

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 5, 2005

Opposition No. **91158625**

Autodesk, Inc.

v.

Dassault Systemes S. A.

Karen Kuhlke, Attorney:

On November 10, 2004, applicant filed a consented motion to amend its application.¹ By the proposed amendment, applicant seeks to amend the "the words only designation," and by implication the description of the mark, in the subject application by deleting "3DS" and replacing it with "DS & Design."

Amendments to the description of the mark in a registration may be approved if the proposed amendment does not materially alter the mark. Trademark Rule 2.72. A modification of the mark which eliminates a prominent feature represents a material alteration of the character of the mark which renders the amendment unacceptable. See *Richards-Wilcox Manufacturing Co.*, 181 USPQ 735 (ComrPats

¹The Board notes that applicant did not submit a substitute drawing page in support of this amendment.

1974); *In re Dillard Department Stores Inc.*, 33 USPQ2d 1058 (Comm'r 1994). Further, the deletion of matter from a mark is evaluated according to the same standard as a proposed addition to the mark. *In re CTB Inc.*, 52 USPQ2d 1471 (TTAB 1999) (proposed amendment of "TURBO AND DESIGN" to typed word "TURBO" is material alteration).

The literal portion of this design mark is listed in the "words only" field as 3DS and the description of the mark reads: The mark consists of a stylized version of "3DS" in the colors blue (lower left "D"), red (top curve of "3" above), and orange (lower right "S").

The deletion of the number 3 would delete a prominent feature of the mark. Therefore, deletion of the number 3 from the literal portion and the description of the mark would constitute a material alteration of the mark. Moreover, the proposed amendment impermissibly changes the scope of the mark. Currently, the description of the mark is limited to a design that contains the number 3 used in conjunction with the letters DS. The proposed amendment broadens the mark by deleting the number 3 which is an integral part of the literal portion of the mark. In view of the above, the proposed amendment cannot be approved and applicant's motion to amend the drawing is denied. See TMEP Section 807.14.

Discovery and trial dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE: **March 31, 2005**

30-day testimony period for party in position of plaintiff
to close: **June 29, 2005**

30-day testimony period for party in position of defendant
to close: **August 28, 2005**

15-day rebuttal testimony period to close: **October 12, 2005**

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