

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROSETTA-WIRELESS CORP., an Illinois
Corporation,)
)

Plaintiff)
)

v.)

APPLE INC., a California Corporation)
)

Defendant.)
)
)
)
)
)

Civil Action No. 15-cv-00799

Judge Joan H. Lefkow

**MOTION FOR RECONSIDERATION OF COURT’S ORDER REGARDING MOTION
TO SEVER**

Pursuant to Federal Rule of Civil Procedure 60(b), Plaintiff Rosetta-Wireless Corp. (“Rosetta”) respectfully requests that the Court reconsider the procedural portion of its Order (Dkt. # 109) granting Defendants’ motion to sever. In particular, Rosetta requests that rather than effectuating severance by dismissing the severed Defendants without prejudice, the Court instead order that those Defendants are severed and instruct Rosetta to file amended complaints against each of them under new case numbers with such new cases being deemed continuations of the original case. In further support of its motion, Rosetta states as follows:

1. On November 10, 2015, the Court granted Defendants’ motion to sever. (Dkt. # 109).
2. In the Order, the Court stated “Because Rosetta does not oppose severance, the court will exercise its discretion under Rule 21 to sever the claims against the five defendant groups[.]” Dkt. # 109 at 5. However, in specifying the procedure for severance, the Court stated (without further comment) that “The claims against the

following defendant groups are dismissed without prejudice: [listing Samsung, Motorola, LG and HTC].” *Id.* at 10. The Court did not dismiss Rosetta’s claims against Apple, thereby allowing that case to move forward immediately.

3. For the reasons stated in greater detail in Rosetta’s Memorandum In Support Of Plaintiff’s Motion For Reconsideration Of Court’s Order Regarding Motion To Sever, the current form the dismissal will create confusion about the status of service and the deadlines for discovery and disclosure; delay adjudication of the severed cases; make coordination between the cases needlessly complex; trigger disputes regarding the scope of Rosetta’s damages; and lead to uncertainty about the deadline for the filing of an *inter partes* review with the United States Patent and Trademark Office under the America Invents Act.
4. For the reasons stated in greater detail in Rosetta’s Memorandum In Support Of Plaintiff’s Motion For Reconsideration Of Court’s Order Regarding Motion To Sever, Seventh Circuit law requires that these prejudicial consequences be avoided by the Court either severing the case or clarifying that the cases refiled following its dismissal order are continuations of the original case.

WHEREFORE, pursuant to Federal Rule of Civil Procedure 60(b), Rosetta respectfully requests that the Court reconsider the procedural portion of its Order granting Defendants’ motion to sever and issue a revised Order:

- (1) Severing Rosetta’s claims against HTC, LG, Samsung and Motorola from Case No. 15-cv-00799;
- (2) Ordering Rosetta to file a Second Amended Complaint for each severed Defendant group, with each filed under its own case number;

- (3) Clarifying that the severance order does not nullify the filing and service of the earlier-filed complaints or the other proceedings that occurred prior to severance, and providing that the severed actions shall be treated as continuations of the earlier actions;
- (4) Deeming Rosetta's prior filing of separate complaints in Case Nos. 1:15-cv-10603, 1:15-cv-10605, 1:15-cv-10608, 1:15-cv-10611 to be in compliance with the above; and
- (5) Requiring that the parties make their Initial Disclosures and Patent Local Rule 2.1 disclosures within seven days of the Court's reconsideration order.

Date: November 30, 2015

KOBRE & KIM LLP

/s/ Michael Ng

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2015, I electronically filed Rosetta-Wireless Corp.'s Motion for Reconsideration of the Court's Order Regarding Motion to Sever with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Michael Ng
Michael Ng (*pro hac vice*)

**IN THE UNITED STATES DISTRICT COURT
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| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil Action No. 15-cv-00799 |
| |) | |
| APPLE INC., a California Corporation |) | Judge Joan H. Lefkow |
| |) | |
| Defendant. |) | |
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| |) | |
| |) | |

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR RECONSIDERATION OF COURT’S ORDER REGARDING MOTION TO SEVER

Pursuant to Federal Rule of Civil Procedure 60(b), Plaintiff Rosetta-Wireless Corp. (“Rosetta”) respectfully requests that the Court reconsider the procedural portion of its Order (Dkt. # 109) granting Defendants’ motion to sever. In particular, Rosetta requests that rather than effectuating severance by dismissing the severed Defendants without prejudice, the Court instead order that those Defendants are severed and instruct Rosetta to file amended complaints against each of them under new case numbers with such new cases being deemed continuations of the original case.

This apparently minor change in procedure will have major consequences on the efficiency and speed of adjudication of this case. As explained in greater detail below, in its current form the dismissal will create confusion about the status of service and the deadlines for discovery and disclosure; delay adjudication of the severed cases; make coordination between the cases needlessly complex; trigger disputes regarding the scope of Rosetta’s damages; and lead to uncertainty about the deadline for the filing of an *inter partes* review with the United

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