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How the Trump Administration Will Impact the Technology Industry

Christopher Mohr

No. 16-341

IN THE
Supreme Court of the United States

TC HEARTLAND LLC,
Petitioner,
v.
KRAFT FOOD BRANDS GROUP LLC,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF OF THE SOFTWARE & INFORMATION INDUSTRY ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS (*continued*)

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (*continued)*

Page(s)

TABLE OF AUTHORITIES (*continued*)

Page(s)

Statutes

TABLE OF AUTHORITIES (*continued)*

Page(s)

Other Authorities

TABLE OF AUTHORITIES (*continued)*

Page(s)

TABLE OF AUTHORITIES (*continued)*

Page(s)

TABLE OF AUTHORITIES (*continued)*

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Software & Information Industry Association ("SIIA") is the principal trade association for the software and digital information industries. The 700-plus software companies, search engine providers, data and analytics firms, information service companies, and digital publishers that constitute SIIA's membership serve nearly every segment of society, including business, education, government, healthcare, and consumers.

SIIA's members regularly are targeted by made-for-litigation entities who assert infringement of patents they do not practice. Such non-practicing entities, who may exist on paper only and typically have few or no employees to inconvenience, generally file their lawsuits in hand-picked district courts with well-established reputations for imposing procedures and delivering outcomes favorable to patent holders, and which have no connection to the dispute beyond the fact that a nationally distributed product was sold or used there.

Amicus has substantial interests in restoring the statutory limits on patent venue, redressing the forum shopping that has infected patent litigation in recent years, and ensuring that the balance struck by Congress in 28 U.S.C. § 1400(b) is respected.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored any portion of this brief, and no person other than *amicus curiae* or its counsel or members made any monetary contribution intended to fund the preparation or submission of the brief. All parties have consented to the filing of this brief.

SUMMARY OF THE ARGUMENT

Sixty years ago, in *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222 (1957), this Court answered the very question presented here: "whether 28 U.S.C. § 1400(b) is the sole and exclusive provision governing venue in patent infringement actions, or whether that section is supplemented by 28 U.S.C. § 1391(c)." *Id.* at 222. The pertinent provisions of both the specific patent venue statute and the general venue provision in effect today are materially identical to those in effect in *Fourco*. Accordingly, this Court should reaffirm *Fourco* and reverse the decision below.

I. The Court should adhere to *Fourco*'s settled interpretation.

A. *Fourco* held that Section 1400(b) stands alone and permits patent-infringement suits against corporations only where they are incorporated or have a regular and established place of business and committed acts of infringement. 353 U.S. at 226, 229.

B. In 1990, the Federal Circuit distinguished *Fourco* on the basis of a 1988 amendment, which changed Section 1391(c)'s stated sphere of applicability from "for venue purposes" to "[f]or purposes of venue under this chapter." *VE Holding Corp.* v. *Johnson Gas Appliance Co.*, 917 F.2d 1574, 1579 (Fed. Cir. 1990). The court of appeals rejected *Fourco* based on this minor modification, arguing that the change entitled it to interpret the statute "as a matter of first impression." That decision was incorrect. Nothing in the text or history of the 1988 amendment even remotely suggested that Congress intended to end the

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