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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

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

17 Plaintiffs.

18 v.

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

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

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

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

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

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

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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

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