

ESTTA Tracking number: **ESTTA758877**

Filing date: **07/18/2016**

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	The Sage Group PLC
Granted to Date of previous extension	07/17/2016
Address	North Park Newcastle Upon Tyne, NE139AA UNITED KINGDOM
Attorney information	Jeffrey L. Van Hoosear Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:949-760-0404

Applicant Information

Application No	86384544	Publication date	01/19/2016
Opposition Filing Date	07/18/2016	Opposition Period Ends	07/17/2016
Applicant	EchoStar Technologies L.L.C. 100 Inverness Terrace East Englewood, CO 80112 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: Home and office electrical power automation systems comprising wireless and wired controllers, controlled devices, namely, switches, thermostats, and software, all sold together as a unit, for appliances, lighting, and security power monitoring and control applications; Home and office automation system components, namely, remote controls for controlling television receivers, security cameras, and lighting; Home and office automation system components, namely, electronic devices for monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinklers systems, and carbon monoxide detectors; computer software for use in home and office automation systems for monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; electronic devices and computer software sold together as a unit that allow users to remotely interact with home and office automation systems, namely, systems for the monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; Home and office automation system components, namely, electronic transmitters and receivers and computer software sold together as a unit that allow the sharing and transmission of data and information between the transmitters and receivers for monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; camera hardware sys-</p>

tems for IP video surveillance; Electronic personal emergency response system consisting of a device worn on the body with a button that users push to notify others in the event of an emergency, and a remote unit that dials out on the telephone for help; Scales having electronic transmitters, receivers, and computer software for tracking weight measurements and reporting them to a remote location; Portable electronic devices for calorie counting; Electronic devices for the remote control and monitoring of irrigation sprinklers; Home entertainment system control and monitoring devices, namely, electronic devices to remotely control cable and satellite set top boxes and DVRs, stereos, and cameras; Home automation system components, namely, remote controls for faucets; Electronic weather monitoring devices, namely, devices for monitoring external temperature, wind speed and direction, barometric pressure, and humidity; computer application software for use on computers, tablets, and mobile phones to control security cameras, television receivers, lighting, door sensors, locks, doorbell interfaces, motion sensors, irrigation sprinkler systems, carbon monoxide detectors, and smoke detectors in homes and businesses from a remote location; electronic devices and computer operating software for said devices, sold together as a unit, for environmental monitoring and control of smoke alarms, carbon monoxide alarms, fire alarms, security alarms and motion sensors; environmental hazard detectors, namely, electronic devices to detect and record the presence of water, smoke, fire, movement, motion, and sound; lighting control apparatus, namely, devices to sense ambient light; computer application software for use by home-owners on computers, tablets, and mobile phones to monitor and control, from a remote location by wired or wireless communication, devices for environmental monitoring and control, namely, smoke alarms, carbon monoxide alarms, fire alarms, environmental hazard detectors, lighting equipment, security alarms and motion sensors

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Other	Opposer's common law rights addressed in the Notice of Opposition.

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4560792	Application Date	07/09/2012
Registration Date	07/01/2014	Foreign Priority Date	NONE
Word Mark	SAGECLOUD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 039. First use: First Use: 2013/09/26 First Use In Commerce: 2013/12/20 Storage services for archiving and preserving electronic data Class 042. First use: First Use: 2013/09/26 First Use In Commerce: 2013/12/20 Back-up services for computer hard-drive and magnetically encoded data		

Attachments	85671311#TMSN.png(bytes) 2016-07-18 Notice of Opposition - Sage Group - SSOFT.042M2.pdf(32632 bytes) 2016-07-18 Exhibit A -Notice of Opposition by The Sage Group PLC - SSOFT.042M2.PDF(283781 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	/JVH/
Name	Jeffrey L. Van Hoosear
Date	07/18/2016

cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; electronic devices and computer software sold together as a unit that allow users to remotely interact with home and office automation systems, namely, systems for the monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; Home and office automation system components, namely, electronic transmitters and receivers and computer software sold together as a unit that allow the sharing and transmission of data and information between the transmitters and receivers for monitoring, control, and automation of lighting, cameras, smoke detectors, doors, motion sensors, irrigation sprinkler systems, and carbon monoxide detectors; camera hardware systems for IP video surveillance; Electronic personal emergency response system consisting of a device worn on the body with a button that users push to notify others in the event of an emergency, and a remote unit that dials out on the telephone for help; Scales having electronic transmitters, receivers, and computer software for tracking weight measurements and reporting them to a remote location; Portable electronic devices for calorie counting; Electronic devices for the remote control and monitoring of irrigation sprinklers; Home entertainment system control and monitoring devices, namely, electronic devices to remotely control cable and satellite set top boxes and DVRs, stereos, and cameras; Home automation system components, namely, remote controls for faucets; Electronic weather monitoring devices, namely, devices for monitoring external temperature, wind speed and direction, barometric pressure, and humidity; computer application software for use on computers, tablets, and mobile phones to control security cameras, television receivers, lighting, door sensors, locks, doorbell interfaces, motion sensors, irrigation sprinkler systems, carbon monoxide detectors, and smoke detectors in homes and businesses from a remote location; electronic devices and computer operating software for said devices, sold together as a unit, for environmental monitoring and control of smoke alarms, carbon monoxide alarms, fire alarms, security alarms and motion sensors; environmental hazard detectors, namely, electronic devices to detect and record the presence of water, smoke, fire, movement, motion, and sound; lighting control apparatus, namely, devices to sense ambient light; computer application software for use by home-owners on computers, tablets, and mobile phones to monitor and control, from a remote location by wired or wireless communication, devices for environmental monitoring and control, namely, smoke alarms, carbon monoxide alarms, fire alarms, environmental hazard detectors, lighting equipment, security alarms and motion sensors in Class 9; and

Healthcare monitoring and control devices, namely, automated pill dispensers, blood pressure, heart rate, blood sugar, and weight monitors, wearable electronic sensors for tracking heart rate activity and vital signs, electronic sensors for monitoring body temperature, respiratory conditions, fitness and exercise heart rate monitoring devices, and glucose monitoring devices, and diet monitoring devices in Class 10.

And Opposer opposes the same Application in Class 9.

As grounds for opposition, it is alleged:

1. Since at least as early as 1992, and long before Applicant filed the referenced Application, Opposer and/or its U.S. subsidiary have been using names and marks containing the term SAGE (collectively “Opposer’s Marks”) in connection with various accounting and business management software and business management related services and support for its software and services. The use of these names and marks has been valid and continuous and has not been abandoned.

2. Opposer, through substantial use and promotion, has acquired significant goodwill and consumer recognition in Opposer’s Marks. In addition, by virtue of substantial use and promotion, Opposer’s Marks have become well-known and famous in the minds of consumers. Opposer’s Marks became well-known and famous long before Applicant filed the Application.

3. Opposer is the owner of and relies upon United States Service Mark Registration No. 4,560,792 for the mark SAGECLOUD for “storage services for archiving and preserving electronic data” in International Class 39 and “back-up services for computer hard-drive and magnetically encoded data” in International Class 42. The application for this mark was filed on July 9, 2012 and registered on July 1, 2014. The mark was first used at least as early as September 26, 2013. Opposer first used this mark long before Applicant filed the present Application.

4. Opposer’s registration as specified in Paragraph 3 above is valid, subsisting, unrevoked, uncancelled, and not abandoned. As such, it constitutes prima facie evidence of the validity of the registered mark and of the registration thereof, Opposer’s ownership of the mark shown therein, and Opposer’s exclusive right to use the SAGECLOUD mark in commerce in

connection with the services named therein, without condition or limitation. Said registration also constitutes notice to Applicant of Opposer's claim of ownership of the mark shown therein, all as provided in Sections 7(b), 22 and 33(a) of the Trademark Act of 1946, as amended. A current printout from the electronic database records of the USPTO showing the current status and title of the registration is attached as Exhibit A.

5. Opposer also relies on its prior common law rights in its Sage Group trade name, its registered SAGE mark, and its various unregistered SAGE marks used for its various software products and services for use in accounting, business information, and business management as a ground for this Opposition.

6. Opposer's date of first use and filing date for the above registration substantially precede the filing date of the present Application.

7. In view of the similarity between Opposer's SAGE mark and trade name for various goods and services, including, but not limited to, its computer software products in Class 9, and Applicant's application for SAGE for computer software in Class 9, Opposer believes that the Applicant's present application for the mark SAGE may so resemble Opposer's SAGE mark and trade name that confusion, mistake or deception will occur under Section 2(d) of the Trademark Act. In view of Opposer's prior statutory and common law rights, Applicant should not be entitled to registration of the Application pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

8. Applicant's registration of the mark in U.S. Trademark Application Serial No. 86/384,544 may also cause a dilution of the distinctive quality of Opposer's Marks within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. 1125(c), and could possibly lessen the ability of Opposer's Marks to distinguish the goods and services of Opposer.

9. By reason of the foregoing, Opposer believes that it would be damaged by the

registration of U.S. Trademark Application Serial No. 86/384,544 for the mark SAGE because registration of this mark would be in violation of Opposer's Registrations and its rights.

WHEREFORE, Opposer requests that U.S. Trademark Application Serial No. 86/384,544 for the mark SAGE be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Please charge any additional necessary fees to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP



Dated: July 18, 2016

By: _____

Jeffrey Van Hoosear
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Irvine, CA 92614
(949) 760-0404
efiling@knobbe.com
Attorneys for Opposer,
The Sage Group PLC

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE OF OPPOSITION upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on July 18, 2016, addressed as follows:

Max Gratton
ECHOSTAR OPERATING CORPORATION
100 Inverness Ter E
Englewood, CO 80112-5308



Takeko Yoshioka-Moua

23790859

EXHIBIT A

Generated on: This page was generated by TSDR on 2016-03-30 17:02:33 EDT

Mark: SAGECLOUD

SAGECLOUD

US Serial Number: 85671311

Application Filing Date: Jul. 09, 2012

US Registration Number: 4560792

Registration Date: Jul. 01, 2014

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jul. 01, 2014

Publication Date: Dec. 11, 2012

Notice of Allowance Date: Feb. 05, 2013

Mark Information

Mark Literal Elements: SAGECLOUD

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: 1158536

International Application(s) / Registration(s) Based on this Property: A0033468/1158536

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: Storage services for archiving and preserving electronic data

International Class(es): 039 - Primary Class

U.S Class(es): 100, 105

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 26, 2013

Use in Commerce: Dec. 20, 2013

For: Back-up services for computer hard-drive and magnetically encoded data

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 26, 2013

Use in Commerce: Dec. 20, 2013

Basis Information (Case Level)

Feb. 04, 2014	EXTENSION 2 FILED	98765
Feb. 04, 2014	TEAS EXTENSION RECEIVED	
Aug. 28, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Aug. 27, 2013	EXTENSION 1 GRANTED	66530
Jul. 25, 2013	EXTENSION 1 FILED	66530
Aug. 27, 2013	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66530
Jul. 25, 2013	TEAS EXTENSION RECEIVED	
Jul. 24, 2013	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Feb. 05, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Dec. 11, 2012	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Dec. 11, 2012	PUBLISHED FOR OPPOSITION	
Nov. 21, 2012	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Nov. 06, 2012	APPROVED FOR PUB - PRINCIPAL REGISTER	
Oct. 30, 2012	ASSIGNED TO EXAMINER	76464
Jul. 17, 2012	NOTICE OF PSEUDO MARK MAILED	
Jul. 14, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jul. 12, 2012	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 28, 2014

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Registrant: SageCloud, Inc.

Assignment 1 of 1

Conveyance: ASSIGNS THE ENTIRE INTEREST

Reel/Frame: [5337/0264](#)

Pages: 8

Date Recorded: Aug. 05, 2014

Supporting Documents: [assignment-tm-5337-0264.pdf](#)

Assignor

Name: [SAGECLOUD, INC.](#)

Execution Date: May 12, 2014

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [THE SAGE GROUP PLC](#)

Legal Entity Type: COMPANY

State or Country Where Organized: UNITED KINGDOM

Address: NORTH PARK
NEWCASTLE UPON TYNE, UNITED KINGDOM NE13 9AA

Correspondent

Correspondent Name: DANIEL MCFADDEN, ESQ., FOLEY HOAG LLP

Correspondent Address: 155 SEAPORT BOULEVARD
BOSTON, MA 02210

Domestic Representative

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