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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

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

Plaintiffs

v.

PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,

Defendants,

PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,

Counterclaimants,

v.

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

Counterdefendants.

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

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

**OPPOSITION OF AMAZON.COM, AMAZON WEB SERVICES, INC., AND TWITCH INTERACTIVE, INC. TO MOTION TO "CLARIFY" OR "SUPPLEMENT" CLAIM CONSTRUCTION ORDER**

Date: December 12, 2019
Time: 9:00 AM
Dept: Courtroom 3, 5th floor
Judge: Hon. Beth L. Freeman

Trial Date: March 16, 2020

PERSONALWEB TECHNOLOGIES, LLC and LEVEL 3 COMMUNICATIONS, LLC,

Counterclaimants,

v.

TWITCH INTERACTIVE, INC. a Delaware corporation

Counterdefendants.

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

## INTRODUCTION

PersonalWeb requests that the Court "supplement" the claim construction order by plugging into the Court's construction of the term "unauthorized or unlicensed" a construction by a different court of a different claim term not at issue here. In doing so, it seeks reconsideration and reversal of the Court's prior ruling. At claim construction, the parties disputed whether "unauthorized" and "unlicensed" referred to determining compliance with a license or instead meant some sort of generic permission or approval. Amazon argued the former, and the Court agreed: it construed "unauthorized or unlicensed" to mean "not compliant with a valid license." (Dkt. 485 at 6-12.) PersonalWeb now seeks reconsideration, asking the Court to rule that the word "license" in the Court's construction itself does not necessarily mean "license" at all, but rather a more abstract "right to content." In PersonalWeb's view, once the Court's construction no longer *literally* refers to a license, it will be free to pursue infringement theories that depend on the generic permission-or-approval concept the Court rejected.

PersonalWeb presents no new claim term for the Court to construe; instead it repackages the same dispute that the Court already resolved against PersonalWeb on a complete record. That makes this a motion for reconsideration. But PersonalWeb has offered no actual grounds for reconsideration; nor did it request leave to file a motion for reconsideration, as required; nor is there any need for the Court to offer a "construction of a construction" for the term "license," because the Court already properly construed the claims the first time; nor would reconsideration save PersonalWeb's case because its infringement theory still isn't viable under the construction it requests.

PersonalWeb's primary argument is that it needs clarity about what a license is. But "clarity" is the opposite of what PersonalWeb hopes to achieve. During claim construction PersonalWeb itself argued license *did* have a clear meaning (and thus "authorization" needed a different construction). PersonalWeb does not like that the Court used "license" in its construction precisely *because* it is clear, and clearly defines the boundaries of the asserted claims. PersonalWeb seeks to muddy those boundaries and introduce ambiguity (i.e., with its "rights to content" proposal) so that

its expert can play a free-form word association game to try to keep the case alive.

As the Court noted at the telephone conference (Dkt. 515), it directed the parties to finalize their terms and proposed constructions months ago, in April. (*See* Dkt. 401.) PersonalWeb had every opportunity to seek construction of different terms, or to seek different constructions of "unauthorized" or "unlicensed," or to oppose Amazon's proposed construction that the Court adopted because it was "unclear" – PersonalWeb did none of those things. The Court should reject PersonalWeb's attempt to circumvent the local rules by captioning its motion with a creative title. The Court should summarily deny the motion.

## FACTUAL BACKGROUND

As the Court is aware, the patents in suit purport to solve the problem of consistently locating files (*i.e.*, "data items") in a computer system and controlling access to files that contain licensed content to prevent unauthorized sharing. (Dkt. 485 at 2:11-13; 10:12-14.) To accomplish this, files are identified using "True Names"—names computed from the data in the file itself—instead of other, purportedly less reliable means such as user-provided file names. (*Id.* at 2:16-23.) According to the patents, this allows a file to be uniquely identified regardless of its context, which in turn allows a system to reliably limit access to the file to authorized or licensed users. (*E.g.*, '310 patent at 3:52-58; 31:4-12.)

PersonalWeb's infringement theory in this and its past cases has nothing to do with licensing or content authorization. It accuses conditional GET requests using If-None-Match headers on the world wide web. (Dkt. 507 at 5-6.) These requests use ETags to determine whether a user already has a cached copy of the current object found at a given web location, or URL. If so, no new object is sent; if not, the current object is sent to the browser. This process – specified in the HTTP standard – is anonymous and generic – it does not depend on the user making the request or the nature of the content requested. No user is refused a requested object based on whether he has a valid license. And nothing prevents the user from accessing the old object after it is no longer current. This process simply does not check whether the user has a license to a file or is otherwise "authorized" by the owner to use it. It checks only whether the locally cached version of the file is the current version

available at the web server.

In PersonalWeb's earlier case against IBM and GitHub, the defendants contended that the concept of "authorization" in the patents referred to a valid license. (*See* Dkt. 452-3 (*PersonalWeb Techs., LLC v. IBM*, No. 6:12-cv-661, Dkt. 78, Ex. B at 10 (E.D. Tex. Nov. 18, 2015)).) PersonalWeb opposed, arguing that "authorization" meant only some generic approval, rather than authorization to access licensed content. (Dkt. 452-2 at 26-27.) In March 2016, Judge Gilstrap issued a claim construction order construing "unauthorized" as "not compliant with a valid license" and "authorization" as "a valid license." (*Id.* at 25-28.)

Just as had happened in PersonalWeb's past cases, at claim construction in this case the parties disputed whether "authorized" as used in the patents means having a valid license to content, or instead could refer to simple approval or permission. Even though PersonalWeb was clearly aware of Judge Gilstrap's constructions, it chose not to apply or even mention them in its infringement contentions. (Dkt. Nos. 452-7 & 452-8.) And it argued against those constructions at claim construction. (Dkt. 406 at 7.)

To accommodate its "cache-control" infringement theories, discussed above, which have nothing to do with policing access to licensed content, PersonalWeb contended the Court should either not construe the relevant claim terms at all or should adopt its generic "permission" concept:

**"unauthorized or unlicensed" ('310 patent, claim 20)**

| **PersonalWeb's Proposal** | **Amazon and Twitch's Proposal** |
|---|---|
| Plain and ordinary meaning.<br>Alternative construction: not permitted or not legally permitted<br>[or: not permitted under a license – *see* Dkt. 485 at 6 n.1] | not compliant with a valid license |

**"authorization" ('420 patent, claims 25, 166)**

| **PersonalWeb's Proposal** | **Amazon and Twitch's Proposal** |
|---|---|
| plain and ordinary meaning.<br>Alternative constructions: permission | a valid license |

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