UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-1444-GW-KSx	Date	September 5, 2019
Title	*BlackBerry Limited v. Twitter, Inc.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Anne Kielwasser	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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PROCEEDINGS: **DEFENDANT TWITTER, INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) [39]**

The Court's Tentative Ruling is circulated and attached hereto. Court hears oral argument. For reasons stated on the record, Defendant's Motion is TAKEN UNDER SUBMISSION. Court to issue ruling.

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BlackBerry Limited v. Twitter, Inc.; Case No. 2:19-cv-01444-GW-(KSx)
Tentative Ruling on Motion to Dismiss First Amended Complaint

I. Background

Plaintiff BlackBerry Limited ("BlackBerry") filed suit against Twitter, Inc. ("Twitter") on February 27, 2019, alleging infringement of seven patents. Docket No. 1; *see also* Docket No. 36 (First Amended Complaint).

Twitter has moved to dismiss all of BlackBerry's patent infringement claims under 35 U.S.C. § 101. Docket No. 39-1. Twitter's motion has been fully briefed. *See* BlackBerry's Opposition in support of Twitter's Motion to Dismiss, Docket No. 40; Twitter's Reply in support of its Motion to Dismiss, Docket No. 43.

For the reasons stated in this Order, the Court would **DEFER-IN-PART**, **DENY-IN-PART**, and **GRANT-IN-PART with leave to amend** as further articulated herein.

II. Legal Standard

A. Motion to Dismiss (Rule 12(b)(6))

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed for failure to state a claim for one of two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) ("Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.").

In deciding a Rule 12(b)(6) motion, a court "may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court must construe the complaint in the light most favorable to the plaintiff, accept all allegations of material fact as true, and draw all reasonable inferences from well-pleaded factual allegations. *Gompper v. VISX, Inc.*, 298 F.3d 893, 896 (9th Cir. 2002); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001), *amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001); *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). A court is not required to accept as true legal conclusions couched as factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Where a

plaintiff facing a Rule 12(b)(6) motion has pleaded "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," the motion should be denied. *Id.*; *Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1191 (9th Cir. 2013). But if "the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not show[n] . . . the pleader is entitled to relief." *Iqbal*, 556 U.S. at 679 (citations omitted).

B. Patent Eligibility under 35 U.S.C. § 101

An invention or a discovery is patentable if it is a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101. "In choosing such expansive terms . . . Congress plainly contemplated that the patent laws would be given wide scope." *Diamond v. Chakrabarty*, 447 U.S. 303, 308 (1980). Still, the Supreme Court has identified exceptions to this wide scope to distinguish patents that claim the building blocks of human ingenuity, which are ineligible for patent protection, from those that "integrate the building blocks into something more." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 217 (2014) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 89 (2012)) (internal quotations omitted). These exceptions to patent protection are "laws of nature, natural phenomena, and abstract ideas." *Diamond v. Diehr*, 450 U.S. 175, 185 (1981). While the boundaries of the judicial exceptions remain subject to further development, the Supreme Court has clearly delineated the policy underlying those exceptions: avoiding patents that "too broadly preempt the use of a natural law [or abstract idea]." *Mayo*, 566 U.S. at 73. Thus, patent law should "not inhibit further discovery by improperly tying up the future use of laws of nature [or abstract ideas]." *Id*. at 1301.

In *Mayo*, the Supreme Court "set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice*, 573 U.S. at 217. The first step is to ask "whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* If not, the claims fall within the scope of § 101 and are patent-eligible. If the claims are directed to one of the exceptions, the next step is to search for an "inventive concept" that is "sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the natural law itself." *Mayo*, 566 U.S. at 72-73. In doing so, a court must "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the

claim' into a patent-eligible application." *Alice*, 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 78-79). If, in considering the claim elements individually and as an ordered combination, they merely recite well-understood, routine, and conventional steps, they will not constitute an inventive concept for patent eligibility purposes. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1128 (Fed. Cir. 2018). "Whether the claim elements or the claimed combination are well-understood, routine, conventional is a question of fact." *Id.*; *see also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018) ("Like indefiniteness, enablement, or obviousness, whether a claim recites patent eligible subject matter is a question of law which may contain underlying facts.").

III. Discussion

A. Introduction and Determinations Regarding the '351, '929, '120, '089, and '059 Patents

This will be the third time the Court has had occasion to review various patents assigned to BlackBerry. About a year before this case was filed, BlackBerry filed patent infringement actions against Snap, Inc. and certain Facebook, Inc. entities and affiliates. Those cases are also before this Court. *BlackBerry Limited v. Facebook, Inc. et al*, Case No. 2:18-cv-01844-GW-(KSx) ("*Facebook Case*"); *BlackBerry Limited v. Snap Inc.*, Case No. 2:18-cv-02693-GW-(KSx) ("*Snap Case*"). Concurrently with this tentative ruling, the Court has prepared and shared a tentative ruling addressing three § 101 summary judgment motions in those other cases. The determinations reached therein, as well as certain determinations that were reached by the Court in resolving similar § 101 motions to dismiss previously brought by Snap and Facebook Defendants, are relevant to the parties' dispute here. *See Facebook Case*, Docket No. 68.

Directly relevant, in its concurrently-issued tentative ruling in the *Facebook Case*, the Court has found the asserted claims of U.S. Patent Nos. 8,296,351 and 8,676,929 patent-ineligible at the summary judgment stage. The Court would **DEFER RULING** on Twitter's motion to dismiss related to these patents until a final ruling has been issued in that case and the parties have each filed supplemental briefs five pages or less stating how a determination of § 101 patent-ineligibility of the same asserted patents in those other cases should impact Twitter's motion in this case. Unless otherwise specified at the hearing, supplemental briefs shall be due by September 10, 2019.

Also directly relevant, in both its previous ruling on Facebook Defendants' § 101 motion to dismiss and in its concurrently-issued tentative ruling in the *Facebook Case* regarding a § 101 motion for summary judgment, the Court found the asserted claims of U.S. Patent Nos. 9,349,120

not drawn to an abstract idea under *Mayo/Alice* Step One. The Court would specifically incorporate by reference the analysis provided in each of its other § 101 rulings regarding the '120 Patent, and for the same reasons discussed in those rulings would **DENY** Twitter's motion to dismiss as it relates to the '120 Patent.

The Court has not previously reviewed the other four asserted patents raised by Twitter's motion to dismiss. However, the Court finds for at least some of these newly-disputed patents, its previous analysis is equally instructive as to the appropriate outcome at the pleading stage.

For U.S. Patent No. 8,286,089, the Court again specifically incorporates by reference the analysis provided in each of its previous § 101 rulings regarding the '120 Patent. Particularly at the pleading stage, the parallels between the '089 and '120 Patents put the '089 Patent similarly under the purview of the claims held non-abstract at Step One in *Core Wireless*. *See Core Wireless Licensing S.A.R.L. v. LG Elecs., Inc.*, 880 F.3d 1356, 1362 (Fed. Cir. 2018). Even if the claims are abstract at *Mayo/Alice* Step One, the Court would find that § 101 analysis at the motion to dismiss stage is premature, as factual questions likely exist at *Mayo/Alice* Step Two would preclude dismissal. *See Aatrix*, 882 F.3d at 1128. The Court would **DENY WITHOUT PREJUDICE** Twitter's motion as to the '089 Patent.

U.S. Patent No. 9,021,059 relates to the transmission of content and notifications via a specific arrangement of network components. Sufficient Federal Circuit cases exist for the proposition that a specific arrangement and relationship among networked components may be patent-eligible as drawn to a technologically improved or unconventional distributed architecture, whether it be at *Mayo/Alice* Step One or Two, for the Court to deem it premature at this stage of litigation to consider the patent eligibility of these claims. *Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1261-62 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016); *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016). The Court would **DENY WITHOUT PREJUDICE** Twitter's motion as to the '059 Patent.

For U.S. Patent No. 8,572,182, there are also parallels to BlackBerry patents previous considered by the Court, but this time to a patent about setting time stamps that the Court found patent-ineligible at the motion to dismiss stage. *Facebook Case*, Docket No. 68 at 13-18. The Court will thus address the parties' dispute regarding this patent in greater detail herein.

Finally, for U.S. Patent No. 8,825,777, further discussion is also warranted.

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