If a faithful application of this Court's and the Supreme Court's precedents required this result, I would accept it and move on. But because neither this circuit's precedent nor that of the Supreme Court supports this broad grant of immunity to Georgia county sheriffs, I respectfully dissent.

IN RE: CRAY INC., Petitioner

2017-129

United States Court of Appeals, Federal Circuit.

9/21/2017

Background: Patentee brought action against competitor, alleging infringement of four patents related to supercomputer systems. The United States District Court for the Eastern District of Texas, No. 2:15-cv-01554-JRG, J. Rodney Gilstrap, J., 2017 WL 2813896, denied competitor's motion to transfer venue. Competitor petitioned for writ of mandamus.

Holding: The Court of Appeals, Lourie, Circuit Judge, held that venue was not proper in the home a sales executive of competitor.

Petition granted.

1. Federal Courts ⚿2024

The Court of Appeals may issue a writ under the All Writs Act as necessary or appropriate in aid of the Court's jurisdiction. 28 U.S.C.A. § 1651(a).

2. Mandamus ⚿1, 26, 28

Mandamus is reserved for exceptional circumstances; a writ of mandamus is appropriately issued, however, when there is usurpation of judicial power or a clear abuse of discretion.

3. Mandamus ⚿1

A writ of mandamus may issue where: (1) the petitioner has no other adequate means to attain the relief he desires; (2) the petitioner shows his right to mandamus is clear and indisputable; and (3) the issuing court is satisfied that the writ is appropriate under the circumstances.

4. Mandamus ⚿11

A writ of mandamus may be appropriate to decide issues important to proper judicial administration.

5. Patents ⚿1730

On the issue of improper venue in a patent infringement action, the only question before the court is whether the alleged infringer has a regular and established place of business in the forum. 28 U.S.C.A. § 1400(b).

6. Courts ⚿96(7)

In matters unique to patent law, the Court of Appeals for the Federal Circuit applies its own law, rather than regional circuit law.

7. Patents ⚿1730

There are three general requirements relevant to the patent venue inquiry: (1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be

the place of the defendant. 28 U.S.C.A. § 1400(b).

8. Patents ⚿1730

While the 'place' for venue in a patent infringement action need not be a fixed physical presence in the sense of a formal office or store, there must still be a physical, geographical location in the district from which the business of the defendant is carried out. 28 U.S.C.A. § 1400(b).

9. Patents ⚿1730

A business may be "regular," as required for venue in a patent infringement action, if it operates in a steady, uniform, orderly, and methodical manner; in other words, sporadic activity cannot create venue. 28 U.S.C.A. § 1400(b).

10. Patents ⚿1730

While a business can certainly move its location, it must for a meaningful time period be stable, established, to support venue in a patent infringement action. 28 U.S.C.A. § 1400(b).

11. Patents ⚿1730

Relevant considerations in determining whether a patent infringement defendant has a regular and established place of business in the district, for venue purposes, include whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place. 28 U.S.C.A. § 1400(b).

12. Patents ⚿1730

Marketing or advertisements may be relevant to determining venue in a patent infringement action, but only to the extent they indicate that the defendant itself holds out a place for its business. 28 U.S.C.A. § 1400(b).

13. Patents ⚿1730

Home of sales executive did not constitute a regular and established place of business of supercomputer manufacturer, and thus was not basis of venue for patent infringement action against manufacturer, even though executive's home and home phone number were listed in his social media profiles, where executive did not maintain product literature or products at his home, manufacturer played no role in selecting the location of executive's home, and manufacturer did not own, lease, or rent any portion of the home. 28 U.S.C.A. § 1400(b).

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in No. 2:15–cv–01554–JRG, Judge J. Rodney Gilstrap.

ON PETITION

Melanie Lyne Mayer, Attorney, David Keith Tellekson, Fenwick & West LLP, Seattle, WA, Bryan Alexander Kohm, Fenwick & West, LLP, San Francisco, CA, for Petitioner.

Before LOURIE, REYNA, and STOLL, Circuit Judges.

ORDER

Lourie, Circuit Judge.

Cray Inc. ("Cray") petitions for a writ of mandamus vacating the order of the United States District Court for the Eastern District of Texas denying its motion to transfer the case to the United States District Court for the Western District of Wisconsin. *See Raytheon Co. v. Cray, Inc.*, No. 2:15-cv-01554-JRG, 258 F.Supp.3d 781, 2017 WL 2813896 (E.D. Tex. June 29, 2017) ("*Transfer Order*"). Raytheon Company ("Raytheon") opposes the petition. The district court misinterpreted the scope

and effect of our precedent in determining that Cray maintained "a regular and established place of business" in the Eastern District of Texas within the meaning of 28 U.S.C. § 1400(b). Accordingly, the court's decision refusing transfer pursuant to 28 U.S.C. § 1406(a) was an abuse of discretion. We therefore grant Cray's petition for a writ of mandamus and direct transfer of the case.

Background

This petition arises from a patent infringement action filed by Raytheon against Cray in the Eastern District of Texas. Cray sells advanced supercomputers that Raytheon accuses of infringement. Cray is a Washington corporation with its principal place of business located there. It also maintains facilities in Bloomington, Minnesota; Chippewa Falls, Wisconsin; Pleasanton and San Jose, California; and Austin and Houston, Texas.

Although Cray does not rent or own an office or any property in the Eastern District of Texas, it allowed Mr. Douglas Harless and Mr. Troy Testa to work remotely from their respective homes in that district. *Transfer Order*, 258 F.Supp.3d at 783–787 & n.1, 2017 WL 2813896, at *1–2 & n.1. Mr. Testa worked for Cray as a senior territory manager while residing in the district from 2010 to 2011 before the underlying suit was filed. *Id.* at 784 n.1, 2017 WL 2813896 at *1 n.1

Mr. Harless worked as a "sales executive" for approximately seven years with associated sales of Cray systems in excess of $345 million. *Id.* at 783, 2017 WL 2813896 at *1. Mr. Harless's responsibilities also included "new sales and new account development in [the] Central U.S." and "management of key accounts within the Financial, Biomedical and Petroleum Industries." *Id.* (alteration in original) (quotation marks omitted). Cray's "Americas Sales Territories" map, an internal document, identified Mr. Harless as a "Named Account Manager" and his location at his Eastern District of Texas personal home. *Id.* Mr. Harless received reimbursement for his cell phone usage for business purposes, internet fees, and mileage or "other costs" for business travel. *Id.* Cray provided Mr. Harless with "administrative support" from its Minnesota office. *Id.* He provided "price quotations" to customers, listing himself as the "account executive" and the person who prepared the quotation. *Id.* at 790, 2017 WL 2813896 at *6. The communications also identified his home telephone number as his "office" telephone number with an Eastern District of Texas area code. *Id.*

Mr. Harless, however, did not maintain Cray products at his home, nor did he maintain product literature at his home because it was available online. *Id.* at 793, 2017 WL 2813896 at *9. It is undisputed that Cray never paid Mr. Harless for the use of his home to operate its business, or publicly advertised or otherwise indicated that his home residence was a Cray place of business.

Cray moved to transfer this suit under 28 U.S.C. § 1406(a), which provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." Cray argued that it does not "reside" in the Eastern District of Texas in light of the Supreme Court's decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, —— U.S. ——, 137 S.Ct. 1514, 197 L.Ed.2d 816

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