



POST TC HEARTLAND VENUE

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Patent Venue Statute

- 28 U.S. Code § 1400 - Patents and copyrights, mask works, and designs
- . . .
- (b) Any 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.

2



TC Heartland v. Kraft Foods

- A domestic corporation resides only in its state of incorporation for purposes of 28 U.S. Code § 1400(b) (“Any civil action for patent infringement may be brought in the judicial district where the defendant resides . . .”).
- Bright line rule.

3

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Other option: “regular and established place of business”

- 28 U.S. Code § 1400(b) (“Any civil action for patent infringement may be brought in the judicial district . . . where the defendant has committed acts of infringement and has a regular and established place of business.”)

4

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“regular and established place of business”

- *In re Cray*, Fed. Cir. Sep. 21, 2017
- Mr. Harless’s home (in E.D. Tex.) not a regular and established place of business of Cray.

5

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Cases brought before *TC Heartland*?

- Motions to transfer for improper venue
 - Granted—no waiver based on failure to raise defense in Rule 12 motion or responsive pleading. F.R.C.P. 12(h)(1).
 - Not granted—waiver based on failure to raise defense in Rule 12 motion or responsive pleading. F.R.C.P. 12(h)(1).

6

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Cases brought before TC Heartland?

- Denied motion to transfer
 - *Cobalt Boats v. Sun Ray, et al.*
 - E.D. Va. June 7, 2017
 - Venue waived by failure to pursue
 - J. Newman – dissent

7

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Cases brought before TC Heartland?

- Granted motion to transfer
 - *Cutsforth v. LEMM Liquidating*
 - D. Minn. Aug. 4, 2017
 - “[T]o hold that *Fourco* remained good law at all times over the last twenty-seven years, and thus that Defendants should have raised the improper venue defense at the time this case was filed, effectively ignores reality. If Defendants had attempted to raise the argument in this Court (or likely any district court) in 2012 that *VE Holding* was not binding authority on the issue of patent venue, they would not have been successful.”

8

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RESULTS ORIENTED

- Cases on the eve of trial – no transfer
- Newer cases - transfer

9

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In re Cray, Fed. Cir. Sep. 21, 2017

- three general facts relevant to the inquiry:
 - 1) Is there physical place in the district?
 - 2) Is it a regular and established place of business?
 - 3) Is it the place of the defendant?
- “No one fact is controlling.”

10

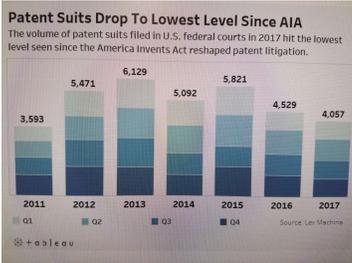
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11

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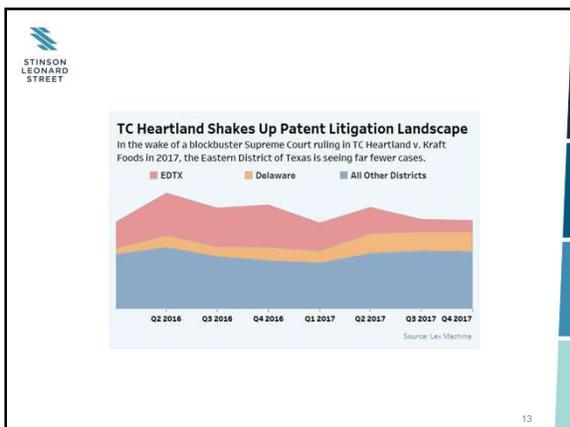
Patent Suits Drop To Lowest Level Since AIA
The volume of patent suits filed in U.S. federal courts in 2017 hit the lowest level seen since the America Invents Act reshaped patent litigation.



Year	Q1	Q2	Q3	Q4	Total
2011					3,593
2012					5,471
2013					6,129
2014					5,092
2015					5,821
2016					4,529
2017					4,057

Source: Lex Machina

12



Tactics

Who are your defendants and where do they live?

- Improved local options**
- District of Kansas
 - Eastern District of Missouri
 - Western District of Missouri (stay tuned)



