

Judge Albright Denies Motion for Leave to Effect Alternative Service on Foreign Defendants

JUNE 22, 2022

On October 15, 2020, plaintiff ACQIS sued six Lenovo entities for infringement of nine patents related to data transmission systems. On November 16, 2021, Judge Albright granted the motions to dismiss for improper service filed by three Lenovo entities. Thereafter, ACQIS filed its Motion for Leave to Effect Alternative Service on the three dismissed Lenovo entities. On June 9, 2022, Judge Albright denied Plaintiff's motion.

Under the Rules of Civil Procedure, when a foreign corporation is served outside the United States it must be by any manner prescribed by Rule 4(f) for serving an individual, except personal delivery. Fed. R. Civ. P. 4.2(h). Rule 4(f) (3) further provides that the Court may authorize service on a foreign individual by other means not prohibited by international agreement—thus the Court has considerable discretion to authorize alternative means of service, including by email.

Citing *Terrestrial Comms LLC v. NEC Corp.*, No. 6:19-CV-00597-ADA, 2020 U.S. Dist. LEXIS 106909 (W.D. Tex. June 17, 2020), Judge Albright emphasized that the “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.” Because ACQIS failed to first attempt service on the foreign entities pursuant to the Hague Service Convention, Judge Albright exercised the Court's discretion to deny ACQIS's motion for alternative service.

Judge Albright further found that the dismissed entities were unnecessary to the current matter and any potential benefit of including the dismissed entities would be outweighed by likely complications and delays.

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