

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SOLAS OLED LTD., an Irish corporation,

Plaintiff,

v.

LG DISPLAY CO., LTD., a Korean corporation; LG ELECTRONICS, INC., a Korean corporation; and SONY CORPORATION, a Japanese corporation,

Defendants.

CASE NO. 6:19-CV-00236-ADA

JURY TRIAL DEMANDED

**DEFENDANTS' UNOPPOSED MOTION FOR ISSUANCE OF
LETTER ROGATORY TO TOMOYUKI SHIRASAKI**

Pursuant to the Court's inherent authority to issue Letters Rogatory, Defendants LG Display Co., Ltd., LG Electronics, Inc., and Sony Corporation (collectively "Defendants"), by and through their undersigned attorneys, hereby request that the Court issue a Letter Rogatory for International Judicial Assistance to obtain documents and testimony from Tomoyuki Shirasaki. Plaintiff Solas OLED Ltd. ("Solas") does not oppose this motion.

Defendants' use of Letters Rogatory is an appropriate method of obtaining discovery from Mr. Shirasaki because Japan is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil and Criminal Matters. *See* Fed. R. Civ. P. 4(2)(2)(B); All Writs Act, 28 U.S.C. §§ 1651, 1781 (permitting "the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner."); *see also* U.S. Dep't of State, Depositions in Japan, <https://jp.usembassy.gov/u-s-citizen-services/attorneys/depositions-in-japan/> (last visited on Jun. 17, 2020).

Judicial assistance between the United States and Japan is governed by Article 5 of the Vienna Convention on Consular Relations. *See* Vienna Convention on Consular Relations (1963),

LG Display Co., Ltd.

available at http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf (last visited Jun. 17, 2020). Article 5(j) of the Convention acknowledges that the use of Letters Rogatory is an appropriate method of requesting evidence located in a foreign State. *See* Vienna Convention on Consular Relations (1963). As numerous courts have confirmed, the use of Letters Rogatory has been the traditional method of requesting foreign judicial assistance in obtaining evidence located abroad. *See, e.g., Bakeer v. Nippon Cargo Airlines, Co.*, 2011 U.S. Dist. LEXIS 90102, *61-62 (E.D.N.Y. 2011) (noting that “[s]ince Japan is not a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters . . . , [t]he only method for obtaining the testimony of an unwilling Japanese witness is through ‘a letter rogatory executed by a Japanese court’”); *United States v. Walus*, 616 F.2d 283, 304 (7th Cir. 1980) (holding district court should have granted request by defendant for use of letters rogatory to obtain evidence located abroad that was relevant to defendant’s case).

The proposed letter submitted herewith solicits documents and deposition testimony from Mr. Shirasaki.

The requested order for the issuance of a Letter Rogatory is necessary because Article 17 of the Japan-United States Consular Convention only authorizes American consular officers to take depositions in Japan, “on behalf of the courts or other judicial tribunals or authorities of the sending state (United States), voluntarily given, in accordance with the laws of the receiving state (Japan).” This provision regarding the authority of consular officers to take depositions has been interpreted by the Japanese Government very strictly. *See* U.S. Dep’t of State, Depositions in Japan. Japanese law and practice, and the mutually-agreed upon interpretation of the U.S.-Japan Consular Convention concerning obtaining evidence in Japan, permits the taking of deposition of a willing witness on U.S. consular premises for use in U.S. courts only: (1) when pursuant to a commission (Fed. R. Civ. P. Rule 28(b)(2)) to take a deposition issued by a court to any Consul or Vice-Consul of the United States at Tokyo/Osaka; or (2) on notice, provided an order issued by a court in the United States specifically authorizes a U.S. consular officer to take the deposition on notice. *See id.*

For these reasons, Defendants respectfully request the Court grant its unopposed motion,

endorse the attached Letter Rogatory, and direct the Clerk to place the Court's seal upon them and return them to Defendants for delivery to the foreign jurisdiction.

Respectfully Submitted,

/s/ Jennifer H. Doan

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of September, 2020, I electronically filed this document with the Clerk of Court via the Court's CM/ECF system which will send notification of such filing to all counsel of record, all of whom have consented to electronic service in this action.

/s/ Jennifer H. Doan
Jennifer H. Doan

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ORDER

Before the Court is Defendants LG Display Co., Ltd., LG Electronics, Inc., and Sony Corporation's Unopposed Motion for Issuance of Letter Rogatory to Tomoyuki Shirasaki ("Motion"). Being well-advised that it is unopposed, and having fully considered the Motion, the Court is of the opinion that the Motion should be GRANTED. Attached hereto are signed and stamped copies of the issued Letter Rogatory to Tomoyuki Shirasaki.

IT IS SO ORDERED this _____ day of _____, 2020

ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

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