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How Many Communications Before a State Has Jurisdiction?

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According to the Federal Circuit, twenty-two communications with a party over the course of three months may be enough to force a defendant to defend itself in the state where the party is located. But three letters sent over that same time period is not enough.

In a recently published opinion, *Trimble, Inc. v. PerDiemCo LLC*, the Federal Circuit reversed a district court's dismissal of a declaratory judgment noninfringement action for lack of personal jurisdiction. PerDiemCo, a Texas LLC and the defendant in the action, had communicated with Trimble twenty-two times over the course of three months. The communications began with a demand letter from PerDiemCo's sole owner to Trimble's subsidiary seeking to have Trimble pay for a non-exclusive license to practice PerDiemCo's allegedly infringed patents. The parties attempted to negotiate over the next three months via letters, emails, and telephone calls until Trimble filed a declaratory judgment noninfringement action in the Northern District of California, where Trimble is headquartered.

The district court dismissed the action for lack of personal jurisdiction, relying on the Federal Circuit's 1998 opinion, *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*. In *Red Wing*, the New Mexico defendant had sent three demand letters to the Minnesota plaintiff, alleging infringement of the defendant's patents and offering a nonexclusive license. The *Red Wing* court held that the defendant's activities were not enough to force the defendant into a Minnesota court.
In the *Trimble* opinion, the Federal Circuit went in a different direction and rejected the notion that no amount of communications was ever enough to subject a defendant to a federal court's jurisdiction in a foreign state, clarifying that "there is no general rule that demand letters can never create specific personal jurisdiction."

In support of its decision, the Federal Circuit reasoned that (1) the burden on PerDiemCo of litigating in California was minimal because PerDiemCo is a non-practicing entity with experience litigating in other states, (2) California has an interest in adjudicating the dispute because Trimble is headquartered there, (3) California is where most of Trimble's employees and documents are located, (4) the pendency of the case in California does not prevent the parties from reaching a settlement, and (5) the same federal patent law governs in every state.

Takeaways

While we do not know an exact answer to “How many communications before a state has jurisdiction?,” we know the answer in patent infringement cases is somewhere between three and twenty-two. With its *Trimble* decision, the Federal Circuit has reduced the incentives patent holders have to negotiate with an alleged infringer if it is located in a non-friendly jurisdiction prior to bringing an infringement action in a friendly court. If there is too much communication, a patentee may be forced to litigate in a state it doesn’t want. Conversely, this decision has increased the incentives of accused infringers to communicate and negotiate with the patent holder. If the accused infringer gets the patent holder talking, it may be enough to haul the patent holder to its local courthouse.

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