

The Supreme Court Rolled Back Patent Venue -- What Will Happen Now for Copyright?

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The Supreme Court recently sounded the death knell for patent litigation in the Eastern District of Texas, overruling the Federal Circuit's interpretation of 28 U.S.C. § 1400(b) and dramatically

reducing forum shopping in patent cases. In *TC Heartland LLC v. Kraft Foods Group Brands LLC*, the Supreme Court overturned nearly thirty years of Federal Circuit case law that permitted plaintiffs to file patent lawsuits wherever a defendant would be subject to personal jurisdiction. The Court held that under 28 U.S.C. § 1400(b) "a domestic corporation 'resides' only in its State of incorporation." This will significantly reduce the filings in the Eastern District of Texas but may increase the number of filings in jurisdictions such as California or Delaware, where many corporations are incorporated.

What does that mean for venue in copyright cases, governed by 28 U.S.C. § 1400(a)? For several reasons, we don't expect to see any dramatic shift in venue for copyright cases. Although similar to the patent venue statute addressed in *TC Heartland*, § 1400(a) differs in a few noteworthy ways:

Copyright Venue – § 1400(a). Civil actions, suits, or proceedings arising under any 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**.

Patent Venue – § 1400(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**.

The logic of the Supreme Court's restrictive interpretation of the term "resides" in §1400(b) would seem to apply equally to that same term in §1400(a), although there is room for some argument given the Court's careful observation that it was simply applying its past precedent and was not asked to reconsider the correctness of that past

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precedent. Even if the term “resides” is interpreted narrowly, the other provisions of the copyright statute would prevent any dramatic restriction in copyright venue.

The copyright statute is broader in two key ways:

1. In addition to the location where a defendant *resides*, a copyright action may be initiated in any location where a defendant “*may be found*.” Some courts have held that, for purposes of § 1400(a), a defendant “may be found” in any jurisdiction in which it is subject to personal jurisdiction. See, e.g., *Time, Inc. v. Manning*, 366 F.2d 690, 697-98 (5th Cir. 1966); *Isbell v. DM Records, Inc.*, No. Civ.A.3:02-CV-1408-G, 2004 U.S. Dist. LEXIS 10394, 2004 WL 1243153, at *13 (N.D. Tex. June 4, 2004); *CAVU Releasing, LLC v. Fries*, 419 F. Supp. 2d 388, 394 (S.D.N.Y. 2005). If this broad interpretation is applied, then any reduction in the scope of “resides” is counteracted by a broad reading of “may be found.”
2. Unlike the patent statute, the copyright statute examines the location of both the defendant and its agent, which provides an opportunity for broader venue.

While *TC Heartland* signals a dramatic shift in venue for patent cases, it does not portend a similarly dramatic shift for copyright cases.