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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EVOLUTIONARY INTELLIGENCE LLC,

No. C-13-03587 DMR

Plaintiff(s),

**ORDER DENYING PLAINTIFF’S
ADMINISTRATIVE MOTION TO
RELATE CASES**

v.

YELP INC,

Defendant(s).

Before the court is a motion by Plaintiff Evolutionary Intelligence LLC (“Plaintiff”) to relate eight cases pending in this district to the above-captioned case. [Docket No. 78.] Defendant Yelp Inc. (“Yelp”) has filed a statement of non-opposition to the motion.¹ [Docket No. 81.] The matter is appropriate for resolution pursuant to Civil Local Rule 7-11(c). For the reasons stated below, the motion is **denied**.

I. BACKGROUND

Under consideration are eight lawsuits in addition to the instant case originally filed by Plaintiff against different defendants in the Eastern District of Texas:

Evolutionary Intelligence LLC v. Apple Inc., Case No. 3:13-cv-4201-WHA;

¹ The court notes that in the present action, both parties have consented to proceed before a magistrate judge for all further proceedings in the case, including trial and the order of entry of a final judgment, pursuant to 28 U.S.C. §636(c).

1 compatible devices); *Facebook*, Case No. 3:13-cv-4202-JSC, Docket No. 9 at ¶¶ 9, 13 (alleging that
2 Facebook infringes the patents by making its Facebook social networking and advertising product
3 and service); *FourSquare Labs*, Case No. 3:13-cv-4203-EDL, Docket No. 9 at ¶¶ 9, 13 (alleging that
4 Foursquare infringes the patents by making its Foursquare mobile device application and merchant
5 platform); *Groupon*, Case No. 3:13-cv-4204-LB, Docket No. 26 at ¶¶ 9, 14 (alleging that Groupon
6 infringes the patents by making its Groupon location-based coupon product and service);
7 *LivingSocial*, Case No. 3:13-cv-4205-EDL, Docket No. 1 at ¶¶ 9, 14 (alleging that LivingSocial
8 infringes the patents by making its location-based coupon product and service); *Millennial Media*,
9 Case No. 5:13-cv-4206-HRL, Docket No. 1 at ¶¶ 9, 14 (alleging that Millennial Media infringes the
10 patents by making its mMedia and MYDAS mobile advertising products and services) *Twitter*, Case
11 No. 4:13-cv-4207-KAW, Docket No. 1 at ¶¶ 9, 14 (alleging that Twitter infringes the patents by
12 making its Twitter real-time information network product and service); *Sprint Nextel Corp.*, Case
13 No. 3:13-cv-4513-JCS, Docket No. 26 at ¶¶ 9, 14 (alleging that Sprint infringes the patents by
14 making its Sprint CDMA and 4G networks and Sprint Services Framework). There are no
15 allegations that these defendants or products are related in any way.

16 Furthermore, Plaintiff has not addressed whether it appears likely that there will be an undue
17 burdensome duplication of labor and expense or conflicting results if the cases are conducted before
18 different judges. As noted, each of these cases concerns different defendants with different products
19 or services. The bulk of the relevant evidence in patent cases comes from defendants accused of
20 infringement, which will be unique to each defendant. Each case will therefore require a unique
21 inquiry to assess infringement and damages. As a result, “although some validity and inequitable
22 conduct issues would overlap, there would be a plethora of different infringement and damage[s]
23 issues.” *Bender v. Exar Corp.*, Case No. 3:09-cv-1140-WHA, Docket No. 45 (N.D. Cal. Aug. 3,
24 2009) at 1. Because of these differences, it is unlikely that relation would avoid duplication of labor
25 and expense or conflicting results.

26 Accordingly, the motion to relate the above cases is **denied**.

27 Yelp has stated its non-opposition to “having pre-trial proceedings in all (or some subset of)
28 the cases identified in [the motion] proceed before this court or the Honorable Judge Alsup.”

1 Docket No. 81 at 1. There is precedent in this district for consolidated pre-trial proceedings in
2 unrelated cases regarding the same patents proceeding before different judges. *See Bender*, Case
3 No. 3:09-cv-1140-WHA, Docket No. 45 at 1 (declining to relate 24 cases brought by same plaintiff
4 against different defendants with different products, but permitting parties in all cases to stipulate to
5 the court holding coordinated claim construction and invalidity proceedings with the consent of the
6 assigned judge). However, consolidated proceedings would require additional coordination with and
7 consent of the parties in the other cases, which is not ascertainable at this time. The question of
8 coordination may be revisited once the judicial assignments of all of these matters is fully settled.

9
10 IT IS SO ORDERED.

11 Dated: October 8, 2013



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13 _____
DONNA M. RYU
United States Magistrate Judge