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Case Study: The Intersection of Legal Malpractice and Federal Jurisdiction

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**In The
Supreme Court of the United States**

◆

JERRY W. GUNN, INDIVIDUALLY;
WILLIAMS SQUIRES & WREN, L.L.P.;
JAMES E. WREN, INDIVIDUALLY; SLUSSER &
FROST, L.L.P.; WILLIAM C. SLUSSER, INDIVIDUALLY;
SLUSSER WILSON & PARTRIDGE, L.L.P.; AND
MICHAEL E. WILSON, INDIVIDUALLY,

Petitioners,

v.

VERNON F. MINTON,

Respondent.

◆

**On Writ Of Certiorari To The
Supreme Court Of Texas**

◆

PETITIONERS' BRIEF ON THE MERITS

◆

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QUESTIONS PRESENTED

Did the Federal Circuit depart from the standard this Court articulated in *Grable & Sons Metal Products Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), for “arising under” jurisdiction of the federal courts under 28 U.S.C. § 1338, when it held that state law legal malpractice claims against trial lawyers for their handling of underlying patent matters come within the exclusive jurisdiction of the federal courts? Because the Federal Circuit has exclusive jurisdiction over appeals involving patents, are state courts and federal courts strictly following the Federal Circuit’s mistaken standard, thereby magnifying its jurisdictional error and sweeping broad swaths of state law claims – which involve no actual patents and have no impact on actual patent rights – into the federal courts?

PARTIES TO THE PROCEEDING

All parties to the proceeding are identified in the case caption.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Supreme Court Rules, Petitioners make this Disclosure of Corporate Affiliations and Corporate Interest:

Petitioners have no parent corporation, and there are no publicly held corporations that own 10% or more of their stock.

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OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Texas (App. 1-26 and App. 27-45)¹ are reported at *Minton v. Gunn*, 355 S.W.3d 634 (Tex. 2011), *cert. granted*, ___ S. Ct. ___, 2012 WL 831493 (2012). The opinion of the Court of Appeals for the Second District of Texas (App. 46-94) is reported at *Minton v. Gunn*, 301 S.W.3d 702 (Tex. App. – Fort Worth 2009), *reversed*, 355 S.W.3d 634 (Tex. 2011). The Court of Appeals’ per curiam order denying rehearing en banc (App. 95-96) is not reported. The district court’s orders granting summary judgment and its final judgment (JA 208-19) are not reported.



STATEMENT OF JURISDICTION

The petition for a writ of certiorari was filed on March 9, 2012, and was granted on October 5, 2012. The jurisdiction of this Court rests on 28 U.S.C. § 1257(a).



¹ Citations to “App.” in this Brief will be to the Appendix to the Petition for a Writ of Certiorari. Citations to “JA” will be to the Joint Appendix.

STATUTORY PROVISIONS INVOLVED

At issue in this appeal is the “arising under” jurisdiction of the federal courts pursuant to 28 U.S.C. § 1338. At the time this action was filed, that provision read:

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Effective September 16, 2011, 28 U.S.C. § 1338 was amended, and it now reads:

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any

Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.



STATEMENT OF THE CASE

A. The Underlying Patent Litigation

Petitioners Jerry W. Gunn *et al.* (the “Lawyer Defendants”) are attorneys who represented Respondent Vernon Minton in a federal patent infringement action against the National Association of Securities Dealers, Inc. (the “NASD”) (the “Patent Litigation”). JA 17-22. In the Patent Litigation, Minton alleged that the NASD infringed Minton’s U.S. Patent No. 6,014,643 (the “’643 Patent”). JA 20-21.

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