

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

SENDSIG, LLC,

Plaintiff,

v.

TABLETOP MEDIA, LLC,

Defendant.

CIVIL ACTION NO. 3:18-CV-2053

JURY TRIAL REQUESTED

COMPLAINT FOR PATENT INFRINGEMENT

SendSig, LLC (“SendSig” or “Plaintiff”) alleges the following as its Complaint for Patent Infringement against Defendant Tabletop Media LLC (“Tabletop” or “Defendant”):

THE PARTIES

1. SendSig is a limited liability company organized and existing under the laws of the State of Georgia with its principal office at 3930 E. Jones Bridge Road, Suite 140, Peachtree Corners, GA 30092.

2. Defendant Tabletop Media, LLC is a Delaware limited liability company with its principal place of business at 12404 Park Central Dr. Suite 350 Dallas, TX 75251. Tabletop may be served with process via its registered agent, CT Corporation, 1999 Bryan St., Ste 900, Dallas, TX 75201-3136.

3. Defendant Tabletop Media LLC uses the tradename “Ziosk®” in branding and selling its products, services and media.

JURISDICTION AND VENUE

4. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, namely §§ 271, 281, 284, and 285.

5. Tabletop is subject to personal jurisdiction in this Court under 28 U.S.C. § 1400(b). Tabletop has committed acts of infringement and maintains a place of business in this district, has minimum contacts with Texas, and has purposefully availed itself of the privileges of conducting business here through the sale and marketing of products and services that infringe SendSig’s patent throughout Texas and in this district.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(b) on the grounds that Defendant has committed acts of infringement and has a regular and established place of business in this judicial district.

7. Defendant has previously admitted that venue is proper in this Judicial District because Tabletop resides within this district. *See Tabletop Media, LLC v. Citizen Syss. Am., Corp. and Citizen Syss. Japan Co., Ltd.*, No. 3:16-cv-01304-C (N.D. Tex. 2016), in the United States District Court for the Northern District of Texas, Dallas Division (Dkt. 1, ¶ 14).

FACTUAL BACKGROUND

8. SendSig is the owner by assignment of all right, title and interest in and to United States Patent Number 6,292,164 B2, titled “System and Method for Character Display and Entry in Character Processing System” (the “’164 Patent”), including the right to sue for all past, present, and future infringement.

9. Exhibit A is a true and correct copy of the ’164 Patent.

10. The ’164 Patent issued from U.S. patent application number 09/191,774 (the “’774 Application”) filed on November 13, 1998.

11. Following a full examination, the Patent Office issued the ’164 Patent on September 18, 2001.

12. The ’164 Patent is valid and enforceable.

SUBJECT MATTER OF THE ’164 PATENT

13. The ’164 Patent describes a system and method for character display and entry in a character processing system. The subject matter claimed in the ’164 Patent relates to text processing and user input of information for a text processing system involving displaying a set of characters in a size larger than characters already accepted and displayed in the system.

14. The ’164 Patent recognized that an advantage of the inventions is “the ease of selection among the[] characters.”

15. The '164 Patent teaches a text input and processing system that receives a set of user inputs associated with a set of characters. User input of characters is advantageously enabled by displaying characters for input in a larger size than characters already accepted and displayed in the system.

16. Figures 6A and 6B from the '164 Patent illustrate characters accepted as input by the user and larger print character(s) for selection by the user. Displaying such characters in larger size eases user selection and input.

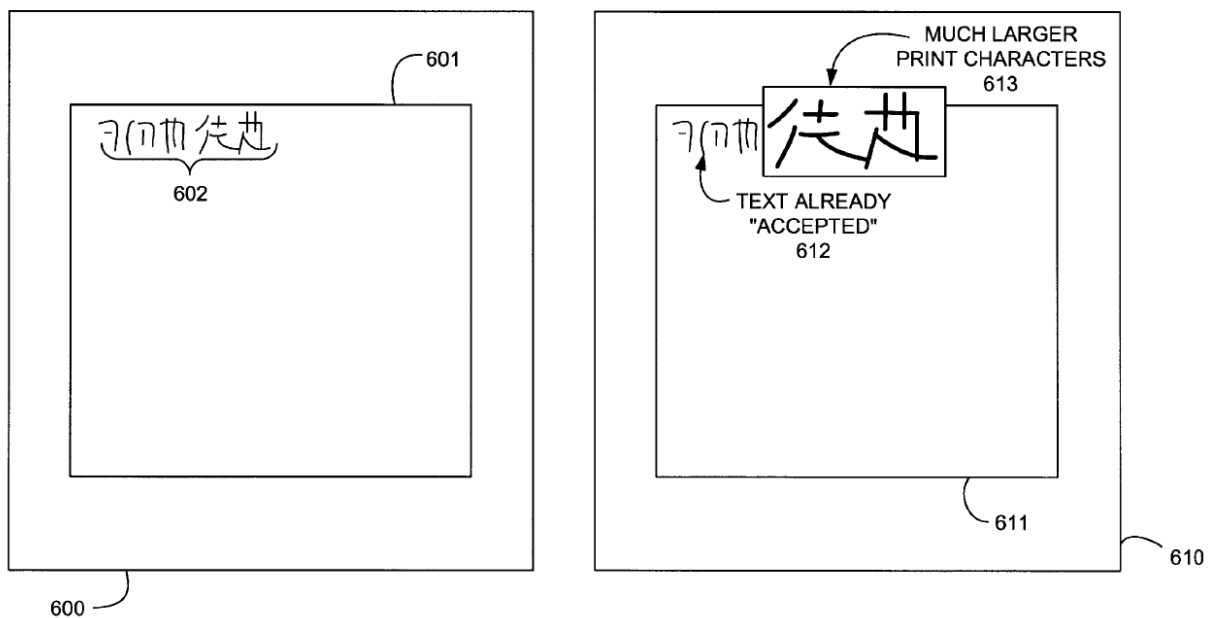


FIG. 6A

FIG. 6B

TABLETOP MEDIA/ZIOSK



17. Tabletop is the developer, owner, and distributor of Ziosk devices such as those shown below that feature a touchscreen interface, credit card reader, and built-in printer.

18. Tabletop makes, imports, markets, sells, offers to sell, and/or uses the Ziosk point-of-sale system (“Ziosk POS”) that includes software and hardware.

19. The Ziosk POS system provides entertainment, ordering and pay-at-the-table functionality for restaurants.

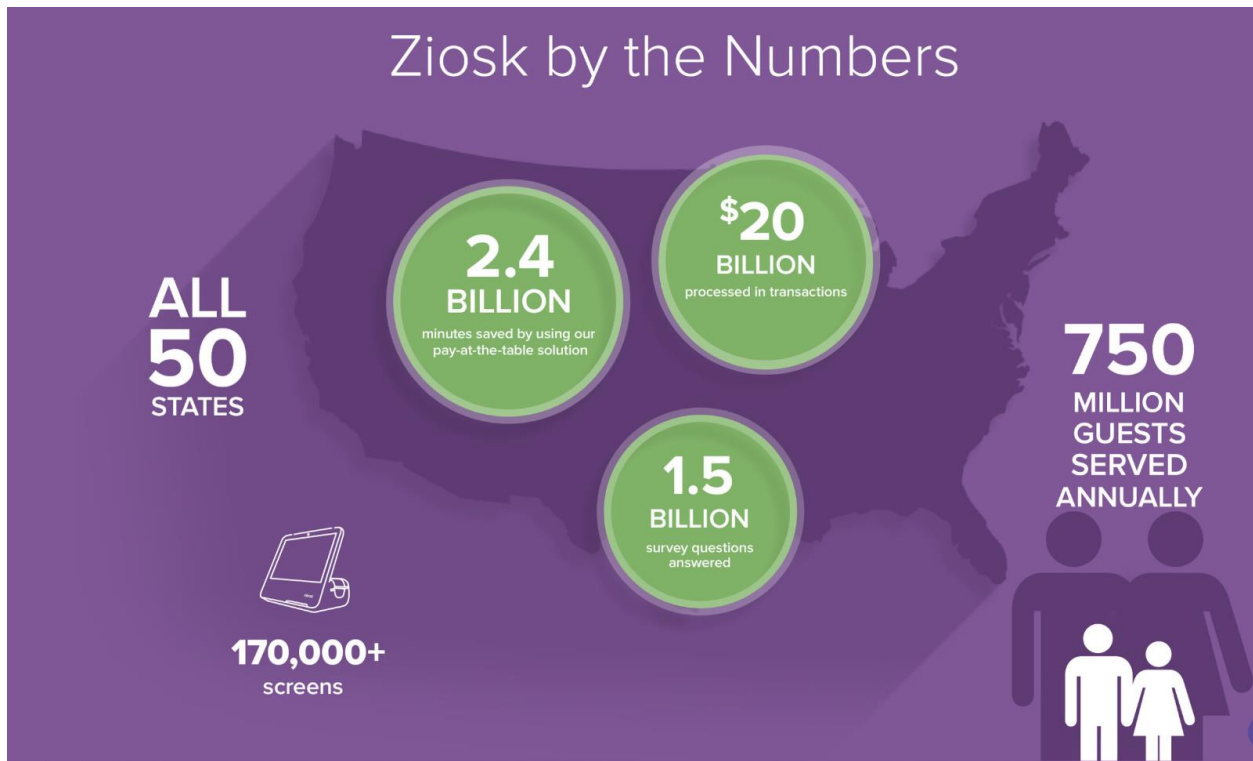
20. The original Ziosk technology and newly launched Ziosk Aurizon™ next generation tablets each feature 7-inch and 8-inch devices with encrypted credit card readers.



21. Ziosk devices are specifically designed for the restaurant industry and typically are installed at customer seating and intended for engagement by restaurant customers.

22. As of May of 2016, Tabletop had 165,089 devices in use in 2,827 restaurant locations nationwide, including at well-known restaurant chains like Chili's, Olive Garden, and Red Robin, among others.

23. According to its Tabletop's website, 750 million guests are served annually by its Ziosk POS System.



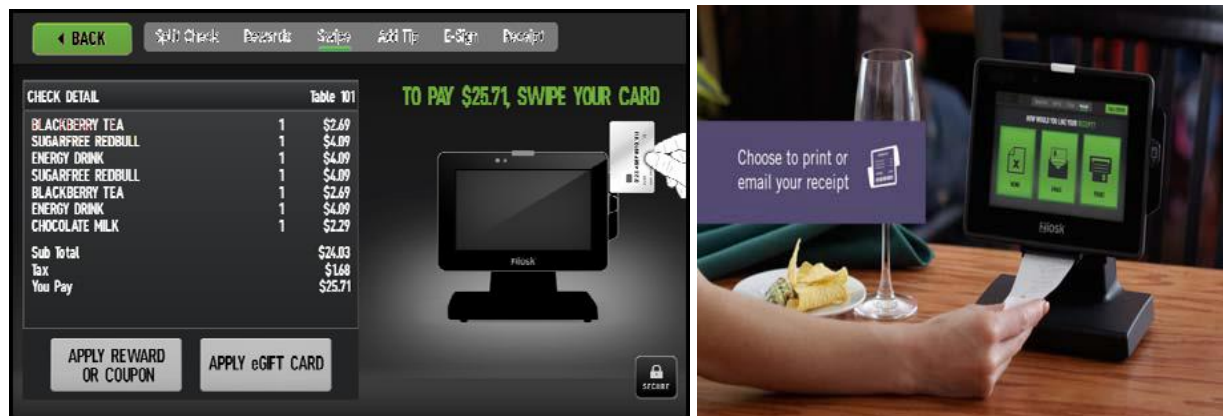
24. Tabletop claims that Ziosk devices are currently active at more than 170K tables.



25. Ziosk devices incorporating the claimed subject matter of SendSig’s ’164 Patent have transformed and streamlined the casual dining experience.

26. Using a Ziosk device, restaurant guests can order food or beverages directly from the device, and they can order on their own schedule, not the schedule of the wait staff.

27. Ziosk devices allows restaurant patrons to pay for their meal with a credit card, debit card, gift card or other payment option (see below).



28. After completing a payment transaction, restaurant patrons are given the choice of emailing or printing a copy of their receipt (see above).

29. Ziosk tablets enable guests to view menu items, play games, view news and entertainment, order food and beverages and ‘pay on demand’ giving control over their dining experience.

30. Featuring interactive capabilities, Ziosk devices provide a media footprint for direct engagement with customers. To capitalize on this engagement opportunity, Tabletop created the Ziosk® Media Network, a digital media platform for partners to create engaging experiences at the point of purchase.

31. Ziosk claims to have revolutionized the experience and economics of dining out.

32. Ziosk's Chief Strategy and Product officer, John Regal described Ziosk's business model as follows: *"We have a very unique business model with what we do with the restaurants. What happens is, we literally are able to give the restaurants the Ziosk for free, and actually we write them a check every month. So they don't actually have to buy the 30 or 40 million dollars of hardware at all."*

33. When asked to explain the model, Mr. Regal continued: *"Yeah, how do we give away money. The way it works is we put the Ziosks on every single table in the restaurant. And the restaurants get all this benefit from people ordering food and drink and all of that. The only thing that the guest pays that's incremental is if the guests want to play the games that's [sic] on the Ziosk. Right on the Ziosk, we have a bunch of the top Android games. And if you want to access the entertainment or watch some videos or some cartoons, it's \$1.99, unlimited for the entire time you're at the table. And that revenue literally pays the lease payment on the equipment, and that's what makes the Ziosk free."*

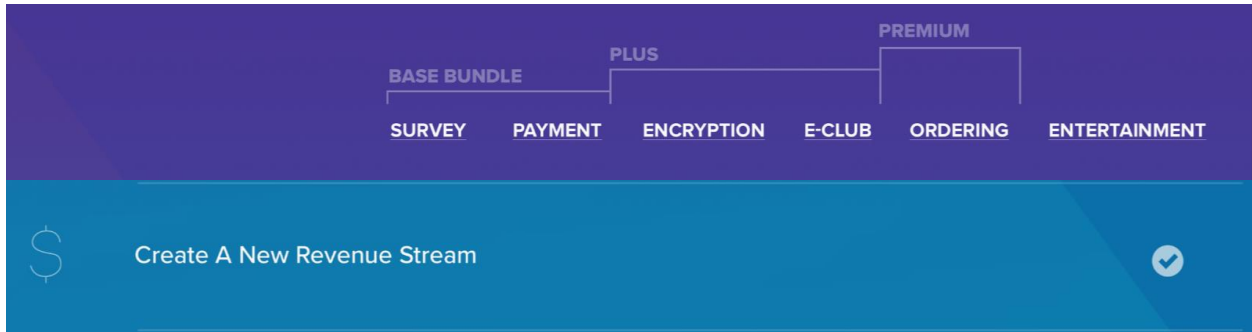
34. Mr. Regal was asked, “So it’s free to the establishment to put in because someone like me, I have a four-year-old, he’s gonna go on there, watch a cartoon, play a game, a 20-year-old is gonna go there, will play some other type of game, and that’s kind of the revenue generator on the back end?”

35. He answered, “Yeah. So to be a little more specific, the restaurant agrees to pay us a monthly service fee, let’s just say it’s \$1,000, the fee varies by the restaurant. They’re going to get the first \$1,000, or whatever the amount they’re paying us is, out of the premium content sales. And we have a track record that sort of shows that they’re going to get more than enough to cover their monthly fee, and then we share whatever incremental revenue above that 50/50.”

36. Tabletop’s website provides additional details about the cost of its devices and the revenue sharing model:

BASE	PLUS	PREMIUM
<ul style="list-style-type: none">Credit & NFC Pay-at-the-TableSurvey on each checkDaily insights reporting	<ul style="list-style-type: none">Includes Base BundleChip Cards/P2PEE-Club (plus additional \$1.00 collection fee)	<ul style="list-style-type: none">Includes everything in Base and Plus BundlesGuest order entryMenu management
\$260	\$310	\$495
includes entertainment with no revenue sharing for the brand	includes entertainment with no revenue sharing for the brand	includes entertainment with no revenue sharing for the brand
Optional: 50/50 revenue sharing for the brand	Optional: 50/50 revenue sharing for the brand	Optional: 50/50 revenue sharing for the brand

37. The games and applications on Ziosk’s devices are revenue generators.



38. A selling point to restaurants interested in using Ziosk devices is revenue generated by customer purchases of applications and games that subsidize the restaurant’s cost of Ziosk hardware.

39. Tabletop’s profitability is tied directly tied to customer purchases and use of applications and games on Ziosk devices.

40. Ziosk includes Ziosk branded games on its devices that are deployed in restaurants across the U.S., including the following identified on the Ziosk website:

Our Customers

Our footprint encompasses the best of the best in the restaurant industry, including the following brands:



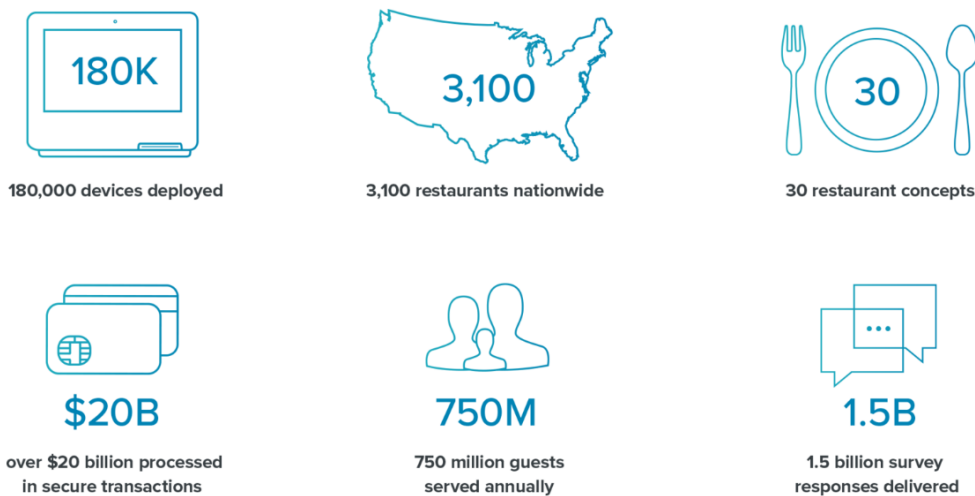
41. According to Tabletop, restaurants that utilize Ziosk share in the revenue from the games and applications on the Ziosk device.

42. Ziosk users such as these restaurants (i.e., TGI Friday's, Olive Garden, Red Robin, etc.) share in revenue from use of the Ziosk device applications and games.

43. On information and belief, subject to discovery in this case, Tabletop and its restaurant customers that have deployed Ziosk systems (such as those listed above) enter into revenue sharing agreements.

44. Ziosk's website provides the following statistics related to use of its devices.


The Numbers Speak for Themselves:




45. Tabletop offers Ziosk branded games and applications on its devices, including zTrivia, its most popular communal game.


46. According to Tabletop, over 10 million people played Trivia, in 2017.

Entertainment

 Over **10 million plays** of our most popular communal game, zTrivia (2017)

 Up to **400% in ROI: business performance + incremental revenue**

- ▶ Provide optional entertainment to guests
- ▶ Create communal experiences at the table
- ▶ Create a new revenue stream for your business

 [View Entertainment](#)

47. Tabletop charges \$1.99 for “unlimited” game play during the user’s dining experience.



48. Tabletop generates revenue through targeted advertising in its trivia games.

49. Ziosk and Uber formed an advertising partnership that Ziosk claims focuses on native integration and contextually relevant content to create a seamless experience for users.

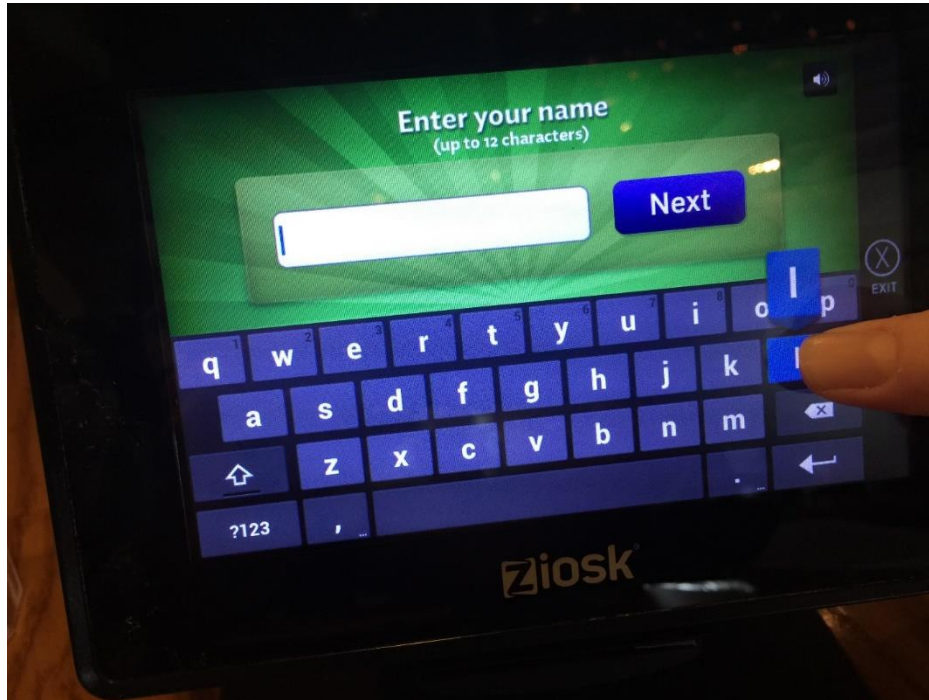
50. Tabletop released a press release stating, *“Uber first appears within the Ziosk experience with a transportation-related trivia question that Chili’s guests are prompted to answer. From there, the guests can enter their mobile number to receive a text message and claim a \$20 Uber ride credit for use during a future Uber experience. With a high number of Chili’s guests using the Ziosk tablet, and an increasing number paying on the tablet, Ziosk acts as a discovery platform for partners like uber to raise awareness of their brand and increase user base.”*

The program focuses heavily on native integration and contextually relevant content to create a seamless experience for users. Uber first appears within the Ziosk experience with a transportation-related trivia question that Chili’s guests are prompted to answer. From there, the guests can enter their mobile number to receive a text message and claim a \$20 Uber ride credit for use during a future Uber experience. With a high number of Chili’s guests using the Ziosk tablet, and an increasing number paying on the tablet, Ziosk acts as a discovery platform for partners like Uber to raise awareness of their brand and increase user base.

51. Tabletop’s Ziosk trivia application generates multiple sources of revenue for Ziosk, its partners, and Tabletop customers.

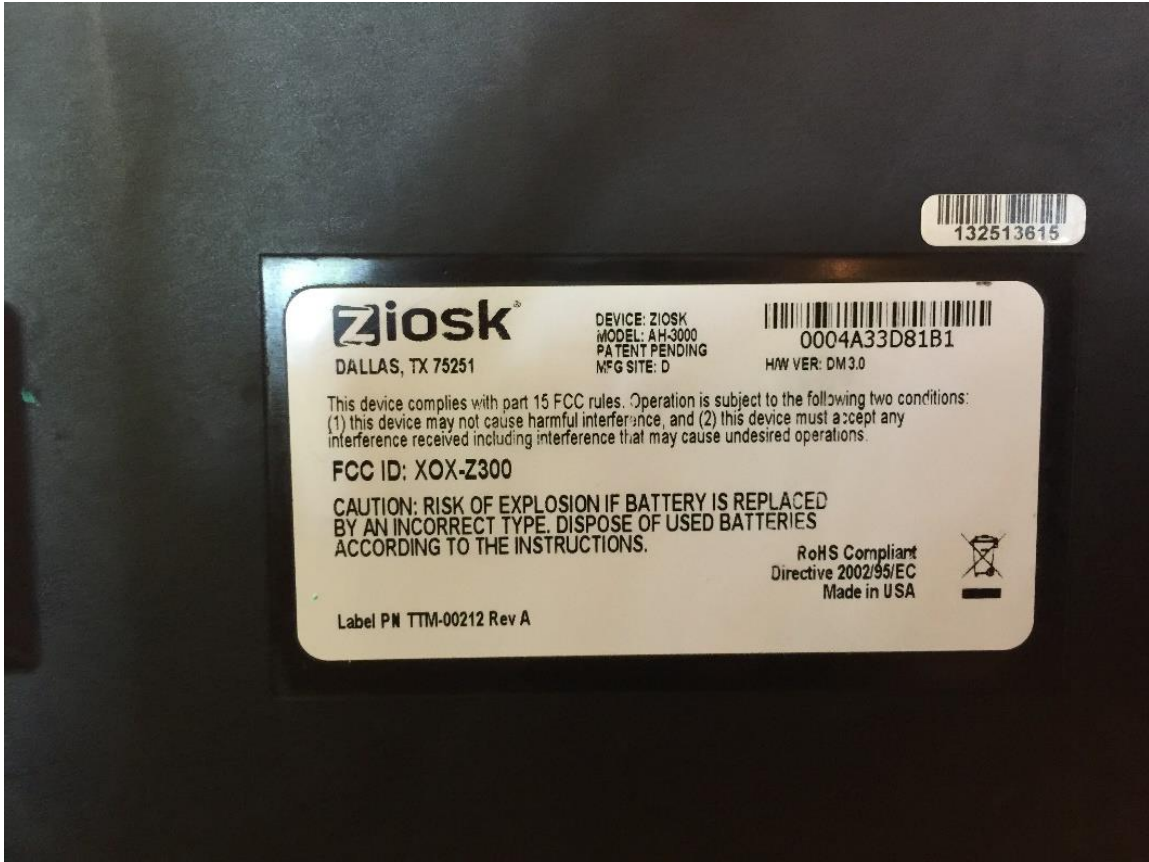
52. Tabletop made and owns the zTrivia -branded games. See <https://www.intel.com/content/dam/www/public/us/en/documents/solution-briefs/13539-8-ziosk-solution-brief.pdf>

53. zTrivia and other Ziosk products and services present a display that prompts a user to enter his/her name to play the trivia game.



54. When a character is selected, it “pops out.”

55. Ziosk devices (including but not limited to the Ziosk Aurizon™ Tablet, and the Ziosk, model number AH-3000 and other model numbers) include touch screen displays.



Ziosk Aurizon™ Tablet - Payment



56. Ziosk devices display a keypad for use as an input device.
57. Ziosk devices feature a touchscreen providing for user input to the Ziosk POS system.
58. The Ziosk device keypad displays one or more sets of characters.
59. Ziosk devices include computer executable code (the “Ziosk Device Software”).
60. Character sets displayed by a Ziosk device and Ziosk Device Software allow users to input information that comprises a set of user inputs associated with one or more of the sets of characters including, for example, a user name.

61. Ziosk devices include memory and Ziosk Device Software for operation of the Ziosk POS system.

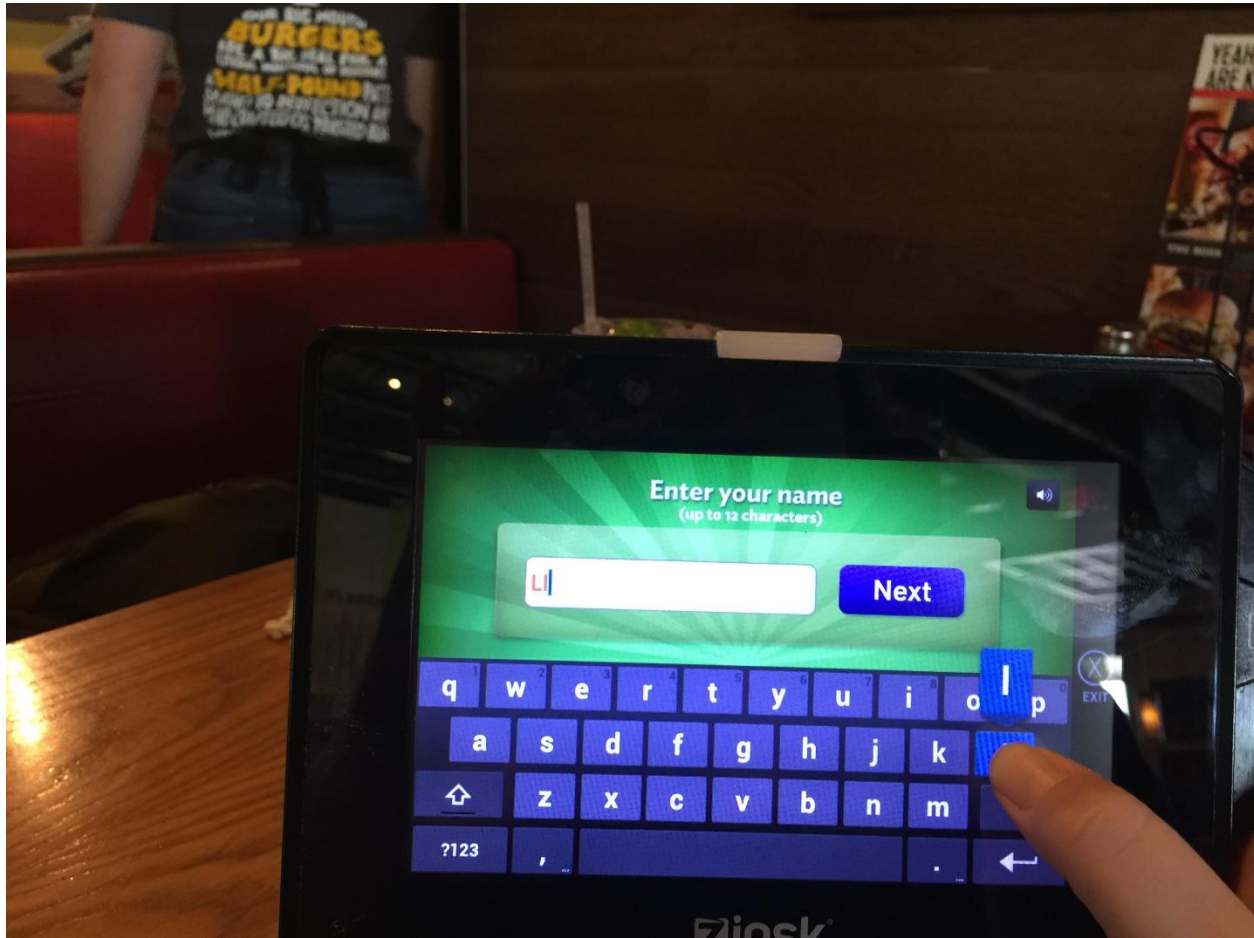
62. Ziosk devices include a data structure (“Ziosk Data Structure”) that associates sets of user inputs with respective sets of the one or more sets of characters.

63. The Ziosk Device Software and Ziosk Data Structure determine a set of characters associated with a set of user inputs.

64. Ziosk Device Software and Ziosk devices enable a user to use the displayed keypad to input information (e.g., a username).

65. During normal operation of a Ziosk device running Ziosk Device Software, a user selects a displayed character.

66. The photograph below shows selection of the letter “I” on a Ziosk device.



67. During normal operation as intended by Tabletop, when a displayed character is selected, the accused Ziosk Device Software and Ziosk device cause the selected character (which is from the one or more sets of characters) to be displayed in a size larger than the characters already accepted and displayed.

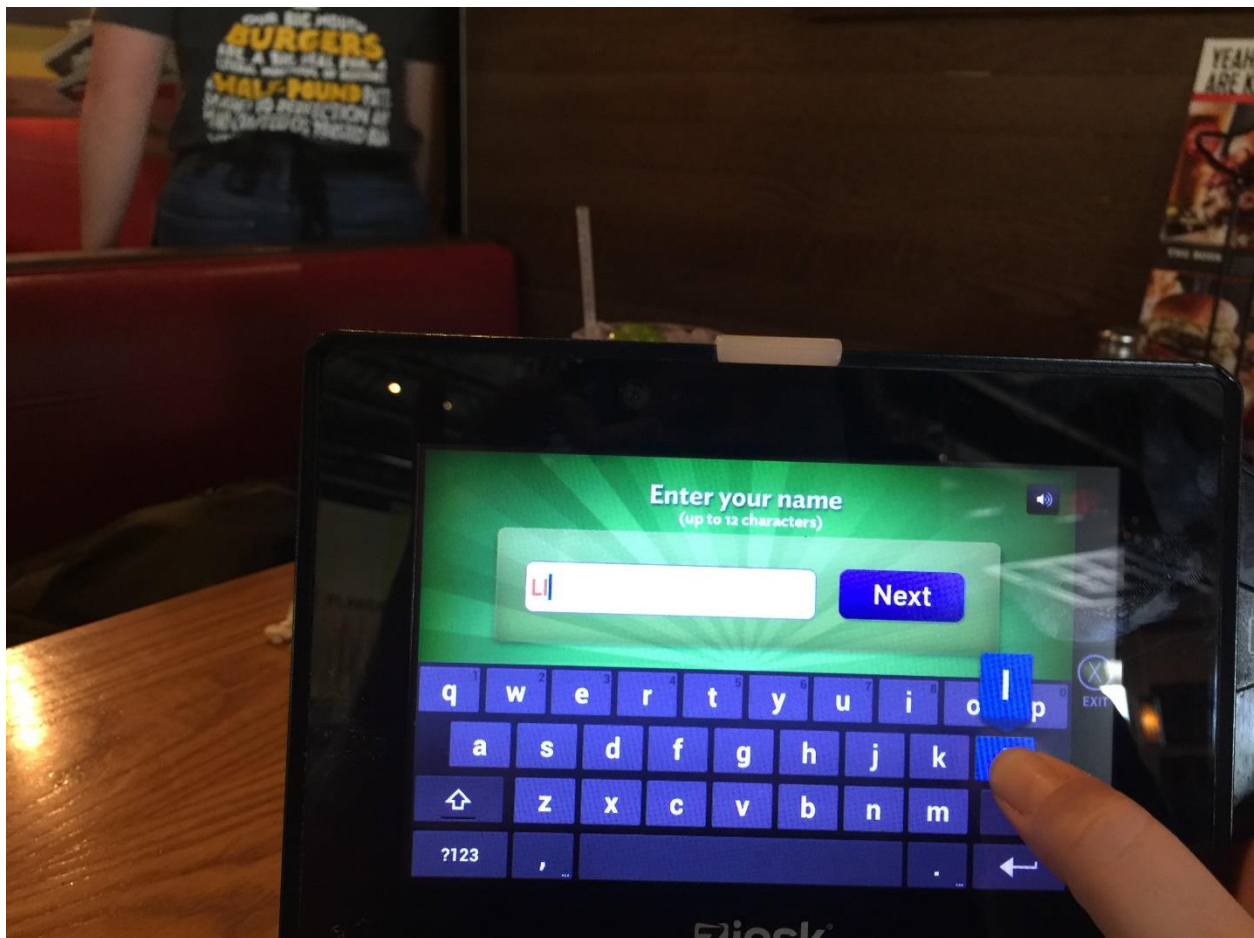
68. For example in reference to the photograph above, at least the “LI” characters are accepted and displayed characters input to the Ziosk device display.

69. During normal operation, user selection among characters displayed is improved when the accused Ziosk products cause the selected character (from the

one or more sets of characters) is displayed in a size larger than the characters already accepted and displayed.

70. After a character is selected, it is displayed in a size generally corresponding to those characters already accepted and displayed by the Ziosk accused product.

71. The photographs below demonstrate selection of the “l” character and for input causing it then to be displayed in a size generally corresponding to the characters already accepted and displayed by the system.



72. The Ziosk POS system is cloud-based and includes Ziosk servers.

COUNT I – DIRECT INFRINGEMENT OF THE '164 PATENT

73. SendSig realleges and incorporates by reference the allegations set forth above, as if set forth verbatim herein.

74. Tabletop has directly infringed the '164 Patent in violation of 35 U.S.C. § 271(a) by making, using (including its own use and testing), selling, or offering to sell in the United States, or importing into the United States the Ziosk POS system, associated software, servers, hardware and software that embody at least claims 1 and 19.

75. The particular combination of claim elements recited in these claims was not well-understood, routine, or conventional to a skilled artisan in the relevant field at the time of the inventions.

76. Infringing products include the Ziosk POS system and other branded solutions with the same or similar features and functionality that satisfy each element of one or more asserted claims.

77. Technical details about the infringing Ziosk products and services is available at www.ziosk.com.

78. Tabletop has no authority or license to practice any claim of the '164 Patent.

79. SendSig is entitled to recover from Tabletop compensation in the form of monetary damages suffered as a result of Tabletop's infringement in an amount that cannot be less than a reasonable royalty together with interest and costs as fixed by this Court.

COUNT II – INDUCED PATENT INFRINGEMENT OF THE '164 PATENT

80. SendSig realleges and incorporates by reference the allegations set forth above, as if set forth verbatim herein.

81. Since the filing of this Complaint giving notice of infringement and details about the acts constituting infringement of the '164 Patent, Tabletop has actively and intentionally induced the direct infringement by others (namely, restaurants and customers) of at least claims 1 and 19 in violation of 35 U.S.C. § 271(b).

82. Tabletop provides instructions that encourage and direct performance of steps and operation that constitute infringement of the '164 Patent.

83. Tabletop encourages and directs performance of certain practices by revenue sharing agreements with restaurants.

84. SendSig is entitled to recover from Tabletop compensation in the form of monetary damages suffered as a result of Tabletop's infringement in an amount that cannot be less than a reasonable royalty together with interest and costs as fixed by this Court.

JURY DEMAND

85. Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Fed. R. Civ. P. 38.

PRAYER FOR RELIEF

86. SendSig respectfully requests that the Court find in its favor and against Tabletop, and that the Court grant the following relief:

- a) Judgment that Tabletop infringes one or more claims of the '164 Patent;
- b) An accounting and an award to SendSig of damages adequate to compensate Plaintiff for the Defendant's acts of infringement (but in no event less than a reasonable royalty), together with pre-judgment and post-judgment interest and costs pursuant to 35 U.S.C. § 284;
- c) Finding that this is an exceptional case and award Plaintiff its reasonable attorneys' fees and expenses in accordance with 35 U.S.C. § 285; and
- d) Any further relief that this Court deems just and proper.

Respectfully submitted this 7th day of August, 2018,

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