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UNITED STATES DISTRICT COURT

NORTHER DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VOIP-PAL.COM, INC., a Nevada corporation, Plaintiff, v. AT&T CORP., a Delaware corporation, Defendant.	Case No. 5:18-cv-06177-LHK-VKD **THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT** **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff VoIP-Pal.com, Inc. ("VoIP-Pal"), for its Third Amended Complaint against

Defendant AT&T Corp. ("AT&T" or "Defendant"), hereby alleges as follows:

PARTIES

1. Plaintiff VoIP-Pal is a Nevada corporation with its principal place of business located at 10900 NE 4th Street, Suite 2300, Bellevue, Washington 98004.

2. Defendant, AT&T Corp., is a Delaware corporation with its principal place of business at One AT&T Way, Bedminster, New Jersey 079201. On information and belief, AT&T Corp. regularly conducts and transacts business in the Northern District of California and throughout the United States, and, as set forth below, has committed and continues to commit, tortious acts of patent infringement within the Northern District of California.

3. As a result of Defendant's infringement as alleged herein, between July 2014 and December 2015, VoIP-Pal provided numerous notices to Defendant in connection with its violation of VoIP-Pal's patent rights. Despite the notices, Defendant has infringed and continues to infringe VoIP-Pal's patents.

NATURE OF THE ACTION

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

4. This is a civil action for infringement of United States Patent No. 8,542,815 (the "'815 Patent") and United States Patent No. 9,179,005 (the "'005 Patent") (the "'815 Patent," and together with the '005 Patent, the "Patents-in-Suit") under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

5. 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 examination. VoIP-Pal is the owner of all rights, title, and interest in and to the '815 Patent and possesses all rights of recovery under the '815 Patent. A copy of the '815 Patent is

attached as Exhibit A.

6. On November 3, 2015, the '005 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 examination. VoIP-Pal is the owner of all rights, title, and interest in and to the '005 Patent and possesses all rights of recovery under the '005 Patent. A copy of the '005 Patent is attached as Exhibit B.

7. VoIP-Pal's patents represent fundamental advancements to Internet Protocol ("IP") based communication, including improved functioning, classification, routing and reliability of Voice-over-IP (VoIP) and IP-based transmission of video, photographs, messages and mixed media, as well as improved interoperability of IP-based private networks with public networks such as the public switched telephone network (PSTN). The '815 and '005 Patents provided, *inter alia*, improvements in call routing controllers, processes, and networks. Several illustrative examples of such improvements are briefly described below, although the patented invention is not limited to these specific improvements or examples.

8. The public switched telephone network (PSTN) connected callers through nodes such as central offices or exchanges. Because these nodes were limited to providing services only to subscribers in a "local calling service area," they required callers to place calls in a specific manner, e.g., by requiring the use of certain dialing patterns and conventions associated with that local area. See '815 Patent at 1:29-35. For example, PSTN nodes conventionally required PSTN callers to dial in a manner compatible with a local numbering plan (e.g., a plan based on the "North American Numbering Plan" or "National Numbering Plan," in use by AT&T as early as about the 1940's and further developed in later years) as well as to dial in a manner compatible with international standards such as those of the International Telecommunications Union (ITU) Telecommunications Standardization Sector (ITU-T). See '815 Patent at 18:23-34. For example,

it is known in the field of telephony that early numbering plans assigned an "area code" of 312 for calling Illinois, and that this code (312) remains in use even today as an area code for Chicago. To take another example, the ITU designates "44" as a "country code" for calling the United Kingdom. *Id*. at Fig. 12 ("County Code" attribute for London user is "44").

9. Large organizations were able to avoid PSTN dialing constraints, at least for internal calls, by using private branch exchanges (PBXs) and private numbering plans for their internal private telephone networks, but these PBXs also needed to provide caller access to the PSTN. See '815 Patent at 1:15-26. As Andy Valdar has explained in his textbook, "Businesses which have more than a few telephones use a private branch exchange system, known as a PBX, to provide call connections between each telephone (which become 'extensions') and links into the PSTN... The PBX is really a small version of the PSTN exchanges, typically ranging in sizes from 10 up to 5,000 extensions. A private numbering scheme is required to enable extension to extension dialling, also ***special codes (e.g. 'dial 9')*** are required to enable calls to be made to the PSTN. [...] In the case where a company extends over two or more sites (e.g. office or factory buildings) the PBXs on each site can be linked by private circuits, thus enabling calling between all the extensions. This is known as a 'private corporate network' (or just 'private network'). In this case the private numbering scheme extends across all the PBXs and usually each PBX is linked to the PSTN." (Source: Valdar, Andy, Understanding Telecommunications Networks, © 2006 The Institution of Engineering and Technology, London, UK, p. 38. (emphasis added)).

10. It was well-understood, routine and conventional for PBXs to require users to dial a special code (e.g., a prefix digit of "9") if they wanted to place a call on the PSTN, as noted by Valdar and numerous other sources. For example, one telecom dictionary distinguishes between dialing an "internal PBX station number" and an "external number," wherein in the latter case, "the user must dial an access code in order to gain access to an external trunk connected to the public switched telephone network (PSTN)... The ***conventional*** access code is nine (9) in the United

States and Canada, and zero (0) in most other countries". (Source: Ray Horak, "Webster's New World® Telecom Dictionary" © 2008 by Wiley Publishing, Inc., Indianapolis, Indiana, p.133). To take another example, U.S. Patent No. 3,725,596 ("Maxon"), filed in 1971, discloses an discloses an early private branch exchange (PBX) having equipment for automatically generating and transmitting calling station and trunk number information to a central office on outgoing calls. Maxon indicates that "a calling party at station ST10... dials a prefix digit, such as the ***conventional*** prefix digit 9, to initiate an outgoing call to the central office. The digit 9 is... detected by the dial 9 detector 152. Upon the detection of this digit, the register control circuit 153 advises common control that the digit 9 has been dialed for a central office call." [emphasis added]. Maxon at 9:66-10:6; *see also* Fig. 1B (152), 8:58-68, 9:21, 9:38-40, 13:3-6, 14:6-7 and at 14:59. Webster's New World Telecom dictionary and Maxon both confirm that it was considered "conventional" to use a prefix digit such as "9" to place a PSTN call from a PBX.

11. A person of skill in the art (POSITA), upon review of the Patents-in-Suit, would appreciate that they provide technical improvements to overcome certain technical limitations of prior art routing processes, systems and networks, for example, they provide technical solutions for, *inter alia*, (1) user-specific calling, (2) transparent routing, and (3) network resiliency.

12. ***User-Specific Call Handling*:** Many prior art communication systems required users to place a call by using a specific callee identifier format or by following certain dialing conventions with no opportunity for defining a user-specific manner of placing calls. For example, as discussed above, PSTN nodes were typically limited to supporting only the dialing conventions of their local calling service area and processed calls locally (see '815 Patent at 1:29-35) and did not support user-specific calling. The technology described and patented in the Patents-in-Suit overcame such technical limitations to support user-specific calling styles from any continent or country based on the application of user-specific attributes to callee identifiers and network classification criteria to route a call. It was unnecessary for the user to do anything special to

"trigger" such user-specific call processing. See, *e.g.*, '815 Patent at 15:10-15 (storing user-specific parameters including a "continent code" and "country code" in association with each subscriber), 17:59-18:10 (disclosing a user-specific "dialing profile" capable of supporting numerous *global* styles of dialing), and Figs. 8A-8D. The technology was capable of fulfilling the individual call handling service preferences of users world-wide (*id*. at 18:55-67), and could also support unconventional dialing styles or special callee identifiers such as usernames (*id*. at 17:14-15).

13. ***Routing transparency*:** Some prior art communication systems required a user to explicitly signal how a call should be processed or to manually "trigger" special call handling. For example, as discussed above, PBX systems in large organizations often relied on a user-specified classification of the dialed number to interpret the number and route the call—a user placing a call to the PSTN would dial a predefined prefix such as "9" to indicate that subsequent digits were to be interpreted as a PSTN number. If no prefix was dialed, the dialed digits were interpreted as a private PBX extension. The dialed digits alone dictated how the call was routed, and thus the user made an affirmative decision when placing a call as to how the call's routing would take place. In this example, the PBX fails to provide user-specific call handling and fails to provide routing transparency. In contrast, the patented invention uses a caller's attributes to evaluate a callee identifier against network routing criteria to cause a call to automatically be routed over a system network (e.g., "private network") or another network interconnected to the system network through a gateway (e.g., a "public network" such as the PSTN) transparently to the user, without the user manually specifying which network to use for routing by the user's manner of placing the call (e.g., by the user dialing a prefix of "9" to make a PSTN call).

14. To illustrate this with one embodiment disclosed in the '815 Patent, if a Vancouver user (user profile in Fig. 10) dialed the PSTN phone number of the London user (user profile in Fig. 12), the system would evaluate the dialed digits based on the caller's attributes, determine that

the London user is a subscriber to the system, and classify the call as a private network call, identifying a subscriber username such as "44011062444" (see '815 Patent at Fig. 8B, Fig. 12, 20:19-21:25). A routing controller (16 in Fig. 1) determines that the London user is associated with a different node than the Vancouver user, and produces a routing message (Fig. 16; *see also* 20:26-48; Fig. 8A at 280, 302, 350, 381) for receipt by a call controller (14 in Fig. 1), thereby causing the call controller to establish the call (*id*. at 26:46-49). The caller in this illustrative embodiment need not be aware that the London user is a subscriber and need not know whether or not the call is being placed over the PSTN.

15. ***Resiliency*:** Some prior art provided service to a limited area (*id*. at 1:45-46: "such as one location, or a small number of branch offices") but was incapable of providing reliable service to a large number of subscribers dispersed over a geographically dispersed area such as a continent (*id*. at 1:40-46). For example, PSTN exchanges and nodes were limited to serving a "local calling service area" (id. at 1:29-31), whereas the PBX systems described above in the Valdar textbook were "really a small version of the PSTN exchanges, typically ranging in sizes from 10 up to 5,000 extensions" (see Valdar, *supra*; cf. '815 Patent at 1:43-46). Furthermore, at a *system-level*, such networks did not always have "other nodes... able to take up the load" if a particular node failed, e.g., due to a natural disaster (*id*. at 1:35-39). In contrast, the patented inventions provide reliable service to large areas including countries and continents. This gave rise to technical challenges regarding how to handle issues such as a very large number of subscribers, bursts of excessive demand and/or communication node failure, all of which affected system reliability. The patented inventions therefore describe a technology for flexibly assigning nodes to particular geographical areas, including the option of adding redundant nodes with overlapping responsibility for load sharing. *Id*. at 12:50-13:2 (disclosing a private network of super nodes providing communication services to large geographical regions) and 13:3-6 (disclosing special nodes for "call load sharing"). The technology performed call routing by identifying a suitable

private network "node" or a gateway (e.g., a gateway to the PSTN) in response to evaluation of the caller's attributes, the callee identifier, and available routing resources. This design made it simple to allocate or add new nodes and gateways to particular regions (12:50-13:6; 24:54-67, 26:46-49; 26:65-27:7). The use of caller attributes, callee identifier and dynamic routing criteria to produce the routing message, as described in the Patents-in-Suit, allowed such new nodes and gateways to be identified in the routing message, to increase service availability to subscribers as needed without redesigning the routing apparatus and process, thereby creating an improved, resilient and reliable *global* routing system.

16. As described above, a variety of techniques were used for routing decisions, all of which utilized a callee identifier and some of which also relied on special user input at the time of the call. However, one of the inventive concepts embodied in the Patents-in-Suit—and which was not well-understood, routine and conventional to persons of skill in the art at the time of the invention—was routing processes, apparatus and systems, in which user-specific "attributes" (e.g., "attributes" associated with a caller or participant in a communication) were utilized to evaluate a "callee identifier" (or "participant identifier") against "network routing criteria" (e.g., "public network routing criteria" and "private network routing criteria") to identify, in a "routing message," an appropriate "address" (e.g., an address, on the private network, associated with the callee) or "gateway" (e.g., a gateway to the public network), where the routing message is used to establish the call (e.g., the "routing message" causes a "call controller" to establish the call from the caller to the callee via the aforesaid "address" or "gateway," as appropriate).

17. Defendant employs VoIP-Pal's innovative technology and products, features, and designs, and have widely distributed infringing products and/or services that have undermined VoIP-Pal's technology monetization and marketing efforts, including VoIP-Pal's efforts to secure licensing revenue for these patents. Instead of incorporating non-infringing technology into its products and services, AT&T has employed VoIP-Pal's patented communication classification and

routing technology, in violation of VoIP-Pal's valuable intellectual property rights.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1338(a).

19. This Court has personal jurisdiction over Defendant because, among other things, Defendant has committed, aided, abetted, contributed to, and/or participated in the commission of patent infringement in violation of 35 U.S.C. § 271 in this judicial district and elsewhere that led to foreseeable harm and injury to VoIP-Pal.

20. This Court also has personal jurisdiction over Defendant because, among other things, Defendant has established minimum contacts within the forum such that the exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice. Moreover, Defendant has placed products and provided services that practice the claimed inventions of the Patents-in-Suit into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products and services were located within this District. Defendant has sold, advertised, marketed, distributed and made available products and services in this District that practice the claimed inventions of the Patents-in-Suit.

21. The acts by Defendant cause injury to VoIP-Pal within this District. Upon information and belief, Defendant derives substantial revenue from the sale of infringing products within this District, have expanded its market share through its use of infringing products within this District, have engaged in this infringement with the expectation that their actions will have consequences within this District, and derive substantial revenue from interstate and international commerce.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b) because, on information and belief, Defendant maintains a regular and established place of business and offer products and/or services for sale in the Northern District of California. On information and belief,

Defendant has certain communication and computing infrastructure for their infringing products and services located in the Northern District of California, such as servers. Furthermore, venue is proper in that Defendant has infringed and continues to infringe VoIP-Pal's patents causing harm to VoIP-Pal in the Northern District of California, including via said communication and computing infrastructure.

BACKGROUND OF THE TECHNOLOGY AND THE PATENTS-IN-SUIT

23. United States Patent No. 8,542,812 entitled "Producing Routing Messages For Voice Over IP Communications" was duly and legally issued by the United States Patent and Trademark Office on September 24, 2013.

24. United States Patent No. 9,179,005 entitled "Producing Routing Messages For Voice Over IP Communications" was duly and legally issued by the United States Patent and Trademark Office on November 3, 2015.

25. The '815 Patent and '005 Patent are collectively referred to herein as the "Patents-In-Suit". On July 29, 2016, the Court stayed this litigation pending decisions by the Patent Trial and Appeal Board ("PTAB") on whether to institute *inter partes review* ("IPR") on the '815 and '005 Patents based on petitions filed by Apple, Inc. (the "IPR Petitions") who is subject to a litigation by VoIP-Pal currently pending in this District over the same Patents-in-Suit. (ECF No. 31 in the Verizon Case[1]). On November 21, 2016, the PTAB instituted IPR on various claims of the '815 and '005 Patents. (*See* ECF No. 36 at ¶¶ 6-7 in the Verizon Case). On November 20, 2017, the PTAB issued final written decisions concerning the IPR Petitions. In its decisions, the PTAB held that the petition in the IPR did not show by a preponderance of the evidence that the claims of issue in the IPRs were unpatentable. (*See* ECF No. 36 at ¶ 9 in the Verizon Case).

26. The inventions of the Patents-In-Suit originated from breakthrough work and

[1] "Verizon Case" means the case styled as *VoIP-Pal.com, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, Case No. 2:16-cv-00271-RCJ-VCF (D. Nev.) over which the Honorable Judge Robert C. Jones is also presiding and from which AT&T Corp. was severed as a defendant into this action.

development in the internet protocol communications field.

27. Internet protocol (IP) communications commonly involve personal computers (PCs), phones, and other devices, sending and receiving various types of communication in various formats (e.g., audio, video, text, and other data formats), for example, over local and wide area networks between client and server devices.

28. Furthermore, IP communication systems and methods may involve communication within or between IP networks, and between an IP network and external networks, such as the public switched telephone network (PSTN) including cellular networks for mobile devices.

29. Processing and routing such communications preferably requires resilience, reliability, high availability and flexibility in routing the communications within and between networks.

30. VoIP-Pal has provided significant improvements to communications technology by the invention of novel methods, processes and apparatuses that facilitate communications between internet protocol based systems and networks, such as internally controlled systems and external networks (e.g., between private networks and public networks), including the classification and routing thereof.

31. The Patents-In-Suit represent fundamental advancements to the art of internet protocol (IP) based communication, including improved functioning, routing and reliability for communications over the internet.

32. For example, claim 28 of the '815 Patent recites:

> A call routing apparatus for facilitating communications between callers and callees in a system comprising a plurality of nodes with which callers and callees are associated, the apparatus comprising: receiving means for receiving a caller identifier and a callee identifier, in response to initiation of a call by a calling subscriber; means for locating a caller dialing profile comprising a username associated with the caller and a plurality of calling attributes associated with the caller; means for determining a match when at least one of said calling attributes matches at least a portion of said callee identifier; means for classifying the call as a public network call when said match meets public network classification criteria;

means for classifying the call as a private network call when said match meets private network classification criteria; means for producing a private network routing message for receipt by a call controller, when the call is classified as a private network call, said private network routing message identifying an address, on the private network, associated with the callee; and means for producing a public network routing message for receipt by a call controller, when the call is classified as a public network call, said public network routing message identifying a gateway to the public network.

33. For example, claim 54 of the '815 Patent recites:

A process for operating a call routing controller to establish a call between a caller and a callee in a communication system, the process comprising: in response to initiation of a call by a calling subscriber, locating a caller dialing profile comprising a plurality of calling attributes associated with the caller; and when at least one of said calling attributes and at least a portion of a callee identifier associated with the callee match and when the match meets a private network classification criterion, producing a private network routing message for receipt by a call controller, said private network routing message identifying an address, on a private network, the address being associated with the callee; and when at least one of said calling attributes and said at least said portion of said callee identifier associated with the callee match and when the match meets a public network classification criterion, producing a public network routing message for receipt by a call controller, said public network routing message identifying a gateway to a public network.

34. For example, claim 74 of the '815 Patent recites:

A call routing controller apparatus for establishing a call between a caller and a callee in a communication system, the apparatus comprising: a processor operably configured to: access a database of caller dialing profiles wherein each dialing profile associates a plurality of calling attributes with a respective subscriber, to locate a dialing profile associated with the caller, in response to initiation of a call by a calling subscriber; and produce a private network routing message for receipt by a call controller, said private network routing message identifying an address, on a private network, through which the call is to be routed, when at least one of said calling attributes and at least a portion of a callee identifier associated with the callee match and when the match meets a private network classification criterion, the address being associated with the callee; and produce a public network routing message for receipt by a call controller, said public network routing message identifying a gateway to a public network, when at least one of said calling attributes and said at least said portion of said callee identifier associated with the callee match and when the match meets a public network classification criterion.

35. For example, claim 26 of the '005 Patent recites:

A call routing controller apparatus for producing a routing message for routing communications between a caller and a callee in a communication system, the apparatus comprising: at least one

processor operably configured to: use a caller identifier associated with the caller to locate a caller dialing profile comprising a plurality of calling attributes associated with the caller; when at least one of said calling attributes and at least a portion of a callee identifier associated with the callee meet private network classification criteria, produce a private network routing message for receipt by a call controller, said private network routing message identifying an address, on the private network, associated with the callee; and when at least one of said calling attributes and at least a portion of said callee identifier meet a public network classification criterion, produce a public network routing message for receipt by the call controller, said public network routing message identifying a gateway to the public network.

36. For example, claim 50 of the '005 Patent recites:

A call routing controller apparatus for producing a routing message for routing communications between a caller and a callee in a communication system, the apparatus comprising: means for using a caller identifier associated with the caller to locate a caller dialing profile comprising a plurality of calling attributes associated with the caller; and means for, when at least one of said calling attributes and at least a portion of a callee identifier associated with the callee meet private network classification criteria, producing a private network routing message for receipt by a call controller, said private network routing message identifying an address, on the private network, associated with the callee; and means for, when at least one of said calling attributes and at least a portion of said callee identifier meet a public network classification criterion, producing a public network routing message for receipt by the call controller, said public network routing message identifying a gateway to the public network.

37. For example, claim 74 of the '005 Patent recites:

A method of routing communications in a packet switched network in which a first participant identifier is associated with a first participant and a second participant identifier is associated with a second participant in a communication, the method comprising: after the first participant has accessed the packet switched network to initiate the communication, using the first participant identifier to locate a first participant profile comprising a plurality of attributes associated with the first participant; when at least one of the first participant attributes and at least a portion of the second participant identifier meet a first network classification criterion, producing a first network routing message for receipt by a controller, the first network routing message identifying an address in a first portion of the packet switched network, the address being associated with the second participant, the first portion being controlled by an entity; and when at least one of the first participant attributes and at least a portion of the second participant identifier meet a second network classification criterion, producing a second network routing message for receipt by the controller, the second network routing message identifying an address in a second portion of the packet switched network, the second portion not controlled by the entity.

38. VoIP-Pal is the sole owner and assignee of the entire right title and interest in the '815 Patent and the '005 Patent and has the right to sue and recover damages for any current or past infringement of the '815 Patent and the '005 Patent.

OVERVIEW OF THE ACCUSED INSTRUMENTALITIES

39. Each of the instrumentalities described herein made, used, sold and/or offered for sale by Defendant comprises systems and devices relating to and supporting communications using devices, computers, servers, systems and methods used by, operated by and performed by Defendant. VoIP-Pal is informed and believes, and on that basis alleges that Defendant's practices directly and indirectly employ and infringe certain claims of the Patents-in-Suit, for example, by utilizing a caller dialing profile comprising a plurality of calling attributes to establish network classification criteria for routing calls and messages.

40. Defendant supports and operates a messaging platform (the "AT&T Advanced Messaging System") that includes select mobile devices, software applications running on such devices and servers operated by Defendant. Defendant's Advanced Messaging System allows smartphone users to send messages including text, images, video and audio to others. Defendant's Advanced Messaging System allows devices to initiate a communication between a caller, or a first participant, and a callee, or a second participant, which may be a subscriber who is also accessible via Defendant's Advanced Messaging or a non-subscriber. A profile that includes attributes is used as part of the process that classifies a communication.

41. Defendant offers Voice over IP products and services ("AT&T VoIP") utilizing equipment at the customer or business premises and a collection of servers and gateways. AT&T on-premises equipment and/or AT&T servers initiate a call and identifies a caller, or first participant, and a callee, or second participant. The callee or second participant may be an AT&T VoIP subscriber, or a non-subscriber. A profile that includes attributes is used as part of the process that classifies the call.

42. Defendant supports a Wi-Fi based calling platform ("AT&T Wi-Fi Calling") the components of which include mobile devices, software running on such devices and servers operated by AT&T that allows calls to be placed over Wi-Fi networks. AT&T Wi-Fi Calling allows a mobile device to initiate a communication such as a call or a text message between a caller, or a first participant, and a callee, or a second participant, using an AT&T assisted voice over IP ("VoIP") system, and the callee or second participant may be an AT&T subscriber accessible using VoIP, Wi-Fi or other IP data network or a non-subscriber. A caller profile that includes attributes is used as part of the process that classifies a call.

COUNT I

Infringement Of The '815 Patent

43. Paragraphs 1 through 42 are incorporated by reference as if fully stated herein.

44. Defendant, either alone or in conjunction with others, has infringed and continues to infringe, both directly and indirectly, one or more claims of the '815 Patent, including at least claim 54, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by using, offering to sell, selling and/or importing into the United States at least certain methods, apparatuses, products and services used for communication, including, without limitation, video/audio communication, such as AT&T VoIP products and services, including without limitation U-Verse Voice service, AT&T enterprise products and services, AT&T Voice DNA, AT&T IP Flexible Reach, AT&T SIP Trunking, AT&T Hosted VoIP, AT&T Business in a Box and AT&T UC Voice, AT&T's U-Verse Voice service, and AT&T Wi-Fi Calling and the like (collectively, "the '815 Accused Instrumentalities").

45. For example, AT&T infringes exemplary claim 54 of the '815 Patent by using, offering to sell, selling and/or importing into the United States at least the '815 Accused Instrumentalities, which '815 Accused Instrumentalities comprise a process for operating a call routing controller to establish a call between a caller and a callee in a communication system,

comprising:

- in response to initiation of a call by a calling subscriber, locating a caller dialing profile comprising a plurality of calling attributes associated with the caller (e.g., in the '815 Accused Instrumentalities, a caller dialing profile comprising calling attributes can include a contact list stored on a mobile device, an address book stored on AT&T servers or other information used in the classification of a call, such as settings stored on the on-premises equipment, information stored on AT&T servers, and/or information obtained regarding the connection of the caller device to the network); and
- when at least one of said calling attributes and at least a portion of a callee identifier associated with the callee match and when the match meets a private network classification criterion (the '815 Accused Instrumentalities match at least one of the calling attributes in the contact list or address book and at least a portion of the callee identifier in order to find an entry in the contact list or address book associated with the callee. After matching an entry in the users contact list or address book, the phone number associated with that user is sent to AT&T servers, which classifies the call depending on a destination associated with that phone number. The '815 Accused Instrumentalities allow calls to be made using an AT&T controlled network and over a public network such as the PSTN. Private network classification criteria represents routing calls over an AT&T controlled network.); and
- producing a private network routing message for receipt by a call controller, said private network routing message identifying an address, on a private network, the address being associated with the callee (the AT&T operated controller routes the call using a routing message to its own subscriber over an AT&T controlled

network. For example, the callee may be an AT&T subscriber reached using the Accused Instrumentalities, or may be an AT&T customer reached using VoIP to a home or business phone); and

- when at least one of said calling attributes and said at least said portion of said callee identifier associated with the callee match and when the match meets a public network classification criterion (the '815 Accused Instrumentalities match at least one of the calling attributes in the contact list or address book and at least a portion of the callee identifier in order to find an entry in the contact list or address book associated with the callee. After matching an entry in the users contact list or address book, the phone number associated with that user is sent to AT&T servers, which classifies the call depending on a destination associated with that phone number. The '815 Accused Instrumentalities allow calls to be made using an AT&T controlled network and over a public network such as the PSTN. Public network classification criteria represents routing calls over a public network such as the PSTN); and
- producing a public network routing message for receipt by a call controller, said public network routing message identifying a gateway to a public network (the AT&T operated controller within the '815 Accused Instrumentalities routes the call using a routing message to a gateway associated with a public network such as the PSTN).

46. On information and belief, Defendant has had knowledge of the '815 Patent since at least December 18, 2015 when VoIP-Pal transmitted correspondence to Randall Stephenson regarding the Patents-in-Suit.

47. Despite its knowledge and notice of the '815 Patent and its infringement of that patent, Defendant has continued to make, use, sell and offer to sell the '815 Accused

Instrumentalities in the United States. Accordingly, Defendant's infringement has been and continues to be willful.

48. Defendant has induced infringement, and continues to induce infringement, of one or more claims of the '815 Patent under 35 U.S.C. § 271(b). Defendant actively, knowingly, and intentionally induced, and continues to actively, knowingly and intentionally induce infringement of the '815 Patent by selling or otherwise making available and/or supplying the '815 Accused Instrumentalities; with the knowledge and intent that third parties will use the '815 Accused Instrumentalities supplied by Defendant to infringe the '815 Patent; and with the knowledge and intent to encourage and facilitate third party infringement through the dissemination of the '815 Accused Instrumentalities and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the '815 Accused Instrumentalities.

49. Defendant specifically intended and was aware that the ordinary and customary use of the '815 Accused Instrumentalities would infringe the '815 Patent. For example, Defendant sells, uses, makes available and provides the '815 Accused Instrumentalities, which when used in their ordinary and customary manner intended by Defendant, infringe one or more claims of the '815 Patent, including at least claim 54. Upon information and belief, Defendant further provides product manuals and other technical information that cause Defendant's customers and other third parties to use and to operate the '815 Accused Instrumentalities for their ordinary and customary use. Defendant's customers and other third parties have directly infringed the '815 Patent, including at least claim 54, through the normal and customary use of the '815 Accused Instrumentalities. By providing instruction and training to customers and other third parties on how to use the '815 Accused Instrumentalities in an infringing manner, Defendant specifically intended to induce infringement of the '815 Patent, including at least claim 54. Defendant accordingly has induced and continues to induce Defendant's customers and other users of the '815 Accused

Instrumentalities in their ordinary and customary way to infringe the '815 Patent, knowing, or at least being willful blind to the fact, that such use constitutes infringement of the '815 Patent.

50. VoIP-Pal has been and continues to be damaged by Defendant's infringement of the '815 Patent. Upon information and belief, Defendant infringes at least claims 1, 2, 7, 12, 27-29, 34, 39, 54, 72-74, 92, 93 and 111 of the '815 Patent.

51. Defendant's conduct in infringing the '815 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

COUNT II

Infringement Of The '005 Patent

52. Paragraphs 1 through 51 are incorporated by reference as if fully stated herein.

53. Defendant, either alone or in conjunction with others, has infringed and continues to infringe, both directly and indirectly, one or more claims of the '005 Patent, including at least claim 74, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by using, offering to sell, selling and/or importing into the United States at least certain methods, apparatuses, products and services used for communication, including, without limitation, messaging (AT&T Advanced Messaging System), video/audio communication, such as AT&T VoIP products and services, including without limitation U-Verse Voice service, AT&T enterprise products and services, AT&T Voice DNA, AT&T IP Flexible Reach, AT&T SIP Trunking, AT&T Hosted VoIP, AT&T Business in a Box and AT&T UC Voice, AT&T's U-Verse Voice service, and AT&T Wi-Fi Calling and the like (collectively, "the '005 Accused Instrumentalities").

54. For example, Defendant infringes claim 74 of the '005 Patent by using, offering to sell, selling and/or importing into the United States at least the '005 Accused Instrumentalities, which '005 Accused Instrumentalities comprise a method of routing communications in a packet switched network in which a first participant identifier is associated with a first participant and a second participant identifier is associated with a second participant in a communication, the

method comprising:

- after the first participant has accessed the packet switched network to initiate the communication, using the first participant identifier to locate a first participant profile comprising a plurality of attributes associated with the first participant (in the '005 Accused Instrumentalities, the identifier includes a phone number associated with the caller and a first participant profile including first participant attributes includes a contact list stored on a mobile device, an address book stored on AT&T servers or other information used in the classification of a call, such as settings stored on the on-premises equipment, information stored on the AT&T servers, and/or information obtained regarding the connection of the caller device to the network):
- when at least one of the first participant attributes and at least a portion of the second participant identifier meet a first network classification criterion (The '005 Accused Instrumentalities allow calls and messages to be sent over an AT&T controlled network and over public networks such as the PSTN and including SMS messaging. First network classification criteria represents routing the message using an AT&T controlled network. Calling attributes and at least a portion of a callee identifier are used to establish a first network classification criteria, for example by determining that the call or message can be sent and determining that the second participant is an AT&T subscriber);
- producing a first network routing message for receipt by a controller, the first network routing message identifying an address in a first portion of the packet switched network, the address being associated with the second participant, the first portion being controlled by an entity (in the case that the message is to be delivered

over an AT&T controlled network a routing message is prepared for receipt by a call controller operated by AT&T); and

- when at least one of the first participant attributes and at least a portion of the second participant identifier meet a second network classification criterion (the '005 Accused Instrumentalities allow calls and messages to be sent over an AT&T controlled network and over public networks such as the PSTN including SMS messaging. Second network classification criterion represents routing the call or message using a non-AT&T controlled network such as the PSTN including standard SMS messaging. Calling attributes are used to establish a second network classification criterion for example by determining that the call or message can be sent and determining that the second participant is not an AT&T subscriber); and
- producing a second network routing message for receipt by the controller, the second network routing message identifying an address in a second portion of the packet switched network, the second portion not controlled by the entity (the '005 Accused Instrumentalities produce a network routing message for receipt by a call controller which identifies an address of a gateway to a non-AT&T network such as the PSTN including SMS messaging).

55. On information and belief, Defendant has had knowledge of the '005 Patent since at least December 18, 2015 when VoIP-Pal transmitted correspondence to Randall Stephenson regarding the Patents-in-Suit.

56. Despite its knowledge and notice of the '005 Patent and its infringement of that patent, Defendant has continued to make, use, sell and offer to sell the '005 Accused Instrumentalities in the United States. Accordingly, Defendant's infringement has been and continues to be willful.

57. Defendant has induced infringement, and continues to induce infringement, of one or more claims of the '005 Patent under 35 U.S.C. § 271(b). Defendant actively, knowingly, and intentionally induced, and continues to actively, knowingly and intentionally induce infringement of the '005 Patent by selling or otherwise making available and/or supplying the '005 Accused Instrumentalities; with the knowledge and intent that third parties will use the '005 Accused Instrumentalities supplied by Defendant to infringe the '005 Patent; and with the knowledge and intent to encourage and facilitate third party infringement through the dissemination of the '005 Accused Instrumentalities and/or the creation and dissemination of promotional and marketing materials, supporting materials, instructions, product manuals, and/or technical information related to the '005 Accused Instrumentalities.

58. Defendant specifically intended and was aware that the ordinary and customary use of the '005 Accused Instrumentalities would infringe the '005 Patent. For example, Defendant sells, uses, makes available and provides the '005 Accused Instrumentalities, which when used in their ordinary and customary manner intended by Defendant, infringe one or more claims of the '005 Patent, including at least claim 74. Upon information and belief, Defendant further provides product manuals and other technical information that cause Defendant's customers and other third parties to use and to operate the '005 Accused Instrumentalities for their ordinary and customary use. Defendant's customers and other third parties have directly infringed the '005 Patent, including at least claim 74, through the normal and customary use of the '005 Accused Instrumentalities. By providing instruction and training to customers and other third parties on how to use the '005 Accused Instrumentalities in an infringing manner, Defendant specifically intended to induce infringement of the '005 Patent, including at least claim 74. Defendant accordingly has induced and continues to induce Defendant's customers and other users of the '005 Accused Instrumentalities in their ordinary and customary way to infringe the '005 Patent, knowing, or at least being willful blind to the fact, that such use constitutes infringement of the '005 Patent.

59. VoIP-Pal has been and continues to be damaged by Defendant's infringement of the '005 Patent. Upon information and belief, Defendant infringes at least claims 1, 24-26, 49, 50, 73-79, 83, 84, 88, 89, 92, 94-96, 98 and 99 of the '005 Patent.

60. Defendant's conduct in infringing the '005 Patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, VoIP-Pal respectfully requests that this Court enter judgment against Defendant as follows:

A. That Defendant has infringed the Patents-In-Suit;

B. That VoIP-Pal be awarded damages adequate to compensate VoIP-Pal for Defendant's past infringement and any continuing and future infringement up until the date such judgment is entered, including pre- and post-judgment interests, costs, disbursements as justified under 35 U.S.C. § 284;

C. That any award of damages be enhanced under 35 U.S.C. § 284 as a result of Defendant's willful infringement;

D. That this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that VoIP-Pal be awarded reasonable attorney fees;

E. A judgment requiring that VoIP-Pal be awarded a compulsory ongoing licensing fee or reasonable royalty; and

F. That VoIP-Pal be awarded such other and further relief at law or equity as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff VoIP-Pal demands a trial by jury on all claims and issues so triable.

DATED this 15th day of November, 2018.

Respectfully submitted,

MALEK MOSS PLLC

/s/ Kevin N. Malek

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Third Amended Complaint for Patent Infringement was served on counsel of record for the Defendant electronically through the Court's CM/ECF system on November 15, 2018.

/s/ Kevin N. Malek