

# Locating A 'Place Of Business' After TC Heartland: Part 1

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August 1, 2017 Brian Kwok

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PRACTICES Intellectual Property

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In the wake of the United States Supreme Court's decision in TC Heartland, holding that for the purposes of the patent venue statute, a domestic corporation "resides" only in its state of incorporation, the "regular and established" prong of 28 U.S.C. §1400(b) has received renewed attention. Under §1400(b), a defendant may also be sued for patent infringement in a judicial district where it has committed acts of infringement and has "a regular and established place of business."

The precise meaning of the phrase "a regular and established place of business" is the subject of much debate. The highest authority that speaks to this issue is *In re Cordis*,<sup>[1]</sup> decided by the Federal Circuit in 1985. There the Federal Circuit described the phrase "regular and established" in general terms using the equally vague standard of a "permanent and continuous presence."

What practitioners can agree on is that what constitutes a "regular and established place of business" is a fact-based, multifaceted inquiry, where no one factor is necessarily determinative. Various courts emphasize and weigh factors, such as physical location, in an ad hoc manner with seemingly varying and unpredictable results. While physical location is one of the most important factors considered by courts when concluding there is a "regular and established place of business," even this factor is not necessarily determinative. For example, the New Jersey district court in *MAGICorp v. Kinetic Presentations, Inc.*<sup>[2]</sup> found that another factor — the lack of employee authority to complete a sale — outweighed the presence of a physical location and found venue improper. Similarly, the Ohio district court in *CPG Prods. Corp. v. Mego Corp.*<sup>[3]</sup> found an employee's activities in the district were substantial enough to overcome both a lack of physical location and a lack of employee authority to complete sales.

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

[Read "Locating A 'Place Of Business' After TC Heartland: Part 2."](#)

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*The author wishes to thank Haynes Boone 2017 summer associate Nicholas Lo for his contribution to this article.*