

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

AQUENT LLC, )  
)  
*Opposer,* )  
)  
v. )  
)  
ACQUIENT, LLC )  
)  
*Applicant.* )  
\_\_\_\_\_ )

TTAB

Opposition No. 91166064  
Application Serial No. 76568018

**APPLICANT'S OPPOSITION TO OPPOSER'S  
MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

Applicant, Acquient, LLC ("Applicant"), by counsel, as and for its Opposition to Aquent, Inc.'s ("Opposer") Motion for Leave to Amend Notice of Opposition states as follows:

Opposer moves to amend to allege fraud as an additional count in its Notice of Opposition against Applicant's application for registration of the trademark ACQUIENT AND DESIGN (serial no. 78342888). As the basis for its motion, Opposer alleges that when Applicant filed its application for trademark registration it "verified that the mark ACQUIENT was in use in connection with 'sales training, recruiting, consulting, and management services.' However, during the discovery deposition of Ken Wolff, CEO of applicant Acquient, LLC, Opposer learned that Applicant has never offered 'recruiting' services." *See Opposer's Motion for Leave to Amend Notice of Opposition @ pg. 1.* This statement is an inaccurate characterization of testimony provided by Mr. Wolff. Mr. Wolff repeatedly testified during his October 6, 2005, deposition that, while Applicant does not recruit potential candidates/employees for its clients, it does advise them as to the recruiting process and ways in which they can maximize the experience. *See Exhibit 1.* Opposer's counsel never questioned Mr. Wolff about Applicant's trademark application, information contained in the application or



the reason for including "recruiting" in the initial list of services on the application. There is no question that Applicant provides consultation services related to its clients' recruiting of candidates and that is the reason why "recruiting" was initially included in the list of services on Applicant's trademark application<sup>1</sup>. Applicant denies making any false statements on its application.

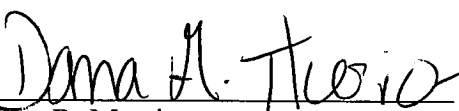
Opposer's motion to amend is without basis. Further, Opposer's motion is untimely and, at this late date, prejudicial to Applicant. The discovery deadline is February 16, 2005.

**CONCLUSION**

For the foregoing reasons, Opposer's Motion for Leave to Amend Notice of Opposition should be denied.

Respectfully submitted,

CARR, MORRIS & GRAEFF, P.C.

By: 

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Counsel for Applicant Acquient, LLC

January 9, 2006

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<sup>1</sup> "Recruiting" was later deleted from the application in response to an Office Action received by Applicant on July 24, 2004.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Applicant's Opposition to Opposer's Motion for Leave to Amend Notice of Opposition was mailed, postage prepaid this 9<sup>th</sup> day of January, 2006 to:

John L. Welch  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210

Counsel for Opposer Aquent LLC

  
Dana G. Theriot



1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
 2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
 3  
 4 -----  
 5 AQUEST, LLC, :  
 6 Opposer : Opposition No.  
 7 v. : 91164326  
 8 ACQUIENT, LLC, :  
 9 Applicant : Application S.N.  
 10 ----- : 78/342888  
 11  
 12  
 13 30(b)(6) Deposition of KEN WOLFF  
 14 Washington, D.C.  
 15 Thursday, October 6, 2005  
 16 9:06 A.M.  
 17  
 18  
 19  
 20 Job No.: 1-64847  
 21 Pages: 1 - 127  
 22 Reported by: Susan B. Fillmore, R.P.R.

1 30(b)(6) Deposition of KEN WOLFF, held at  
 2 the offices of:  
 3  
 4 FOLEY HOAG, LLP  
 5 1875 K Street, Northwest  
 6 Suite 800  
 7 Washington, D.C. 20006  
 8 (202) 223-1200  
 9  
 10 Pursuant to Notice before Susan B.  
 11 Fillmore, Registered Professional Reporter and  
 12 Notary Public of the District of Columbia.  
 13  
 14  
 15  
 16  
 17  
 18  
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 20  
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 22

1 A P P E A R A N C E S  
 2 ON BEHALF OF OPPOSER:  
 3 JEREMY A. YOUNKIN, ESQUIRE  
 4 FOLEY HOAG, LLP  
 5 Seaport World Trade Center  
 6 155 Seaport Boulevard  
 7 Boston, Massachusetts 02210-2600  
 8 (617) 832-3077  
 9  
 10 ON BEHALF OF APPLICANT:  
 11 DANA GLYNN THERIOT, ESQUIRE  
 12 CARR, MORRIS & GRAEFF, P.C.  
 13 1120 G Street, Northwest, Suite 930  
 14 Washington, D.C. 20005-3801  
 15 (202) 789-1000  
 16  
 17  
 18 C O N T E N T S  
 19 EXAMINATION OF KEN WOLFF PAGE  
 20 Direct Examination by Mr. Younkin 5  
 21 Cross-Examination by Ms. Theriot 120  
 22 Redirect Examination by Mr. Younkin 121

1 E X H I B I T S  
 2 (Attached to the transcript)  
 3 AQUEST DEPOSITION EXHIBIT PAGE  
 4 1 Notice of Taking Deposition Under 5  
 5 Rule 30(b)(6), Fed. R. Civ. P.  
 6 2 Acquient Web site printout, 9/2/05 32  
 7 3 Acquient Web site printout, 10/5/05 33  
 8 4 Photocopy of document, An Acquient 35  
 9 White Paper  
 10 5 Photocopy of brochure, Ideas That 38  
 11 Sell  
 12 6 Licensing Agreement 52  
 13 7 Printout from Web site, Hire 81  
 14 Above The Bar  
 15 8 Printout from Web site, Acquient 101  
 16 Search is Now Rainfield Group  
 17 9 Printout from Web site, Rainfield 102  
 18 Group  
 19 10 Handwritten and labeled diagram 116  
 20  
 21  
 22

<p>21</p> <p>1 BY MR. YOUNKIN:</p> <p>2 Q All right, thank you.</p> <p>3 A Just for clarity, customer relationship</p> <p>4 management software is a specific type of software.</p> <p>5 So it's customer relationship management software</p> <p>6 consulting, not software consulting.</p> <p>7 Q Okay. Does Acquient provide recruiting</p> <p>8 services?</p> <p>9 A No.</p> <p>10 Q Has Aquent Acquient ever provided</p> <p>11 recruiting services?</p> <p>12 A We advise our clients on recruiting</p> <p>13 process. We do not recruit for our clients.</p> <p>14 Q Okay.</p> <p>15 A And related services like compensation,</p> <p>16 interviewing process, psychometric assessment</p> <p>17 processes, things of that nature. That's our role</p> <p>18 in the recruiting.</p> <p>19 --Q-- Okay, well, let's take a step back, then. . . .</p> <p>20 I asked you whether Acquient provides recruiting</p> <p>21 services, and then you said no.</p> <p>22 A That's correct.</p>	<p>23</p> <p>1 necessarily an accurate characterization of the</p> <p>2 business we're in.</p> <p>3 Q All right. Well, do you, as part of the</p> <p>4 services that you provide, do you advise sometimes</p> <p>5 your clients that they need to make changes in their</p> <p>6 sales staff?</p> <p>7 A Yes.</p> <p>8 Q And in fact not just sales staff, but</p> <p>9 other types of staff, as well.</p> <p>10 A Any staff related to or directly</p> <p>11 influencing the growth initiative for the company.</p> <p>12 Q And that advice might include advice that</p> <p>13 the clients hire certain types of people; is that</p> <p>14 right?</p> <p>15 A When you say types of people, that's too</p> <p>16 nebulous question for me to answer that way. I can</p> <p>17 tell you positions; we might advise them to hire</p> <p>18 certain positions. We might at some times advise</p> <p>19 them to hire specific experience level or industry</p> <p>20 background.</p> <p>21 Q All right. But I believe you've testified</p> <p>22 that you don't actually try to match your clients'</p>
<p>22</p> <p>1 Q And I asked whether you had ever provided</p> <p>2 recruiting services in the past, and you started to</p> <p>3 answer about how you advise clients on recruiting,</p> <p>4 et cetera.</p> <p>5 A For clarity, we do not provide candidates</p> <p>6 for our clients. Does that answer the question</p> <p>7 sufficiently?</p> <p>8 Q Well, I mean, as CEO of Acquient, do you</p> <p>9 believe that your company provides recruiting</p> <p>10 services?</p> <p>11 A No.</p> <p>12 Q Do you believe your company has ever</p> <p>13 provided recruiting services?</p> <p>14 A No.</p> <p>15 Q Now, as part of -- you okay?</p> <p>16 (Brief interruption in the proceedings.)</p> <p>17 A Sorry.</p> <p>18 Q That's all right.</p> <p>19 As part of the services that Acquient</p> <p>20 provides, you consult on your clients' sales force;</p> <p>21 is that correct?</p> <p>22 A That's a portion of what we do, but not</p>	<p>24</p> <p>1 staffing needs to actual people.</p> <p>2 In other words, you don't do the</p> <p>3 recruiting yourself.</p> <p>4 A No, that's correct. But it is probably</p> <p>5 more clear for you to ask that whether or not we</p> <p>6 source the candidates for our clients. In other</p> <p>7 words --</p> <p>8 Q Well, I'll ask the questions.</p> <p>9 A I understand, but for an accurate</p> <p>10 characterization of I think what you're asking me,</p> <p>11 is we may, and often do, advise a client about, you</p> <p>12 know, bringing a certain position aboard, but we do</p> <p>13 not find the candidates for them. It's up to them,</p> <p>14 and they can choose who they wish.</p> <p>15 Q Do you -- when you encounter a situation</p> <p>16 where you're advising a client that they need to</p> <p>17 add, say, a new position to their employees, do you</p> <p>18 recommend any certain companies who could help them</p> <p>19 out with that?</p> <p>20 A Yes.</p> <p>21 Q Are there specific companies that you</p> <p>22 recommend?</p>

<p style="text-align: right;">109</p> <p>1 says, of that group, who's likely to say yes to you. 2 And that's what we call developing a prospect 3 universe. 4 Q Can I ask you a question about this first 5 box. 6 A Sure. 7 Q Now, is this -- this sounds like sort of 8 top-level stuff that you'd be talking to, like, a 9 CEO about. 10 A Well, we would talk to the executive 11 infrastructure, and then an also the sales 12 organization, the line sales folks, and some 13 operations folks who interact directly with the 14 clients. Because what you say you believe your 15 clients need aren't necessarily what they're buying 16 and why they buy you. And you have to ask them. 17 And the best people to know that are the ones who 18 are on the street directly interacting with your 19 client. 20 Now, you refer to sales infrastructure. 21 Like I said, with so many of our clients, and the 22 lion's share of our clients, we're dealing with</p>	<p style="text-align: right;">111</p> <p>1 It's a key part of this, this endeavor. So we 2 collect on every level. 3 The next thing we look at is what we call 4 the Sales Infrastructure. And included in the sales 5 infrastructure are, do you have the right people? 6 Do you have enough of those people? Are their 7 territories appropriate? Is their compensation 8 appropriate? Do they have the tools they need? 9 Which is CRM software, which track their activities 10 with their prospects; a pipeline and forecasting 11 system that makes sense. 12 And then finally -- and this is our 13 connection with recruiting -- do you have a 14 recruiting process that clearly evaluates the most 15 appropriate aspects of sales behavior that lead to 16 performance. And in other words -- and this is what 17 our speech is often about, the one I told you about 18 hiring salespeople -- the Harvard Business Journal 19 did a study of 1800 salespeople, and found out that 20 things like education and background, sex, age, 21 weight, appearance, and then most importantly, past 22 performance against quota, industry knowledge and</p>
<p style="text-align: right;">110</p> <p>1 attorneys, accountants, consultants, who are in that 2 sales capacity, but they are in a services 3 organization, the product. The asset walks on two 4 feet. 5 So let's, if -- for clarity I think it 6 would be good to refer to the sales role, not just 7 is sales team, because the sales role is filled by 8 many people who are not salespeople, and for the 9 purposes of our client base. 10 Q I guess the reason I ask that is because, 11 I mean, the purpose of this line of questioning was 12 for me to try to understand to what extent you and 13 Acquient interact with people below the executive 14 level. 15 A Right. And in this environment, we're 16 connecting those are directly facing the customer, 17 the line sales representative and operations person, 18 all the way up to the CEO, and including them to 19 alignment. 20 Q Okay. 21 A You know, in larger companies they say 22 it's 1 percent vision and 99 percent alignment.</p>	<p style="text-align: right;">112</p> <p>1 experience, technical competence and Rolodex and 2 relationships, had zero correlation to the 3 likelihood that they would perform well in their 4 departments. And that's somewhat counterintuitive. 5 Salespeople -- and if I compare this to 6 lawyers so that it makes sense to you -- are a lot 7 like litigators, and those people are born, not 8 made, to a large degree. There's a talent, a 9 natural ability that makes a strong litigator that 10 isn't necessary someone who's stronger than a strong 11 attorney in another role. Salespeople live by that 12 paradigm, and so we encourage them to include some 13 sort of behavioral assessment process into the 14 recruiting. 15 And so what we will also establish here is 16 performance appraisal requirements for our client, 17 so that should their sales organization 18 consistently -- members of it consistently miss that 19 performance appraisal, they can make their decision 20 that this person needs CDE. 21 You know, a lot of times clients don't 22 know how to --</p>