

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FOURKITES, INC.,)
)
Plaintiff,)
)
v.)
)
MACROPOINT, LLC,)
)
Defendant.)
)

CASE NO. 1:16:-cv-02703-CAB

JUDGE: CHRISTOPHER A. BOYKO

**REPLY IN SUPPORT OF DEFENDANT MACROPOINT LLC'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY**

TABLE OF CONTENTS

I. INTRODUCTION ii

II. ARGUMENT 3

 A. FourKites Fails To Plead Declaratory Judgment Jurisdiction 3

 1. Jurisdiction Should Not Be Presumed Based On Prior Litigation Involving Different Patents. 5

 2. Jurisdiction Should Not Be Presumed Based On Allegations Against Ruiz Foods. 6

 3. FourKites’ Allegations Based “On Information And Belief” Do Not Support Jurisdiction. 10

 B. FourKites Fails To Plead Claims Under The Lanham Act 11

 C. FourKites Fails To Plead A Claim For Deceptive Trade Practices..... 16

 D. FourKites Fails To Plead A Claim For Tortious Interference 16

 E. If Not Dismissed, This Case Should Be Stayed Under The First-To-File Rule..... 17

 F. The Customer-Suit Exception Does Not Apply 19

III. CONCLUSION..... 20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>16630 Southfield Limited Partnership v. Flagstar Bank</i> , 727 F.3d 502 (6th Cir. 2013)	11, 14
<i>Arris Group, Inc. v. British Telecommunications PLC</i> , 639 F.3d 1368 (Fed. Cir. 2011).....	3, 7, 8
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 550 U.S. 544 (2007).....	11
<i>In re Darvocet, Darvon, & Propoxyphene Products Liability Litigation</i> , 756 F.3d 917 (6th Cir. 2014)	11
<i>Electronics for Imaging, Inc. v. Coyle</i> , 394 F.3d 1341 (Fed. Cir. 2005).....	17
<i>Enzo Biochem, Inc. v. Calgene, Inc.</i> , 188 F.3d 1362 (Fed. Cir. 1999).....	4
<i>Globetrotter Software, Inc. v. Elan Computer Group, Inc.</i> , 362 F.3d 1367 (Fed. Cir. 2004).....	12
<i>Hunter Douglas, Inc. v. Harmonic Design, Inc.</i> , 153 F.3d 1318 (Fed. Cir. 1998).....	12
<i>Intel Corp. v. Future Link Sys., LLC</i> , 2015 U.S. Dist. LEXIS 17176 (D. Del. Feb. 12, 2015)	3, 6, 9
<i>Microsoft Corp. v. DataTern, Inc.</i> , 755 F.3d 899 (Fed. Cir. 2014).....	6, 8
<i>Prasco, LLC v. Medicis Pharm. Corp.</i> , 537 F.3d 1329 (Fed. Cir. 2008).....	3
<i>Streck, Inc. v. Research & Diagnostic Sys.</i> , 665 F.3d 1269 (Fed. Cir. 2012).....	4, 5
<i>Zenith Elecs. Corp. v. Exzec, Inc.</i> , 182 F.3d 1340 (Fed. Cir. 1999).....	12, 17

..

Statutes

35 U.S.C. §1011, 2, 17
35 U.S.C. §271(c)8
Lanham Act, 15 U.S.C. § 43(a)11, 12, 15
Ohio’s Deceptive Trade Practices Act..... *passim*

I. INTRODUCTION

FourKites, Inc.'s ("FourKites") response to MacroPoint LLC's ("MacroPoint") Motion to Dismiss or, in the Alternative, to Stay ("Motion to Dismiss") [Doc# 13] is telling for what it lacks. Rather than address the *substance* of MacroPoint's legally appropriate actions, FourKites repeatedly speculates about what it believes may have been the real *purpose* behind those actions, while ignoring what really happened. In the Complaint, and now in its response to the Motion to Dismiss, FourKites spends most of its effort attempting to impugn MacroPoint's motives rather than justifying its own case. Therein lies the problem and the reason why FourKites has failed to sufficiently plead its claims.

What FourKites characterizes as "gamesmanship" and a "campaign against FourKites" is, in reality, a good faith effort by MacroPoint to first obtain valid patents and then enforce those patents against direct infringers wherever they may be found. Tellingly, FourKites' lengthy recitation of MacroPoint's enforcement efforts does not include even one sentence that attempts to explain how it is that FourKites did not infringe the patents of the '943 patent family (U.S. Patent No. 8,604,943) previously asserted against it, or how FourKites' customer, Ruiz Food Products, Inc. ("Ruiz"), does not infringe U.S. Patent No. 9,429,659 (the "'659 Patent") or U.S. Patent No. 8,275,358 (the "'358 Patent") now. The entire premise of FourKites' Complaint appears to be its unsupported belief that *all* of MacroPoint's patents are invalid and that MacroPoint should know it. Protestations devoid of real basis, however, are no grounds to take up this Court's time.

It is true that a court in this District invalidated one portion of MacroPoint's patent portfolio under 35 U.S.C. §101. It is likewise true, however, that those patents were issued by the United States Patent and Trademark Office ("USPTO") under the then existing §101 standard and that the law regarding what constitutes patentable subject matter under §101 is evolving day

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