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8
 9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

| | | | |
|----|--|---|---------------------------------|
| 11 | PATENT RIGHTS PROTECTION GROUP, |) | Case No.: 2:08-cv-00662-JCM-LRL |
| 12 | LLC, a Nevada limited liability company, |) | |
| | |) | |
| 13 | Plaintiff, |) | <u>NOTICE OF APPEAL</u> |
| | |) | |
| 14 | vs. |) | |
| | |) | |
| 15 | VIDEO GAMING TECHNOLOGIES, INC., a |) | |
| | Tennessee corporation and SPEC |) | |
| 16 | INTERNATIONAL, INC. a Michigan |) | |
| | corporation, |) | |
| 17 | |) | |
| | Defendants. |) | |

18
 19 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL:

20 NOTICE IS HEREBY GIVEN that Plaintiff, Patent Rights Protection Group, LLC in the
 21 above named case hereby appeals to the United States Court of Appeals for the Federal Circuit
 22 from the Order (attached hereto as Exhibit 1) granting Defendants' Motions to Dismiss,
 23 Denying Plaintiff's Counter-motion for Jurisdictional Discovery, and dismissing this action

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without prejudice entered in this action on April 29, 2009.

DATED this 27th day of May, 2009.

Respectfully Submitted,

WEIDE & MILLER, LTD.



R. Scott Weide, Esq.
Mark Borghese, Esq.
7251 W. Lake Mead Blvd., Suite 530
Las Vegas, NV 89128
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 7251 West Lake Mead Blvd., Suite 530, Las Vegas, Nevada, 89128.

On May 27, 2009, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

E-MAIL / E-FILE: Automatically through the court’s electronic filing system or by transmitting a copy of the document to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

FAX SERVICE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

MAIL SERVICE: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am readily familiar with the firm’s practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Mark Borghese

An employee of WEIDE & MILLER, LTD.

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SERVICE LIST

| ATTORNEYS OF RECORD | PARTIES REPRESENTED | METHOD OF SERVICE |
|---|---|--|
| Leigh Goddard McDonald Carano Wilson 100 West Liberty Street, 10 th Floor P.O. Box 2670 Reno, NV 89505-2670 | Defendant SPEC International, Inc. | <input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service |
| Steven Underwood Aaron Wong Price, Heneveld, Cooper, DeWitt & Litton 695 Kenmoor, S.E. P.O. Box 2567 Grand Rapids, MI 49501 | Defendant SPEC International, Inc. | <input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service |
| James D. Boyle Santoro, Driggs, Walch, Kearney, Holley & Thompson 400 South Fourth Street, Third Floor Las Vegas, NV 89101 | Defendant Video Gaming Technologies, Inc. | <input type="checkbox"/> Personal service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service |

EXHIBIT 1

EXHIBIT 1

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UNITED STATE DISTRICT COURT
DISTRICT OF NEVADA

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PATENT RIGHTS PROTECTION GROUP,
LLC, a Nevada limited liability company,

Case No. 2:08-cv-00662-JCM-LRL

Plaintiff,

**ORDER GRANTING
MOTIONS TO DISMISS; DENYING
COUNTERMOTION FOR
JURISDICTIONAL DISCOVERY**

vs.

VIDEO GAMING TECHNOLOGIES, INC., a
Tennessee corporation and SPEC
INTERNATIONAL, INC., a Michigan
corporation,

Defendants.

Before this Court is Defendant SPEC International, Inc.’s (“SPEC”) *Motion to Dismiss* (Doc. #13), Defendant Video Gaming Technologies, Inc.’s (“VGT”) *Motion to Dismiss* (Doc. #17), and Plaintiff Patent Rights Protection Group, LLC’s (“PRPG”) *Counter-motion for Jurisdictional Discovery* (Doc. #24). This Court reviewed the papers submitted in support of and in opposition to the motions and the counter-motion, and the Court heard oral arguments on April 9, 2009. (Doc. # 46) For the reasons that follow, this Court GRANTS SPEC’s and VGT’s respective motions to dismiss and DENIES PRPG’s counter-motion and, therefore DISMISSES PRPG’s lawsuit, without prejudice, pursuant to Fed. R. Civ. P. 12(b)(2).

1. PERSONAL JURISDICTION

The Nevada long-arm statute, NRS 14.065, provides that a court within Nevada can exercise personal jurisdiction over a defendant to the full extent that the United States Constitution permits. *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, 999 P.2d 1020,

1 1023 (2000). In turn, the Due Process Clause of the United States Constitution allows a court
2 to exercise personal jurisdiction over a defendant only when the defendant has sufficient
3 “minimum contacts” with a forum state so that the exercise of jurisdiction does not offend
4 “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S.
5 310, 316 (1945).

6 There are two types of personal jurisdiction that a court may have over a non-resident
7 defendant: general jurisdiction and specific jurisdiction. *Helicopteros Nacionales de Columbia,*
8 *S.A. v. Hall*, 466 U.S. 408, 414-15 (1984). In either case, the exercise of personal jurisdiction
9 must be reasonable. *Amoco Egypt Oil Co. v. Leonis Nav. Co.*, 1 F.3d 848, 851 (9th Cir. 1993)
10 (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987)); *International Shoe Co.*
11 *v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (“The second stage of the
12 due process inquiry asks whether the assertion of personal jurisdiction comports with
13 ‘traditional notions of fair play and substantial justice’ - that is, whether it is reasonable under
14 the circumstances of the particular case.”). Here, the Court finds that the exercise of this
15 jurisdiction would be unreasonable and, therefore, would be unconstitutional.

16 In analyzing whether the exercise of general or specific personal jurisdiction over a
17 defendant would be reasonable, the court should balance the following factors:

- 18 [1] the extent of purposeful interjection,
- 19 [2] the burden on the defendant to defend the suit in the chosen forum,
- 20 [3] the extent of conflict with the sovereignty of the defendant's state,
- 21 [4] the forum state's interest in the dispute;
- 22 [5] the most efficient forum for judicial resolution of the dispute;
- 23 [6] importance of the chosen forum to the plaintiff's interest in convenient
24 and effective relief; and
- 25 [7] the existence of an alternative forum.

23 *Amoco Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 851 (9th Cir. 1993) (quoting
24 *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 386 (9th Cir. 1990)).

25 Applying the first factor, both SPEC and VGT have had very limited purposeful
26 interjection into Nevada, essentially only appearances at trade shows. Thus, the “extent of
27 purposeful interjection” is minimal for both Defendants. This factor weighs in favor of
28 unreasonableness. Second, it would be burdensome for each of the Defendants to defend the

1 lawsuit in Nevada, because both Defendants are located outside of Nevada and Defendants'
2 witnesses relevant to this action are located outside of Nevada. This factor weighs in favor of
3 unreasonableness. Third, this lawsuit does not present issues of state sovereignty (neither
4 Defendant is from a foreign nation) and, thus, this factor is neutral. Fourth, the forum state
5 where the various parties have their principle places of business all have an interest in this
6 litigation at least equal to that of Nevada. The Court also considered that Plaintiff selected this
7 forum and that Plaintiff has witnesses in this forum. Thus, this factor is neutral. Fifth, this
8 Court would be no more efficient than any other in hearing this case. Thus, this factor is
9 neutral. Sixth, Nevada would provide no more or less convenience to PRPG and no more or
10 less effective relief than any alternate forum. Thus, this factor is neutral. Finally, each
11 Defendant would be subject to personal jurisdiction in an alternative forum, including at least
12 Michigan and Tennessee. This factor weighs in favor of unreasonableness.

13 After balancing the above factors, this Court concludes that Defendants have
14 demonstrated that the exercise of jurisdiction (whether general or specific) over SPEC and/or
15 VGT in Nevada would be unreasonable and, therefore, unconstitutional.

16 **2. ADDITIONAL CONSIDERATIONS**

17 In light of the foregoing, the Court further concludes that PRPG's request for
18 jurisdictional discovery, even if granted, would have no bearing on the above analysis and
19 conclusion, and therefore this Court concludes that it will not grant PRPG's countermotion for
20 jurisdictional discovery. The Court further concludes that the alternative basis for dismissal
21 advocated by SPEC and VGT—lack of venue pursuant to Fed. R. Civ. P. 12(b)(3)—is moot.
22 Similarly, dismissal under the doctrine of issue preclusion advanced by SPEC is deemed moot
23 by this Order. Finally, the issue of transfer or stay of the instant action is moot given the
24 ultimate dismissal of the Michigan litigation transferred to this district.

25 **3. CONCLUSION**


26 Because exercise of personal jurisdiction over SPEC and VGT in Nevada would be
27 unreasonable and, therefore, unconstitutional, this Court GRANTS SPEC's *Motion to Dismiss*
28 (Doc. #13) and VGT's *Motion to Dismiss* (Doc. #17). This Court DENIES PRPG's

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Countermotion for Jurisdictional Discovery (Doc. #24). As such, the lawsuit is DISMISSED without prejudice.

Dated this 28th of April, 2009

IT IS SO ORDERED:



James C. Mahan
United States District Judge