

A senior executive domiciled in State B brought an action in a state court in State A against her former employer, a corporation that is incorporated and has its principal place of business in State A. In her complaint, the executive alleges that she was wrongfully terminated after 17 years of employment and seeks \$100,000 in lost wages and benefits.

The corporation filed an answer two weeks after it received service of process. The answer claimed that the executive was terminated for attempting to license a patent owned by the corporation without its permission, in violation of patent law. The corporation contemporaneously filed a notice of removal in federal court. Twenty-three days later, the executive filed a motion to remand.

Should the federal court grant the motion to remand?

- A. No, because federal courts have exclusive jurisdiction over patent-law violations.
- B. No, because the motion to remand was due within 21 days after the notice of removal was filed.
- C. Yes, because the corporation, as a citizen of State A, cannot remove the case to federal court.
- D. Yes, because the corporation should have filed its notice of removal in state court.

Explanation:

A **defendant may remove** a case from **state to federal court** if the case falls within the federal court's original **subject-matter jurisdiction**. Original jurisdiction arises from either:

- **federal-question jurisdiction** – when a claim arises under the U.S. Constitution, a federal treaty, or federal law *or*
- **diversity jurisdiction** – when the amount in controversy exceeds \$75,000 and the opposing parties are **citizens** of different states.

Diversity jurisdiction seeks to protect out-of-state defendants from potential bias in state courts. However, in-state defendants do not face the same risk of bias. Therefore, the **forum-defendant rule** (ie, home-court advantage rule) **prohibits removal** when (1) subject-matter jurisdiction arises from **diversity jurisdiction** and (2) the defendant is a **citizen of the state** in which the **case was filed**.

Here, diversity jurisdiction exists because the amount in controversy is \$100,000 and the executive and the corporation are citizens of different states (States B and A, respectively). But since the corporation is a citizen of State A—where the case was filed—the forum-defendant rule prohibits removal. Therefore, the federal court should grant the executive's **motion to remand** the case to state court.

(Choice A) Federal courts have **exclusive jurisdiction** over patent claims, and any party that asserts a patent claim can remove the case to federal court. But here, the corporation has not asserted a patent claim—it merely raised the alleged patent violation to explain why the executive was terminated.

(Choice B) A motion to remand must be filed within 30 days after the notice of removal was filed. Therefore, the executive timely filed her motion 23 days after the corporation filed its notice of removal.

(Choice D) A notice of removal must be filed in the federal court located in the same district in which the suit is pending—as the corporation did here. A copy of the notice of removal should then be delivered to the parties and the state court.

Educational objective:

The forum-defendant rule prohibits removal when (1) subject-matter jurisdiction arises from diversity jurisdiction and (2) the defendant is a citizen of the state in which the case was filed.

References

- 28 U.S.C. § 1441(b)(2) (forum-defendant rule).

Requirements for removal to federal court

