

EXHIBIT 7

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13
14 **UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**
16

17 ELAN MICROELECTRONICS
CORPORATION,

18 Plaintiff,

19 vs.

20 PIXCIR MICROELECTRONICS CO. LTD.,

21 Defendant.
22
23
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Case No.: 2:10-cv-00014-RCJ-PAL

**ELAN MICROELECTRONICS
CORPORATION’S OPPOSITION TO
PIXCIR MICROELECTRONICS
CO.’S MOTION TO DISMISS FOR
LACK OF PERSONAL
JURISDICTION; OR IN THE
ALTERNATIVE,
COUNTERMOTION FOR
JURISDICTIONAL DISCOVERY**


25
26 Plaintiff, Elan Microelectronics Corporation (“Elan”), by and through its counsel of
27 record, Robert J. Caldwell, Esq. and Matthew J. Christian, Esq. of Kolesar & Leatham, Chtd. and
28 Sean P. DeBruine, Esq. of Alston & Bird LLP, hereby files this Opposition to the Motion to

1 Dismiss by Pixcir Microelectronics Co. ("Pixcir") for Lack of Personal Jurisdiction (Doc. No.
2 16). Alternatively, Elan countermoves for an order permitting jurisdictional discovery. As set
3 forth more fully herein, Elan has demonstrated that Pixcir has more than sufficient minimal
4 contacts to this district and, even if the Court were to consider the question close, it should allow
5 Elan to conduct limited jurisdictional discovery.

6 This Opposition is made and based upon the papers and pleadings filed in this action, the
7 following memorandum of points and authorities, the attached declarations and any oral
8 argument which the Court may entertain on this matter.

9 DATED this 21st day of October, 2010.

10 **KOLESAR & LEATHAM, CHTD.**

11 By: 
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Elan filed this case to address the ongoing infringement of U.S. Patent No. 5,825,352
4 (“the ’352 patent”) by Pixcir. Pixcir is a company based in the People’s Republic of China.
5 Pixcir’s employees have visited this forum to conduct its business at the Consumer Electronics
6 Show, and targets the market in this district such that products made by others using the accused
7 Pixcir components are sold here. Despite these intentional actions in and directed to this forum,
8 Pixcir asks that Elan be denied the opportunity to address Pixcir’s infringement, claiming that
9 this Court does not have personal jurisdiction. That motion should be denied. The
10 uncontroverted facts demonstrate that Pixcir has more than minimal contacts to this district, and
11 this Court’s exercise of jurisdiction would be fair and reasonable. In the alternative, should the
12 Court find this to be a close question, Elan respectfully requests leave to take limited
13 jurisdictional discovery so that the issue of jurisdiction may be resolved on a complete record.

14 **II. STATEMENT OF FACTS**

15 The ’352 patent discloses and claims a touch-sensitive input device, such as a computer
16 touchpad or touchscreen, and related methods embodied in the device. Declaration of Kai Zhu in
17 Support of Elan Microelectronics Corp.’s Opposition to Pixcir Microelectronics Co.’s Motion to
18 Dismiss for Lack of Personal Jurisdiction; or in the Alternative, Countermotion for Jurisdictional
19 Discovery (“Zhu Decl.”), ¶ 2 and Exh. 1. In particular, the ’352 patent covers touchpads and
20 touchscreens that can first detect the simultaneous presence of two or more fingers, and then
21 interpret the number of fingers, along with motion of those fingers, to provide specific input
22 functions, such as scrolling, rotating, or zooming an image on the screen. *See id.*, Exh. 1. at col.
23 2, ln. 38 – col. 4, ln. 16.

24 Pixcir designs, makes, and sells integrated circuit products (“chips” or “ICs”) that control
25 touchscreens. Zhu Decl., Exh. 2. Pixcir promotes its accused Tango series of touch controller
26 ICs, including Tango S32, as enabling multi-finger, or multi-touch, touchscreens. *Id.* Pixcir
27 does not sell the accused ICs directly to consumers. Rather, Pixcir promotes the ICs to the
28 manufacturers of computers, smart phones and the like for inclusion into their finished products

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1 as components. Elan contends that by supplying the accused ICs to such end products, Pixcir is
2 liable for inducement of infringement, 35 U.S.C. § 271(b), or contributory infringement, 35
3 U.S.C. § 271(c), or both. Operating such a finished product allegedly infringes at least the
4 method claims of the '352 patent and Elan alleges that Pixcir is also liable for inducing that
5 infringement.

6 When Elan filed its complaint in January, 2010, Pixcir was a recent entrant in the market
7 of touchscreen controller ICs. Zhu Decl., Exh. 2. At that time, at least one product incorporating
8 Pixcir's accused ICs was available for sale in the United States and to residents of this district,
9 while other similar products were announced. For example, Acer Aspire 5738PG multi-touch
10 touchscreen notebook computers were available for purchase in the United States and this district
11 as late as December 7, 2009. Declaration of Jason Englund in Support of Elan Microelectronics
12 Corp.'s Opposition to Pixcir Microelectronics Co.'s Motion to Dismiss for Lack of Personal
13 Jurisdiction; or in the Alternative, Countermotion for Jurisdictional Discovery ("Englund
14 Decl."), Exh. A. The Aspire 5738PG incorporates the accused Tango S32 ICs in its multi-touch
15 touchscreen. Zhu Decl., ¶ 12 and Exh. 10 at 1, 2, 9 and 10. This computer model was available
16 for sale throughout the United States, including Nevada, via websites such as Amazon.com,
17 TigerDirect.com, and others. Englund Decl., ¶¶ 2-3; *see also* Zhu Decl., ¶ 13 and Exh. 11.

18 The International Consumer Electronics Show ("CES") is an internationally known
19 technology-related trade show held each January in Las Vegas. Zhu Decl., ¶ 5 and Exh. 3. CES
20 2009 took place from January 7 to January 10, 2009. Zhu Decl., Exh. 3. In an article dated
21 January 8, 2009, the second day of CES 2009, a Taiwanese newspaper called DigiTimes reported
22 that Pixcir would demonstrate mini-notebook computers with multi-touch touchscreens
23 incorporating Pixcir's accused ICs at CES 2009. Zhu Decl., ¶ 6 and Exh. 4. The president of
24 Pixcir is quoted as saying that "Pixcir's marketing in the US [was] being run by dealers," and he
25 hoped that CES 2009 would "allow major US firms in the industry to gain a better understanding
26 of Pixcir's technology R&D and application capabilities." *Id.* Consistent with DigiTimes's
27 report, during CES 2009 multiple websites around the world simultaneously reported on Pixcir's
28 accused ICs and Pixcir's demonstration of them at the show. Zhu Decl., ¶¶ 7-11, Exhs. 5-9.

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1 Those websites provided links to YouTube videos that were produced by Pixcir and uploaded to
2 Pixcir's YouTube page in December 2008, shortly before CES 2009. *Id.* Those YouTube videos
3 demonstrate products with multifinger touchscreens incorporating Pixcir's accused ICs. *Id.* This
4 evidence suggests that at CES 2009, in this district, Pixcir was showing products, or at least
5 videos of products, incorporating its accused ICs.

6 CES 2010 took place from January 7 to January 10, 2010, in Las Vegas. Zhu Decl., Exh.
7 3. Five days after CES 2010, Pixcir posted an article on its website entitled "PIXCIR Touch-
8 Control Technological Solution Shines at CES." Zhu Decl. ¶ 12 and Exh. 10 at 11-12; ¶ 14 and
9 Exh. 12 at 1. The article stated that "[e]xhibitors at CES 2010 ha[d] displayed nearly 50 touch-
10 screen products incorporating PIXCIR solutions, including electronic books, children's
11 computers, dual-screen computers, tablet PCs, Netbook computers, GPS, and Android [Mobile
12 Internet Device], generating significant publicity for PIXCIR solutions." Zhu Decl. Exh. 12 at 1.
13 The article further stated that "many leading panel makers and brands are introducing PIXCIR
14 products, many of which are now in mass production, and more products will be delivered after
15 the New Year." *Id.* Pixcir has also posted a PowerPoint presentation on its website entitled
16 "CES 2010 – [t]he world's largest consumer technology trade[]show." Zhu Decl. ¶ 15 and Exh.
17 13. In the presentation, Pixcir listed many "[p]roducts showcased by PIXCIR clients at CES,"
18 including a Dell 5-inch tablet phone and a Lenovo tablet computer. Zhu Decl. ¶ 15 and Exh. 13
19 at 3, 18 and 19.

20 Dell demonstrated the 5" tablet phone referenced in Pixcir's PowerPoint, called the
21 Streak, at Dell's CES 2010 press conference. Zhu Decl., Exh. 15. The Dell Streak is now
22 widely available in the United States and in this district. Zhu Decl., ¶ 18. Similarly, Information
23 about the Lenovo tablet computer "showcased [] at CES" 2010, the Lenovo Ideapad S10-3, was
24 leaked on the Internet before CES 2010. Zhu Decl., ¶ 19 and Exh. 16. The Lenovo Ideapad S10-
25 3 is widely available to consumers in the United States and in this district at least via
26 Amazon.com. Zhu Decl., ¶ 20 and Exh. 17. Meanwhile, Pixcir announced at its website on
27 February 8, 2010 that Lenovo had mass-produced and offered for sale "the world's first multi-
28 finger capacitive touch Tablet PC," Zhu Decl., ¶ 12 and Exh. 10 at 3,4, 11 and 12., which on

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1 information and belief refers to the Lenovo Ideapad S10-3. Zhu Decl., ¶ 15.

2 **III. ARGUMENT**

3 As a threshold issue, Federal Circuit law, rather than Ninth Circuit law as cited by Pixcir,
4 controls personal jurisdiction questions in patent cases. *See Patent Rights Prot. Group, LLC v.*
5 *Video Gaming Techs., Inc.*, 603 F.3d 1364, 1368 (Fed. Cir. 2010). When a personal jurisdiction
6 inquiry is “based on affidavits and other written materials in the absence of an evidentiary
7 hearing, a plaintiff need only to make a *prima facie* showing that defendants are subject to
8 personal jurisdiction.” *Elecs. for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1349 (Fed. Cir. 2003)
9 (citation omitted). Furthermore, “a district court must accept the uncontroverted allegations in
10 the plaintiff’s complaint as true and resolve any factual conflicts in the affidavits in the plaintiff’s
11 favor.” *Id.*

12 Since at least 2008, Pixcir has aimed its accused products at the market in the United
13 States and in this district for PC’s, smart phones and other electronic devices. *See* Zhu Decl. at
14 ¶ 7 and Exh. 5. Products with the accused Pixcir ICs have been available for sale in this district,
15 and Pixcir used the prominent CES trade show, which takes place annually in Las Vegas, as a
16 channel to promote multi-touch touchscreens products incorporating its accused ICs in both 2009
17 and 2010. Pixcir representatives or “dealers,” *see* Zhu Decl. ¶ 6 and Exh. 4, travelled to this
18 district to attend CES 2009, and as a result garnered world-wide publicity, *see* Zhu Decl. Exhs. 6,
19 7, 8, and 9; at CES 2010, it intentionally supplied those ICs as components to numerous
20 electronic products that Pixcir knew would be exhibited at CES 2010. In addition, Pixcir clearly
21 worked with U.S. based companies such as Dell, Hewlett-Packard and Lenovo to introduce
22 products based on its accused ICs for sale in the United States and in this district. *See* Zhu Decl.
23 ¶ 12 and Exh. 10.

24 Pixcir’s purposeful promotion of its accused ICs into the United States market, together
25 with Pixcir’s heavy marketing activities, *see* Zhu Decl. ¶ 4, that eventually pushed those ICs into
26 Nevada, alone establish specific jurisdiction. Similarly, Pixcir or its dealers’ presence in Las
27 Vegas to promote its products at CES 2009, and facilitating other exhibitors to demonstrate
28 infringing products at CES 2010 also is enough to establish jurisdiction. Taken together, these

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1 facts are more than sufficient to show that Pixcir is amenable to suit here. At a minimum, the
2 court should grant Elan leave to take limited jurisdictional discovery, so that Pixcir’s claim that
3 this court lacks personal jurisdiction may be determined on a complete record.

4 **A. Jurisdiction In This Forum Comports with Due Process.**

5 Under Federal Circuit law, establishing specific jurisdiction under a state’s long-arm
6 statute involves a two-step test: (1) whether the forum state’s long-arm statute permits service of
7 process on the defendant; and (2) whether asserting personal jurisdiction comports with
8 constitutional due process. *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403, 1411 (Fed. Cir.
9 2009). Here, because “Nevada’s long-arm statute, [Nevada Revised Statute § 14.065], reaches
10 the limits of due process set by the United States Constitution,” the test reduces to the due
11 process analysis. *Patent Rights Prot. Group, LLC*, 603 F.3d at 1369.

12 The Federal Circuit has adopted a three-pronged test for the due process analysis:
13 whether (1) the defendant purposefully directed its activities at residents of the forum; (2) the
14 claim arises out of or relates to the defendant's activities with the forum; and (3) assertion of
15 personal jurisdiction is reasonable and fair. *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com. De*
16 *Equip. Medico*, 563 F.3d 1285, 1297 (Fed. Cir. 2009) (citation omitted). In this case, each of the
17 three prongs is clearly met. As such, personal jurisdiction over Pixcir in this court comports with
18 due process.

19
20 *1. Pixcir Visited This Forum and Has Purposefully Directed Its Infringing*
Activites Here.

21 The facts set out above demonstrate that Pixcir has purposefully directed its activities
22 relating to the accused products toward this forum. Pixcir’s contacts with this forum include
23 visiting Las Vegas for the CES 2009 trade show, targeting this forum as a market for its
24 products, and inducing companies to demonstrate and market nearly 50 devices based on the
25 accused Pixcir products in this district at CES 2010. Any of these contacts would be sufficient to
26 establish jurisdiction.

27 As discussed above, numerous websites report that Pixcir representatives travelled to this
28 district to attend the CES 2009 trade show in Las Vegas. Zhu Decl. ¶¶ 6-11. At least one press

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1 article quotes the Pixcir’s President as stating that it was attending CES in order to introduce the
2 accused products to the technology industry. *Id.*, Exh. 4. Coincident with that visit, technology
3 web sites all over the world began reporting on Pixcir’s touchscreen controllers and directing
4 readers to Pixcir’s promotional videos on YouTube. *Id.*, ¶¶ 7-11. The reasonable inference to
5 draw from these facts is that at a minimum Pixcir employees or agents promoted their products
6 by showing CES attendees their video demonstrations and provided the web address where they
7 could be reviewed on-line. The act of maintaining a website with its promotional videos and
8 directing those videos to viewers in this district alone are acts by themselves sufficient to support
9 jurisdiction. *Rio Properties, Inc. v. Rio International Interlink*, 284 F. 3d 1007, 1020 (9th Cir.
10 2002).

11 While not denying their attendance, Pixcir does not deny that its employees or agents
12 attended CES 2009. Rather, Pixcir states only that it “did not have a booth” at the show and that
13 their employees did not do certain things in Nevada. Motion (Doc. No. 16) at 3:4-6. If Pixcir
14 employee(s) were not present in this district for CES 2009 Pixcir would have said so. Pixcir
15 certainly knows how to make such a blanket denial, as it clearly denies that any of its employees
16 attended CES 2010 the following year. Motion (Doc. No. 16) at 3. The reasonable inference to
17 draw from its failure to do so with regard to CES 2009 is that it did attend that trade show in this
18 district.

19 Pixcir carefully states what its employees did *not* do during CES 2009. In particular,
20 Pixcir claims that its employees did not “use, offer for sale, sell, market or import the TANGO
21 S32 controller in Nevada” and “did not display” that chip at CES 2009. Motion (Doc. No. 16) at
22 3. *See also* Fuentes Decl., at 2. Those statements do not avoid the jurisdictional significance of
23 Pixcir’s presence in this district, nor do that explain away Pixcir’s promotion of its products in
24 this district. First, it is not surprising that Pixcir did not “display the TANGO S32” at the show.
25 That product standing alone is a small chip much like many others. Rather, Pixcir demonstrated
26 what that chip can do—enabling an infringing multi-finger touchscreen—by incorporating it into
27 others’ final products. Again, to the extent Pixcir did not demonstrate such a touchscreen live, it
28 very likely used its YouTube videos as its demonstration. Again, Pixcir’s careful statements do

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1 not rebut the showing that its representatives were conducting business in this district.

2 Thus, Pixcir would be able to promote its products without “using, selling, offering to sell
3 or importing” the accused ICs. Pixcir’s evidence appears carefully crafted to the argument that
4 its employees did not infringe the ’352 patent while in this district. However, that argument is
5 irrelevant under the proper jurisdictional analysis. Elan only needs to make a *prima facie*
6 showing that personal jurisdiction comports with the Constitutional limits. The Federal Circuit
7 has held that such a “*prima facie* showing” requirement relates to any activities supporting
8 jurisdiction, and that the plaintiff need not establish that those activities constitute infringement.
9 *Synthes*, 563 F.3d at 1298-99. As such, it makes no difference in the jurisdictional analysis
10 whether Pixcir imported or used touchscreen products including its accused ICs. The key is that
11 Pixcir purposely travelled to this jurisdiction to promote the accused products in the marketplace.
12 Pixcir does not deny that it conducted business during CES 2009, but only that it had not sold
13 any TANGO 32 within the U.S. by January 2009. At a minimum, Pixcir representatives
14 travelled to this forum to further its business interests. As such, Pixcir has purposely availed
15 itself of the rights and privileges of this jurisdiction in order to conduct business here. While
16 Pixcir goes to great length to state what its representatives did *not* do in Nevada, the fact that
17 Pixcir was present in this district is not controverted. Accordingly, the uncontroverted evidence
18 establishes that representatives of Pixcir traveled to this district to attend CES 2009.

19 Because Pixcir was physically present at CES 2009, specifically with the purpose of
20 marketing its accused ICs to at least U.S. firms, it has purposefully directed its marketing
21 activities at this district. With its evidence presented herein, Elan has certainly met the “*prima*
22 *facie* showing” requirement.

23 Of course this is not Pixcir’s only contact with this forum. Beginning in late 2009 the
24 Acer Aspire 5738PG laptop computer went on sale in this district, and throughout the United
25 States. Englund Decl., ¶¶ 2-3. That computer included a multi-touch enabled touchscreen based
26 on the accused Pixcir controller ICs. Zhu Decl., Exh. 10 at 2. Pixcir therefore provided a
27 component of that touchscreen specifically for use in a device that practices the ’352 patent, and
28 actively aided and abetted Acer’s sale of that product in the United States and in this district.

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1 The inference that Pixcir knew and intended that the Acer laptops would be sold and offered for
 2 sale in this district is inescapable. As such, the reasonable inference to be drawn from these facts
 3 is that Pixcir is liable for acts of infringement directed toward residents of this district and taking
 4 place here. When an accused infringers products reach a forum as a result of the stream of
 5 commerce initiated by the defendant, with a reasonable expectation they would reach the forum,
 6 jurisdictional minimum contacts are met. *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21
 7 F.3d 1558, 1566 (Fed. Cir. 1994) (“the forum State does not exceed its powers under the Due
 8 Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into
 9 the stream of commerce with the expectation that they will be purchased by consumers in the
 10 forum State.”)(quotation omitted).¹

11 Finally, Pixcir’s acts of infringement directed at this forum include inducing and
 12 contributing to the infringement of Elan’s ’352 patent in this district at CES 2010. Pixcir
 13 proudly touts on its website that “PIXCIR Touch-Control Technological Solution Shines at CES”
 14 2010 because nearly 50 exhibited touchscreen devices incorporated its accused ICs. The article
 15 listed those devices as “electronic books, children's computers, dual-screen computers, Tablet
 16 PCs, Netbook computers, GPS, and Android [Mobile Internet Devices].” Zhu Decl., Exh. 12. In
 17 order to have functioning products or prototypes to demonstrate at CES in January 2010, those
 18 manufacturers must have completed their design and tested the products well before that date. It
 19 is highly likely that Pixcir worked intimately with most, if not all, the companies making these
 20 nearly 50 products on the design and implementation of the touchscreens using Pixcir’s accused
 21 controllers. Thus, Pixcir knew—before CES 2010—that those electronics incorporating its
 22 accused ICs were heading for CES 2010, especially with its own experiences at CES 2009. By
 23 supplying its accused ICs, Pixcir knowingly facilitated the infringement of the patent that would
 24

25
 26 ¹While the Federal Circuit has not explicitly resolved the question of whether infringing items placed in the stream
 27 of commerce alone is sufficient to support jurisdiction, or whether “something more” is required is not relevant to
 28 the analysis here. Pixcir’s attendance at CES 2009 and its activities encouraging customers to bring thier products to
 CES 2010 certainly provide “something more.” See *Commissariat a L’Energie Atomique v. Chi Mei Optoelectronics Corp.*, 395 F.3d 1315, 1321-22 (Fed. Cir. 2005).

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1 result from the importation, use through demonstration, offer to sell and sale of those products in
2 this district.

3 In summary, Pixcir's purposeful act of placing the accused products into an established
4 stream of commerce leading to offers for sale and sales in this district demonstrate that Pixcir has
5 directed its activities toward residents of this forum. Particularly when combined with Pixcir's
6 travel to this forum to promote the accused products and its efforts to support the infringement
7 by others in this district, the evidence is clear that Pixcir had minimum contacts sufficient to
8 establish jurisdiction. In short, the uncontroverted evidence shows that Pixcir purposefully
9 directed its business activities at this district.

10 2. *Elan's Patent Infringement Claim Arises out of or Relates to Pixcir's*
11 *Activities In and Direct To This Forum.*

12 Elan's patent infringement claims arise out of or relate to Pixcir's activities directed at
13 this forum. These activities include inducing infringement by the sale in this district of the Acer
14 5738PG computers, inducing Dell and others to demonstrate and promote products in this district
15 with the accused Tango S32 IC, and travelling to this district to promote that product. Because
16 Pixcir may be liable for these activities, there is no real question that this prong of the due
17 process inquiry is met.

18 3. *Asserting Personal Jurisdiction over Pixcir in the District of Nevada*
19 *is Reasonable and Fair*

20 The Supreme Court has long held that, to prevail on the third "fairness" prong, a
21 defendant seeking to escape specific jurisdiction has the heavy burden of presenting "a
22 compelling case that the presence of some other considerations would render jurisdiction
23 unreasonable." *See Burger King*, 471 U.S. at 477. Indeed the Supreme Court long ago concluded
24 that "modern transportation and communications ha[d] made it much less burdensome for a party
25 sued to defend himself in a State where he engages in economic activity." *Burger King*, 471 U.S.
26 at 474 (*quoting McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 1957). The
27 Federal Circuit has adopted a balancing test of five factors for this third "fairness" prong: (1) the
28 burden on the defendant; (2) the forum's interest in adjudicating the dispute; (3) the plaintiff's

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1 interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in
2 obtaining the most efficient resolution of controversies; and (5) the shared interest of the states in
3 furthering fundamental substantive social policies. *See Synthes*, 563 F.3d at 1298.

4 For the first factor, Pixcir cannot argue that its burden is unduly great. By choosing to
5 sell a product to the United States market and this district that is subject to a U.S. Patent, Pixcir
6 can not complain when it is hailed into court in the United States and specifically in this district.
7 Pixcir cannot complain that the District of Nevada is an improper venue, since its infringement is
8 intimately tied up with its activities in Las Vegas, including sending its personnel into this
9 district to conduct its business. In particular, as the Supreme Court explained more than half a
10 century ago, Pixcir cannot assert distance as a burden. *McGee*, 355 U.S. at 233. For the second
11 factor, this district, through its annual hosting the CES trade show in Las Vegas, has become a
12 global nexus for the introduction, marketing, and sale of the most advanced consumer electronics
13 products. This district therefore has exceptionally strong interest in the prevention of patent
14 infringement arising from activities at CES, where high-tech companies around the world
15 convene and market their latest products. Because Pixcir is a Chinese company, it is obvious
16 that the third factor favors Elan as this district was chosen by Elan in the first place. The fourth
17 and fifth factors do not apply in this case because there is no alternative forum involved here. In
18 summary, Pixcir failed to meet its burden by presenting a compelling case to show that this
19 district's exercise of personal jurisdiction over it is constitutionally unreasonable under the third
20 prong of the due process analysis.

21 Thus, because (1) Pixcir has purposefully directed its marketing activities at CES in Las
22 Vegas; (2) Elan's infringement claim arises directly out of Pixcir's activities; and (3) this
23 district's assertion of personal jurisdiction over it is not unreasonable or unfair under due
24 process, all the three prongs of the due process analysis for finding specific jurisdiction under
25 Federal Circuit law pass the test. Accordingly, the court should find personal jurisdiction over
26 Pixcir and deny its motion to dismiss.

27 //
28 //

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1 **B. This Court has Jurisdiction Under Fed. R. Civ. P. 4(k)(2)**

2 To the extent that there is any question whether Pixcir has sufficient minimum contacts
3 with Nevada to establish jurisdiction here, there is no question that Pixcir's extensive contacts
4 with the United States as a whole do support jurisdiction. Under Fed. R. Civ. P. 4(k)(2), a court
5 may exercise jurisdiction where a claim arises under federal law, the defendant does not have
6 minimum contacts with any one state to support jurisdiction, but where its contacts with United
7 States as a whole are sufficient to meet the due process requirements. *Synthes*, 563 F.3d at 1293-
8 94. Elan's complaint alleges patent infringement under federal law, 35 U.S.C. § 271 et seq., and
9 therefore arises under federal law. *Synthes*, 563 F.3d at 1294. Here, like the defendant in
10 *Synthes*, Pixcir has extensive contacts with the United States as a whole, in addition to its
11 contacts directly with Nevada. Pixcir promotes the infringing product by video demonstrations
12 uploaded to and distributed by YouTube, Inc. Zhu Decl., ¶¶ 7-11. YouTube is a California
13 company. *Id.* Pixcir admits it has targeted the United States market by employing dealers here.
14 Zhu Decl., ¶ 6. Finally, Pixcir has done business with several large United States companies,
15 including Hewlett-Packard Corp., based in California, Dell, Inc., based in Texas, and Lenovo,
16 Inc. based in North Carolina. Zhu Decl. ¶ 12 and Exh. 10 at 4, 8. Finally, products including the
17 accused Pixcir ICs from these companies and others are sold throughout the United States. *Id.*,
18 ¶¶ 13,18; Englund Decl., ¶¶ 2-3. For the reasons set forth in section III.A. above, Pixcir has
19 purposefully availed itself of the rights and privileges of doing business in Nevada so that
20 jurisdiction in Nevada passes muster under the due process requirements. When expanded to
21 Pixcir's contacts with the United States as a whole, the same analysis establishes that jurisdiction
22 in the United States comports with due process. In particular, these contacts are significantly
23 more extensive than those of the defendant in *Synthes* which supported a finding of personal
24 jurisdiction. *Synthes*, 563 F.3d at 1297-1300 (attendance at a trade show, one sale in the United
25 States).

26 The only other requirement under Rule 4(k)(2) is a showing that the defendant is not
27 subject to personal jurisdiction in any one state. *Synthes*, 563 F.3d at 1293. This Court need not
28 analyze jurisdiction in each of the 50 states, however. Rather, to avoid application of nationwide

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1 jurisdiction under this rule, the burden is on Pixcir to designate a suitable forum in which it is
 2 subject to personal jurisdiction. *Touchcom*, 574 F.3d at 1415. Thus, if the Court concludes that
 3 Pixcir is not subject to personal jurisdiction in Nevada (although Elan strongly believes that it is),
 4 and Pixcir in its reply does not identify a U.S. forum in which it is subject to personal
 5 jurisdiction, this Court should exercise jurisdiction under Rule 4(k)(2).

6 **C. At the Minimum, Jurisdictional Discovery Should be Granted Because It**
 7 **Will Help Uncover Details of Pixcir’s Activities Purposefully Directed at**
 8 **Nevada or the U.S. as a Whole**

8 Should the court conclude that finding specific jurisdiction over Pixcir on the evidence
 9 presented is a close call, Elan respectfully moves for leave to conduct limited and expedited
 10 jurisdictional discovery. Jurisdictional discovery is “appropriate where the existing record is
 11 ‘inadequate’ to support personal jurisdiction and ‘a party demonstrates that it can supplement its
 12 jurisdictional allegations through discovery.’” *Trintec Indus. v. Pedre Promotional Prods.*, 395
 13 F.3d 1275, 1283 (Fed. Cir. 2005) (quoting *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199
 14 F.3d 1343, 1351-52 (D.C. Cir. 2000)). Should the Court decide that the facts are not sufficiently
 15 established to make out a *prima facie* case of jurisdiction, Elan proposes to serve limited
 16 discovery requests² and/or to conduct a limited number of depositions to determine, *inter alia*,
 17 who from Pixcir attended CES 2009, to what purpose, and what activities Pixcir has conducted
 18 while in this district. Elan would also learn whether any officers, directors, agents or dealers of
 19 Pixcir have visited this district at any other time for any other purpose. Elan would further seek
 20 discovery of Pixcir’s contributions to and knowledge of the “nearly 50 products” displayed at
 21 CES 2010 based on the accused Pixcir ICs. Finally, Elan would seek further details regarding
 22 Pixcir’s relationship and interaction with U.S.-based companies such as Hewlett-Packard Corp.,
 23 Dell, Inc. and Lenovo and any “dealers” employed by Pixcir to market its products in the United
 24 States. *See* Zhu Decl., ¶ 6 and Exh. 4, ¶ 12 and Exh. 10. Finally, Elan could learn the volume of
 25 sales of products including the accused controller ICs in this district and any actions to market
 26 _____

27
 28 ² Elan is willing to tender to the Court for inspection, at the Court’s request, its proposed discovery requests and a list of proposed deponents concerning jurisdictional issues.

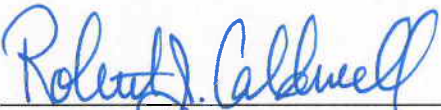
1 those products to residents of this district. Thus, if any question remains regarding personal
2 jurisdiction over Pixcir, the court should grant Elan leave to take limited jurisdictional discovery.

3 **IV. CONCLUSION**

4 When all of the facts are considered, and inferences drawn in Elan's favor as required by
5 controlling precedent, it is clear that Pixcir has sufficient contacts with this district to establish
6 jurisdiction, and this Court's exercise of that jurisdiction would be fair and reasonable. Pixcir's
7 motion should therefore be denied. In the alternative, the Court should authorize Elan to conduct
8 limited discovery to establish the nature and extent of Pixcir's contacts with the United States
9 and with this district.

10 DATED this 21st day of October, 2010.

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11
12
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, Chtd., and that on the 21st day of October, 2010, I caused to be served a true and correct copy of foregoing ELAN MICROELECTRONICS CORPORATION'S OPPOSITION TO PIXCIR MICROELECTRONICS CO.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION; OR IN THE ALTERNATIVE, COUNTERMOTION FOR JURISDICTIONAL DISCOVERY in the following manner:

(ELECTRONIC SERVICE) Pursuant to FRCP 5(b)(3) and LR 5-4, the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system:

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