

## CLIENT ALERT

### Congress Could Take Steps Toward Patent Venue Reform

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For more than a decade now the U.S. District Court for the Eastern District of Texas has played an outsized role in U.S. patent litigation. Driven by local rules perceived as favorable to patent holders, faster times to trial, and a jury pool that tends to favor property rights, the rise of the Eastern District has coincided almost precisely with the rise of so-called “patent trolls.” The numbers are staggering: In 2003, 14 patent cases were filed in the Eastern District. Last year, 2540 patent cases were filed in the Eastern District, over 40 percent of those filed nationwide.

Over that time, studies have concluded that patent holders “win” in the Eastern District a full 20 percent more often than in other courts. While others dispute that conclusion, the perception of many corporate leaders is that the cottage patent litigation industry in the Eastern District is unfair and that most cases do not belong there.

Last week a bill was introduced in the Senate that seeks to restrict venue choices to address those concerns. The bill, titled the Venue Equity and Non-Uniformity Elimination (VENUE) Act of 2016, S.2733, would require that patent lawsuits be filed only in a judicial district in which the alleged infringer has a physical facility related to the infringement or the patent owner has a facility related to the development of the patented technology.

This would be a dramatic departure from the present scheme. Patent owners can currently choose to file patent lawsuits in any judicial district in which the defendant has committed acts of infringement. For companies that sell products nationwide, this effectively means that a patent owner can sue in any judicial district. Clearly, the target of the bill is “patent trolls” who do not conduct any research, development, or production, but merely establish an office within the Eastern District of Texas for the purpose of filing lawsuits against companies.

The VENUE Act was read twice and introduced to the Committee on the Judiciary. Its future is uncertain. The Committee on the Judiciary has not been receptive to bills changing federal venue provisions in the past. Still, with the heightened focus on patent reform in Washington as of late, the bill should be closely watched.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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