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12 AMAZON WEB SERVICES, INC., and
13 TWITCH INTERACTIVE, 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

**REPLY OF AMAZON.COM, INC., AM-
AZON WEB SERVICES, INC., AND
TWITCH INTERACTIVE, INC. IN SUP-
PORT OF MOTION FOR ATTORNEY
FEES AND COSTS**

Date: August 6, 2020
Time: 9:00 a.m.
Dept: Courtroom 3, 5th Floor
Judge: Hon. Beth L. Freeman

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17 PersonalWeb told its expert to ignore the Court’s constructions

18 altogether. 9

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1 **I. INTRODUCTION**

2 This case was never about the underlying merits. It was always about the *in terrorem* effect
3 of suing nearly a hundred customers (including medium-sized businesses) of a single company, and
4 leveraging customer fear of being forced to pay millions to defend someone else's technology into
5 a lucrative settlement. That tactic is as cynical as it is corrosive to our institutions. It squanders
6 scarce judicial resources from more deserving claimants who daily petition our courts for redress
7 of real injuries. It diverts otherwise useful capital away from innovation and job creation and to-
8 wards dead-weight windfalls for the undeserving. And it has brought worldwide opprobrium onto
9 our nation's patent system. Amazon could and did defend this case on behalf of its customers, but
10 the unfortunate fact is that many targets of patent abuse do not because they cannot. For every case
11 that has reached this point—where a defendant has the will and the wherewithal to see a case
12 through—there are hundreds, even thousands, that never benefit from the disinfecting sunlight of a
13 final judgment.

14 Here, we have three such final judgments. And each shows just how frivolous this case has
15 always been. None of PersonalWeb's hundreds of pages of post-hoc, cherry-picked, self-serving
16 and (formerly) privileged declarations and exhibits justifies the cascade of increasingly frivolous
17 positions that PersonalWeb actually advanced in this case. Amazon respectfully urges the Court to
18 seize this unique opportunity to remind all litigants that invoking the coercive power and careful
19 attention of our courts is more than a right. It is also a great privilege—one of the very blessings
20 of liberty—and may not be cynically abused without meaningful consequence.

21 **II. PERSONALWEB'S PURPORTED PRE-FILING INVESTIGATION IGNORED**
22 **OBVIOUS AND FATAL DEFECTS.**

23 PersonalWeb spends nearly half of its opposition describing the “multiple prefiling legal
24 opinions” that it commissioned before filing. (Opp. at 2-13; Dkt. 608-1 (“Bermeister Decl.”) ¶ 10;
25 Dkt. 608-16 (“Sherman Decl.”) ¶ 5.) Setting aside that those opinions were prepared by people
26 having a financial interest in the outcome of this litigation, those opinions hardly show that Person-
27 alWeb reasonably believed in seeing this case through on the merits.

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