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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

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

Plaintiff,

v.

TWITTER, INC., a California corporation,

Defendant.

CASE NO.: 2:16-cv-2338

**COMPLAINT FOR PATENT
INFRINGEMENT**

[JURY DEMAND]

Plaintiff, Voip-Pal.com, Inc.’s (“VPLM”) Complaint against Defendant Twitter, Inc., (“Twitter”), alleges infringement of U.S. Patent No. 8,542,815 (the “815 patent”), and its continuation patent, U.S. Patent No. 9,179,005 (the “005 patent”). VPLM further complains and 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 September 24, 2013, the ‘815 patent entitled “Producing Routing Messages for Voice Over IP Communications” was duly and legally issued with Clay Perreault, Steve Nicholson, Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors after full and fair

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examination. VPLM is the owner of all rights, title, and interest in and to the ‘815 patent and possesses all rights of recovery under the ‘815 patent. A copy of the ‘815 patent is attached as

Exhibit A.

3. On November 3, 2015, the ‘005 patent entitled “Producing Routing Messages for Voice Over IP Communications” was duly and legally issued with Clay Perreault, Steve Nicholson, Rod Thomson, Johan Emil Viktor Bjorsell, and Faud Arafa as the named inventors after full and fair examination. 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 B.

4. 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.

5. 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

6. 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.

7. 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 District of Nevada and throughout the United States, and, as set forth below, has committed and continues to commit, tortious acts of patent infringement within the District of Nevada.

8. As a result of Twitter’s infringement as alleged herein, on December 18, 2015, VPLM provided notice to Twitter that it may be in violation of VPLM’s patent rights, including VPLM’s

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1 rights under the ‘815 patent and the ‘005 patent. See **Exhibit C**, Correspondence to Twitter. Despite
2 the notice, Twitter has infringed and continues to infringe VPLM’s patents.

3 **JURISDICTION AND VENUE**

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

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

16 11. Venue is proper within this District under 28 U.S.C. § 1391(b), (c), and § 1400(b)
17 because Twitter regularly transacts business within this District and offers services for sale in this
18 District that infringe VPLM’s patents. Furthermore, venue is proper in that Twitter has and
19 continues to infringe VPLM’s patents causing harm to VPLM in Nevada. Also, VPLM is
20 incorporated in Nevada.

21 **FACTUAL ALLEGATIONS**

22 **A. Twitter’s Infringement of VPLM’S Patents**

23 12. VPLM has protected its innovative designs and technologies through a broad range
24 of intellectual property rights. Among the patents that VPLM has been awarded are the ‘815 patent
25 and ‘005 patent to which VPLM owns all rights, title, and interest.

26 13. As detailed in the attached **Exhibit D** (Asserted Claims and Infringement Contentions
27 Concerning the ‘815 Patent and the ‘005 Patent), VPLM is informed and believes, and on that basis
28 alleges that Twitter offers messaging that may include “Direct Messages,” “Reply Tweets,”

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1 “Mentions” and “Re-Tweets” that utilize caller/initiator and callee/recipient call classification criteria
2 that is used on a collection of servers and gateways and/or through software or firmware applications
3 that run on computing devices such as smartphones, tablet computers, desktop computers and
4 portable computers. Twitter practices directly and indirectly certain claims of the ‘815 and the’005
5 Patents by utilizing a caller dialing profile comprising a plurality of calling attributes to establish
6 private network classification criteria and public network classification criteria for routing
7 communications such as calls/messages between a caller/initiator and a callee/recipient.

8 14. VPLM is informed and believes, and on that basis alleges that Twitter engages in the
9 following specific infringing practices:

10 **B. Asserted Claim No. 1 regarding Twitter’s System (the ‘815 patent)**

11 15. Twitter practices directly and indirectly certain claims of the ’815 patent, as
12 illustrated in **Chart 1 of Exhibit D**, by utilizing a caller dialing profile comprising a plurality of
13 calling attributes to establish network classification criteria for routing messages between callers and
14 callees, including operations that occur on its equipment, servers and/or gateways, and/or the
15 equipment, servers and/or gateways of subsidiaries and/or intermediaries. Twitter communications
16 between a caller and a callee include “Direct Messages” (in which one or more Twitter users are
17 identified as the recipient(s) of the message), and “Mentions” (in which one or more Twitter users is
18 identified by username in a message, which could be a “Re-Tweet” or a “Reply Tweet,” for
19 example). Calling attributes includes information associated with the caller, such as settings stored
20 on a mobile device and information stored on Twitter equipment (e.g., the list of users that are
21 currently following the caller, the list of users that are blocked by the caller, and the security and
22 privacy settings for the caller including whether tweets are public or protected). Network
23 classification criteria affect how messages are delivered to recipients, which can be over the public
24 SMS network and over a private network to a Twitter application running on a computing device
25 such as a smartphone.

26 **C. Asserted Claim No. 2 regarding Twitter’s System (the ‘005 patent)**

27 16. Twitter practices directly and indirectly certain claims of the ’005 patent, as
28 illustrated in **Chart 2 of Exhibit D**, by utilizing a caller dialing profile (or first participant profile)

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comprising a plurality of calling attributes (or first participant attributes) to establish network classification criteria for routing messages between callers (or first participants) and callees (or 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 caller (or first participant) and a callee (or 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). Calling attributes (or first participant attributes) includes information associated with the caller (or 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.

17. The Twitter 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 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.

18. Twitter’s infringement of the ‘815 patent and 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.

19. Twitter continues to choose to infringe VPLM’s patent rights through its caller attribute based communication classification and routing systems, including at least Twitter’s Messaging based communication products and services.

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20. Twitter has not obtained permission or a license from VPLM to use its inventions as identified in the ‘815 patent and the ‘005 patent.

21. Furthermore, the ‘815 patent and ‘005 patent are only two patents in a suite of ten related patents. *See Exhibit E*, VPLM Active Patents as of January 1, 2016. VPLM preserves the right to request leave to amend this Complaint to add additional allegations of infringement based on additional patents associated with the suite.

CLAIMS FOR RELIEF

First Claim for Relief (Infringement of the ‘815 and ‘005 Patents by Twitter)

22. VPLM incorporates and re-alleges paragraphs 1 through 26 of this Complaint.

23. Twitter has infringed and continues to infringe, directly and indirectly through contributory and/or induced infringement, one or more claims of the ‘815 patent and 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. Twitter’s infringing activities violate 35 U.S.C. § 271.

25. VPLM is informed and believes, and on that basis alleges, that Twitter’s infringement of the ‘815 patent and the ‘005 patent has been and continues to be intentional, willful, and without regard to VPLM’s rights because it had actual knowledge of the ‘815 patent and the ‘005 patent through direct and indirect communications with VPLM, and constructive notice due to the patentee’s disclosure of IP-based communication methods in predecessors of the ‘815 patent and the ‘005 patent, including International PCT Publication No. WO2008/052340 on May 8, 2008, U.S. Patent Publication No. 2010/0150328 on June 17, 2010, and U.S. Patent Publication No. 2013/0329722 on December 12, 2013.

26. VPLM is informed and believes, and on that basis alleges, that Twitter has increased revenues by virtue of its infringement of the ‘815 patent and the ‘005 patent. On information and belief, a portion of Twitter’s market capitalization are thus attributable to the incremental value of the infringed property. Based upon information and belief, the damages arising from such infringement are alleged to be Two Billion Six Hundred and Ninety-Nine Million Two Hundred and

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1 Fifty-Six Thousand and Four Hundred and Eighteen Dollars (\$2,699,256,418) based upon the
2 calculations contained in **Exhibit F**, attached hereto.

3 27. VPLM has sustained damages as a direct and proximate result of Twitter’s
4 infringement of the ‘815 patent and the ‘005 patent as their continuing infringement unfairly allows
5 Twitter to dominate the market and harms VPLM’s ability to secure licensing revenue for these
6 patents. Said damages will be proved at trial.

7 28. VPLM will suffer and is suffering irreparable harm from Twitter’s continuing
8 infringement of the ‘815 patent and the ‘005 patent.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, VPLM prays for relief, as follows:

- 11 1. A judgment that the ‘815 patent and the ‘005 patent are valid and enforceable;
- 12 2. A judgment that Twitter has infringed, contributorily infringed, and/or induced
13 infringement of one of more claims of the ‘815 patent and the ‘005 patent;
- 14 3. An order and judgment permanently enjoining Twitter and its officers, directors,
15 agents, servants, employees, affiliates, attorneys, and all others acting in privity or in concert with
16 them, and their parents, subsidiaries, divisions, successors and assigns from further acts of
17 infringement of the ‘815 patent and the ‘005 patent;
- 18 4. A judgment awarding VPLM all damages adequate to compensate for Twitter’s
19 infringement of the ‘815 patent and the ‘005 patent, and in no event less than a reasonable royalty for
20 Twitter’s acts of infringement, including all pre-judgment and post-judgment interest at the
21 maximum rate permitted by law;
- 22 5. A judgment awarding VPLM all damages, including treble damages, based on any
23 infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;
- 24 6. Actual damages suffered by VPLM as a result of Twitter’s unlawful conduct, in an
25 amount to be proven at trial, as well as prejudgment interest as authorized by law;
- 26 7. A judgment and an award to VPLM of its costs and reasonable attorneys’ fees
27 incurred in this action as provided by 35 U.S.C. § 285; and
- 28 8. Such other relief as this Court deems just and proper.

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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 6th day of October, 2016.

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