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

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**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 MOTION FOR JUDGMENT ON THE PLEADINGS

Padraic McFreen (“Opposer”) respectfully moves the Trademark Trial And Appeal Board (“TTAB”) for judgment on the pleadings, pursuant to Fed. R. Civ. P. 12(c), 49 C.F.R. § 821.17, 37 C.F.R. § 2.127(e)(1), Trademark Board Manual Procedure (“TBMP”) § 504.01 and TTAB precedent, specifically, *Shared, LLC v. SharedSpaceofAtlanta, LLC*, 125 USPQ2d 1143 (TTAB 2017).

In support of its Motion For Judgment On The Pleadings, Opposer concurrently files Opposer’s Brief In Support Of Motion For Judgment On The Pleadings.

Respectfully submitted,

May 27, 2021

/s /Padraic McFreen

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Padraic McFreen.

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Opposition No. 91228289

**OPPOSER’S BRIEF IN SUPPORT OF OPPOSER’S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Pursuant to Fed. R. Civ. P. 12(c), 49 C.F.R. § 821.17, 37 C.F.R. § 2.127(e)(1), Trademark Board Manual Procedure (“TBMP”) § 504.01 and Trademark Trial and Appeal Board (“TTAB”) precedent, Padraic McFreen (“Opposer”) respectfully moves for an order granting Opposer’s Motion For Judgment On The Pleadings (“Motion”), on the pleaded grounds Opposer’s and MiTac International Corporation’s (“Parties”) pleadings, now closed, “disclose that there are no material issues of fact to be resolved”¹ as to the U.S. Trademark Registration for the stylized mark, MIVU, registered on May 27, 2014, receiving Registration No. 4,539,050; the U.S. Trademark Registration for the standard character mark, MIVU PPCV, registered on May 9, 2017, receiving Registration No. 5,200,314; the U.S. Trademark Registration for the standard character mark, MIVU ESCAPEVELOCITY,

¹ 49 C.F.R. § 821.17

registered on May 9, 2017, receiving Registration No. 5,200,315; the U.S. Trademark Registration for the standard character mark, MIVU MOGOBILE, registered on May 9, 2017, receiving Registration No. 5,200,316, and MiTac International Corporation's ("Applicant") applied-for Mark, MIVUE.

Applicant filed its application for the applied-for Mark, MIVUE, subsequent Opposer and its application received the Federal Trademark Application Serial No. 86/786,555.

The dominant elements of Parties' Marks differ by one letter. The difference in the marks is minor and the small difference could be overlooked or misremembered.

Some of the Parties' goods, namely mobile devices, software, wide area networks and electronic systems in International Class 9, are legally identical. As a matter of law, Opposer is entitled to judgment on these undisputed material facts.²

Respectfully, the TTAB should grant Opposer's Motion For Judgment On The Pleadings ("Motion").

I. INTRODUCTION

A Motion For Judgment On The Pleadings is an appropriate pre-trial device employed to save the time and expense of a full trial when a party is able to demonstrate, prior to trial, that there is no genuine dispute of material fact to be resolved, and "the moving party is entitled to judgment on the substantive merits of

² *Id.*

the controversy as a matter of law.” *Shared, LLC v. SharedspacesofAtlanta, LLC*, 125 USPQ2d 1143 (TTAB 2017).

Pursuant to TBMP § 504.01, “[a] motion for judgment on the pleadings should be filed ‘after the pleadings are closed, but with such time as not to delay the trial.’” Furthermore, to remain in compliance with the spirit of the rules, Opposer must adhere to the language of Fed. R. Civ. P. 12(c), which states in pertinent part, “[a]fter the pleadings are closed, but early enough not to delay trial [Opposer] may move for judgment on the pleadings.”

The TTAB applies summary judgement motion deadlines to motions for judgment on the pleadings as directed by 37 C.F.R. § 2.127(e)(1).

To prevail on its Motion For Judgment On The Pleadings, (“Motion”) Opposer must satisfy the “test solely of the undisputed facts appearing in all pleadings, supplemented by any facts to which the [TTAB] will take judicial notice.”³⁴⁵ The TTAB has set Opposer’s Pretrial Disclosure date as June 25, 2021. Opposer files its instant Motion on May 27, 2021.

Opposer files its Motion approximately thirty-days before the filing of its Pretrial Disclosures are due and early enough not to delay trial.

³ TBMP § 504.02

⁴ *Kraft Group LLC v. Harpole*, 90 USPQ2d 1837, 1840 (TTAB 2009), dismissed in favor of a cancellation proceeding, slip op. Opposition 91185033 (TTAB September 15, 2011); *Land O’ Lakes Inc. v. Hugunin*, 88 USPQ2d 1957, 1958 (TTAB 2008); *Media Online Inc. v. El Clasificado Inc.*, 88 USPQ2d 1285, 1288 (TTAB 2008).

⁵ Pursuant to TBMP § 504.02, Note 4 “[a] judgment on the pleadings may be granted only where, on the facts as deemed admitted, there is not a genuine issue of material fact as to be resolved, and the moving party is entitled to judgment, on the substantive merits of the controversy, as a matter of law.”

Opposer's Motion is timely.⁶⁷

II. PLEADED MATERIAL FACTS NOT IN DISPUTE

Pursuant to TBMP § 528.01, the following material facts are not in dispute:

- Opposer is the owner of United States Trademark Registration Nos. 4539050, 5200315, 5200316, and 5200314 for “MIVU”, “MIVU ESCAPEVELOCITY”, “MIVU MOGOBILE” and “MIVU PPCV”, respectively, all for computer hardware and computer software in International Class 9, United States Classes 21, 23, 26, 36, 38. Opposer's registered trademark, MIVU is used on computer software and hardware for use with associated network of Internet connected devices, to collect, aggregate, analyze, transform, prioritize, and distribute content of any type across electronic systems or Internet systems. Opposer's registered MIVU formative trademarks, MIVU ESCAPEVELOCITY, MIVU MOGOBILE and MIVU PPCV are used in connection with computer hardware and software based goods for use with mobile devices on associated computing networks, namely, short-range wireless networks, local area networks, wide area networks and Internet, composed

⁶ Federal R. Civ. P. 12(c) “After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings; TBMP § 504.01 “in order to avoid a disruption or delay in the trial phase of a Board proceeding, a motion for judgment on the pleadings must be filed before the day of the deadline for pretrial disclosures for the first testimony period, as originally set or as reset.” *See. Shared, LLC v. SharedSpaceofAtlanta, LLC*, Opposition 91228478 (TTAB December 21, 2017).

⁷ 37 C.F.R. § 2.127(d) “When any party timely files a potentially dispositive motion, including, but not limited to...a motion for judgment on the pleadings...the case is suspended by the Trademark Trial and Appeal Board with respect to all matter not germane to the motion...”

primarily of stationary and mobile computing devices, for use to collect, aggregate, analyze, transform, prioritize, store and distribute content across electronic communication systems, computer networks and Internet-based networks (“Opposer’s goods”).

- Opposer is the owner of the common law Mark, MIVU.
- Opposer is the owner of MiVu, LLC, a State of Virginia Domestic Limited Liability Company, operating under the trade name MiVu.
- Opposer owns domains: <http://www.iMiVu.com>; MiVu.us; MiVu.photos; MiVu.com.br; MiVu.com.bz, MiVu.net, MiVu.online, MiVu.io, MiVu.info
- Opposer is the former owner of MiVu Corporation, a state of Texas Corporate entity, which formerly operated under the trade name MiVu, formed in November, 2000, and the trade name, MiVu, has not been abandoned by Opposer.
- Opposer is the owner of the canceled trademark application, No. 76/205548, for the mark MIVU CORPORATION, filed in February, 2001, for goods and services within International Classes 9, 35, 38, 41, and United States Classes 21, 23, 26, 36, 38, 101, 102, 104, 107.
- Applicant is the owner of the Trademark Registration Application Serial No. 86786555 applied-for mark, MIVUE for camcorders; cameras; time recording devices; covers for protecting navigational devices; satellite navigational system, namely, a global positioning

system GPS; auto-electronic navigational system, namely, a global positioning system and handheld computers; satellite global positioning receivers; GPS tracking devices for tracking and tracing vehicles and ships; portable multimedia players; multimedia players; digital media adaptors; pedometers; speedometers; altimeters; barometers; directional compasses; velocimeters; stabilizers; gradient indicators; software and apparatus for measuring distance; software and apparatus for finding location; software and apparatus for measuring altitude; software for measuring speed; software for indicating direction (“Applicant’s goods”) International Class 9, United States Classes 21, 23, 26, 36, 38. Applicant uses its applied-for Mark, MIVUE, on *inter alia* computer hardware and computer software based goods.

- Applicant answered and did not amend its Answer to the instant Notice of Opposition, docket at 6, ¶13, that its applied-for mark, MIVUE, is not in-use within the United States.
- Applicant makes use of its applied-for mark, MIVUE, in the United States, on 16 of the 29 goods listed on its MIVUE Application:
 - 1) Camcorders; 2) cameras; 3) time recording devices; 4) radar detectors; 5) covers for protecting navigational devices; 6) satellite navigational system, namely, a global positioning system GPS; 7) satellite global

positioning receivers; 8) GPS tracking device for tracking and tracing vehicles and ships; 9) speedometers; 10) directional compasses; 11) velocimeters; 12) stabilizers; 13) gradient indicators; 14) software and apparatus for measuring distance; 15) software for measuring speed; 16) software for indicating direction.

- Applicant did not produce nor withhold from Discovery contemporaneous business planning documents, marketing planning documents, strategic planning documents, applied-for mark, MIVUE, licensing documents, third-party communications documents relating to distribution, marketing campaign documents, design documents, drawing documents, and schematic documents that establish its intent to use the applied-for mark, MIVUE, in commerce in connection with each one of the 29 goods listed on the MIVUE Application.

- Applicant did not reserve an Affirmative Defenses⁸⁹¹⁰ in its Answer to the instant proceeding's Notice of Opposition.
- The dominant portion of Applicant's applied-for Mark, MIVUE, encompasses the dominant portions of Opposer's registered MIVU and MIVU formative Marks entirely.
- Parties' Marks', most dominant elements are identical.
- Parties' Marks, MIVU and MIVUE are pronounced "My View".
- Parties' registered and applied-for Marks are not restricted in any way.
- Parties' respective Marks are used on some goods that rely on computer networks and network associated mobile devices.
- Parties' registered Marks and applied-for Mark are respectively unrestricted concerning marketing channels, channels of trade, and consumer class.
- Satellite Global Positioning Systems ("GPS") are computer networks.

⁸ 37 C.F.R. § 2.114(b)(2) An answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the averments upon which the petitioner relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, respondent shall so state and this will have an effect of a denial...An answer may contain any defense, including the affirmative defenses of unclean hands, laches, estoppels, acquiescence, fraud, mistake, prior judgment, or any other matter constituting an avoidance or affirmative defense.

⁹ See *Harry Winston, Inc, v, Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1422-23 n.7 (TTAB 2014) (affirmative defenses deemed waived).

¹⁰ TBMP § 314 Except as provided by Fed. R. Civ. P. 12 (b) and (h)(2) (which allow a defendant to raise certain specified defenses by motion) a defendant may not rely on an unpled defense unless the defendant's pleading is amended (or deemed amended) pursuant to Fed. R. Civ. P. 15(a) or 15(b), to assert the matter. [Note 3.]

III. JUDGMENT ON THE PLEADINGS STANDARD

As stated herein above, judgment on the pleadings is appropriate when there are no material issues of fact to be resolved and the moving party is entitled to judgment as a matter of law.¹¹

The purpose of judgment on the pleadings much like summary judgment is one of judicial economy, that is, to save time and expense of a trial where, based upon the pleadings, no genuine issue of material fact remains as to the subject pleadings.

Motions for judgment on the pleadings should be filed before the day of the deadline for pretrial disclosures for the first testimony period, as originally set or as reset. Fed. R. Civ. P. 12(c).

Cross-applying the rules for summary judgment, the movant must show the absence of a genuine issue of material fact. TBMP § 528.01 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

In order to demonstrate a genuine issue, the non-movant must present more than a “scintilla of evidence” upon which a reasonable jury could find for the non-movant. *Liberty Lobby*, 477 U.S. at 252. The Board must draw “all justifiable inferences” in the non-movant’s favor. *Id.* at 255.

¹¹ Fed. R. Civ. P. 12(c), 49 C.F.R. § 821.17, 37 C.F.R. § 2.127(e)(1), Trademark Board Manual Procedure § 504.01 and TTAB precedent, specifically, *Shared, LLC v. SharedspacesofAtlanta, LLC*, 125 USPQ2d 1143 (TTAB 2017).

Only if a reasonable fact finder could resolve the matter in favor of the non-movant should judgment be denied. *See Opryland USA Inc. v. Great Am. Music Show Inc.*, 970 F.2d 847, 850 (Fed. Cir. 1992).

IV. OPPOSER HAS STANDING

Standing is a threshold issue that must be proven in every *inter parties* case. *See Empresa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014) (Opposer must show that it has a real interest in the proceeding and a reasonable basis for its belief of damage). A real interest is a direct and personal stake in the outcome of the proceeding. *Ritchie v. Simpson*, 50 USPQ2d at 1026.

Opposer's belief is justifiably reasonable as Applicant continues to attempt to register its applied-for Mark, MIVUE, which its dominant elements are identical to its MIVU and MIVU formative Marks' dominant elements for use on related goods.

Opposer has standing based on its uses, ownership title in and pleading of its U.S. Trademark Registrations: Nos. 4,539,050; 5,200,314; 5,200,315; 5,200,316. *See Schering-Plough HealthCare Products, Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1324 (TTAB 2007) (standing established based on ownership of pleaded registrations), and *Cunningham v. Laser Golf Corp.*, 222 F.3rd 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

Opposer owns the Internet domains imivu.com, mivu.us, mivu.photos, mivu.com.br, mivu.com.bz., mivu.net, mivu.online, mivu.io and mivu.info. Opposer also owns MiVu, LLC, a state of Virginia Domestic Limited Liability Corporation,

which operates under the trade name “MiVu”. Opposer is the former owner of MiVu Corporation, a state of Texas Corporation, which previously conducted business under the trade name “MiVu.” *See Otto Roth & Co. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189, (CCPA 1981) (plaintiff may show standing based on common law rights in mark that is distinctive, inherently or otherwise).

Applicant’s applied-for Mark, MIVUE, so resembles Opposer’s Marks, for use of its applied-for Mark on goods related to that of Opposer’s, and offered to some of the same classes of consumers within at least some of the same trade channels as that of Opposer’s.

Opposer has a reasonable basis for believing it would be damaged by the registration of Applicant’s applied-for Mark, MIVUE. *See* TBMP § 309.03(b); *Empresa Cubana del Tabaco v. General Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir.2014).

V. OPPOSER HAS PRIORITY

Opposer’s priority in the MIVU and MIVU formative marks is established by its pleading of ownership of the Registration for the MIVU marks, which predate the filing of Applicant’s MIVUE Application. *See King NASDAQ Stock Market Inc. v. Antarctica S.r.L.*, 69 USPQ2d 1718, 1726 (TTAB 2003) (priority established by the pleaded registration). *See also. Empresa Cubana Del Tabaco v. Gen Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014).

Applicant admits *no prior use* of its applied-for mark, MIVUE.

Opposer has a priority interest in Common Law MIVU Mark through longstanding and ongoing use in connection with computer software and hardware, wireless computer networks, its businesses and related domain name registrations, beginning as early as September, 2000. *See Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156 (Fed. Cir. 2002).

VI. MARKS AND GOODS ARE LEGALLY RELATED

Marks Are Identical

Under *duPont*, the TTAB determines similarity of MIVU and MIVUE marks in their entireties—taking to account, appearance, sound, connotation and commercial impression. *See duPont*, 177 USPQ at 567.

Varying weights may be assigned to each element of a *duPont* factor depending on the evidence presented. *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011 (factors “may play more or less weighty roles in any particular determination”). “The proper test, ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning, LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012).

Parties Marks are sufficiently similar.

Opposer configures the first four letters of its marks using “a combination capital letter-lowercase letter-capital letter-lowercase letter configuration [MiVu].”

Applicant's applied-for Mark, MIVUE, employs the identical lettering configuration as that of Opposer, "MiVue".

The dominant letters M, I, V, U, are identical in Applicant's applied-for mark and Opposer's Marks.

Applicant's mark simply contains an additional letter, E. Both Opposer's mark and Applicant's applied-for mark are pronounced "My View."

Applicant's MIVUE Application Trademark Snap Shot Publication Stylesheet, Miscellaneous Information/Statements, Pseudo Mark, states its mark is pronounced "MYVIEW."

"Marks may be found to be...similar if there are sufficient similarities in terms of sound or visual appearance or connotation." *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1089 (TTAB 2016).

One of Opposer's marks, MIVU, contains colors, angled letters, and swoosh's; however, these are unpronounceable and do very little to the overall commercial impression of the mark. Applicant's applied-for mark, MIVUE, incorporates Opposer's entire MIVU mark which supports similarity. *See Wella Corp. v. California Concept Corp.*, 558 F.2d 1019, 194 USPQ 419 (CCPA 1977).

The first four letters of Opposer's pleaded marks as well as Applicant's applied-for Mark, MIVUE, are the most prominent and dominant components of each respective Mark. *See Palm Bay Imps.*, 73 USPQ2d at 1692; *Presto Prods. Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988).

Applicant's applied-for Mark, MIVUE, adds the suffix E.

The addition of the minor subordinate suffix does not change the visual impression, sound or connotation of Applicant's applied-for mark, MIVUE. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010).

Parties' Marks give the same visual impression, are both pronounced "my view", and create identical connotations and commercial impressions (MIVU and MIVUE). *Id.* The dominant portions of the Marks are the same.

Consistent with TTAB and the Federal Circuit Court's decisions, the Marks at issue here, indeed are similar. *See In re Guild Mortgage Company*, 2020 USPQ2d 10279 (TTAB 2020) (refusal of GUILD MORTGAGE COMPANY based on likelihood of confusion with GUILD INVESTMENT MANAGEMENT); *In re St. Julian Wine Company, Inc.*, 2020 USPQ2d 10595 (TTAB 2020) (refusal of REAL MICHIGAN for hard cider based on likelihood of confusion with MICHIGAN APPLES); *In re Information Builders Inc.*, 2020 USPQ2d 10444 (TTAB 2020) (refusal of INFORMATION BUILDERS based on the likelihood of confusion with a stylized letter in a registered INFORMATION mark; *DeVivo v. Ortiz*, 2020 USP2Qd 10153 (TTAB 2020) (refusal of ENGIRLNEER due to likelihood of confusion with ENGIRLNEER); *Stratus Networks, Inc. v. UBTA-UBET Communications, Inc.*, 2020 USPQ2d 10341 (Fed. Cir. 2020) (refusal of STRATUS NETWORKS & design based on likelihood of confusion with STRATA NETWORKS); *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596 (TTAB 2020) (refusal of PRO ERA due to likelihood of confusion with NEW ERA); *Hylete LLC v. Hybrid Athletics, LLC*, 2019 USPQ2d (Fed. Cir. 2019) (refusal of HYLETE based on likelihood of confusion and

common law rights of HYBRID); *In re Country Oven, Inc.*, 2019 USPQ2d 443903 (TTAB 2019) (refusal of COUNTRY OVEN for bakery shops and bakery services based on likelihood of confusion with COUNTRY OVEN for bread buns); *The Pierce-Arrow Society v. Spintek Filtration, Inc.*, 2019 USPQ2d 471774 (TTAB 2019) (refusal of PIERCE-ARROW based on likelihood of confusion with PIERCE ARROW SOCIETY;

and *In re Jump Designs*, 80 USPQ2d 1370, 1374 (TTAB 2006) (quoting TMEP § 1207.01 (b)(iii)).

Parties' pleadings support a legal finding of similarity.

Parties Use Each Respective Mark on Similar Goods

Parties' goods are computer software and computer hardware related goods.

Consideration of the similarity of parties' goods is based on the goods recited in Applicant's application vis-à-vis the goods identified in Opposer's pleaded registrations. *See Stone Lions Capital Partners, LP v. Lion Capital, LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014).

Opposer's goods are computer software and computer hardware based while some of Applicant's goods are computer software and computer hardware based.

Computer systems form the technical and mechanical foundation for GPS, altimeters, barometers, velocimeters, tracking and tracing objects on graphical user interfaces which form the user-side of near real-time GPS tracking and location-based services.

Applicant's GPS goods rely on smart phones which are computers that connect to its goods via local and wide area networks, e.g., WiFi. GPS is a computer software and computer hardware network. GPS devices require computer software delivery which is typically achieved by wireless communications using embedded WiFi technologies and WiFi networks

Applicant's goods send content as data between a smart phone device and a WiFi enabled device...by short-range and local area networks. Applicant's goods use computer software to translate data sets to images, text and voice...and distribute data from smart phone mobile devices using Apple's iOS and Google's computer operating system software to the Internet, namely, YouTube.com, Facebook.com and MiVueShare.

Opposer's goods are comprised of computer software and hardware, electronic systems and both parties utilize online Internet-based outlets, Internet stores and direct sales channels.

Applicant's customers are Amazon.com, Best Buy, Fry's, Petra, Power Sales, BBI, BJ's, Michael C Fina, the State of New York, Hertz Car Rental and Home Shopping Network. *See. In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012), (legally identical goods are presumed to travel in same channels of trade to same class of purchasers).

If only a few of the goods are identical, the overlap of just one of the goods means all goods are identical. *See e.g., In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB

1992) and *Levi Strauss & Co. v. Abercrombie & Fitch trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013).

VII. CONCLUSION

Parties' respective Marks, MIVU and MIVUE are so similar, time, energy and trial resources dedicated to reaching this conclusion would not be in the best interest of the TTAB or the Parties.

Opposer is entitled to judgment on the pleaded Marks, MIVU and MIVUE.

Parties' goods overlap and are so similarly related, time, energy and trial resources dedicated to reaching this same conclusion at trial would not be in the best interest of the TTAB or the Parties.

Opposer is entitled to judgment on the pleaded goods.

In the interest of judicial economy and for the reasons set forth herein above, Opposer respectfully requests that its Motion For Judgment On The Pleadings be granted with prejudice.

Respectfully submitted,

May 27, 2021

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion For Judgment On The Pleadings has been served on Erica R. Halstead of Abelman, Frayne & Schwab, counsel for MiTac International Corp., by emailing said copy on this 27th day of May, 2021, to: docket@lawabel.com, ehalstead@lawabel.com, aallen@lawabel.com.

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