

THE
NATIONAL LAW REVIEW

Federal Circuit Defines “Regular and Established Place of Business”

Friday, September 29, 2017

The US Court of Appeals for the Federal Circuit defined “regular and established place of business” in a judicial district to require (1) a physical place in the district that is (2) regular and established, and that is (3) of the defendant. *In re: Cray Inc.*, Case No. 17-129 (Fed. Cir., Sept. 21, 2017).

Raytheon filed a patent infringement action against Cray in the Eastern District of Texas. Cray is a Washington corporation with its principal place of business located there. Following the Supreme Court of the United States’ 2017 decision in *TC Heartland v. Kraft Foods (IP Update, Vol. 20, No. 5)*, a domestic corporation may only be sued for patent infringement in a judicial district (1) in its state of incorporation or (2) where the domestic corporation has committed acts of infringement and has a regular and established place of business. Cray moved to transfer the case, arguing that venue was improper in the Eastern District of Texas because Cray was not incorporated in Texas and did not maintain a regular and established place of business in the district.

The district court denied the motion, finding that Cray had a regular and established place of business because it employed a sales representative who worked from his home in the district. Attempting to provide future litigants with guidance, the district court identified factors it considered in deciding whether venue was proper in the district. These factors included whether the company has a physical presence in the district, has targeted interactions with customers in the district, and receives benefits based on its presence in the district. Cray petitioned the Federal Circuit for a writ of *mandamus*, requesting reversal of the district court’s denial of the motion to transfer.

The Federal Circuit found that the factors identified by the district court were incorrect. Instead, the Federal Circuit identified three requirements that must be met for venue to be proper. First, the defendant must have a physical place in the district. While the place does not need to be fixed in the sense of a formal office or store, there must be a physical location in the district from which the business of the defendant is carried out.

Second, the place must be “a regular and established place of business” that operates for a stable and meaningful time period, as opposed to one that has a temporary presence. For example, a business that semi-annually displays products at a trade show has only a temporary presence. Similarly, an employee who can move his or her home out of the district without approval of the defendant would cut against the home being considered a place of business of the company.

Third, the “regular and established place of business” must be the “place of the defendant.” Relevant considerations include whether the defendant owns, leases or exercises control over the place; whether the defendant conditioned employment on an employee’s continued residence in the district; and whether the defendant stores material at a place in the district so it can be sold or distributed from that place.

Applying the three requirements to the facts of the case, the Federal Circuit found that Cray did not have a regular and established place of business in the district. Instead, the Court found that the facts merely showed a physical location within the district where one of Cray’s employees carries on certain work. The Court noted, for instance, that Cray paid no part of the employee’s home or rent, did not store any materials there, did not

The logo for McDermott Will & Emery, featuring the firm's name in a green, sans-serif font. The text is arranged in two lines: "McDermott" on the top line and "Will & Emery" on the bottom line.

Article By [McDermott Will & Emery](#)
[Amol Parikh](#) IP Update

[Corporate & Business Organizations](#)
[Litigation / Trial Practice](#)
[5th Circuit \(incl. bankruptcy\)](#)

believe a location within the district to be important to the business performed, and did not have any intent to maintain a place of business in the district if the employee moved. Under these circumstances, the Federal Circuit found that venue was improper in the Eastern District of Texas and remanded the case for further consideration as to where the case should be transferred.

© 2019 McDermott Will & Emery

Source URL: <https://www.natlawreview.com/article/federal-circuit-defines-regular-and-established-place-business>