

Kwok, Wong for Law360: Tension Over 'Place Of Business' Timing For Patent Venue

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PRACTICES Patent Litigation, Patents, Intellectual Property

Patent litigants have been disputing the meaning of a “regular and established place of business” in the context of patent infringement venue with increasing frequency following the U.S. Supreme Court’s decision in *TC Heartland*. An increasingly common dispute revolves around when a defendant must have its regular and established place of business in the judicial district for venue to be proper. Must it exist at the time of filing the complaint, or only when the alleged act of infringement occurred? Various district court decisions appear to answer this question differently.

In *Personal Audio v. Google*, the court found that patent venue is determined at the time the suit is filed. Personal Audio sued Google in the Eastern District of Texas claiming that the Google Play music application infringes two of its U.S. patents. Google challenged, venue arguing it was improper because it did not have “a regular and established place of business” in the district at the time the patent suit was filed.

Google argued that while it leased office space for its employees in the city of Frisco, Texas, starting in October 2011, it had closed that office in December 2013, nearly two years prior to the complaint being filed in the case. Google continued to sublease the space to another company before the lease was officially terminated in August 2015. The court found that because Google ceased its business operations of that office space in December 2013 (and the plaintiff did not offer evidence to the contrary) venue was not proper because no regular and established place of business existed at the time the patent suit was filed in September 2015.

The court relied on a strict interpretation of § 1400(b), focusing on the verb tense of the statutory language that permits lawsuits in judicial districts where the defendant “resides” or “has a regular and established place of business.” ...

The U.S. District Court for the Middle District of Florida, Jacksonville Division, recently split from *Personal Audio* when the magistrate court in *ParkerVision v. Apple* found venue was proper as to defendant Qualcomm because “Qualcomm had a regular and established place of business in this district when the causes of action accrued, and [plaintiff] ParkerVision filed its complaint within a reasonable time thereafter.” ...

As the number of physical brick and mortar stores and offices increasingly disappear in favor of online platforms and telecommuting opportunities, some believe that establishing a “regular and established place of business” for venue purposes will be increasingly difficult. Indeed, thousands of retail stores are closing each year each year in response to growing online sales with 2017 seeing a record number of more than 6,700 stores announced to be closed. In view of these closures, what parties now must consider is whether a reasonable amount of time has passed between the termination of a place of business and the filing of a lawsuit to establish venue under the patent statute.

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