

No. 2026-140

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

IN RE CORE SCIENTIFIC, INC.,

Petitioner.

On Petition for a Writ of Mandamus to
the United States District Court for the Eastern District of Texas in
No. 2:25-CV-519-JRG-RSP, Hon. Rodney Gilstrap

**CORE SCIENTIFIC'S PETITION FOR REHEARING AND
REHEARING EN BANC**

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FORM 9. Certificate of Interest

Form 9 (p. 1)
March 2023

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 26-0140

Short Case Caption In re Core Scientific, Inc.

Filing Party/Entity Core Scientific, Inc.

Instructions:

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 07/13/2026

Signature: /s/ Matthew J. Dowd

Name: Matthew J. Dowd

FORM 9. Certificate of Interest

Form 9 (p. 2)
March 2023

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. ☒ None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. ☒ None/Not Applicable
Core Scientific, Inc.		

☐ Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
March 2023

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

☐ None/Not Applicable

☐ Additional pages attached

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5. Related Cases. Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

☒ Yes (file separate notice; see below)

☐ No

☐ N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

☒ None/Not Applicable

☐ Additional pages attached

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TABLE OF ABBREVIATIONS

Acronym/ Abbreviation	Description
Austin	The city of Austin, Texas, in WDTX, where Core's primary Texas campus is located
Core	Petitioner Core Scientific, Inc.
CoreWeave	Third-Party Defendant CoreWeave, Inc.
Denton	The city of Denton, Texas, in EDTX, where Core operates one of its accused facilities
EDTX	Eastern District of Texas
HPC	High Performance Computing
Malikie	Respondents Malikie Innovations Ltd. and Key Patent Innovations Ltd.
Op.	Order on Petition for a Writ of Mandamus, Dkt. No. 22 (June 29, 2026)
Order	Order, Dkt. No. 7 (Apr. 29, 2026)
Pecos	The city of Pecos, Texas, in WDTX, where Core operates one of its accused facilities
Pet.	Core Scientific's Petition for a Writ of Mandamus, Dkt. No. 2 (Apr. 28, 2026)
Reply	Core Scientific's Reply in Support of the Petition for a Writ of Mandamus, Dkt. No. 19 (May 29, 2026)
Resp.	Malikie's Opposition to Petition for a Writ of Mandamus, Dkt. No. 17 (May 20, 2026)
WDTX	Western District of Texas

STATEMENT OF RELATED CASES

Under Federal Circuit Rule 47.5, counsel for Petitioner state:

1. There are no, nor have there been any other, appeals in or from this same action or proceeding in the lower tribunal before this or any other appellate court.

2. This petition for a writ of mandamus challenges the district court's denial of a motion to transfer a patent-infringement suit brought by Malikie against Core. The venue motion sought transfer from EDTX to WDTX. No other appeal in or from this same proceeding was previously before this Court or another appellate court.

Malikie asserts U.S. Patent Nos. 8,788,827, 10,284,370, 8,666,062, 7,372,960, 8,532,286, and 8,712,039 in the underlying case. Malikie also asserted U.S. Patent Nos. 8,788,827, 10,284,370, 8,666,062, 7,372,960, and 8,532,286 (and an additional patent) in *Malikie Innovations Ltd. v. MARA Holdings, Inc. (f/k/a Marathon Digital Holdings, Inc.)*, No. 7:25-CV-222-DC-DTG (W.D. Tex. May 12, 2025). Malikie also asserted U.S. Patent Nos. 8,788,827, 8,666,062, 8,532,286, and 8,712,039 (and an additional two patents) in *Malikie Innovations Ltd. v. Foundry Digital LLC*, No. 7:25-CV-567-DC-DTG (W.D. Tex.).

Counsel for Core is not aware of any other case that could directly affect or be directly affected by the Court's decision in this matter.

**STATEMENT OF COUNSEL UNDER
FEDERAL CIRCUIT RULE 40(c)**

Based on my professional judgment, I believe this petition requires an answer to the following precedent-setting questions of exceptional importance:

1. Whether a party is precluded from addressing in its reply an issue raised by the Court and raised in the opposing response brief for the first time on appeal and for the first time in the case.

2. (A) Whether “[m]otions to transfer venue are to be decided based on the situation which existed when suit was instituted,” *In re EMC Corp.*, 501 F. App’x 973, 976 (Fed. Cir. 2013), *see also Hoffman v. Blaski*, 363 U.S. 335, 343 (1960); and are to be given “top priority,” *In re Horse-shoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003); *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020); or

(B) Whether motions to transfer must always consider a subsequent pleading, in view of *In re Samsung Electronics Co.*, 2 F.4th 1371 (Fed. Cir. 2021), even when the opposing party delayed filing the subsequent pleading in a manner that attempts to manipulate the venue analysis.

Based on my professional judgment, I believe the panel decision is contrary to the following decisions of the Supreme Court of the United

States or the precedents of this Court: *Clark v. Sweeney*, 146 S. Ct. 410, 412 (2025) (per curiam); *United States v. Sineneng-Smith*, 590 U.S. 371 (2020); *Greenlaw v. United States*, 554 U.S. 237 (2008); *Hoffman v. Blaski*, 363 U.S. 335 (1960); *Novosteel SA v. United States*, 284 F.3d 1261 (Fed. Cir. 2002); and *In re EMC Corp.*, 501 F. App'x 973 (Fed. Cir. 2013).

Date: July 13, 2026

By: /s/ Matthew J. Dowd
Matthew J. Dowd

REASONS FOR GRANTING THE PETITION

The petition presents two significant questions governing the transfer analysis.

The first is whether a petitioner can address, in its reply, an issue raised by this Court for the first time on appeal and never raised by the opposing party below. Neither the district court nor Malikie below asserted that the subsequent pleadings control the transfer analysis. Core had thus no obligation to raise in its petition an issue not presented to or considered by the district court. It was manifest error to conclude that Core “failed” to raise this issue and that Core’s reply could not address it once raised by the Court and Malikie.

The second question is whether “[m]otions to transfer venue are to be decided based on the situation which existed when suit was instituted.” *In re EMC Corp.*, 501 F. App’x 973, 976 (Fed. Cir. 2013) (quotation omitted). That analysis conforms to *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960), and aligns with the Fifth Circuit’s requirement that a transfer motion receive “top priority,” *In re Horseshoe Ent.*, 337 F.3d 429, 433 (5th Cir. 2003); *In re Apple Inc.*, 979 F.3d 1332, 1337 (Fed. Cir. 2020).

Here, the panel applied a different rule whereby a subsequent complaint always controls, citing *In re Samsung Electronics Co.*, 2 F.4th 1371 (Fed. Cir. 2021). The decision finds no support in *Samsung*, creates a rule allowing strategic pleading that manipulates the venue analysis, and overlooks the district court’s authority and discretion to decide the transfer motion based on the party-presented arguments and evidence.

SUMMARY OF PROCEEDINGS

I. Motion to Transfer

This patent case started in May 2025, when Malikie sued Core in EDTX for alleged infringement based on Core’s cryptomining activities. When Malikie filed suit, Core’s Texas cryptomining activities were exclusively in WDTX. Appx0311; Appx0493-0513. Five months before Malikie sued, Core completely ceased its EDTX cryptomining activities. Appx0311; Appx0496-0498. Core had announced in November 2024 that it was ending cryptomining activity in EDTX and transitioning to High Performance Computing (“HPC”). Appx0493-0495.

Because no accused activity was in EDTX—as well as a host of other factors establishing WDTX as the clearly more convenient forum—Core moved to transfer in July 2025. Appx0287-0305. WDTX was also the

location of Core's primary Texas campus in Austin, where the most knowledgeable witnesses work and live. Appx0310-0314. Core submitted an un rebutted declaration from its chief of staff Cline Kezar, who identified the most knowledgeable subject-matter witnesses. Appx0308-0314;Appx0890-0891. Additionally, all relevant physical evidence was in WDTX. Appx0313-0314.

Three months later, Malikie opposed the transfer motion after receiving comprehensive venue discovery. Appx0528-0548. Discovery confirmed that all EDTX cryptomining had ceased. Appx0750. Malikie's deposition of Kezar confirmed that the convenience of Core's most knowledgeable witnesses strongly favored WDTX. Appx0812-0830; Appx0885-0887. Notably, Malikie did not seek to amend the complaint before opposing the transfer motion. Appx0019-0021. Nor did Malikie argue for denial based on Core's EDTX HPC activities. Appx0528-0548.

Core's reply emphasized that the accused activity and knowledgeable witnesses were in WDTX. Appx0775-0784. Core submitted a second Kezar declaration detailing each potential Core witness identified by Malikie and confirming that all potential witnesses in EDTX did not have relevant knowledge. Appx0786-0791.

Only after the transfer motion was fully briefed did Malikie seek to amend its complaint. SAppx003-016. Malikie expanded its allegations for one patent, alleged infringement of a sixth patent, and introduced claims relating to Core's HPC activities, such as those occurring in Denton. SAppx018-090. In response to these new allegations related to HPC activities, on March 27, 2026, Core filed a third-party complaint against CoreWeave seeking indemnification. SAppx093-103; SSAppx0001-0017; SSAppx0258-00256; SSAppx0371-0378.

Malikie did not seek to file a sur-reply or otherwise introduce any argument that the amended complaint would affect the court's transfer-motion analysis. Appx0021-0024. Nor did Malikie seek additional discovery based on its belated amended complaint. *Id.*

On April 10, 2026, the district court issued its decision and denied transfer. Appx0001. It adopted the magistrate judge's March 25, 2026, Memorandum Order in doing so, which found that two factors weighed in favor of transfer, one factor weighed against transfer, the rest were neutral, yet denied the motion.

II. Mandamus Petition

Core then petitioned for a writ of mandamus, arguing that the decision was a clear abuse of discretion due to several legal and factual errors when assessing the *Volkswagen* factors. Pet.13-40. Core’s petition focused on the original complaint. The district court knew of the amended complaint but did not consider it, likely because the amendment came long after the transfer motion and because Malikie did not seek to rely on it.

In response to the petition, this Court instructed that “the response(s) and reply should address the relevance, if any, of the amended complaint . . . and the third-party complaint.” Order2. Malikie’s opposition to the petition relied primarily on the arguments it raised below but also added new arguments raised for the first time. It primarily argued that the district court’s analysis and weighing of the eight factors were correct. Resp.12-27.¹

Core’s reply addressed the arguments in Malikie’s response, including its new amended-complaint arguments. The subsequent pleadings

¹ Third-party CoreWeave did not respond and did not oppose Core’s mandamus petition.

“do not alter the analysis in this instance,” Core explained, because the district court initially analyzed the factors “as if ‘before’ Malikie filed its long-delayed amended complaint.” Reply1.

III. Panel Decision

The panel denied the petition, concluding that “Core’s entitlement to mandamus to direct transfer is anything but clear, at least because Core’s petition fails to address the amended and third-party complaints, both of which relate to Core’s ongoing activities in EDTX.” Op.2. The panel further ruled that Core’s argument about the amended complaint being Malikie’s “attempt to manipulate venue” was “not properly before this court” because it was “raised for the first time in a reply brief.” Op.3.

The decision did not analyze the transfer factors or address Core’s argument that the wrong legal standards were applied. Nor did the panel determine whether WDTX is clearly the more convenient forum. The panel acknowledged that “[t]he parties do not appear to have sought to supplement their transfer papers to address” the amended complaint and third-party complaint. Op.2. The panel also acknowledged that the district court “limit[ed] its analysis to bitcoin mining activities.” *Id.* Yet the

decision does not address the evidence that the district court considered in reaching its conclusion.

ARGUMENT

I. The Decision Wrongly Concludes that Core Improperly Raised a New Argument in Its Reply

The panel decision rests on manifest error when it concluded that Core’s responsive argument about Malikie’s “attempt to manipulate venue” was “not properly before this court.” Op.3. That conclusion is error for multiple reasons.

1. Core responded directly to the Court’s order, which instructed that the “reply should address the relevance, if any, of the amended complaint . . . and the third-party complaint.” Order2. Core’s reply did precisely that. Core detailed the multiple reasons why the amended complaint and third-party complaint were not relevant to the mandamus petition. Reply15-21. Core also explained why the only reasonable conclusion was that the district court decided not to consider the subsequent pleadings because of Malikie’s apparent gamesmanship. *Id.*

Given the Court’s order requesting the parties’ positions on this precise issue, it cannot be error for Core to have presented an argument that is directly responsive to the Court’s order. Nor can the argument be

“not properly before this court” when the argument is responsive to the Court’s order.

2. Core’s argument is directly responsive to Malikie’s new argument raised for the first time on appeal. As this Court explained, “reply briefs *reply* to arguments made in the response brief.” *Novosteel SA v. United States*, 284 F.3d 1261, 1274 (Fed. Cir. 2002). Reply briefs, by their basic nature, address arguments raised in response briefs.

This Court’s law aligns with standard appellate practice. *See, e.g., In re Gold Res. Corp. Sec. Litig.*, 776 F.3d 1103, 1119 (10th Cir. 2015); *United States v. Ramirez*, 557 F.3d 200, 203 (5th Cir. 2009) (“[W]hen a new issue is raised in the appellee’s brief and the appellant responds in his reply brief,” there is no concern of “disadvantaging the appellee.”); *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1093 n.3 (9th Cir. 2007).

3. Assuming that Malikie’s new argument on appeal might be an alternative ground for affirmance (even though not raised below), Core’s reply responded to this new argument. “When an appellee raises in its answer brief an alternative ground for affirmance, the appellant is entitled to respond in its reply brief.” *United States v. Brown*, 348 F.3d 1200,

1213 (10th Cir. 2003); *accord Innovation Ventures, LLC v. N.V.E., Inc.*, 694 F.3d 723, 729 (6th Cir. 2012); *Walker v. Exeter Region Co-op. Sch. Dist.*, 284 F.3d 42, 47 (1st Cir. 2002); *In re Wildman*, 859 F.2d 553, 555-56 n.4 (7th Cir. 1988).

To the extent the decision implies that Core had to anticipate all possible arguments that Malikie might raise, that would be a new rule in this Circuit, and it would conflict with accepted appellate practice. An appellant has no obligation to affirmatively address all possible alternative grounds for affirmance. *See, e.g., Warmenhoven v. NetApp, Inc.*, 13 F.4th 717, 729 (9th Cir. 2021) (“[The appellee] is thus wrong to suggest that an appellant must address all *possible* alternate grounds for affirmance—even those not ruled upon by the district court—in an opening brief.”); *Brown*, 348 F.3d at 1212-13 (same); *Walker*, 284 F.3d at 47 (same).

4. Neither of the cases cited by the panel supports the decision’s conclusion that Core failed to raise the argument in its petition. In *Norman v. United States*, 429 F.3d 1081, 1091 n.5 (Fed. Cir. 2005), the appellants’ reply was the first time they addressed an aspect of the trial court’s analysis. Moreover, the Court recognized that the new-argument-

in-the-reply-brief prohibition is “not governed by a rigid rule” and would not be applied “where circumstances indicate that it would result in basically unfair procedure.” *Id.* (quoting *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 800 (Fed. Cir. 1990)).

The same applies to the panel’s reliance on *In re TC Heartland LLC*, 821 F.3d 1338 (Fed. Cir. 2016), *rev’d on other grounds*, 581 U.S. 258 (2017). There, the petitioner not only raised a new argument for the first time in its reply but also raised an argument that was entirely new to the litigation. *Id.* at 1343 n.5. Worse, the petitioner “made a contradictory argument before the district court.” *Id.* Because of the petitioner’s “belated raising of this new argument,” the respondent “would not have expected to face such an argument.” *Id.* *TC Heartland* is nothing like Core’s reply that addresses Malikie’s new argument and is responsive to the Court’s order.

5. Because Malikie’s arguments were new, they ran headlong into forfeiture and waiver problems. Reply20-21. “[A]ppellate courts ordinarily should not consider alternative grounds that the appellee did not present in the lower court.” Jeffrey M. Anderson, *Right for Any Reason*, 44 Cardozo L. Rev. 1015, 1072 (2023). This Court has reaffirmed this

fundamental appellate principle on countless occasions. *E.g.*, *In re Google Tech. Holdings LLC*, 980 F.3d 858, 863 (Fed. Cir. 2020); *Nuvo Pharms. (Ireland) Designated Activity Co. v. Dr. Reddy's Lab's Inc.*, 923 F.3d 1368, 1378 (Fed. Cir. 2019); *Golden Bridge Tech., Inc. v. Nokia, Inc.*, 527 F.3d 1318, 1323 (Fed. Cir. 2008); *Glaxo Grp. Ltd. v. TorPharm, Inc.*, 153 F.3d 1366, 1371-72 (Fed. Cir. 1998).

Here, Malikie affirmatively delayed amending the complaint until after briefing on the transfer motion. Appx0021. It affirmatively chose not to raise the issue with the district court. Under these circumstances, Malikie should not now be able to rely on the amended complaint to defeat a meritorious mandamus petition.²

Even had Malikie presented these alternative grounds to the district court, this Court still prefers not to “resolve these issues [on alternative grounds] without the benefit of the district court’s reasoning.” *Wing Enters., Inc. v. Tricam Indus., Inc.*, 829 F. App’x 508, 517 (Fed. Cir. 2020); *Spigen Korea Co., Ltd. v. Ultraproof, Inc.*, 955 F.3d 1379, 1385

² Malikie later tried to invoke a second amended complaint filed after briefing on the mandamus petition was completed. Dkt.Nos. 20,21.

(Fed. Cir. 2020) (declining to consider alternative grounds for affirmance that “were not decided by the district court”).

II. The Decision Contravenes the Party-Presentation Principle

The Supreme Court has been clear: Judicial decisionmaking must be governed by the party-presentation principle. *Clark v. Sweeney*, 146 S. Ct. 410, 412 (2025) (per curiam). The party-presentation principle is critical because the parties “frame the issues for decision,” while the court serves as “neutral arbiter of matters the parties present.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). “In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation.” *Greenlaw*, 554 U.S. at 243. “To put it plainly, courts ‘call balls and strikes’; they don’t get a turn at bat.” *Clark*, 146 S. Ct. at 412 (quoting *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 599 (2020)).

The decision departs from the party-presentation principle by relying on grounds never presented to or decided by the district court. The district court analyzed the record before it, as the panel acknowledged. Op.2. Only after this Court requested briefing on these new issues did

Malikie argue, for the first time, that the subsequent pleadings justified denying transfer. Resp.30-33. This is a quintessential violation of the party-presentation principle. *In re AccessiBe Ltd.*, No. 2022-113, 2021 WL 5764861, at *1 (Fed. Cir. Dec. 6, 2021) (requiring a party seeking mandamus to first request reconsideration of a transfer motion that was dismissed for lack of jurisdiction even though “there was no disagreement between the parties” on this issue); *Stearn v. Dep’t of Navy*, 280 F.3d 1376, 1381 (Fed. Cir. 2002) (reversing “*sua sponte* findings of res judicata” out of concern for “eroding the system of party presentation so basic to our system of adjudication”).

Here, the panel took its “turn at bat” and resolved the petition on issues beyond the district court’s analysis and beyond those the parties framed. *Clark*, 146 S. Ct. at 412. Rather than declining to consider new appellate arguments or remanding for district-court review in the first instance, the panel accepted them as a basis for denying relief while simultaneously holding that Core could not fully respond in its reply. Op.2-3.

“To be sure, “[t]he party presentation principle is supple, not iron-clad.” *Astellas Pharma, Inc. v. Sandoz Inc.*, 117 F.4th 1371, 1377 (Fed. Cir. 2024) (quoting *Sineneng-Smith*, 590 U.S. at 376). But if a court

undertakes the “modest initiating role,” it cannot be correct to hold that a party’s argument, responsive to the court’s request, is not properly before the court.

III. The Reliance on *Samsung* Conflicts with the Fifth Circuit’s “Top Priority” Mandate and with *Hoffman* and *EMC*

The panel concluded that entitlement to mandamus was “anything but clear” because Core’s petition supposedly “fails to address” the subsequent pleadings. Op.2. The panel relied primarily on *Samsung* as holding that a petition must always address a later-filed complaint. But that reliance conflicts with the directive to give “top priority” to a motion to transfer, *Horseshoe Ent.*, 337 F.3d at 433; *Apple*, 979 F.3d at 1337, and to decide a motion to transfer “based on the ‘situation which existed when suit was instituted.’” *EMC*, 501 F. App’x at 976; accord *Hoffman*, 363 U.S. at 343-44.

To begin, the district court’s intentional choice to not rely on the subsequent pleadings conforms to the “top priority” requirement that is given to transfer motions. *Horseshoe Ent.*, 337 F.3d at 433; *Apple*, 979 F.3d at 1337. As Core’s reply explained, the district court knew of the amended complaint when it decided the transfer motion. Reply16-18. Malikie does not argue otherwise. Resp.30-33. The court’s choice to not

consider the amended pleading is no different than the court deciding the issue before February 20, 2026—when the belated amended pleading was entered. Notably, Malikie did not argue that the district court erred by not considering the subsequent pleadings. Resp.30-33.

In many contexts, an amended complaint does render the original complaint a “dead letter.” *Samsung*, 2 F.4th at 1376. But that statement overlooks the temporally focused analysis required for transfer motions and venue analysis. *Hoffman*, 363 U.S. at 343. Malikie’s argument would enable parties to use an amended pleading at any time to negate a motion that must be given “top priority.” The panel identified no basis for its apparent view that *Samsung* should overrule *Hoffman* in this circumstance, and its approach will only encourage further manipulation of the transfer analysis.

Moreover, the timing in *Samsung* makes that case inapplicable here. There, the amended complaint was filed the day after the original complaint, and the motion to transfer was not filed until six months later. 2 F.4th at 1373-74. There could be no meaningful dispute that the later-filed transfer motion had to account for the amended complaint.

Here, in contrast, the transfer motion was filed around four months before Malikie sought leave to amend the complaint. *Samsung* simply does not hold that a later-filed amended pleading controls over an earlier filed transfer motion. Nor does *Samsung* overrule the Fifth Circuit’s “top priority” rule, which ensures that the transfer analysis is not later manipulated by after-arising facts or theories.

The panel misapplied *Samsung* when characterizing Malikie’s efforts to manipulate the venue analysis. Op.3. Unlike the cases collected in *Samsung*, Malikie’s manipulation was its decision to seek to amend the complaint only after the transfer briefing was finished. Reply19-20. And in *In re RingCentral*, the analysis considered later-arising allegations obtained only during discovery. No. 2023-139, 2023 WL 6368336, at *1 (Fed. Cir. Sept. 29, 2023). Here, Malikie’s amended complaint rested on information known long before the transfer motion was filed, thus confirming that the district court was on solid ground to not consider the delayed, manipulative pleading. *Cf. In re Insulin Pricing Litig.*, No. 2:23-MD-3080(BRM)(LDW), 2025 WL 3022535, at *2 (D.N.J. Oct. 29, 2025) (noting a party’s attempt to “escape MDL jurisdiction” through an amended pleading).

Even if the district court and both parties should have considered the subsequent pleadings, the proper outcome of Core’s petition should have been a remand so the parties could brief the issue and present the relevant evidence for the district court’s consideration and factual determinations. Malikie recognized this as a reasonable result, suggesting that vacatur should be granted for “the district court to reconsider in light of the now-operative pleadings.” Resp.33.³

IV. The Panel Does Not Address the District Court’s Errors

The panel decision leaves unaddressed the legal and factual errors underpinning the flawed transfer analysis based on the original complaint.

A. Legal Errors

First, the district court did not analyze the local-interest factor in a temporally correct manner. Pet.14-17; Reply2-6. The transfer analysis must assess the facts at “the time of the bringing of the action.” *Hoffman*, 363 U.S. at 342. At that time, all alleged Texas activities were occurring in WDTX, with none in EDTX. For the local-interest factor, the court

³ To be clear, the correct result is to consider Core’s petition based on the arguments and evidence presented to the district court, not based on pleadings filed later to manipulate the venue analysis. Reply15-21.

equated 100% infringing activity in WDTX with 0% activity in EDTX. Pet.14-17. That was legal error.

Second, the district court applied the incorrect “precisely the same issues” standard for the practical-problems (or judicial-economy) factor. Pet.21-25; Reply6-8. Malikie did not dispute that the court applied the wrong standard. Resp.18-19; Reply7. The legal error was underscored by the fact that Judge Gilstrap claimed that this Court “broadened” the Supreme Court’s ruling in *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19 (1960), by supposedly extending it to cases “where there are some differences in the retained cases.” Pet.23 (citing *Tivo Inc. v. Cisco Sys., Inc.*, No. 1:12-CV-311-JRG, 2012 WL 3307407 (E.D. Tex. Aug. 13, 2012)); Reply7. In that other case—but not here—Judge Gilstrap correctly applied *Continental Grain* and this Court’s precedent for the practical-problems factor.

Third, the district court misapplied the law when assessing the compulsory-process factor because, under Fifth Circuit law, this factor must be neutral when all witnesses are within both districts’ subpoena powers, as here. *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013); Pet.27-29; Reply10. Judge Gilstrap had correctly applied *Radmax* in

other cases. Pet.28 (citing *Spencer v. Allstate Ins. Co.*, No. 2:16-CV-605-JRG, 2016 WL 6879598, at *3 (E.D. Tex. Nov. 22, 2016)). The compulsory-process factor should have been deemed neutral (and not against transfer). Either way, this factor should be granted only minimal weight given that Malikie did not provide any evidence of unwillingness. Pet.30 (citing *In re Planned Parenthood Fed’n of Am., Inc.*, 52 F.4th 625, 629 (5th Cir. 2022)).

B. Factual Errors

The district court’s transfer analysis also rested on three clearly erroneous factual findings.

First, the non-party witnesses relied upon by Malikie for the compulsory-process factor lacked relevant knowledge. Pet.30-32,36; Reply10-13. The un rebutted declarations and deposition testimony showed that Malikie’s identified witnesses had negligible to no relevant knowledge, especially as compared to Core’s willing witnesses. Pet.30-32,36; Reply10-13. The panel opinion overlooks this clearly erroneous finding, as well as not addressing Malikie’s false statement that “Core provided no evidence about any specific former employees’ knowledge.”

Resp.23. Core’s petition and reply identified the discovery that Malikie obtained which shows Malikie’s statement to be false. Pet.6-8; Reply11.

Second, the district court clearly erred when finding that “a similar share” of alleged infringing activity occurred in EDTX. Pet.15-21; Reply2-6. To the contrary, the evidence showed that substantially more activity occurred in WDTX. Pet.17-21; Reply4-5. Core demonstrated that it had ceased all cryptomining in Denton months before suit was filed. Pet.15-21; Reply2-6. Austin remained the operational hub for the accused functionality, and the relevant management, technical personnel, and evidence were in WDTX. Op.1-3;Pet.17-21; Reply5-6.

Third, it was clear error to not find that WDTX would be significantly more convenient for Core’s willing witnesses. Pet.32-35. Malikie asserted the nonsensical position that the court need not give weight to the stated preference of these witnesses, supported by testimony and common sense, to work from their corporate office rather than a hotel. Resp.24; Pet.32-35; Appx0917. This clear error rested in part on the court’s refusal to correctly apply *In re Juniper Networks Inc.*, 14 F.4th 1313, 1319 (Fed. Cir. 2021), where this Court rejected “the proposition that convenience-to-the-witnesses factor is attenuated when the

witnesses are employees of the party calling them.” In response, Malikie did not cite, let alone address, *Juniper Networks*. Reply11-12.

C. The Proper Weighing of Factors Showed that WDTX is Clearly More Convenient

Under the correct analysis, four factors favor transfer, and four factors are neutral. Pet.39-40; Reply2. No factor weighs against transfer. “With nothing on the transferor-forum side of the ledger, the analysis shows that the transferee forum is ‘clearly more convenient.’” *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014).

V. Conclusion

The panel should reconsider the petition based on the evidence and arguments presented to the district court—not on subsequent events, such as Malikie’s manipulative amended complaint. Alternatively, as Malikie recognized, vacatur should be granted for “the district court to reconsider in light of the now-operative pleadings.” Resp.33.

Date: July 13, 2026

Respectfully submitted,

By: /s/ Matthew J. Dowd

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ADDENDUM

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In Re CORE SCIENTIFIC, INC.,
Petitioner

2026-140

On Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas in No. 2:25-cv-00519-JRG-RSP, Judge J. Rodney Gilstrap.

ON PETITION

Before PROST, MAYER, and CUNNINGHAM, *Circuit Judges*.
CUNNINGHAM, *Circuit Judge*.

O R D E R

Core Scientific, Inc. petitions for a writ of mandamus seeking to compel the district court to transfer the underlying case to the United States District Court for the Western District of Texas (“WDTX”). Malikie Innovations Ltd. and Key Patent Innovations Ltd. (collectively, “Malikie”) oppose. We deny the petition.

Malikie sued Core in the United States District Court for the Eastern District of Texas (“EDTX”) alleging patent infringement based on bitcoin mining. Core moved to transfer the case to WDTX under 28 U.S.C. § 1404(a),

arguing its bitcoin mining operations were now focused in WDTX, as it terminated such operations in EDTX before the complaint was filed, turning instead to High Performance Computing (“HPC”) activities in EDTX.

After the motion was briefed but before it was resolved, Malikie was granted leave of court to file an amended complaint alleging infringement from both bitcoin mining and HPC activities. Core later filed a third-party complaint against CoreWeave, Inc., seeking indemnification related to the accused HPC activities. The parties do not appear to have sought to supplement their transfer papers to address these developments. Ultimately, the district court denied Core’s motion to transfer.¹ Appearing to limit its analysis to bitcoin mining activities, the court determined, among other things, that EDTX would be more convenient for several non-party witnesses with relevant and material information to issues in the litigation and that a significant share of the alleged infringement giving rise to those claims occurred in EDTX before the complaint.

To obtain this extraordinary remedy, Core must show: (1) “no other adequate means to attain the relief [it] desires,” (2) a “clear and indisputable” right to relief, and (3) the writ is “appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (cleaned up). Core’s entitlement to mandamus to direct transfer is anything but clear, at least because Core’s petition fails to address the amended and third-party complaints, both of which relate to Core’s ongoing activities in EDTX. *See In re Samsung Elecs. Co.*, 2 F.4th 1371, 1376 (Fed. Cir. 2021) (“Once the respondents filed their amended complaints, the original complaints were dead letters . . . including for purposes of venue.” (cleaned up));

¹ The district court adopted the magistrate judge’s order, overruling Core’s objections.

IN RE CORE SCIENTIFIC, INC.

3

see also In re Volkswagen AG, 371 F.3d 201, 203 (5th Cir. 2004).

Core argues the amended complaint was merely an attempt to manipulate venue. That argument, “raised for the first time in a reply brief,” is “not properly before this court.” *Norman v. United States*, 429 F.3d 1081, 1091 n.5 (Fed. Cir. 2005); *see In re TC Heartland LLC*, 821 F.3d 1338, 1343 n.5 (Fed. Cir. 2016) (“[Petitioner]’s belated raising of this new argument is especially inappropriate in the context of a petition for a writ of mandamus.”), *rev’d on other grounds sub nom., TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258 (2017). Moreover, unlike situations where a party’s unilateral actions to manipulate venue were disregarded, *see, e.g., Samsung*, 2 F.4th at 1378–79 (collecting cases), here Malikie’s venue allegations are based on *Core*’s activities in EDTX. Under the circumstances, we cannot say Core has demonstrated entitlement to the extraordinary remedy of mandamus.

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

June 29, 2026
Date

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

In Re CORE SCIENTIFIC, INC.,
Petitioner

2026-140

On Petition for Writ of Mandamus to the United States
District Court for the Eastern District of Texas in No. 2:25-
cv-00519-JRG-RSP, Judge J. Rodney Gilstrap.

ON PETITION

PER CURIAM.

ORDER

Upon consideration of Core Scientific, Inc.'s filing of a
petition for a writ of mandamus seeking to compel the dis-
trict court to vacate its prior order and transfer the case to
the United States District Court for the Western District of
Texas,

IT IS ORDERED THAT:

Any responses to the petition are due no later than 7 days from the date of entry of this order, and any reply thereto is due no later than 3 days thereafter. In addition to any other arguments the parties wish to raise, the response(s) and reply should address the relevance, if any, of the amended complaint filed on November 14, 2025, and the third-party complaint filed on March 27, 2026.

FOR THE COURT



Jarrett B. Perlow
Clerk of Court

April 29, 2026
Date

FORM 19. Certificate of Compliance with Type-Volume Limitations

Form 19
July 2020

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 26-0140

Short Case Caption: In re Core Scientific, Inc.

Instructions: When computing a word, line, or page count, you may exclude any items listed as exempted under Fed. R. App. P. 5(c), Fed. R. App. P. 21(d), Fed. R. App. P. 27(d)(2), Fed. R. App. P. 32(f), or Fed. Cir. R. 32(b)(2).

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

- ☒ the filing has been prepared using a proportionally-spaced typeface and includes 3,893 words.
- ☐ the filing has been prepared using a monospaced typeface and includes _____ lines of text.
- ☐ the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 07/13/2026

Signature: /s/ Matthew J. Dowd

Name: Matthew J. Dowd

FORM 30. Certificate of Service

Form 30
July 2020**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT****CERTIFICATE OF SERVICE****Case Number** 2026-0140**Short Case Caption** In re Core Scientific, Inc.

NOTE: Proof of service is only required when the rules specify that service must be accomplished outside the court's electronic filing system. See Fed. R. App. P. 25(d); Fed. Cir. R. 25(e). Attach additional pages as needed.

I certify that I served a copy of the foregoing filing on 07/13/2026

by ☐ U.S. Mail ☐ Hand Delivery ☒ Email ☐ Facsimile
☐ Other: _____

on the below individuals at the following locations.

Person Served	Service Location (Address, Facsimile, Email)
Ricardo Joel Bonilla	rbonilla@fr.com
Nicholas James Valencia	valencia@fr.com

☐ Additional pages attached.Date: 07/13/2026Signature: /s/ Matthew J. DowdName: Matthew J. Dowd