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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BLACKBERRY LIMITED,

Plaintiff,

v.

FACEBOOK, INC., WHATSAPP INC., and INSTAGRAM LLC,

Defendants.

SNAP INC.,

Defendant.

Case Nos. 2:18-cv-01844; 2:18-cv-02693 GW(KSx)

FACEBOOK DEFENDANTS' OPPOSITION TO BLACKBERRY'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT (U.S. PATENT NOS. 8,677,250, 8,279,173, AND 9,349,120)

Hearing Date: September 5, 2019
Time: 8:30 A.M.
Ctrm: 9D

Assigned to the Hon. George H. Wu

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I. INTRODUCTION

In its rush to have something heard at the same time as the pending motions for summary judgment under 35 U.S.C. § 101, BlackBerry filed an error laden and deficient motion for partial summary judgment seeking to establish that several accused products infringe claims across multiple patents. Tellingly, the "Statement of Uncontroverted Facts" accompanying the motion relies almost entirely on bald statements that BlackBerry's experts analyzed the systems and provided opinions.[1] When those opinions are closely analyzed, they demonstrate BlackBerry's inability to show that any accused product infringes any asserted claim.

The '250 patent requires enabling a "game application" to utilize a "contact list" for an instant messaging application, but BlackBerry and its expert point only to a "Chats list" that does not contain a list of the user's contacts and cannot be accessed by any supposed game application. The deposition of BlackBerry's expert also uncovered a profound lack of knowledge, as he repeatedly changed positions multiple times in an attempt to salvage BlackBerry's theory, raising credibility issues that provide a separate basis for rejecting BlackBerry's motion. With respect to the '173 patent, which requires the display of a "tag type indicator" for every tag in a tag list, BlackBerry's expert admitted that he was relying on a blank area of the screen – on which **nothing** is displayed – as the supposedly displayed indicator. For the '120 patent, which requires the ability to silence all new message notifications within a thread, BlackBerry's expert acknowledged that the accused products continue to show visual cues that inform the user of the receipt of new messages, even for silenced threads. These and the other flaws with BlackBerry's analysis, as discussed below, actually show non-infringement of the asserted patents. But at a minimum, they raise genuine issues of material fact that preclude summary judgment.

[1] *E.g.*, SUF Nos. 29-36.

II. LEGAL STANDARD

BlackBerry's motion only attempts to establish *literal* infringement, not infringement under the doctrine of equivalents.[2] The standard for proving literal infringement is well-settled, and exacting. Literal infringement exists only "when every limitation recited in the claim appears in the accused device, i.e. when 'the properly construed claim reads on the accused device exactly.'" *DeMartini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1331 (Fed. Cir. 2001) (citation omitted). The absence of even a single limitation precludes a finding of literal infringement. *See, e.g. Kahn v. Gen. Motors Corp.*, 135 F.3d 1472, 1477-78 (Fed. Cir. 1998). Whether an accused product infringes a claim presents a question of fact. *See Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1301-02 (Fed. Cir. 2011).

BlackBerry bears the burden of proving infringement. *See, e.g.*, *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 198-199 (2014). In the context of summary judgment, "[w]here the moving party will have the burden of proof on an issue at trial," as here, "the movant must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007); *see also, e.g.*, *L & W, Inc. v. Shertech, Inc.*, 471 F.3d 1311, 1318 (Fed. Cir. 2006). As established below, BlackBerry has not carried its burden with respect to any of the asserted claims or any of the accused products addressed in its motion.

III. ARGUMENT

A. BlackBerry Has Not Shown Infringement of the '250 Patent

It is somewhat puzzling that BlackBerry's motion chose to lead with the '250 patent considering the profound deficiencies in BlackBerry's theory. The problems with BlackBerry's infringement theory run the gamut of summary

[2] BlackBerry's two technical experts (on which BlackBerry's motion entirely relies) only evaluated literal infringement for purposes of the present motion. (Schonfeld Dep., 22:21-23:4, Keefe Ex. 1; Rosenberg Dep., 132:2-9, Keefe Ex. 2.)

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