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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

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

Plaintiff,

v.

APPLE, INC., a California corporation,

Defendants.

CASE NO.: 2:16-cv-00260-RFB-VCF

**SECOND AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

[JURY DEMAND]

Plaintiff, Voip-Pal.com, Inc.'s ("VPLM") Second Amended Complaint against Defendant Apple, Inc., ("Apple"), alleges infringement of U.S. Patent No. 8,542,815 ("the '815 patent"), and its continuation patent, U.S. Patent No. 9,179,005 ("the '005 patent"). VPLM further complains and alleges as follows:

THE NATURE OF THE ACTION

1. VPLM is a leader in Voice-over-Internet Protocol ("VoIP") technology and owns a portfolio of VoIP-related patents and patent applications.

2. On September 24, 2013, the '815 patent entitled "Producing Routing Messages for Voice Over IP Communications" was duly and legally issued with Clay Perreault, Steve Nicholson, Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors after full and fair

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1 examination. VPLM is the owner of all rights, title, and interest in and to the ‘815 patent and
2 possesses all rights of recovery under the ‘815 patent. A copy of the ‘815 patent is attached as

3 **Exhibit A.**

4 3. On November 3, 2015, the ‘005 patent entitled “Producing Routing Messages for
5 Voice Over IP Communications” was duly and legally issued with Clay Perreault, Steve Nicholson,
6 Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors after full and fair
7 examination. VPLM is the owner of all rights, title, and interest in and to the ‘005 patent and
8 possesses all rights of recovery under the ‘005 patent. A copy of the ‘005 patent is attached as

9 **Exhibit B.**

10 4. VPLM’s patents represent fundamental advancements to Internet Protocol (“IP”)
11 based communication, including improved functioning, call classification, call routing and reliability
12 for VoIP, messaging, and IP-based transmission of video, photographs and mixed media
13 communications.

14 5. Apple employs VPLM’s innovative technology and products, features, and designs,
15 and has widely distributed infringing products and/or services that have undermined VPLM’s
16 marketing and monetization efforts. Instead of incorporating non-infringing technology into its
17 products and services, Apple has employed and has incorporated VPLM’s patented communication
18 classification and routing technology, in violation of VPLM’s valuable intellectual property rights.

19 **PARTIES**

20 6. Plaintiff, VoIP-Pal.com, Inc. (“VPLM”) is a Nevada corporation with its principal
21 place of business located 10900 NE 4th Street, Suite 2300, Bellevue, Washington 98004.

22 7. Defendant, Apple Inc. (“Apple”) is a California corporation with its principal place of
23 business at 1 Infinite Loop, Cupertino, California 95014. On information and belief, Apple regularly
24 conducts and transacts business in the District of Nevada and throughout the United States, and, as
25 set forth below, has committed and continues to commit, tortious acts of patent infringement within
26 the District of Nevada.

27 8. As a result of Apple’s infringement as alleged herein, between May 2014 and
28 December 2015, VPLM provided numerous notices to Apple in connection with its violation of

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1 VPLM’s patent rights. *See Exhibit C*, Correspondence to Apple. Despite the notices, Apple has
2 infringed and continues to infringe VPLM’s patents.

3 **JURISDICTION AND VENUE**

4 9. This action arises under the patent laws of the United States, i.e., 35 U.S.C. § 1 *et seq.*
5 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1338.

6 10. This Court has personal jurisdiction over Apple because it has committed and
7 continues to commit acts of infringement in violation of 35 U.S.C. § 271 by placing infringing
8 products and services into the stream of commerce, either directly or through subsidiaries and/or
9 intermediaries, with the knowledge or understanding that such products are sold in the District of
10 Nevada. The acts by Apple cause injury to VPLM within this District. Upon information and belief,
11 Plaintiff alleges that the Apple derives substantial revenue from the sale of infringing products
12 within this District, has expanded its market share through its use of infringing products within this
13 District, has engaged in this infringement with the expectation that their actions will have
14 consequences within this District, and derives substantial revenue from interstate and international
15 commerce.

16 11. Venue is proper within this District under 28 U.S.C. § 1391(b), (c), and § 1400(b)
17 because Apple maintains a regular and established place of business and offers products and/or
18 services for sale in Nevada and have related computing infrastructure located in Nevada. For
19 example, on information and belief, Apple has located large data centers and extensive cloud
20 computing infrastructure in or near Reno, Nevada. Furthermore, venue is proper in that Apple has
21 and continues to infringe VPLM’s patents causing harm to VPLM in Nevada, including via said data
22 centers and cloud computing infrastructure in Nevada. Also, VPLM is incorporated in Nevada.

23 **FACTUAL ALLEGATIONS**

24 **A. Apple’s Infringement of VPLM’S Patents**

25 12. VPLM has protected its innovative designs and technologies through a broad range
26 of intellectual property rights. Among the patents that VPLM has been awarded are the ‘815 patent
27 and ‘005 patent to which VPLM owns all rights, title, and interest.

28 13. As detailed in the attached **Exhibit D** (Asserted Claims and Infringement Contentions

1 Concerning the '815 Patent and the '005 Patent), VPLM is informed and believes, and on that basis
2 alleges that Apple's practices directly and indirectly employ and infringe certain claims of the '815
3 patent and the '005 patent by utilizing a caller dialing profile comprising a plurality of calling
4 attributes to establish network classification criteria for routing calls/messages.

5 14. VPLM is informed and believes, and on that basis alleges that Apple engages in the
6 following specific infringing practices:

7 **B. Asserted Claim No. 1 regarding Apple's iMessage (the '815 patent)**

8 15. Apple provides, supports and/or operates messaging technology, including iMessage,
9 an instant messaging service supported by Apple's Messages application and computing
10 infrastructure that allows smartphone and desktop users to send messages including text, images,
11 video and audio to other users. Apple's messaging, including the iMessage application, runs on
12 Apple desktop computers, laptops, tablets and mobile devices running OS X, iOS and watchOS
13 operating systems. Apple directly and/or indirectly practices certain claims of the '815 patent as
14 illustrated in Chart 1 of Exhibit D by utilizing a caller dialing profile comprising a plurality of calling
15 attributes to establish network classification criteria for its messaging systems.

16 16. In particular, devices running the iMessage application initiate a communication
17 between a caller and a callee. The callee may be an Apple subscriber or a non-subscriber. In the case
18 that the callee is an Apple subscriber, the communication is sent using iMessage. On the other hand,
19 if the user is not an Apple subscriber or if iMessage is not available, the communication is sent using
20 SMS/MMS. Apple's messaging system directly and/or indirectly practices certain claims of the '815
21 patent in order to determine the classification of the communication between the caller and callee,
22 and, subsequently, how the communication should be routed.

23 **C. Asserted Claim No. 2 regarding Apple's iMessage (the '005 patent)**

24 17. Apple manufacturers, supports and operates a messaging platform (the "Apple
25 Messaging System") that includes Apple desktop computers, laptops, tablets and mobile devices,
26 software applications running on such devices and servers associated with iMessage, an instant
27 messaging service, and associated computing infrastructure. The Apple Messaging System allows
28 smartphone and desktop users to send messages including text, images, video and audio to others.

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1 Apple practices certain claims of the ‘005 patent as illustrated in Chart 2 of Exhibit D.

2 18. The Apple Messaging System allows devices to initiate a communication between a
3 caller, or a first participant, and a callee, or a second participant, which may be an Apple subscriber
4 or a non-subscriber. A profile that includes attributes is used as part of the process that classifies a
5 communication that directly and/or indirectly practices certain claims of the ‘005 patent.

6 **D. Asserted Claim No. 3 regarding Apple’s WiFi Calling (the ‘815 patent)**

7 19. Apple manufactures and supports devices and infrastructure related to a calling
8 platform (“Apple WiFi Calling”) that includes Apple desktop computers, laptops, tablets and mobile
9 devices, software applications running on such devices and associated infrastructure including
10 servers operated by wireless carriers that allow calls and text messages to be placed and received
11 over WiFi networks. Apple induces the infringement of certain claims of the ‘815 patent as
12 illustrated in Chart 3 of Exhibit D.

13 20. Apple WiFi Calling allows an Apple device to initiate a call between a caller and a
14 callee using a carrier assisted voice over IP (“VoIP”) system and the callee may be a Wi-Fi Calling
15 subscriber of the carrier or a non-subscriber. A profile that includes calling attributes is used as part
16 of the process that classifies a call or text message.

17 21. Apple also provides and/or supports WiFi Calling on desktop computers, laptops,
18 tablets and mobile devices. In the case of WiFi Calling, an Apple device initiates a call between a
19 caller and a callee using a carrier based VoIP system. The callee may be a subscriber of the carrier or
20 a non-subscriber. Apple directly and/or indirectly practices certain claims of the ‘815 patent by
21 utilizing a caller dialing profile comprising a plurality of calling attributes to establish network
22 classification criteria for its WiFi calling system.

23 **E. Asserted Claim No. 4 regarding Apple’s WiFi Calling (the ‘005 patent)**

24 22. Apple also provides and/or supports devices and infrastructure related to a calling
25 platform (“Apple WiFi Calling”) including desktop computers, laptops, tablets and mobile devices
26 and associated communications and computing infrastructure such as servers in data centers. In the
27 case of WiFi Calling, an Apple device initiates a call or text message between a caller and a callee
28 using a carrier-based VoIP system. The callee may be a Wi-Fi Calling subscriber of the carrier or a

1 non-subscriber. Apple directly and/or indirectly practices certain claims of the '005 patent by
 2 utilizing a caller dialing profile comprising a plurality of calling attributes to establish network
 3 classification criteria for its WiFi calling system as illustrated in Chart 4 of Exhibit D.

4 23. Apple's infringement of the '815 patent and the '005 patent provides Apple with
 5 valuable functionality for its products and services at the expense of VPLM's protected intellectual
 6 property. Rather than utilizing non-infringing technology for call and message classification and
 7 routing of Public to Public telephony, Private to Private telephony, Public to Private and Private to
 8 Public telephony, messaging and media transfers, Apple has employed VPLM's technology,
 9 including its routing and classification systems and methods.

10 24. Apple continues to choose to infringe VPLM's patent rights through its caller
 11 attribute based communication classification and routing systems, including at least Apple's
 12 Messaging and WiFi based communication products and services.

13 25. Apple has not obtained permission or a license from VPLM to use its inventions as
 14 identified in the '815 patent and the '005 patent.

15 26. Furthermore, the '815 patent and '005 patent are only two patents in a suite of ten
 16 related patents. *See Exhibit E*, VPLM Active Patents as of January 1, 2016. VPLM preserves the
 17 right to request leave to amend this Complaint to add additional allegations of infringement based on
 18 additional patents associated with the suite.

19 CLAIMS FOR RELIEF

20 **First Claim for Relief (Infringement of the '815 and '005 Patents by Apple)**

21 27. VPLM incorporates and re-alleges paragraphs 1 through 26 of this Complaint.

22 28. Apple has infringed and continues to infringe, directly and indirectly through
 23 contributory and/or induced infringement, one or more claims of the '815 patent and the '005 patent
 24 by using, selling and/or offering to sell in the United States its Messaging and WiFi communication
 25 services.

26 29. Apple's infringing activities violate 35 U.S.C. § 271.

27 30. VPLM is informed and believes, and on that basis alleges, that Apple's infringement
 28 of the '815 and '005 Patents has been and continues to be intentional, willful, and without regard to

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1 VPLM's rights because it had actual knowledge of the '815 patent and the '005 patent through direct
2 and indirect communications with VPLM. In addition, as an active participant in the
3 communications industry, Apple had constructive notice of the patents at the time of the international
4 PCT publication of WO2008/052340 (the predecessor of the '815 patent), on May 8, 2008.

5 31. VPLM is informed and believes, and on that basis alleges, that Apple has increased
6 profits by virtue of its infringement of the '815 patent and the '005 patent. The portion of such
7 increased profits attributable to the incremental value of the infringed property, based upon
8 information and belief, is alleged to be two billion, eight hundred and thirty-six million, seven
9 hundred and ten thousand, and thirty one dollars (\$2,836,710,031) based upon the calculations
10 contained in **Exhibit F**, attached hereto.

11 32. VPLM has sustained damages as a direct and proximate result of Apple's
12 infringement of the '815 patent and the '005 patent as their continuing infringement unfairly allows
13 Apple to dominate the market and harms VPLM's ability to secure licensing revenue for these
14 patents. Said damages will be proved at trial.

15 33. VPLM will suffer and is suffering irreparable harm from Apple's continuing
16 infringement of the '815 patent and the '005 patent.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, VPLM prays for relief, as follows:

- 19 1. A judgment that the '815 patent and the '005 patent are valid and enforceable;
- 20 2. A judgment that Apple has infringed, contributorily infringed, and/or induced
21 infringement of one of more claims of the '815 patent and the '005 patent;
- 22 3. An order and judgment permanently enjoining Apple and its officers, directors,
23 agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with
24 them, and their parents, subsidiaries, divisions, successors and assigns from further acts of
25 infringement of the '815 patent and the '005 patent;
- 26 4. A judgment awarding VPLM all damages adequate to compensate for Apple's
27 infringement of the '815 patent and the '005 patent, and in no event less than a reasonable royalty for
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Apple’s acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

5. A judgment awarding VPLM all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

6. A judgment awarding VPLM the percentage of Apple’s profits that were a result of the infringements of Plaintiff’s patents, pursuant to 35 U.S.C. § 289 together with pre-judgment interest;

7. Actual damages suffered by VPLM as a result of Apple’s unlawful conduct, in an amount to be proven at trial, as well as prejudgment interest as authorized by law;

8. A judgment that this is an exceptional case and an award to VPLM of its costs and reasonable attorneys’ fees incurred in this action as provided by 35 U.S.C. § 285; and

9. Such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, VPLM hereby demands trial by jury on all issues so triable under the Complaint.

DATED this 4th day of May, 2016.

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