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* Redacted version for
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IPR2019-00528

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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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TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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28

INTRODUCTION 1

ARGUMENT 1

 I. The Court Should Grant Summary Judgment of Infringement of
 the '250 Patent..... 1

 A. Defendants Do Not Dispute that Limitations 9.c through
 9.e, 12, 13, and 14 are Met By the Accused Systems 1

 B. Defendants Fail to Raise A Genuine Issue of Material Fact
 With Respect To Limitations 9.a or 9.b. 1

 II. The Court Should Grant Summary Judgment of Infringement of
 the '173 Patent..... 12

 A. The Accused Systems Include “Tag Type Indicators” As
 Claimed..... 12

 B. The Accused “Tag Type Indicators” Indicate “Tag
 Sources” 15

 III. The Court Should Grant Summary Judgment of Infringement OF
 the '120 Patent..... 17

 A. Defendants Do Not Dispute That All But Two Limitations
 of Claims 1 and 13 are Met By the Accused Systems..... 17

 B. Defendants Fail To Raise A Genuine Issue Of Material
 Fact With Regard To The Accused Systems’ Silencing
 “Notifications” 17

 C. Defendants Fail To Raise A Genuine Issue Of Material
 Fact With Regard To The Accused Products’ Use Of A
 “Flag” To Silence A Message Thread 23

CONCLUSION..... 25

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TABLE OF AUTHORITIES

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
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19
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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*
5 *identifying game play in the contact list;*

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

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

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

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

27 In an effort to show that the “Chat list” is not a “contact list” as claimed,
28 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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