

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

REALTIME ADAPTIVE STREAMING
LLC,

Plaintiff,

v.

SLING TV L.L.C.,
SLING MEDIA, L.L.C.,
DISH NETWORK L.L.C.,
DISH TECHNOLOGIES L.L.C. AND
ARRIS GROUP, INC.,

Defendants.

Case No. 1:17-cv-02097-RBJ

JOINT MOTION TO CONSOLIDATE RELATED CASES

Pursuant to Federal Rules of Civil Procedure 42 and D.C.COLO.LCivR 42.1, Plaintiff Realtime Adaptive Streaming LLC (“Realtime”), defendant Polycom, Inc. in D. Colo. Case No. 1:17-cv-02692-RBJ, and defendant Apple Inc. (collectively, “Parties”) in D. Colo. Case No. 1:17-cv-02869-MSK-STV seek consolidation of this action with two related cases pending in this District, for pre-trial scheduling purposes. The three related cases are:

- *Realtime Adaptive Streaming LLC v. Sling TV L.L.C. et al.*, Civil Action No. 1:17-cv-02097-RBJ;
- *Realtime Adaptive Streaming LLC v. Polycom, Inc.*, Civil Action No. 1:17-cv-02692-RBJ; and
- *Realtime Adaptive Streaming, LLC v. Apple Inc.*, Civil Action No. 1:17-cv-02869-MSK-STV.

Defendants in the Sling Matter have indicated that they do not oppose this motion.

I. BACKGROUND

Parties seek to consolidate this action, *Realtime Adaptive Streaming LLC v. Sling TV L.L.C. et al.*, Civil Action No. 1:17-cv-02097-RBJ, filed on August 31, 2017 (the “Sling Matter”), with two co-pending actions: *Realtime Adaptive Streaming LLC v. Polycom, Inc.* (Civil Action No. 1:17-cv-02692-RBJ), filed on November 10, 2017 (the “Polycom Matter”), and *Realtime Adaptive Streaming, LLC v. Apple Inc.* (Civil Action No. 1:17-cv-02869-MSK-STV), filed on November 30, 2017 (the “Apple Matter”) (collectively, the “Related Cases”).

The Sling Matter and the Polycom Matter are both pending before The Honorable R. Brooke Jackson. The Apple Matter is currently pending before The Honorable Marcia S. Krieger and referred to The Honorable Scott T. Varholak, Magistrate Judge. All three matters are in relatively early phases.

The Parties have met and conferred and agree that consolidation as to schedule would be appropriate including, for example, joint hearings on common issues. However, defendants would retain their rights to conduct separate discovery and motions practice and receive the full scope of discovery allowable under the federal and local rules. Thus, for example, Apple and DISH would have the option to file their own claim construction briefs and the defendants would receive individual time allocations for depositions, consistent with the Federal and Local Rules. Where practicable, defendants would coordinate discovery efforts as necessary to avoid duplicative discovery on common issues. The three matters would not be consolidated for trial.

Scheduling Conferences have not yet occurred in the three matters and are set for March 7, 2018 in the Sling and Polycom matters and for March 12, 2018 in the Apple matter.

Because these matters are pending in the same judicial district, the Parties seek consolidation of the three matters for pre-trial proceeding purposes so as to have all three cases in front of a single judge according to a single, consolidated schedule up to and until the dates of trial. *See* FED. R. CIV. P. 42(a); *see also* D.C. COLO. L. CIV. R. 42.1 (“MOTION TO CONSOLIDATE: A motion to consolidate shall be decided by the district judge to whom the lowest numbered case included in the proposed consolidation is assigned. A motion to consolidate shall be given priority. Consolidated cases shall be reassigned to the judicial officer(s) to whom the lowest numbered consolidated case was assigned.”). The district judge assigned to the lowest numbered case is The Honorable R. Brooke Jackson, who currently presides over both the Sling Matter and the Polycom Matter.

The following patents are at issue:

- Sling Matter: U.S. Patent Nos. 8,934,535 (“the ’535 patent”) and 8,867,610 (“the ’610 Patent”);
- Polycom Matter: the ’535 patent and U.S. Patent Nos. 7,386,046 (“the ’046 patent”), 8,929,442 (“the ’442 patent”), 9,762,907 (“the ’907 patent”), and 9,769,477 (“the ’477 patent”);
- Apple Matter: the ’535, ’046, ’442, and ’477 patents, as well as U.S. Patent Nos. 8,634,462 (“the ’462 patent”), 9,578,298 (“the ’298 patent”).

The ’535 patent is shared by all three matters and the ’046, ’442, and ’477 patents are additionally shared by the Polycom Matter and the Apple Matter.

II. THE THREE CASES SHOULD BE CONSOLIDATED FOR PRETRIAL SCHEDULING PURPOSES.

Federal Rule of Civil Procedure 42(a) provides: “If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” FED. R. CIV. P. 42(a). The primary aim of Rule 42(a) is to enable courts to dispatch cases “with expedition and economy while providing justice to the parties.” *Breaux v. American Family Mut. Ins. Co.*, 220 F.R.D. 366, 367 (D. Colo. 2004) (quoting 9 C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE § 2381 at 427 (2nd ed. 1995)). “Therefore, the Court will consider both judicial economy and fairness to the parties in exercising its discretion under Rule 42(a).” *Crocs, Inc. v. Effervescent, Inc.*, No. 06-cv-00605-PAB-KMT, 2017 WL 3908110, at *1 (D. Colo. Jan. 27, 2017); see *Harris v. Illinois-California Exp., Inc.*, 687 F.2d 1361, 1368 (10th Cir. 1982) (“Consolidation of cases is permitted as a

matter of convenience and economy...[and] accomplishes those ‘considerations of judicial economy and fairness’”).

In exercising its discretion to consolidate, “the court should take into consideration whether judicial efficiency is best served by consolidation. The court generally weighs the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense that consolidation would cause.” *Otter Prod., LLC v. Treefrog Developments, Inc.*, No. 11-CV-02180-WJM-KMT, 2013 WL 490964, at *1 (D. Colo. Feb. 7, 2013).

The requirements of Rule 42(a) are met here. There are one or more common issues of law, as the cases share at least one patent and there are other overlapping patents. Given that the cases are pending in the same judicial district, limited consolidation before a single judge in that district with respect to the governing schedule and pre-trial procedures will help conserve this Court’s limited resources.

III. CONCLUSION

For the foregoing reasons, the parties respectfully request consolidation of the following three cases:

- *Realtime Adaptive Streaming LLC v. Sling TV L.L.C. et al.*, Civil Action No. 1:17-cv-02097-RBJ;
- *Realtime Adaptive Streaming LLC v. Polycom, Inc.*, Civil Action No. 1:17-cv-02692-RBJ; and
- *Realtime Adaptive Streaming, LLC v. Apple Inc.*, Civil Action No. 1:17-cv-02869-MSK-STV.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.