

Filed on behalf of EMC Corporation and VMware, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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EMC CORPORATION and VMWARE, INC.,  
Petitioners

v.

Patent Owner of  
U.S. Patent No. 6,415,280 to Farber et al.

IPR Case No. IPR2013-00083

**PETITIONERS' MOTION TO EXCLUDE EVIDENCE**  
**PURSUANT TO 37 C.F.R. § 42.64(C)**

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**I. Statement of the Precise Relief Requested**

Pursuant to 37 C.F.R. § 42.64(c), EMC Corporation and VMware, Inc. (“Petitioners”) move to exclude Exhibits 2009-2012, and 2014, submitted by PersonalWeb Technologies, LLC (“Patent Owner”) in support of its Response (Doc. No. 45).

Patent Owner has offered licensing agreements and declarations from its Chairman (Kevin Bermeister) in an attempt to prove that others objectively valued the challenged claims. However, cross-examination has revealed that the licenses were entered into between closely related parties and thus are irrelevant to any “objective” value of the claims. Mr. Bermeister’s declarations failed to identify these relationships between the parties, and his purported “valuations” of the licenses not only lack objective support but also are inconsistent with contemporaneous SEC filings.

Petitioners served timely objections to this evidence on July 31, 2013 (Ex. 1081), and cross-examined Mr. Bermeister on August 27, 2013. Petitioners now move to exclude these exhibits because they are irrelevant (FRE 402), and also highly prejudicial, confusing, and misleading (FRE 403).<sup>1</sup>

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<sup>1</sup> Petitioners additionally move to exclude Exs. 2009, 2014 because such testimony lacks foundation (FRE 602), and violates the duty of candor (37 C.F.R. § 42.11).

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