

Four Changes to Patent Litigation Post-‘TC Heartland’

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Partner Michael Rueckheim and Associate Matthew McCullough authored an article for *The Recorder*, titled “[Four Changes to Patent Litigation Post-‘TC Heartland’](#),” published October 24, 2017. The article examines the likely ramifications of the U.S. Supreme Court’s May 2017 decision in *TC Heartland v. Kraft Foods Group Brands*, which found that the word “resides” in the patent venue statute (28 U.S.C. Section 1400) refers to the state where an accused infringer is incorporated. The authors explain the following four changes:

1. Ever since the Federal Circuit held in *VE Holding v. Johnson Gas Appliance* in 1990 that “resides” meant where an accused infringer was subject to personal jurisdiction, the Eastern District of Texas (E.D. Tex.), which offered fast times to trial and other benefits to patent owners, by far had the largest number of patent cases. Post-*TC Heartland*, the number of patent cases in E.D. Tex. has fallen precipitously, with many moving to Delaware and California given the large number of businesses incorporated and located in those states.
2. Patent litigation expenses are shifting due to *TC Heartland*. Generally speaking, patent owners can no longer find the same cost efficiencies by filing suit against several accused infringers in a single district. For accused infringers, the change is probably to their benefit, since E.D. Tex. is more reticent to grant early summary judgment motions and end a case before significant expenses accrue.
3. Delay and uncertainty may increase due to more patent cases being filed in districts with little patent experience. Further, some districts with an influx of patent cases post-*TC Heartland* are short-staffed, leading to congestion.
4. Finally, declaratory judgment actions will likely decrease given that 28 U.S.C Section 1406 allows a court to either dismiss or transfer a litigation in response to a venue challenge. Recent opinions indicate that patent venue concerns may trump concerns of personal jurisdiction.

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