

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

am/al

Mailed: March 23, 2006

Opposition No. 91167256

DAX Technologies Corporation

v.

Groundhog Technologies Inc.

**Angela Lykos, Interlocutory Attorney**

On January 23, 2006 the Board entered a notice of default against applicant for failure to file an answer or a motion to further extend its time to answer.

On February 24, 2006 applicant filed a response to the notice of default stating that the notice of opposition was never received.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown the court may set aside and entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where the defendant has a meritorious defense. *See Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991). Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding

cases on their merits. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In inasmuch was inadvertent, the notice of default is hereby set aside.

The Board presumes that applicant's communication is intended as an answer to the notice of opposition.<sup>1</sup> A reading of this informal "answer" reveals, however, that it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of opposition. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

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<sup>1</sup> Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The notice of opposition filed by opposer herein consists of fifteen (15) paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until **thirty (30)** in which to file an answer herein which complies with Fed. R. Civ. P. 8.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which is available online at [www.uspto.gov](http://www.uspto.gov).<sup>2</sup>

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Trial dates, including the close of discovery, are reset as follows:

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| THE PERIOD FOR DISCOVERY TO CLOSE:                                   | 8/25/06  |
| 30-day testimony period for party in position of plaintiff to close: | 11/23/06 |
| 30-day testimony period for party in position of defendant to close: | 1/22/07  |
| 15-day rebuttal testimony period for plaintiff to close:             | 3/8/07   |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party

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<sup>2</sup> The Trademark Trial and Appeal Board Manual of Procedure (TBMP) is available on the World Wide Web at <http://www.uspto.gov>.

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.