

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMC Corporation and VMware, Inc.
Petitioner,

v.

Personal Web Technologies, LLC.
Patent Owner.

Case IPR2013-00083 (JYC)
Patent 6,415,280

Before KEVIN F. TURNER, JONI Y. CHANG, and MICHAEL R. ZECHER,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

ORDER

A telephone conference call was held on February 5, 2013, between the Patent judges and respective counsel for the parties. EMC's counsel initiated the call to seek authorization to file three replacement exhibits in this proceeding and two other *inter partes* review proceedings (Ex. 1038 in IPR2013-00082; Ex. 1034

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in IPR2013-00083; and Ex. 1047 in IPR2013-00085). Each of the original exhibits appears to be a claim chart from another proceeding.

During the conference call, EMC requested authorization to file the replacement exhibits and indicated that the replacement exhibits would contain no substantive changes. Rather, the replacement exhibits would simply present the information in a short, concise, and user-friendly manner that would be easier for the Board to consider the information. EMC further explained that the replacement exhibit for Ex. 1047 in IPR2013-00085 would contain information regarding the prior art publication rather than the alleged on-sale product. EMC also offered to provide confirmation that no new information would be provided in the replacement exhibits. Prior to the conference call, EMC provided a copy of the proposed replacement exhibits to counsel for Personal Web.

In response, Personal Web argued that, based on its review of the proposed replacement exhibits, they appear to contain substantive and drastic changes, including removing information that is helpful to Personal Web. According to Personal Web, the changes are more than correcting a clerical or typographical mistake under 37 C.F.R. § 42.104(c) and Personal Web would be prejudiced as it has already been analyzing the petitions, declarations, and exhibits for roughly one and half months. Personal Web also pointed out that 37 C.F.R. § 42.123 permits a

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motion to submit supplemental information *after* a trial has been instituted, but not before institution.

Upon consideration of both parties' arguments, the Board finds Personal Web's arguments persuasive. The original exhibits appear to be readable and are presented in a sufficiently organized format. Moreover, the filing of replacement exhibits at this time before institution would place an unnecessary burden on Personal Web while they prepare to file patent owner preliminary responses that are due next month.

Accordingly, it is

ORDERED that EMC's request for authorization to file replacement exhibits is *denied*.

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