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Filing date: **07/08/2020**

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

Proceeding	91256082
Party	Defendant Merck Sharp & Dohme Corp.
Correspondence Address	JAMES A. THOMAS MERCK & CO., INC. 126 E. LINCOLN AVENUE OFFICE OF GENERAL COUNSEL RAHWAY, NJ 07065 UNITED STATES Primary Email: TrademarkUS@merck.com Secondary Email(s): james.thomas2@merck.com, lynn.brumfield@merck.com No phone number provided.
Submission	Answer and Counterclaim
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Signature	/Marie A. Lavalleye/
Date	07/08/2020
Attachments	MSD Answer and Counterclaim.pdf(208178 bytes)

Registrations Subject to the filing

Registration No.	3608560	Registration date	04/21/2009
Registrant	SOFTEK ILLUMINATE, INC. SUITE 130 7299 W. 98TH TERRACE OVERLAND PARK, KS 66212 UNITED STATES		

Goods/Services Subject to the filing

Class 009. First Use: 2008/04/01 First Use In Commerce: 2008/04/01

All goods and services in the class are requested, namely: Computer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records; computer software for indexing, searching, displaying, and managing radiology images, radiology examinations, radiology reports, radiology data, and patient data

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
Fraud on the USPTO	Trademark Act Section 14(3); In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009)		
Registration No.	6023126	Registration date	03/31/2020
Registrant	Softek Illuminate, Inc. 10012 W. 50TH TERR. MERRIAM, KS 66203 UNITED STATES		

Email: sales@goilluminate.com

Goods/Services Subject to the filing

Class 009. First Use: 2011/01/01 First Use In Commerce: 2011/01/01
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All goods and services in the class are requested, namely: Downloadable and recorded computer software for managing patient medical information, specifically software for generating automatic follow-up notices for primary care physicians regarding radiological findings; computer software for tracking pre-screened patient data and patient diagnoses

Class 035. First Use: 2011/01/01 First Use In Commerce: 2011/01/01
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All goods and services in the class are requested, namely: Business consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services

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

In the Matter of: Ser. No. 88/732,936
Mark: ILLUMINATE & Design
Date of Publication: April 28, 2020

Softek Illuminate, Inc.,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No.: 91256082
Merck Sharp & Dohme Corp.,)	
)	
Applicant.)	
)	
)	

ANSWER TO NOTICE OF OPPOSITION

Merck Sharp & Dohme Corp. (“MSD”) hereby answers the Notice of Opposition filed by Softek Illuminate, Inc. (“Softek Illuminate”) regarding the mark embodied in MSD’s Application Serial No. 88/732,936.

The following paragraphs of this Answer correspond with those of Softek Illuminate’s Notice of Opposition.

In response to the first unnumbered paragraph, MSD is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph regarding Softek Illuminate’s corporate status, address, or belief as to damage from registration of the mark embodied in MSD’s Application Serial No. 88/732,936 and accordingly denies them. MSD admits the remaining allegations of this paragraph.

1. MSD denies that Softek Illuminate began using an ILLUMINATE mark in February 2009. On information and belief, Softek Illuminate did not exist until April 2016. MSD admits that it filed Application Serial No. 88/732,936, based on a *bona fide* intent to use the embodied mark, on December 19, 2019 in connection with the services described. The remaining allegations of this

paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them.

2. MSD admits that Softek Illuminate is listed in the U.S. Patent and Trademark Office (USPTO) records as the owner of Reg. Nos. 3,608,560 and 6,023,126. The materials referenced in this paragraph speak for themselves. The remaining allegations of this paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them.

3. The allegations of this paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them.

4. MSD is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and accordingly denies them.

5. The allegations of this paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them. In addition, MSD is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the pronunciation or trade channels of any Softek Illuminate marks and accordingly denies them.

6. The allegations of this paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them.

7. The allegations of this paragraph consist of legal conclusions as to which no response is required, but to the extent that a response is required, MSD denies them.

In response to the second unnumbered paragraph, MSD denies that Softek Illuminate is entitled to the relief requested.

AFFIRMATIVE DEFENSES

MSD sets forth the following allegations as affirmative defenses, which are pled together as well as in the alternative, without admitting that it bears the burden of persuasion or presentation of evidence on each or any of these matters, and without waiving the right to assert by motion or amendment, and subsequently rely on, other defenses that become available or appear during the course of this proceeding.

First Defense – Unclean Hands

1. MSD repeats and incorporates by reference all other paragraphs herein, including the paragraphs of MSD's Counterclaim, below.

2. As described in greater detail in MSD's Counterclaim, below, to the extent that Softek Illuminate has acquired any rights superior to MSD's rights, such rights, including those embodied in Reg. Nos. 3,608,560 and 6,023,126, were obtained and maintained fraudulently and in bad faith.

3. On information and belief, Reg. No. 3,608,560 was obtained fraudulently and in bad faith based on misrepresentations in Application Serial No. 77/562,892 regarding the nature and scope of use of the ILLUMINATE mark in commerce as of the September 4, 2008 filing date, and maintained fraudulently and in bad faith based on misrepresentations in a Combined Declaration of Use and Incontestability Under Sections 8 & 15 regarding the nature and scope of use of the ILLUMINATE mark in commerce as of the February 26, 2015 filing date.

4. On information and belief, Reg. No. 6,023,126 was obtained fraudulently and in bad faith based on misrepresentations in Application Serial No. 88/598,373 regarding the nature and scope of use of the ILLUMINATE mark in commerce as of the August 29, 2009 filing date.

5. Accordingly, because Reg. Nos. 3,608,560 and 6,023,126, were obtained and maintained fraudulently and in bad faith, Softek Illuminate's claims are barred in whole or in part by the doctrine of unclean hands.

Second Defense – Restriction of MSD Application

6. MSD repeats and incorporates by reference all other paragraphs herein, including the paragraphs of MSD's Counterclaim, below.

7. MSD believes that no likelihood of confusion exists between the MSD ILLUMINATE mark embodied in Application Ser. No. 88/732,036 and the ILLUMINATE marks embodied in Reg. Nos. 3,608,560 and 6,023,126 in light of, among other things, (i) the differences in the nature and subject matter of the services in Application Ser. No. 88/732,036 and the nature and subject matter of the goods and services in Opposer's Reg. Nos. 3,608,560 and 6,023,126 and (ii) the number of currently coexisting

ILLUMINATE (or similar) marks in the health field, which indicate that Softek Illuminate's rights in an ILLUMINATE mark are quite weak and entitled only to a limited scope of protection.

8. A brief search of the USPTO's records reveals dozens of marks that are similar to the ILLUMINATE marks embodied in Reg. Nos. 3,608,560 and 6,023,126 and that are registered for, and appear to be in use on or in connection with, goods and services in the health field. Examples of such third-party marks are identified in Exhibit A hereto.

9. Moreover, as described in greater detail in MSD's Counterclaim, below, MSD is willing to limit its use of the MSD ILLUMINATE Mark embodied in Application Ser. No. 88/732,936 to the field of infectious diseases. MSD therefore requests that Application Ser. No. 88/732,936 be amended to restrict the description of services accordingly: "*Providing medical information in the field of infectious diseases, namely, clinical study results to doctors and patients in the field of infectious diseases.*"

10. As described in greater detail in MSD's Counterclaim, below, the use of the ILLUMINATE marks embodied in Reg. Nos. 3,608,560 and 6,023,126, on information and belief, isbe limited to the field of radiology. MSD's Counterclaim therefore seeks, among other things, to restrict Reg. Nos. 3,608,560 and 6,023,126 to the field of radiology consistent with Opposer's actual uses.

11. The proposed amendments to Application Ser. No. 88/732,036, particularly when coupled with the restrictions sought in MSD's Counterclaim to Opposer's Reg. Nos. 3,608,560 and 6,023,126, would further obviate any possible risk of confusion between the parties' marks because consumers would distinguish between the marks based on their use in the field of radiology, on the one hand, and infectious disease, on the other hand.

12. Accordingly, Application Ser. No. 88/732,936 is at least entitled to registration with the restriction identified above.

COUNTERCLAIM

MSD submits that it has been and will continue to be damaged by registration of Reg. Nos. 3,608,560 and 6,023,126 in connection with the good and services identified therein, which are listed in

the USPTO's records in the name of Softek Illuminate, and hereby petitions to cancel such registrations pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111.

The grounds for cancellation are as follows:

A. MSD and Its Application (Ser. No. 88/732,936)

1. MSD is a leader in worldwide health care markets and is engaged in the business of developing, manufacturing, distributing, marketing, and selling a broad range of pharmaceuticals and medical devices and in the provision of information in the fields of health, medicine, pharmaceuticals, and the pharmaceutical industry, including medical information regarding clinical studies to doctors and patients (the "MSD Goods and Services").

2. MSD is a New Jersey corporation located and doing business at One Merck Drive, Whitehouse Station, New Jersey 08889.

3. On December 19, 2019, MSD filed an application (Serial No. 88/732,936) to register the following mark, under 15 U.S.C. § 1051(b), based on its *bona fide* intent to use such mark in commerce in connection with a subset of the MSD Goods and Services, namely, "*Providing medical information, namely, clinical study results to doctors and patients*" in Class 44 (the "MSD Application"):



(the "MSD ILLUMINATE Mark").

4. As set forth in the Second Affirmative Defense to its Answer, MSD is willing to limit the services in its Application Ser. No. 88/732,036 to the field of infectious diseases, namely, the provision of medical information and clinical study results regarding infectious diseases.

5. On April 28, 2020, the USPTO published the MSD Application in the *Trademark Official Gazette*.

6. On May 29, 2020, Softek Illuminate filed a Notice of Opposition opposing registration of the MSD Application, premised on its allegations of priority in, and a likelihood of confusion with, the ILLUMINATE marks embodied in Reg. Nos. 3,608,560 and 6,023,126.

B. The Softek Solutions Registration (Reg. No. 3,608,560)

7. On information and belief, on September 4, 2008, an entity named Softek Solutions, Inc. (“Softek Solutions”) filed Application Serial No. 77/562,892, which matured into Reg. No. 3,608,560, based on its alleged use in commerce of the mark ILLUMINATE on or in connection with “*Computer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records; computer software for indexing, searching, displaying, and managing radiology images, radiology examinations, radiology reports, radiology data, and patient data*” in Class 9.

8. In Application Serial No. 77/562,892, Softek Solutions represented to the USPTO, under a signed declaration that all statements made were true, that it was “using the mark in commerce” as of the September 4, 2008 filing date “on or in connection with the identified goods and/or services.”

9. Such representations were false and misleading at the time and, on information and belief, were known at the time by Softek Solutions (and Softek Illuminate, by virtue of its being the purported assignee of Reg. No. 3,608,560) to be false and misleading.

10. Softek Illuminate, which now asserts ownership of Reg. No. 3,608,560 against MSD,¹ states in its Notice of Opposition that “Opposer began using its ILLUMINATE brand in February of 2009,” *five months after* Softek Solutions filed Application Serial No. 77/562,892 based on a claim of current use in commerce.

¹ On information and belief, Softek Illuminate was not founded until in or around April 2016, the date of formation of Softek Illuminate with the Kansas Secretary of State.

11. Thus, on information and belief, at the time that Softek Solutions filed Application Serial No. 77/562,892, it was not using the ILLUMINATE mark in commerce on or in connection with any of the identified goods in the application.

12. Accordingly, on information and belief, Softek Illuminate (by virtue of its being the purported assignee of Reg. No. 3,608,560) was not using an ILLUMINATE mark as of the September 4, 2008 filing date of Application Serial No. 77/562,892.

13. On information and belief, neither Softek Solutions nor Softek Illuminate has ever used the mark ILLUMINATE on or in connection with goods or services outside of the field of radiology, including “[c]omputer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records” and “computer software for indexing, searching, displaying, and managing . . . patient data” outside of the field of radiology.

14. For example, the homepage of Softek Illuminate’s website located at <https://goilluminate.com/>² indicates that Softek Illuminate is “Putting [Electronic Medical Records] Data to Work for the Radiology Practice,” offering a “Patient-Centered Radiology Practice,” and providing “instant access to the patient and business documentation *your radiology practice needs*” (emphases added).

15. As a further example, the specimen of use submitted with Application Serial No. 77/562,892 does not reflect use of the ILLUMINATE mark on or in connection with “[c]omputer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records” and “computer software for indexing, searching, displaying, and managing . . . patient data” outside of the field of radiology.

² Last visited on June 30, 2020.

16. The specimen purports to display a “scanned image of [a] screen shot from [the ILLUMINATE] computer program,” but those images reflect only purported displays of radiology exam data.

17. On information and belief, as of the filing date of Application Serial No. 77/562,892, both Softek Solutions (and Softek Illuminate, by virtue of its being the purported assignee of Reg. No. 3,608,560) knew that the ILLUMINATE mark was not being used on or in connection with goods or services outside of the field of radiology, including “[c]omputer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records” and “computer software for indexing, searching, displaying, and managing . . . patient data” outside of the field of radiology.

18. The foregoing false representations were material and made with the intent to induce the USPTO to grant Reg. No. 3,608,560, as well as to extend materially the scope of goods covered by Reg. No. 3,608,560 to beyond what Softek Solutions and Softek Illuminate may have otherwise been entitled.

19. The USPTO, relying on the truth of the foregoing false representations, granted Reg. No. 3,608,560, including coverage for all of the goods listed therein.

20. On information and belief, Softek Solutions filed a Combined Declaration of Use and Incontestability on February 26, 2015 to maintain Reg. No. 3,608,560 on or in connection with “*Computer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records; computer software for indexing, searching, displaying, and managing radiology images, radiology examinations, radiology reports, radiology data, and patient data*” in Class 9.

21. In the Combined Declaration of Use and Incontestability submitted by Softek Solutions on February 26, 2015 to maintain Reg. No. 3,608,560, Softek Solutions represented to the USPTO, under a signed declaration that all statements made were true, that the ILLUMINATE mark was “in use in commerce on or in connection with all of the goods . . . listed in the existing registration . . . and the mark has been continuously used in commerce for five (5) consecutive years after the date of registration . . .

and is still in use in commerce on or in connection with all goods . . . listed in the existing registration.”

In support of its alleged claim of current use in commerce of the ILLUMINATE mark for the covered goods, as required by 15 U.S.C. § 1058, Softek Solutions stated that it was “submitting one (or more) specimen(s) for this class showing the mark as used in commerce.”

22. Such representations were false and misleading at the time and, on information and belief, were known at the time by Softek Solutions (and Softek Illuminate, by virtue of its being the purported assignee of Reg. No. 3,608,560) to be false and misleading.

23. On information and belief, rather than submit a specimen demonstrating current use of the ILLUMINATE mark in commerce, Softek Solutions (and Softek Illuminate, by virtue of its being the purported assignee of Reg. No. 3,608,560) merely copied the final two pages of the specimen it submitted with the original application sever years prior. Moreover, the specimen, which bears a 2005 copyright notice, is marked as “for demo purposes only.”

24. Accordingly, on information and belief, the specimen of use did not demonstrate current use of the ILLUMINATE mark in commerce on or in connection with any of the goods as of the February 26, 2015 filing date.

25. On information and belief, Softek Solutions (and Softek Illuminate, by virtue of its being the purported assignee of Reg. No. 3,608,560) was aware that such seven-year-old specimen of use did not, and could not, demonstrate current use of the mark in commerce.

26. On information and belief, neither Softek Solutions nor Softek Illuminate has ever used the mark ILLUMINATE on or in connection with goods or services outside of the field of radiology, including “*Computer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records*” and “*computer software for indexing, searching, displaying, and managing . . . patient data*” outside of the field of radiology.

27. The specimen of use submitted with the Combined Declaration of Use and Incontestability, for example, does not reflect use of the ILLUMINATE mark on or in connection with

“[c]omputer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records” and *“computer software for indexing, searching, displaying, and managing . . . patient data”* outside of the field of radiology.

28. The specimen purports to display a “scanned image of [a] screenshot of [the ILLUMINATE] software,” but those images reflect only purported displays of radiology exam data.

29. On information and belief, as of the filing date of the Combined Declaration of Use and Incontestability, both Softek Solutions and Softek Illuminate, to the extent that the latter was in existence, knew that the ILLUMINATE mark was not being used on or in connection with goods or services outside of the field of radiology, including *“Computer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records”* and *“computer software for indexing, searching, displaying, and managing . . . patient data”* outside of the field of radiology.

30. The foregoing false representations were material and made with the intent to induce the USPTO to maintain Reg. No. 3,608,560, as well as to maintain the scope of protection for goods beyond what Softek Solutions and Softek Illuminate may have otherwise been entitled.

31. The USPTO, relying on the truth of the foregoing false representations, maintained Reg. No. 3,608,560 and acknowledged Softek Solutions’s Declaration of Incontestability.

32. MSD has been damaged because the MSD Application has been impaired by the registration of, continued registration of, and the acknowledgement of the corresponding Declaration of Incontestability for, Reg. No. 3,608,560 for the goods listed therein, including by Softek Illuminate’s filing of a Notice of Opposition against the MSD Application based on Reg. No. 3,608,560 and the alleged incontestability thereof.

C. The Softek Illuminate Registration (Reg. No. 6,023,126)

33. On August 29, 2019, Softek Illuminate filed Application Serial No. 88/598,373, which matured into Reg. No. 6,023,126, based on its alleged use in commerce of the mark ILLUMINATE on or

in connection with “[c]omputer software for managing patient medical information, specifically software for generating automatic follow-up notices for primary care physicians regarding radiological findings; computer software for tracking pre-screened patient data and patient diagnoses” in Class 9 and “[s]ervices related to the analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” in Class 35.

34. During examination, Softek Illuminate amended the descriptions in Application Serial No. 88/598,373 to cover “[d]ownloadable and recorded computer software for managing patient medical information, specifically software for generating automatic follow-up notices for primary care physicians regarding radiological findings; computer software for tracking pre-screened patient data and patient diagnoses” in Class 9 and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” in Class 35.

35. In Application Serial No. 88/598,373, Softek Illuminate represented to the USPTO under a signed declaration that (i) all statements made were true and (ii) as of the August 29, 2019 filing date, the mark was “in use in commerce on or in connection with the goods/services in the application,” including, as amended, “[d]ownloadable and recorded computer software for tracking pre-screened patient data and patient diagnoses” and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services.”

36. Such representations were false and misleading at the time and, on information and belief, were known at the time by Softek Illuminate to be false and misleading.

37. On information and belief, Softek Illuminate has never used the mark ILLUMINATE on or in connection with any goods or services outside of the field of radiology, including “computer software for tracking pre-screened patient data and patient diagnoses” or “business consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and

post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” outside of the field of radiology.

38. For example, the homepage of Softek Illuminate’s website located at <https://goilluminate.com/>³ indicates that Softek Illuminate is “Putting [Electronic Medical Records] Data to Work *for the Radiology Practice*,” offering a “Patient-Centered *Radiology Practice*,” and providing “instant access to the patient and business documentation *your radiology practice needs*” (emphases added).

39. As a further example, the specimens of use submitted with Application Serial No. 88/598,373 for each class do not reflect use of the ILLUMINATE mark on or in connection with “[d]ownloadable and recorded computer software for tracking pre-screened patient data and patient diagnoses” or “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” outside of the field of radiology.

40. Such specimens, which purport to display emails and brochures describing and listing the ILLUMINATE program’s services and functionality, make clear that the services are intended specifically for use in the field of radiology through statements such as “Illuminate equips radiology departments with critical data,” “Our Latest Upgrade Redefines the Patient-Centered Radiology Practice. AGAIN,” and “Welcome to the Patient-centered Radiology Practice.”

41. On information and belief, as of the filing date of Application Serial No. 88/598,373, Softek Illuminate knew that it was not using the ILLUMINATE mark on or in connection with goods or services outside of the field of radiology, including “[c]omputer software for tracking pre-screened patient data and patient diagnoses” and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of

³ Last visited on June 30, 2020.

productivity, efficiency, and completeness in the provision of healthcare services” outside of the field of radiology.

42. The foregoing false representations were material and made with the intent to induce the USPTO to grant Reg. No. 6,023,126, as well as to extend materially the scope of goods and services covered by Reg. No. 6,023,126 to beyond what Softek Illuminate may have otherwise been entitled.

43. The USPTO, relying on the truth of the foregoing false representations, granted Reg. No. 6,023,126, including coverage for all of the goods and services listed therein, including those goods and services not limited to the field of radiology.

44. MSD has been damaged because the MSD Application has been impaired by the registration of Reg. No. 6,023,126 for the goods and services listed therein, including by Softek Illuminate’s filing of a Notice of Opposition against the MSD Application based on Reg. No. 6,023,126.

COUNT I – Void *Ab Initio* for Nonuse

45. MSD repeats and incorporates by reference all other paragraphs herein.

46. Softek Solutions filed Application Serial No. 77/562,892 on September 4, 2008 on the basis of use in commerce under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a).

47. At the time that Softek Solutions filed Application Serial No. 77/562,892, which matured into Reg. No. 3,608,560, Softek Solutions represented to the USPTO, under oath via an authorized declaration signed through its attorney of record, that all statements made therein were true (and would be corrected if they became no longer true over the course of examination) and that the ILLUMINATE mark was then in use in commerce, including on or in connection with *each* of the goods identified in Application Serial No. 77/562,892, including “[c]omputer software for managing patient medical information; computer software for indexing, searching, displaying, and managing electronic health records and electronic medical records” and “computer software for indexing, searching, displaying, and managing . . . patient data.”

48. On information and belief, Softek Solutions filed a Combined Declaration of Use and Incontestability on February 26, 2015 to maintain Reg. No. 3,608,560 on or in connection with all goods listed therein.

49. In the Combined Declaration of Use and Incontestability, Softek Solutions represented to the USPTO, under a signed declaration that all statements made were true, that the ILLUMINATE mark was “in use in commerce on or in connection with all of the goods . . . listed in the existing registration . . . and the mark has been continuously used in commerce for five (5) consecutive years after the date of registration . . . and is still in use in commerce on or in connection with all goods . . . listed in the existing registration.” In support of its alleged claim of current use in commerce of the ILLUMINATE mark, as required by 15 U.S.C. § 1058, Softek Solutions stated that it was “submitting one (or more) specimen(s) for this class showing the mark as used in commerce.”

50. On August 29, 2019, Softek Illuminate filed Application Serial No. 88/598,373, which matured into Reg. No. 6,023,126, based on its alleged use in commerce of the mark ILLUMINATE on or in connection with “[c]omputer software for managing patient medical information, specifically software for generating automatic follow-up notices for primary care physicians regarding radiological findings; computer software for tracking pre-screened patient data and patient diagnoses” in Class 9 and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” in Class 35.

51. During examination, Softek Illuminate amended the descriptions in Application Serial No. 88/598,373 to cover “[d]ownloadable and recorded computer software for managing patient medical information, specifically software for generating automatic follow-up notices for primary care physicians regarding radiological findings; computer software for tracking pre-screened patient data and patient diagnoses” in Class 9 and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services” in Class 35.

52. In Application Serial No. 88/598,373, Softek Illuminate represented to the USPTO under a signed declaration that (i) all statements made were true and (ii) as of the August 29, 2019 filing date, the mark was “in use in commerce on or in connection with the goods/services in the application,” including, as amended, “[d]ownloadable and recorded computer software for tracking pre-screened patient data and patient diagnoses” and “[b]usiness consulting services provided to the healthcare industry, namely, the collection, reporting, and analysis, both real-time and post-completion, of productivity, efficiency, and completeness in the provision of healthcare services.”

53. As described herein, the foregoing representations were false and misleading at the times they were made and, on information and belief and the facts pleaded herein, were known by Softek Solutions and Softek Illuminate (including with respect to Reg. No. 3,608,560, by virtue of its being the purported assignee of Reg. No. 3,608,560) to be false and misleading at such times.

54. The foregoing false representations were material and made with the intent to induce the USPTO to grant Reg. Nos. 3,608,560 and 6,023,126, to maintain Reg. No. 3,608,560, to acknowledge Softek Solutions’s Declaration of Incontestability for Reg. No. 3,608,560, and to extend materially the scope of goods and services covered by Reg. Nos. 3,608,560 and 6,023,126 to beyond what Softek Solutions and Softek Illuminate may have otherwise been entitled.

55. The USPTO, relying on the truth of the foregoing false representations, granted Reg. No. 6,023,126, including coverage for all of the goods and services listed therein.

56. For these reasons, the Board should declare Reg. Nos. 3,608,560 and 6,023,126 invalid, void *ab initio*, and incapable of resulting in a registration.

57. Alternatively, Reg. Nos. 3,608,560 and 6,023,126 should, under 15 U.S.C. § 1068, be restricted to the field of radiology, while the MSD Application should be restricted to the field of infectious diseases, thereby obviating any potential likelihood of confusion.

58. Absent such a determination, MSD will continue to be damaged, including through Softek Illuminate’s current Notice of Opposition against the MSD Application based on Reg. Nos. 3,608,560 and 6,023,126, as well as the alleged incontestability of Reg. No. 3,608,560.

COUNT II – Abandonment

59. MSD repeats and incorporates by reference all other paragraphs herein.

60. On information and belief and the facts pleaded herein, neither Softek Solutions nor Softek Illuminate is currently using, or has ever used, the ILLUMINATE mark in commerce on or in connection with any goods or services outside of the field of radiology.

61. On information and belief and the facts pleaded herein, neither Softek Solutions nor Softek Illuminate has had an intent to resume, or begin, use of the ILLUMINATE mark in commerce on or in connection with goods or services outside of the field of radiology.

62. Neither Softek Solutions's nor Softek Illuminate's non-use constitutes excusable non-use.

63. Reg. Nos. 3,608,560 and 6,023,126, therefore, should be declared abandoned with respect to all goods and services listed therein that are not limited to the field of radiology.

64. Alternatively, Reg. Nos. 3,608,560 and 6,023,126 should, under 15 U.S.C. § 1068, be restricted to the field of radiology, while the MSD Application should be restricted to the field of infectious diseases, thereby obviating any potential likelihood of confusion.

65. Absent such a determination, MSD will continue to be damaged, including through Softek Illuminate's current Notice of Opposition against the MSD Application based on Reg. Nos. 3,608,560 and 6,023,126, as well as the alleged incontestability of Reg. No. 3,608,560.

COUNT III – Fraud

66. MSD repeats and incorporates by reference all other paragraphs herein.

67. As described herein, Softek Solutions and Softek Illuminate filed Reg. Nos. 3,608,560 and 6,023,126 knowing that they had not used the ILLUMINATE mark in commerce on or in connection with any, or at least some, of the goods and services identified therein.

68. Accordingly, Softek Solutions's and Softek Illuminate's filing of Application Serial Nos. 77/562,892 and 88/598,373 were knowingly false and misleading.

69. Further, Softek Solutions filed the Combined Declaration of Use and Incontestability Under Sections 8 & 15 for Reg. No. 3,608,560 knowing that the evidence it submitted did not reflect its

current use of the ILLUMINATE mark in commerce and that the registration included goods on or in connection with Softek Solutions had never used the ILLUMINATE mark.

70. Accordingly, Softek Solutions's (and Softek Illuminate's, by virtue of its being the purported assignee of Reg. No. 3,608,560) filing of the Combined Declaration of Use and Incontestability was knowingly false and misleading.

71. The USPTO, relying on the truth of Softek Solutions's and Softek Illuminate's knowingly false statements, did, in fact, accept those representations and grant Reg. Nos. 3,608,560 and 6,023,126 and maintain Reg. No. 3,608,560, including for goods and services that neither Softek Solutions nor Softek Illuminate has ever offered under or in connection with the ILLUMINATE mark.

72. Reg. Nos. 3,608,560 and 6,023,126 thus should be cancelled because the registrations were premised on fraud.

73. Alternatively, Reg. Nos. 3,608,560 and 6,023,126 should, under 15 U.S.C. § 1068, be restricted to the field of radiology, while the MSD Application should be restricted to the field of infectious diseases, thereby obviating any potential likelihood of confusion.

74. Absent such a determination, MSD will continue to be damaged, including through Softek Illuminate's current Notice of Opposition against the MSD Application based on Reg. Nos. 3,608,560 and 6,023,126, as well as the alleged incontestability of Reg. No. 3,608,560.

WHEREFORE, MSD respectfully prays that Softek Illuminate's Notice of Opposition be dismissed, that Application Ser. No. 88/732,936 be restricted to the field of infectious diseases, that Reg. Nos. 3,608,560 and 6,023,126 be cancelled or restricted to the field of radiology, and that the Board grant MSD such other relief as it may deem appropriate.

Respectfully submitted,

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July 8, 2020

Exhibit A

Mark	Reg. No.	Owner	Goods & Services
ABILITY ILLUMINATE	Reg 4,772,375	ABILITY NETWORK INC.	35: Healthcare information exchange services, namely, promoting the exchange of referral information in the field of healthcare; providing a web-based system and online portals for the exchange of referral information in the field of healthcare; business collaboration services, namely, providing a secure web-based network for the exchange of referral information in the field of healthcare; medical care referral services 36: Insurance services, namely, providing information and on-line computer databases for the review and verification of insurance eligibility status and related information 42: Providing an internet website portal that features technology that enables the secure exchange of healthcare referral information 44: Providing a website featuring medical information for use in referrals to healthcare providers
ILLUMINATING DISCOVERY	Reg 5,379,556	AGILENT TECHNOLOGIES, INC.	42: Scientific and technology research for others relating to reagents and bioassays for high performance drug discovery and related applications, and for scientific, laboratory, field, quality control, process, food and beverage, packaging and other industrial use; development of probes, reagents and bioassays for others for high performance drug discovery and related applications including biomedical, diagnostic, microbiological, environmental application, quality control, process, food and beverage, packaging and other industrial use; providing technical consultation services and information relating to the development of probes, reagents and bioassays for high performance drug discovery and related applications including biomedical, microbiological, environmental application, quality control, process, food and beverage, packaging and other industrial use
LUMINATE	Reg 4,700,874	ALLEGRO OPHTHALMICS, LLC	5: Pharmaceutical preparations for the treatment of eye diseases and conditions
ILLUMINATING NERVES - PRESERVING FUNCTION.	Reg 5,674,356	ALUME BIOSCIENCES, INC.	41: Educational services, namely, providing seminars in the field of medical research and the use and applications of nerve illumination for medical therapies; providing a website featuring non-downloadable videos in the field of health 42: Providing information and online information on the development of new technologies for nerve illumination; providing information and online information regarding research and technology to improve the prognosis or reduction of nerve damage caused by surgery; providing information regarding research and technology relating to nerve labeling, tagging and targeting; providing information and online information regarding research and technology for use in nerve ablation procedures 44: Providing health information; providing information and online information regarding healthcare to improve the prognosis or reduction of nerve damage caused by surgery; providing information regarding healthcare relating to nerve labeling, tagging and targeting; providing information and online information regarding healthcare for use in nerve ablation procedures
ILLUMINATING THE SCIENCE OF LIFE	Reg 4,895,649	ASSOCIATION OF MEDICAL ILLUSTRATORS	35: Association services, namely, promoting awareness of the art and science of the profession of medical illustration to the public
ILLUMINATE THE UNKNOWN	Reg 6,045,619	BOTANISOL ANALYTICS, INC.	42: Research and development in the pharmaceutical and biotechnology fields
ILLUMINATE 365	Reg 5,842,790	CALDERON TEXTILES, LLC	45: Regulatory compliance consultation in the field of health care
ILLUMINATING REVOLUTIONARY PATIENT CARE	Reg 4,846,523	CHRISTIE MEDICAL HOLDINGS, INC.	10: Medical apparatus, instruments and devices for use in surgery, surgical procedures, drawing blood, peripheral venous access, varicose vein treatment and wound management; medical apparatus and instruments utilizing light for biological tissue visualization, diagnosis, and treatment

ILLUME ROOM	Reg 6,082,207	CUEVAS, CHRISTOPHER	44: Photobiomodulation therapy services for treating medical conditions
ELUMINATE HEALTH	Reg 4,448,679	ELUMINATE HEALTH, LLC	35: Providing consumers, employers, and other financial stakeholders with real-time pricing information about healthcare plans, healthcare plan ratings, and customer satisfaction information for the purposes of making purchasing decisions
ILLUMINATIONS	Reg 4,655,976	FHC PROPERTY MANAGEMENT, LLC	44: Health care services, namely, wellness programs in the field of memory care for individuals facing alzheimer's disease and other forms of dementia
ILLUMIN8	Reg 5,683,097	GEOSPOCK LIMITED	9: Software for visualisation and analysis of geospatial and geotemporal data; geospatial software, namely, software for indexing geospatial and geotemporal data; none being in the field of medical records or medical data or for project management of infrastructure projects for energy transmission systems, oil and gas transmission systems, water transmission systems and telecommunication transmission systems
ILLUMA CARE CONNECTIONS	Reg 5,967,801	ILLUMA LLC	35: Patient relationship management services in the nature of patient outreach services, namely, scheduling of patient appointments with healthcare providers, namely, optometrists and ophthalmologists, retina specialists, radiology centers, and other in-home screening providers in the optical field and excluding such services that pertain to the field of antimicrobial stewardship and/or infection management 42: Software as a services (saas) services featuring software for use in medical image management, a web portal with a suite of advanced collaboration tools and access to third party applications to provide a single source to view patients' consolidated ophthalmic health records, and a forum for communication and collaboration among eye health care providers and single sign-on access to applications in the field of eye-related healthcare; healthcare information exchange services, namely, providing an interactive web site that features technology that enables users to identify, locate, retrieve and aggregate patient's ophthalmic health records; providing a web hosting platform for hardware, software and networking components to deploy healthcare information exchanges related to health care for the eye on a computer network; software as a service (saas) services featuring mobile software to connect enrollee health data pertaining to eye health to disease management organizations and healthcare providers to offer real-time clinical coaching and behavioral algorithms driven by current patient data, all of the above limited to optometrists and ophthalmologists, retina specialists, radiology centers, and other in-home screening providers in the optical field and excluding such services that pertain to the field of antimicrobial stewardship and/or infection management
ILLUMA	Reg 5,967,802		35: Patient relationship management services in the nature of patient outreach services, namely, scheduling of patient appointments with healthcare providers, namely, optometrists and ophthalmologists, retina specialists, radiology centers, and other in-home screening providers in the optical field and excluding such services that pertain to the field of antimicrobial stewardship and/or infection management 42: Software as a services (saas) services featuring software for use in medical image management, a web portal with a suite of advanced collaboration tools and access to third party applications to provide a single source to view patients' consolidated ophthalmic health records, and a forum for communication and collaboration among eye health care providers and single sign-on access to applications in the field of eye-related healthcare; healthcare information exchange services, namely, providing an interactive web site that features technology that enables users to identify, locate, retrieve and aggregate patient's ophthalmic health records; providing a web hosting platform for hardware, software and networking components to deploy healthcare information exchanges related to health care for the eye on a computer network; software as a service (saas) services featuring mobile software to connect

			enrollee health data pertaining to eye health to disease management organizations and healthcare providers to offer real-time clinical coaching and behavioral algorithms driven by current patient data, all of the above limited to optometrists and ophthalmologists, retina specialists, radiology centers, and other in-home screening providers in the optical field and excluding such services that pertain to the field of antimicrobial stewardship and/or infection management
ILLUMICARE	Reg 5,096,174	ILLUMICARE, INC	42: Online non-downloadable computer software that provides integrated business management intelligence in the field of healthcare by combining information from various databases and presenting it in an easy-to-understand user-interface for analysis by healthcare providers in treating patients, diagnosing medical conditions, managing patient care, and assessing risk for medical treatment options; providing temporary use of non-downloadable software in the field of healthcare business intelligence to assist healthcare providers in providing medical services to patients
ILLUMINA	Reg 2,632,507	ILLUMINA, INC.	1: Chemicals, namely reagents for scientific or medical research use for analyzing cells, proteins, nucleic acids and other molecules of 50 to 10,000 daltons, sequencing dna, genotyping, gene expression profiling and high through-put screening 42: Scientific and medical research, namely, analysis of cells, proteins, nucleic acids and other molecules of 50 to 10,000 daltons, sequencing dna, genotyping, gene expression profiling and high through-put screening
ILLUMINA	Reg 4,268,307		1: Assays and reagents for use in genetic research; diagnostic reagents and preparations, except for medical or veterinary use; diagnostic reagents for scientific or research use; diagnostic reagents for clinical or medical laboratory use; reagent kits comprised primarily of oligonucleotides, enzymes, antibodies, dyes and buffers for nucleic acid detection in the fields of scientific, pharmaceutical and medical research 9: Automated laboratory apparatus and computer systems for use in analysis of biomolecules; nucleic acid sequencers, imaging devices, namely, electronic imaging apparatus for detecting images and optical signals, and for processing images and optical signals into data, for use in the analysis of biomolecules, and analyzers for use in scientific research; laboratory equipment, namely, fluid containers, fluid mixers, fluid control valves and temperature-controlled incubators for sample preparation, amplification, mixing, hybridization, incubation, and washing; automated laboratory apparatus and systems, namely, sample loaders and bar code readers; computer systems, namely, computer hardware, computer software, and data files for collecting, storing, analyzing and reporting biological information, and for sample tracking and managing projects, laboratory workflow and data, all the foregoing for use in the fields of scientific research; computer software for data collection, management, and analysis of genetic information for use in the field of scientific research 40: Custom synthesis services, namely, custom synthesis of nucleotides, oligonucleotides, and other nucleic acids, and labeled derivatives thereof and custom nucleotide attachment to substrates 42: Scientific research; medical research; dna screening for scientific research purposes; providing reagent sample testing services for others in the fields of science and research related thereto; computer services, namely, cloud hosting provider services for storing, analyzing and sharing biological information; providing an online network service that enables users to store, analyze and share data in the fields of life science; technical support services, namely, infrastructure management services for monitoring, administration and management of cloud computing it and application systems in the fields of life science; consulting services in the field of cloud computing in the fields of life science; providing online non-downloadable software for the custom design and ordering

			of assays and reagents; design and development of laboratory apparatus and instruments and computer systems for use in analysis of biomolecules; installation and maintenance of computer software and databases used in the field of analysis of biomolecules; consultancy, information and advisory services in the field of analysis of biomolecules; product development, namely, developing equipment for use in preparing, detecting, analyzing and sequencing nucleic acids and other biological molecules, and automated laboratory equipment and systems, and computer systems for collecting, storing, analyzing and reporting biological information, and for sample tracking and managing projects, laboratory workflow and data to the order and specification of others, all the foregoing in the fields of scientific and clinical research
ILLUMINA	Reg 4,502,341		<p>5: Medical diagnostic reagents; clinical diagnostic reagents; reagent kits and beads with attached biomolecules, comprised primarily of oligonucleotides and other nucleic acids, natural and modified nucleotides, polypeptides, buffers, labels, and substrates, for clinical diagnostic purposes</p> <p>9: Computer systems, namely, computer hardware, computer software, and data files for collecting, storing, analyzing and reporting biological information, and for sample tracking and managing projects, laboratory workflow and data, all the foregoing for use in the fields of diagnostic and clinical research and for clinical diagnostic purposes; computer software for data collection, management, and analysis of genetic information for use in the fields of diagnostic and clinical research and for clinical diagnostic purposes</p> <p>10: Clinical diagnostic instruments, namely, nucleic acid sequencers, imaging devices and analyzers</p> <p>42: Providing diagnostic services for others in the fields of science and research related thereto; clinical diagnostic services in preparing, amplifying, labeling, detecting, analyzing and sequencing nucleic acids from human beings</p>
ILLUMINOTES	Reg 4,726,838		<p>41: Providing non-downloadable electronic newsletters in the fields of nucleic acid sequencing and genotyping, medical diagnostics, medical research, life sciences, biology, molecular pathology, molecular diagnostics, laboratory medicine, biotechnology, and genetics; online electronic newsletters delivered via email in the fields of nucleic acid sequencing and genotyping, medical diagnostics, medical research, life sciences, biology, molecular pathology, molecular diagnostics, laboratory medicine, biotechnology, and genetics</p>
ILLUMINATEHEALTH	Reg 5,608,197	ILLUMINATE HEALTH	<p>9: Computer application software for mobile phones, home voice command and recognition software, namely, software for healthcare management and medication safety management</p> <p>42: Software as a service (saas) services featuring software for healthcare management and medication safety management</p>
ILLUMINATE FACE & BODY BAR	Reg 5,042,705	ILLUMINATE IP, LLC	<p>35: Retail store services featuring skin care, health, wellness and beauty products</p> <p>44: Health spa services, namely, cosmetic body care services; medical spa services, namely, minimally and non-invasive cosmetic and body fitness therapies</p>
ILLUMINATE FACE & BODY BAR	Reg 5,172,323		<p>35: Retail store services featuring skin care, health, wellness and beauty products</p> <p>44: Health spa services, namely, cosmetic body care services; medical spa services, namely, minimally and non-invasive cosmetic and body fitness therapies</p>
ILLUMINATE FACE & BODY BAR	Reg 5,286,857		<p>35: Retail store services featuring skin care, health, wellness and beauty products</p> <p>44: Health spa services, namely, cosmetic body care services; medical spa services, namely, minimally and non-invasive cosmetic and body fitness therapies</p>
ILLUMINATE PLASTIC SURGERY	Reg 5,664,385	ILLUMINATE PLASTIC SURGERY, INC.	<p>44: Cosmetic surgery services; plastic surgery; plastic surgery services; cosmetic and plastic surgery; cosmetic and plastic surgery, namely, a minimally invasive face/neck lift done under local anesthesia</p>
ILLUMINATED FLAME	Reg 5,049,694	ILLUMINATED FLAME INC	<p>41: Education services, namely, providing on-line classes and webinars in the field of meditation, yoga, reiki, stress</p>

			management and communication; education services, namely, providing non-downloadable webinars in the field of meditation, yoga, reiki, stress management and communication; meditation training; providing fitness instruction services in the field of yoga; providing fitness training services in the field of yoga 44: Energy healing services, namely, stress management and stress reduction counseling for individuals to enhance their lives; psychological counseling; reiki healing services; providing in-person energy healing services; providing in-person vibrational energy healing services
ILLUMINE	Reg 5,138,156	ILLUMINATING INCORPORATED	9: Electronic downloadable publications, namely, magazines and newsletters in the field of yoga, physical conditioning, health, nutrition and lifestyle 16: Printed publications, namely, magazines and newsletters in the field of yoga, physical conditioning, health, nutrition and lifestyle 41: Providing on-line magazines in the fields of yoga, physical conditioning, health, nutrition and lifestyle; providing on-line journals, namely, blogs featuring yoga, physical conditioning, health, nutrition and lifestyle; providing online information in the fields of yoga, and physical conditioning 44: Providing online information in the fields of health and nutrition
ILLUMINATING STORIES	Reg 6,044,151	ILLUMINATING STORIES, LLC	44: Energy healing services, namely, quantum transformation and healing services to eliminate stress; energy healing services, namely, stress management and stress reduction counseling for individuals to enhance their lives; energy healing services, namely, therapeutic touch services; holistic health services; holistic health services featuring herbal medicine; hypnosis services; providing both in-person and on-line vibrational energy healing services; providing in-person energy healing services; providing in-person holistic health care services; providing in-person vibrational energy healing services; providing long-distance energy healing services; providing vibrational energy healing services
ILLUMINATING STORIES HEART-CENTERED HEALING FOR WHOLENESS	Reg 6,044,164		44: Energy healing services, namely, quantum transformation and healing services to eliminate stress; energy healing services, namely, stress management and stress reduction counseling for individuals to enhance their lives; energy healing services, namely, therapeutic touch services; holistic health services; holistic health services featuring herbal medicine; hypnosis services; providing both in-person and on-line vibrational energy healing services; providing in-person energy healing services; providing in-person vibrational energy healing services; providing long-distance energy healing services; providing vibrational energy healing services; providing in-person holistic health care services
ILUM	Reg 5,330,571	INFECTIOUS DISEASE CONNECT, INC.	35: Business consulting services in the fields of organizational change management rendered to healthcare providers; business consulting services in the field of clinical medical management 44: Providing information in the fields of disease management, clinical medical information management, infection prevention and control, and antimicrobial stewardship; consulting services in the fields of disease management, clinical medical information management, infection prevention and control, and antimicrobial stewardship
ILÚM	Reg 5,498,084		9: Computer application software for mobile phones, handheld computers, and desktop computers, namely, software for collecting, aggregating, editing, organizing, modifying, transmitting, storing, reporting, presenting and sharing data and information regarding disease management, clinical management, change management, infection prevention and control, and antimicrobial stewardship; computer software and informatics platform that provides real-time clinical decision support, integrated management and operational intelligence by combining information from various databases and specialty hubs and presenting it to care providers and healthcare stakeholders in an easy-to-understand user interface in the fields

			of disease management, clinical management, change management, infection prevention and control, and antimicrobial stewardship; computer software for aggregating and analyzing hospital data in order to generate reports regarding illness, disease, quality of care, cost of care, value of care, and health and medicine data; computer software for database management, namely, order management, disease management, and clinical record management software
ILUM	Reg 5,840,396		42: Software as a service (saas) services featuring software for collecting, aggregating, editing, organizing, modifying, transmitting, storing, reporting, presenting and sharing data and information regarding disease management, clinical management, change management, infection prevention and control, and antimicrobial stewardship; software as a service (saas) services featuring software and an informatics computer software platform that provides real-time clinical decision support, integrated management and operational intelligence by combining information from various databases and specialty hubs and presenting it to care providers and healthcare stakeholders in an easy-to-understand user interface in the fields of disease management, clinical management, change management, infection prevention and control, and antimicrobial stewardship; software as a service (saas) services featuring software for aggregating and analyzing hospital data in order to generate reports regarding illness, disease, quality of care, cost of care, value of care, and health and medicine data; software as a service (saas) services featuring software for database management, namely, order management, disease management, and clinical record management software
ILLUMINATIVE ANALYTICS	Reg 5,085,449	ISSAC CORP	35: Business data analysis; business data analysis services in the field of cyber and intelligence analysis; business data analysis services in the field of health care; business data analysis; business data analysis services in the field of logistics optimization; business data analysis services in the field of energy management; business data analysis services in the field of big data; statistical analysis and reporting services for business purposes 42: Structural and functional analysis of genomes
LUMA LUMINATE THE MIND FOR LIFE	Reg 5,717,762	JAYMAC PHARMACEUTICALS, LLC	5: Pharmaceutical preparations in the nature of pills for dementia associated with alzheimer's disease
ILLUMEO	Reg 6,060,870	KONINKLIJKE PHILIPS N.V.	9: Software for use in the medical and healthcare field in connection with clinical imaging, namely, software for medical clinicians to electronically manage and process patient health data; software for integrating and organizing data from laboratory results, prior radiology reports and imaging orders, all for use in connection with clinical imaging, all to help clinicians bridge the stages of diagnosis to follow-up 42: Developing, installing and updating software for use in the medical and healthcare field in clinical imaging; consultancy services relating to software for use in the medical and healthcare field in clinical imaging
ILUMIEN	Reg 4,258,470	LIGHTLAB IMAGING, INC.	9: Computer displays and computer monitors and controllers therefor used in association with medical imaging apparatus during medical imaging of an individual
ILUMIEN	Reg 4,577,532		9: Optical coherence tomography software for medical imaging; computer software for use in medical diagnosis, namely, for use in measurement and assessment of measured physiological variables 10: Optical coherence computed tomography apparatus for medical imaging incorporating computer displays and computer monitors and controllers therefor used during medical imaging of an individual; computer monitors used in direct association with medical diagnostic apparatus for use in medical diagnostics and associated software for analyzing medical diagnostic data, all sold as a unit
DREAMS ILLUMINATED	Reg 5,841,218	LUMIERE CHILDREN'S THERAPY, LLC	44: Pediatric therapy practice providing speech therapy; occupational therapy; physical therapy in the nature of gross and fine motor skills; developmental therapy in the nature of

			cognitive and social skills to enhance learning; and applied behavioral analysis (aba) in the nature of teaching pre-academic social and communication skills
LUMINATE	Reg 5,671,593	LUMINATE LABS, LLC	41: Providing on-line digital publications in the nature of magazines and journals in the field of business, professional and personal development, lifestyle, health and wellness, fitness, arts, culture, travel and motivation via the internet ; providing on-line training programs in the form of live and pre-recorded classes, seminars, workshops and courses in the field of business, professional and personal development, lifestyle, health and wellness, fitness, art, culture, travel and motivation; providing a website featuring non-downloadable publications in the nature of magazines and journals featuring information and advice in the field of business, professional and personal development, lifestyle, health and wellness, fitness, arts, culture, travel and motivation; on-line journals, namely, blogs in the field of business, professional and personal development, lifestyle, health and wellness, fitness, arts, culture, travel and motivation 42: Computer services, namely, creating an on-line community for registered users to organize groups and events, participate in discussions, get feedback from their peers and engage in social, business and community networking 44: Providing a website featuring information about health, wellness and nutrition 45: Online social networking services in the field of business and personal development
ILLUMIN8	Reg 4,934,079	LVG-MINER HOLDINGS, LLC	44: Chiropractic services; chiropractics
ILLUMINATION 360	Reg 5,298,178	MABRIE FACIAL COSMETIC, INC.	44: Cosmetic and plastic surgery and providing medical aesthetic procedures
ILLUMIN8	Reg 5,059,823	MINDAPTIV, LLC	9: Computer software for compressing, encoding, encrypting, and decoding data of many types, such as video, audio, images, and text, all of the foregoing specifically excluding software used in the fields of genetics, medical diagnosis or treatment, and scientific or clinical research
THE MATCH ILLUMINATOR	Reg 4,631,164	NATIONAL RESIDENT MATCHING PROGRAM	41: Providing on-line newsletters in the field of medical residency and medical fellowship
CARE. ILLUMINATED.	Reg 4,646,290	NAVITUS HEALTH SOLUTIONS, LLC	35: Pharmacy services; arranging of managed care contractual services in the fields of diagnostic imaging, home health care, durable medical equipment, specialty pharmacy, and diagnostic lab services; mail order pharmacy services; management services provided to pharmacies for controlling drug inventories; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies 44: Health care services, namely, disease management programs; dispensing of pharmaceuticals; medical and pharmaceutical consultation; pharmaceutical advice; pharmaceutical compounding services
LUMENATE	Reg 5,449,695	NEURVANA MEDICAL, LLC	10: Medical devices, namely, minimally invasive neurovascular devices for the treatment of neurological conditions
LUMENATE INTRALUMINAL DEVICE	Reg 5,499,119		10: Medical devices, namely, minimally invasive neurovascular devices for the treatment of neurological conditions
ILLUMINATE THE EVERYDAY	Reg 5,704,187	OBP MEDICAL CORPORATION	10: Medical apparatus and instruments for use in endoscopy, gynecological, and surgical procedures; medical apparatus and instruments for use in orthopedic surgery, plastic surgery, and general surgery; surgical instruments and apparatus; medical apparatus and instruments, namely, single-use, self-contained illumination devices for use in connection with medical procedures; surgical apparatus and instruments, namely, single-use, self-contained illumination devices for use in connection with surgical procedures; light emitting diode (led) apparatus for lighting, incorporated into medical instruments; light emitting diode (led) apparatus for lighting, incorporated into surgical instruments; endoscopic equipment for medical

			<p>purposes; medical apparatus and instruments for use in connection with medical procedures, namely, endoscopic seal devices for medical purposes; medical apparatus and instruments for use in pelvic exams; speculums; vaginal speculums; medical apparatus and instruments for use in hysteroscopy procedures</p>
ILLUMINATE VENTILATION	Reg 4,797,206	SENTEC AG	<p>9: Apparatus and instruments for measuring, signaling and checking of the temperature, pressure, quantity and concentration of gas and liquids, components thereof, namely, peripheral component interface hardware and micro-computers and microprocessors for such devices; electro-optical sensors and instruments for the simultaneous measuring of various parameters, in particular the partial pressure of oxygen and the partial pressure of carbon dioxide; ion selective biosensors and sensors for measuring human biometric data; devices for spectroscopic analyses; instruments and sensors for trace analysis of ventilation and oxygenation and various parameters related thereto in the pharmaceutical industry; apparatus for determining the concentration of a material contained in a substance for use in the field of the pharmaceutical and medical industries; electro-optical measuring instruments for measuring ventilation and oxygenation and various parameters related thereto, electrochemical electrodes, optical sensors, micro-electrodes, electronic evaluation micro-optical and micro-electrochemical sensors, reference electrodes; electrode testing devices; sensor testing devices for pharmaceutical or laboratory use; biotechnical devices for pharmaceutical or laboratory use; all the aforesaid goods for use in measuring or testing for the pharmaceutical and medical industries</p> <p>10: Electric and/or electronic sensors for measuring vital parameters and blood values; sensors and measuring probes for measuring the partial pressure of oxygen, the partial pressure of carbon dioxide; instruments and sensors for trace analysis of ventilation and oxygenation and various parameters related thereto in health services and in medical services; medical apparatus and instruments, namely, non-invasive ventilation and oxygenation apparatus and instruments; measuring apparatus for measuring and determining the properties of a patient's blood and exhalation air; medical sensors and instruments and their components for use in measuring and monitoring various parameters of blood, namely, oxygen, carbon dioxide, chemical and physical parameters, combined oxygen/carbon dioxide tension, partial pressure of gaseous substances and physiological parameters; apparatus for medical diagnosis of and therapy for the breathing condition of a patient; sensors for medical use for monitoring and measuring blood properties and respiratory events; non-invasive and transdermal measuring apparatus for measuring the pressure and chemical properties of a patient's blood and exhalation air; sensors and probes for measuring the partial pressure of oxygen, the partial pressure of carbon dioxide, blood pressure, pulse rate and other blood and hematocrit values; apparatus for blood analysis and their components; medical devices for determining oxygen and carbon dioxide content, the concentration of hydrogen ions concentration, the level of metabolites and the partial pressure of gaseous substances; medical devices for determining the concentration of gases in blood; luminescence photometers and spectroscopic analysis apparatus; electrochemical electrodes and micro-electrodes, all for medical use; optical sensors, immunosensors, electronic evaluation micro--optical sensors and micro-electrochemical sensors, all for sensing various blood parameters and physiological parameters for medical use; reference electrodes for medical use; apparatus for testing electrodes for medical use; apparatus for testing sensors, namely, for testing finger sensors and ear sensors for medical use; apparatus for testing medical therapy measurements; apparatus for testing sleep and artificial sleep; all the aforesaid goods for use in testing in the context of medical care</p>

			41: Courses, seminars and training for further education, in particular in the field of measuring technology and non-invasive diagnostics
IMAGING ILLUMINATED	Reg 4,802,794	STRYKER EUROPEAN OPERATIONS LIMITED	9: Computer hardware and software for medical imaging apparatus 10: Medical imaging apparatus comprised primarily of medical imaging hardware and software and parts and fittings therefor 41: Educational services, namely, conducting educational conferences in the field of medical imaging
ILLUMINATED BY SPY FLUORESCENCE	Reg 5,043,646		9: Computer hardware and software for medical imaging apparatus 10: Medical imaging apparatus comprised primarily of medical imaging hardware and software and parts and fittings therefor 16: Printed publications, namely, brochures in the field of medical imaging
ILUMYA SUPPORT LIGHTING THE WAY	Reg 5,765,023	SUN PHARMA GLOBAL FZE	35: Administering pharmacy reimbursement program and copay support programs; retail pharmacy services; mail order pharmacy services; online retail pharmacy services; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies 36: Patient benefits programs in connection with pharmaceutical services, namely, providing financial assistance for disadvantaged persons for pharmaceuticals; patient support and assistance in connection with pharmaceutical services, namely, providing information about eligibility for financial assistance provided through patient benefits programs; insurance services in the form of insurance verification services and prior authorization services, namely, verifying medicaid, medicare, and commercial insurance eligibility status and related information for others 39: Distribution services, namely, delivery of pharmaceutical products 44: Patient support and assistance in connection with pharmaceutical services, namely, providing medical information about pharmaceuticals
ILUMYA SUPPORT	Reg 6,019,469		35: Business administration of pharmacy reimbursement programs and services; retail pharmacy services; mail order pharmacy services; online retail pharmacy services; pharmaceutical services, namely, processing online and telephone prescription orders in retail and central fill pharmacies 36: Patient benefits programs in connection with pharmaceutical services, namely, providing financial assistance for disadvantaged persons for pharmaceuticals; financial administration of pharmacy reimbursement programs and services; patient support and assistance in connection with pharmaceutical services, namely, providing information about eligibility for financial assistance provided through patient benefits programs; insurance services in the form of insurance verification services and prior authorization services, namely, verifying medicaid, medicare, and commercial insurance eligibility status and related information for others 39: Distribution services, namely, delivery of pharmaceutical products 44: Patient support and assistance in connection with pharmaceutical services, namely, providing medical information about pharmaceuticals excluding any such services in the fields of antimicrobial stewardship and/or infection management
ILLUMINATING THE PATH TO BETTER HEALTH	Reg 5,738,043	THE STAYWELL COMPANY, LLC	41: Employer and organizational onsite educational services, namely, conducting classes and workshops in the field of personal health and healthy lifestyle and distributing course materials in connection therewith; publication of booklets, workbooks, postcards and pamphlets for promoting and educating individuals and family members on lifestyle changes and disease management; providing patient education in the field of health management, healthy lifestyles, and disease management and treatment in the nature of classes and

			workshops; providing educational health coaching and well-being programs in the nature of classes and workshops in the field of personal health, health management, healthy lifestyles, and disease management and treatment 44: Providing health information services, namely, providing health-related content to individuals and their family members through online, telephone and e-mail communications; providing health care services, namely, disease management and healthy lifestyle management programs; provision of health information utilizing health professionals that guide individuals and family members one-on-one to achieve optimal health management and disease management; providing health screenings in the field of biometrics that assess and determine personal health risks and provide recommendations for lifestyle changes, disease management, educational resources and treatment information; providing an internet website portal featuring links to health information in the form of news articles and resources to aid individuals and family members in attaining and maintaining good health; web-based health assessment services, namely, a series of health-related questions for response from the user that result in a report that provides health-related information in the form of personal health risks, prioritized recommendations based on severity of risk for lifestyle changes and disease management, recommended educational resources and treatment information; health assessment and monitoring services for patients through health survey questionnaires
LUMINATE SUPPORT PROGRAM	Reg 5,777,505	USWM, LLC	9: Downloadable mobile application provided to patients of prescription non-narcotic opioid withdrawal medication featuring product information and patient support
ILLUMINIZER	Reg 5,724,408	ZYAGNUM AG	9: Cytometers 10: Medical diagnostic instruments for the analysis of body fluids; medical diagnostic apparatus for medical purposes for testing cancer cells, dna; medical apparatus for taking body fluid samples; apparatus for analyzing bacteria in biological samples for medical use 42: Preparation of biological samples for research purposes; preparation of biological samples for testing and analysis in research laboratories

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

In the Matter of: Ser. No. 88/732,936
Mark: ILLUMINATE & Design
Date of Publication: April 28, 2020

Softek Illuminate, Inc.,)	
)	
Opposer,)	
)	
v.)	
)	Opposition No.: 91256082
Merck Sharp & Dohme Corp.,)	
)	
Applicant.)	
)	
)	

CERTIFICATE OF SERVICE

This is to certify that I have this 8th day of July, 2020 caused the foregoing Answer to Notice of Opposition and Counterclaim to be served on Softek Illuminate, Inc. by email at the following email addresses and by electronic filing via the USPTO's ESTTA system:

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July 8, 2020