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U.S. Supreme Court Hears TC Heartland Case

By David Lindner

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On Monday, March 27, 2017, the U.S. Supreme Court heard oral arguments in *TC Heartland LLC v. Kraft Food Brands Group LLC*, (Case No. 16-341). This case considers whether venue for a patent infringement case is proper in any district where the defendant is subject to personal jurisdiction. According to the Federal Circuit, the patent venue statute, 28 U.S.C § 1400, should be read in conjunction with the general venue statute, 28 U.S.C § 1391 as held in *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (Fed. Cir. 1990). This broad interpretation of the venue statute has led to several courts becoming "hot spots" for patent litigation, such as the Eastern District of Virginia and the Eastern District of Texas.

The TC Heartland dispute arose when Kraft Food Brands Group ("Kraft") sued T.C. Heartland ("Heartland") in Delaware District court for allegedly infringing three Kraft patents. Heartland, an Indiana company, moved to dismiss for lack of personal jurisdiction or to transfer the venue to the Southern District of Indiana. Heartland argued that it was not registered to do business in Delaware, had no contacts or accounts in Delaware, and sales of the accused product in Delaware were initiated by customers; only 2% of its 2013 sales were in Delaware. In other words, Heartland had no purposeful conduct in Delaware. The district court of Delaware denied the motion to dismiss or transfer venue. Heartland filed a petition for a writ of mandamus at the Federal Circuit.

On appeal to the Federal Circuit, Heartland argued that 2011 Congressional amendments to 28 U.S.C. § 1391 changed the venue statue and effectively overruled *VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F.2d 1574 (Fed. Cir. 1990). The argument is that the patent venue statue, § 1400, should be read separately from the general venue statute.

The Federal Circuit unequivocally ruled that Heartland's argument was "utterly without merit or logic" and that Heartland presented no evidence that Congress intended to narrow the patent venue statute with its 2011 amendments. *In re: TC Heartland LLC*, 821 F.3d 1338, 1341-2 (Fed. Cir. 2016). To the contrary, "Congressional reports have repeatedly recognized that VE Holding is the prevailing law." *Id.* at 1343.

On appeal to the Supreme Court, Heartland sought clarification on whether 28 U.S.C. § 1400(b) is the sole and exclusive provision governing venue in patent infringement actions and is not to be supplemented by 28 U.S.C. § 1391(c). This question is the same as the issue decided in *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 77 S.Ct. 787, 1 L.Ed.2d 786 (1957). Our colleagues have previously summarized the litigants' positions here.

Briefly, Heartland argued that patent venue is proper where the defendant is incorporated and resides. The Supreme Court held in *Fourco* that the patent venue statute, 28 U.S.C. § 1400(b), should be read alone, and not interpreted in view of the general venue statue, 28 U.S.C. § 1391(c). Accordingly, Heartland argued that the Federal Circuit's interpretation of the patent venue statute in *VE Holding* is

inconsonant with *stare decisis* and *Fourco* should be controlling law. Heartland's argument is supported by a number of *amici*, including the American Bar Association, AIPLA, Electronic Frontier Foundation, the Orange County Intellectual Property Law Association, and a large number of law professors. Kraft maintains that Congress' amendments to the venue statute abrogate the *Fourco* decision.

During oral arguments, Heartland implored the Court to "adhere to this Court's existing, long established interpretation of Section 1400(b) and reject the new call for a new revisionist interpretation."

The Court appeared to struggle with how *Fourco* would be interpreted with non-corporate entities such as LLCs, associations, and individuals. Justice Sotomayor inquired of Heartland, "so what do we do with unincorporated associations . . . those are not defined by section 1400(b)."

In contrast, Kraft argued, "Congress has written a definition of 'residence' that applies for all venues" and "the definition [of residence] that *Foruco* applied is no longer the controlling definition of 'residence.'"

Chief Justice Roberts remarked of Kraft's argument: "I would have thought that if Congress were trying to make a significant change, there'd be a lot more evidence of it other than just changing the particular nuances . . . of the words."

Although numerous *amici* briefs were filed and there was some discussion during oral argument of policy concerns such as forum shopping, the role of non-practicing entities, and overcrowding in venues such as the Eastern District of Texas, these issues appeared to raise fewer questions from the Court.

Implications

If the Supreme Court sides with Heartland, the decision will have the potential to limit patent cases to venues where the defendant resides, typically the state of incorporation for a corporate defendant. Such a decision also could vitiate popular patent venues, such as the Eastern Districts of Texas and Virginia. Further, Delaware could become the most popular patent venue as many corporations are incorporated there.

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