

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77271076
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 112
<b>MARK SECTION (no change)</b>	
<b>EVIDENCE SECTION</b>	
<b>EVIDENCE FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	evi_6718415553-213603410_._Consent_Agreement_executed.pdf
<b>CONVERTED PDF FILE(S)</b> (5 pages)	\\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0002.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0003.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0004.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0005.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0006.JPG
<b>ORIGINAL PDF FILE</b>	evi_6718415553-213603410_._HMS_IntegritySource_OA_Response.9.13.pdf
<b>CONVERTED PDF FILE(S)</b> (3 pages)	\\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0007.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0008.JPG \\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0009.JPG
<b>ORIGINAL PDF FILE</b>	evi_6718415553-213603410_._hms.email.pdf
<b>CONVERTED PDF FILE(S)</b> (1 page)	\\TICRS\EXPORT11\IMAGEOUT11\772\710\77271076\xml1\RFR0010.JPG
<b>DESCRIPTION OF EVIDENCE FILE</b>	Evidence of consent to use HMS term by Health Market Science and Applicant.

**SIGNATURE SECTION**

RESPONSE SIGNATURE	/Angela C. Wilcox/
SIGNATORY'S NAME	Angela C. Wilcox
SIGNATORY'S POSITION	Attorney for Applicant
DATE SIGNED	09/13/2010
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES

**FILING INFORMATION SECTION**

SUBMIT DATE	Mon Sep 13 22:21:06 EDT 2010
TEAS STAMP	USPTO/RFR-67.184.155.53-2 0100913222106343960-77271 076-4707642a8dcf85e2f2d11 7b7bf81a2e230-N/A-N/A-201 00913213603410299

**Request for Reconsideration after Final Action  
To the Commissioner for Trademarks:**

Application serial no. **77271076** has been amended as follows:

**EVIDENCE**

Evidence in the nature of Evidence of consent to use HMS term by Health Market Science and Applicant. has been attached.

**Original PDF file:**

evi\_6718415553-213603410\_-\_Consent\_Agreement\_executed.pdf

**Converted PDF file(s) (5 pages)**

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

**Original PDF file:**

evi\_6718415553-213603410\_.\_HMS\_IntegritySource\_OA\_Response.9.13.pdf

**Converted PDF file(s)** (3 pages)

Evidence-1

Evidence-2

Evidence-3

**Original PDF file:**

evi\_6718415553-213603410\_.\_hms.email.pdf

**Converted PDF file(s)** (1 page)

Evidence-1

## **SIGNATURE(S)**

### **Request for Reconsideration Signature**

Signature: /Angela C. Wilcox/ Date: 09/13/2010

Signatory's Name: Angela C. Wilcox

Signatory's Position: Attorney for Applicant

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77271076

Internet Transmission Date: Mon Sep 13 22:21:06 EDT 2010

TEAS Stamp: USPTO/RFR-67.184.155.53-2010091322210634

3960-77271076-4707642a8dcf85e2f2d117b7bf

81a2e230-N/A-N/A-20100913213603410299

## CONSENT AGREEMENT

THIS COEXISTENCE AGREEMENT ("Agreement") is made this \_\_\_ day of September, 2010, by and between Health Management Systems, Inc., located at 401 Park Avenue South, New York, New York 10016 (hereinafter "Health Management") and Health Market Science, Inc., located at 2700 Horizon Drive, King of Prussia, PA 19428 (hereinafter "Health Market"). Both Health Management and Health Market will be collectively referred to herein as the "Parties."

**WHEREAS**, Health Market owns the United States Trademark Registrations identified in Exhibit 1 hereto<sup>1</sup> (hereinafter the "Health Market Registrations").

**WHEREAS**, Health Management owns the United States Trademark Registrations identified in Exhibit 2 hereto (hereinafter the "Health Management Registrations").

**WHEREAS**, Health Management is the applicant for United States Trademark Serial Number 77/271,076 for the name HMS INTEGRITYSOURCE for "Providing services for healthcare providers as business solutions, namely, program analysis, namely providing an on-line computer database in the field of pricing insurance services and comparing prices of insurance services; business consulting services in the field of training; and audits and investigations, namely, account auditing focusing on coding review, compliance audits, medical review, cost analysis and drug rebates" in International Class 35; for "Financial recovery, namely, debt recovery and collection agencies featuring collections, recoupment and demand letters; providing information and online computer databases for the purpose of review and verification of insurance eligibility; rate setting, namely, insurance premium rate computing" in International Class 36; for "Training services in the field of insurance claim processing, advertising and communication technologies" in International Class 41; and for "Data analytics, namely, data mining for overpayment, error and waste analysis, fraud and abuse detection and coding" in International Class 42; and Health Management intends to file an application for the name HMS ELIGIBILITY SOURCE for healthcare and insurance related services as well (collectively referred to herein as the "Health Management Applications").

**WHEREAS**, Health Market consents to registration of the Health Management Registrations and Health Management Applications.

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<sup>1</sup> Notices of Allowance have been received for the applications to register COMPLETESPEND and COMPETEVIEW. Registration is expected as Health Market has filed its Statements of Use for both marks. Further, the application to register PRESCRIBER ELIGIBILITY is expected to register shortly. For purposes of this Consent Agreement, the applications to register the COMPLETESPEND and COMPETEVIEW and PRESCRIBER ELIGIBILITY mark shall be considered within the definition of the "Health Market Registrations."

**WHEREAS**, Health Management consents to registration of the Health Market Registrations.

**WHEREAS**, Health Market and Health Management consent to the coexistence of their respective Health Market Registrations and Health Management Registrations and Health Management Applications and agree that confusion is not likely as between the marks found because of, among other things, the differences in overall commercial impressions created by the marks combined with sophistication of the respective customer base.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are hereby incorporated and made a part of this Agreement, and in further consideration of the promises set forth below and intending to be bound, the Parties hereby agree as follows:

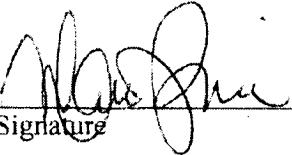
1. Use of the Respective Marks. Health Market recognizes and understands that Health Management has applied for the Health Management Applications. Health Market and Health Management both agree that they do not consider that there is any likelihood of confusion as between the Health Management Applications and the Health Market Registrations based upon: (i) the differing overall commercial impressions created by the marks, (ii) consumer expectations related to the services provided by the parties, and (iii) the sophistication of the consumers. Further, Health Market and Health Management both agree that they do not consider that there is any likelihood of confusion as between the Health Market Registrations and the Health Management Registrations based upon: (i) the differing overall commercial impressions created by the marks, (ii) consumer expectations related to the services provided by the parties, and (iii) the sophistication of the consumers.
2. Use of this Consent Agreement. The respective Parties consent to either party submitting this Consent Agreement to the United States Patent and Trademark Office.
3. Addressing Any Instances of Confusion. The Parties represent that they are not aware of any instances of actual confusion as between their respective marks. In the event either party ever becomes aware of an instance of actual confusion arising out of the use of their respective marks, each agrees to provide notice to the other of such confusion and each take reasonable steps to remedy any such confusion
4. Right to Assign, License, or Sell. This Agreement does not, in any way, limit or constrain the Parties' rights to assign, license, sell or use their respective trademarks in any way or for any purpose, provided, however, that it is the parties intention that this Agreement bind the successors and assigns of the parties to the rights and limitations described herein on the respective parties trademarks.
5. No Defined Territories. This Agreement does not set forth any defined territories for the Parties' use of their respective trademarks.

6. No License. This Agreement does not constitute a license between the Parties.
7. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof. This Agreement may not be amended, modified or varied except by written agreement of the Parties.
8. If Any Provision is Void. If any part of this Agreement is determined to be void, invalid or unenforceable by any Court or competent authority in any jurisdiction, such determination shall not affect the validity or enforceability of any other part or parts of the Agreement, all of which shall remain in full force and effect.
9. Good Faith in Resolving Disputes. Any controversy or claim arising out of or relating to this Agreement shall be settled, if possible, through good faith negotiations between the Parties.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Agreement.

HEALTH MANAGEMENT SYSTEMS, INC.

HEALTH MARKET SCIENCE, INC.

  
Signature

\_\_\_\_\_  
Signature

Maria Fern 9/10/10  
Printed Name Dated

\_\_\_\_\_  
Printed Name Dated

Health Market Science  
Active Trademarks  
EXHIBIT 1

Cozen No.	Trademark	Status	App. No.	Filing Date	Reg. No.	Reg. Date
HMSO0002US	HMS Investigators	Registered	78849758	30-Mar-2006	3484968	12-Aug-2008
HMSO0005US	NPI RIGHT	Registered	78841070	20-Mar-2006	3409105	08-Apr-2008
HMSO0006US	HMS Affiliations	Registered	78840895	20-Mar-2006	3499139	09-Sep-2008
HMSO0007US	HMS PXDX	Registered	78840883	20-Mar-2006	3484961	12-Aug-2008
HMSO0008US	HEALTH MARKET SCIENCE	Registered	78840869	20-Mar-2006	3409104	08-Apr-2008
HMSO0010US	SERVICES	Registered	78849738	30-Mar-2006	3372979	22-Jan-2008
HMSO0018US	Logo	Registered	77185136	18-May-2007	3582137	03-Mar-2009
HMSO0019US	HMS PROFILES	Registered	77184398	18-May-2007	3597091	31-Mar-2009
HMSO0021US	CompleteSpend	ALLOWED	77831155	21-Sep-2009		
HMSO0022US	Prescriber Eligibility	Pending	77831118	21-Sep-2009		
HMSO0023US	CompleteView	ALLOWED	77831150	21-Sep-2009		

## EXHIBIT 2

Trademark	Status	App. No.	Filing Date	Reg. No.	Reg. Date
HEALTH MANAGEMENT SYSTEMS and design	Registered	75-856,373	11.23.99	2,505,876	11.13.01
COBCONNECT	Registered	76-519,205	5.21.03	2,898,893	11.2.04
COBMATCH	Registered	77-000,344	9.15.06	3,531,480	11.11.08
KIDCONNECT	Registered	77-282,412	9.18.07	3,740,439	1.19.10
CHECK IN DIRECT and design	Registered	77-317,066	10.30.07	3,740,475	1.19.10
MSSC	Registered	77-379,233	1.24.08	3,585,560	3.10.09
COBMANAGER	Registered	78-953,597	8.16.06	3,429,017	5.13.08
VERIFY GUY	Published	77-729,458	5.5.09		
VERIFY SOLUTIONS	Registered	77-325,137	11.8.07	3,461,592	7.8.08
INTEGRIGUARD	Registered	75-725,658	6.9.99	2,635,885	10.15.02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Health Management Systems, Inc.

Mark: HMS INTEGRITYSOURCE

Serial No.: 77/271,076

Filed: September 4, 2007

Law Office No. 112

Examining Attorney: Benjamin U. Okeke

**RESPONSE**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir:

Applicant hereby responds to the Office Action regarding Trademark Application No. 77/271,076, dated March 12, 2010.

**Likelihood of Confusion Refusal**

Applicant reasserts its prior use arguments set forth in its Response dated January 29, 2010.

Applicant also provides that given its prior use of the HMS term, and that Heath Market Science and Applicant have used their respective service marks for a number of years without knowledge of actual confusion between the service marks, Health Market Science and Applicant have mutually consented to each party's use and registration of their respective trademarks containing the HMS term. Attached hereto please find the agreement and emails noting the parties' consent for both Health Market Science and Applicant to use the HMS term in association with their respective businesses. Further, Applicant has been notified through the

attorney for Health Market Science that Health Market Science acquiesces to Applicant's use and registration of the HMS INTEGRITYSOURCE mark.

As such, Applicant respectfully requests that the consent of both Health Market Science and Applicant supports registration of Applicant's HMS INTEGRITYSOURCE application.

VANEK, VICKERS & MASINI, P.C.

Dated: September 13, 2010

By: /s/Angela C. Wilcox  
Angela C. Wilcox, Esq.  
*Attorney for Applicant*

VANEK, VICKERS & MASINI, P.C.  
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CHICAGO, ILLINOIS 60606  
Telephone: (312) 224-1500  
Facsimile: (312) 224-1510  
Email: [awilcox@vaneklaw.com](mailto:awilcox@vaneklaw.com)



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**From:** Chesnick, Adam [AChesnick@cozen.com]  
**Sent:** Monday, September 13, 2010 5:59 PM  
**To:** Wilcox, Angela C.  
**Cc:** sjeffries@hms.com  
**Subject:** RE: Status

Angela,

I still haven't received an executed agreement from our client. Please assume that we will not receive an executed agreement by the end of the evening, though I anticipate receiving an executed document tomorrow.

Thanks.

**Adam J. Chesnick, Esq. | Cozen O'Connor  
Intellectual Property Group**  
1900 Market Street | Philadelphia, PA. 19103 | P: 215 665 4603 | F: 215 665 2013  
[achesnick@cozen.com](mailto:achesnick@cozen.com) | [www.cozen.com](http://www.cozen.com)

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**From:** Wilcox, Angela C. [mailto:AWilcox@vaneklaw.com]  
**Sent:** Monday, September 13, 2010 4:40 PM  
**To:** Chesnick, Adam  
**Cc:** sjeffries@hms.com  
**Subject:** Status

Hi Adam,

I know it is nearing the end of your day, so I just wanted to check in with you to see if you have heard anything yet from your client.

Thanks,  
Angela