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Filing date: **09/20/2017**

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

Proceeding	91228289
Party	Plaintiff Padraic C. McFreen
Correspondence Address	PADRAIC MCFREEN 13357 Dumbarton Street Carmel, IN 46032 UNITED STATES Email: pmcfreen@gmail.com
Submission	Other Motions/Papers
Filer's Name	PADRAIC MCFREEN
Filer's email	pmcfreen@gmail.com
Signature	/Padraic McFreen/
Date	09/20/2017
Attachments	McFreen P Response to D Reply to P Reply in Supp of M to Compel.pdf(713027 bytes)

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

Padraic McFreen.

Opposer,

v.

MITAC International Corp.

Applicant.

Opposition No. 91228289

**OPPOSER’S REQUEST TO RESPOND
TO APPLICANT’S REQUEST TO CLARIFY THE RECORD CONCERNING
MISSTATEMENTS OF FACT IN OPPOSER’S REPLY TO APPLICANT’S
RESPONSE IN OPPOSITION OF OPPOSER’S MOTION TO COMPEL.**

The undersigned submits the attached Declaration and its exhibits solely to respond to Applicant’s clarification of an alleged misstatement of fact in OPPOSER’S REPLY TO APPLICANT’S RESPONSE IN OPPOSITION OF OPPOSER’S MOTION TO COMPEL.

Applicant attempts to clarify the record concerning Applicant’s Counsels’ and Opposer’s Prior Counsels’ communications relating to Discovery issues. Perhaps Applicant is mistaken or simply made an error in its assessment and characterization of Opposer’s Prior Counsel having “never responded to Applicant’s attempts to resolve the issue”. Applicant’s Counsel has made errors in her attempts at communicating with Opposer’s Prior Counsel previously. A Declaration supporting same is attached.

Respectfully submitted,

September 20, 2017

/s /Padraic McFreen
Padraic McFreen, Opposer
13357 Dumbarton Street
Carmel, IN 46032
pmcfreen@gmail.com
281-736-0510

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

Padraic McFreen.

Opposer,

v.

MITAC International Corp.

Applicant.

Opposition No. 91228289

Declaration of Padraic McFreen

I, Padraic McFreen, hereby declare as follows:

1. I am the counsel of record for the Opposer in these proceedings. I have been personally involved in these proceedings. I have personal knowledge of the facts stated herein.

2. On June 20, 2017, Applicant's Counsel emailed Opposer's prior Counsel with a claim that he had made an error in providing his correct contact email to the Board. As shown in Exhibit A., Applicant's Counsel covered up her error by making a false claim of error to Opposer's prior Counsel. Applicant's Counsel had actually made the error.

3. On August 23, 2017, the following day after Applicant's Counsel filed its Motion to Compel with the Board, Applicant's Counsel notified Opposer's prior Counsel of the filing. In the notification email to Opposer's prior Counsel, as shown in Exhibit B, Applicant's Counsel never attached the file.

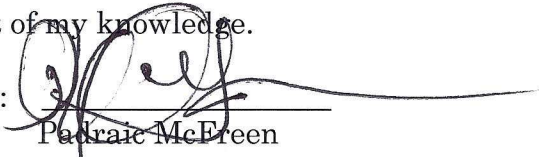
4. On July 17, 2017, Opposer's prior Counsel emailed Applicant's Counsel about Discovery issues.

5. On July 31, 2017, as shown in Exhibit C., Opposer's prior Counsel and Applicant's Counsel engaged in extensive communications concerning Discovery issues.

6. On August 17, 2017, as shown in Exhibit D., Opposer's prior Counsel requested an update from Applicant's Counsel concerning Discovery issues.

7. On September 12, 2017, Applicant's Counsel acknowledged and addressed third-party deficiencies in Discovery in response to Opposer's prior Counsel's relentless prodding.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

By: 
Padraic McEreen

Date: 9/20/17

13357 Dumbarton Street
Carmel, IN 46032

OPPOSER DECLARATION EXHIBIT A



Michael Stewart <midstewart@gmail.com>

MIVUE Trademark Opposition 91228289

13 messages

Michael Stewart <ms@themiamilaw.com>

Mon, May 22, 2017 at 12:09 PM

To: docket@lawabel.com, leabelman@lawabel.com, jbsaylor@lawabel.com

Bcc: Padraic McFreen <PMCFREEN@gmail.com>

Julie:

Further to our telephone conversation a moment ago, attached is our first set of discovery documents. We look forward to hearing from you.

Very truly yours,

/Michael D. Stewart/

MICHAEL D. STEWART, ESQ.

Law Offices of Michael D. Stewart

Please note new address

150 SE 2nd Ave., Suite 1000, 10th Floor

Miami, Florida 33131

email: ms@TheMiamiLaw.com

1-305-590-8909 Telephone

1-866-438-6574

1-305-415-9920 Facsimile

Website: <http://www.TheMiamiLaw.com><http://www.gotpersonalinjury.com>Twitter: <https://twitter.com/TheMiamiLaw>Facebook: <http://www.facebook.com/themiamilawyer>LinkedIn: <https://www.linkedin.com/in/miamilawyer>Google: <https://plus.google.com/+Themiamilaw/posts>

Admitted to practice in New York and Florida, State and Federal Courts

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2 attachments**INTERROGATORIES.docx**

35K

**MIVUE RFP pcm rev.docx**

35K

SEYLER, J. <JBSeyler@lawabel.com>

Tue, Jun 20, 2017 at 10:56 AM

To: "ms@miamilaw.com" <ms@miamilaw.com>

Cc: "midstewart@gmail.com" <midstewart@gmail.com>, "HALSTEAD, E." <EHalstead@lawabel.com>

Dear Michael:

Please advise if you will consent to a 30-day extension for Mitac to respond to the outstanding discovery requests such that they will now be due on July 20. Mitac will extend the courtesy to your client as well, thereby extending the due date from July 4 to August 4.

Further, to the extent that consent is provided, we shall file a 30-day extension of all dates with the Board such that Discovery will close on August 8 rather than July 9.

Your courtesy is appreciated.

I look forward to hearing from you.

Regards,

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

212-949-9022

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart

Sent: Monday, May 22, 2017 12:10 PM

To: Docket; ABELMAN, L.; SEYLER, J.

Subject: MIVUE Trademark Opposition 91228289

Julie:

Further to our telephone conversation a moment ago, attached is our first set of discovery documents. We look forward to hearing from you.

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart

Please note new address

150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
[1-305-590-8909](tel:1-305-590-8909) Telephone

immediately notify the sender and delete it. It is strictly prohibited to disseminate, distribute or copy this communication. If you do not wish to receive further email from this address simply respond to this email indicating this.

[Quoted text hidden]

SEYLER, J. <JBSeyler@lawabel.com>
To: "ms@themiamilaw.com" <ms@themiamilaw.com>

Tue, Jun 20, 2017 at 10:58 AM

Dear Michael,

There was an error in your ms@themiamilaw.com (the email of record at the Board) so the full email below is being resent.

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: SEYLER, J.
Sent: Tuesday, June 20, 2017 10:56 AM
To: 'ms@miamilaw.com'
Cc: midstewart@gmail.com; HALSTEAD, E.
Subject: RE: MIVUE Trademark Opposition 91228289

Dear Michael:

Please advise if you will consent to a 30-day extension for Mitac to respond to the outstanding discovery requests such that they will now be due on July 20. Mitac will extend the courtesy to your client as well, thereby extending the due date from July 4 to August 4.

Further, to the extent that consent is provided, we shall file a 30-day extension of all dates with the Board such that Discovery will close on August 8 rather than July 9.

Your courtesy is appreciated.

I look forward to hearing from you.

Regards,

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: midstewart@gmail.com [<mailto:midstewart@gmail.com>] **On Behalf Of** Michael Stewart

Sent: Monday, May 22, 2017 12:10 PM

To: Docket; ABELMAN, L.; SEYLER, J.

Subject: MIVUE Trademark Opposition 91228289

Julie:

Further to our telephone conversation a moment ago, attached is our first set of discovery documents. We look forward to hearing from you.

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart

Please note new address

150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
1-305-590-8909 Telephone

1-866-438-6574

1-305-415-9920 Facsimile

Website: <http://www.TheMiamiLaw.com>

<http://www.gotpersonalinjury.com>

Twitter: <https://twitter.com/TheMiamiLaw>

Facebook: <http://www.facebook.com/themiamilawyer>

LinkedIn: <https://www.linkedin.com/in/miamilawyer>

Google: <https://plus.google.com/+Themiamilaw/posts>

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communication. If you do not wish to receive further email from this address simply respond to this email indicating this.

[REDACTED]

Michael Stewart <ms@themiamilaw.com>
To: "SEYLER, J." <JBSeyler@lawabel.com>

Tue, Jun 20, 2017 at 11:36 AM

Julie:

What was the error you received?

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart
Please note new address
150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
1-305-590-8909 Telephone
1-866-438-6574
1-305-415-9920 Facsimile
Website: <http://www.TheMiamiLaw.com>
<http://www.gotpersonalinjury.com>
Twitter: <https://twitter.com/TheMiamiLaw>
Facebook: <http://www.facebook.com/themiamilawyer>
LinkedIn: <https://www.linkedin.com/in/miamilawyer>
Google: <https://plus.google.com/+Themiamilaw/posts>

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[Quoted text hidden]

SEYLER, J. <JBSeyler@lawabel.com>
To: Michael Stewart <ms@themiamilaw.com>

Tue, Jun 20, 2017 at 11:42 AM

Not an error from you- sorry for confusion...it was my error in typing the email address without the word "the".

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

212-949-9022

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart

Sent: Tuesday, June 20, 2017 11:37 AM

To: SEYLER, J.

Subject: Re: FW: MIVUE Trademark Opposition 91228289

[Quoted text hidden]

Michael Stewart <ms@themiamilaw.com>
To: "SEYLER, J." <JBSeyler@lawabel.com>

Tue, Jun 20, 2017 at 11:50 AM

Ok. Thank you. You had me worried for a second.

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart
Please note new address
150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
1-305-590-8909 Telephone
1-866-438-6574
1-305-415-9920 Facsimile
Website: <http://www.TheMiamiLaw.com>
<http://www.gotpersonalinjury.com>
Twitter: <https://twitter.com/TheMiamiLaw>
Facebook: <http://www.facebook.com/themiamilawyer>
LinkedIn: <https://www.linkedin.com/in/miamilawyer>
Google: <https://plus.google.com/+Themiamilaw/posts>

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[Quoted text hidden]

SEYLER, J. <JBSeyler@lawabel.com>
To: Michael Stewart <ms@themiamilaw.com>

Tue, Jun 20, 2017 at 11:44 AM

Did you receive the substantive email with the request for consent?

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart

Sent: Tuesday, June 20, 2017 11:37 AM

To: SEYLER, J.

Subject: Re: FW: MIVUE Trademark Opposition 91228289

[Quoted text hidden]

SEYLER, J. <JBSeyler@lawabel.com>
To: Michael Stewart <ms@themiamilaw.com>

Tue, Jun 20, 2017 at 11:55 AM

Yes- I can see why.

Meanwhile not to sound repetitive, are you able to provide consent to the extensions requested as set forth in the original email?

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart

Sent: Tuesday, June 20, 2017 11:50 AM

[Quoted text hidden]

[Quoted text hidden]

Michael Stewart <ms@themiamilaw.com>
To: "SEYLER, J." <JBSeyler@lawabel.com>

Tue, Jun 20, 2017 at 12:12 PM

Julie:

I am waiting to hear from my client. I will get back to you shortly.

Very truly yours,

/Michael D. Stewart/

MICHAEL D. STEWART, ESQ.

Law Offices of Michael D. Stewart

Please note new address

150 SE 2nd Ave., Suite 1000, 10th Floor

Miami, Florida 33131

OPPOSER DECLARATION EXHIBIT B



Michael Stewart <midstewart@gmail.com>

Motion Compel

2 messages

Michael Stewart <midstewart@gmail.com>
Reply-To: midstewart@gmail.com
To: "SEYLER, J." <jbseyler@lawabel.com>

Wed, Aug 23, 2017 at 6:41 PM

I do not see that the motion to compel was attached. Please resend.

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart
Please note new address
150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
1-305-590-8909 Telephone
1-866-438-6574
1-305-415-9920 Facsimile
Website: <http://www.TheMiamiLaw.com>
<http://www.gotpersonalinjury.com>
Twitter: <https://twitter.com/TheMiamiLaw>
Facebook: <http://www.facebook.com/themiamilawyer>
LinkedIn: <https://www.linkedin.com/in/miamilawyer>
Google: <https://plus.google.com/+Themiamilaw/posts>

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SEYLER, J. <JBSeyler@lawabel.com>
To: "midstewart@gmail.com" <midstewart@gmail.com>
Cc: "BRANTHOVER, N." <nwbranthover@lawabel.com>

Wed, Aug 23, 2017 at 6:49 PM

Please look at all the attachments. It's there.

Julie

Julie B. Seyler
Abelman Frayne & Schwab
666 Third Avenue
New York, New York 10017
212-949-9022

[Quoted text hidden]

OPPOSER DECLARATION EXHIBIT C



Michael Stewart <midstewart@gmail.com>

MIVUE Trademark Opposition

4 messages

Michael Stewart <ms@themiamilaw.com>
To: "SEYLER, J." <JBSeyler@lawabel.com>
Bcc: Padraic McFreen <PMCFREEN@gmail.com>

Mon, Jul 31, 2017 at 3:20 PM

Julie:

Have you had a chance to review my client's discovery? Do you intend to amend your discovery responses?

In my preparation for trial in this matter I note that it seems clear that your client is infringing upon my clients trademark rights. It also appears from the internet that your client is making uses of the mark which were not covered by the initial application, which we believe also clearly infringe upon my clients rights.

I understand that you previously had settlement negotiations with my client and that those negotiations broke down. After consultation with my client, he is willing to resolve this matter and to provide your client with a release from liability for a one time payment of \$500,000.00. Please let me know if your client is interested.

Very truly yours,

/Michael D. Stewart/
MICHAEL D. STEWART, ESQ.
Law Offices of Michael D. Stewart

Please note new address

150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131

email: ms@TheMiamiLaw.com

[1-305-590-8909](tel:1-305-590-8909) Telephone

[1-866-438-6574](tel:1-866-438-6574)

[1-305-415-9920](tel:1-305-415-9920) Facsimile

Website: <http://www.TheMiamiLaw.com>
<http://www.gotpersonalinjury.com>

Twitter: <https://twitter.com/TheMiamiLaw>

Facebook: <http://www.facebook.com/themiamilawyer>

LinkedIn: <https://www.linkedin.com/in/miamilawyer>

Google: <https://plus.google.com/+Themiamilaw/posts>

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SEYLER, J. <JBSeyler@lawabel.com>
To: Michael Stewart <ms@themiamilaw.com>
Cc: "HALSTEAD, E." <EHalstead@lawabel.com>

Mon, Jul 31, 2017 at 4:17 PM

[Please telephone.](tel:)

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart

Sent: Monday, July 31, 2017 3:20 PM

To: SEYLER, J.

Subject: MIVUE Trademark Opposition

[Quoted text hidden]

SEYLER, J. <JBSeyler@lawabel.com>
To: Michael Stewart <ms@themiamilaw.com>
Cc: "HALSTEAD, E." <EHalstead@lawabel.com>

Mon, Jul 31, 2017 at 4:34 PM

Dear Michael,

I asked you to telephone because we never received your client's responses to discovery. Please resend them and confirm that you are doing so. Upon receipt we shall confirm that we have them.

I am not clear as what you are referring to when you are asking if we intend to amend our discovery responses. In a prior email you stated "I don't know if you want to change it but your discovery requests reference companies not party to the opposition (I think it is in the general objections section). Do you mean in the General Objections to our responses to your client's interrogatories?"

In an email dated July 17, I contacted you for clarification and specifically inquired whether you meant in Applicant's Responses to Opposer's Interrogatories in General Objection No. 4 wherein it is stated that "Mitac objects to Opposer's Definitions and "Instructions" to the extent that they seek to impose any obligation or burden on **Tequila** not specifically required by the Trademark and Appeal Board rules of the Federal Rules of Civil Procedure" and that rather than Tequila it should state Mitac? We would want to change this to state Mitac. If there is another reference, please advise as we searched the documents and could not locate it.

We shall forward your client's proposal to our client.

Regards,

Julie

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

666 Third Avenue

New York, New York 10017

[212-949-9022](tel:212-949-9022)

From: midstewart@gmail.com [mailto:midstewart@gmail.com] **On Behalf Of** Michael Stewart
Sent: Monday, July 31, 2017 3:20 PM
To: SEYLER, J.
Subject: MIVUE Trademark Opposition

Julie:

[Quoted text hidden]

Padraic McFreen <pmcfreen@gmail.com>
To: Michael Stewart <ms@themiamilaw.com>

Tue, Aug 1, 2017 at 11:14 AM

Thank you

Sent from my iPad
[Quoted text hidden]

OPPOSER DECLARATION EXHIBIT D

SEYLER, J. <JBSeyler@lawabel.com>

Wed, Aug 16, 2017 at 3:23 PM

To: Raymond Betancourt <rb@themiamilaw.com>

Cc: Michael Stewart <ms@themiamilaw.com>, "midstewart@gmail.com" <midstewart@gmail.com>, "BRANTHOVER, N." <nwbranthover@lawabel.com>

Dear Mr. Stewart,

Please see the attached letter.

Julie B. Seyler

ABELMAN FRAYNE & SCHWAB

<MIVUE Opposition in the U.S. Deficiency Letter.pdf>

Raymond Betancourt <rb@themiamilaw.com>

Thu, Aug 17, 2017 at 7:45 PM

To: "SEYLER, J." <JBSeyler@lawabel.com>

Ms. Seyler:

I have forwarded your letter to the client. Will you be maintaining your discovery as filed?

--

Very truly yours,

RAYMOND A. BETANCOURT
Law Offices of Michael D. Stewart
Please note new address
150 SE 2nd Ave., Suite 1000, 10th Floor
Miami, Florida 33131
email: ms@TheMiamiLaw.com
[1-305-590-8909](tel:1-305-590-8909) Telephone
[1-888-MiamiLaw](tel:1-888-MiamiLaw)