

Brian Kwok in Law360: Patent Venue Sort-Out Will Continue

By Brian C. Kwok | September 27, 2017

RELATED PRACTICES Patent Litigation, Patents, Intellectual Property

A decision by the U.S. Court of Appeals for the Federal Circuit setting guidelines where patent suits can be filed provided much-needed clarity in a contentious area of the law and should result in many cases leaving the Eastern District of Texas, *Law360* [reported](#).

The appeals court ruled that U.S. District Judge Rodney Gilstrap of the Eastern District of Texas abused his discretion when he found that his court was the proper venue for a patent infringement suit against supercomputer maker Cray Inc. just because the Seattle-headquartered company has a sales representative who works remotely from his home in the district, *Law360* said.

The Federal Circuit said that the test the judge created "is not sufficiently tethered" to the venue statute. The appellate court held instead that patent suits can be filed only in districts where a defendant resides or has a physical location where the company, not just its employees, regularly carries on business. ...

However, likely to the chagrin of many defendants, the Eastern District of Texas patent docket will not dry up completely, attorneys caution. Some companies will still be subject to suits there, including major businesses with headquarters in the Dallas suburbs within the district, and national retailers and others that have a "place of business" almost everywhere in America. ...

The patent venue statute states that suits can be filed where the defendant resides or where it has committed acts of infringement and has a regular and established place of business.

In a May decision known as *TC Heartland*, the U.S. Supreme Court discarded long-standing precedent that companies reside essentially anywhere they make sales. The justices held that a company resides only in the district where it is incorporated.

The decision therefore placed renewed emphasis on what constitutes a "regular and established place of business" in a district, an issue that had rarely been litigated before. In the Cray case, Judge Gilstrap created a four-factor test to address that question, which focused on issues like the benefits a company derives from its presence in the district and its targeted interactions with customers in the district. ...

While the Federal Circuit made clear that Judge Gilstrap's test was flawed and that venue was not appropriate based on the facts of the Cray case, judges will now have to apply the Federal Circuit's test to different facts in other cases, said [Brian Kwok](#) of Haynes Boone.

"What we still do not know — and what will continue to be the subject of fact-intensive litigation — are the precise combination of facts that together would support a finding of a regular and established place of business," he said.

Excerpted from *Law360*. To read the full article, please click [here](#).