

ESTTA Tracking number: **ESTTA271669**

Filing date: **03/12/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188353
Party	Defendant Starpound Technologies, Inc.
Correspondence Address	SUSAN T. CRAIGHEAD TRUSTED COUSNEL (ASHLEY), LLC 400 COLONY SQUARE 1201 PEACHTREE STREET NE, SUITE 500 ATLANTA, GA 30361-6317  scraighead@trusted-counsel.com
Submission	Motion to Amend Application
Filer's Name	Susan T. Craighead
Filer's e-mail	scraighead@trusted-counsel.com
Signature	/STC/
Date	03/12/2009
Attachments	Settlement Agreement Starpound.pdf ( 3 pages )(1028978 bytes )

## TRADEMARK AGREEMENT

This AGREEMENT ("Agreement") is entered into as of the last date which appears next to the parties' signatures below (the "Effective Date") by and between **StarPound Technologies, Inc.**, a Delaware Corporation, having a place of business at Suite 400, 2100 Powers Ferry Road, Atlanta, Georgia 30339 (hereinafter "StarPound"), and **Interactive Supercomputing, Inc.**, a Delaware Corporation, having a principal place of business at 135 Beaver Street, Waltham, Massachusetts 02452 (hereinafter "ISC"). StarPound and ISC enter into this Agreement on behalf of themselves, their parents, subsidiaries, affiliates and related companies.

### RECITALS

WHEREAS, ISC asserts that it adopted at least as early as 2005 and has continuously used the mark **Star-P**, and adopted at least as early as 2006 and has continuously used the marks **Star P**, and **\*P**, for various software goods and services, and that it is the owner of three valid and subsisting **Star-P** and **Star-P** derivative marks currently registered with the U.S. Patent and Trademark Office ("USPTO");

WHEREAS, StarPound asserts that it and/or its subsidiaries or predecessors in interest have adopted and are using the mark "**STARPOUND**" for telecommunications software and related goods and services;

WHEREAS, StarPound filed U.S. Trademark Application S.N. 77/451881 for the mark "**STARPOUND**" for various goods and services (the "Application");

WHEREAS ISC has filed an opposition to said Application, said opposition currently being captioned *Interactive Supercomputing, Inc. v. StarPound Technologies, Inc.*, Opposition No. 91188353; and

WHEREAS the parties hereto are desirous of resolving their dispute over StarPound's registration of the mark "**STARPOUND**;"

NOW, THEREFORE, in full and complete consideration of the promises and covenants set forth in this Agreement, the receipt and sufficiency of which the parties acknowledge to each other, it is agreed as follows:

1. Limitation on Registration by StarPound.

Without any prejudice to its other rights, StarPound will file an amendment, with the consent of ISC, to narrow the identifications of goods and services in its Application for the "**STARPOUND**" mark as follows:

- (i) amend the identification of goods and services in International Class 009 to read substantially as follows (amendments shown in italics): "Downloadable open source computer software platform for transporting and aggregating voice, video and data

communications from multiple distributed systems onto one IP network; software for business process modeling, *excluding business process modeling using mathematical, parallel, distributed or high performance computing*; computer software development tools, *excluding such tools for use with software for mathematical, parallel, distributed or high performance computing*"; and

(ii) amend the identification of goods and services in International Class 042 to read substantially as follows (amendments shown in italics): "Design, development and implementation of software *other than software for mathematical, parallel, distributed or high performance computing*; technical support services, namely, troubleshooting of computer software problems, *excluding such services relating to software for mathematical, parallel, distributed or high performance computing*; hosting an on-line community website featuring information about a software platform for transporting and aggregating voice, video and data communications from multiple distributed systems onto one IP network".

2. No Objection by ISC.

Provided that StarPound meets the obligations set forth in paragraph 1 of this Agreement, and that the Trademark Trial and Appeal Board grants the motion to amend the Application, ISC will withdraw its challenge to the Application as amended pursuant to said paragraph 1 by filing a stipulation for dismissal of its opposition.

3. General Provisions.

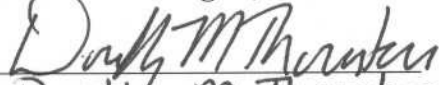
- a. Compromise Agreement. This Agreement is a compromise and settlement of disputed claims and is not intended to be, nor shall it be construed as, any admission of liability or wrongdoing by any party or any other person or entity.
- b. Entire Agreement. This Agreement constitutes the entire understanding and contract between the parties with respect to the subject matter referred to herein. Any and all other representations, understandings, or agreements, whether oral, written, or implied, are merged into and superseded by the terms of this Agreement.
- c. Severability. If any provision of this Agreement is found to be prohibited by law and invalid, or for any reason such provision is held unenforceable, in whole or in part, that provision shall be considered severable and its invalidity or unenforceability shall not affect the remainder of this Agreement, which shall continue in full force and effect.
- d. Confidentiality. The parties shall keep the terms of this Agreement confidential except: (i) upon receipt of the non-disclosing party's prior written consent; (ii) where disclosure is required by law, provided the non-disclosing party has been given sufficient notice prior to such disclosure so as to allow the non-disclosing party a

reasonable opportunity to seek any available legal safeguards against the widespread dissemination of the information; and (iii) where the information in question has become publicly known without breach of this Agreement. The parties may, without breaching this section, disclose information concerning the Agreement to their attorneys, accountants, financial advisors and employees with a need to know the information.

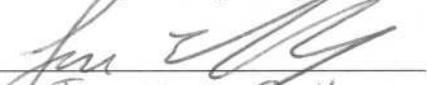
- e. Warranty of Independent Advice. Each party warrants and represents that it has received independent legal advice from such party's attorney with respect to the rights and obligations arising from, and the advisability of executing, this Agreement, and that in executing this Agreement it has not relied upon any statements, representations or agreements other than those described herein.
- f. Warranty of Due Authorization. Each party warrants and represents that such party is fully entitled and duly authorized to enter into and deliver this Agreement, and perform its obligations hereunder.
- g. Execution in Counterparts. This Agreement may be executed and delivered in any number of counterparts. Fax signatures shall be effective to bind the parties. When each party has signed and delivered at least one counterpart to all other parties, each counterpart shall be deemed an original and all counterparts, taken together, shall constitute one and the same agreement, which shall be binding and effective on the parties hereto.

IN WITNESS WHEREOF, each party has executed this Agreement through a duly authorized officer as of the date set forth below.

**StarPound Technologies, Inc.**

By:   
Name: Dorothy M Thornton  
Title: V.P. Administration  
Date: 2-27-2009

**Interactive Supercomputing, Inc.**

By:   
Name: James G. Scully  
Title: SVP operations and cfo  
Date: 3/5/09