

ESTTA Tracking number: **ESTTA59086**

Filing date: **12/23/2005**

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

Proceeding	91166064
Party	Plaintiff Aquent LLC Aquent LLC 711 Boylston Street Boston, MA 02116 UNITED STATES
Correspondence Address	John L. Welch Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02210 UNITED STATES jwelch@foleyhoag.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	John L. Welch
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Signature	/johnlwelch/
Date	12/23/2005
Attachments	Opposition No. 91-166064 - Motion For Leave To Amend Notice of Opposition.pdf (7 pages)

fact it was not in use for "recruiting" services. See *Medinol Ltd. v. Neuro VASX, Inc.*, 67 USPQ2d 1205 (TTAB 2003) [fraud found in statement of use where no use of mark on one of two listed goods].

Consequently, as a matter of law, the opposed application is void *ab initio*, and this opposition should be sustained on the ground of fraud.

Attached hereto is a proposed Amended Notice of Opposition, adding a claim of fraud at paragraph 8.

Simultaneously with this motion, Opposer is filing a motion for summary judgment on the ground of fraud.

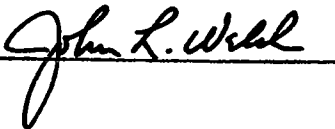
AQUENT LLC



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail/hand/facsimile on 12-23-05



training" (class 41).

2. The opposed Application Serial No. 76/568,018 was filed on December 31, 2003, claiming a first use date of August 1, 2000.

3. From a time prior to Applicant's filing date and alleged first use date, Opposer and its predecessors in interest have used the mark and name AQUEST in connection with a variety of services, including, inter alia, business management services; employment contracting and temporary help services; recruitment and placement of personnel, including marketing personnel; employment information services; and education and training services.

4. Opposer is the owner of U.S Service Mark Registration No. 2,289,555 for the mark AQUEST for "employment contracting and temporary help services; recruitment and placement of computer-skilled personnel on a temporary, contract, or permanent basis; recruitment and placement of information technology specialists on a temporary, contract, or permanent basis; recruitment and placement of graphic artists and multi-media specialists on a temporary, contract, or permanent basis; payroll transfer services; employment information services, namely the provision of employment opportunity information to prospective employees and the provision of resume information to prospective employees, by means of computer, facsimile, telephone, and other communication devices." (International class 35)

5. Opposer is also the owner of U.S. Service Mark Registration No. 2,409,082, for the mark AQUENT for "computer education training services; educational services, namely, conducting classes, seminars, conferences, and workshops, and distributing course materials in connection therewith, in the fields of computer information networks, multi-media and computer graphics, programming, computer operation and repair, and entrepreneurship and personal business management." (international class 41).

6. The services set forth in Application Serial No. 76/568,018 identical in part and otherwise closely related to the services in connection with which Opposer has used and is using its mark and name AQUENT. For example, on information and belief, as part of Applicant's business consultation and business management services and its sales training services, it provides, inter alia, executive search services, training and recruitment services, and advice on the training and recruitment of employees. In addition, on information and belief, Applicant's services are offered to the same class of customers who purchase Opposer's services offered under the mark and name AQUENT.

7. The applied-for mark ACQUIENT & Design is substantially similar to Opposer's mark and name AQUENT and is likely to cause confusion, mistake, and deception as to the source of Applicant's

services, all to Opposer's damage. Customers and potential customers are likely to believe that Applicant's services originate from, or are sponsored or approved by, Opposer, when that is not the case. Any dissatisfaction with Applicant's services will reflect upon and irreparably damage the reputation and goodwill of Opposer embodied in its mark and name AQUENT.

8. The subject application was filed under Section 1(a) of the Trademark Act, based upon Applicant's verification that the mark was in actual use in connection with "sales training, recruiting, consulting, and management services." In fact, at the time of the filing of the application, the mark ACQUIENT & Design was not in use, and had not been used, in connection with recruiting services. Applicant's false statement regarding use of its mark in connection with recruiting services was a fraudulent and material misrepresentation that renders Application Serial No. 76/568018 void *ab initio* as a matter of law.

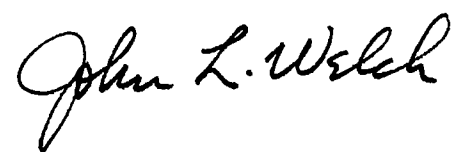
9. If Applicant is granted the registration herein opposed, it would thereby obtain a prima facie exclusive right to use of its mark, which would be a further source of damage to Opposer.

* * * * *

WHEREFORE, Opposer believes that it will be damaged by registration of said mark, and prays that this Opposition be

sustained, that Application Serial No. 76/568018 be rejected, and that the mark applied for therein be refused registration.

Aquent LLC.

A handwritten signature in black ink that reads "John L. Welch". The signature is written in a cursive style with a large, prominent "J" and "W".

John L. Welch
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