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

ARIGNA TECHNOLOGY LIMITED, *Plaintiff*, v. NISSAN MOTOR COMPANY, LTD., ET AL., *Defendants*.	§ § § § § § § § § §	Case No. 2:22-cv-00126-JRG-RSP (Lead Case)

REPORT AND RECOMMENDATION

Before the Court defendants Continental AG, Conti Temic microelectronic GmbH, and ADC Automotive Distance Control Systems GmbH (collectively "Continental") move to dismiss for failure to perfect service of process. Case No. 2:21-CV-00054-JRG-RSP Dkt. No. 237. Briefings on the motion were filed in Case No. 2:21-CV-00054-JRG-RSP before Continental was severed into Case No. 2:22-cv-00126-JRG-RSP. For the following reasons, the motion should be **DENIED.**

I. Background

Arigna filed suit against vehicle part supplier Continental alleging infringement of U.S. Patent No. 7,397,318 ("'318 Patent"). Arigna executed service through CT Corporation in California, which is the registered agent of Continental Automotive Systems, Inc. ("CAS"), which in turn is a subsidiary of Continental. Continental, all German entities, moves to dismiss for failure to perfect service. Dkt. No. 237.

II. Law and Analysis

Continental first argues that service was not perfected in accordance with Texas law and that Texas law should apply. Dkt. No. 237 pp 3-6. Because Continental is a foreign entity, the

analysis begins with the Hague Convention. Continental argues that the Convention applies the law of the "forum state." *Id.* (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 697-99 (1988)). However, the Supreme Court's opinion in *Schlunk* clearly discusses the laws of "this country" which is consistent with the Convention's use of "forum state" to refer to countries. *Id.* Accordingly, the laws of United States apply.

Pursuant to federal law, a corporation can be served under the law of the state in which service was executed. Fed. R. Civ. P. 4(e)(1), (h)(1)(A). Arigna served CAS in California. While the rules allow for application of Texas law, they do not preclude the application of California law. *Id*. Accordingly, Continential's reliance on Texas law for failure to serve and for due process violations is not persuasive.

Under California law, a corporation may be served through its "general manager." Cal. Civ. P. Code § 416.10(b). A foreign corporation, specifically, may be served through "its general manager in [California]." Cal. Corp. Code § 2110.1. "It is well settled" that California does not require "strict compliance with statutes governing service of process." *Gibble v. Car-Lene Research, Inc.*, 67 Cal. App. 4th 295, 313 (1998); *see also Garcia v. Doe White Trucking Co.*, No. 20-CV-00134-SI, 2020 WL 1156911, at *4 (N.D. Cal. Mar. 10, 2020) (describing similarly). Instead, these statutes "should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant." *Gibble*, 67 Cal. App. 4th at 313; *see also Pasadena Medi-Ctr. Assocs. v. Superior Court*, 9 Cal. 3d 773, 778–79 (1973) (upholding service after concluding that § 416.10 should be "liberally construed"); *Summers v. McClanahan*, 140 Cal. App. 4th 403, 411 (2006) ("It is clear [that] the old rule of strict construction has been rejected and a new rule of liberal construction has been adopted.").

The California Supreme Court has identified a "general manager" for service of process as an agent who (1) is "of sufficient character and rank to make it reasonably certain that defendant would be apprised of the service" and (2) has "given [the defendant] substantially the business advantages that it would have enjoyed if it conducted its business through its own offices or paid agents in the state." *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 83–84 (1959) (quotation omitted). "California and federal district courts have relied on the 'character and rank' and 'substantially the business advantages' language from *Cosper* in more than a dozen cases since *Cosper* was decided in 1959." *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d. 1071, 1074 (C.D. Cal. 2013); *see also Yamaha Motor Co. v. Super. Ct.*, 174 Cal. App. 4th 264, 274–75 (2009); *Khachatryan v. Toyota Motor Sales, U.S.A., Inc.*, 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008); *Gray v. Mazda Motor of Am., Inc.*, 560 F. Supp. 2d 928, 931 (C.D. Cal. 2008); *Xun v. Daimler AG*, 2020 WL 6784526, at *1 (C.D. Cal. Sept. 3, 2020).

First, the Court finds that CAS is of "sufficient character and rank to make it reasonably certain that" Continental "would be apprised of the service," *Cosper*, 53 Cal. 2d at 83, because CAS is Continental's contact within the United States through which it conducts business in the United States including manufacturing of certain technologies related to this suit. Dkt. Nos. 261-2, 261-3, 261-4 p 13, 16-17. Second, the Court finds that CAS gives Continental a substantial advantage as its business contact within the United States, in addition to the production of certain technologies related to this suit. *Id.*

Accordingly, Arigna properly served Continental by serving CAS. Additionally, since service was authorized under Federal and California law, due process has been satisfied.

III. Conclusion

"California law allows service on a foreign corporation by serving its domestic subsidiary." *U.S. ex rel. Miller v. Pub. Warehousing Co. KSC,* 636 F. App'x 947, 949 (9th Cir. 2016) (citing *Yamaha Motor Co., Ltd. v. Super. Ct.,* 174 Cal.App.4th 264, 94 Cal.Rptr.3d 494, 498 (2009)). Because service was proper under California law, service is unnecessary under the Hague Convention. *See Schlunk*, 486 U.S. at 707 ("Where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications."). Accordingly, it is **RECOMMENDED** that Continental's motion to dismiss for failure to perfect service (Dkt. No. 237) be **DENIED**.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); see *Douglass v. United Servs. Auto. Ass'n,* 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). Any objection to this Report and Recommendation must be filed in ECF under the event "Objection to Report and Recommendations [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 19th day of September, 2022.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE