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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SIANO MOBILE SILICON, INC.,
Plaintiff,
v.
MAVCOM, INC., ET AL.,
Defendants.

Case No.: C-10-04783 LHK (PSG)

**ORDER GRANTING PLAINTIFF
SIANO MOBILE SILICON, INC.'S
RENEWED MOTION FOR LEAVE
TO CONDUCT DISCOVERY**

(Docket No. 35)

Plaintiff Siano Mobile Silicon, Inc. ("Siano") moves for leave to conduct discovery in advance of the case management conference. It also seeks a shortened time period for Defendant Innofidei, Inc. ("Innofidei") to respond to such discovery, including document requests, interrogatories, and deposition notices. Innofidei opposes the motion. Having reviewed the papers and considered the arguments of counsel, Siano's motion for leave to conduct discovery is GRANTED.

I. BACKGROUND

This is an antitrust case. Siano alleges that Innofidei and others have engaged in unlawful monopolistic activity and other tortious conduct regarding the mobile television market generally

1 and CMMB chips specifically.¹

2 Innofidei previously filed five motions to dismiss, including for *forum non conveniens*,
3 lack of subject matter jurisdiction, and lack of personal jurisdiction. Siano then moved for leave
4 to conduct discovery on issues of personal jurisdiction. After a hearing was held on shortened
5 time on February 10, 2011, but before the court ruled on Siano's discovery motion, Judge Koh
6 struck the multiple motions to dismiss without prejudice to re-filing all of the motions as a single
7 pleading.² The court then denied Siano's discovery motion as moot and invited Siano to renew
8 its motion in the event another motion to dismiss for lack of personal jurisdiction was re-filed.³
9 On February 23, 2011, Innofidei re-filed its motion to dismiss (on the same grounds and in a
10 single pleading) and re-noticed a hearing for the motion for April 28, 2011.⁴ Siano's oppositions
11 to the motions to dismiss are therefore due on March 31, 2011.⁵

12 In connection with the re-filed motion to dismiss, Innofidei administratively moved to
13 bifurcate and prioritize *forum non conveniens* and subject matter jurisdiction arguments and stay
14 briefing and discovery relating to personal jurisdiction and service.⁶ On February 28, 2011,
15 Judge Koh denied the administrative motion.⁷

16 Also in connection with the re-filed motion to dismiss, Siano administratively moved for
17 leave to renew its motion for leave to conduct discovery. The court granted this administrative
18 motion.⁸

20 ¹ Compl. ¶¶ 1-4.

21 ² See Docket No. 62. Pursuant to General Order 42, the undersigned has jurisdiction over
22 the pending discovery motion.

23 ³ See Docket No. 51.

24 ⁴ See Docket No. 62.

25 ⁵ Pursuant to Civ. L.R. 7-3(a), an opposition to a motion must be served and filed not less
26 than 21 days before the hearing date.

27 ⁶ See Docket No. 66.

28 ⁷ See Docket No. 76.

⁸ See Docket No. 77.

1 Siano seeks early discovery on personal jurisdiction in advance of its March 31 deadline
2 for filing its opposition to Innofidei's motion to dismiss on that issue. In its complaint Siano
3 alleges that while Innofidei is a China-based company, Innofidei nevertheless has specific
4 contacts with the Northern District of California that permit the exercise of personal jurisdiction
5 in this district. For example, Siano alleges that Innofidei has offices located in Silicon Valley
6 and that it operates in conjunction with (or as) another company named Mavcom, Inc.
7 ("Mavcom") that is also located in this district and named as a defendant in this case.⁹ Siano
8 further alleges that Innofidei's own website states that the company has operations in this district
9 and that other companies located in California have issued press releases reflecting joint ventures
10 with Innofidei and its operations here.¹⁰ Siano also alleges that Innofidei is funded by two
11 venture capital companies, BlueRun Ventures and Redpoint Ventures, both of which have offices
12 in this district.

13 II. LEGAL STANDARDS

14 Fed. R. Evid. 26(d)(2) allows a court to authorize expedited discovery for "convenience
15 and in the interests of justice." The standard for authorizing expedited discovery is "good
16 cause." "Good cause may be found where the need for expedited discovery, in consideration of
17 the administration of justice, outweighs the prejudice to the responding party."¹¹

18 In the Ninth Circuit, "[a] district court is vested with broad discretion to permit or deny
19 [jurisdictional] discovery."¹² Such discovery "should ordinarily be granted where pertinent facts
20 bearing on the question of jurisdiction are controverted or where a more satisfactory showing of
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24 ⁹ Compl. ¶¶ 7-12.

25 ¹⁰ These include: (1) a September 15, 2010 press release announcing Agilent Technologies
26 and Innofidei's joint development of RF tests for TD-LTE chipsets; and (2) a June 21, 2010 press
27 release announcing Cadence Global Services "tight collaboration" with Innofidei on the
28 industry's first TD-LTE baseband chip. Compl. ¶ 4, Exh. B. Siano further references other joint
ventures by Innofidei with California-based Alcatel-Lucent and Motorola, Inc. *See id.*

¹¹ *Semitool, Inc. v. Tokyo Electron Am.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002).

¹² *Laub v. U.S. Dep't of the Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003).

1 the facts is necessary.”¹³ A court may grant jurisdictional discovery if the request is based on
2 more than a ‘hunch that it might yield jurisdictionally relevant facts,’¹⁴ or more than “bare
3 allegations in the face of specific denials.”¹⁵ In *Laub*, the Ninth Circuit reversed the district
4 court’s denial of jurisdictional discovery where there was a “reasonable probability” that the
5 outcome of the motion to dismiss would be different if discovery were permitted.¹⁶

6 In light of *Laub*, courts in this district have held that a plaintiff need not make out a prima
7 facie case of personal jurisdiction before it can obtain jurisdictional discovery.¹⁷ Rather a
8 plaintiff must present only a “colorable basis” for jurisdiction, or “some evidence” constituting a
9 showing lesser than a prima facie case.¹⁸

10 III. DISCUSSION

11 Innofidei makes two principal arguments in opposition to permitting the discovery that

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13 ¹³ *Id.* (quoting *Butcher’s Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir.
14 1986).

15 ¹⁴ *See Boschetto v. Hansing*, 539 F.3d 1011, 1020, 1020 (9th Cir. 2008).

16 ¹⁵ *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 562 (9th Cir. 1995)(citation omitted).

17 ¹⁶ *Id.* Indeed, it may be an abuse of discretion for a court to deny jurisdictional discovery
18 where such discovery “might well demonstrate” jurisdictionally relevant facts and the plaintiff is
19 denied the opportunity to develop the jurisdictional record. *See Rutsky & Co. Ins. Serv., Inc. v.*
20 *Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003) (emphasis added); *Smug-mug, Inc. v.*
21 *Virtual Photo Store, LLC*, No. C 09-2255 CW, 2009 WL 248003, at *3 (N.D.Cal. Aug. 13, 2009)
22 (granting jurisdictional discovery request “because the existing record is insufficient to support
23 personal jurisdiction and [p]laintiff has demonstrated that it can supplement its jurisdictional
24 allegations through discovery”). *Accord Trintec Indus., Inc. v. Pedre Promotional Prods., Inc.*,
25 395 F.3d 1275, 1283 (Fed.Cir. 2005) (holding plaintiff is entitled to jurisdictional discovery
26 where existing record is inadequate to support personal jurisdiction but jurisdictional allegations
27 can be supplemented through discovery); *Cent. States, Se. & Sw. Areas Pension Fund v.*
28 *Phencorp Reinsurance Co.*, 440 F.3d 870, 877-78 (7th Cir. 2006) (finding district court erred by
denying jurisdictional discovery relating to general jurisdiction and noting “it is not surprising
that [plaintiff] can do little more than suggest” certain minimum contacts given the denial of
jurisdictional discovery).

¹⁷ *See eMag Solutions, LLC v. Toda Kogyo Corp.*, No. C 02-1611 PJH, 2006 WL 3783548,
at 82 (N.D.Cal. Dec. 21, 2006) (explaining that “[i]t would . . . be counterintuitive to require a
plaintiff, prior to conducting discovery, to meet the same burden that would be required to defeat
a motion to dismiss”) (quoting *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 673
(S.D.Cal. 2001)); *Focht v. Sol Melia S.A.*, No. C-10-0906 EMC, 2010 WL 3155826, at *2
(N.D.Cal. Aug. 9, 2010).

¹⁸ *See Google, Inc. v. Egger*, Case No. C 08-3172 RMW (PSG), 2009 WL 1228485, at *1;
eMag Solutions, 2006 WL 3783548, at *2; *Focht*, 2010 WL 3155826, at *2.

1 Siano seeks: (1) the motion to dismiss for lack of personal jurisdiction should be subordinated to
2 the motions to dismiss for *forum non conveniens* and for lack of subject matter jurisdiction in
3 light of the Foreign Trade Antitrust Improvements Act; and (2) Siano has failed to show a
4 “colorable basis” that discovery related to personal jurisdiction is warranted.

5 Innofidei first argues that under *Sinochem*,¹⁹ the motions to dismiss for *forum non*
6 *conveniens* and for lack of subject-matter jurisdiction should be heard and decided before the
7 court considers a motion to dismiss for lack of personal jurisdiction. In *Sinochem*, the Supreme
8 Court held that a district court has discretion to determine a plea for *forum non conveniens* before
9 considering challenges to subject-matter and personal jurisdiction.²⁰ “[W]here subject-matter or
10 personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh
11 *heavily* in favor of dismissal, [does] the court properly take the less burdensome course.”²¹

12 Nothing in *Sinochem*, however, compels a district court to hear a *forum non conveniens*
13 or subject-matter jurisdiction challenge first, and Judge Koh has now rejected Defendants’
14 request to prioritize the *forum non conveniens* and subject matter jurisdiction issues. As the
15 Supreme Court specifically explained, “[i]n the mine run of cases, jurisdiction ‘will involve no
16 arduous inquiry’ and both judicial economy and the consideration ordinarily accorded the
17 plaintiff’s choice of forum ‘should impel the federal court to dispose of [those] issue[s] first.’”
18 As a result, with an opposition due on a motion a dismiss for lack of personal jurisdiction due,
19 *Sinochem* offers no basis to deny discovery that is otherwise warranted.²²

20 Innofidei next disputes that Siano has shown a “colorable basis” that discovery related to
21 personal jurisdiction is appropriate. The court, however, finds that Siano has presented such a

22 ¹⁹ *Sinochem Intern. Co. Ltd. v. Malaysia Shipping Corp.*, 549 U.S. 422, 127 S.Ct. 1184, 167
23 L.Ed.2d 15 (2007).

24 ²⁰ *See id.*, 549 U.S. at 423.

25 ²¹ *Id.* at 436.

26 ²² *Id.* Indeed, in a post-*Sinochem* case in this district involving pending motions to dismiss
27 for *forum non conveniens* and for lack of personal jurisdiction, Judge Fogel lifted a stay of
28 personal jurisdiction discovery because “the personal jurisdiction inquiry [may] meaningfully []
inform the Court’s ultimate decision with respect to *forum non conveniens*.” *Facebook, Inc. v.*
StudiVZ, Ltd., et al., Case No. 08-3468 JF (HRL), 2009 WL 1190802, at *4 (N.D. Cal. May 4,
2009) (citing *Sinochem*, 549 U.S. at 436).

1 colorable basis by setting forth pertinent facts as noted above that bear on the question of
2 jurisdiction. To be sure, Innofidei disputes any alleged contacts with this district with a sworn
3 declaration stating that “it makes, markets, and sells nothing in California, has no assets or
4 presence in California and derives no revenue from California.” But where pertinent
5 jurisdictional facts are controverted or a more satisfactory showing of the facts is necessary, *Laub*
6 instructs that jurisdictional discovery should be granted, not denied.²³

7 **III. CONCLUSION**

8 For the foregoing reasons, Siano’s motion for leave to conduct discovery is GRANTED.
9 The parties are hereby authorized to engage in discovery limited to the issue of personal
10 jurisdiction. At this time, the court will refrain from setting specific limits on the types or
11 numbers of discovery procedures authorized by this order, but the parties are cautioned that the
12 discovery is to be narrowly focused and as limited as possible. Innofidei shall complete its
13 responses to these discovery requests no later than March 31, 2011.

14 IT IS SO ORDERED.

15 Dated: 3/1/11

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18 PAUL S. GREWAL
19 United States Magistrate Judge
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28 ²³ See *Laub*, 342 F.3d at 1093.