

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SMARTFLASH LLC,
Patent Owner.

Case CBM2014-00102
Patent 8,118,221 B2Case CBM2014-00106
Patent 8,033,458 B2Case CBM2014-00108
Patent 8,061,598 B2Case CBM2014-00112
Patent 7,942,317 B2VIDEOTAPED DEPOSITION OF
ANTHONY J. WECHSELBERGER

DECEMBER 11, 2014

8:35 a.m.

REPORTED BY:
PAUL J. FREDERICKSON, CCR, CSR
JOB NO. 36913

240	<p>1 APPEARANCES</p> <p>2 FOR THE PATENT OWNER:</p> <p>3 DAVIDSON BERQUIST JACKSON & GOWDEY, LLP</p> <p>4 4300 Wilson Blvd.</p> <p>5 7th Floor</p> <p>6 Arlington, VA 22203</p> <p>7 BY: MICHAEL R. CASEY, Ph.D., ESQ.</p> <p>8 mcasey@dbjg.com</p> <p>9</p> <p>10 FOR THE PATENT OWNER:</p> <p>11 CALDWELL CASSADY CURRY</p> <p>12 2101 Cedar Springs Rd.</p> <p>13 Suite 1000</p> <p>14 Dallas, TX 75201</p> <p>15 BY: BRADLEY W. CALDWELL, ESQ.</p> <p>16 bcaldwell@caldwellcc.com</p> <p>17</p> <p>18 FOR THE PETITIONER:</p> <p>19 ROPES & GRAY, LLP</p> <p>20 1900 University Avenue</p> <p>21 6th Floor</p> <p>22 East Palo Alto, CA 94303-2284</p> <p>23 BY: LAUREN N. ROBINSON, ESQ.</p> <p>24 Lauren.Robinson@ropesgray.com</p> <p>25</p>	242	<p>1 INDEX</p> <p>2 ANTHONY J. WECHSELBERGER</p> <p>3 By Mr. Casey: 244, 374</p> <p>4 By Ms. Robinson: 371</p> <p>5</p> <p>6 Request for information: None</p> <p>7 Request for documents: None</p> <p>8</p> <p>9 INDEX TO EXHIBITS</p> <p>10 All Exhibits premarked</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
241	<p>1 FOR THE PETITIONER:</p> <p>2 ROPES & GRAY, LLP</p> <p>3 1211 Avenue of the Americas</p> <p>4 New York, NY 10036-8704</p> <p>5 212.596.9000</p> <p>6 BY: BRIAN D. MATTY, ESQ.</p> <p>7 Patent Agent</p> <p>8 brian.Matty@ropesgray.com</p> <p>9 ALSO PRESENT:</p> <p>10 JEFREE ANDERSON</p> <p>11 Videographer</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	243	<p>1 WECHSELBERGER</p> <p>2 DECEMBER 11, 2014</p> <p>3 [8:34 a.m.]</p> <p>4 THE VIDEOGRAPHER: On the record.</p> <p>5 This begins the video deposition of Anthony</p> <p>6 Wechselberger in the matter of Apple Inc. versus</p> <p>7 Smartflash LLC in the United States Patent and</p> <p>8 Trademark Office before the Patent Trial and Appeal</p> <p>9 Board.</p> <p>10 This deposition is being held at Ropes &</p> <p>11 Gray, 1900 University Avenue, 6th Floor, East Palo</p> <p>12 Alto, California on December 11, 2014. The time is</p> <p>13 8:35 a.m.</p> <p>14 My name is Lou Meadows from the firm of David</p> <p>15 Feldman Worldwide and I am the legal video</p> <p>16 specialist. The court reporter is Paul</p> <p>17 Frederickson.</p> <p>18 Counsel, would you please introduce</p> <p>19 yourselves for record?</p> <p>20 MS. ROBINSON: I'm Lauren Robinson from</p> <p>21 the firm of Ropes & Gray here on behalf of Apple.</p> <p>22 Here with me is my colleague Brian Matty.</p> <p>23 MR. CASEY: Michael Casey representing</p> <p>24 patent owner Smartflash LLC.</p> <p>25 THE VIDEOGRAPHER: Thank you.</p>

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1 **WECHSELBERGER**
2 **thought that there was a need for inexpensive**
3 **distribution of media content to users, would you**
4 **have said you thought there was?**
5 MS. ROBINSON: Objection to form.
6 A. The question again, please?
7 **Q. If I had asked you in 1999 if you**
8 **thought that there was a need for inexpensive**
9 **distribution of media content to users, would you**
10 **have said you thought there was?**
11 A. Yes.
12 MS. ROBINSON: Just so the record is
13 clear. I know you reread the question. My
14 objection stood along with the rereading.
15 BY MR. CASEY:
16 **Q. Are you aware of any commercial**
17 **implementations of the Stefik architecture?**
18 A. It's my understanding that significant
19 portions or maybe complete portions of the Stefik
20 architecture are embodied in some commercial
21 initiatives that the current owner of that
22 technology, ContentGuard, is -- is a part of.
23 Reminding us of the questions you and I
24 discussed yesterday about initiatives, and I
25 mentioned ContentGuard and InterTrust, that were

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1 **WECHSELBERGER**
2 part of industry initiatives to develop or
3 standardize around DRM infrastructures or processes.
4 And that's what I'm thinking about in responding to
5 the question just now.
6 **Q. So what commercial implementations of**
7 **the Stefik architecture are you aware of?**
8 A. I am not aware of any specific
9 implementations, only of the fact that there are
10 initiatives, meaning industry consortia. So
11 consortia of entities which have collaborated to
12 work together to generate industry backing for doing
13 certain DRM functions in certain ways.
14 And I am -- and I am aware that ContentGuard
15 as an entity has been part of one or more of those,
16 as has InterTrust. And that's all I'm -- that's as
17 good as I can do for you today without going and
18 studying it.
19 **Q. Do you know who were part of the**
20 **consortia that ContentGuard is a member of?**
21 A. Not off -- not without researching it.
22 Not off-the-cuff.
23 **Q. You don't know any of the members?**
24 A. I think Time Warner is aligned with
25 ContentGuard in one of those.

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1 **WECHSELBERGER**
2 **Q. Are you aware of any commercial**
3 **implementations of the Ginter architecture, of the**
4 **Ginter patent?**
5 A. It's really the same answer as I -- as I
6 intimated a minute ago -- well, I didn't say that.
7 But ContentGuard and InterTrust are two of the 900
8 pound gorillas in this space, DRM space generally,
9 and they are -- and they have both been part of
10 industry initiatives to push DRM technologies
11 forward that revolve to some extent or another
12 around their respective technology architectures,
13 which are quite similar but -- and beyond that I
14 don't know any further commercial or participant
15 details.
16 **Q. Are you aware of the Apple iTunes**
17 **system?**
18 MS. ROBINSON: Objection to form and
19 outside the scope of the testimony that we agree
20 he's here to provide today.
21 MR. CASEY: It goes to whether or not
22 the -- the software embodied in the system is
23 commercially successful.
24 MS. ROBINSON: I stand by my objection.
25 MR. CASEY: Are you instructing him not

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1 **WECHSELBERGER**
2 to answer?
3 MS. ROBINSON: No, I'm objecting as to
4 the scope of the question and the form.
5 MR. CASEY: You can answer the question.
6 A. The question was, am I aware of the
7 iTunes system?
8 **Q. Yes.**
9 A. What do you mean by "aware"?
10 **Q. Do you know how it operates?**
11 MS. ROBINSON: The same objections.
12 A. I -- I believe it's correct to say I
13 have as a result of my work on this case, not the
14 CBMs but the litigation between Smartflash and
15 Apple, that I have become pretty well aware but not
16 totally intimate with how the iTunes system
17 functions. I'm aware enough about it to have
18 provided in the litigation side opinions about
19 infringement versus noninfringement.
20 **Q. Are you aware of how the App Store by**
21 **Apple operates?**
22 MS. ROBINSON: Again, objection to form
23 and the scope of this question being included.
24 A. I am aware enough about how that store
25 operates, again, to allow me to have been -- to have

336	<p>1 WECHSELBERGER</p> <p>2 provided opinions on infringement in the litigation</p> <p>3 between Apple and Smartflash.</p> <p>4 Q. Are you aware of how in app purchases</p> <p>5 work for applications that utilize the App Store?</p> <p>6 MS. ROBINSON: The same objections.</p> <p>7 A. And I'll give you the same answer. I</p> <p>8 have learned enough about that function to have</p> <p>9 provided opinions about it in my work on the</p> <p>10 litigation side of the case.</p> <p>11 But I would also add for all three of the</p> <p>12 questions that in preparation for yesterday and</p> <p>13 today, and working with -- to defend my CBM</p> <p>14 declarations, which are not associated with any of</p> <p>15 those iTunes questions, or iTunes store's functions,</p> <p>16 I have spent months since I've opened the cover on</p> <p>17 that stuff, and I did not -- did not bone up on it</p> <p>18 in preparation for this deposition.</p> <p>19 So when I said I am aware enough to have</p> <p>20 provided opinions for purposes of noninfringement,</p> <p>21 I'm not in a state of mental acuteness to defend</p> <p>22 those or provide those same opinions today because I</p> <p>23 just haven't done my homework yet or again.</p> <p>24 Q. Well, let's wait and see what the</p> <p>25 questions are.</p>	338	<p>1 WECHSELBERGER</p> <p>2 in addition to that.</p> <p>3 If you intend to pass this document forward</p> <p>4 and then ask him about his declarations and not this</p> <p>5 document, let me know.</p> <p>6 But if you intend to ask him about this</p> <p>7 document that you just passed us, then I want to get</p> <p>8 on the phone with the board.</p> <p>9 MR. CASEY: Okay.</p> <p>10 MS. ROBINSON: All right.</p> <p>11 MR. CASEY: Do you have a speakerphone?</p> <p>12 MS. ROBINSON: There should be one,</p> <p>13 yeah, that way.</p> <p>14 MR. CASEY: It's going to be hard for</p> <p>15 the court reporter to hear.</p> <p>16 MS. ROBINSON: Yeah, I think it actually</p> <p>17 gets mic'd up through --</p> <p>18 [Pause.]</p> <p>19 MS. ROBINSON: Bear with me for one</p> <p>20 moment. We have accumulated quite an allotment of</p> <p>21 paper over the last couple of days.</p> <p>22 MR. CASEY: I'm just trying to see if I</p> <p>23 can find that number for you.</p> <p>24 MS. ROBINSON: So I think it's the --</p> <p>25 the 571.272.7822. Is that the one you would say it</p>
337	<p>1 WECHSELBERGER</p> <p>2 I'm going to hand you what's been premarked</p> <p>3 as --</p> <p>4 MS. ROBINSON: So, counsel, before we</p> <p>5 get into this, you know, our position is that this</p> <p>6 is an inappropriate topic for the deposition today.</p> <p>7 I -- I'm willing to jump on the phone with the</p> <p>8 board.</p> <p>9 I understand that you all sought discovery</p> <p>10 into Apple's iTunes and were denied that. So, you</p> <p>11 know, if you -- if you want to -- I mean, it looks</p> <p>12 like what you handed me is, you know, an Apple</p> <p>13 technological document of some type. And if you</p> <p>14 want to persist in asking these questions, we're</p> <p>15 going to need to get on the phone with the board and</p> <p>16 get the board's permission to go forward, because</p> <p>17 our position is not this is appropriate to do this</p> <p>18 in the scope of this depo.</p> <p>19 MR. CASEY: Let's get on the phone.</p> <p>20 MS. ROBINSON: All right.</p> <p>21 MR. CASEY: You haven't heard a single</p> <p>22 question, and you're -- you're saying that you want</p> <p>23 to get on the phone.</p> <p>24 But your hanging. Go ahead.</p> <p>25 MS. ROBINSON: So here's what I'll say</p>	339	<p>1 WECHSELBERGER</p> <p>2 is?</p> <p>3 MR. CASEY: That -- I'm still looking.</p> <p>4 MS. ROBINSON: Okay.</p> <p>5 MR. CASEY: That actually sounds right</p> <p>6 but --</p> <p>7 [Discussion off the record.]</p> <p>8 THE COURT REPORTER: Did you want to</p> <p>9 stay on the record or --</p> <p>10 MR. CASEY: I was going to say we can</p> <p>11 excuse the witness for the moment and --</p> <p>12 MS. ROBINSON: Yes. We can just go off</p> <p>13 while this gets straightened out.</p> <p>14 MR. CASEY: We can go off the video</p> <p>15 record, and then if you have no objection, we are</p> <p>16 going to need probably the -- the call with the</p> <p>17 judge to be transcribed.</p> <p>18 So --</p> <p>19 MS. ROBINSON: Yep. Agreed.</p> <p>20 THE VIDEOGRAPHER: Off the video record.</p> <p>21 The time is 1:51 p.m.</p> <p>22 [Phone ringing.]</p> <p>23 [Preliminary discussion answering phone.]</p> <p>24 MS. ROBINSON: I'm calling from the</p> <p>25 videoconference system. So I'm an attorney here</p>

340	<p>1 WECHSELBERGER</p> <p>2 with my opposing counsel, and we're counsel on some</p> <p>3 covered business method petitions in front of the</p> <p>4 PTAB, and we just had a -- we're in a deposition and</p> <p>5 had a dispute we wanted to raise to the board. I'm</p> <p>6 not sure the right protocol, but can you forward us</p> <p>7 to somewhere where we need to be?</p> <p>8 JUDGE McCULLOUGH: Okay. So you're in a</p> <p>9 deposition with the CBM number. Let me get that for</p> <p>10 the judge.</p> <p>11 MS. ROBINSON: Okay. So it's quite a</p> <p>12 few. It's CBM2014 102 and 103, 106, 107 --</p> <p>13 JUDGE McCULLOUGH: Wait a minute. I</p> <p>14 have to see who the judges are.</p> <p>15 MS. ROBINSON: Okay.</p> <p>16 JUDGE McCULLOUGH: Hold on for a second.</p> <p>17 [Pause.]</p> <p>18 JUDGE McCULLOUGH: Okay. The judge is</p> <p>19 actually gone for the day.</p> <p>20 MS. ROBINSON: Okay.</p> <p>21 JUDGE McCULLOUGH: The lead judge, she's</p> <p>22 not available.</p> <p>23 MS. ROBINSON: Okay.</p> <p>24 JUDGE McCULLOUGH: And could you send an</p> <p>25 email and maybe I could see? Or do you have to do</p>	342	<p>1 WECHSELBERGER</p> <p>2 MS. ROBINSON: Thanks so much.</p> <p>3 [Pause.]</p> <p>4 JUDGE McCULLOUGH: Hello, ma'am.</p> <p>5 MS. ROBINSON: Yes?</p> <p>6 JUDGE McCULLOUGH: Okay. I'm still</p> <p>7 checking.</p> <p>8 MS. ROBINSON: Thank you.</p> <p>9 JUDGE McCULLOUGH: No one is available,</p> <p>10 so I'm just sending an email and trying to get an</p> <p>11 email back. I will probably have to give you a dial</p> <p>12 in number. Okay? But I'm just waiting for someone</p> <p>13 to respond. Okay?</p> <p>14 MS. ROBINSON: Thank you for your help.</p> <p>15 JUDGE McCULLOUGH: You're welcome.</p> <p>16 [Pause.]</p> <p>17 JUDGE McCULLOUGH: Hello, ma'am.</p> <p>18 MS. ROBINSON: Yes.</p> <p>19 JUDGE McCULLOUGH: Okay. Let me</p> <p>20 transfer you to judge McCullough.</p> <p>21 MS. ROBINSON: Okay. Sorry, go ahead.</p> <p>22 JUDGE McCULLOUGH: And he'll help you</p> <p>23 out. I mean, he'll talk to you. Okay?</p> <p>24 MS. ROBINSON: Okay. Thank you very</p> <p>25 much.</p>
341	<p>1 WECHSELBERGER</p> <p>2 this today right now?</p> <p>3 MS. ROBINSON: Yeah. The issue is that</p> <p>4 we're in the deposition with the witness, looking to</p> <p>5 get a resolution on whether, you know, certain</p> <p>6 topics can be covered in the deposition.</p> <p>7 Are any of the other judges available? I</p> <p>8 know there's Elluru, Powell, Plenzler and Clements.</p> <p>9 JUDGE McCULLOUGH: Right. I'm trying to</p> <p>10 see if Bisk is available.</p> <p>11 MS. ROBINSON: Thank you so much.</p> <p>12 JUDGE McCULLOUGH: Powell, Bisk.</p> <p>13 MS. ROBINSON: Yeah, Powell, Bisk,</p> <p>14 Elluru, Plenzler, and Clements.</p> <p>15 JUDGE McCULLOUGH: Right.</p> <p>16 Hold on, please.</p> <p>17 MS. ROBINSON: Yes.</p> <p>18 [Pause.]</p> <p>19 JUDGE McCULLOUGH: Okay. CBM 2014 102?</p> <p>20 MS. ROBINSON: Yep. 2014 102, 103, 106,</p> <p>21 107, 108, 109, and 111, 112 -- or, sorry, 112, 113.</p> <p>22 JUDGE McCULLOUGH: 112, 113.</p> <p>23 MS. ROBINSON: Yeah.</p> <p>24 JUDGE McCULLOUGH: Okay. Hold on,</p> <p>25 please.</p>	343	<p>1 WECHSELBERGER</p> <p>2 JUDGE McCULLOUGH: That's the only judge</p> <p>3 I could get in contact with.</p> <p>4 MS. ROBINSON: Understand.</p> <p>5 JUDGE McCULLOUGH: Let me transfer you.</p> <p>6 MS. ROBINSON: Understood.</p> <p>7 JUDGE McCULLOUGH: And if he doesn't</p> <p>8 pick up, you call this number again. I'm waiting to</p> <p>9 make sure that the call goes through. Okay? So if</p> <p>10 he doesn't pick up, call back the 7822 number. All</p> <p>11 right?</p> <p>12 MS. ROBINSON: Okay. If it's easier, I</p> <p>13 can also give you a call back number for us.</p> <p>14 JUDGE McCULLOUGH: Okay. What is your</p> <p>15 call back number?</p> <p>16 MS. ROBINSON: It's 605.617.4793.</p> <p>17 JUDGE McCULLOUGH: 4793?</p> <p>18 MS. ROBINSON: Yes.</p> <p>19 JUDGE McCULLOUGH: Okay. I'll transfer</p> <p>20 you now, ma'am. Okay?</p> <p>21 MS. ROBINSON: Thanks so much.</p> <p>22 JUDGE McCULLOUGH: This is Judge</p> <p>23 McCullough.</p> <p>24 MS. ROBINSON: Your Honor, thanks for</p> <p>25 getting on the phone with us.</p>

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