

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

Mailed: June 30, 2005

Opposition No. 91158625

Autodesk, Inc.

v.

Dassault Systemes S. A.

**Peter Cataldo, Attorney:**

On November 10, 2004, applicant submitted a proposed amendment to the description of its mark at issue herein, with opposer's consent. On February 5, 2005, the Board issued an order denying the proposed amendment on the ground that it constitutes an impermissible material alteration of the mark, as well as an impermissible enlargement of the scope thereof. Thereafter, on March 17, 2005, applicant resubmitted its proposed amendment, along with a proposed amended drawing page.

In its March 17, 2005 filing, applicant asserts as follows:

In response, and in accordance with an agreement between the parties, Applicant respectfully re-files the proposed amendment with a copy of the drawing page. The drawing page and underlying trademark remain unchanged from the application as originally filed. Only the "Words Only" description of the mark is proposed for amendment, from "3DS" to "DS & Design." Applicant further amends the description of the mark to read as

follows: "The mark consists of a stylized version of 'DS.'" Please enter these amendments.

Applicant's March 17, 2005 filing thus appears to request reconsideration of the Board's February 5, 2005 order as well as propose an additional amendment to the description of its involved mark.

Motion for Reconsideration

The Board turns first to applicant's motion for reconsideration. In that regard, applicant's motion is untimely inasmuch as it is filed more than one month after the Board's February 5, 2005 decision. See Trademark Rule 2.127(b). In addition, applicant's request for reconsideration is not well taken.

Requests for reconsideration, as provided in Trademark Rule 2.127(b), provide a party with an opportunity to point out any error the Board may have made in its initial consideration of a matter. Such a motion may not properly be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in a brief on the original motion. See TBMP §518 (2d ed. rev 2004) and the authorities cited therein.

In this case, applicant points to no error on the part of the Board in the February 5, 2005 order, but merely reargues points raised in its original motion to amend and expresses its disagreement with the result reached therein. Further the submission of a proposed drawing page - with an

unchanged drawing - with applicant's filing does not convince the Board that its earlier order is in error. In short, the proposed amendment of the description of the mark from "3DS" to "DS and design" remains unacceptable for the reasons set forth in the Board's February 5, 2005 order.

In view thereof, the Board remains of the view that its February 5, 2005 decision is correct. Accordingly, respondent's motion for reconsideration is **denied**.

Proposed Further Amendment to Description of Mark

By its further proposed amendment, applicant seeks to amend the description of the involved mark from "3DS" to "a stylized version of DS." However, for the reasons set forth in the Board's February 5, 2005 order, such an amendment would delete a prominent feature of the mark, i.e., the number "3". Thus, the proposed amendment constitutes an impermissible material alteration of the mark. Moreover, the proposed amendment impermissibly changes the scope of the mark, essentially broadening the mark by deleting the number 3, which as noted above is a prominent and integral part of the literal portion of the mark. See TMEP Sections 807.14 and 808.01 and the authorities cited therein.

In view of the above, the proposed amendment cannot be approved and applicant's motion to further amend the description of the mark is denied.

Dates Reset

Trial dates are reset as indicated below.

Discovery period to close: **August 1, 2005**  
Thirty-day testimony period for party in position of plaintiff to close: **October 30, 2005**  
Thirty-day testimony period for party in position of defendant to close: **December 29, 2005**  
Fifteen-day rebuttal testimony period to close: **February 12, 2006**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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