Do We Need Venue Reform in Patent Cases

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Many defendants in patent infringement cases litigants argue that case law (such as *VE Holding* in 1990) allowing patent lawsuits to be filed in any district in which the defendant has sales have only encouraged abusive patent litigation. They say this practice, which they call “forum shopping,” allows patent owners to file infringement suits in courts that are known to be plaintiff-friendly, such as the Eastern District of Texas, which moves cases to trial rapidly and tends to produce more favorable jury verdicts.

Patent owners, on the other hand, have resisted venue reform because they believe it’s simply one more way for infringers to escape justice by barring them from the one district court where they can get a fair hearing against wealthier and more powerful corporate infringers.

As for trial lawyers, they’re happy with the way things are, and are resistant any change that might affect their lucrative business.

The issue of venue reform is so hotly debated that Congress has gotten involved. For several years, it has been debating various venue reform measures, but so far has been unable to reach consensus on a measure that is acceptable to most of the stakeholders. But thanks to new case — and fearful of alienating one group of supporters and lobbyists or another — Congress has decided to let the U.S. Supreme Court decide matters for them.

On December 14, 2016, the High Court agreed to review a Federal Circuit decision in *TC Heartland LLC v. Kraft Foods,* in which the Federal Circuit affirmed the long-standing practice of allowing patent suits to be filed in any judicial district in which the defendant sells an allegedly-infringing product.

In this case, Kraft Foods sued TC Heartland in the District of Delaware, alleging that Heartland’s liquid water enhancer products infringed three of Kraft Foods’ patents. Heartland moved to either dismiss the action or transfer venue to the Southern District of Indiana, where it is headquartered, noting that it is not registered to do business and has no presence in Delaware.

After the district court denied its motion, Heartland appealed. But the Federal Circuit affirmed the district court’s ruling, noting that Heartland ships accused products to Delaware, although these amount to only 2% of its total sales.

A decision in favor of Heartland would radically alter the landscape of patent litigation, and could effectively bar patent owners from bringing suits in the Eastern District of Texas.

Patent plaintiffs and defendants alike wait anxiously for the High Court’s decision, which is expected in June, 2017.