

Federal Circuit Patent Bulletin: *Polar Electro Oy v. Suunto Oy*

July 20, 2016

"[Unlike] where a small manufacturer sells its products to an independent distributor, who then distributes the products to consumers across the nation[, the] active participation in supplying and shipping the accused products to [the forum state] constitutes purposeful availment [to support the exercise of personal jurisdiction]."

On July 20, 2016, in *Polar Electro Oy v. Suunto Oy*, the U.S. Court of Appeals for the Federal Circuit (Newman, Lourie,* Chen) vacated and remanded the district court's dismissal for lack of personal jurisdiction over Suunto in Polar's suit alleging infringement of U.S. Patents No. 5,611,346 and No. 6,537,227, which related to measuring heart rates during physical exercise and athletic performance. The Federal Circuit stated:

Determining whether personal jurisdiction over an out-of-state defendant is proper entails a two-part inquiry. First, a district court analyzes and applies the long arm statute of the state in which it sits to determine whether personal jurisdiction is proper under the statute. Second, the court determines whether exercising jurisdiction over the defendant in the forum state comports with the Due Process Clause of the U.S. Constitution. . . . Due process requires that the defendant have sufficient "minimum contacts" with the forum state, "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Personal jurisdiction has two forms: specific and general. General jurisdiction is not at issue here.

We apply a three-prong test to determine whether specific jurisdiction exists: "(1) whether the defendant purposefully directed activities at residents of the forum; (2) whether the claim arises out of or relates to those activities; and (3) whether assertion of personal jurisdiction is reasonable and fair." . . . Polar asserts a stream-of-commerce theory of personal jurisdiction over Suunto, but the precise requirements of the stream-of-commerce theory remain unsettled. [We] decline to decide which version of the stream-of-commerce theory should apply because . . . the result would be the same under all articulations of the stream-of-commerce test.

Polar argues that the district court erred in concluding that Suunto did not have sufficient contacts with Delaware. According to Polar, (1) Suunto entered into a distribution agreement with ASWO to sell its products in the United States, including Delaware; (2) Suunto packaged and shipped at least ninety-four accused products to Delaware retailers; (3) Suunto owns a website, which makes the accused products available to Delaware consumers and lists retail stores in Delaware that carry those products; (4) there have been eight

online sales of the accused products to Delaware consumers through Suunto's website; and (5) Suunto has ongoing warranty and data privacy obligations to its Delaware customers. Polar contends that those activities, individually and collectively, establish that Suunto had the required minimum contacts with Delaware.

Suunto responds that it did not purposefully direct its activities or products at Delaware, and that it merely placed its products into the stream of commerce from Finland. Suunto argues that Polar improperly attributes the acts of ASWO to Suunto without a showing of control, agency, or alter ego. Suunto maintains that it entered into an arms-length agreement with ASWO, pursuant to which ASWO purchases products from Suunto, takes title in Finland, and pays for and directs shipments to the United States. Suunto also maintains that it does not control marketing, distribution, or sales in the United States, and has not visited Delaware to market the accused products. Suunto also argues that online sales in Delaware are few and have been made exclusively by ASWO; that ASWO maintains the Dealer Locator feature on Suunto's website; and that ASWO is responsible for repairing and replacing products under warranty in the United States. Suunto emphasizes that Polar failed to show that Suunto specifically directed sales to Delaware.

We agree with Polar that Suunto has sufficient contacts with Delaware to sustain specific jurisdiction. . . . Suunto's actions are purposefully directed to Delaware, indicating an intent and purpose to serve not only the U.S. market generally, but also the Delaware market specifically. . . . Although ASWO provided the destination addresses, took title to the goods in Finland, and directed and paid for shipping, it was Suunto, not ASWO, who physically fulfilled the orders, packaged the products, and prepared the shipments in Finland. Suunto admits as much. Through its own conduct, Suunto purposefully availed itself of the Delaware market.

This is not a case where a small manufacturer sells its products to an independent distributor, who then distributes the products to consumers across the nation. Suunto did not simply place its products in the stream of commerce, with the products fortuitously reaching Delaware as a result of the unilateral effort of ASWO. Rather, "acting in consort" with ASWO, Suunto deliberately and purposefully shipped the accused products to Delaware retailers. Suunto's active participation in supplying and shipping the accused products to Delaware thus constitutes purposeful availment.

Moreover, it is undisputed that this patent infringement action arises out of and relates to Suunto's purposeful shipping of the accused products to Delaware. Polar therefore has made a *prima facie* showing of minimum contacts under all articulations of the stream-of-commerce test. Because Suunto's purposeful shipping adequately supports minimum contacts, we need not decide whether the other facts argued by Polar, namely, Suunto's website, the eight online sales, and the warranty and data privacy obligations, constitute purposeful availment by Suunto. [B]ecause we conclude that Suunto has sufficient minimum contacts with Delaware, we vacate the district court's determination that it lacked personal jurisdiction over Suunto and remand for the district court to determine whether exercising jurisdiction over Suunto would be reasonable and fair.