

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTH EAST DIVISION**

Brookins Hybrid Drive Systems, LLC;
Warp Speed Torque Drive, LLC; Ernie
Brookins, and Gail Brookins.

Plaintiffs,

v.

M. A. C., Inc. and Dakota Fluid Power, Inc.,

Defendants.

Civil No.

COMPLAINT IN CIVIL ACTION

Plaintiffs Brookins Hybrid Drive Systems, LLC; Warp Speed Torque Drive, LLC; Ernie Brookins; and Gail Brookins, by and through the undersigned counsel, for their Complaint against Defendants M. A. C., Inc. and Dakota Fluid Power, Inc., hereby state and allege as follows:

JURISDICTION

1. Plaintiff Brookins Hybrid Drive Systems, LLC is a limited liability company duly organized under the laws of the State of North Dakota with its principal office at 4344 20th Avenue South, Fargo, North Dakota 58103.

2. Plaintiff Warp Speed Torque Drive, LLC is a limited liability company duly organized under the laws of the State of North Dakota with its principal office at 4344 20th Avenue South, Fargo, North Dakota 58103.

3. Plaintiff Ernie Brookins is a resident of Cass County, North Dakota, the husband of Plaintiff Gail Brookins, and an agent of Plaintiffs Brookins Hybrid Drive Systems, LLC and Warp Speed Torque Drive, LLC.

4. Plaintiff Gail Brookins is a resident of Cass County, North Dakota and the wife of Plaintiff Ernie Brookins. Plaintiff Gail Brookins is the majority owner of Plaintiffs Brookins Hybrid Drive Systems, LLC and Warp Speed Torque Drive, LLC.

5. Defendant M. A. C., Inc. is a business corporation duly organized under the laws of the State of North Dakota with its principal office at 2106 East Indiana Avenue, Bismarck, North Dakota 58504. Defendant M. A. C., Inc. is the registered owner of the trade name "MAC Inc." (M. A. C., Inc. is hereinafter referred to as "MAC, Inc.").

6. Defendant Dakota Fluid Power, Inc. is a foreign business corporation duly registered with the State of North Dakota. Dakota Fluid Power, Inc. is a domestic corporation in the State of South Dakota with its principal office at 3409 North Lewis Avenue, Sioux Falls, South Dakota 57104.

7. This Court has personal jurisdiction over the parties to this claim, as all parties are either residents of the State of North Dakota or registered to conduct business in this State.

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as the Plaintiffs raise claims for patent infringement against all of the Defendants under 35 U.S.C. § 271.

FACTS

9. Plaintiff Ernie Brookins is the inventor of a United States Patent for a "Rotational Power Distribution and Control System," Patent Number 7,824,290, filed on July 30, 2007 (hereinafter described as "Rotational Power System patent").

10. The Rotational Power System patent claims priority from United States Provisional Patent Application Serial Number 60/820,923, filed July 31, 2006, entitled "Rotational Power Distribution and Control System," and United States Provisional Patent

Application Serial Number 60/827,627, filed September 29, 2006, entitled “Rotational Power Distribution and Control System.”

11. Plaintiff Ernie Brookins assigned the rights for the Rotational Power System patent to Plaintiff Brookins Hybrid Drive Systems, LLC.

12. Plaintiff Brookins Hybrid Drive Systems, LLC and Plaintiff Warp Speed Torque Drive, LLC entered into a license agreement under which Warp Speed Torque Drive, LLC has the exclusive right to use the Rotational Power System patent.

13. In or around November 2011, Plaintiffs Ernie Brookins and Gail Brookins, (hereinafter “the Brookins”) visited the business premises for MAC, Inc., at its manufacturing facility located at 2106 East Indiana Avenue, Bismarck, North Dakota 58504.

14. During the November 2011 meeting, Plaintiff Ernie Brookins and Defendant Mac, Inc. executed a Non-Disclosure Agreement. Michael Seifert executed the Non-Disclosure Agreement on behalf of Mac, Inc. on November 18, 2011, and Plaintiff Ernie Brookins executed the agreement on November 20, 2011. A true and correct copy of the Non-Disclosure Agreement is attached hereto as Exhibit A and incorporated herein. The Non-Disclosure Agreement indicated the purpose of the engagement was “to contract with Ernie Brookins to assess known designs and develop proprietary new designs for MAC, which MAC will own in entirety, related to ‘flameless heaters.’”

15. The Non-Disclosure Agreement defined “Confidential Information” and specifically indicated the term did not include information that was “in the public domain at the time of disclosure” or “was independently developed by the receiving party without reference to the Confidential Information of the disclosing party.”

16. The Rotational Power System patent and associated intellectual property was not “Confidential Information” as defined by the Non-Disclosure Agreement because it was in the public domain at the time of any disclosure by Plaintiffs to Defendant MAC, Inc., as well as independently developed by Plaintiff Ernie Brookins prior to any disclosure to MAC, Inc.

17. The Non-Disclosure Agreement further stated “this Agreement does not confer any right, license, interest or title in, to or under the disclosing party’s Confidential Information to the receiving party.”

18. Defendant MAC, Inc. did not obtain any right, license, interest, or title in the Rotational Power System patent and/or associated and underlying intellectual property as a result of any disclosure by Plaintiffs of such intellectual property to the Defendants.

19. Following the November 2011 meeting, Plaintiff Ernie Brookins and Defendant MAC, Inc. entered into a Memorandum of Understanding indicating MAC, Inc. would retain Ernie Brookins as a consultant to help develop an industrial flameless heater. The Memorandum called for MAC, Inc. to pay nine hundred fifty dollars per week (\$950/week) to Ernie Brookins.

20. As part of the Memorandum of Understanding, Plaintiff Ernie Brookins and Defendant MAC, Inc. further agreed that MAC, Inc. would provide Ernie Brookins with an engine set to building a prototype flameless heater, and MAC, Inc. would reimburse Ernie Brookins for any and all parts purchased for the project.

21. As a part of the Memorandum of Understanding, Plaintiff Ernie Brookins and Defendant MAC, Inc. also agreed that, if MAC, Inc. utilized any preexisting intellectual property developed by Ernie Brookins in its flameless heaters, then MAC, Inc. would pay a royalty for such use.

22. From December 2011 to January 2012, Plaintiff Ernie Brookins worked on designing and constructing a flameless heater pursuant to the parties' Memorandum of Understanding. As part of such work, the Brookins purchased parts and supplies for the heater prototype from Defendant Dakota Fluid Power, Inc.

23. On or about December 21, 2011, representatives of Defendant MAC, Inc. visited a shop in West Fargo, North Dakota rented by Plaintiff Warp Speed Torque Drive, LLC. During the visit, Plaintiff Ernie Brookins demonstrated how the intellectual property underlying the Rotational Power System patent could be applied in a flameless heater.

24. On or about January 26, 2012, Plaintiffs Ernie Brookins and Gail Brookins entered into a contract with MAC, Inc. to formalize the parties' relationship (hereinafter "January 2012 contract"). The contract was signed by Mike Seifert and Travis Welle on behalf of MAC, Inc., as well as the Brookins.

25. The January 2012 contract provided Plaintiff Gail Brookins would prepare a provisional patent application for the prototype flameless heater developed by Plaintiff Ernie Brookins and utilizing the intellectual property underlying the Rotational Power System patent, with such application naming Ernie Brookins as the inventor.

26. The January 2012 contract further provided MAC, Inc. would pay a royalty for the rights to utilize the design created by Plaintiff Ernie Brookins, demonstrated by the prototype flameless heater, and protected by the anticipated provisional patent application.

27. Following the execution of the January 2012 contract, Plaintiff Ernie Brookins continued designing and constructing a prototype flameless heater pursuant to the understanding and belief that MAC, Inc. would pay a royalty for the use of the intellectual property underlying the Rotational Power system patent.

28. While developing the flameless heater, Plaintiffs Ernie Brookins and Gail Brookins consulted with employees and/or agents of Dakota Fluid Power, Inc. regarding their acquisition of pumps, valves, and other parts from Dakota Fluid Power, Inc. for the prototype.

29. During consultations with Defendant Dakota Fluid Power, Inc., Plaintiffs Ernie Brookins and Gail Brookins provided diagrams of Ernie Brookins' design for a flameless heater to employees and/or agents of Dakota Fluid Power, Inc. The diagrams showed the design Plaintiff Ernie Brookins created for the flameless heater utilizing the preexisting intellectual property underlying the Rotational Power System patent.

30. After being introduced through Plaintiffs Ernie and Gail Brookins, Defendants MAC, Inc. and Dakota Fluid Power, Inc. began to directly engage in discussions regarding the construction of the flameless heater by MAC, Inc., with Dakota Fluid Power, Inc. providing parts and supplies.

31. Based upon information and belief, Defendants MAC, Inc. and Dakota Fluid Power, Inc. entered into an agreement for Dakota Fluid Power, Inc. to manufacture a compression manifold for MAC, Inc. utilizing the intellectual property and design underlying the Rotational Power System patent and demonstrated and explained by Plaintiff Ernie Brookins to agents of Dakota Fluid Power, Inc.

32. Based upon information and belief, Defendant Dakota Fluid Power, Inc. has manufactured a compression manifold utilizing the intellectual property and design underlying the Rotational Power System patent for MAC, Inc., which MAC, Inc. has placed into its flameless heaters and sold in interstate commerce.

33. Plaintiffs Brookins Hybrid Drive Systems, LLC, Warp Speed Torque Drive, LLC, Ernie Brookins, and Gail Brookins did not authorize or approve the use of the intellectual

property underlying or design of the Rotational Power System Patent by either MAC, Inc. or Dakota Fluid Power, Inc. for use in a flameless heater.

34. Based upon information and belief, Defendants MAC, Inc. and/or Dakota Fluid Power, Inc. filed for a provisional patent for the flameless heater and/or compression manifold utilizing the intellectual property and design underling the Rotational Power System patent without naming Plaintiff Ernie Brookins as the inventor.

COUNT ONE – PATENT INFRINGEMENT

35. Plaintiffs incorporate paragraphs 1-34 herein.

36. Defendants MAC, Inc. has infringed and is still infringing upon the Rotational Power System patent by making, selling, and using flameless heaters that embody the patented invention, and Defendant MAC, Inc. will continue to do so unless enjoined by this Court.

37. Defendant Dakota Fluid Power, Inc. has infringed and is still infringing upon the Rotational Power System patent by making, selling, and using a compression manifolds that embody the patented invention, and Defendant Dakota Fluid Power, Inc. will continue to do so unless enjoined by this Court.

38. The Plaintiffs have complied with the statutory requirement of placing notice of the Letters Patent for the Rotational Power System patent on any and all transmission systems they manufacture utilizing the patented intellectual property.

39. The Plaintiffs have given Defendants MAC, Inc. and Dakota Fluid Power, Inc. written notice of the infringement, yet the Defendants continue to make, sell, and use flameless heaters and compression manifolds embodying the Rotational Power System patent.

40. Plaintiff Brookins Hybrid Drive Systems, LLC, as the owner of the Rotational Power System patent, suffered damages as a direct and proximate result of the patent infringement by Defendants MAC, Inc. and Dakota Fluid Power, Inc.

41. Plaintiff Warp Speed Torque Drive, LLC, as the licensee of the Rotational Power System patent from Plaintiff Brookins Hybrid Drive Systems, LLC, suffered damages as a direct and proximate result of the patent infringement by Defendants MAC, Inc. and Dakota Fluid Power, Inc.

COUNT TWO – TREBLE DAMAGES

42. Plaintiffs incorporate Paragraphs 1-41 herein.

43. The actions of Defendants MAC, Inc. and Dakota Fluid Power, Inc. constitute willful patent infringement, as the Defendants continued to infringe upon the Rotational Power System patent after being placed on notice of the infringement by Plaintiffs.

44. As a result of Defendants' willful patent infringement, Plaintiffs are entitled to treble damages for their patent infringement claim.

COUNT THREE - BREACH OF CONTRACT.

45. Plaintiffs incorporate Paragraphs 1-44 herein.

46. Defendant MAC, Inc. breached its contract(s) with Plaintiffs Ernie Brookins and Gail Brookins, acting on behalf of Plaintiff Warp Speed Torque Drive, LLC, by failing to pay any royalty for the use of the Rotational Power System patent in the flameless heaters the company manufactured and placed into interstate commerce.

47. Defendant MAC, Inc. breached its Non-Disclosure Agreement with Plaintiff Ernie Brookins by disclosing the intellectual property underling the Rotational Power System patent to third-parties, including but not limited to Dakota Fluid Power, Inc.

48. Plaintiffs Warp Speed Torque Drive, LLC, Ernie Brookins and Gail Brookins have suffered damages as a direct and proximate result of Defendant MAC, Inc.'s breach of contract.

COUNT FOUR – MISAPPROPRIATION OF TRADE SECRET

49. Plaintiffs incorporate Paragraphs 1-48 herein.

50. The intellectual property underlying the Rotational Power System, including but not limited to drawings, specifications, photos, and the like, qualifies as protected "trade secrets" under N.D.C.C. ch. 47-25.1.

51. Plaintiffs are the rightful owners of the trade secrets referenced in Paragraph 47.

52. Defendants MAC, Inc. and Dakota Fluid Power, Inc. misappropriated the Plaintiffs' trade secrets in violation of N.D.C.C. ch. 47-25.1.

53. As a direct and proximate result of Defendants' misappropriation of trade secrets, Plaintiffs have suffered damages.

COUNT FIVE – CIVIL CONSPIRACY

54. Plaintiffs incorporate Paragraphs 1-53 herein.

55. Defendants MAC, Inc. and Dakota Fluid Power, Inc. acted in concert to willfully commit patent infringement and unlawfully misappropriate the Plaintiffs' trade secrets with the intent of using such confidential and proprietary information to manufacture a flameless heater and benefit said Defendants to the exclusion of the Plaintiffs.

56. Defendants' conduct constitutes a civil conspiracy in that Defendants took concerted action to commit patent infringement and unlawful misappropriation of trade secrets, and Plaintiffs suffered damages as direct and proximate result of such unlawful conduct.

WHEREFORE, Plaintiffs Brookins Hybrid Drive Systems, LLC, Warp Speed Torque Drive, LLC, Ernie Brookins, and Gail Brookins respectfully requests this Court enter relief as follows:

1. A preliminary and final injunction against continuing infringement by Defendants MAC, Inc. and Dakota Fluid Power, Inc.
2. An accounting for damages and interest thereon;
3. An award of treble damages for Defendants' willful patent infringement;
4. Plaintiffs' costs and disbursements, including attorney fees, as permitted by applicable law; and
5. For such other and further relief as this Court deems just and equitable.

JURY DEMAND

Plaintiffs demand a jury trial of any factual issues pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated this 15th day of November, 2012.

KENNELLY & O'KEEFFE, LTD.

/s/ Timothy O'Keeffe
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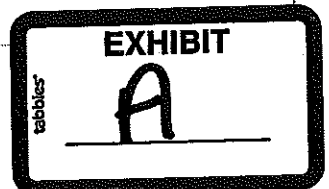
MAC Inc. with its offices at 2106 East Indiana Avenue, Bismarck, North Dakota, 58504 ("MAC") and [Ernie Brookins] agree to the terms of this Non-Disclosure Agreement (the "Agreement"), effective as of the date executed by the second party to sign:

1. Purpose. This Agreement is intended to facilitate discussions between MAC and [Ernie Brookins] related to a possible negotiated transaction (the "Purpose"). The focus of the engagement is to contract with Ernie Brookins to assess known designs and develop proprietary new designs for MAC, which MAC will own in entirety, related to "flameless heaters". Both parties recognize the value of the discussions relating to the Purpose as sufficient consideration for entering into this Agreement. Further, these discussions may include the disclosure by each party to the other of confidential, proprietary, trade secret or otherwise competitively sensitive information (collectively, "Confidential Information").

2. Confidential Information. Confidential Information includes the existence and terms of this Agreement, the specifications and exact details related to the Purpose, potential investors or funders and all other information disclosed by one party to the other in any manner related to the Purpose and either party, including (without limitation) in writing, orally, electronically, or by visual inspection. Confidential Information does not include information that (a) was in the public domain at the time of disclosure, (b) was published or otherwise became a part of the public domain after disclosure to the receiving party through no fault of the receiving party, (c) was disclosed to the receiving party by a third party who (to the best of the receiving party's knowledge) had no duty of confidentiality to the other party hereunder, or (d) was independently developed by the receiving party without reference to the Confidential Information of the disclosing party. It is MAC's intention to have Ernie Brookins assess and develop a heat exchanging concept prototype related to current products known as "flameless heaters". Any design, invention, or product developed by Ernie Brookins or his affiliates as part of MAC's direction, funding, suggestion are the property of MAC. All fees paid to Ernie will be on a transaction by transaction basis, with no commitment intended whatsoever to entertain any royalties should the potential product enter the market as a production unit.

3. Non-Disclosure. Each party agrees that it will (a) keep the other party's Confidential Information in confidence, (b) not disclose, publish or otherwise distribute the other party's Confidential Information to any third party, (c) disclose the other party's Confidential Information only to those of its employees, agents, advisors, and affiliates who have a reasonable need to know the Confidential Information and who have been advised of and have agreed to abide by the terms of this Agreement, (d) use at least the same degree of care to protect its own Confidential Information when protecting the other party's Confidential Information, but no less than a reasonable standard of care. Either party may disclose the other party's Confidential Information to the extent required by law, order of court, governmental agency or stock exchange rule provided that the party whose Confidential Information is to be disclosed has first been given a reasonable opportunity to seek a protective order or other protection for its Confidential Information.

4. Equitable Relief. Each party agrees that money damages would not be a sufficient remedy for breach of this Agreement. Accordingly, in addition to all other remedies that each party may have, each party shall be entitled to specific performance and injunctive relief or other



equitable relief as determined by a court of competent jurisdiction as a remedy for any breach or threatened breach of this Agreement. Each party agrees to waive any requirement for a bond in connection with any such injunctive or other equitable relief. Nothing herein shall prohibit either party from pursuing any other remedy available at law or in equity for a breach or threatened breach of this Agreement, including, without limitation, damages, expenses and costs (including reasonable attorneys' fees).

5. Term. The obligations set forth in this Agreement will apply to any Confidential Information disclosed by one party to the other party, whether before or after the date of this Agreement. The parties' obligations of confidentiality under this Agreement will continue for a period of five (5) years following the effective date hereof. Upon termination of the discussions between the parties, each party agrees to promptly return or destroy (if requested in writing by the disclosing party) all Confidential Information received from the disclosing party, and to certify in writing to the disclosing party that it has done so.

6. Miscellaneous. Except as specifically provided for herein, this Agreement does not confer any right, license, interest or title in, to or under the disclosing party's Confidential Information to the receiving party. NEITHER PARTY MAKES ANY COVENANT, REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION DISCLOSED TO THE OTHER PARTY. Each party disclaims any and all liability for the information provided hereunder, interpretative or otherwise, which is furnished to such Party. Any reliance by either Party on any of the information provided hereunder will be at such Party's sole risk and expense. Each person signing this Agreement warrants that he or she has authority to bind the respective party to the obligations of this Agreement. If any provision of this Agreement is found to be invalid, illegal or unenforceable, such provision shall be modified or severed to the extent necessary to reflect the fullest legal and enforceable expression of the intent of the parties. This Agreement (i) shall be construed in accordance with the laws of the State of North Dakota, without regard to its conflict of laws provisions, (ii) constitutes the entire agreement of the parties and supersedes all previous agreements between the parties, whether written or oral, regarding the subject matter hereof, and (iii) may be executed in multiple counterparts, each of which shall be considered an original but all of which together shall constitute one agreement. A facsimile signature may be considered an original for all purposes, including execution and enforcement of this Agreement.

IN WITNESS WHEREOF, this Confidentiality Agreement is entered into as of the date of the second party to sign below.

MAC Inc.

By: 

Name: Michael Seifert

Title: CEO

Date: 18 November 2011

| Ernie Brookins |

By: _____

Name: Ernie Brookins

Title: 

Date: 11-20-11