

## The Supreme Court Reins in Lax Patent Venue Rules

On May 22, 2017, the United States Supreme Court in *TC Heartland LLC v. Kraft Food Group Brands LLC*, 581 U.S. \_\_\_ (2017) has tightened rules regarding where patent infringement lawsuits can be filed. Reversing a long-standing practice, the Supreme Court held that a domestic corporation can only be sued for patent infringement in: (1) its state of incorporation; or (2) where the domestic corporation has committed acts of infringement and has a regular and established place of business.

The patent venue statute, 28 U.S.C. §1400(b), provides that a patent infringement lawsuit can be filed “in the district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.” In *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222 (1957), the Supreme Court concluded that, for purposes of §1400(b), a domestic corporation “resides” only in its state of incorporation. However, since *Fourco*, Congress has amended the general venue statute to provide 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.” §1391 (a), (c). In 1990, the Federal Circuit held that, in light of these amendments to the general venue statute, the definition of venue in patent cases should follow general venue rules, and therefore, a domestic company can be sued for patent infringement in any state where the domestic company is subject to the court’s personal jurisdiction. In other words, the Federal Circuit believed that Congress effectively overruled *Fourco*. Because it is relatively easy to establish personal jurisdiction, a practical result of this holding was that patentees have flocked to courts perceived as “patentee friendly,” in particular, the Eastern District of Texas where 37% of all patent cases were filed in 2016.

TC Heartland LLC (“TC Heartland”), a company organized under Indiana law and headquartered in Indiana, manufactures flavored drink mixes. Kraft Food Group Brands LLC (“Kraft”), a competitor company, sued TC Heartland in the U.S. District Court for the District of Delaware alleging patent infringement. TC Heartland does not have local presence in Delaware but ships the allegedly infringing products into Delaware. Citing *Fourco*, TC Heartland moved to transfer the case to Indiana arguing that venue was improper in Delaware. However, both the district court and the Federal Circuit ruled against TC Heartland, holding that because the

District of Delaware could exercise personal jurisdiction over TC Heartland, Kraft could sue TC Heartland for patent infringement in Delaware courts.

The Supreme Court reversed and held that amendments to the general patent venue statute did not modify the meaning of “reside” in §1400(b) as interpreted by *Fourco*, and therefore, a domestic corporation “resides” only in its state of incorporation for purposes of patent venue. Framing the issue as a matter of statutory construction, the Supreme Court reasoned that if Congress wanted to change the meaning of “resides” in §1400(b), it would have provided a clear indication of its intent, and no such indication appears in the current version of §1391. Thus, according to the Supreme Court, the interpretation of §1400(b) in *Fourco* remains controlling and, for patent venue purposes, a domestic company only “resides” in its state of incorporation.

*TC Heartland* is likely to have a significant impact on patent litigation. First of all, it is likely that far fewer patent lawsuits will be filed in the Eastern District of Texas, since many patent defendants are not incorporated in Texas nor have a regular and established place of business in that district. Second, there will probably be more patent lawsuits brought in Delaware since a lot of U.S. companies are incorporated in Delaware. Third, it is likely that there will be more court battles regarding whether a domestic corporation “has committed acts of infringement and has a regular and established place of business” in a particular state. Fourth, it appears that there are now stricter patent venue rules for suing a corporation versus a non-incorporated entity for which presumably more lenient general venue rules still apply. Interestingly, the Supreme Court has decided the question of where a corporate defendant can be sued in a case that does not involve a corporation (because TC Heartland is an LLC, and not a corporation). It is possible that this decision will now lead to increased litigation regarding venue status for non-incorporated entities.