NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In re: HANTOVER, INC.,
Petitioner

2018-138

On Petition for Writ of Mandamus to the United States District Court for the Northern District of Ohio in No. 3:14-cv-00406-JJH.

ON PETITION

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

MOORE, *Circuit Judge*

ORDER

Hantover, Inc. petitions for a writ of mandamus to direct the United States District Court for the Northern District of Ohio to "dismiss Counts I–V of the case" or "in the alternative, to sever and transfer Counts I–V to the" United States District Court for the District of Kansas. We *deny* Hantover's petition without response.

In 2006, Bettcher Industries, Inc. sued Hantover in the Northern District of Ohio for infringement of two of its patents: U.S. Patent No. 6,769,184 ("the '184 patent") and 7,000,325 ("the '325 patent"). In 2007, the parties entered

into a settlement agreement that included a clause addressing future enforcement of the agreement:

> Should any party fail to perform any portion of its obligations under the terms of this Agreement, the parties agree that Judge Katz of the Northern District of Ohio, to whom the Litigation is assigned, will have continuing jurisdiction over the case for the purposes of enforcing the Agreement.

In February 2014, Bettcher Industries, Inc. filed the underlying complaint against Hantover in the Northern District of Ohio.* Count I asserted infringement of the '184 patent. Count II asserted infringement of the '325 patent. Counts III–V asserted infringement of three additional patents not asserted in the 2006 action. And Count VI of the complaint alleged that Hantover breached the parties' 2007 Settlement Agreement by having made, offered for sale, and sold the accused products in breach of various provisions of the Settlement Agreement.

Hantover's amended answer to the complaint did not contest that venue in the Northern District of Ohio was improper, and the case proceeded through claim construction. On August 4, 2017, approximately two and a half months after the Supreme Court of the United States issued its ruling in *TC Heartland LLC v. Kraft Foods Groups Brands LLC*, 137 S. Ct. 1514 (2017), Hantover moved to dismiss or transfer the case for improper venue, arguing that it did not reside in the Northern District of Ohio within the meaning of 28 U.S.C. § 1400(b) as interpreted by *TC Heartland* or have a regular and established place of business in the district to warrant venue.

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* The complaint also named Heartland Fabrication & Machine, Inc. as a defendant, but Heartland was subsequently dismissed from the case.

After holding a hearing, the district court denied Hantover's motion in an order issued on April 25, 2018, finding that Hantover had "waived its objections to venue by virtue of its assent to the 2007 Settlement Agreement." The district court noted that "a number of the patent infringement claims are directly related to the prior litigation as asserted in the Sixth Cause of Action" and that "[t]he underlying infringement claims must be adjudicated in order to resolve the breach of contract claim." The court further explained that "[s]evering those interrelated claims would not be an effective use of resources from everyone's standpoint." The court also noted the fact that "[t]his four-year old litigation has proceeded in this forum through claim construction" and that "[t]o transfer this case, in its advanced stage, into a new forum and upon a new judicial officer would not constitute a reasonable response to the problems and needs of the parties, nor comport with the interests of justice."

To prevail on a mandamus petition, a party must show that (1) it has a clear legal right to relief, (2) there are no adequate alternative legal channels through which it may obtain that relief, and (3) the grant of mandamus is appropriate under the circumstances. *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 542 U.S. 367, 380-81 (2004); *Kerr v. U.S. Dist. Court for the N. Dist. of Cal.*, 426 U.S. 394, 403 (1976). Hantover has not met its burden. Hantover fails to sufficiently explain why raising its arguments on appeal from final judgment would be inadequate here. *See, e.g., Bankers Life & Cas. Co. v. Holland,* 346 U.S. 379, 383 (1953) (holding that the cost and inconvenience of trial are generally insufficient to warrant mandamus relief). Nor are we able to say that Hantover has demonstrated a clear entitlement to relief.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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