Supreme Court Hits Reset on Patent Venue Law in *TC Heartland*

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Client Alert

In yesterday's *TC Heartland LLC v. Kraft Foods Group Brands LLC* decision, the Supreme Court reversed nearly thirty years of patent venue law and held that a domestic corporation resides only in its state of incorporation for purposes of patent venue. Based on this holding, domestic corporations now face patent infringement lawsuits only in their states of incorporation or in judicial districts where they have a regular and established place of business (e.g., a corporate headquarters) and have committed alleged acts of infringement.

Previous Federal Circuit case law provided venue for patent infringement claims anywhere the district court had personal jurisdiction over the defendant. Under that case law, patent infringement plaintiffs could file lawsuits against companies with nationwide distribution networks practically anywhere in the United States. This had the effect of concentrating patent litigation in a handful of district courts—most prominently the Eastern District of Texas. The new Supreme Court decision creates a more restrictive regime that likely eliminates venue in the Eastern District of Texas and several other patent litigation hot zones in most cases.

**Background.** The May 22 decision involves straightforward facts but travels a wending road of statutory amendments and evolving case law. The accused infringer is TC Heartland, an Indiana corporation headquartered in Indiana that manufactures flavored drink mixes. The plaintiff is its direct competitor, Kraft Foods, a Delaware corporation with its principal place of business in Illinois. Kraft Foods sued TC Heartland for patent infringement in the District of Delaware. TC Heartland's sole contact with that district is shipping allegedly infringing products to Delaware; TC Heartland is not registered to conduct business in Delaware, nor does it have any other presence there.

TC Heartland moved to dismiss or transfer venue to the Southern District of Indiana. The motion relied on a 1958 Supreme Court decision, *Fourco Glass Co. v. Transmirra Products Corp.*, which concluded that, under the patent venue statute (28 U.S.C. § 1400(b)) a domestic corporation “resides” only in its state of incorporation.

The district court denied TC Heartland’s motion based on the Federal Circuit’s 1990 decision, *VE Holding Corp. v. Johnson Gas Appliance Co.*, which concluded that a 1988 amendment to the general venue statute (28 U.S.C. § 1391(c)) altered patent venue law as well. Under the 1988 amendment, corporate defendants “reside” in any judicial district in which they are subject to personal jurisdiction. Per *VE Holding*, because the 1988 amendment purports to define “resides” “for purposes of venue under this chapter,” the patent venue statute incorporates the amendment’s more expansive definition.

On appeal from the district court’s denial of TC Heartland’s motion, the Federal Circuit reaffirmed *VE Holding*. The appellate court also concluded a 2011 amendment to Section 1391 did not affect *VE Holding*. Under that amendment, Section 1391 “shall govern the venue of all civil actions brought in district courts of the United States” “except as otherwise provided by law,” and the statute’s definition of “resides” applies “[f]or all venue purposes.”
The Supreme Court’s Decision. In a unanimous opinion by Justice Thomas, the Supreme Court reversed. It traced the path of patent venue law back to the Judiciary Act of 1789, stopped off in 1897 for Congress’s creation of a patent-specific venue statute, and then journeyed to the 1948 recodification of that statute as Section 1400(b), which remains the patent venue statute’s current form. The Court then revisited its 1958 opinion in *Fourco*, noting that it had “squarely rejected” applying the general venue statute’s definition of residence to the patent venue statute.

Next, the Court considered whether the 1988 amendments to the general venue statute altered the meaning of Section 1400(b). It concluded that Section 1391 bears no indication that Congress intended to change the patent venue law under *Fourco*. The Court explained that the 1988 amendment’s extension of Section 1391 to “all venue purposes” was no such indication, as the version of the statute at issue in *Fourco* contained similar language. The Court noted that this language was even less troubling under the current general venue statute, which includes a saving clause rendering it inapplicable when “otherwise provided by law.” Finally, the Court observed that the 2011 amendment deleted “under this chapter”—the language on which the Federal Circuit had relied in *VE Holding*—from the general venue statute.

Takeaways. *TC Heartland* significantly alters the patent litigation landscape. The decision’s most obvious consequence is its effective curtailment of the Eastern District of Texas—the most popular forum for patent infringement lawsuits and the site of more than a third of all new patent case filings in 2016—as the proper venue in cases against many domestic corporations. The Eastern District of Texas’s popularity among patent-plaintiffs provoked no small amount of discourse, yet Justice Thomas’s opinion does not discuss the public policy implications of the Court’s decision.

A number of other implications flow from *TC Heartland*:

- The District of Delaware and Northern District of California, already popular forums for new patent cases, are likely ascendant as preferred destinations for patent owners.
- The Eastern District of Texas likely will see an increase in motions to dismiss for improper venue.
- The Eastern District of Texas may remain a viable venue in patent lawsuits against foreign corporations. The Supreme Court declined to reach the question of foreign corporate defendants in *TC Heartland*, and stated that it was not expressing any opinion on its previous decision in *Brunette Machine Works v. Kockum Industries*. The Court concluded in that case that the venue rule for foreign residents under the then-existing statutory regime applied in patent infringement cases.

[1] Justice Gorsuch took no part in the consideration or decision of the case.