

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

Baxley

Mailed: December 16, 2005

Opposition No. **91163127**

Danware Data A/S

v.

Netopsystems AG

Andrew P. Baxley, Interlocutory Attorney:

In compliance with the Board's August 17, 2005 order, applicant filed a revised amended answer on September 27, 2005.¹ A review of that answer indicates that it consists of acceptable responses to the allegations of the notice of opposition. See Fed. R. Civ. P. 8(b). Accordingly, the September 27, 2005 answer is made of record.

¹ Although applicant filed an answer on December 27, 2004, applicant filed a submission on May 10, 2005 that was construed as an amended answer. Because that submission was more in the nature of a brief on the case, the Board, in an August 17, 2005 order, determined that it was unacceptable. See Fed. R. Civ. P. 8(b). Accordingly, applicant was directed in the August 17, 2005 to file a proper amended answer.

However, upon further review, the answer that applicant filed on December 27, 2004 acceptably responded to the allegations of the notice of opposition and therefore was acceptable. See *id.* As such, the statement in the August 17, 2005 order that original answer did not comply with Rule 8(b) is in error and is hereby vacated. See TBMP Section 518 (2d ed. rev. 2004).

Further, applicant's May 10, 2005 submission was inresponse to correspondence that opposer sent to applicant. As such, it was not an amended answer, a motion, or a brief in response to a motion and therefore should not have been filed with the Board. To the extent that the May 10, 2005 submission was intended as a brief on the case, it was prematurely filed. See Trademark Rule 2.128(a)(1).

Opposition No. 91163127

On October 17, 2005, opposer, asserting that September 27, 2005 order did not comply with Rule 8(b), withdrew the opposition without opposer's consent and without prejudice. However, Trademark Rule 2.106(c) provides that, after an answer is filed, the opposition may not be withdrawn without prejudice, except with the written consent of applicant.

Opposer's assertion that applicant's September 27, 2005 answer is unacceptable because it contains "extraneous materials" is not well-taken. The additional statements in paragraphs 8 through 12 of that answer filed on September 27, 2005 are amplifications of the averments of the answer which provide fuller notice of the position which applicant plans to take in defense of its right to registration. Accordingly, that answer is acceptable.² See *Textron, Inc. v. Gillette Co.*, 180 USPQ 152, 153 (TTAB 1973); TBMP Section 506.01 (2d ed. rev. 2004).

To remedy the apparent confusion with regard to the acceptability of applicant's September 27, 2005 answer, opposer is allowed until forty-five days from the mailing date of this order to either: (i) obtain and file with the Board applicant's written consent to the withdrawal of the opposition; or (ii) withdraw the withdrawal of the notice of

² Instead of assuming that applicant's September 27, 2005 answer did not comply with Fed. R. Civ. P. 8(b), the better practice would have been to file a motion to strike that answer based on alleged noncompliance therewith.

Opposition No. 91163127

opposition. Failure to comply with the foregoing will result in the dismissal of this opposition with prejudice.

Proceedings herein are otherwise suspended retroactive to October 17, 2005.