

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: PERSONALWEB  
TECHNOLOGIES, LLC ET AL., PATENT  
LITIGATION

Case No. [18-md-02834-BLF](#)

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

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
ADDITIONAL ATTORNEYS' FEES**

Plaintiffs

v.

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

PERSONALWEB TECHNOLOGIES, LLC  
and LEVEL 3 COMMUNICATIONS, LLC,

Defendants,

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

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

Plaintiffs,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

On March 2, 2021, the Court issued its Order Granting in Part and Denying in Part Motion for Attorneys' Fees and Costs. ECF 648. On March 11, 2021, Defendants Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive filed a supplemental declaration in support of their request for additional attorneys' fees incurred between February 2020 and February 2021. ECF 649. Defendants seek a total of \$694,147.86 in attorneys' fees for 1117.4 hours of work in five different categories along with \$11,120.97 in costs. *Id.* ¶¶ 13-14, Exhs. B-C. Plaintiff PersonalWeb Technologies, LLC opposes this request as to three fee categories. ECF 654. The Court has already

United States District Court  
Northern District of California

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1 pre-dating February 2020. *See* ECF 559; 648. The Court now turns to Defendants' supplemental  
2 request and Plaintiff's opposition.

3 **A. Summary Judgment on Non-Infringement**

4 Although Defendants identify \$4,460.42 in fees for 7.7 hours of work in this category, they  
5 clearly state that they are not seeking supplemental fees for this task. ECF 649 ¶11(a).  
6 PersonalWeb's request to lower the recoverable amount in this category is unnecessary.

7 **B. Federal Circuit Appeal on Claim Construction and Non-Infringement**

8 Defendants request \$106,291.43 in fees for 169.7 hours of work related to Plaintiff's appeal  
9 of the Court's February 3, 2020 order. ECF 649 ¶ 11(d) (fee request); ECF 578 (order); ECF 587  
10 (notice of appeal). In that order, the Court denied Amazon's motion for judgment on the pleadings  
11 for lack of standing; granted Amazon's motion for summary judgment of non-infringement; denied  
12 Amazon's motion for summary judgment on the alternative ground that PersonalWeb lacked  
13 standing; granted Twitch's motion for summary judgment of non-infringement; and denied Twitch's  
14 motion to exclude the testimony of Erik de la Iglesia as moot. ECF 578 at 2. Plaintiff now argues  
15 that the Court should deny all fees in this category as Plaintiff's misconduct is not a "but for" cause  
16 of this appeal. ECF 654 at 2-3.

17 In their initial fee motion, Defendants requested fees related to claim construction and  
18 summary judgment for non-infringement. The Court reduced both requests by 25%. ECF 648 at 18-  
19 19, 21. However, the Court's decision on claim construction was based in part on Plaintiff's attempts  
20 to work around the Court's claim construction ruling—misconduct that would not be implicated in  
21 the pending Federal Circuit appeal. *See also* ECF 636 at 14 ("PersonalWeb made reasonable, albeit  
22 unsuccessful, arguments that the terms authorized/unauthorized or licensed/unlicensed should be  
23 given their plain and ordinary meaning."). And its decision on summary judgment for non-  
24 infringement was based on the agreement of the parties. More importantly, it is possible Plaintiff  
will win on appeal. The Court declines at this juncture to award Defendants fees related to the  
appeal. *See Phigenix, Inc. v. Genentech Inc.*, No. 15-CV-01238-BLF, 2019 WL 2579260, at \*18  
(N.D. Cal. June 24, 2019). This request is dismissed without prejudice to Defendants' moving again

1 by \$106,291.43 in fees and 169.7 hours.

### 2 **C. Case Management**

3 Defendants request \$63,978.92 in fees for 83.1 hours of work. ECF 649 ¶ 11(e). Plaintiff  
4 requests that the Court reduce these fees by 25%. ECF 654 at 4. The Court agrees with Plaintiff that  
5 a 25% reduction is appropriate here. This Court found that a 25% reduction was warranted when  
6 considering Defendants' original request for case management fees:

7 Amazon's request requires a haircut. Although it is particularly  
8 difficult to attribute case management activities to the particular  
9 misconduct present in this case, PersonalWeb's ever-shifting  
10 infringement theories—S3, Ruby on Rails, the late emergence of  
11 CloudFront and complete abandonment of Ruby on Rails, and,  
12 finally, PersonalWeb's extraordinary declaration that Twitch was  
13 not a representative customer case only fifteen months after insisting  
14 just the opposite—support Amazon's need for significant case  
15 management efforts. Thus, the Court will reduce case management  
16 fees by 25% to reflect a fair reduction related to otherwise necessary  
17 activities.

18 ECF 648 at 12. Nothing in Defendants' request counsels that the Court reach a different outcome  
19 now. Even accepting that later phases of the litigation were less infected by Plaintiff's shifting  
20 infringement theories, a review of billing entries reveals that Defendants request fees for time  
21 unrelated to Plaintiff's misconduct. *See, e.g.*, ECF 649, Exh. A at 33, 55 (entries related to Plaintiff's  
22 motion for protective order, Defendants' fee request). As such, the Court reduces the lodestar by  
23 \$15,994.73 in fees and 20.78 hours. Defendants are entitled to \$47,984.19 in fees for 62.33 hours of  
24 work in this category.

### 20 **D. Other Fees and Costs Requested**

21 Defendants request reimbursement for additional fees in the amount \$98,019.07  
22 incurred defending the appeal of the Claim Preclusion/*Kessler* Doctrine and \$425,958.45 incurred  
23 for presentation of the attorneys' fee motion. PersonalWeb does not contest the reasonableness of  
24 these amounts and the Court agrees that the request is reasonable in light of the work performed

1 and the skill required. The requested amounts will be granted. Further, Defendants' request for  
2 \$11,120.97 in non-taxable costs is unopposed and approved.

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4 For the foregoing reasons, Defendants' motion for additional attorneys' fees is GRANTED  
5 IN PART AND DENIED IN PART. The Court finds that Defendants are entitled to \$571,961.71 in  
6 fees for 926.92 hours of work and \$11,120.97 in non-taxable costs.

7 **IT IS SO ORDERED.**

8  
9 Dated: April 19, 2021



10 BETH LABSON FREEMAN  
United States District Judge

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