

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

UTILITY SOLUTIONS, INC.	)	
	)	
Plaintiffs	)	
	)	
vs.	)	Civil Action No. 3:14-cv-492
	)	
DAVID ALAN FRANKLIN,	)	
DAVID ALAN FRANKLIN DBA	)	
INITECH ENTERPRISES and	)	
INITECH ENTERPRISES, LLC.	)	
	)	
Defendants.	)	
	)	

**COMPLAINT**

**COMES NOW** the Plaintiff, Utility Solutions, Inc., by and through its legal counsel, TREGO, HINES & LADENHEIM, PLLC, and in support of the instant Complaint against Defendants David A. Franklin, David A. Franklin d/b/a Initech Enterprises, and Initech Enterprises, LLC., does hereby allege and aver:

**THE PARTIES**

1. Utility Solutions, Inc. is a North Carolina corporation with a principal place of business at 101 33rd Street Drive S.E. Hickory, NC 28602.
2. Upon information and belief, David Alan Franklin is a natural person who resides and conducts business in this State and District.
3. Upon information and belief, Initech Enterprises, LLC was a Limited Liability Company formed under the laws of the State of North Carolina with a principal place of business at 107 Craftsman Drive, Morganton, NC 28655.

4. Upon information and belief, David Alan Franklin was the Member/Manager of Initech Enterprises, LLC.
5. Upon information and belief, Initech Enterprises, LLC was administratively dissolved by the North Carolina Secretary of State on or about May 23, 2013.
6. Upon information and belief, subsequent to the administrative dissolution of Initech Enterprises, LLC, David Alan Franklin continued, and continues, to do business in this State and District as Initech Enterprises.

### **Jurisdiction and Venue**

7. This Court has exclusive original subject matter jurisdiction over claims arising under the United States Patent Law pursuant to Title 35 U.S.C. §271 and 28 U.S.C. §1331, §1338.
8. This Court has supplemental jurisdiction over the state and common law claims in this action pursuant to 28 U.S.C. §1367(a) because those claims are so related to the patent claims so as to form part of the same case or controversy under Article III of the United States Constitution.
9. Upon information and belief, David Alan Franklin, Initech Enterprises, LLC, and David Alan Franklin d/b/a Initech Enterprises, all have sufficient contacts with this State and district such that this Court's exercise of personal jurisdiction over them would comport with traditional notions of fair play and substantial justice.
10. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

### **Background**

11. Utility Solutions, Inc. (hereinafter, "Utility Solutions") is a designer and manufacturer of hot line tools and products for the electrical power industry.

12. Utility Solutions was founded in 1990 by engineers with broad electrical distribution experience.
13. In the course of its business, Utility Solutions routinely creates and improves products for use by the electrical power industry.
14. Over the years Utility Solutions has accumulated an impressive list of innovative and patented products that directly relate to a lineman's job.
15. Defendant David Allan Franklin (hereinafter, "Franklin") is a former employee of Utility Solutions.
16. Franklin was employed by Utility Solutions for approximately eight years, from August 1996 until October 2004.
17. During his tenure at Utility Solutions, Franklin worked as a design engineer technician.
18. Franklin contributed to the development of a number of Utility Solution's products, including the load break device which is the subject of the above-captioned proceeding.
19. Franklin was a co-inventor, along with Eugene H. Wood (hereinafter, "Wood") and Michael G. Nolte (hereinafter, "Nolte") of an invention known as an Interrupting Apparatus Having Operations Counter and Methods of Forming and Using Same (hereinafter, the "invention").
20. On or about December 12, 2003, Franklin, Wood, and Nolte each assigned his entire respective right, title, and interest in and to the invention to Utility Solutions.
21. The assignment of the invention from Franklin, Wood, and Nolte to Utility Solutions was recorded with the United States Patent and Trademark Office at Reel: 014798 / Frame:0454. A true and correct copy of the assignment is attached hereto as Exhibit 1.

22. On December 12, 2003, the same day Franklin, Wood, and Nolte assigned the invention to Utility Solutions, Utility Solutions filed a patent application (No. 10/734,468) with the United States Patent and Trademark Office seeking protection for the invention.

### **The Patent in Suit**

23. On November 15, 2005, United States Patent No. 6,965,088 ("the '088 Patent") was duly and legally issued for an "Interrupting Apparatus Having Operations Counter and Methods of Forming and Using Same." A true and correct copy of the '088 Patent is attached as Exhibit 2.

24. Utility Solutions is the owner of all right, title and interest to the '088 Patent.

25. The '088 Patent is, and at all relevant times in the past has been, in full force and effect.

### **The infringing Acts of Defendants**

26. Franklin voluntarily terminated his employment with Utility Solutions on or about October 14, 2005.

27. Upon information and belief, Franklin left Utility Solutions to form his own company, a machine shop operating under the name Initech Enterprises, LLC (hereinafter, "Initech").

28. Upon information and belief, Franklin and Initech originally engaged in the manufacture and sale of products that did not compete with those offered by Utility Solutions.

29. Upon information and belief, Franklin and Initech began to experience financial difficulties in approximately 2012.

30. Upon information and belief, Franklin and Initech elected to address those financial difficulties by broadening their product offering to include products competitive with those offered by Utility Solutions.

31. Upon information and belief, Franklin and Initech introduced into the market an electrical load break device that is substantially identical to the invention Franklin previously assigned to Utility Solutions and which is the subject of the '088 Patent.
32. Upon information and belief, Franklin violated the assignment agreement (Exhibit 1) when he and Initech introduced into the market an electrical load break device that is substantially identical to the invention which is the subject of the '088 Patent.
33. Upon information and belief, Initech was administratively dissolved by the North Carolina Secretary of State in May 2013.
34. Upon information and belief, notwithstanding the administrative dissolution of his company, Franklin continues to do business under the name Initech Enterprises, including selling and offering for sale an electrical load break device that is substantially identical to the invention which is the subject of the '088 Patent.

**COUNT I – Against all Defendants  
Patent Infringement  
(35 U.S.C. §271)**

35. Paragraphs 1 – 34 are incorporated by reference herein as though set forth in their entirety.
36. On November 15, 2005, United States Patent No. 6,965,088 was duly and legally issued to Utility Solutions for an "Interrupting Apparatus Having Operations Counter and Methods of Forming and Using Same."
37. Utility Solutions owned the '088 Patent throughout the period of the Defendants' infringement and is still the owner of all right, title and interest to the '088 Patent.
38. The '088 Patent is, and at all relevant times in the past has been, in full force and effect.
39. Franklin and Initech have infringed, and continue to infringe, the '088 Patent because they have manufactured, made, had made, used, practiced, imported, provided, supplied,

distributed, sold, and/or offered for sale products that directly infringe one or more claims of the '088 Patent.

40. Upon information and belief, Franklin and Initech will persist in their infringing conduct unless and until enjoined by this Court.

41. Upon information and belief, Franklin and Initech knew of the '088 Patent since approximately its date of issue and nevertheless pursued their knowing and willful infringement in flagrant disregard of the rights of Utility Solutions.

42. Upon information and belief, the knowing and willful infringement perpetrated by Franklin and Initech makes this an exceptional case within the meaning of 35 U.S.C. §285 and entitles Utility Solutions to the award of its attorneys' fees.

43. Utility Solutions has been damaged as a result of the infringing conduct of Franklin and Initech who are therefore liable to Utility Solutions in an amount that adequately compensates Utility Solutions for such infringement which cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §284.

**COUNT II – Against Franklin  
Breach of Contract**

44. Paragraphs 1 – 43 are incorporated by reference herein as though set forth in their entirety.

45. Franklin is a former employee of Utility Solutions.

46. During the course of his employment, Franklin assisted in the development of the invention embodied in the '088 Patent.

47. Franklin assigned to Utility Solutions his entire right, title, and interest in and to the invention embodied in the '088 Patent.

48. The assignment was a valid and enforceable agreement between Franklin and Utility Solutions.
49. Utility Solutions satisfied its obligations under the agreement.
50. Notwithstanding the assignment, Franklin subsequently created a new company and exploited the invention embodied in the '088 Patent.
51. Franklin defaulted on his material obligations under the agreement when he and Initech exploited the invention embodied in the '088 Patent.
52. The activities of Franklin as described herein constitute a breach of the assignment agreement.
53. Utility Solutions has been damaged by Franklin's breach of the assignment agreement in an amount to be determined at trial.

**COUNT III – Against all Defendants**  
**North Carolina Unfair and Deceptive Trade Practices**  
**(N.C. Gen. Stat. §75-1.1)**

54. Paragraphs 1 – 53 are incorporated by reference herein as though set forth in their entirety.
55. The activities of Franklin and Initech as described in the forgoing paragraphs, and in each cause of action herein asserted, constitute unfair and/or deceptive trade practices that have occurred and are occurring in commerce and have proximately caused and are proximately causing injury to Utility Solutions. Thus, these activities violate the North Carolina statutory prohibition of unfair and deceptive trade practices. N.C. Gen. Stat. §75-1.1.

56. By reason of the foregoing, Utility Solutions is entitled to recover from Franklin and Initech, treble damages and reasonable attorneys' fees, pursuant to N.C. Gen. Stat. §75-16 and 75-16.1.

**COUNT IV – Against All Defendants  
North Carolina Common Law Unfair Competition**

57. Paragraphs 1 – 56 are incorporated by reference herein as though set forth in their entirety.

58. The activities of Franklin and Initech as described herein are unfair acts that have damaged the legitimate business of Utility Solutions; therefore those activities constitute unfair competition pursuant to the common law of North Carolina.

59. Utility Solutions has been damaged by the conduct of Franklin and Initech as described herein and will continue to be so damaged in the absence of relief from this Court.

**WHEREFORE**, Utility Solutions prays for a judgment against Defendants as follows:

- (A) Adjudicating that Defendants have infringed the '088 Patent;
- (B) Permanently enjoining Defendants, their affiliates, officers, directors, employees, agents, licensees, subsidiaries, successors and assigns, and any and all persons acting in privity or in concert with any of them who receive notice of the injunction, including distributors and customers, from continuing acts of infringement of the '088 Patents;
- (C) Awarding Utility Solutions damages for infringement, together with pre-judgment and post-judgment interest;
- (D) Adjudging that Defendants are willful infringers and trebling the aforesaid damages pursuant to 35 U.S.C. §284;



- (E) Adjudging that this case is exceptional and awarding Utility Solutions its reasonable attorneys' fees, pursuant to 35 U.S.C. §285;
- (F) Adjudging that Franklin is in breach of contract and awarding Utility Solutions damages therefore;
- (G) Adjudging that Defendants have committed unfair and deceptive trade practices in violation of North Carolina law and that damages for such violation be trebled pursuant to N.C. Gen. Stat. §75-16 and that Utility Solutions be awarded its reasonable attorneys' fees pursuant to N.C. Gen Stat. §75-16.1;
- (H) Adjudging that Defendants committed acts of unfair competition in violation of North Carolina common law and that damages be awarded therefore;
- (I) Awarding Utility Solutions its costs, expenses, disbursements and attorneys' fees incurred in connection with this action;
- (J) Awarding Utility Solutions such other and further relief as this Court may deem just and proper, and
- (K) That all triable issues be brought before a jury.

Dated this 5<sup>th</sup> day of September, 2014.

Respectfully submitted,

/s/ Matthew J. Ladenheim

Matthew J. Ladenheim

TREGO HINES & LADENHEIM, PLLC

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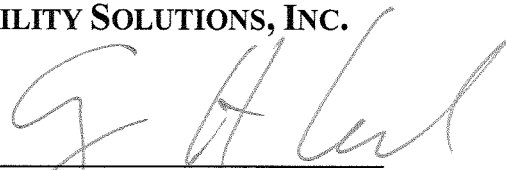
*Counsel for Plaintiff Utility Solutions*

**VERIFICATION OF COMPLAINT**

**COMES NOW** Eugene H. Wood, under penalty of perjury, and declares that he is the Vice President of Utility Solutions, Inc., Plaintiff in the matter of *Utility Solutions, Inc. vs David Alan Franklin and Initech Enterprises, LLC*, that he has read the attached Complaint, and that the statements made therein are true except as to those matters stated upon information and belief, and as to those matters, he believes them to be true.

This the 4<sup>th</sup> day of September, 2014.

**UTILITY SOLUTIONS, INC.**

  
\_\_\_\_\_  
Eugene H. Wood  
Vice President

STATE OF North Carolina

COUNTY OF Catawba

On this the 4<sup>th</sup> day of September, 2014, Eugene H. Wood personally appeared before me, a Notary public in and for said County and State, and being duly sworn, averred that, being duly authorized, he executed the foregoing Assignment as the free act and deed of said corporation for the uses and purposes set forth.

NOTARY PUBLIC: Rebekah A. Dancy

Printed Name: Rebekah A. Dancy

My Commission expires: March 22, 2015

