UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

AERITAS, LLC, Plaintiff v. **DARDEN CORPORATION, AND OLIVE GARDEN OF TEXAS LLC** Defendant	**Case No. 6:20-cv-00938-ADA** **JURY TRIAL DEMANDED**

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC ("Aeritas" or "Plaintiff") files this Second Amended Complaint for patent infringement against Darden Corporation and Olive Garden of Texas, LLC (collectively "Defendant"), and alleges as follows:

NATURE OF THE ACTION

1.   This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq*.

PARTIES

2.   Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3.   Upon information and belief, Darden Corporation ("Darden") is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 1000 Darden Center Dr Orlando, Florida 32837.

4.   Upon information and belief, Olive Garden of Texas LLC ("Olive Garden") is a Texas Limited Liability Company with a principal place of business at 1000 Darden Center Dr Orlando, Florida 32837.

5.   On information and belief, Olive Garden is an affiliate of and is controlled by Darden.

JOINT ENTERPRISE

6.   On information and belief, Darden Corporation and Olive Garden of Texas LLC have jointly and severally entered into and formed a joint enterprise for the purpose of exploiting and profiting from the use of the Accused Products, as detailed herein, as well as the development and use of the olivegarden.com website and Olive Garden restaurants in this Judicial District.

7.   On information and belief, the Darden Corporation and Olive Garden of Texas LLC have together entered into an express or implied agreement to exploit and profit from the use of the Accused Products, the olivegarden.com website and Olive Garden restaurants in this Judicial District.

8.   On information and belief, Darden Corporation and Olive Garden of Texas LLC, via their joint enterprise, generate revenues, business goodwill, and market share, which bolsters their respective reputations and ability to generate sales to other customers in this Judicial District.

9.   On information and belief, the actions of Darden Corporation and Olive Garden of Texas LLC were carried out in furtherance of the common purpose of exploiting and profiting from the use of the Accused Products, the olviegarden.com website, and the Olive Garden restaurants in this Judicial District.

10.   On information and belief, the actions of Darden Corporation and Olive Garden of Texas LLC complained of herein benefit Darden Corporation and Olive Garden of Texas LLC

and, as such, exhibits a common pecuniary interest (including but not limited to revenues, goodwill, market share, and sales advantage) between Darden Corporation and Olive Garden of Texas LLC.

11.   On information and belief, each of Darden Corporation and Olive Garden of Texas LLC are sophisticated parties and entered into an agreement with each other and mutually exercise control over the joint enterprise.

12.   On information and belief, the joint enterprise is further described and exhibited on the olivegarden.com website.

13.   On information and belief, the joint enterprise exists and operates in this judicial District.

14.   On information and belief, at all times relevant with respect to the asserted claims of infringement in this suit, Olive Garden acted as an agent of Daren and Darden acted as an agent of Olive Garden.

15.   On information and belief, at all times relevant with respect to the asserted claims of infringement in this suit, all actions of Olive Garden are attributable to Darden.

16.   On information and belief, at all times relevant with respect to the asserted claims of infringement in this suit, all actions of Darden are attributable to Olive Garden.

17.   On information and belief, as a result of its actions, and agency with Olive Garden, Darden is a necessary party to this action.

18.   On information and belief, the joint enterprise, Olive Garden, and Darden use the Olive Garden restaurants in this district as regular and established places of business.

JURISDICTION AND VENUE

19.   This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

20.   Upon information and belief, Darden Corporation and Olive Garden of Texas LLC are subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

21.   Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Darden Corporation and Olive Garden of Texas LLC has committed acts of infringement and their joint enterprise has regular and established places of business in this judicial district.

22.   Venue is also proper in this District because, on information and belief, Darden has committed acts of infringement and has a regular and established place of business in this judicial district via the actions of its agents.

23.   Venue is also proper in this District because, on information and belief, Olive Garden has committed acts of infringement and has a regular and established place of business in this judicial district.

OVERVIEW OF THE OLIVE GARDEN APP

24.   Darden Corporation and Olive Garden of Texas LLC provide for their customers use the Olive Garden App, which is available for use with iOS and Android devices:

https://apps.apple.com/us/app/olive-garden-italian-kitchen/id1067313166
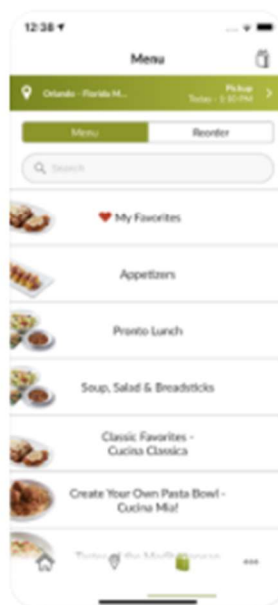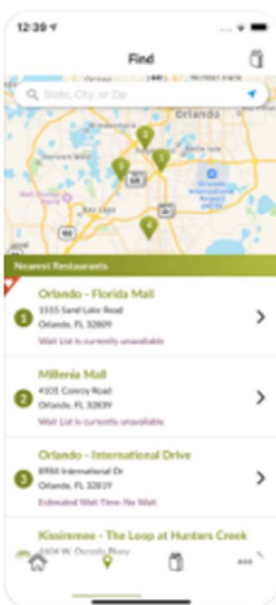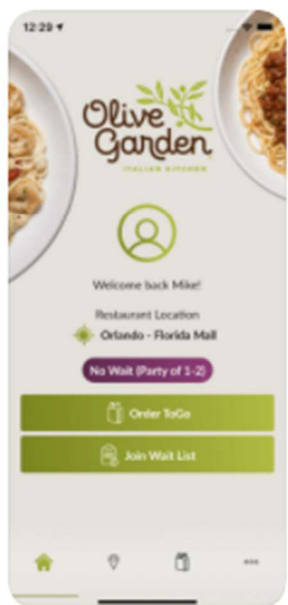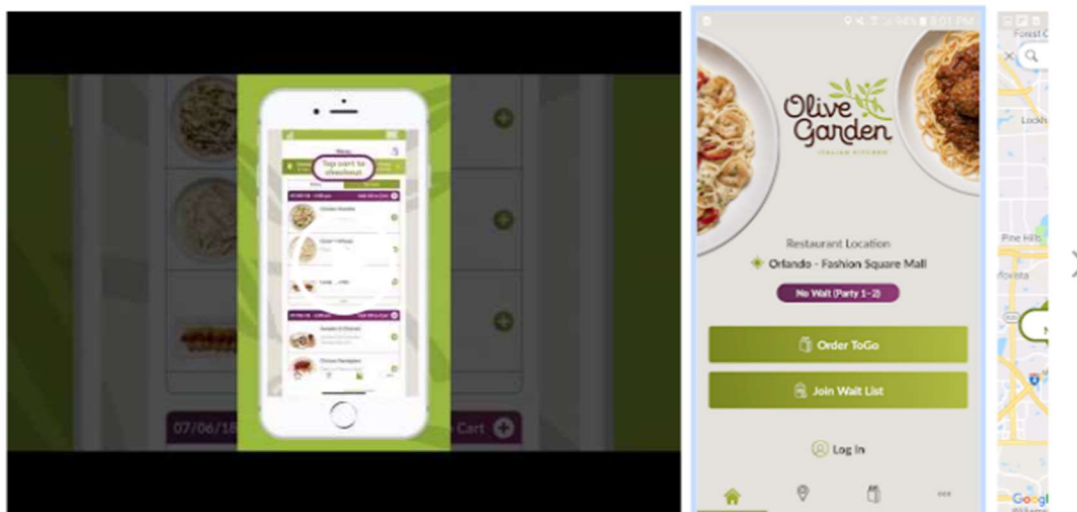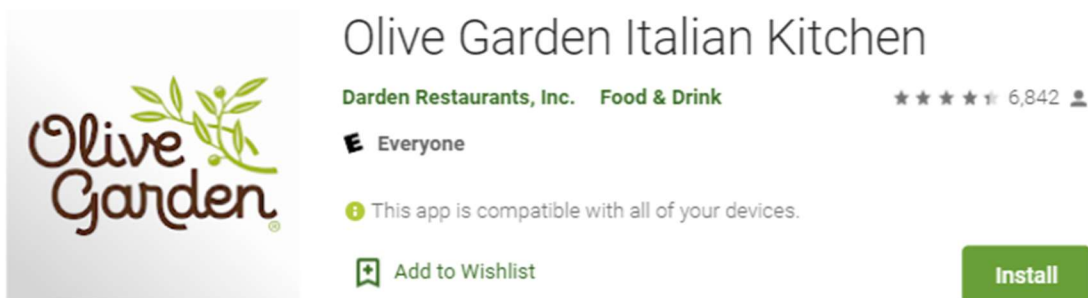
The Olive Garden app conveniently brings your favorites to your fingertips. Find real-time directions to your nearest Olive Garden, browse the menu, place and save ToGo orders, save your spot on the Wait List and more, all within a few taps.

https://play.google.com/store/apps/details?id=com.darden.mobile.olivegarden&hl=en_US

25.   The Olive Garden App relies on a remote server to function, which executes programming instructions to provide a rules engine.
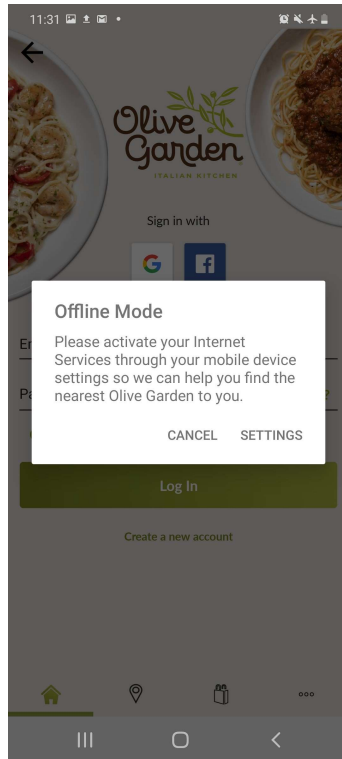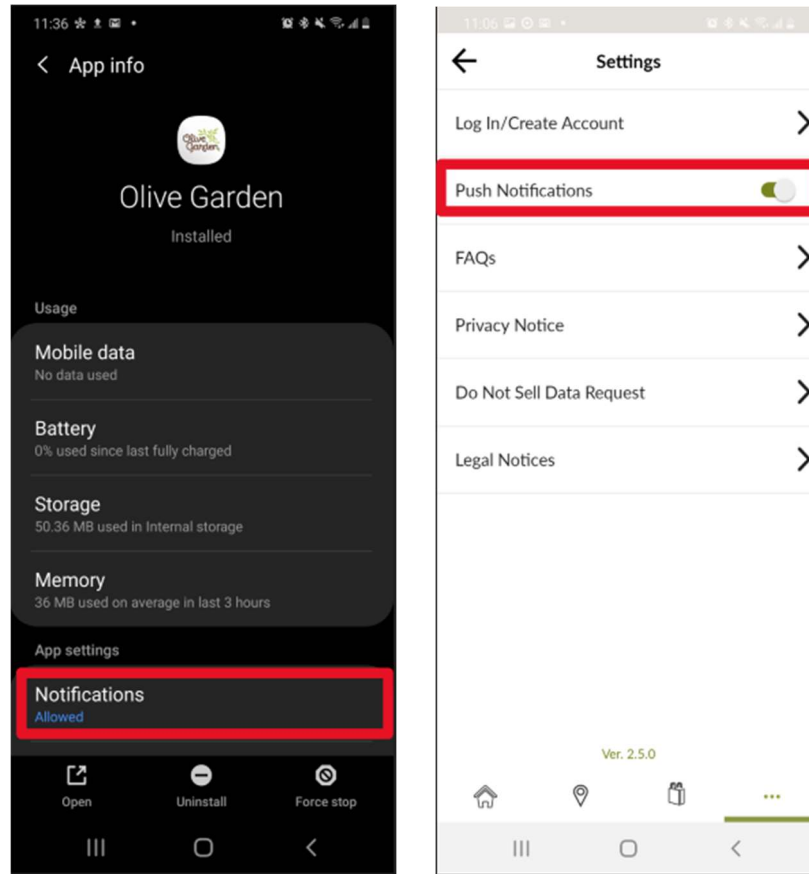
26.   The Olive Garden App provides an indication of permission to provide the

mobile device a notification with an associated notification criterion.

https://developer.android.com/guide/topics/permissions/requesting.html

https://developer.android.com/guide/topics/permissions/normal-permissions.html

27.   In order to operate properly, the Olive Garden server obtains permission to access the mobile device's location.
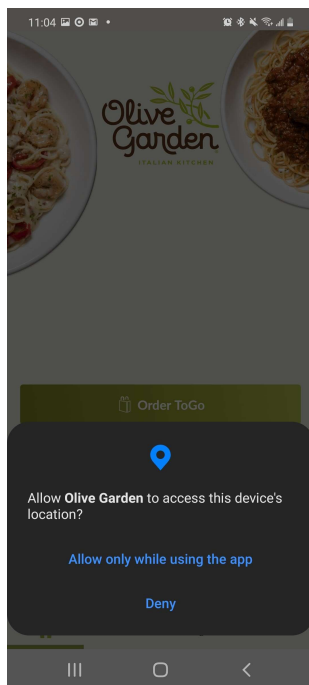
28.   If the user's device is located near an Olive Garden location that does not have any Join Wait list availability, the Olive Garden App provides a notification that the user must select a new location.
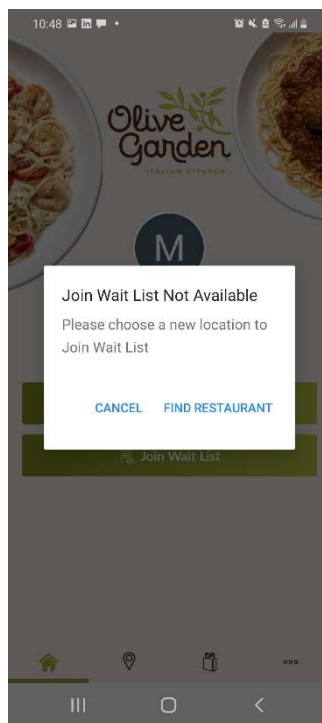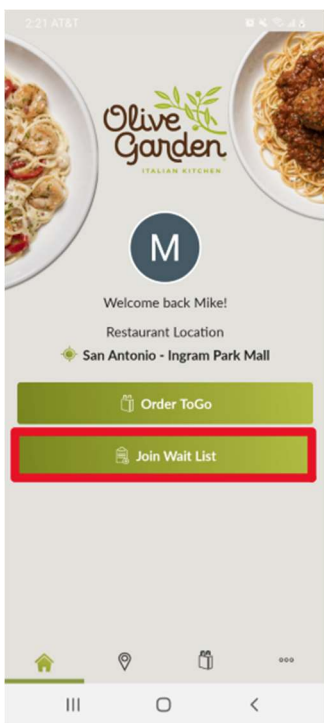
29.   After the user's device receives a notification, the Olive Garden server receives additional data in the form of a touchscreen input.
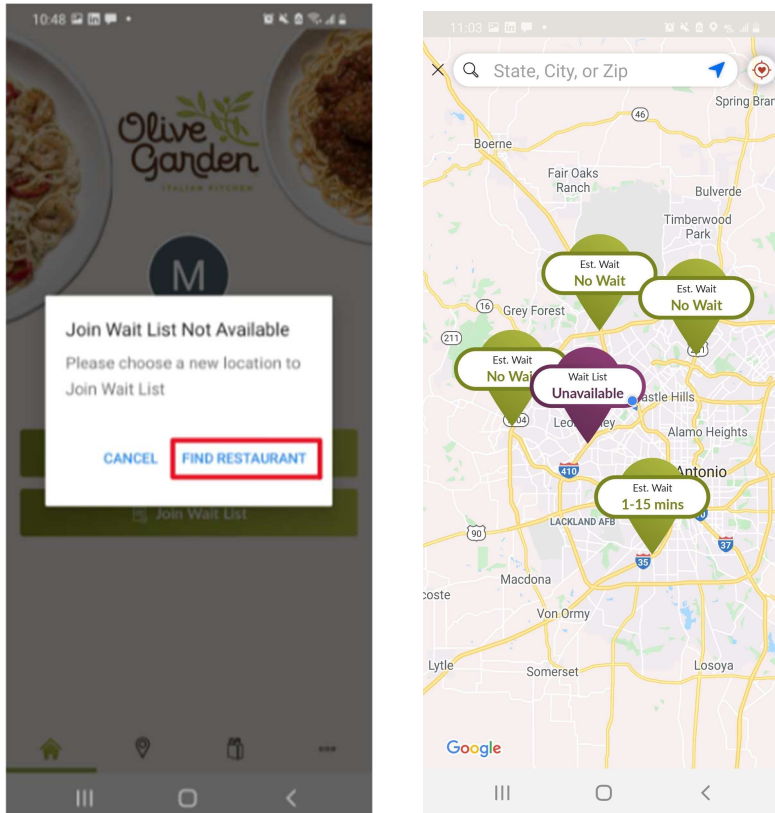
30.   After tapping on a notification option, the Olive Garden App displays a map of restaurant locations based on retrieved information.
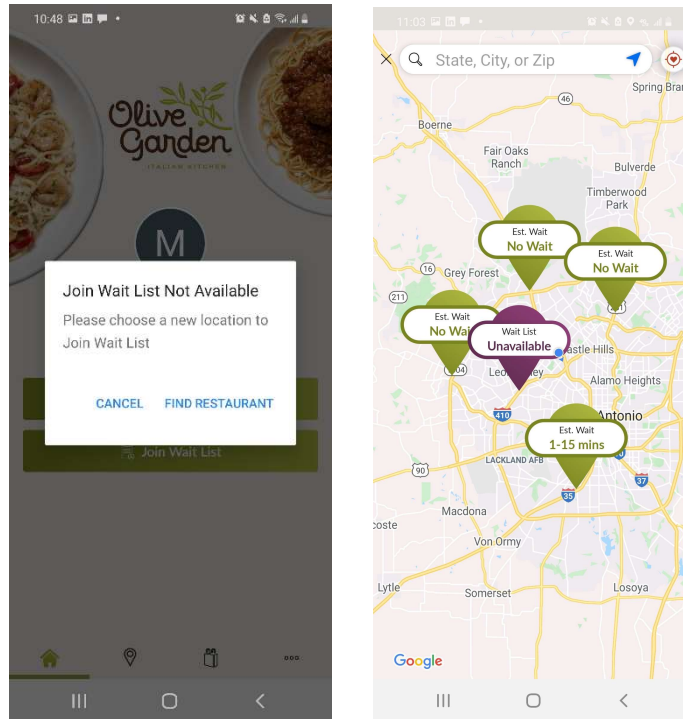
31.   When the user selects an Olive Garden location that is not accepting the user to Join the Wait List, the Olive Garden App provides the user a visual notification indicating the user must find a different location.
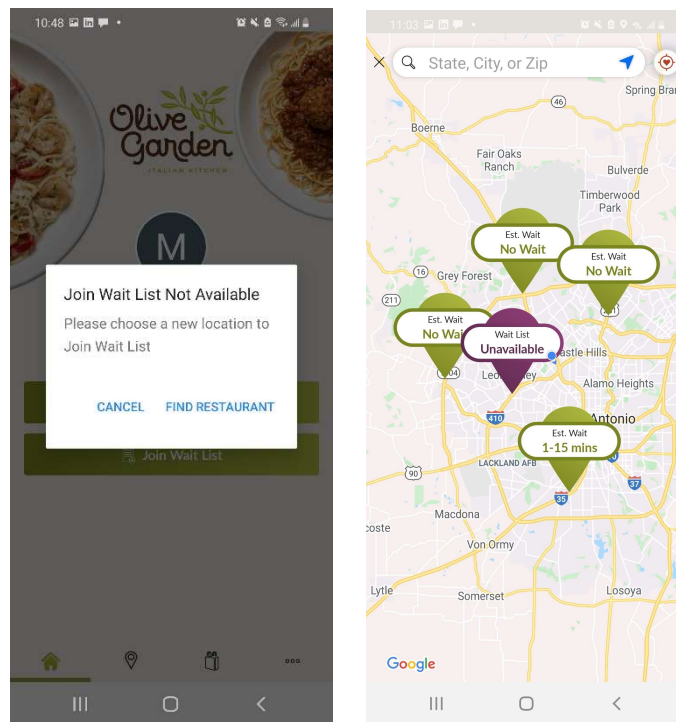
32.   The Olive Garden App stores data on items the user has expressed interest, such as favorite locations and stores data.
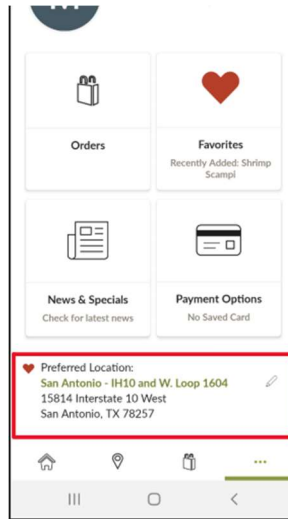
33.   The Olive Garden App stores data associated with one or more inventory attributes, such as whether there is any wait at a restaurant.
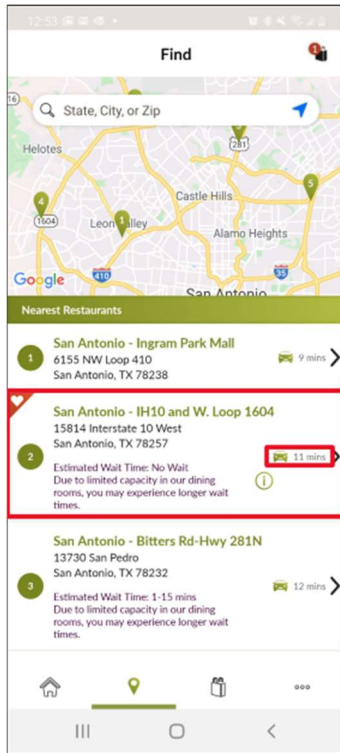
34.   The Olive Garden App includes notification criteria that define when notifications are to be delivered to the user's device, including an email notification.
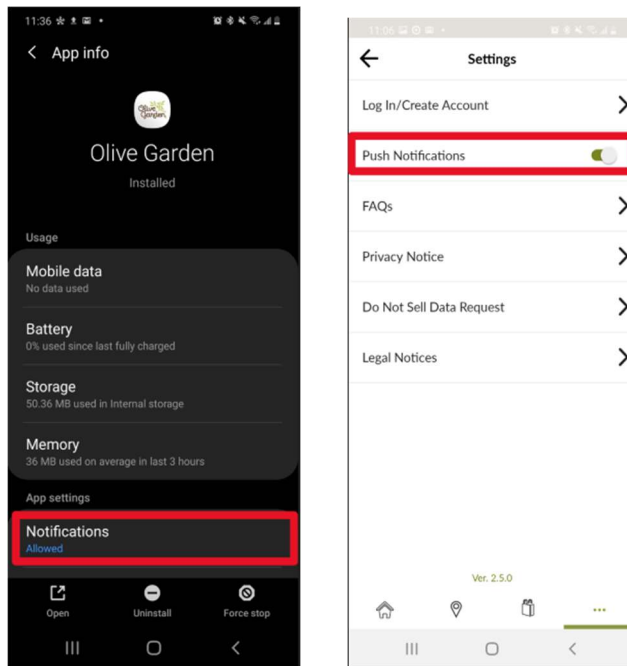
35.   The Olive Garden App generates a message for delivery to the user's device if a matching rule is triggered and a notification criteria is met.
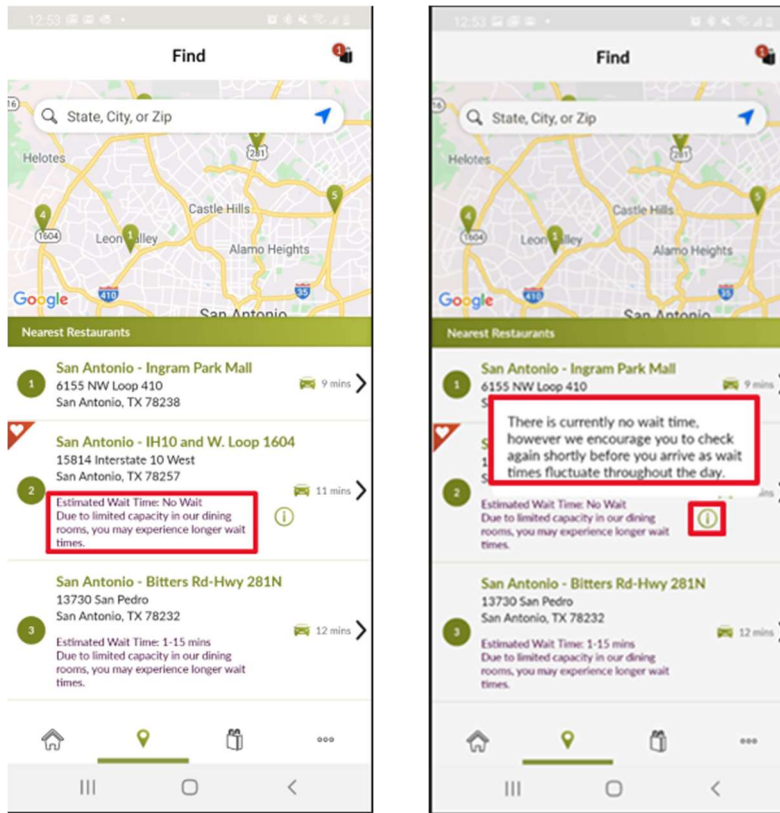
36.   The Olive Garden App generates a message that identifies available favorite locations that are open and is accepting online orders.
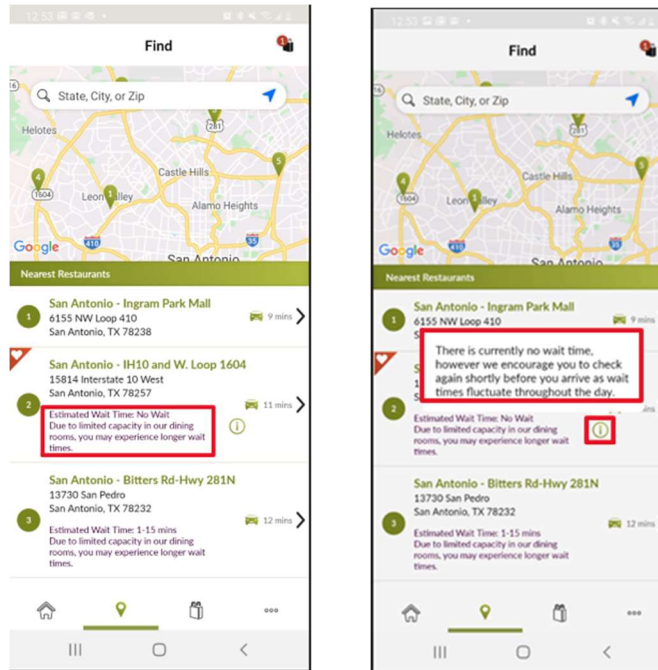
37.   If the appropriate criteria are met, the Olive Garden App delivers an appropriate message to the user's device.
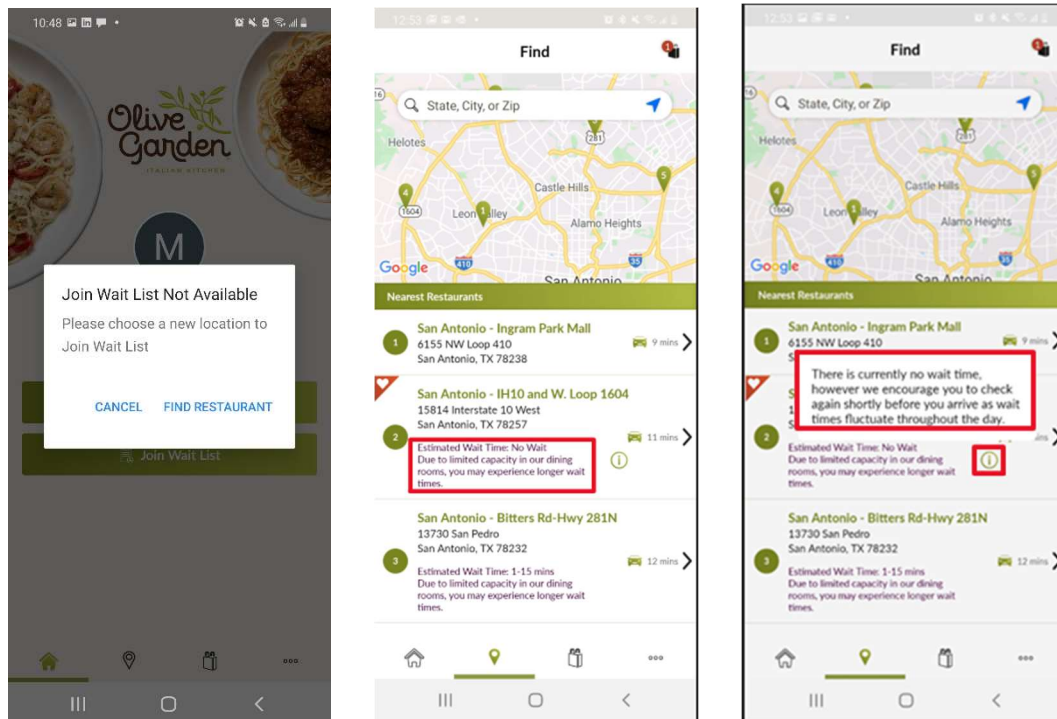
COUNT I
(Infringement of U.S. Patent No. 8,055,285)

38.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

39.   Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the "'285 Patent"), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the '285 Patent is attached as Exhibit PX-285.

40.   The '285 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

41.   Darden Corporation and Olive Garden of Texas LLC have been and are now infringing one or more claims of the '285 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the Olive Garden server in the United States without authority.

42.   Darden Corporation and Olive Garden of Texas LLC have also infringed the '285 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '285 Patent.

43.   Claim 1 recites:

      1.   A method, comprising:

            at a first time, receiving and storing an input in a user profile in a

                  database, the input comprising consumer interest data;

            at a second time distinct from the first time, obtaining data

                  identifying a current location of the mobile communication

                  device;

            based on the input stored in the user profile and the current

location of the mobile communication device, initiating a

search to locate information pertinent to the input;

receiving results derived from the search; and

in response to the input and the search, delivering, by a

notification server, information to the mobile

communications device.

44.   More particularly, Darden Corporation and Olive Garden of Texas LLC infringe at least claim 1 of the '285 Patent. Darden Corporation and Olive Garden of Texas LLC receive and store an input in a user profile in a database, the input comprising consumer interest data. At a second time, data identifying a current location of the mobile communications device on which the Accused Instrumentality is installed is obtained. Based on the input and location, Darden Corporation and Olive Garden of Texas LLC perform a search to locate pertinent information (e.g., nearby restaurants) and receive the results of such search, distance from mobile device. Darden Corporation and Olive Garden of Texas LLC then provide the information to the mobile communications device.

45.   Aeritas has been damaged by Darden Corporation and Olive Garden of Texas LLC's infringing activities.

COUNT II
(Infringement of U.S. Patent No. 9,390,435)

46.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

47.   Plaintiff is the owner, by assignment, of U.S. Patent No. 9,390,435 (the "'435 Patent"), entitled MIXED-MODE INTERACTION, which issued on June 12, 2016. A copy of the '435 Patent is attached as Exhibit PX-435.

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

49.   Darden Corporation and Olive Garden of Texas LLC have been and is now infringing one or more claims of the '435 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the servers in the United States without authority.

50.   Darden Corporation and Olive Garden of Texas LLC have also infringed the '435 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '435 Patent.

51.   Claim 1 recites:

1.   Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device
        user a notification, the notification having an associated
        notification criteria;

at a given time, determine a location of a mobile device;

based at least in part on a determined location of the mobile device
        and the notification criteria, to provide to the mobile device
        the notification, the notification being associated at the
        mobile device with one of: an audible, visual and tactile
        alert;

receive second data as a result of an input being received at the

mobile device following the notification;

retrieve information associated with the input and the determined

location of the mobile device; and

provide to the mobile device a response to the input, the response

based on the retrieved information.

52.   More particularly, Darden Corporation and Olive Garden of Texas LLC infringe at least claim 1 of the '435 Patent. On information and belief, Darden Corporation and Olive Garden of Texas LLC employ a processor and computer memory holding computer program instructions to perform the functions described above. Darden Corporation and Olive Garden of Texas LLC receive data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Darden Corporation and Olive Garden of Texas LLC determine the location of the mobile device. Based on the location and notification criteria, Darden Corporation and Olive Garden of Texas LLC provide at least a visual alert notification. Darden Corporation and Olive Garden of Texas LLC receive second data as a result of an input being received at the mobile device, retrieve information associated with the input and location, and provide responsive information to the mobile device (e.g., restaurant information).

53.   Aeritas has been damaged by Darden Corporation and Olive Garden of Texas LLC's infringing activities.

COUNT III
(Infringement of U.S. Patent No. 9,888,107)

54.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

55.   Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the "'107 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the '107 Patent is attached as Exhibit PX-107.

56.   The '107 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

57.   Darden Corporation and Olive Garden of Texas LLC have been and is now infringing one or more claims of the '107 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the Olive Garden servers in the United States without authority.

58.   Darden Corporation and Olive Garden of Texas LLC have also infringed the '107 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '107 Patent.

59.   Claim 5 recites:

5.   Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria;

at a given time, determine a location of a mobile device;

based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the

mobile device with one of: an audible, visual and tactile alert;

receive second data as a result of an input being received at the mobile device following the notification;

retrieve information associated with the input and the determined location of the mobile device; and

provide to the mobile device a response to the input, the response based on the retrieved information;

wherein the computer program instructions comprise a rules engine that comprises first and second components, a first component that evaluates the notification criteria, and a second component that executes notification rules.

60.   More particularly, Darden Corporation and Olive Garden of Texas LLC infringe at least claim 5 of the '107 Patent. On information and belief, Darden Corporation and Olive Garden of Texas LLC employ a processor and computer memory holding computer program instructions to perform the functions described above. Darden Corporation and Olive Garden of Texas LLC receive data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Darden Corporation and Olive Garden of Texas LLC determine the location of the mobile device. Based on the location and notification criteria, Darden Corporation and Olive Garden of Texas LLC provide at least a visual alert notification. Darden Corporation and Olive Garden of Texas LLC receive second data as a result of an input being received at the mobile device, retrieve information associated with the input and location, and provide responsive information to the mobile device. On information and belief, the program instructions include first

and second components of a rules engine to evaluate notification criteria and execute notification rules.

61.   Aeritas has been damaged by Darden Corporation and Olive Garden of Texas LLC's infringing activities.

COUNT IV
(Infringement of U.S. Patent No. 10,362,160)

62.   Aeritas incorporates paragraphs 1 through 20 as though fully set forth herein.

63.   Plaintiff is the owner, by assignment, of U.S. Patent No. 10,362,160 (the "'160 Patent"), entitled MIXED-MODE INTERACTION, which issued on July 23, 2019. A copy of the '160 Patent is attached as Exhibit PX-160.

64.   The '160 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

65.   Darden Corporation and Olive Garden of Texas LLC have been and is now infringing one or more claims of the '160 Patent under 35 U.S.C. § 271 by making and using the Olive Garden App with users' iOS and Android devices and the Olive Garden servers in the United States without authority.

66.   Darden Corporation and Olive Garden of Texas LLC have also infringed the '160 Patent by encouraging users of the Olive Garden App to use the user's iOS or Android devices with the Olive Garden App to practice the claims of the '160 Patent.

67.   Claim 1 recites:

1.   Apparatus, comprising:

a processor;

computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device

user a notification, the notification having an associated

notification criteria;

at a given time, receive information identifying a determined

location of a mobile device;

based at least in part on a determined location of the mobile device

and the notification criteria, to provide to the mobile device

the notification, the notification being associated at the

mobile device with one of: an audible, visual and tactile

alert;

receive second data as a result of an input being received at the

mobile device following the notification;

retrieve information associated with the input and the determined

location of the mobile device; and

provide to the mobile device a response to the input, the response

based on the retrieved information.

68.   More particularly, Darden Corporation and Olive Garden of Texas LLC infringe

at least claim 1 of the '160 Patent. On information and belief, Darden Corporation and Olive

Garden of Texas LLC employ a processor and computer memory holding computer program

instructions to perform the functions described above. Darden Corporation and Olive Garden

of Texas LLC receive data indicating permission to provide a notification to a mobile

device user in accordance with notification criteria. At a given time, Darden Corporation

and Olive Garden of Texas LLC determine the location of the mobile device. Based on the

location and notification criteria, Darden Corporation and Olive Garden of Texas LLC provide

at least a visual alert notification, retrieve information associated with the input and location, and provide responsive information to the mobile device. On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

69.   Aeritas has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Darden Corporation and Olive Garden of Texas LLC:

1.   declaring that Darden Corporation and Olive Garden of Texas LLC has infringed the '285, the '435, the '107, and the '160 Patents;

2.   awarding Plaintiff its damages suffered as a result of Darden Corporation and Olive Garden of Texas LLC's infringement of the '285, the '435, the '107, and the '160 Patents;

3.   awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and

4.   granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: December 18, 2020   Respectfully submitted,

/s/ Raymond W. Mort, III
Raymond W. Mort, III
Texas State Bar No. 00791308
raymort@austinlaw.com

THE MORT LAW FIRM, PLLC
100 Congress Ave, Suite 2000
Austin, Texas 78701
Tel/Fax: (512) 865-7950

**ATTORNEYS FOR PLAINTIFF
AERITAS, LLC**