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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22
23 VOIP-PAL.COM, INC., a Nevada corporation,

Case No. 5:18-cv-06054-LHK-VKD

24 Plaintiff,
v.

**THIRD AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

25 CELLCO PARTNERSHIP d/b/a Verizon
26 Wireless and and DOES I through X,
inclusive,

JURY TRIAL DEMANDED

27 ,
28 Defendant.

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COMPLAINT

Plaintiff VoIP-Pal.com, Inc. (“VoIP-Pal”), for its Third Amended Complaint against Defendant Cellco Partnership d/b/a Verizon Wireless (“Verizon” 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 Cellco Partnership d/b/a Verizon Wireless, is a Delaware general partnership with its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920. On information and belief, Defendant 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. The true names of Defendants I through X, inclusive, whether individual, corporate, associate or otherwise are unknown to the Plaintiff, who therefore sues each Defendant designated herein as DOE is in some way responsible for the damages claimed by the Plaintiff herein. The Plaintiff will ask leave of this Court to amend this Complaint to insert the true names and capacities of Defendants DOES I through X, inclusive, when the identities have been ascertained, to formulate appropriate allegations, and to join such Defendants in this action.

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

1 a portfolio of VoIP-related patents and patent applications.

2 4. This is a civil action for infringement of United States Patent No. 8,542,815 (the
3 “‘815 Patent”) and United States Patent No. 9,179,005 (the “‘005 Patent”) (the “‘815 Patent,” and
4 together with the ‘005 Patent, the “Patents-in-Suit”) under the Patent Laws of the United States, 35
5 U.S.C. § 1 *et seq.*

6 5. On September 24, 2013, the ‘815 Patent entitled “Producing Routing Messages for
7 Voice Over IP Communications” was duly and legally issued with Clay Perreault, Steve
8 Nicholson, Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors
9 after full and fair examination. VoIP-Pal is the owner of all rights, title, and interest in and to the
10 ‘815 Patent and possesses all rights of recovery under the ‘815 Patent. A copy of the ‘815 Patent is
11 attached as Exhibit A.
12

13 6. On November 3, 2015, the ‘005 Patent entitled “Producing Routing Messages for
14 Voice Over IP Communications” was duly and legally issued with Clay Perreault, Steve
15 Nicholson, Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors
16 after full and fair examination. VoIP-Pal is the owner of all rights, title, and interest in and to the
17 ‘005 Patent and possesses all rights of recovery under the ‘005 Patent. A copy of the ‘005 Patent is
18 attached as Exhibit B.
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20 7. VoIP-Pal’s patents represent fundamental advancements to Internet Protocol (“IP”)
21 based communication, including improved functioning, classification, routing and reliability of
22 Voice-over-IP (VoIP) and IP-based transmission of video, photographs, messages and mixed
23 media, as well as improved interoperability of IP-based private networks with public networks
24 such as the public switched telephone network (PSTN). The ‘815 and ‘005 Patents provided, *inter*
25 *alia*, improvements in call routing controllers, processes, and networks. Several illustrative
26 examples of such improvements are briefly described below, although the patented invention is not
27 limited to these specific improvements or examples.
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1 8. The public switched telephone network (PSTN) connected callers through nodes
2 such as central offices or exchanges. Because these nodes were limited to providing services only
3 to subscribers in a “local calling service area,” they required callers to place calls in a specific
4 manner, e.g., by requiring the use of certain dialing patterns and conventions associated with that
5 local area. See ‘815 Patent at 1:29-35. For example, PSTN nodes conventionally required PSTN
6 callers to dial in a manner compatible with a local numbering plan (e.g., a plan based on the “North
7 American Numbering Plan” or “National Numbering Plan,” in use by Defendant as early as about
8 the 1940’s and further developed in later years) as well as to dial in a manner compatible with
9 international standards such as those of the International Telecommunications Union (ITU)
10 Telecommunications Standardization Sector (ITU-T). See ‘815 Patent at 18:23-34. For example,
11 it is known in the field of telephony that early numbering plans assigned an “area code” of 312 for
12 calling Illinois, and that this code (312) remains in use even today as an area code for Chicago. To
13 take another example, the ITU designates “44” as a “country code” for calling the United
14 Kingdom. *Id.* at Fig. 12 (“County Code” attribute for London user is “44”).

17 9. Large organizations were able to avoid PSTN dialing constraints, at least for
18 internal calls, by using private branch exchanges (PBXs) and private numbering plans for their
19 internal private telephone networks, but these PBXs also needed to provide caller access to the
20 PSTN. See ‘815 Patent at 1:15-26. As Andy Valdar has explained in his textbook, “Businesses
21 which have more than a few telephones use a private branch exchange system, known as a PBX, to
22 provide call connections between each telephone (which become ‘extensions’) and links into the
23 PSTN... The PBX is really a small version of the PSTN exchanges, typically ranging in sizes from
24 10 up to 5,000 extensions. A private numbering scheme is required to enable extension to
25 extension dialling, also *special codes* (e.g. ‘dial 9’) are required to enable calls to be made to the
26 PSTN. [...] In the case where a company extends over two or more sites (e.g. office or factory
27 buildings) the PBXs on each site can be linked by private circuits, thus enabling calling between all
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1 the extensions. This is known as a ‘private corporate network’ (or just ‘private network’). In this
2 case the private numbering scheme extends across all the PBXs and usually each PBX is linked to
3 the PSTN.” (Source: Valdar, Andy, Understanding Telecommunications Networks, © 2006 The
4 Institution of Engineering and Technology, London, UK, p. 38. (emphasis added)).

5 10. It was well-understood, routine and conventional for PBXs to require users to dial a
6 special code (e.g., a prefix digit of “9”) if they wanted to place a call on the PSTN, as noted by
7 Valdar and numerous other sources. For example, one telecom dictionary distinguishes between
8 dialing an “internal PBX station number” and an “external number,” wherein in the latter case, “the
9 user must dial an access code in order to gain access to an external trunk connected to the public
10 switched telephone network (PSTN)... The conventional access code is nine (9) in the United
11 States and Canada, and zero (0) in most other countries”. (Source: Ray Horak, “Webster’s New
12 World® Telecom Dictionary” © 2008 by Wiley Publishing, Inc., Indianapolis, Indiana, p.133). To
13 take another example, U.S. Patent No. 3,725,596 (“Maxon”), filed in 1971, discloses an discloses
14 an early private branch exchange (PBX) having equipment for automatically generating and
15 transmitting calling station and trunk number information to a central office on outgoing calls.
16 Maxon indicates that “a calling party at station ST10... dials a prefix digit, such as the
17 conventional prefix digit 9, to initiate an outgoing call to the central office. The digit 9 is...
18 detected by the dial 9 detector 152. Upon the detection of this digit, the register control circuit 153
19 advises common control that the digit 9 has been dialed for a central office call.” [emphasis added].
20 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.
21 Webster’s New World Telecom dictionary and Maxon both confirm that it was considered
22 “conventional” to use a prefix digit such as “9” to place a PSTN call from a PBX.
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26 11. A person of skill in the art (POSITA), upon review of the Patents-in-Suit, would
27 appreciate that they provide technical improvements to overcome certain technical limitations of
28 prior art routing processes, systems and networks, for example, they provide technical solutions

1 for, *inter alia*, (1) user-specific calling, (2) transparent routing, and (3) network resiliency.

2 12. **User-Specific Call Handling:** Many prior art communication systems required
3 users to place a call by using a specific callee identifier format or by following certain dialing
4 conventions with no opportunity for defining a user-specific manner of placing calls. For example,
5 as discussed above, PSTN nodes were typically limited to supporting only the dialing conventions
6 of their local calling service area and processed calls locally (see '815 Patent at 1:29-35) and did
7 not support user-specific calling. The technology described and patented in the Patents-in-Suit
8 overcame such technical limitations to support user-specific calling styles from any continent or
9 country based on the application of user-specific attributes to callee identifiers and network
10 classification criteria to route a call. It was unnecessary for the user to do anything special to
11 “trigger” such user-specific call processing. See, *e.g.*, '815 Patent at 15:10-15 (storing user-
12 specific parameters including a “continent code” and “country code” in association with each
13 subscriber), 17:59-18:10 (disclosing a user-specific “dialing profile” capable of supporting
14 numerous *global* styles of dialing), and Figs. 8A-8D. The technology was capable of fulfilling the
15 individual call handling service preferences of users world-wide (*id.* at 18:55-67), and could also
16 support unconventional dialing styles or special callee identifiers such as usernames (*id.* at 17:14-
17 15).

18 13. **Routing transparency:** Some prior art communication systems required a user to
19 explicitly signal how a call should be processed or to manually “trigger” special call handling. For
20 example, as discussed above, PBX systems in large organizations often relied on a user-specified
21 classification of the dialed number to interpret the number and route the call—a user placing a call
22 to the PSTN would dial a predefined prefix such as “9” to indicate that subsequent digits were to
23 be interpreted as a PSTN number. If no prefix was dialed, the dialed digits were interpreted as a
24 private PBX extension. The dialed digits alone dictated how the call was routed, and thus the user
25 made an affirmative decision when placing a call as to how the call’s routing would take place. In
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1 this example, the PBX fails to provide user-specific call handling and fails to provide routing
2 transparency. In contrast, the patented invention uses a caller's attributes to evaluate a callee
3 identifier against network routing criteria to cause a call to automatically be routed over a system
4 network (e.g., "private network") or another network interconnected to the system network through
5 a gateway (e.g., a "public network" such as the PSTN) transparently to the user, without the user
6 manually specifying which network to use for routing by the user's manner of placing the call
7 (e.g., by the user dialing a prefix of "9" to make a PSTN call).
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9 14. To illustrate this with one embodiment disclosed in the '815 Patent, if a Vancouver
10 user (user profile in Fig. 10) dialed the PSTN phone number of the London user (user profile in
11 Fig. 12), the system would evaluate the dialed digits based on the caller's attributes, determine that
12 the London user is a subscriber to the system, and classify the call as a private network call,
13 identifying a subscriber username such as "44011062444" (see '815 Patent at Fig. 8B, Fig. 12,
14 20:19-21:25). A routing controller (16 in Fig. 1) determines that the London user is associated with
15 a different node than the Vancouver user, and produces a routing message (Fig. 16; *see also* 20:26-
16 48; Fig. 8A at 280, 302, 350, 381) for receipt by a call controller (14 in Fig. 1), thereby causing the
17 call controller to establish the call (*id.* at 26:46-49). The caller in this illustrative embodiment need
18 not be aware that the London user is a subscriber and need not know whether or not the call is
19 being placed over the PSTN.
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21 15. **Resiliency:** Some prior art provided service to a limited area (*id.* at 1:45-46: "such
22 as one location, or a small number of branch offices") but was incapable of providing reliable
23 service to a large number of subscribers dispersed over a geographically dispersed area such as a
24 continent (*id.* at 1:40-46). For example, PSTN exchanges and nodes were limited to serving a
25 "local calling service area" (*id.* at 1:29-31), whereas the PBX systems described above in the
26 Valdar textbook were "really a small version of the PSTN exchanges, typically ranging in sizes
27 from 10 up to 5,000 extensions" (see Valdar, *supra*; cf. '815 Patent at 1:43-46). Furthermore, at a
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1 *system-level*, such networks did not always have “other nodes... able to take up the load” if a
2 particular node failed, e.g., due to a natural disaster (*id.* at 1:35-39). In contrast, the patented
3 inventions provide reliable service to large areas including countries and continents. This gave rise
4 to technical challenges regarding how to handle issues such as a very large number of subscribers,
5 bursts of excessive demand and/or communication node failure, all of which affected system
6 reliability. The patented inventions therefore describe a technology for flexibly assigning nodes to
7 particular geographical areas, including the option of adding redundant nodes with overlapping
8 responsibility for load sharing. *Id.* at 12:50-13:2 (disclosing a private network of super nodes
9 providing communication services to large geographical regions) and 13:3-6 (disclosing special
10 nodes for “call load sharing”). The technology performed call routing by identifying a suitable
11 private network “node” or a gateway (e.g., a gateway to the PSTN) in response to evaluation of the
12 caller’s attributes, the callee identifier, and available routing resources. This design made it simple
13 to allocate or add new nodes and gateways to particular regions (12:50-13:6; 24:54-67, 26:46-49;
14 26:65-27:7). The use of caller attributes, callee identifier and dynamic routing criteria to produce
15 the routing message, as described in the Patents-in-Suit, allowed such new nodes and gateways to
16 be identified in the routing message, to increase service availability to subscribers as needed
17 without redesigning the routing apparatus and process, thereby creating an improved, resilient and
18 reliable *global* routing system.

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

6 17. Defendant employs VoIP-Pal’s innovative technology and products, features, and
7 designs, and have widely distributed infringing products and/or services that have undermined
8 VoIP-Pal’s technology monetization and marketing efforts, including VoIP-Pal’s efforts to secure
9 licensing revenue for these patents. Instead of incorporating non-infringing technology into its
10 products and services, Defendant has employed VoIP-Pal’s patented communication classification
11 and routing technology, in violation of VoIP-Pal’s valuable intellectual property rights.

12 **JURISDICTION AND VENUE**

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

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

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

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

8 22. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b) because, upon
9 information and belief, Defendant maintains a regular and established place of business and offer
10 products and/or services for sale in the Northern District of California. On information and belief,
11 Defendant has certain communication and computing infrastructure for their infringing products
12 and services located in the Northern District of California, such as servers. Furthermore, venue is
13 proper in that Defendant has infringed and continues to infringe VoIP-Pal's patents causing harm
14 to VoIP-Pal in the Northern District of California, including via said communication and
15 computing infrastructure.
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18 **BACKGROUND OF THE TECHNOLOGY AND THE PATENTS-IN-SUIT**

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

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

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

8
9 26. The inventions of the Patents-In-Suit originated from breakthrough work and
10 development in the internet protocol communications field.

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

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

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

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

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

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

4 A call routing apparatus for facilitating communications between
5 callers and callees in a system comprising a plurality of nodes with
6 which callers and callees are associated, the apparatus comprising:
7 receiving means for receiving a caller identifier and a callee
8 identifier, in response to initiation of a call by a calling subscriber;
9 means for locating a caller dialing profile comprising a username
10 associated with the caller and a plurality of calling attributes
11 associated with the caller; means for determining a match when at
12 least one of said calling attributes matches at least a portion of said
13 callee identifier; means for classifying the call as a public network
14 call when said match meets public network classification criteria;
15 means for classifying the call as a private network call when said
16 match meets private network classification criteria; means for
17 producing a private network routing message for receipt by a call
18 controller, when the call is classified as a private network call, said
19 private network routing message identifying an address, on the
20 private network, associated with the callee; and means for producing
21 a public network routing message for receipt by a call controller,
22 when the call is classified as a public network call, said public
23 network routing message identifying a gateway to the public
24 network.

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

16 A process for operating a call routing controller to establish a call
17 between a caller and a callee in a communication system, the
18 process comprising: in response to initiation of a call by a calling
19 subscriber, locating a caller dialing profile comprising a plurality of
20 calling attributes associated with the caller; and when at least one of
21 said calling attributes and at least a portion of a callee identifier
22 associated with the callee match and when the match meets a private
23 network classification criterion, producing a private network routing
24 message for receipt by a call controller, said private network routing
25 message identifying an address, on a private network, the address
26 being associated with the callee; and when at least one of said
27 calling attributes and said at least said portion of said callee
28 identifier associated with the callee match and when the match
29 meets a public network classification criterion, producing a public
30 network routing message for receipt by a call controller, said public
31 network routing message identifying a gateway to a public network.

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

26 A call routing controller apparatus for establishing a call between a
27 caller and a callee in a communication system, the apparatus
28 comprising: a processor operably configured to: access a database of
29 caller dialing profiles wherein each dialing profile associates a
30 plurality of calling attributes with a respective subscriber, to locate a
31 dialing profile associated with the caller, in response to initiation of

1 a call by a calling subscriber; and produce a private network routing
2 message for receipt by a call controller, said private network routing
3 message identifying an address, on a private network, through which
4 the call is to be routed, when at least one of said calling attributes
5 and at least a portion of a callee identifier associated with the callee
6 match and when the match meets a private network classification
7 criterion, the address being associated with the callee; and produce a
8 public network routing message for receipt by a call controller, said
9 public network routing message identifying a gateway to a public
10 network, when at least one of said calling attributes and said at least
11 said portion of said callee identifier associated with the callee match
12 and when the match meets a public network classification criterion.

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

8 A call routing controller apparatus for producing a routing message
9 for routing communications between a caller and a callee in a
10 communication system, the apparatus comprising: at least one
11 processor operably configured to: use a caller identifier associated
12 with the caller to locate a caller dialing profile comprising a plurality
13 of calling attributes associated with the caller; when at least one of
14 said calling attributes and at least a portion of a callee identifier
15 associated with the callee meet private network classification
16 criteria, produce a private network routing message for receipt by a
17 call controller, said private network routing message identifying an
18 address, on the private network, associated with the callee; and
19 when at least one of said calling attributes and at least a portion of
20 said callee identifier meet a public network classification criterion,
21 produce a public network routing message for receipt by the call
22 controller, said public network routing message identifying a
23 gateway to the public network.

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

18 A call routing controller apparatus for producing a routing message
19 for routing communications between a caller and a callee in a
20 communication system, the apparatus comprising: means for using a
21 caller identifier associated with the caller to locate a caller dialing
22 profile comprising a plurality of calling attributes associated with
23 the caller; and means for, when at least one of said calling attributes
24 and at least a portion of a callee identifier associated with the callee
25 meet private network classification criteria, producing a private
26 network routing message for receipt by a call controller, said private
27 network routing message identifying an address, on the private
28 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.

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

28 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

1 second participant in a communication, the method comprising: after
2 the first participant has accessed the packet switched network to
3 initiate the communication, using the first participant identifier to
4 locate a first participant profile comprising a plurality of attributes
5 associated with the first participant; when at least one of the first
6 participant attributes and at least a portion of the second participant
7 identifier meet a first network classification criterion, producing a
8 first network routing message for receipt by a controller, the first
9 network routing message identifying an address in a first portion of
10 the packet switched network, the address being associated with the
11 second participant, the first portion being controlled by an entity;
12 and when at least one of the first participant attributes and at least a
13 portion of the second participant identifier meet a second network
14 classification criterion, producing a second network routing message
15 for receipt by the controller, the second network routing message
16 identifying an address in a second portion of the packet switched
17 network, the second portion not controlled by the entity.

18 38. VoIP-Pal is the sole owner and assignee of the entire right title and interest in the
19 '815 Patent and the '005 Patent and has the right to sue and recover damages for any current or
20 past infringement of the '815 Patent and the '005 Patent.

21 **OVERVIEW OF THE ACCUSED INSTRUMENTALITIES**

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

40. Defendant supports and operates a messaging platform (the "Verizon Messaging
System") that includes select mobile devices, software applications running on such devices and
servers operated by Defendant. Defendant's Messaging System allows smartphone users to send
messages including text, images, video and audio to others. Defendant's 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 Messaging or a non-

1 subscriber. A profile that includes attributes is used as part of the process that classifies a
2 communication.

3 41. Defendant offers Voice over IP products and services (“Verizon VoIP”) utilizing
4 equipment at the customer or business premises and a collection of servers and gateways.
5 Defendant’s on-premises equipment and/or Defendant’s servers initiate a call and identifies a
6 caller, or first participant, and a callee, or second participant. The callee or second participant may
7 be a Verizon VoIP subscriber, or a non-subscriber. A profile that includes attributes is used as
8 part of the process that classifies the call.
9

10 42. Defendant supports a Wi-Fi based calling platform (“Verizon Wi-Fi Calling”) the
11 components of which include mobile devices, software running on such devices and servers
12 operated by Defendant that allows calls to be placed over Wi-Fi networks. Verizon Wi-Fi Calling
13 allows a mobile device to initiate a communication such as a call or a text message between a
14 caller, or a first participant, and a callee, or a second participant, using a Defendant assisted voice
15 over IP (“VoIP”) system, and the callee or second participant may be Defendant’s subscriber
16 accessible using VoIP, Wi-Fi or other IP data network or a non-subscriber. A caller profile that
17 includes attributes is used as part of the process that classifies a call.
18

19 **COUNT I**

20 **Infringement Of The ‘815 Patent**

21 43. Paragraphs 1 through 42 are incorporated by reference as if fully stated herein.
22

23 44. Defendant, either alone or in conjunction with others, has infringed and continues to
24 infringe, both directly and indirectly, one or more claims of the ‘815 Patent, including at least
25 claim 54, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by using,
26 offering to sell, selling and/or importing into the United States at least certain methods,
27 apparatuses, products and services used for communication, including, without limitation,
28 video/audio communication, such as Verizon VoIP products and services, including without

1 limitation Verizon FIOS, Verizon Business Digital Voice, Verizon One Talk Business Solutions,
2 Verizon Preferred Voice, Verizon Virtual Communications Express, Verizon IP Trunking, Verizon
3 Business Connection, Verizon Virtual Contact Center, Verizon Unified Communications and
4 Collaboration as a Service (UCCaaS), Verizon IP Integrated Access, Verizon Hosted IP Centrex,
5 Verizon IP Flexible T1, and Verizon Wi-Fi Calling and the like (collectively, “the ‘815 Accused
6 Instrumentalities”).

7
8 45. For example, Verizon infringes exemplary claim 54 of the ‘815 Patent by using,
9 offering to sell, selling and/or importing into the United States at least the ‘815 Accused
10 Instrumentalities, which ‘815 Accused Instrumentalities comprise a process for operating a call
11 routing controller to establish a call between a caller and a callee in a communication system,
12 comprising:

- 13
- 14 • in response to initiation of a call by a calling subscriber, locating a caller dialing
15 profile comprising a plurality of calling attributes associated with the caller (e.g., in
16 the ‘815 Accused Instrumentalities, a caller dialing profile comprising calling
17 attributes can include a contact list stored on a mobile device, an address book
18 stored on Defendant’s servers or other information used in the classification of a
19 call, such as settings stored on the on-premises equipment, information stored on
20 Defendant’s servers, and/or information obtained regarding the connection of the
21 caller device to the network); and
 - 22 • when at least one of said calling attributes and at least a portion of a callee identifier
23 associated with the callee match and when the match meets a private network
24 classification criterion (the ‘815 Accused Instrumentalities match at least one of the
25 calling attributes in the contact list or address book and at least a portion of the
26 callee identifier in order to find an entry in the contact list or address book
27 associated with the callee. After matching an entry in the users contact list or
28

1 address book, the phone number associated with that user is sent to Defendant's
2 servers, which classifies the call depending on a destination associated with that
3 phone number. The '815 Accused Instrumentalities allow calls to be made using a
4 Defendant controlled network and over a public network such as the PSTN. Private
5 network classification criteria represents routing calls over Defendant's controlled
6 network.); and

- 7
- 8 • producing a private network routing message for receipt by a call controller, said
9 private network routing message identifying an address, on a private network, the
10 address being associated with the callee (the Defendant operated controller routes
11 the call using a routing message to its own subscriber over a Defendant controlled
12 network. For example, the callee may be Defendant's subscriber reached using the
13 Accused Instrumentalities, or may be Defendant's customer reached using VoIP to a
14 home or business phone); and
- 15 • when at least one of said calling attributes and said at least said portion of said
16 callee identifier associated with the callee match and when the match meets a public
17 network classification criterion (the '815 Accused Instrumentalities match at least
18 one of the calling attributes in the contact list or address book and at least a portion
19 of the callee identifier in order to find an entry in the contact list or address book
20 associated with the callee. After matching an entry in the users contact list or
21 address book, the phone number associated with that user is sent to Defendant's
22 servers, which classifies the call depending on a destination associated with that
23 phone number. The '815 Accused Instrumentalities allow calls to be made using a
24 Defendant controlled network and over a public network such as the PSTN. Public
25 network classification criteria represents routing calls over a public network such as
26 the PSTN); and
27
28

- 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 Defendant 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 1, 2015 when VoIP-Pal transmitted correspondence to Neer Gupta 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

1 their ordinary and customary manner intended by Defendant, infringe one or more claims of the
2 '815 Patent, including at least claim 54. Upon information and belief, Defendant further provides
3 product manuals and other technical information that cause Defendant's customers and other third
4 parties to use and to operate the '815 Accused Instrumentalities for their ordinary and customary
5 use. Defendant's customers and other third parties have directly infringed the '815 Patent,
6 including at least claim 54, through the normal and customary use of the '815 Accused
7 Instrumentalities. By providing instruction and training to customers and other third parties on how
8 to use the '815 Accused Instrumentalities in an infringing manner, Defendant specifically intended
9 to induce infringement of the '815 Patent, including at least claim 54. Defendant accordingly has
10 induced and continues to induce Defendant's customers and other users of the '815 Accused
11 Instrumentalities in their ordinary and customary way to infringe the '815 Patent, knowing, or at
12 least being willful blind to the fact, that such use constitutes infringement of the '815 Patent.
13

14 50. VoIP-Pal has been and continues to be damaged by Defendant's infringement of the
15 '815 Patent. Upon information and belief, Defendant infringes at least claims 1, 2, 7, 12, 27-29, 34,
16 39, 54, 72-74, 92, 93 and 111 of the '815 Patent.
17

18 51. Defendant's conduct in infringing the '815 Patent renders this case exceptional
19 within the meaning of 35 U.S.C. § 285.
20

21 COUNT II

22 **Infringement Of The '005 Patent**

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

24 53. Defendant, either alone or in conjunction with others, has infringed and continues to
25 infringe, both directly and indirectly, one or more claims of the '005 Patent, including at least
26 claim 74, under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by using,
27 offering to sell, selling and/or importing into the United States at least certain methods,
28 apparatuses, products and services used for communication, including, without limitation,

1 messaging (Verizon Messaging System), video/audio communication, such as Verizon VoIP
2 products and services, including without limitation Verizon FIOS, Verizon Business Digital Voice,
3 Verizon One Talk Business Solutions, Verizon Preferred Voice, Verizon Virtual Communications
4 Express, Verizon IP Trunking, Verizon Business Connection, Verizon Virtual Contact Center,
5 Verizon Unified Communications and Collaboration as a Service (UCCaaS), Verizon IP Integrated
6 Access, Verizon Hosted IP Centrex, Verizon IP Flexible T1, and Verizon Wi-Fi Calling and the
7 like (collectively, “the ‘005 Accused Instrumentalities”).
8

9 54. For example, Defendant infringes claim 74 of the ‘005 Patent by using, offering to
10 sell, selling and/or importing into the United States at least the ‘005 Accused Instrumentalities,
11 which ‘005 Accused Instrumentalities comprise a method of routing communications in a packet
12 switched network in which a first participant identifier is associated with a first participant and a
13 second participant identifier is associated with a second participant in a communication, the
14 method comprising:
15

- 16 • after the first participant has accessed the packet switched network to initiate the
17 communication, using the first participant identifier to locate a first participant
18 profile comprising a plurality of attributes associated with the first participant (in
19 the ‘005 Accused Instrumentalities, the identifier includes a phone number
20 associated with the caller and a first participant profile including first participant
21 attributes includes a contact list stored on a mobile device, an address book stored
22 on Verizon servers or other information used in the classification of a call, such as
23 settings stored on the on-premises equipment, information stored on the Verizon
24 servers, and/or information obtained regarding the connection of the caller device to
25 the network):
26
- 27 • when at least one of the first participant attributes and at least a portion of the
28 second participant identifier meet a first network classification criterion (The ‘005

1 Accused Instrumentalities allow calls and messages to be sent over a Verizon
2 controlled network and over public networks such as the PSTN and including SMS
3 messaging. First network classification criteria represents routing the message
4 using a Verizon controlled network. Calling attributes and at least a portion of a
5 callee identifier are used to establish a first network classification criteria, for
6 example by determining that the call or message can be sent and determining that
7 the second participant is a Verizon subscriber);

- 8
- 9 • producing a first network routing message for receipt by a controller, the first
10 network routing message identifying an address in a first portion of the packet
11 switched network, the address being associated with the second participant, the first
12 portion being controlled by an entity (in the case that the message is to be delivered
13 over a Verizon controlled network a routing message is prepared for receipt by a
14 call controller operated by Verizon); and
- 15
- 16 • when at least one of the first participant attributes and at least a portion of the
17 second participant identifier meet a second network classification criterion (the ‘005
18 Accused Instrumentalities allow calls and messages to be sent over a Verizon
19 controlled network and over public networks such as the PSTN including SMS
20 messaging. Second network classification criterion represents routing the call or
21 message using a non-Verizon controlled network such as the PSTN including
22 standard SMS messaging. Calling attributes are used to establish a second network
23 classification criterion for example by determining that the call or message can be
24 sent and determining that the second participant is not a Verizon subscriber); and
- 25
- 26 • producing a second network routing message for receipt by the controller, the
27 second network routing message identifying an address in a second portion of the
28 packet switched network, the second portion not controlled by the entity (the ‘005

1 Accused Instrumentalities produce a network routing message for receipt by a call
2 controller which identifies an address of a gateway to a non-Verizon network such
3 as the PSTN including SMS messaging).

4 55. On information and belief, Defendant has had knowledge of the '005 Patent since at
5 least December 1, 2015 when VoIP-Pal transmitted correspondence to Neer Gupta regarding the
6 Patents-in-Suit.

7
8 56. Despite its knowledge and notice of the '005 Patent and its infringement of that
9 patent, Defendant has continued to make, use, sell and offer to sell the '005 Accused
10 Instrumentalities in the United States. Accordingly, Defendant's infringement has been and
11 continues to be willful.

12 57. Defendant has induced infringement, and continues to induce infringement, of one
13 or more claims of the '005 Patent under 35 U.S.C. § 271(b). Defendant actively, knowingly, and
14 intentionally induced, and continues to actively, knowingly and intentionally induce infringement
15 of the '005 Patent by selling or otherwise making available and/or supplying the '005 Accused
16 Instrumentalities; with the knowledge and intent that third parties will use the '005 Accused
17 Instrumentalities supplied by Defendant to infringe the '005 Patent; and with the knowledge and
18 intent to encourage and facilitate third party infringement through the dissemination of the '005
19 Accused Instrumentalities and/or the creation and dissemination of promotional and marketing
20 materials, supporting materials, instructions, product manuals, and/or technical information related
21 to the '005 Accused Instrumentalities.
22

23
24 58. Defendant specifically intended and was aware that the ordinary and customary use
25 of the '005 Accused Instrumentalities would infringe the '005 Patent. For example, Defendant
26 sells, uses, makes available and provides the '005 Accused Instrumentalities, which when used in
27 their ordinary and customary manner intended by Defendant, infringe one or more claims of the
28 '005 Patent, including at least claim 74. Upon information and belief, Defendant further provides

1 product manuals and other technical information that cause Defendant's customers and other third
2 parties to use and to operate the '005 Accused Instrumentalities for their ordinary and customary
3 use. Defendant's customers and other third parties have directly infringed the '005 Patent,
4 including at least claim 74, through the normal and customary use of the '005 Accused
5 Instrumentalities. By providing instruction and training to customers and other third parties on how
6 to use the '005 Accused Instrumentalities in an infringing manner, Defendant specifically intended
7 to induce infringement of the '005 Patent, including at least claim 74. Defendant accordingly has
8 induced and continues to induce Defendant's customers and other users of the '005 Accused
9 Instrumentalities in their ordinary and customary way to infringe the '005 Patent, knowing, or at
10 least being willful blind to the fact, that such use constitutes infringement of the '005 Patent.
11

12 59. VoIP-Pal has been and continues to be damaged by Defendant's infringement of the
13 '005 Patent. Upon information and belief, Defendant infringes at least claims 1, 24-26, 49, 50, 73-
14 79, 83, 84, 88, 89, 92, 94-96, 98 and 99 of the '005 Patent.
15

16 60. Defendant's conduct in infringing the '005 Patent renders this case exceptional
17 within the meaning of 35 U.S.C. § 285.
18

19 **PRAYER FOR RELIEF**

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

- 22 A. That Defendant has infringed the Patents-In-Suit;
- 23 B. That VoIP-Pal be awarded damages adequate to compensate VoIP-Pal for
24 Defendant's past infringement and any continuing and future infringement up until
25 the date such judgment is entered, including pre- and post-judgment interests, costs,
26 disbursements as justified under 35 U.S.C. § 284;
- 27 C. That any award of damages be enhanced under 35 U.S.C. § 284 as a result of
28 Defendant's willful infringement;

- 1 D. That this case be declared an exceptional case within the meaning of 35 U.S.C. §
2 285 and that VoIP-Pal be awarded reasonable attorney fees;
- 3 E. A judgment requiring that VoIP-Pal be awarded a compulsory ongoing licensing fee
4 or reasonable royalty; and
- 5 F. That VoIP-Pal be awarded such other and further relief at law or equity as this
6 Court deems just and proper.
7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff VoIP-Pal demands a trial by jury on all claims and issues so triable.
10

11 DATED this 15th day of November, 2018.

12 Respectfully submitted,

13
14 /s/ Kevin N. Malek
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CERTIFICATE OF SERVICE

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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