

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE, INC.

Petitioner

v.

SMARTFLASH LLC

Patent Owner

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Case CBM2014-00106

Patent 8,033,458

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PATENT OWNER'S PRELIMINARY RESPONSE

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## PATENT OWNER'S LIST OF EXHIBITS

Exhibit Number	Exhibit Description
2001	Congressional Record - House, June 23, 2011, H4480-4505
2002	Congressional Record - Senate, Sep. 8, 2011, H5402-5443

Patent Owner sets forth below, in its Preliminary Response, why no Covered Business Method (CBM) review should be instituted for the patent-at-issue.

Arguments presented herein are presented without prejudice to presenting additional arguments in a later response should the PTAB institute a CBM review.

## I. OVERVIEW OF U.S. PATENT NO. 8,033,458

Although the claims define the actual scope of coverage of the patent, as described in the first paragraph of the BACKGROUND OF THE INVENTION, the patent-at-issue, U.S. Patent No. 8,033,458 (hereinafter “the ‘458 patent”) generally describes “data storage and access systems ... [and] is particularly useful for managing stored audio and video data, but may also be applied to storage and access of text and software, including games, as well as other types of data.” Col. 1, lines 20-28.

Preferred embodiments described in the last full paragraph of col. 15 illustrate this further: “FIG. 7 ... shows a variety of content access terminals for accessing data supply computer system 120 over internet 142. The terminals are provided with an interface to a portable data carrier or ‘smart Flash card’ (SFC) as generally described with reference to FIG. 2 and as described in more detail below. In most embodiments of the terminal the SFC interface allows the smart Flash card data carrier to be inserted into and removed from the terminal, but in some

embodiments the data carrier may be integral with the terminal.” Exemplary terminals include, but are not limited to, set-top boxes 154, CD/DVD Players 170 and mobile communications devices 152. Col. 16, lines 4-17.

Referring to preferred embodiments, the ‘458 patent discloses that a data supply system may provide users with a seamless purchase and content delivery experience. Col. 23, line 63 - col. 24, line 1. Users are able to purchase content from a variety of different content providers even if they do not know where the content providers are located or how the content is delivered. See *id.* The exemplary system is operated by a “content data supply ‘system owner,’” who may act as an intermediary between a user seeking to purchase content and content providers, such as record labels, movie studios, and software providers. See col. 13, lines 60-67. When a user accesses the system, he or she is able to select content to purchase or rent from a variety of different content providers. See col. 4, line 64 - col. 5, line 8. If the user finds a content item to buy, his or her device will transmit stored “payment data” to a “payment validation system” to validate the payment data. See col. 8, lines 3-6. The payment validation system returns proof that the payment data has been validated, in the form of “payment validation data,” and the user is able to retrieve the purchased content from the content provider. See col. 8, lines 7-9.

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