

ESTTA Tracking number: **ESTTA51042**

Filing date: **10/31/2005**

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	DAX Technologies Corporation
Granted to Date of previous extension	11/05/2005
Address	Metropark South100 Matawan Road, Suite 300 Matawan, NJ 07747 UNITED STATES

Attorney information	Stanley D. Ference III Ference & Associates 409 Broad Street Pittsburgh, PA 15143 UNITED STATES uspto@ferencelaw.com
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Applicant Information

Application No	78457751	Publication date	09/06/2005
Opposition Filing Date	10/31/2005	Opposition Period Ends	11/05/2005
Applicant	Groundhog Technologies Inc. One Broadway, 14th Floor Cambridge, MA 02142		

UNITED STATES

Goods/Services Affected by Opposition

Class 009. First Use: 20000301 First Use In Commerce: 20010301

All goods and services in the class are opposed, namely: Computer software for network optimization, namely, software for performing wireless communication system performance optimization functions

Attachments	Notice of Opposition by DAX Tech to 78457751.pdf (5 pages)
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Signature	/Stanley D. Ference III/
Name	Stanley D. Ference III
Date	10/31/2005

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

DAX Technologies Corporation)	
)	Opposition No.
Opposer,)	
)	
vs.)	
)	
Groundhog Technologies, Inc.)	
)	
Applicant)	

NOTICE OF OPPOSITION

DAX Technologies Corporation (“Opposer”), a New Jersey corporation organized under the laws of the United States with its principle place of business at 100 Matawan Road, Suite 300, Metropark South, Matawan, New Jersey 07747, believes it will be damaged by the registration of the mark shown in the trademark application Serial Number 78/457,751, and hereby opposes the same.

DESCRIPTION OF APPLICANT’S APPLICATION

Applicant:	Groundhog Technologies, Inc. One Broadway, 14 th Floor Cambridge, MA 02142
Filing Date:	July 28, 2000
Mark:	OptiMo GSM/GPRS
Classes:	International Class 009
For:	(Cl. 009) Computer software for network optimization, namely, software for performing wireless communication system performance optimization functions.

GROUNDS FOR OPPOSITION

1. Opposer is a corporation organized and existing under the laws of the State of New Jersey as DAX Technologies Corporation and maintains its headquarters in New Jersey with other offices being located in the U.S., Munich, Germany, and Bucharest, Romania

2. Opposer has been in the business of providing software products, development, consulting and support services for the IT and telecommunications field since at least 1996. Opposer's business includes, *inter alia*, wireless network and performance management products and services, which broadly provide complete network management solutions enabling wireless operators to successfully execute critical operation priorities.

3. Opposer sells its products and services throughout the United States and internationally.

4. Opposer is the owner of U.S. trademark registration no. 2,796,773, registered December 23, 2003, for the "OPTIMA" trademark for "computer software for use in workforce management." Said registration was based on an application filed in the U.S. Patent and Trademark Office on April 1, 2002, which is a date prior to the date of the filing of Applicant's application. Opposer's first use of said trademark was on or about January 1, 2001, which is a date prior to the Applicant's first use of its mark.

5. Opposer is the owner of U.S. trademark registration no. 2,797,519, registered on December 23, 2003 for the "OPTIMA" trademark for "computer software for network management." Said registration was based on an application filed in the U.S. Patent and Trademark Office on July 11, 2002, which is a date prior to the date of the filing of

Applicant's application. Opposer's first use of said trademark was on or about January 1, 2000, which is a date prior to the Applicant's first use of its mark.

6. Opposer has continuously used the OPTIMA trademarks for computer software for use in network and workforce management as well as related products and services from a date prior to the filing date of Applicant's application Serial No. 78/457,751 and before the Applicant's first use of its mark.

7. Opposer's use of the OPTIMA trademarks has been valid and continuous since the date of first use of said designations and such marks have not been abandoned. Said trademarks of Opposer are symbolic of the extensive goodwill and consumer recognition built up by Opposer through substantial amounts of time and effort in advertising and promotion.

8. Applicant seeks to have the term "OptiMo GSM/GPRS" registered as a trademark for "computer software for network optimization, namely, software for performing wireless communication system performance optimization functions."

9. Applicant's application, Serial No. 78/457,751, was published for opposition in the Official Gazette on September 6, 2005. Through a timely filed request for extension of time, Opposer has extended until November 5, 2005, the time period to file a Notice of Opposition.

10. The respective goods and services of Opposers and Applicant are substantially similar or identical and are promoted through the same channels of trade for provision to, sale to, and use by, the same class of purchasers.

11. In view of the visual and aural similarity of the respective marks and related nature of the goods and services of the respective parties, it is alleged that Applicant's mark so resembles Opposer's OPTIMA trademarks as to likely cause confusion, or to cause mistake, or to deceive customers or cause members of the public to believe that Applicant's goods and/or services emanate from and are sponsored or approved by Opposers.

12. The continued use and registration of Applicant's mark is likely to cause confusion, mistake or deception of actual or prospective customers, consumers or purchasers as to the respective marks, as well as the source of origin of the respective goods and services, of Opposers and Applicant and permit Applicant to trade on the substantial goodwill of Opposer's business, symbolized and recognized by its aforesaid marks to the detriment and damage of Opposers.

13. Furthermore, any defect, objection or fault found with Applicant's goods or services marketed under its mark would necessarily reflect upon and seriously injure the reputation which Opposers have established for their goods and services marketed under their marks.

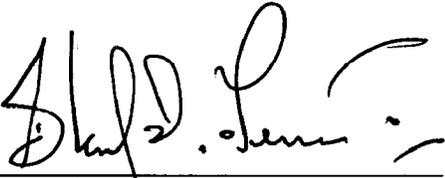
14. Use by Applicant of the trademark OptiMo GSM/GPRS for which registration is sought is without the Opposer's consent or permission.

Wherefore, Opposer respectfully requests that registration of the opposed application, Serial No. 75/457,751 be denied and the registration of the trademark OptiMo GSM/GPRS in International Class 009 be rejected.

The amount of three hundred dollars (\$300.00) required under 37 C.F.R. 2.6(a)(18) is being paid herewith.

Respectfully submitted,

FERENCE & ASSOCIATES

By: 
Stanley D. Ference III
Registration No. 33,879

Dated: 31 October 2005

FERENCE & ASSOCIATES
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