United States Court of Appeals for the Federal Circuit

IN RE: TC HEARTLAND LLC,
Petitioner

2016-105

On Petition for Writ of Mandamus to the United States District Court for the District of Delaware in No. 1:14-cv-00028-LPS, Chief Judge Leonard P. Stark.

ON PETITION

JOHN F. DUFFY, Hughes Hubbard & Reed LLP, Washington, DC, argued for petitioner. Also represented by JAMES W. DABNEY, RICHARD KOEHL, STEFANIE M. LOPATKIN, WANDA DELORIS FRENCH-BROWN, New York, NY.

JOHN DAVID LUKEN, Dinsmore & Shohl LLP, Cincinnati, OH, argued for respondent. Also represented by JOSHUA LORENTZ.

BRIAN DAVID LEDAHL, Russ August & Kabat, Los Angeles, CA, for amici curiae Guy Fielder, Jon D. Paul, Network-1 Technologies, Inc., Neurografix, Paul Morinville, Scientific Telecommunications, LLC, US Inventor, Inc. Also represented by MARC AARON FENSTER.

VERA RANIERI, Electronic Frontier Foundation, San Francisco, CA, for amici curiae Electronic Frontier Foundation, Public Knowledge, Engine Advocacy. Also represented by CHARLES DUAN, Public Knowledge, Washington, DC.

JOHN D. VANDENBERG, Klarquist Sparkman, LLP, Portland, OR, for amici curiae Acushnet Company, Adobe Systems Incorporated, Asus Computer International, Demandware, Inc., Dropbox, Inc., Ebay, Inc., Google Inc., HP Inc., HTC America, Inc., InterActiveCorp, Intuit, Inc., L Brands, Inc., Lecorpio LLC, LinkedIn Corp., Macy's, Inc., Newegg Inc., North Carolina Chamber, North Carolina Technology Association, QVC, Inc., SAP America, Inc., SAS Institute Inc., Symmetry LLC, Vizio, Inc., Xilinx, Inc. Also represented by ROBERT TODD CRUZEN, KLAUS H. HAMM.

Before MOORE, LINN, and WALLACH, *Circuit Judges.*

MOORE, *Circuit Judge.*

O R D E R

TC Heartland LLC ("Heartland") petitions for a writ of mandamus to direct the United States District Court for the District of Delaware to either dismiss or transfer the patent infringement suit filed against it by Kraft Foods Group Brands LLC ("Kraft"). We deny Heartland's petition.

BACKGROUND

Heartland is a limited liability company organized and existing under Indiana law and headquartered in Indiana. *Kraft Foods Grp. Brands LLC v. TC Heartland, LLC*, No. 14-28-LPS, 2015 WL 4778828, at *1 (D. Del. Aug. 13, 2015) ("Magistrate's Report"). Respondent Kraft is organized and exists under Delaware law and its prin-

cipal place of business is in Illinois. *Id.* Kraft filed suit against Heartland in the United States District Court for the District of Delaware alleging that Heartland's liquid water enhancer products ("accused products") infringe three of Kraft's patents. *Id.* at *1–2. Heartland moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. *Id.* at *1. It also moved to either dismiss the action or transfer venue to the Southern District of Indiana under 28 U.S.C. §§ 1404 and 1406. *Id.*

Before the district court, Heartland alleged that it is not registered to do business in Delaware, has no local presence in Delaware, has not entered into any supply contracts in Delaware or called on any accounts there to solicit sales. But Heartland admitted it ships orders of the accused products into Delaware pursuant to contracts with two national accounts. In 2013, these shipments, which contained 44,707 cases of the accused product that generated at least $331,000 in revenue, were about 2% of Heartland's total sales of the accused products that year. The Magistrate Judge, applying, *inter alia*, our precedent from *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1571 (Fed. Cir. 1994), determined that it had specific personal jurisdiction over Heartland for claims involving the accused products. He also rejected Heartland's arguments that Congress' 2011 amendments to 28 U.S.C. § 1391 changed the law governing venue for patent infringement suits in a manner which nullified our holding in *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (Fed. Cir. 1990). The district court adopted the Magistrate Judge's report in all respects and denied Heartland's motions. *Kraft Foods Grp. Brands LLC v. TC Heartland, LLC*, No. 14-28-LPS, 2015 WL 5613160, at *1–2 (D. Del. Sept. 24, 2015) ("District Court Order"). In so doing, the district court specifically stated that the Magistrate Judge correctly concluded that *Beverly Hills Fan* governed the personal jurisdiction analysis and that

Congress' 2011 amendments to 28 U.S.C. § 1391 "did not undo" our decision in *VE Holding*. *Id.* We agree.

DISCUSSION

A writ of mandamus is an extraordinary remedy appropriate only in exceptional circumstances, such as those amounting to a judicial "usurpation of power" or a clear abuse of discretion. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380 (2004). Three conditions must be satisfied before issuing the writ: 1) the petitioner must have no other adequate means to attain the relief he desires; 2) the petitioner has the burden to show his right to mandamus is "clear and indisputable"; and 3) the issuing court must be satisfied that the writ is appropriate under the circumstances. *Id.* at 380–81. The parties do not address all three parts of the *Cheney* test in their briefing, focusing instead on only the second part. We likewise confine our analysis to only the second part of the *Cheney* test.

Heartland argues that it is entitled to a writ of mandamus based on two legal theories. First, it argues that it does not "reside" in Delaware for venue purposes according to 28 U.S.C. § 1400(b). Second, it argues that the Delaware district court lacks specific personal jurisdiction over it for this civil action. We conclude that a writ of mandamus is not warranted. The arguments raised regarding venue have been firmly resolved by *VE Holding*, a settled precedent for over 25 years. The arguments raised regarding personal jurisdiction have been definitively resolved by *Beverly Hills Fan*, a settled precedent for over 20 years. As a panel, we are bound by the prior decisions of this court.

A. Venue

With respect to venue, Heartland argues that Congress' 2011 amendments to 28 U.S.C. § 1391 changed the statutory law in a manner which effectively overruled *VE*

Holding: "To be clear, the argument set forth here is that this Court's holding in *VE Holding* no longer applies given the changed language in §§ 1391(a) and (c)." Pet. 9. We do not agree. In *VE Holding*, this court held that the definition of corporate residence in the general venue statute, § 1391(c), applied to the patent venue statute, 28 U.S.C. § 1400. The 2011 amendments to the general venue statute relevant to this appeal were minor. The language preceding the definition of corporate residence in § 1391 was changed from "For the purposes of venue under this chapter . . ." to "For all venue purposes . . . ." *Compare* 28 U.S.C. § 1391(c) (1988) *with* 28 U.S.C. § 1391(c) (2011). This is a broadening of the applicability of the definition of corporate residence, not a narrowing. This change in no manner supports Heartland's arguments.

The only other relevant 2011 amendment is the addition of the language in § 1391(a), "Applicability of section.--Except as otherwise provided by law." Heartland argues that the "law" otherwise defined corporate residence for patent cases and therefore the statutory definition found in § 1391(c) is no longer applicable to patent cases. As Heartland itself acknowledges, "most special venue statutes have not been held to encompass particular rules about residency, and thus subsection (c) can apply to such statutes wherever they are found in the U.S. Code." Pet. 7–8. The patent venue statute, 28 U.S.C. § 1400(b), provides in its entirety: "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." It is undisputed that the patent venue statute itself does not define corporate residence and thus there is no statutory "law" that would satisfy Heartland's claim that Congress intended in 2011 to render § 1391(c)'s definition of corporate residence inapplicable to venue for patent cases. However, Heart-

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