

POLAR ELECTRO OY v. SUUNTO OY, Appeal No. 2015-1930 (Fed. Cir. July 20, 2016).
Before Newman, Lourie, and Chen. Appealed from D. Del. (Judge Sleet).

Background:

Suunto is a Finnish company that sold fitness activity trackers in the U.S. through its sister company Amer Sports Winter & Outdoor ("Amer Sports"). Under their distribution agreement, Suunto shipped its activity trackers to addresses specified by Amer Sports. Amer Sports paid for shipping and took title of the products at Suunto's shipping dock in Finland. Suunto also had a website with a U.S. dealer locator listing dealer locations in Delaware. However, the dealer locator portion of the website was operated by Amer Sports.

Polar sued Suunto and Amer Sports for patent infringement in the U.S. District Court for the District of Delaware, alleging that the activity trackers sold by Suunto and Amer Sports infringed Polar's patents. Suunto moved for dismissal for lack of personal jurisdiction. The District Court held that although Suunto had a general intent to serve the U.S. market, its sales were not targeted at Delaware because they were conducted indirectly through Amer Sports. Thus, the District Court found that Suunto lacked the required minimum contacts with Delaware, and dismissed the complaint against Suunto. Polar appealed, asserting that personal jurisdiction over Suunto existed under the stream-of-commerce theory.

Issues/Holdings:

Did the District Court err in holding that it lacked personal jurisdiction over Suunto?
Yes, vacated and remanded.

Discussion:

The Federal Circuit first discussed the split in Supreme Court opinions on the standard for determining sufficient minimum contacts under the stream-of-commerce theory. Specifically, Justice O'Connor, joined by three justices in *Asahi Metal v. Superior Court of California, Solano County* (1987), held that a defendant must purposefully direct activities toward a forum State for a finding of minimum contacts. In the same case, Justice Brennan, joined by three justices, held that the mere foreseeability or awareness that Defendant's products would enter the forum State was sufficient to establish minimum contacts. The Supreme Court revisited this issue in 2011 in *J. McIntyre Machinery, Ltd. v. Nicastro*, but again did not produce a majority opinion. Accordingly, the Federal Circuit held that there was no definitive precedent for which version of the stream-of-commerce theory should be applied.

In this case, the Federal Circuit found that under either version of the theory, Suunto did have the requisite minimum contacts. Suunto had shipped ninety-four of its accused products to Delaware retailers, fully expecting that its products would be sold in Delaware as a result of its activities. This indicated an intention to not only serve the U.S. market generally, but Delaware specifically. Accordingly, the Federal Circuit found that Suunto met the stricter version of the stream-of-commerce theory by purposefully availing itself of the Delaware market. Exercising personal jurisdiction must also be "reasonable and fair" in order to comply with the due process clause. This issue had not been addressed by the District Court because it was moot in view of their other findings. The Federal Circuit decided not to address this issue in the first instance, and remanded to the District Court for a finding of whether exercising personal jurisdiction in this case would be reasonable and fair.