

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-1444-GW-KSx

Date October 1, 2019

Title *BlackBerry Limited v. Twitter, 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 - FINAL RULING ON DEFENDANT TWITTER, INC.'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) [39]**

Attached hereto is the Court's Final Ruling. Defendant's Motion is GRANTED IN PART and DENIED IN PART.

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**BlackBerry Limited v. Twitter, Inc.**; Case No. 2:19-cv-01444-GW-(KSx)  
Final 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 **DENY-IN-PART** and **GRANT-IN-PART with or without leave to amend, depending on the particular patent**, 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 ruling, the Court has prepared and will issue a final 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 final 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. As directed by the Court, BlackBerry and Twitter have filed short briefs stating that the rulings in the *Facebook Case* regarding those patents should “apply equally to Twitter’s motion in this case.” Docket No. 49 at 1 (BlackBerry’s supplemental brief); *see also* Docket No. 50 (Twitter’s supplemental brief, articulating same). The Court would **GRANT** Twitter’s motion to dismiss related to these patents. Without objection from BlackBerry in its supplemental brief (Docket No. 49), the Court would find the claims determined patent ineligible in the *Facebook Case* for the ’351 and ’929 Patents representative of the other claims of those

patents to the extent they are at issue in Twitter's motion to dismiss (and specifically Claim 10 of the '929 Patent (*see* Docket No. 50 at 4-5)). The Court agrees with Twitter that based on the procedural posture of this dispute, leave to amend as to these two patents would be futile, and dismissal is thus **WITH PREJUDICE**.

Also directly relevant, in both its previous ruling on Facebook Defendants' § 101 motion to dismiss and in its concurrently-issued 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<sup>1</sup> put the '089 Patent similarly under the purview of the claims held non-abstract at Step One in *Core Wireless*. *See Core*

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<sup>1</sup> Claim 1 of the '089 Patent states:

1. A method of representing new electronic messages on a communication device having a display, the method comprising:
  - receiving a new electronic message;
  - setting a new message flag to indicate receipt of the new electronic message;
  - representing, on a home screen displayed on the display, a new message indicator when the new message flag is set;
  - receiving an invocation to switch the home screen displayed on the display to a message inventory display screen for viewing a listing including a plurality of electronic messages including the new electronic message, the message inventory display screen displaying a preview, for each listed electronic message, of either a subject line or of a portion of contents of the electronic message, the contents of an electronic message being accessible upon receipt of a request to open an electronic message from the list of messages;
  - unsetting the new message flag in response to the invocation to switch the home screen displayed on the display to the message inventory display screen, the unsetting of the flag occurring without having received a request to open the new electronic message; and
  - receiving an invocation to switch the message inventory display screen to the home screen, wherein the new message indicator represented on the home screen is not displayed as a result of the unsetting of the new message flag.

'089 Patent, Claim 1.

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