

1 requirements for permissive joinder under Rule 20. Thus, defendants, and in particular Facebook,
2 will be prejudiced by joinder in this case.

3 Interval's Complaint accuses some, but not all, defendants of infringement of three of its
4 four patents, contradicting its assertion that each of the defendants' websites operate in "nearly
5 identical fashion" and that the defendants "infringe the same claims of the same patents."
6 (*Compare* Compl., D.I. 1 *with* Opp., D.I. 122 at 2-3.) Instead, Interval chose to assert four patents
7 against only four of the defendants, two patents against ten of the defendants, and to assert only
8 one patent against Facebook – the '682 patent.

9 Interval's illustration of OfficeMax's website's features' alleged infringement of an
10 unspecified claim of the '507 patent actually negates its argument. Interval claims that all eleven
11 defendants infringe the '507 in the same way – yet Interval has not even accused Facebook of
12 infringing the '507 patent. Evidently, even Interval cannot keep its infringement cases against
13 each defendant straight. This example further fails to identify any remaining defendants' specific
14 websites and relevant functionality, depriving the Court of the opportunity to make an informed
15 determination as to the actual similarity between defendants. Nor can defendants adequately
16 respond to this unsupported assertion, as Interval has refused to amend its Complaint to set forth
17 *which* websites, and which features of those websites, it is accusing of infringement. By refusing
18 to provide information as to specific accused products, Interval has entirely failed to show that its
19 cause of action against at least eleven distinct "websites" actually "aris[e] out of the same
20 transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20.

21 Finally, as Facebook has been accused of infringing only one patent, it will be particularly
22 prejudiced should the cases not be severed. As the vast majority of the issues raised in an un-
23 severed case will have no relevance to Facebook, this case will be "overwhelmed" by issues not
24 relevant to Facebook. *See WIAV Networks, Inc. v. 3COM Corp.*, No. C 10-03448 WHA, 2010
25 WL 3895047, at *1 (N.D. Cal. Oct. 1, 2010). Similarly, Facebook and each of "the accused
26 defendants – who will surely have competing interests and strategies – are also entitled to present
27 individualized assaults on questions of non-infringement, invalidity, and claim construction." *Id.*
28 at *2.

1 Much of Interval's argument relies on its assertion that, because it believes that the yet
 2 unnamed products work in similar ways, claim construction, invalidity, and infringement issues
 3 will also be similar. However, this is not a case where the parties are accused of infringing the
 4 same industry standard, or of infringing through use of the same computer software program –
 5 each defendant in this case has different products and services which it has developed
 6 independently and which are likely to have been built in, and function in, different ways. While
 7 Interval may wish to face one unified set of arguments in opposition to its positions on
 8 infringement, claim construction, and invalidity, it forsook this opportunity by choosing to sue
 9 eleven distinct, competing defendants on varying combinations of patents. Although Facebook is
 10 more than willing to work with the other defendants to maximize judicial efficiency, such
 11 efficiency *cannot* come at the expense of Facebook or any other defendant's ability to fully
 12 defend itself in this litigation. Thus Facebook's motion should be granted.

13 DATED this 12th day of November, 2010. COOLEY LLP

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2010, I electronically filed the following document(s): **FACEBOOK’S JOINDER IN DEFENDANTS GOOGLE INC. AND YOUTUBE, LLC’S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS OR SEVER FOR MISJOINDER PURSUANT TO FED. R. CIV. P. 20 AND 21** with the Clerk of the Court using the CM/ECF system, which will send an email notification of such filing to the attorney(s) of record listed below.

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