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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SDS KOREA CO., LTD., a South Korean corporation,  
  
Plaintiff,  
  
vs.  
  
SDS USA, INC., a New Jersey corporation; iBEND, LLC., a Montana LLC and SIMON SONG, an individual; and DOES 1-100, inclusive,  
  
Defendants.

CASE NO. 10 CV 0216 MMA (BGS)

**ORDER:  
GRANTING DEFENDANTS’  
MOTION TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION  
AND IMPROPER VENUE**

[Doc. No. 14]

**GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS’ EX PARTE  
APPLICATION**

[Doc. No. 35]

On May 5, 2010, Defendants SDS USA, Inc., iBEND, LLC and Simon Song (collectively “Defendants”), filed a motion to dismiss Plaintiff SDS Korea Co., Ltd.’s first amended complaint (“FAC”) for lack of personal jurisdiction, improper venue, and failure to state a claim, or in the alternative for a more definite statement of its claims. [Doc. No. 14.]<sup>1</sup> Plaintiff opposed

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<sup>1</sup> Defendants’ motion to dismiss also seeks sanctions against Plaintiff for its allegedly unreasonable refusal to amend the FAC to correct certain pleading deficiencies without involving the Court. According to Defendants, Plaintiff agreed to amend certain claims without requiring Defendants to file a motion to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(e), and later refused to honor this agreement. The record, however, does not indicate any bad faith conduct by Plaintiff with respect to amending the FAC. Accordingly, the Court **DENIES** Defendants’ request for sanctions.

1 Defendants’ motion [Doc. Nos. 19-26], and Defendants submitted a reply, including objections to  
2 Plaintiff’s evidence [Doc. Nos. 29, 30]. On June 15, the Court took Defendants’ motion to  
3 dismiss under submission on the papers and without oral argument pursuant to its discretion under  
4 Civil Local Rule 7.1(d)(1). [Doc. No. 31.] On June 17, Plaintiff submitted a response to  
5 Defendants’ objections, as well as objections to Defendants’ evidence. [Doc. Nos. 32, 33.] On  
6 June 21, Defendants filed an *ex parte* application requesting the Court strike these “late-filed”  
7 documents, or in the alternative, permit Defendants an opportunity to respond. [Doc. No. 35.]  
8 Plaintiff opposed Defendants’ *ex parte* request on June 22. [Doc. No. 22.] For the reasons set  
9 forth below, the Court **GRANTS** Defendants’ motion to dismiss, and **GRANTS IN PART** and  
10 **DENIES IN PART** Defendants’ *ex parte* application.

### 11 BACKGROUND

12 Plaintiff is a South Korean “machine tooling” company involved in, among other things,  
13 “pioneering technology for bending and cutting” metallic materials. [FAC ¶¶4, 9.] Plaintiff’s  
14 principal place of business is located in San Diego, California. [*Id.* at ¶9.] Defendant SDS USA is  
15 a New Jersey corporation with its principal place of business in Norwood, New Jersey. [*Id.* at ¶5;  
16 *Defs.’ Mot. to Dismiss*, Doc. No. 14, p.2.] Individual Defendant Simon Song is the president and  
17 CEO of SDS USA. [Doc. No. 14, p.1.] Mr. Song is domiciled in New Jersey. [*Id.* at p.2.]  
18 Defendant iBend LLC is a Missouri limited liability company with its principal place of business  
19 in Riverside, Missouri. [*Id.* at p.3; FAC ¶7.]

20 Plaintiff produces an automated system that processes and bends steel rule, which is sold in  
21 the United States under the trademark “EasyBender.” [FAC ¶¶10, 15.]<sup>2</sup> iBend sells “automatic  
22 bending machines for the die making and sign making industries.” [Doc. No. 14, p.1.] SDS USA  
23 provides “technical support [for] automatic bending machines for the die making and sign making  
24 industries.” [*Id.*] Until 2007, SDS USA provided services for Plaintiff’s products sold in the  
25 United States. [FAC ¶34.] The relationship terminated when SDS USA allegedly breached its  
26 contract with Plaintiff by selling its own products that infringed Plaintiff’s patents. [*Id.*] In

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28 <sup>2</sup> The United States Patent and Trademark Office (“USPTO”) registration number for EasyBender® is 3405475. Plaintiff also owns trademarks for “SDS” and “SDS Korea” with registration numbers 3582433 and 3582411, respectively. [FAC ¶12.]

1 addition, Plaintiff asserts Defendants are using an infringing domain name—EasyBender.com—to  
2 confuse consumers and redirect traffic to iBend’s website (www.ibend.net). [*Id.* at ¶18.] Plaintiff  
3 alleges Defendants are wrongfully using its EasyBender mark in various locations on iBend’s  
4 website, including for example, to provide links to proprietary “EasyBender Online Manual(s).”  
5 [*Id.* at ¶¶19, 22.] Plaintiff asserts Defendants’ unauthorized use of its proprietary manuals online  
6 constitutes copyright infringement. [*Id.* at ¶22.]

7 Accordingly, on January 28, 2010, Plaintiff filed a complaint alleging, *inter alia*, trademark  
8 and copyright infringement claims. [Doc. No. 1.] On March 9, 2010, Plaintiff filed its FAC to add  
9 patent infringement claims, alleging ten causes of action for: (1) Trademark Infringement (15  
10 U.S.C. § 1114); (2) Unfair Competition under the Lanham Act (15 U.S.C. §§ 1114, 1125(a)); (3)  
11 Injunctive Relief under the Lanham Act (15 U.S.C. § 1116); (4) Copyright Infringement; (5)  
12 Unfair Competition and Infringement under California Business and Professions Code § 17790;  
13 (6) Negligent Interference with Economic Relations; (7) Infringement of ‘919 Patent; (8)  
14 Infringement of ‘940 Patent; (9) Infringement of ‘574 Patent; and (10) Infringement of Patent  
15 Application 12/111,857. [Doc. No. 7.]

### 16 LEGAL STANDARD

17 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may move to  
18 dismiss for lack of personal jurisdiction. The plaintiff then bears the burden of demonstrating that  
19 jurisdiction exists. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).  
20 The plaintiff “need only demonstrate facts that if true would support jurisdiction over the  
21 defendant.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Uncontroverted allegations in  
22 the complaint must be taken as true. *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588  
23 (9th Cir. 1996). However, the court may not assume the truth of such allegations if they are  
24 contradicted by affidavit. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280,  
25 1284 (9th Cir. 1977). In a case such as this, where a court considers only affidavits and discovery  
26 materials, the plaintiff need only make a *prima facie* showing of jurisdiction. *Id.* at 1285. Further,  
27 “conflicts between the facts contained in the parties’ affidavits must be resolved in [the plaintiff’s]  
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1 favor for purposes of deciding whether a prima facie case for personal jurisdiction exists.” *Id.*  
2 (quoting *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)).

3 There are two independent limitations on a court’s power to exercise personal jurisdiction  
4 over a non-resident defendant: the applicable state personal jurisdiction rule and constitutional  
5 principles of due process. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). California’s  
6 jurisdictional statute is coextensive with federal due process requirements; therefore, jurisdictional  
7 inquiries under state law and federal due process standards merge into one analysis. *Rano v. Sipa*  
8 *Press, Inc.*, 987 F.2d 580, 587 (9th Cir. 1993); *see* Cal. Civ. Proc. Code § 410.10. The exercise of  
9 jurisdiction over a non-resident defendant violates the protections created by the due process  
10 clause unless the defendant has “minimum contacts” with the forum state so that the exercise of  
11 jurisdiction “does not offend traditional notions of fair play and substantial justice.” *International*  
12 *Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Personal jurisdiction may be either general or  
13 specific. Here, Plaintiff asserts the Court may exercise both general and specific jurisdiction over  
14 each Defendant, whereas Defendants contend personal jurisdiction does not exist under either  
15 standard. For the reasons set forth below, the Court agrees with Defendants.

16 **DISCUSSION**

17 **I. DEFENDANTS’ EX PARTE APPLICATION**

18 As a preliminary matter, the Court considers Defendants’ *ex parte* application to strike  
19 certain late-filed documents that Plaintiff submitted after Defendants filed extensive objections to  
20 Plaintiff’s evidence. [Doc. No. 35.]<sup>3</sup> On June 17, Plaintiff filed a response to Defendants’  
21 objections, as well as objections to Defendants’ evidence that was submitted with their moving  
22 papers on May 5, 2010. [Doc. Nos. 32, 33.] On June 21, Defendants moved to strike both  
23 documents, or in the alternative, allow Defendants time to respond. [Doc. No. 35.] For the  
24 reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants’ *ex*  
25 *parte* application.

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28 <sup>3</sup> Defendants timely filed their objections on June 14 in connection with their reply brief submitted in support of their motion to dismiss. [Doc. No. 30.]

1           **(A) Plaintiff's Objections to Defendants' Evidence [Doc. No. 32]**

2           Defendants filed their motion to dismiss on May 5, 2010, which was scheduled for hearing  
3 on June 21, 2010. [Doc. No. 14.] Pursuant to Civil Local Rule 7.1(e), Plaintiff's opposition,  
4 including any objections to Defendants' evidence submitted on May 5, was due no later than June  
5 7. *See* Civ. L.R. 7.1(e)(2). Thus, Plaintiff's objections filed ten days later on June 17 are  
6 untimely. Plaintiff asserts the late-filed objections should not be stricken because "Defendants  
7 were the ones who decided to commence filing objections to evidence in a 12(b)(6) motion, where  
8 the case has not yet commenced and therefore the evidence on both sides cannot be properly be  
9 authenticated through discovery." [Doc. No. 36, p.2.] The Court disagrees. On a motion to  
10 dismiss for lack of personal jurisdiction, the Court may consider evidence outside the allegations  
11 in the complaint. *See, Oakley, Inc. v. Jofa AB*, 287 F. Supp. 2d 1111, 1113-14 (C.D. Cal. 2003). If  
12 Plaintiff desired to object to evidence Defendants submitted in support of their moving papers, it  
13 was required to do so when it filed its opposition, no later than June 7. *See, e.g., Hong v. Right*  
14 *Mgmt. Consultants, Inc.*, 2006 U.S. Dist. LEXIS 15252 \*53-54 (N.D. Cal.). Accordingly,  
15 Plaintiff's untimely objections to Defendants' evidence [Doc. No. 32] are **STRICKEN**.

16           **(B) Plaintiff's Response to Defendants' Objections [Doc. No. 33]**

17           Defendants also move to strike Plaintiff's response (filed June 17) to Defendants'  
18 objections (filed June 14) on the ground that it is "tantamount to an improper sur-reply." [Doc.  
19 No. 35, p.2.] Unlike Plaintiff's untimely *objections* to Defendants' evidence, however, which  
20 could (and should) have been made in connection with its opposition, Plaintiff did not have an  
21 opportunity to respond to Defendants' objections filed with their reply brief. Because the Court  
22 took Defendants' motion to dismiss under submission on June 15, Plaintiff was prevented from  
23 responding to Defendants' objections at the hearing. The Court therefore finds Plaintiff's  
24 response, promptly filed within three days of receiving Defendants' objections, reasonable.  
25 Accordingly, the Court **DENIES** Defendants' request to strike Plaintiff's response [Doc. No. 33].  
26 In addition, the Court **DENIES** Defendants' request to be allowed to file a reply to Plaintiff's  
27 responses. The Court has thoroughly reviewed the parties' respective positions regarding the  
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1 evidence submitted in connection with Defendants’ motion to dismiss, and concludes additional  
2 briefing is unnecessary.<sup>4</sup>

3 **II. GENERAL JURISDICTION**

4 Before the Court can exercise general jurisdiction over SDS USA, iBend, and Mr. Song,  
5 Plaintiff must allege facts sufficient to demonstrate each Defendant has “continuous and  
6 systematic business contacts” with California, such that the exercise of jurisdiction is “reasonable  
7 and just.” *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 415 (1984). This so called “minimum  
8 contacts” standard for establishing general jurisdiction is high, requiring that the defendant’s  
9 contacts approximate physical presence in the forum. *Bancroft & Masters, Inc. v. Augusta*  
10 *National Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). “This is an exacting standard, as it should be,  
11 because a finding of general jurisdiction permits a defendant to be haled into court in the forum  
12 state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801  
13 (citation omitted). In addition, each defendant’s contacts with the forum state must be considered  
14 individually, unless the plaintiff establishes the defendant’s actions are reasonably attributable to  
15 the other defendants. *See Indiana Plumbing Supply, Inc. v. Standard of Lynn, Inc.*, 880 F. Supp.  
16 743, 750-51 (C.D. Cal. 1995).

17 Here, Plaintiff suggests the conduct of SDS USA, iBend, and Mr. Song should be  
18 considered collectively to determine if Defendants engaged in sufficient minimum contacts with  
19 the forum to establish jurisdiction. [*See Pl.’s Opp. to Mot. to Dismiss*, Doc. No. 19, p.4.] In  
20 support, Plaintiff offers evidence indicating the two companies “share some corporate officers,”  
21 advertise together, and share an address in Montana. [*Id.*] However, Plaintiff does not identify  
22 any legal theory or authority that would allow the Court to impute the individual Defendant’s  
23 conduct to one another based on this limited evidence. Thus, the Court declines to impute each  
24 Defendant’s conduct to the others, and will consider each Defendant’s alleged contacts with  
25 California separately.

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28 <sup>4</sup> Except as otherwise stated herein, Defendants’ objections are **OVERRULED** for purposes  
of the pending motion to dismiss.

1           **(A) Simon Song**

2           Mr. Song argues this action should be dismissed because he lacks the requisite minimum  
3 contacts with California for this Court to exercise personal jurisdiction over him. In support of  
4 Defendants’ motion to dismiss, Mr. Song provides a declaration stating: (i) he is domiciled in New  
5 Jersey; (ii) he does not own any real or personal property in California; (iii) he does not own any  
6 vehicles registered in California; (iv) he does not have any bank accounts in California; (v) he  
7 does not maintain an office, a mailing address, a telephone or fax number, nor an answering  
8 service in California; (vi) he does not own or lease any storage or warehouse space in California;  
9 (vii) he has not been physically present in California for any purpose related to Plaintiff’s  
10 allegations; and (viii) he has not purposefully availed himself of any activities directed toward  
11 California. [Doc. No. 14, p.8-9; Declaration of Simon Song ¶¶3-13.] Plaintiff asserts Mr. Song is  
12 subject to personal jurisdiction because he has specifically directed advertisements toward  
13 California and solicited business from California residents—albeit, on behalf of SDS USA and  
14 iBend. [Doc. No. 19, p.1, 3.]

15           In support, Plaintiff provides a declaration from Tony Lim (President of Plaintiff SDS  
16 Korea) stating, he “discovered” that Mr. Song exhibited iBend equipment at the “2009 Sign Expo  
17 trade show in Las Vegas, Nevada.” [Declaration of Tony Lim ¶¶1, 7.] Although the trade show  
18 did not take place in California, Plaintiff asserts Mr. Song’s exhibition of iBend products at the  
19 Las Vegas show supports a finding of jurisdiction because it is the only one offered in the western  
20 United States, and there were over 2,400 southern California residents in attendance. [Doc. No.  
21 19, p.13; Lim Decl. ¶7.] Plaintiff also offers a declaration from Mike Adams (president of Adams  
22 Technologies, a distributor for Plaintiff), which states that he witnessed Mr. Song’s exhibition at  
23 the Las Vegas trade show, and he is aware of several emails and letters from Mr. Song soliciting  
24 business from California companies. [Doc. No. 19, p.13; Declaration of Mike Adams. ¶¶6-10, 12.]

25                   *(i) Trade Show in Las Vegas, Nevada*

26           First, Plaintiff does not indicate Mr. Song engaged in any contact with the forum in his  
27 individual capacity. Mr. Adams testifies he witnessed Mr. Song exhibiting *iBend’s* products at the  
28 trade show in Las Vegas, Nevada. [Adams Decl. ¶12.] “[A] person’s mere association with a

1 corporation that causes injury in the forum state is not sufficient in itself to permit that forum to  
2 assert jurisdiction over the person.” *Indiana Plumbing Supply*, 880 F. Supp. at 750. Thus, Mr.  
3 Song’s actions at the show, even if directed toward the forum, do not subject *him* to personal  
4 jurisdiction.

5         Second, the Court finds that Mr. Song’s participation in a single trade show in Las Vegas,  
6 Nevada, does not weigh in favor of exercising general jurisdiction over him in California. Even if  
7 the Court accepts as true that Mr. Song participated in infringing product demonstrations at the  
8 2009 Las Vegas trade show, which approximately 2,400 California residents attended, this  
9 evidence does not demonstrate conduct directed toward California. The trade show Mr. Song  
10 allegedly attended is the “primary trade show in the western United States for the Sign Making  
11 industry.” [Adams Decl. ¶12.] As such, the trade show is presumably open to all members of the  
12 public associated with these industries, regardless of residence. There is no indication Mr. Song  
13 participated in soliciting attendees for the trade show, that he sought out California residents  
14 during the show, that he interacted with any California residents at the trade show, nor that he sold  
15 any equipment to California residents or entered any contracts or obligations with customers in  
16 California. While an exhibitor could reasonably anticipate residents from any of the western  
17 states, including California, would attend the event, without more, Mr. Song’s involvement in an  
18 out-of-state trade show open to the general public does not support exercising jurisdiction over  
19 him in California. *See Kransco Manufacturing, Inc. v. Markwitz*, 656 F.2d 1376, 1377 (9th Cir.  
20 1981) (no general jurisdiction where defendant attended trade show in the forum and mailed  
21 several letters to forum alleging infringement).

22                   (ii)     *Emails and Letters from Simon Song*

23         Second, the Court finds the remaining contacts Plaintiff identifies—two letters from Mr.  
24 Song in his capacity as president of SDS USA—are inadmissible, and otherwise insufficient to  
25 demonstrate sufficiently continuous and systematic contacts to support general jurisdiction.  
26 Plaintiff provides testimony from Mr. Adams that David Reynolds of US Steel Rule Die Co., Inc.  
27 of Cerritos, California forwarded him an email, including a two-page letter attachment, that Mr.

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1 Reynolds received from Mr. Song. [Adams Decl. ¶¶6-7; Exh. A.]<sup>5</sup> Defendants object to this  
2 evidence on numerous grounds, including that Mr. Adams’s testimony lacks foundation, he lacks  
3 personal knowledge and he does not (and cannot) authenticate the email and letter from Mr. Song,  
4 attached as Exhibit “A.” The Court agrees, and **SUSTAINS** Defendants’ objections to paragraphs  
5 six and seven of Mr. Adams’s declaration, including the documents attached as Exhibit A.  
6 Although Mr. Adams can testify he received an email from David Reynolds, as that matter is  
7 within Mr. Adams’s personal knowledge, he does not demonstrate he has personal knowledge  
8 regarding purchases made by US Steel Rule Die Co., Inc. Similarly, Mr. Adams has not  
9 established he is in a position to authenticate Mr. Song’s email and attached unsigned letter.

10 Even if the Court considers the email and attached letter, however, the documents do not  
11 support a finding of general jurisdiction over Mr. Song. At best, the unsigned letter demonstrates  
12 Mr. Song may have sent a form letter to a “Valued Customer” in his capacity as president of SDS  
13 USA; the letter is written on SDS USA letterhead, and “President” appears below Mr. Song’s  
14 signature block. Thus, nothing indicates Mr. Song acted in his individual capacity. In addition,  
15 the letter is not addressed to a California resident or business. Although Mr. Adams testifies he  
16 received the email and attached letter from David Reynolds—who is allegedly associated with a  
17 California business—the email from Mr. Reynolds to Mr. Adams merely states, “I am traveling up  
18 North but received this email.” [Adams Decl. ¶6; Exh. A.] Mr. Reynolds does not indicate he

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20 <sup>5</sup> In paragraph nine of his declaration, Mr. Adams indicates Walt Marris of Marris Printing  
21 (located in the City of Industry, California), also received the same letter from Mr. Song. [Adams  
22 Decl. ¶9.] Defendants assert this testimony is inadmissible because it lacks foundation, Mr. Adams  
23 does not have personal knowledge regarding the letter Marris Printing allegedly received, and the  
24 testimony is inadmissible hearsay. The Court agrees, and **SUSTAINS** Defendants’ objections to  
25 paragraph nine for purposes of this motion only.

26 Similarly, Mr. Adams testifies in paragraph eight that Mr. Song likely sent similar letters to  
27 approximately 29 other companies because SDS USA shared the same database with Adams  
28 Technology. [Adams Decl. ¶8.] Defendants object to this statement on several grounds, including:  
29 Mr. Adams lacks personal knowledge that other SDS USA customers received similar letters; Mr.  
30 Adams’s statements are hearsay because he is offering other customers’ statements that they received  
31 the letter for the truth of the matter asserted; and Mr. Adams’s statement that SDS USA likely sent  
32 the letter to approximately 29 companies is speculative. [Doc. No. 30, p.3-5.] The Court agrees the  
33 testimony in paragraph eight is inadmissible. Mr. Adams does not identify the “several other  
34 customers” that presumably contacted Adams Technologies, how the customers contacted Adams  
35 Technologies, who the customers spoke to, what was said during the conversation, or why the letters  
36 were not forwarded to Adams Technology. Accordingly, for purposes of this motion, Defendants’  
37 objections are **SUSTAINED**.

1 actually received the correspondence from Mr. Song, and the forwarded portion of the original  
2 email identifies both the sender and the recipient as “info@iBEND.net.” [*Id.*]

3         The second email correspondence allegedly sent by Mr. Song is similarly unhelpful to  
4 Plaintiff. Mr. Adams testifies that, “On May 14, 2009, I received an email forwarded by a leasing  
5 agent. Adams Tech sold a machine in Sacramento, Simon Song sent this forwarded email to try  
6 and get the customer to cancel the order and purchase an iBend instead.” [Adams Decl. ¶10; Exh.  
7 C.] In support of Mr. Adams’s testimony, Plaintiff offers a string of email correspondence,  
8 beginning with an email from Mr. Song on April 29, 2009, addressed to “Whom it may concern.”  
9 [Adams Decl. ¶10; Exh. C.] Defendants object to Mr. Adams’s testimony and the supporting  
10 documents in Exhibit C, in part, on the grounds his testimony lacks foundation, and he does not  
11 have personal knowledge regarding the accuracy and authenticity of the email correspondence or  
12 Mr. Song’s reasons for sending it. [Doc. No. 30, p.7-8.] The Court agrees Mr. Adams’s statement  
13 that, “Simon Song sent this forwarded email to try and get the customer to cancel the order and  
14 purchase an iBend instead” is not admissible, and **SUSTAINS** Defendants’ objections to this  
15 portion of paragraph ten and Exhibit C. Mr. Adams does not appear as a recipient on the email  
16 correspondence, nor does Mr. Adams establish how he knows *why* Mr. Song sent the initial email.

17         Even if admissible, however, the email correspondence in Exhibit C does not demonstrate  
18 Mr. Song engaged in contact with the forum. Although it appears the email was ultimately  
19 received by companies that have California offices, this fact does not indicate Mr. Song directed  
20 his email to California. In addition, the correspondence reveals Mr. Song’s email was repeatedly  
21 forwarded before ending up in the hands of the “leasing agent” who forwarded it to Mr. Adams.  
22 Thus, even viewed in the light most favorable to Plaintiff, Mr. Song’s email does not provide an  
23 adequate basis for personal jurisdiction.

24         Based on the record before the Court, Plaintiff has not satisfied its burden to establish Mr.  
25 Song is subject to general jurisdiction in California. Not only has Plaintiff failed to produce any  
26 evidence Mr. Song engaged in contact with the forum in his individual capacity, the only  
27 admissible evidence even involving Mr. Song is his alleged attendance at a trade show in Las  
28 Vegas, Nevada—outside of California. It is undisputed Mr. Song is a New Jersey resident, who

1 does not own or lease any property in California. Mr. Song does not maintain any telephone, fax,  
2 or answering services in California, he does not have a California driver's license, nor does he  
3 have a California bank account. Mr. Song's actions taken on behalf of SDS USA and iBend at the  
4 out-of-state trade show do not demonstrate he engaged in continuous or systematic contacts with  
5 California. Accordingly, this Court does not have general jurisdiction over Mr. Song.

6 **(B) SDS USA**

7 SDS USA similarly asserts it "lacks sufficient contacts with California to be subject to this  
8 Court's jurisdiction." [Doc. No. 14, p.9.] SDS USA is a New Jersey corporation, with its  
9 principal place of business in Norwood, New Jersey. [SDS USA Decl.<sup>6</sup> ¶3.] SDS USA is not  
10 qualified to do business in California, nor does it have any subsidiaries in California. [*Id.* at ¶4.]  
11 "None of SDS USA's officers or directors reside or are domiciled in California," nor do any of  
12 SDS USA's employees reside or conduct business in California. [*Id.* at ¶¶5-6.] In addition, SDS  
13 has not held any of its board meetings in California, or attended business conferences in  
14 California. [*Id.* at ¶¶ 15.] SDS USA does not maintain a bank account in California, does not  
15 have any vehicles registered in California, and does not maintain any telephone, facsimile, or  
16 answering services in California. [*Id.* at ¶¶7, 10-12.] SDS USA does not lease any storage space  
17 nor own any real property in California. [*Id.* at ¶¶ 9, 13.] "SDS USA does not direct any of its  
18 advertising specifically toward California residents, nor does it advertise in any publications that  
19 are targeted or directed primarily toward California residents." [*Id.* at 14.]

20 Plaintiff asserts SDS USA's statements regarding its advertising are untrue because: SDS  
21 USA participated in a trade show in Long Beach, California in 2008 [Doc. No. 19, p.5]; SDS USA  
22 advertises that it has two tool sharpening locations available to its clients, one of which is "ABL"  
23 in San Diego, California [*Id.*; Exh. F]; and SDS USA advertises on Advanced Dye Supplies's  
24 website, a company which has an office in Santa Fe Springs, California [Doc. No. 19, p.4-5].

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28 \_\_\_\_\_  
<sup>6</sup> Declaration of Simon Song in his capacity as president and CEO of SDS USA, Inc.

1 Plaintiff also alleges SDS USA and iBend provided a quote for a machine to a company located in  
2 San Diego, California. [Doc. No. 19, p.2, 5 n.1.]<sup>7</sup>

3 (i) *2008 Trade Show in Long Beach, California*

4 Mr. Lim testifies that in 2008, one of SDS USA’s distributors, Arete Corp., participated in  
5 “The Sign Business & Digital Graphics Show” in Long Beach, California, and “SDS USA was  
6 displaying their products at this show.” [Lim Decl. ¶8.] Mr. Lim spoke to Jeff Brown, of SDS  
7 USA, at the booth during the event. [*Id.*] Because this trade show took place in California, the  
8 Court finds Mr. Lim’s testimony adequately demonstrates SDS USA engaged in contact with the  
9 forum through its participation in the Long Beach show. Without more, however, SDS USA’s  
10 presence at a single event does not establish sufficient systematic and continuous contacts to create  
11 general jurisdiction. *See Kransco Manufacturing*, 656 F.2d at 1377.

12 (ii) *Quote to California Business*

13 With respect to the alleged quote SDS USA and iBend provided to Sign Graphix in San  
14 Diego, California, Plaintiff provides testimony from Mr. Adams stating, “I have discovered that  
15 Jolly Limquenco of SIGN GRAPHIX received a quote for an iBEND machine from SDS USA in  
16 July 2009.” [Adams Decl. ¶16.] Defendants object to this testimony on the grounds that it lacks  
17 foundation, Mr. Adams does not have personal knowledge regarding the quote, and it constitutes  
18 inadmissible hearsay. [Doc. No. 30, p.15.] The Court agrees, and **SUSTAINS** Defendants’  
19 objections for purposes of this motion only. *See Fed. R. Evid.* 602. Mr. Adams does not  
20 demonstrate the requisite personal knowledge required to testify that Sign Graphix received a  
21 quote from the Defendants.

22 (iii) *Website Advertisement & Referral for Services*

23 SDS USA’s alleged marketing activities with two different companies that maintain  
24 California offices are likewise unhelpful to Plaintiff. Mr. Lim testifies, “I have discovered that  
25 SDS USA advertises on the website for Advanced Die Supplies . . . Advanced Die Supplies[’s]  
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27 <sup>7</sup> Plaintiff also relies on the two emails Mr. Song allegedly sent on behalf of SDS USA to  
28 solicit business from California companies. [*Id.* at p.5.] However, because the Court sustained  
Defendants’ objections to these emails and related testimony, it will not consider the emails in its  
jurisdictional analysis.

1 west coast office is located in Santa Fe Springs, California.” [Doc. No. 19, p.4-5; Lim Decl. ¶10.]  
2 Plaintiff asserts this advertisement is “highly relevant to establish that SDS USA does business in  
3 California with Advanced Die Supplies.” [Doc. No. 33, p.10.] While SDS USA’s logo appears on  
4 the website, the logo does not link to information about SDS USA, it does not invite people to  
5 contact SDS USA, and it does not provide an opportunity to interact with SDS USA in any way.  
6 In addition, that Advanced Die Supplies has a California location is inapposite. Plaintiff provides  
7 no evidence SDS USA has had any contact with the California office, nor that any contacts with  
8 potential customers in California arose from this advertisement.

9 Similarly, Mr. Lim testifies that SDS USA refers customers who need tools sharpened to  
10 SDS USA’s New Jersey location, or to a company named ABL, Inc. in San Diego, California,  
11 depending on the customer’s location. [Doc. No. 19, p.5; Lim Decl. ¶¶12-14.] Mr. Lim states, in  
12 relevant part, “it is my understanding that in some instances a customer who has purchased an  
13 EasyBender sends [a] purchase order to SDS USA for the sharpening which is done in San Diego  
14 by ABL, Inc. It is my understanding that SDS USA then pays ABL, Inc. for the service.” [Lim  
15 Decl. ¶13.] Defendants object to these statements on the grounds that the testimony lacks  
16 foundation and Mr. Lim lacks personal knowledge. [Doc. No. 30, p.27.] For the following  
17 reasons, the Court **SUSTAINS** Defendants’ objections.

18 Mr. Lim is not affiliated with SDS USA or ABL, Inc.—he is the president of Plaintiff SDS  
19 Korea. [Lim Decl. ¶1.] Mr. Lim’s declaration does not establish how he has personal knowledge  
20 regarding SDS USA’s relationship (if any) with ABL, Inc. Nor does he indicate how he has  
21 personal knowledge of SDS USA’s alleged practices for coordinating the sharpening services  
22 provided by ABL, Inc.<sup>8</sup> In the absence of evidence to establish Mr. Lim has personal knowledge  
23 regarding these matters, his testimony is inadmissible. Fed. R. Evid. 602.

24 Accordingly, in the absence of admissible evidence beyond SDS USA’s isolated  
25 attendance at the Long Beach trade show in 2008, the Court finds SDS USA has not engaged in

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27 <sup>8</sup> For similar reasons, Exhibit “G” to Mr. Lim’s declaration lacks foundation and is  
28 inadmissible. Although Mr. Lim declares, “I have knowledge that SDS USA has corresponded with  
ABL, Inc. discussing making attempts to lure service customers away from SDS Korea’s distributor  
Adams Technology” [Lim Decl. ¶14], he fails to authenticate the supporting email correspondence  
in Exhibit G, and Mr. Lim is not an identified recipient on any of the correspondence.

1 contact with California that can reasonably be considered equivalent to physical presence in the  
2 forum. *See Bancroft & Masters*, 223 F.3d at 1086. Thus, this Court does not have general  
3 jurisdiction over SDS USA.

4 (C) **iBend, LLC**

5 iBend also moves to dismiss Plaintiff’s complaint for lack of jurisdiction because it has not  
6 engaged in sufficient contacts with California to establish personal jurisdiction. iBend is a  
7 Missouri limited liability company with its principal place of business in Riverside, Missouri.  
8 [Declaration of Jay Joo ¶3.]<sup>9</sup> None of iBend’s employees, officers or directors are domiciled in  
9 California, nor do they conduct business for iBend or attend meetings or seminars on its behalf in  
10 California. [*Id.* at ¶¶4-6, 15.] iBend does not maintain any office space in California, nor a  
11 mailing address, telephone or facsimile number in California. [*Id.* at ¶¶11-12.] In addition, iBend  
12 does not maintain any bank accounts in California, does not own any vehicles registered in  
13 California, and does not own or lease any property in California. [*Id.* at ¶¶7, 8-10, 12-13.] Nor  
14 does iBend direct any advertising specifically toward California. [*Id.* at ¶14.]

15 Plaintiff asserts Mr. Joo’s testimony is untruthful because Mr. Song exhibited iBend’s  
16 equipment at the trade show in Las Vegas, which was attended by over two thousand California  
17 residents, and for the past two years iBend has advertised in a monthly trade publication, *Cutting*  
18 *Edge*, which has a “large subscription base in California.” [Doc. No. 19, p.4, 12; Adams Decl.  
19 ¶¶12-13; Exh. D.] In addition, Plaintiff asserts iBend entered at least one contract with a  
20 California business, and that iBend currently advertises on Advanced Dye Supplies’s website,  
21 which has an office in Santa Fe Springs, California. [Doc. No. 19, p.4-5.]<sup>10</sup>

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22  
23 <sup>9</sup> Jay Joo is the president and sole member of iBend, LLC. [Joo Decl. ¶1.]

24 <sup>10</sup> Plaintiff also refers to an “attempted sale” where iBend allegedly attempted to convince a  
25 customer in Sacramento, California to cancel its order with Adams Technology and purchase a  
26 machine from iBend instead. [Adams Decl. ¶10.] Because the Court previously sustained  
27 Defendants’ objections to paragraph ten of Mr. Adams’s testimony and the corresponding emails in  
28 Exhibit “C” thereto, the Court does not consider this alleged contact in its jurisdictional analysis.

27 The Court also notes the FAC alleges—without elaboration—that iBend advertises infringing  
28 products on its website, <http://ibend.net> [FAC ¶39], but Plaintiff does not raise the iBend website in  
its opposition to Defendants’ motion to dismiss. However, without more, a passive informational  
website that has not resulted in any identifiable contacts or sales with California residents does not

1 (i) *Trade Show in Las Vegas, Nevada*

2 Mr. Adams testifies he witnessed Mr. Song exhibiting iBend's equipment at the 2009 trade  
3 show in Las Vegas, Nevada. [Adams Decl. ¶12.] Plaintiff argues that because over 2,400  
4 California residents attended the Las Vegas trade show, iBend purposefully directed its conduct  
5 toward California. For the reasons previously set forth above in section II(A)(i), iBend's presence  
6 at the Las Vegas trade show, through Mr. Song, does not demonstrate contact with California.

7 (ii) *Trade Publication*

8 Plaintiff argues iBend actively directs advertisements toward the forum because the trade  
9 publication, *Cutting Edge*, has a "large subscription based in California." [Adams Decl. ¶13.]  
10 However, there is nothing in the record to support this statement. Plaintiff asserts the "distribution  
11 list for the *Cutting Edge* magazine is posted on the internet and a listing of the Southern California  
12 recipients was attached as Exhibit "D" to Plaintiff's Notice of Lodgement." [Doc. No. 33, p.9.]  
13 But Exhibit D, which consists of excerpts from *Cutting Edge*, including copies of iBend's  
14 advertisements in October 2009 and February 2010, do not indicate any significant connection to  
15 California.<sup>11</sup> [Adams Decl. ¶13; Exh. D.] Accordingly, iBend's advertisements in *Cutting Edge*  
16 do not establish contact with the forum.

17 (iii) *Sale to California Business*

18 Plaintiff also contends iBend engaged in contact with California because it has identified at  
19 least one allegedly infringing device sold to a California business. [Doc. No. 19, p.12.] iBend  
20 asserts the identified device "was sold by a non-party distributor in North Hollywood, California."  
21 [Doc. No. 14, p.3; Nielson Decl. ¶11.] Plaintiff interprets this statement as an admission that  
22 iBend "entered into at least one contract with a California business." [Doc. No. 19, p.12.] Based  
23 on the record, however, iBend merely acknowledges that a third party distributor—not  
24 iBend—sold the device identified by Plaintiff. Without more, a single sale by an unidentified  
25 distributor to a California business does not establish that iBend had contact with the forum.

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26  
27 create personal jurisdiction. *See CollegeSource, Inc. v. AcademyOne, Inc.*, 2009 U.S. Dist. LEXIS  
28 \*11-12, 15-16 (S.D. Cal.) (citing *Bancroft*, 223 F.3d at 1082; *Cybersell, Inc. v. Cybersell, Inc.*, 130  
F.3d 414 (9th Cir. 1997)).

<sup>11</sup> The Court notes several portions of Exhibit D are illegible.

1 Accordingly, because iBend is not registered to do business in California, has no employees in  
2 California, and has no assets in California, the Court finds the contacts alleged by Plaintiff are not  
3 sufficient to support general jurisdiction over iBend.

4 **III. SPECIFIC JURISDICTION**

5 “Where general jurisdiction is inappropriate, a court may still exercise specific jurisdiction  
6 if the defendant has sufficient contacts with the forum state in relation to the cause[s] of action.”  
7 *Sher*, 911 F.2d at 1361 (citing *Data Disc, Inc.*, 557 F.2d at 1286). Specific jurisdiction is analyzed  
8 using a three-prong test: (1) the non-resident defendant must purposefully direct its activities  
9 towards, or consummate some transaction with, the forum or a resident thereof, or perform some  
10 act by which it purposefully avails itself of the privilege of conducting activities in the forum,  
11 thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises  
12 out of or results from the defendant’s forum-related activities; and (3) the exercise of jurisdiction  
13 must be reasonable. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). Each of these conditions  
14 is required to assert jurisdiction. *Insurance Co. of N. Am. v. Marina Salina Cruz*, 649 F.2d 1266,  
15 1270 (9th Cir. 1981).

16 Plaintiffs may satisfy the first prong in the analysis by demonstrating that the defendant  
17 “purposefully directed” its conduct toward the forum state, or “purposefully availed” itself of the  
18 privilege of doing business in the forum. *Schwarzenegger*, 374 F.3d at 802. Courts typically  
19 utilize the purposefully directed standard in tort cases, whereas the purposeful availment test is  
20 most useful for contract-based claims. *Id.*

21 To establish the defendant “purposefully directed” its conduct toward the forum, the  
22 plaintiff usually produces “evidence of the defendant’s actions outside the forum state that are  
23 directed at the forum, such as the distribution in the forum state of goods originating elsewhere.”  
24 *Id.* at 803. Conversely, the “purposeful availment” inquiry usually involves evidence of the  
25 defendant’s actions in the forum to determine whether the defendant should reasonably anticipate  
26 being haled into the forum state court based on its contacts. *Schwarzenegger*, 374 F.3d at 802;  
27 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The purposeful availment  
28



1 test is met where “the defendant has taken deliberate action within the forum state or if he has  
2 created continuing obligations to forum residents.” *Ballard*, 65 F.3d at 1498.

3 The second prong in the analysis requires that the claim arise out of or result from the  
4 defendant’s forum-related activities. A claim arises out of a defendant’s conduct if the claim  
5 would not have arisen “but for” the defendant’s forum-related contacts. *Panavision Int’l v. L.P.v.*  
6 *Toeppa*, 141 F.3d 1316, 1322 (9th Cir. 1998).

7 If the plaintiff satisfies the first two factors, the defendant bears the burden of overcoming  
8 a presumption that jurisdiction is reasonable, by presenting a compelling case that specific  
9 jurisdiction would be unreasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985);  
10 *Haisten v. Grass Valley Medical Fund, Ltd.*, 784 F.2d 1392, 1397 (9th Cir. 1986). Seven factors  
11 are considered in assessing whether the exercise of jurisdiction over a non-resident defendant is  
12 reasonable: (1) the extent of the defendant’s purposeful interjection into the forum state’s affairs;  
13 (2) the burden on the defendant of defending in the forum; (3) conflicts of law between the forum  
14 state and the defendant’s home jurisdiction; (4) the forum state’s interest in adjudicating the  
15 dispute; (5) the most efficient judicial resolution of the dispute; (6) the plaintiff’s interest in  
16 convenient and effective relief; and (7) the existence of an alternative forum. *Caruth v.*  
17 *International Psychoanalytical Ass’n*, 59 F.3d 126, 128 (9th Cir. 1995).

18 **(A) Simon Song**

19 The only admissible evidence in the record regarding Mr. Song’s contact with California  
20 involves his presence at the 2009 trade show in Las Vegas, Nevada. But, as previously discussed,  
21 Plaintiff has not demonstrated Mr. Song acted in his individual capacity at the show, and the Court  
22 may not assert jurisdiction over him based only on his association with iBend. Accordingly, this  
23 Court lacks specific jurisdiction over Mr. Song.

24 **(B) SDS USA**

25 Plaintiff asserts this Court has specific personal jurisdiction over SDS USA, because the  
26 company attended a trade show in 2008 in Long Beach, California, and it currently advertises on  
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1 the website for Advanced Die Supplies, which has an office in Santa Fe Springs, California.<sup>12</sup> As  
2 Plaintiff acknowledges, however, it is not merely the number of contacts the defendants have with  
3 California, it is “the quality and nature of those contacts which is important for establishing  
4 jurisdiction.” [Doc. No. 19, p.7-8; see *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475  
5 (1985).]

6 Plaintiff asserts SDS USA directly solicited business from California through its  
7 advertisement on Advanced Die Supplies’s website. [Doc. No. 19, p.13.] The Court disagrees.  
8 First, the record does not contain any evidence SDS USA’s advertisement was deliberately  
9 directed toward the forum. Although Advanced Die Supplies has a California location, SDS  
10 USA’s placement of its logo on the company’s website, which is accessible nationwide, does not  
11 establish SDS USA was specifically seeking business from California. SDS USA’s mere presence  
12 on a website that is accessible nationwide does establish personal jurisdiction in California. See,  
13 e.g., *CollegeSource*, 2009 U.S. Dist. LEXIS at \*15 (citing *Cybersell*, 130 F.3d at 419). Second,  
14 Plaintiff has not demonstrated SDS USA purposefully availed itself of the benefits of conducting  
15 business in the forum through the placement of its logo on Advanced Die Supplies’s website. The  
16 record contains no evidence the ad resulted in any interaction with potential customers in the  
17 forum, nor any sales to California residents or businesses.

18 Plaintiff’s reliance on iBend’s presence at the Long Beach trade show is similarly  
19 unavailing. According to Mr. Lim’s testimony, SDS USA displayed its products at one of its  
20 distributor’s booths at the Long Beach show; SDS USA did not purchase its own booth. [Lim  
21 Decl. ¶8.] Plaintiff does not offer evidence that SDS USA sold any products at the show to  
22 California residents or businesses, or that SDS USA otherwise entered any negotiations,  
23 agreements, or contracts with any California customers. Thus, the location of the trade show,  
24 which SDS USA had no control over, is the only evidence indicating any contact with the forum.

25 In addition, even assuming SDS USA’s participation in the Long Beach trade show is  
26 sufficient to satisfy the first prong in the specific jurisdiction analysis, Plaintiff has not

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27  
28 <sup>12</sup> The Court does not consider evidence of the other alleged contacts previously deemed inadmissible in section II(B), *supra*.

1 demonstrated its claims arise out of or relate to SDS USA's exhibition at the Long Beach show.  
2 "To satisfy th[e] second prong, the Ninth Circuit requires a plaintiff to show that [it] would not  
3 have suffered an injury "but for" the defendant's forum-related conduct." *CollegeSource, Inc.*,  
4 2009 U.S. Dist. LEXIS at \*18-19 (citing *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007)).  
5 Here, Plaintiff does not assert any of its alleged injuries resulted from SDS USA's participation in  
6 the Long Beach trade show. Notably, although Mr. Lim testifies SDS USA displayed its products  
7 at the show, he does not specify whether the products displayed were those that allegedly infringe  
8 Plaintiff's patents. Accordingly, Plaintiff has not satisfied the second prong in the specific  
9 jurisdiction analysis because Plaintiff's claims do not arise out of SDS USA's attendance at the  
10 show. SDS USA is not subject to specific personal jurisdiction in California.

11 **(C) iBend, LLC**

12 Finally, Plaintiff asserts iBend's exhibition at the Las Vegas trade show, its monthly  
13 advertisements in the trade publication, *Cutting Edge*, and one sale involving an allegedly  
14 infringing iBend machine in northern California establish specific jurisdiction over iBend. The  
15 Court disagrees.

16 As previously discussed, Mr. Adams testified he saw Mr. Song exhibiting "iBend  
17 equipment in the ARETE booth" at the trade show in Las Vegas, Nevada. [Adams Decl. ¶12.]  
18 Notably, this trade show took place *outside* of California. Although there were California  
19 residents in attendance at the trade show, there is no indication the potential access to California's  
20 residents motivated iBend's participation. In addition, Plaintiff does not assert iBend interacted  
21 with any California residents or businesses at the trade show, sold any products to California  
22 attendees, nor entered any negotiations or other agreements involving California consumers. The  
23 Ninth Circuit has held, "that a non-resident defendant's act of soliciting business in the forum state  
24 will generally be considered purposeful avilment *if* that solicitation results in contract  
25 negotiations or the transaction of business." *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 381  
26 (9th Cir. 1990) (emphasis added) (citation omitted). Thus, iBend's mere presence at a trade show  
27 in Las Vegas, Nevada does not establish it purposefully directed any conduct toward California.

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1 Similarly, Plaintiff asserts iBend specifically directed marketing activities toward the  
2 forum by placing monthly ads in *Cutting Edge* for the past two years. Because the record contains  
3 no evidence indicating where the publication is distributed, the existence of iBend's  
4 advertisements in *Cutting Edge* do not establish any contact with California. Lastly, Plaintiff  
5 identifies one sale of an allegedly infringing iBend machine to a business in San Francisco,  
6 California. While Plaintiff asserts iBend admits it entered this sales contract in California, the  
7 evidence demonstrates that an unidentified third-party distributor actually sold the iBend machine.  
8 Without more, the Court concludes the sale of an iBend machine by an unnamed third party does  
9 not establish iBend purposefully availed itself to the benefits and protections of California's laws  
10 such that it could reasonably be expected to be haled into California's courts. Accordingly, the  
11 conduct identified by Plaintiff does not demonstrate iBend is subject to specific jurisdiction.

#### 12 **IV. VENUE**

13 Even if Plaintiff had produced admissible evidence of sufficient contacts with California to  
14 exercise personal jurisdiction over any of the Defendants, venue in the Southern District is not  
15 proper. Plaintiff asserts it properly initiated this action in San Diego under 28 U.S.C. § 1391(b)(2)  
16 because a "substantial part of the events giv[ing] rise to the claim occurred" in this district. [Doc.  
17 No. 19, p.14.] The record, however, belies Plaintiff's position.

18 Setting aside the admissibility problems with Plaintiff's evidence, none of the alleged  
19 events that give rise to Plaintiff's claims occurred in the Southern District of California. Indeed,  
20 the only link Plaintiff provides to the Southern District is an alleged quote from iBend to a San  
21 Diego company (Sign Graphix). Yet Plaintiff does not even allege the quote was given for an  
22 infringing machine. Accordingly, even if Plaintiff's allegations are taken as true, which they need  
23 not be on a motion to dismiss for improper venue,<sup>13</sup> the facts before the Court do not demonstrate  
24 that any events, let alone a substantial part of the events, giving rise to Plaintiff's claims occurred

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28 <sup>13</sup> See *Argueta v. Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996).

1 in the Southern District.<sup>14</sup> Because the Southern District of California is not a proper venue for  
2 Plaintiff's claims, its complaint is subject to dismissal.

3 Although the Court agrees with Plaintiff that transferring the case to an appropriate venue  
4 is often preferable to dismissing the action, Plaintiff has not identified an appropriate venue for  
5 transfer. Similarly, Defendants did not identify a potentially acceptable venue until their reply  
6 brief, which identifies the Eastern District of New York. Because the record is devoid of any  
7 reference to parties or events in New York, the Court does not find New York to be an acceptable  
8 venue for transfer. Accordingly, dismissal is appropriate.

9 **V. PLAINTIFF'S REQUEST FOR JURISDICTIONAL DISCOVERY**

10 Lastly, Plaintiff requests that it be granted an opportunity to conduct jurisdictional  
11 discovery if the Court finds the existing evidence does not demonstrate an adequate basis for  
12 personal jurisdiction over the Defendants. [Doc. No. 19, p.18-19.] "Courts are afforded a  
13 significant amount of leeway in deciding whether parties may conduct discovery relating to  
14 jurisdictional issues while a motion to dismiss is pending. It is clear that the question of whether  
15 to allow discovery is generally within the discretion of the trial judge. However, where *pertinent*  
16 facts bearing on the question of jurisdiction are in dispute, discovery should be allowed." *Orchid*  
17 *Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 672 (S.D. Cal. 2001) (emphasis added)  
18 (internal marks and citations omitted).

19 Here, Plaintiff has not shown that pertinent facts bearing on jurisdiction are in dispute.  
20 Plaintiff asserts there are inconsistencies between Mr. Song's and Mr. Joo's declarations that  
21 warrant discovery, but fails to identify a single discrepancy between the two declarations.  
22 Similarly, Plaintiff unsuccessfully attempts to contradict Defendants' assertions that they have not  
23 engaged in advertising activities specifically directed toward California. As discussed more fully  
24 above, Plaintiff is unable to identify any advertising that specifically targeted the forum. Sheer  
25 speculation and conclusory statements regarding Defendants' alleged activities are insufficient to  
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27 <sup>14</sup> For the same reasons, venue is not proper in San Diego under the patent venue statute, 28  
28 U.S.C. § 1400(b), which provides: "Any civil action for patent infringement may be brought in the  
judicial district where the defendant resides, or where the defendant has committed acts of  
infringement *and* has a regular and established place of business." (emphasis added).

1 satisfy the showing require by *Orchid Biosciences*. Thus, in the absence of any credible evidence  
2 that pertinent facts are in dispute, the Court **DENIES** Plaintiff's request for jurisdictional  
3 discovery.<sup>15</sup>

4 **CONCLUSION**

5 Because the Court lacks personal jurisdiction over each of the Defendants, and none of the  
6 events giving rise to Plaintiff's claims occurred in the Southern District of California, the Court  
7 **DISMISSES** Plaintiff's complaint for lack of jurisdiction and improper venue. The Clerk of Court  
8 is instructed to terminate the case file.

9 **IT IS SO ORDERED.**

10  
11 DATED: August 4, 2010

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13 Hon. Michael M. Anello  
14 United States District Judge

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<sup>15</sup> Magistrate Judge McCurine recently permitted briefing on Plaintiff's request for jurisdictional discovery, and denied the request on June 11, 2010. [Doc. No. 28; *see also* Doc. No. 29-1, Exhs. 10-13.]