

## Supreme Court limits locations of patent lawsuits

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Lower courts refused to transfer the case to Indiana.

Heartland sought to transfer the case to IN, citing a patent venue statute that says, "a 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". Kraft alleged that Heartland's liquid water enhancers infringed on Kraft's MiO liquid water enhancer.

In a decision that upends 27 years of law governing patent infringement cases, the justices sided with beverage flavoring company TC Heartland LLC in its legal battle with food and beverage company Kraft Heinz Co. The Federal Circuit had ruled venue was governed by amendments to the general law on venue, and the case could be brought in Delaware.

In delivering the court's opinion, Justice Clarence Thomas wrote that much of the decision hinged on the word "resides", which the court found to mean *state of incorporation*.

The U.S. Supreme Court on Monday tightened rules for where patent lawsuits can be filed in a decision that may make it harder for so-called patent "trolls" to launch sometimes dodgy patent cases in friendly courts, a major irritant for high-tech giants like Apple Inc. and Alphabet Inc.'s Google. In fact, a whopping 30 percent of all patent cases from the past few years have been in Texas.

Kevin McNeely, partner at Browdy and Neimark, explained that the plain meaning of the statutes would lead one to "believe that the term "resides" as used in the patent venue statute should be construed exactly the same as in the general venue statute".

This time, the question went to the Federal Circuit, which didn't exist in the days of *Fourco*. *TC Heartland* unsuccessfully tried to get the case moved to IN, where it resides. But the Federal Circuit ruled against *TC Heartland* and upheld *VE Holding*. The Supreme Court reversed. "This decision will limit venue-shopping in patent litigation and facilitate an equitable litigation landscape in the US", said Bill O'Connor, Heartland Vice President and General Counsel.

How does this ruling benefit tech companies?

A figure of a child holding an open book decorates a flagpole at the U.S. Supreme Court building in **Washington**, U.S., October 5, 2014.

Other organizations - including the Software & Information Industry Association (SIIA), Internet Association, Hispanic Leadership Fund and the National Grange of the Order of the Patrons of Husbandry - last month filed amicus briefs in support of Samsung's request. The history of Eastern Texas becoming the mecca of patent litigation stems from the nature of the venue standard before the Supreme Court's *TC Heartland* decision. Consequently, Utah businesses are increasingly exposed to patent infringement disputes in a variety of jurisdictions around the country. "The likelihood of getting sued by one of these [patent assertion] companies has gone down substantially", he said. He said the federal appeals court in **Washington** that handles patent appeals was wrong to say that Congress had changed those rules. Utah is full of dynamic businesses in rapidly growing areas, which are often the target of patent-infringement suits brought by larger, more entrenched rivals in distant jurisdictions. That could create its own problems.

Because so many companies are incorporated in DE, analysts expect the number of lawsuits filed there to increase.

"From here out", according to Walter Olson, a senior fellow at the libertarian Cato Institute, "*defendants* can still be sued in a district such as E.D. Tex. if they have a regular and established place of business in it, but the decision is likely to shrink what I called in my January preview a 'jackpot patent litigation sector'". "It remains to be seen whether patentees will look elsewhere or file in DE and bet that the vacancies get filled quickly". And although that particular case didn't involve the Eastern District of Texas, the issue in the center of the case-forum shopping-does.