Patent Litigation | Alert

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The Supreme Court's Decision in *TC Heartland* Likely to Mark the End of an Era

Texas-sized verdicts and favorable plaintiff success rates, as perceived by some, have catapulted the Eastern District of Texas to the top of the list for patent infringement filings. The Supreme Court's May 22, 2017, decision in *TC Heartland LLC v. Kraft Food Group Brands LLC*, 581 U.S. ____ (2017), which held "that a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue," is seen by many as the case that will likely put an end to that trend.

The patent venue statute, 28 U.S.C. § 1400(b), permits actions for patent infringement to be filed "in the judicial district where the defendant *resides*, or where the defendant has committed acts of infringement and has a regular and established place of business." (emphasis added). In 1964, the Supreme Court held that for domestic corporations the term "resides," as used in § 1400(b), refers to the corporation's State of incorporation. *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U. S. 222, 226 (1957).

But the Federal Circuit subsequently interpreted 1988 amendments to the general venue statute, 28 U.S.C. § 1391(c), which provided that for "purposes of venue under this chapter," corporations "shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced," as redefining the term "resides" in § 1400(b). *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574, 1578 (Fed. Cir. 1990). Trial courts in Texas's Eastern District followed the Federal Circuit's precedent, and more than 40 percent of the nation's patent cases were filed there last year, with a single court within the EDTX overseeing more than a quarter of all patent cases – more than the federal district courts of New York, California, and Florida combined. *Amici* from all quarters – including tech companies and law professors, weighed in favoring more restrictive venue limitations, with perhaps the most notable of those efforts led by Texas Attorney General Ken Paxton, who filed a brief joined by the Attorneys General of 16 other states.

In *TC Heartland*, the Federal Circuit found that 2011 amendments to § 1391, which now provides that "[e]xcept as otherwise provided by law, . . . this section shall govern the venue of all civil actions brought in district courts of the United States," did not disturb its earlier *VE Holding* decision. (slip. op. at 7). The Supreme Court disagreed. In reversing the Federal Circuit, the Court found the 2011 amendments to § 1391 did not evidence a congressional intent to disturb its prior decision in *Fourco*, particularly in view of the savings clause that makes clear the current version of § 1391 does not apply when "otherwise provided by law." (slip. op. at 8). Thus, a corporation is now less susceptible to patent cases being asserted against it outside its State of incorporation or where it does not have a regular and established place of business.

The Supreme Court's *TC Heartland* decision will likely have a significant impact on the venue distribution of patent cases across the country. The perceived "favored" forums of patentees—most notably the Eastern District of Texas—will likely see a significant decrease in filings; and, conversely, Delaware (a preferred State for incorporation) and judicial districts that are centers for technology will likely see a significant increase in filings. In addition, it will likely be more difficult for nonpracticing entities to generate economies of scale by suing multiple accused infringers in a single forum. District courts will likely see a wave of motions to dismiss for improper venue, particularly in recently-filed cases. In any event, for many, this case represents a long- awaited sea change.

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