10-1971

Brunette Machine Works Ltd, v. Kockum Industries

Lewis F. Powell, Jr.

See Larry's Recommendation - write w/ order & opinion

Tentative View - Subject to Argument

Affirm CA 9

3/18/72--LAH

Q - Which venue statute applies to a patent inf. suit against an alien.

CA 9 held that 28 USC 1391(d), providing "An alien may be sued in any district", controls & applicable, and that the general venue statute (Sec 1400(b)) for patent suits does not apply.

Decisions of this Court (Stonite & Fourco) holding that patent venue statute controlled did not involve alien defendants

BENCH MEMO

No. 70-314 OT 1971
Brunette Machine Works, Ltd v. Kockum Industries
Cert to CA 9 (Duniway, Carter, Gray--Per Curiam)

QUESTION PRESENTED:

Whether, in a patent infringement suit against an alien, venue is governed by the patent-infringement-venue statute or by the alien-venue statute.

FACTS

Resp, Kockum Industries, filed a patent infringement suit in the USDC D Oregon against Petr, Brunette Machine Works, a corporation licensed in Canada. Petr moved to dismiss the suit for improper venue, claiming that a patent infringement suit could only be brought in a district in which the defendant resides or where it committed acts of infringement and has a regular and established place of business.

RELEVANT CASES: In re Hohorst, 150 U.S. 653 (1893); Stonite Co. v. Melvin Lloyd Co, 315 U.S. 561 (1942); Fourco Glass Co v. Transmirra Prod., 353 U.S. 222 (1957); Coulter Electronics Inc. .v A.B. Lars, 376 F.2d 743 (CA7 1967), cert denied,

(con't)

The DC agreed and granted the motion to dismiss. Resp appealed to the CA 9 and that court reversed the DC, holding that venue was proper in the district for Oregon under the alien-venue statute which states that an alien may be sued in any district. The alien corporation filed cert.

DISCUSSION:

It may be helpful to set out the two competing statutes.

28 U.S.C. § 1391(d):

"An alien may be sued in any district." ← (General statute

28 U.S.C. § 1400(b): ← (Special statute

"Any civil action for patent infringement may be brought in the judicial district (1) where the defendant resides, or (2) where the defendant has committed acts of infringement and has a regular and established place of business."

Cert was granted in this case to resolve a conflict in the Circuits. The CA 9 and every other federal court, save one, has held that an alien patent infringer may be sued in any district where personal service may be effected. The CA 7 has held to the contrary in a 1967 case in which this Court denied cert. Cert was further called for since the CA7 case relied on broad language from several Supreme Court cases which would seem to support the CA7 view. A brief excursion, chronologically, through the history of the development of these patent and alien venue provisions will demonstrate, I believe, the soundness of the CA 9's view.

In 1893 this Court decided In re Hohorst, supra. This was

---

389 U.S. 859; Phizer v. Laboratori Pro-Ter, 278 F.Supp. 148 (SDNY 1967).

a patent infringement suit against an alien. At the time the case came up there was neither an alien venue statute nor a patent infringement venue statute. The general venue statute in existence at the time permitted suit only in the district in which the defendant ~~was inhabited~~ resided. The Court held that the general statute could not apply against an alien since he had no district of inhabitance. Suits against aliens could be had "in any district in which valid service can be made upon the defendant." The Court stated:

> "The words of that provision, as it now stands upon the statute book, are that 'no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant.' These words evidently look to those persons, and those persons only, who are inhabitants of some district within the United States. Their object is to distribute among the particular districts the general jurisidction fully and clearly and clearly granted in the earlier part of the same statute; and not to wholly annul or defeat that jurisdiction over any comprehended in the grant. To construe the provision as applicable to all suits between a citizen and an alien would leave the courts of the United States open to aliens against citizens, and close them to citizens against aliens. Such a construction is not required by the language of the provision, and would be inconsistent with the general intent of the section as a whole." P.660.

Having already held that the statute did not apply to suits against aliens, the Court went on to note that patent infringement suits present a peculiarly compelling case for liberal construction of the venue laws since such cases are, by statute, reserved for the exclusive jurisdiction of the federal courts. Therefore, if there is not a federal forum

there is no judicial forum at all for a suit against a patent infringer.

Four years later the first patent venue statute was passed (1897). The statute, although its language was a little more cumbersome, was identical in result to the present statute--it allowed suits to be brought where the infringer resided or where he had committed acts of infringement and maintained a regular place of business.

The first major conflict between the patent venue statute and the general venue statute was presented in Stonite Prods. v. Melvin Lloyd Co., 315 U.S. 561, supra, in which the conflict was with a section stating that suits against 2 or more defendants, residing in different districts in the same state, could be brought in either district. A patent infringement suit had been filed against two domestic corporations residing in 2 districts. Suit was brought in one of the districts; the defendant residing in the other jurisdiction complained that venue was not proper as to it. The Court held that the patent venue statute was the "exclusive provision controlling venue in patent infringement proceedings." The Court said that the 1897 statute was designed to resolve the confusion, which existed after In re Hohorst, as to where patent infringement suits might be brought. That section was not be read as a venue section to be applied compatibly with the general venue provisions, but was designed to be the exclusive source of venue in infringement suits. (The action invloved only domestic infringers and no mention at all was made of the general venue provision dealing with suits against aliens.)

Stonite was decided in 1942. In 1948 the patent venue statute was recodified and the question quickly arose whether the recodification had effected any substantive changes in the intendment of the law. In Fourco Glass Co v. Trasnmirra Prod Co., supra, the question was firmly resolved in the negative. This was a patent infringement suit against a domestic corporate infringer. The precise question was whether the general corporate venue statute could be applied in a patent infringement suit. The general venue provision stated that a corporation could be sued in any district in which it was doing business. A suit was brought where a domestic corporation was doing business but in which he had not committed acts of infringement. To comply with the patent venue statute the defendant must both do business and have committed acts of infringement in the district. The Court held, that unless the revision had altered the substance of the statute, the patent provision was the exclusive controlling venue statute. The Court looked to the "Reviser's note" and concluded that Congress did not intend section 1391(c) to be an exception to section 1400(b). As in Stonite, the opinion contains broad language indicating that the patent infringement proviso is the exclusive source of venue in all patent cases. Again, however, the alien provision was not involved in the case.

In 1967, the CA7 was presented with the precise question involved in the instant case. In Coulter Electronics Inc v. A.B. Lars, supra, the CA held that a patent infringement suit against an alien corporation could only be brought in the districts prescribed in the patent venue statute. The CA relied on the Court's broad language in Stonite and

Fourco to the effect that the exclusivity of section 1400(b) was well established. The CA noted that the opposing view was based, in part, on the contention that In re Hohorst was still good law. But, the CA found, Hohorst lost its viability in 1897 when the patent venue statute was passed. This, the ct thought, was the teaching of Stonite. The Court thought that to rule otherwise would constitute "judicial legislation" and that, if there were hardships created by its interpretation of the law, then it was up to Congress to amend the statute. This Court denied cert in the case.

The same day that cert was denied in Coulter, the SDNY (per Judge Mansfield) decided Phizer Co. v. Laboratori Pro-Ter, which was also a case involving a patent infringement suit against an alien corporate entity. Judge Mansfield first looked at Coulter and said that he was unable to follow the decision in that case. He then looked to the precedents which the CA 7 had found controlling--Stonite & Fourco--and decided that, while their language was broad, neither had direct applicability to the instant case since both involved suits against domestic corporations. The judge noted that Fourco rested primarily on a review of the reviser's note to the recodification of the patent statute. He pointed out that the CA 7 had overlooked a critical revisers' note to section 1391(d), which indicated that, unlike section 1391(c), the alien section was to operate as an exception to the patent venue statute. Quoted in full the critical note states:

Distinguished Stonite + Fourco as alien not involved

> "Subsection (d) of this section is added to give statutory recognition to the weight of authority concerning a rule of venue as to which there has been sharp conflict of decisions. See Sandusky Foundry &

Machine Co v. De Lavand, 1918, D.C.Ohio, 251 F. 631, 632 (sic) and cases cited. See also Keating v. Pennsylvania Co., 1917, D.C.Ohio, 245 F. 155 and cases cited.)"

Sandusky Foundry, the ct noted, was a patent infringement suit against an alien in which the court held that the patent venue provision did not exclude the operation of the general rule allowing the institution of suits against aliens in any district where they might be served. As authority for that proposition, the Sandusky court cited, among other precedents, Hohorst and Keating (the other precedent cited in the Reviser's Note).

The Phizer court also noted the injustice of reading the patent-venue provision as exclusive:

> "the effect of holding section 1400(b)'s requirements exclusive in a suit against an alien would be to permit a foreign infringer, who conceivably could flood this country with merchandise known by it to infringe, to escape responsibility merely because it did not maintain a regular place of business here. Such a construction would work grave injustice in some cases by denying victims any relief at all, even under circumstances where fundamental fairness required the alien to subject himself to the jurisdiction as a condition to his doing business here." P 153.

CA9 followed Phizer

This was the status of the law when the instant case arrived at the CA9. There was language looking both ways in the Supreme Court (compare Hohorst against Stonite & Fourco) and there was a split in the lower courts created by the solo opinion in the CA7 case. The CA9 opted for the Phizer result in a short 2-page Per Curiam. The CA does not say anything more than that it approves of the SDNY and rejects the CA7.

I am in full accord with the CA9's choice. First, the Reviser's note is persuasive. It indicates that a different treatment was contemplated between 1391(c) and 1391(d)--i.e., domestic corporations were not to be as widely suable as were alien corporations in patent infringement suits. Second, the expansive language in Stonite and Fourco dealt only with domestic corporations. The problem in those cases was simply one of determing "where" the patent infringement suit could be brought; it was never a question of "whether" a suit could be brought. This seems to me to be the critical point. In this regard the language in In re Hohorst is still quite persuasive. The object of the other venue provisions was to "distribute among the particular districts the general jurisdiction" granted to the federal courts. It was never contemplated that venue statutes themselves would ~~confer or~~ take away jurisdiction. This is especially true, as the Hohorst Court indicated, in patent infringement cases in which the federal is the only forum. It would require clear Congressional intent to believe that it intended to confer exclusive jurisdiction over a broad category of cases and then take it away altogether as to a segment of those ~~defendants~~ plaintiffs. The Reviser's Note indicates that no such harsh result was contemplated.

Petr contends that the result is not so harsh even though the courthouses are closed to plaintiffs claiming that their patents have been infringed. They may (1) sue the sellers of the infringing product who have been licensed to distribute for the alien corporation, or (2) they may bring a suit under the Tariff laws to keep the infringing

product out of the United States. Neither opportunity answers the basic point that the federal government has in essence created a right without a remedy directly against the wrongdoer, under Petr's reading of the statute.

CONCLUSION

Since logic and the sparse legislative history are both on the side of the Resp in this case, you should vote to affirm the CA9 and establish finally that the alien venue statute may be utilized in patent infringement suits against aliens.

AFFIRM

LAH

BRUNETTE MACHINE WORKS V. KOCKUM INDUSTRIES Argued 2/23/72
No. 70-314

I would Affirm.

Kolisch (Brunette)

Admits his client cannot be sued in U.S. if the special venue statute controls.

Thus, there are some aliens who could not be sued anywhere in U.S. in patent infringement cases.

Admits that 3 cases he relies upon involved only domestic corps.

Agrees that Congress did not intend to exempt aliens from suit — it was simply was "congressional oversight."

Cross (Resp.)

No. 70-314 BRUNETTE MACHINE WORKS V. KOCKUM INDUSTRIES
Argued 3/23/72

Tentative Impressions*

Counsel for Brunette conceded that his client cannot be sued in the United States if the special venue statute with respect to patent cases is applicable. That statute - 28 U. S. C. 1400(b) - provides as follows:

> "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."

Counsel for Brunette relies on three decisions of this Court (Stonite, Fourco and _____) which use rather expansive language in saying that 28 U. S. C. 1400(b) was designed as a special jurisdictional statute for patent litigation. But these cases did not involve aliens, aliens, and there was no discussion of the general statute applicable to suits against aliens.

The general statute 28 U. S. C. 1391(d) provides quite simply:

"An alien may be sued in any district."

*These impressions are dictated on the afternoon following argument to record my initial and tentative impressions. I will have read, in preparation for the arguments, the principal briefs, some of the cases and the bench memo. I hope to do further study before the Conference. My views are subject to change and to the discussion at the Conference.

My Tentative Views:

Congress surely did not intend that aliens could not be sued for patent infringement. The language in 1391(d) is explicit and adequate t o include patent suits. There is nothing - referred to in the briefs or otherwise - to suggest that Congress intended aliens to be exempt from patent litigation, or that § 1391(d) was not intended to embrace patent litigation unless it is otherwise expressly authorized by some other statute.

I would affirm the decision of the Ninth Circuit Court of Appeals.

Conf. 3/24/72

Court .....
Argued March 23, ..., 19..72
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 70-314

BRUNETTE MACHINE WORKS

vs.

KOCKUM INDUSTRIES

Affirm
(Unanimous)

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
.....														
Rehnquist, J.														
Powell, J.														
Blackmun, J.														
Marshall, J.														
White, J.														
Stewart, J.														
Brennan, J.														
Douglas, J.														
Burger, Ch. J.														

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Mr. Justice Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 30 1972

No. 70–314

Recirculated: _____

Brunette Machine Works, Ltd., Petitioner, *v.* Kockum Industries, Inc.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Received
Joined
5/31/72

[May —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Section 1391 (d) of the United States Judicial Code provides that "an alien may be sued in any district." Section 1400 (b) provides that "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." We are asked to decide which provision governs the venue of an action for patent infringement against an alien defendant.

Respondent Kockum, an Alabama corporation doing business in Oregon, holds a United States patent on a machine that removes bark from logs. Kockum claims that petitioner Brunette, a Canadian corporation, has infringed that patent by assisting two American manufacturers to make and sell similar machines.[1] Kockum obtained service of process on Brunette in Oregon, under that State's long-arm statute, Ore. Rev. Stat. § 14.035,

[1] Respondent's suit against one of those manufacturers, an Oregon corporation, is now pending on appeal to the Court of Appeals for the Ninth Circuit. *Kockum Industries, Inc.* v. *Salem Equipment, Inc.*, No. 25870.

and filed this action for patent infringement in the United States District Court for Oregon. The District Court dismissed the complaint on the ground of improper venue, accepting Brunette's contention that § 1400 (b) is the exclusive provision governing venue in patent infringement litigation, and that its requirements were not satisfied here.[2] The Court of Appeals reversed, holding that § 1391 (d) applies to patent infringement suits as to all others, and hence that Brunette is subject to suit as an alien in any district. — F. 2d — (1971). We granted certiorari to resolve a conflict in the Circuits on this question.[3] — U. S. — (1971). We affirm.

I

Section 1391 (d), providing that an alien may be sued in any district, appeared for the first time in the Judicial Code of 1948, but its roots go back to the beginning of the Republic. The first restrictions on venue in the federal courts were set forth in the Judiciary Act of 1789:

> "[N]o civil suit shall be brought before either [district or circuit] courts against an inhabitant of the United States, by any original process in any other district than that whereof he is an inhabitant, or in

---

[2] Petitioner does not "reside" in Oregon, because the residence of a corporation for purposes of § 1400 (b) is its place of incorporation. *Fourco Glass Co.* v. *Transmirra Prods. Corp.*, 353 U. S. 222 (1957), discussed *post*. And while the alleged infringement occurred in Oregon, petitioner apparently has no regular place of business there.

[3] Compare the decision of the Court of Appeals for the Ninth Circuit below with *Coulter Electronics, Inc.* v. *A. B. Lars Ljungberg & Co.*, 376 F. 2d 743 (CA7), cert denied, 389 U. S. 859 (1967). Several district courts in other circuits have adopted the view taken by the Court of Appeals for the Ninth Circuit in this case, see *Chas. Pfizer & Co.* v. *Laboratori Pro-Ter Prodotti Therapeutici*, 278 F. Supp. 148 (SDNY 1967); *Olin Mathieson Chemical Corp.* v. *Molins Organizations, Ltd.*, 261 F. Supp. 436 (ED Va. 1966).

> which he shall be found at the time of serving the writ . . . ." 1 Stat. 73, 79 (1789).[4]

Because this limitation on the place where federal cases might be tried applied in terms only to suits against "an inhabitant of the United States," suits against aliens were left unrestricted, and could be tried in any district, subject only to the requirements of service of process.

The original venue provisions remained essentially unchanged until 1875, when Congress substantially revised the Judiciary Act and greatly expanded the scope of federal jurisdiction. 18 Stat. 470 (1875).[5] In describing the class of cases subject to venue restrictions, the 1875 statute dropped the phrase "suit . . . against an inhabitant of the United States" and substituted "suit . . . against any person." This Court held, however, that the change was stylistic and not substantive, and that Congress did not thereby bring suits against

---

[4] The provision for venue wherever the defendant "shall be found" is deceptively broad. The grant of federal jurisdiction at that time consisted almost exclusively of suits between parties of diverse citizenship. Unlike the present statute, however, which provides for jurisdiction over suits "between citizens of different States," 28 U. S. C. § 1332 (a)(1), the 1789 statute provided for jurisdiction over suits "between a citizen of the State where the suit is brought, and a citizen of another State." Thus the litigants were effectively confined to the district of residence of one of them, by the jurisdictional grant though not by the venue statutes. This restriction was eliminated in 1875, when a number of important changes were made in the Judiciary Act, see n. 5, *infra,* and the relevant clause of the grant of diversity jurisdiction was rephrased in its present form, 18 Stat. 470 (1875).

[5] The jurisdiction of the Federal Courts was extended to include suits "arising under the Constitution or laws of the United States," *i. e.,* the federal question jurisdiction now found in 28 U. S. C. § 1331 (a). And the diversity jurisdiction was rephrased, see n. 4, *supra.*

aliens within the scope of the venue laws. *In re Hohorst*, 150 U. S. 653 (1893).

The Court offered two reasons in *Hohorst* for concluding that suits against aliens remained outside the scope of the venue laws. First, no contemporary significance appears to have attached to the relevant change in language in 1875.[6] Second, and perhaps more important, to hold the venue statutes applicable to suits against aliens would be in effect to oust the federal courts of jurisdiction in most cases, because the general venue provisions were framed with reference to the defendant's place of residence or citizenship, and an alien defendant is by definition a citizen of no district.[7] The *Hohorst* Court reasoned that it should not lightly be assumed that Congress intended that result, in light of the fact that the venue provisions are designed not to keep suits out of the federal courts, but merely to allo-

---

[6] 150 U. S., at 61, citing *In re Louisville Underwriters*, 134 U. S. 488, 492 (1890), and *Shaw* v. *Quincy Mining Co.*, 145 U. S. 444, 448 (1892), for the proposition that the substitution "has been asssumed to be an immaterial change."

[7] In 1875, the restrictions on venue in the federal courts were those imposed by the 1789 statute quoted in text: suit could be brought where the defendant was an inhabitant , or where he could be found. In 1887, however, Congress eliminated the provision authorizing suit wherever the defendant could be found: federal question cases could be brought only where the defendant was an "inhabitant," and diversity cases only where either the plaintiff or the defendant resides. 24 Stat. 552 (1887). A suit against an alien was not regarded as a true diversity suit, and hence it was necessary to satisfy the requirements of federal question venue, *i. e.*, residence of the defendant. *Hohorst, supra.*

Today the general venue provisions for federal question and diversity cases appear in 28 U. S. C. §§ 1391 (a) and (b); they follow the 1887 statute, except that Congress has added a provision for venue "where the claim arose," see n. 8, *infra.*

cate suits to the most appropriate or convenient federal forum.[8]

The reasoning of *Hohorst* with respect to suits against aliens continues to have force today. In remains true today that to hold the venue statutes applicable here would in effect oust the federal courts of a jurisdiction clearly conferred on them by Congress. Moreover, in the 99 years since *Hohorst* was decided, Congress has never given the slightest indication that it is dissatisfied with the long-standing judicial view that the 1789 language continues to color the venue statutes, with the result that suits against aliens are outside the scope of all the venue laws.

II

Petitioner argues that by enacting § 1400 (b), Congress indicated a legislative intent to reject that rule in patent cases, and regulate the venue of suits against

---

[8] There have been, and perhaps there still are, occasional gaps in the venue laws, *i. e.*, cases in which the federal courts have jurisdiction but there is no district in which venue is proper. One such gap arose in connection with cases involving multiple plaintiffs and defendants. Venue was fixed at the residence of the defendant, or in diversity cases at the residence of the plaintiff as well. When there were multiple plaintiffs or defendants, the district of residence for venue purposes was the district were *all* plaintiffs or *all* defendants reside. *Smith* v. *Lyon,* 133 U. S. 315 (1890). If they resided in different districts then there was no proper venue. In 1966 Congress acted to close the gap with a provision authorizing suit "where the claim arose," 80 Stat. 1111 (1966), which in most cases provides a proper venue even in multiple-party situations. The development supports the view that Congress does not in general intend to create venue gaps, which take away with one hand what Congress has given by way of jurisdictional grant with the other. Thus in construing venue statutes it is reasonable to prefer the construction that avoids leaving such a gap.

aliens in that limited class of cases. There is support for petitioner's argument in the broad langauge of prior decisions of this Court. Twice before, the Court has refused to apply venue provisions of general applicability to patent infringement cases. In *Stonite Prods. Co.* v. *Lloyd Co.,* the Court declared that what is now § 1400 (b) is "the exclusive provision controlling venue in patent infringment proceedings." 315 U. S. 561, 563 (1942). *Stonite* held that venue in patent cases is not affected by what is now § 1392 (a), which relaxes certain restrictive venue rules in cases involving multiple defendants.[9] Similarly, in *Fourco Glass Co.* v. *Transmirra Prods. Corp.,* the Court asserted that "28 U. S. C. § 1400 (b) is the sole and exclusive provision controlling venue in patent infringement actions," emphasizing its character as "a special venue statute applicable, specifically, to *all* defendants in a particular type of action." 353 U. S. 222, 228–229 (1957) (emphasis in original). *Fourco* held that venue in patent cases is not affected by § 1391 (c), which expands for venue purposes the definition of the residence of a corporation.[10]

The analysis in each case rested heavily on the legislative history of § 1400 (b). Prior to 1893, patent infringement cases had been widely, though not universally, regarded as subject to the general federal venue statutes. *Chaffee* v. *Hayward,* 20 How. (61 U. S.) 208, 215–216 (1857). This Court cast doubt on that proposition, how-

---

[9] Section 1392 (a) originally 11 Stat. 272 (1858), affords some relief in a very small class of cases that fall in the gap described in n. 8, *supra.* When multiple defendants reside in different districts *within the same State,* the suit may be brought in any one of them.

[10] Section 1391 (c), enacted in 1948, provides: A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

ever, in the *Hohorst* case, *supra*. We have already noted that *Hohorst* held the general venue limitations inapplicable because the defendant was an alien.[11] In further support of the decision, however, the Court noted that the suit was based on a claim for patent infringement; the venue restrictions, said the Court, were intended to apply only to that part of the federal jurisdiction that was concurrent with state court jurisdiction, and not to patent suits, which are entrusted exclusively to the federal courts.

The apparent effect of the decision was to hold that patent infringement suits could be tried in any district, even when the defendant was not an alien. After *Hohorst*, there was great confusion on this point in the lower courts.[12] Congress responded promptly, creating a special new venue statute for the occasion: patent infringement claims were to be heard only in the district where the defendant was an inhabitant, or the district where he committed acts of infringement and also maintained a regular and established place of business. 29 Stat. 695 (1897), now codified as 28 U. S. C. § 1400 (b). The new provision was of course more restrictive than the law as it was left by *Hohorst*, but it was rather less restrictive than the general venue provision then applicable to claims arising under federal law.[13] Over the objections of some legislators,

---

[11] See pp. ——–——, *supra*.

[12] See *Stonite Prods. Co.* v. *Lloyd Co.*, 315 U. S. 561, 564–565 (1942); conflicting decisions collected at 29 Cong. Rec. 1901 (54th Cong., 2d Sess., 1897).

[13] Venue in a federal question case was at that time proper only where the defendant was an inhabitant, 24 Stat. 552 (1887), as corrected 25 Stat. 433 (1888). Thus the new statute gave patent claimants an advantage by authorizing as an additional venue alternative any district where the defandant maintained a regular place of business, and committed acts of infringement. Ironically, changes in the general venue law have left the patent venue statute far be-

who could see no reason for treating patent suits differently from any other federal question litigation,[14] Congress took the opportunity to establish for patent infringement suits a special and separate venue statute. Thus it is fair to say, as the Court did in *Stonite* and *Fourco,* that in 1897 Congress placed patent infringement cases in a class by themselves, outside the scope of general venue legislation.

But that analysis sheds no light on the present case. For it totally misconceives the origin and purpose of § 1391 (d) to characterize that statute as an appendage to the general venue statutes, analogous to the provisions at issue in *Stonite* and *Fourco.* Section 1391 (d) is not derived from the general venue statutes that § 1400 (b) was intended to replace. Section 1391 (d) reflects, rather, the longstanding rule that suits against alien defendants are outside those statutes. Since the general venue statutes did not reach suits against alien defendants, there is no reason to suppose the new substitute in patent cases was intended to do so. Indeed, the only glimmer of evidence of legislative intent points in the other direction. We have no reliable indication of what Congress thought about the matter in 1875, when it dropped the language that expressly excluded suits against alien defendants from the general venue statutes, or in 1897, when it enacted the special patent venue statute. But in 1948, Congress was apparently quite content to leave suits against alien defendants exempt from the

---

hind. Since 1948, a corporate defendant has been subject to suit not only where he maintains a "regular place of business," as in § 1400 (b), but also where he is "doing business." 62 Stat. 869, now § 1391 (c). And since 1966, the general venue law has authorized suit "where the claim arose," see n. —, *supra.*

[14] See 29 Cong. Rec. 1901 (54th Cong., 2d Sess., 1897) (remarks of Mr. Payne).

venue statutes, in patent cases as in all others. In that year, Congress codified as § 1391 (d) the rule exempting suits against aliens from the federal venue statutes. The Revisers' Notes, whiclh provide the principal guide to interpretation of the 1948 Code, explain the intent to codify a rule that commands the "weight of authority," citing a pair of district court cases. These cases hold that neither the general venue laws nor the patent venue law controls in a suit against an alien defendant. *Sandusky Foundry & Machine Co.* v. *DeLavaud,* 251 Fed. 631 (ND Ohio 1918); *Keating* v. *Pennsylvania Co.,* 245 Fed. 155 (ND Ohio 1917).

III

We conclude that in § 1391 (d) Congress was stating a principle of broad and overriding application, and not merely making an adjustment in the general venue statute, as this Court found Congress had done in *Stonite* and *Fourco.* The principle of § 1391 (d) cannot be confined in its application to cases that would otherwise fall under the general venue statutes. For § 1391 (d) is properly regarded, not as a venue restriction at all, but rather as a declaration of the long-established rule that suits against aliens are wholly outside the operation of all the federal venue laws, general and special.

That rule, which has prevailed throughout the history of the federal courts, controls this case. Since respondent Brunette is an alien corporation, it cannot rely on § 1400 (b) as a shield against suit in the District of Oregon. The judgment of the Court of Appeals is

Affirmed.

May 31, 1972

Re: Burnett Machine Works v. Kockum Industries, Inc. No. 70-314

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 31, 1972

Dear Thurgood:

Re: No. 70-314
Brunette Machine v. Kockum

Please join me in your opinion.

WOD

William O. Douglas

Mr. Justice Marshall

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1972

70-314 - Brunette Machine Works, Ltd.
v. Kockum Industries, Inc.

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1972

Re: No. 70-314 - Brunette Machine Works
v. Kockum Industries

Dear Thurgood:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1972

Re: No. 70-314 - Brunette Machine Works, Ltd.
v. Kockum Industries, Inc.

Dear Thurgood:

Please join me. And thanks for the breath of fresh air.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 31, 1972

RE: No. 70-314, Brunette Machine Works v. Kockum Industries, Inc.

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1972

Re: 70-314 - Brunette v. Kockum

Dear Thurgood:

Please join me in your opinion for the Court in this case.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1972

No. 70-314 -- Brunette Machine Works v. Kockum Ind.

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
					4/3/72			
join TM 6/5/72	join TM 5/31/72	join TM 5/31/72	join TM 5/31/72	join TM 5/31/72		join TM 5/31/72	join TM 5/31/72	
					70-314 Burnett Machine Works v. Kockum Ind.			