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 and 6-20-CV-00958-ADA, Honorable Alan D. Albright

RESPONSE TO PETITION FOR A WRIT OF MANDAMUS

JONATHAN K. WALDROP
DARCY L. JONES
MARCUS A. BARBER
JOHN W. DOWNING
HEATHER S. KIM
JACK SHAW
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065
(650) 453-5170

SHELLEY IVAN
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
(212) 506-1700

Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development

AUGUST 9, 2021

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number	21-165
Short Case Caption	In Re OnePlus Technology (Shnzhen) Co. Ltd.
Filing Party/Entity	WSOU Investments, LLC d/b/a Brazos Licensing and Development

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 08/09/2021

Signature: /s/ Jonathan K. Waldrop

Name: Jonathan K. Waldrop

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☑ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☑ None/Not Applicable
WSOU Investments, LLC d/b/a Brazos Licensing and Development		

☐ Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable ☐ Additional pages attached

Jonathan K. Waldrop Kasowitz Benson Torres LLP		
Darcy L. Jones, Kasowitz Benson Torres LLP	John W. Downing, Kasowitz Benson Torres LLP	Jack Shaw, Kasowitz Benson Torres LLP
Marcus A. Barber Kasowitz Benson Torres LLP	Heather Kim, Kasowitz Benson Torres LLP	Shelley Ivan, Kasowitz Benson Torres LLP

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

☑ None/Not Applicable ☐ Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☑ None/Not Applicable ☐ Additional pages attached

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Plaintiff WSOU Investments LLC d/b/a Brazos Licensing and Development ("WSOU" or "Respondent") submits this response in opposition to the petition for a writ of mandamus (the "Petition") filed by defendant OnePlus Technology (Shenzhen) Co. Ltd. ("OnePlus" or "Petitioner") seeking an order directing the United States District Court for the Western District of Texas ("District Court" or "Judge Albright") to dismiss this case for lack of personal jurisdiction.

ISSUE PRESENTED

Whether Judge Albright's decision to (i) order alternative service on OnePlus (a Chinese company) under Rule 4(f)(3) by personal service on OnePlus's authorized agent for service of process at the company's U.S. location and email service on OnePlus's U.S. counsel, and (ii) deny OnePlus's motion to dismiss for lack of personal jurisdiction, is so patently erroneous that it warrants the extraordinary and drastic mandamus relief.

SUMMARY OF THE ARGUMENT

OnePlus's Petition plainly fails to meet this Court's high standard for the drastic mandamus relief under which a petitioner must satisfy the following three requirements: (1) the petitioner must have no other adequate means to attain the desired relief; (2) the petitioner must show that the right to issuance of the writ is clear and indisputable; and (3) the petitioner must convince the court

that the writ is appropriate under the circumstances. OnePlus does not come close to satisfying even one of these requirements.

First, there is no question that OnePlus can attain the desired relief by obtaining meaningful review of the District Court's decision after final judgment. The U.S. Supreme Court has made it crystal clear that a petitioner cannot use the extraordinary mandamus relief as a substitute for appeal even if hardship may result from delay and unnecessary trial. This Court routinely denies mandamus in cases where the petitioner (like OnePlus) seeks to overturn a decision denying a motion to dismiss for lack of personal jurisdiction, and should do the same here as OnePlus failed to demonstrate exceptional circumstances.

Second, OnePlus failed to show that the right to issuance of the writ is clear and indisputable as this Court already rejected the very arguments OnePlus raises here. Judge Albright correctly denied OnePlus's motion to dismiss for lack of personal jurisdiction and held that the court-ordered alternative service on OnePlus complied with: (i) the Federal Rules of Civil Procedure, including Rule 4(f)(3), because the District Court had the discretionary authority to order such service; (ii) the constitutional due process and Texas long-arm statute, because the service was reasonably calculated to apprise OnePlus of the pendency of the action and afford it an opportunity to object; and (iii) the Hague Convention, which does not prohibit service on a foreign company through its U.S. agent and U.S. counsel.

OnePlus does not deny that WSOU served OnePlus pursuant to Judge Albright's order or that it was not properly apprised of this action. Instead, OnePlus claims that service here is procedurally ineffective due to WSOU's purported failure to follow the formalities of the Hague Convention. OnePlus misdirects the Court by asserting that the Hague Convention is mandatory in this case, and that the issue and undecided question here is whether Rule 4(f)(3) can be used to circumvent service under the Hague Convention.

This Court already held that service under the Hague Convention is not mandatory in every case where the defendant is located outside of the U.S. and that district courts have discretionary authority to order a wide variety of alternative service in the U.S. under Rule 4(f)(3) depending on the circumstances. *See Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1239-40 (Fed. Cir. 2010) (service may be effected under Rule 4(f)(3) on defendants' domestic counsel or agents as an alternative to service under the Hague Convention). The U.S. Supreme Court agreed and denied certiorari. *See Abbyy Prod., LLC v. Nuance Commc'ns, Inc.*, 564 U.S. 1053 (2011). Multiple other circuits reached the same conclusion affirming alternative service under Rule 4(f)(3). Notably, OnePlus has failed to cite a single circuit or U.S. Supreme Court case contradicting this widely-accepted principle.

OnePlus also misdirects the Court by asserting that the Texas long-arm statute requires service under the Hague Convention. But the Court rejected this argument that "confuses service of process under Rule 4(f)(3), which provides for court-directed service by any means not prohibited by international agreement, with service under Rule 4(e)(1), which does not require a court-order and provides for service by following state law." *Nuance*, 626 F.3d at 1240 (internal quotation marks omitted) (emphasis added). The Court further explained that, for the purposes of Rule 4(f)(3), when the state's long-arm statute is co-extensive with the federal due process requirements (like the case here), the jurisdiction analyses under state law and federal law are the same. *Nuance*, 626 F.3d at 1230-31.

OnePlus similarly incorrectly asserts that Rule 4(f) mandates service under the Hague Convention and allows alternative service under 4(f)(3) only if court intervention is necessary. However, this Court made it clear that "Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections [including subsection 4(f)(1) referencing the option to serve under the Hague Convention]; it stands independently, on equal footing." *Nuance*, 626 F.3d at 1239 (citations omitted). The Court's ruling makes perfect sense as holding otherwise is to effectively mandate the Hague Convention for defendants located outside of the U.S. and deprive district courts of their essential role of exercising discretion under the unique circumstances of each case to prevent foreign defendants from

unnecessarily delaying the litigation process and relieve the burden on plaintiffs by preserving their valuable resources and time, especially where the defendants maintain U.S. presence and already have U.S. counsel, which is exactly the case here.

Third, OnePlus failed to show that the writ is appropriate under the circumstances here as Judge Albright correctly ordered alternative service of process under Rule 4(f)(3) and denied OnePlus's motion for lack of personal jurisdiction. OnePlus, as the party with the burden of proof, submitted no evidence to show that Judge Albright clearly abused his discretion or usurped judicial power. OnePlus's attempt to make a policy argument by emphasizing the number of cases WSOU has filed to protect its patent rights and recover for the wrongful infringement of OnePlus and other defendants is similarly nonsensical and must fail.

It would be a miscarriage of justice for a writ of mandamus to issue here when OnePlus was properly served, adequately apprised of this action, and given the opportunity to object. OnePlus should not be allowed to escape this case, delay the litigation process, and waste judicial resources and WSOU's time and money by making highly improper formalistic arguments that are contrary to this Court's rulings and lack common sense.

Accordingly, the Petition should be denied.

FACTUAL BACKGROUND

A. WSOU Properly Served OnePlus By Court-Ordered Personal Service On The Registered Agent For Service Of Process At OnePlus's U.S. Location And Email Service On Its U.S. Counsel

Petitioner OnePlus is a Chinese corporation with a principal place of business located at 18F, Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District Shenzhen, Guangdong, 518040, China. Appx18 ¶2. OnePlus maintains a U.S. presence and registered agent for service of process at OnePlus's U.S. address at OnePlus Global, 1295 Martin Luther King Drive, Hayward, CA 94541. Appx63-64.

OnePlus is a billion-dollar global company and has been named as a defendant in 17 cases filed against it for violating various patent holders' rights in the last three years in Texas. Appx118-121.

Respondent WSOU is a Delaware limited liability company with a principal place of business located at 605 Austin Avenue, Suite 6, Waco, Texas 76701. Appx18 ¶1.

On October 14, 2020, WSOU commenced the above-captioned actions by filing five complaints against OnePlus for direct and indirect infringement of five different U.S. patents which relate to varying technologies. Appx18-23. The same day, Summonses were issued as to OnePlus in the five actions. Appx67-70.

In all five complaints, WSOU alleged that OnePlus committed infringing acts in the Western District of Texas. Appx19 ¶5.

On December 3, 2020, WSOU filed motions for leave to effect alternative service on OnePlus ("Service Motions") in all five cases pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure ("FRCP") requesting that the Court authorize WSOU to serve OnePlus through: (i) personal delivery to OnePlus's registered agent for service of process located at OnePlus Global, 1295 Martin Luther King Drive, Hayward, California 94541; and (ii) e-mail upon OnePlus's U.S. Counsel, Messrs. Brady Randall Cox at brady.cox@alston.com and Michael J. Newton at mike.newton@alston.com. Appx24-31.

In the Service Motions, WSOU showed that OnePlus's authorized agent for service of process was located at OnePlus Global, 1295 Martin Luther King Drive, Hayward, CA 94541. Appx63-64. WSOU also showed that attorneys Cox and Newton represented OnePlus in the Eastern District of Texas as recently as October 26, 2020. Appx60-62.

On December 14, 2020, the Court granted WSOU's Service Motions finding that "good cause exists" for WSOU's request and approving alternative service on OnePlus (the "December 14 Order"). Appx15.

On January 6, 2021, pursuant to the December 14 Order, WSOU effected service on OnePlus via personal delivery to Geoffrey Maely, at OnePlus Global,

1295 Martin Luther King Drive, Hayward, California 94541, as well as email to brady.cox@alston.com and mike.newton@alston.com. Appx67-70

On January 8, 2021, WSOU filed the returned, executed Summonses, including Proof of Service on OnePlus. Appx15.

On January 20, 2021, pursuant to OnePlus's request to extend the time to respond to WSOU's complaints, WSOU filed an Unopposed Motion for Extension of Time, by which WSOU agreed to extend OnePlus's deadline to respond to the Complaints from January 27, 2021 to February 26, 2021. Appx15. On January 27, 2021, the Court granted the motion and reset OnePlus's deadline to respond to the Complaints to February 26, 2021. Appx16.

After being granted a generous extension of time to respond to WSOU's complaint, on February 26, 2021, OnePlus filed a motion to dismiss for insufficiency of service of process and lack of personal jurisdiction in all five cases, ignoring the December 14 Order and arguing that WSOU's service (as effectuated pursuant to the December 14 Order) was procedurally ineffective due to failure to follow the Hague Convention. Appx89-106.

On March 12, 2021, WSOU opposed OnePlus's motion to dismiss. Appx71-88. On March 19, 2021, OnePlus filed its reply. Appx107-116.

B. The District Court Denied OnePlus's Motion for Insufficient Service Of Process And Lack Of Personal Jurisdiction

On July 8, 2021, Judge Albright denied OnePlus's motion to dismiss for insufficient service of process and lack of personal jurisdiction. Appx1-11. In his decision, Judge Albright held that the court-ordered alternative service complied with: (i) the Federal Rules of Civil Procedure because Rule 4(f)(3) permits a party, like OnePlus, to use an alternative method of service if the party obtains permission of the court, and the method is not otherwise prohibited by international agreement (Appx6-7); (ii) international agreements entered into by the United States and China [*i.e.*, the Hague Convention] because the methods of service on OnePlus were not prohibited by the Hague Convention and China did not object to them (Appx7-8); and (iii) the due process protections afforded by the U.S. Constitution and the Texas long-arm statute because the alternative methods of service on OnePlus were reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections (Appx9-11).

On July 30, 2021, OnePlus filed the instant Petition with this Court. Fed. Cir. Dkt. 2. On August 2, 2021, the Court directed WSOU's response. Fed. Cir. Dkt. 4.

REASONS A WRIT OF MANDAMUS SHOULD NOT ISSUE HERE

A writ of mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S.

367, 380 (2004) (internal quotation marks and citation omitted). This Court has held that "[t]he writ of mandamus is available in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power." *In re Volkswagen of Am. Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009).

A writ of mandamus may be issued only if the petitioner satisfies the following three requirements: (1) the petitioner must have no other adequate means to attain the relief desired; (2) the petitioner must show that the "right to issuance of the writ" is "clear and indisputable"; and (3) the petitioner must convince the court that the writ is "appropriate under the circumstances." *In re HTC Corp.*, 889 F.3d 1349, 1352 (Fed. Cir. 2018).

Here, the Petition plainly fails to demonstrate that Judge Albright's well-reasoned decision approving the alternative service of process and denying OnePlus's motion to dismiss for lack of personal jurisdiction constitutes a clear abuse of discretion or usurpation of judicial power and warrants the extraordinary mandamus relief. As demonstrated below, OnePlus failed to satisfy even one of the requirements for the issuance of a writ, and the Petition should be denied.

I. ONEPLUS FAILED TO SHOW THAT IT HAS NO ADEQUATE MEANS TO ATTAIN THE DESIRED RELIEF AS ONE PLUS CAN OBTAIN MEANINGFUL APPELLATE REVIEW AFTER FINAL JUDGMENT

The Court should deny mandamus because OnePlus has failed to show that it has no adequate means to attain the desired relief. *See In re Lab'y Comput. Sys.,*

Inc., 243 F.3d 553 (Fed. Cir. 2000) (denying mandamus and holding that the petitioner, as the party with the burden of proof, failed to show it had no other means of attaining the desired relief).

Contrary to OnePlus's assertion (Pet. at 23-25), there is no question that OnePlus can attain the desired relief here by obtaining meaningful appellate review of the District Court's decision after final judgment. *See In re Volkswagen of Am., Inc.*, 296 F. App'x 11, 13-14 (Fed. Cir. 2008) (denying mandamus and holding that dismissal for lack of personal jurisdiction can be reviewed on appeal from final judgment).

A. OnePlus Cannot Use The Extraordinary Mandamus Relief As A Substitute For Appeal Even If Hardship May Result From Delay And Unnecessary Trial

OnePlus "cannot justify an end run around the final judgment rule" by arguing that the harm and inconveniences associated with litigating in the Western District of Texas will already have been done by the time a case is tried and appealed (Pet. at 24-25). *In re TCT Mobile Int'l Ltd.*, 783 F. App'x 1028, 1029 (Fed. Cir. 2019).

As the U.S. Supreme Court made crystal clear, OnePlus should not be given the extraordinary mandamus relief as a substitute for appeal even if "hardship may result from delay and perhaps unnecessary trial." *In re TCT Mobile*, 783 F. App'x at 1029 (citing *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953)).

Despite OnePlus's grievances about the purported burden and inconveniences of being subject to personal jurisdiction in Texas (Pet. at 23 25), OnePlus, as a billion-dollar global company, failed to show any evidence of financial hardship from litigating in Texas. Indeed, OnePlus has been well represented by multiple counsel in 17 cases filed against it for violating various patent holders' rights, and there is no indication that OnePlus is incapable of defending itself. Appx118-121.

OnePlus's reference to *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017) (Pet. at 24) misses the point. First, *TC Heartland* is inapposite and distinguishable as that case relates to a venue challenge, and the court there found the need to address the important question of whether the Congress had effectively amended 28 U.S.C § 1400(b) through subsequent statutory amendments. Here, there are no statutory amendments, and this Court has already rejected the very arguments that OnePlus is raising. *See In re TCT Mobile*, 783 F. App'x at 1029. Second, *TC Heartland* was decided more than two years before this Court's denial of the personal jurisdiction mandamus in *In Re TCT Mobile*. OnePlus has not shown that this Court found *TC Heartland* relevant to the personal jurisdiction inquiry in any way.

B. This Court Routinely Denies Mandamus Where The Petitioner, Like OnePlus Here, Seeks To Overturn The Denial Of A Motion To Dismiss For Lack Of Personal Jurisdiction, And OnePlus Failed To Show Exceptional Circumstances To Avoid Mandamus Denial

OnePlus cannot deny the indisputable fact that this Court routinely denies mandamus where a petitioner, like OnePlus here, seeks to overturn the denial of a motion to dismiss for lack of personal jurisdiction. *See In re TCT Mobile*, 783 F. App'x at 1029; *In re BNY ConvergEx Grp., LLC*, 404 F. App'x 484, 484-85 (Fed. Cir. 2010); *In re Volkswagen*, 296 F. App'x at 13-14; *In re Unique Functional Prod., Inc.*, 75 F. App'x 752, 753 (Fed. Cir. 2003); *In re Lab'y Comput.*, 243 F.3d at 553.

OnePlus has not shown "exceptional circumstances here to depart from that general rule," and mandamus is not available. *In re TCT Mobile*, 783 F. App'x at 1029. Contrary to OnePlus's argument that the circumstances here are exceptional because this case involves a basic answered question about the application of Rule 4(f)(3) leading to inconsistent results (Pet. at 25-30), as demonstrated below, this Court has already answered that very same question in *Nuance*, and the Supreme Court and other circuits agreed. *Nuance*, 626 F.3d at 1239.

Because OnePlus must satisfy all three requirements under the legal standard for mandamus relief but failed to satisfy the first requirement (*i.e.*, to show that it has no adequate means of obtaining the desired relief), the Court should deny the Petition.

II. ONEPLUS FAILED TO SHOW THAT THE RIGHT OF ISSUANCE OF THE WRIT IS CLEAR AND INDISPUTABLE AS THIS COURT ALREADY REJECTED THE VERY ARGUMENTS ONEPLUS RAISES HERE

The Court should also deny mandamus because OnePlus failed to show that the right of issuance of the writ is clear and indisputable, as Judge Albright's analysis is consistent with this Court's rulings.

In reviewing the District Court's denial of a motion to dismiss for lack of personal jurisdiction, as OnePlus is asking here, this Court should apply its own law. *See Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1292 (Fed. Cir. 2012) (holding that the law of the Federal Circuit, rather than that of the regional circuit in which the case arose, applies to determine whether the district court properly declined to exercise personal jurisdiction over an out-of-state accused infringer); *Nuance,* 626 F.3d at 1230 (same); *Akro Corp. v. Luker*, 45 F.3d 1541, 1543 (Fed. Cir. 1995) (same); *see also Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285, 1293 (Fed. Cir. 2009) ("[S]ervice of process in a federal action is covered generally by Rule 4 of the Federal Rules of Civil Procedure" and "personal jurisdictional issues in patent infringement cases are reviewed under Federal Circuit law, not regional circuit law.") (internal quotation marks and citations omitted).

A. The Court-Ordered Alternative Service Of Process Complies With The Federal Rules Of Civil Procedure

WSOU properly served OnePlus pursuant to Judge Albright's order for alternative service and in accordance with Rules 4(h) and 4(f) of the FRCP. Rule 4(h) states that "unless federal law provides otherwise a foreign corporation must be served (1) in a judicial district of the United States or (2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual." Fed. R. Civ. P. 4(h) (citations omitted).

1. Rule 4(f)(3) Gives The District Court The Discretionary Authority To Order Alternative Service On OnePlus

This Court held that Rule 4(f)(3) gives district courts the discretionary authority to order alternative service. *See Nuance*, 626 F.3d at 1238-39. Judge Albright correctly followed *Nuance* in his analysis of Rule 4(f)(3). Appx4.

Rule 4(f) provides as follows:

> (f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:
>
> > (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
> >
> > (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
>
> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
>
> (C) unless prohibited by the foreign country's law, by:
>
> > (i) delivering a copy of the summons and of the complaint to the individual personally; or
> >
> > (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

As such, in addition to the means of service authorized by the Hague Convention, Rule 4(f)(3) permits a party to use an alternative method of service if the party: (1) obtains permission of the court; and (2) the method is not otherwise prohibited by international agreement. *See* Fed. R. Civ. P. 4(f)(3); *Nuance*, 626 F.3d at 1239-40; *Terrestrial Comms LLC v. NEC Corp.*, No. 6:19-CV-00597-ADA, 2020 WL 3270832, at *2 (W.D. Tex. June 17, 2020).

In *Nuance*, this Court unequivocally held that under Rule 4(f)(3), federal courts have the discretionary authority to direct service of process by other means not prohibited by international agreements, including service via email and personal service to defendants' U.S. counsel and other agents within the U.S., and that "numerous courts have found alternate service methods appropriate without a prior

attempt to serve through the Hague Convention." *Nuance*, 626 F.3d at 1238-39; *see also Terrestrial Comms LLC*, 2020 WL 3270832, at *3 ("The Hague Convention is not mandatory" and "attempting service under the Hague Convention is not a prerequisite to requesting alternative service" under Rule 4(f)(3)"); *In re LDK Solar Sec. Litig.*, No. C 07-05182 WHA, 2008 WL 2415186, at *2 (N.D. Cal. June 12, 2008) (same).

Notably, the Court took the time to list those approved alternative methods of service under Rule 4(f)(3), including substituted service on U.S. entities representing foreign defendants, email service, mail service at the U.S. office of a defendant's international courier and U.S. counsel, and personal service of process at the U.S. office of a foreign company. *Nuance*, 626 F.3d at 1239.

This list includes the email and personal service methods Judge Albright ordered here. Further, as explained by this Court in *Nuance*, both of those methods were adequate and proper to notify OnePlus about WSOU's pending actions against it. *See Nuance*, 626 F.3d at 1239-40; *see also Brown v. China Integrated Energy, Inc.*, 285 F.R.D. 560, 565 (C.D. Cal. 2012) ("The Hague Convention does not prohibit authorizing plaintiffs to serve the foreign individual defendants by serving them through [defendant's] agent for service of process or its attorneys in the United States.").

Multiple circuit courts have reached the same conclusion approving alternative service under Rule 4(f)(3). *See Marks Law Offices, LLC v. Mireskandari*, 704 F. App'x 171, 177 (3d Cir. 2017) (affirming court-ordered alternative mail service under Rule 4(f)(3) and noting that the rule permits "a wide variety of alternative methods of service"); *Nagravision SA v. Gotech Int'l Tech. Ltd.*, 882 F.3d 494, 498 (5th Cir. 2018) (affirming court-ordered email service under Rule 4(f)(3) and holding that the Hague Convention under Rule 4(f)(1) does not displace alternative service under Rule 4(f)(3)); *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016-19 (9th Cir. 2002) (affirming court-ordered email and mail service and holding that "Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief'" but "merely one means among several which enable service of process on an international defendant"); *Compania de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269, 1295 (10th Cir. 2020) (affirming alternative service under Rule 4(f)(3) and holding that "numerous courts have authorized alternative service under Rule 4(f)(3)," including "service upon a foreign defendant's U.S. counsel") (internal quotation marks and citations omitted) *cert. denied, Grupo Cementos de Chihuahua v. Compania de Inversiones*, No. 20-1033, 2021 WL 2519105, at *1 (June 21, 2021); *Freedom Watch, Inc. v. Org. of the Petroleum Exporting Countries (OPEC)*, 766 F.3d 74, 84 (D.C. Cir. 2014) (affirming service through OPEC's United States counsel and holding that the

district court "retains discretion under Rule 4(f)(3) to authorize service even if the alternative means would contravene foreign law" as long that service is not prohibited by an international agreement). OnePlus has failed to cite a single circuit or U.S. Supreme Court case contradicting this widely-accepted principle.

Further, alternative email service on OnePlus counsel was proper because WSOU showed evidence of an attorney-client relationship and OnePlus never disputed that such relationship exists. *See In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 931-32 (N.D. Ill. 2009) (alternative service under 4(f)(3) on a Russian producer's subsidiary and U.S. counsel found proper); *LG Elecs., Inc. v. Asko Appliances, Inc.*, No. 08–828 (JAP), 2009 WL 1811098, at *4 (D. Del. June 23, 2009) (alternative service under 4(f)(3) on U.S. counsel found proper). Personal service on OnePlus's registered agent for service of process at its U.S. location was proper as well. *See In re LDK Solar Sec. Litig.*, 2008 WL 2415186, at *4 (granting a motion to authorize service under Rule 4(f)(3) at the California office of a Chinese corporation).

2. Rule 4(f)(1) Does Not Mandate The Hague Convention And Does Not Displace The Court-Authorized Alternative Service Under Rule 4(f)(3), Which Stands On Equal Footing

OnePlus incorrectly asserts that Rule 4(f) mandates service under the Hague Convention and allows alternative service under 4(f)(3) only if court intervention is necessary. (Pet. at 17-18.) This Court made it clear that "Rule 4(f)(3) is not

subsumed within or in any way dominated by Rule 4(f)'s other subsections [including subsection 4(f)(1) referencing the option to serve under the Hague Convention]; it stands independently, on equal footing." *Nuance*, 626 F.3d at 1239; *see also Rio Props.*, 284 F.3d at 1016 ("We hold that Rule 4(f)(3) is an equal means of effecting service of process under the Federal Rules of Civil Procedure, and we commit to the sound discretion of the district court the task of determining when the particularities and necessities of a given case require alternate service of process under Rule 4(f)(3).").

This Court's ruling in *Nuance* makes perfect sense as holding otherwise is to effectively mandate the Hague Convention for defendants located outside of the U.S. and deprive district courts of their essential role of exercising discretion under the unique circumstances of each case to advance justice.

Notably, the defendants in *Nuance* petitioned the Supreme Court for certiorari, arguing that the Federal Circuit was incorrect in holding that alternative service of process is allowed under Rule 4(f)(3) irrespective of whether the litigant tried to follow the Hague convention, and that the Supreme Court should grant the petition to "correct the conflict." Pet. for Writ of Certiorari, 2011 WL 515698, at *14, *Abbyy Prod., LLC v. Nuance Commc'ns, Inc.*, No. 10-1019. (U.S.) But the Supreme Court denied certiorari. *See Abbyy Prod.,* 564 U.S. at 1053. If the Supreme

Court found no reason to change this Court's decision in *Nuance*, then the Court should similarly find no reason to disturb the well-settled law.

Despite the Supreme Court's denial of certiorari in *Nuance*, OnePlus did not stop there. One Plus instead now offers a self-contradictory statutory interpretation argument about the meaning of Rule 4(f)(3) under the "nearest reasonable referent" canon as to persuade this Court to depart from its well-reasoned precedent. (Pet. at 15-16.) In this new argument, OnePlus asserts that the phrase "at a place not within any judicial district of the Unites States" in Rule 4(f) modifies "served" (the nearest reasonable referent) and not "individual" (which appears earlier in the sentence), meaning that Rule 4(f)(3) purportedly authorizes service only outside of the U.S., and not service within the U.S. as ordered by Judge Albright. (Pet. at 16).

This argument fails for three independent reasons. First, because OnePlus never raised this argument before Judge Albright, the argument must be rejected. *See Golden Bridge Tech., Inc. v. Nokia, Inc.*, 527 F.3d 1318, 1322 (Fed. Cir. 2008) (federal appellate courts do not consider issues "not passed upon below" or entertain arguments not presented to the lower tribunal); *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1576 (Fed. Cir. 1991) ("[A]bsent exceptional circumstances, a party cannot raise on appeal legal issues not raised and considered in the trial forum."). Second, even if OnePlus argued this issue of statutory interpretation before Judge Albright – and it did not – this and other courts have already rejected

the same idea. *See Nuance*, 626 F.3d at 1239 (rejecting the argument that Rule 4(f)(3) only authorizes service outside of the U.S. and holding that "federal law plainly permits service on Defendants' domestic subsidiaries or domestic counsel"); *Compania de Inversiones*, 970 F.3d at 1295 (rejecting the argument that the text of Rule 4(f) envisions service "at a place not within any judicial district of the United States" and holding that the "proper construction" of Rule 4(f)(3) vis-à-vis a foreign defendant includes service via delivery to the defendant's U.S. attorney"); *Rio Props.*, 284 F.3d at 1016 (same). And third, the argument is self-contradictory as, under the "nearest reasonable referent" canon, the phrase "foreign country" in the very title of Rule 4(f) ("Serving an Individual in a Foreign Country") is closer to and modifies the word "individual" (the nearest reasonable referent) and not the word "serving," which appears earlier.

Accordingly, Judge Albright correctly authorized alternative service under Rule 4(f)(3).

3. The Court-Ordered Service Under Rule 4(f)(3) Is Independent From Service Under Rule 4(e)(1) Which Follows State Law

This Court has made it abundantly clear that Rules 4(f) (Serving an Individual in a Foreign Country) and 4(e) (Serving an Individual within a Judicial District of the United States) are independent and exclusive of one another. *See Nuance*, 626 F.3d at 1240. Nevertheless, OnePlus asserts that the Texas long-arm statute

requires service under the Hague Convention if the stature requires transmittal of documents abroad. (Pet. at 8-10.) But this Court has already rejected this very argument that "confuses service of process under Rule 4(f)(3), which provides for the court-directed service by any means not prohibited by international agreement with service under Rule 4(e)(1), which does not require a court-order and provides service by following state law." *Nuance*, 626 F.3d at 1240 (internal quotation marks omitted) (emphasis added). The Court further explained that, for the purposes of Rule 4(f)(3), when the state's long-arm statute is co-extensive with the federal due process requirements – which is the case here as Judge Albright established that "courts interpret the Texas long-arm statute to reach as far as the federal constitutional requirements" (Appx9) – the personal jurisdiction analyses under state law and federal law are the same. *Nuance*, 626 F.3d at 1230-31.

B. The Court-Ordered Alternative Service Complies With The Constitutional Due Process And The Texas Long-Arm Statute

Judge Albright correctly held that the court-ordered alternative service complies with the constitutional due process and the Texas long-arm statute as such service was reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Appx9-11; *Mullane v. Cent. Hanover Bank & Tr. Co.,* 339 U.S. 306, 314 (1950). Because courts interpret the Texas long-arm statute to reach as far as the federal constitutional requirements of due process, the court-ordered

alternative service of process on OnePlus is equally as acceptable as complying with the Texas long-arm statute. *See Terrestrial,* 2020 WL 3270832, at *4; *McBride v. Wille,* No. SA-13-CV-0986-DAE, 2013 WL 12130463, at *2 (W.D. Tex. Dec. 2, 2013); *see also Nuance*, 626 F.3d at 1239-40 ("Because California's long-arm statute is co-extensive with federal due process requirements, the jurisdiction analyses under California law and federal law are the same.").

OnePlus incorrectly asserts that the court-ordered alternative service here was improper because the Substituted Service on the Texas Secretary of State provision of the Texas long-arm statute requires transmission of documents abroad and thus triggers the Hague Convention. (Pet. at 8-13.) First, the Texas long-arm statute does not require service under the Hague Convention, and the Hague Convention is not even mentioned in the statute. Second, OnePlus's references to "substituted" (*i.e.*, not required) service provision of the Texas long-arm statute does not establish that this provision actually triggers service under the Hague Convention. And third, under *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988), if a foreign defendant can be served under state law without transmitting documents abroad, the Hague Convention is inapplicable. *See id*. at 707 ("Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national.") In sum, the Hague Convention does not preempt

service on domestic agents that are valid under state law or due process requirements just like the alternative service on OnePlus here. *Id.* at 707.

OnePlus attempts to distinguish *Volkswagenwerk* arguing that the Illinois long-arm statute at issue in that case did not reference transmittal of documents abroad. (Pet. at 11.) OnePlus is wrong. The Illinois long-arm statute states that "with respect to service of process upon any other person who resides or whose business address is outside the United States …. Plaintiff shall forthwith mail a copy of the summons, upon which the date of service upon the Secretary is clearly shown, together with a copy of the complaint to the defendant at his or her last known place of residence or business address." Ill. Rev. Stat., Ch. 100, ¶ 2-209 (e). Similarly, the Texas long-arm statute states: "If the secretary of state is served with duplicate copies of process for a nonresident, the documents shall contain a statement of the name and address of the nonresident's home or home office and the secretary of state shall immediately mail a copy of the process to the nonresident at the address provided." Tex. Civ. Prac. & Rem. Code Ann. § 17.045(a). Because both long-arm statutes refer to mailing documents to nonresidents, OnePlus's argument distinguishing *Volkswagenwerk* fails. *Sheets* is also distinguishable because the plaintiff there attempted service under the Louisiana (not Texas) long-arm statute, and there was no court-approved service. *See Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533, 537 (5th Cir. 1990).

Accordingly, Judge Albright correctly authorized alternative service under Rule 4(f)(3) in compliance with the constitutional due process and the Texas long-arm statute.

C. The Court-Ordered Alternative Service Is Not Prohibited By The Hague Convention

Judge Albright also correctly held that the court-ordered alternative service is proper because such service is not prohibited by the Hague Convention. Appx7-9. OnePlus failed to show otherwise. And there is no indication that China ever objected to the methods of alternative service used here, including email and personal service.

Further, contrary to OnePlus's assertion (Pet. at 19), Judge Albright correctly held that seeking to avoid unnecessary delay and expense of translating documents and following formalities in serving under the Hague Convention is a valid reason to grant a request for alternative service of process under 4(f)(3). *See Affinity Labs of Tex., LLC v. Nissan N. Am. Inc.*, No. WA:13-CV-369, 2014 WL 11342502, at *3 (W.D. Tex. July 2, 2014); *see also Brown v. China Integrated Energy, Inc.*, 285 F.R.D. 560, 563, 566 (C.D. Cal. 2012) (ordering alternative service and noting that service under the Hague Convention would take four to six months); *Ackerman v. Glob. Vehicles U.S.A., Inc.*, No. 4:11CV687RWS, 2011 WL 3847427, at *3-4 (E.D. Mo. Aug. 26, 2011) (authorizing service on defendant's counsel "so as to not further delay" the lawsuit) (internal quotation marks omitted); *LG Elecs.*, 2009 WL

1811098, at *4 (authorizing service on defendant's counsel "to prevent further delays in litigation"). Courts have also found that avoiding the additional expense of serving a defendant in a foreign country is a valid justification for granting an alternative method of service. *Vinewood Capital, L.L.C. v. Al Islami*, No. 406–CV–316–Y, 2006 WL 3151535, at *2 (N.D. Tex. Nov. 2, 2006) (finding that alternative service would limit the costs associated with service under the Hague Convention).

Paradoxically, while OnePlus vehemently argues that the Hague Convention is mandatory under Rule 4(f) and that WSOU should comply with the Hague Convention given the purported minimal cost and delays associated with compliance (Pet. at 19) – which is clearly not the case – OnePlus waived service of process in another Texas case admitting on the record that the waver was signed to "save the expense of serving a summons and complaint." Appx117. OnePlus cannot have it both ways and fundamentally change its position whenever convenient and helpful to its arguments.

OnePlus also argues that the court-ordered alternative service of process does not comport with the principle of international comity. (Pet. at 17-18.) OnePlus is wrong. The principle of international comity refers to the spirit of co-operation in which a domestic tribunal approaches the resolution of cases touching the laws and interests of other sovereign states. *Societe Nationale Industrielle Aerospatiale v. United States Dist. Court for S. Dist.*, 482 U.S. 522, 544, n.27 (1987). However, the

principle of comity 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. *See id.* at 544.

Importantly, the principles of comity are also a matter of the court's discretionary power to determine whether a plaintiff has complied with the constitutional due process in its efforts to secure service of process upon a foreign defendant, so Judge Albright correctly exercised his judgement in that regard here. *See UNM Rainforest Innovations v. D-Link Corp.,* No. 6-20-CV-00143-ADA, 2020 WL 3965015, at *3-4 (W.D. Tex. July 13, 2020). As demonstrated above, the alternative service of process on OnePlus does not trigger obligations under the Hague Convention, and thus, Judge Albright correctly found that the principle of comity is not offended in this case. Appx10-11.

Because OnePlus must satisfy all three requirements under the legal standard for mandamus relief but failed to satisfy the second requirement (*i.e.*, to show that the right to issuance of the writ is clear and indisputable), the Court should deny the Petition.

III. ONEPLUS FAILED TO SHOW THAT THE DRASTIC MANDAMUS RELIEF IS APPROPRIATE UNDER THE CIRCUMSTANCES IN THIS CASE

A. OnePlus Failed To Show That The District Court Clearly Abused Its Discretion Or Usurped Judicial Power

OnePlus failed to show that the drastic and extraordinary mandamus relief is appropriate under the circumstances in this case as this Court's clear rulings in *Nuance* confirm that Judge Albright correctly ordered alternative service under Rule 4(f)(3) and properly denied OnePlus's motion for lack of personal jurisdiction. OnePlus, as the party with the burden of proof, submitted no legitimate evidence to show that Judge Albright clearly abused his discretion or usurped judicial power, and the Petition is thus without merit.

B. OnePlus's Policy Argument Leads To The Absurd Result Of Mandating The Hague Convention And Depriving District Courts Of Their Essential Role Of Exercising Judgment To Advance Justice

OnePlus's unsuccessful attempt to make a policy argument by emphasizing the number of cases that WSOU has filed against patent infringers must similarly fail. OnePlus implies that WSOU is doing something improper by filing multiple patent infringement actions as to persuade the Court that this is a policy issue. OnePlus is wrong again. WSOU has the right to exercise its patent rights like every other patent holder and seek to recover for the wrongful infringement by OnePlus and other defendants.

WSOU followed the rules here and diligently served OnePlus pursuant to Judge Albright's court order which, as demonstrated herein, is proper and compliant with federal and state law. Tellingly, OnePlus failed to cite a single case to support its intentionally vague argument about WSOU's purported improper actions.

More importantly, OnePlus's policy argument is devoid of common sense and, if accepted, would lead to the absurd result of mandating the Hague Convention in all cases where the defendant is located outside of the U.S. and depriving District Courts of their essential role of exercising judgment under the unique circumstances of each case to prevent foreign defendants from unnecessarily delaying the litigation process and relieve the burden on plaintiffs by preserving their valuable resources and time, especially where the defendants maintain U.S. presence and already have U.S. counsel, which is exactly the case here.

The Court should thus reject OnePlus's argument.[1]

[1] The same reasoning applies to TP-Link Technologies Co. Ltd.'s ("TP Link") amicus brief submitted in support of the Petition. The Court should reject TP Link's amicus brief because: (1) TP Link missed the filing deadline; and (2) TP Link failed to make any arguments materially different from OnePlus's arguments in the Petition, and nothing in TP-Link's brief changes WSOU's supported conclusion that the Petition should be denied.

Because OnePlus must satisfy all three requirements under the legal standard for mandamus relief but failed to satisfy the third requirement (*i.e.*, to show that the drastic mandamus relief is appropriate under the circumstances of this case), the Petition should be denied.

There is no question that it would be a miscarriage of justice for a writ of mandamus to issue here when OnePlus was properly served, adequately apprised of this action, and given the opportunity to object. OnePlus should not be allowed to escape this case, delay the litigation process, and waste judicial resources and WSOU's time and money by making highly improper formalistic arguments that are contrary to this Court's rulings and lack common sense.

Accordingly, as demonstrated above, because OnePlus failed to satisfy the three requirements for obtaining mandamus relief, the Petition is without merit.

IV. CONCLUSION

For the foregoing reasons, this Court should deny the Petition.

Dated: August 9, 2021

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
Telephone: (650) 453-5170
Facsimile: (650) 453-5171

Shelley Ivan
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800

Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development

CERTIFICATE OF COMPLIANCE

This foregoing Response to Petition for Writ of Mandamus complies with:

(1) the type-volume limitations of Federal Rule of Appellate Procedure 21(d)(1) because it contains 6,981 words.

(2) the typeface requirements of the 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 9, 2021

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop
Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development

PROOF OF SERVICE

In accordance with Federal Circuit Rule 21(a)(2), I hereby certify that on August 9, 2021, I have mailed the foregoing Petition and Appendix 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 Judge, and the below counsel of record, at the addresses below:

Julie S. Goldemberg
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
julie.goldemberg@morganlewis.com

William R. Peterson
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
Telephone: (713) 890-5188
Facsimile: (713) 890-5001
william.peterson@morganlewis.com

Michael J. Lyons
Ahren C. Hsu-Hoffman
Jacob J.O. Minne
1400 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 843-4000
Facsimile: (650) 843-4001
michael.lyons@morganlewis.com
ahren.hsu-hoffman@morganlewis.com
jacob.minne@morganlewis.com

Hon. Alan D. Albright
United States Court for the Western District of Texas
800 Franklin Avenue, Room 301
Waco, Texas 76701
Telephone: (254) 750-1501

Dated: August 9, 2021

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop
Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development

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 and 6-20-CV-00958-ADA, Honorable Alan D. Albright

APPENDIX IN SUPPORT OF RESPONSE TO PETITION FOR A WRIT OF MANDAMUS

JONATHAN K. WALDROP
DARCY L. JONES
MARCUS A. BARBER
JOHN W. DOWNING
HEATHER S. KIM
JACK SHAW
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065
(650) 453-5170

SHELLEY IVAN
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
(212) 506-1700

Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development

AUGUST 9, 2021

TABLE OF CONTENTS

EXHIBIT A

UAET (02-2008)

Unopposed Application for Extension of Time to Answer Complaint

Attach this form to the *Application for Extension of Time to Answer Complaint* event.

CASE AND DEADLINE INFORMATION

Civil Action No.: 2:20-cv-0105

Name of party requesting extension: OnePlus Technology (Shenzhen) Co., LTD.

Is this the first application for extension of time in this case?
- [x] Yes
- [ ] No

If no, please indicate which application this represents:
- [ ] Second
- [ ] Third
- [ ] Other _____

Date of Service of Summons:

Number of days requested:
- [x] 30 days
- [ ] 15 days
- [ ] Other _____ days

New Deadline Date: 10/21/2020 *(Required)*

ATTORNEY FILING APPLICATION INFORMATION

Full Name: Brady Cox
State Bar No.: 24074084
Firm Name: Alston & Bird
Address: 2200 Ross Avenue
Suite 2300
Dallas, TX 75201
Phone: (214)922-3400
Fax: (214)922-3899
Email: brady.cox@alston.com

A certificate of conference does not need to be filed with this unopposed application.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ALTPASS LLC v. ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.	§ § § § § § § §	Case No. 2:20-CV-0105-JRG

DEFENDANT ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD RULE 7.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, Defendant OnePlus Technology (Shenzhen) Co., Ltd. states that it is owned by OnePlus Mobile Communications (Guangdong) Co., Ltd., and no publicly held company owns 10% or more of OnePlus Technology (Shenzhen) Co., Ltd.'s stock.

Dated: October 21, 2020

Respectfully submitted,

/s/ Michael J. Newton

Michael J. Newton
Brady Cox
ALSTON & BIRD, LLP
2200 Ross Avenue, Suite 2300
Dallas, Texas 75201
Tel: (214) 922-3400
Fax: (214) 922-3899
mike.newton@alston.com
brady.cox@alston.com

Emily M. Grand
ALSTON & BIRD, LLP
950 F. Street NW
Washington, DC 20004-1404
Tel: (202) 239-3228
Fax: (202) 239-3333
emily.grand@alston.com

Attorneys for OnePlus Technology (Shenzhen) Co., LTD

EXHIBIT B

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Sunday, November 29, 2020. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

C4176059 ONEPLUS GLOBAL

Registration Date:	07/19/2018
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC STOCK
Status:	ACTIVE
Agent for Service of Process:	**LEGALZOOM.COM, INC. (C2967349)** To find the most current California registered Corporate Agent for Service of Process address and authorized employee(s) information, click the link above and then select the most current 1505 Certificate.
Entity Address:	1295 MARTIN LUTHER KING DR HAYWARD CA 94541
Entity Mailing Address:	249 W JACKSON ST #110 HAYWARD CA 94544

Certificate of Status

A Statement of Information is due EVERY year beginning five months before and through the end of July.

Document Type	File Date	PDF
SI-COMPLETE	05/14/2020	
SI-COMPLETE	10/16/2018	
REGISTRATION	07/19/2018	

* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code **section 2114** for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

Modify Search **New Search** **Back to Search Results**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC, d/b/a BRAZOS LICENSING AND DEVELOPMENT, Plaintiff, v. ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD., Defendant.	§ § § § § § § § § § § § § § § §	Case No. 6:20-cv-00952-ADA **JURY TRIAL DEMANDED**

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO EFFECT ALTERNATIVE SERVICE ON DEFENDANT

Before the Court is Plaintiff's Motion for Leave to Effect Alternative Service on Defendant OnePlus Technology (Shenzhen) Co., Ltd. After considering Plaintiff's Motion and supporting evidence, the Court finds that Plaintiff's Motion should be GRANTED.

IT IS THEREFORE ORDERED that Plaintiff may serve Defendant via email upon its recent U.S. counsel Messrs. Brady Randall Cox, brady.cox@alston.com and Michael J Newton, mike.newton@alston.com and via registered mail carrier with return receipt upon Defendant's U.S. location at OnePlus Global, 1295 Martin Luther King Dr, Hayward CA 94541.

SIGNED this _____ day of _____, 2020.

HON. ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

WSOU INVESTMENTS LLC,
Plaintiff

V. Civil Action No. **6:20−CV−00952−ADA**

ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.,
Defendant

SUMMONS IN A CIVIL ACTION

TO: **Oneplus Technology (Shenzhen) Co., Ltd.**
c/o OnePlus Technology (Shenzhen) Co., Ltd.
18F, Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District
Shenzhen, Guangdong, 518040, China

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) −− or 60 days if you are the United States or a United States Agency, or an office or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) −− you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Isaac Rabicoff
Rabicoff Law LLC
73 W. Monroe St.
Chicago, IL 60603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JEANNETTE J. CLACK
CLERK OF COURT

s/AKEITA MICHAEL
DEPUTY CLERK

ISSUED ON 2020−10−14 10:55:41

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 6:20-cv-00952

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Oneplus Technology (Shenzhen) Co., Ltd was received by me on *(date)* 01/06/2021 .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

☑ Other *(specify):* Service was effected via email to brady.cox@alston.com and mike.newton@alston.com on 1/6/2021 pursuant to the Court's Order Granting Plaintiff's Motion for Leave to Effect Alternative Service and via personal delivery to Geoffrey Maely, Defendant's authorized agent to accept service.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 01/08/2021

/s/ Mark Siegmund
Server's signature

Mark Siegmund, Attorney for Plaintiff
Printed name and title

1508 North Valley Mills Dr
Waco, Texas 76710

Server's address

Additional information regarding attempted service, etc:

mark waltfairpllc.com

From: mark waltfairpllc.com
Sent: Wednesday, January 6, 2021 12:25 PM
To: brady.cox@alston.com; mike.newton@alston.com
Subject: Service of Complaint - Case Number 6:20-cv-00952 filed in the Western District of Texas

Importance: High

Dear Messrs. Brady Randall Cox and Michael J. Newton:

I represent the Plaintiff, WSOU Investments, LLC d/b/a Brazos Licensing and Development, in the above referenced case filed against your client, OnePlus Technology (Shenzhen) Co, Ltd. filed in the Western District of Texas. This email is represents formal service of the above referenced suit, as granted by Judge Alan D Albright, District Judge of the Waco Division of the Western District of Texas. Please see the provided link to access his order granting WSOU Investments, LLC's Motion for Leave to Effect Alternative Service.

Additionally, you will find the complaint (including the civil cover sheet and exhibits) for the above referenced case. Finally, you will find the summons issued for the above referenced case. If you have any questions, please feel free to reach out.

Link for service documents: https://www.dropbox.com/sh/cw3dd883yrxpbvj/AAA6Ooc15t9EhVGtGn0Tst9Ta?dl=0

Sincerely,

Mark Siegmund
Walt Fair, PLLC
mark@waltfairpllc.com
1508 North Valley Mills Drive
Waco, Texas 76710-4462
Telephone: (254) 772-6400
Fax: (254) 772-6432
waltfairpllc.com

Attorney or Party without Attorney: Isaac Rabicoff, Esq. Rabicoff Law LLC 5680 King Centre Dr Suite 645 Alexandria, VA 22315 *Telephone No:* 773-669-4590 *Attorney For:* Plaintiff	*For Court Use Only* *Ref. No. or File No.:*
Insert name of Court, and Judicial District and Branch Court: United States District Court for the Western District of Texas	
Plaintiff: WSOU INVESTMENTS LLC *Defendant:* ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.	

PROOF OF SERVICE	*Hearing Date:*	*Time:*	*Dept/Div:*	*Case Number:* 6:20-CV-00952-ADA

1. *At the time of service I was at least 18 years of age and not a party to this action.*

2. I served copies of the Summons in a Civil Action; Complaint for Patent Infringement; Report on the Filing or Determination of an Action Regarding a Patent or Trademark; Plaintiff's Rule 7.1 Disclosure Statement; Standing Order Regarding Notice of Readiness for Scheduling Conference in Patent Cases; Civil Cover Sheet

3. *a. Party served:* Oneplus Technology (Shenzhen) Co., Ltd. c/o OnePlus Technology (Shenzhen) Co., Ltd.
   b. Person served: Geoffrey Mahely , African American , Male , Age: 40 , Hair: Brown , Eyes: Brown , Height: 5'10" , Weight: 175 , authorized to accept served under F.R.C.P. Rule 4.

4. *Address where the party was served:* 1295 Martin Luther King Dr, Hayward, CA 94541

5. *I served the party:*
   a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed, Jan 06 2021 (2) at: 06:35 PM

6. ***Person Who Served Papers:***
   a. Edgar Mendez (2017-0001328, San Francisco)
   b. FIRST LEGAL
   1202 Howard Street
   SAN FRANCISCO, CA 94103
   c. (415) 626-3111
   d. ***The Fee** for Service was:*

7. ***I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.***

01/07/2021
(Date)

(Signature)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT,	§	
	§	Civil Action No. 6:20-00952-ADA
Plaintiff,	§	Civil Action No. 6:20-00953-ADA
	§	Civil Action No. 6:20-00956-ADA
v.	§	Civil Action No. 6:20-00957-ADA
	§	Civil Action No. 6:20-00958-ADA
ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.,	§	
Defendant.	§	

PLAINTIFF WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT'S OPPOSITION TO DEFENDANT ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.'S MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development ("WSOU") submits this opposition to Defendant OnePlus Technology (Shenzhen) Co., Ltd.'s ("OnePlus") motion to dismiss for insufficient service of process and lack of personal jurisdiction ("Motion").

I. INTRODUCTION

OnePlus's Motion is without merit. This Court granted WSOU's motion for leave to effect alternative service. Pursuant to the Court's order, WSOU effected service via email to U.S. counsel for OnePlus and personal delivery to its authorized agent for service. Because the Court already ruled on this issue, the Motion is moot.

Further, the Court ruled that alternative service upon OnePlus was procedurally proper under the Federal Rules of Civil Procedure ("FRCP"), Texas long-arm statute, and due process requirements because it was reasonably calculated to provide notice to OnePlus of this action. Contrary to OnePlus's contentions, service pursuant to the Hague Convention is not mandatory where, as here, alternative means of service exist and have been effectuated under Rule 4(f)(3) of the FRCP.

OnePlus does not dispute that it is now fully informed of this litigation. OnePlus's demand for additional international service pursuant to the Hague Convention to remedy the purported insufficient service of process is thus an improper attempt to create procedural hurdles, delay the action, and waste the parties' time and judicial resources.

Accordingly, the Motion should be denied.

II. BACKGROUND AND PROCEDURAL HISTORY

WSOU is a Delaware limited liability company with a principal place of business located at 605 Austin Avenue, Suite 6, Waco, Texas 76701.

OnePlus is a Chinese corporation with a principal place of business located at 18F, Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District Shenzhen, Guangdong,

518040, China. OnePlus maintains a U.S. presence and agent via OnePlus Global located at 1295 Martin Luther King Drive, Hayward, CA 94541. (Dkt. 8, Ex. B.)

On October 14, 2020, WSOU commenced the above-captioned actions by filing five complaints against OnePlus for direct and indirect infringement of U.S. Patent Nos. 7,477,876, 8,149,776, 8,712,708, 8,767,614, and 9,231,746 (collectively, the "Patents-In-Suit"). The same day, Summonses were issued as to OnePlus in those five actions.

On December 3, 2020, WSOU filed five motions for leave to effect alternative service on OnePlus pursuant to Rule 4(f)(3) of the FRCP ("Service Motions")[1] requesting that the Court authorize WSOU to serve OnePlus through: (i) e-mail upon U.S. Counsel for OnePlus, Messrs. Brady Randall Cox at brady.cox@alston.com and Michael J. Newton at mike.newton@alston.com; and (ii) personal delivery to OnePlus's U.S. agent located at OnePlus Global, 1295 Martin Luther King Drive, Hayward, California 94541. (Dkt. 8.)

On December 14, 2020, the Court granted WSOU's Service Motions finding that "good cause exists" for WSOU's request and approving alternative service on OnePlus (the "December 14 Order").

On January 6, 2021, pursuant to the December 14 Order, WSOU effected service on OnePlus via email to brady.cox@alston.com and mike.newton@alston.com as well as personal delivery to OnePlus's authorized agent for service, Geoffrey Maely, at OnePlus Global, 1295 Martin Luther King Drive, Hayward, California 94541. (Dkt. 11.)

On January 8, 2021, WSOU filed the returned, executed Summonses, including Proof of Service on OnePlus.[2]

[1] Dkt. 8 in all of the above-captioned actions.

[2] Dkt. 11 (Case No. 6:20-00952-ADA), Dkt. 10 (all other actions).

On January 20, 2021, pursuant to OnePlus's request to extend the time to respond to WSOU's complaints, WSOU filed an Unopposed Motion for Extension of Time, by which WSOU agreed to extend OnePlus's deadline to respond to the Complaints from January 27, 2021 to February 26, 2021. (Dkt. 13.) On January 27, 2021, the Court granted the motion and reset OnePlus's deadline to respond to the Complaints to February 26, 2021.

Almost two months after service on OnePlus, on February 26, 2021, OnePlus filed the Motion ignoring the December 14 Order and arguing that WSOU's service (as effectuated pursuant to the December 14 Order) was procedurally defective due to failure to follow the Hague Convention.[3]

III. LEGAL STANDARD

Rule 4(h) of the FRCP governs service of process on corporations, partnership, or associations. Fed. R. Civ. P. 4(h). Pursuant to Rule 4(h)(2), service on a corporation at a place not within any judicial district of the United States is to be conducted in any manner prescribed by Rule 4(f) for serving an individual except for personal delivery under Rule (4)(f)(2)(C)(i). *Id.*

Pursuant to Rule 4(f), to be effective, service on a foreign defendant must comply with one of three provisions as follows:

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice []; or
>
> (3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

[3] Dkt. 21 (Case No. 6:20-00952-ADA), Dkt. 20 (all other actions).

As such, pursuant to Rule 4(f)(3), "so long as the method of service is not prohibited by international agreement, the Court has considerable discretion to authorize an alternative means of service." *Terrestrial Comms LLC v. NEC Corp.*, No. 6:19-CV-00597-ADA, 2020 WL 3270832, at *2 (W.D. Tex. June 17, 2020) (citing *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002)). Rule 4(f)(3) merely provides one of the permissible methods for service of process on international defendants. *See Rio Props.*, 284 F.3d at 1015.

Notably, a plaintiff is not required to attempt to effect service on a foreign defendant pursuant to the Hague Convention under Rule 4(f)(1) prior to requesting the Court's authorization of an alternative method of service under Rule 4(f)(3). *See Affinity Labs of Tex., LLC v. Nissan N. Am. Inc.*, No. WA:13-cv-369, 2014 WL 11342502, at *1 (W.D. Tex. July 2, 2014); *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1239-40 (Fed. Cir. 2010).

Axiomatically, service pursuant to the Hague Convention is not mandatory if there are alternative means to effectuate service under Rule 4(f)(3). *Terrestrial Comms LLC v. NEC Corp.*, No. 6:20-CV-00096-ADA, 2020 WL 3452989, at *4 (W.D. Tex. June 24, 2020) (rejecting foreign defendant's demand for service under the Hague Convention and holding that email service on the defendant's U.S. counsel is proper and effective under Rule 4(f)(3) even if counsel has not been expressly authorized to accept service on defendant's behalf); *Terrestrial Comms*, 2020 WL 3270832, at *3 (same). *See also Brown v. China Integrated Energy, Inc.*, 285 F.R.D. 560, 565 (C.D. Cal. 2012) ("The Hague Convention does not prohibit authorizing plaintiffs to serve the foreign individual defendants by serving them through [defendant's] agent for service of process or its attorneys in the United States.").

Moreover, the United States Supreme Court has held that "[w]here service on a domestic agent is valid and complete under both state law and the Due Process Clause, [the] inquiry ends

and the [Hague] Convention has no further implications [and] contrary to [defendant's] assertion, the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988) (holding that the Hague Convention did not apply when process is effected by serving a foreign corporation through its U.S. subsidiary).

This Court can thus authorize any alternative method of service that complies with the Texas long-arm statute and constitutional requirements of due process. *See Terrestrial Comms*, 2020 WL 3270832, at *3.

Courts have repeatedly interpreted the Texas long-arm statute "to reach as far as the federal constitutional requirements of due process will allow." *Id.* (citing *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996)). To that end, to satisfy the constitutional requirements of due process, the method of service must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Accordingly, if alternative service complies with the state long-arm statute and due process requirements, and thus apprises a defendant of the pending action, the defendant may not obtain dismissal of a case for insufficiency of process and resultant lack of personal jurisdiction under Rules 12 (b)(2) and (5) of the FRCP.

IV. ARGUMENT

A. The Motion Should Be Denied As Moot Because The Court Has Already Approved Alternative Service On OnePlus

The Motion is procedurally improper. It ignores the Court's December 14 Order that approved the exact service effected by WSOU. Because the issues raised in the Motion were already considered and decided by the Court, the Motion is moot and should be denied on this

ground alone. *See Happy v. Congress Materials, LLC*, No. SA-14-CA-201, 2014 WL 11321381 (W.D. Tex. Nov. 12, 2014) (denying as moot a motion following the issuance of a court order on the same issue); *Saturn v. Barnett*, A-16-CA-505-LY, 2016 WL 7392240 (W.D. Tex. Dec. 20, 2016), *report and recommendation adopted*, No. 1:16-CV-00505-LY, 2017 WL 9850919 (W.D. Tex. Jan. 12, 2017) (finding an insufficiency of process argument moot after defendant was successfully served pursuant to the Court's order).

OnePlus could have filed a motion to vacate the December 14 Order if it believed that the Court's decision was erroneous. *See* Fed. R. Civ. P. 59(e); *Templet v. HydroChem Inc*., 367 F.3d 473, 479 (5th Cir. 2004). OnePlus never did so and should not be allowed to make an end-run around proper procedure and this Court's December 14 Order by filing the Motion.

B. Service Is Proper Under The FRCP, Texas Long-Arm Statute, And Constitutional Due Process

This Court correctly approved alternative service via email to OnePlus's U.S. counsel, Messrs. Brady Cox and Michael J. Newton, and personal delivery to OnePlus's authorized agent for service in the U.S., Geoffrey Maely.

First, the alternative service is proper under Rule 4(f)(3) as such service is not prohibited by any international agreement. *See Terrestrial Comms*, 2020 WL 3270832, at *3 (email service on foreign defendant's U.S. counsel complied with Rule 4(f)(3) and not prohibited by any international agreement even though counsel was not expressly authorized to accept service on defendant's behalf); *Terrestrial Comms,* 2020 WL 3452989, at *4 (same).

Second, the alternative service authorized by the Court is also proper under the Texas long-arm statute and due process requirements as OnePlus has been fully apprised of this pending action and afforded the opportunity to present its objections. *See Terrestrial Comms*, 2020 WL 3270832, at *1; *Volkswagenwerk*, 486 U.S. at 707.

The Court-approved alternative service thus comports with the FRCP, the Texas long-arm statute, and constitutional due process.

Accordingly, the Motion is meritless and should be denied.

C. Compliance With The Hague Convention Is Not Mandatory Here, And There Is No Basis For Additional International Service On OnePlus

As demonstrated above (*supra* at 4-5), compliance with the Hague Convention is not mandatory as long as there are alternative means of service that comport with the rules, and OnePlus has been effectively served and apprised of the matters here. *See, e.g.*, *Volkswagenwerk*, 486 U.S. at 707; *Terrestrial Comms*, 2020 WL 3270832, at *3; *Terrestrial Comms,* 2020 WL 3452989, at *3. OnePlus's request for additional international service under the Hague Convention (Motion at 10) is thus baseless and nonsensical.

Indeed, this Court has held that alternative service including email to a foreign defendant's U.S. counsel and personal delivery to the defendant's U.S. agent is sufficient without meeting the requirements under the Hague Convention.

> "[S]ervice pursuant to Hague Convention procedures is required **only** if the method of serving process involves the transmittal of documents abroad." *Sheets v. Yamaha Motors Corp., U.S.A.,* 891 F.2d 533, 537 (5th Cir. 1990) (emphasis added). If alternative means to effectuate service exist, strict compliance with the service requirements under the Hague Convention is not always mandatory. *Brown,* 285 F.R.D. at 564. 'Thus, if domestic service on a foreign corporation were effected properly, the Hague Convention would not require additional, international service.' *Giencore Ltd v. Occidental Argentina Exploration & Prod., Inc.,* CIV.A H–11–3070, 2012 WL 591226 (S.D. Tex. Feb. 22, 2012) (citing *Schlunk,* 486 U.S. at 707).
>
> Here, [plaintiff] requests that the Court authorize service on [defendant] through [defendant's subsidiary] or its outside counsel, Mr. Hill. Neither method would require the transmittal of service documents abroad because both [defendant's subsidiary] and Mr. Hill are located in the United States. Therefore, as long as service on a domestic subsidiary is authorized by relevant state law, [plaintiff] would not have to strictly comply with the procedures on international transmission and service as enumerated under the Hague Convention."

Affinity Labs, 2014 WL 11342502, at *2. *See also Terrestrial Comms*, 2020 WL 3270832, at *3 (rejecting foreign defendant's demand for service under the Hague Convention and approving email service on defendant's U.S. counsel because "alternative means to effectuate service exist, [so] strict compliance with the service requirements under the Hague Convention is not mandatory").

This is exactly what transpired here. This Court correctly approved alternative service via email to OnePlus's U.S. counsel and personal delivery to OnePlus's U.S. agent as those service methods were permissible under Rule 4(f)(3) and did not require international transmittal of service documents. Because such domestic service was effectuated properly, the Hague Convention does not mandate additional international service.

OnePlus argues that the Texas long-arm statute requires process served on a foreign defendant to be sent abroad. *See* Motion at 1, 6–7. OnePlus is wrong. This Court has explicitly held that the "Texas long-arm statute does not require the transmittal of documents abroad when serving a foreign defendant." *Terrestrial Comms*, 2020 WL 3270832, at *3 (citing *Fundamental Innovation Sys. Int'l, LLC v. ZTE Corp.*, No. 3:17-cv-01827-N, 2018 WL 3330022, at *3 (N.D. Tex. Mar. 16, 2018)).

OnePlus also argues that "Rule 4(f)(3) cannot be used when proposed service would be effected in the United States." Motion at 8. To the contrary, this Court has explicitly held that if alternative service includes service to defendant's counsel or subsidiary in the United States under Rule 4(f)(3), no transmittal of documents abroad is required and service under the Hague Convention is not mandatory. *See Affinity Labs*, 2014 WL 11342502, at *2.

OnePlus does not – because it cannot – show otherwise. There is no "loophole" (Motion at 12) around the alternative service approved by the Court and effected by WSOU. Rather, the

alternative service authorized by the December 14 Order is the only service required here.

OnePlus has failed to cite a single relevant case from the Western District of Texas or the Fifth Circuit that contradicts or undermines the December 14 Order. In contrast, this Court's decisions in the *Terrestrial Comms* cases, rejecting the application of the Hague Convention and approving alternative service by email to defendant's U.S. counsel, fully supports the December 14 Order and squarely contradicts OnePlus's position in the Motion. *See Terrestrial Comms*, 2020 WL 3452989, at *1; *Terrestrial Comms,* 2020 WL 3270832, at *1.

OnePlus cites to *Prem Sales, LLC v. Guangdong Chigo Heating & Ventilation Equipment Co*., No. 5:20-CV-141-M-BQ, 2020 WL 6063452, at *9 (N.D. Tex. Oct. 14, 2020) to support its argument that under the Hague Convention, WSOU was required but failed to prepare translations of the complaint, patents, and other exhibits to afford OnePlus's management an opportunity to review these documents in their native language. Motion at 11. This argument makes no sense, and the cited case is inapplicable. First, the Hague Convention is not mandatory here and its guidelines are thus not applicable. Second, WSOU served OnePlus's U.S. counsel and the referenced translation was not necessary for OnePlus to secure proper representation and object to WSOU's filing. Third, OnePlus is currently represented by U.S. counsel in the cases at issue. And fourth, OnePlus does not dispute that it is now fully informed about the pending litigation.

Further, contrary to OnePlus's argument (Motion at 5), saving precious time and resources and relieving plaintiff of the undue burden associated with the Hague Convention, is not only a reason but also the main purpose of seeking alternative service. In fact, this Court has explicitly held that avoiding burdensome and unnecessary expenses and delays associated with the Hague Convention is a valid reason for the approval of alternative service, just like here. *See Terrestrial Comms*, 2020 WL 3452989, at *4 ("The Court views [defendant's] objection to alternative service

as an attempt to further delay resolution of the lawsuits rather than as a method of ensuring [defendant's] apprisal of the pending suits. This Court previously held that seeking to avoid unnecessary delay and expense in serving a foreign defendant through the Hague Convention is a valid reason to grant alternative service."); *Affinity Labs*, 2014 WL 11342502, at *3 ("Courts have also found that avoiding the additional expense of serving a defendant in a foreign country is a valid justification for granting an alternative method of service… Thus, saving time and expense are valid reasons to request an alternative method of service.") (internal citations and quotations omitted).

Consistent with these binding decisions and contrary to OnePlus's contentions (Motion at 10), WSOU is not required to detail how the Court-approved alternative service by email is less burdensome than service under the Hague Convention. The case that OnePlus cites to support its position—*Baker Hughes Inc. v. Homa*, No. CIV.A. H-11-3757, 2012 WL 1551727 (S.D. Tex. Apr. 30, 2012)—is thus distinguishable, inapposite and contradicts the Motion. Among other things: (i) *Baker* did not involve the Hague Convention, unlike here; (ii) the court in *Baker* held that, although expediting the process and avoiding additional costs were legitimate reasons that can provide sufficient justification for the alternative service, the court could not reach a conclusion that service offending Austrian law was appropriate, whereas here, no foreign law is offended by the December 14 Order; and (iii) the court in *Baker* denied defendant's motion to dismiss for insufficient service of process and lack of personal jurisdiction, and thus, if anything, *Baker* supports WSOU, not OnePlus.

Put simply, OnePlus's demand for additional, international service is nothing but an improper attempt to create procedural hurdles, delay the action, and waste the parties' time and judicial resources. *See In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, No. CV 09-

02047, 2015 WL 13387769 (E.D. La. Nov. 9, 2015) (finding that defendants' refusal to accept service of process and insistence on the formalities of the Hague Convention were motivated by their intent to delay justice). This baseless demand should be rejected.

V. CONCLUSION

For the foregoing reasons, WSOU respectfully requests that the Court deny OnePlus's motion to dismiss for insufficient service of process and lack of personal jurisdiction.

Dated: March 12, 2021

RESPECTFULLY SUBMITTED,

By: */s/ Jonathan K. Waldrop*

Jonathan K. Waldrop (CA Bar No. 297903)
(Admitted in this District)
jwaldrop@kasowitz.com
Darcy L. Jones (CA Bar No. 309474)
(Admitted in this District)
djones@kasowitz.com
Marcus A. Barber (CA Bar No. 307361)
(Admitted in this District)
mbarber@kasowitz.com
John W. Downing (CA Bar No. 252850)
(Admitted in this District)
jdowning@kasowitz.com
Heather S. Kim (CA Bar No. 277686)
(Admitted in this District)
hkim@kasowitz.com
Jack Shaw (CA Bar No. 309382)
(Admitted in this District)
jshaw@kasowitz.com
KASOWITZ BENSON TORRES LLP
333 Twin Dolphin Drive, Suite 200
Redwood Shores, California 94065
Telephone: (650) 453-5170
Facsimile: (650) 453-5096

Mark D. Siegmund (TX Bar No. 24117055)
mark@waltfairpllc.com
LAW FIRM OF WALT FAIR, PLLC
1508 N. Valley Mills Drive
Waco, TX 76710
Telephone: (254) 772-6400
Facsimile: (254) 772-6432

Attorneys for Plaintiff
WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on March 12, 2021, pursuant to Local Rule CV-5, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on all parties who have appeared in this case.

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT,	§	
Plaintiff,	§	Civil Action No. 6:20-00952-ADA
	§	Civil Action No. 6:20-00953-ADA
	§	Civil Action No. 6:20-00956-ADA
v.	§	Civil Action No. 6:20-00957-ADA
	§	Civil Action No. 6:20-00958-ADA
ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.,	§	
Defendant.	§	

PROPOSED ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Before this Court is Defendant OnePlus Technology (Shenzhen) Co., Ltd.'s Motion To Dismiss For Insufficient Service of Process And Lack of Personal Jurisdiction, and Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development's Opposition thereto. Having considering the briefing, the Court finds that the motion should be **DENIED**.

It is therefore **ORDERED** that Defendant's Motion To Dismiss For Insufficient Service of Process And Lack of Personal Jurisdiction is **DENIED**.

SIGNED this ____ day of March, 2021.

_____
ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU Investments LLC doing business as Brazos Licensing and Development, Plaintiffs, v. Oneplus Technology (Shenzhen) Co., Ltd., Defendant.	§ § § § § § § § § § § § §	Civil Action No. 6:20-cv-00952-ADA Civil Action No. 6:20-cv-00953-ADA Civil Action No. 6:20-cv-00956-ADA Civil Action No. 6:20-cv-00957-ADA Civil Action No. 6:20-cv-00958-ADA Jury Trial Demanded

---

MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Treaties

Other Authorities

I. INTRODUCTION

The United States and China are parties to the Hague Convention—a multilateral treaty governing service of legal documents between their borders. The Hague Convention allows contracting nations some measure of control over the flow of legal process within their borders while creating "appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time" and to "improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure." Hague Convention (20 U.S.T. 361) at Preamble. The treaty applies when legal process—such as the complaints at issue here—must be sent abroad under the forum-state's long-arm statute.

WSOU has taken the position—in this case and in over 20 others filed in the last five months—that it can circumvent the Hague Convention by seeking alternative service under Rule 4(f)(3). To the contrary, WSOU is bound by the same procedural rules that apply to other plaintiffs seeking to litigate their claims in Texas.

WSOU's approach to service should be rejected for three reasons. First, WSOU fundamentally misreads the Texas long-arm statute, which requires process served on a foreign defendant to be sent abroad. This requirement to serve abroad triggers the obligation to comply with the Hague Convention and leaves no room for substituted service under Rule 4(f)(3). Second, WSOU failed to provide any reason why court intervention altering the service requirements was necessary in this case. Finally, WSOU has shown a pattern and practice of ignoring the Hague Convention and prematurely exploiting a purported loophole in the Federal Rules of Civil Procedure. WSOU's approach not only conflicts with the rules, but also undermines international comity by simply disregarding as a nuisance the Hague Convention and

its carefully crafted balancing of interests. For all these reasons, WSOU's insufficient attempt at service should be rejected and the case dismissed.

II. PROCEDURAL HISTORY

WSOU filed motions for substitute service under Rule 4(f)(3) on December 3, 2020 (ECF No. 8) which were granted *ex parte*, without opinion, on December 16, 2020 via text-only docket entry. Purported "summons[es] returned executed" were filed on January 8, 2021. ECF No. 10. The instant motion moves for dismissal pursuant to Rules 12(b)(2) and (5).

III. LEGAL STANDARD

Under Federal Rules of Civil Procedure 12(b) (2) and (5), a defendant may move to dismiss a case for "insufficient service of process" (Rule 12(b)(5)) and the resultant "lack of personal jurisdiction" (Rule 12(b)(2)). Sufficient service of process requires compliance with (1) fundamental due process, such that the service is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)), and (2) "the procedural requirement of service of summons" as set forth in Fed. R. Civ. Proc. 4 and any relevant state rules or treaties (*Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987)). Attention to both norms of due process *and* procedural formalities are separate requirements, each of which must be satisfied before a court can exercise personal jurisdiction. *Omni Capital Int'l*, 484 U.S. at 104. The latter point is at issue in this case.

A. The Hague Convention

The United States and China are both contracting parties to the Hague Convention. 20 U.S.T. 361; *see also* Chiaviello Decl. Ex. 1 (listing Convention members). Article 1 of the Hague Convention provides:

> The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.
>
> This Convention shall not apply where the address of the person to be served with the document is not known.

Under the Convention, member states provide a "central authority" responsible for receiving and effecting service from abroad consistent with domestic policies. *Id.* Arts. 2-7.[1]

To determine whether a case creates "an occasion to transmit a judicial … document for service abroad" the Fifth Circuit directs that "courts are to look to the method of service prescribed by the internal law of the forum state." *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533, 536–37 (5th Cir. 1990) (*citing Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699-706 (1998)). The Hague Convention is triggered—and "shall apply" (20 U.S.T. 361 Art. 1)—if the state method of serving process "involves the transmittal of documents abroad." *Sheets*, 891 F.2d at 537; *see also Schlunk*, 486 U.S. at 706-07 ("the Illinois long-arm statute authorized Schlunk to serve VWAG by substitute service on VWOA … Where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications").[2]

---

[1] Some member nations to the Convention permit parties to continue to freely send service-documents by mail, but this is limited to cases where "the State of destination does not object." 20 U.S.T. 361 Art. 10. China objects to such service under the Hague Convention. *See* Chiaviello Decl. Ex. 2; *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").

[2] This is also consistent with the different procedures for domestic and foreign service under Fed. R. Civ. Proc. 4. When serving a defendant "[w]ithin a Judicial District of the United States" service can be effected by "following state law for serving a summons" (Fed. R. Civ. Proc. 4(e)(1)), whereas only when an entity is "served at a place not within any judicial district of the of the

Here, Texas' long arm statute provides that an out-of-state business may be served directly to the "person in charge" of the defendant's in-state business branch or via the Texas Secretary of State as agent for service of process. Tex. Civ. Prac. & Rem. Code Ann. §§ 17.043-44 (West). **But in either case, the long arm statute also requires sending documents to the defendant's foreign business address.** *See id.* §§ 17.045(a) ("If the secretary of state is served with duplicate copies of process for a nonresident, the documents shall contain a statement of the name and address of the nonresident's home or home office and the secretary of state shall immediately mail a copy of the process to the nonresident at the address provided") and (c) ("If the person in charge of a nonresident's business is served with process under Section 17.043, a copy of the process and notice of the service must be immediately mailed to the nonresident or the nonresident's principal place of business."); *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.").

B. Other Provisions and Considerations for Service Abroad

When not preempted, Rule 4(f)(3) also permits the court to direct service abroad "by other means not prohibited by international agreement, as the court orders." The leading case describing application of Rule 4(f)(3), cited by WSOU (ECF No. 8 at 3) and numerous courts in the Fifth Circuit, is *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir. 2002).

United States" (Fed. R. Civ. Proc. 4(f)), is the court empowered to allow service "by other means not prohibited by international agreement." Fed. R. Civ. Proc. 4(f)(3). *See Charles v. Sanchez*, No. EP-13-CV-00193-DCG, 2013 WL 12087219, at *3–4 (W.D. Tex. Aug. 5, 2013) (comparing service under Rule 4(e) and 4(f)); C*onvergen Energy LLC v. Brooks*, No. 20-CV-3746 (LJL), 2020 WL 4038353, at *2, 7 (S.D.N.Y. July 17, 2020) (Rule 4(f)(3) does not permit service on US counsel where service would be effected within the United States); *In re Auto. Parts Antitrust Litig.*, No. 16-CV-04003, 2017 WL 10808851, at *2 (E.D. Mich. Nov. 2, 2017) ("the plain language of Rule 4(f)(3) limits the Rule to service made outside of the United States").

Under *Rio*, so long as alternate service is not prohibited by an international agreement, a court can exercise discretion under Rule 4(f)(3) to order service be effected in a foreign country by "other means" where "facts and circumstances of the present case necessitate[] the district court's intervention." *Id.* at 1016. A plaintiff's request to serve by "other means" must specifically "demonstrate why the facts and circumstances of the present case necessitate the district court's intervention." *Compass Bank v. Katz*, 287 F.R.D. 392, 395 (S.D. Tex. 2012) (internal quotations omitted). "[A] plaintiff should never seek alternative service under Rule 4(f)(3) merely to 'expedite the process and avoid additional costs of service.'" *Id.*; *Baker Hughes Inc. v. Homa*, No. CIV.A. H-11-3757, 2012 WL 1551727, at *17 (S.D. Tex. Apr. 30, 2012).

Finally, "even when 'other methods of obtaining service of process are technically allowed, principles of comity encourage the court to insist, as a matter of discretion, that a plaintiff attempt to follow foreign law in its efforts to secure service of process upon defendant.'" *UNM Rainforest Innovations v. D-Link Corp.*, No. 6-20-CV-00143-ADA, 2020 WL 3965015, at *4 (W.D. Tex. July 13, 2020) (*quoting Midmark Corp. v. Janak Healthcare Private Ltd.*, No. 3:14-cv-088, 2014 WL 1764704, at *2 (S.D. Ohio May 1, 2014)); *Terrestrial Comms LLC v. NEC Corp.*, No. 6-20-CV-00096-ADA, 2020 WL 3452989, at *2 (W.D. Tex. June 24, 2020) (same).

IV. ARGUMENT

As discussed above, the United States and China are members of the Hague Convention and are bound by its terms. Texas law requires the transmission of documents abroad when a foreign company is sued, and Defendant OnePlus Technology (Shenzhen) Co., Ltd. ("OnePlus Shenzhen") is a foreign corporation. Accordingly, compliance with the Hague Convention is required. WSOU has not even attempted to serve OnePlus Shenzhen under the Hague

Convention and has not otherwise served process on OnePlus Shenzhen in China. This is insufficient as a matter of law and the case should be dismissed for insufficient service of process and lack of personal jurisdiction.

Even if WSOU could evade application of the Hague Convention, there is no justification for alternative service in this case. WSOU's motion for alternate service (ECF No. 8) cites no circumstances in this case that necessitate court intervention. Rather, WSOU's habitual attempts to circumvent the Hague Convention are contrary to international comity. The minute-order permitting such service should be vacated and the service of summons quashed.

A. Service Is Procedurally Ineffective Due To Failure To Follow The Hague Convention

Compliance with the Hague Convention is mandatory because the text of the treaty provides that it "shall apply" when there is "occasion" to serve documents abroad. 20 U.S.T. 361 Art. 1. As discussed above, such an occasion has arisen in this case because, according to the Complaint, WSOU has sued a defendant located in China (ECF No. 1 ¶ 2) in a Texas court, and Texas long-arm statute expressly requires transmittal of documents abroad. Tex. Civ. Prac. & Rem. Code Ann. §§ 17.043-45 (West); *Sheets*, 891 F.2d at 536–37 (5th Cir. 1990); *Bayoil Supply*, 54 F. Supp. 2d at 693.

Rule 4(f)(3) does not override these requirements, because it only applies when alternative forms of service are "not prohibited by international agreement." Fed. R. Civ. Proc. 4(f)(3). But through repeated use of imperative language—"shall" and "will" instead of "may" and "could"—the Hague Convention establishes a mandatory framework for service between member nations that prohibits alternatives. WSOU's authority does say otherwise.

WSOU's authority is inapposite because those cases did not implicate the Hague Convention. In *STC.UNM v. Taiwan Semiconductor Mfg. Co., Ltd.*, (6:19-cv-00261-ADA (W.D.

Tex. May 29, 2019) DE 13 (citing *Rio*, 284 F.3d at 1014) (ECF No. 8 at 3)), this Court ordered alternative service only after explaining that the Defendant was in Taiwan, and that Taiwan is not a party to the Hague Convention. *Id.* at 2. Likewise, when *Rio* was decided, Costa Rica was not a party to the Convention. *Rio*, 284 F.3d at 1015, fn. 4 ("The parties agree, however, that the Hague Convention does not apply in this case because Costa Rica is not a signatory.")

In fact, *Rio* expressly warns 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*** referenced in Rule 4(f)(1)." 284 F.3d at 1015, fn. 4. (emphasis added). Texas courts have reiterated this admonition. *Compass Bank*, 287 F.R.D. at 394 (S.D. Tex. 2012) (same). The Supreme Court has likewise advised that "[t]hose who eschew [the Hague Convention's] procedures risk discovering that the forum's internal law required transmittal of documents for service abroad, and that the Convention therefore provided the ***exclusive*** means of valid service." *Schlunk*, 486 U.S. at 706 (emphasis added).

WSOU's reliance *Schlunk* is similarly unavailing. Texas courts have expressly distinguished between the Illinois long-arm statute applied in *Schlunk* and the Texas long-arm statute applicable in this case. In *Schlunk*, the lower court expressly concluded that the defendant's domestic subsidiary "is [defendant's] agent for service of process under Illinois law" and, accordingly, complete service could be effected within the United States. *Id.* at 697. Because Texas law—unlike the Illinois law at issue in *Schlunk*—requires transmission of

documents abroad,[3] the Hague Convention provides the exclusive means of valid service in this case.

Analyzing similar issues, numerous courts have held unambiguously that Rule 4(f)(3) cannot generally be used to circumvent the Hague Convention. *See* footnote 2, *supra* (collecting cases concluding that Rule 4(f)(3) cannot be used when proposed service would be effected in the United States); *Rio*, 284 F.3d at 1015, fn. 4; *Compass Bank*, 287 F.R.D. at 394 (S.D. Tex. 2012); *Duarte*, No. 2:13-CV-00050, 2013 WL 2289942, at *2; *Drew Techs., Inc. v. Robert Bosch, L.L.C.*, 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). Consistent with this authority and a straightforward reading of the Federal Rules of Civil Procedure, this Court should do the same and dismiss the case for insufficient service of process and resultant lack of personal jurisdiction.

While the Hague Convention itself provides some limited exceptions to its applicability, none of those exceptions apply here. Specifically, the Convention "shall not apply where the address of the person to be served with the document is not known." 20 U.S.T. 361 Art. 1. But here, the Complaint expressly provides an address for OnePlus Shenzhen. ECF No. 1, ¶ 2. The convention also permits exercise of jurisdiction before Hague service has been completed if, after at least six months of diligent efforts to certify service via the Convention, no certificate of

[3] Even though the Texas secretary of state may act as agent for service of process, this does not obviate the need to transmit process abroad under Texas law. *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 Texas secretary of state has been served "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.")

service is provided. 20 U.S.T. 361 Art. 15. But here, WSOU has made no effort to serve via the Convention, much less "every reasonable effort" as required under the treaty. *Id.* Finally, "[i]n case of urgency," a judge may also enter "any provisional or protective measures" before Hague Convention service is perfected. *Id.* But neither WSOU's Complaint, nor its motion for alternative service evinces any such urgency.

WSOU's remaining authority is just as readily distinguishable. In *Nuance Commc'ns, Inc. v. Abbyy Software House*, (626 F.3d 1222 (Fed. Cir. 2010)), the plaintiff established that "the Russian Federation unilaterally suspended all judicial cooperation with the United States in civil and commercial matters in 2003" and submitted evidence that "the Russian Federation does not consider the Hague Service Convention to be in effect between the Russian Federation and the United States." *Id.* at 1237-38. No such sovereign-rebuke of the Hague Convention exists here; to the contrary, China (unlike Russia) continues to be recognized by the U.S. State Department as a "Party to the Hague Service Convention." Chiaviello Decl. Exs. 3 and 4. In *Stream SICAV v. Wang* (989 F. Supp. 2d 264 (S.D.N.Y. 2013)), plaintiff "articulated good reasons why it could not have realistically served Wang" earlier, and explained that executing service would unfairly delay resolution for the other defendants in the case, who were ready to proceed. *Id.* at 280. Here, there are no other defendants, and no reason why WSOU could not have begun service under the Hague convention months ago.[4] In *GLG Life Tech Corp. Sec. Litig.* (287 F.R.D. 262, 264 (S.D.N.Y. 2012)), the address of the foreign defendant to be served was unknown, and counsel for the defendant refused to provide an address for service until it

[4] The court in *Stream SICAV* also explained that "Courts in this Circuit generally require a plaintiff first to reasonably attempt service and then to show that the court's intervention is necessary to achieve it." *Id.* Again, WSOU has made no such showing.

filed its opposition brief, and even then, provided "no affidavit has been filed indicating the source of the address or providing any basis for believing that the address is in fact correct." *Id.* at 264. This mooted application of the Hague convention, since it "shall not apply where the address of the person to be served with the document is not known." 20 U.S.T. 361 Art. 1. In this case, OnePlus Shenzhen's address is expressly pled. ECF No. 1 ¶ 2. Finally, in *In re LDK Solar Sec. Litig.*, (No. C 07-05182 WHA, 2008 WL 2415186, at *3 ((N.D. Cal. June 12, 2008)) Defendants' counsel suggested "it might be impossible to serve some of [the unserved defendants]"; OnePlus Shenzhen and its counsel make no such suggestion here.

Accordingly, application of alternative service under Rule 4(f)(3) is improper in this case and service to date is ineffective.

B. There Is No Valid Basis To Effect Service By Other Means

Even if Rule 4(f)(3) could be used to circumvent the Hague Convention, Plaintiff still has not shown that the Court ***should*** exercise its discretion to do so. WSOU's case-authority makes clear that even when Rule 4(f)(3) applies Plaintiff must still explain what "necessitate[s]" court intervention. *Rio*, 284 F.3d at 1016.

Plaintiff did not explain why it needed alternative service. While it spent some time arguing that its proposed service method "will provide reasonable notice and an opportunity to be heard" (ECF No. 8 at 4-5), it has not shown any reason why under the specific facts of this case, service via a domestic agent is necessary rather than service via the Hague Convention. This omission is fatal. *Baker Hughes Inc.,* No. CIV.A. H-11-3757, 2012 WL 1551727, at *17 (refusing alternative service where Plaintiff "has not explained why the facts and circumstances of the present case necessitate [ ] the district court's intervention.")

C. Plaintiff's Habitual Attempts To Abrogate The Hague Convention Undermines International Comity

Many courts have observed that "even when 'other methods of obtaining service of process are technically allowed, principles of comity encourage the court to insist, as a matter of discretion, that a plaintiff attempt to follow foreign law in its efforts to secure service of process upon defendant.'" *Terrestrial Comms LLC v. NEC Corp.*, No. 6-20-CV-00096-ADA, 2020 WL 3452989, at *2 (W.D. Tex. June 24, 2020) *quoting Midmark Corp. v. Janak Healthcare Private Ltd.*, No. 3:14-cv-088, 2014 WL 1764704, at *2 (S.D. Ohio May 1, 2014); *UNM Rainforest Innovations v. D-Link Corp.*, No. 6-20-CV-00143-ADA, 2020 WL 3965015, at *2 (W.D. Tex. July 13, 2020) (same); *C & F Sys., LLC v. Limpimax, S.A.*, 2010 WL 65200, at *2 (W.D.Mich. Jan. 6, 2010).

Allowing alternative service in this case disregards these concerns in both practical and fundamental ways. Normally, following the Convention, Plaintiff would be required to prepare translations of the complaints, patents, and other exhibits at issue, affording management at OnePlus Shenzhen an opportunity to review these documents immediately in their native language. This has not happened. *See Prem Sales, LLC v. Guangdong Chigo Heating & Ventilation Equip. Co.*, No. 5:20-CV-141-M-BQ, 2020 WL 6063452, at *9 (N.D. Tex. Oct. 14, 2020) (finding lack of Chinese translation as further showing that plaintiff's service "falls short of satisfying the dictates of the Hague Convention.") More fundamentally, the treaty was drafted such that the nation signatories could opt for more or less freedom in process of judicial documents, *i.e.,* by objecting to some types of service under Article 10. 20 U.S.T. 361. Bypassing those expectations fundamentally weakens the treaties ability to regulate the conduct of its signatories, thereby ultimately weakening the treaty itself. *See Medellin v. Texas*, 552 U.S. 491, 505 (2008).

This concern is not isolated to this case alone. WSOU is a prolific plaintiff, filing 192 district court cases since it began litigating in March 2020. Chiaviello Decl. Ex. 5. Increasingly, it is turning to an improper and unjustified invocation of Rule 4(f)(3), having requested permission to effect alternate service in 26 of its 46 cases filed since October 6, 2020. *Id*. Such requests for alternative service are not limited to actions against Chinese companies. *See, e.g., WSOU Investments LLC v. Canon, Inc.* Case No. 6:20-cv-984, D.E. 8, "Motion for Leave to Effect Alternative Service" (Dec. 3, 2020) (seeking alternate service on a Japanese corporation). Allowing WSOU to use a perceived loophole in the Federal Rules of Civil Procedure is undermining the Hague Convention, and flouting its mutual protections put in place for the benefits not only of foreign defendants sued in the United States, but for United States companies who are sued in foreign jurisdictions.

V. CONCLUSION

For the foregoing reasons, OnePlus Shenzhen's motion to dismiss for insufficient service of process and lack of personal jurisdiction should be granted.

Dated: February 26, 2021

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ *Elizabeth M. Chiaviello*

Elizabeth M. Chiaviello
Texas Bar No. 24088913
elizabeth.chiaviello@morganlewis.com
1717 Main Street, Suite 3200
Dallas, TX 75201-7347
T. 214-466-4000
F. 214-466-4001

Michael J. Lyons
(*pro hac vice pending*)
michael.lyons@morganlewis.com
Ahren C. Hsu-Hoffman
Texas Bar No. 24053269
ahren.hsu-hoffman@morganlewis.com
Jacob J.O. Minne (*pro hac vice pending*)
jacob.minne@morganlewis.com
1400 Page Mill Road
Palo Alto, CA 94304
T. 650.843.4000
F. 650.843.4001

Attorneys for Defendant OnePlus Technology (Shenzhen) Co., Ltd.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU Investments LLC doing business as Brazos Licensing and Development, Plaintiffs, v. OnePlus Technology (Shenzhen) Co., Ltd., Defendant.	§ § § § § § § § § §	Civil Action No. 6:20-cv-00952-ADA Civil Action No. 6:20-cv-00953-ADA Civil Action No. 6:20-cv-00956-ADA Civil Action No. 6:20-cv-00957-ADA Civil Action No. 6:20-cv-00958-ADA Jury Trial Demanded

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION

I. INTRODUCTION

The pending motion presents a straightforward civil procedure question: "Does this case "occasion" transmission of documents abroad, triggering Plaintiff WSOU's mandatory compliance with the Hague Convention?" Binding Fifth Circuit authority establishes the rule that the Hague Convention[1] is triggered if the forum-state's long-arm statute requires service abroad. *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533, 536-37 (5th Cir. 1990). Here, the Texas long-arm statute, Tex. Civ. Prac. & Rem. Code Ann. §§ 17.043 *et seq.*, contains such a mandate. As a result, WSOU is required to comply with the Hague Convention. Because it has not done so, service of process in this case is defective.

WSOU does not challenge this analysis, conceding that compliance with the Hague Convention is mandatory unless there are wholly-domestic ***"alternative means of service that comport with the rules***." Opp. at 7 (emphasis added). But WSOU does not attempt to show how the Texas long-arm statute allows for service in this case without mailing process abroad. Nor does WSOU address the clear rule that such a foreign service requirement triggers the Hague Convention. Instead, WSOU refers to inapposite cases dealing with the substantial reach (as opposed to the procedural requirements) of the Texas long-arm statute, or other issues tangential to the controlling statutory analysis.

WSOU should not be permitted to circumvent the service obligations mandated by an international treaty. This case should be dismissed.

[1] Throughout this brief, unless otherwise noted, the "Hague Convention" refers to the "Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters," Nov. 15 1965, 20 U.S.T. 361

II. ARGUMENT

A. WSOU Misconstrues The Texas Long-Arm Statute

WSOU does not dispute that the Hague Convention is a binding, ratified treaty that "***shall apply in all cases*** … where there is occasion to transmit a judicial or extrajudicial document for service abroad." Mot. at 2-3 *citing* 20 U.S.T. 361. Likewise, WSOU does not dispute, and in fact concedes, that the binding Fifth Circuit authority in this case, *Sheets*, holds that to determine if the Hague Convention applies "courts are to look to the method of service prescribed by the internal law of the forum state." 891 F.2d at 537; *see* Mot. at 3-4; Opp. at 7.

But instead of looking at ***how*** service is made, that is, "the method of service prescribed by the internal law of the forum state," WSOU has looked at ***who*** can be served and whether Texas allows courts to exercise personal jurisdiction over out of state defendants. Opp. at 5 (explaining that "the Texas long-arm statute [] reach[es] as far as the federal constitutional requirements of due process will allow") (internal quotes omitted). This is the wrong inquiry.

The question at issue is not the theoretical scope of Texas' extraterritorial jurisdiction, but whether its procedural requirements mandate service abroad.[2] As already explained (Mot. at 4), whether foreign service would be effected by serving the person in charge of the defendant's in-state business (Tex. Civ. Prac. & Rem. Code Ann. § 17.043), or via the secretary of state (*id.* § 17.044), the statute still requires that process be mailed to the defendant (*id.* § 17.045). Texas courts (and federal courts within the state) are clear that compliance with these procedural mandates cannot be bypassed. *Sang Young Kim v. Frank Mohn A/S*, 909 F. Supp. 474, 479-80 (S.D. Tex. 1995) ("Texas courts strictly construe the long-arm statute, and consistently conclude

[2] *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) (Opp. at 5) speaks to the constitutional due process limits, not procedural requirements, for service of process. But both the substantive due process limits and procedural mandates for service must be observed. Mot. at 2 *citing Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987).

that failure to strictly comply with the statute by forwarding a copy of the process to the nonresident defendant as required by section 17.045 deprives the court of jurisdiction over the defendant") (citing *Whitney v. L & L Realty Corp.*, 500 S.W.2d 94 (Tex. 1974)).

WSOU's only response to OnePlus Shenzhen's showing that the Texas long-arm statute requires mailing documents abroad is a conclusory three-word argument: "OnePlus is wrong." Opp. at 8. But WSOU identifies no actual flaws in OnePlus Shenzhen's analysis. WSOU never explains how service could be effected via the Texas long-arm statute without mailing documents abroad. Nor does WSOU cite any on-point authority supporting its position.

In *Terrestrial Comms. LLC v. NEC Corp.*, cited by WSOU, the defendant focused on prudential concerns in authorizing alternative service under Rule 4 without addressing the requirements for service under the Texas long-arm statute. *Terrestrial Comms LLC v. NEC orp. and NEC Corp. of Am.*, C.A. No. 6:19-cv-00597-ADA, ECF No. 21 ("NEC Corporation's Opposition to Plaintiff's Motion for Leave to Effect Alternative Service on Defendant NEC Corporation") (W.D. Tex. Apr. 29, 2020).[3]

Similarly, *ZTE*—a decision underpinning *Terrestrial Comms,* and another case cited by WSOU—did not analyze the procedural requirements of the Texas long-arm statue, because the plaintiff had already "attempt[ed] to serve ZTE Corporation in China ***in accordance with the Hague Convention***" over six months earlier. *Fundamental Innovation Sys. Int'l, LLC v. ZTE Corp.*, No. 3:17-cv-01827-N, 2018 WL 3330022, at *3 (N.D. Tex. Mar. 16, 2018).

[3] Identical arguments were made in the companion case, Case No. 6:20-CV-00096-ADA. Likewise, the defendant in *Affinity Labs* did not analyze the Texas Long-Arm statute. Case No. 6:13-cv-00369-JCM, ECF No. 52 ("Nissan North America Inc.'s Opposition to Affinity Lab's Motion for Alternative Service of Process on Nissan Motor Co. Under Fed. R. Civ. P. 4(f)(3)") (W.D. Tex. May 15, 2014). WSOU is also incorrect in suggesting that these unpublished district court cases are "binding decisions." Opp. at 10.

Courts that have analyzed the Texas long-arm statute have concluded that it does require service of documents abroad and triggers the requirements of the Hague Convention. Mot. at 4 (*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."); *see also Traxcell Techs., LLC v. Nokia Sols. & Networks US LLC*, No. 218CV00412RWSRSP, 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) (analyzing both §§17.043 and .045 and concluding that mailing process "is an integral part of the 'service' … [b]ecause 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"); *Prem Sales, LLC v. Guangdong Chigo Heating & Ventilation Equip. Co.*, No. 5:20-CV-141-M-BQ, 2020 WL 6063452, at *4 (N.D. Tex. Oct. 14, 2020) (distinguishing the Illinois long-arm statute analyzed in *Schlunk*).

B. Rule 4(f)(3) Does Not Provide An Exception To Attempting Hague Service

Instead of addressing the Texas long-arm statute, WSOU imagines that service can be effected domestically—avoiding application of the Hague Convention—through use of Rule 4(f)(3). *See generally* Opp. at 4, 6, 8. These arguments fail for two reasons.

First, WSOU ignores the Fifth Circuit's rule for determining whether compliance with the Hague Convention is required. The Fifth Circuit has explained that to determine whether the treaty is triggered, "courts are to look to the method of service prescribed by the internal law of

the forum state." *Sheets,* 891 F.2d at 537. WSOU cannot circumvent this rule by simply invoking Rule 4(f)(3).

Second, WSOU's approach is at odds with the Federal Rules of Civil Procedure. The rules do not contemplate or permit alternative service effected entirely domestically under Rule 4(f)(3). Instead, the rules that govern service on a corporation, like OnePlus Shenzhen, start with Rule 4(h); under that rule, recourse to the methods of service allowed under Rule 4(f) is only available if service is being made "at a place ***not within any judicial district of the United States***." Fed. R. Civ. Proc. 4(h)(2). When service is attempted "in a judicial district of the United States," as WSOU has done here, a plaintiff is directed to effect service "in the manner prescribed by Rule 4(e)(1)." Fed. R. Civ. Proc. 4(h)(1)(A).[4] Rule 4(e)(1), in turn, requires compliance with state rules for service, which, as analyzed above, require mailing of documents abroad, and therefore compliance with the Hague Convention. Further, Rule 4(f) itself similarly provides means for service "at a place not within any judicial district of the United States." The pending motion cites cases across the nation—including in this district—establishing that Rules 4(f) and 4(e) are exclusive of one another, 4(f) dealing with service effected outside the United States, and 4(e) dealing with service inside the United States. Mot. at 3-4, fn. 2 (*citing Charles v. Sanchez*, No. EP-13-CV-00193-DCG, 2013 WL 12087219, at *3–4 (W.D. Tex. Aug. 5, 2013)).

As a further example, in *ZTE,* the plaintiff was only able to complete service via US counsel under Rule 4(f)(3) because it had already started effecting service via the Hague Convention half a year earlier. 2018 WL 3330022, at *3. The Hague Convention itself

[4] Rule 4(h)(1)(B) is not applicable here, since OnePlus Shenzhen is not alleged to have "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process" in the United States, and in any event, the Texas long-arm statute would still require "mailing a copy [of process] to the defendant."

recognizes a domestic court's authority to order alternative methods of service if, after at least six months of diligent efforts to certify service via the Convention, no certificate of service is provided. 20 U.S.T. 361 Art. 15. Thus, under Rule 4, the service of ZTE was appropriate both because it was consistent with the Hague Convention, and because service was not effected solely in the United States, merely perfected here. That is not the case here, and the difference is dispositive.

C. The Motion To Dismiss Is Procedurally Proper

Attempting to sidestep the law, WSOU launches a collateral attack on the pending motion alleging that it is improper, because OnePlus Shenzhen did not simultaneously seek to moot the previously granted *ex parte* motion for alternative service. Opp. at 5-6. This argument fails for three reasons.

First, the Hague Convention is a ratified treaty, binding on the court and the parties; it cannot be mooted or supplanted by court order. Nor can a court order cure otherwise defective service under the treaty. Plaintiff's authority does not suggest otherwise: *Happy v. Congress Materials* denied as moot a motion for default judgment, not a motion to dismiss for insufficient service. *Happy v. Cong. Materials, LLC*, No. SA-14-CA-201, 2014 WL 11321381, at *2 (W.D. Tex. Nov. 12, 2014). And it is unclear how WSOU believes *Saturn v. Barnett* helps its case; there was no dispute plaintiff effected proper (if not untimely) service. The court did write that the plaintiff "after several tries, and on this Court's Order, eventually served Williamson County successfully, and the insufficiency of service of process argument is now moot." *Saturn v. Barnett*, No. A-16-CA-505-LY, 2016 WL 7392240, at *6 (W.D. Tex. Dec. 20, 2016), report and recommendation adopted, No. 1:16-CV-00505-LY, 2017 WL 9850919 (W.D. Tex. Jan. 12, 2017). But the "Court's Order" in *Saturn* was not an order permitting alternative service; rather, it was a court directive that service be made in just over two weeks and that "**[f]ailure to effect**

and file proof of service by this date will result in dismissal of all claims against [defendant] for want of prosecution." *Saturn,* No. 1:16-CV-00505-LY ECF No. 25 ("Order") (W.D. Tex. Oct. 11, 2016) (emphasis in original).

Second, OnePlus Shenzhen did request that the pending motion be struck. ECF No. 21-1[5] (Proposed Order) (proposing "that the December 16, 2020 order regarding service is struck").

Third, if the court truly believes that this request for reconsideration should have been styled differently, then the court should simply construe the motion as requesting the appropriate relief. "[N]omenclature is not controlling" and the court should construe a motion "however styled, to be the type proper for the relief requested." *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 527 (9th Cir. 1983); *In re Barrier*, 776 F.2d 1298, 1300 (5th Cir. 1985) (reconstruing a procedurally infeasible motion for a stay as a motion for mandamus). Nor was OnePlus Shenzhen required to bring a (potentially time-barred) Rule 59 motion, as suggested by WSOU. *See* Opp. at 6. Rule 59 governs final *judgments*; the minute-entry WSOU relies on is simply an interlocutory order, and thus resolvable under Rule 60. *See United States v. Jones*, 84 F.3d 432 (5th Cir. 1996) ("motions for reconsideration generally fall under the purview of Fed.R.Civ.P. 60(b).") And because WSOU does not argue that treating this motion to dismiss as a further request for reconsideration in any way effects the outcome, the court should resolve this issue on the merits.

D. WSOU Fails To Address The Discretionary Considerations of Comity and Fairness

Finally, even if compliance with the Hague Convention could be avoided through application of Rule 4(f)(3), WSOU ignores the rule—from its own line of cases—that "principles of comity encourage the court to insist, as a matter of discretion, that a plaintiff attempt to follow

[5] In Case No. 20-cv-952. ECF No. 20-1 in all other cases.

foreign law in its efforts to secure service of process upon defendant.'" *UNM Rainforest Innovations v. D-Link Corp.*, No. 6-20-CV-00143-ADA, 2020 WL 3965015, at *4 (W.D. Tex. July 13, 2020) (*quoting Midmark Corp. v. Janak Healthcare Private Ltd.*, No. 3:14-cv-088, 2014 WL 1764704, at *2 (S.D. Ohio May 1, 2014)); *Terrestrial Comms LLC v. NEC Corp.*, No. 6-20-CV-00096-ADA, 2020 WL 3452989, at *2 (W.D. Tex. June 24, 2020) (same); *see generally* Mot. at 5, 11-12.

Although in the cases above, the courts found the plaintiffs' interests outweighed prudential comity concerns, the prudential concerns here are much more far reaching. WSOU seeks to fundamentally shift the burden of costs (*e.g.*, for translations) and time to foreign defendants, and to undermine the procedural norms applied in the United States and other Hague Convention signatories in dozens, and perhaps soon, hundreds of cases. WSOU has an established practice of seeking an exception to Hague Convention service in most of the cases it files. Indeed, since October 6, 2020, WSOU has requested alternative service under Rule 4(f)(3) in contravention of the Hague Convention in 26 out of 46 cases. ECF 21-6[6] (Chiaviello Decl. Ex. 5). WSOU does not even dispute that it is attempting to fundamentally change how courts handle service of process on foreign defendants. Opp. at 10.

This Court should take a broader view of the policy implications underlying this motion. Foreign tribunals will be less likely to afford U.S. companies and citizens the benefits and protections of the Hague Convention on service—or the six other Hague conventions to which the United States is a contracting party[7]—if courts in the United States routinely decline to afford convention protections to foreign companies sued here.

[6] In Case No. 20-cv-952. ECF No. 20-6 in all other cases.
[7] Including, for example, conventions "on the Taking of Evidence Abroad in Civil or Commercial Matters," "on the Civil Aspects of International Child Abduction," "on the

This Court should reject WSOU's efforts to undermine the application of the Hague Convention in U.S. courts and should dismiss this case for improper service of process.

III. CONCLUSION

For the foregoing reasons, OnePlus Shenzhen's motion to dismiss for insufficient service of process and lack of personal jurisdiction should be granted.

Dated: March 19, 2021

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: */s/ Michael J. Lyons*

Michael J. Lyons (*admitted pro hac vice*)
michael.lyons@morganlewis.com
Ahren C. Hsu-Hoffman, Bar No. 24053269
ahren.hsu-hoffman@morganlewis.com
Jacob J.O. Minne (*admitted pro hac vice*)
jacob.minne@morganlewis.com
1400 Page Mill Road
Palo Alto, CA 94304
Telephone: +1.650.843.4000
Facsimile: +1.650.843.4001

Elizabeth M. Chiaviello, Bar No. 24088913
elizabeth.chiaviello@morganlewis.com
1717 Main Street, Suite 3200
Dallas, TX 75201-7347
Telephone: +1.214.466.4000
Facsimile: +1.214.466.4001

Attorneys for Defendant
OnePlus Technology (Shenzhen) Co., Ltd.

Protection of Children and Co-operation in Respect of Intercountry Adoption," and "on the International Recovery of Child Support and Other Forms of Family Maintenance."

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Eastern District of Texas

EVS CODEC TECHNOLOGIES, LLC et al
Plaintiff

v.

ONEPLUS TECHNOLOGY (SHENZHEN) Co., et al
Defendant

Civil Action No. 2:19-cv-00057-JRG

WAIVER OF THE SERVICE OF SUMMONS

To: Amir Alavi
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 04/03/2019, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 4 April 2019

Alice Liu
Signature of the attorney or unrepresented party

ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.
Printed name of party waiving service of summons

Alice Liu
Printed name

18/F, Tower C, Tairan Building, No. 8 Tairan Road,
Futian District, Shenzhen, Guangdong, China
Address

alice.liu@oneplus.com
E-mail address

+86 18664309908
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

NOTICE: Effective September 1, 2021, Bloomberg Law will no longer support Internet Explorer (IE). We recommend using Chrome, Firefox or Microsoft Edge for the best experience on Bloomberg Law. If you need assistance or have additional questions about browser compatibility, please contact our Tech Support team at Blaw_Tech_Support@bna.com or 1-800-372-1033, Ext 3.

Results for Dockets

Courts | All Texas U.S. District Court Dockets ✕ Parties | Any Type | OnePlus Technology ✕

Filters Clear All Filters

Narrow by Date

Any

Court

- U.S. District Court For The Western District Of Texas (9)
- U.S. District Court For The Eastern District Of Texas (7)
- U.S. District Court For The Northern District Of Texas (1)

Filing Type

- Answer
- Brief
- Certificate
- Complaint/Petition
- Filed In Error

Show More

1 - 17 of 17 Sort by Date Details

Select All Edit Search Create Alert Add to

1. M-Red Inc. v. OnePlus Technology (Shenzhen) Co., Ltd., Docket No. 2:21-cv-00297 (E.D. Tex. Aug 03, 2021), Court Docket

PARTIES	M-Red Inc., OnePlus Technology (Shenzhen) Co., Ltd.
JUDGE	JAMES RODNEY GILSTRAP
DATE FILED	Aug 03, 2021
LAST UPDATED	2021-08-04 13:26:02
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	28:1338 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

2. Longhorn HD LLC. v. OnePlus Technology (Shenzhen) Co., Ltd., Docket No. 2:21-cv-00082 (E.D. Tex. Mar 10, 2021), Court Docket

PARTIES	Longhorn HD LLC., OnePlus Technology (Shenzhen) Co., Ltd.
JUDGE	JAMES RODNEY GILSTRAP
DATE FILED	Mar 10, 2021
LAST UPDATED	2021-06-19 00:05:59
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	28:1338 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

3. WSOU Investments LLC v. Oneplus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00958 (W.D. Tex. Oct 14, 2020), Court Docket

PARTIES	Oneplus Technology (Shenzhen) Co., Ltd., WSOU Investments LLC
JUDGE	ALAN D. ALBRIGHT
DATE FILED	Oct 14, 2020
LAST UPDATED	2021-07-29 00:04:58
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	35:271 Patent Infringement

Oneplus Technology (Shenzhen) Co., Ltd.

4. WSOU Investments LLCv. Oneplus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00957 (W.D. Tex. Oct 14, 2020), Court Docket

PARTIES	Oneplus Technology (Shenzhen) Co., Ltd., WSOU Investments LLC
JUDGE	ALAN D. ALBRIGHT
DATE FILED	Oct 14, 2020
LAST UPDATED	2021-07-07 00:03:31
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	

35:271 Patent Infringement

Oneplus Technology (Shenzhen) Co., Ltd.

5. WSOU Investments LLC v. Oneplus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00956 (W.D. Tex. Oct 14, 2020), Court Docket

PARTIES	Oneplus Technology (Shenzhen) Co., Ltd., WSOU Investments LLC
JUDGE	ALAN D. ALBRIGHT
DATE FILED	Oct 14, 2020
LAST UPDATED	2021-07-19 00:01:22
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	35:271 Patent Infringement

Oneplus Technology (Shenzhen) Co., Ltd.

6. WSOU Investments LLC v. Oneplus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00953 (W.D. Tex. Oct 14, 2020), Court Docket

PARTIES	Oneplus Technology (Shenzhen) Co., Ltd., WSOU Investments LLC
JUDGE	ALAN D. ALBRIGHT
DATE FILED	Oct 14, 2020
LAST UPDATED	2021-07-28 00:07:39
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	35:271 Patent Infringement

Oneplus Technology (Shenzhen) Co., Ltd.

7. WSOU Investments LLC v. Oneplus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00952 (W.D. Tex. Oct 14, 2020), Court Docket

PARTIES	Oneplus Technology (Shenzhen) Co., Ltd., WSOU Investments LLC
JUDGE	ALAN D. ALBRIGHT
DATE FILED	Oct 14, 2020
LAST UPDATED	2021-07-20 00:00:50
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	35:271 Patent Infringement

Oneplus Technology (Shenzhen) Co., Ltd.

8. Tactus Technologies LLC v. OnePlus Technology (Shenzhen) Co Ltd et al, Docket No. 3:20-cv-01601 (N.D. Tex. Jun 16, 2020), Court Docket

PARTIES	OnePlus Technology (Shenzhen) Co Ltd, Tactus Technologies LLC, OnePlus Mobile Communications (Guangdong) Co Ltd, OnePlus USA Corp
JUDGE	JAMES EDGAR KINKEADE
DATE FILED	Jun 16, 2020
LAST UPDATED	2020-10-26 00:05:36
FEDERAL NOS	Property Rights: Patent [830]
CAUSE OF ACTION	35:271 Patent Infringement

One Plus Technology (Shenzhen) Co Ltd

9. Fundamental Innovation Systems International, LLC v. OnePlus Technology (Shenzhen) Co. Ltd. et al, Docket No. 2:20-cv-00119 (E.D. Tex. Apr 23, 2020), Court Docket

PARTIES	OnePlus Mobile Communications (Guangdong)Co., Ltd., OnePlus Technology (Shenzhen) Co. Ltd., Fundamental Innovation Systems International, LLC
JUDGE	JAMES RODNEY GILSTRAP
DATE FILED	Apr 23, 2020
LAST UPDATED	2021-02-01 14:43:02

FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co. Ltd.

10. Altpass LLC v. OnePlus Technology (Shenzhen) Co., Ltd., Docket No. 2:20-cv-00105 (E.D. Tex. Apr 12, 2020), Court Docket

PARTIES T-Mobile USA, Inc., Altpass LLC, OnePlus Technology (Shenzhen) Co., Ltd.
JUDGE JAMES RODNEY GILSTRAP
DATE FILED Apr 12, 2020
LAST UPDATED 2021-02-12 00:02:48
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 28:1331 Fed. Question

One Plus Technology (Shenzhen) Co., Ltd.

11. Ironworks Patents, LLC v. OnePlus Technology (Shenzhen) Co., Ltd., Docket No. 6:20-cv-00252 (W.D. Tex. Mar 31, 2020), Court Docket

PARTIES OnePlus Technology (Shenzhen) Co., Ltd., Ironworks Patents, LLC
JUDGE ALAN D. ALBRIGHT
DATE FILED Mar 31, 2020
LAST UPDATED 2020-12-05 00:04:05
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

12. Cellular Communications Equipment LLC v. One Plus Technology Co. LTD, Docket No. 2:20-cv-00079 (E.D. Tex. Mar 17, 2020), Court Docket

PARTIES OnePlus Technology (Shenzhen) Co. Ltd., Cellular Communications Equipment LLC, OnePlus Mobile Communications (Guangdong) Co., Ltd., One Plus Technology Co. LTD
JUDGE JAMES RODNEY GILSTRAP
DATE FILED Mar 17, 2020
LAST UPDATED 2021-01-04 23:51:40
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co. Ltd.

13. American GNC Corporation v. OnePlus Technology (Shenzhen) Co., Ltd. et al, Docket No. 6:20-cv-00171 (W.D. Tex. Mar 04, 2020), Court Docket

PARTIES STMicroelectronics S.R.L., STMicroelectronics NV, American GNC Corporation, OnePlus Technology (Shenzhen) Co., Ltd.
JUDGE ALAN D. ALBRIGHT
DATE FILED Mar 04, 2020
LAST UPDATED 2021-07-06 00:02:17
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

14. Globalfoundries U.S. Inc. v. Taiwan Semiconductor Manufacturing Company Ltd. et al, Docket No. 6:19-cv-00499 (W.D. Tex. Aug 26, 2019), Court Docket

PARTIES Globalfoundries U.S. Inc., Guangdong Oujia Communication Technology Co., Ltd., Qualcomm Technologies, Inc., Taiwan Semiconductor Manufacturing Company Ltd., TSMC Technology, Inc., Guangdong Oujia Holding Co., Ltd., Qualcomm Inc., OnePlus Mobile Communication

(Guangdong) Co., Ltd., TSMC North America, Shenzhen Yunling Trade Co., Ltd.... and 2 more

JUDGE ALAN D. ALBRIGHT
DATE FILED Aug 26, 2019
LAST UPDATED 2019-12-02 23:50:26
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

15. Globalfoundries U.S. Inc. v. Taiwan Semiconductor Manufacturing Company Ltd. et al, Docket No. 6:19-cv-00493 (W.D. Tex. Aug 26, 2019), Court Docket

PARTIES Globalfoundries U.S. Inc., Guangdong Oujia Communication Technology Co., Ltd., Qualcomm Technologies, Inc., Taiwan Semiconductor Manufacturing Company Ltd., TSMC Technology, Inc., Guangdong Oujia Holding Co., Ltd., Qualcomm Inc., OnePlus Mobile Communication (Guangdong) Co., Ltd., TSMC North America, Shenzhen Yunling Trade Co., Ltd.... and 2 more
JUDGE ALAN D. ALBRIGHT
DATE FILED Aug 26, 2019
LAST UPDATED 2019-11-29 00:05:42
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

16. EVS Codec Technologies, LLC et al v. T-Mobile USA, Inc. et al, Docket No. 2:19-cv-00057 (E.D. Tex. Feb 15, 2019), Court Docket

PARTIES EVS Codec Technologies, LLC, T-Mobile USA, Inc., Saint Lawrence Communications LLC, OnePlus Technology (Shenzhen) Co., Ltd.
JUDGE JAMES RODNEY GILSTRAP
DATE FILED Feb 15, 2019
LAST UPDATED 2020-11-07 23:58:39
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzhen) Co., Ltd.

17. American Patents LLC v. OnePlus Technology (Shenzen) Co., Ltd., Docket No. 4:18-cv-00701 (E.D. Tex. Oct 04, 2018), Court Docket

PARTIES OnePlus Technology (Shenzen) Co., Ltd., David Folsom, American Patents LLC
JUDGE Amos L. Mazzant
DATE FILED Oct 04, 2018
LAST UPDATED 2019-09-17 23:55:25
FEDERAL NOS Property Rights: Patent [830]
CAUSE OF ACTION 35:271 Patent Infringement

One Plus Technology (Shenzen) Co., Ltd.

Per Page 50

PROOF OF SERVICE

In accordance with Federal Circuit Rule 21(a)(2), I hereby certify that on August 9, 2021, I have mailed the foregoing Petition and Appendix 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 Judge, and the below counsel of record, at the addresses below:

Julie S. Goldemberg
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
julie.goldemberg@morganlewis.com

William R. Peterson
1000 Louisiana Street, Suite 4000
Houston, TX 77002-5005
Telephone: (713) 890-5188
Facsimile: (713) 890-5001
william.peterson@morganlewis.com

Michael J. Lyons
Ahren C. Hsu-Hoffman
Jacob J.O. Minne
1400 Page Mill Road
Palo Alto, CA 94304
Telephone: (650) 843-4000
Facsimile: (650) 843-4001
michael.lyons@morganlewis.com
ahren.hsu-hoffman@morganlewis.com
jacob.minne@morganlewis.com

Hon. Alan D. Albright
United States Court for the Western District of Texas
800 Franklin Avenue, Room 301
Waco, Texas 76701
Telephone: (254) 750-1501

Dated: August 9, 2021

/s/ Jonathan K. Waldrop
Jonathan K. Waldrop
Counsel for Respondent WSOU Investments, LLC d/b/a Brazos Licensing and Development