

Changes to Venue Rules and the Rise of Multi-District Litigation 23rd Annual Advanced Patent Law Institute

Sherri Wilson, Dykema
Darlene Ghavimi, Conley Rose

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.
www.dykema.com

TC Heartland Decision – Why Does It Matter

- Impacts the Patent Venue Statute (28 U.S.C. § 1400(b))
- Therefore –
 - Will patent cases still be filed at the same volume or less in the Eastern District of Texas?
 - Will Delaware become the prominent place for filing?
 - Is another District Court becoming the go-to for patent infringement suits?
 - Are different parties being sued to stay in Eastern District (such as Retailers)?

Let's first review the Venue Statutes (General and Patent)

General Venue Statute – 28 U.S.C. § 1391(b)

28 U.S.C. § 1391(b)

(b) Venue in general.

A civil action may be brought in—

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

General Venue Statute – 28 U.S.C. § 1391(c)

28 U.S.C. § 1391(c)

(c) Residency.

For all venue purposes—

- (1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;
- (2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and
- (3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

Patent Venue Statute – 28 U.S.C. § 1400(b)

28 U.S.C. § 1400

- (a) Civil actions, suits, or proceedings arising under an Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.
- (b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides or where the defendant has committed actions of infringement and has a regular and established place of business.

Then . . . Where did a Defendant Reside Before *TC Heartland*?

Patent Venue for Corporation Before *TC Heartland*

VE Holding Corp. v. Johnson Gas Appliance Co., 917 F.2d 1574 (Fed. Cir. 1990)

- Trial court dismissed two patent infringement cases for improper venue under 28 U.S.C. § 1400(b).
- Trial court held that Iowa Defendant did not “reside” in California
- Trial court held that Iowa Defendant had no “regular and established place of business” in California
- Federal Circuit reversed, holding that Congress adopted a “new definition of reside” for venue in 28 U.S.C. § 1391 and that applied to patent cases
- Venue with respect to corporate defendants in patent cases was proper in “any judicial district in which such defendant is subject to the court’s personal jurisdiction.” *Id.* at 1584.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Changes to Venue Rules and the Rise of Multi-District Litigation

Also available as part of the eCourse

[2018 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the
23rd Annual Advanced Patent Law Institute session

"Changes to Venue Rules and the Rise of Multi-District Litigation"