

Hon. Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al.,

Defendants.

No. 2:10-CV-01385-MJP

DEFENDANT APPLE INC.'S MOTION
TO DISMISS OR SEVER PURSUANT
TO FED. R. CIV. P. 20 AND 21

NOTE ON MOTION CALENDAR:
November 12, 2010

Pursuant to Fed. R. Civ. P. 20 and 21, Defendant Apple Inc. (“Apple”) respectfully moves the Court to dismiss or sever Apple from this case. Plaintiff Interval Licensing LLC (“Interval”) cannot satisfy the “same transaction or occurrence” prong of the test for permissive joinder for the reasons set forth in Google Inc. and YouTube LLC’s (collectively, “Google”) joint Motion To Dismiss Or Sever For Misjoinder Pursuant To Fed. R. Civ. P. 20 and 21. (Docket No. 63.)

As summarized in Google’s motion, Interval does not allege that the defendants are jointly or severally liable, conspired to infringe the asserted patents, or acted in concert in any way with respect to the asserted patents. Nor has Interval alleged that there is any nexus or connection between the accused products. Interval has not even alleged that all of the defendants infringe the same asserted patents. There is simply no allegation that Apple

1 and the other defendants are anything other than separate companies that sell separate
2 products.¹ Interval has thus failed to establish a right to relief against Apple and the other
3 defendants “with respect to or arising out of the same transaction, occurrence, or series of
4 transactions or occurrences.” Fed. R. Civ. P. 20(a).

5 Further, there will be no substantial right that will be prejudiced by severance. To
6 the contrary, severance will avoid prejudicing Apple and other defendants from having to
7 litigate disparate allegations, evidence, accused products, arguments, and theories.

8 In the interest of expeditiously disposing of or managing this case, Apple hereby
9 joins in Google’s motion and incorporates by reference the authority and arguments
10 presented therein.² Accordingly, based on that authority and those arguments as well as the
11 analysis in this motion, Apple requests that the Court dismiss or sever Apple from this case.

12 Notwithstanding any decision on this motion, Apple expressly reserves its right
13 under Rule 20(b), Rule 42(b), the Court’s inherent authority, and/or any other source of law
14 to move for a separate trial.

15 Apple expressly reserves the right to file its own brief in reply to any opposition
16 filed by Interval.

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23 ¹ Concurrent with this motion, Apple has filed a Motion To Dismiss For Failure To State A Claim Upon
24 Which Relief Can Be Granted Pursuant To Fed. R. Civ. P. 12(b)(6), based in part on Interval’s failure to
25 identify the specific Apple products and/or services, if any, that allegedly infringe. There is no basis to
26 assume any common transaction or occurrence between any of Apple’s products or services and any of the
other defendant’s products or services.

² Apple does not join the first sentence of footnote 2 in Google’s motion. (Docket No. 63 at 6:26.)

1 DATED: October 21, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of October, 2010 at Seattle, Washington.

/s/ Colette Saunders

Colette Saunders
Legal Assistant