

EXHIBIT 18

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

14  
15 TWITTER, INC., a Delaware corporation,

16 Plaintiff,

17 v.

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

20 Defendant.

No. 21-cv-2769

**COMPLAINT FOR  
DECLARATORY JUDGMENT**

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## I. INTRODUCTION

1  
2 1. This Complaint for declaratory judgment of noninfringement (“Declaratory  
3 Judgment Complaint”) arises from a real, substantial, immediate, and justiciable controversy  
4 between plaintiff Twitter, Inc. (“Twitter”), and defendant VoIP-Pal.com Inc. (“VoIP-Pal”), as to  
5 whether Twitter infringes any claims of U.S. Patent 9,935,872 (“the ’872 patent”; Exhibit 1),  
6 which is entitled, “Producing Routing Messages For Voice Over IP Communications.” This  
7 action is related to prior litigations between VoIP-Pal and Twitter that began in 2016.

8 2. The ’872 patent is a continuation patent from a patent family that includes six  
9 other patents that VoIP-Pal asserted in prior lawsuits against Twitter, Apple, AT&T, Verizon, and  
10 Amazon that VoIP-Pal filed in 2016 and 2018 in the District of Nevada. Those actions were later  
11 transferred to this Court (“the 2016 and 2018 Cases”). The ’872 patent shares a common  
12 specification with the six previously-asserted patents. All six of the previously-asserted patents  
13 were found to be invalid under 35 U.S.C. § 101 for claiming ineligible subject matter, including  
14 U.S. Patent 9,179,005 (“the ’005 patent”; Exhibit 2) and U.S. Patent 8,542,815 (“the ’815  
15 patent”), which VoIP-Pal asserted in the 2016 Case against Twitter. *E.g., VoIP-Pal.com, Inc. v.*  
16 *Twitter, Inc.*, Case No. 18-cv-04523-LHK, ECF No. 82 (Mar. 25, 2019).

17 3. In April 2020, VoIP-Pal filed lawsuits in the Western District of Texas asserting  
18 U.S. Patent 10,218,606 (“the ’606 patent”; Exhibit 3) against Facebook, WhatsApp, Google,  
19 Amazon, Apple, AT&T, and Verizon (“the Texas lawsuits”). The ’606 patent is a continuation of  
20 the ’872 patent and is a member of the same family of patents asserted in the 2016 and 2018  
21 Cases, and shares a common specification with the six patents asserted in the 2016 and 2018  
22 Cases and the ’872 patent. The claims of the ’606 patent asserted in those new lawsuits are very  
23 similar to the claims of the patents that VoIP-Pal previously asserted in the 2016 and 2018 Cases  
24 and were found to be invalid by this Court.

25 4. On April 8, 2020, VoIP-Pal issued a press release stating that VoIP-Pal is  
26 considering taking further action and is not finished taking action in the wake of a recent decision  
27 by the Court of Appeals for the Federal Circuit in favor of Twitter, Apple, AT&T, and Verizon  
28

1 that affirmed this Court's judgment in the 2016 Cases that two of VoIP-Pal's previously-asserted  
2 patents are invalid under 35 U.S.C. § 101 (Exhibit 4).

3 5. On April 8, 2020, after seeing VoIP-Pal's lawsuits in Texas against Facebook,  
4 WhatsApp, Google, Amazon, and Apple and VoIP-Pal's press release, Twitter filed an action for  
5 declaratory judgment of noninfringement of the '606 patent against VoIP-Pal in this Court (Case  
6 No. 20-cv-02397). Soon thereafter, Apple, AT&T, and Verizon filed similar declaratory  
7 judgment actions against VoIP-Pal based on the '606 patent. On April 14, 2020, Apple filed a  
8 first amended complaint that added claims for declaratory judgment of noninfringement and  
9 invalidity for the '872 patent.

10 6. In June 2020, counsel for Twitter asked counsel for VoIP-Pal whether VoIP-Pal  
11 would be willing to grant Twitter a covenant not to sue for the '606 patent, but VoIP-Pal declined  
12 to discuss a covenant not to sue. On June 26, 2020, Twitter filed a first amended complaint that  
13 added a claim for a declaratory judgment of invalidity of the '606 patent.

14 7. In July 2020, VoIP-Pal filed motions to dismiss Twitter's, Apple's, AT&T's and  
15 Verizon's declaratory judgment complaints in this Court for lack of subject matter jurisdiction,  
16 lack of personal jurisdiction, and improper venue. In December 2020, the Court denied VoIP-  
17 Pal's motions to dismiss. *E.g., Twitter, Inc. v. VoIP-Pal.com, Inc.*, Case No. 20-cv-02397, ECF  
18 No. 50 (Dec. 14, 2020) (Exhibit 5); *Apple Inc. v. VoIP-Pal.com, Inc.*, Case No. 20-cv-02460, ECF  
19 No. 60 (Dec. 11, 2020) (Exhibit 6).

20 8. Between December 2020 and April 2021, VoIP-Pal and Twitter had multiple  
21 communications about possible resolution of Twitter's declaratory judgment action against the  
22 '606 patent and a possible broader resolution that includes VoIP-Pal's other patents, including the  
23 '872 patent. Those communications have not resulted in a resolution of the dispute between  
24 VoIP-Pal and Twitter concerning VoIP-Pal's patents.

25 9. On March 24, 2021, VoIP-Pal filed another motion to dismiss the declaratory  
26 judgment actions filed by Twitter, Apple, AT&T, and Verizon—this time based on a limited  
27 covenant not to sue for infringement of the '606 patent. *E.g., Twitter*, Case No. 20-cv-02397,  
28 ECF No. 62 (Mar. 21, 2021). That limited covenant not to sue was insufficient to eliminate

1 subject matter jurisdiction for Twitter's declaratory judgment claims for the reasons explained in  
2 Twitter's opposition to that motion. *Id.*, ECF No. 66 (Apr. 7, 2021). In response to Twitter's  
3 opposition, on April 9, 2021, VoIP-Pal offered a broader covenant not to sue based on the '606  
4 patent and asked Twitter to stipulate to dismissal of Twitter's declaratory judgment action.

5 10. On April 12, 2021, Twitter responded in part that, at a minimum, any covenant not  
6 to sue to resolve Twitter's declaratory judgment action against the '606 patent should also include  
7 the '872 patent. Twitter also stated that it expects VoIP-Pal to sue Twitter in the future and that  
8 even a broader covenant that includes the '606 and '872 patents would not be sufficient to resolve  
9 the broader dispute between Twitter and VoIP-Pal concerning VoIP-Pal's patent portfolio. On  
10 April 13, 2021, VoIP-Pal responded that its broader covenant not to sue was intended to address  
11 only the issues raised by Twitter in opposition to VoIP-Pal's motion to dismiss and declined to  
12 extend the covenant to include the '872 patent or other VoIP-Pal patents.

13 11. Twitter's and VoIP-Pal's dispute concerning the '872 patent is related to VoIP-  
14 Pal's 2016 Case against Twitter and Twitter's declaratory judgment action involving the '606  
15 patent. The claims of the '872 patent are very similar to the claims of the six patents that VoIP-  
16 Pal previously asserted in the 2016 and 2018 Cases and were found to be invalid by this Court,  
17 including the '005 patent, which was asserted against Twitter (Exhibits 1 and 2). The Federal  
18 Circuit affirmed this Court's judgment of invalidity for those six patents, including the '005  
19 patent, which was asserted against Twitter. The claims of the '872 patent are also very similar to  
20 the claims of the '606 patent (Exhibits 1 and 3), which is the subject of the pending Texas  
21 lawsuits and the declaratory judgment actions filed by Twitter, Apple, AT&T, and Verizon in this  
22 Court. Apple has filed a claim for declaratory judgment of noninfringement and invalidity for the  
23 '872 patent, and this Court has found that subject matter jurisdiction exists for that claim.

24 12. Twitter believes that it does not infringe and has not infringed any claims of the  
25 '872 patent. VoIP-Pal has offered to Twitter a license for its patents in the family that includes  
26 the '606 and '872 patents but on terms that are unreasonable and unacceptable to Twitter.

27 13. VoIP-Pal's actions have created a real, substantial, and immediate controversy  
28 between VoIP-Pal and Twitter as to whether Twitter's products and/or services infringe any

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