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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HO KEUNG, TSE,

No. C 11-01812 WHA

Plaintiff,

v.

**ORDER TO SHOW CAUSE
WHY THE CLAIMS IN THIS
MULTI-DEFENDANT ACTION
SHOULD NOT BE SEVERED**

EBAY, INC., *et. al*,

Defendants.

_____/

Last month, this patent-infringement action involving user-identification software was transferred to the United States District Court for the Northern District of California from our sister court in the Eastern District of Texas (Dkt. No. 62). It was randomly assigned to the undersigned judge last week (Dkt. No. 77). The operative complaint accuses three separate defendants of independent acts constituting infringement of plaintiff’s patent. The three defendants are unrelated companies that operate unrelated websites. Significantly, they are not alleged to have acted in concert to infringe plaintiff’s asserted patent. They share no common transaction or occurrence.


As set forth in FRCP 20(a)(2), multiple defendants may be joined together in one action if “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” In situations of misjoinder and nonjoinder of parties, FRCP 21 provides that “[o]n motion or on its own, the court

1 may at any time, on just terms, add or drop a party.” The fact that separate parties manufacture,
2 sell, or operate similar products that may infringe identical patents is not necessarily sufficient to
3 join unrelated parties as defendants in the same lawsuit pursuant to Rule 20(a). *See*
4 *WiAV Networks, LLC v. 3Com Corp.*, No. C 10-03448 WHA, 2010 WL 3895047
5 (N.D. Cal. Oct. 1, 2010).

6 Plaintiff is therefore **ORDERED TO SHOW CAUSE** why all but the first-named defendant
7 should not be dismissed for misjoinder pursuant to FRCP 21. Plaintiff must file its response by
8 **NOON ON MAY 23, 2011**. Defendants may file any replies by **NOON ON MAY 31, 2011**.

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10 **IT IS SO ORDERED.**

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12 Dated: May 9, 2011.


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14 WILLIAM ALSUP
15 UNITED STATES DISTRICT JUDGE
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