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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14
15 TWITTER, INC., a Delaware corporation,

16 Plaintiff,

17 v.

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

20 Defendant.

No. 3:21-cv-09773-JD

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

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I. INTRODUCTION

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2 1. This First Amended Complaint for declaratory judgment of noninfringement and
3 invalidity arises from a real and immediate controversy between plaintiff Twitter, Inc.
4 (“Twitter”), and defendant VoIP-Pal.com Inc. (“VoIP-Pal”), as to whether Twitter infringes any
5 claims of U.S. Patents 8,630,234 and 10,880,721,¹ both entitled, “Mobile Gateway.”

6 2. Since 2016, Twitter and VoIP-Pal have been embroiled in a series of lawsuits
7 involving VoIP-Pal’s patents in the field of routing communications in a packet-switched network
8 such as an Internet Protocol network. Those lawsuits have been part of a large litigation
9 campaign in which VoIP-Pal has asserted patents against Twitter and other major technology
10 companies such as Apple, AT&T, Verizon, Amazon, Facebook, WhatsApp, Google, T-Mobile,
11 Samsung Electronics, and Huawei.

12 3. VoIP-Pal’s litigation campaign began in 2016, when it filed lawsuits against
13 Twitter, Apple, AT&T, and Verizon alleging infringement of two patents that are part of a patent
14 family that VoIP-Pal refers to as the “Routing, Billing, Rating” or “RBR” patents (the “2016
15 Cases”; e.g., Exhibit 3). All patents in the RBR family share a common specification. In 2018,
16 VoIP-Pal filed additional lawsuits against Apple and Amazon to assert four other RBR patents
17 (the “2018 Cases”). The 2016 and 2018 Cases were originally filed in the District of Nevada but
18 were transferred to this Court in 2018.

19 4. This Court found all six RBR patents asserted in the 2016 and 2018 Cases to be
20 invalid under 35 U.S.C. § 101 for claiming ineligible subject matter. *E.g., VoIP-Pal.com, Inc. v.*
21 *Twitter, Inc.*, Case No. 18-cv-04523-LHK, ECF No. 82 (Exhibit 4). On March 16, 2020, the
22 Court of Appeals for the Federal Circuit affirmed those judgments of invalidity.

23 5. Dissatisfied with the outcome of the 2016 and 2018 Cases in this Court, VoIP-Pal
24 went forum shopping. In April 2020, VoIP-Pal filed lawsuits in the Western District of Texas
25 against Facebook, WhatsApp, Google, Amazon, Apple, AT&T, and Verizon to assert a seventh
26 patent in the RBR family, U.S. Patent 10,218,606 (the “606 patent”) (the “2020 Texas Cases”).

27 ¹ U.S. Patent 8,630,234 and 10,880,721 are referred to herein as the “Mobile Gateway” patents.
28 U.S. Patent 8,630,234 is referred to as the “234 patent” (Exhibit 1), and U.S. Patent 10,880,721
is referred to as the “721 patent” (Exhibit 2).

1 The claims of the '606 patent asserted in those new lawsuits are very similar to the claims of the
2 six RBR patents that VoIP-Pal previously asserted in the 2016 and 2018 Cases and were found to
3 be invalid by this Court.

4 6. On April 8, 2020, VoIP-Pal issued a press release stating that VoIP-Pal is
5 considering taking further action and is not finished taking action in the wake of the recent
6 Federal Circuit decision affirming this Court's judgment in the 2016 Cases that two of VoIP-Pal's
7 previously-asserted patents are invalid under 35 U.S.C. § 101 (Exhibit 5).

8 7. On April 8, 2020, after seeing VoIP-Pal's lawsuits in Texas against Facebook,
9 WhatsApp, Google, Amazon, and Apple and VoIP-Pal's press release, Twitter filed an action for
10 declaratory judgment of noninfringement of the '606 patent against VoIP-Pal in this Court (Case
11 No. 20-cv-02397; see Exhibit 7). Soon thereafter, Apple, AT&T, and Verizon filed similar
12 declaratory judgment actions in this Court against VoIP-Pal based on the '606 patent (collectively
13 with Twitter the "2020 DJ Actions"). On April 14, 2020, Apple filed a first amended complaint
14 that added claims for declaratory judgment of noninfringement and invalidity of an eighth patent
15 in the RBR family, U.S. Patent 9,935,872 (the "'872 patent").

16 8. In July 2020, VoIP-Pal filed motions to dismiss the 2020 DJ Actions for lack of
17 subject matter jurisdiction, lack of personal jurisdiction, and improper venue. In December 2020,
18 the Court denied VoIP-Pal's motions to dismiss. *E.g., Twitter, Inc. v. VoIP-Pal.com, Inc.*, Case
19 No. 20-cv-02397, ECF No. 50 (Exhibit 8); *Apple Inc. v. VoIP-Pal.com, Inc.*, Case No. 20-cv-
20 02460, ECF No. 60.

21 9. Between December 2020 and April 2021, VoIP-Pal and Twitter communicated
22 many times about potential settlement with respect to the '606 patent and VoIP-Pal's other
23 patents. Since December 2020, Twitter's position has been that Twitter is unwilling to enter into
24 a piecemeal settlement with VoIP-Pal that addresses only one or some of VoIP-Pal's patents, and
25 that any settlement must be global in the sense of encompassing VoIP-Pal's entire patent
26 portfolio. Twitter has communicated that position to VoIP-Pal multiple times, and VoIP-Pal has
27 refused to offer Twitter a license or covenant not to sue for VoIP-Pal's entire patent portfolio.
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1 10. For example, on January 11, 2021, VoIP-Pal proposed that VoIP-Pal and Twitter
2 enter into a settlement for the '606 patent and all other RBR patents. Twitter observed that such a
3 settlement would not cover VoIP-Pal's entire patent portfolio and expressly noted that VoIP-Pal
4 had recently touted receiving a U.S. patent and a European patent in the Mobile Gateway family.
5 Twitter later rejected VoIP-Pal's proposed settlement for all RBR patents in part because it would
6 not have covered all of VoIP-Pal's patents, including the Mobile Gateway patents.

7 11. On March 24, 2021, VoIP-Pal filed another motion to dismiss the 2020 DJ
8 Actions—this time based on a limited covenant not to sue for the '606 patent. *E.g.*, Case No. 20-
9 cv-02397, ECF No. 62. That limited covenant not to sue was insufficient to eliminate subject
10 matter jurisdiction for Twitter's declaratory judgment claims for the reasons explained in
11 Twitter's opposition to that motion. *Id.*, ECF No. 66.

12 12. In response to Twitter's opposition, on April 9, 2021, VoIP-Pal offered a broader
13 covenant not to sue for the '606 patent and asked Twitter to stipulate to dismissal of Twitter's
14 declaratory judgment action. Twitter responded in part that, at a minimum, any covenant not to
15 sue to resolve Twitter's declaratory judgment action against the '606 patent should also include
16 the '872 patent. Twitter also stated that it expects VoIP-Pal to sue Twitter in the future and that
17 only a covenant not to sue that covers VoIP-Pal's entire patent portfolio would resolve the
18 broader dispute between Twitter and VoIP-Pal concerning VoIP-Pal's patent portfolio. VoIP-Pal
19 declined to extend the covenant to include VoIP-Pal's patents other than the '606 patent.

20 13. On April 14, 2021, VoIP-Pal filed a reply brief in support of its motion to dismiss,
21 which granted Twitter the broader covenant not to sue for the '606 patent that VoIP-Pal had
22 offered on April 9. *Id.*, ECF No. 68. VoIP-Pal also granted similar broader covenants not to sue
23 to Apple, AT&T, and Verizon. On August 30, 2021, this Court granted VoIP-Pal's motion to
24 dismiss Twitter's 2020 DJ Action in view of VoIP-Pal's broader covenant not to sue for the '606
25 patent (but denied VoIP-Pal's motion to dismiss the other 2020 DJ Actions). However, the Court
26 retained jurisdiction over Twitter's 2020 DJ Action to consider Twitter's motion for attorney fees,
27 which is fully briefed and under submission to the Court.

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1 14. On April 15, 2021, Twitter and VoIP-Pal participated in a court-supervised
2 settlement conference in Twitter’s 2020 DJ Action, which did not result in settlement.

3 15. Following that unsuccessful settlement conference, on April 16, 2021, Twitter
4 filed an action for declaratory judgment of noninfringement of the ’872 patent. *Twitter, Inc. v.*
5 *VoIP-Pal.com, Inc.*, Case No. 5:21-cv-02769-LHK, ECF No. 1 (the “2021 DJ Action”;
6 Exhibit 10). In response, VoIP-Pal filed a motion to dismiss for lack of subject matter
7 jurisdiction, lack of personal jurisdiction, and for improper venue. *Id.* at ECF No. 25. On
8 November 2, 2021, the Court denied VoIP-Pal’s motion to dismiss Twitter’s 2021 DJ Action. *Id.*
9 at ECF No. 38 (Exhibit 11).

10 16. On June 25, 2021, VoIP-Pal filed lawsuits in the Western District of Texas against
11 Apple, AT&T, Verizon, Amazon, Facebook, WhatsApp, Google, and T-Mobile alleging
12 infringement of the two Mobile Gateway patents (the “Texas Mobile Gateway Cases”). The
13 complaints in those lawsuits identify claim 20 of the ’234 patent and claim 38 of the ’721 patent
14 as exemplary asserted claims, but VoIP-Pal asserts many other claims.

15 17. The Mobile Gateway patents are not members of the RBR family, but they are
16 very similar to the eight RBR patents that were or are at issue in the 2016 and 2018 Cases, the
17 2020 Texas Cases, and the 2020 DJ Actions. The Mobile Gateway patents concern the same
18 technology as the previously-asserted RBR patents—namely, routing of communications in a
19 packet-switched network. The claims of the Mobile Gateway patents are very similar to the
20 claims of the RBR patents previously asserted by VoIP-Pal (Exhibit 12).

21 18. VoIP-Pal’s infringement allegations in the Texas Mobile Gateway Cases are very
22 similar to VoIP-Pal’s infringement allegations in the 2016 and 2018 Cases and/or 2020 Texas
23 Cases against Twitter, Apple, AT&T, Verizon, and/or Amazon. For example, VoIP-Pal’s
24 infringement allegations for the Mobile Gateway patents are directed to some of the same accused
25 instrumentalities that VoIP-Pal accused of infringement in VoIP-Pal’s prior lawsuits, such as
26 messaging involving text, images, and videos.

27 19. VoIP-Pal has sued every defendant from the 2016 and 2018 Cases for
28 infringement of the Mobile Gateway patents other than Twitter. On information and belief, the

1 reason that VoIP-Pal has not sued Twitter for infringement of the Mobile Gateway patents to date
2 is strategic— for example, concern that, if VoIP-Pal filed a lawsuit to assert the Mobile Gateway
3 patents against Twitter while Twitter’s 2020 and/or 2021 DJ Actions were pending, they might be
4 deemed to be first-filed cases such that VoIP-Pal would end up litigating the Mobile Gateway
5 patents in this Court.

6 20. On November 17, 2021, the parties participated in a second court-supervised
7 settlement conference in Twitter’s 2020 DJ Action, which did not result in settlement.

8 21. On November 30, 2021, VoIP-Pal filed lawsuits in the Western District of Texas
9 against Samsung Electronics and Huawei Technologies alleging infringement of the two Mobile
10 Gateway patents.

11 22. Following this Court’s denial of VoIP-Pal’s motion to dismiss Twitter’s 2021 DJ
12 Action (Exhibit 10), on December 9, 2021, VoIP-Pal filed a motion to dismiss based on a
13 covenant not to sue for the ’872 patent. On information and belief, VoIP-Pal plans to file a
14 lawsuit against Twitter for infringement of the Mobile Gateway patents after Twitter’s 2021 DJ
15 Action is dismissed.

16 23. Twitter believes that it does not infringe and has not infringed any claims of the
17 Mobile Gateway patents, including claim 20 of the ’234 patent and claim 38 of the ’721 patent,
18 which were exemplary claims identified in the complaints in VoIP-Pal’s Texas Mobile Gateway
19 Cases. Since December 2020, Twitter has repeatedly informed VoIP-Pal that any resolution of
20 the disputes concerning VoIP-Pal’s patents must cover VoIP-Pal’s entire patent portfolio, but
21 VoIP-Pal has refused to offer a license or covenant not to sue to Twitter for VoIP-Pal’s entire
22 patent portfolio.

23 24. VoIP-Pal’s actions have created a real, substantial, and immediate controversy
24 between VoIP-Pal and Twitter as to whether Twitter’s products and/or services infringe any
25 claims of the Mobile Gateway patents. The facts and allegations recited herein show that there is
26 a real, substantial, immediate, and justiciable controversy concerning this issue.

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II. PARTIES

1
2 25. Plaintiff Twitter is a company incorporated under the laws of Delaware, with
3 headquarters at 1355 Market Street, Suite 900, San Francisco, California.

4 26. Twitter operates a global Internet platform for public self-expression and
5 conversation in real time. People with a Twitter account can post “Tweets”—messages of 280
6 characters or less, sometimes with pictures or video, and those messages can be read by other
7 people using the Twitter platform. They may, in turn, “Retweet” those messages to their own
8 followers. Users can include “hashtagged” keywords (indicated by a “#”) in their Tweets to
9 facilitate searching for messages on the same topic. People who use Twitter can also send direct
10 messages to other users that can contain images and video. Each day, people post hundreds of
11 millions of Tweets, engaging in public conversation on virtually every conceivable topic.
12 Twitter’s products and services are provided through the Twitter platform.

13 27. Based on information and belief, defendant VoIP-Pal is a company incorporated
14 under the laws of Nevada and recently relocated its principal place of business from Bellevue,
15 Washington, to 7215 Bosque Blvd, Suite 102, Waco, Texas 76710. See [https://www.voip-](https://www.voip-pal.com/contact-us)
16 [pal.com/contact-us](https://www.voip-pal.com/contact-us).

17 28. Based on information and belief, VoIP-Pal is the owner of the Mobile Gateway
18 patents.

III. JURISDICTION AND VENUE

19
20 29. This First Amended Declaratory Judgment Complaint includes counts for
21 declaratory relief under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

22 30. Twitter seeks declaratory relief under 28 U.S.C. §§ 2201 and 2202.

23 31. This Court has subject matter jurisdiction over the claims alleged in this action
24 under 28 U.S.C. §§ 1331, 1332, 1338, 2201, and 2202 because this Court has exclusive
25 jurisdiction over declaratory judgment claims arising under the patent laws of the United States
26 pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202. Jurisdiction is also proper under 28 U.S.C.
27 § 1332 because Twitter and VoIP-Pal are citizens of different states, and the value of the
28 controversy exceeds \$75,000.

1 32. This Court can provide the declaratory relief sought in this First Amended
2 Declaratory Judgment Complaint because an actual case and controversy exists between the
3 parties within the scope of this Court’s jurisdiction pursuant to 28 U.S.C. § 2201. An actual case
4 and controversy exists at least for the reasons set forth in Sections I, II, and IV of this Complaint
5 (¶¶ 1-28, 38-76).

6 33. This Court has personal jurisdiction over VoIP-Pal because VoIP-Pal has
7 purposefully directed activities in this District that form the basis of Twitter’s claim against VoIP-
8 Pal—namely, prosecuting the 2016 Case involving two RBR patents against Twitter in this
9 District, and voluntarily transferring from Nevada to this District the 2016 Cases against Apple,
10 AT&T, and Verizon and the 2018 Cases against Apple and Amazon. VoIP-Pal also has retained
11 counsel located in California to prosecute its patent portfolio and to represent VoIP-Pal in the
12 2016 and 2018 Cases; the 2020 Texas Action; the 2020 DJ Actions filed by Twitter, Apple,
13 AT&T, and Verizon in this Court; the 2021 DJ Action filed by Twitter; and the Texas Mobile
14 Gateway cases, including Lewis Hudnell of the Hudnell Law Group in Mountain View,
15 California. In addition, on information and belief, on or about April 20, 2016, VoIP-Pal
16 representative Ray Leon met with representatives of Apple in the Northern District of California
17 in connection with VoIP-Pal’s patent enforcement campaign.

18 34. This Court found the foregoing activities to be a sufficient basis for personal
19 jurisdiction in the context of the 2020 DJ Actions for the ’606 patent (and ’872 patent for Apple)
20 and Twitter’s 2021 DJ Action for the ’872 patent, and those activities also support personal
21 jurisdiction for the present action for the Mobile Gateway patents. As a result of VoIP-Pal’s
22 actions described in this First Amended Complaint, there is a real, substantial, live, immediate,
23 and justiciable case or controversy concerning the Mobile Gateway patents between VoIP-Pal and
24 Twitter, a company that resides and operates in this District. As a result of VoIP-Pal’s actions
25 described above, VoIP-Pal has established sufficient minimum contacts with the Northern District
26 of California such that VoIP-Pal is subject to specific personal jurisdiction in the Northern
27 District of California for this action. Further, the exercise of personal jurisdiction based on those
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1 repeated and highly-pertinent contacts does not offend traditional notions of fair play and
2 substantial justice.

3 35. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400, including
4 because, under Ninth and Federal Circuit law, venue in declaratory judgment actions for
5 noninfringement of patents is determined under the general venue statute, 28 U.S.C. § 1391.

6 36. Under 28 U.S.C. § 1391(b)(1), venue is proper in any judicial district where a
7 defendant resides. An entity with the capacity to sue and be sued, such as VoIP-Pal, is deemed to
8 reside, if a defendant, in any judicial district in which such defendant is subject to the court's
9 personal jurisdiction with respect to the civil action in question under 28 U.S.C. § 1391(c).

10 37. As discussed above, VoIP-Pal is subject to personal jurisdiction with respect to
11 this action in the Northern District of California, and thus, for the purposes of this action, VoIP-
12 Pal resides in the Northern District of California and venue is proper under 28 U.S.C. § 1391.

13 IV. FACTUAL BACKGROUND

14 A. VoIP-Pal's 2016 and 2018 Cases And The RBR Patents

15 38. In 2016, VoIP-Pal filed lawsuits in the District of Nevada against Twitter, Apple,
16 AT&T, and Verizon, alleging infringement of two RBR patents, U.S. Patents 8,542,815 ("the
17 '815 patent") and 9,179,005 ("the '005 patent"; Exhibit 3). Twitter filed a motion to transfer for
18 improper venue, which sought transfer to this Court. Twitter's motion was granted, after which
19 VoIP-Pal agreed to transfer its actions against Apple, AT&T, and Verizon to this Court. Between
20 August and November of 2018, all four of those actions were transferred to this Court and
21 consolidated for pretrial purposes: Twitter (Case No. 18-cv-04523-LHK), Verizon (Case No. 18-
22 cv-06054-LHK), AT&T (Case No. 18-cv-06177-LHK), and Apple (Case No. 18-cv-06217-LHK)
23 (i.e., the 2016 Cases).

24 39. In the 2016 Cases, Twitter, Apple, AT&T, and Verizon filed a motion to dismiss
25 under Fed. R. Civ. P. 12(b)(6) because the asserted claims of the '815 and '005 patents are invalid
26 under 35 U.S.C. § 101. On March 25, 2019, this Court granted the motion to dismiss and found
27 all asserted claims of the '815 and '005 patents to be invalid (Exhibit 4). VoIP-Pal appealed. On
28 March 16, 2020, the Federal Circuit affirmed this Court's judgment of invalidity.

1 40. In May and June 2018, VoIP-Pal filed two additional lawsuits against Apple and
2 Amazon in the District of Nevada, alleging infringement of four other RBR patents, U.S. Patents
3 9,537,762; 9,813,330; 9,826,002; and 9,948,549. The asserted claims of those four RBR patents
4 are very similar to the asserted claims of the two RBR patents in the 2016 Cases.

5 41. In October and November 2018, VoIP-Pal voluntarily agreed to transfer to this
6 Court the 2018 Cases against Apple (Case No. 5:18-cv-06216-LHK) and Amazon (Case
7 No. 5:18-cv-07020-LHK) (i.e., the 2018 Cases).

8 42. In the 2018 Cases, Apple and Amazon filed a motion to dismiss under Fed. R. Civ.
9 P. 12(b)(6) that the asserted claims of the four asserted patents are invalid under 35 U.S.C. § 101.
10 On November 1, 2019, this Court granted Apple's and Amazon's motion to dismiss and found all
11 asserted claims of the patents in the 2018 Cases to be invalid. VoIP-Pal appealed. On
12 November 3, 2020, the Federal Circuit affirmed this Court's judgment of invalidity.

13 **B. VoIP-Pal's 2020 Texas Cases And Press Release, And**
14 **Twitter's, Apple's, AT&T's, And Verizon's 2020 DJ Actions**

15 43. During April 2-7, 2020, VoIP-Pal filed four new lawsuits in the Western District
16 of Texas, Waco Division, asserting a seventh RBR patent, the '606 patent, against defendants
17 Facebook and WhatsApp (Case No. 20-cv-267), Google (Case No. 20-cv-269), and previous
18 defendants Amazon (Case No. 20-cv-272) and Apple (Case No. 20-cv-275). On April 24, 2020,
19 VoIP-Pal filed new lawsuits in the same court asserting the '606 patent against previous
20 defendants AT&T (Case No. 20-cv-325) and Verizon Wireless (Case No. 20-cv-327).

21 44. The claims of the '606 patent that VoIP-Pal asserts in the 2020 Texas Cases are
22 very similar to claims of the six patents that VoIP-Pal asserted against Twitter, Apple, AT&T,
23 and Verizon in the 2016 and 2018 Cases and were held to be invalid (for example, claim 74 of the
24 '005 patent; Exhibit 3).

25 45. VoIP-Pal's infringement allegations in the 2020 Texas Cases are similar to VoIP-
26 Pal's infringement allegations in the 2016 and 2018 Cases (including against all of the same prior
27 defendants except for Twitter) and are directed to accused instrumentalities that are similar to
28

1 Twitter's products and services (for example, communications involving text, images, and
2 videos).

3 46. On April 8, 2020, VoIP-Pal issued a press release that announced the filing of the
4 2020 Texas Cases against Facebook, WhatsApp, Google, Amazon, and Apple (Exhibit 5 and
5 <https://www.voip-pal.com/voip-pal-new-patent-lawsuits-april->). The press release also mentioned
6 the Federal Circuit's affirmance of this Court's judgment of invalidity in the 2016 Cases against
7 Twitter, Apple, AT&T, and Verizon. The press release states that, in the wake of the Federal
8 Circuit decision, VoIP-Pal is considering taking further action and "planning their next moves."
9 VoIP-Pal's CEO is quoted as saying, "Our legal team is assessing our next moves regarding this
10 Alice decision and we expect to announce our intentions soon. *I can tell you; we are not*
11 *finished*," and "We remain firm in our resolve to achieve monetization for our shareholders and
12 will continue to see this fight through until a successful resolution is reached. Patience is a
13 virtue." (Exhibit 5 (emphasis added).)

14 47. On April 8, 2020, after seeing VoIP-Pal's lawsuits in Texas against Facebook,
15 WhatsApp, Google, Amazon, and Apple and VoIP-Pal's press release, Twitter filed an action for
16 declaratory judgment of noninfringement of the '606 patent against VoIP-Pal in this Court (Case
17 No. 20-cv-02397).

18 48. On April 10, 2020, Apple filed an action for declaratory judgment of
19 noninfringement and invalidity of the '606 patent against VoIP-Pal in this Court (Case No. 20-cv-
20 02460). On April 14, 2020, Apple filed a first amended complaint that added claims for
21 declaratory judgment of noninfringement and invalidity of the '872 patent.

22 49. On April 24, 2020, VoIP-Pal filed lawsuits in the Western District of Texas
23 asserting the '606 patent against AT&T and Verizon. Soon thereafter, AT&T and Verizon filed
24 declaratory judgment actions against VoIP-Pal for the '606 patent in this Court. *AT&T Corp. et*
25 *al. v. VoIP-Pal.com, Inc.*, Case No. 20-cv-02995; *Cellco Partnership d/b/a Verizon Wireless v.*
26 *VoIP-Pal.com, Inc.*, Case No. 20-cv-03092.

1 50. On June 4, 2020, counsel for Twitter asked counsel for VoIP-Pal whether VoIP-
2 Pal would be willing to grant Twitter a covenant not to sue based on the '606 patent. On June 11,
3 2020, counsel for VoIP-Pal declined to discuss a covenant not to sue.

4 51. On June 26, 2020, Twitter filed a first amended complaint that added a claim for a
5 declaratory judgment of invalidity of the '606 patent (Exhibit 7).

6 52. On July 10, 2020, VoIP-Pal filed motions to dismiss Twitter's, Apple's AT&T's,
7 and Verizon's 2020 DJ Actions for lack of subject matter jurisdiction, lack of personal
8 jurisdiction, and improper venue. In December 2020, this Court denied VoIP-Pal's motions to
9 dismiss, finding that subject matter jurisdiction and personal jurisdiction exist and that venue is
10 proper. *E.g.*, Case No. 20-cv-02397, ECF No. 50 (Twitter) (Exhibit 8); Case No. 20-cv-02460,
11 ECF No. 60 (Apple).

12 53. On December 2, 2020, counsel for Twitter and VoIP-Pal had a telephone call in
13 which VoIP-Pal offered to pay Twitter \$250,000 for Twitter to dismiss its declaratory judgment
14 action against the '606 patent. Twitter informed VoIP-Pal that Twitter is not interested in a
15 piecemeal settlement in view of VoIP-Pal's other patents, including the '872 patent (which was
16 the subject of declaratory judgment claims advanced by Apple), and the likelihood that VoIP-Pal
17 would sue Twitter again in the future. Twitter's counsel asked if VoIP-Pal would be willing to
18 discuss a global settlement by which VoIP-Pal would agree not to sue Twitter on any of its
19 patents. VoIP-Pal's counsel declined to discuss such a global settlement. VoIP-Pal did not deny
20 the likelihood that VoIP-Pal would sue Twitter again in the future.

21 54. On January 4, 2021, counsel for Twitter corresponded with counsel for VoIP-Pal
22 to state that, in view of VoIP-Pal's litigation history and patent portfolio, Twitter is not interested
23 in pursuing a piecemeal resolution that would resolve only the current action and to note that
24 VoIP-Pal declined to discuss a broader resolution that would include the '872 patent.

25 55. On January 11, 2021, counsel for Twitter and VoIP-Pal had a telephone call in
26 which VoIP-Pal proposed to enter into a settlement for the '606 patent and "all family members"
27 (i.e., all RBR patents), for a payment by Twitter of \$1 million. Twitter observed that VoIP-Pal's
28 proposal would not cover VoIP-Pal's entire patent portfolio and expressly noted that VoIP-Pal

1 had recently touted receiving a U.S. patent and a European patent in *the Mobile Gateway family*.
2 That recently-issued U.S. Mobile Gateway patent was the '721 patent, which issued on
3 December 29, 2020. Twitter asked if VoIP-Pal would agree to a settlement that would include
4 patents other than those in the RBR family. VoIP-Pal's counsel said he would check with VoIP-
5 Pal, but VoIP-Pal did not respond to that inquiry.

6 56. On January 15, 2021, Twitter declined VoIP-Pal's proposed settlement for the
7 RBR patent family. Twitter's reasons for declining VoIP-Pal's offer included that it would not
8 have covered all of VoIP-Pal's patents (including the recently-touted Mobile Gateway patent),
9 Twitter's belief that VoIP-Pal's RBR patents are invalid under 35 U.S.C. § 101, and VoIP-Pal's
10 demand for a \$1 million payment was unreasonable.

11 57. On March 24, 2021, VoIP-Pal filed additional motions to dismiss Twitter's,
12 Apple's, AT&T's, and Verizon's 2020 DJ Actions—this time based on covenants not to sue that
13 VoIP-Pal granted in the motions. *E.g., Twitter*, Case No. 20-cv-02397, ECF No. 62 (Mar. 21,
14 2021). That covenant was insufficient to eliminate subject matter jurisdiction for reasons
15 explained in Twitter's opposition. *Id.*, ECF No. 66 (Apr. 7, 2021). In response, on April 9, 2021,
16 VoIP-Pal offered a broader covenant not to sue based on the '606 patent and asked Twitter to
17 stipulate to dismissal of Twitter's declaratory judgment action.

18 58. On April 12, 2021, Twitter responded in part that, at a minimum, a covenant not to
19 sue to resolve Twitter's declaratory judgment action against the '606 patent should also include
20 the '872 patent. Twitter also stated that it expects VoIP-Pal to sue Twitter in the future for
21 infringement of other patents and that even a broader covenant that includes the '606 and '872
22 patents would not be sufficient to resolve the broader dispute between Twitter and VoIP-Pal
23 based on VoIP-Pal's patent portfolio. Twitter stated, in view of the broader dispute between
24 VoIP-Pal and Twitter concerning VoIP-Pal's patent portfolio, VoIP-Pal can eliminate that broader
25 dispute only by offering a covenant not to sue that covers VoIP-Pal's entire patent portfolio and
26 future related patents and applications.

1 59. On April 13, 2021, VoIP-Pal responded by declining to discuss at that time a
2 covenant not to sue for more than the '606 patent. VoIP-Pal did not deny Twitter's stated
3 expectation that VoIP-Pal plans to sue Twitter in the future.

4 60. On April 14, 2021, VoIP-Pal filed its reply brief in support of its motion to
5 dismiss, which granted Twitter the broader covenant not to sue for the '606 patent that VoIP-Pal
6 had offered on April 9. Case No. 20-cv-02397, ECF No. 68. In view of the circumstances and
7 the broad dispute between Twitter and VoIP-Pal concerning VoIP-Pal's patents, Twitter believed
8 that the broader covenant not to sue was insufficient to eliminate subject matter jurisdiction.

9 61. On April 15, 2021, Twitter and VoIP-Pal participated in a court-supervised
10 settlement conference pursuant to the court's ADR program, which did not result in settlement.

11 62. On May 25, 2021, Verizon and VoIP-Pal filed a joint stipulation of dismissal for
12 Verizon's 2020 DJ Case, and the Court dismissed without prejudice the next day.

13 63. On August 25, 2021, this Court denied VoIP-Pal's motions to dismiss Apple's and
14 AT&T's 2020 DJ Actions, finding that VoIP-Pal's covenants not to sue to be insufficient to
15 eliminate subject matter jurisdiction. Case No. 20-cv-02460, ECF No. 96 (Apple; Exhibit 9);
16 Case No. 20-cv-02995, ECF No. 97 (AT&T). The Court also expressly found that the Mobile
17 Gateway patents concern the same technology as the RBR patents and are asserted against the
18 same accused products as in VoIP-Pal's earlier lawsuits:

19 The '234 patent and the '721 patent [Mobile Gateway patents]
20 **concern the same technology** as the patents involved in the 2016
21 cases, the 2018 cases, the 2020 Texas cases, and the instant case
22 [the RBR patents]. Moreover, the 2021 cases [Texas Mobile
23 Gateway Cases] involve the same accused products as the 2016
24 cases, the 2020 Texas cases, and the instant case.

23 *Id.* at 7 (emphasis added) (Exhibit 9).

24 64. On August 30, 2021, the Court granted VoIP-Pal's motion to dismiss Twitter's
25 2020 DJ Action based on the broader covenant not to sue for the '606 patent and entered
26 judgment but retained jurisdiction to consider Twitter's motion for attorney fees. Case No. 20-
27 cv-02397, ECF No. 89 at 17. In setting the briefing schedule for Twitter's motion for attorney
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1 fees, the Court referred the parties to a court-supervised settlement conference. Case No. 20-cv-
2 02397, ECF No. 92 (Sep. 13, 2021).

3 **C. Twitter Files The 2021 DJ Action For The '872 Patent**

4 65. Following the unsuccessful settlement conference on April 15, 2021, in Twitter's
5 2020 DJ Action, Twitter filed an action for declaratory judgment of noninfringement for an eighth
6 RBR patent, the '872 patent, on April 16, 2021. *Twitter, Inc. v. VoIP-Pal.com, Inc.*, Case
7 No. 5:21-cv-02769-LHK, ECF No. 1 (i.e., the 2021 DJ Action; Exhibit 10). Twitter's complaint
8 recounted the history of the parties' settlement discussions. The claims of the '872 patent are
9 very similar to claims of the '606 patent and the six patents that VoIP-Pal asserted against
10 Twitter, Apple, AT&T, and Verizon in the 2016 and 2018 Cases and were held to be invalid (for
11 example, claim 74 of the '005 patent).

12 66. On June 21, 2021, VoIP-Pal filed a motion to dismiss Twitter's DJ action for the
13 '872 patent for lack of subject matter jurisdiction, lack of personal jurisdiction, and for improper
14 venue. Case No. 5:21-cv-02769-LHK, ECF No. 25. That motion rehearsed the arguments that the
15 Court had previously rejected in denying VoIP-Pal's first motion to dismiss the present action.

16 67. On November 2, 2021, the Court denied VoIP-Pal's motion to dismiss Twitter's
17 DJ action for the '872 patent. Case No. 5:21-cv-02769-LHK, ECF No. 38 (Exhibit 11).

18 **D. The Texas Mobile Gateway Cases**

19 68. On June 25, 2021, VoIP-Pal filed new lawsuits in the Western District of Texas
20 against Apple, AT&T, Verizon, Amazon, Facebook, WhatsApp, Google, and T-Mobile to assert
21 the two Mobile Gateway patents (i.e., the Texas Mobile Gateway Cases; e.g., Exhibit 6).

22 69. The Mobile Gateway patents are not members of the RBR family, but they are
23 very similar to the eight RBR patents that were or are at issue in the 2016 and 2018 Cases, the
24 2020 Texas Cases, and the 2020 DJ Actions. The Mobile Gateway patents concern the same
25 technology as the previously-asserted RBR patents—namely, routing of communications in a
26 packet-switched network.

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1 70. The claims of the Mobile Gateway patents are very similar to the claims of the
2 RBR patents. Like the invalidated claims of the RBR patents, the claims of the Mobile Gateway
3 patents describe (in purely functional terms with functions generic to a computer):
4 sending/receiving data (e.g., IP addresses) between generic telecommunications devices;
5 retrieving data from storage; determining whether data matches certain characteristics; and
6 routing a call based on the determining step. Also like the claims of the RBR patents, the claims
7 of the Mobile Gateway patents fail to describe *how* to achieve these results. As an example,
8 Exhibit 12 is a claim chart that shows the similarity between claim 38 of the '721 patent (Mobile
9 Gateway) and claim 74 of the '005 patent (RBR).

10 71. VoIP-Pal's infringement allegations in the Texas Mobile Gateway Cases are very
11 similar to VoIP-Pal's infringement allegations in the 2016 and 2018 Cases and/or 2020 Texas
12 Cases against Twitter, Apple, AT&T, Verizon, and/or Amazon. For example, VoIP-Pal's
13 infringement allegations for the Mobile Gateway patents are directed to some of the same accused
14 instrumentalities that VoIP-Pal accused of infringement in VoIP-Pal's prior lawsuits against
15 Twitter, Apple, AT&T, and/or Verizon, such as messaging involving text, images, and videos.

16 72. VoIP-Pal has sued every defendant from the 2016 and 2018 Cases for
17 infringement of the Mobile Gateway patents other than Twitter. On information and belief, the
18 reason that VoIP-Pal has not sued Twitter for infringement of the Mobile Gateway patents to date
19 is strategic—for example, concern that, if VoIP-Pal filed a lawsuit to assert the Mobile Gateway
20 patents against Twitter while Twitter's 2020 and/or 2021 DJ Actions were pending, they might be
21 deemed to be first-filed cases such that VoIP-Pal would end up litigating the Mobile Gateway
22 patents in this Court.

23 **E. Second Settlement Conference In Twitter's 2020 DJ Action And**
24 **Twitter's Belief That VoIP-Pal Plans To Sue Twitter For Infringement Of**
25 **The Mobile Gateway Patents After Twitter's 2021 DJ Action Has Concluded**

26 73. Twitter's 2020 DJ Action was dismissed because of VoIP-Pal's covenant not to
27 sue for the '606 patent. Notwithstanding that dismissal, the Court retained jurisdiction to hear
28 Twitter's motion for attorney fees and sua sponte ordered the parties to participate in a second

1 court-supervised settlement conference. On November 17, 2021, Twitter and VoIP-Pal
2 participated in a second court-supervised settlement conference, which did not result in
3 settlement.

4 74. On December 9, 2021, VoIP-Pal filed a motion to dismiss Twitter's 2021 DJ
5 Action based on a covenant not to sue for the '872 patent. Case No. 21-cv-02769, ECF No. 43.

6 75. On information and belief, based on VoIP-Pal's litigation history against Twitter
7 and other companies and the events described above, Twitter expects that VoIP-Pal will sue
8 Twitter for infringement of the Mobile Gateway patents after Twitter's 2021 DJ Action has
9 concluded. Especially concerning to Twitter was that on May 25, 2021, VoIP-Pal and Verizon
10 stipulated to the dismissal of Verizon's 2020 DJ Action (Case No. 20-cv-03092, ECF No. 73), but
11 just one month later, on June 25, 2021, VoIP-Pal sued Verizon for infringement of the Mobile
12 Gateway patents. Based on VoIP-Pal's filing of its motion to dismiss Twitter's 2021 DJ Action
13 based on a covenant not to sue for the '872 patent, Twitter believes that VoIP-Pal plans to sue
14 Twitter for infringement of the Mobile Gateway patents soon after Twitter's 2021 DJ Action has
15 concluded.

16 76. Twitter believes that it does not infringe and has not infringed any claims of the
17 Mobile Gateway patents.

18 **FIRST CLAIM FOR RELIEF**
19 **(DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '234 PATENT BY TWITTER)**

20 1. The facts and allegations contained in the preceding paragraphs are incorporated
21 by reference herein.

22 2. In view of the facts and allegations set forth above, there is an actual, substantial,
23 immediate, and justiciable controversy between Twitter and VoIP-Pal regarding whether
24 Twitter's products and services infringe any claims of the '234 patent.

25 3. For example, an actual case and controversy exists at least because of the facts,
26 events, and activities described in Sections I, II, and IV of this Complaint (¶¶ 1-28, 38-76), and
27 Twitter believes it does not infringe and has not infringed any claims of the '234 patent.
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1 determining step. Also like the claims of the RBR patents, the claims of the Mobile Gateway
2 patents fail to describe *how* to achieve these results. As an example, Exhibit 12 is a claim chart
3 that shows the similarity between claim 38 of the '721 patent (Mobile Gateway) and claim 74 of
4 the '005 patent (RBR).

5 25. The claims of '721 patent are invalid in view of prior art—for example, as shown
6 by inter partes review petitions filed by Google and Meta Platforms.

7 26. The claims of the '721 patent are invalid 35 U.S.C. § 112—for example, the
8 defendants' claim construction briefing in the Texas Mobile Gateway Cases show indefiniteness.

9 27. In view of the foregoing, there is an actual, substantial, immediate, and justiciable
10 controversy between Twitter and VoIP-Pal regarding whether any claim of the '721 patent is
11 valid.

12 28. Twitter is entitled to a judgment declaring that the claims of the '721 patent are
13 invalid at least under 35 U.S.C. §§ 101, 102, 103, and/or 112.

14 PRAYER FOR RELIEF

15 Twitter respectfully requests that this Court enter judgment against VoIP-Pal as follows:

16 A. A declaration that the Twitter products and services do not infringe any claims of
17 the '234 patent;

18 B. A declaration that the claims of the '234 patent are invalid;

19 C. A declaration that the Twitter products and services do not infringe any claims of
20 the '721 patent;

21 D. A declaration that the claims of the '721 patent are invalid;

22 E. For attorney's fees and costs;

23 F. Such other and further relief as this Court or a jury may deem just and proper.
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