



decisions both issued after Defendants' last brief, as filed on January 19, 2018.<sup>2</sup> See Dkt. No. 46.

In *Realtime Data*, the district court for the C.D. Cal. made the following findings, in view of the Supreme Court's recent decision in *TC-Heartland*, 137 S. Ct. 1514 (2017):

- The phrase ““for purposes of § 1400(b) a domestic corporation ‘resides’ only in its *State* of incorporation’ . . . contains a latent ambiguity.” Ex. A at 4-5 (emphasis original);
- “The statement that a corporation resides ‘only in its state of incorporation’ merely provides a *necessary* condition for venue, not a *sufficient* condition. While venue may *only* be proper within the state of incorporation, a patent case must *also* be brought in the judicial district containing a corporation’s principal place of business. Adopting this view brings *TC Heartland* into alignment not only with the Supreme Court’s pre-*Fourco* jurisprudence, but also with the express language of the statute that ‘[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides.” *Id.* at 5 (emphasis in original) (citing 28 U.S.C. § 1400(b)); and
- “For the foregoing reasons, the Court **STRIKES** [Plaintiff’s] Amended Complaint, **GRANTS** [Defendant’s] Motion and **TRANSFERS** the matter.” *Id.* at 6 (emphasis in original).

Additionally, in *West View*, the district court for the S.D. Cal. made the following findings, in view of the Federal Circuit’s decision in *In re Cray*, 871 F.3d 1355 (Fed. Cir. 2017):

- “Plaintiff zeroes in on the language in *Cray* that ‘[r]elevant considerations include whether the defendant owns or leases the place, or exercises other attributes of possession or control over the place.” Ex. B at 11 (emphasis in original);
- “Plaintiff argues that despite no physical BMWNA or BMWMC office, venue is proper because of the numerous sales people and dealerships in this District (1) which BMWNA controls, and (2) for which BMWMC is the sole manufacturer of the allegedly infringing product. As to BMWNA, Plaintiff argues that it exercises ‘near-complete control’ over the dealers in this District pursuant to strict contractual relationships with these dealers. . . . Plaintiff lists at least thirty examples of BMWNA's control in the operating agreement.” *Id.* (citations omitted);

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<sup>2</sup> Herein, Defendants provides notice of two cases, as they relate to pending briefing before the Court, including pertinent citations from the case, but without attorney arguments on the issues.

- “Plaintiff argues that BMWNA prominently advertises the BMW brand at the dealerships, which meets the *Cray* court’s consideration that “[m]arketing or advertisements also may be relevant, but only to the extent they indicate that the defendant itself holds out a place for its business.” *Id.* at 12 (citations omitted);
- “Plaintiff would have the Court find Defendants’ control over the dealership, evidenced by the operating agreement, to meet the third requirement. The Court disagrees. Plaintiff’s argument ignores the difference between separate and distinct corporate entities.” *Id.* at 12-13;
- “The Court finds no facts to support collapsing the corporate forms; the dealerships’ physical locations are not places of Defendants.” *Id.* at 16;
- “[T]he Court finds that [BMW corporate entities] do not own or control the dealerships or the employee’s home in the District for the purposes of the *In re Cray* test and 28 U.S.C. § 1400(b)(2). There are no physical locations carrying on a regular and established business that are owned, controlled or possessed by Defendants.” *Id.* at 17;
- “Plaintiff, who has the burden to prove venue, [ ] has not established that venue is proper in this District . . . For the reasons stated above, the Court GRANTS Defendants’ Motion to Transfer Venue . . .” *Id.* at 17-18 (citations omitted).

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Respectfully submitted,

/s/ Lionel M. Lavenue

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this February 14, 2018. All other counsel not deemed to have consented to service in such manner will be served via facsimile transmission and/or first class mail.

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