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11 and AMAZON WEB SERVICES, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 IN RE: PERSONAL WEB TECHNOLOGIES,
16 LLC ET AL., PATENT LITIGATION

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

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

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

19 Plaintiffs,

20 v.

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

23 Defendants.

**ADMINISTRATIVE MOTION TO
FILE UNDER SEAL PORTIONS OF
REPLY AND EXHIBITS 21-22, 24, AND
25 TO SHAMILOV DECLARATION IN
SUPPORT OF REPLY IN SUPPORT
OF MOTION OF AMAZON.COM, INC.
AND AMAZON WEB SERVICES, INC.
FOR SUMMARY JUDGMENT**

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

26 Counterclaimants,

27 v.

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

Counterdefendants.

1 Pursuant to Civil Local Rules 7-11 and 79-5(d), Amazon.com, Inc. and Amazon Web
2 Services, Inc. (collectively, “Amazon”) hereby move for administrative relief to file the following
3 items under seal in connection with Amazon’s Reply in Support of Motion of Amazon.com, Inc. and
4 Amazon Web Services, Inc. for Summary Judgment on Declaratory Judgment Claims and Defenses
5 Under the Claim Preclusion and *Kessler* Doctrines (“Reply”).

- 6 • Portions of Amazon’s Reply excerpting or summarizing Exhibits 22 and 24 to the
7 Shamilov Reply Declaration as outlined below.
- 8 • Excerpts from the Rule 30(b)(6) deposition of Praveen K. Gattu (“Gattu”) attached
9 as **Exhibit 21** to the Declaration of Saina S. Shamilov in support of Amazon’s Reply
10 (“Shamilov Reply Declaration”).
- 11 • Excerpt from the Rule 30(b)(6) deposition of Jeffrey H. Dean (“Dean”) attached as
12 **Exhibit 22** to the Shamilov Reply Declaration and portions of the Reply
13 incorporating that material.
- 14 • License Agreement between Kinotech, Inc. and Digital Island, Inc. attached as
15 **Exhibit 24** to the Shamilov Reply Declaration and portions of the Reply
16 incorporating that material.
- 17 • Excerpt from Plaintiffs’ supplemental infringement contentions, U.S. Patent No.
18 7,02,310 claim chart in E.D. Texas Case No. 6:11-cv-00658-LED, served October
19 31, 2012 attached as **Exhibit 25** to the Shamilov Reply Declaration.

20 Amazon requests leave to file Exhibit 24 under seal because PersonalWeb Technologies,
21 LLC (“PersonalWeb”) designated this item “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” (“AEO”) under the Stipulated Protective Order entered by the Court in each pending action,
23 Case Nos. 5:18-md-02834-BLF (Dkt. No. 290) and 5:18-cv-00767-BLF (“Current Actions”).
24 Specifically, the above referenced item refers to the assignment of rights in the patents-in-suit from
25 PersonalWeb’s predecessor-in-interest to Level 3’s predecessor-in-interest.

26 Amazon is filing this administrative motion for Exhibit 24 only to abide by the terms of the
27 Stipulated Protective Order in the Current Actions and to facilitate the filing of its Reply. By filing
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1 this administrative motion, Amazon is not waiving its right to contest PersonalWeb’s designations
2 and expressly reserves its right to contest the propriety of the designations, in whole or in part.

3 In the Ninth Circuit, a party seeking to file documents under seal in connection with a
4 dispositive motion must establish compelling reasons for doing so to rebut the presumption against
5 public access. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003). As
6 further explained in the accompanying declaration of Ravi R. Ranganath (“Ranganath Declaration”),
7 PersonalWeb has designated Exhibit 24 as Highly Confidential - Attorneys’ Eyes Only under the
8 Stipulated Protective Order, and Amazon believes that it must file this item under seal to abide by
9 the terms of the Stipulated Protective Order. However, Amazon reserves its rights to contest these
10 designations as noted above.

11 Amazon also requests leave to file Exhibit 21 under seal. Exhibit 21 is an excerpt of
12 deposition testimony regarding non-public aspects of the internal operation of Amazon’s Simple
13 Storage Service (“S3”). Amazon designated this item the equivalent of the “CONFIDENTIAL
14 OUTSIDE COUNSEL ONLY” designation provided under the Protective Order entered in the prior
15 Texas action, *PersonalWeb Techs., LLC v. Amazon.com Inc.*, No. 6:11-cv-00658 (E.D. Tex. Filed
16 Dec. 8, 2011), Dkt. No. 89 (“Texas Action”), and as “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” in the Current Actions. In the Ninth Circuit, a district court may override the
18 presumption of public access to judicial documents where “good cause” is shown. *See Phillips ex*
19 *rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002). “For good cause
20 to exist, the party seeking protection bears the burden of showing specific prejudice or harm will
21 result if no protective order is granted.” *Id.* at 1211 (internal citations omitted).

22 As further explained in the Ranganath Declaration, the confidential deposition testimony
23 Amazon seeks to file under seal meets the *Foltz* standard. *See Phoenix Technologies Ltd. v. VMware,*
24 *Inc.*, No. 15-cv-01414-HSG, 2018 WL 1169188, at *2 (N.D. Cal. Feb. 14, 2018) (good cause exists
25 to protect business information that might harm a litigant’s competitive standing if disclosed, and
26 where the redaction is “sufficiently narrowly tailored” to only seal portions of the exhibit that might
27 put sensitive business information at risk).

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1 Amazon also requests leave to file Exhibit 22 under seal because Amazon designated this
2 item “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under the Stipulated Protective
3 Order entered by the Court in the Current Actions. Exhibit 22 is an excerpt of deposition testimony
4 that reflects sensitive business information, namely Associate General Counsel Jeff Dean’s
5 discussion of agreements between Amazon and its S3 customers and Amazon decision to indemnify
6 its customers.

7 This testimony also meets the *Foltz* standard. *See, e.g., Finisar Corp. v. Nistica, Inc.*, No.
8 13-CV-03345-BLF(JSC), 2015 WL 3988132, at *4 (N.D. Cal. June 30, 2015) (sealing “excerpts
9 from the deposition transcripts” of a party’s employees that “exclusively reflect[ed] [the party’s]
10 confidential product and business information which [were] not intended for public disclosure”);
11 *Ojmar US, LLC v. Sec. People, Inc.*, No. 16-CV-04948-HSG, 2017 WL 7726713, at *1 (N.D. Cal.
12 Nov. 29, 2017) (“[L]icense agreements, financial terms, details of confidential licensing
13 negotiations, and business strategies’ containing ‘confidential business information’ satisfied the
14 ‘compelling reasons’ standard in part because sealing that information ‘prevented competitors from
15 gaining insight into the parties’ business model and strategy”).

16 Amazon further requests leave to file Exhibit 25 under seal because Amazon designated this
17 item “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to the Stipulated Protective Order
18 entered in the Current Actions and “RESTRICTED CONFIDENTIAL - CONTAINS SOURCE
19 CODE MATERIAL” pursuant the Protective Order entered in the Texas Action. Exhibit 25 is an
20 excerpt of infringement contentions reproducing confidential and proprietary source code for
21 Amazon’s S3.

22 As explained in the accompanying Ranganath Declaration, the confidential and proprietary
23 source code here too meets the *Foltz* standard. *See Opperman v. Path, Inc.*, No. 3-cv-00453-JST,
24 2017 WL 1036652, at *2 (N.D. Cal. Mar. 17, 2017) (sealing excerpts of developers’ proprietary
25 source code in summary judgment pleadings).

26 Disclosure of non-public details regarding the operation of Amazon’s S3 and confidential
27 business strategies would put Amazon at a competitive disadvantage with respect to competitors and
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1 competing services. Amazon has designated information relating to its S3 technology and customer
2 agreements as AEO under the Protective Orders entered in the Texas Action and the Current Actions.

3 For these reasons, Amazon respectfully requests that the Court grant this motion for leave to
4 file under seal Exhibits 21-22, 24, and 25 to the Shamilov Reply Declaration and portions of the
5 Reply excerpting or summarizing Exhibits 22 and 24.

6 Respectfully submitted,

7 Dated: January 24, 2019

FENWICK & WEST LLP

8 By: /s/ Ravi R. Ranganath

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16 AMAZON WEB SERVICES, INC.
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