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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

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7 IN RE PERSONALWEB
8 TECHNOLOGIES, LLC, ET AL., PATENT
9 LITIGATION

Case No. 18-md-02834-BLF

10 **ORDER GRANTING IN PART AND**
11 **DENYING IN PART PERSONALWEB'S**
12 **ADMINISTRATIVE MOTION FOR**
13 **RELIEF**

14 Currently before the Court is PersonalWeb Technologies, LLC and Level 3
15 Communications LLC (collectively, "PersonalWeb") administrative motion for relief related to
16 Amazon.com, Inc. and Amazon Web Services, Inc. (collectively, "Amazon") reply in support of
17 Amazon's motion for summary judgment. ECF No. 354 ("Mot."). PersonalWeb requests that the
18 Court strike Section H of Amazon's reply, or in the alternative PersonalWeb requests leave to file
19 a sur-reply. For the reasons stated below, the Court DENIES PersonalWeb's request to strike and
20 GRANTS PersonalWeb's request to file a sur-reply.

21 **I. DISCUSSION**

22 **A. Request to Strike**

23 PersonalWeb argues that Amazon's reply improperly raised for the first time the issue of
24 whether PersonalWeb has standing to assert patent infringement regarding CloudFront. Mot. at 1.
25 *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider
26 arguments raised for the first time in a reply brief.").

27 In the motion for summary judgment, Amazon "request[ed] that the Court . . . bar
28 PersonalWeb from asserting any claim against Amazon or its customers that relates to the use or
29 operation of S3." ECF No. 315 at 2. PersonalWeb's opposition argued that claim preclusion did

1 not apply because, *inter alia*, Amazon “ignore[d] ‘CloudFront’ and the role that separate product
2 plays in the infringement.” ECF No. 334 at 3. In direct response to PersonalWeb’s argument,
3 Amazon’s reply brief argued that CloudFront is a content delivery network and that “PersonalWeb
4 affirmatively allege[d] that it does not assert any claims against any content delivery networks.”
5 ECF No. 350 at 8-9. Moreover, Amazon argued that PersonalWeb did not have standing to assert
6 claims related to CloudFront under the agreement between Kinetech, Inc. and Digital Island, Inc.,
7 (“Kinetech-Digital Island Agreement”) which governed PersonalWeb’s right to assert the patents-
8 in-suit. ECF No. 350 at 9-10.

9 The Court finds that Amazon’s arguments regarding CloudFront were properly limited to
10 responding to PersonalWeb’s arguments in its opposition. Accordingly, the Court denies
11 PersonalWeb’s request to strike Section H of Amazon’s reply.

12 **B. Request to File a Sur-Reply**

13 In the alternative, PersonalWeb requests leave to file a sur-reply. PersonalWeb argues that
14 it will be prejudiced if it is not given the opportunity to respond to Amazon’s arguments regarding
15 standing. Mot. at 1.

16 Civil Local Rule 7-3 governs filing of supplementary material and controls the analysis of
17 PersonalWeb’s request to file a sur-reply. Under Civil Local Rule 7-3, “[o]nce a reply is filed, no
18 additional memoranda, papers or letters may be filed without prior court approval.” Civ. L. R. 7-
19 3(d). When a party “raises a new argument or presents new evidence in a reply brief, a court may
20 consider these matters only if the adverse party is given an opportunity to respond.” *Banga v.*
21 *First USA, NA*, 29 F. Supp. 3d 1270, 1276 (N.D. Cal. 2014).

22 Here, Amazon’s reply brief was limited to responding to PersonalWeb’s arguments.
23 However, in doing so, Amazon presented evidence regarding the relevance of the Kinetech-Digital
24 Island Agreement. In its proposed sur-reply, PersonalWeb argues that Amazon misinterprets the
25 Kinetech-Digital Island Agreement. Accordingly, the Court finds good cause to allow
26 PersonalWeb to file a sur-reply. PersonalWeb’s motion for relief to file a sur-reply is GRANTED.
27 The Court will consider PersonalWeb’s sur-reply brief filed at ECF No. 354-1.

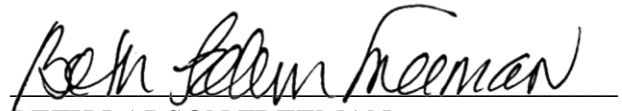
28 **H. CONCLUSION**

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For the foregoing reasons, PersonalWeb’s request to strike Section H of Amazon’s reply is DENIED and PersonalWeb’s request for leave to file a sur-reply is GRANTED.

IT IS SO ORDERED.

Dated: February 6, 2019


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California