Exhibit 3

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Michael A. Sherman (SBN 94783)
masherman@stubbsalderton.com
Jeffrey F. Gersh (SBN 87124)
jgersh@stubbsalderton.com
Sandeep Seth (SBN 195914)
sseth@stubbsalderton.com
Wesley W. Monroe (SBN 149211)
wmonroe@stubbsalderton.com
Stanley H. Thompson, Jr. (SBN 198825)
sthompson@stubbsalderton.com
Viviana Boero Hedrick (SBN 239359)
vhedrick@stubbsalderton.com
STUBBS, ALDERTON & MARKILES, LLP
15260 Ventura Blvd., 20th Floor
Sherman Oaks, CA 91403
Telephone: (818) 444-4500
Facsimile: (818) 444-4520

Attorneys for PersonalWeb Technologies, LLC and Level 3 Communications, LLC
[Additional Attorneys listed below]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE PERSONALWEB TECHNOLOGIES, LLC, ET AL., PATENT LITIGATION	**CASE NO.: 5:18-md-02834-BLF**
AMAZON.COM, INC., et al., Plaintiffs, v. PERSONALWEB TECHNOLOGIES, LLC, et al., Defendants.	**Case No.: 5:18-cv-00767-BLF** **PERSONALWEB TECHNOLOGIES, LLC AND LEVEL 3 COMMUNICATIONS, LLC'S OPPOSITION TO AMAZON.COM, INC. AND AMAZON WEB SERVICES, INC.'S MOTION FOR SUMMARY JUDGMENT ON DECLARATORY JUDGMENT CLAIMS AND DEFENSES UNDER THE CLAIM PRECLUSION AND KESSLER DOCTRINE**
PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC, Counterclaimants, v. AMAZON.COM, INC. and AMAZON WEB SERVICES, INC., Counterdefendants.	Date: February 7, 2019 Time: 2:00PM Dept.: Courtroom 3, 5th Floor Judge: Hon. Beth L. Freeman Trial Date: March 16, 2020

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

1 Unlike S3, Amazon's CloudFront is a content delivery network that can cache and serve files
2 that a website operator hosts on S3 or a completely unrelated host system. (Monroe Decl. Ex. 4 at
3 33:8-16, 155:20-156:12.) CloudFront and S3 have their own software engineers, they have their own
4 separate marketing forces, they are largely written in different languages (with S3 largely written in
5 Java, whereas CloudFront is written in C), and they are priced differently from the other. (*Id.* at 33,
6 155-56.) One can be a "customer" of S3, and not a customer of CloudFront, and vice-versa. (*Id.*)
7 *Infringement Categories 1 and 2 do not involve S3.* Category 1 infringement does not involve
8 S3 and is not encompassed by Amazon's motion. In this category, Twitch's web server system
9 generates MD5 ETags for its webpage base files and serves the files and their ETags to browsers
10 rendering Twitch's webpages. (DLI Decl. ¶¶6-8; Monroe Decl. Ex. 6.) These ETags are not generated
11 by S3, but rather via Twitch's *own* webpage server system, a fact that is absent from Amazon's moving
12 papers. (*Id.*) Category 2 also does not involve S3. This category involves Twitch's generation of MD5
13 ETags for its webpage *asset* files by Twitch's own web server system, and not by S3. (*Id.*) These
14 categories are nowhere dealt with in Amazon's Motion.
15 *Category 4 alleges infringement that involves fingerprints generated outside of S3.* Twitch
16 uses its website server to generate content fingerprints for the content of its webpage asset files and
17 inserts these into the asset file's filename. (DLI Decl. ¶10; Monroe Decl. Ex. 6.) As these fingerprints
18 are generated, inserted into the asset file's name, and served via the operators own webpage server,
19 using non-S3 products, it is outside the scope of the Motion. *(Id.)*
20 *The '544 patent infringement allegations do not involve S3.* PersonalWeb's '544 infringement
21 allegations involve the combination of the generation and use of Category 1 website base file ETags
22 and Category 4 website asset file filenames with fingerprints. (DLI Decl. ¶¶7, 10, 11, 13; Monroe
23 Decl. Ex. 7D.) Again, S3 is not used to generate either of these. (*Id.*) The '544 infringement is
24 likewise outside of the scope of the Motion.
25 **B. What the Texas Action *Did Involve***
26 Amazon references S3's relevance to the Texas Action as if the same transactions were and
27 are at issue then and now. Yes, there is an overlap of the infringed patents between this case and the
28 Texas Action, as it relates to category 3, only. And, yes both involved PersonalWeb and Amazon. But

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

1 Finally, the *Kessler* doctrine only extends to transactional facts that are "essentially the same"
2 as those found to be non-infringing. *Brain Life* 746 F.3d at 1057. The cache-busting feature of S3 has
3 never been litigated by PersonalWeb, much less held to be non-infringing by any court.

4 **IV. CONCLUSION**

5 Neither claim preclusion nor the *Kessler* doctrine apply to any infringement category. At most,
6 genuine issues of material fact preclude granting Amazon's motion to Category 3 infringement, the
7 only infringement category to which claim preclusion, or the *Kessler* doctrine could theoretically
8 apply. Given the positions Amazon staked out in its Motion, and the plethora of what are minimally
9 disputed material facts, it will likely submit reply declarations that will only serve to highlight the
10 foregoing conclusion. Such an "affidavit match" should preclude the grant of summary judgment.

11 Respectfully submitted,

12 Dated: January 9, 2019 STUBBS, ALDERTON & MARKILES, LLP

13

14 By: /s/ Michael A. Sherman
Michael A. Sherman
15 Jeffrey F. Gersh
Sandeep Seth
16 Wesley W. Monroe
Stanley H. Thompson, Jr.
17 Viviana Boero Hedrick
Attorneys for Plaintiffs
18

Dated: January 9, 2019 MACEIKO IP
19

20

21 By: /s/ Theodore S. Maceiko
Theodore S. Maceiko (SBN 150211)
22 ted@maceikoip.com
MACEIKO IP
23 420 2nd Street
Manhattan Beach, California 90266
24 Telephone: (310) 545-3311
Facsimile: (310) 545-3344
25 Attorneys for Plaintiff
PERSONALWEB TECHNOLOGIES, LLC,

26

27

28

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

1
2 Dated: January 9, 2019 DAVID D. WIER
3
4 By: */s/ David D. Wier*

David D. Wier
5 david.wier@level3.com
Vice President and Assistant General Counsel
6 Level 3 Communications, LLC
1025 Eldorado Boulevard
7 Broomfield, CO 80021
Telephone: (720) 888-3539
8 Attorneys for Plaintiff
LEVEL 3 COMMUNICATIONS, LLC

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.