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INTERACTIVE, INC.  
11

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

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

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

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

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

17  
18 Plaintiffs.

**REPLY DECLARATION OF J. DAVID  
HADDEN IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT OF  
NONINFRINGEMENT BY  
AMAZON.COM, INC. AND AMAZON  
WEB SERVICES, INC. AND MOTION  
OF TWITCH INTERACTIVE, INC.  
FOR SUMMARY JUDGMENT OF  
NONINFRINGEMENT AND TO  
EXCLUDE THE TESTIMONY OF  
ERIK DE LA IGLESIA**

19 v.

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

21 Defendants.

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

23 Counterclaimants,

24 v.

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

26 Counterdefendants.  
27  
28

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

1 PERSONALWEB TECHNOLOGIES, LLC, a  
2 Texas limited liability company, and LEVEL 3  
3 COMMUNICATIONS, LLC, a Delaware limited liability company,

4 Plaintiffs,

5 v.

6 TWITCH INTERACTIVE, INC. a Delaware  
7 corporation,

8 Defendant.

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

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1 I, J. David Hadden, declare as follows:

2 1. I am a partner with the law firm of Fenwick & West LLP, counsel to Amazon.com,  
3 Inc., Amazon Web Services, Inc. (collectively, “Amazon”), and Twitch Interactive, Inc. (“Twitch”)  
4 in this matter. I have personal knowledge of the facts set forth herein.

5 2. I understand that PersonalWeb’s brief (Dkt. 550) states: “After the Court’s Claim  
6 Construction Order, Amazon threatened PersonalWeb with Rule 11 sanctions if it did not immedi-  
7 ately halt its litigation against Amazon and dismiss its case with prejudice. PersonalWeb agreed  
8 the next business day and outlined proposed terms for a stipulation for entry of judgment (Amazon  
9 knew that it would have to stipulate to the dismissal it demanded as it had answered PersonalWeb’s  
10 claims).” (Dkt. 550 at 2-3.) That representation does not accurately reflect the parties’ conversa-  
11 tions, as I discuss below.

12 3. On August 16, 2019, the Court issued its claim construction order. Dkt. 485. The  
13 Court’s constructions left PersonalWeb Technologies, LLC (“PersonalWeb”) with no viable  
14 infringement claims against Amazon and Twitch.

15 4. On August 16, 2019, shortly after the Court issued its claim construction order, I  
16 sent a letter to PersonalWeb’s lead counsel, Michael Sherman. This letter requested that  
17 PersonalWeb dismiss all claims against Amazon and Twitch with prejudice in light of the Court’s  
18 claim construction order. Attached hereto as **Exhibit 1** is my August 16, 2019 letter.

19 5. On August 19, 2019, Mr. Sherman sent me a letter outlining PersonalWeb’s position.  
20 The letter stated that PersonalWeb did not agree to dismiss all claims as Amazon and Twitch had  
21 requested. Instead, PersonalWeb proposed dismissing claims against only Amazon, not Twitch,  
22 and subject to a number of conditions. PersonalWeb proposed stipulating to a judgment of non-  
23 infringement for PersonalWeb’s counterclaims in case no. 5:18-cv-00767-BLF for CloudFront and  
24 S3. PersonalWeb also proposed stipulating to a judgment of non-infringement on U.S. Patent No.  
25 7,945,544 claims against Twitch and all other customers in the MDL. PersonalWeb’s proposal was  
26 contingent on Amazon dismissing its complaint in case no. 5:18-cv-00767-BLF without prejudice.  
27 Attached hereto as **Exhibit 2** is Mr. Sherman’s August 19, 2019 letter.

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1           6.       On August 20, 2019, I responded via email. I indicated that Amazon and Twitch  
2 would consider PersonalWeb's proposal and asked for PersonalWeb's Rule 11 basis for continuing  
3 with the remaining three patents against Twitch. Mr. Sherman explained that PersonalWeb would  
4 alter the Court's claim constructions and use pieces of Judge Gilstrap's claim constructions to main-  
5 tain their claims. I replied by explaining that this was improper, and that HTTP cache control  
6 headers and ETags have nothing to do with determining "compliance with a valid license" generally  
7 or as used by Twitch. I then reiterated that we would seek all appropriate sanctions. Attached  
8 hereto as **Exhibit 3** is the email correspondence between me and Mr. Sherman on August 20, 2019.

9           7.       On August 21, 2019, I spoke with Mr. Sherman on the phone. During that conver-  
10 sation, Mr. Sherman tried to persuade Amazon to agree to the stipulation outlined in PersonalWeb's  
11 August 19, 2019 letter. I told Mr. Sherman that it did not make sense to stipulate in the Amazon  
12 case while continuing to litigate the same issues in the Twitch case. I told Mr. Sherman that Amazon  
13 would consider PersonalWeb's stipulation, but I never agreed to it or to any stipulation at all. I also  
14 reiterated my positions outlined in my August 16, 2019 letter and August 20, 2019 emails to Mr.  
15 Sherman.

16           8.       On August 23, 2019, four days after PersonalWeb sent their letter, the parties ex-  
17 changed opening expert reports. PersonalWeb did not serve an expert report for any claims against  
18 Amazon or for U.S. Patent No. 7,945,544 claims against Twitch. PersonalWeb's recent opposition  
19 brief claims that it failed to do so in reliance on some understanding that Amazon would eventually  
20 agree to PersonalWeb's proposal. (Dkt. 550 at 3 ("[I]n reliance on Amazon's indicated desire for  
21 immediate dismissal and the expectation that dismissal would be cooperatively worked-out and  
22 imminent, PersonalWeb did not serve expert reports in the Amazon case that were due on August  
23 23, 2019.")) However, as outlined above, Amazon's position has always been that PersonalWeb  
24 lacks a Rule 11 basis to continue its claims against Amazon or Twitch (or any of the other Amazon  
25 customers in the MDL), and that it should dismiss all those claims subject to its appeal rights or  
26 instead face sanctions. PersonalWeb's failure to serve complete expert reports was therefore its  
27 own choice and in no way induced by Amazon.

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