



1 degree of intertwinement between the jurisdictional facts and the facts underlying the merits of the  
2 cause of action to determine whether dismissal on jurisdictional grounds is appropriate, or whether  
3 resolution of the issues must await summary judgment proceedings or trial on the merits.” *See DDB*  
4 *Technologies, L.L.C. v. MLB Advanced Media, L.P.*, 517 F.3d 1284, 1291 (Fed.Cir. 2008) (“We  
5 agree with the majority of the regional circuits that the degree of intertwinement of jurisdictional  
6 facts and facts underlying the substantive claim should determine the appropriate procedure for  
7 resolution of those facts”); *see also, Rosales v. United States*, 824 F.2d 799, 803 (9<sup>th</sup> Cir. 1987) (“if  
8 the jurisdictional issue and substantive claims are so intertwined that resolution of the jurisdictional  
9 question is dependent on factual issues going to the merits, the district court should employ the  
10 standard applicable to a motion for summary judgment”).

11         The Supreme Court has also acknowledged the propriety of proceeding on the merits where  
12 jurisdictional facts are intertwined with the merits of a case. *See, Gulf Oil Corp. v. Copp Paving*  
13 *Co.*, 419 U.S. 186, 203 n. 19 (1974). In *Gulf Oil* the Court noted that where there is an identity  
14 between the “jurisdictional” issues and certain issues on the merits, there is “no objection to  
15 reserving the jurisdictional issues until a hearing on the merits.” *Ibid.*; *see also, Land v. Dollar*, 330  
16 U.S. 731, 735-39 (1947) (finding that, where the question of jurisdiction was dependent on decision  
17 of the merits, the District Court had jurisdiction to determine its jurisdiction by proceeding to a  
18 decision on the merits).

19         In the present case, Plaintiffs allege that the court has personal jurisdiction over Defendant  
20 Khubani because he: 1) “is responsible for and has actively directed, managed, controlled, approved,  
21 participated in, and carried out the promotion of IdeaVillage’s products, including the accused  
22 products, into the stream of commerce with the expectation that those products will be sold and  
23 offered for sale throughout the United States, including within California and within this judicial  
24 district;” 2) “has actively directed, managed, controlled, approved, participated in and carried out  
25 IdeaVillage’s infringing activities described herein and has done so with knowledge of Plaintiffs’  
26 intellectual property rights and with the specific intent to encourage and induce IdeaVillage’s  
27 infringement of Plaintiffs’ intellectual property rights;” and 3) “actively directed, managed,  
28 controlled, approved, participated in and carried out the manufacture, promotion, and sale of the

1 accused products with the expectation that the advertisements for the accused products and the  
2 accused products themselves will be offered for sale, sold, promoted and distributed nationwide,  
3 including in California and specifically in this judicial district.” *See*, Second Amended Complaint  
4 (docket no. 127), ¶ 7.

5 In support of those allegations, Plaintiffs have submitted, among other things, excerpts of  
6 Defendant Khubani’s deposition testimony related to Khubani’s involvement in the design of the  
7 accused product, and in the development of commercials for the accused product. Plaintiffs have  
8 also submitted copies of purchase orders with Khubani’s name on them (albeit apparently initialed  
9 by someone else); agreements signed by Khubani (on Ideavillage’s behalf) with a company that  
10 distributes the accused product in California, and website printouts indicating that Khubani was at  
11 one time listed as the owner and administrative contact for a website for the accused product which  
12 provides an address in California for all shipments, customer service, and returns of the accused  
13 products (which Khubani acknowledged in deposition was the “official” website for the accused  
14 product).

15 Defendant Khubani responds with affidavits and deposition excerpts which he claims show  
16 that he did not induce Ideavillage’s alleged infringement, he was not the primary decision maker  
17 behind the accused products, and he was not responsible for the ultimate design of the accused  
18 products. He contends the evidence shows that his involvement in the accused products “is no more  
19 than is typical of a company president.” Khubani further claims that he did not know the website for  
20 the accused product was registered in his name, and that he has since corrected the website  
21 registration.<sup>2</sup>

22 Based on the evidence submitted by the parties, there are genuine issues of material fact as to  
23 the extent of Defendant Khubani’s intent and involvement with: the design of the accused product;  
24 the marketing of the accused products in California; and the importation of the accused products into  
25 California. Both this court’s personal jurisdiction over Defendant Khubani and the merits of  
26 Plaintiffs’ claims against Defendant Khubani depend on a determination of those facts. And a  
27

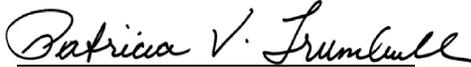
---

28 <sup>2</sup> Plaintiffs noted at the hearing that Khubani is still listed as the administrative contact for  
the website.

1 reasonable jury could return a verdict in favor of either side based on the evidence in the record.  
2 Thus, applying the standard applicable to a motion for summary judgment,<sup>3</sup> dismissal of the claims  
3 against Defendant Khubani on grounds of lack of jurisdiction would be premature at this juncture.  
4 *See, Rosales v. United States*, 824 F.2d at 803.

5 Defendant Khubani’s argument that Plaintiffs have had plenty of time to conduct merits  
6 discovery as well as jurisdictional discovery misses the point. The determinative factor is not the  
7 amount of discovery Plaintiffs have had. It is whether there are genuine issues of material fact as to  
8 the facts upon which both jurisdiction and the merits depend. It is only where there are no such  
9 genuine issues of material fact that it is appropriate to resolve, in a motion to dismiss, jurisdictional  
10 issues that are so closely intertwined with the merits of the case. *See, Rosales v. United States*, 824  
11 F.2d at 803; *see also, Gulf Oil*, 419 U.S. at 203 n. 19.

12 Dated: 9/3/10

  
13 PATRICIA V. TRUMBULL  
14 United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

---

26  
27 <sup>3</sup> To obtain summary judgment, a party must demonstrate that no genuine issue of material  
28 fact exists for trial, and that based on the undisputed facts he is entitled to judgment as a matter of law.  
*See Celotex v. Catrett*, 477 U.S. 317, 322 (1986). “[S]ummary judgment will not lie if the dispute about  
a material fact is ‘genuine,’ that is if the evidence is such that a reasonable jury could return a verdict  
for the nonmoving party.” *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).