

ESTTA Tracking number: **ESTTA197165**

Filing date: **03/10/2008**

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	Smartcomp, L.L.C.		
Entity	Limited Liability Company	Citizenship	Pennsylvania
Address	480 Johnson Road Suite 200 Washington, PA 15301 UNITED STATES		
Attorney information	Sherry H. Flax Saul Ewing LLP 500 E. Pratt St. Baltimore, MD 21202 UNITED STATES sflax@saul.com Phone:410-332-8784		

Applicant Information

Application No	77248247	Publication date	02/19/2008
Opposition Filing Date	03/10/2008	Opposition Period Ends	03/20/2008
Applicant	Intego Insurance Services, LLC 190 Farmington Ave. Farmington, CT 06032 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. First Use: 2007/07/11 First Use In Commerce: 2007/08/01
All goods and services in the class are opposed, namely: Workers' Compensation service that utilizes a customer's payroll information to calculate, process, and transmit insurance premiums

Grounds for Opposition

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

U.S. Registration No.	2753851	Application Date	05/14/2001
Registration Date	08/19/2003	Foreign Priority Date	NONE
Word Mark	UNIVERSAL SMARTCOMP THE SMART WAY TO MANAGE YOUR INJURED WORKERS.		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 042. First use: First Use: 2001/05/00 First Use In Commerce: 2001/05/00 Medical case management, workers compensation panel development and coordination of care for injured employees
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U.S. Application No.		Application Date	
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services			

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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	/sherry flax/
Name	Sherry H. Flax
Date	03/10/2008

NOTICE OF OPPOSITION

Opposer, Smartcomp, LLC, a limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania, believes that it will be damaged by registration of the mark SMARTCOMP, as shown in Serial No. 77248247, and hereby opposes the same. As grounds of opposition, it is alleged that:

1. Opposer is a physical medicine rehabilitation company and scheduling service that provides its services to injured workers. It schedules physical therapy, occupational therapy and chiropractic services for its clients from a network of providers and provides billing, bill review, and re-pricing services. Opposer provides its services throughout the United States.

2. Opposer owns the registration for the service mark UNIVERSAL SMARTCOMP THE SMART WAY TO MANAGE YOUR INJURED WORKERS, U.S. Reg. No. 2753851, for use in connection with “medical case management, workers compensation panel development and coordination of care for injured employees,” in International Class 42. Opposer has been using the mark in interstate commerce on a continuous basis since at least as early as May 2001.

3. Opposer has filed an application to register SMARTCOMP, U.S. Ser. No. 77417330, for use in connection with “Case management services, namely, the coordination of necessary medical services, vocational issues and educational services for persons injured at work,” in International Class 45. The application is based on actual used in interstate commerce on a continuous basis since at least as early as May 2001.

4. Pursuant to Application Serial No. 77248247, Applicant Intego Insurance Services, LLC (“Applicant”), seeks to register SMARTCOMP as a service mark for “workers’ compensation service that utilizes a customer’s payroll information to calculate, process, and

transmit insurance premiums” in International Class 36. Applicant alleges as its filing basis actual use of the mark in commerce as of August 1, 2007. The mark was published in the Official Gazette on February 19, 2008.

5. Opposer has developed exceedingly valuable goodwill in its SMARTCOMP mark. By virtue of its efforts and the expenditure of considerable sums for promotional activities, and by virtue of the excellence of its services, Opposer has gained a valuable reputation in connection with providing comprehensive medical case management and related services for injured workers.

6. There is no issue as to priority of use. Opposer has used SMARTCOMP in interstate commerce since at least as early as May 2001. Accordingly to its application, Applicant’s date of first use is August 1, 2007.

7. Opposer hereby opposes registration of SMARTCOMP because it is confusingly similar to Opposer’s SMARTCOMP and UNIVERSAL SMARTCOMP THE SMART WAY TO MANAGE YOUR INJURED WORKERS marks. Applicant seeks registration for nearly identical services as are provided by Opposer. Because both marks are used in connection with providing billing and management services for injured workers, the channels of trade are nearly identical and use of the same mark is highly likely to cause confusion as to the source of the services among consumers.

8. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of the mark. Such registration would be a source of damage and injury to Opposer. Opposer would lose the value of the good will associated with its use of its SMARTCOMP and UNIVERSAL SMARTCOMP THE SMART WAY TO MANAGE YOUR INJURED WORKERS marks. Applicant's use of SMARTCOMP

would cause confusion and deception as to the source, origin or sponsorship of its services in trade in violation of the Lanham Act, 15 U.S.C. § 1114(1).

WHEREFORE, Opposer prays that the application Serial No. 77248247 be rejected, and that the mark therein sought for the services specified in the application be denied and refused.