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HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

 Plaintiff,

 v.

AOL, INC., et al.,

 Defendants.

Case No. No. 2:10-cv-01385-MJP

**DEFENDANT FACEBOOK, INC.’S JOINDER
IN DEFENDANTS GOOGLE INC. AND
YOUTUBE, LLC’S MOTION TO DISMISS
OR SEVER FOR MISJOINDER PURSUANT
TO FED. R. CIV. P. 20 AND 21**

**NOTED ON MOTION CALENDAR:
November 12, 2010**

I. INTRODUCTION AND RELIEF REQUESTED

Defendant Facebook Inc. (“Facebook”) respectfully joins in Defendants Google Inc. and YouTube, LLC’s Motion to Dismiss or Sever for Misjoinder Pursuant to Fed. R. Civ. P. 20 and 21 (“Google’s Motion to Sever”). (D.I. 63) As set forth in Google’s Motion to Sever, Plaintiff Interval Licensing LLC (“Interval”) has joined eleven unrelated entities in a single action for patent infringement without alleging any coordinated action between them or any right to relief that arises out of “the same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P. 20(a)(2)(A). Facebook should therefore be dropped from the instant action, or the claim against it should be severed.

1 **II. ARGUMENT**

2 Under Federal Rule of Civil Procedure (“Rule”) 20, a plaintiff cannot join multiple
 3 defendants unless two requirements are satisfied: transactional relatedness and commonality.
 4 FED. R. CIV. P. 20(a)(2); *see Bravado Int’l Grp. Merch. Servs. v. Cha*, No. 09-9066 PSG (CWx),
 5 2010 WL 2650432, at *1 (C.D. Cal. June 30, 2010). Here, no such transactional relatedness
 6 exists, because the claims asserted against the other defendants have insufficient factual
 7 commonality with the single claim asserted against Facebook to be found to arise out of the same
 8 transaction. *See, e.g., WiAV Networks, LLC v. 3Com Corp.*, No. 10-3448 WHA, 2010 WL
 9 3895047, at *3–4 (N.D. Cal. Oct. 1, 2010) (in patent case asserting claims against “unrelated and
 10 competing defendants for their own independent acts of patent infringement,” dismissing all but
 11 first named defendant for misjoinder). Thus, this Court may dismiss Facebook from this suit or
 12 sever the claim asserted against it, pursuant to Rule 21.

13 Determination of infringement and remedies will be fact specific to each defendant. *See*
 14 *Spread Spectrum Screening, LLC v. Eastman Kodak Co.*, No. 10 C 1101, 2010 WL 3516106,
 15 at *2 (N.D. Ill. Sept. 1, 2010). Facebook’s products or services accused of infringement of U.S.
 16 patent No. 6,757,682 (the “’682 patent”)¹ are distinct from those products or services of the other
 17 defendants accused of infringement of the ’682 patent, as well as distinct from those products or
 18 services of other defendants accused of infringement of the three additional patents-in-suit.
 19 Further, Interval did not allege that any coordination or common action by Defendants resulted in
 20 infringement. Finally, presentation of evidence of the other defendants’ accused products or
 21 services and financial information, in particular when presented amidst additional patents not
 22 relevant to Facebook, would be prejudicial to Facebook at trial.²

23 ¹ As set forth in Defendant Facebook, Inc.’s Joinder in Defendants Google, Inc. and YouTube,
 24 LLC’s Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted
 25 Pursuant to Fed. R. Civ. P. 12(b)(6), filed concurrently with this motion, and Google’s Motion to
 26 Dismiss (D.I. 62), the complaint does not set forth any accused products or services. However,
 all of Facebook’s products and services are distinct from the products and services of the other
 Defendants.

27 ² Facebook concurs that coordination or consolidation of discovery, particularly for claim
 28 construction and validity purposes, may be employed to preserve judicial efficiency and party
 resources, and does not object to this Court hearing any re-filed case against Facebook.

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III. CONCLUSION

For the foregoing reasons, and for the reasons discussed in Google’s Motion to Sever, Facebook respectfully joins Google’s Motion to Sever and requests that the Court dismiss Facebook from this case, or sever the claims against it, because joinder of the defendants here is improper.

DATED this 22nd day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2010, I electronically filed the following document(s):
**DEFENDANT FACEBOOK, INC.’S JOINDER IN DEFEDANTS GOOGLE INC. AND YOUTUBE, LLC’S
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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