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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **SAN DIEGO DIVISION**

11 **GABRIEL TECHNOLOGIES**
12 **CORPORATION and TRACE**
13 **TECHNOLOGIES, LLC,**
14 Plaintiffs,
15 vs.

CIVIL ACTION NO. 3:08-cv-01992-MMA-POR
PLAINTIFFS' FOURTH AMENDED
COMPLAINT

16 **QUALCOMM INCORPORATED,**
17 **SNAPTRACK, INC., and NORMAN**
18 **KRASNER,**
19 Defendants.

DEMAND FOR JURY TRIAL

20 Pursuant to the Court's Orders dated September 3, 2009 and October 8, 2009, Plaintiffs
21 Gabriel Technologies Corporation and Trace Technologies, LLC (collectively, "Gabriel") and
22 file their Third Amended Complaint against Defendants Qualcomm Incorporated ("Qualcomm"),
23 SnapTrack, Inc. ("SnapTrack"), and Norman Krasner ("Krasner") (collectively, "defendants"), as
24 follows:

25 **I. INTRODUCTION**

26 1. Gabriel files this lawsuit to hold technology thieves responsible for their wrongful
27 conduct. The chief thief is Krasner, who on paper appears to be a prolific inventor with over 60
28 published domestic patents mostly related to global positioning satellite systems. As Gabriel

1 would find out the hard way, Krasner's prolific inventions are often based on the work of others,
2 and Krasner has made a career out of preparing, prosecuting, and procuring domestic and foreign
3 patents based on work done by others.

4 2. Krasner and SnapTrack entered into a license agreement with Loc8.net a/k/a
5 Locate Networks, Inc. ("Locate"), a predecessor-in-interest to Gabriel, ostensibly to jointly
6 develop technology for their mutual benefit. As it would turn out, SnapTrack and Krasner used
7 the relationship to obtain millions of dollars from Locate to keep SnapTrack afloat while
8 negotiating a billion dollar buyout. Unaware of the sinister intentions of SnapTrack and Krasner,
9 Locate brought to the table real technological value, which SnapTrack and Krasner stole for
10 themselves and for SnapTrack's eventual purchaser, Qualcomm. Over time, Krasner,
11 SnapTrack, and Qualcomm surreptitiously misappropriated Locate's valuable enabling
12 technology and other disruptive intellectual property rights.

13 3. Although it paid more than a billion dollars for SnapTrack's technology,
14 Qualcomm did not pay the true owner of much of that technology. Qualcomm took no steps to
15 correct ownership or inventorship of the patents with the United States Patent & Trademark
16 Office. Instead, Qualcomm wrongfully continued to file patents and patent applications based
17 on Locate's technology and failed to pay Gabriel, the true owner, for its many inventions and
18 patents.

19 4. Gabriel brings this suit to obtain payment for the technology unlawfully acquired
20 and used and to correct ownership and inventorship on what should be its patents.
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1 **II. PARTIES**

2 5. Plaintiff Gabriel Technologies Corporation is a corporation organized pursuant to
3 the laws of the State of Delaware with its principal place of business in Omaha, Nebraska.

4 6. Plaintiff Trace Technologies, LLC is a limited liability company organized
5 pursuant to the laws of the State of Nevada. Trace Technologies, LLC is a wholly-owned
6 subsidiary of Gabriel Technologies Corporation.

7 7. Defendant Qualcomm is a corporation organized pursuant to the laws of the State
8 of Delaware. Qualcomm's principal place of business and United States headquarters is located
9 in San Diego, California. Qualcomm may be served by serving its counsel of record, COOLEY
10 GODWARD KRONISH LLP, 4401 Eastgate Mall, San Diego, California 92121-1909.

11 8. Defendant SnapTrack is a corporation organized pursuant to the laws of the State
12 of California. SnapTrack's principal place of business is located in California. Since its
13 acquisition by Qualcomm in 2000, SnapTrack is a wholly owned subsidiary of Qualcomm.
14 SnapTrack may be served by serving its counsel of record, COOLEY GODWARD KRONISH LLP,
15 4401 Eastgate Mall, San Diego, California 92121-1909.

16 9. Defendant Krasner is an individual who is a citizen of and resides in the State of
17 California. Krasner may be served by serving his counsel of record, COOLEY GODWARD
18 KRONISH LLP, 4401 Eastgate Mall, San Diego, California 92121-1909.

19 **III. JURISDICTION AND VENUE**

20 10. This Court has subject matter jurisdiction over this action and Gabriel's claims for
21 correction of inventorship, patent ownership, declaratory judgment, and equitable patent
22 infringement pursuant to 28 U.S.C. §§ 1331 and 1338, as well as 28 U.S.C. §§ 2201 and 2202.
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1 In addition, this Court has supplemental jurisdiction over the related state law claims asserted
2 herein pursuant to 28 U.S.C. § 1367.

3 11. Venue in this Court is proper under 28 U.S.C. §§ 1391 and 1400(b).

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5 **IV. FACTS APPLICABLE TO ALL COUNTS**

6 **Gabriel, Trace, and Locate.**

7 12. Gabriel Technologies Corporation is a publicly-traded corporation focused on two
8 rapidly growing segments of the homeland security market: asset tracking and physical security.
9 Through its wholly-owned subsidiary, Gabriel Technologies, LLC, a Nebraska limited liability
10 company, the company designs, develops, manufactures, and sells a series of physical locking
11 systems for the transportation and shipping industries collectively known as the War-Lok™
12 security system. Gabriel Technologies Corporation's other wholly-owned subsidiary, Trace
13 Technologies, LLC ("Trace"), was formed to develop location based services to enable
14 customers to track assets and personnel worldwide.
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16 13. Locate, a Washington corporation, was formed to focus on location determining
17 devices and location-based services.

18 14. Trace was developed as a joint venture entity between Locate and Gabriel. Trace
19 subsequently acquired substantially all of the assets of Locate, including Locate's rights under
20 the License Agreement with SnapTrack. Gabriel then acquired all of Locate's rights in Trace,
21 which today operates as a wholly-owned subsidiary of Gabriel.
22

23 **Krasner and SnapTrack.**

24 15. In late 1998, the founders of Locate, Richard Crowson and William Clise, started
25 discussing joint development projects with SnapTrack.
26

27 16. Although Locate was seeking opportunities to develop its existing business,
28 Krasner saw Locate as providing access to two resources he wanted: (1) funds to keep

1 SnapTrack running while he was attempting to sell SnapTrack and (2) valuable enabling
2 technology that he could steal and wrongfully add to SnapTrack's patent portfolio.

3 17. While negotiating the terms of a potential venture, SnapTrack and Locate
4 discussed their intellectual property and how the parties could best work together.
5

6 18. Unlike SnapTrack, Locate negotiated in good faith and shared its experience in
7 the field of narrowband telecommunication networks for the purpose of collaborating with
8 SnapTrack.

9 19. At this time, SnapTrack was focused on broadband networks and assisted Global
10 Positioning System ("aGPS") technology and the development of related intellectual property.
11

12 20. Although SnapTrack was not as interested in narrowband networks because it was
13 concentrating its investment in broadband networks, SnapTrack liked the opportunity that Locate
14 presented. SnapTrack could continue to focus on broadband networks and sell itself to a
15 company focusing on broadband. At the same time, Krasner and SnapTrack could obtain patents
16 based on valuable enabling technology that Locate had already conceived of and was
17 implementing in the narrowband field.
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19 21. SnapTrack hoped to find potential purchasers in the aGPS field who needed a
20 significant aGPS patent portfolio. In the aGPS market, such a patent portfolio would provide
21 incredible licensing opportunities to the owner of the patent portfolio and would create
22 significant barriers to entry for competitors.

23 **SnapTrack and Locate Enter Into the License Agreement.**

24 22. Prior to the entry of the License Agreement, representatives of Locate, including
25 Crowson and Clise, discussed in early 1999 the intellectual property ownership rights with
26 representatives of SnapTrack, including Stephen Poizner, then Chief Executive Officer of
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1 SnapTrack, and Krasner. SnapTrack assured Locate that Locate's rights in its existing
2 intellectual property would not be affected by entering into the License Agreement. With respect
3 to Program Technology, Poizner represented that it would be jointly-owned and that the parties
4 would set up a process to protect such joint ownership rights. These statements were untrue or
5 misleading when made because, as discussed below, Krasner, SnapTrack, and Qualcomm (i) did
6 not respect and separately safeguard Locate's existing intellectual property rights; (ii) did not
7 work with or otherwise provide Locate any joint ownership rights; and (iii) failed to disclose and
8 affirmatively misrepresented the existence of Program Technology. Had Locate known that
9 these representations were false and were not going to be complied with, Locate would have not
10 entered into the License Agreement.
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13 23. On August 20, 1999, SnapTrack and Locate entered into a License Agreement
14 (the "License Agreement"). Although titled a "License Agreement," the agreement was more
15 akin to a joint development agreement because the parties agreed to jointly develop and own
16 "Program Technology," as discussed below.

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18 24. The stated purpose of the License Agreement was to allow Locate to obtain (i) a
19 license to use SnapTrack's aGPS software to develop location pager devices and related location
20 services and (ii) technical support and engineering services from SnapTrack related to its
21 software.

22
23 25. Locate agreed to pay SnapTrack millions of dollars in license and royalty fees in
24 exchange for the rights to use, make, or have made the SnapTrack Server Software and the
25 SnapTrack Client Software required for provisioning aGPS location-based services to Locate
26 customers.
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1 26. As part of the License Agreement, Locate expressly protected its existing
2 intellectual property rights. To that end, Section 8, entitled “Proprietary Rights,” provided:

3 Each party shall retain ownership of its respective patents, trade secrets,
4 copyrights, and other Intellectual Property Rights that are in existence as of the
5 Effective Date.

6 27. Because SnapTrack realized the value that Locate brought to the table, SnapTrack
7 agreed that “Program Technology,” or items of work carried out by the parties in connection
8 with the License Agreement, would be jointly owned by Locate and SnapTrack.

9 28. In clear and unambiguous terms, section 8(b) of the License Agreement stated:

10 All Program Technology shall be jointly owned by and between the parties, with
11 each party owning an undivided, equal ownership interest in any such Program
12 Technology, and all rights therein shall be vested in [SnapTrack] and [Locate] as
13 joint and equal owners.

14 29. In addition to setting forth the parties’ joint ownership interest, the License
15 Agreement further provided that this joint ownership interest was to be protected by the parties.
16 Section 8(b)(i) of the License Agreement stated:

17 The parties shall establish a process for identifying all Program Technology
18 Intellectual Property Rights. With respect to all such Program Technology so
19 identified, the parties shall establish a process for determining (1) which
20 intellectual property filing to make with respect to such Program Technology
21 (including but not limited to patent applications, reissues, and reexaminations,
22 copyright and trademark registrations, and similar intellectual property
23 registrations), (2) which party shall be responsible for such filings.

24 30. Because of the proprietary nature of the information the parties were exchanging,
25 SnapTrack and Locate further expressly provided for confidential treatment of that information.
26 Specifically, paragraph 9(a) of the License Agreement states:

27 Nondisclosure. Each party shall treat as confidential all Confidential Information
28 of the other party, shall not use such Confidential Information except as set forth
herein and in order to allow the parties to meet their obligations under this
Agreement, and shall use reasonable efforts not to disclose such Confidential
Information to any third party. Without limiting the foregoing, each of the parties
shall use at least the same degree of care which it uses to prevent the disclosure of

1 its own confidential information of like importance to prevent the disclosure of
2 Confidential Information disclosed to it by the other party under this Agreement.
3 Each party shall promptly notify the other party of any actual or suspected misuse
or unauthorized disclosure of the other party's Confidential Information.

4 31. Thus, Locate endeavored from the outset to set up a process to protect intellectual
5 property rights pertaining to the Program Technology, trade secrets, and other confidential
6 information by requiring: (i) a process for identifying all Program Technology Intellectual
7 Property Rights; (ii) determination of the type of intellectual property filings needed, *e.g.*, patent,
8 copyright, etc.; (iii) determination of which party would be responsible for obtaining such
9 intellectual property protection; and (iv) protection of each party's confidential information.
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11 32. As it would turn out, Krasner and SnapTrack (and later Qualcomm) had no
12 intention of recognizing Locate's joint ownership of Program Technology or protecting Locate's
13 joint ownership interest.

14 **SnapTrack Finds a Buyer: Qualcomm.**

15 33. Although Qualcomm is no stranger to intellectual property disputes, a brief
16 history of Qualcomm's patent portfolio and business is necessary to understand Qualcomm's
17 acquisition of SnapTrack's—but in reality, Locate's—intellectual property.
18

19 34. Qualcomm was founded in 1985 to develop and patent a wireless technology
20 system known as Code Division Multiple Access (CDMA).

21 35. Instead of manufacturing its own cell phones, Qualcomm made money by
22 obtaining a large patent portfolio relating to CDMA and then licensing those CDMA patents to
23 cell phone manufacturers like Samsung, Ericsson, and Motorola.
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25 36. In 1999, the year CDMA was included as standard technology for phones,
26 Qualcomm's licensing deals generated more than \$400 million in revenue.
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1 37. Although still highly lucrative, many of Qualcomm's fundamental CDMA patents
2 were approaching expiration. To diversify its revenue sources, Qualcomm sought to strengthen
3 its patent portfolio by investing in certain disruptive technologies, including aGPS. Acquisition
4 of the SnapTrack patent portfolio was intended to allow—and actually did allow—Qualcomm to
5 dominate the aGPS market just as it had the CDMA market.
6

7 38. Qualcomm decided to acquire SnapTrack and its intellectual property and
8 technology and conducted due diligence with respect to that proposed acquisition.

9 39. Bruce Greenhaus, a Qualcomm vice president and registered United States patent
10 attorney, led a team of Qualcomm engineers and inventors involved in the SnapTrack due
11 diligence. At times, Greenhaus has falsely claimed that he alone was responsible for the due
12 diligence related to SnapTrack's intellectual property.
13

14 40. Initially, Qualcomm offered to make a sizeable investment in SnapTrack, but
15 rejected that offer and insisted that Qualcomm acquire SnapTrack outright.

16 41. On January 26, 2000, Qualcomm announced that it was acquiring SnapTrack for
17 \$1 billion. In its press release, Qualcomm announced the acquisition as follows:
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19 In a move designed to enable broad new applications for mobile location-based
20 services and wireless Internet systems, Qualcomm Incorporated (Nasdaq: QCOM)
21 today announced that it will acquire SnapTrack, Inc. of San Jose, Calif., a leader
22 in wireless position location technology. Combining SnapTrack's technology with
23 Qualcomm's innovative gpsOne™ technology will accelerate the introduction of
24 powerful location-enabled mobile phones and other devices utilizing Wireless
25 Assisted GPS™ (Global Positioning System) technology. The acquisition
26 provides Qualcomm with an even stronger patent portfolio covering Wireless
27 Assisted GPS. *SnapTrack's patents are necessary for the commercial viability of
28 any Wireless Assisted GPS system.* Under the agreement, SnapTrack will become
a wholly owned subsidiary of Qualcomm, and will continue its work on position
location technology and meeting its customer commitments. Qualcomm will pay
\$1 billion in stock for the acquisition of SnapTrack. Completion of the agreement,
which is subject to regulatory approval and other customary closing conditions, is
expected by mid-March of this year.

1 42. Focusing on SnapTrack’s patent portfolio, Dr. Irwin Mark Jacobs, then chairman
2 and CEO of Qualcomm, stated, “SnapTrack’s impressive technology strengths and patent
3 portfolio will provide Qualcomm with increased position location capabilities.”

4 43. In describing SnapTrack’s patent portfolio, Qualcomm acknowledged the
5 existence of the relationship and the License Agreement between Locate and SnapTrack, as
6 follows:
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8 SnapTrack has nearly 50 patents, either issued or pending, that are critical to the
9 efficient, cost-effective deployment of Wireless Assisted GPS. SnapTrack has
10 royalty-bearing licensing agreements with Denso, DSPC/Intel, Loc8.net/Glenayre,
11 Motorola and Texas Instruments for patents and technology that cover the
12 deployment of assisted GPS-based wireless location systems, and an agreement
13 with Microsoft to integrate SnapTrack's solution into the Microsoft Mobile
14 Explorer smart phone platform.

15 44. At the time Qualcomm announced the acquisition, Locate had no reason to
16 believe that its technology had been misappropriated by Krasner and SnapTrack or that any of its
17 technology was involved in the acquisition. Even after the acquisition, Locate continued to
18 perform under the License Agreement.

19 45. During its due diligence (and after its acquisition of SnapTrack), Qualcomm and,
20 in particular, Greenhaus and his due diligence team ignored or disregarded both the intellectual
21 property provisions of the License Agreement and Locate’s contributions to Program
22 Technology.

23 46. On March 2, 2000, Qualcomm announced that it had completed the acquisition of
24 SnapTrack, which became a wholly owned subsidiary of Qualcomm. Again, Qualcomm focused
25 on and touted “SnapTrack’s patent portfolio of nearly 50 patents, either issued or pending, that
26 are critical to the efficient, cost-effective deployment of Wireless Assisted GPS systems.”
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1 47. As part of the acquisition, Krasner's SnapTrack stock was converted into
2 Qualcomm stock. Upon information and belief, Krasner and his wife received approximately
3 300,000 shares of Qualcomm stock then valued at \$139.56 per share. In connection with the
4 acquisition, Krasner became a "key employee" of Qualcomm.
5

6 48. In its press releases and SEC filings relating to the acquisition of SnapTrack,
7 Qualcomm never mentioned any other SnapTrack assets or even SnapTrack's revenues. Upon
8 information and belief, none of these items played a role in Qualcomm's acquisition of
9 SnapTrack. Instead, the sole value to Qualcomm and reason for the \$1 billion acquisition of
10 SnapTrack was the valuable intellectual property.
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12 49. In acquiring SnapTrack, Qualcomm willfully ignored the fact that SnapTrack did
13 not solely own all of the intellectual property SnapTrack and Krasner sold to Qualcomm for \$1
14 billion.
15

16 50. After acquiring SnapTrack's patent portfolio, Qualcomm set its sights on
17 achieving market dominance in the aGPS market as it had done with CDMA.
18

19 51. In 2002, Qualcomm announced that its gpsOne™ technology, which features
20 SnapTrack technology, "is the world's most widely developed personal location system for
21 mobile handsets."
22

23 52. From 2002 to 2005, the number of gpsOne™-enabled devices in use in the world
24 skyrocketed from 5 million to 150 million. Qualcomm claimed that it is "the most widely-
25 developed GPS technology in the world."
26

27 **Krasner, SnapTrack, and Qualcomm Misappropriate Gabriel's Trade Secrets and**
28 **Confidential Information.**

53. Unbeknownst to Locate, Krasner decided to take Locate's intellectual property
and inventions and patent them as if he were the actual inventor. Locate's intellectual property

1 and confidential information derived independent economic value from not being generally
2 known to the public. For example, such confidential information and trade secrets had value as
3 patentable technology.

4 54. Although SnapTrack was focused on aGPS and the broadband market, Krasner
5 filed patent applications directed to narrowband innovations upon which Locate was focused and
6 that had valuable application within the broadband market upon which SnapTrack was focused.
7

8 55. One example of Krasner filing patents based on enabling technology developed
9 by Locate occurred in March 1999. During the negotiations culminating in the License
10 Agreement, Locate discussed its past experience in narrowband and solutions to problems it had
11 encountered and which were applicable to telecommunications more broadly. This information
12 was Locate's solely-owned know how, intellectual property, and confidential information.
13

14 56. Krasner, without telling Locate's founders that he was doing so, filed a
15 provisional patent application incorporating Locate's technology under his own name while
16 excluding the actual inventor prior to the execution of the License Agreement, Krasner had no
17 right to do so because (i) he was not one of the true inventors and (ii) Locate was supposed to
18 retain ownership of its own existing pre-agreement intellectual property rights.
19

20 57. Upon information and belief, Krasner filed the provisional patent application to
21 add value to SnapTrack's patent portfolio for a potential purchaser (like Qualcomm) as well as to
22 put additional arrows in its quiver for future battles with its competitors. Of course, Locate had
23 no reason to believe that Krasner was improperly filing patent applications for which he was not
24 the inventor. Despite SnapTrack's representations regarding the parties' existing intellectual
25 property rights, Krasner did not disclose to Locate the decision to pursue and file this patent
26 application, which incorporated Locate's solely-owned technology. Had Locate known that
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1 Krasner and SnapTrack were going to take Locate's solely-owned technology for themselves in
2 direct contravention of the prior representations, Locate would not have entered into the License
3 Agreement.

4 58. After entering into the License Agreement, Krasner continued his practice of
5 "ghost writing" patents by filing patent applications relating to Program Technology and naming
6 either Krasner as a sole inventor or Krasner and other SnapTrack engineers as joint inventors.
7 No Locate employees were listed as inventors.

8 59. While filing these patent applications beginning in 1999, Krasner and SnapTrack
9 failed to disclose to Locate that Program Technology existed or follow the procedures required
10 by the License Agreement regarding Program Technology and intellectual property filings.
11 Because these patent applications were not disclosed to Locate, Locate was not aware of Krasner
12 and SnapTrack's clandestine filings relating to technology solely owned or jointly owned by
13 Locate.

14 60. Following Krasner's lead, Qualcomm filed patent applications relating to Program
15 Technology and named San Diego-based Qualcomm engineers as inventors instead of Locate (or
16 Gabriel) employees. Again, because these patent applications were not disclosed to Locate,
17 Locate was not aware of these unpublished filings relating to technology solely owned or jointly
18 owned by Locate.

19 61. Locate's jointly-owned Program Technology was misappropriated by Krasner,
20 SnapTrack, and Qualcomm in multiple ways:

21 i) Krasner, SnapTrack, and Qualcomm filed new patent applications that
22 incorporated Program Technology;
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1 ii) Krasner, SnapTrack, and Qualcomm included the Program Technology in
2 continuation-in-part patent applications;

3 iii) Krasner, SnapTrack, and Qualcomm broadened patent claims in pending
4 patent application to encompass the Program Technology; and
5

6 iv) Krasner, SnapTrack, and Qualcomm failed to credit Locate as an assignee
7 or Locate employees as co-inventors.

8 62. At least ninety-two (92) U.S. and foreign patents and patent applications filed by
9 Krasner, SnapTrack, and Qualcomm are based upon—in whole or in part—Program Technology,
10 Locate’s sole intellectual property, or both. These patents and patent applications can be
11 grouped into at least thirteen (13) core inventions.
12

13 63. Nine (9) of at least thirteen (13) core inventions are embodied in the following
14 U.S. patents (and related foreign patents or applications):

15 i) Patent Nos. 6,377,209 and 6,583,757 (“the ‘209 and ‘757 Patents”) and six
16 (6) related PCT/foreign patents, including WO2000057203, EP1171779, MXPA01009528,
17 CN1344372, CA2367032, and AU773464;

18 ii) Patent No. 6,661,372 (“the ‘372 Patent”);

19 iii) Patent No. 6,799,050 (“the ‘050 Patent”);

20 iv) Patent No. 6,861,980 (“the ‘980 Patent”) and six (6) related PCT/foreign
21 patents, including AU2005250882, BRPI0511499, CN1957264, EP1749215, JP2008500543, and
22 WO2005119287;
23

24 v) Patent No. 6,895,249 (“the ‘249 Patent”) and ten (10) related PCT/foreign
25 patents, including AU777646B, AU7689401, BR0106971, CA2383685, CN1201627,
26 EP1302081, HK1050606, JP2004504614, MXPA02002692, and WO0207458;
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1 vi) Patent No. 7,254,402 (“the ‘402 Patent”) and ten (10) related PCT/foreign
2 patents, including AU1534202, AU2002215342, CA2425547, CN1608211, EP1330662,
3 IL155206, JP4018535B2, JP2007306588, MXPA03003208, and WO0231526;

4 vii) Patent No. 7,289,786 (“the ‘786 Patent”) and U.S. Application Serial No.
5 11/538,436 (“the ‘436 Application”) and six (6) related PCT/foreign patents, including
6 CN1762173, EP1588578, JP2007521712, KR20050090461, MXPA05007633, and
7 WO2004066665;

8 viii) Patent No. 7,319,876 (“the ‘876 Patent”) and ten (10) related PCT/foreign
9 patents, including AU2003270026, BR0313697, CA2496460, CN1689365, EP1532833,
10 JP2005537709, KR20050040131, MXPA05002231, RU2005108595, and WO2004019650; and
11

12 ix) Patent No. 7,421,277 (“the ‘277 Patent”) and related U.S. Application
13 Serial No. 11/377,856 (“the ‘856 Application”).
14

15 64. The remaining four (4) core inventions are embodied in the following U.S. patent
16 applications (and related foreign patents or applications):

17 i) Application Serial No. 10/418,799 (“the ‘799 Application”) and ten (10)
18 related PCT/foreign patents, including AU2003301350, BR0315350, CA2501268, CN1705894,
19 EP1552323, JP2006504110, KR20050051695, MXPA05003921, RU2005114912, and
20 WO2004036240;

21 ii) Application Serial No. 10/792,062 (“the ‘062 Application”) and nine (9)
22 related PCT/foreign patents, including BRPI0408017, CA2517800, CN1778127, EP1600020,
23 JP2006521767, KR20050104420, MXPA05009417, RU2005130765, and WO2004080096;

24 iii) Application Serial No. 10/956,409 (“the ‘409 Application”) and two (2)
25 related PCT/foreign patents, including BRPI0512122 and WO2006009712; and
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1 iv) Application Serial No. 10/961,986 (“the ‘986 Application) and seven (7)
2 related PCT/foreign patents, including CA2463543, CN1602636, EP1435184, IL161315,
3 JP2005537690, KR20050035147, and WO03032662.

4 65. These patents and patent applications should name Locate employees as the sole
5 inventors or, at the very least, as joint inventors.

6 66. By filing these patent applications and obtaining these patents, Krasner,
7 SnapTrack, and Qualcomm obtained valuable technology without paying for it. The
8 procurement of these issued patents has unfairly allowed SnapTrack and Qualcomm to create
9 barriers of entry to third-party competition in the aGPS market that was not rightfully theirs to
10 use and from which to benefit. Upon information and belief, Qualcomm licenses these patents to
11 industry leaders as part of its patent portfolio and lucrative business model. Because Gabriel did
12 not—and still does not—have access to Qualcomm’s license agreements, it was not aware of any
13 licensing of patents that should have listed Locate employees as sole or joint inventors.

14 67. In addition to filing patents based on Locate’s inventions, upon information and
15 belief, Krasner has filed patents relating to wireless network technology which was likely
16 developed by companies other than SnapTrack or Qualcomm. Examples of such suspicious
17 patents include U.S. Patent Nos. 6,937,872 and 6,665,541.

18 68. Qualcomm’s clandestine activities in obtaining the patents have forced aGPS
19 users and providers to either obtain a license from Qualcomm or attempt to design around these
20 patents. Thus, Qualcomm was able to represent ownership of and control barriers to entry in the
21 marketplace that were not its own.

1 **The Specific Patents and Patent Applications.**

2 69. Krasner, SnapTrack, and Qualcomm filed the patents and patent applications
3 listed above without listing Locate or any of its employees as having any inventorship or
4 ownership rights. As summarized below, Locate employees contributed to each of these patents
5 and patent applications and, in most cases, were the sole inventors.
6

7 **The '209 Patent and the '757 Patent**

8 70. The '209 Patent and the '757 Patent list Krasner as the sole inventor.

9 71. In January and February 1999, during preliminary discussions between SnapTrack
10 and Locate, Locate identified its experience with latency problems in networks like the ReFLEX
11 paging network, which latencies are significantly greater than the latencies in any other type of
12 wireless transmission network.
13

14 72. These problems were not known to Krasner or SnapTrack until these discussions
15 with Locate, and Locate even provided the solution to these latency issues.

16 73. As part of his efforts to make SnapTrack's patent portfolio as valuable as possible
17 to potential buyers, Krasner took Locate's technology and patented it under his own name.
18

19 **The '372 Patent**

20 74. The '372 Patent only lists Richard Girerd and Krasner as inventors.

21 75. The '372 Patent was broadened during prosecution to cover new types of
22 acquisition assistance information having reduced satellite information payloads.

23 76. The new types of acquisition assistance information were contributed as Program
24 Technology by Locate engineers.
25

26 77. Rather than amending the patent application of the '372 Patent, the new
27 acquisition assistance technique should have been included in either a new patent application or,
28

1 if possible, in a continuation-in-part (CIP) patent application, which should have named Locate
2 employees as inventors.

3 The '050 Patent

4 78. The '050 Patent lists Krasner as the only inventor.

5 79. The '050 Patent resolves conflicts between transmission to a terrestrial network
6 and reception from GPS satellites.

7 80. The Locate location pager implements a mechanism that resolves similar conflicts
8 to those addressed in the '050 Patent.

9 81. In addition, the user-initiated conflict resolution mechanism is illustrated and
10 discussed in multiple Locate documents that pre-date the filing of the '050 Patent by more than a
11 year.
12

13 The '980 Patent

14 82. Claim 1 of the '980 Patent is directed to a method for messaging position-based
15 information in an assisted wireless position determination system. Qualcomm employees
16 Rowitch and Patrick are listed as inventors.

17 83. The elements of Claim 1 are disclosed in the Locate document entitled "Location
18 Message Handling Protocol" (LMHP), dated November 2002, and in the Locate document
19 entitled "Sputnik Software Functional Specifications" ("Sputnik"), dated December 2000. Both
20 of these documents pre-date the May 26, 2004 filing of the '980 patent.
21

22 The '249 Patent

23 84. The '249 Patent lists Gaal, a Qualcomm employee, as the only inventor. That
24 patent uses position location data classifications to determine a broadcast schedule.
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1 85. The LS-GF IF Specification, dated December 15, 1999, which SnapTrack had in
2 its possession, discloses the broadcasting of acquisition assistance information. A June 1999
3 letter discusses a location dependent simulcast of unique satellite data, and a September 1999 e-
4 mail discusses a meeting about the immediate need for a broadcast data aging analysis.

5
6 86. Thus, Locate provided the details of the broadcast method claimed in the '249
7 Patent well prior to the July 10, 2001 filing of the patent.

8 The '402 Patent

9 87. The '402 Patent lists Vayanos, a Qualcomm employee, as the first-named
10 inventor. Samir Soliman, another Qualcomm employee who was a member of the SnapTrack
11 due diligence team, is also listed as an inventor.

12
13 88. The Locate paging network delivers acquisition assistance information either in a
14 broadcast mode to all location pagers in a GPS zone or in a targeted mode to a targeted location
15 pager in a single base station coverage area.

16 89. In addition, documents authored by Locate in 1999 disclose relevant information
17 regarding the acquisition assistance information discussed in the '402 Patent. Specifically,
18 claims of the '402 Patent recite limitations regarding the GPS code phase search range shown in
19 the Locate documents.

20
21 90. Because Qualcomm was a member of a standard-setting subcommittee and
22 because Vayanos represented Qualcomm on that committee, if Vayanos were truly the inventor
23 of the '402 Patent, the patent should have been disclosed prior to the balloting and publication of
24 the relevant standard.

25
26 91. However, Qualcomm did not make a declaration of intellectual property rights
27 and licensing until after publication of the standard.

1 92. Locate, as the sole inventor of this patent, may not have been obligated to declare
2 the patent to the standard setting organization or to grant licenses under favorable terms to
3 standard members.

4 The '786 Patent and the '436 Application

5
6 93. The '786 Patent and the '436 Application list Krasner as the sole inventor and
7 relate to a “method and apparatus for communicating emergency information using wireless
8 devices.”

9 94. Locate documents that pre-date the filing of the '786 Patent and the '436
10 Application illustrate the triggering of an alert on the location pager and the transmission of an
11 alert message to an emergency center. Other Locate documents supporting inventorship include
12 an internal e-mail and memorandum.

13
14 95. Claims of the '786 Patent and the '436 Application recite limitations that are
15 shown in these documents.

16 The '876 Patent

17 96. Claim 1 of the '876 Patent, which has a priority date of August 26, 2002, is
18 directed to a location services apparatus for providing location services to a mobile station.
19 Qualcomm employees Jha and Grilli are listed as the inventors.

20
21 97. The Sputnik document discloses the elements of Claim 1 and pre-dates the
22 priority date of the '876 Patent.

23 The '277 Patent and the '856 Application

24 98. Claim 1 of the '277 Patent, which has a priority date of February 5, 2004, is
25 directed to a method of performing position determination in a network. Qualcomm employee
26 Burroughs is listed as the inventor.

1 99. Elements of the '277 Patent and the '856 Application are disclosed in the Sputnik
2 document, the Locate document entitled "Location Message Handling Protocol" (LMHP), dated
3 November 2002, and other Locate documents.

4 The '799 Application

5 100. Claim 1 of the '799 Application, which has a priority date of October 17, 2002, is
6 directed to a method of determining a position estimate for a wireless terminal. Leonid Sheynblat
7 is listed as the inventor.

8
9 101. Claim 1 encompasses a Locate method of improving the location estimation in the
10 network and is disclosed in the Sputnik document.

11 The '062 Application

12 102. Claim 1 of the '062 Application, which has a priority date of March 5, 2003, is
13 directed to a method of providing location services. Wang, Sheynblat, Agahse, Gollens, and Hsu
14 are listed as the inventors on the '062 Application.

15
16 103. The Sputnik document and other Locate documents describe the functionality
17 discussed in the '062 Application.

18 The '409 Application

19 104. The '409 Application relates to tracking lost and stolen mobile devices using
20 unique equipment identifiers. Anjali Jha, a Qualcomm employee, and Krasner are listed as the
21 inventors.

22
23 105. Claims in the '409 Application recite limitations regarding the tracking of a
24 targeted mobile station based on status information. These limitations were taught in various
25 documents provided to SnapTrack by Locate.

1 The '986 Application

2 106. The '986 Application establishes permission criteria to allow others to track the
3 location of a mobile device. Krasner and Sheynblat are listed as the inventors.

4 107. Multiple Locate documents, which pre-date the filing of the '986 Application,
5 define creating permissions for users, and the claims of the '986 Application recite limitations
6 that are shown in those documents.

7 108. The above-discussed patents and patent applications read on the following
8 Qualcomm/SnapTrack products and services: the SnapTrack Position Determination Module
9 software, the Qualcomm QPoint server, the GlobalWARN system, the inGeo device, the Brew
10 Location Signature Solution server, the Qualcomm MedioFlo network, and/or any product
11 incorporating Qualcomm's gpsOne technology.
12

13 **Qualcomm Continues Its Wrongdoing.**

14 109. Despite Qualcomm's protestations to Gabriel that Locate did not have people who
15 contributed to the inventions or the patents at issue, Gabriel learned that Qualcomm, through an
16 entity called Qualcomm Ventures, considered an investment in Locate and later pursued a buyout
17 of Locate, including all of Locate's hardware, software, key personnel (both current and former),
18 and intellectual property rights. During the due diligence of that proposed transaction,
19 Qualcomm had access to Locate's financial information and other valuable company
20 information. Qualcomm did not consummate the buyout nor did Qualcomm inform Locate of its
21 potential ownership interest in portions of the SnapTrack patent portfolio.
22

23 110. After Qualcomm's failed attempt to buy Locate and its intellectual property
24 rights, in or around June 2004, SnapTrack and Qualcomm presented Trace, the successor-in-
25 interest to Locate's assets, with an Amended and Restated License Agreement. The proposed
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1 Amended and Restated License Agreement stated that it “supersedes and replaces in its entirety
2 the prior License Agreement made and entered as of August 20, 1999, as amended, by and
3 between [SnapTrack] and Trace Technologies LLC, as successor-in-interest to substantially all
4 of the assets of Locate Networks, Inc.”

5
6 111. Neither SnapTrack nor Qualcomm informed Trace that they had filed patent
7 applications incorporating Locate’s intellectual property without listing Locate personnel as
8 inventors. To the contrary, representatives of SnapTrack and Qualcomm fraudulently concealed
9 that information from Gabriel and falsely claimed that no Program Technology existed under the
10 License Agreement. Representatives of SnapTrack and Qualcomm further falsely claimed that
11 the sole purpose of presenting the Amended and Restated License Agreement was to standardize
12 the prior License Agreement to the form now used by Qualcomm.
13

14 112. The provisions of the proposed Amended and Restated License Agreement were
15 significantly different from the License Agreement entered into by SnapTrack and Locate. First,
16 the proposed Amended and Restated License Agreement deleted section 8(b) of the License
17 Agreement which stated that “[a]ll Program Technology was jointly owned by the parties.”
18 Second, the proposed Amended and Restated License Agreement stated:

19
20 Trace hereby grants, on behalf of itself and its Affiliates, to [SnapTrack] an
21 irrevocable, perpetual, nonexclusive, paid-up, royalty-free, worldwide license
22 under the Necessary IP of Trace and its Affiliates, without the right to sublicense
23 (except to [SnapTrack]’s Affiliates, and by [SnapTrack] and/or its Affiliates to
their direct and indirect customers) in order to use, make, have made, sell, offer to
sell, lease, offer to lease, and import the Software.

24 113. Necessary IP was defined in the proposed Amended and Restated License
25 Agreement as “all Intellectual Property Rights which are essential or commercially necessary to
26 the development, manufacture, use, sale or distribution of licenses or other rights to Software in
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1 order to comply with the specifications of the location services portion of any wireless
2 communications standard adopted for any air interface by any nation.”

3 114. By the deletion of the joint ownership provision of the License Agreement and the
4 inclusion of a broadly-defined license from Trace to SnapTrack, SnapTrack and Qualcomm
5 attempted to transfer Locate’s existing intellectual property rights to themselves.
6

7 115. As part of the proposed Amended and Restated License Agreement, SnapTrack
8 and Qualcomm also requested that Trace pay approximately \$342,000 in additional fees and
9 costs. Knowing quite well what they had done with Locate’s intellectual property over the past
10 few years, SnapTrack and Qualcomm kindly offered to waive these fees if Gabriel would just
11 sign the Amended and Restated License Agreement.
12

13 116. In April 2005, when Trace inquired as to whether any Program Technology or
14 related intellectual property filings existed, Qualcomm’s Senior Legal Counsel Phillip Fries
15 responded that Qualcomm would only address those issues after Trace paid certain fees to
16 SnapTrack or signed the proposed Amended and Restated License Agreement. Although
17 Qualcomm did agree that the change regarding joint ownership rights would only apply
18 prospectively, Qualcomm still did not acknowledge or identify Locate’s contributions. In point
19 of fact, Fries indicated that Locate was a “sales” team without engineering capability.
20

21 117. In August 2005, counsel for Gabriel met with Greenhaus. During that meeting,
22 Greenhaus explained that he had been part of the original Qualcomm team involved in the
23 valuation of SnapTrack and that as part of the acquisition, he knew SnapTrack’s patent portfolio
24 very well. To begin that meeting, Greenhaus stated that Locate did not make any contribution to
25 SnapTrack’s patent portfolio. By the end of the meeting, Greenhaus stated that he may have
26 been wrong and that steps needed to be taken to verify several points.
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1 118. After the meeting, Greenhaus, knowing at that time that Gabriel lacked needed
2 capital, continued to conceal Krasner, SnapTrack, and Qualcomm's fraud and misappropriation
3 by claiming that Locate did not contribute any technology and that no Program Technology
4 existed. However, SnapTrack and Qualcomm did not provide Locate access to any inventor
5 notebooks or other information exclusively in their possession regarding any inventions or patent
6 filings. Greenhaus had promised to do so and then purposefully delayed in the hopes of
7 bankrupting Gabriel.
8

9 119. In October 2005, Qualcomm Senior Director Brian Salisbury again requested that
10 Trace sign the Amended and Restated License Agreement. He also reiterated Qualcomm's
11 position that no SnapTrack patents were jointly owned by Locate.
12

13 120. Over a period of years, Krasner, SnapTrack, and Qualcomm failed to disclose and
14 actively misled Locate about the existence of Program Technology and related intellectual
15 property filings. When Gabriel attempted to discover whether and what Program Technology
16 existed, Qualcomm refused to provide any information regarding Program Technology or related
17 intellectual property filings and outright claimed that no Program Technology existed. To date,
18 Qualcomm has refused to provide information regarding patent filings on the grounds that such
19 information is confidential and/or privileged.
20

21 121. Despite SnapTrack and Qualcomm's false representations about the existence of
22 Program Technology or any patents or patent applications based on Program Technology, Trace
23 refused to sign the proposed Amended and Restated License Agreement, which had been
24 prepared by SnapTrack and Qualcomm in an attempt to have Trace waive its intellectual
25 property rights.
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1 122. Instead, Trace only agreed to sign an Amended and Restated License Agreement
2 which preserved its intellectual property rights and its rights that had accrued under the original
3 license agreement from August 20, 1999 through the January 16, 2006 effective date of the
4 Amended and Restated License Agreement.
5

6 123. As of January 16, 2006, SnapTrack and Trace entered into the Amended and
7 Restated License Agreement. At the time that Trace entered into the Amended and Restated
8 License Agreement, Trace was not aware that SnapTrack had misappropriated Locate intellectual
9 property and technology.
10

11 124. Because Trace did not intend to waive its intellectual property rights and
12 ownership interest in Program Technology, the Amended and Restated License Agreement
13 includes provisions regarding the parties' proprietary rights. Paragraph 8(a) of the Amended and
14 Restated License Agreement states:
15

16 Each party shall retain ownership of its respective Intellectual Property Rights
17 that (i) its employees have developed or may in the future develop or (ii) it has
18 acquired or will acquire in the future from others. The parties acknowledge that
19 certain provisions existed in the Prior License that addressed the joint ownership
20 by the parties of certain technology. Those provisions are incorporated by
21 reference herein to the same extent as if repeated in this Agreement, as to any
22 Program Technology (as such term is defined in the Prior License) developed
23 prior to May 31, 2004. The deletion of such joint ownership provisions herein
24 shall have prospective effect and apply only to potential activities the parties have
25 conducted or may conduct on or after May 31, 2004, but shall not affect the
26 parties' underlying ownership rights in or to the Program Technology developed
27 prior to May 31, 2004, or their ability to use such Program Technology without
28 any duty of accounting to the other as contemplated by the Prior License for such
Program Technology developed prior to May 31, 2004.

1 125. Thereafter, Gabriel retained intellectual property counsel to review published
2 patents and patent applications filed worldwide by Krasner, SnapTrack, and Qualcomm to
3 determine whether any were based on Program Technology. SnapTrack is listed as an assignee
4 on 55 patents. Qualcomm has filed approximately 6,500 U.S. patent applications and is listed as
5

1 an assignee on approximately 2,345 issued domestic patents, of which almost 2,000 issued
2 during the last eight years.

3 126. Over time, as the patents and patent applications discussed above matured and
4 were published and Gabriel obtained access to them, Gabriel began reviewing these documents.
5 Because Locate was no longer in business, Gabriel interviewed people familiar with Locate and
6 its business as well as the business relationship with SnapTrack. Gabriel also searched for
7 documents relating to Locate that may discuss Locate technology or inventions. Gabriel then
8 compared this information against the patent filings in an effort to determine whether Locate
9 contributed to these filings.
10

11 127. Even without access to SnapTrack's purported inventors' notebooks and other
12 materials that are in the possession of Krasner, SnapTrack, and Qualcomm, Gabriel discovered
13 certain patents that incorporate Locate's pre-existing technology and jointly-owned Program
14 Technology. However, defendants have exclusive control of important information, and
15 defendants have refused to provide such information to Gabriel. Upon information and belief,
16 other patents and patent applications in addition to those identified thus far likely incorporate
17 Locate's pre-existing technology and jointly-owned Program Technology. Upon information
18 and belief, Gabriel has uncovered preliminary evidence that indicates that Krasner and
19 SnapTrack may have misappropriated other parties' intellectual property rights in a manner very
20 similar to that used against Locate.
21

22 128. Gabriel presented information concerning its intellectual property claims to
23 Qualcomm and its Board of Directors in June 2007. To the best of Gabriel's knowledge,
24 Qualcomm has taken no steps to correct the inventorship issues or otherwise address the
25 misappropriation of Locate's technology and intellectual property.
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1 135. SnapTrack breached the Amended and Restated License Agreement in secret by,
2 among other things, not disclosing its patent filings relating to both Locate's technology and
3 Program Technology. The harm flowing from SnapTrack's breaches was not reasonably
4 discovered by Gabriel until a future time as discussed above.
5

6 136. As a result of SnapTrack's breaches, Gabriel has suffered damages for which it
7 seeks recovery.

8 **COUNT FIVE: Correction of Inventorship (Pursuant to 35 U.S.C. § 256)**

9 137. Gabriel repeats and realleges the allegations above.

10 138. As discussed above, Krasner and representatives of SnapTrack and Qualcomm
11 applied for and were issued U.S. Patents based on the representation that they were the inventors.
12

13 139. This representation was false, because Krasner, SnapTrack, and Qualcomm failed
14 to disclose that representatives of Locate conceived of claims in the patents and were the true
15 inventors.

16 140. At all relevant times, the true inventors, including Crowson and Clise, were
17 without deceptive intent and were unaware of and played no role in any deception by Krasner,
18 SnapTrack, and Qualcomm.

19 141. Pursuant to 35 U.S.C. § 256, the patents should be corrected to reflect that
20 representatives of Locate/Gabriel are the sole inventors or, at the very least, co-inventors.
21 Pursuant to assignments from and agreements with these true inventors, Gabriel would be an
22 owner/assignee of intellectual property developed by such inventors, including the subject
23 patents.
24
25

26 **COUNT SIX: Declaratory Judgment Of Ownership Interest In The Patents (Pursuant to
27 28 U.S.C § 2201)**

28 142. Gabriel repeats and realleges the allegations above.

1 143. Gabriel seeks a declaratory judgment that Gabriel has an ownership interest in and
2 to the above-listed patents.

3 144. There is a substantial and continuing justiciable controversy between Gabriel and
4 Krasner, SnapTrack, and Qualcomm as to Gabriel's ownership interest in and to the patents.

5 145. A valid case and controversy exists sufficient for this Court to declare the rights
6 and remedies of the parties, because there is a dispute between the parties as to the ownership of
7 valuable technology and related patents.

8 146. This controversy is ripe for determination at this time because the parties dispute
9 ownership of valuable technology and related patents and because those patents have been issued
10 by the USPTO.

11 147. Representatives of Gabriel conceived of such technology and assigned all right,
12 title, and interest in such technology to Gabriel. Thus, Gabriel has the requisite standing to
13 request this declaration.

14 148. Krasner, SnapTrack, and Qualcomm utilized these contributions made by Gabriel
15 without payment and/or acknowledgment of inventorship and ownership rights.

16 149. To resolve this controversy, Gabriel requests that the Court declare the respective
17 rights and duties of the parties in this matter and, in particular, that Gabriel is the owner of
18 certain technology and patents.

19
20
21 **COUNT EIGHT: Misappropriation (Pursuant to California Uniform Trade Secrets Act)**

22 150. Gabriel repeats and realleges the allegations above.

23 151. Locate's confidential and proprietary information as well as Program Technology
24 derived independent economic value from not being generally known to the public or to other
25 persons who could obtain economic value from its disclosure or use.
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VII. REQUEST FOR RELIEF

1
2 159. WHEREFORE Gabriel Technologies Corporation and Trace Technologies, LLC
3 respectfully request that the Court:

4 A. Enter judgment against Krasner, SnapTrack, and Qualcomm for actual,
5 consequential, and compensatory damages suffered by Gabriel in an amount exceeding \$1
6 billion;

7
8 B. Enter judgment against Krasner, SnapTrack, and Qualcomm for
9 exemplary damages;

10 C. Enter judgment correcting ownership and inventorship of the patents and
11 order the USPTO to so correct ownership and inventorship;

12 D. Enter declaratory judgment that Gabriel is the owner of certain technology
13 and patents discussed above;

14 E. Enter judgment finding infringement by SnapTrack and/or Qualcomm of
15 Gabriel's patents;

16 F. Enter preliminary and permanent injunctive relief preventing Krasner,
17 SnapTrack, and Qualcomm from using Gabriel's confidential and proprietary information,
18 technology, and patents;

19 G. Award Gabriel attorneys' fees and costs;

20 H. Award Gabriel pre-judgment and post-judgment interest at the highest
21 rates allowed by law; and

22 I. Grant Gabriel such other and further relief to which it may be entitled at
23 law or equity.
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1 Dated: January 11, 2010

Respectfully submitted,

2
3 By: /s/ John van Loben Sels

4 John D. van Loben Sels

5 State Bar No. 201354

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10 **COUNSEL FOR PLAINTIFFS GABRIEL
11 TECHNOLOGIES CORPORATION AND
12 TRACE TECHNOLOGIES, LLC**

13
14
15
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on January 11, 2010, a true and correct copy of Plaintiffs' Fourth
18 Amended Complaint was served on Defendants' counsel of record, COOLEY GODWARD KRONISH
19 LLP, 4401 Eastgate Mall, San Diego, California 92121-1909, via the Court's CM/ECF system.

20 /s/ John van Loben Sels

21 John D. van Loben Sels