

Serving the city's law profession since 1854

POSTED April 5, 2017 1:46 PM Share      | Print[Home](#) [Courts ▼](#) [Calendar](#) [Public Notices](#) [40 Under 40](#) [Subscribe](#)

Pending Supreme Court ruling could turn IP litigation on its head

As with most cases that make it to the Supreme Court, the exact issue to be decided is technical and not very sexy, but the potential impact on companies' business operations is large.

Such is the circumstance with *TC Heartland v. Kraft Foods Group Brands*. In this case, the Supreme Court will decide on rules governing the venue for filing patent disputes.

The debate over whether the definition of residency in the general venue statute applies to the specific patent statute exists because the vast majority of patent litigation occurs in two federal districts — the Eastern District of Texas and the District of Delaware.

It is unsurprising as these two districts have quick trial dates, tend to produce larger damage awards and plaintiffs are more likely to be successful. Plaintiffs, after all, want to maximize their chance of success.

Patent litigation has a special, specific venue provision first codified in 1897, which states that venue for patent cases is appropriate in a district where the defendant resides or infringes and has a regular and established place of business.

Patent litigation necessitated a special venue statute to limit patent litigation, because prior to its enactment, an alleged patent infringer could be sued in any district in which they could be served.

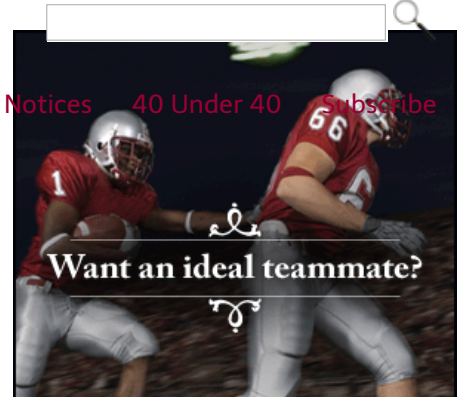
This led to patent litigation being filed against alleged infringers in districts in which they had no physical presence. If this sounds surprising based on current patent litigation practice, it is.

Based on current interpretations of personal jurisdiction in the Federal Circuit for patent litigation and the venue statutes, alleged infringers can be sued in any district in which it conducts business. *TC Heartland* seeks to end this practice through enforcement of the specific patent venue statute.

Lawyers' Forum

By Joseph W. Barber

Joseph W. Barber focuses his practice on intellectual property matters and complex commercial litigation. He can be reached at jwbarber@howardandhoward.com and (312) 456-3648.



**UNLIMITED CLE
FOR ONLY \$150!**

THE CHICAGO BAR ASSOCIATION'S
CLEADVANTAGE

www.chicagobar.org



You May Also Like

7th Circuit: Title VII protects orientation

Prosecutors knocked for lack of evidence in sex offender registry case

High court takes up Lakefront Trail suit

Serving the city's law profession since 1854

Kraft argues this statute was passed to consolidate and simplify all venue statutes with common definitions and rules when specific venue statutes were silent on an issue.

Unfortunately, the 2011 act was silent on its application to patent litigation. In fact, Congress has never substantively amended the specific patent venue statute.

If TC Heartland is successful and the Supreme Court limits patent litigation only to those districts in which the defendant resides or infringes and has a regular and established place of business, certain federal districts could see an increase in patent litigation.

A 2016 PricewaterhouseCoopers study on patent litigation found that 19 percent of patent litigation lawsuits were in the automotive, electronics or software fields. On the surface, these industries may appear unrelated, but this is not the case. Modern automobiles are extremely technologically advanced with computers and software running most systems.

Additionally, General Motors, Ford, and Fiat Chrysler are collaborating with Silicon Valley start-ups and technology companies to bring driverless cars closer to reality. In March 2016, GM acquired self-driving startup Cruise Automation.

It has also recently invested in Lyft, which plans to test a fleet of self-driving Chevrolet Bolt electric taxis in the near future. Auto-parts suppliers, like Delphi, are also investing heavily in driverless cars and the related technology.

The expanding use of software and cloud computing in self-driving automobiles will likely increase the number patent lawsuits filed in the Eastern District of Michigan. The establishment of a U.S. Patent and Trademark Office field office in Detroit further recognizes the importance of the Eastern District of Michigan as a patent venue in the future, especially if TC Heartland is successful.

This would be a great outcome for U.S. automotive companies and their suppliers. Instead of having to travel to rural Texas for hearings and trial, disputes would be settled locally — where the technology was developed. This would reset patent venue back to what Congress initially intended in 1897.

Send to friend

[Click here to enter an extra message...](#)

Lawyer finds trouble in two states; ARDC urges disbarment

[Home](#) [Courts ▼](#) [Calendar](#) [Public Notices](#) [40 Under 40](#) [Subscribe](#)
Mickey vs. taxman: No amusement here

Panel holds employers must face negligence claims after murder

Questions raised on insurers, cell tower data

Latest listings from
Jobs.LawBulletin.com

[Office Space - 225 WEST WASHIN](#)

[Attorneys - COMMERCIAL LITIGATION
CREDITOR BANKRUPTCY ATTORNEY](#)

[Attorneys - METRA- Associate Ger
Litigation](#)

[Attorneys - FORECLOSURE ATTOR](#)

[Attorneys - Attorneys](#)

[Attorneys - SPANISH SPEAKING F
ATTORNEY](#)