McDole, Raju and Reynolds in IP Watchdog on TC Heartland Venue Fallout

December 20, 2017 Jamie Raju

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In 1990, the Federal Circuit held that Congress's 1988 amendment of the general venue statute, 28 U.S.C. § 1391, affected the interpretation of "reside[]" within the patent venue statute, 28 U.S.C. § 1400(b). *VE Holding Corp. v. Johnson Gas Appliance Co.,* 917 F.2d 1574, 1584 (Fed. Cir. 1990), abrogated by *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017). As a result, courts have long held that venue with respect to corporate defendants in patent cases was proper in "any judicial district in which such defendant is subject to the court's personal jurisdiction." *See id*. In 2017, the Supreme Court rejected this approach, holding that under 28 U.S.C. § 1400(b), a corporate defendant may be sued (1) in its state of incorporation, or (2) where it has committed acts of infringement and has a regular and established place of business.

Now, litigants must consider how *TC Heartland* may affect venue in (1) affirmative patent infringement actions, (2) declaratory judgment actions, and (3) International Trade Commission ("ITC") investigations. …

Because the decisions in *TC Heartland* and In *re Cray* have narrowed the scope of venue for patent infringement actions, patent owners concerned with litigating in an accused infringer's home forum should consider all of their options.

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