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

OPTIMUM POWER SOLUTIONS LLC,  
Plaintiff,

v.

APPLE INC., DELL INC., HEWLETT-  
PACKARD COMPANY, LENOVO (UNITED  
STATES) INC., and SONY ELECTRONICS,  
INC.,  
Defendants.

No. C 11-1509 SI

**ORDER DENYING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT AND  
GRANTING DEFENDANTS' MOTION  
TO DISMISS ALL BUT ONE  
DEFENDANT**

Plaintiff has filed a motion for leave to file a first amended complaint. Defendants have filed a motion to dismiss the complaint. The motions are scheduled for a hearing on September 22, 2011. Pursuant to Civil Local Rule 7-1(b), the Court finds that these matters are appropriate for resolution without oral argument, and hereby VACATES the hearing. For the following reasons, the Court hereby DENIES plaintiff's motion and GRANTS defendants' motion.

**BACKGROUND**

On February 24, 2010, plaintiff Optimum Power Solutions LLC filed this lawsuit against five defendants alleging infringement of U.S. Patent Number 5,781,784, entitled "Dynamic Power Management of Solid-State Memories" (the "'784 Patent"). Compl. ¶ 1. The complaint alleges that plaintiff is the owner by assignment of all rights, title and interest in the '784 Patent. *Id.* ¶ 11. According to the complaint, "the '784 Patent discloses a power management device and related logic control circuitry that supplies variable voltage to solid-state memory devices. The device provides

1 sufficient power to maintain memory information during periods of no activity or standby periods, and  
2 an increased level of power during periods of data access activity or memory access periods, thereby  
3 reducing substantially the power consumption of solid-state memory devices.” *Id.* ¶ 12. Plaintiff alleges  
4 that each of the five defendants sells computers and/or computer systems that infringe the ‘784 patent.  
5 *Id.* ¶¶ 14-43. For example, plaintiff alleges that defendant Apple’s Apple MacBook Pro with an Intel  
6 Core 2 Duo CPU (P8600) 2.4Ghz with a 3 MB L2 cache infringes the ‘784 patent, as does defendant  
7 Dell’s Dell Studio1555 Notebook with an Intel Centrino 2 Duo CPU (P8600) 2.4GHz with a 3 MB L2  
8 cache. *Id.* ¶¶ 14, 17.

9  
10 Plaintiff’s proposed first amended complaint seeks to join five additional defendants on the  
11 ground that these new defendants’ products also allegedly infringe the ‘784 Patent. On August 12,  
12 1011, the five defendants named in the plaintiff’s original complaint moved to dismiss the complaint  
13 as to all but one defendant, on the theory that defendants are misjoined. Now before the Court are  
14 plaintiff’s motion to amend and defendants’ motion to dismiss, which concern the same issue: whether  
15 the defendants’ acts of infringement of the same patent, albeit in an allegedly similar manner, are  
16 sufficient to permit plaintiff to pursue its claims against all ten defendants in a single suit.

## 17 18 LEGAL STANDARDS

### 19 I. Motion to amend

20 Federal Rule of Civil Procedure 15 governs amendment of the pleadings. It states that if a  
21 responsive pleading has already been filed, the party seeking amendment “may amend its pleading only  
22 with the opposing party’s written consent or the court’s leave. The court should freely give leave when  
23 justice so requires.” Fed. R. Civ. P. 15(a). There are several reasons to deny leave to amend, including,  
24 *inter alia*, the futility of amendment. *See Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160  
25 (9th Cir. 1989); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 809 (9th Cir. 1988). Thus while courts  
26 do not ordinarily consider the validity of a proposed amended pleading in deciding whether to grant  
27 leave to amend, leave may be denied if the proposed amendment is futile or would be subject to  
28 dismissal. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). “Amendments seeking to add

1 claims are to be granted more freely than amendments adding parties.” *Union Pac. R.R. Co. v. Nev.*  
2 *Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991).

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4 **II. Motion to dismiss**

5 Federal Rule of Civil Procedure 20(a) provides that joinder of defendants is appropriate where  
6 “any right to relief is asserted against them jointly, severally, or in the alternative with respect to or  
7 arising out of the same transaction, occurrence, or series of transactions or occurrences; and [] any  
8 question of law or fact common to all defendants will arise in the action.” Fed. Rule Civ. Proc. 20(a)(2).  
9 “The first prong, the ‘same transaction’ requirement, refers to similarity in the factual background of  
10 a claim.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997). Where misjoinder is apparent, a  
11 court is within its discretion to either dismiss or sever the claims against the misjoined parties. Fed. R.  
12 Civ. P. 21; *Coughlin*, 130 F.3d at 1350.

13  
14 **DISCUSSION**

15 Plaintiff contends that joinder of the five defendants in the original complaint, or ten defendants  
16 in the proposed FAC, is proper “given the identity of accused instrumentalities at issue.” Opp’n at 3:3.  
17 Specifically, plaintiff asserts that each of the accused instrumentalities is comprised of, among other  
18 things, a processor and its associated cache memory, a PWM rate controller, and portions of the BIOS  
19 software. Plaintiff has grouped defendants’ products into “uniform, homogenous groupings” based upon  
20 the processor family utilized in the accused instrumentalities, and plaintiff asserts each of the processors  
21 in the same group performs its portion of the power management accused of infringement in exactly the  
22 same fashion. Thus, plaintiff asserts, there are multiple common legal and factual questions presented  
23 by plaintiff’s infringement claims against defendants.

24 Defendants contend that the separate sale of separate products by separate defendants is  
25 insufficient to support joining multiple defendants in the same action, regardless of the similarity of their  
26 products, the similarity of the components that make up their products, or the alleged similarity in the  
27 manner in which these component combinations violate the ’784 Patent. Defendants argue that merely  
28 arranging claims into “groupings” does not meet the requirements for joinder because there are no

1 allegations that defendants acted in concert or that their separate sales of computers somehow constitute  
2 common transactions or occurrences. Defendants also note that all of the defendants are competitors,  
3 each of whom sells its own, separate computer products in direct competition with each other.  
4 Defendants assert that joinder of multiple defendants in this case would prove complex and  
5 unmanageable; for example, they note that plaintiff alleges that 110 of the products manufactured by  
6 one defendant alone infringe its patent.

7 Courts have found that merely alleging a violation of the same patent or copyright is insufficient  
8 to permit a plaintiff to pursue claims against multiple defendants in a single suit. *See WiAV Networks*  
9 *LLC v. 3Com Corp.*, No. C 10-3488 WHA, 2010 WL 3895047, at \*3 (N.D. Cal. Oct. 1, 2010) (severing  
10 claims brought against twelve defendants who all manufactured laptops that allegedly infringed the  
11 same patent). In *WiAV Networks LLC*, the court found that “joinder is improper where multiple  
12 competing businesses have allegedly infringed the same product by selling different products.” 2010  
13 WL 3895047, at \*3 (citing *Spread Spectrum Screening, LLC v. Eastman Kodak Co.*, 2010 WL 3516106,  
14 at \*2 (N.D. Ill. Sept. 1, 2010) (severing claims brought against competing defendants alleged to have  
15 infringed the same patent by selling different products); *Philips Elecs. N.Am. Corp. v. Conent Corp.*,  
16 220 F.R.D. 415, 417 (D. Del. 2004) (severing claims brought against multiple defendants where the only  
17 connection between them was that they may have infringed the same patent); and *Androphy v. Smith*  
18 *& Nephew, Inc.*, 31 F. Supp. 2d 620, 623 (N.D. Ill. 1998) (severing claims brought against separate  
19 companies selling different products allegedly in violation of the same patent)). Underlying the decision  
20 of the court in *WiAV Networks* was the right of the defendants to present “individualized assaults on  
21 question of non-infringement, invalidity and claim construction” and the fact that infringement issues,  
22 damages issues, wilfulness issues, time frames and accused conduct, and discovery issues would likely  
23 vary from company to company. 2010 WL 3895047, at \*3.

24 Plaintiff asserts that this case is similar to *Privasys, Inc. v. Visa International, et al.*, No. C 07-  
25 03257 SI, 2007 WL 3461761 (N.D. Cal. Nov. 14, 2007), where this Court granted the plaintiff leave to  
26 amend to add certain defendants alleged to have infringed the same patent. However, in *Privasys* all  
27 of the defendants were alleged to be acting in concert pursuant to a written agreement, and plaintiff  
28 alleged that one of the defendants exercised direction or control over the other defendants. *See Privasys*,

1 \*1-2. Thus, the Rule 20(a) “same transaction, occurrence or series of transactions or occurrences”  
2 standard was met.

3 The Court agrees with defendants that plaintiff’s allegations against the various defendants are  
4 insufficient to meet the standard required for joinder under Federal Rule of Civil Procedure 20(a).  
5 Although plaintiff accuses defendants of infringing the ’784 Patent in five similar ways, plaintiff does  
6 not allege that defendants’ infringement involved the “same transaction, occurrence or series of  
7 transactions or occurrences.” Fed. R. Civ. Proc. 20(a)(2). Plaintiff has not alleged that defendants acted  
8 in concert or otherwise controlled or directed each others’ conduct – and indeed defendants appear to  
9 be ardent competitors of one another in the marketplace for their products; nor has plaintiff alleged any  
10 connection between defendants except for the fact that each defendant is alleged to have infringed  
11 plaintiff’s patent. Although plaintiff asserts that the infringement analysis will not vary from defendant  
12 to defendant, Rule (20)(a) requires both a “question of law or fact common to all defendants” *and* “the  
13 same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. Proc. 20(a)(2).  
14 Plaintiff has not, and cannot, made anus such claim.

15  
16 **CONCLUSION**

17 Accordingly, the Court concludes that defendants are misjoined, and GRANTS defendants’  
18 motion to dismiss plaintiff’s claims against all but one defendant. The Court finds that it would be futile  
19 to grant plaintiff leave to amend to file the proposed FAC as the new defendants would be dismissed  
20 for improper joinder, and accordingly DENIES plaintiff’s motion to amend to add additional defendants.  
21 The Court DISMISSES WITHOUT PREJUDICE plaintiff’s claims against Dell, Inc., Hewlett-Packard  
22 Company, Lenovo Company, and Sony Electronics, Inc., and plaintiff’s claims against the first-named  
23 defendant, Apple, Inc., remain in this case. Docket Nos. 140, 156.

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25 **IT IS SO ORDERED.**

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27 Dated: September 20, 2011

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SUSAN ILLSTON  
United States District Judge