

NOTE: This order is nonprecedential.

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

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**In re: CARBONITE, INC.,**  
*Petitioner*

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2018-101

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On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in No. 6:17-cv-00121-RWS-JDL, Judge Robert Schroeder, III.

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**ON PETITION**

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

O'MALLEY, *Circuit Judge.*

**ORDER**

Carbonite, Inc. petitions for a writ of mandamus directing the United States District Court for the Eastern District of Texas to dismiss this case for improper venue or, alternatively, to address Carbonite's arguments that venue is improper. Specifically, Carbonite argues that the district court clearly abused its discretion in determining that Carbonite'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. Realtime Data LLC opposes.

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 Carbonite 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