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CASE SUMMARY


CONOR BURDEN LEONARD*

INTRODUCTION

In Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., the U.S. Court of Appeals for the Ninth Circuit analyzed the scope of federal removal jurisdiction over matters related to certain international arbitration agreements and awards. In doing so, the Ninth Circuit articulated a broad standard to determine whether a federal court is an appropriate forum to hear a dispute related to a foreign arbitration agreement or award. The Ninth Circuit interpreted the key language of the relevant provision to permit removal whenever there is an arbitral

* J.D. Candidate, May 2012, Golden Gate University School of Law, San Francisco, California; B.A. Political Science, 2005, University of Minnesota, Minneapolis, Minnesota. I have many people to thank. I could not have completed this project without the support I received. Cameron, thank you for your encouragement, friendship, grace, tenacity, and love. Mom and Dad, thank you for being remarkable parents and for setting an amazing example to follow. Tom and Wendy, thank you for welcoming me into your family and supporting us in every way. Brendan and Robin, thank you for being the best siblings. Dean Ramey, Professor Sylvester, and Professor Baskauskas, thank you for your guidance. Finally, thank you to Dan, Brian, Caitlin, Pete, and Tyler for your collective and individual support, sense of humor, and help.

1 Infuturia Global Ltd. v. Sequus Pharm., Inc. (Infuturia II), 631 F.3d 1133, 1135, 1138-39 (9th Cir. 2011).

2 Id. at 1135.
award or agreement that “could conceivably affect the outcome of the plaintiff’s suit.”

I. BACKGROUND

Arbitration is a method of nonjudicial dispute resolution usually governed by a judicially enforceable agreement to submit specified issues to private resolution by a third party. It provides the parties with an opportunity to choose a convenient forum, control the characteristics of the neutral third party, and avoid prolonged litigation. In this way, arbitration can reduce the expenses associated with extended litigation.

Despite the advantages of arbitration, English courts initially held a negative view of arbitration. U.S. courts originally followed the English viewpoint toward arbitration until Congress passed the Federal Arbitration Act of 1925 (FAA). The FAA effectively reversed American courts’ animosity toward arbitration and “created a powerful federal policy in favor of [it].” More specifically, Congress sought to further American business interests through arbitration with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is a chapter of the FAA.

Congress promoted arbitration through the Convention in a few ways. First, Congress established a quid pro quo with international governments related to arbitral awards and agreements. A U.S. district...
court must order arbitration when (a) the arbitral agreement is in writing, (b) the arbitration is to take place in a country that signed the Convention, (c) the arbitral agreement arises out of a legal relationship, and (d) one of the parties to the agreement is not an American citizen.\footnote{Sedco, Inc. v. Petroleos Mexicanos Mexican Nat’l Oil Co., 767 F.2d 1140, 1144-45 (5th Cir. 1985).} Second, Congress granted original jurisdiction to the district courts to adjudicate arbitral disputes “falling under the Convention.”\footnote{9 U.S.C.A. § 203 (Westlaw 2011).}

Various Convention sections deal with other specifics. For instance, they identify the types of agreements that fall under the Convention and create causes of action to enforce them.\footnote{9 U.S.C.A. §§ 202, 206, 207 (Westlaw 2011); Czarina, L.L.C. v. W.F. Poe Syndicate, 358 F.3d at 1290-91.} Specifically, 9 U.S.C. §§ 206 and 207 allow a party to sue in federal court to compel arbitration or to confirm an arbitral award stemming from a Convention agreement.\footnote{9 U.S.C. § 205 (Westlaw 2011).} In addition, 9 U.S.C. § 205 provides for removal of an action on a foreign arbitral award to the appropriate U.S. district court.\footnote{Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., 631 F.3d 1133, 1135 (9th Cir. 2011); see 9 U.S.C.A. § 205 (providing that “[w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant . . . may . . . remove such action or proceeding to the district court of the United States” (emphasis added)).}

In *Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc.*, the Ninth Circuit determined whether the U.S. District Court for the Northern District of California had jurisdiction over an action removed from state court by the defendant.\footnote{Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002), quoted in *Infuturia II*, 631 F.3d at 1137-38.} The Ninth Circuit evaluated two different viewpoints of the language of § 205. The Fifth Circuit, the only other circuit to evaluate the language of § 205 that authorizes removal of an action that “relates to” an arbitration agreement or award falling under the Convention, interpreted the phrase to permit removal “whenever an arbitration agreement falling under the Convention could conceivably affect the outcome of the plaintiff’s case.”\footnote{Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002), quoted in *Infuturia II*, 631 F.3d at 1137-38.} In contrast to the Fifth Circuit’s decision on the scope of § 205 removal, a Central District of California decision narrowed the scope of the statute by adding privity of

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\footnotesize{McDermott Int’l, Inc. v. Lloyds Underwriters of London, 944 F.2d 1199, 1207-08 (5th Cir. 1991).}
contract as a prerequisite. The Ninth Circuit settled on the broader interpretation.

The decision is noteworthy because it provides parties engaged in international disputes with ready access to the federal courts. The Ninth Circuit stated that the federal courts have jurisdiction over certain international arbitral agreements and awards whenever the agreement or award “‘relates to’ the subject matter of an action . . . [that] could conceivably affect the outcome of the plaintiff’s suit.” This broad interpretation of § 205, coupled with other factors, will make it easier for parties to access a federal forum in arbitration disputes.

II. FACTS OF INFUTURIA GLOBAL LTD. V. SEQUUS PHARMACEUTICALS, INC.

Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., involved five parties. Plaintiff-appellant Infuturia Global Ltd. (Infuturia), a citizen of the British Virgin Islands, developed and marketed liposome-related pharmaceutical products. Defendant-appellee Sequus Pharmaceuticals Inc., (Sequus), a California pharmaceutical company, produced lipid-based drugs. Defendant Professor Yechezkel Barenholz was an Israeli citizen and an employee of defendant Hebrew University, an Israeli corporation. Yissum Research and Development Company of the Hebrew University of Jerusalem (Yissum), an Israeli company, was the subsidiary that protected intellectual property created by University students and faculty.

In 1990, Infuturia and Yissum entered into a license agreement (the 1990 agreement) that gave Infuturia an exclusive license related to certain liposome-based technology developed by Barenholz. An arbitration clause in the 1990 agreement mandated “arbitration of any
dispute ‘connected in any way to the implementation of [the] Agreement.”’31 Five years later, Sequus entered into a license agreement (the 1995 agreement) with Yissum.32 The 1995 agreement also covered liposome technology rights.33 Not long thereafter, a lawsuit ensued.34

III. THE ISSUE AND PROCEDURAL HISTORY OF INFUTURIA GLOBAL LTD. V. SEQUUS PHARMACEUTICALS, INC.

The dispute in Infuturia Global arose over licensing rights owned by Yissum.35 Infuturia sued Sequus, the University, and Barenholz in Santa Clara County Superior Court, alleging tortious interference with the 1990 agreement.36 Infuturia claimed that discoveries that should have been reported to it under the 1990 agreement were licensed instead to Sequus.37 Citing the arbitration clause in the 1990 agreement, non-party Yissum sought a stay of the Santa Clara County Superior Court litigation and an order to compel arbitration in Israel.38 The court granted the stay, and the case went to arbitration.39

In arbitration, Yissum and Infuturia brought claims against each other.40 Yissum alleged that Infuturia owed it $125,000 under the 1990 agreement and that Infuturia’s failure to pay allowed Yissum to cancel the 1990 agreement.41 Infuturia alleged that Yissum breached the 1990 agreement when it shared information with Sequus that sparked the development of a cancer drug, and that Yissum owed Infuturia $45 million.42

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31 Infuturia II, 631 F.3d at 1135.
32 Id.
33 Id.
34 Id.
35 Id.
38 Defining stay as “[a]n order to suspend all or part of a judicial proceeding or a judgment resulting from that proceeding,” BLACK’S LAW DICTIONARY 1548 (9th ed. 2009); Infuturia II, 631 F.3d at 1136; Infuturia I, 2009 WL 440477, at *2.
39 Infuturia II, 631 F.3d at 1136.
40 Infuturia I, 2009 WL 440477, at *2.
41 Id.
42 Id.
Arbitrator Amnon Strashnov decided in favor of Yissum, granting its monetary claim and rejecting Infuturia’s cross claim. The arbitrator determined that the cancer drug was invented before Sequus received information from Yissum. A court in Israel confirmed the award.

In 2008, after the Santa Clara County Superior Court lifted the stay on the litigation, Infuturia asked the court to confirm the Israeli arbitral award and filed a first amended complaint alleging tortious interference with the 1990 agreement, conspiracy to interfere with Infuturia’s rights under the 1990 agreement, conversion of Infuturia’s contract rights, breach of fiduciary duty, and fraudulent concealment. Thereafter, the University and Barenholz removed the case from the state court to the U.S. District Court for the Northern District of California under 9 U.S.C. § 205. They argued that jurisdiction for the removed action existed under the Convention, as it provided the federal courts with the ability to “hear cases where the subject matter ‘relates to an arbitration . . . award falling under the Convention.’” The University and Barenholz asserted that Infuturia’s complaint related to the arbitration award since both parties sought to enforce portions of the award.

Although they were non-signatories to the 1990 agreement containing the arbitration clause, the University and Barenholz intended to raise affirmative defenses in federal court, including collateral estoppel, arguing that the issues raised by Infuturia were decided in the Israeli arbitration.

Infuturia filed a motion to remand the case back to Santa Clara County Superior Court since the defendants were non-signatories to the 1990 agreement containing the arbitration provision. Nonetheless, the

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44 Infuturia I, 2009 WL 440477, at *2.
45 Id.
46 Id.
47 Infuturia Global Ltd. v. Sequus Pharm., Inc. (Infuturia II), 631 F.3d 1133, 1136 (9th Cir. 2011).
48 Defendants the Hebrew University of Jerusalem and Yechezkel Barenholz’ Memorandum of Points and Authorities in Opposition to Motion to Remand at 2, Infuturia I, 2009 WL 440477 (No. C 08-4871 SBA), 2009 WL 1160328 at *2.
49 Id.
50 Infuturia II, 631 F.3d 1135-36.
51 Defining collateral estoppel as “[a] doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one.” BLACK’S LAW DICTIONARY 298 (9th ed. 2009); Defendants the Hebrew University of Jerusalem and Yechezkel Barenholz’ Memorandum of Points and Authorities in Opposition to Motion to Remand at 2, Infuturia I, 2009 WL 440477 (No. C 08-4871 SBA), 2009 WL 1160328 at *2.
district court found removal proper, thus denying the motion.\textsuperscript{53} In addition, the court found Infuturia’s pleadings were vague and ordered it to file a more specific second amended complaint.\textsuperscript{54}

After Infuturia filed its Second Amended Complaint against only Sequus, the defendant answered and raised collateral estoppel as an affirmative defense.\textsuperscript{55} Additionally, Sequus moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that Infuturia had failed to state a claim, and under Rule 12(b)(7), arguing that Infuturia had failed to join a necessary party.\textsuperscript{56} The district court granted both motions, and Infuturia appealed.\textsuperscript{57}

On appeal, Infuturia challenged the grant of Sequus’s motions to dismiss and the court’s subject matter jurisdiction, and argued that removal was inappropriate.\textsuperscript{58} A panel of the Ninth Circuit addressed the motion to dismiss in an unpublished disposition.\textsuperscript{59} In its published opinion the panel analyzed subject matter jurisdiction, removal jurisdiction, and timeliness of removal.\textsuperscript{60}

IV. THE NINTH CIRCUIT’S ANALYSIS

A. SUBJECT MATTER JURISDICTION

Infuturia raised two arguments in support of its proposition that the federal courts lacked subject matter jurisdiction over the case. First, Infuturia claimed that “the parties were not diverse when [the] case was removed.”\textsuperscript{61} The Ninth Circuit agreed with Infuturia’s argument that diversity did not exist initially, because there were foreign citizens on either side of the case at the time of removal.\textsuperscript{62} However, in its Second Amended Complaint, Infuturia had dismissed the foreign defendants.\textsuperscript{63} Consequently, the Ninth Circuit concluded that the district court had

\textsuperscript{53} Infuturia II, 631 F.3d at 1136.
\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.; see also Fed. R. Civ. P. 12(b)(6), (7).
\textsuperscript{57} Infuturia II, 631 F.3d at 1136.
\textsuperscript{58} Id. at 1136, 1139.
\textsuperscript{59} Id. at 1136 n.4.
\textsuperscript{60} Id. at 1136-39.
\textsuperscript{61} Id. at 1137.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
diversity jurisdiction over the foreign appellant and the domestic appellee under 28 U.S.C. § 1332(a)(2).\textsuperscript{64}

Second, Infuturia contended that jurisdiction was improper because even if Sequus had been the only defendant, it could not have removed the case to federal court given its position as the forum defendant.\textsuperscript{65} The Ninth Circuit rejected this argument, pointing out that because removal was effectuated under 9 U.S.C. § 205, the forum defendant rule was inapplicable.\textsuperscript{66}

B. REMOVAL JURISDICTION

On the question of removal jurisdiction, the Ninth Circuit considered whether § 205 allowed for “removal jurisdiction over a case where the defendant raises an affirmative defense related to an arbitral award falling under the [Convention].”\textsuperscript{67} To analyze that possibility, the Ninth Circuit first quoted § 205, which states in pertinent part that removal is permitted “[w]here the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention.”\textsuperscript{68} The court identified the phrase “relates to” as the key language.

In its analysis of “relates to,” the Ninth Circuit looked at the Fifth Circuit’s interpretation of § 205, as well as how the term has been interpreted in other contexts.\textsuperscript{69} The Fifth Circuit construed the phrase to mean that, “whenever an arbitration agreement falling under the Convention could conceivably affect the outcome of the plaintiff’s case, the agreement ‘relates to’ the plaintiff’s suit.”\textsuperscript{70} The Ninth Circuit noted that, interpreting the phrase in context of the Employee Retirement Income Security Act, the Supreme Court said “[a] law ‘relates to’ an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.”\textsuperscript{71} And the Ninth Circuit noted that its own precedent interpreting the bankruptcy jurisdiction has

\textsuperscript{64} Id.
\textsuperscript{65} Id.
\textsuperscript{66} Id.; see 9 U.S.C.A. § 205 (Westlaw 2011); 28 U.S.C.A. § 1441(b) (Westlaw 2011) (providing generally that unless the district court would have original jurisdiction based on the presence of a federal question, the action cannot be removed if one of the defendants is a citizen of the state in which the action is brought).
\textsuperscript{67} Infuturia II, 631 F.3d at 1135 (footnote omitted).
\textsuperscript{68} Id. at 1137 (footnote omitted).
\textsuperscript{69} Id. at 1137 (quoting 9 U.S.C. § 205 and adding emphasis).
\textsuperscript{70} Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002).
\textsuperscript{71} Infuturia II, 631 F.3d at 1138 (quoting Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96–97 (1983)).
held, like the Fifth Circuit’s interpretation of “relates to” in the context of 9 U.S.C. § 205, that “[a] civil proceeding is ‘related to’ a [bankruptcy] case if the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.”

Then, the Ninth Circuit examined Infuturia’s argument to add privity of contract to the § 205 analysis. Infuturia cited a Central District of California case holding that parties must have entered into an arbitration agreement (be in privity of contract) and the action had to relate to the arbitral agreement to remove the action from state court under § 205. The Ninth Circuit overruled that case, pointing out that adopting the proposed standard would base jurisdiction on the privity of the parties, whereas § 205 deals with the relationship between the arbitral agreement and the subject matter at issue.

The Ninth Circuit concluded that “relates to” should be construed broadly, thereby rejecting Infuturia’s argument that 9 U.S.C. § 205 should be narrowed by adding a privity requirement. As a result, the court found that Sequus’s collateral estoppel defense met the “relates to” standard because the Israeli arbitrator handed down an award that could conceivably affect the outcome of Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc.

C. TIMELINESS OF REMOVAL

Finally, the Ninth Circuit rejected Infuturia’s assertion that removal was untimely. Section 205 permits defendants to, “at any time before the trial thereof, remove [an action falling under the Convention] to the district court.” The court denied Infuturia’s contention that the word “trial” means “any adjudication on the merits,” including the Israeli arbitration. Instead, the court emphasized that the statute clearly facilitated the removal of state court actions falling under the Convention at any time before the adjudication of the claims asserted in state court.

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72 Id. (quoting McGuire v. United States, 550 F.3d 903, 911–12 (9th Cir. 2008), with emphasis added and citation and internal quotation marks omitted).
73 Id.
75 Infuturia II, 631 F.3d at 1138.
76 Id.
77 Id. at 1138-39.
78 Id. at 1139.
80 Infuturia II, 631 F.3d at 1139.
81 Id.
Noting that the California superior court action remained undecided prior to removal, the Ninth Circuit rejected Infuturia’s argument that removal was not timely.82

V. IMPLICATIONS OF THE DECISION

This decision is important because it provides parties in international arbitral disputes with ready access to the federal courts. In AtGames Holdings Ltd. v. Radica Games Ltd., the District Court for the Central District of California concluded that privity of contract was a necessary prerequisite to removal under 9 U.S.C. § 205.83 In Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc., Infuturia advanced a similar argument, and the Ninth Circuit rejected it outright.84 Instead, the Ninth Circuit explicitly agreed with existing Fifth Circuit precedent, making it easier to remove cases to the federal courts under the Convention.85 Other factors also contribute to the potential increase in cases heard by federal courts as a result of Infuturia Global. In combination with these factors, the Infuturia Global decision may cause the federal courts to receive more § 205 notices of removal, to hear more motions to remand, and to retain more Convention cases.

Because 9 U.S.C. § 203 provides original jurisdiction for cases that fall under the Convention,86 parties must meet only two criteria to remove an action under § 205.87 First, a party seeking to remove must establish that there is an arbitral award or agreement that falls under the

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82 Id.
84 Infuturia II, 631 F.3d at 1138-39.
85 Id. at 1138.
87 Hawkins v. KPMG LLP, 423 F. Supp. 2d 1038, 1044 (N.D. Cal. 2006) (order and memorandum granting motion to remand and denying motion to compel arbitration).
Convention.\textsuperscript{88} Second, the agreement or award must “relate to” the action.\textsuperscript{89} In most cases, these criteria will be easy to establish.

The first prong of the test—that the award or agreement falls under the Convention—is simple to meet. Section 202 identifies the agreements that fall under the Convention.\textsuperscript{90} A Ninth Circuit panel decision evaluated the plain meaning of § 202.\textsuperscript{91} According to the court, § 202 confers jurisdiction on the district court when the agreement or award “(1) . . . arise[s] out of a legal relationship (2) which is commercial in nature and (3) which is not entirely domestic in scope.”\textsuperscript{92} The court called these requirements “basic.”\textsuperscript{93}

Similarly, in most cases, the second prong of the test should not prove difficult. As discussed above, the Ninth Circuit interpreted the “relates to” language in § 205 broadly to mean the arbitral award or agreement need only “conceivably affect the outcome of the plaintiff’s suit” to be removable.\textsuperscript{94} In \textit{Beiser v. Weyler}, the Fifth Circuit also broadly defined the “relates to” language from 9 U.S.C. § 205.\textsuperscript{95} According to the Fifth Circuit,

\begin{quote}
[The district court will have jurisdiction under § 205 over just about any suit in which a defendant contends that an arbitration clause falling under the Convention provides a defense. \textit{As long as the defendant’s assertion is not completely absurd or impossible, it is at least conceivable that the arbitration clause will impact the disposition of the case. That is all that is required to meet the low bar of “relates to.”}]
\end{quote}

Both the Fifth and Ninth Circuits highlighted the ease with which defendants satisfy the second step by broadly defining the key phrase of § 205.\textsuperscript{97}

\textsuperscript{88} See 9 U.S.C.A. § 202 (Westlaw 2011) (“An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement . . . falls under the Convention.”).

\textsuperscript{89} 9 U.S.C.A. § 205 (Westlaw 2011).


\textsuperscript{91} Ministry of Def. of Islamic Republic of Iran v. Gould Inc., 887 F.2d 1357, 1362 (9th Cir. 1989).

\textsuperscript{92} Id.

\textsuperscript{93} Id.

\textsuperscript{94} Infuturia Global Ltd. v. Sequus Pharm., Inc. (\textit{Infuturia II}), 631 F.3d 1133, 1135 (9th Cir. 2011).

\textsuperscript{95} Beiser v. Weyler, 284 F.3d 665, 669 (5th Cir. 2002).

\textsuperscript{96} Id. (emphasis added).

\textsuperscript{97} Id.; \textit{Infuturia II}, 631 F.3d at 1135, 1138.
Not only are the steps of the Convention removal process easy to satisfy, removal may provide defendants with significant advantages in some cases. Where federal procedural law differs from applicable state-court rules, the ability to remove may be outcome-determinative. Consequently, defendants may seek to remove actions to gain potential or perceived strategic advantages available in federal courts.

In this era of global commercial transactions, international agreements often provide that disputes will be settled by arbitration rather than through the courts. In virtually every case where an arbitration agreement is at issue, and so long as the parties fall under the Convention and satisfy § 202, the federal courts will have jurisdiction on a showing that the arbitration award or agreement could conceivably affect the outcome of the case.

CONCLUSION

In *AtGames Holdings v. Radica Games*, the District Court for the Central District of California concluded that in order to rely upon an international arbitral agreement as the basis for removal under 9 U.S.C. § 205, the defendant must have entered into the agreement with the plaintiff. In *Infuturia Global Ltd. v. Sequus Pharmaceuticals, Inc.*., Infuturia advanced a similar argument, which the Ninth Circuit rejected outright. The court held that removal is permitted “whenever an arbitration agreement . . . could conceivably affect the outcome of the plaintiff’s case.” Since the Ninth Circuit’s § 205 removal standard is now lower, defendants may use the *Infuturia Global* decision to remove more cases, giving them the potential advantages of litigating in federal courts.

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98 See, e.g., SAMUEL ISSACHAROFF, CIVIL PROCEDURE 135-36 (2d ed. 2008) (stating many of the strategic considerations that plaintiffs ponder in deciding upon a forum, and that may be lost when an action is removed).

99 See id.; see also Hanna v. Plumer, 380 U.S. 460, 473-74 (1965); Erie v. Tompkins, 304 U.S. 64, 78 (1938).

100 SAMUEL ISSACHAROFF, CIVIL PROCEDURE 135 (2d ed. 2008).

101 Christopher R. Drahozal, Commercial Norms, Commercial Codes, and International Commercial Arbitration, 33 Vand. J. Transnat’l L. 79, 94 (2000) (stating that arbitration is accepted as the form of dispute resolution for international business, and that one estimation was that “ninety percent of all international contracts contain arbitration clauses”).

102 Id. (stating one estimation that “ninety percent of all international contracts contain arbitration clauses”).

103 AtGames Holdings Ltd. v. Radica Games Ltd., 394 F. Supp. 2d 1252, 1255 (C.D. Cal. 2005) (order granting motion to remand), overruled by Infuturia Global Ltd. v. Sequus Pharm., Inc. (*Infuturia II*), 631 F.3d 1133 (9th Cir. 2011).

104 *Infuturia II*, 631 F.3d at 1138-39.

105 Id. at 1138.
Thus, the Ninth Circuit’s interpretation of 9 U.S.C. § 205 will inevitably result in more cases on the federal courts’ dockets.