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# SUPREME COURT'S *TC HEARTLAND* DECISION WILL CHANGE THE GEOGRAPHY OF PATENT INFRINGEMENT

**By Paul Schuck**

The Supreme Court has brought significant change to the law regarding proper venue for patent infringement cases. In *TC Heartland v. Kraft Foods Group Brands LLC*, Case No. 16-3421 (May 22, 2017), the Court overruled the Federal Circuit's longstanding decision in *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (1990). *TC Heartland* dramatically reduces the number of venues available to plaintiffs and will have a profound effect on where future patent infringement cases are litigated.

The central issue in *TC Heartland* was where a corporation "resides" under the patent venue statute, 28 U.S.C. §1400(b), which permits a party to be sued in any judicial district "where the defendant resides." In *VE Holding*, the Federal Circuit had ruled that an entity resides "in any judicial district in which such defendant is subject to the Court's personal jurisdiction with respect to the civil action in question." For businesses selling products or services nationally, the Federal Circuit's ruling effectively permitted plaintiffs to sue in any district court in the country.

*VE Holding* resulted in patent plaintiffs identifying what they believed to be favorable courts and filing a disproportionate number of cases in those courts. For example, more than a third of all patent cases in recent years have been filed in the Eastern District of Texas—a district that is home to few of the defendants sued there. In 2015, a single Eastern District judge presided over more than one-fourth of all patent infringement cases filed in the United States.

In an 8-0 decision (Justice Gorsuch did not participate), the Supreme Court rejected the Federal Circuit's broad construction of "resides" in section 1400 and ruled that an entity resides only in its state of incorporation. Under this new decision, and section 1400(b), parties may now only be sued for patent infringement: (1) where the party is incorporated; or (2) where the party has committed acts of infringement **and** has a regular and established place of business.

The *TC Heartland* decision will likely change the geography of patent litigation. In pending patent cases where venue has not been waived, parties may seek dismissal or transfer of the case. In the future, the Court's ruling will likely reduce the number of patent cases filed in the Eastern District of Texas and increase the number cases filed in districts where companies are incorporated (often, Delaware) and where companies have established places of business. Those districts that are home to a large number of high-technology businesses—such as the Northern, Southern and Eastern Districts of California—may see an increase in patent litigation. *TC Heartland*'s restriction on venue, along with the America Invents Act provisions limiting joinder (35 U.S.C. §299), may also result in an increase in multi-district litigation proceedings for patent disputes.

The full Supreme Court opinion is available here.

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