

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 J. DAVID HADDEN (CSB No. 176148)/
dhadden@fenwick.com
2 SAINA S. SHAMILOV (CSB No. 215636)
sshamilov@fenwick.com
3 TODD R. GREGORIAN (CSB No. 236096)
tgregorian@fenwick.com
4 PHILLIP J. HAACK (CSB No. 262060)
phaack@fenwick.com
5 RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
6 CHIEH TUNG (CSB No. 318963)
ctung@fenwick.com
7 FENWICK & WEST LLP
Silicon Valley Center
8 801 California Street
Mountain View, CA 94041
9 Telephone: 650.988.8500
Facsimile: 650.938.5200

10 Counsel for
11 AMAZON.COM, INC. and
AMAZON WEB SERVICES, INC.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 IN RE PERSONALWEB TECHNOLOGIES,
16 LLC, ET AL., PATENT LITIGATION

Case No.: 5:18-md-02834-BLF

17 AMAZON.COM, INC. and AMAZON WEB
18 SERVICES, INC.,

19 Plaintiffs,

20 v.

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

22 Defendants.

**STATEMENT OF AMAZON.COM,
INC. AND AMAZON WEB SERVICES,
INC. REGARDING REPRESENTA-
TIVE CASES**

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

25 Counterclaimants,

26 v.

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

28 Counter-Defendants

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

1 In response to the Court's request to select a representative case, the parties agreed to des-
2 ignate PersonalWeb's case against Twitch Interactive, Inc. (Case No. 5:18-cv-05619-BLF). Per-
3 sonalWeb Technologies, LLC and Level3 Communications LLC ("PersonalWeb"), however, re-
4 quest that an additional case, against Kongregate, Inc., Case No. 5:18-cv-04625-BLF, also proceed.
5 But there is no need for another representative case. In its case against Twitch, PersonalWeb asserts
6 *all* of its infringement categories. And as it admitted at the last case management conference, if the
7 Twitch case culminates in "a verdict against PersonalWeb that no infringement was found," "none
8 of the customer cases could go forward because there would be findings in each of the buckets."
9 (Nov. 2, 2018 CMC Hrg. Tr. at 6:17-22.) The Kongregate case, which involves only a subset of
10 the buckets, adds nothing to the already selected representative case against Twitch.

11 During the parties' discussions, PersonalWeb's sole reason for requesting that the Kongre-
12 gate case proceed as well was its "concern" that because Twitch became a wholly-owned subsidiary
13 of Amazon.com, Inc. in 2014, its case will not adequately represent the interests of other defend-
14 ants. But this concern is not valid. First, no defendant has raised such a concern or requested that
15 its case be designated as representative. Kongregate itself opposes PersonalWeb's request. Sec-
16 ond, PersonalWeb's concern would not even be addressed by the Kongregate case. As Kongregate
17 told PersonalWeb in July, it used Amazon S3 during the relevant time period and is therefore no
18 different than any other indemnified Amazon customer sued by PersonalWeb. And to be clear,
19 every current defendant (or its predecessor) was an Amazon S3 customer before the patents expired.
20 Third, although Twitch became an Amazon subsidiary in 2014, it retained full control of its website
21 and its design. Accordingly, the technology to be litigated in the Twitch case is Twitch's own, and
22 not one controlled by Amazon (outside of the implicated S3 functionality). Indeed, PersonalWeb
23 alleges that Twitch's purported infringement began in 2012, years before Amazon's acquisition.
24 Finally, Twitch, like Amazon and any other defendant, has a significant interest in defeating *all* of
25 PersonalWeb's claims under *any* theory and vindicating its business and technology.

26 Accordingly, the Court should reject PersonalWeb's proposal to have an unnecessary and
27 duplicative case against Kongregate proceed along with the Twitch case and Amazon's declaratory
28 judgment action.

1 Dated: November 9, 2018

FENWICK & WEST LLP

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3 By: /s/ Saina S. Shamilov
Saina S. Shamilov

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5 Counsel for
6 AMAZON.COM, INC. and
7 AMAZON WEB SERVICES, INC.
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