UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

TWILIO, INC.,

Plaintiff,

v.

TELESIGN CORPORATION,

Defendant.

Case No. 16-CV-06925-LHK

ORDER GRANTING IN PART DEFENDANT'S MOTION TO DISMISS

Re: Dkt. No. 31

Plaintiff Twiilio, Inc. ("Twilio" or "Plaintiff") filed a patent infringement suit against Defendant Telesign Corporation ("Telesign" or "Defendant") and alleged that Defendant infringed the claims of U.S. Patent Nos. 8,306,021 ("the '021 Patent"), 8,837,465 ("the '465 Patent"), 8,755,376 ("the '376 Patent"), 8,738,051 ("the '051 Patent"), 8,737,962 ("the '962 Patent"), 9,270,833 ("the '833 Patent"), and 9,226,217 ("the '217 Patent") (collectively, the "Asserted Patents"). Before the Court is Defendant's Motion to Dismiss, which seeks to dismiss all seven Asserted Patents. ECF No. 31 ("Mot."). The Court issued its decision on the '962, '833, '021, '465, and '376 patents on March 31, 2017. ECF No. 57. The present order covers the '051 and '217 patents. Having considered the submissions of the parties, the relevant law, and the record in this case, the Court GRANTS Defendant's Motion to Dismiss with respect to the '051 and '217

patents.

I. BACKGROUND

A. Factual Background

1. The Parties

Plaintiff Twilio is a Delaware corporation with its primary place of business in San Francisco, California. ECF No. 1 ("Compl.") ¶ 1. Plaintiff's co-founder, Jeffrey Lawson, is a co-inventor on three of the Asserted Patents. ECF No. 45 at 1. Defendant Telesign is a California corporation with its principal place of business in Marina Del Rey, California. Compl. ¶ 15.

2. The Twilio Patents

Plaintiff's complaint and the parties' briefing divides the asserted patents into four families: (1) the '962 and '833 patents (the "Score Patents"), (2) the '051 patent (the "Delivery Receipts Patent"), (3) the '021, '465, and '376 patents (the "Platform Patents"), and (4) the '217 patent (the "Path Selection Patent"). As mentioned above, this order covers the '051 and '217 patents, which are the Delivery Receipts Patent and the Path Selection Patent, respectively. An overview of the two patents follows.

a. Delivery Receipt Patent (The '051 Patent)

i. Specification

The '051 patent is titled "Method and System for Controlling Message Routing." Compl., Ex. D ('051 patent). It was filed on July 25, 2013 and issued on May 27, 2014. It claims priority to several provisional applications, the earliest of which was filed on July 26, 2012.

The '051 patent generally relates to "controlling message routing in the telephony messaging field." '051 patent at col. 1:17-18. In general, when a message is sent from one machine (or "node") to another, it passes through a series of intermediate machines (or "nodes") before it reaches its final destination. *See id*. at col. 1:40-42, 2:55-65. The process of determining the path that the message takes through these intermediate nodes is often referred to as "routing." *See id*. at col. 1:40-60.

In modern networks, the sender or the recipient of a message does not retain control over

the route that a message takes through these intermediate nodes. *Id*. at col. 1:47-49, 2:55-65. This is due in part to the fact that the intermediate nodes are often controlled by third-parties who are not affiliated with the sender or the recipient of the message. *See id*. at col. 1:29-35. As a result, the sender or the recipient of the message cannot always trust that an intermediate node will reliably pass a message along to the next intermediate node on its route. *See id*. at col. 1:37-39. Messages can get "altered, delayed dropped, split into multiple messages, suffer from character encoding issues, or have any number of issues due to the message handling of an encountered node on the message's way to the destination." *Id*. at col. 1:50-54. This "makes it extremely difficult for a party wishing to send and/or receive a message to ensure the integrity and reliability of communicating a message." *Id*. at col. 1:55-57.

One prior art solution for ensuring that messages have been reliably delivered is using a delivery receipt, which is an indication sent by the recipient that the message was received. *Id*. at col. 1:46-47. However, a delivery receipt also has reliability problems. Because it also passes through the same third-party, intermediate nodes, there is also no guarantee that it will be reliably transmitted. *See id*. at col. 1:37-39. Thus, at the time of invention, "there remain[ed] a need in the telephony field to create a new and useful method and system for controlling message routing." *Id*. at col. 1:57-59.

The '051 patent purports to solve this problem through one primary modification to delivery receipt usage: sending the delivery receipt through a "second channel," which is different from the one that the original message was sent through. *Id*. at col. 2:53-55, 3:14-15. For example, if a message is sent as a text message over an "SMS message routing channel," the delivery receipt could be sent through an "internet network channel." *Id*. at col. 3:14-17.

The '051 patent integrates this "second channel" feature into a larger method for monitoring and adjusting routing options for sending a message. *Id*. at col. 2:53-55. Figure 1 illustrates this method:

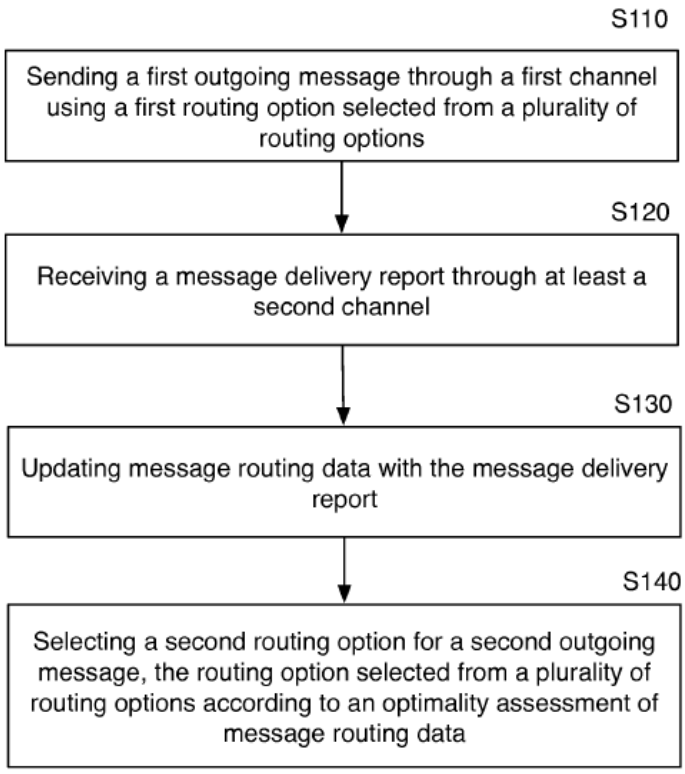

FIGURE 1

At step S110, the message is sent through a "first channel" using a "routing option selected from a plurality of routing options." *Id.* at col. 3:31-32. In the patent, "[r]outing options are preferably different initial nodes to which a message may be initially sent." *Id.* at col. 3:35-37. As discussed above, a message will generally pass through a series of intermediate nodes before it reaches its destination, and the sender of the message does not retain control over the path that the message takes through these intermediate nodes. *See id.* at col. 1:40-42, 1:47-49, 2:55-65. Thus, the sender's selection of an initial node "functions as the fundamental point of control to the full route a message will take to arrive at a destination." *Id.* at col. 3:65-67. After the message is passed off to the initial node, it will then get passed off to a series of intermediate nodes that lie between the initial node and the message's destination. *See id.* at col. 1:47-49, 2:55-65.

Eventually, the message will either reach its destination or the destination will determine,

after waiting for a certain period of time, that delivery was unsuccessful. *See id*. at col. 4:23-38. Once either of these events occurs, at step S120, the destination will send a "message delivery report" (i.e., a delivery receipt) to the sender through a "second channel" that is different from the "first channel." *Id*. at col. 4:19-20. The message delivery report provides feedback on the message's delivery, such as whether delivery succeeded or failed and/or what condition the message arrived in (e.g., if it was "altered, censored, truncated, encoded improperly, split into multiple messages, or otherwise not conforming to the original outgoing message"). *Id*. at col. 4:25-31, 4:38-44.

At step S130, the information in the message delivery report is used to "adjust the criteria used in selecting routing options" for future messages. *Id*. at col. 6:32-33. The specification refers to this step as "updating message routing data." *Id*. at col. 6:31-32. For example, "[u]pdating the message routing data can include ranking routing options based at least in part on delivery success rates." *Id*. at col. 6:42-43. At step S140, this adjusted criteria is put into practice: a "second routing option" is selected for a "second outgoing message." *Id*. at col. 7:1-5.

Neither the claims nor the specification provides much limitation on how this process must be implemented, or the contexts in which it can be deployed. Instead, the specification makes a number of non-limiting statements, including that: Messages can include "SMS, multimedia messaging service (MMS), image messaging, animation messaging, video messaging, audio/music messaging, internet protocol (IP) messaging, push notifications, and/or any suitable messaging technique." *Id*. at col. 3:4-9; *see also id*. at col. 11:3-4 ("the messages are preferably SMS or MMS, but can be any suitable type of message"). "There may . . . be a plurality of types of channels available for sending a message such as SMS or MMS, push notifications, or any suitable messaging channel." *Id*. at col. 4:9-12. "Generating a delivery report may include a number of various implementations," including "providing a user feedback interface [], redirecting internet and app links through a monitored system [], providing a monitored pin code service [], monitoring a user-reply signal [], and/or using any suitable alternative technique." *Id*. at col. 4:66-5:7. "The routing options may be characterized by different service providers, networks,

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