

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RUIZ FOOD PRODUCTS, INC.,

Petitioner,

v.

MACROPOINT LLC,

Patent Owner.

Case IPR2017-02018
U.S. Patent No. 9,429,659

**PATENT OWNER'S REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS**

UPDATED LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
2001	Expert Declaration of David Hilliard Williams
2002	David Hilliard Williams CV
2003	“What are the differences in the technical specifications in the 1988 automatic onboard recording device (AOBRD) Rule (49 CFR 395.15) and the Electronic Logging Device (ELD) rule?”, https://www.fmcsa.dot.gov/faq/what-are-differences-specs-1988-aobrd-rule-and-eld-rule
2004	“ELD MANDATE: UPDATES, VIOLATION INFORMATION AND DEVICE INTRODUCTION PRICING & REVIEWS DRIVERS NEED TO KNOW,” https://unitedworldtransportation.com/eld-mandate-updates-violation-information-device-introduction-pricing-reviews-drivers-need-know/
2005	“Automatic On-Board Recording Devices (AOBRDs) Hand-Held, Commercial Vehicle Safety Alliance, June 6, 2012, http://www.ct.gov/dmv/lib/dmv/cv_bulletins/2012-05-automatic-on-board-recording-devices-aobrds-hand-held-created-06-06-12.pdf
2006	“Small Hardware Device Provides GPS Fleet Tracking Capabilities,” Fleet Financials, October 14, 2010, https://www.fleetfinancials.com/72619/small-hardware-device-provides-gps-fleet-tracking-capabilities
2007	“A Look at the Geotab GO Device: Past, Present, and Future,” Malene Johansen & Vincent Zhu, June 22, 2015, https://www.geotab.com/blog/geotab-go-device-past-present-future/
2008	“Announcing Geotab GO5 Premium Vehicle Tracking Device,” April 5, 2011, https://www.geotab.com/press-release/u-blox/
2009	“FMCSA Implementation of MAP-21,” Federal Motor Carrier Safety Administration, September 28, 2012, https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/FMCSA%20Implementation%20of%20MAP-21-%20Overview-

<u>Exhibit No.</u>	<u>Description</u>
	Agenda-Qs%209-28-12.pdf
2010	“The Future of Electronic On-board Recording Devices in the U.S.,” Michael Goldberg, July 3, 2011, https://www.frg-law.com/blog/the-future-of-electronic-on-board-recording-devices-in-the-u-s/
2011	Declaration of Kyle B Fleming, Esq.
2012	Kyle B. Fleming CV
2013	Complaint filed in <i>FourKites, Inc. v MacroPoint, LLC</i> , Case No. 1:16-cv-02703-CAB (N.D. Ohio)

Petitioner’s Opposition (“Opp.”) advances irrelevant differences and unpersuasive arguments to ignore the holding and principles of *Click-to-Call*. The Federal Circuit found the plain language of § 315(b) to clearly and unambiguously express Congress’ intent that no dismissal exception exists. The plain language of § 315(a) is equally clear and unambiguous, and the petition should be dismissed.

I. The Federal Circuit’s Statements, Framework, And Conclusions From *Click-To-Call* Are Equally Applicable To § 315(a) And Petitioner Fails To Manufacture Any Material Distinction

Petitioner first suggests that *Click-to-Call*’s silence on § 315(a) is a tacit affirmance that there is a dismissal exception to § 315(a). Opp. at 5. But the Federal Circuit did not address § 315(a) because it was not at issue, and the “case or controversy” requirement forbids advisory opinions on legal questions not actually in dispute. U.S. Const. art. III, § 2, cl. 1; *Muskrat v. United States*, 219 U.S. 346, 356 (1911). Suggesting that the Federal Circuit “could have” ruled on §315(a) is constitutionally improper; therefore the lack of an advisory opinion cannot be twisted into an implicit approval of Petitioner’s § 315(a) position.

Second is Petitioner’s unremarkable observation that the Federal Circuit’s decision on § 315(b) relied on the language of § 315(b) not (a). Opp. at 5-7. But “serving” versus “filing” is a difference without distinction. These are different events, but this difference has no substantive impact on the Federal Circuit’s holding, which has equal force and veracity if the language of § 315(a) is inserted:

The statute does not contain any exceptions or exemptions for complaints ~~serve~~ [filed] in civil actions that are subsequently dismissed, with or without prejudice.... Simply put, ~~§ 315(b)~~'s [§315(a)'s] time bar is implicated once a party ~~receives notice through official delivery of a complaint in a civil action~~ [files a civil action challenging the validity of a claim], irrespective of subsequent events.

899 F.3d at 1330 (modification added). There is no dismissal exception anywhere in § 315, and no subsequent event undoes any act—service or filing—once it has occurred. Section 315(a) is no different from (b) on this decisive factor.

Third, Petitioner argues the “dismissal” exception nevertheless should be applied because § 315(a) is a “preclusion” provision whereas § 315(b) is a statute of limitation. Opp. at 7-9. This is a false dichotomy because the result of the two provisions is the same—petitioner cannot seek an IPR. If § 315(a) is “preclusive,” then so is § 315(b)—and that was irrelevant in *Click-to-Call*. In any event, neither provision is “preclusive” because neither triggers any claim or issue preclusion. *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001) (claim preclusion forecloses “successive litigation of the very same claim” regardless of the issues); *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (issue preclusion forecloses successive litigation of the very same issues regardless of the claim).

After dismissing its declaratory judgment action, FourKites retained its ability to sue MacroPoint again on the same claims and on the same issues—declaratory judgment of patent invalidity. That FourKites and Ruiz cannot file a

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