

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

DUNN  
Mailed: March 29, 2005

Cancellation No. 92043181

Team Air Express, Inc.

v.

Deutsche Telekom AG

**Elizabeth A. Dunn, Attorney:**

On January 18, 2005, respondent filed a proposed amendment to Registration No. 2712615, the subject of the petition to cancel. The proposed amendment does not allege that petitioner consented to the amendment.

When a motion to amend a registration in substance is made without the consent of the other party or parties, it ordinarily should be made prior to trial, in order to give the other party or parties fair notice thereof. The Board generally will defer determination of a timely filed (i.e., pre-trial) unconsented motion to amend in substance until final decision, or until the case is decided upon summary judgment.<sup>1</sup> See *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d

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<sup>1</sup> If the Board ultimately finds that a defendant is not entitled to registration in the absence of a restriction that was timely proposed by the defendant, the proposed restriction will be approved and entered. If a further refinement thereof is

1216 (TTAB 1990)(motion to amend identification of goods deferred); Trademark Trial and Appeal Board Manual of Procedure (TBMP) §514.03 (2<sup>nd</sup> ed., rev. 2004).<sup>2</sup>

The Board notes that petitioner's testimony period closed February 4, 2005, and that petitioner submitted no evidence of any type. Insofar as it appears that the parties may have settled this matter, the parties are allowed until 30 days from the mailing date of this order in which to submit petitioner's consent to entry of the amendment, and petitioner's withdrawal of the petition to cancel, failing which the Board will enter judgment for respondent for want of prosecution by petitioner.

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**E-Government Initiatives at the Trademark Trial and Appeal Board:**

TTAB forms for electronic filing are now available at <http://estta.uspto.gov>.

Images of TTAB proceeding files can be viewed using TTABVUE at <http://ttabvue.uspto.gov>.

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found necessary by the Board, and is within the scope of the notice given to plaintiff by defendant, or was tried with the express or implied consent of plaintiff, defendant will be allowed time in which to file a request that its application or registration be amended to conform to the findings of the Board, failing which judgment will be entered against the party. If, on the other hand, the Board ultimately finds that defendant is entitled to registration even without the proposed restriction, defendant will be allowed time to indicate whether it still wishes to have the restriction entered.

<sup>2</sup> The TBMP is available on the USPTO website, [www.uspto.gov](http://www.uspto.gov).

**Changes:**

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at [www.uspto.gov](http://www.uspto.gov).