

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>INVISTA S.À R.L., INVISTA TECHNOLOGIES S.À R.L., and INVISTA NORTH AMERICA S.À R.L.,</b>	§	
	§	
	§	
<b>Plaintiffs,</b>	§	<b>CIVIL ACTION NO.</b> _____
	§	
<b>v.</b>	§	
	§	
<b>FRONTECH, INC., MING D. WAN, and DOES 1-10,</b>	§	
	§	
<b>Defendants</b>	§	<b>JURY DEMANDED</b>

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs INVISTA S.à r.l., INVISTA Technologies S.à r.l., and INVISTA North America S.à r.l. (collectively, “INVISTA” or “Plaintiffs”), by and through their attorneys, file this Original Complaint against Defendants Frontech, Inc. (“Frontech”), Ming D. Wan, and Does 1-10 (collectively, “Defendants”), as follows:

**PRELIMINARY STATEMENT**

1. This lawsuit arises out of the unlawful misappropriation and use of INVISTA’s trade secrets by Frontech, its President, Ming D. Wan (“Wan”), and unknown third parties. The technology at issue is INVISTA’s highly confidential and proprietary process used for the manufacture of Butanediol (“BDO”), a chemical used in everything from automobile parts to spandex. INVISTA and Frontech compete in licensing BDO manufacturing technology in China. INVISTA’s technology, including its high pressure hydrogenation process used in a key step of the BDO manufacturing process, is best of class and gives INVISTA an overwhelming competitive advantage over its competitors, including Frontech, which licenses an inferior

technology. Instead of investing the substantial time, resources and energy necessary to develop and improve its own hydrogenation technology in order to compete with INVISTA, Defendants have instead simply misappropriated INVISTA's technology. Frontech is, quite simply, competing with INVISTA using INVISTA's own proprietary technology.

2. INVISTA recently received clear evidence of Defendants' misconduct when it was provided a copy of an engineering diagram used by Frontech in its licensing efforts ("Frontech Copy"). As explained below, the diagram, which reflects INVISTA's detailed design and proprietary trade secret technology of a hydrogenation reactor used in a key step of the BDO manufacturing process, is not just a close approximation of INVISTA's engineering design diagram ("INVISTA Drawing"), but is a virtual copy, right down to the millimeter. In fact, Frontech did not even bother to change the numeric and alpha-numeric designations given certain parts. Most telling, however, is that the INVISTA Drawing contained a minor dimension error for a nozzle (the stated dimension was too big for the nozzle to fit within the vessel), and this minor sizing error is precisely duplicated in the Frontech Copy.

3. Upon information and belief, Defendants have copied, marketed and used INVISTA's proprietary technology on at least two projects, causing harm and damages to INVISTA. Further, this month INVISTA is submitting bids to license its BDO technology for use in three major BDO manufacturing projects. Upon information and belief, Frontech is submitting bids, in competition with INVISTA, on two and possibly all three of these projects. All three potential licensees intend to select technology suppliers by month's end, and to complete contract negotiations soon thereafter. As such, INVISTA is requesting, in a separate motion, expedited discovery to determine if a preliminary injunction is justified to prevent Frontech from utilizing INVISTA's technology in these bids.

4. Upon information and belief, Defendants Frontech and Wan, with the assistance and cooperation of various Doe Defendants, directed and orchestrated this improper activity from Frontech's headquarters in Houston, Texas, where Defendants, among other activities, prepared bid packages and license packages for potential licensees and licensees.

### **THE PARTIES**

5. Plaintiff INVISTA S.à r.l. is a business entity organized under the laws of Luxembourg, with its principal place of business in Wichita, Kansas. INVISTA S.à r.l. is one of the largest integrated fibers and polymers businesses in the world. INVISTA S.à r.l. is a citizen and subject of Luxembourg within the meaning and intent of 28 U.S.C. § 1332.

6. Plaintiff INVISTA Technologies S.à r.l. is a business entity organized under the laws of Luxembourg, with its registered office in Luxembourg and its principal place of business located at its St. Gallen Branch in Switzerland. INVISTA Technologies S.à r.l. is a citizen and subject of Luxembourg within the meaning and intent of 28 U.S.C. § 1332.

7. Plaintiff INVISTA North America S.à r.l. is a business entity organized under the laws of Luxembourg, with its principal place of business in Wichita, Kansas. INVISTA North America S.à r.l. is a citizen and subject of Luxembourg within the meaning and intent of 28 U.S.C. § 1332.

8. Defendant Frontech, Inc. is a corporation organized and existing under the laws of the State of Texas, with a principal place of business at 2500 Citywest Boulevard, Suite 300, Houston, Texas 77042-3033. Frontech may be served with process through its registered agent, Dawn F. Lin, at 11205 Bellaire Boulevard, Suite B31, Houston, Texas 77072. Frontech is a citizen and resident of the State of Texas within the meaning and intent of 28 U.S.C. §1332.

9. Defendant Ming D. Wan, also known as Frank Wan, an individual, is the President and a Director of Frontech. Wan may be served with process at his residence, 22703 Shannon Falls Court, Katy, Texas 77494-2259. Wan is a citizen and resident of the State of Texas within the meaning and intent of 28 U.S.C. §1332.

10. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants Does 1-10, inclusive, are unknown to Plaintiffs at this time, who therefore sue said Defendants by such fictitious names, and when the true names and capacities of said Defendants are ascertained, Plaintiffs will seek leave from the Court to amend this Complaint accordingly. Plaintiffs are informed and believe and therefore allege that each of the Defendants designated herein as a Doe is responsible in some manner for the events herein referenced, and caused damages to Plaintiffs proximately thereby as herein alleged.

#### **JURISDICTION AND VENUE**

11. This Court has diversity jurisdiction over all parties to this lawsuit pursuant to 28 U.S.C. §1332(a)(3) because each Plaintiff is a citizen of a foreign state or country, each named Defendant is a citizen of the State of Texas, and the amount in controversy exceeds \$75,000.00, exclusive of attorneys' fees, interest and costs.

12. This Court also has subject matter jurisdiction, pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1121(a), for the causes of action asserted herein pursuant to the Trademark Act of July 5, 1946, as amended, 15 U.S.C. §§ 1051 *et seq.* (commonly referred to as the Lanham Act). This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for the state law claims asserted herein.

13. This Court has personal jurisdiction over Defendant Frontech because it is a corporate citizen of this judicial district, and has personal jurisdiction over Defendant Wan

because he resides in this judicial district. On information and belief, much of the Defendants' wrongful conduct complained of herein occurred within this judicial district.

14. Venue is proper in this district under 28 U.S.C. § 1391 because Defendants Frontech and Wan reside within and are subject to personal jurisdiction in this judicial district.

### **FACTUAL BACKGROUND**

#### **A. INVISTA's Proprietary Technology for the Manufacture of Butanediol**

15. Butanediol is an industrial solvent and intermediate compound used in the production of various plastics and polymers. BDO has numerous commercial applications, including use in the production of automobile parts, printing ink, various cleaning agents, agricultural and veterinary chemicals, paint and varnishes, adhesives used in leather products and footwear, and stretch-fabric clothing, such as spandex and INVISTA's LYCRA<sup>®</sup> fiber.

16. This lawsuit arises out of Frontech's misappropriation and use of INVISTA's proprietary technology used in the manufacture of BDO, particularly executing a key step ("Step Two") wherein butynediol ("BYD") is converted to BDO. INVISTA has an exclusive, worldwide license from E.I du Pont de Nemours and Company ("DuPont") to implement and sublicense Step Two using a high pressure, two reactor hydrogenation process to convert BYD to BDO (the "HP2R Process"). INVISTA purchased its rights to license this technology from DuPont as part of an approximately \$4 billion asset purchase of the DuPont Textiles and Interior Business. INVISTA has heavily invested in implementing and continuously improving this process so that the process can be utilized on an industrial scale and in a commercially viable manner. INVISTA developed and owns or has exclusive rights in the technical "know how" involved in executing and operating the HP2R Process, and has produced proprietary schematics, drawings, and other design documents that embody the HP2R Process. INVISTA owns or has

exclusive trade secret rights in the technical knowledge for implementing and operating the HP2R Process and the design documents relating to said technology, and takes great care to guard their secrecy. INVISTA asserts ownership and exclusive rights in its technical “know how” and related trade secret rights, and collectively references this work product herein as its “HP2R Technology.” INVISTA aggressively protects this confidential and proprietary information given the competitive advantage it provides in the manufacture of BDO.

17. INVISTA owns a facility in La Porte, Texas, which it acquired from DuPont as part of the \$4 billion asset purchase, that produces BDO pursuant to INVISTA’s proprietary BDO hydrogenation process, including its Step Two HP2R Process. INVISTA also licenses its proprietary BDO manufacturing process, including its HP2R Technology, to third parties who wish to construct their own BDO manufacturing facilities. Currently, this licensing activity takes place primarily in China.

**B. Frontech Initially Offered Radically Different Technology for the Manufacture of BDO, Particularly As to Step Two of the Process**

18. Upon information and belief, prior to 2007, Wan and Frontech had offered to potential licensees and licensees a BDO manufacturing technology, particularly as to Step Two, that was separate and distinct from INVISTA’s HP2R technology. Upon information and belief, Wan acquired knowledge of a BDO manufacturing process in Texas, including a low pressure, three reactor process for implementing Step Two (the “LP3R Process”). Wan formed Frontech, Inc. in Houston, Texas, and began competing with INVISTA to license BDO manufacturing technology, including offering licenses for a technology that implemented the LP3R process for implementing Step Two (the “LP3R Technology”). Upon information and belief, the management of Frontech and decisions made regarding the manner in which Frontech would compete with INVISTA occurred at Frontech’s corporate headquarters in Houston, Texas.

19. The HP2R Process is radically different from the LP3R Process, employing significantly different engineering technology and resulting in improved capital productivity and conversion efficiency. The Step Two process for the conversion of BYD to BDO involves the hydrogenation of unsaturated carbon bonds which, if left unsaturated, adversely impact customers downstream. The HP2R Process conducts this conversion more efficiently than the LP3R Process. For example, the HP2R Process uses hydrogenation reactors operated at much higher pressures than those used in the LP3R Process. By operating at a higher pressure, a greater mass of hydrogen can be passed through the reactor and the quantity of hydrogen dissolved into the liquid stream increases, which augments the reaction's efficiency. Overall, the HP2R Process results in a higher yield of quality product and a smaller amount of undesired byproducts. The reactors and associated equipment used in the HP2R Process are also much more readily scaled to higher plant capacities than those used in the LP3R Process. These are substantial technological differences. As a result, Frontech's familiarity with the LP3R Process would *not* enable Frontech to create and implement a design for the HP2R Process without first investing in significant and time-consuming research and development.

**C. The Licensing of BDO Technology in China**

20. In recent years, China has become a large manufacturer and consumer of BDO. Chinese BDO manufacturers typically do not develop or own rights to the underlying proprietary technology required to manufacture BDO, and frequently solicit bids from licensors of BDO technology. In response, BDO technology licensors submit bids to license their competing technologies. In the event that a licensor secures the bid, it will deliver to the licensee a process design package that includes engineering designs, drawings, and schematics detailing how to build the BDO plant. The BDO technology licensor may be able to use its previously developed proprietary drawings and schematics as a starting point in developing materials for new

licensees, as the core process technology, including the reactors and related instrumentation, will remain consistent for a project of a similar capacity.

21. As part of the licensing process, development of detailed engineering drawings typically involves three phases. First, the BDO licensor creates a process design package for the plant. The licensor then creates a basic design package that specifies the critical design elements for the process to operate properly. This package is completed by either the licensor or by a qualified engineering company. Finally, the licensor transfers the basic design package to a Detailed Design Contractor, typically selected by the client/licensee or an engineering company having familiarity with the licensor and its technology. This contractor completes the detailed customization (*e.g.*, translation into Chinese, piping and instrumentation design, civil design, and detailed mechanical design) and compliance with Chinese codes. In fact, the Chinese government requires BDO licensors to enlist a Chinese Detailed Design Contractor to complete this final customization and compliance work. To this end, a series of Chinese Design Institutes are authorized and have the required certifications by the Chinese government to fulfill this role. A number of the originally established Chinese Design Institutes are commonly referenced by their serially assigned designation (CDI#1, CDI#2, etc.).

**D. INVISTA and Frontech Compete for the Licensing of BDO Technology in China**

22. Frontech began competing with INVISTA for business in the licensing of BDO technology in China in or about 2006. Because INVISTA's Step Two HP2R Technology is far superior to Frontech's LP3R Technology, INVISTA enjoyed early success relative to Frontech. As noted above, BDO manufacturer utilizing INVISTA's HP2R Technology can obtain higher yields and purity of product than it could with the LP3R Technology originally licensed by



Frontech, which results in a significant competitive advantage for BDO manufacturers that license and employ INVISTA's HP2R Technology.

23. In 2003 through 2004, INVISTA submitted a bid for its BDO technology to Sichuan Tianhua Fubang Chemical Co., Ltd. (the "Tianhua Project"). INVISTA offered its HP2R Technology as part of this bid. INVISTA was awarded the project. In the second half of 2006, INVISTA submitted a technology bid package to Fujian Meizhouwan Chlor-Alkali Chemical Industry Co., Ltd. (the "FM Project"). At this time, Frontech began competing directly with INVISTA for BDO technology licenses, submitting its own bid in connection with the FM Project. As with the Tianhua Project, INVISTA offered its HP2R Technology as part of its bid package, whereas Frontech offered the LP3R technology. INVISTA won the bid, and a license agreement was executed in February 2007. FM later explained that INVISTA's superior HP2R Technology was a deciding factor.

24. In 2007, Frontech secured two BDO licensing bids, one for Shaanxi Delin Chemical Industry Co. (the "Shaanxi Project") and one for Yunnan Yunwei (the "Yunwei Project"). It was not until 2009 or early 2010, that INVISTA discovered that Frontech secured these projects by misappropriating INVISTA's BDO technology, particularly its superior and proprietary Step Two HP2R Technology. Frontech's abandonment of the LP3R Technology and its illicit use of INVISTA's HP2R Technology, underscores the superiority of INVISTA's HP2R Process.

**E. Frontech Copied INVISTA's HP2R Technology and Misrepresented the Technology as Its Own**

25. In late 2009 and early 2010, INVISTA learned in growing detail that Frontech had licensed a high pressure hydrogenation reactor as part of the BDO manufacturing process on both the Shaanxi and Yunwei projects. INVISTA was alarmed, because such a reactor was the

same as that used in INVISTA's proprietary manufacturing process. Further, no empirical evidence suggested that Frontech had invested the time and money to research and develop the "know how" required to implement such a radical departure from the LP3R Process. INVISTA also learned of additional implementation details regarding the technology that Frontech had licensed, all of which raised the specter that Frontech was in fact marketing and licensing INVISTA's proprietary HP2R Technology and not the LP3R Technology.

26. INVISTA's fears were confirmed in late 2009 when it received clear evidence that Frontech had used INVISTA's proprietary technology on the Shaanxi and Yunwei projects. The evidence came in the form of the Frontech Copy, an engineering drawing that Frontech included in its license packages after winning the Shaanxi and Yunwei bids in 2007. The Frontech Copy, which evidences the detailed design of a reactor used in Step Two of INVISTA's BDO manufacturing process, exhibits extraordinary similarity to the INVISTA Drawing, an engineering diagram that Basic Design Contractor Toyo had produced for INVISTA as part of the customization of INVISTA's HP2R Technology for the Tianhua Project in 2003 and 2004. With only a few minor changes, and translation of the English into Chinese, the two drawings are otherwise identical, leaving little doubt that Frontech simply copied and misappropriated INVISTA's HP2R Technology to hold out and present as its own work product. For example:

- (a) When the INVISTA Drawing is overlaid upon the Frontech Copy, the vessel outline and dimension lines match perfectly;
- (b) All liquid levels on the Frontech Copy are irrefutably identical to the liquid levels on the INVISTA Drawing, down to the exact fraction of a millimeter;

- (c) The INVISTA Drawing contained a minor dimension error for one nozzle (the stated dimension was too big for the nozzle to fit within the vessel), and this minor sizing error is precisely duplicated by Frontech;<sup>1</sup>
- (d) The vessel identifier is identical in both drawings (“V201”);
- (e) The Splash Plate, the Split Baffle, the Catalyst Hold-Down Grid, the Basket, and the Catalyst Support are in identical locations in both drawings;
- (f) Nozzle identification numbers are identical and non-sequential (1, 2, 5, 6, 7, 11, 12, 18, 35, 40 A/B, 44, 47) in both drawings;
- (g) The number and location of the grounding lugs are identical in both drawings;
- (h) The angle of all nozzles appears identical between the two drawings;
- (i) Both drawings call for use of the same sizes of nozzle connections and seal rings, as well as the same brand (Grayloc);
- (j) Design operating temperatures are identical in both drawings; and
- (k) Design operating pressures are identical to two decimal places in both drawings.

27. Particularly notable are duplications (b) and (c) above. Regarding duplication (b), a BDO plant requires a number of liquid levels that are critical for proper operation. However, it is highly unlikely that any two engineers, working independently, would prescribe precisely the same liquid levels in setting the project parameters. Further, it is inconceivable that any two independent BDO plant designs would prescribe precisely the same liquid levels for all liquids,

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<sup>1</sup> INVISTA had corrected this minor sizing error in its later licensing/design packages.

particularly with the precision in duplication measured down to the exact fraction of a millimeter, as in this case. Regarding duplication (c), it is beyond mere chance or coincidence that Frontech could independently make precisely the same minor dimension error to exactly the same nozzle as is found in the INVISTA Drawing.

28. Additionally, regarding duplications (e) and (g), nothing about the design of a BDO plant requires the Splash Plate, the Split Baffle, the Catalyst Hold-Down Grid, the Basket, the Catalyst Support, or the grounding lugs to be placed in a specific location within the overall design, or placed in a specific position relative to each other. Thus, no design or engineering reason explains why the INVISTA Drawing and the Frontech Copy show these elements at precisely the same location.

29. Similarly, the identification numbers assigned to the various nozzles are at the discretion of the draftsman tasked with implementing a drawing for the design. Thus, it is incomprehensible how, other than through direct copying, the nozzle identification numbers in both drawings could exhibit exactly the same nonsequential set of numbers (see duplication (f) above). In the same vein, no reason exists as to why the vessel should be labeled with the same identifying code in both drawings, yet both drawings identify the vessel as “V201.” And, as is particularly conspicuous to lay inspection, the vessel outline and dimension lines match perfectly when the INVISTA Drawing is overlaid upon the Frontech Copy. No engineering consideration regarding BDO plant design explains this perfect duplication.

30. The similarities between the INVISTA Drawing and the Frontech Copy are too numerous to have occurred by chance. Even if an INVISTA engineer, well versed in the details of INVISTA’s HP2R Technology, were asked to reproduce the INVISTA Drawing from memory, he/she would be virtually unable to do so to the level of detail found in the Frontech

Copy. The only explanation for the numerous, detailed, and arbitrary duplications found in the two diagrams is that Frontech simply copied the INVISTA Drawing.

31. To be clear, INVISTA has not received and does not have access to Frontech's bid package and related licensing materials such as its process design package or basic or detailed engineering packages for the Shaanxi and Yunwei projects. However, with such clear duplication present in the Frontech Copy, INVISTA certainly leaves open the very distinct possibility that Frontech's bids and licensing packages have included other proprietary and confidential information owned by INVISTA. Indeed, the implementation details in the technology that Frontech licensed for the Shaanxi and Yunwei projects strongly suggest that Frontech actually marketed and licensed INVISTA's BDO technology, particularly INVISTA's HP2R Technology, to Shaanxi and Yunwei.

32. Frontech's use of INVISTA's HP2R Technology in association with Frontech's bids for the Shaanxi and Yunwei projects is entirely illicit. Frontech has never sought, and INVISTA has never given, permission for Frontech to market, license, or otherwise use INVISTA's BDO technology, including but not limited to its HP2R Technology. Further, by including the Frontech Copy, which is a clear duplication of the INVISTA Drawing, in its license packages with no attribution to INVISTA, Frontech has represented that it is the owner, developer, and originator of INVISTA's HP2R Technology. This representation is false.

33. Furthermore, Frontech's decision to compete with INVISTA by misappropriating INVISTA's technology and falsely holding it out as its own, which is dramatically different from the technology previously used by Frontech, could not have been made without the direction and participation of Frontech's President and Director, Wan. Because such direction and participation constitutes tortious behavior by Wan, and Wan is a corporate officer of Frontech, he

is independently and separately liable for his tortious conduct. And because INVISTA has confidentiality agreements in place with licensees and design contractors, INVISTA believes that additional Doe parties committed tortious and illegal acts at the request of Frontech and/or Wan that facilitated the transfer of the INVISTA Drawing into Frontech's and/or Wan's possession.

34. Frontech is incorporated in Texas and headquartered in Houston, Texas. Wan is a resident of Katy, Texas. Although the illegal conduct of Frontech and Wan was undertaken in order to achieve illicit benefit in the licensing of BDO technology in China, Wan and Frontech, upon information and belief, orchestrated and directed their scheme to misappropriate and license INVISTA's high pressure hydrogenation technology from Frontech's headquarters in Texas. INVISTA also believes that a majority of the illegal and tortious conduct actually took place in Frontech's Texas headquarters, including the decision to misappropriate INVISTA's proprietary information, the preparation of the Shaanxi and Yunwei bids which used the ill-gotten information, the preparation of the license packages after securing these bids, the preparation of the two bids discussed below, and communications with one or more of the Doe Defendants who assisted Frontech and Wan in the misappropriation.

35. Frontech holds itself out to licensees and potential licensees in China as, and those entities understand Frontech to be, a Texas Company offering non-local (not Chinese) technology.

**F. Frontech Has Submitted Pending BDO Licensing Bids Which May Also Include the HP2R Technology**

36. INVISTA and Frontech are currently competing for at least two and possibly three Chinese BDO technology projects. INVISTA is submitting bid packages to GD Younglight Energy and Chemical (the "Younglight Project") and to two other potential licensees

whose bidding processes are being kept confidential. Upon information and belief, Frontech is also submitting bid packages on at least two and possibly all three of these bids. All three potential licensees intend to select technology suppliers by the end of the month, and to complete contract negotiations soon thereafter. Because of Frontech's illicit use of INVISTA's BDO technology, including its HP2R Technology, in the Shaanxi and Yunwei projects, INVISTA is greatly concerned that Frontech is once again illicitly marketing and including INVISTA's BDO technology, including its HP2R Technology, in association with its current bids for the Younglight Project and the other two non-public projects, and will continue to do so in the future.

**COUNT I — FALSE DESIGNATION OF ORIGIN**

**pursuant to 15 U.S.C. § 1125(a)(1)(A)**

**(against Defendants Frontech, Wan, and Does 1-10)**

37. The foregoing paragraphs are incorporated herein by reference.

38. This claim for relief arises under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A), and is asserted against Defendants Frontech, Wan, and Does 1-10.

39. Upon information and belief, Defendants have made false and misleading statements of fact regarding the origin of the BDO technology, particularly the HP2R Technology, and regarding the origin of the Frontech Copy, in connection with bids seeking to license the BDO technology, including the HP2R Technology, and in subsequent license packages provided to licensees, including in connection with the Shaanxi and Yunwei projects.

40. Such statements were and are likely to deceive, or had the capacity to deceive, and upon information and belief actually deceived the potential licensees and licensees to whom the statements were made.

41. Upon information and belief, Defendants acted willfully, with full knowledge of Plaintiffs' rights, and with the intent to deceive potential licensees and licensees.

42. Defendants' statements falsely designating the origins of the BDO technology, particularly the HP2R Technology and the Frontech Copy, are material, in that they are likely to influence or have influenced the purchasing decisions of potential licensees and licensees.

43. With the assistance of Wan and Does 1-10, Frontech has secured and may continue to secure agreements for the licensing of technology used to manufacture BDO, which is used in numerous products entering into and having a substantial effect upon interstate commerce.

44. Plaintiffs have been injured and are likely to continue to be injured as a result of Defendants' conduct.

**COUNT II — FALSE ADVERTISING**

**pursuant to 15 U.S.C. § 1125(a)(1)(B)**

**(against Defendants Frontech, Wan, and Does 1-10)**

45. The foregoing paragraphs are incorporated herein by reference.

46. This claim for relief arises under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), and is asserted against Defendants Frontech, Wan, and Does 1-10.

47. Upon information and belief, Defendants have made false and misleading statements of fact regarding the origin of the BDO technology, particularly the HP2R Technology, and regarding the origin of the Frontech Copy, in connection with the advertising and marketing of Frontech's services to potential licensees of BDO technology and in subsequent license packages provided to licensees, including in connection with the Shaanxi and Yunwei projects.



48. Such statements were and are likely to deceive, or had the capacity to deceive, and upon information and belief actually deceived the potential licensees and licensees to whom the statements were made.

49. Upon information and belief, Defendants acted willfully, with full knowledge of Plaintiffs' rights, and with the intent to deceive potential licensees and licensees.

50. Defendants' statements falsely advertising Frontech to be the owner and developer of the BDO technology, particularly the HP2R Technology and the Frontech Copy, are material, in that they are likely to influence or have influenced the purchasing decisions of potential licensees and licensees.

51. With the assistance of Wan and Does 1-10, Frontech has secured and may continue to secure agreements for the licensing of technology used to manufacture BDO, which is used in numerous products entering into and having a substantial effect upon interstate commerce.

52. Plaintiffs have been injured and are likely to continue to be injured as a result of Defendants' conduct.

**COUNT III — MISAPPROPRIATION OF TRADE SECRETS**

**pursuant to Texas Common Law**

**(against Defendants Frontech, Wan and Does 1-10)**

53. The foregoing paragraphs are incorporated herein by reference.

54. This claim for relief arises under Texas common law and is asserted against Defendants Frontech, Wan, and Does 1-10.

55. INVISTA owns or has exclusive trade secret rights to the BDO technology it operates and sublicenses, including the HP2R Technology. Such trade secret rights include the technical "know how" developed by INVISTA and used at its plant in La Porte, Texas, for

executing the BDO manufacturing process, including the HP2R Process, as well as drawings and design documents relating to said technology, including the INVISTA Drawing. Such trade secrets are extremely valuable to INVISTA, as they enable it to manufacture BDO efficiently and cost-effectively at its plant in La Porte, Texas, and they also represent INVISTA's primary business advantage over competitors bidding for agreements to license the technology to be implemented for the production of BDO. INVISTA has developed and continuously improved these trade secrets through the expenditure of considerable time and expense, and takes great care to guard their secrecy and to prevent their disclosure except through authorized channels. Without gaining access to these trade secrets, it would be impossible to legitimately and independently duplicate INVISTA's BDO technology, particularly the HP2R Technology, to the degree reflected by the similarity of the INVISTA Drawing and the Frontech Copy.

56. Upon information and belief, each of Frontech, Wan, and unidentified Doe Defendants 1-10 acquired INVISTA's closely-guarded trade secrets by improper means and with notice that disclosure thereof would be improper.

57. Upon information and belief, Wan and Does 1-10 disclosed such trade secrets, without INVISTA's knowledge or consent, to Frontech and other third parties working with Frontech. Frontech also used and disclosed those trade secrets, without INVISTA's knowledge or consent, to at least one Chinese Design Institute and possibly other third parties working with Frontech, as well as in bid packages and license packages Frontech submitted in connection with the Shaanxi and Yunwei projects as well as in pending bids. Upon information and belief, Defendants' conduct occurred in and was orchestrated from Frontech's headquarters in Houston, Texas, where Defendants prepared the bid packages and license packages to be distributed to potential licensees, licensees, and third parties.

58. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Defendants' conduct.

**COUNT IV — VIOLATIONS OF TEXAS THEFT LIABILITY ACT**

**pursuant to Tex. Civ. Prac. & Rem. Code § 134.005**

**(against Defendants Frontech, Wan and Does 1-10)**

59. The foregoing paragraphs are incorporated herein by reference.

60. This claim for relief arises under Texas common law and is asserted against Defendants Frontech, Wan, and Does 1-10.

61. By the actions set forth herein, Defendants have committed theft, pursuant to Texas Civil Practice & Remedies Code Section 134.002(2), by unlawfully appropriating trade secrets as that term is defined by Texas Penal Code Section 31.05(a)(4).

62. The BDO technology, including the HP2R Technology and the technical "know how" developed and improved by INVISTA for executing the BDO manufacturing process including the HP2R Process, as well as drawings and design documents relating to said technology, including but not limited to the INVISTA Drawing, constitute scientific and technical information, designs, processes, procedures, formulas, and improvements that have value to Plaintiffs. Plaintiffs own or have exclusive rights to such trade secrets. Plaintiffs have taken measures to prevent such information from becoming available to persons other than those selected by Plaintiffs to have access for limited purposes. Therefore, such information constitute trade secrets as defined by Texas Penal Code Section 31.05(a)(4).

63. Pursuant to Texas Penal Code Section 31.05, each of Defendants committed a violation of the Texas Theft Liability Act by knowingly stealing, making copies of, communicating, and/or transmitting such trade secrets. Upon information and belief, such conduct occurred in and was orchestrated from Frontech's headquarters in Houston, Texas.

64. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Defendants' theft. Accordingly, Plaintiffs seek civil remedies for Defendants' violations of the Texas Theft Liability Act, as permitted by Texas Civil Practice & Remedies Code Section 134.005.

**COUNT V — CONVERSION**  
**pursuant to Texas Common Law**  
**(against Defendants Frontech, Wan, and Does 1-10)**

65. The foregoing paragraphs are incorporated herein by reference.

66. This claim for relief arises under Texas common law and is asserted against Defendants Frontech, Wan, and Does 1-10.

67. At all relevant times herein, INVISTA owned the exclusive rights to license and use its BDO technology, including the HP2R Technology and the INVISTA Drawing.

68. The INVISTA BDO technology, including but not limited to the HP2R Technology and the INVISTA Drawing, is confidential and proprietary information constituting personal property properly belonging to INVISTA. Specifically, key aspects of the underlying intangible property in the HP2R Technology was merged into or is embodied in the INVISTA Drawing, a tangible document.

69. Without INVISTA's knowledge or consent, Defendants Frontech, Wan, and Does 1-10 wrongfully exercised dominion and control over INVISTA's personal property, including the INVISTA Drawing and the HP2R Technology merged therein, in a manner inconsistent with INVISTA's rights. Upon information and belief, such conduct occurred in and was orchestrated from Frontech's headquarters in Houston, Texas.

70. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Defendants' conduct.

**COUNT VI — COMMON LAW MISAPPROPRIATION**

**pursuant to Texas Common Law**

**(against Defendant Frontech)**

71. The foregoing paragraphs are incorporated herein by reference.

72. This claim for relief arises under Texas common law and is asserted against Defendant Frontech.

73. INVISTA's BDO technology, including the HP2R Technology, which includes the technical "know how" developed and improved by INVISTA for executing the HP2R Process, as well as drawings and design documents relating to said technology, including the INVISTA Drawing, was developed and improved by INVISTA through the expenditure of extensive time, labor, skill, and money.

74. Defendant Frontech used and continues to use INVISTA's BDO technology, particularly the HP2R Technology and the INVISTA Drawing, in competition with INVISTA, thereby gaining a special advantage or "free ride" in its competition with INVISTA because it has borne none of the expenses incurred by INVISTA in developing and improving the HP2R Technology and the INVISTA Drawing. Upon information and belief, Frontech orchestrates and directs such competitive use of INVISTA's BDO technology, including the HP2R Technology and the INVISTA Drawing from its headquarters in Houston, Texas.

75. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Frontech's conduct.

**COUNT VII — UNFAIR COMPETITION**

**pursuant to Texas Common Law**

**(against Defendant Frontech)**

76. The foregoing paragraphs are incorporated herein by reference.

77. This claim for relief arises under Texas common law and is asserted against Defendant Frontech.

78. Frontech used the INVISTA Drawing to create the Frontech Copy and to promote its “own” technology in such a manner as is calculated to deceive and cause potential licensees to enter into licensing contracts with Frontech, including in connection with the Shaanxi and Yunwei projects, as well as in connection with current bids. Upon information and belief, such conduct occurred in, and was orchestrated and directed from, Frontech’s headquarters in Houston, Texas.

79. On information and belief, understanding the technical superiority of INVISTA’s technology to its own, Frontech sought to unfairly compete with INVISTA by misappropriating the technology and using it as its own on past and current bids for the purpose of being awarded bids at INVISTA’s expense. INVISTA owned or had exclusive rights to the BDO technology wrongfully held out by Frontech as its own, including the HP2R Technology; INVISTA had developed and improved said technology through the expenditure of considerable time and expense; and INVISTA was and is best able, because of its experience and expertise as the developer and operator of said technology, to assist potential licensees with implementing and executing the HP2R process at an industrial scale and in a commercially viable manner.

80. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Frontech’s conduct.

**COUNT VIII — CIVIL CONSPIRACY**  
**pursuant to Texas Common Law**  
**(against Defendants Frontech, Wan and Does 1-10)**

81. The foregoing paragraphs are incorporated herein by reference.

82. This claim for relief arises under Texas common law and is asserted against Defendants Frontech, Wan, and Does 1-10.

83. Each of Defendants Frontech, Wan, and Does 1-10 have conspired together for the purpose of accomplishing unlawful purposes. Among other things, Defendants conspired to misappropriate INVISTA's trade secrets, components of its BDO technology including INVISTA's HP2R Technology, and the INVISTA Drawing for copying and use in Frontech's dealings with potential licensees and licensees, including in connection with the Shaanxi and Yunwei projects, as well as with current bids.

84. Defendants Frontech, Wan, and Does 1-10 had a meeting of the minds on this object and course of action, and one or more of them committed unlawful, overt acts to further this object and course of action. Upon information and belief, such occurred in, and was orchestrated and directed from, Frontech's headquarters in Houston, Texas.

85. Plaintiffs have been injured and are likely to continue to be injured as a proximate result of Frontech's conduct.

**COUNT IX — UNJUST ENRICHMENT**  
**pursuant to Texas Common Law**  
**(against Defendant Frontech)**

86. The foregoing paragraphs are incorporated herein by reference.

87. This claim for relief arises under Texas common law and is asserted against Defendant Frontech.

88. By engaging in the conduct set forth herein, Frontech was unjustly enriched in that it wrongfully secured the benefit of contracts to license INVISTA's BDO technology, including INVISTA's HP2R Technology, including in connection with the Shaanxi and Yunwei projects, through fraud and by the taking of an undue advantage that, upon information and

belief, occurred in, and was orchestrated and directed from, Frontech's headquarters in Houston, Texas. It would be unconscionable for Frontech to be allowed to retain said benefits.

**JURY DEMAND**

89. Plaintiffs demand, in accordance with Federal Rule of Civil Procedure 38(b), a trial by jury of all issues triable by jury and have remitted the appropriate fee.

**PRAYER FOR RELIEF**

90. WHEREFORE, premises considered, Plaintiffs respectfully pray that final judgment be rendered for Plaintiffs as follows:

- a. that Defendants Frontech, Wan, and Does 1-10 be permanently enjoined from the further possession, use, or disclosure of INVISTA's BDO technology, including but not limited to the HP2R Technology;
- b. that Defendants Frontech, Wan, and Does 1-10 be ordered to return to Plaintiffs any and all tangible items and documents in their possession, and any and all such tangible items and documents in the possession of other persons or entities within their control, including, without limitation, all electronic files, records, and back-up copies, describing, evidencing, reflecting, or otherwise embodying INVISTA's BDO technology, including the HP2R Technology and including but not limited to all copies of the INVISTA Drawing and the Frontech Copy;
- c. that Defendant Frontech be permanently enjoined, pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116, from making false and misleading statements regarding the origins of the INVISTA BDO technology, including the HP2R Technology and the INVISTA Drawing and from



falsely advertising itself to be the developer and rightful owner of said information;

- d. that judgment be ordered against Defendants Frontech, Wan, and Does 1-10 for actual damages caused to Plaintiffs, pursuant to Texas common law, Texas Civil Practice & Remedies Code § 134.005(a)(1), and 15 U.S.C. § 1117(a)(ii);
- e. that Defendant Frontech be ordered to give an accounting of its profits from the licensing of INVISTA's BDO technology, including but not limited to the HP2R Technology;
- f. that a constructive trust be imposed upon all profits obtained by Defendant Frontech from the licensing of INVISTA's BDO technology, including the HP2R Technology, including but not limited to in connection with the Shaanxi and Yunwei projects, pursuant to Texas common law and 15 U.S.C. §1117(a);
- g. that Defendant Frontech be ordered to pay treble damages to Plaintiffs due to the knowing, intentional, and purposeful nature of its conduct, pursuant to 15 U.S.C. §1117(a);
- h. that Defendants Frontech, Wan, and Does 1-10 be ordered to pay exemplary damages for their willful, fraudulent and malicious actions pursuant to Texas Civil Practice & Remedies Code § 41.003(a);
- i. that Defendants Frontech, Wan, and Does 1-10 each be ordered to pay additional damages for civil theft of up to \$1,000.00 each pursuant to Texas Civil Practice & Remedies Code § 134.005(a)(1);

- j. that Plaintiffs be awarded their reasonable attorneys' fees pursuant to Texas Civil Practice & Remedies Code § 134.005(b) and 15 U.S.C. § 1117(a);
- k. that Plaintiffs be awarded their costs and expenses for prosecuting this action, including their expert witness fees, pursuant to Texas Civil Practice & Remedies Code §§ 31.007(b) and 134.005(b) and 15 U.S.C. § 1117(a);
- l. that Plaintiffs be awarded pre-judgment and post-judgment interest; and
- m. all such other and further relief, general or special, at law or in equity to which Plaintiffs may be justly entitled.

Dated the 15th day of June, 2010

Respectfully submitted,

EDISON, MCDOWELL & HETHERINGTON LLP

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