

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELESIGN CORPORATION

Petitioner

v.

TWILIO, INC.

Patent Owner

Patent 8,755,376

IPR Case Number: IPR2017-01977

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE EVIDENCE**

A. EX1017 is a non-hearsay party admission.

EX1017 includes only statements by Patent Owner via its co-founder Mr. Cooke. Thus, it is a non-hearsay party admission and cannot properly be excluded. FED. R. EVID. 801(d)(2).

B. EX1018 is non-hearsay and/or hearsay but admissible under multiple hearsay exceptions.

The key aspects of EX1018 are reproduced below.

Case IPR2017-01977
Patent 8,755,376

```
On Feb 28, 2010, at 5:55 PM, Stacy Stubblefield wrote:

> Evan,
>
> Do we have an NDA on file with Twilio? I don't see one in my
> records. If
> no, we'd like to get one executed ASAP if possible.
>
> Thanks,
> Stacy
>
>
>
> -----Original Message-----
> From: Evan Cooke [mailto:[REDACTED]]
> Sent: Sunday, February 28, 2010 4:16 PM
> To: Stacy Stubblefield
> Cc: [REDACTED]
> Subject: Re: Twilio Account Activity
>
> Thanks for the update Stacy. Let us know if there is anything we can
> do to help.
>
> My mobile number is [REDACTED] if you have any questions day or
> night today as you are developing.
>
> Cheers,
> -Evan
>
> On Feb 28, 2010, at 4:12 PM, Stacy Stubblefield wrote:
>
>> Hi Evan,
>>
>> Yes, we just added $1750 to the account. Our main SMS provider is
>> completely down, and we're quickly integrating Twilio in to cover
>> during the
>> outage. You can expect to see major traffic over the next few days.
>>
>> I configured autorecharge on our account. Let me know if you need
>> anything
>> from us.
>>
>> Thanks,
>> Stacy Stubblefield
>>
>> TeleSign Corp.
>> 9454 Wilshire Blvd., Suite 525
>> Beverly Hills, CA 90212
>> http://www.TeleSign.com
>> [REDACTED]
>>
>>
>> -----Original Message-----
>> From: Evan Cooke [mailto:[REDACTED]]
>> Sent: Sunday, February 28, 2010 3:59 PM
>> To: [REDACTED]
>> Subject: Twilio Account Activity
>>
>> Hi Stacy,
>>
>> We saw a few transactions on your Twilio account and wanted to
>> confirm
>> the activity and see if there was anything we could do to help if you
>> are expecting a large campaign.
>>
>> Cheers,
>> -Evan
```

EX1018, pp. 1-2.

1. EX1018 is offered for the non-hearsay purpose of actual intent, rebutting an intent-to-copy allegation.

Patent Owner's Response makes the reckless and bogus allegation that: "Petitioner's co-founder Stacy Stubblefield signed an NDA with Patent Owner in 2010 to gain access to its technology [.]" POR (Paper 26) 58. Patent Owner hid the context of the NDA's execution from the Board and now does not want the Board to see that context. In making its allegation, Patent Owner characterized the intent of Ms. Stubblefield. Petitioner offers EX1018 for the non-hearsay purpose of helping to show her actual intent: to obtain an NDA to protect the information Petitioner TeleSign would send to Patent Owner if Petitioner were to be Patent Owner's customer.

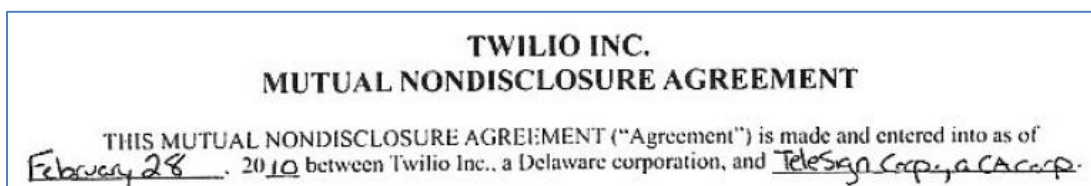
EX1018 provides context in which the NDA was requested and executed. Namely, Ms. Stubblefield did not, in fact, sign the NDA for the purpose of gaining access to Patent Owner's technology as Patent Owner contends. Rather, EX1018 shows that Ms. Stubblefield understood TeleSign's main SMS provider to be "completely down," and that TeleSign was attempting to "quickly integrate" Twilio to "cover the outage," leading to requesting an NDA "ASAP." EX1018 at 1. This context shows that Ms. Stubblefield's intent of entering the NDA had nothing to do with attempting to gain access to Patent Owner's confidential information. Rather, her intent was to ensure that whatever information Petitioner TeleSign was to

provide to Patent Owner would be protected via the NDA, which is further confirmed by the last two (and unreciprocated) bullets of the NDA identifying confidential information:

- TeleSign's clients
- All information, including but not limited to phone numbers, email addresses, and personal or business names, sent by TeleSign to Twilio via Twilio's API. This confidential information includes information found in both text and audio form.

EX2041 at 1.

The NDA was executed on the very same day as the emails (February 28, 2010):



EX2041 at 1.

EX1018 chronicles written email correspondence between **the parties** on the exact same day, long before any lawsuit between them existed. Patent Owner does not dispute that EX1018 is an email chain between the parties. Paper 38 (Mot. to Exclude), p. 2. And Mr. Evan Cooke is actually a co-founder and named inventor of the '376 patent (*see* EX1001, p. 1). Patent Owner does not dispute the accuracy of the email chain or that it is a fair and accurate representation of what it purports to be. Patent owner did not and does not object to EX1018's authenticity or relevance. And certainly the comments made on behalf of Patent Owner by Mr.

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