

Identifying Information

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Paper Information

Title:	There's No Place Like Home (To File Your Patent Lawsuit)
Abstract:	<p>This paper investigates the drivers of venue selection in patent litigation, focusing on a consideration that has received little attention in the forum shopping literature—the importance of home court advantage. Further, it explores changes in forum shopping before and after a recent major change in patent venue law. In its May 2017 decision in <i>TC Heartland LLC v. Kraft Foods Group Brands LLC</i>, the Supreme Court reined in the Federal Circuit’s permissive venue standard, which had fueled the rise of the Eastern District of Texas as the busiest patent trial court in the nation and the preferred filing location of patent assertion entities (PAEs), derisively known as patent trolls. As others have predicted, I find that the district-by-district changes in filings since <i>TC Heartland</i> have been dramatic. For example, 72 percent more patent cases were filed in the District of Delaware the year after <i>TC Heartland</i> than the year before and the Eastern District of Texas saw a 68 percent decline during the same period. Further, the decline in filings in the Eastern District of Texas is entirely attributable to PAEs. The clumping of cases in these two districts that are both perceived as pro-patentee and located away from the principal offices of almost all defendants confirms that forum shopping has been and after <i>TC Heartland</i> continues to be common, especially by PAEs. Concerning home turf, I find that in the vast majority of cases, both before and after <i>TC Heartland</i>, plaintiffs select the district court where their principal place of business is located, a district away from their opponents’ main office, or a court that is both. Further, I find that plaintiffs with the option of filing at home or in a more distant but more plaintiff-friendly district frequently choose to litigate at home. These results hold for PAEs and practicing entities and suggest a strong rule of venue selection for patent plaintiffs: There is no place like home to file your lawsuit and no worse place than your opponent’s home. These home court preferences are plausibly explained by both the perception that parties face more sympathetic judges and juries in their home districts and the desire to minimize one’s own litigation costs or impose additional costs on opponents. Future work will investigate the importance of these factors, including by determining whether patent plaintiffs are more likely to win when litigating at home.</p>