

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
MEMPHIS DIVISION**

**B.E. TECHNOLOGY, L.L.C.,**

**Plaintiff,**

**v.**

**BARNES & NOBLE, INC.,**

**Defendant.**

Case No. 2:12-cv-02823-JPM-tmp

JURY TRIAL REQUESTED

**DEFENDANT BARNES & NOBLE, INC.'S MOTION TO STAY PENDING RESOLUTION  
OF ITS MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)**

Defendant Barnes & Noble, Inc. ("Barnes & Noble") respectfully moves the Court to stay all proceedings in this case, including Local Patent Rule disclosures and fact discovery, pending resolution of Barnes & Noble's motion to transfer. The Federal Circuit has indicated that a timely-filed motion to transfer a patent case under § 1404(a) should be decided before proceeding to the merits of an action, and that it is appropriate to stay litigation pending resolution of a transfer motion. *In re Fusion-IO, Inc.*, No. 12-139, 2012 WL 6634939 (Fed. Cir. Dec. 21, 2012) (non-precedential). The grounds for this Motion are fully set forth in the attached Memorandum. As set forth in the Certificate of Consultation below, Plaintiff has advised that while it cannot consent to this motion, it will not actively oppose it.

Respectfully submitted,

s/ Mark Vorder-Bruegge, Jr.  
Mark Vorder-Bruegge, Jr. (#06389)  
WYATT, TARRANT & COMBS, LLP  
1715 Aaron Brenner Drive, Suite 800  
Memphis, TN 38120-4367  
Phone: 901.537.1010  
Facsimile: 901.537.1010  
mvorder-bruegge@wyattfirm.com

### CERTIFICATE OF CONSULTATION

The undersigned attorney hereby certifies that prior to the filing of the foregoing motion, substantive consultation was held between the undersigned and Richard Carter, counsel for plaintiff B.E. Technology, over multiple days culminating in a telephone discussion on February 7, 2013. At that time, B.E. Technology indicated that it would continue to oppose stay motions of the foregoing type in this and related cases. On the next afternoon, the Court granted several virtually identical motions for stay in related cases, and the undersigned re-contacted Mr. Carter to determine whether plaintiff would reconsider. At 3:16 p.m. on February 11, Mr. Carter advised that in light of the Court's rulings on the other stay motions, plaintiff cannot consent to, but "will not actively oppose" this stay motion.

/s/ Mark Vorder-Bruegge, Jr.  
Mark Vorder-Bruegge, Jr.

### CERTIFICATE OF SERVICE

The foregoing document was filed under the Court's CM/ECF system, automatically effecting service on counsel of record for all other parties who have appeared in this action on the date of such service.

/s/ Mark Vorder-Bruegge, Jr.  
Mark Vorder-Bruegge, Jr.

60325165.1