

Following the January 20, 2011 hearing on Vertical's motion to dismiss or transfer, Judge Seeborg issued an order denying Vertical's motion to transfer the First Filed Action following an extensive analysis of the appropriate legal standards. Judge Seeborg's Order considered the first-to-file doctrine along with "the convenience and availability of witnesses, or absence of jurisdiction over all necessary or desirable parties, or the possibility of consolidation with related litigation, or considerations relating to the real party in interest." (Docket Number 22, Order, p. 4-5 citing, *Elec. For Imaging v. Coyle*, 394 F.3d 1341, 1348 (Fed. Cir. 2005)). Interwoven filed a Request for Judicial Notice on January 27, 2011 informing the Court of Judge Seeborg's Order (Docket Number 22).

Unfortunately, despite Judge Seeborg's Order maintaining the parties' patent dispute in the Northern District of California, Vertical continues to prosecute this action here. Interwoven's counsel requested that Vertical voluntarily dismiss its suit here since its duplicative of the First Filed Action. Vertical's counsel refused. In the First Filed Action, the parties have engaged in a meet and confer regarding case scheduling in advance of the upcoming case management hearing scheduled for March 24, 2011. In view of the foregoing, Interwoven respectfully requests that this Court stay, dismiss, or transfer this case to the Northern District of California.

Dated: February 7, 2011

Respectfully submitted,

By: /s/ Bijal V. Vakil
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 7th day of February 2011. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ Bijal V. Vakil
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