

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

v.

SMARTFLASH LLC,

Patent Owner.

Case CBM2015-00130

Patent 8,118,221 B2

**DECLARATION OF EMILY E. TOOHEY
IN SUPPORT OF PATENT OWNER'S PRELIMINARY RESPONSE**

Smartflash - Exhibit 2089

I, Emily E. Toohey, make the following Declaration pursuant to 28 U.S.C. § 1746:

1. I am a Litigation Paralegal at the law firm of Davidson Berquist Jackson & Gowdey, LLP.
2. I provide this Declaration in connection with Patent Owner's Preliminary Response in the above-identified Covered Business Method Patent Review. Unless otherwise stated, the facts set forth in this declaration are based on my personal knowledge.
3. Exhibit 2001 is a true and correct copy of the Congressional Record - House, June 23, 2011, H4480-4505. An exhibit label on the first page has been added to the bottom of the Congressional Record but no other alterations have been made.
4. Exhibit 2002 is a true and correct copy of the Congressional Record - Senate, Sep. 8, 2011, S5402-5443. An exhibit label on the first page has been added to the bottom of the Congressional Record but no other alterations have been made.
5. Exhibit 2049 is a true and correct copy of a Report and Recommendation (on Defendants' Motions for Summary Judgment of Invalidity Pursuant to 35 U.S.C. § 101), from *Smartflash, LLC et al. v. Apple Inc., et al.*, Case No. 6:13-CV-447 (E.D. Tex.) and *Smartflash LLC, et al. v. Samsung Electronics*

Co. Ltd, et al., Case No. 6:13-CV-448 (E.D. Tex.), dated Jan. 21, 2015 that I downloaded from PACER on June 1, 2015. An exhibit label on the first page has been added to the bottom of the Report and Recommendation but no other alterations have been made.

6. Exhibit 2050 is a true and correct copy of an Order adopting Report and Recommendation (on Defendants' Motions for Summary Judgment of Invalidity Pursuant to 35 U.S.C. § 101), from *Smartflash LLC, et al. v. Apple Inc., et al.*, Case No. 6:13-CV-447 (E.D. Tex.) and *Smartflash LLC, et al. v. Samsung Electronics Co. Ltd, et al.*, Case No. 6:13-CV-448 (E.D. Tex.), dated Feb. 13, 2015 that I downloaded from PACER on June 1, 2015. An exhibit label on the first page has been added to the bottom of the Order but no other alterations have been made.
7. Exhibit 2058 is a true and correct copy of a Memorandum Opinion and Order (on Defendants' Motions for Stay Pending the Outcome of CBMs) from *Smartflash LLC, et al. v. Apple Inc., et al.*, Case No. 6:13-CV-447 (E.D. Tex.), *Smartflash LLC, et al. v. Samsung Electronics Co. Ltd, et al.*, Case No. 6:13-CV-448 (E.D. Tex.), *Smartflash LLC, et al. v. Google, Inc., et al.*, Case No. 6:14-CV-435 (E.D. Tex.), and *Smartflash LLC, et al. v. Amazon, Inc., et al.*, Case No. 6:14-CV-992 (E.D. Tex.) dated May 29, 2015 that I downloaded from PACER on June 1, 2015. An exhibit label on the

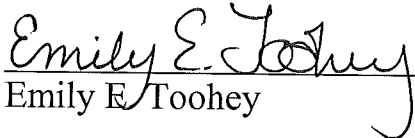
first page has been added to the bottom of the Memorandum Opinion and Order but no other alterations have been made.

8. Exhibit 2068 is a true and correct copy of the Transcript of the Deposition of Anthony J. Wechselberger taken in CBM2015-00015, CBM-2015-00016, CBM-2015-00017, and CBM-2015-00018 dated May 28, 2015 as received from the Court Reporter, David Feldman Worldwide, Inc., 450 Seventh Avenue, Ste. 500, New York, NY 10123, on June 2, 2015. An exhibit label on the first page has been added to the bottom of the Transcript but no other alterations have been made.
9. Exhibit 2073 is a true and correct copy of Apple's Preliminary Claim Constructions and Extrinsic Evidence filed in *Smartflash, LLC, et al. v. Apple Inc., et al.*, Case No. 6:13-CV-447 (E.D. Tex.) that I downloaded from PACER on June 19, 2015. An exhibit label on the first page has been added to the bottom of the Preliminary Claim Constructions but no other alterations have been made.
10. Exhibit 2075 is a true and correct copy of the Order on Defendants' Renewed Motion for Judgment as a Matter of Law on the Issue of § 101 under Rule 50(b); Dkt. #585; from *Smartflash LLC, et al. v. Apple Inc., et al.*, Case No. 6:13-CV-447 (E.D. Tex.) dated July 8, 2015 that I downloaded

from Pacer on July 14, 2015. An exhibit label on the first page has been added to the bottom of the Order but no other alterations have been made.

11. Exhibit 2082 is a true and correct copy of the Trial Transcript from *Virnetx Inc. v. Apple Inc.*, Case No. 6:10-cv-417 (E.D. Tex.) dated November 2, 2012. An exhibit label on the first page has been added to the bottom of the Transcript but no other alterations have been made.
12. I make this declaration of my own personal knowledge. If called to testify as to the truth of the matters stated herein, I could and would testify competently.
13. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of August, 2015, at McLean, Virginia.


Emily E Toohy