

ESTTA Tracking number: **ESTTA770967**

Filing date: **09/15/2016**

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	Epic Systems Corporation
Granted to Date of previous extension	09/17/2016
Address	1979 Milky Way Verona, WI 53593 UNITED STATES

Correspondence information	George S. Pavlik Husch Blackwell LLP 120 South Riverside Plaza Suite 2200 Chicago, IL 60606 UNITED STATES ptomailbox@whdlaw.com, julie.hughes@huschblackwell.com, george.pavlik@huschblackwell.com Phone:312-526-1617
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Applicant Information

Application No	86857155	Publication date	07/19/2016
Opposition Filing Date	09/15/2016	Opposition Period Ends	09/17/2016
Applicant	Axxess Technology Solutions Inc. Suite 700 Dallas, TX 75248 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Electronic data collection and data submission services for business purposes for home health agencies in the fields of medicine and healthcare
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Common law rights

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2964155	Application Date	05/13/2004
Registration Date	06/28/2005	Foreign Priority Date	NONE
Word Mark	CARE EVERYWHERE		

Design Mark	CARE EVERYWHERE
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2003/12/08 First Use In Commerce: 2004/02/22 Computer software for use in the healthcare field, namely software for entering, storing, editing, organizing, integrating, synchronizing, processing, accessing, managing, communicating and sharing data to, from, across and among multiple separate information systems, including heterogeneous systems, and user manuals and documentation packaged with such computer software

Attachments	78417889#TMSN.png(bytes) Notice of Opposition.pdf(25618 bytes) Exhibit A.pdf(50105 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	/George S. Pavlik/
Name	George S. Pavlik
Date	09/15/2016

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

In the matter of trademark application Serial No. 86/857,155
For the mark POWERING CARE EVERYWHERE

Epic Systems Corporation)	
)	
Opposer,)	
)	
vs.)	Opposition No. _____
)	
Axxess Technology Solutions Inc.)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Epic Systems Corporation (“Opposer”), believes that it will be damaged by registration of the POWERING CARE EVERYWHERE mark as applied for in Application Serial No. 86/857,155 (“Application”) by Axxess Technology Solutions Inc. (“Applicant”) and hereby opposes the same, pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the Lanham Act), 15 U.S.C. § 1063(a).

The grounds for opposition are as follows:

1. Opposer is a corporation organized under the laws of Wisconsin, with its principal place of business located at 1979 Milky Way, Verona, Wisconsin 53593.
2. Opposer is one of the leading healthcare software developers and providers in the United States, with thousands of health care providers and patients using its software solutions.

3. Opposer is the owner of all rights, title and interest in and to the mark CARE EVERYWHERE in the United States (the “CARE EVERYWHERE mark”) in connection with computer software and software-related services in the healthcare field.

4. Commencing long prior to the filing date of the Application and Applicant’s date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, Opposer has used the CARE EVERYWHERE mark in U.S. interstate commerce on computer software for use in the healthcare field, including software for entering, storing, editing, organizing, integrating, synchronizing, processing, accessing and managing data and communicating and sharing data across separate information systems.

5. Commencing long prior to the filing date of the Application and Applicant’s date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, Opposer has offered, licensed, advertised and promoted computer software under the CARE EVERYWHERE mark for use in the healthcare field.

6. Commencing long prior to the filing date of the Application and Applicant’s date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, software offered and licensed by Opposer under its CARE EVERYWHERE mark has been used by organizations, institutions and businesses in the healthcare field for electronic data collection and data submission.

7. Over the years and long prior to the filing date of the Application and Applicant’s date of first use of the POWERING CARE EVERYWHERE mark, Opposer has offered, licensed, advertised and promoted software under the CARE EVERYWHERE mark to healthcare organizations, institutions and businesses having segments, divisions and/or operations in the field of home healthcare services.

8. Commencing long prior to the filing date of the Application and Applicant's date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, Applicant has offered electronic data collection and submission services under the CARE EVERYWHERE mark in the healthcare field.

9. Commencing long prior to the filing date of the Application and Applicant's date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, Applicant has used the CARE EVERYWHERE mark in U.S. commerce to facilitate the electronic exchange of data among a network of healthcare providers.

10. Commencing long prior to the filing date of the Application and Applicant's date of first use of the POWERING CARE EVERYWHERE mark and continuing through the present, Applicant has offered additional software-related services under the CARE EVERYWHERE mark, such as software training, installation, implementation and maintenance in the healthcare field.

11. Since first adopting and using the CARE EVERYWHERE mark, Opposer has made substantial investment in advertising and promoting its computer software and software-related services under the CARE EVERYWHERE mark.

12. By virtue of Opposer's long, continuous and exclusive use of the CARE EVERYWHERE mark and extensive advertising and promotion of goods and services under the CARE EVERYWHERE mark, purchasers, potential purchasers and the general public have come to widely recognize the CARE EVERYWHERE mark as being associated with a single source of computer software and software-related services in the healthcare field, and further recognize the single source as being Opposer.

13. Opposer's CARE EVERYWHERE mark is distinctive with regard to computer software and software-related services in the healthcare field, with such distinctiveness having been

obtained well prior to the filing date of the Application and the date of Applicant's first use of the POWERING CARE EVERYWHERE mark.

14. Opposer has established strong common law rights in and to the CARE EVERYWHERE mark in connection with software and software-related services in the healthcare field. Opposer shall rely herein upon such common law rights in and to the CARE EVERYWHERE mark in opposing Applicant's registration of POWERING CARE EVERYWHERE.

15. In addition to its common law rights, Opposer is the owner of, and will rely herein upon, United States Trademark Registration No. 2,964,155 (United States Trademark Application Serial No. 78/417,889) ("Opposer's Registered Mark"). A true and correct copy of documents printed from the TSDR database of the USPTO show the current status and title of Opposer's Registered Mark, which are attached hereto as Exhibit A.

16. Opposer's Registered Mark specifies the following goods:

computer software for use in the healthcare field, namely software for entering, storing, editing, organizing, integrating, synchronizing, processing, accessing, managing, communicating and sharing data to, from, across and among multiple separate information systems, including heterogeneous systems, and user manuals and documentation packaged with such computer software

(the "CARE EVERYWHERE mark"). Opposer's Registered Mark is valid, subsisting and conclusive evidence of Opposer's exclusive nationwide right to use the CARE EVERYWHERE mark in U.S. commerce on the goods specified in the registration.

17. Opposer's CARE EVERYWHERE mark has been in use for at least five (5) consecutive years since the date of registration and the U.S. Patent and Trademark Office ("USPTO") has acknowledged Opposer's Registered Mark being incontestable under Section 15 of the Lanham Act, 15 U.S.C. § 1065.

18. Upon information and belief, Applicant is a corporation organized under the laws of Texas, with a business address at 16000 Dallas Parkway, Suite 700, Dallas, Texas 75248.

19. On December 22, 2015, Applicant filed the Application with the USPTO for registration of the mark POWERING CARE EVERYWHERE (“POWERING CARE EVERYWHERE mark”) in connection with the following services, in International Class 35:

Electronic data collection and data submission services for business purposes in the fields of medicine and healthcare

(the “Application”). The Application was assigned Serial No. 86/857,155.

20. On April 11, 2016, the Examining Attorney issued an Office Action refusing the specimen submitted by Applicant, and refusing registration of the POWERING CARE EVERYWHERE mark because of a likelihood of confusion with Opposer’s Registered Mark.

21. Upon information and belief, Applicant filed a Response to Office Action (“Response”) with the USPTO on May 2, 2016 in connection with the Application. Applicant’s Response amended the filing basis of the Application from Section 1(a) (use-based) to Section 1(b) (intent-to-use), and included remarks requesting reconsideration of the Examining Attorney’s refusal of the Application because of a likelihood of confusion with Opposer’s Registered Mark.

22. Upon information and belief, Applicant’s Attorney of Record authorized an Examiner’s Amendment to the Application on June 8, 2016, to clarify and limit certain services, with the services listed as follows:

Electronic data collection and data submission services for business purposes for home health agencies in the fields of medicine and healthcare

23. The Application is currently pending and was published for opposition in the *Official Gazette* on July 19, 2016.

24. The services listed in the Application for POWERING CARE EVERYWHERE, initially filed and as amended, are closely related to the goods and services offered by Opposer on or in connection with its CARE EVERYWHERE mark.

25. On August 17, 2016, Opposer filed a Request to Extend Time to File an Opposition against the Application (“Request”). The Board granted Opposer’s Request on August 17, 2016 (Doc. No. 2) and extended the deadline for opposing the Application until September 17, 2016—this deadline being further extended to the next succeeding business day, Monday, September 19, 2016, under 35 U.S.C. § 21(b) because September 17, 2016 is a Saturday. The subject Notice of Opposition is timely.

26. Prior to publication of the Application, Opposer contacted Applicant to advise Applicant of Opposer’s rights under the CARE EVERYWHERE mark and to express its concern that that registration and use of POWERING CARE EVERYWHERE by Applicant would likely cause confusion in the marketplace and dilute the value of Opposer’s CARE EVERYWHERE mark. Although Opposer has since conferred with Applicant on issues forming the basis of this Opposition, Applicant has not agreed to expressly abandon the Application.

COUNT I – LIKELIHOOD OF CONFUSION – 15 U.S.C. § 1052(d)

27. Applicant’s POWERING CARE EVERYWHERE mark so resembles Opposer’s CARE EVERYWHERE mark that use and registration of Applicant’s POWERING CARE EVERYWHERE mark would be likely to cause confusion, mistake and/or deception as to the source or origin of Applicant’s services in violation of Section 2(d) of the Trademark Act.

28. Applicant’s POWERING CARE EVERYWHERE mark is confusingly similar in sight, sound and connotation to Opposer’s mark.

29. The services identified in the Application are so similar and/or so closely related to the goods and services offered by Opposer under its CARE EVERYWHERE mark that the public is likely to be confused, to be deceived and to erroneously assume that Applicant's services are offered by Opposer, or that Applicant is in some way connected with, sponsored by, endorsed by or affiliated with Opposer.

30. The services identified in the Application are so similar and/or so closely related to the goods specified in Opposer's Registered Mark that the public is likely to be confused, to be deceived and to erroneously assume that Applicant's services are offered by Opposer, or that Applicant is in some way connected with, sponsored by, endorsed by or affiliated with Opposer.

31. Likelihood of confusion is enhanced by the fact that Opposer's CARE EVERYWHERE mark is strong, well known, and entitled to a broad scope of protection.

32. Likelihood of confusion is enhanced by the fact that the services identified in the Application are likely to be offered through the same channels of trade to the same classes of prospective purchasers as the goods and services offered by Opposer under its CARE EVERYWHERE mark and the goods identified in Opposer's Registered Mark.

33. Likelihood of confusion is enhanced by the fact that the services identified in the Application are likely to be advertised and promoted in the same or similar types of media, trade shows and other healthcare channels of trade as the goods and services offered by Opposer under its CARE EVERYWHERE mark and the goods identified in Opposer's Registered Mark.

34. Applicant is not affiliated with, connected with, or endorsed or sponsored by Opposer. Opposer has not approved or authorized Applicant to register or use the POWERING CARE mark in U.S. commerce with regard to the services identified in the Application.

35. Opposer has continuously used its CARE EVERYWHERE mark since long prior to the filing date of the Application, and upon information and belief, long prior to Applicant's first use of the POWERING CARE EVERYWHERE mark.

36. Applicant's use and registration of its POWERING CARE EVERYWHERE mark will injure and damage Opposer and the goodwill and reputation of Opposer's CARE EVERYWHERE mark.

37. Applicant's use and registration of its POWERING CARE EVERYWHERE mark is likely to dilute the distinctive quality of the well-known CARE EVERYWHERE mark, including by tarnishment and/or blurring.

38. Applicant's use and registration of its POWERING CARE EVERYWHERE mark is likely to cause confusion, mistake and deception in the minds of the public and will cause damage and injury to both Opposer and the public. Therefore, the registration of Applicant's POWERING CARE EVERYWHERE mark should be denied, *inter alia*, under Section 2(d) of the Federal Trademark Act.

WHEREFORE, Opposer files this Notice of Opposition and prays that this opposition be sustained and the Application herein opposed be rejected; that registration of the Applicant's POWERING CARE EVERYWHERE mark be refused; and for such other and further relief as may be deemed to be just and proper.

Dated: September 15, 2016

Respectfully submitted,

/George S. Pavlik/

George S. Pavlik

Eugenia G. Carter

Attorneys for Opposer

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CERTIFICATE OF SERVICE

I hereby certified that I have sent this Notice of Opposition via electronic mail and First Class Main on September 15, 2016 to counsel for Applicant:

Cathryn A. Berryman
Winstead PC
P.O. Box 131851
Dallas, TX 75313
cberryman@winstead.com

/George S. Pavlik/
George S. Pavlik

Exhibit A

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Mark: CARE EVERYWHERE

CARE EVERYWHERE

US Serial Number: 78417889

Application Filing Date: May 13, 2004

US Registration Number: 2964155

Registration Date: Jun. 28, 2005

Register: Principal

Mark Type: Trademark

Status: The registration has been renewed.

Status Date: Sep. 25, 2014

Publication Date: Apr. 05, 2005

Mark Information

Mark Literal Elements: CARE EVERYWHERE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1192317

International Application(s) /Registration(s) Based on this Property: A0040071/1192317

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *.* identify additional (new) wording in the goods/services.

For: Computer software for use in the healthcare field, namely software for entering, storing, editing, organizing, integrating, synchronizing, processing, accessing, managing, communicating and sharing data to, from, across and among multiple separate information systems, including heterogeneous systems, and user manuals and documentation packaged with such computer software

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(a)

First Use: Dec. 08, 2003

Use in Commerce: Feb. 22, 2004

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: EPIC SYSTEMS CORPORATION

Owner Address: 1979 Milky Way
Verona, WISCONSIN 53593
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: WISCONSIN

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: EPIC SYSTEMS CORPORATION
1979 MILKY WAY
VERONA, WISCONSIN 53593
UNITED STATES

Phone: 608-271-9000

Fax: 608-271-7237

Correspondent e-mail: bpaulson@epic.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 25, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Sep. 25, 2014	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	76874
Sep. 25, 2014	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76874
Sep. 25, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76874
Sep. 16, 2014	TEAS SECTION 8 & 9 RECEIVED	
Sep. 16, 2014	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jun. 14, 2011	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	77315
Jun. 14, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	77315
May 12, 2011	TEAS SECTION 8 & 15 RECEIVED	
Sep. 21, 2006	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Sep. 21, 2006	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Jun. 28, 2005	REGISTERED-PRINCIPAL REGISTER	
Apr. 05, 2005	PUBLISHED FOR OPPOSITION	
Mar. 16, 2005	NOTICE OF PUBLICATION	
Jan. 06, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	77975
Dec. 20, 2004	ASSIGNED TO LIE	77975
Dec. 13, 2004	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 12, 2004	ASSIGNED TO EXAMINER	76745
May 19, 2004	NEW APPLICATION ENTERED IN TRAM	

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Jun. 28, 2015

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: GENERIC WEB UPDATE

Date in Location: Sep. 25, 2014

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 2,964,155

Registered June 28, 2005

**TRADEMARK
PRINCIPAL REGISTER**

CARE EVERYWHERE

EPIC SYSTEMS CORPORATION (WISCONSIN CORPORATION)
5301 TOKAY BOULEVARD
MADISON, WI 537111027

FOR: COMPUTER SOFTWARE FOR USE IN THE HEALTHCARE FIELD, NAMELY SOFTWARE FOR ENTERING, STORING, EDITING, ORGANIZING, INTEGRATING, SYNCHRONIZING, PROCESSING, ACCESSING, MANAGING, COMMUNICATING AND SHARING DATA TO, FROM, ACROSS AND AMONG MULTIPLE SEPARATE INFORMATION SYSTEMS, INCLUDING HETEROGENEOUS SYSTEMS, AND USER MANUALS AND DOCUMENTA-

TION PACKAGED WITH SUCH COMPUTER SOFTWARE, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 12-8-2003; IN COMMERCE 2-22-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-417,889, FILED 5-13-2004.

PAULA MAHONEY, EXAMINING ATTORNEY