

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RUIZ FOOD PRODUCTS, INC.,

Petitioner,

v.

MACROPOINT LLC,

Patent Owner.

Case IPR2017-02016
U.S. Patent No. 8,275,358 B1

**UNOPPOSED MOTION FOR *PRO HAC VICE* ADMISSION OF
KYLE B. FLEMING
UNDER 37 C.F.R. § 42.10**

UPDATED LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
2001	Expert Declaration of David Hilliard Williams
2002	David Hilliard Williams CV
2003	Ruiz Food Products, Inc.'s Initial Invalidity Contentions, Civil Action 6:16-cv-1133
2004	Expert Report of Dr. Stephen B. Heppe dated January 25, 2017, Civil Action 6:16-cv-1133
2005	Ruiz Food Products, Inc.'s Final Election of Asserted Prior Art, Civil Action 6:16-cv-1133
2006	Declaration of Kyle B Fleming, Esq.
2007	Kyle B. Fleming CV

Patent Owner respectfully requests that the Board recognize Kyle B. Fleming as counsel *pro hac vice* for the above-captioned proceeding in accordance with 37 C.F.R. § 42.10(c). Patent Owner is, contemporaneously, requesting the admission *pro hac vice* of Mr. Fleming in the related proceeding, IPR2017-2018.

The Lead Counsel, Mark C. Johnson, is a registered practitioner (Reg. No. 51,854). Petitioner does not oppose this Motion.

I. Timing for Filing

This Motion for *Pro Hac Vice* Admission is being filed no sooner than twenty-one (21) days after service of the Petition as set forth in the Order Authorizing Motion for Pro Hac Vice Admission, *Unified Patents, Inc. v. Parallel Iron*, LLC, IPR2013-00639 Paper 7 (“*Pro Hac Vice* Order”).

II. Statement of Facts

As required by the *Pro Hac Vice* Order, the following statement of facts demonstrates good cause for the Board to recognize Mr. Fleming *pro hac vice*.

Mr. Fleming is an experienced litigation attorney and has been involved in numerous litigations in over 24 years of practice, including numerous litigations involving patent infringement in U.S. District Courts across the country, before the U.S. Court for Appeals for the Federal Circuit, and the International Trade Commission. Mr. Fleming’s CV is attached as (Exhibit 2007) to the accompanying Declaration of Kyle B. Fleming (Exhibit 2006). As evidenced by Mr. Fleming’s CV and Declaration (including a partial list of his cases), he has represented a wide range of clients in a wide range of technologies in patent litigation matters.

With respect to the instant dispute, Mr. Fleming has been involved in counselling and representing Patent Owner with respect to these and related patents since 2015. Mr. Fleming was first involved in evaluating and counselling the Patent Owner with respect to the related patents asserted in *MacroPoint, LLC v. FourKites, Inc.*, Case No. 1:15-cv-01002 (N.D. Ohio) and the subsequent invalidity challenges thereto.

Mr. Fleming has also been involved in evaluating and counselling the Patent Owner with respect to the subject patents. U.S. Patent Nos. 8,275,358 and 9,429,659 (IPR2017-2018) are currently being asserted by Patent Owner against Petitioner in an infringement action pending in the Eastern District of Texas, *MacroPoint, LLC v. Ruiz Food Products, Inc.*, Case. No. 6:16-cv-01133-RWS-KNM, and were also the subject of another action titled *FourKites, Inc. v. MacroPoint, LLC*, Case No. 1-16-cv-02703 (N.D. Ohio). Although neither Mr. Fleming nor his Firm made any appearances in these matters, Mr. Fleming was involved in working with Patent Owner and other litigation counsel in material aspects of these other actions.

As a result of his work in connection with the aforementioned District Court litigations, Mr. Fleming is extremely familiar with the subject matter of this proceeding. In addition, and specifically with respect to these proceedings, Mr. Fleming has been heavily involved in analyzing the Petitions and the asserted prior

art and Exhibits, including Petitioner's expert's declaration. Further, Mr. Fleming has been extensively involved in these proceedings, including meeting with Patent Owner and Patent Owner's expert, and has been materially and substantially involved in preparing Patent Owner's Preliminary Responses; Patent Owner's Responses, the Motion to Amend in this proceeding; and in the discovery taken thus far.

Further, the Patent Owner has expended significant time and financial resources in connection with Mr. Fleming's representation in these proceedings and the related District Court matters, and the Patent Owner wishes to continue using Mr. Fleming as one of its counsel in these proceedings.

Accordingly, Mr. Fleming has a well-established familiarity with the subject matters at issue in the proceeding and there is good cause for the Board to recognize Mr. Fleming *pro hac vice* during the proceeding.

III. Accompanying Declaration of Mr. Fleming (Exhibit 2006)

This Motion is accompanied by the Declaration of Mr. Fleming as required by the *Pro Hac Vice* Order. In this Declaration, Mr. Fleming states compliance with the general requirements for *pro hac vice* admission and describes the foregoing familiarity with the subject matter of the proceedings. Further, Mr. Fleming states that he is a member in good standing of the Bar of the State of California, the Bar of the State of Ohio, and the Bar of the State of New York; is

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