



LITIGATION NEWSLETTER

Recent Litigation News in Intellectual Property

December 2016

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The Federal Circuit Reverses the Delaware District Court's Finding of No Personal Jurisdiction Even Though the Accused Infringer Never Had Title to the Allegedly Infringing Products in the U.S.

The Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Polar Electro Oy v. Suunto Oy*, recently reversed the U.S. District Court for the District of Delaware's decision to not exercise personal jurisdiction over Finnish sports watch maker Suunto Oy, despite Suunto never having title to the accused products when they were sold in the U.S. At trial, Suunto argued that the Delaware District Court could not exercise personal jurisdiction claiming that it had no contacts with the U.S. because a sister company, U.S. based distributor Amer Sports Winter & Outdoor ("ASWO"), took title to the products in-question in Finland and paid for shipping to the U.S.

The Federal Circuit reversed and vacated the District Court's finding of no personal jurisdiction because Suunto in effect controlled all the distribution work, including shipping directly to retail outlets rather than through an ASWO facility, thus making jurisdiction appropriate. According to the Federal Circuit, a court may exercise personal jurisdiction over an out-of-state resident under the Delaware long-arm statute, provided that the provisions of the state's long-arm statute are satisfied and there are no due process violations. Citing the Delaware state court precedent extending the Delaware long-arm statute to cover situations where an accused infringer intends to serve the Delaware market and introduce a product into the market that causes injury, the Federal Circuit vacated the Delaware District Court's jurisdictional ruling.

The Delaware District Court dismissed Suunto from the infringement action on due process grounds, which come into play where a small manufacturer uses a national distributor with no clear intention to sell in a particular state. In that scenario, a patentee can put a small manufacturer at a disadvantage by forcing it to spend money and resources in an out-of-state jurisdiction.

The Federal Circuit distinguished the small manufacturer scenario from the instant fact pattern. Here, plaintiff Polar argued for jurisdiction under a stream of commerce argument, which required Polar to show that Suunto put the accused products into the stream of commerce fully aware that the products "would foreseeably reach" Delaware. The Federal Circuit further observed that, while the U.S. Supreme Court has not been clear on a key question underlying that argument, i.e., whether an accused infringer "purposefully directed activities at residents of the forum state," Suunto's actions met the definition even under stringent application of this test.

The Federal Circuit further rejected Suunto's argument that its activities should be attributed to ASWO, its alter ego, noting that Suunto knew its distribution agreement could lead to sales in Delaware, and its outbound logistic services were extensive. The Federal Circuit also noted that Suunto packaged and shipped at least 94 products to the addresses of Delaware retailers.

According to the Federal Circuit, such "active participation" as exercised by Suunto satisfied the the Supreme Court's purposeful availment test. The Federal

Circuit, however, left for another day whether other Suunto activities such as a website, eight online sales and warranty obligations alone would have been sufficient to confer personal jurisdiction.

The Federal Circuit Reiterates the Flexibility of the KSR Obviousness Analysis

The Federal Circuit recently reiterated that the *KSR* obviousness test is flexible in *ClassCo, Inc. v. Apple, Inc.* on an appeal of the PTAB finding of obviousness after an *Inter Partes Review*, wherein the PTAB affirmed an Examiner's rejection of claims at issue.

After being accused of infringement of U.S. Patent No. 6,970,695, Apple requested *Inter Partes Review* of the '695 patent, which relates to improved caller ID systems having audible announcement of the identity of the originator of an incoming call. The PTAB found the claimed invention obvious over two prior art references: the Fujioka and Gulick references. In that regard, the PTAB found that the Fujioka reference disclosed all but one of the claimed elements; that is, the Fujioka reference does not disclose using the same "audio transducer" (i.e., speaker) for announcing both a caller's identity and telephone voice signals. The PTAB, accordingly, looked to the Gulick reference for that teaching noting that the Gulick reference, generally, discloses a hands-free telephone that integrates various phone features into a single device.

The PTAB further explained that "Gulick discloses a speaker that produces audio derived from tonal ringing call-alerting and also from caller voice signals," and that, in light of the Gulick reference, "one of ordinary skill in the art would have understood that a speaker in a telephone system may (and does) produce audio derived from multiple types of data in a telephone system, including tonal ringing call alerting and caller voice signals." The PTAB, accordingly, held that the combination of the Fujioka and Gulick references rendered representative claim 2 and the claims that depend from it obvious.

On appeal, the Federal Circuit affirmed the PTAB's finding of obviousness in view of the combination of the references. The Federal Circuit specifically noted that, under the *KSR* obviousness analysis, some flexibility regarding the function of the elements is permissible in combining the elements of the prior art. That is, *KSR* does not require that a combination only unite old elements without changing their respective functions. *KSR* instead teaches that "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton," and explains that the ordinary artisan recognizes "that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." In that respect, the Federal Circuit also noted that the *KSR* reasoning does not support ClassCo's theory that a person of ordinary skill can only perform combinations of a puzzle element A with a perfectly fitting puzzle element B; to the contrary, *KSR* instructs that the obviousness analysis requires a flexible approach. The Federal Circuit, accordingly, found that the PTAB properly applied this flexible approach in holding that the combination of the Fujioka and Gulick references "would have resulted in no more than [a] predictable result" and affirming the finding of obviousness.