

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

URETEK HOLDINGS, INC.; URETEK USA,
INC.; and BENEFIL WORLDWIDE OY,

Plaintiffs,

CASE NO: _____

v.

HAYWARD BAKER, INC.,

Defendant.

**PLAINTIFF URETEK'S COMPLAINT FOR PATENT INFRINGEMENT WITH
INJUNCTIVE RELIEF SOUGHT AND DEMAND FOR JURY TRIAL**

Plaintiffs Uretex Holdings, Inc.; Uretex USA, Inc.; and Benefil Worldwide Oy (collectively "Uretex"), for their original complaint of patent infringement against defendant Hayward Baker, Inc. ("Hayward Baker"), allege as follows:

The Parties

1. Plaintiff Uretex Holdings, Inc. is a Florida corporation with a principal place of business in Lakeland, Florida.
2. Plaintiff Uretex USA, Inc. is an Iowa corporation with a principal place of business in Tomball, Texas.
3. Plaintiff Benefil Worldwide Oy is a foreign corporation with a place of business in Finland.
4. On information and belief, Hayward Baker is a Delaware corporation having a place of business at 6850 Benjamin Road, Tampa, Florida.

Jurisdiction and Venue

5. This action arises under the patent statutes of the United States, 35 U.S.C. §§ 271 et seq. Accordingly, the Court has federal question jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1338(a).

6. Hayward Baker resides and has committed acts of infringement in this district. Accordingly, the Court has personal jurisdiction over Hayward Baker.

7. Venue is properly within this district in accordance with 28 U.S.C. § 1391 (b) and (c) and § 1400 (b).

The Urettek Patent

8. On October 21, 2003, United States Patent No. 6,634,831 (the “‘831 Patent”) was duly and legally issued for an invention entitled Method for Increasing the Bearing Capacity of Foundation Soils for Built Structures and referred to commercially as the Deep Injection process. A copy of the ‘831 Patent is attached as Exhibit A.

9. On May 29, 2012, a reexamination certificate was issued for the ‘831 Patent, a copy of which is attached as Exhibit B.

10. Benefil Worldwide owns the ‘831 patent by assignment.

11. Urettek USA holds exclusive licensing rights from Benefil Worldwide under the ‘831 patent with the right to sublicense.

12. Urettek Holdings is the exclusive licensee for industrial, commercial, and residential applications of the ‘831 patent in Florida.

The Patented Deep Injection Process

13. The patented Deep Injection process solves the problem created by loose and unconsolidated soils beneath roadways, residential slabs, and other foundations. Soils deep beneath a foundation can erode over time and lose their ability to adequately support the overlying loads. For example, weather conditions such as rain, snow, and severe temperature changes can erode soils deep beneath roadways until the roads crack, settle, and become driving hazards. In Central Florida, the unconsolidated soils created by sinkholes result in cracked and sinking foundations under homes and other buildings.

14. Uretek stabilizes loose soils with the patented Deep Injection process by injecting an expanding material such as polyurethane deep into the foundation soil beneath the roadway or building slab. As it expands, the material compacts the surrounding soil, thereby increasing the load bearing capacity of the foundation soil. The process monitors the surface for foundation lift to indicate when the soil has been sufficiently densified to support the foundation.

15. The industry has accepted the Deep Injection process as the preferred solution to many problematic soil stabilization issues. For roadways, many departments of transportation require the Deep Injection process for chronic and severe problem areas to reduce or eliminate the need for future repairs. For sinkholes, the Deep Injection process has become a standard part of foundation remediation programs for homeowners, engineers, and insurance companies addressing the problem.

Hayward Baker Infringes the '831 Patent

16. Hayward Baker provides geotechnical construction services, including stabilization for foundation soils beneath roads and residential foundations.

17. Hayward Baker uses the best geotechnical solutions in residential sinkhole repair. After Uretek demonstrated the benefits of its patented process for sinkhole repair, Hayward Baker sub-contracted Uretek Holdings' predecessor for years to perform the Deep Injection process as part of its residential sinkhole remediation services in Central Florida.

18. Once the Deep Injection process became a required part of most residential sinkhole repairs in his area, Hayward Baker stopped sub-contracting Uretek and, on information and belief, invested in trucks and equipment to provide the patented service without the permission of Uretek. On information and belief, Hayward Baker has secured hundreds of local sinkhole repair jobs worth millions of dollars based on its ability to provide the patented process required for these jobs.

19. On information and belief, Hayward Baker also has performed the patented process to stabilize foundation soils beneath roads by injecting an expanding polyurethane through a plurality of holes deep into the foundation soils while monitoring at the surface in a process Hayward Baker calls polyurethane grouting.

20. On information and belief, the polyurethane grouting method used by Hayward Baker for residential sinkhole and road repair is covered by at least claims 1 and 17 of the '831 patent.

21. Uretek Holdings' predecessor informed Hayward Baker of the '831 patent as part of their business relations. When Uretek USA approached Hayward Baker to discuss

potential infringing activities, Hayward Baker initially assured Uretex USA that it would not infringe and would respect the patent. Instead, on information and belief, Hayward Baker invested in equipment and training to offer and perform its own identical version of the patented Deep Injection process.

22. Several companies show respect for the patent by using Uretex Holdings as the exclusive provider for Deep Injection work, including several local companies who use Uretex Holdings for sinkhole repairs. Other companies caught infringing the '831 patent have stopped after discussions or litigation with Uretex.

23. On information and belief, Hayward Baker has continued to infringe based upon a stated but incorrect belief that the patent should be narrowly construed so as to avoid infringement or alternatively that the patent was invalid but without providing any specifics as to why. Hayward Baker's narrow construction of the patent scope, however, has been rejected by another court, and the patent was reconfirmed as valid in a reexamination before the U.S. Patent & Trademark Office. Accordingly, Hayward Baker has demonstrated an objectively high likelihood that its actions would infringe a valid patent despite its lawyer-created excuses for its copying of the patented Deep Injection process. On information and belief, Hayward Baker knew or should have known that its unsubstantiated excuses could not condone its infringing activity.

Count 1: Patent Infringement

24. Uretek realleges and incorporates by reference all preceding allegations.

25. On information and belief, Hayward Baker infringes the '831 patent by performing the patented method to increase the bearing capacity of foundation soils of various structures as claimed by the '831 patent.

26. On information and belief, Hayward Baker will continue to infringe the claims in the '831 patent unless enjoined by this Court.

27. Hayward Baker's infringing acts in competition with Uretek have caused damage and irreparable injury to Uretek, and Uretek will continue to suffer damage and irreparable injury unless and until that infringement is enjoined by this Court.

28. On information and belief, Hayward Baker was actually aware of the '831 patent and willfully committed acts of infringement.

29. Hayward Baker's infringement is exceptional and entitles Uretek to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

Jury Demand

30. Uretek demands a trial by jury on all issues.

Prayer for Relief

WHEREFORE, Uretek prays the Court to enter a judgment in its favor as follows:

- (a) Granting a permanent injunction against Hayward Baker's continued infringement;
- (b) Awarding damages, including but not limited to lost profits and price erosion, but not less than a reasonable royalty;
- (c) Finding that Hayward Baker's infringement has been willful and under 35 U.S.C. § 284 and increasing such damages to three times the awarded amount;
- (d) Awarding prejudgment and postjudgment interest;
- (e) Finding that this case is an exceptional case under 35 U.S.C. § 285 and award attorneys' fees;
- (f) Awarding costs; and
- (g) Granting all other relief to which Uretek is entitled.

Date: February 14, 2013

Respectfully submitted,

s/Lara J. Tibbals

Lara J. Tibbals
Florida Bar No. 129054
David L. Luikart III
Florida Bar No. 21079
ltibbals@hwhlaw.com
HILL WARD HENDERSON
3700 Bank of America Plaza
101 East Kennedy Boulevard
Tampa, FL 33602
Tel: (813) 221-3900
Fax: (813) 221-2900

Charles B. Walker, Jr.*
Trial Counsel
Paul A. Dyson*
Seth E. Jaffe*
FULBRIGHT & JAWORSKI, L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
cwalker@fulbright.com
pdyson@fulbright.com
sjaffe@fulbright.com

*Admission *pro hac vice* pending

ATTORNEYS FOR PLAINTIFFS