

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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RSC

May 26, 2021

Opposition No. 91228289

Padraic C. McFreen

v.

Mitac International Corp.

Rebecca Stempien Coyle, Interlocutory Attorney:

On November 23, 2020, Opposer filed a Petition to the Director to reverse the November 9, 2020, denial of Opposer's request for reconsideration. 84 TTABVUE. On November 24, 2020 Opposer filed a motion to suspend proceedings pending resolution of the Petition to the Director. 78 TTABVUE. The motion to suspend is fully briefed. 79 and 81 TTABVUE. On December 15, 2020, Opposer filed a motion for judgment on the pleadings. 83 TTABVUE.¹

¹ Opposer's third filed motion to suspend (78 TTABVUE) supersedes his earlier filed motions, filed November 23 and 24, 2020 (76 and 77 TTABVUE) neither of which will be given further consideration. Similarly, Opposer's second filed reply in support of its motion to suspend (81 TTABVUE) and second filed motion for judgment on the pleadings (83 TTABVUE) supersede his original submissions of the same (80 TTABVUE and 82 TTABVUE, respectively), neither of which will be given further consideration.

The submission of duplicate filings unnecessarily enlarges the proceeding file. The Board expects Opposer to take greater care with his submissions in the future.

Opposer's Petition to the Director was denied on May 12, 2020. 86 TTABVUE. Proceedings are now before the Board for resumption of proceedings. *See* 86 TTABVUE 6.

The Board first addresses Opposer's motion to suspend. Proceedings may be suspended sua sponte by the Board or for good cause upon motion approved by the Board. Trademark Rule 2.117; *see also* TBMP § 510. The filing of a petition to the Director will not, by itself, act as a stay of inter partes proceedings before the Board. Trademark Rule 2.146(g). However, if a stay is specifically requested, the decision as to whether grant the stay is within the Board's discretion. Trademark Rules 2.146(g), 2.117(c); TBMP § 510.03(a). Opposer's motion to suspend is subject to the good cause standard. Trademark Rule 2.117(c); *see also Nat'l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 155 n. 8 (TTAB 2008).

Here, after careful consideration of the facts of this proceeding, the Board finds suspension of the opposition is appropriate. Opposer's Petition to the Director seeks reversal of the denial of his request for reconsideration, which could, if granted, impact the decision on Opposer's motion for summary judgment. These circumstances constitute good cause for suspension of this proceeding pending the decision on Opposer's petition. Accordingly, Opposer's motion to suspend proceedings pending disposition of his Petition to the Director is **retroactively granted** and dates, including trial dates, will be reset below.

In view thereof, because proceedings are retroactively suspended, Opposer's motion for judgment on the pleadings will receive **no consideration**.²

Lastly, as previously noted by the Board, complication of the record is unnecessary. The parties are directed to move forward and to focus on preparing and presenting the record for trial. Inasmuch as Opposer remains unrepresented by legal counsel at this time, the Board advises that TBMP Chapter 700 sets forth trial procedure and the introduction of evidence.

Proceedings are **resumed** and dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	6/25/2021
Plaintiff's 30-day Trial Period Ends	8/9/2021
Defendant's Pretrial Disclosures Due	8/24/2021
Defendant's 30-day Trial Period Ends	10/8/2021
Plaintiff's Rebuttal Disclosures Due	10/23/2021
Plaintiff's 15-day Rebuttal Period Ends	11/22/2021
Plaintiff's Opening Brief Due	1/21/2022
Defendant's Brief Due	2/20/2022
Plaintiff's Reply Brief Due	3/7/2022
Request for Oral Hearing (optional) Due	3/17/2022

The Federal Rules of Evidence generally apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony

² A motion for judgment on the pleadings is a test solely of the undisputed facts appearing in all the pleadings, supplemented by any facts of which the Board will take judicial notice. *Media Online Inc. v. El Clasificado Inc.*, 88 USPQ2d 1285, 1287 (TTBA 2008); *see also* TBMP § 504. The only kind of fact that may be judicially noticed by the Board is a fact that is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b); *see also* TBMP § 704.012(a) and cases cited therein.

periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Tips for Filing Evidence, Testimony, or Large Documents

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. Note: Parties are strongly encouraged to check the entire document before filing.³ The Board will not extend or reset proceeding schedule dates or other deadlines to allow

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.

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time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.