

Motion To Dismiss for Lack of Personal Jurisdiction and Undue Delay in Service Denied

OCTOBER 17, 2022

On March 28, 2022, Defendant Realtek Semiconductor Corporation (“Realtek”) filed a renewed motion to dismiss under Rule 12(b)(2) asserting that Plaintiff Bandspeed, LLP (“Bandspeed”) failed to make a preliminary showing that the court had personal jurisdiction over it. Realtek also sought to dismiss the case for undue delay in service and failure to prosecute under Rule 41(b).

On October 13, 2022, the court denied Realtek’s motion, concluding that the court could assert personal jurisdiction over Realtek and that Bandspeed’s delay in service did not warrant dismissal.

Bandspeed is a Texas corporation with its principal place of business in Austin, Texas. The amended complaint alleges that Realtek – a Taiwanese company headquartered in Hsinchu City, Taiwan – sold products in the Western District of Texas and throughout the United States that infringe the Bandspeed patents. Realtek contended that it did not have sufficient minimum contacts with the State of Texas because it had no subsidiaries, facilities, or operations in Texas; it was not authorized, registered, or licensed to do business in Texas; and it did not direct any of its activities towards residents of Texas.

Rule 4(k)(2) permits the exercise of personal jurisdiction over a foreign defendant if process has been served and “(1) the plaintiff’s claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction, and (3) the exercise of jurisdiction comports with due process.”

The court found that Realtek purposefully availed itself of doing business with the United States because (1) Realtek conducted business with U.S. companies for the purpose of incorporating its products into products sold in the United States, (2) Realtek sought authorization from the FCC to sell products in the United States, (3) Realtek had presented products for sale and distribution within the United States at the Consumer Electronics Show in Nevada, and (4) Realtek had sought approval from Bluetooth SIG to ensure that its products complied with U.S. standards.

Further, the court found that Bandspeed’s claims clearly arose under federal law; that Realtek had failed to meet its burden of identifying an alternative forum in which Bandspeed could have brought suit in order to defeat application of Rule 4(k)(2) (“[A] defendant cannot defeat Rule 4(k)(2) by simply naming another state; the defendant’s burden under the negotiation requirement entails identifying a forum where the plaintiff *could have* brought suit.”); and that exercising jurisdiction comports with fair play and substantial justice.

With respect to the failure to prosecute and undue delay claims, the court held that Bandspeed's inaction in ensuring that its Letters Rogatory reached Realtek during the 14 months between initiating the process with the State Department in November 2020 and filing a motion for alternative service in January 2022 was reasonable given the COVID-19 pandemic.

Ryan Bradley, a Law Clerk in Winston's Chicago office, assisted with this briefing.

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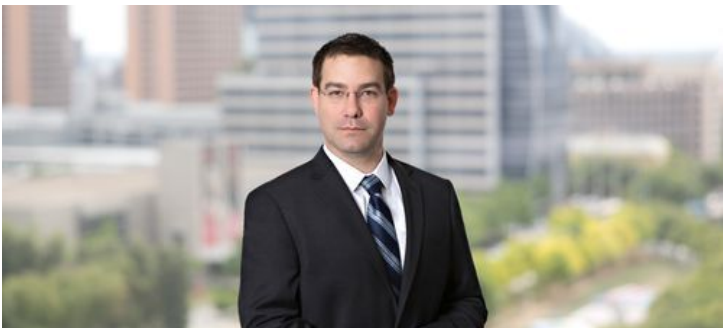
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