

ESTTA Tracking number: **ESTTA516559**

Filing date: **01/17/2013**

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	Independent Health Association, Inc.		
Entity	Corporation	Citizenship	New York
Address	511 Farber Lakes Drive Buffalo, NY 14221 UNITED STATES		

Attorney information	Ellen S. Simpson Simpson & Simpson PLLC 5555 Main Street Williamsville, NY 14221 UNITED STATES esimpson@idealawyers.com Phone:716-626-1564		
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Applicant Information

Application No	85597014	Publication date	12/18/2012
Opposition Filing Date	01/17/2013	Opposition Period Ends	01/17/2013
Applicant	Argus Health Systems, Inc. 1300 Washington Street Kansas City, MO 641051433 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: a highly scalable and comprehensive computer system consisting primarily of a computer software platform for the administration of pharmacy benefits, software platforms for prescription claims adjudication, eligibility, and pharmacy management
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2927338	Application Date	08/04/2003
Registration Date	02/22/2005	Foreign Priority Date	NONE
Word Mark	NOVA HEALTHCARE ADMINISTRATORS		

Design Mark	NOVA HEALTHCARE ADMINISTRATORS
Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1991/03/00 First Use In Commerce: 1991/03/00 Third party administrator of employee benefit plans; insurance administration and brokerage services

U.S. Application No.	85657195	Application Date	06/20/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NOVA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Third party administration of employee benefit plans; insurance administration and brokerage services Class 044. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Wellness, disease management and case management services		

U.S. Application No.	85657173	Application Date	06/20/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NOVA		
Design Mark			
Description of	The mark consists of the word NOVA and a semicircle design comprised of		

Mark	three petals located to the upper right of the A.
Goods/Services	Class 036. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Third party administration of employee benefit plans; insurance administration and brokerage services Class 044. First use: First Use: 2011/01/00 First Use In Commerce: 2011/01/00 Wellness, disease management and case management services

Attachments	76536990#TMSN.gif (1 page)(bytes) 85657195#TMSN.jpeg (1 page)(bytes) 85657173#TMSN.jpeg (1 page)(bytes) IHAO113US_opp.pdf (17 pages)(2725855 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	/Ellen S. Simpson/
Name	Ellen S. Simpson
Date	01/17/2013

benefits management to health care providers, employers, plan subscribers, and other third-party providers of health care related services.

2. Upon information and belief, Applicant is a provider of health care information management services, providing its goods and services to health care organizations, including managed care organizations and pharmacy benefit managers.

3. Since at least as early as March 1, 1991, long prior to the filing date of the application opposed herein, Opposer has been using, and continues to use, the service mark NOVA HEALTHCARE ADMINISTRATORS in interstate commerce in connection with third party administrator of employee benefit plans, insurance administration and brokerage services. The service mark NOVA HEALTHCARE ADMINISTRATORS has become identified with Opposer and its services and is well known and famous in connection with Opposer's services.

4. Since at least as early as January 2011, long prior to the filing date of the application opposed herein, Opposer continuously has used the service mark NOVA in interstate commerce in connection with the advertising, promotion and sale of third party administration of employee benefit plans, insurance administration and brokerage services, as well as wellness, disease management and case management services. The service mark NOVA has become identified with Opposer and its services and is well known and famous in connection with Opposer's services. As a result, Opposer has established common-law rights in the NOVA mark.

5. Since at least as early as January 2011, long prior to the filing date of the application opposed herein, Opposer continuously has used the service mark **nová'** in commerce in connection with the advertising, promotion and sale of third party administration of employee benefit plans, insurance administration and brokerage services, as well as wellness, disease management and case management services. The service mark **nová'** has become

identified with Opposer and its services and is well known and famous in connection with Opposer's services. As a result, Opposer has established common-law rights in the **nová'** mark.

6. Opposer has been using, and continues to use, the marks NOVA and **nová'** from a date prior to April 13, 2012, the date of filing of Applicant's intent-to-use application for the mark RXNOVA, and a date prior to any date of first use that can be relied upon by Applicant for the mark RXNOVA. Since at least as early as January 2011, Opposer has expended a substantial amount of time, money and effort promoting, marketing and advertising its services under and in connection with the NOVA and **nová'** marks. As a result of Opposer's continuous use of these marks, Opposer has developed and enjoys extensive goodwill and customer recognition throughout the United States with respect to these marks.

7. Opposer is the owner of U.S. Service Mark Registration No. 2,927,338, dated February 22, 2005, pursuant to U.S. Service Mark Application Serial No. 76/536,990 filed on Aug. 04, 2003 for the service mark NOVA HEALTHCARE ADMINISTRATORS for use in association with third party administrator of employee benefit plans; insurance administration and brokerage services in International Class 36 (Exhibit 1).

8. The above referenced U.S. Service Mark Registration No. 2,927,338 for the service mark NOVA HEALTHCARE ADMINISTRATORS has become incontestable under Section 15 of the Lanham Act, 15 U.S.C. §1065, constituting conclusive evidence of the validity of the registered marks and Opposer's exclusive right to use the same.

9. Opposer is also the owner of pending U.S. Service Mark Application Serial No. 85/657,195, filed on June 20, 2012, for the service mark NOVA for use in association with third party administration of employee benefit plans; insurance administration and brokerage services

in International Class 36, and wellness, disease management and case management services in International Class 44 (Exhibit 2).

10. Opposer is also the owner of pending U.S. Service Mark Application Serial No. 85/657,173, filed on June 20, 2012, for the mark **nová** for use in association with third party administration of employee benefit plans; insurance administration and brokerage services in International Class 36, and wellness, disease management and case management services in International Class 44 (Exhibit 3). The marks cited above in Paragraphs 8 through 10 are hereby entitled the “NOVA marks.”

11. For many years, Opposer has extensively used and promoted its services using its family of NOVA marks. Opposer has developed exceedingly valuable goodwill with respect to its the family of NOVA marks cited above. By virtue of its efforts, the expenditure of considerable sums for advertising and promotional activities, and by virtue of the excellence of its services, Opposer has developed exceedingly valuable goodwill with respect to these NOVA marks. Opposer’s NOVA marks are well known to consumers and have been distinctive and famous since prior to the filing date of the application opposed herein.

12. By its Application Serial No. 85/597,014, Applicant seeks to register the mark RXNOVA for use in association with “a highly scalable and comprehensive computer system consisting primarily of a computer software platform for the administration of pharmacy benefits, software platforms for prescription claims adjudication, eligibility and pharmacy management” in International Class 9.

13. The opposed application is an intent-to-use based application filed on April 13, 2012, which date is well after Opposer first commenced use of and/or registered its NOVA marks.

14. Upon information and belief, Applicant has not used the mark RXNOVA in the United States in association with the goods identified in U.S. Trademark Application Serial No. 85/597,014 prior to April 13, 2012, the date of filing of Applicant's intent-to-use application for this mark.

15. Applicant's mark, RXNOVA, is confusingly similar in sight, sound and meaning to Opposer's aforesaid marks owned and used by Opposer which all include the word NOVA. The use and registration of Applicant's mark RXNOVA would result in confusion, mistake and/or deception as to the source or origin of Applicant's goods, leading consumers to believe that they are somehow affiliated with, approved, sponsored or licensed by Opposer.

16. Upon information and belief, Applicant's mark, RXNOVA, is used in association with goods utilized in the field of health care information services. Opposer's mark NOVA is used in association with services utilized in the field of managed health care, including health care plans, and related administrative services.

17. Upon information and belief, Applicant's mark, RXNOVA, is used in association with goods marketed and sold to managed care organizations and pharmacy benefit managers. Opposer's services also utilize similar channels of trade and are offered to buyers in the same or similar industries.

18. If Applicant is permitted to use and register Applicant's mark for the goods identified in the Application, confusion in trade, resulting in irreparable damage and injury to Opposer, inevitably would result by reason of the similarity between Applicant's and Opposer's marks and the goods and/or services sold and provided thereunder. Any objection or fault found with the goods marketed under Applicant's mark, RXNOVA, would reflect on, and injure, the reputation Opposer has established for the services provided under its aforesaid marks. If Applicant is granted the registration herein opposed, Applicant would obtain a *prima facie* exclusive right to use the mark set forth in its application for registration. Such registration

would become a source of damage and injury to Opposer through the generation of confusion, mistake, and/or deception, the dilution of Opposer's marks and the diminution of Opposer's ability to control the quality of goods and/or services sold thereunder.

19. Moreover, such registration would run contrary to the requirement that all doubts as to the likelihood of confusion must be resolved in favor of Opposer, and against Applicant, who has a legal duty to select a mark dissimilar to marks already in use.

20. Applicant's mark, as used on the goods identified in the Application, would dilute, or be likely to dilute, the distinctiveness of Opposer's aforesaid marks, resulting in damage to Opposer, its goodwill and strength and value of its marks.

21. In view of the similarity in sight, sound and meaning between Applicant's mark RXNOVA and Opposer's aforesaid marks; the similarity between the respective goods and/or services of Applicant and Opposer associated with Opposer's aforesaid marks; and the similarity of the channels of trade and customer base for Applicant's alleged goods and Opposer's services; Applicant's mark so resembles Opposer's aforesaid marks as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 85/597,014 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer hereby submits the requisite filing fee in the amount of \$300.00 as required in 37 C.F.R. § 2.6(a)(17). Please charge any additional fees to Account No. 50-0822.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Ellen S. Simpson", with a long horizontal flourish extending to the right.

Ellen S. Simpson
Attorney for Opposer
Simpson & Simpson PLLC
5555 Main Street
Williamsville, New York 14221
(tel) 716-626-1564 / (fax) 716-626-0366

DATED: January 17, 2013

In the Matter of U.S. Trademark Application Serial No. 85/597,014
Published in the *Official Gazette* on December 18, 2012
Independent Health Association, Inc. v. Argus Health Systems, Inc.
Attorney Docket No. 0035.IHAO113US

EXHIBIT 1

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,927,338

Registered Feb. 22, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

NOVA HEALTHCARE ADMINISTRATORS

INDEPENDENT HEALTH ASSOCIATION, INC.
(NEW YORK CORPORATION)
511 FARBER LAKES DRIVE
WILLIAMSVILLE, NY 14221

FOR: THIRD PARTY ADMINISTRATOR OF EM-
PLOYEE BENEFIT PLANS; INSURANCE ADMINIS-
TRATION AND BROKERAGE SERVICES, IN CLASS
36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-0-1991; IN COMMERCE 3-0-1991.

OWNER OF U.S. REG. NOS. 1,451,464, 2,653,308
AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE HEALTHCARE ADMINISTRATOR,
APART FROM THE MARK AS SHOWN.

SER. NO. 76-536,990, FILED 8-4-2003.

KENNETH D. BATTLE, EXAMINING ATTORNEY

In the Matter of U.S. Trademark Application Serial No. 85/597,014
Published in the *Official Gazette* on December 18, 2012
Independent Health Association, Inc. v. Argus Health Systems, Inc.
Attorney Docket No. 0035.IHAO113US

EXHIBIT 2



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NOVA

Word Mark NOVA
Goods and Services IC 036. US 100 101 102. G & S: Third party administration of employee benefit plans; insurance administration and brokerage services. FIRST USE: 20110100. FIRST USE IN COMMERCE: 20110100
 IC 044. US 100 101. G & S: Wellness, disease management and case management services. FIRST USE: 20110100. FIRST USE IN COMMERCE: 20110100
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85657195
Filing Date June 20, 2012
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Independent Health Association, Inc. CORPORATION NEW YORK 511 Farber Lakes Drive Williamsville NEW YORK 14221
Attorney of Record Ellen S. Simpson
Prior Registrations 2927338
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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In the Matter of U.S. Trademark Application Serial No. 85/597,014
Published in the *Official Gazette* on December 18, 2012
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Attorney Docket No. 0035.IHAO113US

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Word Mark NOVA
Goods and Services IC 036. US 100 101 102. G & S: Third party administration of employee benefit plans; insurance administration and brokerage services. FIRST USE: 20110100. FIRST USE IN COMMERCE: 20110100
 IC 044. US 100 101. G & S: Wellness, disease management and case management services. FIRST USE: 20110100. FIRST USE IN COMMERCE: 20110100
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 05.05.25 - Daffodils; Iris (flower); Other flowers
 26.01.03 - Circles, incomplete (more than semi-circles); Incomplete circles (more than semi-circles)
 26.01.06 - Circles, semi; Semi-circles
 26.01.09 - Circles having animals as a border; Circles having geometric figures as a border; Circles having humans as a border; Circles having objects as a border; Circles having plants as a border; Geometric figures, objects, humans, plants or animals forming or bordering the perimeter of a circle.
Serial Number 85657173
Filing Date June 20, 2012
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Independent Health Association, Inc. CORPORATION NEW YORK 511 Farber Lakes Drive Williamsville NEW YORK 14221
Attorney of Ellen S. Simpson

Record

Prior Registrations 2927338

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word NOVA and a semicircle design comprised of three petals located to the upper right of the A.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this NOTICE OF OPPOSITION is being filed electronically with the United States Patent and Trademark Office utilizing the *Electronic System for Trademark Trials and Appeals* on this 17th day of January, 2013.



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CERTIFICATE OF SERVICE

I certify that a true copy of this NOTICE OF OPPOSITION was served upon the Applicant by depositing a copy thereof with the U.S. Postal Service, via first class mail, postage prepaid, directed to Applicant's counsel:

Scott J. Slavick
Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, Illinois 60610-0395

Dated: January 17, 2013

By:



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