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California Court Weighs In On Patent Venue In Multi-District States

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As reported in our prior blog post, the Federal Circuit appears poised to decide whether a corporation can be sued for patent infringement in any federal district in its state of incorporation. In a recent order in the Central District of California case of *Realtime Data LLC v. Nexenta Systems, Inc.*, No. 2-17-cv-07690-28 SJO (JCx), the court has addressed the issue pending before the Federal Circuit, and concludes the answer is "no."

> "… the Court finds that, in the context of 28 U.S.C. § 1400(b), a corporate defendant 'resides' only in the state of its incorporation and, within that state, only in the judicial district in which it maintains its principal place of business."

The California Court identified "several indications" in *Stonite Prods. v. Melvin Lloyd Co.,* 315 U.S. 561 (1942) that the Supreme Court viewed residence as a district-specific trait, including:

- The Supreme Court's decision "to describe the defendant as 'an inhabitant of the Eastern District of Pennsylvania' – not as an inhabitant of the State of Pennsylvania."
- The Supreme Court's statements that the patent venue statute "was intended to be 'a restrictive measure, limiting a prior, broader venue' statute."
- The ultimate resolution of the case, noting that "the district court had originally dismissed the case, finding that venue was improper in the Western District. Upon determining that 28 U.S.C. § 109 was the sole provision governing patent venue, the Supreme Court could have chosen to remand the case to the district court for further proceedings – an outcome consistent with the view that the patent venue statute allowed the defendant to be sued in the Western District. Instead, however, it elected to simply reverse the Court of Appeals, allowing the district court's dismissal of the case to stand."

The California Court also explained why the Supreme Court's statements in *TC Heartland LLC v. Kraft Foods Group Brands LLC,* 137 S. Ct. 1514, 1521 (2017) do not require a different result:

- "Neither the Court in *TC Heartland* nor the Court in *Fourco* was asked to consider the question of venue in multi-district states. In both instances, the defendant was challenging a lawsuit brought in an entirely different state, not merely a separate district within the same state."
- The Supreme Court's statement in *TC Heartland* that "a domestic corporation resides only in its State of incorporation" is reconcilable because "it contains a latent ambiguity. The statement that a corporation resides 'only in its state of incorporation"' merely provides a *necessary* condition for venue, not a *sufficient* condition. While venue may *only* be proper within the state of incorporation, a patent case must *also* be brought in the judicial district containing a corporation's principal place of business."

Finally, the California Court acknowledged that its decision "raises some concerns about corporations that operate entirely outside of their state of incorporation." It suggests that such issues can be resolved according to the guidance offered by the general venue statute, 28 U.S.C. § 1391(d), which provides that if there is no

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district in a state in which a defendants' contacts would be sufficient to subject it to personal jurisdiction, "the corporation shall be deemed to reside in the district within which it has the most significant contacts."

Guidance from the Federal Circuit on this issue is expected to issue soon. In the meantime, at least, an intra-state motion to transfer may be a productive litigation strategy.

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