

## Patent Ruling Means Business for NDCal

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Silicon Valley Office Managing Partner Kathi Vidal and Dallas Office Managing Partner Tom Melsheimer authored an article in the *Daily Journal* titled “Patent Ruling Means Business for NDCal,” published on June 21, 2017. The article discusses how *TC Heartland v. Kraft Food Groups Brands LLC*, decided by the U.S. Supreme Court in May 2017, will likely lead to an increase in filings and cases in the Northern District of California.

In *TC Heartland*, the Supreme Court announced that “as applied to domestic corporations, ‘reside[nce]’ for venue purposes refers only to the State of incorporation.” The ruling’s narrow definition of “residence” will curtail plaintiffs’ ability to forum shop.

According to 28 U.S.C. Section 1400(b), plaintiffs can only bring patent actions against domestic corporations where the domestic defendant “has committed acts of infringement and has a regular and established place of business.” Given that 13 percent of U.S. companies are headquartered in California, more than any other state, this supports an increase in Northern California filings post *TC Heartland*. Further, many companies incorporated in Delaware are headquartered in Northern California, which means they can be sued in either venue. In the article, Kathi and Tom argue that given the anticipated increased congestion in Delaware, there will likely also be more transfers into the California district.

Examining the issue of court congestion, Tom states that under existing law, in determining whether to transfer to Delaware the court will consider the connections to Northern California and the relative congestion of the districts. To date, there have been far fewer filings in Northern California, but far more judges, and the median time to trial has been comparable between two districts. Given the anticipated influx of cases into Delaware, the disparity between the two districts should increase.

Filings in the Eastern District of Texas will likely decrease given that less than one percent of U.S. companies are headquartered there. Since *TC Heartland* came down, 76 cases in that district have requested transfer or dismissal.

Since *TC Heartland*, there have been upticks in patent filings in the Northern District of California. Tom recommends taking legal action against Northern California companies where they are incorporated in order to avoid protracted venue disputes that companies will likely lose.

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