

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Cameron Sutcliffe, et al.,
Plaintiffs,
vs.
Honeywell International, Inc., et al.,
Defendants.

No. CV-13-01029-PHX-PGR

ORDER

Pending before the Court is Defendants Airbus Military, S.L.'s and EADS Construcciones Aeronauticas S.A.'s Motion to Dismiss the Second Amended Complaint for Lack of Personal Jurisdiction Pursuant to Fed.R.Civ.P. 12(b)(2) (Doc. 38). Having considered the parties' memoranda in light of the relevant record, the Court finds the motion should be granted pursuant to Fed.R.Civ.P. 12(b)(2) because the Court lacks personal jurisdiction over either Airbus Military, S.L. or EADS Construcciones Aeronáuticas S.A.¹

¹

Although the moving defendants, without the joinder of the plaintiffs, have requested oral argument, the Court concludes that oral argument would not significantly aid the decisional process.

The Court notes that it has intentionally not discussed every argument raised by the parties and that those arguments not discussed were considered by

1 Background

2 This action arises from the crash of a CASA C212-CC40, a twin engine aircraft
3 (“the Aircraft”), in Saskatoon, Saskatchewan, Canada on April 1, 2011. On the day
4 of the crash, the Aircraft, owned by non-party Fugro Aviation Canada Ltd., was being
5 used to conduct an aerial geophysical survey near Saskatoon. On board the Aircraft
6 were two pilots, Cameron Sutcliffe and Brock Gorrell, and an equipment operator,
7 Iaroslav Gorokhovski. Approximately three hours into the flight, the Aircraft’s right
8 engine failed and the pilots attempted to return to the Saskatoon airport but could not
9 do so because the Aircraft’s left engine failed about fourteen minutes later while the
10 Aircraft was on its final approach to the airport and the Aircraft ended up crashing
11 into a noise abatement wall next to a street in Saskatoon. Both pilots were injured
12 in the crash, and Gorokhovski was killed. The Second Amended Complaint (“SAC”),
13 filed by plaintiffs Sutcliffe and Gorell and Galina Gorokhovskaia, in her personal
14 capacity and on behalf of Gorokhovski’s beneficiaries, alleges a separate claim of
15 negligence against each of three groups of defendants: Honeywell International, Inc.,
16 alleged to be the successor to Garrett, the company that designed, manufactured
17 and distributed the Aircraft’s TPE331 turboprop engines; EADS Construcciones
18 Aeronáuticas, S.A. (“EADS CASA”) and Airbus Military S.L. (“Airbus Military”), both
19 alleged to be the manufacturer of the C212 aircraft, with Airbus Military alleged to be
20 the successor to EADS CASA; and Shimadzu Corporation and Shimadzu Precision
21 Instruments, Inc., alleged to be suppliers of components used in the Aircraft’s

22
23 _____
24 the Court to be unnecessary to its resolution of the pending motion.

25 The Court further notes that it is exercising its discretion to resolve the
26 personal jurisdiction issue prior to resolving the pending issue of whether it has
subject matter jurisdiction over this action based on diversity of citizenship. See
Ruhrgas AG v. Marathon Oil, 526 U.S. 574 (1999).

1 engines.²

2 More specifically, Count Three of the SAC alleges that EADS CASA and
3 Airbus Military, without distinguishing between them, “failed to meet the duties [of
4 care to pilots and passengers in CASA C-212 aircraft] required of them as the
5 designer, manufacturer, type certificate holder, and distributor of the Aircraft” (¶ 49),
6 and that their acts of negligence did or could include the following (¶ 50):

- 7 A. Failing to conduct adequate test[ing] to ensure the Aircraft could be
safely operated with one engine inoperative;
- 8 B. Designing a fuel system which was incapable of supplying the
collector tank with sufficient fuel when the Aircraft was flown banked
9 in the operating engine;
- 10 C. Failing to include screens on the ejector pumps;
- 11 D. Specifying inspection techniques and intervals that were unable to
detect foreign objects in ejector pumps and fuel tanks;
- 12 E. Failing to have an effective system in place to identify and report
engine failures caused by low fuel levels in collector tanks, including
13 failures identified in service difficulty, incident and accident reports,
warranty claims, and communications with engine and fuel pump
14 manufacturers, operators, repair stations, pilots, mechanics,
transportation safe[ty] boards, and military and civil aviation
authorities;
- 15 F. Failing to apply state of the art ergonomics and human factors
principles in the design of the cockpit, including the annunciator
panel;
- 16 G. Designing the annunciator panel with lights grouped by system rather
than engine;
- 17 H. Specifying inadequate emergency procedures to engine failures;
- 18 I. Failing to warn that single engine operations could lead to fuel
starvation of the operating engine; and
- 19 J. Failing to warn of the risks of debris injection by ejector pumps.

20 The SAC alleges that the named plaintiffs, Sutcliffe, Gorrell and Galina
21 Gorokhovskaia, are all residents of Canada, as was decedent Gorokhovski, and that
22 his beneficiaries are also residents of Canada with the exception of his parents who
23 are alleged to be citizens of the United States residing in Georgia. None of the
24

25 2

26 Both Shimadzu defendants were previously dismissed from this action.

1 plaintiffs are alleged to have any connection with Arizona. Defendant Honeywell is
2 alleged to be an Arizona corporation with its principal place of business in Arizona,
3 and defendants EADS CASA and Airbus Military are alleged to be Spanish
4 corporations with their principal places of business in Madrid, Spain.

5 Personal Jurisdiction-Related Evidence³

6 The defendants have supported their motion with two declarations from Pedro
7 Blanco, EADS CASA's head of legal affairs.⁴ The plaintiffs, whose SAC contains no
8 personal jurisdiction allegations, have supported their opposition to the motion with
9 the declaration of Jamie Thornback, a Canadian attorney associated with the
10 plaintiffs who specializes in aviation accidents, and various website documents
11 submitted by Thornback.

12 There is no dispute that both engines that were in the Aircraft at the time of the
13 crash in April 2011 had been originally purchased by Construcciones Aeronáuticas
14 SA ("CASA"), a predecessor to EADS CASA, from co-defendant Honeywell's
15 predecessor in Arizona in 1980 (left engine) and 1981 (right engine). There is also
16 no dispute that the crash-related engines were not the engines that had been
17 originally installed on the Aircraft by CASA at the time of its manufacture in 1980; the

18
19

³

20 The plaintiffs contend at least twice in their response that the
21 defendants' motion to dismiss, which has been brought pursuant to Rule 12(b)(2),
22 must be treated as a motion for summary judgment pursuant to Fed.R.Civ.P. 12(d)
23 because evidentiary matters outside of the pleadings have been presented to the
24 Court. This contention is baseless because Rule 12(d), by its very terms, mandates
25 such a conversion only as to motions brought pursuant to Fed.Civ.P. 12(b)(6) and
26 12(c).

⁴

25 The Court notes that it has not relied on any disputed evidence set forth
26 in Blanco's supplemental declaration filed with the defendants' reply brief.

1 right engine was installed in the Aircraft in January 2005 by a non-party and the left
2 engine was installed in August 2010 by a non-party.

3 A. EADS CASA's evidence

4 According to the evidence submitted on behalf of EADS CASA by its declarant
5 Blanco, CASA was renamed EADS CASA in 1999 when it became a subsidiary of
6 the European Aeronautic Defense and Space Company ("EADS"); EADS CASA
7 became a subsidiary of EADS N.V. in April 2009, which was renamed Airbus Group
8 N.V. in June 2014. EADS CASA designs, manufactures, assembles and sells
9 certain aircraft, including the C-212 and its variants. The Aircraft was delivered in
10 1981 to American Casa Distributor, Inc., a California company that is independent
11 from EADS CASA, and thereafter EADS CASA did not determine or play any role
12 in who purchased or used the Aircraft. The Aircraft was extensively modified by its
13 owner in 1989 and received a Canadian type limited certificate; EADS CASA was
14 not involved in those modifications.

15 Blanco also declares that the C-212 aircraft and all of its variants were
16 designed, manufactured, assembled, tested, distributed, and sold in Spain, and
17 decisions about the issuance of warnings, operational procedures, and emergency
18 procedures to customers and operators were and are made in Spain. He also states
19 that none of the specific acts of negligence alleged against EADS CASA in Count
20 Three of the SAC were committed in Arizona by it or any corporate affiliate or
21 predecessor.

22 Blanco further declares that EADS CASA has not made any direct sales to
23 Arizona customers in the previous ten years, and that it and its predecessors make
24 a limited number of purchases from Arizona companies. He also states that EADS
25 CASA North America, which was previously owned as a subsidiary of EADS CASA,
26

1 had sales of approximately \$47,881 to customers in Arizona between July 2008 and
2 October 2011, and that EADS CASA North America is now a subsidiary of Airbus
3 Group, Inc., which is a corporation wholly owned by Airbus Group, N.V.

4 Blanco also declares that in the past ten years EADS CASA has not
5 maintained any offices, employees, or representatives, including sales personnel,
6 in Arizona; that it has not had any subsidiaries or affiliates with offices, employees
7 or agents in Arizona; that it has not advertised any aircraft, parts, equipment, or
8 services in Arizona or to any customer whose principal place of business is in
9 Arizona; that it has not owned any property or maintained any bank accounts in
10 Arizona; that it has not sued or previously been sued in Arizona; and it has not been
11 registered to do business in Arizona.

12 B. Airbus Military's evidence

13 According to the evidence submitted by declarant Blanco on behalf of Airbus
14 Military, the company was founded in 2002 for the sole purpose of designing,
15 manufacturing, assembling and selling a single aircraft, the A400M, and the
16 company has never played any role in the design, manufacture, assembly, sale, or
17 after-sale support of the CASA C-212-CC40 aircraft, its engines, or any of its
18 components.

19 Blanco also declares that Airbus Military has never maintained any offices,
20 employees, or representatives, including sales personnel, in Arizona; that it has
21 never had any subsidiaries or affiliates with offices, employees or agents in Arizona;
22 that it has never sold aircraft, parts, or equipment to, or provided any services to any
23 customer in Arizona; that it has never advertised any aircraft or parts, equipment or
24 services in Arizona or to any customer whose principal place of business is in
25 Arizona; that it has never owned any property, maintained any bank accounts, or
26

1 paid any taxes in Arizona; that it has never sued or previously been sued in Arizona;
2 and that it has never been registered to do business in Arizona. Blanco further
3 declares that Airbus Military has never had any offices, employees, property or
4 representatives in the United States.

5 C. The plaintiffs' evidence

6 The plaintiffs, through its declarant Jamie Thornback, has submitted research
7 information that Thornback obtained from several websites, including Airbus-related
8 websites and Honeywell's website. Thornback states in his declaration that he has
9 investigated and litigated other accidents involving TPE331 engines, and that he
10 conducted research regarding the Aircraft's crash and potentially responsible parties
11 both before and after this action was filed. Based on his research, Thornback states
12 that 477 C212 aircraft were manufactured between 1971 and 2013, which means
13 that Airbus Military/EADS CASA and their predecessors have purchased at least 954
14 TPE331-10 engines from Garrett/Honeywell; he also states that 13,000 TPE331
15 engines have shipped from Honeywell's Arizona facility since 1961, which means
16 that Airbus Military/EADS CASA have purchased at least 7% of the TPE331 engines
17 manufactured by Honeywell. He further states that in 2009 the general procurement
18 activities of Airbus, Airbus Military Astrium, EADS, EADS Defense & Security and
19 Eurocopter were merged into a single department, the EADS General Procurement
20 share service, which is hosted by Airbus; that Airbus has purchased materials from
21 several Arizona companies, that Airbus contributed \$165 million in Arizona in 2009,
22 working with sixteen suppliers, and that Honeywell has a longstanding relationship
23 with Airbus and has been a part of every aircraft Airbus has developed.

24 Discussion

25 EADS CASA and Airbus Military ("the defendants") have moved to dismiss the
26

1 negligence claim alleged against them pursuant to Fed.R.Civ.P. 12(b)(2) for lack of
2 personal jurisdiction; they argue that the Court has neither general nor specific
3 personal jurisdiction over them. The burden of proof is on the plaintiffs to show that
4 personal jurisdiction is appropriate, and they need to make that showing as to both
5 of the defendants. Walden v. Fiore, 134 S.Ct. 1115, 1123 (2014). Since the Court
6 is only considering the parties' pleadings and their submitted written materials, the
7 plaintiffs need only make a prima facie showing of jurisdictional facts to defeat the
8 motion to dismiss, Martinez v. Aero Caribbean, 764 F.3d 1062, 1066 (9th Cir.2014),
9 *i.e.*, they need only demonstrate facts that if true would support jurisdiction over the
10 defendants. Ballard v. Savage, 65 F.3d 1495, 1498 (9th Cir.1995).

11 Where, as here, there is no applicable federal statute governing personal
12 jurisdiction, the Court applies the law of the state in which it sits. Martinez, at 1066.
13 Arizona's long-arm statute provides that an Arizona court may exercise personal
14 jurisdiction over a nonresident defendant to the maximum extent permitted under the
15 Due Process Clause of the United States Constitution. Ariz.R.Civ.P. 4.2(a); A. Uberti
16 and C. v. Leonardo, 892 P.2d 1354, 1358 (Ariz.1995). The Constitution permits
17 courts to exercise personal jurisdiction over nonresident defendants if there are at
18 least "minimum contacts" with the forum such that the exercise of jurisdiction "does
19 not offend traditional notions of fair play and substantial justice." International Shoe
20 Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).
21 The "minimum contacts' inquiry principally protects the liberty of the nonresident
22 defendant, not the interests of the plaintiff." Walden v. Fiore, 134 S.Ct. at 1125 n.9.

23 A. General Jurisdiction

24 The plaintiffs argue in part that the Court possesses general personal
25 jurisdiction over the defendants. General jurisdiction allows a defendant to be haled
26

1 into court in the forum state to answer for any of its activities anywhere in the world.
2 Martinez v. Aero Caribbean, 764 F.3d at 1066. The Supreme Court has made it
3 clear that general jurisdiction “requires affiliations so continuous and systematic as
4 to render the foreign corporation essentially at home in the forum State, *i.e.*,
5 comparable to a domestic enterprise in that State.” Daimler AG v. Bauman, 134
6 S.Ct. 746, 758 n.11 (2014) (internal quotation marks, brackets, and citation omitted).
7 This standard is a “demanding” one, Martinez, at 1070, and the paradigm fora for
8 general jurisdiction over a corporation are its place of incorporation and its principal
9 place of business, Daimler, at 760, and only in an “exceptional case” will general
10 jurisdiction be available anywhere else. *Id.* at 761 n.19; Martinez, at 1070. It is
11 undisputed that Arizona is neither the place of incorporation nor the primary place
12 of business of either EADS CASA or Airbus Military.

13 The Court, reviewing the evidence of record in the light most favorable to the
14 plaintiffs, concludes that the plaintiffs have failed to establish a prima facie showing
15 of general jurisdiction over either EADS CASA or Airbus Military because their
16 factual showing is insufficient as a matter of law to render these defendants
17 “essentially at home” in Arizona.

18 The plaintiffs’ argument that the “numerous contacts” between the defendants
19 and Arizona are sufficient to establish general jurisdiction is simply untenable. First,
20 the plaintiffs’ theory of general jurisdiction is not based solely on the Arizona-related
21 contacts of the defendants, but rather on the aggregate in-state activities of
22 unspecified Airbus-connected entities affiliated or related to them. This single
23 enterprise contention, whether it be grounded in an agency or alter ego theory, and
24 it’s not clear whether the plaintiffs are invoking one or both theories, is insufficient
25 to establish general personal jurisdiction. As to the former, the Supreme Court
26

1 essentially rejected an agency theory of general jurisdiction in Daimler: “The Ninth
2 Circuit’s agency theory appears to subject foreign corporations to general jurisdiction
3 whenever they have an in-state subsidiary or affiliate, an outcome that would sweep
4 even the sprawling view we rejected in Goodyear [Dunlop Tires Operations, S.A. v.
5 Brown, 131 S.Ct. 2846 (2011)]”. As to the latter, the plaintiffs have not made any
6 showing sufficient to establish that either defendant is the alter ego of some other
7 unspecified Airbus-related entity with Arizona contacts. Under Arizona law,
8 corporate status is not to be lightly disregarded, Chapman v. Field, 602 P.2d 481,
9 483 (Ariz.1979), and alter ego status is not demonstrated absent proof of both (1)
10 unity of control and (2) that the observance of corporate form would sanction a fraud
11 or promote injustice. Gatecliff v. Great Republic Life Ins. Co., 821 P.2d 725, 728
12 (Ariz.1991). The Court agrees with the defendants that the isolated examples of
13 cooperation among Airbus-related entities that the plaintiffs identify from declarant
14 Thornback’s internet research do not amount to any evidence of the injustice or
15 fraud requirement necessary to pierce the corporate veil.

16 Secondly, and more importantly, general personal jurisdiction would not exist
17 here even if all of the Arizona-based contacts by any Airbus-related entity mentioned
18 by the plaintiffs are attributed to the defendants. For purposes of this motion, the
19 Court accepts that purchases of aerospace-related products from Arizona
20 companies by Airbus-related entities are systematic, continuous, and substantial.
21 But those procurement activities alone are insufficient because the proper inquiry is
22 not, as the plaintiffs seem to suggest, whether a defendant’s contacts in the
23 aggregate in the forum state are extensive. The Supreme Court has now made it
24 clear that since a corporation is normally at home for purposes of general personal
25 jurisdiction only at its place of incorporation and its principal place of business, an
26

1 argument that a foreign corporation is subject to general jurisdiction in any state in
2 which it conducts a systematic, continuous and substantial course of business is
3 “unacceptably grasping.” Daimler AG v. Bauman, 134 S.Ct. at 761. This is so
4 because the inquiry into general jurisdiction is not solely focused on the magnitude
5 of the foreign defendant’s in-state contacts, but on “an appraisal of a corporation’s
6 activities in their entirety, nationwide and worldwide. A corporation that operates in
7 many places can scarcely be deemed at home in all of them. Otherwise, ‘at home’
8 would be synonymous with ‘doing business’ tests framed before specific jurisdiction
9 evolved in the United States.” *Id.* at 762. See also, Helicopteros Nacionales de
10 Colombia, S.A. v. Hall, 466 U.S. 408, 418 (1984) (“[W]e hold that mere purchases
11 even if occurring at regular intervals, are not enough to warrant a State’s assertion
12 of *in personam* jurisdiction over a nonresident corporation in a cause of action not
13 related to those purchase transactions.”)

14 The plaintiffs have simply not made the requisite showing that this is an
15 exceptional case permitting general personal jurisdiction over defendants
16 incorporated and headquartered in Spain and the Court concludes that subjecting
17 the defendants to general jurisdiction in Arizona is incompatible with due process.
18 See Helicopteros, at 417-18 (Supreme Court concluded that a Colombian
19 corporation that owned a helicopter that crashed in Peru killing a U.S. citizen was not
20 subject to general personal jurisdiction in a wrongful death action brought in Texas.
21 In so deciding, the Supreme Court noted that the defendant had no place of
22 business in Texas and had never been licensed to do business there. It further
23 noted that the defendant’s contacts with Texas, which included that its CEO had
24 gone to Texas to negotiate a contract for transportation services with the plaintiffs’
25 employers, it had deposited checks drawn on a Texas bank, it had made significant
26

1 purchases from Bell Helicopter in Texas, and had sent its personnel to Texas for
2 training at Bell's facilities there, were insufficient to satisfy due process requirements.
3 See *also*, Martinez v. Aero Caribbean, 764 F.3d at 1070 (Ninth Circuit concluded
4 that a foreign aircraft manufacturer sued for wrongful death in California over an
5 airplane crash in Cuba was not subject to general personal jurisdiction in California.
6 In so determining, the court noted that this was not an exceptional case permitting
7 general personal jurisdiction because the defendant was organized and had its
8 principal place of business in France, it had no offices, staff or other physical
9 presence in California, it was not licensed to do business in California, and its
10 California contacts were minor compared to its worldwide activities. While the
11 defendant did have numerous contacts with California, including that it had contracts
12 worth between \$225 and \$450 million to sell airplanes to a California corporation, it
13 had contracts with eleven California component suppliers, it had sent company
14 representatives to California to attend industry conferences, promote its products,
15 and meet with its suppliers, its aircraft were being used in California, and it had
16 advertised in trade publications with distribution in California, these contacts were
17 insufficient to make the defendant at home in California.)

18 B. Specific Jurisdiction

19 The plaintiffs also argue that the Court has specific jurisdiction over the
20 defendants, basically because the engines that were on the Aircraft at the time of the
21 crash were purchased by EADS CASA's corporate predecessor in Arizona. The
22 inquiry into whether a forum state may assert specific jurisdiction over a nonresident
23 defendant focuses on the relationship among the defendant, the forum, and the
24 litigation. Walden v. Fiore, 134 S.Ct. at 1121. A three-part is used to determine
25 whether a defendant has sufficient contacts with the forum state to be subjected to
26

1 specific personal jurisdiction: (1) the nonresident defendant must purposefully direct
2 his activities or consummate some transaction with the forum or a forum resident,
3 or perform some act by which he purposefully avails himself of the privilege of
4 conducting activities in the forum, thereby invoking the benefits and protections of
5 its laws; (2) the claim must be one which arises out of or relates to the nonresident
6 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport
7 with fair play and substantial justice, *i.e.*, it must be reasonable. Picot v. Weston,
8 F.3d __, 2015 WL 1259528, at *3 (9th Cir. March 19, 2015). All three factors must
9 exist for personal jurisdiction to apply. Omeluk v. Langsten Slip & Batbyggeri A/S,
10 52 F.3d 267, 270 (9th Cir.1995). The plaintiffs have the burden of proving the first
11 two prongs, and if they do so, the burden shifts to the defendants to set forth a
12 compelling case that the exercise of jurisdiction would not be reasonable. Picot, at
13 *4.

14 (1) Purposeful Availment

15 The first prong of the test is analyzed under either a purposeful availment
16 standard or a purposeful direction standard, which are two distinct concepts.
17 Washington Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 672 (9th Cir. 2012).
18 While the Ninth Circuit generally applies a "purposeful direction" or "effects" test for
19 claims sounding in tort, *id.*, it has, at least in some cases, limited the use of that test
20 to claims involving intentional torts. See Holland America Line Inc. v. Wärtsilä North
21 America, Inc., 485 F.3d 450, 460 (9th Cir.2007) ("[I]t is well established that the
22 *Calder* [purposeful direction] test applies only to intentional torts, not to the breach
23 of contract and negligence claims[.]"); *accord*, Marlyn Nutraceuticals v. Improvita
24 Health Products, 663 F.Supp.2d 841, 850 (D.Ariz. 2009) (Court applied the
25 purposeful availment test to a negligent misrepresentation claim). Since the sole
26

1 claim against the defendants is a negligence claim, a non-intentional tort, the Court
2 will apply the purposeful availment standard.⁵

3 This standard focuses on whether a nonresident defendant's conduct and
4 connection with the forum are such that it should reasonably anticipate being haled
5 into court there. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297
6 (1980). It is based on the presumption that it is reasonable to require a defendant
7 to be subject to the burden of litigating in a state in which it conducts business and
8 benefits from its activities in that state. Brainerd v. Governors of the University of
9 Alberta, 873 F.2d 1257, 1259 (9th Cir.1989). This requirement is met if the contacts
10 proximately result from actions by the defendant itself that create a substantial
11 connection with the forum, such as where the defendant has deliberately engaged
12 in significant activities within the forum or has created continuing obligations
13 between itself and forum residents. Burger King Corp. v. Rudzewicz, 471 U.S. 462,
14 474-76 (1985). But the defendant may not be haled into a jurisdiction as a result of
15 the defendant's random, fortuitous, or attenuated contacts with the forum. *Id.* at 474.

16 The plaintiffs argue in part that EADS CASA purposely availed itself of the
17 rights and privileges of Arizona law via its purchase of the Aircraft's engines in
18 Arizona from Honeywell.⁶ The Court, viewing the evidence in a light most favorable

19 5

20 The Court notes that if the purposeful direction standard were to be
21 applied here, the Court would conclude that no specific personal jurisdiction exists
22 because the plaintiffs failed to meet their burden as to the first prong. This is
23 because one element of that standard is that the defendants caused harm that they
24 knew would be likely to be suffered in the forum state, Washington Shoe Co., 704
25 F.3d at 673, and the plaintiffs, who have not alleged that they have any connection
26 at all with Arizona, clearly have not alleged that they suffered any harm in Arizona.

6

25 Although the Court recognizes that the Arizona-related contacts at issue
26 are those of EADS CASA or of its corporate predecessor CASA, the Court treats the

1 to the plaintiffs, concludes that the plaintiffs have met this prong because they have
2 sufficiently established that the defendants have deliberately engaged in commercial
3 activities within Arizona that cannot be said to be merely attenuated.

4 (2) Arising Out Of

5 In order for the defendants' purposeful activities in Arizona to support specific
6 jurisdiction, the plaintiffs' claims against them must arise out of those activities. The
7 Ninth Circuit relies on a "but for" test to determine whether a particular claim arises
8 out of forum-related activities. Ballard v. Savage, 65 F.3d at 1500. The question
9 presented here is whether but for the defendants' contacts with Arizona would the
10 plaintiffs' claims against them have arisen. *Id.* The plaintiffs' contention is that "but
11 for' EADS CASA's purchase of engines from Honeywell there would be no action
12 against EADS CASA in Arizona."

13 The Court is unpersuaded that this factor has been met because it concludes
14 that the "arising out of" issue cannot be reduced to the simplistic and sweeping
15 approach taken by the plaintiffs given the facts of record. The causation element
16 requires a more direct relationship between the relevant forum contact, the mere
17 purchase of the engines, and the actual negligence claim brought against the
18 moving defendants in the SAC. As the defendants correctly point out, the plaintiffs
19 do not allege that the purchase of the engines in Arizona constituted a negligent act
20 on the defendants' part, nor do they allege that any of the specific acts of negligence
21 raised against the defendants in ¶ 50 of Count Three of the SAC, *i.e.*, the design of
22 the C-212 aircraft's fuel system, the design of its cockpit and instrument panel, the
23 testing of the aircraft, the specification of inspection techniques for the aircraft, and

24
25 defendants as being a single entity for purposes of the specific jurisdiction analysis
26 given the plaintiffs' allegation and evidence that Airbus Military is the successor to
EADS CASA.

1 decisions about whether and what warnings to issue, occurred in Arizona. While the
2 design and/or manufacture of the engines themselves underlies the plaintiffs'
3 negligence claim against Honeywell, and their negligence claim against the former
4 Shimadzu defendants, it does not appear to directly underlie their negligence claim
5 against the moving defendants.

6 (3) Reasonableness

7 But even if the first two prongs of the specific jurisdiction test are met, the
8 assertion of personal jurisdiction against the defendants is unreasonable if it does
9 not comport with fair play and substantial justice. The Court must consider and
10 balance seven factors in determining the reasonableness of its exercise of personal
11 jurisdiction, none of which are dispositive in itself. Terracom v. Valley National Bank,
12 49 F.3d 555, 561 (9th Cir.1995).

13 The first reasonableness factor is the extent of the defendants' purposeful
14 interjection into Arizona. Notwithstanding the Court's conclusion that the plaintiffs
15 have satisfied the purposeful availment prong, this factor tilts at least somewhat in
16 the defendants' favor given that the defendants' relevant connections with Arizona
17 are sparse. See Core-Vent Corp. v. Nobel Industries AB, 11 F.3d 1482, 1488 (9th
18 Cir.1993) (Ninth Circuit noted that since the foreign defendants' contacts with the
19 forum were attenuated, this first factor weighed in their favor, but that it did not weigh
20 heavily in their favor given the court's assumption that those contacts were sufficient
21 to meet the purposeful availment prong.)

22 The second factor is the burden on the defendants of defending this action in
23 Arizona. This factor favors the defendants because they are Spanish businesses
24 headquartered in Spain with no physical presence in Arizona, and there is no
25 evidence of record that any of the specific allegations of negligence against them
26

1 took place anywhere other than in Spain. “The Supreme Court has recognized that
2 defending a lawsuit in a foreign country can impose a substantial burden on a
3 nonresident alien. ‘The unique burdens placed upon one who must defend
4 oneself in a foreign legal system should have significant weight in assessing the
5 reasonableness of stretching the long arm of personal jurisdiction over national
6 borders.’” Core-Vent, at 1488 (quoting Asahi Metal Industry Co. v. Superior Court,
7 480 U.S. 102, 114 (1987)); see also, Glencore Grain Rotterdam B.V. v. Shivnath Rai
8 Harnarain Co., 284 F.3d 1114, 1125-26 (9th Cir.2002) (Ninth Circuit, in assessing this
9 second factor, noted that the burden on the foreign defendant to defend a suit in
10 California “appears great, given that it is incorporated in India, owns no property in
11 the forum, and has no employees or persons authorized to act on its behalf there.
12 Moreover, its potential witnesses and evidence are likely half a world away.”)

13 The third factor is the extent to which the exercise of jurisdiction would conflict
14 with the sovereignty of the defendants’ state. This factor favors the defendants. The
15 Ninth Circuit has recognized that where the nonresident defendant “is from a foreign
16 nation rather than another state, the sovereignty barrier is high and undermines the
17 reasonableness of personal jurisdiction.” Glencore Grain Rotterdam, at 1126.

18 The fourth factor is the forum state’s interest in adjudicating the dispute. This
19 factor weighs in the defendants’ favor because Arizona’s interest in this action, at
20 least as to the negligence claim against these defendants, is at best very slight for
21 the following reasons: none of the plaintiffs are Arizona residents and none of them
22 were harmed in Arizona; while the Aircraft’s engines were purchased from an
23 Arizona company, those purchases occurred in 1980 and 1981, over 30 years prior
24 to the crash of the Aircraft; the specific allegations of negligence raised against these
25 defendants occurred outside of Arizona; the Aircraft was not built or sold in Arizona,
26

1 and there is no evidence that it was ever operated in Arizona. See Asahi Metal
2 Industry Co., 480 U.S. at 114 (“Because the plaintiff is not a California resident,
3 California’s legitimate interests in the dispute have considerably diminished.”)

4 The fifth factor considers what forum is the most efficient judicial resolution of
5 the controversy, which is evaluated by looking at where the witnesses and the
6 evidence are likely to be located. Terracom v. Valley National Bank, 49 F.3d at 561.
7 This is essentially a neutral factor here because witnesses and evidence will likely
8 be located in Arizona, Canada, and Spain.

9 The sixth factor is the importance of the forum to the plaintiffs’ interest in
10 convenient and effective relief. Notwithstanding the plaintiffs’ statement that they
11 filed suit in Arizona for a variety of reasons, including their enhanced ability to obtain
12 discovery in this forum, particularly against Honeywell, this factor is essentially
13 insignificant in this case given that Arizona is neither the plaintiffs’ place of residence
14 nor the location of the crash. See Core-Vent Corp., 11 F.3d at 1490 (Ninth Circuit
15 noted that “neither the Supreme Court nor our court has given much weight to
16 inconvenience to the plaintiff” and that “a mere preference” on the plaintiff’s part for
17 its chosen forum does not affect the balancing.)

18 The seventh factor is the existence of an alternative forum. This factor weighs
19 in the defendants’ favor because the plaintiffs, who bear the burden of proving the
20 unavailability of an alternative forum, *id.*, have not sufficiently established that they
21 would be precluded from effectively litigating their negligence claim against these
22 defendants in Canada or Spain.

23 In summary, the Court, having balanced all of the reasonableness-related
24 factors, concludes that the moving defendants have presented a sufficiently
25 compelling argument that the exercise of personal jurisdiction over them by this
26

1 Court would be improper because it would offend the traditional notions of fair play
2 and substantial justice.

3 C. Jurisdictional Discovery

4 The plaintiffs request that if the Court fails to summarily deny the defendants'
5 motion that they be afforded the opportunity to conduct formal jurisdictional
6 discovery related to the internal relationships among the various Airbus-related
7 entities and those entities' contacts with Arizona. They state that such discovery will
8 show, for example, that the defendants' purchases of Honeywell's products are
9 systematic, continuous, and substantial.


10 The Court agrees with the defendants that no such discovery is warranted
11 here because, based on the sufficiently developed record already presented by the
12 parties, the requested discovery would not reveal facts sufficient to constitute a basis
13 for either general or specific personal jurisdiction. See Pebble Beach Co. v. Caddy,
14 453 F.3d 1151, 1160 (9th Cir.2006) (“[W]here a plaintiff’s claim of personal
15 jurisdiction appears to be both attenuated and based on bare allegations in the face
16 of specific denials made by the defendants, the Court need not permit even limited
17 discovery[.]”); Martinez v. Aero Caribbean, 764 F.3d at 1070 (Ninth Circuit concluded
18 that it is not an abuse of discretion to refuse to grant jurisdictional discovery when
19 it is clear that additional discovery would not demonstrate facts sufficient to
20 constitute a basis for personal jurisdiction.); Boschetto v. Hansing, 539 F.3d 1011,
21 1020 (9th Cir. 2008) (Ninth Circuit noted that the denial of jurisdictional discovery is
22 not an abuse of discretion when the plaintiffs’ request is based only on their belief
23 that discovery will enable them to demonstrate sufficient forum business contacts to
24 establish the court’s personal jurisdiction.) Therefore,

25 IT IS ORDERED that Defendant Shimadzu Corporation’s Motion to Amend
26

1 Caption (Doc. 40) is granted to the extent that the caption of this action is amended
2 to reflect that the sole remaining named defendant is Honeywell International, Inc.

3 IT IS FURTHER ORDERED that Defendant Airbus Military, S.L.'s and EADS
4 Construcciones Aeronauticas S.A.'s Motion to Dismiss the Second Amended
5 Complaint for Lack of Personal Jurisdiction Pursuant to Fed.R.Civ.P. 12(b)(2) (Doc.
6 38) is granted to the extent that the Second Amended Complaint (Doc. 12) is
7 dismissed as to defendants Airbus Military, S.L. and EADS Construcciones
8 Aeronáuticas S.A. pursuant to Fed.R.Civ.P. 12(b)(2) for lack of personal jurisdiction.

9 DATED this 30th day of March, 2015.

10
11 
12 Paul G. Rosenblatt
United States District Judge