Miscellaneous Docket No. 2021-165

United States Court of Appeals for the Federal Circuit

IN RE ONEPLUS TECHNOLOGY (SHENZHEN) CO. LTD.,
Petitioner.

On Petition for a Writ of Mandamus to the U.S. District Court for the Western District of Texas in Case Nos. 6-20-CV-00952-ADA, 6-20-CV-00953-ADA, 6-20-CV-00956-ADA, 6-20-CV-00957-ADA, 6-20-CV-00958-ADA
Hon. Alan D. Albright

REPLY IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS

Julie S. Goldemberg
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
T. 215.963.5000
F. 215.963.5001
julie.goldemberg@morganlewis.com

William R. Peterson
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
T. 713.890.5188
F. 713.890.5001
william.peterson@morganlewis.com

Michael J. Lyons
Ahren C. Hsu-Hoffman
Jacob J.O. Minne
MORGAN, LEWIS & BOCKIUS LLP
1400 Page Mill Road
Palo Alto, CA 94304
T. 650.843.4000
F. 650.843.4001
michael.lyons@morganlewis.com
ahren.hsu-hoffman@morganlewis.com
jacob.minne@morganlewis.com

Counsel for Petitioner
OnePlus Technology (Shenzhen) Co. Ltd.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

Rules

INTRODUCTION

WSOU's response confirms that service was improper. Under a straightforward reading, Rule 4(f)(3) is inapplicable to domestic service, and the district court improperly relied on it to circumvent the service requirements in the Hague Convention, violating the principle of international comity. Independently, the district court clearly abused its discretion in finding that this form of service provided it with personal jurisdiction over OnePlus Shenzhen under the Texas long-arm statute, which requires transmittal of documents abroad and thus required compliance with the Hague Convention.

This Court should grant mandamus to correct the district court's clear abuses of discretion in allowing WSOU to circumvent the Hague Convention and in denying OnePlus Shenzhen's motion to dismiss for lack of personal jurisdiction. Granting the writ would provide valuable guidance to this and other district courts wrestling with the same issue, saving judicial resources by preventing cases from proceeding without personal jurisdiction.

ARGUMENT IN REPLY

I. The District Court Clearly Abused Its Discretion In Denying The Motion To Dismiss

Service and personal jurisdiction are two separate issues, and the district court clearly abused its discretion in both (1) finding service pursuant to Rule 4(f)(3) effective and (2) finding the service sufficient to establish personal jurisdiction in

Texas. Section I.A of the petition and this reply address the latter issue, lack of personal jurisdiction, while Sections I.B and I.C address the former, improper service. WSOU conflates the two in its response, but they are separate issues, either of which is dispositive and warrants mandamus relief.

A. WSOU's Purported Service Under Rule 4(f)(3) Does Not Establish Personal Jurisdiction Over OnePlus Shenzhen Under The Texas Long-Arm Statute

As OnePlus Shenzhen explained in its petition, the Hague Convention is triggered when state law requires the transmittal of documents abroad. Under Rule 4(k)(1), the district court can only exercise personal jurisdiction over OnePlus Shenzhen if service complied with the Texas long-arm statute, which require the transmittal of documents abroad and thus requires compliance with the Hague Convention. Pet. 8-10.

WSOU's service via Rule 4(f)(3) cannot establish personal jurisdiction under the Texas long-arm statute because the documents were not transmitted abroad, so this case must be dismissed for lack of personal jurisdiction.

The district court clearly abused its discretion in ruling otherwise. WSOU's arguments to the contrary are unavailing.

1. Regional law applies in interpreting the Texas long-arm statute.

As an initial matter, WSOU mistakenly invites this Court to apply Federal Circuit law rather than the regional law of the Fifth Circuit and Texas. Resp. Br. 14.

But "[d]etermining whether jurisdiction exists over an out-of-state defendant involves two inquiries: whether a forum state's long-arm statute permits the assertion of jurisdiction and whether assertion of personal jurisdiction violates federal due process." *Graphic Controls Corp. v. Utah Med. Prods., Inc*., 149 F.3d 1382, 1385-86 (Fed. Cir. 1998).

In arguing that Federal Circuit law applies, WSOU cites cases concerning federal due process principles. This is undisputed: "With regard to the federal constitutional due process analysis of the defendant's contacts with the forum state in patent cases, [the Federal Circuit] do[es] not defer to the interpretations of other federal and state courts." *Graphic Controls*, 149 F.3d at 1386 (citing *Akro Corp. v. Luker*, 45 F.3d 1541, 1543-44 (Fed. Cir. 1995), on which WSOU also relies).

But the arguments in the petition concern the Texas long-arm statute. And "in interpreting the meaning of state long-arm statutes, [this Court] . . . **defer[s] to the interpretations of the relevant state and federal courts**." *Id.* (emphasis added; citing various cases). In *Graphic Controls*, this Court expressly "decline[d] [the] invitation to begin substituting [its] interpretation of state long-arm statutes for that of the relevant state and federal courts." *Id.*

Therefore, although Federal Circuit law would apply to any issues involving federal due process, Fifth Circuit and Texas law apply to the issues raised in the petition, which concern the procedural requirements of the Texas long-arm statute.

2. The Fifth Circuit and Texas courts interpret the Texas long-arm statute to trigger the Hague Convention procedures.

Sheets v. Yamaha Motors Corp., U.S.A., 891 F.2d 533, 536-37 (5th Cir. 1990), is controlling. In that case the Fifth Circuit recognized the Hague Convention is triggered—and "shall apply" (Hague Convention, Art. 1)—if the state's method of serving process "involves the transmittal of documents abroad." *Id.* at 537 (holding the "transmittal of documents abroad" required by a state statute "is precisely the type of service that triggers the application of Hague Convention procedures.").

WSOU distinguishes *Sheets* by noting the Fifth Circuit was applying Louisiana law, and there was no court-approved service. Resp. Br. 25. But WSOU offers no justification for this Court to disregard the Fifth Circuit's holding in *Sheets* that a court must: (1) look to a state's law (here, the Texas long-arm statute), (2) determine whether it requires the transmittal of documents abroad, and (3) if so, apply the Hague Convention. As a matter of regional law, this Court is bound by the Fifth Circuit's ruling.

In addition, as OnePlus Shenzhen explained in its petition, numerous Texas courts have held that the Texas long-arm statute requires service of documents abroad and triggers the Hague Convention. Pet. 9 (citing *Bayoil Supply & Trading of Bahamas v. Jorgen Jahre Shipping AS*, 54 F. Supp. 2d 691, 693 (S.D. Tex. 1999) ("Because Defendant is a foreign resident, notice must be mailed abroad, triggering the requirements of the Hague Convention."); *Traxcell Techs., LLC v. Nokia Sols.*

& Networks US LLC, No. 2:18-CV-00412, 2019 WL 8137134, at *3 (E.D. Tex. Oct. 22, 2019) (analyzing § 17.045(a) and concluding "[b]ecause substituted service on the Texas Secretary of State for a nonresident defendant requires the transmittal of judicial documents abroad, the Hague Convention is implicated"); *Macrosolve, Inc. v. Antenna Software, Inc*., No. 6:11-CV-287, 2012 WL 12903085, at *2 (E.D. Tex. Mar. 16, 2012) (same); *Sang Young Kim v. Frank Mohn A/S*, 909 F. Supp. 474, 479-80 (S.D. Tex. 1995) ("Because the Defendant in this case could be properly served under Texas law only by transmitting judicial documents to the Defendant abroad, the Hague Convention is applicable.")); *see also Duarte v. Michelin N. Am., Inc.*, No. 2:13-CV-00050, 2013 WL 2289942, at *2-4 (S.D. Tex. May 23, 2013) (even when the Texas secretary of state has been served as the authorized agent pursuant to Texas law "it cannot be said that service is completed for purposes of conferring jurisdiction on the court until the documents have been transmitted abroad to the defendant.").

The only Fifth Circuit case WSOU cites to support its position, *Nagravision SA v. Gotech Int'l Tech. Ltd.*, 882 F.3d 494, 498 (5th Cir. 2018), is inapposite. The case contains no discussion of personal jurisdiction in view of the Texas long-arm statute's procedural requirements.

As the Fifth Circuit and Texas courts have held, the Texas long-arm statute contains a procedural requirement to serve via the Hague Convention in order for the district court to take personal jurisdiction over OnePlus Shenzhen.

3. *Nuance* is no barrier to the petition.

WSOU primarily relies on *Nuance Commun., Inc. v. Abbyy Software H.*, 626 F.3d 1222, 1239-40 (Fed. Cir. 2010), to argue that this Court has already answered the question presented. Resp. Br. 13. Not so; *Nuance* is readily distinguishable. In *Nuance* the plaintiff wished to serve a defendant corporation in Russia, but "the Russian Federation unilaterally suspended all judicial cooperation with the United States in civil and commercial matters in 2003." *Id.* at 1240. OnePlus Shenzhen is in China, and WSOU does not dispute that China (unlike Russia) continues to be recognized by the State Department as a "Party to the Hague Service Convention." Appx39-50.

Nuance also involved the interpretation of the California long-arm statute under Ninth Circuit and California law that is not applicable here.[1] The Court in *Nuance* followed the Ninth Circuit's decision in *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002), as it was bound to do so. And similar to Russia in *Nuance*, Costa Rica (where the *Rio* defendant was located) was not a

[1] This Court must apply Fifth Circuit law here. *See* Section I.A.1, *supra*.

party to the Hague Convention. *Rio*, 284 F.3d at 1015 n.4 ("[T]he Hague Convention does not apply in this case because Costa Rica is not a signatory."). The Ninth Circuit expressly warned in *Rio* that "[a] federal court would be prohibited from issuing a Rule 4(f)(3) order in contravention of an international agreement, **including the Hague Convention**." *Id.* (emphasis added). Texas courts have reiterated this admonition. *Compass Bank v. Katz*, 287 F.R.D. 392, 395 (S.D. Tex. 2012) (same).

The other circuit court cases that WSOU cites are likewise inapplicable. In *Marks L. Offices, LLC v. Mireskandari*, 704 Fed. App'x 171, 177 (3d Cir. 2017), documents were transmitted to the defendant abroad pursuant to Hague Convention procedures. *Compania de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269, 1294 (10th Cir. 2020) and *Freedom Watch, Inc. v. Org. of the Petroleum Exporting Countries*, 766 F.3d 74, 84 (D.C. Cir. 2014) contain no analysis of applicable long-arm statutes or personal jurisdiction.

4. WSOU misinterprets *Volkswagenwerk.*

WSOU also argues that under *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1998), a foreign defendant can be served under state law without transmitting documents abroad, making the Hague Convention inapplicable. Resp. Br. 24-25. WSOU is mistaken because, as explained above, **Texas** state law requires

the transmission of documents abroad, triggering the procedures in the Hague Convention.

As OnePlus Shenzhen explained in its petition, in *Volkswagenwerk* the Hague Convention did not control because the applicable Illinois law allowed service to the defendant's domestic subsidiary (without transmittal of documents abroad). Pet. 11 (citing 486 U.S. at 697). As the Supreme Court explained, "service on a domestic agent [was] valid and complete under . . . state law," 486 U.S. at 707, which did not require transmittal abroad.

The portion of the Illinois long-arm statute quoted by WSOU is irrelevant—it was not relied on in *Volkswagenwerk*. *See Schlunk v. Volkswagenwerk Aktiengesellschaft*, 145 Ill. App. 3d 594, 608 (1986) (discussing service under other Illinois law).

Here, in contrast, the district court relied on the Texas long-arm statute to exercise personal jurisdiction over OnePlus Shenzhen. Appx5, Appx9. Because the Texas long-arm statute—unlike the Illinois method of service at issue in *Volkswagenwerk*—expressly requires the transmission of documents abroad, the Hague Convention governs.[2]

[2] In granting mandamus and holding the Texas long-arm statute requires the transmittal of documents abroad via the Hague Convention for the district court to exercise personal jurisdiction, this Court need not say that there are no exceptions under Texas law to this principle. There were exceptions addressed in

B. Rule 4(f)(3) Does Not Apply To Domestic Service

Under a straightforward reading of Rule 4(f)(3), the phrase "at a place not within any judicial district of the United States" refers to the location of service, not the location of the individual that is served. Pet. 13-16. Cases from courts throughout the country, other portions of Rule 4, and the nearest reasonable referent canon all support OnePlus Shenzhen's interpretation of Rule 4(f)(3). *Id.*

In response WSOU identifies cases going the other way. Resp. Br. 21-22. But the cases cited by WSOU lack the same level of analysis of the issue found in the cases OnePlus Shenzhen cited. If anything, the confusion among the lower courts makes mandamus all the more appropriate. *See* Pet. 22 (discussing this Court's supervisory authority).

WSOU also argues that OnePlus Shenzhen waived (more technically, forfeited) reliance on the nearest reasonable referent canon. Resp. Br. 21. WSOU's argument takes an unduly narrow view of preservation. Although OnePlus Shenzhen did not refer to the nearest reasonable referent canon by name below, it presented the same argument to the district court: "Rule 4(f)(3) cannot be used when proposed service would be effected in the United States." Appx101 (OnePlus

---

Volkswagenwerk under Illinois law, and there may be exceptions under Texas law that might apply in future cases. However, neither the district court nor WSOU have suggested that any exceptions to the general rule apply here.

Shenzhen's opening brief; citing, *inter alia*, *Drew Techs., Inc. v. Robert Bosch, LLC*, No. 12-15622, 2013 WL 6797175, at *3 (E.D. Mich. Oct. 2, 2013) (finding "Court ordered service under Rule 4(f)(3) is clearly limited to methods of service made outside of the United States" and expressly rejecting contrary authority)); Appx112 (OnePlus Shenzhen's reply, analyzing Rule 4 and arguing "[t]he rules do not contemplate or permit alternative service effected entirely domestically under Rule 4(f)(3).").

As the Supreme Court has explained, when an issue has been raised to the district court, parties "can make any argument in support of that claim [on appeal]; parties are not limited to the precise arguments they made below." *Yee v. City of Escondido*, 503 U.S. 519, 534, (1992). Indeed, "[a]n argument is typically elaborated more articulately, with more extensive authorities, on appeal than in the less focused and frequently more time pressured environment of the trial court, and there is nothing wrong with that." *Puerta v. United States*, 121 F.3d 1338, 1341-42 (9th Cir. 1997). Such is the case here. On appeal, OnePlus Shenzhen cites the nearest reasonable referent canon as further support for the **same** interpretation of Rule 4's language it argued below. There is no forfeiture.

Finally, WSOU contends that OnePlus Shenzhen's reliance on the nearest reasonable referent canon is "self-contradictory" because the title of Rule 4(f) is "Serving an Individual in a Foreign Country." Resp. Br. 22. But there is no conflict;

under Rule 4(f)(3) (1) the individual must be "in a foreign country" per the title and (2) service must occur "at a place not within any judicial district of the United States" per the language of the Rule.

The most straightforward reading of the Federal Rules of Civil Procedure requires this Court to hold Rule 4(f)(3) does not allow for domestic service. The district court improperly relied on Rule 4(f)(3) to permit domestic service to OnePlus Shenzhen's U.S. counsel and purported subsidiary's agent. This case should be dismissed for lack of personal jurisdiction.

C. District Courts Should Not Allow Litigants To Circumvent The Hague Convention Without A Showing Of Necessity

OnePlus Shenzhen and amicus TP-Link Technologies Co. Ltd. both explain why, even if Rule 4(f)(3) **could** be used to circumvent the Hague Convention and serve OnePlus Shenzhen domestically in a way that satisfies the Texas long-arm statute, a district court **should not** do so where a plaintiff has not even attempted to follow Hague Convention procedures. Pet. 17-22; Brief of TP-Link Technologies Co. Ltd. as Amicus Curiae, Dkt. 7-1 ("TP-Link Br.") 3-11.

WSOU argues that seeking to avoid the "delay and expense of translating documents and following formalities" is a valid policy reason to allow litigants to circumvent the Hague Convention via Rule 4(f)(3) without even trying to abide by the treaty. Resp. Br. 26. Courts in Texas disagree. *See, e.g.*, *Baker Hughes Inc. v. Homa,* No. H-11-3757, 2012 WL 1551727, at *17 (S.D. Tex. Apr. 30, 2012) (finding

these reasons unavailing). And the argument proves too much: under WSOU's logic, the Hague Convention procedures would never need to be followed because there will always be at least some amount of delay (and frequently some translation expense) in serving via a foreign central authority.

WSOU also minimizes the significance of international comity, arguing that it "does not require plaintiffs to resort to Hague Convention procedures without assessing the particular facts, sovereign interests, and likelihood that resort to those procedures will prove effective in each case." Resp. Br. 28. Even so, the Fifth Circuit has warned that international comity is still a factor to consider. *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 644 (5th Cir. 1994). And WSOU offers no explanation as to why the particular facts of this case warrant disregarding the procedures outlined in the treaty. For example, WSOU does not claim that utilizing the Hague Convention to serve OnePlus Shenzhen will be ineffective; WSOU never even tried.

WSOU further notes "there is no indication China ever objected to the methods of alternative service used here, including email and personal service." Resp. Br. 26. Not so. "[I]n cases governed by the Hague Service Convention, service by mail is permissible if . . . the receiving state has not objected to service by mail." *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017). China specifically objected to service by mail, providing a clear indication it would object

to service via electronic mail and personal delivery. *See, e.g.*, *In re LDK Solar Sec. Litig*., No. C 07-05182 WHA, 2008 WL 2415186, at *1 (N.D. Cal. June 12, 2008) ("China, however, objected to Article 10 of the Convention").

That OnePlus Shenzhen waived service requirements in another case is irrelevant. That case involved a different plaintiff who did not seek to serve OnePlus Shenzhen via Rule 4(f)(3) but instead reached out and negotiated a cooperative agreement. Holding such cooperation with a plaintiff in a separate case against OnePlus Shenzhen here would only serve to discourage cooperation in the future.

WSOU also offers no response to the argument in the petition that bypassing signatory countries' expectations weakens the treaty, which in turn undermines the protections it offers for U.S. citizens and corporations. *See Medellin v. Texas*, 552 U.S. 491, 505 (2008) (explaining that a treaty "depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it").

Finally, WSOU offers no defense to the district court's inconsistent application of Rule 4(f)(3). Although the district court allowed alternative service in this case and in the *TP-Link* case that is addressed in its amicus brief, the district court denied a request for alternative service in a case with a Swiss defendant. *See Murolet, LLC v. Schindler Grp.*, No. 5:20-cv-01011-ADA, Dkt. 24 (W.D. Tex. Apr. 8, 2021). The Hague Convention is designed to be applied universally to defendants in signatory nations, but the district court's rulings are inconsistent and create further

uncertainty. *Water Splash,* 137 S. Ct. at 1505 (the Hague Convention "seeks to simplify, **standardize**, and generally improve the process of serving documents abroad, specifying certain approved methods of service and preempting **inconsistent** methods of service wherever it applies") (emphasis added, internal quotation omitted).

II. Mandamus Is Warranted

This Court should decide this issue now, in this mandamus petition, rather than wait for an appeal from a final judgment.

A. This Court Should Grant Mandamus To Correct The District Court's Clear Abuse Of Discretion

The district court clearly abused its discretion by denying the motion to dismiss based on an erroneous understanding of personal jurisdiction under the Texas long-arm statute. "[A] district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *McLane Co. v. EEOC*, 137 S. Ct. 1159, 1168 n.3 (2017) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 403, 405 (1990)).

WSOU argues that mandamus should never issue to prevent a case from moving forward where there is a lack of personal jurisdiction. Resp. 10-11. But if WSOU were correct, then TC Heartland could not have received mandamus relief for its similar venue challenge, and the Supreme Court should not have considered the merits in that appeal. Likewise, the Seventh Circuit could not have granted

mandamus relief in *Abelesz v. OTP Bank*, 692 F.3d 638, 650-653 (7th Cir. 2012), which involved a challenge to personal jurisdiction.

Nor can WSOU harmonize its argument with the purpose of personal jurisdiction: preventing a court from making decisions that affect those outside of its authority. Review on appeal can (and would) undo the judgment entered by a district court due to lack of personal jurisdiction, but it could not undo the prejudice to OnePlus Shenzhen of defending itself in an improper lawsuit—a case that the personal jurisdiction laws were designed to prevent. Patent litigation can take years, and defendants who are forced to participate face irreparable harm in the form of "pressure to settle" to avoid "the prospect of protracted litigation." *Abelesz*, 692 F.3d at 652.

OnePlus Shenzhen has no adequate remedy on appeal.

B. This Court Should Grant Mandamus To Decide The Basic Question Of Whether A Texas District Court Has Personal Jurisdiction When Process Was Served Domestically Pursuant To Rule 4(F)(3)

The issue presented by this petition also warrants advisory mandamus. WSOU does not dispute that this question affects large numbers of pending cases—many of which it filed. TP-Link Br. 3. Other plaintiffs in Texas are increasingly following WSOU's example. *Id.* at 6-11. Nor does WSOU dispute that the issue would recur in numerous cases in the busiest patent litigation state in this country if this Court waited to resolve it on appeal from a final judgment. *See id*.

The confusion over whether the Texas long-arm statute requires the transmission of service documents abroad via the Hague Convention is growing daily. Indeed, after the petition was filed, on August 5, 2021, the plaintiff in *Sockeye Licensing TX LLC v. Chengdu XGimi Technology Co., Ltd*., No. 6:21-cv-00718 (W.D. Tex.) asked the Texas Secretary of State to mail service papers abroad, in violation of the Hague Convention procedures. TP-Link Br. 10.

Either advisory or supervisory mandamus is warranted: WSOU cannot have it both ways. If (as OnePlus Shenzhen contends), whether a district court has personal jurisdiction when process was served domestically is an open and unsettled question among the district courts, then advisory mandamus is necessary. But if (as WSOU apparently suggests), some district courts have coalesced around the incorrect view that Rule 4(f)(3) can be used to circumvent the Hague Convention, regardless of a state long-arm statute's procedural requirements, then supervisory mandamus is necessary to correct this established bad habit. Given the enormous importance of this unsettled procedural issue, if advisory mandamus were ever warranted, it is warranted in this case.

C. Judicial Economy Requires An Immediate Answer To This Issue

This Court must, eventually, decide whether Rule 4(f)(3) can be used to serve a defendant domestically and circumvent the Hague Convention procedures. It is

far better to do so now, before numerous cases proceed to trial and final judgment without personal jurisdiction.

The TP-Link amicus brief makes clear that the waste will not be confined to this case. TP-Link Br. 6-11. Given how busy the patent docket is in the Western District of Texas and plaintiffs' propensity to sue foreign defendants there, Pet. 28-29, judicial economy strongly supports deciding the issue now. Doing so will save many litigants and district courts the inconvenience and expense of preparing cases for trial where there is lack of personal jurisdiction.

CONCLUSION

For the foregoing reasons, as well as the reasons articled in the petition and TP-Link's amicus brief, this Court should grant this petition for writ of mandamus, directing the district court to dismiss the cases.

Dated: August 12, 2021

MORGAN, LEWIS & BOCKIUS LLP

/s/ Julie S. Goldemberg
Julie S. Goldemberg
1701 Market Street
Philadelphia, PA 19103-2921
T. 215.963.5000
F. 215.963.5001
julie.goldemberg@morganlewis.com

Michael J. Lyons
Ahren C. Hsu-Hoffman
Jacob J.O. Minne
1400 Page Mill Road

Palo Alto, CA 94304
T. 650.843.4000
F. 650.843.4001
michael.lyons@morganlewis.com
ahren.hsu-hoffman@morganlewis.com
jacob.minne@morganlewis.com

William R. Peterson
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
T. 713.890.5188
F. 713.890.5001
william.peterson@morganlewis.com

CERTIFICATE OF COMPLIANCE

1. This Reply in Support of Petition for a Writ of Mandamus complies with the type-volume limitations of Federal Rule of Appellate Procedure 21(b) because it contains 3,802 words.

2. This Reply complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman 14-point font.

Dated: August 12, 2021

/s/ Julie S. Goldemberg
Julie S. Goldemberg
Counsel for Petitioner
OnePlus Technology (Shenzhen) Co. Ltd.

PROOF OF SERVICE

I hereby certify that on August 12, 2021, I have mailed the foregoing Reply in Support of Petition for a Writ of Mandamus by First Class Mail, postage prepaid, or have dispatched it to FedEx for delivery within 3 calendar days to the Honorable Alan D Albright, United States District Judge, at the address below, and served an electronic copy of the same Reply in Support of Petition for a Writ of Mandamus on the below counsel of record via CM/ECF:

Served By CM/ECF
Jonathan K. Waldrop
Darcy L. Jones
Marcus A. Barber
John W. Downing
Heather S. Kim
Jack Shaw
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Dr., Suite 200
Redwood Shores, California 94065
650.453.5170
jwaldrop@kasowitz.com
djones@kasowitz.com
mbarber@kasowitz.com
jdowning@kasowitz.com
hkim@kasowitz.com
jshaw@kasowitz.com

Served By CM/ECF
Shelley Ivan
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
212.506.1700
sivan@kasowitz.com

Served By FedEx Priority Delivery
Hon. Alan D Albright
United States District Court
for the Western District of Texas
800 Franklin Avenue, Room 301
Waco, TX 76701
254.750.1510

Dated: August 12, 2021

/s/ Julie S. Goldemberg
Julie S. Goldemberg
Counsel for Petitioner
OnePlus Technology (Shenzhen) Co. Ltd.