UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ELEMENT CAPITAL COMMERCIAL COMPANY PTE. LTD, Plaintiff, v. BOE TECHNOLOGY GROUP CO., LTD; BEIJING BOE DISPLAY TECHNOLOGY CO., LTD; AND MOTOROLA (WUHAN) MOBILITY TECHNOLOGIES COMMUNICATION CO., LTD. Defendants.	Civil Action No. 2:22-cv-00118-JRG **JURY TRIAL DEMANDED**

PLAINTIFF'S MOTION FOR LEAVE TO EFFECT SERVICE BY ALTERNATE MEANS

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff Element Capital Commercial Company Pte. Ltd ("Plaintiff" or "Element"), respectfully seeks leave to serve the Summons and Complaint on Defendants BOE Technology Group Co., Ltd, Beijing BOE Display Technology Co., Ltd, and Motorola (Wuhan) Mobility Technologies Communication Co., Ltd (collectively "Defendants"), by alternate means including via their U.S. subsidiaries and affiliate companies.

I. LEGAL STANDARD

Rule 4(h) of the Federal Rules of Civil Procedure governs service of process on corporations, partnerships, or associations, and Rule 4(h)(2) provides that serving a domestic or foreign corporation, or a partnership or other unincorporated incorporation "at a place not within any judicial district of the United States" must be done "in any manner prescribed by Rule

4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Fed. R. Civ. P.4(h)(2). Rule 4(f)(3) provides that the Court may authorize service on a foreign individual "by other means not prohibited by international agreement." Fed. R. Civ. P. 4(f)(3). "Thus, 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." Order Granting Plaintiff's Motion for Leave to Effect Alternative Service on Defendant Taiwan Semiconductor Manufacturing Company Limited at 1, *STC.UNM v. Taiwan Semiconductor Mfg. Co. Ltd*., No. 6:19-cv-00261-ADA (W.D. Tex. May 29, 2019), DE 13 (citing *Rio Properties Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002)).

"[T]rial courts have authorized a wide variety of alternative methods of service including publication, ordinary mail, mail to the defendant's last known address, delivery to the defendant's attorney, telex, and most recently, email." *Rio Properties, Inc.*, 284 F.3d at 1016, *citing SEC v. Tome*, 833 F.2d 1086, 1094 (2d Cir.1987) (condoning service of process by publication in the Int'l Herald Tribune); *Smith v. Islamic Emirate*, Nos. 01 Civ. 10132, 01 Civ. 10144, 2001 WL 1658211, at *2-*3, 2001 U.S. Dist. LEXIS 21712, at *5-*13 (S.D.N.Y. Dec. 26, 2001) (authorizing service of process on terrorism impresario Osama bin Laden and al-Qaeda by publication); *Levin v. Ruby Trading Corp.*, 248 F. Supp. 537, 541-44 (S.D.N.Y.1965) (employing service by ordinary mail); *Int'l Controls Corp. v. Vesco*, 593 F.2d 166, 176-78 (2d Cir.1979) (approving service by mail to last known address); *Forum Fin. Group*, 199 F.R.D. at 23-24 (authorizing service to defendant's attorney); *New Eng. Merchs. Nat'l Bank v. Iran Power Generation & Transmission Co.*, 495 F.Supp. 73, 80 (S.D.N.Y. 1980) (allowing service by telex for Iranian defendants); *Broadfoot v. Diaz* (*In re Int'l Telemedia Assoc.*), 245 B.R. 713, 719-20 (Bankr.N.D.Ga.2000) (authorizing service via email). Additionally, district courts have routinely

allowed alternative service upon foreign corporations to be accomplished by serving a United States subsidiary or affiliate of a foreign entity. *See, e.g., Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1239 (Fed. Cir. 2010) (collecting cases allowing service of foreign entities through domestic subsidiaries and counsel); *Lisson v. Stream SICAV v. Wang*, 989 F. Supp. 2d 264, 280 (S.D.N.Y. 2013) (service of Chinese corporate executive allowed via corporation's registered agent in US); *In re GLG Life Tech Corp. Sec. Litig*., 287 F.R.D. 262, 266 (S.D.N.Y. 2012) (authorizing service on CEO living in China via service to his company's registered domestic agent and counsel); *In re LDK Solar Secs. Litig.*, No. C07-05182 WHA, 2008 WL 2415186, at *4 (N.D. Cal. June 12, 2008) (service on six Chinese defendants through California subsidiary granted).

In the end, the Court may authorize any alternative method of service that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

II. ARGUMENT

The Defendants in this case are Chinese companies headquartered at the following locations:

BOE Technology Group Co., Ltd
181 No.12 Xihuanzhong Rd, BDA, Beijing, 100176, China

Beijing BOE Display Technology Co., Ltd
118 Jinghai 1 Road Economic Tech Development Zone Beijing, 100176, China

Motorola (Wuhan) Mobility Technologies Communication Co., Ltd.
No.19, Gaoxin 4th Road, Wuhan East Lake High-tech Zone, Wuhan, Wuhan Hubei 430000, China.

Dkt. No. 1, ¶¶ 2-4. Defendants act in concert to make, use, test, sell, offer for sale, market, and/or import the accused products into the United States, the State of Texas, and this judicial district. E.g., Dkt. No. 1, ¶¶ 24-52, 56.

On April 18, 2022, Plaintiff filed a Complaint in this Court alleging claims for patent infringement against Defendants. Dkt. No. 1. Since filing the Complaint, Plaintiff has initiated the Hague process for service,[1] a process that is now estimated to take between 1-2 years for defendants in China. Rabena Decl. ¶¶ 4-6. Plaintiff has also sent via Federal Express, a copy of the Complaint with exhibits and a waiver form, in both English and Chinese, to each Defendant, requesting the Defendants to waive formal service (Rabena Decl. ¶ 7); to date no Defendant has responded to these requests and one Defendant has refused to accept the Federal Express package. Rabena Decl. ¶¶ 8-10. Accordingly, Plaintiff respectfully requests leave to effect service upon Defendants through alternative means including via Defendants' U.S. subsidiaries or affiliates, and/or other alternate means as the Court deems appropriate. In particular, Plaintiff seeks leave to serve Defendants' subsidiaries or affiliates, as follows:

For the BOE entity Defendants (Defendants BOE Technology Group Co. Ltd and Beijing BOE Display Technology Co., Ltd), service at BOE Technology of America 2350 Mission college Boulevard, No. 600, Santa Clara, CA 95054; and

[1] A plaintiff does not have to attempt to effect service under Rule 4(f)(1)or Rule 4(f)(2) before requesting authorization of an alternative method of service under Rule 4(f)(3). *Id*. at 2 (citing *Rio Properties, Inc*., 284 F.3d at 1015 ("[E]xamining the language and structure of Rule 4(f) and the accompanying advisory committee notes, we are left with the inevitable conclusion that service of process under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief.' It is merely one means among several which enables service of process on an international defendant.").

For Motorola (Wuhan) Mobility Technologies Communication Co., Ltd., service at Motorola Mobility LLC, c/o Registered Agent, Corporate Trust Center, 1209 Orange Street, Wilmington, DE 19801.

Dated: July 22, 2022

Respectfully submitted,

/s/ J. Thad Heartfield

J Thad Heartfield
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Facsimile: (202) 293-7860

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that defendants have not answered and there is no counsel of record for Defendants at this time. All other counsel of record are being served with a copy of the foregoing document on July 22, 2022, via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ J. Thad Heartfield
J. Thad Heartfield

UNITED STATES DISTRICT COURT
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DECLARATION OF JOHN F. RABENA IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO EFFECT SERVICE BY ALTERNATE MEANS

1. My name is John F. Rabena. I submit this Declaration in support of Plaintiff's Motion for Leave to Effect Service by Alternative Means.

2. I am over 18 years of age, and am fully competent to make this Declaration. I have personal knowledge of the facts stated, and they are all true and correct.

3. I am attorney of record for Plaintiff Element Capital Commercial Company Pte. Ltd. ("Plaintiff" or "Element") in the above case.

4. Plaintiff initiated the Hague service process by engaging an international process server on April 26, 2022, approximately one week after filing the Complaint in the above action.

5. On June 16, 2022 the Chinese Ministry of Finance accepted the Hague service documents.

6. The international process server Plaintiff engaged estimates from his recent experience that the complete Hague service process in China can now take approximately 1-2 years.

7. On June 21, 2022, Plaintiff sent a copy, in both English and Chinese, of the Complaint, exhibits, and service Waiver form ("Complaint Package") to each of the Defendants in this case via Federal Express. These documents were accompanied by a cover letter (in both English and Chinese), requesting that the Defendants waive formal service and/or identify their U.S. counsel who will represent them in this case.

8. According to FedEx tracking records, Defendant Motorola (Wuhan) Mobility Technologies Communication Co. Ltd. received the Complaint Package on July 8, 2022, but has not responded in any way.

9. The Complaint Package was sent to two different addresses for Defendant BOE Technology Group Co., Ltd. According to FedEx tracking records, Defendant BOE Technology Group Ltd. refused both of the Complaint Packages, one on July 5, 2022 and the other on July 6, 2022. Attached as **Exhibits 1 and 2** are true and correct copies of

two FedEx tracking records for the Complaint Package that was sent to the two addresses for Defendant BOE Technology Group Co., Ltd.

10. The FedEx tracking record for the Complaint Package sent to Defendant Beijing BOE Display Technology Co., Ltd indicates that it has not been delivered but does not specify a reason.

I hereby solemnly affirm under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2022.

/s/ John F. Rabena
John F. Rabena

Exhibit 1

(https://www.fedex.com/en-us/home.html)

FedEx® Tracking

SCHEDULED DELIVERY DATE

Pending

No signature required

ON TIME

DELIVERY STATUS

In Transit

Get Status Updates

TRACKING ID

558153554250

FROM
WASHINGTON, DC US

Label Created
6/21/2022 16:01

PACKAGE RECEIVED BY FEDEX
WASHINGTON, DC
6/21/2022 19:51

IN TRANSIT
At FedEx destination facility
BEIJING CN
7/6/2022 19:56

OUT FOR DELIVERY
BEIJING CN
7/5/2022 09:49

TO
BEIJING, PR CHINA, CN

SCHEDULED DELIVERY DATE
Pending

View travel history

Alerts (1)

No scheduled delivery date available at this time.

(https://www.fedex.com/en-us/home.html)

Shipment facts

Shipment overview

TRACKING NUMBER

558153554250

SHIPPER REFERENCE

L11009/JFR/TB

SHIP DATE

6/21/22

STANDARD TRANSIT

6/27/22 before 6:00 pm

SCHEDULED DELIVERY

Pending

Services

SERVICE

FedEx International Priority

TERMS

Shipper

SPECIAL HANDLING SECTION

Deliver Weekday, Residential Delivery

Package details

WEIGHT

1.3 lbs / 0.59 kgs

TOTAL PIECES

1

TOTAL SHIPMENT WEIGHT

1.3 lbs / 0.59 kgs

PACKAGING

FedEx Pak

(https://www.fedex.com/en-us/home.html)

Travel history

SORT BY DATE/TIME
Ascending

TIME ZONE
Local Scan Time

Tuesday, 6/21/2022

- 4:01 PM
  Shipment information sent to FedEx
- 7:51 PM
  Picked up
  WASHINGTON, DC
- 8:54 PM
  Left FedEx origin facility
  WASHINGTON, DC
- 11:39 PM
  Arrived at FedEx hub
  MEMPHIS, TN

Wednesday, 6/22/2022

- 2:31 AM
  In transit
  MEMPHIS, TN
- 3:52 AM
  Departed FedEx hub
  MEMPHIS, TN
- 7:15 AM
  Arrived at FedEx hub
  ANCHORAGE, AK
- 7:38 AM
  In transit
  ANCHORAGE, AK
- 1:31 PM
  Departed FedEx hub
  ANCHORAGE, AK

(https://www.fedex.com/en-us/home.html)

In transit
SENNAN-SHI JP

- 2:01 AM
  At destination sort facility
  BEIJING CN
- 8:05 PM
  In transit
  Package available for clearance
  BEIJING CN
- 8:05 PM
  International shipment release - Import
  BEIJING CN

Saturday, 6/25/2022

- 2:20 AM
  Local Delay
  Delay beyond our control
  BEIJING CN

Sunday, 6/26/2022

- 1:56 AM
  At local FedEx facility
  BEIJING CN

Tuesday, 6/28/2022

- 1:50 AM
  At local FedEx facility
  BEIJING CN

Wednesday, 6/29/2022

- 3:08 AM
  At local FedEx facility
  BEIJING CN

Thursday, 6/30/2022

- 1:58 AM
  At local FedEx facility
  BEIJING CN

At local FedEx facility
BEIJING CN

Saturday, 7/2/2022

- 1:20 AM
  At local FedEx facility
  BEIJING CN

Sunday, 7/3/2022

- 1:34 AM
  At local FedEx facility
  BEIJING CN

Monday, 7/4/2022

- 4:23 PM
  At local FedEx facility
  BEIJING CN

Tuesday, 7/5/2022

- 9:34 AM
  At local FedEx facility
  BEIJING CN
- 9:49 AM
  On FedEx vehicle for delivery
  BEIJING CN
- 2:14 PM
  Delay
  Shipment Refused by recipient.
  BEIJING CN
- 7:36 PM
  At local FedEx facility
  BEIJING CN

Wednesday, 7/6/2022

- 7:56 PM
  At local FedEx facility
  BEIJING CN

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Exhibit 2

(https://www.fedex.com/en-us/home.html)

FedEx® Tracking

SCHEDULED DELIVERY DATE

Pending

No signature required

ON TIME

DELIVERY STATUS

In Transit

Get Status Updates

TRACKING ID

558153554238

FROM
WASHINGTON, DC US

Label Created
6/21/2022 15:02

PACKAGE RECEIVED BY FEDEX
WASHINGTON, DC
6/21/2022 19:51

IN TRANSIT
At FedEx destination facility
BEIJING CN
7/18/2022 21:55

OUT FOR DELIVERY
BEIJING CN
7/6/2022 09:25

TO
BEIJING, PR CHINA, CN

SCHEDULED DELIVERY DATE
Pending

View travel history

Alerts (1)

No scheduled delivery date available at this time.

(https://www.fedex.com/en-us/home.html)

Shipment facts

Shipment overview

TRACKING NUMBER

558153554238

SHIPPER REFERENCE

L11009/JFR/TB

SHIP DATE

6/21/22

STANDARD TRANSIT

6/27/22 before 6:00 pm

SCHEDULED DELIVERY

Pending

Services

SERVICE

FedEx International Priority

TERMS

Shipper

SPECIAL HANDLING SECTION

Deliver Weekday

Package details

WEIGHT

1.3 lbs / 0.59 kgs

TOTAL PIECES

1

TOTAL SHIPMENT WEIGHT

1.3 lbs / 0.59 kgs

PACKAGING

FedEx Pak

(https://www.fedex.com/en-us/home.html)

Travel history

SORT BY DATE/TIME
Ascending

TIME ZONE
Local Scan Time

Tuesday, 6/21/2022

- 3:02 PM
  Shipment information sent to FedEx
- 7:51 PM
  Picked up
  WASHINGTON, DC
- 8:54 PM
  Left FedEx origin facility
  WASHINGTON, DC
- 11:39 PM
  Arrived at FedEx hub
  MEMPHIS, TN

Wednesday, 6/22/2022

- 2:39 AM
  In transit
  MEMPHIS, TN
- 4:50 PM
  Departed FedEx hub
  MEMPHIS, TN
- 8:11 PM
  Arrived at FedEx hub
  ANCHORAGE, AK

Thursday, 6/23/2022

- 7:09 AM
  In transit
  ANCHORAGE, AK
- 1:09 PM
  Departed FedEx hub
  ANCHORAGE, AK

(https://www.fedex.com/en-us/home.html)

- **At destination sort facility**
  BEIJING CN

- 11:25 PM
  In transit
  Package available for clearance
  BEIJING CN

- 11:25 PM
  International shipment release - Import
  BEIJING CN

Sunday, 6/26/2022

- 1:55 AM
  Local Delay
  Delay beyond our control
  BEIJING CN

Tuesday, 6/28/2022

- 1:50 AM
  At local FedEx facility
  BEIJING CN

Wednesday, 6/29/2022

- 3:08 AM
  At local FedEx facility
  BEIJING CN

Thursday, 6/30/2022

- 1:57 AM
  At local FedEx facility
  BEIJING CN

Friday, 7/1/2022

- 1:22 AM
  At local FedEx facility
  BEIJING CN

Saturday, 7/2/2022

- 1:20 AM
  At local FedEx facility
  BEIJING CN

(https://www.fedex.com/en-us/home.html)

- **At local FedEx facility**
  BEIJING CN

Monday, 7/4/2022

- 4:23 PM
  At local FedEx facility
  BEIJING CN

Tuesday, 7/5/2022

- 2:40 AM
  At local FedEx facility
  BEIJING CN

Wednesday, 7/6/2022

- 9:04 AM
  At local FedEx facility
  BEIJING CN
- 9:25 AM
  On FedEx vehicle for delivery
  BEIJING CN
- 12:38 PM
  Delay
  Shipment Refused by recipient.
  BEIJING CN
- 7:59 PM
  At local FedEx facility
  BEIJING CN

Thursday, 7/7/2022

- 6:43 PM
  At local FedEx facility
  BEIJING CN

Friday, 7/8/2022

- 6:16 PM
  At local FedEx facility
  BEIJING CN

(https://www.fedex.com/en-us/home.html)

At local FedEx facility
BEIJING CN

Tuesday, 7/12/2022

- 8:28 PM
  At local FedEx facility
  BEIJING CN

Wednesday, 7/13/2022

- 8:59 PM
  At local FedEx facility
  BEIJING CN

Thursday, 7/14/2022

- 8:57 PM
  At local FedEx facility
  BEIJING CN

Friday, 7/15/2022

- 8:21 PM
  At local FedEx facility
  BEIJING CN

Saturday, 7/16/2022

- 5:14 PM
  At local FedEx facility
  BEIJING CN

Monday, 7/18/2022

- 9:55 PM
  At local FedEx facility
  BEIJING CN

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ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO EFFECT SERVICE BY ALTERNATE MEANS

Before the Court is Plaintiff's Motion for Leave to Effect Service by Alternate Means on Defendants. 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 Defendants via their United States affiliate companies as follows:

Defendants BOE Technology Group Co. Ltd and Beijing BOE Display Technology Co., Ltd may be served at BOE Technology of America 2350 Mission college Boulevard, No. 600, Santa Clara, CA 95054; and

Defendant Motorola (Wuhan) Mobility Technologies Communication Co., Ltd., may be served at Motorola Mobility LLC, c/o Registered Agent, Corporate Trust Center, 1209 Orange Street, Wilmington, DE 19801.