

## Exhibit 10

April 17, 2023

VIA Email to: FOIARequests@USPTO.gov

FOIA Department/Office of the General Counsel  
Unites States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

RE: FOIA Appeal for F-22-00081 (for Supplemental Production dated January 18, 2023)

Requestor, Smartflash, LLC (“Smartflash”),<sup>1</sup> hereby appeals (1) the decision of the U.S. Patent and Trademark Office (USPTO) to not produce unredacted versions of all seven emails produced by the USPTO on January 18, 2023 as shown in the attached Bates number Exhibit A and (2) the adequacy of the USPTO’s search in this matter. The letter accompanying the January 18, 2023 production (attached hereto as Exhibit B) indicates that “You have the right to appeal this initial decision[, and an] appeal must be received within 90 calendar days from the date of this letter.” Thus, this appeal, as it includes copies of the original filed request (Exhibit C) and a copy of the USPTO’s January 18, 2023 letter (Exhibit B), is timely filed.

**Any Privilege under Exemption (b)(5) Has Been Waived**

Redactions such as those made in the production dated January 18, 2023 are improper as any claim that the contents are privileged under Exemption (b)(5) has been waived. Exemptions under deliberative privilege, like those under claims of attorney-client privilege and/or work-product privilege, can be waived, and they have been here. As the Court noted with approval in *Rockwell International Corp. v. U.S. Dept. of Justice*, 235 F.3d 598 (D.C. Cir. 2001), “where ‘counsel attempts to make a testimonial use of these [notes, documents, and other internal] materials the normal rules of evidence come into play with respect to cross-examination and production of documents.’” *Id.* at 606 (quoting *United States v. Nobles*, 422 U.S. 225, 239 n.14 (1975)). In explaining the reasoning of the Supreme Court, the District Court held that “[i]n *Nobles*, the defense attempted to invoke work-product privilege in a way that would have threatened the prosecution's ability to engage in effective cross-examination.” *Id.*

The USPTO similarly has improperly attempted to invoke deliberative privilege here in a way that threatens (1) Smartflash’s ability to engage in effective defense of its litigation positions

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<sup>1</sup> Requester, Smartflash, notes that the issue of who the Requester was in a previous FOIA Request (F-21-00071) is currently an issue in on-going litigation in the District Court of the District of Columbia (1:22-cv-01123). For the avoidance of doubt, this appeal is being jointly filed in the name of the Requester, Smartflash, and Michael R. Casey, in his representative and personal capacities. Thus, even if the USPTO deems the Requester to be Michael R. Casey, this appeal is proper.

and (2) Smartflash’s counsel’s ability to help Smartflash engage in effective defense of Smartflash’s litigation positions. The USPTO has made “testimonial use” of the contents of the redacted emails by testifying as to who searched, where they searched, what was and was not found, whether additional documents were likely to be found, and what was relevant as noted below. However, as a preliminary matter, any mental impressions of Judge Moore about what should and should not be produced and what is and is not relevant have been waived based on at least paragraph 30 of the first declaration of Ms. Caitlin Trujillo (hereinafter “the First Trujillo Declaration”) (Document 27-3 in 1:22-cv-01123 (DCDC)) (attached as Exhibit D). That paragraph describes Judge Moore’s mental impressions on the issues involved herein when it states “Judge Moore sent these emails and historical versions of Standard Operating Procedure 1 (*which he did not think were necessarily responsive but thought might be helpful to the requester*) to the Office of General Law, which was adjudicating the administrative appeal.”

A001-A002

The USPTO has made “testimonial use” of the contents of the redacted email dated April 7 from Judge Moore to other USPTO personnel based on at least paragraph 22 of the First Trujillo Declaration. Ms. Trujillo testified as to the contents of that email when she stated “*Judge Moore*, sent a short summary of the request ... and *asked that [the recipients] search their records for responsive documents.*” First Trujillo Declaration, ¶ 22. As none of the unredacted portions asks the recipients to search their records for responsive documents, Ms. Trujillo must be testifying about the contents of the unredacted portions. Thus, any privilege associated with the redacted portions has been waived. Furthermore, the assertion that Judge Moore was asking the recipients to perform a search is inconsistent with a later email dated April 12, 2021 to Judges Michelle Ankenbrand and Jason Repko where he stated “no need to search yet.” A003.

A003-A011

Likewise, paragraph 23 of the First Trujillo Declaration states that Judge Moore provided Judges Michelle Ankenbrand and Jason Repko “with a copy of the FOIA request and *a summary of the requested materials* and asked them for input on what types of records the Board might have, and who other than them might have responsive records.” While the April 12, 2021 email does include a header stating “SUMMARY OF FOIA REQUEST AND MY PRELIMINARY THOUGHTS REGARDING EACH DOCUMENT REQUEST,” by testifying that a summary actually follows that header, the First Trujillo Declaration provides testimony about the contents of the redacted email. Thus, the Requester has the right to now receive the contents of that alleged summary in order to be able “to engage in effective cross-examination” under Supreme Court and District Court precedent. That alleged summary is present in pages A003, A004, A006-A008, and A009-A011.

A009

The USPTO has not provided any evidence that the redaction in the first line of A009 is part of any “back and forth” of a pre-decisional context on what to provide or not provide as part of the FOIA request. Judge Repko’s response was already complete as to what Judge Repko

knew about the situation. To the extent that the redaction relates to Judge Moore contacting any other person, if Ms. Trujillo has testified about such contacts, then the USPTO has waived as to that reduction too.

#### A012

Paragraphs 24 and 25 of the First Trujillo Declaration also waive additional privileges with respect to the redacted emails, including the April 22, 2021 email from Judge Moore, including, but not limited to, where was searched. Paragraph 24 states that “Judge Moore also reviewed the cases files of each Smartflash proceeding for any responsive documents that could be responsive to the request. He was unable to locate any responsive records.” To the extent that the issue of what Judge Moore was or was not able to find is found in any of the redactions, any privilege related to those redactions has been waived. For example, if the first redaction states something akin to “Having reviewed the USPTO’s file, it now appears that there is only one responsive document,” then the first redaction is improper. It also is improper to redact what was found in any of the searches as the April 27 email from Judge Moore (attached to the August 31, 2021 email from Judge Moore) testifies as to the issue of the limits of what was found -- thereby waiving any privilege related to the issue generally.

Furthermore, paragraph 25 states that Chief Judge Boalick, Deputy Chief Judge Bonilla, Vice Chief Judges Gongola and Tierney “indicated that they were unable to find any additional information.” The unredacted portions of the April 22, 2021 emails do not state that, and to the extent that the redacted portions do, the privilege associated with those redactions has been waived.

#### A014-A016

Paragraph 27 of the First Trujillo Declaration also waives privilege at least with respect to the first set of redactions of Judge Moore in that email. Paragraph 27 states that, on “August 31, 2021, after Judge Moore had been informed of Dr. Casey’s administrative appeal, he contacted Chief Judge Boalick, Deputy Chief Judge Bonilla, and Vice Chief Judges Tierney and Gongola and Judge Ankenbrand and *asked them to search their records again.*” As the unredacted portion of that email does not “ask[] them to search their records again,” Ms. Trujillo must be testifying as to the contents of the redacted portions -- thereby waiving privilege as to those redactions. In addition, to the extent that any redaction in any of the other redacted emails relates to Judge Moore asking any recipient of any email to search his/her records or identifying locations to search, the privilege has been waived as to those redactions as well.

As to the second set of redactions in the portion of the email from Ms. Williams, any privilege related to those redactions are waived as well to the extent that those portions relate to where was searched and how searches were conducted. Paragraph 32 of the First Trujillo Declaration states that “[t]here are no other locations likely to contain responsive agency records.” Thus, where was searched has been waived. In addition, there is no indication as to the relative roles of Ms. Williams and Judge Moore to evidence that the discussions were protected predecisional discussions.

As to the third set of redactions in the portion of the email from Judge Moore dated April 22, 2021, any privilege related to those redactions are waived as well to the extent that those portions relate to where was searched and how searches were conducted. Paragraph 32 of the First Trujillo Declaration states that “[t]here are no other locations likely to contain responsive agency records.” Thus, where was searched has been waived.

### **The USPTO’s Response Does Not Articulate Any Foreseeable Harm from Producing Unredacted Versions of the Produced Emails**

As noted in *Reporters Comm. for Freedom of the Press v. Fed. Bureau of Investigation*, 3 F.4th 350, 370 (D.C. Cir. 2021), “what is needed is a focused and concrete demonstration of why disclosure of the particular type of material at issue will, in the specific context of the agency action at issue, actually impede *those same agency deliberations going forward*.” (Emphasis added.) Furthermore, the *Reporters Comm.* court also addressed the “chilling effect” issue when it was unpersuaded that foreseeable harm was proven by “a series of boilerplate and generic assertions that release of any deliberative material would necessarily chill internal discussions.” The Court similarly found that an “agency must ‘identify specific harms to the relevant protected interests that it can reasonably foresee would actually ensue from disclosure of the withheld materials’ and ‘connect such harms in a meaningful way to the information withheld’...” *Leopold v. U.S. Dep’t of Justice*, 19-cv-2796 (D. D.C. July 23, 2021)

As the USPTO’s response does not set forth a focused and concrete demonstration of why disclosure of the particular type of material at issue will, in the specific context of the agency action at issue, actually impede those same agency deliberations going forward, and as the USPTO does not connect such harms in a meaningful way to the information withheld, the redactions are improper and should be removed. Furthermore, given what the USPTO has produced with respect to where was searched, what was found, and by whom searches were made, there is no foreseeable harm in providing all further information on those issues. Thus, Requestor also is entitled to unredacted copies of all redacted documents on the basis that there is no foreseeable harm in providing that information.

### **Requestor Also Appeals the Adequacy of the USPTO’s Search**

It is the agency’s responsibility to show that its search was reasonable. Given that the USPTO has not fully identified how and where searches were performed, Requestor appeals the searches for responsive documents as being unreasonable. For example, paragraph 28 of the First Trujillo Declaration states that Judge Moore “reached out to Judge Miriam Quinn, who was serving as Vice Chief Judge as the time the relevant cases were repaneled, and who was involved in the relevant repaneling decisions, to search her records. At Judge Quinn’s suggestion he also contacted Judge Barbara Benoit to search her records.” To the extent that written records reflect “reaching out” or what was searched, no such records have been produced. Any written records reflecting who was contacted and what was searched for should be produced.

**Conclusion**

The USPTO should produce completely unredacted copies of previously redacted emails produced on January 18, 2023 and perform an updated search for responsive documents.

I would greatly appreciate receiving a confirmation to mcasey@maierandmaier.com that this appeal has been received.

Sincerely,

/ Michael R. Casey /

Michael R. Casey, Ph.D.  
Reg. No. 40,294  
Attorney for Requester Smartflash, LLC, and  
in his personal capacity  
571-278-6379 (mobile)  
(703) 740-8322 (office)  
mcasey@maierandmaier.com

Exhibit A

**From:** [Moore, Scott](#)  
**To:** [Boalick, Scott](#); [Bonilla, Jacqueline](#); [Weidenfeller, Scott](#); [Kim, Michael](#); [Gongola, Janet](#)  
**Cc:** [Flanagan, Krista M.](#)  
**Subject:** New F request re panel expansion  
**Date:** Wednesday, April 7, 2021 11:35:00 AM  
**Attachments:** [Casey FOIA Request.pdf](#)  
[Exhibit 1 - chat with the chief march 2018.pdf](#)  
[Search Request.docx](#)  
[Smartflash FOIA Information.docx](#)

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*Privileged / Work Product / Deliberative*

(b) (5) I received a new request seeking extensive information regarding the panel expansions in the *Apple v. Smartflash* cases.

I haven't yet had a chance to digest this request; (b) (5)

The specific document requests are reproduced below. The Requestor asserts that the deliberative process was waived with respect to these panel expansions when former CJ Ruschke presented the attached PowerPoint to the public.

I'm prepping for an oral hearing tomorrow, but I will jump on this request as soon as I free up.  
Scott Moore

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Request #1

Page 7 of Exhibit 1 states that a "Suggestion [for Panel Expansion] must be in writing with reasons and basis for expansion." Exhibit 1 states on page 10 that "the panel was expanded for case resource management" in "Apple Inc. v. Smartflash LLC –14 individual cases all administered by a 4-or 5-judge panel (see Case CBM2014-00102, et al.)."

For any Smartflash case in the "14 individual cases" (as that term is used on page 10), Requestor requests a copy of any document showing:

- a. The Suggestion for Panel Expansion (as that term is used on page 7);
- b. Who suggested the need for the Panel Expansion and the reasons and/or basis for doing so;
- c. Who was on the original panel prior to the expansion of the panel;
- d. What criteria were used to decide which APJs to add to panel when the panel was expanded;
- e. What documents were considered when deciding to expand the panel;
- and
- f. Any objections to the expansion of the panel.

Request #2

Page 8 states that "Early AIA practice expanded panels in families for case resource management" and that such a PTAB practice is "Now discontinued." Requestor requests a copy of any document showing:

- a. What other panels were expanded "for case resource management" as that phrase is used on page 8 of Exhibit 1;
- b. Why the PTAB practice is "Now discontinued" as that phrase is used on page 8 of Exhibit 1; and
- c. When the "Now discontinued" practice was discontinued.

Request #3

Requester requests (1) a copy of any documents showing what documents were considered when determining that any "panel was expanded for case resource management" in the "Apple Inc. v. Smartflash LLC" cases described on page 10 of Exhibit 1 and (2) to the extent that the considered documents



are not part of the E2E system as part of the proceedings of the “Apple Inc. v. Smartflash LLC” cases described on page 10 of Exhibit 1, copies of the considered documents.

Request #4

For any CBM Review in which Smartflash was a party that is not part of the “14 individual cases” (as that term is used on page 10), Requestor requests, to the extent that they exist, a copy of any document showing:

- a. Any Suggestion for Panel Expansion (as that term is used on page 7);
- b. Who suggested the need for the Panel Expansion and the reasons and/or basis for doing so;
- c. Who was on the original panel prior to the expansion of the panel;
- d. What criteria were used to decide which APJs to add to panel when the panel was expanded;
- e. What documents were considered when deciding to expand the panel;
- and
- f. Any objections to the expansion of the panel.

**From:** Alexander, Traci <Traci.Alexander@USPTO.GOV>

**Sent:** Wednesday, April 7, 2021 9:12 AM

**To:** Williamson, Ginger <Ginger.Williamson@USPTO.GOV>

**Cc:** Moore, Scott <Scott.Moore@USPTO.GOV>; Alexander, Traci <Traci.Alexander@USPTO.GOV>

**Subject:** Search Request - F-21-00071

Request for Documents for Request # 'F-21-00071'. Your response due date is: 4/14/2021 12:00:00 AM Message from SENDER:

Good Morning,

Please read the attached request for records under the FOIA. The requester has given very specific information for the search. A search request was sent to OCIO but no search was performed. They pointed out the requester's instructions in the attached request. A response is due 04/14/2021.

Thanks,

Traci Alexander  
FOIA Specialist  
Office of General Law

**From:** [Moore, Scott](#)  
**To:** [Ankenbrand, Michelle](#); [Repko, Jason M.](#)  
**Subject:** FOIA request re Smartflash  
**Date:** Monday, April 12, 2021 4:40:00 PM  
**Attachments:** [Casey FOIA Request1.pdf](#)  
[Exhibit 1 - chat with the chief march 20182.pdf](#)

*Privileged / Work Product / Deliberative*

Michelle and Jason,

We recently received the attached FOIA request seeking documents pertaining to the panel expansion decisions in CBMs involving Smartflash. This FOIA request relates in part to the attached "Chat with the Chief" presentation that you appear to have authored.

I am formulating a document collection plan and a summary for management, and I was hoping to get your thoughts before I send the summary to the executive team.

I would very much appreciate it if each of you could do the following:

- 1) Below is a summary of the document requests that includes my thoughts regarding each (the hollow bullet points). I would appreciate it if you would take a look at my thoughts and let me know if there is anything I should add or something that looks wrong (e.g., I say I don't think there will be anything responsive, but you know that there are responsive documents).
- 2) Let me know how long you estimate it would take you to search for responsive documents (no need to search yet).
- 3) Let me know if you there is anyone else at PTAB that I should ask to search for responsive documents.

Thank you very much for your assistance.

Warm regards,  
Scott

SUMMARY OF FOIA REQUEST AND MY PRELIMINARY THOUGHTS REGARDING EACH DOCUMENT REQUEST

(b) (5) [REDACTED]

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- (b) (5) [Redacted]

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- [Redacted]

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- [Redacted]

- [Redacted]

- [Redacted]

Scott C. Moore  
Lead Administrative Patent Judge

Patent Trial and Appeal Board  
1961 Stout Street, 14<sup>th</sup> Floor  
Denver, CO 80294  
[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)

**From:** [Moore, Scott](#)  
**To:** [Ankenbrand, Michelle](#)  
**Subject:** RE: FOIA request re Smartflash  
**Date:** Tuesday, April 20, 2021 6:00:00 PM

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Received. Thank you!

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**From:** Ankenbrand, Michelle <Michelle.Ankenbrand@USPTO.GOV>  
**Sent:** Tuesday, April 20, 2021 2:51 PM  
**To:** Moore, Scott <Scott.Moore@USPTO.GOV>  
**Subject:** RE: FOIA request re Smartflash

Hi Scott,

Attached is the spreadsheet we discussed. The relevant information is in the second tab, titled 2 Expanded Panels (AIA). It's quite large, but filtering by column A for FAM will give you the 250 cases that are responsive to the request.

Thanks,  
Michelle

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**From:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>  
**Sent:** Monday, April 12, 2021 4:41 PM  
**To:** Ankenbrand, Michelle <[Michelle.Ankenbrand@USPTO.GOV](mailto:Michelle.Ankenbrand@USPTO.GOV)>; Repko, Jason M. <[Jason.Repko@USPTO.GOV](mailto:Jason.Repko@USPTO.GOV)>

**Subject:** FOIA request re Smartflash  
*Privileged / Work Product / Deliberative*  
Michelle and Jason,

We recently received the attached FOIA request seeking documents pertaining to the panel expansion decisions in CBMs involving Smartflash. This FOIA request relates in part to the attached "Chat with the Chief" presentation that you appear to have authored.

I am formulating a document collection plan and a summary for management, and I was hoping to get your thoughts before I send the summary to the executive team.

I would very much appreciate it if each of you could do the following:

- 1) Below is a summary of the document requests that includes my thoughts regarding each (the hollow bullet points). I would appreciate it if you would take a look at my thoughts and let me know if there is anything I should add or something that looks wrong (e.g., I say I don't think there will be anything responsive, but you know that there are responsive documents).
- 2) Let me know how long you estimate it would take you to search for responsive documents (no need to search yet).
- 3) Let me know if you there is anyone else at PTAB that I should ask to search for responsive documents.

Thank you very much for your assistance.

Warm regards,  
Scott

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SUMMARY OF FOIA REQUEST AND MY PRELIMINARY THOUGHTS REGARDING EACH DOCUMENT REQUEST

(b) (5)





(b) (5)

[REDACTED]

**Scott C. Moore**

Lead Administrative Patent Judge

Patent Trial and Appeal Board

1961 Stout Street, 14<sup>th</sup> Floor

Denver, CO 80294

[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)

**From:** [Moore, Scott](#)  
**To:** [Repko, Jason M.](#)  
**Subject:** RE: FOIA request re Smartflash  
**Date:** Tuesday, April 13, 2021 10:45:00 AM

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(b) (5)

Thanks for responding.

Scott

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**From:** Repko, Jason M. <[Jason.Repko@USPTO.GOV](mailto:Jason.Repko@USPTO.GOV)>  
**Sent:** Tuesday, April 13, 2021 7:37 AM  
**To:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>; Ankenbrand, Michelle <[Michelle.Ankenbrand@USPTO.GOV](mailto:Michelle.Ankenbrand@USPTO.GOV)>  
**Subject:** RE: FOIA request re Smartflash

Hi Scott,

I just worked on the Orange Book part, not the presentation on expanded panels.  
Jason

---

**From:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>  
**Sent:** Monday, April 12, 2021 4:41 PM  
**To:** Ankenbrand, Michelle <[Michelle.Ankenbrand@USPTO.GOV](mailto:Michelle.Ankenbrand@USPTO.GOV)>; Repko, Jason M. <[Jason.Repko@USPTO.GOV](mailto:Jason.Repko@USPTO.GOV)>

**Subject:** FOIA request re Smartflash  
*Privileged / Work Product / Deliberative*  
Michelle and Jason,

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I am formulating a document collection plan and a summary for management, and I was hoping to get your thoughts before I send the summary to the executive team.

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Thank you very much for your assistance.

Warm regards,  
Scott

-----  
SUMMARY OF FOIA REQUEST AND MY PRELIMINARY THOUGHTS REGARDING EACH DOCUMENT REQUEST

(b) (5)



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**Scott C. Moore**  
Lead Administrative Patent Judge  
Patent Trial and Appeal Board  
1961 Stout Street, 14<sup>th</sup> Floor  
Denver, CO 80294  
[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)

**From:** [Moore, Scott](#)  
**To:** [Boalick, Scott](#); [Bonilla, Jacqueline](#); [Gongola, Janet](#); [Tierney, Michael](#)  
**Cc:** [Flanagan, Krista M.](#)  
**Subject:** Apple v. Smartflash FOIA request  
**Date:** Thursday, April 22, 2021 4:00:00 PM  
**Attachments:** [Casey FOIA Request1.pdf](#)

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*Privileged / Work Product / Deliberative*

Quick update regarding the *Apple v. Smartflash* request (received April 7).

(b) (5) [REDACTED], it now appears that there is only one responsive document—a spreadsheet created by Michelle Ankenbrand. We produced this same spreadsheet last year in response to a different FOIA request.

(b) (5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Scott

**Scott C. Moore**

Lead Administrative Patent Judge

Patent Trial and Appeal Board

1961 Stout Street, 14<sup>th</sup> Floor

Denver, CO 80294

[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)

**From:** [Moore, Scott](#)  
**To:** [Jordan, Kimberly R. \(PTAB\)](#)  
**Subject:** RE: Documents  
**Date:** Tuesday, April 27, 2021 11:59:00 AM

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Thank you!  
Scott

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**From:** Jordan, Kimberly R. (PTAB) <Kimberly.Jordan@USPTO.GOV>  
**Sent:** Tuesday, April 27, 2021 6:39 AM  
**To:** Moore, Scott <Scott.Moore@USPTO.GOV>  
**Subject:** RE: Documents

I did not find any documents related to expanded panels in these cases.

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**From:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>  
**Sent:** Monday, April 26, 2021 3:55 PM  
**To:** Jordan, Kimberly R. (PTAB) <[Kimberly.Jordan@USPTO.GOV](mailto:Kimberly.Jordan@USPTO.GOV)>  
**Subject:** Documents

- 12 specific *Apple v. Smartflash* CBMs (CBM2014-00102 to -00113) (the “**Apple v. Smartflash cases**”), and
- other Smartflash CBMs with expanded panels (CBM2014-00193, CBM2014-00197 to -00200, CBM2014-00204, CBM2015-00059, CBM2015-00131 to -00133) (the “**other Smartflash cases**”)

**Scott C. Moore**

Lead Administrative Patent Judge  
Patent Trial and Appeal Board  
1961 Stout Street, 14<sup>th</sup> Floor  
Denver, CO 80294  
[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)

**From:** [Moore, Scott](#)  
**To:** [Boalick, Scott](#); [Bonilla, Jacqueline](#); [Tierney, Michael](#)  
**Cc:** [Gongola, Janet](#); [Nalven, Andrew](#); [Ankenbrand, Michelle](#)  
**Subject:** Appeal in F-21-00071  
**Date:** Tuesday, August 31, 2021 7:27:00 PM  
**Attachments:** [f-21-00071 Translucent.pdf](#)  
[Casey FOIA Request \(F-21-00071\).pdf](#)

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*Privileged / Deliberative / Work Product*

I just received notification that the Requestor has filed an appeal in F-21-00071 (the FOIA request seeking information about panel expansions in the *Apple v. Smartflash* cases, as described in former CJ Ruschke’s “Chat with the Chief” presentation).

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I will provide you with an update once I learn more.

Scott Moore

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**From:** Williams, Jennifer <[Jennifer.Williams@USPTO.GOV](mailto:Jennifer.Williams@USPTO.GOV)>  
**Sent:** Tuesday, August 31, 2021 1:19 PM  
**To:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>  
**Subject:** FW: F-21-00071

Hi Scott,

The FOIA requester here has submitted an appeal, and I have a couple of questions for you. I will set up a quick meeting for us to discuss, but my general questions are below. I have attached the initial request to jog your memory, along with the document and the transparent redactions we applied.

- (b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Apologies for the short turnaround on this, but we do need to get this appeal decision out by next Tuesday.

Thanks,  
Jen

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**From:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>

**Sent:** Tuesday, April 27, 2021 12:00 PM

**To:** Alexander, Traci <[Traci.Alexander@USPTO.GOV](mailto:Traci.Alexander@USPTO.GOV)>

**Subject:** RE: F-21-00071

Yes. Just heard back this morning. We did not locate any additional responsive records.  
Scott Moore

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**From:** Alexander, Traci <[Traci.Alexander@USPTO.GOV](mailto:Traci.Alexander@USPTO.GOV)>

**Sent:** Tuesday, April 27, 2021 5:21 AM

**To:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>

**Subject:** FW: F-21-00071

Good Morning Scott,

Have you been able to determine whether or not the attached spreadsheet is the only responsive record for the referenced request?

Thanks,

Traci

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**From:** Moore, Scott <[Scott.Moore@USPTO.GOV](mailto:Scott.Moore@USPTO.GOV)>

**Sent:** Thursday, April 22, 2021 4:12 PM

**To:** Alexander, Traci <[Traci.Alexander@USPTO.GOV](mailto:Traci.Alexander@USPTO.GOV)>

**Cc:** Campbell, Dorothy <[Dorothy.Campbell@USPTO.GOV](mailto:Dorothy.Campbell@USPTO.GOV)>; Flanagan, Krista M. <[Krista.Flanagan@USPTO.GOV](mailto:Krista.Flanagan@USPTO.GOV)>; Williamson, Ginger <[Ginger.Williamson@USPTO.GOV](mailto:Ginger.Williamson@USPTO.GOV)>

**Subject:** F-21-00071

Tricia,

Here is a spreadsheet responsive to F-21-00071. This appears that this is the only responsive document, but I need to check with someone who has been on leave to make sure. I will try and do that tomorrow.

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Please give us a chance to review a draft version of the production before it goes out.

Thank you,

Scott Moore

**Scott C. Moore**

Lead Administrative Patent Judge

Patent Trial and Appeal Board

1961 Stout Street, 14<sup>th</sup> Floor

Denver, CO 80294

[scott.moore@uspto.gov](mailto:scott.moore@uspto.gov)