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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: PERSONALWEB TECHNOLOGIES,  
17 LLC ET AL., PATENT LITIGATION,

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

Plaintiffs,

v.

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

Defendants.

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

Plaintiffs,

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.,  
AMAZON WEB SERVICES, INC., AND  
TWITCH INTERACTIVE, INC. IN  
SUPPORT OF FURTHER  
SUPPLEMENTAL FEES REQUEST**

Date: December 7, 2023

Time: 9:00 a.m.

Place: Courtroom 3, 5th Floor

Judge: Honorable Beth Labson Freeman

1 The Court should award Amazon its full revised requested fees for supplemental work  
2 performed in this case. That amount now reflects more than \$1.1 million in voluntary reductions  
3 from the total Amazon incurred defending the Court’s rulings on appeal and addressing the  
4 maneuvers PersonalWeb and its counsel deployed to evade the judgment. (Dkt. 880 (“Mot.”);  
5 Dkt. 893.)

6 **1. The Court should award the fees Amazon incurred defending multiple appeals.**

7 Amazon’s motion sought fees incurred with respect to PersonalWeb’s appeal of the  
8 non-infringement ruling and the petition for certiorari concerning the *Kessler* ruling. (Mot. at 3-5.)  
9 Although PersonalWeb asks the Court to deny this request in full, it did not include argument  
10 concerning the non-infringement appeal, and thus the Court should award those fees. As to *Kessler*,  
11 Amazon argued that the Court *already awarded* earlier appellate fees on this issue. (*Id.* at 4.) In  
12 response, PersonalWeb argues the Court should nonetheless deny recovery because its petition for  
13 certiorari was not “objectively baseless.” (Dkt. 889-1 at 9.) But that is not the standard: an appeal  
14 need not be “independently exceptional” to justify an award of appellate fees under Section 285.  
15 *See Action Star Enter. Co. v. KaiJet Tech. Int’l, Ltd.*, No. 12-cv-08074 BRO (MRWX), 2015 WL  
16 12752877, at \*3 (C.D. Cal. June 24, 2015). PersonalWeb’s *Kessler* positions were part of the  
17 reason the Court found the case exceptional, making those fees recoverable. Moreover,  
18 PersonalWeb’s cert petition was wasteful—it could never have made any practical difference for  
19 the outcome of this case. Even if PersonalWeb had achieved a *complete reversal* of the *Kessler*  
20 ruling at the Supreme Court, that would not undo *either* this Court’s separate judgment of  
21 noninfringement *or* its exceptional case ruling. The Court should award Amazon the full amount  
22 requested for the work on those appeals.

23 **2. The Court should award fees that Amazon incurred obtaining the fee award.**

24 PersonalWeb argues that the Court should exclude fees incurred in the Federal Circuit  
25 appeal of the original fee award as premature because that appeal is still pending. (Dkt. 889-1 at 3.)  
26 The Circuit took the appeal under submission in June 2023. To the extent there is still no ruling by  
27 the time of the December 2023 hearing on this motion, Amazon requests that the Court nevertheless  
28 award the fees rather than defer, to avoid further proceedings concerning attorney fees.

1           **3. The Court should award fees that Amazon incurred in post-judgment**  
2           **proceedings.**

3           The remainder of PersonalWeb’s arguments concern fees incurred in other post-judgment  
4 proceedings. These include post-judgment discovery and attempts to seek compliance with the  
5 Court’s orders, work to address both the attempted withdrawal of PersonalWeb’s counsel and  
6 PersonalWeb’s other efforts to evade the judgment by placing itself in a state court receivership,  
7 and asserting that in federal court as a bar to collection.

8           *The requested fees are authorized by statute.* PersonalWeb’s first argument is that §285  
9 does not permit recovery of fees for any proceedings to enforce a judgment in a patent infringement  
10 case. There is no authority that supports this position. The Federal Circuit has instructed that a  
11 case must be viewed as “an inclusive whole,” and has thus authorized “awarding fees for the entire  
12 case, including any subsequent appeals.” *Ameranth, Inc. v. Domino’s Pizza, Inc.*, No. 12-cv-0733  
13 DMS (WVG), 2021 WL 2550057, at \*1 (S.D. Cal. June 21, 2021) (citations and quotations  
14 omitted). The statute authorizes even the recovery of fees incurred *seeking attorney fees*, a non-  
15 patent issue that occurs post-judgment. (*See* Mot. at 5.) And courts have expressly held that fees  
16 incurred to enforce a judgment or settlement of a patent case are recoverable under §285. *Schmidt*  
17 *v. Zazzara*, 544 F.2d 412, 413-15 (9th Cir. 1976) (allowing recovery under §285 of attorney fees  
18 incurred enforcing a consent judgment); *Fitness IQ, LLC v. TV Prod. USA, Inc.*, No. 10-cv-2584  
19 WMC, 2012 WL 13175920, at \*5 (S.D. Cal. Sept. 14, 2012) (same as to enforcement of settlement  
20 agreement); *j2 Glob. Inc. v. Fax87*, No. 13-cv-05353 DDP (AJWX), 2016 WL 7260588, at \*5 (C.D.  
21 Cal. Dec. 15, 2016) (allowing plaintiff to recover fees “for any further litigation” if a default  
22 judgment was violated); *cf. Action Star*, 2015 WL 12752877, at \*3 (awarding fees following a  
23 post-judgment escrow dispute). PersonalWeb cites *Mathis v. Spears*, 857 F.2d 749, 755 (Fed. Cir.  
24 1988)—a case decided long before *Octane Fitness* and *Therasense* announced the current §285  
25 standards. But even *Mathis* held only that *any* prevailing party—whether a patentee or an accused  
26 infringer—may recover under §285. It did not interpret an award for an entire “case” as excluding  
27 judgment enforcement; to the contrary, the court there stated that “it would be inconsistent with the  
28

1 intent” of the statute “to limit [the] prevailing party [] to something less than the fees and expenses  
2 to which it was subjected” by its opponent. *Id.* at 758.

3 PersonalWeb’s next argument is that California Code of Civil Procedure §685.040 does not  
4 apply in federal court or allow recovery here. (Dkt. 889-1 at 4.) But to the extent the Court accepts  
5 PersonalWeb’s argument that §285 does not apply, then §685.040 would, and it too, authorizes an  
6 award. *See Carnes v. Zamani*, 488 F.3d 1057, 1060 (9th Cir. 2007). The section entitles judgment  
7 creditors to “reasonable and necessary costs of enforcing a judgment,” and those include attorney  
8 fees incurred to enforce a judgment that, as here, is based on a federal statute that authorizes fees.  
9 *Sayta v. Martin*, No. 16-cv-03775-LB, 2022 WL 267405, at \*2 (N.D. Cal. Jan. 28, 2022), *rev’d on*  
10 *other grounds*, 2023 WL 5447676 (9th Cir. Aug. 24, 2023); *see also Erickson v. Sympathy for the*  
11 *Rec. Indus. ex rel. Mermis*, No. 10-cv-00636 HRL, 2011 WL 1211533, at \*2 (N.D. Cal. Mar. 30,  
12 2011)) (permitting the recovery of post-judgment attorney fees under §685.040 where the  
13 underlying judgment was based on violations of the Copyright Act, which provides for the recovery  
14 of reasonable attorney’s fees to a prevailing party as part of the costs).<sup>1</sup>

15 ***The award should include the fees incurred in the related state court actions.*** Under  
16 either statute, Amazon is entitled to recover for a parallel proceeding to enforce the judgment. §285  
17 authorizes recovery of fees incurred in closely related proceedings, *see* Mot. at 7-8 (discussing  
18 authorities), and §685.040 authorizes fees incurred in a separate action to enforce a judgment, as  
19 well as “defending the validity of the judgment against challenge in a separately filed attack.”  
20 *Globalist Internet Techs., Inc. v. Reda*, 167 Cal. App. 4th 1267, 1274–75 (2008). Both standards  
21 are met here. PersonalWeb’s principals filed the state court actions specifically to undermine the  
22 Court’s judgment and prevent it from ever being enforced. (*See* Mot.; Dkt. 871-7; Gregorian Reply  
23 Decl. ¶¶3-5.) PersonalWeb asserted the state court receivership and injunction *in this case* as a

24 \_\_\_\_\_  
25 <sup>1</sup> PersonalWeb cites *Bass v. First Pac. Networks. Inc.*, 219 F.3d 1052 (9th Cir. 2000), but that  
26 case is irrelevant. *Bass* asked whether federal or state law governed fee recovery in a Rule 65.1  
27 surety proceeding where the district court was exercising supplemental jurisdiction over state law  
28 claims. The case did not address either Rule 69(a) or §685.040 *at all*. *See id.*

1 reason why it did not have to pay the judgment or obey the Court's discovery orders. And  
2 PersonalWeb's principals filed a declaratory judgment action on the alter ego issue in part to ensure  
3 that this Court would not entertain a post-judgment motion on that issue. (Gregorian Reply Decl. ¶6.)  
4 Neither state court action should ever have been filed, but both are intertwined with this case.

5 PersonalWeb also contends that fee recovery should be denied because Amazon has not yet  
6 succeeded in enforcing the judgment. (Dkt. 889-1 at 9:28.) This much is true: PersonalWeb has  
7 not paid any of the \$5.4 million it owes, and its principals have chosen instead to multiply the state  
8 court proceedings (and have been sanctioned separately for it by the Superior Court (*see* Dkt. 893-  
9 1)). But that is a reason to *award* fees, not to deny them. Moreover, whether Amazon won every  
10 individual motion—though it has prevailed on most, allowing it to uncover PersonalWeb's  
11 principals' fraud on the Superior Court—is also not the standard for recovery.<sup>2</sup> Amazon prevailed  
12 in the case, which authorizes it to seek fees. *See Erickson*, 2011 WL 1211533, at \*2; *see also*  
13 *Greyhound Fin. Corp. v. TSM Fin. Grp., Inc.*, No. 92-cv-3750, 1995 WL 562068, at \*4 (N.D. Ill.  
14 Sept. 21, 1995) (awarding plaintiff fees for a separate unresolved alter ego action to collect the  
15 judgment because plaintiff "had ample reason the believe that ordinary collection procedures would  
16 be ineffective").

17 **4. The rates of Amazon's counsel are reasonable.**

18 Finally, PersonalWeb contends that Amazon's counsel's rates are unreasonable for the post-  
19 judgment work. (*See* Dkt. 889-1 at 10.) As explained in its moving papers, the billing for  
20 Amazon's counsel is commensurate with the prevailing billing rates for similar work. Moreover,  
21 Amazon has requested *substantially* reduced rates for most of its counsel than it actually incurred.  
22 (*See* Mot. at 10.) By comparison, PersonalWeb's principals have hired Kirkland & Ellis LLP to  
23 represent some of their investment entities in resisting the judgment in all three pending actions.  
24 While these attorneys have refused to disclose their billing rates, the available evidence suggests

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25  
26 <sup>2</sup> To support this argument, PersonalWeb points to a motion to compel documents from its  
27 privilege log. (Dkt. 889-1 at 9.) But even there, the Court denied the motion to compel without  
28 prejudice to renewal later. (Dkt. 877 at 5.)

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