



ALERT
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Federal Circuit Provides Framework for Establishing Venue in Patent Cases

This past week, the U.S. Court of Appeals for the Federal Circuit issued its decision in *In re Cray*, providing guidance on application of the patent venue statute. In granting a writ of mandamus and transferring the case from the Eastern District of Texas, the court identified three requirements for establishing whether a defendant has a "regular and established place of business" within a judicial district. The court explained that "(1) there must be a physical place in the district; (2) it must be a regular and established place of business; and (3) it must be the place of the defendant." Noting that "no precise rule has been laid down and each case depends on its own facts," the court reasoned that the requirements inform whether the necessary elements exist for patent venue.

Discussing the first requirement, the court stressed that "a virtual space or electronic communications from one person to another" does not constitute a "physical place in the district." Rather, "there must still be a physical, geographical location in the district from which" a defendant's business operates. Regarding the second requirement, the court explained that "sporadic activity cannot create venue" because the term "regular" requires that a business operation have "sufficient permanence" or "continuous presence" in the district. On the third requirement, the Federal Circuit identified several considerations that courts may evaluate, including whether a defendant "owns or leases" the physical location, exercises "possession or control over the place," lists the location "on a website, or in a telephone or other directory," or "places its name on a sign associated with or on the building itself." The court also recognized that venue cannot exist simply because "a defendant has advertised that it has a place of business" in the district; instead, "the defendant must actually engage in business from that location." Likewise, the court noted that employees' personal decisions to reside in a judicial district cannot establish venue.

Addressing patent venue for the first time since Supreme Court's *TC Heartland* decision, the Federal Circuit's opinion provides a unified framework and targeted guidance for evaluating what constitutes a "regular and established place of business"—an issue with which many district courts have been grappling.

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