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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE PERSONAL WEB 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** **Case No.: 5:18-cv-05619-BLF** **PERSONALWEB TECHNOLOGIES, LLC'S REPLY TO AMAZON'S OPPOSITION TO CLAIM CONSTRUCTION BRIEF**
PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC, Counterclaimants, v. AMAZON.COM, INC. and AMAZON WEB SERVICES, INC., Counterdefendants.	

PERSONALWEB TECHNOLOGIES, LLC, a Texas limited liability company, and LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company,

Plaintiffs,

v.

TWITCH INTERACTIVE, INC. a Delaware corporation,

Defendant.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

I. INTRODUCTION

Amazon's proposed constructions are all cooked from the same recipe. First, propose an unduly narrow characterization of invention in the patents-in-suit. Second, based on that narrow characterization, argue to incorporate only the most limiting preferred embodiment into the constructions of the terms in the asserted claims.

But the invention and claims are not as narrow as Amazon asserts. The invention in the patents-in-suit is about improving the operation of a system of networked devices using several mechanisms to improve its efficiency. The Web is a system of networked devices that benefits from the mechanisms taught in the patents-in-suit. Although the specification provides examples of ways such a system can be constructed, it does not limit the scope of the asserted claims to those examples.

Amazon also repeatedly—and improperly—refers to the accused instrumentalities to bolster its arguments. The law is clear that the Court should reject attempts to fashion claim constructions from the operation of the accused infringing instrumentality, rather than from the language of the claims and teachings of the specification. *Wilson Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1330–31 (Fed. Cir. 2006) ("This court, of course, repeats its rule that claims may not be construed with reference to the accused device.") (Citations and internal quotation marks omitted). Because Amazon supports its proposed constructions with misrepresentations about the accused instrumentalities and PersonalWeb's infringement contentions, PersonalWeb will correct those misrepresentations herein, but not engage in infringement and invalidity argument that is beyond the scope of the present claim construction proceedings.

Further, besides repeatedly misrepresenting statements made in the file histories of the patents-in-suit, Amazon improperly relies extensively on these statements without the required showing that by these statements, PersonalWeb *expressly* relinquished claim scope. *See Epistar Corp. v. Int'l Trade Comm'n*, 566 F.3d 1321, 1334 (Fed.Cir.2009) ("A heavy presumption exists that claim terms carry their full ordinary and customary meaning, unless it can be shown the patentee *expressly* relinquished claim scope." (emphasis added)).

Adopting Amazon's proposed constructions would be contrary to law and thus they should be rejected.

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