

## NOTICE OF FILING

### Details of Filing

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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59  
Rule 29.02(1)

## Affidavit

No. 527 of 2024

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**FORTESCUE LIMITED ACN 002 594 872** and others  
Applicants

**ELEMENT ZERO PTY LIMITED ACN 664 342 081** and others  
Respondents

Affidavit of: **Rebecca Mary Dunn**  
Address: Level 35, International Tower Two, 200 Barangaroo Avenue  
Barangaroo NSW 2000  
Occupation: Solicitor  
Date: 22 September 2025

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I **Rebecca Mary Dunn** of Level 35, International Tower Two, 200 Barangaroo Avenue  
Barangaroo NSW 2000, Solicitor, say on oath:

### Introduction

- I am a partner of Gilbert + Tobin Lawyers, and I have day-to-day carriage of this matter for the First, Second and Fourth Respondents (the **Element Zero Respondents**) with Michael Williams, the solicitor for the Element Zero Respondents. I have sworn eight

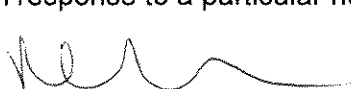
Filed on behalf of (name & role of party)	<u>The First, Second and Fourth Respondents</u>
Prepared by (name of person/lawyer)	<u>Michael John Williams, Partner</u>
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previous affidavits in these proceedings, including on 9 September 2025 (my **Seventh Affidavit**) and 16 September (my **Eighth Affidavit**) which I refer to in this affidavit.

2. I make this affidavit from my own knowledge unless indicated to the contrary. Where I rely on information provided to me from other sources, I have identified the relevant source and believe that information to be true and correct.
3. In making this affidavit, I do not waive or intend to waive – nor am I authorised to waive – privilege in any communication between Element Zero Respondents and their external legal representatives, including any privileged advice, work product or work undertaken by lawyers of Gilbert + Tobin in connection with these proceedings.
4. Exhibited to me at the time of swearing this affidavit is a confidential bundle of documents marked “**Confidential Exhibit RMD-8**” to which I refer below. A reference to a page number of Confidential Exhibit RMD-8 is a reference to the document on the corresponding page of Confidential Exhibit RMD-8. Confidential Exhibit RMD-8 contains information that has been designated as confidential by one of the parties in the proceeding and documents produced by the Element Zero Respondents in discovery, those documents containing information which is commercially sensitive to Element Zero. I respectfully request that access to Confidential Exhibit RMD-8 be restricted to external legal representatives of the parties.
5. I have read the eleventh affidavit of Paul Alexander Dewar affirmed 18 September 2025 (the **Dewar Affidavit**). I make this affidavit to respond to incorrect or inaccurate statements made in the Dewar Affidavit.
6. I consider it necessary to do so in circumstances where the Applicants have asserted in their submissions that the EZ Respondents have a burden in this application to explain the discovery they have given, and it is therefore incumbent on me, as their solicitor, to explain the alleged issues the Applicants have raised.
7. I have not responded to every statement appearing in that affidavit and do not intend to be taken to agree with statements to which I have not responded below.

#### **Identification of categories for documents recently discovered**

8. In paragraph 8 of the Dewar Affidavit, Mr Dewar states that on 16 September 2025 DCCL wrote to G+T requesting an explanation as to which of the documents were produced on the basis they had been produced by the Third Respondent pursuant to categories 11(d) and 11(f), and for the remainder, to identify which documents were produced in response to a particular notified deficiency.




9. At paragraph 9, Mr Dewar states that at the time of affirming his affidavit, Gilbert + Tobin had not provided a response to this letter.
10. On 9 September 2025, at the time of producing the additional documents to DCCL, Gilbert + Tobin sent a letter to DCCL (which is at Confidential Annexure PAD-76 to the Dewar Affidavit) confirming that of the of the 565 documents produced:
  - (a) 490 documents are being produced on the basis that they were produced by the Third Respondent in relation to categories 11(d) and 11(f); and
  - (b) 75 documents are documents referred to in the Element Zero Respondents' response to Items 2, 376-378, 379, 380, 381, 384, 387, 396-398, 399, 407, 408, 425, 426, 428-429, 430, 448, 493 and 494 which have not previously been produced to the Applicants.
11. On 19 September 2025 (after the service of the Dewar Affidavit), Gilbert + Tobin responded to DCCL's email dated 11 September 2025 providing a schedule which identified the documents produced in response to Items 2, 41-46, 376-378, 379, 380, 381, 384, 387, 396-398, 399, 407, 408, 425, 426, 428-429, 430, 448, 493 of DCC's letters 4 July 2025 and 14 July 2025. A copy of Gilbert + Tobin's letter dated 19 September 2025 is reproduced at pages 2 to 8 of **Confidential Exhibit RMD-8**. In the course of preparing that letter, Gilbert + Tobin became aware of a typographical error in the letter referred to in paragraph 10 above. As indicated in the letter of 19 September 2025, the number of new documents produced is 60 instead of 75.

#### **The number of documents in the Seized Material**

12. At paragraph 20 of the Dewar Affidavit, Mr Dewar refers to paragraph 47 of my Seventh Affidavit in which I explain "*once processed there were approximately 3 million records in the Seized Materials on which searches described below were run*" and paragraph 9(d) of Eighth Affidavit in which I state, "*the images contained approximately 7 million individual records*".
13. The statements in paragraph 47 of my Seventh Affidavit and paragraph 9(d) of Eighth Affidavit are both correct. To clarify the statement in my Seventh Affidavit, I confirm that the Seized Material contained documents which were replicated two or more times (for example, where email inboxes were contained on a computer and on a server so were imaged multiple times).




14. After processing of the Seized Material (approximately 7 million individual records) there were approximately three million unique records over which the searches described in my Seventh Affidavit were run.

**Category 11(e) and (f) documents**

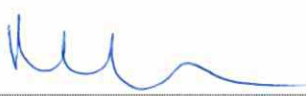
15. At paragraph 27 of the Dewar Affidavit, Mr Dewar refers to two documents which were produced by the Third Respondent which he says are responsive to category 11(e) but not 11(f) (BWJ.5000.0003.4277 and BWJ.5000.0003.4278).
16. This is incorrect. I have reviewed the Third Respondent's discovery and note that the Third Respondent produced BWJ.5000.0003.4277 and BWJ.5000.0003.4278 as responsive to both category 11(e) and 11(f).

**PCT Application no WO2025118033**

17. At paragraph 29 of the Dewar Affidavit, Mr Dewar refers to a statement I made at paragraph 68 of my Seventh Affidavit. I clarify the statement made at paragraph 68 of my Seventh Affidavit and confirm that the Element Zero Respondents conducted searches for all patent applications filed by the Respondents (not just those in which the Second Respondent was a named inventor).
18. At paragraph 30 of the Dewar Affidavit, Mr Dewar states that he is informed by Kevin Huang and believes, that there is a PCT Application no. WO2025118033 related to the 979 Application (which is the patent identified in discovery category 13(c)), but copies and drafts of it have not been discovered by the Element Zero Respondents. This is incorrect. The Element Zero Respondents produced this patent application (EZR.0003.0002.0309) and claim patent attorney privilege over the draft patents in their control (see for example, EZR.0003.0002.0291, EZR.0003.0002.0292, EZR.0003.0002.0296, EZR.0003.0002.0298, EZR.0003.0002.0300 identified in Part 3 of the Element Zero Respondents' Lists of Documents).

Sworn by the Deponent  
at Barangaroo  
in New South Wales  
on 22 September 2025  
Before me:

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Signature of deponent



Signature of witness

Caitlin Aisling Meade, Solicitor  
Level 35, International Tower Two, 200 Barangaroo Avenue, Barangaroo NSW 2000