UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

SOLOCRON MEDIA, LLC,

Plaintiff,

v.

VERIZON COMMUNICATIONS INC., CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, AT&T MOBILITY LLC, SPRINT SPECTRUM L.P., AND T-MOBILE USA, INC.,

Defendants.

Case No. 2:13-cv-1059-JRG-RSP

[JURY TRIAL DEMANDED]

[redacted]

Redacted Version

DEFENDANTS' MOTION TO SEVER

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I. INTRODUCTION

Plaintiff Solocron's joinder of four unrelated competitors—Verizon, AT&T, T-Mobile and Sprint—in a single lawsuit runs afoul of Federal Rule of Civil Procedure 20 as well as the strict joinder requirements of the America Invents Act. Solocron's complaint and infringement contentions accuse different products, each of which was independently developed and were independent implemented across the four competitor defendants. As such, no shared set of aggregate facts supports Solocron's improper attempt to join Defendants in a single action. Therefore, pursuant to Federal Rule of Civil Procedure 21, Defendants respectfully request that the Court sever the claims levied against each Defendant into separate actions.

II. BACKGROUND

A. Legal Background

Federal Rule of Civil Procedure 20(a)(2) provides that multiple defendants may be joined in a single action if (1) any claim asserted against each of them arises out of the *same transaction, occurrence, or series of transactions or* occurrences, *and* (2) there is a question of law or fact common to all defendants that will arise in the action. Importantly, the accused products or processes must be "the same" and "even the existence of some similarity . . . cannot satisfy the 'same transaction' requirement." *See Lodsys, LLC v. Brother Int'l Corp.*, No. 2:11-cv-90-JRG, 2013 WL 1338767, at *3 (E.D. Tex. Jan. 14, 2013) (analyzing *In re EMC*, 677 F.3d 1351, 1359 (Fed. Cir. 2012)); *see also SimpleAir, Inc. v. Microsoft Corp.*, No. 2:11-cv-416-JRG, Dkt. No. 416, slip op. at 4 (E.D. Tex. Aug. 9, 2013) (same). Following *EMC,* this Court noted that, among others, "pertinent factual considerations" underlying joinder under Rule 20 include "the existence of some relationship among the defendants," "the use of identically sourced components," "licensing of technology agreements between the defendants," and "overlap of the

products' or processes' development and manufacture." *Lodsys*, at *3 (quoting *EMC I* at 1359-60). As explained below, no such overlapping facts exist in this case.

In addition to satisfying the requirements of Rule 20, Solocron must also satisfy the more strict standards of 35 U.S.C. § 299.[1] Pursuant to 35 U.S.C. § 299, accused infringers can be joined in the same action "only if" the right to relief arises out of "the *same transaction*, occurrence, or series of transactions or occurrences relating to the making, using, . . . , or selling of the *same accused product or process*; *and* questions of fact common to all defendants or counterclaim defendants will arise in the action." 35 U.S.C. § 299(a) (emphasis added).[2] In other words, under § 299(a), there must be one transaction, or set of transactions, relating to the making, using or selling of one accused product or process. *In re Nintendo,* 544 Fed. Appx. 934, 939 (Fed. Cir. 2013); *Reese v. Sprint Nextel Corp.*, No. 2:13-cv-3811-ODW, 2013 U.S. Dist. LEXIS 98635, *1 (C.D. Cal. July 15, 2013) (severing action against T-Mobile, AT&T, Verizon, and Sprint—the same Defendants as in this case—because the "[n]ewly enacted statute, 35 U.S.C. § 299, requires a higher standard for joinder."). And, while joinder *requires* that the claims share questions of law or fact common to all defendants in addition to arising out of the same transaction or occurrence, the Federal Circuit has held that satisfaction of those requirements is still not sufficient to support joinder; rather, courts must also consider "principles of fundamental fairness" and "prejudice." *Nintendo*, 544 Fed. Appx. at 939. Neither the requirements of Section 299, nor "principles of fundamental fairness" support joinder of Defendants in this case.

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[1] Solocron's complaint was filed December 6, 2013. *See* Dkt. No. 1. "Effective September 16, 2011, joinder in patent cases is governed by the America Invents Act . . . 35 U.S.C. § 299." *In re Nintendo Co.*, 544 Fed. Appx. 934, 939 (Fed. Cir. 2013).

[2] The statute explicitly prohibits joining multiple defendants "based solely on allegations that they each have infringed the patent or patents-in-suit." 35 U.S.C. § 299(b).

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