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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

TWITTER, INC., Plaintiff, v. VOIP-PAL.COM, INC., Defendant.	Case No. 5:21-cv-2769-LHK **OPPOSITION TO SUA SPONTE JUDICIAL REFERRAL TO CONSIDER WHETHER CASES SHOULD BE RELATED** **(Civil L.R. 3-12 and 7-11)**
TWITTER, INC., Plaintiff, v. VOIP-PAL.COM, INC., Defendant.	Case No. 5:21-cv-9773-EJD

I. INTRODUCTION

This action, Case No. 5:21-cv-9773-EJD ("*Twitter III*"), should not be related to Twitter' previous declaratory-judgment action against VoIP-Pal, Case No. 5:21-cv-2769-LHK ("*Twitter II*"), because the cases do not satisfy this Court's rules for relatedness. *See* Civil L.R. 3-12(a). Although the cases concern the same parties, that is where the similarity ends. *Twitter III* concerns *different* patents with substantially *different* inventors from *different* patent families than the previous cases. The patent at issue in *Twitter II* generally relates to classifying and routing of communications and are part of the Routing, Billing, Rating ("RBR") patent family. The patents at issue in *Twitter III*, U.S. Patent Nos. 8,630,234 ("the '234 patent") and 10,880,721 ("the '721 patent") (collectively "the Mobile Gateway patents") generally relate to methods for channeling communications into distributed voice over internet protocol (VoIP) gateways and are part of the Mobile Gateway patent family. Twitter even admits that the Mobile Gateway patents are "not members of the RBR family." *See* Case No. 5:21-cv-9773-EJD, Dkt. No. 1 at ¶17. The Court has never previously considered VoIP-Pal's Mobile Gateway patents. Thus, *Twitter III* concerns *different* property, *different* transactions and events, and *different* issues of fact and law than the previous Twitter cases. In fact, Court has made no rulings on the merits in *Twitter II*. Thus, it is highly unlikely that there will be an unduly burdensome duplication of labor and expense or conflicting results if *Twitter III* is assigned to a different judge than the previous Twitter cases. Thus, the referral should be denied.

The referral also should be denied because the Court has already considered whether cases involving the Mobile Gateway patents are a related to cases involving the RBR patents and determined that they are not related. On July 8, 2021, AT&T filed an administrative motion in the to consider whether Case No. 3:21-cv-5078-JD, which involved the Mobile Gateway patents, should be related to Case No. 5:20-cv-2995-LHK, which involved a RBR patent. Similarly, on July 12, 2021, Apple filed an administrative motion in the to consider whether Case No. 3:21-cv-5110-EMC, which involved the Mobile Gateway patents, should be related to Case No. 5:20-cv-2460-LHK, which involved a RBR patent. On August 25, 2021, Judge Koh denied AT&T's and Apple's motions to relate. *See* Exs. 1-2.

Similar to this case, on July 27, 2021, Judge Freeman issued a *sua sponte* judicial referral to the Court to determine whether Case No. 5:21-cv-5275-BLF, which involved the Mobile Gateway patents,

should be related to Case No. 5:20-cv-3092-LHK, which involved a RBR patent. On August 26, 2021, the Court issued an order denying that Case No. 5:21-cv-5275-BLF and Case No. 5:20-cv-3092-LHK are related. *See* Ex. 3. Subsequently, Judge Donato related the Apple and Verizon Mobile Gateway patent cases to the AT&T Mobile Gateway patent cases. *See* Ex. 4. The Verizon Mobile Gateway patent case, Case No. 3:21-cv-5275-JD, remains pending. Thus, the Court also should not relate *Twitter III* to *Twitter II* for the same reasons it did not relate the AT&T, Apple, and Verizon Mobile Gateway patent cases to the previous RBR cases. If anything, *Twitter III* should be referred to Judge Donato to consider whether it should be related to the pending Verizon Mobile Gateway patent case.

II. ARGUMENT

A. Civil L.R. 3-12(a)(1) is not satisfied.

Twitter III and *Twitter II* do not satisfy Civil L.R. 3-12(a)(1) because they do not concern the same property or the same transaction or event. *Twitter II* involves VoIP-Pal's RBR patents whereas *Twitter III* involves VoIP-Pal's '234 and '721 patents. The RBR patents are part of a different patent family than the '234 and '721 patents—the Mobile Gateway family. Though the RBR patents and the Mobile Gateway patents have one common inventor—Johan Emil Viktor Bjorsell—the two patent families have *seven* inventors not in common. *Compare* Ex. 8 *with* Exs. 5-6. Consequently, the Mobile Gateway patents have a *different* specification, substantially *different* inventors, and materially *different* claims than the RBR patent at issue in *Twitter II*. Notably, Twitter makes no serious attempt to allege that the RBR patents are similar to the Mobile Gateway patents. Rather, Twitter merely alleges that these patents are similar to the Mobile Gateway patents. *See* Case No. 5:21-cv-9773, Dkt. No. 1 at ¶¶17, 69. But this unsupported claim is not enough to establish relatedness. *See NXP Semiconductors USA, Inc. v. LSI Corp.*, No. C-08-00775-JW, Dkt. No. 195 at p. 3 (N.D. Cal. Jan. 13, 2009) ("Although Plaintiff represents that the patents in both cases generally involve the same type of technology, the two cases involve entirely different sets of patents."). Indeed, a careful review of the patents and their claims reveals numerous fundamental differences between the RBR patents and the Mobile Gateway patents.

Specifically, the Mobile Gateway patents generally relate to channeling communications from mobile communication devices such as smartphones via a system of distributed VoIP gateways based on the device's location, to facilitate roaming in various geographical areas. *See* Exs. 5-6. A calling device

receives an access code from an access server, whereby it is enabled to access communication infrastructure that has been optimally selected based on the calling device's location. *See*, *e.g.*, Ex. 6 at 9:21-46, 12:63-15:16, 16:18-19:28, 19:37-23:10, 30:55-31:61.

Twitter falsely alleges that the claims of the Mobile Gateway patents are similar to the claims of the RBR patents previously asserted by VoIP-Pal. *See* Case No. 5:21-cv-9773-EJD, Dkt. No. 1 at ¶17. Indeed, Twitter tries to obscure the salient fact that the claims of the Mobile Gateway patents are completely different from the RBR patent claims at issue in the previous Twitter cases. As Exhibit 7 starkly illustrates, in fourteen detailed claim-to-claim comparisons, the differences are massive and pervasive. *See* Ex. 7. None of the RBR patent claims require, *e.g.*, transmitting an "access code request messages" to an "access server", seeking "access codes" associated with a "location identifier" for a mobile device, receiving an "access code reply message" from the "access server" with the "access code," and a mobile device using the "access code" to initiate a call. Conversely, the Mobile Gateway claims do not require, *e.g.*, using "attributes" of a "dialing profile" to "determine a match" with a callee identifier, "determin[ing] whether [a] second network element is the same as [a] first network element," "classifying the call" as a "public network call" or "private network call," or "producing a routing message" for a "call controller," *inter alia*.

Twitter's allegation that *Twitter III* concerns the same Twitter technology that VoIP-Pal has previously accused is both meaningless and inaccurate. *See* Case No. 5:21-cv-9773-EJD, Dkt. No. 1 at ¶18. VoIP-Pal did not assert any claim for infringement in *Twitter II*. *See* Case No. 5:21-cv-2769, Dkt. No. 42. And due to Twitter's successful motion to dismiss under 35 U.S.C. § 101, VoIP-Pal's previous infringement case against Twitter in this Court never made it past the pleadings stage. *See* Case No. 5:18-cv-4523-LHK, Dkt. Nos. 82, 84. Thus, the Court never considered Twitter's accused products and services or their infringement in that case either. Regardless, because *Twitter III* concerns completely different patent claims, the relevant features of Twitter's products and services are completely different as well. Also, the Court's ineligibility rulings against the claims of six RBR patents have no bearing on whether the claims of the Mobile Gateway patents are ineligible. *See Ortho Pharm. Corp. v. Smith*, 959 F.2d 936, 942 (Fed. Cir. 1992) ("grounds of invalidity must be analyzed on a claim-by-claim basis"). Thus, the cases do not concern the same transaction or event.

B. Civil L.R. 3-12(a)(2) is not satisfied.

Twitter III and *Twitter II* also do not satisfy Civil L.R. 3-12(a)(2) because having a different judge handle *Twitter III* will not be unduly burdensome and duplicative or potentially lead to conflicting results. The Court has made no merits rulings in *Twitter II*. In such a circumstance, courts in this District have held that "there would be no judicial efficiency gained by relating the cases." *See Karamelion LLC v. Nortek Security & Control, LLC*, Case No. 4:19-cv-06016-YGR, Dkt. No. 21 at p. 2 (N.D. Cal. Jan 14, 2020).

Additionally, the Court presided over VoIP-Pal's previous infringement case against Twitter for less than eight months, considered one Rule 12 motion, and dismissed the case at the pleadings stage almost three years ago. *See* Case No. 5:18-cv-4523-LHK, Dkt. Nos. 82, 84. Among other things, the Court did not issue a claim construction order, consider motions for summary judgment, or conduct a trial. Thus, any familiarity the Court already has with the RBR patents is limited and of negligible benefit in *Twitter III*, *even if* the claims of the respective patent families were at all similar, which they are not. *See Uniloc USA, Inc. v. Logitech, Inc.*, Case No. 18-CV-01304-LHK, 2018 U.S. Dist. LEXIS 208122, at *4 (N.D. Cal. Dec. 5, 2018) (stating in cases with different patents "any benefit of relation will be negligible, and relation is not necessary to avoid unduly burdensome duplication of labor and expense."); Ex. 7.

Further, the only result to come out of VoIP-Pal's previous case against Twitter was dismissal of the asserted claims as ineligible under § 101. As noted above, that result has no impact on the eligibility of the Mobile Gateway patent claims. Thus, there is no risk of inconsistent results. *See Uniloc*, 2018 U.S. Dist. LEXIS 208122, at *4 ("[B]ecause the instant case and the [newly-filed] cases do not involve the same patents, there is a low risk of inconsistent results."); *Twilio, Inc. v. Telesign Corporation*, No. 16-CV-06925-LHK, Dkt. No. 198 at p. 3 (N.D. Cal. June 27, 2018) ("Because the two cases do not involve the same patents or even the same patent families, there is a low risk of inconsistent results."); *NXP Semiconductors*, No. C-08-00775-JW, Dkt. No. 196 at p. 3.; *Hynix Semiconductor Inc. v. Rambus Inc.*, Nos. C-00-20905 RMW, C-05-334 RMW, C-05-2298 RMW, C-06-244 RMW, C08-3343 SI, 2008 U.S. Dist. LEXIS 68625 (N.D. Cal. Aug. 24, 2008).

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