Supreme Court Limits Jurisdiction in Patent Cases

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SUPREME COURT LIMITS JURISDICTION IN PATENT CASES

In a unanimous decision, the U.S. Supreme Court ruled today in ***TC Heartland LLC v. Kraft Foods Group Brands LLC,*** No. 16-341, that patent infringement lawsuits must be brought in one of two places: (1) wherever the defendant is incorporated or (2) where the defendant has committed acts of infringement and has a regular and established place of business. This ruling will greatly reduce the number of patent cases litigated in the Eastern District of Texas, a forum popular with patent plaintiffs, and increase the number of filings in the Eastern District of Michigan (where many automotive parts suppliers are headquartered), and the District of Delaware, where many defendants are incorporated. Prior to *TC Heartland*, accused infringers faced the daunting task of litigating an infringement suit in virtually any state in which their accused products or services could be found, even if distributed or sold through unaffiliated third parties, including through online merchants (such as Amazon) or other indirect means.

For the first quarter of 2017, the Eastern District of Texas was the top forum in the United States for numbers of patent cases filed, with 311 cases, followed by the District of Delaware (129 cases), the Central District of California (48 cases), the District of New Jersey (41 cases), and the Northern District of Illinois (35 cases). In all, these five jurisdictions accounted for approximately 60 percent of the patent infringement cases filed in the United States since the first quarter of 2017. In the Eastern District of Michigan, by contrast, nine such cases were filed during that time period. These numbers should drastically change in light of the *TC Heartland* decision.

By narrowing venue in patent infringement cases to a defendant's place of incorporation, or to where it has a regular and established place of business and the infringement occurred, patent infringement filings (particularly by non-

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practicing entities) are now more likely to be concentrated in courts that bear a closer connection to the accused infringer's affected business. These courts are likely to be more convenient for witnesses, closer to the location of relevant documents and other evidence, and more convenient and less expensive overall for the accused infringer to litigate in than courts in jurisdictionally remote locations with an attenuated connection to the alleged infringement.

Given today's ruling and the overall increased demand for advanced technologies in areas such as vehicle safety and autonomous control, we anticipate an increase in the number of automotive industry patent litigation in Delaware (where many companies are incorporated) and in Michigan, where many automotive suppliers are headquartered and otherwise concentrate their business operations. If your company is facing a patent infringement lawsuit in a forum other than its state of incorporation or where it has a regular and established place of business, consider filing an immediate request for a transfer of venue. This may place added pressure on a patentee to settle, minimize litigation expenses, and give your company the opportunity to have its case decided in a more convenient forum.

In light of the new limitations on jurisdiction, companies should evaluate their places of jurisdiction and identify where they have regular and established places of business. A regular and established place of business need not be a physical presence, but one that it is not temporary. By understanding where they may be required to defend a patent lawsuit, companies can work to implement a strategy for such lawsuits. If you have questions regarding patent litigation, including the potential impact of today's ruling on your company, please contact the authors or your Butzel Long attorney.

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