

3. Upon information and belief, Defendant Maxim is a Delaware corporation with its principal place of business at 120 San Gabriel Drive, Sunnyvale, California.

III. JURISDICTION AND VENUE

4. This action for declaratory judgment arises under the United States Patent Laws, 35 U.S.C. § 100 et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The United States District Court for the District of Colorado¹ has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). This matter presents an actual case or controversy and serves the purpose of resolving legal rights as between Chipotle and Maxim.

5. Maxim has minimum contacts with the District of Colorado such that this forum is a fair and reasonable one. Maxim has also committed such purposeful acts and/or transactions in the District of Colorado that it reasonably knew and/or expected that it could be hauled into court as a future consequence of such activity, including accusing Chipotle of patent infringement. Maxim has also transacted and/or, at the time of the filing of this Amended Complaint, is transacting business within the District of Colorado. Indeed, Maxim: (a) directly and/or through its distribution networks, offers for sale, sells, and/or distributes products within the state of Colorado; (b) maintains a sales office within the state of Colorado (a true and correct copy of Maxim's website at <http://www.maxim-ic.com/sales/offices/worldwide.mvp>, showing Maxim's worldwide sales offices, including Colorado, is attached as Exhibit A); (c) Maxim engages a franchised distributor within the state of Colorado who, upon information and belief, is subject to the direction and control of Maxim (a true and correct copy of Maxim's website at <http://www.maxim-ic.com/sales/offices/distributor/franchise.mvp>, showing Maxim's franchised

¹ This matter originated in the United States District Court for the District of Colorado and was centralized to this District by the Judicial Panel on Multidistrict Litigation for the pre-trial proceedings. See MDL No. 2354, Dkt. No. 101 (Corrected Transfer Order). The matter "shall be remanded" to the District of Colorado "at or before the conclusion of...pretrial proceedings." 28 U.S.C. § 1407(a).

distributor in Colorado (named "Avnet") is attached as Exhibit B); and (d) operates an interactive website at www.maxim-ic.com through which persons in the state of Colorado can and do order products from Maxim, which are shipped to Colorado. For at least these reasons, personal jurisdiction exists over Maxim and venue over this action is proper in the District of Colorado under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(b). The United States District Court for the Western District of Pennsylvania has jurisdiction over this matter for pretrial purposes pursuant to the Corrected Transfer Order issued by the Judicial Panel on Multidistrict Litigation (JPML). *See* MDL No. 2354, Dkt. No. 101 (Corrected Transfer Order).

IV. FACTUAL BACKGROUND

A. Chipotle And Its Business

6. In 1993, Chipotle opened its first restaurant at the corner of Evans and Gilpin Streets in Denver, Colorado. Based on a unique business model for "fast-casual" dining and food made with only fresh, high-quality ingredients and prepared by classic cooking methods, Chipotle has achieved both national recognition and widespread consumer acceptance and popularity. As a result, Chipotle now owns and operates over 1500 Mexican fast-casual restaurants throughout the United States, and in Canada, the United Kingdom and France.

7. Chipotle maintains a website at www.chipotle.com where it shares information regarding its menu and "Food With Integrity" philosophy, among other information. Chipotle's website enables customers to order food online or by fax for pick-up from one its restaurants.

8. In August of 2009, Chipotle released an iPhone ordering app that allows users to locate and order food from nearby Chipotle restaurants. Chipotle's website includes a link to the Apple iTunes App Store where, at no cost, one may download Chipotle's iPhone ordering app.

9. On July 22, 2013, Chipotle released an Android ordering app that allows users to locate and order food from nearby Chipotle restaurants. This release was for testing purposes

and limited to Chipotle restaurants in the Colorado Springs, Colorado market. Chipotle enabled its Android ordering app for other markets in the United States on November 8, 2013. Chipotle's Android ordering app is available at the Google Play Store where it may be downloaded at no cost.

B. Maxim's Patent Infringement Threats To Chipotle

10. On August 3, 2011, Maxim sent a demand letter to Chipotle's Officer in Denver, Colorado alleging that Chipotle's iPhone ordering app infringed upon United States Patent Nos. 5,940,510 ("the '510 Patent"), 5,949,880 ("the '880 Patent"), 6,105,013 ("the '013 Patent"), and 6,237,095 ("the '095 Patent"). True and correct copies of these patents are attached as Exhibits C, D, E, and F.

11. Maxim's August 3, 2011 letter was the first notice and knowledge Chipotle had of the '510, '880, '013 and '095 Patents.

12. The '510, '880, '013, and '095 Patents are assigned to Maxim. True and correct copies of the assignments of these patents to Maxim are attached as Exhibits G, H, I, and J.

13. In its August 3, 2011 letter, Maxim alleges that "[i]t is our belief that Chipotle is infringing a number of the patents within the Maxim Mobile Transaction Patent Portfolio." Specifically, Maxim states that the Chipotle mobile platform "for the iPhone and other devices, infringe certain claims within the portfolio via direct infringement, joint infringement, contributory infringement and/or inducement." Maxim further states that if it did not hear from "Chipotle within the one month period, Maxim will assume that Chipotle does not want to obtain a license in a non-litigious manner and will act accordingly." Maxim's statements in the August 3, 2011 letter are a clear and unmistakable threat of litigation against Chipotle.

14. Attached to Maxim's August 3, 2011 letter is nine pages of claim charts for the '510, '880, '013, and '095 Patents. In particular, for claims of the '510 Patent, Maxim alleges

Chipotle's "Infringement under Joint Infringement;" for claims of the '880 Patent, Maxim alleges Chipotle's "Infringement under Direct Infringement;" and for claims of the '013 and '095 Patents, Maxim alleged "Infringement under Joint Infringement, Contributory Infringement and Inducement."

15. Also attached to Maxim's August 3, 2011 letter is a thirty-nine page document entitled "Analysis of Chipotle Mobile Software." Therein, and despite numerous errors and inaccuracies, Maxim claims to have analyzed Chipotle's iPhone ordering app to show that "Chipotle infringes certain claims within Maxim patents." In addition, Maxim states that "[t]his document is referenced by the claim charts, provided herewith, showing the Chipotle mobile application, stores server structures and processes, and overall system architecture infringe a diverse set of claims within the Maxim patent portfolio." Maxim's letter, together with the detailed attachments alleging patent infringement, is a further clear and unmistakable threat of litigation against Chipotle.

16. As of the filing of this Amended Complaint, Maxim has filed suit against, or had a declaratory judgment action filed against it after threatening suit by, a total of 51 parties ("Opposing Parties"). All of these cases, including this case, are the subject of Multi-District Litigation No. 12-mc-00244-JFC in the Western District of Pennsylvania ("MDL Action"). Maxim has alleged infringement of the '510, '880, '013 and '095 Patents by each of the Opposing Parties in the MDL Action based upon each Opposing Party's provision of iOS and/or Android applications.

17. Given Maxim's initiation of litigation against numerous third parties asserting infringement of the '510, '880, '013, and '095 patents based upon iPhone and Android apps, Maxim's August 3, 2011 letter alleging that Chipotle's iPhone app is infringing those patents, the pending litigation between Chipotle and Maxim involving the '510, '880, '013, and '095 patents,

and Chipotle's present intention to continue offering its iPhone and Android ordering apps, it is clear that Maxim intends to and will pursue litigation against Chipotle for infringement of the '510, '880, '013, and '095 Patents. Accordingly, as of the filing of this Amended Complaint, there is a substantial controversy between Chipotle and Maxim of sufficient immediacy and reality to warrant declaratory relief from this Court.

V. FIRST CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement – U.S. Patent No. 5,940,510)

18. Chipotle incorporates each and every allegation in paragraphs 1 through 17 as though fully set forth herein.

19. Chipotle has not infringed, and is not infringing, either directly, jointly, contributorily or by inducement, any claim of the '510 Patent.

20. Chipotle is entitled to a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that Chipotle has not infringed and is not infringing any claim of the '510 Patent.

VI. SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement – U.S. Patent No. 5,949,880)

21. Chipotle incorporates each and every allegation in paragraphs 1 through 20 as though fully set forth herein.

22. Chipotle has not infringed, and is not infringing, either directly, jointly, contributorily or by inducement, any claim of the '880 Patent.

23. Chipotle is entitled to a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that Chipotle has not infringed and is not infringing any claim of the '880 Patent.

VII. THIRD CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement – U.S. Patent No. 6,105,013)

24. Chipotle incorporates each and every allegation in paragraphs 1 through 23 as though fully set forth herein.

25. Chipotle has not infringed, and is not infringing, either directly, jointly, contributorily or by inducement, any claim of the '013 Patent.

26. Chipotle is entitled to a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that Chipotle has not infringed and is not infringing any claim of the '013 Patent.

VIII. FOURTH CLAIM FOR RELIEF
(Declaratory Judgment of Non-Infringement – U.S. Patent No. 6,237,095)

27. Chipotle incorporates each and every allegation in paragraphs 1 through 26 as though fully set forth herein.

28. Chipotle has not infringed, and is not infringing, either directly, jointly, contributorily or by inducement, any claim of the '095 Patent.

29. Chipotle is entitled to a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that Chipotle has not infringed and is not infringing any claim of the '095 Patent.

IX. FIFTH CLAIM FOR RELIEF
(Declaratory Judgment Of Invalidity –
U.S. Patent Nos. 5,940,510, 5,949,880, 6,105,013, and 6,237,095)

30. Chipotle incorporates each and every allegation in paragraphs 1 through 29 as though fully set forth herein.

31. The claims of each of the '510, '880, '013, and '095 Patents are invalid under 35 U.S.C. §§ 101, 102, 103 and/or 112.

32. Chipotle is entitled to a declaration, pursuant to 28 U.S.C. §§ 2201 and 2202, that the claims of the '510, '880, '013, and '095 Patents are invalid.

X. PRAYER FOR RELIEF

Chipotle respectfully requests that this Court find in its favor and against Maxim, and that the Court grant Chipotle the following relief:

A. Declaratory judgment that Chipotle has not directly infringed, and is not directly infringing, any claim of the '510, '880, '013, and '095 Patents;

B. Declaratory judgment that Chipotle has not jointly infringed, and is not jointly infringing, any claim of the '510, '880, '013, and '095 Patents;

C. Declaratory judgment that Chipotle has not contributorily infringed, and is not contributorily infringing, any claim of the '510, '880, '013, and '095 Patents;

D. Declaratory judgment that Chipotle has not induced, and is not inducing, any infringement of any claim of the '510, '880, '013, and '095 Patents;

E. Declaratory judgment that the claims of the '510, '880, '013, and '095 Patents are invalid;

F. Declare this an exceptional case and award Chipotle its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

G. Award Chipotle any such further and additional relief that this Court deems just and proper under the circumstances.

XI. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Chipotle demands a trial by jury on all issues so triable.

DATED: November 15, 2013

Respectfully submitted,

By: s/ Benjamin B. Lieb
Benjamin B. Lieb
blieb@sheridanross.com
George T. Scott
jscott@sheridanross.com
SHERIDAN ROSS P.C.
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
Telephone: 303-863-9700
Facsimile: 303-863-0223
E-mail: litigation@sheridanross.com

ATTORNEYS FOR PLAINTIFF
CHIPOTLE MEXICAN GRILL, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on November 15, 2013, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will issue an electronic notification of filing to all counsel of record..

/s/Benjamin B. Lieb _____

Benjamin B. Lieb