

Small Business Notes

Minnesota Department of Employment and
Economic Development (DEED)

U.S. Supreme Court Decision May Work To Restrain “Patent Trolls”

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- **U.S. Supreme Court Decision May Work To Restrain “Patent Trolls”**

In recent years many businesses – especially small businesses with new and emerging technologies and products – have been victimized by “Patent Acquisition Entities” (PAE) more commonly known as “patent trolls.” A PAE is a entity formed for the purpose of acquiring registered but dormant patents and then threatening to sue businesses with related products or technology for patent infringement unless the targeted businesses pay to settle the PAE’s claims. Many businesses respond to such a hold-up with payment to the PAE to avoid the greater costs and risks of litigation. A Boston University School of Law paper, “The Private and Social Costs of Patent Trolls,” estimated that targeted businesses lost half a trillion dollars to patent trolls in the years 1990 through 2010.

On May 22, 2017, the U.S. Supreme Court handed down its decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC* [No. 16-341]. That case, which did NOT involve a patent troll situation but rather a patent dispute between two legitimate competitors, held that a patent suit can be brought only in the state where the business resides or has an established place of business (citing the decision in *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 226 (1957) that for purposes of patent suit venue a business resides only in its state of incorporation). The decision overturns the Federal Circuit’s 1990 decision in *VE Holding Co. v. Johnson Gas appliance Co.*, 917 F.2d 1574 which had held that a business resides in any judicial district in which the business is subject to personal jurisdiction.

PAEs will have to file any infringement suits in the state of incorporation of the target business or where it an established place of business not simply in a state where the business’ products may be distributed or sold or where the PAE resides.

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