

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 J. DAVID HADDEN (CSB No. 176148)
 dhadden@fenwick.com
 2 SAINA S. SHAMILOV (CSB No. 215636)
 sshamilov@fenwick.com
 3 TODD R. GREGORIAN (CSB No. 236096)
 tgregorian@fenwick.com
 4 RAVI R. RANGANATH (CSB No. 272981)
 rranganath@fenwick.com
 5 CHIEH TUNG (CSB No. 318963)
 ctung@fenwick.com
 6 FENWICK & WEST LLP
 Silicon Valley Center
 7 801 California Street
 Mountain View, CA 94041
 8 Telephone: 650.988.8500
 Facsimile: 650.938.5200
 9

10 Counsel for AMAZON.COM, INC., and AMA-
 ZON WEB SERVICES, INC.

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

14 IN RE: PERSONAL WEB TECHNOLOGIES,
 15 LLC ET AL., PATENT LITIGATION

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

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

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

**NOTICE OF MOTION AND MOTION
 OF AMAZON.COM, INC. AND AMA-
 ZON WEB SERVICES, INC. FOR
 SUMMARY JUDGMENT OF NONIN-
 FRINGEMENT**

17 Plaintiffs.

18 v.

19 PERSONALWEB TECHNOLOGIES, LLC and
 20 LEVEL 3 COMMUNICATIONS, LLC,

Date: November 15, 2019
 Time: 9:00 a.m.
 Dept: Courtroom 3, 5th Floor
 Judge: Hon. Beth L. Freeman
 Trial Date: March 16, 2020

21 Defendants.

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

24 Counterclaimants,

25 v.

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

27 Counterdefendants.
 28

REDACTED VERSION SOUGHT TO BE FILED UNDER SEAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ----- 1

MEMORANDUM OF POINTS AND AUTHORITIES----- 1

I. INTRODUCTION ----- 1

II. FACTUAL AND PROCEDURAL BACKGROUND ----- 2

III. ARGUMENT----- 5

 A. PersonalWeb Failed to Prosecute Its Claims on the '544 and '791 patents ----- 5

 B. PersonalWeb Failed to Put Forth Any Evidence to Meet Its Burden of
 Proof of Infringement on the Remaining Three Patents ----- 6

 C. No Evidence Can Show that Amazon Technology Infringes Any of the
 Asserted Claims ----- 8

 D. PersonalWeb Lacks Standing to Assert Any Claim Against CloudFront
 Based on the Patents-in-Suit----- 13

CONCLUSION ----- 14

FENWICK & WEST LLP
ATTORNEYS AT LAW

TABLE OF AUTHORITIES

Cases:	Page(s):
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986) -----	6
<i>AquaTex Indus., Inc. v. Techniche Sols.</i> , 479 F.3d 1320 (Fed. Cir. 2007) -----	7
<i>Arthur A. Collins, Inc. v. N. Telecom Ltd.</i> , 216 F.3d 1042 (Fed. Cir. 2000) -----	7
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986) -----	6
<i>Centricut, LLC v. Esab Grp., Inc.</i> , 390 F.3d 1361 (Fed. Cir. 2004) -----	8
<i>Forest Labs., Inc. v. Abbott Labs.</i> , 239 F.3d 1305 (Fed. Cir. 2001) -----	8
<i>Implicit Networks Inc. v. F5 Networks Inc.</i> , No. C10-3365 SI, C 10-4234 SI, 2013 WL 1007250 (N.D. Cal. Mar. 13, 2013)-----	7
<i>Intellectual Sci. & Tech., Inc. v. Sony Elecs., Inc.</i> , 589 F.3d 1179 (Fed. Cir. 2009) -----	7
<i>IPVX Patent Holdings, Inc. v. Voxernet LLC</i> , No. 5:13-cv-01708 HRL, 2014 WL 3074296 (N.D. Cal. July 3, 2014) -----	7
<i>Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986) -----	6
<i>Medtronic, Inc. v. Mirowski Family Ventures, LLC</i> , 571 U.S. 191 (2014) -----	6
<i>Novartis Corp. v. Ben Venue Labs., Inc.</i> , 271 F.3d 1043 (Fed. Cir. 2001) -----	6
<i>O2 Micro Int'l, Ltd. v. Monolithic Power Sys., Inc.</i> , 467 F.3d 1355 (Fed. Cir. 2006) -----	6
<i>PersonalWeb Techs., LLC v. Apple, Inc.</i> , 917 F.3d 1376 (Fed. Cir. 2019) -----	13
<i>PersonalWeb Techs., LLC v. IBM</i> , No. 16-cv-01266-EJD, 2017 WL 2180980 (N.D. Cal. May 9, 2017)-----	7

1 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on November 15, 2019, at 9:00 a.m., at the United States
4 District Court for the Northern District of California, 280 South First Street, San Jose, California,
5 in the courtroom of the Honorable Beth L. Freeman, Amazon.com, Inc., and Amazon Web Ser-
6 vices, Inc. (collectively “Amazon”) will and hereby do move the Court under Rule 56 of the Federal
7 Rules of Civil Procedure for an order granting summary judgment in favor of Amazon and against
8 PersonalWeb Technologies, LLC and Level 3 Communications, LLC (collectively “PersonalWeb”)
9 because (1) Amazon does not infringe the asserted claims of U.S. Patent No. 5,978,791 (“the ’791
10 patent”), 6,928,442 (“the ’442 patent”), U.S. Patent No. 7,802,310 (“the ’310 patent”), U.S. Patent
11 No. 7,945,544 (“the ’544 patent”), and U.S. Patent No. 8,099,420 (“the ’420 patent”) (collectively,
12 the “patents-in-suit”) and (2) PersonalWeb lacks standing to assert any claim of the patents-in-suit
13 against Amazon CloudFront.

14 Amazon bases its motion on this notice, the accompanying memorandum of points and au-
15 thorities, the supporting declaration of Saina S. Shamilov, all pleadings and documents on file in
16 this action, and such other materials or argument as the Court may consider.

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Amazon seeks a declaration that it does not infringe five PersonalWeb patents. While Per-
20 sonalWeb denied Amazon’s declaratory judgment claims and asserted counterclaims of infringe-
21 ment, it failed to produce any expert opinion in support of its positions. Having thus failed to meet
22 its burden of production, PersonalWeb cannot, as a matter of law, meet its burden of persuasion.
23 This is fatal to its case.

24 But even if PersonalWeb had tried to muster expert testimony to support its counterclaims,
25 its case would still be fatally flawed. It abandoned its infringement allegations for two of the pa-
26 tents-in-suit when it omitted them from its infringement contentions. And the remaining three pa-
27 tents are directed to policing access to licensed content, which the accused Amazon technology,
28 the CloudFront content delivery network, does not do, whether on its own or in combination with

1 any other technology. Given this, Amazon's technology does not meet multiple limitations of the
2 asserted claims, and the Court should enter summary judgment of noninfringement. PersonalWeb
3 also lacks standing to assert claims against CloudFront because Level 3 Communications, LLC has
4 the exclusive right to use and license the patents-in-suit in the field of content delivery networks.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 In January 2018, PersonalWeb initiated a widespread patent litigation campaign asserting
7 that Amazon's customers infringe related patents relating to methods of governing access to con-
8 tent. Shortly thereafter, to protect its customers and technology, Amazon filed an action for declar-
9 atory judgment of noninfringement of the five patents-in-suit and PersonalWeb responded by bring-
10 ing infringement counterclaims against Amazon on four of the five patents and denying that Ama-
11 zon does not infringe the fifth patent. (Dkt. 257.) At PersonalWeb's request, the United States
12 Judicial Panel on Multidistrict Litigation centralized the declaratory judgment action and the cus-
13 tomer cases before this Court. (Dkt. 1.) To promote judicial efficiency, the Court stayed all cus-
14 tomer cases pending resolution of the declaratory judgment action and a representative customer
15 case against Twitch Interactive, Inc. *PersonalWeb Techs., LLC v. Twitch Interactive, Inc.*, No.
16 5:18-cv-05619-BLF (N.D. Cal.); (Dkt. 313.)

17 On October 29, 2018, PersonalWeb served its infringement contentions. In those conten-
18 tions, PersonalWeb did not allege infringement of the '791 patent or the '544 patent. It alleged that
19 Amazon's S3 and/or CloudFront Content Delivery Network infringes the '442, '310, and '420 pa-
20 tents because each can respond to conditional GET requests with ETags as specified in the HTTP
21 protocol. On March 13, 2019, the Court granted summary judgment finding that PersonalWeb's
22 claims against S3 are precluded. (Dkt. 381.) PersonalWeb's claims against CloudFront remained.

23 The parties do not dispute that the HTTP protocol governs communications between web
24 browsers and web servers on the World Wide Web; all websites comply with it. (Shamilov Decl.,
25 Ex. 2 (Weissman Rep.) at ¶ 26; Shamilov Decl., Ex. 1 (de la Iglesia Rep.) at ¶ 18; Shamilov Decl.,
26 Ex. 3 (RFC 2616, HTTP 1.1 standard) at §§ 1.1, 1.3.) As shown by the de la Iglesia expert report
27 in the Twitch case, the parties also do not dispute how the HTTP protocol functions. (Amazon cites
28 Mr. de la Iglesia's Twitch report at various points in this brief to show the parties' agreement about

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.