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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 VICTAULIC COMPANY, a New Jersey  
12 Corporation,

13 Plaintiff,

14 v.

15 ALLIED RUBBER & GASKET CO.,  
16 INC. d/b/a ARGCO, a California  
17 Corporation; TAIZHOU REALFLEX  
18 PIPETEC CO., LTD, a Peoples' Republic  
19 of China Corporation,

20 Defendant.

Case No.: 3:17-cv-01006-BEN-JLB

**ORDER GRANTING MOTION FOR  
SIXTH EXTENSION OF TIME AND  
ORDERING SERVICE BY  
ELECTRONIC MEANS**

**[Doc. 18]**

21 Before the Court is Plaintiff Victaulic Company's ("Victaulic" or "Plaintiff")  
22 Motion for a Sixth Extension of Time to Serve Summons and Complaint on Defendant  
23 Taizhou Realflex Pipetec Co. Ltd. ("Realflex" or "Defendant"). For the reasons set forth  
24 below, Plaintiff's Motion is **GRANTED**.

25 **I. BACKGROUND**

26 Plaintiff filed its Complaint for patent infringement against Defendant Realflex on  
27 May 16, 2017. (Doc. No. 1.) Realflex is a corporation existing under the laws of China,  
28 with its principal place of business in Taizhou City, Zhejiang Province, People's

1 Republic of China. (Doc. No. 18-1 at 2.) Crowe Foreign Services<sup>1</sup> was engaged by  
2 Plaintiff to ensure Defendant was served in accordance with the Hague Service  
3 Convention.<sup>2</sup> (Doc. No. 18 at 2.) “The Hague Service Convention does not impose an  
4 obligatory time frame and no signatory nation is obligated under the Hague Service  
5 Convention to provide status with respect to service of documents in its possession and  
6 the China courts generally do not.”<sup>3</sup> (Doc. No. 18-6 ¶ 9.) Ms. Celeste Ingalls<sup>4</sup> (*Crowe*  
7 *Foreign Services representative*) affidavit supports this contention as it references the  
8 auto-reply she received in response to her request for a status update from the Chinese  
9 Central Authority. It stated that the office was not fully operational and would not return  
10 to full operational status until March 2020. (Doc. No. 18-1 at 2.) Since service has not  
11 been effectuated on Defendant, Plaintiff now requests a sixth extension of time (*six-*  
12 *months*) to serve Defendant Realflex. *Id.* at 5.

13 In support of its motion, Plaintiff attached the Declaration of Colin T. Kemp  
14 (*Counsel for Plaintiff*), the Affidavit of Celeste Ingalls, and other exhibits indicating  
15 service of foreign defendants in China can take more than two years. (*Id.* at 4.) Plaintiff  
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19 <sup>1</sup> Alan H. Crowe & Associates, Inc. dba Crowe Foreign Services is a service of  
20 process firm which specializes in legal service of process outside of the United States.  
(Doc. No. 18-6 ¶ 1.)

21 <sup>2</sup> On July 13, 2017, Ms. Ingalls, forwarded to the Central Authority in China, the  
22 Summons and Complaint in this matter for service on Defendant. (Doc. No. 18-1 at 2.)

23 <sup>3</sup> “The Hague Service Convention does not impose an obligatory time frame and,  
24 although Ministry of Justice for China indicated their procedures are in the process of  
25 being streamlined, the turnaround time remains frustrating and unbending. The current  
26 Hague service time in China has increased, exponentially, and Ministry of Justice for  
27 China issued a statement that service of process will take up to 2 years or more, with  
28 proofs of service being returned an average of 1 to 5 months after service occurs. This  
means there is a wait window of 2 years with no interim information provided.” (Doc.  
No. 18-6 ¶ 10.)

<sup>4</sup> Ms. Celeste Ingalls has specialized in service of process in foreign countries for  
more than 24 years. (Doc. No. 18-6 ¶ 1.)

1 also attached a recent report suggesting concern among the international law community  
2 that the Chinese Central Authority has “stopped executing US requests altogether.” (*Id.*)

### 3 **II. DISCUSSION**

4 District courts retain broad discretion to permit service-of-process extensions under  
5 Rule 4(m). *See Mann v. Am. Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003). In  
6 considering whether to grant an extension, “a district court may consider factors ‘like the  
7 statute of limitations bar, prejudice to the defendant, actual notice of a lawsuit, and  
8 eventual service.’” *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007) (quoting  
9 *Troxell v. Fedders of N. Am. Inc.*, 160 F.3d 381, 383 (9th Cir. 1998)).

10 Here, Plaintiff took steps to attempt to effectuate service within the 90 days  
11 proscribed by Rule 4(m) and Civil Local Rule 4.1(a). Specifically, on July 13, 2017,  
12 Plaintiff engaged Crowe Foreign Services to serve the Defendant with the Summons and  
13 Complaint in China. (*See* Doc. No. 18-1 at 4-5.) Despite Plaintiff’s efforts, more than  
14 34-months have passed, and the Defendant remains unserved.

15 Notwithstanding Plaintiff’s inability to effectuate timely service, it is clear the  
16 delay is not attributable to Plaintiff, but rather stems from the Chinese Central  
17 Authority’s slow-walk in facilitating the request. The Chinese Central Authority’s reply  
18 to Ms. Ingalls request for a status update aptly illustrates this point. “On August 14,  
19 2018, ..., the Ministry of Justice in China noted that service is ‘time-consuming and not  
20 efficient’ and confirmed that it often takes more than two years to complete.”<sup>5</sup> (Doc. No.  
21 18-1 at 3.) Moreover, the current global COVID-19 pandemic has likely complicated  
22 service efforts in China and will undoubtedly result in additional service delays in the  
23 future. Thus, it is clear the Plaintiff’s request for an extension of time to serve the  
24 Defendant is necessary. Accordingly, the Plaintiff’s Motion is Granted.

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27 <sup>5</sup> “The Ministry of Justice in China also informed Ms. Ingalls that it had no update  
28 on the status of service because it had not yet heard from the Supreme People’s Court of  
China.” (Doc. No. 18-1 at 3.)

1 The Court further Orders that the facts of this case demonstrate alternative service  
2 under Rule 4(f)(3) is necessary. As noted above, we are in the midst of a massive global  
3 crisis. COVID-19 has radically altered life as we know it. A new lexicon has emerged in  
4 response to these changed conditions such that terms like “social distancing” and  
5 “flattening the curve” have become part of our everyday conversations. With that comes  
6 changes to the way we must do business so that matters like this case keep moving, rather  
7 than sitting stagnant as this case has for the past 34-months. Thus, the Court finds a  
8 change of approach is appropriate.

9 Rule 4(f) permits service on an individual, other than a minor, an incompetent  
10 person, or a person whose waiver has been filed, at a place not within any judicial district  
11 of the United States, by one of three means. Under Rule 4(f)(3), courts can order service  
12 through a variety of methods, “including publication, ordinary mail, mail to the  
13 defendants last known address, delivery to the defendant’s attorney, telex, and most  
14 recently, email,” provided here is no international agreement directly to the contrary. *Rio*  
15 *Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). Multiple forms  
16 of alternative service at once are also permissible. *Id.* at 1017. Finally, to comport with  
17 due process, “the method of service crafted by the district court must be ‘reasonably  
18 calculated, under all the circumstances, to apprise interested parties of the pendency of  
19 the action and afford them an opportunity to present their objections.’” *Id.* at 1016-17  
20 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Of the  
21 methods Rule 4(f) permits, it “does not denote any hierarchy or preference of one method  
22 of service over another.” *Rio Properties*, 284 F.3d at 1015. Moreover, Federal Rule of  
23 Civil Procedure 4(h)(2) allows service of process upon a foreign corporation to be  
24 effected “in any manner prescribed for individuals by subdivision [4](f) except personal  
25 delivery.”<sup>6</sup> Thus, service by alternative means is proper under Rule 4(f)(3) so long as it is  
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28 <sup>6</sup> Rule 4(f) authorizes several methods for service of process including, an  
“internationally agreed means,” a method that is reasonably calculated to give notice.

1 (1) ordered by the court; (2) not prohibited by international agreement; and (3)  
2 reasonably calculated, under the circumstances, to apprise the party of the action.

3 Here, the first element of Rule 4(f)(3) is met because the Court is ordering  
4 alternative service on Defendant.

5 The second element of Rule 4(f)(3), the method of service is not prohibited by  
6 international agreement, is also met.<sup>7</sup> Like the United States, the People’s Republic of  
7 China is a signatory to the Hague Convention. The Hague Convention requires signatory  
8 countries to establish a Central Authority to receive requests for service of documents  
9 from other countries and to service those documents by methods compatible with the  
10 internal laws of the receiving state. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*,  
11 486 U.S. 694, 698-99 (1988). Service through a country’s Central Authority is the  
12 principal means of service under the Hague Convention. Plaintiff indicates it attempted  
13 service on Defendant Realflex via the relevant Chinese Authority. However, due to  
14 issues within the Chinese government, discussed *supra*, service has yet to be effectuated.<sup>8</sup>  
15 (Doc. No. 18-1 at 2.)

16 It is true that “compliance with the Convention is mandatory in all cases to which it  
17 applies” *Volkswagenwerk Aktiengesellschaft*, 486 U.S. at 705, and that “a federal court  
18 would [thus] be prohibited from issuing a Rule 4(f)(3) order in contravention of ... the  
19 Hague Convention,” *Rio Properties, Inc.*, 284 F.3d at 1015 n. 4. However, the Ninth  
20 Circuit has rejected the contention that Rule 4(f)(3) can only be utilized if other methods  
21 of service have failed or been shown to be unduly burdensome. *See Rio Properties, Inc.*,  
22 284 F.3d at 1016 (“[W]e disapprove of the statements in *Graval [ v. P.T. Bakrie & Bros.*,  
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25 Fed. R. Civ. P. 4(f). Thus, service may be attained by using any one of the specified  
26 methods, as appropriate, to effectuate service on a defendant located abroad.

27 <sup>7</sup> Rule 4(f)(1) expressly addresses service pursuant to the Hague Convention. *See*  
28 Fed. R. Civ. P. 4(f)(1).

<sup>8</sup> Plaintiff has undertaken diligent efforts for over two years to serve Defendant  
through the Hague Convention. (Doc. No. 18-1 at 2.)

1 986 F. Supp. 1326 (C.D. Cal. 1996),] which would require attempted service by all  
2 feasible alternatives before service under Rule 4(f)(3) is allowed. Instead, we hold that  
3 Rule 4(f)(3) is an equal means of effecting service of process under the Federal Rules of  
4 Civil Procedure”). Rather, it has held that service pursuant to Rule 4(f)(1), is not  
5 necessarily preferable to the manners of service permitted by Rule 4(f)(3). *See id.* (“By  
6 all indications, court-directed service under Rule 4(f)(3) is as favored as service available  
7 under Rule 4(f)(1) or Rule 4(f)(2”).

8 While being a party to the Hague Convention, China has objected to service under  
9 Article 10(A), which provides for service by “postal channels.” Hague Conv. Art. 10(a),  
10 20 U.S.T. 361. “Where a signatory nation has objected to only those means of service  
11 listed in Article [10], a court acting under Rule 4(f)(3) remains free to order alternatives  
12 means of service that are not specifically referenced in Article [10].” *Shinde v.*  
13 *Nithyananda Found.*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011) (quoting *Gurung v.*  
14 *Malhortra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011)) (alterations in original). Although  
15 Article 10(a) references “postal channels,” it does not mention service by email, online  
16 messaging system, or other electronic means. Thus, China’s objection to service by  
17 “postal channels” does not prohibit service by “electronic means.” For this reason, courts  
18 have held that the Hague Convention does not prohibit service by electronic means  
19 notwithstanding China’s objection to service by “postal channels.” *Microsoft Corp. v.*  
20 *Goldah.com Network Tech. Co.*, No. 17-CV-02896, 2017 WL 4536417, at \*4 (N.D. Cal.  
21 Oct. 11, 2017) (“China’s objection to Article 10 does not prohibit the email service the  
22 Court ordered in the instant case.”); *see also Facebook, Inc. v. Banana Ada, LLC*, No. C-  
23 11-3619, 2012 WL 1038752, at \*2 (N.D. Cal. Mar. 27, 2012); *Williams-Sonoma Inc. v.*  
24 *Friendfinder Inc.*, No. C06-06572, 2007 WL 1140639, at \*2 (N.D. Cal. Apr. 17, 2007)  
25 (allowing email service of defendants located in countries that have objected to service  
26 via postal channels).

27 Therefore, the Court concludes that the Hague Convention, to the extent applicable  
28 under the circumstances, does not prohibit service on a Chinese company through

1 electronic means. Because there is no international agreement prohibiting such service,  
2 service through online publication and other electronic means such as email are  
3 permissible alternatives under Rule 4(f)(3).

4 The third element of Rule 4(f)(3), requiring that service be reasonably calculated to  
5 apprise Defendant of the litigation, will also be met. In determining whether a plaintiff  
6 has exercised “reasonable diligence,” the court examines the affidavit to see whether the  
7 Plaintiff “took those steps a reasonable person who truly desired to give notice would  
8 have taken under the circumstances.” *Donel, Inc. v. Badalian*, 87 Cal. App. 3d 327, 333  
9 (1978). The “reasonable diligence” requirement “denotes a thorough, systematic  
10 investigation and inquiry conducted in good faith by the party or his agent or attorney.”

11 As discussed *supra*, Plaintiff engaged the services of Crowe Foreign Services, a  
12 firm specializing in service of process under the Hague Service Convention. Ms. Ingalls,  
13 the representative assigned to facilitate said service has more than 24 years of specialized  
14 experience serving individuals/entities in foreign countries.<sup>9</sup> (*See* Doc. No. 18-6 ¶ 1.) Of  
15 note, Ms. Ingalls, at the invitation of the Hague Administration, participated in “a  
16 ‘training’ session, ... to provide guidance to a foreign Central Authority and its courts on  
17 their practical obligations with respect to service under the provisions of the Hague  
18 Service Convention.” *Id.* ¶ 5.

19 Here, Ms. Ingalls, on July 13, 2017, “forwarded the Summons in a Civil Action,  
20 Complaint, Civil Cover Sheet, and Exhibits with Chinese translations, to the Central  
21 Authority in China to be served upon Taizhou Realflex Pipetec Co., Ltd. in accordance  
22 with the Hague Service Convention.” *Id.* ¶ 8. Thereafter, Ms. Ingalls made numerous  
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25 <sup>9</sup> Since 2003, Ms. Ingalls has “attended, at special invitation as a private expert, all  
26 Special Administrative Sessions of the Hague Conference in The Hague, Netherlands, at  
27 which each signatory country was represented by their respective Judicial Authorities to  
28 discuss the practical mechanics of, and problems encountered in dealing with, the Hague  
Service Convention as they apply to each country’s laws and interpretations of the  
Convention and its obligations.” (Doc. No. 18-6 ¶ 4.)

1 attempts to determine the status of the service on the Defendant. For example, Ms.  
2 Ingalls received an email correspondence from the Ministry of Justice of China on  
3 August 14, 2018, in response to her request for a status update relating to service on  
4 Taizhou Realflex Pipetec Co., Ltd. The email stated that the Ministry of Justice had not  
5 received a reply from the Supreme People’s Court of China. *See Id.* ¶ 11. Thereafter, on  
6 February 28, 2020, in response to an additional request for status, she received an auto-  
7 reply email from the Chinese Central Authority stating their offices were not in full  
8 operation. *See Id.* ¶ 12. As of March 9, 2020, she has not received any additional  
9 updates in response to her further requests for updates on the service of the Defendant.  
10 *Id.* It is clear, Ms. Ingalls and Plaintiff have exercised reasonable diligence in attempting  
11 to serve the Defendant in accordance with the Hague Service Convention guidelines.

12 In conclusion, the Court finds that service by electronic means and notice in an  
13 electronic publication is reasonably calculated to give the Defendant actual notice of the  
14 suit and an opportunity to respond should it choose to do so. *Rio Properties*, 284 F.3d at  
15 1017.

16 Accordingly, the Plaintiff is Ordered to publish notice of the suit, in the Wall Street  
17 Journal - Asia edition (*electronic format*), to run for four (4) consecutive weeks, in the  
18 region containing Defendant’s principal place of business: Taizhou City, Zhejiang  
19 Province, People’s Republic of China.

20 Additionally, to supplement service by publication, Plaintiff shall also serve the  
21 Defendant with copies of the summons, Complaint, and all other associated documents  
22 and Chinese translations via the email address located on the Defendant’s webpage under  
23 the “Contact Us” tab: info@realflex-cn.com.

### 24 **III. CONCLUSION**

25 For the foregoing reasons, it is **ORDERED:**

- 26 1. Plaintiff’s Sixth Motion for an Extension of Time to Serve Defendant is  
27 **GRANTED**. Plaintiff’s shall have until **August 3, 2020** to serve Defendant;  
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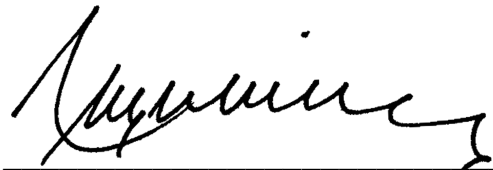


1 2. Plaintiff shall serve the Defendant via publication in the Wall Street Journal -  
2 Asia edition (*electronic format*), to run for four (4) consecutive weeks, in the  
3 region containing Defendant's principal place of business: Taizhou City, Zhejiang  
4 Province, People's Republic of China;

5 3. Plaintiff shall also serve the Defendant with copies of the summons, Complaint,  
6 and all other associated documents and Chinese translations, via email at:  
7 info@realflex-cn.com.

8 **IT IS SO ORDERED.**

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10 DATED: May 8, 2020



11 **HON. ROGER T. BENITEZ**  
12 United States District Judge  
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