

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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EMC CORPORATION

Petitioner

v.

PERSONALWEB TECHNOLOGIES, LLC

Patent Owner

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Cases IPR2013-00082 (Patent 5,978,791)

IPR2013-00083 (Patent 6,415,280)

IPR2013-00084 (Patent 7,945,544)

IPR2013-00085 (Patent 7,945,539)

IPR2013-00086 (Patent 7,949,662)

IPR2013-00087 (Patent 8,001,096)<sup>1</sup>

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

CHANG, *Administrative Patent Judge*

ORDER

Conduct of the Proceeding

37 C.F.R. § 42.5

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<sup>1</sup> This Order addresses issues that are identical in all six cases. Therefore, we exercise our discretion to issue one order to be filed in each of the six cases. The parties, however, are not authorized to use this style heading in any subsequent papers. Note that the petitioners for IPR2013-00082 and IPR2013-00083 are EMC Corporation and VMware, Inc.

IPR2013-00082, Patent 5,978,791  
IPR2013-00083, Patent 6,415,280  
IPR2013-00084, Patent 7,945,544

IPR2013-00085, Patent 7,945,539  
IPR2013-00086, Patent 7,949,662  
IPR2013-00087, Patent 8,001,096

On October 16, 2013, a telephone conference call was held between respective counsel for the parties and Judges Turner, Chang, and Zecher. PersonalWeb sought leave to file a motion for observation regarding cross-examination of EMC's reply declarant, Dr. Clark. EMC filed a reply (Paper 55<sup>2</sup>) and a second declaration of its expert, Dr. Clark, in support of the reply. The parties indicated that they agreed to the date of the cross-examination of Dr. Clark regarding his second declaration. Upon further discussion, the parties also agreed to the following due dates for PersonalWeb's motion for observation and EMC's response to observation: October 31, 2013, and November 6, 2013, respectively.

As noted in the Scheduling Order (Paper 22 at 4) and the *Office Patent Trial Practice Guide* (77 Fed. Reg. 48756, 48767-68), a motion for observation on cross-examination is a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit (including another part of the same testimony). Any response to observation must be equally concise and specific.

An observation (or response) is not an opportunity to raise new issues, to re-argue issues, or to pursue objections. Each observation should be in the following form:

In exhibit \_\_\_, on page \_\_\_, lines \_\_\_, the witness testified \_\_\_. This testimony is relevant to the \_\_\_ on page \_\_\_ of \_\_\_. The testimony is relevant because \_\_\_.

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<sup>2</sup> For the purpose of clarity and expediency, IPR2013-00082 is representative and all citations are to IPR2013-00082 unless otherwise noted.

IPR2013-00082, Patent 5,978,791  
IPR2013-00083, Patent 6,415,280  
IPR2013-00084, Patent 7,945,544

IPR2013-00085, Patent 7,945,539  
IPR2013-00086, Patent 7,949,662  
IPR2013-00087, Patent 8,001,096

The entire observation should not exceed one short paragraph. The Board may decline consideration or entry of excessively long or argumentative observations (or responses).

It is:

ORDERED that PersonalWeb is authorized to file a motion for observation on the cross-examination testimony of Dr. Clark regarding his second declaration filed in support of EMC's reply; the due date for filing such a motion is October 31, 2013; and

FURTHER ORDERED that EMC is authorized to file a response to PersonalWeb's observation; the response must be filed on or before November 6, 2013.

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