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10 **Attorneys for PersonalWeb Technologies, LLC**  
**and Level 3 Communications, LLC**  
 11 [Additional Attorneys listed below]

12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

15 IN RE PERSONALWEB TECHNOLOGIES,  
 LLC, ET AL., PATENT LITIGATION

**CASE NO.: 5:18-md-02834-BLF**

16  
 17 AMAZON.COM, INC., et al.,

**Case No.: 5:18-cv-00767-BLF**

18 Plaintiffs,

**DECLARATION OF KEVIN  
 BERMEISTER IN SUPPORT OF  
 PERSONALWEB TECHNOLOGIES, LLC  
 AND LEVEL 3 COMMUNICATIONS,  
 LLC'S OPPOSITION TO AMAZON.COM,  
 INC. AND AMAZON WEB SERVICES,  
 INC.'S MOTION FOR SUMMARY  
 JUDGMENT ON DECLARATORY  
 JUDGMENT CLAIMS AND DEFENSES  
 UNDER THE CLAIM PRECLUSION AND  
 KESSLER DOCTRINE**

19 v.

20 PERSONALWEB TECHNOLOGIES, LLC, et  
 al.,

21 Defendants.

22 PERSONALWEB TECHNOLOGIES, LLC  
 23 and LEVEL 3 COMMUNICATIONS, LLC,

Date: February 7, 2019  
 Time: 2:00 PM  
 Dept.: Courtroom 3, 5<sup>th</sup> Floor  
 Judge: Hon. Beth L. Freeman

24 Counterclaimants,

25 v.

26 AMAZON.COM, INC. and AMAZON WEB  
 SERVICES, INC.,

Trial Date: March 16, 2020

27 Counterdefendants.  
 28

1 I, Kevin Bermeister, declare as follows:

2 1. My name is Kevin Bermeister. I am over the age of 18 and competent to make this  
3 declaration. I reside in Sydney, Australia, and have personal knowledge of the matters set forth  
4 below. If called as a witness I would and could competently testify thereto.

5 2. I am the Non-Executive Chairman of PersonalWeb Technologies, LLC  
6 ("PersonalWeb") and was so during litigation of *PersonalWeb Technologies LLC and Level 3*  
7 *Communications v. Amazon.com, Inc, et al.*, Case No. 6:11-cv-00658, in the Eastern District of  
8 Texas ("the Texas Action"). In that capacity I had the authority to make decisions for PersonalWeb  
9 in connection with the Texas Action.

10 3. In an earlier declaration I gave in this case (Docket number 37-1, dated March 23,  
11 2018), I provided some background on the transactions and business activities associated with and  
12 relating to the "True-Names" patent family for how data could be more efficiently transmitted over  
13 the Internet, as well as PersonalWeb's acquisition of the "True-Names" patent family in 2011.

14 4. In initiating the Texas Action in late 2011 and throughout its prosecution, I  
15 understood that it only accused the Multipart Upload functionality of Amazon Web Service's Simple  
16 Storage Service ("S3") system. I also had understood from publicly available materials that a  
17 content-based value called an ETag could be used during the Multipart Upload process to verify that  
18 a part did not get corrupted during the upload process and could be used to finalize the assembly of  
19 the uploaded parts into an object for storage and retrieval on S3. I was not aware at the time of the  
20 Texas Action that there were S3 website operator customers who were using ETags for an entirely  
21 different purpose of controlling browser caches by directing browsers to use conditional HTTP GET  
22 requests containing content-based ETags in order to instruct the browsers when they were authorized  
23 to reuse previously cached content or when they must get newly authorized content in rendering the  
24 website operator's webpages.

25 5. The Texas Action ended with a stipulation of dismissal in June, 2014. During the  
26 Texas Action PersonalWeb had accused Amazon of infringement through its Multipart Upload  
27 system. As the Texas Action progressed I learned that the economic activity associated with the  
28 Multipart Upload meant that the potential damages that could be obtained for patent infringement

1 did not warrant the expense of trial. I made the business decision to agree to dismiss the existing  
2 infringement claims for Multipart Upload. In making that business decision in no way did I concede  
3 that PersonalWeb was agreeing to or acknowledging (a) non-infringement of the Amazon Multipart  
4 Upload feature or non-infringement of any other aspect of any other feature associated with S3, or  
5 (b) invalidity of the subject patents.

6 6. I also made the business decision to dismiss Dropbox, Inc., originally named as a co-  
7 defendant with Amazon in the Texas Action, when I learned that Dropbox did not use Multipart  
8 Upload.

9 I declare under penalty of perjury under the laws of the United States of America that the  
10 foregoing is true and correct.

11 Executed on January 9, 2019 in Sydney, Australia.



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Kevin Bermeister