



Internet Association

May 12, 2016

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Leahy:

Following the recent decision in *In re: TC Heartland LLC*, in which the court failed to restore limitation to venue in patent cases, it is even more critical that Congress take immediate action to curb venue abuse. The Internet Association urges the U.S. Senate to support S. 2377, the Venue Equity and Non-Uniformity Elimination (VENUE) Act of 2016, which would implement necessary venue reforms to curb abusive litigation tactics employed by patent trolls.

The Internet Association works to advance policies that foster innovation, promote economic growth, and empower people through the free and open Internet. The Internet creates unprecedented benefits for society, and as the voice of the world's leading Internet companies, we ensure stakeholders understand these benefits. Our members experience the U.S. patent system both as owners of intellectual property and as parties subject to the damaging litigation of patent trolls. Venue shopping distorts litigation outcomes and creates an unbalanced system that unfairly advantages trolls, which ultimately harms our nation's innovators and our economy.

Congress has long recognized the unique nature of patent litigation and the importance of venue, providing in law that venue in patent litigation should be tied to the case in question.¹ In 1990, however, *VE Holding Corp. v. Johnson Gas Appliance Co.* rejected previous venue interpretations and essentially created nationwide venue for nearly all patent litigation.² In practice, this holding has forced defendants, including small and independent inventors, to bear the cost of litigating in distant venues unrelated to the case in question without the protection of reasonable venue limitations enforced by courts. More problematic, opportunistic patent trolls have exploited venue law following *V.E. Holding* to shop for favorable forums that enable them to extort innovators and small businesses, most notably in the Eastern District of Texas.

Frivolous patent troll activity has created a cottage industry in East Texas, which hosted nearly 2,000 more new lawsuits last year than the next-busiest court. Local rules disadvantaging one party, high win rates, unreasonable damage awards, and expansive, inequitable discovery practices attract trolls to East Texas, where their embedded business model is thriving as a form of legalized extortion. A 2015 U.S. Chamber of Commerce Institute for Legal Reform survey found East Texas to have the least fair and reasonable legal environment. Indeed, East Texas has become the prime example of how venue

¹ See 28 U.S.C. § 1400(b); see also *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222 (1957) (stating that 28 U.S.C. § 1400(b) is the sole source of patent litigation venue determination).

² 917 F.2d 1574 (Fed. Cir. 1990)



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shopping prevents equality and consistency in the application of justice. Trolls now strategically manufacture jurisdiction by simply renting empty offices or storing documents in town, ensuring that they will be able to leverage unfair practices to gain a competitive advantage against targeted parties.

Their strategy is working and getting worse. Just 7 years ago, the Eastern District of Texas received just 9% of patent cases. Today, it is home to nearly half of patent cases nationwide, with about 95% of cases being filed by trolls. A single judge hears one fifth of all patent cases in the nation.

On April 29, 2016, the U.S. Court of Appeals for the Federal Circuit issued its opinion in the closely watched case of *In re: TC Heartland LLC*, rejecting a petition to limit venue in the case. The disappointing ruling by the Court reiterates the importance of Congress acting to end abusive practices that have prevailed under nationwide venue in recent years through sensible, unambiguous legislation. Trolls should be prevented from shopping for the court of their choice and leveraging these tactics to force settlements on unassuming parties, including small and medium sized main street businesses and innovators across various industries.

The VENUE Act, introduced by Senators Flake, Gardner, and Lee, would accomplish the goal of reasonable venue reform by narrowing the judicial districts that have jurisdiction over patent infringement lawsuits to only those districts that have a material connection to the alleged infringement. This common sense approach would provide that the court that hears a patent infringement case has a meaningful connection to the case before it, while still ensuring that patent holders have the ability to conveniently bring action to defend their intellectual property rights. Venue reform is supported by a large and varied group of stakeholders, creating common ground on an issue that Congress can- and should- take action to resolve. Last year, an amendment nearly identical to S. 2377 passed the House Judiciary Committee by voice vote, with nearly a dozen bipartisan cosponsors.

We urge you to support S. 2377, the VENUE Act, and act expeditiously to enact this legislation. Thank you and we look forward to continuing to work with you on this critical issue.

Respectfully Submitted,

Michael Beckerman
President & CEO

cc: The Honorable Mitch McConnell
The Honorable Harry Reid