Keywords: **venue, resides, corporation, general statute, specific statute**

General: **The general venue statute of 28 U.S.C. § 1391(c) modifies the meaning of the specific venue statute of 28 U.S.C. § 1400(b) for infringement actions.**

VE Holding Corp. v. Johnson Gas Appliance Co.
917 F. 2d 1574 (Fed. Cir.1990)
Decided October 24, 1990

I. Jurisdiction & Venue

Jurisdiction is defined as "[a] term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the *subject matter* and the *parties*."[1] Jurisdiction is divided into subject matter and personal jurisdiction. Subject matter jurisdiction relates to the area of law and the facts of the action. Federal district courts are given subject matter jurisdiction in "any civil action arising under any Act of Congress relating to patents."[2] Personal jurisdiction is the court's jurisdiction over the parties themselves. There are numerous possible factors deciding personal jurisdiction. A common analysis comes from *International Shoe Co. v. Washington*, which generally requires a state to have at least "minimum contacts" with a party to establish personal jurisdiction over the party. Venue is the locality of the action, such as a district or county where the action is held.

II. Facts

VE Holding Corporation ("VE") is a patent holder for patents 4,667,408 (water cleaned vegetable peeler), 4,704,804 (steam conditioning vegetables), and 4,731,938 (pasteurization process). VE filed suit against Johnson Gas Appliance Company ("Johnson") in the Northern District of California with co-defendant California Pellet Mill Company in a first case (VE Holding I) and against Johnson alone in a second case (VE Holding II) for direct infringement, contributory infringement, and inducement to infringe. In both cases, Johnson moved to dismiss for improper venue since Johnson was an Iowa-based corporation with no "regular and established place of business in the Northern District of California." The district court agreed and held that venue did not lie in the Northern District of California. VE appealed both and VE Holdings I and II are both consolidated into this case.

[1] *Black's Law Dictionary*, 6th ed.
[2] 28 U.S.C. § 1338(a).

III. Issue

1. Did the district court err in finding that venue for patent infringement cases is not influenced by the federal venue statute 35 U.S.C. § 1391?

IV. Discussion

1. Yes. Venue connotes locality and protects a defendant from the inconvenience of having to defend an action in a court that is either remote from the defendant's residence or from the place where the acts underlying the controversy occurred.[3] Essentially, venue statutes limit a plaintiff's choice of forum among courts where personal and subject matter jurisdiction may be appropriate. A specific venue statute for patent infringement suits has existed since 1897. The current version of the statute reads as follows:

> 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.[4]

There is also a federal general venue statute in 28 U.S.C. § 1391. However, application of the federal general venue statute in view of federal specific venue statutes is not always consistent. For example, the Jones Act regulating liability of vessel operators and marine employers for the work-related injury or death of an employee includes a specific section whereby jurisdiction is to be under the court of the district in which the defendant employer resides or in which his principal office is located. The Supreme Court determined that a broader definition of residence from the federal general venue statute in 28 U.S.C. § 1391(c) carried into the specific venue statute of the Jones Act.[5] In contrast, the patent infringement specific venue statute in 28 U.S.C. § 1400(b) was interpreted by the Supreme Court to be unaltered by the provisions of the federal general venue statute.[6] Indeed, the Supreme Court, in *Fourco*, explicitly stated that § 1400(b) is the sole and exclusive provision governing venue in patent infringement actions, and that it is not to be supplemented by § 1391(c).[7]

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[3] *See* 1576 (citing 1A(2) J. Moore, et al., *Moore's Federal Practice* ¶ 0.340 (2d ed. 1990).
[4] 28 U.S.C. § 1400(b).
[5] *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966).
[6] *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222 (1957).
[7] *Id.* ("We think it is clear that § 1391(c) is a general corporation venue statute, whereas § 1400(b) is a special venue statute applicable, specifically, to *all* defendants.") (emphasis original) meaning that corporations could only be sued where they were incorporated.

In deciding the present case, the Federal Circuit found that the general provisions of § 1391(c) did alter the interpretation of § 1400(b). In differentiating its holding from *Fourco*, the Federal Circuit noted that Congress had amended § 1391(c) in 1988. At the time that *Fourco* was decided (1957), § 1391(c) read as follows:

> A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.[8]

Post-1988, § 1391(c) read as follows:

> *For purposes of venue under this chapter*, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced.[9]

The Federal Circuit focused on the inclusion of the first clause indicating that that new statute had a clear meaning that the general venue provisions were to alter all of the provisions under Chapter 87 of Title 28, which includes § 1400(b). Additionally, the Federal Circuit noted that viewing § 1400(b) as the "exclusive" venue statute in patent infringement actions was improper at least because the Supreme Court had previously supplemented 28 U.S.C. § 1400(b) with 28 U.S.C. § 1391(d) (the general venue provision applicable to aliens) with respect to a patent suit involving a foreign corporation[10]. Likewise, the Federal Circuit noted that the general rule that a specific statute is not controlled or nullified by a general statute regardless of priority of enactment, absent a clear intention otherwise[11], did not govern the present situation at least because 1) the general statute, § 1391(c), expressly reads itself into the specific statute, § 1400(b) and 2) § 1391(c) only defines a term—resides—in § 1400; it neither alone governs patent venue nor establishes a patent venue rule separate from and apart from that provided under § 1400(b). The Federal Circuit also noted that while the legislative history of the 1988 amendment to § 1391(c) was silent regarding intent to alter § 1400, Congress' silence on the issue did not support the negative inference that the 1988 amendment was not intended to affect § 1400(b). Likewise, courts presume that Congress is knowledgeable about existing law absent extraordinary circumstances[12]. Thus, the Federal Circuit found that (akin to prior cases that determined that under different statutory language, Congress' intent was that § 1400(b) stood alone) the amended

[8] 28 U.S.C. § 1391(c) (1966).
[9] 28 U.S.C. § 1391(c) (1988) (emphasis added).
[10] *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706 (1972).
[11] *Morton v. Mancari* 417 U.S. 535, 550-51 (1974) and *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153-54 (1976).
[12] *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988).

language of § 1391(c) lead to the conclusion that Congress intended for venue in a patent infringement case to include any district where there would be personal jurisdiction over the corporate defendant at the time the action is commenced. Because Johnson had conceded personal jurisdiction in the case, the court held that venue was proper and reversed and remanded VE Holding II. However, VE Holding I occurred before the 1988 amendments were effective. Thus, under the old statutory language of § 1391(c), the court affirmed VE Holding I.

V. Conclusion

The Federal Circuit constructed a rule for determining whether venue is proper by 1) determining whether the defendant is a corporation and 2) if the defendant is a corporation, is the defendant subject to personal jurisdiction in a district at the time that the action was commenced.