No. 22-

IN THE

United States Court of Appeals

FOR THE FEDERAL CIRCUIT

IN RE: STINGRAY IP SOLUTIONS LLC,

Petitioner.

On Petition for Writ of Mandamus to
the United States District Court for the Eastern District of Texas,
Nos. 2:21-cv-00045-JRG and 2:21-cv-00046-JRG
Chief Judge J. Rodney Gilstrap

PETITION FOR WRIT OF MANDAMUS

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November 8, 2022

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number No. 22-

Short Case Caption In re: Stingray IP Solutions LLC

Filing Party/Entity Stingray IP Solutions LLC

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box**. Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 11/08/2022

Signature: /s/ Jeffrey A. Lamken

Name: Jeffrey A. Lamken

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	**2. Real Party in Interest.** Fed. Cir. R. 47.4(a)(2).	**3. Parent Corporations and Stockholders.** Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	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/Not Applicable	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. ☐ None/Not Applicable
Stingray IP Solutions LLC		Acacia Research Group LLC
		Acacia Research Corporation

☐ Additional pages attached

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).

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5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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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).

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INTRODUCTION

Mandamus is appropriate to resolve "basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results." *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017). This petition raises precisely such an issue—indeed, a threshold jurisdictional question that has sharply divided district courts for years: Whether foreign defendants can defeat personal jurisdiction in the plaintiff's chosen forum under Federal Rule of Civil Procedure 4(k)(2), and obtain transfer to the district of their choice, by simply announcing that they consent to suit in that district.

Numerous courts have answered that question in the negative—and with reason. Rule 4(k)(2) creates personal jurisdiction in the plaintiff's chosen forum over foreign defendants that are "not subject to [personal] jurisdiction in any state's courts of general jurisdiction." In *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283 (Fed. Cir. 2012), this Court explained that defendants seeking to defeat personal jurisdiction under Rule 4(k)(2) must identify an alternative "forum where the plaintiff ***could have*** brought suit"—that is, "a forum where [personal] jurisdiction would have been proper at the time of filing, ***regardless of consent***." *Id.* at 1294 (second emphasis added). That commonsense approach ensures that defendants cannot manipulate federal-court jurisdiction, and thwart a plaintiff's choice of forum, by unilaterally declaring a forum of their own choosing.

The district court here, however, took the opposite approach. It held that Rule 4(k)(2) did not authorize personal jurisdiction in Texas over the defendants—foreign companies headquartered in China and Hong Kong—because they purportedly were subject to personal jurisdiction in California. But the district court's determination, and its consequent transfer of these cases, rested ***solely*** on the defendants' bare assertion that they "***would submit*** to jurisdiction" in the Central District of California. Appx176 (emphasis added); Appx427; *see* Appx17. Neither defendants nor the district court ***ever*** contended that personal jurisdiction would be proper in California on any ground ***other*** than their litigation-inspired consent to suit there.

The division among district courts is deep. Consistent with this Court's decision in *Merial*, many district courts hold that foreign patent defendants cannot defeat personal jurisdiction under Rule 4(k)(2) by consenting to suit elsewhere. But many others—like here—disregard *Merial* and allow defendants to choose their own forum simply by consenting to suit in another State where personal jurisdiction would not otherwise exist. Dozens of district courts have weighed in, with no consensus. Even within the same district, judges have taken conflicting views, making Rule 4(k)(2)'s application utterly unpredictable.

This case thus presents precisely the sort of "basic, unsettled, recurring legal issues" with "disparate results" for which mandamus is appropriate. *In re Micron*, 875 F.3d at 1095. Whether foreign defendants can unilaterally defeat personal juris-

diction under Rule 4(k)(2) is not merely "important to proper judicial administration." *Id.* at 1096. It is fundamental: It is a threshold question about where litigation can take place at all. And deciding that issue here "would reduce the widespread disparities in rulings" that have developed since *Merial*, resolving "the fundamental legal issues presented in this case and many others." *Id.* Mandamus is warranted.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651. Because this petition seeks a writ of mandamus in two patent actions arising under Title 35, this Court has "exclusive" jurisdiction under 28 U.S.C. § 1295. *In re Princo Corp.*, 478 F.3d 1345, 1351 (Fed. Cir. 2007).

RELIEF SOUGHT

Stingray IP Solutions LLC respectfully requests a writ of mandamus reversing or vacating the U.S. District Court for the Eastern District of Texas's October 13, 2022 Order finding a lack of personal jurisdiction under Rule 4(k)(2) and transferring these actions to the Central District of California under 28 U.S.C. § 1406(a). Appx1-18; *see Stingray IP Solutions, LLC v. TP-Link Techs. Co., Ltd.*, No. 2:21-cv-45, Dkt. 85 (E.D. Tex. Oct. 13, 2022); No. 2:21-cv-46, Dkt. 84 (E.D. Tex. Oct. 13, 2022).[1] The Eastern District should be "instructed to recall any case files from" the

[1] The relevant filings are substantively identical in both actions (E.D. Tex. Nos. 2:21-cv-45 and 2:21-cv-46; now C.D. Cal. Nos. 2:22-cv-7541 and 2:22-cv-7571). Like

transferee court. *In re Cutsforth, Inc.*, No. 17-135, 2017 WL 5907556, at *2 (Fed. Cir. Nov. 15, 2017).[2]

ISSUE PRESENTED

Whether a foreign defendant may defeat personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), and obtain transfer to the forum of its choosing, merely by consenting to suit in the other forum.

STATEMENT

I. LEGAL FRAMEWORK

This case concerns Federal Rule of Civil Procedure 4(k)(2), which governs personal jurisdiction over foreign defendants. Where jurisdiction is lacking under Rule 4(k)(2), courts may transfer the case to another district where jurisdiction was proper under 28 U.S.C. § 1406, which governs cases brought in the wrong district. Each provision is summarized below.

A. Rule 4(k)(2)

Rule 4(k)(2) "serves as a federal long-arm statute, which allows a district court to exercise personal jurisdiction over a foreign defendant whose contacts with the

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the district court, this petition generally cites the filings in E.D. Tex. No. 2:21-cv-45. Appx2 n.3.

[2] Insofar as the Court concludes the writ should issue to the transferee court, it should direct the Central District of California to transfer the cases and any case files back to the Eastern District of Texas, which should be instructed to deny defendants' motions to dismiss or transfer for lack of personal jurisdiction.

United States, but not with the forum state, satisfy due process." *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com. de Equip. Medico*, 563 F.3d 1285, 1296 (Fed. Cir. 2009). Rule 4(k)(2) provides:

> *Federal Claim Outside State-Court Jurisdiction*. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:
>
> > (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and
> >
> > (B) exercising jurisdiction is consistent with the United States Constitution and laws.

Fed. R. Civ. P. 4(k)(2). Rule 4(k)(2) thus "allow[s] district courts to exercise personal jurisdiction" over a foreign defendant "as long as (1) the plaintiff's claim arises under federal law, (2) the defendant is not subject to personal jurisdiction in the courts of any state, and (3) the exercise of jurisdiction satisfies due process requirements." *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1294 (Fed. Cir. 2012). Accordingly, a federal court that would not otherwise have personal jurisdiction over a foreign defendant can exercise jurisdiction under Rule 4(k)(2), provided the defendant is not subject to personal jurisdiction in some other State.

When deciding whether the defendant is subject to personal jurisdiction in the courts of another State, this Court employs a burden-shifting approach. Under that approach, a defendant contesting personal jurisdiction in the original forum under Rule 4(k)(2) can "avoid the application of the rule only when it designates a suitable [alternative] forum in which the plaintiff could have brought suit." *Touchcom, Inc.*

v. Bereskin & Parr, 574 F.3d 1403, 1415 (Fed. Cir. 2009). The "defendant's burden," this Court has stated, "entails identifying a forum where the plaintiff ***could have brought suit***—a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***." *Merial*, 681 F.3d at 1294 (some emphasis added).

B. Section 1406

Section 1406 governs the disposition of suits brought in the wrong forum. When suit is brought in the "wrong . . . district," such as where the court lacks personal jurisdiction over the defendant, the district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district" where the case "could have been brought." 28 U.S.C. § 1406(a). Section 1406 thus allows transfer to another district only if the case "could have been brought" there in the first instance.

That provision parallels 28 U.S.C. § 1404, which allows transfer "[f]or the convenience of the parties and witnesses, in the interest of justice," to another district where the case "might have been brought." § 1404(a). The Supreme Court has held that a case "might have been brought" in a proposed transferee district only if, "'when a suit is commenced, [the] plaintiff has ***a right*** to sue in that district, ***independently of the wishes of [the] defendant***.'" *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960) (emphasis added). It is "'immaterial,'" the Court has explained, whether "'the defendant subsequently makes himself subject, by consent, waiver of venue

and personal jurisdiction defenses or otherwise, to the jurisdiction of some other forum.'" *Id.* (brackets omitted).

II. FACTUAL BACKGROUND

This petition arises from infringement actions Stingray brought against two related foreign defendants: TP-Link Technologies Co., Ltd. ("TP-Link China"), a Chinese corporation headquartered in Shenzhen, China; and TP-Link Corporation Limited ("TP-Link Hong Kong"), a Hong Kong corporation headquartered in Hong Kong. Appx4-5.[3]

A. TP-Link Targets U.S. Markets

TP-Link China and TP-Link Hong Kong (collectively, "TP-Link") are a "global provider" of networking devices and accessories. Appx5; Appx222-223. TP-Link China designs, develops, and manufactures those products, which it sells to TP-Link Hong Kong. Appx238. Those products are ultimately sold worldwide, including across the United States and in Texas. Appx5; Appx231. This case concerns TP-Link's smart home and other networking products, including "mesh" network devices "that use Zigbee protocol to communicate with other devices on [a home] network." Appx69-71 ¶¶36-38.

[3] Defendants represented that a third defendant, TP-Link International Ltd., is the "the same entity" as TP-Link Hong Kong. Appx1 n.2.

To facilitate U.S. sales of its products, including the accused products, TP-Link has obtained U.S. certifications from the FCC, the Wi-Fi Alliance, and Underwriters' Laboratories. Appx240; Appx252-256; Appx382-388; Appx411-412; Appx413-414. Those products—configured and packaged by TP-Link for sale in the United States—indicate, in English, that they comply with those U.S. standards. Appx257-269; *see* Appx363-381 (FCC, UL, and registered trademarks on TP-Link's product, with packaging in English).

The products bear U.S. trademarks owned by TP-Link, including "TP-LINK." Appx309-311. To obtain and maintain those trademarks, TP-Link had to declare—and periodically reaffirm—that the marks were "in use in [U.S.] commerce." 37 C.F.R. §§2.33, 2.34; 15 U.S.C. §1058(a)(1), (3); Appx270-295; Appx296-308; Appx348-362. TP-Link also asserts U.S. copyrights over product information for the accused products, as well as the TP-Link website (tplink.com). Appx389-394; Appx395-401; Appx226-235.

The TP-Link website—operated by TP-Link China—includes an online store and lists distribution partners and retailers where consumers can purchase TP-Link's products in the United States, including Texas. Appx224-225. TP-Link also provides technical support services for its products to U.S. customers through email, live chat on its website, a 24-hour telephone hotline, and a mobile application

available for download and use with its products. Appx405-406; Appx59-60 ¶15; Appx8, Appx11.

TP-Link's products are sold in the United States through a distribution agreement between TP-Link Hong Kong and non-party TP-Link USA Corporation ("TP-Link USA"). Appx7-8; Appx243-251. Under that agreement, TP-Link USA imports, markets, and distributes TP-Link's products, including the accused products, in the United States. Appx7-8; Appx245-246 (Arts. 2-3); Appx184 ¶4. The agreement gives TP-Link Hong Kong "right of prior written approval" for "all advertisements and promotions" in the United States. Appx8; Appx245-246 (Art. 2). It also requires TP-Link USA to establish and maintain "marketing channels" to sell TP-Link's products in the United States. Appx8; Appx244-246 (preamble; Art. 2, ¶¶2, 5). Under that agreement, TP-Link's accused products are sold by national retailers like Amazon, Best Buy, Costco, Home Depot, and Target, including in Texas. Appx7; Appx224-225; Appx312-316; Appx317-321; Appx322-327; Appx328-337; Appx338-347.

B. Stingray Sues in Its Home District

Stingray—a Texas company located in Frisco, Texas—filed these actions alleging that TP-Link China and TP-Link Hong Kong infringe Stingray patents for routing, organizing, and securing wireless communications networks. Appx68-75

¶¶31-42; Appx108-128 ¶¶31-57.[4] Stingray chose to file suit in its home district, the Eastern District of Texas, in February 2021. After obtaining leave to effect alternative service, Stingray effectuated service on TP-Link in December 2021. Appx185-191; Appx151-154.

Stingray alleged personal jurisdiction over TP-Link on two grounds. It first alleged that TP-Link had sufficient contacts with Texas to support personal jurisdiction because TP-Link delivered its products into the stream of commerce with the expectation that they would be purchased by customers in Texas. Appx57-62 ¶¶12-17; *see* Appx1-18. Stingray alternatively alleged that, if TP-Link was not subject to personal jurisdiction in any State, personal jurisdiction was proper in the Eastern District of Texas under Rule 4(k)(2). Appx62-67 ¶¶18, 23, 28; *see* Appx1-18.

C. TP-Link Challenges Personal Jurisdiction and Seeks Transfer

TP-Link moved to dismiss or transfer the cases based on a putative lack of personal jurisdiction in the Eastern District of Texas. Appx155-182. It primarily argued that Texas lacked personal jurisdiction because TP-Link had insufficient contacts with Texas and had not purposefully availed itself of that market. Appx170-175; Appx422-426.

[4] The 2:21-cv-45 action asserted U.S. Patent Nos. 6,958,986, 6,961,310, and 7,027,426. Appx68-69 ¶¶31-36. The 2:21-cv-46 action asserted U.S. Patent Nos. 7,082,117, 7,224,678, 7,440,572, and 7,616,961. Appx108-110 ¶¶31-37.

TP-Link also argued that Stingray could not assert jurisdiction under Rule 4(k)(2). Rule 4(k)(2) provides jurisdiction in the plaintiff's chosen forum if the defendant is not subject to personal jurisdiction in any other State. According to TP-Link, that requirement was not satisfied because TP-Link was subject to suit in the Central District of California ("CDCA"). Appx176. TP-Link's ***sole*** basis for that argument was a bare assertion—made for the first time in TP-Link's motion—that "Defendants ***would submit*** to jurisdiction in the CDCA." Appx176 (emphasis added); Appx427. TP-Link did not offer ***any*** argument or evidence that it had contacts with California that would have supported personal jurisdiction there when Stingray filed suit, regardless of TP-Link's consent.[5]

As an alternative to dismissal, TP-Link sought transfer to the Central District of California under 28 U.S.C. § 1406(a). Appx176. TP-Link did not explain how these actions "could have been brought" initially in the Central District, as § 1406(a) requires, and again relied solely on its post-suit consent to suit in that forum. Appx176.[6]

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[5] Elsewhere, when requesting transfer, TP-Link stated that the Central District of California is "where [non-party] TP-Link USA can be properly joined." Appx176. But TP-Link did not contend that TP-Link ***USA***'s contacts with California supported personal jurisdiction over the defendants here, TP-Link ***China and Hong Kong***. To the contrary, TP-Link insisted that "TP-Link USA's Actions Cannot Be Imputed to Defendants," Appx172, and the district court made no contrary finding.

[6] TP-Link also moved to dismiss for inadequate service of process. The district court rejected that challenge in a May 4, 2022 order. Appx185-191.

D. The District Court Finds a Lack of Personal Jurisdiction Under Rule 4(k)(2) and Transfers to the Central District of California

The district court found a lack of personal jurisdiction in Texas and transferred the cases to the Central District of California. Appx16-17. The court first concluded that TP-Link was "not subject to personal jurisdiction in Texas" based on its contacts with the State. Appx15-16. Finding Stingray had not shown that TP-Link "do[es] more than simply place [its] products into the stream of commerce—in Asia—and thereafter . . . some small number of these products end up in Texas," it declared that Texas's exercise of personal jurisdiction on those facts would be unreasonable. Appx15-16.

Turning to Rule 4(k)(2), the district court recognized that the rule affords personal jurisdiction over federal claims if the defendant is not subject to personal jurisdiction in any individual State, so long as the defendant has sufficient contacts with the United States as a whole. Appx17. In a footnote, the district court acknowledged this Court's statement in *Merial* that "'a defendant cannot defeat Rule 4(k)(2) by simply naming another state,'" and must instead identify "'a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***.'" Appx17 n.11 (emphasis added) (quoting *Merial*, 681 F.3d at 1294-95).

The district court, however, did not apply that direction. It instead declared that Rule 4(k)(2) does not allow personal jurisdiction in Texas because TP-Link had consented to suit in California. Appx17 (citing *Adams v. Unione Mediterranea Di*

Sicurta, 364 F.3d 646, 650 (5th Cir. 2014)). Like TP-Link, the district court did not contend that personal jurisdiction "would have been proper [in California] at the time of filing, regardless of consent." *Merial*, 681 F.3d at 1294. Instead, it declared Rule 4(k)(2) inapplicable based solely on TP-Link's post-suit assertion that "'Defendants . . . submit to jurisdiction in the CDCA'" and "'are amenable to suit in the CDCA.'" Appx17 (quoting Appx176). On the same rationale, the court declared that "these cases 'could have been brought' in CDCA" and transferred them to the Central District of California under § 1406(a). Appx17-18.

REASONS WHY THE WRIT SHOULD ISSUE

This Court and the Supreme Court have long recognized that "mandamus can be an appropriate means for the appellate court to correct a district court's answers to 'basic, undecided' legal questions." *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017) (quoting *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964)). Mandamus is particularly appropriate to resolve unsettled questions that are "important to 'proper judicial administration'" and have generated "considerable litigation producing disparate results." *Id.* (quoting *La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-60 (1957)). This case presents just that sort of "basic, unsettled, recurring legal issue[ ]," *id.*: Whether a foreign defendant can defeat personal jurisdiction under Rule 4(k)(2), and obtain transfer to the district of its choosing, simply by announcing that it consents to jurisdiction in a different forum.

The district courts are deeply divided on that threshold jurisdictional question. In *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283 (Fed. Cir. 2012), this Court declared that "a defendant cannot defeat Rule 4(k)(2) by simply naming another state" where it would "consent to suit," but instead must identify "a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***." *Id.* at 1294 (emphasis added). Many district courts, however, have treated that statement as dictum. As a result, a deep division has arisen. Some courts follow *Merial* and hold that defendants cannot avoid Rule 4(k)(2) by consenting to suit in another district that would otherwise lack personal jurisdiction. Others—including the district court here—hold the opposite, allowing defendants to defeat Rule 4(k)(2) and obtain transfer to their preferred forum simply by consenting to suit in another district.

Those "widespread disparities in rulings on the fundamental legal standards" governing personal jurisdiction call out for this Court's intervention. *In re Micron*, 875 F.3d at 1096. Whether a suit may proceed in a plaintiff's chosen forum is one of the most basic and recurring issues in patent litigation. This Court thus has repeatedly granted mandamus review of transfer orders under 28 U.S.C. § 1406 to clarify the legal standards governing venue, jurisdiction, and transfer in patent cases. *See, e.g.*, *In re Micron*, 875 F.3d at 1095; *In re Cray Inc.*, 871 F.3d 1355, 1360 (Fed. Cir. 2017); *In re BigCommerce, Inc.*, 890 F.3d 978, 981 (Fed. Cir. 2018); *In re ZTE (USA) Inc.*, 890 F.3d 1008, 1011 (Fed. Cir. 2018); *In re Google LLC*, 949 F.3d 1338,

1341 (Fed. Cir. 2020); *In re Volkswagen Group of America, Inc.*, 28 F.4th 1203, 1207 (Fed. Cir. 2022); *see also In re BP Lubricants USA Inc.*, 637 F.3d 1307, 1313 (Fed. Cir. 2011) (granting mandamus to decide "'basic and undecided' question" regarding Rule 9(b)). Indeed, even though mandamus "[o]rdinarily" is "not available for rulings on motions under 28 U.S.C. § 1406(a)," this Court has held that mandamus review of such orders is appropriate "where doing so is important to proper judicial administration, such as when there are a significant number of district court decisions that adopt conflicting views on the basic legal issues presented in the case at hand." *In re Volkswagen*, 28 F.4th at 1207 (citations and additional punctuation omitted).[7]

This Court should likewise grant mandamus here to resolve "basic, unsettled, recurring legal issues" that have divided district courts. *In re Micron*, 875 F.3d at 1095. It should reaffirm *Merial*'s instruction that defendants seeking to avoid Rule 4(k)(2) must identify "a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***." 681 F.3d at 1294 (emphasis added). It should reverse the district court's contrary ruling and consequent transfer of these cases to the Central District of California.

[7] That approach respects the writ's traditional role: "The Supreme Court has confirmed that the requirements for mandamus are satisfied when the district court's decision involves 'basic' and 'undecided' legal questions." *In re Google*, 949 F.3d at 1341 (quoting *Schlagenhauf*, 379 U.S. at 110).

I. MANDAMUS IS WARRANTED TO CLARIFY WHETHER FOREIGN DEFENDANTS CAN DEFEAT PERSONAL JURISDICTION UNDER RULE 4(k)(2) BY CONSENTING TO SUIT IN A DIFFERENT FORUM

Mandamus is warranted here because the district courts have "deeply split" over "basic, unsettled, recurring legal questions" regarding personal jurisdiction over foreign defendants under Rule 4(k)(2). *In re Micron*, 875 F.3d at 1095. In the decade since *Merial*, district courts have sharply divided over whether foreign defendants can defeat personal jurisdiction under Rule 4(k)(2)—and avoid the plaintiff's chosen forum—simply by announcing that they consent to suit in a different forum of their own choosing. This Court should resolve that conflict to prevent "inconsistent results across the country" and relieve ongoing confusion over where patent owners may bring suit. *In re BP Lubricants*, 637 F.3d at 1313.

A. District Courts Have Divided over Whether Consent to Another Forum Defeats Personal Jurisdiction Under Rule 4(k)(2)

District courts have sharply divided over whether defendants in patent cases can avoid personal jurisdiction under Rule 4(k)(2) by consenting to suit in another forum. The conflict is deep and openly acknowledged by the district courts themselves. *See MediaZam LLC v. Voices.com, Inc.*, No. 20-cv-1381, 2022 WL 993570, at *10-13 (E.D. Wis. Mar. 31, 2022) (surveying the conflict).

1. The majority of courts addressing the issue appear to hold that a defendant's consent to suit in another State ***cannot*** defeat personal jurisdiction under Rule 4(k)(2). Instead, those cases hold that a defendant seeking to avoid Rule 4(k)(2)

must show "sufficient minimum contacts with [an alternative forum] such that [the plaintiff] could have brought suit in that forum, regardless of consent." *Mitsui O.S.K. Lines, Ltd. v. Swiss Shipping Line S.A.L.*, No. 17-cv-03394, 2017 WL 6327538, at *3-4 (N.D. Cal. Dec. 6, 2017); *see Orange Electronic Co. v. Autel Intelligent Tech. Corp.*, No. 2:21-CV-00240, 2022 WL 4368160, at *5 n.2 (E.D. Tex. Sept. 21, 2022) ("[Defendant] attempts to defeat jurisdiction under Rule 4(k)(2) simply by consenting to the Southern District of New York; however, such is inappropriate and such conduct has been rejected by the Federal Circuit."); *RegenLab USA LLC v. Estar Techs. Ltd.*, 335 F. Supp. 3d 526, 547 (S.D.N.Y. 2018) (defendant seeking to avoid Rule 4(k)(2) must "identify[ ] a court or courts, if any, in the United States 'where jurisdiction would have been proper at the time of filing, regardless of consent'"); *MediaZam*, 2022 WL 993570, at *13 ("[T]he court disagrees with the defendant that the simple fact that it has identified Delaware as an alternative forum requires dismissal."); *Knoll, Inc. v. Senator Int'l Ltd.*, No. 19-cv-4566, 2020 WL 1922780, at *7 (E.D. Pa. Apr. 21, 2020) ("[C]onsent alone will not do it.").[8]

[8] *See also, e.g.*, *Robert Bosch LLC v. Alberee Prods., Inc.*, 70 F. Supp. 3d 665, 680-81 (D. Del. 2014); *Polar Electro Oy v. Suunto Oy*, No. 11-cv-1100, 2017 WL 3713396, at *6 (D. Del. Aug. 29, 2017); *Venmill Industries, Inc. v. ELM, Inc.*, 100 F. Supp. 3d 59, 69 (D. Mass. 2015); *Sunrise Tech., Inc. v. SELC Ireland, Ltd.*, No. 15-cv-11546, 2016 WL 3360418, at *10 (D. Mass. June 14, 2016); *Am. Wave Machines, Inc. v. Surf Lagoons, Inc.*, No. 13-cv-3204, 2014 WL 10475281, at *8 (S.D. Cal. Nov. 12, 2014); *Kraken Sports, Inc. v. Benvenuti*, No. 19-cv-3233, 2021

In so holding, those courts followed this Court's analysis in *Merial* and *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403 (Fed. Cir. 2009), two of the very few cases in which this Court has addressed Rule 4(k)(2)'s requirement "that the defendant must not be subject to personal jurisdiction in the courts of any state (sometimes called the 'negation requirement')." *Merial*, 681 F.3d at 1294. In *Touchcom*, the Court held that "the purposes of Rule 4(k)(2) are best achieved when the defendant is afforded the opportunity to avoid the application of the rule only when it designates a suitable forum in which the plaintiff ***could have brought suit***." 574 F.3d at 1415 (emphasis added). Because the defendants in *Touchcom* had "not named another state in which they would be subject to jurisdiction," they could not avoid jurisdiction under Rule 4(k)(2) in the plaintiff's chosen forum. *Id.*

This Court again examined Rule 4(k)(2) in *Merial*. There, the defendant argued that it had adequately "identified . . . an alternate forum for suit" by representing that it "'would have agreed that there was personal jurisdiction'" in a different district. *Merial*, 681 F.3d at 1294. The Court rejected that argument, reasoning that

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WL 1124530, at *3 (D.D.C. Mar. 24, 2021); *Krausz Indus. Ltd. v. Smith-Blair, Inc.*, 188 F. Supp. 3d 545, 558 (E.D.N.C. 2016); *Syngenta Crop Protection, LLC v. Willowood, LLC*, 139 F. Supp. 3d 722, 732-33 (M.D.N.C. 2015), *rev'd in part on other grounds*, 2019 WL 11270983 (Fed. Cir. 2019); *Freescale Semiconductor, Inc. v. Amtran Tech. Co., Ltd.*, No. A-12-cv-644, 2014 WL 1603665, at *3, *6 n.2 (W.D. Tex. Mar. 19, 2014); *Georgetown Rail Equip. Co. v. Tetra Tech Canada, Inc.*, No. 6:18-CV-377, 2019 WL 5954966, at *8 (E.D. Tex. July 17, 2019) (report and recommendation) ("consent is not enough to avoid application of Rule 4(k)(2)").

a defendant's "*ex post* consent to suit" in another forum is "not independently sufficient to prevent [the plaintiff's chosen forum] from exercising personal jurisdiction under Rule 4(k)(2)." *Id.* at 1294. Under *Touchcom*, the Court explained, "a defendant can 'avoid the application of [Rule 4(k)(2)] only when it designates a suitable forum in which the plaintiff ***could have brought suit***.'" *Id.* (brackets and emphasis in original) (quoting *Touchcom*, 574 F.3d at 1415). Accordingly, the Court reasoned, "a defendant cannot defeat Rule 4(k)(2) by simply naming another state" where it would consent to suit. *Id.* The "defendant's burden" instead "entails identifying a forum where the plaintiff ***could have*** brought suit—a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***." *Id.* at 1294 (second emphasis added).

Merial thus emphatically (and correctly) stated that a defendant's consent to suit in another State cannot defeat personal jurisdiction in the plaintiff's chosen forum under Rule 4(k)(2). Court after court has agreed with *Merial* that any defendant seeking to avoid Rule 4(k)(2) must identify "a forum where jurisdiction would have been proper at the time of filing, regardless of consent." *Merial*, 681 F.3d at 1294; *see* pp. 16-17 & n.8, *supra*.

2. Other district courts take the opposite view, holding that defendants ***can*** avoid jurisdiction under Rule 4(k)(2) simply by consenting to suit in another State. *See, e.g.*, *Fitbit, Inc. v. Koninklijke Philips N.V.*, 336 F.R.D. 574, 584 (N.D. Cal.

2020); *Albany International Corp. v. Yamauchi Corp.*, 978 F. Supp. 2d 138, 146 (N.D.N.Y. 2013); *Miller Industries Towing Equip. Inc. v. NRC Indus.*, No. 1:19-cv-95, 2020 WL 1897171, at *6 (E.D. Tenn. Apr. 16, 2020); *Orbital Australia Pty Ltd. v. Daimler*, No. 3:14-cv-808, 2015 WL 4042178, at *3 (E.D. Va. July 1, 2015).

Those courts have focused on another portion of *Merial*, where the Court observed that the defendant there had challenged personal jurisdiction under Rule 4(k)(2) as a means of attacking a previously entered default judgment. *Merial*, 681 F.3d at 1295. In view of that, the Court deemed it unnecessary to definitively decide "the general requirements for a defendant to prevent the application of Rule 4(k)(2) by consenting to suit in another jurisdiction," as it "suffice[d]" to hold that defendants cannot "challeng[e] a prior default judgment" by later "naming another forum that would not have had an independent basis for jurisdiction at the time of the original complaint." *Id.*

Based on that language, several district courts have dismissed *Merial*'s statement that "defendants must show that there is 'a forum where jurisdiction would have been proper at the time of filing, regardless of consent'" as "dicta," and have confined *Merial* to cases in which a defendant seeks "to overturn a prior default judgment." *Fitbit*, 336 F.R.D. at 584; *see Albany International*, 978 F. Supp. 2d at 146 ("*Merial* stands only for the proposition that a foreign defendant challenging a default judgment predicated on Rule 4(k)(2) may not defeat jurisdiction merely by

naming a state where it 'would have agreed' to suit."); *Miller Industries*, 2020 WL 1897171, at *6 (holding defendant's statement that it would not contest jurisdiction in alternative forum sufficed to defeat Rule 4(k)(2)); *Orbital Australia*, 2015 WL 4042178, at *3 (stating that *Merial* "limited its holding to the facts before it" and transferring case to district where defendant consented to suit).

Other courts have held that a defendant's consent to suit in another forum is sufficient to avoid Rule 4(k)(2) without acknowledging *Merial*. *See, e.g.*, *Alpha Tech. U.S.A. Corp. v. N. Dairy Equip., Ltd.*, No. 6:17-cv-1000, 2018 WL 501598, at *5 (M.D. Fla. Jan. 22, 2018) (finding Rule 4(k)(2) inapplicable because defendant "consent[ed] to a transfer to Michigan"); *Lambeth Magnetic Structures, LLC v. Toshiba Corp.*, No. 14-cv-1526, 2017 WL 782892, *6 (W.D. Pa. Mar. 1, 2017) (finding Rule 4(k)(2) inapplicable because defendants "represent[ed]" they "would be amenable to suit in California"). And here, the district court acknowledged *Merial* but declined to follow it, apparently on the view that "Fifth Circuit" law should control. Appx17 & n.11.

3. In total, dozens of district court decisions have weighed in on the issue. The disagreement has extended to ***intradistrict*** conflicts in two of the busiest patent courts: the Northern District of California, *compare Mitsui*, 2017 WL 6327538, at *3-4, *with Fitbit*, 336 F.R.D. at 584, and the Eastern District of Texas, *compare* Appx1-18, *with Orange Electronic*, 2022 WL 4368160, at *5 n.2. There have even

been conflicting decisions from the same district ***judge***. In this case, Judge Gilstrap allowed the defendants to defeat personal jurisdiction under Rule 4(k)(2) simply by stating that they would " 'submit to jurisdiction in the CDCA.' " Appx17. In another case, however, he ***rejected*** an "attempt[ ] to defeat jurisdiction under Rule 4(k)(2) simply by consenting to [another district]," finding that tactic "inappropriate" and "rejected by the Federal Circuit." *Orange Electronic*, 2022 WL 4368160, at *5 n.2 (citing *Merial*, 681 F.3d at 1294).

B. The Division of Authority Implicates Fundamental Jurisdictional Issues that Require Certainty

The uncertainty and unpredictability that have followed *Merial* amply "present special circumstances justifying mandamus review of certain basic, unsettled, recurring legal issues over which there is considerable litigation producing disparate results." *In re Micron*, 875 F.3d at 1095. Few issues are more "important to proper judicial administration" than the rules governing personal jurisdiction and the forum in which a suit may proceed. *Id.* at 1096. And "courts benefit from straightforward rules under which they can readily assure themselves of their power to hear a case." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010); *see Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). That is doubtless why *Merial* took the time to examine Rule 4(k)(2) and explain that a defendant seeking to defeat personal jurisdiction under the rule must identify "a forum where jurisdiction would have been proper at the time of filing, regardless of consent." 681 F.3d at 1294.

Yet, because *Merial* did not rule definitively on "the general requirements for a defendant to prevent the application of Rule 4(k)(2) by consenting to suit in another jurisdiction," 681 F.3d at 1295—and this Court has not revisited the issue since—district courts and litigants have lacked firm guidance. As a result, "district courts have deeply split," producing "widespread disparities in rulings" that breed uncertainty and invite gamesmanship. *In re Micron*, 875 F.3d at 1095-96; *see* pp. 26-28, *infra*. Mandamus would mend that division, allowing this Court "to 'further supervisory [and] instructional goals' regarding 'issues [that] are unsettled and important.'" *In re Micron*, 875 F.3d at 1095 (quoting *In re Queen's Univ. at Kingston*, 820 F.3d 1287, 1291 (Fed. Cir. 2016)).

It is hard to imagine a more apt case for "mandamus [as] a proper vehicle for considering the fundamental legal issues presented in this case and many others." *In re Micron*, 875 F.3d at 1096. The "significant number of district court decisions that adopt conflicting views on the basic legal issues presented in this case" confirm the issue is important and recurring. *In re Google*, 949 F.3d at 1342. The dearth of relevant Federal Circuit decisions shows "it is unlikely that, as these cases proceed to trial, these issues will be preserved and presented to this court through the regular appellate process." *Id.* And the decade-plus that has passed since *Merial* has provided ample time "to allow the issues to 'percolate in the district courts.'" *Id.* at 1343. For all those reasons, mandamus review is warranted.

II. DEFENDANTS' CONSENT TO SUIT IN ANOTHER FORUM SHOULD NOT DEFEAT JURISDICTION UNDER RULE 4(k)(2)

The Court should resolve the conflict over Rule 4(k)(2) by reaffirming what it said in *Merial*: A defendant's "consent to suit" in another forum is "not independently sufficient to prevent [the district court] from exercising personal jurisdiction under Rule 4(k)(2)." 681 F.3d at 1294. A defendant thus "cannot defeat Rule 4(k)(2) by simply naming another state [where it consents to suit]; the defendant's burden under the negation requirement entails identifying a forum where the plaintiff ***could have*** brought suit—a forum where jurisdiction would have been proper at the time of filing, ***regardless of consent***." *Id.* (second emphasis added).

Merial held that that rule applies at least when a defendant attacks personal jurisdiction under Rule 4(k)(2) to "challeng[e] a prior default judgment." 681 F.3d at 1295. The question here is whether the same rule should apply when a defendant attacks personal jurisdiction under Rule 4(k)(2) to challenge a pending lawsuit. It plainly should. Rule 4(k)(2)'s text makes no distinction between default judgments and other kinds of cases, much less suggests that the rule applies differently in each context. *See generally* Fed. R. Civ. P. 4(k)(2). That alone forecloses any attempt to atextually cabin *Merial*'s construction of the rule to default-judgment cases.

Nor is there any other basis for limiting *Merial* to default-judgment cases. *Merial* followed directly from this Court's earlier precedent in *Touchcom*, which was not a default-judgment case. As *Merial* explained, *Touchcom* expressly held

that "a defendant can 'avoid the application of [Rule 4(k)(2)] only when it designates a suitable forum in which the plaintiff ***could have brought suit***.'" *Merial*, 681 F.3d at 1294 (emphasis in original) (quoting *Touchcom*, 574 F.3d at 1415). This Court's precedent thus ***already*** held that a defendant seeking to "defeat Rule 4(k)(2)" must "identify[ ] a forum where the plaintiff ***could have*** brought suit." *Merial*, 681 F.3d at 1294. *Merial* simply explained that "'a suitable forum in which the plaintiff ***could have brought suit***'" means "a forum where jurisdiction would have been proper at the time of filing, regardless of consent." *Id.* (quoting *Touchcom*, 574 F.3d at 1415).

That conclusion is unassailably correct. Interpreting the virtually identical standard governing transfer under § 1404, the Supreme Court has held that a case "'***might have been brought***'" in another district only "'[i]f when suit is commenced, [the] plaintiff has a right to sue in that district, ***independently of the wishes of [the] defendant***.'" *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960) (quoting 28 U.S.C. § 1404(a)) (emphasis added). The "conduct of a defendant after suit has been instituted," the Court explained, cannot "add to the forums where 'it might have been brought.'" *Id.* at 343. It is "'immaterial'" whether "'the defendant subsequently makes himself subject, by ***consent***, waiver of venue and personal jurisdiction defenses or otherwise, to the jurisdiction of some other forum.'" *Id.* at 344 (brackets omitted) (emphasis added). The Supreme Court thus adopted precisely the same rule this Court articulated in *Merial*: A suit could have been brought in another

district only if "jurisdiction would have been proper [in that district] at the time of filing, ***regardless of consent***." *Merial*, 681 F.3d at 1294 (emphasis added).

Rule 4(k)(2) should be interpreted harmoniously with the transfer statutes, like §§ 1404 and 1406, with which it interacts. When a district court lacks personal jurisdiction, § 1406 allows it to transfer the case to another district where the suit "could have been brought." 28 U.S.C. § 1406(a); Appx16-17; *see also* 28 U.S.C. § 1631. The Supreme Court has made clear, however, that whether a case "could" or "might have been brought" in another district for purposes of ***transfer*** must be determined without regard to the defendant's consent. *Hoffman*, 363 U.S. at 342; *see Erwin-Simpson v. AirAsia Berhad*, 985 F.3d 883, 892-93 (D.C. Cir. 2021) (*Hoffman*'s reasoning extends to § 1406(a)); *Hayman Cash Register Co. v. Sarokin*, 669 F.2d 162, 166 (3d Cir. 1982) (same). Applying a different standard for purposes of ***Rule 4(k)(2)*** would produce anomalous results: A foreign defendant's consent to suit in another district would allow it to ***defeat personal jurisdiction*** in the original forum under Rule 4(k)(2), but would not allow the court to ***transfer*** the case to the district where, because of that consent, jurisdiction purportedly exists. The only option would be to "dismiss" the case under § 1406(a)—effectively giving canny defendants a get-out-of-jail-free card.

Even if transfer were possible, unacceptable "incentives for gamesmanship" would abound. *Merial*, 681 F.3d at 1295. A foreign defendant could "use a simple,

unilateral statement of consent" to defeat Rule 4(k)(2) and "achieve transfer into a forum it considers more convenient (or less convenient for its opponent)." *Id.* That would discard the "strong presumption in favor of ***the plaintiff's*** choice of forum"—a choice "entitled to greater deference when [as here] the plaintiff has chosen [its] home forum." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-56 (1981) (emphasis added). Instead, it would allow ***the defendant*** to dictate the forum. And it would do so in cases where it makes the ***least*** sense to defer to the defendant's desired forum: cases where a foreign defendant lacks significant contacts with ***any*** individual State and the ***only*** connection between the litigation and the defendant's designated forum is that the defendant wants to litigate there. *See Merial*, 681 F.3d at 1294-95.

That approach would license precisely the sort of "gross discrimination" the Supreme Court rejected in *Hoffman*, offering defendants a means "to transfer an action to any district desired by the defendants" simply by consenting to jurisdiction there, whereas plaintiffs would be unable to transfer to that same forum absent defendants' consent. 363 U.S. at 344. The opportunities for abuse are obvious. A defendant could force transfer to any district where it thinks circuit law or the jury pool more favorable. Worse, it could force transfer to a distant district—*e.g.*, by consenting to suit only in Hawaii—in hopes of ratcheting up the plaintiff's litigation costs and obtaining settlement leverage. And even if a court refused to transfer in

those circumstances, the alternative would be dismissal. Either way, the defendant's gamesmanship would be unjustly rewarded.

III. THE DISTRICT COURT ERRED IN FINDING RULE 4(k)(2) INAPPLICABLE AND TRANSFERRING THE CASES BASED ON DEFENDANTS' CONSENT TO SUIT IN ANOTHER DISTRICT

Under the proper legal standard, Rule 4(k)(2) plainly provides personal jurisdiction over TP-Link in Texas. Neither TP-Link nor the district court disputed that two of Rule 4(k)(2)'s elements are satisfied—and properly so. Stingray's patent-infringement claims "arise[ ] under federal law." Fed. R. Civ. P. 4(k)(2); *see Synthes*, 563 F.3d at 1296. And TP-Link has more than "sufficient contacts with ***the United States as a whole*** to satisfy due process standards." *Merial*, 681 F.3d at 1294 (emphasis added). TP-Link "purposefully directed its activities at parties in the United States," *Synthes*, 563 F.3d at 1297, by (among other things) obtaining U.S. certifications and trademarks for its products; packaging those products with English-language instructions; delivering those products to a U.S. distributor whose "'entire function is . . . to sell products in the United States'"; and providing technical assistance to U.S. customers, Appx8; *see* pp. 7-9, *supra*. Stingray's claims arise from those products' infringement in the United States, and the United States'

assertion of personal jurisdiction is plainly "reasonable and fair." *Synthes*, 563 F.3d at 1297.[9]

It was accordingly TP-Link's "burden" to show that it, in fact, is "subject to personal jurisdiction in the courts of" some other State by identifying another "forum where jurisdiction would have been proper at the time of filing, regardless of consent." *Merial*, 681 F.3d at 1294. TP-Link failed to carry that burden. Although it declared that "Fed. R. Civ. P. 4(k)(2) does not apply here" because it was purportedly subject to suit in California, it offered ***no*** argument or evidence that it had sufficient contacts with California to establish personal jurisdiction there. Appx176; Appx427.

To the contrary, TP-Link relied ***solely*** on its bare assertion that "Defendants would submit to jurisdiction in the CDCA." Appx176; Appx427; *see* p. 5 & n.5, *supra*. The district court likewise found Rule 4(k)(2) inapplicable based ***solely*** on TP-Link's "admissions that 'Defendants . . . submit to jurisdiction in the CDCA.'" Appx17. But "consent" to suit in "an alternative forum with no basis for personal jurisdiction but for [defendants'] consent" "cannot defeat Rule 4(k)(2)." *Merial*, 681 F.3d at 1295. TP-Link was obligated to prove "some independent basis for jurisdiction" in the Central District of California, "regardless of consent." *Id.* at

[9] Stingray also properly "serv[ed] a summons" on TP-Link, Fed. R. Civ. P. 4(k)(2), as the district court found, Appx1-18; Appx185-191.

1294-95. Because it failed to do so, Rule 4(k)(2) applies, and jurisdiction was proper in the Eastern District of Texas.[10]

The district court's contrary decision led to two further errors. Upon finding Rule 4(k)(2) inapplicable, the district court transferred the cases to the Central District of California based on TP-Link's consent to "'submit to jurisdiction in the CDCA.'" Appx17. Under Supreme Court precedent, however, § 1406 permits transfer only to a district where a case "could have been brought," 28 U.S.C. § 1406(a)—meaning a court where jurisdiction was proper ***without*** regard to the defendant's consent. *See Hoffman*, 363 U.S. at 342; pp. 25-26, *supra*. Just as TP-Link's consent to suit in California could not defeat personal jurisdiction under Rule 4(k)(2), it also could not support transfer under § 1406. The district court's construction of Rule 4(k)(2) thus led it to violate § 1406's and *Hoffman*'s clear command—underscoring the impropriety of that construction.

[10] Given the constraints of mandamus review, Stingray assumes for purposes of this petition that the district court correctly found that Texas would not have personal jurisdiction over TP-Link apart from Rule 4(k)(2). *See* Appx15-16. Stingray reserves the right to challenge that ruling in a later appeal if necessary, but it poses no obstacle to mandamus review of the Rule 4(k)(2) question presented here. If TP-Link has sufficient contacts with Texas to support personal jurisdiction, there would be personal jurisdiction under traditional personal-jurisdiction standards. Conversely, if TP-Link's contacts do not establish personal jurisdiction in Texas—and given that TP-Link failed to show personal jurisdiction in any other State—there would be personal jurisdiction in Texas under Rule 4(k)(2). Either way, personal jurisdiction is proper in Texas.

Moreover, rather than follow this Court's decision in *Merial*, the district court appears to have thought it should follow "Fifth Circuit" law. Appx17 (citing *Adams v. Unione Mediterranea Di Sicurta*, 364 F.3d 646, 650 (5th Cir. 2014)). Insofar as the district court believed regional circuit law governed, it erred. As the parties all recognized below, "personal jurisdiction issues in patent infringement cases are reviewed under Federal Circuit law, not regional circuit law." *Synthes*, 563 F.3d at 1293; *see* Appx165 n.4, Appx202 (parties' agreement on that point). That includes the interpretation and application of Rule 4(k)(2). *See Merial*, 681 F.3d at 1292; *Touchcom*, 574 F.3d at 1410, 1413-15. The district court's invocation of Fifth Circuit rather than Federal Circuit law is emblematic of the rampant confusion in this area. And it underscores the urgent need for this Court's guidance about the proper application of Rule 4(k)(2).

CONCLUSION

This Court should issue a writ of mandamus reversing the district court's October 13, 2022 order finding a lack of personal jurisdiction under Rule 4(k)(2) and transferring the cases to the Central District of California. The cases should be ordered returned to the Eastern District of Texas.

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Respectfully submitted,

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FORM 19. Certificate of Compliance with Type-Volume Limitations **Form 19**
July 2020

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: No. 22-

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