IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CASE NO. 6:13-CV-447-JRG-KNM**
	§	
APPLE, INC., et al.,	§	
	§	
Defendants.	§	

	§	
SMARTFLASH LLC, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CASE NO. 6:13-CV-448-JRG-KNM**
	§	
SAMSUNG ELECTRONICS CO. LTD, et al.,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION

Defendants filed Motions for Summary Judgment of Invalidity Pursuant to 35 U.S.C. § 101 (6:13CV447, Doc. No. 266; 6:13CV448, Doc. No. 320). For the reasons set forth below, the Court recommends that the Motions be **DENIED**.

BACKGROUND

Plaintiffs Smartflash LLC and Smartflash Technologies Limited (collectively "Smartflash") filed these actions against Apple, Inc. ("Apple"), Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC (collectively "Samsung"), HTC Corporation, HTC America, Inc., and Exedea, Inc. (collectively "HTC") (collectively "Defendants") alleging infringement of the following patents: U.S. Patent No.

7,334,720 ("the '720 Patent"); U.S. Patent No. 7,942,317 ("the '317 Patent"); U.S. Patent No. 8,033,458 ("the '458 Patent"); U.S. Patent No. 8,061,598 ("the '598 Patent"); U.S. Patent No. 8,118,221 ("the '221 Patent"); and U.S. Patent No. 8,336,772 ("the '772 Patent").

The patented technology relates generally to data storage and access systems for paying for and downloading digital content such as audio, video, text, software, games and other types of data. The asserted patents share a common specification. The '720 patent issued from a continuation of U.S. Patent Application No. 10/111716. The '317 Patent issued from a continuation of the application that led to the '720 Patent. The '458 Patent, the '598 Patent, and the '221 Patent all issued from continuations of the application that led to the '317 Patent. The '772 Patent issued from a continuation of U.S. Application No. 12/943,872, which was also a continuation of the application that led to the '317 Patent.

Across both cases, Smartflash asserts the following claims: Claims 1, 13, 14, and 15 of the '720 Patent; Claim 18 of the '317 Patent; Claims 8, 10, and 11 of the '458 Patent; Claims 2, 7, 15, and 31 of the '598 Patent; Claims 2, 11, and 32 of the '221 Patent; and Claims 5, 10, 14, 22, 26, 32 of the '772 Patent.

Asserted Claim 26 of the '772 Patent depends on Claim 25. As one example, Claim 25 recites:

> 25. A handheld multimedia terminal for retrieving and accessing protected multimedia content, comprising:
>
> a wireless interface configured to interface with a wireless network for communicating with a data supplier;
>
> non-volatile memory configured to store multimedia content, wherein said multimedia content comprises one or more of music data, video data and computer game data;
>
> a program store storing processor control code;

a processor coupled to said non-volatile memory, said program store, said wireless interface and

a user interface to allow a user to select and play said multimedia content;

a display for displaying one or both of said played multimedia content and data relating to said played multimedia content;

wherein the processor control code comprises:

code to request identifier data identifying one or more items of multimedia content available for retrieving via said wireless interface;

code to receive said identifier data via said wireless interface, said identifier data identifying said one or more items of multimedia content available for retrieving via said wireless interface;

code to request content information via said wireless interface, wherein said content information comprises one or more of description data and cost data pertaining to at least one of said one or more items of multimedia content identified by said identifier data;

code to receive said content information via said wireless interface;

code to present said content information pertaining to said identified one or more items of multimedia content available for retrieving to a user on said display;

code to receive a first user selection selecting at least one of said one or more items of multimedia content available for retrieving;

code responsive to said first user selection of said selected at least one item of multimedia content to transmit payment data relating to payment for said selected at least one item of multimedia content via said wireless interface for validation by a payment validation system;

code to receive payment validation data via said wireless interface defining if said payment validation system has validated payment for said selected at least one item of multimedia content; and

code responsive to said payment validation data to retrieve said selected at least one item of multimedia content via said wireless interface from a data supplier and to write said retrieved at least one item of multimedia content into said non-volatile memory, code to receive a second user selection selecting one or more of said items of retrieved multimedia content to access;

code to read use status data and use rules from said non-volatile memory pertaining to said second selected one or more items of retrieved multimedia content; and

code to evaluate said use status data and use rules to determine whether access is permitted to said second selected one or more items of retrieved multimedia content,

wherein said user interface is operable to enable a user to make said first user selection of said selected at least one item of multimedia content available for retrieving,

wherein said user interface is operable to enable a user to make said second user selection of said one or more items of retrieved multimedia content available for accessing, and

wherein said user interface is operable to enable a user to access said second user selection of said one or more item of retrieved multimedia content responsive to said code to control access permitting access to said second selected one or more items of retrieved multimedia content.

'772 Patent, Claim 25.

Asserted Claim 13 of the '720 Patent depends on Claim 3. As another example, Claim 3 recites:

3. A data access terminal for retrieving data from a data supplier and providing the retrieved data to a data carrier, the terminal comprising:

a first interface for communicating with the data supplier;

a data carrier interface for interfacing with the data carrier;

a program store storing code; and

a processor coupled to the first interface, the data carrier interface, and the program store for implementing the stored code, the code comprising:

code to read payment data from the data carrier and to forward the payment data to a payment validation system;

code to receive payment validation data from the payment validation system;

code responsive to the payment validation data to retrieve data from the data supplier and to write the retrieved data into the data carrier; and

code responsive to the payment validation data to receive at least one access rule from the data supplier and to write the at least one access rule into the data carrier, the at

> least one access rule specifying at least one condition for accessing the retrieved data written into the data carrier, the at least one condition being dependent upon the amount of payment associated with the payment data forwarded to the payment validation system.

'720 Patent, Claim 3.

APPLICABLE LAW

Federal Rule of Civil Procedure 56(a) provides for summary judgment when "there is no genuine dispute as to any material fact." A dispute about a material fact is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When the summary judgment movants demonstrate the absence of a genuine dispute over any material fact, the burden shifts to the non-movant to show there is a genuine factual issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Eason v. Thaler*, 73 F.3d 1322, 1325 (5th Cir. 1996). A court must draw all reasonable inferences in favor of the non-moving party. *BMC Res., Inc. v. Paymentech, L.P.*, 498 F.3d 1373, 1378 (Fed. Cir. 2007).

Patentable Subject Matter

Section 101 of the Patent Act defines patentable subject matter: "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title." 35 U.S.C. § 101. "Congress took this permissive approach to patent eligibility to ensure that ingenuity should receive liberal encouragement." *Bilski v. Kappos*, 561 U.S. 593, 601 (2010) (internal quotations omitted). Supreme Court precedent carves out three specific exceptions to § 101's broad patentability principles: laws of nature, physical phenomena, and abstract ideas. *Id.* These exceptions represent "the basic tools of scientific and

DOCKET ALARM

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.