

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

IKORONGO TEXAS LLC)	
and IKORONGO TECHNOLOGY LLC,)	Civil Action No. 6:20-cv-00843-ADA
)	
Plaintiffs,)	
)	
v.)	
)	
UBER TECHNOLOGIES, INC.)	
Defendant.)	JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Ikorongo Texas LLC (“Ikorongo TX”) and Ikorongo Technology LLC (“Ikorongo Tech”) (together “Ikorongo” or “Plaintiffs”) for their complaint against defendant Uber Technologies, Inc. (“Uber” or “Defendant”), hereby alleges as follows:

THE PARTIES

1. Ikorongo TX is a Texas limited liability company having an address at 678 Bear Tree Creek, Chapel Hill, NC 27517.
2. Ikorongo Tech is a North Carolina limited liability company having an address at 678 Bear Tree Creek, Chapel Hill, NC 27517.
3. Upon information and belief, Defendant Uber is a corporation organized under the laws of Delaware with its principal place of business located in San Francisco, CA. Uber is registered to conduct business in Texas.

JURISDICTION

4. This is a civil action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, *et seq.* This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has general personal jurisdiction over Uber because Uber is engaged in substantial and not isolated activity within this judicial district. This Court has specific jurisdiction over Uber because Uber 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 Uber in this Court would not offend traditional notions of fair play and substantial justice. Uber, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement of Ikorongo's rights in the Asserted Patents in this District by, among other things, making, using, offering to sell, selling, and importing products and/or services that infringe the Asserted Patents. Uber has (1) operated the Internet website, <https://www.Uber.com/>, and provided a mobile application (the "Uber app"), which is available to and accessed by ridesharing users, customers, and potential customers of the Defendant, both riders and drivers, within this judicial district; (2) operated within the judicial district, with ridesharing offered to users, drivers, customers, and potential customers of Defendant in locations including Austin, El Paso, San Antonio, and Waco; (3) actively advertised to employ (and in fact hired) residents within the District as drivers; (4) transacted business within this judicial district and elsewhere in Texas; (5) infringed, actively infringed and/or induced infringement of Ikorongo's patent rights in this judicial district and elsewhere in Texas; (6) established regular and systematic business contacts within the State of Texas; and (7) continued to conduct such business in Texas through the continued operation within the district.

Accordingly, this Court's jurisdiction over the Defendant comports with the constitutional

standards of fair play and substantial justice and arises directly from the Defendant's purposeful minimum contacts with the State of Texas.

6. 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, Uber has transacted business in this District and has committed acts of infringement of Ikorongo's patent rights in this District by, among other things, making, using, offering to sell, selling, and importing products and/or services that infringe the Asserted Patents. Uber has regular and established places of business in this District, including at 201 East 3rd St., Austin, TX 78701; 507 Calles St., #120, Austin, TX 78702; 10842 Potranco Rd. #112, San Antonio, TX 78251 and 121 Interpark Blvd. #501, San Antonio, TX 78216. Moreover, Defendant has opened its second largest office in the world in Texas and continues to hire engineering and financial personnel, in addition to other positions, to that office.

FACTUAL BACKGROUND

7. This action concerns RE 45,543 (the '543 Patent) and RE 47,704 (the '704 Patent) (collectively the "Asserted Patents"), true and correct copies of which are attached as Exhibits A and B, respectively.

8. Ikorongo TX, pursuant to the principles of *Waterman v. Mackenzie*, 138 U.S. 252 (1891) and 35 U.S.C. §261, is the owner of the exclusive right under the Asserted Patents within and throughout a specified part of the United States ("the Specified Part") that includes specific counties within the present judicial district, including the right to sue for past, present and future infringement and damages thereof.

9. Ikorongo Tech is the owner of the entire right, title and interest in the Asserted Patents, including the exclusive right under the Asserted Patents, within and throughout all parts

of the United States and world not included in the Specified Part, including the right to sue for past, present and future infringement and damages thereof. This includes at least one county within the present judicial district.

10. Together Ikorongo TX and Ikorongo Tech own the entire right, title and interest in the Asserted Patents, including the right to sue for past, present and future infringement and damages thereof, throughout the entire United States and world.

11. Each of the '543 Patent and the '704 Patent is a Reissue Patent of U.S. Patent No. 7,080,139 (the '139 Patent). The '139 Patent, entitled "Method and Apparatus for Selectively Sharing and Passively Tracking Communication Device Experiences" was filed on April 24, 2001 as U.S. Patent Application No. 09/841,475. It was duly and legally issued by the U.S. Patent and Trademark Office (PTO) on July 18, 2006. It received 597 days of patent term extension. A true and correct copy of the '139 Patent is attached as Exhibit C.

12. The '543 Patent was filed as Reissue Application 13/894,009 on May 14, 2013. It was duly and legally reissued by the PTO on June 2, 2015.

13. The '704 Patent was filed as Reissue Application 14/577,746 on December 19, 2014. It was duly and legally reissued by the PTO on November 5, 2019.

14. The elements claimed by the Asserted Patents, taken alone or in combination, were not well-understood, routine or conventional to one of ordinary skill in the art at the times of their respective invention.

15. The elements claimed by the reissue claims of Asserted Patents are clearly and unequivocally disclosed in the patent, constituting parts or portions of the invention, and were intended or sought to be covered or secured by the original patent.

16. As an example, a person having ordinary skill in the art would understand that the reissue claims of the Asserted Patents constitute parts or portions of the invention, and were intended or sought to be covered or secured by the original patent at least because certain claims of the reissue patents (including, *e.g.*, ‘543 Patent claim 32) are directed to the same invention as claim 32 of the ’139 Patent.

17. As another example, a person having ordinary skill in the art would understand from the ’139 Patent that visited location data may be a type of “shared computer user experience.” A person having ordinary skill in the art would understand this at least because of Claim 32 of the ’139 Patent.

18. As another example, a person having ordinary skill in the art would understand from the ’139 Patent that that the invention includes embodiments including using satellites to determine geographic location data. A person having ordinary skill in the art would understand this from at least the specification’s discussion of GPS and DGPS.

19. As another example, a person having ordinary skill in the art would understand from the specification of ’139 Patent that that the invention includes embodiments that teach tracking location information independent of other user experience tracking. A person having ordinary skill in the art would understand this at least because the patent describes building various databases and combinations of databases, and further contains discussion of a visited location database (“VLD”), which is a database that specifically may be used for storing locations visited by users.

COUNT I

(Uber's Infringement of the '543 Patent)

20. All previous paragraphs are reincorporated by reference as if fully set forth herein.

21. The elements claimed by the '543 patent, taken alone or in combination, were not well-understood, routine or conventional to one of ordinary skill in the art at the time of the invention. Rather, the '543 patent provides a technical solution to technical problems.

22. Uber has infringed and continues to infringe, literally and/or by the doctrine of equivalents, individually and/or jointly, at least claims 32, 36, 38, 54, 57, 63, 64, 66, and 68-70 of the '543 patent by making, using, testing, selling, offering for sale, or importing into the United States Accused Instrumentalities covered by the '543 patent. Accused Instrumentalities for direct infringement (and for underlying acts of direct infringement for indirect infringement claims) of the '543 Patent include methods performed by or for Uber, methods performed by or for drivers, methods performed by or for users (*e.g.*, Riders and Uber EATS customers) concerning the Uber Service, Uber Apps (*e.g.*, Driver, Rider, Uber EATs, and other versions of the apps), Uber Servers, and computers and methods that operate in substantially the same manner.. For non-limiting examples, *see, e.g.*, exemplary claim chart Exhibit D, which is incorporated herein by reference.

23. Additionally, Uber is an active inducer of infringement of the '543 patent under 35 U.S.C. § 271(b) and a contributory infringer of the '543 patent under 35 U.S.C. § 271(c) either literally and/or by the doctrine of equivalents. This complaint does not currently assert inducement or contributory infringement claims for acts that occurred prior the Original Complaint given the Court's practice of allowing full discovery on pre-suit knowledge and

indirect infringement. Plaintiffs expect that discovery will yield information to assert such pre-suit indirect infringement and reserves the right to amend the Complaint or otherwise add the issue to the case as may be appropriate.

24. As an example, Uber induces infringement of the '543 patent by intending that others use products and services made, used, offered for sale, sold or provided by or on behalf of Uber in directly infringing one or more asserted claims of the '543 patent. Uber provides these products and/or services to others, such as riders, Uber Eat customers, resellers and end-user customers, who, in turn, make, use, provision for use, offer for sale, or sell in the United States products and/or services that directly infringe one or more claims of the '543 patent. As a non-limiting example, by providing the Uber apps directly or indirectly to riders in the Western District of Texas, Uber intends and encourage riders, via instructions, user prompts, product literature, etc., to use the Uber app on a rider's phone in a manner that infringes claim 32 as shown in Exhibit D.

25. Uber contributes to the infringement of the '543 patent by others by knowingly providing products and/or services that when configured and used result in performance of a method that directly infringes one or more claims of the '543 patent.

26. Upon information and belief, Uber has had actual knowledge of the '543 patent since at least as early as the service upon Uber of the Original Complaint.

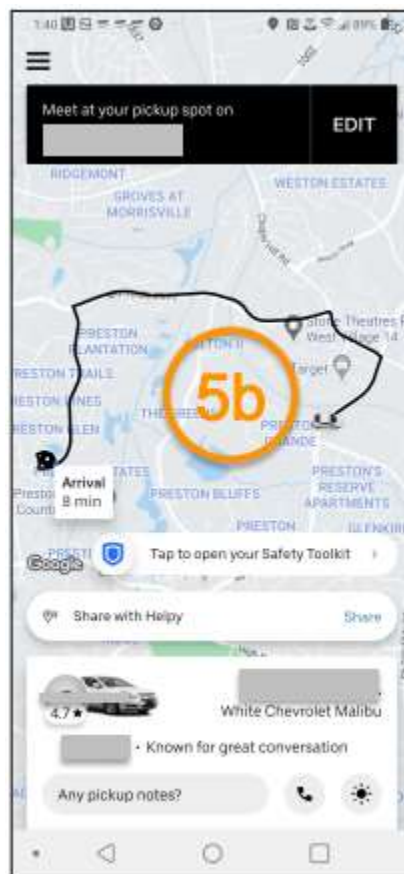
27. Uber commits affirmative acts that cause infringement of one or more claims of the '543 patent with knowledge of the '543 patent and knowledge or willful blindness that the induced acts constitute infringement of one or more claims of the '543 patent. As an illustrative example only, Uber induces such acts of infringement by its affirmative actions of intentionally providing software components that when used in their normal and customary way, infringe one

or more claims of the ‘543 patent and/or by directly or indirectly providing instructions on how to use its products and/or services in a manner or configuration that infringes one or more claims of the ‘543 patent, including those found at www.Uber.com, in product literature and items described in the exemplary claim charts hereto. .

28. Uber commits contributory infringement by, *inter alia*, knowingly offering for sale and selling products and/or services including features that when used cause the direct infringement of one or more claims of the ‘543 patent by a third party (e.g., a rider or Uber Eats customer), and which have no substantial non-infringing uses, or include a separate and distinct component that is especially made or especially adapted for use in infringement of the ‘543 patent and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

29. As an example, Uber provides its apps to riders and users in connection with its offering for sale and selling of car rides to users or delivery services to Uber Eats customers. Uber provides such software for the purpose of selling such services. As such, the apps are part of the sale of such services.

30. The Uber App includes particular software code that has no substantial non-infringing use. As a non-limiting example, the portion or component of the software code that is responsible for the “share with Helpy” actions and features illustrated in the following screen shot has no substantial non-infringing uses:



31. Uber also infringes the '543 Patent under 35 U.S.C. §271(f)(1) and (f)(2) either literally and/or by the doctrine of equivalents. This complaint does not currently assert infringement claims under 35 U.S.C. §271(f)(1) and (f)(2) for acts that occurred prior the Original Complaint given the Court's practice of allowing full discovery on pre-suit knowledge and indirect infringement. Plaintiffs expect that discovery will yield information to assert such a claim and reserves the right to amend the Complaint or otherwise add the issue to the case as may be appropriate.

32. The acts described above with respect to inducing infringement and contributory infringement support infringement under the mentioned statute to the extent that the acts that would constitute direct infringement occur outside the U.S. For example, Uber supplies or

causes to be supplied in or from the US its Uber apps for drivers, riders and customers outside the U.S. who in turn save them (and use them) on their phones. The drivers, riders and customers then use their phones in a manner that would directly infringe if it occurred in the U.S.

33. As a result of Uber's acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT II

(Uber's Infringement of '704 Patent)

34. All previous paragraphs are reincorporated by reference as if fully set forth herein.

35. The elements claimed by the '704 patent, taken alone or in combination, were not well-understood, routine or conventional to one of ordinary skill in the art at the time of the invention. Rather, the '704 patent provides a technical solution to technical problems.

36. Uber has infringed and continues to infringe, literally and/or by the doctrine of equivalents, individually and/or jointly, at least claims 33-36, 38-41, 45-48 of the '704 patent by making, using, testing, selling, offering for sale or importing into the United States Accused Instrumentalities covered by the '704 patent. Accused Instrumentalities for direct infringement (and for underlying acts of direct infringement for indirect infringement claims) for the '704 patent include the Uber service, Uber Apps (*e.g.*, Driver, Rider, Uber EATs, and other versions of the apps), Uber Servers, Uber Computers, computer readable memories having software stored thereon, methods performed by or for Uber, methods performed by or for drivers, methods performed by or for users (*e.g.*, Riders and Uber EATS customers) concerning the Uber Service, Uber Apps (*e.g.*, Driver, Rider, Uber EATs and other versions of the apps), Uber Servers, Uber computers, computer readable memories having software stored thereon (*e.g.*, Uber apps stored

on Uber servers, code depositories, copies on individual Uber employees' phones and computers, drivers' phone copies, riders/customers' phone copies) , and products and services that are substantially similar or operate in a substantially similar manner. For non-limiting examples, *see, e.g.*, exemplary claim chart Exhibit E, which is incorporated herein by reference.

37. Additionally, Uber is an active inducer of infringement of the '704 patent under 35 U.S.C. § 271(b) and a contributory infringer of the '704 patent under 35 U.S.C. § 271(c) either literally and/or by the doctrine of equivalents. This complaint does not currently assert inducement or contributory infringement claims for acts that occurred prior to the Original Complaint given the Court's practice of allowing full discovery on pre-suit knowledge and indirect infringement. Plaintiffs expect that discovery will yield information to assert such pre-suit indirect infringement and reserves the right to amend the Complaint or otherwise add the issue to the case as may be appropriate.

38. Uber induces infringement of the '704 patent by intending that others make, use, offer for sale, or sell in the United States, products and/or services covered by the '704 patent, including but not limited to the Accused Instrumentalities. Uber provides these products and/or services to others, such as riders, Uber Eat customers, resellers and end-user customers, who, in turn, use, provision for use, offer for sale, or sell in the United States products and/or services that directly infringe one or more claims of the '704 patent. As a non-limiting example, by providing the Uber apps directly or indirectly to riders in the Western District of Texas, Uber intends and encourage riders, via instructions, user prompts, product literature, etc., to install the Uber app on a rider's phone in a manner that infringes claim 48 as shown in Exhibit E.

39. Uber contributes to the infringement of the '704 patent by others by knowingly providing products and/or services that when configured result in a system or performance of a method that directly infringes one or more claims of the '704 patent.

40. Upon information and belief, Uber has had actual knowledge of the '704 patent since at least as early as the service upon Uber of the Original Complaint.

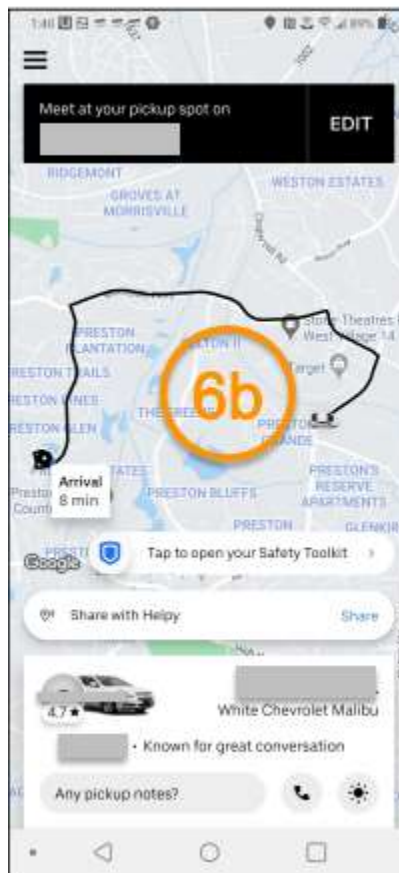
41. Uber commits affirmative acts that cause infringement of one or more claims of the '704 patent with knowledge of the '704 patent and knowledge or willful blindness that the induced acts constitute infringement of one or more claims of the '704 patent. As an illustrative example only, Uber induces such acts of infringement by its affirmative actions of intentionally providing software components that when used in their normal and customary way, infringe one or more claims of the '704 patent and/or by directly or indirectly providing instructions on how to use its products and/or services in a manner or configuration that infringes one or more claims of the '704 patent, including those found at www.Uber.com, in product literature and items described in the exemplary claim charts hereto.

42. Uber commits contributory infringement by, *inter alia*, knowingly selling products and/or services including features that when used cause the direct infringement of one or more claims of the '704 patent by a third party (e.g., a rider or Uber Eats customer), and which have no substantial non-infringing uses, or include a separate and distinct component that is especially made or especially adapted for use in infringement of the '704 patent and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

43. As an example, Uber provides its apps to riders and users in connection with its offering for sale and selling of car rides to users or delivery services to Uber Eats customers.

Uber provides such software for the purpose of selling such services. As such, the apps are part of the sale of such services.

44. The Uber App includes particular software code that has no substantial non-infringing use. As a non-limiting example, the portion or component of the software code that is responsible for the “Share with Helpy” actions and features illustrated in the following screen shot has no substantial non-infringing uses:



45. Uber also infringes the ‘704 Patent under 35 U.S.C. §271(f)(1) and (f)(2) either literally and/or by the doctrine of equivalents. This complaint does not currently assert infringement claims under 35 U.S.C. §271(f)(1) and (f)(2) for acts that occurred prior the Original Complaint given the Court’s practice of allowing full discovery on pre-suit knowledge

and indirect infringement. Plaintiffs expect that discovery will yield information to assert such a claim and reserves the right to amend the Complaint or otherwise add the issue to the case as may be appropriate.

46. The acts described above with respect to inducing infringement and contributory infringement support infringement under the mentioned statute to the extent that the acts that would constitute direct infringement occurs outside the U.S. For example, Uber supplies or causes to be supplied in or from the US its Uber apps for drivers, riders and customers outside the U.S. who in turn save them (and use them) on their phones. The drivers, riders and customers then use their phones in a manner that would directly infringe if it occurred in the U.S.

47. As a result of Uber's acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

Plaintiffs request that the Court enter judgment against Uber:

- (A) that Uber has infringed one or more claims of each of the Asserted Patents, directly and/or indirectly, literally and/or under the doctrine of equivalents;
- (B) awarding damages sufficient to compensate Plaintiffs for Uber's infringement under 35 U.S.C. § 284;
- (C) finding this case exceptional under 35 U.S.C. § 285 and awarding Plaintiffs their reasonable attorneys' fees;
- (D) awarding Plaintiffs their costs and expenses incurred in this action;
- (E) awarding Plaintiffs prejudgment and post-judgment interest; and
- (F) granting Plaintiffs such further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all claims so triable under Federal Rule of Civil Procedure 38.

Date: December 22, 2020

Respectfully submitted,

/s/Derek Gilliland _____

DEREK GILLILAND
STATE BAR NO. 24007239
SOREY, GILLILAND & HULL, LLP
109 W. Tyler St.
Longview, Texas 75601
903.212.2822 (telephone)
903.212.2864 (facsimile)
dgilliland@SoreyLaw.com

KARL RUPP
STATE BAR NO. 24035243
NIX PATTERSON L.L.P.
1845 Woodall Rodgers Fwy., Suite 1050
Dallas, Texas 45001
972.831.1188 (telephone)
972.444.0716 (facsimile)
krupp@nixlaw.com

HOWARD WISNIA
CALIFORNIA STATE BAR NO. 184626
WISNIA PC
12770 High Bluff Dr., Suite 200
San Diego, CA 92130
Tel: (858) 461-0989
howard@wisnialaw.com

COUNSEL for PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been delivered to all counsel of record via the Court's CM/ECF service on this 22nd day of December, 2020.

/s/ Derek Gilliland

Derek Gilliland