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Attorneys for Plaintiff Swarm Technology, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Swarm Technology, LLC, an Arizona
limited liability company,

Plaintiff,

vs.

Amazon.com, Inc., and Amazon Web
Services, Inc.,

Defendants.

Case No.: CV-21-00438-PHX-DJH

**SWARM TECHNOLOGY, LLC'S
FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANTS
AMAZON.COM, INC. AND AMAZON
WEB SERVICES, INC.**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Swarm Technology, LLC ("Swarm") hereby requests that Defendants Amazon.com, Inc. and Amazon Web Services, Inc. (individually and collectively "AWS") respond to the following requests for production within thirty (30) days of service, in accordance with the Definitions and Instructions below. Productions should be made at the law offices of Beus Gilbert McGroder PLLC, 701 N. 44th Street, Phoenix, Arizona 85008, or at such other place as may be mutually agreeable to counsel.

DEFINITIONS

1. Notwithstanding any definition set forth below, each word, term, or phrase used in this discovery is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

CV-21-00438-PHX-DJH

**SWARM'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS**

- 1 2. “Plaintiff,” or “Our,” shall refer to Swarm Technology, LLC.
- 2 3. “Defendant,” “You,” and “Your,” shall refer, to Defendants Amazon.com, Inc.
- 3 and/or Amazon Web Services, Inc., and related corporate parents, corporate predecessors,
- 4 corporate successors, and all past or present subsidiaries, affiliates, divisions, units,
- 5 departments, officers, directors, principals, agents, employees, representatives, assigns,
- 6 attorneys, experts, insurers, and each Person acting or purporting to act on behalf of any of
- 7 them.
- 8 4. “Complaint” means Case No.: CV-21-00438-PHX-DJH, the lawsuit dated
- 9 March 12, 2021 filed in the United States District Court for the District of Arizona.
- 10 5. “Person” means any natural person or any business, legal, or governmental entity
- 11 or association.
- 12 6. “Third party” means a person who is not Plaintiff or Defendants.
- 13 7. The “’004 Patent” refers to U.S. Patent No. 9,852,004 issued December 26,
- 14 2017, and entitled “System and Method for Parallel Processing Using Dynamically
- 15 Configurable Proactive Co-Processing Cells.”
- 16 8. The “’275 Patent” refers to U.S. Patent No. 10,592,275 issued March 17, 2020,
- 17 and entitled “System and Method for Swarm Collaborative Intelligence Using Dynamically
- 18 Configurable Proactive Autonomous Agents.”
- 19 9. “Asserted Patents” or “Patents-in-Suit” mean the “the ‘004 Patent,” and “the
- 20 ‘275 Patent.”
- 21 10. “Accused Products” means the AWS IoT Core and AWS Greengrass products
- 22 and services referred to in the Complaint.
- 23 11. “IoT” means networks which facilitate the management, control, monitoring,
- 24 calibration, initialization, and/or deployment of Internet of Things (“IoT”) devices, including
- 25 cloud-based products and services involving computing, storage, networking, databases,
- 26 analytics, application services, deployment, mobile tools, and developer tools.
- 27 12. “Product Development” means detailed product development records and data,
- 28 including engineering and design histories, schematics, parts lists, specifications, research and

1 development costs, development plans, project management tools and histories including
2 software development documentation and revision histories, development timelines;
3 development budgets, and/or cost/benefit analysis associated with or used as part of the
4 product development.

5 13. "Sales and Pricing" means periodic (e.g., monthly, quarterly, annual),
6 cumulative, and aggregate sales, licensing, and pricing data, including list prices, discounts,
7 bundled pricing structures, net revenues, unit sales, and/or any category/product grouping.

8 14. "Cost and Profitability" means periodic (e.g., monthly, quarterly, annual),
9 cumulative, and aggregate costs and profitability data, including costs of good/services sold,
10 gross margin, sales and marketing expenses, administrative expenses, research and
11 development costs, other operating costs; operating margin, and/or any allocated costs by
12 product and description of cost allocation criteria, guidelines, and/or rules.

13 15. "Market Research and Competitive Analyses" means any internal company
14 market research or third-party market research available to or utilized by You including market
15 analyses (i.e., industry trends and projections, product family trends and projections, product
16 sector trends and projections, product category trends and projections adoption/substitution
17 patterns from other networking options, market segmentation analyses), competitive analysis,
18 comparative analyses among networking products and services offered by third parties,
19 comparative analyses between networking options (i.e., intent-based networking vs. software-
20 defined networking), historical and projected market share analyses, customer type
21 assessments (e.g., anticipated demand drivers by customer type, profitability by customer
22 type), commercialization plan, customer segmentation analyses, consumer surveys,
23 competitive analyses, business plans, investor updates, board of directors presentations,
24 strategic planning documents, diagnostic reviews, revenue models, sales forecasts,
25 profitability forecasts, SWOT (i.e., strengths, weaknesses, opportunities, threats) analyses, and
26 other similar business documents.

27 16. "Product Description and Marketing Material" include product lists, product
28 categories, product guides, specifications, user manuals, tutorials, product brochures, training

1 modules, marketing presentations, conference presentations and/or hand-outs, and any other
2 marketing related data.

3 17. "License and Other Agreement" include product, service, software, and/or
4 subscription licenses, inbound software, technology, and/or patent license agreements, license
5 solicitations and/or negotiations, bundled product/service licenses, licensing presentations,
6 offers/counter offers, internal analyses conducted in relation to potential licensing, business
7 licensing policies, procedures, and practice.

8 18. "AI" means artificial intelligence.

9 19. "Shadow" and/or Twin" shall have the same meanings used for such terms in
10 the AWS IoT Core Developer Guide and related documentation.

11 20. "Task Pool" means any list, database, memory module, cache, random access
12 memory, or other data or memory structure or construct, whether implemented in hardware,
13 firmware, software, and/or executable code, that is configured to hold, store, monitor, track,
14 display, populate with, and/or update a plurality of individual tasks.

15 21. "Things" means any physical specimen or tangible item in Defendant's
16 possession, custody, or control.

17 22. "Document" or "Documents" means the complete original (or complete copy
18 where the original is unavailable) and each non-identical copy (where different from the
19 original because of notes made on the copy or otherwise) of any writing or record, including
20 to all written, typewritten, handwritten, printed, electronic materials (including e-mail), or
21 graphic matter of any kind or nature, however produced or reproduced, any form of collected
22 data for use with electronic data processing equipment, and any mechanical or electronic visual
23 or sound recordings, including, without limitation, e-mails, writings, drawings, graphs, charts,
24 photographs, sound recordings, images, computerized databases, and other data or data
25 compilations stored in any medium from which information can be obtained, now or formerly
26 in your possession, custody or control, including all Documents as defined in the broadest
27 sense permitted by the Federal Rules of Civil Procedure or the Federal Rules of Evidence. For
28 the sake of clarity, "Document" or "documents" include, presentations, slides, spreadsheets,

1 letters, memoranda, writings, circulars, bulletins, manuals, speeches, analog or digital records,
2 drawings, blueprints, books, accounts, journals, reports, agreements, cables, indices, diagrams,
3 projections, advertising or marketing literature, pamphlets, forecasts, photographs, graphs,
4 notes, notebooks, charts, minutes, notes or recordings of meetings, agendas, documents related
5 to meetings, meeting invitees, records, minutes, reports or summaries of interviews,
6 conversations, telephone calls, conferences, investigations or negotiations, opinions or reports
7 of consultants, appraisals, press releases, newspaper articles, mailing lists, contracts, drafts,
8 calendars, day-timers, datebooks, messages, letters of credit, financial statements, invoices,
9 statements of account, receipts, promissory notes, security agreements, deeds of trust, security
10 instruments, loan agreements, credit and debit memoranda, cancelled checks and drafts, check
11 stubs, securities ledgers, computer printouts, electronic messages, e-mails, correspondence,
12 communications of any nature, summaries of records of conversations or conferences, reports,
13 data sheets, specifications, sketches, reports, summaries of investigations or prior art searches
14 and any results, discussions, or analysis thereof, opinions or reports of consultants or
15 consulting engineers, and any tangible Things.

16 23. "Communication" means any transmission of data, signals, or other information
17 between or among one or more persons and/or one or more devices including telephone
18 conversations, letters, telegrams, teletypes, telexes, telecopies, data packets, instructions, e-
19 mail, text messages, computer handshakes, prompts, and pings, , written memoranda, and face-
20 to-face conversations.

21 24. "Concerning" means relating to, referring to, describing, evidencing, or
22 constituting.

23 25. "Including," "including," and "include" shall mean including but not limited to.

24 26. "Produce" means to provide legible, complete, and exact copies of responsive
25 Documents to the undersigned counsel, or to make such Documents available to the
26 undersigned counsel for inspection and reproduction.

27 27. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring
28 to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing,

1 constituting, dealing with, involving, embodying, comprising, or making reference to in any
2 way.

3 28. The terms “all,” “each,” and “any” shall be construed as all and any.

4 29. The use of the singular form of any word shall include the plural form and vice
5 versa.

6 30. The words “and” and “or” shall be construed conjunctively or disjunctively as
7 necessary to make the request inclusive rather than exclusive.

8 31. The use of a verb in any tense shall be construed as the use of the verb in all
9 other tenses.

10 32. Words in the masculine, feminine, or neuter form shall include each of the other
11 genders.

12 33. The use of any definition for the purposes of this discovery shall not be deemed
13 to constitute an agreement or acknowledgement on the part of Plaintiff that such definition is
14 accurate, meaningful, or appropriate for any other purpose in this litigation.

15 34. Capitalized terms not defined herein shall be given the meaning attributed to
16 them in the Complaint.

17 INSTRUCTIONS

18 1. This discovery seeks disclosure to the full extent allowed by the Federal Rules
19 of Civil Procedure and shall be interpreted as inclusive rather than exclusive. They are of a
20 continuing nature, and to the extent required by the applicable rules, you are required to
21 provide supplemental answers if, prior to the termination of this case, you obtain additional or
22 different information covered by any one of these requests.

23 2. The use of the singular form of any word shall include the plural and vice versa.

24 3. If any of the Documents requested herein are no longer in Defendant’s
25 possession, custody, or control, Defendant is requested to Identify each such requested
26 Document, by date, type of Document, person(s) from whom sent, person(s) to whom sent,
27 and to provide a summary of its pertinent contents.

1 4. If any Document responsive to these requests has been destroyed, describe the
2 content of such Document, the location of any copies of such Document, the date of such
3 destruction, the person who ordered or authorized such destruction, and the reason for such
4 destruction.

5 5. If, because of a claim of privilege, you do not respond to any Document request
6 or subpart thereof, or you withhold or redact any Document or Thing or portion thereof, set
7 forth the privilege claimed, the facts upon which you rely to support the claim of privilege,
8 and furnish a list Identifying each Document and Thing for which the privilege is claimed,
9 together with the following additional information:

- 10 a. A brief description of the nature and subject matter of the Document or
11 Thing, including the title and type of Document (*i.e.*, whether it is a letter,
12 memorandum, drawing, etc.) or Thing;
13 b. The Document's date or the Thing's date of creation;
14 c. The Identity of the author(s) or creator(s);
15 d. The Identity of the person(s) to whom the Document is addressed or to
16 whom the Thing has been provided, including all persons who received
17 copies, photographs, or other representations of the Document or Thing;
18 e. The Identity of the person(s) to whom the Document or Thing was sent;
19 f. The Identity of the present custodian of the Document or Thing;
20 g. The current location of the Document or Thing;
21 h. For each withheld Document, its number of pages; and
22 i. The request or subpart to which the Document, withheld information, or
23 other Thing is otherwise responsive.

24 6. Identify any program necessary to view or open any electronic file produced. To
25 the extent that any software required to open a file is not generally available, provide a program
26 in your possession capable of opening said Document.

27 7. If Defendant objects to any part of any request for production, then Defendant
28 must answer all parts not objected to and state the precise nature of the objection to any

1 unanswered part. If, in answering any of these requests for production, Defendant asserts or
2 relies upon any privilege or other rule protecting against answering and/or disclosure of a
3 Document, Communication, or other information, then Defendant must specify the exact
4 nature of such privilege or rule. With respect to each Document or Communication as to which
5 Defendant asserts a privilege or other protection against disclosure, Defendant must Identify
6 such Document or Communication and the basis for the asserted privilege.

7 8. To the extent Defendant alleges that the meaning of any term in these requests
8 for production is unclear, then Defendant is to assume a reasonable meaning, state that
9 assumed reasonable meaning, and answer the request on the basis of that assumed meaning.

10 9. Analyses” means any internal company market research or third-party market
11 research utilized by You including but not limited to market analyses (i.e., industry growth
12 projections, adoption/substitution patterns from other networking options, market
13 segmentation analyses), competitive analysis, comparative analyses among networking
14 products/providers, comparative analyses between networking options (i.e., intent-based
15 networking vs. software-defined networking), historical and projected market share analyses,
16 customer type assessments (e.g., anticipated demand drivers by customer type, profitability by
17 customer type), commercialization plan, customer segmentation analyses, consumer surveys,
18 competitive analyses, business plans, investor updates, board of directors presentations,
19 strategic planning documents, diagnostic reviews, revenue models, sales forecasts,
20 profitability forecasts, SWOT (i.e., strengths, weaknesses, opportunities, threats) analyses, and
21 other similar business documents.

22 10. “Product Descriptions and Marketing Materials” means to include, but is not
23 limited to, product lists, product categories, product guides, product brochures, training
24 modules, marketing presentations, conference presentations and/or hand-outs, and any other
25 marketing related data.

26 11. “Licenses and Other Agreements” includes, but is not limited to, licenses,
27 inbound patent license agreements, license solicitation and/or negotiation, licensing
28

1 presentations, offers/counter offers, internal analyses conducted in relation to potential
2 licensing, business licensing policies, procedures, and practice.

3 12. "Things" means any physical specimen or tangible item in Defendant's
4 possession, custody, or control.

5 13. "Document" or "Documents" means the complete original (or complete copy
6 where the original is unavailable) and each non-identical copy (where different from the
7 original because of notes made on the copy or otherwise) of any writing or record, including
8 but not limited to all written, typewritten, handwritten, printed, electronic materials (including
9 e-mail), or graphic matter of any kind or nature, however produced or reproduced, any form
10 of collected data for use with electronic data processing equipment, and any mechanical or
11 electronic visual or sound recordings, including, without limitation, e-mails, writings,
12 drawings, graphs, charts, photographs, sound recordings, images, computerized databases, and
13 other data or data compilations stored in any medium from which information can be obtained,
14 now or formerly in your possession, custody or control, including all Documents as defined in
15 the broadest sense permitted by the Federal Rules of Civil Procedure or the Federal Rules of
16 Evidence. For the sake of clarity, "Document" or "documents" includes as an example patents,
17 patent applications, presentations, slides, spreadsheets, letters, memoranda, writings, circulars,
18 bulletins, manuals, speeches, analog or digital records, drawings, blueprints, books, accounts,
19 journals, reports, agreements, cables, indices, diagrams, projections, advertising or marketing
20 literature, pamphlets, forecasts, photographs, graphs, notes, notebooks, charts, minutes, notes
21 or recordings of meetings, agendas, documents related to meetings, meeting invitees, records,
22 minutes, reports or summaries of interviews, conversations, telephone calls, conferences,
23 investigations or negotiations, opinions or reports of consultants, appraisals, press releases,
24 newspaper articles, mailing lists, contracts, drafts, calendars, day-timers, datebooks, messages,
25 letters of credit, financial statements, invoices, statements of account, receipts, promissory
26 notes, security agreements, deeds of trust, security instruments, loan agreements, credit and
27 debit memoranda, cancelled checks and drafts, check stubs, securities ledgers, computer
28 printouts, electronic messages, e-mails, correspondence, communications of any nature,

1 summaries of records of conversations or conferences, reports, data sheets, specifications,
2 sketches, reports, summaries of investigations or prior art searches and any results,
3 discussions, or analysis thereof, opinions or reports of consultants or consulting engineers, and
4 any tangible Things.

5 14. "Communication" means any transmission of information by one or more
6 persons and/or between two or more persons by means including, without limitation, telephone
7 conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, text messages, other
8 computer linkups, written memoranda, and face-to-face conversations.

9 15. "Concerning" means relating to, referring to, describing, evidencing, or
10 constituting.

11 16. "Including" means including but not limited to.

12 17. "Produce" means to provide legible, complete, and exact copies of responsive
13 Documents to the undersigned counsel, or to make such Documents available to the
14 undersigned counsel for inspection and reproduction.

15 18. "Relate to," "relates to," "refers to," or "relating to" means relating to, referring
16 to, mentioning, discussing, reflecting, containing, stating, describing, embodying, evidencing,
17 constituting, dealing with, or making reference to in any way.

18 19. The terms "all," "each," and "any" shall be construed as all and any.

19 20. The use of the singular form of any word shall include the plural form and vice
20 versa.

21 21. The words "and" and "or" shall be construed conjunctively or disjunctively as
22 necessary to make the request inclusive rather than exclusive.

23 22. The use of a verb in any tense shall be construed as the use of the verb in all
24 other tenses.

25 23. Words in the masculine, feminine, or neuter form shall include each of the other
26 genders.

24. The use of any definition for the purposes of these requests shall not be deemed to constitute an agreement or acknowledgement on the part of Plaintiff that such definition is accurate, meaningful, or appropriate for any other purpose in this litigation.

25. Capitalized terms not defined herein shall be given the meaning attributed to them in the Complaint.

26. Unless otherwise stated herein, these requests for production seek Documents during the period from January 1, 2013, to the present.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Product Development documents relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 2:

All Sales and Pricing documents relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 3:

All Cost and Profitability documents relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 4:

All Market Research and Competitive Analyses documents relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 5:

All Product Description and Marketing Material documents relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 6:

All License and other Agreements documentation relating to the Accused Products.

REQUEST FOR PRODUCTION NO. 7:

All documents related to any motion to dismiss or affirmative defense raised by You or which You may raise before or at the time of trial including patent invalidity or unenforceability, eligible subject matter under 35 U.S.C. § 101, prior art under 35 U.S.C. 102 and/or 103, and non-infringement.

1 **REQUEST FOR PRODUCTION NO. 8:**

2 All Product Development documents relating to the products and services identified in
3 response to Swarm's Interrogatory No. 1.

4 **REQUEST FOR PRODUCTION NO. 9:**

5 All Sales and Pricing documents relating to the products and services you have
6 identified in answer to Swarm's Interrogatory No. 1.

7 **REQUEST FOR PRODUCTION NO. 10:**

8 All Cost and Profitability documents relating to the products and services you have
9 identified in answer to Swarm's Interrogatory No. 1.

10 **REQUEST FOR PRODUCTION NO. 11:**

11 All Market Research and Competitive Analyses documents relating to the products and
12 services you have identified in answer to Swarm's Interrogatory No. 1.

13 **REQUEST FOR PRODUCTION NO. 12:**

14 All Product Description and Marketing Material documents relating to the products and
15 services you have identified in answer to Swarm's Interrogatory No. 1.

16 **REQUEST FOR PRODUCTION NO. 13:**

17 All License and other Agreements documentation relating to the products and services
18 you have identified in answer to Swarm's Interrogatory No. 1.

19 **REQUEST FOR PRODUCTION NO. 14:**

20 All Product Development documents relating to the products and services identified in
21 response to Swarm's Interrogatory No. 2.

22 **REQUEST FOR PRODUCTION NO. 15:**

23 All Sales and Pricing documents relating to the products and services you have
24 identified in answer to Swarm's Interrogatory No. 2.

25 **REQUEST FOR PRODUCTION NO. 16:**

26 All Cost and Profitability documents relating to the products and services you have
27 identified in answer to Swarm's Interrogatory No. 2.
28

1 **REQUEST FOR PRODUCTION NO. 17:**

2 All Market Research and Competitive Analyses documents relating to the products and
3 services you have identified in answer to Swarm's Interrogatory No. 2.

4 **REQUEST FOR PRODUCTION NO. 18:**

5 All Product Description and Marketing Material documents relating to the products and
6 services you have identified in answer to Swarm's Interrogatory No. 2.

7 **REQUEST FOR PRODUCTION NO. 19:**

8 All License and other Agreements documentation relating to the products and services
9 you have identified in answer to Swarm's Interrogatory No. 2.

10 **REQUEST FOR PRODUCTION NO. 20:**

11 All Product Development documents relating to the products and services identified in
12 response to Swarm's Interrogatory No. 3.

13 **REQUEST FOR PRODUCTION NO. 21:**

14 All Sales and Pricing documents relating to the products and services you have
15 identified in answer to Swarm's Interrogatory No. 3.

16 **REQUEST FOR PRODUCTION NO. 22:**

17 All Cost and Profitability documents relating to the products and services you have
18 identified in answer to Swarm's Interrogatory No. 3.

19 **REQUEST FOR PRODUCTION NO. 23:**

20 All Market Research and Competitive Analyses documents relating to the products and
21 services you have identified in answer to Swarm's Interrogatory No. 3.

22 **REQUEST FOR PRODUCTION NO. 24:**

23 All Product Description and Marketing Material documents relating to the products and
24 services you have identified in answer to Swarm's Interrogatory No. 3.

25 **REQUEST FOR PRODUCTION NO. 25:**

26 All License and other Agreements documentation relating to the products and services
27 you have identified in answer to Swarm's Interrogatory No. 3.
28

1 DATED this 25th day of May, 2021.

2 **BEUS GILBERT McGRODER PLLC**

3 
4 By /s/ Timothy J. Casey

5 Leo R. Beus

6 Michael K. Kelly

7 Timothy J. Casey

8 Christine N. Jones

9 701 North 44th Street

10 Phoenix, AZ 85008-6504

11 (480) 429-3015

12 Attorneys for Plaintiff Swarm Technology,
13 LLC

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on May 25, 2021, I transmitted the foregoing document to the
16 following individuals via electronic mail and US mail:

17 Andrew M. Federhar
18 Jessica A. Gale
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21 Phoenix, Arizona 85016
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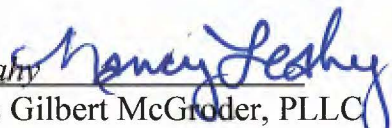
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/s/Nancy Leahy 
Nancy Leahy, Beus Gilbert McGroder, PLLC
Attorneys for Plaintiff Swarm Technology, LLC