

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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General Email: TTABInfo@uspto.gov

RSC

December 13, 2021

Opposition No. 91228289

Padraic C. McFreen

v.

Mitac International Corp.

Rebecca Stempien Coyle, Interlocutory Attorney:

On November 12, 2021, the Board informed the parties that it would be conducting a telephone conference with the parties to discuss pretrial and trial procedure.¹ When the parties were unable to communicate regarding the scheduling of the conference, the Board set the date for the conference as December 2, 2021.²

On December 2, 2021, Opposer contacted the Board by telephone and stated his intention to withdraw the opposition. The Board then deferred the conference and allowed Opposer until December 10, 2021 to file his withdrawal of the opposition, failing which the opposition would proceed.³

Opposer has not filed his withdrawal of the opposition to date. Rather, on December 10, 2021, Opposer contacted the Board stating that ahead of his filing he

¹ 93 TTABVUE.

² 94 TTABVUE.

³ 95 TTABVUE.

reached out to Applicant's counsel to coordinate the return of files it obtained during the course of the proceedings, and that once Applicant's counsel confirms coordination, Opposer's filing would follow in due course. Applicant's counsel then contacted the Board on the same day stating that, pursuant to the Standard Protective Order, it would destroy or return, per Opposer's preference, (1) all materials and documents, including ESI, containing protected information, (2) all copies, summaries, and abstracts thereof, and (3) all other materials, memoranda or documents embodying data concerning said material, including all copies provided.

Inasmuch as Opposer has not withdrawn his opposition, the opposition will proceed and the Board will conduct the conference to discuss pretrial and trial procedure. However, due to a scheduling conflict that has arisen for the Board, the conference will be rescheduled to December 16, 2021, at 1:00pm EST.

While the Board appreciates the parties' efforts to address the handling of designated material, these efforts alone are insufficient for the Board to further delay this proceeding which has been pending for more than five years. Moreover, paragraph 16 of the Board's Standard Protective Order (which was automatically imposed in this proceeding, *see* 2 TTABVUE, *see also* 30 TTABVBUE 4) provides for the handling of materials after termination of a proceeding. The deadline for returning, or destroying, materials is thirty days **after** the termination of the Board proceeding.

The parties are also reminded that, as "a general rule, the Board does not accept email from the parties". *Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859, 1860 n. 4

(TTAB 2014). While a rare exception may be “made to facilitate the procedural matter of setting-up telephone conferences[,] ... any direct email communications must be initiated by the Board.” *Id.* Any request for relief, such as a request for an extension of time, must be filed through ESTTA. Trademark Rules 2.190(b), 2.191, *see also* TBMP §§ 104, 110.01(a).

Accordingly, absent the prior withdrawal of the opposition or a properly filed request for extension of time, the Board will conduct the conference to discuss pretrial and trial procedure on **December 16, 2021 at 1:00pm EST**.

The parties must contact the Board for the conference as follows:⁴

DIAL: 571-273-0000
MEETING ID: 03507
PASSWORD: 4535545789

Failure to appear for the conference may result in the Board issuing an order to show cause why judgment should not be entered for apparent loss of interest in the proceeding. See TBMP § 527.03.

⁴ This call-in information is for purposes of the scheduled conference only. For all other telephone calls to the Board, the parties should contact the Board’s general number, at 571-272-8500, the assigned paralegal, or the assigned interlocutory attorney.