

NOTE: This order is nonprecedential.

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

In re: YAHOO HOLDINGS INC.,
Petitioner

2018-103

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of New York in No. 1:16-cv-01557-ILG-SMG, Judge I. Leo Glasser.

ON PETITION

Before PROST, *Chief Judge*, MOORE and O'MALLEY, *Circuit Judges*.

O'MALLEY, *Circuit Judge*.

ORDER

Yahoo Holdings, Inc. petitions for a writ of mandamus directing the United States District Court for the Eastern District of New York to dismiss this case for improper venue. Specifically, Yahoo argues that the district court clearly abused its discretion in determining that Yahoo's 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 in law. Respondents Al-

mondNet, Inc., Datonics, LLC, and Intent IQ, LLC oppose.

We recently held that the Supreme Court's decision in *TC Heartland* effected a relevant change in the 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). *In re Micron Tech., Inc.*, No. 17-138 (Fed. Cir. Nov. 15, 2017). In light of that decision, we deem it the proper course here for Yahoo 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