

# Knobbe Martens

## Shifting Venue for Patent Infringement Lawsuits

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The U.S. Supreme Court recently made a significant change to the geographic location where patent infringement lawsuits may be filed. In *TC Heartland v. Kraft Food Groups*, decided on May 22, 2017, the Supreme Court unanimously limited the venue for patent suits against domestic corporations to either (1) the defendant's state of incorporation, or (2) where the defendant has a regular place of business and committed allegedly infringing acts. This decision represents a break from 30 years of precedent that allowed patent owners to sue essentially anywhere in the U.S. that the defendant sold the allegedly infringing products.

### Infringement Suits Should Spread Out Across the Nation

Patent infringement lawsuits will no longer be concentrated in the Eastern District of Texas, which is perceived to be a plaintiff friendly venue and where last year plaintiffs filed about 1/3 of all infringement suits. This concentration was widely viewed as unfair forum shopping, largely by non-practicing entities, because few defendants had any connection, beyond the sale of products, with Eastern Texas. Additionally, for lawsuits involving competitors, there will be fewer suits filed in the plaintiff's home state.

Patent litigation will likely shift to places like Delaware or California, where many corporations are incorporated or have a regular place of business. This means fewer defendants will be dragged to the plaintiff's hometown or an inconvenient forum. In the month after the *TC Heartland* decision, patent case filings were down over 50% in the Eastern District of Texas, while filings were up nearly 150% in Delaware.

### Practical Examples

Some examples help illustrate the impact of *TC Heartland*:

**1. Corporation having its only location in Orange County:** This company likely could be sued for patent infringement only in the Central District of California, or in the state the company is incorporated. If the company decides to expand beyond Orange County, such as by opening sales offices or manufacturing facilities in other states, it should be mindful that any new location is a potential venue for patent litigation.

**2. Unincorporated startup based in Orange County:** Startups should now consider potential forums for patent suits before incorporating. If an Orange County startup incorporates in California, then California is likely the only potential forum for a patent infringement suit against it. However, by incorporating in Delaware, the company later could be hauled across the country to defend against such a lawsuit.

**3. Foreign entity with an office in Orange County:** *TC Heartland* did not change the venue rules for foreign corporations. For now, foreign corporations may be sued for patent infringement where they are subject to personal jurisdiction.

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