

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case Number: 16-23535-CIV-MORENO

Hon. John J. O'Sullivan, Magistrate Judge

BLACKBERRY LIMITED,

Plaintiff,

v.

BLU PRODUCTS, INC.,

Defendant.

**PLAINTIFF BLACKBERRY'S OPPOSITION
TO DEFENDANT BLU PRODUCTS' MOTION
TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

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Plaintiff BlackBerry Limited (“BlackBerry”) hereby opposes Defendant BLU Products, Inc.’s (“BLU”) November 4, 2016 Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (D.I. 24-25), directed to (1) the patentability under 35 U.S.C. § 101 of four (4) of the 15 asserted patents: U.S. Patent Nos. 8,402,384 (the “384 patent”); 8,489,868 (the “868 patent”), 8,713,466 (the “466 patent”); and 8,745,149 (the “149 patent”) (collectively “BlackBerry’s Patents”¹); and (2) the sufficiency of BlackBerry’s Complaint (D.I. 16).

I. INTRODUCTION

BlackBerry’s Patents are directed to specific technological inventions that claim significant advances over prior art technology directed to the usability and security of mobile devices. These patents are inventive, and the claimed inventions are not well-known, routine, or conventional. Indeed, BlackBerry’s inventions have been instrumental in making BlackBerry an innovator and market leader in the mobile communication industry. For over 30 years, BlackBerry has provided a broad array of transformative, patented technologies in groundbreaking mobile communication devices and services used by tens of millions of consumers and organizations around the world, including by over 90% of Fortune 500 companies.

Under the U.S. Supreme Court’s two-step *Alice* inquiry, a claim is patent-eligible under § 101 if it *either* (1) is directed to a patent-eligible concept, *i.e.*, something other than “laws of nature, natural phenomena, and abstract ideas,” *or* (2) includes an “inventive concept” sufficient to transform any patent-ineligible concept into a patent-eligible claim.²

The most recent Federal Circuit precedent in *Bascom*³ and *Enfish*⁴ has significantly clarified the § 101 case law landscape, and the Federal Circuit has reinforced these clarifications

¹ BLU refers to these as the “101 Patents” in its motion.

² *Alice Corp. v. CLS Bank Int’l*, _ U.S. __, 134 S.Ct. 2347, 2354, 2357 (2014).

³ *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

⁴ *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016).

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