

ESTTA Tracking number: **ESTTA757949**

Filing date: **07/13/2016**

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	ScanHealth, Inc.
Granted to Date of previous extension	07/13/2016
Address	11 East Superior St. Suite 310 Duluth, MN 55802 UNITED STATES
Party who filed Extension of time to oppose	Physio-Control, Inc.
Relationship to party who filed Extension of time to oppose	ScanHealth, Inc. is a wholly owned subsidiary of Physio-Control, Inc. and is therefore in privity with Physio-Control, Inc.

Attorney information	Eugene J. Rath III FLYNN, THIEL, BOUTELL & TANIS, P.C. 2026 Rambling Road Kalamazoo, MI 49008-1631 UNITED STATES doCKET@flynnthiel.com Phone:(269) 381-1156
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Applicant Information

Application No	86477407	Publication date	03/15/2016
Opposition Filing Date	07/13/2016	Opposition Period Ends	07/13/2016
Applicant	Health: ELT, LLC Ste. 626 Dallas, TX 75231 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Computer software for use in managing populations in managed care and state and federal medical care programs; computer application software for mobile phones, handheld computers and other computers, namely software for use in managing healthcare provider information, managing the process of locating, contacting and maintaining contact with members of a healthcare plan or program, and providing analytics and data relating to group health</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Consulting services, namely, to healthcare providers in the field of managed care and state and federal medical care programs</p>


Class 042. First Use: 0 First Use In Commerce: 0

All goods and services in the class are opposed, namely: Providing on-line, non-downloadable, software applications for use in managing healthcare provider information, managing the process of locating, contacting and maintaining contact with members of a healthcare plan or program, and providing analytics and data relating to group health

Grounds for Opposition

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

U.S. Registration No.	4528469	Application Date	08/06/2013
Registration Date	05/13/2014	Foreign Priority Date	NONE
Word Mark	HEALTHEMS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/10/01 First Use In Commerce: 2000/10/01 Providing temporary use of on-line non-downloadable software for gathering and hosting clinical, operational, financial, human resource, and regulatory data collected at the point of service, for use by providers of fire and emergency medical services		

Attachments	86030405#TMSN.png(bytes) 00323551.PDF(381468 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	/Eugene J. Rath III/
Name	Eugene J. Rath III
Date	07/13/2016

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

In re Serial No. 86/477,407

Mark: HEALTH: ELT

SCANHEALTH, INC.

Opposer,

v.

HEALTH: ELT, LLC

Applicant.

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Opposition No. _____

NOTICE OF OPPOSITION

ScanHealth, Inc. (“ScanHealth” or “Opposer”), a Minnesota corporation having a principal place of business at 11 East Superior Street, Suite 310, Duluth, MN 55802, United States, believes that it will be damaged by registration of the mark HEALTH: ELT by Health: ELT, LLC (“Applicant”), and hereby opposes the same under 15 U.S.C. §1063. As grounds for opposition, Opposer asserts that:

1. ScanHealth is and has been for many years engaged in the manufacture, advertising, and sale of goods and services generally related to hosting data related to fire and emergency services. ScanHealth has become a leader in developing, advertising, and selling these goods and services.

2. ScanHealth is a wholly owned subsidiary of Physio-Control, Inc. of Redmond, WA.

3. ScanHealth uses its mark HEALTHHEMS in conjunction with the hosting data goods and services.

4. Opposer is the owner of U.S. Registration No. 4,528,469 for the mark HEALTHEMS for “Providing temporary use of on-line non-downloadable software for gathering and hosting clinical, operational, financial, human resource, and regulatory data collected at the point of service, for use by providers of fire and emergency medical services,” in Int’l Class 42. This registration issued on May 13, 2014, and is valid and subsisting.

5. ScanHealth has expended vast resources to promote its HEALTHEMS mark.

6. ScanHealth has been continuously using the HEALTHEMS mark with hosting data goods and services since at least as early as the year 2000.

7. Through its substantial use and promotion, ScanHealth has built up -- at great expense and effort -- tremendous goodwill in its HEALTHEMS mark.

8. By virtue of ScanHealth’s widespread and continuous use of its HEALTHEMS mark, ScanHealth has established extensive common law rights in the HEALTHEMS mark.

9. Applicant filed a trademark application which was assigned Application Serial No. 86/477,407 (the “ ‘407 application”) to register HEALTH: ELT. As published, the application identifies goods in International Class 009, and services in International Classes 035 and 042. Those goods and services are “Computer software for use in managing populations in managed care and state and federal medical care programs; computer application software for mobile phones, handheld computers and other computers, namely software for use in managing healthcare provider information, managing the process of locating, contacting and maintaining contact with members of a healthcare plan or program, and providing analytics and data relating to group health” (in Int’l Class 009); “Consulting services, namely, to healthcare providers in the field of managed care and state and federal medical care programs” (in Int’l Class 035); and “Providing on-line, non-downloadable, software applications for use in managing healthcare provider information, managing the process of locating, contacting and maintaining contact with members of a healthcare plan or program, and providing analytics and data relating to group health” (in Int’l Class 042). The ‘407 application was filed on December 11, 2014, based on an intent-to-use the mark in United States commerce.

10. Upon information and belief, Applicant has not alleged in the ‘407 application a first use date in United States commerce.

11. The filing date of Applicant’s ‘407 application is subsequent to ScanHealth’s use of the HEALTHEMS mark.

12. Applicant's HEALTH: ELT mark is nearly identical to Opposer's HEALTHEMS mark. In addition, the goods and services covered by the '407 application are related to the goods and services offered by Opposer under its HEALTHEMS mark, and the respective goods likely will be marketed to the same consumers and potential consumers in the same channels of trade.

13. If Applicant is permitted to register the mark HEALTH: ELT, granting a *prima facie* exclusive right to use that mark in nationwide commerce with the goods and services of the '407 application, it will conflict with Opposer's lawful and longstanding right to use the HEALTHEMS mark in association with hosting data goods and services.

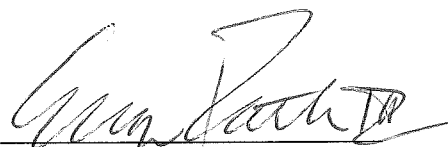
14. Opposer will be damaged by the registration of Applicant's application for the HEALTH: ELT mark in that the mark so resembles Opposer's HEALTHEMS mark, when used on or in connection with the goods identified in the '407 application, as to cause confusion, or to cause mistake or to deceive within the meaning of §2(d) of the Trademark Act, 15 U.S.C. §1052(d).

15. In view of Opposer's prior rights in the HEALTHEMS mark, Applicant is not entitled to registration of the HEALTH: ELT mark, pursuant to §2(d) of the Lanham Act, 15 U.S.C. §1052(d).

16. By reason of the foregoing, Opposer will be gravely damaged by the registration of the mark shown in the '407 application.

WHEREFORE, Opposer prays that Applicant's Application Serial No. 86/477,407 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Dated this 13th day of July, 2016.



Eugene J. Rath III
FLYNN, THIEL, BOUTELL & TANIS, P.C.
2026 Rambling Road
Kalamazoo, MI 49008-1631
(269) 381-1156

Attorney for Opposer, ScanHealth, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF OPPOSITION was served on this 13th day of July, 2016, by first class mail, addressed as follows:

Jeffrey D. Harty
NYEMASTER GOODE, P.C.
700 Walnut Street
Suite 1600
Des Moines, IA 503091

Attorney for Applicant

By: _____


Eugene J. Rath III