

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

FOURKITES, INC.,)	
)	
<i>Plaintiff,</i>	)	CASE NO. 1:16:-cv-02703-CAB
)	
<i>v.</i>	)	JUDGE: CHRISTOPHER A. BOYKO
)	
MACROPOINT, LLC,	)	DEFENDANT MACROPOINT LLC'S
	)	MOTION TO DISMISS OR, IN THE
<i>Defendant.</i>	)	ALTERNATIVE, TO STAY
)	

Defendant MacroPoint, LLC (“MacroPoint”), respectfully moves this Court for an order dismissing all of the claims asserted in the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6). Plaintiff FourKites, Inc. (“FourKites”) fails to state any claim against MacroPoint on which relief can be granted as to its affirmative claims. Further, the Court lacks subject matter jurisdiction over FourKites’ declaratory judgment claims. Alternatively, MacroPoint moves for an order staying this action pending the outcome of earlier filed litigation involving MacroPoint’s patents that is now proceeding in another jurisdiction.

A Memorandum of Law in support of this Motion is attached.

Respectfully submitted,

/s/ Wayne M. Serra

Timothy J. Coughlin (0019483)

Thomas F. Zych (0019942)

Arthur P. Licygiewicz (0068458)

Wayne M. Serra (0074780)

THOMPSON HINE LLP

3900 Key Center

127 Public Square

Cleveland, Ohio 44114

Telephone: (216) 566-5500

Facsimile: (216) 566-5800

Tim.Coughlin@ThompsonHine.com

Tom.Zych@ThompsonHine.com

Art.Licygiewicz@thompsonhine.com

Wayne.Serra@thompsonhine.com

Attorneys for Defendant MacroPoint, LLC

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

FOURKITES, INC.,)	
)	
<i>Plaintiff,</i>	)	CASE NO. 1:16:-cv-02703-CAB
)	
v.	)	JUDGE: CHRISTOPHER A. BOYKO
)	
MACROPOINT, LLC,	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF DEFENDANT
<i>Defendant.</i>	)	MACROPOINT LLC’S MOTION TO
	)	DISMISS OR IN THE ALTERNATIVE
	)	TO STAY

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
FACTUAL BACKGROUND	1
LAW AND ARGUMENT	2
I. FOURKITES LACKS STANDING TO ASSERT DECLARATORY JUDGMENT CLAIMS AGAINST MACROPOINT’S PATENTS	2
A. The Declaratory Judgment Claims Are Both Facially and Factually Deficient.....	4
1. The Complaint Itself Fails to Show that FourKites Is Entitled to Relief	4
a. Allegations Regarding Other Patents Fail to Show Standing For the Current Patents	5
b. MacroPoint Is Entitled to Seek New Patents	5
c. MacroPoint is Entitled to Publicize Its Patent Rights	6
2. The Facts Alleged Fail to Show that FourKites Has Standing to Sue.....	7
B. FourKites Failed to Plead A Case of Actual Controversy Under the Declaratory Judgment Act.....	8
C. FourKites Failed to Plead a Justiciable Case or Controversy Under Article III	9

D. FourKites Failed to State Claims for False Advertising and False Affiliation 10

E. FourKites Failed to State a Claim for Deceptive Trade Practices..... 13

F. FourKites Failed to Plead a Justiciable Case or Controversy Under Article III 14

II. IN THE ALTERNATIVE, THE COMPLAINT SHOULD BE STAYED,
PENDING THE OUTCOME OF THE TEXAS LITIGATION 17

A. The First-to-File Rule Requires a Stay of this Action..... 17

B. The Customer-Suit Exception Does Not Apply..... 18

CONCLUSION 19

TABLE OF AUTHORITIES

Federal Cases

800 Adept, Inc. v. Murex Sec., Ltd., 539 F.3d 1354, 1368 (Fed. Cir. 2008) 5

Allen v. Wright, 468 U.S. 737, 750 (1984) 3, 9

Arris Group, Inc. v. British Telecommunications PLC, 639 F.3d 1368 (Fed. Cir. 2011) 9

Ass’n of Cleveland Fire Fighters v. City of Cleveland, 502 F.3d 545, 548 (6th Cir. 2007) 4

B. & V. Distributing Co., Inc., v. Dottore Cos., LLC, No. 1: 05-cv-2900, 2006 U.S. Dist. LEXIS 23410, at *6 (N.D. Ohio Apr. 26, 2006) 10

Baatz v. Columbia Gas Transmission, LLC, 814 F.3d 785, 789 (6th Cir. 2016) 17, 18

Baseball at Trotwood, LLC v. Dayton Prof'l Baseball Club, 2003 U.S. Dist. LEXIS 27460, at *17 (S.D. Ohio Sep. 2, 2003) 16

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) 4, 7, 11

Cnty. of Oakland v. Detroit, 866 F.2d 839, 845 (6th Cir. 1989) 10

Coyne v. American Tobacco Company, 183 F. 3d 488, 494 (6th Cir. 1999) 7

Enzo Biochem, Inc. v. Calgene, Inc., 188 F.3d 1362, 1379 (Fed. Cir. 1999) 5

Extracorporeal Alliance, L.L.C. v. Rosteck, 285 F. Supp. 2d 1028, 1043 (N.D. Ohio 2003) 16

<i>Feist Publ'ns Inc. v. Rural Tel. Serv. Co. Inc.</i> , 499 U.S. 340, 361 (1991)	12
<i>Fogerty v. MGM Group Holding Corp., Inc.</i> , 379 F.3d 348, 352 (6th Cir. 2004)	12
<i>Globetrotter Software, Inc. v. Elan Computer Grp., Inc.</i> , 362 F.3d 1367, 1374-75 (Fed. Cir. 2004)	7
<i>Hensley Mfg. v. ProPride, Inc.</i> , 579 F.3d 603, 609 (6th Cir. 2009)	11
<i>Herman Miller, Inc. v. Palazzetti Imps. & Exps., Inc.</i> , 270 F.3d 298, 323 (6th Cir. 2001).	13
<i>Innovative Automation, LLC</i> , 2012 U.S. Dist. LEXIS 114503 at *42-43	19
<i>In re Foreclosure Cases</i> , 2007 U.S. Dist. LEXIS 84011, *2 (N.D. Ohio Oct. 31, 2007)	7
<i>Intel Corp. v. Future Link Sys., LLC</i> , 2015 U.S. Dist. LEXIS 17176 (D. Del. Feb. 12, 2015)	9
<i>Johnson Ctls. v. Phoenix Ctl. Sys.</i> , 886 F.2d 1173 (9th Cir 1989)	12
<i>Katz v. Lear Siegler, Inc.</i> , 909 F.2d 1459, 1464 (Fed. Cir. 1990).	19
<i>Laird v. Tatum</i> , 408 U.S. 1 (1972)	9
<i>Lexmark Int'l, Inc. v. Static Control Components, Inc.</i> , 134 S. Ct. 1377, 1387 (2014)	4
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560 (1992)	3
<i>MedImmune, Inc. v. Genentech, Inc.</i> , 549 U.S. 118, 127 (2007)	8
<i>Merial Ltd. v. Cipla Ltd.</i> , 681 F.3d 1283, 1299 (Fed. Cir. 2012)	18
<i>Mezibov v. Allen</i> , 411 F.3d 712, 716 (6th Cir. 2005)	4
<i>Microsoft Corp. v. DataTern, Inc.</i> , 755 F.3d 899 (Fed. Cir. 2014)	9
<i>Plating Resources, Inc. v. UTI Corp.</i> , 47 F. Supp. 2d 899, 903 (N.D. Ohio 1999)	18
<i>Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.</i> , 508 U.S. 49 (1993)	15
<i>Steel Co. v. Citizens for Better Environment</i> , 523 U.S. 83, 94-95 (1998)	4
<i>Streck, Inc. v. Research & Diagnostic Sys.</i> , 665 F.3d 1269, 1284 (Fed.Cir. 2012)	8
<i>Super Sulky, Inc. v. United States Trotting Ass'n</i> , 174 F.3d 733, 742 (6th Cir. 1999)	18
<i>United States v. Ritchie</i> , 15 F.3d 592, 598 (6th Cir. 1994).	5

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.