

1 COOLEY LLP  
HEIDI L. KEEFE (178960)  
2 (hkeefe@cooley.com)  
3175 Hanover Street  
3 Palo Alto, California 94304  
Telephone: (650) 843-5000  
4 Facsimile: (650) 849-7400

5 ATTORNEYS FOR DEFENDANTS  
6 FACEBOOK, INC., WHATSAPP INC.  
and INSTAGRAM, LLC  
7

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.  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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,  
28

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")

1 iChat

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

4 **'634 Patent**

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

10 **'236 Patent**

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

13 **'351 Patent**

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

18 **'929 Patent**

19 Johnson

20 Noble

21 Colburn

- 22 25. U.S. 6,205,432 (“Gabbard”)  
23 26. U.S. 6,892,181 (“Megiddo”)  
24 27. U.S. 7,663,652 (“Reese”), incorporating U.S. 5,956,486 (“Hickman”) and  
25 Internet E-mail: Protocols, Standards, and Implementation (“Hughes”)  
26  
27  
28

1 Dated: June 14, 2019

COOLEY LLP

2  
3 /s/ Heidi L. Keefe

4 Heidi L. Keefe

5 COOLEY LLP

6 HEIDI L. KEEFE (178960)

(hkeefe@cooley.com)

7 MARK R. WEINSTEIN (193043)

(mweinstein@cooley.com)

8 MATTHEW J. BRIGHAM (191428)

(mbrigham@cooley.com)

9 LOWELL D. MEAD (223989)

10 (lmead@cooley.com)

11 3175 Hanover Street

Palo Alto, CA 94304-1130

12 Telephone: (650) 843-5000

13 Facsimile: (650) 849-7400

14 COOLEY LLP

15 MICHAEL G. RHODES (116127)

(rhodesmg@cooley.com)

16 101 California Street

17 5th Floor

San Francisco, CA 94111-5800

18 Telephone: (415) 693-2000

19 Facsimile: (415) 693-2222

20 Attorneys for Defendants

21 FACEBOOK, INC., WHATSAPP INC.,

22 INSTAGRAM, INC., and INSTAGRAM,

23 LLC

# 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.