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Cases

No table of authorities entries found.

INTRODUCTION

1
2 Summary judgment on the issue of infringement of the asserted claims of U.S.
3 Patent Nos. 8,677,250 (“the ’250 patent”), 8,279,173 (“the ’173 patent”), and
4 9,349,120 (“the ’120 patent”) is appropriate because there are no material issues of
5 fact. BlackBerry has proven a *prima facie* case of infringement, and Defendants have
6 failed to raise any relevant factual disputes, including concerning BlackBerry’s source
7 code analysis, expert testimony, or how the experts declare that the accused systems
8 operate. Instead, Defendants use a smoke and mirrors approach to try to distract the
9 Court from the plain meaning of the claims and what is clearly performed by the
10 accused systems. For example, Defendants do their best to attack the credibility of
11 BlackBerry’s expert witnesses by pointing to questioning during depositions about
12 limitations that appear nowhere in the claims. Defendants also raise untimely claim
13 construction arguments that seek to improperly inject limitations into the claims.
14 Defendants then try to use their improper, and overly restrictive claim constructions
15 to manufacture non-infringement positions with irrelevant declarations from their fact
16 witnesses which, in many cases, directly contradict the witnesses’ deposition
17 testimony and/or Defendants’ engineering documents. None of these efforts raises a
18 genuine issue of material fact, and accordingly, the Court should grant partial
19 summary judgment of infringement of the asserted claims.

ARGUMENT

21 **I. THE COURT SHOULD GRANT SUMMARY JUDGMENT OF**
22 **INFRINGEMENT OF THE ’250 PATENT**

23 **A. Defendants Do Not Dispute that Limitations 9.c through 9.e, 12, 13,**
24 **and 14 are Met By the Accused Systems**

25 For the ’250 Patent, Defendants do not dispute that all of the limitations of the
26 asserted claims are met by the accused systems except for limitations 9.a and 9.b. As
27 explained in detail below, even with respect to limitations 9.a and 9.b, the disputes
28 are narrow and not tied to the claim language.

B. Defendants Fail to Raise A Genuine Issue of Material Fact With

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1 **Respect To Limitations 9.a or 9.b.**

- 2 **1. Limitation 9.a:** *enabling a game application on the electronic*
3 *device to utilize a contact list for an instant messaging*
4 *application for playing games with contacts in the contact list by*
 identifying game play in the contact list;

5 Defendants attempt to make new, unfounded claim construction arguments and
6 attack the credibility of BlackBerry’s expert, Dr. Schonfeld, based on lines of
7 questioning during his deposition that were completely unrelated to a plain and
8 ordinary reading of the asserted claims. Tellingly Defendants failed to cite any expert
9 of their own to support their arguments.

10 Defendants do not dispute that the Facebook “Instant Games” feature, as
11 implemented in both Messenger and the Facebook Website, enables various game
12 applications for playing games with the user’s contacts on a user’s electronic device.
13 Defendants also do not dispute that, when a user is in the process of playing an Instant
14 Game with a contact, game play is identified by including a visual identifier next to
15 the contact with whom the user is playing, and that the particular contact appears in a
16 Chat list that contains other contacts. Thus, Defendants’ non-infringement arguments
17 for this limitation rely entirely on an over-parsing of the claim language—specifically
18 (1) whether the “Chat list” meets the “contact list” requirement and (2) whether the
19 contact list is “utilize[d]” for identifying game play as claimed.

20 **(a) The “Chat List” Satisfies The “Contact List”**
21 **Requirement**

22 BlackBerry identifies a “Chat list” as the “contact list” required by this
23 limitation. Put simply, the “Chat list” is a “list” that contains “contacts,” and
24 Defendants do not contend otherwise. Thus, under any ordinary reading of the term
25 “contact list,” the Facebook “Chat list” meets the limitations.

26 In an effort to show that the “Chat list” is not a “contact list” as claimed,
27 Defendants are forced to raise an untimely claim construction argument and try to
28 improperly add limitations into the claim. But Defendants’ belated claim construction
 arguments are waived. *Bettcher Indus., Inc. v. Bunzl USA, Inc.*, 661 F.3d 629, 640-

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