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ALERT

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Shop Until You Drop, Or Until The Supreme Court Says To Stop, The Supreme Court Limits 'Venue Shopping' For Patent Cases

In recent years plaintiffs have leveraged an area of patent law by filing patent infringement lawsuits in forums which are perceived as being patent plaintiff friendly. This practice of honing in on venues based on the belief that the location will be favorable to the case they are presenting is known as venue shopping.

Historically, there have been a number of jurisdictions that have been repeatedly targeted by plaintiffs. For example, the Eastern District of Texas has reportedly received over 1/3 of the patent infringement filings despite the infringing activity occurring throughout the United States. On May 22, 2017 the Supreme Court ruled on this controversial practice of venue shopping. After the decision rendered by Justice Thomas in *TC Heartland LLC v. Kraft Foods Group Brands LLC* however, it seems as if the days of venue shopping are over.

In *TC Heartland* the question presented was where proper venue lies for a patent infringement lawsuit brought against a domestic corporation. The controversy arose out of an infringement claim by Kraft against TC Heartland. TC Heartland is an Indiana headquartered company, which manufactures flavored drink mixes. Kraft sued TC Heartland in Delaware, although TC Heartland is not registered to conduct business, and has no meaningful presence in Delaware. TC Heartland does however ship allegedly infringing products into the State. The Court's analysis of the issue relied mainly on the interplay between two statutes, 28 U.S.C. § 1400(b) and §1391(c). The two statutes differ on how they define a corporation's residence. How the statutes define residency is important because it determines where venue will exist for infringement actions.

That conflict between statutes was addressed in 1990 by the Federal Circuit when they decided *VE Holding Corp. v. Johnson Gas Appliance Co*. Relying on §1391(c), the Federal Circuit held that venue exists in any place where personal jurisdiction exists (either where the company is incorporated, or their principal place of business). The Federal Circuit decision remained unchanged until recently, where it was expressly overruled in *TC Heartland*.

The Court in *TC Heartland* held in a unanimous 8-0 ruling in favor of TC Heartland (not including Justice Gorsuch, who did not participate in consideration of the case). The Court

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concluded that §1400(b) defines residency as applying only to the place of incorporation, and Congress intended §1400(b) to be the complete and sole provision controlling venue in patent infringement actions. Therefore, a domestic corporation resides ***only*** in its state of incorporation for the purpose of the patent venue statute.

The Court took this case and used it as a vehicle to resolve the issue of venue shopping in patent disputes that has been long lingering. The result of the ruling is that plaintiffs will no longer have the option to freely choose which jurisdiction to bring their suit. Instead, venue options for patent disputes will be much more limited. Accordingly, it seems as if there may no longer be venue shopping in the Eastern District of Texas, and similarly situated districts where they have consistently ruled in favor of patent owners. Put down your shopping bags, because after *TC Heartland* the days of venue shopping are over.

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This Alert was written by Steven S. Rubin.

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