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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 OEM Group Incorporated, an Arizona
corporation,

10 Plaintiff,

11 v.

12 SEMSYSCO Incorporated, a Montana
corporation, et al.,

13 Defendants.
14

No. CV13-1960 PHX DGC

ORDER

15 Defendant SEMSYSCO, Inc. has filed a motion to dismiss for lack of personal
16 jurisdiction. Doc. 18. The motion is fully briefed. Docs. 25, 29. The Court discussed
17 the motion with the parties at the Case Management Conference held on
18 February 13, 2014.

19 This is a patent infringement case. SEMSYSCO's motion asserts that it is a
20 holding corporation located in Montana and does not make, use, sell, offer to sell, or
21 import any products or services, including those alleged to be infringing of Plaintiff's
22 patents. In response, Plaintiff OEM Group, Inc. does not dispute this assertion. OEM
23 presents no evidence that SEMSYSCO has taken any action that violated its patents or
24 affected interests within the State of Arizona. Instead, OEM argues that SEMSYSCO
25 may be an alter-ego of Co-defendant SEMSYSCO Austria, or that SEMSYSCO may be
26 liable for inducing infringement. The Court finds neither argument persuasive.

27 OEM presents no factual allegations in its complaint, and no factual assertions in
28 its response, to show that SEMSYSCO is the alter-ego of SEMSYSCO Austria. Indeed,

1 the words “alter-ego” do not even appear in OEM’s complaint. *See* Doc. 1. OEM’s
2 response to the motion to dismiss does contain factual assertions and supporting
3 documentation concerning a relationship between SEMSYSCO Austria and an entity
4 known as The Thompson Group, but The Thompson Group is separate from
5 SEMSYSCO and is not a party to this case. Doc. 25 at 2-4. OEM candidly states that “it
6 is unknown” whether SEMSYSCO is the alter-ego of SEMSYSCO Austria. Doc. 25 at
7 10.

8 To defeat a motion to dismiss for lack of personal jurisdiction on the basis of
9 pleadings and affidavits, a plaintiff must make only a prima facie showing of jurisdiction.
10 *Nuance Communications, Inc. v. Abby Software House*, 626 F.3d 1222, 1231 (Fed. Cir.
11 2010). But OEM has not made even a prima facie showing. Its complaint does not set
12 forth any facts to show that SEMSYSCO is the alter-ego of SEMSYSCO Austria, and its
13 response fails to provide such facts.

14 OEM has also failed to make a prima facie showing that SEMSYSCO is subject to
15 personal jurisdiction on the basis of having induced infringement. OEM argues that
16 SEMSYSCO’s motion “does not rule out allegations that [SEMSYSCO] induced
17 infringement,” and cites to paragraphs 20, 35, 50, and 65 of its complaint. Doc. 25 at 9.
18 These paragraphs in the complaint, however, do not allege any facts upon which it could
19 be asserted that SEMSYSCO is liable for inducing infringement. To the extent OEM is
20 suggesting that SEMSYSCO Austria induced infringement by selling products to others,
21 SEMSYSCO could be liable for that conduct only if it were the alter-ego of SEMSYSCO
22 Austria, an assertion that has not been supported. To the extent OEM suggests that
23 SEMSYSCO itself has undertaken actions that constitute inducement of infringement, it
24 has pointed to no factual allegations and no supporting evidence to back up such a claim.
25 Thus, OEM has failed to establish a prima facie case of jurisdiction over SEMSYSCO
26 based on inducement of infringement.

27 OEM asks the Court to permit jurisdictional discovery. The Federal Circuit has
28 instructed that a request for jurisdictional discovery is to be decided on the basis of Ninth

1 Circuit law, not Federal Circuit law. *See Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*,
2 566 F.3d 1012, 1021 (Fed. Cir. 2009). The Ninth Circuit has held that where “a
3 plaintiff’s claim of personal jurisdiction appears to be both attenuated and based on their
4 allegations in the face of specific denials made by defendants, the Court need not permit
5 even limited discovery[.]” *Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 562 (9th Cir.
6 1995). As discussed above, Plaintiff has not even made bare allegations that
7 SEMSYSCO is an alter-ego of SEMSYSCO Austria, and no factual allegations that
8 SEMSYSCO engaged in inducement of infringement. Nor has OEM provided factual
9 support for such assertions in its response to the motion to dismiss. Given the utter lack
10 of supporting facts for the suggestion that SEMSYSCO is subject to personal jurisdiction
11 in Arizona, the Court will dismiss the claim against SEMSYSCO and deny OEM’s
12 request for jurisdictional discovery under *Terracom*.

13 **IT IS ORDERED** that Defendant SEMSYSCO, Inc.’s motion to dismiss for lack
14 of personal jurisdiction (Doc. 18) is **granted**. In light of this ruling, the Court will not
15 enter a Case Management Order until SEMSYSCO Austria has been served and appears
16 in this case.

17 Dated this 14th day of February, 2014.

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22 David G. Campbell
23 United States District Judge
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