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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 TELESIGN CORPORATION,
12
13 PLAINTIFF,
14 v.
15 TWILIO, INC.,
16 DEFENDANT.

) Case No. 15-3240-PSG-SS
)
) **PLAINTIFF’S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF MOTION FOR**
) **PRELIMINARY INJUNCTION**

)
)
) Date: October 5, 2015
) Time: 1:30 p.m.
) Crtm: 880

) Honorable Philip S. Gutierrez
)
)
)

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I. INTRODUCTION

1
2 Through great expense and personal effort, the founders of TeleSign built a
3 company from a two-person venture into a business employing over 280 people in its
4 Los Angeles headquarters and throughout the world. One of its marquee offerings is
5 PhoneID, which provides a novel way to reduce the proliferation of Internet fraud
6 attempted by anonymous users. TeleSign has enjoyed great success based on the
7 unique operation of PhoneID. In the face of intense competition, TeleSign has been
8 able to distinguish itself by its patented technology.

9 Rather than attempting to protect their ideas by keeping them a secret, more
10 than 10 years ago, the inventors of the technology in PhoneID chose to seek patent
11 protection, relying on the *quid pro quo* offered by the patent system: disclosure of its
12 technology in exchange for a limited time period to exclude others from practicing its
13 invention.

14 A few months ago, Twilio--a much larger company than TeleSign--began
15 aggressively marketing technology called Lookup that is in all material respects
16 identical to PhoneID. Lookup, in conjunction with Twilio's phone verification
17 products, clearly infringes TeleSign's patent. This infringement is having a
18 devastating effect on TeleSign's business. Twilio is trying to lure customers from
19 TeleSign by offering Lookup at a fraction of the cost of PhoneID, in some cases 1/10
20 the price, and in others, for free. TeleSign has been forced into a price war with
21 Twilio, a company with much greater capital, which has elevated market share over
22 profits in order to capitalize on the inertia and technical hurdles that make it hard for
23 customers to switch vendors. Once Twilio is able to gain customer relationships by its
24 infringement, it will be very difficult, if not impossible, for TeleSign to win back
25 those customers, let alone restore its prices. This irreparable harm is happening right
26 now and will continue through resolution of this case. As market awareness of
27 Twilio's product grows each week, these irreparable injuries increase.

1 Without the relief of a preliminary injunction, TeleSign will continue to lose
2 customers, continue to lose market share, and suffer irreparable price erosion.
3 Because these injuries are impossible to fully remedy at the conclusion of the case, a
4 preliminary injunction should be entered now.

5 **II. FACTUAL BACKGROUND**

6 **A. TeleSign's Patented Technology**

7 TeleSign's patented technology solves a unique problem born out of the
8 anonymity possible in Internet commerce. The ability to hide one's identity lends
9 itself to fraudulent transactions. One way to help reduce fraud is to employ what is
10 referred to as "two-factor authentication," one example of which is requiring potential
11 users to respond to a text message in addition to providing a password. The password
12 is the first authentication factor; responding to the text message correctly is the second
13 factor. Although two-factor authentication helps confirm that people are who they
14 say, fraudulent users have found ways to respond to text messages without giving
15 away their identity.

16 For example, a person can purchase a "burner" phone, a mobile phone that can
17 be bought with cash and does not have to be tied to a person's identity. A person also
18 can obtain phone numbers via the internet that are not associated with phones. This is
19 prevalent with "VoIP" or "voice over Internet protocol" technologies, where users can
20 obtain many phone numbers that are not tied to a specific hardware device. Given
21 these technologies (and others), identifying potentially-fraudulent activity continues to
22 be a problem when two-factor authentication is used alone.

23 As the '034 Patent states; "it has been found that with the advent of different
24 telephone systems, such verification can still lead to access by fraudulent users." '034
25 Patent, 1:44-46. A "problem with online registrations is that the registrant often
26 registers with untraceable and false e-mail addresses and telephone numbers." '034
27 Patent, 3:56-58. One aspect of the '034 Patent is to help reduce fraud by further
28

1 including steps of determining characteristics of a phone number and factoring them
2 into a registration decision. TeleSign owns the rights to this invention.

3 **B. Defendant Twilio’s Infringing Product**

4 On March 31, 2015, Twilio announced its Lookup technology. (Peal Decl.,
5 Exhibit 1, p. 1 (“Introducing Lookup”).) Lookup is used to add a layer of protection
6 on top of Twilio’s two-factor authentication (“2FA”) technology so that when a
7 prospective user attempts to register with a website (for example), not only does he or
8 she have to enter a code received in a Twilio text message (2FA), the user’s phone
9 number is evaluated by Lookup as a factor to consider when registering the user. This
10 functionality is nearly identical to the functionality available with TeleSign’s PhoneID
11 product and is covered by the ‘034 Patent.

12 **C. Effects of Twilio’s Infringement**

13 For years, TeleSign was able to differentiate itself in the market based on
14 PhoneID. That is no longer the case. TeleSign’s entire sales strategy and growth
15 plans have been disrupted by Twilio’s infringement. Twilio offers Lookup
16 technology, along with its other technology, to the same customers that TeleSign is
17 targeting. TeleSign’s irreparable harm is detailed in Section 5 below.

18 **III. LEGAL STANDARDS**

19 **A. Preliminary Injunction**

20 When ruling on a motion for preliminary injunction, the court is to consider
21 four factors: (1) likelihood of success; (2) irreparable harm; (3) balance of hardships;
22 and (4) public interest. *See Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1187
23 (9th Cir. 2011); *see also Trebro Mfg. v. FireFly Equip., LLC*, 748 F.3d 1159, 1165
24 (Fed. Cir. 2014). The Ninth Circuit applies a sliding scale test, under which “the
25 elements of the preliminary injunction test are balanced, so that a stronger showing of
26 one element may offset a weaker showing of another.” *Alliance for the Wild Rockies*
27 *v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The movant is not required to prove
28

1 that it is certain to win. It is enough to show that success is more likely than not. See
2 *Revision Military, Inc. v. Balboa Mfg. Co.*, 700 F.3d 524, 526 (Fed. Cir. 2012).

3 **B. Direct Infringement and Inducing Infringement**

4 TeleSign asserts two theories of liability: direct infringement and inducing
5 infringement. Direct infringement requires proof by a preponderance of the evidence
6 that the defendant performs each element of a claim, either literally or under the
7 doctrine of equivalents. *Cheese Sys. v. Tetra Pak Cheese & Powder Sys.*, 725 F.3d
8 1341, 1348 (Fed. Cir. 2013) (citing *BMC Resources, Inc. v. Paymentech, L.P.*, 498
9 F.3d 1373, 1381 (Fed. Cir. 2007)). A defendant is liable for inducing another to
10 infringe a patent if the defendant “knew of the patent and that ‘the induced acts
11 constitute patent infringement.’” *Commil USA, LLC v. Cisco Sys.*, 135 S. Ct. 1920,
12 1926 (U.S. 2015) (quoting *Global-Tech. Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060,
13 2063 (U.S. 2011)).

14 Even if an infringer does not perform each step of a patented method, it is still
15 liable if it directs or controls another entity that is performing one or more of the steps.
16 See *Nalco Co. v. Turner Designs, Inc.*, No. 13-2727, 2014 U.S. Dist. LEXIS 148067,
17 *2 (N.D. Cal. Oct. 17, 2014). An agreement for indemnification between two parties
18 is proof of “control or direction” over an entity by an accused infringer. *Id.* at *15.

19 **IV. TELESIGN IS LIKELY TO SUCCEED ON THE MERITS**

20 **A. TeleSign’s Patent is Presumptively Valid.**

21 Patents are presumed valid during preliminary injunction proceedings. *Gaymar*
22 *Indus. v. Cincinnati Sub-Zero Prods.*, Appeal No. 2014-1174, 2015 U.S. App. LEXIS
23 10736, *14 (Fed. Cir. June 25, 2015) (“To begin, the patent enjoys the same
24 presumption of validity during preliminary injunction proceedings as at other stages of
25 litigation.”) (citation omitted). Therefore, “the patentee need not address invalidity as
26 an initial matter in filing for a preliminary injunction.” *Id.* Because the ‘034 Patent is
27 presumptively valid, TeleSign will focus its argument on infringement.

1 **B. Twilio is Infringing TeleSign’s Patent.**

2 Twilio has known at least since Twilio received a copy of TeleSign’s Original
3 Complaint in this action on May 1, 2015, that its own acts and the acts it is inducing
4 constitute patent infringement.¹ (Declaration of Mary Peal (“Peal Decl.”) at ¶ 2.)
5 Twilio has been on notice of TeleSign’s patent and has been actively inducing actual
6 or potential customers to use Twilio’s technology in an infringing manner via its
7 website.²

8 The following section provides illustrative examples of how Twilio is actively
9 inducing infringement of TeleSign’s patent. As discussed below, each step of claim 1
10 of the ‘034 Patent is performed either by Twilio or under the direction and control of
11 Twilio’s users. Twilio is contractually obligated to provide the relevant services
12 requested by Twilio’s users. (*See, e.g.*, Peal Decl., Exhibit 2 at § 2.1³ and § 8.1;
13 Exhibit 3, p. 1⁴.)

14 **C. Element-by-Element Infringement Analysis of Claim 1.**

15 Each of the subheadings below recites one or more elements of claim 1 of the
16 ‘034 Patent and is followed by factual bases that demonstrates TeleSign’s likelihood
17 of success of showing that Twilio induces infringement of TeleSign’s patent (and is
18 liable as a direct infringer).

19 _____
20 ¹ *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068 (U.S. 2011)
21 (“Accordingly, we now hold that induced infringement under § 271(b) requires
22 knowledge that the induced acts constitute patent infringement.”).

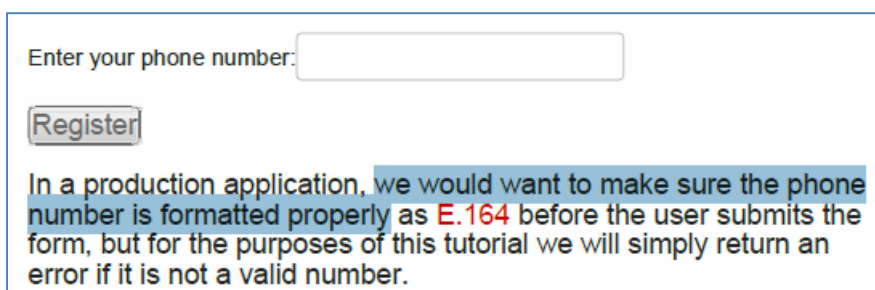
23 ² TeleSign also understands that Twilio’s sales or marketing representatives have
24 encouraged others to use Twilio’s technology in an infringing manner.
(Berkovitz Decl. at ¶ 34.)

25 ³ (“Twilio will make the Twilio Services available to Customer in accordance with the
26 SLA . . .”).

27 ⁴ (“Twilio will use commercially reasonable efforts to make the Twilio API available
28 99.95% of the time.”).

1 **1. Preamble: “A process for telephonically registering a user**
2 **over one or more communication networks through**
3 **determining characteristics of a telephone number.”**

4 Twilio performs the claimed process or induces others to do so. Even if the
5 preamble of claim 1 were a limitation, Twilio induces others to register users while
6 determining characteristics of a telephone number. Twilio actually provides a tutorial
7 entitled: “Using Twilio SMS . . . To Build A Phone Verification System.” (Peal
8 Decl., Exhibit 4, p. 1.) Not only does Twilio “cover” how to build a phone-
9 verification system, it encourages users to download a “complete example” of the
10 code and goes “into detail about every segment of the code” on its website. (Peal
11 Decl., Exhibit 4, pp. 1-7.) As shown below, Twilio’s website shows users how to
12 create a “Register” button and explains the importance of ensuring that phone
13 numbers are formatted correctly (a task Lookup or other Twilio technology is
14 designed to perform): “we would want to make sure the phone number is formatted
15 properly.” (Peal Decl., Exhibit 4, p. 2 (highlighting added).)



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20 Checking a phone number’s format is an express purpose of Twilio Lookup, as
21 shown below. (Peal Decl., Exhibit 5, p. 2.)
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CHECK NUMBER FORMAT

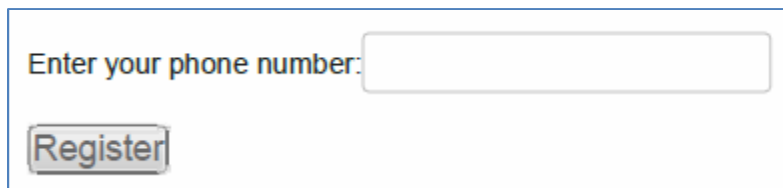
Avoid junk entries

Identify entries in a phone number database that don't follow standard number structure.

When users input their numbers online, it opens the door to erroneous inputs in a database. Check every number before calling and sending messages to numbers that are too-short [3032], too-long [303-201-20201], and/or include letters or special characters.

2. “receiving a telephone number”

Twilio receives phone numbers from its customers, its end users, and encourages others to receive telephone numbers from their end users. The exemplary Twilio tutorial teaches others to receive a telephone number, as shown below. (Peal Decl., Exhibit 4, p. 2.)



Enter your phone number:

3. “electronically determining the type of phone, the phone carrier and geographic characteristics associated with the telephone number”

Twilio performs this step under the direction and control of its users. TeleSign’s patent explains that “[d]etermining the phone type characteristics includes determining whether the phone number is associated with a **landline** telephone, a cellular phone, or a **voice over internet protocol** phone.” ’034 Patent, 2:15-18 (emphasis added). As shown below, Twilio Lookup makes the same determinations regarding phone type, specifically mentioning “landline” and “VoIP” (or “voice over internet protocol”) numbers. (Peal Decl., Exhibit 5 (red underlining added).)

CHECK TYPE

Know when you need a backup

Recognize when an alternative delivery method is needed to successfully send communications.

Some number types don't accept all communications -- for example, most landline numbers and many VoIP numbers do not accept SMS messages. Identify which kind of communications users can accept, based on their number type. This allows businesses to optimally decide whether to send voice or text communications for \$0.005 per lookup.

Claim 1 recites three characteristics: type of phone, the phone carrier and geographic characteristics associated with the telephone number. As indicated by Twilio's website below, Twilio Lookup gathers all three in connection with a given phone number (item "a"): the type of phone (item "b"), the phone carrier (item "c"), and geographic characteristics (item "d"). (Peal Decl., Exhibit 5 (yellow annotations added).)

REQUEST & RESPONSE

```
curl -X GET https://lookups.twilio.com/v1/PhoneNumbers/55-11-5525-6325\  
-d "Type=carrier"  
-u "{AccountSid}:{AuthToken}"
```

```
{  
  "country_code": "BR",  
  "phone_number": "+551155256325",  
  "national_format": "(11) 5525-6325",  
  "url": "https://lookups.twilio.com/v1/PhoneNumber/+551155256325",  
  "carrier": {  
    "type": "landline",  
    "error_code": null,  
    "mobile_network_code": null,  
    "mobile_country_code": null,  
    "name": "Vivo"  
  }  
}
```

1 **4. “connecting to a telephone associated with the telephone**
2 **number through at least one of the communication networks”**
3 **and “communicating a verification message with the telephone**
4 **over at least one of the communication networks”**

5 Twilio performs this step by sending “SMS”⁵ messages to its end users, sending
6 SMS messages at the direction and control others, and/or encouraging users to send
7 SMS verification messages. TeleSign’s patent explains that SMS is an exemplary
8 method of communicating a verification message to a connected telephone.⁶ Twilio
9 specifically instructs its users how to provide for verifying user numbers “using an
10 SMS message,” as illustratively reflected below. (Peal Decl., Exhibit 4, p. 1; *see also*,
11 pp. 1-6.)

12 user to enter a code. However, since we already covered that
13 method of verification in our previous PHP phone verification post,
14 today we are going to verify the user’s number using an SMS
15 message.

16 **5. “registering the user through at least one of the**
17 **communication networks based on the type of phone, the**
18 **phone carrier, the geographic characteristics associated with**
19 **the telephone number and the verification message”**

20 Twilio registers users or actively encourages others to register users based on
21 the phone characteristics determined by Twilio Lookup. The preceding Subsection (4)
22 showed Twilio’s use of a verification code or message. This is repeated in Twilio’s
23 six-step process, shown below, which Twilio encourages users to follow (*see*
24 particularly steps 2-4). (Peal Decl., Exhibit 4, p. 1-2.)

25 ⁵ “Short Message Service” or “texting.”

26 ⁶ *See, e.g.*, ‘034 patent, 4:67-5:2 (“In a particularly preferred embodiment, the
27 electronic message is a Short Message Service (SMS)[].”).

The 6 Steps For Building a Phone Verification System

1. User visits verification web page and enters phone number.
2. Random verification code is generated and sent via SMS to the user.
3. User enters the code that they received into a web form.
4. If code is entered correctly, update database.
5. If code is entered incorrectly, re-prompt user to enter code.
6. Update web page with status message.

Twilio’s website indicates that Lookup information is used to register users—for example, to ensure that phone numbers selected by Twilio’s customers are correct and familiar, to “scrub out numbers with invalid formats,” to “increase the quality of consumer data gathered,” and to validate “the accuracy of data inputs.” (Peal Decl., Exhibit 1, pp.1-2 (emphasis added)).

to list “+1” national code on a Yelp ad. Now, with this free Lookup, businesses like PaybyPhone can systematically ensure that the numbers they select are the most familiar to locals by identifying and adjusting international phone numbers into the national format. “Identifying the originating number type and country code enables targeted communications,” explains Chris Morrow, Head of PaybyPhone IT Operations.

Additionally, they can scrub out numbers with invalid formats. Lookup identifies erroneous phone number entries that don’t follow standard number structure (e.g. 404-2010-10202). “Lookup allows PayByPhone to increase the quality of consumer data gathered, and improves the consumer experience, by validating accuracy of data inputs,” says Morrow. “This enables developers to easily author applications which perform input validation while minimizing consumer interaction.”

D. Summary of Exemplary Evidence of Infringement.

Exhibits 1, 4 and 5 to the Peal Declaration show aspects of Twilio’s intentional and deliberate efforts to use aspects of Twilio’s technology in a manner that infringes TeleSign’s. These exhibits are just a sample of the tutorials, code samples, offers, and instructions that encourage others to use Twilio’s technology.

1 **V. IRREPARABLE HARM**

2 **A. Twilio’s harm to TeleSign is presumed irreparable.**

3 “Irreparable harm is presumed when a clear showing of patent validity and
4 infringement has been made.” *See e.g., Amazon.com, Inc. v. Barnesandnoble.com,*
5 *Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001); *see also Abbott Labs. v. Andrx Pharms.,*
6 *Inc.*, 452 F.3d 1331, 1347 (Fed. Cir. 2006) “[W]e conclude that [plaintiff] has not
7 established a likelihood of success on the merits. As a result, [plaintiff] is no longer
8 entitled to the presumption of irreparable harm.”); *Everett Labs., Inc. v. Breckenridge*
9 *Pharm., Inc.*, 573 F. Supp. 2d 855, 866 (D.N.J. 2008) (“In *Abbott Laboratories*, a
10 post-*eBay* decision, the Federal Circuit seemed to imply that the presumption may still
11 exist at the preliminary injunction stage.”).

12 Here, TeleSign’s patent is presumed valid. It issued after a thorough
13 examination by the Patent Office. During prosecution, the Patent Office submitted
14 initial rejections based on 35 U.S.C. § 101 (patent ineligibility), § 102 (lack of
15 novelty). (Peal Decl., Exhibit 6, pp. 56-66.) Further testing the claims, the Patent
16 Office attempted to issue rejections under § 112 (lack of written description) and §
17 103 (obviousness) (Peal Decl., Exhibit 6, pp. 90-98) and even a second purported
18 patent-ineligibility rejection (Peal Decl., Exhibit 6, p. 123). The face of the ’034
19 Patent indicates that the patent examiner ultimately cited seven different references
20 during prosecution. (Peal Decl., Exhibit 7, p. 1.) The applicants overcame all of these
21 rejections, resulting in a Notice of Allowance. (Peal Decl., Exhibit 6, p. 146-50.) No
22 one has ever shown TeleSign’s patent to be invalid. In Section 3 (above), TeleSign
23 has shown that Twilio is infringing TeleSign’s patent.

24 Because TeleSign has made a clear showing that its patent is valid and Twilio is
25 infringing, the harm that Twilio’s infringement is causing TeleSign is presumed to be
26 irreparable. *Amazon.com, Inc.*, 239 F.3d at 1350.

1 **B. Even absent a presumption, Twilio’s infringement is irreparably**
2 **harming TeleSign.**

3 Even if the Court were to find a presumption of irreparable harm inapplicable,
4 TeleSign is in fact suffering and will continue to suffer irreparable harm as a result of
5 Twilio’s infringement. As discussed in detail in the accompanying declarations of
6 Darren Berkovitz (a founder of TeleSign) and Michael Chapman (an economics
7 expert), TeleSign is losing business opportunities, its prices are being eroded, and its
8 good will and reputation are being damaged as a result of Twilio’s infringement. Any
9 one of these is a sufficient basis to grant TeleSign’s motion. *See, e.g., Celsis in Vitro,*
10 *Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 929 (Fed. Cir. 2012) (“Price erosion, loss of
11 goodwill, damage to reputation, and loss of business opportunities are all valid
12 grounds for finding irreparable harm.”).

13 **1. TeleSign and Twilio directly compete with one another for**
14 **customers, and TeleSign is losing sales that could result in**
15 **long-term customer relationships.**

16 Twilio promotes Lookup as a low-cost alternative to PhoneID and, thus,
17 directly competes with TeleSign in the same market. (Declaration of Darren
18 Berkovitz (“Berkovitz Decl.”) at ¶¶ 28, 31-33.) TeleSign and Twilio market their
19 products using the same channels, such as offering online information and
20 demonstrations, attending conferences, and marketing to software- and website-
21 developers directly (*e.g.*, using Twitter accounts), and through an enterprise-sales
22 model. (Berkovitz Decl.at ¶ 29.) TeleSign and Twilio regularly meet with the same
23 customers and potential customers on sales calls and during in-person meetings.
24 (Berkovitz Decl.at ¶ 29.)

25 Once TeleSign loses a customer Twilio, it will be very difficult to reestablish
26 the relationship. After a customer decides on a software vendor, it embeds the
27 vendor’s technology into its own product, tests and debugs the software, then trains IT
28 personnel and end users to use it. After a customer invests substantial time and
29 money implementing one solution, it is very challenging to convince the customer—

1 which is busy running its own business—to switch to a different solution. (Berkovitz
2 Decl. at ¶¶ 25-27.) Doing so is not as simple as just signing a contract with a new
3 technology provider. Instead, developers must remove the software code from the
4 prior vendor and replace it with new technology, which then must be integrated,
5 tested, and deployed and distributed. (Berkovitz Decl. at ¶¶ 25-27.)

6 This inertia is even harder to overcome because the sales cycle for products like
7 PhoneID and Lookup often takes several months to complete, and the typical contract
8 will run for a year or more. Accordingly, sales decisions made now will determine
9 whether customers are using TeleSign’s products or Twilio’s for years to come.
10 During that time, the customers’ products will scale and grow in unexpected ways,
11 with technology from either TeleSign or Twilio embedded as part of the products.
12 (Berkovitz Decl. at ¶¶ 23-25.)

13 **2. TeleSign’s prices are being eroded because of Twilio’s**
14 **infringement.**

15 Twilio is attempting to gain market share by offering Lookup at extremely low
16 prices and, sometimes, for free. (Berkovitz Decl. at ¶ 37.) Since TeleSign is no
17 longer able to differentiate itself based on its patented technology, it has been forced
18 into a price war. TeleSign has had to lower prices for its PhoneID technology
19 substantially, sometimes to a fraction of a cent for each PhoneID transaction.
20 (Berkovitz Decl. at ¶ 40.) TeleSign has also had to lower prices on other products and
21 services often sold as part of a package with PhoneID. (Berkovitz Decl. at ¶ 40.)

22 For example, in late April 2015, one customer questioned TeleSign’s pricing of
23 proposed solutions, indicating that Twilio was charging 1/10th the price for a “very
24 similar service.” (Berkovitz Decl. at ¶ 42.) This customer, as with many of
25 TeleSign’s customers, made price one of the top factors in its decision. (Berkovitz
26 Decl. at ¶ 42.) In April and May of 2015, TeleSign had to offer several of its existing
27 customers significant discounts or price reductions, often to half of the prices
28

1 originally received for PhoneID and other technology from TeleSign to retain their
2 business. (Berkovitz Decl. at ¶ 43.) TeleSign felt the greatest impact of this price
3 erosion in July 2015, when it was forced to give a substantial discount to a customer,
4 resulting in millions of dollars in lost revenue in 2015 and, potentially, much more in
5 later years. (Berkovitz Decl. at ¶¶ 44-45.)

6 **3. TeleSign is losing goodwill and its reputation in the market is**
7 **being tarnished because of Twilio's infringement.**

8 Twilio's infringement has injured TeleSign by tarnishing its goodwill with
9 customers. (Berkovitz Decl. at ¶ 50.) TeleSign has promoted PhoneID as unique,
10 patented technology, which has helped it foster a corporate identity as an innovator of
11 high-quality products and services. (Berkovitz Decl. at ¶ 50.) This perception is
12 being impugned by Twilio's infringement, as customers come to view PhoneID as just
13 one among multiple options. (Berkovitz Decl. at ¶ 50.) TeleSign fears that its
14 historically innovative and differentiated PhoneID technology may ultimately be
15 perceived more along the lines of a commodity. (Berkovitz Decl. at ¶ 50.)

16 TeleSign and Twilio compete in an industry where a company's reputation is
17 based in-part on its number of customers and their identities. (Declaration of Michael
18 Chapman ("Chapman Decl.") at ¶ 41.) Important customers provide reputational
19 value, and their loss would harm TeleSign beyond lost revenue. (Chapman Decl. at ¶¶
20 41-44.) Further, the more customers TeleSign has, the more traffic it can process and
21 analyze, which adds to the value and effectiveness of PhoneID. (Chapman Decl. at ¶¶
22 27, 45, 83.) This loss of synergy and its damage to TeleSign's reputation cannot be
23 recovered.

24 **4. Monetary damages will not adequately compensate for the**
25 **harm caused by Twilio's infringement.**

26 As discussed in detail in the declaration of Michael Chapman, the injuries
27 TeleSign will suffer if Twilio is allowed to continue infringing the '034 Patent while
28 this case proceeds can never be remedied with money damages.

1 It will be impossible to accurately calculate the economic impact caused by the
2 loss of customer relationships and good will. TeleSign and Twilio will be competing
3 aggressively for virtually all new customers for phone verification technology.
4 (Chapman Decl. at ¶¶ 35-37, 63, 65-66, 67, 72, 74, 80, 87.) If Twilio's low-cost or
5 free technology is available, many customers are likely to choose it, and TeleSign is
6 likely to lose a substantial share of the market. (Berkovitz Decl. at ¶¶ 51-52;
7 Chapman Decl. at ¶¶ 7, 65-66.) TeleSign will lose sales of technology that it cross-
8 sells with PhoneID, if Twilio is allowed to continue marketing Lookup. (Berkovitz
9 Decl. at ¶¶ 22; Chapman Decl. at ¶¶ 5, 30, 68-69, 74, 86.) Customers enter into long-
10 term contracts for technology like PhoneID and Lookup. (Chapman Decl. at ¶¶ 46-48,
11 70, 75.) We will never know how long a customer relationship may have lasted and
12 how that relationship may have grown over the years.

13 Twilio's continued presence in the market is likely to cause an even more
14 precipitous decline in prices. (Chapman Decl. at ¶¶ 6, 37, 72-77, 87.) In this market,
15 it will be difficult, if not impossible, to raise prices back to where they were before
16 Twilio's infringement. (Chapman Decl. at ¶¶ 6, 73, 76, 87.) We never will be able to
17 accurately determine what prices TeleSign would have been able to command in the
18 market now and in the future had not Twilio's unfair competition caused a price war.

19 The injury to TeleSign's reputation as an innovator, offering unique solutions,
20 is even harder to attach a dollar amount to. What new products and partnerships
21 would have been possible if Twilio had not flooded the market with a cheap
22 alternative, making PhoneID appear to be a commodity? These lost opportunities are
23 inherently difficult, if not impossible, to quantify. (Chapman Decl. at ¶¶ 5, 65-71, 83,
24 86.)

1 **VI. THE BALANCE OF HARDSHIPS FAVORS A PRELIMINARY**
2 **INJUNCTION**

3 Balancing the hardships involves considering the relative effect of granting or
4 denying an injunction on the parties. See *i4i, Ltd. v. Microsoft Corp.*, 598 F.3d 831,
5 862 (Fed. Cir. 2010). Any hardship to Twilio from infringing and inducing others to
6 infringe TeleSign’s patents is its own doing. Twilio is aware of TeleSign’s patent and
7 is choosing to act in the face of TeleSign’s exclusionary rights. And any hardship to
8 Twilio will be further mitigated by an appropriate bond.

9 The harm to TeleSign in suffering an ongoing loss of its exclusivity rights, as
10 set forth above, is far more serious, meriting an injunction. See *Brocade Communs.*
11 *Sys. v. A10 Networks, Inc.*, No. 10-3428, 2013 U.S. Dist. LEXIS 4834, *28-29 (N.D.
12 Cal. Jan. 10, 2013) (“Brocade, on the other hand, would suffer ongoing loss of its
13 rights to exclusively practice its patents, and Brocade's loss would be at the hands of a
14 direct competitor. Brocade's hardship in the absence of an injunction outweighs A10's
15 hardship if an injunction were to be entered. The balance, therefore, weighs in favor of
16 entry of an injunction.”).

17 **VII. THE PUBLIC INTEREST SUPPORTS A PRELIMINARY INJUNCTION**

18 Protecting rights secured by valid patents is an important public interest. *Smith*
19 *Int'l, Inc. v. Hughes Tool Co.*, 718 F.2d 1573, 1581 (Fed. Cir. 1983); see also *Brocade*
20 *Communs. Sys.*, No. 10-3428, 2013 U.S. Dist. LEXIS 4834 at *30 (“Protecting a
21 patentee's exclusive practice of her patent, therefore, generally serves the public
22 interest.”). On the other hand, there is no “critical public interest that would be
23 injured by the grant of preliminary relief.” *Rubin ex rel. NLRB v. Vista Del Sol Health*
24 *Servs.*, No. 14-9534, 2015 U.S. Dist. LEXIS 9195, *121 (C.D. Cal. Jan. 21, 2015)
25 (citations omitted).

26 **VIII. CONCLUSION**

27 For the foregoing reasons, TeleSign respectfully requests that the Court enter an
28 order barring Twilio, and all those acting in active concert with it, from infringing the

1 '034 Patent, including by making, using, selling and offering to sell its Lookup
2 product, or any product with the same functionality, in conjunction with the Twilio
3 2FA product. TeleSign also asks that the Court enter such other relief as it deems just
4 and proper.

5
6 Dated: August 5, 2015.

Respectfully Submitted,

7
8 SHOOK, HARDY & BACON L.L.P.

9 By: /s/ Courtney A. Hasselberg

Courtney A. Hasselberg

Attorney for Plaintiff

10
11 **TELESIGN CORPORATION**