UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
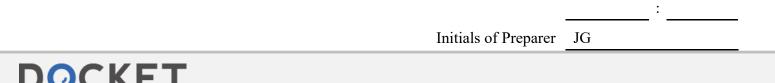
CIVIL MINUTES - GENERAL

Case No.	**CV 18-1844-GW(KSx)** CV 18-2693-GW(KSx)	Date	April 5, 2019
Title	*BlackBerry Limited v. Facebook, Inc. et al* *BlackBerry Limited v. Snap Inc.*		

Present: The Honorable   GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

PROCEEDINGS: **IN CHAMBERS - *CORRECTED* FINAL RULING ON CLAIM CONSTRUCTION/*MARKMAN* HEARING**

Attached hereto is the Court's *Corrected* Final Ruling on Claim Construction/*Markman* Hearing.

_____ : _____

Initials of Preparer   JG

BlackBerry Limited v. Facebook, Inc. et al, Case No. 2:18-cv-01844-GW-(KSx) (Lead Case)
BlackBerry Limited v. Snap Inc., Case No. 2:18-cv-02693-GW-(KSx)
Final Ruling on Claim Construction/*Markman* Hearing

Technology Tutorial: March 21, 2019 at 8:30 a.m.;
Claim Construction Hearing: April 1, 2019 at 8:30 a.m.

I.   **Introduction**

Plaintiff BlackBerry Limited ("BlackBerry") filed suit against Facebook, Inc., WhatsApp, Inc., Instagram, Inc.,[1] and Instagram, LLC (collectively, "Facebook Defendants") on March 6, 2018, alleging infringement of various patents. *BlackBerry Limited v. Facebook, Inc. et al*, Case No. 2:18-cv-01844-GW-(KSx) ("*Facebook Case*"), Docket No. 1; *see also* Docket No. 15 (Facebook First Amended Complaint).

A month later on April 3, 2018, BlackBerry separately filed suit against Snap Inc., alleging infringement of some of the same patents. *BlackBerry Limited v. Snap Inc.*, Case No. 2:18-cv-02693-GW-(KSx) ("*Snap Case*"), Docket No. 1. The two actions have been consolidated for pretrial purposes. Docket No. 92.[2]

Now pending are some of the parties' claim construction disputes. The parties have submitted a Joint Claim Construction and Prehearing Statement. *See* Docket No. 110; *see also* Docket No. 111 (Court's Order Regarding Joint Claim Construction and Prehearing Statement). The parties have also filed various claim construction briefs and supporting documents consistent with the Court's Order Regarding the Joint Claim Construction and Prehearing Statement:

- Opening Claim Construction Briefs: BlackBerry's Opening Claim Construction Brief (Docket No. 116); Defendants' Common Opening Claim Construction Brief (Docket No. 119); Facebook Defendants' Opening Claim Construction Brief (Docket No. 117); Snap's Opening Claim Construction Brief (*Snap Case*, Docket No. 97)

- Responsive Claim Construction Briefs: BlackBerry's Responsive Claim Construction

---

[1] Previously in Facebook Defendants' Motion to Dismiss, they stated, "Instagram, Inc. is no longer an active corporation, but joins this motion if necessary." *See Facebook Case,* Docket No. 36 at 1 n.2. Instagram, Inc. is listed on the face of the CM/ECF docket with other Facebook Defendants for each of Facebook Defendants' claim construction papers. However, Instagram, Inc. is not necessarily listed as joining the briefing itself. *See, e.g.*, Docket No. 119 at 1 (listing only "Defendants Snap Inc., Facebook, Inc., WhatsApp, Inc., and Instagram, LLC" as submitting an Opening Claim Construction Brief for the Common Patents). The parties are **ORDERED** to meet and confer regarding their positions regarding the involvement of Instagram, Inc. in this litigation and file a joint report with the Court within 7 days of the Court's final claim construction order.

[2] Citations are to the *Facebook Case* unless otherwise noted.

Brief (Docket No. 125); Defendants' Common Responsive Claim Construction Brief (Docket No. 123); Facebook Defendants' Responsive Claim Construction Brief (Docket No. 121); Snap's Responsive Claim Construction Brief (*Snap Case*, Docket No. 100)

- Claim Construction Presentation Materials: BlackBerry's Claim Construction Presentation Materials (Docket No. 128); Defendants' Common Claim Construction Presentation Materials (Docket No. 127) Facebook Defendants' Claim Construction Presentation Materials (Docket No. 126); Snap's Claim Construction Presentation Materials (*Snap Case*, Docket No. 103)

A technology tutorial was held on March 21, 2019. Docket No. 133. After the technology tutorial, the parties submitted a Joint Statement Regarding Disputed Claim Terms that narrowed the parties' claim construction disputes. Docket No. 135. The parties provided additional clarification regarding some of their positions in another Joint Report filed March 28, 2019. Docket No. 146.

Also after the technology tutorial, BlackBerry filed a Motion to Strike the Declaration of Jonathan Katz. Docket No. 134. The parties stipulated to an expedited briefing schedule on the Motion and it has now been fully briefed. Docket Nos. 139, 140.

The Court would construe the presented disputed terms as stated herein. The Court would **DENY** BlackBerry's Motion to Strike (Docket No. 134).

II. <u>Background</u>

For purposes of the parties' claim construction disputes, the parties request construction of terms in asserted claims of the following currently-asserted patents:

- Patents that BlackBerry asserts all Defendants infringe: U.S. Patent Nos. 8,301,713 ("the '713 Patent"), 8,296,351 ("the '351 Patent"), 8,676,929 ("the '929 Patent"), and 8,209,634 ("the '634 Patent");
- Patents that BlackBerry asserts Facebook Defendants infringe: U.S. Patent Nos. 9,349,120 ("the '120 Patent"), 8,677,250 ("the '250 Patent"), 8,279,173 ("the '173 Patent"), 7,372,961 ("the '961 Patent"), and 8,429,236 ("the '236 Patent");
- Patents that BlackBerry asserts Snap infringes: U.S. Patent Nos. 8,326,327 ("the '327 Patent"), and 8,825,084 ("the '084 Patent").

See Docket No. 110 at 2 n.1.

A. '351 and '929 Patents

The '929 Patent is a continuation of the '351 Patent and both patents share substantially the same specification. The '351 and '929 Patents also share the same title, "System and Method for Pushing Information to a Mobile Device." The '351 Patent issued on October 23, 2012 and the '929 Patent issued on March 18, 2014.

Claim 1 of the '351 Patent recites:

1. A system for pushing information to a mobile device, comprising:
   a proxy content server that receives information over a computer network from an information source and stores the information to one of a plurality of channels based on pre-defined information categories, wherein the plurality of channels comprise memory locations included in at least one of the proxy content server or a proxy content server database;
   the proxy content server to receive a feedback signal over a wireless network that indicates a position of the mobile device, and to use the feedback signal to select a channel for transmission of the information from the selected channel over the wireless network to the mobile device, wherein the information comprises at least one of static advertising information, dynamic advertising information, default advertising information, or content information, and wherein a combination of the static advertising information with one of the dynamic or default advertising information comprises an advertisement or an information bulletin.

Claim 1 of the '929 Patent recites:

1. A method for pushing information to a mobile device, the method comprising:
   detecting a triggering event comprising a time triggering event;
   determining, by a server, information relevant to the detected triggering event from among information stored in one of a plurality of memory location channels, wherein the information is stored in the one of the plurality of memory location channels based on a category of the information matching a pre-defined category of the one of the plurality of memory location channels;
   when the information relevant to the detected triggering event comprises content information, inserting to the content information, by the server, a meta tag for one or more advertisements to be displayed with the content information, wherein the meta tag identifies the one or more advertisements and advertisement display requirements, and wherein the one or more advertisements are selected based on the detected triggering event; and

transmitting the content information that includes the meta tag to the mobile device.

B. The '634 Patent

The '634 Patent issued June 26, 2012 and is titled "Previewing a New Event on a Small Screen Device." Claim 1 of the '634 Patent recites:

> 1. A method of providing notifications of unread messages on a wireless communication device, comprising:
> displaying at least one icon relating to electronic messaging on a graphical user interface of the wireless communication device;
> receiving a plurality of electronic messages on the wireless communication device, the plurality of electronic messages including messages from a plurality of different messaging correspondents; and
> in response to receiving at least one of the plurality of electronic messages, visually modifying at least one displayed icon relating to electronic messaging to include a numeric character representing a count of the plurality of different messaging correspondents for which one or more of the electronic messages have been received and remain unread.

C. The '713 Patent

The '713 Patent issued October 30, 2012 and is titled "Handheld Electronic Device and Associated Method Providing Time Data in a Messaging Environment." Claim 1 of the '713 Patent recites:

> 1. A method of operating an electronic device, the method comprising:
> outputting an electronic conversation comprising a plurality of indications, each indication being representative of at least a portion of a corresponding messaging communication between the electronic device and a second electronic device;
> identifying a first messaging communication between the electronic device and the second electronic device occurring at a first time, the first messaging communication having a corresponding first indication representative of at least a portion of the first messaging communication and which is one of the plurality of indications;
> determining that a predetermined duration of time has elapsed since the first time without additional communication between the electronic device and the second electronic device during that duration of time;
> detecting an input to the electronic device following said identifying and determining steps, said input occurring at a second time; and

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase
Smarter legal research.