

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

VERIFONE SYSTEMS, INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies” or “Plaintiff”) hereby alleges for its Complaint for Patent Infringement against Defendant Verifone Systems, Inc. (“Verifone” or “Defendant”), on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a limited liability company organized under the laws of Delaware, with its principal place of business located at One Boston Place, Suite 2600, Boston, MA 02108.

2. On information and belief, Defendant Verifone is a corporation organized and existing under the laws of Delaware with its principal place of business located at 88 West Plumeria Drive, San Jose, CA 95134.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Defendant because Defendant has been incorporated in Delaware at all relevant times and has purposely availed itself of the privileges and benefits of the laws of Delaware.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b) at least because Defendant is subject to personal jurisdiction in this district and resides in this district. On information and belief, Defendant conducts substantial business in this district as the self-proclaimed global leader in secure electronic payment solutions, directly or through intermediaries such as partners or local distributors, including by providing merchant-operated, consumer-facing, and self-service payment systems for the financial, retail, hospitality, petroleum, government, and healthcare industries.

U.S. PATENT NO. 7,797,448

7. U.S. Patent No. 7,797,448 (the "'448 patent") entitled, "GPS-Internet Linkage," was duly and legally issued by the U.S. Patent and Trademark Office on Sept. 14, 2010. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '448 patent, including all right to recover for any and all infringement thereof. The '448 patent is valid and enforceable. A true and correct copy of the '448 patent is attached as Exhibit A.

8. Claim 1 of the '448 patent recites, for example, an integrated system whereby computers equipped with Global Positioning System ("GPS") units are configured to identify their respective locations and communicate with each other over the Internet. This integration is directed to a specific improvement in the way computers can transmit messages over the Internet

by enabling transmitted data to have an associated location characteristic that can be used to help identify the transmitting computer, implement security protocols in a private network, or track the movement of transmitting mobile devices, for example. This claim, therefore, is necessarily rooted in computer technology in order to address a challenge specifically arising in the realm of computer networks and particular to the Internet, and requires a GPS unit such that other systems and methods of identifying a transmitting computer's location are not pre-empted, including without limitation by using only Wi-Fi access points and cellular tower locations.

9. The integration of Internet communications with GPS specifically, as opposed to other means for determining the location of mobile devices, was a novel approach at the time of the invention that coincided with then Vice President Al Gore's announcement of a GPS modernization initiative to make GPS more accessible to the public by adding new civil signals for future GPS satellites. *See* Press Release, The White House, Vice President Gore Announces New Global Positioning System Modernization Initiative (Jan. 25, 1999), *available at* <http://clinton6.nara.gov/1999/01/1999-01-25-vice-president-gore-announces-new-global-positioning-system.html>.

10. Claim 4 of the '448 patent depends upon claim 1 to further recite, for example, that the integrated system creates localized computer networks based on geographic proximity of the computers equipped with GPS units.

11. Claim 6 of the '448 patent depends upon claim 1 to further recite, for example, that the integrated system provides automatic identification of the computers equipped with GPS units.

12. Claim 8 of the '448 patent recites, for example, a method for identifying the locations of computers equipped with GPS units by using the integrated system of claim 1.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,797,448

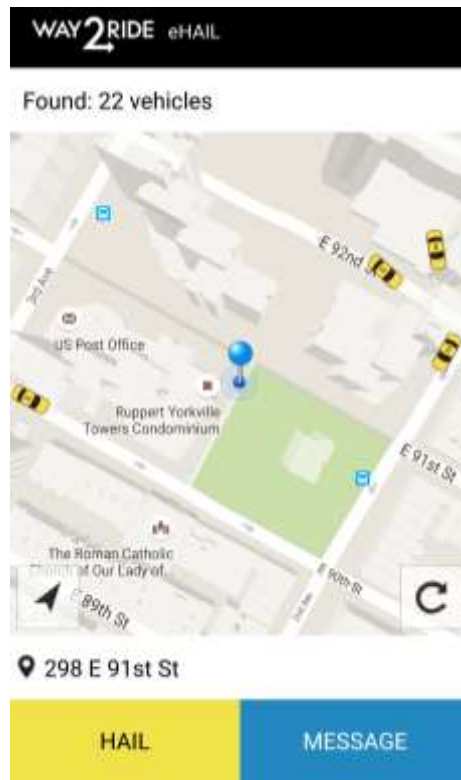
13. Blackbird Technologies reasserts and incorporates by reference Paragraphs 1 through 12 of this Complaint as if fully set forth herein.
14. Defendant has become aware of the '448 patent at least by virtue of the filing of this Complaint.
15. On information and belief, Verifone acquired RideCharge, Inc, which offers Curb, an app that provides e-hail access to professional taxi and for-hire drivers, on or about October 13, 2015. Curb was formerly known as Taxi Magic.
16. On information and belief, Verifone plans to merge its Way2Ride app, which also provides e-hail service, with Curb. As of the filing date of this Complaint, Way2Ride and Curb are separate apps.
17. On information and belief, Verifone hosts, develops, programs, operates, supports, and/or provides network services to enable e-hail transportation from the Curb and Way2Ride apps (“Verifone Services”), which may be wholly or partially separate and distinct for each of the Curb and Way2Ride apps. *See, e.g.,* <http://www.verifone.com/industries/taxi/way2ride/> (“Way2ride is built on Verifone’s open API cloud platform, which enables developers to easily create apps with secure payment, messaging and other value-added services leveraging Verifone’s secure mobile commerce network. Verifone’s open API cloud platform currently supports taxi and for-hire vehicle implementations (e.g., in-taxi interactions).”).
18. On information and belief, Verifone develops, programs, supports, and makes available (i) a mobile app for Curb customers (“Curb Client App”) and Way2Ride customers (“Way2Ride Client App”) (collectively, “Client App(s)”), and (ii) software for in-vehicle

dispatch equipment for professional taxi and for-hire drivers, including but not limited to those provided by Verifone, for Curb drivers (“Curb Driver App”) and Way2Ride drivers (“Way2Ride Driver App”) (collectively, “Driver App(s”).

19. On information and belief, the Client Apps can be installed on computing devices (“Client Device”) running several different operating systems, including but not limited to certain versions of iOS and Android.

20. On information and belief, the Driver Apps are accessible from in-vehicle dispatch equipment for professional taxi and for-hire drivers, including but not limited to those provided by Verifone. (“Driver Device”).



21. On information and belief, a Client App user can request a ride from a Driver App user. The default pickup location for the ride is at or near the current location of the Client Device. For example:



(Samsung Galaxy S6 screenshot of Way2Ride Client App.)



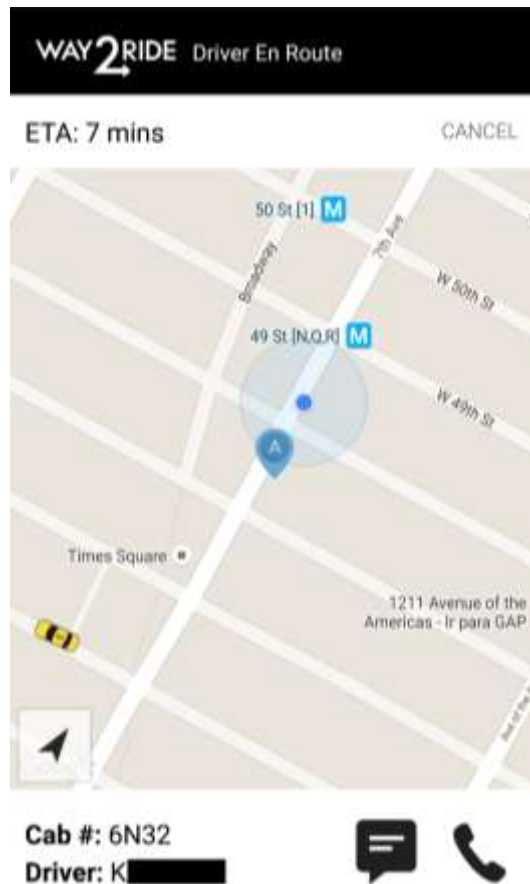
(Samsung Galaxy S6 screenshot of Curb Client App.) See also Curb videos at <https://www.youtube.com/watch?v=m3Qdcbbdnp4> & <https://www.youtube.com/watch?v=y0F3y5ANPnA> (both showing default pickup location at the current location of the Client Device).

22. On information and belief, if the pickup location is not at the current location, selecting the  icon on the Way2Ride Client App or the  icon on the Curb Client App will center the pickup location onto the current location.

23. On information and belief, when a Client App user requests a ride, information including but not limited to the pickup location is transmitted to the Verifone Services via the Internet. Also via the Internet, an available driver may receive notification of the Client App user's ride request on a Driver Device, which indicates the requested pickup location.

24. On information and belief, the Verifone Services determines a driver's availability in part by comparing the current location of the Driver Device with the requested pickup location. *See, e.g.,* <https://gocurb.com/dyc/> ("Currently, Curb sends ride offers to the closest approved driver.").

25. On information and belief, when a driver accepts a ride request, the Driver App transmits information indicating such acceptance to the Verifone Services via the Internet, which then notifies the Client Device via the Internet accordingly. For example:



(Samsung Galaxy S6 screenshot of Way2Ride Client App (showing assigned cab number and Driver Device user name, redacted in part).) *See also, e.g.,* <https://gocurb.com/chi/> ("Please remember to 'Book-In' and accept Curb 'CB' rides over street hails during times of high demand. Accepting the 'CB' ride requests builds rider loyalty and keeps them using Curb to

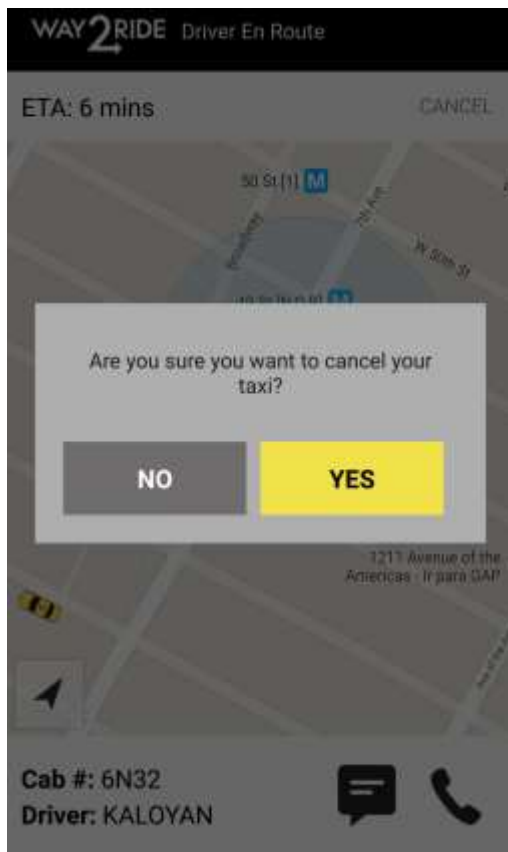
book a taxi”); Curb videos at <https://www.youtube.com/watch?v=m3Qdcbbdnp4> & <https://www.youtube.com/watch?v=y0F3y5ANPnA> (both showing acceptance of a ride request on a Curb Client App by displaying the Driver Device user assignment and tracking the Driver Device).

26. The Client Device displays information about the assigned driver and shows the location of the Driver Device as it travels to the pickup location. For example:



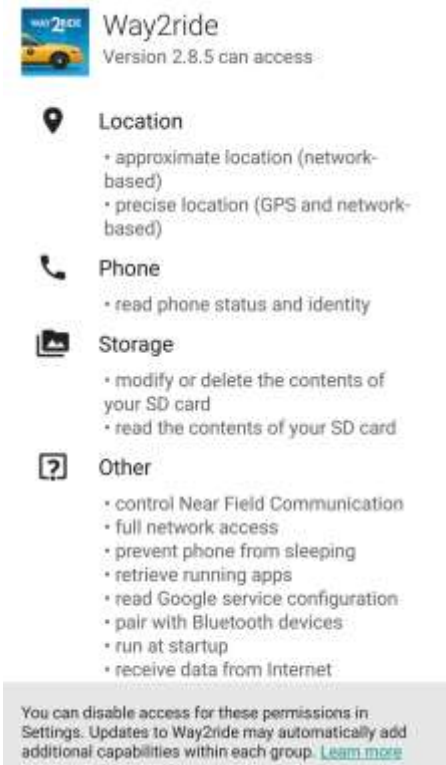
(screenshot from Curb video at <https://www.youtube.com/watch?v=KrVX05rovrg>.) See also, e.g., *supra* ¶ 25; Way2Ride video at <https://www.youtube.com/watch?v=OnF7GMc2kRg> (showing Way2Ride Client App tracking Driver Device location as it travels to the pickup location).

27. On information and belief, in addition to communicating a ride request and a driver's acceptance, the Verifone Services enable the Client Device and Driver Device to communicate other information with each other via the Internet, including but not limited to ride cancellations. For example:

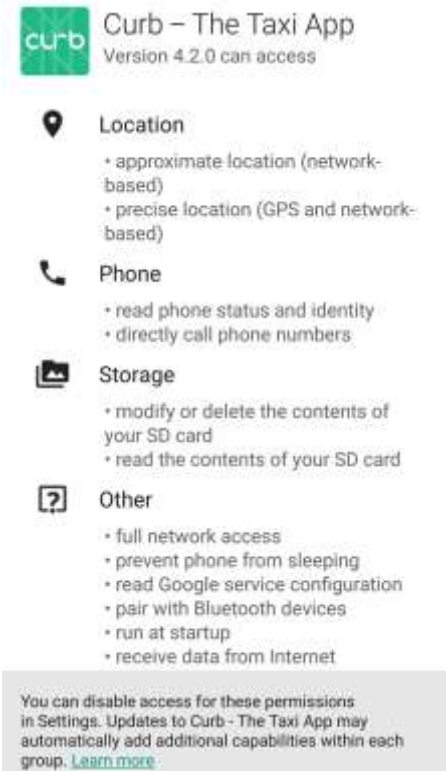


(Samsung Galaxy S6 screenshot of Way2Ride Client App (showing option to cancel ride).) *See also, e.g., <https://gocurb.com/dyc/> (indicating Curb Driver App can “cancel[] ride because rider didn’t need it”).*

28. On information and belief, the Client App transmits Client Device location information determined at least in part from the Client Device GPS to the Verifone Services over the Internet. For example:

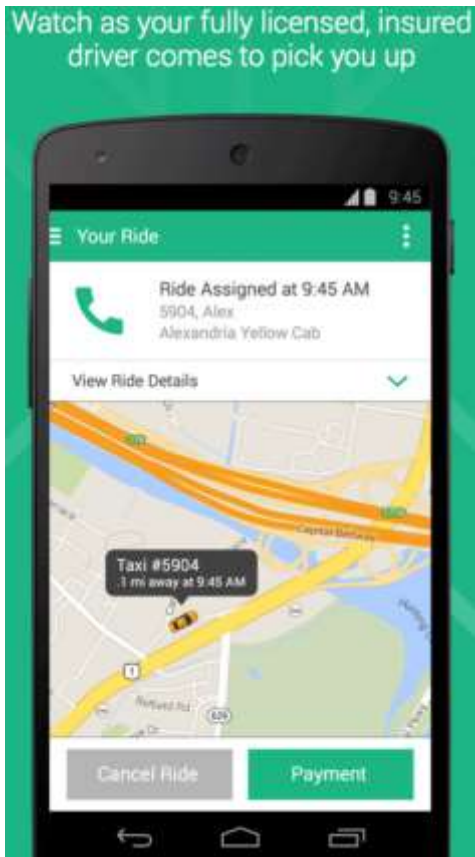


(Way2Ride for Android permissions screenshot (requiring “precise location (GPS and network-based),” “full network access,” and “receive data from Internet”).)

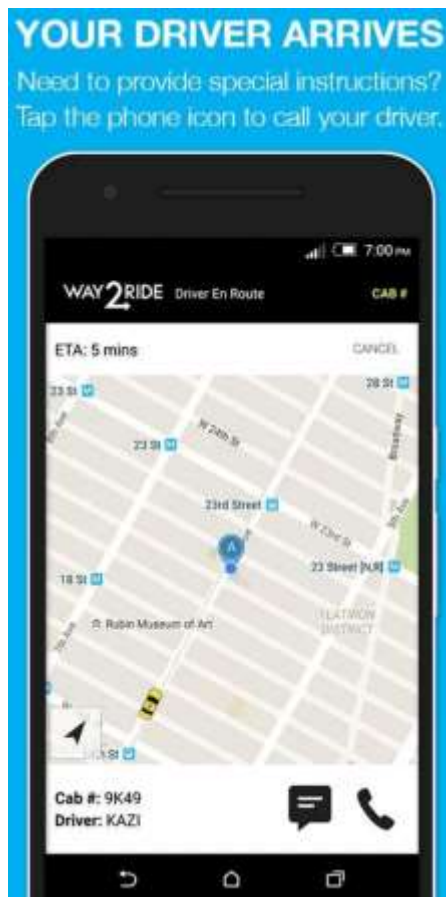


(Curb for Android permissions screenshot (requiring “precise location (GPS and network-based),” “full network access,” and “receive data from Internet”).) *See also, e.g.,* <https://www.way2ride.com/termsOfService.form> (“By using the Service, you consent to Verifone collecting and sharing information about you, your location (received through your computing or mobile device) and your use of the Service with Verifone’s third party partners.”); <https://www.way2ride.com/privacy.form> (“Information We Collect [includes] your geographic location that can be derived from your use of the Service.”).

29. On information and belief, the Driver App transmits Driver Device location information determined at least in part from the Driver Device GPS to the Verifone Services over the Internet. For example:



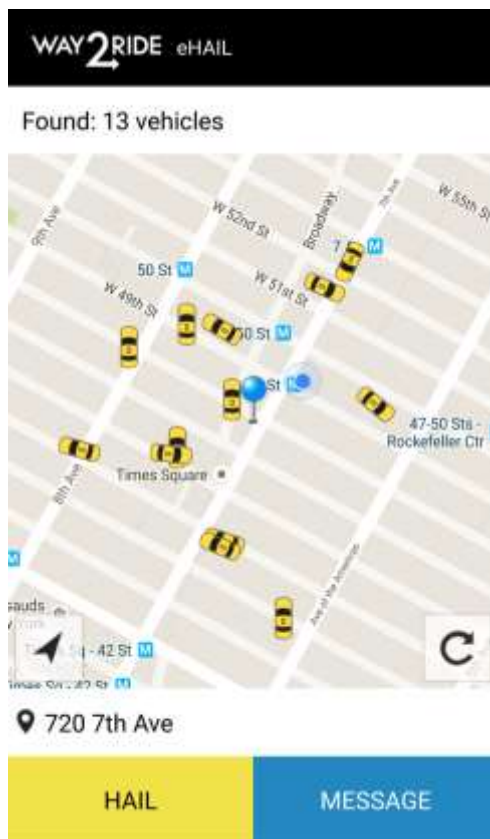
(from Curb app store page.)



(from Way2Ride app store page.). See also, e.g., <https://gocurb.com/austin-new-improved-ride/> (“Better GPS tracking ... We’ve updated our map screens to give riders a real-time snapshot of nearby taxis.”); <https://gocurb.com/chi/> (“If you receive offers farther away than 1.5 miles it means the GPS in your vehicle is outdated and slow to update causing the system to think you are in a different location. To enhance your GPS please visit your fleet garage and ask for better GPS.”).

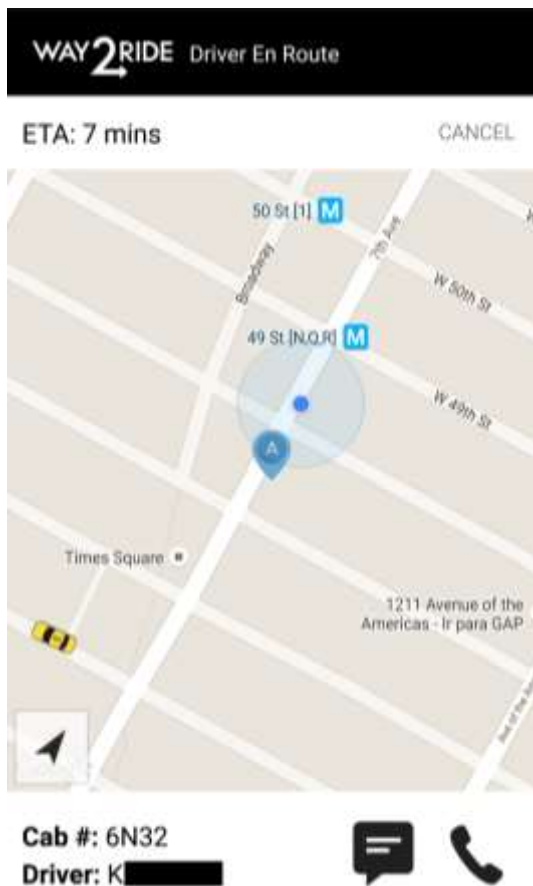
30. Therefore, the Verifone Services integrated with existing Client Devices and Driver Devices configured to determine their respective locations at least in part from GPS data (the “Accused System”) falls within the scope of at least claim 1 of the ’448 patent.

31. The Accused System also falls within the scope of claim 4 of the '448 patent because, for example, it is configured to restrict the universe of integrated Driver Devices that a Client Device can communicate with based upon a location parameter. For example:

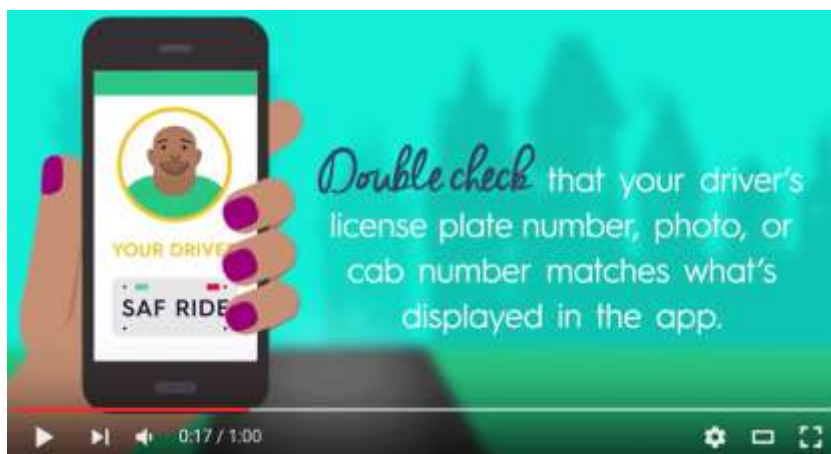


(Samsung Galaxy S6 screenshot of Way2Ride Client App (locating 13 potential Driver Devices).) *See also, e.g.,* <https://gocurb.com/dyc/> (“If 3 drivers are about the same distance from a ride offer, the driver with the highest Accept Rate will get the offer first.”).

32. The Accused System also falls within the scope of claim 6 of the '448 patent because it is configured to automatically identify the Driver Device to the Client Device and vice versa. When a driver accepts a ride request, identifying information about the Driver Device and its user is transmitted to the Client Device. For example:



(Samsung Galaxy S6 screenshot of Way2Ride Client App (showing assigned cab number and Driver Device user name, redacted in part).)



(screenshot from Curb video at <https://www.youtube.com/watch?v=KrVX05rovrg>.) And, identifying information about the Client Device and its user is transmitted to the Driver Device.

See, e.g., <https://gocurb.com/privacy/> (“To process your Bookings and payments we must share some of your Personal Information with the Transportation Provider and the driver that is providing services to you. To complete a Booking, we must provide your name, pickup location (and often destination), time of pickup, and mobile phone number to the Transportation Provider dispatching your ride By placing a Booking, you hereby authorize us to share all Booking-related information with any Transportation Providers designed by you to provide you Transportation Services.”); <https://www.way2ride.com/privacy.form> (indicating what information the Way2ride service collects, including “your geographic location that can be derived from your use of the Service,” and that it may be shared “with service providers who perform services on our behalf”); Curb Driver Services Agreement at § 1.25 (“‘User Information’ means information about a User made available to you in connection with such User’s request for and use of Transportation Services, which may include the User’s name, pickup location, contact information and photo.”) & § 2.2 (“Provision of Transportation Services. When the Driver App is active, Trip Requests may appear to you via the Driver App if you are available and in the vicinity of the User. If you accept a Trip Request, the Ehaul Services will provide you with certain User Information via the Driver App, including the User’s first name and pickup location.”), *available at*

<https://gocurb.com/wp-content/uploads/2016/01/Driver-Services-Agreement.pdf>

Direct Infringement of System Claims 1, 4, and 6 of U.S. Patent No. 7,797,448

33. Defendant, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’448 patent, including at least claims 1, 4, and 6, by using and making, in this judicial district and/or elsewhere in the United States, the Accused System. For example, Verifone controls the

Accused System as a whole by running, operating, and/or supporting its Verifone Services or otherwise making its Verifone Services available to Client Devices and Driver Devices, and obtains a benefit from such use at least by collecting Way2Ride and Curb transportation payments. Verifone makes the Accused System by hosting and/or launching its Verifone Services or otherwise making its Verifone Services available to existing Client Devices and Driver Devices configured to determine their respective locations at least in part from GPS data such that they are capable of communicating with each other over the Internet.

Inducement of System Claims 1, 4, and 6 of U.S. Patent No. 7,797,448

34. At least on or after the filing of this Complaint, Defendant, pursuant to 35 U.S.C. § 271(b), knowingly and intentionally actively induces the infringement of one or more claims of the '448 patent, including at least claims 1, 4, and 6, by instructing and otherwise encouraging infringement and by making the Client App and Driver App available to Way2Ride and Curb customers, drivers, and/or driver employers to download and install onto their respective Client Devices and Driver Devices in order to use the Accused System. For example, the Client App requires device permissions that include access to “precise location (GPS and network-based),” “full network access,” and “receive data from Internet.” *See supra* ¶ 28. Verifone also provides many instructional videos and other promotional materials demonstrating how the Client Device and Driver Device can communicate with each other to facilitate transportation services in a way that infringes the '448 patent. *See, e.g.*, Way2Ride video at <https://www.youtube.com/watch?v=OnF7GMc2kRg>; Curb videos at <https://www.youtube.com/watch?v=m3Qdcbbdnp4> & <https://www.youtube.com/watch?v=y0F3y5ANPnA>; Tim Stenovec, *This app is a great way to avoid Uber's surge pricing in New York City*, Business Insider, Dec. 28, 2015 (shared by

Verifone on its Way2Ride Facebook page), available at <http://www.businessinsider.com/how-to-use-way2ride-app-2015-12>.

35. Way2Ride and Curb customers, pursuant to 35 U.S.C. § 271(a), directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '448 patent, including at least claims 1, 4, and 6, by using the Accused System. For example, Way2Ride and Curb customers control the Accused System as a whole by using Client Devices in order to transmit transportation requests to Driver Devices and otherwise communicate with those Driver Devices over the Internet to facilitate successful transactions, and obtain benefits from such use at least by virtue of the Way2Ride or Curb rides.

36. Way2Ride and Curb drivers, pursuant to 35 U.S.C. § 271(a), directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '448 patent, including at least claims 1, 4, and 6, by using the Accused System. For example, Way2Ride and Curb drivers control the Accused System as a whole by using Driver Devices in order to accept transportation requests from Client Devices and otherwise communicate with those Client Devices over the Internet to facilitate successful transactions, and obtains benefits from such use at least by virtue of customer payments for the Way2Ride or Curb rides.

Direct Infringement of Method Claim 8 of U.S. Patent No. 7,797,448

37. Defendant, pursuant to 35 U.S.C. § 271(a), has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, claim 8 of the '448 patent by using, in this judicial district and/or elsewhere in the United States, the Accused System to identify the locations of Client Devices and Driver Devices. *See, e.g.*, <https://www.way2ride.com/privacy.form> (“Information We Collect [includes] your geographic location that can be derived from your use of the Service.”); <https://gocurb.com/privacy/> (“We

will collect location-based information using your GPS functionality from your mobile device as you use the Services.”); Curb Driver Privacy Statement (“LOCATION-BASED SERVICES CONSENT You hereby expressly consent to Verifone’s use of location-based services and expressly waive and release Verifone from any and all liability, claims, causes of action or damages arising from your use of the Services, or in any way relating to the use of the precise location and other location-based services.”), available at <https://gocurb.com/wp-content/uploads/2016/01/Driver-Privacy-Statement.pdf>.

Inducement of Method Claim 8 of U.S. Patent No. 7,797,448

38. At least on or after the filing of this Complaint, Defendant, pursuant to 35 U.S.C. § 271(b), knowingly and intentionally actively induces the infringement of claim 8 of the ’448 patent by instructing and otherwise encouraging infringement and by promoting, advertising, and instructing Client Device users about the Accused System’s ability to enable Client Devices to track its own location and the location of Driver Devices to facilitate on demand transportation. See generally, e.g., Way2Ride video at <https://www.youtube.com/watch?v=OnF7GMc2kRg>; Curb videos at <https://www.youtube.com/watch?v=m3Qdcbbdnp4> & <https://www.youtube.com/watch?v=y0F3y5ANPnA>.

39. Way2Ride and Curb customers, pursuant to 35 U.S.C. § 271(a), directly infringe, literally and/or under the doctrine of equivalents, claim 8 of the ’448 patent by using the Client Device component of the Accused System to track their own locations and the locations of Driver Devices to facilitate on demand transportation. For example, the locations of Driver Devices are tracked by a Client Device at least after launching the Client App and/or booking a ride with a particular Way2Ride or Curb driver.

Contributory Infringement of Claims 1, 4, 6, and 8 of U.S. Patent No. 7,797,448

40. At least on or after the filing of this Complaint, Defendant, pursuant to 35 U.S.C. § 271(c), contributes to the infringement of at least claims 1, 4, 6, and 8 of the '448 patent by knowingly and intentionally selling and offering to sell within the United States the Client Apps to Way2Ride and Curb customers. The Client Apps are a material part of the Accused System covered by the '448 patent because, *inter alia*, they are capable of (i) identifying the location of the Client Device they are installed on, (ii) receiving the location of Driver Devices over the Internet through the Verifone Services, and (iii) communicating with a Driver Device over the Internet through the Verifone Services. Defendant knows the Client Apps are especially made or especially adapted for use in infringing the '448 patent and are not staple articles or commodities of commerce suitable for substantial noninfringing use because the aforementioned capabilities cannot be circumvented once the Client Apps are installed onto Client Devices, and the location of the Client Device and a Driver Device must be identified by the Client Apps in order to request and book transportation. Defendant sells and offers to sell within the United States the Client Apps by, *inter alia*, charging Way2Ride customers a fee in accordance with its Way2Ride limited license grant and associated terms of service, *see, e.g.*, <https://www.way2ride.com/termsOfService.form> ("*Hailing Fee*. For each Taxi ride that you originate via the Service, either by hailing such Taxi or booking such Taxi ahead of time via the Service, you may be charged a Hailing Fee of up to \$4.00. For any hailing fee assessed in accordance with this paragraph, you agree to pay such amount to Verifone and authorize Verifone to charge such amount to a payment card associated with your Account.), and charging Curb customers certain fees for the right to use the Curb App in accordance with its Curb licensing policies. *See, e.g.*, <http://support.gocurb.com/customer/en/portal/articles/1641621->

[how-much-does-curb-cost-](#) (“In some cases, a service fee ranging from \$1 to \$2 is added to the fare to cover the cost of credit card processing through the app.”);

<http://support.gocurb.com/customer/en/portal/articles/1790842-city-dev-fee> (“The City Development Fee is a nominal fee that Curb charges in specific markets to cover our commitment to service reliability and feature improvements.”).

41. On information and belief, the owner(s) of the ’448 patent have complied with 35 U.S.C. § 287(a) at all relevant times.

42. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant’s infringement of the ’448 patent.

43. As a consequence of Defendant’s infringement of the ’448 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

44. On information and belief, Defendant will continue to infringe the ’448 patent unless enjoined by this Court.

45. As a consequence of continued infringement of the ’448 patent by Defendant, Blackbird Technologies has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts unless Defendant is enjoined by this Court from committing further acts of infringement. Blackbird Technologies has no adequate remedy at law. In the event this Court determines that it will not award injunctive relief, this Court should require Defendant to pay damages for past infringement of the ’448 patent and royalties for its infringement of the ’448 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed one or more claims of the '448 patent, including at least claims 1, 4, 6, and 8 literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. §§ 271(a), (b), and (c);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284;

C. Granting Blackbird Technologies permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining Defendant, its officers, agents, servants, employees, affiliates, and all others in active concert therewith from future acts of infringing the '448 patent;

D. In the event that this Court determines that it will not enter injunctive relief, ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '448 patent on a going-forward basis;

E. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

F. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

G. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: July 8, 2016

STAMOULIS & WEINBLATT LLC

OF COUNSEL

/s/ Stamatios Stamoulis

Christopher Freeman
cfreeman@blackbird-tech.com
Wendy Verlander
wverlander@blackbird-tech.com
John Handy
jhandy@blackbird-tech.com
Blackbird Tech LLC d/b/a
Blackbird Technologies
One Boston Place, Suite 2600
Boston, MA 02108
(617) 307-7100

Stamatios Stamoulis #4606
stamoulis@swdelaw.com
Richard C. Weinblatt #5080
weinblatt@swdelaw.com
Two Fox Point Centre
6 Denny Road, Suite 307
Wilmington, DE 19809
(302) 999-1540

Attorneys for Plaintiff
Blackbird Tech LLC
d/b/a Blackbird Technologies