

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

TABLETOP MEDIA, LLC,

Plaintiff,

v.

SENDSIG, LLC,

Defendant.

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Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Tabletop Media, LLC (“Tabletop”) brings this action to obtain a declaratory judgment that its pay-at-the-table tablet for the restaurant market does not infringe any of the claims of U.S. Patent Nos. 6,304,898 (“the ’898 patent”), 6,564,249 (“the ’249 patent”), 6,763,373 (“the ’373 patent”), 6,798,907 (“the ’907 patent”), 6,826,551 (“the ’551 patent”), 7,091,959 (“the ’959 patent”), 7,353,014 (“the ’014 patent”), 7,486,824 (“the ’824 patent”), 7,516,183 (“the ’183 patent”), 7,777,729 (“the ’729 patent”), 7,869,655 (“the ’655 patent”), 8,115,748 (“the ’748 patent”), and 8,782,159 (“the ’159 patent”) (collectively, the “SendSig Patents”). The SendSig Patents comprise 13 of the 14 patents in “a patent portfolio related to applicable point of sale applications and equipment, among other inventions,” purportedly owned by SendSig (the “Portfolio”). This action is filed pursuant to 28

U.S.C. §§ 2201 and 2202 for the purpose of resolving an actual and justiciable controversy between Tabletop and defendant SendSig, LLC (“SendSig”).

PARTIES

1. Tabletop is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 12404 Park Central Drive, Suite 350, Dallas, Texas 75251. Tabletop makes the Ziosk[®] tablet, the world’s first ordering, entertainment, and pay-at-the-table tablet for the restaurant market. Ziosk[®] tablets are deployed in Chili’s, Olive Gardens, and numerous other food and entertainment destinations across the U.S. The technology, which features 7-inch and 8-inch tablets and encrypted credit card readers, resides on each table and enables guests to see menu items, play games, view news and entertainment, order food and beverages, and “pay on demand.”

2. “SendSig is a limited liability company organized and existing under the laws of the State of Georgia with its principal place of business at 3930 E. Jones Bridge Road, Suite 140, Peachtree Corners, GA 30092.”¹ On August 7, 2018, SendSig sued Tabletop in this Court for alleged infringement of 1 of the 14 patents in the Portfolio, U.S. Patent No. 6,292,164 (“the ’164 patent”). That action, initiated by SendSig in this Court to enforce its alleged rights in at least one of the patents in

¹ *SendSig, LLC v. Tabletop Media, LLC*, No. 3:18-cv-02053-M (N.D. Tex.), ECF No. 1 at 1 (¶ 1).

the Portfolio, is styled *SendSig, LLC v. Tabletop Media, LLC*, No. 3:18-cv-02053-M (“the SendSig Action”).

JURISDICTION AND VENUE

3. Tabletop brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to obtain a judicial declaration that the SendSig Patents, purportedly owned by SendSig, have not been infringed by Tabletop. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1-390, and is based upon an actual and justiciable controversy between the parties with respect to the infringement of the SendSig Patents.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over SendSig because, by voluntarily filing the SendSig Action in this judicial district, SendSig appeared before the Court and submitted itself to the Court’s personal jurisdiction.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this judicial district.

SENDSIG’S HATCHING

7. On March 29, 2018, attorney Jonathan Sparks filed Articles of Organization with the Georgia Secretary of State bringing SendSig into existence.

8. According to that formation document, SendSig’s principal office is located at 3930 E. Jones Bridge Road, Suite 140, Peachtree Corners, GA 30092, which is the same address for numerous other affiliated non-practicing entities that Sparks has organized including Universal Transdata, LLC (effective date 4/28/2017), USB Bridge Solutions, LLC (effective date 10/26/2017), SynchView Technologies, LLC (effective date 2/23/2018), FireNet Technologies, LLC (effective date 3/6/2018), and Visible Connections, LLC (effective date 4/24/2018), all of which are currently filing patent infringement actions across the U.S.

9. This is also the principal office location for IPinvestments Group, who according to its LinkedIn page “is an intellectual property business advisory firm committed to extracting maximum value for intellectual property assets.”

SENDSIG’S PATENT INFRINGEMENT ALLEGATIONS

10. On August 7, 2018, SendSig sued Tabletop for infringement of the ’164 patent alleging the Ziosk[®] tablet’s touchscreen display “pops out” “[w]hen a character is selected.”²

11. The next day, SendSig served Tabletop with process.

12. Twelve days later, on August 20, 2018, Ryan Strong, of IPinvestments Group, overnighted a letter to Tabletop’s General Counsel that enclosed “[a]

² *SendSig, LLC v. Tabletop Media, LLC*, No. 3:18-cv-02053-M (N.D. Tex.), ECF No. 1 at 1 (¶ 54).

courtesy copy of the complaint and exhibits (i.e. a copy of the ‘882 Patent [sic]).” A true and correct copy of the August 20, 2018 letter (with enclosures) is attached hereto as Exhibit A.

13. In the letter, Strong made clear SendSig would file additional actions against Tabletop if it refused to enter a license agreement for all 14 patents in the Portfolio by stating:

IPinvestments Group has been retained to manage the licensing of a patent portfolio related to applicable point of sale applications and equipment, among other inventions, owned by SendSig, LLC (the “Portfolio”). . . .

As you may be aware, on August 7, 2018, SendSig filed a lawsuit against Tabletop Media, LLC (“Tabletop Media”) in the United States District Court for the Northern District of Texas (Civil Action No. 3:18-CV-2053) claiming patent infringement of U.S. Patent No. 6,292,164. . . .

Our purpose in writing is to acquaint Tabletop Media with the Portfolio and to open a dialogue for it to obtain a **license under the Portfolio** for its proprietary technologies. . . .

SendSig is prepared to grant Tabletop Media a full release for past infringement and a license to allow you to continue providing and using the infringing technologies. . . .

(Ex. A at 1-3 (emphasis added).)

14. To further SendSig’s threat of patent enforcement against Tabletop, Strong copied SendSig’s outside patent litigation counsel—“Jennifer Tatum Lee, Esq., Connor Kudlac Lee PLLC,” “Kevin S. Kudlac, Esq., Connor Kudlac LEE

PLLC,” and “Cabrach J. Connor, Esq., Connor Kudlac Lee PLLC”—on the letter. (*Id.* at 3.)

15. Four days later, on August 24, 2018, SendSig sued Toast, Inc., a company who provides a restaurant management and point of sale system built on the Android operating system, for allegedly infringing the '164 and '249 patents.³

16. In sum, SendSig’s conduct has caused Tabletop to reasonably and legitimately apprehend that SendSig will sue Tabletop for infringement of the SendSig Patents on account of its refusal to enter a licensing agreement.

COUNT I

DECLARATION OF NON-INFRINGEMENT OF THE '898 PATENT

17. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

18. The manufacture, use, sale, offer to sell, and/or importation of Tabletop’s pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '898 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop’s pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '898 patent.

³ *SendSig, LLC v. Toast, Inc.*, No. 8:18-cv-00405-LSC-MDN (D. Neb.), ECF No. 1 at 21-24 (¶¶ 91-112).

19. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '898 patent, either literally or under the doctrine of equivalents.

20. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '898 patent.

21. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '898 patent.

COUNT II

DECLARATION OF NON-INFRINGEMENT OF THE '249 PATENT

23. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

24. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '249 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '249 patent.

25. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '249 patent, either literally or under the doctrine of equivalents.

26. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '249 patent.

27. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

28. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '249 patent.

COUNT III

DECLARATION OF NON-INFRINGEMENT OF THE '373 PATENT

29. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

30. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '373 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '373 patent.

31. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '373 patent, either literally or under the doctrine of equivalents.

32. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '373 patent.

33. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

34. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '373 patent.

COUNT IV

DECLARATION OF NON-INFRINGEMENT OF THE '907 PATENT

35. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

36. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '907 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '907 patent.

37. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '907 patent, either literally or under the doctrine of equivalents.

38. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '907 patent.

39. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

40. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '907 patent.

COUNT V

DECLARATION OF NON-INFRINGEMENT OF THE '551 PATENT

41. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

42. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '551 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '551 patent.

43. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '551 patent, either literally or under the doctrine of equivalents.

44. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '551 patent.

45. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

46. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '551 patent.

COUNT VI

DECLARATION OF NON-INFRINGEMENT OF THE '959 PATENT

47. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

48. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '959 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '959 patent.

49. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '959 patent, either literally or under the doctrine of equivalents.

50. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '959 patent.

51. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

52. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '959 patent.

COUNT VII

DECLARATION OF NON-INFRINGEMENT OF THE '014 PATENT

53. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

54. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '014 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '014 patent.

55. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '014 patent, either literally or under the doctrine of equivalents.

56. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '014 patent.

57. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

58. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '014 patent.

COUNT VIII

DECLARATION OF NON-INFRINGEMENT OF THE '824 PATENT

59. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

60. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '824 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '824 patent.

61. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '824 patent, either literally or under the doctrine of equivalents.

62. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '824 patent.

63. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

64. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '824 patent.

COUNT IX

DECLARATION OF NON-INFRINGEMENT OF THE '183 PATENT

65. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

66. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '183 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '183 patent.

67. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '183 patent, either literally or under the doctrine of equivalents.

68. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '183 patent.

69. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

70. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '183 patent.

COUNT X

DECLARATION OF NON-INFRINGEMENT OF THE '729 PATENT

71. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

72. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '729 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '729 patent.

73. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '729 patent, either literally or under the doctrine of equivalents.

74. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '729 patent.

75. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

76. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '729 patent.

COUNT XI

DECLARATION OF NON-INFRINGEMENT OF THE '655 PATENT

77. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

78. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '655 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '655 patent.

79. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '655 patent, either literally or under the doctrine of equivalents.

80. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '655 patent.

81. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

82. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '655 patent.

COUNT XII

DECLARATION OF NON-INFRINGEMENT OF THE '748 PATENT

83. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

84. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '748 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '748 patent.

85. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '748 patent, either literally or under the doctrine of equivalents.

86. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '748 patent.

87. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

88. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '748 patent.

COUNT XIII

DECLARATION OF NON-INFRINGEMENT OF THE '159 PATENT

89. Tabletop hereby incorporates by reference each of its allegations contained in paragraphs 1-16 of this Complaint for Declaratory Judgment as if set forth herein.

90. The manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '159 patent. In addition, the manufacture, use, sale, offer to sell, and/or importation of Tabletop's pay-at-the-table tablet does not contribute to or induce the infringement of any of the claims of the '159 patent.

91. Tabletop has not infringed and does not infringe, directly or indirectly, any of the claims of the '159 patent, either literally or under the doctrine of equivalents.

92. There is an actual and justiciable controversy between Tabletop and SendSig over SendSig's allegation of Tabletop's infringement of the '159 patent.

93. As a result of the facts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

94. A judicial declaration of non-infringement is necessary and appropriate so that Tabletop may ascertain its rights regarding the '159 patent.

PRAYER FOR RELIEF

WHEREFORE, Tabletop respectfully asks this Court to enter judgment in Tabletop's favor against SendSig granting the following relief:

A. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '898 patent;

B. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '249 patent;

C. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '373 patent;

D. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '907 patent;

E. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '551 patent;

F. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '959 patent;

G. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '014 patent;

H. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '824 patent;

I. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '183 patent;

J. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '729 patent;

K. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '655 patent;

L. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '748 patent;

M. A declaration that Tabletop's pay-at-the-table tablet does not infringe and has not infringed any of the claims of the '159 patent;

N. An order declaring that this is an exceptional case and awarding Tabletop its costs, expenses, disbursements, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and

O. Any such other and further relief that this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Tabletop respectfully demands a jury trial of all issues triable to a jury in this action.

DATED: October 15, 2018

Respectfully submitted,

By: /s/ Samuel E. Joyner

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