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February 2, 2004

***VIA HAND DELIVERY***

Michael E. Kunz  
Clerk of Court  
United States District Court  
Eastern District of Pennsylvania  
601 Market Street  
2609 U.S. Courthouse  
Philadelphia, PA 19106-1797

**Re: *B&G Equipment Co. v. Sector Diagnostic LLC d/b/a Termatrol***  
**United States District Court for the Eastern District of Pennsylvania**  
**Our Ref.: File 736 (309525-24)**

Dear Mr. Kunz:

Enclosed please find two copies of a Complaint, a Civil Cover Sheet, Designation Form, Case Management Form, and Exhibit A for the captioned civil action which was filed today with the United States District Court for the Eastern District of Pennsylvania. Also enclosed please find a computer disk containing PDF versions of the above-referenced documents.

If there are any questions, please do not hesitate to contact me.

Sincerely,

**PIPER RUDNICK LLP**



Darius C. Gambino

DCG/pam  
Enclosures

## CIVIL COVER SHEET

## APPENDIX H

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

B&amp;G Equipment Company

(b) County of Residence of First Listed Plaintiff Lamar, Georgia  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Darius C. Gambino 215-656-2402  
Piper Rudnick LLP  
3400 Two Logan Square, Philadelphia PA

## DEFENDANTS

Sector Diagnostic, LLC d/b/a Termatrol

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

19103-3762

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☒ 5 ☒ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed. Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

35 U.S.C. Section 271 Patent Infringement

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 2/2/04

SIGNATURE OF ATTORNEY OF RECORD

PA 83,496

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF PENNSYLVANIA**

<hr/>	:	
B&G EQUIPMENT COMPANY,	:	
a Delaware Corporation,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.:
	:	
SECTOR DIAGNOSTIC LLC	:	<b>COMPLAINT FOR</b>
d/b/a TERMATROL,	:	<b>PATENT INFRINGEMENT</b>
a Hawaii Limited Liability	:	
Company,	:	
Defendant.	:	<b>JURY TRIAL DEMANDED</b>
	:	
<hr/>	:	

Plaintiff, B&G Equipment Company ("B&G"), through its attorneys alleges that:

1. Plaintiff B&G is a corporation incorporated under the laws of the State of Delaware, and has a principal place of business at 135 Region South Drive, Jackson, Georgia, 30233.
2. Upon information and belief, Defendant, Sector Diagnostic, LLC d/b/a Termatrol ("Sector"), is a limited liability company organized under the laws of the State of Hawaii, and has its principal place of business at 569 Papalani Street, Kailua, Hawaii 96734.
3. Upon information and belief, Sector is in the business of manufacturing and selling various pest control and monitoring products.
4. Upon information and belief, Sector sells a substantial amount of its pest control products in the Commonwealth of Pennsylvania through distributor Univar USA, Inc. ("Univar"), located at 850 Calcon Hook Road, #9, Sharon Hill, PA. 19079.

### **JURISDICTION**

4. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. § 271 and §§ 281-285. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1331 and § 1338(a). Jurisdiction is also conferred upon this Court pursuant to 28 U.S.C. § 1331, in that the Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.

5. Defendant is subject to personal jurisdiction in this judicial District due its continuous sales of products in this judicial District through its aforementioned distributor Univar.

### **VENUE**

6. Venue in this District is proper under Title 28 United States Code, Section 1391 (b) and (c) and Section 1400(b).

### **BACKGROUNDFACTS**

7. B&G is the record owner of U.S. Pat. No. 6,615,535 (the “’535 Patent”), entitled “Pest Control System Including Compartments Having Areas for Receiving Pest Control Materials of Differing Physical Consistencies”, which was issued by the United States Patent and Trademark Office on September 9, 2003. A true and correct copy of the ‘535 Patent is attached hereto as Exhibit A.

8. On or about October 28, 2003, B&G asserted a claim of patent infringement under the ‘535 Patent against Sector, arising from Sector’s manufacture and sale of certain termite traps which will be referred to herein as (a) “707 Termite Monitoring Station” which essentially comprises an in-ground termite tube with an above-ground termite baiting and/or monitoring component, and (b) “702 Termite Monitoring Station” which essentially comprises

an above-ground termite baiting and/or monitoring component coupled to a wooden in-ground stake (collectively the "Sector Products").

9. Upon information and belief, Sector is presently selling the Sector Products through Univar and other distributors across the country.

10. B&G's President, Cecil Patterson, and Sector's President, Kirk Hovious, engaged in settlement discussions over the past three (3) months, but no settlement could be reached. Accordingly, B&G has filed the present Complaint.

## **COUNT I**

### **Patent Infringement of U.S. Patent No. 6,615,535**

11. B&G hereby incorporates the allegations of paragraphs 1-10.

12. Defendant Sector has infringed, and continues to infringe, the '535 Patent by making, using and/or selling the Sector Products.

13. Defendant has been on notice of Plaintiff's '535 Patent since at least as early as October 28, 2003, and therefore Defendant's infringement has been, and continues to be, willful and deliberate.

14. Defendant has been, and is now, willfully infringing Plaintiff's '535 Patent in this District and elsewhere, causing damage and irreparable harm to Plaintiff, and will continue to do so unless enjoined by this Court.

RELIEF REQUESTED

WHEREFORE, Plaintiff B&G respectfully requests:

1. Entry of declaratory judgment that Defendant Sector has infringed the '535 Patent;
2. Entry of declaratory judgment that Defendant Sector's infringement of the '535 Patent has been, and continues, to be willful and deliberate;
3. Entry of an order preliminarily and permanently enjoining Defendant Sector and its respective directors, officers, employees, agents and all persons in active concert or participation with them from further acts which would infringe the '535 Patent;
4. Entry of judgment that the present case is 'exceptional' under 35 U.S.C. § 285, and award of attorneys' fees and costs to Plaintiff B&G;
5. An award of damages in an amount adequate to compensate B&G for Sector's infringement of the '535 Patent, and in any event no less than the amount of a reasonable royalty, together with interest as fixed by the Court. Such damages should be trebled in accordance with 35 U.S.C. § 284 as a consequence of Sector's willful infringement; and
6. Such other relief as the Court may deem just and appropriate.

Dated: February 2, 2004

Piper Rudnick LLP



Darius C. Gambino (PA 83,496)  
Attorneys for B&G Equipment Company

Piper Rudnick LLP  
3400 Two Logan Square  
18<sup>th</sup> & Arch Streets  
Philadelphia, PA 19103-2762  
215.656.330 PHONE  
215.656.3301 FAX

## UNITED STATES DISTRICT COURT

APPENDIX F

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 135 Region South Drive, Jackson, Georgia 30233

Address of Defendant: 569 Papalani Street, Kailua, Hawaii 96734

Place of Accident, Incident or Transaction: Sharon Hill, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☒ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Darius C. Gambino, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

DATE: 2/2/04

Attorney-at-Law

PA 83,496

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/2/04

Attorney-at-Law

PA 83,496

Attorney I.D.#

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 135 Region South Drive, Jackson, Georgia 30233

Address of Defendant: 569 Papalani Street, Kailua, Hawaii 96734

Place of Accident, Incident or Transaction: Sharon Hill, Pennsylvania

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☒ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Acts Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Darius C. Gambino, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

DATE: 2/2/04

Attorney-at-Law

PA 83,496

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/2/04

Attorney-at-Law

PA 83,496

Attorney I.D.#



## APPENDIX I

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

B&amp;G EQUIPMENT COMPANY

CIVIL ACTION

v.

SECTOR DIAGNOSTIC, LLC d/b/a

NO.

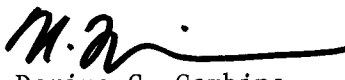
TERMATROL

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

2 | 2 | 04  
Date

  
Darius C. Gambino  
Attorney-at-law

B&G Equipment Company  
Attorney for

215-656-3300  
Telephone

215-656-3301  
FAX Number

darius.gambino@piperrudnick.com  
E-Mail Address