

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>GATES FORMED-FIBRE</b>	)	
<b>PRODUCTS, INC.,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 94-363-P-C</b>
	)	
<b>DELAWARE VALLEY CORP.,</b>	)	
	)	
<b>Defendant</b>	)	

**RECOMMENDED DECISION ON**  
**DEFENDANT'S MOTION TO DISMISS**  
**OR, IN THE ALTERNATIVE, TO TRANSFER**

This case presents a question of federal patent law, in which the defendant has moved pursuant to Fed. R. Civ. P. 12(b)(2) to dismiss the complaint for lack of *in personam* jurisdiction or, in the alternative, to transfer the proceeding to the District of Massachusetts pursuant to 28 U.S.C. § 1404(a).<sup>1</sup> I recommend that the defendant's motion to dismiss the complaint be granted.

**I. Applicable Law**

The plaintiff seeks damages, costs, attorney fees and other relief on its complaint alleging that the defendant has infringed on two patents owned by the plaintiff. Subject matter jurisdiction is premised on 28 U.S.C. § 1338(a) (vesting district courts with original jurisdiction over proceedings “arising under any Act of Congress relating to patents”). Maine's long-arm statute, 14 M.R.S.A.

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<sup>1</sup> The court stayed the plaintiff's discovery request for certain documents, unrelated to the jurisdiction issue, pending disposition of the defendant's motion. See Report of Conference of Counsel and Order (Docket No. 3).

§ 704-A, defines the *in personam* jurisdictional reach of the court; this reach is coextensive with that which is permissible within the constitutional confines of due process.<sup>2</sup> *McCain Foods, Ltd. v. Lamb-Weston, Inc.*, 23 U.S.P.Q. 2d (BNA) 1307, 1308 (D. Me. 1992). “Generally, due process requires that the defendant have `minimum contacts with [the forum] such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”” *Archibald v. Archibald*, 826 F. Supp. 26, 29 (D. Me. 1993) (quoting *International Shoe*, 326 U.S. at 316; brackets in original).

Pursuant to 28 U.S.C. § 1295(a)(1), the Federal Circuit has exclusive jurisdiction over appeals from final decisions of this court where jurisdiction is based in whole or in part on 28 U.S.C. § 1338(a). The law of the Federal Circuit, rather than that of the First Circuit, therefore applies to the substantive aspects of this case, personal jurisdiction among them. *See Akro*, 45 F.3d at 1543; *see also DiManno v. Such*, 1994 U.S. App. LEXIS 18688 at \*4-\*5 (1st Cir. 1994). The due process inquiry requires the court to determine whether the defendant purposefully directed its activities at residents of Maine and, if so, whether this litigation “results from alleged injuries that arise out of or relate to those activities.” *Akro*, 45 F.3d at 1545 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)); *see also Talus Corp. v. Browne*, 775 F. Supp. 23, 26 (D. Me. 1991). The plaintiff carries the burden of proof at this first stage of inquiry, which it may meet with a *prima*

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<sup>2</sup> As the Federal Circuit has recently reemphasized, because subject matter jurisdiction in a patent case exists by virtue of a federal question, rather than by virtue of diversity of citizenship of the parties, it is the Due Process clause of the Fifth Amendment that is applicable. *Akro Corp. v. Luker*, 45 F.3d 1541, 1544 (Fed. Cir. 1995). This creates an analytical wrinkle because the Supreme Court's discussion of the constitutional dimensions of personal jurisdiction, most notably *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), involves state-law and diversity cases that implicate the Due Process Clause of the *Fourteenth* Amendment. *See Akro*, 45 F.3d at 1544-45. The Federal Circuit has nonetheless opted to apply *International Shoe* and its progeny to patent cases arising under federal law. *Id.* at 1545.

*facie* showing supported by the pleadings, affidavits and any exhibits. *Talus*, 775 F. Supp. at 25 (citations omitted). In assessing whether the plaintiff has made out a *prima facie* case in favor of jurisdiction, any conflicts between the affidavits of the plaintiff and the movant are resolved in favor of the plaintiff. *Triple-A Baseball Club Assoc. v. Northeastern Baseball, Inc.*, 655 F. Supp. 513, 533-34 (D. Me.), *aff'd in part, rev'd in part on other grounds*, 832 F.2d 214 (1st Cir. 1987), *cert. denied*, 485 U.S. 935 (1988).

Even if the plaintiff has not demonstrated that the acts at issue in the litigation were sufficiently directed at the forum, jurisdiction may still lie in this court if the defendant has had other contacts with the forum that are “continuous and substantial.” *Talus*, 775 F. Supp. at 26 (citation omitted); *see also Akro*, 45 F.3d at 1547. The defendant may defeat an otherwise valid assertion of jurisdiction by demonstrating that its contacts with the forum are so minimal that submitting to suit in the forum would not comport with notions of fair play and substantial justice. *Akro*, 45 F.3d at 1546. Finally, jurisdiction does not lie even where these constitutional conditions are met in certain circumstances. These cases “are limited to the rare situation in which the plaintiff’s interest and the state’s interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum.” *Id.* at 1549 (citation omitted).

## II. Factual Background

The record, including the affidavits and unsworn declarations of the parties,<sup>3</sup> with attached exhibits, establishes the following facts. The plaintiff avers that it is a Colorado corporation with its principal place of business in Auburn, Maine. Complaint ¶ 1. The defendant is a Massachusetts corporation with its principal place of business in Lawrence, Massachusetts. Affidavit of D. Paul DiMaggio, Jr. (“DiMaggio Affidavit”), appended to Defendant Delaware Valley Corp.'s Motion to Dismiss for Lack of Personal Jurisdiction or in the Alternative Motion to Transfer and Memorandum in Support Thereof (“Defendant's Memorandum”) (Docket No. 2) at ¶ 1. It is in the business of manufacturing non-woven fiber products, and is accused by the plaintiff of infringing two patents in connection with the defendant's manufacture of a product consisting of a thermally-bonded blend of polypropylene and polyethylene. *Id.* at ¶ 2-3. The product is typically used as an automotive trim carpet; it is sold by the defendant exclusively to buyers that either are subcontractors to automobile manufacturers or are refitters of automobile subassemblies. *Id.* at ¶ 3, 6. None of these purchasers are located in Maine. *Id.* at ¶ 7. The defendant has never sold the product directly to a customer in Maine, shipped it into Maine, or otherwise promoted, advertised or offered it for sale in Maine. *Id.* at ¶¶ 4-5.

The defendant has sold certain other items to three customers in Maine since 1990; as a percentage of the defendant's total sales, these Maine transactions have ranged from a low of .04 percent in 1991-92 and again in 1992-93 to a high of .36 percent in 1993-94. *Id.* at 9-10, 16. In 1993-94, its largest grossing year during the five-year period 1989-94, the defendant's total sales

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<sup>3</sup> The defendant has supported its motion with sworn affidavits; the plaintiff resists the motion with a series of unsworn declarations that are executed under penalty of perjury. Such declarations have the force and effect of a sworn affidavit. *See* 28 U.S.C. § 1746.

amounted to \$10,649,744, and its sales in Maine amounted to \$38,214. *Id.* at ¶¶ 14-15. The defendant's sales to Maine customers take place by mail; the defendant has no offices, property, employees or agents in Maine, nor is it licensed or registered to do business in Maine. *Id.* at ¶¶ 21, 23-24, 26.

In 1987, the defendant purchased a fiber blending system from the plaintiff for use by the defendant in its manufacturing process. Declaration of Ronald W. Adams (“Adams Declaration”), appended to Plaintiff Gates' Objection to Defendant's “Motion to Dismiss for Lack of Personal Jurisdiction or in the Alternative to Transfer” (“Plaintiff's Memorandum”) (Docket No. 4), at ¶¶ 3, 4. Prior to the purchase, the defendant's president, D. Paul DiMaggio, Jr., visited the plaintiff's facility in Auburn, Maine to inspect the system. *Id.* at ¶¶ 7-8. In 1991 and 1992, the defendant purchased 19,000 pounds of polyester fiber from the Eastport, Maine plant operated by Fiber Extrusion, Inc., which is a wholly-owned subsidiary of the plaintiff. Declaration of Sheila J. Clifford, appended to Plaintiff's Memorandum, at ¶¶ 1, 3-7.

The parties have transacted other business as well. From February until July of 1987, the plaintiff sent baled fibers to the defendant's plant in Massachusetts. Declaration of Donald L. Turgeon, appended to Plaintiff's Memorandum, at ¶ 3. Acting as a subcontractor for the plaintiff, the defendant processed the fibers into carpet and then shipped the carpet to the plaintiff's plant in Maine. *Id.* This arrangement began in February 1987 when the defendant processed 35,000 pounds of fiber at a cost to the plaintiff of \$8,974. *Id.* at ¶ 8. The plaintiff is unable to document the full extent of its 1987 business dealings with the defendant, but estimates that “more than three” such transactions took place, typically involving between 25,000 and 40,000 pounds of fiber. *Id.* at ¶¶ 7-8. Appended to the Turgeon Declaration are four checks, in the amounts of \$2,478.60, \$1,040.40,

\$4,902.80, \$6,834.00 and \$6,052.00, drawn by the plaintiff to the order of the defendant in 1987. The plaintiff does not contend that any of these transactions are related to the patents that are at issue in this litigation.

The record also reflects that in 1990 DiMaggio telephoned the plaintiff to inquire about entering into a licensing or subcontracting relationship concerning the product eventually patented by the plaintiff. Declaration of Elwood G. Trask (“Trask Declaration”), appended to Plaintiff’s Memorandum, at ¶¶ 2-3. The plaintiff’s technical director, Elwood Trask, told DiMaggio that the plaintiff had applied for a patent. *Id.* at ¶ 3. The parties apparently did not strike a deal as a result of this discussion, and in 1993 DiMaggio responded to a communication from the plaintiff by indicating a willingness to enter into “subcontracting arrangements like we had in the past.” Exh. C to Plaintiff’s Memorandum.

In the spring of 1994, several employees of the plaintiff went to an automobile dealer in Auburn, Maine and examined the door panels on a 1994 “GMC Sierra” pickup truck. Declaration of Gerald J. Smith, appended to Plaintiff’s Memorandum, at ¶ 8. The purpose of the visit was to investigate allegations that the defendant was providing General Motors with material, for use in door panels, that was similar to a material for which the plaintiff holds a patent. *Id.* Seeking to determine whether the plaintiff’s patent was being infringed, the employees purchased a door panel from the dealer’s parts department and thereafter conducted tests on it. *Id.*

### **III. Analysis**

The defendant contends that specific *in personam* jurisdiction is lacking because it does not make, use or sell any products in Maine that are the subject of this litigation. The plaintiff counters

that it has made the requisite *prima facie* showing of specific personal jurisdiction, both because the defendant placed its allegedly patent-infringing products into the stream of commerce knowing that some of the products would ultimately come to be sold in Maine, and because of the prior business dealings between the parties and between the defendant and a subsidiary of the plaintiff.

The “stream of commerce” theory of personal jurisdiction derives from the Supreme Court's 1988 holding that a forum state “does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980). The Court determined that Oklahoma could not assert jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products liability action where the defendants' only connection with Oklahoma was the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma. *Id.* at 287, 299. The Court has since found itself split over the exact requirements of the stream-of-commerce theory. In *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102 (1987), Justice O'Connor and three of her colleagues adopted the view that merely placing items into the stream of commerce does not in itself establish the forum contacts necessary for jurisdiction, absent some sort of “act of the defendant purposefully directed toward the forum State.” *Id.* at 112. Justice Brennan, although concurring in the judgment of the court, wrote on behalf of three colleagues that no such showing of additional conduct should be required because

[t]he stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.

*Id.* at 117 (Brennan, J., concurring in part and concurring in the judgment). Justice Stevens provided the decisive fifth vote, but without expressing any view as to which version of the stream-of-commerce theory he would adopt. *Id.* at 121 (Stevens, J., concurring in part and concurring in the judgment). The circuits are similarly divided on the issue, with the Federal Circuit recently declining to take a position on the matter. *See Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1566 (Fed. Cir.), *cert. dismissed*, 129 L. Ed. 2d 917 (1994) (holding that jurisdiction was proper under either version of the theory). The First Circuit has squarely adopted the view of Justice O'Connor's plurality. *See Boit v. Gar-Tec Prod., Inc.*, 967 F.2d 671, 683 (1st Cir. 1992).

This case presents a problem that is almost identical to the one the Supreme Court was unable to resolve definitively in *Asahi*. No one in Maine purchases the fabric that is the subject of this litigation; what is offered for sale in Maine are automobiles and automobile parts of which the fabric is a component. Similarly, in *Asahi* a foreign manufacturer of tire valves became the defendant in a California products liability action as a result of having sold its valves to a tire manufacturer, which then sold a significant number of tires in the forum. *See Asahi*, 480 U.S. at 106. Casting the decisive vote against the exercise of jurisdiction, Justice Stevens concluded that in the circumstances the exercise of jurisdiction would be “unreasonable and unfair,” and therefore unconstitutional, regardless of whether the defendant had purposefully engaged in forum activities. *Id.* at 121-22. He then went on to suggest that the test proposed by Justice O'Connor would be inapplicable given the ubiquitousness of the defendant's valves in the forum:

Whether or not [the defendant's] conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the components. In most circumstances I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute “purposeful

availment” even though the item delivered to the forum State was a standard product marketed throughout the world.

*Id.* at 122. In other words, it was the view of Justice Stevens that at some point the court could simply impute purposeful availment to a defendant based on the sheer numbers of its products reaching the forum.

*Beverly Hills Fan* also provides some useful insight. In that case, the plaintiff had filed a patent infringement complaint in the Eastern District of Virginia against two corporate defendants: One, incorporated in the People's Republic of China, manufactured ceiling fans in Taiwan; the other, incorporated in New Jersey, imported the fans into the U.S. and distributed them. *Beverly Hills Fan*, 21 F.3d at 1560. The plaintiff submitted evidence that the defendants had an ongoing relationship with a retail chain that operated approximately six retail outlets throughout Virginia. *Id.* The allegation that the defendants “purposefully shipped the accused fan into Virginia through an established distribution channel” was sufficient under either version of the stream-of-commerce theory of specific jurisdiction. *Id.* at 1565, 1566. This was so because the defendants “knew the likely destination of the products, and their conduct and connections with the forum state were such that they should reasonably have anticipated being brought into court there.” *Id.* at 1566.

The circumstances of the instant case more closely resemble *Asahi* than *Beverly Hills Fan*. Unlike the latter case, there is nothing in the record here to suggest that the defendant did business with any of its clients with a specific view toward causing its product to be offered for sale in Maine. As in *Asahi*, it was surely foreseeable to the defendant that some portion of its product would end up in Maine, but without any of the additional conduct that Justice O'Connor suggested as indicia of the purposeful direction of the product to the forum. *See Asahi*, 480 U.S. at 112; *see also Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 946-47 (4th Cir. 1994), *cert. denied*, 130 L. Ed. 2d 1070

(1995) (close cooperation between foreign manufacturer of cigarette filters and non-foreign cigarette manufacturer not sufficient “additional conduct” to create personal jurisdiction over filter manufacturer). *Cf. Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 420 (5th Cir. 1993) (defendant had knowledge that subject products would be delivered to specific user in forum district; evidence of 211 contacts within forum); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947 (7th Cir. 1992) (president of defendant directly informed that a certain shipment of its products intended for use in forum and had additional specific contacts in forum); *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1391 (8th Cir. 1991) (defendant's actions “uniquely aimed” at forum and defendant may have directly shipped there). Nor is there record evidence that the volume of the defendant's products reaching Maine is anywhere near as great as that which Justice Stevens suggested would allow a court to impute the requisite purposeful direction.<sup>4</sup> The First Circuit made a similar observation about the product at issue in *Boit*, thus bolstering its conclusion that personal jurisdiction did not lie for the reasons articulated in Justice O'Connor's *Asahi* plurality. *See Boit*, 967 F.2d at 683 n.4.

That, however, does not end the inquiry. When a lawsuit does not arise out of a defendant's activities within the forum, specific *in personam* jurisdiction may still lie if the lawsuit is sufficiently related to other forum-based activities of the defendant. *Akro*, 45 F. 3d at 1547; *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 206 (1st Cir. 1994). The relatedness requirement “authorizes the

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<sup>4</sup> The plaintiff also contends that the defendant is subject to specific *in personam* jurisdiction because the ultimate customers of the defendant, some of whom are located in Maine, are themselves guilty of patent infringement. *See* 35 U.S.C. § 271(a) (providing that “whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent”). The active inducement of patent infringement by another also constitutes infringement within the meaning of section 271. *See id.* at subsection (b). However, the fact that users may be infringing a patent in Maine does not necessarily mean any actionable inducement took place within the jurisdiction.

court to take into account the strength (or weakness) of the plaintiff's relatedness showing in passing upon the fundamental fairness of allowing the suit to proceed.” *Id.* at 207. For example, in *Akro* the defendant had licensed a patent to a competitor of the plaintiff located within the forum. *Akro*, 45 F.3d at 1548-49. The Federal Circuit found this activity to be sufficiently related to the plaintiff's cause of action, which sought a declaratory judgment of noninfringement, patent invalidity and unenforceability. *Id.* at 1542, 1549. The plaintiff contends that the defendant's purchase of a fiber blending system from the plaintiff in 1987, the work done by the plaintiff for the defendant in that year, and the defendant's subsequent abortive discussion about further licensing or subcontracting, apparently related to the patents at issue here, are both forum-based and sufficiently related to the lawsuit so as to create specific jurisdiction. I disagree. Other courts have held that the mailing of a letter into the forum alleging patent infringement is insufficient to create specific personal jurisdiction. *See, e.g., Ryobi Am. Corp. v. Peters*, 815 F. Supp. 172, 176 (D.S.C. 1993); *KVH Indus., Inc. v. Moore*, 789 F. Supp. 69, 72 (D.R.I. 1992). In concluding that the plaintiff had established personal jurisdiction in *Akro*, the Federal Circuit therefore explicitly declined to rely on the fact that the defendant had corresponded with the plaintiff over alleged patent infringement. *Akro*, 45 F.3d at 1548. Similarly, any discussions about licensing, subcontracting and patents that have transpired between the parties here amount to the mere “statement of a business position” that did not make it reasonable for the defendant to anticipate being haled into a court in Maine. *Ryobi*, 815 F. Supp. at 176 (citing *World-Wide Volkswagen*, 44 U.S. at 297). Nor can I agree that the other transactions between the parties are sufficiently related to this lawsuit. Nothing in the record sufficiently establishes that the device sold by the plaintiff to the defendant, or the textiles sold thereafter by the

defendant to the plaintiff, involve either the process or the product later patented by the plaintiff.<sup>5</sup> To assert jurisdiction over the defendant with such a weak thread would certainly offend traditional notions of fair play, and thus transgress upon principles of due process.

The remaining question is whether the defendant's activities within Maine are sufficient to create in the courts of this district general jurisdiction over the defendant. “General jurisdiction is established over a nonresident when a defendant's activities within the state are ‘substantial’ or ‘continuous and systematic.’” *Archibald*, 826 F. Supp. at 29 (quoting *International Shoe*, 326 U.S. at 317). “[M]ere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 418 (1984). Obviously, this is all the more so when, as here, the defendant made only two isolated purchases in the jurisdiction. Nor would it comport with notions of fairness and reasonableness to subject the defendant to general *in personam* jurisdiction within this district based on the work the defendant did for the plaintiff in 1987. “[C]hief among the obligations that a nonresident corporation should expect to fulfill is amenability to suit in any forum that is significantly affected by the corporation's commercial activities.” *Id.* at 423 (Brennan, J., dissenting). The defendant's sales to the plaintiff were too small in scope, too limited in duration, and too remote in time from the present case to permit this court to exercise jurisdiction based on these activities.

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<sup>5</sup> According to the plaintiff's vice-president of engineering, the equipment sold by the plaintiff to the defendant is “similar” to the equipment used by the plaintiff in its patented manufacturing process, and the equipment sold to the defendant “could be” used by the defendant to infringe the plaintiff's patents. Adams Declaration at ¶ 5. Given that the burden of making a *prima facie* showing of *in personam* jurisdiction falls on the plaintiff, this speculation is insufficient to create a link between the equipment sale and the alleged infringement.

For like reasons, the defendant's sales to three other customers are also insufficient. Although these transactions appear to be more regular than those between the defendant and the plaintiff or its subsidiary, they cannot be understood either to have a significant effect on Maine or to be a significant part of the defendant's business. The defendant's major customers are the automobile and automobile parts manufacturers, none of which are located in Maine. At their height in 1994, the defendant's sales in Maine amounted to \$38,214, or .36 percent of the company's total annual sales. In another patent infringement case, *McCain Foods*, this court found general *in personam* jurisdiction over a corporate defendant whose in-state sales were just .7 percent of its total sales. *McCain Foods*, 23 U.S.P.Q. 2d at 1309. Noting that Maine is a small state, the court rejected the proposition that such a small percentage figure would by itself demonstrate a lack of purposeful activity within the forum. *Id.* However, at issue in *McCain Foods* was a food product marketed by the defendant nationally; the Maine sales effort may have yielded as much as \$3.5 million for the defendant and was at least a proportional fraction of what was a nationwide sales effort. *Id.* That cannot be said of this defendant's sales activity in Maine, which amounts to a series of isolated transactions that are tangential to the company's main sales effort. Thus the defendant does not “direct[] sales at residents of Maine as a regular part of its business” in the sense contemplated by *McCain Foods*. *Id.*

All of the cases cited by the defendant can be readily distinguished. *See Michigan Nat. Bank v. Quality Dinette, Inc.*, 888 F.2d 462, 466 (6th Cir. 1989) (defendant had sales representative in forum and made over 400 sales there, totalling more than \$625,000 over two years); *Best Lock Corp. v. Ilco Unican Corp.*, 32 U.S.P.Q. 2d (BNA) 1223, 1224 (S.D.Ind. 1994) (defendant in patent infringement case had \$500,000 of annual sales and 35 customers in forum); *Hoover v. Recreation*

*Equip. Corp.*, 792 F. Supp. 1484, 1489 (N.D. Ohio 1991) (defendant conducted ongoing sales and circulated promotional material within forum for the preceding five years ); *Milligan v. Soo Line R.R.*, 775 F. Supp. 277, 280 (N.D. Ill. 1991) (defendant did between \$800,000 and \$1.5 million in annual sales within forum over three years); *McIntyre's Mini Computer Sales Group, Inc. v. Creative Synergy Corp.*, 644 F. Supp. 580, 586 (E.D. Mich. 1986) (defendant did two percent of total sales within forum for each year of company's existence). I agree with the plaintiff that the raw figures as to the value of a defendant's business within the forum is not the dispositive factor. Such a mechanical approach would be inconsistent with *International Shoe* and the equitable principles articulated therein. See *Foster-Miller, Inc. v. Babcock & Wilcox Canada*, 46 F.3d 138, 150 (1st Cir. 1995) (disclaiming “mechanical application” of the “gestalt factors” set forth in *International Shoe*). But this defendant's contacts with the forum can only be described as isolated and intermittent rather than substantial, continuous or systematic. The defendant is therefore not subject to the general jurisdiction of the courts of Maine.

#### IV. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to dismiss be **GRANTED.**

#### NOTICE

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Cape Elizabeth, Maine this 25th day of April, 1995.*

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*David M. Cohen  
United States Magistrate Judge*