

26-104

**IN THE
United States Court of Appeals for the Federal Circuit**

In re: COMCAST CABLE COMMUNICATIONS, LLC, dba Xfinity,
COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, dba
Comcast Technology Solutions,
Petitioners

On Petition for a Writ of Mandamus to the
United States District Court for the
Eastern District of Texas
No. 2:24-cv-00886, Hon. J. Rodney Gilstrap

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 26-104

Short Case Caption In re: Comcast Cable Communications, LLC

Filing Party/Entity the Chamber of Commerce of the United States of America

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1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input checked="" type="checkbox"/> None/Not Applicable
the Chamber of Commerce of the United States of America		

☐ Additional pages attached

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4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☐ Yes (file separate notice; see below) ☐ No ☒ N/A (amicus/movant)

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6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every economic sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

Many of the Chamber’s members conduct business outside their states of incorporation. As a result, the Chamber has a substantial interest in the rules that determine whether a non-resident corporation may be sued in a particular venue. These rules should be uniform, predictable, and consistent with what Congress has prescribed.

The present dispute squarely implicates this interest. District courts are divided on the meaning of the term “acts of infringement” as it relates to method claims in the patent venue statute, 28 U.S.C. §

1400(b). Different judges in one of the most active districts for patent litigation have taken conflicting positions on this issue. This split creates uncertainty for plaintiffs and defendants alike. Congress has prescribed a single set of patent venue rules for the entire country. These rules should be interpreted uniformly, and this Court is uniquely positioned to achieve that goal.

Moreover, the interpretation of the venue statute that Comcast challenges in its petition extends back at least eight years. Yet this Court has not had the opportunity to address the issue in a direct appeal from a final judgment. The Court is familiar with the many practical reasons why a threshold legal issue, decided early in patent cases that are often expensive and risky, may struggle to present itself in an appeal as of right. Amicus curiae respectfully submits this brief to explain why immediate resolution of the issue is warranted on writ review and why, on the merits, Comcast's position should prevail.¹

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amicus curiae certifies that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Each party consented to the filing of this amicus brief in this case.

II. INTRODUCTION

Comcast’s petition presents an important legal issue regarding the correct interpretation of the patent venue statute. The issue concerns a basic threshold requirement for plaintiffs who file suit in judicial districts where the defendant does not reside: what it means, in the context of a claim alleging infringement of a method, for “acts of infringement” to occur within a judicial district. This important question of judicial administration has been frequently litigated in recent years. And it has produced conflicting answers from district courts—including from different judges within the Eastern District of Texas. Without this Court’s intervention, this divide is likely to deepen as litigants increasingly contest the issue before district courts.

These are precisely the circumstances in which this Court has held that the extraordinary remedy of mandamus is appropriate to resolve venue disputes. District courts need guidance on this important question of statutory interpretation and judicial administration. The issue is purely legal and squarely presented in this case. It was raised in the district court and does not turn on any case-specific facts. The issue is also clearly defined: does an “act of infringement” in 28 U.S.C. § 1400(b)

require performance of *every* step of a claimed method, or is performance of just *one* step enough? Nothing would be gained from allowing the issue to percolate further in the district courts. And Comcast has demonstrated that it is entitled to dismissal or transfer under the correct interpretation of the venue statute.

Resolving the issue now would advance this Court's purpose to bring national uniformity to important questions of patent law. It also would eliminate the possibility of forum-shopping on the basis of which interpretation of the same statutory language prevails in a particular judicial district. And it would prevent the emergence of additional intra-district splits that would create even more uncertainty for litigants.

On the merits, the answer is clear. This Court has held that, under 35 U.S.C. § 271(a), a "patent for a method or process is not infringed" in a particular location "unless all steps or stages of the claimed process" are performed there. *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1317-18 (Fed. Cir. 2005). Accordingly, to establish the "acts of infringement" element of the patent venue statute, it is not enough that some subset of the method's steps are performed in the judicial district

where the suit was filed. Rather, *all* steps of the claimed method must be performed there.

Amicus curiae therefore urges this Court to grant Comcast's petition for writ of mandamus and to rule in favor of Comcast's position on the question presented.

III. ARGUMENT

A. Mandamus is Appropriate Because the Petition Squarely Presents an Important Unresolved Legal Question of Judicial Administration on which District Courts Are Split.

A writ of mandamus is warranted where (1) the petitioner has “no other adequate means to attain the relief he desires”; (2) the petitioner's right to the writ is “clear and indisputable”; and (3) issuance of “the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004). Although mandamus relief is ordinarily not available to address improper venue, this Court has held that mandamus may be appropriate to resolve “basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results,” including venue. *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017); *see also In re Volkswagen Grp. of Am.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022). This Court has found the Supreme Court's standard for

mandamus relief to be met in such circumstances because the resolution of such issues is “important to proper judicial administration.” *Micron*, 875 F.3d at 1095 (quotations and citation omitted).

Mandamus relief is warranted here for precisely those reasons. Comcast has identified a purely “legal” dispute over the meaning of “acts of infringement” in 28 U.S.C. § 1400(b) when the claim involves a method patent. The issue is “basic” because it concerns the threshold matter of venue, which is a fundamental part of judicial administration and must be satisfied in every patent infringement case. The issue is “unsettled” because neither this Court nor the Supreme Court has directly answered it. And the issue has been the subject of “considerable litigation producing disparate results.” As Comcast’s petition documents, the issue has been litigated with increasing frequency, and district courts are split on the correct interpretation of the statute. *See* Comcast’s Petition for Writ of Mandamus, ECF No. 1, at 16-19, 23-25.

This Court has repeatedly granted mandamus relief to resolve venue issues in similar circumstances. In *Micron*, district courts were “deeply split on the answer” to a basic legal question arising in the wake of the Supreme Court’s *TC Heartland* decision on venue in patent cases.

875 F.3d at 1095 (citing *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258 (2017)). This Court concluded that resolving the issue “is important to proper judicial administration” and “[d]oing so would reduce the widespread disparities in rulings on the fundamental legal standards” at stake. *Id.* at 1096. This Court thus used mandamus as “a proper vehicle for considering the fundamental legal issues presented in this case and many others.” *Id.*

This Court in *Micron* also identified prior instances where it had viewed mandamus petitions “in the venue context” through the same lens. *Id.* (collecting cases). For example, in *Cray*, the Court found mandamus appropriate to resolve “the uncertainty surrounding and the need for greater uniformity on th[e] issue” of what “regular and established place of business” means in § 1400(b). *In re Cray Inc.*, 871 F.3d 1355, 1358-59 (Fed. Cir. 2017). Citing its “mandate to achieve uniformity in patent matters,” this Court concluded that mandamus would “further ‘supervisory or instructional goals’ on an ‘unsettled and important’ issue, an appropriate basis upon which to grant the mandamus petition.” *Id.* at 1360 (quoting *Panduit Corp. v. All States*

Plastic Mfg. Co., 744 F.2d 1564, 1574 (Fed. Cir. 1984), and *In re Queen's Univ. at Kingston*, 820 F.3d 1287, 1291 (Fed. Cir. 2016)).

This Court also has granted mandamus relief in multiple similar venue disputes since *Micron*. In *BigCommerce*, the Court granted mandamus relief to resolve a split among district courts “about whether a corporation ‘resides’ under § 1400(b) in *every* judicial district within its state of incorporation when the state has more than one judicial district.” *In re BigCommerce, Inc.*, 890 F.3d 978, 981 (Fed. Cir. 2018) (emphasis in original). The Court observed that this question of statutory interpretation was “basic,” “undecided,” and “will inevitably be repeated.” *Id.* (quotations and citations omitted).

Likewise, in *Volkswagen*, this Court granted mandamus relief in a venue dispute in light of ““a significant number of district court decisions that adopt conflicting views on the basic legal issues presented in th[e] case.”” *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022) (alteration in original) (quoting *In re Google LLC*, 949 F.3d 1338, 1342 (Fed. Cir. 2020)). The Court noted that this was a well-established basis for mandamus relief in venue disputes even though “[o]rdinarily, mandamus relief is not available for rulings on motions under 28 U.S.C.

§ 1406(a).” *Id.* The Court thus undertook interlocutory review to resolve a “disagreement among district courts on the recurring issue of whether independent car dealerships are sufficient to establish venue over car distributors.” *Id.*

As yet another example, *Google* involved legal issues relating to the interpretation of “regular and established place of business” in § 1400(b). 949 F.3d at 1342-43. This Court concluded that “mandamus is an available remedy” because “[t]he district courts’ decisions on these issues are in conflict” and “[t]his court has not addressed this fundamental and recurring issue of patent law.” *Id.* at 1343; *see also In re ZTE (USA) Inc.*, 890 F.3d 1008, 1011 (Fed. Cir. 2018) (“This case presents two such ‘basic’ and ‘undecided’ issues relating to proper judicial administration in the wake of *TC Heartland*; namely, whether Federal Circuit or regional circuit law governs the burden of proof for determining the propriety of venue under § 1400(b), and on which party that burden rests. These issues are likely to be repeated and present sufficiently exceptional circumstances as to be amenable to resolution via mandamus.”).

A straight line runs through those cases and this one. As Comcast’s petition amply demonstrates, the venue issue at stake is a purely legal

one of statutory interpretation. The issue has been often litigated and, without this Court's intervention, is likely to recur frequently. *See* Comcast Petition at 23-25; *AML IP, LLC v. J.C. Penney Corp. Inc.*, 2022 WL 10757631, at *7 (W.D. Tex. Oct. 18, 2022) ("Penney OpCo's Motion is one of a growing number challenging venue under § 1400(b)'s traditionally less contentious 'acts of infringement' prong."). District courts are split on the issue, and different judges within one of the most active districts for patent litigation have reached opposite conclusions. *See* Comcast Petition at 16-19. *Compare, e.g., SEVEN Networks, LLC v. Google LLC*, 315 F. Supp. 3d 933, 944-45 (E.D. Tex. 2018) (single step is sufficient), *and RavenWhite Licensing LLC v. Home Depot, Inc.*, 2024 WL 4329023, at *1 (E.D. Tex. Aug. 13, 2024) (same) *with AML IP, LLC v. Bath & Body Works Direct, Inc.*, 2024 WL 3825242, at *3 (E.D. Tex. Aug. 13, 2024) (each step must be performed in the judicial district). Accordingly, the issue presented in Comcast's petition warrants immediate resolution.

The fact that this split has arisen within the Eastern District of Texas increases the importance of resolving it. According to one study, patent assertion entities or non-practicing entities now file more than

60% of all patent lawsuits. Bronwyn H. Hall & Christian Helmers, *The Economics of Innovation and Intellectual Property* 536 (2024). A large proportion of them file in the Eastern District of Texas. *See id.* at 552 (from 2005–15 43% of all NPE cases were filed in the Eastern District of Texas); *see also* Lauren Castle, *Texas Patent Pendulum Swings Back from West to Eastern District*, Bloomberg L. News (Aug. 1, 2024), <https://news.bloomberglaw.com/ip-law/texas-patent-pendulum-swings-back-from-west-to-eastern-district>. So a split on a basic legal issue like this one within the Eastern District of Texas has an outsized effect on patent litigation nationwide.

Further, non-practicing entities commonly assert method patents involving software, *see* Hall & Helmers, *supra*, at 549, which often claim a combination of servers allegedly hosted by the defendant company and delivery of content to users across the country. If patentees can establish an “act of infringement” merely by alleging that a single step of a method claim—such as “delivery”—was performed in the judicial district where suit was filed, then plaintiffs will have disproportionate power to steer such cases to their preferred venue.

This Court should grant Comcast’s petition and rule that a patentee must allege infringement of *every* step of a method claim in a district to establish venue there.

B. The Term “Acts of Infringement” in 28 U.S.C. § 1400(b) Requires the Performance of All Claimed Method Steps in the Judicial District Where Suit Is Filed.

This Court should grant Comcast’s petition and rule that, to establish the “acts of infringement” prong of the patent venue statute, the defendant must “perform each step of the patented method in this district.” *AML IP, LLC v. Bath & Body Works Direct, Inc.*, 2024 WL 3825242, at *3 (E.D. Tex. Aug. 13, 2024) (Jordan, J.). That common-sense conclusion is supported by (1) the plain meaning of § 1400(b) which requires the commission of an “act of infringement” in a judicial district, not merely an element thereof; and (2) this Court’s decision in *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005) (ruling that a “patent for a method or process is not infringed” in a particular location “unless all steps or stages of the claimed process” are performed there).

Courts must “give the words of a statute their ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import.” *NTP*, 418 F.3d at 1314-15

(quoting *Williams v. Taylor*, 529 U.S. 420, 431 (2000)). “[A]bsent a clear showing of contrary legislative intent, the plain meaning analysis of the statutory language begins and ends the judicial inquiry.” *Executive Jet Aviation, Inc. v. United States*, 125 F.3d 1463, 1470 (Fed. Cir. 1997) (alteration in original) (quoting *MCI Telecomms. Corp. v. United States*, 878 F.2d 362, 365 (Fed. Cir. 1989)).

Here, the patent venue statute states: “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.” 28 U.S.C. § 1400(b). “A method patent . . . is not infringed unless all the steps are carried out.” *Limelight Networks, Inc. v. Akamai Techs., Inc.*, 572 U.S. 915, 921 (2014). It follows, therefore, that a defendant commits an “act of infringement” of a method claim in a judicial district only if it performs all method steps there. Performance of a mere subset of the method steps is not enough because such an act is not an “act of infringement.”

If the plain meaning of the statute left any doubt, this Court’s decision in *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005), dispels it. In *NTP*, this Court held that “a process cannot be

used ‘within’ the United States as required by [35 U.S.C. §] 271(a) unless each of the steps is performed within this country.” *Id.* at 1318. The Court reasoned that “the use of a process necessarily involves doing or performing each of the steps recited,” and because § 271(a) requires an act of infringement “within” the United States, “all steps or stages of the claimed process” must be “utilized” there. *Id.* (quotations and citation omitted).

The same is true under the patent venue statute: the “acts of” infringing a method claim are committed “where” every step is practiced. *See Valeant Pharm. N. Am. LLC v. Mylan Pharm. Inc.*, 978 F.3d 1374, 1380 (Fed. Cir. 2020) (“We answered the ‘where’ question with respect to traditional acts of infringement years ago in extraterritorial infringement cases,” including in *NTP*). “[I]f a private party practiced even one step of a patented process outside” a territory, then an act of infringement has not occurred in that place. *NTP*, 418 F.3d at 1318 (quotations and citation omitted). Nothing justifies interpreting the patent venue statute differently in the method patent context from the statute that defines the predicate act of infringing a method patent.

IV. CONCLUSION

Comcast's petition raises an important and recurring issue of judicial administration on which district courts are divided, and the district court erred in this case. Deciding this issue now will achieve uniformity in the law and promote efficiency in patent litigation. Comcast's petition therefore should be granted.

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CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitation of Rule 21(e) of the Federal Circuit Rules because it contains 2,888 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b), as determined by the word counting feature of Microsoft Word.

2. This Brief complies with the typeface requirements of Rule 32(a)(5) and the typestyle requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because the Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: October 27, 2025

/s/ Stanley J. Panikowski
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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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Stanley J. Panikowski