



Where Can Corporations Be Sued for Patent Infringement? Part I

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In May 2017, the U.S. Supreme Court issued arguably [the most important patent decision](#) in several years, *TC Heartland v. Kraft Foods Group Brands*, which overturned the U.S. Court of Appeals for the Federal Circuit (Federal Circuit)’s longstanding precedent regarding where proper venue lies in patent infringement cases. The [venue](#) statute specifically applicable to patent infringement lawsuits requires plaintiffs to file: (1) in the judicial district where the defendant “resides,” or (2) “where the defendant has committed acts of infringement and has a regular and established place of business.” Since 1990, the Federal Circuit –the court with [exclusive, nationwide jurisdiction over most patent appeals](#) – had interpreted “resides” in such a manner that allowed domestic corporations to be sued for patent infringement wherever they are subject to a court’s personal jurisdiction. [For nearly 30 years](#), plaintiffs relied on this interpretation to “[forum shop](#)” and sue domestic corporations in almost any federal district court in the country, often [strategically choosing](#) districts where [judges and juries have reputations as being favorable to patent owners](#).

In *TC Heartland*, a unanimous Supreme Court reversed the Federal Circuit, concluding that a domestic corporation accused of patent infringement “resides” only in its state of incorporation. The opinion has had a [measurable impact](#) on the patent litigation system by shifting patent suits away from [federal district courts that have handled the vast majority of infringement complaints](#) to other judicial districts. In addition, *TC Heartland* has spurred litigation and questions over several venue-related issues that were not addressed in the opinion. Because of *TC Heartland*’s effect on the patent litigation landscape, patent venue law is currently in flux and subject to future alterations by courts and possibly by Congress.

Part I of this Sidebar will discuss patent venue jurisprudence, including the *TC Heartland* opinion, and then address the impact of the decision on the patent litigation system generally. [Part II](#) discusses implications of the decision, including litigation in the lower courts and potential issues that may be addressed by courts or Congress in the future.

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Patent Venue Statute Jurisprudence

A 1957 Supreme Court opinion, *Fourco Glass Co. v. Transmirra Products Corp.*, concluded that, for purposes of the patent venue statute, a domestic corporation “resides” only in the state where it is incorporated. In 1988, Congress amended the general federal venue statute, but not the patent-specific venue statute, to provide that “[f]or purposes of venue under this chapter, a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction.” In 1990, the Federal Circuit ruled in *VE Holding Corp. v. Johnson Gas Appliance Co.* that, as a result of the 1988 amendments to the general venue statute, *Fourco* no longer applied in determining corporate residence in patent cases. As mentioned, since its issuance patent owners relied on *VE Holding* to sue domestic corporations in any district where they conducted business, as long as the requirements of personal jurisdiction were satisfied (that is, they sued in any district where the company has meaningful “contacts, ties or relations,” such as where the business sells products or where such products are used). However, in May 2017, the Supreme Court in *TC Heartland* determined that Congress did not intend to alter *Fourco*’s interpretation of “resid[ence]” in the patent-specific venue statute when it had amended the general venue statute, and therefore, the Federal Circuit’s broader view of patent venue was inconsistent with *Fourco*. Thus, the Supreme Court affirmed that *Fourco* remains the law regarding patent venue, such that a domestic corporation accused of infringement “resides” only in its state of incorporation.

TC Heartland’s Impact on the Patent Litigation System

Prior to *TC Heartland*, the majority of patent infringement suits were concentrated in a handful of districts, most notably the Eastern District of Texas and the District of Delaware, in part because plaintiffs believed those district courts’ patent rules and practices gave them certain procedural advantages over defendants. The Eastern District of Texas has been particularly popular with “patent assertion entities” (sometimes referred to by their critics as “patent trolls”), which are firms that do not make products incorporating the patented technologies, but rather purchase patents to file lawsuits or threaten legal action against alleged infringers to extract settlements or licensing fees. *TC Heartland* appears to have limited the ability of patent plaintiffs, including patent assertion entities, to forum shop and has “significantly” reduced the number of patent cases filed in the Eastern District of Texas, where few companies are incorporated. Instead, the District of Delaware and the Northern and Central Districts of California have experienced an increase in patent litigation due to the number of companies incorporated in Delaware and the many technology companies with headquarters in California (such firms often being the target of lawsuits brought by patent assertion entities). A legal scholar has asserted in congressional testimony that these districts may benefit patent defendants and may increase litigation costs for patent owners because the Northern District of California provides a “home court advantage” for Silicon Valley technology companies and the District of Delaware’s relatively small number of judges could struggle with handling an expanded patent docket and moving patent cases along to final judgment in a timely manner.

For more on the implications of the *TC Heartland* decision and the impact it is currently having in lower courts, as well as potential issues for courts and Congress in the future, proceed to [Part II](#) of this post.