

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:22-cv-22706-RNS

BELL NORTHERN RESEARCH, LLC,

Plaintiff

v.

JURY TRIAL DEMANDED

HMD AMERICA, INC.; HMD GLOBAL OY;
SHENZHEN CHINO-E COMMUNICATION
CO., LTD.; HON HAI PRECISION
INDUSTRY CO., LTD; TINNO MOBILE
TECHNOLOGY CORP.; SHENZHEN
TINNO MOBILE CO., LTD.; TINNO USA,
INC.; UNISOC TECHNOLOGIES CO., LTD.;
SPREADTRUM COMMUNICATIONS USA,
INC.; WINGTECH TECHNOLOGY CO.,
LTD.; WINGTECH INTERNATIONAL,
INC.; HUAQIN CO., LTD; BEST BUY CO.,
INC.; BEST BUY STORES L.P.; TARGET
CORP.; WALMART INC.

Defendants.

MOTION TO SET COMMON RESPONSE DEADLINE

Defendants HMD America, Inc., HMD Global Oy (“HMD”), Tinno Mobile Technology Corp.; Shenzhen Tinno Mobile Co., Ltd.; Tinno USA, Inc.; Wingtech Technology Co., Ltd.; Wingtech International, Inc.; and Walmart Inc. (collectively the “Moving Defendants”) hereby move the Court to set **Monday, January 16, 2023** as a common response deadline for all Defendants who have either been served or have waived service, and in support of said motion state as follows:

Background

On August 25, 2022, Plaintiff Bell Northern Research, LLC (“Plaintiff”) filed a Complaint for patent infringement against HMD, its US-based affiliate HMD America, Inc., and parties alleged to be device manufacturers, component suppliers, and retailers to HMD. ECF No. 1. The accused products in the Complaint are all HMD mobile devices. *Id.*

This is the second filing of this patent infringement action, which was previously docketed as Case No. 1:22-cv-21035-RNS (the “Prior Action”). Upon the filing of the Prior Action, HMD conferred with Plaintiff and questioned Plaintiff’s assertion of subject-matter jurisdiction, based on the existence of a prior licensing arrangement between Plaintiff and a third party which was publicly filed (with redactions) in another litigation. At that time, HMD indicated its intention to move to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction. Following those conferences, Plaintiff voluntarily dismissed the Prior Action. 1:22-cv-21035-RNS, ECF No. 55. Plaintiff then filed the present action against some of the original Defendants in the Prior Action and some newly identified Defendants.

Plaintiff has yet to serve all of the captioned Defendants with the Complaint in the present action. Certain Defendants domiciled in the United States, including HMD America, Inc. and Tinno USA, Inc., presently have response deadlines in October of 2022, some as early as October 24, 2022. *See* ECF Nos. 36, 38, 48. Other Defendants, including Defendants domiciled outside of the United States like HMD, Shenzhen Tinno Mobile Co., Ltd., and Wingtech Technology Co., Ltd., have waived service and received response deadlines in November and December, 2022. *See* ECF Nos. 28–33, 50–51. Still other Defendants, including Defendants domiciled outside of the United States like Huaqin Co. Ltd., have yet to be served with the Complaint. *See* ECF No. 58.

Should those Defendants waive service of the Complaint, their responses will be due in January of 2023 or later. *See* Fed. R. Civ. P. 4(d)(3), 6(a)(1)(B).

Argument

The Moving Defendants respectfully ask the Court to set a common response deadline for all Defendants who have been served or who have waived service. The Moving Defendants submit that there is good cause for the request for three reasons.

First, setting a common response deadline is consistent with the Court's Order Requiring Discovery and Scheduling Conference, which instructs that where, as here, there are multiple defendants, "the parties must file **joint motions and consolidated responses and replies** unless there are clear conflicts of position," including as appropriate any "joint motion to dismiss the complaint." ECF No. 8. The Court's Order further instructs that, to file a joint motion to dismiss the complaint,

one or more Defendants may need an extension of time to respond to the complaint. To that end, those Defendants must confer with opposing counsel, as required by the Local Rules, and then seek relief from the Court regarding an appropriate extension. So long as the disparate service dates do not result in extensions that will unduly delay the proceedings, the Court will accommodate any request that facilitates the joint filing.

Id.

Second, a common response deadline would also allow the parties to resolve outstanding evidentiary issues relating to the Court's subject-matter jurisdiction. In pre-suit conferences after the dismissal of the Prior Action and prior to the commencement of the present action, HMD has again questioned Plaintiff's assertion of subject-matter jurisdiction, based on the above-noted prior licensing arrangement between Plaintiff and a third party. Plaintiff has represented to HMD that, notwithstanding that prior arrangement, it now has standing to bring this suit.

HMD has asked to review the documents supporting Plaintiff's assertions, to determine whether a motion to dismiss under Rule 12(b)(1) as to the accused HMD products is necessary or appropriate. Plaintiff and the third party have since consented to such review, but state that they cannot provide the documents to parties other than HMD and HMD America, Inc. until entry of a protective order by the Court, despite having been aware of HMD's request since before the present action was filed.

An extended, common response deadline will allow an orderly start to this case, whereby:

- the parties can confer and present a proposed protective order to the Court,
- Plaintiff can thereafter produce the documents that allegedly establish the Court's jurisdiction,
- the Defendants can thereafter confer and assess whether a joint motion to dismiss under Rule 12(b)(1) (or any other consolidated response) is appropriate, with any Defendant having a conflict of position able to identify it.

Finally, a common response deadline will also avoid the need to file further piecemeal motions for extensions of time.

A January 16, 2023 common response deadline will not unduly delay the proceedings in this matter. It would provide Plaintiff time to effect full service of the Complaint. In addition, any Defendant outside the United States who has yet to waive service upon Plaintiff's requests would have until approximately that date to respond under Rules 4(d)(3) and 6(a)(1)(B).

Pursuant to the Court's Order Requiring Discovery and Scheduling Conference, counsel for the Moving Defendants conferred with counsel for Plaintiff by email, provided a draft of this motion, and offered to further confer telephonically. In response, Plaintiff, stated that they "disagree with the stated basis for [the] motion and oppose it," and declined to further confer.

WHEREFORE, the Moving Defendants respectfully move the Court to set a deadline of **Monday, January 16, 2023**, for all Defendants who have been served or who have waived service to jointly move to dismiss the Complaint or otherwise respond thereto, each identifying any conflict of position.

CERTIFICATION OF PRE-FILING CONFERENCE

Pursuant to Local Rule 7.1(a)(3), the undersigned counsel for HMD certifies that he met and conferred with counsel for Plaintiff regarding the issues raised in this motion via email on October 19, 2022, and Plaintiff has indicated that it opposes the motion.

Dated: October 20, 2022

Respectfully submitted,

/s/ Joseph W. Bain

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