

Federal Circuit Holds Demand Letters Are Sufficient to Establish Personal Jurisdiction

***Jack Henry & Assocs., Inc. v. Plano Encryption Techs. LLC,*
910 F.3d 1199 (Fed. Cir. 2018)**

A patent assertion entity's sending of a demand letter into a district is sufficient to give rise to personal jurisdiction over that entity.

This case is important because the Federal Circuit clarified that demand letters may give rise to personal jurisdiction in the patent context and that a PAE may be hailed into court in a district into which it sends demand letters.

Plano Encryption Technologies LLC ("PET"), located in the Eastern District of Texas, claimed that its sole business was to enforce intellectual property. As part of that enforcement, PET sent letters to a number of Texas banks ("Banks") stating its belief that the Banks were infringing its patents, attaching claim charts, referencing a recently-filed lawsuit involving the same patents, and inviting the Banks to take a license to PET's patent portfolio. All of the Banks have contacts with the Northern District of Texas.

Jack Henry & Associates, Inc. ("Jack Henry"), the software system provider for the Banks' mobile apps, responded to the letters on the basis that it was indemnifying the Banks. In its response letter, Jack Henry set forth bases for non-infringement, called into question the validity of the patents, and requested that PET and its counsel meet and discuss the issues. PET did not respond to Jack Henry; rather, PET sent follow-up letters to the Banks disputing Jack Henry's bases for non-infringement and invalidity and referencing PET's "successful history" of enforcing its intellectual property. Jack Henry and the Banks filed a declaratory judgment action in the Northern District of Texas. The district court, finding that PET's contacts with the Northern District did not subject it to personal jurisdiction, dismissed the case for improper venue. Jack Henry and the banks appealed.

The Federal Circuit reversed. The issue involved 28 U.S.C. 1391, which provides that for purposes of venue, a corporation shall be deemed to reside in any district in which it is subject to personal jurisdiction. Personal jurisdiction involves three aspects: 1) whether the defendant "purposefully directed" its activities at residents of the forum; (2) whether the claim "arises out of or relates to" the defendant's activities within the forum; and (3) whether assertion of personal jurisdiction is "reasonable and fair." The first two factors, which constitute the "minimum contacts" portion of the inquiry were easily met given that PET purposefully sent the letters giving rise to this dispute into the Northern District. As to the third factor, the fairness factor, the Federal Circuit held that this factor was met because PET did not argue that litigating in the Northern District would be burdensome and because the Northern District has a substantial interest in resolving the dispute. In so doing, the Federal Circuit explicitly rejected PET's argument that patent enforcement letters can never provide the basis for jurisdiction in a declaratory judgment action.