

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

BOARDACTIVE CORPORATION,

Plaintiff,

v.

FOURSQUARE LABS, INC.,

Defendant.

Civil Action No. 1:22-cv-00597-JDW

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff BoardActive Corporation (“Plaintiff” or “BoardActive”) for its Complaint against Defendant Foursquare Labs, Inc. (“Defendant” or “Foursquare”) alleges as follows:

INTRODUCTION

1. This is a patent infringement action arising under the patent laws of the United States (35 U.S.C. § 1 *et seq.*) based upon Foursquare’s direct and indirect infringement of BoardActive’s patents, including 10,621,620 (the “620 Patent”) and 10,692,108 (the “108 Patent”) (collectively, the “Patents-in-Suit”).

THE PARTIES

2. BoardActive is a Georgia corporation with its principal place of business at 3225 Cumberland Boulevard South East, Suite 100, Atlanta, Georgia 30339. BoardActive is a pioneer in location-based marketing, offering businesses software solutions to actively engage and retain customers through personalized advertisements as customers move throughout their day.

3. Foursquare is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 50 West 23rd Street, 8th Floor, New York, New York 10010. Foursquare makes and sells location-based marketing solutions.

JURISDICTION

4. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. §1, *et seq.*

5. This Court has jurisdiction over the subject matter of the Complaint pursuant to 28 U.S.C. §§1331 and 1338.

6. This Court has personal jurisdiction over Foursquare because Foursquare has engaged in systematic and continuous business activities in this District and is incorporated in this District's state. As described below, Foursquare has committed acts of patent infringement giving rise to this action within this District. Thus, Foursquare has purposefully availed itself of the privilege of conducting business within the State of Delaware and this District.

VENUE

7. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b), (c), and 1400(b) because, *inter alia*, Defendant is incorporated in Delaware, provides a substantial amount of business in this District, and has committed acts of patent infringement and/or has contributed to, or induced acts of patent infringement by others in this District.

BACKGROUND

I. Industry

8. Traditionally, the dissemination of creative adverts has been largely reliant on the means of advertising signage. While creative signage offers advertising agencies a direct link to consumers, the passive nature of this interaction is subject to the durational view of any message conveyed—especially to a passing consumer—and limits the analytical information advertisers may use to assess the reach and effectiveness of signage consumption.

9. More recently, when digital signage replaced the prominence of traditional signage, the signage industry adapted. The ability to inform, educate, entertain and sell exponentially increased in both public and private areas. However, the mere inclusion of digital signage did not overcome many of the industry's existing shortcomings. Digital signage, similar to traditional advertising, faced challenges with visibility and its ability to help advertisers with engagement through, for example, a consumer's wireless device. Regardless of the medium upon which the advertising signage existed, no consumer would immediately perform the intended advertiser's response, as a result of viewing the advertisement. Digital signage and geolocation tools effectively changed an advertisers' ability to advertise, but it did not change the consumer's burden to perform additional steps (e.g., remembering or writing down information or taking a picture) before having the ability to interact with the digital advertisement's desired benefit. Thus, a need existed for systems and methods to provide information and rules corresponding to the course of travel of the consumer to help more fully realize the potential of location and audience based creative delivery.

10. For decades, targeted and interactive media, customer preferences and correlated data including programs to attract, retain and incentivize existing and potential new customers has long been a thorny, expensive and investment-intensive technological problem. *A New Playbook for Customer Loyalty Programs*, WALL ST. J. (Nov. 16, 2021, 3:00 PM EST), <https://deloitte.wsj.com/articles/a-new-playbook-for-customer-loyalty-programs-01637085524>. For example, in late 1990s, following de-regulation, the airline industry effectively ushered in customer loyalty programs (e.g., frequent flyer and shopper reward) generally "designed to help deepen relationships with customers and encourage them to keep using a company's products and services." *Id*; Gary W. Loveman, *Diamonds in the Data Mine*, HARV. BUS. REV. (May, 2003), <https://hbr.org/2003/05/diamonds-in-the-data-mine>.

11. Later in the 2000s, Harrah's Casinos famously poached a Harvard professor to wrestle with this technology problem in gaming and his answer was to develop and deliver complex and secretive computational intensive data gathering and harvesting models directed towards an insertable playing card. The computers' delicate aim was to consider and balance information so as to not 'under-perk' high rollers nor 'over-perk' lower rollers—but also to make those who did not fit the “stereotypical profile of a Las Vegas high roller, . . . feel[] special.” *Id.* Because the casino's computer models “deliver[ed] the recognition and service [customers have] come to expect,” the casino expects customers to “return to Harrah's again and again.” *Id.*; Christina Binkley, *Casino Chain Mines Data on Gamblers, And Strikes Pay Dirt with Low-Rollers*, WALL ST. J. (May 4, 2000, 12:01 AM ET), <https://www.wsj.com/articles/SB957397104215402276>.

12. With the concomitant rise of Web 1.0, 2.0 and now 3.0 including social media, digital advertising wars and data mining have joined the likes of tech giants Google, Yahoo, and Microsoft. Each of these companies “have received patents for . . . ‘Influencer Marketing,’ but none use as clever of a technique [t]o determine who the VIPs are. Google's [patent] looks for volume of connections, Yahoo's [patent] . . . look[‘s] at how influential someone's own followers are, and Microsoft[‘s] [patent] aims to assemble a set of influencers with the largest unduplicated audience.” John Constine, *Facebook Patents Clever Way to Advertise Just to Important People*, TECHCRUNCH (Feb. 16, 2015, 11:54 PM CST), <https://techcrunch.com/2015/02/16/facebook-influencer-marketing/?guccounter=1>. With the advent of an ever more crowded digital world, the need for such technological solutions for directed company marketing and consumer engagement became especially pronounced. Indeed, “[a]s consumer behaviors continue to change, brands . . . need to redesign their loyalty offerings to provide customers more personalized, engaging experiences.” *A New Playbook for Customer Loyalty Programs, supra.*

13. As luck, ingenuity, a keen eye, persistence, perspiration and computer system experience would have it, Mr. Douglas Pittman invented, coded and built the technological system and platform to deliver on the new model of consumer engagement. Mr. Pittman became intrigued with this pervasive technology problem transcending most major industry sectors having the common goal of using technology and data science to attract, incentivize, retain, and engage specific customers for the benefit of both. Mr. Pittman realized the computing power almost ubiquitously possessed in the palm of every customer or potentially reachable customer's hand – the smart phone, and with an inventive combination and utilization of geolocation technology attributes (including vectoring calculations), information processing technology, data gathering, handling and delivery technology, set his programmers to work on building the platform that is BoardActive's today.

14. Mr. Pittman applied for and was granted over a dozen U.S Patents on his inventive applications of this technology, two of which are asserted herein.

II. BoardActive

15. BoardActive—founded by its CEO and sole inventor of the Patents-in-Suit, Mr. Douglas Pittman—offers a novel location and audience-based advertising and messaging platform through its VisualMatic® technology. The concept underlying the Patents-in-Suit came to Mr. Pittman while he was driving his son to Samford University in Birmingham, Alabama. He had noticed a beautiful creative advertisement on a highway billboard, but having his eyes on the road while driving, Mr. Pittman could not make out the specific advertised content and was unwilling to turn the car around just to get a better look at the billboard. Although Mr. Pittman and his son agreed that the creative was beautiful (and likely very expensive), they did not know: (1) what it

said, (2) where the company was located, (3) what the company did or was trying to advertise or sell, or (4) anything about the brand being advertised.

16. As a consumer, Mr. Pittman wanted to know more about how he could interact with that brand and its creative; however, at that time there was no way to interactively connect a brand or creative to a consumer in real-time. Existing mediums of advertising using static or digital signage remained passive. Specifically, existing creative delivery platforms failed to deliver actionable content based upon the contemporaneous combination of an identified directional and temporal interaction. Mr. Pittman knew that an advertising solution to increase the immediacy upon a viewing user's response to an actionable advertisement would be a lucrative way to quantify, identify, measure, record, engage and retain consumers. Thus, he got to work and formed BoardActive.

17. Through its platforms and VisualMatic® Technology, BoardActive provides companies with the ability to engage their customers quickly and effectively by distributing actionable, personalized, and/or contextual content (*i.e.*, advertisements, notifications, visuals, creatives, etc.) to a consumer's mobile or wireless device so to influence the consumers course-of-travel. For example, by integrating a determination of motion associated with a consumer and transposing associated creative content (e.g., actionable, personalized, and/or contextual) to the consumer's mobile or wireless device, BoardActive extends the viewing means of any targeted creative as determined by the consumer's individualized direction and timing. When subsequent conditions of BoardActive's targeted advertising features are met, the actionable, personalized, and/or contextual content displayed on the consumer's wireless device may update so the consumer can engage with the brand and the company can track their advertisements for efficacy.

18. To protect BoardActive’s investments in its innovative technology platform, BoardActive filed multiple applications, and, to date, was awarded nearly a dozen patents from the United States Patent and Trademark Office (“USPTO”). Among those patents are the Patents-in-Suit, which were the first to associate digital advertisements and course of travel to deliver consumers an individualized meaningful advertisement. In fact, due to these accomplishments—among others—Mr. Pittman, representing BoardActive, was an invited speaker at the USPTO to discuss recent technical developments and his experience and perspective on the patent system. Despite being aware of BoardActive’s robust patent protection, competitors—including much larger companies such as Foursquare—released infringing technology solutions that have, and continue to, irreparably harm BoardActive’s business.

19. It is noteworthy that many of the claims of BoardActive’s patents recite specific technological improvement over the prior art in the field of location and audience based mobile and wireless technology. As one of ordinary skill in the art would recognize location and audience based creative delivery as a technological field. BoardActive’s improvement to location and audience based mobile and wireless technology is an improvement in a technical field. More specifically, many claims recite a combination of additional elements including defining a delivery condition for delivering content, the condition including a course of travel, receiving first and second indication data corresponding to a first location and a second location, respectively; determining a course of travel of the mobile computing device, and transmitting content in response to the delivery condition being met. Aspects of the BoardActive claims recite a specific improvement over prior art systems by delivering content not only based on a mobile computing device’s location, but the mobile computing device’s course of travel.

III. The Patents-in-Suit

20. On April 14, 2020, the USPTO duly and lawfully issued the '620 Patent, entitled "Platform for Location and Time Based Advertising." A true and correct copy of the '620 is attached hereto as Exhibit A.

21. On June 23, 2020, the USPTO duly and lawfully issued the '108 Patent, entitled "Platform for Location and Time Based Advertising." A true and correct copy of the '108 is attached hereto as Exhibit B.

22. BoardActive solely owns, by assignment, all rights, titles, and interests in and to the Patents-in-Suit, including the exclusive rights to bring suit with respect to any past, present, and/or future infringement thereof.

IV. Foursquare

23. Foursquare designs, makes, offers, uses, sells and advertises location-based mobile applications, Software Development Kits ("SDK"), Application Programming Interfaces ("API") and other related services and support in the United States, including into this Judicial District. Examples of the accused products in this case include the Foursquare Console, Foursquare City Guide, Foursquare Swarm, Places API, and Pilgrim SDK and reasonably similar products ("Accused Products"). These products and/or services enable Foursquare and its customers to track end-users' locations (using the specific geolocation elements, inter alia, as described and claimed in the patents-in-suit) to, for instance, deliver alerts, notifications, and advertising based on, upon other things, the users' movement and location.

V. Foursquare's Knowledge of the Patents-in-Suit

24. By letter dated May 19, 2020, BoardActive notified Defendant of the existence of its patent portfolio, including the '620 Patent and the pending patent application of the '108 Patent,

notified Defendant that it reserved its rights to pursue claims for infringement under 35 U.S.C. § 271, and invited Defendant to hold a licensing discussion with BoardActive (the “Notice Letter”).

25. Defendant declined BoardActive’s invitation.

26. Foursquare is not authorized to practice the Patents-in-Suit.

FOURSQUARE’S INFRINGEMENT OF THE PATENTS-IN-SUIT

27. As described below, Foursquare infringes (literally or under the doctrine of equivalents) at least one claim of each of the Patents-in-Suit directly (alone or jointly) and/or indirectly by contributing to and/or inducing direct infringement by others by making, using, offering for sale, importing into the United States, and/or encouraging the manufacture, use, and sale of devices, software, and/or services.

28. Foursquare has had actual and/or constructive notice of the Patents-in-Suit prior to the filing of this lawsuit and has known that its actions constitute infringement of the Patents-in-Suit. As described above in Paragraphs 24–26, Foursquare received notice of its infringement of the Patents-in-Suit through the Notice Letter. Foursquare also received notice of its infringement of the Patents-in-Suit at least as early as the date of service of this Complaint. Therefore, Foursquare has engaged in egregious misconduct, as it was aware of the Patents-in-Suit or willfully blinded itself as to the existence of the Patents-in-Suit, and made, used, sold, offered to sell, imported and/or encouraged the making, using, selling, offering to sell, or importing of the Accused Products despite knowing that its actions constituted infringement of the Patents-in-Suit at all times relevant to this suit.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 10,621,620

29. BoardActive reasserts and realleges Paragraphs 1–28 as if fully set forth herein.

30. Foursquare has infringed and continues to directly infringe, alone or jointly, one or more claims of the '620 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, selling, and/or importing the Accused Products in the United States without the authority of the patent owner in violation of 35 U.S.C. § 271(a). The Accused Products satisfy each and every element of the claims of the '620 Patent. Foursquare's infringing products include, but are not limited to, the Accused Products and any same or reasonably similar products.

31. For example, as described below, Foursquare's use (and/or its customer's use) of the Pilgrim SDK infringes claim 1 of the '620 Patent. Claim 1 of the '620 recites:

*1. A method comprising:
registering asset data, wherein registering the asset data
comprises at least one of the following:
registering a first geolocation associated with one of the
following:
a physical asset, and
a virtual asset;
receiving media content to be associated with at least one registered asset, wherein the
media content is configured to be operative with a content interaction layer and a
consumer tracking layer to enable:
interacting with a consumer of the media content in conjunction with, at least in part,
the media content, and
tracking the consumer of the media content in conjunction with, at least in part, the
media content;
specifying a plurality of rules for selecting the media content to deliver to the consumer,
wherein specifying the plurality of rules comprises specifying:
a first rule for delivering the media content, the first rule being associated with at least
one element of profile data corresponding with the consumer, and
a second rule for updating the media content, the second rule being associated with a
second geolocation;
receiving an activation command for triggering a delivery of the media content, wherein
receiving the activation command comprises at least one of the following:
determining that a spatial trigger has occurred,
determining that a time-based trigger has occurred, and
determining that an event has occurred,
comparing the first rule and the at least one element of profile data associated with the
consumer in order to determine whether to deliver the media content to the consumer;
delivering the media content to a device associated with the consumer when the first rule
is met;
tracking a location associated with the consumer further to the delivery of the media*

content;
comparing the second rule and the location in order to determine whether to update the media content; and
updating the media content at the device associated with the consumer when the second rule is met.

32. Foursquare's Pilgrim SDK registers asset data, wherein the asset data comprises registering a first geolocation associated with a physical asset, a virtual asset, or both. As an example:

"Near" Location Targeting: Geofences

With Pilgrim SDK's geofencing feature, developers know when a user is nearing or has entered a venue depending on set thresholds. This is invaluable information for developers who want to ping users the moment they enter a location, instead of waiting two to three minutes for Foursquare's visit detection technology (i.e., Snap-to-Place, featured above) to provide a more accurate prediction. Developers can also ping users who are approaching a venue, helping to convince them to stop rather than walk past.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

There are five types of geofences you can create:

- Venue - a geofence around a specific venue (e.g Joe's Pizza in NYC)
- Chain - a geofence around a specific [chain](#) of venues (e.g Walmart)
- Category - a geofence around a specific [category](#) of venues (e.g Thai Restaurants)
- Circle - a circular geofence around a specific lat/lng pair
- Polygon - a polygon geofence using lat/long pairs

Additional Properties

Additional properties allow you to add custom metadata to each geofence event, where the additional properties will be appended to the event [payload](#) as a key-value pair.

<https://developer.foursquare.com/docs/manage-geofences> (last visited April 21, 2022).

33. The Pilgrim SDK receives media content to be associated with at least one registered asset, wherein the media content is configured to be operative with a content interaction layer and a consumer tracking layer to enable interacting with a consumer of the media content in

conjunction with, at least in part, the media content, and tracking the consumer of the media content in conjunction with, at least in part, the media content. For example:

Send personalized, timely notifications or serve dynamic content to users based on where they are or where they like to go. Deliver proximity alerts when customers enter or exit a venue, and drive engagement at the highest point of impact.

<https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022).

Dynamic Distance Overlay (DDO)

Dynamic Distance Overlay (DDO) is text that appears over an ad to tell the user how far they are from the nearest business location. Dynamic Distance Overlays are used to spur users to visit stores and ultimately make a purchase.

Engagement Metrics

Engagement Metrics are the measurement of how users engage with your advertising campaign. Metrics may include ad clicks, completed video views, shares or likes of a post, and duration of visit.

Secondary Action Rate

Secondary Action Rate, which is another term for post-click rate, is the secondary action measurement of how an ad leads to another action (secondary) beyond the initial ad click.

<https://foursquare.com/glossary/> (last visited April 21, 2022).

34. The Pilgrim SDK further specifies a plurality of rules for selecting the media content to deliver to the consumer, wherein specifying the plurality of rules comprises specifying a first rule for delivering the media content, the first rule being associated with at least one element of profile data corresponding with the consumer, and a second rule for updating the media content, the second rule being associated with a second geolocation. For example:

Dynamic Creative

Dynamic Creative are ads that adjust to the environment, location, user behavior, and other factors where it is intended to be served. The ad request in Dynamic Creative is sent to the server based on the customer and their behavior.

Dynamic Distance Overlay (DDO)

Dynamic Distance Overlay (DDO) is text that appears over an ad to tell the user how far they are from the nearest business location. Dynamic Distance Overlays are used to spur users to visit stores and ultimately make a purchase.

Id.

"Near" Location Targeting: Geofences

With Pilgrim SDK's geofencing feature, developers know when a user is nearing or has entered a venue depending on set thresholds. This is invaluable information for developers who want to ping users the moment they enter a location, instead of waiting two to three minutes for Foursquare's visit detection technology (i.e., Snap-to-Place, featured above) to provide a more accurate prediction. Developers can also ping users who are approaching a venue, helping to convince them to stop rather than walk past.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

35. The Pilgrim SDK receives an activation command for triggering a delivery of the media content, wherein receiving the activation command comprises at least one of the following: determining that a spatial trigger has occurred, determining that a time-based trigger has occurred, and determining that an event has occurred. For example:

Send personalized, timely notifications or serve dynamic content to users based on where they are or where they like to go. Deliver proximity alerts when customers enter or exit a venue, and drive engagement at the highest point of impact.

<https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022).

Event Types

Geofences have five potential event types that are delivered directly to the client and through an optional webhook:

Event Type	Description
entrance	Triggered on the first GPS signal that is received inside of the geofence.
dwel	Triggered after the user has "dwelled" within the geofence for a configurable length of time. Default is 1 minute.
venue confirmed	Triggered when the device has dwelled inside a geofence radius and confirmed a stop at the venue within the radius. Only available in SDK versions 2.1.2 or greater
exit	Triggered on the first GPS signal that is received outside of the geofence.
presence	Triggered when the device is in a geofence radius during a get location request. Only available in SDK versions 2.1 or greater

<https://developer.foursquare.com/docs/ios-add-features#event-types> (discussing Pilgrim SDK capabilities) (last visited April 21, 2022).

Commute

Pilgrim defines commuting as when a user is moving some distance between one's home and place of work on a regular basis. This can be useful, for example, if you want to send targeted messaging that relates to their morning or evening commute: "Need a pick me up? Stop by and grab a cup of joe on your way into the office."

<https://developer.foursquare.com/docs/ios-add-features#commute> (last visited April 21, 2022).

36. The Pilgrim SDK also compares the first rule and the at least one element of profile data associated with the consumer in order to determine whether to deliver the media content to the consumer. For example:

The Pilgrim SDK also offers features which you can use to augment your in-app experience, bringing location to the forefront to offer more compelling interactions to your users.

Get Current Location

Current Location is the most comprehensive of the in-app features, allowing you to get precise place information for any user who has given your app permission to use location.

For e.g you may want to display a nearby venue to your user, or you may want to determine whether or not to send an in-app notification or display a modal if your user is at or near a specific geofence.

<https://developer.foursquare.com/docs/ios-add-features#event-types> (discussing Pilgrim SDK capabilities) (last visited April 21, 2022).

37. Foursquare's at least one processing unit, through the Pilgrim SDK, further delivers, when the delivery condition is met, the content to the mobile device.

"Near" Location Targeting: Geofences

With Pilgrim SDK's geofencing feature, developers know when a user is nearing or has entered a venue depending on set thresholds. This is invaluable information for developers who want to ping users the moment they enter a location, instead of waiting two to three minutes for Foursquare's visit detection technology (i.e., Snap-to-Place, featured above) to provide a more accurate prediction. Developers can also ping users who are approaching a venue, helping to convince them to stop rather than walk past.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

Send personalized, timely notifications or serve dynamic content to users based on where they are or where they like to go. Deliver proximity alerts when customers enter or exit a venue, and drive engagement at the highest point of impact.

<https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022).

38. The Pilgrim SDK tracks a location associated with the consumer further to the delivery of the media content; compares the second rule and the location in order to determine whether to update the media content; and updates the media content at the device associated with the consumer when the second rule is met.

Dynamic Creative

Dynamic Creative are ads that adjust to the environment, location, user behavior, and other factors where it is intended to be served. The ad request in Dynamic Creative is sent to the server based on the customer and their behavior.

Dynamic Distance Overlay (DDO)

Dynamic Distance Overlay (DDO) is text that appears over an ad to tell the user how far they are from the nearest business location. Dynamic Distance Overlays are used to spur users to visit stores and ultimately make a purchase.

<https://foursquare.com/glossary/> (last visited April 21, 2022).

Pilgrim SDK Segments and Attribute-Based Targeting

Pilgrim SDK Segments provides the data-driven insight needed to reach specific consumer groups and cater directly to their needs. Using 750 pre-defined user segments like the Super Shopper, the Technophile, and the Foodie, businesses can target audiences with highly tailored messaging, or even empower advertisers to send behavior-based campaigns.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

Commute

Pilgrim defines commuting as when a user is moving some distance between one's home and place of work on a regular basis. This can be useful, for example, if you want to send targeted messaging that relates to their morning or evening commute: "Need a pick me up? Stop by and grab a cup of joe on your way into the office."

<https://developer.foursquare.com/docs/ios-add-features#commute> (last visited April 21, 2022).

39. Despite its knowledge or willful blindness of the '620 Patent, Foursquare is also indirectly infringing the '620 Patent by actively inducing and/or contributing to the direct infringement of others of the '620 Patent in the United States. Foursquare has and continues to intentionally and actively induce others, such as its partners, customers, end users, distributors, and/or retailers, to make, use, offer for sale, sell, and/or import the Accused Products without the authority of the patent owner in violation of 35 U.S.C. § 271(b).

40. For example, Foursquare instructs its partners and customers to use and/or install one or more of the Accused Products such that those partners and customers directly infringe at least claim 1 of the '620 Patent. Indeed, Foursquare advertises that its Pilgrim SDK "can be embedded in any app[.]" <https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022). As yet another example, Foursquare touts that its Pilgrim SDK "drives engagement and revenue" by "us[ing] location intelligence to create timely, context driven app experiences." <https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022). Moreover, Foursquare provides product documentation regarding its Pilgrim SDK which instructs its customers and partners on how to use its infringing functionalities. *See* <https://developer.foursquare.com/docs/pilgrim-sdk> (last visited April 21, 2022).

41. Despite its knowledge or willful blindness of the '620 Patent described above, Foursquare has and continues to sell, offer for sale, and/or import into United States the Accused Products without the authority of the patent owner in violation of 35 U.S.C. § 271(c). Foursquare

knew at all times relevant to this Complaint that the Accused Products are especially made or especially adapted for use in the inventions claimed by the '620 Patent and are not staple articles of commerce suitable for non-infringing use.

42. All of the above constitute acts of past and continuing direct and/or indirect infringement by Foursquare of at least claim 1 of the '620 Patent. Foursquare has continued these infringing activities despite its knowledge of, or willful blindness to, the claims of the '620 Patent through the Notice Letter and an objectively high likelihood that its activities constituted infringement of a valid patent. Accordingly, Foursquare's infringement has been, and continues to be, willful and deliberate. Foursquare's infringement of the '620 Patent amounts to egregious and exceptional misconduct and BoardActive is therefore entitled to recover treble damages under 35 U.S.C. § 284 and reasonable attorneys' fees incurred in litigating this action under 35 U.S.C. § 285.

43. Foursquare's infringement of the '620 Patent is continuing and is expected to continue unless enjoined by this Court. BoardActive does not have an adequate remedy at law, will be irreparably harmed if Foursquare's infringement of the '620 Patent is permitted to continue, and is therefore entitled to an injunction against further infringement by Foursquare pursuant to 35 U.S.C. § 283.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 10,692,108

44. BoardActive reasserts and realleges Paragraphs 1–43 as if fully set forth herein.

45. Foursquare has infringed and continues to directly infringe, alone or jointly, one or more claims of the '108 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, selling, and/or importing the Accused Products in the United States without the authority of the patent owner in violation of 35 U.S.C. § 271(a). The Accused Products satisfy

each and every element of the claims of the '108 Patent. Foursquare's infringing products include, but are not limited to, the Accused Products and any same or reasonably similar products.

46. For example, as described below, Foursquare infringes at least claim 13 of the '108 Patent through its Pilgrim SDK. Claim 13 of the '108 Patent recites:

*13. A method comprising:
specifying a content distribution campaign comprising media content associated with a geolocation;
specifying a plurality of rules for the content distribution campaign, wherein specifying the plurality of rules comprises:
specifying the geolocation,
specifying a period of time, and
specifying at least one action to be performed by a consumer;
receiving a first indication that the consumer is within a radius of the geolocation;
tracking the consumer in response to receiving the first indication to determine whether the consumer has performed the at least one action; and
establishing that the consumer is eligible for the content distribution campaign when the plurality of rules is satisfied.*

47. Foursquare “embeds [the Pilgrim SDK] in its own consumer apps City Guide and Swarm and which can be embedded in any app[.]” <https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022). The Pilgrim SDK specifies a content distribution campaign comprising media content associated with a geolocation.

Use location intelligence to create timely, context-driven app experiences that drive engagement and revenue.

<https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022).

Send personalized, timely notifications or serve dynamic content to users based on where they are or where they like to go. Deliver proximity alerts when customers enter or exit a venue, and drive engagement at the highest point of impact.

<https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022).

48. The Pilgrim SDK specifies a plurality of rules for the content distribution campaign, wherein specifying the plurality of rules comprises: specifying the geolocation, specifying a period of time, and specifying at least one action to be performed by a consumer.

"Near" Location Targeting: Geofences

With Pilgrim SDK's geofencing feature, developers know when a user is nearing or has entered a venue depending on set thresholds. This is invaluable information for developers who want to ping users the moment they enter a location, instead of waiting two to three minutes for Foursquare's visit detection technology (i.e., Snap-to-Place, featured above) to provide a more accurate prediction. Developers can also ping users who are approaching a venue, helping to convince them to stop rather than walk past.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

Commute

Pilgrim defines commuting as when a user is moving some distance between one's home and place of work on a regular basis. This can be useful, for example, [if you want to send targeted messaging that relates to their morning or evening commute](#): "Need a pick me up? Stop by and grab a cup of joe on your way into the office."

<https://developer.foursquare.com/docs/ios-add-features#commute> (last visited April 21, 2022).

Active Check In

Active Check-in refers to a user check-in from the Swarm app. Via the app, a user can confirm their check-in with a "I am here" to help validate the visit data.

Explicit Check-in

Explicit Check-in (see Active Check-in) is when users in the Swarm app actively confirm their location check-in.

Engagement Metrics

Engagement Metrics are the measurement of how users engage with your advertising campaign. Metrics may include ad clicks, completed video views, shares or likes of a post, and duration of visit.

<https://foursquare.com/glossary/> (last visited April 21, 2022).

Access User States

User states allow you to more accurately interact, or not interact, with your users based on their state. For example, you might not want to send a notification to any users that are at home but you may want to remind them of a great promotion while they are on their way to work or on vacation.

<https://developer.foursquare.com/docs/ios-add-features> (last visited April 21, 2022).

Event Types

Geofences have five potential event types that are delivered directly to the client and through an optional webhook:

Event Type	Description
entrance	Triggered on the first GPS signal that is received inside of the geofence.
dwell	Triggered after the user has "dwelled" within the geofence for a configurable length of time. Default is 1 minute.
venue confirmed	Triggered when the device has dwelled inside a geofence radius and confirmed a stop at the venue within the radius. Only available in SDK versions 2.1.2 or greater
exit	Triggered on the first GPS signal that is received outside of the geofence.
presence	Triggered when the device is in a geofence radius during a get location request. Only available in SDK versions 2.1 or greater

<https://developer.foursquare.com/docs/ios-add-features#event-types> (discussing Pilgrim SDK capabilities) (last visited April 21, 2022).

49. The Pilgrim SDK receives a first indication that the consumer is within a radius of the geolocation; tracks the consumer in response to receiving the first indication to determine whether the consumer has performed the at least one action; and establishes that the consumer is eligible for the content distribution campaign when the plurality of rules is satisfied.

Commute

Pilgrim defines commuting as when a user is moving some distance between one's home and place of work on a regular basis. This can be useful, for example, if you want to send targeted messaging that relates to their morning or evening commute: "Need a pick me up? Stop by and grab a cup of joe on your way into the office."

<https://developer.foursquare.com/docs/ios-add-features#commute> (last visited April 21, 2022).

"Near" Location Targeting: Geofences

With Pilgrim SDK's geofencing feature, developers know when a user is nearing or has entered a venue depending on set thresholds. This is invaluable information for developers who want to ping users the moment they enter a location, instead of waiting two to three minutes for Foursquare's visit detection technology (i.e., Snap-to-Place, featured above) to provide a more accurate prediction. Developers can also ping users who are approaching a venue, helping to convince them to stop rather than walk past.

<https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022).

Engagement Metrics

Engagement Metrics are the measurement of how users engage with your advertising campaign. Metrics may include ad clicks, completed video views, shares or likes of a post, and duration of visit.

<https://foursquare.com/glossary/> (last visited April 21, 2022).

Access User States

User states allow you to more accurately interact, or not interact, with your users based on their state. For example, you might not want to send a notification to any users that are at home but you may want to remind them of a great promotion while they are on their way to work or on vacation.

<https://developer.foursquare.com/docs/ios-add-features> (last visited April 21, 2022).

Event Types

Geofences have five potential event types that are delivered directly to the client and through an optional webhook:

Event Type	Description
entrance	Triggered on the first GPS signal that is received inside of the geofence.
dwell	Triggered after the user has "dwelled" within the geofence for a configurable length of time. Default is 1 minute.
venue confirmed	Triggered when the device has dwelled inside a geofence radius and confirmed a stop at the venue within the radius. Only available in SDK versions 2.1.2 or greater
exit	Triggered on the first GPS signal that is received outside of the geofence.
presence	Triggered when the device is in a geofence radius during a get location request. Only available in SDK versions 2.1 or greater

<https://developer.foursquare.com/docs/ios-add-features#event-types> (discussing Pilgrim SDK capabilities) (last visited April 21, 2022).

50. Despite its knowledge or willful blindness of the '108 Patent, Foursquare is also indirectly infringing the '108 Patent by actively inducing and/or contributing to the direct infringement of others of the '108 Patent in the United States. Foursquare has and continues to intentionally and actively induce others, such as its partners, customers, end users, distributors, and/or retailers, to make, use, offer for sale, sell, and/or import the Accused Products without the authority of the patent owner in violation of 35 U.S.C. § 271(b). For example, Foursquare instructs its partners and customers to use and/or install one or more of the Accused Products such that those partners and customers directly infringe at least claim 13 of the '108 Patent. Indeed, Foursquare advertises that its Pilgrim SDK "can be embedded in any app[.]" <https://foursquare.com/article/a-guide-to-getting-the-most-out-of-pilgrim-sdk/> (last visited April 21, 2022). As yet another example, Foursquare touts that its Pilgrim SDK "drives engagement and revenue" by "us[ing] location intelligence to create timely, context driven app experiences." <https://foursquare.com/products/pilgrim-sdk/> (last visited April 21, 2022). Moreover, Foursquare provides product documentation regarding its Pilgrim SDK which instructs its customers and

partners on how to use its infringing functionalities. *See* <https://developer.foursquare.com/docs/pilgrim-sdk> (last visited April 21, 2022).

51. Despite its knowledge or willful blindness of the '108 Patent described above, Foursquare has and continues to sell, offer for sale, and/or import into United States the Accused Products without the authority of the patent owner in violation of 35 U.S.C. § 271©. Foursquare knew at all times relevant to this Complaint that the Accused Products are especially made or especially adapted for use in the inventions claimed by the '108 Patent and are not staple articles of commerce suitable for non-infringing use.

52. All of the above constitute acts of past and continuing direct and/or indirect infringement by Foursquare of at least claim 13 of the '108 Patent. Foursquare has continued these infringing activities despite its knowledge of, or willful blindness to, the claims of the '108 Patent through the Notice Letter and an objectively high likelihood that its activities constituted infringement of a valid patent. Accordingly, Foursquare's infringement has been, and continues to be, willful and deliberate. Foursquare's infringement of the '108 Patent amounts to egregious and exceptional misconduct and BoardActive is therefore entitled to recover treble damages under 35 U.S.C. § 284 and reasonable attorneys' fees incurred in litigating this action under 35 U.S.C. § 285.

53. Foursquare's infringement of the '108 Patent is continuing and is expected to continue unless enjoined by this Court. BoardActive does not have an adequate remedy at law, will be irreparably harmed if Foursquare's infringement of the '108 Patent is permitted to continue, and is therefore entitled to an injunction against further infringement by Foursquare pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, BoardActive Corporation respectfully requests that this Court:

- A. Enter judgment that Foursquare has infringed one or more claims of each of the Patents-in-Suit pursuant to 35 U.S.C. §§ 271(a), 271(b), and/or 271(c);
- B. Enter a judgment declaring that any continued manufacture, use, offer for sale, sale, and/or importation of Accused Products, or inducement of or contribution to such conduct, by Foursquare would constitute infringement of one or more claims of each of the Patents-in-Suit pursuant to 35 U.S.C. §§ 271(a), 271(b), and/or 271(c);
- C. Enter an order, pursuant to 35 U.S.C. § 284, awarding damages to BoardActive, including lost profits, or in the alternative, not less than a reasonable royalty, including pre-judgment and post-judgment interest and costs, in an amount adequate to compensate BoardActive for Foursquare's infringement of the Patents-in-Suit;
- D. Enter a judgment that Foursquare's infringement of the Patents-in-Suit is willful and that damages shall be increased under 35 U.S.C § 284 to three times the amount found or measured;
- E. Enter an order for a permanent injunction enjoining Foursquare and its corresponding officers, agents, servants, employees, attorneys, affiliates, divisions, subsidiaries, and all persons in active concert or participation with any of them, from infringing the Patents-in-Suit, and/or contributing to or inducing anyone to do the same, including manufacture, use, offer to sell, sale, and/or importation of Accused Products before the expiration of the Patents-

in-Suit;

- F. If a permanent injunction is not granted, a judicial determination of the conditions for future infringement such as an ongoing royalty;
- G. Enter an order for a post-judgment equitable accounting of damages owed by Foursquare for the period of infringement of the Patents-in-Suit following the period of damages established at trial;
- H. Enter an order, pursuant to 35 U.S.C. § 285, declaring this to be an exceptional case and thereby awarding to BoardActive its reasonable attorneys' fees, expenses, and costs incurred in this action; and
- I. Enter an order awarding to BoardActive such other and further relief, whether at law or in equity, that this Court seems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, BoardActive hereby requests a trial by jury on all issues so triable.

Dated: April 4, 2023

Respectfully submitted,

/s/ Shelley A. Kinsella

Shelley A. Kinsella (#4023)
ARMSTRONG TEASDALE LLP
1007 N. Market Street, 3rd Floor
Wilmington, DE 19801
Telephone: (302) 416-9672
Email: SKinsella@atllp.com

Edward F. Behm (admitted *pro hac vice*)
Mark Halderman (admitted *pro hac vice*)
ARMSTRONG TEASDALE LLP
2005 Market Street, 29th Floor
Philadelphia, PA 19103
Email: ebehm@atllp.com
mhalderman@atllp.com