

United States District Court

For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DENNIS FERNANDEZ,

No. C 11-04491 WHA

Plaintiff,

v.

ADOBE SYSTEMS, INC.; CISCO
SYSTEMS, INC.; INTERCALL, INC.;
and BLACKBOARD, INC.,**ORDER TO SHOW CAUSE
WHY THE CLAIMS IN THIS
MULTI-DEFENDANT ACTION
SHOULD NOT BE SEVERED**

Defendants.

This action was filed on September 9, 2011, and was reassigned to the undersigned judge several weeks later. The complaint accuses four separate defendants of independent acts that allegedly constitute infringement of plaintiff's two patents. The four defendants are unrelated companies that sell unrelated products. Significantly, they are not alleged to have acted in concert to infringe plaintiff's asserted patents. 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 may at any time, on just terms, add or drop a party." The fact that separate parties manufacture, sell, or operate similar products that may infringe identical patents is not necessarily sufficient to

1 join unrelated parties as defendants in the same lawsuit pursuant to Rule 20(a).

2 *See WiAV Networks, LLC v. 3Com Corp.*, No. C 10-03448 WHA, 2010 WL 3895047
3 (N.D. Cal. Oct. 1, 2010).

4 Plaintiff is therefore **ORDERED TO SHOW CAUSE** why all but the first-named defendant
5 should not be dismissed for misjoinder pursuant to FRCP 21. Plaintiff must file its response by
6 **NOON ON OCTOBER 11, 2011**. Defendants may file any replies by **NOON ON OCTOBER 18, 2011**.

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8 **IT IS SO ORDERED.**

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10 Dated: September 28, 2011.


11 WILLIAM ALSUP
12 UNITED STATES DISTRICT JUDGE

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