

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VOIP-PAL.COM, INC.,

Plaintiff,

v.

AMAZON.COM, INC.;
AMAZON.COM SERVICES LLC; and
AMAZON WEB SERVICES, INC.

Defendants.

CIVIL ACTION NO. 6:20-cv-00272-ADA

JURY TRIAL DEMANDED

**PLAINTIFF VOIP-PAL.COM, INC.'S MOTION TO DISMISS OR IN THE ALTERNATIVE,
MOTION TO STRIKE THE AMAZON DEFENDANTS' COUNTERCLAIMS FOR NON-
INFRINGEMENT AND INVALIDITY**

TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. FACTUAL AND PROCEDURAL BACKGROUND..... 1
- III. ARUGMENT..... 2
 - A. Amazon’s Counterclaims for Declaratory Judgment of Non-Infringement and Invalidity Should be Dismissed for Failure to State a Claim Because They Do Not Put VoIP-Pal on Reasonable Notice of Amazon’s Non-Infringement or Invalidity Theories..... 2
 - B. Amazon’s Counterclaims for Declaratory Judgments of Non-Infringement and Invalidity Should be Stricken as Duplicative of Amazon’s Affirmative Defenses..... 6
 - 1. Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services, Inc. do not infringe, and have not infringed (directly, contributorily, or by inducement), either literally or under the doctrine of equivalents, and are not liable for infringement of, any valid and enforceable claim of the ’606 patent. 7
 - 2. Amazon.com, Inc., Amazon.com Services LLC, or Amazon Web Services, Inc. have not infringed and do not infringe any claim of the ’606 patent, directly, indirectly, literally, or under the doctrine of equivalents..... 7
- IV. CONCLUSION..... 7

..

TABLE OF AUTHORITIES**Cases**

<i>Albritton Prop. v. Am. Empire Surplus Lines</i> , 2005 U.S. Dist. LEXIS 7330 (N.D. Tex. Apr. 25, 2005).	6
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	2
<i>ASUSTeK Computer Inc. v. AFTG-TG LLC</i> , No. 5:CV 11-00192-EJD, 2011 U.S. Dist. LEXIS 149330 (N.D. Cal. Dec. 29, 2011)	4
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	2
<i>Bender v. LG Electronics U.S.A., Inc.</i> , 2010 U.S. Dist. LEXIS 33075 (N.D. Cal. Mar. 11, 2010).....	4
<i>Deniece Design, LLC v. Braun</i> , 953 F. Supp. 2d 765 (S.D. Tex. 2013).....	3
<i>Doe I v. Roman Catholic Diocese</i> , 2006 U.S. Dist. LEXIS 58347 (S.D. Tex. Aug. 18, 2006).....	6
<i>Duramed Pharms., Inc. v. Watson Labs., Inc.</i> , No. 3:08-CV-00116-LRH-RAM, 2008 U.S. Dist. LEXIS 103389 (D. Nev. Dec. 12, 2008).....	4
<i>Hanson Aggregates, Inc. v. Roberts & Schaefer Co.</i> , 2006 U.S. Dist. LEXIS 55353 (N.D. Tex. Aug. 9, 2006).....	6, 7
<i>Human Power of N, Co. v. Synergix, LLC</i> , No. 1-17-CV-1065-LY, 2018 U.S. Dist. LEXIS 116636 (W.D. Tex. July 12, 2018)	3
<i>Kinetic Concepts, Inc. v. Wake Forest Univ. Health Scis.</i> , Consolidated Civil Action No. SA-11-CV- 163-XR, 2013 U.S. Dist. LEXIS 78624 (W.D. Tex. June 4, 2013).....	3
<i>Neitzke v. Williams</i> , 490 U.S. 319, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).....	3
<i>PetEdge, Inc. v. Marketfleet Sourcing, Inc.</i> , 2017 U.S. Dist. LEXIS 107541 (D. Mass July 12, 2017)	4
<i>Qarbon.com Inc. v. eHelp Corp.</i> , 315 F. Supp. 2d 1046 (N.D. Cal. 2004)	4, 5
<i>SecurityProfiling, LLC v. Trend Micro Am., Inc.</i> , No. 6:16-CV-01165-RWS-JDL, 2017 U.S. Dist. LEXIS 72218 (E.D. Tex. May 11, 2017).....	3, 5

...

Sliding Door Co. v. KLS Doors, LLC, No. EDCV 13-00196 JGB (DTBx), 2013 U.S. Dist. LEXIS 71304
(C.D. Cal. May 1, 2013) 4

Symetra Life Ins. Co. v. Rapid Settlements Ltd., 612 F. Supp. 2d 759 (S.D. Tex. 2007) 6, 7

United States v. Forest Dale, Inc., 818 F. Supp. 954 (N.D. Tex. 1993)..... 6

Woods v. Torkelson, No. 5:19-CV-0446-JKP, 2019 U.S. Dist. LEXIS 199179 (W.D. Tex. Nov. 18,
2019) 3, 6

Wordtech Sys., Inc. v. Integrated Networks Solutions Inc., 609 F.3d 1308 (Fed. Cir. 2010)..... 4

Xilinx, Inc. v. Invention Inv. Fund LLP, 2011 U.S. Dist. LEXIS 81986 (N.D. Cal. July 27, 2011)..... 4

Rules

Fed. R. Civ. P. 12(b)(6)..... 2

Fed. R. Civ. P. 12(f)..... 1

TABLE OF ABBREVIATIONS

ABBREVIATION	TERM
VoIP-Pal	Plaintiff VoIP-Pal.com, Inc.
Amazon	Defendants Amazon.com, Inc., Amazon.com Services LLC, and Amazon Web Services Inc.
The '606 patent	U.S Patent No. 10,218,606
The patent-in-suit	The '606 patent

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.