

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

ADVANCED MICRO DEVICES, INC., ET  
AL.,

Plaintiffs,

v.

TCL INDUSTRIES HOLDINGS CO., LTD.;  
ET AL.,

Defendants.

**Case No.: 2:22-cv-00134-JRG-RSP**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' MOTION FOR ALTERNATIVE SERVICE ON DEFENDANT REALTEK  
SEMICONDUCTOR CORP. PURSUANT TO FED. R. CIV. P. 4(f)(3)**

Plaintiffs Advanced Micro Devices, Inc. and ATI Technologies ULC (collectively, “AMD” or “Plaintiffs”) respectfully move this Court for alternative service pursuant to Rule 4(f)(3) of the Federal Rules of Civil Procedure. AMD seeks an order by this Court granting its request to effectuate service in this case via electronic mail to Defendant Realtek Semiconductor Corp. (“Realtek”) through its in-house counsel, its outside U.S. counsel Mann Tindel & Thompson (“Mann Tindel”) appearing in this action on behalf of Realtek, and its outside U.S. counsel at Orrick Herrington & Sutcliffe LLP (“Orrick”) representing Realtek in an ongoing International Trade Commission (“ITC”) action.

This is at least the third case in which Realtek, represented by Orrick, has refused mailings by the Clerk of Court, forcing the plaintiffs to move for alternative service—in which at least two other United States District Courts have granted on Realtek’s counsel by electronic means under similar circumstances. *See, e.g., Rock Creek Networks, LLC v. Realtek Semiconductor Corp.*, Case

No. 6-21-cv-00081 (W.D. Tex.), Dkt. No. 10 (Mar. 30, 2021) (ordering alternative service on Realtek’s outside counsel including at Orrick); *DivX, LLC v. Realtek Semiconductor Corp. et al.*, Case No. 1-20-cv-01202 (D. Del.), Dkt. No. 19 (Feb. 5, 2021) (ordering alternative service on Realtek’s outside counsel including at Orrick).

Further, to the extent either Realtek or any party seeks stay of these proceedings pending the parallel International Trade Commission case, AMD respectfully requests that the present motion for alternative service be adjudicated before any such stay is entered. *See, e.g., Lighting Sci. Group Corp. v. Nichia Corp.*, 2019 U.S. Dist. LEXIS 232761 at \*1-7 (Aug. 8, 2019) (considering and ruling on plaintiff’s motion for alternative service, after issuing ruling on a mandatory stay of the case pending ITC proceedings under § 1659, also noting that “Plaintiff may continue to attempt to serve Nichia Japan while the stay is pending”).

## I. FACTUAL BACKGROUND

### A. Defendant Realtek, Despite Representation by U.S. Counsel Here and in a Co-Pending International Trade Commission Matter, Refuses a Reasonable Extension to Sync P.R. 3-1 and P.R. 3-2 Deadlines with All Defendants, While Also Refusing Reasonable Methods of Service

Defendant Realtek has engaged U.S. counsel to appear in this action (through law firm Mann Tindel). Defendant Realtek is also represented in a co-pending 19 U.S.C. § 1337 unfair importation investigation at the ITC, Inv. No. 337-TA-1318, captioned *Certain Graphics Systems, Components Thereof, and Digital Televisions Containing the Same* (the “1318 Investigation”), through three U.S. law firms appearing in the ITC (including Mann Tindel and Orrick), who are actively litigating on behalf of Realtek in the 1318 Investigation. In that co-pending matter, Realtek’s ITC Orrick counsel includes Jordan Coyle based in Washington, D.C., as well as Robert

Benson, based in Orrick's offices in Irvine, CA and Taipei, Taiwan.<sup>1</sup> The 1318 Investigation involves the same five patents asserted in this case.<sup>2</sup>

Realtek has filed appearances in this action, and their national counsel has actively taken positions on behalf of Realtek relating to this matter, yet Realtek refuses reasonable forms of service, and refuses to agree to an extension of time on P.R. 3-1 and P.R. 3-2 disclosures (and the corresponding P.R. 3-3 and P.R. 3-4 disclosures), which would sync deadlines with the other defendants.

For example, the week of June 20<sup>th</sup>, 2022, even though no Realtek attorney had filed an appearance in this action, nor accepted service of the complaint and summons, counsel for AMD discussed extending the deadlines for P.R. 3-1 and P.R. 3-2 disclosures with Realtek's ITC national counsel by phone, in a good faith attempt to obtain Realtek's position on an extension. Ex. 1, Emails between AMD and Realtek counsel dated June 28 – July 1, 2022, at 3. After delaying in providing a position for a week, on Friday July 1, 2022, Realtek responded that it would be willing to agree to a 10-day extension (despite being informed of Defendant TCL's willingness to agree to a 21-day extension to July 26, 2022), but stated that "if TCL does not request the automatic stay under § 1659, and if AMD believes a further extension is warranted in order to sync the deadlines, we can consider that further issue next week [i.e., the week of July 5<sup>th</sup>, 2022]." *Id.* at 1. The next week, AMD reached back out again to Realtek, but on July 6, 2022, without any explanation, Realtek responded that "Realtek does not believe any further extensions are warranted with respect

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<sup>1</sup> In addition, though yet to make an appearance in this case, Mr. Benson and the undersigned have communicated about this matter on several occasions by phone and email. The meet and confer communication pertinent to this motion was conducted between Mr. Benson and the undersigned.

<sup>2</sup> Given the Commission's recent setting of a target date for completion of the ITC Investigation for seventeen (17) months, AMD has filed a pending motion for partial termination of the 1318 Investigation as to one of the five patents in the ITC Investigation.

to upcoming contention deadlines.” Ex. 2, Emails between AMD and Realtek counsel dated July 5 & 6, 2022.

**B. Despite Filing Appearances in this Case, Realtek Has Evaded Several Attempts of Service of the Complaint and Summons in this Action, by the Clerk of this Court, by a Taiwanese Process Server, and by AMD by E-Mail to Realtek’s In-House and Outside Counsel**

On May 13, 2022, Plaintiff AMD requested this Court’s Office of the Clerk to serve Realtek by international mail under Fed. R. Civ. P. 4(f)(2)(C)(ii). On May 19, 2022, the Court’s Office of the Clerk sent the Complaint, Summons, AMD Corporate Disclosure Statement, Report on Patent Filing, and Notice of Appearance for AMD Counsel to Realtek’s headquarters at No. 2, Innovation Road II, Hsinchu Science Park, Hsinchu, Taipei, Taiwan. Ex. 3, Cover Letter from Court’s Office of the Clerk to Realtek (May 19, 2022). The Office of the Clerk’s delivery was “[r]efused by recipient” five times, on May 23, 2022, May 24, 2022, May 25, 2022, May 26, 2022, and May 27, 2022. Ex. 4, FedEx Advanced Shipment Tracking 776904698455. On June 2, 2022, this Court’s Office of the Clerk received a return delivery of the package. Ex. 5, FedEx Advanced Shipment Tracking 943718232948.

On June 8, 2022, prior to AMD receiving any notice of any outside law firm representing Realtek in this action or in the ITC, AMD sent the U.S. District Court Complaint, Summons, AMD Corporate Disclosure Statement, Report on Patent Filing for this action to Realtek In-House General Counsel, Gina Hung, in Hu Kou Hsiang, Taiwan, via email. Ex. 6, Email from M. De Renzis to G. Hung (June 8, 2022), at 2. Following Realtek’s filing of a notice of appearance in the ITC action through its counsel at Orrick, on June 9, 2022, AMD forwarded that email with the U.S. District Court complaint, summons, and materials to Orrick, and requested confirmation that Realtek accepts electronic service of the U.S. District Court complaint and materials. *Id.* at 1-2.

In response, Robert Benson of Orrick refused to accept electronic service on behalf of Realtek, on June 12, 2022. *Id.* at 1.

On Friday June 24, 2022, a law firm in Taiwan was hired by AMD (Tai E International Patent & Law Office) attempted delivery of the complaint and summons in this case on Realtek. Ex. 7, Decl. of Chen, Liang-Chih of Tai E International Patent & Law Office (July 1, 2022), ¶ 1-2. Upon visiting Realtek on June 28, 2022, Realtek's security guard directed the Taiwanese process server to Realtek's mailroom. *Id.*, ¶ 5. A Realtek mailroom clerk then took AMD's package and inspected the envelope. *Id.* After inspecting the envelope, the mailroom clerk inquired about the nature of the documents and the process server informed the mailroom clerk that these were legal documents from a U.S. law firm. *Id.* The mailroom clerk then made a phone call and replied to the process server that Realtek refused to receive the documents. *Id.* Despite the process server's further explanation that these documents included complaints filed by AMD and ATI in the U.S. District Court, the process server was asked to leave the building by the Realtek security guard, and the guard then escorted him to leave the building. *Id.*

On July 6, 2022, with yet another attempt to avoid contested motion practice, Realtek's counsel at Orrick once again refused to agree to electronic service of the district court complaint and summons in this action. Ex. 2.

At the same time, Realtek, through its counsel Orrick, also has been actively litigating in the ITC's 1318 Investigation. This includes their participation in the parties' bi-weekly discovery committee meeting teleconferences, occurring on June 17, 2022 and July 1, 2022. Also, for example, on June 27, 2022, Realtek filed a verified response to the ITC complaint. Also in the 1318 Investigation, Realtek has propounded fifteen interrogatories and 121 document requests on AMD.

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