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On the AI Edge of § 1400(b): Data Centers and Venue in Patent Litigation

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The current AI boom has fueled a wave of investment in data centers. As recent examples widely reported in the news, OpenAI is seeking to raise billions of dollars for its upcoming data centers.[1] Meta announced the opening of a Kansas City Data Center, representing an investment of more than $1 billion in the state of Missouri.[2] Financial groups like JPMorgan and Mitsubishi UFJ Financial Group are reportedly in talks to underwrite a $22 billion loan for a 1,200-acre data center campus in Texas for Vantage Data Centers.[3] BlackRock's Global Infrastructure Partners is in talks to acquire Macquarie's Aligned Data Centers for almost $40 billion.[4] And interest in data centers is not limited to certain business sectors; a wide range of companies, including Honeywell, GE Vernova, and Caterpillar, noted plans to invest in data centers on recent quarterly calls.[5]

Data centers can be viewed as real estate investments by the acquirer (e.g., JPMorgan), service-based businesses by the operator (e.g., OpenAI), points-of-service by third parties leasing space at the data centers (e.g., third party enterprises or cloud service providers using Vantage Data Centers), or various combinations of the above. Their physical presence in or near specific judicial districts and the complex business relationship between their owners and users raise important legal venue and jurisdictional issues, particularly in the context of patent litigation.

One question that has been—and will continue to be—tested in court: is a company's mere use of a data center enough to satisfy venue requirements under 28 U.S.C. § 1400(b) for patent infringement suits? The answer to this question controls whether a company can be exposed to patent infringement suits in districts where third party data centers it uses are located, even if the company has no other employees or offices there.

Prior to the Federal Circuit's *In re Google LLC* decision,[6] courts reached different conclusions on this question—even within the same judicial district. *In re Google* offered some clarification, reducing the likelihood that mere presence of a data center in a judicial district would establish venue for patent infringement claims over any company associated with that data center. However, *In re Google* did not provide bright line rules. Instead, the Federal Circuit made clear that the § 1400(b) venue inquiry required a highly fact-specific analysis of the contractual relationship between the company and the data center and the company's particular use of the data center.

Any company utilizing third-party data centers should be aware that its exposure to potential patent

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infringement suits where the data center is located could turn on specific provisions of its agreement with the data center and the particular nature of its relationship with the data center.

LEGAL FRAMEWORK FOR VENUE IN PATENT CASES

In 2017, the Supreme Court in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*,[7] interpreted the patent venue statute, 28 U.S.C. § 1400(b), to have different requirements than the venue statute for other civil litigation, 28 U.S.C. § 1391.[8] In general civil litigation, a corporation can be sued anywhere it legally resides or is subject to personal jurisdiction. In *Heartland*, the Supreme Court determined that the same did not apply to patent litigation. In particular, the Supreme Court held that the patent venue statute had different, and more narrow requirements: a corporation could only be sued in (1) its state of incorporation, or (2) where it had a regular place of business and had committed alleged acts of infringement.[9] The immediate effect of *Heartland* was to restrict the venues where corporations could be sued for patent infringement. Rather than anywhere the corporation was subject to personal jurisdiction—often any judicial district for large companies—*Heartland* narrowed proper venue to where the corporation was incorporated or had a "regular place of business."

As courts have since explained after mining earlier Supreme Court decisions, Congress "intentionally" made "patent venue [to be] narrower than general venue""to eliminate the 'abuses engendered' by previous venue provisions allowing such suits to be brought in any district in which the defendant could be served."[10] Thus, the venue requirement of § 1400(b) is not a "vague principle" that should "be given a 'liberal' construction."[11]

In the aftermath of *Heartland*, the Federal Circuit soon clarified what constituted a "regular place of business" in *In re Cray Inc.*[12] In *Cray*, the Federal Circuit interpreted a "regular place of business" in § 1400(b) to require a place—a "physical, geographical location in the district from which the business of the defendant is carried out."[13] This place could not be "transient." It required "regular" activity, not just "sporadic activity."[14] The defendant "must [have] actually engage[d] in business from that location."[15] Finally, proper venue required a place "*of the defendant*, not solely of the defendant's employee."[16] This requirement considered factors such as "whether the defendant own[ed] or lease[d] the place, or exercise[d] other attributes of possession or control over the place."[17] These requirements placed meaningful restrictions on § 1400(b) that meant venue for patent infringement suits was not necessarily proper in jurisdictions where corporations could be sued for general civil claims.

DATA CENTERS BECOME FOCUS OF PATENT VENUE DISPUTES

Under *Heartland* and *Cray*, it did not appear controversial that the owners and operators of the data centers would satisfy § 1400(b)'s venue requirements in the judicial district where the data centers were geographically located. Data centers were undisputably "physical, geographical locations," and required employees to operate, monitor, and service them. And for owners and operators of the data center, the data center itself was the business, and tied to the physical location. What was a more complex question was whether a data center's geographical presence in a judicial district would also satisfy § 1400(b) for the companies using the data center to host data, serve content, perform intensive computational tasks such as running generative AI models, or to provide other services.

Against this legal backdrop, data centers became a focus for patent venue fights. Many of the initial venue disputes surrounding data centers involved plaintiffs who sought to use Google's Global Cache (GGC) as a basis to establish venue and jurisdiction for patent infringement claims over Google in districts where GGC was deployed in data centers. Google's GGC system "allow[ed] [Internet Service Providers ("ISPs")] to serve certain Google content from within their own networks." "Google provide[d] the GGC hardware" and the ISP "only need[ed] to provide rack space, power, a keyboard & monitor, and a connection to [its] network" before "Google t[ook] care of the remote operation of the cache."[18]

Patent infringement suits seeking to tie jurisdiction and venue to Google's GGC servers arose in multiple divisions of the U.S. District Court for the Eastern District of Texas. In *Personal Audio, LLC v. Google, LLC*[19]—a case from the Beaumont division—Google successfully argued that its GGC

servers and data centers were not "regular and established place[s] of business."[20]

The plaintiff sought to use Google's GGC servers in CableOne and SuddenLink data centers located in Tyler, Sherman, Plano, and Texarkana to establish § 1400(b) venue in East Texas.[21] The court focused its analysis on the physical data center buildings, finding that they were owned by third-party ISPs, not Google.[22] Therefore, the "property on which [Google's GGC servers] were located were not owned, leased, or controlled by Google."[23] While Google "relie[d]" on servers in "server rooms" within the data centers, these servers could not be considered places where Google conducted business, as such a conclusion would have "far-reaching consequences that distort the scope of [§ 1400(b)]."[24] As a result, the court concluded the GGC servers were not a "place of business" of Google.[25] The court thus determined venue was improper in the Eastern District of Texas and transferred the case to the District of Delaware, Google's place of incorporation.[26]

The underlying rationale in *Personal Audio* was echoed elsewhere. For example, in *Peerless Network, Inc. v. Blitz Telecom Consulting, LLC*,[27] a telecommunications company sued a wholesaler of Voice-Over Internet Protocol services. It had no office or employees in the Southern District of New York.[28] The wholesaler stored telecommunications equipment "involved in processing calls to and from New York-based phone numbers" on "sixteen inches of shelf space" in the plaintiff's telecom data facility, where the equipment was involved in routing calls to people in the district.[29] The wholesaler could—but had never accessed—its shelf space, and only "if escorted by [the data center] security personnel."[30]

The parties disputed whether this was sufficient to satisfy § 1400(b)'s requirement the defendant had a "regular and established place of business" in the district, which the court interpreted as "a location where, for example, products are made, customers are served, or business decisions are made."[31] The court's interpretation was based on an attempt to harmonize § 1400(b) with 28 U.S.C. § 1694—the service statute for patent infringement actions—which presumes that a defendant with a "place of business" in a district also has "agents conducting such business" in that district.[32] Under this understanding, the court reasoned that legal "control" through an employee or agent was necessary to establish a business presence.[33] Because the defendant did not have employees or agents in the district, the court determined venue was improper.[34]

IS THE SERVER OR THE DATA CENTER THE "PLACE?": *SEVEN NETWORKS* AND THE RELEVANCE OF SPECIFIC PROVISIONS IN THE GOOGLE / ISP DATA CENTER AGREEMENT TO VENUE

Returning to the Eastern District of Texas, seven months later the court changed course from *Personal Audio*. In *Seven Networks, LLC v. Google LLC*[35]—a case from the Marshall Division—the court determined that Google's GGC servers were a "regular and established place of business" for Google sufficient to satisfy § 1400(b).[36] The court noted that "[m]ultiple ISPs hosted GGC servers in the Eastern District of Texas," "Google cache[d] content on its GGC servers located in the Eastern District of Texas," and "Google treat[ed] its GGC servers in the Eastern District of Texas the same as it treat[ed] all of its other GGC servers in the United States."[37] The court "disagree[d] with [the] conclusion" from "its sister court."[38]

For § 1400(b)'s physical place requirement, the court determined that servers running Google's GGC were "physical server(s) occupying [] physical space," and that Google "exercise[d] exclusive control over the *physical server and the physical space within which the server is located and maintained*."[39] To reach this conclusion, the court analyzed individual provisions of the GGC agreement between Google and the ISP who owned the data center, determining that "Google's ownership of the server and its contents is absolute, as is Google's control over the server's location once it is installed."[40]

The level of detail in the court's analysis is illuminating. The court's analysis was not a high-level survey, but a searching inquiry and analysis of the specific contractual requirements governing the relationship between Google and the ISP with respect to the servers.

First, the court established the importance of Google's GGC servers to its business in East Texas. Analogizing to "brick-and-mortar stores," the court explained that "Google's GGC servers independently determine what content to cache based on *local* requests."[41] The court noted that these servers acted "autonomous[ly]" in that "decisions related

to serving a particular request [we]re made *locally*, without coordinating with other servers."[42] Again analogizing to a physical store, the court explained: "Like a brick-and-mortar store sells directly to customers from inventory and stocks that inventory based on local customer demand, ustreamer [*sic*] in each GGC node decides—independently from other nodes in Google's Edge Network— whether to serve requested content, whether to cache content, and whether to send requests to other servers."[43] This analysis of the specific functionality of Google GGC servers formed the basis of the court's determination that "Google GGC servers located in this District cache[d] Google's products and deliver[ed] them to residents of this District."[44]

From this perspective, the court narrowed its focus to the physical servers themselves, rather than the data centers in which those servers were housed. While acknowledging that Google leased, and did not own the servers, the court mined the agreement between Google and the ISPs to find that the character of the relationship was one more akin to ownership.

For example, the court explained: "Google *requires* ISPs such as Suddenlink to provide "[r]ack space, power, network interfaces, and IP addresses, as specified in the following table [omitted], in consultation with Google"; "[r]emote assistance and installation services described in SCHEDULE 'A' "; "[n]etwork access between the Equipment and Host network subscribers"; and "[r]emote high bandwidth access, sufficient for Google to download upgrade images of GGC to the Equipment."[45] The court further noted that on termination of the agreement, "if the ISP did not "*remove, package and ship* . . . all Equipment back to Google within fifteen (15) calendar days of effective date of termination," "*Google will have the right to: (a) charge Host and Host will pay the fair market value of the Equipment; or (b) recover and take possession of such Equipment*, and for this purpose may enter any premises of Host where such equipment is located during normal working hours to remove Equipment" (all emphases in this paragraph are the court's).[46] The court also noted that Google controlled the precise physical location of its servers in the data center: "for an ISP to move a previously installed GGC from one location to a new location, it must secure Google's permission, *which Google may not permit 'at its sole discretion.'*"[47] To the court, these provisions showed ownership, not a "mere lease of digital space or computing power; it is the installation of Google's own servers in a physical space *that becomes Google's.*"[48]

The court found that the agreement did not create "a partnership, wherein an ISP may independently act on Google's behalf in administering the GGC," and indeed "expressly disclaimed such a relationship."[49] The court illustrated its conclusion that Google exerted total legal control over the physical servers by highlighting provisions "that tasks such as the 'physical switching of a toggle switch;' 'power cycling equipment (turning power on and/or off);' and '*tightening screws*, cable ties, or securing cabling to mechanical connections, plug;' may be performed 'only with specific and direct step-by-step instructions from Google.'"[50]

As a result—acknowledging its disagreement with the Beaumont division in *Personal Audio*[51]—the court concluded that Google's individual GGC servers were like individual "local data warehouses," akin to physical warehouses where third-party businesses store physical merchandise.[52] The court explained that just like a physical warehouse, the "logistical positioning" of a server near a district was an important business purpose where "prompt delivery" was a "core aspect of business strategy," i.e. to ensure users in the district received "quick access to the cached data," and "avoid[ed] the delays associated with distant data retrieval from Google Data Centers."[53]

With this lens, focusing on each individual server within the data center rather than the larger data center, the court determined that Google's GGC's were "places" within the meaning of § 1400(b)—i.e., "the 'place' of the 'place of business' [wa]s not the room or building of the ISP but rather Google's server and the space wherein it [wa]s located."[54] The court concluded that "a shelf containing piece of . . . telecommunications equipment . . . is a physical place in the district insofar as it is a building or part of a building set apart for any purpose."[55]

For the "regular and established" requirement, Google contended that the impact of its servers in the district was not "substantial" enough to qualify as a "regular and established" business under the statute.[56] This was based on the fact that there were only six Google GGC servers in data centers in Tyler, Texas, three GGC servers in Sherman, Texas, and three GGC servers in Texarkana, Texas.[57] Google asserted that the contribution of these servers to its

business was "so small as to be immaterial."[58] The court rejected this challenge, however, determining that the statute did not require a "substantial" or "large" impact from the physical business in the district to satisfy § 1400(b).[59]

As a result, the court found that 12 leased server machines running GGC within three third-party data centers were enough to establish venue over Google for patent infringement claims.

COMPETING VIEWS AMONG COURTS CONTINUE

After *Seven Networks*, a court in the Northern District of Texas reached a different conclusion. In *CUPP Cybersecurity LLC v. Symantec Corp.*,[60] the plaintiff sued Symantec for patents relating to "device management, network security, demilitarized zone security, and endpoint security."[61] The plaintiff sought to establish venue based on a data center that hosted Symantec servers in Dallas which was operated by third-party Equinix.[62] Citing the *Personal Audio* and *Seven Networks* opinions, the court recognized that Eastern District of Texas courts had reached "conflicting conclusions" on the same fact patterns.[63]

In its analysis, the Northern District of Texas court, like the Southern District of New York court, determined that physical data centers—not individual server machines—were the appropriate framework to conduct the § 1400(b) venue inquiry.[64] The court reasoned that the statute required "a place, i.e., a building or a part of a building set apart for any purpose or quarters of any kind from which business is conducted."[65] And because Symantec's servers [we]re not a building or part of a building," but rather "hardware, the physical electronic equipment used to operate the internet or an intranet," and that "the business conducted from Symantec servers involve[d] electronic communications," the court determined that Symantec's servers could not constitute physical "places" under the Federal Circuit's *In re Cray* decision, and therefore were not enough to establish proper venue under § 1400(b).[66]

For the "regular and established" requirement, the court concluded that "regular" places of business must be where a defendant engages in business in a "steady, uniform, orderly, and methodical manner."[67] Symantec's directing of Internet traffic through servers was not sufficient to qualify as "places Symantec conducts its business," or else, for example, "[m]aybe even every handheld device sold by Verizon would become a place of business for Verizon."[68]

But *CUPP* was not the last word. Subsequent suits again found Google's GGC servers in the district sufficient to establish proper venue. In *Super Interconnect Techs. LLC v. Google LLC*,[69] the Marshall division of the Eastern District of Texas—based on facts identical to those in *Seven Networks*—again determined that Google's GGC servers in the district were sufficient to establish venue under § 1400(b).[70]

The Eastern District of Texas' decisions quickly spurred numerous suits in the district. Indeed, in a denial of a petition for a writ of mandamus from the district court's *Seven Networks* opinion, a dissenting judge from the Federal Circuit noted that Google had been sued under the same venue theory for patent infringement 34 times in less than five months following the *Seven Networks* decision.[71]

IN RE GOOGLE: THE FEDERAL CIRCUIT WEIGHS IN

With the conflict in decisions and number of cases relying on *Seven Networks* for venue, the Federal Circuit took up Google's petition for writ of mandamus from Eastern District of Texas court's denial of Google's transfer motion in *Super Interconnect*.

In *In re Google, LLC*, the Federal Circuit granted Google's request for a petition of writ of mandamus, finding venue improper and ordering the Eastern District of Texas court to dismiss or transfer the case. The Federal Circuit's decision was based on a careful analysis of the facts laid out in the *Seven Networks* decision (which both parties agreed applied equally to *Super Interconnect*).

In its decision, the Federal Circuit sought to answer two specific questions: (1) did "the rack space occupied by the [Google's] GGC servers constitute[] a 'place' under § 1400(b) as interpreted in *Cray*"[72]; and (2) were the ISPs [e.g., SuddenLink and CableOne] "acting as Google's agent."[73]

Analyzing the same detailed facts in the *Seven Networks* opinion, the Federal Circuit concluded that "leased shelf space or rack space ***can*** serve as a 'place' under [§ 1400(b)]."[74] Thus, the Federal Circuit concluded that Google's GGC servers qualified as a physical "place."[75] However, taking from the Southern District of New York court's

analysis in *Personal Audio*, the Federal Circuit determined that a place "of business" required "an employee or agent of the defendant to be conducting business at that place," referencing the same service statute (28 U.S.C. § 1694) as the *Personal Audio* court.[76]

It was undisputed that Google had no employees in the Eastern District of Texas. The Federal Circuit therefore analyzed the facts laid out in *Seven Networks* on the specific nature of the contractual agreement between Google and the ISPs to determine if an agency relationship existed. Here, the Federal Circuit reached a different conclusion than the Eastern District of Texas.

The Federal Circuit focused on the three functions the ISPs agreed to perform in their contracts with Google.

First, the ISPs provided Google's GGC servers with network access.[77]

Second, the ISPs performed the installation of Google's GGC servers.[78]

Third, the agreements provided that "'Google may from time to time request that [the ISP] perform certain services' involving 'basic maintenance activities' with respect to the GGC servers."[79]

The Federal Circuit noted these activities included operation of the physical power toggle switch and the tightening of screws quoted from the agreements in the *Seven Networks* decision.[80]

However, for each of these, the Federal Circuit determined the Google/ISP agreements had not created an agency or "regular and established" business relationship. For providing Google network access, the Federal Circuit found that under the parties' agreement "Google ha[d] no right of interim control over the ISP's provision of network access beyond requiring that the ISP maintain network access to the GGC servers and allow the GGC servers to use certain ports for inbound and outbound network traffic."[81] This did not create an agency relationship.

For installation of Google's GGC servers, the Federal Circuit acknowledged that provisions of the agreement requiring "[c]oordination with logistics and shipping personnel; inventory of equipment received; [u]npacking equipment; [a]ssembling equipment based on information and instructions provided by Google; . . . [c]onnecting equipment to power strip(s) and Ethernet cable(s); [and] [p]owering up equipment & executing installation scripts configuring IP address information" were "suggestive of an agency relationship."[82] However, such activities were not a "regular and established" business of Google since server installation "[wa]s a one-time event for each server."[83]

For the contracted maintenance activities, the Federal Circuit again acknowledged that they "may be suggestive of an agency relationship."[84] But the Federal Circuit determined that maintenance activities, "standing alone," could not be "considered the conduct of *Google's* business."[85] To justify this conclusion, the Federal Circuit explained that "[ma]aintaining equipment is meaningfully different from—as only ancillary to—the actual producing, storing, and furnishing to customers of what the business offers."[86]

As a result, the Federal Circuit determined that "the Eastern District of Texas was not a proper venue because Google lacked a 'regular and established place of business' within the district since it ha[d] no employee or agent regularly conducting its business at its alleged 'place of business' within the district."[87] The Federal Circuit made clear its determination was limited the specific nature of Google's business and specific agreements with the ISPs. For example, it cautioned that its decision should not be interpreted that a human agent would always be necessary to show proper venue.[88]

IMPACT OF *IN RE GOOGLE*

The Federal Circuit's *In re Google* decision paved the way for stricter venue requirements under § 1400(b) in multiple areas like data centers where multiple parties may utilize a physical location.

For example, in 2021, the Federal Circuit relied on *In re Google* to determine that department-style clothing stores were not a "regular and established place of business" for the specific brands sold in those stores. The Federal Circuit found that the defendant did not have "the right to direct or control" store employees, which it deemed "an essential element of an agency relationship."[89] In 2022, the Federal Circuit relied on *In re Google* to determine that auto dealerships were not necessarily agents of car manufacturers.[90] The presence of an auto dealership would not necessary be a "regular and established place of business" for the manufacturer.[91] The Federal Circuit found that contracts for car dealerships did not typically grant the manufacturers

control over the dealership, and would not necessarily create agency relationships sufficient to establish a regular place of business of the auto manufacturer.[92] Other circuits have cited *In re Google* to support decisions finding, for instance, that ATMs and their maintenance were not "regular and established" places of business for the banks associated with those ATMs.[93]

More recently, *in Zilkr Cloud Techs., LLC v. RingCentral, Inc.*, the patentee asserted venue over the defendant was proper in the Northern District of Texas because of "roughly two dozen remote employees," "a data center housing Defendant's servers located in Dallas," and "tax records reflecting over $8 million of business property owned by the Defendant in Dallas."[94] The defendant did not dispute it owned an Equinix data center through an agreement with third-party Equinix for hosting defendant's servers.[95] The court cited *In re Google* as support for finding venue not proper, observing that the defendant did not have any employees at the Equinix facility and was not engaged in its core business activities at the Dallas data center.[96]

In *Mobility Workx LLC v. Amazon.com Servs. LLC.*,[97] a Florida cellular networks company sued Amazon Web Services (AWS) and Amazon.com Services (ASL) for patent infringement by, *inter alia*, AWS's "Private 5G" service, which "enable customers to deploy their own private cellular networks."[98] The plaintiff asserted that venue was proper under § 1400(b) based on "(1) three Amazon fulfillment centers located in Fort Worth, Richardson, and Carrollton, Texas, and (2) a 'server rack' purportedly owned and operated by Defendant AWS at a co-location data center in Carrollton."[99] Amazon provided uncontroverted evidence that (1) AWS and its "cloud computing services" were not associated with the physical fulfillment centers of ASLs "retail business"; (2) the Carrollton server rack was "located at a third-party co-location facility purchased by a customer," and "AWS neither own[ed] nor lease[d] space at that facility, and its employees di[d] not regularly work there"; and (3) AWS's accused Private 5G service had never been "deployed or sold in Texas."[100] Citing *In re Google*, the same Eastern District of Texas court that issued the *Personal Audio* and *Seven Networks* decisions determined that venue was not proper, explaining that "the mere presence of a server at a third-party facility, without the regular physical presence of a defendant's employee or agent conducting the defendant's business there, does not establish a 'regular and established place of business' under § 1400(b)."[101]

IN RE GOOGLE'S GUIDEPOSTS FOR THE FUTURE

Unfortunately for data centers and those employing them, while *In re Google* provided guidance, it did not provide bright line rules for the purposes of venue in patent cases. While businesses contracting with data centers will not automatically be subject to patent infringement claims in judicial districts where those data centers are located, the inquiry is fact-specific and based on the nature of the business, the specific contractual relationship with the data center, and the level of involvement by the business with the data center's operations.

In re Google does, however, provide some useful guideposts:

- Under the patent venue statute, 28 U.S.C. § 1400(b), it appears clear that an owner or operator of a physical data center will likely be subject to patent infringement claims in the judicial district where that data center is located. This is because a data center is a physical location with a purpose of the business—hosting data or providing computing power on servers—tied to the physical location itself.

- While data centers are obviously physical locations for purposes of patent venue under § 1400(b), so are the individual server machines within those data centers. This means that a business leasing one server machine within a data center could be subject to a patent infringement claim in the district where that data center is located.

- Something more than a comprehensive edge network or content delivery network (CDN) is necessary to subject a third party with a server in a data center to a patent infringement claim in that district. Critically, the Federal Circuit did not adopt the reasoning in *Seven Networks* that "logistical positioning" of servers in or near districts was a "core aspect of business strategy" sufficient to show the servers alone were a place "of business." The Federal Circuit reasoned that geographical location of servers was not sufficiently

connected to the "actual producing, storing, and furnishing to customers of what the business offers."[102]

- The specific terms of the agreement between a business and a data center is critical to understanding whether the business might be subject to patent infringement claims in the judicial district where the data center is located. While venue for patent actions will generally require an actual employee of the business in the district, this is not a bright line rule. *In re Google* makes clear that depending on the specific provisions of the agreement between the business and the data center and the specific nature of the business, employees or contractors at a data center could be considered as agents of the business—thereby subjecting the business to potential patent infringement claims.

- Frequency matters. One-time tasks such as initial server installation and setup—even if performed by data center employees or contractors in a manner "suggestive of an agency relationship" with the business—will not qualify as "regular" business activity if only performed once. The Federal Circuit has not provided further guidance on the frequency of tasks "suggestive of an agency relationship" that could trigger patent venue.

    - . . . But regular maintenance on a business's server within a data center by data center employees or contractors—even in a manner "suggestive of an agency relationship"—will not cause the server to be a "place" of the business if the business is using the server for purposes unrelated to mere maintenance of the servers themselves.

Today, where data centers are at the center of rapid expansion and innovation, these guideposts nevertheless leave many uncertainties with respect to exposure to patent infringement claims for the companies associated with a data center.

For example, businesses have begun to buy or construct their own data centers, even those whose "core" business is not the ownership of data centers.[103] These data centers will likely subject the owner to venue in the judicial districts where they are located. But what happens when a business leases not only individual servers within a data center, but also entire rooms or floors? Will ownership beyond mere server machines in a data center be enough to satisfy § 1400(b)?

For businesses who specialize in complex stock market trades where network latency is important and millisecond delays in trade execution could cause financial losses, does the geographical location of the data center take on more importance? For companies seeking to develop and run their own large language and generative artificial intelligence models, server requirements and data center control are likely heightened from servers that, for example, only cache or provide content to an edge network. Will the agreements between these businesses and the data centers rise to an agency relationship for purposes of § 1400(b)?

As the Supreme Court recounted in *Heartland*, the patent venue statue in effect today was enacted in 1897, recodified in 1948, and remains "unaltered today."[104] The drafters of this statute could not have contemplated the complex relationships between companies that arise from data centers or how these relationships can affect a parties' risk exposure to patent infringement claims brought in districts where those data centers are located. As data centers increase in importance and complexity, it is very well possible that the legal framework set forth in a decades-old statute will not keep up with this dynamic environment.

But for now, companies contracting with data centers will need to be mindful of § 1400(b)'s requirements and the fact-intensive inquiry necessary to determine whether venue is proper for patent infringement claims. As the Federal Circuit observed in *In re Google*: "If there is dissatisfaction with the resolution we reach, '[t]he remedy for any dissatisfaction with the results in particular cases lies with Congress and not with [the courts]. Congress may amend the statute; we may not.'"[105]

Notes

1. https://www.ft.com/content/908dc05b-5fcd-456a-88a3-eba1f77d3ffd.
2. https://missouripartnership.com/meta-data-center-opens-represents-1b-investment-in-missouri/.
3. https://www.ft.com/content/00261ab8-64d8-43a4-99d9-35a2017dbe2b.
4. https://www.ft.com/content/23eb77a9-8b80-42ac-aab3-d4ee7e512fad.

5. https://www.reuters.com/legal/transactional/great-ai-buildout-shows-no-sign-slowing-2025-10-31/.
6. In re Google LLC, 949 F.3d 1338 (Fed. Cir. 2020).
7. TC Heartland LLC v. Kraft Foods Grp. Brands LLC, 581 U.S. 258 (2017).
8. § 1391(b) provides,

> Venue in General.—A civil action may be brought in—
> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

§ 1400(b) provides,

> Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

9. Heartland, 581 U.S. at 266.
10. Peerless Network, Inc. v. Blitz Telecom Consulting, LLC, No. 17-cv-1725 (JPO), 2018 WL 1478047, at *2 (S.D.N.Y. Mar. 26, 2018) (citing Schnell v. Peter Eckrich & Sons, Inc., 365 U.S. 260, 262 (1961)).
11. Id. at 264 (quoting Olberding v. Illinois Cent. R. Co., 346 U.S. 338, 340 (1953)).
12. In re Cray Inc., 871 F.3d 1355 (Fed. Cir. 2017).
13. Id. at 1362.
14. Id. at 1363.
15. Id. at 1364.
16. Id. at 1363.
17. Id.
18. Id.
19. Personal Audio, LLC v. Google, LLC, 280 F. Supp. 3d 922 (E.D. Tex. 2017).
20. Id.
21. Id.
22. Id.
23. Id. ("Personal Audio contends that the business of Google is carried out from the servers. But the GGC servers are hosted by separate third-party ISPs.").
24. Id.
25. Id. at 935.
26. Id.
27. Peerless Network, Inc. v. Blitz Telecom Consulting, LLC, No. 17-cv-1725, 2018 WL 1478047 (S.D.N.Y. Mar. 26, 2018).
28. Id. at *3.
29. Id. at *2-3.
30. Id. at *2.
31. Id. at *3-4.
32. Id. at *4
33. Id.
34. Id.
35. Seven Networks, LLC v. Google LLC, 315 F. Supp. 3d 933 (E.D. Tex. 2018).
36. Id. at 954.
37. Id. at 950.
38. Id.
39. Id. at 951 (emphasis original).
40. Id. at 952.
41. Id. at 948 (emphasis added).
42. Id. (emphasis added).
43. Id.
44. Id. at 949.
45. Id. at 952 (emphasis original).
46. Id. (emphasis original).
47. Id. (emphasis original).
48. Id. (emphasis original).
49. Id. at 953.
50. Id. (emphasis original).
51. Id. at 950.
52. Id. at 959-60.
53. Id. at 961.
54. Id. at 965.
55. Id. at 954 (citation omitted).
56. Id. at 956.
57. Id. at 949.
58. Id. at 956.
59. Id.
60. CUPP Cybersecurity LLC v. Symantec Corp., 2019 WL 1070869 (N.D. Tex. Jan. 16, 2019).
61. Id. at *2.
62. Id. at *3.
63. Id.
64. Id.
65. Id.
66. Id.
67. Id. at *3.
68. Id.
69. Super Interconnect Techs. LLC v. Google LLC, 2019 WL 3717683 (E.D. Tex. Aug. 7, 2019).
70. Id. at *2.
71. In re Google LLC, 914 F.3d 1377, 1380 (Fed. Cir. 2019) (Reyna, J., dissenting) (noting that "[A]t the time of filing of the petition for rehearing, Google had been sued

thirteen more times in the same district under the same venue theory since October 29, 2018, the date that we denied the petition for mandamus. That number now stands at thirty-four.") (emphasis original).
72. Id. at 1343.
73. Id. at 1345.
74. Id. at 1343-44 (emphasis added).
75. Id. at 1344.
76. Id.
77. Id. at 1345.
78. Id. at 1346.
79. Id.
80. Id.
81. Id. at 1345.
82. Id. at 1346.
83. Id.
84. Id.
85. Id. (emphasis added).
86. Id.
87. Id. at 1347.
88. Id.
89. Andra Grp., LP v. Victoria's Secret Stores, L.L.C., 6 F.4th 1283, 1288 (Fed. Cir. 2021).
90. In re Volkswagen Grp. of Am., Inc., 28 F.4th 1203, 1208 (Fed. Cir. 2022).
91. In re Volkswagen Grp. of Am., Inc., 28 F.4th 1203, 1208 (Fed. Cir. 2022) ("We hold that the dealerships located in the Western District do not constitute regular and established places of business of Volkswagen and Hyundai under § 1400(b) because Stratos has failed to carry its burden to show that the dealerships are agents of Volkswagen or Hyundai under a proper application of established agency law.")
92. Id. at 1211-12.
93. Mantissa Corp. v. Great Am. Bancorp, Inc., 446 F. Supp. 3d 398, 403 (C.D. Ill. 2020).
94. Zilkr Cloud Techs., LLC v. RingCentral, Inc., 2022 WL 1102863, at *2 (N.D. Tex. Apr. 12, 2022).
95. Id. at *5.
96. Id. at *6.
97. Mobility Workx LLC v. Amazon.com Servs. LLC., 24-cv-1060, 2025 WL 2345052, at *1 (E.D. Tex. Aug. 13, 2025).
98. Id.
99. Id. at *4.
100. Id.
101. Id.
102. In re Google, 949 F.3d at 1346. Also noteworthy, the baselines that the Federal Circuit drew in requiring both employee / agency presence and activities sufficiently connected to business operations is uncannily reminiscent of the discussion in Peerless Network.
103. For instance, see https://rpa.org/news/lab/the-rise-of-data-centers.
104. 581 U.S. at 265.
105. In re Google, 949 F.3d at 1347.