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TROPOS NETWORKS, INC.

**E-filing**

**ADR**

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

TROPOS NETWORKS, INC., a Delaware corporation,

Plaintiff,

vs.

IPCO, LLC, a Georgia limited liability company, STATISIGNAL, IPC, LLC, a Georgia limited liability company, STATISIGNAL SYSTEMS, INC., a Georgia Corporation, and DOES 1-50,

Defendants.

**C 05 04281 EMC**

**COMPLAINT FOR:**

- (1) **DECLARATORY JUDGMENT OF NON-INFRINGEMENT, INVALIDITY AND UNENFORCEABILITY;**
- (2) **TORTIOUS INTERFERENCE WITH CONTRACTS;**
- (3) **TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; and**
- (4) **UNFAIR COMPETITION PURSUANT TO UNFAIR BUSINESS PRACTICES ACT (BUS. & PROF. CODE § 17200).**

**JURY TRIAL DEMANDED**

1 Plaintiff Tropos Networks, Inc. ("Tropos"), by and through its attorneys of record, sues  
2 Defendants IPCO, LLC, StatSignal, IPC, LLC and StatSignal Systems, Inc., and Does 1-50  
3 (collectively, "Defendants") and alleges as follows:

4 **NATURE OF ACTION**

5 1. This action is based, in part, on the patent laws of the United States, Title 35 of the  
6 United States Code. Tropos seeks a declaration that its activities do not infringe United States  
7 Patent Nos. 6,249,516 ("the '516 Patent") and 6,044,062 ("the '062 Patent"), and/or that these  
8 patents are invalid and unenforceable. This action is also based, in part, on California's Business  
9 and Professions Code Section 17200, which prohibits unfair business practices. Tropos seeks  
10 relief from Defendants' intentional interference with Tropos' contracts and prospective economic  
11 advantage, and from Defendants' unfair competition and business practices.

12 **THE PARTIES**

13 2. Tropos is a corporation organized and existing under the laws of the State of  
14 Delaware, having offices at 555 Del Rey Avenue, Sunnyvale, CA.

15 3. Upon information and belief, IPCO, LLC ("IPCO") is a limited liability company  
16 organized and existing under the laws of the State of Georgia, having business addresses at 200  
17 Galleria Parkway, Suite 1820, Atlanta, GA and 2859 Paces Ferry Road, Atlanta, GA.

18 4. Upon information and belief, StatSignal, IPC, LLC ("SIPCO") is a limited liability  
19 company organized and existing under the laws of the State of Georgia, having business addresses  
20 at 200 Galleria Parkway, Atlanta, GA and 2859 Paces Ferry Road, Atlanta, GA.

21 5. Upon information and belief, StatSignal Systems, Inc. ("StatSignal Systems") is a  
22 corporation organized and existing under the laws of the State of Georgia, having business address  
23 at 2859 Paces Ferry Road, Atlanta, GA and 6065 Roswell Road, Atlanta, GA.

24 6. DOE 1 through DOE 50, inclusive, are sued herein under fictitious names. Their  
25 true names and capacities are unknown to plaintiff. When said true names and capacities are  
26 ascertained, plaintiff will amend this complaint by inserting their true names and capacities.

27 //

28 //

1           7.       On information and belief, at all times mentioned herein Defendants were the  
2 agents of the other Defendants and in doing the things alleged below, were acting within the scope  
3 of their agency, towards a common interest, and are jointly and severally liable.

4                               **JURISDICTION AND VENUE**

5           8.       This is a civil action regarding false allegations of patent infringement arising  
6 under the patent laws of the United States, Title 35 of the United States Code, in which Plaintiff  
7 seeks declaratory judgment under the Declaratory Judgment Act. Thus, the Court has jurisdiction  
8 over the subject matter of this matter under 28 U.S.C. §§1331, 1338(a), 2201 and 2202. This is  
9 also a civil action arising under the laws of the State of California. This Court has subject matter  
10 jurisdiction pursuant to 28 U.S.C. §1332 because the parties are diverse and the matter in  
11 controversy exceeds \$75,000. Further, this Court has supplemental jurisdiction over Plaintiff's  
12 state law claims pursuant to 28 U.S.C. §1367.

13           9.       This Court has personal jurisdiction over the Defendants because Defendants have  
14 committed intentional acts in, or expressly aimed at the State of California concerning the subject  
15 matter of this lawsuit, that have caused harm to Tropos, which Defendants knew would be  
16 suffered in California. Defendants have also engaged in activities in California and/or conducted  
17 business in California, including but not limited to entering into contracts or business relationships  
18 with California businesses and/or residents concerning the subject matter of this lawsuit.

19           10.      Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and (c) and 1400(b).

20                               **GENERAL ALLEGATIONS**

21           11.      Tropos is in the business of designing, developing and providing metro-scale Wi-Fi  
22 mesh network products and services ("Mesh Network Products").

23           12.      On information and belief, StatSignal IPC and StatSignal Systems operate in the  
24 area of wireless mesh networking and Internet related technology.

25           13.      On information and belief, IPCO is an IP holding company that has improperly  
26 asserted one or more of its wireless mesh network patents against Tropos, and companies like  
27 Tropos, that provide Mesh Network Products.

1           14.     The '516 Patent issued on June 19, 2001 from U.S. Patent Application Serial No.  
2 09/492,930 ("the '930 Application"). The '930 Application was filed on January 27, 2000 as a  
3 divisional of U.S. Patent Application Serial No. 08/760,895 ("the '895 Application"). The '895  
4 Application matured into the '062 Patent, which issued on March 28, 2000.

5           15.     The '516 Patent and the '062 Patent purport to be directed to wireless network  
6 systems.

7           16.     On information and belief, Edwin B. Brownrigg, one of the named inventors,  
8 resides in Roseville, California.

9           17.     On information and belief, Brownrigg is a principle of CommUnique, LLC  
10 ("CommUnique"), which is also located in Roseville, CA.

11          18.     On information and belief, the '516 and '062 Patents were assigned by  
12 CommUnique to IPCO on December 11, 2004.

13                   **IPCO Threatens Tropos With Patent Infringement**

14          19.     By virtue of false allegations of patent infringement made to both Tropos and its  
15 customers, both within and outside the State of California, and by virtue of IPCO's other actions,  
16 Tropos has an imminent apprehension that it will be sued by IPCO for patent infringement relating  
17 to its Mesh Network Products and the '516 and '062 Patents.

18          20.     On information and belief, Defendants hold additional patents relating to wireless  
19 mesh networking that have served as the basis for threats against Tropos and/or its customers.  
20 Accordingly, Tropos also has an imminent apprehension that it will be sued by one or more of the  
21 Defendants for patent infringement of these other patents relating to wireless mesh networking.

22                   **IPCO's Patents Are Not Infringed, Are Invalid And Are Unenforceable**

23          21.     The '516 and '062 Patents are not infringed, either literally or under the doctrine of  
24 equivalents, by any Mesh Network Product manufactured, used, sold, or offered for sale, or  
25 imported by Tropos.

26          22.     On information and belief, the '516 and '062 Patents are also unenforceable due to  
27 inequitable conduct by at least one of the purported inventors during the prosecution of the  
28 applications that matured into these patents.

1           23.     Purported inventor Brownrigg is a co-author of an article entitled "A Packet Radio  
2 Network for Library Automation," which was published by the Institute of Electrical and  
3 Electronics Engineers in October, 1987 ("the 1987 Brownrigg Article").

4           24.     Brownrigg is also a co-author of a textbook entitled "Packet Radio Networks:  
5 Architectures, Protocols, Technologies and Applications," which was published by Pergamon  
6 Press in 1987 ("the 1987 Brownrigg Book").

7           25.     The 1987 Brownrigg Article and the 1987 Brownrigg Book are both material to the  
8 patentability of the subject matter claimed in the '516 and '062 Patents.

9           26.     Brownrigg had a duty of candor and good faith in dealing with the United States  
10 Patent and Trademark Office ("USPTO") during the prosecution of the application that matured  
11 into the '516 and '062 Patents, including a duty to disclose material information to the USPTO  
12 relating to patentability of the alleged inventions in these patents.

13           27.     Brownrigg breached his duty of candor, good faith, and the requirement to  
14 disclosure material information to the USPTO relating to the applications that matured into the  
15 '516 and '062 Patents.

16           28.     Specifically, on information and belief, despite having knowledge of the materiality  
17 of the 1987 Brownrigg Article and the 1987 Brownrigg Book since their publication in 1987, and  
18 with the intent to deceive the USPTO and the examiner reviewing the '895 and '930 Applications,  
19 Brownrigg intentionally withheld 1987 Brownrigg Article and the 1987 Brownrigg Book from the  
20 USPTO during the prosecution of these Applications in violation of the duty of candor and good  
21 faith owed under 37 C.F.R. §1.56.

22           29.     The aforesaid conduct of Brownrigg constitutes inequitable conduct that renders  
23 the '516 and '062 Patents unenforceable.

24           30.     In addition to the 1987 Brownrigg Article and the 1987 Brownrigg Book, several  
25 additional pieces of material prior art were not before the USPTO during the prosecution of the  
26 '895 and the '930 Applications. On information and belief, had this prior art been before the  
27 USPTO during the prosecution of the '895 and '930 Applications, the '516 and '062 Patents  
28 would not have issued.

1           31.     Accordingly, Tropos believes the '516 and '062 Patents are not infringed, are  
2 invalid for failure to comply with the conditions of patentability set forth in Title 35, United States  
3 Code, including 35 U.S.C. §§102, 103 and 112, and are unenforceable due to inequitable conduct  
4 by at least one of the purported inventors during the prosecution of the applications that matured  
5 into these patents.

6                   **The '516 Patent Is Currently Being Challenged In Federal Court**

7           32.     On April 29, 2005, Elster Electricity, LLC ("Elster") filed a lawsuit against IPCO  
8 seeking, *inter alia*, a declaration that the '516 Patent is invalid and unenforceable.

9           33.     During the course of the lawsuit against IPCO, Elster identified several pieces of  
10 prior art that it contends render the '516 Patent invalid under 35 U.S.C. §§102 and/or 103.

11           34.     Elster has also alleged inequitable conduct on the part of the purported inventor  
12 Brownrigg, citing the aforementioned publications and asserting that they were intentionally  
13 withheld during the prosecution of the applications that led to these patents.

14                   **Defendants Threaten Tropos' Business Relationships**

15           35.     Tropos has on-going and potential relationships with leading business partners and  
16 customers in the mesh network market. Some of these businesses have issued press releases  
17 announcing their involvement with Tropos' Mesh Network Products.

18           36.     Defendants, or their agents, have falsely and in bad faith informed one or more of  
19 Tropos' partners or customers that Tropos and or their customers are infringing the '516 and '062  
20 Patents.

21           37.     Defendants, or their agents, also falsely and in bad faith have informed one or more  
22 of Tropos' partners or customers that doing business with Tropos would result in liability because  
23 of Tropos' alleged patent infringement.

24           38.     As a result of Defendants' conduct, which bore no relation to a legitimate attempt  
25 at dispute resolution, Tropos' existing and prospective business relationships with one or more of  
26 its partners or customers have been damaged.

1 39. Defendants' claims of Tropos' patent infringement were made to one or more of  
2 Tropos' partners or customers with full knowledge and appreciation that the validity and  
3 enforceability of the '516 Patent were being challenged in federal court.

4 40. On information and belief, Defendants' claims of Tropos' patent infringement were  
5 made to one or more of Tropos' partners or customers in bad faith, and with full knowledge and  
6 appreciation that the '516 and '062 Patents are invalid, and were procured by fraud and inequitable  
7 conduct.

#### 8 **FIRST CAUSE OF ACTION**

##### 9 **Declaration That The '516 Patent Invalid, Unenforceable And/Or Not Infringed**

10 41. Tropos repeats and incorporates herein Paragraphs 1 through 40.

11 42. An actual, live and justiciable controversy exists between Tropos and IPCO as to  
12 whether Tropos' Mesh Network Products infringe IPCO's alleged rights under the '516 Patent,  
13 and whether the '516 Patent, and each of its claims, are valid and/or enforceable.

14 43. IPCO contends that the '516 Patent, and each of its claims, are valid and  
15 enforceable, and that Tropos and their customers infringe the '516 Patent.

16 44. Tropos denies those contentions, and alleges that the '516 Patent, and each of its  
17 claims, are not infringed, are invalid for failing to meet the conditions for patentability set forth in  
18 35 U.S.C. §§102, 103 and 112, and are unenforceable due to inequitable conduct on the part of at  
19 least one of the named inventors during the prosecution of the application that matured into the  
20 '516 Patent.

21 45. As a result, Tropos seeks, and is entitled to, a judgment against IPCO that the '516  
22 Patent, and each of its claims, are invalid, unenforceable and/or not infringed, either literally or  
23 under the doctrine of equivalents.

#### 24 **SECOND CAUSE OF ACTION**

##### 25 **Declaration That The '062 Patent Is Invalid, Unenforceable And/Or Not Infringed**

26 46. Tropos repeats and incorporates herein Paragraphs 1 through 40.



47. An actual, live and justiciable controversy exists between Tropos and IPCO as to whether Tropos' Mesh Network Products infringe IPCO's alleged rights under the '062 Patent, and whether the '062 Patent, and each of its claims, are valid and/or enforceable.

48. IPCO contends that the '062 Patent, and each of its claims, are valid and enforceable, and that Tropos and their customers infringe the '062 Patent.

49. Tropos denies those contentions, and alleges that the '062 Patent, and each of its claims, are not infringed, are invalid for failing to meet the conditions for patentability set forth in 35 U.S.C. §§102, 103 and 112, and are unenforceable due to inequitable conduct on the part of at least one of the named inventors during the prosecution of the application that matured into the '062 Patent.

50. As a result, Tropos seeks, and is entitled to, a judgment against IPCO that the '062 Patent, and each of its claims, are invalid, unenforceable and/or not infringed, either literally or under the doctrine of equivalents.

### **THIRD CAUSE OF ACTION**

#### **Declaration Of Non-Interference With Patent Rights**

51. Tropos repeats and incorporates herein Paragraphs 1 through 50.

52. On information and belief, an actual, live and justiciable controversy exists concerning Tropos' freedom to operate free of infringement claims by Defendants, and as a result Tropos seeks, and is entitled to, a judgment against Defendants that Tropos is not infringing any valid and enforceable claim of Defendants' patents.

### **FOURTH CAUSE OF ACTION**

#### **Tortious Interference with Contractual Relations**

53. Tropos repeats and incorporates herein Paragraphs 1 through 50.

54. Tropos seeks to recover damages based upon a claim that Defendants interfered with Tropos' contractual relationships.

55. Tropos has existing contract(s) with one or more of its partners or customers.

56. Defendants knew of the existence of these contract(s).



57. Defendants engaged in wrongful acts or conduct intended to prevent Tropos' performance, cause Tropos' performance to be more expensive or burdensome, and/or reduce the likelihood that one or more of Tropos' partners or customers will continue their contracts with Tropos, or enter into new contracts with Tropos in the future.

58. Defendants' conduct caused Tropos' performance to be more expensive or burdensome, strained the contractual relationship and/or reduced the likelihood that one or more of Tropos' partners or customers will continue their contracts with Tropos, or enter into new contracts with Tropos in the future.

59. Defendants' conduct constitutes an intentional interference with existing contract(s) held by Tropos and was done with an improper purpose and by an improper means.

60. As a direct and proximate cause of IPCO's acts, Tropos has been damaged in an amount in excess of \$75,000, exclusive of interest, attorney's fees, and costs.

61. Defendants' conduct was willful or malicious, or intentionally fraudulent, manifested a knowing and reckless indifference toward and disregard of Tropos' rights. Thus, Tropos is entitled to an award of punitive damages against IPCO.

#### **FIFTH CAUSE OF ACTION**

##### **Tortious Interference with Prospective Economic Advantage**

62. Tropos repeats and incorporates herein Paragraphs 1 through 50.

63. Tropos seeks to recover damages based upon a claim that Defendants interfered with Tropos' prospective economic advantage.

64. Economic relationship(s) existed between Tropos and one or more of its partners or customers containing probable future economic benefits or advantages to Tropos.

65. Defendants knew of the existence of the relationship(s).

66. Defendants engaged in wrongful acts or conduct with the intent of interfering with or disrupting Tropos' economic relationship(s), or with the knowledge that the interference or disruption was certain or substantially certain to occur as a result of Defendants' actions.

67. As a result of Defendants' conduct, Tropos' economic relationship(s) were actually interfered with or disrupted.

68. Defendants' conduct constitutes an intentional interference with potential economic advantages of Tropos and was done with an improper purpose and by an improper means.

69. As a direct and proximate cause of Defendants' actions, Tropos has been damaged in an amount in excess of \$75,000, exclusive of interest, attorney's fees, and costs.

70. Defendants' conduct was willful or malicious, or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and disregard of Tropos' rights. Thus, Tropos is entitled to an award of punitive damages against Defendants.

### **SIXTH CAUSE OF ACTION**

#### **Unfair Competition Under The Unfair Business Practices Act (Bus. & Prof. Code § 17200)**

71. Tropos repeats and incorporates herein Paragraphs 1 through 50.

72. Tropos has existing and prospective business relationships with one or more of its partners and customers.

73. Defendants knew of these contract and economic relationships(s).

74. Defendants engaged in wrongful conduct intended to prevent Tropos' performance, cause Tropos' performance to be more expensive or burdensome, interfere with, disrupt, or strained these relationship(s) and/or reduce the likelihood that one or more of Tropos' partners or customers will continue their relationship(s) with Tropos, or enter into new relationship(s) with Tropos in the future.

75. Defendants' conduct prevented Tropos' performance, caused Tropos' performance to be more expensive or burdensome, interfered with, disrupted, or strained these relationships and/or reduced the likelihood that one or more of Tropos' partners or customers will continue their relationships with Tropos, or enter into new relationships with Tropos in the future.

76. Defendants' acts constitute unfair competition under Business and Professions Code Section 17200 and may be enjoined.

77. Defendants' conduct, as detailed above, constitutes, *inter alia*, an unfair business practice and/or unfair competition.

1        78. Tropos will suffer severe harm if these partners or customers will no longer  
 2 conduct business with Tropos. As a further direct and proximate result, Defendants will continue  
 3 such wrongful acts and business practices and continue to injure consumers and the competitive  
 4 process.

5        79. Upon information and belief, unless enjoined, Defendants will continue such anti-  
 6 competitive conduct and continue to harm consumers and competition in California.

7        80. Accordingly, Tropos requests that the Court enter a permanent injunction against  
 8 IPCO enjoining Defendants' wrongful acts and business practices. As a result of Defendants'  
 9 unfair practices, Tropos further seeks restitution against Defendants for their unlawful acts, and  
 10 disgorgement of Defendants' ill-gotten gains. Tropos also seeks attorney's fees for having to  
 11 bring this private attorney general action against Defendants.

#### 12        **PRAYER FOR RELIEF**

13        WHEREFORE, Plaintiff Tropos prays for an Order and Judgment as follows:

14        1. On the First, Second and Third Causes of Action, for an Order:

- 15            a. Declaring that Tropos does not infringe, literally or under the doctrine of
- 16                        equivalents, any valid and enforceable claim of the '516 or the '062 Patents;
- 17            b. Declaring that each of the claims of the '516 and '062 Patents are invalid,
- 18                        unenforceable and void, and that Defendants are without any right or
- 19                        authority to enforce or threaten to enforce any claim of the '516 or '062
- 20                        Patents against Tropos or any other party;
- 21            c. Declaring that Tropos is free to operate without cloud of infringement
- 22                        claims by Defendants; and
- 23            d. Granting Tropos all appropriate monetary relief, including a finding that
- 24                        this case is an exceptional case under 35 U.S.C. §285 and awarding Tropos'
- 25                        reasonable attorneys fees and costs incurred in this action;

26        2. On the Fourth, Fifth and Sixth Causes of Action, for a Judgment in favor of Tropos  
 27 and against Defendants in an amount to be determined at trial, including without limitation,  
 28

1 restitution, disgorgement of Defendants' ill-gotten gains, interest, attorney's fees, litigation costs,  
2 punitive damages, and preliminary and permanent injunctive relief; and

3 3. Granting Tropos such other and further relief, either in law or equity, as the Court  
4 determines just and equitable.

5 Dated: October 21, 2005

FENWICK & WEST LLP

6  
7 By: 

8 Charlene M. Morrow

9 FELDMAN GALE, P.A.

10 Sheila Y. Harrison

11 Todd M. Malynn

12 Attorneys for Plaintiff

13 TROPOS NETWORKS, INC.  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by law.

Dated: October 21, 2005

FENWICK & WEST LLP

By:



Charlene M. Morrow

FELDMAN GALE, P.A.

Sheila Y. Harrison

Todd M. Malynn

Attorneys for Plaintiff

TROPOS NETWORKS, INC.