

ESTTA Tracking number: **ESTTA240198**

Filing date: **10/01/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	InSight Health Corp.
Granted to Date of previous extension	10/01/2008
Address	26250 Enterprise Court, Suite 100 Lake Forest, CA 92630 UNITED STATES

Attorney information	Alina S. Morris Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 UNITED STATES efiling@kmob.com Phone:949-760-0404
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Applicant Information

Application No	77373703	Publication date	06/03/2008
Opposition Filing Date	10/01/2008	Opposition Period Ends	10/01/2008
Applicant	DVMinsight 7522-7524 Clariemont Mesa Blvd. San Diego, CA 92111 UNITED STATES		

Goods/Services Affected by Opposition

Class 044. First Use: 2007/04/01 First Use In Commerce: 2007/04/01 All goods and services in the class are opposed, namely: Teleradiology services to the veterinary community

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2485208	Application Date	09/12/2000
Registration Date	09/04/2001	Foreign Priority Date	NONE
Word Mark	INSIGHT		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 042. First use: First Use: 1996/07/01 First Use In Commerce: 1996/07/01 Health care services in the nature of diagnostic imaging, imaging guided therapy services, radiology services, and managed diagnostic health care services

U.S. Registration No.	2229303	Application Date	04/10/1996
Registration Date	03/02/1999	Foreign Priority Date	NONE
Word Mark	INSIGHT HEALTH SERVICES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1996/07/01 First Use In Commerce: 1996/07/01 health care services, in the nature of a diagnostic imaging provider; managed diagnostic health care services		

U.S. Registration No.	3271336	Application Date	10/20/2006
Registration Date	07/31/2007	Foreign Priority Date	NONE
Word Mark	INSIGHT IMAGING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: First Use: 2006/12/04 First Use In Commerce: 2006/12/04 Health care services in the nature of diagnostic imaging, imaging guided therapy services, radiology services, and managed diagnostic health care services		

Attachments	76126941#TMSN.gif (1 page)(bytes) 75089138#TMSN.gif (1 page)(bytes) 77025758#TMSN.jpeg (1 page)(bytes) INSIHEL.056TIS Ntc of Opp.pdf (6 pages)(269262 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Alina S. Morris/
Name	Alina S. Morris
Date	10/01/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

InSight Health Corp.,

Opposer,

v.

DVMInsight,

Applicant.

) I hereby certify that this correspondence and all marked
) attachments are being deposited with the United States
) Patent and Trademark Office, Trademark Trial and
) Appeal Board via electronic filing through their website
) located at <http://esta.uspto.gov/> on:

10/1/08

(Date)

Alina S. Morris

Alina S. Morris

NOTICE OF OPPOSITION

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

Dear Sir or Madam:

Opposer, InSight Health Corp. (hereinafter referred to as "InSight"), located and doing business at 26250 Enterprise Court, Suite 100, Lake Forest California 92630-8405, believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 77/373,703 ("Applicant's Application") filed January 16, 2008 by DVMInsight (hereinafter referred to as "Applicant"), and hereby opposes the same.

A description of Applicant's Application is as follows:

Mark:	INSIGHT RADIOLOGY
Serial No.:	77/373,703
Filing Date:	January 16, 2008
Publication Date:	June 3, 2008
Goods:	Teleradiology services to the veterinary community, in International Class 44
Alleged Date of First Use:	April 1, 2007

As grounds for opposition, it is alleged:

1. Since at least as early as 1996, InSight has used names and marks containing the term INSIGHT, including the marks set forth in Paragraphs 2 through 4 below (collectively, the “INSIGHT Marks”) in association with medical imaging, radiology, and diagnostic health care (“InSight’s Services.”)

2. InSight is the owner of and relies on U.S. Trademark Registration No. 2,485,208 (the “’208 Registration”) for the mark INSIGHT for “health care services in the nature of diagnostic imaging, imaging guided therapy services, radiology services, and managed diagnostic health care services.” The ’208 Registration was filed on September 12, 2000, and issued on September 4, 2001. Thus, the filing date and date of registration of the ’208 Registration are all prior to the filing date of Applicant’s Application. By virtue of InSight’s compliance with the provisions of 15 U.S.C. § 1065, InSight’s right to use the INSIGHT mark shown in the ’208 Registration is incontestable.

3. InSight is the owner of and relies on U.S. Trademark Registration No. 2,229,303 (the “’303 Registration”) for the mark  for “health care services, in the nature of a diagnostic imaging provider; managed diagnostic health care services.” The ’303 Registration was filed on April 10, 1996 and issued on March 2, 1999. Thus, the filing date and date of registration of the ’303 Registration are all prior to the filing date of Applicant’s Application. By virtue of InSight’s compliance with the provisions of 15 U.S.C. § 1065, InSight’s right to use the INSIGHT mark shown in the ’303 Registration is incontestable.

4. InSight is the owner of and relies on U.S. Trademark Registration No. 3,271,336 (the “’336 Registration”) for the mark INSIGHT IMAGING for “health care services in the nature of diagnostic imaging, imaging guided therapy services, radiology services, and managed

diagnostic health care services.” The ’336 Registration was filed on October 20, 2006, issued on July 31, 2007. Thus, the filing date and date of registration of the ’303 Registration are all prior to the filing date of Applicant’s Application.

5. The ’208, ’303, and ’336 Registrations valid, subsisting, unrevoked and uncanceled; as such they constitute prima facie evidence of the validity of the registered marks and of the registrations thereof, and of InSight’s ownership of the marks shown therein and/or InSight’s exclusive right to use the marks in commerce in connection with the goods and services named therein, without condition or limitation. The ’208, ’303, and ’336 Registrations also constitute notice to Applicant of InSight’s claim of ownership of the marks shown therein; all as provided in Section 7(b), 22 and 33(a) of the Trademark Act of 1946, as amended.

6. In view of the substantial similarity of the respective marks and the related nature of the goods and services of the respective parties, it is alleged, that Applicant’s mark so resembles the registered marks in the ’208, ’303, and ’336 Registrations, previously used in the United States and not abandoned, as to be likely to cause confusion or to cause make or deceive.

7. If Applicant is permitted to register the mark shown in Applicant’s Application, Applicant’s corresponding prima facie exclusive right to use the INSIGHT RADIOLOGY mark in nationwide commerce will conflict with InSight’s lawful and prima facie exclusive right to use the ’208, ’303, and ’336 nationwide.

8. If Applicant is permitted to register the mark shown in Applicant’s Application, Applicant’s corresponding prima facie exclusive right to use the INSIGHT RADIOLOGY mark in nationwide commerce will conflict with InSight’s lawful and prima facie exclusive right to use the marks in the ’208, ’303, and ’336 Registrations nationwide.

9. Since a date well prior to the filing date of Applicant's Application, and prior to Applicant's claimed date of first use of the mark in the application. InSight has used the INSIGHT Marks in connection with the provision and advertisement of InSight's services. Such use has been valid and continuous, and has not been abandoned. As a result of this use, well prior to the filing date of Applicant's Application, the relevant class of the public has come to associate InSight with the INSIGHT Marks.

10. InSight has invested substantial amounts of time, effort and money in the INSIGHT Marks. By reason of InSight's widespread and continuous use of the INSIGHT Marks, in addition to the protection afforded to InSight by the '208, '303, and '336 Registrations, InSight has extensive, non-registered statutory and common law rights in the INSIGHT Marks.

11. InSight, through sales, advertising and promotion of InSight's services under the INSIGHT Marks, since a date prior to the filing date of Applicant's Application, has built up at great expense and effort, valuable goodwill symbolized by the INSIGHT Marks.

12. In view of InSight's prior rights in the INSIGHT Marks, Applicant is not entitled to register the INSIGHT RADIOLOGY mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

13. In view of InSight's prior use and registrations of the InSight Marks, the INSIGHT RADIOLOGY mark is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

14. Applicant is not entitled to register the INSIGHT RADIOLOGY mark pursuant to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

15. By reason of all the foregoing, InSight will be gravely damaged by the registration of the mark shown in Applicant's Application because registration of this mark would be in violation of InSight's trademark and trade name rights.

WHEREFORE, InSight prays that U.S. Trademark Application Serial No. 77/373,703 be rejected and stricken, that no registration be issued thereon to Applicant, and this opposition be sustained in favor of InSight.

Please charge Deposit Account No. 11-1410 for any fees which may be required, or credit any overpayment to this account.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

10/1/08

By: _____

Alina S. Morris

Diane M. Reed
Alina S. Morris
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
efiling@kmob.com
Attorneys for Opposer,
InSight Health Corp.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **NOTICE OF OPPOSITION** upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid on October 1, 2008, addressed as follows:

DVMInsight
75222-7524 Clariemont Mesa Blvd.
San Diego, CA 92111

Alina S. Morris

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