

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
Civil Action No. 1:22-cv-22706-RNS**

BELL NORTHERN RESEARCH, LLC,

Plaintiff,

v.

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.

JURY TRIAL DEMANDED

**PLAINTIFF'S OPPOSITION TO MOTION TO SET COMMON RESPONSE
DEADLINE**

Bell Northern Research, LLC ("Plaintiff" or "BNR"), opposes the Motion to Set Common Response Deadline ("Motion") filed by Defendants HMD America, Inc., HMD Global Oy ("HMD"), Tinno Mobile Technology Corp., Shenzhen Tinno Mobile Co., Ltd., Tinno USA, Inc. ("Tinno"), Wingtech Technology, Co., Ltd., Wingtech International, Inc. ("Wingtech"), and Walmart, Inc. ("Walmart"). Plaintiff respectfully requests that the Court deny Defendants' Motion.

I. BACKGROUND

On August 25, 2022, BNR filed this action for patent infringement against HMD, Tinno, Wingtech, Walmart, Shenzhen Chino-E Communication Co., Ltd. (“Chino-E”), Unisoc Technologies Co., Ltd. and Spreadtrum Communications USA, Inc. (“Unisoc”), Huaqin Co., Ltd. (“Huaqin”), Best Buy Co., Inc., Best Buy Stores L.P. (“Best Buy”), and Target Corp. (“Target”). (ECF No. 1.)

On September 21, 2022, BNR filed a waiver of the service of summons signed by HMD Global Oy. (ECF No. 28.) The next day, BNR filed a return of service as to HMD America, Inc. (ECF No. 34). At the request of HMD, BNR agreed to an extension of HMD America Inc.’s response date to October 24, 2022 and agreed to the same extension for Best Buy and Target. (ECF No. 35.) Additional waivers, returns, and agreed extensions were filed concerning Walmart, Tinno, Hon Hai, Unisoc, and Wingtech. (*See* ECF Nos. 27, 29, 31–33, 36, 38, 48, 51.) The table below summarizes the response date for each of those Defendants.

Defendant	Response Date
HMD America, Inc.	October 24, 2022 (ECF No. 36)
Target Corp.	October 24, 2022 (ECF No. 36)
Best Buy Co., Inc.	October 24, 2022 (ECF No. 36)
Best Buy Stores L.P.	October 24, 2022 (ECF No. 36)
Walmart Inc.	October 24, 2022 (ECF No. 27)
Hon Hai Precision Industry Co., Ltd.	October 24, 2022 (ECF No. 48)
Tinno USA, Inc.	October 27, 2022 (ECF No. 38)
Wingtech International, Inc.,	November 18, 2022 (ECF No. 50)
Spreadtrum Communications USA, Inc.	November 18, 2022 (ECF No. 29)

Wingtech Technology Co. Ltd.,	December 19, 2022 (ECF No. 51)
HMD Global Oy	December 19, 2022 (ECF No. 28)
Tinno Mobile Technology Corp.	December 19, 2022 (ECF No. 33)
Shenzhen Tinno Mobile Co., Ltd.	December 19, 2022 (ECF No. 32)
Unisoc Technologies Co., Ltd.	December 19, 2022 (ECF No. 31)

Yesterday, on October 21, 2022, BNR filed its unopposed motion for alternative service on Shenzhen Chino-E Communication Co., Ltd (“Chino-E”). (ECF No. 61.) The Court granted BNR’s motion on October 21, 2022. (ECF No. 62.) Counsel for BNR has been in communication with counsel for Huaqin Co. Ltd. (“Huaqin”) regarding service. (*See* ECF No. 61 at 1.) Plaintiff remains mindful of this Court’s Notice of Upcoming Deadline to Serve under Federal Rule of Civil Procedure 4(m) requiring service of Huaqin by November 23, 2022.

This Motion was filed by HMD, Tinno, Wingtech, and Walmart. (ECF No. 59.) Defendants Best Buy, Target, Hon Hai, Unisoc, Chino-E, and Huaqin did not join in the Motion. (*Id.*) None of the Defendants have a response date of January 16, 2023.

II. ARGUMENT

Defendants’ Motion is not based on good cause and instead relies on a misapplication of Rule 4 and speculation. First, Defendants incorrectly argue that if Huaqin or Chino-E waive service—which they have not done—then their responses “will be due in January of 2023 or later.” (*See* ECF No. 59 at 2–3.) This argument is wrong because it misapplies the response deadlines set by Rule 4. These deadlines are based on when the request for waiver is sent to the defendant. *See* Fed. R. Civ. P. 4(d)(3). For example, BNR sent Chino-E a request to waive

service under Rule 4 of the Federal Rules of Civil Procedure on September 9, 2022 via email and FedEx. (ECF. No. 61 at 1–2.) Rule 4(d)(3) provides:

A defendant, who before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

Fed. R. Civ. P. 4(d)(3).

Chino-E is a “defendant outside of any judicial district of the United States.” Fed. R. Civ. P. 4(d)(3). Even if Chino-E timely returns the waiver, Chino-E must respond to BNR’s Complaint within 90 days from when BNR sent the request. Ninety days from when BNR sent the request is December 8, 2022. (*See Scalia v. Horizon Care Servs.*, No. 20-80154-CV-MIDDLEBROOKS, 2020 U.S. Dist. LEXIS 265740, at *1 (S.D. Fla. Apr. 29, 2020) (holding that under Rule 4(d)(3), defendant’s response to the complaint was due sixty days after plaintiff sent defendant a request to waive service).

The same response date of December 8, 2022 applies to Hauqin as well. BNR sent the request for waiver to Hauqin on September 9, 2022. Even if both Chino-E and Hauqin agree to waive service, their responses will be due December 8, 2022. Their responses will not “be due in January of 2023 or later,” as Defendants argue. (*See* ECF No. 59 at 3.) Not a single Defendant in this case has a response date of January 16, 2023 and there is no basis to use this date as a common response deadline for all of the Defendants in the litigation, even those that did not join this Motion.

Second, Defendants incorrectly argue in their Motion that a “common response deadline” is consistent with the Court’s Order Requiring Discovery and Scheduling Conference (ECF No. 8). (ECF No. 59 at 3.) This argument is unavailing because it is based on speculation as to a unidentified “joint motions and consolidated responses and replies” that do not even exist and

for which there is no existing joinder of the Defendants. (*Id.*) Even this Motion is not a “joint motion” and is only brought by HMD, Tinno, Wingtech, and Walmart. (*Id.* at 1.) Most of the Defendants did not join in it. (*Id.*) Moreover, even for the Defendants that did bring this Motion, they are silent as to whether “clear conflicts of position” do not exist. Accordingly, the Court’s Order Requiring Discovery and Scheduling Conference does not provide a basis to set a common response deadline of January 16, 2023.

Finally, Defendants’ argument that responses should be delayed until January 16, 2023 to “allow the parties to resolve outstanding evidentiary issues relating to the Court’s subject matter jurisdiction,” is based on more speculation. (*Id.* at 3–4.) Defendants fail to provide any plausible grounds under Rule 12(b)(1) for setting a common response deadline, and fail to provide any plausible arguments about the “licensing arrangement between Plaintiff and a third party” that would justify additional delay. (ECF 59 at 3.) Defendants’ so-called “orderly start” plan is nothing more than a hypothetical—their desired hypothetical—that does not warrant delaying this case and will prejudice Plaintiff. (*See id.* at 4.)

III. CONCLUSION

The Court should deny Defendants’ Motion to Set Common Response Deadline.

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