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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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

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

Plaintiffs

v.

PERSONALWEB TECHNOLOGIES, LLC
and LEVEL 3 COMMUNICATIONS, LLC,

Defendants,

PERSONALWEB TECHNOLOGIES, LLC,
a Texas limited liability company, and
LEVEL 3 COMMUNICATIONS, LLC, a
Delaware limited liability company,

Plaintiffs,

v.

TWITCH INTERACTIVE, INC. a Delaware
corporation,

Defendant.

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

**ORDER DENYING PERSONALWEB'S
REQUEST TO DENY OR DEFER
CONSIDERATION OF MOTION FOR
ATTORNEYS' FEES AND BILL OF
COSTS PENDING RESOLUTION OF
PERSONALWEB'S APPEALS;
RESETTING HEARING ON THE
MOTION TO AUGUST 6, 2020 AT 9:00
A.M.**

[Re: ECF 594]

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

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

On April 10, 2020, the parties filed a joint statement regarding PersonalWeb's request to deny or defer consideration of the motion for attorneys' fees and bill of costs of Amazon.com, Inc., Amazon Web Services, Inc., and Twitch Interactive, Inc. (collectively, "Amazon") at ECF 593, pending resolution of PersonalWeb's Federal Circuit appeals. Request, ECF 594. The Court set a telephonic case management conference on April 16, 2020 (the "CMC") and heard the parties' respective positions on the issue. For the reasons stated on the record and discussed below, the

1 Court DENIES PersonalWeb’s Request.

2 While the Court recognizes that the determination of the issues on appeal may affect
3 Amazon’s motion for attorneys’ fees, the Court is not persuaded that any of the facts or issues
4 presented in this case warrant a deviation from the Court’s usual course, which is “to consider
5 attorneys’ fees promptly after the merits decision rather than stay a motion for attorneys’ fees until
6 resolution of the appeal.” *PersonalWeb Techs., LLC v. EMC Corp.*, No. 5:13-cv-01358-EJD, 2020
7 WL 1557441, at *1 (N.D. Cal. Apr. 1, 2020) (citation omitted).

8 Courts consider four factors to determine whether to stay awarding attorneys’ fees and costs
9 pending appeal: (1) “whether the stay applicant has made a strong showing that he is likely to
10 succeed on the merits;” (2) “whether the applicant will be irreparably injured absent a stay;” (3)
11 “whether issuance of the stay will substantially injure the other parties interested in the proceeding;”
12 and (4) “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

13 First, PersonalWeb has failed to make a strong showing that it is likely to succeed in its
14 appeal. PersonalWeb argues that delaying Amazon’s motion in this case is “particularly compelling
15 because of a change in law that occurred after the first summary judgment ruling.” Request at 4
16 (citing *Huang v Huawei Technologies Co., Ltd.*, 787 Fed. Appx. 723 (Fed. Cir. Oct. 9. 2019). The
17 Court is not persuaded. Setting aside the fact that a non-precedential opinion is not a “change in
18 law” as PersonalWeb asserts, the Federal Circuit’s *Huang* decision has no impact on this Court’s
19 grant of summary judgment based on claim preclusion and the *Kessler* doctrine. PersonalWeb
20 claims that it is likely to succeed on appeal because in the *Huang* decision, the Federal Circuit
21 “explicitly used the infringement contention rather than the complaint to determine the subject
22 matter of the prior action for claim preclusion purposes,” while this Court “primarily determined
23 the scope of the Texas action based on the allegations in the complaint.” Request at 4. But
24 PersonalWeb fails to note that nowhere in the *Huang* decision did the Federal Circuit hold or even
25 suggest that looking to the complaint allegations in the preclusion analysis would be improper. *See*
26 *Huang*, 787 Fed. Appx. at 726. And more importantly, in this case, the Court *did* consider the
27 infringement contentions in the Texas case in deciding the claim preclusion issue:

28 Second, PersonalWeb argues that the scope of the Texas Action

1 should be limited to what was included in the infringement
2 contentions, and not the complaint. Trans., ECF No. 376 at 44-45.
3 Even if the Court agreed with PersonalWeb, the Texas infringement
4 contentions included the HTTP GET command, and thus
5 PersonalWeb’s argument fails on its own terms.

6 ...
7 In sum, the Court finds that both the complaint and the infringement
8 contentions in the Texas Action indisputably support the Court’s
9 conclusion that the Texas Action asserted infringement against all of
10 S3 and was not limited only to MPU.

11 *In re PersonalWeb Techs., LLC, et al. Patent Litig.*, No. 18-MD-02834-BLF, 2019 WL 1455332, at
12 *11-*12 (N.D. Cal. Apr. 2, 2019). In sum, the Court is not persuaded that the *Huang* decision makes
13 PersonalWeb’s appeal likely to succeed. Accordingly, the first factor weighs against a stay.

14 Second, PersonalWeb does not explain how it will be irreparably harmed absent a stay.
15 Instead, PersonalWeb focuses on how everyone—the Court, PersonalWeb, and Amazon—will be
16 spending “substantial time, effort, and cost (in the case of the parties) briefing, arguing, hearing, and
17 deciding these issues” and those efforts “will be wasted should the Federal Circuit rule in favor of
18 one or both of PersonalWeb’s pending appeals.” Request at 2. These generic waste-of-time-and-
19 resources arguments fail to establish *irreparable* harm. “For instance, [PersonalWeb has] neither
20 argued that [it has] limited financial resources such that litigating attorneys’ fees would result in
21 bankruptcy nor that the costs of litigation would be ‘overwhelming.’” *PersonalWeb Techs., LLC v.*
22 *EMC Corp.*, 2020 WL 1557441, at *2 (citing *Glauser v. GroupMe, Inc.*, 2015 WL 2157342, at *2–
23 *3 (N.D. Cal. May 7, 2015)). Thus, the second factor supports Amazon and denial of a stay.

24 Third, there is no evidence that other parties will be injured by a stay. That said, Amazon
25 claims that it may be prejudiced by a stay because by the time both of the merits appeals conclude,
26 Amazon may be unable to recover fees – if it is awarded any. Request at 8. The Court has been
27 presented with no evidence on the status of PersonalWeb’s financial health and therefore cannot
28 determine whether Amazon would be injured by a stay. Thus, the Court finds that this factor is
neutral.

Fourth, public policy considerations weigh in favor of denying a stay. PersonalWeb has
made no showing that the public interest would be served by a stay – only that the Court’s
“potentially reduced resources” due to COVID-19 health concerns supports a stay. *See* Request at
2. While COVID-19 has certainly impacted the courts’ operations across the country, this Court

1 continues to resolve substantive motions. *See* General Order 72 (“All civil matters will be decided
2 on the papers, or if the assigned judge believes a hearing is necessary, the hearing will be by
3 telephone or videoconference.”). Further, “judicial economy is better served by determining
4 attorneys’ fees promptly while the details of the proceedings are still fresh and when the Federal
5 Circuit has the opportunity to consider any appeal of the calculation at the same time as the appeal
6 on the merits.” *Spitz Techs. Corp. v. Nobel Biocare USA LLC*, No. SACV1700660JVSJCGX, 2018
7 WL 6016149, at *2 (C.D. Cal. Aug. 13, 2018), *aff’d*, 773 F. App’x 625 (Fed. Cir. 2019); *see also*
8 Fed. R. Civ. P. 54(d) advisory committee’s notes to 1993 amendment. Moreover, public interest
9 will be served by holding parties to their stipulation. *See PersonalWeb Techs., LLC v. EMC Corp.*,
10 2020 WL 1557441, at *2. Here, the parties stipulated to a briefing schedule on Amazon’s motion
11 for attorneys’ fees. *See* ECF 591. Then, rather than following the stipulated briefing schedule, and
12 weeks *after* Amazon filed its motion, PersonalWeb requested a stay pending appeal. *See* Request.
13 In sum, the fourth factor supports denying a stay.

14 In conclusion, because three of the four *Hilton* factors weigh in favor of denying a stay, the
15 Court DENIES PersonalWeb’s Request to deny or defer consideration of the motion for attorneys’
16 fees and bill of costs.

17 At the CMC, PersonalWeb requested, and Amazon did not object, to reset the hearing from
18 June 6, 2020 at 9:00 a.m. to a later date (depending on the Court’s availability) to allow for a longer
19 briefing period. Accordingly, the Court hereby RESETS the hearing on Amazon’s Motion at ECF
20 593 to **August 6, 2020 at 9:00 a.m.** The parties are to meet, confer, and submit a stipulation as to
21 the briefing schedule in accordance with this Court’s Standing Order Re Civil Cases.

22
23 **IT IS SO ORDERED.**

24
25 Dated: April 20, 2020

26 
27

BETH LABSON FREEMAN
28 United States District Judge