

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

BEC Technologies, Inc.,

Plaintiff,

v.

James A. Raetz and  
Gregory J. Raetz,

Defendants.

---

Case No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff BEC Technologies, Inc., for its Complaint against defendants  
James A. Raetz and Gregory J. Raetz, alleges as follows:

**Parties**

1. Plaintiff BEC Technologies, Inc. ("BEC") is a Colorado corporation having a principal place of business at 3130 North El Paso, Colorado Springs, Colorado 80907. BEC makes and sells materials for use in air filters.
2. Defendant James A. Raetz is an individual residing at 15501 Snake Trail Road, Waseca, Minnesota 56093.
3. Defendant Gregory J. Raetz is an individual residing at 15501 Snake Trail Road, Waseca, Minnesota 56093.

4. Defendant James A. Raetz and defendant Gregory J. Raetz (collectively the "Raetzes") own and control the affairs of Point Source Solutions, Inc., a Minnesota corporation residing with the Raetzes at 15501 Snake Trail Road, Waseca, Minnesota 56093 ("PSS"). PSS is an *alter ego* of the Raetzes.
5. Through PSS, the Raetzes own United States Patent 7,892,326 and United States Patent 7,416,851 (the "Raetz patents"). Through PSS, the Raetzes have filed suit in this Court for alleged infringement of the Raetz patents by BEC and four of its customers. *Point Source Solutions, Inc., v. BEC Technologies, Inc., et al.*, Case 0:13-cv-01040-SRN-FLN (filed 05/30/13)(the "Action.").
6. BEC asked PSS to agree to joinder of the Raetzes in the Action as the real parties in interest. PSS refused, necessitating this separate action.

### **Claims**

#### ***Invalidity***

7. This claim for patent invalidity invokes the patent laws of the United States.
8. There is a case of actual controversy within the jurisdiction of the Court under the Declaratory Judgments Act. 28 U.S.C. § 2201(a).
9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
10. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

11. BEC reallege all averments made by BEC in the preceding paragraphs.
12. The patents in suit are based on a provisional patent application, which the Raetzes filed on September 3, 2004. The Raetzes assert that the claims of the patents in suit are entitled to this date. BEC disagrees, but it makes no difference as a practical matter.
13. The patent laws provide in part that the scope and content of prior art is determined as of one year prior to the earliest filing date that a patent owner legitimately can claim. 35 U.S.C. § 102(b). By the Raetzes' reckoning, that date is one year before their provisional filing -- September 3, 2003.
14. Any patent, publication, public use, offer for sale or sale that occurred before this critical date is prior art to the Raetz patents. There is a great deal of prior art meeting that description, and it thoroughly invalidates the Raetz patents not only under § 102(b), but also under several other sections of the patent laws, including but not limited to 35 U.S.C. §§ 102(a), 102(f) and 102(g).
15. The Raetz patents and the prior art relate to air quality, which has been an issue and a problem literally for centuries. Air is an odorless mixture of gas molecules. It can carry other molecules, including malodorous molecules and molecules of poisons like toluene and benzene. Air also can carry dangerous or irritating particles, including bacteria, viruses and pollen.

16. In 1992, a Colorado resident and chemist named Richard O. Kunz began experimenting with multi-purpose air filters. His goal was to create an air filter that would simultaneously capture particles and molecules. In 1992, Mr. Kunz conceived of and made air filters from a plastic non-woven cloth (or web) impregnated with finely-ground activated charcoal. The web carried an electrical charge and picked up particle-sized contaminants. The activated charcoal in the web absorbed molecular-sized contaminants.
17. Mr. Kunz memorialized his work in detail in patent applications filed in 1993 and 1994 and in a Declaration filed during prosecution in 1994. The 1993 patent application is attached as Exhibit A. The 1994 Declaration is attached as Exhibit B.
18. BEC was unable to obtain an allowance from the Patent Office of either of its applications. A principal impediment was the Tani patent. United States Patent 5,112,677. This patent was not cited during prosecution of the patents in suit. Had it been, the patents in suit would not have been allowed. Tani anticipates or renders obvious every claim of the patents in suit. The Tani patent is attached as Exhibit C and a claim chart comparing the disclosure of Tani to the claims of the patents in suit is attached as Exhibit D.
19. BEC was formed during prosecution of the Kunz patent applications. Its purpose was to commercialize the filter materials described in the Kunz patent applications and related materials. BEC decided to call

this filter material "Gray Matter," which it registered at a trademark.

BEC commenced operations in 1995, after the Kunz patent applications had gone abandoned.

20. Over the space of the next three years, BEC made Gray Matter<sup>®</sup> material in quantity and fabricated many discrete filters for specific end uses. Gray Matter<sup>®</sup> filters were made and installed for customers up and down the Colorado Front Range. Gray Matter<sup>®</sup> material was sold to other filter fabricators for much the same purpose in other locations. And Gray Matter<sup>®</sup> was described and promoted extensively on BEC-related websites and in printed materials. By 1998, BEC was an active, growing business.
21. BEC's early activities with Gray Matter<sup>®</sup> occurred well before the 2003 critical date. They necessarily invalidate the Raetz patents. The Raetzes' charges of infringement here -- directed specifically to Gray Matter<sup>®</sup> -- are flat-out admissions to that effect. The Raetzes are charging the prior art with infringement, and that is doom to any patent, putting aside that the Raetzes had full knowledge of BEC's work with Gray Matter<sup>®</sup> but never said a word about it to the Patent Office during eight years of patent prosecution directed *sub silentio* to Gray Matter<sup>®</sup>.
22. The success of BEC and the excellence of its products by 1998 was not lost on the Raetzes. In late 1998, the Raetzes placed two orders with BEC for components of Gray Matter<sup>®</sup>.

23. After that, the Raetzes became regular customers. Before the 2003 critical date, the Raetzes ordered \$14,000 worth of Gray Matter<sup>®</sup> material and components from BEC. The Raetzes promoted and used this material for a variety of public purposes, including installations in casinos and hospitals.
24. This activity by the Raetzes before the critical date is prior art to the patents in suit. In all reasonable likelihood, the Raetzes' activity fully anticipates every claim of the patents in suit, to say nothing of the fact that the Raetzes -- apparently out of a misplaced sense of self preservation -- did not disclose any of its activity with Gray Matter<sup>®</sup> to the Patent Office during prosecution of its patent applications.
25. It is inconceivable that the Raetzes' failure to tell the Patent Office about BEC and Gray Matter<sup>®</sup> was a product of memory loss. The Raetzes continued long after the critical date not only to work with Gray Matter<sup>®</sup> in quantity, but also to forge a business relationship with BEC for the distribution and sale of Gray Matter<sup>®</sup>.
26. In July 2003, shortly before the critical date and in contemplation of a distribution arrangement with BEC, the Raetzes signed a nondisclosure agreement with BEC that required the Raetzes to keep confidential any technical or marketing information they learned of from BEC about Gray Matter<sup>®</sup> or BEC's business. In December 1994, BEC offered the Raetzes an exclusive distribution agreement. The parties operated under this agreement until it was terminated in September 2005. There were many

reasons for the termination, but one of particular note was that BEC had heard from reliable sources that the Raetzes was talking openly about stealing BEC's Gray Matter® technology.

27. For the reasons stated above and other reasons to be pursued in this lawsuit, BEC avers that the patents in suit are invalid for their failure to comply with at least 35 U.S.C. §§ 102, 103 and 112. BEC respectfully requests declaration from the Court that the Raetz patents are invalid.

### ***Unenforceability***

28. This claim for patent unenforceability invokes the patent laws and regulations of the United States.
29. There is a case of actual controversy within the jurisdiction of the Court under the Declaratory Judgments Act. 28 U.S.C. § 2201(a).
30. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
31. Venue is proper in this District pursuant to 28 U.S.C. § 1391.
32. BEC realleges all averments made by BEC in the preceding paragraphs.
33. During the prosecution of the Raetz patents, the Raetzes withheld from the Patent Office an extensive body of anticipating work by BEC and another extensive body of anticipating work by the Raetzes themselves with assistance from BEC. Had this work been disclosed to the Patent Office,

the patents in suit would not have issued. It is difficult to imagine information more material.

34. The Raetztes withheld all the anticipating work with the specific intent to mislead the Patent Office into believing that it was examining the Raetztes' patent applications based on the best and closest prior art, when the opposite was in fact the truth. The Raetztes' deceptive conduct is unmistakable, and it borders on a certainty when certain conduct of the Raetztes in the Patent Office is considered.
35. In preparing their patent applications, the Raetztes copied extensively from scientific and commercial literature of BEC. A marked-up copy of the Raetztes' 2005 application is attached, together with the copied BEC literature in attached Exhibit F. The same analysis for the 2008 application would yield the same results. Despite the copying from BEC, there was no mention of BEC or Gray Matter<sup>®</sup>, which the Raetztes had of course bought from BEC rather than researched and produced for themselves.
36. The Raetztes also submitted to the Patent Office in an information disclosure statement a document of the Raetztes' that copied from BEC information. In particular, the Raetztes submitted a sales brochure attributable to the Raetztes. However, much of the material in the brochure came from BEC. A marked-up copy of the brochure is attached as Exhibit G, together with the copied BEC literature.

37. On information and belief, the Raetzes' sales brochure was not in fact the original sales brochure, but rather a one-off revision of the brochure to excise any information or references that might result in difficulties with the Patent Office. BEC has compared the Raetzes' Patent Office brochure to a version of the brochure that was received by BEC from the Raetzes in the ordinary course of business. The comparison is attached as Exhibit H, which also includes United States Patent No. 5,736,473 (the '473 patent) issued to Cohen, et al., and assigned to Kimberly-Clark Corp. One portion omitted from the second page of the Raetz brochure is a portion from Kimberly-Clark's literature describing an electret filtration media used in filter applications, which was protected by one more U.S. patents. It is believed that the '473 patent may be the one or more U.S. patents referenced in the omitted portion.
38. In the Patent Office, the Raetzes filed declarations that swore that they had invented the claimed subject matter. These declarations were false, and the Raetzes could not possibly have thought otherwise. The Raetzes knew that the Patent Office would rely upon those declarations, but the Raetzes did nothing to make the truth known. Then, during prosecution, the Raetzes cited art and argued with the Examiner about art that was of minor relevance compared to the years of commercial activity by the Raetzes and BEC that -- if cited -- would have caused the immediate, complete and final rejection of every claim in the Raetzes' applications.

39. By its acts and failures to act, the Raetzes committed inequitable conduct in the Patent Office in procuring issuance of their patents. And the Raetzes' misconduct is ongoing. The Raetzes has a third application pending in the Patent Office that covers essentially the same ground as its two issued patents. The Raetzes have made a false claim of inventorship and have not fairly disclosed to the Patent Office, among other things, the prior art of BEC and the Raetzes' own prior art conduct based on the prior art of BEC.
40. For the reasons stated above and other reasons to be pursued in this lawsuit, BEC avers that the patents in suit are unenforceable because of the Raetzes' multiple and aggravated failures to comply with their duty of disclosure in obtaining the patents in suit. BEC respectfully requests an order from the Court declaring that the patents in suit are unenforceable.

### ***Fraud***

41. This claim for fraud invokes the patent laws, regulations and common laws of the United States and the laws of Minnesota.
42. There is a case of actual controversy within the jurisdiction of the Court under the Declaratory Judgments Act. 28 U.S.C. § 2201(a).
43. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), 28 U.S. C. 1367 and the doctrine of pendant jurisdiction.
44. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

45. BEC realleges all averments made by BEC in the preceding paragraphs.
46. The Raetzes' infringement claims are barred by their fraud in obtaining and asserting the patents in suit.
47. When the Raetzes were prosecuting their patent applications in the Patent Office, the Raetzes were under a duty to disclose to the Patent Office all prior art known to the Raetzes that was material to examination of the patent applications by the Patent Office.
48. Yet the Raetzes did not do so, failing to cite an extensive body of anticipating work by BEC and another extensive body of anticipating work performed by the Raetzes themselves with assistance from BEC.
49. The Raetzes withheld all the anticipating work from the Patent Office because they knew full well that citation of this work would have kept the Raetzes from getting their patents.
50. The Patent Office could not have known of this misconduct, and it necessarily issued the Raetzes' patents in the mistaken belief that the Raetzes had met their duty of disclosure and cited all material prior art.
51. The Patent Office wasted its time and limited resources in examining the Raetzes' applications, and the pecuniary injury has now spread to the public to a degree that is not yet known in view of the Raetzes' fraudulent assertion of its fraud-tainted patents.
52. BEC can state with certainty that the Raetzes' fraudulent conduct has already cost it considerable time and money in responding to this lawsuit.

### ***Noninfringement***

- 53. This claim for patent noninfringement invokes the patent laws of the United States.
- 54. There is a case of actual controversy within the jurisdiction of the Court under the Declaratory Judgments Act. 28 U.S.C. § 2201(a).
- 55. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
- 56. Venue is proper in this District pursuant to 28 U.S.C. § 1391.
- 57. BEC realleges all averments made by BEC in the preceding paragraphs.
- 58. BEC seek a declaration from the Court that they have not infringed either of the patents in suit

### ***Tortious Interference***

- 59. This Court has subject matter jurisdiction pursuant to 28 U.S. C. 1367 and the doctrine of pendant jurisdiction.
- 60. Venue is proper in this District under 28 U.S.C. §§ 1391.
- 61. BEC realleges all averments made by BEC in the preceding paragraphs.
- 62. BEC has ongoing business relationships with the other defendants in the Action. Each of these business relationships has been in existence for several years, and BEC has expected that these relationships would continue on for the foreseeable future.

63. The Raetzes have been fully aware of BEC's business relationships with each of the defendant customers in the Action since 2005 at the latest, and the Raetzes have been aware of BEC's intent to maintain and nurture these relationships.
64. The Raetzes procured their plainly invalid and unenforceable patents for the purpose of disrupting the long-standing business relationships between BEC and each of the defendant customers in the Action.
65. The Raetzes filed the Action for the purpose of disrupting the long-standing business relationships between BEC and each of the defendant customers in the Action.
66. In addition, on information and belief, the Raetzes have been discussing its patents and this suit with filter users with the intent of persuading them to sign on as customers of the Raetzes rather than BEC, in some cases at the direct expense of BEC's growth efforts.
67. The Raetz patents were procured with subjective bad faith on the part of the Raetzes, as was the Action and the Raetzes' marketing efforts based on this lawsuit and other assertions of their patents.
68. The Raetz patents were procured with objective bad faith on the part of the Raetzes, as was the Action and the Raetzes' marketing efforts based on this lawsuit and other assertions of their patents.
69. The Raetzes' procurement of their patents, filing of this suit, and related marketing activities constitute tortious interference with BEC's contracts,

BEC's business relationships, and BEC's future contracts and business relationships

70. BEC has been harmed and continues to be harmed by the Raetzes' tortious interference.

### ***Laches***

71. Recovery by the Raetzes is barred by laches arising out of the Raetzes' failure to timely assert their patents.
72. On information and belief, the Raetzes unconscionably delayed in asserting their patents and filing suit because they wanted a potential damage base of sufficient size to make the case attractive to counsel on a contingent-fee basis.

### ***Unfair Competition***

73. This claim for unfair competition invokes the laws and regulations of the United States relating to unfair competition.
74. There is a case of actual controversy within the jurisdiction of the Court under the Declaratory Judgments Act. 28 U.S.C. § 2201(a).
75. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).
76. Venue is proper in this District pursuant to 28 U.S.C. § 1391.
77. The promotional website maintained by the Raetzes sets forth false and misleading statements of fact (Exhibit I).

78. The website touts "A NEW STATE-OF-THE-ART FILTER SYSTEM ENGINEERED AND TESTED BY POINT SOURCE SOLUTIONS, INC." The "system" being referred to was in fact engineered and tested by BEC many years before the Raetzes had even heard of the air filters in question.
79. The website states: "Working under U.S. Patent Nos. 7,416,581 and 7,892,326B2, as well as several pending patents, PSSI has developed the means to reduce levels of harmful particulate matter and pollution in indoor environments, while simultaneously reducing the energy requirements of your Heating Ventilation and Air Conditioning (HVAC) systems." The "means" being referred to was in fact engineered and tested by BEC many years before the Raetzes had even heard of the air filters in question. The patents cover work by BEC, not the Raetzes.
80. The website states: "We offer the only true, sustainable and modern solution to your air quality needs." This is true as to BEC. It is not clear that the Raetzes even have a product.
81. The website states: "As the founders of the intellectual properties contained in U.S. Patent Nos. 7,416,581 and 7,892,326 B2, we are very pleased with how the technology has been applied to indoor air venues. After more than 10 years of evaluation in the 'real life' 'real time' arena, the technology has been demonstrated and proven as a beneficial asset to reduce the risk of exposure to air pollution as well as protecting building

infrastructure and fostering wise use of electrical energy." The "technology" being referred to was in fact engineered and tested by BEC many years before the Raetzes had even heard of the air filters in question. The patents cover work by BEC, not the Raetzes.

82. Other misleading statements will be identified in due course.

83. BEC has been injured by the Raetzs' unfair competition.

### **Demand for Judgment**

WHEREFORE BEC demands judgment as follows:

- A. A declaration that the Raetz patents are invalid.
- B. A declaration that the Raetz patents are unenforceable as a result of inequitable conduct committed on the Patent Office during their procurement.
- C. A declaration that the Raetz patents are unenforceable as a result of fraud committed on the Patent Office during their procurement.
- D. An injunction against further prosecution by the Raetzes of the patent application now pending in the Patent Office.
- E. A declaration that the Raetz patents are not infringed by any defendant.
- E. A determination that the Raetzes tortiously interfered with BEC's contracts and relations with its customers.
- F. A determination that the Raetzes have engaged in unfair competition.
- G. An award of actual damages to BEC.

- H. A determination that this is an exceptional case under 35 U.S.C. § 285 by virtue of the Raetzes' pervasive misconduct.
- I. An award to BEC of at least its attorney fees in this matter.
- J. An award of such other and further relief as this Court may deem just and proper.

### **Jury Demand**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the Seventh Amendment to the United States Constitution, BEC demands a trial by jury of all issues triable by jury in this action.

Respectfully submitted,

Dated: October 18, 2013

BRIGGS & MORGAN

By: s/Scott M. Flaherty

John M. Degnan (#21817)  
Scott M. Flaherty (#388354)  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Tel: (612) 977-8400  
Fax: (612) 977-8650  
[Email: sflaherty@briggs.com](mailto:sflaherty@briggs.com)

Dated: October 18, 2013

ASPIRE IP

By: s/Scott J. Hawranek

Scott J. Hawranek (*pro hac*  
*vice* forthcoming) 24 S.  
Weber, Suite 300

Colorado Springs, CO  
80903 Tel: (719) 344-9907  
Fax: (719) 471-1663  
[Email: scott@aspireip.com](mailto:scott@aspireip.com)

Dated: October 18, 2013

LATHROP & GAGE

By: s/David J. Lee

David J. Lee (*pro hac vice*  
forthcoming)  
950 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
Tel: (720) 931-3238  
Fax: (720) 931-3201  
[Email: dlee@lathropgage.com](mailto:dlee@lathropgage.com)

*Attorneys for Plaintiff*