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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 REGEN ENERGY INC., a Canadian
corporation,

11 Plaintiff,

12 v.

13 ECURV INC., a Delaware
14 corporation,

15 Defendant.

Civil Case No.: '15CV1851 BAS JMA

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

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1 For its complaint against Defendant eCurv Inc. (“eCurv”), Plaintiff Regen
2 Energy Inc. (“Regen”) alleges on personal knowledge as to its own activities and
3 on information and belief as to the activities of others as follows:

4 **THE PARTIES**

5 1. Regen is a Canadian corporation with its United States offices located
6 at 1850 Diamond Street, Suite 105, San Marcos, CA 92078.

7 2. On information and belief, Defendant eCurv is a corporation
8 organized under the laws of the State of Delaware with its principal place of
9 business located at One Broadway, 14th Floor, Kendall Square, Cambridge, MA
10 02142.

11 **NATURE OF ACTION**

12 3. This is an action alleging patent infringement by eCurv of United
13 States Patent Nos. 8,918,223 (the “’223 Patent”) and 9,110,647 (the “’647”
14 Patent).

15 4. Regen is the assignee of the ’223 Patent, entitled, “Apparatus for
16 Managing an Energy Consuming Load,” issued on December 23, 2014. Regen is
17 owner of all rights, title and interest in and to this patent, including the right to
18 recover for infringement. A true and correct copy of the ’223 patent is attached
19 hereto as Exhibit A.

20 5. Regen is the assignee of the ’647 Patent, entitled, “Method and
21 Apparatus for Managing an Energy Consuming Load,” issued on August 18, 2015.
22 Regen is owner of all rights, title and interest in and to this patent, including the
23 right to recover for infringement. A true and correct copy of the ’647 Patent is
24 attached hereto as Exhibit B.

25 6. The ’223 Patent and the ’647 Patent are collectively referred to herein
26 as the “Asserted Patents.”

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JURISDICTION AND VENUE

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2 7. This is an action for patent infringement arising under the patent laws
3 of the United States, Title 35 of the United States Code, including without
4 limitation 35 U.S.C. §§ 271 *et seq.* This Court has subject matter jurisdiction over
5 this case pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises
6 under the patent laws of the United States, Title 35 of the United States Code,
7 including but not limited to 35 U.S.C. §§ 271, 281, 284 and 285.

8 8. On information and belief, this Court has personal jurisdiction over
9 eCurv based upon at least the following: (a) eCurv has appointed an agent,
10 National Registered Agents, Inc., in the State of California, located at 818 W.
11 Seventh St., Suite 930, Los Angeles, CA 90017, to receive service of process on
12 its behalf, and (b) eCurv transacts business in and maintains continuous and
13 systematic contacts with this District and the State of California at least through its
14 marketing of its Queued Power Access Control (“QPAC™”) product line to
15 dozens of the largest retailers in the United States, including without limitation, to
16 one or more companies that have their corporate headquarters located within the
17 Southern District of California.

18 9. In addition, Regen has its United States offices in the Southern
19 District of California, and most of Regen’s corporate officers and at least one of
20 the two inventors of the Asserted Patents currently reside in the Southern District
21 of California.

22 10. Venue is proper in the United States District Court for the Southern
23 District of California under 28 U.S.C. §§ 1391(b)-(d) and/or 1400(b) because,
24 *inter alia*, a substantial part of the events giving rise to the claims of this action
25 occurred in this district, and because eCurv is subject to personal jurisdiction in
26 this district.

BACKGROUND

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2 11. With its United States offices in San Marcos, California, Regen is a
3 technology company that is transforming the energy efficiency landscape. Regen
4 set out to develop a sophisticated new energy management technology based on a
5 concept called swarm logic. Regen’s wireless automated demand management
6 and demand response controllers can be easily installed onto any electrical
7 heating, cooling or other discretionary electrical load. Once installed, the Regen
8 controllers work together intelligently communicating and managing the duty
9 cycles of the loads being controlled. Utilizing Regen’s patented technology, the
10 controllers dramatically reduce peak electrical demand by up to 25% in
11 commercial and light industrial properties and allow for effective scheduling of
12 overnight and weekend loads.

13 12. On information and belief, eCurv, either directly or through other
14 entities under its control, manufactures, uses, offers for sale, and/or sells
15 infringing energy management software and related products, including without
16 limitation eCurv’s QPAC™ products (the “Accused Products”).

17 13. On information and belief, eCurv infringes the Asserted Patents by
18 engaging in acts constituting infringement under 35 U.S.C. § 271, including
19 without limitation by making, using, selling and/or offering for sale in and/or
20 importing into the United States without authority one or more Accused Products
21 that infringe one or more claims of the Asserted Patents.

22 14. On information and belief, eCurv displays, promotes, sells and/or
23 offers to sell its products throughout the United States, including without
24 limitation by offering the Accused Products to dozens of the largest retailers in the
25 United States.

26 15. On information and belief, eCurv has sold the Accused Products to at
27 least one or more third parties for use in the United States, including without
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1 limitation to at least the City of Newton for the Newton North and Newton South
2 High Schools in Newton, Massachusetts.

3 16. eCurv does not have a license to any Regen patents or technology.

4 17. eCurv has knowledge and notice of the Asserted Patents and its
5 infringement since at least, and through, the filing of this Complaint.

6 **FIRST CAUSE OF ACTION**

7 (Infringement of the '223 Patent)

8 18. Regen incorporates by reference as if fully set forth herein the
9 allegations in Paragraphs 1-17 of this Complaint.

10 19. On information and belief, eCurv infringes, literally and/or under the
11 doctrine of equivalents, one or more claims of the '223 Patent, by making, using,
12 selling and/or offering for sale in and/or importing into the United States without
13 authority products, including without limitation the Accused Products, that
14 infringe one or more claims of the '223 Patent.

15 20. As a direct and proximate result of eCurv's infringement, Regen has
16 suffered, and will continue to suffer, damage in an amount to be proved at trial.

17 21. As a result of the harm suffered as alleged herein, Regen is entitled to
18 relief under the Patent Act, including damages adequate to compensate it for such
19 infringement, but in no event less than a reasonable royalty.

20 22. Regen is informed and believes, and on the basis of such information
21 and belief, alleges that eCurv's infringement of the '223 Patent is willful and
22 deliberate, at least at all times after the filing of the Complaint. Accordingly,
23 Regen is entitled to enhanced damages pursuant to 35 U.S.C. § 284 and to an
24 award of attorney's fees and costs incurred in prosecuting this action pursuant to
25 35 U.S.C. § 285.

26 23. On information and believe, unless enjoined by this Court, eCurv will
27 continue to do the acts complained herein, and unless restrained and enjoined will
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1 continue to do so, all to Regen's irreparable damage. It would be difficult to
2 ascertain the amount of compensation which would afford Regen adequate relief
3 for such future and continuing acts. Regen does not have an adequate remedy at
4 law to compensate it for injuries threatened.

5 **SECOND CAUSE OF ACTION**

6 (Infringement of the '647 Patent)

7 24. Regen incorporates by reference as if fully set forth herein the
8 allegations in Paragraphs 1-23 of this Complaint.

9 25. On information and belief, eCurv infringes, literally and/or under the
10 doctrine of equivalents, one or more claims of the '647 Patent, by making, using,
11 selling and/or offering for sale in and/or importing into the United States without
12 authority products including without limitation the Accused Products, that infringe
13 one or more claims of the '647 Patent.

14 26. As a direct and proximate result of eCurv's infringement, Regen has
15 suffered, and will continue to suffer, damage in an amount to be proved at trial.

16 27. As a result of the harm suffered as alleged herein, Regen is entitled to
17 relief under the Patent Act, including damages adequate to compensate it for such
18 infringement, but in no event less than a reasonable royalty.

19 28. Regen is informed and believes, and on the basis of such information
20 and belief, alleges that eCurv's infringement of the '647 Patent is willful and
21 deliberate, at least at all times after the filing of the Complaint. Accordingly,
22 Regen is entitled to enhanced damages pursuant to 35 U.S.C. § 284 and to an
23 award of attorney's fees and costs incurred in prosecuting this action pursuant to
24 35 U.S.C. § 285.

25 29. On information and belief, unless enjoined by this Court, eCurv will
26 continue to do the acts complained herein, and unless restrained and enjoined will
27 continue to do so, all to Regen's irreparable damage. It would be difficult to
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1 ascertain the amount of compensation which would afford Regen adequate relief
2 for such future and continuing acts. Regen does not have an adequate remedy at
3 law to compensate it for injuries threatened.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Regen respectfully prays that the Court grant the
6 following relief:

- 7 A. For judgment that the '223 Patent is valid and enforceable;
- 8 B. For judgment that eCurv has infringed and continues to infringe the
9 '223 Patent;
- 10 C. For judgment that eCurv has willfully infringed the '223 Patent;
- 11 D. For a preliminary and permanent injunction prohibiting eCurv, and
12 all persons or entities acting in concert with eCurv, from infringing the '223
13 Patent;
- 14 E. For judgment that the '647 Patent is valid and enforceable;
- 15 F. For judgment that eCurv has infringed and continues to infringe the
16 '647 Patent;
- 17 G. For judgment that eCurv has willfully infringed the '647 Patent;
- 18 H. For a preliminary and permanent injunction prohibiting eCurv, and
19 all persons or entities acting in concert with eCurv, from infringing the '647
20 Patent;
- 21 I. An award of damages adequate to compensate Regen for the
22 infringement, as well as prejudgment and post-judgment interest from the date the
23 infringement began, but in no event less than a reasonable royalty as permitted by
24 35 U.S.C. § 284;
- 25 J. An award of treble damages and/or exemplary damages due to
26 eCurv's willful misconduct under 35 U.S.C. § 284;
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1 K. A finding that this case is exceptional and an award of interest, costs,
2 expenses, and attorneys' fees incurred by Regen in prosecuting this action as
3 provided by 35 U.S.C. § 285;

4 L. For any other orders necessary to accomplish complete justice
5 between the parties; and

6 M. For such other and further relief as this Court or a jury may deem just
7 and proper.

8 **JURY DEMAND**

9 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Regen
10 demands a trial by jury on all issues so triable.

11 DATED: August 19, 2015 Respectfully submitted,

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