

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FOURKITES, INC.,

Plaintiff,

v.

MACROPOINT, LLC,

Defendant.

CASE NO.

JUDGE:

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff FourKites, Inc. (“FourKites”), for its Complaint against Defendant MacroPoint, LLC (“MacroPoint”) alleges as follows:

INTRODUCTION

1. This is an action for declaratory relief regarding United States Patent Nos. 8,275,358 (“the ’358 patent”) and 9,429,659 (“the ’659 patent”), and for injunctive relief and to recover damages as a result of unfair competition and anticompetitive practices by MacroPoint.

2. FourKites seeks by the present action to terminate MacroPoint’s continuing threats and actions, including not only against FourKites, but against FourKites’ customers as well, despite this Court—less than one year ago—ruling that the alleged “invention” of MacroPoint’s relevant patents was not patentable.

3. As discussed in greater detail below, despite this Court’s prior ruling, which remains pending appeal, MacroPoint has continued a pattern and practice of anticompetitive behavior that misrepresents the status of legal proceedings in this and the United States Court of Appeals of the Federal Circuit, which threatens FourKites’ customer relationships and business development efforts. At the same time, MacroPoint has continued to seek new patents from the

United States Patent and Trademark Office (“USPTO”) directed to the same unpatentable concepts that this Court previously held invalid. On August 30, 2016, it was successful in obtaining such a new patent, and immediately asserted that patent – in a different court – against one of FourKites’ customers.

4. The facts and circumstances of MacroPoint’s actions establish an improper course of conduct that, unless and until abated, will continue to interfere with and threaten FourKites’ legitimate business relationships. The Court should act quickly to put an end to MacroPoint’s conduct.

PARTIES

5. FourKites is a Delaware corporation having a principal place of business in Chicago, Illinois.

6. On information and belief, MacroPoint is a limited liability company organized and existing under the laws of the State of Ohio with a principal place of business in Cleveland, Ohio.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 over FourKites’ claims under the Patent Laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and its claims for False Advertising and Unfair Competition under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* In addition, under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over FourKites’ state-law unfair competition and deceptive trade practices claims. These state-law claims arise out of the same nucleus of operative facts giving rise to FourKites’ Lanham Act claims and are so related to the federal antitrust claim that they form part of the same case or controversy.

8. This Court has personal jurisdiction over MacroPoint because it is organized under the laws of the State of Ohio and it has its headquarters and primary places of business in the State of Ohio. MacroPoint also has previously availed itself of this Court's jurisdiction on two prior occasions. In February 2014, MacroPoint sued in this Court Salebug.com, LLC, GoStrat LLC, Pegasus TransTech Corporation, and Prasad Gollapalli for infringement of United States Patent No. 8,604,943 ("the '943 patent"). In May 2015, MacroPoint sued FourKites in this Court for infringement of the '943 patent, and later amended its complaint to additionally assert United States Patent Nos. 9,070,295 ("the '295 patent"), 9,082,097 ("the '097 patent"), 9,082,098 ("the '098 patent"), and 9,087,313 ("the '313 patent") (collectively, together with the '943 patent, "the '943 patent family").

9. Venue is proper in this District under 28 U.S.C. §1391 because MacroPoint resides in this District and a substantial part of the events or omissions giving rise to the claims FourKites asserts occurred in this District.

FACTUAL ALLEGATIONS

I. MacroPoint's Previous Suit Against FourKites.

10. In May 2015, MacroPoint sued FourKites in this Court for infringement of the '943 patent, but MacroPoint did not serve FourKites. Instead, MacroPoint sent threatening letters to FourKites' existing and potential customers and partners.

11. Despite not being served with a summons and complaint, FourKites voluntarily appeared in this Court and immediately filed a motion to dismiss MacroPoint's claims because, among other reasons, the '943 patent was invalid under 35 U.S.C. § 101 for claiming unpatentable subject matter.

12. Shortly thereafter, MacroPoint amended its claims against FourKites to assert the

four additional patents of the '943 patent family. FourKites renewed its motion and challenged the patentability of all of the claims of all of the patents in the '943 patent family.

13. In November 2015, this Court ruled in favor of FourKites. *See* Case No. 1-15-cv-01002, Dkt. # 25. The Court agreed that all of the claims of all of the patents in the '943 patent family were invalid. First, the Court found that the claims of the '943 patent family were directed to the abstract idea of tracking freight. Second, the Court found that the claims of the '943 patent family did not include an inventive concept sufficient to transform the claimed abstract idea into a patent-eligible application. A true and correct copy of the Court's memorandum opinion and order is attached hereto as Exhibit A and is incorporated by reference.

14. As set forth in its memorandum opinion and order, this Court determined that the '943 patent family did no more than instruct the use of a conventional computer and preexisting technology and the incorporation of pre-existing industry standards for notice and consent in relation to the use of tracking systems. This Court further held that, although the patents in the '943 patent family did not entirely foreclose all tracking of freight, the steps in the claimed invention did involve well-understood, routine, conventional activity, and that upholding the patents would risk disproportionately tying up the use of the underlying conventional steps.

15. In December 2015, MacroPoint appealed the Court's decision to the United States Court of Appeals for the Federal Circuit. As of the date of this complaint, that appeal is fully briefed and oral argument is scheduled for December 6, 2016.

II. MacroPoint's Conduct at the Patent Office.

16. At the time of this Court's judgment invalidating claims of the '943 patent family, MacroPoint had a pending United States Patent Application No. 14/752,005 ("the '005 application") that claimed priority to the '943 patent family. Pursuant to a December 3, 2015

office action, the applied-for claims of the '005 application were allowable provided MacroPoint corrected a typographical error and filed a terminal disclaimer.

17. On January 27, 2016, FourKites sent to the USPTO a Protest under 37 C.F.R. § 1.291, in which FourKites made the USPTO aware of the Court's November 2015 decision and other additional prior art references that FourKites alleged made the claims of the '943 patent family obvious.

18. On February 4, 2016, MacroPoint's patent attorney filed a letter with the USPTO stating that it was "working diligently to finish reviewing" FourKites Protest and that it would "shortly file a Reply to the Protest detailing all reasons why the Protest should not be entered into the record of the application." MacroPoint requested that the USPTO "please delay reaching a resolution to enter the Protest in the record of the application until you [have] had an opportunity to review applicant's Reply." Instead, later that same day, MacroPoint expressly abandoned the '005 application despite its claims otherwise being found allowable by the USPTO subject to corrections of objections and the filing of the terminal disclaimer.

19. At that same time, MacroPoint also had pending United States Patent Application Nos. 14/987,692 ("the '692 application") and 14/987,707 ("the '707 application"), both of which claim priority to the patents of the '943 patent family, and to which FourKites also submitted Protests under 37 C.F.R. § 1.291.

20. The '692 application was also abandoned. The circumstances of the abandonment of the '692 application are not presently known because it remains under seal at the USPTO.

21. On March 4, 2016, the examiner at the USPTO responsible for reviewing the '707 application issued an office action stating that the claims of the '707 application were allowable subject to corrections of objections and the filing of the terminal disclaimer. The examiner of the

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