

ESTTA Tracking number: **ESTTA711076**

Filing date: **11/25/2015**

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

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	FIRST OPINION, INC.		
Entity	Corporation	Citizenship	Delaware
Address	78 1st Street Floor 1 San Francisco, CA 94105 UNITED STATES		

Attorney information	Thomas E. Zutic DLA Piper LLP (US) 500 Eighth Street NW Washington, DC 20004 UNITED STATES thomas.zutic@dlapiper.com,ashley.joyce@dlapiper.com,alberto.zacapa@dlapiper.com,dctrademarks@dlapiper.com Phone:2027994000
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### Registrations Subject to Cancellation

Registration No	1335327	Registration date	05/14/1985
Registrant	First Opinion Corporation 8258 Prestwick Dr. La Jolla, CA 92037 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 009. First Use: 1984/08/00 First Use In Commerce: 1984/08/00  
All goods and services in the class are cancelled, namely: Pre-Recorded Computer Programs

### Grounds for Cancellation

Abandonment	Trademark Act section 14		
Registration No	1644040	Registration date	05/07/1991
Registrant	First Opinion Corporation Suite 478 La Jolla, CA 92037 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 042. First Use: 1990/04/01 First Use In Commerce: 1990/04/01  
All goods and services in the class are cancelled, namely: computerized medical diagnostic and advice services

### Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Abandonment	Trademark Act section 14
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Attachments	Consolidated Petition for Cancellation of FIRST OPINION Registrations.pdf(3365638 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	/Thomas E. Zutic/
Name	Thomas E. Zutic
Date	11/25/2015

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

In the matter of Trademark  
Registration No. 1335327  
Mark: FIRST OPINION  
Filing Date: August 27, 1984  
Registered: May 14, 1985

In the matter of Service Mark  
Registration No. 1644040  
Mark: FIRST OPINION  
Filing Date: May 17, 1990  
Registered: May 7, 1991

FIRST OPINION, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Consolidated Cancellation No. _____
	)	
FIRST OPINION CORPORATION,	)	
	)	
Registrant.	)	
	)	

**PETITION FOR CANCELLATION**

Petitioner First Opinion, Inc. (“First Opinion” or “Petitioner”) believes that it is and will be damaged by the continued presence on the Principal Register of Registration Nos. 1335327 and 1644040 (“Registrations”) owned by First Opinion Corporation (“Registrant”) for the marks FIRST OPINION (“FIRST OPINION Marks”) registered in connection with “pre-recorded computer programs” in International Class 9 and in connection with “computerized medical diagnostic and advice services” in International Class 42, respectively. Petitioner hereby petitions to cancel said Registrations under the provisions of Section 14 of the Trademark Act of 1946 (“Lanham Act”), 15 U.S.C. § 1064, (“Petition for Cancellation”) in this Consolidated Cancellation Proceeding as Registrant is listed as the owner of both Registrations on the website

of the United States Patent and Trademark Office (“USPTO”) and Petitioner’s claims regarding the Registrations involve common questions of law and fact. T.B.M.P. § 305.01; 37 C.F.R. § 2.112.

As grounds for the Cancellation, Petitioner alleges the following:

1. Petitioner is a Delaware corporation with a principal place of business at 78 1st Street, Floor 1, San Francisco, California 94105.

2. Petitioner is the owner of the trademark FIRST OPINION, U.S. Application Serial No. 86681294, filed with the USPTO on July 1, 2015, for “downloadable mobile application software featuring health, wellness and medical information, and for the transmission of data between medical practitioners and individuals” in International Class 9, and for “providing health, wellness and medical information” in International Class 44, with a date of first use and first use in commerce of at least as early as January 31, 2013 (“Application”). Attached hereto as **Exhibit A** and made part of the record are true and correct copies of the Trademark Status and Document Retrieval (“TSDR”) and Trademark Electronic Search System printouts for the Application.

3. On August 27, 1984, upon information and belief, Registrant’s predecessor-in-interest, Edwin Iliff (“Iliff”), an individual, filed an application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), with the USPTO for registration of the mark FIRST OPINION for use in connection with “pre-recorded computer programs” in International Class 9. That application was assigned Serial No. 73496575, and registered on the Principal Register on May 14, 1985 as Registration No. 1335327 (“First Registration”).

4. On May 17, 1990, Iliff filed a second application under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), with the USPTO for registration of the mark FIRST

OPINION for use in connection with “computerized medical diagnostic and advice services” in International Class 42. That application was assigned Serial No. 74067212, and registered on the Principal Register on May 7, 1991 as Registration No. 1644040 (“Second Registration”) (First Registration and Second Registration, collectively hereinafter, the “Registrations”).

5. Upon information and belief, Iliff assigned the Registrations to Registrant on or around August 3, 1992, and recorded the assignments with the USPTO on August 12, 1992. Upon information and belief, Registrant is a California corporation with an address of 8258 Prestwick Drive, La Jolla, California 92037-2046.

6. Petitioner files this Petition for Cancellation because, upon information and belief and as set forth below, Registrant has abandoned and is no longer using the FIRST OPINION Marks as depicted in the Registrations.

7. Further, Petitioner files this Petition for Cancellation because, upon information and belief, Petitioner fraudulently filed its Combined Declaration of Use and Application for Renewal of Registration of a Mark under Sections 8 & 9 of the Trademark Act, 15 U.S.C. §§ 1058 and 1059 (“Combined Declaration of Use and Renewal” or “Declaration and Renewal”) for the Second Registration on April 19, 2011, as there was no use of the FIRST OPINION Marks at that time to support renewal of the Second Registration. Attached hereto as **Exhibit B** and made part of the record is a true and correct copy of the Combined Declaration of Use and Renewal. Indeed, the specimen filed as part of the Combined Declaration of Use and Renewal includes a purported copyright notice of 2004 at the bottom of each webpage printout. *See* Exhibit B.

8. On October 16, 2015, the USPTO Examining Attorney issued a non-final Office Action refusing registration of Petitioner’s Application under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), because of an alleged likelihood of confusion with Registrant’s Registrations.

Thus, Petitioner is now being and will continue to be damaged by the continued presence on the Principal Register of the Registrations.

9. Petitioner files this Petition for Cancellation because, upon information and belief and as set forth below, Registrant has abandoned and is no longer using the FIRST OPINION Marks as depicted in the Registrations, and Registrant has fraudulently maintained its Second Registration.

**ABANDONMENT OF REGISTRATION NOS. 1335327 AND 1644040  
SECTIONS 14 & 45 OF THE LANHAM ACT, 15 U.S.C. §§ 1064 & 1127**

10. Petitioner re-alleges the allegations contained in Paragraphs 1 through 9 of this Petition for Cancellation.

11. Upon information and belief, Registrant is not using the FIRST OPINION Marks, as depicted in its Registrations, for “pre-recorded computer programs” or for “computerized medical diagnostic and advice services” in the United States.

12. Indeed, by the end of the grace period on November 14, 2015, Registrant was required to file a Combined Declaration of Use and Renewal for the First Registration. Registrant, however, did not file any Declaration and Renewal, further evidencing its abandonment of the First Registration. Attached hereto as **Exhibit C** and made part of the record is a true and correct copy of a printout of the TSDR webpage for the First Registration, reflecting that the Declaration and Renewal was not filed.

13. On April 19, 2011, Registrant filed a Combined Declaration of Use and Renewal for the Second Registration, but Petitioner, upon information and belief, alleges that such Declaration and Renewal was fraudulently filed because there was no use to support the Second Registration at that time. Attached hereto as **Exhibit D** and made part of the record is a true and correct copy of a printout of the TSDR webpage for the Second Registration.

14. Upon information and belief, Registrant has not used the FIRST OPINION Marks, as depicted in the Registrations for “pre-recorded computer programs” and “computerized medical diagnostic and advice services” in the United States for at least three consecutive years.

15. Registrant’s purported website is located at <http://www.firstopinion.4t.com/> (“Website”) and includes a copyright date of 2004 at the bottom. This Website does not appear to have been updated since 2004. Attached hereto as **Exhibit E** and made part of the record is a true and correct copy of a screenshot of Registrant’s Website. Thus, upon information and belief, Registrant has not used its Website or any other website or social media for the FIRST OPINION Marks since at least as far back as 2004.

16. Upon information and belief, Registrant has no intent to resume use of the FIRST OPINION Marks, as depicted in the Registrations, for “pre-recorded computer programs” and “computerized medical diagnostic and advice services” in the United States.

17. Upon information and belief, Iliff is the President of Registrant, and shares the same address as Registrant since at least the time of filing the Second Registration. On November 16, 2015, Iliff filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), for the FIRST OPINION Marks in connection with “computer software for providing medical advice” in International Class 9 (“Intent-to-Use Application”). This Intent-to-Use Application was assigned Serial No. 86822045 and is nearly identical to the goods and services listed in the Registrations: “pre-recorded computer programs” in International Class 9 and “computerized medical diagnostic and advice services” in International Class 42. Accordingly, upon information and belief, Registrant filed this Intent-to-Use Application through

liff to try to obtain a new duplicate registration to replace the Registrations, which Registrant has abandoned through non-use for at least the past three years.

18. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years is *prima facie* evidence of abandonment. 15 U.S.C. § 1127.

19. Registrant has abandoned the FIRST OPINION Marks, as depicted in the Registrations, within the meaning of Section 45 of the Lanham Act, 15 U.S.C. § 1127, because of Registrant's non-use of the FIRST OPINION Marks for "pre-recorded computer programs" and for "computerized medical diagnostic and advice services," with no intent to resume use of the marks as depicted in the Registrations.

20. Since Registrant has abandoned the FIRST OPINION Marks, as depicted in the Registrations, the Registrations are subject to cancellation under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

**REGISTRATION NO. 1644040 IS INVALID BECAUSE OF FRAUD  
SECTION 14(3) OF THE LANHAM ACT, 15 U.S.C. § 1064(3)**

21. Petitioner re-alleges the allegations contained in Paragraphs 1 through 20 of this Petition for Cancellation.

22. A petition to cancel a registration is appropriate "[a]t any time if . . . registration was obtained fraudulently or contrary to the provisions of section 1054 of title 15 or of subsection (a), (b), or (c) of section 1052 of title 15 for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts . . . ." 15 U.S.C. § 1064(3).

23. Petitioner asserts that Registrant's Second Registration should be cancelled under Section 14 of the Lanham Act, 15 U.S.C. § 1064(3), because the Second Registration was renewed fraudulently.

24. Specifically, upon information and belief, Registrant knowingly made false and material misrepresentations in the filing of Combined Declaration of Use and Renewal for the Second Registration and therefore committed prosecution fraud on the USPTO.

25. On April 19, 2011, Registrant's Operations Counsel at the time, Amy K. Calton, filed the Combined Declaration of Use and Renewal for the Second Registration expressly acknowledging the following sections of the Lanham Act:

**Section 8: Declaration of Use in Commerce**

*Unless the owner has specifically claimed excusable nonuse, the mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.*

**Section 9: Application for Renewal**

*The registrant requests that the registration be renewed for the goods and/or services identified above.*

26. Amy Calton attested to the above by signing her name to the following statement in the Combined Declaration of Use and Renewal on April 19, 2011:

“The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.”

27. Upon information and belief, however, Registrant was not using the FIRST OPINION Marks at the time it filed its Combined Declaration of Use and Renewal for the Second Registration on April 19, 2011. Indeed, Registrant's specimen of use for this Declaration and Renewal consisted of mere screenshots from its Website that Petitioner alleges has not changed substantively, if at all, since 2004. Upon information and belief, Registrant has not used the FIRST OPINION Marks since at least as far back as 2004.

28. Therefore, upon information and belief, said false Declaration and Renewal for the Second Registration was made with the intent to induce authorized agents of the USPTO to renew the Second Registration and, reasonably relying upon the truth of said false Declaration and Renewal, the USPTO did, in fact, renew the Second Registration.

29. Registrant's statements in its Combined Declaration of Use and Renewal for the Second Registration were false, and Registrant knew or should have known of the falsity of its statements.

30. Registrant's statements in its Combined Declaration of Use and Renewal for the Second Registration were false representations of a material fact, and Registrant knew or should have known of the falsity of its statements.

31. Upon information and belief, Registrant intended to induce the USPTO to rely upon Registrant's false representations of a material fact and thereby acknowledge and accept the Combined Declaration of Use and Renewal for the Second Registration.

32. Upon information and belief, Registrant's intentional false representations of a material fact deceived the USPTO into acknowledging and accepting the Combined Declaration of Use and Renewal for the Second Registration.

33. In view of the foregoing, the Combined Declaration of Use and Renewal for the Second Registration was obtained fraudulently.

34. In view of the foregoing, the Second Registration was maintained fraudulently.

35. Accordingly, Registrant's Second Registration is invalid on the ground of fraud and should be cancelled under Section 14 of the Lanham Act, 15 U.S.C. § 1064(3).

By virtue of the foregoing, Petitioner believes that it is now and will be damaged by the continued presence on the Principal Register of Registration Nos. 1335327 and 1644040 for the

FIRST OPINION Marks. If Registrant is permitted to maintain the Registrations and retain such rights as conferred under the Principal Register of the Lanham Act, Registrant will retain unlawful gain and advantage to which Registrant is not entitled under the Lanham Act, to the detriment and harm of Petitioner.

WHEREFORE, Petitioner believes and avers that it is being, and will continue to be, damaged by Registration Nos. 1335327 and 1644040 for the FIRST OPINION Marks, and respectfully requests that Registration Nos. 1335327 and 1644040 be cancelled and that this Petition for Cancellation be sustained in favor of Petitioner.

Petitioner hereby appoints Ann K. Ford, a member of the Bar of the District of Columbia, Thomas E. Zutic, a member of the Bar of the District of Columbia, John M. Nading, a member of the Bar of the District of Columbia, David M. Kramer, a member of the Bar of the District of Columbia, Eunice R. Chung, a member of the Bar of the District of Columbia, Ashley H. Joyce, a member of the Bar of the District of California, and all of the law firm of DLA Piper LLP (US), 500 8th Street, NW, Washington, DC 20004, telephone number (202) 799-4000, to transact all business in the USPTO in connection with this Cancellation Proceeding and hereby revokes all previous powers of attorney herein.

Please address all correspondence to:

Thomas E. Zutic, Esq.  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
*dctrademarks@dlapiper.com*

The filing fee for this Cancellation in the amount of \$600.00 is hereby electronically transferred with the submission of the Petition for Cancellation.

The undersigned, registered agent for Petitioner herein, states that he is authorized to prosecute this Cancellation, that he has read and signed the foregoing Petition for Cancellation and knows the contents thereof, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of this Cancellation and any decision resulting therefrom.

Dated: November 25, 2015

Respectfully submitted,

**DLA PIPER LLP (US)**

By: /s/ Thomas E. Zutic  
Thomas E. Zutic  
John M. Nading  
Ashley H. Joyce  
500 8th Street, NW  
Washington, D.C. 20004  
Tel. 202-799-4000  
Fax 202-799-5000

*Attorneys for Petitioner First Opinion, Inc.*

# **EXHIBIT A**



## United States Patent and Trademark Office

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[TSDR](#)
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*( Use the "Back" button of the Internet Browser to return to TESS)*

# FIRST OPINION

## Word Mark FIRST OPINION

**Goods and Services** IC 009. US 021 023 026 036 038. G & S: Downloadable mobile application software featuring health, wellness and medical information, and for the transmission of data between medical practitioners and individuals. FIRST USE: 20130100. FIRST USE IN COMMERCE: 20130100

IC 044. US 100 101. G & S: Providing health, wellness and medical information. FIRST USE: 20130100. FIRST USE IN COMMERCE: 20130100

### Standard Characters Claimed

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 86681294

**Filing Date** July 1, 2015

**Current Basis** 1A

**Original Filing Basis** 1A

**Owner** (APPLICANT) First Opinion, Inc. CORPORATION DELAWARE 78 1st St., Floor 1 San Francisco CALIFORNIA 94103

**Attorney of** Ann K. Ford

**Record**

**Type of Mark** TRADEMARK. SERVICE MARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

- 
- [TESS HOME](#)
  - [NEW USER](#)
  - [STRUCTURED](#)
  - [FREE FORM](#)
  - [BROWSE DICT](#)
  - [SEARCH OG](#)
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**Generated on:**

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**Mark:** FIRST OPINION

FIRST OPINION

**US Serial Number:** 86681294

**Application Filing Date:**

Jul. 01, 2015

**Filed as TEAS RF:** Yes

**Currently TEAS RF:**

Yes

**Register:**

Principal

**Mark Type:**

Trademark, Service Mark

**Status:**

A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Status Date:**

Oct. 16, 2015

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## Mark Information

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**Mark Literal Elements:**

FIRST OPINION

**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

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## Goods and Services

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**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:**

Downloadable mobile application software featuring health, wellness and medical information, and for the transmission of data between medical practitioners and individuals

**International Class(es):** 009 - Primary Class

**U.S Class(es):**

021, 023, 026, 036, 038

**Class Status:**

ACTIVE

**Basis:**

1(a)

**First Use:** Jan. 2013

**Use in Commerce:**

Jan. 2013

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**For:**

Providing health, wellness and medical information

**International Class(es):** 044 - Primary Class

**U.S Class(es):**

100, 101

**Class Status:**

ACTIVE

**Basis:**

1(a)

First Use: Jan. 2013

Use in Commerce:

Jan. 2013

### 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:**

First Opinion, Inc.

**Owner Address:**

78 1st St., Floor 1  
San Francisco, CALIFORNIA UNITED STATES 94103

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:**

DELAWARE

### Attorney/Correspondence Information

**Attorney of Record**

**Attorney Name:** Ann K. Ford

**Docket Number:**

384448-1

**Attorney Primary Email Address:** [dctrademarks@dlapiper.com](mailto:dctrademarks@dlapiper.com)

**Attorney Email Authorized:**

Yes

**Correspondent**

**Correspondent Name/Address:**

ANN K. FORD  
Dla Piper Llp US  
500 8th St NW  
Washington, DISTRICT OF COLUMBIA UNITED STATES 20004-2131

**Phone:** 202.799.4000

**Fax:**

202.799.5000

**Correspondent e-mail:** [dctrademarks@dlapiper.com](mailto:dctrademarks@dlapiper.com)

**Correspondent e-mail Authorized:**

Yes

**Domestic Representative - Not Found**

### Prosecution History

Date	Description	Proceeding Number
Oct. 16, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Oct. 16, 2015	NON-FINAL ACTION E-MAILED	6325
Oct. 16, 2015	NON-FINAL ACTION WRITTEN	90340
Oct. 09, 2015	ASSIGNED TO EXAMINER	90340
Jul. 08, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 04, 2015	NEW APPLICATION ENTERED IN TRAM	

### TM Staff and Location Information

**TM Staff Information**

**TM Attorney:** COLLOPY, DIANE PATRICI

**Law Office Assigned:**

LAW OFFICE 107

**File Location**

**Current Location:** TMEG LAW OFFICE 107 - EXAMINING

**Date in Location:**

ATTORNEY ASSIGNED

Oct. 16, 2015

# **EXHIBIT B**

## Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of Registration of a Mark under Sections 8 & 9

**The table below presents the data as entered.**

Input Field	Entered
<b>REGISTRATION NUMBER</b>	1644040
<b>REGISTRATION DATE</b>	05/07/1991
<b>SERIAL NUMBER</b>	74067212
<b>MARK SECTION</b>	
<b>MARK</b>	FIRST OPINION
<b>ATTORNEY SECTION (current)</b>	
<b>NAME</b>	Peter H. Karlen
<b>FIRM NAME</b>	1205 PROSPECT STREET
<b>STREET</b>	SUITE 400
<b>CITY</b>	LA JOLLA
<b>STATE</b>	California
<b>POSTAL CODE</b>	92037
<b>COUNTRY</b>	United States
<b>ATTORNEY SECTION (proposed)</b>	
<b>NAME</b>	Robert L. Brewer, Paige W. Mills, and Ryann M. Schneider
<b>FIRM NAME</b>	Bass, Berry & Sims PLC
<b>INTERNAL ADDRESS</b>	Suite 2800
<b>STREET</b>	150 3rd Avenue South
<b>CITY</b>	Nashville
<b>STATE</b>	Tennessee
<b>POSTAL CODE</b>	37201

<b>COUNTRY</b>	United States
<b>PHONE</b>	615-742-7760
<b>FAX</b>	615-742-0410
<b>EMAIL</b>	trademarks@bassberry.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>DOCKET/REFERENCE NUMBER</b>	011211-235

**CORRESPONDENCE SECTION (current)**

<b>NAME</b>	PETER H. KARLEN
<b>FIRM NAME</b>	1205 PROSPECT STREET
<b>STREET</b>	SUITE 400
<b>CITY</b>	LA JOLLA
<b>STATE</b>	California
<b>POSTAL CODE</b>	92037
<b>COUNTRY</b>	United States

**CORRESPONDENCE SECTION (proposed)**

<b>NAME</b>	Robert L. Brewer, Paige W. Mills, and Ryann M. Schneider
<b>FIRM NAME</b>	Bass, Berry & Sims PLC
<b>INTERNAL ADDRESS</b>	Suite 2800
<b>STREET</b>	150 3rd Avenue South
<b>CITY</b>	Nashville
<b>STATE</b>	Tennessee
<b>POSTAL CODE</b>	37201
<b>COUNTRY</b>	United States
<b>PHONE</b>	615-742-7760
<b>FAX</b>	615-742-0410
<b>EMAIL</b>	trademarks@bassberry.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	Yes
<b>DOCKET/REFERENCE NUMBER</b>	011211-235

<b>GOODS AND/OR SERVICES SECTION</b>	
<b>INTERNATIONAL CLASS</b>	042
<b>GOODS OR SERVICES</b>	computerized medical diagnostic and advice services
<b>SPECIMEN FILE NAME(S)</b>	
<b>ORIGINAL PDF FILE</b>	<a href="#">SPN0-6790153173-171550004_._web1.pdf</a>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\740\672\74067212\xml1\S890002.JPG</a>
<b>ORIGINAL PDF FILE</b>	<a href="#">SPN0-6790153173-171550004_._web2.pdf</a>
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	<a href="#">\\TICRS\EXPORT11\IMAGEOUT11\740\672\74067212\xml1\S890005.JPG</a>
<b>SPECIMEN DESCRIPTION</b>	printouts from website
<b>OWNER SECTION (current)</b>	
<b>NAME</b>	First Opinion Corporation
<b>CITY</b>	La Jolla
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	92037
<b>COUNTRY</b>	United States
<b>OWNER SECTION (proposed)</b>	
<b>NAME</b>	First Opinion Corporation
<b>INTERNAL ADDRESS</b>	Suite 478
<b>STREET</b>	8070 La Jolla Shores Drive
<b>CITY</b>	La Jolla
<b>STATE</b>	California
<b>ZIP/POSTAL CODE</b>	92037

<b>COUNTRY</b>	United States
<b>LEGAL ENTITY SECTION (current)</b>	
<b>TYPE</b>	corporation
<b>STATE/COUNTRY OF INCORPORATION</b>	California
<b>PAYMENT SECTION</b>	
<b>NUMBER OF CLASSES</b>	1
<b>NUMBER OF CLASSES PAID</b>	1
<b>SUBTOTAL AMOUNT</b>	500
<b>TOTAL FEE PAID</b>	500
<b>SIGNATURE SECTION</b>	
<b>SIGNATURE</b>	/Amy K. Calton/
<b>SIGNATORY'S NAME</b>	Amy K. Calton
<b>SIGNATORY'S POSITION</b>	Operations Counsel
<b>DATE SIGNED</b>	04/19/2011
<b>PAYMENT METHOD</b>	DA
<b>FILING INFORMATION</b>	
<b>SUBMIT DATE</b>	Tue Apr 19 15:11:30 EDT 2011
<b>TEAS STAMP</b>	USPTO/S08N09-XX.XX.XXX.XX X-20110419151130251254-16 44040-4801d6ac0cdfc99936a 4e8594bc0e2db-DA-1482-201 10405171550004418

---

**Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of  
Registration of a Mark under Sections 8 & 9  
To the Commissioner for Trademarks:**

**REGISTRATION NUMBER:** 1644040

**REGISTRATION DATE:** 05/07/1991

**MARK:** FIRST OPINION

The owner, First Opinion Corporation, a corporation of California, having an address of  
Suite 478  
8070 La Jolla Shores Drive  
La Jolla, California 92037  
United States

is filing a Combined Declaration of Use and/or Excusable Nonuse/Application for Renewal of  
Registration of a Mark under Sections 8 & 9.

For International Class 042, the mark is in use in commerce on or in connection with **all** goods or services  
listed in the existing registration for this specific class: computerized medical diagnostic and advice  
services ; or, the owner is making the listed excusable nonuse claim.

The owner is submitting one specimen showing the mark as used in commerce on or in connection with  
any item in this class, consisting of a(n) printouts from website.

**Original PDF file:**

[SPN0-6790153173-171550004\\_.\\_web1.pdf](#)

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

[Specimen File1](#)

**Original PDF file:**

[SPN0-6790153173-171550004\\_.\\_web2.pdf](#)

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

[Specimen File1](#)

**Original PDF file:**

[SPN0-6790153173-171550004\\_.\\_web3.pdf](#)

**Converted PDF file(s)** (2 pages)

[Specimen File1](#)

[Specimen File2](#)

The registrant's current Attorney Information: Peter H. Karlen of 1205 PROSPECT STREET  
SUITE 400  
LA JOLLA, California (CA) 92037  
United States (USX)

The registrant's proposed Attorney Information: Robert L. Brewer, Paige W. Mills, and Ryann M.  
Schneider of Bass, Berry & Sims PLC

Suite 2800  
150 3rd Avenue South  
Nashville, Tennessee (TN) 37201  
United States (USX)

The docket/reference number is 011211-235.

The phone number is 615-742-7760.

The fax number is 615-742-0410.

The email address is trademarks@bassberry.com.

The registrant's current Correspondence Information: PETER H. KARLEN of 1205 PROSPECT STREET

SUITE 400  
LA JOLLA, California (CA) 92037  
United States (USX)

The registrant's proposed Correspondence Information: Robert L. Brewer, Paige W. Mills, and Ryann M. Schneider of Bass, Berry & Sims PLC

Suite 2800  
150 3rd Avenue South  
Nashville, Tennessee (TN) 37201  
United States (USX)

The docket/reference number is 011211-235.

The phone number is 615-742-7760.

The fax number is 615-742-0410.

The email address is trademarks@bassberry.com.

A fee payment in the amount of \$500 will be submitted with the form, representing payment for 1 class(es), plus any additional grace period fee, if necessary.

## **Declaration**

### **Section 8: Declaration of Use in Commerce**

*Unless the owner has specifically claimed excusable nonuse, the mark is in use in commerce on or in connection with the goods and/or services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.*

### **Section 9: Application for Renewal**

*The registrant requests that the registration be renewed for the goods and/or services identified above.*

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all

statements made on information and belief are believed to be true.

Signature: /Amy K. Calton/ Date: 04/19/2011

Signatory's Name: Amy K. Calton

Signatory's Position: Operations Counsel

**Mailing Address (current):**

1205 PROSPECT STREET  
SUITE 400  
LA JOLLA, California 92037

**Mailing Address (proposed):**

Bass, Berry & Sims PLC  
150 3rd Avenue South  
Nashville, Tennessee 37201

Serial Number: 74067212

Internet Transmission Date: Tue Apr 19 15:11:30 EDT 2011

TEAS Stamp: USPTO/S08N09-XX.XX.XXX.XXX-2011041915113

0251254-1644040-4801d6ac0cdfc99936a4e859

4bc0e2db-DA-1482-20110405171550004418

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# First Opinion

*the right diagnosis*

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reduce liability



### Emergency Medicine

Accurately diagnose your patients with our easy to use software. Access EM knowledge base at patient's side.



[details](#)

### Medical Liability

Reduce your liability, improve patient safety and expand your staff's medical knowledge.



[find out how!](#)

### Clinical Decision Support

Proactive clinical management system based on patented technology & clinical knowledge database.



[details](#)

### First Opinion Corporation

*The Leader in Diagnostic Software & Clinical Decision Support Solutions*

The First Opinion Corporation is leading the way with patient centered clinical decision support tools. We are the world leader in automated medical diagnostic technology and systems with 29 issued or allowed patents in the United States and 38 international patents issued and over 150 additional international patents pending, being validated or designated. Our physicians and computer scientists have spent over 20 years developing and patenting this technology.

Our products can reduce diagnostic errors at the initial patient encounter, reduce liability, improve patient safety and place the accumulated knowledge of the medical community at the fingertips of your staff.

*"In order to make a diagnosis you have to think of it..."*  
Sir William Osler

- Emergency Medicine
- Medical Liability
- Clinical Decision Support
- Patents & Trademarks



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## First Opinion

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- About Us
  - Company Mission
  - Company History
  - Company Vision
- Products & Patents
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  - Patents
- Product Examples
  - Emergency Medicine
  - Medical Liability
  - Clinical Decision Support

**First Opinion Corporation**  
 8070 La Jolla Shores Drive  
 Suite 478  
 La Jolla, CA 92037  
 858.454.5260

First Opinion Corporation is the world leader in automated medical diagnostic technology and systems with 29 issued or allowed patents in the United States and 38 international patents. Our physicians and computer scientists have spent over 20 years developing and patenting this technology.

First Opinion products can reduce diagnostic errors at the initial patient encounter, reduce liability, improve patient safety and place the knowledge of the medical community at the fingertips of your staff.

### About Us

*"bringing the knowledge of many to the service of one..."*

**Company Mission**  
 The mission of First Opinion Corporation is to make the collective expertise of the world's best clinicians available to practitioners, anytime, anywhere.

**Company History**  
 The history of First Opinion Corporation is one of invention, innovation and the development of an intellectual property portfolio that is broad in scope and global in breadth. Edwin Iliff, M.D. is a practicing physician in a busy emergency department, as well as a computer programmer. In the ER, Dr. Iliff had to quickly diagnose thousands of conditions each year. In the early 1980s he had a vision: he realized that nearly nine of ten complaints are confined to just a few thousand medical problems and that almost all of the primary care decisions involved are based upon a detailed medical history and self or assisted physical examination.

Dr. Iliff envisioned the use of personal computers to automate this diagnostic process. Testing and validating his ideas, he invented the list-based method of automated diagnosis in the late 1980s and programmed the initial FIRST OPINION® system. The First Opinion Corporation was born. First Opinion's physicians, attorneys and computer scientists crafted the strategy of developing a global intellectual property portfolio of broad and interlocking claims. The company was confident that advancing technology and the rising demand for healthcare services, would create an environment for the First Opinion revolution. Their work continues today.



**Company Vision**  
 The World Health Organization estimates that more than half of the world's six billion people lack access to the most essential drugs - vaccines, antibiotics and painkillers - and more than a third of the world's children are malnourished. Many Third World governments spend less than 1 percent of their gross domestic product on healthcare, compared to 15 percent in the United States.



The irony is that the greatest barrier to healthcare in the Third World is the same as in the United States: access to care.

The First Opinion Corporation has a vision of worldwide healthcare evolution. This vision is rooted in a tradition of patient service and a reverence for health and human life. First Opinion Corporation believes that timely access to relevant information is the key to an effective healthcare system in the Third World as much as it is in the First World.

In accordance with its core corporate values and its belief in the worldwide advancement of healthcare, First Opinion will dedicate resources to the development and implementation of automated healthcare access and disease tracking systems in Third World countries. The goal is to relieve the shortage of healthcare personnel that exists in nearly all parts of the world by applying the Corporation's principle of the "knowledge of many in the service of one and the knowledge of one in the service of many".

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# First Opinion

*the right diagnosis*

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  - First Opinion EMR
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- Product Examples
  - Emergency Medicine
  - Medical Liability
  - Clinical Decision Support

**First Opinion Corporation**  
 8070 La Jolla Shores Drive  
 Suite 478  
 La Jolla, CA 92037  
 858.454.5260

First Opinion Corporation is the world leader in automated medical diagnostic technology and systems with 29 issued or allowed patents in the United States and 38 international patents. Our physicians and computer scientists have spent over 20 years developing and patenting this technology.

First Opinion products can reduce diagnostic errors at the initial patient encounter, reduce liability, improve patient safety and place the knowledge of the medical community at the fingertips of your staff.

## First Opinion Products

*"In order to make a diagnosis you have to think of it..."*  
 Sir William Osler

First Opinion products are designed to provide the most accurate diagnosis during the initial patient encounter. First Opinion Corporation has developed three major products from the company's expansive intellectual property portfolio.

Our physicians and computer scientists have spent over twenty years developing and patenting the technology underlying these products. These products tie together a comprehensive clinical knowledge base with First Opinion's patented processes and technologies.

 <p>Now available on Tablet PC!</p> <p>Includes all 2000 diseases defined by American Board of Emergency Medicine (ABEM)</p>	<p><b>First Opinion EM®</b>  <i>The Right Decision for Emergency Physicians</i></p> <p>First Opinion EM is specifically designed to help the clinician arrive at the correct diagnosis at the earliest possible point in time with the fewest number of questions. The system is used at the patient's bedside and allows the user to quickly click on symptoms and signs to assemble and then refine a differential diagnosis. The list-based processing engine allows all diseases to be considered in parallel such that when a symptom is established it is weighted (differently) in all diseases that contain that symptom.</p> <p>The system can be anything from a check list of "don't miss" diagnosis to operating in fully automated interview mode in which structured questions are presented directly to the patient.</p> <p style="text-align: right;"><a href="#">Click Here to Learn More</a></p>
 <p>First Opinion Online provides all the tools, information and data sets to make an online medical diagnosis..</p> <p>New First Opinion Web Services allow you to pass data into First Opinion's data servers and receive instant online results.</p>	<p><b>First Opinion Online®</b>  <i>The Right Decision for Online Medical Diagnosis</i></p> <p>All the power and ease of use of First Opinion EM available online and accessible anywhere in the world.</p> <p>First Opinion Online is easy to use and works with most Internet based web browsers. First Opinion Online provides all the tools, information and data sets to make an online medical diagnosis. Great solution for online patient management, disease management and clinical support systems.</p> <p><b>NEW!</b> First Opinion Web Services. Access key First Opinion processes or data sets by passing XML data from your online application and receiving medical diagnostic information in return. Easily integrate First Opinion products into your existing online products, including online medical records, online patient management systems and online disease management systems.</p> <p style="text-align: right;"><a href="#">Click Here to Learn More</a></p>
 <p>License First Opinion SDK for use in your medical applications and electronic medical records (EMR).</p>	<p><b>First Opinion EMR®</b>  <i>The Right Decision for Automated Medical Diagnosis</i></p> <p>Integrate First Opinion diagnostic and patient safety information directly into your existing Electronic Medical Record (EMR).</p> <p>License our Software Development Kit (SDK) for use in your medical applications, including electronic medical record systems (EMRs) disease management systems, patient management systems, and other specialty medical systems.</p> <p style="text-align: right;"><a href="#">Click Here to Learn More</a></p>

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**ROUTING SHEET TO POST REGISTRATION (PRU)**

**Registration Number:** 1644040



**Serial Number:** 74067212



**RAM Sale Number:** 1482

**RAM Accounting Date:** 20110420

**Total Fees:** \$500

Note: Process in accordance with Post Registration Standard Operating Procedure (SOP)

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Number of Classes Paid</u>	<u>Total Fee</u>
§8 affidavit	7205	20110419	\$100	1	1	\$100
Application for Renewal (§9)	7201	20110419	\$400	1	1	\$400

Physical Location: 900 - FILE REPOSITORY (FRANCONIA)

Lost Case Flag: False

In TICRS (AM-FLG-IN-TICRS): True

**Transaction Date:** 20110419



# **EXHIBIT C**

**Generated on:**

This page was generated by TSDR on 2015-11-24 16:23:34 EST

**Mark:** FIRST OPINION

**US Serial Number:** 73496575

Aug. 27, 1984

**US Registration Number:** 1335327

May 14, 1985

**Register:**

Principal

**Mark Type:**

Trademark

**Status:**

The registration has been renewed.

**Status Date:**

Aug. 24, 2005

**Publication Date:** Mar. 05, 1985

**Application Filing Date:**

**Registration Date:**

---

## Mark Information

---

**Mark Literal Elements:**

FIRST OPINION

**Standard Character Claim:**

No

**Mark Drawing Type:**

1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

---

## 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:**

Pre-Recorded Computer Programs

**International Class(es):** 009 - Primary Class

**U.S Class(es):**

021

**Class Status:**

ACTIVE

**Basis:**

1(a)

**First Use:** Aug. 1984

**Use in Commerce:**

Aug. 1984

---

## 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  
Filed 66A: No  
Filed No Basis: No

Currently 44E: No  
Currently 66A: No  
Currently No Basis: No

Amended 44E: No

## Current Owner(s) Information

**Owner Name:**

First Opinion Corporation

**Owner Address:**

8258 Prestwick Dr.  
La Jolla, CALIFORNIA 92037  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country Where  
Organized:**

CALIFORNIA

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Robert L. Brewer, Paige W. Mills, and Ryann M. Schenider

**Docket Number:**

011211-235

**Attorney Primary Email  
Address:** [trademarks@bassberry.com](mailto:trademarks@bassberry.com)

**Attorney Email  
Authorized:**

Yes

### Correspondent

**Correspondent  
Name/Address:**

Robert L. Brewer, Paige W. Mills, and Ryann M. Sch  
Bass, Berry & Sims PLC  
150 3rd Avenue South  
Suite 2800  
Nashville, TENNESSEE 37201  
UNITED STATES

**Phone:** 615-742-7760

**Fax:**

615-742-0410

**Correspondent e-mail:** [trademarks@bassberry.com](mailto:trademarks@bassberry.com)

**Correspondent e-mail  
Authorized:**

Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Apr. 05, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Apr. 05, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
May 21, 2008	CASE FILE IN TICRS	
Aug. 03, 2006	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Aug. 03, 2006	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Aug. 24, 2005	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Aug. 24, 2005	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Mar. 21, 2005	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Aug. 23, 2005	ASSIGNED TO PARALEGAL	64591
Mar. 21, 2005	TEAS SECTION 8 & 9 RECEIVED	
Oct. 25, 1990	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Oct. 18, 1990	RESPONSE RECEIVED TO POST REG. ACTION	
Aug. 22, 1990	POST REGISTRATION ACTION MAILED - SEC. 8 & 15	
Jun. 11, 1990	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
May 14, 1985	REGISTERED-PRINCIPAL REGISTER	
Mar. 05, 1985	PUBLISHED FOR OPPOSITION	
Feb. 21, 1985	NOTICE OF PUBLICATION	
Feb. 21, 1985	NOTICE OF PUBLICATION	
Jan. 24, 1985	NOTICE OF PUBLICATION	
Jan. 04, 1985	APPROVED FOR PUB - PRINCIPAL REGISTER	

## Maintenance Filings or Post Registration Information

**Affidavit of Continued Use:**

Section 8 - Accepted

**Affidavit of Incontestability:**

Section 15 - Accepted

**Renewal Date:**

May 14, 2005

## TM Staff and Location Information

**TM Staff Information - None**

**File Location**

**Current Location:** SCANNING ON DEMAND

**Date in Location:**

May 21, 2008

## Assignment Abstract Of Title Information

**Summary**

**Total Assignments:** 2

**Registrant:**

Iliff; Edwin

### Assignment 1 of 2

**Conveyance:**

ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

**Reel/Frame:** [0888/0940](#)

**Pages:**

2

**Date Recorded:** Aug. 12, 1992

**Supporting Documents:**

No Supporting Documents Available

### Assignor

**Name:** [ILIFF, ED](#)

**Execution Date:**

Aug. 03, 1992

**Legal Entity Type:** INDIVIDUAL

**Citizenship:**

No Citizenship Found

### Assignee

**Name:**

[FIRST OPINION CORPORATION](#)

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:**

CALIFORNIA

**Address:**

8258 PRESTWICK  
LA JOLLA, CALIFORNIA 920372046

### Correspondent

**Correspondent Name:**

PETER H. KARLEN

**Correspondent Address:**

SUITE 400  
1205 PROSPECT STREET  
LA JOLLA, CA 92037

### Domestic Representative - Not Found

### Assignment 2 of 2

**Conveyance:**

SECURITY INTEREST

**Reel/Frame:** [4798/0442](#)

**Pages:**

17

Date Recorded: Jun. 09, 2012

Supporting Documents:

[assignment-tm-4798-0442.pdf](#)

Assignor

Name: [HEALTHWAYS, INC.](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: CORPORATION State or Country Where Organized:  
DELAWARE

Name: [POPULATION HEALTH SUPPORT, LLC](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized:  
DELAWARE

Name: [HEALTHWAYS HEALTH SUPPORT, LLC](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized:  
DELAWARE

Name: [HEALTHWAYS QUITNET, LLC](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized:  
DELAWARE

Name: [NAVVIS HEALTHCARE, LLC](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized:  
MISSOURI

Name: [HEALTHWAYS WHOLEHEALTH NETWORKS, INC.](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: CORPORATION State or Country Where Organized:  
DELAWARE

Name: [MEYOUHEALTH, LLC](#) Execution Date:  
Jun. 08, 2012  
Legal Entity Type: LIMITED LIABILITY COMPANY State or Country Where Organized:  
DELAWARE

Assignee

Name:  
[SUNTRUST BANK, AS ADMINISTRATIVE AGENT](#)  
Legal Entity Type: CORPORATION State or Country Where Organized:  
GEORGIA

Address:  
211 PERIMETER CENTER PARKWAY, SUITE 100  
ATLANTA, GEORGIA 30346

Correspondent

Correspondent Name:  
SUSAN LAKE, PARALEGAL  
Correspondent Address:  
1180 PEACHTREE STREET  
KING & SPALDING  
ATLANTA, GA 30309

Domestic Representative - Not Found

Proceedings

**Summary****Number of Proceedings:**

2

**Type of Proceeding: Opposition****Proceeding Number:** [91121895](#)**Filing Date:**

Jan 25, 2001

**Status:** Terminated**Status Date:**

Jan 07, 2002

**Interlocutory Attorney:****Defendant****Name:**

ANTHONY B. NESBURN

**Correspondent Address:**PETER H. KARLEN  
PETER H. KARLEN  
1205 PROSPECT ST., SUITE 400 LA JOLLA, CA 92037**Associated marks**

Mark	Application Status	Serial Number	Registration Number
SECOND OPINION	Cancelled - Section 8	<a href="#">75161894</a>	<a href="#">2605027</a>

**Plaintiff(s)****Name:**

FIRST OPINION CORPORATION

**Correspondent Address:**DARRELL L. OLSON  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
620 NEWPORT CENTER DRIVE SIXTEENTH FLOOR  
NEWPORT BEACH CA , 92660  
UNITED STATES**Associated marks**

Mark	Application Status	Serial Number	Registration Number
FIRST OPINION	Renewed	<a href="#">73496575</a>	<a href="#">1335327</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Jan 25, 2001	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Feb 08, 2001	Mar 20, 2001
3	PENDING, INSTITUTED	Feb 08, 2001	
4	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Apr 16, 2001	
5	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	Mar 20, 2001	
6	ANSWER	May 18, 2001	
7	P'S MOT FOR EXTEN. OF TIME W/ CONSENT	May 21, 2001	
8	WITHDRAWAL OF OPPOSITION	Jul 27, 2001	
9	BD'S DECISION: DISMISSED W/O PREJUDICE	Sep 12, 2001	
10	TERMINATED	Sep 12, 2001	
11	POW OF ATTORNEY	Aug 03, 2001	
12	TERMINATED	Jan 07, 2002	

**Type of Proceeding: Opposition****Proceeding Number:** [91100162](#)**Filing Date:**

Dec 21, 1995

**Status:** Terminated**Status Date:**

Jun 18, 1996

**Interlocutory Attorney:** GERARD F ROGERS**Defendant****Name:**

CIRCUMSTANTIAL INVESTMENTS, INC.

**Correspondent Address:**CIRCUMSTANTIAL INVESTMENTS, INC.  
242 EAST 19TH STREET, APT. 11B

NEW YORK NY , 10003  
UNITED STATES

Associated marks			
Mark	Application Status	Serial Number	Registration Number
THE FIRST OPINION	Abandoned - After Inter-Partes Decision	<a href="#">74604512</a>	

**Plaintiff(s)**

**Name:**

FIRST OPINION CORPORATION

**Correspondent Address:**

PETER H. KARLEN  
1205 PROSPECT STREET SUITE 400  
LA JOLLA CA , 92037  
UNITED STATES

Associated marks			
Mark	Application Status	Serial Number	Registration Number
FIRST OPINION	Renewed	<a href="#">73496575</a>	<a href="#">1335327</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Dec 21, 1995	
2	NOTICE SENT; ANSWER DUE (DUE DATE)	Jan 29, 1996	Mar 09, 1996
3	PENDING, INSTITUTED	Jan 29, 1996	
4	PL'S REQ FOR DEFAULT	Mar 02, 1996	
5	BOARD'S DECISION: SUSTAINED	Jun 18, 1996	
6	TERMINATED	Jun 18, 1996	

# **EXHIBIT D**

**Generated on:**

This page was generated by TSDR on 2015-11-25 13:46:23 EST

**Mark:** FIRST OPINION

**US Serial Number:** 74067212

May 17, 1990

**US Registration Number:** 1644040

May 07, 1991

**Application Filing Date:**

**Registration Date:**

**Register:**

Principal

**Mark Type:**

Service Mark

**Status:**

The registration has been renewed.

**Status Date:**

Apr. 20, 2011

**Publication Date:** Feb. 12, 1991

---

## Mark Information

---

**Mark Literal Elements:**

FIRST OPINION

**Standard Character Claim:**

No

**Mark Drawing Type:**

1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

**Disclaimer:**

"OPINION"

---

## Related Properties Information

---

**Claimed Ownership of US Registrations:**

1335327

---

## 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:**

computerized medical diagnostic and advice services

**International Class(es):** 042 - Primary Class

**U.S Class(es):**

100

**Class Status:**

ACTIVE

**Basis:**

1(a)

First Use: Apr. 01, 1990

Use in Commerce:

Apr. 01, 1990

## 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:**

First Opinion Corporation

**Owner Address:**

Suite 478  
8070 La Jolla Shores Drive  
La Jolla, CALIFORNIA 92037  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country Where  
Organized:**

CALIFORNIA

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Robert L. Brewer, Paige W. Mills, and Ryann M. Schneider  
**Docket Number:** 011211-235

**Attorney Primary Email Address:** [trademarks@bassberry.com](mailto:trademarks@bassberry.com)  
**Attorney Email Authorized:**

Yes

### Correspondent

**Correspondent  
Name/Address:**

Robert L. Brewer, Paige W. Mills, and Ryann M. Sch  
Bass, Berry & Sims PLC  
150 3rd Avenue South  
Suite 2800  
Nashville, TENNESSEE 37201  
UNITED STATES

**Phone:** 615-742-7760

**Fax:**

615-742-0410

**Correspondent e-mail:** [trademarks@bassberry.com](mailto:trademarks@bassberry.com)  
**Correspondent e-mail Authorized:**

Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Apr. 20, 2011	REGISTERED AND RENEWED (SECOND RENEWAL - 10 YRS)	68502
Apr. 20, 2011	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 19, 2011	TEAS SECTION 8 & 9 RECEIVED	
Oct. 18, 2007	CASE FILE IN TICRS	
Apr. 10, 2001	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Apr. 10, 2001	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Mar. 13, 2001	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Dec. 08, 2000	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Jul. 31, 1996	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
May 08, 1996	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
May 07, 1991	REGISTERED-PRINCIPAL REGISTER	

Feb. 12, 1991 PUBLISHED FOR OPPOSITION  
Jan. 11, 1991 NOTICE OF PUBLICATION  
Nov. 05, 1990 APPROVED FOR PUB - PRINCIPAL REGISTER  
Oct. 30, 1990 EXAMINER'S AMENDMENT MAILED  
Oct. 23, 1990 ASSIGNED TO EXAMINER

60792

## Maintenance Filings or Post Registration Information

### Affidavit of Continued Use:

Section 8 - Accepted

### Affidavit of Incontestability:

Section 15 - Accepted

### Renewal Date:

May 07, 2011

## TM Staff and Location Information

### TM Staff Information - None

#### File Location

Current Location: GENERIC WEB UPDATE

Date in Location:

Apr. 20, 2011

## Assignment Abstract Of Title Information

### Summary

Total Assignments: 2

Registrant:

liff, Ed

### Assignment 1 of 2

#### Conveyance:

ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL

Reel/Frame: [0885/0908](#)

Pages:

2

Date Recorded: Aug. 10, 1992

#### Supporting Documents:

No Supporting Documents Available

### Assignor

Name: [LIIFF, ED](#)

Execution Date:

Aug. 03, 1992

Legal Entity Type: INDIVIDUAL

Citizenship:

No Citizenship Found

### Assignee

Name:

[FIRST OPINION CORPORATION](#)

Legal Entity Type: CORPORATION

State or Country Where  
Organized:

CALIFORNIA

Address:

8258 PRESTWICK LA JOLLA, CA 92037-2046

### Correspondent

Correspondent Name:

PETER H. KARLEN

Correspondent Address:

1205 PROSPECT STREET  
SUITE 400  
LA JOLLA, CA 92037

### Domestic Representative - Not Found

### Assignment 2 of 2

Conveyance:

SECURITY INTEREST

Reel/Frame: [4798/0442](#)

Pages:

17

Date Recorded: Jun. 09, 2012

Supporting Documents:

[assignment-tm-4798-0442.pdf](#)

Assignor

Name: [HEALTHWAYS, INC.](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized:

DELAWARE

Name: [POPULATION HEALTH SUPPORT, LLC](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

DELAWARE

Name: [HEALTHWAYS HEALTH SUPPORT, LLC](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

DELAWARE

Name: [HEALTHWAYS QUITNET, LLC](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

DELAWARE

Name: [NAVVIS HEALTHCARE, LLC](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

MISSOURI

Name: [HEALTHWAYS WHOLEHEALTH NETWORKS, INC.](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized:

DELAWARE

Name: [MEYOUHEALTH, LLC](#)

Execution Date:

Jun. 08, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized:

DELAWARE

Assignee

Name:

[SUNTRUST BANK, AS ADMINISTRATIVE AGENT](#)

Legal Entity Type: CORPORATION

State or Country Where Organized:

GEORGIA

Address:

211 PERIMETER CENTER PARKWAY, SUITE 100  
ATLANTA, GEORGIA 30346

Correspondent

Correspondent Name:

SUSAN LAKE, PARALEGAL

Correspondent Address:

1180 PEACHTREE STREET  
KING & SPALDING

ATLANTA, GA 30309

**Domestic Representative - Not Found**

# **EXHIBIT E**



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details

## First Opinion Corporation

*The Leader in Diagnostic Software & Clinical Decision Support Solutions*

The First Opinion Corporation is leading the way with patient centered clinical decision support tools. We are the world leader in automated medical diagnostic technology and systems with 29 *issued or allowed* patents in the United States and 38 international patents issued and over 150 additional international patents *pending, being validated or designated*. Our physicians and computer scientists have spent over 20 years developing and patenting this technology.

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Sir William Osler

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- Medical Liability
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **CONSOLIDATED PETITION FOR CANCELLATION** was served via U.S. First Class Mail, postage prepaid, and properly addressed to Registrant:

First Opinion Corporation  
8258 Prestwick Drive  
La Jolla, California 92037-2046

First Opinion Corporation  
Suite 478  
8070 La Jolla Shores Drive  
La Jolla, California 92037

this 25th day of November, 2015.

/s/ Thomas E. Zutic  
\_\_\_\_\_  
Thomas E. Zutic  
*Attorney for Petitioner*