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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

15 TWITTER, INC., a Delaware corporation,

16 Plaintiff,

17 v.

18 VOIP-PAL.COM, INC., a Nevada
19 corporation,

20 Defendant.

No. 5:21-cv-9773

**COMPLAINT FOR
DECLARATORY JUDGMENT**

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I. INTRODUCTION

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2 1. This Complaint for declaratory judgment of noninfringement arises from a real and
3 immediate controversy between plaintiff Twitter, Inc. (“Twitter”), and defendant VoIP-Pal.com
4 Inc. (“VoIP-Pal”), as to whether Twitter infringes any claims of U.S. Patents 8,630,234 and
5 10,880,721,¹ both entitled, “Mobile Gateway.”

6 2. Since 2016, Twitter and VoIP-Pal have been embroiled in a series of lawsuits
7 involving VoIP-Pal’s patents in the field of routing communications in a packet-switched network
8 such as an Internet Protocol network. Those lawsuits have been part of a large litigation
9 campaign in which VoIP-Pal has asserted patents against Twitter and other major technology
10 companies such as Apple, AT&T, Verizon, Amazon, Facebook, WhatsApp, Google, T-Mobile,
11 Samsung Electronics, and Huawei.

12 3. VoIP-Pal’s litigation campaign began in 2016, when it filed lawsuits against
13 Twitter, Apple, AT&T, and Verizon alleging infringement of two patents that are part of a patent
14 family that VoIP-Pal refers to as the “Routing, Billing, Rating” or “RBR” patents (the “2016
15 Cases”; e.g., Exhibit 3). All patents in the RBR family share a common specification. In 2018,
16 VoIP-Pal filed additional lawsuits against Apple and Amazon to assert four other RBR patents
17 (the “2018 Cases”). The 2016 and 2018 Cases were originally filed in the District of Nevada but
18 were transferred to this Court in 2018.

19 4. This Court found all six RBR patents asserted in the 2016 and 2018 Cases to be
20 invalid under 35 U.S.C. § 101 for claiming ineligible subject matter. *E.g., VoIP-Pal.com, Inc. v.*
21 *Twitter, Inc.*, Case No. 18-cv-04523-LHK, ECF No. 82 (Exhibit 4). On March 16, 2020, the
22 Court of Appeals for the Federal Circuit affirmed those judgments of invalidity.

23 5. Dissatisfied with the outcome of the 2016 and 2018 Cases in this Court, VoIP-Pal
24 went forum shopping. In April 2020, VoIP-Pal filed lawsuits in the Western District of Texas
25 against Facebook, WhatsApp, Google, Amazon, Apple, AT&T, and Verizon to assert a seventh
26 patent in the RBR family, U.S. Patent 10,218,606 (the “606 patent”) (the “2020 Texas Cases”).

27 ¹ U.S. Patent 8,630,234 and 10,880,721 are referred to herein as the “Mobile Gateway” patents.
28 U.S. Patent 8,630,234 is referred to as the “234 patent” (Exhibit 1), and U.S. Patent 10,880,721
is referred to as the “721 patent” (Exhibit 2).

1 The claims of the '606 patent asserted in those new lawsuits are very similar to the claims of the
2 six RBR patents that VoIP-Pal previously asserted in the 2016 and 2018 Cases and were found to
3 be invalid by this Court.

4 6. On April 8, 2020, VoIP-Pal issued a press release stating that VoIP-Pal is
5 considering taking further action and is not finished taking action in the wake of the recent
6 Federal Circuit decision affirming this Court's judgment in the 2016 Cases that two of VoIP-Pal's
7 previously-asserted patents are invalid under 35 U.S.C. § 101 (Exhibit 5).

8 7. On April 8, 2020, after seeing VoIP-Pal's lawsuits in Texas against Facebook,
9 WhatsApp, Google, Amazon, and Apple and VoIP-Pal's press release, Twitter filed an action for
10 declaratory judgment of noninfringement of the '606 patent against VoIP-Pal in this Court (Case
11 No. 20-cv-02397; see Exhibit 7). Soon thereafter, Apple, AT&T, and Verizon filed similar
12 declaratory judgment actions in this Court against VoIP-Pal based on the '606 patent (collectively
13 with Twitter the "2020 DJ Actions"). On April 14, 2020, Apple filed a first amended complaint
14 that added claims for declaratory judgment of noninfringement and invalidity of an eighth patent
15 in the RBR family, U.S. Patent 9,935,872 (the "'872 patent").

16 8. In July 2020, VoIP-Pal filed motions to dismiss the 2020 DJ Actions for lack of
17 subject matter jurisdiction, lack of personal jurisdiction, and improper venue. In December 2020,
18 the Court denied VoIP-Pal's motions to dismiss. *E.g., Twitter, Inc. v. VoIP-Pal.com, Inc.*, Case
19 No. 20-cv-02397, ECF No. 50 (Exhibit 8); *Apple Inc. v. VoIP-Pal.com, Inc.*, Case No. 20-cv-
20 02460, ECF No. 60.

21 9. Between December 2020 and April 2021, VoIP-Pal and Twitter communicated
22 many times about potential settlement with respect to the '606 patent and VoIP-Pal's other
23 patents. Since December 2020, Twitter's position has been that Twitter is unwilling to enter into
24 a piecemeal settlement with VoIP-Pal that addresses only one or some of VoIP-Pal's patents, and
25 that any settlement must be global in the sense of encompassing VoIP-Pal's entire patent
26 portfolio. Twitter has communicated that position to VoIP-Pal multiple times, and VoIP-Pal has
27 refused to offer Twitter a license or covenant not to sue for VoIP-Pal's entire patent portfolio.
28

1 10. For example, on January 11, 2021, VoIP-Pal proposed that VoIP-Pal and Twitter
2 enter into a settlement for the '606 patent and all other RBR patents. Twitter observed that such a
3 settlement would not cover VoIP-Pal's entire patent portfolio and expressly noted that VoIP-Pal
4 had recently touted receiving a U.S. patent and a European patent in the Mobile Gateway family.
5 Twitter later rejected VoIP-Pal's proposed settlement for all RBR patents in part because it would
6 not have covered all of VoIP-Pal's patents, including the Mobile Gateway patents.

7 11. On March 24, 2021, VoIP-Pal filed another motion to dismiss the 2020 DJ
8 Actions—this time based on a limited covenant not to sue for the '606 patent. *E.g.*, Case No. 20-
9 cv-02397, ECF No. 62. That limited covenant not to sue was insufficient to eliminate subject
10 matter jurisdiction for Twitter's declaratory judgment claims for the reasons explained in
11 Twitter's opposition to that motion. *Id.*, ECF No. 66.

12 12. In response to Twitter's opposition, on April 9, 2021, VoIP-Pal offered a broader
13 covenant not to sue for the '606 patent and asked Twitter to stipulate to dismissal of Twitter's
14 declaratory judgment action. Twitter responded in part that, at a minimum, any covenant not to
15 sue to resolve Twitter's declaratory judgment action against the '606 patent should also include
16 the '872 patent. Twitter also stated that it expects VoIP-Pal to sue Twitter in the future and that
17 only a covenant not to sue that covers VoIP-Pal's entire patent portfolio would resolve the
18 broader dispute between Twitter and VoIP-Pal concerning VoIP-Pal's patent portfolio. VoIP-Pal
19 declined to extend the covenant to include VoIP-Pal's patents other than the '606 patent.

20 13. On April 14, 2021, VoIP-Pal filed a reply brief in support of its motion to dismiss,
21 which granted Twitter the broader covenant not to sue for the '606 patent that VoIP-Pal had
22 offered on April 9. *Id.*, ECF No. 68. VoIP-Pal also granted similar broader covenants not to sue
23 to Apple, AT&T, and Verizon. On August 30, 2021, this Court granted VoIP-Pal's motion to
24 dismiss Twitter's 2020 DJ Action in view of VoIP-Pal's broader covenant not to sue for the '606
25 patent (but denied VoIP-Pal's motion to dismiss the other 2020 DJ Actions). However, the Court
26 retained jurisdiction over Twitter's 2020 DJ Action to consider Twitter's motion for attorney fees,
27 which is fully briefed and under submission to the Court.

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1 14. On April 15, 2021, Twitter and VoIP-Pal participated in a court-supervised
2 settlement conference in Twitter’s 2020 DJ Action, which did not result in settlement.

3 15. Following that unsuccessful settlement conference, on April 16, 2021, Twitter
4 filed an action for declaratory judgment of noninfringement of the ’872 patent. *Twitter, Inc. v.*
5 *VoIP-Pal.com, Inc.*, Case No. 5:21-cv-02769-LHK, ECF No. 1 (the “2021 DJ Action”;
6 Exhibit 10). In response, VoIP-Pal filed a motion to dismiss for lack of subject matter
7 jurisdiction, lack of personal jurisdiction, and for improper venue. *Id.* at ECF No. 25. On
8 November 2, 2021, the Court denied VoIP-Pal’s motion to dismiss Twitter’s 2021 DJ Action. *Id.*
9 at ECF No. 38 (Exhibit 11).

10 16. On June 25, 2021, VoIP-Pal filed lawsuits in the Western District of Texas against
11 Apple, AT&T, Verizon, Amazon, Facebook, WhatsApp, Google, and T-Mobile alleging
12 infringement of the two Mobile Gateway patents (the “Texas Mobile Gateway Cases”). The
13 complaints in those lawsuits identify claim 20 of the ’234 patent and claim 38 of the ’721 patent
14 as exemplary asserted claims, but VoIP-Pal asserts many other claims.

15 17. The Mobile Gateway patents are not members of the RBR family, but they are
16 very similar to the eight RBR patents that were or are at issue in the 2016 and 2018 Cases, the
17 2020 Texas Cases, and the 2020 DJ Actions. The Mobile Gateway patents concern the same
18 technology as the previously-asserted RBR patents—namely, routing of communications in a
19 packet-switched network. The claims of the Mobile Gateway patents are very similar to the
20 claims of the RBR patents previously asserted by VoIP-Pal (Exhibit 12).

21 18. VoIP-Pal’s infringement allegations in the Texas Mobile Gateway Cases are very
22 similar to VoIP-Pal’s infringement allegations in the 2016 and 2018 Cases and/or 2020 Texas
23 Cases against Twitter, Apple, AT&T, Verizon, and/or Amazon. For example, VoIP-Pal’s
24 infringement allegations for the Mobile Gateway patents are directed to some of the same accused
25 instrumentalities that VoIP-Pal accused of infringement in VoIP-Pal’s prior lawsuits, such as
26 messaging involving text, images, and videos.

27 19. VoIP-Pal has sued every defendant from the 2016 and 2018 Cases for
28 infringement of the Mobile Gateway patents other than Twitter. On information and belief, the

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