Keywords: determining venue, 28 U.S.C. § 1400(b)

General: A proper venue is provided when the defendant possesses a regular and established place of business in the district in which suit is filed.

In re Cray, Inc.
United States Court of Appeals for the Federal Circuit
No. 2017-129
Decided: September 21, 2017

I. Background

Cray Inc. ("Cray") sells advanced supercomputers, with its principle place of business located in Washington. Cray maintains additional facilities in Bloomington, Minnesota; Chippewa Falls, Wisconsin; Pleasanton and San Jose, California; and Austin and Houston, Texas. Although Cray does not own or rent an office or any property in the Eastern District of Texas, Cray allowed Mr. Douglas Harless and Mr. Troy Testa to work remotely from their respective homes in that district. Mr. Harless worked as a "sales executive" for approximately seven years with associated sales of Cray systems in excess of $345 million. Cray's "Americas Sales Territories" map, an internal document, identified Mr. Harless's location at his Eastern District of Texas personal home. Cray provided Mr. Harless with "administrative support" from its Minnesota office, while reimbursing Mr. Harless for business related expenses such as cell phone usage, internet fees, and mileage or "other costs" for business travel.

In 2015, Raytheon Company ("Raytheon"), sued Cray in the United States District Court for the Eastern District of Texas, alleging infringement of four of its patents. Cray filed a Motion to Dismiss for lack of personal jurisdiction and improper venue, arguing that Cray had neither committed acts of infringement, nor maintained a regular and established place of business within that district. Cray argued that it does not "reside" in the Eastern District of Texas in light of the Supreme Court's decisions in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017), to which the district court agreed.

Cray moved to transfer this suit to the Western District of Wisconsin under 28 U.S.C. § 1406(a), which provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." The district court however, rejected the Cray's request to transfer suit asserting that Mr. Harless's activities were factually similar to the actives performed by the representatives in *In re Cordis Corp.*, 769 F.2d 733 (Fed. Cir. 1985), in which this court rejected a mandamus request to reverse an order denying transfer for improper venue. In response, Cray petitioned for a writ of mandamus directing reversal of the district court's denial of its motion to transfer venue and directing the district court to transfer this case to the Western District of Wisconsin.

II. Issue

Did the district court err in denying Cray's motion to transfer venue?

III. Discussion

Yes. The Federal Circuit concluded that the district court misunderstood the scope and effect of its decision in *Cordis*, and that its misplaced reliance on the precedent led to the district court denying the motion to transfer venue. The Federal Circuit found this denial as an abuse of discretion and granted Cray's petition, directing the district court to transfer the case to an appropriate venue to be determined by the district court on remand.

The Federal Circuit reiterated that § 1400(b) provides that "[a]ny 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*." Because Cray is incorporated in the state of Washington, the Federal Circuit found that the residency requirement of this statute cannot be met with respect to the Eastern District of Texas. Therefore, the remaining question before the Court was whether Cray has a "regular and established place of business" in the Eastern District of Texas within the meaning of § 1400(b). In analyzing the language of the statute, the Court noted that: (i) "place of business" must be a physical, geographical location in the district from which the business of the defendant is carried out, (ii) the place of business must be "regular and established", (iii) the "regular and established place of business" must be a "*place of the defendant*," not solely a place of the defendant's employee.

The Court noted that the parties' primary dispute thus concerned whether Mr. Harless's home, located in the Eastern District of Texas, constitutes a "regular and established place of business" of Cray. The Court determined that there is no indication that Cray owns, leases, or rents any portion of Mr. Harless's home. Instead, the Court noted that Mr. Harless was free to live where he chose as far as Cray was concerned. Further, Mr. Harless's did not appear to store any inventory or conduct any demonstrations in his home. Accordingly, the Court stated that no evidence shows that Cray believed a location within the Eastern District of Texas was important to the business performed, or that Cray had any intention to maintain some business in that district in the event Mr. Harless decided to terminate his residence as a place where he conducted business. In other words, the Court determined that the presented facts merely show that there exists within the district a physical location where an employee of the defendant carries on certain work for his employer. The Court noted that these facts are in contrast with those in *Cordis*, where it was clear that Cordis's business specifically depended on employees being physically present at certain places in the district and that is was undisputable that Cordis affirmatively acted to make permanent operations within that district to service its customers there.

IV. Conclusion

The Federal Circuit concluded that the district court's order denying Cray's motion is to be vacated, and that the district court is directed to transfer the case to an appropriate venue. In response to Cray's seeking transfer to the Western District of Wisconsin, Raytheon notes that it prefers transfer to the United States District Court for the Western District of Texas. The Federal Circuit stated that because the district court had erroneously determined that the original venue was proper, it did not address the parties' argument regarding where the case should be transferred. Accordingly, the Federal Circuit left this determination for the district court on remand.