

NOTE: This order is nonprecedential.

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

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**IN RE KONAMI DIGITAL ENTERTAINMENT, INC.,**  
*Petitioner.*

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2015-114

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On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in No. 2:13-cv-00754-JRG, Judge J. Rodney Gilstrap.

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**ON PETITION**

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Before NEWMAN, DYK, and HUGHES, *Circuit Judges.*  
DYK, *Circuit Judge.*

**ORDER**

Konami Digital Entertainment, Inc. (“Konami”), the defendant in the underlying patent infringement suit, seeks a writ of mandamus directing the United States District Court for the Eastern District of Texas to vacate its order denying its motion to transfer venue to the United States District Court for the Northern District of California. Babbage Holdings, LLC, the plaintiff that brought the underlying action, opposes the petition.

Applying Fifth Circuit law in cases from district courts in that circuit, this court has granted mandamus to

correct denials of transfer. *See, e.g., Genentech Inc.*, 566 F.3d at 1347–48; *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008). But our review of the denial of transfer order is limited. The remedy of mandamus is available only in extraordinary situations to correct a clear abuse of discretion or usurpation of judicial power. *In re Calmar, Inc.*, 854 F.2d 461, 464 (Fed. Cir. 1988).

In denying transfer, the district court explained that “Konami’s entire Motion consist[ed] of one page with four paragraphs of argument,” and, by contrast, “Babbage . . . provide[d] twenty pages (not including exhibits) of response and analysis to the specific 28 U.S.C. § 1404(a) factors.” *Babbage Holdings, LLC v. Konami Digital Entm’t*, 2:13-cv-754-JRG, slip op. at 3 (E.D. Tex. Sept. 29, 2014). Moreover, while Konami referenced a different case involving Babbage Holdings that was transferred, it was pointed out to the court that Konami was not actually headquartered in the Northern District of California and did not identify its own witnesses or documents within the transferee district. *Id.*

The party seeking transfer bears the burden of proving that there is sufficient cause for transfer of venue. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008) (en banc); *cf. In re Apple Inc.*, 743 F.3d 1377, 1379 (Fed. Cir. 2014) (noting the relevance of the movant’s failed submission of sufficient evidence to suggest that transfer was appropriate). Given the nature of Konami’s transfer motion, we cannot say that it was a clear abuse of discretion for the district court to conclude that Konami did not meet its burden in this regard. We do not decide whether Konami should prevail on its transfer request on a more detailed showing.

Accordingly,

IT IS ORDERED THAT:

(1) The petition for a writ of mandamus is denied.

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- (2) All other pending motions are denied as moot.
- (3) Each party shall bear its own costs.
- (4) The stay of the district court proceedings is lifted.

FOR THE COURT

/s/ Daniel E. O'Toole  
Daniel E. O'Toole  
Clerk of Court

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