



Patent Litigation: TC Heartland Portends Broad Sweeping Changes to Venue Transfers

by Joseph Mellema, Jeffer Mangels Butler & Mitchell LLP

The highly anticipated decision in *TC Heartland LLC v. Kraft Foods Group Brands, LLC* has triggered a rush to the courthouse to file venue transfer motions in the two months since that decision was issued by the US Supreme Court. It is fairly obvious to most that the Eastern District of Texas may no longer be the go-to venue of choice for domestic plaintiff corporations. It is much less clear, however, whether the *TC Heartland* decision will prompt a new go-to venue—or venues—or whether it will result in a more even distribution of patent cases throughout the district courts.

In *TC Heartland*, the US Supreme Court reversed the Federal Circuit Court of Appeals in holding that the term “resides” in the patent venue statute is limited to a domestic corporation’s State of incorporation. In so doing, the highest court returned venue in patent cases to a condition that existed 30 years ago, in which venue is proper where a domestic corporation “resides” or where “the defendant has committed acts of infringement and has a regular and established place of business.” The prior rule which the Federal Circuit followed established proper venue anywhere the domestic corporation was subject to personal jurisdiction.

TC Heartland has caused dozens of venue filings in the Eastern District of Texas, particularly in cases involving non-practicing entities (NPEs) where NPEs routinely relied on personal jurisdiction to establish venue. Some prolific NPEs have opted to sue outside of the district or agreed to venue transfers to other districts. While the decision may have significant effect on small to mid-size corporations, it may have lesser impact on large corporations that, for tax or cost-of-living reasons, have relocated to Texas or otherwise have a substantial presence there. The frenzy goes beyond the Eastern District; one day after the

decision, an Illinois federal court ordered the parties to brief venue in view of *TC Heartland*.

Though most agree that the Eastern District will be the hardest hit, there are widely varying opinions on where cases subject to patent venue challenges will go, and where new patent suits will be filed. One obvious choice is the District Court of Delaware, where many domestic corporations are already incorporated and thus, “reside.” Where a domestic corporation has multiple “hubs” or remote offices, plaintiffs may choose the hub’s venue and argue that the domestic corporation has a “regular and established place of business” there. In this scenario, it is highly likely that the district courts of California and Illinois will remain—and quite possibly will increase—as go-to jurisdictions. As these trends start to coalesce, there will be much to consider in choosing—and challenging—venue.

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