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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NUANCE COMMUNICATIONS INC,

Plaintiff,

No. C 08-02912 JSW

v.

ABBY SOFTWARE HOUSE, et al.,

Defendants.

**ORDER DENYING MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

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Now before the Court is the motion to dismiss for lack of personal jurisdiction filed by Defendant Abby Software, Ltd. (“Abby Software”). The Court finds the motion appropriate for decision without oral argument. N.D. Civ. L.R. 7-1(b). Accordingly, the Court HEREBY VACATES the hearing date of May 13, 2011. Having carefully reviewed the parties’ papers, the relevant legal authority, and having good cause, the Court hereby DENIES the motion to dismiss for lack of personal jurisdiction.

**BACKGROUND**

Upon remand to this Court from the Federal Circuit, and after conducting jurisdictional discovery, Abby Software, a company in the Republic of Cyprus, moves again to dismiss Nuance Communications Inc.’s (“Nuance”) complaint against it for lack of personal jurisdiction.

The Court shall address additional facts as necessary to its analysis in the remainder of this Order.

1 ANALYSIS

2 A. Standards for Exercising Personal Jurisdiction.

3 Abby Software seeks to dismiss the complaint pursuant to Federal Rule of Civil  
4 Procedure 12(b)(2) for lack of personal jurisdiction. The plaintiff bears the burden to establish  
5 personal jurisdiction. *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007). Where the facts  
6 are not directly controverted, a plaintiff’s version of the facts is taken as true. *AT&T v.*  
7 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (“AT&T”). Likewise, the  
8 Court must resolve “conflicts between the facts contained in the parties’ affidavits” in  
9 plaintiff’s favor, “for purposes of deciding whether a prima facie case for personal jurisdiction  
10 exists.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (quoting *AT&T*, 94 F.3d at  
11 588).

12 After the completion of jurisdictional discovery, Abby Software argues that this Court  
13 does not have personal jurisdiction because they do not have the requisite minimum contacts  
14 with this judicial district. Because this is a patent case, the Court applies Federal Circuit  
15 precedent to determine whether it has personal jurisdiction over Defendants. *HollyAnne Corp.*  
16 *v. TFT, Inc.*, 199 F.3d 1304, 1306 (Fed. Cir. 1999). A court has personal jurisdiction over a  
17 defendant where: (1) asserting jurisdiction over the defendant does not violate the defendant’s  
18 due process rights, and (2) the governing long-arm statute permits the court to exercise  
19 jurisdiction over the defendant. *See Dainippon Screen Mfg. Co. v. CFMT, Inc.*, 142 F.3d 1266,  
20 1269-70 (Fed. Cir. 2000). California’s long arm statute allows courts to assert personal  
21 jurisdiction over defendants “on any bases not inconsistent with the Constitution ... of the  
22 United States.” Cal. Code Civ. Proc. § 410.10; *see also, e.g., Inamed Corp. v. Kuzmak*, 249  
23 F.3d 1356, 1360 (Fed. Cir. 2001). California’s long arm statute is coextensive with the  
24 Constitution, and therefore the Court may assert personal jurisdiction unless doing so would  
25 violate Abby Software’s due process rights.

26 The Supreme Court set forth the due process standard in *International Shoe v.*  
27 *Washington*, in which it held that “due process requires only that ... [the Defendant] have  
28 certain minimum contact with the forum state such that the maintenance of the suit does not

1 offend traditional notions of fair play and substantial justice.” 326 U.S. 310, 316 (1945).

2 Therefore, the Court uses a two-step analysis to examine first whether Defendant has the  
3 requisite minimum contacts with California, and second whether haling Abby Software into  
4 this Court would offend traditional notions of fair play and substantial justice.

5 “Under the ‘minimum contacts’ test, a defendant may be subject to either specific  
6 jurisdiction or general jurisdiction.” *LSI Industries, Inc. v. Hubbell Lighting, Inc.*, 232 F.3d  
7 1369, 1375 (Fed. Cir. 2000). Abby Software argues that its contacts with California are  
8 insufficient to support jurisdiction under either of these bases.

9 **B. The Court Does Not Have General Jurisdiction Over Abby Software.**

10 “General jurisdiction” refers to a court’s ability to exercise personal jurisdiction over a  
11 defendant in any action, including actions unrelated to the defendant’s contacts with the state in  
12 which the court sits. *See Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 415  
13 (1984). In *Perkins v. Benguet Consol. Mining Co.*, the Supreme Court held that a federal court  
14 can exercise general jurisdiction over a defendant if that defendant has “continuous and  
15 systematic” contacts with the forum state. 342 U.S. 437, 447-49 (1952) (upholding general  
16 jurisdiction because defendant carried on a “continuous and systematic, but limited, part of its  
17 general business” in the forum state). The standard for meeting this “continuous and  
18 systematic” requirement is “fairly high” and requires that the defendant’s contacts be of the sort  
19 that approximate physical presence. *Autogenomics, Inc. v. Oxford Gene Tech. Ltd.*, 566 F.3d  
20 1012, 1018 (Fed. Cir. 2009); *see also Campbell Pet Co. v. Piale*, 542 F.3d 879, 883-84 (Fed.  
21 Cir. 2008). There is not a “specific test to follow” when determining whether a defendant’s  
22 contacts are continuous and systematic, and courts must instead “look at the facts of each case  
23 to make such a determination.” *LSI Indus.*, 232 F.3d at 1375.

24 Abby Software contends that general jurisdiction is lacking here because its contacts  
25 with California are sporadic and insubstantial. Nuance argues that Abby Software has  
26 voluntarily submitted to the jurisdiction of California on other occasions and has counsel  
27 located in California. In addition, Nuance contends that discovery is incomplete and further  
28 contracts linking Abby Software to California would demonstrate sufficient contacts to

1 establish general jurisdiction. Finally, Nuance contends that Abby Software functions merely  
2 as an alter ego for its California-based subsidiary, so jurisdiction over the parent is appropriate  
3 as well. Based on the record before the Court at this time, however, these are not the sort of  
4 continuous and systematic contacts that give rise to general jurisdiction, and the Court finds that  
5 it does not have general jurisdiction over Abby Software. *See Helicopteros*, 466 U.S. at 417.

6 **B. The Court Has Specific Jurisdiction Over Abby Software.**

7 Nuance argues that even if this Court lacks general jurisdiction over Abby Software, it  
8 nevertheless has specific jurisdiction to adjudicate its claims arising out of Abby Software’s  
9 contacts with California. “[E]ven where general jurisdiction is not available, specific  
10 jurisdiction may be exercised by a district court in the forum state” if doing so would not violate  
11 due process. *Campbell Pet Co.*, 542 F.3d at 884. For specific jurisdiction over a defendant to  
12 be proper, the defendant must have “certain minimum contacts with” the forum. *Int’l Shoe*, 326  
13 U.S. at 316. The “minimum contacts” standard requires that the defendant engaged in “some  
14 act by which the defendant purposefully availed himself of the privilege of conducting activities  
15 within the forum state, thus invoking the benefits and protections of its laws.” *Hanson v.*  
16 *Denckla*, 357 U.S. 235, 253 (1958). The requisite minimum contacts are present “where the  
17 defendant ‘deliberately’ has engaged in significant activities within a state, ... or has created  
18 ‘continuing obligations’ between himself and residents of the forum.” *Burger King Corp. v.*  
19 *Rudzewicz*, 471 U.S. 462, 475-76 (1985) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S.  
20 770, 781 (1984), and *Travelers Health Ass’n v. Virginia*, 399 U.S. 643, 648 (1950)) (internal  
21 citations omitted). On the other hand, random, fortuitous, or attenuated connections with the  
22 forum state fall short of the minimum contacts threshold. *Id.* at 475.

23 The Federal Circuit uses a three-part test to apply the minimum contacts standard set  
24 forth by the Supreme Court. *See, e.g., Akro Corp. v. Luker*, 45 F.3d 1541, 1545-46 (Fed. Cir.  
25 1995); *Breckenridge Pharms., Inc. v. Metabolife Labs., Inc.*, 444 F.3d 1356, 1363 (Fed. Cir.  
26 2006). First, the defendant must have “purposefully directed its activities at residents of the  
27 forum.” *Breckenridge*, 444 F.3d at 1363. Second, the claim must arise out of or relate to those  
28

1 activities. *Akro*, 45 F.3d at 1545-46. Lastly, the exercise of personal jurisdiction must be  
2 “reasonable and fair.” *Breckenridge*, 444 F.3d at 1363.

3 In its opinion reversing this Court’s dismissal of Abby Software and remanding for  
4 jurisdictional discovery, the Federal Circuit held that the

5 limited evidence of record support Nuance’s contention that Abby Software  
6 functions as more than a holding company. Abby Software’s website portrays  
7 Abby as a single company with offices in many countries, including the United  
8 States. The CEO of Abby Software, who expressed a desire to return to the U.S.  
9 market, is both the founder of the Abby companies and the Chairman of Abby’s  
10 Global Management Team, which includes among its members the CEOs of Abby  
USA and Abby Production. Abby Software’s website lists multiple California  
entities as customers of the accused products .... Abby Software’s website also  
promotes the sale of these products in California by providing the names and contact  
information for retail stores located in California as well as online stores that sell the  
FineReader product.

11 *Nuance*, 626 F.3d at 1235.

12 After the completion of jurisdictional discovery, not only are the observations made by  
13 the Federal Circuit accurate, but it is also evident that Abby Software: (1) established its  
14 subsidiaries to build up an international distribution market as part of its expansion into the  
15 global market; (2) acquired Abby USA in 2002 pursuant to a Stock Purchase Agreement that  
16 contained a California choice of law provision and subjected the parties to the exclusive  
17 jurisdiction of California courts; (3) interacts with entities in the United States to acquire  
18 intellectual property rights that it deems necessary to be used in the software developed by the  
19 Abby companies; (4) permits the California Abby entity and other subsidiaries to use its  
20 intellectual property rights freely and without formal licensing arrangements; and (5) has  
21 repeatedly obtained protection for its patents in the United States. (Miller Decl., Exs. 1, 2, 4, 6,  
22 14.) Having reviewed the record, the Court finds that these contacts are sufficient to constitute  
23 minimum contacts.

24 Here, just as the Federal Circuit found with regard to the Abby Production entity, the  
25 relationship between Abby Software and Abby USA established a “distribution system with  
26 Abby USA that was intended to deliver products to the U.S. market via a ... California entity.”  
27 *Nuance*, 626 F.3d at 1234. Here, as evidenced by Abby Software’s ongoing relationship with  
28 Abby USA and the distribution channel of products utilizing the company’s intellectual

1 property, Abby Software has contacts with California related to the activities sued upon in this  
2 matter that are sufficient to support this Court’s exercise of personal jurisdiction. Although  
3 Abby Software may be a removed parent company, the Court finds that the relationship with  
4 Abby USA, the overlap in management, and the creation of a California distribution system for  
5 products based upon its freely-shared intellectual property, is sufficient to survive a motion to  
6 dismiss. *See Cardsoft, Inc. V. Verifone Holdings, Inc.*, 2009 WL 361069, at \*1-2 (E.D. Texas  
7 Feb. 10, 2009) (holding that plaintiffs had made the prima facie showing of jurisdictional facts  
8 by a preponderance of the evidence where the defendant was merely a far removed parent  
9 company).

10 Even where a defendant has minimum contacts with the forum state, asserting  
11 jurisdiction may still be unreasonable if doing so would be unfair. *See, e.g., Patent Rights Prot.*  
12 *Grp., LLC v. Video Gaming Techs., Inc.*, 603 F.3d 1364, 1369 (Fed. Cir. 2010). To determine  
13 whether it is fair to exercise jurisdiction, the Supreme Court has instructed courts to determine  
14 whether “the assertion of jurisdiction would comport with ‘fair play and substantial justice.’”  
15 *Burger King*, 471 U.S. at 476 (quoting *Int’l Shoe*, 326 U.S. at 320). Where, as here, a defendant  
16 has directed its activities at residents of the forum state, the defendant cannot defeat jurisdiction  
17 based on fairness considerations unless it “present[s] a compelling case that the presence of  
18 some other considerations would render jurisdiction unreasonable.” *Id.* at 477. “Where the  
19 case involves a dispute arising under United States’ patent laws and there is no indication that  
20 Plaintiffs would be entitled to relief in any other jurisdiction, ... [Defendant] could reasonably  
21 expect to be haled into court ... to account for its infringing activities here.” *Cardsoft*, WL  
22 361069, at \* 2.

23 The unfair exception standard is met only in “rare situation[s] in which the plaintiff’s  
24 interest and the state’s interest in adjudicating the dispute in the forum are so attenuated that  
25 they are clearly outweighed by the burden of subjecting the defendant to litigation within the  
26 forum.” *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1568 (Fed. Cir. 1994).  
27 Courts review several considerations to determine whether a particular case presents one of  
28 these “rare situations.” Those considerations are: (1) the burden on the defendant; (2) the

1 interests of the forum state; (3) plaintiff's interest in obtaining relief; (4) the interstate judicial  
2 system's interest in efficiently resolving controversies; and (5) the shared interest of all states in  
3 furthering substantive social policies. See *Burger King*, 471 U.S. at 477; *Autogenomics*, 566  
4 F.3d at 1025.

5 Abby Software argues that it would be substantially burdened by litigating in this  
6 judicial district because it does not have offices, operations, or employees in California. This  
7 argument, however, is unpersuasive in light of the fact that Abby Software has proven itself  
8 financially capable of engaging in protracted negotiations with California-based entities and,  
9 like Abby Production, shares the same counsel and operates under the same consolidated  
10 Global Management Team. Just as the appellate court has already found, "[t]hese relationships  
11 should ameliorate any possible burden of litigating in California." *Nuance*, 626 F.3d at 1234.

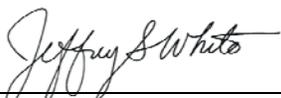
12 Accordingly, because the exercise of jurisdiction over Abby Software would not  
13 violate principles of due process, the Court DENIES Abby Software's motion to dismiss based  
14 on lack fo personal jurisdiction.

15 **CONCLUSION**

16 For the reasons stated, the motion to dismiss for lack of personal jurisdiction against  
17 Defendant Abby Software, Ltd. is DENIED.

18 **IT IS SO ORDERED.**

19  
20 Dated: May 3, 2011

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23 JEFFREY S. WHITE  
24 UNITED STATES DISTRICT JUDGE  
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