

ESTTA Tracking number: **ESTTA1100693**

Filing date: **12/09/2020**

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 C MCFREEN 13357 DUMBARTON STREET CARMEL, IN 46032 UNITED STATES Primary Email: pmcfreen@gmail.com Secondary Email(s): padraic.mcfreen@gmail.com 281-736-0510
Submission	Other Motions/Submissions
Filer's Name	Padraic McFreen
Filer's email	pmcfreen@gmail.com
Signature	/Padraic McFreen/
Date	12/09/2020
Attachments	McFreen MIVU Reply to Response and Objection to Opposer Motion To Suspend re. MIVUE.20201208 Corrected COS20201209.pdf(848615 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 REPLY TO APPLICANT’S RESPONSE AND OBJECTION TO
OPPOSER’S MOTION TO SUSPEND**

Pursuant to Trademark Federal Statute and Rules relevant to this Board’s discretion regarding suspension, namely, 37 C.F.R. § 2.117(b), on November 23, 2020, Padraic McFreen (“Opposer”), moved this Board to suspend these instant opposition proceedings until a time when this Board has been notified by the Office of the Director concerning the results of its review of this Board’s November 9, 2020 order, denying Opposer’s Motion For Reconsideration (“Motion”). Opposer has shown “good cause.”

On November 9, 2020, Opposer notified Applicant, MiTac International Corporation (“Applicant”), of its intent to petition the director and to seek suspension. *See* Exhibit 1. Applicant responded within a couple of hours. It did not object to Opposer’s intent to petition the director.

Opposer recognizes by operation of the instant Motion that the granting of a motion to suspend is not automatic and at this Board's discretion when concerning petitions to the director. Opposer's Motion is not without merit. This Board will suspend opposition proceedings when a petition concerning same has been filed with the office of the director.¹

Applicant Suspends Communication with Opposer

After more than a year of it refusing to communicate with Opposer, Applicant now demonstrates interest in these proceedings. Opposer has numerous requests made to Applicant outstanding, all of which Applicant has ignored.

Specifically, in mid-year 2019, Opposer submitted a proposal for settlement to Applicant for purposes of bringing these proceedings to a close. After several months and subsequent email requests, subject to Fed. R. Evidence 408, Applicant ignored Opposer. Applicant has never responded to Opposer.

Applicant suspended all communication with Opposer between June 4, 2019 and September 30, 2020. For 482 days, Applicant did not communicate with nor respond to Opposer's attempts to bring these proceedings to an end. *See*. Exhibit 2.

Consistent with the manner in which Opposer has fairly cooperated with Applicant, immediately following Applicant's submission of Applicant's Objection to Opposer's Unconsented Motion To Suspend ("Response")², Opposer contacted Applicant to inquire into its "interest in discussing settlement at this time." Shortly thereafter, Applicant responded expressing interest in discussing settlement. *See*.

¹ TBMP 211.03

² 79 TTABVUE 2

Exhibit 3. As agreed, Opposer is presently preparing its proposal for settlement to be presented to Applicant.

Applicant Fails to Point to Alleged Evidence of Delay

Applicant has never complained about the filing of motions by Opposer, nor accused Opposer of deliberately trying to delay these proceedings. Applicant is unable to point to the record for support of its claim.

As a matter of fact, Opposer’s motion practice, namely its Motion For Summary Judgment, is precisely the type of “pretrial device [employed] to dispose of cases”³ and the use of same speaks to its attempt to hurry these proceedings rather than delay.

Applicant has, based upon its motion practice, made no attempts to speed along these opposition proceedings. Applicant’s objection is without basis as its action—more specifically its inaction—is the leading contributing factor for the alleged delays it complains of in its Response.

Opposer respectfully reminds this Board of the fact that on average, when Opposer and Applicant fully brief filed motions, the Board has issued its orders between 1-6 months. Applicant, during the 482 day period of not communicating with Opposer, it also did not file a response to Opposer’s Motion For Reconsideration.⁴ But for Applicant’s absence, the Board may have issued its order within 1-6 months. Instead, the Board issued its order more than 13 months later.

³ TBMP 528.01

⁴ 71-75 TTABVUE

Applicant Fails to Show Prejudice

Applicant asserts that it will be unduly prejudiced by the granting of the requested suspension, but fails to state how. Applicant has not provided any specific example or demonstration of prejudice that would be caused by the suspension. Applicant is using its applied-for Mark MIVUE in United States' commerce and is indeed not experiencing prejudice, suffering delay or being hindered in any way. *See*. Exhibit 4.

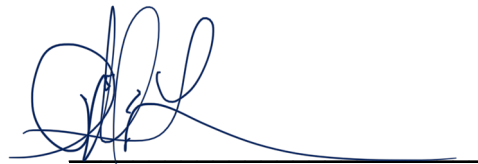
Applicant will not be prejudiced. Opposer's Motion has merit, will not prejudice Applicant and has been filed in good faith and with good cause. For the above reasons in support of its Motion, Opposer respectfully asks this Board to grant its Motion To Suspend.

Respectfully submitted on December 8, 2020,

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

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Reply To Applicant's Objection To Opposer's Motion To Suspend has been served on Erica R. Halstead of Abelman, Frayne & Schwab, counsel for MiTac International Corp., by emailing said copy on this 8th day of December, 2020, to: docket@lawabel.com, ehalstead@lawabel.com, aallen@lawabel.com.



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

Exhibit 1

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Subject: Fwd: McFree v. MiTac International Corp. Settlement Counter-Offer Request

From: Padraic McFree <pmcfreen@gmail.com>

Date: Tue, Dec 08, 2020 11:29 am

To:

----- Forwarded message -----

From: **Padraic McFree** <pmcfreen@gmail.com>

Date: Sun, Oct 20, 2019 at 10:14 AM

Subject: Fwd: McFree v. MiTac International Corp. Settlement Counter-Offer Request

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

Subject to Fed. R. Evidence 408

Counsel,

On October 10, 2019, Opposer, Padraic McFree, sent to you its request for your client, MiTac International Corporation's Counter-Offer of Settlement.

As of today, October 20, 2019, your client has not responded or provided guidance of when or if Opposer should expect to receive their response.

Does your client, MiTac International Corporation, intend to respond to Opposer's request?

Please advise.

Padraic McFree, Opposer

----- Forwarded message -----

From: **Padraic McFree** <pmcfreen@gmail.com>

Date: Thu, Oct 10, 2019 at 6:11 PM

Subject: McFree v. MiTac International Corp. Settlement Counter-Offer Request

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

Counsel,

The Board at the USPTO noted the basis of Opposer's Motion To Suspend to be reason of settlement negotiations.

As several months have passed since your client failed to respond or counter Opposer's, then, Settlement Offer, Opposer now hereby requests a Counter-Offer of Settlement from your client, MiTac International Corp.

Regards,

Padraic McFree, Opposer

--

Padraic McFree

Computer Trespass and Data Collection Advisory: WE ARE COLLECTING DATA TRAFFIC FROM YOU.

PLEASE BE ADVISED:

Computer Trespass pursuant to New York Penal Law section 156.10. Computer Trespass is defined as follows:

A person is guilty of Computer Trespass when he or she knowingly uses, causes to be used, or accesses a computer, computer service, or computer network without authorization and:

- 1. he or she does so with an intent to commit or attempt to commit or further the commission of any felony; or
- 2. he or she thereby knowingly gains or causes another to access to computer material.

Computer trespass is a class E felony punishable by up to four years in state prison

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Subject: Fwd: McFreen v. MiTac International Corp. Settlement Counter-Offer Request
From: Padraic McFreen <pmcfreen@gmail.com>
Date: Tue, Dec 08, 2020 11:29 am
To: Padraic McFreen

----- Forwarded message -----

From: Padraic McFreen <pmcfreen@gmail.com>
Date: Thu, Oct 10, 2019 at 7:11 PM
Subject: McFreen v. MiTac International Corp. Settlement Counter-Offer Request
To: SEYLER, J. <JBSeyler@lawabel.com>

Counsel,

The Board at the USPTO noted the basis of Opposer's Motion To Suspend to be reason of settlement negotiations.

As several months have passed since your client failed to respond or counter Opposer's, then, Settlement Offer, Opposer now hereby requests a Counter-Offer of Settlement from your client, MiTac International Corp.

Regards,

Padraic McFreen, Opposer

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Although the crime of Computer Trespass, like all computer related offenses, has specific and special definitions to elements found in the statute, one of the most important terms in this statute is “without authorization” as it is a defense to this crime if a person had reasonable grounds to believe that he or she in fact had authorization to use the computer. See New York Penal Law 156.50(1).

Pursuant to New York Penal Law 156.00(8):

“‘Without authorization’ means to use or to access a computer, computer service or computer network without the permission of the owner or lessor or someone licensed or privileged by the owner or lessor where such person knew that his or her use or access was without permission or after actual notice to such person that such use or access was without permission. It shall also mean the access of a computer service by a person without permission where such person knew that such access was without permission or after actual notice to such person, that such access was without permission.”

“Proof that such person used or accessed a computer, computer service or computer network through the knowing use of a set of instructions, code or computer program that bypasses, defrauds or otherwise circumvents a security measure installed or used with the user’s authorization on the computer, computer service or computer network shall be presumptive evidence that such person used or accessed such computer, computer service or network.”

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Subject: Fwd: US Opposition against MIVUE in Cl. 9; McFreen v. MiTac International Corp.; Our Ref: 226362

From: Padraic McFreen <pmcfreen@gmail.com>

Date: Tue, Dec 08, 2020 11:25 am

To: Padraic McFreen

Attach:

----- Forwarded message -----

From: **Padraic McFreen** <pmcfreen@gmail.com>

Date: Mon, Nov 9, 2020 at 3:59 PM

Subject: Re: US Opposition against MIVUE in Cl. 9; McFreen v. MiTac International Corp.; Our Ref: 226362

To: HALSTEAD, E. <ERHalstead@lawabel.com>

Cc: ALLEN A. <AAllen@lawabel.com>

Dear Ms. Halstead:

In light of today's TTAB Order, Opposer intends to petition the director. In parallel, Opposer will file its Motion to Suspend pending disposition of the petition.

Please advise as to your client's consent to Opposer's impending filing. Should we not receive a response from your client, we will conclude consent and file the motion accordingly.

Kind regards,

Padraic McFreen

On Wed, Sep 30, 2020 at 3:28 PM HALSTEAD, E. <ERHalstead@lawabel.com> wrote:

Dear Mr. McFreen,

We attach a copy of the Change of Correspondence Address filed today with the Board. You may now direct all communication in this matter to the undersigned, and to Aimee Allen who is copied on this email.

Regards,

Erica Halstead

Erica R. Halstead, Esq. . ABELMAN, FRAYNE & SCHWAB

666 Third Avenue . 10th Floor . New York, New York . 10017-4011

(p) 212-949-9022 . (f) 212-949-9190 . ehalstead@lawabel.com . www.lawabel.com

AFS | ABELMAN FRAYNE & SCHWAB
INTELLECTUAL PROPERTY LAW

Exhibit 2

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Subject: Fwd: US Opposition against MIVUE in Cl. 9; McFreen v. MiTac International Corp.; Our Ref: 226362

From: Padraic McFreen <pmcfreen@gmail.com>

Date: Tue, Dec 08, 2020 11:42 am

To: Padraic McFreen

Attach:

USPTO. ESTTA. Receipt MIVUE.html

Exhibit 2

----- Forwarded message -----

From: HALSTEAD, E. <ERHalstead@lawabel.com>

Date: Wed, Sep 30, 2020 at 3:28 PM

Subject: US Opposition against MIVUE in Cl. 9; McFreen v. MiTac International Corp.; Our Ref: 226362

To: pmcfreen@gmail.com <pmcfreen@gmail.com>

Cc: ALLEN A. <AAllen@lawabel.com>

Dear Mr. McFreen,

We attach a copy of the Change of Correspondence Address filed today with the Board. You may now direct all communication in this matter to the undersigned, and to Aimee Allen who is copied on this email.

Regards,

Erica Halstead

Erica R. Halstead, Esq. . ABELMAN, FRAYNE & SCHWAB

666 Third Avenue . 10th Floor . New York, New York . 10017-4011

(p) 212-949-9022 . (f) 212-949-9190 . ehalstead@lawabel.com . www.lawabel.com



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Exhibit 3

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Subject: Fwd: MIVU v MIVUE US Trademark Opposition; Our Ref: 226362
From: Padraic McFreen <pmcfreen@gmail.com>
Date: Tue, Dec 08, 2020 11:49 am
To: Padraic McFreen
Attach:

Exhibit 3

----- Forwarded message -----

From: Padraic McFreen <pmcfreen@gmail.com>
Date: Wed, Dec 2, 2020 at 10:33 AM
Subject: Re: MIVU v MIVUE US Trademark Opposition; Our Ref: 226362
To: HALSTEAD, E. <ERHalstead@lawabel.com>, <docket@lawabel.com>, ALLEN A. <AAllen@lawabel.com>

Ms. Halstead,

Is your client interested in discussing settlement at this time?

I look forward to hearing from you.

Regards,

Padraic McFreen, Opposer

On Mon, Nov 30, 2020 at 5:29 PM HALSTEAD, E. <ERHalstead@lawabel.com> wrote:

Mr. McFreen,

Attached please find Applicant's Objection to Opposer's Motion to Suspend.

Regards,

Erica Halstead

Erica R. Halstead, Esq. . ABELMAN, FRAYNE & SCHWAB

666 Third Avenue . 10th Floor . New York, New York . 10017-4011

(p) 212-949-9022 . (f) 212-949-9190 . ehalstead@lawabel.com . www.lawabel.com

AFS | ABELMAN FRAYNE & SCHWAB
INTELLECTUAL PROPERTY LAW

From: Padraic McFreen <pmcfreen@gmail.com>
Sent: Tuesday, November 24, 2020 8:48 AM
To: Docket <docket@lawabel.com>; HALSTEAD, E. <ERHalstead@lawabel.com>; ALLEN A. <AAllen@lawabel.com>
Subject: Correction - MiVu Motion To Suspend w/Corrected Service Detail

Ms. Halstead:

Please find attached the identical Motion To Suspend, but with corrected service certification details, filed with the TTAB this morning.

Regards,

Padraic McFreen, Opposer

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Subject: Fwd: MIVU v MIVUE US Trademark Opposition; Our Ref: 226362
From: Padraic McFreen <pmcfreen@gmail.com>
Date: Tue, Dec 08, 2020 11:49 am
To: Padraic McFreen
Attach:

Exhibit 3.1

----- Forwarded message -----

From: HALSTEAD, E. <ERHalstead@lawabel.com>
Date: Wed, Dec 2, 2020 at 3:35 PM
Subject: RE: MIVU v MIVUE US Trademark Opposition; Our Ref: 226362
To: Padraic McFreen <pmcfreen@gmail.com>
Cc: ALLEN A. <AAllen@lawabel.com>

Mr. McFreen,

If you wish to make a settlement proposal, we will present it to our client.

Regards,

Erica Halstead

Erica R. Halstead, Esq. . ABELMAN, FRAYNE & SCHWAB

666 Third Avenue . 10th Floor . New York, New York . 10017-4011

(p) 212-949-9022 . (f) 212-949-9190 . ehalstead@lawabel.com . www.lawabel.com



From: Padraic McFreen <pmcfreen@gmail.com>
Sent: Wednesday, December 2, 2020 10:33 AM
To: HALSTEAD, E. <ERHalstead@lawabel.com>; Docket <docket@lawabel.com>; ALLEN A. <AAllen@lawabel.com>
Subject: Re: MIVU v MIVUE US Trademark Opposition; Our Ref: 226362

Ms. Halstead,

Is your client interested in discussing settlement at this time?

I look forward to hearing from you.

Exhibit 4



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with 4" LCD Screen
and 16GB SD Card

\$59.99 ~~\$94.99~~

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Product Description

Mio MiVue 733 WiFi and GPS Full HD Dash Cam

The Mio MiVue 733 GPS Full HD Dash Cam comes with a pre-installed Advanced Driver Assistance System (ADAS), offering complete peace of mind while on the road. The ADAS program includes Lane Departure Warnings, Forward Collision Warnings, and Fatigue Alerts. Plus, the Stop and Go feature provides innovative alerts for when the car in front of you begins to move and you do not react quickly enough. This technology ensures drivers stay alert at traffic lights or in traffic jams, helping to reduce the chance of a car accident and the irritation of the driver behind you. Thanks to Full 1080p HD footage, the MiVue 733 GPS captures every detail on the road with clear recordings and images. And in the event of an accident or a sudden change of motion, the device's built-in G sensor instantly records your vehicle's movements and ensures the recorded data cannot be overwritten. Hit the road with confidence!

What You Get

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- Charger
- Mounting bracket
- 1-year Limited Manufacturer's Warranty
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Features

Specifications

Reviews

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