



## **Fortescue outlines IP theft case**

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### **Body**

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Element Zero could not have invented then designed and constructed its green iron pilot plant in the time frame claimed with the budget available to it, a **Fortescue** employee says, in documents lodged by the iron ore major in its federal court case against former employees it says stole intellectual property.

**Fortescue** has alleged that three former executives including long-term Forrest lieutenant Michael Masterman, as well as Bart Kolodziejczyk and Bjorn Winther-Jensen, stole intellectual property developed by **Fortescue** Future Industries (FFI), and used it to launch Element Zero.

The case, lodged early this year, has involved claims that **Fortescue**, chaired by billionaire founder Andrew Forrest, directly instructed private investigators to follow the families of former employees to schools and child care centres and rummaged through their mail.

In a trove of documents filed by **Fortescue** and released by the court on Wednesday, the company paints a picture of why it suspected its intellectual property had been stolen.

In one of several affidavits lodged by **Fortescue**, employee Wayne McFaul says **Fortescue**'s law firm Davies Collison Cave Law (DCCL) asked him to compare the timelines and costs of the technologies developed by both companies.

"DCCL asked me to provide my opinion as to whether I consider that Dr Kolodziejczyk and Dr Winther-Jensen could have invented the Element Zero process and then designed and constructed the Element Zero plant in the time available to them between their leaving **Fortescue** in November 2021 and the Element Zero plant being operational in January 2024 (a 26-month period)," he says in his affidavit.

"Based on my analysis of the **Fortescue** project, the similarity between the **Fortescue** plant and the Element Zero plant, and the reasons below, in my opinion it would not have been possible to deliver the Element Zero plant by January 2024, unless the basis of design documents were commenced 12 months earlier in January 2023." Mr McFaul was asked by the lawyers to assume Element Zero had access to \$5m in funding in its first 20 months.

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"DCCL then asked me to provide my opinion as to whether or not this funding was sufficient to finance the Element Zero project in the first 20 months, assuming that my estimated project timeline is correct," he says.

Mr McFaul says that referring to what Fortescue spent to get to a similar point of development - a figure which was redacted - "I do not consider that funding of \$5m was anywhere near sufficient to finance a process R&D project in the nature and complexity of the Fortescue project and the Element Zero project during the period of December 1, 2021 to August 1, 2023".

Mr McFaul also says there is an "unexplained resource deficit" in terms of funds, however that figure was also been redacted.

An affidavit from another Fortescue employee, Anand Bhatt, says he constructed a timeline of when Dr Kolodziejczyk must have started work on the process of using ionic liquids and low temperature iron reduction, dating back to June 2020, and running up until the time Dr Kolodziejczyk and Dr Winther-Jensen left Fortescue.

However, a search of the IT systems at Fortescue, which should have revealed documents such as drafts of provisional patents and analysis of data, found gaps during key periods when the two men were assumed to have been working on the processes.

"I am therefore concerned that Dr Kolodziejczyk and Dr Winther-Jensen have intentionally not uploaded onto the Fortescue IT system and/or taken and/or deleted the above work product during or prior to ceasing their employment with Fortescue," Dr Bhatt says.

"Based on my analysis of Dr Kolodziejczyk's work on the ionic process at Fortescue ... and my understanding of the Element Zero process ... I consider that the Element Zero process is substantially the same process as that which Dr Kolodziejczyk took steps to develop while employed at Fortescue. That is because both processes are based on a hydroxide electrolyte where the water has been removed to make an ionic liquid." Dr Bhatt also says he reviewed Dr Winther-Jensen's email folders at Fortescue and "identified five documents of concern that Dr Winther-Jensen emailed from his Fortescue professional email address ... to his personal email address ... between his resignation from Fortescue on November 3, 2021 and his final day at Fortescue, November 12, 2021".

"Each of the five documents is confidential and directly relevant to the Fortescue project.

"Following my review ... I consider that the leaching technical report, iron ore leaching update, TEA Sheet and TEA Covering Email contain information that would be of particular value in progressing a competing research and development project in relation to the purification of iron ore utilising electrochemical reduction.

"I cannot conceive of any legitimate reason for Dr Winther-Jensen to have sent an email attaching any of these documents in the November 2021 period. I am concerned that the confidential information in each document could have been misused, could continue to be misused and/or may in the future be misused by Dr Winther-Jensen and Element Zero." FFI employee Adrian Huber has also claimed in his affidavit that Dr Kolodziejczyk was the subject of complaints he misrepresented his qualifications.

A subsequent Deloitte investigation, Mr Huber's affidavit says, found Dr Kolodziejczyk made "material misrepresentations and inaccuracies in respect of activities, positions held and qualifications" in his CV.

A letter published as part of the trove of documents also raises concerns about Dr Kolodziejczyk's behaviour following his resigning from FFI in mid-2021, and then later retracting his resignation.

"All of us who serve at FFI, would like to support you and see you successful," the letter, from then-FFI CEO Julie Shuttleworth says. "Bart, this however will necessitate a substantial behavioural change by you and leads me to our chairman's chief concern, to your failure to be a positive and encouraging leader." The nature of the concerns about Dr Kolodziejczyk's behaviour are not detailed in the letter. The matter is scheduled to return to court for an interlocutory hearing on Thursday.

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