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WLF Asks Federal Circuit to Curtail Forum Shopping in Patent Cases

(In re: TC Heartland, LLC)

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—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation late yesterday called on the U.S. Court of Appeals for the Federal Circuit (the court that handles appeals in most patent cases) to crack down on forum shopping by “patent trolls,” entities that inappropriately file numerous patent-infringement cases in plaintiff-friendly jurisdictions. Although this case was filed in the District of Delaware, the Eastern District of Texas is the prime example of a forum where numerous patent-infringement lawsuits are filed, thereby forcing many defendants who do not conduct any business in the vicinity to defend themselves in a distant and inhospitable forum.

In a brief filed in *In re: TC Heartland, LLC*, WLF argues that rules governing venue and personal jurisdiction generally require a patent owner to file a patent-infringement lawsuit in the alleged infringer’s “home” State if it wants to adjudicate nationwide infringement allegations—*i.e.*, the defendant’s State of incorporation or where it maintains its principal place of business.

Twenty years ago, the Federal Circuit adopted rules that permit patent owners to file suit in virtually any federal district court in the country. As a result, patent trolls—companies that buy up old patents for the purpose of extorting licensing fees rather than using the patented invention—have gravitated to districts where they receive a friendly hearing. WLF’s brief urges the Federal Circuit to overturn its 1990s-era precedents that have created this forum-shopping problem. It argues that those precedents are a relic of an earlier era when federal courts were less willing to enforce constitutional limits on courts’ exercise of jurisdiction over nonresident defendants. WLF also argues that recent amendments to federal venue statutes impose further limits on forum shopping.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “By ignoring venue restrictions, courts like the Eastern District of Texas have become havens for patent trolls. Forty percent of all patent-infringement suits are filed there. The Federal Circuit can prevent forum shopping by properly enforcing rules governing venue and personal jurisdiction in this case. If a patent holder wants to challenge infringing conduct nationwide, it ought to file suit in the defendant’s home State—where it can require a defendant to defend any and all claims.”

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive litigation.

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