

1 VENABLE LLP  
Frank C. Cimino, Jr. (*pro hac vice* pending)  
2 fccimino@venable.com  
Megan S. Woodworth (*pro hac vice* pending)  
3 mswoodworth@venable.com  
600 Massachusetts Ave., NW  
4 Washington, D.C. 20001  
Telephone: (202) 344-4000  
5 Facsimile: (202) 344-8300

6 William A. Hector (SBN 298490)  
wahector@venable.com  
7 101 California Street, Suite 3800  
San Francisco, CA 94111  
8 Telephone: (415) 653-3750  
Facsimile: (415) 653-3755  
9

*Attorneys for Plaintiff*  
10 CELLCO PARTNERSHIP d/b/a Verizon Wireless

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CELLCO PARTNERSHIP d/b/a Verizon  
15 Wireless,

16 Plaintiff,

17 v.

18 VOIP-PAL.COM, INC.,  
19

20 Defendant.

CASE NO. 20-cv-3092

**COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-  
INFRINGEMENT AND INVALIDITY**

**DEMAND FOR JURY TRIAL**

VENABLE LLP  
101 CALIFORNIA STREET, SUITE 3800  
SAN FRANCISCO, CA 94111  
415-653-3750

1 Plaintiff Cellco Partnership d/b/a Verizon Wireless (“Verizon”), by and through its  
2 counsel, files this Complaint against VoIP-Pal.com, Inc. (“VoIP-Pal”) for declaratory judgment  
3 that it does not infringe any claim of U.S. Patent No. 10,218,606 (the “’606 patent”) and that the  
4 ’606 patent is invalid.

### 5 INTRODUCTION

6 1. This is an action for a declaratory judgment arising under the patent laws of the  
7 United States, Title 35 of the United States Code. Verizon seeks declaratory judgments that it  
8 does not infringe any claim of the ’606 patent and that the ’606 patent is invalid. The action  
9 arises from a real and immediate controversy between Verizon and VoIP-Pal as to whether  
10 Verizon infringes any claims of the ’606 patent, which is attached as Exhibit 1 and entitled  
11 “Producing Routing Messages for Voice Over IP Communications.”

12 2. This is not the first lawsuit between VoIP-Pal and Verizon in this District.  
13 Between 2016 and 2018, VoIP-Pal filed six lawsuits against Verizon, AT&T, Twitter, Apple,  
14 and Amazon in the United States District Court for the District of Nevada asserting six patents  
15 from the family that includes the ’606 patent. Twitter successfully moved to transfer its case to  
16 this Court. And during briefing on Verizon’s motion to transfer, VoIP-Pal consented to transfer  
17 the remaining five cases. Exhibit 2. This Court found all the patents asserted in those cases, all  
18 of which are related to the ’606 patent, invalid under 35 U.S.C. § 101 for claiming ineligible  
19 subject matter. Exhibits 3, 4. One of this Court’s decisions (concerning the two patents  
20 previously asserted against Verizon) has been affirmed by the Federal Circuit (Exhibit 5, *VoIP-*  
21 *Pal.com, Inc. v. Twitter, Inc., et al.* Nos. 2019-1808 (Dkt. 88), 2019-1812 (Dkt. 5), 2019-1813  
22 (Dkt. 5), 2019-1814 (Dkt. 5)), and VoIP-Pal’s appeal of the second decision concerning the other  
23 four patents is pending.

24 3. The ’606 patent shares a common specification with the six already-invalidated  
25 patents. The claims of the ’606 patent are very similar to the claims of the patents already  
26 invalidated by this Court. Despite this Court’s familiarity with this patent family, VoIP-Pal filed  
27 a lawsuit on April 24, 2020, in the United States District Court for the Western District of Texas  
28 asserting infringement of the ’606 patent against Verizon. Exhibit 6, Complaint, *VoIP-Pal.com,*

1 *Inc. v. Verizon Communications, Inc. et al.*, Civil Action No. 6:20-cv-00327-ADA. In the past  
2 month, VoIP-Pal also has also sued AT&T, Apple, Amazon, Google, and Facebook in the Western  
3 District of Texas for infringement of the '606 patent. *VoIP-Pal.com, Inc. v. AT&T, Inc. et al.*,  
4 Civil Action No. 6:20-cv-00325-ADA; *VoIP-Pal.com, Inc. v. Apple Inc.*, Civil Action No. 6:20-  
5 cv-00275-ADA; *VoIP-Pal.com, Inc. v. Amazon.com, Inc. et al.*, Civil Action No. 6:20-cv-0272-  
6 ADA; *VoIP-Pal.com, Inc. v. Google LLC*, Civil Action No. 6:20-cv-00269-ADA; *VoIP-Pal.com,*  
7 *Inc. v. Facebook, Inc. et al.*, Civil Action No. 6:20-cv-00267-ADA.

8 4. VoIP-Pal's recent lawsuits on the '606 patent in the Western District of Texas are  
9 blatant forum-shopping attempts to avoid this District, which has extensive experience with  
10 highly-similar, highly-related patents. In the interests of justice and judicial efficiency, any  
11 dispute between VoIP-Pal and Verizon concerning the '606 patent should be adjudicated in this  
12 District.

13 5. Verizon believes that it does not infringe the '606 patent, that it has not infringed  
14 any claims of the '606 patent, and that the claims of the '606 patent are invalid.

15 6. VoIP-Pal's actions have created a real and immediate controversy between VoIP-  
16 Pal and Verizon as to whether Verizon's products or services infringe any claim of the '606 patent  
17 and whether the claims of the '606 patent are invalid. The facts and allegations recited herein  
18 show that there is a real, immediate, and justiciable controversy concerning these issues.

19 **THE PARTIES**

20 7. Plaintiff Cellco Partnership d/b/a Verizon Wireless is a Delaware general  
21 partnership with its principal place of business at One Verizon Way, Basking Ridge, New Jersey  
22 07920.

23 8. On information and belief, VoIP-Pal is a company incorporated and registered  
24 under the laws of Nevada with its principal place of business at 10900 NE 4th Street, Suite 2300,  
25 Bellevue, Washington 98004.

26 9. On information and belief, VoIP-Pal owns the '606 patent.

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V E N A B L E L L P  
101 CALIFORNIA STREET, SUITE 3800  
SAN FRANCISCO, CA 94111  
415-663-3750

**JURISDICTION AND VENUE**

1  
2           10.     This action arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et*  
3 *seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

4           11.     This Court has subject matter jurisdiction over the claims alleged in this action  
5 under 28 U.S.C. §§ 1331, 1332, 1338, 2201, and 2202 because this Court has exclusive  
6 jurisdiction over declaratory judgment claims arising under the patent laws of the United States  
7 pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

8           12.     This Court can provide the declaratory relief sought in this Declaratory Judgment  
9 Complaint because an actual case and controversy exists between the parties within the scope of  
10 this Court’s jurisdiction pursuant to 28 U.S.C. § 2201. An actual case and controversy exists at  
11 least because Verizon does not infringe and has not infringed any claims of the ’606 patent; VoIP-  
12 Pal previously filed lawsuits against Verizon alleging infringement of two patents related to the  
13 ’606 patent; the ’606 patent shares a common specification with those two patents; the claims of  
14 the two patents that were previously asserted in litigation against Verizon are very similar to  
15 claims of the ’606 patent; and VoIP-Pal has accused Verizon of infringing the ’606 patent in  
16 litigation in the Western District of Texas. Moreover, the two patents VoIP-Pal previously  
17 asserted against Verizon were held invalid under 35 U.S.C. § 101 by this Court, and—based on  
18 the substantial similarities between those invalid claims and the claims of the ’606 patent—the  
19 ’606 patent is invalid for at least the same reasons.

20           13.     The ’606 patent issued in February 2019, during the pendency of VoIP-Pal’s earlier  
21 lawsuit against Verizon in this District concerning patents from the same family. During a  
22 hearing in that lawsuit, VoIP-Pal assured the Court that VoIP-Pal had “no intention to assert any  
23 of the other patents against any of the other defendants.” Exhibit 7 at 10. VoIP-Pal’s hollow  
24 assurances to the Court and Verizon as well as its decision to delay filing suit on the ’606 patent  
25 demonstrate VoIP-Pal’s intent to litigate, in piecemeal fashion, other patents in the same family  
26 of patents that this Court has already invalidated. Furthermore, VoIP-Pal has recently made  
27 public statements that the company is “not finished” taking action, despite the Federal Circuit  
28

1 decision affirming this Court’s judgment that the claims of two patents that VoIP-Pal previously  
2 asserted against Verizon are invalid. Exhibit 5; Exhibit 8.

3 14. This Court has personal jurisdiction over VoIP-Pal because VoIP-Pal has engaged  
4 in actions in this District that form the basis of Verizon’s claims against VoIP-Pal—namely, the  
5 prosecution of a prior patent infringement lawsuit against Verizon and other defendants  
6 involving the six patents from the same family as the ’606 patent. VoIP-Pal also voluntarily  
7 transferred to this District its previous lawsuits against Verizon, AT&T, Apple, and Amazon,  
8 explicitly recognizing that this venue was an appropriate and more convenient forum in which  
9 to litigate its dispute. Exhibit 2.

10 15. VoIP-Pal’s actions have created a real, live, immediate, and justiciable case or  
11 controversy between VoIP-Pal and Verizon.

12 16. As a result of VoIP-Pal’s conduct described above, VoIP-Pal has consciously and  
13 purposefully directed allegations of infringement of the ’606 patent and related patents at  
14 Verizon, a company that operates in this District.

15 17. In doing so, VoIP-Pal has established sufficient minimum contacts with this  
16 District such that VoIP-Pal is subject to specific personal jurisdiction in this action. Further, the  
17 exercise of personal jurisdiction based on these repeated and pertinent contacts does not offend  
18 traditional notions of fairness and substantial justice.

19 18. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400, at least because  
20 under Ninth and Federal Circuit law venue in declaratory judgment actions for non-infringement  
21 of patents is determined under the general venue statute, 28 U.S.C. § 1391. Additionally, VoIP-  
22 Pal consented to transfer to this District the lawsuit that VoIP-Pal filed against Verizon, and in  
23 doing stipulated that convenience favors transfer to this District.

24 19. Under 28 U.S.C. § 1391(b)(1), venue is proper in any judicial district where a  
25 defendant resides. As discussed above, VoIP-Pal is subject to personal jurisdiction with respect  
26 to this action in the District, and thus, at least for the purposes of this action, VoIP-Pal resides  
27 in the District and venue is proper under 28 U.S.C. § 1391.

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V E N A B L E L L P  
101 CALIFORNIA STREET, SUITE 3800  
SAN FRANCISCO, CA 94111  
415-663-3750

**FACTUAL BACKGROUND**

1  
2           20. In 2016, VoIP-Pal filed lawsuits in the District of Nevada against Verizon, AT&T,  
3 Apple, and Twitter, alleging infringement of two patents—U.S. Patent Nos. 8,542,815 (the “’815  
4 patent”) and 9,179,005 (the “’005 patent”). Verizon moved to transfer its case to this District.  
5 During briefing, VoIP-Pal consented to transfer of its case against Verizon to this District. VoIP-  
6 Pal stipulated that the “convenience of the parties and witnesses favors transfer to the Northern  
7 District of California.” Exhibit 2.

8           21. Between August and November 2018, each of the four cases was transferred to  
9 this District and consolidated for pretrial purposes: Verizon (Civil Action No. 5:18-cv-06054-  
10 LHK), AT&T (Civil Action No. 5:18-cv-06177-LHK), Apple (Civil Action No. 5:18-cv-06217-  
11 LHK), and Twitter (Civil Action No. 5:18-cv-04523-LHK).

12           22. Verizon and the other defendants filed a motion to dismiss, pursuant to Fed. R.  
13 Civ. P. 12(b)(6), because the asserted claims of the ’815 and ’005 patents are invalid under 35  
14 U.S.C. § 101. On March 25, 2019, this Court granted the motion to dismiss in a detailed,  
15 thorough 45-page opinion finding all asserted claims of the ’815 and ’005 patents to be invalid.  
16 Exhibit 3.

17           23. VoIP-Pal appealed this Court’s decision to the U.S. Court of Appeals for the  
18 Federal Circuit. On March 16, 2020, the Federal Circuit affirmed this Court’s judgment of  
19 invalidity. Exhibit 5.

20           24. In 2018, VoIP-Pal filed additional lawsuits in the District of Nevada against Apple  
21 and Amazon, alleging infringement of four patents—U.S. Patents 9,537,762; 9,813,330;  
22 9,826,002; and 9,948,549. Those four patents are part of the same family as, and share a common  
23 specification with, the ’815 and ’005 patents that VoIP-Pal asserted in its earlier litigations.  
24 VoIP-Pal consented to transfer of the cases to this District. Civil Action Nos. 5:18-cv-06216-  
25 LHK and 5:18-cv-07020-LHK.

26           25. Apple and Amazon filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) that  
27 the asserted claims of the four asserted patents were invalid under 35 U.S.C. § 101. On November  
28

1 19, 2019, this Court granted the motion to dismiss and found all asserted claims of the four patents  
2 to be invalid. Exhibit 4. VoIP-Pal has filed an appeal, which is pending.

3 26. In early April 2020, VoIP-Pal filed new lawsuits in the Western District of Texas  
4 (Waco Division) against Apple, Amazon, Google, and Facebook alleging infringement of the  
5 '606 patent. Civil Action Nos. 6:20-cv-00275-ADA, 6:20-cv-00272-ADA, 6:20-cv-00269-  
6 ADA, 6:20-cv-00267-ADA.

7 27. On April 8, 2020, Twitter filed a declaratory judgment action on the '606 patent  
8 in this District. Civil Action No. 6:20-cv-02397-LHK. The Twitter action was filed before  
9 VoIP-Pal sued Twitter on the '606 patent. That case has been assigned to Judge Lucy H. Koh.  
10 VoIP-Pal has not filed a lawsuit against Twitter relating to the '606 patent.

11 28. On April 10, 2020, Apple also filed a declaratory judgment action on the '606  
12 patent and one other related patent in this District. Civil Action No. 6:20-cv-02460-LHK. That  
13 case has also been assigned to Judge Koh.

14 29. On April 24, 2020, VoIP-Pal filed two new lawsuits in the Western District of  
15 Texas against Verizon and several affiliates as well as another against AT&T—alleging  
16 infringement of the '606 patent. Civil Action Nos. 5:20-cv-00325-ADA, 5:20-cv-00327-ADA.

17 30. On April 30, 2020, AT&T filed a declaratory judgment action on the '606 patent  
18 in this District. *AT&T Corp. et al. v. VoIP-Pal.com, Inc.*, Civil Action No. 5:20-cv-02995.

19 31. The '606 patent, which issued on February 26, 2019 (during the pendency of VoIP-  
20 Pal's against Verizon in this District), is related to and very similar to the six patents that this Court  
21 found invalid in earlier litigations.

22 32. VoIP-Pal's complaint against the Verizon entities in the Western District of Texas  
23 identifies claim 15 as an "exemplary" claim that is allegedly infringed by the Verizon entities.  
24 The "exemplary" claim of the '606 patent is very similar to the claims of the six related patents  
25 that VoIP-Pal asserted against Verizon in litigations in this District, and which this Court held to  
26 be invalid. For example, claim 15 depends from claim 1 of the '606 patent. During prosecution  
27 of the '606 patent, the U.S.P.T.O. rejected claim 1 of the '606 patent under non-statutory double  
28 patenting as not patentability distinct from and therefore unpatentable over claim 1 of U.S. Pat.



1 No. 9,826,002, which this Court found invalid under 35 U.S.C. § 101. Exhibit 9 at 8; Exhibit 4 at  
2 65.

3 33. VoIP-Pal’s infringement allegations against the Verizon entities in the Western  
4 District of Texas, as reflected in its complaint in that action, track its infringement allegations  
5 against Verizon in the earlier actions in this District. VoIP-Pal again directs its allegations  
6 towards telecommunications services, including Verizon Messages, Wi-Fi Calling, and One Talk,  
7 that were also accused in the earlier actions in this District.

8 34. Verizon believes that it does not infringe and has not infringed any claims of the  
9 ’606 patent and that the claims of the ’606 patent are invalid at least for the same reasons that  
10 the claims of the six previously-asserted patents were held invalid.

11 35. VoIP-Pal’s tactics appear to reflect an attempt to avoid the adverse judgments of  
12 this Court by bringing a lawsuit based on very similar patent claims in a different district. In the  
13 interests of justice and judicial efficiency, any dispute between VoIP-Pal and Verizon  
14 concerning the ’606 patent should be adjudicated in this District.

15 **INTRADISTRICT ASSIGNMENT**

16 36. For purposes of intradistrict assignment under Civil Local Rules 3-2(c) and 3-  
17 5(b), this Intellectual Property Action will be assigned on a district-wide basis. Verizon believes  
18 that the case should be assigned to the Honorable Lucy H. Koh, who presided over VoIP-Pal’s  
19 prior lawsuits against Verizon and other companies (*see, e.g., VoIP-Pal.com, Inc. v. Cellco*  
20 *Partnership d/b/a Verizon Wireless*, Civil Action No. 5:18-cv-06054-LHK), and who is  
21 currently presiding over related cases *Twitter, Inc. v. VoIP-Pal.com, Inc.*, Civil Action No. 5:20-  
22 *cv-02397-LHK*, and *Apple Inc. v. VoIP-Pal.com, Inc.*, Civil Action No. 5:20-cv-02460-LHK.

23 **FIRST CLAIM FOR RELIEF**

24 **(Declaratory Judgment that Verizon Does Not Infringe the ’606 Patent)**

25 37. Verizon repeats and realleges each and every allegation contained in paragraphs  
26 1 through 36 of this Complaint as if fully set forth herein.

27 ///

28 ///





1 in earlier litigations against Verizon and other defendants in this District. This Court held that  
2 the asserted claims of those six patents were all invalid under 35 U.S.C. § 101.

3 45. Like those already-invalidated claims, the claims of the '606 patent are invalid  
4 under 35 U.S.C. § 101. For example, the claims of the '606 patent (including claim 15) are  
5 directed to the abstract idea of routing a communication based on characteristics of the  
6 participants—an idea that this Court held was abstract in analyzing several representative claims  
7 of four related patents. *See* Exhibit 4 at 32, 52, 53, 57; *see also* Exhibit 3 at 21, 35 (holding that  
8 the idea of “routing a call based on the characteristics of a caller and callee” was abstract);  
9 Exhibit 5 (affirming this Court’s judgment of invalidity). Furthermore, consistent with this  
10 Court’s earlier judgments concerning related patents, none of the elements of the '606 patent’s  
11 claims recite an inventive concept, either individually or as an ordered combination. For  
12 example, the claims (including claim 15) recite generic computer components (like a “packet  
13 switched communication system,” a “processor,” and a “database”) that the specification admits  
14 were not invented by VoIP-Pal and that operate in their expected manner.

15 46. In view of the foregoing, there is an actual, justiciable, substantial, and immediate  
16 controversy between Verizon, on the one hand, and VoIP-Pal, on the other, regarding whether  
17 any claim of the '606 patent is valid.

18 47. Verizon is entitled to judgment declaring that the claims of the '606 patent are  
19 invalid at least under 35 U.S.C. § 101.

20 **PRAYER FOR RELIEF**

21 Verizon respectfully requests the following relief:

- 22 A. That the Court enter a judgment declaring that Verizon has not infringed and does  
23 not infringe any valid and enforceable claim of the '606 patent;
- 24 B. That the Court enter a judgment declaring that the claims of the '606 patent are  
25 invalid at least under 35 U.S.C. § 101;
- 26 C. That the Court declare that this case is exceptional under 35 U.S.C. § 285 and award  
27 Verizon its attorneys’ fees, costs, and expenses incurred in this action;
- 28

1 D. That the Court award Verizon any and all other relief to which Verizon may show  
2 itself to be entitled; and

3 E. That the Court award Verizon any other relief as the Court may deem just, equitable,  
4 and proper.

5 **JURY DEMAND**

6 Verizon hereby demands a jury trial on all issues and claims so triable.

7  
8 Dated: May 5, 2020

VENABLE LLP

9  
10 By: /s/ William A. Hector  
11 Frank C. Cimino, Jr. (*pro hac vice* pending)  
12 fccimino@venable.com  
13 Megan S. Woodworth (*pro hac vice* pending)  
14 mswoodworth@venable.com  
15 600 Massachusetts Ave., NW  
16 Washington, D.C. 20001  
17 Telephone: (202) 344-4000  
18 Facsimile: (202) 344-8300

19 William A. Hector (SBN 298490)  
20 wahector@venable.com  
21 101 California Street, Suite 3800  
22 San Francisco, CA 94111  
23 Telephone: (415) 653-3750  
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25 *Attorneys for Plaintiff*  
26 CELLCO PARTNERSHIP d/b/a Verizon  
27 Wireless  
28

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SAN FRANCISCO, CA 94111  
415-653-3750