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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PERSONALWEB TECHNOLOGIES LLC,
et al.,

Plaintiffs,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant.

Case No. 16-cv-01266-EJD

**ORDER GRANTING LEAVE TO
SUBMIT SUPPLEMENTAL EXPERT
REPORT**

On July 26, 2017, the Court granted Defendant’s motion to exclude the opinions of Plaintiffs’ expert, Dr. Akemann, in part because he did not reliably apportion the value of the ’420 patent from the portfolio of patents that were the subject of the licenses he relied on. Dkt. No. 345. At a status conference held on July 28, 2017, Plaintiffs orally moved for leave to submit a supplemental report from Dr. Akemann for the limited purpose of curing the deficiencies in his apportionment analysis. *See* Dkt. No. 348.

Federal Rule of Civil Procedure 26(a)(2) required the parties’ experts to each provide a written report which contains “a complete statement of all opinions the witness will express and the basis and reasons for them.” Accordingly, the Court will not permit Dr. Akemann to provide any new opinions beyond those already contained in his report. However, following the example of several courts in this district and others, the Court finds it appropriate to permit Dr. Akemann *one* opportunity to supplement his report for the very limited purpose of clarifying his methodology and conclusion that there should be a “substantial downward adjustment” that is “not necessarily . . . too large” to account for apportionment. *Finjan, Inc. v. Sophos, Inc.*, No. 14-CV-

1 01197-WHO, 2016 WL 4268659, at *1 (N.D. Cal. Aug. 15, 2016); *Golden Bridge Tech. v. Apple*
2 *Inc.*, 2014 U.S. Dist. LEXIS 68564, *21 (N.D. Cal. May 18, 2014); *Dynetix Design Sols., Inc. v.*
3 *Synopsys, Inc.*, No. C 11-05973 PSG, 2013 WL 4538210, at *5 (N.D. Cal. Aug. 22, 2013); *Cornell*
4 *Univ. v. Hewlett-Packard Co.*, 609 F. Supp. 2d 279, 284 (N.D.N.Y. Mar. 30, 2009).

5 For the foregoing reasons, it is hereby ORDERED that:

6 1. Plaintiffs may tender a supplemental damages expert report on apportionment for
7 the limited purpose described above no later than July 31, 2017. The supplemental report may not
8 exceed 8 pages in length. Additionally, Plaintiffs must make Dr. Akemann available for
9 deposition on the substance of his supplemental report. The deposition may not exceed three (3)
10 hours in length and must be completed by August 4, 2017.

11 2. As proposed by Plaintiffs at the status conference, Dr. Kearl will be permitted to
12 testify beyond the scope of his report at trial as is necessary to respond to Dr. Akemann's
13 supplemental report. Additionally, Defendant may (but is not required to) serve a supplemental
14 report of no more than 8 pages responding to Dr. Akemann's supplemental report by August 4,
15 2017. Defendant will not be required to make Dr. Kearl available for deposition.

16 3. Upon receipt of Dr. Akemann's supplemental report, Defendant may renew its
17 motion to exclude the opinions of Dr. Akemann by submitting a brief of no more than three (3)
18 pages by August 4, 2017. Plaintiffs may file a responsive brief not to exceed three (3) pages
19 within two days of the filing of Defendant's renewed motion. No replies will be allowed.

20 **IT IS SO ORDERED.**

21 Dated: July 28, 2017

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23 EDWARD J. DAVILA
24 United States District Judge

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