

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

FISHER-PRICE, INC. and
MATTEL, INC.,

Plaintiffs,

vs.

DYNACRAFT BSC, INC.,

Defendant.

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C.A. No. 17-51-LPS-CJB

**OPENING BRIEF IN SUPPORT OF DEFENDANT DYNACRAFT BSC, INC.'S
MOTION TO DISMISS FOR IMPROPER VENUE**

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Introduction

Defendant Dynacraft BSC, Inc. (“Dynacraft”) does not reside in the State of Delaware and does not have a regular and established place of business in the District of Delaware, as plaintiffs Fisher-Price, Inc. and Mattel, Inc. concede in the Complaint. (D.I. 1 at ¶ 3.) Nevertheless, plaintiffs brought this patent infringement suit in the District of Delaware under the premise that venue is proper anywhere that a defendant-entity is subject to personal jurisdiction. The United States Supreme Court, however, recently held that the sole and exclusive venue in patent cases is in a judicial district in the state where a domestic corporate defendant resides or where it commits acts of infringement and has a regular and established place of business. *TC Heartland, LLC v. Kraft Foods Group Brands LLC*, No. 16-341, 581 U.S. ___, Slip Op. at 1-2 (May 22, 2017) (interpreting 28 U.S.C. § 1400(b)).

Based on the Supreme Court’s ruling in *TC Heartland*, venue in this District is legally improper and this case must be dismissed. Accordingly, Dynacraft respectfully requests that this Court dismiss this case pursuant to Federal Rule of Civil Procedure 12(b)(3) or transfer the case to the Northern District of California as provided by 28 U.S.C. § 1406(a).

Nature and Stage of the Proceedings

On January 1, 2017, Fisher Price and Mattel filed a Complaint alleging that Dynacraft manufacturers and sells products that infringe United States Patent Nos. 7,222,684 (the “684 Patent”); 7,487,850 (the “850 Patent”); 7,621,543 (the “543 Patent”); and 7,950,978 (the “978 Patent”). (D.I. 1 at ¶¶ 20-22, 29-30, 35-36, 41-42.) Dynacraft has not answered the Complaint and now moves to dismiss the Complaint for the reasons set forth below.

Summary of Argument

For a domestic corporation, venue in a patent infringement action is proper only where the corporation resides or where it has committed acts of infringement and has a regular and established place of business. There is no dispute that Dynacraft is not incorporated in the State of Delaware or that it does not have a regular and established place of business in this District. Therefore, venue in this District is improper and this case should be dismissed.

Statement of Facts

Dynacraft is a corporation organized and existing under the laws of the State of Massachusetts. *See* Declaration of David Castrucci (“Castrucci Decl.”), filed concurrently herewith, at ¶ 1. Moreover, Dynacraft’s headquarters is located at 89 S. Kelly Road, American Canyon, California. (*Id.* at ¶ 2.) Dynacraft employs about 40 employees at its headquarters, including most of its corporate officers and product design staff. (*Id.*) At its headquarters, Dynacraft’s operations include management, personnel, customer service, shipping, traffic, IT and creative. (*Id.*) In other words, Dynacraft is a resident of Massachusetts and has a regular and established place of business in California.

On January 17, 2017, plaintiffs filed this patent infringement lawsuit against Dynacraft in the District of Delaware. (D.I. 1.) Plaintiffs allege no facts in the Complaint that Dynacraft resides in Delaware or has a regular and established place of business in this District. *Id.* Indeed, plaintiffs cannot do so, as Dynacraft is not incorporated in Delaware and does not have any regular and established places of business in the District of Delaware, *i.e.*, it has no employees and does not have any physical facilities in Delaware. (Castrucci Decl. ¶¶ 3-4.)

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