

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner

v.

SMARTFLASH LLC,
Patent Owner

Case CBM2015-00123
Patent 8,033,458

Before the Honorable JENNIFER S. BISK, RAMA G. ELLURU, JEREMY M. PLENZLER, and MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

**DECLARATION OF JAMES R. BATCHELDER IN SUPPORT OF
MOTION FOR *PRO HAC VICE* ADMISSION**

I, James R. Batchelder, being duly sworn and upon oath, hereby attest to the following:

1. I am a member in good standing of the Bar of California.
2. I have never been suspended or disbarred from practice before any court or administrative body.
3. I have never been denied an application for admission to practice before any court or administrative body.

Apple Exhibit 1038

4. No sanction or contempt citation has ever been imposed against me by any court or administrative body.
5. I have read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in 37 C.F.R. Part 42.
6. I will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a).
7. In the last three (3) years, I have applied to appear *pro hac vice* before the Office in CBM2013-00020 (filed 11/12/2013 (Paper 23), granted 11/26/2013 (Paper 39)) and CBM2013-00023 (filed 11/12/2013 (Paper 20), granted 11/26/2013 (Paper 35)), CBM2014-00102 (filed 3/27/2015 (Paper 31), granted 4/1/2015 (Paper 32)), CBM2014-00106 (filed 3/27/2015 (Paper 30), granted 4/1/2015 (Paper 31)), CBM2014-00108 (filed 3/27/2015 (Paper 28), granted 4/1/2015 (Paper 29)), CBM2014-00112 (filed 3/27/2015 (Paper 27), granted 4/1/2015 (Paper 28)), CBM2015-00015 (filed 3/27/2015 (Paper 21), granted 4/1/2015 (Paper 22)), CBM2015-00016 (filed 3/27/2015 (Paper 21), granted 4/1/2015 (Paper 22)), CBM2015-00017 (filed 3/27/2015 (Paper 20), granted 4/1/2015 (Paper 21)), CBM2015-00018 (filed 3/27/2015 (Paper 13), granted 4/1/2015 (Paper 14)), CBM2015-00028 (filed 12/16/2015 (Paper 36), granted 12/31/2015 (Paper 39)), CBM2015-00029 (filed 12/16/2015 (Paper 35), granted

12/31/2015 (Paper 38)), CBM2015-00031 (filed 12/16/2015 (Paper 35), granted 12/31/2015 (Paper39)), CBM2015-00032 (filed 12/16/2015 (Paper 35), granted 12/31/2015 (Paper 40)), and CBM2015-00033 (filed 12/16/2015 (Paper 34), granted 12/31/2015 (Paper 37)), also representing Apple. I have also applied to appear *pro hac vice* before the Office in IPR2013-00191 (filed 2/3/2014 (Paper 45), granted 2/13/2014 (Paper 50)).

8. Concurrently with the present motion, I intend to file a motion to apply to appear *pro hac vice* before the Office in CBM2015-00121, CBM2015-00124, CBM2015-00127, CBM2015-00130, CBM2015-00131 and CMB2015-00133, also involving Apple and Smartflash.

9. I am an experienced litigation attorney having familiarity with the subject matter at issue in this proceeding. I have been practicing law since 1988 and have extensive experience litigating patent infringement cases in many different District Courts across the country, including participation in multiple trials, *Markman* hearings, patent summary judgment proceedings , and other patent-related hearings and pleadings concerning, *inter alia*, patent validity and/or infringement. I have received professional recognition in the field of patent litigation by several different organizations, including *The Best Lawyers in America*, *Northern California Super Lawyers*, *IAM Patent 100 – The World’s Leading Patent*

Practitioners, and Managing IP – “IP Star”. I am very familiar with U.S. Patent No. 8,033,458 (“the ‘458 Patent”) and the issues involved in this case. I have represented Apple against Smartflash in the pending District Court litigation since 2013, and have been actively involved as lead counsel for Apple since that time. As lead counsel in the District Court litigation, I have, among other things, been heavily involved with forming invalidity positions against Smartflash’s ‘458 Patent and related patents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of January, 2016, in East Palo Alto, CA.

/s/ James R. Batchelder

James R. Batchelder