

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RUIZ FOOD PRODUCTS INC.,  
Petitioner,

v.

MACROPOINT LLC,  
Patent Owner.

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IPR2017-02016

Patent 8,275,358 B1

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**PETITIONER'S OPPOSITION TO MOTION TO DISMISS**

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## LIST OF ADDED EXHIBITS

| 1024 | Complaint and Attached Exhibits, <i>FourKites, Inc. v. MacroPoint, LLC</i> , Case No. 1:16-cv-02703-CAB (N.D. Ohio)  |
|------|--|
| 1025 | Defendant MacroPoint LLC's Motion to Dismiss or, in the Alternative, to Stay, <i>FourKites, Inc. v. MacroPoint, LLC</i> , Case No. 1:16-cv-02703-CAB (N.D. Ohio)                     |
| 1026 | Reply in Support of Defendant MacroPoint LLC's Motion to Dismiss or, in the Alternative, to Stay, <i>FourKites, Inc. v. MacroPoint, LLC</i> , Case No. 1:16-cv-02703-CAB (N.D. Ohio) |
| 1027 | Notice of Dismissal without Prejudice  |
| 1028 | Black's Law Dictionary, 353 (7th ed. 1999)   |

## I. INTRODUCTION

The Board should deny MacroPoint’s motions to dismiss these proceedings because controlling precedent holds that dismissal without prejudice renders an action as if it had never been filed for purposes of § 315(a)(1). The authority on which MacroPoint relies, the Federal Circuit’s decision in *Click-to-Call*, was strictly and purposely limited to § 315(b). The Court could have interpreted § 315 as a whole, but it specifically chose to limit its decision to § 315(b). This interpretation was proper because the subsections use different terms and have different and distinct legal effects. Section 315(b) focuses on “service” and has a clock-starting effect, whereas § 315(a) merely refers to “filing” and has a preclusive effect. The background legal principle that the Court refused to apply to § 315(b) is applicable to § 315(a). Therefore, *Click-to-Call* should not be improperly extended to § 315(a), and the Board should not overrule its own prior decisions. If MacroPoint wants to change the well-established law of § 315(a), it can seek to appeal to the Federal Circuit after the Board’s final written decision.

Alternatively, the Board should find that the FourKites countersuit was not a “civil action” for purposes of the statute. MacroPoint moved to dismiss FourKites’ declaratory judgment claims, which were a direct response to MacroPoint’s suit against Ruiz, as not directed to an Article III case or controversy. Taking MacroPoint at its allegation there, claims that could not pass Article III muster

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