

1 PERKINS COIE LLP
Sarah Fowler (Bar No. 264838)
2 Moeka Takagi (Bar No. 333226)
3150 Porter Drive
3 Palo Alto, CA 94304-1212
Phone: 650.838.4300
4 Email: SFowler@perkinscoie.com
Email: MTakagi@perkinscoie.com

5 PERKINS COIE LLP
6 Gene W. Lee (admitted *pro hac vice*)
Thomas Matthew (admitted *pro hac vice*)
7 1155 Avenue of the Americas, 22nd floor
New York, NY 10112-0015
8 Phone: 212.262.6900
Email: GLee@perkinscoie.com
9 Email: TMatthew@perkinscoie.com

10 *Attorneys for Plaintiff Twitter, Inc.*

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

15 TWITTER, INC.,
16
17 Plaintiff,
18 v.
19 VOIP-PAL.COM, INC.,
20 Defendant.

Case No. 21-cv-09773-JD

**PLAINTIFF TWITTER, INC.’S REPLY
IN SUPPORT OF MOTION FOR LEAVE
TO FILE A FIRST AMENDED
COMPLAINT**

Date: Thursday, October 20, 2022
Time: 10:00am PDT
Location: Courtroom 11, 19th Floor
Judge: James Donato

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1 **I. INTRODUCTION**

2 The court “should freely give leave when justice so requires” (Fed. R. Civ. P. 15(a)) or
3 “on just terms” (Fed. R. Civ. P. 15(d)). Twitter seeks leave to amend in good faith and in the
4 early stages of this case. There is no undue delay, and the First Amended Complaint would not
5 prejudice Defendant. Accordingly, Twitter respectfully requests this Court grant Twitter leave to
6 file its proposed First Amended Complaint.

7 VoIP-Pal’s Opposition presents no reasons to deny Twitter’s Motion. VoIP-Pal’s
8 statements that it does not intend to enforce the ’234 and ’721 patents and that it is willing to
9 stipulate to noninfringement do not eliminate an actual controversy between the parties. VoIP-
10 Pal’s argument that Twitter’s proposed First Amended Complaint is a supplemental complaint
11 that should be evaluated under Federal Rule of Civil Procedure 15(d) instead of Rule 15(a) is of
12 no moment because the legal standards for those two provisions are the same. VoIP-Pal would
13 not suffer undue prejudice because an actual controversy still exists between the parties, and
14 VoIP-Pal will have to litigate the validity of the ’234 and ’721 patents anyway in VoIP-Pal’s
15 lawsuits against Meta and Google. Twitter has not unduly delayed in seeking to amend its
16 Complaint, as the present Motion was filed at an early stage in the case. Finally, in view of the
17 lack of merit in VoIP-Pal’s substantive positions, VoIP-Pal resorts to making a false and meritless
18 accusation that Twitter violated this District’s ADR Rules in a prior action.

19 VoIP-Pal’s Answer and Opposition reveal that an actual controversy continues to exist
20 between Twitter and VoIP-Pal concerning the ’234 and ’721 patents. VoIP-Pal’s real goal is to
21 extricate itself from the present action in this District while leaving open the possibility of
22 asserting its patents against Twitter in a different forum and/or at a different time. Under these
23 circumstances, it is especially important to allow Twitter to file its proposed First Amended
24 Complaint to present claims for declaratory judgment of invalidity.

25 **II. STATEMENT OF RELEVANT FACTS IN RESPONSE TO OPPOSITION**

26 The first declaratory judgment action that Twitter filed against VoIP-Pal involved VoIP-
27 Pal’s U.S. Patent 10,218,606 (the “’606 patent”). *Twitter, Inc. v. VoIP-Pal.com, Inc.*, Case
28

1 No. 5:20-cv-2397-LHK (N.D. Cal.) (“*Twitter I*”).¹ In that action, Twitter and VoIP-Pal
2 participated in two settlement conferences pursuant to this District’s ADR Local Rules. Those
3 settlement conferences did not result in settlement.

4 The first settlement conference in *Twitter I* occurred in April 2021. Dkt. No. 1 at ¶ 61.
5 The day after the first settlement conference, Twitter filed a declaratory judgment action against
6 VoIP-Pal concerning U.S. Patent 9,935,872 (the “’872 patent”). *Twitter, Inc. v. VoIP-Pal.com,*
7 *Inc.*, Case No. 3:21-cv-02769-LHK (“*Twitter II*”). *Id.* at ¶ 65. Twitter’s complaint in the
8 *Twitter II* action disclosed some aspects of the settlement discussions between the parties, which
9 VoIP-Pal incorrectly asserted were confidential. *Twitter I*, Dkt. Nos. 72, 73.

10 VoIP-Pal filed a motion accusing Twitter of violating the protective order in *Twitter I*
11 based on that assertion. *Id.*, Dkt No. 72. The court denied the motion and ruled that Twitter did
12 not violate the protective order. *Id.*, Dkt. No. 73. The court found that the relevant settlement
13 discussions were not confidential and were not subject to the protective order. *Id.*

14 Similarly, one party in *Twitter I* filed an ADR complaint against the other party accusing
15 the other party of violating the confidentiality provisions of ADR L.R. 7-4(a) and engaging in a
16 settlement conference in bad faith. *Id.*, Dkt. No. 74. The court found that the other party did not
17 violate ADR L.R. 7-4(a) or engage in the settlement conference in bad faith. *Id.*

18 The second settlement conference in *Twitter I* occurred on November 17, 2021. Dkt. 1 at
19 ¶ 20. Twitter filed the original Complaint in the present action on December 17, one month after
20 the second settlement conference. Dkt. 1.

21 **III. ARGUMENT**

22 **A. VoIP-Pal’s Statements That It Does Not Intend To Enforce The Mobile** 23 **Gateway Patents And That It Is Willing To Stipulate To Noninfringement Do** 24 **Not Eliminate An Actual Controversy**

25 This action is the third declaratory judgment action that Twitter has filed against VoIP-
26 Pal. In each declaratory judgment action, VoIP-Pal has filed a motion to dismiss asserting a lack

27 ¹ VoIP-Pal is currently asserting the ’606 patent in litigation against other companies, including
28 against Meta and Google in this District. *VoIP-Pal.com, Inc. v. Meta Platforms, Inc.*, Case
No. 3:22-cv-04279, and *VoIP-Pal.com, Inc. v. Google, Inc.*, Case No. 3:22-cv-05419.

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