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GENERAL ELECTRIC COMPANY AND  
12 GE WIND ENERGY, LLC

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA  
15

16	)	<b>Case No. 1:10-cv-00674-OOW-JLT</b>
17	)	<b>AMENDED COMPLAINT FOR</b>
18	)	<b>1) BREACH OF CONTRACT</b>
19	)	<b>2) DECLARATORY RELIEF</b>
20	)	<b>DEMAND FOR JURY TRIAL</b>
21	)	
22	)	

GENERAL ELECTRIC COMPANY, a New York corporation; and GE WIND ENERGY, LLC, a Delaware limited liability company,  
Plaintiffs,  
vs.  
THOMAS WILKINS, an individual,  
Defendant.

23  
24 Plaintiffs General Electric Company and GE Wind Energy, LLC (collectively, "GE")  
25 bring this action against defendant Thomas A. Wilkins ("Wilkins") and allege as follows:

26 **THE PARTIES**

27 1. Plaintiff General Electric Company is a New York corporation with its principal  
28 place of business in Connecticut.



1 by GE from May to December 2002, when he voluntarily resigned. At all times during his  
2 employment with Enron and GE, Wilkins's primary workplace was at the Tehachapi, California  
3 offices.

4 10. Wilkins's job responsibilities while employed by Enron and GE included the  
5 design, development, installation, and testing of wind turbine generators. In the course of his  
6 work, Wilkins was expected to improve and innovate in the area of wind turbine generators.  
7 Wilkins was expressly hired by Enron and GE to invent.

8 11. As a condition of his employment with Enron, Wilkins was required to sign, and  
9 did sign, a Confidentiality and Inventions Agreement ("C&I Agreement"). In the  
10 C&I Agreement, Wilkins agreed that all inventions developed during the course of his  
11 employment were works for hire that were the property of Enron, promised to execute  
12 assignment and patent documents upon request, and appointed any Enron officer as his attorney-  
13 in-fact to execute documents necessary to assign to Enron the rights to any inventions developed  
14 by Wilkins in the course of his employment:

15 "3. Inventions

16 (a) I understand that during my employment with the Company and for  
17 one year thereafter, my development of ideas, processes, inventions,  
18 technology, designs and similar things ("Invention Ideas") is subject to the  
19 terms of this agreement. I further understand that California Labor Code  
20 Section 2870(a) provides:

21 'Any provision in an employment agreement which provides that an  
22 employee shall assign, or offer to assign, any of his or her rights in an  
23 invention to his or her employer shall not apply to an invention that the  
24 employee developed entirely on his or her own time without using the  
25 employer's equipment, supplies, facilities, or trade secret information  
26 except for those inventions that either (1) relate at the time of conception  
27 or reduction to practice of the invention to the employer's business, or  
28 actual or demonstrably anticipated research or development of the

1 employer; or (2) result from any work performed by the employee for the  
2 employer.’

3 (b) I agree that, except as specifically prohibited by California Labor Code  
4 Section 2870, all Invention Ideas created or developed by me, alone or  
5 with others, during the course of my employment with the Company, are  
6 works for hire and therefore the property of the Company, and further  
7 agree to maintain adequate records of all such Invention Ideas for the  
8 Company’s benefit. I agree upon the Company’s request and without the  
9 need for further consideration, to execute any and all documents and take  
10 such actions which may be necessary in the Company’s judgment to assign  
11 all rights to any Invention Idea to the Company and to obtain patent or  
12 other intellectual property protections for any Invention Idea, and hereby  
13 appoint any officer of the Company as my attorney-in-fact for the purpose  
14 of executing such documents and taking such actions. I also acknowledge  
15 that Invention Ideas which are reduced to practice within one year after my  
16 employment with the Company will be presumed to be Invention Ideas  
17 subject to this agreement, unless I can show that such Invention Idea was  
18 not conceived or developed during the term of my employment.”

19 The C&I Agreement also expressly called for injunctive relief to enforce its terms in the event of  
20 a breach by Wilkins:

21 “5. Remedies. I recognize that nothing in this agreement limits any  
22 remedy of the Company at law or in equity including under the California  
23 Uniform Trade Secrets Act and acknowledge that, in addition to  
24 termination of my employment, I could face possible criminal or civil  
25 actions if I misappropriate or disclose the Company’s Confidential  
26 Information. I also recognize that my violation of this agreement could  
27 cause the Company irreparable harm, the amount of which is very difficult  
28 to estimate. Therefore, I agree that the Company shall have the right to

1           obtain injunctive relief upon any breach or threatened breach of this  
2           agreement.”

3       A true and correct copy of the form of C&I Agreement signed by Wilkins is attached as  
4       Exhibit A. The document attached as Exhibit A, although signed by another employee, contains  
5       the same terms as the C&I Agreement agreed to and signed by Wilkins.

6           12. Once Wilkins became an employee of GE, he was required to execute and, on  
7       information and belief GE alleges he did execute, GE’s Employee Innovation and Proprietary  
8       Information Agreement (“EIPI Agreement”). In the EIPI Agreement, Wilkins agreed that all  
9       inventions developed during the course of his employment with GE would be disclosed and  
10      assigned to GE:

11                   “In consideration of my employment by Company, and the compensation  
12                   paid to me by the Company, I (‘employee’) agree:

13                   (a) to disclose and assign to the Company (or as the Company may direct)  
14                   as its exclusive property, all inventions, improvements, trade secrets and  
15                   technical or business information which I may solely or jointly develop,  
16                   conceive, reduce to practice or author during the period of my employment  
17                   (1) that relate to the business or the present or demonstrated or reasonably  
18                   foreseeable future research or development of the Company or its parent,  
19                   subsidiaries or affiliates, or (2) that result from or are suggested by any  
20                   work that I may do for the Company or its parent, subsidiaries or affiliates,  
21                   or (3) that are otherwise made through the use of Company, or its parent,  
22                   subsidiaries or affiliates, time equipment, supplies, facilities, material or  
23                   secret\* or confidential\* information or data. ...

24                   ---

25                   (c) to execute, upon the request of the Company, all necessary papers and  
26                   otherwise provide proper assistance (at the Company’s expense), during  
27                   and subsequent to my employment, to enable the Company to obtain for  
28                   itself or its nominees, patents, copyrights, or other legal protection for such

1 inventions, discoveries, innovations, improvements, original works of  
2 authorship, trade secrets and technical or business information in any and  
3 all countries;”

4 A true and correct copy of the form of EIPi Agreement signed by Wilkins is attached as  
5 Exhibit B. The document attached as Exhibit B, although signed by another employee,  
6 contains the same terms as the EIPi Agreement agreed to and signed by Wilkins.

7 13. As a condition of his employment with GE, Wilkins was required to sign, and did  
8 sign, an acknowledgment that he received and was required to comply with the policies described  
9 in the guide to GE’s policies: “Integrity: The Spirit the Letter of our Commitment,” which also  
10 made clear that Wilkins was obligated to protect GE’s intellectual property, and was obligated to  
11 understand his responsibilities to GE concerning inventions he developed while a GE employee,  
12 including his duties as set forth in the EIPi Agreement.

13 14. In addition to his contractual obligations, Wilkins was obligated under California  
14 law to assign to Enron intellectual property developed during the course of his employment with  
15 Enron.

16 15. By virtue of its acquisition of Enron’s assets, including Enron’s assignment to GE  
17 of its patents and inventions, GE stepped into the shoes of Enron with respect to Wilkins’s  
18 obligations concerning ownership and assignment of intellectual property.

19 16. In addition to his contractual obligations, Wilkins was obligated under California  
20 law to assign to GE intellectual property developed during the course of his employment with  
21 GE.

22 *The ‘565 Patent*

23 17. One GE patent relating to wind turbines is U.S. Patent No. 6,924,565 (“the ‘565  
24 patent”), which issued on August 2, 2005. The ‘565 patent names seven inventors on its face and  
25 lists GE as the assignee of record. One of the named inventors of the ‘565 patent is Wilkins.

26 18. Wilkins was and is obligated under the C&I Agreement, the EIPi Agreement, and  
27 California law to assign to GE any interest he may have in the ‘565 patent and the invention  
28 covered by the ‘565 patent.

1           19. GE applied for the '565 patent in 2003, after Wilkins terminated his employment  
2 with GE. On information and belief, in February 2004, GE through its outside lawyer requested  
3 that Wilkins sign documents in the course of its prosecution of the application for the  
4 '565 patent. Specifically, through its outside lawyer, GE sent Wilkins an Inventor Declaration  
5 and Power of Attorney form, a patent assignment agreement, and a copy of the patent  
6 application.

7           20. On information and belief, in February 2004, the outside lawyer who was handling  
8 the patent application for GE, Paul Mendonsa, spoke by telephone with Wilkins. On further  
9 information and belief, Wilkins stated that he was not willing to assist GE with the patent  
10 application because he did not believe GE treated its employees properly. On further information  
11 and belief, Wilkins did not state that he believed that he owned any intellectual property rights to  
12 the invention covered by the patent application, nor did Wilkins repudiate or deny his obligation  
13 to assign to GE intellectual property rights for any and all inventions made while an employee of  
14 Enron and GE.

15           21. Although all of the other named inventors of the '565 patent cooperated with GE's  
16 requests for assistance with the patent application, it is not uncommon for former employees to  
17 refuse to cooperate with GE's patent applications. On some occasions, the former employee is  
18 employed by a competitor and will not cooperate with GE. On others, the former employee is  
19 disgruntled and will not cooperate with GE for personal reasons, as Wilkins stated were his  
20 circumstances. Patent law anticipates such lack of cooperation, and includes mechanisms for an  
21 employer to obtain patents without the cooperation of its former employees. GE used and uses  
22 these mechanisms in the course of its business to obtain patents without the cooperation of  
23 former employees.

24           22. GE was able to proceed with application for the '565 patent without Wilkins's  
25 cooperation, and the patent was issued to GE in 2005. It was not necessary for Wilkins to  
26 execute any document for GE to obtain the '565 patent. GE thereafter practiced and licensed the  
27 patent. GE heard nothing from Wilkins with respect to the '565 patent until 2010. In May 2010,  
28 Wilkins first asserted an ownership right to the '565 patent and the invention covered by the

1 '565 patent, first informed GE that he was purporting to offer to license the '565 patent to others  
2 on a publicly-available website, and first refused GE's request that he cease and desist all such  
3 purported licensing efforts and assign to GE any and all rights that he claims in the '565 patent.

4 23. The '565 patent is valuable and GE has acted conscientiously in protecting its  
5 ownership of that patent. Indeed, GE had already filed this lawsuit before becoming aware of  
6 Wilkins's assertion of ownership of the '565 patent and the invention covered by the '565 patent  
7 in 2010.

8 *The '985 Patent*

9 24. Another GE patent relating to wind turbine technology is U.S. Patent No. 6,921,985  
10 ("the '985 patent"), which issued on July 26, 2005. The '985 patent lists five inventors and is  
11 assigned on its face to GE. At the time of their invention, the five inventors named on the  
12 '985 patent were employed by GE in Salzbergen, Germany, to develop systems and methods that  
13 would allow wind turbines to ride through low voltage events. All five inventors named on the  
14 '985 patent have assigned their rights in the '985 patent to GE, their employer at the time their  
15 invention was conceived and developed.

16 25. GE does not consider Wilkins to be an inventor of the invention covered by the  
17 '985 patent, but were that so, Wilkins was and is obligated under the C&I Agreement, the EIPI  
18 Agreement, and California law to assign to GE any interest he may have in the '985 patent and  
19 the invention covered by the '985 patent.

20 26. It was not necessary for Wilkins to execute any document for GE to obtain the  
21 '985 patent, and GE never communicated with Wilkins concerning its application for the  
22 '985 patent. Upon receipt of the '985 patent, GE practiced and licensed the patent. GE heard  
23 nothing from Wilkins with respect to the '985 patent until 2009. In 2009, Wilkins first asserted  
24 an ownership right to the '985 patent and the invention covered by the '985 patent; first informed  
25 GE that he had purported to license the '985 patent to one of GE's competitors, Mitsubishi  
26 Heavy Industries LTD. ("MHI"); first informed GE that he was purporting to offer to license the  
27 '985 patent to others on a publicly-available website; and first refused GE's request that he cease  
28 and desist all such purported licensing efforts and assign to GE any and all rights that he claims

1 in the '985 patent.

2 27. The '985 patent is valuable, and GE has acted conscientiously in protecting its  
3 ownership of that patent. GE currently is asserting the '985 patent in ongoing actions against  
4 MHI in both the United States International Trade Commission (Inv. No. 337-TA-641) and the  
5 U.S. District Court for the Southern District of Texas (2:09-cv-00229 (currently stayed)) (jointly,  
6 the "Actions"). The Actions against MHI were commenced in 2008 and 2009, respectively, and  
7 GE has promptly met every challenge to the validity of the '985 patent and GE's ownership of  
8 that patent.

9 28. MHI has employed Wilkins as a consultant in the Actions. Since 2009, Wilkins has  
10 asserted that he is an unnamed co-inventor of the '985 patent and owns the '985 patent and the  
11 invention covered by the '985 patent. MHI has relied upon Wilkins's assertion to challenge GE's  
12 standing to bring the Actions and the enforceability of the '985 patent. Upon learning of  
13 Wilkins's assertion of ownership of the '985 patent, GE brought this lawsuit.

14 *Damages and Harm Caused by Wilkins*

15 29. The value of the '565 patent exceeds \$75,000. Wilkins's actions have wrongfully  
16 placed a cloud on the ownership and title of the '565 patent.

17 30. The value of the '985 patent exceeds \$75,000. The financial impact of the cloud  
18 placed on the ownership and title of the '985 patent and its impact on GE's litigation with MHI  
19 exceed \$75,000. This cloud is wrongfully interfering with GE's rights to enforce its valuable  
20 patent rights.

21 31. Wilkins has violated his agreements to assign to GE intellectual property developed  
22 in the course of his employment with Enron and GE, as well as his obligations arising under  
23 California law.

24 32. Among other relief, GE seeks a declaration that Wilkins is obligated under  
25 California law and by contract to assign to GE all intellectual property developed in the course of  
26 his employment by Enron and GE, and seeks an order of specific performance that Wilkins  
27 execute all necessary documents to formally assign to GE any rights he may have or claim to  
28 have in the '565 and '985 patents.



1 least 2010.

2 38. Prior to 2009, Wilkins had asserted no ownership interest in the '985 patent, and  
3 GE was unaware that Wilkins claimed any ownership interest in the '985 patent or in the  
4 invention that underlies the patent. Prior to 2009, GE and Wilkins had no communications  
5 whatsoever concerning the '985 patent.

6 39. GE has performed or been excused from performing all of its obligations under the  
7 C&I Agreement.

8 40. As a direct and proximate result of Wilkins's breaches, GE has suffered damages in  
9 excess of \$75,000 exclusive of interest and costs. GE will set forth the full amount of said  
10 damages when they are more fully ascertained or proven.

11 41. GE has no adequate remedy at law and is therefore entitled to an order requiring  
12 that Wilkins specifically perform his obligation to assign his rights or claimed rights in the  
13 '985 patent and to the invention covered by the '985 patent to GE pursuant to the  
14 C&I Agreement.

15 42. On information and belief, GE alleges that Wilkins has or shortly will take steps to  
16 grant to one or more third parties purported license rights to the '985 patent.

17 43. Unless the Court enters a preliminary and permanent injunction preventing any such  
18 conduct by Wilkins, GE will suffer irreparable harm in that (i) pecuniary compensation would  
19 not be adequate, (ii) it would be extremely difficult to ascertain the amount of compensation that  
20 would afford adequate relief; (iii) the defendant lacks the ability to pay a monetary judgment; and  
21 (iv) restraint is necessary to prevent a multiplicity of judicial proceedings.

22 44. Accordingly, GE requests that the Court issue a preliminary and permanent  
23 injunction (i) requiring Wilkins and all those acting in concert with him to assign to GE all rights  
24 to intellectual property developed or claimed to have been developed by Wilkins in the course of  
25 his employment with Enron or GE, including the '985 patent and the invention covered by the  
26 '985 patent; (ii) prohibiting Wilkins from taking any steps whatsoever purporting to license or  
27 grant other rights to third parties in GE's intellectual property, including but not limited to the  
28 '985 patent; and (iii) prohibiting Wilkins from engaging in any conduct that would convey or

1 tend to convey to third parties that Wilkins has any ownership interest in the '985 patent or the  
2 invention covered by the '985 patent.

3 **SECOND CLAIM FOR RELIEF**

4 **(Breach of Contract as to '985 Patent – EIPI Agreement)**

5 45. GE incorporates and replays by this reference paragraphs 1-44.

6 46. Pursuant to the EIPI Agreement, Wilkins agreed that GE owns the invention  
7 covered by the '985 patent and Wilkins was required to assign to GE any interest he might  
8 otherwise claim to have in the '985 patent and the invention covered by the '985 patent. Wilkins  
9 was further constrained from licensing the '985 patent and/or the invention covered by the  
10 '985 patent to third parties.

11 47. Wilkins breached his obligations under the EIPI Agreement in the following  
12 respects: (i) by failing to assign to GE any interest he claims to have in the '985 patent (breach  
13 occurred in 2010), (ii) by failing to assign to GE any interest he claims to have in the invention  
14 covered by the '985 patent (breach occurred in 2010), (iii) by claiming ownership of the  
15 '985 patent (breach occurred in 2009), (iv) by claiming ownership of the invention covered by  
16 the '985 patent (breach occurred in 2009), (v) by purporting to license the '985 patent (breach  
17 occurred in 2009 or 2010); and (vi) by purporting to offer to license the '985 patent to others on a  
18 publicly-available web site (breach occurred in 2009 or 2010).

19 48. Wilkins committed these breaches no earlier than 2009. Wilkins first asserted an  
20 ownership interest in the invention covered by the '985 patent and in the '985 patent in 2009. In  
21 2010, GE demanded, including by its Complaint in this lawsuit, that Wilkins assign to GE any  
22 and all interest that Wilkins claims to have in the '985 patent and the invention covered by the  
23 '985 patent, but Wilkins refuses to do so. On information and belief, Wilkins also purports to  
24 have licensed all or part of the '985 patent to at least one third party in 2009 or 2010, and has  
25 purported to offer to license the '985 patent to others on a publicly-available web site since at  
26 least 2010.

27 49. Prior to 2009, Wilkins had asserted no ownership interest in the '985 patent, and  
28 GE was unaware that Wilkins claimed any ownership interest in the '985 patent or in the

1 invention that underlies the patent. Prior to 2009, GE and Wilkins had no communications  
2 whatsoever concerning the '985 patent.

3 50. GE has performed or been excused from performing all of its obligations under the  
4 EIPi Agreement.

5 51. As a direct and proximate result of Wilkins's breaches, GE has suffered damages in  
6 excess of \$75,000 exclusive of interest and costs. GE will set forth the full amount of said  
7 damages when they are more fully ascertained or proven.

8 52. GE has no adequate remedy at law and is therefore entitled to an order requiring  
9 that Wilkins specifically perform his obligation to assign his rights or claimed rights in the  
10 '985 patent and to the invention covered by the '985 patent to GE pursuant to the  
11 EIPi Agreement.

12 53. On information and belief GE alleges that Wilkins has or shortly will take steps to  
13 grant to one or more third parties purported license rights to the '985 patent.

14 54. Unless the Court enters a preliminary and permanent injunction preventing any such  
15 conduct by Wilkins, GE will suffer irreparable harm in that (i) pecuniary compensation would  
16 not be adequate, (ii) it would be extremely difficult to ascertain the amount of compensation that  
17 would afford adequate relief; (iii) the defendant lacks the ability to pay a monetary judgment; and  
18 (iv) restraint is necessary to prevent a multiplicity of judicial proceedings.

19 55. Accordingly, GE requests that the Court issue a preliminary and permanent  
20 injunction (i) requiring Wilkins and all those acting in concert with him to assign to GE all rights  
21 to intellectual property developed or claimed to have been developed by Wilkins in the course of  
22 his employment with Enron or GE, including the '985 patent and the invention covered by the  
23 '985 patent; (ii) prohibiting Wilkins from taking any steps whatsoever purporting to license or  
24 grant other rights to third parties in GE's intellectual property, including but not limited to the  
25 '985 patent; and (iii) prohibiting Wilkins from engaging in any conduct that would convey or  
26 tend to convey to third parties that Wilkins has any ownership interest in the '985 patent, or that  
27 he has any rights in any other intellectual property developed in the course of his employment  
28 with Enron or GE.

1 **THIRD CLAIM FOR RELIEF**

2 **(Declaratory Relief – Rights to ‘985 Patent)**

3 56. GE incorporates and repleads by this reference paragraphs 1-55.

4 57. Even in the absence of contractual agreement, pursuant to California law, including,  
5 but not limited to, California Labor Code § 2860, Wilkins is required to assign to GE any interest  
6 he claims to have in the ‘985 patent and to the invention covered by the ‘985 patent. Wilkins is  
7 further constrained under California law from purporting to license the ‘985 patent and/or the  
8 invention covered by the ‘985 patent to third parties.

9 58. An actual controversy exists between GE on the one hand and Wilkins on the other  
10 with respect to the ‘985 patent in that GE contends, and Wilkins denies, that GE is the sole and  
11 rightful owner of the ‘985 patent and the invention covered by the ‘985 patent, and that Wilkins  
12 is required to assign any rights or claimed rights he has in the ‘985 patent and the invention  
13 covered by the ‘985 patent to GE.

14 59. The actual controversy ripened in 2009, when Wilkins first asserted an ownership  
15 interest in the invention covered by the ‘985 patent and in the ‘985 patent, and first purported to  
16 license the ‘985 patent to a third party (MHI). In 2010, GE demanded, including by its  
17 Complaint in this lawsuit, that Wilkins assign to GE any and all interest that Wilkins may have in  
18 the ‘985 patent and the invention covered by the ‘985 patent, but Wilkins refuses to do so.

19 60. GE is entitled to a declaration (i) that as between GE and Wilkins, GE is the sole  
20 legal and equitable owner of the ‘985 patent and the invention covered by the ‘985 patent;  
21 (ii) that Wilkins has no ownership interest in the ‘985 patent and the invention covered by the  
22 ‘985 patent; (iii) that Wilkins had and has no right to license the ‘985 patent; and (iv) to an order  
23 that Wilkins execute any necessary documents to confirm formally GE’s ownership and to  
24 remove the cloud on GE’s ownership created by his failure to do so.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Breach of Contract as to ‘565 Patent – C&I Agreement)**

27 61. GE incorporates and repleads by this reference paragraphs 1-60.

28 ///

1           62. Pursuant to the C&I Agreement, Wilkins agreed that GE owns the invention  
2 covered by the '565 patent and Wilkins was required to assign to GE any interest he might  
3 otherwise claim to have in the '565 patent and the invention covered by the '565 patent. Wilkins  
4 also appointed any officer of GE as his attorney-in-fact to execute documents necessary to assign  
5 to GE all rights for any invention developed by Wilkins in the course of his employment.

6           63. Wilkins breached his obligations under the C&I Agreement in the following  
7 respects: (i) by failing to assign to GE any interest he claims to have in the '565 patent (breach  
8 occurred in 2010), (ii) by failing to assign to GE any interest he claims to have in the invention  
9 covered by the '565 patent (breach occurred in 2010), (iii) by claiming ownership of the  
10 '565 patent (breach occurred in 2010), (iv) by claiming ownership of the invention covered by  
11 the '565 patent (breach occurred in 2010), and (v) by purporting to offer to license the  
12 '565 patent to others on a publicly-available web site (breach occurred in 2009 or 2010).

13           64. Wilkins committed these breaches in 2010, when he first asserted an ownership  
14 interest in the '565 patent and the invention covered by the '565 patent, refused to assign any and  
15 all ownership interests in the '565 patent and the invention covered by the '565 patent to GE, and  
16 first purported to offer to license the '565 patent to others on a publicly-available web site  
17 (Wilkins may have purported to offer to license the '565 patent to others on the web site in  
18 2009).

19           65. On information and belief, in 2004 Wilkins had refused to cooperate with General  
20 Electric Company's application for the '565 patent, including refusing to sign an agreement to  
21 assign inventorship rights to General Electric Company (Wilkins was not asked at that time to  
22 assign any rights to GE Wind Energy, LLC, his former employer). On further information and  
23 belief, at that time Wilkins did not state an intent to breach his duty to assign inventorship rights  
24 to GE Wind Energy, LLC, but rather refused to cooperate with General Electric Company's  
25 patent application for personal reasons. GE did not suffer any actual and appreciable harm by  
26 Wilkins's refusal to cooperate with the patent application in 2004. In fact, GE was able to secure  
27 issuance of the '565 patent, to exercise the '565 patent, and to license the '565 patent. It was not  
28 until Wilkins first asserted ownership of the '565 patent and the invention covered by the '565

1 patent in 2010 and first purported to offer to license the '565 patent to others on a publicly-  
2 available web site in 2010 that GE suffered actual and appreciable harm. By the time Wilkins  
3 took these actions, GE had already filed this lawsuit.

4 66. GE has performed or been excused from performing all of its obligations under the  
5 C&I Agreement.

6 67. As a direct and proximate result of Wilkins's breaches, GE has suffered damages in  
7 excess of \$75,000 exclusive of interest and costs. GE will set forth the full amount of said  
8 damages when they are more fully ascertained or proven.

9 68. GE has no adequate remedy at law and is therefore entitled to an order requiring  
10 that Wilkins specifically perform his obligation to assign his rights or claimed rights in the  
11 '565 patent and to the invention covered by the '565 patent to GE pursuant to the  
12 C&I Agreement.

13 69. On information and belief GE alleges that Wilkins has or shortly will take steps to  
14 grant to one or more third parties purported license rights to the '565 patent.

15 70. Unless the Court enters a preliminary and permanent injunction preventing any such  
16 conduct by Wilkins, GE will suffer irreparable harm in that (i) pecuniary compensation would  
17 not be adequate, (ii) it would be extremely difficult to ascertain the amount of compensation that  
18 would afford adequate relief; (iii) the defendant lacks the ability to pay a monetary judgment; and  
19 (iv) restraint is necessary to prevent a multiplicity of judicial proceedings.

20 71. Accordingly, GE requests that the Court issue a preliminary and permanent  
21 injunction (i) requiring Wilkins and all those acting in concert with him to assign to GE all rights  
22 to intellectual property developed or claimed to have been developed by Wilkins in the course of  
23 his employment with Enron or GE, including the '565 patent and the invention covered by the  
24 '565 patent; (ii) prohibiting Wilkins from taking any steps whatsoever purporting to license or  
25 grant other rights to third parties in GE's intellectual property, including but not limited to the  
26 '565 patent; and (iii) prohibiting Wilkins from engaging in any conduct that would convey or  
27 tend to convey to third parties that Wilkins has any ownership interest in the '565 patent, or that  
28 he has any rights in any other intellectual property developed in the course of his employment

1 with Enron or GE.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Breach of Contract as to '565 Patent – EIPI Agreement)**

4 72. GE incorporates and repleads by this reference paragraphs 1-71.

5 73. Pursuant to the EIPI Agreement, Wilkins agreed that GE owns the invention  
6 covered by the '565 patent and Wilkins was required to assign to GE any interest he might  
7 otherwise claim to have in the '565 patent and the invention covered by the '985 patent. Wilkins  
8 was further constrained from licensing the '565 patent and/or the invention covered by the  
9 '565 patent to third parties.

10 74. Wilkins breached his obligations under the EIPI Agreement in the following  
11 respects: (i) by failing to assign to GE any interest he claims to have in the '565 patent (breach  
12 occurred in 2010), (ii) by failing to assign to GE any interest he claims to have in the invention  
13 covered by the '565 patent (breach occurred in 2010), (iii) by claiming ownership of the  
14 '565 patent (breach occurred in 2010), (iv) by claiming ownership of the invention covered by  
15 the '565 patent (breach occurred in 2010), and (v) by purporting to offer to license the  
16 '565 patent to others on a publicly-available web site (breach occurred in 2009 or 2010).

17 75. Wilkins committed these breaches in 2010, when he first asserted an ownership  
18 interest in the '565 patent and the invention covered by the '565 patent, refused to assign any and  
19 all ownership interests in the '565 patent and the invention covered by the '565 patent to GE, and  
20 first purported to offer to license the '565 patent to others on a publicly-available web site  
21 (Wilkins may have purported to offer to license the '565 patent to others on the web site in  
22 2009).

23 76. On information and belief, in 2004 Wilkins had refused to cooperate with General  
24 Electric Company's application for the '565 patent, including refusing to sign an agreement to  
25 assign inventorship rights to General Electric Company (Wilkins was not asked at that time to  
26 assign any rights to GE Wind Energy, LLC, his former employer). On further information and  
27 belief, at that time Wilkins did not state an intent to breach his duty to assign inventorship rights  
28 to General Electric Wind Energy, LLC, but rather refused to cooperate with General Electric

1 Company's patent application for personal reasons. GE did not suffer any actual and appreciable  
2 harm by Wilkins's refusal to cooperate with the patent application in 2004. In fact, GE was able  
3 to secure issuance of the '565 patent, to exercise the '565 patent, and to license the '565 patent.  
4 It was not until Wilkins first asserted ownership of the '565 patent and the invention covered by  
5 the '565 patent in 2010 and first purported to offer to license the '565 patent to others on a  
6 publicly-available web site in 2010 that GE suffered actual and appreciable harm. By the time  
7 Wilkins took these actions, GE had already filed this lawsuit.

8 77. GE has performed or been excused from performing all of its obligations under the  
9 EIPI Agreement.

10 78. As a direct and proximate result of Wilkins's breaches, GE has suffered damages in  
11 excess of \$75,000 exclusive of interest and costs. GE will set forth the full amount of said  
12 damages when they are more fully ascertained or proven.

13 79. GE has no adequate remedy at law and is therefore entitled to an order requiring  
14 that Wilkins specifically perform his obligation to assign his rights or claimed rights in the  
15 '565 patent and to the invention covered by the '565 patent to GE pursuant to the  
16 EIPI Agreement.

17 80. On information and belief GE alleges that Wilkins has or shortly will take steps to  
18 grant to one or more third parties purported license rights to the '565 patent.

19 81. Unless the Court enters a preliminary and permanent injunction preventing any such  
20 conduct by Wilkins, GE will suffer irreparable harm in that (i) pecuniary compensation would  
21 not be adequate, (ii) it would be extremely difficult to ascertain the amount of compensation that  
22 would afford adequate relief; (iii) the defendant lacks the ability to pay a monetary judgment; and  
23 (iv) restraint is necessary to prevent a multiplicity of judicial proceedings.

24 82. Accordingly, GE requests that the Court issue a preliminary and permanent  
25 injunction (i) requiring Wilkins and all those acting in concert with him to assign to GE all rights  
26 to intellectual property developed or claimed to have been developed by Wilkins in the course of  
27 his employment with Enron or GE, including the '565 patent and the invention covered by the  
28 '565 patent; (ii) prohibiting Wilkins from taking any steps whatsoever purporting to license or

1 grant other rights to third parties in GE's intellectual property, including but not limited to the  
2 '565 patent; and (iii) prohibiting Wilkins from engaging in any conduct that would convey or  
3 tend to convey to third parties that Wilkins has any ownership interest in the '565 patent, or that  
4 he has any rights in any other intellectual property developed in the course of his employment  
5 with Enron or GE.

6 **SIXTH CLAIM FOR RELIEF**

7 **(Declaratory Relief – Rights to '565 Patent)**

8 83. GE incorporates and repleads by this reference paragraphs 1-82.

9 84. Even in the absence of contractual agreement, pursuant to California law, including,  
10 but not limited to, California Labor Code § 2860, Wilkins is required to assign to GE any interest  
11 he claimed to have in the '565 patent and to the invention covered by the '565 patent. Wilkins is  
12 further constrained under California law from purporting to offer to license the '565 patent  
13 and/or the invention covered by the '565 patent to third parties

14 85. An actual controversy exists between GE on the one hand and Wilkins on the other  
15 with respect to the '565 patent in that GE contends, and Wilkins denies, that GE is the sole and  
16 rightful owner of the '565 patent and the invention covered by the '565 patent, and that Wilkins  
17 is required to assign any rights or claimed rights he has in the '565 patent and the invention  
18 covered by the '565 patent to GE.

19 86. The actual controversy ripened in 2010, when Wilkins first asserted an ownership  
20 interest in the '565 patent and the invention covered by the '565 patent and first purported to  
21 offer to license the '565 patent to others on a publicly-available web site.

22 87. GE is entitled to a declaration (i) that as between GE and Wilkins, GE is the sole  
23 legal and equitable owner of the '565 patent and the invention covered by the '565 patent;  
24 (ii) that Wilkins has no ownership interest in the '565 patent and the invention covered by the  
25 '565 patent; (iii) that Wilkins has no right to license the '965 patent; and (iv) to an order that  
26 Wilkins execute any necessary documents to confirm formally GE's ownership and to remove  
27 the cloud on GE's ownership created by his failure to do so.

28 ///

**SEVENTH CLAIM FOR RELIEF**

**(Declaratory Relief – Appointment of Attorney-in-Fact Under C&I Agreement)**

88. GE incorporates and repleads by this reference paragraphs 1-87.

89. Pursuant to the C&I Agreement, Wilkins appointed any officer of Enron as his attorney-in-fact to execute any documents necessary to assign to Enron all rights to any invention made by Wilkins in the course of his employment.

90. GE has been assigned Enron's rights under the C&I Agreement.

91. An actual controversy exists between GE on the one hand and Wilkins on the other with respect to whether Wilkins has appointed any officer of GE as his attorney-in-fact to execute any documents necessary to assign to GE all rights to any invention made by Wilkins in the course of his employment. GE contends that Wilkins has so appointed any officer of GE as his attorney-in-fact. Wilkins disagrees, and contends that he has not so appointed an attorney-in-fact.

92. The actual controversy ripened in 2010, when Wilkins claimed ownership of inventions that he purportedly made in the course of his employment at Enron or GE, and disavowed GE's rights to Wilkins's inventions made while an employee of Enron or GE.

93. GE is entitled to a declaration that Wilkins has appointed any officer of GE to act as his attorney-in-fact for the purpose of executing documents necessary to assign to GE all rights to any invention made by Wilkins in the course of his employment at Enron or GE.

**EIGHTH CLAIM FOR RELIEF**

**(Declaratory Relief – Rights to Inventions During Employment)**

94. GE incorporates and repleads by this reference paragraphs 1-93.

95. Pursuant to the C&I Agreement, Wilkins agreed that GE owns any invention made by Wilkins during the course of his employment at Enron and Wilkins was required to assign to GE any interest he might otherwise claim to have in such inventions.

96. Pursuant to the EIPI Agreement, Wilkins was required to assign to GE any interest he claimed to have in any invention made by Wilkins during the course of his employment at GE.

///



1 C. A declaration (i) that as between GE and Wilkins, GE is the sole legal and  
2 equitable owner of the '565 patent and the invention covered by the '565 patent; (ii) that Wilkins  
3 has no ownership interest in the '565 patent and the invention covered by the '565 patent; and  
4 (iii) that Wilkins had and has no right to license the '565 patent.

5 D. An order that Wilkins execute any necessary documents to confirm formally GE's  
6 ownership of the '565 patent and the invention covered by the '565 patent and to remove the  
7 cloud on GE's ownership created by his failure to do so.

8 E. A declaration (i) that as between it and Wilkins, GE is the sole legal and equitable  
9 owner of any invention made by Wilkins during the course of his employment at Enron and GE  
10 and (ii) that Wilkins has no ownership interest in any invention made by Wilkins during the  
11 course of his employment at Enron and GE.

12 F. An order that Wilkins execute any necessary documents to confirm formally GE's  
13 ownership of any and all inventions made by Wilkins in the course of his employment with  
14 Enron and GE and to remove the cloud on GE's ownership created by his failure to do so.

15 G. For a preliminary and permanent injunction (i) requiring Wilkins and all those  
16 acting in concert with him to assign to GE all rights to intellectual property developed or claimed  
17 to have been developed by Wilkins in the course of his employment with Enron or GE;  
18 (ii) prohibiting Wilkins from taking any steps whatsoever purporting to license or grant other  
19 rights to third parties in GE's intellectual property, including but not limited to the '985 and  
20 '565 patents; and (iii) prohibiting Wilkins from engaging in any conduct that would convey or  
21 tend to convey to third parties that Wilkins has any ownership interest in the '985 or '565  
22 patents, or that he has any rights in any other intellectual property developed in the course of his  
23 employment with Enron or GE.

24 H. For compensatory damages in excess of \$75,000 according to proof;

25 I. For pre-judgment interest on all compensatory damages;

26 J. For its costs incurred in connection with this action; and

27 K. For such other and further relief as the Court deems proper.

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Dated: October 13, 2010

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By           /s/ James M. Hanlon, Jr.            
Attorneys for Plaintiffs  
General Electric Company and GE Wind  
Energy, LLC

**DEMAND FOR JURY TRIAL**

GE demands a jury trial on all claims so triable.

Dated: October 13, 2010

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By /s/ James M. Hanlon, Jr.  
Attorneys for Plaintiffs  
General Electric Company and GE Wind  
Energy, LLC

**EXHIBIT A**

**CONFIDENTIALITY AND INVENTIONS AGREEMENT**

In consideration of my [continued] employment by ENRON WIND CORP., or one or more of its affiliates or subsidiaries, (the "Company"), I agree as follows:

**1. Confidentiality.**

(a) I understand that during the course of my employment with the Company, I [have had and] will have access to confidential, trade secret information of the Company ("Confidential Information"). Confidential Information includes information in any form pertaining to the business, assets and/or intellectual property of the Company (or any of its affiliates, consultants or business partners), including, without limitation, (i) the Company's technical information such as its know-how, concepts, methods, processes, formulae, compositions, systems, techniques, inventions, specifications, designs, computer programs and similar information; and (ii) the Company's business information such as customer lists, prospects, pricing data, sources of supply, financial data, marketing plans and other business practices. Confidential Information **does not** include (x) information which is publicly known through lawful means, (y) information rightfully in my possession prior to my employment with the Company or information which is part of my general knowledge (including industry and/or professional knowledge and know-how which I may possess); and (z) information received from a third party who possesses the information lawfully, without confidentiality restriction, and who received it from someone other than the Company.

(b) I understand that Confidential Information is extremely valuable to the Company and I promise, during and at all times after my employment with the Company, to keep it secret and in strict confidence. This means I will not disclose it to anyone outside of the Company (including any future employer), copy it or in any way use it for myself or others, other than in the normal course of performing my job.

(c) I also understand that any records containing Confidential Information (for example, notebooks, files and computer data) are the Company's property and I agree to return all such records to the Company (and not to retain copies, abstracts or notes thereof) upon termination of my employment with the Company. I further agree that during my employment with the Company I will maintain under my control only that Confidential Information that I have a current business need to know and that I will properly dispose of or return such information when I no longer have such a need.

**2. Business Interference.** I promise that during my employment with the Company and for one year thereafter, I will not try to divert business from the Company or its affiliates or try to influence any person to end his or her employment or other business relationship with the Company. I also agree that during my employment with the Company, I will not engage in any business activity in competition with the Company.

**3. Inventions.**

(a) I understand that during my employment with the Company and for one year thereafter, my development of ideas, processes, inventions, technology, designs and similar things ("Invention Ideas") is subject to the terms of this agreement. I further understand that California Labor Code Section 2870(a) provides:

"Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either (1) relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or (2) result from any work performed by the employee for the employer."

(b) I agree that, except as specifically prohibited by California Labor Code Section 2870, all Invention Ideas created or developed by me, alone or with others, during the course of my employment with the Company, are works for hire and therefore the property of the Company, and further agree to maintain adequate records of all such Invention Ideas for the Company's benefit. I agree upon the Company's request and without the need for further consideration, to execute any and all documents and take such actions which may be necessary in the Company's judgment to assign all rights to any Invention Idea to the Company and to obtain patent or other intellectual property protections for any Invention Idea, and hereby appoint any officer of the Company as my attorney-in-fact for the purpose of executing such documents and taking such actions. I also acknowledge that Invention Ideas which are reduced to practice within one year after my employment with the Company will be presumed to be Invention Ideas subject to this agreement, unless I can show that such Invention Idea was not conceived or developed during the term of my employment.

4. **Compliance with Other Obligations.** I also acknowledge that during my employment with the Company, I will not use or disclose the confidential, trade secret information of others, including former employers, and that I will fully cooperate with the Company in complying with any and all intellectual property requirements arising under contracts between the Company and any United States government entity.

5. **Remedies.** I recognize that nothing in this agreement limits any remedy of the Company at law or in equity including under the California Uniform Trade Secrets Act and acknowledge that, in addition to termination of my employment, I could face possible criminal and civil actions if I misappropriate or disclose the Company's Confidential Information. I also recognize that my violation of this agreement could cause the Company irreparable harm, the amount of which is very difficult to estimate. Therefore, I agree that the Company shall have the right to obtain injunctive relief upon any breach or threatened breach of this agreement.

6. **Miscellaneous.** This agreement shall be governed by the laws of the State of California. If any provision of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall remain in full force and effect. This agreement is the final expression of my understanding with respect to the subject matter hereof and may only be modified by a writing executed by me and the Company. This agreement shall be binding on me and my successors and heirs, and shall inure to the benefit of the Company's successors and assigns.

Dated: 6-27-00

Employee Name:

Employee Signature:

*Chris Kallenberg*  
*Chris Kallenberg*

# **EXHIBIT B**

**Employee Innovation and Proprietary Information Agreement**

*(Distribution: Three signed originals - One to business component's permanent business records, one to employee and one to business component's Intellectual Property Counsel.)*

TO G.E. Wind Enead (hereinafter the "Company");  
*(Insert legal name of Company for which employee works)*

In consideration of my employment by Company, and the compensation paid to me by the Company, I ("employee") agree:

- (a) to disclose and assign to the Company (or as the Company may direct) as its exclusive property, all inventions, discoveries, innovations, improvements, trade secrets and technical or business information which I may solely or jointly develop, conceive, reduce to practice or author during the period of my employment (1) that relate to the business of the present or demonstrated or reasonably foreseeable future research or development of the Company or its parent, subsidiaries or affiliates, or (2) that result from or are suggested by any work that I may do for the Company or its parent, subsidiaries or affiliates or (3) that are otherwise made through the use of Company, or its parent, subsidiaries or affiliates, time, equipment, supplies, facilities, material or secret\* or confidential\* information or data. To the extent that any court of competent jurisdiction finds that any provision of this paragraph is unenforceable because it requires the assignment of any invention in contravention of the law or public policy of that jurisdiction, this paragraph shall be interpreted to impose only the maximum permissible assignment obligation. [NOTICE: This is the notice required by the states of CA, IL, KS, MN and WA, and any other state requiring such notice, notifying employees in such states that they are not obligated to assign to the Company any rights in an invention that the employee developed entirely on his or her own time without using the Company's equipment, supplies, facilities, material or trade secret information unless those inventions either (1) relate to the Company's business or actual or demonstrably anticipated research or development of the Company at the time the invention was made; or (2) result from any work performed by the employee for the Company.]
- (b) that all original works of authorship that are made by me (solely or jointly with others) within the scope of my employment and that are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Sec. 101) and I further agree, to the extent any such work is determined not to be a "work made for hire," that I will disclose and assign to the Company (or as the Company may direct) as its exclusive property any such original work of authorship;
- (c) to execute, upon the request of the Company, all necessary papers and otherwise provide proper assistance (at the Company's expense), during and subsequent to my employment, to enable the Company to obtain for itself or its nominees, patents, copyrights, or other legal protection for such inventions, discoveries, innovations, improvements, original works of authorship, trade secrets and technical or business information in any and all countries;
- (d) to make and maintain for the Company adequate and current written records of all such inventions, discoveries, innovations, improvements, original works of authorship, trade secrets and technical or business information;
- (e) at the Company's request, or upon any termination of my employment to deliver to the Company promptly all items that belong to the Company or its parent, subsidiaries or affiliates or that by their nature are for the use of Company employees only, including, without limitation, all written and other materials that are of a secret\* or confidential\* nature relating to the business of the Company or its affiliates;
- (f) not to use, publish or otherwise disclose (except as my Company duties may require), either during or subsequent to my employment, any secret\* or confidential\* information or data of the Company or its parent, subsidiaries or affiliates or any information or data of others that the Company or its parent, subsidiaries or affiliates are obligated to maintain in confidence;
- (g) not to disclose or use in my work with the Company any secret or confidential information of others (including any prior employers), or any inventions or innovations of my own that are not included within the scope of this agreement;
- (h) that the Company may, at any time and without further consent, access and monitor my usage of Company information and resources, including but not limited to: computers, computer software, electronic mail, on-line services, voice mail, facsimile machines, telephones and photocopiers;
- (i) that my employment with the Company is "at will" and that both the Company and I have the right to terminate my employment at any time, with or without advance notice and with or without cause.

This agreement supersedes and replaces any existing agreement between the Company and me relating generally to the same subject matter. This agreement may not be modified or terminated, in whole or part, except in writing signed by an authorized representative

of the Company. Discharge of my undertakings in this agreement shall be an obligation of my executors, administrators, or other legal representatives or assigns. In the event that any court of competent jurisdiction concludes that any provision (or portion of any provision) of this agreement is unenforceable because it conflicts with the law or public policy of that jurisdiction, the parties agree that the court should first narrow or otherwise interpret the provision to the extent necessary to conform it to the law or public policy of that jurisdiction. In the event that the court concludes that it is unable to narrow or otherwise interpret the provision so that it is neither invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby.

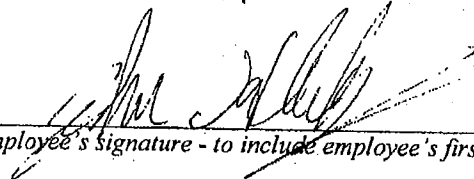
I represent that, except as stated below, I have no agreements with or obligations to others in conflict with the foregoing.

*\*These terms are used in the ordinary sense and do not refer to the official security classifications of the United States Government. The Company generally considers "secret" or "confidential" any information or data that is not generally known - regardless of whether such information or data is in oral, written, machine readable or other form. When in doubt, you should assume that information or data is secret or confidential unless or until determined otherwise. Without limitation, examples of information or data that may be of a secret or confidential nature are: drawings, manuals, notebooks, reports, models, inventions, formulas, processes, machines, compositions, computer programs, accounting methods, business plans and information systems. For further information, you should consult your Company's assigned legal counsel.*

TYPE OR PRINT IN INK

Full Name <u>John Hornbeck</u>	Component _____
Social Security No. _____	Location <u>Tehachapi</u>

\_\_\_\_\_  
 Witness (The employee's immediate manager or other appropriate representative of the Company)

(Signed)   
 (Employee's signature - to include employee's first name in full)

Assembler III  
 Employee's Position

6-7-02  
 Date

Countersigned - Authorized Company Representative (Required only when this agreement supersedes prior agreement)

The following are the only agreements to which I am a party that may be in conflict with the obligations undertaken above:

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