

1 Lewis E. Hudnell, III (CASBN 218736)

[lewis@hudnelllaw.com](mailto:lewis@hudnelllaw.com)

2 Nicolas S. Gikkas (CASBN 189452)

[nick@hudnelllaw.com](mailto:nick@hudnelllaw.com)

3 HUDNELL LAW GROUP P.C.

4 800 W. El Camino Real Suite 180

Mountain View, California 94040

5 Telephone: 650.564.3698

Facsimile: 347.772.3034

6

7 Attorneys for Defendant

VOIP-PAL.COM, INC.

8

9

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

10

11 TWITTER, INC.,

12

Plaintiff,

13

v.

14

VOIP-PAL.COM, INC.,

15

Defendant.

16

17

18

19

20

21

22

23

24

25

26

27

28

Case No. 3:21-CV-09773-JD

**DEFENDANT VOIP-PAL.COM, INC.'S  
NOTICE OF MOTION AND MOTION TO  
DISMISS; MEMORANDUM OF POINTS  
AND AUTHORITIES**

Honorable James Donato

Date: March 24, 2022

Time: 10:00 a.m.

Courtroom 11, 19th Floor

## TABLE OF CONTENTS

1	TABLE OF AUTHORITIES .....	iii
2	TABLE OF ABBREVIATIONS .....	v
3	NOTICE OF MOTION AND MOTION TO DISMISS .....	1
4	ISSUES TO BE DECIDED .....	1
5	MEMORANDUM OF POINTS AND AUTHORITIES .....	1
6	I. INTRODUCTION .....	1
7	II. STATEMENT OF FACTS.....	2
8	A. VoIP-Pal's 2016 NDCAL Cases .....	2
9	B. VoIP-Pal's 2018 NDCAL Cases .....	3
10	C. VoIP-Pal's 2020 WDTX Cases .....	3
11	D. The 2020 NDCAL Actions .....	4
12	E. <i>Twitter II</i> .....	5
13	F. VoIP-Pal's 2021 WDTX Cases .....	5
14	G. The 2021 NDCAL Actions and <i>Twitter III</i> .....	6
15	III. ARGUMENT .....	7
16	A. The Court Should Dismiss This Case For Lack Of Subject-Matter Jurisdiction. ....	7
17	1. Legal standard .....	7
18	2. The totality of the circumstances show that there is no actual controversy. ....	8
19	B. The Court Should Dismiss This Action For Lack Of Personal Jurisdiction.....	11
20	1. Legal standard .....	11
21	2. VoIP-Pal has never enforced the Mobile Gateway patents in this District. ....	12
22	3. Personal jurisdiction is not reasonable and fair.....	14
23	C. The Court Should Dismiss This Action For Improper Venue. ....	15
24	IV. CONCLUSION .....	15

1  
2                   **TABLE OF AUTHORITIES**  
3

**Cases**

3	<i>3M Co. v. Avery Dennison Corp.</i> , 673 F.3d 1372, 1377 (Fed. Cir. 2012) .....	11
4	<i>ActiveVideo Networks, Inc. v. Trans Video Electronics, Ltd.</i> , 975 F. Supp. 2d 1083 (N.D. Cal. Sept. 30, 2013) .....	8
5	<i>Activision Blizzard Inc. v. Acceleration Bay LLC</i> , No. 16-cv-03375-RS, 2016 U.S. Dist. LEXIS 119289 (N.D. Cal. Sep. 1, 2016) .....	7
6	<i>Applera Corp. v. Michigan Diagnostics, LLC</i> , 594 F. Supp. 2d 150, 158-60 (D. Mass. 2009) .....	10
7	<i>Association for Molecular Pathology v. Myriad Genetics, Inc.</i> , 133 S. Ct. 2107 (2013) .....	8
8	<i>Association for Molecular Pathology v. U.S. Patent &amp; Trademark Office</i> , 689 F.3d 1303 (Fed. Cir. 2012) .....	8
9	<i>Autogenomics, Inc. v. Oxford Gene Technology Ltd.</i> , 566 F.3d 1012 (Fed. Cir. 2009) .....	13
10	<i>Avocent Huntsville Corp. v. Aten Int'l Co.</i> , 552 F.3d 1324 (Fed. Cir. 2009) .....	12
11	<i>Bailey et al. v. Household Finance Corp. of Cal. et al.</i> , Case No. 10-cv-857 WQH (RBB), 2010 U.S. Dist. LEXIS 117866 (S.D. Cal. 2010) .....	14
12	<i>Barnes &amp; Noble, Inc. v. LSI Corp.</i> , 823 F. Supp. 2d 980 (N.D. Cal. 2011) .....	10
13	<i>Breckenridge Pharm., Inc. v. Metabolite Labs, Inc.</i> , 444 F.3d 1356 (Fed. Cir. 2006) .....	12, 13
14	<i>Cepheid v. Roche Molecular Sys., Inc.</i> , No. C-12-4411 EMC, 2013 U.S. Dist. LEXIS 7446 (N.D. Cal. Jan. 17, 2013) .....	8, 9, 10
15	<i>Chandler v. State Farm Mut. Auto. Ins. Co.</i> , 598 F.3d 1115 (9th Cir. 2010) .....	7
16	<i>Daimler AG v. Bauman</i> , 134 S. Ct. 746 (2014) .....	12
17	<i>Dex Products, Inc. v. Barbara Houghteling</i> , No. C 05-05126 SI, 2006 U.S. Dist. LEXIS 45237 (N.D. Cal. June 23, 2006) .....	15
18	<i>Dow Chemical Co. v. Calderon</i> , 422 F.3d 827 (9th Cir. 2005) .....	14
19	<i>In re Qualcomm Litig.</i> , Case No.: 17-cv-00108-GPC-MDD, 2017 U.S. Dist. LEXIS 185481 (S.D. Cal. Nov. 8, 2017) .....	10
20	<i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	11
21	<i>Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria</i> , 937 F.2d 44 (2nd Cir. 1991) .....	14
22	<i>Maxchief Invs. Ltd. v. Wok &amp; Pan, Ind., Inc.</i> , 909 F.3d 1134 (Fed. Cir. 2018) .....	12
23	<i>MedImmune, Inc. v. Genentech</i> , 549 U.S. 118 (2007) .....	7, 8
24	<i>Micron</i> , 518 F.3d 895 (Fed. Cir. 1998) .....	9
25	<i>Petzilla, Inc. v. Anser Innovation LLC</i> , 2015 U.S. App. LEXIS 13623 (Fed. Cir., July 28, 2015) ....	12
26	<i>Petzilla, Inc. v. Anser Innovation LLC</i> , No. C-14-1354 EMC, 2014 U.S. Dist. LEXIS 134115 (N.D. Cal. Sep. 23, 2014) .....	12
27	<i>Prasco, LLC v. Medicis Pharm. Corp.</i> , 537 F.3d 1329 (Fed. Cir. 2008) .....	10
28	<i>Radio Sys. Corp. v. Accession, Inc.</i> , 638 F.3d 785 (Fed. Cir. 2011) .....	12
29	<i>Ranza v. Nike, Inc.</i> , 793 F.3d 1059 (9th Cir. 2015) .....	11
30	<i>SanDisk Corp. v. ST Microelecs., Inc.</i> , 480 F.3d 1372 (Fed. Cir. 2007) .....	8
31	<i>Savage v. Glendale Union High Sch.</i> , 343 F.3d 1036 (9th Cir. 2003) .....	7
32	<i>Torrent Pharmaceuticals Limited v. Daiichi Sankyo, Inc.</i> , 196 F. Supp. 3d 871 (N.D. Ill. 2016) ....	14
33	<i>Twitter, Inc. v. Voip-Pal.com, Inc.</i> , No. 5:20-CV-02397-LHK, 2020 U.S. Dist. LEXIS 235757 (N.D. Cal. Dec. 14, 2020) .....	4
34	<i>Twitter, Inc. v. VoIP-Pal.com, Inc.</i> , No. 5:21-CV-02769-LHK, 2021 U.S. Dist. LEXIS 211777 (N.D. Cal. Nov. 2, 2021) .....	5

1	<i>VoIP-Pal.Com, Inc. v. Apple Inc.</i> , 375 F. Supp. 3d 1110 (N.D. Cal. 2019) .....	3
2	<i>VoIP-Pal.com, Inc. v. Apple Inc.</i> , 411 F. Supp. 3d 926 (N.D. Cal. 2019) .....	3
3	<i>VoIP-Pal.com, Inc. v. Apple, Inc.</i> , No. 20-1241, 2020 U.S. App. LEXIS 34684 (Fed. Cir. Nov. 3, 2020) .....	3
4	<i>VoIP-Pal.Com, Inc. v. Twitter, Inc.</i> , 798 F. App'x 644 (Fed. Cir. 2020) .....	3
5	<i>VoIP-Pal.com, Inc. v. Twitter, Inc.</i> , Case No. 2:16-cv-02338-RFB-CWH, 2018 U.S. Dist. LEXIS 122807 (D. Nev. July 23, 2018).....	2
6	<i>Wilton v. Seven Falls Co.</i> , 515 U.S. 277, 282 (1995) .....	7

## 7 **Statutes**

7	28 U.S.C. § 1391 .....	15
8	28 U.S.C. § 1391(b)(1).....	15
9	28 U.S.C. § 1391(c)(2).....	16
10	28 U.S.C. § 2201 .....	7
11	Cal. Code Civ. P. § 410.10.....	11

## 12 **Rules**

13	Civil L.R. 11-3(a)(3) .....	15
14	Fed. R. Civ. P. 12(b)(1).....	1, 7, 10
15	Fed. R. Civ. P. 12(b)(2).....	1, 11, 13
16	Fed. R. Civ. P. 12(b)(3).....	1, 15

1  
2  
3                   **TABLE OF ABBREVIATIONS**  
4  
5

6 <b>ABBREVIATION</b>	7 <b>TERM</b>
8                   VoIP-Pal	9                   Defendant VoIP-Pal.com, Inc.
10                  Twitter	11                  Plaintiff Twitter, Inc.
12                  Apple	13                  Apple, Inc.
14                  AT&T	15                  AT&T Corp., AT&T Services, Inc., and 16                  AT&T Mobility LLC
17                  Verizon	18                  Cellco Partnership d/b/a Verizon Wireless
19                  Facebook	20                  Facebook, Inc.
21                  WhatsApp	22                  WhatsApp, Inc.
23                  Google	24                  Google LLC
25                  Amazon	26                  Amazon.com, Inc., Amazon.com 27                  Services, LLC, and Amazon Web 28                  Services, Inc.
The '606 patent	U.S. Patent No. 10,218,606
The '872 patent	U.S. Patent No. 9,935,872
The '234 patent	U.S. Patent No. 8,630,234
The '721 patent	U.S. Patent No. 10,880,721
The Mobile Gateway patents	The '234 and '721 patents
RBR	Routing, Billing, Rating
WDTX	Western District of Texas
NDCAL	Northern District of California
DNV	District of Nevada
SDCAL	Southern District of California

# 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.