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8 (Additional counsel of record listed on signature page)

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 BLACKBERRY LIMITED,

14 Plaintiff,

15 v.

16 FACEBOOK, INC., WHATSAPP
17 INC., INSTAGRAM, INC. and
18 INSTAGRAM, LLC,

19 Defendants.

Case No. 2:18-cv-01844-GW-KSx

**DEFENDANTS' FINAL ELECTION
OF ASSERTED PRIOR ART**

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**CASE NO. 2:18-CV-01844-GW
DEFENDANTS' FINAL ELECTION
OF ASSERTED PRIOR ART**

1 Pursuant to the Updated Joint Case Scheduling Report (See Case No. 2:18-cv-
2 01844 GW(KSx), Dkt. No. 93), and the Court’s adoption of the parties’ proposed
3 schedule (Dkt. 96), and the Court’s order extending time for narrowing elections (Dkt.
4 200), Defendants Facebook, Inc., WhatsApp, Inc., Instagram, Inc. and Instagram LLC
5 (“Defendants”) hereby serve their Final Election of Asserted Prior Art for U.S. Patent
6 Nos. 7,372,961 (“the ’961 Patent”), 8,209,634 (“the ’634 Patent”), 8,279,173 (“the
7 ’173 Patent”), 8,307,713 (“the ’713 Patent”), 8,429,236 (“the ’236 Patent”), 8,677,250
8 (“the ’250 Patent”), 9,349,120 (“the ’120 Patent”), 8,296,351 (“the ’351 Patent”), and
9 8,676,929 (“the ’929 Patent”) (collectively, the “patents-in-suit”). For purposes of
10 this election, a prior art instrumentality (such as a device or process) and associated
11 references that describe that instrumentality have been counted as one reference, as
12 well as the closely related work of a single prior artist. *See* Fed. Cir. Bar Assoc. “A
13 Model Order Limiting Excess Patent Claims And Prior Art”, n. 2.

14 Defendants reserve all rights to supplement or amend this final election of
15 asserted prior art. For example, Defendants’ election and reduction of asserted prior
16 art is made based on Defendants’ current understanding of Plaintiff’s claimed priority
17 dates for each of the patents-in-suit and Plaintiff’s infringement contentions, including
18 its election of asserted claims. Defendants reserve the right to supplement or amend
19 their election of asserted prior art should Plaintiff’s contentions regarding any of these
20 issues change. Plaintiff has also not adequately responded to Defendants’
21 interrogatory seeking Plaintiff’s contentions on why the asserted prior art does not
22 invalidate the asserted claims. Defendants reserve the right to supplement or amend
23 their election should Plaintiff supplement its interrogatory response with new
24 contentions. Defendants further reserve the right to supplement or amend their
25 election of asserted prior art based on any further claim construction order provided
26 by the Court. Discovery is also on-going, including discovery of Plaintiff, the alleged
27 inventors, the patent prosecution firms, and third-party prior art inventors. As a result,
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1 Defendants reserve the right to supplement or amend their election based on additional
2 discovery. Defendants further reserve the right to use non-elected prior art for any
3 purpose other than for prior art invalidity, including for example, to provide a
4 technical background and show the state of the art at the time of the alleged invention
5 of any of the patents-in-suit, to show the understanding of a person of ordinary skill in
6 the art at the time of the alleged invention of any of the patents-in-suit, and/or
7 demonstrate the incremental value (if any) of the alleged inventions over the prior art
8 for determining damages.

9 **'961 Patent**

- 10 1. Usenet Post by Steven Brecher (“Brecher 1996”)
11 2. Digital Signature Standard, FIPS Pub 186-2 (“DSS 2000”)
12 3. OpenSSL 0.9.5
13 4. Crypto++ Library, Version 3.2

14 **'173 Patent**

- 15 5. U.S. 7,415,662 (“Rothmuller”)
16 6. U.S. 7,831,913 (“MacLaurin”)
17 7. U.S. 7,870,475 (“Schachter”)
18 8. U.S. 7,945,653 (“Zuckerberg”)

19 **'713 Patent**

- 20 9. JP2000330913 (“Ito”)
21 10. iChat (*see, e.g.*, 2018-10-29 Defs. Joint Invalidation Contentions, Ex. D16,
22 and any amendments or supplements thereto)

23 **'120 Patent**

- 24 11. U.S. 7,644,126 (“Chmaytelli”)
25 12. Mozilla Thunderbird, Version 2.0.0.12 (“Thunderbird”)

26 **'250 Patent**

- 27 13. U.S. 7,519,667 (“Capps”)
28 14. WO 2001/031476 (“Crane”)

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iChat

- 15. Nintendo DS (*see, e.g.*, 2018-10-29 Def. FB Invalidity Contentions, Ex. F61, and any amendments or supplements thereto)

'634 Patent

- 16. U.S. 7,281,215 (“Canfield”)
- 17. PocketPC: How to Do Everything with Your PocketPC (2nd ed.) (“McPherson”); 10 Minute Guide to PocketPC 2002 (“Miller”)
- 18. Mac OS X: Mac OS X The Missing Manual (1st ed.) (“Pogue”); Mac OS X The Complete Reference (“Feiler”)

'236 Patent

- 19. U.S. 4,818,998 (“Apsell”)
- 20. U.S. 2002/0042266 (“Heyward”)

'351 Patent

- 21. U.S. 6,456,234 (“Johnson”)
- 22. U.S. 6,505,046 (“Baker”)
- 23. WO 01/61559 A1 (“Noble”)
- 24. Special Edition Using SQL (“Colburn”)

'929 Patent

Johnson

Noble

Colburn

- 25. U.S. 6,205,432 (“Gabbard”)
- 26. U.S. 6,892,181 (“Megiddo”)
- 27. U.S. 7,663,652 (“Reese”), incorporating U.S. 5,956,486 (“Hickman”) and Internet E-mail: Protocols, Standards, and Implementation (“Hughes”)

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Dated: June 14, 2019

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/s/ Heidi L. Keefe

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