

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

Quartz Auto Technologies LLC,

Plaintiff,

v.

Postmates Inc.,

Defendant.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Quartz Auto Technologies LLC (“Quartz Auto” or “Plaintiff”) complains against Defendant Postmates Inc. (“Postmates” or “Defendant”) as follows:

NATURE OF ACTION

1. This is an action for patent infringement of United States Patent Nos. 6,446,004 (the “’004 Patent”), U.S. Patent No. 7,370,085 (the “’085 Patent”), and 7,958,215 (the “’215 Patent”) (collectively, the “Asserted Patents”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

THE PARTIES

2. Plaintiff Quartz Auto is a Delaware limited liability company with its principal place of business located at 301 S. Fremont Ave., Baltimore, Maryland 21230.

3. On information and belief, Defendant Postmates is a Delaware corporation with its principal place of business located at 201 3rd Street, Suite 200, San Francisco, California 94103. Defendant is registered to conduct business in Delaware, and may be served through its registered agent, The Corporation Trust Company, Corporation Trust Center 1209 Orange St., Wilmington, DE 19801. On information and belief, as of December 1, 2020, Defendant became a wholly-owned subsidiary of Uber Technologies, Inc.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Defendant is subject to this Court's specific and general personal jurisdiction because it is a citizen of Delaware at least because it is organized under the laws of Delaware.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(c), and 28 U.S.C. § 1400(b) because Defendant is subject to personal jurisdiction in this District, resides in this District, has regularly conducted business in this District, and/or has committed acts of patent infringement in this District, as more specifically alleged below in paragraphs 7-9.

7. Venue is proper as to the '004 Patent at least because Defendant resides in this District. In addition, as alleged in further detail herein, Defendant, in conjunction with its employee drivers, has committed acts of direct infringement of the '004 Patent in this District at least by practicing steps of the claimed methods in this District. To the extent that the drivers are not employees of Defendant, the drivers' acts in this District are nevertheless attributable to Defendant under principles of joint infringement.

8. Venue is proper as to the '085 Patent at least because Defendant resides in this District. In addition, as alleged in further detail herein, Defendant, in conjunction with its employee drivers, has committed acts of direct infringement of the '085 Patent in this District at least by practicing steps of the claimed methods in this District. To the extent that the drivers are not employees of Defendant, the drivers' acts in this District are nevertheless attributable to Defendant under principles of joint infringement.

9. Venue is proper as to the '215 Patent at least because Defendant resides in this District.

THE ASSERTED PATENTS

10. On September 3, 2002, the '004 Patent, entitled "System and Method for Implementing Proximity or Location Driven Activities" was duly and legally issued by the United States Patent and Trademark Office ("USPTO") to Kevin Trung Cao, Daniel Alexander Ford, and Reiner Kraft, with the International Business Machines Corporation ("IBM") as assignee. A copy of the '004 Patent is attached hereto as **Exhibit A**.

11. The '004 Patent discloses and claims a system and associated method for implementing a proximity driven activity. In one embodiment, the system and an associated method of the '004 Patent allow requests to be executed at some point in the future without specifying the exact time or necessarily a precise location. The execution time of the request is linked to the arrival of a person at, or near a geographic location or destination. When a person arrives at that location or comes within a proximity threshold distance of that location, the request to interact will be executed. The proximity threshold can be adjustable and programmable. A mobile computing device may be, for example, a personal computer or smartphone, and preferably possesses a wireless means of communication.

12. On May 6, 2008, the '085 Patent, entitled "Method, System, and Program for Providing User Location Information with a Personal Information Management Program" was duly and legally issued by the USPTO to Michael Wayne Brown, Rabindranath Dutta, and Michael A. Paolini, with IBM as assignee. A copy of the '085 Patent is attached hereto as **Exhibit B**.

13. The '085 Patent discloses and claims a method for providing user location information for a personal information management (PIM) program by generating position

coordinates of a wireless device with related time information. Additionally, the '085 Patent claims another method for generating a calendar for a PIM program by receiving a time interval and determining position coordinates of a wireless device in order to display a user's activity with the corresponding time. In one embodiment, the '085 Patent determines whether a rate of change in distance per unit of time in a series of position coordinates at designated times indicates a user's activity during the activity time period, and then generates information on the predefined activity. A PIM client gathers and presents PIM information, such as calendaring and scheduling information, in accordance with the described implementations. A PIM refers to a program designed to allow users to organize random bits of information in a useful format.

14. On June 7, 2011, the '215 Patent, entitled "System Management Using Real Time Collaboration" was duly and legally issued by the USPTO to David Gerard Herbeck and Susette Marie Townsend, with IBM as assignee. A copy of the '215 Patent is attached hereto as **Exhibit C**.

15. The '215 Patent discloses and claims a number of variations of computer-implemented embodiments for responding to a problem condition or managing an information technology device that receives an alert. In particular, the '215 Patent discloses management methods and systems using real-time collaboration and instant messaging technology to manage alerts and assign responsibility.

16. The '004, '085, and '215 Patents are referred to hereinafter as the "Asserted Patents."

17. Plaintiff Quartz Auto is the owner of the entire right, title, and interest in and to the Asserted Patents, including the right to sue for and collect past, present, and future damages and to seek and obtain injunctive or any other relief for infringement of the Asserted Patents. The Asserted Patents were originally owned by and assigned to IBM, as assignee from the inventors

thereof. IBM transferred ownership of the Asserted Patents to Daedalus Group, LLC (“Daedalus”) pursuant to a Patent Assignment Agreement entered into on September 30, 2019, and, through Plaintiff’s immediate predecessor in interest, Slingshot IOT LLC, the Asserted Patents were ultimately assigned to Quartz Auto on or about February 13, 2020 and February 14, 2020, and recorded in the USPTO, with all right, title, and interest in and to the Asserted Patents to Quartz Auto.

18. Each of the Asserted Patents is presumed valid under 35 U.S.C. §282.

DEFENDANT’S INFRINGING METHODS AND SYSTEMS

19. Defendant has represented that it is a “pioneer of on-demand logistics” and that it has “built a technology platform that enables consumers who use Postmates’ platform to order food and goods from over 700,000 restaurants and other retailers for delivery or pick up.” Defendant touts that its platform serves 80% of US households in all 50 states. Through its technology platform, referred to herein as the “Postmates Platform,” Defendant offers, coordinates, and controls, among other things, on-demand delivery services. On information and belief, Defendant employs hundreds of thousands of drivers in connection with its on-demand delivery services.

20. On information and belief, Defendant uses servers in its network in combination with the Postmates mobile applications to operate, direct, and control on-demand delivery services. For the purposes of this complaint, the term “Postmates Platform” encompasses all such hardware, applications, and functionalities and any related Postmates technologies that interface with the Postmates server systems and mobile applications to provide on-demand delivery services. The specific components of the Postmates Platform that provide the structure and/or functionality and/or perform method steps recited in the asserted claims of the Asserted Patents are identified below.

21. Plaintiff alleges that Postmates drivers are employees of Defendant for purposes of the acts of infringement alleged herein, for at least the reasons that: (i) Defendant is a gig company whose on-demand delivery business is that of delivering food or goods for compensation, and drivers perform work that is central, not tangential, to the usual course of Defendant's entire delivery business, which would not be a viable business without its drivers; (ii) the performance of that work is not free from the control and direction of Defendant; (iii) Defendant sets drivers' qualification standards, solicits applications, conducts background checks on applicants, engages certain applicants as drivers while rejecting others, and enters into standard form contracts with drivers; (iv) drivers cannot build own their own delivery client base—they must take deliveries provided by Defendant via its Fleet mobile app; (v) drivers cannot fix the delivery fees charged to the customers and Defendant sets all delivery fees charged through the Postmates App; (vi) Defendant provides each of its delivery drivers with a prepaid "Postmates Card" credit card for use in paying for customer's orders that have not yet been prepaid by the customer when prompted by the Fleet mobile app; (vii) Defendant provides its delivery drivers with a "Postmates" branded hot/cold tote delivery bag for delivering goods to customers upon signing up to join the service; (viii) Defendant handles all payment processing; and (ix) Defendant approves delivery driver applications and can cancel use of the platform by particular drivers and/or impose sanctions on drivers such as suspension or deactivation of driver accounts, e.g., for late deliveries.

COUNT I
(Infringement of the '004 Patent)

22. Plaintiff Quartz Auto repeats and realleges the above paragraphs, which are incorporated by reference as if fully restated herein.

23. Plaintiff Quartz Auto is the owner of all rights, title, and interest in the '004 Patent and, at a minimum, of all substantial rights in the '004 Patent, including the exclusive right to

enforce the patent and all rights to pursue damages, injunctive relief, and all other available remedies for past, current, and future infringement thereof.

24. Plaintiff Quartz Auto and its predecessors in interest have never licensed Defendant under the '004 Patent, nor has Plaintiff Quartz Auto otherwise authorized Defendant to practice any part of the '004 Patent claims.

25. The '004 Patent is presumed valid under 35 U.S.C. § 282.

26. On information and belief, Defendant, alone and/or in conjunction with agents or parties under its control, has directly infringed and continues to directly infringe claims 1-8 and 11 of the '004 Patent pursuant to 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by using methods for coordinating, controlling, and providing on-demand delivery services that are covered by one or more claims of the '004 Patent without license or authority. The factual basis of Plaintiff's allegations of infringement of the '004 Patent is summarized below.

27. Claim 1 of the asserted claims recites:

1. A method of implementing a proximity driven activity, comprising:

specifying an activity to be executed at an indeterminate destination location;

storing an executable software code corresponding to the activity;

determining a current location of a mobile computing device;

determining whether the destination location is within a predefined proximity range from the current location of the mobile computing device;

executing the executable software code at a time when the destination location is within the proximity range of the mobile computing device; and

transmitting an address of the destination location to the mobile computing device.

28. On information and belief, the Postmates Platform, using the specific components identified on a limitation-by-limitation basis below, performs a method of implementing a

proximity driven activity, which includes methods for arranging and scheduling on-demand delivery services. Specifically, and as alleged in the following paragraphs, Postmates' servers and its Fleet app running on its drivers' mobile devices perform the steps of this method claim. Quartz alleges that the drivers are Postmates employees such that Postmates itself performs all of the claim steps as a direct infringer. If Postmates' drivers are instead Postmates' independent contractors or agents, Postmates directly infringes this claim as a joint infringer with its drivers, each of which act under Postmates' direction and control, as alleged further herein.

29. On information and belief, the Fleet app specifies an activity to be executed at an indeterminate destination location. Specifically, the Fleet app enables a driver to enter user input to "go online," which specifies that the driver is available to fulfill pick-up activities (the activity to be executed) associated with delivery requests. The activity is to be executed at a destination location—the merchant at which the driver will pick up the delivery. The destination location is indeterminate to the driver since the driver does not know the location of the merchant s/he will be paired with when specifying the activity.

30. On information and belief, one or more servers of the Postmates Platform stores an executable software code corresponding to the activity. The Postmates Platform uses algorithms to match drivers with delivery requests and coordinate the pick-up and drop-off of such deliveries. On information and belief, the algorithms use, and the servers thus necessarily store, executable software code that corresponding to the activity of fulfilling delivery requests.

31. On information and belief, the Fleet app periodically determines a current location of a mobile computing device of the driver. Whenever the Fleet app is in use in the foreground or background, the Fleet app collects location information and other motion-generated or orientation-generated mobile sensor data from the driver's mobile computing device.

32. On information and belief, one or more servers of the Postmates Platform determines whether the destination location (the merchant at which the driver will pick up the delivery) is within a predefined proximity range from the current location of a driver's mobile computing device as part of its matching process. In particular, the matching process generally matches a driver (at a current location) with a delivery pick-up location (destination location) that is close by (within a predetermined proximity range) based upon efficiency and reliability parameters for a potential match.

33. On information and belief, one or more servers of the Postmates Platform executes the executable software code at a time when the destination location is within the proximity range of the mobile computing device. The one or more servers use algorithms to match drivers with delivery requests and coordinate the pick-up and drop-off of such deliveries. On information and belief, the algorithms use, and the server(s) in turn thus necessarily execute, the executable software code as part of the matching process.

34. A match will only be made during a time that the pick-up location of the available delivery (the destination location) is within a proximity range of the driver's mobile computing device (which is running the Fleet app). Upon matching a driver with a delivery request, a server of the Postmates Platform transmits an offer to the Fleet app running on a driver's mobile computing device. The executable code holds the offer open for a period of time during which the driver can accept the delivery.

35. On information and belief, a server of the Postmates Platform transmits a notification that contains the address of the destination location to the mobile computing device of the driver once the driver accepts the delivery request with which s/he has been matched.

36. With respect to dependent claims 2-4, on information and belief, the Fleet app running on the driver's mobile computing device periodically transmits the current location of the mobile computing device over a network to a Postmates server (an event proximity server). This necessarily occurs, at least in part, over the Internet.

37. With respect to dependent claims 5 and 6, on information and belief, software code is downloaded from a server of the Postmates Platform to the driver's mobile computing device and then executed on the mobile computing device to enable functionality required to provide the location information used to match a driver's mobile computing device to a delivery request and to execute messaging associated with the driver's acceptance of the delivery request and the receipt of the transmitted destination address at the driver's mobile computing device.

38. With respect to dependent claim 7, as alleged above, the accused method involves a server of the Postmates Platform executing the executable software code as part of the process of matching a driver (and his/her mobile computing device) with a pick-up destination location and providing location and address information to direct the driver to the pick-up destination location.

39. With respect to dependent claim 8, on information and belief, the accused method further embodies anti-hysteresis software code running on a server of the Postmates Platform to prevent duplication of the activity, as demonstrated, for example, by the fact that multiple drivers do not get matched with the same delivery request.

40. With respect to dependent claim 11, whenever the Fleet app is in use in the foreground or background, the Fleet app collects location information and other motion-generated or orientation-generated mobile sensor data from the driver's mobile computing device. On

information and belief, the Fleet app periodically determines a current location of a mobile computing device of the driver in latitude/longitude coordinates generated using GPS.

41. Plaintiff alleges that Defendant has been and is engaged in direct infringing activities because all steps of the claimed methods are performed by Defendant as a single entity. In particular, Plaintiff alleges that the steps of the accused on-demand delivery methods performed by the Fleet app running on the mobile computing devices of Postmates drivers are attributable to the drivers, and that such drivers are Postmates employees, such that their actions constitute acts performed by Defendant. The steps of the asserted claims performed by the server-side software and/or network of the Postmates Platform are also performed Defendant as the entity that owns or controls and operates such servers and network. On information and belief, Plaintiff further alleges that other Postmates employees, such as product development and testing engineers or driver support personnel, have and continue to use the accused methods for development, testing, and/or demonstration purposes.

42. Plaintiff pleads in the alternative that, to the extent that Postmates drivers are independent contractors or agents rather than employees, Defendant is responsible as a direct infringer because Defendant has and continues to perform the server-side steps and Defendant has and continues to direct and control the steps performed on the driver's mobile device such that those steps are also attributable to Defendant under principles of joint infringement. Defendant is liable as a direct infringer of the asserted method claims by at least one or more of: (i) acting through drivers who are agents of Defendant with respect to the on-demand delivery services provided; (ii) contracting with its drivers to perform on-demand delivery services that require performance of one or more steps of the claimed methods; and (iii) conditioning the drivers'

participation in Defendant's services and receipt of payment upon the performance of one or more steps of the claimed methods and establishing the manner or timing of that performance.

43. Defendant has and continues to practice infringing methods by at least providing, operating, and controlling the accused methods via the Postmates Platform computer systems and software developed, owned, and provided by Defendant, which Defendant designed to perform the methods covered by the asserted patent claims. Defendant directs and controls the method steps performed by drivers by (i) prescreening and authorizing select individuals to serve as drivers in its on-demand delivery network on behalf of Defendant; (ii) supplying the Fleet app for accessing and controlling the Postmates Platform, which must be used by drivers to initiate and control the Postmates Platform throughout the entire lifecycle of each delivery; (iii) dictating, via software supplied to the driver's mobile device and instructions to the drivers, the manner in which the Fleet app operates and must be used such that when the accused method is initiated on a driver's mobile device each step of the asserted method claims is performed in a manner dictated by the accused Postmates Platform; (iv) dictating the terms and conditions upon which drivers are paid for their delivery services and retaining the ability to terminate a driver's access to and use of the Postmates Platform if not used in accordance with Defendant's required terms; (v) advertising the Postmates Platform and its on-demand services and providing instructions and directions to drivers regarding the use of the accused Fleet app; and (vi) updating and providing ongoing support and maintenance for the accused Postmates Platform and its methodologies.

44. Defendant conditions its drivers' use of its on-demand delivery network upon the performance of the steps performed by the Fleet app, and Defendant establishes the manner or timing of its drivers' performance. Defendant requires its drivers to contractually agree to terms and conditions that provide the drivers a limited license to use the Fleet app only in conjunction

with Defendant's on-demand delivery network. Drivers must download the Fleet app to their mobile devices and utilize the Fleet app, including performing the specific claim steps executed by the Fleet app identified above, in order to participate in Defendant's on-demand delivery network and services. Defendant provides step-by-step instructions and support to its drivers telling them how to utilize the Fleet app if the driver wants to perform deliveries in Defendant's network. Those instructions, and the integrated sequence of events that must be performed for a driver to invoke use of the Postmates Platform and be matched with delivery requests and directed to the delivery's pick-up and drop-off locations, establish the manner or timing of the drivers' performance of the claimed method steps. If drivers do not follow these precise steps, Defendant's services of matching drivers to deliveries and coordinating the pick-up and drop-off of deliveries are not available.

45. Defendant benefits by providing the Postmates Platform to attract and retain merchants and drivers to increase its revenue and valuation. Drivers also receive a benefit of receiving payment from Defendant from using the Fleet app and picking up deliveries and dropping off those deliveries at their destinations.

46. As a result of Defendant's infringement of at least claims 1-8 and 11, Plaintiff Quartz Auto has suffered monetary damages in an amount yet to be determined and will continue to suffer damages in the future. Defendant is liable to Plaintiff in an amount that adequately compensates for such 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.

47. Defendant's wrongful acts have damaged and will continue to damage Plaintiff Quartz Auto irreparably, and Plaintiff has no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, Plaintiff Quartz Auto is entitled to a permanent injunction

restraining and enjoining Defendant and its agents, servants, and employees, and all persons acting thereunder, in concert with, or on its behalf, from infringing at least claims 1-8 and 11 of the '004 Patent without additional compensation to Plaintiff in an amount to be determined by the Court.

COUNT II
(Infringement of the '085 Patent)

48. Plaintiff Quartz Auto repeats and realleges the above paragraphs, which are incorporated by reference as if fully restated herein.

49. Plaintiff Quartz Auto is the owner of all rights, title, and interest in the '085 Patent and, at a minimum, of all substantial rights in the '085 Patent, including the exclusive right to enforce the patent and all rights to pursue damages, injunctive relief, and all other available remedies for past, current, and future infringement thereof.

50. Plaintiff Quartz Auto and its predecessors in interest have never licensed Defendant under the '085 Patent, nor has Plaintiff Quartz Auto otherwise authorized Defendant to practice any part of the '085 Patent claims.

51. The '085 Patent is presumed valid under 35 U.S.C. § 282.

52. On information and belief, Defendant, alone and/or in conjunction with agents or parties under its control, has directly infringed and continues to directly infringe claims 1, 2, 8-11, 15, 16, and 19 of the '085 Patent pursuant to 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents, by using methods for coordinating, controlling, and providing on-demand delivery services that are covered by one or more claims of the '085 Patent without license or authority. The factual basis of Plaintiff's allegations of infringement of the '085 Patent is summarized below.

53. Claim 1 of the asserted claims recites:

1. A method for providing user location information for a personal information management program, comprising:

generating position coordinates of a wireless device and time information indicating times when the position coordinates were generated, wherein a user is associated with the wireless device;

processing the position coordinates and time information to determine whether a rate of change in distance per unit of time in a series of position coordinates at times indicates a predefined activity of the user occurring during an activity time period during which the position coordinates and the time information were generated; and

generating information on the determined predefined activity for the activity time period.

54. On information and belief, the Postmates Platform, using the specific components identified on a limitation-by-limitation basis below, performs a method for providing user location information for a personal information management (PIM) program. Specifically, and as alleged in the following paragraphs, Postmates' servers, and its Fleet app running on its drivers' mobile devices, perform the steps of this method claim. Quartz alleges that the drivers are Postmates employees such that Postmates itself performs all of the claim steps as a direct infringer. If Postmates' drivers are instead Postmates' independent contractors or agents, Postmates directly infringes this claim as a joint infringer with its drivers, each of which act under Postmates' direction and control, as alleged further herein.

55. On information and belief, the Fleet app running on a driver's mobile wireless device generates position coordinates of such wireless device and time information indicating times when the position coordinates were generated, wherein a user is associated with the wireless device. Whenever the Fleet app is in use in the foreground or background, the Fleet app collects location information and other motion-generated or orientation-generated mobile sensor data from the driver's mobile computing device. This information includes GPS-generated latitude and

longitude location and timestamps (time information) indicating times when the coordinates were generated.

56. On information and belief, a server of the Postmates platform processes the position coordinates and time information provided by the Fleet app to determine whether a rate of change in distance per unit of time in a series of position coordinates at times indicates a predefined activity of the driver, such as driving to a pick-up location (pick-up leg), picking up a delivery (pick-up waypoint), driving to the drop-off location (drop-off leg), and/or dropping off the delivery (drop-off waypoint), occurring during an activity time period during which the position coordinates and the time information were generated.

57. On information and belief, one or more servers of the Postmates Platform generates information on the determined predefined activity for the activity time period. The generated information may include efficiency and reliability parameters such as the location and the number of minutes that a driver spent waiting at a merchant's location for the delivery (pick-up waypoint minutes).

58. With respect to dependent claim 2, on information and belief, the Fleet app in coordination with the user's mobile computing device periodically generates position coordinates and associated time information and transmits the information over a network to a server of the Postmates Platform. The server receives and stores the information in a database and processes the information to determine the predefined activity during the activity time period and locations and associated time periods where the driver was present. For example, Postmates pays its drivers a certain wage for the amount of time s/he has to wait for the delivery at the pick-up location. On information and belief, the server processes the generated position coordinates and time information to provide this functionality.

59. With respect to dependent claim 8, the Fleet app running on the wireless devices of multiple drivers each periodically generate position coordinates and time information associated with each respective driver. The Fleet apps each transmit the information over a network to a server of the Postmates Platform. The server receives and stores the information in a database in a manner that associates it with each individual driver (i.e. with one user). The server processes the information for each driver (i.e. for the multiple wireless devices) to determine the predefined activity for each driver.

60. With respect to dependent claims 9 and 10, on information and belief, a server of the Postmates Platform may receive a request for information about a driver's activities during a selected time interval. Such a request may come, for instance, from a backend computer of the Postmates Platform as part of server-side analytics of a driver's delivery history. A server of the Postmates Platform determines a predefined activity occurring during the selected time interval, such as pick-up waypoint during a particular delivery, and generates information on the predefined activity, such as the amount of minutes spent at the pick-up waypoint, or the amount of wages earned for that predefined activity. On information and belief, the generated information may be transmitted to the backend computer that requested the database search to enable display of the location where the driver was located during the delivery identified for the time interval.

61. With respect to dependent claim 11, the backend computer requesting the information comprises a program installed on a computer and the generated information may be transmitted over the Internet to the requesting computer.

62. With respect to dependent claims 15 and 16, on information and belief, one or more servers of the Postmates Platform determines locations of the driver's wireless device during the delivery process based on position coordinates of the wireless device during the activity time

period, wherein generating information comprises generating information on the predefined activity and the locations where the predefined activity occurred. The server keeps records of trip details associating determined locations with determined predefined activities.

63. With respect to dependent claim 19, the predefined activities of driving to a pick-up location (pick-up leg), picking up a delivery (pick-up waypoint), driving to the drop-off location (drop-off leg), and dropping off the delivery (drop-off waypoint), involve driving and/or walking.

64. Plaintiff alleges that Defendant has been and is engaged in direct infringing activities because all steps of the claimed methods are performed by Defendant as a single entity. In particular, Plaintiff alleges that the steps of the accused on-demand delivery methods performed by the Fleet app running on the mobile devices of Postmates drivers are attributable to the drivers, and that such drivers are Postmates employees, such that their actions constitute acts performed by Defendant. The steps of the asserted claims performed by the server-side software and/or network of the Postmates Platform are also performed by Defendant as the entity that owns or controls and operates such servers and network. On information and belief, Plaintiff further alleges that other Postmates employees, such as product development and testing engineers or driver support personnel, have and continue to use the accused methods for development, testing, and/or demonstration purposes.

65. Plaintiff pleads in the alternative that, to the extent that Postmates drivers are independent contractors or agents rather than employees, Defendant is responsible as a direct infringer because Defendant has and continues to perform the server-side steps and Defendant has and continues to direct and control the steps performed on the driver's mobile device such that those steps are also attributable to Defendant under principles of joint infringement. Defendant is liable as a direct infringer of the asserted method claims by at least one or more of: (i) acting

through drivers who are agents of Defendant with respect to the on-demand delivery services provided; (ii) contracting with its drivers to perform on-demand delivery services that require performance of one or more steps of the claimed methods; and (iii) conditioning the drivers' participation in Defendant's services and receipt of payment upon the performance of one or more steps of the claimed methods and establishing the manner or timing of that performance.

66. Defendant has and continues to practice infringing methods by at least providing, operating, and controlling the accused methods via the Postmates Platform computer systems and software developed, owned, and provided by Defendant, which Defendant designed to perform the methods covered by the asserted patent claims. Defendant directs and controls the method steps performed by drivers by (i) prescreening and authorizing select individuals to serve as drivers in its on-demand delivery network on behalf of Defendant; (ii) supplying the Fleet app for accessing and controlling the Postmates Platform, which must be used by drivers to initiate and control the Postmates Platform throughout each delivery; (iii) dictating, via software supplied to the drivers' mobile devices and instructions to the drivers, the manner in which the Fleet app operates and must be used such that when the accused method is initiated on a driver's mobile device each step of the asserted method claims is performed in a manner dictated by the accused Postmates Platform; (iv) dictating the terms and conditions upon which drivers are paid for their delivery services and retaining the ability to terminate a driver's access to and use of the Postmates Platform if not used in accordance with Defendant's required terms; (v) advertising the Postmates Platform and its on-demand services and providing instructions and directions to drivers regarding the use of the accused Fleet app; and (vi) updating and providing ongoing support and maintenance for the accused Postmates Platform and its methodologies.

67. Defendant conditions its drivers' use of its on-demand delivery network upon the performance of the steps performed by the Fleet app, and Defendant establishes the manner or timing of its drivers' performance. Defendant requires its drivers to contractually agree to terms and conditions that provide the drivers a limited license to use the Fleet app only in conjunction with Defendant's on-demand delivery network. Drivers must download the Fleet app to their mobile devices and utilize the Fleet app, including performing the specific claim steps executed by the Fleet app identified above, in order to participate in Defendant's on-demand delivery network and services. Defendant provides step-by-step instructions and support to its drivers telling them how to utilize the Fleet app if the driver wants to perform deliveries in Defendant's network. Those instructions, and the integrated sequence of events that must be performed for a driver to invoke use of the Postmates Platform and be matched with delivery requests and directed to the delivery's pick-up and drop-off locations, establish the manner or timing of the drivers' performance of the claimed method steps. If drivers do not follow these precise steps, Defendant's services of matching drivers to deliveries and coordinating the pick-up and drop-off of deliveries are not available.

68. Defendant benefits by providing the Postmates Platform to attract and retain merchants and drivers to increase its revenue and valuation. Drivers also receive a benefit of receiving payment from Defendant from using the Fleet app and picking up deliveries and dropping off those deliveries at their destinations.

69. As a result of Defendant's infringement of at least claims 1, 2, 8-11, 15, 16, and 19, Plaintiff Quartz Auto has suffered monetary damages in an amount yet to be determined, and will continue to suffer damages in the future. Defendant is liable to Plaintiff in an amount that

adequately compensates for such 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.

70. Defendant's wrongful acts have damaged and will continue to damage Plaintiff Quartz Auto irreparably, and Plaintiff has no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, Plaintiff Quartz Auto is entitled to a permanent injunction restraining and enjoining Defendant and its agents, servants, and employees, and all persons acting thereunder, in concert with, or on its behalf, from infringing at least claims 1, 2, 8-11, 15, 16, and 19 of the '085 Patent without additional compensation to Plaintiff in an amount to be determined by the Court.

COUNT III
(Infringement of the '215 Patent)

71. Plaintiff Quartz Auto repeats and realleges the above paragraphs, which are incorporated by reference as if fully restated herein.

72. Plaintiff Quartz Auto is the owner of all rights, title, and interest in the '215 Patent and, at a minimum, of all substantial rights in the '215 Patent, including the exclusive right to enforce the patent and all rights to pursue damages, injunctive relief, and all other available remedies for past, current, and future infringement thereof.

73. Plaintiff Quartz Auto and its predecessors in interest have never licensed Defendant under the '215 Patent, nor has Plaintiff Quartz Auto otherwise authorized Defendant to practice any part of the '215 Patent.

74. The '215 Patent is presumed valid under 35 U.S.C. § 282.

75. On information and belief, Defendant, alone and/or in conjunction with agents or parties under its control, has directly infringed and continues to directly infringe claims 1-8 and 13-16 of the '215 Patent pursuant to 35 U.S.C. § 271(a), either literally or under the doctrine of

equivalents, by using methods for coordinating, controlling, and providing on-demand delivery services that are covered by one or more claims of the '215 Patent without license or authority.

The factual basis of Plaintiff's allegations of infringement of the '215 Patent is summarized below.

76. Claim 1 of the asserted claims recites:

1. A computer-implemented method of responding to a problem condition, comprising:

automatically detecting availability of a first candidate to respond to a problem condition;

responsive to the detecting:

automatically assigning responsibility for the problem condition to the first candidate; and

receiving a confirmation from the first candidate indicating acceptance of responsibility for the problem condition.

77. On information and belief, one or more servers of the Postmates Platform perform a method of responding to a problem condition i.e., a delivery request reflecting food or goods in need of timely pick-up from a merchant partner and drop-off at the ordering customer's location. Specifically, and as alleged in the following paragraphs, Postmates' servers perform the steps of this method claim such that Postmates itself performs all of the claim steps and is a direct infringer.

78. On information and belief, a server of the Postmates platform automatically detects availability of a first candidate to respond to a problem condition. Specifically, in response to merchant partner submitting a request indicating a need for a delivery using the Postmates Platform (a problem condition), a server of the Postmates Platform detects which drivers nearby the pick-up location have gone online indicating availability to perform deliveries in the vicinity of the merchant partner.

79. On information and belief, a server of the Postmates Platform, responsive to the detecting of an available driver that can most efficiently respond to the request, automatically assigns responsibility for the delivery request to that first candidate driver, notifying the driver of a delivery request.

80. On information and belief, a server of the Postmates Platform receives a confirmation if the first candidate driver accepts the delivery request by clicking “Accept Delivery” in the Fleet app or where the first candidate driver has enabled offers to be “auto-accepted” by the app. The confirmation is transmitted from the Fleet app of the driver’s mobile device and indicates acceptance by the driver of responsibility for resolving the problem condition, i.e., by picking up and delivering the outstanding delivery.

81. With respect to dependent claim 2, as alleged above, the Postmates Platform assigns responsibility for the delivery request by sending a real-time notification containing basic details about the delivery request to the first candidate driver.

82. With respect to dependent claim 3, on information and belief, a server of the Postmates Platform detects availability of a second candidate driver using its Matcher algorithm if a confirmation from the first candidate driver is not received within a set time period or if the delivery request is declined. The Postmates Platform server then assigns responsibility for the delivery request to the second candidate driver.

83. With respect to dependent claim 4, on information and belief, the accused method embodies the driver’s availability comprising an online presence in an instant messaging system. The drivers must have selected “Go Online” within the Fleet app to receive delivery request instant messages and send responsive messages.

84. Claim 5 of the asserted claims recites:

5. A computer-implemented method of managing an information technology device, comprising:

receiving an alert from a managed information technology device;

receiving availability information about a plurality of candidates;

automatically selecting a candidate qualified and available to respond to the event from among the plurality of candidates;

automatically assigning responsibility for the alert to the candidate; and

receiving a reply from the candidate indicating acceptance of responsibility for the alert.

85. On information and belief, one or more servers of the Postmates Platform perform a method of managing an information technology device. The servers communicate with the Fleet app to perform a computer implemented method for on-demand delivery services. As part of that method, Postmates servers receive, manage and respond to incoming delivery requests initiated by its merchant partners using a specialized application designed by Postmates, referred to as the Partner app, by which Postmates manages an information technology device. Specifically, and as alleged in the following paragraphs, Postmates' servers perform the steps of this method claim such that Postmates itself performs all of the claim steps and is a direct infringer.

86. On information and belief, a server of the Postmates Platform receives an alert from a managed information technology device (e.g., a merchant's tablet, smartphone, or other computer with the Partner app installed) containing information about a confirmed delivery request event.

87. On information and belief, a server of the Postmates Platform receives availability information about a plurality of drivers who are candidates to respond to and fulfill the delivery request event. In particular, the Fleet app notifies the server that a driver is available when the driver has selected to "go online." The Fleet app also periodically provides a current location of

the driver's mobile computing device, which the server uses to determine if the driver is nearby the pick-up location.

88. On information and belief, a server of the Postmates Platform automatically selects a candidate driver qualified and available to respond to the delivery request event from among the plurality of candidates. The matching methodology determines if the candidate is available and qualified by checking whether the driver is online and nearby the pick-up location and whether s/he has accepted other delivery requests that would conflict with or result in inefficiencies if batched or compounded with the pending delivery request.

89. On information and belief, a server of the Postmates Platform automatically assigns responsibility for the delivery request alert to the selected first candidate driver.

90. A server also transmits a notification to the driver via the Fleet app indicating assignment of responsibility for the delivery, which may be accepted or declined. On information and belief, if the first candidate driver accepts the delivery request, a server of the Postmates Platform receives a reply transmitted from the Fleet app of the driver's mobile device indicating acceptance of responsibility for the alert.

91. With respect to dependent claim 6, a candidate driver is not selected to receive responsibility for the alert unless the driver has selected to "go online" and is nearby the pick-up location indicating his/her availability. In this manner, the method uses the availability information as part of the selecting.

92. With respect to dependent claim 7, a server of the Postmates Platform receives availability information from a plurality of drivers who have gone online in the Fleet app. The matching algorithm determines if each candidate is available and qualified by checking whether the driver is online and nearby the pick-up location and whether s/he has accepted other delivery

requests that would conflict with or result in inefficiencies if batched or compounded with the pending delivery request (together, a plurality of qualified candidates). The matching algorithm then chooses one candidate from this plurality of qualified candidates.

93. With respect to dependent claims 8 and 13, on information and belief, the matching methodology performed by the server determines which of multiple potential candidate drivers is closest to the managed device of the merchant. The managed information technology device of the merchant may be a tablet, smartphone, or computer.

94. Claim 14 of the asserted claims recites:

14. A computer-implemented method of managing an information technology device, comprising:

receiving an alert from a managed information technology device;

automatically selecting a candidate qualified to respond to the event;

automatically determining if the candidate is available to respond to the event;

automatically sending an instant message to the candidate containing information about the alert;

receiving an instant message from the candidate indicating acceptance of responsibility for the alert; and

automatically assigning responsibility for the alert to the candidate.

95. On information and belief, one or more servers of the Postmates Platform performs a method of managing an information technology device. The one or more servers communicate with the Fleet app to perform a computer implemented method for on-demand delivery services. As part of that method, Postmates servers receive, manage, and respond to incoming delivery requests initiated by its merchant partners using a specialized application designed by Postmates, referred to as the Partner app, by which Postmates manages an information technology device.

Specifically, and as alleged in the following paragraphs, Postmates' servers perform the steps of this method claim such that Postmates itself performs all of the claim steps and is a direct infringer.

96. On information and belief, a server of the Postmates Platform receives an alert from a managed information technology device (e.g., a merchant's tablet, smartphone, or computer with the Partner app installed) containing information about a confirmed delivery request event.

97. On information and belief, a server of the Postmates Platform automatically selects a candidate driver qualified to respond to the delivery request event from among a plurality of candidates. The matching methodology determines if the candidate is available and qualified by checking whether the driver is online and nearby the pick-up location and whether s/he has accepted other delivery requests that would conflict with or result in inefficiencies if batched or compounded with the pending delivery request.

98. On information and belief, a server of the Postmates Platform automatically determines if the candidate is available to respond to the event. In particular, the server receives availability information about a plurality of drivers who are candidates to respond to and fulfill the delivery request. When a driver "goes online," the Fleet app notifies the server that the driver is online and available to pick up deliveries and periodically provides a current location of the driver's mobile computing device, which the server uses to determine if the driver is nearby the pick-up location of a particular delivery request.

99. On information and belief, a server of the Postmates Platform automatically sends an instant message to the Fleet app of the mobile device of candidate driver containing information about the alert, such as the name of the merchant at which the delivery pick-up will occur.

100. On information and belief, a server of the Postmates Platform receives a reply transmitted from Fleet app of the driver's mobile device indicating acceptance of responsibility for the alert, if the first candidate driver accepts the delivery request.

101. On information and belief, a server of the Postmates Platform automatically assigns responsibility for the delivery request alert to the selected first candidate driver, which the driver can accept using the Fleet app.

102. With respect to dependent claim 15, on information and belief, a server of the Postmates Platform detects a second candidate qualified to respond and the availability of the second candidate driver if the confirmation from the first candidate driver is not received within a selected time period. The Postmates Platform server then assigns responsibility for the delivery request to the second candidate driver.

103. With respect to dependent claim 16, on information and belief, the determining of whether a candidate driver is available includes detecting an online presence in an instant messaging system. The drivers must have selected "Go Online" within the Fleet app to receive delivery request instant messages and send responsive messages.

104. Plaintiff alleges that Defendant has been and is engaged in direct infringing activities because all steps of the claimed methods are performed by the server-side software and/or network of the Postmates Platform and Defendant is the entity that owns or controls and operates such servers and network. On information and belief, Plaintiff further alleges that Defendant has and continues to use the accused methods for development, testing, and/or training purposes.

105. As a result of Defendant's infringement of at least claims 1-8 and 13-16, Plaintiff Quartz Auto has suffered monetary damages in an amount yet to be determined and will continue to suffer damages in the future. Defendant is liable to Plaintiff in an amount that adequately

compensates for such 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.

106. Defendant's wrongful acts have damaged and will continue to damage Plaintiff Quartz Auto irreparably, and Plaintiff has no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, Plaintiff Quartz Auto is entitled to a permanent injunction restraining and enjoining Defendant and its agents, servants, and employees, and all person acting thereunder, in concert with, or on its behalf, from infringing at least claims 1-8 and 13-16 of the '215 Patent without additional compensation to Plaintiff in an amount to be determined by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Quartz Auto respectfully requests that this Court enter:

A. A judgment in favor of Plaintiff Quartz Auto that Defendant has been and is infringing at least claims 1-8 and 11 of the '004 Patent; claims 1, 2, 8-11, 15, 16, and 19 of the '085 Patent; and claims 1-8 and 13-16 of the '215 Patent pursuant to 35 U.S.C. §§ 271(a);

B. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with any of them from infringing or inducing the infringement of any claims 1-8 and 11 of the '004 Patent; claims 1, 2, 8-11, 15, 16, and 19 of the '085 Patent; and claims 1-8 and 13-16 of the '215 Patent, without additional compensation to Plaintiff in an amount to be determined by the Court;

C. A judgment awarding Plaintiff Quartz Auto all damages adequate to compensate it for Defendant's infringement of the Quartz Auto Patents under 35 U.S.C. § 284, and in no event less than a reasonable royalty for Defendant's acts of infringement, including that Defendant

provide accountings and pay all pre-judgment and post-judgment interest at the maximum rate permitted by law, and also any past damages permitted under 35 U.S.C. § 286, as a result of Defendant's infringement of at least claims 1-8 and 11 of the '004 Patent; claims 1, 2, 8-11, 15, 16, and 19 of the '085 Patent; and claims 1-8 and 13-16 of the '215 Patent;

D. An assessment of costs, including reasonable attorney fees pursuant to 35 U.S.C. § 285, and prejudgment interest against Defendant; and

E. Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Pursuant to Fed R. Civ. P. 38, Plaintiff Quartz Auto hereby demands a trial by jury on all issues so triable.

Dated: December 9, 2020

BAYARD, P.A.

Of Counsel:

Fitch, Even, Tabin & Flannery LLP

Timothy P. Maloney (IL 6216483)

tim@fitcheven.com

Nicole L. Little (IL 6297047)

nlittle@fitcheven.com

Joseph F. Marinelli (IL 6270210)

jmarinelli@fitcheven.com

Evan Kline-Wedeen (IL 6329941)

eklinewedeen@fitcheven.com

Jacqueline Thompson (IL 6333461)

jthompson@fitcheven.com

Thomas James (IL 6331587)

tjames@fitcheven.com

120 South LaSalle Street, Suite 2100

Chicago, Illinois 60603

Telephone: (312) 577-7000

Facsimile: (312) 577-7007

/s/ Stephen B. Brauerman

Stephen B. Brauerman (#4952)

Ronald P. Golden III (#6254)

600 North King Street, Suite 400

Wilmington, DE 19801

(302) 655-5000

sbrauerman@bayardlaw.com

rgolden@bayardlaw.com

Attorneys for Plaintiff,

Quartz Auto Technologies LLC