

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

AMAZON.COM, INC. And AMAZON
WEB SERVICES, INC.,

Plaintiffs,

v.

PERSONALWEB TECHNOLOGIES, LLC,
et al.,

Defendants.

PERSONALWEB TECHNOLOGIES, LLC,
et al.,

Plaintiffs,

v.

TWITCH INTERACTIVE, INC.,

Defendant.

Case No. 18-md-02834-BLF

Case No. 18-cv-00767-BLF

Case No. 18-cv-05619-BLF

**ORDER GRANTING IN PART AND
DENYING IN PART AMAZON’S
MOTION FOR FURTHER
SUPPLEMENTAL FEES**

Re: ECF No. 880 (Case No. 18-md-02834)

Re: ECF No. 375 (Case No. 18-cv-00767)

Re: ECF No. 280 (Case No. 18-cv-05619)

Pending before the Court is Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc.’s (collectively, “Amazon”) Motion for Further Supplemental Fees (the “Motion”). *See* Mot., ECF No. 880.¹ Amazon seeks attorney fees and costs from PersonalWeb Technologies, LLC (“PersonalWeb”) for work performed between March 2021 and March 2023. *See id.* at 1. PersonalWeb disputes the majority of the fees. *See* Corrected Opp’n (“Opp’n”), ECF No. 889-1. The Court heard oral argument on the Motion on November 16, 2023. Having considered the parties’ written submissions and oral arguments, the Court GRANTS IN PART and DENIES IN

¹ All ECF citations refer to the docket of the lead case. *In re PersonalWeb Technologies Patent*

1 PART the Motion, for the reasons described below.

2 **I. BACKGROUND**

3 This multi-district litigation stems from PersonalWeb filing dozens of suits in 2018 against
4 Amazon and a bevy of its customers, in which it asserted patent infringement claims that this
5 Court has found—in an order affirmed by the Federal Circuit—were objectively baseless and not
6 reasonable when brought. *See* Order Re Exceptional Case 33, ECF No. 636; *In re PersonalWeb*
7 *Techs. LLC*, 85 F.4th 1148, 1154–57 (Fed. Cir. 2023). The Court granted Amazon’s motions for
8 summary judgment in two phases, and by February 3, 2020, Amazon had won on summary
9 judgment as to all claims. *See* ECF Nos. 394, 578. The Court entered judgment against
10 PersonalWeb in the MDL action and all member cases on October 28, 2020. *See* J., ECF No. 643.
11 The Court then entered an amended judgment on July 27, 2021, that incorporated fees and costs
12 awarded by the Court in orders issued on March 2, 2021, and April 19, 2021. *See* Am. J., ECF
13 No. 708; *see also infra*, at Part I(A).

14 **A. Prior Requests for Attorney Fees and Costs**

15 Amazon moved for attorney fees and costs for the first time in March 2020. *See* ECF No.
16 593. The Court granted that motion in October 2020, reasoning that the case was exceptional
17 because:

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

28 Order Re Exceptional Case 33. On March 2, 2021, following additional briefing requested by the
29 Court on whether the fees requested by Amazon were reasonable, the Court awarded Amazon over
30 \$4.6 million in attorney fees and \$203,300.10 in non-taxable costs for work performed from
31 January 2018 through January 2020. *See* First Fee Award 9, 30, ECF No. 648.

32 On March 11, 2021, Amazon filed a supplemental declaration in support of a request for

1 additional attorney fees incurred from February 2020 through February 2021. *See* ECF No. 649.
2 On April 19, 2021, the Court granted in part and denied in part the additional attorney fee request.
3 *See* Second Fee Award, ECF No. 656. With respect to one category of fees—Amazon’s work
4 related to PersonalWeb’s appeal of the Court’s final summary judgment order, for which it
5 requested \$106,291.43—the Court declined to award fees while the appeal was pending, and
6 denied the request without prejudice to Amazon moving again for the same fees. *See id.* at 2–3.
7 After excluding this amount and applying certain other reductions to the requested fees, the Court
8 awarded Amazon \$571,961.71 in fees and \$11,120.97 in non-taxable costs. *See id.* at 4.

9 Accordingly, the Amended Judgment entered on July 27, 2021, incorporated these fee and
10 cost awards, as well as post-judgment interest accrued through July 14, 2021, and amounted to
11 \$5,403,122.68. *See* Am. J. 3.

12 **B. PersonalWeb’s Actions Following Fee Awards**

13 The parties agree that, to date, PersonalWeb has not paid any portion of the judgment
14 entered against it. *See, e.g.,* Mot. 10. Instead, mere days after the Court issued the second of its
15 two orders awarding fees and costs on April 19, 2021, PersonalWeb commenced two procedural
16 tracks through which it attempted to circumvent this Court’s jurisdiction over post-judgment
17 proceedings. First, on April 22, 2021, PersonalWeb took the position that it was not represented
18 by counsel with respect to Amazon’s attempts to secure or enforce any monetary award. *See* ECF
19 No. 661-1. Over the next 16 months, PersonalWeb continued to stymie Amazon’s efforts to
20 enforce the judgment by instructing its then-counsel to file no fewer than *seven* motions to
21 withdraw or substitute counsel and notices of a purported substitution of counsel—with no
22 substitute counsel ever properly identified, *see* ECF Nos. 674, 678, 679, 683, 688, 728, 767²—
23 until at last PersonalWeb had its new counsel file a sufficient notice of appearance on August 8,
24 2022, *see* ECF No. 770.

25 Second, on April 27, 2021, PersonalWeb’s principals and secured creditors filed suit in

26 _____
27 ² Amazon states that PersonalWeb’s then-counsel attempted to withdraw six times, *see* Mot. 6, but
28 appears not to have counted the notice of withdrawal filed on August 2, 2022, *see* ECF No. 767,
29 which the Court denied and struck for noncompliance with its prior orders. *see* ECF No. 769.

1 California state court to place PersonalWeb into a receivership. *See* ECF No. 717-2.
2 Unsurprisingly, PersonalWeb made no objection to the receivership, and the state court appointed
3 a receiver on May 10, 2021. *See* ECF Nos. 717-4, 717-6, 747-4. PersonalWeb then stipulated to
4 the entry in state court of an order stating that the state court possessed exclusive jurisdiction over
5 PersonalWeb’s property and assets, and enjoining PersonalWeb’s judgment holders from
6 enforcing any judgment against PersonalWeb. *See* ECF No. 717-6. Next, PersonalWeb
7 repeatedly attempted to use the state court’s receivership jurisdiction to assert that this Court
8 lacked jurisdiction to oversee the enforcement of its judgment, *see, e.g.*, ECF No. 728, forcing the
9 Court to issue an order directing PersonalWeb’s counsel to obtain precise confirmation from the
10 receiver that the receiver would authorize PersonalWeb to retain and compensate counsel for the
11 ongoing proceedings in this Court, *see* ECF No. 760. Within one month of the Court’s order,
12 PersonalWeb provided the Court a written response from the receiver confirming that the receiver
13 was authorized to pay attorney fees for PersonalWeb’s counsel in this action and would in fact pay
14 such fees for as long as funding was available. *See* ECF No. 766.

15 In response to these actions, Amazon has served post-judgment discovery on
16 PersonalWeb; twice requested the Court compel compliance with its discovery requests; and
17 intervened in the state court receivership action. *See* Mot. 6–7; *see also, e.g.*, Decl. of Todd R.
18 Gregorian (“Gregorian Decl.”) ¶ 22, ECF No. 873.

19 C. Appeals in This Action

20 In addition, over the course of this action, PersonalWeb has timely appealed this Court’s
21 two summary judgment rulings, its claim construction ruling, and its prior awards of attorney fees
22 and costs. *See* Mot. 3–6. The Federal Circuit upheld the Court’s first summary judgment ruling in
23 2020; PersonalWeb then petitioned the Supreme Court for certiorari on April 2, 2021, *see*
24 *PersonalWeb Techs., LLC v. Patreon, Inc.*, No. 20-1394, 2021 WL 1298201 (S. Ct. Apr. 2, 2021),
25 and, following briefing, the Supreme Court denied certiorari in May 2022, *see* 142 S. Ct. 2707
26 (2022) (Mem.). PersonalWeb appealed the second summary judgment ruling and claim
27 construction ruling in March 2020, *see* ECF No. 587, and the Federal Circuit upheld both rulings

28 in August 2021, *see* ECF Nos. 700, 710. PersonalWeb also appealed the Court’s order awarding

1 attorney fees and costs of \$5,401,625.06; the Federal Circuit affirmed that ruling on November 3,
2 2023. *See In re PersonalWeb Techs. LLC*, 85 F.4th at 1164.

3 **D. The Present Motion**

4 Amazon requests \$2,856,570.62 in attorney fees and \$193,299.37 in costs for work
5 performed between March 2021 and March 2023. *See* Not. of Revised Fees, Exh. A (“Total Fee
6 Chart”), ECF No. 914. The path to these numbers involved a series of filings. On May 5, 2023,
7 Amazon submitted declarations from counsel for Fenwick & West, LLP (“Fenwick”), Steptoe
8 Johnson LLP (“Steptoe”), and Paul Hastings LLP (“Paul Hastings”) regarding a further request for
9 supplemental fees for work performed between March 2021 and March 2023, but did not file an
10 underlying fee motion with the declarations. *See* Gregorian Decl.; Decl. of Steven K. Davidson
11 (“Davidson Decl.”), ECF No. 874; Declaration of Stephen B. Kinnaird (“Kinnaird Decl.”), ECF
12 No. 875. The Gregorian Declaration included a fee chart and cost chart. *See* Gregorian Decl.,
13 Exhs. B–C, ECF Nos. 873-5, 873-6. The Court ordered Amazon to file a motion for supplemental
14 fees, *see* ECF No. 876, after which Amazon filed the pending Motion, although it did not include
15 further declarations or a cost chart, and its attached fee chart—which categorized the requested
16 fees into Federal Appeals (Fees); Federal Appeals (Other); Post-Judgment Enforcement; State
17 Court Judgment Enforcement; and Case Management—did not indicate total hours per category or
18 the full sum of attorney fees requested by Amazon. *See* Mot., Exh. A, ECF No. 880-1. The
19 Motion initially requested over \$3.13 million in fees for work performed from March 2021 to
20 March 2023; \$106,291.43 in previous appeal fees incurred between February 2020 and February
21 2021; and \$193,605.69 in costs (which was not mentioned in the Motion, which merely referenced
22 “further supplemental . . . costs as set forth in [Amazon’s] declarations”). *See* Mot. 1, 10.

23 After PersonalWeb filed its opposition to the Motion, Amazon filed a notice of revisions to
24 its Motion to withdraw over \$340,000 of fees and costs incurred in connection with opposing two
25 anti-SLAPP motions in state court. *See* Anti-SLAPP Not., ECF No. 893. The notice included a
26 revised fee chart—which used the same categories as the prior chart and still provided no totals—
27 and cost chart. *See id.* at Exh. B (“Final Hourly Chart”), ECF No. 893-5; Exh. C (“Cost Chart”),
28 ECF No. 893-6. Amazon then filed a reply in support of its motion, which stated in an

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.