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

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

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-SVK

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

Case No.: 5:18-cv-05619-BLF-SVK

**OPPOSITION OF AMAZON.COM,
INC., AMAZON WEB SERVICES,
INC., AND TWITCH INTERACTIVE,
INC. TO MOTION FOR LEAVE TO
AMEND INFRINGEMENT
CONTENTIONS**

Dept: Courtroom 6, 4th Floor

Judge: Hon. Susan van Keulen

Trial Date: March 16, 2020

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 PERSONAL WEB TECHNOLOGIES, LLC, a
2 Texas limited liability company, and
3 LEVEL 3 COMMUNICATIONS, LLC, a
4 Delaware limited liability company,

5 Plaintiffs,

6 v.

7 TWITCH INTERACTIVE, INC., a Delaware
8 corporation,

9 Defendant.

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1 **I. INTRODUCTION**

2 PersonalWeb seeks leave to amend its infringement contentions eighteen months into this
3 case, after the parties completed their claim construction disclosures and briefing, and after the
4 Court conducted the *Markman* hearing. It does so on the basis that Amazon’s claim constructions
5 came as a “surprise.” But Judge Gilstrap construed the same patents three years ago, and the claim
6 construction disputes before the Court now are the same as they were in 2016. (Declaration of
7 Saina S. Shamilov in Support of Opposition to Motion for Leave to Amend (“Shamilov Decl.”),
8 Ex. 1 (*PersonalWeb Techs., LLC v. IBM*, No. 6:12-cv-661, Dkt. 103 (E.D. Tex. Mar. 11, 2016)
9 (“Prior Order”)). And Amazon disclosed its proposed constructions in *January 2019*.¹
10 PersonalWeb inexplicably waited for nearly five months, until the *Markman* briefing and hearing
11 were complete, to file this motion. It cannot show good cause for the amendment because it was
12 not diligent. *See, e.g., GoPro, Inc. v. 360Heros, Inc.*, No. 16-cv-01944-SI, 2017 WL 1278756, at
13 *1 (N.D. Cal. Apr. 6, 2017) (waiting two months until after initial *Markman* briefing not diligent).

14
15 The Court’s Patent Local Rules aim to deter such behavior. They force the parties to
16 disclose their theories early in the case precisely to prevent them from becoming a “moving target.”
17 *See CBS Interactive, Inc. v. Etilize, Inc.*, 257 F.R.D. 195, 201 (N.D. Cal. 2009). PersonalWeb’s
18 motion flies in the face of those requirements, with no good cause to justify any deviation from
19 them. Allowing PersonalWeb to amend its infringement contentions now would also prejudice
20 Amazon,² who relied on PersonalWeb’s infringement contentions to develop defenses and claim
21 construction positions. The Court should deny PersonalWeb’s motion.
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26 _____
27 ¹ PersonalWeb’s claim that it first learned of Amazon’s proposed constructions on March 12,
2019 is inaccurate. (*See* PersonalWeb’s Motion for Leave to Amend (“Mot.”), Dkt. 448 at 1, 5.)

28 ² Unless otherwise stated, “Amazon” as used herein refers to Amazon.com, Inc. Amazon Web Services, Inc., and Twitch Interactive, Inc.

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