

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

**SMARTFLASH LLC, and  
SMARTFLASH TECHNOLOGIES  
LIMITED,**

**Plaintiffs,**

**v.**

**AMAZON.COM, INC.,  
AMAZON.COM, LLC, AMZN  
MOBILE, LLC, AMAZON WEB  
SERVICES, INC., and  
AUDIBLE, INC.,**

**Defendants.**

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**Civil Action No. 6:14cv992**

**JURY TRIAL DEMANDED**

**PLAINTIFFS' COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Smartflash LLC and Smartflash Technologies Limited file this First Amended Complaint against Defendant Amazon.com, Inc. for patent infringement under 35 U.S.C. § 271 and allege, based on their own personal knowledge with respect to their own actions and based upon information and belief with respect to all others' actions, as follows:

**THE PARTIES**

1. Plaintiff Smartflash LLC is a limited liability corporation organized and existing under the laws of the State of Texas, and maintains its principal place of business at 100 E. Ferguson, Suite 406, Tyler, Texas, 75702. Smartflash LLC maintains a website at [www.smartflashllc.com](http://www.smartflashllc.com).
2. Plaintiff Smartflash Technologies Limited is a limited company organized and existing under the laws of the British Virgin Islands, and maintains a principal place of business on the island of Tortola.

3. Defendant Amazon.com, Inc. is a corporation organized under the laws of Delaware and maintains a principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Amazon.com, Inc. has designated Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 as its agent for service of process.
4. Defendant Amazon.com, LLC is a limited liability corporation organized under the laws of Delaware with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Amazon.com, LLC is registered to do business in Texas and has designated Corporation Service Company DBA CSC – Lawyers Inc., 211 East 7th Street, Suite 620, Austin, Texas 78701, as its agent for service of process.
5. Defendant AMZN Mobile, LLC is a limited liability corporation organized under the laws of Delaware with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. AMZN Mobile, LLC has designated Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 as its agent for service of process.
6. Defendant Amazon Web Services, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109. Amazon Web Services, Inc. has designated Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 as its agent for service of process.
7. Defendant Audible, Inc. is a corporation organized under the laws of Massachusetts with its principal place of business at 1 Washington Park, 16th Floor, Newark, New Jersey

07102. Audible, Inc. has designated Corporation Service Company, 84 State Street, Boston, Massachusetts 02109 as its agent for service of process.

**JURISDICTION AND VENUE**

8. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
9. This Court has personal jurisdiction over Amazon.com, Inc., Amazon.com, LLC, AMZN Mobile, LLC, Amazon Web Services, Inc., and Audible, Inc. (“Defendants” or “Amazon”). Defendants conduct business and have committed acts of patent infringement and/or has induced acts of patent infringement by others in this district and/or have contributed to patent infringement by others in this district, the State of Texas, and elsewhere in the United States.
10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, among other things, Defendants are subject to personal jurisdiction in this district, Defendants have regularly conducted business in this judicial district, and certain of the acts complained of herein occurred in this judicial district.

**PATENTS-IN-SUIT**

11. On February 26, 2008, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,334,720 (the “720 patent”) entitled “Data Storage and Access Systems.”
12. On May 17, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,942,317 (the “317 patent”) entitled “Data Storage and Access Systems.”

13. On October 11, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,033,458 (the “458 patent”) entitled “Data Storage and Access Systems.”
14. On November 22, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,061,598 (the “598 patent”) entitled “Data Storage and Access Systems.”
15. On February 21, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,118,221 (the “221 patent”) entitled “Data Storage and Access Systems.”
16. On December 25, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,336,772 (the “772 patent”) entitled “Data Storage and Access Systems.”
17. On August 5, 2014 at 12:00 AM EDT (*i.e.*, August 4, 2014 at 11:00 PM CDT), the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,794,516 (the “516 patent”) entitled “Data Storage and Access Systems.”
18. Smartflash LLC, together with Smartflash Technologies Limited,<sup>1</sup> owns all rights, title, and interest in and to the ’720, ’317, ’458, ’598, ’221, ’772, and ’516 patent (the “patents-in-suit”) and possesses all rights of recovery.
19. Smartflash incorporates the patents-in-suit herein by reference.

#### **FACTUAL ALLEGATIONS**

20. The patents-in-suit generally cover devices, methods, and systems for transmitting, retrieving, downloading, storing, and accessing content, content information, DRM data,

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<sup>1</sup> Smartflash Technologies Limited joins as a co-plaintiff in this lawsuit only to avoid a dispute as to whether it should be added for standing purposes.

payment data, and supplementary data. For example, some of the claims in the patents-in-suit cover devices that retrieve data, store data, and manage access to the data via payment information and/or use rules. As another example, some of the claims in the patents-in-suit cover a computer system (*e.g.*, one or more connected servers) or a supply server that transmits content or data to requesters.

21. The Amazon Appstore app is an Android application that supports the purchase and download of applications and other digital content from Amazon Appstore.
22. Amazon sells and delivers digital content through the Amazon Appstore app.
23. Amazon end-user customers can use the Amazon Appstore app on their Android-based devices, including Kindle Fire tablet and Amazon Fire phone devices, to purchase and download applications and other digital content.
24. An application developer or publisher can use the Amazon Appstore's in-application payment functionality to collect payment for enhanced functionality or additional content usable by the application.
25. The Amazon Appstore's in-application payment functionality is available through the Amazon APIs and, in operation, is accessible and usable via the Amazon Appstore app.
26. An Android application can call the Amazon Appstore in-application payment functionality to convey payment requests and responses.
27. The Amazon Client, in turn, conveys the payment requests and responses to one or more Amazon servers for payment approval.
28. When payment is approved, the Amazon Appstore app receives a purchase token which identifies the transaction and the purchase.

29. Amazon Appstore also makes content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (*e.g.*, gender, age, geographic location, etc.).
30. Amazon Appstore also allows users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's account and/or library. Users can access their content from their account and/or library via a variety of devices by using Amazon's cloud storage supporting content purchased from the Amazon Appstore app, including, for example, Amazon's Cloud Drive and Amazon Web Services platforms and/or services.
31. Amazon's Kindle devices, Kindle Fire tablets, and Fire phones evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased content or data (*e.g.*, whether the device rating settings allow access to an app for a certain age group).
32. Amazon Instant Video (including Amazon Prime Instant Video, and formerly Amazon Video On Demand and Amazon Unbox) is an iOS, Android, television, and console application that supports the purchase and download of digital content from Amazon.
33. Amazon sells and distributes digital content through the Amazon Instant Video app.
34. Amazon's end-user customers can use the Amazon Instant Video app on their devices, including Kindle Fire tablet and Amazon Fire phone devices, to purchase and download movies, television shows, video, and other digital content.
35. A publisher can use the Amazon Instant Video payment functionality to collect payment for content.

36. The Amazon Instant Video app, in turn, conveys the payment requests and responses to one or more Amazon servers for payment approval.
37. When payment is approved, the Amazon Instant Video app receives a purchase token which identifies the transaction and the purchase.
38. Amazon Instant Video also makes content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (*e.g.*, gender, age, geographic location, etc.).
39. Amazon Instant Video also allows users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's account and/or library. Users can access their content from their account and/or library via a variety of devices by using Amazon's cloud storage supporting content purchased from the Amazon Instant Video app, including, for example, Amazon's Cloud Drive and Amazon Web Services platforms and/or services.
40. Amazon develops and distributes media players and viewers, including, for example, the Video Library, with the Amazon Instant Video app.
41. The media players and viewers evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased content or data (*e.g.*, whether the device rating settings allow access to a movie for a certain age group, or whether a movie rental time period has expired).
42. Amazon Music (including Amazon Prime Music and Amazon MP3) is an iOS, Android, television, and console application that supports the purchase and download of digital content from Amazon.
43. Amazon sells and distributes digital content through the Amazon Music app.

44. Amazon's end-user customers can use the Amazon Music app on their devices, including Kindle Fire tablet and Amazon Fire phone devices, to purchase and download music and other digital content.
45. A publisher can use the Amazon Music payment functionality to collect payment for content.
46. The Amazon Music app, in turn, conveys the payment requests and responses to one or more Amazon servers for payment approval.
47. When payment is approved, the Amazon Music app receives a purchase token which identifies the transaction and the purchase.
48. Amazon Music also makes content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (*e.g.*, gender, age, geographic location, etc.).
49. Amazon Music also allows users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's account and/or library. Users can access their content from their account and/or library via a variety of devices by using Amazon's cloud storage supporting content purchased from the Amazon Music app, including, for example, Amazon's Cloud Drive, Cloud Player, and Amazon Web Services platforms and/or services.
50. Amazon develops and distributes media players and viewers, including, for example, the Amazon Cloud Player, with the Amazon Music app.
51. The media players and viewers evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased



content or data (*e.g.*, whether the device rating settings allow access to a song or album for a certain age group).

52. Amazon's Kindle is an application for iOS and Android, and a website e-bookstore interface, that supports the purchase and download of digital content from Amazon.
53. Amazon sells and distributes digital content through its Kindle e-bookstore.
54. Amazon's end-user customers can access the Kindle app and website on their devices, including all versions of the Kindle tablet, Kindle Fire tablet and Amazon Fire phone devices, to purchase and download digital content.
55. A publisher can use Amazon Kindle payment functionality to collect payment for content.
56. Amazon's Kindle e-bookstore, in turn, conveys the payment requests and responses to one or more Amazon servers for payment approval.
57. When payment is approved, Amazon's Kindle e-bookstore receives a purchase token which identifies the transaction and the purchase.
58. Amazon's Kindle e-bookstore also makes content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (*e.g.*, gender, age, geographic location, etc.).
59. Amazon's Kindle e-bookstore also allow users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's account and/or library. Users can access their content from their account and/or library via a variety of devices by using Amazon's cloud storage supporting content purchased from the Kindle e-bookstore, including, for example Amazon's Cloud Drive and Amazon Web Services platforms and/or services.

60. Amazon develops and distributes Kindle readers and applications, including, for example, the Kindle devices, Kindle Fire tablets, and Kindle app.
61. The media players and viewers evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased content or data (*e.g.*, whether a user has permission to view a book).
62. Audible.com is an application for iOS, Android, television, and website, wholly owned and operated by Amazon, that supports the purchase and download of digital content from Audible.com.
63. Amazon sells and distributes digital content through Audible.com.
64. Amazon's end-user customers can access the Audiobooks from Audible app and Audible.com on their devices, including Kindle Fire tablet and Amazon Fire phone devices, to purchase and download digital content.
65. A publisher can use Audible.com payment functionality to collect payment for content.
66. Audible.com, in turn, conveys the payment requests and responses to one or more Amazon or Audible servers for payment approval.
67. When payment is approved, Audible receives a purchase token which identifies the transaction and the purchase.
68. Audible.com and the Audiobooks from Audiobooks from Audible app also make content and media recommendations to users based on user characteristics, including usage history, purchase history, and demographic information (*e.g.*, gender, age, geographic location, etc.).
69. Audible and Audible.com also allow users the ability to access purchased content from a variety of devices by, for example, associating a user's purchased content with the user's

account and/or library. Users can access their content from their account and/or library via a variety of devices by using Audible's and Amazon's cloud storage supporting content purchased from Audible.com, including, for example, Audible Air, and Amazon's Cloud Drive and Amazon's Web Services platforms and/or services.

70. Audible develops and distributes media players, including, for example, the Audible software.
71. The media players and viewers evaluate use and access rules and user, device, or use status to determine whether a user has permission to access, play, or view the purchased content or data (*e.g.*, whether a user has permission to view a book).
72. An application developer or publisher can use Amazon Mobile Ads, including the Amazon Mobile Ad Network, to provide for in-application advertisement functionality.
73. The in-application advertisement functionality is available through the Amazon Mobile Ads API.
74. An application, such as an Amazon Appstore application, can call the in-application advertisement functionality to present advertisements to users.
75. Amazon develops and sells its Android-based Fire phones and Kindle Fire tablets that are sold to customers with the Amazon Appstore preinstalled.
76. Amazon Fire TV (and Amazon Fire TV Stick) is a digital media player and microconsole designed to stream digital audio/video content and video game to televisions.
77. Amazon develops and distributes Amazon Fire TV to manufacturers of televisions, set-top boxes, and other distributors that sell such devices to customers with Amazon Instant Video, Amazon Music, and Fire TV Apps preinstalled in the Amazon Fire TV platform.

78. Amazon has committed and continues to commit acts of infringement under 35 U.S.C. § 271 (i) with any version of its Amazon Appstore and the Amazon Appstore app; (ii) with any version of Amazon Instant Video, and the Amazon Instant Video app; (iii) with any version of Amazon Music and the Amazon Music App; (iv) with any version of Audiobooks from Audible or Audible.com (v) with any version of Amazon Mobile Ads, including the Amazon Mobile Ad Network; (vi) with any version of Amazon's hardware devices, including the Amazon Kindle, Amazon's Fire mobile phone and Kindle Fire tablet devices that include functionality that accesses the Amazon Appstore, Amazon Instant Video, Amazon Music, Amazon's Kindle e-bookstore, and Audible.com; (vii) with any version of its Fire TV platform that includes functionality that accesses the Fire TV App store, Amazon Appstore, Amazon Instant Video, Amazon Music, Amazon's Kindle e-bookstore, or Audible.com; (viii) with any version of its Fire TV App store; (ix) with any version of the Amazon Video Library, or other media and content players and viewers; (x) with any version of Amazon's proprietary Android operating system that includes any of the features listed in items (i)-(x); and (xi) with Amazon's servers, including those involved in operating the Amazon Appstore, Amazon Instant Video, Amazon Music, the Fire TV App store, the Amazon Kindle e-bookstore, Audiobooks from Audible, Audible.com, cloud platforms and/or services such as Amazon Cloud Drive, Amazon Cloud Player, Amazon Web Services, and Amazon Mobile Ad Network (collectively, "Amazon's Accused Instrumentalities").

**COUNT ONE: PATENT INFRINGEMENT BY AMAZON, INC.**

79. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

80. As described below, Amazon has infringed and continues to infringe the patents-in-suit.

81. Amazon's Accused Instrumentalities meet claims of the patents-in-suit.
82. Amazon makes, uses, offers to sell, sells and/or imports Amazon's Accused Instrumentalities within the United States or into the United States without authority from Plaintiffs.
83. Amazon therefore infringes the patents-in-suit under 35 U.S.C. § 271(a).
84. Amazon indirectly infringes the patents-in-suit by inducing infringement by others, such as device manufacturers, app developers and publishers, digital content publishers, and end-user customers, for example, by encouraging device manufacturers to make, use, import, sell, and offer to sell Amazon's Accused Instrumentalities within the United States, by instructing and encouraging app developers and publishers and digital content publishers to sell and offer to sell digital content and applications in the United States through Amazon's Accused Instrumentalities, and by instructing end-user customers to install and use Amazon's Accused Instrumentalities in the United States.
85. Amazon took the above actions intending others to infringe.
86. Amazon was aware of the patents-in-suit and knew that the others' actions, if taken, would constitute infringement of that patent. Alternatively, Amazon believed there was a high probability that others would infringe the patents-in-suit but remained willfully blind to the infringing nature of others' actions. Amazon therefore infringes the patents-in-suit under 35 U.S.C. § 271(b).
87. Amazon indirectly infringes the patents-in-suit by contributing to infringement by others, such as device manufacturers, app developers and publishers, digital content publishers, and end-user customers by offering to sell and/or selling within the United States products that contain components that constitute a material part of the inventions claimed

in the patents-in-suit, and components of products that are used to practice one or more processes/methods covered by the claims of the patents-in-suit and that constitute a material part of the inventions claimed in the patents-in-suit. Such components are, for example, the software components responsible for purchasing of digital content or applications from or using the Amazon Appstore, Amazon Instant Video, Amazon Music, or Fire TV App store; the software components responsible for providing digital content or applications upon payment validation; the software components that provide in-application payment functionality; the software components that provide in-application advertisement functionality; and the software components that install, for example, any version of any operating system, including Amazon's Android operating system, that includes the Amazon Appstore app, Amazon Instant Video app, Amazon Music app, or Fire TV App store, any version of a media player or viewer, any version of the Amazon Appstore app, Amazon Instant Video app, Amazon Music app, or Fire TV App store, any version of Amazon Fire TV, or any version of Amazon's in-application payment functionality.

88. In the above offering to sell and/or selling, Amazon has known these components to be especially made or especially adapted for use in an infringement of the patents-in-suit and that these components are not a staple article or commodity of commerce suitable for substantial non-infringing use. Alternatively, Amazon believed there was a high probability that others would infringe the patents-in-suit but remained willfully blind to the infringing nature of others' actions. Amazon therefore infringes the patents-in-suit under 35 U.S.C. § 271(c).

89. Amazon's acts of infringement have caused damage to Plaintiffs. Plaintiffs are entitled to recover from Amazon the damages sustained by Plaintiffs as a result of Amazon's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Amazon have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiffs for which there is no adequate remedy at law, and for which Plaintiffs are entitled to injunctive relief under 35 U.S.C. § 283.
90. To the extent that Amazon releases any new version of Amazon's Accused Instrumentalities, such instrumentalities meet claims of the patents-in-suit and infringe under 35 U.S.C. § 271(a)-(c) in ways analogous to Amazon's current infringement described above.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all issues so triable.

**PRAYER FOR RELIEF**

1. A judgment that the Amazon has directly infringed the patents-in-suit, contributorily infringed the patents-in-suit, and induced the infringement of the patents-in-suit;
2. A preliminary and permanent injunction preventing Amazon and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and inducing the infringement of the patents-in-suit;
3. A ruling that this case be found to be exceptional under 35 U.S.C. § 285, and a judgment awarding to Plaintiffs its attorneys' fees incurred in prosecuting this action;

4. A judgment and order requiring Amazon to pay Plaintiffs damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed.
5. A judgment and order requiring Amazon to pay Plaintiffs the costs of this action (including all disbursements);
6. A judgment and order requiring Amazon to pay Plaintiffs pre-judgment and post-judgment interest on the damages awarded;
7. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that Plaintiffs be awarded a compulsory ongoing licensing fee; and
8. Such other and further relief as the Court may deem just and proper.



Dated: December 29, 2014

Respectfully submitted,

**CALDWELL CASSADY & CURRY**



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