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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.
28

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

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

MEMORANDUM OF POINTS AND AUTHORITIES -----1

I. INTRODUCTION -----1

II. BACKGROUND-----2

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

 B. Each time its infringement theory failed, PersonalWeb changed its theory for the sole purpose of prolonging the case unreasonably with the hope of extracting settlements from the customer defendants -----3

 C. PersonalWeb opposed summary judgment of claim and *Kessler* preclusion by submitting sham declarations -----5

 D. After the Court’s claim construction order foreclosed PersonalWeb’s infringement claims, PersonalWeb directed its expert to apply a different construction to prolong the case unreasonably -----5

 E. After PersonalWeb lost all claims on multiple grounds, it tried to unravel the MDL by claiming the Twitch case was no longer representative -----7

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

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

 B. The Court should find this case exceptional because PersonalWeb repeatedly changed positions----- 10

 C. The Court should find this case exceptional because PersonalWeb needlessly and unreasonably prolonged the case after the claim construction order foreclosed all infringement claims----- 12

 D. The Court should find this case exceptional because PersonalWeb failed to follow the Court’s rules and was not candid with the Court ----- 13

IV. THE COURT SHOULD AWARD AMAZON AND TWITCH THE ATTORNEY FEES AND COSTS THEY REASONABLY INCURRED IN THIS CASE ----- 14

V. CONCLUSION----- 16

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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

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