CELGARD, LLC v. SK INNOVATION CO., LTD., Appeal No. 2014-1807 (Fed. Cir. July 6, 2015). Before Newman, Reyna and Wallach. Appealed from W.D.N.C. (Judge Cogburn).

Background:

Celgard sued SKI, whose principal place of business is Korea, for infringement in North Carolina. Celgard sought to establish the district court's jurisdiction based on a "purposeful-direction" theory or a "stream-of-commerce" theory (*e.g.*, through sales to third party manufacturers who in turn sell and offer for sale the accused separators to residents of North Carolina). Before trial, the district court granted Celgard's motion for jurisdictional discovery, which in effect held in abeyance SKI's motion to dismiss for lack of personal jurisdiction. Subsequently, the district court granted SKI's motion to dismiss after jurisdictional discovery revealed no evidence of purposeful availament towards or products actually located in the forum state (*i.e.*, no minimum contacts). Celgard appealed.

Issue/Holding:

Did the trial court err in declining to exercise personal jurisdiction under either a purposeful direction or a stream-of-commerce theory? No, affirmed.

Discussion:

The Federal Circuit reviewed the district court's determination of personal jurisdiction by focusing on whether jurisdiction over SKI would be consistent with due process. In particular, the Federal Circuit analyzed Celgard's two proposed theories: (1) the "purposeful-direction" theory, and (2) the "stream-of-commerce" theory.

Celgard's "purposeful-direction" theory was premised on car dealership advertisements in North Carolina. However, the Federal Circuit held that the activities of the local car dealers could not be imputed to SKI because there was no evidence that SKI had any relationship with the local dealers, much less, the requisite control over the dealers (*e.g.*, an agency or alter ego relationship). Contrary to Celgard's assertions, the Federal Circuit held that a joint venture agreement between SKI and KMC, which is the Korean-located parent company of KMA, which operates the North Carolina car dealerships, was insufficient to establish an agency relationship.

The Federal Circuit also rejected Celgard's "stream-of-commerce" theory because Celgard failed to show facts that would meet any precedential standard for personal jurisdiction. The Federal Circuit reiterated the three standards as: (1) the Justice Brennan's "foreseeability" test in *Asahi*; (2) Justice O'Connor's "substantial connection" test in *Asahi*; and (3) Justice Kennedy's "intent to invoke or benefit from the protection of" the forum state in *McIntyre Machinery*. Celgard's evidence did not show SKI's products in North Carolina, but included tests showing only that batteries taken from electronic devices purchased in North Carolina are not inconsistent with SKI's separator products. The Federal Circuit held that Celgard cannot even meet the flexible foreseeability standard in *Asahi*, much less the more rigid substantial connection or intent to invoke benefits from protection of state law.

Thus, agreeing with SKI's arguments, the Federal Circuit affirmed the trial court's finding of lack of personal jurisdiction.