

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: LG ELECTRONICS INC.,
Petitioner

2019-107

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in No. 2:17-cv-00514-JRG, Judge J. Rodney Gilstrap.

ON PETITION

Before PROST, *Chief Judge*, O'MALLEY and TARANTO,
Circuit Judges.

O'MALLEY, *Circuit Judge.*

ORDER

LG Electronics Inc. ("LG Korea") petitions for a writ of mandamus directing the United States District Court for the Eastern District of Texas to vacate its decision denying LG Korea's motion to dismiss for lack of personal jurisdiction or alternatively transfer the case pursuant to 28 U.S.C. § 1404(a). AGIS Software Development, LLC opposes. The court denies the petition.

AGIS filed this suit in the Eastern District of Texas against LG Korea, a South Korean corporation with no

offices or employees in the United States. The complaint states that AGIS “is a limited liability company organized and existing under the laws of the State of Texas, and maintains its principal place of business at 100 W. Houston Street, Marshall, Texas 75670.” The complaint alleges infringement of four patents through the importation and sale of devices that are pre-configured or adapted with software applications developed by Google Inc. and other third parties that allow the device users to perform the patented methods directly, or indirectly, through instructions to device users concerning those applications.

LG Korea moved the district court to either dismiss the case for lack of personal jurisdiction or alternatively to transfer the case to the Northern District of California. LG Korea argued that its subsidiary, LG Electronics MobileComm U.S.A., Inc. (“LG Mobile”), purchases and takes title to the accused devices in South Korea and is entirely responsible for importing, marketing, and selling the accused devices to customers in the United States. LG Korea also argued that AGIS’s principals were conducting business and enforcing these patents largely from Florida under a related corporate entity just weeks before incorporating in Texas and commencing this infringement suit, doing so only in hopes of a favorable venue. LG Korea further urged that the Northern District of California would be more convenient for trying this case because both Google and LG Mobile are headquartered there.

The district court denied both requests. The court first concluded that it had specific personal jurisdiction over LG Korea because LG Korea knew or reasonably could have foreseen that a termination point of its established distribution channel was Texas, noting LG Korea’s admissions that it knew LG Mobile was reselling the devices to third-party carriers who distribute the phones nationwide, including in Texas, and that LG Korea directly shipped some devices to the Dallas-Fort Worth area in Texas. The district court next concluded that LG Korea

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had not shown that the Northern District of California was clearly more convenient for trial to warrant transfer. In doing so, the court found that transferring would make it convenient to secure more sources of proof relevant to the case and also secure the testimony of more potentially unwilling witnesses. However, it concluded that the plaintiff's chosen forum was convenient for more willing witnesses. The court also concluded that the Eastern District of Texas had more local interest in resolving this case and that it could more quickly resolve the case.

A party seeking a writ bears the burden of demonstrating that it has no "adequate alternative" means to obtain the desired relief, *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 309 (1989), and that the right to issuance of the writ is "clear and indisputable," *Will v. Calvert Fire Ins.*, 437 U.S. 655, 666 (1978) (citation and internal quotation marks omitted). The court must also be satisfied that the issuance of the writ is appropriate under the circumstances. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 381 (2004). LG Korea has failed to meet this demanding standard.

With regard to the district court's denial of the motion to dismiss for lack of personal jurisdiction, LG Korea has not even attempted to explain why raising its arguments on appeal after a final judgment would be inadequate. It also has not shown a clear and indisputable right to relief. LG Korea's primary assertion of error essentially appears to be that there is no personal jurisdiction for an infringement action in the Eastern District of Texas because it has not committed any patent infringement there or anywhere else in the United States. That, however, is a merits issue, and one that we should address only after it is resolved in the first instance by the district court.

With regard to transfer, we have held in cases arising from district courts in the Fifth Circuit that mandamus may only be granted when a denial of transfer amounts to

a “clear’ abuse of discretion” such that refusing transfer produced a “patently erroneous result.” *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008) (quoting *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (en banc). We cannot say that a denial of transfer under these circumstances was such an abuse. It is undisputed that the Eastern District of Texas could more quickly resolve the case, which is worthy of at least some consideration. *Cf. Parsons v. Chesapeake & Ohio Ry. Co.*, 375 U.S. 71, 73 (1963). The case also was assigned to the same district judge who is overseeing another action filed by AGIS involving the same patents, suggesting that the court system as a whole could benefit from adjudicating this case in plaintiff’s chosen forum.* *See In re Vistaprint Ltd.*, 628 F.3d 1342, 1346 (Fed. Cir. 2010). And while AGIS’s incorporation in Texas is deserving of little consideration, it is not clear that the allegations in this case are a concern of significant local interest to either forum.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

Jan. 24, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

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* While the district court was correct not to weigh this consideration against transfer because at the time there was a pending motion to transfer the related case, the district court ultimately denied transfer in both cases and this court recently denied mandamus to transfer the related case, ensuring that it will remain in Texas.