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SCOTUS: Supreme Court Limits Venue Where Patent Suits Can Be Filed

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Today in TC *Heartland LLC v. Kraft Food Brands Grp. LLC*, 581 U.S. ___ (2017), the Supreme Court reversed a long-standing practice permitting venue over domestic corporations to be had wherever the court had personal jurisdiction over the defendant. Now, however, "[a]s applied to domestic corporations, 'reside[nce]' in § 1400(b) refers only to the State of incorporation." *Id*., p. 10.

For defendants with a presence in the U.S., venue in patent cases is governed by 28 U.S.C. § 1400(b), which provides that venue is appropriate either: (1) "in the judicial district where the defendant resides," or (2) "where the defendant has committed acts of infringement and has a regular and established place of business."

Starting in 1990, with *VE Holding Corp. v. Johnson Gas Appliance Co*., 917 F.2d 1574 (Fed. Cir. 1990), the Federal Circuit had held that the broad "reside" provisions in § 1391(c), as amended, apply to broaden § 1400(b). That is, the current version of section 1391 provides that, "[e]xcept as otherwise provided by law" and "[f]or all venue purposes," a corporation "shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question."

In today's decision in *TC Heartland*, however, the Supreme Court reversed the Federal Circuit, holding that the special-purpose venue statute § 1400(b) as codified in 1948 – not § 1391(c) – is the sole and exclusive provision controlling venue in patent infringement actions, and that a domestic company only resides in its State of incorporation under that statute.

Commentary:

Today's decision is not surprising. *VE Holdings* and the Federal Circuit decision in *TC Heartland* cut against the prevailing current in patent legislation and procedural rulings in patent litigation

protecting defendants by limiting where and what plaintiffs must file. Further, several commentators had argued that there would be no reason for the Supreme Court to have taken up the case if the court was simply going to affirm the Federal Circuit decisions.

And starting with *VE Holdings,* the Federal Circuit did some fancy footwork to avoid the Supreme Court's prior *Fourco* decision, *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222, 226, in which the Supreme Court essentially re-affirmed in today's decision.

There will obviously be a number of winners and losers. Delaware – the State of incorporation for more than 50 percent of publicly-traded domestic companies and more than 60 percent of Fortune 500 companies – is an obvious winner. The Eastern District of Texas is an obvious loser.

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The opinion can be found at https://www.supremecourt.gov/opinions/16pdf/16-341_8n59.pdf.

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