IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SUMMIT 6 LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 3:11-cv-367-O**
	§	
RESEARCH IN MOTION CORPORATION, et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court are Defendant Facebook, Inc.'s ("Defendant Facebook") Opposed Motion to Sever and Appendix in Support (ECF Nos. 374–75); Plaintiff Summit 6 LLC's ("Summit 6") Notice of Non-Opposition to Facebook's Motion to Sever (ECF No. 385); Defendants Samsung Electronics Co. Ltd. and Samsung Telecommunications America LLC's (collectively, "Defendant Samsung") Response (ECF No. 413); and Defendant Facebook's Reply (ECF No. 466). Having reviewed the motion, the Court finds it is well-taken and should be and is hereby **GRANTED.**

Defendant Facebook argues that this Court should sever Summit 6's cases against Defendant Facebook and Defendant Samsung for trial. *See* Def. Facebook's Mot. Sever 5, ECF No. 374. Defendant Facebook argues that the two defendants are "unrelated parties who are not accused of joint infringement and whose accused products are completely different," thus failure to sever "would unfairly prejudice [Defendant] Facebook and run afoul of the Federal Circuit's *In re EMC* decision." *Id.*; *see also In re EMC Corp.*, 677 F.3d 1351 (Fed. Cir. 2012). Summit 6 agrees that Defendant Samsung should be severed for trial and that Defendant Facebook should proceed to trial

first. Pl.'s Not. Non-Opposition 1, ECF No. 385.

Defendant Samsung argues the Federal Circuit's holding in *In re EMC* allows the Court considerable discretion to consolidate cases for trial under Rule 42. Def. Samsung's Br. Supp. Resp. 2, ECF No. 413-1. Samsung asserts the trial should not be severed because both defendants assert "the claims of the '482 patent are invalid in light of prior art and are unenforceable in light of Summit 6's inequitable conduct," and these common factual and legal questions warrant proceeding with a single trial under Rule 42(a). *Id.* Samsung also argues for a single trial because there are common third party fact witnesses and a single trial would conserve judicial resources and serve judicial economy. Defendant Facebook argues that requiring it to try the case alongside Samsung would be both highly prejudicial to Defendant Facebook and confusing to the jury. Def. Facebook's Reply 2–3, ECF No. 466. Defendant Facebook further argues"any judicial economy that could come from consolidating these cases for trial would be minimal" given the parties have jointly conducted discovery and other pretrial matters. *Id.*

In *In re EMC*, the Federal Circuit addressed the proper standard to evaluate whether joinder of a defendant is proper under Rule 20. *In re EMC*, 677 F.3d at 1359. It clarified that in patent cases "joinder is not appropriate where different products or processes are involved." *Id.* "Unless there is an actual link between the facts underlying each claim of infringement, independently developed products using differently source parts are not part of the same transaction, even if they are coincidentally identical." *Id.* "[T]he mere fact that infringement of the same claims of the same patent alleged does not support joinder, even though the claims would raise common questions of claim construction and patent invalidity." *Id.* at 1357. However, the Federal Circuit made clear that *In re EMC* is not an absolute bar to joinder, and the Court must assess whether their actions are part

of the "same transaction, occurrence, or series of transactions or occurrences." *Id.* (using the "transaction or occurrence" test).

While explaining the test for proper joinder in a patent case the Federal Circuit also made clear that "even if joinder is not permitted under Rule 20, the district court has considerable discretion to consolidate cases for discovery and for trial under Rule 42." *Id.* at 1360. Rule 42 states: "If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay." Fed. R. Civ. P. 42(a). Further, "district courts have the discretion to refuse joinder in the interest of avoiding prejudice and delay, ensuring judicial economy, or safeguarding principles of fundamental fairness." *In re EMC*, 677 F.3d at 1360 (quoting *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521 (5th Cir. 2010)). "In a complicated patent litigation a large number of defendants might prove unwieldy, and a district court would be justified in exercising its discretion to deny joinder 'when different witnesses and documentary proof would be required.'" *Id*. (quoting *Acevdeo*, 600 F.3d at 522).

Here, the Court finds that trial with two independent defendants each involving different accused products or processes would be prejudicial and potentially confusing to the jury. Accordingly, it is **ORDERED** that Defendant Facebook's motion to sever should be and is hereby **GRANTED**. The February 19, 2013 trial setting for Defendant Samsung is cancelled and a new trial date will be set by separate order.

SO ORDERED on this 6th day of February, 2013.

Reed O'Connor
UNITED STATES DISTRICT JUDGE