

**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 Version

DEFENDANTS' MOTION TO SEVER

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

 A. Legal Background..... 1

 B. Factual Background 3

III. ARGUMENT 7

 A. Joinder Is Improper Because the Accused Products and Processes Are Not
 “the Same.” 7

 B. Joinder Is Improper Because the Transactions or Occurrences Are Not “the
 Same.” 8

 C. Solocron’s Allegations Do Not Satisfy the Joinder Requirements..... 10

IV. CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

Arroyo v. PHH Mortg. Corp.,
 No. 13-cv-2335(JS)(AKT), 2014 U.S. Dist. LEXIS 68534 (E.D.N.Y. May 19, 2014)..... 3

Brandeis Univ. v. East Side Ovens, Inc.,
 No. 11-cv-619-BBC, 2012 U.S. Dist. LEXIS 18902 (W.D. Wis. Feb. 15, 2012)..... 3

Fujitsu Ltd. v. Netgear,
 620 F.3d 1321 (Fed. Cir. 2010) 11

In re EMC,
 677 F.3d 1351 (Fed. Cir. 2012) 1, 9, 11

In re Nintendo,
 544 Fed. Appx. 934 (Fed. Cir. 2013)..... 2

IpVenture, Inc. v. Acer, Inc.,
 879 F. Supp. 2d 426 (D. Del. 2012)..... 9

Lodsys, LLC v. Brother Int’l Corp.,
 No. 2:11-cv-90-JRG, 2013 WL 1338767 (E.D. Tex. Jan. 14, 2013)..... 1, 2, 9

Medsquire LLC v. Quest Diagnostics, Inc.,
 No. 2:11-cv-04504-JHN-PLAx, 2011 WL 7710202 (C.D. Cal. Dec. 1, 2011)..... 11

Net Nav. Sys., LLC v. Cisco Sys., Inc.,
 4:11-cv-660, 2012 WL 7827543 (E.D. Tex. Aug. 22, 2012)..... 3

Norman IP Holdings, LLC v. Lexmark Int’l, Inc.,
 6:12-cv-508, 2012 WL 3307942 (E.D. Tex. Aug. 10, 2012)..... 3, 9

Reese v. Sprint Nextel Corp.,
 No. 2:13-cv-3811-ODW, 2013 U.S. Dist. LEXIS 98635 (C.D. Cal. July 15, 2013)..... 2

SimpleAir, Inc. v. Microsoft Corp.,
 No. 2:11-cv-416-JRG, Dkt. No. 416 (E.D. Tex. Aug. 9, 2013)..... 1, 8, 9, 10, 12

Summit 6 LLC v. HTC Corp.,
 No. 7:14-cv-0014-O, 2014 U.S. Dist. LEXIS 126800 (N.D. Tex. Sept. 10, 2014)..... 8

WiAV Networks, LLC v. 3Com Corp.,
 No. C 10-03448 WHA, 2010 WL 3895047 (N.D. Cal. Oct. 1, 2010) 10, 11

Statutes

35 U.S.C. § 299..... 2

Rules

Fed. R. Civ. P. 20..... 1, 2

Fed. R. Civ. P. 21..... 1, 3

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.

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).

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.