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11 Attorneys for AMAZON.COM, INC.  
and AMAZON WEB SERVICES, INC.

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

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

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

19 Plaintiffs,

20 v.

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

22 Defendants.

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

24 Counterclaimants,

25 v.

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

27 Counterdefendants.  
28

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

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

**MOTION OF AMAZON.COM, INC.  
AND AMAZON WEB SERVICES, INC.  
FOR JUDGMENT ON THE PLEAD-  
INGS ON INFRINGEMENT CLAIMS  
AGAINST CLOUDFRONT**

Date: October 3, 2019

Time: 9:00 a.m.

Dept: Courtroom 3, 5th Floor

Judge: Hon. Beth L. Freeman

Trial Date: March 16, 2020

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**NOTICE OF MOTION FOR JUDGMENT ON THE PLEADINGS****TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, on October 3, 2019 at 9:00 a.m., at the United States District Court for the Northern District of California, 280 South First Street, San Jose, California, in the courtroom of the Honorable Beth Labson Freeman, Amazon.com, Inc. and Amazon Web Services, Inc. (collectively “Amazon”) will and hereby do move the Court under Federal Rule of Civil Procedure 12(c) for an order rendering judgment on the pleadings in favor of Amazon and against PersonalWeb Technologies, LLC (“PersonalWeb”) on PersonalWeb’s claims accusing Amazon’s CloudFront content delivery network (CDN) of patent infringement, because PersonalWeb lacks standing to assert those claims.

Amazon bases its motion on this notice, the accompanying memorandum of points and authorities, the request for judicial notice, the pleadings and records on file, the argument of counsel, and any other such matters as may be presented to the Court. In resolving this motion, should the Court consider any facts referenced in the motion to be outside the pleadings and not properly subject to judicial notice, Amazon requests that the Court convert the motion into a motion for summary judgment under Fed. R. Civ. P. 12(d) and 56.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

PersonalWeb named Amazon’s Simple Storage Service (S3) as the sole allegedly infringing technology in scores of pleadings filed around the country and in this multidistrict litigation, without mentioning any other Amazon technology. But faced with the fact that PersonalWeb’s earlier unsuccessful lawsuit against Amazon barred those claims against S3, PersonalWeb in October 2018 added Amazon’s CloudFront content delivery network to its infringement contentions. PersonalWeb then argued that the Court should not grant Amazon summary judgment under claim preclusion and the *Kessler* doctrine at least as to these belated contentions. When the Court granted summary judgment against PersonalWeb’s S3 claims, it instructed Amazon to “challenge the inclusion of CloudFront” by a separate motion. (Dkt. 381 at 10, 27.)

Amazon now moves for judgment on the pleadings as to PersonalWeb’s claims against

1 CloudFront because PersonalWeb lacks standing to bring that claim. CloudFront indisputably is a  
2 content delivery network or “CDN,” and Level 3 Communications, the nominal co-plaintiff in this  
3 case, indisputably owns the exclusive right to enforce the patents against CDNs. Level 3 does not  
4 do so in this case. Nor has Level 3 granted PersonalWeb permission to do so. Because all material  
5 facts are established through PersonalWeb’s own pleadings, the written contract incorporated  
6 therein, and judicially noticeable facts, Amazon is entitled to judgment on the pleadings against  
7 PersonalWeb’s CloudFront claims, which disposes of all remaining issues in this case.

## 8 **II. FACTUAL BACKGROUND**

9 Amazon bases its motion on the following allegations and judicially noticeable facts incor-  
10 porated into the pleadings:

### 11 **(1) The Kinetech-Digital Island Agreement governs PersonalWeb’s right to sue.**

12 PersonalWeb asserts four patents in these proceedings. (*See* Case No: 5:18-md-02834,  
13 Dkt. 257 (“Amended Counterclaim”), ¶ 1; Case 5:18-cv-05619, Dkt. 13 (“Twitch Com-  
14 plaint”), ¶ 1.) Its right to assert these patents is governed by an agreement between Kine-  
15 tech, Inc., its predecessor in interest, and Digital Island, Inc., a predecessor to the nominal  
16 plaintiff in this action, Level 3. *Id.* The Agreement defines the patents it covers as “United  
17 States Patent No. 5,978,791 (‘The ’791 patent’) and all . . . continuation applications . . .  
18 issued to Kinetech [predecessor to PersonalWeb] before or during the term of” the Agree-  
19 ment “commencing upon the Effective Date” of September 2000 and “remain[ing] in effect  
20 as long as there are enforceable rights under any of the Patents.” (Request for Judicial  
21 Notice (“RJN”), Ex. 1 (“Agreement”) at 1.1, 9.1.) All four patents issued during the term  
22 of the Agreement and are continuations of the ’791 patent. (*See* Amended Counterclaim,  
23 ¶¶ 1, 20; Twitch Complaint, ¶¶ 1, 18; RJN Ex. 1 at 9.1.)

24 **(2) The agreement grants Level 3 and PersonalWeb the exclusive right to enforce the**  
25 **patents within their respective fields of use.** The Agreement specifies that PersonalWeb  
26 and Level 3 “each own a fifty percent (50%) undivided interest in and to the patents,” but  
27 it limits the right of each co-owner to enforce the patents to only their respective exclusive  
28 fields of use. (Amended Counterclaim, ¶¶ 1-2; Agreement, § 6.4.1 (“DI shall have the first

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