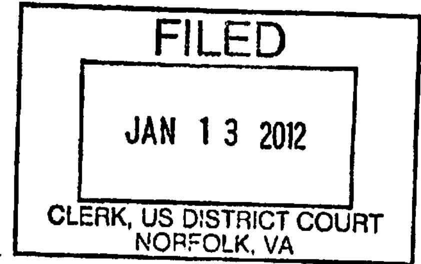
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



AUTOMATED TRACKING SOLUTIONS, LLC,

Plaintiff,

v. **Civil No. 2:11cv424**

AWAREPOINT CORPORATION et al.,

Defendants.

MEMORANDUM ORDER

This matter comes before the court on (1) Defendants TeleTracking Technologies ("TeleTracking"), RadarFind Corporation's ("RadarFind"), Impinj, Inc. ("Impinj"), and SimplyRFiD Inc.'s ("SimplyRFiD") Motion to Dismiss Plaintiff's Complaint for Improper Joinder, pursuant to Federal Rules of Civil Procedure 20 and 21; and (2) Defendants TeleTracking and RadarFind's Motion to Dismiss Plaintiff's Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). Both motions have been fully briefed and are ripe for decision. For the reasons set forth herein, the Motion to Dismiss for Improper Joinder is **GRANTED**, and the court finds it unnecessary to consider the Rule 12(b)(6) Motion to Dismiss, which is rendered **MOOT**.

I.

This is a patent infringement case, filed on July 28, 2011, in which Plaintiff Automated Tracking Solutions, LLC ("Plaintiff") accuses six separate defendants of infringing four related patents: U.S. Patent No. 7,551,089; U.S. Patent 7,834,765; U.S. Patent 7,834,766; and U.S. Patent 6,933,849 (collectively, the "patents-in-suit"). The patents-in-suit are each entitled "Method and Apparatus for Tracking Objects and People" and represent inventory control "processes and systems that permit identification, tracking, location, and/or surveillance of tagged objects at the item level anywhere in a facility or area." Compl. ¶ 22.

Defendants TeleTracking, RadarFind, Impinj, and SimplyRFiD move the court under Federal Rules of Civil Procedure 20 and 21 ("Rules 20 and 21") to dismiss the claims against them for improper joinder. In the Memorandum filed in support of their Motion, Defendants state that "[t]here is nothing in the Complaint to suggest the claims arise from the same transaction or occurrence. The only apparent commonality is that defendants are each accused of infringing the same patents. Courts have increasingly held that this is not, in itself, sufficient to justify joinder." Mem. in Sup. at 1. Defendants assert that the six defendants are unrelated entities, with the exception of TeleTracking and RadarFind, which have a parent-subsidiary

relationship. Defendants further contend that the Complaint alleges five independent claims of patent infringement (even if the claims against TeleTracking and RadarFind are considered together) in which defendants are accused of infringing different claims by way of different products and different systems. Defendants aver that the joinder of the varying claims against varying parties unnecessarily complicates the issues for the court and the jury.

Plaintiff responded to Defendants' Motion to Dismiss for Improper Joinder by suggesting that significant efficiencies are to be had by proceeding against all Defendants in one action and by stating that Defendants have provided no evidence of prejudice as a result of a joint action. In the alternative, Plaintiff suggests that rather than dismissing the action, the court instead sever the case into five individual actions so that the parties need not begin the litigation cycle anew.

II.

Rule 20 provides that defendants may be joined in one action if "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 . . . any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(1)(A) and (B). "[C]ourts have uniformly held that parties

are misjoined when they fail to satisfy either of the preconditions for permissive joinder of parties set forth in [Rule] 20a." Hanna v. Graven, 262 F.Supp.2d 643, 647 (E.D. Va. May 13, 2000).

In the event of improper joinder, Rule 21 provides the court with discretion to add or drop a party or to sever any claim against a party for just terms.[1] There is no specific standard for misjoinder, and district courts possess broad discretion in ruling on such motions under Rule 21. E.g., Colt Def. LLC v. Heckler & Koch Def., No. 2:04-cv-258, 2004 U.S. Dist. LEXIS 28690, at *9 (E.D. Va. Oct. 22, 2004); see Weaver v. Marcus, 165 F.2d 862, 864 (4th Cir. 1948) (stating that courts can exercise discretion in determining whether to drop a party under Rule 21 and indicating that "the exercise of such discretion by the District Judge can be reversed on appeal only when there has been a clear abuse thereof").

The United States Court of Appeals for the Fourth Circuit has stated that the Rule 20 "transaction or occurrence" test "permit[s] all reasonably related claims for relief by or against parties to be tried in a single proceeding." Saval v. BL LTD, 710 F.2d 1027, 1031 (4th Cir. 1983) (internal citations

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[1] "On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." Fed. R. Civ. P. 21.

omitted). The Fourth Circuit has explained that Rule 20's purpose is to "promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits." Id. (internal citations omitted).

While the Fourth Circuit has yet to articulate a standard for the joinder of multiple defendants particular to a patent infringement action, several courts in the Eastern District of Virginia have interpreted the Saval standard within the context of other infringement cases. See, e.g., Bear Creek Techs., Inc. v. RCN Commc'ns, No. 11-cv-103, 2011 WL 3626787, at *3 (E.D. Va. Aug. 17, 2011) (Jackson, J.) (granting motion to dismiss based on misjoinder, despite allegations that defendants were infringing the same patent in "an allegedly similar manner"); Colt Def. LLC, No. 2:04-cv-258, at *7-8 (finding that the defendants were improperly joined because the trademark infringement claims did not arise from the same transaction or occurrence, even though common questions of fact and law seemed to exist).[2]

III.

The Complaint does not assert that the joined Defendants' alleged infringements arise "out of the same transaction,

[2] The Federal Circuit applies the law of the regional circuit to procedural matters, unless the procedural matter is itself a substantive patent law issue. See, e.g., Midwest Indus., Inc. v. Karavan Trailers, Inc., 175 F.3d 1356, 1359 (Fed. Cir. 1999) (en banc in relevant part).

occurrence, or series of transactions or occurrences," as required by Rule 20 for proper joinder. With the exception of TeleTracking and RadarFind, Defendants appear to be independently owned and operated entities (and may even be direct competitors). There are no allegations in the Complaint that there are legal or business relationships amongst Defendants to indicate that they are acting in connection with each other to infringe any of the four patents-in-suit, or that their actions of infringement are related.

Plaintiff does not provide an explanation for how this joinder meets the requirement of Rule 20 that the infringement arise "out of the same transaction, occurrence, or series of transactions or occurrences." Instead, Plaintiff relies on principles of judicial economy. However, as the court noted in Bear Creek, "the Court need not rely on judicial economy in its decision when there is not sufficient commonality amongst the Defendants." See Bear Creek Techs., Inc., 2011 WL 3626787, at *5. Moreover, how can judicial economy be served by attempting to try five or six different infringement actions at one time? This type of joinder in the case at bar represents judicial ineconomy and serves no purpose but to thwart the rules of proper procedure for filing separate lawsuits.

In this case, there is not sufficient commonality amongst the defendants. Plaintiff has filed the present action against

six defendants, five of which are unrelated, alleging violations of various claims of four different patents. Judicial economy does not exist when six separate cases of infringement are to be presented. Asking a jury to keep all of this evidence properly sorted against this many defendants in an infringement case creates confusion that could lead to an inability to decide the case.

Finally, though two Defendants, Awarepoint and Bode, have not explicitly raised the issue of misjoinder, the court, on its own motion, raises it sua sponte, pursuant to Federal Rule of Civil Procedure 21. E.g., Bear Creek Techs., Inc., 2011 WL 3626787, at *2; see supra note 1 and accompanying text. The same reasons for misjoinder applicable to the the moving Defendants are likewise applicable to the non-moving Defendants.

IV.

Accordingly, the court **GRANTS** the Motion to Dismiss for Improper Joinder as to the moving Defendants and **DISMISSES** Plaintiff's Complaint without prejudice as to those Defendants. The court, for improper joinder, additionally **DISMISSES** Plaintiff's Complaint without prejudice as to nonmoving Defendant Bode, leaving only the first named Defendant, Awarepoint, in the case. See, e.g., Bear Creek Techs., Inc., 2011 WL 3626787, at *2 (dismissing all but the first named defendant). Therefore, for the reasons set forth above, all

Defendants, other than Awarepoint, are **DROPPED** from this case. Defendants TeleTracking and RadarFind's Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) is rendered **MOOT**.

The Clerk is **DIRECTED** to send a copy of this Memorandum Order to counsel of record for Plaintiff and to counsel of record for Defendants.

It is so **ORDERED**.

/s/
Rebecca Beach Smith
Chief
United States District Judge RBS

Rebecca Beach Smith
Chief United States District Judge

Norfolk, Virginia

January 13, 2012