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Supreme Court Limits Where Patent Cases Can Be Brought—Can You Move to Your Home Court?

The Supreme Court, in *TC Heartland LLC v. Kraft Foods Group Brands LLC,* issued an opinion that may limit the number of patent suits brought in courts perceived to be plaintiff-friendly and may give companies the opportunity to move existing cases to their home jurisdiction. We will discuss the implications of that decision and what you may be able to do to have cases transferred from the court chosen by the plaintiff.

The patent venue statute (28 USC § 1400(b)) permits a plaintiff to sue a company in any judicial district where the defendant "resides," or "where the defendant has committed acts of infringement and has a regular and established place of business." Prior to yesterday, where a defendant "resides" was liberally construed as being any venue where the defendant is subject to personal jurisdiction. In a unanimous decision, the Supreme Court overturned this standard and held that a domestic corporation resides only in its state of incorporation.

While this new standard makes it simple to determine where domestic companies can be sued for patent infringement based on where they "reside," determining venue based on "where the defendant has committed acts of infringement and has a regular and established place of business" is a fact-intensive inquiry with little guiding law. As discussed in a previous post, when the Federal Circuit last addressed the issue of regular and established place of business more than 30 years ago, the court held that it is where a defendant's presence in the jurisdiction is "permanent and continuous" and is related to the alleged infringing acts. *In re Cordis Corp.,* 769 F.2d 733 (Fed. Cir. 1985). There, venue was found proper where the defendant had employees working from home offices who sold the accused products from stock kept in their homes.

Now that the Supreme Court has ruled, the question becomes what to do if you would like to move your case out of the court chosen by the plaintiff. For newly-filed cases where the defendant has not answered the complaint, the answer is simple: make a motion to dismiss under Federal Rule of Civil Procedure 12(b)(3).

Older cases are not so simple. The Federal Rules require that a motion to dismiss for improper venue be filed before filing a responsive pleading, that is, before answering the complaint. But at least one case has found that a party did not waive its right to assert a lack of personal jurisdiction defense—which must also be raised in a motion prior to answering the complaint—and can move to dismiss the complaint, where the Supreme Court issued an opinion changing the rules of the game after the answer was filed. *Holzsager v. Valley Hospital,* 646 F.2d 792, 796 (2d Cir. 1981).

We anticipate many motions to dismiss being filed in courts such as the Eastern District of Texas. With offices in the top patent venues in the country—Texas, Delaware, and Central District of California—we look forward to helping you with venue challenges under *TC Heartland* and those cases surely to follow.

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