

# “Hot Topics” in Intellectual Property

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## Forum Shopping in Patent Cases

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Many defendants in patent infringement cases 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 district courts where they can get a fair hearing against wealthier and more powerful corporate infringers.

As for trial lawyers, they’d been happy with the way things were, and were resistant to any change that might affect their lucrative business.

The issue of venue reform became so hotly debated that Congress had to get involved. For several years, it debated various venue reform measures, but was unable to reach consensus on a measure acceptable to most of the stakeholders. Fearful of alienating one group of supporters and lobbyists or another, Congress 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 sold 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 was not registered to do business and had 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 shipped accused products to Delaware, although these amounted to only 2% of its total sales.

In May 2017, the Supreme Court ruled in favor of Heartland, deciding unanimously that companies can be sued for patent infringement only in the jurisdiction where they are incorporated.

The decision has already radically altered the landscape of patent litigation. There has been a decline in cases in the patent owner friendly Eastern District of Texas but dramatic upticks elsewhere — the US District Court for the Northern District of California, for example.

For more on the *Heartland* case and this hot topic, read [\*TC Heartland v. Kraft and the Resurrection of the Place of Incorporation or “Regular and Established Place of Business” Test for Patent Venue\*](#) from the Berkeley Technology Law Journal.