

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

GRATUITY SOLUTIONS, LLC and
GRATUITY, LLC

Plaintiffs,

v.

TOAST, INC.

Defendant.

Case No.: 1:22-CV-11539-PBS

PLAINTIFFS' PRELIMINARY INFRINGEMENT CONTENTIONS

Plaintiffs Gratiuty Solutions, LLC and Gratiuty, LLC (“Gratiuty” or “Plaintiffs”), by and through their attorneys, hereby serve their Preliminary Infringement Contentions. Plaintiffs are also producing (1) all documents in the possession or custody of Plaintiffs evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each Asserted Patent. These contentions address the infringement of U.S. Patent Nos. 9,741,050 (“’050 patent” or “Asserted Patent”) by Toast Inc. (“Toast” or “Defendant”). These contentions also identify Accused Instrumentalities as defined below.

This disclosure is made solely for the purpose of this action. This disclosure is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any other objections on grounds that would require the exclusion of statements contained herein if such disclosure were asked of, or statement contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

At the time of exchanging these contentions with Toast, no discovery has been undertaken by either party and Gratiuty’s investigation of Toast’s infringement is ongoing.

Moreover, Gratiuty has yet to receive any production of any core technical documents and therefore this disclosure is based in large part upon information that Gratiuty has been able to obtain publicly, together with Gratiuty's current good faith beliefs regarding the Accused Instrumentalities.¹

This disclosure is given without prejudice to Gratiuty's rights, and Gratiuty hereby expressly reserves its rights and ability to further supplement or amend its contentions, including without limitation to add asserted claims or accused methods/products as additional facts are ascertained, analyses are made, research is completed, contentions are made, and claims are construed. The following disclosures are made subject to and without waiving any of the foregoing.

I. THE ASSERTED CLAIMS

Gratiuty, based on the information presently available to it, asserts that Toast infringes each of the following claims:

<u>Asserted Patent</u>	<u>Asserted Claims</u>	<u>Priority Date</u>²
The '050 Patent	Claims 1-13	at least as early as September 4, 2012 on the basis of application No. 61/696,569

II. ACCUSED INSTRUMENTALITIES & PRELIMINARY INFRINGEMENT CLAIM CHARTS

Gratiuty, based on the information presently available to it, identifies the following Accused Instrumentalities that infringe the Asserted Claims as described in the attached claim charts (Exhibit A).

¹ While the Court uses the term "accused product(s)", it should be understood that the infringement of an "Accused Instrumentality" as described herein includes the use of systems, devices, components, and other instrumentalities that meets the standards for infringement under 35 U.S.C. § 271.

² Gratiuty makes this disclosure without waiving any argument that it is entitled to an earlier date of invention based on activities predating the filing of the applications identified above.

A. The '050 Patent

All of the Asserted Claims of the '050 patent are infringed by each of the "'050 Accused Instrumentalities" defined collectively to include, without limitation: at least Toast Tip's Manager, Toast Payroll & Team Management, and/or Toast Point-of-Sale hardware and software.

Exhibit A is a claim chart identifying where each element of each Asserted Claim of the '050 patent is found within the '050 Accused Instrumentalities.

Any citations included in the charts are exemplary only, and are not limiting. Gratiuty notes that Toast has not yet provided discovery in this matter because non-venue discovery is stayed and Gratiuty has prepared these charts based on the limited information presently available to it. Gratiuty has subdivided the Asserted Claims in the charts to explain where the Accused Instrumentalities meet each claim element. These subdivisions are not to be taken as an indication of the boundaries of claim elements with respect to the doctrine of equivalents, or any other issue. In addition, the Accused Instrumentalities and Defendant's other products/services or use thereof may infringe the Asserted Claims in multiple ways. Gratiuty reserves the right to provide an alternative claim mapping or infringement contentions for the Accused Instrumentalities or Defendant's other products/services. Gratiuty further reserves the right to rely upon the opinions of one or more experts in support of its infringement contentions and/or modifications and revisions thereof. Gratiuty accordingly reserves its right to amend or supplement these charts upon obtaining relevant information during discovery.

III. DIRECT AND INDIRECT INFRINGEMENT

1. Direct and Indirect Infringement

Gratiuty contends that Toast directly infringes each of the Asserted Claims under 35 U.S.C. § 271(a) each time that it makes, uses, tests, and/or hosts in the United States the Accused

Instrumentalities, or products, devices, systems, and/or components of systems, that practice the claimed methods as described in further detail in Exhibit A. Toast directly infringes each of the Asserted Claims under 35 U.S.C. § 271(a) each time that it imports the Accused Instrumentalities into the United States. Toast's customers similarly directly infringe each of the Asserted Claims under 35 U.S.C. § 271(a) each time that a customer uses in the United States any of the Accused Instrumentalities that perform the claimed methods as described in further detail in Exhibits A-F. To the extent that the Accused Instrumentalities are made such that some elements are supplied or provided by Toast's business partners, service providers, or third-party vendors (none of which have yet been disclosed in discovery), Toast and such third parties are liable for joint infringement of such claims.

Toast additionally infringes each of the Asserted Claims pursuant to § 271(b) by inducing infringement of each of the Asserted Claims, such as by end users and customers of the Accused Instrumentalities. Toast actively induces infringement of third parties by (a) providing the Accused Instrumentalities to third parties and intending them to use; (b) advertising these Accused Instrumentalities through Toast's own and through third party websites; (c) encouraging customers and other third parties to communicate directly with Toast representatives about the Accused Instrumentalities for purposes of technical assistance and repair as well as sales and marketing; (d) providing instructions as to how to use the Accused Instrumentalities in an infringing manner (as further explained in Exhibit A), thereby making, importing into the United States, and/or using the Accused Instrumentalities, or performing the claimed methods of the Asserted Claims, with knowledge that such conduct constitutes an act of infringement. Toast has proceeded in this manner despite its actual knowledge of the Asserted Patents and that the specific actions it actively induced and induces on the part of its customers and other third parties

constitutes infringement of the Asserted Patents. At the very least, because Toast has been and remains on notice of the Asserted Patents and the accused infringement, it has been and remains willfully blind regarding the infringement it has induced and continues to induce.

Toast additionally infringes each of the Asserted Claims pursuant to § 271(c) by providing the Accused Instrumentalities, including web pages and content, user interfaces (e.g., hierarchical collapsing menu structure, hierarchical information structure, information structure, and/or hierarchical menu structure), software, and/or computer equipment as identified above, Toast contributes to the direct infringement of users of the Accused Instrumentalities, and similar products, devices, systems, and/or components of systems that are critical and material components of the Accused Instrumentalities that infringe the Asserted Patents, where these Accused Instrumentalities constitutes a material part of the claimed inventions (as further described in Exhibit A), Toast knows these Accused Instrumentalities to be especially made or especially adapted for use in infringement of the Asserted Claims, and the Accused Instrumentalities are not a staple article or commodity of commerce suitable for substantial non-infringing use.

Additionally, Gratuity contends that Toast is liable for infringement under 35 U.S.C. § 271(f) for supplying or causing to be supplied in or from the United States components of the Accused Instrumentalities uncombined in whole or in part and in such manner as to actively induce the combination of said components outside the United States and/or with knowledge that the components are especially made or adapted for use in an infringing invention, knowing that the components will be combined outside the United States in a manner that infringes.

IV. ACCOMPANYING DOCUMENT PRODUCTION

Gratiuty will make a document production of (1) all documents evidencing conception and reduction to practice for each claimed invention that are in the possession or custody of Gratiuty, and (2) a copy of the file history for each Asserted Patent at a mutually agreed-upon time.

Dated: September 1, 2023

/s/ Adam J. Woodward

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