

Foreign Service & Foreign Discovery

Kevin Kudlac
Jordan Garsson

University of Texas
Advanced Patent Law Institute
October 20, 2022

1

1

The Premise

- You Have Sued a Foreign Defendant. Now What?
 - Serve the foreign defendant (Kevin)
 - Get Discovery from foreign entities (Jordan)
 - Win at trial (YOU!!)
 - Collect (Good Luck)



2

2

Foreign Service: *How to Bring Foreign Defendants into U.S. Court*

3

3

Serve the Foreign Defendant – Due Process

- "The fundamental requisite of due process of law is the opportunity to be heard."
 - ***Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950)**
- "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice **reasonably calculated, under all the circumstances**, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."
 - ***Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950)**
 - ***Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 US 694, 707 (1988)**

4

4

Serve the Foreign Defendant – Due Process

- “The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.”
 - ***Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950)**
- “But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied.”
 - ***Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950)**
- **PRO TIP: There is no magic formula.**

5

5

Serve the Foreign Defendant – Due Process

- **HOWEVER:** do not offend “traditional notions of fair play and substantial justice.”
- “But when notice is a person's due, process which is a mere gesture is not due process.”
- “The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”
- “The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.”
 - ***Mullane v. Central Hanover Bank & Trust Co.*, 339 US 306, 314 (1950)**
- **Question:** How do I avoid offending the traditional notions?

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Foreign Service and Foreign Discovery

Also available as part of the eCourse

[2022 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the
27th Annual Advanced Patent Law Institute session

"Foreign Service and Foreign Discovery"