

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 J. DAVID HADDEN (CSB No. 176148)
dhadden@fenwick.com
2 SAINA S. SHAMILOV (CSB No. 215636)
sshamilov@fenwick.com
3 MELANIE L. MAYER (admitted *pro hac vice*)
mmayer@fenwick.com
4 TODD R. GREGORIAN (CSB No. 236096)
tgregorian@fenwick.com
5 RAVI R. RANGANATH (CSB No. 272981)
rranganath@fenwick.com
6 CHRISTOPHER S. LAVIN (CSB No. 301702)
clavin@fenwick.com
7 FENWICK & WEST LLP
Silicon Valley Center
8 801 California Street
Mountain View, CA 94041
9 Telephone: 650.988.8500
Facsimile: 650.938.5200

10 Counsel for AMAZON.COM, INC.,
11 AMAZON WEB SERVICES, INC., and
12 TWITCH INTERACTIVE, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 IN RE: PERSONAL WEB TECHNOLOGIES,
LLC ET AL., PATENT LITIGATION

Case No.: 5:18-md-02834-BLF

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

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

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

19 Plaintiffs

v.

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

22 Defendants,

**RESPONSE OF AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC. AND
TWITCH INTERACTIVE, INC.
TO ADMINISTRATIVE MOTION TO
CONTINUE DECEMBER 14 HEARING
DATE OR, IN THE ALTERNATIVE, TO
PERMIT TELEPHONIC APPEARANCE**

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

24 Plaintiffs,

v.

25 TWITCH INTERACTIVE, INC. a Delaware
26 corporation

27 Defendants.

28

1 Amazon provides the following response to ECA and Claria's request to excuse Mr.
2 Markiles from the December 14 hearing:

- 3 1. Counsel for ECA and Claria has reported to Amazon the following information: Mr.
4 Markiles used the disputed email accounts actively during approximately 2010-2012
5 with limited use thereafter and he retains access to them. Mr. Markiles is also informed
6 about Stubbs Alderton's collection of materials in response to the orders against
7 PersonalWeb. ECA and Claria's position nevertheless remains that the Stubbs collection
8 *could* moot their need to collect from the disputed accounts *if* Stubbs and PersonalWeb
9 are collecting and producing the responsive ECA and Claria documents from those
10 accounts.¹
- 11 2. The principal attorneys responsible for the Stubbs Alderton collection appear to be
12 Michael Sherman and Jeffrey Gersh, who also remain counsel of record for PersonalWeb
13 in the Federal Circuit appeal of the fee award. Messrs. Sherman and Gersh continue to
14 refuse to provide information about their collection, including such basic information as
15 (a) whether they will search any files other than email; (b) whether they are withholding
16 any responsive documents, including documents deemed to ECA's or Claria's instead of
17 PersonalWeb's (or part of a joint representation or common interest); (c) whether Stubbs
18 will search for and treat certain categories as responsive to the Court's order or withhold
19 them; (d) why they refused to collect documents dated after July 2021. Mr. Sherman has
20 taken the position that Stubbs will not commit to providing information in response to
21 these requests until December 12, after Amazon's status report is due to the Court and
22 on the eve of the currently-scheduled hearing. *See Exhibit B* (correspondence). This,
23 and the fact that PersonalWeb itself still refuses to direct Stubbs concerning the
24

25 ¹ ECA and Claria contend also that collection from the email accounts would be burdensome
26 because Mr. Markiles cannot perform a server-side collection of the email accounts at Stubbs
27 Alderton. Counsel has informed Amazon that Mr. Markiles is no longer an active partner at
28 Stubbs Alderton notwithstanding that the law firm website continues to advertise that he remains
a "partner," "founding partner," and "member of the firm's executive committee." **Exhibit A**
(<https://stubbsalderton.com/attorney/murray-markiles/>).

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collection, has prevented Amazon from making progress on the issues informally.

3. PersonalWeb did not make its bulk production of privilege screen documents on December 5 as promised. Instead that production was delayed until December 7. The bulk production consists of documents collected from PersonalWeb itself and does not contain any of the Stubbs collection. Due to the time it will take to process and stage that production for an electronic search, Amazon will likely not be able to answer the Court's questions about whether certain Markiles emails are in the production until the weekend or early next week. Amazon has asked PersonalWeb to report on whether the production contains the emails in question, and also to represent to the Court that neither it nor Stubbs attempted to game the Court's inquiry by cherry-picking those emails for inclusion. Amazon currently does not know whether PersonalWeb will comply.
4. Given the above, Amazon believes that personal appearances by the Stubbs Alderton attorneys remain appropriate. If the Court desires to move the in-person hearing so that Mr. Markiles can participate without interrupting his travel plans, Amazon is available for an in-person appearance on January 4-6 or 11-13.
5. If the Court does move the hearing, Amazon requests that the Court conduct a remote conference at the originally scheduled time with Messrs. Sherman and Gersh of Stubbs Alderton present, to address their refusals discussed above and in Amazon's other filings, so that it may make progress on the PersonalWeb disputes.

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December 8, 2022

FENWICK & WEST LLP

By: /s/ Todd R. Gregorian
Todd R. Gregorian

Counsel for Defendants AMAZON.COM, INC.,
AMAZON WEB SERVICES, INC., and
TWITCH INTERACTIVE, INC.