

*Offensive Venue: Exposing the Curiously Ineffective Use Of Declaratory Relief
To Forum Shop In Patent Litigation*

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Everyone in patent litigation is forum shopping. Given the clear differences in outcomes among the various federal districts, it would be irrational not to forum shop. Declaratory judgments, which allow accused infringers to preemptively select the forum and control the timing of the suit, were considered to be the best way for accused infringers to play the forum shopping game. This Article presents new evidence that declaratory judgments, when compared with transfer motions, are not an effective way for accused infringers to get their desired forum. This result is all the more surprising because of the general perception that transfer motions are difficult to win and rarely granted—another perception refuted by the data presented here. In actuality, declaratory judgments had lower Forum Success Rates than transfer motions even when variables such as timing of suit, party size and judicial district were considered. This paper explains the study, its methodology and results.