

EXHIBIT B

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN ~~JOSE~~FRANCISCO DIVISION

TWITTER, INC., a Delaware corporation,

Plaintiff,

v.

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

Defendant.

No. 5:21-cv-9773

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

I. INTRODUCTION

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

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

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

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

5. Dissatisfied with the outcome of the 2016 and 2018 Cases in this Court, VoIP-Pal went forum shopping. In April 2020, VoIP-Pal filed lawsuits in the Western District of Texas against Facebook, WhatsApp, Google, Amazon, Apple, AT&T, and Verizon to assert a seventh patent in the RBR family, U.S. Patent 10,218,606 (the “’606 patent”) (the “2020 Texas Cases”).

¹ U.S. Patent 8,630,234 and 10,880,721 are referred to herein as the “Mobile Gateway” patents. 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).

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

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

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

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

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

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

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

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

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

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