

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

American GNC Corporation,
Plaintiff,

v.

OnePlus Technology (Shenzhen) Co., Ltd;
STMicroelectronics NV; and
STMicroelectronics, S.R.L.,
Defendants.

Civil Action No. 6:20-cv-171

Patent Case

Jury Trial Demanded

**STMICROELECTRONICS N.V.'S REPLY IN SUPPORT OF MOTION TO DISMISS
UNDER RULES 12(B)(2), 12(B)(5), AND 12(B)(6)**

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AGNC sued a Dutch entity with no jurisdictional ties to the United States in this Federal Court in Texas. STNV submitted evidence conclusively demonstrating that no facts support jurisdiction in this forum. In response, AGNC excerpts piecemeal and incomplete phrases from public ST documents, alleging that they demonstrate jurisdiction. But none of these documents contradicts Mr. Mayo's declaration.

AGNC bears the burden of proving jurisdiction is proper. It did not carry its burden. Nor did it present fact issues that warrant jurisdictional discovery. Accordingly, the relief requested in AGNC's response should be denied.

A. Three failed attempts at service does not equal one successful attempt.

AGNC admits that its only attempt to serve STNV before STNV moved to dismiss was "mistaken[]" service on non-party STSA. *See* AGNC Resp. at 6. But it cites no authority for its proposition that a "clerical error cannot render actual service ineffective." *See id.* On the contrary, a material error—such as serving the wrong entity—"is not a technical error that can be overlooked." *See Fallman v. Hotel Insider, Ltd.*, No. 14cv10140 (DLC), 2016 WL 5875031, at *4 (S.D.N.Y. Oct. 7, 2016) (finding that a "one-letter typo" that occurred after plaintiff's request for service through the Hague rendered service ineffective). AGNC ignores that "service of process on a wholly-owned subsidiary does not constitute service of process on a parent corporation where separate corporate identities are maintained." *See* Mot. at 4 (citing *United States ex rel. Vallejo v. Investronica, Inc.*, 2 F. Supp. 2d 330, 335 (W.D.N.Y. 1998)). AGNC cannot overcome this well-settled law. *See id.* Its attempt to serve STNV through a subsidiary using the Hague Convention was ineffective.

Acknowledging that this attempt was ineffective, AGNC made two additional attempts to serve STNV *after* STNV moved to dismiss. First, it attempted to serve STNV's agent registered

in New York “solely for service of process related to its registration under the U.S. Securities Exchange Act of 1934.”¹ Second, it attempted to serve STNV in the Netherlands through UPS. These attempts, too, were ineffective.

AGNC’s attempted service on STNV’s agent in New York for SEC-related actions was insufficient because that agent is not authorized to accept service for patent-infringement lawsuits.² *See, e.g., Stormhale, Inc. v. Baidu.com, Inc.*, 675 F. Supp. 2d 373, 375 (S.D.N.Y. 2009) (“This limited designation [as an agent to receive service only for securities-related matters] prevents Stormhale from properly serving Baidu through CT Corp. The Court finds that CT Corp. is not Baidu’s agent for receiving general service of process under Rule 4(h)(1)(B) and that Stormhale’s service of Baidu through CT Corp. was therefore improper.”). And AGNC’s attempted service through UPS in the Netherlands fares no better. Although the Netherlands has not objected to service by mail under the Hague Convention, AGNC has not even argued that “service by mail is authorized under otherwise-applicable law,” the second prong of the *Water Splash* test. *See Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017). Having a UPS package dropped off at STNV’s location in the Netherlands certainly does not comply with the Federal Rules. *Compare* Fed. R. Civ. P. 4(f)(2)(C)(ii) (permitting use of “any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt”), *with* AGNC Resp. at Ex. 11 (reflecting UPS package left at office). And it does not comply with Dutch law either.³

¹ *See* Mot., **Ex. A**: A. Mayo Dec. ¶ 7; *see also* AGNC Resp., Ex. 1 at 8 (referencing the company’s “agent for service of process in the United States *related to our registration under the U.S. Securities Exchange Act of 1934 . . .*” (emphasis added)).

² And indeed, that agent properly rejected AGNC’s service attempt. *See* ECF Nos. 22, 22-1.

³ *See* **Ex. C**: Response of the Netherlands to Questionnaire of July 2008 relating to the Hague Convention at 18 (“In civil procedures, the servicing of documents is done by a bailiff.”). This

AGNC's three ineffective attempts at service warrant dismissal.

B. AGNC has not met its burden to prove the existence of personal jurisdiction.

AGNC pleaded incorrect facts in support of its theories that jurisdiction over STNV was proper in Texas. *See* Compl. ¶¶ 12–14. STNV disproved those facts through a sworn declaration demonstrating that AGNC had improperly attempted to conflate the ST entities. In response, AGNC reversed course, apparently waiving its allegations that STNV has minimum contacts in Texas, and instead asserting that its contacts are with the United States as a whole, relying on its conclusory, one-sentence Rule 4(k)(2) allegation as the sole basis for jurisdiction.⁴

There are three requirements for demonstrating Rule 4(k)(2) jurisdiction over claims arising under federal law: (i) service of a summons; (ii) that the defendant is not subject to jurisdiction in any of the state's courts of general jurisdiction; and (iii) that exercising jurisdiction is consistent with the U.S. Constitution and laws (in other words, that jurisdiction comports with due process). In support of the third prong,⁵ AGNC introduces a host of new "facts" that are again false, and that again rest on its refusal to acknowledge the ST entities' corporate separateness.⁶ None of them satisfies its burden to demonstrate jurisdiction.

Court's opinion in *Densys Ltd. v. 3Shape Trios A/S*, No. 6:19-cv-00680, ECF No. 29 (W.D. Tex. June 18, 2020), turned on an analysis of Danish law, not on whether Denmark had not objected to service by mail, as AGNC implies. *See* AGNC Resp. at 6 n.2.

⁴ *See* Compl. ¶ 15 ("Personal jurisdiction over STMicro is also proper under Fed. R. Civ. P. 4(k)(2).").

⁵ As explained, AGNC has not served a summons, so this requirement is unmet. STNV does not contend that it is subject to jurisdiction in any state's courts of general jurisdiction.

⁶ The specific jurisdiction analysis asks whether (i) STNV purposefully directed its activities at the U.S.; (ii) AGNC's claim arises out of or relates to those activities; and (iii) the assertion of personal jurisdiction is reasonable and fair. *See* Mot. at 10 (citing *Nuance Commc'ns, Inc. v. Abhy Software House*, 626 F.3d 1222, 1231 (Fed. Cir. 2010)).

1. None of AGNC’s new “facts” establishes that STNV purposefully directed its activities at residents of this forum.

AGNC misrepresents ST documents and introduces legally inapt information in support of its “purposeful direction” theory. For example, AGNC relies on STNV’s Annual Report for the proposition that STNV has “over 700 employees in the U.S.” *See* AGNC Resp. at 11; *see also id.* at 1. In fact, it has none. In a page AGNC omits, the Annual Report clearly explains: “While STMicroelectronics N.V. is our parent company, we conduct our global business through STMicroelectronics International N.V. and also conduct our operations through service activities from our subsidiaries.”⁷ AGNC ignores that the Annual Report consolidates data for all ST entities so that AGNC can falsely attribute all the report’s contents to STNV.⁸

AGNC next attempts to assert jurisdiction based on STNV’s listing of stock on the New York Stock Exchange. *See* AGNC Resp. at 11. AGNC cites no authority for this proposition, because it is not a sufficient basis for jurisdiction. *See Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (“Total has no contacts of its own with the United States beyond listing its stock on various exchanges and promoting sales of stock in the United States. Plaintiffs have cited no authority for the proposition that such contacts suffice to establish personal jurisdiction, and the Court is not persuaded that Congress intended for the courts to assert jurisdiction under Rule 4(k)(2) whenever a corporation lists its stock on a United States exchange.”), *abrogated on other grounds, Williams v. Yamaha Motor Co.*, 851 F.3d 1015 (9th Cir. 2017). That STNV owns U.S.

⁷ *See Ex. D: STMicroelectronics N.V. Annual Report 2019 at 9 (emphasis added); see also Mot., Ex. A: A. Mayo Dec. ¶ 13.*

⁸ AGNC similarly attributes an ST Company Presentation’s contents to STNV, despite admitting that the presentation “*does not make any distinction among STMicro entities.*” *See* AGNC Resp. at 12 (emphasis added). The Company Presentation no more “confirms STNV’s extensive presence in the U.S.” than the Annual Report does. *See id.*

patents and trademarks likewise does not confer jurisdiction. *See, e.g., Geanacopulos v. Narconon Fresh Start*, 39 F. Supp. 3d 1127, 1132 (D. Nev. 2014) (“Ownership or licensing alone of the . . . trademark is insufficient to confer personal jurisdiction”); *Fusion Entm’t v. Josh Agle, Inc.*, No. 07-cv-01651-WYD-KLM, 2008WL 140489, at *5 (D. Colo. Jan. 11, 2008) (“[O]wning intellectual property rights . . . [is] not sufficient to establish a basis for personal jurisdiction.”).^{9,10} And neither will STNV’s participation in previous litigation confer jurisdiction here. *See* AGNC Resp. at 11. STNV’s activities between *ten and nineteen years ago*—the timeframe of the cases AGNC references, *see* AGNC Resp., Ex. 5—and the unique facts and causes of action in those cases cannot support the exercise of jurisdiction in this case.¹¹ “The court is to consider the existence of personal jurisdiction on the basis of the facts as they existed at the time the complaint was filed.” *Diebold Election Sys., Inc. v. AI Tech, Inc.*, 562 F. Supp. 2d 866 (E.D. Tex. 2008) (citing *Asarco, Inc. v. Glenara, Ltd.*, 912 F.2d 784, 787 n.1 (5th Cir.1990)).

AGNC has also failed to create a fact issue regarding STNV’s averment that it “does not publish, own, or operate any website.”¹² AGNC deceptively attempts to contradict this

⁹ *Touchcom* does not stand for the proposition that ownership of a U.S. intellectual property interest confers jurisdiction. *See* AGNC Resp. at 11 (citing *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403 (Fed. Cir. 2009)). The *Touchcom* defendants were a law firm and an attorney, who, themselves, “entered into a contractual agreement to obtain U.S. patent protection,” became “registered patent agents,” and “submit[ed] documents to the USPTO.” *Touchcom*, 574 F.3d at 1416. Their actual business activity, therefore, was in prosecuting the intellectual property interest, not merely owning it.

¹⁰ Further, AGNC’s claim does not “arise out of or relate to” any of *STNV*’s patents.

¹¹ In fact, in one case AGNC cites, STNV “denie[d] that the Court ha[d] personal jurisdiction over ST NV in this action because . . . Plaintiff did not serve ST NV in accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents as required by Federal Rule of Civil Procedure 4(f)(1).” *See* AGNC Resp., Ex. 6 ¶ 15.

¹² *See* Mot., Ex. A: A. Mayo Dec. ¶ 8.

statement by telling the Court that the ST website represents “that it is ‘owned and controlled by STMicroelectronics International N.V. and STMicroelectronics N.V.’” AGNC Resp. at 2 (quoting Ex. 2). But the complete sentence in AGNC’s own exhibit says: “ST is committed to protect the privacy of personally identifiable information collected from the web sites (including mobile web sites and apps) owned and controlled by STMicroelectronics International N.V. and *STMicroelectronics N.V. affiliated companies* (the ‘ST Sites’).” AGNC Resp., Ex 2 (emphasis added). Indeed, the very next sentence states, “References to ‘we’, ‘our’ or ‘us’ in this Privacy Policy mean *STMicroelectronics International N.V.*”¹³

STNV demonstrated that it does not purposefully direct any activities at this forum, or the United States. AGNC’s misrepresentations do not satisfy its burden to show otherwise.¹⁴

2. None of AGNC’s new “facts” demonstrates that STNV placed infringing products into the stream of commerce.

The only pieces of “evidence” AGNC offers in support of its contention that STNV sells products in the U.S. are (i) the original allegations from its Complaint, and (ii) products offered

¹³ *Id.* (emphasis added).

¹⁴ Under the heading, “AGNC’s Claims Arise Out of, and Relate to, STMicroelectronics N.V.’s U.S. Activities,” AGNC makes a purposeful direction argument, claiming that *Nuance* stands for the proposition that “purposeful direction to the forum will exist when a foreign defendant *is alleged* to have infringed a patent directly by selling accused products in the forum or indirectly by placing the accused product into the stream of commerce.” AGNC Resp. at 16 (emphasis AGNC’s) (citing 626 F.3d at 1234). *Nuance* makes no such statement—indeed, Rule 12(b)(2) would have no purpose if allegations were all that were required to prove jurisdiction.

In *Nuance*, the defendant “purposefully imported the accused products into California, made those products available for sale through an established distribution chain, and the cause of action for patent infringement [wa]s alleged to arise out of these activities.” *Nuance*, 626 F.3d at 1234. Here, STNV has done none of those things. Thus, it neither purposefully directed its activities to the United States, nor do AGNC’s claims arise out of and relate to any activities of STNV.

for sale on the ST website. *See* AGNC Resp. at 12–13. But STNV already disproved the allegations in the Complaint, introducing evidence that it does not “manufacture, market, distribute, offer to sell, sell, import, export, transport, or service products or services in or to Texas or anywhere else in the United States.”¹⁵ And as shown, the website is *not* owned or controlled by STNV—not only did STNV demonstrate that through testimony, but AGNC’s own exhibit disproves this statement. *See* discussion above at 5–6. Indeed, the first line of the Sales Terms and Conditions available on that same website states: “‘Seller’ shall mean the STMicroelectronics legal entity providing semiconductor Products”¹⁶ And the cited technical documents also confirm that STNV is not the seller—the excerpted language clearly states, “[STNV] *and its subsidiaries* (‘ST’) reserve the right . . .” and that “ST products are sold pursuant to ST’s terms and conditions of sale.” *See* AGNC Resp. at 13 (emphasis added). AGNC cannot demonstrate jurisdiction over STNV under a stream-of-commerce theory.

3. AGNC identifies no facts that would support an agency or alter ego theory.

As explained in STNV’s motion, both agency and alter ego theories require AGNC to show that STNV exercised control over the activities of an agent or the business operations of another company. *See* Mot. at 12 (citing *Celgard, LLC v. SK Innovation Co.*, 792 F.3d 1373, 1379 (Fed. Cir. 2015); *De Bree v. Pac. Drilling, Inc.*, No. H-18-4711, 2019 WL 6186526, at *4 n.3 (S.D. Tex. Oct. 29, 2019)); *see also Celgard*, 792 F.3d at 1379 (explaining that an alter ego theory requires such facts as “common[] owne[rship][,] not transacting at arms-length, and . . . profits flowing back to the sister company”).

¹⁵ *See* Mot., Ex. A: A. Mayo Dec. ¶ 5.

¹⁶ *See* Ex. E: Terms and Conditions of Sale.

AGNC attempts to shift the burden to STNV to show that it maintains corporate separateness. *See* AGNC Resp. at 14. But it is AGNC’s burden to show that STNV does not. *See Celgard*, 792 F.3d at 1378–79. None of AGNC’s assertions is relevant to the alter-ego analysis. For example, AGNC claims that STNV “treats all of [its subsidiaries] as one in its public representations, [so] they should be treated as [STNV’s] agents and alter egos.” AGNC Resp. at 13; *see also id.* at 14 (referencing product labels); *id.* at 15 (referencing ST logo). But how the ST Group represents itself or labels its products has no bearing on whether STNV “exercises control over” its subsidiaries.¹⁷ AGNC cites no contrary authority.¹⁸

Likewise, third-party discovery AGNC served on STMicroelectronics, Inc. in another case has nothing to do with whether this Court can exercise jurisdiction over STNV on an agency or alter ego theory. Once again, AGNC’s assertion that “STMicroelectronics Inc. told the Court in the Northern District of Texas that its parent entity [STNV] should be the one involved,” *see* AGNC Resp. at 15, is a mischaracterization of what is reflected in its attached documents. In fact, in the excerpted motion to compel, STMicroelectronics, Inc. explained that it was not responsible for the products there, and that AGNC conflated separate corporate entities:

ST-Inc. does not manufacture any products, and it designs only a handful of products, *none of which have been identified by AGNC as relevant to the litigation*. STNV, ST-Inc. and all of STNV’s subsidiaries and related companies are legally separate entities which diligently respect the corporate formalities of the numerous jurisdictions in which they are formed and/or operate. Similarly, each ST entity has its own documents, information, places of business and employees.

¹⁷ And in fact, SEC regulations require use of the nomenclature “ST Group.” *See* Ex. F: SEC Form 20-F, <https://www.sec.gov/files/form20-f.pdf>, at 6 (definition of “group”).

¹⁸ AGNC also twice states that it is “remarkable” that Mr. Mayo is an employee of STMicroelectronics, Inc. *See* AGNC Resp. at 14, 16. AGNC neither explains why this is remarkable, nor offers any legal authority supporting how the identity of Mr. Mayo’s employer affects the jurisdictional analysis.

AGNC served a total of four different subpoenas relevant to its Motion, two requesting documents and two requesting deposition testimony. *The initial two document and deposition subpoenas were served on “STMicroelectronics,” which, to ST-Inc.’s knowledge, exists nowhere in the world;* nevertheless, ST-Inc. in good faith provided a response on behalf of itself.

...

As stated previously, the “STMicroelectronics” group of companies comprise over 60 different entities located in more than 25 countries around the world. *The various tasks of chip, hardware, and software design, manufacturing, marketing and sales is distributed throughout these entities and the world. As noted above, ST-Inc. did not design or manufacture the specific devices identified in AGNC’s subpoenas nor has it sold any such devices to the named defendants, LG or ZTE within the time frame of the subpoenas.* The inquiry should stop there.¹⁹

That STMicroelectronics, Inc. did not design the accused products in an unrelated case does not mean that STNV made the accused products here. AGNC has offered no reason to disregard the corporate form.

AGNC’s response brief does not save its failure to prove the existence of personal jurisdiction in its Complaint.

4. Exercising jurisdiction over STNV would not be reasonable or fair.

STNV demonstrated the injustice of exercising jurisdiction in its motion. *See* Mot. at 13–14. AGNC has not shown otherwise.

C. AGNC has raised no issues of fact that warrant jurisdictional discovery.

“Discovery on matters of personal jurisdiction . . . need not be permitted unless the motion to dismiss raises issues of fact.” *Wyatt v. Kaplan*, 686 F.2d 276, 284 (5th Cir. 1982) (affirming denial of jurisdictional discovery). As shown, there are no fact issues. STNV demonstrated that jurisdiction does not lie, and nothing in AGNC’s response creates a fact question.

¹⁹ *See* AGNC Resp. Ex. 18 at 2, 8 (emphases added).

Having failed to meet its burden to establish personal jurisdiction over STNV, AGNC contends that the Court should allow it to take unbounded jurisdictional discovery regarding STNV and “its relationship with its subsidiaries” including any “unknown” subsidiaries. *See* AGNC Br. at 19. AGNC seeks a license to engage in a fishing expedition to determine against which entity it might have a cause of action. But jurisdictional discovery should not be permitted as an end-run around AGNC’s *pre-filing* obligation to ensure that “the factual contentions [in its complaint] ha[d] evidentiary support.” *See* Fed. R. Civ. P. 11. “Courts need more than a request for an unfettered fishing trip to authorize discovery. [AGNC] should have offered the Court a good faith reason that the discovery requested might reveal some relevant information.” *De Bree v. Pac. Drilling, Inc.*, No. 4:18-CV-4711, 2019 WL 6175209, at *1 (S.D. Tex. Nov. 20, 2019) (affirming denial of request for discovery aimed at developing alter ego facts because “Plaintiff could not articulate any factual inquiries that would warrant the proposed discovery request”).

The assertions AGNC made in its response are inaccurate, and do not contradict the statements in the Mayo Declaration. STNV therefore agrees with AGNC that jurisdictional discovery “would be an unnecessary expense and delay for both parties.” *See* AGNC Resp. at 19.

D. AGNC has admitted that it did not have a basis to allege willfulness or inducement.

After pleading willfulness and inducement, AGNC now admits that “the facts known to AGNC are [not] legally sufficient for pre-suit notice for willfulness or inducement as to STNV.” AGNC Resp. at 19. STNV therefore asks the Court to dismiss these allegations with prejudice.

CONCLUSION

AGNC has attempted to serve STNV three times, but it has not once done so effectively. And it has shown no basis for exercising jurisdiction over a foreign holding company. STNV therefore asks the Court to dismiss the claims against it.

June 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 29, 2020, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF, which sent notice of the filing to all case participants.

/s/ Vishal Patel

Vishal Patel