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DISTRICT OF UTAH  
BY:   
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

LEGATO SYSTEMS, INC.,

Plaintiff,

v.

COLUMBIA DATA PRODUCTS, INC.,

Defendant.

Civil Action No.  
\_\_\_\_\_

**COMPLAINT**

**2:01CV00312C**

JURY TRIAL DEMANDED

Judge  
\_\_\_\_\_

Plaintiff, Legato Systems, Inc. ("Legato"), complains against defendant Columbia Data Products, Inc. ("CDP") and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Legato is a Delaware corporation having its principal place of business at 2350 West El Camino Real, Mountain View, California, and conducts business in this judicial district. The technology disclosed and claimed in the patents-in-suit, discussed below, was originally developed by Vinca Corporation of Orem, Utah ("Vinca"). Legato acquired Vinca in

August of 1999.

2. Defendant CDP is, upon information and belief, a Florida corporation having a principal place of business at 1070-B Rainer Drive, Altamonte Springs, Florida, and conducts business in this judicial district.

3. This is a civil action brought by Legato for patent infringement committed by defendant CDP and arising under the patent laws of the United States, specifically, Title 35 U.S.C. §§ 271, 281, 283, 284 and 285. Jurisdiction of this Court is founded upon 28 U.S.C. §§ 1331 and 1338(a)

4. In addition, this Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367 because all of the claims asserted herein are so related as to form part of the same case or controversy under Article III of the United States Constitution.

5. Upon information and belief, defendant CDP has transacted business, contracted to supply goods or services and has otherwise purposely availed itself of the privileges and benefits of the laws of the state of Utah and therefore is subject to the jurisdiction of this Court pursuant to § 78-27-24, Utah Code Ann.

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(b) and 1391.

#### **BACKGROUND**

7. Legato is the owner by assignment of U.S. Patent Nos. 5,649,152 (the “152 patent,” attached as Exhibit “A”) and 6,073,222 (the “222 patent,” attached as Exhibit “B”) (collectively, the “patents-in-suit”). The technology disclosed and claimed in the patents-in-suit was originally developed by Vinca which Legato acquired in August of 1999.

8. The patents-in-suit address the problem of making a backup copy of a computer disk that is in use. This is at times referred to as making a “live backup.”

9. The inventors of the patents-in-suit sought a solution to the live backup problem that would be simple in operation and that would be versatile without requiring massive storage capacities to implement. In solving this problem, a method was devised for preserving a static “snapshot” of the disk (a complete image of all the data on the disk) as of a particular point in time – a way to preserve the contents of the disk that would not be affected by subsequent modifications to the disk. A backup copy of this snapshot of the disk could then be made.

10. The so-called snapshot of the data contained on the computer disk is accessed by employing a “virtual” device. A system using such a virtual device and a method of using the same is the essence of the novel innovations disclosed and claimed the patents-in-suit.

11. Upon information and belief, CDP attended a NetWorld+Interop Conference in 1995 where it saw a display advertising the technology of the patents-in-suit, which Vinca had dubbed “SnapShot.” CDP expressed great interest in the technology and spoke with personnel employed by Vinca, Legato’s predecessor-in-interest to the patents-in-suit, about Vinca’s SnapShot product at the show.

12. At that time, CDP sold a product it called “SnapBack” which enabled a user to make a backup of a hard disk. The functionality of CDP’s SnapBack product was similar to that of dozens of other commercially available products at the time. CDP’s SnapBack product could not be used to perform a live backup. CDP expressed interest to Vinca personnel in utilizing Vinca’s SnapShot technology to perform a live backup.

13. In the months that followed, CDP had numerous contacts with Vinca to pursue a

business relationship with Vinca. These contacts included a visit to Salt Lake City where Vinca executives met with CDP executives. During these meetings, CDP tried to convince Vinca to bundle Vinca's SnapShot product with CDP's product or to simply acquire CDP outright. During such discussions, CDP suggested Vinca pay approximately \$1 million to purchase CDP. Vinca personnel even traveled to Florida in April of 1997 to visit CDP. Vinca ultimately determined that selling CDP's product did not fit within Vinca's business strategy so discussions with CDP were terminated

14. As a result of its numerous contacts with and access to Vinca, CDP learned much of Vinca's SnapShot technology. Additionally, CDP sought and obtained technical support from Vinca engineers relative to use of CDP's SnapBack product to backup the snapshot created by Vinca's SnapShot technology. When CDP could not get its product to work for this application, CDP contacted Vinca and spoke with Vinca engineers to resolve the problem.

15. Having failed to recruit Vinca as a business partner, CDP then set out to take advantage of the information it had gleaned from its discussions with Vinca by copying Vinca's SnapShot technology and combining it with CDP's SnapBack program. By using Vinca's SnapShot program and the technical information CDP had obtained directly from Vinca engineers, CDP was able to identify how Vinca's SnapShot program worked and implement Vinca's technology into CDP's product so that CDP's product could produce a live backup. CDP named its new product "SnapBackLive."

16. On about November 18, 1996, at the Comdex computer trade show in Las Vegas,

CDP introduced SnapBackLive version 4.0 to the trade.<sup>1</sup> CDP's SnapBackLive program had essentially the same functionality as its prior SnapBack program, but now included as a component in the program the ability to make a "live" backup by utilizing technology corresponding to the SnapShot functionality developed and subsequently patented as disclosed and claimed in Legato's '152 and '222 patents – hence, the addition of "Live" to its prior logo, SnapBack.

17. CDP dubbed the component of its program that incorporated Vinca's SnapShot technology its "Open Transaction Manager," or "OTM." In a paper dated November 11, 1998, entitled "Open Transaction Manager – Competitive Analysis" which was published by CDP on its internet web site, CDP acknowledges use of the technology corresponding to the Vinca patents when it states: "OTM is an enabling technology that presents a stable, coherent, point-in-time snapshot alternate view of one or more volumes or physical drives to any (backup) application." Having successfully copied Vinca's SnapShot technology and bundled it with its own back-up program, CDP proceeded to market its SnapBackLive product.

18. In or about November, 1997, Vinca entered a royalty agreement (the "SnapShot royalty agreement") with Seagate Software Network & Storage Management Group, Inc. ("Seagate") pursuant to which Seagate has been distributing and selling Vinca's SnapShot product, which incorporates the technology disclosed and claimed in the patents-in-suit. Vinca assigned to Legato its rights and obligations under the SnapShot royalty agreement with Seagate when Legato acquired Vinca. Subsequently, VERITAS Software, Inc. ("VERITAS") acquired

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<sup>1</sup> Although SnapBackLive was CDP's first version of a program that could produce a live backup, it was identified as version 4.0 apparently in an attempt to make the program look more mature than it really was.

Seagate, and VERITAS assumed Seagate's obligations under the SnapShot royalty agreement between Vinca and Seagate.

19. Upon information and belief, CDP has recently contracted with VERITAS for VERITAS to use, distribute and sell a software product incorporating CDP's infringing OTM technology. CDP thus knowingly and intentionally interfered with and disrupted economic relations between Legato and VERITAS, by licensing its infringing OTM technology to VERITAS, and causing VERITAS to cease paying royalties to Legato pursuant to the SnapShot royalty agreement.

**FIRST CLAIM FOR RELIEF**  
**(CDP's Infringement of Legato's U.S. Pat. No. 5,649,152)**

20. Legato hereby incorporates all of the preceding allegations of this Complaint into the First Claim for Relief as though fully set forth herein.

21. Legato is the owner by assignment of the '152 patent (Exhibit A). The '152 patent is directed to a system and method for providing a static snapshot, or image, of data stored on a mass storage system as it existed at a particular point in time.

22. The '152 patent was duly and validly issued by the United States Patent and Trademark Office after undergoing examination according to law.

23. CDP has imported into the United States and/or has made and/or sold and/or offered to sell products falling within the scope of the claims of the '152 patent without license or authority from Legato or Legato's predecessors-in-interest and in violation of Legato's rights. CDP is thereby directly infringing Legato's '152 patent and/or indirectly inducing others to infringe the '152 patent and/or engaging in acts constituting contributory infringement of

Legato's '152 patent. Such acts of infringement arise through at least CDP's manufacture, sales and support of the various CDP products, including, but not limited to, CDP's Open Transaction Manager (OTM) product.

24. Upon information and belief, CDP has had and continues to have notice of the existence of the Legato's '152 patent and despite such notice continues to willfully, wantonly and deliberately engage in acts of infringement as that term is defined in 35 U.S.C. § 271, without regard to Legato's '152 patent, and will continue to do so unless otherwise enjoined by this Court.

25. Legato has been and will continue to be damaged by the infringing conduct of defendant CDP.

26. Unless and until defendant CDP is enjoined from future infringement, Legato will suffer irreparable harm.

**SECOND CLAIM FOR RELIEF**  
**(CDP's Infringement of Legato's U.S. Pat. No. 6,073,222)**

27. Legato hereby incorporates all of the preceding allegations of this Complaint into the Second Claim for Relief as though fully set forth herein.

28. Legato is the owner by assignment of the '222 patent (Exhibit B).

29. The '222 patent is directed to a system and method for using a virtual device established at a computer system to access data as it existed at a selected moment in a mass storage system associated with the computer system, regardless of whether new data has been written to the mass storage system.

30. The '222 patent was duly and validly issued by the United States Patent and Trademark Office after undergoing examination according to law.

31. CDP has imported into the United States and/or has made and/or sold and/or offered to sell products falling within the scope of the claims of the '222 patent without license or authority from Legato or Legato's predecessors-in-interest and in violation of Legato's rights. CDP is thereby directly infringing Legato's '222 patent and/or indirectly inducing others to infringe the '222 patent and/or engaging in acts constituting contributory infringement of Legato's '222 patent. Such acts of infringement arise through at least CDP's manufacture, sales and support of the various CDP products incorporating the virtual device (and method for using same) described and claimed in the '222 patent, including, but not limited to, CDP's Open Transaction Manager (OTM) product.

32. Upon information and belief, CDP has had and continues to have notice of the existence of the Legato's '222 patent and despite such notice continues to willfully, wantonly and deliberately engage in acts of infringement as that term is defined in 35 U.S.C. § 271, without regard to Legato's '222 patent, and will continue to do so unless otherwise enjoined by this Court.

33. Legato has been and will continue to be damaged by the infringing conduct of defendant CDP.

34. Unless and until defendant CDP is enjoined from future infringement, Legato will suffer irreparable harm.

**THIRD CLAIM FOR RELIEF**  
**(CDP's Intentional Interference with Economic Relations**  
**between VERITAS and Legato)**

35. Legato hereby incorporates all of the preceding allegations of this Complaint into the Third Claim for Relief as though fully set forth herein.



36. CDP knowingly and intentionally interfered with and disrupted economic relations between Legato and VERITAS, by licensing its pirated OTM technology to VERITAS, and causing VERITAS to cease paying royalties to Legato pursuant to the SnapShot royalty agreement. Under the SnapShot royalty agreement, VERITAS was paying Legato a royalty for VERITAS' distribution and sale of Legato's proprietary SnapShot live back-up technology as disclosed and claimed in the patents-in-suit. CDP actively sought out and negotiated with VERITAS to enter into a contract for the use, distribution and sale of software containing the SnapShot live back-up technology stolen from Legato, under which VERITAS currently pays CDP a royalty. VERITAS has discontinued payment of royalties to Legato under the SnapShot royalty agreement.

37. CDP intentionally interfered with the existing economic relationship between Legato and VERITAS for an improper purpose or by improper means.

38. CDP intentionally interfered with the existing economic relationship between Legato and VERITAS by improper means in that CDP actively pirated, copied, stole, and otherwise misappropriated and converted to its own use the proprietary SnapShot live back-up technology belonging to Legato and its predecessor-in-interest, Vinca, disclosed and claimed in the patents-in-suit. CDP accomplished this misappropriation under the guise of seeking to engage in business with Vinca around 1995 to 1997. These contacts included calls and visits to Vinca's facilities in Utah during which CDP tried to convince Vinca to bundle Vinca's SnapShot product with CDP's product or to simply acquire CDP outright. During such discussions, CDP asked various questions of Vinca software engineers and obtained a great deal of technical information concerning Vinca's product. Vinca provided such technical information in reliance

on CDP's professed good faith intentions to partner with Vinca in business to produce a product joining both CDP's and Vinca's technology. CDP and Vinca did not ultimately engage in a business relationship, yet CDP proceeded to misappropriate and convert to its own use the technical information obtained from Vinca, including that disclosed and claimed in the patents-in-suit. The result of these efforts is OTM, CDP's own live back-up software product incorporating the misappropriated SnapShot technology. Thus CDP obtained from Vinca the critical information it needed to create OTM through means that are contrary to law, including but not limited to deceit, misrepresentation, and/or other means that constitute a violation of an established standard of the trade.

39. CDP further intentionally interfered with the existing economic relationship between Legato and VERITAS for an improper purpose in that CDP's primary purpose, upon information and belief, in contracting with VERITAS was to injure Legato by improperly effecting the termination of economic relations between Legato and VERITAS.

40. As a result of CDP's intentional interference with the existing economic relations between Legato and VERITAS, Legato has been and continues to be injured in that VERITAS has discontinued payment under the SnapShot royalty agreement causing Legato to be without the profits it would have realized from the royalty payments made under such agreement. VERITAS has indicated that it does not intend to honor the agreement.

**PRAYER FOR RELIEF**

WHEREFORE, Legato prays for judgment against CDP as follows:

A. For judgment holding defendant CDP liable for infringement of Legato's '152 patent and Legato's '222 patent; and for intentionally interfering with Legato's economic relations with Seagate.

B. For an award of damages adequate to compensate Legato for CDP's infringement of Legato's '152 patent and Legato's '222 patent, including treble damages and all other categories of damages allowed by 35 U.S.C. § 284;

C. For an award of damages adequate to compensate Legato for CDP's intentional interference with Legato's economic relations with VERITAS, including punitive damages;

D. For injunctive relief enjoining defendant CDP, its officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them as follows:

(i) from manufacturing any products falling within the scope of the claims of Legato's '152 patent or Legato's '222 patent;

(ii) from using any product or method falling within the scope of any of the claims of Legato's '152 patent or Legato's '222 patent;

(iii) from selling, offering to sell, licensing or purporting to license any product or method falling within the scope of any of the claims of Legato's '152 patent or Legato's '222 patent;

(iv) from importing any product into the United States which falls within the scope of Legato's '152 patent or Legato's '222 patent;

(v) from actively inducing others to infringe any of the claims of Legato's '152 patent or Legato's '222 patent;

(vi) from engaging in acts constituting contributory infringement of any of the claims of Legato's '152 patent or Legato's '222 patent; and

(vii) from all other acts of infringement of any of the claims of Legato's '152 patent or Legato's '222 patent;

E. That defendant CDP be ordered to deliver up for destruction all infringing products in its possession;

F. That this be declared an exceptional case and that Legato be awarded its attorneys fees against defendant CDP pursuant to 35 U.S.C. § 285;

G. For an award of Legato's costs of this action; and

H. For such further relief as this Court deems Legato may be entitled to in law and in equity.

**JURY DEMAND**

Legato hereby demands a trial by jury of those issues triable to a jury as a matter of right.

DATED this 1<sup>st</sup> day of May, 2001.

WORKMAN, NYDEGGER & SEELEY

By: 

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