**Keywords:** **non-compete agreements, contempt orders**

**General:** **District courts can only enforce compliance with their orders. A district court must review an agreement for what it says and cannot expand it to satisfy the purposes of one of its parties.**

***Energy Recovery, Inc. v. Hauge***
110 U.S.P.Q.2d 1083 (Fed. Cir. March 20, 2014)

## I. Facts

Mr. Hauge was a former employee of Energy Recovery Inc. (ERI), a producer of equipment that recovers energy in desalinization plants. During Mr. Hauge's employment, a dispute arose over ownership of intellectual property, which included several patents and a patent application. The dispute resulted in litigation and ended in an agreement adopted by the district court in a 2001 order. In the order, Mr. Hauge agreed not to compete for two years and to assign ERI all right, title, and interest along with any and all patent rights in: (1) patent and patent applications; (2) any and all patent rights, intellectual property rights, and property rights; and (3) all other intellectual property and other rights relating to pressure exchanger technology prior to the 2001 order. After the non-compete agreement expired, Mr. Hauge started his own company Isobarix and filed a patent application that issued as a patent in 2007. In 2009, Mr. Hauge approached ERI with the idea of uniting his newly acquired pressure exchanger technology under an ERI umbrella with the benefits going to both parties. ERI rejected Mr. Hauge's proposal, so Mr. Hauge began selling a pressure exchanger based on his recently issued patent. To help in the manufacturing process, Mr. Hauge contacted two ERI employees about forming a consulting agreement. The two ERI employees agreed and contracted with Isobarix helping Mr. Hauge setup Isobarix's facility. According to ERI, Isobarix's facility is similar to ERI's facility and the ceramic used in the Isobarix's pressure exchanger is essentially the same as the ceramic made by ERI, which ERI claimed is produced utilizing special techniques. In 2012 ERI filed a motion alleging that Mr. Hauge violated the order by using proprietary technology in the manufacture of his pressure exchanger. Mr. Hauge responded by arguing that ERI failed to show that the technology was protectable as trade secret and that Mr. Hauge was not prohibited from using the technology, because the order only covered transfer of ownership of patents and proprietary technology predating the order. The district court found that allowing Mr. Hauge to use intellectual property assigned to ERI to develop new products would make the settlement agreement and its assignment of ownership useless. Accordingly, the district court found Mr. Hauge in contempt and enjoined him and Isobarix from manufacturing and selling pressure exchangers. In response, Mr. Hauge filed a motion with the Federal Circuit to stay the permanent injunction.

## II. Issue

Did Mr. Hauge violate the district court's order by using the same manufacturing process as ERI?

## III. Discussion

No. Mr. Hauge did not violate the order, because the order did not expressly prohibit Mr. Hauge from using manufacturing processes. In order to establish contempt there must be evidence supporting each element of a four element test: (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's favor; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result. The Federal Circuit found that there was insufficient evidence to support the third element in the test (i.e., conduct that violated the terms of the order). In its analysis, the Federal Circuit reviewed the district court's order and compared the order to Mr. Hauge's conduct. Specifically, the Federal Circuit noted that the order prohibited Mr. Hauge from competing for two years and to assign ERI all right, title, and interest along with any and all patent rights in: (1) patent and patent applications; (2) any and all patent rights, intellectual property rights, and property rights; and (3) all other intellectual property and other rights relating to pressure exchanger technology prior to the order. The Federal Circuit then reviewed Mr. Hauge's conduct, pointing out that Mr. Hauge did not compete for two years, that he did relinquish ownership rights in patents and pending patent applications prior to the order, and that by manufacturing his pressure exchanger Mr. Hauge was not claiming ownership in any of ERI's intellectual property rights. ERI argued that Mr. Hauge violated the fourth clause in the order in which Mr. Hauge assigned to ERI all other intellectual property and other rights relating to pressure exchanger technology predating the order, which included special manufacturing processes. In response, the Federal Circuit explained that even if Mr. Hauge misappropriated trade secrets or infringed ERI's patents he would still not be in violation of the district court's order. A contempt order is only appropriate if a party violated a specific command in an order. In other words, the order did not require that Mr. Hauge not use ERI intellectual property, only that he relinquish rights in the intellectual property and abstain from competing for two years from the time of the order.

## IV. Conclusion

The Federal Circuit found that the district court abused its discretion in finding Mr. Hauge in contempt and removed the injunction. The district court can only enforce compliance with its orders. A district court must review the order for what it says and cannot expand it to satisfy the purposes of one of its parties. If Mr. Hauge misappropriated trade secrets then ERI needs to sue him in state court. If Mr. Hauge violated an ERI patent or patents, then ERI needs to sue him for patent infringement.