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May 22, 2017

Supreme Court/Venue

Patent Venue Statute Is Not Modified by General Venue Statute

The term "resides" in 28 U.S.C. § 1400(b) for determining venue patent suits refers only to the State of incorporation, the Supreme Court held May 22, 2017. *TC Heartland LLC, v. Kraft Food Brands Group LLC*, U.S., No. 16-341, 5/22/2017.

Overruling the Federal Circuit's decision in *VE Holding Corp. v. Johnson Gas Appliance Co*., 917 F.2d 1574 (Fed. Cir. 1990), the Court concluded that 2008 and 2011 revisions to the general venue statute at 28 U.S.C. §1391 did not modify the meaning of "resides" in Section 1400(b) to include personal jurisdiction for corporate defendants. This issue was resolved by a 1957 Supreme Court decision, and nothing in the later legislation indicates that Congress intended to overturn that decision, the Court concluded.

Background

In *Fourco Glass Co. v. Transmirra Prods*., 353 U.S. 222 (1957), the Supreme Court held that the phrase "where the defendant resides" in Section 1400(b) is not limited by language in Section 1391(c). At issue was the Section 1391(c) statement that corporations may be sued in any judicial district where they are incorporated, licensed to do business, or are doing business, and that "such judicial district shall be regarded as the residence of such corporation for venue purposes."

However, the Federal Circuit in *VE Holding* held that Congress overruled *Fourco* with its 1988 revision of Section 1391. That revision stated that, for venue purposes "under this chapter" (which includes Section 1400), venue in an action against a corporate defendant is proper anywhere there is personal jurisdiction over the corporate defendant.

In this case, the Federal Circuit relied on *VE Holdings* to rule that 2011 revisions to Section 1391, which changed "for venue purposes under this chapter" to "for all venue purposes," confirmed that *Fourco* was overruled.

Fourco Was Not Overturned

The Federal Circuit decision was reversed by an 8-0 vote (Justice Gorsuch did not participate in this case). Writing for a unanimous Court, Justice Thomas pointed out that none of the revisions cited by the Federal Circuit give any indication that Congress intended its changes to Section 1391 to change the meaning of the language in Section 1400(b). The Court was not persuaded that changing "for venue purposes" to "for all venue purposes" resulted in changes to Section 1400(b).

In this context, we do not see any material difference between the two phrasings. … Respondent argues that "all venue purposes" means "all venue purposes"—not "all venue purposes *except* for patent venue." … The plaintiffs in *Fourco* advanced the same argument. … This Court was not persuaded then, and the addition of the word "all" to the already comprehensive provision does not suggest that Congress intended for us to reconsider that conclusion.

Moreover, Justice Thomas continued, the saving clause in the current version of the statute ("unless otherwise provided by law") explicitly acknowledges that there are other venue statutes with other definitions of "resides," a point implicitly recognized in *Fourco*. Nor was the Court persuaded that Congress in 2011 ratified *VE Holding*, explaining as follows:

If anything, the 2011 amendments undermine that decision's rationale. As petition points out, *VE Holding* relied heavily—indeed, almost exclusively—on Congress' decision in 1988 to replace "for venue purposes" with "[*f*]*or purposes of venue under this chapter*".… Congress deleted "under this chapter" in 2011 and worded the current version of §1391(c) almost identically to the original version of the statute. … In short, noting in the text suggests congressional approval of *VE Holding*.

To read the Court's opinion in this case, click here.