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9 Attorneys for **PersonalWeb Technologies, LLC**

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

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

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

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

Case No.: 5:18-cv-00767-BLF  
 Case No.: 5:18-cv-05619-BLF

17 Plaintiffs,

18 v.

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

**DECLARATION OF EXPERT GERALD  
 G. KNAPTON IN SUPPORT OF  
 PERSONAL WEB TECHNOLOGIES,  
 LLC'S SUPPLEMENTAL BRIEFING  
 FOR HEARING ON THE  
 DETERMINATION OF THE  
 REASONABLENESS OF ATTORNEYS'  
 FEES AND COSTS REQUESTED BY  
 AMAZON.COM, INC., AMAZON WEB  
 SERVICES, INC., AND TWITCH  
 INTERACTIVE, INC.**

20 Defendants.

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

23 Counterclaimants,

24 v.

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

26 Counterdefendants.

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 28 PERSONALWEB TECHNOLOGIES, LLC, a  
 Texas limited liability company, and

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LEVEL 3 COMMUNICATIONS, LLC, a  
Delaware limited liability company  
Plaintiffs,  
v.  
TWITCH INTERACTIVE, INC. a Delaware  
corporation,  
Defendant.

**DECLARATION OF GERALD G. KNAPTON**

1  
2 I, Gerald G. Knapton, make this declaration in support of PersonalWeb Technologies,  
3 LLC’s (“PersonalWeb”) Supplemental Briefing for Hearing on the Determination of the  
4 Reasonableness of Attorneys’ Fees and Costs Requested by Amazon.com, Inc., Amazon Web  
5 Services, Inc., and Twitch Interactive, Inc. (collectively, “Amazon”) in the Motion for Attorney  
6 Fees and Costs (ECF 593) and Bill of Costs (ECF 589) (collectively, “Motion”). PersonalWeb has  
7 engaged me to offer my expert opinion on the reasonableness and necessity of the proffered fees,  
8 costs and disbursements. I am making this declaration as an expert witness, based on matter  
9 (including my specialized knowledge, skill, experience, training and education) perceived by, or  
10 personally known to me, or made known to me that is of a type that may reasonably be relied upon  
11 by an expert in forming an opinion upon the subject to which my testimony relates.

12  
13 **I.**  
**INTRODUCTION**

14 1. I was retained by PersonalWeb to assist them with examining the evidence  
15 submitted by Amazon in support of Amazon’s Motion for Fees and costs filed pursuant to 35  
16 U.S.C. § 285, Rule 54, the Federal Rules of Civil Procedure, Local Rules 54-1 through 54-5, and  
17 this Court’s order of October 6, 2020 (ECF 636) regarding “exceptional case” fees (“Order”). I  
18 have read and examined the Order, including the Court’s holding at page 33:6-12:

19 “This case is exceptional because (1) PersonalWeb’s infringement claims  
20 related to Amazon S3 were objectively baseless and not reasonable when  
21 brought because they were barred due to a final judgment entered in the  
22 Texas Action; (2) PersonalWeb frequently changed its infringement positions  
23 to overcome the hurdle of the day; (3) PersonalWeb unnecessarily prolonged  
24 this litigation after claim construction foreclosed its infringement theories; (4)  
25 PersonalWeb’s conduct and positions regarding the customer cases were  
26 unreasonable; and (5) PersonalWeb submitted declarations that it should have  
27 known were not accurate.”

28 2. Amazon filed its Motion for fees several months earlier on March 20, 2020--  
months before that guidance (ECF 593), so it included fees for work that was not found to be for  
“exceptional” claims. It submitted invoices that total 12,783.2 hours of work done over 25 months  
by Fenwick & West LLP (“Fenwick”), Amazon’s counsel, from January 8, 2018 through February

1 29, 2020. Amazon seeks fees of \$6,100,000.00, and non-taxable expenses of \$323,668.06 (ECF  
2 593 at 15:23-25)

3 3. In its motion Amazon estimated that they would incur a further \$450,000 in fees  
4 through June 24, 2020 (ECF 592-1 - Gregorian 13:7-10) although no evidence has been submitted  
5 to support such a claim.

6 **II.**  
7 **BACKGROUND OF EXPERT**

8 4. My qualifications are more fully set out in my qualifications and curriculum vitae  
9 attached to this opinion as Exhibit 1. In sum, I have been an attorney since 1977 and am a senior  
10 partner and shareholder at Ropers Majeski, P.C., which has law offices in San Jose, Redwood  
11 City, San Francisco, Walnut Creek, Los Angeles, Costa Mesa, New York City, Boston and Paris.  
12 I have reviewed well over \$4.5 billion dollars in legal fees and related work product. I have been  
13 qualified as an expert witness on the reasonableness and necessity of legal fees and testified in  
14 person to arbitrators, courts, and juries more than 59 times, in many parts of the United States,  
15 including California, Delaware, and New York. I have reviewed charges in well over a thousand  
16 matters. I am admitted to practice before this honorable Court (since 1979) and I am a member of  
17 the American Intellectual Property Law Association (“AIPLA”). Many of my fee matters have  
18 involved determining reasonable legal fees and costs for patent litigation in federal courts and/or  
19 the International Trade Commission (ITC).

20 5. I subscribe to the Economic Surveys by AIPLA, Lex Machina reports on patent  
21 litigation, and the Wolters Kluwer Real Rate Reports on many kinds of litigation including patent  
22 litigation. I regularly review invoices and related work product for patent litigation and by this  
23 work I have gained an understanding of the reliability of those resources

24 6. As a result of this I have developed an understanding of the process and costs of  
25 patent litigation in the ITC and in many federal courts including the Northern District of  
26 California.

27 **Documents reviewed and summary of documents created:**

28 7. I have signed the amended protective order that I am told is controlling in this case

1 (ECF 427), interviewed counsel for PersonalWeb, reviewed the public files and records in this  
2 matter and similar matters as well as the relevant patent file wrappers, tutorials, and reference  
3 materials. Based on my review, study and research, my staff and I have compiled several  
4 Microsoft® Excel® spreadsheets (Exhibits 2, 3, 4, 6 and 8) to help me quantify my opinions.  
5 Exhibit 2 is an Excel spreadsheet that contains all of the information found in Fenwick’s invoices  
6 at ECF 592-5. Exhibit 3 is an Excel spreadsheet that contains all of the information taken from  
7 Amazon’s Time Chart at ECF 592-6 with the fees for each timekeeper in each category taken from  
8 the “Effective Rate with Final Discount” column. Exhibit 4 is an Excel spreadsheet that compiles  
9 the costs listed by Fenwick in each of its invoices. Exhibit 5 is a compilation from the 2019  
10 AIPLA Report of the Economic Survey that contain the total amounts and rates for fees charged  
11 by patent litigators in Northern California. Exhibit 6 is an Excel spreadsheet that lists all 43  
12 timekeepers that billed time, taken directly from the Fenwick invoices at ECF 592-5. Exhibit 7  
13 lists each of the Fenwick attorneys that attended the depositions that were noticed in this action.  
14 Exhibit 8 is an Excel spreadsheet that summarizes all of the totals from Fenwick’s invoices,  
15 including the total hours, fees, discounts, costs, and individual invoice totals for each invoice at  
16 ECF 592-5, as well as reflects all discounts and adjustments made to each total that appears to  
17 form the basis for Amazon’s “bottom line” fee request in its Motion.

18           8.       As this Court will determine whether to allow the request for expert witness fees  
19 and the other “non-statutory” costs, my analysis assumes, but does not concede, that those  
20 amounts are at issue. Based on this it is my opinion that the reasonable and necessary fees that can  
21 be awarded to Amazon are **\$1,302,947.86** and, if they are of the sort deemed compensable by the  
22 Court on an exceptional case theory, reasonable and necessary non-taxable costs are **\$203,300.10**.  
23 This will be developed in the following sections and supported by the eight exhibits.

24           **There are three discrepancies in the Amazon numbers:**

25           9.       *First:* In the columns on page one of Amazon’s compilation of charts, entitled  
26 “Fenwick & West LLP Time Accrued and Effective Rates by Category” (ECF 592-7) (“Time  
27 Chart”), Amazon lists the “Effective Rate Before Final Discount” side by side with the “Effective  
28 Rate With Final Discount” in ECF 592-7 and then it improperly uses the higher of the two rate

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