

7, 2018. (Dkt. No. 49.) After considering the Parties' arguments and specifically AGIS's request for jurisdictional discovery on HTC, (Dkt. No. 40 at 17), this Court ordered limited discovery and renewed briefing on the issue of personal jurisdiction. (Dkt. No. 51.)

II. LEGAL STANDARD

A. Personal Jurisdiction

Personal jurisdiction is governed by Federal Circuit law in patent cases. *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d 1012, 1016 (Fed. Cir. 2009); *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1565 (Fed. Cir. 1994). The plaintiff bears the burden of establishing that the defendant is subject to personal jurisdiction. *Celgard, LLC v. SK Innovation Co., Ltd.*, 792 F.3d 1373, 1378 (Fed. Cir. 2015). If no jurisdictional discovery is conducted, the plaintiff need only make a *prima facie* showing. *Id.* However, when, as here, there has been jurisdictional discovery, the preponderance of the evidence standard applies. *Id.* (citing *Piecznik v. Dyax Corp.*, 265 F.3d 1329, 1334 (Fed. Cir. 2001)).

Whether a court may exercise personal jurisdiction over an out-of-state defendant is a two-step analysis: (1) does the state's long-arm statute permit service of process, and if so, (2) does exercising jurisdiction over the defendant violate due process? *Autobytel, Inc. v. Insweb Corp.*, No. 2:07-cv-00524, 2009 WL 901482, at *1 (E.D. Tex. Mar. 31, 2009) (citing *Genetic Implant Sys., Inc. v. Core-Vent Corp.*, 123 F.3d 1455, 1458 (Fed. Cir. 1997)). Since Texas's long-arm statute is coextensive with the due process inquiry, the two inquiries collapse into a single analysis of whether asserting jurisdiction comports with due process. *Johnston v. Multidata Sys. Int'l Corp.*, 523 F.3d 602, 609 (5th Cir. 2008); *ATEN Int'l Co. v. Emine Tech. Co.*, 261 F.R.D. 112, 118 (E.D. Tex. 2009). Due process is satisfied if (1) the defendant has established minimum contacts with the forum state; and (2) the exercise of jurisdiction would not offend

“traditional notions of fair play and substantial justice.” *Autobytel*, 2009 WL 901482, at *1 (quoting *Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 325 U.S. 310, 316 (1945)). Once the plaintiff demonstrates that the defendant has sufficient contacts with the forum, the burden shifts to the defendant to show that litigating in the forum would be unfair or unreasonable. *Celgard*, 792 F.3d at 1377.

Minimum contacts can be found on the basis of general jurisdiction, specific jurisdiction, or the stream of commerce theory. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011); *Beverly Hills Fan*, 21 F.3d at 1566. General jurisdiction exists when the defendant’s contacts with the forum are “so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 128 (2014). Specific jurisdiction is satisfied when the defendant has “purposefully directed [its] activities at the residents of the forum, and the litigation results from alleged inquires that arise from or relate to those activities.” *Icon Health & Fitness, Inc. v. Horizon Fitness, Inc.*, No. 5:08-cv-00026, 2009 WL 1025467, at *3 (E.D. Tex. Mar. 26, 2009) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

Under the stream of commerce theory, minimum contacts are found if the defendant “deliver[s] its products into the stream of commerce with the expectation that they will be purchased by customers in the forum State.” *Beverly Hills Fan*, 21 F.3d at 1566 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98 (1980)).¹ The Supreme Court is split over whether merely placing a product into the stream of commerce, defined as “the regular

¹ Placing a product into the stream of commerce can form the basis for specific jurisdiction if the plaintiff alleges patent infringement based on the defendant’s shipment of allegedly infringing products into the forum state. *Beverly Hills Fan*, 21 F.3d at 1565 (“The allegations are that defendants purposefully shipped the accused fan into Virginia through an established distribution channel. The cause of action for patent infringement is alleged to arise out of these activities. No more is usually required to establish specific jurisdiction.”).

and anticipated flow of products from manufacture to distribution to retail sale” (the “Brennan test”), or whether the existence of additional conduct by the defendant purposefully directed toward the forum state (the “O’Connor test”) satisfies this test. *Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 112, 117 (1987). The Federal Circuit has declined to resolve this split and determines whether the specific facts at issue support jurisdiction under either theory. *Beverly Hills Fan*, 21 F.3d at 1566.

Despite these divergent views, it is undisputed that “unilateral actions of a third party having no pre-existing relationship with the tortfeasor” will not confer jurisdiction over a foreign defendant. *Beverly Hills Fan*, 21 F.3d at 1565 (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 297). Put differently, jurisdiction “arises from the efforts of the [defendant] to serve, directly or indirectly, the market for its product.” *Id.* at 1566 (quoting *World-Wide Volkswagen*, 444 U.S. at 297).

If minimum contacts have been found, the defendant bears the burden of showing that it would be unfair or unreasonable to maintain suit in the forum. *Asahi*, 480 U.S. at 121–22 (Stevens, J., concurring in part and concurring in the judgment) (quoting *Int’l Shoe*, 326 U.S. at 320); *Beverly Hills Fan*, 21 F.3d at 1568. This analysis requires balancing various factors: “(1) the burden on the defendant; (2) the forum State’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985) (internal citations and quotation marks omitted). Jurisdiction is generally denied in the “rare situation in which the plaintiff’s interest and the state’s interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting

the defendant to litigation within the forum.” *Beverly Hills Fan*, 21 F.3d at 1568 (internal citations omitted).

B. Transfer Under 28 U.S.C. § 1404(a)

Section 1404(a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The first inquiry is “whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed.” *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (“*Volkswagen I*”). “Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” 28 U.S.C. § 1404(b); *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1519 (2017) (“§1404(b) is the sole and exclusive provision controlling venue in patent infringement actions.”) (internal citations and quotation marks omitted). For purposes of § 1404(b), a domestic corporation resides only in its state of incorporation. *TC Heartland*, 137 S. Ct. at 1521.

HTC is not a domestic corporation. However, as noted above, once this threshold inquiry is met, the court analyzes public and private factors relating to the convenience of parties and witnesses as well as the interests of particular venues in hearing the case. *Volkswagen I*, 371 F.3d at 203; *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). The private factors are “(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive.” *Volkswagen I*, 371 F.3d at 203 (internal citation omitted). The public factors are “(1) the administrative

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