

Exhibit 1

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Slip Copy, 2012 WL 6634939 (C.A.Fed. (Tex.))
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Only the Westlaw citation is currently available. This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Federal Circuit Rule 32.1 and Federal Circuit Local Rule 32.1. (Find CTAF Rule 32.1)

United States Court of Appeals,
 Federal Circuit.
 In re FUSION-IO, INC., Petitioner.

Misc. No. 139.
 Dec. 21, 2012.

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in case no. 11-CV-0391, Rodney Gilstrap, Judge.

Before NEWMAN, PROST and WALLACH, Circuit Judges.

**ORDER
 ON PETITION**

WALLACH, Circuit Judge.

*1 Fusion-IO, Inc. seeks a petition for a writ of mandamus directing the United States District Court for the Eastern District of Texas to transfer to the United States District Court for the District of Utah. Solid State Storage Solutions, Inc. opposes the petition.

This petition arises out of a complaint brought by Solid State Storage in the Eastern District of Texas, charging Fusion-IO and eight other defendants with patent infringement. Fusion-IO moved to sever the infringement claims against it and transfer those claims to the District of Utah pursuant to 28 U.S.C. § 1404(a). On September 17, 2012, the Eastern District of Texas granted the motion insofar as severing the claims against Fusion-IO, consolidated the action against Fusion-IO with the originally-filed case for

purposes of pre-trial proceedings, and denied Fusion-IO's motion to transfer without prejudice to re-filing the same motion in the first-filed case.

Fusion-IO moved for reconsideration, but that motion was denied again without addressing the merits of the motion for transfer. The court explained that its September 17, 2012 order was administrative in nature and that it will address each motion to transfer venue, including Fusion-IO's motion, in a timely manner.

Fusion-IO now seeks from us a writ of mandamus directing the district court to transfer the case to the District of Utah. To warrant that relief, Fusion-IO must show (1) that it has no other adequate alternative means to attain the desired relief and (2) a "clear and indisputable" right to relief. Cheney v. U.S. Dist. Court, 542 U.S. 367, 380-81, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004).

Fusion-IO's petition asks us, in effect, to bypass the district court's weighing of the facts and considerations relevant to its transfer motion, which we decline to do. We fully expect, however, for Fusion-IO to promptly request transfer in the lead case along with a motion to stay proceedings pending disposition of the transfer motion, and for the district court to act on those motions before proceeding to any motion on the merits of the action. See In re Horseshoe Entm't, 337 F.3d 429, 433 (5th Cir.2003) ("As indicated earlier, Horseshoe filed its motion to transfer timely and before it filed its answer and in our view disposition of that motion should have taken a top priority in the handling of this case[.]"); McDonnell Douglas Corp. v. Polin, 429 F.2d 30, 30-31 (3d Cir.1970) ("[I]t is not proper to postpone consideration of the application for transfer under § 1404(a) until discovery on the merits is completed, since it is irrelevant to the determination of the preliminary question of transfer.").

Accordingly,

IT IS ORDERED THAT:

The petition for a writ of mandamus is denied.

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