

TRAILBLAZERS

INTELLECTUAL PROPERTY

JAMES DABNEY

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PIONEER SPIRIT Jim Dabney began his career in competition law, then became interested in the relationship between competition and intellectual property law.

TRAILS BLAZED Dabney has argued four cases before the U.S. Supreme Court, including representing TC Heartland against Kraft. "I got involved in TC Heartland due to my earlier success representing KSR International before the Supreme Court in 2007." Fairly early on with TC Heartland, he saw that the Federal Circuit's treatment of patent venue was in deep tension with Supreme Court precedent. "I had raised these objections for years. In 2014, we took the view that venue was improper in the case whether or not the court could constitutionally exercise jurisdiction." He represented TC Heartland throughout the litigation. "I never got the memo that trial lawyers were not supposed to do appellate work. And TC Heartland stayed with trial counsel all the way to the Supreme Court, whereas Kraft did the conventional thing and engaged new counsel whose stock in trade is handling Supreme Court arguments. If lawyers aren't in the trenches, they don't have the experience in responding to Supreme Court questions rather than just making a point." The Supreme Court ruled unanimously for his client on May 22, reversing the Federal Circuit's ruling.

FUTURE EXPLORATIONS Following the TC Heartland ruling, more companies may consider convenient corporate governance rules when incorporating. "Companies heavily involved in IP may reincorporate in states that are better for them. Also, the abusive litigation opportunities have been very substantially diminished."

