IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WIRELESS RECOGNITION TECHNOLOGIES LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No. 2:10-cv-00364-TJW-CE**
A9.COM, INC., AMAZON.COM, INC., GOOGLE, INC., NOKIA, INC. and RICOH INNOVATIONS, INC.	)	**JURY TRIAL DEMANDED**
Defendants.	)	
WIRELESS RECOGNITION TECHNOLOGIES LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No. 2:10-cv-00365-TJW**
NOKIA CORPORATION, and RICOH COMPANY, LTD	)	**JURY TRIAL DEMANDED**
Defendants.	)	
WIRELESS RECOGNITION TECHNOLOGIES LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No. 2:10-cv-00577-TJW-CE**
A9.COM, INC., AMAZON.COM, INC., GOOGLE, INC., NOKIA, INC. and RICOH INNOVATIONS, INC.	)	**JURY TRIAL DEMANDED**

Defendants.	)	
WIRELESS RECOGNITION TECHNOLOGIES LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No. 2:10-cv-00578-TJW-CE**
NOKIA CORPORATION, and RICOH COMPANY, LTD	)	**JURY TRIAL DEMANDED**
Defendants.	)	

PLAINTIFF WIRELESS RECOGNITION TECHNOLOGIES LLC'S MOTION TO CONSOLIDATE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 42(A) AND LOCAL RULE CV-42(B)

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 42(a) and Local Rule CV-42(b), Plaintiff Wireless Recognition Technologies LLC ("WRT") respectfully moves the Court to consolidate four related actions pending in this Court: (1) *Wireless Recognition Technologies LLC v. A9, Inc., et al.*, No. 2:10-cv-00364-TJW-CE (" '287 Patent Domestic Action" or " '287PDA"); (2) *Wireless Recognition Technologies LLC v. Nokia Corporation, et al.*, No. 2:10-cv-00365-TJW (" '287 Patent International Action" or " '287PIA"); (3) *Wireless Recognition Technologies LLC v. A9, Inc., et al.*, No. 2:10-cv-00577-TJW-CE (" '474 Patent Domestic Action" or " '474PDA"); and (4) *Wireless Recognition Technologies LLC v. Nokia Corporation, et al.*, No. 2:10-cv-00578-TJW (" '474 Patent International Action" or " '474PIA"). WRT requests that the '287PIA, '474PDA, and '474PIA actions be consolidated into the '287PIA action.

The foregoing actions involve significantly overlapping issues of both law and fact. Between the four actions, the patents-in-suit and claims thereof are related, the defendants are

principally the same (*i.e.*, the same or related parent entities) and the infringing products are the same. Moreover, in only one of the actions – the first filed '287 Domestic Action – has the Court set claim construction hearing and trial dates,[1] and entered the Docket Control Order and Discovery Order,[2] with the trial date set over two years in the future.

Consolidating these actions for trial will conserve judicial resources and promote consistent rulings without unduly prejudicing any party. The Defendants in each action have elected to oppose consolidation through trial, despite the obvious benefits offered by consolidation through trial. It is Defendants' refusal that necessitates WRT having to seek the Court's intervention. The just exercise of this Court's discretion under Rule 42(a) and Local Rule CV-42(b) warrants granting the instant motion.

II. STATEMENT OF RELEVANT FACTS

On September 14, 2010, WRT brought the '287 Patent Domestic Action against Defendants A9.com, Inc. ("A9"), Amazon.com ("Amazon"), Google Inc. ("Google"), Nokia Inc. ("Nokia") and Ricoh Innovations, Inc. ("RII"). The suit alleges infringement of WRT's U.S. Patent No. 7,392,287 (" '287 Patent"), which claims "systems and methods for sending information to a data processing apparatus for identifying a document to share with a recipient."[3]

On the same day, WRT filed the '287 Patent International Action against the respective parent entities of Nokia and RII, namely Nokia Corporation and Ricoh Company, Ltd., in order to prevent customary delays in the international service of process from affecting the former '287 Patent Domestic Action. This action alleges infringement of the same '287 Patent[4] by the same

[1] 287PDA Dkt. No. 50.
[2] 287PDA Dkt. Nos. 63, 64.
[3] 287PDA Dkt. No. 1 at ¶ 13.
[4] 287PIA Dkt. No. 1 at ¶ 10.

products as between the parent and subsidiaries.[5]

On December 21, 2010, U.S. Patent No. 7,856,474 (" '474 Patent") was issued[6] by the U.S. Patent and Trademark Office, and on the same day,[7] WRT brought the '474 Patent Domestic Action against the same first set of Defendants, namely A9, Amazon, Google, Nokia and RII.[8] The '474 Patent is related to the '287 Patent in all relevant aspects, including having common ownership, common inventorship and even claiming priority to the same parent application.[9] This action alleges infringement of the same products by the same Defendants[10] as the '287 Patent Domestic Action.

For similar reasoning as the above filing of the '287 Patent International Action, the '474 Patent International Action was also filed against the parent entities of Nokia and RII. This action alleges infringement of the same '474 Patent[11] by the same products as between the parent and subsidiaries.[12]

To summarize, WRT presently asserts two patents –the '287 Patent and the '474 Patent – in four actions against Defendants A9, Amazon, Google, Nokia and RII, and additional parent entity Defendants of Nokia and RII. The two Patents are related in all relevant aspects, by

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[5] Compare 287PDA Dkt. No. 1 to 287PIA Dkt. No 1, at ¶¶ 32, 11, for Nokia and Nokia Corporation, respectively. Compare Id., at ¶¶ 38, 17, for RII and Ricoh Company, Ltd.
[6] 287PIA Dkt. No. 1 at Ex. A.
[7] The additional filing was made to avoid the risk of the filing of a declaratory judgment action by Defendants in another jurisdiction. In fairness to Defendants such action was not threatened, but nevertheless the practice occurs all too often in modern day patent litigation.
[8] 287PIA Dkt. No. 1.
[9] 287PIA Dkt. No. 4-1 at 1.
[10] For A9, *compare* 287PDA Dkt. No. 1, ¶ 14 to 474PA Dkt. No 1, ¶ 14. For Amazon, *compare* 287PDA Dkt. No. 1, ¶ 20 to 474PA Dkt. No 1, ¶ 20. For Google, *compare* 287PDA Dkt. No. 1, ¶ 26 to 474PA Dkt. No 1, ¶ 26. For Nokia, *compare* 287PDA Dkt. No. 1, ¶ 32 to 474PA Dkt. No 1, ¶ 32. For RII, *compare* 287PDA Dkt. No. 1, ¶ 38 to 474PA Dkt. No 1, ¶ 38.
[11] 474PIA Dkt. No. 1 at ¶ 10.
[12] *Compare* 474PDA Dkt. No. 1 to 474PIA Dkt. No 1, at ¶¶ 32, 11, for Nokia and Nokia Corporation, respectively. *Compare Id.*, at ¶¶ 38, 17, for RII and Ricoh Company, Ltd.

common ownership, common inventorship and common claim to priority. As noted, between the actions, the infringing Defendant products are also the same.

In addition, in only one of the actions – the first filed '287 Domestic Action – has the Court set claim construction hearing and trial dates.[13] In that, and only in that action, the Court entered a Docket Control Order and Discovery Order.[14] In fact, the trial date is set over two years in the future, with the claim construction hearing set for August 22, 2012 and the jury selection set for December 2, 2013.[15]

Defendants are well aware of the obvious and extensive overlap of the parties, legal issues, and technical information. They are also well aware that in only one of the actions has the Docket Control Order and Discovery Order been entered, with trial set for over two years away. Likely for these reasons, Defendants have offered to consolidate the cases past the Claim Construction Hearing.

However, they have united to refuse consolidation through trial. Instead, they would prefer that the Court separately try four virtually identical actions, thereby substantially and unreasonably wasting scarce judicial resources and needlessly requiring that four distinct juries be impaneled. To avoid this needless waste, WRT respectfully asks that the Court exercise its discretion to grant the instant motion.

III. POINTS AND AUTHORITIES

Pursuant to Fed. R. Civ. P. 42(a), this Court has the power to consolidate actions "involving common questions of law or fact." Fed. R. Civ. P. 42(a)(1). Rule 42(a) has "[t]he stated purpose . . . to 'avoid unnecessary costs or delay', and hence the decision to invoke the

[13] 287PDA Dkt. No. 50.
[14] 287PDA Dkt. Nos. 63, 64.
[15] *Id.*

rule is entirely within the discretion of the district court as it seeks to promote the administration of justice." *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973).

The Fifth Circuit has urged the courts of its Circuit "to make good use of Rule 42(a)" to "expedite the trial and eliminate unnecessary repetition and confusion." *Gentry*, 487 F.2d at 581 (citing *Dupont v. S. Pac. Co.*, 366 F.2d 193, 195 (5th Cir. 1966), *cert. denied*, 386 U. S. 958 (1967)). In fact, Rule 42(a) "has been applied liberally" in the Fifth Circuit. *In re Air Crash Disaster at Florida Everglades*, 549 F.2d 1006, 1013 (5th Cir. 1977). However, the Court must ensure "that the rights of the parties are not prejudiced by the order of consolidation under the facts and circumstances of the particular case." *Dupont*, 366 F.2d at 196.

IV. ARGUMENT

Consolidating the four actions for trial will promote judicial economy, consistency, and equity. The foregoing actions involve significantly overlapping issues of both law and fact. Between the four actions, the patents-in-suit and claims thereof are related, being tied by common ownership, inventorship and priority, the defendants are principally the same (*i.e.*, the same or related parent entities) and the infringing products are the same. Conducting multiple trials would achieve nothing more than compound unnecessary repetition and confusion. *Gentry*, 487 F.2d at 581

Conducting multiple trials would also compound judicial inefficiency. *See, e.g., Kowalski v. Mommy Gina Tuna Resources*, No. 05-00679, 2008 U.S. Dist. LEXIS 87853, at *6 (D. Ha. Oct. 24, 2008) ("[T] he interest of judicial efficiency would be served by consolidation. One trial will consume less judicial resources than two."). In fact, courts have exercised their discretion to consolidate actions with significantly less overlap than presently provided. *See, e.g., TBC Consoles, Inc. v. Forest Consoles, Inc.*, No. 05-2756, 2008 U.S. Dist. LEXIS 64659, at *3

(S.D.N.Y. Aug. 21, 2008).

Another important consideration is the parties' costs, which will be substantially reduced by consolidation. *See, e.g., Kowalski*, 2008 U.S. Dist. LEXIS 87853 at *6. Consolidation ensures that neither WRT nor the Defendants participate in multiple trials regarding essential, identical issues.

Consolidating the four actions will also promote consistency. The Court will have to issue multiple claim construction rulings, which risk inconsistency between them. In addition, the Court should also have the opportunity to rule on other overlapping legal issues a single time. For example, as obviousness is a question of law for the Court based on several factual issues that must be developed at trial, trying the actions together will ensure that the Court has a single complete record on which to base its decision and a single set of jury instructions to prepare. This will promote consistent rulings on the invalidity defenses. *See id*. at *6-7 ("A consolidated trial also avoids the risk of inconsistent judgments, as both trials would focus on the validity of the . . . [p]atent.").

Finally, Defendants cannot fairly argue that consolidating the multiple actions for trial would result in undue prejudice. *Dupont*, 366 F.2d at 196. As noted, in only one of the actions – the first filed '287 Patent Domestic Action – has the Court set claim construction hearing and trial dates,[16] and entered the Docket Control Order and Discovery Order.[17] There, the claim construction hearing is set for August 22, 2012 and the jury selection set for December 2, 2013. The timing permits WRT and the Defendants to readily adopt the majority of items scheduled for the '287 Patent Domestic Action for the other three actions[18] upon consolidation, and come to

[16] 287PDA Dkt. No. 50.
[17] 287PDA Dkt. Nos. 63, 64.
[18] *I.e.*, '287 Patent International Action, '474 Patent Domestic Action and '474 Patent

agreement regarding items coming due in the near future.[19]

V. CONCLUSION

Because consolidation of the related actions will promote judicial economy, will ensure consistent judgments, and will not unduly prejudice any party to either action, Plaintiff WRT respectfully asks that the Court exercise its discretion to grant WRT's Motion to Consolidate Pursuant to Federal Rule of Civil Procedure 42(a) and Local Rule CV-42(b) and consolidated the following three actions into *Wireless Recognition Technologies LLC v. A9.com, Inc., et.al.*, C.A. No. 2:10-cv-00364-TJW-CE:

- *Wireless Recognition Technologies LLC v. Nokia Corporation, et.al.*, C.A. No. 2:10-cv-00365;
- *Wireless Recognition Technologies LLC v. A9.com, Inc., et.al.*, C.A. No. 2:10-cv-00577; and
- *Wireless Recognition Technologies LLC v. Nokia Corporation, et.al.*, C.A. No. 2:10-cv-00578.

International Action.

[19] It bears repeating that Defendants have shown willingness to consolidate past the Claim Construction Hearing, though not through trial.

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Respectfully Submitted,

By: /s/ William E. Davis, III

William E. Davis, III
Texas State Bar No. 24047416
The Davis Firm, P.C.
111 W. Tyler St.
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
E-mail: bdavis@bdavisfirm.com

Of Counsel

Cameron H. Tousi
David M. Farnum
Ralph P. Albrecht
Albrecht Tousi & Farnum, PLLC
1701 Pennsylvania Ave, NW Ste 300
Washington, D.C. 20006
Telephone: (202) 349-1490
Facsimile: (202) 318-8788

ATTORNEYS FOR PLAINTIFF WIRELESS RECOGNITION TECHNOLOGIES LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 16th day of August, 2011.

/s/ William E. Davis, III
William E. Davis, III