

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

In re: DECA INTERNATIONAL CORP.,
Petitioner

2017-136

On Petition for Writ of Mandamus to the United States District Court for the Southern District of Mississippi in No. 3:10-cv-708-TSL-RHW, Senior Judge Tom S. Lee.

ON PETITION

Before TARANTO, CHEN, and HUGHES, *Circuit Judges*.
TARANTO, *Circuit Judge*.

O R D E R

DECA International Corp. petitions for a writ of mandamus that would direct the United States District Court for the Southern District of Mississippi to dismiss the case for improper venue. Specifically, DECA argues that the district court clearly abused its discretion in determining that its venue defense had been waived and that the Supreme Court's decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017), did not

constitute an intervening change of law. SkyHawke Technologies, LLC, opposes.

We recently held that the Supreme Court's decision in *TC Heartland* effected a relevant change of law and, more particularly, that failure to present the venue objection earlier did not come within the waiver rule of Federal Rule of Civil Procedure 12(g)(2) and (h)(1)(A). *In re Micron*, No. 17-138 (Fed. Cir. Nov. 15, 2017). In light of that decision, we deem it the proper course here for DECA to first move the district court for reconsideration of its order denying the motion to dismiss. We therefore deny the petition for a writ of mandamus. Any new petition for mandamus from the district court's ruling on reconsideration will be considered on its own merits.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court