

**MORRISON
FOERSTER**

Venue Transfer and Mandamus at the Federal Circuit

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Introductions



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28 U.S.C. § 1400(b)

(b) 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. § 1406(a) – if venue improper, district court “shall dismiss” or “transfer such case to any district court division in which it could have been brought”

28 U.S.C. § 1404(a)

(b) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

Mandamus 3-Factor Test

- (1) “clear and indisputable” right to the writ
- (2) “no other adequate means to attain relief”
- (3) “writ is appropriate under the circumstances”

But the Federal Circuit will also consider mandamus for purposes similar to a Supreme Court cert. grant

- To further “supervisory or instructional goals” on an “unsettled and important issue” – *In re Cray*, 871 F.3d 1355 (Fed. Cir. 2017)

CAFC mandamus stats since 10/2022

24 unique decisions on mandamus petitions raising venue

23 from TX district courts (18 WDTX; 5 EDTX)

17 denied petition

7 granted some relief

~30% success rate basically same as normal patent appeals despite highly deferential mandamus standard

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