

# Exhibit 6

1 Michael A. Sherman (SBN 94783)  
 masherman@stubbsalderton.com  
 2 Jeffrey F. Gersh (SBN 87124)  
 jgersh@stubbsalderton.com  
 3 Sandeep Seth (SBN 195914)  
 sseth@stubbsalderton.com  
 4 Wesley W. Monroe (SBN 149211)  
 wmonroe@stubbsalderton.com  
 5 Stanley H. Thompson, Jr. (SBN 198825)  
 sthompson@stubbsalderton.com  
 6 Viviana Boero Hedrick (SBN 239359)  
 vhedrick@stubbsalderton.com  
 7 STUBBS, ALDERTON & MARKILES, LLP  
 15260 Ventura Blvd., 20<sup>th</sup> Floor  
 8 Sherman Oaks, CA 91403  
 Telephone: (818) 444-4500  
 9 Facsimile: (818) 444-4520

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,  
 16 LLC, ET AL., PATENT LITIGATION

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

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

18 Plaintiffs,

19 v.

20 PERSONALWEB TECHNOLOGIES, LLC, et  
 21 al.,

22 Defendants.

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

**PERSONALWEB TECHNOLOGIES, LLC  
 AND LEVEL 3 COMMUNICATIONS,  
 LLC'S SUR-REPLY TO AMAZON.COM,  
 INC., AND AMAZON WEB SERVICES,  
 INC.'S REPLY IN SUPPORT OF  
 MOTION FOR SUMMARY JUDGMENT  
 ON DECLARATORY JUDGMENT  
 CLAIMS AND DEFENSES UNDER THE  
 CLAIM PRECLUSION AND KESSLER  
 DOCTRINES**

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

24 Counterclaimants,

25 v.

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

28 Counterdefendants.

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

Trial Date: March 16, 2020

1 Amazon asserts for the first time in its Reply (Dkt. 350 at 8-10, Section H) that PersonalWeb  
2 does not have standing to assert infringement regarding CloudFront. It is improper for Amazon to  
3 first raise this issue in its Reply rather than its initial Motion. *Zamani v. Carnes*, 491 F.3d 990, 997  
4 (9<sup>th</sup> Cir, 2007) (“the district court need not consider arguments raised for the first time in a reply  
5 brief”). Amazon’s new argument is that PersonalWeb’s complaint “affirmatively alleges that it does  
6 *not* assert any claims against any content delivery networks (CDNs), which by definition excludes  
7 CloudFront” and that it therefore is “barred by the rules of standing.” Reply at 8:24; 8:28-9:1  
8 (emphasis in original). This is incorrect.

9 While Amazon does not explain where in the complaints PersonalWeb supposedly makes this  
10 “affirmative allegation,” Amazon does raise the issue of the scope of PersonalWeb’s exclusive field  
11 of use versus that of Level 3. *See, e.g.*, Amended Counterclaim, Dkt. 71, ¶ 3. Specifically, Amazon  
12 argues that Level 3’s exclusive field of use is “the infrastructure services of one or more managed  
13 global content delivery networks (CDNs).” *Id.* at 9:24-25. Amazon, however, omits the bulk of the  
14 definition of Level 3’s Exclusive Field from the agreement. The *unabridged* definition of Level 3’s  
15 Exclusive Field in the agreement is:

16 the infrastructure services of one or more managed global content delivery networks  
17 (CDNs) ***in which*** a customer’s content is served faster, on average, than if served from  
18 the customer’s origin server or the CDN can typically serve more users than a  
19 customer’s origin server alone; where at least some customer content on origin servers  
20 is replicated to possibly many alternate servers of the CDN, ***many of said CDN servers***  
21 ***being at ISP sites***, and where users’ requests for origin content are satisfied by  
22 directing them to CDN servers.

23 Shamilov Reply Decl., Ex. 24, PERSONALWEB006814 (Kinotech-Digital Island Agreement,  
24 Schedule 1.2) (emphasis added).

25 As Level 3 is an ISP (Internet Service Provider), its Exclusive Field does not extend generically  
26 to *all* CDNs, as argued by Amazon, but is expressly *limited* to CDNs deployed *at ISPs* (“many of said  
27 CDN servers being at ISP sites”). This limitation is critical because no evidence is presented that  
28 CloudFront operates as an ISP. Further, to PersonalWeb’s knowledge, *none* of CloudFront “CDN

1 servers” are “at ISP sites,” much less “many.” Amazon has submitted no evidence covering any of  
2 these issues.

3 As a factually unsupported and incorrect predicate to its argument, Amazon’s position is that  
4 it did not timely have notice of PersonalWeb’s claims as related to CloudFront infringement.  
5 PersonalWeb’s infringement contentions were served in October 29, 2018. Amazon’s argument is  
6 puzzling because it is exactly in these infringement contentions under Patent L.R. 3-1(b) where a  
7 patent owner is supposed to disclose the “Accused Instrumentality” of the alleged infringement. Such  
8 an identification would not be needed if it was required to be in a complaint for patent infringement.  
9 In any case, PersonalWeb’s complaints and counterclaims have explicitly included the role of  
10 “intermediate cache servers” in the alleged infringement, which is precisely the CloudFront  
11 functionality at issue here. *See, e.g.*, PersonalWeb’s Answer and Counterclaim, ¶¶ 27, 32, 37, 39, 42,  
12 49, 56, 57, 65. In PersonalWeb’s infringement contentions CloudFront is a specific Accused  
13 Instrumentality that performs functions ascribed to “intermediate cache servers” as alleged in the  
14 counterclaim.

15 Amazon’s Motion was filed on November 28, 2018. As with the timely service of the  
16 infringement contentions accusing CloudFront, the parties met and conferred on November 21 and 26,  
17 2018 on PersonalWeb discovery that specifically focused on CloudFront. Those meet and confers  
18 resulted in Amazon providing certain discovery on CloudFront, and Amazon never once raised a lack  
19 of standing issue regarding CloudFront in any of these interactions and exchanges as a basis to refuse  
20 to produce discovery. (Seth Decl. ¶ 3.)

21 Amazon provides no explanation as to why its standing argument could not have been raised  
22 in its moving papers, or earlier, or that PersonalWeb’s arguments in its Opposition regarding  
23 CloudFront were reasonably unforeseen.

24 Finally, Amazon incorrectly asserts that “PersonalWeb never once mentioned CloudFront in  
25 any of its numerous submissions to the Court ....” Reply at 9:17-19. This is not true. For example, on  
26 March 23, 2018, in support of its opposition to Amazon’s motion to enjoin, PersonalWeb filed the  
27 declaration of Dr. Samuel H. Russ [Dkt. 37-2] in which he discusses his infringement analysis of  
28 “website owner/operators that choose to have their website files hosted and served by Amazon through

1 their S3 servers (including those in the Amazon’s Cloudfront network)...” *Id.* at ¶ 5. Through the  
2 remainder of Dr. Russ’ declaration, he describes aspects of the operation of “S3/Cloudfront” networks,  
3 systems, and servers six more times. *Id.*

4 Dated: January 31, 2019

STUBBS, ALDERTON & MARKILES, LLP

5  
6 By: /s/ Wesley W. Monroe

7 Wesley W. Monroe  
8 Michael A. Sherman  
9 Sandeep Seth  
10 Jeffrey F. Gersh  
11 Stanley H. Thompson, Jr.  
12 Viviana Boero Hedrick

Attorneys for PersonalWeb Technologies, LLC  
and Level 3 Communications, LLC

13  
14 Dated: January 31, 2019

MACEIKO IP

15  
16 By: /s/ Theodore S. Maceiko

17 Theodore S. Maceiko (SBN 150211)  
18 ted@maceikoip.com  
19 MACEIKO IP  
20 420 2nd Street  
21 Manhattan Beach, California 90266  
22 Telephone: (310) 545-3311  
23 Facsimile: (310) 545-3344

Attorney for Plaintiff  
PERSONALWEB TECHNOLOGIES, LLC

24  
25 Dated: January 31, 2019

DAVID D. WIER

26  
27 By: /s/ David D. Wier

28 David D. Wier  
david.wier@level3.com  
Vice President and Assistant General Counsel  
Level 3 Communications, LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021  
Telephone: (720) 888-3539

Attorney for Plaintiff  
LEVEL 3 COMMUNICATIONS, LLC