

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

IN RE NATIONAL OILWELL VARCO, L.P.,
Petitioner.

Miscellaneous Docket No. 994

On Petition for Writ of Mandamus to the United
States District Court for the Southern District of Texas in
case no. 06-CV-170, Judge Lynn N. Hughes.

ON PETITION

Before LOURIE, BRYSON, and MOORE, *Circuit Judges.*

LOURIE, *Circuit Judge.*

O R D E R

National Oilwell Varco, L.P. (NOV) seeks a writ of mandamus directing the United States District Court for the Southern District of Texas to allow "basic discovery." Hydril Co., L.P. opposes. NOV replies.

The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discre-

tion or usurpation of judicial power. *In re Calmar, Inc.*, 854 F.2d 461, 464 (Fed. Cir. 1988). A party seeking a writ bears the burden of proving that it has no other means of attaining the relief desired, *Mallard v. U.S. Dist. Court for the Southern Dist. of Iowa*, 490 U.S. 296, 309, (1989), and that the right to issuance of the writ is "clear and indisputable," *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980). A court may deny mandamus relief "even though on normal appeal, a court might find reversible error." *In re Cordis Corp.*, 769 F.2d 733, 737 (Fed. Cir. 1985).

In the papers submitted, NOV has not shown why it cannot raise any challenge to the district court's discovery determinations on appeal from a final judgment. Although NOV argues that it will be unable to present a proper record on appeal without this court's intervention now and that it wishes to "avoid piece by piece" appeal, that argument is generally insufficient to warrant mandamus relief. *See Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383, (1953) ("[I]t is established that the extraordinary writs cannot be used as substitutes for appeals ... even though hardship may result from delay and perhaps unnecessary trial"). NOV will still be able to argue about the propriety of the district court's discovery determinations on appeal. Because NOV has failed to meet its burden of establishing the extraordinary circumstances necessary to grant mandamus relief, we deny the petition.

Accordingly,

IT IS ORDERED THAT:

The petition for writ of mandamus is denied.

FOR THE COURT

SEP 02 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Robert M. Bowick, Esq.

R. Paul Yetter, Esq.

Clerk, United States District Court for the Southern
District of Texas

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THE FEDERAL CIRCUIT

SEP 02 2011

JAN HORBALY
CLERK