

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

KM ENTERPRISES, INC.,

Plaintiff,

v.

GLOBAL TRAFFIC TECHNOLOGIES,
LLC

Defendant.

CIVIL ACTION NO. _____ - _____ - _____

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT
AND INVALIDITY, AND FOR FALSE ADVERTISING, TORTIOUS
INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS AND
DECEPTIVE TRADE PRACTICES**

1. Defendant Global Traffic Technologies, LLC (“GTT”) offers an inferior product for the critical safety function of changing traffic signals from red to green to allow the passage of emergency and transit vehicles. Plaintiff KM Enterprises, Inc. (“KME”) is an innovator who first developed and offered a superior system that has been repeatedly chosen over GTT’s system following direct comparison by government agencies in the United States and Canada. GTT holds a limited patent that does not cover KME’s products, yet GTT has sought to threaten and intimidate customers into choosing its inferior product through a campaign of i) wrongly claiming that its patent covers KME’s products, ii) misleading customers and potential customers, and iii) engaging in false advertising. Plaintiff KM Enterprises, Inc. for its Complaint against Defendant Global Traffic Technologies, LLC states and alleges as follows:

THE PARTIES

2. Plaintiff KM Enterprises, Inc. is a corporation organized and existing under the laws of the State of Illinois with its principal place of business at 320 South 11th Street, Mount Vernon, Illinois, 62864. KME produces and sells the Emtrac Priority Management System (“Emtrac System”)—a system that uses precise navigation technology and secure RF communication to permit equipped transit, emergency, and municipal vehicles to place priority or preemption requests to intersection signal-control equipment. KME’s Emtrac System is the leading GPS-based priority and preemption system in the industry.

3. Defendant Global Traffic Technologies, LLC is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business at 7800 Third Street North, St. Paul, Minnesota, 55128.

JURISDICTION AND VENUE

4. KME seeks a declaratory judgment that U.S. Patent No. 5,539,398 (the ‘398 Patent) is invalid and not infringed by sales of KME’s Emtrac Systems. This action is therefore brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and concerns a controversy arising under the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.*

5. KME also seeks damages and an injunction under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act) for GTT’s falsely advertising its product.

6. KME also seeks damages and an injunction under Minnesota law for false advertising, tortious interference with prospective contractual relations and deceptive trade practices.

7. This Court has subject matter jurisdiction over all claims asserted by KME under the provisions of 15 U.S.C. 1121(a), 28 U.S.C. §§ 1331, 1332 and 1338(a), 1367, 2201 and 2202.

8. This Court has personal jurisdiction over GTT because GTT is a limited liability company that resides in this District; because GTT does business within this District by, among other things, soliciting business in this District and selling goods and services to customers within this District; and by virtue of the claims GTT has asserted in this District seeking to enforce the '398 patent.

9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(a), (b) and (c) in that GTT is a limited liability corporation residing in this District; is subject to personal jurisdiction in this District; and does business within this District by, among other things, soliciting business within this District and selling goods and services to customers within this District.

FACTUAL BACKGROUND

Plaintiff KM Enterprises, Inc.

10. KME is a corporation formed on July 18, 2007 by Rodney "Kris" Morgan, an inventor who has been in the business of developing, commercializing and selling traffic signal control systems for over 24 years. Attached as Exhibit A is a true and correct copy of the Certificate of Good Standing for KME issued by the Illinois Secretary

of State dated October 11, 2010. KME produces and sells the Emtrac Priority Management System (“Emtrac System”)—a system that uses precise navigation technology and secure RF communication to permit equipped transit, emergency, and municipal vehicles to place priority or preemption requests to intersection signal-control equipment. The priority or preemption requests allow a vehicle to change a traffic signal—for example, from red to green—to allow safe, priority passage through intersections the vehicle is approaching.

11. Mr. Morgan created the first Emtrac System in 1985 after he witnessed a fatal accident between a passenger vehicle and an ambulance on an emergency call. At that time, the only system available for an emergency vehicle to change a traffic light in an emergency was to use an optical strobe light on the vehicle to trigger a receptor on the traffic light signaling it to change. In the 1985 accident Mr. Morgan witnessed, the optical strobe did not function correctly and the traffic light did not change.

12. The most widely known optical system available in 1985 was manufactured by The 3M Company under the Opticom™ brand. As Mr. Morgan noticed the day of the accident, the standard optical sensors in use at the time, such as 3M’s Opticom™ System, could fail because they had several problems: they were susceptible to weather changes such as fog, they could not be read if obstacles were in the way or the sensors were dirty, they were not reliable from long distances, they could not prioritize simultaneous calls from two different vehicles, and they were costly to repair and maintain.

13. Mr. Morgan sought to create a more reliable way to place priority or preemption requests to intersection signal-control equipment. He accordingly developed

the first commercially successful non-optical priority or preemption request system that was based on UHF radio frequency transmissions.

14. Mr. Morgan began developing his RF-based preemption and priority system in 1985 in cooperation with an electronic systems expert, Bradley K. Cross. At the same time that Mr. Morgan and Mr. Cross were developing the original RF Emtrac System, Mr. Morgan and Mr. Cross filed a patent application for their invention on June 13, 1988. The patent, entitled "Traffic Signal Preemption System," was ultimately issued and registered on April 3, 1990 as U.S. Patent No. 4,914,434 ("the '434 patent"). Attached as Exhibit B is a true and correct copy of U.S. Patent No. 4,914,434. The patent claims an RF-based traffic signal preemption system for enabling emergency vehicles to cause a traffic light controller at an intersection to preempt traffic signals at the intersection in favor of emergency vehicles. The system included a vehicle information transmission system that repeatedly generated information identifying the vehicle in the direction of vehicular motion, and a vehicle detection, identification and preemption system that connected to a traffic light controller that received a radio signal from the vehicle and processed the signal based on preprogrammed preemption criteria.

15. During the same time, Mr. Morgan brought the new product, the original RF Emtrac System, to the market and began to compete against 3M's Opticom™ System for emergency vehicle preemption contracts. By 1988, the original RF Emtrac System became a substantial competitor based on its superior performance over optical systems such as the Opticom™ System. By 1990, the original RF Emtrac System had surpassed the Opticom™ System in sales.

16. In 1991, one of the distributors of 3M's Opticom™ System, Econolite, approached Mr. Morgan seeking to become the exclusive distributor for the RF Emtrac System. Econolite eventually ceased distribution of the Opticom™ System and began exclusively selling, marketing, producing and maintaining the RF Emtrac System. Econolite and Mr. Morgan also agreed that Econolite would license and maintain the '434 patent and any intellectual property related to the Emtrac System.

17. In 1993, while working with Econolite on the RF Emtrac System, Mr. Morgan's co-inventor, Bradley Cross, designed a further improved system for including GPS capabilities in the RF Emtrac System.

18. The GPS capabilities were not added to the Emtrac System in 1993 because at that time GPS system performance was inadequate but improving. Emtrac continued throughout the 1990's to be the leader in RF preemption and priority systems.

19. In 2004, GPS functionality was added to the commercially available Emtrac System. Because Mr. Morgan was willing to redesign the Emtrac System to include GPS and because Econolite did not have the personnel available to properly support the new GPS product, Mr. Morgan and Econolite ended their agreement. Mr. Morgan then resumed the development, sale and marketing of the new Emtrac GPS System.

20. Today, vehicles equipped with the Emtrac GPS System carry a Vehicle Computer Unit (VCU), which is connected to a dual antenna that receives GPS location data and transmits priority requests to intersections through secure radio. The Vehicle

Control Unit pinpoints its location using GPS signals and makes a determination whether the vehicle is within a predefined zone that warrants sending an RF signal to an intersection requesting a change in the traffic signal. The Emtrac Systems are therefore based on a smart vehicle rather than a smart intersection.

Defendant Global Traffic Technologies, Inc.

21. Global Traffic Technologies, Inc. was formed in 2007 by a private equity firm, TorQuest Partners, after TorQuest purchased 3M's Opticom™ GPS and Infrared Systems and Canoga Traffic Detection businesses for \$80 million.

22. Prior to 2007 and GTT's formation, 3M was focused on selling and marketing its optical Opticom™ Systems and did not actively pursue selling or marketing the Opticom™ GPS System. After GTT was formed in 2007, it began focusing on building the Opticom™ GPS System and began competing head-to-head against KME's Emtrac GPS Systems.

23. However, as customers and distributors noticed, GTT's Opticom™ GPS System is based on a different design and offers different functionality from the superior Emtrac System. GTT claims that it offers a system that uses a computer processor at each controlled intersection. GTT also claims that the processor at the intersection stores map data. GTT further claims that the processor at the intersection receives vehicle data including the vehicle's position by transmission from the vehicle and compares the vehicle data to the stored map data. Accordingly, GTT's system requires a smart intersection.

24. KME's Emtrac GPS System is the only system with a computer unit in the vehicle that determines whether the position of the vehicle is within a pre-defined detection zone stored in the computer in the vehicle. The Emtrac GPS System does not need or use a processor at the intersection controller to compare the position of the vehicle to stored map data. Emtrac's GPS System does not need and does not perform a series of matches to position signals that have been received.

25. GTT's '398 patent claims systems that use a processor with stored map data at an intersection to compare vehicle data transmitted from a vehicle to a programmed map, and claims receiving a series of position signals and recording a series of matches to determine if a match threshold has been reached. Attached as Exhibit C is a true and correct copy of U.S. Patent No. 5,539,398.

26. GTT has represented to potential customers that its commercial systems include the technology claimed in the '398 patent, and has stated in a pleading filed with this Court that it marks its systems with the '398 patent number. Attached as Exhibit D is a true and correct copy of the Complaint filed by GTT on September 30, 2010.

27. Several customers drafted reviews of the Emtrac GPS System and the Opticom™ GPS System in head-to-head bidding contests and chose Emtrac's System. Attached as Exhibits E, F and G are true and correct copies of memoranda from the City of Stillwater, OK, the Region of Waterloo, Canada, and the City of Pasadena, CA reviewing the two systems and choosing Emtrac. GTT threatened to sue Emtrac and the customers who chose Emtrac for false advertising if the reviews were published.

Attached as Exhibit H is a true and correct copy of a February 26, 2010 cease-and-desist letter from GTT's counsel to Kris Morgan.

28. GTT approached KME in 2008 to discuss obtaining production rights to KME's Emtrac System. GTT met with KME twice in Mount Vernon, IL and once in Minneapolis, MN to request an agreement wherein GTT would sell the Emtrac GPS System under the Opticom™ label. The parties signed a Non-Disclosure Agreement. The discussions were not productive and GTT was not granted any rights to private label or sell KME's Emtrac GPS System. After GTT was unable to secure rights to sell the Emtrac GPS System, GTT continued to attempt to compete against the Emtrac GPS System. Customers continued to choose the Emtrac GPS System.

GTT Harasses With Complaint Against Wrong Parties Without Investigation

29. On September 30, 2010, GTT filed a Complaint in this Court for infringement of the '398 patent against Emtrac Systems, Inc., Andrew Morgan, Kristopher Morgan and Rodney Morgan for making, using and selling the Emtrac System ("GTT Complaint"). (Ex. D.) GTT's Complaint alleges that the Emtrac System infringes the '398 Patent. GTT did not name KME in the suit. Instead, GTT filed the suit against Emtrac Systems, Inc., a corporation that does not exist, and three individuals—Andrew, Kristopher and Rodney Morgan—seeking their personal liability for infringement that allegedly occurred after Emtrac Systems, Inc. dissolved.

30. Emtrac Systems, Inc. was formed in April 2005 with the aim of it becoming a distributor for a very limited regional customer set. It made limited sales and was dissolved shortly after it was formed.

31. Andrew Morgan is Rodney “Kris” Morgan’s college-aged son who has never been a shareholder or officer of Emtrac Systems, Inc. or KME.

32. Rodney “Kris” Morgan is the President and sole shareholder of KME. Mr. Morgan has never been a shareholder or officer of Emtrac Systems, Inc.

33. Kristopher Morgan is Rodney “Kris” Morgan’s college-aged son who, for purposes of the Secretary of State filings, was named President of Emtrac Systems, Inc. Mr. Morgan attempted to sell Emtrac Systems to customers near his college in Southern Illinois as a part-time job while attending college.

34. GTT sued the wrong parties without a proper investigation and needlessly named the dissolved corporation as well as Mr. Morgan and his sons individually in the suit to harass them and to smear their name in the industry.

KME Does Not Infringe GTT’s Patents

35. In the GTT Complaint, GTT alleged that the Defendants infringed the ‘398 patent by developing, manufacturing, marketing, offering to sell, and/or selling “traffic control management systems, including the Emtrac Priority Control System” and that “Emtrac’s traffic control systems, including the Emtrac System, are covered by at least one claim of the ‘398 patent.” (Ex. D.)

36. The ‘398 patent describes an emergency vehicle preemption system that requires a preprogrammed map and a processor at each intersection and requires that a comparing step be performed at the intersection that compares the data in the vehicle to the map of allowed approaches stored in the intersection module. (Ex. C.)

37. KME's Emtrac System as it applies to emergency vehicle preemption does not store a map of allowed approaches at the intersection and does not practice the step of comparing at the intersection the vehicle data to the map of allowed approaches. The KME Emtrac System instead uses a computer unit in the vehicle that determines if the vehicle is within a pre-defined detection zone stored in the vehicle. KME's Emtrac System does not need and does not store map data in each intersection module and does not need or use a processor at the intersection controller to compare the position of the vehicle to stored map data. KME's Emtrac System also does not receive a series of position signals and record a series of matches to determine if a match threshold has been reached to determine if a vehicle is within an allowed approach to an intersection. As a result, KME's Emtrac System is more cost efficient, simpler to use, more robust, and more reliable than the claimed system and does not infringe the '398 patent.

GTT Uses Wrongly Directed and Baseless Complaint as Weapon Against KME

38. In addition to filing an unsupported Complaint against Mr. Morgan and his sons, GTT has engaged in an improper out-of-court campaign to wrest market share from KME.

39. GTT has used the unsupported patent infringement allegations as a weapon to try and put KME out of business. First, on October 1, 2010, GTT issued a misleading press release on its website after filing the lawsuit against KME. Attached as Exhibit I is a true and correct copy of the October 1, 2010 GTT press release. The press release states:

Global Traffic Technologies (“GTT”) yesterday filed a Complaint against Emtrac Systems, Inc. in United States District Court for the District of Minnesota. The Complaint alleges that Emtrac and persons working in its name have infringed a GTT patent by using, selling and operating its “Emtrac Priority Control System.” The patent asserted in the Complaint is U.S. Patent No. 5,539,398, entitled “GPS-Based Traffic Control Preemption System.”

According to State of Illinois records, Emtrac Systems, Inc. was dissolved by the State of Illinois on Sept. 11, 2009. The Complaint alleges that individuals have continued to engage in infringing activity in the name of Emtrac after its dissolution. The Complaint seeks damages and an injunction.

GTT is represented by Faegre & Benson LLP, which recently represented GTT in patent litigation against Tomar Industries, Inc. GTT in that case was awarded significant monetary damages at a jury trial, and the court enjoined Tomar from manufacturing and selling products that infringe GTT’s patents.

40. GTT’s press release fails to disclose that its suit against Tomar involved Tomar’s optical system, not a GPS system.

41. GTT’s press release fails to disclose that the patent asserted against Tomar is a different and separate patent from the ‘398 patent asserted by GTT against the Emtrac GPS System. GTT’s press release fails to disclose that the patent asserted against Tomar relates to a limited feature of an optical system, and is not asserted and cannot be asserted against the Emtrac GPS System.

42. GTT’s press release fails to disclose that its suit against Tomar involved a Tomar system that was compatible with GTT’s Opticom™ optical system.

43. GTT’s press release fails to disclose that, unlike the products at issue in the Tomar suit, the Emtrac GPS System is not an optical system and is not compatible with any GTT signal preemption system.

44. The GTT press release fails to disclose that, according to the Court in the Tomar action, Tomar was able to easily change its product design and to continue to offer a product that does not infringe the patent asserted in that case.

45. GTT's press release along with statements by individuals with actual, implied, or apparent authority of GTT, are designed to have and in fact do have the effect of misleading and confusing actual and potential distributors and customers of the Emtrac GPS System.

46. GTT has contacted KME's current and prospective customers and/or distributors and told them that GTT would win the suit against Emtrac and that GTT would put Emtrac out of business. GTT told customers and/or distributors that they may be financially responsible if Emtrac is found to infringe the '398 patent.

47. As a result of GTT's false statements and intimidating conversations to KME's customers and/or distributors, at least one of the KME's prospective clients has informed KME that it may pull their contract and/or give their prospective business to GTT.

48. GTT's objective is to create an atmosphere of fear and confusion to such an extent that KME's customers no longer purchase from KME due to litigation (either actual or potential) over the '398 patent.

GTT Falsely Advertises Its Product and Experience on Its Website

49. GTT's improper tactics in trying to take away business from KME extends to GTT's advertising of its products and its business. GTT's website advertises its Opticom™ GPS System using a video in which the depicted vehicles are not actually

using the Opticom™ GPS System but are instead using KME's Emtrac GPS System for the described functionality.

50. The video describes the alleged functionality of the Opticom™ GPS System. To illustrate the product, video is shot of Minneapolis transit systems with various equipment located on the vehicles. Upon information and belief, GTT does not have any optical or GPS-related contracts with Minneapolis transit. GTT's Opticom™ product is not on the vehicles in Minneapolis. The Emtrac GPS System, however, is on the vehicles in Minneapolis and is shown prominently in the GTT video. The video is an attempt to pass-off the Opticom™ System as Emtrac's GPS System.

51. KME became aware of the GTT video at a trade show in 2009 by an inquiry from a potential customer. Since the video has been online, KME's customers and/or distributors have voiced concern that GTT was implying that it had obtained the Minneapolis contract. KME's customers and/or distributors have also expressed concern that GTT was trying to pass off its Opticom™ System as Emtrac's GPS System.

52. GTT has also misrepresented its experience in the industry as a way to take business away from KME. In a recent October 2010 e-mail newsletter sent to GTT's prospective and actual customers, GTT prominently wrote:

About Us

For more than 35 years Global Traffic Technologies (GTT), the innovator of Opticom™ priority control solutions, has provided reliable traffic management systems that help emergency and traffic personnel increase safety, minimize traffic congestion and reduce greenhouse emissions, while maximizing resource efficiency and performance.

53. The statement is misleading and false. GTT is not the innovator of the Opticom™ priority control system—3M developed the Opticom™ system, not GTT. GTT has not been in the business for 35 years—3M was in the business for over thirty years and GTT bought the product just three years ago. GTT is falsely attributing 3M's experience and reputation to its own. Such statements are misleading to KME's potential customers.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '398
PATENT

54. KME repeats the allegations above as if fully set forth herein.

55. GTT claims it is the record owner of the '398 patent.

56. GTT has claimed that the Emtrac Priority Control System infringes the '398 patent.

57. KME sells the Emtrac Priority Control System. GTT has threatened KME's actual and potential customers with disruption of their use and enjoyment of the Emtrac Priority Control System.

58. Pursuant 28 U.S.C. § 2201, there exists an actual and substantial controversy between GTT and KME as to whether KME and its products infringe either directly, indirectly or via contributory infringement or inducement of infringement, any valid and enforceable claim of the '398 patent. KME has suffered and continues to suffer harm to its business and reputation as a result of the charge of infringement. The controversy is of such immediacy and reality to warrant a declaratory judgment.

59. KME and its Emtrac System do not infringe and is not infringing, either directly, indirectly or under the doctrine of equivalents, via contributory infringement or inducement of infringement, any valid and enforceable claim of the '398 patent.

60. KME is entitled to a declaration that it does not infringe and is not infringing, either directly, indirectly or under the doctrine of equivalents, via contributory infringement or inducement of infringement, any valid and enforceable claim of the '398 patent.

61. A judicial declaration of noninfringement is necessary and appropriate to resolve this controversy.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF THE '398 PATENT

62. KME repeats the allegations above as if fully set forth herein.

63. GTT claims it is the record owner of the '398 patent.

64. GTT has claimed that the Emtrac Priority Control System infringes the '398 patent.

65. KME sells the Emtrac Priority Control System. GTT has threatened KME's actual and potential customers with disruption of their use and enjoyment of the Emtrac Priority Control System.

66. Pursuant 28 U.S.C. § 2201, there exists an actual and substantial controversy between GTT and KME as to whether KME and its products infringe either directly, indirectly or via contributory infringement or inducement of infringement, any valid and enforceable claim of the '398 patent. KME has suffered and continues to suffer

harm to its business and reputation as a result of the charge of infringement. The controversy is of such immediacy and reality to warrant a declaratory judgment.

67. KME does not infringe the '398 patent because it is invalid for failure to meet the requirements of patentability specified in the United States patent statutes, including without limitation 35 U.S.C. §§ 101, 102, 103, and/or 112.

68. KME is entitled to a declaration that the '398 patent is invalid.

69. A judicial declaration of invalidity is necessary and appropriate to resolve this controversy.

COUNT III
VIOLATION OF 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act)

70. KME repeats the allegations above as if fully set forth herein.

71. GTT has advertised—including on its website and at its trade show—its Opticom GPS™ System using a video in which the depicted vehicles are not using the Opticom™ GPS System but are instead using KME's Emtrac System for the capabilities described in the video. By representing to potential customers that vehicles using the Emtrac System are using GTT's Opticom™ GPS System, GTT is making a false statement of fact in a commercial advertisement about its own and another's product.

72. GTT's use of videos depicting the Emtrac System has actually deceived or has the tendency to deceive a substantial segment of its audience. KME's customers and/or distributors have brought GTT's video to KME's attention and voiced concern that GTT was implying that it had obtained the Minneapolis contract. KME's customers also

expressed concern that GTT was trying to pass off its Opticom™ System as Emtrac's System.

73. This deception is material because it is likely to influence a customer's purchase decision.

74. GTT has caused this false statement to enter interstate commerce at least by placing the video on its website and making it accessible over the Internet.

75. KME has been or is likely to be injured as a result of GTT's false statement.

76. In addition, GTT has misrepresented its experience in the industry in an attempt to take customers away from KME. In a recent October 2010 e-mail newsletter sent to GTT's prospective and actual customers, GTT prominently wrote:

About Us

For more than 35 years Global Traffic Technologies (GTT), the innovator of Opticom™ priority control solutions, has provided reliable traffic management systems that help emergency and traffic personnel increase safety, minimize traffic congestion and reduce greenhouse emissions, while maximizing resource efficiency and performance.

77. The statement is misleading and false. GTT is not the innovator of the Opticom priority control system—3M is the developer of that system. GTT has not been in the business for 35 years—3M was in the business for over thirty years and GTT bought the product just three years ago. GTT is falsely attributing 3M's experience and reputation as its own. Such statements are misleading to KME's potential customers.

78. GTT's misleading statements about its experience have deceived or have the tendency to deceive a substantial segment of its audience. These deceptions are material because they are likely to influence a customer's purchase decision.

79. GTT has caused these false statements to enter interstate commerce by sending the e-mail to GTT's customers.

80. KME has been or is likely to be injured as a result of GTT's false statements.

81. GTT has committed other acts of unfair competition in interstate commerce including but not limited to the acts alleged in this Complaint. KME has been or is likely to be injured as a result of GTT's acts of unfair competition. GTT's acts complained of herein constitute common law unfair competition, false advertising, false designation of origin, palming off, and false description or representation in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

82. GTT's unfair competition has been willful and in bad faith, making this an exceptional case under 15 U.S.C. § 1117(a).

83. As a result of GTT's wrongful conduct, KME is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT IV
VIOLATION OF MINNESOTA FALSE ADVERTISING ACT (Minn. Stat. § 325F.67)

84. KME repeats the allegations above as if fully set forth herein.

85. GTT has advertised—including on its website and at its trade show—its Opticom GPS™ System using a video in which the depicted vehicles are not using the Opticom™ GPS System but are instead using KME's Emtrac System for the capabilities described in the video.

86. KME's customers and/or distributors have brought GTT's video to KME's attention and voiced concern that GTT was implying that it had obtained the Minneapolis contract. KME's customers also expressed concern that GTT was trying to pass off its Opticom™ System as Emtrac's System.

87. By placing this video depicting use of KME's Emtrac System on its website, GTT has placed before the public an advertisement regarding merchandise offered to the public for sale with the intent to sell GTT's Opticom™ GPS System.

88. GTT's advertisement is making a material assertion, representation, or statement of fact which is untrue, deceptive, or misleading by representing to potential customers that vehicles using the Emtrac System are using GTT's Opticom™ GPS System.

89. KME has been injured by GTT's false advertisement.

90. In addition, GTT has misrepresented its experience in the industry in an attempt to take customers away from KME. In a recent October 2010 e-mail newsletter sent to GTT's prospective and actual customers, GTT prominently wrote:

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92. By sending this newsletter to potential customers, GTT has placed before the public an advertisement regarding merchandise offered to the public for sale with the intent to sell GTT's Opticom™ GPS System.

93. GTT's advertisement is making a material assertion, representation, or statement of fact which is untrue, deceptive, or misleading by representing to potential customers in violation of Minn. Stat. § 325F.67.

94. KME has been injured by GTT's false advertisement.

95. GTT's false advertisement has been willful and in bad faith.

96. As a result of GTT's wrongful conduct, KME is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief, damages in an amount to be proven at trial, and recovery of all reasonable attorneys' fees and costs incurred herein.

COUNT V
TORTIOUS INTERFERENCE
WITH PROSPECTIVE CONTRACTUAL RELATIONS

97. KME repeats the allegations above as if fully set forth herein.

98. Several customers drafted reviews of the Emtrac System and the Opticom™ System in head-to-head bidding contests and chose Emtrac's System. (Exs. E, F, G.)

99. GTT approached KME in 2008 to discuss obtaining production rights to KME's Emtrac System. GTT met with KME twice in Mount Vernon, IL and once in Minneapolis, MN to request an agreement wherein GTT would sell the Emtrac GPS System under the Opticom™ label. The parties signed a Non-Disclosure Agreement. The discussions were not productive and GTT was not granted any rights to private label or sell KME's Emtrac GPS System. After GTT was unable to secure rights to sell the Emtrac GPS System, GTT continued to attempt to compete against the Emtrac GPS System. Customers continued to choose the Emtrac GPS System.

100. GTT is now using its unsupported patent infringement allegations as a weapon to try and put KME out of business. First, on October 1, 2010, GTT issued a misleading press release on its website after filing the lawsuit against KME. (Ex. I.) The press release states:

Global Traffic Technologies ("GTT") yesterday filed a Complaint against Emtrac Systems, Inc. in United States District Court for the District of Minnesota. The Complaint alleges that Emtrac and persons working in its name have infringed a GTT patent by using, selling and operating its "Emtrac Priority Control System." The patent asserted in the Complaint is

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According to State of Illinois records, Emtrac Systems, Inc. was dissolved by the State of Illinois on Sept. 11, 2009. The Complaint alleges that individuals have continued to engage in infringing activity in the name of Emtrac after its dissolution. The Complaint seeks damages and an injunction.

GTT is represented by Faegre & Benson LLP, which recently represented GTT in patent litigation against Tomar Industries, Inc. GTT in that case was awarded significant monetary damages at a jury trial, and the court enjoined Tomar from manufacturing and selling products that infringe GTT’s patents.

101. GTT’s press release fails to disclose that its suit against Tomar involved Tomar’s optical system, not a GPS system.

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104. GTT’s press release fails to disclose that, unlike the products at issue in the Tomar suit, the Emtrac GPS System is not an optical system and is not compatible with any GTT signal preemption system.

105. The GTT press release fails to disclose that, according to the Court in the Tomar action, Tomar was able to easily change its product design and to continue to offer a product that does not infringe the patent asserted in that case.

106. GTT's press release along with statements by individuals with actual, implied, or apparent authority of GTT, are designed to have and in fact do have the effect of misleading and confusing actual and potential distributors and customers of the Emtrac System.

107. Second, GTT has contacted KME's current and prospective customers and distributors and told them that GTT would win the suit against Emtrac and that GTT would put Emtrac out of business. GTT told customers and distributors that they may be financially responsible as well if Emtrac is found to infringe the '398 patent.

108. As a result of GTT's false statements and intimidating conversations to KME's customers and distributors, at least one of the KME's prospective clients has informed KME that they may pull their contract and/or give their prospective business to GTT.

109. GTT's objective is to create an atmosphere of fear to such an extent that KME's customers no longer purchase from KME due to litigation (either actual or potential) over the '398 patent.

110. The '398 patent requires a map of allowed approaches stored at the intersection and a comparing step performed at the intersection that compares the vehicle data to the map of allowed approaches.

111. A minimal investigation would reveal that KME's Emtrac System does not store a map of allowed approaches at the intersection and does not practice the step of comparing at the intersection the vehicle data to the map of allowed approaches.

112. GTT's statements are intentional, improper, and made in bad faith.

113. GTT has induced or otherwise caused third parties to not enter into or continue prospective relations with KME or prevented KME from acquiring or continuing prospective relations with third parties. As a result of GTT's false statements and intimidating conversations to KME's customers and/or distributors, several of the KME's prospective clients have informed KME that they may pull their contract and/or give their prospective business to GTT.

114. As a result of GTT's wrongful conduct, KME is entitled to the preliminary and permanent injunctive remedies specified in the Prayer for Relief and damages in an amount to be proven at trial.

COUNT VI
VIOLATION OF MINNESOTA DECEPTIVE TRADE PRACTICES ACT (Minn. Stat. § 325D.44)

115. KME repeats the allegations above as if fully set forth herein.

116. GTT has advertised—including on its website and at its trade show—its Opticom GPS™ System using a video in which the depicted vehicles are not using the Opticom™ GPS System but are instead using KME's Emtrac System for the capabilities described in the video.

117. KME's customers and/or distributors brought GTT's video to KME's attention and voiced concern that GTT was implying that it had obtained the Minneapolis

contract. KME's customers and/or distributors also expressed concern that GTT was trying to pass off its Opticom™ System as Emtrac's System.

118. GTT's use of a video depicting vehicles deploying KME's Emtrac System to promote GTT's Opticom™ GPS System is done in the course of business.

119. GTT's use of a video depicting vehicles deploying KME's Emtrac System to promote GTT's Opticom™ GPS System causes likelihood of confusion or misunderstanding as to the source of the system depicted in said video in violation of Minn. Stat. § 325D.44.

120. GTT's continued use of a video deceptively portraying vehicles as deploying GTT's Opticom™ GPS System for the described functionality when the depicted videos are actually deploying KME's Emtrac system is likely to damage KME.

121. KME will continue to be irreparably harmed unless and until the unfair competition activities of GTT and its employees, agents and other individuals working at their direction in the name of GTT are enjoined by this Court.

122. In addition, GTT has misrepresented its experience in the industry in an attempt to take customers away from KME. In a recent October 2010 e-mail newsletter sent to GTT's prospective and actual customers, GTT prominently wrote:

About Us

For more than 35 years Global Traffic Technologies (GTT), the innovator of Opticom™ priority control solutions, has provided reliable traffic management systems that help emergency and traffic personnel increase safety, minimize traffic congestion and reduce greenhouse emissions, while maximizing resource efficiency and performance.

123. The statement is misleading and false. GTT is not the innovator of the Opticom priority control system—3M is the developer of that system. GTT has not been in the business for 35 years—3M was in the business for over thirty years and GTT bought the product just three years ago. GTT is falsely attributing 3M's experience and reputation as its own. Such statements are misleading to KME's potential customers.

124. GTT's newsletter is sent in the course of business.

125. The statements in GTT's newsletter causes likelihood of confusion or misunderstanding as to the experience and history of GTT and its products in violation of Minn. Stat. § 325D.44.

126. GTT's continued use of the statements set forth in its October 2010 newsletter is likely to damage KME.

127. GTT has committed other acts of unfair competition in including but not limited to the acts alleged in this Complaint. KME has been or is likely to be injured as a result of GTT's acts of unfair competition.

128. KME will continue to be irreparably harmed unless and until the unfair competition activities of GTT and its employees, agents and other individuals working at their direction in the name of GTT are enjoined by this Court.

JURY DEMAND

129. Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Local Rule 38.1, KME demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, KME respectfully requests the following relief:

130. A declaration that KME and its products have not infringed, and are not infringing, either directly, indirectly or by the doctrine of equivalents, via contributory infringement or inducement of infringement, any valid and enforceable claim of the '398 patent;

131. A declaration that that the claims of the '398 patent are invalid and/or unenforceable for failure to meet one or more of the individual requirements for patentability set forth in 35 U.S.C. § 101 *et seq.*;

132. A declaration that GTT and its respective officers, agents, servants, employees and all persons in active concert or participation with them are permanently enjoined from suing or threatening to sue, or making any charge against KME or any of its current or prospective customers, distributors or partners, that its products infringe the '398 patent;

133. A declaration that GTT and its respective officers, agents, servants, employees and all persons in active concert or participation with them are permanently enjoined from falsely misleading customers and must remove the misleading Opticom™ GPS System video and press release from GTT's website, remove and desist from all other false or misleading actions, and issue corrective advertising;

134. Award KME damages and costs in amounts sufficient to compensate it for GTT's false advertising, tortious interference with prospective contractual relations, and

deceptive trade practices, together with pre-judgment and post-judgment interest and costs;

135. That KME be awarded its costs, disbursements and attorneys' fees herein in accordance with Title 15 U.S.C. § 1117(a) and Title 35 U.S.C. § 285; and

136. That KME be awarded such other relief as this Court may deem just and equitable.

Dated: November 5, 2010

Respectfully submitted,

**ROBINS, KAPLAN, MILLER &
CIRESI L.L.P.**

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