

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

**DECLARATION OF KYLE. B FLEMING IN SUPPORT OF
UNOPPOSED MOTION FOR *PRO HAC VICE* ADMISSION**

I, KYLE B. FLEMING, declare as follows:

1. I am a member in good standing of the Bar of the State of California, the Bar of the State of Ohio, and the Bar of the State of New York, as well as permanently admitted to, and in good standing with, the following Federal Courts:

- A. U.S. Court of Appeals for the Second Circuit
- B. U.S. Court of Appeals for the Sixth Circuit
- C. U.S. Court of Appeals for the Ninth Circuit
- D. U.S. Court of Appeals for the Eleventh Circuit
- E. U.S. Court of Appeals for the Federal Circuit
- F. U.S. District Courts for the Northern, Central and Southern Districts of California
- G. U.S. District Courts for the Southern and Eastern Districts of New York
- H. U.S. District Courts for the Northern and Southern Districts of Ohio
- I. U.S. District Courts for the Northern and Central Districts of Illinois
- J. U.S. District Court for the Eastern District of Michigan
- K. U.S. District Court for the Eastern District of Wisconsin

L. U.S. District Court for the District of Colorado

2. I have never been suspended or disbarred from practice before any court or administrative body.
3. I have never been denied an application for admission to practice before any court or administrative body.
4. I have never had imposed against me sanctions or contempt citations by any court or administrative body.
5. I have read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of 37 C.F.R.
6. I will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 et. seq. and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).
7. Other than contemporaneously filing a Motion for *Pro Hac Vice* Admission in the related proceeding (IPR2017-2016), I have not previously applied to appear *pro hac vice* in any proceedings before the PTAB in the last three (3) years.
8. I have substantial familiarity with the subject matter at issue in this proceeding, specifically U.S. Patent No. 9,429,659 (and U.S. Patent No. 8,275,358

in related IPR2017-2016) and the prior art cited in the Petition. My familiarity is based on the following.

9. I have been involved in representing Patent Owner with respect to the '358 patent and related patents since 2015. I was first involved in analyzing and counselling the Patent Owner with respect to the related patents asserted in *MacroPoint, LLC v. FourKites, Inc.*, Case No. 1:15-cv-01002 (N.D. Ohio) and the subsequent invalidity challenges thereto.

10. I have also been involved in analyzing, evaluating and counselling the Patent Owner specifically regarding the '358 and '659 patents as these patents are being asserted against Petitioner in an infringement action pending in the Eastern District of Texas, *MacroPoint, LLC v. Ruiz Food Products, Inc.*, Case. No. 6:16-cv-01133-RWS-KNM, and were also the subject of another action titled *FourKites, Inc. v. MacroPoint, LLC*, Case No. 1-16-cv-02703 (N.D. Ohio). Although I did not make a formal appearance in those cases (nor did other members of my Firm), I was involved in working with Patent Owner and litigation counsel in material aspects of these related actions.

11. In addition, and with respect to these *inter partes* review proceedings, I have been heavily involved in analyzing the Petitions and the asserted prior art and Exhibits, including Petitioner's expert's declaration. I have been extensively

involved in all aspects of these proceedings, including meeting with Patent Owner and Patent Owner's expert. I was materially and substantially involved in drafting and preparing Patent Owner's Preliminary Responses, Patent Owner's Responses, the Motion to Amend and related amended claims (in IPR2017-2016); and in the discovery taken thus far.

12. A current copy of my CV is submitted herewith.

13. I hereby declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: August 30, 2018

Respectfully submitted,



Kyle B. Fleming