

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

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

9280-0366 QUÉBEC INC. d/b/a TRANSIT,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges against Defendant 9280-0366 Québec inc. d/b/a Transit (“Transit”), on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Ave., Ste. 203, Concord, MA 01742.
2. Transit is a corporation organized and existing under the laws of Québec, Canada, with its principal place of business located at 803-5333 av. Casgrain, Montréal, Québec H2T1X3, Canada.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*
4. This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Transit. Transit has transacted business within Delaware, committed acts of patent infringement in Delaware, and made and performed on contracts substantially connected with Delaware. Transit has made certain minimum contacts with Delaware such that the maintenance of this suit does not offend traditional notions of fair play and substantial justice. As explained below, Transit has infringed Blackbird Technologies' patent rights through the use of a software application, called "the Transit App" or simply "Transit," executable on users' smartphones. The Transit App provides real-time public transit information, such as recommending routes for users to travel to their destinations. Transit has marketed, offered, and provided this infringing instrumentality in Delaware to citizens of Delaware through various interactive means, including but not limited to its website (transitapp.com) and the Apple and Google app stores. Transit specifically targets its services to users of public transportation systems in and around Wilmington, who accept terms and conditions set by Transit in order to use the Transit App. Transit uses data provided under license by at least DART First State, which provides public transit services in Delaware. Citizens of Delaware, in turn, have used the infringing instrumentality along with information provided by Transit to navigate public transportation systems in Delaware. Transit monitors the locations of users of the Transit App by monitoring the locations of their respective smartphones. Transit has used a process in this District where such use infringes Blackbird Technologies' patent rights.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c)(3) at least because Transit is not resident in the United States and therefore may be sued in any judicial district.

THE PATENT-IN-SUIT

7. U.S. Patent No. 9,400,190 (the “’190 patent”) entitled, “Real-Time Traffic Condition Measurement Using Network Transmission Data,” was duly and legally issued by the U.S. Patent and Trademark Office on July 26, 2016. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the ‘190 patent, including all right to recover for any and all infringement thereof. The ‘190 patent is valid and enforceable. A true and correct copy of the ‘190 patent is attached as Exhibit A.

8. The claims of the ’190 patent are directed to an unconventional process of real-time traffic condition monitoring, measurement, route mapping, and travel-time estimation. The claimed invention improves the functioning of conventional traffic monitoring and route mapping systems where, prior to the claimed invention, receiving vehicle traffic information for a calculated route and estimating travel-time did not involve calculating vehicle traffic information based on a plurality of cell phone locations selected based on the proximity of those cell phones to the calculated route. The claimed invention improves the accuracy and reliability of route calculation and travel time estimation by introducing an unconventional technological solution (*e.g.*, an enhanced traffic monitoring architecture using real-time data from a plurality of in-route cell phones to calculate routes and estimated times of travel). The improved functioning of these systems further allows for more accurate departure time alerts and reminders.

COUNT I – INFRINGEMENT OF THE ‘190 PATENT

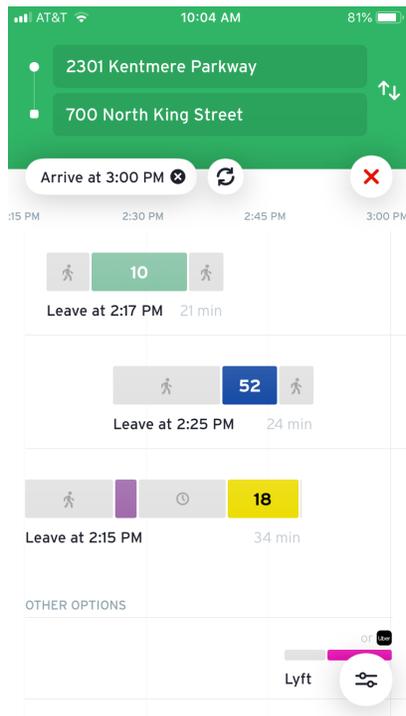
9. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

10. Transit infringes one or more claims of the ‘190 patent, including at least claims 1 and 8, through the Transit App, as discussed in the following paragraphs of this Complaint.

Such paragraphs describe the current version (5.2.7) of the Transit App for iOS. Upon information and belief, the Transit App for Android operates in a substantially similar manner.

11. Through the Transit app, Transit “receiv[es] a destination and a desired time of arrival at the destination from a user,” as recited in claims 1 and 8.

12. For example, in the screenshot below, a user can enter a destination (*e.g.*, 700 N. King Street, Wilmington, DE) and a desired time of arrival at the destination (*e.g.*, 3:00 P.M.):



13. Through the Transit App, Transit “receiv[es] vehicle traffic information for a calculated route predicted to be traveled by the user to the destination,” as recited in claims 1 and 8.

14. For example, as shown in the screenshot above, the Transit App recommends several calculated predicted routes to be traveled by the user to the entered destination. The Transit App receives vehicle traffic information for such routes. For example, according to the Privacy Policy for the Transit App, Transit “collect[s] and process[es] information from your

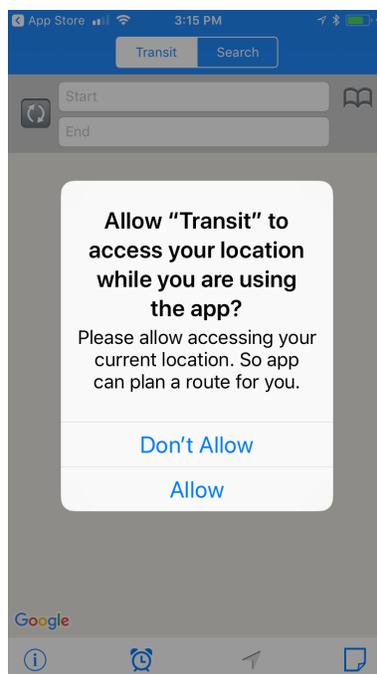
device ..., including ... keep[ing] track of your location and movement, including your latitude, longitude, time and speed of travel.” (See Exhibit B). Transit “use[s] information collected from or provided by you for the following purposes: Provide you with pertinent transport information for nearby services; ... Generate real-time location data of transit vehicles and broadcast the vehicle location and predicted arrival times to other users.” (*Id.*).

15. In the Transit App, “the vehicle traffic information is calculated based on a plurality of cell phone locations, each of the plurality of cell phone locations selected based on a proximity of the cell phone to the calculated route,” as recited in claims 1 and 8.

16. For example, as explained in Paragraph 14, through the Transit App, Transit calculates vehicle traffic information for routes predicted to be travelled by a given user based on other users’ cell phone locations as those other users travel along the same public transportation routes.

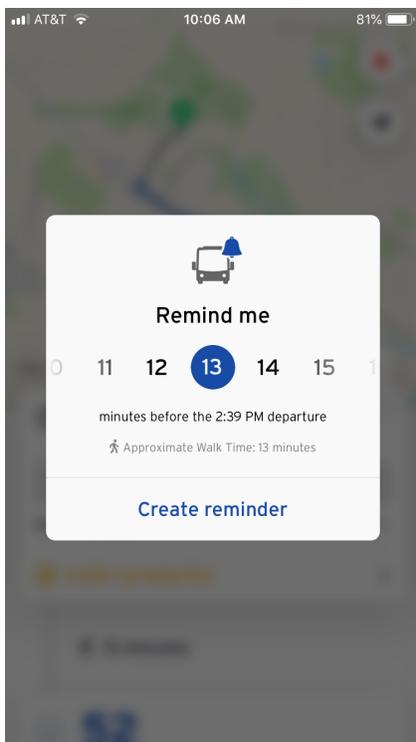
17. In the Transit App, “each of the plurality of cell phone locations is determined following confirmation of a user setting that permits communication of a location of the user to a requestor of the location,” as recited in claims 1 and 8.

18. For example, in the screenshot below, the Transit App requests access to the user’s location, which the user may provide by affirmatively allowing such access through a setting:



19. Through the Transit App, Transit “communicat[es] an alert to the user, based on the vehicle traffic information, indicating the user should proceed to the destination for an on-time arrival at the destination,” as recited in claim 1.

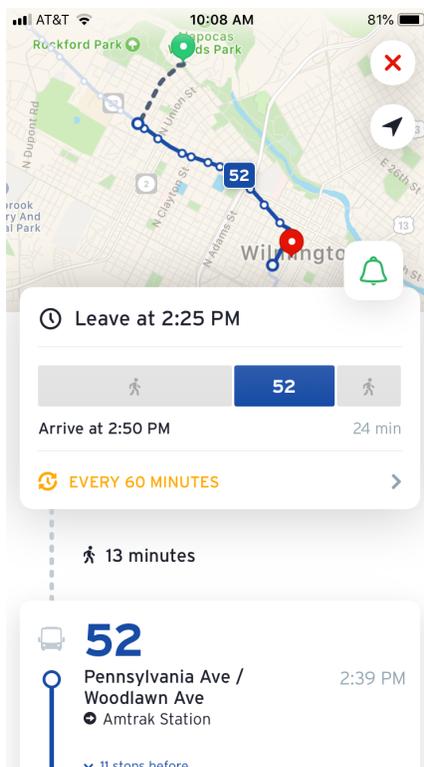
20. For example, in the screenshot below, the user can create a reminder that causes the Transit App to communicate an alert the user, based on the vehicle traffic information, indicating that the user should depart for the destination:



21. Through the Transit App, Transit also “estimat[es] a travel time for the user based on the calculated route and the user’s travel habits,” as recited in claim 8.

22. For example, in the screenshot below, the Transit App provides an estimated travel time (24 minutes):

[space intentionally left blank]



Regarding the user’s travel habits, Transit “collect[s] your preferences, including favorite routes, saved locations and other personal customizations such as the ‘Minimize Walking’ option you may select for planning a-to-b trips.” (See Exhibit B).

DAMAGES

23. Blackbird Technologies has sustained damages as a direct and proximate result of Transit’s infringement of the ‘190 patent.

24. As a consequence of Transit’s past infringement of the ‘190 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

25. As a consequence of Transit’s continued and future infringement of the ‘190 patent, Blackbird Technologies is entitled to royalties for Transit’s infringement of the ‘190 patent on a going-forward basis.

PRAYER FOR RELIEF

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

A. Adjudging that Defendant has infringed the '190 patent, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '190 patent on a going-forward basis;

D. Awarding that this case be exceptional under 35 U.S.C. § 285 and awarding costs, expenses, and attorneys' fees to Blackbird Technologies;

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

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

DEMAND FOR JURY TRIAL

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

Dated: February 20, 2019

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