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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VOIP-PAL.COM INC.,

Plaintiff,

v.

TWITTER, INC.,

Defendant.

Case No. 5:18-cv-04523-LHK

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff, Voip-Pal.com, Inc.'s ("VPLM") for its First Amended Complaint against Defendant Twitter, Inc., ("Twitter"), hereby alleges as follows:

THE NATURE OF THE ACTION

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

2. On November 3, 2015, United Patent No. 9,179,005 (the " '005 Patent" and the "Patent-in-Suit") 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. VPLM 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 A**.

3. VPLM's patents represent fundamental advancements to Internet Protocol ("IP") based communication, including improved functioning, call classification, call routing and reliability for VoIP, messaging, and IP-based transmission of video, photographs and mixed media communications.

4. Twitter employs VPLM's innovative technology and products, features, and designs, and has widely distributed infringing products and/or services that have undermined VPLM's marketing and monetization efforts. Instead of incorporating non-infringing technology into its products and services, Twitter has employed and has incorporated VPLM's patented communication classification and routing technology, in violation of VPLM's valuable intellectual property rights.

PARTIES

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

6. Defendant, Twitter Inc. ("Twitter") is a California corporation with its principal place of business at 1355 Market Street, Suite 900, San Francisco, California 94103. On information and belief, Twitter 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.

7. As a result of Twitter's infringement as alleged herein, on December 18, 2015, VPLM provided notice to Twitter, through written correspondence, that it may be in violation of VPLM's patent rights, including VPLM's rights under the '005 Patent. Despite the notice, Twitter has infringed and continues to infringe VPLM's patents.

JURISDICTION AND VENUE

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

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

10. Venue is proper within this District under 28 U.S.C. § 1391(b), (c), and § 1400(b) because Twitter regularly transacts business within this District and offers services for sale in this District that infringe VPLM's patent rights. Furthermore, venue is proper in that Twitter has and continues to infringe VPLM's patent rights causing harm to VPLM in the Northern District of California.

FACTUAL ALLEGATIONS

A. Twitter's Infringement of VPLM'S Patents

11. VPLM has protected its innovative designs and technologies through a broad range of intellectual property rights. Among the patents that VPLM has been awarded is the '005 Patent to which VPLM owns all rights, title, and interest.

12. VoIP-Pal's patent(s) 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. The '005 Patent provides, *inter alia*, improvements in communications routing controllers, processes, and networks.

13. 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. The technology performs communication routing by identifying a suitable private network "node" or a gateway (e.g., a gateway to the PSTN) in response to evaluation of the sender's attributes, the identifier,

and available routing resources. This design made it simple to allocate or add new nodes and gateways to particular regions. The use of these attributes, identifier and dynamic routing criteria to produce the routing message, as described in the Patent-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.

14. As described above, a variety of techniques were used for routing decisions, all of which utilized an 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 Patent-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 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 communication.

BACKGROUND OF THE TECHNOLOGY AND THE PATENT-IN-SUIT

15. The inventions of the Patent-In-Suit originated from breakthrough work and development in the internet protocol communications field.

16. 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.

17. 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.

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

19. 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.

20. The Patent-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.

21. 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.

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

OVERVIEW OF THE ACCUSED INSTRUMENTALITIES

23. Twitter has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the '005 Patent by using, selling and/or offering to sell in the United States messaging services using messaging application software and/or equipment, servers and/or gateways that route messages to computing devices such as smartphones, tablet computers and personal computers.

24. 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 Patent-in-Suit.

25. Upon information and belief, Twitter operates and supports a messaging platform (the "Twitter System") that includes desktop computers, laptops, tablets and mobile devices such as smartphones, software applications running on mobile devices, and servers and gateways communicating with such devices. The Twitter System allows smartphone, tablet, laptop and desktop users to send messages that are routed to other users. Twitter directly or indirectly (e.g., through its subsidiaries, affiliates, partners and/or other intermediaries) practices certain claims of U.S. Patent 9,179,005. The Twitter System allows devices to initiate a communication between a first participant, and a second participant. In the case of messages referred to as "Mentions" (in which one or more Twitter users is identified in the message, such as in a "Reply Tweet" or a

"Re-Tweet") and "Direct Messages" (in which one or more specific Twitter users are identified as the recipient(s) of the message), a callee identifier (e.g., username) is part of the message.

26. VPLM is informed and believes, and on that basis alleges that Twitter offers messaging, including "Direct Messages," "Reply Tweets," "Mentions" and "Re-Tweets" that utilize initiator and recipient call classification criteria that is used on a collection of servers and gateways and/or through software or firmware applications that run on computing devices such as smartphones, tablet computers, desktop computers and portable computers.

27. VPLM is informed and believes, and on that basis alleges that Twitter engages in the following specific infringing practices: Twitter practices directly and indirectly certain claims of the '005 Patent by utilizing a first participant profile comprising a plurality of first participant attributes to establish network classification criteria for routing messages between first participants and second participants, including operations that occur on its equipment, servers and/or gateways, and/or the equipment, servers and/or gateways of subsidiaries and/or intermediaries. Twitter communications between a first participant and a second participant include "Direct Messages" (in which one or more Twitter users are identified as the recipient(s) of the message), and "Mentions" (in which one or more Twitter users is identified by username in a message, which could be a "Re-Tweet" or a "Reply Tweet," for example). First participant attributes include information associated with first participant, such as settings stored on a mobile device and information stored on Twitter equipment (e.g., the list of users that are currently following the caller, the list of users that are blocked by the caller, and the security and privacy settings for the caller including whether tweets are public or protected). Network classification criteria affect how messages are delivered to recipients, which can be over the public SMS network and over a private network to a Twitter application running on a computing device such as a smartphone.

28. The Twitter System allows devices to initiate a communication between a first participant, and a second participant, which may be an Twitter subscriber or a non-subscriber. A profile that includes attributes is used as part of the process that classifies a communication that directly and/or indirectly practices certain claims of the '005 Patent.

29. Twitter's infringement of the '005 Patent provides Twitter with valuable functionality for its products and services at the expense of VPLM's protected intellectual property. Rather than utilizing non-infringing technology for call and message classification and routing of Public to Public communications, Private to Private communications, Public to Private and Private to Public communications (e.g. messaging and media transfers), Twitter has employed VPLM's technology, including its classification and routing systems and methods.

30. Twitter continues to choose to infringe VPLM's patent rights through the Accused Instrumentalities, including at least Twitter's Messaging based communication products and services.

31. Twitter has not obtained permission or a license from VPLM to use its inventions as identified in the '005 Patent.

COUNT I
Infringement of the '005 Patent

32. VPLM incorporates and re-alleges paragraphs 1 through 40 of this Complaint.

33. 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, the

Twitter System, Mentions, Tweets, Reply Tweets, Re-Tweets and Direct Messages (collectively, "the '005 Accused Instrumentalities").

34. 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 (the Twitter System offers messaging services through its Web-based application, its mobile applications and through SMS messaging. A Twitter application is available for iOS and for Android, and Twitter also allow smartphones to send and receive messages using SMS messages. Twitter communications between a first participant and a second participant include Direct Messages (in which at least one Twitter user is identified as the recipient of the message), and Mentions (in which one or more Twitter users are identified in the message, which could be a "Re-Tweet" or a "Reply Tweet," for example). Mentions (including Reply Tweets and Re-Tweets) may be delivered to the user identified in the message as a "notification"):

- 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 (the '005 Accused Instrumentalities, including the Twitter System, after the first participant has accessed the packet switched network to initiate the communication, uses the first participant identifier (e.g., Twitter username) to locate a first participant profile comprising a plurality of attributes associated with the first participant. A Direct Message and a Mention can be initiated by the

Twitter application and through an SMS application on a mobile device. A first participant profile including first participant attributes includes information used in the classification of a communication, such as settings stored on the mobile device and information stored on Twitter servers. Examples of first participant attributes are: 1. the list of users that are currently following the first participant, 2. the list of users that are blocked by the first participant, and 3. the security and privacy settings for the first participant including whether Tweets are protected.);

- 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, determine if at least one of the first participant attributes and at least a portion of the second participant identifier meet a first network classification criterion, e.g., the Twitter System allows messages to be sent over a private network to a Twitter application and using the public SMS network. First network classification criteria represents routing the message over a private network to a Twitter application. The first participant attributes and the second participant identifier are used to match the 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 (e.g., when at least one of the first participant attributes and at least a portion of the second participant identifier meet the first network classification criterion, the Twitter System produces a first network routing message for receipt by a controller which identifies an address,

associated with the second participant, in a first portion of the packet switched network, which is controlled by an entity, e.g., the Twitter application protocol is based on a push notifications to iOS or Android. Reply Tweets and Direct Messages are sent, e.g., to the smartphone of the second participant using cellular data or Wi-Fi networks, over a private network using TCP/IP); 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 (e.g., the Twitter System determines if at least one of the first participant attributes and at least a portion of the second participant identifier meet a second network classification criterion such that the Twitter System allows messages to be sent over a private network to a Twitter application and using the public SMS network. Second network classification criteria represents routing the message using the public SMS network. The first participant attributes and the second participant identifier are used to match the second network classification criterion. One example of first participant attributes being used to match a second network classification criterion is the use of the list of users that are currently following the first participant. For example, if the second participant is a follower of the first participant and the second participant has configured their Twitter account to receive SMS notifications, then the message will be sent to the second participant using the public SMS network.); 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 (e.g., when at least one of the first participant attributes and at least a portion of the

second participant identifier meet the second network classification criterion, the Twitter System produces a second network routing message for receipt by the controller which identifies an address in a second portion of the packet switched network, which is not controlled by the entity such that if a message is sent using SMS, the Twitter servers deliver the message using an SMS gateway).

35. On information and belief, Defendant has had knowledge of the '005 Patent since at least December 18, 2015 when VoIP-Pal transmitted correspondence to Mr. Dick Costolo regarding the Patent-in-Suit.

36. 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.

37. 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.

38. 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.

39. 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 – 77, 79, 83, 84, 88, 89, 92, 94, 96, 98 and 99 of the '005 Patent.

40. 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

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

DATED this 15th day of November, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing First 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