

ESTTA Tracking number: **ESTTA1200490**

Filing date: **04/03/2022**

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

Proceeding no.	91274662
Party	Defendant mAgilEnt LLC
Correspondence address	MAGILENT LLC 1101 HERITAGE HILLS WAY WAKE FOREST, NC 27587 UNITED STATES Primary email: john.fandl@magilent.com Secondary email(s): notifications@trademarkengine.com, johnfandl@gmail.com 919-720-2171
Submission	Answer
Filer's name	Johann Fandl
Filer's email	john.fandl@mAgilEnt.com
Signature	/Johann Fandl/
Date	04/03/2022
Attachments	Opposition No 91274662 - mAgilEnt Answer to Notice of Opposition.pdf (255453 bytes)

Trademark Trial and Appeal Board Electronic Filing System: <https://estta.uspto.gov>

ESTTA Tracking number: ESTTA1192554

Answer Date: 04/03/2022

Opposition No. 91274662

Application Serial No(s). 90480492

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

Proceeding	91274662
Party	Defendant mAgilEnt LLC
Correspondence Address	mAgilEnt LLC 1101 HERITAGE HILLS WAY WAKE FOREST, NC 27587 UNITED STATES
Submission	Answer
Filer's Name	Johann Fandl
Filer's e-mail	john.fandl@mAgilEnt.com
Signature	/JohannFandl/
Date	04/03/2022
Attachments	Opposition No 91274662 - mAgilEnt Answer to Notice of Opposition.pdf

Opposition No. 91274662

Agilent Technologies, Inc.
Opposer,

v.

Mark:

mAgilEnt LLC

MAGILENT

Applicant.

ANSWER TO NOTICE OF OPPOSITION

The following is the Answer of Applicant mAgilEnt LLC ("Applicant"), owner of Federal Trademark Application Serial No. 90480492 for the mark MAGILENT (hereinafter "Applicant's Mark"), to the Notice of Opposition filed on

February 22, 2022 by Agilent Technologies Inc. (hereinafter "Opposer"), and assigned Opposition No. 91274662.

1. Admitted.

2. Admitted.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 3 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 4 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 5 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 6 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

7. Admitted.

8. Admitted.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 9 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 10 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

11. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 11 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 12 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

13. Admitted.

14. Denied. FURTHERMORE, Applicant sets forth the following in support of its position:

Per the [Filing of 90480492 on 1-21-2021](#) and documented in the screenshot below, applicant filing was NOT “seeking registration of the mark MAGILENT”. Applicant filed for registration of the mark mAgilEnt and the literal element mAgilEnt.

Trademark/Service Mark Application, Principal Register

Serial Number: 90480492
Filing Date: 01/21/2021

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	90480492
MARK INFORMATION	
*MARK	mAgilEnt
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	mAgilEnt
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	mAgilEnt LLC
*MAILING ADDRESS	1101 Heritage Hills Way
*CITY	Wake Forest
*STATE (Required for U.S. applicants)	North Carolina
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	27587

15. Admitted.

16. Admitted.

17. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

Applicant acknowledges receipt of a litigious demand via email to withdraw the application, as well as a litigious demand to change the company name mAgilEnt, LLC.

Applicant was not offered any opportunity to *amend* the application, hence Applicant must deny.

18. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 18 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

19. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 19 of the Notice of Opposition, specifically regarding

the timing of “... use of its AGILENT Marks in connection with the Agilent Goods and Services”. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

20. Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in paragraph 20 of the Notice of Opposition. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

21. As noted in points 1 to 20 above, Applicant is without knowledge or information sufficient to form a belief as to the truth of allegations contained in specifically enumerated paragraphs of the Notice of Opposition. Since Applicant can neither admit nor deny those specifically enumerated paragraphs as written, Applicant must deny.

22. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

22a. Applicant’s mark is unique and distinctive:

Applicant’s mark (mAgilEnt) is a mnemonic that expresses the company mission statement: “Making Agile Enterprises”, as represented in the commercial logo and as acknowledged by USPTO via assigning the PSEUDO MARK “MAKING AGILE ENTERPRISE”.

Additionally, the first 4 letters of Applicant’s mark (Magi) carry additional meaning: Magi is the term we use for our consultants, and how we market their experience to customers.

By contrast, Opposer’s mark is generic, i.e. its parts do not represent a mnemonic or denote any additional meaning.

22b. Applicants’ mark and Opposer’s mark are different in spelling.

22c. The *first* letter of Applicant’s mark is specifically different from

Opposer’s mark.

22d. The different first letter is critical due to its dramatic effect on internet search results. Consumers entering the letters **magi** and consumers entering the letters **agil** receive *dramatically different and non-overlapping results* from internet search engines. This is significant because internet search results would be the primary avenue of any possible potential consumer confusion between Applicant's mark and Opposer's mark, and the related goods and services associated with each.

22e. The different first letter is also critical due to its dramatic effect on human word recognition and interpretation.

The field of psycholinguistics proves that letter order is determinative in the human ability to differentiate 2 similar words, even when the words are only shown for a fraction of a second. For example, in English an *S suffix* is easily ignored by the human brain (as it is ignored by internet search engines), while 2 words with a different *starting* letter are very rarely, if ever, confused with each other.

So, if, for example, Applicant's mark were "AGILENTS", Opposer would have a claim re: that mark being "confusingly similar" to Opposer's mark.

With a different first letter, however, Applicant's mAgilEnt mark is singular and distinctive by design, and clearly dissimilar to Opposer's mark.

22f. Applicant's mark and Opposer's mark are different in appearance.

22g. Applicant's mark and Opposer's mark create different commercial impressions.

23. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

Applicants' documented services are disjoint with Opposer's services in both the actual services provided and the target market.

24. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

24a. Applicant's services are *business-oriented*, with a focus on "...migration of legacy *business data* and design and development of custom computer software for *business process improvement...*". Conversely, Opposer's enumerated Class 042 services are all *scientific / technical* in nature, and do not reference the term "business" at all.

Consequently, due to the lack of overlap between Applicant's and Opposer's services, Opposer's claim that Applicant's mark is "...likely to cause confusion, mistake, or deception that Applicant's Services are those of Agilent, or are otherwise endorsed, sponsored, or approved by Agilent)." is without merit.

24b. Applicant's mark and Applicant's services are specifically aligned with each other to differentiate and avoid confusion with the services of any other company, including those of Opposer.

25. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

25a. Applicant's services and Opposer's services are not marketed through the same

channels of trade.

25b. Applicant's mark is singular and avoids contextual association with any other company, including that of Opposer.

25c. Applicant's mark and Opposer's mark are not likely to cause confusion, mistake or deception to purchasers as to the source of either Applicant's or Opposer's goods or services.

26. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

Opposer trivializes and mischaracterizes the critical impact of the first letter difference, per 22d and 22e above.

27. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

27a. "AGILE" is used in commerce by third parties as part of numerous trademarks for science and technology services not owned by Opposer.

27b. "AGILE" is a common phrase in relation to providing science and technology services.

27c. "ENT" is used in commerce (as an abbreviated term referring to "Enterprise") by third parties as part of numerous trademarks for science and technology services not owned by Opposer.

27d. "ENT" (as an abbreviated term referring to "Enterprise") is a common phrase in relation to providing science and technology services to mid-sized to large companies.

28. Denied.

FURTHERMORE, Applicant sets forth the following in support of its position:

USPTO published Applicant's trademark application (U.S. Serial No. 90480492) in the Official Gazette on Oct 26, 2021, as part of its mission to promote "industrial and technological progress in the United States and strengthen the national economy".

Reversing that rightful (and appreciated) decision based on Opposer's unsubstantiated claims of harm would in no way further this critically important mission.

WHEREFORE, Applicant prays that the Trademark Trial and Appeal Board deny the Opposition and permit registration of Applicant's proposed mark in Application Serial Number 90480492 in the United States Patent and Trademark Office.

Opposition No. 91274662: ANSWER to Notice of Opposition

Dated this 3rd day of April, 2022

A handwritten signature in black ink, appearing to read "Johann Fandl". The signature is written in a cursive style with a large initial 'J'.

Johann Fandl
mAgilEnt LLC
1101 HERITAGE HILLS WAY
WAKE FOREST, NC 27587
UNITED STATES
TEL: 919-720-2171

Applicant

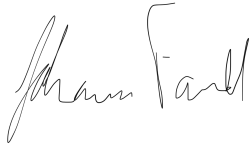
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of ANSWER TO NOTICE OF OPPOSITION has been served on the following by delivering said copy on April 3, 2022 via email to the Opposer emails listed in the Notice of Opposition:

Primary email: doCKET@hollandhart.com

Secondary email(s): AGarcia@hollandhart.com, JAKent@hollandhart.com,
TMEnf-Agilent@hollandhart.com

Dated this 3rd day of April, 2022



Johann Fandl
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TEL: 919-720-2171

Applicant