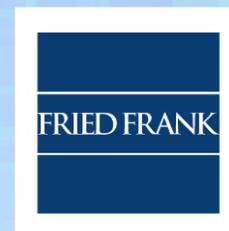


# Fried Frank Intellectual Property

## Into the *Heartland*<sup>TM</sup>



Please visit our "Into the *Heartland*" Resource Center at [friedfrank.com/IntotheHeartland](http://friedfrank.com/IntotheHeartland)

## Objecting to Personal Jurisdiction Does Not Preserve Venue Defense; Waiver of Personal Jurisdiction Objection Does Not Establish Venue

District courts are issuing new orders every day that address different venue-related issues in the wake of the Supreme Court's *TC Heartland* decision. We highlight two such cases below.

Last week, Magistrate Judge Roy S. Payne of the Eastern District of Texas recommended denying Yahoo's motion to dismiss for improper venue in ***MyMail, Ltd. v. Yahoo!, Inc.***, 2-16-cv-01000 (E.D. Tex. Aug. 17, 2017) (Report and Recommendation, J. Roy S. Payne, Dkt. 129) because objecting to personal jurisdiction was not enough to preserve a venue challenge.

In its complaint, MyMail alleged that venue was proper in the Eastern District of Texas because Yahoo was subject to personal jurisdiction. In its answer, Yahoo denied that venue was proper "for the reasons set forth in the Complaint." After the Supreme Court issued its *TC Heartland* decision, Yahoo moved to dismiss for improper venue, arguing that it had preserved its venue objection. Magistrate Judge Payne disagreed, noting that Yahoo's specific "objection was based solely on the argument this District does not have personal jurisdiction over Yahoo." Therefore, Magistrate Judge Payne concluded, by effectively acknowledging that venue was proper on other grounds, Yahoo had waived its improper venue defense.

In another case, the Southern District of Ohio granted Ranir's motion to dismiss for improper venue in ***Procter & Gamble Company v. Ranir, LLC***, 1-17-cv-00185 (S.D. Ohio Aug. 17, 2017) (Order, Judge Timothy S. Black, Dkt. 36). The court concluded that the *TC Heartland* decision applies to all open patent infringement cases and that objecting to personal jurisdiction is not necessary to challenge venue.

In March 2017, prior to the Supreme Court issuing its *TC Heartland* decision, Procter & Gamble ("P&G") filed a complaint alleging that venue was proper because the Southern District of Ohio has personal jurisdiction over Ranir. A few days later, P&G filed a motion for preliminary injunction. Ranir promptly moved to dismiss, arguing that venue was improper because it is incorporated in Delaware and has its principal place of business in Michigan, not Ohio. P&G responded by arguing that the *TC Heartland* decision did not apply retroactively to the case, that P&G's preliminary injunction motion should be decided before Ranir's improper venue motion, and that Ranir had waived its improper venue defense by not challenging personal jurisdiction in its motion to dismiss.

The court granted Ranir's motion to dismiss, holding in key part that (1) the *TC Heartland* decision applies retroactively to all open cases, regardless of whether a complaint was filed prior to the decision being handed down ("The fact that P&G filed this case prior to the Supreme Court's decision in *TC Heartland*

does not mean it may proceed under an improper theory of venue.”); (2) courts must resolve venue before “addressing the merits of any claim, including a preliminary injunction;” and (3) the fact that Ranir did not object to personal jurisdiction is not the same as Ranir being deemed to “reside” in the district for purposes of venue (“A defendant’s waiver of personal jurisdiction can only ‘establish’ venue if venue is proper everywhere the defendant is subject to personal jurisdiction.”).

\* \* \*

We will continue to monitor these and other related *TC Heartland* venue issues. Please [click here](#) to view our “Into the *Heartland*” Resource Center and keep up on all the latest updates.

**Authors:**

Scott W. Doyle

Jonathan R. DeFosse

Jeffrey I.D. Lewis

Robert M. Masters

Ted M. Nissly

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or the attorneys listed below:

**Contacts:**

**Washington, D.C.**

Scott W. Doyle	+1.202.639.7326	scott.doyle@friedfrank.com
Jonathan R. DeFosse	+1.202.639.7277	jonathan.defosse@friedfrank.com
Robert M. Masters	+1.202.639.7370	robert.masters@friedfrank.com

**New York**

Jeffrey I.D. Lewis	+1.212.859.8987	jeffrey.lewis@friedfrank.com
--------------------	-----------------	------------------------------

---

For a complete list of our Intellectual Property Attorneys, please click [here](#).