

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

MELLACONIC IP LLC,

Plaintiff,

v.

VIA TRANSPORTATION, INC.,

Defendant.

Civil Action No. 3:20-cv-2543-N

Jury Trial Requested

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Mellaconic IP LLC (“Mellaconic” or “Plaintiff”) files this First Amended Complaint against Defendant Via Transportation, Inc. (“Via” or “Defendant”) for infringement of U.S. Patent No. 9,986,435 (the “’435 patent”). The ’435 patent is referred to herein as the “patent-in-suit.”

**THE PARTIES**

1. Plaintiff is a Texas limited liability company having an address at 6009 W Parker Road, Ste 1027, Plano, Texas 75093.

2. Defendant Via Transportation, Inc. is a corporation organized under the laws of Delaware with its principal place of business located at 160 Varick Street, 4th Floor, New York, NY 10013. Defendant is registered to conduct business in Texas.

**JURISDICTION AND VENUE**

3. This is a civil action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others.

4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has general personal jurisdiction over Defendant because Defendant has continuous and systematic contacts with the State of Texas and this District. For example, in late 2017, Defendant signed a contract with the City of Arlington to provide a “comprehensive on-demand public transit solution for [Arlington, Texas].” Ex. B, pg. 1; Ex. C. Defendant’s app-based service uses a fleet of six-passenger vehicles, a smartphone application and dynamic routing to provide on-demand trips throughout Defendant’s coverage area in Arlington. *See* Ex. D, pg. 2. Defendant describes the services it provides to Arlington as “a comprehensive turnkey solution.” Ex. B, pg. 1. By January 2020 Defendant’s service in Arlington had expanded to cover approximately 41 percent of the city’s land area and to include 28 vehicles. Ex. D, pg. 2. More recently, Defendant partnered with the Trinity Metro “to bring Via’s technology to Fort Worth.” Ex. E, pg. 1. In addition to the foregoing, Defendant has (1) operated the Internet websites <https://ridewithvia.com/> and <https://my.drivewithvia.com/> and provided mobile applications (e.g, the “Via app,” “Via Driver app”), which are available to and accessed by ridesharing users, customers, and potential customers of the Defendant, both riders and drivers, within this judicial district. Defendant has also actively advertised to employ and, upon information and belief, hired residents within the District. *See* Ex. F; Ex. G. Based at least on the foregoing, Defendant has established minimum contacts with the State of Texas and this District, and the Court’s jurisdiction over the Defendant comports with the constitutional standards of fair play and substantial justice.

6. This Court also has specific personal jurisdiction over Defendant because Defendant has committed acts of infringement giving rise to this action and has established more than minimum contacts within this judicial district, such that the exercise of jurisdiction over Defendant in this Court would not offend traditional notions of fair play and substantial justice. Defendant, directly and through subsidiaries or intermediaries, has committed and continues to

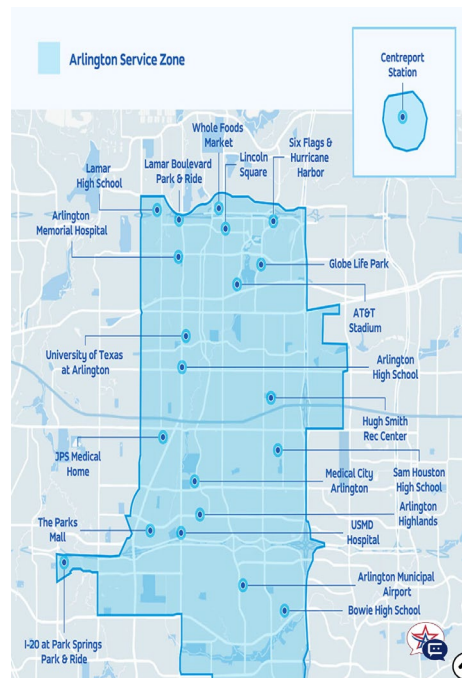
commit acts of infringement of Mellaconic's rights in the patent-in-suit in this District by, among other things, making, supporting, and/or operating the systems that support Via apps and/or by inducing direct infringement by end users of Via apps. For example, as discussed in Count I (below), Defendant has induced direct infringement of the '435 patent by users of Via Driver apps, including Via drivers in Arlington, Texas. Defendant has purposefully directed its infringing activities to residents of this District. For example, as discussed above, Defendant provides transit services for customers in this District pursuant to its contract with the City of Arlington. And, as discussed in Count I (below), Mellaconic's patent infringement claims relate to Defendant's provision of transit services to riders and drivers in this District and elsewhere in the United States. In view of Defendant's activities and infringement in this District, the exercise of jurisdiction over Defendant in this Court does not offend traditional notions of fair play and substantial justice.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Defendant is registered to do business in Texas and, upon information and belief, Defendant has a regular and established place of business in this District and has committed acts of infringement within this District.

8. Via (or its agents for carrying out the City of Arlington contract) have a regular and established place of business in the District. Via (or its agents) maintain a fleet of Mercedes vans in the District, which keeps at one or more secure lots within Arlington, including (upon information and belief) a lot located at the corner of UTA Blvd. and S Center Street. *See* Ex. C at Ex A, Section 6 ("Contractor will cause a fleet of ... Mercedes Metris vans to be deployed ...."). Via characterizes the vans in Arlington as "a fleet of Via's vehicles" (Ex. H, pg. 1), and the vehicles are prominently marked with Via's logo. Via's City of Arlington contract requires it to provide services during set hours throughout a defined region. *See* Ex. C at Ex. A, Section 5. Via's drivers

serve as its agents for providing the contracted services in the contracted region. Via drivers work shifts in Via’s vans during which they pick up and drop off passengers according to rides scheduled by Via through its application. *See id.* at Exhibit A, Section 6 (“[D]rivers will be able to gain access to these vehicles after being registered onto the Via system, enabling these individuals to sign up for specific daily shifts or longer periods of work.”). Upon information and belief, Via drivers begin their shift by picking up a Via van up from the lot in Arlington where they are kept when not in service and return the Via van to the lot at the end of their shift. The lot(s) where Via vans are kept in Arlington, Texas are a regular and established place of business of Defendant.

9. Via vans that operate in Arlington, Texas are themselves are a regular and established place of business of Defendant. As discussed above, Defendant describes these vans as “a fleet of Via’s vehicles.” As illustrated below, these vans operate within a defined service area in this District.



Ex. D, pp. 2-3; Ex. I, pg. 1 (“Rides are available Monday-Friday from 6am to 9pm, and Saturday from 9am to 9pm, anywhere in our operating zone, including Downtown Arlington, UTA, the

Entertainment District, the Parks Mall, the Highlands, and the Centreport TRE Station”). Via vans are a physical place in the district from which Via (or its agents) conduct business. Via drivers provide transit services from within Via vans located within the operating/service zone (illustrated above) according to instructions provided by Via to a driver by way of a Via application executed on a device in the vehicle.

10. Upon information and belief, Via (or its agents for performing its contract with the City of Arlington) also have a regular and established place of business in this District for Via recruiting, vetting and/or hiring drivers. Via requires drivers to “visit [its] registration center and complete [a] registration process” to begin driving for Via. *See* Ex. F, pg. 5. Upon information and belief, Via (or its agent) has a location in this judicial district that it uses for completing the driver registration process.

11. Defendant has committed acts of infringement of Mellaconic’s patent rights in this District by, among other things, making, supporting, and/or operating the systems that support Via apps and/or by inducing direct infringement by end users of Via apps. For example, as discussed in Count I (below), Defendant has induced direct infringement of the ’435 patent by users of Via Driver apps, including Via drivers in Arlington, Texas.

#### **THE PATENT-IN-SUIT**

12. The ’435 patent is titled “Autonomous, Non-Interactive, Context-Based Services for Cellular Phone.” A copy of the ’435 patent is attached hereto as Exhibit A. The inventions claimed by the ’435 patent generally relate to new and novel systems and methods for providing context-based services or applications on a cellular telephone.

13. The ’435 patent lawfully issued on May 29, 2018, and stems from U.S. Patent Application No. 14/885,515 filed on October 16, 2015. U.S. Patent Application No. 14/885,515 is

a continuation of U.S. Patent Application 14/293,376, filed on June 2, 2014, now U.S. Patent No. 9,177,311, which is a continuation of U.S. Patent Application No. 13/941,853, filed on July 15, 2013, now U.S. Patent No. 8,744,429, which is a continuation of U.S. Patent Application No. 12/415,027, filed on March 31, 2009, now U.S. Patent No. 8,532,642.

14. The named inventors on the patent-in-suit are Miodrag Potkonjak and Nathan Beckmann.

15. Each claim of the patent-in-suit is presumed valid and directed to patent eligible subject matter under 35 U.S.C. § 101.

**COUNT I**  
**(Infringement of U.S. Patent No. 9,986,435)**

16. Plaintiff incorporates paragraphs 1 through 15 herein by reference.

17. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

18. Plaintiff is the owner of the '435 patent with all substantial rights to the '435 patent including the exclusive right to enforce, sue, and recover damages for past and future infringement.

19. The '435 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

20. Defendant has, and continues to, infringe one or more claims of the '435 patent in this judicial district and elsewhere in Texas and the United States.

**DIRECT INFRINGEMENT (35 U.S.C. §271(a))**

21. Defendant has directly infringed, and continues to directly infringe, either by itself or via an agent, claims of the '435 patent (including at least claim 21) by, among other things, making, supporting, and/or operating the systems that support Via apps (the "Accused Systems").

22. For example, as described in paragraphs 23-28 (below), the Accused Systems perform the method of claim 21 at least when Via notifies a Via driver of a ride request.

23. The Accused Systems receive, by a first device located at a first location (e.g., a Via server), one or more messages that indicate location information of a second device located at a second location (e.g., a mobile device with Via app). As evidenced below, a Via server receives location information from a device enabled with the Via app. Upon information and belief, the Accused Systems use the location information to identify a ride/vehicle.

**Location and Other Information from Your Mobile Device.** We collect and store your location information if you enable your mobile device to send it to us. We may also collect information that identifies the mobile device you are using. Collection of this information improves the provision of the Service. You may opt-out of location-based services at any time by editing the setting at the device level.

<https://ridewithvia.com/privacy-policy/>

**Driver Partners and Members.** When a Member requests a Ride, we may share your first name and last initial and location with a Driver Partner in order to provide the Service. We will not share your e-mail address, phone number or other information with Driver Partners without your permission. With respect to Driver Partners, we may share your name, location and a masked phone number with a Member in order to provide the Service. In connection with a Member's request to retrieve a lost and found item from a vehicle, we may share your phone number with a Member. Otherwise, we will not share your e-mail address, phone number or other information with Members without your permission.

<https://ridewithvia.com/privacy-policy/>

Via is the new smart, affordable & easy way to get around your city. Request a ride on your phone and share with other riders going your way. You can Via in NYC, Washington D.C., Chicago, and more.

Via is an easy, fast, convenient and smart way to get around. Via is an on-demand, shared ride service that picks up multiple passengers heading in the same direction, keeping rides affordable and little more than the cost of public transit!

- Book a ride on your phone
- Get picked up on a nearby corner
- Share your ride with others
- Save cash and reduce carbon emissions

**How it works:**

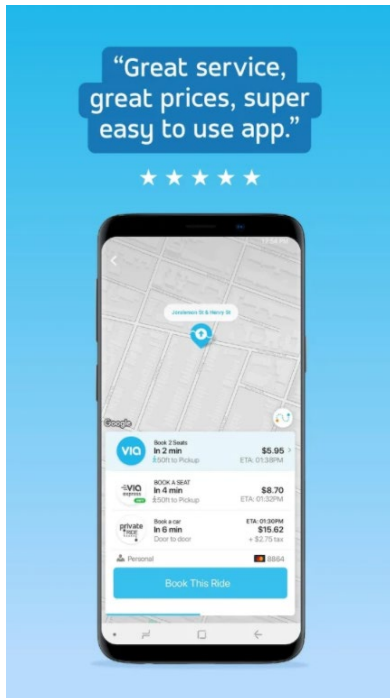
Set your pickup and drop off to request a ride. We'll match you with a Via driver headed your way. Our smart pickup coordination will direct you to a nearby corner to meet your driver, so your Via and its passengers never have to go out of their way. We pool riders into the same car efficiently and without delays, keeping our price point affordable for everyone.

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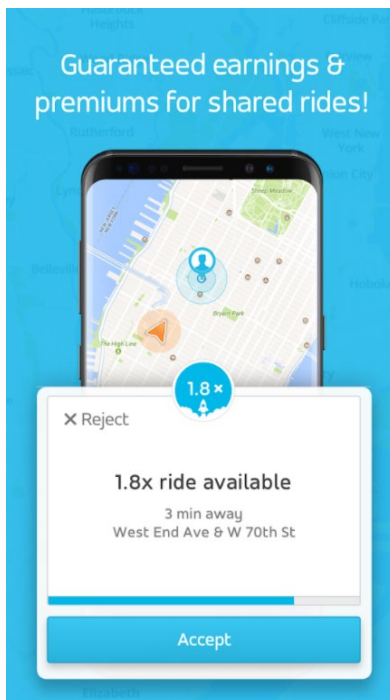
<https://play.google.com/store/apps/details?id=via.rider>

24. The Accused Systems also receive, at a first device (e.g., a Via server), one or more messages that include a request for a first action (e.g., notifying a Via driver's mobile device of a ride request) to be performed by the first device (e.g., Via server). As evidenced below, a device enabled with the Via app sends a request to a Via server to alert a Via driver (via the Via Driver app on the driver's device) that a ride has been requested.





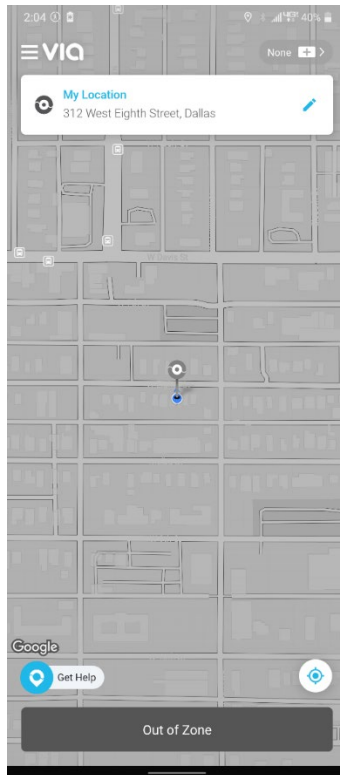
<https://play.google.com/store/apps/details?id=via.rider>



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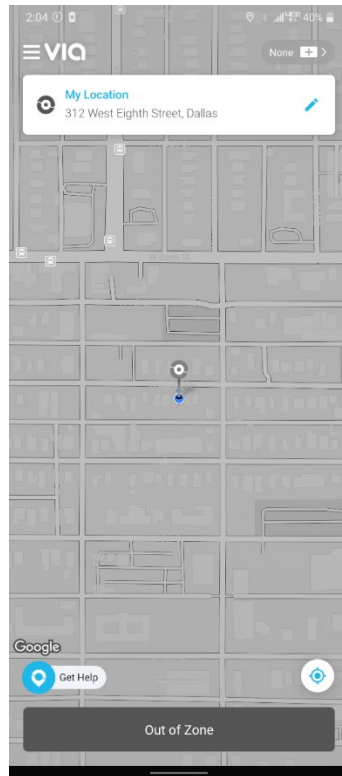
25. The request for a first action (e.g., notifying a Via driver’s mobile device of a ride request) is related to the location information of the second device (e.g., when a mobile device

enabled with Via app requests a ride using the device's current location). As evidenced below, a device enabled with the Via app can request a ride using the device's current location.



26. The one or more messages (e.g., a ride request message from a mobile device enabled with Via app, messages with location from a mobile device enabled with Via app) are received from the second device (e.g., mobile device enabled with Via app).

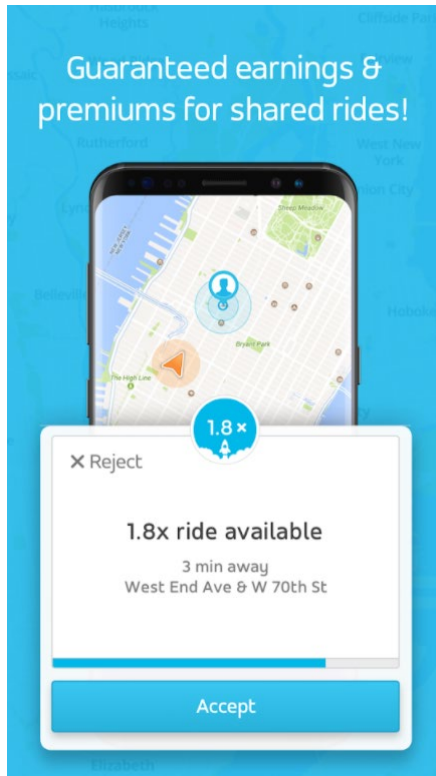
27. The location information of a second device (e.g., location of mobile device enabled with Via app) acts as authentication to allow the first action (e.g., notifying a Via driver's mobile device of a ride request) to be performed by the first device (e.g., Via server). As evidenced below, a device located outside of Via's coverage area cannot request a ride using the device's location.



In this manner, the location information of the second device (e.g., location of mobile device enabled with Via app) acts as authentication to allow the first action (e.g., notifying a Via driver's mobile device of a ride request) to be performed by the first device (e.g., Via server). The location information of the second device (e.g., location of mobile device with Via app) acts as authentication to allow the first action to be performed (e.g., notifying a Via driver's mobile device of a ride request) because whether the first action is permitted is based on confirmation that the rider device's location is within a coverage area.

28. The Accused Systems perform, based at least on the received one or more messages (e.g., a ride request message from a mobile device enabled with Via app, messages with location from a mobile device enabled with Via app), by the first device (e.g., Via server), the authenticated first action (e.g., notifying a Via driver's mobile device of a ride request) that is related to controlling a third device (e.g., causing a Via driver's mobile device enabled with the Via Driver

app to display a ride request interface). As evidenced below, when a nearby device requests a ride using the Via app, a Via driver's mobile device receives a notification that causes it to display a ride request via the Via Driver app.



<https://play.google.com/store/apps/details/?id=via.driver&hl=en>

### **INDIRECT INFRINGEMENT (INDUCEMENT - 35 U.S.C. §271(b))**

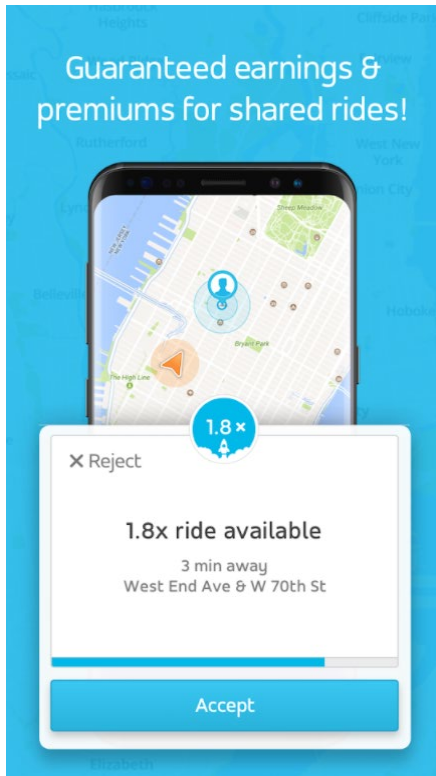
29. Defendant has, and continues to, indirectly infringe one or more claims of the '435 patent by inducing direct infringement by end users of Via apps (the "Accused Products").

30. For example, Defendant has induced direct infringement of the '435 patent by users of the Via Driver app, including drivers in this judicial district. As described in paragraphs 31-33 (below), a Via driver's mobile device with the Via Driver app performs the method of claim 8 at least when a Via driver is alerted of a ride request via the Via Driver app.

31. A Via driver's mobile device with the Via Driver app (a first device located at a first geographical location) receives geographical location information of a second device located at a second geographical location (e.g., a mobile device with the Via app that has requested a ride) and a request for a first action to be performed (e.g., a message indicating a driver should be alerted of a ride request). As discussed above (see paragraph 25), a device enabled with the Via app can request a ride using the device's current location. As evidenced below, when a Via rider requests a ride using their device's location, a device running the Via Driver app receives one or more messages that include location information for the rider's mobile device and information indicating a ride request interface should be presented.

**Driver Partners and Members.** When a Member requests a Ride, we may share your first name and last initial and location with a Driver Partner in order to provide the Service. We will not share your e-mail address, phone number or other information with Driver Partners without your permission. With respect to Driver Partners, we may share your name, location and a masked phone number with a Member in order to provide the Service. In connection with a Member's request to retrieve a lost and found item from a vehicle, we may share your phone number with a Member. Otherwise, we will not share your e-mail address, phone number or other information with Members without your permission.

<https://ridewithvia.com/privacy-policy/>



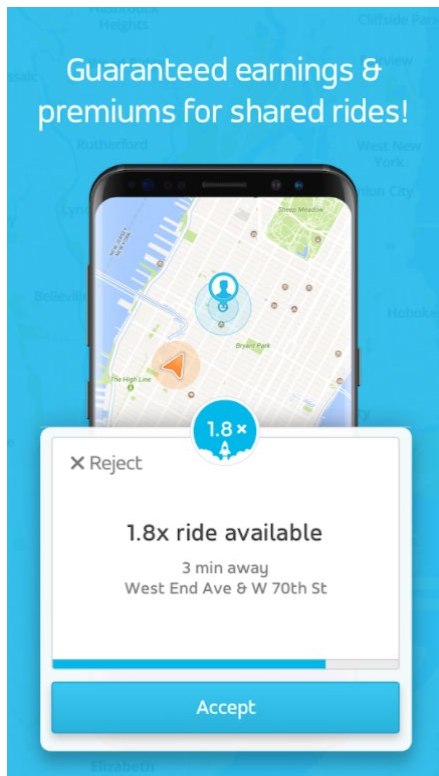
<https://play.google.com/store/apps/details/?id=via.driver&hl=en>



<https://apps.apple.com/us/app/viavan-driver/id1336526055>

32. The geographical location information of the second device (e.g., mobile device with Via app) acts as authentication to allow the first action to be performed. As discussed above (see paragraph 27), a device located outside Via's coverage area cannot request a ride using the device's location. In this manner, the geographical location information of the second device (e.g., mobile device with Via app) acts as authentication to allow the first action (e.g., alerting a Via driver's mobile device of a ride request) to be performed. The location information of the second device (e.g., location of mobile device with Via app) acts as authentication to allow the first action (e.g., alerting a Via driver of a ride request) because whether the first action is permitted is based on confirmation that the rider device's location is within a coverage area.

33. A Via driver's mobile device with the Via Driver app performs, based on the request (e.g., ride request message), the authenticated first action (e.g., alerting the driver of a ride request) by performing an autonomous download of data (e.g., map/navigation data). As discussed above, the first action is authenticated in accordance with the geographical location information of the second device because whether the first action is permitted is based on confirmation that the rider device's location is within a coverage area. As evidenced below, the Via Driver app alerts a driver of a ride request by automatically downloading map and navigation data that is presented to the driver via a ride request interface.



<https://play.google.com/store/apps/details/?id=via.driver&hl=en>





<https://apps.apple.com/us/app/viavan-driver/id1336526055>

34. Defendant has had knowledge of the '435 patent and its infringements at least based on service of Plaintiff's Original Complaint (ECF 1) or this Amended Complaint.

35. On information and belief, despite having knowledge of the '435 patent and its infringement, Defendant has specifically intended for persons who acquire and use the Accused Products to do so in a way that infringes the '435 patent, including at least claim 8 (as described above), and Defendant knew or should have known that its actions were inducing infringement.

36. Despite having knowledge of the '435 patent and its infringement, Defendant has instructed and encouraged, and continues to instruct and encourage, users to use the Accused Products in a manner that results in infringement of the '435 patent. For example, Defendant has

provided, and continues to provide, the Accused Products to end users with code that when executed by mobile devices running the Accused Products causes the mobile devices to infringe (e.g., as described above). Defendant has also provided, and continues to provide, live and online support materials that encourage end users (e.g., Via drivers) to use the Accused Products in an infringing manner. *See, e.g.,* <https://nyc.drivewithvia.com/support/>, <https://my.drivewithvia.com/>.

37. Defendant is liable for its infringements of the '435 patent pursuant to 35 U.S.C. § 271.

38. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

39. Plaintiff has satisfied the requirements of 35 U.S.C. § 287 and is entitled to recover damages for infringement occurring prior to the filing of this lawsuit.

#### **JURY DEMAND**

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **PRAYER FOR RELIEF**

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '435 patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein, including an accounting for any sales or damages not presented at trial;
- c. Judgment that Defendant account for and pay to Plaintiff a reasonable, ongoing,

post judgment royalty because of Defendant's infringing activities, including continuing infringing activities, and other conduct complained of herein;

- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;
- e. Find this case exceptional under the provisions of 35 U.S.C. § 285 and award enhanced damages;
- f. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: November 30, 2020

Respectfully submitted,

/s/ Ryan Griffin  
Ryan Griffin  
Texas Bar No. 24053687

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Attorneys for Plaintiff  
**MELLACONIC IP LLC**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on November 30, 2020, the foregoing document was submitted to the clerk of the U.S. District Court, Northern District of Texas, using the electronic case filing system (CM/ECF) of the court. I certify that the documents was served on counsel of record electronically as authorized by Federal Rule of Civil Procedure 5(b)(2)(E).

/s/ Ryan Griffin  
Ryan Griffin