

ESTTA Tracking number: **ESTTA190128**

Filing date: **01/31/2008**

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	ACTANT AG
Granted to Date of previous extension	02/02/2008
Address	Bahnhofstrasse 10 Zug, CH-6300 SWITZERLAND

Domestic Representative	Michael K. Cantwell Attorney Michael K. Cantwell, P.C. 102-30 66th Road Apt. 30D Forest Hills, NY 11375 UNITED STATES mkcantwell@rcn.com Phone:718-830-0082
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Applicant Information

Application No	77010981	Publication date	12/04/2007
Opposition Filing Date	01/31/2008	Opposition Period Ends	02/02/2008
Applicant	UltraConcurrent, Inc. P.O. Box 2019 Aptos, CA 95001 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. All goods and services in the class are opposed, namely: Computers; computer operating systems; computer operating system software; computer server software; computer hardware and peripherals; computer software for use in database management; software used to create other software applications; data warehousing software, telephony software, fax messaging software; computer software used for extracting and saving data while keeping it coherently intact, browsing and accessing off loaded data, and selectively deleting and restoring off loaded data; computer software, namely, a relational, XML and inferential database management system for a networked environment; computer operating system and web services utility programs; computer programs for use in data manipulation, in testing and maintenance of database and web services information, in code generation, and in computer program design, maintenance, and analysis; user manuals and instruction books in electronic form distributed with the foregoing; and user manuals and instruction books sold as a unit therewith</p>
<p>Class 035. All goods and services in the class are opposed, namely: Database management; computerized database management; management and compilation of computerized databases; providing computer databases featuring trade information in the fields of marketing, sales, customer service,</p>

contracts, human resources, call centers, management of supply chains, orders, inventory, business consolidation management, business risk management, business quality management, business project management, business stakeholder-shareholder relationship management, and strategic business, simulation, enterprise and resource planning

Class 041.

All goods and services in the class are opposed, namely: Educational services, namely conducting education and training through classes, workshops, seminars, in the field of computers, computer software, web services, computer databases, computer server software, computer programming, computer networking, computer system design, and intelligence analysis; conducting education and training through classes, workshops, and seminars provided via a global computer network, personal computers and handheld devices, in the field of computers, computer software, web services, computer databases, computer programming, computer networking, computer system design, and intelligence analysis

Class 042.

All goods and services in the class are opposed, namely: Computer services, namely, consultation in the field of computer software; programming, design, development, analysis, implementation, management, integration, deployment, maintenance, updating and repair of computer software for others; application service provider (ASP), namely hosting, managing and administering computer software and computer server software for others; providing an on-line computer database and analysis featuring information in the fields of medical clinical research, computer diagnostics; application service provider (ASP) featuring software in the field of database management; application service provider (ASP) featuring computer server software; application service provider featuring software for providing an online database and web services in the field of transaction processing to upload transactional data, provide statistical and inferential analysis, and produce notifications and reports; computer service, namely, acting as an application service provider in the field of knowledge management and intelligence analysis to host computer application software for creating searchable databases of information and data; computer service, namely, acting as an application service provider in the field of knowledge management and intelligence analysis to host computer application software for searching and retrieving information from databases and computer networks; database development services; technical assistance and consultation services, namely troubleshooting, managing, and maintaining computer software for others; leasing and rental of computer software; testing, analysis and evaluation of the goods and services of others for the purpose of compliance and certification; computer database development services; hosting the web sites of others on computer servers for local area networks, intranets, and the Internet; consultation services and providing technical assistance related to the design, creation, hosting, maintenance, operation, and management of computer databases; and providing information in the fields of computers, computer software, computer databases

Grounds for Opposition

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

U.S. Registration No.	2339751	Application Date	03/16/1998
Registration Date	04/11/2000	Foreign Priority Date	12/15/1997
Word Mark	AQTOR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: Software for banks, securities houses, asset managers, brokers, assurances, real estate managers, auctioneers, stock exchanges and bookmakers for the computer-assisted automation in the field of quoting and of buying and selling transactions		

Attachments	75450710#TMSN.gif (1 page)(bytes) Notice of Opposition ACTORSCRIPT.pdf (6 pages)(1948205 bytes) Notice of Opposition Cf of Mailing.pdf (1 page)(134773 bytes)
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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 USPS Express Mail Post Office to Addressee on this date.

Signature	/mkc/
Name	Michael K. Cantwell
Date	01/31/2008

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In re Application of UltraConcurrent, Inc.

Serial No.: 77/010,981

Mark: ACTORSCRIPT

Filed: September 29, 2006

Actant AG)	
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)	
)	Opposer,
)	
v.)	Opposition No.:
)	
UltraConcurrent, Inc.)	
)	
)	Applicant.
)	

United States Patent and Trademark Office
Commissioner for Trademarks
600 Delaney Street
Alexandria, Virginia 22313-1451

Attention: Trademark Trial and Appeal Board

NOTICE OF OPPOSITION

Actant AG, a corporation organized under the laws of Switzerland, located at Bahnhofstrasse 10 CH-6300 ZUG, Switzerland ("Opposer"), believes it would be damaged by registration of ACTORSCRIPT, as shown in Application Serial No. 77/010,981 (the "Application"), and hereby opposes same under the provisions of Section 13 of the Trademark Act of July 5, 1946, 15 U.S.C. § 1063.

GROUNDS FOR OPPOSITION

1. Opposer is recognized as one of the leading providers of software for banks, brokers, securities houses, securities exchanges and other persons and entities involved in the purchase and sale of securities and related financial products and transactions.

2. Opposer is the owner of Registration No. 2,339,751 for AQTOR, issued April 11, 2000, for "software for banks, securities houses, asset managers, brokers, assurances, real estate managers, auctioneers, stock exchanges and bookmakers for the computer-assisted automation in the field of quoting and of buying and selling transactions."

3. Opposer has enjoyed considerable success offering its services to a wide range of banks, brokers, securities houses, securities exchanges and other persons and entities involved in the purchase and sale of securities and related financial products and transactions. Opposer has devoted significant time, effort and money to developing and promoting its unique and high-quality software products.

4. By virtue of its expenditure of significant time, money and effort on developmental, promotional and marketing activities, the excellence of the products provided under the AQTOR Mark and unsolicited media coverage in connection with these marks, Opposer has gained valuable goodwill, and the consuming public in the United States and throughout the world has come to recognize AQTOR as an indicator of the source of Opposer's products.

5. Upon information and belief, applicant, UltraConcurrent, Inc. ("Applicant") is a corporation organized under the laws of Delaware, with its principal place of business at P.O. Box 2019, Aptos, California 95001.

6. Applicant seeks to register ACTORSCRIPT as a trademark in International Class 9 for the following goods:

Computers; computer operating systems; computer operating system software; computer server software; computer hardware and peripherals; computer software for use in database management; software used to create other software applications; data warehousing software, telephony software, fax messaging software; computer software used for extracting and saving data while keeping it coherently intact, browsing and accessing off loaded data, and selectively deleting and restoring off loaded data; computer software, namely, a relational, XML and inferential database management system for a networked environment; computer operating system and web services utility programs; computer programs for use in data manipulation, in testing and maintenance of database and web services information, in code generation, and in computer program design, maintenance, and analysis; user manuals and instruction books in electronic form distributed with the foregoing; and user manuals and instruction books sold as a unit therewith

7. Applicant seeks to register ACTORSCRIPT as a service mark for the following services:

Database management; computerized database management; management and compilation of computerized databases; providing computer databases featuring trade information in the fields of marketing, sales, customer service, contracts, human resources, call centers, management of supply chains, orders, inventory, business consolidation management, business risk management, business quality management, business project management, business stakeholder-shareholder relationship management, and strategic business, simulation, enterprise and resource planning, in International Class 35;

Educational services, namely conducting education and training through classes, workshops, seminars, in the field of computers, computer software, web services, computer databases, computer server software, computer programming, computer networking, computer system design, and intelligence analysis; conducting education and training through classes, workshops, and seminars provided via a global computer network, personal computers and handheld devices, in the field of computers, computer software, web services, computer databases, computer programming, computer networking, computer system design, and intelligence analysis, in International Class 41; and

Computer services, namely, consultation in the field of computer software; programming, design, development, analysis, implementation, management, integration, deployment, maintenance, updating and repair of computer software for others; application service provider (ASP), namely hosting, managing and administering computer software and computer server software for others; providing an on-line computer database and analysis featuring information in the fields of medical clinical research, computer diagnostics; application service provider (ASP) featuring software in the field of database management; application service provider (ASP) featuring computer server software; application service provider featuring software for providing an online database and web services in the field of transaction processing to upload transactional data, provide statistical and inferential analysis, and produce notifications and reports; computer service, namely, acting as an application service provider in the field of knowledge management and intelligence analysis to host computer

application software for creating searchable databases of information and data; computer service, namely, acting as an application service provider in the field of knowledge management and intelligence analysis to host computer application software for searching and retrieving information from databases and computer networks; database development services; technical assistance and consultation services, namely troubleshooting, managing, and maintaining computer software for others; leasing and rental of computer software; testing, analysis and evaluation of the goods and services of others for the purpose of compliance and certification; computer database development services; hosting the web sites of others on computer servers for local area networks, intranets, and the Internet. consultation services and providing technical assistance related to the design, creation, hosting, maintenance, operation, and management of computer databases; and providing information in the fields of computers, computer software, computer databases, in International Class 42.

8. Applicant's ACTORSCRIPT Mark is highly similar in sound, appearance and meaning to AQTOR.

9. The goods and services covered by Applicant's ACTORSCRIPT Mark overlap or are closely similar to the goods covered by the Opposer's AQTOR Mark.

10. Opposer's registration of the Opposer's AQTOR Mark and its use of the Opposer's AQTOR Mark in commerce occurred prior to the filing date of September 29, 2006 identified in the Application.

11. On information and belief, Applicant made no use of the ACTORSCRIPT Mark prior to September 29, 2006.

12. Opposer thus has priority in its use of the AQTOR Mark over Applicant's use of the ACTORSCRIPT Mark.

13. A unique feature of Opposer's AQTOR software is its proprietary scripting language, which allows the customer unparalleled flexibility in the use of the AQTOR software. Hence, in the marketplace, the AQTOR scripting capabilities are well known and strongly associated with the AQTOR software and offer Opposer a competitive advantage in the sale of the AQTOR software.

14. Because the ACTORSCRIPT Mark so closely resembles the AQTOR Mark and the AQTOR scripting capability is so closely associated in the marketplace with the AQTOR software, confusion in the trade and in the minds of the public would likely result if Applicant were permitted to register the ACTORSCRIPT Mark, thereby causing irreparable damage and injury to Opposer. For example, persons familiar with Opposer's AQTOR Mark and the scripting capabilities of the software products bearing the AQTOR Mark would likely believe the software and computer products and services offered under Applicant's ACTORSCRIPT Mark were produced, licensed or sponsored by Opposer. Any such confusion could result in a loss of sales and goodwill to Opposer, and would certainly dilute the distinctiveness of Opposer's AQTOR Mark. Further, any defect, objection or fault found with services offered to the public under Applicant's ACTORSCRIPT Mark would likely reflect upon and injure the reputation Opposer has established with respect to the goods provided under its AQTOR Mark.

15. Opposer will be damaged if Applicant is granted the registration herein opposed because Applicant would thereby obtain at least a *prima facie* right to exclusive use of Applicant's ACTORSCRIPT Mark. However, Opposer was first to offer goods bearing the AQTOR Mark for software used in securities and related financial transactions and did so prior to the filing date identified in the Application. Applicant's registration would thus confuse the trade and the public, be a source of damage and injury to Opposer and diminish the significant investment Opposer has made in Opposer's AQTOR Mark.

RELIEF REQUESTED

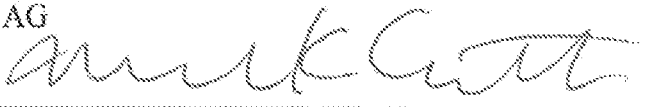
A. Registration of the mark shown in Application Serial No. 77/010,981 should be refused in the Classes for which registration is sought, in accordance with Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d).

B. Opposer thus respectfully requests that registration of the mark shown in Application Serial No. 77/010,981 be denied and that this opposition be sustained.

Respectfully submitted,

Actant AG

By:



Michael K. Cantwell
Attorney for Opposer

Dated: January 31, 2008

Michael K. Cantwell, P.C.
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CERTIFICATE OF MAILING

I hereby certify that this correspondence was deposited with the United States Postal Service as Express Mail, label number EB884007118US postage prepaid, in an envelope addressed to: Connie L. Ellerbach, Esq., Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California 94041 on January 31, 2008.



Michael K. Cantwell