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8 Attorneys for Plaintiff  
9 Juniper Networks, Inc.

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

13 JUNIPER NETWORKS, INC., a  
14 Delaware corporation,

15 Plaintiff,

16 vs.

17 ALTITUDE CAPITAL PARTNERS,  
L.P., a Delaware limited partnership,  
18 and SECURITY RESEARCH  
HOLDINGS LLC, a Delaware limited  
19 liability company,

20 Defendants.

Case No. No. 3:09-cv-03449

**AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT**

**DEMAND FOR JURY TRIAL**

21  
22  
23 Plaintiff Juniper Networks, Inc. (“Juniper”) alleges as follows:

24 **PARTIES**

25 1. Plaintiff Juniper is a corporation duly organized and existing under the  
26 laws of the State of Delaware, and has its principal place of business at 1194 North  
27 Mathilda Avenue, Sunnyvale, California 94089.

1           2.       On information and belief, Defendant Altitude Capital Partners, L.P.  
2 (“Altitude”) is a limited partnership organized and existing under the laws of the  
3 State of Delaware, and has a principal place of business at 485 Madison Avenue,  
4 Suite 2300, New York, NY 10022.

5           3.       On information and belief, Defendant Security Research Holdings LLC  
6 (“SRH”) is a limited liability company organized and existing under the laws of the  
7 State of Delaware, and has a principal place of business at 485 Madison Avenue,  
8 Suite 2300, New York, NY 10022.

9           4.       Altitude and SRH are in the business of patent litigation. They do not  
10 manufacture nor produce any products. Former Altitude partner and current SRH  
11 principal William Marino has stated, “[O]ur approach has been to sue first and talk  
12 to people later. And the reason we’ve done that is we worry about declaratory  
13 judgment risk.” He has further stated, “We just see litigation as a pragmatic way to  
14 force discussions with people who otherwise don’t want to talk to you at the time  
15 you approach them.”

#### 16                                   **SUBJECT MATTER JURISDICTION**

17           5.       This action arises under the patent laws of the United States of  
18 America, 35 U.S.C. § 1 *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C.  
19 §§ 2201 and 2202. This Court has subject matter jurisdiction under 28 U.S.C. §§  
20 1331 and 1338(a) in that this is a civil action arising out of the patent laws of the  
21 United States of America.

22           6.       This Court also has subject matter jurisdiction under 28 U.S.C. § 2201  
23 because, as shown below, a substantial controversy exists between Juniper and  
24 Altitude and SRH regarding patent non-infringement, invalidity, and  
25 unenforceability. This controversy has been in existence since before July 27, 2009  
26 (the filing date of the original complaint in this case).

27           7.       On November 2, 2007, a company named Enhanced Security Research,  
28 LLC (“ESR”) brought a complaint for patent infringement against Juniper in the

1 United States District Court for the Eastern District of Texas alleging that certain  
2 Juniper network security products infringe United States Patent Nos. 6,119,236 and  
3 6,304,975 (collectively, the “patents-in-suit”), ESR hired the law firm Townsend  
4 and Townsend and Crew LLP (“Townsend”) to represent it in this case (the “2007  
5 Texas Case”).

6 8. ESR claimed to be the owner of all rights and interest in the patents-in-  
7 suit at the time it initiated the 2007 Texas Case.

8 9. In or about June 2008, Altitude expressed interest in the 2007 Texas  
9 Case against Juniper and other potential litigation involving the patents-in-suit.  
10 Altitude requested and analyzed information regarding alleged infringement of the  
11 patents-in-suit by Juniper and others. Altitude also conducted a detailed review of  
12 Juniper’s invalidity contentions for the patents-in-suit.

13 10. On or about September 9, 2008, Altitude and ESR executed a Term  
14 Sheet

15 [REDACTED]

16  
17  
18 11. On or about October 10, 2008, Altitude and ESR executed a Letter of  
19 Intent indicating

20  
21 [REDACTED]

22  
23 12. Around this time, Altitude began assembling [REDACTED]  
24 to take over the litigation involving the patents-in-suit against Juniper and  
25 other parties. As part of these efforts, Altitude approached the law firm Robins,  
26 Kaplan, Miller & Ciresi L.L.P. (“Robins Kaplan”) for retention in connection with  
27 the litigation. At one point in this process (around December 2008), Altitude co-  
28

1 founder Warren Hurwitz stated [REDACTED]

2  
3 13. In or about December 2008, Altitude prepared

4  
5 [REDACTED]

6  
7  
8 14. On or about January 20, 2009, Altitude and ESR executed a Purchase  
9 Agreement by which SRH (a shell company Altitude had created) became owner of  
10 all substantial rights to the patents-in-suit,

11 [REDACTED]

12  
13 15. The Purchase Agreement contained a subsection providing

14 [REDACTED]

15  
16 SRH subsequently exercised its right  
17 under the Purchase Agreement by directing ESR to make decisions relating to the  
18 patents-in-suit.

19 16. After execution of the Purchase Agreement, the principals of Altitude  
20 and SRH began directing and controlling enforcement efforts against Juniper in the  
21 2007 Texas Case and related cases, both directly and through their counsel (Robins  
22 Kaplan). For example,

23  
24 [REDACTED]

25 Upon information and belief,  
26 Altitude and SRH also caused ESR in February 2009 to begin seeking from Juniper  
27 (for the first time) discovery regarding a host of Juniper products that had not  
28 previously been accused of infringing the patents-in-suit.

1 17. Altitude and SRH also directed the filing of a new action against  
2 Juniper on or about March 26, 2009, in California state court. The [REDACTED]  
3 [REDACTED] Robins Kaplan attorneys took the lead in this case, for example, by  
4 arguing at court hearings in April and May 2009.

5 18. Altitude and SRH also directed the filing of a new infringement action  
6 against Juniper on or about May 18, 2009, in the Eastern District of Texas (the  
7 “2009 Texas Case”). The new complaint against Juniper named Robins Kaplan as  
8 lead counsel. Altitude and SRH (through Marino) were also responsible for hiring  
9 local counsel in this new action (Capshaw DeRieux LLP). Townsend was omitted  
10 from the list of counsel for the 2009 Texas Case. Marino later affirmatively stated  
11 to ESR principal Russell Brand that

12 [REDACTED]  
13

14 19. At the direction of Altitude and SRH, Robins Kaplan also entered an  
15 appearance in the 2007 Texas case on or about June 4, 2009. At the direction of  
16 Altitude and SRH, that case was voluntarily dismissed.

17 20. At the direction of Altitude and SRH, Robins Kaplan also filed an  
18 infringement action involving the patents-in-suit in Delaware against a number of  
19 other companies on or about May 29, 2009.

20 21. Beginning in about May 2009, Juniper came to the realization that ESR  
21 had transferred ownership of the patents to Altitude and SRH, and that Altitude and  
22 SRH (and not ESR) were in fact currently controlling the litigation efforts against  
23 Juniper and others in Texas, California, and Delaware.

24 22. On or about May 6, 2009, Altitude and SRH directed the production of  
25 over 10,000 pages of documents in the California state court action against Juniper.  
26 Upon reviewing these documents, Juniper discovered that they contained:

27 a. the Letter of Intent

28 [REDACTED]

1 [REDACTED]

- 2
- 3 b. the Purchase Agreement between SRH and ESR transferring all
- 4 substantial rights in the patents-in-suit and indicating (among
- 5 other things) that Altitude and SRH now had the exclusive right
- 6 to direct and control litigation against Juniper; and
- 7 c. email correspondence disclosing

8

9 [REDACTED]

10

11

12 23. On or about May 7, 2009, Juniper deposed ESR representative Russell

13 Brand in connection with the California state court action. In that deposition, Brand

14 confirmed that

15 [REDACTED]

16 Robins Kaplan defended this deposition.

17 24. In May and June 2009, Juniper observed that Altitude and SRH were,

18 in fact, exercising their right to enforce the patents-in-suit against Juniper and others

19 and to direct and control all litigation involving the patents-in-suit. For example,

20 Juniper saw that the [REDACTED] Robins Kaplan lawyers that Altitude and SRH

21 had brought on pursuant to the Purchase Agreement were taking over the 2007

22 Texas Case against Juniper and prosecuting new litigation against Juniper and others

23 in Texas, California, and Delaware.

24 25. Juniper also conducted independent research regarding Altitude and

25 SRH, and discovered that they were not in the business of acquiring patents for use

26 in making products but rather were non-practicing entities that sought patents for

27 assertion against other companies in infringement lawsuits.

28

1 26. Based on the facts set forth above (among others), Juniper realized that  
2 its ongoing dispute regarding the patents-in-suit was no longer with ESR; it was  
3 with Altitude and SRH.

4 27. Juniper also concluded that, because ESR no longer owned the patents-  
5 in-suit, Juniper faced the serious risk of prevailing in its case against ESR on the  
6 merits only to find itself exposed to a new infringement lawsuit at any time by the  
7 true owners of the patents-in-suit (Altitude and SRH).

8 28. Accordingly, Juniper filed this declaratory judgment action against  
9 Altitude and SRH on July 27, 2009.

10 29. As of July 27, 2009, and there was a definite and concrete dispute  
11 between Juniper, Altitude, and SRH. Moreover, Juniper had legal interests that  
12 were adverse to Altitude and SRH. Altitude and SRH were not merely funding the  
13 ongoing litigation against Juniper at that point, but were actively directing and  
14 controlling that litigation,

15 [REDACTED]

16 30. Because Altitude and SRH (and not ESR) had standing to sue Juniper  
17 on July 27, 2009, it follows that Juniper's apprehension of suit was immediate and  
18 real at that time. Indeed, by that date, Altitude and SRH had already repeatedly sued  
19 Juniper through the intermediary of ESR, even though ESR itself lacked standing to  
20 sue.

21 31. As of July 27, 2009, all of the circumstances surrounding the parties  
22 and the patents-in-suit (including those facts and circumstances set forth above)  
23 demonstrated that a justiciable Article III controversy existed between Juniper,  
24 Altitude, and SRH.

25 **PERSONAL JURISDICTION**

26 32. This Court has personal jurisdiction over Altitude and SRH because  
27 they have engaged in numerous contacts and business dealings within the State of  
28 California (including in relation to their acquisition of rights to the patents-in-suit)

1 and have participated in the bringing of patent infringement claims against Juniper,  
2 a California resident.

3 **VENUE**

4 33. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and  
5 (c) and 1400(b), because a substantial part of the events giving rise to Juniper's  
6 claims occurred in this district.

7 **INTRADISTRICT ASSIGNMENT**

8 34. Pursuant to Civil Local Rule 3-2(c), because this action is an  
9 intellectual property action, it is properly assigned to any of the divisions in this  
10 district.

11 **GENERAL ALLEGATIONS**

12 35. Juniper incorporates by reference paragraphs 1-34 of this Complaint  
13 and re-alleges them as though fully set forth herein.

14 36. Juniper designs, develops, markets, and sells a wide variety of network  
15 security products, and intends to continue designing, developing, marketing, and  
16 selling these products.

17 37. On information and belief, SRH claims to be the owner of all  
18 substantial rights to the patents-in-suit.

19 38. On information and belief, SRH was created for the sole purpose of  
20 purchasing rights to the patents-in-suit from ESR.

21 39. On information and belief, SRH is owned and controlled by Altitude,  
22 and is Altitude's alter ego. Altitude is in the business of purchasing and investing in  
23 patent portfolios that are monetized by suing other companies for patent  
24 infringement.

25 40. On November 2, 2007, ESR (a purported predecessor-in-interest to the  
26 patents-in-suit) brought a complaint for patent infringement against Juniper in the  
27 United States District Court for the Eastern District of Texas alleging that certain  
28 Juniper network security products infringe the patents-in-suit.



1           41.    On information and belief, in late 2008 or early 2009, Altitude and  
2 SRH negotiated with ESR to obtain all substantial rights to the patents-in-suit via  
3 the Purchase Agreement.

4           42.    On July 17, 2009, the Texas case was dismissed by the Texas court  
5 because ESR lacked standing.

6           43.    On May 18, 2009, ESR filed another complaint for patent infringement  
7 against Juniper in the United States District Court for the Eastern District of Texas.  
8 That case was also dismissed for lack of subject matter jurisdiction, because ESR  
9 did not own and did not have standing to assert the patents-in-suit.

10          44.    As of July 27, 2009, Altitude and SRH (collectively, “Defendants”) had  
11 asserted or planned to themselves assert in the immediate future that Juniper’s  
12 network security products infringe the patents-in-suit. Therefore, a substantial  
13 controversy of sufficient immediacy and reality exists (and has existed since before  
14 July 27, 2009) between Juniper and Defendants as to whether any of Juniper’s  
15 products infringe any valid and enforceable claims of any of the patents-in-suit to  
16 warrant the issuance of a declaratory judgment.

17          45.    Juniper desires a judicial determination of the foregoing controversy  
18 and a declaration by the Court of the parties’ respective rights.

19                               **FIRST CAUSE OF ACTION**

20                   **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,119,236)**

21          46.    Juniper incorporates by reference paragraphs 1-45 of this Complaint  
22 and re-alleges them as though fully set forth herein.

23          47.    Based on Defendants’ actions, Juniper’s past and current conduct, and  
24 Juniper’s future plans, all as described above, a substantial controversy has arisen  
25 between Juniper and Defendants concerning whether Juniper has infringed or does  
26 infringe any valid and enforceable claim, properly construed, of the ‘236 Patent, and  
27 whether Juniper is liable for the purported infringement of any such claim, either  
28

1 literally or under the doctrine of equivalents, and whether based on a theory of direct  
2 infringement, contributory infringement, or infringement by inducement.

3 48. Juniper does not infringe, and has never infringed, any valid and  
4 enforceable claim, properly construed, of the '236 Patent, and is not liable for the  
5 purported infringement of any such claim, either literally or under the doctrine of  
6 equivalents, and whether based on a theory of direct infringement, contributory  
7 infringement, or infringement by inducement.

8 49. A judicial declaration that Juniper does not infringe any valid and  
9 enforceable claim of the '236 Patent is necessary and appropriate at this time so that  
10 Juniper can ascertain its rights and duties with respect to designing, developing,  
11 marketing, and selling networking products.

## 12 **SECOND CAUSE OF ACTION**

### 13 **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,304,975 B1)**

14 50. Juniper incorporates by reference paragraphs 1-49 of this Complaint  
15 and re-alleges them as though fully set forth herein.

16 51. Based on Defendants' actions, Juniper's past and current conduct, and  
17 Juniper's future plans, all as described above, a substantial controversy has arisen  
18 between Juniper and Defendants concerning whether Juniper has infringed or does  
19 infringe any valid and enforceable claim, properly construed, of the '975 Patent, and  
20 whether Juniper is liable for the purported infringement of any such claim, either  
21 literally or under the doctrine of equivalents, and whether based on a theory of direct  
22 infringement, contributory infringement, or infringement by inducement.

23 52. Juniper does not infringe, and has never infringed, any valid and  
24 enforceable claim, properly construed, of the '975 Patent, and is not liable for the  
25 purported infringement of any such claim, either literally or under the doctrine of  
26 equivalents, and whether based on a theory of direct infringement, contributory  
27 infringement, or infringement by inducement.

28

1 53. A judicial declaration that Juniper does not infringe any valid and  
2 enforceable claim of the ‘975 Patent is necessary and appropriate at this time so that  
3 Juniper can ascertain its rights and duties with respect to designing, developing,  
4 marketing, and selling networking products.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Juniper prays for judgment as follows:

7 A. For a judicial determination that Juniper is not infringing, and has not  
8 infringed, any valid and enforceable claims of the ‘236 or ‘975 Patents;

9 B. For a judicial determination, pursuant to 35 U.S.C. § 285, that this case  
10 is exceptional and that Juniper be awarded its reasonable attorneys’ fees and costs;  
11 and

12 C. For such other and further relief as this Court deems just and proper.

13 Dated: February 22, 2011

IRELL & MANELLA LLP

16 By: /s/ Azar Mouzari

17 Azar Mouzari  
18 Attorneys for Plaintiff  
19 Juniper Networks, Inc.

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**DEMAND FOR JURY TRIAL**

Juniper Networks, Inc. hereby demands a trial by jury on all issues triable to a jury.

Dated: February 22, 2011

IRELL & MANELLA LLP

By: /s/ Azar Mouzari  
Azar Mouzari  
Attorneys for Plaintiff  
Juniper Networks, Inc.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on February 22, 2011, the foregoing document was filed electronically using the CM/ECF system which will send notification of such filing to the e-mail addresses on file with the Clerk of Court.

By: /s/ Azar Mouzari  
Azar Mouzari