

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., SAMSUNG ELECTRONICS CO. LTD, SAMSUNG
ELECTRONICS AMERICA, INC., and GOOGLE INC.
Petitioners,

v.

SMARTFLASH LLC,
Patent Owner.

Case CBM2015-00031¹

Patent 8,336,772 B2

PATENT OWNER'S NOTICE OF APPEAL

¹ Samsung's challenge to claims 5 and 10 of US Patent No. 8,336,772 B2 ("the '772 patent") in CBM2015-00059 was consolidated with this proceeding. Paper 24, 9. Google's challenge to claims 1, 5, and 10 of the '772 patent in CBM2015-00132 was consolidated with this proceeding. Paper 31, 11; Paper 37, 2-3 (claim 9 was initially consolidated with this case, but subsequently consolidated with another case).

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Patent Owner Smartflash LLC appeals under 35 U.S.C. § 141 to the United States Court of Appeals for the Federal Circuit from the *Final Written Decision* entered on May 26, 2016 (Paper 45), the *Decision Denying Patent Owner's Request for Rehearing* entered on August 24, 2016 (Paper 49) and from all underlying orders, decisions, rulings and opinions regarding U.S. Patent No. 8,336,772 (“the ‘772 Patent”) including the *Decision - Institution of Covered Business Method Patent Review* entered on May 28, 2015 (Paper 11).

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner anticipates that the issues on appeal may include the following, as well as any underlying findings, determinations, rulings, decisions, opinions, or other related issues:

- Whether the Board erred in finding that the subject matter of the ‘772 Patent is directed to activities that are financial in nature and in instituting Covered Business Method review of the ‘772 Patent.
- Whether the Board erred in finding that the claims of the ‘772 Patent are not directed to a “technological invention” as defined in § 18(d)(1) of the Leahy-Smith America Invents Act;

- Whether the Board's decisions with respect to the '772 Patent were arbitrary and capricious in light of its decisions on other computer implemented invention patents;
- Whether the Board erred in denying in part Patent Owner's Motion to Exclude (Paper 29);
- Whether the Board erred in finding that claims 1, 5, 8 and 10 of the '772 Patent are drawn to an abstract idea; and
- Whether the Board erred in finding that claims 1, 5, 8 and 10 of the '772 Patent are unpatentable under 35 U.S.C. § 101.

Copies of this Notice of Appeal are being filed simultaneously with the Director, the Patent Trial and Appeal Board, and the Clerk of the United States Court of Appeals for the Federal Circuit.

Any required fees may be charged to Deposit Account No. 501860.

Dated: October 24, 2016

/ Michael R. Casey /

Michael R. Casey
Registration No. 40,294
Davidson Berquist Jackson & Gowdey, LLP
8300 Greensboro Drive
Suite 500
McLean, VA 22102
Telephone: (571) 765-7705
Fax: (571) 765-7200
Email: mcasey@dbjg.com
Attorney for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this PATENT OWNER'S NOTICE OF APPEAL was filed with the Patent Trial and Appeal Board using the E2E System and was served, by agreement of the parties, by emailing copies to counsel for the Petitioner as follows:

J. Steven Baughman (steven.baughman@ropesgray.com) Megan Raymond (megan.raymond@ropesgray.com) James R. Batchelder (james.batchelder@ropesgray.com) ApplePTABService- SmartFlash@ropesgray.com <i>Attorneys for Petitioner Apple Inc.</i>	Walter Renner (renner@fr.com) Thomas Rozylowicz (rozylowicz@fr.com) CBM39843-0008CP3@fr.com <i>Attorneys for Petitioners Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i>
Raymond Nimrod (raynimrod@ quinnemanuel.com) QE-SF-PTAB-Service@quinnemanuel.com <i>Attorneys for Petitioner Google Inc.</i>	

The undersigned hereby further certifies that on October 24, 2016 this PATENT OWNER'S NOTICE OF APPEAL (and its three attached decisions) were filed with the Federal Circuit via CM/ECF (along with one courtesy copy by hand delivery) and two (2) copies were served on the U.S. Patent and Trademark Office via in-hand delivery as follows:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulaney Street
Alexandria, VA 22314-5793

Dated: October 24, 2016

/ Michael R. Casey /
Michael R. Casey (Reg. No. 40,294)
Davidson Berquist Jackson & Gowdey, LLP
8300 Greensboro Drive - Suite 500
McLean, VA 22102
Telephone: (571) 765-7705
Fax: (571) 765-7200
Email: mcasey@dbjg.com
Attorney for Patent Owner