[SEE SIGNATURE PAGE FOR COUNSEL]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

GOOGLE INC., AOL LLC, YAHOO! INC., IAC SEARCH & MEDIA, INC. AND LYCOS, INC.,

Plaintiffs,

v.

L. DANIEL EGGER, SOFTWARE RIGHTS ARCHIVE, LLC, AND SITE TECHNOLOGIES, INC.,

Defendants.

CASE NO. C-08-03172-RMW

PLAINTIFFS' REPLY IN SUPPORT OF THEIR CROSS-MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM DEFENDANT SOFTWARE RIGHTS ARCHIVE, LLC

Hearing Date: April 17, 2009
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Plaintiffs	Google Inc., AOL LLC, Yahoo! Inc., IAC Search & Media, Inc., and Lycos, Inc.
SRA	Software Rights Archive, LLC
SRA, LLC	SRA, LLC
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Plaintiffs respectfully submit this reply brief in further support of their cross-motion to compel the production of documents from Defendant SRA.

I. INTRODUCTION

There is no excuse for SRA's blanket refusal to provide important jurisdictional discovery concerning its pending motion to dismiss, transfer, or stay this action. Plaintiffs need the requested discovery in order to fully oppose SRA's motion, which is due in less than a month, on May 1, 2009. The information sought by Plaintiffs is critical to several issues in SRA's motion, such as whether SRA is subject to personal jurisdiction by virtue of the California contacts of Altitude Capital and SRA, LLC, who are closely connected to SRA and its patent infringement action against Plaintiffs.

Plaintiffs have easily put forth enough evidence that personal jurisdiction over SRA is proper to merit jurisdictional discovery.[1] Altitude Capital, who is believed to be funding the patent litigation brought by SRA in the Texas action, does not (and cannot) dispute that it has California contacts related to its business – the acquisition and litigation of patents. Here, Altitude Capital is apparently using shell entities (SRA and SRA, LLC) to insulate itself from any accountability for SRA's patent litigation against Plaintiffs. Under federal due process principles and Delaware agency and alter ego law for establishing personal jurisdiction, these and other facts clearly establish a colorable showing of personal jurisdiction over SRA, and Plaintiffs are therefore entitled to jurisdictional discovery. SRA should not be allowed to disavow the California contacts of its related entities, especially where such information is necessary for Plaintiffs to fully oppose SRA's motion to dismiss for lack of personal jurisdiction. Further, SRA and its related entities admit a common interest in the outcome of this litigation. It would be

[1] Indeed, SRA waived any objection to personal jurisdiction when it voluntarily appeared without reservation of rights in the bankruptcy division of this Court to intervene in a related bankruptcy action. Case No. 99-50736-RLE (Bankr. N.D. Cal.). However, notwithstanding this waiver by SRA, Plaintiffs should not be prevented from discovering facts which will allow Plaintiffs to fully oppose SRA's motion to dismiss, transfer, or stay.

unjust to allow them to avoid jurisdiction in the Northern District of California, where most of Plaintiffs are headquartered or have significant offices.

SRA has not advanced any justification for its stonewalling. It claims the requested discovery is irrelevant because the elements of the alter ego doctrine for establishing personal jurisdiction have not been met. However, Plaintiffs have provided enough preliminary evidence to support this theory. In effect, SRA demands that Plaintiffs prove their theories before they may discover documents that would support them. This is improper, especially when SRA exclusively controls much, if not all, of the relevant information. SRA is also wrong that there is no evidence of its own and its related entities' California contacts. For at least these reasons, Plaintiffs' motion to compel should be granted.[2]

II. SOFTWARE RIGHTS ARCHIVE SHOULD BE COMPELLED TO PROVIDE CRITICAL DISCOVERY REGARDING ITS PENDING MOTION TO DISMISS, TRANSFER, OR STAY

A. Plaintiffs Have Made a Sufficient Showing of Personal Jurisdiction Over Software Rights Archive To Merit Discovery

Plaintiffs have requested jurisdictional discovery concerning the California contacts of SRA and its related entities, SRA, LLC and Altitude Capital. Relying upon Ninth Circuit

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[2] As the Court is aware, the Texas action began in November 2007, when SRA sued Plaintiffs for allegedly infringing the same patents at issue in this matter. In July 2008, Plaintiffs moved to dismiss the Texas action for lack of standing, arguing that SRA is not an assignee of the patents-in-suit. In particular, Plaintiffs argued that a purported 1998 assignment from Site Technologies, Inc. ("Site Tech") to L. Daniel Egger was ineffective because Site Tech's subsidiary, Site/Technologies/Inc. ("Site/Tech"), owned the patents. On March 31, 2009, Magistrate Judge Everingham denied the motion to dismiss on the grounds that, pursuant to an alter ego theory, "Site/Tech is bound by the 1998 assignment [by Site Tech] to Egger." (Dkt. No. 94, Statement of Recent Decision, Order at 12). Plaintiffs respectfully disagree with Judge Everingham's ruling and submit that it should not govern the result on this motion. For example, Plaintiffs submit that the applicable Delaware standards require a different result. The law of alter ego mandates that two corporations should not be treated as one unless fraud or injustice is found in the party's use of the corporate form. *See Mobil Oil Corp. v. Linear Films, Inc.*, 718 F. Supp. 260, 269 (D. Del. 1989) ("Unless done deliberately, with specific intent to escape liability for a specific tort or class of torts, the cause of justice does not require disregarding the corporate entity."); *see also Wallace v. Wood*, 752 A.2d 1175, 1184 (Del. Ch. 1999) ("Effectively, the corporation must be a sham and exist for no other purpose than as a vehicle for fraud."). Judge Everingham's order does not address the deliberate intent element. Accordingly, Plaintiffs ask this Court to grant discovery in this matter notwithstanding this recent order.

precedent, SRA contends that Plaintiffs are not entitled to this discovery unless they first articulate a "colorable basis" for, and "some evidence" tending to show, personal jurisdiction over SRA. (*See* Opp. Br. at 5). As explained below, Plaintiffs have met this standard. Moreover, this Court should apply Federal Circuit law to resolve Plaintiffs' request for jurisdictional discovery in this patent case. *Commissariat A L'Energie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315, 1323 (Fed. Cir. 2005) ("In determining the relevance of a request for jurisdictional discovery, we apply Federal Circuit law."). According to the Federal Circuit, jurisdictional discovery is appropriate where, as here, the requested discovery is of particular relevance, and the requesting party has demonstrated that discovery will supplement its jurisdictional allegations. *See id*. at 1323 ("In this case, jurisdictional discovery is of particular relevance, and [the requesting party] has clearly made a sufficient threshold showing to merit jurisdictional discovery"); *Trintec Indus., Inc. v. Pedre Promotional Prods., Inc.*, 395 F.3d 1275, 1283 (Fed. Cir. 2005) ("Such discovery is appropriate where the existing record is 'inadequate' to support personal jurisdiction and 'a party demonstrates that it can supplement its jurisdictional allegations through discovery.'") (citation omitted).

As shown below, these requirements are easily met here for at least two reasons. First, the requested discovery is highly relevant to personal jurisdiction under several legal doctrines, such as Delaware alter ego and agency law and federal due process principles. Second, there are more than enough California contacts tending to show personal jurisdiction to warrant jurisdictional discovery. Thus, Plaintiffs' request for limited jurisdictional discovery from SRA should be granted.

1. The Requested Discovery Is Highly Relevant To Personal Jurisdiction Under Multiple Legal Theories

Additional discovery from SRA concerning its California contacts and corporate structure is appropriate because this information is highly relevant to personal jurisdiction over SRA pursuant to several legal doctrines. SRA disputes that its relationship with SRA, LLC and

Altitude Capital renders it amenable to jurisdiction under alter ego or federal due process principles. (Opp. Br. 7-13).[3] This is incorrect. As shown below, there are more than enough facts suggesting that Delaware agency and alter ego law concerning jurisdiction and federal due process principles operate to impute the California contacts of the related entities to SRA.

Agency/Alter Ego: SRA argues that the Delaware alter ego theory for establishing personal jurisdiction is inapplicable here because SRA, LLC and Altitude Capital do not exercise the requisite degree of control over SRA necessary for purposes of personal jurisdiction. (Opp. at 8-10). SRA also argues that facts such as SRA sharing an address with Altitude Capital, and that SRA's Vice President and General Counsel, Russ Barron, is an advisor to Altitude Capital, are insufficient to merit the jurisdictional discovery Plaintiffs seek. (Opp. 9-10). This is simply inconsistent with established law regarding the agency and alter ego theories of jurisdiction. Information concerning SRA's agents is plainly relevant for purposes of personal jurisdiction.

Similarly, the California contacts of SRA's alter egos are also relevant to jurisdiction. At this juncture, Plaintiffs must put forth evidence tending to suggest the two requirements of an alter ego relationship: "(1) [that] there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their] separate identities would result in fraud or injustice." *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134-35 (9th Cir. 2003) (concluding the district court abused its discretion in denying motion for jurisdictional discovery and remanding case with instructions to "allow [ ] the opportunity to develop the record and make a prima facie showing of jurisdictional facts"). Plaintiffs do not, as SRA suggests, need to prove the merits of their agency or alter ego claims at this early stage of the case. "[D]iscovery is not to be denied simply because it relates to a claim or defense that is being challenged as insufficient or untenable." *Gillman ex. rel. Gillman v. Sch. Bd. for Holmes County*, No. 08-cv-34, 2008 WL 1883544, at *3 (N.D. Fla. Apr. 25, 2008);

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[3] Although SRA does not dispute that its California contacts are relevant to personal jurisdiction, it instead contends that it has no California contacts, a point which is addressed in the following section. *See* Section I.A.2., *infra*.

accord Alexander v. F.B.I., 194 F.R.D. 316, 326 (D.D.C. 2000) (same). "To hold otherwise, this court would have to determine in the context of a discovery motion whether the legal theories underlying [the] claimed defenses are sound. Ordinarily, courts will avoid such an exercise." *Gilman*, 2008 WL 1883544 at *3.

Here, Plaintiffs have easily set forth facts sufficient to meet the requirements of an alter ego relationship between SRA and its related entities.[4] With respect to the first requirement, there is sufficient evidence tending to show a unity of interest and ownership among SRA, SRA, LLC, and Altitude Capital. In particular, Russ Barron, the Vice President and General Counsel of SRA, admits in his declaration that Altitude Capital is a "controlling entity" of SRA.[5] SRA, a Delaware limited liability company, alleges that it maintains its principal place of business in "Texas." However, nothing at the address for SRA's alleged "office" indicates or suggests SRA is located anywhere in the building.[6] SRA also has not registered with the Texas Secretary of State or set up a business property tax account for its Texas "office."[7] Moreover, Altitude Capital shares (or shared) an address with SRA, alleges a common interest privilege with SRA, and is in the business of acquiring patents and bringing patent suits.[8] All these facts suggest that Altitude Capital is funding the Texas litigation and is using the shell entities, SRA and SRA, LLC, in an attempt to insulate itself from accountability for SRA's patent action against Plaintiffs. Thus the evidence

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[4] As a preliminary matter, SRA waived any objection to personal jurisdiction when it voluntarily appeared without reservation of rights in the bankruptcy division of this Court to intervene in a related bankruptcy action. Case No. 99-50736-RLE (Bankr. N.D. Cal.). Based on this fact alone, SRA should be subject to the jurisdiction of this Court.

[5] Dkt. No. 91, Declaration of Russell J. Barron, paragraph 2 (stating that SRA, LLC and Altitude Capital have a controlling ownership stake in Software Rights Archive, LLC).

[6] Kash Decl. Ex. A.

[7] *See id.*

[8] Kash Decl. Exs. B-C.

and the claims of common interest privilege show a "unity of interest and ownership" among SRA, SRA, LLC and Altitude Capital. *See Harris Rutsky & Co.*, 328 F.3d at 1134-35.[9]

There is also sufficient evidence that SRA and its cohorts are using the corporate form to perpetrate a fraud or injustice, thereby satisfying the second requirement of the alter ego doctrine. For instance, Altitude Capital has used SRA to avoid accountability for its jurisdictional contacts with California in order to shield it from the Court's reach. Under SRA's view, the chain of non-operational shell entities permits it (for example) not only to freely obtain funding and resources from California to sue Plaintiffs for alleged infringing activities in California, but also to conceal all documents about such activities. Thus, Plaintiffs are entitled to threshold information about SRA's corporate structure and its sources of funding in order to fully oppose SRA's motion to dismiss for lack of personal jurisdiction.

Federal Due Process Principles: Jurisdictional discovery is also appropriate here based on federal due process principles. Under the law of the Federal Circuit, it is well-settled that courts may exercise jurisdiction over closely-related entities and patent holding companies under due process principles, even when agency and alter ego doctrines are inapplicable. *See, e.g.*, *Dainippon Screen Mfg. Co., Ltd. v. CFMT, Inc.*, 142 F.3d 1266 (Fed. Cir. 1998). In *Dainippon*, a declaratory judgment plaintiff (like Plaintiffs here) argued that a parent company's California contacts established personal jurisdiction over its non-operational Delaware subsidiary, which owned the disputed patent.[10] The Federal Circuit agreed that the parent's California contacts gave the district court personal jurisdiction over the subsidiary, noting that "a patent holding subsidiary . . . cannot fairly be used to insulate patent owners from defending declaratory judgment actions" where the parent's activities would otherwise subject it to personal jurisdiction in the forum state.

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[9] Altitude Capital and SRA, LLC both have resisted discovery, and Plaintiffs have been forced to compel documents from these two "controlling entities" pursuant to Fed. R. Civ. P. 45(c)(2)(B)(i). Plaintiffs' motions to compel are currently pending in the District of Delaware. *See* Misc. No. 09-017-JJF (D. Del.).

[10] As noted in *Dainippon* at 1270, California's long arm statute is co-extensive with the federal Constitution and therefore the issue is one of federal due process.

Id. at 1271. Importantly, both parties in *Dainippon* agreed that the parent-subsidiary relationship was proper as a matter of corporate law, and plaintiff expressly disavowed any intention to pierce the corporate veil. *See id.* at 1271 n.3 ("Agreeing that the parent-subsidiary relationship in this case is legally proper, Dainippon does not seek here to pierce the corporate veil."). Thus, under *Dainippon*, a corporate parent's activities may support personal jurisdiction over its subsidiary under federal due process principles.[11]

In addition to *Dainippon*, courts in similar cases have found the contacts of one company can establish personal jurisdiction of the court over its corporate subsidiary or parent. For instance, in *Alien Tech. Corp. v. Intermec, Inc., et al.*, No. 06-51, 2007 WL 63989 (D.N.D. Jan. 4, 2007), the plaintiff sued for a declaration of patent invalidity and non-infringement against three affiliated defendants: Intermec, Inc. ("Intermec"), Intermec Technology Corp. ("ITC"), and Intermec IP Corp. ("IIP"). Although only ITC had contacts with the forum state of North Dakota, *see id.* at *4, the court found that ITC's North Dakota contacts could be imputed to the other two defendants for purposes of personal jurisdiction. Similar to the facts here, one entity was the wholly owned patent holding company of a second entity; the second entity was the wholly owned operating company of a third entity; the third entity "has the benefit of both companies as the main holding company"; the second and third entities shared a principal place of business in the state of Washington; and all three entities had overlapping officers and directors. *See id.* at *7. In light of these close linkages between the companies and without conducting any alter ego analysis, the court concluded that "[f]airness demands that Intermec and IIP be subject to jurisdiction in those fora where ITC is subject to jurisdiction." *Id.*

The same corporate linkages in *Intermec* are present here. Plaintiffs contend that SRA is a wholly-owned patent holding company of Altitude Capital, and Russ Barron already admits that

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[11] SRA unsuccessfully attempts to distinguish *Dainippon* because the parent corporation in that case *practiced* the patent-in-suit whereas the alleged parent in this case – Altitude – is merely using its subsidiary – SRA – to *assert* the patents-in-suit. (*See* Opp. Br. at 12). SRA fails to marshal any authority to support a supposed distinction between practicing and non-practicing parent corporations.

Altitude Capital is a "controlling entity" and has a "controlling ownership stake."[12] Given the extremely close relationship between these related entities, federal due process and fairness demand that SRA be subject to jurisdiction in the same fora as Altitude Capital. *See Intermec*, 2007 WL 63989 at *7; *see also Baden Sports, Inc. v. Molten*, No. 06-0210, 2007 WL 171897, at *3 (W.D. Wash. Jan. 18, 2007) ("A subsidiary company's contacts with the forum state may be imputed to the parent company where the subsidiary was established for, or is engaged in, activities that the parent would have to undertake if not for the subsidiary's involvement."); *Ergo Licensing, LLC v. Cardinal Health, Inc.*, No. 08-259, 2009 WL 585789, at *3 (D. Me. Mar. 5, 2009) (granting motion for jurisdictional discovery because movant made a "colorable case" for jurisdiction over a corporate parent and subsidiary).[13]

SRA argues that principles of federal due process are inapplicable here because an element of fraud or injustice must be shown in order for this Court to exercise personal jurisdiction over SRA based on the California contacts of its related entities, and cites a Ninth Circuit case in support of its position. (Opp. Br. at 10-11). But this is a patent case, and Federal Circuit law – *not* Ninth Circuit law – therefore governs whether federal due process principles support personal

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[12] Dkt. No. 91, Declaration of Russell J. Barron, paragraph 2: "No entity with a controlling ownership stake in Software Rights Archive, LLC, *including SRA, LLC and Altitude Capital Partners, L.P*…" (Emphasis added). It is worth noting that in its Opposition Brief, SRA vigorously disputes the contention that SRA and Altitude are alter egos, but never disputes the contention that Altitude is SRA's ultimate corporate parent (believed to own SRA indirectly through one or more non-operational intermediaries such as SRA, LLC).

[13] SRA fails to marshal any relevant authority in support of its claim that Plaintiffs' requests for jurisdictional discovery are too attenuated. In *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008), the court affirmed denial of jurisdictional discovery where, unlike this case, the lone relevant contact for jurisdiction purposes was an eBay sale consummated by a California resident. The case is also distinguishable because Plaintiffs here have specifically identified the additional discovery they seek. For the same reason, *EsNtion Records, Inc. v. JonesTM, Inc.*, No. 07-2027, 2008 WL 2415977, at *6 (N.D. Tex. June 16, 2008), is distinguishable because there, unlike here, the requesting party failed to "specify what evidence it believes discovery would produce to support personal jurisdiction over [the defendant]." Similarly, in *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1160 (9th Cir. 2006), unlike this case, the court concluded as a matter of law that the sole alleged basis for jurisdiction – a passive website and domain name – was insufficient. Finally, *Butcher's Union Local No. 498 v. SCD Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) is distinguishable because the plaintiffs in that case failed to advance any facts or theory of personal jurisdiction and failed to give the district court any notice that they sought discovery to establish personal jurisdiction under the state long-arm statute.

jurisdiction over SRA.[14] *See, e.g., Rates Tech., Inc. v. Nortel Networks Corp.*, 399 F.3d 1302, 1307 (Fed. Cir. 2005) ("[w]e apply our own law, not that of the regional circuit, to issues of personal jurisdiction in a patent infringement case"); *Commissariat*, 395 F.3d at 1323 ("In determining the relevance of a request for jurisdictional discovery, we apply Federal Circuit law."). As a result, SRA has no controlling authority for its position that principles of federal due process are insufficient to establish personal jurisdiction here.[15]

2. There Is Sufficient Evidence Tending To Show Personal Jurisdiction To Warrant Additional Discovery

In its Opposition Brief, SRA argues that jurisdictional discovery is unwarranted because neither it nor its related entities would be subject to jurisdiction in California. (Opp. Br. at 13). Specifically, SRA contends it is not subject to specific jurisdiction in California because it never contacted Plaintiffs prior to filing the Texas action to allege patent infringement. (*Id.*) SRA further contends that no entity with a controlling ownership stake in it would be subject to general jurisdiction in California. (Opp. Br. at 14). These positions are untenable. As shown below, Plaintiffs have reason to believe that SRA and its related entities may be subject to either specific or general jurisdiction in California, and Plaintiffs are therefore entitled to additional jurisdictional discovery.

Specific jurisdiction requires a showing that "(1) the defendant purposefully directed its activities at residents of the forum, (2) the claim arises out of or relates to those activities, and (3) assertion of personal jurisdiction is reasonable and fair." *Avocent Huntsville Corp. v. Aten. Int'l Co., Ltd.*, 552 F.3d 1324, 1332 (Fed. Cir. 2008). Contrary to SRA's allegation, the Federal Circuit has *never* held that pre-suit communication between the patentee and the forum state plaintiff is

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[14] Moreover, there is also sufficient evidence that SRA and its related companies are using the corporate form to perpetrate a fraud or injustice, as discussed above.

[15] The Ninth Circuit's decision in *Harris* cited by SRA does not address the issue of jurisdiction over related entities in a patent case under the principles of federal due process. 328 F.3d at 1127. Moreover, the *Harris* court determined that jurisdictional discovery was appropriate. *Id*. at 1135. As discussed in the next section, Plaintiffs have made a similar showing here.

"an indispensable prerequisite to the assertion of specific personal jurisdiction" in a declaratory judgment action. (*See* Opp. Br. at 13). Rather, the Federal Circuit has stressed that "the plaintiff *need not* be the forum resident toward whom any, much less all, of the defendant's relevant activities were purposefully directed." *Id.* at 1334 (quoting *Akro Corp. v. Luker*, 45 F.3d 1541, 1547 (Fed. Cir. 1995) (emphasis added)). Furthermore, "if the defendant patentee purposefully directs activities at the forum which relate in some material way to the enforcement or the defense of the patent, those activities may suffice to support specific jurisdiction" in a declaratory judgment action. *Id.* at 1336.

The patents-in-suit were property of a California corporation and/or its bankruptcy estate, and notwithstanding the 3/31/09 Order, Plaintiffs contend the patents remain the property of the California bankruptcy estate (of Site Technologies, Inc.). Pursuant to California contracts, Daniel Egger allegedly obtained the patents out of the hands of the California corporation and, ultimately, allegedly transferred them into the hands of SRA. Indeed, as recently as Fall 2008, SRA paid the California corporation to enter into a contract with Daniel Egger to attempt to transfer rights to the asserted patents.[16] These acts clearly "relate in some material way to the enforcement or the defense of the patent[s]." *Avocent*, 552 F.3d at 1336. Thus, Plaintiffs have a colorable basis to believe that SRA and its related entities and agents purposefully engaged in activities in California that directly and materially relate to enforcement of the patents, and are therefore entitled to jurisdictional discovery.

Moreover, with respect to Altitude Capital, Plaintiffs also have a colorable basis to allege that this entity may be subject to *general* jurisdiction in California. "General jurisdiction arises when a defendant maintains 'continuous and systematic' contacts with the forum state even when the cause of action has no relation to those contacts." *Trintec*, 395 F.3d at 1279. When a company transacts large amounts of business in the forum state, particularly through regular channels, such contacts may establish general jurisdiction. *See, e.g., LSI Indus., Inc. v. Hubbell*

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[16] Kash Decl. Ex. D. *See also* Dkt. No. 96 (Hung Decl. Ex. H (Transcript of Proceedings, dated December 17, 2009) at 25).

Lighting, Inc., 232 F.3d 1369, 1375 (Fed. Cir. 2000) ("Based on Hubbell's millions of dollars of sales of lighting products in Ohio over the past several years and its broad distributorship network in Ohio, we find that Hubbell maintains 'continuous and systematic' contacts with Ohio.").

SRA argues that information about its corporate structure is irrelevant because the declaration of Mr. Russell Barron allegedly proves that Altitude Capital has no relevant contacts with California. (Opp. Br. at 14; Kaplan Ex. 2). However, Mr. Barron's declaration does not address several important issues, including the California contacts of Altitude Capital's investors, or Altitude Capital's contacts with California in connection with the disputed ownership of the patents-in-suit. (Kaplan Ex. 2). The California action includes issues related to ownership of such patents. As a result, the relevant California contacts for purposes of jurisdiction are not limited to whether Altitude Capital contacted any California entity and alleged infringement. They also include the California contacts by Altitude Capital and its representatives regarding patent ownership, an issue that is not addressed by Mr. Barron's declaration.[17] In addition, contacts to obtain funding for SRA to bring its law suit would of course be highly relevant.

As discussed in Plaintiffs' opening brief, the public records show that Altitude Capital has made at least one multi-million dollar business investment in California. (*See* Br. at 5 n.10 (disclosing a $35 million investment in a California corporation)).[18] The fact that Altitude Capital has invested millions of dollars into California is indicative of the type of continuous and systematic business activity that would subject it to general jurisdiction in this state.

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[17] SRA's citation to *Morrison & Foerster LLP v. Momentous.ca Corp.*, No. 07-6361, 2008 WL 648481, at *6 (N.D. Cal. Mar. 5, 2008), is inapposite and misleading. (*See* Opp. Br. at 14.) There, the Court expressly "*[did] not address Morrison's request for jurisdictional discovery on the alter ego and fraud issues*," and went on to find that it had jurisdiction over the defendant. *Morrison & Foerster LLP*, 2008 WL 648481, at *10 n.1 (emphasis added).

[18] In its Opposition Brief, SRA argues that this $35 million investment was made by Altitude Partners, *LLC*, while Movants supposedly seek information on Altitude Capital Partners, *L.P.* – a "different entity altogether." (*See* Opp. Br. at 15 n.7). This argument is specious. As SRA well knows, Altitude Capital Partners, L.P. is simply the committed private equity fund for Altitude Capital Partners' business. *See* Kash Decl. Ex. E ("Altitude Capital Partners: Firm Overview," *available at* http://altitudecp.com/firm.html). Thus, just as the contacts of Altitude Capital Partners, L.P. may be imputed the SRA, the contacts of Altitude Capital Partners, LLC *certainly* may be imputed to Altitude Capital Partners, L.P. for personal jurisdiction purposes.

Courts routinely grant similar requests for jurisdictional discovery that involve disputed facts, an undeveloped record, and targeted and limited discovery requests. For example, in *Commissariat*, the Federal Circuit held that the jurisdictional discovery was appropriate because the plaintiff identified contacts, sales of infringing product in the forum, which supported discovery regarding the amount of revenues and the defendant's intention to service that market. 395 F.3d at 1323. Similarly, in *Trintec*, the Federal Circuit held that jurisdictional discovery was appropriate because the record was incomplete, and the plaintiff had identified potential contacts with the forum, such as sales and advertising over the Internet. *Trintec*, 395 F.3d at 1283. For the same reasons here, Plaintiffs are entitled to jurisdictional discovery so that they may assess the true extent of SRA's and Altitude Capital's apparent contacts with California.[19]

B. Plaintiffs' Discovery Requests Are Not Overbroad or Unduly Burdensome

Finally, SRA claims that Plaintiffs' document requests are overbroad on the ground that they are not limited to California contacts. (Opp. Br. at 16). For example, SRA objects that Plaintiffs' request for documents concerning SRA's owners, and persons having a beneficial interest in SRA, is "not limited to [] persons having a residence or place of business in California." (*Id.*) SRA's argument fails as an initial matter because it has submitted no evidence in support of its claim that Plaintiffs' discovery requests impose any undue burden. *See Burton Mech. Contractors, Inc. v. Foreman*, 148 F.R.D. 230, 233 (N.D. Ind. 1992) (a party objecting to discovery requests on grounds of undue burden "must specifically establish the nature of any alleged burden, usually by affidavit or other reliable evidence"). Furthermore, Plaintiffs are not required to restrict their discovery requests to persons who reside in California or have a place of business in California, because numerous other types of contacts are relevant to the personal

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[19] Even assuming that Ninth Circuit precedent controlled the request for jurisdictional discovery in this patent case, which it does not, jurisdictional discovery is appropriate. *See Harris*, 328 F.3d 1122 (9th Cir. 2003) (reversing denial of jurisdictional discovery). In *Harris*, the Ninth Circuit held that jurisdictional discovery was appropriate in light of evidence suggesting an alter ego relationship, such as overlapping directors, and 100% stock ownership by the parent. *Id*. at 1135. The court noted "[t]he record is simply not sufficiently developed to enable us to determine whether the alter ego or agency tests are met," and therefore concluded "that the district court abused its discretion in denying [the] motion for jurisdictional discovery." *Id.*

jurisdiction analysis. Indeed, as a general matter, *all* contacts between a defendant and the forum state are relevant to the personal jurisdiction analysis and may be inquired about during discovery. *See, e.g.*, *DakColl, Inc. v. Grand Central Graphics, Inc.*, 352 F. Supp. 2d 990, 995 (D.N.D. 2005) ("In determining whether the defendant has sufficient contacts with the forum state to exercise personal jurisdiction, the court must consider all of the contacts in the aggregate and examine the totality of the circumstances."); *BCCI Holdings (Luxembourg) v. Mahfouz*, No. 92-cv-2763, 1993 WL 70451, at *1 (D.D.C. Mar. 5, 1993) ("All contacts with the District of Columbia are relevant to the issue of personal jurisdiction. *Accordingly, unless expressly indicated otherwise, defendants must respond to discovery requests relating to any contact with the District of Columbia*.") (emphasis added). Plaintiffs are therefore entitled to seek the identity of individuals having an interest in SRA, in order to determine whether these contacts may be imputed to SRA. Plaintiffs' requests are not overbroad.[20]

III. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant their cross-motion to compel production of documents from Defendant Software Rights Archive, LLC.

[20] SRA's unreasonable position is highlighted by SRA's utter failure to offer to provide even a *single* document to Plaintiffs in response to Plaintiffs' discovery requests.

Dated: April 3, 2009

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on all counsel of record by ECF on this 3rd day of April 2009, and a courtesy copy has been served by electronic mail.

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DECLARATION OF CONSENT

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from counsel for Plaintiffs Google Inc., AOL LLC, and Yahoo! Inc.

/s/ Jennifer A. Kash
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