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QUINN EMANUEL URQUHART & SULLIVAN, LLP
James R. Asperger (Bar No. 83188)
jamesasperger@quinnemanuel.com
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Kevin P.B. Johnson (Bar No. 177129)
kevinjohnson@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

BLACKBERRY CORPORATION
Edward R. McGah, Jr (SBN 97719)
Vice President, Deputy General Counsel – Litigation
41 Ticknor Place
Laguna Niguel, California 92677
Telephone: (+1) 650-581-4750

Attorneys for Plaintiff,
BlackBerry Limited

* Redacted version for filing with PTAB as exhibit in IPR2019-00516 and IPR2019-00528

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

BLACKBERRY LIMITED, a Canadian corporation,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation, WHATSAPP INC., a Delaware corporation, and INSTAGRAM, INC., a Delaware corporation, and INSTAGRAM, LLC, a Delaware limited liability company,

Defendants.

Case No. 2:18-cv-01844-GW-KS
LEAD CONSOLIDATED CASE

Related Case: 2:18-cv-02693-GW-KS

BLACKBERRY'S REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT OF U.S. PATENT NOS. 8,677,250, 8,279,173, AND 9,349,120

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INTRODUCTION

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

ARGUMENT

I. THE COURT SHOULD GRANT SUMMARY JUDGMENT OF INFRINGEMENT OF THE '250 PATENT

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

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

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

Respect To Limitations 9.a or 9.b.

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

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

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

(a) The "Chat List" Satisfies The "Contact List" Requirement

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

In an effort to show that the "Chat list" is not a "contact list" as claimed, Defendants are forced to raise an untimely claim construction argument and try to 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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