

## COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
CIVIL ACTION NO.:

---

 EXRO TECHNOLOGIES INC.,  
 12-21 Highfield Circle S.E. :  
 Calgary, Alberta T2G :

Plaintiff, :

v. :

 EPROPELLED INC. :  
 Serve: Corporation Service Company :  
 85 State Street :  
 Boston, MA 02109 :

Defendant. :

**RECEIVED**

2/15/2022 HG

**COMPLAINT**

Plaintiff, EXRO TECHNOLOGIES, INC. (hereinafter, “**Exro**” or “**Plaintiff**”), by and through its undersigned counsel, hereby files this Complaint against Defendant EPROPELLED, INC. (hereinafter “**ePropelled**” or “**Defendant**”) and alleges the following:

**INTRODUCTION**

1. This litigation concerns the bad faith tactics of ePropelled in publishing an untrue, libelous and defamatory statement about Exro in a press release in a transparent attempt to harm Exro and gain a market advantage.

2. Exro and ePropelled both have technology targeting the mobility electrification segment. Due to the rapidly-increasing demand for innovation and the fundraising and investing needed to fulfill such demand, the clean power electronics industry is highly competitive.

3. After a few private communications, in which ePropelled raised purported concerns about similarities between Exro’s technology and a patent owned by ePropelled and Exro

responded, ePropelled launched a surprise—and unsupported—press release that claimed that Exro never responded to its initial letter. This statement was completely false and is plainly contradicted by the parties’ written correspondence.

4. This false public statement had the intended effect: Exro has suffered significant damage in the form of falling stock prices and decreased investor and market confidence.

5. ePropelled must be held accountable for its tortious conduct and should be required to compensate Exro for the damage it has deliberately, and without justification, caused to Exro.

### **THE PARTIES**

6. Exro is, and has at all relevant times been, a foreign corporation organized under the laws of the Province of British Columbia, Canada, with a principal place of business located at 12-21 Highfield Circle S.E., Calgary, Alberta T2G.

7. ePropelled is, and has at all relevant times been, a foreign corporation organized under the laws of the State of Delaware, with a principal place of business located at 116 John Street, Suite 205, Lowell, Massachusetts 01852.

### **JURISDICTION**

8. This Court has jurisdiction over this matter in accordance with Mass. Gen. Laws. Ch. 212, § 4.

9. This Court has personal jurisdiction over ePropelled because ePropelled’s principal place of business is located within the Commonwealth of Massachusetts.

10. Venue is proper pursuant to Mass. Gen. Laws Ch. 223, §§ 1 & 8 inasmuch as ePropelled’s principal place of business is located within this county and a substantial number of the events giving rise to the Exro’s claims occurred in this county.

## GENERAL ALLEGATIONS

### **A. Factual Background**

11. Exro is a clean technology company that designs and manufactures intelligent control solutions in power electronics. Its products and technology expand the capabilities of electric motors, generators, and batteries and enable those applications to achieve more with less energy consumed. In particular, Exro has pioneered an advanced motor control technology, the Coil Driver™, that expands the capabilities of electric powertrains by enabling intelligent optimization for efficient energy consumption.

12. On information and belief, ePropelled designs intelligent motors, motor controllers, generators, and power management systems, that can be utilized, *inter alia*, in the aerospace, manned and unmanned aerial vehicles, electric vehicles, and pump markets.

13. Exro and ePropelled have technology targeting the same market in the clean power electronics industry; and they specifically compete in the design, manufacture, and sale of intelligent motor technology, power management applications, and control solutions.

### **B. The Parties' Exchange of Correspondence**

14. On October 7, 2021, ePropelled reached out—for the first time—to Exro by sending a letter. In it, ePropelled wrote that it wished to “bring to [Exro’s] attention” that ePropelled believed that Exro held a patent, Patent No. 9,812,981 B2 (the “**981 Patent**”) that was similar to a patent held by ePropelled, Patent No. 7,382,103 (the “**103 Patent**”), and asking Exro to “explain how [Exro’s] Coil Driver™ technology is different to [ePropelled’s] existing patent.” A copy of ePropelled’s October 7, 2021 correspondence (“**ePropelled’s October 7 Letter**”) is attached as Exhibit “A.”

15. As support for its conclusion that the patents were “similar,” ePropelled’s October 7 Letter included a chart purporting to compare the two patents. The chart contained side-by-side

purported concepts from each party's patent that were displayed with no information explaining their relevance or how a comparison of the two patents could possibly amount to patent infringement.

16. ePropelled's October 7 Letter closed with an invitation for Exro to "explain how [its] Coil Driver<sup>TM</sup> technology is different to [ePropelled's] existing patent."

17. On November 4, 2021, Exro responded to ePropelled's October 7 Letter through its counsel ("**Exro's November 4 Response**"). A copy of Exro's November 4 Response is attached as Exhibit "B."

18. In Exro's November 4 Response, Exro stated that, while it was "investigating the claims in ePropelled's letter" and "respects valid and enforceable third-party patent rights," ePropelled's October 7 Letter simply did not "provide sufficient information for Exro to meaningfully investigate this matter and provide a substantive response." Exro's November 4 Response proceeded to note that ePropelled's October 7 Letter did not provide any analysis of the claims of either patent, but rather cited to a chart purporting to contain various information from each patent and put the onus on Exro to explain how Exro's "Coil Driver<sup>TM</sup> technology is different to [ePropelled's] existing patent."

19. Exro's November 4 Response also specifically addressed various deficiencies in ePropelled's letter, including that it (1) did not include an infringement claim chart identifying how ePropelled believes that Exro's Coil Driver<sup>TM</sup> technology meets the limitations of ePropelled's patent claims; (2) failed to address ePropelled's understanding of the scope of ePropelled's patent claims, including those limitations that are drafted using means-plus-function language (governed by 35 U.S.C. § 112, ¶ 6) but appear to lack support of corresponding structure

in ePropelled’s patent; and (3) failed to identify which “particular Exro product(s) ePropelled alleges to infringe [ePropelled’s] patent and the specific features of each.”

20. Exro’s November 4 Response concluded with a request that ePropelled provide the information identified by Exro—including a proper infringement claim chart—by a date certain so Exro could “investigate ePropelled’s allegations and provide a substantive response.”

21. ePropelled responded four days later, on November 8, 2021. Rather than providing the requested information to enable Exro to engage in a meaningful investigation of its allegations, ePropelled provided a two-paragraph response directly from its counsel (“**ePropelled’s November 8 Response**”). A copy of ePropelled’s November 8 Response is attached as Exhibit “C.” ePropelled’s November 8 Response acknowledged Exro’s November 4 Response, and clarified that ePropelled “has not accused Exro of infringement [and] has not conducted an infringement analysis.” ePropelled’s November 8 Response conceded that ePropelled had not provided an infringement claim chart, instead stating that it had provided “a chart showing the similarities between the parties’ respective patents” and on that basis concluded that ePropelled had “already provided [Exro] with information sufficient for [its] own evaluation.”

22. Critically, ePropelled’s November 8 Response did not address or engage with any of the substantive concerns raised by Exro’s November 4 Response.

**C. ePropelled Blindsides Exro With Defamatory Press Release That is Expressly Contradicted by the Parties’ Correspondence**

23. For over two months thereafter, Exro did not hear further from ePropelled, and in particular, ePropelled did not reach out further to discuss the substantive concerns set forth in Exro’s November 4 Response.

24. Instead, on January 24, 2022, ePropelled blindsided Exro by publishing—without warning—a press release to its website announcing that it had filed suit against Exro for patent

infringement in the District of Massachusetts (the “**ePropelled Press Release**”). A copy of the ePropelled Press Release is attached as Exhibit “D.” Critically, the ePropelled Press Release states as follows:

ePropelled respects the intellectual property rights of others and will vigorously defend its own intellectual property. *After proactively reaching out to Exro Technologies Inc. to discuss the issue with no response*, the company took legal action to protect ePropelled’s Dynamic Torque Switching™ (eDTSTM) technology that is core to its business and the company has invested millions to develop and commercialize for more than a decade.

*Id.* (emphasis added.).

25. ePropelled included Exro’s stock ticker symbol in its Press Release, knowing full-well that its inclusion that would cause the press release to be picked up and connected to any search relating to Exro.

26. The bolded statement in the press release excerpt above, hereinafter the “Defamatory Statement,” was false when made. Exro *did* respond to “the issue,” *i.e.*, the intellectual property issues raised in ePropelled’s October 7 Letter, in Exro’s November 4 Response. Indeed, Exro’s November 4 Response directly engaged “the issue,” raising substantive areas of concern with ePropelled’s claims and identifying additional information needed from ePropelled in order to undertake its own analysis. Critically, ePropelled’s November 8 Response failed even to address—much less provide documentation concerning—the concerns expressed in Exro’s November 4 Response, obviating any further reply and engagement from Exro.

27. The Defamatory Statement is all the more troubling given that ePropelled’s November 8 Response *specifically acknowledged* that Exro *did* respond to ePropelled’s initial inquiry. ePropelled’s November 8 Response begins: “This will respond on behalf of ePropelled to [Exro’s] letter dated November 4, 2021.”

28. ePropelled's publication of the Defamatory Statement was clearly made with knowledge of its falsity and therefore constitutes reckless, intentional, willful, and malicious conduct. It is clear that, through the ePropelled Press Release, ePropelled was intent on falsely portraying a market participant as nonresponsive, indifferent, or inactive in the face of allegations of patent infringement.

29. Exro responded immediately to the ePropelled Press Release. On January 25, 2022, Exro published its own press release, clarifying that "[c]ontrary to allegations made by ePropelled, Exro diligently investigated and promptly responded to ePropelled's inquiry. Based on Exro's response, ePropelled then clarified that it was not accusing Exro of infringement and stated that it had not conducted an infringement analysis. ePropelled made no further communication with Exro prior to filing suit." A copy of Exro's January 25, 2022, press release is attached as Exhibit "E."

30. In a blatant attempt to try to cover up its Defamatory Statement, ePropelled issued a second press release, dated January 27, 2022, which was titled "ePropelled Provides Complaint Details in Response to Exro Technologies Inc. Claims on Patent Infringement Lawsuit" ("**ePropelled's January 27 Press Release**," a copy of which is attached as Exhibit "F"). At the bottom of the third paragraph, ePropelled's January 27 Press Release states that "Exro Technologies Inc. did not respond with information sufficient to resolve the dispute, prompting ePropelled to file suit." This statement—at the bottom of the press release—was not described as a "retraction," or any type of "clarification." And it did nothing to clarify the falsity of the Defamatory Statement. It also fails to provide the reader with important contextual information—for example, that Exro had *in fact* responded to ePropelled's initial letter, that Exro had, *in fact* provided substantive responses and concerns, that Exro had, *in fact*, sought further information from ePropelled, and that ePropelled, *in fact*, never provided any such information or

clarifications. Indeed, ePropelled's January 27 Press Release also fails to explain to the reader that ePropelled even told Exro explicitly that it was *not* accusing Exro of patent infringement and had not conducted an infringement analysis.

31. ePropelled's January 27 Press Release was too little too late, and the damage was already done. ePropelled's January 27 Press Release was posted, tipped to, or picked up by multiple national outlets, including PRNewswire,<sup>1</sup> Bloomberg,<sup>2</sup> and Barron's.<sup>3</sup>

32. Moreover, ePropelled's publication of the Defamatory Statement caused injury to Exro and its investors. Exro's stock price fell over 27% in the next full trading day after ePropelled published the Defamatory Statement—from \$1.79 on Friday, January 21, 2022, the last active trading day before ePropelled published the Defamatory Statement, to \$1.31 on January 25, 2022.<sup>4</sup>

33. The Defamatory Statement has also significantly damaged Exro's relationships with both current and prospective investors. Indeed, investors have specifically reached out to Exro with concerns over the implication that Exro did not initially respond to ePropelled's accusations—an implication which ePropelled knew was patently false when made.

### **COUNT I: DEFAMATION**

34. Exro incorporates by reference each and every allegation set forth above as if fully recounted herein.

35. ePropelled made false and defamatory written statements about Exro by publishing the Defamatory Statement in the ePropelled Press Release. The ePropelled Press Release

---

<sup>1</sup> <https://www.prnewswire.com/news-releases/epropelled-files-patent-infringement-lawsuit-against-exro-technologies-inc-301466767.html> (last accessed on February 11, 2022)

<sup>2</sup> <https://www.bloomberg.com/press-releases/2022-01-24/epropelled-files-patent-infringement-lawsuit-against-exro-technologies-inc> (last accessed on February 11, 2022)

<sup>3</sup> [https://www.barrons.com/articles/epropelled-files-patent-infringement-lawsuit-against-exro-technologies-inc-01643050983?mod=md\\_stockoverview\\_news](https://www.barrons.com/articles/epropelled-files-patent-infringement-lawsuit-against-exro-technologies-inc-01643050983?mod=md_stockoverview_news) (last accessed on February 11, 2022)

<sup>4</sup> <https://www.marketwatch.com/investing/stock/exrof> (last accessed February 11, 2022)



contained Exro's stock ticker which had the obvious and intended effect of drawing investor and public market attention.

36. ePropelled published the Defamatory Statement with knowledge of its falsity. Specifically, ePropelled knew that Exro had responded to its October 7 Letter—indeed, ePropelled acknowledged this in its November 8 Response: “[t]his will respond on behalf of ePropelled to [Exro’s] letter dated November 4, 2021,” a letter in which Exro responded to ePropelled’s vague and meritless “allegations” and directly engaged with ePropelled. Thus, ePropelled’s publication of the Defamatory Statement, which it knew was false when made, amounts to reckless, intentional, willful, and malicious conduct.

37. ePropelled’s publication of the Defamatory Statement has injured Exro, including damage to its reputation and standing in the industry.

38. The ePropelled Press Release was posted, tipped to, or picked up by multiple national outlets, including PRNewswire, Bloomberg, and Barron’s, significantly harming Exro’s professional reputation and reputation in the community as well as its credibility with investors and the market.

39. Exro’s stock price fell over 27% in the next full trading day after ePropelled published the Defamatory Statement—from \$1.79 on Friday, January 21, 2022, the last active trading day before ePropelled published the Defamatory Statement, to \$1.31 on January 25, 2022—and continues to fall.<sup>5</sup>

40. The Defamatory Statement has significantly damaged Exro’s relationships with both current and prospective investors. Exro has had to expend time and resources managing investor concerns in light of the Defamatory Statement.

---

<sup>5</sup> <https://www.marketwatch.com/investing/stock/exrof> (last accessed February 11, 2022)

41. ePropelled's Defamatory Statement has caused damage to Exro, in excess of \$50,000, plus other costs, expenses and damages to be proven at trial.

**COUNT II – VIOLATION OF MASS. GEN. LAWS CH. 93A**

42. Plaintiff incorporates by reference each and every allegation set forth above as if fully recounted herein.

43. Exro and ePropelled are each engaged in trade or commerce.

44. As described in detail above, by making and publishing the Defamatory Statement in the ePropelled Press Release, ePropelled engaged in an unfair method of competition in violation of Mass. Gen. Laws Ch. 93A, §§ 2 & 11, by publishing false statements meant to defame or with the effect of defaming Exro, a competitor.

45. ePropelled's actions and practices set forth herein caused Exro injury and damage and said actions and practices were, on information and belief, willful or knowing and in violation of Mass. Gen. Laws Ch. 93A, §§ 2 & 11, which entitles Exro to double or treble damages, and its reasonable attorneys' fees.

46. The events underlying the unfair methods, acts or practices detailed herein, which concern the publication of defamatory statements made from ePropelled's headquarters in Lowell, Massachusetts, primarily and substantially occurred within the Commonwealth of Massachusetts.

47. ePropelled's violations of Mass. Gen. Laws Ch. 93A, §§ 2 & 11 have caused damage to Exro, in excess of \$50,000, plus other costs, expenses, and damages to be proven at trial.

**Prayer for Relief**

**WHEREFORE**, Plaintiff requests that this Court:

A. Enter judgment in favor of Exro as to each Count of the Complaint;

- B. Award Exro its damages including attorneys' fees and costs, plus interest as allowed by law;
- C. Award Exro double or treble damages pursuant to Mass. Gen. Laws Ch. 93A as to Count II of the Complaint;
- D. Grant such further relief as is necessary and proper.

**Demand for Jury Trial**

Plaintiff, Exro, hereby demands a trial by jury.

COZEN O'CONNOR



Dated: February 15, 2022

---

Wendy K. Venoit, Esq.  
BBO #: 568657  
*Attorneys for Plaintiff*  
EXRO TECHNOLOGIES, INC.  
101 Arch Street, 8<sup>th</sup> Floor  
Boston, Massachusetts 02110  
(617) 849-5002  
wveniot@cozen.com