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 in Case No. 2:24-cv-00886-JRG-RSP, Judge J. Rodney Gilstrap

COMCAST'S COMBINED PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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January 8, 2026

CERTIFICATE OF INTEREST

Counsel for Petitioners Comcast Cable Communications, LLC d/b/a Xfinity and Comcast Cable Communications Management, LLC d/b/a/ Comcast Technology Solutions 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.

Comcast Cable Communications, LLC d/b/a Xfinity and Comcast Cable Communications Management, LLC d/b/a/ Comcast Technology Solutions

2. Real Party 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.

None.

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.

Comcast Corporation

4. Legal Representatives. 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. Fed. Cir. R. 47.4(a)(4).

DAVIS POLK & WARDWELL LLP: Xueyao Chen, Alena Farber (former), James Y. Park, Micah G. Block

THE DACUS FIRM, P.C.: Deron R. Dacus

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5. Related Cases. 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)?

[X] Yes (file separate notice; see below) [ ] No [ ] N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). Please do not duplicate information. This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

Already filed.

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

None.

Dated: January 8, 2026

/s/ Thomas G. Saunders

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STATEMENT OF COUNSEL UNDER CIRCUIT RULE 40(C)(1)

Based on my professional judgment, I believe that the panel decision is contrary to the following precedents of this Court:

In re BigCommerce, Inc., 890 F.3d 978 (Fed. Cir. 2018);

In re Cray Inc., 871 F.3d 1355 (Fed. Cir. 2017);

In re Google LLC, 949 F.3d 1338 (Fed. Cir. 2020);

In re Volkswagen Grp. of Am., Inc., 28 F.4th 1203 (Fed. Cir. 2022);

In re ZTE (USA) Inc., 890 F.3d 1008 (Fed. Cir. 2018).

Based on my professional judgment, I believe that this appeal requires an answer to the following precedent-setting question of exceptional importance:

> Whether a defendant's alleged performance of a single step of a claimed multi-step method in a judicial district is sufficient to establish that "the defendant has committed acts of infringement" in the district for purposes of venue under 28 U.S.C. § 1400(b).

/s/ Thomas G. Saunders
THOMAS G. SAUNDERS

STATEMENT UNDER CIRCUIT RULE 40(B)(1)(E)

The panel did not address the precedential decisions listed above, in which this Court granted mandamus to resolve issues of statutory interpretation governing proper venue in patent cases rather than awaiting an appeal from final judgment. The panel also misapprehended the importance of promptly resolving the question presented, which has divided the district courts.

INTRODUCTION

This case presents an undecided question of statutory interpretation on a fundamental issue of judicial administration that has irreconcilably divided district courts and will continue to recur, producing erroneous venue decisions in some of the busiest jurisdictions hearing patent cases. The issue is whether a defendant's alleged performance of a ***single step*** of a claimed multi-step method in a judicial district establishes that "the defendant has committed acts of infringement" in that district for purposes of venue under 28 U.S.C. § 1400(b). The answer is a resounding "no," yet the panel declined to grant mandamus, leaving litigants to face conflicting rulings and prolonged proceedings in improper forums. Although some venue questions can await an appeal from a final judgment, this is precisely the type of recurring question of basic judicial administration that this Court has held warrants mandamus, and the Court should grant panel rehearing or rehearing en banc to resolve it.

The statutory language "in the judicial district … where the defendant has committed acts of infringement," 28 U.S.C. § 1400(b), has a clear meaning for method claims under black-letter law: An act of infringement occurs when someone performs ***all steps*** of a claimed method. *E.g.*, *Mirror Worlds, LLC v. Apple Inc.*, 692 F.3d 1351, 1358 (Fed. Cir. 2012). Thus, in the analogous situation of analyzing whether a method claim was infringed "within the United States," this Court held

that ***all steps*** must be performed within this country. *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1318 (Fed. Cir. 2005). Yet instead of following this Court's guidance, the district court simply adopted its earlier decision in another case holding that venue is proper whenever the plaintiff alleges the performance of only a single step in the judicial district. *SEVEN Networks, LLC v. Google LLC*, 315 F. Supp. 3d 933, 944-945 (E.D. Tex. 2018). Other district courts have split on the issue, either agreeing with or properly rejecting this "one step" rule.

The panel's decision to defer resolution of this issue until a post-judgment appeal conflicts with the many instances in which this Court granted mandamus rather than waiting to address similar issues under Section 1400(b). Underscoring the urgency, two judges on the wrong side of the district-court split decide over 20% of venue motions in patent cases nationwide, and Comcast's mandamus petition received amicus support from the U.S. Chamber of Commerce, emphasizing the need for immediate action to restore clarity and predictability in the law. The misinterpretation of Section 1400(b) is not an ordinary legal issue that can await review in future years, but rather an important question that will continue affecting numerous litigants unless and until this Court acts to prevent district courts from improperly hearing cases that should be heard elsewhere.

BACKGROUND

Sandpiper CDN, LLC ("Sandpiper CDN") sued Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC (together, "Comcast") in the U.S. District Court for the Eastern District of Texas, alleging infringement of patents related to content delivery networks ("CDNs"). Appx8-84. Sandpiper CDN alleged only direct infringement of method claims related to the operation of CDN servers and related software. Appx30-31(¶63); Appx44(¶76); Appx56(¶87); Appx65(¶97); Appx71(¶105); Appx83.

The parties agree that Comcast does not reside in the Eastern District of Texas. Appx9-10(¶¶3-5). Although Sandpiper CDN alleged that venue is proper in the Eastern District because Comcast allegedly committed acts of infringement there, Sandpiper CDN never alleged that Comcast performed ***all*** steps of the claimed methods in the Eastern District.

Comcast moved to dismiss or transfer the case under 28 U.S.C. § 1406(a), arguing that venue was improper under Section 1400(b) because no acts of infringement occurred in the Eastern District of Texas. Appx666; Appx750-755. Unrefuted affidavits established that none of Comcast's CDN servers or the accused software were present within the Eastern District, and that Comcast had not performed ***any*** steps of the claimed methods there. Appx674-675; Appx751-755; Appx685-714; Appx681(¶¶6-8); Appx19(¶30). At minimum, however, Comcast

argued that venue is improper because Sandpiper CDN does not allege that ***every*** step of the claimed methods is performed within the Eastern District. Appx675; Appx750.

Sandpiper CDN opposed Comcast's motion, relying on the district court's *SEVEN Networks* decision, which held that an allegation that a ***single*** method step was performed in the district satisfies the "acts of infringement" requirement for venue. Appx737; *see* Appx783; Appx786. Sandpiper CDN argued that at least one step of each claimed method was performed in the Eastern District of Texas. Appx732.

In reply, Comcast urged the district court to reconsider its *SEVEN Networks* decision, citing a conflicting decision from another judge rejecting the "one step" rule in favor of an "all steps" rule. Appx675 (citing *AML IP, LLC v. Bath & Body Works Direct, Inc.*, 2024 WL 3825242, at *3 (E.D. Tex. Aug. 13, 2024)); Appx750.

Magistrate Judge Payne recommended denying Comcast's venue motion. Appx3-7. The report and recommendation ("R&R") concluded that Sandpiper CDN had "provide[d] at least one step" for each patent that Comcast allegedly performed in the Eastern District. Appx6 (citing *SEVEN Networks*, 315 F. Supp. 3d at 944-945, and Appx731-733). Comcast timely objected, arguing that the R&R and the underlying *SEVEN Networks* decision were inconsistent with this Court's *NTP* decision and other case law. Appx800. The district court adopted the R&R in a

half-page order, without addressing Comcast's arguments against *SEVEN Networks*. Appx1.

Comcast petitioned this Court for a writ of mandamus, arguing that the district court's "one step" rule conflicts with the plain text of Section 1400(b) and controlling precedent. Dkt.2-1 ("Pet.") 12-20. Comcast further explained that mandamus is necessary because the issue is a basic, undecided legal question implicating proper judicial administration that has divided the district courts. Pet.21-27. The U.S. Chamber of Commerce filed an amicus brief supporting Comcast, emphasizing the need for uniformity. Dkt.18 ("Chamber Br.").

The panel denied Comcast's petition in a two-page, per curiam order. Dkt.22 ("Order") 3. It suggested that Comcast failed to show that there are "no other adequate means to attain … relief" because there could be a post-judgment appeal. Order 2 (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-381 (2004)). In a footnote, the panel acknowledged that a post-judgment appeal may be inadequate when immediate intervention is needed to resolve a "basic, unsettled, recurring legal issue over which there is considerable litigation producing disparate results." Order 2 n.1 (quoting *In re Monolithic Power Sys., Inc.*, 50 F.4th 157, 160 (Fed. Cir. 2022)). But the panel concluded that "no such urgency has been shown" and that waiting until final judgement would "allow the issue to percolate." Order 3 n.1 (quoting *In re Google LLC* ("*Google I*"), 2018 WL 5536478, at *3 (Fed. Cir.

Oct. 29, 2018)). The panel did not address the precedent Comcast cited in which mandamus was granted under nearly identical circumstances, nor did it engage with the extensive district-court split on the issue.

REASONS FOR GRANTING REHEARING

This Court routinely grants mandamus to resolve fundamental questions about 28 U.S.C. § 1400(b) when they are crucial for proper judicial administration and divide the district courts. *In re Volkswagen Grp. of Am., Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022); *see* Pet.22 (collecting cases). This case warrants similar intervention to resolve whether the alleged performance of a ***single*** step of a multi-step method in a judicial district is sufficient to establish that the defendant has committed "acts of infringement" under Section 1400(b). The district court's "one step" rule contradicts both the statute and binding precedent, and it is precisely the type of fundamental question dividing the district courts that merits immediate action, not a denial of mandamus that will allow the problem to continue to fester.

I. THE "ONE STEP" RULE DEFIES THE PATENT VENUE STATUTE AND THIS COURT'S PRECEDENT

The panel did not reach the merits of the question presented, but they overwhelmingly support Comcast. Pet.12-20.

A. The Patent Venue Statute Unambiguously Refers To "Acts Of Infringement," And This Court's Precedent Establishes Clear Rules For The Infringement Of Method Claims

The patent venue statute provides: "Any civil action for patent infringement may be brought [1] in the judicial district where the defendant resides, or [2] where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). Thus, if a plaintiff does not proceed in the district "where the defendant resides," it must establish both a regular and established place of business ***and*** "acts of infringement" in the forum.

The meaning of "acts of infringement" under Section 1400(b) is determined by reference to the statute defining patent infringement, 35 U.S.C. § 271. As this Court recognized, venue may be predicated on conduct that qualifies as "use[]" under Section 271(a), which, "[f]or that reason," constitutes "an infringing act … in the district." *BASF Plant Science, LP v. Commonwealth Sci. & Indus. Rsch. Org.*, 28 F.4th 1247, 1263-1264 (Fed. Cir. 2022). It is well established that "[w]hat constitutes an act of infringement" is "determined by reference to the definition of patent infringement in [Section] 271(a)." *Blackbird Tech LLC v. Cloudflare, Inc.*, 2017 WL 4543783, at *3 (D. Del. Oct. 11, 2017); *see* 60 Am. Jur. 2d Patents § 739 ("The acts of infringement referred to in the patent venue statute are those acts defined by the statute dealing with infringement."); Pet.13 n.4 (collecting authorities).

Regarding ***how many*** method steps must be performed for there to be infringement, this Court's precedent is unequivocal: "To infringe a method claim, all steps of the claimed method must be performed." *Mirror Worlds*, 692 F.3d at 1358; *see Akamai Techs. v. Limelight Networks, Inc.*, 797 F.3d 1020, 1022, 1022 (Fed. Cir. 2015) (en banc) ("Direct infringement under § 271(a) occurs where all steps of a claimed method are performed by or attributable to a single entity."); Pet.13-14.

As for ***where*** method steps must be performed for infringement to occur in a particular location, this Court has also established a clear rule. Pet.14-16. In *NTP*, this Court held that "each of the steps" of a method claim must be performed within this country for the method to be used "within the United States" under Section 271(a). 418 F.3d at 1318. The Court reasoned that the "use" of a patented method "fundamentally" differs from that of a patented device, as a method "consists of a series of acts or steps … and therefore has to be carried out or performed." *Id*. at 1317. Thus, even a single step's performance abroad destroys an infringement claim. *Id.* at 1318.

Under *NTP*, there cannot be infringement of a claimed method within a judicial district if any steps are performed outside the district. *E.g.*, *Bath & Body Works*, 2024 WL 3825242, at *3 ("Although *NTP* concerned Section 271(a), the same reasoning should apply to Section 1400(b), as both statutes consider the

location of the alleged infringement."). The statute instructs that venue is proper "in the judicial district … where the defendant has committed acts of infringement." 28 U.S.C. § 1400(b). This language requires an infringing act in a particular district, just as the language of Section 271(a) requires infringement "within the United States." And just as *NTP* establishes that there is no infringement "within the United States" unless all steps of a method are performed here, there cannot be "infringement" of a method "in the judicial district" unless all steps are performed in the district. *Bath & Body Works*, 2024 WL 3825242, at *3.

B. The District Court's "One Step" Rule Is Incorrect

One branch of cases in the Eastern and Western District of Texas has relied on *SEVEN Networks*' "one step" rule, but *SEVEN Networks* misinterpreted the venue statute and made other errors. Pet.16-18. In *SEVEN Networks*, Google cited *NTP* and argued that there was no allegation that Google performed all steps of the claimed method in the district. 315 F. Supp. 3d at 943. The district court rebuffed Google's argument, reasoning that it was "previously rejected by the courts." *Id.* (citing *Blackbird*, 2017 WL 4543783, at *4). But *Blackbird* never adopted a "one step" rule over an "all steps" rule. In fact, *Blackbird* acknowledged the plaintiff's position "that under [S]ection 1400(b), a method claim is infringed within a district only if the whole system is put into service there," and did not dispute that principle. 2017 WL 4543783, at *4. *Blackbird* concluded that venue was appropriate because

both method ***and*** apparatus claims were at issue, and "not ***all*** of the alleged infringing activity needs to have occurred" within the district "so long as some act of infringement took place there." *Id.* That statement addressed distinct infringing acts, not partial performance of a single infringing act's multiple steps.

SEVEN Networks' policy justifications about limiting plaintiffs' options for venue were similarly flawed. 315 F. Supp. 3d at 943 n.13. Section 1400(b) does not dictate that there must be multiple options for where patent-infringement suits may proceed. For instance, if a defendant has its only regular and established place of business in the same state where it is incorporated, then a plaintiff has no choice but to sue where the defendant resides regardless of where it allegedly infringes. That result is not anomalous; it is precisely what Congress intended in crafting Section 1400(b). Pet.19-20.

In sharp contrast, *Bath & Body Works*¸ a conflicting decision ***from the same district***, is firmly rooted in this Court's precedent. Pet.18-19. There, the district court considered both Section 271(a) and *NTP* to explain that "a method is only used within a location if each step is performed in that location." *Bath & Body Works*, 2024 WL 3825242, at *3. Because the plaintiff did "not allege that all of the steps" occurred in the district, the court granted the defendant's venue motion. *Id.* The district court here should have followed the same path.

II. MANDAMUS IS NECESSARY TO RESOLVE A BASIC, UNDECIDED QUESTION OF STATUTORY INTERPRETATION THAT HAS DIVIDED THE DISTRICT COURTS

A. The Panel Failed To Follow Precedent From Both The Supreme Court And This Court

Mandamus is appropriate where, as here, an issue presented "is important to proper judicial administration, such as when an appellate court corrects a district court's answers to basic, undecided legal questions concerning judicial administration." *In re Stingray IP Sols., LLC*, 56 F.4th 1379, 1382 (Fed. Cir. 2023) (cleaned up). This "judicial administration" standard is grounded in multiple Supreme Court decisions. *Id.* (citing *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-260 (1957), and *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964)).

The panel's decision to defer review conflicts with multiple precedential decisions regarding Section 1400(b) in which this Court granted mandamus rather than waiting for appeals from final judgments. *Volkswagen*, 28 F.4th at 1207 (meaning of "regular and established place of business"); *Cray*, 871 F.3d at 1360-1364 (same); *BigCommerce*, 890 F.3d at 981-984 (a corporation "resides" in all judicial districts in its state of incorporation); *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1015-1016 (Fed. Cir. 2018) (choice of law and burden of proof); *see* Chamber Br.6-10. Those decisions underscore that delaying until a post-judgment appeal undermines judicial administration by increasing unpredictability among district courts.

Every day the "one step" rule remains uncorrected, parties are subjected to inconsistent rulings, and many of them are forced to litigate in improper forums. Multiple motions presenting the same question are currently pending before judges who have already made their conflicting views clear, and thus the number of divergent decisions will continue to increase if this Court fails to act. *Compare Convergent Assets LLC v. Ulta Beauty, Inc.*, No. 4:24-cv-568-SDJ, Reply 2-3 (E.D. Tex. Dec. 6, 2024), ECF No. 34; *Convergent Assets LLC v. The Home Depot, Inc*., No. 4:24-cv-739-SDJ, Reply 2-4 (E.D. Tex. Jan. 27, 2025), ECF No. 39, *with Veracyte, Inc. v. Sonic Healthcare USA, Inc.*, No. 2:25-cv-00459-JRG, Opposition 14-15 (E.D. Tex Dec. 1, 2025), ECF No. 49; *Valtrus Innovations Ltd. v. The Home Depot, Inc.*, No. 2:25-cv-00081-JRG, Opening Br. 8-9 (E.D. Tex. May 7, 2025), ECF No. 38.

There are "far reaching consequences" in allowing erroneous venue determinations to proliferate. *In re Google LLC* ("*Google I Rehearing*"), 914 F.3d 1377, 1380 (Fed. Cir. 2019) (Reyna, J., dissenting, joined by Newman & Lourie, JJ.). Unless the Court grants mandamus, numerous "cases will proceed through motion practice, discovery, claim construction, or trial before potentially getting thrown out by a reversal of a ruling on a motion to dismiss for improper venue." *Id.* at 1381. That burden might be tolerated in an individual case presenting a fact-specific dispute. *See Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-384

(1953). But it should not be ignored where, as here, a mandamus petition raises a fundamental question of statutory interpretation that affects numerous cases.

The panel's reliance on *In re Monolithic Power Systems, Inc.*, 50 F.4th 157 (Fed. Cir. 2022), was misplaced. Order 2-3 n.1. If anything, *Monolithic* reinforces that mandamus is available when "immediate intervention is necessary to assure proper judicial administration." 50 F.4th at 159-160. There was no "basic unsettled, recurring legal issue" in *Monolithic* because of an "idiosyncratic set of facts" that counseled against this Court being "drawn into such fact-laden disputes." *Id.* at 161. Here, Comcast's theory for mandamus is not fact-bound. Comcast presented a fundamental question of statutory interpretation on which the statute and precedent overwhelmingly support Comcast's position, but which has irreconcilably split the district courts.

The panel further justified its denial by noting that "waiting until final judgment would 'allow the issue to percolate in the district courts as to more clearly define the importance, scope, and nature of the issue.'" Order 3 n.1 (quoting *Google I*, 2018 WL 5536478, at *3). But there is nothing to be more clearly defined. The issue is purely legal, and the legal arguments are fully briefed. Until this Court answers the question presented, one set of judges will continue to accept venue theories based on *SEVEN Networks*, while another set properly transfers cases to other forums. Percolation will only multiply conflicting rulings and perpetuate

uncertainty without providing any additional information to guide this Court's review.

The panel's citation to *Google I* reinforces the appropriateness of mandamus. Order 3 n.1. In *Google I*, this Court denied mandamus the first time around because one issue was "unclear" in scope, and the other issue, "[e]ven if … more clearly defined," had a "paucity of district court cases." 2018 WL 5536478, at *2-3. That was why the Court wanted the "issue to percolate … so as to more clearly define the importance, scope, and nature of the issue." *Id.* at *3. *But see id.* at *6 (Reyna, J., dissenting) (leaving "this issue to percolate … will only result in wasted judicial and litigant resources as they continue to wrestle in uncertainty"). Here, the issue is crystal clear, and there is no paucity of district-court decisions. Pet.18, 23-24.

The dissenting voices in *Google I* were ultimately vindicated when this Court recognized that intervention was necessary. Only a year after this Court denied rehearing, this Court granted mandamus on the same issue even though there were only two additional district-court decisions. *In re Google LLC* ("*Google II*"), 949 F.3d 1338, 1342 n.2 (Fed Cir. 2020). Here, although there are pending cases implicating the "one step" rule (*see supra* p. 12), there is no need to wait for them when their outcomes are preordained and the conflict is already as developed as it was in *Google II*. Indeed, awaiting those cases will only ensure that more resources are wasted should venue be deemed improper. In *Google II*, this Court granted

mandamus to overturn a separate portion of the same *SEVEN Networks* decision that spawned the erroneous "one step" rule. 949 F.3d at 1343-1345. The time has come for the Court to address the remaining error in *SEVEN Networks*.

B. The Panel Overlooked The Urgency Of Resolving The District Court Split On A Fundamental Question Of Judicial Administration

The panel suggested that there is no "urgency" warranting mandamus (Order 3 n.1), but that ignores the current division among district courts and its impact on U.S. patent litigation. This Court has recognized that when "considerable litigation producing disparate results" exists and "district courts have deeply split on the answer," mandamus is warranted. *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017); *see Volkswagen*, 28 F.4th at 1207. That is especially true when, as here, the issue "will inevitably be repeated." *BigCommerce*, 890 F.3d at 981; *see ZTE*, 890 F.3d at 1011 ("issues are likely to be repeated"). In such circumstances, the Court "need not multiply citations" or await even more conflicting decisions before intervening. *Micron*, 875 F.3d at 1095-1096.

The split among district courts on the meaning of "acts of infringement" in Section 1400(b) is already entrenched. Judge Gilstrap and Judge Albright repeatedly apply the erroneous "one step" rule from *SEVEN Networks*, while Judge Jordan has

explicitly rejected it. Pet.23-24.[1] Making matters worse, district courts applying the "one step" rule have shown no interest in reevaluating whether *SEVEN Networks* was rightly decided, leaving the error to metastasize. *See* Appx1 (adopting the magistrate judge's application of the "one step" rule without further analysis).

Given the judges and judicial districts ensnared in the split, the issue has an outsized effect on nationwide patent practice. In recent years, the U.S. District Court for the Eastern District of Texas has had a disproportionate effect on U.S. patent litigation. *See* Chamber Br.10-11 (explaining how non-practicing entities disproportionately file in the Eastern District of Texas and commonly assert method claims involving software). The statistics back up that general impression: Judge Gilstrap and Judge Albright have decided approximately a fifth of all venue motions filed in patent cases across the country.[2]

The persistent division in district-court decisions means that similarly situated parties face different rules depending solely on where a plaintiff files a lawsuit and

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[1] *Compare, e.g.*, *SEVEN Networks*, 315 F. Supp. 3d at 943-945 (Gilstrap, J.); *RavenWhite Licensing LLC v. Home Depot, Inc.*, 2024 WL 4329023, at *1 (E.D. Tex. Aug. 13, 2024) (Payne, M.J.); *AML IP, LLC v. J.C. Penney Corp.*, 2022 WL 10757631, at *6 & n.1 (W.D. Tex. Oct. 18, 2022) (Albright, J.), *with AML IP, LLC v. Bath & Body Works Direct, Inc.*, 2024 WL 3825242, at *3 (E.D. Tex. Aug. 13, 2024) (Jordan, J.).

[2] As a rough estimate, DocketNavigator identifies 3,532 venue motions for patent cases filed since 2017, with 7.4% before Judge Gilstrap (263 cases) and 14.6% before Judge Albright (514 motions). Appx823-825.

which judge is assigned to the case. Pet.25-26. The panel's decision not to act exacerbates the erosion of predictability for venue determinations, implicating critical issues of judicial administration. Absent enforcement of the patent venue statute as Congress wrote it, litigants cannot reliably anticipate where patent litigation may occur, leading to increased forum shopping and inconsistent results. Pet.26. As the U.S. Chamber of Commerce explained, that lack of uniformity is destabilizing for American businesses. *See* Chamber Br.1-2 (the district-court split "creates uncertainty for plaintiffs and defendants alike," raising an "issue[] of concern to the nation's business community").

CONCLUSION

Comcast's rehearing petition should be granted.

Respectfully submitted,

/s/ Thomas G. Saunders

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January 8, 2026

ADDENDUM

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In Re COMCAST CABLE COMMUNICATIONS, LLC, dba Xfinity, COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, dba Comcast Technology Solutions,
Petitioners

2026-104

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

ON PETITION

Before PROST, CHEN, and HUGHES, *Circuit Judges*.

PER CURIAM.

O R D E R

Comcast Cable Communications, LLC and Comcast Cable Communications Management, LLC (collectively, "Comcast") petition for a writ of mandamus seeking to set aside the district court's denial of Comcast's motion to dismiss or transfer for improper venue. Sandpiper CDN, LLC opposes the petition. Comcast replies.

Sandpiper brought this suit in the United States District Court for the Eastern District of Texas ("EDTX"), alleging Comcast infringed claims of five method patents. Comcast, which is incorporated in Delaware, moved to dismiss or transfer to the United States District Court for the Eastern District of Pennsylvania, arguing EDTX is an improper venue under 28 U.S.C. § 1400(b) because Comcast does not "reside" in EDTX for venue purposes and no "acts of infringement" occurred in that district. Adopting the magistrate judge's recommendation, the district court denied the motion. Comcast now petitions for mandamus, arguing the court erred in concluding that venue is proper despite Sandpiper failing to sufficiently establish that every step of the patented methods was performed in the EDTX.

A petitioner seeking the extraordinary remedy of mandamus must generally show: (1) "no other adequate means to attain the relief he desires," (2) a "clear and indisputable" right to relief, and (3) the writ is "appropriate under the circumstances." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (cleaned up). At a minimum, Comcast has failed to show it has no other adequate means to challenge the district court's venue determination. "[A]n appeal will usually provide an adequate remedy for a defendant challenging the denial of an improper-venue motion," and Comcast has failed to demonstrate that review of its challenge in a post-judgment appeal would be "inadequate" under the circumstances of this case. *In re HTC Corp.*, 889 F.3d 1349, 1354 (Fed. Cir. 2018).[1]

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[1] A post-judgment appeal may be inadequate when immediate appellate intervention is necessary to resolve "a basic, unsettled, recurring legal issue over which there is considerable litigation producing disparate results, or similar [extraordinary] circumstances," *In re Monolithic Power*

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

Jarrett B. Perlow
Clerk of Court

December 9, 2025
Date

Sys., Inc., 50 F.4th 157, 160 (Fed. Cir. 2022) (cleaned up), but no such urgency has been shown here. And waiting until final judgment would "allow the issue to percolate in the district courts as to more clearly define the importance, scope, and nature of the issue for us to review." *In re Google LLC*, No. 2018-152, 2018 WL 5536478, at *3 (Fed. Cir. Oct. 29, 2018).

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because:

1. The filing has been prepared using a proportionally spaced typeface and includes 3,891 words.

2. The filing has been prepared using Microsoft Word for Office 365 in 14-point Times New Roman font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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January 8, 2026