

Sometimes, There's No Place Like Home

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In our article “Delaware – the New Black for Patent Litigation” published last May, we wrote about the landmark Supreme Court decision in *TC Heartland v. Kraft Foods Group Brands* significantly restricting patent suits to those states where the defendant is either (a) incorporated or (b) has sold accused products and has a regular and established place of business.

As predicted, new patent infringement cases quickly plummeted in Texas (the darling of patent plaintiffs for decades) and surged in Delaware (the darling of corporate entities for decades). Bloomberg reports that Texas filings dropped from an average of 110 per month to just 45, while Delaware filings increased from an average of 46 per month to 78 per month. Why this surge? Because so many companies are incorporated in Delaware. A patent owner can sue a Delaware company in Delaware regardless of whether the defendant has an established place of business there or even sold products in the state.

Companies that have no corporate office, warehouse or other regular and established place of business in Delaware may want to think twice about incorporating in Delaware and subjecting themselves to patent infringement suits in a far-away state. Some companies may consult with trusted corporate counsel and still opt for Delaware. Other companies, especially those that are small to mid-size, may decide to incorporate where they operate and make any quarrelsome patent owner come to them. Sometimes, there really is no place like home.

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