

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 MELANIE L. MAYER (admitted *pro hac vice*)
mmayer@fenwick.com
4 TODD R. GREGORIAN (CSB No. 236096)
tgregorian@fenwick.com
5 RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
6 CHIEH TUNG (CSB No. 318963)
ctung@fenwick.com
7 TJ FOX (CSB No. 322938)
tfox@fenwick.com
8 FENWICK & WEST LLP
Silicon Valley Center
9 801 California Street
Mountain View, CA 94041
10 Telephone: 650.988.8500
Facsimile: 650.938.5200

11 Attorneys for AMAZON.COM, INC.,
12 AMAZON WEB SERVICES, INC., and
13 TWITCH INERACTIVE, INC.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

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

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

19 Plaintiffs

20 v.

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

22 Defendants,

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

24 Plaintiffs,

25 v.

26 TWITCH INTERACTIVE, INC.,

27 Defendant.

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

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

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

**MOTION OF AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC., AND
TWITCH INTERACTIVE, INC. FOR
ATTORNEY FEES AND COSTS**

Date: June 4, 2020
Time: 9:00 a.m.
Dept: Courtroom 3, 5th Floor
Judge: Hon. Beth L. Freeman

28

TABLE OF CONTENTS

1

2 NOTICE OF MOTION AND MOTION FOR ATTORNEY’S FEES----- 1

3 MEMORANDUM OF POINTS AND AUTHORITIES----- 1

4 I. INTRODUCTION ----- 1

5 II. BACKGROUND----- 2

6 A. PersonalWeb filed 85 lawsuits with no viable infringement theory ----- 2

7 B. Each time its infringement theory failed, PersonalWeb changed its

8 theory for the sole purpose of prolonging the case unreasonably with

the hope of extracting settlements from the customer defendants ----- 3

9 C. PersonalWeb opposed summary judgment of claim and *Kessler*

preclusion by submitting sham declarations----- 5

10 D. After the Court’s claim construction order foreclosed PersonalWeb’s

11 infringement claims, PersonalWeb directed its expert to apply a

12 different construction to prolong the case unreasonably ----- 5

13 E. After PersonalWeb lost all claims on multiple grounds, it tried to

14 unravel the MDL by claiming the Twitch case was no longer

representative ----- 7

15 III. PERSONALWEB’S CONDUCT MAKES THIS CASE EXCEPTIONAL ----- 8

16 A. PersonalWeb asserted baseless claims ----- 8

17 B. The Court should find this case exceptional because PersonalWeb

18 repeatedly changed positions ----- 10

19 C. The Court should find this case exceptional because PersonalWeb

needlessly and unreasonably prolonged the case after the claim

20 construction order foreclosed all infringement claims ----- 12

21 D. The Court should find this case exceptional because PersonalWeb

22 failed to follow the Court’s rules and was not candid with the Court ----- 13

23 IV. THE COURT SHOULD AWARD AMAZON AND TWITCH THE ATTORNEY

FEES AND COSTS THEY REASONABLY INCURRED IN THIS CASE ----- 14

24 V. CONCLUSION ----- 16

25

26

27

28

FENWICK & WEST LLP
ATTORNEYS AT LAW

TABLE OF AUTHORITIES

Cases:	Page(s):
<i>AdjustaCam, LLC v. Newegg, Inc.</i> , 861 F.3d 1353 (Fed. Cir. 2017) -----	10, 12
<i>Andersen Mfg. Inc. v. Wyers Prods. Grp., Inc.</i> , No. 8-cv-0235-WJM-STV, 2019 WL 4007772 (D. Colo. Aug. 23, 2019) -----	10
<i>Astrazeneca AB v. Dr. Reddy’s Labs., Ltd.</i> , No. 07 CIV. 6790 (CM), 2010 WL 1375176 (S.D.N.Y. Mar. 30, 2010) -----	1
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984) -----	15
<i>Bovino v. Levensger Co.</i> , No. 14-CV-00122-RM-KLM, 2016 WL 1597501 (D. Colo. Apr. 21, 2016) -----	14
<i>Bywaters v. United States</i> , 670 F.3d 1221 (Fed. Cir. 2012) -----	15
<i>Cambrian Sci. Corp. v. Cox Commc’ns, Inc.</i> , 79 F. Supp. 3d 1111 (C.D. Cal. 2015)-----	8
<i>DataTern, Inc. v. MicroStrategy Inc.</i> , C.A. No. 11-11970-FDS, 2018 WL 2694458 (D. Mass. June 5, 2018)-----	12
<i>Fogerty v. Fantasy, Inc.</i> , 510 U.S. 517 (1994) -----	8
<i>Homeland Housewares, LLC v. Sorensen Research & Dev. Trust</i> , 581 F. App’x 877 (Fed. Cir. 2014)	14
<i>Intex Recreation Corp. v. Team Worldwide Corp.</i> , 77 F. Supp. 3d 212 (D.D.C. 2015)-----	13
<i>Ketab Corp. v. Mesriani & Assocs., P.C.</i> , 734 F. App’x 401 (9th Cir. 2018)-----	13
<i>Kilopass Tech., Inc. v. Sidense Corp.</i> , 82 F. Supp. 3d 1154 (N.D. Cal. 2015) -----	14–15
<i>Linex Techs., Inc. v. Hewlett-Packard Co.</i> , No. C 13–159 CW, 2014 WL 4616847 (N.D. Cal. Sep. 15, 2014)-----	9
<i>Lumen View Tech. LLC v. Findthebest.com, Inc.</i> , 811 F.3d 479 (Fed. Cir. 2016)-----	8, 14–15

FENWICK & WEST LLP
ATTORNEYS AT LAW

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

FENWICK & WEST LLP
ATTORNEYS AT LAW

1	<i>Octane Fitness, LLC v. ICON Health & Fitness, Inc.</i> , 572 U.S. 545 (2014) -----	1, 8
2		
3	<i>Oplus Techs., Ltd. v. Vizio, Inc.</i> , 782 F.3d 1371 (Fed. Cir. 2015) -----	10
4		
5	<i>Pannonia Farms, Inc. v. Re/Max Int’l, Inc.</i> , 407 F. Supp. 2d 41 (D.D.C. 2005) -----	9
6		
7	<i>Perdue v. Kenny A. ex. rel. Winn</i> , 559 U.S. 542 (2010) -----	14
8		
9	<i>PersonalWeb Techs., LLC v. IBM Corp.</i> , No. 6:12-cv-661 (E.D. Tex. Mar. 11, 2016) -----	9
10		
11	<i>Phigenix, Inc. v. Genentech Inc.</i> , No. 15-cv-01238-BLF, 2019 WL 2579260 (N.D. Cal. June 24, 2019) -----	15
12		
13	<i>Rambus Inc. v. Infineon Techs. AG</i> , 318 F.3d 1081 (Fed. Cir. 2003) -----	14
14		
15	<i>Raylon, LLC v. Complus Data Innovations, Inc.</i> , 700 F.3d 1361 (Fed. Cir. 2012) -----	15
16		
17	<i>Rothschild Connected Devices Innovations, LLC v. Guardian Prot. Servs., Inc.</i> , 858 F.3d 1383 (Fed. Cir. 2017) -----	8, 15
18		
19	<i>Source Search Techs., LLC v. Kayak Software Corp.</i> , No. 11-3388(NLH/KMW), 2016 WL 1259961 (D.N.J. Mar. 31, 2016), <i>aff’d</i> , 697 F. App’x 695 (Fed. Cir. 2017) -----	10
20		
21	<i>Spitz Techs. Corp. v. Nobel Biocare USA LLC</i> , No. SACV 17-00660 JVS (JCGx), 2018 WL 6164300 (C.D. Cal. June 7, 2018) -----	13
22		
23	<i>Taurus IP, LLC v. DaimlerChrysler Corp.</i> , 726 F.3d 1306 (Fed. Cir. 2013) -----	12
24		
25	<i>ThermoLife Int’l, LLC v. Myogenix Corp.</i> , No. 13cv651 JLS (MDD), 2017 WL 1235766 (S.D. Cal. Apr. 4, 2017) -----	10
26		
27	<i>TNS Media Research LLC v. Tivo Research & Analytics, Inc.</i> , No. 11-cv-4039 (KBF), 2018 WL 2277836 (S.D.N.Y. May 18, 2018) -----	12
28		
	Statutes & Rules:	
	35 U.S.C. § 285 -----	1-2, 8, 14
	Civil L.R. 5-1(i)-(j)	14

1 **NOTICE OF MOTION AND MOTION FOR ATTORNEY’S FEES**
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on June 4, 2020, at 9:00 a.m., at the United States District
4 Court for the Northern District of California, 280 South First Street, San Jose, California, in the
5 courtroom of the Honorable Beth L. Freeman, Amazon.com, Inc., and Amazon Web Services, Inc.
6 (collectively, “Amazon”) and Twitch Interactive, Inc. (“Twitch”) will and hereby do move the
7 Court under 35 U.S.C. § 285, Rule 54 the Federal Rules of Civil Procedure, and Local Rules 54-1
8 through 54-5, for an order granting Amazon and Twitch their reasonable attorney fees and non-
9 taxable costs.

10 Amazon and Twitch base their motion on this notice, the accompanying memorandum of
11 points and authorities, the supporting declaration of Todd R. Gregorian, all pleadings and
12 documents on file in this action, and such other materials or argument as the Court may consider.

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 The Court should award Amazon and Twitch the significant attorney’s fees and non-taxable
16 expenses they incurred defending themselves and more than 80 other defendants from
17 PersonalWeb’s litigation abuse. Section 285 empowers the Court to grant this relief not merely to
18 assist aggrieved litigants but to deter those who cavalierly “abuse[] the litigation process and
19 needlessly consume the scarce time of the court.” *Astrazeneca AB v. Dr. Reddy’s Labs., Ltd.*, No.
20 07 CIV. 6790 (CM), 2010 WL 1375176, at *9 (S.D.N.Y. Mar. 30, 2010). To do so, the Court must
21 find only that this case “stands out from others”—either because the claims were weak or because
22 it was litigated unreasonably. *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545,
23 554 (2014).

24 Both forms of abuse occurred in this case. PersonalWeb never had a viable claim for relief.
25 Eight years ago, PersonalWeb sued Amazon and Amazon’s customer Dropbox in Texas, alleging
26 that Amazon S3 infringed its patents. PersonalWeb had no valid claim in that case: it had no choice
27 but to dismiss its complaint with prejudice after claim construction. Four years after that case
28 ended, PersonalWeb took another run at extracting settlements with its now expired patents in a

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.