Supreme Court Decision in TC Heartland Will Limit Venue Choice in Patent Litigation

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The Supreme Court on May 22, 2017 issued its highly anticipated decision in *TC Heartland LLC v. Kraft Food Brands Group LLC*, regarding the proper interpretation of the patent venue statute, 28 U.S.C. § 1400(b). In a unanimous 8-0 opinion by Justice Thomas, the Court rejected the Federal Circuit's 1990 precedent that allowed a patent owner to bring suit in any district having personal jurisdiction over a corporate defendant, dramatically altering the patent litigation landscape. The Supreme Court ruled that in patent cases a corporation is deemed to "reside" only where it is incorporated. The decision will restrict where patent cases may be filed and reduce the current concentration of cases within certain federal courts. In particular, the decision is expected to reduce substantially the number of patent cases filed in the Eastern District of Texas.

The patent venue statute, 28 U.S.C. § 1400(b), provides that "[a]ny civil action for patent infringement may be brought 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." The Supreme Court previously interpreted § 1400(b) in a 1957 decision, *Fourco Glass Co. v. Transmirra Products Corp*. 353 U.S. 222, 226 (1957). In that decision, the Court concluded that the patent venue statute operated independently from the general federal venue statute, and held that a corporation "resides" in its place of incorporation for patent cases. Therefore, under *Fourco*, patent cases could only be filed against corporate defendants in limited judicial districts: where they were incorporated or where they had committed acts of infringement and had a regular and established place of business. Nonetheless, after Congress amended the general venue statute in 1988, the Federal Circuit held that the meaning of the patent venue statute incorporated the amended definition of "resides" in the general statute. See *VE Holding Corp. v. Johnson Gas Appliance Co*., 917 F.2d 1574 (1990). Since that decision, the judicial districts where patent suits could be filed against corporate defendants expanded to include any federal district in which they are subject to personal jurisdiction.

VE Holding led to the concentration of patent cases in a handful of districts perceived as either plaintiff-friendly or particularly experienced in handling patent disputes. In 2016, nearly half of all patent cases were filed in just two districts: the Eastern District of Texas and the District of Delaware.

The May 22 decision rejects *VE Holding*. The Court stated that the general venue state, 28 U.S.C. § 1391, contains no indication that Congress intended to alter the meaning of § 1400(b) as interpreted in *Fourco*, and that, if anything, amendments that Congress made to the general venue statute in 2011 undermine *VE Holding*'s rationale.

The Supreme Court's opinion focuses on statutory interpretation rather than public policy or the practical implications of the May 22 ruling. Nonetheless, the decision will have a tremendous and immediate effect on patent owners, particularly non-practicing entities (including so-called "patent trolls") – who may now have to enforce their patents in diverse, far-flung jurisdictions – as well as on companies who may be targets of patent infringement complaints. Parties contemplating filing suit will need to reconsider their strategy on where to file a patent infringement action. It may also increase the number of cases that are filed in Delaware, where many businesses are incorporated. Other jurisdictions where corporate defendants are headquartered or have regular places of business that have not been frequent forums for patent litigation in recent years may also see an increase in patent filings.

Another effect of this decision may be to allow defendants who challenged venue in the Eastern District of Texas or in other districts where venue now is improper to get those cases dismissed or transferred immediately. In fact, it may even allow defendants who challenged venue to contest the validity of judgments entered against them, provided those judgments are still appealable. Going forward, defendants can expect to be sued in more familiar forums rather than far-flung jurisdictions with which they only have minimal contacts.

It remains to be seen how this decision will change patent venue long term. In the short term, this decision may remove the impetus for patent venue reform legislation, which was being driven by stakeholders looking for a solution to what they perceived as the Eastern District of Texas "problem." Indeed, House Judiciary Committee Chairman Rep. Robert W. Goodlatte (R-Va.) issued a statement applauding the decision and noting his intention to focus "on other aspects of abusive patent litigation and how we keep our patent laws up to date to ensure a well-functioning patent system."

The authors of this Alert co-authored an amicus brief on behalf of the American Bar Association, which advocated for reversal of the Federal Circuit's *VE Holding* precedent.

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