SUPREME COURT OF THE UNITED STATES

No. 01–408

THE HOLMES GROUP, INC., PETITIONER *v.* VORNADO AIR CIRCULATION SYSTEMS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[June 3, 2002]

JUSTICE GINSBURG, with whom JUSTICE O'CONNOR joins, concurring in the judgment.

For reasons stated by Chief Judge Markey, writing for a unanimous en banc Federal Circuit in *Aerojet-General Corp.* v. *Machine Tool Works, Oerlikon-Buehrle Ltd.,* 895 F. 2d 736 (1990), I conclude that, when the claim stated in a compulsory counterclaim "aris[es] under" federal patent law and is adjudicated on the merits by a federal district court, the Federal Circuit has exclusive appellate jurisdiction over that adjudication and other determinations made in the same case. See *id.*, at 741–744 (distinguishing *Christianson* v. *Colt Industries Operating Corp.,* 486 U. S. 800 (1988), in which this Court *affirmed* the jurisdictional decision of the Federal Circuit; in discussing the "well-pleaded complaint rule," the Federal Circuit observed that a patent infringement counterclaim, unlike a patent issue raised only as a defense, has as its own, independent jurisdictional base 28 U. S. C. §1338, *i.e.*, such a claim discretely "arises under the patent laws").

The question now before this Court bears not at all on a plaintiff's choice of trial forum. The sole question presented here concerns Congress' allocation of adjudicatory authority among the federal courts of appeals. At that appellate level, Congress sought to eliminate forum shop-

ping and to advance uniformity in the interpretation and application of federal patent law. See generally R. Dreyfuss, The Federal Circuit: A Case Study in Specialized Courts, 64 N. Y. U. L. Rev. 1, 30–37 (1989).

The Court's opinion dwells on district court authority. See *ante*, at 4–6. But, all agree, Congress left that authority entirely untouched. I would attend, instead, to the unique context at issue, and give effect to Congress' endeavor to grant the Federal Circuit exclusive appellate jurisdiction at least over district court adjudications of patent claims. See R. Dreyfuss, 64 N. Y. U. L. Rev., at 36.

In the instant case, however, no patent claim was actually adjudicated. For that sole reason, I join the Court's judgment.