

Supreme Court Changes the Landscape of Patent Litigation

MAY 23, 2017

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For decades, accused infringers have been hailed into venues across the country where they have little or no presence. On May 22, 2017, the Supreme Court in *TC Heartland LLC. v. Kraft Foods Group Brands LLC*, turned this notion on its head. Historically, the rationale applied for justifying venue in such cases has been that the term “resides” as used in the patent venue statute, 28 U.S.C. § 1400(b), is synonymous with the term as used in the general venue provisions of 28 U.S.C. § 1391(c). Specifically, 28 U.S.C. § 1400(b), provides:

Any 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.

To determine where a defendant resides under this statute, Courts regularly applied 28 U.S.C. § 1391(c), namely that a defendant “shall be deemed to reside...in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question.” See, e.g., *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F. 2d 1574 (1990). As a result, a defendant with no ties other than selling a product in a particular venue could be subject to patent litigation there.

The Supreme Court revisited this analysis in *TC Heartland*, and the resulting ruling likely will result in a sea change in the patent litigation landscape. At issue was whether the Federal Circuit’s conclusion that subsequent statutory amendments to 28 U.S.C. § 1391 resulted with 28 U.S.C. § 1391(c) supplying the definition of “resides” for § 1400(b). Under this framework, the Court addressed the meaning of “residence” as it pertains to domestic corporations in patent infringement lawsuits. The Court held that as applied to domestic corporate defendants, “residence in § 1400(b) refers only to the State of incorporation.” In reversing the Federal Circuit, the Court upended 30 years of established practice as to where patent infringement suits may be filed.

The Supreme Court reasoned that Congress enacted § 1400(b) as a standalone venue statute. Applying this rationale, the Supreme Court disagreed with the Federal Circuit’s longstanding holding that § 1391(c) applied to § 1400(b), thus redefining the meaning of the term “resides.” In a unanimous opinion, the Court held that “[a]s applied to domestic corporations, ‘residence’ in § 1400(b) refers only to the State of incorporation.” Thus, as a result of this ruling, an accused infringer can be brought into court: (i) where it resides, *i.e.*, its state of incorporation, or (ii) where the infringement occurred and it maintains a “regular and established place of business.”^[1]

This ruling may impact scores of current litigation matters currently pending as well as where your company may be the subject of such cases.

[The Supreme Court's opinion can be found here.](#)

Because more than half of U.S. publicly-traded companies and 64 percent of the Fortune 500 companies are incorporated in Delaware, parties should expect substantial intellectual property litigation to occur in Delaware, which already has a very sophisticated intellectual property bench and bar. With an office of experienced litigators located in Wilmington, Delaware and numerous intellectual property experts throughout the firm's various locations, Benesch is well equipped to respond to the Court's ruling. For an assessment of your particular case or corporation's venue options, please contact one of our attorneys.

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[1] While the Supreme Court did not address the meaning of “regular and established place of business” in this ruling, that historically has been deemed to be if a corporation does business “in that district through a permanent and continuous presence there.” *In re Cordis Corp.*, 769.F.2d 733, 737 (1985). The Court also did not address the issue of venue pertaining to foreign corporations.