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## Home Sweet Home: Federal Circuit Decides Venue Requirements for Patent Cases

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On April 29, 2016, the Federal Circuit Court of Appeals reinforced its expansive view of federal venue requirements for patent cases in *In re: TC Heartland LLC*, Case No. 2016-105, finding that the broad definition of corporate “residency” in the general federal venue statute, 28 U.S.C. § 1391(c), applies to the specific, patent venue provisions of 28 U.S.C. § 1400. That definition of “residency,” for purposes of venue, includes any federal judicial district where personal jurisdiction can be asserted over the defendant corporation. While some had viewed this case as an excellent opportunity for the Federal Circuit to curtail perceived forum shopping among patent litigants, the court declined the invitation. Rather than engage in policy-driven reform, the court rendered a straight-forward decision and recitation of its own precedent.

The issue landed in the Federal Circuit after the petitioner, TC Heartland LLC, failed to convince the District of Delaware to dismiss or transfer a suit brought against it in that forum by Kraft Foods. Kraft alleged that TC Heartland’s “liquid water enhancer” products infringe three of Kraft’s patents. TC Heartland—an Indiana corporation headquartered in Indiana—responded by moving to dismiss the case for lack of personal jurisdiction or to transfer venue to its home state. The trial court found specific personal jurisdiction in light of TC Heartland’s distribution of the allegedly infringing products into Delaware. Relying on the Federal Circuit’s prior ruling in *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (Fed. Cir. 1990), the lower court also rejected TC Heartland’s construction of federal venue statutes and denied transfer.

Left with few procedural avenues of immediate redress, TC Heartland petitioned the Federal Circuit for a writ of mandamus. Faced with clear precedent liberally construing Section 1400’s residency-based venue requirements, TC Heartland got creative. It argued that the Federal Circuit’s ruling in *VE Holding*—finding that venue under Section 1400 is essentially coextensive with personal jurisdiction—had been overruled by Congress’ 2011 amendments to the general venue statute, 28 U.S.C. § 1391. Those amendments included an open-ended statement that Section 1391 would apply “[e]xcept as otherwise provided by law.” That, argued TC Heartland, incorporated by reference (and to the exclusion of other “law”) Supreme Court jurisprudence purportedly construing corporate residency more narrowly.

In a decision that can be fairly described as curt, the Federal Circuit disagreed. The court dismissed the 2011 amendments to Section 1391 as “minor,” and, if anything, a “broadening of the applicability of the definition of corporate residence.” Having pointed out a lack of legislative history to support TC Heartland’s reading of the phrase “except as otherwise provided by law,” the court returned to *VE Holding*. In the court’s view, that decision “firmly resolved” that the broader terms of Section 1391(c) “read [themselves] into the specific statute, § 1400(b)...and do[] not conflict with § 1400(b).” The court left that “prevailing law” as is and denied TC Heartland’s Petition<sup>1</sup>.

The court’s ruling sits atop its own “firm” precedent and, in that regard, is no surprise. The surprise, if any, is that the court did not travel, or even entertain, the avenues for change that were presented to it—change that would have placated grumblings over the ease with which our venue laws, as they are presently written and construed, can be manipulated. Legitimate questions remain open as to whether the legislature ever contemplated the concentration of patent litigation in friendly venues like the Eastern District of Texas. To that the Federal Circuit has answered without apology or hesitation: “that’s the law!”

A copy of the Federal Circuit’s decision in its entirety is available [here](#).

For more information on the content of this alert, please contact your regular Nixon Peabody attorney or:

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<sup>1</sup> The court also summarily dispatched TC Heartland’s argument that the lower court lacked personal jurisdiction. Consistent with its traditionally broad view of specific personal jurisdiction, TC Heartland’s shipment or sale of the allegedly infringing products into the forum met or exceeded the requisite “minimum contacts” and constitutional thresholds.