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REVIEW & OUTLOOK

Supreme Court Patent Victory

Trolls who forum shop for judges will now have a harder time.

Unanimous Supreme Court decisions that create tectonic shifts in law are rare, but on Monday an 8-0 majority in TC Heartland v. Kraft Foods rejected a lower court's statutory interpretation that has enabled rampant forum shopping in patent infringement cases.

The case hinged on a 1948 law that limits patent litigation to "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." Kraft sued Indiana-based TC Heartland, which distributes products under the Sunkist and Skinnygirl brands, in the federal district of Delaware for patent infringement.

Heartland challenged Kraft's ability to bring suit in Delaware and sought to move the case to Indiana, but its motion was denied based on the U.S. Court of Appeals for the Federal Circuit's 1990 precedent that rewrote the statute to include any place a defendant conducts business or sells a product. Nowadays, that can be anywhere.

So-called patent trolls who extort businesses by obtaining intellectual property rights and demanding large settlements to avoid litigation have made their home in the plaintiff-friendly Eastern District of Texas. During the last two years, about 40% of patent cases were filed in lovely, restful Marshall, Texas, which boasts fewer than 25,000 residents.

One judge had nearly 1,700 cases assigned to him in 2015—more than twice as many as the judge with the second most. Samsung has been sued so often in Marshall that it has sponsored numerous holiday festivals and an ice-skating rink in front of the courthouse.

As 17 states noted in an amicus brief supporting Heartland, the Eastern District of Texas is popular because "local practices and rules depart from national norms in ways attractive for incentivizing settlement for less than the cost of litigating the early stages of patent cases." The district's judges are averse to summary judgment, and its case assignment system provides a "predictable formula litigants can use to select their preferred jurist." Translation: Plaintiffs can't lose in Marshall.

The Heartland case didn't involve patent trolls or the Eastern District of Texas, but both will likely be significantly affected by the Supreme Court's ruling. In a 13-page opinion for the Court, Justice Clarence Thomas overturned the Federal Circuit's 1990 ruling and harked back to the Supreme Court's 1957 Fourco Glass decision that "definitively and unambiguously held that the word 'residence' " in the 1948 law "refers only to the State of incorporation."

Antonin Scalia must be smiling upstairs at the Court's return to the plain meaning of the statutory text.