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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

TOXGON CORPORATION,	)	
	)	
Plaintiff,	)	NO. CT-00-5040-WFN
	)	
v.	)	FIRST AMENDED
	)	COMPLAINT FOR PATENT
BNFL, Inc., a corporation, GTS DURATEK,	)	INFRINGEMENT
a corporation, John Does and Jane Roes one	)	
through twenty and Entities twenty-one	)	AND JURY DEMAND
through thirty	)	
	)	
Defendants.	)	
	)	

ToxGon Corporation ("ToxGon") alleges:

I.  
The Parties

1.1 The plaintiff, ToxGon, is a Washington corporation with its principal place of business in the State of Washington.

ORIGINAL

1 1.2 The Defendant, BNFL, Inc., (“BNFL”) is a Delaware corporation with a place of  
2 business in the Tri-Cities area of the State of Washington. BNFL is the subsidiary of an English  
3 Company which is owned and operated by Great Briton.  
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5 1.3 The Defendant GTS Duratek, now known as Duratek, Inc. (“Duratek”) is Delaware  
6 corporation, doing business, among other places, in the State of Washington.  
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8 1.4 The parties identified as John Does and Jane Roes one through twenty are  
9 individuals whose identities are not yet known to Plaintiff.

10 1.5 The parties identified as Entities twenty-one through thirty are business entities the  
11 identities of which are not yet known to Plaintiff.  
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13 **II.**  
**Jurisdiction and Venue**

14 2.1 This court has original and exclusive jurisdiction of this case under 28 USC 1338, as  
15 this case alleges infringement of a United States Letters Patent.  
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17 2.2 Venue is proper in this District because acts of infringement alleged in this  
18 complaint occurred in this District.

19 2.3 Additionally both BNFL and ToxGon have operated businesses in Washington.  
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21 **III.**  
**The 611 Patent**

22 3.1 ToxGon is the owner of a U.S. Patent entitled “Method and Apparatus For  
23 Converting Hazardous Material To A Relatively Harmless Condition” number 4,299,611, (“611  
24 Patent”) granted November 10, 1981 on an application filed January 18, 1990.  
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26 3.2 Nineteen separate claims were investigated, considered and granted by the United  
27 States Patent and Trademark Office for the 611 Patent.  
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2 **IV.**  
3 **Infringement**

4 4.1 BNFL and Duratek have engaged in business separately, and also in a long term  
5 financial and strategic alliance. Some of the allegations of this Complaint relate to acts and  
6 omissions in and pursuant to the long term alliance and other allegations relate to independent acts  
7 and omissions.

8 4.2 Under the financial and strategic alliance the two companies cooperated to obtain a  
9 privatization contract with the Department of Energy to clean-up the Hanford, Washington, nuclear  
10 site. The contract provided for payment of at least 6.9 billion dollars to build, own and operate  
11 plants to clean up high level and low level radioactive nuclear and hazardous waste at the Hanford  
12 site.  
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14 4.3 BNFL and Duratek, acting together, and acting alone, engaged in other operations  
15 on behalf of or under contract with state governmental entities and private companies within the  
16 United States. The operations referred to in this paragraph 4.32 included vitrification of toxic  
17 waste through the unauthorized use of the apparatus and methods protected by the 611 Patent and  
18 intentionally infringed the 611 Patent by making, using, selling and/or offering to sell methods and  
19 apparatus literally covered by the claims granted in the 611 Patent, and by using methods and  
20 apparatus having steps equivalent to the steps claimed in the 611 Patent, all without authorization  
21 by Toxgon.  
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24 4.4 The parties identified as John Does and Jane Roes one through twenty and the  
25 Entities referred to as Entities 21 through 30 knowingly infringed the 611 patent.  
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**V.  
Profits**

5.1 BNFL and Duratek, and/or some or all of the other unknown Entities, caused the construction of and the use of facilities in Maryland and other places to vitrify toxic waste using apparatus and methods described in the 611 patent to prove operability of the vitrification process for the clean up of the Hanford sites as well as for the vitrification of toxic waste generated by commercial parties and state governmental agencies. The Defendants used apparatus literally or equivalently within the claims of the 611 Patent without the consent of Toxgon. The actions of BNFL and Duratek referred to in this sub-paragraph were not done pursuant to nor in performance of a contract with the United States nor were such actions authorized or consented to by the United States. The actions taken by BNFL and Duratek constitute infringement of the 611 Patent under 35 U.S.C. § 271.

5.2 As a direct consequence of the infringing structure and method of operation of the facilities referred to in this complaint BNFL, Duratek, and/or some or all of the other unknown Entities, have received sums or beneficial interest in contracts from the Department of Energy which on information and belief, are alleged to be in excess of \$150,000,000.

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**VI.  
Profits Obtained From Other Infringements**

6.1 BNFL and/or Duratek, and/or some or all of the other unknown Entities, constructed and used infringing facilities in Maryland and other places in operations unconnected with and different from the operations referred to in the preceding paragraph V. Defendants included steps to vitrify toxic waste generated by commercial and state parties using apparatus and methods covered by and/or equivalent to the apparatus and methods set forth in the claims granted

1 by the U. S. Patent and Trademark Office in the 611 Patent without the consent of Toxgon. The  
2 actions taken by BNFL and Duratek constitute infringement of the 611 Patent under 35 U.S.C.  
3 § 271.  
4

5 6.2 To summarize, the defendants used the 611 Patent process and apparatus to obtain  
6 contracts and work from the U.S. Government as well as state entities and private companies. The  
7 result of such infringements was that defendants obtained multimillion dollar profits which are  
8 unjustified.  
9

10 **VII.**  
11 **Damages**

12 7.1 Toxgon has been damaged by the amount of at least a reasonable royalty based upon  
13 the benefits obtained by defendants from the infringements of the 611 Patent.

14 7.2 Defendants infringing action was willful and intentional and the court should award  
15 Toxgon enhanced damages, pre-judgment interest, and attorney fees.

16 7.3 Defendants infringement limited Toxgon's ability to market its patent rights.  
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18 **VIII.**  
19 **Jury Demand**

20 Toxgon hereby demands this case be decided by a jury of twelve.  
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22 **IX.**  
23 **Prayer for Relief**

24 Toxgon Requests The Court Grant Toxgon The Following Relief Against All Defendants:

25 9.1 Damages adequate to compensate for the infringements which are at least equal to a  
26 reasonable royalty on the benefits received and to be received by the defendants as a consequence  
27 of its infringement of the 611 Patent;  
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1 9.2 For enhanced damages for as a result of the intentional infringement which was a  
2 proximate cause of plaintiff's bankruptcy;

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4 9.3 Payment of ToxGon's reasonable contingent attorney fees and the costs expended by  
5 its attorneys in pursuit of this action;

6 9.4 For pre-judgment interest in an amount to be determined at trial.

7 9.5 An award of plaintiff's taxable costs herein;

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9 9.6 Such other and further relief as the court may deem to be just in order to  
10 compensate for the infringement and as to each willful infringement the Court should increase the  
11 damages up to three times the actual damages as provided by 35 USC § 284.

12 DATED this 18<sup>th</sup> day of November, 2002.

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16 Floyd L. Newland, WSBA #1009  
17 Of Karr Tuttle Campbell  
18 Attorneys for Plaintiff

19 Joseph H. Trethewey by Jan  
20 Joseph H. Trethewey, WSBA #3021 per T.P.  
21 Attorney for Plaintiffs 10/18/02