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

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

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

REPLY IN SUPPORT OF MOTION OF AMAZON.COM, INC. AND AMAZON WEB SERVICES, INC. FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

Date: November 14, 2019
Time: 9:00 a.m.
Dept: Courtroom 3, 5th Floor
Judge: Hon. Beth L. Freeman
Trial Date: March 16, 2020

FENWICK & WEST LLP
ATTORNEYS AT LAW

TABLE OF CONTENTS

I. INTRODUCTION ----------1

II. AMAZON'S TECHNOLOGY DOES NOT INFRINGE FOR SEVERAL REASONS INCLUDING THOSE THAT DO NOT DEPEND ON THE COURT'S CLAIM CONSTRUCTION ORDER ----------1

A. Amazon's Technology Does Not "Allow," "Permit," or "Not Permit" Access to Content Cached at Web Browsers ----------1

B. Amazon's Technology Does Not Determine Whether an ETag Corresponds to a "Plurality of Identifiers" ----------4

C. Amazon's Technology Does Not Use ETags to Determine the Presence of a File ----------5

III. AMAZON DID NOT "INDUCE" PERSONALWEB TO IGNORE THE COURT'S CASE SCHEDULE ----------6

IV. CONCLUSION----------7

TABLE OF AUTHORITIES

Cases: ***Page(s):***

Rovid v. Graco Children's Prods.,
No. 17-cv-01506-PJH, 2018 WL 5906075 (N.D. Cal. Nov. 9, 2018) ---------- 6

Other Authorities:

Fed. R. Civ. P. 26(e) ---------- 6

I. INTRODUCTION

Amazon does not infringe the asserted patents. PersonalWeb has no evidence to the contrary; it did not serve an expert report alleging infringement. Indeed, PersonalWeb concedes that Amazon does not infringe the patents as construed by the Court. But, Amazon does not infringe for three other reasons that do not depend on the Court's constructions. As the Court already rejected PersonalWeb's invitation to enter an order addressing only the consequences of the Court's claim constructions on its infringement theory (Dkt. 559), the Court should include each independent basis for Amazon's non-infringement in its order granting summary judgment.

II. AMAZON'S TECHNOLOGY DOES NOT INFRINGE FOR SEVERAL REASONS INCLUDING THOSE THAT DO NOT DEPEND ON THE COURT'S CLAIM CONSTRUCTION ORDER.

In its opposition, PersonalWeb agrees to the entry of summary judgment of non-infringement because the accused Amazon technology does not meet the limitations of the asserted claims as construed by the Court. (Dkt. 550 ("Opp.") at 1.) And while that is enough for the Court to grant Amazon's motion, Amazon technology cannot infringe the asserted patents for reasons unrelated to the Court's constructions. The Court should enter judgment of non-infringement for those reasons as well.

A. Amazon's Technology Does Not "Allow," "Permit," or "Not Permit" Access to Content Cached at Web Browsers.

The asserted claims require "allowing" or "permitting" access, or "not permitting" access to content. ('310 patent claim 20; '442 patent claim 11; '420 patent claims 25, 166.) These terms require no constructions and Amazon is not proposing or relying on any in its motion. "Permitting" (or "allowing") access and "not permitting" access means exactly that: permitting it or not permitting it. The verbs "preventing" or "prohibiting" are mere synonyms of "not permitting" and are used in the Amazon motion to avoid grammatically-prohibited double negatives such as "Amazon's technology does not 'not permit' access to content cached at web browsers."

PersonalWeb argues that by providing a new version of an object, an HTTP server denies the browser permission to access the previously received cached object. (Opp. at 4.) This is akin to arguing that by delivering today's paper, the Wall Street Journal rescinds permission to read the

paper delivered yesterday. This is illogical. Nor is there any support for PersonalWeb's argument in the HTTP specification itself. There is no mechanism in the HTTP protocol, and PersonalWeb points to none, for a server to "revoke" a browser's ability to access a cached object that the same server has already provided to it. The HTTP specification in fact says just the opposite, that browsers should be able to access cached content whether or not it is current. (Dkt. 543 (Shamilov Decl.) Ex. 3 (RFC 2616, HTTP 1.1 standard) at § 13.1.1 (cache that cannot communicate with origin server should forward stale content to a browser for display with an optional warning indication of staleness); § 13.1.4 (at a user's direction, browsers may override basic mechanisms to validate stale entities in cache); § 13.13 (history mechanisms can redisplay entities showing "exactly what the user saw at the time when the resource was retrieved" and should display an entity in storage "even if the entity has expired"); Shamilov Decl. Ex. 2 (Weissman Rep.) at ¶¶ 54, 97, 152, 179, 189.) PersonalWeb acknowledges that this is the case. (Opp. at 5.) PersonalWeb argues, however, that the ability of browsers to freely access cached content whether current or not is "irrelevant" because it requires "no request . . . to the server" and is not one of "the primary purposes of a browser." (*Id.*) But the claims require the act of "not permitting access." If access is always permitted, the required act of "not permitting" is not performed by Amazon or anyone else.

Indeed, the HTTP protocol, the basis of PersonalWeb's infringement theories, does not permit or not permit access to content using ETags. (Weissman Rep. at ¶¶ 53-56.) The accused conditional GET requests specified in the HTTP protocol merely determine whether a version of the file on the browser is the same version as the file on the server; that is it. (Weissman Rep. at ¶¶ 45-46.) It is a version control mechanism. The response to the conditional GET request does not prevent the browser from continuing to use the version it already has. This is common sense, even according to PersonalWeb itself. During an *inter partes* review of the '310 patent, PersonalWeb told the Patent Office that "there is no logical reason to have modified [the prior art] to implement a system for checking whether that same local computer 20 is authorized to access a previous version of the same file" and "the local computer 20 is permitted to access a prior version of a file if that computer already has the current version of that file." (Declaration of J. David Hadden ("Hadden Decl.") Ex. 6 (Patent Owner's Response to IPR2013-00596, Paper 15) ("'596 POR") at 19–20;

DOCKET ALARM

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.