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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.,
 18 Plaintiffs,

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

**DECLARATION OF PATRICK
 MCCLORY 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.

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

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

Trial Date: March 16, 2020

25 v.
 26 AMAZON.COM, INC. and AMAZON WEB
 SERVICES, INC.,
 27 Counterdefendants.
 28

1 I, Patrick McClory, declare as follows:

2 1. I am over the age of 18 and competent to make this declaration. The facts herein are,
3 unless otherwise stated, based upon personal knowledge, and if called upon to do so, I could, and
4 would testify to their truth under oath. I submit this declaration in support of PersonalWeb and Level
5 3 Communications' Opposition to Amazon.com, Inc., and Amazon Web Services, Inc.'s Motion for
6 Summary Judgment of Declaratory Judgment Claims and Defenses Under the Claim Preclusion and
7 Kessler Doctrine.

8 2. I was an Amazon Web Services Certified Solutions Architect from 2013 to 2015, an
9 Amazon Web Services Certified Developer from 2014 to 2016, and a Senior Consultant employed by
10 Amazon Web Services from 2013 to 2014. Additionally, I have been consulting to customers on the
11 use of AWS since 2011 and continue to advise customers in their use of this platform both from a
12 strategic and an engineering perspective. I am personally familiar with the Amazon Web Services
13 product called "Simple Storage Service", "Amazon S3" or simply "S3," having consulted on hundreds
14 of projects involving S3. A summary of my experience and qualifications profile is attached hereto
15 as Exhibit A.

16 3. S3 includes several sub-systems servicing an entire suite of features including: storing
17 objects up to 5 terabytes in size; migrating data; configuring lifecycle policies; creating, updating, and
18 deleting tags for objects; copying objects between buckets; replacing object tag sets; modifying access
19 controls; restoring archived objects from archival subsystems such as Amazon Glacier; implementing
20 version control; replicating objects across AWS Regions; managing access; and applying encryption
21 and controlling access to stored data.. These features are described, for example, in AWS's Frequently
22 Asked Questions and S3 descriptions, true and correct copies of which are attached hereto as Exhibits
23 B-D.

24 4. I am personally familiar with an S3 functionality called "multipart upload." Multipart
25 upload is a process by which an S3 customer using an S3 interface can upload large objects (up to 5
26 terabytes) to S3. The process requires a series of transactions in which a customer, sometimes using
27 an AWS-provided tool such as the AWS S3 CLI (Command Line Interface), breaks up an object into
28 smaller parts, uploads each part temporarily to S3, and then instructs S3 to assemble the parts together

1 to form the multipart object to be stored on S3. The parts are stored temporarily in S3 during a
2 multipart upload, and cannot be accessed by an anonymous browser, *i.e.*, a browser operated by
3 someone who does not have credentials to access the S3 bucket to which the multipart upload is being
4 made. The parts also cannot be accessed by the S3 customer except with the
5 CompleteMultipartUpload command. The parts are only stored long enough to create the aggregate
6 object but are not otherwise accessible once a multipart upload is completed or aborted by the S3
7 customer.

8 5. As part of the multipart upload process, an S3 user may generate MD5 hashes for each
9 part that is being uploaded, to be compared to the S3 server-calculated ETag for each respective part.
10 The ETag for a multipart upload part is an MD5 hash of the content of that part. These ETags are
11 generated for each part and used to verify the part did not get corrupted during the upload. Only if the
12 part's content did not get corrupted will it be used by S3 to assemble the parts into the large object for
13 storage when the customer sends a "CompleteMultipartUpload" command. As part of the process, an
14 S3 customer can use S3 specific multipart upload commands to copy an object that they previously
15 had uploaded to S3 and use it as one of the parts that form the final Multipart upload object.

16 6. I have been informed that PersonalWeb was a plaintiff in *PersonalWeb Technologies*
17 *LLC and Level 3 Communications v. Amazon.com, Inc, et al.*, Case No. 6:11-cv-00658 in the Eastern
18 District of Texas ("the Texas Action"). I was provided and reviewed the claim charts for the
19 Preliminary Infringement Contentions ("PICs") for the patents asserted in the Texas Action in which
20 PersonalWeb identified aspects of the Amazon Simple Storage Service ("S3") as the accused
21 instrumentality, produced in this current litigation at AMZ_PWT_00005796-5838,
22 AMZ_PWT_00005848-5925, AMZ_PWT_00005941-5986, AMZ_PWT_00005994-6147,
23 AMZ_PWT_00006159-6254, and AMZ_PWT_00006264-6374.

24 7. Upon reviewing the PICs, I reached the conclusion that they were directed to the
25 multipart upload functionality of S3. I reached this conclusion by reviewing the evidence cited in the
26 charts. For example, the chart for U.S. Patent No. 7,802,310 contains the following statements and
27 citations to evidence:

28

- 1 a. “When performing a multipart upload, Amazon S3 automatically generates a hash
- 2 to identify and retrieve the data being uploaded.”
- 3 b. “Objects greater than 5GB in size require the use of the multipart upload API.”
- 4 c. A description of the use of ETags in multipart uploads, including a graphic of a
- 5 description of the ETag response header from the S3 API Reference.
- 6 d. An excerpt of the S3 Developer Guide stating that “[m]ultipart uploading is a three-
- 7 step process...”
- 8 e. An excerpt of the S3 Developer Guide describing the “Parts Upload Step” for a
- 9 multipart upload.
- 10 f. An excerpt of the S3 Developer Guide describing the “Multipart upload Completion
- 11 (or Abort)” step for a multipart upload.
- 12 g. A description of a sample PUT request from the S3 Developer Guide as including
- 13 “the upload ID that you get in response to your Initiate Multipart upload request.”
- 14 h. A description of a sample response to a PUT request from the S3 Developer Guide
- 15 as including “the ETag header” and a statement that “[y]ou need to retain this value
- 16 for use when you send the Complete Multipart upload request.”
- 17 i. An excerpt from the S3 API Reference describing the Complete Multipart upload
- 18 operation, graphics from the S3 API Reference showing the request and response
- 19 elements for the operation, sample syntax from the S3 API Reference for a POST
- 20 request used to carry out the for the Complete Multipart upload operation, and a
- 21 sample response that “indicates that an object was successfully assembled,”
- 22 including the xml tag “CompleteMultipartUploadResult.”
- 23 j. Excerpts from the S3 API Reference showing how a PUT request can be used to
- 24 copy bytes from an existing object to make it a part during a multipart upload
- 25 operation using the x-amz-copy-source header.
- 26 k. Excerpts from the S3 API Reference showing the behavior of conditional headers
- 27 used with the x-amz-copy-source header during a multipart upload.
- 28

1 8. Based on my experience with the S3 multipart upload functionality, I recognize that
2 the above statements referred to operations performed during multipart upload. They are not referring
3 to operations performed during the service of webpage files to anonymous browsers in response to
4 requests from an anonymous browser. In order to use S3 to serve webpage files to anonymous
5 browsers, an S3 customer has to take affirmative steps to make an S3 bucket available as a website
6 endpoint, as opposed to a REST endpoint which is the normal, default endpoint for a multipart
7 uploaded object, as shown, for example, on pages 87-96 and 338-339 of the S3 Developer Guide
8 produced in this case at AMZ_PWT_00000278. True and correct copies of pages 87-96 and 338-339
9 of the S3 Developer Guide are attached as Exhibit E hereto. Alternatively, an S3 customer would have
10 to configure an S3 bucket, or a specific object in an S3 bucket, to be publicly accessible, and therefore
11 capable of being referenced in a URI. This public accessibility is not the default configuration.

12 9. The Preliminary Infringement Contentions also contained excerpts from the S3 API
13 Reference showing how GET and HEAD operations are implemented and how a PUT request can be
14 used to copy an existing object using the x-amz-copy-source header. Conditional HTTP GET requests
15 are not used during Multipart upload. Using the x-amz-copy-source header in a PUT request may be
16 used to copy an object previously stored on S3 but would use the ETag in a different way than a
17 conditional HTTP GET request. The x-amz-copy-source header in a PUT request would be acted on
18 upon an ETag match of uploaded client data, whereas in a conditional HTTP GET request an If-None-
19 Match header would be acted on upon an ETag mismatch of cached server data.

20 10. All the evidence described in paragraphs 7 and 9 above was recited in support of all the
21 Preliminary Infringement Contentions directed to the Multipart upload feature of S3 for the asserted
22 patents in the Texas Action. Therefore, my conclusions above regarding the '310 Patent Preliminary
23 Infringement Contentions applies to all the Preliminary Infringement Contentions directed to S3 for
24 the asserted patents, *i.e.*, that all are directed to the Multipart upload feature of S3.

25 11. To summarize, anonymous browsers (meaning browsers without access to AWS
26 account credentials) cannot use the S3 Multipart upload features without additional coordination via
27 an application that has access to an appropriate set of AWS account credentials. The S3 multipart
28 upload series of transactions simply does not involve serving S3 object content using conditional

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