

## 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 CBM2014-00102  
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

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241	<p>1 FOR THE PETITIONER:</p> <p>2 ROPES &amp; 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 &amp;</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 &amp; 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>

332	<p>1 <b>WECHSELBERGER</b></p> <p>2 <b>thought that there was a need for inexpensive</b></p> <p>3 <b>distribution of media content to users, would you</b></p> <p>4 <b>have said you thought there was?</b></p> <p>5 MS. ROBINSON: Objection to form.</p> <p>6 A. The question again, please?</p> <p>7 <b>Q. If I had asked you in 1999 if you</b></p> <p>8 <b>thought that there was a need for inexpensive</b></p> <p>9 <b>distribution of media content to users, would you</b></p> <p>10 <b>have said you thought there was?</b></p> <p>11 A. Yes.</p> <p>12 MS. ROBINSON: Just so the record is</p> <p>13 clear. I know you reread the question. My</p> <p>14 objection stood along with the rereading.</p> <p>15 BY MR. CASEY:</p> <p>16 <b>Q. Are you aware of any commercial</b></p> <p>17 <b>implementations of the Stefik architecture?</b></p> <p>18 A. It's my understanding that significant</p> <p>19 portions or maybe complete portions of the Stefik</p> <p>20 architecture are embodied in some commercial</p> <p>21 initiatives that the current owner of that</p> <p>22 technology, ContentGuard, is -- is a part of.</p> <p>23 Reminding us of the questions you and I</p> <p>24 discussed yesterday about initiatives, and I</p> <p>25 mentioned ContentGuard and InterTrust, that were</p>	334	<p>1 <b>WECHSELBERGER</b></p> <p>2 <b>Q. Are you aware of any commercial</b></p> <p>3 <b>implementations of the Ginter architecture, of the</b></p> <p>4 <b>Ginter patent?</b></p> <p>5 A. It's really the same answer as I -- as I</p> <p>6 intimated a minute ago -- well, I didn't say that.</p> <p>7 But ContentGuard and InterTrust are two of the 900</p> <p>8 pound gorillas in this space, DRM space generally,</p> <p>9 and they are -- and they have both been part of</p> <p>10 industry initiatives to push DRM technologies</p> <p>11 forward that revolve to some extent or another</p> <p>12 around their respective technology architectures,</p> <p>13 which are quite similar but -- and beyond that I</p> <p>14 don't know any further commercial or participant</p> <p>15 details.</p> <p>16 <b>Q. Are you aware of the Apple iTunes</b></p> <p>17 <b>system?</b></p> <p>18 MS. ROBINSON: Objection to form and</p> <p>19 outside the scope of the testimony that we agree</p> <p>20 he's here to provide today.</p> <p>21 MR. CASEY: It goes to whether or not</p> <p>22 the -- the software embodied in the system is</p> <p>23 commercially successful.</p> <p>24 MS. ROBINSON: I stand by my objection.</p> <p>25 MR. CASEY: Are you instructing him not</p>
333	<p>1 <b>WECHSELBERGER</b></p> <p>2 part of industry initiatives to develop or</p> <p>3 standardize around DRM infrastructures or processes.</p> <p>4 And that's what I'm thinking about in responding to</p> <p>5 the question just now.</p> <p>6 <b>Q. So what commercial implementations of</b></p> <p>7 <b>the Stefik architecture are you aware of?</b></p> <p>8 A. I am not aware of any specific</p> <p>9 implementations, only of the fact that there are</p> <p>10 initiatives, meaning industry consortia. So</p> <p>11 consortia of entities which have collaborated to</p> <p>12 work together to generate industry backing for doing</p> <p>13 certain DRM functions in certain ways.</p> <p>14 And I am -- and I am aware that ContentGuard</p> <p>15 as an entity has been part of one or more of those,</p> <p>16 as has InterTrust. And that's all I'm -- that's as</p> <p>17 good as I can do for you today without going and</p> <p>18 studying it.</p> <p>19 <b>Q. Do you know who were part of the</b></p> <p>20 <b>consortia that ContentGuard is a member of?</b></p> <p>21 A. Not off -- not without researching it.</p> <p>22 Not off-the-cuff.</p> <p>23 <b>Q. You don't know any of the members?</b></p> <p>24 A. I think Time Warner is aligned with</p> <p>25 ContentGuard in one of those.</p>	335	<p>1 <b>WECHSELBERGER</b></p> <p>2 to answer?</p> <p>3 MS. ROBINSON: No, I'm objecting as to</p> <p>4 the scope of the question and the form.</p> <p>5 MR. CASEY: You can answer the question.</p> <p>6 A. The question was, am I aware of the</p> <p>7 iTunes system?</p> <p>8 <b>Q. Yes.</b></p> <p>9 A. What do you mean by "aware"?</p> <p>10 <b>Q. Do you know how it operates?</b></p> <p>11 MS. ROBINSON: The same objections.</p> <p>12 A. I -- I believe it's correct to say I</p> <p>13 have as a result of my work on this case, not the</p> <p>14 CBMs but the litigation between Smartflash and</p> <p>15 Apple, that I have become pretty well aware but not</p> <p>16 totally intimate with how the iTunes system</p> <p>17 functions. I'm aware enough about it to have</p> <p>18 provided in the litigation side opinions about</p> <p>19 infringement versus noninfringement.</p> <p>20 <b>Q. Are you aware of how the App Store by</b></p> <p>21 <b>Apple operates?</b></p> <p>22 MS. ROBINSON: Again, objection to form</p> <p>23 and the scope of this question being included.</p> <p>24 A. I am aware enough about how that store</p> <p>25 operates, again, to allow me to have been -- to have</p>

336	<p>1 WECHSELBERGER</p> <p>2 provided opinions on infringement in the litigation</p> <p>3 between Apple and Smartflash.</p> <p>4 <b>Q. Are you aware of how in app purchases</b></p> <p>5 <b>work for applications that utilize the App Store?</b></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 <b>Q. Well, let's wait and see what the</b></p> <p>25 <b>questions are.</b></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 <b>I'm going to hand you what's been premarked</b></p> <p>3 <b>as --</b></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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