

Locating a 'Place of Business' After TC Heartland: Part 2

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PRACTICES Retail, Intellectual Property

[Read "Locating A 'Place Of Business' After TC Heartland: Part 1."](#)

In the first part of this article, we focused on two major factors that courts have commonly considered in the “regular and established place of business” analysis under the second prong of 28 U.S.C. § 1400(b), physical location and employee authority to complete sales. In the final part, we will discuss some less prominent factors, the Eastern District of Texas’ new framework set forth in *Raytheon Co. v. Cray Inc.*,^[1] and how the historical case law fits into the Raytheon approach.

Inventory Located in the District

Inventory sometimes supports a finding of a “regular and established place of business,” but is rarely determinative. For instance, in *Clopay Corp. v. Newell Co.*,^[2] the defendant corporation leased an office, retained 10 employees in the district, accepted orders, and maintained inventory in the office. The court noted that no one factor was dispositive, but the evidence at bar clearly met the standard. In *Huey Co.*,^[3] inventory was stored in a warehouse located in the jurisdiction. While the court placed heavy emphasis on the warehouse itself, it also gave weight to the fact the warehouse inventory was used to fulfill orders to multiple locations (both in and out of district) in finding venue proper.

The mere presence of inventory alone, however, may not be sufficient depending on how the inventory is used. Compare *Federal Electric Products Co. v. Frank Adam Electric Co.*,^[4] that found venue proper when inventory was kept in district to expedite shipments to nearby locations, with *Faberge Inc. v. Schick Electric Inc.*,^[5] that found venue improper when inventory was maintained only to resupply retailers in case of emergency shortages.

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

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