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White Paper

TC HEARTLAND LLC V. KRAFT FOODS GROUP BRANDS LLC: DOMESTIC CORPORATE RESIDENCE FOR PURPOSES OF PATENT VENUE

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In *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 581 U.S. _____ (2017), the Supreme Court held that a domestic corporation "resides" only in its State of incorporation for purposes of the patent venue statute, 28 U.S.C. § 1400(b).[1] In a unanimous decision, the Court overruled nearly thirty years of Federal Circuit precedent permitting a patent plaintiff to sue a domestic corporate defendant in any District having personal jurisdiction over that defendant.[2] Following the Court's holding, and in accordance with 28 U.S.C. § 1400(b), a domestic corporate defendant may only be sued in its state of incorporation or in a state in which it has committed acts of infringement and has a regular and established place of business.

Kraft Foods Group Brands LLC ("Kraft") sued TC Heartland LLC ("TC Heartland") in the District of Delaware, alleging that TC Heartland infringed three of its patents. TC Heartland is organized[3] under Indiana law and has its principal place of business in Indiana. TC Heartland is not registered to do business in Delaware and has no meaningful local presence there; however, it shipped the allegedly infringing products into the State of Delaware.

TC Heartland moved to transfer venue to the District Court for the Southern District of Indiana. The patent venue statute provides that venue is appropriate either: (1) "in the judicial district where the defendant resides," or (2) "where the defendant has committed acts of infringement and has a regular and established place of business."[4] In *Fourco*, the Supreme Court previously held that for purposes of §1400(b), a domestic corporation "resides" only in its state of incorporation, and rejected the argument that §1400(b) incorporates the broader definition of "residence" contained in the general venue statute, 28 U.S.C. § 1391(c), because §1400(b) is a "standalone" venue provision for patent cases.[5]

Citing *Fourco*, TC Heartland argued that venue was improper in Delaware because it did not "reside" there or have a "regular and established place of business" in Delaware. The District Court rejected this argument and denied TC Heartland's motion to transfer venue.[6] The Federal Circuit denied TC Heartland's petition for a writ of mandamus, concluding that the 2011 amendments to §1391(c)[7] also applied to §1400(b), such that the broader definition of "residence" in §1391(c) was incorporated into the patent venue statute.[8] The Federal Circuit concluded that because TC Heartland was subject to personal jurisdiction in the District of Delaware, TC Heartland also resided in the District of Delaware under §1391(c) and, therefore, under §1400(b).[9]

The Supreme Court granted certiorari and reversed the Federal Circuit. The Court held that in *Fourco*, it "definitively and unambiguously held that the word 'reside[nce]' in §1400(b), has a particular meaning as applied to domestic corporations: It refers only to the State of incorporation."[10] Because Congress has not amended §1400(b) since *Fourco*, the only remaining question for the Court was whether Congress changed the meaning of §1400(b) when it amended §1391(c). The Court held that Congress did not intend to change the meaning of §1400(b) because there was no "relatively clear indication of its intent in the text of the amended provision" and that "[t]he current version of §1391(c) does not contain any indication that Congress intended to alter the meaning of §1400(b) as interpreted in *Fourco*."[11] Absent a manifestation of Congressional intent to amend §1400(b), the Court held that the 1988 and 2011 amendments to §1391(c) did not apply to §1400(b). Accordingly, the Court held that "[a]s applied to domestic corporations, 'reside[nce]' in §1400(b) refers only to the State of incorporation."[12] Under the Court's interpretation of 28 U.S.C. § 1400(b), a domestic corporate defendant may only be sued in its state of incorporation or in a state in which it has committed acts of infringement and has a regular and established place of business.

The Court's decision does not expressly address the impact of its holding on cases already filed, and this holding is confined to domestic corporations; the Court did not "express any opinion" as to the effect of its holding on venue for foreign corporations.[13]

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[1] Slip Op. at 1.

[2] *See VE Holding Corp. v. Johnson Gas Appliance Co.*, 917 F. 2d 1574 (Fed. Cir. 1990).

[3] It is an open question whether TC Heartland is a corporation or an unincorporated entity. The Court noted this ambiguity in its Opinion, but concluded that "[b]ecause this case comes to us at the pleading stage and has been litigated on the understanding that [TC Heartland] is a corporation, we confine our analysis to the proper venue for corporations." Slip Op. at 2 n.1.

[4] 28 U.S.C. § 1400(b).

[5] Slip Op. at 1-2 (citing *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 226 (1957)).

[6] *Kraft Foods Group Brands LLC v. TC Heartland, LLC*, Civ. No. 14-28-LPS, 2015 U.S. Dist. LEXIS 127972, 2015 WL 5613160 (D. Del. Sept. 24, 2015).

[7] As amended in 2011, effective January 2012, Section 1391 provides that, "[e]xcept as otherwise provided by law" and "[f]or all venue purposes," a corporation "shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." 28 U.S.C. §§ 1391(a), (c).

[8] *In re TC Heartland LLC*, 821 F. 3d 1338 (Fed. Cir. 2016).

[9] *Id.* (citing *VE Holding Corp.*, 917 F. 2d 1574).

[10] Slip Op. at 7-8.

[11] *Id.* at 8.

[12] *Id.* at 10.

[13] *Id.* at 8 n.2.