

NEXLEARN, LLC V. ALLEN INTERACTIONS, INC., Appeal Nos. 2016-2170, 2221 (Fed. Cir. June 19, 2017). Before Moore, Schall, and Hughes. Appealed from D. Kan. (Judge Melgren). (Personal Jurisdiction)

### Background:

NexLearn sued Allen for patent infringement in the district of Kansas, but Allen moved to dismiss NexLearn's complaint for lack of personal jurisdiction in Kansas.

NexLearn attempted to establish personal jurisdiction under specific jurisdiction based on Allen's activities both prior to and after NexLearn's patent issued.

The district court granted Allen's motion to dismiss due to the district court not having personal jurisdiction over Allen in Kansas. The district court determined that Allen did not have sufficient "minimum contacts" with Kansas. NexLearn appealed.

### Issue/Holding:

Did the district court err in holding that Allen did not have sufficient "minimum contacts" to establish personal jurisdiction in Kansas? No, affirmed.

### Discussion:

The Federal Circuit reviewed each of Allen's activities with Kansas asserted by NexLearn but agreed with the district court that none of Allen's activities established sufficient minimum contacts with Kansas. The Federal Circuit's analysis for each of Allen's activities asserted by NexLearn is provided in the following chart.

<b>Allen's Activity</b>	<b>Federal Circuit Analysis</b>
Prior to issuance of NexLearn's patent, Allen developed and advertised its alleged infringing software ("ZebraZapps").	Allen's activities prior to issuance of NexLearn's patent are not relevant to the specific jurisdiction inquiry.
Allen and NexLearn entered a nondisclosure agreement ("NDA"), having a forum selection provision governed by Kansas law, that expired prior to issuance of NexLearn's patent.	The forum selection provision of an expired NDA does not show reasonable foreseeability of litigation in Kansas over NexLearn's patent infringement claim.
Allen accessed NexLearn's software, subjecting Allen to a forum selection provision of the software's end user license agreement ("EULA").	The forum selection provision only relates to disputes arising out of use of the NexLearn software - not creating/using ZebraZapps.
Allen's website is accessible in Kansas and includes "Kansas" in a 50 state dropdown menu for billing purposes.	Accessibility of Allen's website in Kansas and the mere inclusion of Kansas in a dropdown menu is not enough contact in Kansas.
Allen emailed an advertisement to nationwide subscribers, including Kansas residents.	Allen's emailing of one advertisement to all of its nationwide subscribers does not create a substantial connection with the forum state.
Allen offered a NexLearn employee, a Kansas resident, a free trial of ZebraZapps.	Allen's single offer is too insignificant to justify haling it into court in Kansas.

Accordingly, the Federal Circuit determined that Allen's activities only created an "attenuated affiliation," rather than "a substantial connection," with Kansas. As such, the Federal Circuit affirmed the district court's dismissal of NexLearn's complaint.