No. 2026-104

United States Court of Appeals for the Federal Circuit

IN RE: COMCAST CABLE COMMUNICATIONS, LLC d/b/a Xfinity; COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC d/b/a Comcast Technology Solutions,

Petitioners.

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

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF MANDAMUS

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CERTIFICATE OF INTEREST

Counsel for Sandpiper CDN, LLC, certifies the following:

1. **Represented Entities.** Fed. Cir. R. 47.4(a)(1). Provide the full names of all entities represented by undersigned counsel in this case.

   Sandpiper CDN, LLC

2. **Real Parties in Interest.** Fed. Cir. R. 47.4(a)(2). 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.

   N/A

3. **Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3). 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.

   Theseus IP, LLC; Sandpiper Consulting, LLC

4. **Legal Representatives.** Fed. Cir. R. 47(a)(4). 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.

   Shook, Hardy & Bacon L.L.P.: Andrew M. Long; Cesar A. Udave I; Maxwell C. McGraw; Robert H. Reckers

   Gilliam & Smith, LLP: Melissa Richards Smith

5. **Related Cases.** Fed. Cir. R. 47(a)(5). 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)?

   No

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

   None.

CONFIDENTIAL MATERIAL OMITTED

There is no confidential information in this response.

Dated: November 5, 2025

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STATEMENT OF RELATED CASES

Sandpiper CDN, LLC, is not aware of any other appeal in or from this civil action. Nor is Sandpiper aware of any case pending in this or any other court or agency that will directly affect or be directly affected by the Court's decision in this matter.

INTRODUCTION

Mandamus is an "extraordinary remedy, to be reserved for extraordinary situations." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988) (citing *Kerr v. U.S. Dist. Ct. for the N. Dist. of Cal.*, 426 U.S. 394, 402 (1976)). Petitioners Comcast Cable Communications, LLC, and Comcast Cable Communications Management, LLC, ("Comcast") ask this Court to overturn largely settled law to hold that Comcast has a better reading of the patent-venue statute than Respondent Sandpiper CDN, LLC ("Sandpiper"). But nothing about this venue dispute is remotely extraordinary, and Comcast's attempt to manufacture a mandamus-worthy vehicle plows headlong into both the standards governing mandamus review and the plain text of the venue statute. This Court should deny Comcast's petition for writ of mandamus.

First, Comcast's petition does not clear the high bar for mandamus relief. Comcast asks this Court to treat the writ as an interlocutory appeal. But, as this Court has explained, venue determinations can be reviewed on appeal after final judgment, and, therefore, "mandamus review of improper-venue decisions is generally inappropriate." *In re HTC Corp.*, 889 F.3d 1349, 1353 (Fed. Cir. 2018).

Comcast can point to no unique circumstances justifying relief in this case. To the contrary, Comcast asks this Court to rewrite the meaning of "acts of infringement" in 28 U.S.C. § 1400(b) based on a purported "split" in the district courts. But no real split exists. Comcast can cite only a single district court decision supporting its position. On the other side of the ledger are at least eight years of uniform district court decisions—from the Eastern District of Texas, the Western District of Texas, the Northern District of Illinois, and the District of Delaware—rejecting Comcast's position. It is well established that mandamus is inappropriate "if a rational and substantial legal argument can be made in support of the rule in question." *In re Cordis Corp.*, 769 F.2d 733, 737 (Fed. Cir. 1985). This Court should decline Comcast's invitation to brush aside numerous district court decisions as irrational and insubstantial.

Second, Comcast cannot show a right to relief under any standard of review, let alone a right that is clear and indisputable, because its reading of Section 1400(b) is wrong. The plain language of Section 1400(b) confirms that venue is proper in a district so long as the defendant has a regular and established place of business in that district and has engaged in "acts of infringement" there—i.e., has performed

some part of their infringing activity in the district. This commonsense interpretation flows from the plain language of Section 1400(b), the canons of construction, the statutory scheme more broadly, and Section 1400(b)'s purpose. Comcast, on the other hand, does not argue that venue in a district where it has a regular and established place of business and practices at least one step of a method is unfair or inconvenient. Rather, it advances a strained atextual interpretation requiring that the underlying act of infringement be fully complete within the district. That reading flouts applicable tools of interpretation, ignores decisions of this Court, and asks this Court to excise the second half of Section 1400(b) when the infringement suit involves steps of a method taking place in different districts.

Nor does *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005), assist Comcast. The correct reading of *NTP* limits its holding to the specific extraterritoriality question presented and the statutory language governing that determination. This Court should reject Comcast's false dichotomy, drawn from *NTP*, in which "acts of infringement" either occur in one judicial district or no district at all.

Finally, even were the Court inclined to resolve this venue question, this case does not present a neat way to do so. Below, Sandpiper alleged another potential ground for venue, which the district court did not address. Before this Court can direct the district court to dismiss or transfer the case, it should allow the district court to consider that ground in the first instance.

For each of these reasons, this Court should deny the petition.

STATEMENT OF THE CASE

A. Sandpiper Sues Comcast for Patent Infringement in the Eastern District of Texas.

Sandpiper CDN, LLC, holds numerous patents related to content delivery networks ("CDNs"). Appx21 ¶¶ 34–35. In simple terms, a CDN is a network of servers intended to speed up delivery of online content. Appx12–15 ¶¶ 13–25. Sandpiper's patents reflect "revolutionary infrastructure and logic" that allow "for seamlessly routing users to the optimal … server with the correct content." Appx13 ¶ 16. This process eliminates "common congestion and performance issues," providing a better online experience for users. Appx13 ¶ 15.

As life has moved increasingly online, demand for CDNs has skyrocketed. Appx15 ¶ 25. This led a slew of companies to enter the CDN

market, including Comcast. Appx15 ¶¶ 25–26. In 2010, Comcast created a CDN named "Traffic Control." Appx15–17 ¶¶ 25–27. Traffic Control would eventually become Apache Traffic Control, which Comcast uses "to consistently and reliably deliver content at scale" and "meet its enormous data streaming needs." Appx17 ¶¶ 27–28.

But Comcast took a shortcut. Rather than creating Traffic Control from scratch, it "leverag[ed] technology" that Sandpiper created. Appx15 ¶ 26. Indeed, Comcast's entire CDN "infrastructure … is built based on CDN technology" derived from Sandpiper's patents. Appx29–30 ¶ 61. Comcast not only uses this technology "for its own products and services," but also "sells CDN services to businesses and other content providers via its Content Delivery Network (CDN) Suite." *Id.*

In November 2024, Sandpiper sued Comcast Cable Communications, LLC; Comcast Cable Communications Management, LLC; and Comcast Corporation[1] for patent infringement in the Eastern District of Texas. Appx8–84. Sandpiper asserted claims under five of its

[1] The parties later stipulated to dismiss Comcast Corporation, and the district court did so. Appx716–23.

patents: U.S. Patent Nos. 7,013,322; 8,478,903; 9,628,347; 9,660,876; 9,762,692. Appx8 ¶ 1.[2]

Each of Sandpiper's claims are method claims. *See, e.g.*, Appx30–83. For example, Sandpiper asserts claim 1 of the '692 patent, which is directed to infrastructure and logic for configuring CDNs to handle content that is not frequently accessed by clients but still needs to be served. Appx28–29 ¶¶ 58–59. Claim 1 of the '692 patent claims "a method for delivering content in a CDN comprising at least a first tier of servers." Appx71 ¶ 106. As pertinent to Comcast's venue challenge, the claimed method includes the steps of "obtain[ing] a request from a client for a resource" and "serving the resource to the client" via the claimed logic and infrastructure. Appx73 ¶ 107; Appx75 ¶ 109.

Sandpiper has alleged that venue is proper in the Eastern District of Texas under 28 U.S.C. § 1400(b). Comcast does not dispute that it maintains a regular and established place of business in that district. *See* Appx4 & n.1. And Sandpiper's complaint alleges that Comcast "committed and continue[s] to commit acts of patent infringement in the

[2] Sandpiper subsequently dropped any claim under the '322 patent. Appx793.

Eastern District of Texas." Appx11 ¶ 9; *see also* Appx11–12 ¶¶ 10–12. The complaint further alleges that "Comcast, directly and/or through subsidiaries or intermediaries, committed and continues to commit acts of infringement in this District by, among other things, leveraging the offices, facilities, and/or employees Comcast maintains in this District and the State of Texas to make, use, sell, and offer to sell the accused Comcast CDN functionalities." Appx10 ¶ 7.

B. The District Court Denies Comcast's Motion to Dismiss or Transfer Venue.

In January 2025, Comcast filed a motion to dismiss or transfer the case for improper venue under 28 U.S.C. § 1406(a). *See* Appx662–77. As relevant here, Comcast argued that the complaint did not allege any "acts of infringement" in the Eastern District of Texas, as required under 28 U.S.C. § 1400(b). Appx671–76. In the alternative, Comcast argued that because Comcast CDN servers were located outside the district, venue was also improper, as not all steps of the alleged infringement took place within the district. Appx675–76. In so arguing, Comcast urged the district court to depart from its prior ruling in *SEVEN Networks, LLC v. Google LLC*, 315 F. Supp. 3d 933 (E.D. Tex. 2018)—which held that

performance of a single method step in a district satisfies Section 1400(b)'s "acts of infringement" requirement. Appx675.

Sandpiper opposed the motion, arguing that it had sufficiently alleged that at least one step of each asserted claim took place in the Eastern District of Texas, which is all that *SEVEN Networks* requires. Appx730–42. Sandpiper rejected Comcast's focus on the CDN servers—which are only part of the method and can be placed anywhere—pointing out that its allegations concerned Comcast's entire CDN, including the portions that delivered the accused services to Comcast's customers in the district. Appx737. Sandpiper also observed on sur-reply that "Comcast does not dispute that it *offers and sells* the accused services to its customers in the District," another ground for venue. Appx785.

The district court denied Comcast's motion to transfer or dismiss. Appx1–2. The court adopted the report and recommendation of a magistrate judge, who recommended against transfer or dismissal "because 'Comcast's CDN serves Comcast customers in the Eastern District of Texas, [meaning] the "delivering content" [step] … is necessarily performed in this District.'" Appx6. The judge explained that "for each [patent], [Sandpiper] provides at least one step that it alleges is

performed in this District and provides sufficient support for these allegations." *Id.* (citing Appx731–33).

Comcast now seeks a writ of mandamus from this Court ordering the district court to grant its motion to dismiss or transfer venue under 28 U.S.C. § 1406(a).

REASONS FOR DENYING THE WRIT

The Supreme Court has explained that mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (internal quotation marks omitted). To meet its burden of showing entitlement to relief, Comcast must demonstrate "exceptional circumstances amounting to a judicial usurpation of power or a clear abuse of discretion," which requires it to show: (1) a clear and indisputable right to the issuance of the writ; (2) no other adequate method of obtaining relief; and (3) circumstances justifying grant of the extraordinary writ. *Id.* at 380–81 (citations and internal quotation marks omitted). "Failure to establish any of these three prerequisites may suffice to deny a petition." *Waymo LLC v. Uber Techs., Inc.*, 870 F.3d 1350, 1357 (Fed. Cir. 2017). Because

Comcast cannot establish *any* of these prerequisites for relief, the petition should be denied.[3]

I. Comcast's Petition Fails to Meet the High Standards for Mandamus Review.

Comcast can meet "the high standard necessary for a writ of mandamus to issue" only if this Court is "satisfied that the writ is appropriate under the circumstances" and the petitioner has no other adequate remedy. *In re HTC Corp.*, 889 F.3d at 1352, 1361 (quoting *Cheney*, 542 U.S. at 380–81). Comcast's challenge to the district court's denial of its motion to dismiss or transfer venue under 28 U.S.C. § 1406(a) based on its interpretation of the venue provision in Section 1400(b) does not meet this high bar.

[3] The standards governing mandamus do "not involve substantive issues of patent law, [so] this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). This Court and the Fifth Circuit apply the same three factors for mandamus relief, and much of this Court's mandamus precedent applies Fifth Circuit law, so this opposition cites both Federal and Fifth Circuit decisions. "Whether venue is proper under § 1400(b) is," however, "an issue unique to patent law and is governed by Federal Circuit law." *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1012 (Fed. Cir. 2018).

A. Comcast has an adequate remedy and has failed to show that mandamus is appropriate.

It is beyond dispute that this Court may review the district court's denial of Comcast's motion after final judgment. As the Court has explained, if "after judgment venue is determined to have been improper, and the improper-venue objection was not waived, the appellants will be entitled to assert it on appeal and, if the objection is sustained, obtain from the appeals court an order vacating the judgment and directing the remand of the action to the appropriate venue." *Id.* at 1353 (internal quotation marks and brackets omitted).

"Given the availability of adequate relief on appeal, mandamus review of improper-venue decisions is generally inappropriate." *Id.* "[T]he extraordinary writs cannot be used as substitutes for appeals, even though hardship may result from delay and perhaps unnecessary trial." *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953) (citation omitted). Even if the denial of the motion "will give rise to myriad of legal and practical problems as well as inconvenience to both courts," "Congress must have contemplated those conditions in providing that only final judgments are reviewable." *Id.*

Recognizing these principles, this Court has, on multiple occasions,

denied petitions for writ of mandamus when asked to review venue questions. *See, e.g.*, *In re Monolithic Power Sys., Inc.*, 50 F.4th 157, 158 (Fed. Cir. 2022) (per curiam); *In re ZTE Corp.*, No. 2022-122, 2022 WL 1419605, at *1 (Fed. Cir. May 5, 2022); *In re Canon Inc.*, No. 2022-131, 2022 WL 1197336, at *1 (Fed. Cir. Apr. 22, 2022); *In re Medtronic, Inc.*, No. 2022-107, 2021 WL 6112980, at *1–2 (Fed. Cir. Dec. 27, 2021) (per curiam); *In re Hughes Network Sys., LLC*, No. 2017-130, 2017 WL 3167522, at *1 (Fed. Cir. July 24, 2017) (per curiam). The same result is required here.

B. Comcast's attempts to justify mandamus relief fail.

Trying to dodge the bedrock principles governing mandamus review, Comcast urges this Court to treat mandamus as a kind of interlocutory appeal (albeit one not authorized by statute). This Court should reject Comcast's invitation to conflate mandamus and appeal.

Comcast suggests, in a footnote (Pet. 22 n.6), that it may not have to satisfy the Supreme Court's requirements for mandamus relief because it is proceeding under the theory that mandamus "is important to proper judicial administration." Pet. 21 (quoting *In re Stingray IP Sols., LLC*, 56 F.4th 1379, 1382 (Fed. Cir. 2023)). That assertion is

unsupported, and *In re Stingray* unsurprisingly does not exempt Comcast from the Supreme Court's mandamus precedent. This Court took pains in that case to emphasize that its failure to consistently "*separately* require[]" a showing of the *Cheney* factors when applying the "'administration of justice' standard," should not "be misunderstood" or "detract[] from the fundamental reality that, as the Supreme Court has stated, '"mandamus should be resorted to only in extreme cases."' *In re Stingray*, 56 F.4th at 1382–83 (emphasis added) (quoting *La Buy v. Howes Leather Co.*, 352 U.S. 249, 257–58 (1957)). That the Court might have subsumed the *Cheney* factors more broadly into its analysis does not mean that Comcast may avoid them entirely by invoking the administration of justice.

As Comcast observes, this Court occasionally has recognized "narrow circumstances where [granting mandamus] is important to proper judicial administration, such as when there are a significant number of district court decisions that adopt conflicting views on the basic legal issues presented in the case." *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022) (internal quotation marks, citations, and brackets omitted). But Comcast must demonstrate why

this case falls within those circumstances, which it cannot do. Indeed, *In re Volkswagen* only underscores that mandamus is not warranted. After recognizing that granting mandamus relief based on improper venue would ordinarily not be appropriate, the Court there granted mandamus only because of "at least four disparate inter-district determinations on the specific issue presented," as well at least one district court that had "stay[ed] another case until the Federal Circuit issues further guidance on these venue issues." *Id.* at 1207 n.2 (internal quotation marks omitted). The great deal of "inter- and intra-district uncertainty on th[e] issue thus warrant[ed] mandamus review." *Id.*

No such uncertainty exists here. As the Chamber of Commerce observes, "the interpretation of the venue statute that Comcast challenges extends back at least eight years." Chamber Br. 2. In those eight years, Comcast can point to only a *single* case supporting its position. *See* Pet. 23 (citing *AML IP, LLC v. Bath & Body Works Direct, Inc.*, No. 22-CV-216, 2024 WL 3825242, at *3 (E.D. Tex. Aug. 13, 2024)). On the flip side, multiple judges—both inside and outside the Eastern District of Texas—have rejected it. *See, e.g.*, *POET Rsch., Inc. v. Hydrite Chem. Co.*, No. 24-cv-01285, 2025 WL 2696411, at *7 (N.D. Ill. Sept. 22,

2025) (Wood, J.); *AML IP, LLC v. Am. Eagle Outfitters, Inc.*, No. 21-cv-00823, 2022 WL 11456095, at *6 (W.D. Tex. Oct. 19, 2022) (Albright, J.); *SEVEN Networks, LLC*, 315 F. Supp. 3d at 943–44 (Gilstrap, J.); *Blackbird Tech LLC v. Cloudflare, Inc.*, Nos. 17-283 & 17-284, 2017 WL 4543783, at *4 (D. Del. Oct. 11, 2017) (Goldberg, J.); *see also RavenWhite Licensing LLC v. Home Depot, Inc.*, No. 23-CV-00423, 2024 WL 4329023, at *1 (E.D. Tex. Aug. 13, 2024) (Payne, Mag. J.). This nearly unbroken history of courts rejecting Comcast's position demonstrates why mandamus is inappropriate: "if a rational and substantial legal argument can be made in support of the rule in question," the writ should not issue. *In re Cordis Corp.*, 769 F.2d at 737.

That is enough to dispose of the petition: a single aberrant district court decision does not rise to "exceptional circumstances warranting immediate intervention to assure proper judicial administration." *In re Google LLC*, No. 2018-152, 2018 WL 5536478, at *2 (Fed. Cir. Oct. 29, 2018) (per curiam); *see also id.* at *3 ("[T]he paucity of district court cases that have so far addressed the issue suggest that the 'extraordinary remedy' of a writ of mandamus is not currently warranted."). Respecting the bounds of mandamus authority means permitting legal issues "to

percolate in the district courts" before weighing in, as this Court has recognized. *Id.* Those same interests control here.

This case is therefore on all fours with *In re Canon*. There, the Court recognized that it had, in "narrow circumstances," allowed "judicial intervention by way of mandamus review of an improper venue determination." 2022 WL 1197337, at *2. But it denied the writ challenging a venue decision because the petitioner did "not point to disagreement among a significant number of district courts on this issue that might warrant this court's immediate review." *Id.* "At most," the Court reasoned, the petitioner's "arguments suggest that the district court's decision is an outlier capable of postjudgment review." *Id.* So too here.[4]

Because Comcast has the means to obtain relief on appeal after final judgment and has not shown exceptional circumstances warranting

[4] The Court in *In re Canon* granted mandamus as to the petitioner's request for transfer to a more convenient forum. It did so in light of "the purpose of § 1404(a)," which "is to avoid burdening parties and witnesses with unnecessary inconvenience and expense, [but] by the time a case is tried and appealed, … witnesses would have suffered the inconvenience of traveling to a distant forum." *In re HTC Corp.*, 889 F.3d at 1352 n.5. Those interests are not implicated here, as Comcast did not raise an inconvenience argument in the district court.

mandamus, this Court could deny Comcast's petition for writ of mandamus.

II. Comcast Has Not Shown Any Error, Let Alone a Clear and Indisputable Right to Relief, on Its Theory That Section 1400(b) Requires Complete Infringement.

This Court should also deny the petition because Comcast cannot show the clear and indisputable right to relief required to justify mandamus. *See In re Dresser Indus., Inc.*, 972 F.2d 540, 542–43 (5th Cir. 1992) (mandamus review "is governed by the standard required to issue a writ of mandamus, not the standard … on direct appeal"). The district court embraced the correct reading of the text: any acts of infringement in a particular district are sufficient for venue to be proper there (assuming a regular and established place of business). Even were this Court to agree with Comcast's reading, moreover, that would not entitle Comcast to relief. The district court did not address whether sale of a service that performs the method claim constitutes acts of infringement sufficient for venue. Before this Court can direct the district court to dismiss or transfer the case, then, it would need to allow the district court to address this question in the first instance.

For each of these reasons, this Court should deny the petition for writ of mandamus.

A. The plain language of 28 U.S.C. § 1400(b) permits venue in the Eastern District of Texas.

Under 28 U.S.C. § 1400(b), "[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." Sandpiper does not dispute that Comcast does not reside in the Eastern District of Texas, so the first prong does not apply. *See* Appx9 ¶¶ 3–4. Nor does Comcast contest that it has "regular and established place[s] of business" in the district. *See* Appx4 & n.1. Thus, the sole question relevant for venue is whether Comcast "committed acts of infringement" in the district.

When interpreting a statute, the Court begins with the statutory language, *Williams v. Taylor*, 529 U.S. 420, 431 (2000), and looks to a statute's text and structure, *Alexander v. Sandoval*, 532 U.S. 275, 288 (2001). To understand the plain meaning of statutory language, the Court ascertains a phrase's "ordinary, contemporary, common meaning," *Williams*, 529 U.S. at 431 (internal quotation marks omitted), which

"may be properly informed by the use of dictionaries," *McGee v. Peake*, 511 F.3d 1352, 1356 (Fed. Cir. 2008).

Under the plain language of the statute, Comcast has "committed acts of infringement" in the Eastern District of Texas. Under standard dictionary definitions, an "act" involves the "process of doing something." *Act*, *Merriam-Webster*, https://tinyurl.com/d68ace3c (last visited Nov. 5, 2025); *see also Act*, *Oxford English Dictionary*, https://tinyurl.com/ymvj36p2 (last visited Nov. 5, 2025) ("To perform actions, to do things; to take action."). And Congress has defined what it means to infringe a patent: "whoever without authority, makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a). Applying these definitions, then, performing "acts of infringement" in a district involves engaging *in the process* of making, using, offering to sell, or selling a patented invention there. As alleged by Sandpiper, and recognized by the district court, Comcast has done just that: "Comcast's CDN serves Comcast customers in the Eastern District of Texas, [so] the 'delivering content'

[step] … is necessarily performed in th[e] District." Appx6. Venue is therefore proper in the Eastern District of Texas.

This reading is furthermore consistent with other statutory schemes involving "acts of" language. For example, Congress has defined an "act of war" to mean "any act *occurring in the course of* (A) declared war; (B) armed conflict…; or (C) armed conflict between military forces of any origin." 18 U.S.C. § 2331(4) (emphasis added); *see also* 18 U.S.C. §§ 1961(1), (5), 1962 (prohibiting racketeering, or engaging in multiple "acts of racketeering"). In each context, the "acts of" are not synonymous with the entirety of the action—rather, they are constituent parts of the action. So too here: "acts of infringement" are the underlying conduct comprising infringement. Unsurprisingly, the great majority of courts to consider the issue have agreed with this commonsense interpretation of Section 1400(b). *See, e.g.*, *supra* pp. 15–16 (collecting cases). Comcast cannot show a clear and indisputable right to relief based on an atextual interpretation of Section 1400(b) that has been nearly unanimously rejected.

B. Comcast's contrary interpretation contravenes the plain text of Section 1400(b) and misreads *NTP*.

In urging that the district court erred, Comcast contends that "[t]his Court's cases establish that infringement of a method claim requires the performance of *all* steps of the claimed method, not merely the performance of only *some* steps." Pet. 13. True enough, *see, e.g.*, *Mirror Worlds, LLC v. Apple Inc.*, 692 F.3d 1351, 1358 (Fed. Cir. 2012) ("To infringe a method claim, all steps of the claimed method must be performed."), but Comcast misses the point. The question for venue is not whether a defendant has committed a *complete act of infringement* in the district, but whether they have committed *acts of infringement* there. As explained, "acts of infringement" are actions that are part of a completed act of infringement. Because such acts were committed in the Eastern District of Texas, venue was proper. Comcast's contrary arguments ignore the statutory language and contort this Court's decision in *NTP*.

1. Comcast's complete infringement theory violates controlling canons of interpretation.

By eliding the crucial distinction between infringement and acts of infringement, Comcast misinterprets the statute in three primary ways.

First, Comcast's reading violates the surplusage canon by ignoring "*acts of*" in the statute. Under that canon of interpretation, there is a

"presumption that each word Congress uses is there for a reason." *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 477 (2017); *see also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 174–79 (2012). Yet, under Comcast's reading, Section 1400(b) would mean the same whether it lay venue in any district "where the defendant committed *infringement*" or "where the defendant has committed *acts of infringement*." Because this interpretation reads "acts of" out of the statute, it should be rejected. *See, e.g.*, *Duncan v. Walker*, 533 U.S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute." (internal quotation marks omitted)); *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists … where a competing interpretation gives effect to every clause and word of a statute." (internal quotation marks omitted)).

Second, Comcast's reading ignores this Court's precedent holding that an "act of infringement" may encompass activities that are not themselves a completed act of infringement, but instead are "part of" the infringement. In *Valeant Pharmaceuticals North America LLC v. Mylan Pharmaceuticals Inc.*, 978 F.3d 1374 (Fed Cir. 2020), this Court

considered what actions sufficed for venue when infringement was premised on a violation of Section 271(e)(2) (i.e., based on the defendant's submission of an Abbreviated New Drug Application ("ANDA")). *Id.* at 1375. Rather than limiting venue solely to the district where the ANDA was submitted, the Court explained that venue may also be appropriate in the district where the ANDA was *prepared*, even if the ultimate infringement (the ANDA *submission*) did not occur there. *Id.* at 1381, 1384 & n.8.[5] The Court elaborated that, in assessing venue under Section 1400(b)'s "acts of infringement" language, the pertinent question is whether the defendant engaged in acts in the district that are "sufficiently related" to the infringement. *Id.* at 1384.

In *Celgene Corp. v. Mylan Pharmaceuticals Inc.*, 17 F.4th 1111 (Fed. Cir. 2021), this Court again assessed Section 1400(b)'s "acts of infringement" requirement when infringement is based on the defendant's submission of an ANDA. There, this Court reiterated that, as required by Section 1400(b), "the relevant infringing acts must, at a

[5] Specifically, this Court held that venue is proper "in those districts where acts occurred that would suffice to categorize those taking them as a 'submitter' under § 271(e)" and left open the possibility that those acts occurred in either West Virginia (where the ANDA was prepared) or Maryland (where FDA received it). *Id.* at 1384 & n.8.

minimum, fairly be *part of* the submission—not merely 'related to' it in some broader sense." *Id.* at 1121. This was because, "[a]fter all, the relevant prong of § 1400(b) restricts venue to 'where the defendant has committed acts of infringement'—not where the defendant has committed acts related to (*but not part of*) acts of infringement." *Id.* (emphasis added) Applying that test, the Court concluded that a paragraph IV notice letter was not sufficiently related to an act of infringement because it was not part of the ANDA submission; rather, it was treated separately by the statute and regulations and was sent after the ANDA submission had occurred. *Id.*

The logic of *Valeant* and *Celgene* compels rejection of Comcast's position. As this Court contemplated in *Valeant*, the commonsense reading of Section 1400(b) indicates that venue may be proper in multiple districts based on acts of infringement taken in various districts. *See* 978 F.3d at 1384 ("[Venue] is proper only in *those districts* that are sufficiently related to the ANDA submission…." (emphasis added)). The question is whether those acts of infringement can fairly be said to be "part of" the infringement. *Celgene*, 17 F.4th at 1121. Indisputably, taking one step of a patented method in a district is "part of" the

infringement of the entire method, making venue proper in that district. To illustrate, consider a defendant who is alleged to infringe (under Section 271(a)), a method claim that recites the following two steps: (1) preparing an ANDA; and (2) submitting an ANDA. The logic of *Valeant* and *Celgene* dictates that venue is appropriate in the district where the ANDA was prepared, even if the rest of the method was not performed within the district (assuming the defendant has a regular and established place of business there). Comcast's contrary interpretation of Section 1400(b) cannot be squared with the reasoning of *Valeant* and *Celgene* and should be rejected.

Third, Comcast asks this Court, in effect, to erase the second half of Section 1400(b) for a subset of cases. Though Section 1400(b) was adopted to "narrow[] jurisdiction relative to the courts that previously allowed patent suits wherever the defendant could be served," it still was intended to "allow[] broader venue than merely the place of a defendant's incorporation." *In re Cray Inc.*, 871 F.3d 1355, 1361 (Fed. Cir. 2017). Yet Comcast admits that its reading means that venue in this case would *only* be proper "in a district in the state where the defendant is incorporated." Pet. 20. This flies in the face of Congress's intent. *See*

SEVEN Networks, LLC, 315 F. Supp. 3d at 943 n.13 ("[T]he result required by [this] reading of the statute undoubtedly forecloses the ability of a plaintiff to avail itself of half of the special patent venue statute. This would do violence to the statutory venue grant.").

Hypotheticals illustrate the absurdity of Comcast's reading. For instance, suppose a company performs both steps of a patented method in District X. In that case, venue would be proper in District X. But suppose instead that the company performs the first step in District X and the second step in District Y. Common sense tells us that the company has committed acts of infringement in both districts, making venue proper in either district (assuming the defendant also has a regular and established place of business in both districts). Indeed, when the company has performed the second and final step in District Y, it has infringed the patented method. *See, e.g.*, *Mirror Worlds, LLC*, 692 F.3d at 1358. Yet under Comcast's reading, venue would be proper in *neither* District X *nor* District Y, despite the infringement being completed there.

These problems are only magnified with more defendants. Imagine the same scenario, but with the method performed by two affiliated companies. As in the above hypothetical, venue would be unavailable in

both districts under the second prong of Section 1400(b). However, unless both companies are incorporated in the same state, venue would also be unavailable under the first prong. *See, e.g.*, *In re Samsung Elecs. Co.*, No. 2025-129, 2025 WL 1892833, at *2 n.1 (Fed. Cir. July 9, 2025) ("[I]n suits against multiple defendants, transfer is proper only to a district in which all of them are subject to personal jurisdiction and in which venue is proper for an action against all of them." (internal quotation marks omitted)). In such a scenario, there would be no proper venue for a suit against both companies.[6]

Comcast asks this Court to create, in effect, "a venue gap, where the federal courts have jurisdiction, but where no proper venue to exercise that jurisdiction exists." *In re HTC Corp.*, 889 F.3d at 1355. But "venue provisions are designed, not to keep suits out of the federal courts, but merely to allocate suits to the most appropriate or convenient federal forum." *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706,

[6] This scenario does not require an active imagination. The parties voluntarily agreed to dismiss from the suit Comcast Corporation, a company incorporated in Pennsylvania. *See* Appx9 ¶ 5; Appx716–23. Because the other defendants are incorporated in Delaware, Appx9 ¶¶ 3–4, venue in this case would have been unavailable in any forum under Comcast's argument.

710 (1972); *see also Denver & Rio Grande W. R.R. Co. v. Bhd. of R.R. Trainmen*, 387 U.S. 556, 560 (1967) ("[V]enue is primarily a matter of convenience of litigants and witnesses."). Comcast does not argue that litigating this suit in the Eastern District of Texas would be inappropriate or inconvenient. (Indeed, it did not even raise a *forum non conveniens* challenge under 28 U.S.C. § 1404. *See* Appx662–78.) To the contrary, it maintains "a regular and established place of business" in the district. *See* Appx4 & n.1.

Comcast's reading also drives up costs across the board. Reading "acts of infringement" to require complete infringement in a single district threatens a dramatic growth in expenditure of resources on jurisdictional discovery, particularly in cases involving the internet or computer networks where it may be difficult to uncover where operations are occurring. But this Court has held that in interpreting the venue statute, it is important to "minimize expenditure of resources on threshold, non-merits issues, of which venue is one." *In re Google LLC*, 949 F.3d 1338, 1347 (Fed. Cir. 2020). In addition, requiring plaintiffs to make a showing as to where every step in a method takes place before they may even bring suit in a given forum threatens to blur the lines

between the venue inquiry and the merits of infringement. *See In re Cordis Corp.*, 769 F.2d at 737 ("The issue of infringement is not reached on the merits in considering venue requirements." (internal quotation marks and brackets omitted)).

2. Comcast's reliance on NTP *is misplaced.*

Equally unpersuasive is Comcast's reliance on *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282 (Fed. Cir. 2005). Comcast urges that "there cannot be 'infringement' of a method 'in the judicial district' unless all steps are performed in the district." Pet. 15. But Comcast's reliance on *NTP* is wrong, twice over.

First, *NTP* concerned the extraterritorial reach of U.S. Patent law. The Court had no occasion to consider, and did not address, the question of which venues are appropriate when U.S. patent law unquestionably applies. Under U.S. patent law, liability attaches when "whoever without authority makes, uses, offers to sell, or sells any patented invention, *within the United States*." 35 U.S.C. § 271(a) (emphasis added). In *NTP*, this Court considered whether a defendant could be liable for infringement of a method claim when some of the underlying activity—i.e., one step of the method—took place outside of the United States. 418

F.3d at 1318. The Court held "that a process cannot be used 'within' the United States as required by section 271(a) unless each of the steps is performed within this country." *Id.* Because one of the steps had been performed outside of the country, "as a matter of law, these claimed methods could not be infringed by use of [the] system" under Section 271(a). *Id.*

The Court's reasoning in *NTP* does not map onto the situation here—the issue there was the merits of infringement, not venue. Comcast cannot seriously contest that infringement of a method may occur even when some steps occur in different U.S. districts. That alone takes this case outside the purview of *NTP*. *Cf. Grant St. Grp., Inc. v. D & T Ventures, LLC*, No. 10-1095, 2012 WL 13694, at *4 n.5 (W.D. Pa. Jan. 4, 2012) (rejecting application of *NTP* in a "personal jurisdiction analysis" and noting that *NTP* "speaks to the merits of the infringement claim"). The necessary implication of Comcast's reading of Section 1400(b) is the creation of a false dichotomy: infringement of a patented method may happen only in one district or no district at all. But this ignores the obvious middle ground—that acts of infringement have occurred in each district in which the company took a step of the patented method.

Second, though *NTP* answered a *similar* question to the one posed by the venue statute, it did not answer the *same* question. Whether an action happens *within* a location, as Section 271 requires, is not the same question as whether the action happens *in* that location, as Section 1400(b) contemplates. When used as a preposition referring to a location, "within" is "used as a function word to indicate enclosure or containment." *Within*, *Merriam-Webster*, https://tinyurl.com/4wx5evcy (last accessed Nov. 5, 2025); *Within*, *Oxford English Dictionary*, https://tinyurl.com/kckr62bw (last accessed Nov. 5, 2025) ("With emphasis on the restriction or confinement by limits or boundaries; In the limits of, not outside or beyond."). By contrast, "in" is "used as a function word to indicate inclusion, location, or position within limits." *In*, *Merriam-Webster*, https://tinyurl.com/4dud6hub (last accessed Nov. 5, 2025). In other words, Section 271(a)'s requirement that infringement take place "within the United States" means that the infringement must be fully "enclos[ed]" or "contain[ed]" within the United States—i.e., no part of the infringement can take place outside of the United States. By contrast, Section 1400(b)'s requirement that venue lay "in the judicial district" where the defendant has committed acts of infringement

features no similar limitation. Put differently, under Section 1400(b), venue is proper in *any* district in which acts of infringement take place (and the defendant has a regular and established place of business).[7]

The *Bath & Body Works* court—the sole court to agree with Comcast's reading—ignored this important distinction. After relying on *NTP* to rule that "a method is only used *within* a location if each step is performed in that location," that court concluded that "it follows that a defendant does not use a method or process *in* a judicial district unless each of the steps is performed *within* that district." *Bath & Body Works*, 2024 WL 3825242, at *3 (emphases added). But Section 1400(b) includes no requirement that acts of infringement occur *within* a single judicial district. The *Bath & Body Works* court's false equivalence of statutory terms—echoed by Comcast in its petition—cannot override the plain language of Section 1400(b).[8]

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[7] Ordinary usage confirms this difference. For example, noting that a cat lives "within the walls of the castle" suggests that the cat never leaves castle grounds. On the other hand, noting that a cat lives "in the castle" leaves open the possibility that it sometimes strays outside castle grounds.

[8] The *Bath & Body Works* court's decision may also have been influenced by another factor: The case was part of a campaign by a single lawyer, William Ramey, who "sued for infringement of the '979 patent 75 times" amidst a "pattern and practice of violating and flouting ethical rules."

C. Even if Section 1400(b) requires complete infringement, Comcast has still not demonstrated entitlement to relief.

Though Comcast—and the district court—focused on whether Comcast had "used" the patented method, that was not the only basis for infringement alleged in Sandpiper's complaint. Rather, Sandpiper also alleged that Comcast has "committed and continues to commit acts of infringement in this District by, among other things, … *sell[ing]*, and *offer[ing] to sell* the accused Comcast CDN functionalities" practicing the method. Appx10 ¶ 7 (emphasis added).

Because the district court resolved the venue issue with respect to the "use" allegations, it did not consider whether and in what circumstances selling or offering to sell an infringing method in a district may give rise to venue there. *See* Appx1–7. And Comcast wholly fails to grapple with this issue in its petition, offering no answer to that thorny legal question, which the Court has twice declined to answer. *See, e.g.*, *NTP*, 418 F.3d at 1320–21 ("We need not and do not hold that method claims may not be infringed under the 'sells' and 'offers to sell' prongs of section 271(a)."); *Ricoh Co. v. Quanta Comput. Inc.*, 550 F.3d 1325, 1335

AML IP, LLC v. Aero Glob. LLC, No. 23 Civ. 11264, 2025 WL 2673691, at *3, *5 (S.D.N.Y. Sept. 18, 2025).

(Fed. Cir. 2008) (holding, "[a]s did the court in *NTP*," that the Court "need not definitively answer" whether "a party who sells or offers to sell a patented process infringes the patent"). *But see CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 667 F. Supp. 2d 29, 37 (D.D.C. 2009) ("When the infringing act is an offer to sell or a sale, the relevant inquiry is not the place where the methods are performed but the place where the offer to sell or sale occurs."); *WesternGeco L.L.C. v. ION Geophysical Corp.*, 869 F. Supp. 2d 793, 798–99 (S.D. Tex. Apr. 25, 2012) (same). Nor does Comcast confront the fact that the sole district court decision supporting its position did not involve these alternate grounds for venue. *See Bath & Body Works*, 2024 WL 3825242, at *3 ("AML's allegations of infringement are premised on Defendants' use of the patented method.").

Comcast does not contest that it sells and offers for sale the infringing CDN services to customers residing in the Eastern District of Texas. *See* Appx785. So, even were this Court to disagree with Sandpiper about the proper interpretation of Section 1400(b), it should not direct the district court to grant the motion to dismiss or transfer venue without remanding to the district court to decide this question in the first instance. That Comcast cannot show a clear and indisputable right to

relief based on resolving the sole legal question it advanced in its petition for writ of mandamus is further indication that mandamus relief is inappropriate here.

CONCLUSION

This Court should deny the petition for writ of mandamus.

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Respectfully submitted,

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1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 21(d)(1) because it contains 7,081 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 32(b)(2).

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