

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 RULINGS ON:**

**DEFENDANTS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT OF INVALIDITY UNDER 35 U.S.C. § 101 (U.S. PATENT NOS. 8,296,351, 8,676,929, AND 9,349,120) [239]**

**DEFENDANT SNAP, INC.'S MOTION FOR LEAVE TO FILE A FIRST AMENDED ANSWER AND COUNTERCLAIMS TO BLACKBERRY LIMITED'S COMPLAINT [242]**

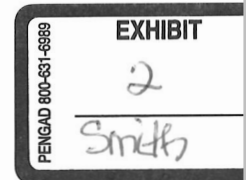
**BLACKBERRY'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF U.S. PATENT NO. 8,825,084 [244]**

**BLACKBERRY'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF INFRINGEMENT OF U.S. PATENT NOS. 8,677,250, 8,279,173, AND 9,349,120 [247]**

**FACEBOOK DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF INVALIDITY UNDER 35 U.S.C. § 101 (U.S. PATENT NO. 8,279,173) [267]**

**DEFENDANT SNAP INC.'S MOTION FOR SUMMARY JUDGMENT OF INVALIDITY UNDER SECTION 101 OF U.S. PATENT NOS. 8,825,084 AND 8,326,327 [272]**

Attached hereto is the Court's Final Rulings on the above-entitled Motions.



Initials of Preparer JG

Facebook Defendants; (4) Snap's Motion for Summary Judgment as to Invalidity under Section 101 of U.S. Patent Nos. 8,825,084 and 8,326,327; (5) BlackBerry's Motion for Partial Summary Judgment as to Infringement of U.S. Patent 8,825,084 against Snap; and (6) Snap's Motion for Leave to File a First Amended Answer and Counterclaims

[Portions of the parties' briefing related to the pending motions addressed by this Ruling were filed under seal. The Court has [REDACTED] the portions of this Ruling that it understands as pertaining to material the parties have stated is confidential. The parties will be expected to state their positions as to whether the highlighted material and/or any other material should remain under seal in a joint report filed three days after the issuance of the sealed version of this Order, including by proposing any redactions they would wish made to a public version of the document.]

## I. Background

Plaintiff BlackBerry Limited ("BlackBerry") has filed suit against Facebook, Inc., WhatsApp, Inc., and Instagram, LLC (collectively, "Facebook Defendants"), alleging infringement of nine 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). BlackBerry separately filed suit against Snap Inc., alleging infringement of six patents. *BlackBerry Limited v. Snap Inc.*, Case No. 2:18-cv-02693-GW-(KSx) ("*Snap Case*"), Docket No. 1.

The following six motions are pending in the case:

- (1) Consolidated Defendants' Motion for Summary Judgment as to Motion for Summary Judgment of Invalidity under 35 U.S.C. § 101 of US Patent Nos. 8,296,351, 8,676,929 and 9,349,120 (Docket No. 239);
- (2) Facebook Defendants' Motion for Summary Judgment as to Invalidity under 35 U.S.C. Section 101 (U.S. Patent No. 8,279,173) (Docket No. 267);
- (3) BlackBerry's Motion for Partial Summary Judgment as to Infringement of U.S. Patents 8,677,250; 8,279,173; and 9,349,120 against Facebook Defendants (Docket No. 247);
- (4) Snap's Motion for Summary Judgment as to Invalidity under Section 101 of

The motions have been fully briefed.<sup>1</sup> After briefing was completed on the motions, Facebook Defendants and Snap each filed one *ex parte* application seeking to submit an additional filing with respect to issues raised in some of the pending motions. Docket Nos. 353, 369. A hearing was held on the motions on September 5, 2019 and the matters were taken under submission.<sup>2</sup>

For the reasons stated in this Order, the Court would rule as follows:

- (1) **GRANT-IN-PART** and **DENY-IN-PART** Consolidated Defendants' Motion for Summary Judgment as to Motion for Summary Judgment of Invalidity under 35 U.S.C. § 101 of US Patent Nos. 8,296,351, 8,676,929 and 9,349,120 (Docket No. 239);
- (2) **DENY** Facebook Defendants' Motion for Summary Judgment as to Invalidity under 35 U.S.C. Section 101 (U.S. Patent No. 8,279,173) (Docket No. 267);
- (3) **DENY** BlackBerry's Motion for Partial Summary Judgment as to Infringement of U.S. Patents 8,677,250; 8,279,173; and 9,349,120 against Facebook Defendants (Docket No. 247) and **DENY AS MOOT** Facebook Defendants' *ex parte* application to file a surreply regarding motion (Docket No. 353);
- (4) **GRANT** Snap's Motion for Summary Judgment as to Invalidity under Section 101 of U.S. Patent Nos. 8,825,084 and 8,326,327 (Docket No. 272);
- (5) **DENY AS MOOT** BlackBerry's Motion for Partial Summary Judgment as to Infringement of U.S. Patent 8,825,084 against Snap (Docket No. 244); and
- (6) **DENY AS MOOT** Snap's Motion for Leave to File a First Amended Answer and Counterclaims (Docket No. 242-4) and **DENY AS MOOT** Snap's *ex parte* application to file a supplemental brief regarding motion (Docket No. 369).

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<sup>1</sup> The docket numbers for the briefing on the motions addressed by this Ruling will be provided as relevant in the discussion sections of this Order.

The Court notes that for sealed versions of briefing, Plaintiff's submissions (and one of Defendants' submissions – *see* Docket No. 279) are only available as sealed declarations in support of applications to seal. Plaintiff has not, after the Court has granted leave to file a document under seal, "thereafter file[d] the document with whatever motion or other document the under-seal filing is intended to support." *See* L.R. 79-5.2.2(c). The parties are expected to comply with this local rule requirement in a timely manner with future sealed filings.

<sup>2</sup> At the hearing, a tentative ruling was provided to the parties regarding the Court's tentative thoughts on the pending motions.

materiality, [o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is “genuine” if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

To satisfy its burden at summary judgment, a moving party without the burden of persuasion “must either produce evidence negating an essential element of the nonmoving party’s claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000); *see also Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (*en banc*); *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000).

If the party moving for summary judgment meets its initial burden of identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact, the nonmoving party may not rely on the mere allegations in the pleadings in order to preclude summary judgment[, but instead] must set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial.

*T.W. Elec. Serv., Inc., v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987) (internal citations and quotation marks omitted). In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence, and views all evidence and draws all inferences in the light most favorable to the non-moving party. *See id.* at 630-31 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)); *see also Hrdlicka v. Reniff*, 631 F.3d 1044 (9th Cir. 2011); *Motley v. Parks*, 432 F.3d 1072, 1075 n.1 (9th Cir. 2005) (*en banc*).

Alternatively, a moving party *with* the burden of persuasion must establish “beyond controversy every essential element of its [claim or defense]” to satisfy its burden

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 85.

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

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