

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

US SOLARTECH, INC.
(f/k/a SILICA TECH, L.L.C.),

Plaintiff,

v.

j-fiber GmbH

Defendant.

Civil Action No. 7:09-cv-00527-CS

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

AMENDED COMPLAINT

Plaintiff US SolarTech, Inc. (“SolarTech”), formerly known as Silica Tech, L.L.C. (“Silica Tech”), for its Complaint against defendant j-fiber GmbH (“J-Fiber”), alleges on personal knowledge as to its own conduct and on information and belief as to the conduct of others, as follows:

NATURE OF THE ACTION

1. SolarTech brings this action against J-Fiber for multiple breaches of a Patent and Technology Information License Agreement, dated May 22, 2003 (the “License Agreement”), and other wrongful acts.

2. Though no longer affiliated, SolarTech and J-Fiber share a common corporate origin. SolarTech is the successor to a company called FiberCore, Inc. (“FiberCore”) and J-Fiber is the successor to FiberCore Jena AG (“FC Jena”), which was a wholly owned subsidiary of FiberCore.

3. When FiberCore acquired FC Jena in 1994, it was a small company utilizing virtually obsolete methods and offering outdated products. FiberCore then made extensive investments in FC Jena, developing novel proprietary technology protected as trade secrets and

utilizing other confidential intellectual property, such that by 2001, FC Jena had been transformed into a leading fiber company, the second largest in Germany.

4. Recognizing that its business would not be viable if ever it lost the ability to use FiberCore's intellectual property due to a change in control, FC Jena sought the License Agreement to formalize its rights as a licensee of the FiberCore intellectual property on which its now-successful business came to rely. FiberCore agreed to the arrangement because it assured FiberCore that its intellectual property rights, and the compensation it received for the use of its intellectual property, would be clearly delineated.

5. FC Jena did in fact undergo a change in control, after FiberCore filed for bankruptcy protection in the U.S., FC Jena entered receivership in Germany, and J-Fiber purchased FC Jena's assets.

6. After reorganization, however, FC Jena and its successor J-Fiber refused to honor the License Agreement and withheld millions of dollars owed to FiberCore and its successor SolarTech. Despite repudiating the License Agreement and refusing to compensate SolarTech, J-Fiber is now exploiting SolarTech's intellectual property — including valuable trade secrets — for its own profit.

THE PARTIES

7. Plaintiff SolarTech was formerly known as Silica Tech, LLC. Effective January 1, 2009, Silica Tech, which was a Connecticut limited liability company, was converted to a Delaware corporation and renamed US SolarTech, Inc. SolarTech's principal place of business is 199 Main Street, Suite 706, White Plains, New York, 10601.

8. SolarTech is a successor-in-interest to all ownership rights of FiberCore in and to all inventions, patents, and patent applications of FiberCore (FiberCore's "Patent Assets"),

pursuant to a court-approved Asset Purchase Agreement and Settlement Agreement between SolarTech and FiberCore's Chapter 7 Trustee in bankruptcy. SolarTech also is the successor to all ownership rights of FiberCore's unpublished research and development information, unpatented inventions, know-how, trade secrets, and technical data ("Technical Information").

9. FiberCore, SolarTech's predecessor, was a publicly traded company incorporated under the laws of Nevada and headquartered in Massachusetts. FiberCore developed, manufactured, and marketed multimode and single-mode fiber optic preforms and fiber primarily for use in the telecommunications and data-communications industries. FiberCore owned all the shares of its subsidiary FC Jena, J-Fiber's predecessor company.

10. Defendant J-Fiber is a limited liability company formed under the laws of Germany with its principal place of business at Im Semmicht 1, D-07751, Jena, Germany. J-Fiber is the successor corporation to FC Jena, having purchased its assets after FC Jena entered German receivership in March 2004. J-Fiber is managed by former officers of FC Jena, including Lothar Brehm, who was FC Jena's last equivalent of a Chief Executive Officer. J-Fiber's business involves the production and sale of fiber products in the field of fiber optics.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) based on diversity jurisdiction as this suit is between a citizen of a state and a citizen of a foreign state and SolarTech claims damages exceeding \$75,000.

12. This Court has personal jurisdiction over J-Fiber in this action, and venue is proper in this district, because J-Fiber's predecessor, FC Jena, consented to jurisdiction in the federal or state courts of New York for any and all disputes arising under the License Agreement.

STATEMENT OF FACTS

FiberCore Acquires SICO and Forms FC Jena

13. In 1993, Dr. Mohd Aslami, an accomplished scientist and author of several patents in the field of fiber optics, founded FiberCore and became its President, Chief Executive Officer, and Chairman. FiberCore became a company that specialized in developing fiber-optic products and manufacturing processes for producing optical fiber.

14. In 1994, FiberCore acquired SICO Jena GmbH Quarzschmelze (“SICO”) — a German company that owned a factory for manufacturing glass and optical fiber products — for \$2.4 million in FiberCore stock. FiberCore renamed the acquired company FiberCore Jena GmbH, and subsequently converted it to FiberCore Jena AG (“FC Jena”).

15. FC Jena’s machinery and technology were antiquated as of 1994, and its products were not competitive in the Western European and U.S. markets, where fiber technology had far surpassed the technology available in East Germany.

16. FiberCore possessed the know-how to produce high-quality, market-competitive fiber but lacked the physical infrastructure necessary for production. It purchased FC Jena because it perceived advantages in developing that infrastructure in Jena, a city renowned for its manufacture of glass and optics instruments.

17. At the time of the acquisition, FC Jena was a small operation. It employed approximately 25 people and generated approximately \$200,000 in sales revenue during the prior year.

18. Due in large part to FiberCore’s improvements in FC Jena’s technology, between 1994 and 2003, FC Jena’s annual sales increased a hundred-fold, to approximately \$20,000,000.

19. Between 1994 and 2003, FiberCore infused over \$15 million of capital, loans and accounts payable to loan conversions, into FC Jena.

20. During this time FiberCore also guaranteed millions of dollars in loans for FC Jena to modernize fiber production at the factory and make FC Jena's products competitive in world markets.

21. By 2001, FiberCore had taken FC Jena from its humble beginnings to the status of Germany's second largest optical fiber producer, second only to Siemens AG. Without FiberCore's know-how and resources, FC Jena never would have attained that status.

The Fiber-Production Process

22. Fiber is made of glass and is used to transmit optical signals that carry information. To make fiber, one must first fabricate a glass rod called a "preform." After the preform is created, fiber is "drawn" from it in a process called "fiber drawing" or the "draw process."

23. A "mode" is a description of the path along which a light wave moves through fiber. There are two types of fiber: multimode and single-mode. Multimode fiber allows more paths than single-mode fiber. Multimode fiber uses a light source known as Light Emitting Diode (LED). This type of fiber primarily is utilized for shorter distances such as within buildings or across campuses. Single-mode fiber uses a laser as its light source and is used for long distances, *e.g.*, between cities.

24. High-quality fiber has high "bandwidth" and low "attenuation." Bandwidth measures the information-carrying capacity of the fiber. The higher the bandwidth, the more information a single strand of fiber can carry. Attenuation is a measure of signal loss. The lower

the attenuation, the longer the distance fiber is able to carry a signal without the necessity of an electronic “repeater” to boost the signal.

25. There are several methods of making a preform used to draw optical fiber. One of these methods is called Modified Chemical Vapor Deposition (“MCVD”), and that was the method FC Jena used when FiberCore acquired it in 1994.

26. After the preform is created, the next step in the manufacturing process is known as “jacketing.” In jacketing, a second glass tube is placed around the preform and heated by running a torch under it, causing it to collapse around the preform. This process increases the radius of the preform, yielding greater fiber production and significantly lower cost per meter of fiber.

27. Once the preform is jacketed, the next step is to draw fiber from it. The preform is hung from a draw tower where a furnace heats it from below and softens the glass so that a tiny strand of fiber, as narrow as a single human hair, can be drawn from the preform. The manufacturing goal is that one continuous strand be drawn from the entirety of each preform.

FiberCore Develops and Safeguards Trade-Secret and Other Confidential Intellectual Property

28. FiberCore made substantial investments in research and development, which was critical to its success.

29. In developing its products and manufacturing processes, FiberCore relied heavily upon proprietary technologies, know-how, processes, and other confidential intellectual property, some of which constituted trade secrets.

30. FiberCore rigorously protected its trade secrets, which were not accessible to the public or replicable from public sources. They were disclosed to FiberCore’s employees only on a “need to know” basis.

31. In order to safeguard the secrecy of its trade secrets and other confidential intellectual property, FiberCore's policy was to enter into confidentiality and non-competition agreements with each key employee within FiberCore and its subsidiaries and affiliates, including FC Jena.

32. In its confidentiality agreements, FiberCore's "Confidential Intellectual Property" was defined broadly to include "any technical or scientific data, process, formula, [or] know-how" and "trade secrets of every kind and character not generally known to the public." A copy of such a confidentiality agreement is attached hereto as Exhibit A.

33. In executing the confidentiality agreements, FiberCore and FC Jena employees expressly acknowledged that FiberCore's Confidential Intellectual Property was "extremely valuable" to FiberCore, was FiberCore's "exclusive property," and that FiberCore had a strong interest in safeguarding the secrecy and value of that information.

34. Employees further acknowledged in the confidentiality agreements that their access to FiberCore's Confidential Intellectual Property imposed a "fiduciary obligation" to protect such information from disclosure or misuse.

35. Employees therefore agreed in the confidentiality agreements not to disclose any Confidential Intellectual Property to any third person or entity, for any reason or purpose whatsoever, either during the course of employment or at any time after the termination of employment, without written consent of the President and one Vice President of FiberCore.

FiberCore Uses Its Know-How To Improve FC Jena's MCVD Processes

36. At the time FiberCore acquired FC Jena in 1994, FC Jena was making preforms using MCVD technology. FC Jena's preforms were very small, so the drawable length of the

fiber was shorter than customary in the industry at that time, and the cost per meter of fiber was significantly higher than the industry standard.

37. Furthermore, the quality of fiber produced by FC Jena was also low-grade, having both lower bandwidth and higher attenuation than industry standard.

38. As a result of these factors, all of FC Jena's sales were in Eastern Europe. Because its products were inferior in quality and higher in cost than industry standard, FC Jena could not sell its fiber in the West.

39. After acquiring FC Jena, FiberCore used the proprietary confidential technology that it maintained and protected as trade secrets, as well as other know-how, to improve both FC Jena's preform-fabrication and drawing processes, thereby improving every aspect of FC Jena's fiber: increasing its bandwidth, decreasing its attenuation, and enabling FC Jena to manufacture fiber of far greater length, thus increasing efficiency.

40. There were at least two types of ways in which FiberCore's trade secrets and know-how improved FC Jena's preform process. First, FiberCore significantly modernized, and increased the number of, machines that FC Jena used in the preform process.

41. When FiberCore acquired FC Jena, FC Jena owned relatively few machines for making preforms, and even fewer of them worked. Over the next few years, FiberCore replaced these machines with two state-of-the-art machines built in Sturbridge, Massachusetts utilizing FiberCore's know-how and its application of the teaching of Dr. Mohd Aslami's U.S. Patent No. 4,212,663.

42. Once these two machines were sent to Jena, FiberCore provided FC Jena with trade-secret drawings and instructions for building additional systems for the preform process, such as control-unit and chemical-delivery systems.

43. FC Jena used Fiber Core's drawings and instructions to fabricate approximately 20-30 additional preform fabrication machines, which increased its production capacity tremendously.

44. Second, Dr. Dau Wu and other FiberCore engineers (the "FiberCore Team") continuously instructed and advised FC Jena on technologies, methods, and procedures to improve manufacturing quality, yield and efficiency.

45. A substantial component of the advice and the proprietary information provided to FC Jena by the FiberCore team consisted of trade secrets of FiberCore.

46. As a result of the foregoing, FC Jena was able to increase quality and quantity in its fiber output and boost efficiency in at least eighteen ways in the preform phase alone.

47. FiberCore's improvements to FC Jena's MCVD preform processes included, by way of example:

a. Introducing a trade-secret chemical-delivery system, which FiberCore's Dr. Aslami had invented and which provided more stable chemical delivery at a significantly faster rate, thus speeding up the process of producing preforms.

b. Providing FC Jena with new proprietary software to run the control units, installing an innovative, state-of-the-art PC/Windows-based system in place of outdated processors the likes of which were used in Atari computer games in the early 1980s. FiberCore shared with FC Jena the trade-secret source code for that software, which enabled a PC to send commands to the "OPTO 22" unit that controlled and monitored the preform-fabrication process, and also collected data on the process and fed it back to the PC.

c. Conveying to FC Jena Fiber Core's trade-secret methods for welding and straightening the extremely long glass tubes used for making preforms at the lathe itself, to avoid carrying tubes over six feet long around the factory, thereby improving a process that had been dangerous and costly.

d. Conveying to FC Jena a new, trade-secret fire-polish process to smooth the inside surface of the glass tube to produce a better-quality preform.

e. Conveying to FC Jena a new, trade-secret vacuum-jacketing process, invented by FiberCore engineer John Mattison, to increase the speed of the jacketing process, which enhanced preform size and quality.

f. Conveying to FC Jena a trade-secret equation devised by Dau Wu (referred to at FC Jena as the "Wu Formula") for grading the dopant element in multi-mode fiber, which greatly improved efficiency by obviating the need for an experienced engineer to closely monitor each lathe. Employing the Wu Formula, a less-experienced engineer or technician could monitor multiple lathes simultaneously.

g. Introducing FC Jena to jacketing techniques based on U.S. Patent No. 4,596,589, which FiberCore had acquired from inventor Gregory Perry in 1993.

h. Providing FC Jena with expert advice on quality control, including implementation of new test procedures to qualify for the Bellcore Quality Audit, a prerequisite for FC Jena to sell fiber to United States customers.

i. Providing FC Jena with recommendations, guidance, and specifications for upgrading its chemical delivery system from Teflon tubes to stainless steel, resulting in the manufacture of drier fiber that had lower attenuation.

j. Replacing FC Jena's control units, which enabled FC Jena to make larger and better quality preforms and to utilize parts of the preforms that previously had been discarded, thus improving efficiency.

k. Purchasing a new tube-cleaning unit that reduced danger to employees handling it and allowed for improved efficiency.

l. Developing and refining methods to enlarge preforms to maximize efficiency, enabling FC Jena to increase its draw of fiber over time from an initial size of 10 kilometers ultimately to 300 kilometers for single-mode fiber, and at least 65 kilometers for multi-mode fiber.

48. FiberCore also made numerous and substantial improvements to FC Jena's fiber draw process.

49. For example, FC Jena had no one on its staff with world-class expertise in fiber production. Therefore, in January 2002, FiberCore hired Robert LaJoie, an expert technician in fiber production, for the specific purpose of posting him to Germany with the mandate of improving the draw process at FC Jena.

50. LaJoie's improvements to the draw process and the draw facility included, by way of example:

a. Repairing and retrofitting Tower 3, an FC Jena tower built in 2000 for drawing single-mode fiber but which no one at FC Jena could operate properly. LaJoie's improvements resulted in doubling the draw speed of Tower 3 compared to FC Jena's Towers 1 and 2.

b. Building a new system to increase the speed of Tower 1.

- c. Improving the efficiency of Tower 2 by making a customized tube enclosure to protect against particles reducing fiber strength and causing fiber breakage.
- d. Establishing the operation of a new 30-meter high-speed draw and coating operation in a new facility.
- e. Consulting with FC Jena in the development of new dyes that allowed for coating fiber at faster speeds, which allowed FC Jena to meet increasing product demand.

The Corporate Rules of FC Jena

51. FC Jena began as a German GmbH (a limited liability company), and later converted to an AG (a corporation) on or about April 26, 2001. German AG companies are run by two boards, a supervisory board and a management board. Typically, the supervisory board makes major business decisions about a company, *e.g.*, annual budget, major expansion, or merger and acquisition, while the management board runs the company's day-to-day affairs.

52. FC Jena's Articles of Incorporation set forth the rules for FC Jena's Supervisory and Management Boards and provided that the Supervisory Board was to have three members: Dr. Aslami, as Chairman, Steven Phillips, Vice-Chairman, outside director, and consultant to FiberCore, and Martin Fischer, Chairman of Sparkasse Bank, FC Jena's primary lender.

53. Under FC Jena's Articles of Incorporation and rules of procedure, the Supervisory Board was required to consent to several types of major business decisions but was not required to consent to FC Jena entering into a license agreement.

54. FC Jena's Supervisory Board appointed FC Jena's Management Board with Mr. Charles DeLuca as Chairman, and Lothar Brehm, as Vice Chairman.

55. Pursuant to the Articles of Incorporation, the Supervisory Board had the power to determine that individual members of the Management Board could bind the company.

The History of the License Agreement

56. As of September 2001, Martin Fischer recognized that if FC Jena ever became separated from FiberCore, FC Jena would have no rights to use the MCVD technology it was using on a daily basis and which had completely transformed the company.

57. On September 6, 2001, Martin Fischer wrote an e-mail to Dr. Aslami and Mr. DeLuca, telling them that they had “to fix in an agreement between all companies” — including FiberCore and FC Jena — “the use of patents, technologie[s] and fixed assets investe[d] until today, and fees demanded therefore.”

58. At the February 16, 2002 Supervisory Board meeting, the Board discussed the drafting of a license agreement, with Sparkasse Bank to review the drafts.

59. The issue was raised with the Supervisory Board as a matter of courtesy or general management oversight; the Board’s approval was not necessary for the license agreement.

60. At or around this time in 2002, several banks and financial institutions concluded a round of financing with FiberCore and FC Jena in order to fund a \$25 million investment in new MCVD equipment based on FiberCore’s designs and know-how.

61. The financing provided FC Jena and Sparkasse Bank with another reminder that FC Jena did not own the intellectual property it was using to produce fiber and would not be able to use it without FiberCore’s permission. The banks financing FC Jena wanted to ensure that their investment would not disappear in the event of an industry downturn, especially considering that FC Jena’s parent company, FiberCore, owned the Patent Assets and Technical Information that FC Jena used on a daily basis.

62. At the August 7, 2002 Supervisory Board meeting, the Board agreed that, notwithstanding the fact that FC Jena was a wholly owned subsidiary of FiberCore, a license agreement between the two entities was necessary, and that FiberCore would prepare a license agreement.

63. At the November 13, 2002 Supervisory Board meeting, FiberCore submitted a draft of the License Agreement. The Supervisory Board agreed to review and comment upon the draft.

64. In or about April 2003, Mr. Fischer submitted comments on the draft License Agreement to FiberCore.

65. In addition, around this time, Mr. Fischer introduced a German financial institution, DEWB AG, as a potential investor in FiberCore Glas (“FC Glas”), a subsidiary of FC Jena.

66. DEWB requested that FiberCore pledge its Patent Assets as security for an investment in FC Glas, but FiberCore informed DEWB that it already had pledged the Patent Assets to a different lender. DEWB eventually decided not to invest.

67. On May 22, 2003, Charles DeLuca, Chairman of FC Jena, signed the License Agreement on behalf of FC Jena, and Robert Lobban, Chief Financial Officer of FiberCore, signed the License Agreement on FiberCore’s behalf.

68. At a Supervisory Board meeting on June 20, 2003, Martin Fischer complained that the License Agreement was concluded without his consent, but did not challenge the validity of the License Agreement.

69. In fact, precisely because Mr. Fischer understood that Mr. DeLuca had complete authority to enter into a license agreement on behalf of FC Jena, he requested that the rules be

changed to require more than one signatory to bind FC Jena to any future “main contracts” such as a license agreement.

70. The Supervisory Board approved that request, revoking the 2002 resolution that had allowed Mr. DeLuca to sign alone on behalf of FC Jena, and requiring all main contracts in the future to be signed by both members of the Management Board.

71. At no time between May 22, 2003 and December 24, 2004 did FC Jena or any representative of it dispute the legal validity of the License Agreement.

Salient Provisions of the License Agreement

72. The License Agreement gave FC Jena the right to use FiberCore’s patents, patent applications, and technical Information “relating to fiber optic preform manufacturing which can be used for the purpose of manufacturing and marketing multimode and single-mode preforms and fiber for use in the fiber optic communications industry.” A true and correct copy of the License Agreement is attached as Exhibit B.

73. In Section 1.00 of the License Agreement, the parties acknowledged that FiberCore, as Licensor, was the owner or had the right to license the patents, patent applications, and technical information.

74. In Section 1.01, the parties stated that FC Jena, as licensee, “wishes to have the right to use such Patents, Patent Applications, and Technical Information.”

75. Section 2.04 defined FiberCore’s “Technical Information” as “unpublished research and development information, un-patented inventions, know-how, trade secrets, and technical data in the possession of [FiberCore] at the effective date of this Agreement that are needed by [FC Jena] to manufacture and market multi-mode and single-mode preforms and fiber

for use in the fiber optic communications and other related industries, and that [FiberCore] has the right to provide to [FC Jena].”

76. Section 2.07 defined “Licensed Products” as “any finished product suitable and approved for sale to an end-user, which utilizes or incorporates [FiberCore’s] Patents and Patent Applications and/or [FiberCore’s] Technical Information, including Derivative Products.”

77. In Sections 3.00 and 4.00, FiberCore granted FC Jena a non-exclusive license to use FiberCore’s Patents, Patent Applications, and Technical Information to “make, use, sell ... and import” Licensed Products in Western Europe. FC Jena could not sell Licensed Products outside Western Europe unless it received permission from FiberCore, and FC Jena had no right to transfer FiberCore’s license or patents in any way.

78. The License Agreement contained a number of provisions that reflected FiberCore’s strong interest in maintaining the confidentiality of the Technical Information it shared with FC Jena. For example:

- a. FC Jena agreed that it had no right to sell, disclose or in any way transfer FiberCore’s Technical Information (Section 4.00).
- b. FC Jena agreed that it would only use FiberCore’s Technical Information in connection with the manufacture of products under the License Agreement and only for the duration of the License Agreement (Section 4.03).
- c. FC Jena agreed to maintain the confidential nature of FiberCore’s trade secrets and promised not to use such information “for any purpose other than to perform its obligations under [the] Agreement” (Section 13.01).

79. Under Section 6.01, FC Jena was required to pay a monthly research and development fee of 6% of the net sales price of all Licensed Products sold during the term of the License Agreement for FiberCore's research and development program.

80. Under Section 6.04, FC Jena agreed that if the License Agreement were terminated for any reason before all of the payments required under the License Agreement were made, FC Jena would pay to FiberCore any remaining unpaid balance and production of all Licensed Products would immediately cease.

81. In Section 10.01, FC Jena agreed to "assign all rights, title, and interest" to FiberCore in any of its inventions. This included Derivative Products, defined as "any products other than the Licensed Products subsequently developed by the Licensee based on Licensor's Patent and Patent Applications and/or on Licensor's Technical Information." FiberCore had the rights to "file, prosecute, and maintain" any inventions covered by Section 10.01.

82. Section 14.03 provided that if FC Jena enters insolvency proceedings, and in connection with those proceedings FiberCore's ownership interest falls below 50.1% because FC Jena is operated by or transferred to an entity or individual that is (i) a competitor of FiberCore, (ii) a creditor, or (iii) part of FC Jena management, then the monthly R&D fee would increase from 6% to 10% and a payment of two million Euros would be due and payable to FiberCore.

83. The two-million Euro payment would only be triggered in the event FiberCore lost control of FC Jena. It represented an up-front payment, common in intellectual-property license agreements, in which the new ownership of an independent FC Jena would essentially purchase the right to use FiberCore's intellectual property.

84. Section 15.00 provided that New York law governs the License Agreement (without giving effect to conflict-of-laws provisions), and that the federal and state courts of

New York would have exclusive jurisdiction over any dispute arising under the License Agreement, to which jurisdiction the parties consented.

85. Section 18.00 provided that, “No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right.”

86. Section 18.1 provided that, “The waiver of a breach hereunder may be effected only with the written consent of the waiving party and shall not constitute a waiver of any other breach.”

**FiberCore and FC Jena Enter Bankruptcy
and Are Succeeded by SolarTech and J-Fiber**

87. On November 14, 2003, FiberCore filed for bankruptcy protection, under Chapter 11, in the United States Bankruptcy Court for the District of Massachusetts (Case No. 03-46551).

88. Four months later, in March 2004, FC Jena filed for receivership in Germany.

89. On May 4, 2004, the Bankruptcy Court appointed Steven Weiss as FiberCore’s Chapter 11 Trustee (the “Trustee”).

90. On or about May 19, 2004, Peter Scholl, the receiver in Germany, sold FC Jena’s assets to J-Fiber.

91. The asset sale to J-Fiber triggered Section 14.03 of the License Agreement. FiberCore’s ownership interest in FC Jena dipped below 50.1%. And J-Fiber had the same management as FC Jena, including Lothar Brehm, Hubertus Mueller, Wolfgang Haemmerle, and Hans Engler. Section 14.03 thus obligated J-Fiber, as successor to FC Jena, to increase its R&D payments from 6% to 10% of net sales and to make a one-time payment of 2,000,000 Euros to FiberCore or its successor SolarTech.

92. Soon after the asset sale to J-Fiber, the Trustee filed a proof of claim in the amount of 11,448,475 Euros in FC Jena’s receivership proceedings, which included the

2,000,000 Euro payment due upon the change in ownership. But FC Jena's receiver, Peter Scholl, refused to make any payment to FiberCore.

93. On February 3, 2006, by order of the Bankruptcy Court, SolarTech acquired all of the assets of FiberCore, including all of its Patent Assets, subject to certain *in rem* claims of J-Fiber relating to patent ownership that are the subject of a declaratory judgment action currently pending in the United States District Court for the District of Massachusetts.

94. In addition to the Patent Assets, SolarTech acquired the right to assume the role of licensor in the License Agreement and pursue the claims that it had against J-Fiber, defined as the "Jena License Claim." Paragraph 14 of the Bankruptcy Court's order provided that the License Agreement (or "Jena License") was transferred and assigned to SolarTech and "should remain in full force and effect for the benefit of [SolarTech]."

**J-Fiber Breaches the License Agreement
and Misappropriates FiberCore's Trade Secrets**

95. Neither FiberCore nor SolarTech ever received any payments from J-Fiber under the License Agreement.

96. From the date of its inception to the present, J-Fiber has continuously used, in its day-to-day operations, the trade secrets and other know-how FiberCore disclosed to FC Jena concerning MCVD processes — both with respect to creating preforms and with respect to the draw process — for the multimode telecommunication-application fibers and standard single-mode fiber J-Fiber produces. J-Fiber uses at least 25 systems that were built based on FiberCore's designs.

97. These trade secrets and know-how currently belong to SolarTech, and J-Fiber has been using this information to manufacture fiber products that are sold in the Licensed Territory,

in the United States, and in many other locations without SolarTech's permission or any compensation to SolarTech.

98. J-Fiber has never publicly disclosed the trade secrets or other confidential know-how it received from FiberCore but instead used this intellectual property for its own commercial advantage.

SolarTech's Attempts To Mediate

99. Under Section 15.00 of the License Agreement, the parties are required "to use their best efforts to mediate any controversy or claim arising out of or relating to this Agreement" before resorting to litigation.

100. As set forth below, SolarTech has used its best efforts to resolve the dispute concerning the License Agreement out of court but J-Fiber has rebuffed these efforts.

101. On or about September 15, 2005, representatives of J-Fiber and SolarTech met at the office of the Trustee to discuss a global settlement, including payments due pursuant to the License Agreement. The parties' negotiations did not result in a resolution.

102. On or about February 1, 2006, just prior to the hearing on the motion to approve the sale of assets from the Trustee to SolarTech, the parties again attempted to negotiate a global settlement, and once again failed to reach agreement.

103. On October 6, 2006, counsel for SolarTech wrote to counsel for J-Fiber, proposing a global settlement. J-Fiber never responded to this offer.

104. In or about February 2007, counsel for SolarTech and J-Fiber discussed a settlement that would have included SolarTech's rights under the License Agreement. J-Fiber's counsel reportedly brought a SolarTech proposal back to J-Fiber's management, but J-Fiber never responded to SolarTech.

SolarTech Formally Notifies J-Fiber of its Breaches

105. Under Section 14.02 of the License Agreement, if a party receives written notice of breach and fails to remedy that breach within 30 days, “the aggrieved party shall be entitled to enforce compliance with the provisions of [the] Agreement without prejudice to [its] rights to claim payment of such damages as it may have suffered as a result of such breach.”

106. Although SolarTech previously had accused J-Fiber of breaching the License Agreement in various forms and in multiple venues, on or about May 14, 2008, counsel for SolarTech sent a letter to J-Fiber’s German counsel formally notifying J-Fiber of its breaches under the License Agreement — including failure to pay the 2,000,000 Euro payment or any of the R&D fees. The letter stated SolarTech’s intention to take legal action if J-Fiber did not cure its breaches within 30 days, and it once again offered the possibility of discussions on the matter.

107. On or about June 23, 2008, J-Fiber’s counsel sent a two-sentence reply letter confirming that it represents J-Fiber and stating that J-Fiber completely rejects SolarTech’s asserted claims.

COUNT 1**BREACH OF LICENSING AGREEMENT**

108. Plaintiff SolarTech repeats, re-alleges, and incorporates by reference each and every allegation set forth in the foregoing paragraphs hereof, as though fully set forth herein.

109. FiberCore and FC Jena were parties to the License Agreement, a binding contract.

110. SolarTech succeeded to the rights and obligations of FiberCore under the License Agreement, by order of the Bankruptcy Court.

111. J-Fiber succeeded to the rights and obligations of FC Jena under the License Agreement, pursuant to its acquisition of FC Jena’s assets in German receivership proceedings.

112. J-Fiber has continued to use SolarTech's trade secrets and know-how in operating its business.

113. J-Fiber has been selling the Licensed Products outside of Western Europe without SolarTech's permission.

114. J-Fiber has failed to make any payments under the License Agreement.

115. J-Fiber's multiple breaches of the License Agreement have damaged SolarTech in an amount to be determined at trial.

COUNT II

MISAPPROPRIATION OF TRADE SECRETS

(In violation of Massachusetts General Laws ch. 93, § 42 and common law)

116. SolarTech repeats, re-alleges, and incorporates by reference each and every allegation set forth in the foregoing paragraphs hereof, as though fully set forth herein.

117. Between 1994 and 2003, FiberCore provided FC Jena with valuable trade secrets, which FC Jena agreed not to use "for any purpose" other than to perform its obligations under the License Agreement.

118. SolarTech currently is the rightful owner of those trade secrets.

119. J-Fiber has continuously used SolarTech's trade secrets to manufacture fiber products without SolarTech's permission or compensation to SolarTech.

120. By so engaging in these unauthorized acts, J-Fiber has misappropriated SolarTech's trade secrets, causing injury and damages to SolarTech.

121. SolarTech has suffered actual, direct, and consequential damages as a direct and proximate result of J-Fiber's misappropriation of its trade secrets and is entitled to double damages, in an amount to be determined at trial.

COUNT III

UNJUST ENRICHMENT

122. SolarTech repeats, re-alleges, and incorporates by reference each and every allegation set forth in the foregoing paragraphs hereof, as though fully set forth herein.

123. FiberCore provided FC Jena with valuable trade secrets, confidential information and other benefits and value, as set forth herein.

124. SolarTech currently is the rightful owner of those trade secrets and that confidential information.

125. J-Fiber continues to use FiberCore's trade secrets and other confidential information, without compensating SolarTech.

126. J-Fiber continues to benefit from the other benefits and value provided to it by FiberCore, without compensating SolarTech.

127. By the conduct alleged herein, J-Fiber has been and continues to be unjustly enriched at the expense of SolarTech.

128. Under principles of equity and good conscience, J-Fiber should not be permitted to retain the benefits conferred on it as a result of SolarTech's trade secrets and other confidential information.

129. SolarTech is entitled to restitution in the amount of J-Fiber's unjust enrichment, which amount is to be determined at trial.

WHEREFORE, SolarTech requests judgment as follows:

A. A declaration that the License Agreement is valid and binding upon J-Fiber;

