

1 MICHAEL A. SHERMAN (SBN 94783)  
 masherman@stubbsalderton.com  
 2 JEFFREY F. GERSH (SBN 87124)  
 jgersh@stubbsalderton.com  
 3 SANDEEP SETH (SBN 195914)  
 sseth@stubbsalderton.com  
 4 WESLEY W. MONROE (SBN 149211)  
 wmonroe@stubbsalderton.com  
 5 STANLEY H. THOMPSON, JR. (SBN 198825)  
 sthompson@stubbsalderton.com  
 6 VIVIANA BOERO HEDRICK (SBN 239359)  
 vhedrick@stubbsalderton.com  
 7 **STUBBS, ALDERTON & MARKILES, LLP**  
 15260 Ventura Blvd., 20<sup>th</sup> Floor  
 8 Sherman Oaks, CA 91403  
 Telephone: (818) 444-4500  
 9 Facsimile: (818) 444-4520

10 **Attorneys for PersonalWeb Technologies, LLC**

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

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

**CASE NO.: 5:18-md-02834-BLF**

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

**CASE NO.: 5:18-cv-00767-BLF**

**CASE NO.: 5:18-cv-05619-BLF**

18 Plaintiffs,

19 v.

**PLAINTIFF PERSONALWEB  
 TECHNOLOGIES, LLC'S NOTICE OF  
 MOTION AND MOTION FOR  
 PROTECTIVE ORDER**

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

22 Defendants.

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

25 Counterclaimants,

26 v.

Date: November 5, 2020  
 Time: 9:00 a.m.  
 Dept.: Courtroom 3, 5<sup>th</sup> Floor  
 Judge: Hon. Beth Labson Freeman

27 AMAZON.COM, INC. and AMAZON WEB  
 28 SERVICES, INC.,

Counterdefendants.

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

Plaintiffs,

v.

5 TWITCH INTERACTIVE, INC. a Delaware  
6 corporation,

Defendant.

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. FACTUAL BACKGROUND .....2

    A. PersonalWeb’s Opposition to the Motion for Attorney Fees Waived  
    Privilege/Protections as to Certain Matters.....2

    B. Amazon and Twitch Have Initiated a Secondary Litigation Over the  
    Opposition Declarations.....3

III. LEGAL BACKGROUND .....5

    A. The Court’s Intervention Is Needed to Curtail Amazon’s Satellite Litigation. ....5

    B. Seeking a Protective Order Is an Appropriate Step In These Circumstance. ....5

    C. The Scope of an Intentional Waiver Is Not Unbounded.....6

    D. Not All Statements That Reference the Existence of a Communication With a  
    Client Result in a Waiver.....9

IV. THE DOCUMENTS PERSONALWEB HAS ALREADY PROVIDED  
ADEQUATELY ADDRESS THE FAIRNESS CONSIDERATIONS GOVERNING  
THE SCOPE OF ITS WAIVER .....9

    A. PersonalWeb’s Production of All its Pre-Filing Opinions by Its Attorneys and  
    Experts Concerning the Preclusive Effect of the Texas Action and  
    Infringement Strikes a Fair Balance. ....9

    B. PersonalWeb’s Production of Third Party Settlement Communications Strikes  
    a Fair Balance. ....10

    C. There Has Been No Waiver Relating the Claim Construction Order in the  
    Texas Action and in *PersonalWeb v. IBM*. ....11

    D. There Has Been No Waiver Relating to the Motivations for Dismissing the  
    Texas Action. ....12

    E. Amazon and Twitch’s Requests Are an Unduly Burdensome Tail Wagging the  
    Dog.....12

V. CONCLUSION.....13

**TABLE OF AUTHORITIES**

1

2 *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep’t of Health & Human,*  
 3 532 U.S. 598, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).....5

4 *City of Burlington v. Dague,*  
 5 505 U.S. 557, 112 S.Ct. 2638, 120 L.Ed.2d 449 (1992).....5

6 *DealDash Oyj v. ContextLogic Inc.,*  
 7 2019 WL 1105317 (N.D. Cal. Mar. 11, 2019)..... 8, 10

8 *Fort James Corp. v. Solo Cup Co.,*  
 9 412 F.3d 1340 (Fed. Cir. 2005)..... 6, 7

10 *Hensley v. Eckerhart,*  
 11 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)..... 5

12 *In re EchoStar Commc’ns Corp.,*  
 13 448 F.3d 1294 (Fed. Cir. 2006)..... 6, 7, 9

14 *Motorola, Inc. v. Vosi Techs, Inc.,*  
 15 2002 WL 1917256 (N.D. Ill. Aug. 19, 2002) ..... 5, 6

16 *United States v. Nobles,*  
 17 422 U.S. 225 (1975)..... 6

18 *United States v. One Star Class Sloop Sailboat built in 1930 with hull no. 721, named “Flash II,*  
 19 546 F.3d 26 (1st Cir. 2008)..... 5, 11

20 *Wi-LAN, Inc. v. Kilpatrick Townsend & Stockton LLP,*  
 21 684 F.3d 1364 (Fed. Cir. 2012).....6

22 Rules

23 Fed. R. Civ. P. 26(b) ..... 7

24 Fed. R. Civ. P. 26(c) ..... 1, 5

25 Rule 26(c)(1)..... 2, 5

26 Fed. R. Civ. P. 26(c)(1)(D) ..... 1, 2, 5

27 Federal Rules of Evidence Rule 502..... 6, 7

28 Other Authorities

Civil L.R. 37 ..... 1, 4

**NOTICE OF MOTION FOR PROTECTIVE ORDER**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that, on November 5, 2020 at 9:00 a.m., at the United States District Court for the Northern District of California, 280 South First Street, San Jose, California, in the courtroom of the Honorable Beth Labson Freeman, PersonalWeb Technologies, LLC (“PersonalWeb”) will and hereby do move the Court for a protective order under Rule 26(c) of the Federal Rules of Civil Procedure. The undersigned counsel for PersonalWeb certifies that the parties met and conferred under Civil. L.R. 37-1(a) about the subject matter of this motion on July 13, 2020.

By this motion Personal Web seeks a protective order limiting discovery by Amazon.com, Inc. and Amazon Web Services, Inc. (collectively, “Amazon”) and Twitch Interactive, Inc. (“Twitch”) to:

1. Communications containing any settlement offers or terms with third parties other than Amazon and Twitch concerning the at-issue technologies in this MDL;
2. Opinions regarding claim preclusion and *Kessler* in any way concerning the cases in this MDL or in connection with the dismissal of the Texas Action; and
3. Opinions regarding infringement of the at-issue technologies in this MDL.

PersonalWeb further seeks an order closing any further discovery by Amazon and Twitch beyond this subject matter.

PersonalWeb bases its motion on this notice, the accompanying memorandum of points and authorities and declaration filed concurrently, the pleadings and records on file, the argument of counsel, and any other such matters as may be presented to the Court.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In opposition to the Motion for Attorney Fees and Costs (“Motion”) (Dkt. 593) filed by Amazon.com, Inc. and Amazon Web Services, Inc. (collectively, “Amazon”) and Twitch Interactive, Inc. (“Twitch”), PersonalWeb Technologies, LLC (“PersonalWeb”) had the opportunity to either point to the absence of evidence offered by Amazon and Twitch in support of the numerous false statements and assertions in the Motion, or it could waive the attorney-client privilege and work-product protections on certain limited topics and present evidence of what really happened. PersonalWeb opted

# 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.