

**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**

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## 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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