Kluwer Patent Blog

US Supreme Court ruling has potential to attract litigation to Europe's Unified Patent Court

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By Annsley Merelle Ward

On 22 May 2107, the US Supreme Court unanimously put limits on where patentees can commence patent infringement proceedings in the US. In the case, TC Heartland challenged Kraft Heinz's decision to commence patent infringement proceedings against it in Delaware, arguing that the case should be transferred to its home court in Indiana.

In overturning last year's decision from the US Court of Appeals for the Federal Circuit, the Court held that patent infringement suits can only be filed in courts located in the jurisdiction where the defendant is incorporated or where it has committed acts of infringement and has a regular and established place of business.

The practical effect of the Supreme Court's decision in *Heartland v Kraft Foods* will be to restrict a patentee's choice to bring cases in patentee-friendly jurisdictions where findings of infringement and damages awards are higher than in other venues, namely the Eastern District of Texas.

By comparison, Article 33 of the UPC Agreement gives a patentee four options as to where to bring infringement proceedings:

- the local/regional division **where the actual or threatened infringement has occurred** or may occur; or
- the local/regional division **where the defendant** or one of the defendants **has its residence or principal place of business**; or
- the local/regional division, in the absence of a residence or principal place of business, the defendant's **place of business**; or
- the **relevant Central Division**, in cases where the defendant's residence, principal place of business or place of business is located outside the Contracting Member States or there is no local or regional division in the relevant Contracting Member State applying the above rules.

With patentees retaining significant control as to where to commence patent infringement cases, the UPC may become an attractive forum for patentees facing increasing restrictions in the US.

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This article was originally published on the website of Bristows.

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