

Conference Call

Ruiz Food Products, Inc., Petitioner vs. Macropoint, LLC, Patent
Owner

September 21st, 2018



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1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3
4 RUIZ FOOD PRODUCTS, INC.,)
5)
6 Petitioner,) Case IPR2017-020161
7) (Patent 8,275,358 B1)
8 vs.)
9) Case IPR2017-02018
MACROPOINT, LLC,) (Patent 9,429,659 B1)
10)
11 Patent Owner.)
12)

10 - - - - -
11 Before MEREDITH C. PETRAVICK, TREVOR M. JEFFERSON,
12 and NATHAN A. ENGELS,
13 - - - - -

13 The telephonic hearing, taken before me, the
14 undersigned, Tracy Lam, Notary Public within and for
15 the State of Ohio, taken via speakerphone at the
16 offices of Cady Reporting Services, 1468 West 9th
17 Street, Cleveland, Ohio, commencing at 11:00 a.m., the
18 day and date above set forth.

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APPEARANCES:

On behalf of the Petitioner (via speakerphone):

James Murphy, Esq.
Ryan Murphy, Esq.

On behalf of the Patent Owner (via speakerphone):

Kyle B. Fleming, Esq.
Luis Carrion, Esq.

1 MR. MURPHY: Good morning, Your
2 Honor. On behalf of Petitioner you have James
3 Murphy and Ryan Murphy, both with Polsinelli.

4 MR. FLEMING: Good morning. On
5 behalf of Patent Owner this is Kyle Fleming.

6 MR. CARRION: And Luis Carrion is
7 also on the line.

8 MR. FLEMING: And I believe we
9 also have a court reporter on the line.

10 PATENT JUDGE: Thank you.

11 Patent Owner, I believe you requested the
12 call regarding -- or a request to file a motion
13 to dismiss.

14 Let's begin with Patent Owner. Please
15 explain your position.

16 MR. FLEMING: Sure. The Federal
17 Circuit recently issued a en banc ruling in a
18 case called "Click to Call vs. Ingenio" in
19 which it reversed what had been the board's
20 presidential and informative decision that a
21 prior action is voluntarily dismissed did not
22 count with respect to the Section 315(b) bar
23 for filing of petition.

24 In this case prior to the petitions being
25 filed by Ruiz, a real party in interest,

1 FourKites had filed a declaratory judgment
2 action challenging the validity of these
3 patents. Now, that case had been dismissed
4 without prejudice prior to the filing of the
5 petitions. So based on the presidential and
6 informative decisions at that time, that case
7 was not considered for purposes of the 315 bar.

8 However, it's Patent Owner's position
9 that now you have Click to Call, the prior
10 declaratory judgment filing is a bar to the
11 action and the Petitioner lacks standing and
12 the board lacks jurisdiction to continue.

13 PATENT JUDGE: Petitioner, we
14 understand from your e-mail that you have posed
15 the request to file a motion.

16 Can you explain your position, please?

17 MR. MURPHY: Yes, Your Honor.

18 The Click to Call decision is only about
19 315(b), it's not about 315(a)(1), which would
20 be the statute at issue here. In Click to
21 Call, and numerous other cases, the Federal
22 Circuit has specifically pointed out the
23 difference between service of the complaint and
24 the filing of an action, which is precisely the
25 difference between 315(b) and 315(a)(1). So in

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