

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

G.W. ARU, LLC, AND COCHISE  
TECHNOLOGY, LLC

Plaintiffs,

v.

W.R. GRACE & CO.-Conn,

Defendant.

Civ. No. 1.22-cv-02636-JKB

JURY TRIAL DEMAND

**DEFENDANT W.R. GRACE & CO.-CONN.'S ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTERCLAIMS TO PLAINTIFFS' COMPLAINT**

Defendant W.R. Grace & Co.-Conn ("Grace") files this Answer, Affirmative Defenses, and Counterclaims to Plaintiffs G.W. Aru, LLC ("Aru") and Cochise Technology, LLC's ("Cochise") (collectively, "Plaintiffs") Complaint. Grace denies all allegations and characterizations in Plaintiffs' Complaint unless expressly admitted in the following paragraphs.

**SUMMARY OF THE CASE<sup>1</sup>**

1. Grace admits that the Complaint is styled as an action for willful patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code. Grace admits that the Complaint purports to assert a patent in the field of catalysts/promoters for petroleum refining. Grace denies all remaining allegations in this paragraph.

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<sup>1</sup> For consistency, Grace uses the same headings in its Answer as Plaintiffs used in the Complaint. In so doing, Grace makes no express or implied admission.

2. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

3. Grace admits that Grace's website contains language "The World Leader in Process Catalysts" and "Talent | Technology | Trust," and that Aru shared with Grace that it had a patent pending related to certain technology. Grace denies all remaining allegations in this paragraph.

4. Grace admits that it had a joint marketing arrangement with Aru before Plaintiffs filed this lawsuit. Grace admits that it increased prices for all companies, including Aru, based on the change in general market price. Grace admits that it developed the Optimized CP®P product in or around December 2020. Grace denies all remaining allegations in this paragraph.

5. Grace admits only that it intended to continue the collaboration with Aru before Plaintiffs filed this lawsuit. Grace denies all remaining allegations in this paragraph.

6. Grace admits that it started working on a distributor agreement with Aru in or around early 2022 and sent the finalized agreement to Aru on or around September 20, 2022. Grace admits that Mr. Jeff Balko is Grace's Vice President for Sales. Grace admits that one of its customers, Marathon Petroleum Company LP ("Marathon"), once asked Grace about the article concerning CO promoter technology development (the "PTQ Article"). Grace denies all remaining allegations in this paragraph.

7. Denied.

8. Grace admits only that the Complaint is styled as such for Plaintiffs to seek maximum compensatory damages and attorney fees. Grace denies the remaining allegations in this paragraph.

## **PARTIES**

9. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

10. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

11. Admitted.

## **JURISDICTION AND VENUE**

12. Admitted.

13. Admitted.

14. Grace admits that venue is proper in this District under 28 U.S.C. § 1400(b). Grace admits that it has a regular and established place of business in this District. Grace denies all remaining allegations in this paragraph.

## **BACKGROUND OF THE PATENTED TECHNOLOGY**

### **Most Gasoline and Other Petroleum Products Are Made by FCC Processes<sup>2</sup>**

15. Grace admits that FCC processes are used in petroleum refineries to convert crude oils into gasoline and other products. Grace admits that additives such as CO to CO<sub>2</sub> combustion promoters play a role in FCC processes. Grace denies the remaining allegations in this paragraph.

16. Admitted.

17. Admitted.

18. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

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<sup>2</sup> While Grace has adopted the sub-headings in this section set forth in the Complaint, Grace denies any allegations set forth in the sub-headings.

**Regeneration of FCC Catalyst  
Creates Pollutants and Damaging Afterburn**

19. Admitted.

20. Admitted.

**CO to CO<sub>2</sub> Combustion Promoters  
Reduce Pollutant Emissions and Afterburn**

21. Grace admits that CO to CO<sub>2</sub> combustion promoters can help control afterburn and reduce emissions from FCC facilities. Grace lacks knowledge or information sufficient to form a belief as to the truth of the additional allegations in this paragraph, and therefore denies all of them.

22. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

23. Grace admits that CO to CO<sub>2</sub> combustion promoters are made of porous support particles impregnated with noble metals, such as platinum and palladium. Grace lacks knowledge or information sufficient to form a belief as to the truth of the additional allegations in this paragraph, and therefore denies all of them.

24. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

**CO Oxidation Effectiveness Historically  
Outweighed Noble Metal Costs**

25. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

26. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

27. Grace admits that its CP® CO to CO<sub>2</sub> combustion promoter is intended to have a uniform distribution of noble metal throughout the promoter. Grace denies all remaining allegations in this paragraph.

**Prevailing Wisdom Deemed Homogeneous  
Noble Metal Distribution Necessary**

28. Grace admits that a 2021 paper that purports to be by researchers at BASF Corporation is attached to the Complaint as Exhibit E, and that paragraph 28 accurately quotes the paper. Grace denies the remaining allegations in this paragraph.

29. Grace admits that United States Provisional Patent Application No. 63/086,149 filed by Grace on October 1, 2020 is attached to the Complaint as Exhibit F. Grace denies the remaining allegations in this paragraph.

30. Grace admits that an article published in the April 27, 2009 version of Oil & Gas Journal titled “Marathon refineries employ new FCCU CO combustion promoter” is attached to the Complaint as Exhibit G. Grace denies the remaining allegations in this paragraph.

31. Grace admits that United States Patent No. 6,165,933, titled “Reduced NO<sub>x</sub> combustion promoter for use in FCC processes,” which was issued on December 26, 2000 is attached to the Complaint as Exhibit H. Grace denies the remaining allegations in this paragraph.

**The Invention of the ‘864 Patent Yield  
Surprising Results with a Large Market Opportunity**

32. Denied.

33. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

34. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

## **PATENT-IN-SUIT**

### **Issuance & Prosecution<sup>3</sup>**

35. Grace admits that United States Patent No. 11,224,864 (the “’864 Patent”) is titled “CO to CO<sub>2</sub> combustion promoter” and was issued by the USPTO on January 18, 2022, naming Guido William Aru as the inventor and naming Cochise as assignee. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

36. Grace admits that the ’864 Patent claims priority to U.S. Application No. 17/043,031, which is a National Phase Entry of International Application No. PCT/US2019/024742 (“PCT Application”), filed on March 29, 2019, which designates the United States and claims the benefit under 35 U.S.C. § 119(e) of Netherlands Application No. 62/651,295, filed on April 2, 2018. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

37. Admitted.

### **Grace’s Knowledge of the ’864 Patent**

38. Grace admits that at some point prior to the issuance of the ’864 Patent, Mr. Aru notified Grace that he had a patent application pending. Otherwise, Grace denies all allegations in this paragraph.

39. Grace admits that Mr. Michael Hawkins is Grace’s Regional Marketing Manager of the Americas—FCC. Grace denies the remaining allegations in this paragraph.

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<sup>3</sup> While Grace has adopted the sub-headings in this section set forth in the Complaint, Grace denies any allegations set forth in the sub-headings.

### **Invention Summary**

40. Grace admits that in conventional CO to CO<sub>2</sub> combustion promoters the intended design is for noble metal to be distributed homogenously through the support particles. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

41. Grace admits that FIG. 2 of the '864 Patent is reproduced in this paragraph. Grace denies all remaining allegations in this paragraph.

42. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

43. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

44. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

### **PARTIES' RELATIONSHIP**

#### **Cooperation Regarding SO<sub>x</sub> Additives<sup>4</sup>**

45. Grace admits that Aru offered FCC additives in 2018, and that SO<sub>x</sub> additives remove sulfur oxides from FCC air emissions. Otherwise, Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

46. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

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<sup>4</sup> While Grace has adopted the sub-headings in this section set forth in the Complaint, Grace denies any allegations set forth in the sub-headings.

47. Grace admits that Dr. Scott Purnell has a Ph.D. in Chemical Engineering, that he formerly was Grace's Vice President of Marketing for Refining Technologies, and that he currently is Grace's Vice President of R&D for Refining Technologies. Grace admits that Dr. Purnell previously knew of Mr. Aru as of August 2018. Otherwise, Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

48. Grace admits that Dr. Purnell met Aru at an industry conference in Park City, Utah in September 2018. Grace admits that Aru approached Dr. Purnell during the meeting and afterwards about SOx reduction technologies in general, and about possible collaboration with Grace. Grace denies all remaining allegations in this paragraph.

49. Grace admits that Dr. Purnell had conversations with Aru regarding SOx technologies in general and possible collaboration between Grace and Aru at a conference in or around October 2018. Grace denies all remaining allegations in this paragraph.

50. Grace admits that Dr. Purnell had conversations with Aru regarding SOx technologies in general and possible collaboration between Grace and Aru. Grace admits that Dr. Purnell arranged a meeting between Aru and Mr. Mark Shelnitz to discuss issues related to Johnson Matthey Process Technologies, Inc. ("JMPTI"). Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

51. Grace admits that Dr. Purnell had conversations with Aru regarding SOx technologies in general and possible collaboration between Grace and Aru. Grace denies all remaining allegations in this paragraph.

### **Supposed Expansion of the Relationship**

52. Grace admits that Dr. Purnell had conversations with Aru regarding SOx technologies in general and possible collaboration between Grace and Aru. Grace denies all remaining allegations in this paragraph.

53. Grace admits that Mr. Bob Riley is Grace's Marketing Director. Grace admits that Mr. Riley served as the primary contact of Aru at Grace in 2019. Grace admits that Mr. Nathan Ergonul is Grace's Vice President and Managing Director of ART. Grace admits that Dr. Purnell is Grace's Vice President of Research and Development. Grace admits that there were conversations between Grace and Aru regarding possible collaboration. Grace denies all remaining allegations in this paragraph.

54. Grace admits that a confidentiality agreement between Grace and Aru was executed in or around April 2019. Grace denies all remaining allegations in this paragraph.

55. Grace admits that there were multiple communications between Grace and Aru regarding distributorship in FCC additives and profit-sharing models in early 2019. Grace denies all remaining allegations in this paragraph.

56. Grace admits that there had been discussions regarding a distributorship agreement on FCC additives between Grace and Aru, and that Aru would be able to offer Grace products to customers. Grace denies all remaining allegations in this paragraph.

### **Disclosures Regarding Aru's Patent-pending CO to CO<sub>2</sub> Combustion Promoters**

57. Grace admits that Dr. Purnell heard about the existence of Aru's pending patent application prior to the issuance of the '864 Patent. Grace denies all remaining allegations in this paragraph.

58. Grace admits that there had been conversations between Grace and Aru regarding distributorship collaboration of FCC additives, and that Mr. Aru visited Grace's headquarters in or around November 2019. Grace denies all remaining allegations in this paragraph.

59. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

60. Grace admits that Mr. Bob Riley had conversations with Aru regarding possible collaboration between Grace and Aru. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

**Preblending Combustion Promoters with  
Fresh Catalyst Increases the Potential Market**

61. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

62. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

63. Grace denies all allegations in this paragraph.

**Divergent Trajectories Through COVID**

64. Grace admits that Grace's 2020 Annual Report and Form 10-K noted a decline of 17.89% in global refining catalysts sales during COVID. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

65. Grace admits that Grace's 2020 Annual Report and Form 10-K noted that the CP®P product is "designed to enable refiners to control carbon monoxide emissions without increasing nitrogen oxides." Grace denies all remaining allegations in this paragraph.

**Joint Marketing Agreement for Grace's Products**

66. Grace admits that with Grace's oral agreement, Aru began offering sales of Grace's products to refining companies in 2019. Grace denies all remaining allegations in this paragraph.

67. Grace admits that Ms. Julie Ellis was previously Sales Operations Director, FCC at Grace and is now Grace's Vice President of Business Management—Refining. Grace admits that Aru sold ZSM-5 additives to customers. Grace denies all remaining allegations in this paragraph.

68. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

69. Grace admits that Mr. Riley was made aware of the Innovative Partnership Award that Marathon provided to Mr. Aru in or around September 2020. Grace lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

70. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

71. Grace denies the allegations in this paragraph.

**Grace Launches Copycat Products and Uses Unrelated Litigation  
As a Pretext for Terminating Joint Marketing Agreement**

72. Grace admits that it launched the Optimized CP®P product in or around December 2020. Grace denies all remaining allegations in this paragraph.

73. Grace admits that on December 23, 2020, Johnson Matthey Process Technologies, Inc. ("JMPTI"), a division of John Matthey, filed a lawsuit in the United States District Court for the Southern District of Georgia, Case No. 4:20-cv-00322-WTM-CLR, naming as defendants a former JMPTI employee, Katherine J.M. Hovey, and Aru, accusing them of trade secret misappropriation. Grace admits that Mr. Aru notified Mr. Riley of this case. Grace lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies all of them.

74. Grace admits that Aru would provide updates to Mr. Riley on the JMPTI lawsuit. Grace denies all remaining allegations in this paragraph.

75. Grace admits that it intended to terminate the oral agreement with Aru due, in part, to the JMPTI lawsuit. Grace denies all remaining allegations in this paragraph.

76. Grace admits that its decision to terminate the oral agreement was based, in part, on the JMPTI lawsuit. Grace denies all remaining allegations in this paragraph.

77. Grace admits that Vertellus Holdings LLC (“Vertellus”) brought a lawsuit (“the Vertellus litigation”) against Grace alleging misappropriation of trade secrets, breach of contract, correction of inventorship for two patents, and various related state law claims. Grace denies all remaining allegations in this paragraph.

78. Grace lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies all of them.

79. Grace admits that its motion for summary judgment in the Vertellus litigation was denied by Judge Gallagher dated August 11, 2021, in the District of Maryland Case No. 1:18-cv-03298-SAG. Grace denies all remaining allegations in this paragraph.

80. Grace admits that Grace and Vertellus notified the Court of a settlement on September 9, 2022, and moved to stay the proceedings pending negotiation of a settlement agreement. Grace denies all remaining allegations in this paragraph.

#### **Grace’s Retaliation Against Aru**

81. Grace admits that notwithstanding the termination of the oral agreement due to the JMPTI lawsuit, Grace continued to offer products to Aru. Grace admits that it increased the price

of its products to all customers, including Aru, due to an increase in general market prices and increased costs. Grace denies all remaining allegations in this paragraph.

82. Grace admits that it intended to terminate the oral agreement with Aru due to the JMPTI lawsuit. Grace denies all remaining allegations in this paragraph.

83. Grace admits that during 2021, Aru updated Mr. Riley on the JMPTI lawsuit. Grace denies all remaining allegations in this paragraph.

84. Grace admits that in or around August 2021, Mr. Riley notified Mr. Aru that he was given a new position in Grace and that Mr. Michael Hawkins would become the new Regional Marketing Manager of the Americas—FCC. Grace admits that Mr. Hawkins also became the principal contact for Aru at Grace. Grace denies all remaining allegations in this paragraph.

85. Grace admits that it intended to resume collaboration with Aru after the JMPTI lawsuit was dismissed, and that there were conversations on such collaboration. Grace denies all remaining allegations in this paragraph.

86. Grace denies the allegations in this paragraph.

**Grace Dangles Renewed Collaboration While Copying Aru's Products**

87. Grace admits that it intended to resume collaboration with Aru after the JMPTI lawsuit was dismissed, and that there were conversations on such collaboration. Grace denies all remaining allegations in this paragraph.

88. Grace denies all remaining allegations in this paragraph.

89. Grace denies all allegations in this paragraph.

90. Grace lacks knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph, and therefore denies all of them.

91. Grace admits that in early 2022 it was working to resume collaboration with Aru, and that there were conversations on such collaboration. Grace denies all remaining allegations in this paragraph.

92. Grace admits that in early 2022 it was working to resume collaboration with Aru, and that there were conversations on such collaboration. Grace denies all remaining allegations in this paragraph.

**Grace's Announcement of its Copycat Products  
Admits Infringement, Coopts Aru's Business Case, and Denigrates Aru**

93. Grace admits an article titled "CO promoter technology development" published in the Q2 2022 edition of Petroleum Technology Quarterly ("PTQ") and that Mr. Colin Baillie authored the article. Grace admits that a copy purporting to be the PTQ article is attached to the Complaint as Exhibit C. Grace admits that Mr. Baillie was the product segment manager for Grace at the time. Grace denies all remaining allegations in this paragraph.

94. Grace admits that the PTQ Article contains the language quoted by Plaintiffs. Grace denies all remaining allegations in this paragraph.

95. Denied.

96. Denied.

**COUNT I  
PATENT INFRINGEMENT  
35 U.S.C. § 271(a)**

97. Grace re-alleges and incorporates by reference its responses to all preceding paragraphs of the Complaint.

98. Denied.

99. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, however, Grace denies all allegations in this paragraph.

100. Grace admits that Claim 1 of the '864 Patent recites the language as quoted by Plaintiffs. Grace denies all remaining allegations in this paragraph.

**“A CO to CO<sub>2</sub> combustion promoter”**

101. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, Grace denies all allegations in this paragraph.

**“microsphere sized porous particles, each microsphere sized porous particle having a diameter of less than 1 mm, and independently comprising”**

102. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, Grace denies all allegations in this paragraph.

**“silica, alumina, or mixtures thereof”**

103. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, Grace denies all allegations in this paragraph.

**“one or more Group VIII noble metals distributed in the particle as an eggshell such that a higher concentration of the one or more Group VIII noble metals is present in the outer region of the microsphere sized porous particle as compared to the concentration of the one or more Group VIII noble metals in the centre of the microsphere sized porous particle”**

104. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, Grace denies all allegations in this paragraph.

105. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, Grace denies all allegations in this paragraph.

106. Grace denies that it infringes, and denies that it willfully infringes. Beyond that, this paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, however, Grace denies all allegations in this paragraph.

107. This paragraph sets forth conclusions of law to which no response is required. To the extent a response is required, however, Grace denies all allegations in this paragraph.

### **PRAYOR FOR RELIEF**

Grace denies the underlying allegations of Plaintiffs' Prayer for Relief against Grace, denies that Plaintiffs are entitled to any relief whatsoever, and requests that the Court deny all relief to Plaintiffs, enter judgement in favor of Grace, and award Grace its attorneys' fees as the prevailing party in the action.

### **DEMAND FOR JURY TRIAL**

Grace is not required to provide a response to Plaintiffs' request for a trial by jury.

### **AFFIRMATIVE DEFENSES**

Grace's affirmative defenses are listed below. Grace reserves the right to amend this Answer to add additional affirmative defenses, including allegations of inequitable conduct, and/or any other defenses currently unknown to Grace, as they become known throughout the course of discovery in this action. Assertion of a defense is not a concession that Grace has the burden of proving the matter asserted.

#### **First Affirmative Defense** **Non-Infringement**

Grace has not infringed and is not infringing—either directly, contributorily, or by inducement, either literally or under the doctrine of equivalents, or otherwise—a valid and enforceable claim of the '864 Patent.

#### **Second Affirmative Defense** **Invalidity**

The claims of the '864 Patent are invalid and/or unenforceable for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability specified in 35 U.S.C. §§ 101, 102, 103, 112, and/or 116, the non-statutory doctrine of double patenting, and the rules, regulations, and laws pertaining thereto.

**Third Affirmative Defense**  
**Prosecution History Estoppel and/or Disclaimer**

To the extent that Plaintiffs allege infringement under the doctrine of equivalents, Plaintiffs' alleged cause of action is barred, including, without limitation, by way of example, under the doctrine of prosecution history estoppel, disclaimer, claim vitiation, and/or recapture. By virtue of statements made, amendments made, and/or positions taken during the prosecution of the applications for the '864 Patent, and any application to which the '864 Patent claims priority, and in view of any statements made, amendments made and/or positions that Plaintiffs have taken or will take before the U.S. Patent and Trademark Office during, for example, reexamination or *inter partes* review. Plaintiffs are estopped from asserting that the '864 Patent covers or includes any of the accused products of Grace.

**RESERVATION OF RIGHTS**

Grace reserves all affirmative defenses available under Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and all other defenses, at law or in equity, that may exist or in the future become available based on discovery and further investigation of the case.

**COUNTERCLAIMS**

Grace asserts the following counterclaims against Plaintiffs:

**The Parties**

1. Counter-Plaintiff W.R. Grace & Co.-Conn ("Grace") is a company incorporated under the laws of Connecticut, whose headquarters is located at 7500 Grace Drive, Columbia, Maryland 21044.
2. Counter-Defendant G.W. Aru, LLC ("Aru") is a Colorado limited liability company. The founder of Aru, Mr. Guido Aru, is listed as the inventor of the '864 Patent.

3. Counter-Defendant Cochise Technology, LLC (“Cochise”) is a Colorado limited liability company. Cochise is listed as the assignee of the ’864 Patent.

**Jurisdiction and Venue**

4. This is an action for a declaration that each asserted claim of the ’864 Patent is not infringed and invalid. Accordingly, this Court has subject matter jurisdiction over Grace’s counterclaims under 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

5. An actual, substantial, and continuing controversy exists between Grace and Counter-Defendants that requires a declaration of Grace’s rights. Specifically, the controversy relates to the non-infringement and invalidity of the ’864 Patent and to Counter-Defendants’ right to threaten and/or maintain a suit against Grace for alleged infringement of the ’864 Patent.

6. This Court has personal jurisdiction over Counter-Defendants, because Counter-Defendants submitted themselves to this Court’s jurisdiction by initiating this lawsuit.

7. To the extent venue is proper for Counter-Defendants’ patent infringement claim, venue is proper for Grace’s counterclaims under 28 U.S.C. § 1391.

**Count I**  
**Declaratory Judgment of Non-Infringement of the’ 864 Patent**

8. Grace re-alleges and incorporates by reference all of its preceding responses and allegations as though fully set forth here.

9. This is an action for declaratory judgment of non-infringement of any and all claims of the ’864 Patent.

10. Grace has not infringed and does not infringe any claim of the ’864 Patent directly or indirectly, literally or equivalently, or willfully.

11. There is an actual controversy within the meaning of 28 U.S.C. §§ 2201 and 2202

between Grace and Counter-Defendants as to whether Grace has infringed or does infringe any claims of the '864 Patent.

12. Grace requests a judicial determination and declaration that Grace has not infringed and does not infringe any claim of the '864 Patent. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties.

**Count II**  
**Declaratory Judgement of Invalidity of the '864 Patent**

13. Grace re-alleges and incorporates by reference all of its preceding responses and allegations as though fully set forth here.

14. This is an action for declaratory judgment of invalidity of any and all claims of the '864 Patent.

15. The claims of the '864 Patent are invalid for failure to comply with one or more of the conditions and requirements for patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

16. There is an actual controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Grace and Counter-Defendants as to whether there are any valid claims of the '864 Patent.

17. Grace requests a judicial determination and declaration that the claims of the '864 Patent are invalid. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties.

**Attorneys' Fees**

18. This action qualifies as an exceptional case, supporting an award of reasonable attorneys' fees, costs, and expenses for Grace against Counter-Defendants under 35 U.S.C. § 285.

**Demand for Jury Trial**

19. Grace requests a trial by jury for all issues in this action so triable.

**Prayer for Relief**

20. Grace requests that this Court enter a judgment in its favor and against Counter-Defendants as follows:

- (a) A judgment in favor of Grace and against Counter-Defendants fully and finally dismissing with prejudice Counter-Defendants' Complaint or any other Amended Complaint Counter-Defendants may file in their entirety, with Counter-Defendants taking nothing by way of its claims;
- (b) A declaration that each of the claims of the '864 Patent is not infringed;
- (c) A declaration that each of the claims of the '864 Patent is invalid;
- (d) A declaration that this is an exceptional case under 35 U.S.C. § 285 and an award to Grace of its costs, attorney's fees, and expenses; and
- (e) Any other such relief for Grace as the Court deems just and proper.

Respectfully submitted,

**FISH & RICHARDSON P.C.**

Dated: December 22, 2022

By: /s/ Ahmed J. Davis

Ahmed J. Davis (Bar No. 17812)

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*Counsel for Defendant W.R. Grace & Co.-Conn.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 22, 2022, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

*/s/ Ahmed J. Davis*

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Ahmed J. Davis (Bar No. 17812)

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