

# EXHIBIT 25

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

3G LICENSING, S.A., KONINKLIJKE :  
KPN N.V. and ORANGE S.A., :

Plaintiffs, :

v. :

Civil Action No. 17-83-LPS-CJB

HTC CORPORATION and HTC :  
AMERICA INC., :

Defendants. :

**MEMORANDUM ORDER**

Pending before the Court is Defendants HTC Corporation (“HTC Corp.”) and HTC America Inc.’s (“HTC America” and collectively with HTC Corp., “HTC” or “Defendants”) motion to dismiss (1) both Defendants for improper venue, or, in the alternative, to transfer venue to the Western District of Washington; and (2) HTC Corp. for lack of personal jurisdiction (D.I. 21). Having considered the parties’ motion briefing (D.I. 22, 28, 30) and letter briefing in response to the Court’s September 11, 2017 Oral Order (D.I. 43, 50, 51, 54, 55), and for the reasons stated below, IT IS HEREBY ORDERED that Defendants’ motion to dismiss (D.I. 21) is GRANTED-IN-PART and DENIED-IN-PART.

The Venue Defense Is Not Untimely

As an initial matter, Defendants’ venue challenge is not untimely. As the Court of Appeals for the Federal Circuit recently held, “[t]he Supreme Court changed the controlling law when it decided *TC Heartland*<sup>1</sup> in May 2017.” *In re Micron Tech., Inc.*, 875 F.3d 1091, 1099 (Fed. Cir. 2017). Therefore, “[t]he venue objection was not available until the Supreme Court

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<sup>1</sup>*TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017).

decided *TC Heartland* because, before then, it would have been improper, given controlling precedent, for the district court to dismiss or to transfer for lack of venue.” *Id.* at 1096.

#### HTC America is Not a Delaware Resident for Purposes of Patent Venue

Venue in a patent case for domestic corporations is governed exclusively by 28 U.S.C. § 1400(b), *TC Heartland*, 137 S. Ct. at 1516, which provides: “[a]ny 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.” For purposes of § 1400(b), a defendant which is a domestic corporation “resides” only in its state of incorporation. *See TC Heartland*, 137 S. Ct. at 1517. It is undisputed that HTC America – which is incorporated in Washington (D.I. 20 at ¶ 10) – does not “reside” in Delaware.

#### Venue is Not Proper in Delaware for HTC America Under the Second Prong of § 1400(b)

Venue is proper in this District unless HTC America can show that the second prong of § 1400(b) is not satisfied. *See Boston Scientific Corp. v. Cook Group Inc.*, \_\_ F. Supp.3d \_\_, 2017 WL 3996110, at \*4 (D. Del. Sept. 11, 2017) (holding that burden is on party opposing venue). With respect to the second prong’s requirement that a defendant have committed “acts of infringement” in the District, it is undisputed that HTC America has sold and offered for sale its allegedly infringing products in Delaware. (*See* D.I. 22 at 3-5; D.I. 28 at 11) Therefore, Delaware is a proper venue for this lawsuit unless HTC America can meet its burden to show it does not have a regular and established place of business in Delaware. If HTC America can show that that is true, then venue here is improper as to it, and the Court will have to dismiss or transfer this case (at least as to HTC America).

HTC America has met its burden – and, indeed, Plaintiffs no longer seriously dispute that Delaware is an improper venue as to HTC America. (See D.I. 50 at 2-3; D.I. 54 at 1) In HTC America’s sworn declaration, it indicates that it has no physical location or facility in Delaware, and it has no employees located in Delaware. (D.I. 22 Ex. A at ¶¶ 5-6) HTC America has shown that it does not have a regular and established place of business in this District. Thus, venue does not lie in Delaware for HTC America under the second prong of Section 1400(b).

HTC Corp. is a Foreign Defendant and May be Sued in Any Judicial District

HTC Corp. is a foreign defendant; specifically, it is a Taiwanese corporation with its principal place of business in Taoyuan, Taiwan. (D.I. 20 at ¶ 9) In *Brunette Mach. Works., Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 706-07 (1972), the Supreme Court held that when a foreign defendant is sued in a patent infringement action, the general venue provision, 28 U.S.C. § 1391, governs. Pursuant to § 1391, a foreign defendant may be sued in any judicial district. See 28 U.S.C. § 1391(c)(3).

Nevertheless, Defendants argue that “[f]or policy reasons” in light of the *TC Heartland* decision, the Court should find that venue is improper in this District as to HTC Corp. (D.I. 22 at 5-7; D.I. 55 at 1)<sup>2</sup> But the *TC Heartland* Court made clear that its holding did **not** address the applicability of Section 1400(b) to foreign defendants, and it explicitly stated that it did not

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<sup>2</sup>Defendants’ argument is essentially that *Brunette*’s holding “was unique to a situation where under the then existing statutory regime, no venue would have been proper.” (D.I. 51 at 2) (internal quotation marks and emphasis omitted) In Defendants’ view, due to statutory changes – as well as different circumstances, which here include that HTC America has a regular and established place of business in the State of Washington and “venue for HTC Corp. may be reasonably based on where venue is proper for HTC [America],” (D.I. 55 at 1) – *Brunette* cannot be dispositive here. The Court, however, understands *Brunette* to remain binding precedent, which determines the outcome here.

“express any opinion on” its holding in *Brunette*. 137 S. Ct. at 1520 n.2. Hence, *Brunette* remains good law, see, e.g., *Red.com, Inc. v. Jinni Tech. Ltd.*, 2017 WL 4877414, at \*7 (C.D. Cal. Oct. 11, 2017), and, accordingly, venue is proper in this District as to HTC Corp.

This Court May Exercise Personal Jurisdiction Over HTC Corp.

In addition to arguing that venue is improper as to both HTC America and HTC Corp., Defendants’ motion also seeks dismissal of HTC Corp. pursuant to Federal Rule of Civil Procedure 12(b)(2), based on lack of personal jurisdiction. (D.I. 22 at 7-9) The Court concludes that this portion of Defendants’ motion lacks merit.

This Court may exercise personal jurisdiction over a foreign defendant pursuant to the “dual jurisdiction” or “stream of commerce” theory, where there is a showing: (1) of an intent to serve the Delaware market; (2) this intent results in the introduction of the product into the market; and (3) plaintiff’s cause of action arises from injuries caused by that product. See *Graphics Props. Holdings, Inc. v. ASUS Comput. Int’l*, 70 F. Supp. 3d 654, 662 (D. Del. 2014); see also *Polar Electro Oy v. Suunto Oy*, 829 F.3d 1343, 1350 (Fed. Cir. 2016) (explaining that when defendant shipped numerous accused products to Delaware retailers, fully expecting that such products would thereafter be sold in Delaware, its actions were “purposefully directed to Delaware, indicating an intent and purpose to serve not only the U.S. market generally, but also the Delaware market specifically”).

The record here shows that these preconditions are satisfied. In its 2015 Annual Report, HTC Corp. stated it “maintains a presence in all key markets, including the United States” and its “products are distributed across . . . America[] . . . through major carriers and local retail channels.” (D.I. 29 Ex. 1 at 34, 145) HTC Corp. further noted that it released particular

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