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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

j2 GLOBAL COMMUNICATIONS, INC. and ADVANCED MESSAGING TECHNOLOGIES, INC.,)	Case No. CV 11-07904 DDP (Ex)
)	
Plaintiffs,)	ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND GRANTING PLAINTIFFS' REQUEST FOR LIMITED JURISDICTIONAL DISCOVERY
v.)	
)	
VITELITY COMMUNICATIONS, LLC,)	[Docket No. 13]
)	
Defendant.)	
_____)	

Presently before the court is Defendant's Motion to Dismiss Plaintiffs' Complaint ("Motion"). Having reviewed the parties' moving papers, the court denies the Motion without prejudice, grants Plaintiffs' request for limited jurisdictional discovery, and adopts the following Order.

I. BACKGROUND

In their Complaint, Plaintiffs j2 Global Communications, Inc. and Advanced Messaging Technologies, Inc. allege that Defendant Vitelity, LLC d/b/a Vitelity Communications ("Vitelity") provides certain Internet fax services that infringe Plaintiffs' patents.

1 Plaintiffs also allege that: "Vitelity is doing business in
2 California, including in this District. It solicits customers in
3 this District and offers telephone numbers in this District for use
4 by its customers. Moreover, Vitelity's network is partially based
5 in California. Vitelity has servers located in California and
6 processes calls in California." (Compl. ¶ 4.)

7 In its Motion, Vitelity argues that Plaintiffs have failed to
8 adequately plead a claim for relief. Vitelity also argues that the
9 court lacks personal jurisdiction. Plaintiffs disagree on both
10 counts and, in the alternative as to personal jurisdiction, request
11 leave to take limited jurisdictional discovery.

12 **II. DISCUSSION**

13 **A. Failure to Plead a Claim**

14 Federal Rule of Civil Procedure 12(b)(6) requires courts to
15 dismiss claims for which no relief can be granted. When
16 considering a 12(b)(6) motion, "a court must accept as true all
17 allegations of material fact and must construe those facts in the
18 light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d
19 443, 447 (9th Cir. 2000). In Ashcroft v. Iqbal, the Supreme Court
20 explained that a court should first "identify[] pleadings that,
21 because they are no more than conclusions, are not entitled to the
22 assumption of truth." 129 S. Ct. 1937, 1950 (2009). Next, the
23 court should identify the complaint's "well-pleaded factual
24 allegations, . . . assume their veracity and then determine whether
25 they plausibly give rise to an entitlement to relief." Id.; see
26 also Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009)
27 ("In sum, for a complaint to survive a motion to dismiss, the non-
28 conclusory factual content, and reasonable inferences from that

1 content, must be plausibly suggestive of a claim entitling the
2 plaintiff to relief." (internal quotation marks omitted)).

3 "A claim for direct infringement must state only: (1)
4 ownership of the allegedly infringed patent; (2) the infringer's
5 name; (3) a citation to the patent; (4) the infringing activity;
6 and (5) citations to the applicable federal patent law." Vellata,
7 LLC v. Best Buy Co., Inc., No. CV 10-6752, 2011 WL 61620, at *4
8 (C.D. Cal. Jan. 7, 2011). Here, Plaintiffs allege in their
9 Complaint that they own the patents at issue and that Vitelocity is
10 infringing those patents. (Compl. ¶¶ 5, 8, 25-26, 31-32.)
11 Plaintiffs also cite to the applicable federal law - 35 U.S.C. §
12 271 - and adequately describe the infringing activity. (Id. at 4-
13 5, ¶¶ 12-19.) Among other things, Plaintiffs allege that Vitelocity
14 "offers its customers an online fax service including in-bound and
15 out-bound Internet fax." (Id. ¶ 12; see also id. at ¶ 18 ("Through
16 its vFax service, Vitelocity offers its customers 'a custom branded
17 vFax portal.'") Plaintiffs further allege that these services
18 infringe their patents. Plaintiffs' allegations are therefore
19 sufficient to meet the pleading standard for patent infringement.

20 **B. Personal Jurisdiction**

21 Federal Rule of Civil Procedure 12(b)(2) provides that a court
22 may dismiss a suit for lack of personal jurisdiction. The
23 plaintiff has the burden of establishing that jurisdiction exists,
24 but need only make "a prima facie showing of jurisdictional facts
25 to withstand the motion to dismiss." Pebble Beach Co. v. Caddy,
26 453 F.3d 1151, 1154 (9th Cir. 2006). "[U]ncontroverted allegations
27 in [the plaintiff's] complaint must be taken as true, and conflicts
28 between the facts contained in the parties' affidavits must be

1 resolved in [the plaintiff's] favor." Rio Props., Inc. v. Rio
2 Int'l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002).

3 District courts have the power to exercise personal
4 jurisdiction to the extent authorized by the law of the state in
5 which they sit. Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P.
6 v. Toebben, 141 F.3d 1316, 1320 (9th Cir. 1998). Because
7 California's long-arm statute authorizes personal jurisdiction
8 coextensive with the Due Process Clause of the United States
9 Constitution, see Cal. Civ. Code § 410.10, this Court may exercise
10 personal jurisdiction over a nonresident defendant when that
11 defendant has "at least 'minimum contacts' with the relevant forum
12 such that the exercise of jurisdiction 'does not offend traditional
13 notions of fair play and substantial justice.'" Schwarzenegger v.
14 Fred Martin Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004) (citing
15 Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

16 Personal jurisdiction may be established on the basis of
17 either general or specific jurisdiction. General jurisdiction
18 exists over a nonresident defendant when the defendant engages in
19 "continuous and systematic general business contacts that
20 approximate physical presence in the forum state." Schwarzenegger,
21 374 F.3d at 801 (internal quotation marks and citations omitted).
22 Where a defendant is subject to a state's general jurisdiction, the
23 defendant "can be haled into court in that state in any action,
24 even if the action is unrelated to those contacts." Bancroft &
25 Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1086 (9th Cir.
26 2000). Specific jurisdiction exists where a case arises out of
27 forum-related acts. The Ninth Circuit analyzes specific
28 jurisdiction according to a three-prong test:

1 (1) The non-resident defendant must purposefully direct his
2 activities or consummate some transaction with the forum or
3 resident thereof; or perform some act by which he
4 purposefully avails himself of the privilege of conducting
5 activities in the forum, thereby invoking the benefits and
6 protections of its laws;

(2) the claim must be one which arises out of or relates to
the defendant's forum-related activities; and

(3) the exercise of jurisdiction must comport with fair
play and substantial justice, i.e. it must be reasonable.

7 Yahoo! Inc. v. La Ligue Contre le Rascime, 433 F.3d 1199, 1205-06
8 (9th Cir. 2006). "If the plaintiff succeeds in satisfying both of
9 the first two prongs, the burden then shifts to the defendant to
10 'present a compelling case' that the exercise of jurisdiction would
11 not be reasonable." Schwarzenegger, 374 F.3d at 802 (citing Burger
12 King Corp. v. Rudzewicz, 471 U.S. 452, 476-78 (1985)).

13 In a typical patent infringement case, where the plaintiff
14 accuses the defendant of selling infringing products or services,
15 the specific jurisdiction "inquiry is relatively easily discerned
16 from the nature and extent of the commercialization of the accused
17 products or services by the defendant in the forum." Avocent
18 Huntsville Corp. v. Aten Int'l Co., 552 F.3d 1324, 1332 (Fed. Cir.
19 2008); see also Beverly Hills Fan Co. v. Royal Sovereign Corp., 21
20 F.3d 1558, 1565 (Fed. Cir. 1994) ("The allegations are that
21 defendants purposefully shipped the accused fan into Virginia
22 through an established distribution channel. The cause of action
23 for patent infringement is alleged to arise out of these
24 activities. No more is usually required to establish specific
25 jurisdiction.").

26 A plaintiff can also obtain discovery on jurisdictional facts,
27 by making at least a 'colorable' showing of personal jurisdiction.
28 See Crystal Cruises, Inc. v. Moteurs Leroy-Somer S.A., No. CV

1 10-8736, 2011 WL 2604886, at *3 (C.D. Cal. July 1, 2011). "This
2 'colorable' showing should be understood as something less than a
3 prima facie showing, and could be equated as requiring the
4 plaintiff to come forward with 'some evidence' tending to establish
5 personal jurisdiction over the defendant." Id.

6 Here, Plaintiffs argue that general and specific jurisdiction
7 exist based on the following facts: 1) Vitelocity maintains an
8 interactive website that "allows customers, including in
9 California, to order Vitelocity's products online, as well as to
10 create and manage their accounts"; 2) Vitelocity "specifically
11 targets California residents by offering local phone numbers for
12 dozens, if not hundreds, of California cities"; 3) Vitelocity "owns
13 servers and equipment in California which it uses to support [its]
14 customers in several states" and to "provide redundancy, a key
15 feature of one of the patents-in-suit"; and 4) Vitelocity is
16 specifically targeting Los Angeles "as a major hub," through
17 certain "strategic partnerships" and infrastructure projects.

18 Vitelocity disputes the significance of these facts, claiming
19 that the local telephone numbers, servers, and Los Angeles projects
20 are not related to the allegedly infringing activity. As
21 Vitelocity's chief financial officer explains in a supporting
22 declaration, these California connections involve Vitelocity's "Voice
23 over Internet Protocol services," not the Internet fax services at
24 issue in this case. According to Vitelocity, the Internet fax
25 services are in fact provided by a third-party, currently seeking a
26 declaratory judgment against Plaintiffs in a Colorado district
27 court. (Supplemental Decl. of Ben Ford at 5-9.)

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1 Vitelocity's response fairly calls into question whether its
2 California-related activities are substantial enough for general
3 jurisdiction, and whether Plaintiffs' infringement claims arise out
4 of these activities, as required for specific jurisdiction. As
5 mentioned, however, Plaintiffs also seek limited jurisdictional
6 discovery as to: 1) the extent of Vitelocity's direct and indirect
7 sales to California customers; 2) the functionality of Vitelocity's
8 website; 3) the number and usage of the local numbers that Vitelocity
9 offers in California; 4) the function of Vitelocity's California-
10 based servers; 5) the extent and type of call processing that
11 Vitelocity performs in California; and 6) any other ways in which
12 Vitelocity targets California customers.

13 The court finds that Plaintiffs have made a colorable claim as
14 to jurisdiction and are therefore entitled to this additional
15 discovery. If, for instance, Plaintiffs discover that Vitelocity
16 makes regular California sales of the allegedly infringing Internet
17 fax services - even through an intermediary - they could likely
18 establish specific jurisdiction. See Beverly Hills Fan, 21 F.3d at
19 1565. Accordingly, the court grants Plaintiffs 90 days from the
20 date of this Order to conduct such limited jurisdictional
21 discovery.

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1 **III. CONCLUSION**

2 For all of these reasons, the court denies Vitelity's Motion
3 without prejudice and grants Plaintiffs request for limited
4 jurisdictional discovery, to be completed within 90 days of the
5 date of this Order.

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7 IT IS SO ORDERED.

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10 Dated: April 12, 2012


DEAN D. PREGERSON
United States District Judge

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