

# EXHIBIT 5

**From:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>  
**Date:** September 27, 2019 at 7:38:02 AM PDT  
**To:** David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>  
**Cc:** Wesley Monroe <[wmonroe@stubbsalderton.com](mailto:wmonroe@stubbsalderton.com)>, Sandy Seth <[sseth@stubbsalderton.com](mailto:sseth@stubbsalderton.com)>, "Stanley H. Thompson Jr." <[sthompson@stubbsalderton.com](mailto:sthompson@stubbsalderton.com)>, Jeffrey Gersh <[jgersh@stubbsalderton.com](mailto:jgersh@stubbsalderton.com)>, Viviana Boero Hedrick <[vhedrick@stubbsalderton.com](mailto:vhedrick@stubbsalderton.com)>, Saina Shamilov <[sshamilov@fenwick.com](mailto:sshamilov@fenwick.com)>, Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Subject: RE: Amazon DJ Action**

Dave

What you are saying is nonsensical. Agreeing to a stipulation is always more cost effective than summary judgment motion practice. If you are serious, then provide an alternative form of stipulation that you and I most recently referred to as a non-opposition (to a not-yet filed motion where we are not mind readers and don't know what's up your sleeve), as the only area of dispute that we are aware of is the consequence of the Court's claim construction order – which was covered by our proposed form of stipulation.

Regards  
Michael

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**From:** Michael Sherman  
**Sent:** Thursday, September 26, 2019 6:03 PM  
**To:** David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>  
**Cc:** Wesley Monroe <[wmonroe@stubbsalderton.com](mailto:wmonroe@stubbsalderton.com)>; Sandy Seth <[sseth@stubbsalderton.com](mailto:sseth@stubbsalderton.com)>; Stanley H. Thompson Jr. <[sthompson@stubbsalderton.com](mailto:sthompson@stubbsalderton.com)>; Jeffrey Gersh <[jgersh@stubbsalderton.com](mailto:jgersh@stubbsalderton.com)>; Viviana Boero Hedrick <[vhedrick@stubbsalderton.com](mailto:vhedrick@stubbsalderton.com)>; Saina Shamilov <[sshamilov@fenwick.com](mailto:sshamilov@fenwick.com)>; Todd Gregorian <[TGregorian@fenwick.com](mailto:TGregorian@fenwick.com)>  
**Subject:** RE: Amazon DJ Action

Dave

What is the functional difference between what might be a non-opposed motion for

summary judgment versus a stipulation of non-infringement? Your response suggests that there are other legal issues outstanding as you “wait for the court to enter summary judgment,” and we don’t see what you are talking about. And if you do see these other issues, then why are you not asking us to include those as part of the draft stipulation – minimally for our consideration?

In short, your response doesn’t make sense and the motivation is lacking; rather your response appears designed to needlessly increase attorneys’ fees.

Finally, I did realize an oversight in my Monday e-mail and the enclosure. We should have included claim 69 of the ‘310 patent, as that was not covered in our expert report either. That goes to my point of our stipulation that was sent to you having been a draft stipulation, and potentially deserving of some tweaks and edits.

Regards  
Michael

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**From:** David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>  
**Sent:** Thursday, September 26, 2019 9:54 AM  
**To:** Michael Sherman <[masherman@stubbsalderton.com](mailto:masherman@stubbsalderton.com)>  
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**Subject:** RE: Amazon DJ Action

Michael,  
Amazon is not interested in entering this stipulation. We will wait for the court to enter summary judgment.  
Take care  
Dave

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**From:** Michael Sherman [<mailto:masherman@stubbsalderton.com>]  
**Sent:** Monday, September 23, 2019 10:15 AM  
**To:** David Hadden <[DHadden@fenwick.com](mailto:DHadden@fenwick.com)>  
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**Subject:** Amazon DJ Action

Dear Dave:

In my letter to you dated August 19 I proposed stipulating to judgment of non-infringement on the Amazon DJ action and to judgment of non-infringement as respects that '544 patent claims asserted against Twitch and all other website operators that are part of the MDL. In a call we had shortly after that letter, I reiterated our willingness and inquired about our working together to get some form of stipulation on file to accomplish same; you indicated you would raise with Amazon and get back to me.

I have not heard back from you on that issue, and to move the ball forward send to you a draft stipulation that accounts for the Amazon DJ action (it is attached). Please review and get back to me, and let's see if we can get this taken care of ASAP. In a manner of speaking, I do believe we both "owe" this to the Court, so that the Court needn't concern itself with the pending motion for judgement on the pleadings directed to CloudFront, set for hearing on October 3. I'm sure the Court will soon be working this up, and it seems as though the sooner we can get this or a comparable stipulation to the Court, the better, so as to save the Court the need for work-up on the motion for judgment issues.

As for the Twitch/'544 issues, on further reflection I presume you'd agree that there's no procedural mechanism that would now apply to a partial judgment on just that issue. You are certainly aware that we've not submitted an expert report on infringement as respects the '544 patent. Are you interested in the preparation of some joint stipulation to the Court, covering this issue?

Regards  
Michael

	V-card	Bio	Website
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