



CRA Insights: Intellectual Property

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CRA Insights: Intellectual Property is a periodic newsletter that provides summaries of notable developments in IP litigation.

Supreme Court ruling impacts patent venue landscape

TC Heartland LLC v. Kraft Foods Group Brands LLC, No. 16-341 (Supreme Court 2017)

Overview

On May 22, 2017, the Supreme Court issued a unanimous decision in this case, holding that a domestic corporation “resides” only in its state of incorporation for purposes of the patent venue statute. 28 U.S.C. §1400(b) provides that “[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.”

In 2014, Kraft Foods Group Brands LLC (Kraft) filed a complaint in the District Court for the District of Delaware alleging that TC Heartland LLC (Heartland) infringed three of Kraft’s US patents. Heartland, which is incorporated and headquartered in Indiana, filed a motion to transfer the case to the Southern District of Indiana, arguing that under the Supreme Court’s 1957 ruling in *Fourco Glass Co. v. Transmirra Products Corp. (Fourco)*, a corporation “resides” only in its state of incorporation for the purpose of venue determination in patent infringement suits.

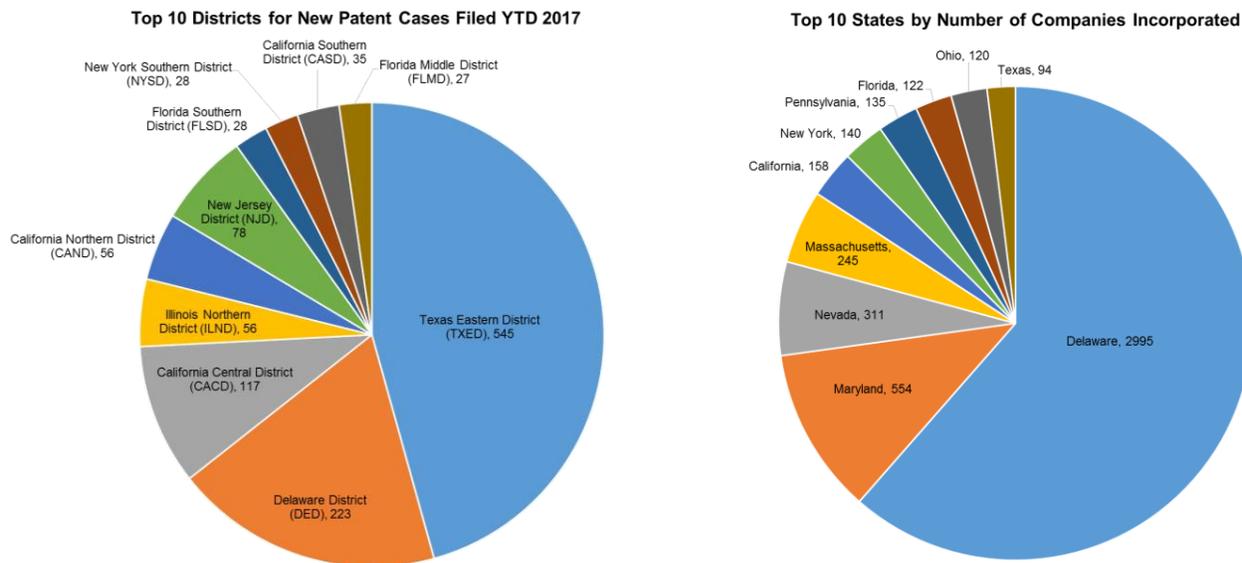
The District Court denied Heartland’s motion to transfer the case, and that order was subsequently upheld by the Federal Circuit based on its 1990 ruling in *VE Holding Corp. v. Johnson Gas Appliance Co. (VE Holding)*, which held *Fourco* no longer applied due to amendments to the general venue statute. Heartland filed a petition for a writ of certiorari, which the Supreme Court granted in December 2016. In its May 22 decision, the Supreme Court reversed the Federal Circuit’s decision, finding that amendments to the general venue statute did not alter the meaning of the patent venue statute as interpreted in *Fourco*.

Justice Thomas delivered the opinion of the Court, which all other Members joined, except Justice Gorsuch, who took no part in the consideration or decision of the case.

Analysis

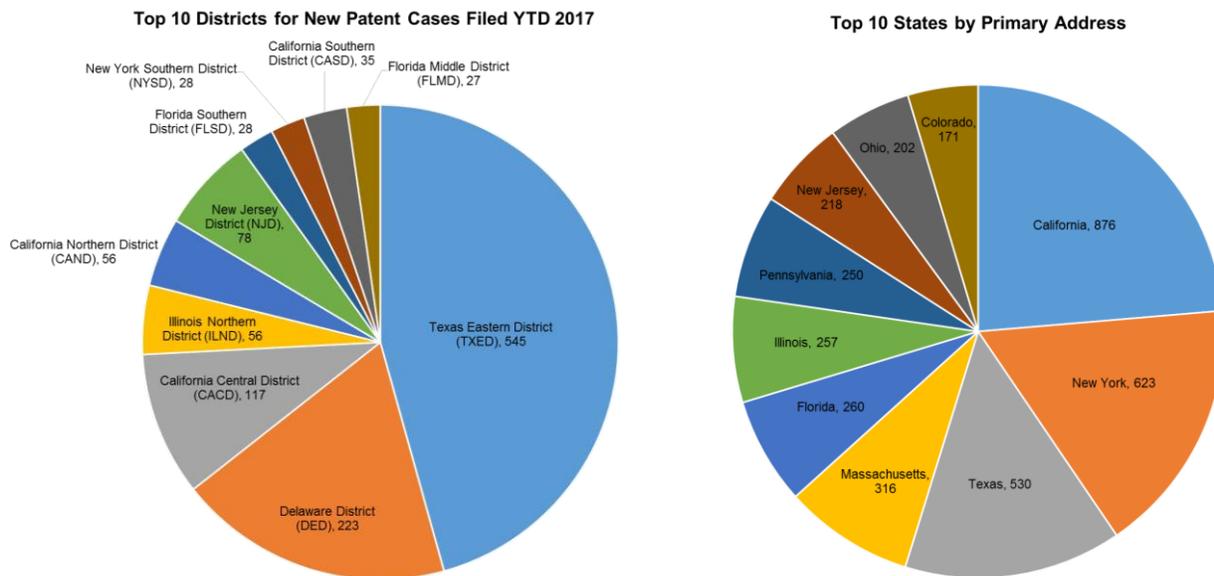
Many analysts predict that the *TC Heartland* opinion will substantially alter the landscape for patent litigation venue determinations. Below is a comparison of the top 10 districts by number of new patent cases filed in

2017 to the top 10 states by number of incorporated entities with annual revenues greater than \$500,000.¹ This data suggests a potentially significant increase in patent cases in states such as Delaware.



Source: Docket Navigator, S&P Capital IQ database

Below is a similar comparison of the top 10 districts by number of active patent cases to the top 10 states by number of corporate headquarters (a potential “regular and established place of business”) for companies with annual revenues greater than \$500,000.² This data suggests a potentially significant shift in future patent cases to districts in California and New York.



Source: Docket Navigator, S&P Capital IQ database

¹ Number of new patent cases per district retrieved May 22, 2017 from Docket Navigator; Number of incorporated entities per state retrieved May 22, 2017 from S&P Capital IQ database.

² Number of corporate headquarters per state retrieved May 22, 2017 from S&P Capital IQ database.

While it is likely that the courts would accept a corporation's headquarters as meeting the definition of a "regular and established place of business," it is possible that many other corporate entities or activities would also be accepted, depending on the courts' interpretation of the statutory language. Additionally, since patent litigation is more common in certain industries than others and industries often cluster in particular regions, states with a large share of incorporated entities or corporate headquarters may not necessarily experience a material increase in patent litigation. Furthermore, many cases involve multiple defendants or subsidiaries with different states of incorporation and/or headquarters, which could complicate venue decisions in many situations. Given these complexities and uncertainties, CRA will continue to monitor and report on trends in patent litigation venue that result from the *TC Heartland* ruling.

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