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10 Counsel for AMAZON.COM, INC.
11 and AMAZON WEB SERVICES, INC.

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

15 IN RE: PERSONAL WEB TECHNOLOGIES,
16 LLC ET AL., PATENT LITIGATION

Case No. 5:18-md-02834-BLF

17 AMAZON.COM, INC., and AMAZON WEB
18 SERVICES, INC.,

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

19 Plaintiffs,

v.

20 PERSONALWEB TECHNOLOGIES, LLC and
21 LEVEL 3 COMMUNICATIONS, LLC,

22 Defendants.

**RESPONSE OF AMAZON.COM, INC.
AND AMAZON WEB SERVICES, INC.
TO ADMINISTRATIVE MOTION FOR
LEAVE FILE A SUR-REPLY TO
MOTION FOR SUMMARY
JUDGMENT**

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

Counterclaimants,

v.

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

27 Counterdefendants.

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1 PersonalWeb's request for leave to file a sur-reply is unwarranted. All the arguments in
2 Amazon's reply brief respond to the contentions PersonalWeb raised in its opposition. In the motion,
3 Amazon "request[ed] that the Court . . . bar PersonalWeb from asserting any claim against Amazon
4 or its customers that relates to the *use or operation of S3*." (Dkt. 315 (Mot.) at 2 (emphasis added);
5 *see also* Dkt. 315-19 (Proposed Order) (seeking order that PersonalWeb is barred from asserting any
6 claim based on "use or operation of Amazon Simple Storage Service ('S3')".) In response,
7 PersonalWeb claimed that Amazon "ignore[d] 'CloudFront' and the role that separate product plays
8 in the infringement." (*See, e.g.*, Dkt. 334 (Opp.) at 3.) In direct response to this argument, Amazon
9 noted that the motion did not address CloudFront because that product is not, and cannot be, at issue
10 in this case. (Dkt. 350 (Reply) at 8-10.) PersonalWeb is not entitled to a sur-reply. *See Heil Co. v.*
11 *Curotto Can Co.*, No. 04-1590 MMC, 2004 WL 2600134, at *1 n.1 (N.D. Cal. Nov. 16, 2004)
12 (denying defendant's request for leave to file a sur-reply where "[c]ontrary to defendant's argument,
13 plaintiff's reply does not raise new legal arguments, but, rather, responds to legal arguments made
14 in defendant's opposition"), *aff'd per curiam*, 163 F. App'x 908 (Fed. Cir. 2006).

15 The Court should deny PersonalWeb's request also because it is untimely: Amazon filed the
16 reply in support of its motion for summary judgment on January 24, 2019 (Dkt. 350) and
17 PersonalWeb waited a week to seek leave to file a sur-reply.

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19 Respectfully submitted,

20 Dated: February 1, 2019

FENWICK & WEST LLP

21 By: /s/ Saina S. Shamilov

22 Saina S. Shamilov

23 Counsel for AMAZON.COM, INC. and
24 AMAZON WEB SERVICES, INC.

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