

mandamus, the Federal Circuit resolved two issues, that (1) the burden of proof for venue is an issue of Federal Circuit law, and (2) that the plaintiff bears the burden of proof on venue issues. *In re ZTE* at 5-10. The Federal Circuit also addressed the district court’s analysis for determining whether a place of business belongs to a defendant. *Id.* at 10-13. The Federal Circuit found that:

- “The mere presence of a contractual relationship between iQor and ZTE USA pursuant to which iQor provides call center services to ZTE USA’s customers does not necessarily make iQor’s call center “a regular and established place of business” of *ZTE USA* in the Eastern District of Texas.” *Id.* at 11-12.
- “While iQor’s call center ‘has more than sixty dedicated ZTE USA customer service representatives,’ neither the magistrate judge nor the district court made any findings on the nature of ZTE USA’s relationship with those representatives or whether it has any other form of control over any of them. *Magistrate Report*, 2017 WL 5163605, at *4. While the magistrate judge found that ZTE USA ‘has at least two full-time employees (supervisors) on site at the call center,’ *id.*, the determining factor is whether those employees render the call center ‘a place of the defendant, not solely a place of the defendant’s employee[s],’ *Cray*, 871 F.3d at 1363.” *Id.* at 12.
- “The magistrate judge did not consider whether ZTE USA itself possesses, owns, leases, or rents the office space for the call center or owns any of the equipment located there. The magistrate judge also made no findings as to whether any signage on, about, or relating to the call center associates the space as belonging to ZTE USA. Finally, the magistrate judge did not make findings regarding whether the location of the call center was specified by ZTE USA or whether iQor would need permission from ZTE USA to move its call center outside of the Eastern District of Texas or to stop working for ZTE USA. *Id.* at 1363–64. These and any other factors relevant to the question of whether American GNC has met its burden to show that the call center was ‘of the defendant’ should be considered on remand.” *Id.*

Dated: May 17, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this May 17, 2018. All other counsel not deemed to have consented to service in such manner will be served via facsimile transmission and/or first class mail.

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