

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

| | | |
|-----------------------------------|---|----------------|
| GRACE TECHNOLOGIES, INC., an Iowa |) | |
| corporation, |) | |
| |) | Case No. _____ |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| RICHARD HABERKERN, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT AND JURY DEMAND
AND REQUEST FOR INJUNCTIVE RELIEF

Plaintiff, Grace Technologies, Inc. (hereinafter “Grace Tech.”), by and through its attorneys, Lane & Waterman LLP, for its Complaint against Defendant, Richard Haberkern (hereinafter “Haberkern”), states as follows:

1. Plaintiff, Grace Technologies, Inc. (“Grace Tech.”) is a corporation in the business of designing, manufacturing, and selling various products, including products in the electrical safety industry, personal safety, maintenance solutions, and more.

2. Defendant, Richard Haberkern, was employed by Grace Tech. as a Director of Engineering, beginning June 1, 2020, and pursuant to an Employment Agreement signed on May 11, 2020, which is attached hereto as Exhibit A.

3. This Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. § 1331 because this Complaint alleges violations of the Defend Trade Secrets Act, 18 U.S.C. § 1833. This Court has supplemental jurisdiction over the remaining claims, arising out of the same facts and circumstances pursuant to 28 U.S.C. § 1367.

4. Venue in this Court is proper because this action arises out of conduct that took place and was directed at Grace Tech. and its offices in Davenport, Iowa.

5. The Employment Agreement provides various Confidentiality and Assignment clauses.

6. Over the course of his employment, Grace Tech. and Haberkern discussed various other positions and compensation; none was finalized.

7. In the weeks preceding November 9, 2020, Grace Tech. became concerned with conduct by Haberkern and various statements made by Haberkern regarding his role at Grace Tech.

8. Simultaneously, Grace Tech. was working towards completion of designs on a project over which Haberkern had provided input and exerted control.

9. Grace Tech., with the assistance of Haberkern and others, moved forward with patent consultations and applications involving the project. See Exhibit B, attached hereto.

10. On multiple occasions Grace Tech. requested Haberkern to provide patent assignment documentation to finalize the patent application. See Exhibit C, attached hereto.

11. Grace Tech. also requested contact information, files, prototypes, and designs for the project.

12. Haberkern refused to provide the requested assignment, information, files, designs, or prototypes.

13. On or about November 7-8, 2020, Haberkern sent multiple emails to Grace Tech. executives and owners, along with outside individuals, which contained confidential Grace Tech. information. See Exhibit D, attached hereto.

14. Grace Tech. requested that Haberkern cease disclosing confidential business information to others and return Grace Tech. property and files to Grace Tech.
15. Grace Tech. terminated Haberkern's employment on November 9, 2020, pursuant to the written Employment Agreement. See Exhibit E, attached hereto.
16. Grace Tech. again requested Haberkern provide Grace Tech. the files and business products and cease making statements about Grace Tech. in email or social media posts.
17. To date, Haberkern has failed to respond to Grace Tech. requests.
18. The Employment Agreement provides:

DISCLOSURE PROHIBITED. The Employee, during the term of this agreement, any extensions of this agreement, and during the one (1) year period after the Employee's termination, without the prior written consent of the Employer, will not disclose to any person, firm or corporation, or personally make use of any confidential information, as defined in Section 6 hereof. Upon leaving the Employer, Employee will not take, without prior written consent of the Employer, any document, record, transcript or similar writing embodying any such confidential information but will deliver to the Employer all such writings which are in possession or under control of the Employee.

Exhibit A, pg. 2.

19. The Employment Agreement defines Confidential Information as follows:

CONFIDENTIAL INFORMATION. In this Agreement:

A. "Confidential Information" means information, not generally known, and proprietary to GRACE, including trade secret information, about its processes and products, including information relating to fee negotiation methodology, research, development, manufacture, purchasing, accounting, engineering, marketing, merchandising, selling, leasing, servicing, finance and business systems and techniques. All information disclosed to Employee, or to which Employee obtains access, whether originated by him/her or others, during the period of his employment, which he/she has a reasonable basis to believe to be Confidential Information, or which is treated by GRACE as being Confidential Information, shall be presumed to be Confidential Information.

Exhibit A, pg. 2-3.

20. The Employment Agreement also provides prohibitions and assignments for inventions as follows:

B. "Inventions" means discoveries, improvements and ideas (whether or not shown or described in writing or reduced to practice) works of authorship, whether or not patentable or copyrightable (1) which related directly to the business of GRACE, or (2) which related to their actual or demonstrable anticipated research or development, or (3) which result from any work performed by Employee for GRACE, or (4) for which equipment, supplies, facility or trade secret information of GRACE is used, or (5) which is developed on any GRACE time.

E. With respect to Inventions made, authored or conceived by Employee, either solely or jointly with others, during his/her employment, whether or not during normal working hours or whether or not at GRACE'S premises, he/she will:

- (i) Keep accurate, complete and timely records of such Inventions, which records shall be GRACE'S property and be retained on GRACE'S premises.
- (ii) Promptly and fully disclose and describe such Inventions to GRACE.
- (iii) Assign (and he/she does hereby assign) to GRACE all of his/her rights to such inventions, and to applications for letters patent and/or copyright in all countries and to letters patent and/or copyrights granted upon such inventions in all countries.
- (iv) Acknowledge and deliver promptly to GRACE (without charge to it but at its expenses) such written instruments and to such other acts as may be necessary in the opinion of GRACE to preserve property rights against forfeiture, abandonment or loss and to obtain and maintain letters patent and/or copyrights and to vest the entire right and title thereto to GRACE.

Exhibit A, pg. 3-4.

21. The Employment Agreement also provides for Covenants Not to Compete and other obligations.

22. The Employment Agreement provides Grace Tech. is entitled to injunctive relief for breach of the Agreement as follows:

INJUNCTIVE RELIEF. The Employee agrees that the Employer would suffer irreparable injury if the Employees violates the covenants set forth herein in that the Employer is without adequate remedy at law in the event of the breach of the terms.

Employee agrees that the Employer either with or without pursuing any potential damage remedies shall be entitled to seek and obtain equitable relief, including specific enforcement of the covenants set forth herein, together with reasonable attorney's fees and costs and Employee waives any requirement that Employee post a bond in the event of such injunction proceeding.

Exhibit A, pg. 5.

COUNT I
BREACH OF CONTRACT

23. Plaintiff adopts and re-alleges the allegations contained in Paragraphs 1-22 as if fully set forth herein.

24. Haberkern and Grace Tech. entered into an Employment Agreement on May 11, 2020.

25. Grace Tech. has performed all requirements pursuant to that contract.

26. On November 9, 2020, Grace Tech. terminated Haberkern's employment pursuant to the agreement's terms.

27. Both before and after the termination of employment, Grace Tech. has requested that Haberkern provide Grace Tech. property, including passwords, files, and intellectual property. See Exhibit C.

28. Haberkern has not responded to these requests to return Grace Tech. property and appears to be refusing to provide Grace Tech. its property.

29. In addition, Haberkern has violated and continues to violate the confidentiality requirements of the Employment Agreement by emailing outside contractors and individuals and making social media posts which discloses confidential and proprietary Grace Tech. business information. See Exhibit F, attached hereto.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.