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Filing date: **03/22/2011**

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

Proceeding	92052698
Party	Plaintiff Internet Employment Linkage, Inc. d/b/a HigherEdJobs
Correspondence Address	ELIZABETH R BURKHARD HOLLAND & KNIGHT LLP 10 ST JAMES AVE FL 11 BOSTON, MA 02116 UNITED STATES elizabeth.burkhard@hklaw.com
Submission	Opposition/Response to Motion
Filer's Name	Elizabeth R. Burkhard
Filer's e-mail	elizabeth.burkhard@hklaw.com
Signature	/Elizabeth Burkhard/
Date	03/22/2011
Attachments	Response to Motion to Consolidate.pdf (4 pages)(21759 bytes) Response Exhibit 1.pdf (1 page)(10317 bytes) Response Exhibit 2.pdf (3 pages)(16652 bytes)

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

AmeriCareers, LLC,
Registrant, Counterclaim Plaintiff and
Opposer,

v.

Internet Employment Linkage, Inc.
d/b/a HigherEdJobs,
Petitioner, Counterclaim Defendant and
Applicant.

Cancellation No. 92052698

Registration No. 3,666,461
Mark: **HIGHER ED SPACE**
Registered on: August 11, 2009

Counterclaim Petition to Cancel

Registration No. 2688003
Mark: **HIGHEREDJOBS.COM**
Registered on: Feb. 18, 2003

Registration No. 2,781,127
Mark: **HIGHEREDJOBS.COM** (stylized)
Registered on: Nov. 11, 2003

Opposition No. 91198027

Serial No. 77950843
HIGHEREDJOBS
Filed on 3/4/2010; Published on 8/31/2010

Serial No. 77950871
HIGHEREDJOBS (stylized)
Filed on 3/4/2010; Published on 8/31/2010

RESPONSE TO MOTION TO CONSOLIDATE

Petitioner, Counterclaim Defendant and Applicant, Internet Employment Linkage, Inc. d/b/a HigherEdJobs (“HigherEdJobs”), does not oppose Registrant, Counterclaim Plaintiff and Opposer, AmeriCareers, LLC’s (“AmeriCareers”), Motion to Consolidate (“Motion”) filed on March 2, 2011, pursuant to TBMP § 511 and Federal Rule of Civil Procedure 42(a). HigherEdJobs, however, requests that the Board follow its standard practice, adopting the trial dates from the most recently instituted of the consolidated cases.

I. Standard Applicable to Motion to Consolidate

The Board may order consolidation where the cases in question involve common questions of law or fact. *See* Fed. R. Civ. P. 42(a); *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997). “Upon consolidation, the Board will reset trial dates for the consolidated proceeding, usually by adopting the trial dates as set in the most recently instituted of the cases being consolidated.” TBMP § 511.

II. AmeriCareers’ Motion to Consolidate

HigherEdJobs is not opposed to consolidating these proceedings. AmeriCareers’ summary of the background of these proceedings is accurate. Consolidation would save time, effort and expense, as some similar issues are involved in each case. However, AmeriCareers’ assertion that HigherEdJobs would not be prejudiced by consolidation, as proposed by AmeriCareers, is not accurate. Further, AmeriCareers’ actions and communications with HigherEdJobs’ counsel on the topic of consolidation have not shown an effort at negotiating in good faith.

AmeriCareers contacted HigherEdJobs’ counsel regarding consolidation on February 28, 2011. *See* Exhibit 1, email from Dan Ouyang to Elizabeth Burkhard, dated February 28, 2011. AmeriCareers then proceeded to file the present Motion on March 2, 2011 before receiving a response from HigherEdJobs. When HigherEdJobs’ counsel responded to AmeriCareers on March 3, 2011, stating that HigherEdJobs was open to discussing consolidation, AmeriCareers made no mention that the present Motion had already been filed. *See* Exhibit 2, email from Dan Ouyang to Elizabeth Burkhard, dated March 3, 2011.

III. AmeriCareers’ Proposed Scheduling Would Prejudice HigherEdJobs

In the Motion, AmeriCareers proposes setting the deadlines for the consolidated proceedings to the deadlines set for the senior, cancellation proceeding. As additional legal

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this foregoing RESPONSE TO MOTION TO CONSOLIDATE was served upon Registrant's correspondent of record, Dan Ouyang, by UPS overnight courier, postage prepaid, on this 22nd day of March, 2011.

/Elizabeth Burkhard/
Elizabeth R. Burkhard

Burkhard, Elizabeth R (BOS- X75850)

From: Dan Ouyang [danmark20108@gmail.com]
Sent: Monday, February 28, 2011 4:00 PM
To: Burkhard, Elizabeth R (BOS- X75850)
Subject: [AmeriCareers v. IEL] - Stipulation to consolidate

Dear Ms. Burkhard,

I am writing to reach an agreement with you to consolidate our two pending cases: Cancellation No. 92052698 and Opposition No. 91198027 since these two cases involve the same parties, and common facts and laws. This is just for the convenience for both parties to avoid the duplication of the same paperwork. As for the new dates, we can keep them same as set in our senior case Cancellation No. 92052698.

Please let us know so that we may file a motion to consolidate the two.

In the meantime, we are open to settle this case that your client drop their case and we drop ours.

We look forward to hearing from you.

Sincerely Yours,

Dan Ouyang, Ph.D.
AmeriCareers LLC
5000 Northwind Dr., Suite 218
East Lansing, MI 48823
Phone: 517-367-8188
Fax: 517-813-6106
Email: danmark20108@gmail.com

Burkhard, Elizabeth R (BOS- X75850)

From: Dan Ouyang [danmark20108@gmail.com]
Sent: Thursday, March 03, 2011 8:57 PM
To: Burkhard, Elizabeth R (BOS- X75850)
Cc: Donoghue, R David (CHI - X66553)
Subject: Re: [AmeriCareers v. IEL] - Stipulation to consolidate

Dear Ms. Burkhard,

Thank you for your reply. I will be available 11:00 AM - 4:PM EST on March 7-9.

Please let me know what time works for you.

Best regards,
Dan Ouyang
AmeriCareers LLC

On Thu, Mar 3, 2011 at 12:18 PM, <elizabeth.burkhard@hklaw.com> wrote:

Dear Mr. Ouyang:

We are open to discussing consolidation of the Cancellation and Opposition proceedings. March 9, 2011 is the deadline for having the discovery conference in the Opposition proceeding, so we need to talk with you about that already. Please let us know your availability for a call early next week. Please reply to all so we can coordinate scheduling.

Best regards,

Betsy Burkhard

Elizabeth Burkhard | Holland & Knight

Associate

10 St. James Avenue, 11th Floor | Boston MA 02116

Phone 617.573.5850 | Fax 617.523.6850

elizabeth.burkhard@hklaw.com | www.hklaw.com

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AmeriCareers LLC

5000 Northwind Dr., Suite 218

East Lansing, MI 48823

Phone: 517-367-8188

Fax: 517-813-6106

Email: danmark20108@gmail.com

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