ENERGY RECOVERY, INC. v. HAUGE, Appeal No. 2013-1515 (Fed. Cir. March 20, 2014). Before Wallach, Rader, and Reyna. Appealed from E.D. Va. (Judge Jackson).

Background:

Hauge formerly worked for Energy Recovery, Inc. ("ERI"). To settle litigation after Hauge's departure from ERI, Hauge and ERI entered into a Settlement Agreement (the "Agreement") regarding intellectual property in the field of "pressure exchangers," a type of energy recovery device used in reverse osmosis. The district court adopted the Agreement into the March 19, 2001 Order (the "2001 Order") obligating Hauge to assign all patents and other intellectual property rights related to pressure exchanger technology predating the 2001 Order to ERI. The Agreement stated that it was not intended to extend to inventions made by Hauge after the date of the Agreement. The Agreement also contained a non-compete clause prohibiting Hauge from making or selling energy recovery devices for two years from the date of the Agreement.

After expiration of the non-compete clause, Hauge began selling pressure exchangers, and Hauge hired two ERI employees as consultants. ERI filed suit, alleging that Hauge had violated the 2001 Order. ERI submitted expert testimony that Hauge's pressure exchangers were the same as ERI's pressure exchangers in terms of operation. After a hearing, the district court found Hauge in contempt of court because Hauge had violated the 2001 Order. The district court stated that allowing Hauge to develop new products using the technology he assigned to ERI would render the Agreement useless. Hauge appealed.

Issue/Holding:

Did the district court abuse its discretion in holding Hauge in contempt of court? Yes, reversed and remanded.

Discussion:

The Federal Circuit reversed the district court's contempt order because Hauge did not violate any provision of the 2001 Order. The Federal Circuit stated that the parties had entered into the Agreement as a consent decree, and quoted the Supreme Court as saying, "the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parities to it." In construing the 2001 Order within its four corners, the Federal Circuit noted that the 2001 Order (i) controlled assignment of intellectual property rights pre-dating the agreement, and (ii) contained a non-compete clause. The 2001 Order did not contain an injunction against infringement. Hauge's activity of using a particular manufacturing process and hiring two ERI employees was not inconsistent with the Agreement. Further, Hauge did not violate the Agreement's non-compete clause because the two year period had expired.

The Federal Circuit also noted that Hauge's conduct of selling pressure sensors and hiring two ERI employees may or may not have violated patent laws or trade secret laws. But, these other possible violations of intellectual property laws did not justify a finding of contempt for violation of the 2001 Order.