

Patent Litigation and Forum Shopping: Analysis of Jurisdictional Issues

Lacey A. Weeks

Abstract

This paper discusses the definitions of intellectual property, patents, litigation, and forum shopping while also discussing a case regarding jurisdictional issues involving patent litigation and forum shopping.

Keywords: law, patent, litigation, forum shopping

1 Introduction

In a world of technology, patents are unavoidable. In order to protect your ideas and inventions, patents are a must as they are designed to protect your ideas from anyone who wishes to take advantage of them for their own personal benefit. But when someone does decide to infringe on the idea you fortunately secured with a patent, patent litigation comes into play to help you defend your patent. When it comes to filing lawsuits, some people turn to forum shopping as a way to win a lawsuit, but is it really ethical to forum shop?

2 Definitions

2.1 Intellectual Property

According to Investopedia, intellectual property "is a broad categorical description of a set of intangible assets that are owned by a company or individual. It's legally protected from outside use or implementation without consent. An Intangible asset is a non-physical asset." [1]

The World Intellectual Property Organization (WIPO) website states that intellectual property "refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce." [2]

Cornell Law School defines intellectual property (IP) as "a type of property encompassing the products of original human thought. Common examples of intellectual prop-

erty include: the contents of a book, designs of an invention, computer software, company logos, and music.” [3]

Georgetown Law states that ”intellectual property law deals with laws to protect and enforce rights of the creators and owners of inventions, writing, music, designs and other works, known as the ”intellectual property.” There are several areas of intellectual property including copyright, trademarks, patents, and trade secrets.” [4]

2.1.1 Types of Intellectual Property

- Patents
- Copyrights
- Trademarks
- Franchise
- Trade Secrets
- Digital Assets [1]

2.2 Patent

Investopedia states that a patent ”is the granting of a property right by a sovereign authority to an inventor. This grant provides the inventor exclusive rights to the patented process, design, or invention for a designated period in exchange for a comprehensive disclosure of the invention. They are a form of incorporeal right.” [5]

Cornell Law School states that a patent ”grants the patent holder the exclusive right to exclude others from making, using, importing, and selling the patented innovation for a limited period.” [6]

2.2.1 Types of Patents

- Utility Patents
- Design Patents
- Plant Patents [5]

2.3 Litigation

According to Cornell Law School, litigation is ”the process of resolving disputes by filing or answering a complaint through the public court system.” Cornell Law School also states that ”in federal courts, litigation is governed by a number of federal rules:

the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Appellate Procedure, the Federal Rules of Bankruptcy Procedure, and the Federal Rules of Evidence.” [7]

Cincinnati College of Law states that litigation “is generally thought of as the process of resolving rights-based disputes through the court system, from filing a law suit through arguments on legal motions, a discovery phase involving formal exchange of information, courtroom trial and appeal. Litigation also encompasses administrative or regulatory processes for establishing legal rights and resolving disputes.” [8]

2.4 Forum Shopping

Cornell Law Schools states that forum shopping “refers to the practice of pursuing a claim subject to concurrent jurisdiction in the court that will treat the claim most favorably. Forum shopping can occur between courts in different states, between federal and state courts in the same state, or between courts in separate countries. While forum shopping is still permitted under limited circumstances, the practice is generally discouraged in the modern legal system due to the Erie Doctrine and other conflict of law rules.” [9]

3 Analysis of Jurisdictional Issues

3.0.1 U.S. Supreme Court Halts Forum Shopping in Patent Infringement Cases

On May 22, 2017, the U.S. Supreme Court issued an Opinion regarding “where a patent infringement suit can be filed,” according to the “U.S. Supreme Court Halts Forum Shopping in Patent Infringement Cases” article. The article also states that for almost 30 years, patent owners who filed infringement suits had a say in which courts they filed lawsuits in. Because they had a say in the matter, the patent owners could potentially favor the courts that favored them, in theory. According to the article, “observers believe that this flexibility was being abused, especially by non-practicing entities or “patent trolls.””

According to the article, “the Supreme Court’s unanimous Opinion dealt a severe blow to this practice.” Because of this, “patent infringement lawsuits will be restricted to the state of incorporation of the accused infringer... or where the accused infringer has committed acts of infringement and has a regular and established place of business...” [10]

4 Commentary

On one hand, I can see a potential reason to pursue forum shopping when going through a patent lawsuit. You want to protect your ideas from being stolen and/or abused for personal gain by another entity and prefer a court that would judge in your favor in regards to your patents. On the other hand, forum shopping can and will be abused by people that are in the position to do so.

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