EXHIBIT A

No.___-____

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

IN RE VERTICAL COMPUTER SYSTEMS, INC.,
Petitioner,

On Petition for a Writ of Mandamus to the United States District Court for the Northern District of California in Case No. 10-cv-4645-RS (Hon. Richard Seeborg)

BRIEF OF PETITIONER VERTICAL COMPUTER SYSTEMS, INC.

Vasilios D. Dossas
NIRO, HALLER & NIRO
181 West Madison, Suite 4600
Chicago, Illinois 60602-4515
Phone: (312) 236-0733
Facsimile: (312) 236-3137

Attorneys for Petitioner,
Vertical Computer Systems, Inc

May 11, 2011

CERTIFICATE OF INTEREST

Counsel for Vertical Computer Systems, Inc., Vasilios D. Dossas, certifies the following:

1. The full name of every party or amicus represented by me is: Vertical Computer Systems, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: Vertical Computer Systems, Inc.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are: Vertical Computer Systems, Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this Court are:

Vasilios D. Dossas
NIRO, HALLER & NIRO

Mark V. Isola
REHON & ROBERTS, APC

Bo Davis
THE DAVIS FIRM, PC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF RELATED CASES

No other appeals from the same civil action have previously been filed before this or any other appellate court. The following cases will be directly affected by the Court's decision in this action: *Interwoven, Inc. v. Vertical Computer Systems, Inc.*, Case No. 10-cv-4645-RS (N.D. Cal.) (the transferor case), and *Vertical Computer Systems, Inc. v. Interwoven, Inc., et al.*, No. 2:10-cv-00490-TJW (E.D. Tex.) (the transferee case).

STATEMENT OF RELIEF SOUGHT

Pursuant to Federal Rule of Appellate Procedure 21 and Federal Circuit Rule 21, Petitioner Vertical Computer Systems, Inc. ("Vertical") respectfully requests that the Court grant this petition for a writ of mandamus, vacate that portion of the May 2, 2011 Order of the District Court for the Northern District of California Denying Vertical's Renewed Motion To Transfer (A001-A009)[1] this case to the District Court for the Eastern District of Texas, and remand with appropriate instructions to facilitate the administrative transfer of the case to the Eastern District of Texas.

STATEMENT OF JURISDICTION

The Federal Circuit has jurisdiction over this petition for a writ of mandamus because the underlying action is a patent case. 28 U.S.C. § 1295; *In re Pinco Corp.*, 478 F.3d 1345, 1351 (Fed. Cir. 2007) ("[O]ur jurisdiction over writs of mandamus in patent cases is exclusive.").

---

[1] All cites identified as A____ refer to the specific pages contained in the exhibits attached to this Petition.

ISSUE PRESENTED

Did the District Court for the Northern District of California clearly abuse its discretion by refusing to transfer this declaratory judgment action to the Eastern District of Texas and by basing its refusal on the first-to-file rule:

(1) when the Plaintiff-Respondent Interwoven, Inc. ("Interwoven") clearly engaged in an anticipatory filing;

(2) when a parallel action involving the same two patents-in-suit remains pending in the Eastern District of Texas;

(3) when one group of the defendants in the Texas case filed a second declaratory judgment action in the Northern District of California, the district court declared that second declaratory judgment action related to the present action, and then transferred it back to the Eastern District of Texas;

(4) when another group of defendants in the Texas case (the LG defendants) are content to stay in Texas and litigate there; and

(5) when Plaintiff-Respondent Interwoven filed a wholly defective initial complaint which further proves that Interwoven's initial filing was anticipatory and merely a "place-setter."

SUMMARY OF ARGUMENT

In rejecting Vertical's motion to transfer the present declaratory judgment to the Eastern District of Texas where parallel litigation remains pending and involves the same two patents-in-suit, the District Court for the Northern District of California held that:

(1) the present action was the first filed (May 2, 2011 Order, page 5);

(2) that the convenience factors "essentially were in balance" (page 5);

(3) that neither the California district court nor its counterpart in Texas is better equipped to proceed (page 5)

(4) that "no persuasive evidence" suggests that Interwoven's declaratory judgment suit was improperly anticipatory (page 5);

(5) that judicial economy is not any more important than any other factor (page 6, n. 2).

(6) that the products of Interwoven and those of the other Texas defendants are "separate and distinct" (page 7); and

(7) that Interwoven's defective complaint does not support a finding that its filing was improperly anticipatory.

The district court committed clear error and thus clearly abused its discretion in every one of these findings, with some more than with others. First, although as between Vertical and Interwoven, Interwoven filed the present declaratory

judgment action first, Vertical had initiated litigation against Microsoft, Inc. in Texas before putting Interwoven under notice of its infringement. The Texas court reviewed claim construction briefing and facilitated settlement before the claim construction hearing. Accordingly, Interwoven was not the first to file and should not prevail on that rule.

Second, Vertical supported its convenience analysis with evidence, including declarations of a witness. Interwoven merely offered attorney argument without identifying any witness and any documents for the court. The district court's conclusion that the convenience in proceeding in Texas is essentially equal to that in proceeding in California has no support in the record.

Third, the district court has not reviewed any of the patents-in-suit and it has not reviewed any of the defendants' accused products. Although the Texas court has not done much more than that described above, it clearly has progressed somewhat further than the California court.

Fourth, the record shows clearly and convincingly that Interwoven's filing was improperly anticipatory, especially when put in the context of this Court's prior decisions involving improper anticipatory filings. (See *Serco Services Co. v. Kelley Co.*, 51 F.3d 1037 (Fed. Cir. 1995) and *Aliphcom v. Wi-LAN, Inc.*, 2010 WL 4699844 (N.D. Cal. Nov. 10, 2010.) The evidence submitted by Vertical showing that Interwoven misled Vertical into believing that it would continue to engage in

settlement discussions so that it could surreptitiously file the present action is enough to support such a conclusion, especially when that evidence remains uncontroverted by Interwoven. Interwoven's statements regarding what it believes to be the Texas court's bias towards plaintiffs reveals Interwoven's intent. This evidence also remains uncontroverted. Additionally, the wholly defective initial filing by Interwoven, at the very least, supports a conclusion that Interwoven's filing was improperly anticipatory – a mere place setter.

Fifth, the district court erred in its conclusion that judicial economy is not any more important than any other convenience factor. This conclusion is wrong legally. Judicial economy is indeed more important. Also, as a practical matter, a reasonable person cannot conclude that the location of documents that one can convert to electronic form and transmit around the world in a matter of seconds is just as important as two different courts working on the same subject matter and risking conflicting results. Clearly, these two factors do not deserve the same weight. And, the district court clearly abused its discretion by giving such factors equal weight.

Finally, the district court did not review the patents-in-suit and it definitely did not inspect the accused products. Its conclusion that the products of the defendants are "separate and distinct" finds absolutely no support in the record. It is erroneous. Therefore, for the reasons outlined above and more fully examined

below, Vertical respectfully requests that this Court vacate the May 2, 2011 Order and instruct the district court to transfer this action to the Eastern District of Texas.

STATEMENT OF FACTS

Vertical is a publicly held corporation that develops and sells software products. It owns U.S. Patent Nos. 6,826,744 ("the '744 patent," A010-A017) and 7,716,629 ("the '629 patent," A018-A026). It has its principal place of business in the Eastern District of Texas at 101 W. Renner Road, Richardson, Texas 75082. Plaintiff-Respondent Interwoven is a Delaware corporation and a direct competitor of Vertical. It recently became a wholly-owned subsidiary of Autonomy ("Autonomy"), a European software company based in Cambridge, England.

Vertical began enforcement of its '744 patent in its home district, the Eastern District of Texas. On April 18, 2007, Vertical brought an action against Microsoft Corp., alleging infringement of the '744 patent. (*Vertical Computer Systems, Inc. v. Microsoft Corporation*, Case No. 2:07-cv-00144 (E.D. Texas).) The parties in that action fully briefed claim construction, and with the help of the Court entered into a settlement agreement and terminated the lawsuit. Vertical then gave notice to Interwoven, alleging that the '744 patent, the same patent involved in the Microsoft action, covered one of Interwoven's products. (A027-A028).

Representatives of Vertical and Interwoven met in San Jose, California on March 5, 2009 to discuss Vertical's claims. The parties had agreed to amicably resolve their differences. At that meeting, Interwoven's representatives made a detailed presentation. Interwoven did not, however, disclose its TeamSite 2006 product, which ultimately became the accused product, or how it functions. Its representatives deflected the entire presentation and subsequent discussion to unrelated products from the 1990s. (A029-A036).

Two days later, on March 17, 2009, Autonomy acquired Interwoven, and made it its wholly-owned subsidiary. (A037-A042). Vertical continued its investigation of Interwoven's products and discovered evidence that helped it identify the TeamSite 2006 product and allowed Vertical to conclude that the TeamSite 2006 product infringes the '744 patent. By this time, a continuation of the '744 patent application issued into the '629 patent. Vertical further concluded that the TeamSite 2006 product also infringes the '629 patent.

On August 12, 2010, Vertical renewed the settlement discussions with Interwoven. It sent correspondence to Interwoven counsel including claim charts for the TeamSite 2006 product. (A043-A044). In that correspondence, Vertical asked for a response by September 15, 2010. Autonomy's general counsel, Mr. Joel Scott, responded before the deadline and stated that he wanted to discuss the matter further and asked for an extension to October 15, 2010, so that the parties

may attempt to settle Vertical's claim. In fact, Scott labeled a confirming email "Privileged-For Settlement Purposes Only, Fed.R.Evid. 408, Cal. Evid. Code § 1152." (A045).

Interwoven did not intend to continue settlement discussions. It intentionally misled Vertical into believing that it did. Rather, it brought the present declaratory judgment action in the Northern District of California on October 14, 2010, the day before the end of its extension. *Interwoven, Inc. v. Vertical Computer Systems, Inc.*, Case No. 10-cv-4645-RS (N.D. Cal.) Interwoven's declaratory judgment complaint is so defective that it does not identify a single claim or product, even though Interwoven had Vertical's claim charts; it does not identify a single invalidity section of the Patent Statute; and it does not provide a single factual allegation for inequitable conduct. The complaint simply states for both the '744 patent and the '629 patent that "[n]o valid, and enforceable, claim of [Patent Number] is infringed by the Plaintiff." (A046-A050).

Interwoven chose to delay service of its complaint on Vertical. In fact, it did not even inform Vertical of the lawsuit until over a month later.

Vertical filed its action in the Eastern District of Texas on November 15, 2010 against Interwoven, two Samsung companies and two LG companies, alleging infringement of the '744 and '629 patents. (*Vertical Computer Systems,*

Inc. v. Interwoven, Inc., et al., Case No. 2:10-CV-00490 (E.D. Tex. Nov. 15, 2010.) Two days later, Interwoven served its California complaint on Vertical.

On December 7, 2010, Vertical filed a motion in the present case asking the Northern District of California to dismiss the California action or transfer it to Texas. Interwoven opposed this motion and filed a separate motion for injunctive relief, seeking to stop Vertical from pursuing the litigation in Texas. On page 2 of the memorandum that Interwoven filed in support of its motion to enjoin Vertical, Interwoven makes a revealing argument. It states that the Eastern District of Texas is "more favorable to patent holders" and by implication suggests that the Northern District of California is more favorable to accused infringers. (A051-A059). This argument and suggestion are not only improper, but, they most certainly confirm Interwoven's intent to affect an improper anticipatory filing. The district court heard both motions on the same day (January 20, 2011 and on January 24, 2011) and it denied both motions in an Order dated January 24, 2011). (A060-A066).

Prior to the district court's decision on Vertical's and Interwoven's motions, Samsung, one of the other defendants in the Texas action, filed its own declaratory judgment action in the Northern District of California (*Samsung Electronics Co., Ltd., et al. v. Vertical Computer Systems, Inc.*, Case No. 3:11-cv-00189 (N.D. Cal. January 12, 2011).) It moved to have its case declared "related" to the present action. (It also moved in the Texas case to transfer or dismiss, as Interwoven did

beforehand). Vertical opposed and argued that Samsung's filing was improper and that the Interwoven and Samsung accused products are different. (A067-A068). The district court disagreed with Vertical's argument and granted the motion to relate the two cases. (A069).

Vertical then moved to dismiss or transfer the Samsung case back to Texas and filed a renewed motion to dismiss and transfer the Interwoven case. The district court took both of Vertical's motions under submission without oral argument. In its May 2, 2011 Order [Dkt. 54, A001-A009], the district court reversed its position on relatedness and used Vertical's arguments regarding differences in accused products to justify keeping Interwoven in the Northern District of California, sending the Samsung case back to Texas, and allowing two parallel cases involving the same two patents to proceed in two different district courts.

The Northern District of California in its January 24, 2011 Order [Dkt. 35, A060-A066] and in its May 2, 2011 Order [Dkt. 54, A001-A009] maintains that the factors of convenience are equal between Texas and California for Interwoven and Vertical. But, Interwoven did not submit a single shred of evidence as to the identities of its witnesses, their location, or the location of the Interwoven documents. It merely offered attorney argument. In contrast, Vertical submitted declarations showing that it and all its witnesses reside in Texas, that it designs and

produces its products in Texas, that the inventor resides in Texas, and that it stores its documents in Texas. (A029-A036).

In reaching its conclusion, the district court did not review the two patents-in-suit; and it did not review any product of any of the parties. Thus, any conclusion by the district court with respect to the patents and products is unsupported.

In response to the Northern District's May 2, 2011 Order, on May 10, 2011, the Eastern District of Texas, "in the interest of comity and the orderly administration of justice" severed Vertical's claim against Interwoven in Texas and transferred it to the Northern District of California. (A070-A076). It denied Samsung's motion to transfer to the Northern District of California for the same reasons, adopting the Northern District's findings.

MANDAMUS STANDARD

In the Ninth Circuit, mandamus is an appropriate vehicle to review an erroneous transfer decision because "the prejudice that results from an erroneous transfer order is of a type not correctable on appeal." *Sunshine Beauty Supplies, Inc. v. U.S. Dist. Ct.*, 872 F.2d 310, 311 (9th Cir. 1989); *see also Pac. Car & Foundry Co. v. Pence*, 403 F.2d 949, 952 (9th Cir. 1968) ("To require litigants to await final judgment for relief serves to defeat the very purpose of the venue rule

by requiring them to submit to the disadvantages from which the rule is designed to relieve them.") Mandamus will issue to correct a "clearly erroneous transfer order." (*Commercial Lighting Prods., Inc. v. U.S. Dist. Ct.*, 537 F.2d 1078, 1079 (9th Cir. 1976); *see also Pac. Car*, 403 F.2d at 952.)

REASONS WHY THE WRIT SHOULD ISSUE

In *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960), the United States Supreme Court held that:

> To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that §1404(a) was designed to prevent. Moreover, such a situation is conducive to a race of diligence among litigants for a trial in the District Court each prefers.

That is exactly what the district court has accomplished. It has sent a related case involving the same issues back to Texas to proceed simultaneously with the case that it kept. The district court has guaranteed inconsistent rulings on claim construction and other issues, and it has guaranteed the waste of time, energy and money. The district court has improperly subordinated judicial economy to the first-to-file rule which Interwoven surreptitiously established with a defective filing.

I. THE PRESENT ACTION IS AN ANTICIPATORY FILING, AND, THUS, THE DISTRICT COURT SHOULD NOT HAVE GIVEN IT PRIORITY

In a factually similar case, *Serco Services Co. v. Kelley Co.*, this Court held that dismissal of a first-filed declaratory judgment action in favor of a related case was proper. (51 F.3d 1037 (Fed. Cir. 1995).) Serco received a letter from Kelley alleging that Serco's product infringed the claims of Kelley's patent. (*Id.* at 1037-38.) Serco responded with a letter stating its non-infringement position. (*Id.* at 1038.) Kelley sent another letter to Serco several months later accusing Serco of infringement and stating that "unless you confirm to us by September 20, 1993 that Serco [will cease its infringing activities], Kelley will commence a law suit." (*Id.*) On September 17, 1993, Serco brought a declaratory judgment action against Kelley in the Northern District of Texas. (*Id.*) On September 20, 1993, Serco wrote back to Kelley, reiterating its non-infringement position. That same day, Kelley brought suit against Serco for patent infringement. (*Id.*)

The Texas district court granted Kelley's motion to dismiss, stating that the anticipatory nature of the declaratory judgment action, coupled with convenience factors, merited dismissal of the declaratory judgment action. Id. In affirming the judgment of the district court, this Court stated that (1) there is no absolute right to a declaratory judgment; (2) whether to dismiss or transfer a first-filed declaratory judgment action in favor of a later-filed infringement suit is left to the district

court's discretion; and (3) the district court's consideration of the convenience and availability of witnesses, the possibility of consolidation with related litigation, and the anticipatory nature of the declaratory judgment action supported dismissal of the declaratory judgment action. (*Id.* at 1038-40.)

Interwoven filed an anticipatory declaratory judgment action in a forum which it believes favors accused infringers. It did so in response to a notice letter that threatened litigation. And Interwoven, like *Serco*, ignored the possibility of consolidation of its declaratory judgment action with related litigation. Here, the possibility of consolidation of the Interwoven declaratory judgment action with related litigation in Texas is reality rather than a mere possibility. Also, Interwoven has only offered attorney arguments for the convenience of its witnesses and the location of its documents. It has not offered any evidence to establish any convenience. Vertical has made such submissions. Thus, the district court should not have applied the first-to-file rule, just as this Court did not apply the rule in *Serco*.

An accused infringer that surreptitiously files suit in the midst of negotiations with the patent holder is engaged in "procedural fencing," a well recognized and universally condemned litigation practice. In filing a declaratory judgment action, such an infringer purports to seek relief from the uncertainty of being accused of infringement without the ability to secure an adjudication of its

rights. In reality, however, the infringer has no need for declaratory relief in that context because the patent owner is actively enforcing its infringement claim. Thus, the infringer's true motive of securing its chosen forum is readily apparent.

The Courts of the Ninth Circuit typically refuse to hear such anticipatory suits because the purposes that the Declaratory Judgment Act was meant to serve would be undermined by a rule rewarding the choice of forum to an infringer that unilaterally abandons negotiations to race to the courthouse. (*Exxon Shipping Co. v. Airport Depot Diner*, 120 F.3d 166, 170 (9th Cir. Alaska 1997) (citing *H.J. Heinz Co. v. Owens*, 189 F.2d 505, 508 (9th Cir. 1951)) [The wholesome purposes of the declaratory act would be aborted by its use as an instrument of procedural fencing either to secure delay or to choose a forum.]; *see also*, *The Hartford Fire Ins. Co. v. McGhee*, 2010 U.S. Dist. LEXIS 52180 at *8 (N.D. Cal. May 27, 2010) [declining to exercise jurisdiction over a declaratory relief action because it would "encourage forum shopping, procedural fencing, and the 'race for res judicata.'"]; *Gerin v. Aegon USA, Inc.*, 2007 U.S. Dist. LEXIS 28049 at *19 (N.D. Cal. Apr. 3, 2007) [transferring case to "discourage forum-shopping and duplicative litigation]; *Callaway Golf Co.*, 2010 U.S. Dist. LEXIS 17906 at *9 [granting motion to transfer to "eliminate the race to the courthouse door in an attempt to preempt a later suit in another forum"].

On pages 6-7 of its May 2, 2011 Order, the district court labors to distinguish one of its own decisions in *Aliphcom v. Wi-LAN, Inc.*, 2010 WL 4699844 (N.D. Cal. Nov. 10, 2010). Aliphcom filed a declaratory judgment action against Wi-LAN, Inc., in the Northern District of California in May 2010, after receiving correspondence from Wi-LAN that alleged that Aliphcom's product practiced Wi-LAN's patents. Wi-LAN then filed suit against Aliphcom in the Eastern District of Texas in June 2010 and joined Aliphcom with other defendants. In the *Aliphcom* case, the district court disregarded the first-to-file rule and transferred the case to the Eastern District of Texas.

The district court in *Aliphcom* acknowledged the presence of multiple factors which might counsel against transfer, such as the locations of documents and witnesses and that Wi-LAN had admitted that it has no regular U.S. employees in Texas or elsewhere and no "robust" activities in Texas. But, the district court concluded that concerns of judicial efficiency and inconsistent judgments presented by allowing two cases with overlapping claims to proceed in two different federal courts outweighed the convenience elements. This Court, in a non-precedential opinion, refused to mandamus the district court to change this outcome.

Unlike *Aliphcom*, Vertical here has a strong presence in the Eastern District of Texas. Its facility there is its principal place of business where it develops and

sells its software products. Its witnesses reside there. It keeps its documents there. None of these factors was present in *Aliphcom*. The facts of the present case support transfer more clearly than in *Aliphcom* where the district court reached the correct conclusion.

Finally, the district court seeks to rationalize the two parallel actions that it ensured would proceed in two different districts first by arguing that the two suits are the same age, and second by arguing that the two suits involve different products. However, neither one of these two rationales addresses the problems of conflicting decisions by the two courts and the waste of judicial resources and the resources of the parties. Indeed, most cases involving related claims, involve different products.

II. JUDICIAL EFFICIENCY IS MORE IMPORTANT THAN THE FIRST-TO-FILE RULE AND THE VARIOUS CONVENIENCE ELEMENTS

In the context of a mandamus petition, this Court recently found substantial justification for maintaining an action in a forum on the ground of judicial economy when, inter alia, the forum includes co-pending litigation involving the same patent and underlying technology. In *In re Vistaprint*, 628 F.3d 1342, 1346 (Fed. Cir. 2010), this Court explained "that having the same ... judge handle this and the co-pending case involving the same patent would be more efficient than

requiring another magistrate or trial judge to start from scratch." (*Id.* at 1344.) The Court further held that:

> [E]ven if trying these two related cases before the same court may not involve the same defendants and accused products, it does not appear on its face erroneous to conclude that maintaining these two cases before the same court may be beneficial from the standpoint of judicial resources.

(*Id.*) The Texas district is where Vertical has sued all the parties. The case in Texas will proceed if the California district court keeps the Interwoven case. Thus, the result that this Court seeks to avoid – judicial inefficiencies, duplicative litigation and conflicting rulings – will prevail. The only way to avoid the outcome is transfer of the Interwoven action to Texas.

In *In re Google*, this Court once again emphasized the importance of judicial efficiency in keeping a group of defendants in the Eastern District of Texas. The Court denied a defendant's petition for writ of mandamus to move its case to California, instead finding that the defendant should remain in a case in Texas where the case in Texas included other defendants. (*In re Google Inc.*, 2011 U.S. App. LEXIS 4381 at *7 (Fed. Cir. Mar. 4, 2011).)

III. INTERWOVEN'S INITIAL COMPLAINT CANNOT INVOKE THE FIRST-TO-FILE RULE

As outlined above, Interwoven's initial declaratory judgment complaint was woefully defective. [Dkt. 1, A046-A050] Interwoven filed a greatly expanded Amended Complaint [Dkt. 43, A077-A091], thus admitting that its initial

complaint did not comply with the requirements of the Federal Rules of Civil Procedure. In fact, the only accomplishment of the initial complaint was to identify the parties and the two patents. This fact further supports the conclusion that Interwoven was engaging in forum shopping and further supports the discarding of the first-to-file rule in this case. Because Interwoven's original complaint was defective, it cannot be used as a "placeholder" under the first-to-file rule. Instead, Vertical's complaint filed in Texas controls, and therefore this action should proceed in Texas.

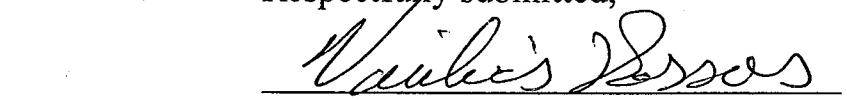
The district court found this further argument to be unpersuasive, citing *Intersearch Worldwide, Ltd. v. Intersearch Group, Inc.*, 544 F.Supp. 2d 949, 958 (N.D. Cal. 2008) for the proposition that the first-to-file date is "the date upon which the court acquires jurisdiction." (*Id.* at page 2.) But, the case cited by the district court does not involve a wholly defective complaint and a subsequent amended complaint that greatly expands every allegation. At the very least, the district court should have considered this as a factor on whether to transfer or retain the action. It erred by not doing so. It also erred by not considering as a factor Interwoven's delay in serving its complaint until after Vertical filed its complaint in Texas.

CONCLUSION

Vertical respectfully requests that the Court issue a writ of mandamus reversing that part of the May 2, 2011 Order of the Northern District of California that denies Vertical's request for a transfer to the Eastern District of Texas. Vertical further requests such other relief to which it may be entitled.

Date: May 11, 2011

Respectfully submitted,



Vasilios D. Dossas
NIRO, HALLER & NIRO
181 West Madison, Suite 4600
Chicago, Illinois 60602-4515
Phone: (312) 236-0733
Facsimile: (312) 236-3137

Attorneys for Petitioner,
Vertical Computer Systems, Inc.

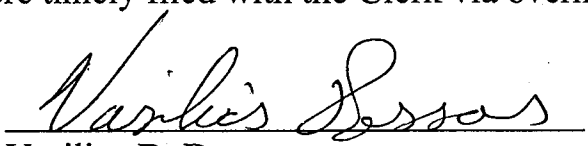
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 11, 2011 a true and correct copy of the foregoing **BRIEF OF PETITIONER VERTICAL COMPUTER SYSTEMS, INC.** was served upon the below-listed counsel and U.S. District Court Judge Richard Seeborg by Federal Express as follows:

Noah A. Brumfield
(nbrumfield@whitecase.com)
Shamita D. Etienne-Cummings
(setienne@whitecase.com)
Bijal V. Vakil
(bvakil@whitecase.com)
WHITE & CASE LLP
5 Palo Alto Square, 9th Floor
3000 El Camino Real
Palo Alto, CA 94306
Tel: (650) 213-0300
Fax: (650) 213-8158
Attorneys for Interwoven, Inc.

Hon. Richard Seeborg
U.S. District Court
Northern District of California
Courtroom 3
450 Golden Gate Avenue, 17th Floor
San Francisco, CA 94102

The undersigned further certifies that on May 11, 2011 an original and five (5) true and correct copies of the foregoing were timely filed with the Clerk via overnight courier (Federal Express).



Vasilios D. Dossas
NIRO, HALLER & NIRO
181 West Madison, Suite 4600
Chicago, Illinois 60602-4515
Phone: (312) 236-0733
Facsimile: (312) 236-3137
Attorneys for Vertical Computer Systems, Inc.