Sana Halwani
416-865-3733
shalwani@litigate.com

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The Death Knell of the Rocket Docket

For those of us who take an interest in American patent litigation, the US District Court for the Eastern District of Texas (also known as the “Rocket Docket”) has been a fabled place where a third (or more) of US patent suits are heard, cases get to trial in two years or less, and patentees are king. It has also been the venue of choice for patent suits brought by non-practicing entities (NPEs...

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That fabled place is no more.

On May 22, 2017, the US Supreme Court released a much anticipated decision in *TC Heartland LLC v Kraft Food Group Brands LLC*, which requires patent owners to sue those infringing their patents in a district court in the state where the infringer is incorporated, or in a district in which they have committed acts of infringement and have an “established place of business.”

The decision reverses more than 25 years of Federal Circuit precedent, which helped establish the Rocket Docket. Turning on a close statutory construction of the patent venue statute, the legal reasoning of the decision is much less interesting than its far-reaching implications.

The immediate result of the decision will be a geographic redistribution of patent cases, with suits previously filed in East Texas shifting to Delaware, California and New York, amongst others. The expectation is that this change will reduce the cost of defending patent litigation.

One open question is what will happen to pending cases and how motions to transfer venue will be dealt with by the Courts in the near term. Transferring recently filed suits will be relatively simple, but cases that have been ongoing for years are a different story.

Another practical impact of the decision will be felt by any plaintiffs seeking to sue multiple defendants, which may have to be brought in courts throughout the country, with the associated increase in litigation costs and risk of inconsistent outcomes.

Finally, critics of the decision warn that it will raise the cost of bringing an infringement action for all patentees (not just NPEs), and will particularly affect small and medium enterprises seeking to enforce their patent rights.

Meanwhile, back in Canada, our single circuit Federal Court may seem quaint in contrast, but it does prevent judge-shopping and the procedural wrangling associated with venue fights.