

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case Number:

XANTREX TECHNOLOGY INC., a Canadian corporation publicly traded on the
Toronto Stock Exchange,

Plaintiff,

v.

ADVANCED ENERGY INDUSTRIES, INC., a Delaware corporation, and
CHRISTOPHER S. THOMPSON, an individual,

Defendants.

COMPLAINT AND JURY DEMAND

Plaintiff Xantrex Technology Inc., by and through its undersigned attorneys, states its
Complaint as follows:

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff Xantrex Technology Inc. (“Xantrex”) is a public company listed on the
Toronto Stock Exchange. Xantrex is headquartered at 8999 Nelson Way, Burnaby, British
Columbia, Canada V5A 4B5, and has additional facilities in Arlington, Washington; Livermore
and San Diego, California; and Barcelona, Spain.

2. Defendant Advanced Energy Industries, Inc. (“Advanced Energy”) is a Delaware
corporation with principal executive office located at 1625 Sharp Point Drive, Fort Collins,
Colorado 80525.

3. Defendant Christopher S. Thompson (“Thompson”) is an individual who, upon
information and belief, is a resident of Colorado.

4. This Court has diversity jurisdiction of this action pursuant to 28 U.S.C. § 1332(a) because there is diversity of parties, as the parties are residents of or are incorporated in different states, and the amount in controversy exceeds U.S. \$75,000 exclusive of interest and costs.

5. This Court also has jurisdiction of this action pursuant to 28 U.S.C. § 1331 because the allegations arise under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq.

6. General personal jurisdiction exists over Advanced Energy because its principal executive office is located in Fort Collins, Colorado.

7. General personal jurisdiction exists over Thompson as a resident of the State of Colorado.

8. The Court also has specific personal jurisdiction over Thompson because many of the activities regarding the misappropriation and dissemination of trade secrets as well as the breach of his employment contract are now occurring in Colorado and this judicial district.

9. Specific jurisdiction also exists over Advanced Energy because it was knowingly complicit in, or directly participated in, the alleged breach of contract activities and the inducement of breach of contract actions in the State of Colorado and this judicial district.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400 because Defendants committed the alleged unlawful acts in this district.

II. FACTUAL BACKGROUND

A. Xantrex's Business.

11. Xantrex develops, manufactures and markets advanced power electronic products. The company's products convert raw electrical power from any central, distributed, or backup power source into high-quality power required by electronic and electrical equipment.

12. Xantrex's products in the distributed market target the renewable resource market segment and include grid tie solar inverters, wind turbine converters, and off-grid solar and backup power inverters. All of these products provide an AC power supply to the user or to the grid from a DC energy source. Xantrex has products in the Mobile sector including inverters, battery chargers, and inverter-chargers for RV, commercial truck, heavy duty truck, marine, home, and consumer use, programmable products such as DC and AC programmable power supplies, as well as electronic load products used in the test and measurement, OEM equipment, and military markets.

13. The advanced power electronics industry, especially the solar sector, is global. Xantrex's competitors in the Inverter Technology and Charge Controller market are located throughout the world, and Xantrex competes in all significant world markets for solar products, including North and South America, Europe, and Asia. Because the Inverter Technology and Charge Controller market is limited and inhabited by numerous companies competing for a piece of a relatively small pie, Xantrex competes for market share on a worldwide basis.

14. As measured by output, Xantrex holds the lion's share of the worldwide market and is the world leader in production of solar power systems. Because of this current market advantage, Xantrex's competitors actively seek competitive advantages to take market share from Xantrex.

15. Solar power technology is by nature cutting edge and is constantly being improved based on research and development. Xantrex devotes substantial resources to product development, maintaining significant budgets for expenditures on an annual basis.

16. To operate effectively, Xantrex must provide senior employees with access to the confidential information essential to its business. Xantrex requires those employees to execute agreements providing that such information is to be held in confidence. Xantrex's employment agreements strictly require its employees to guard the secrecy Xantrex's confidential information both during and after employment. Xantrex's Code of Conduct which is applicable to all employees also contains provisions governing the release of confidential information.

17. Xantrex maintains a number of file storage servers and databases for the electronic storage of company information, including information that is confidential to Xantrex. Xantrex implements a Microsoft (MS) Windows Server Network with layered security. Every Xantrex employee who requires access to network resources (files, databases, applications, printers, etc.) is issued a Windows logon account and secure password. The system requires each user to change their password at the initial logon, such that the password is known only by each employee.

18. The Xantrex network is isolated from the Internet via a set of Cisco routers and firewalls. At a minimum, a user must be logged on to the Xantrex Windows network to access any IT resources.

19. All authorized users of Xantrex IT resources are responsible to maintain a secure environment. Users may only access resources that they are authorized to access and are required to report any potential security lapses that come to their attention.

20. Xantrex has further implemented a number of systems, practices and policies designed to enhance the security of its IT resources. Each user is granted a "personal space" on a

file server, which is referred to as the “G-Drive.” Only that specific user and members of the IT department have access to this space.

21. Individual departments are granted restricted access to files on another server, which is referred to as the “O-Drive”. Permissions to access files on the O-Drive are granted only on a case by case basis.

B. Xantrex’s Employment of Defendant Christopher Thompson.

22. As a result of search process commencing in November, 2004 for the global position of Vice President, Engineering & Product Development, Xantrex entered into negotiations with Thompson regarding employment with Xantrex in approximately January, 2005. An offer letter dated January 28, 2005 was emailed to Thompson offering him the position of Vice President, Product Development. A second offer letter dated January 31, 2005 was also emailed to Thompson. Thompson signed and accepted the terms contained in the second offer letter on February 4, 2007 (the “Employment Contract”).

23. The terms of the Employment Contract eventually signed by Thompson were negotiated between the parties and the final terms included the following:

- a. The base salary was increased from \$185,000 to \$195,000 in the second offer;
- b. A lump sum \$25,000 signing bonus was added to the second offer;
- c. The amount of options granted was increased by 25% in the second offer;
- d. The second offer allowed for unlimited moving expenses; and
- e. The Non-Competition provision was specifically broadened in the second offer by removing the words “anywhere in North America” such that, consistent with Xantrex’s global business and limited market, the executed document required a

one year agreement by Thompson not to work for a competitor anywhere in the world.

24. Thompson commenced employment and was appointed an Officer of the Company on March 17, 2005.

25. In his high level position and as was made clear in Thompson's Employment Contract, he would obtain "significant confidential information and trade secrets respecting the details of Xantrex's Business." By executing his Employment Contract, Thompson acknowledged that Xantrex would require as a business necessity, certain concessions and commitments from him in order to protect Xantrex's confidential information and trade secrets.

C. Thompson's Access to Highly Confidential Information at Xantrex.

26. Thompson's primary responsibilities as Vice President, Engineering & Product Development included developing and executing the vision and engineering/product development strategy and setting the direction and priorities for the company's Engineering Team. Thompson was also responsible for "prioritizing new product initiatives" and bringing projects through to successful completion. Thompson was the most senior person in Xantrex responsible for such duties and reported directly to the CEO. Accordingly, Thompson was a key figure at Xantrex in developing competitive future strategies both with respect to development and marketing for solar produces, and it was particularly important for Xantrex to require a one year non-compete agreement from Thompson.

27. At the time of Thompson's recruitment, the Vice President, Engineering and Product Development was responsible for a staff of approximately 150 personnel in two offices.

At the time of his departure, Thompson was responsible for a staff of approximately 100 staff located in three countries.

28. Thompson played a critical role in developing Xantrex's strategic direction and was privy to sensitive and confidential information regarding Xantrex's products, technology, product roadmaps, and strategic alliances. Thompson was also intimately familiar with the details of Xantrex's plans for the future, both in terms of product development and positioning in the marketplace. For example, Thompson played a leading role in Xantrex's acquisition and integration of a company named Distributed Power through which Xantrex acquired the intellectual property rights to a cutting edge, transformerless solar inverter. Xantrex was still in the process of developing this technology when Thompson left.

29. Thompson assisted with Xantrex's current strategic plan and product roadmaps which were completed during May-July 2007, was present during discussions regarding the strategic plan and roadmaps, and personally developed the strategic plan for product development. Thompson also personally developed and negotiated four Solar America Initiative (SAI) research contracts for Xantrex, which describe Xantrex's proposed efforts to meet the SAI goals for 2010.

30. Thompson was granted wide ranging access to Engineering and Program Management files and data as a result of his senior role supervising various types of employees. Thompson's high-level security group membership allowed him access to documents that were only accessible to a limited number of Xantrex employees both within Engineering and other departments.

31. For example, Thompson had access to the file *CONSOLIDATED_ROADMAPS_2007-07-16 Excel 97-2003.xls*. Access to this file is highly restricted within Xantrex, and can be viewed by only approximately 3% of all of Xantrex employees.

32. Thompson holds degrees in mechanical and electrical engineering, as well as an MBA, and while employed by Xantrex, he acted both as a business and a technical leader. For example, Thompson created the technical specifications document for a key project to expand Xantrex's product line. In fact, as Vice President, Engineering & Product Development, Thompson also had access to all Functional Specification and Market Requirements documents for the entire Xantrex product line.

33. Thompson was well aware of and expressed to other employees the importance of maintaining the confidentiality of Xantrex's proprietary information.

34. On the morning of July 27, 2007, Thompson provided Xantrex's CEO, John Wallace, with verbal notice of his resignation and claimed that his departure was due to his wife's health problems and a need to return to the United States to be closer to family.

35. Thompson's last day with Xantrex was August 24, 2007. At the time of his resignation, Thompson was reminded of his continuing obligations to Xantrex both verbally and in writing.

D. Defendant Advanced Energy

36. Advanced Energy is a relatively new player in the solar field and is a direct competitor of Xantrex. Prior to this year, Advanced Energy's role in the solar cell supply chain was limited to manufacturing equipment used to manufacture solar cells.

37. On August 21, 2007, Advanced Energy announced the release of its first solar installation product, one that would compete directly with Xantrex's offerings.

38. On September 11, 2007, Thompson advised Mr. Wallace that he was working for Advanced Energy. Prior to this, Thompson had not indicated that he was intending to work for a direct competitor of Xantrex in violation of both the express non-competition terms of his Employment Contract, and his continuing obligations to Xantrex to not use or disclose its confidential trade secret information.

39. Thompson was hired as the General Manager of Advanced Energy. In this position, Thompson will have input into Advanced Energy's research, product marketing and product development process with respect to products that compete directly with Xantrex.

40. In fact, after his move to Advanced Energy, Thompson advised Xantrex's Director of Marketing, Solar & Backup Power, Lloyd Gomm, that his new role of General Manager of Advanced Energy's Solar Group included both sales and manufacturing, and he confirmed his involvement with solar inverters at Advanced Energy. Thompson advised Gomm that he had previously been shown Advanced Energy's soon to be released solar inverter before accepting employment at Advanced Energy and had provided a critique of the mechanical design.

41. Advanced Energy's Solaron inverter uses a bi-polar array, which is a design that has been under active development at Xantrex following Xantrex's acquisition of a company named Distributed Power, including its intellectual property rights to a 30 kW transformerless inverter using a symmetrical or bi-polar PV array input. The use of a transformerless topology with a bi-polar or symmetrical array input is a unique approach to grid tie inverter design within

the industry. As the head of Engineering & Product Development at Xantrex, Thompson was closely involved in the development of this product and other products based on the Distributed Power technology and had full access to Xantrex's confidential information regarding this design.

42. Because Thompson was directly involved in these same areas at Xantrex, he will necessarily draw on his knowledge and experiences learned at Xantrex in performing his new duties. It will be impossible for Thompson to perform his duties in his role at Advanced Energy without utilizing confidential information that he had learned at Xantrex while serving as an Officer and Vice President, Engineering & Product Development.

D. Thompson's Theft and Use of Trade Secrets

43. Subsequent to Thompson's departure from Xantrex, an image was obtained of the hard drive from Thompson's Xantrex laptop computer which he turned in at the end of his employment on August 23, 2007. The laptop was damaged and would not boot up or "start."

44. That image revealed the Thompson was using Xantrex confidential information for Advanced Energy's purposes and was reviewing and/or copying information for use at Advanced Energy. It also revealed that Thompson was trying to cover his tracks.

1. The "AE" Documents.

45. A review of the "Recent Documents" folder from the image of Thompson's hard drive revealed four links with "AE" in the document name. The links were no longer functional, as the files had been deleted from their original location. However, copies of three of the files were still present in the Microsoft Messenger folder: ChrisT\ LocalSettings\ ApplicationData\

Microsoft\ Messenger\ distanceisdead@hotmail.com\ SharingFolders\
kellylathompson@hotmail.com.

46. The presence of the files in this folder indicates that the files in question were sent from Thompson's Xantrex computer from an email account with the address kellylathompson@hotmail.com to another email address distanceisdead@hotmail.com. Thompson's wife's name is Kelly and distanceisdead@hotmail.com is Thompson's personal email account.

47. Thompson's computer revealed that the documents were transferred from the computer two days prior to Thompson's departure from Xantrex and the day before he returned his laptop to Xantrex's IT department and that the computer was functioning properly as of August 22, 2007.

48. The first of the recovered "AE" documents is an Excel spreadsheet containing three worksheets which was first created Friday, July 13, 2007, two weeks prior to Thompson giving notice that he was leaving Xantrex. The first worksheet is called "Market Scenarios" and contains what appears to be a proforma business plan for Advanced Energy's new inverter. The document refers to a 2007 "SolarBuzz report," a document produced for Xantrex by Solarbuzz LLC consisting of confidential market data that is licensed to Xantrex.

49. The second worksheet is called "Product Issues," which contains notes regarding deficiencies with Advanced Energy's Solaron inverter. This product was not announced to the public until the end of August 2007, and these details could have only be ascertained with a first hand viewing of the product and/or its construction files, and would have had to have been provided to Thompson by Advanced Energy while he was still employed by Xantrex.

50. Thompson's notes state that the solar inverter has "Inappropriate metal coatings" and that the "Overall corrosion strategy does not seem adequate," indicating that Thompson had access to Advanced Energy's confidential information months before his departure

51. The AE "Product Issues" file demonstrates that Thompson used his knowledge of Xantrex's confidential processes for the benefit of Advanced Energy, as his notes regarding "Reliability" of the product refers to the fact that "ALT" – Accelerated Life Testing – is not planned or understood by Advanced Energy. Alternative life testing is a process that is used by Xantrex for its inverters and is a process that Thompson would not have known about prior to his work for Xantrex.

52. The last worksheet in the "*AE Model.xls*" file recovered from Thompson's computer is called "Single-Phase". Advanced Energy currently only has products in what is referred to as the "commercial grid tie or three phase market segment." and none in what is known as the "single-phase" market.

53. This worksheet however seemed to address the lack of a product in that single-phase market and refers to a partnership with an offshore company so Advanced Energy could develop a single-phase product line, a strategy contemplated by Xantrex.

54. Three days prior to his departure from Xantrex, Thompson accessed a document – *2007-08-01_Delta_GT2.0_Mechanical_evaluation.doc* – that relates to Xantrex's own partnership efforts with a subcontractor manufacturing company called Delta to develop a "single-phase" product. The "Single Phase" worksheet in the "*AE Model.xls*" file also contained items named "High V [Voltage] charge controller," "OV [Over Voltage] disconnects" and

“OutBack killer.” These all refer to products that Xantrex has either discussed or is currently developing.

55. The second “AE” file found on Thompson’s Xantrex computer was first created Sunday, July 15, 2007, six weeks before his departure from Xantrex. The second file also contains three worksheets, two of which model “baseline” and “aggressive” addressable markets for Advanced Energy. The “comments” of the “baseline” worksheet indicate that the data is “[b]ased on 3/2007 SolarBuzz report” paid for by Xantrex

56. The third “AE” file found on Thompson’s computer’s hard drive was also first created Sunday, July 15, 2007. This file again contains a worksheet that is identical to the “Baseline” worksheet found in the second “AE” file.

2. The Highly Confidential Xantrex Documents

57. In addition, the “My Recent Documents” folder revealed that on August 13, 2007 (eleven days prior to Thompson’s ultimate departure from Xantrex), and in a span of 23 minutes between 11:49 a.m. and 12:12 p.m., 27 key business files were accessed in serial fashion from Thompson’s computer. These files could not have been individually reviewed within the 23 minutes Thompson accessed them all.

58. The confidential documents accessed by Thompson included the following:

- (a) templates detailing how Xantrex builds its fully loaded product costs for new products in development which demonstrate how to undercut Xantrex on pricing, and/or learn how to make a new product efficiently;

- (b) internal Powerpoint presentation detailing the phase gates for Xantrex's product development process, consisting of institutional knowledge developed over a long period of time and at a significant cost to Xantrex;
- (c) a multi-page flow chart that has taken years to compile detailing Xantrex's product development process, phase gates and requirements for each phase.
- (d) an internal document describing how engineering should estimate and control new product costs (for new products in development) which could be used by a competitor to beat Xantrex's pricing and profit margins.

59. Most of the 27 files accessed by Thompson had been located in a folder named "Islanding" located on the desktop of Thompson's computer. The folder itself was still present on Thompson's desktop, but the contents of the folder had been deleted and could no longer be accessed.

60. Thompson's "My Recent Documents" folder also showed that on August 14, 2007, in a span of three minutes between 8:22 a.m. and 8:25 a.m., Thompson accessed three additional confidential Xantrex documents, including the *June 2007 Program and Engineering Review.ppt*. This document is particularly sensitive because it contains information regarding the company's priorities in terms engineering resources dedicated to particular product lines – only two regular employees had access to the document at the time Thompson left.

61. The links to the above documents indicated that at the time that they were last accessed, the documents were located on the desktop of Thompson's laptop. However, when Thompson turned his computer over to Xantrex on his last day, the documents were no longer present on the computer.

62. Upon information and belief, and given the in-depth nature of the files accessed by Thompson on August 13th and 14th, *i.e.*, full length documents of Xantrex's highly confidential business trade secrets and the rapid speed with which they were accessed, the documents were downloaded and/or transferred to an external location such as a removable CD or DVD or a USB Drive. Deletion of the files viewed prior to Thompson's return of the laptop is also consistent with such an attempt.

63. There was no legitimate Xantrex business reason to delete Xantrex files from the laptop Xantrex had assigned to Thompson nor was there any legitimate reason to transfer such files to an external location.

64. The review of the "My Recent Documents" folder on Thompson's computer further revealed that on August 17, 2007 (seven days prior to his ultimate departure from Xantrex), Thompson accessed another Xantrex document, *CONSOLIDATED_ROADMAPS_2007-07-16 Excel 97-2003.xls*. This is an extremely sensitive and confidential internal document that contains Xantrex's entire product development plans through to 2010. This document contains detailed, strategic product roadmaps for Xantrex's solar business and all of Xantrex's markets.

65. Finally, the "My Recent Documents" folder revealed that on August 21, 2007, Thompson accessed a file pertaining to Xantrex's ongoing work with Delta, a subcontractor, to manufacture "single-phase" inverters to augment Xantrex's inverter product line and contains a design evaluation of a prototype supplied by Delta. The document accessed by Thompson contains detailed descriptions and pictures of the prototype, along with comments regarding

mechanical product design issues. At the bottom of each of the 17 pages of the document is a notice in bold font that reads: “This document is Xantrex company confidential.”

66. All of the documents described above that were accessed by Thompson are key, if not the key proprietary trade secrets documents belonging to Xantrex and which are protected from disclosure to third parties.

E. Thompson’s Attempted Cover Up

67. Thompson returned his company-issued Blackberry and laptop computer to the IT Department of Xantrex on August 23, 2007. The Blackberry was broken beyond repair. The laptop case was cracked and the laptop would not start up. Thompson advised the IT Department that his son had accidentally spilled water on the laptop while he was driving to work that day.

68. The IT Department removed the hard drive from Thompson’s laptop and configured it as an external hard drive for another computer in the IT area in order to enable Thompson to complete work that he stated he needed to do. Thompson worked on this computer within the IT area for a couple of hours and then left, leaving the hard drive in the possession of IT.

69. The normal practice of Xantrex’s IT Department upon return of a company-issued laptop is to take an image of the hard drive of the laptop once it is returned by the departing Xantrex employee. This practice was followed in the present case and an image of the hard drive of the laptop assigned to Thompson was made.

70. A service call was placed with Dell Canada as there was extensive damage to the laptop. Dell dispatched a Unisys repair technician to Xantrex to carry out the repairs. This is

normal practice. Three separate dispatches were required in this instance to replace the LCD, Motherboard, and chassis.

71. The level of damage sustained by Thompson's laptop is inconsistent with simple water damage. Thompson's story cannot explain the damage that had been done to the case which appeared to be from intentional abuse. The damage to Thompson's Blackberry also appeared to be the result of intentional abuse.

72. The image of Thompson's laptop hard drive reveals that the contents of the Windows folder on the original hard drive were either deleted or were corrupted prior to the return of the laptop.

73. The examination of the image of Thompson's computer hard drive revealed that he had downloaded a hard drive scrubbing program that allows a person to delete information on a computer named "Complete Cleanup" from the Internet on August 22, 2007, two days before his departure.

74. "Complete Cleanup" is a shareware program available at the website <http://www.softdd.com>. The program description states that one of the functions of the Complete Cleanup utility is to allow for "secure file wiping, so the cleaned files cannot be recovered at a later time." This program is not used by Xantrex, issued to its employees or supported by Xantrex's IT department.

75. There is no legitimate Xantrex business reason for Thompson to have "clean swept" his computer before turning it back in.

III. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF (Breach of Contract Against Thompson)

76. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

77. Thompson was an employee of Xantrex until August 24, 2007.

78. As part of the Employment Contract, Thompson agreed to maintain all Xantrex trade secrets confidential and further agreed not to work for a Xantrex competitor anywhere in the world for one year from the date of his departure from Xantrex. The confidentiality provision remains in effect unless and until the confidential information and documents learned or obtained by Thompson become available to the public by means other than breach of Thompson's agreement. The non-compete provision would preclude working for a competitor until August 24, 2008.

79. Thompson was also bound to a Code of Conduct, which governed the dissemination and use of Xantrex's confidential and proprietary information while he was employed at Xantrex and after termination of employment.

80. Thompson breached the Employment Contract and Code of Conduct by: (a) going to work for direct competitor of Xantrex within one year of the end of his employment with Xantrex; (b) obtaining, using and disclosing Xantrex's confidential and proprietary information for purposes other than Xantrex business, including assisting Advanced Energy; and (c) performing services for Advanced Energy while still employed by Xantrex.

81. Thompson's breaches are causing severe irreparable injury to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the

marketplace, for which there is no adequate remedy at law. In the alternative, such activities are directly and proximately causing significant damages to Xantrex in an amount to be proved at trial.

SECOND CLAIM FOR RELIEF
(Violation of the Colorado Uniform Trade Secrets Act CRS 7-74-101 *et seq.*
Against Thompson)

82. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

83. Xantrex is one of a limited number of companies competing in the Inverter Technology and Charge Controller market. As a pioneer and leader in this industry, Xantrex has spent a considerable sum of money, time, and energy in research and development and forming its policies, practices, procedures and strategies for future product development and marketing.

84. The information and data maintained by Xantrex as result of these efforts are not generally known to the outside public.

85. The fact that this information and data is kept secret at Xantrex allows Xantrex to keep an edge on its competitors and flourish in the market place.

86. Xantrex has made all reasonable efforts to keep this information and data secret and prevent them from disclosure outside of Xantrex.

87. Thompson accessed and used Xantrex information regarding its business models, marketing, and engineering specifications to formulate competitive Advanced Energy plans while he was still employed at Xantrex.

88. Thompson, just prior to leaving Xantrex, accessed at least twenty-five highly confidential and trade secret competitive files, and either saved them to an external source such

as a CD or DVD, and/or emailed them to his and his wife's personal email accounts. There was no business justification for Thompson to access these files.

89. Upon information and belief, Thompson has and continues to use these confidential Xantrex documents in his new employment at Advanced Energy.

90. As Thompson was an executive level employee, he knew off-hand much, if not all, of Xantrex's competitive information regarding its business which would be valuable to any competitor of Xantrex. In his new position at Advanced Energy, identical to the position he held at Xantrex, Thompson can use his knowledge of Xantrex's trade secret information combined with the documents he physically took from Xantrex to unlawfully compete.

91. Thompson will inevitably disclose and use the valuable Xantrex information in the course of his employment position with Advanced Energy because he is working with the near-exact same technologies in the same type of position. This likelihood of inevitable disclosure, resulting from Thompson's intentional violation of his Employment Contract, constitutes threatened disclosure of trade secrets.

92. Absent Thompson's unjustified, intentional, wrongful and threatened taking and use of Xantrex's confidential and proprietary information, Xantrex would maintain the confidentiality of its business practices, processes and strategies and protected its trade secrets.

93. Thompson's activities, current and threatened, are causing severe irreparable injury to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the marketplace, for which there is no adequate remedy at law. In the alternative, such

activities are directly and proximately causing significant damages to Xantrex in an amount to be proved at trial.

THIRD CLAIM FOR RELIEF
(Tort of Intentional Interference With Existing Contract Against Advanced Energy)

94. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

95. Defendant Thompson had a valid employment contract with Xantrex that governed, in part, the one year period after employment. This agreement, inter alia, proscribed Thompson from working for a competitor of Xantrex within one year after his employment ended at Xantrex and from disseminating or disclosing confidential and proprietary Xantrex information at any time.

96. Advanced Energy is aware of this binding contract and upon information and belief, was aware of it in July, 2007 and no later than the date Thompson joined Advanced Energy.

97. Advanced Energy intentionally procured Thompson's breach of his binding contract by employing Thompson and obtaining Xantrex's confidential and proprietary information from Thompson and using it to further its own business interests.

98. Advanced Energy had and has no justification for the procurement of these breaches.

99. Advanced Energy's conduct was with knowing, intentional, willful, and wanton disregard of Xantrex's existing contractual relationships.

100. Thompson's breaches are causing severe irreparable injury to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the

marketplace, for which there is no adequate remedy at law. In the alternative, such activities are directly and proximately causing significant damages to Xantrex in an amount to be proved at trial.

FOURTH CLAIM FOR RELIEF
(Common Law Conversion Against Thompson and Advanced Energy)

101. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

102. While employed at Xantrex, Thompson had access to Xantrex's confidential and proprietary information, including policies, practices, guidelines, procedures, and strategic plans for future product development and marketing.

103. These items were to be kept confidential and secret to Xantrex.

104. Thompson did knowingly take these items from Xantrex and use them for his own and Advanced Energy's benefit or otherwise provide them to Advanced Energy in total disregard of Xantrex's rights.

105. This unlawful taking and giving of Xantrex's confidential and proprietary information is causing severe irreparable injury to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the marketplace, for which there is no adequate remedy at law. In the alternative, such activities are directly and proximately causing significant damages to Xantrex in an amount to be proved at trial.

FIFTH CLAIM FOR RELIEF
(Breach Of Fiduciary Duty Against Thompson)

106. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

107. Thompson was an employee of Xantrex until August 24, 2007, holding the position of Vice President of Engineering and Product Development. Thompson was also an Officer of Company, which is publicly traded on the Toronto Stock Exchange.

108. As an employee and Officer Xantrex, Thompson owed a fiduciary duty to Xantrex including the duty of loyalty.

109. While still employed at Xantrex, Thompson actively accessed and used Xantrex confidential and proprietary information for his own benefit and for the benefit of Advanced Energy, a competitor. Thompson further consulted with Advanced Energy about a competing product including how to improve and market that product. These actions were in breach of the duties owed to Xantrex by Thompson.

110. Thompson's breach of his fiduciary duty to Xantrex caused damage to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the marketplace in an amount to be proved at trial.

SIXTH CLAIM FOR RELIEF
(Aiding And Abetting Breach Of Fiduciary Duty Against Advanced Energy)

111. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

112. Thompson was an employee of Xantrex until August 24, 2007, holding the position of Vice President of Engineering and Product Development. Thompson was also an Officer of Company, which is publicly traded on the Toronto Stock Exchange.

113. As an employee and Officer Xantrex, Thompson owed a fiduciary duty to Xantrex including the duty of loyalty.

114. While still employed at Xantrex, Thompson actively accessed and used Xantrex confidential and proprietary information for his own benefit and for the benefit of Advanced Energy, a competitor. Thompson further consulted with Advanced Energy about a competing product including how to improve and market that product. These actions were in breach of the duties owed to Xantrex by Thompson.

115. Advanced Energy knowingly and actively participated in Thompson's actions in breach of his duties owed to Xantrex.

116. Thompson's breach of his fiduciary duty to Xantrex with knowledge and participation by Advanced Energy caused damage to Xantrex, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the marketplace in an amount to be proved at trial.

SEVENTH CLAIM FOR RELIEF
(Violation Of The Computer Fraud And Abuse Act 18 U.S.C. § 1030 *et seq.*
Against Thompson and Advanced Energy)

117. Xantrex incorporates the foregoing paragraphs as if fully set forth herein.

118. While employed at Xantrex, Thompson had access to and used Xantrex's computers, which were connected to Xantrex's secure intranet and the internet. This intranet contained Xantrex confidential and proprietary information that was only available to Xantrex employees. Thompson further had access to highly restricted files and documents which were only available to limited number of high level employees within Xantrex.

119. These computers, attached to the Internet (or World Wide Web) are and were used in interstate commerce.

120. Upon information and belief, Thompson knew that he was leaving Xantrex for Advanced as early as July, 2007.

121. In July and August, 2007, Thompson did knowingly access the Xantrex intranet, via a Xantrex computer, without authorization, and/or exceeded his authority to access such intranet to retrieve, download, or otherwise attain Xantrex confidential and proprietary information for the purpose of using the information for his personal benefit and transmitting such information to Advanced Energy.

122. Upon information and belief, in July and August 2007, Advanced Energy asked or otherwise requested in July and August, 2007 that Thompson provide comments on, input into, or advice on Advanced Energy's product that is in direct competition with Xantrex.

123. Upon information and belief, this request was made with the knowledge and belief that Thompson would use Xantrex computers to access information on Xantrex computers exceeding his authorization or without authorization or in violation of his duties to and agreements with Xantrex to comply with the request.

124. Upon information and belief, Thompson did knowingly transmit, give, offer, or otherwise provide such information to Advanced Energy without the authority or authorization of Xantrex.

125. As a result of this unauthorized access and/or unauthorized exceeding of access and transmission of the above information, Xantrex has and continues to suffer direct and proximate losses and/or damages.

126. As a result of this unauthorized access and/or unauthorized exceeding of access and transmission of the above information, which Advanced Energy directed, assisted, aided

and/or abetted, Xantrex is suffering irreparable harm, including in the form of loss and diminution of its competitive positions in the marketplace, loss of its ability to offer unique products, and lost opportunities to capitalize on its status in the marketplace, for which there is no adequate remedy at law. In the alternative, such activities are directly and proximately causing significant damages to Xantrex in an amount to be proved at trial.

IV. PRAYER FOR RELIEF

WHEREFORE Xantrex requests that this Court enter judgment in its favor granting the following relief:

1. Enter an Order, preliminarily and permanently enjoining Thompson and Advanced Energy, including its officers, directors, employees, agents, affiliates, subsidiaries, parents, successors, representatives and all persons acting or claiming to act on behalf of the individual Defendant or Advanced Energy or Advanced Energy's direction, from disclosing, revealing, using, showing, or otherwise disseminating any and all Xantrex trade secrets; and further enjoining Thompson from working in the Inverter Technology and Charge Controller field at Advanced Energy, or any capacity competitive to his past position at Xantrex, for a period of one year;
2. Enter judgment in favor of Xantrex and against all Defendants, jointly and severally, for damages, including punitive damages, in an amount to be determined at trial;
3. Enter judgment in favor of Xantrex and against all Defendants, jointly and severally, for pre-judgment interest, as provided by law;

4. Enter judgment in favor of Xantrex and against Defendants, jointly and severally, for its reasonable costs and attorneys' fees, as provided by statute or otherwise as provided by law; and

5. Award such other and further relief as this Court deems just and proper.

V. JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Xantrex Technology, Inc. hereby demands a trial by jury of all issues so triable.

Respectfully submitted this 5th day of November, 2007.

s/ Gregory S. Tamkin _____

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