

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

BLAISE LEE MCARDLE, )  
 )  
 Plaintiff )  
 v. ) Civ. No. 97-CV-00095B  
 )  
 PAUL G. FREEMAN, et al., )  
 )  
 Defendants )

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Plaintiff, Blaise Lee McArdle, files this action against Defendants, Freeman Industries, L.L.C. (“Freeman Industries”), Flow Chemicals, Inc. (“Flow”) (collectively “the corporate Defendants”), and Paul Freeman, alleging patent infringement, wrongful appropriation, breach of contract, unjust enrichment, and unfair competition. Presently before the Court is Defendants’ Motion to Dismiss for lack of personal jurisdiction, or, in the alternative, to Transfer Venue. For the reasons set forth below, Defendants’ Motion to Dismiss for lack of personal jurisdiction is GRANTED.

**MOTION TO DISMISS**

“When a defendant presents to a district court a motion to dismiss for lack of in personam jurisdiction, the court may proceed to adjudication by one or another among several different methods,” each involving a different legal standard. Boit v. Gar-Tec Products, Inc., 967 F.2d 671, 674 (1st Cir. 1992). In considering Defendants’ motion, the Court applies the “prima facie” standard. Under this standard, the Court considers only whether Plaintiff “has proffered

evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction.” Id. at 675. “The prima facie showing of personal jurisdiction must be based on evidence of specific facts set forth in the record.” Id. Plaintiff “must go beyond the pleadings and make affirmative proof.” Chlebda v. H.E. Fortna & Bro., Inc., 609 F.2d 1022, 1024 (1st Cir. 1979). However, “[i]n determining whether a prima facie showing has been made, the district court is not acting as a factfinder.” Boit, 967 F.2d at 675. The Court must, for the purposes of this motion, accept “properly supported proffers by a plaintiff as true.” Id.

### **BACKGROUND**

Plaintiff is a resident of Massachusetts who owns three corporations, all located in Kennebec County, Maine. McArdle Aff. ¶ 2. Plaintiff does not own a residence in Maine and his corporations are not parties to this action. See Id. at ¶ 1. Defendant Paul Freeman is a resident of New Rochelle, New York, and has a place of business in Tuckahoe, New York. Freeman Decl. ¶¶ 1, 3. Defendant Freeman Industries is a New York partnership with an office in Tuckahoe, New York. Id. at ¶ 1. Defendant Flow is a Massachusetts corporation which sells goods to Freeman Industries, its only customer. Id. Neither Freeman Industries nor Flow have offices in Maine. Id. at ¶ 5. Paul Freeman is the vice president of both Freeman Industries and Flow. Defs.’ Reply to Pl.’s Resp. to Defs.’ Mot. Dismiss at 4.

Plaintiff holds three United States Patents issued on May 7, 1996 (“patent I”), January 7, 1997 (“patent II”), and May 6, 1997 (“patent III”) respectively. Patent I protects an invention relating to a process and compositions for conditioning soils, beaches, and roadways by treating the surface or the roadway construction materials of these areas with a granular composition or an aqueous solution containing a protein-polysaccharide complex (“PPC”). Patent II protects a

PPC composition, and its method of preparation and use. Patent III protects a method of enhancing internal adhesion of cementitious compositions by treating cementitious-containing materials, including asphalt, with a binding composition containing a PPC.

Plaintiff alleges that Defendants infringed, and continue to infringe, one or more of these patents by making, selling, and using Plaintiff's proprietary and patented PPC compound, made and manufactured by a patented process invented by Plaintiff.

### **DISCUSSION**

In arguing whether this Court has personal jurisdiction over Defendants, both parties analyzed this problem in terms of a state's power to summon an out-of-state defendant with respect to the due process standards of the Fourteenth Amendment. However, this case involves a question of federal patent law. "When the district court's subject matter jurisdiction rests wholly or in part on the existence of a federal question, the constitutional limits of the court's personal jurisdiction are drawn in the first instance with reference to the due process clause of the Fifth Amendment." Lorelei Corp. v. County of Guadelupe, 940 F.2d 717, 719 (1st Cir. 1991). The Fifth Amendment, unlike the Fourteenth Amendment, permits the court to exercise personal jurisdiction over a defendant if that defendant has "minimum contacts" with the United States as a whole. Id. The necessary "minimum contacts" exist whenever the defendant is served within the sovereign territory of the United States. Id. (citing Johnson Creative Arts, Inc. v. Wool Masters, Inc., 743 F.2d 947, 950 n.3 (1st Cir. 1984); Driver v. Helms, 577 F.2d 147, 156 n.25 (1st Cir. 1978)).

Before exercising personal jurisdiction, however, the Court must determine whether the procedural requirement of service of summons has been satisfied. Omni Capital Int'l v. Rudolph

Wolff & Co., Ltd., 484 U.S. 97, 104 (1987). Although “personal jurisdiction and service of process are distinguishable, they are closely related since ‘service of process is the vehicle by which the court may obtain jurisdiction.’” Lorelei, 940 F.2d at 719-20 n.1 (quoting Driver, 577 F.2d at 155). Thus, in order for a court to exercise jurisdiction over a defendant, there must be more than notice and a constitutionally sufficient relationship between the defendant and the forum; there must also be a basis for amenability to service. Omni, 484 U.S. at 104. Service must therefore be grounded on a federal statute or civil rule. United Elec., Radio and Mach. Workers v. 163 Pleasant St. Corp., 960 F.2d 1080, 1085 (1st Cir. 1992) (hereinafter “United Elec.”).

Personal jurisdiction in federal question actions is authorized by the service of process provisions found in Fed. R. Civ. P. 4. See United Elec., 960 F.2d at 1085; Lorelei, 940 F.2d at 719. While there are no constitutional limitations on the court’s exercise of personal jurisdiction other than service within the sovereign territory, Rule 4 imposes a statutory limitation. See Lorelei, 940 F.2d at 719. The relevant portions of Rule 4 provide:

Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located, or . . . *when authorized by a statute of the United States.*

Fed. R. Civ. P. 4(k) (emphasis added).

Rule 4 thus allows the exercise of personal jurisdiction where federal legislation provides for either nationwide or worldwide service of process in cases arising under certain federal laws, but, where no such provision exists, limits jurisdiction to those persons over whom jurisdiction may be obtained under the relevant state long-arm or “doing business” statute. See Fed. R. Civ.

P. 4(k).

In the present case, there is federal statutory authority governing service of process in patent infringement actions. 28 U.S.C. § 1694. Section 1694 provides:

In a patent infringement action commenced in a district where the defendant is not a resident but has a regular and established place of business, service of process, summons or subpoena upon such defendant may be made upon his agent or agents conducting such business.

28 U.S.C. § 1694. Plaintiff has failed to show that service of process on Defendants under 28 U.S.C. § 1694 is appropriate. It is uncontroverted that none of Defendants have a “regular and established place of business” in Maine. For service to be effective under section 1694, “[i]t must appear that a defendant is regularly engaged in carrying on a substantial part of its ordinary business on a permanent basis in a physical location within the district over which it exercises some measure of control.” Ruddier v. Auburn Spark Plug Co., 261 F. Supp. 648, 654 (S.D.N.Y. 1966) (citation omitted); see also Talus Corp. v. Browne, 775 F. Supp. 23, 25 (D. Me. 1991). Plaintiff proffers no evidence that Defendants have offices or plants in Maine, and to the extent that Defendants have contacts with the state of Maine, as discussed below, they are insufficient to rise to the level of conducting a substantial part of their ordinary business on a permanent basis.

Section 1694, however, is not an exclusive provision for service of process in patent infringement cases. Talus Corp., 775 F. Supp. at 25. Rule 4 also permits a plaintiff in a patent infringement action to serve process pursuant to the long-arm or “doing business” statutes of the state in which the federal court lies. Fed. R. Civ. P. 4(k); Talus Corp., 775 F. Supp. at 25-26. Therefore, the Court must look next to the Maine long-arm and “doing business” statutes to

determine whether it has jurisdiction over Defendants.

“Since the ‘state statutes . . . cannot provide for service of process on a defendant outside the respective state unless the defendant has had the contact with that state that is required by the Fourteenth Amendment,’ Rule 4 actually prescribes a two-step analysis.” Lorelei, 940 F.2d at 720 (quoting Johnson Creative Arts, 743 F.2d at 950) (citation omitted). First, the Court must determine whether the applicable long-arm statute or “doing business” statute is satisfied. Id. If the statute authorizes jurisdiction over the defendant, the Court “must then determine whether the exercise of personal jurisdiction under the circumstances is consistent with due process under the Fourteenth Amendment.” Id. “Thus, even though the familiar Fourteenth Amendment “minimum contacts” doctrine exerts no direct restraint on the federal courts in federal question cases, under the existing statutory framework the minimum contacts analysis acts indirectly ‘as a precondition to the exercise of personal jurisdiction . . . .’” Id. (quoting Catrone v. Ogden Suffolk Downs, Inc., 647 F. Supp. 850, 855 (D. Mass. 1986)).

The Maine long-arm statute and “doing business” statute are to be applied to the fullest extent permitted by the due process clause of the Fourteenth Amendment.<sup>1</sup> Tyson v. Whitaker &

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<sup>1</sup> Maine’s long-arm statute specifies when a non-resident defendant is subject to personal jurisdiction in Maine. 14 M.R.S.A. § 704-A. The statute provides in pertinent part:

Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of such acts:

- A. The transaction of any business within this State;
- B. Doing or causing a tortious act to be done, or causing the consequences of a tortious act to occur within this State;

. . . .

Son, Inc., 407 A.2d 1, 3 (Me. 1979); Labbe v. Nissen Corp., 404 A.2d 564, 568 (Me. 1979).

Therefore, the Court need only determine whether the assertion of personal jurisdiction in this case is consistent with due process. See Archibald v. Archibald, 826 F. Supp. 26, 29 (D. Me. 1993) (citing Frazier v. BankAmerica Int'l, 593 A.2d 661, 662 (Me. 1991); Architectural Woodcraft Co. v. Reed, 464 A.2d 210, 212 (Me. 1983); Tyson, 407 A.2d at 3.

Due process requires that two conditions be satisfied before a defendant is subjected to jurisdiction in a particular forum:

First, “the defendant must have purposely established ‘minimum contacts’ with the forum such that he can reasonably anticipate being haled into that forum’s court.” U.S.S. Yachts, Inc., 894 F.2d at 11 (1st Cir. 1990) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 . . . (1985) (citations omitted)). “Second, if such contacts exist, the exercise of personal jurisdiction over the defendant must comport with ‘fair play and substantial justice.’” Id. (citing Burger King, 471

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- I. Maintain any other relation to the State or to persons or property which affords a basis for the exercise of jurisdiction of this State consistent with the Constitution of the United States.

Id. Maine’s long-arm statute provides only for the exercise of “specific jurisdiction” over defendants; “that is, jurisdiction which is asserted when the lawsuit ‘arises directly out of [the defendant’s] forum-based activities.’” Lorelei, 940 F.2d at 720 (quoting Donatelli v. National Hockey League, 893 F.2d 459, 462 (1st Cir. 1990)).

The Maine “doing business” statute, 13-A M.R.S.A. § 1213, on the other hand, applies only to corporations and grants courts with “general jurisdiction,” reaching foreign corporations who “do business” in Maine, even when the cause of action is unrelated to the corporation’s activities. 13-A M.R.S.A. § 1213; Labbe v. Nissen Corp., 404 A.2d 564, 568 (Me. 1979) (foreign corporation which does business in Maine can be sued on an action unrelated to its business activity in Maine); Harriman v. Demoulas Supermarkets, Inc., 518 A.2d 1035 (Me. 1986) (nonresident corporation whose activities are wide-ranging, continuous, and systematic may be subject to personal jurisdiction on causes of action unrelated to those activities, and less extensive activity is required where cause of action arises out of or in connection with defendant’s forum related activity).

Therefore, Plaintiff’s claims as to Defendant Paul Freeman must arise directly out of Paul Freeman’s forum-based activities if there is to be jurisdiction. Plaintiff’s claims as to Defendants Freeman Industries and Flow, on the other hand, need not relate to any forum based activities to the extent that jurisdiction may be available under 13-A M.R.S.A. § 1213.

U.S. at 476 . . . (citations omitted)).

Boit, 967 F.2d at 679.

There are two forms of personal jurisdiction: general jurisdiction and specific jurisdiction. General jurisdiction exists “when the litigation is not directly founded on the defendant’s forum-based contacts, but the defendant has nevertheless engaged in continuous and systematic activity, unrelated to the suit, in the forum state.” United Elec., 960 F.2d at 1088 (citing Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414-16 & n.9 (1984)). Specific jurisdiction exists where a plaintiff’s cause of action “arises directly out of, or relates to, the defendant’s forum-based contacts.” Id.

## **I. General Jurisdiction**

Non-resident defendants fall within the court’s general jurisdiction “when a defendant’s activities within the state are ‘substantial’ or ‘continuous and systematic.’” Archibald, 826 F. Supp. at 29 (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). “Where personal jurisdiction is premised on general jurisdiction, the outcome ‘depends largely on whether a corporate party carried on ‘continuous and systematic’ activities within the forum sufficient to justify requiring it to answer there to a claim unrelated to its in-forum presence.” Saco River Tel. & Tel. Co. v. Shooshan & Jackson, Inc., 826 F. Supp. 580, 581 (D. Me. 1993) (quoting Sandstrom v. Chemlawn Corp., 904 F.2d 83, 88 (1st Cir. 1990)) (citations omitted). “Whenever a plaintiff’s claim does not arise out of something done in the forum state, other contacts between the defendant and the forum must be ‘fairly extensive’ before the burden of defending a suit there may be imposed upon it without ‘offending traditional notions of fair play and substantial justice.’” Labbe, 404 A.2d at 570 (quoting Ratliff v. Cooper Lab., Inc., 444 F.2d

745, 748 (4th Cir. 1971)). In considering a party's amenability to general jurisdiction, the Court looks to: (1) the nature and purpose of a defendant's contacts with the forum state; (2) the connection between the contacts and the cause of action; (3) the number of contacts; (4) the interest of the forum state in the controversy; and (5) the convenience and fairness to both parties. Id. at 570.

Plaintiff contends that Defendant Freeman Industries distributed patented materials in Maine, hired an agent in Maine, bought and sold other products in Maine, advertised in Maine, and solicited customers in Maine. Plaintiff argues that, when considered as a whole, these activities justify the assertion of general jurisdiction. Viewing the evidence as a whole and in a light most favorable to Plaintiff, the Court is persuaded that neither Defendant Freeman Industries nor Defendant Flow have sufficiently substantial or continuous contacts with Maine so as to bring them within the jurisdictional reach of this Court.<sup>2</sup>

Plaintiff's argument that Defendant Freeman Industries distributed patented materials in Maine can be summarized as follows: Freeman Industries hired an agent, Henry Bornhofft, whose territory included Maine. Bornhofft, a Massachusetts resident, developed business for Freeman Industries and was hired for the specific purpose of developing business in Maine. In January, 1997, Paul Freeman, on behalf of Freeman Industries, mailed 100 pounds of allegedly patented material to Mike Shaw, a resident of Kittery, Maine, and employee of Maine Poly, Inc., of Greene, Maine. The material was sent to Mr. Shaw's wife's place of business in Massachusetts and was ultimately stored in the basement of Mr. Shaw's home in Kittery. At the

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<sup>2</sup> Defendant Paul Freeman is not amenable to general jurisdiction, as he is subject only to the state long-arm statute and not the broader "doing business" statute.

request of Henry Bornhofft, Shaw sent ten pounds of the material to Warren Paving & Materials Group in Ontario, Canada.

Plaintiff does not suggest, nor does the affidavit of Mr. Shaw indicate, that Freeman Industries sold this material to Shaw. The sample was mailed by Freeman Industries to Shaw at an address in Massachusetts. The sample was then moved from Massachusetts to Maine by Shaw, and subsequently shipped to Canada at the instruction of Bornhofft. Although the purpose of the shipment is unclear, the record suggests that this was an isolated event, and not part of an ongoing or substantial business relationship.<sup>3</sup> To the extent that Bornhofft may have been an agent of the corporate Defendants, Plaintiff proffers no evidence that he did any work on their behalf aside from his peripheral involvement in the shipment of the aforementioned sample.<sup>4</sup>

Plaintiff tries to bolster its position by noting that Freeman Industries has sold other products, unrelated to the patented material, in Maine, and advertised in Maine. Defendant Freeman Industries' total involvement in the Maine commercial market prior to the initiation of this action was limited to the sale of \$229.50 of alfalfa juice powder to Trillium Soap, of Edgecomb, Maine, and the purchase of \$625.49 of wild blueberry powder from Maine Wild

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<sup>3</sup> Shaw states that he received a sample for examination from Freeman Industries at his wife's address in Massachusetts in November, 1996. Shaw Aff. ¶ 7. Plaintiff does not contend, however, that this sample ever entered the State of Maine.

<sup>4</sup> Plaintiff's own evidence indicates that Bornhofft was not offered an association with Freeman Industries until April 7, 1997. Letter from Freeman Industries to Bornhofft of 4/7/97. It is uncontroverted that Bornhofft was not an agent of Defendant at the time the 100 pound sample was mailed to Shaw in or around January, 1997. Bornhofft Decl. ¶ 7; Freeman Dep. at 32. In fact, the record suggests that Bornhofft was employed by Plaintiff until March 20, 1997. Bornhofft Decl. ¶ 7. It thus appears that Bornhofft was an agent of Defendant for less than two months before this action was instituted on May 19, 1997.

Blueberry Company, of Machias, Maine.<sup>5</sup> Freeman Decl. ¶¶ 13-15; Freeman Dep. at 20. These transactions are hardly sufficient to constitute continuous and systematic contacts.

To the extent that Defendant Freeman Industries “advertised in Maine,” the limited nature of such advertising fails to pull Defendant within the reach of either the long-arm statute or the “doing business” statute. It is uncontested that Freeman Industries advertised in three national trade journals, the Chemical Market Reporters Annual Green Book, the Chemical Processing Industry Digest, and the Food Engineer Master. The Chemical Market Reporters Annual Green Book has a circulation of approximately 17,000, with a distribution of only twenty-two in Maine. Laster Decl. ¶ 4. The Chemical Processing Industry Digest has a circulation of approximately 26,000, with a distribution of 122 in Maine. Id. at ¶ 5. The Food Engineer Master has a circulation of 30,000, with a distribution of 135 in Maine. Id. at ¶ 6. Thus, Defendant Freeman Industries advertised in three relatively obscure trade journals with a total distribution in Maine of no more than 279 issues. Such limited advertising falls far short of those systematic and continuous contacts required for general jurisdiction, even when considered in light of the transactions discussed above. See Labbe, 404 A.2d at 566 (company that advertises in more than ten magazines distributed in Maine, conducts \$80,000 of sales to Maine a year for five years, and sells its goods through independent dealers in Maine has continuous and systematic contacts with

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<sup>5</sup> Plaintiff sent a 1-2 pound sample of “Lycopene” to Steve Swartz of Atlantic Salmon of Maine, L.L.C., on June 9, 1997. The Court, for the purposes of this motion, does not consider this sale because it occurred after the filing of this action. “[P]ersonal jurisdiction depends on the defendant’s contacts with the forum state at the time the lawsuit was filed.” Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 52 (2d Cir. 1991) (citing 4 C. Wright & A. Miller, Federal Practice and Procedure, § 1051, at 160-62 (1987)); see also Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 568-69 & n.9 (2d Cir. 1996), cert. denied, 117 S.Ct. 508 (1996).

Maine).

Finally, Plaintiff notes that Freeman Industries received telephone calls from potential customers residing in Maine on its toll-free telephone line, suggesting that it was doing business in Maine. However, none of these potential customers purchased anything from Freeman Industries. See Aff.'s of Holiday, Baker, Hoyt, Plourde, and Priestley. These calls were initiated not by Freeman Industries but by the individual residents of Maine. Of the 9,784 calls made to or from Freeman Industries between September, 1996, and July, 1997, only twenty-seven were to or from Maine. Laster Decl. ¶¶ 7-9.

In sum, considered together, Defendant Freeman Industries' shipment of one sample to Maine, its purchase of blueberry powder and its sale of alfalfa juice powder, the limited reach of its advertising in national trade journals, and its occasional receipt of inquiries from residents of Maine do not add up to the continuous and systematic contacts necessary for general jurisdiction.<sup>6</sup> See Saco River Tel. & Tel. Co., 826 F. Supp at 582 (given absence of any directed advertising - apart from a nationwide mailing list - or any permanent presence in Maine, representation of seven different clients on discrete short term projects over a decade does not amount to continuous or systematic business activity, and earning \$10,000 from Maine clients does not constitute substantial contact).

## **II. Specific Jurisdiction**

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<sup>6</sup> Of significant importance to the Court's inquiry is the fact that Plaintiff is not a resident of Maine. The Maine Supreme Judicial Court prefers "the view that the status of a plaintiff as a resident of the forum state at the time the cause of action arises significantly reinforces the rational nexus between the forum state and the claim presented for adjudication." Labbe, 404 A.2d at 571. This view is based on the valid assumption that a forum state is unlikely to have an interest in an action in which its residents are not involved. Id. at 571 n.8.

Having found that there are insufficient contacts with the state of Maine to assert general personal jurisdiction over the corporate Defendants, the Court turns to the issue of specific jurisdiction. Whether specific jurisdiction exists turns on an evaluation of “the relationship between the defendant, the forum and the litigation.” Helicopteros, 466 U.S. at 414 (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).

The First Circuit employs a three-part analysis to determine if sufficient contacts exist to trigger specific personal jurisdiction:

First, the claim underlying the litigation must directly arise out of, or relate to, the defendant’s forum-state activities. Second, the defendant’s in state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state’s laws and making the defendant’s involuntary presence before the state’s courts foreseeable. Third, the exercise of jurisdiction must, in light of the Gestalt factors, be reasonable.

United Elec., 960 F.2d at 1089. The ‘Gestalt’ factors include: (1) the defendant’s burden of appearing, (2) the forum state’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the judicial system’s interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies. Id. at 1088 (citing Burger King, 471 U.S. at 477).

The Court considers each Defendant’s litigation-related contacts with Maine in turn.

### **Paul Freeman**

Plaintiff alleges in his complaint that Paul Freeman has “individually and through said non-individual defendants, done business in Maine.” Complaint ¶ 2. Plaintiff offers not one scintilla of evidence to support his allegation that Paul Freeman has individually conducted business in Maine. Paul Freeman has no place of business in Maine nor does he own any

property in Maine. Freeman Dep. at 70. There is no evidence to suggest that Paul Freeman has ever bought or sold anything in the State of Maine. In fact, Paul Freeman has only been in the State of Maine once in the past ten years. Freeman Dep. at 70-71. As such, it is clear that neither Plaintiff's infringement claim nor the pendant common law claims he asserts arise out of any activity conducted by Paul Freeman in Maine.

The only evidence Plaintiff offers to link this action to Paul Freeman's forum activities, is that Paul Freeman is an officer of a company that allegedly shipped infringing material into Maine and that he knew of such shipments. In an effort to tie Paul Freeman to this case for jurisdictional purposes, Plaintiff alleges that Paul Freeman is the "alter ego" of Defendants Freeman Industries and Flow and that, therefore, this Court should pierce the corporate veil to secure jurisdiction over him individually. See e.g., Minnesota Mining & Mfg. Co. v. Eco Chem., Inc., 757 F.2d 1256 (Fed. Cir. 1985). The Court need not consider this argument, however, as it finds no personal jurisdiction over the corporate Defendants Plaintiff seeks to pierce. See United Elec., 960 F.2d at 1091.

Even if the Court could reach Paul Freeman through the corporate activities of Flow and Freeman Industries the Court concludes that the exercise of jurisdiction over Paul Freeman would be unreasonable in light of the 'Gestalt' factors outlined by the First Circuit. Paul Freeman is a New York resident with little or no connection to Maine. Maine has little interest in the resolution of this dispute as neither Defendants nor Plaintiff are residents of this state. Finally, this controversy can be just as appropriately and effectively resolved in New York or Massachusetts as it can be in Maine. For these reasons, the Court finds that Paul Freeman's contacts with Maine are insufficient to subject him to the personal jurisdiction of this Court.

## Corporate Defendants

Plaintiff argues that this Court has specific jurisdiction over Defendants Freeman Industries and Flow because the corporate Defendants (1) have done business in Maine relating to this action; and (2) have committed a tort having consequences in the State of Maine.

### A. “Done Business”

For this Court to have specific jurisdiction over the corporate Defendants the underlying litigation must arise out of, or directly relate to, Defendants’ forum based activities. Defendants’ forum based activities relating to this patent infringement action are limited to the alleged distribution of a 100 pound sample of infringing material to or through the state of Maine. Although Defendants may have hired an agent whose region includes the State of Maine, Plaintiff offers no evidence that this agent conducted any business in Maine at any time on behalf of Defendants outside of his involvement in the sample transaction. This isolated shipment, informally routed through New York, Massachusetts, Maine, and Canada, is not sufficient to represent a purposeful availment of the privilege of conducting activities in Maine so as to make the corporate Defendants’ involuntary presence before this Court foreseeable.

Plaintiff argues that Defendant Freeman Industries, at undetermined times, distributed additional patented materials to customers who, although not themselves residents of Maine, it knew did business with Maine residents, thereby submitting itself to the jurisdiction of Maine courts. Pl.’s Resp. at 4. Plaintiff, however, cannot point to one customer of the corporate Defendants who does business in Maine. Even if he could, “‘mere awareness’ that a product may end up in the forum state does not constitute ‘purposeful availment’ . . . .” Boit, 967 F.2d at 683; see also Asahi Metal Indust. Co. v. Sup. Ct. Calif., 480 U.S. 102, 112 (1987) (plurality opinion)

(“a defendant’s awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State”). The only evidence in the record that Freeman Industries intended to serve the market in Maine is its hiring of an agent to cover the northeast region of the United States in March or April of 1997, and its shipment of one sample to Massachusetts that ended up in Maine. Neither of these facts are sufficient to fulfil the ‘purposeful availment’ requirement.

Even if the alleged transaction was sufficient to represent a purposeful and foreseeable availment of Maine’s market, the Court finds that it would be unreasonable to exercise jurisdiction in this case. Two of the three Defendants reside more than 400 miles from this Court. Maine has little, if any, interest in the resolution of this dispute involving four non-residents. Moreover, considering the residency of the parties, the Court sees no reason why Plaintiff cannot obtain more, or at least equally, convenient and effective relief in the District of Massachusetts or the Southern District of New York.

## **B. Tort**

Plaintiff also alleges that the corporate Defendants committed a tort, the effects of which were felt in Maine, thereby submitting themselves to the jurisdiction of this Court. Specifically, Plaintiff contends that the corporate Defendants (1) interfered with Plaintiff’s advantageous business relationships, and (2) committed corporate espionage in Maine.

Even had Plaintiff pled the torts of interference and corporate espionage, which he has

not<sup>7</sup>, the Court would still lack personal jurisdiction over these Defendants. Plaintiff alleges that Freeman Industries, knowing that Plaintiff was attempting to sell patented material to Pacific Choice Seafoods, “attempted to market its VPP to Pacific Choice, thereby interrupting the negotiations between McArdle’s VPP Corporation and Pacific Choice,” and interfering with an advantageous business relationship. Pl’s Resp. at 11. Pacific Choice is located in Arcata, California, and there is no evidence that it conducts any business in Maine. The “advantageous business relationship” the New York Defendant allegedly interfered with involved a California corporation and Plaintiff, who is a resident of Massachusetts. Negotiations between Pacific Choice and Plaintiff’s company were conducted in California by a resident of California. McArdle Aff. ¶ 10. The Court fails to see how this “interference” in any way involves or relates to the state of Maine.

Plaintiff argues that the impact of Defendant’s tort was felt in Maine by VPP Corporation, a Maine corporation owned by Plaintiff and that this is sufficient to satisfy the long-arm statute.<sup>8</sup>

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<sup>7</sup> Plaintiff has not pled either of these alleged torts in his complaint. Although the Maine long-arm statute reaches those “doing or causing a tortious act to be done, or causing the consequences of a tortious act to occur within this State,” 14 M.R.S.A. § 704-A(2)(B), it only submits the tortfeasor to jurisdiction as to the cause of action arising from the tort. 14 M.R.S.A. § 704-A(2) (Any person who does any of the acts enumerated in subsections A through I “. . . thereby submits such person . . . to the jurisdiction of the courts of this State *as to any cause of action arising from the doing of such acts*”) (emphasis added); Smirz v. Gloeckner & Co., 732 F. Supp. 1205, 1208 (D. Me. 1990) (same); see also Lorelei, 940 F.2d at 270 (Maine’s long-arm statute provides only for the exercise of specific jurisdiction over defendants). Therefore, Plaintiff has failed to satisfy the requirements for long-arm jurisdiction over tortfeasors.

<sup>8</sup> The only authority cited by Plaintiff for the proposition that Defendant’s alleged tort subjects it to the jurisdiction of the Court is an unpublished case from this Court which is contrary to Plaintiff’s position. Forest v. Transcarriers, Inc., Civ. No. 94-0075B (D. Me. Apr. 21, 1995). In Forest, the court found that the corporate defendant, a Tennessee corporation, who committed a tort against a Maine resident in Arkansas, was not subject to general personal jurisdiction because it did not have the requisite minimum contacts and because it would be

This argument is unpersuasive for several reasons. First, Plaintiff's corporations are not parties to this action and, as such, the Court will not speculate as to the effect of Defendant's actions on non-parties. Second, even if the Court could consider the effect of Defendant's alleged tort on VPP Corporation, the facts as alleged are insufficient to bring Defendant Freeman Industries within the reach of the long-arm statute. Under Maine law "[t]he commission outside the forum state of an act that has consequences in the forum state is by itself an insufficient contact where all the events necessary to give rise to the tort claim occurred outside the forum state." Martin v. Deschenes, 468 A.2d 618, 619 (Me. 1983). Here, there is nothing in the record to suggest that any events necessary to give rise to the interference with advantageous business relations claim occurred in Maine.

The sole basis for Plaintiff's allegation that Freeman Industries committed corporate espionage is the assertion that Freeman Industries produced in discovery "documents which it could have secured only through employing or benefiting from corporate espionage in Maine." Pl.'s Resp. at 9. Plaintiff arrives at the conclusion that Defendant stole these documents from the following alleged facts: (1) the documents were kept at his residence in Rome, Maine (where he lived prior to moving to Massachusetts); (2) at some point in time the lock to his door was forced open; (3) the documents were never given to anyone associated with Freeman Industries; and (4) Freeman Industries turned over these documents in the discovery process. Plaintiff asks the Court to conclude, on this evidence alone, that Freeman Industries was involved in the theft of documents, even though he admits that he "has no other proof of the identity of the person who forced the lock, or how Freeman Industries received the confidential documents." Id.; see also

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significantly burdened by being forced to appear in Maine. Id.

McArdle Aff. ¶¶ 4-8 Although the Court, for the purpose of this motion, must view the facts in a light most favorable to Plaintiff, it is not required to accept unfounded inferences. Plaintiff's corporate espionage allegation is nothing more than speculation. As such, the Court finds no basis for the conclusion that Defendants engaged in corporate espionage in Maine.

### **CONCLUSION**

Because Defendants do not have the minimum contacts with the State of Maine necessary to comport with due process, Defendants' Motion to Dismiss for lack of personal jurisdiction is GRANTED.<sup>9</sup>

SO ORDERED.

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MORTON A. BRODY  
United States District Judge

Dated this 4<sup>th</sup> day of November, 1997.

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<sup>9</sup> Although this Order renders Defendants' Motion to Transfer Venue moot, in the event the parties agree and so notify the Court within twenty days, this case shall be transferred to the District of Massachusetts, the Southern District of New York, or any other venue that the parties agree is proper.