

EXHIBIT A

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3 8601 North Scottsdale Road
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4 (480) 429-5000
Facsimile: (480) 429-5001

5 *Attorneys for Plaintiff*
6 *SOILWORKS, LLC, an Arizona corporation*

7
8 **UNITED STATES DISTRICT COURT**
9 **IN AND FOR THE DISTRICT OF ARIZONA**

10
11 SOILWORKS, LLC, an Arizona
corporation,

12 Plaintiff / Counterdefendant /
13 Counterclaimant,

14 v.

15 MIDWEST INDUSTRIAL SUPPLY, INC.,
an Ohio corporation authorized to do
16 business in Arizona,

17 Defendant / Counterclaimant /
Counterdefendant.
18

NO.: 2:06-CV-2141-DGC

**SOILWORKS, LLC'S RESPONSES TO
MIDWEST INDUSTRIAL SUPPLY,
INC.'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
AND THINGS**

19 Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Plaintiff,
20 Soilworks, LLC ("**Soilworks**") hereby responds to Defendant Midwest Industrial Supply,
21 Inc.'s ("**Midwest**") First Request for Production of Documents and Things, dated May 22,
22 2007.

23 **GENERAL STATEMENTS**

24 1. Soilworks incorporates by reference each and every general objection set forth
25 below into each and every specific response. From time to time a specific response may
26 repeat a general objection for emphasis or some other reason. The failure to include any
27 general objection in any specific response shall not be interpreted as a waiver of any general
28

1 objection to that response.

2 2. Soilworks' responses to Defendant's Interrogatories and Document Requests
3 are made to the best of Soilworks' present knowledge, information and belief. Soilworks
4 reserves the right to supplement and amend these responses should future investigation
5 indicate that such supplementation or amendment is necessary. The following responses and
6 objections are given without prejudice to Soilworks' right to revise its responses based upon
7 any subsequent investigation.

8 3. By responding to Midwest's Interrogatories and Document Requests,
9 Soilworks does not waive any objection that may be applicable to: (a) the use, for any
10 purpose, by Midwest of any information or documents given in this response to Midwest's
11 Interrogatories and Document Requests; or (b) the admissibility, relevancy or materiality of
12 any of the information or documents at issue in this case.

13 GENERAL OBJECTIONS

14 1. Soilworks objects to the noticed date for the production. Due to the length and
15 number of discovery requests and the volume of requested materials, Soilworks cannot
16 possibly produce everything within 30 days. Soilworks will produce responsive materials on
17 a rolling basis.

18 2. Soilworks objects to each and every Interrogatory and Document Request to
19 the extent that it is inconsistent or seeks to impose duties or obligations on Soilworks beyond
20 those imposed by the Federal Rules of Civil Procedure, the Local Rules for this District, or
21 the Individual Rules of the Judge hearing this matter.

22 3. Soilworks objects to each and every Interrogatory and Document Request
23 insofar it is vague, ambiguous, indefinite, overly broad, unduly burdensome, duplicative,
24 cumulative, unintelligible or otherwise unclear as to the precise information sought.
25 Soilworks objects on this basis particularly when the Interrogatory or Document Request is
26 unduly burdensome in view of the cost necessary to investigate weighed against Midwest's
27 need for the information.

28 4. Soilworks objects to each and every Interrogatory and Document Request to

1 the extent that it seeks information that is neither relevant to any claim or defense in this
2 action nor reasonably calculated to lead to the discovery of admissible evidence.

3 5. Soilworks objects to each and every Interrogatory and Document Request as
4 overly broad and unduly burdensome to the extent that it seeks information about Soilworks
5 products that are not accused of infringement. Soilworks will only provide materials and
6 information on its products and services that are actually accused of infringing the two
7 Midwest Patents identified in the Counterclaims.

8 6. Soilworks objects to each and every Interrogatory and Document Request as
9 overbroad in geographic scope to the extent that it seeks discovery on activities outside the
10 United States. Unless otherwise stated, Soilworks will interpret each Interrogatory and
11 Document Request to be limited to activities in the United States.

12 7. Soilworks objects to each and every Interrogatory and Document Request to
13 the extent that it seeks information or documents protected by the attorney-client privilege,
14 work product doctrine, joint-defense privilege, common-interest privilege, or any other
15 applicable law, privilege, protection, or doctrine (collectively "privileged information"). The
16 production of any privileged information or document by Soilworks (beyond production of
17 opinions relied upon) is unintentional, and Soilworks does not intend to waive any applicable
18 objection or privilege as a result of such production. The scope of any waiver of privilege
19 related to production of opinions of counsel shall be as narrow as permitted by law.

20 8. Soilworks objects to each and every Interrogatory and Document Request to
21 the extent it requires Soilworks to search for and reveal privileged information from its and
22 its attorneys' litigation files pertaining to this lawsuit. Soilworks will not schedule on its
23 privilege log any attorney-client privileged materials or materials protected by the attorney
24 work product doctrine created during the course of any ongoing Soilworks/Midwest
25 litigation.

26 9. Soilworks objects to each and every Interrogatory and Document Request as
27 unduly burdensome and oppressive to the extent that it purports to require Soilworks to
28 search its facilities and inquire of Soilworks' employees other than those facilities and

1 employees that would reasonably be expected to have responsive information. Soilworks'
2 responses are based upon (1) a reasonable search, given the time allotted to Soilworks to
3 respond to the interrogatories, of facilities and files that could reasonably be expected to
4 contain responsive information, and (2) inquiries of Soilworks employees and/or
5 representatives who could reasonably be expected to possess responsive information.

6 10. Soilworks objects to each and every Interrogatory and Document Request to
7 the extent that it seeks information or documents already in the possession of Midwest or in
8 the public domain and as readily available to Midwest as they are to Soilworks.
9 Accordingly, information or documents that are otherwise responsive to these Interrogatories
10 and Document Requests, but that are already in the possession of Midwest, or are equally
11 available or more available to Midwest, will not be produced in response to these
12 Interrogatories and Document Requests.

13 11. Soilworks objects to each and every Interrogatory and Document Request to
14 the extent it calls for information or documents not within the possession, custody or control
15 of Soilworks. The responses given herein are based upon information and documents within
16 Soilworks' possession, custody or control.

17 12. Soilworks objects to each and every Interrogatory and Document Request as
18 overbroad and unduly burdensome to the extent that it is unlimited in temporal scope or
19 otherwise not limited to a time frame relevant to this litigation and the patent-in-suit.

20 13. Soilworks objects to each and every Interrogatory and Document Request to
21 the extent that it calls for information or documents which are confidential or proprietary to,
22 or the trade secrets of, a third party. Soilworks will not produce such documents until it has
23 notified the relevant third parties of Midwest's requests and, to the extent necessary,
24 obtained their consent to such production.

25 14. Soilworks objects to each and every Interrogatory and Document Request to
26 the extent it seeks confidential, trade secret, or proprietary business, technical, marketing, or
27 financial information. Soilworks will not provide such information until a suitable protective
28 order has been agreed upon by the parties and entered by the Court.

1 27. All documents, things, and electronically stored information concerning any
2 and all factual bases for each and every claim set forth in Plaintiff's Complaint and/or
3 Counterclaim(s).

4 **RESPONSE: Objection.** This request is vague, overly intrusive, broad, unduly
5 burdensome and not reasonably calculated to lead to the discovery of admissible
6 evidence. This interrogatory is premature. This case is still in its early stages, and until
7 Midwest identifies its claim construction / interpretation position and provides a claims
8 chart regarding its patent(s), Soilworks cannot fully respond to this request. Without
9 waiving the foregoing objections, once the Court has entered a Protective Order which
10 is mutually agreeable to all parties, Soilworks will make responsive documents
11 available. Further, this request seeks documents which may be subject to the attorney
12 client and/or work product privileges. To the extent privileged documents exist,
13 Soilworks will provide a privilege log.

14 28. All documentary, physical, and electronically stored evidence that Plaintiff
15 may or intends to rely upon in any pleading, at trial, and/or any hearing in this action.

16 **RESPONSE: Objection.** Vague, overbroad and not reasonably calculated to the
17 discovery of admissible evidence. This interrogatory is premature. This case is still in
18 its early stages, and until Midwest identifies its claim construction / interpretation
19 position and provides a claims chart regarding its patent(s), Soilworks cannot fully
20 respond to this request. Without waiving the foregoing objections, once the Court has
21 entered a Protective Order which is mutually agreeable to all parties, Soilworks will
22 make responsive documents available. Further, this request seeks documents which
23 may be subject to the attorney client and/or work product privileges. To the extent
24 privileged documents exist, Soilworks will provide a privilege log.

25 29. Produce actual samples of Plaintiff's Products.

26 **RESPONSE: Objection.** Vague and overbroad. Durasoil® is the only
27 Soilwork's product about which an infringement argument has been made, and
28 Soilworks will only provide the requested information about Durasoil®. Without

1 waiving the foregoing objections, once the Court has entered a Protective Order which
2 is mutually agreeable to all parties, Soilworks will make responsive documents
3 available.

4 30. All documents, things, and electronically stored information, including
5 invoices, between Plaintiff and any internet entity Plaintiff uses to advertise Plaintiff's
6 Products, including, but not limited to Google and Yahoo!

7 **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**
8 **discovery of admissible evidence.**

9 31. All documents, things, and electronically stored information regarding
10 impressions, purchasing of keywords, Keywords and "costs per click" from all search
11 engines Plaintiff advertises upon related to Plaintiff's Products.

12 **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**
13 **discovery of admissible evidence.**

14 32. Produce a representative sampling of the history of Plaintiff's websites
15 advertising Plaintiff's Products.

16 **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**
17 **discovery of admissible evidence.**

18 33. All organizational charts of Plaintiff from 2002 to the present time.

19 **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**
20 **discovery of admissible evidence. Without waiving the foregoing objections, Soilworks**
21 **responds that it does not possess the requested documents.**

22 Dated this 23rd day of July, 2007.

EXHIBIT B

1 E. SCOTT DOSEK #012114
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5 *Attorneys for Plaintiff*
6 *Soilworks, LLC, an Arizona corporation,*

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8 **UNITED STATES DISTRICT COURT**
9 **IN AND FOR THE DISTRICT OF ARIZONA**

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11 SOILWORKS, LLC, an Arizona
corporation,,
12
13 Plaintiff / Counterdefendant,

14 v.

15 MIDWEST INDUSTRIAL SUPPLY, INC.,
an Ohio corporation authorized to do
business in Arizona,,
16
17 Defendant / Counterclaimant.

NO.: 2:06-CV-02141-DGC

**SOILWORKS, LLC'S RESPONSE TO
MIDWEST INDUSTRIAL SUPPLY,
INC.'S FIRST SET OF REQUEST FOR
ADMISSIONS TO SOILWORKS, LLC**

18 To Defendant/Counterclaimant:

19 **RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS**

20 **REQUEST FOR ADMISSION NO. 1:** Admit that Plaintiff is not a manufacturer of
21 any of Plaintiff's products.

22 Admit _____ Deny X

23
24 **REQUEST FOR ADMISSION NO. 2:** Admit that Plaintiff has never manufactured
25 Plaintiff's Soiltac® and/or Durasoil® products.

26 Admit _____ Deny X

1 Dated this 31st day of December, 2007.

2 KUTAK ROCK LLP

3
4 By _____ /s

5 E. Scott Dosek
6 John P. Passarelli
7 Suite 300
8 8601 North Scottsdale Road
9 Scottsdale, AZ 85253-2742

10 *Attorneys for Plaintiff*

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EXHIBIT C

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5 *Attorneys for Plaintiff*
6 *Soilworks, LLC, an Arizona corporation,*

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8 **UNITED STATES DISTRICT COURT**
9 **IN AND FOR THE DISTRICT OF ARIZONA**

10
11 SOILWORKS, LLC, an Arizona
corporation,,

12 Plaintiff / Counterdefendant,

13 v.

14 MIDWEST INDUSTRIAL SUPPLY, INC.,
15 an Ohio corporation authorized to do
business in Arizona,,

16 Defendant / Counterclaimant.
17

NO.: 2:06-CV-02141-DGC

**SOILWORKS, LLC'S RESPONSE TO
MIDWEST INDUSTRIAL SUPPLY,
INC.'S SECOND SET OF
INTERROGATORIES TO
SOILWORKS, LLC**

18 To Defendant/Counterclaimant:

19 **RESPONSE TO SECOND SET OF INTERROGATORIES**

20 **INTERROGATORY NO. 21:** If you denied any of Defendant's requests for
21 admissions as set forth in Defendant Midwest Industrial Supply, Inc.'s First Set of Requests
22 for Admissions to Plaintiff Soilworks, LLC, please set forth each and every reason for such
23 denial(s).

24 **RESPONSE:**

- 25 1. Request for Admission No. 1 is denied because the term "manufacture" is
26 nowhere defined in Defendant's discovery requests. Nevertheless, by any
27 commonly used definition of the term manufacturer, Plaintiff is a manufacturer
28

1 of products.

2 2. Request for Admission No. 2 is denied because the term “manufacture” is
3 nowhere defined in Defendant’s discovery requests. Nevertheless, by any
4 commonly used definition of the term manufacturer, Plaintiff is a manufacturer
5 of products.

6 3. Request for Admission No. 3 is denied because the term “binder” is nowhere
7 defined in Defendant’s discovery requests.

8 4. Request for Admission No. 4 is denied because the term “synthetic isoalkane”
9 is nowhere defined in Defendant’s discovery request.

10 5. Request for Admission No. 5 is denied because the term “isoalkane” is
11 nowhere defined in Defendant’s discovery request.

12 6. Request for Admission No. 6 is denied because the term “isoalkane” is
13 nowhere defined in Defendant’s discovery request.

14 7. Request for Admission No. 7 is denied because Durasoil® is an organic
15 product.

16 8. Request for Admission No. 8 is denied because Durasoil® is a synthetic
17 product.

18 9. Request for Admission No. 9 is denied because Plaintiff has indeed suffered
19 irreparable harm due to the actions of defendant in publishing untrue
20 accusations about Plaintiff within the parties’ industry, in general and
21 specifically to Plaintiff’s customers..

22 10. Request for Admission No. 10 is denied because Defendant has disseminated
23 information in a manner that is likely to cause confusion among customers of
24 Plaintiff’s products regarding Plaintiff’s conduct and products.

25 11. Request for Admission No. 11 is denied because Defendant has disseminated
26 information in a manner that is likely to cause deception among consumers of
27 Plaintiff’s products regarding Plaintiff’s conduct and products.

28 12. Request for Admission No. 12 is denied because Defendant has disseminated

1 information in a manner that is likely to cause mistake among consumers of
2 Plaintiff's products regarding Plaintiff's conduct and products.

3 13. Request for Admission No. 13 is denied because Defendant's own documents
4 including its claim charts reveal that its patents are invalid under 35 U.S.C.
5 §101.

6 14. Request for Admission No. 14 is denied because Defendant's own documents
7 including its claim charts reveal that its patents are invalid under 35 U.S.C.
8 §101.

9 15. Request for Admission No. 15 is denied because Defendant's own documents
10 including its claim charts reveal that its patents are invalid under 35 U.S.C.
11 §101.

12 16. Request for Admission No. 16 is denied because Plaintiff has most certainly
13 suffered monetary damage as a result of the actions taken by Defendant and as
14 set forth in Plaintiff's complaint. The precise amount of said damages has yet
15 to be calculated with precision and continues to mount.

16 17. Request for Admission No. 17 is denied because Plaintiff has most certainly
17 suffered monetary damage as a result of the actions taken by Defendant and as
18 set forth in Plaintiff's complaint. The precise amount of said damages has yet
19 to be calculated with precision and continues to mount.

20 18. Request for Admission No. 20 is denied because there are indeed "proprietary
21 ingredients" in Durasoil®.

22
23 Dated this 31st day of December, 2007.

KUTAK ROCK LLP

By _____ /s

E. Scott Dosek
John P. Passarelli
Suite 300
8601 North Scottsdale Road
Scottsdale, AZ 85253-2742

Attorneys for Plaintiff

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 31, 2007, the foregoing Soilworks, LLC's
3 Response to Midwest Industrial Supply, Inc.'s Second Set of Interrogatories was served
4 electronically upon the following:
5

6 JOHN M. SKERIOTIS #0069263 (OH)
7 JILL A. GRINHAM #075560 (OH)
8 BROUSE MCDOWELL
9 388 S. Main Street
10 Suite 500
11 Akron, OH 44311-4407

Jill Anne Grinham jgrinham@brouse.com
John M Skeriotis jms@brouse.com

Attorneys for Defendant Midwest Industrial Supply, Inc.

12
13
14 _____/s/
Amy S. Fletcher
15
16
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EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona)	
corporation,)	
)	
Plaintiff/Counterdefendant,)	
)	
vs.)	NO. 2:06-CV-02141-DGC
)	
MIDWEST INDUSTRIAL SUPPLY,)	
INC., an Ohio corporation)	
authorized to do business)	
in Arizona,)	
)	
Defendant/Counterclaimant.)	
)	

Phoenix, Arizona
April 9, 2008
9:00 a.m.

C O N F I D E N T I A L
DEPOSITION OF CHAD FALKENBERG
SOILWORKS, LLC 30(b)(6)
(VOLUME I, Pages 1 - 229)

LEA, SHERMAN & HABESKI
Registered Professional Reporters
834 North First Avenue
Phoenix, Arizona 85003
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Reported by: Linda Blackmon, RPR/RMR
Certified Reporter
Certificate No. 50320

I N D E X

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1 identify the instance you are saying they missed
2 because of this letter?

3 A. Not the firm details you are looking for, no.

4 Q. I am looking for any detail. By the way, all
5 you have told me is that there may be an airport but
6 you don't know of any, correct?

7 A. I think you would be best off when you depose
8 Polar that they would have the closest information
9 relating to those projects.

10 Q. Do you know what irreparable harm has been
11 caused by Midwest against Soilworks?

12 MR. DOSEK: Object to the form.

13 A. I don't know.

14 Q. BY MR. SKERIOTIS: Do you know what
15 "irreparable harm" is?

16 A. I have an idea.

17 Q. I will represent to you that when I use that
18 term I mean harm that can't be repaired monetarily. So
19 with that definition what irreparable harm is Midwest
20 causing to Soilworks?

21 MR. DOSEK: Same objection.

22 A. I don't know.

23 Q. BY MR. SKERIOTIS: With respect to
24 Paragraph 12, Paragraph 12 states "Midwest
25 intentionally has misrepresented the scope of said

1 Q. BY MR. SKERIOTIS: Do you know the damage, can
2 you estimate the damage that you feel that Midwest has
3 caused Soilworks?

4 A. I wish it was that easy. It's very difficult.

5 Q. Do you know of any damages you have suffered
6 that you can quantify?

7 A. That's the problem, it's very difficult to
8 quantify and it's a challenge to quantify that number.

9 Q. But do you know of anything that you can
10 quantify?

11 A. I don't know for sure.

12 Q. So I guess again the question is as you sit
13 here today do you know of any damage that you can
14 quantify as you sit here today?

15 MR. DOSEK: Object to the form.

16 A. It's difficult to quantify.

17 Q. BY MR. SKERIOTIS: I understand it's difficult
18 to quantify. The question is, though, do you know of
19 any damage as you sit here today that you can quantify?

20 A. I am not sure.

21 Q. But I don't think that's an "I'm not sure"
22 question, I think it's either "yes" or "no", either you
23 can quantify something here today or you can't. I
24 understand it's difficult. Just so you know, I am not
25 asking you for what's difficult to quantify, I am

1 asking you for what you can quantify.

2 A. I have not come here with numbers in my head,
3 no.

4 Q. So as you sit here today you cannot quantify
5 any amount of damage, correct?

6 A. As I sit here today I do not know how much
7 damage has been caused.

8 Q. Well, Mr. Falkenberg, how do you expect
9 Midwest to proceed with its litigation when at some
10 point in time you quantify some amount? I mean when do
11 you plan on quantifying that amount, can I ask you
12 that?

13 I mean here we are getting ready to be
14 done with discovery, this is our only deposition that's
15 going to happen today and tomorrow, when do you expect
16 to quantify this? Do you expect to just spring it on
17 Midwest at some point in the future later and we go
18 where did that come from?

19 MR. DOSEK: Object to the form. If you
20 have a question, ask the question.

21 Q. BY MR. SKERIOTIS: When do you expect to
22 quantify these numbers? This litigation has been
23 pending that you filed on September 7, 2006. We are
24 almost at the two-year mark and you haven't been able
25 to quantify what amount of damage; is that correct?

1 A. That's because it's difficult to quantify.

2 Q. When do you plan on quantifying it? That's
3 what my question is, when do you plan on quantifying
4 the damage?

5 A. I wish I could give you a date.

6 Q. So it could be that you can never quantify
7 this damage, correct?

8 A. I don't know when I am going to give you a
9 date, I don't know what that date is going to be.

10 MR. DOSEK: Let's break for lunch.

11 MR. SKERIOTIS: Hang on.

12 MR. DOSEK: It's 12:30 now, we have had
13 one little break and I think now is a good time.

14 MR. SKERIOTIS: Well, with all due
15 respect, Scott, I mean I always have given you leniency
16 and I understand, but this is my deposition.

17 MR. DOSEK: I understand that too and I
18 understand that --

19 MR. SKERIOTIS: I have got one more
20 count I want to get to and then we will take a break.
21 I want to finish this Complaint up to the degree that I
22 can.

23 MR. DOSEK: If it wasn't for the fact
24 that you are spending such an inordinate amount of time
25 going through this Complaint, I would agree with you

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)
3

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, LINDA BLACKMON, a Certified Reporter
6 in the State of Arizona; that the witness before
7 testifying was duly sworn by me to testify to the whole
8 truth; that the questions propounded to the witness and
9 the answers of the witness thereto were taken down by
10 me in shorthand and thereafter reduced by
11 computer-aided transcription to print under my
12 direction; that the deposition was submitted to the
13 witness to read and sign; that the foregoing 228 pages
14 are a true and correct transcript of all proceedings
15 had upon taking of said deposition, all done to the
16 best of my skill and ability.

17 I FURTHER CERTIFY that I am in no way related
18 to any of the parties thereto nor am I in any way
19 interested in the outcome hereof.

20 DATED at Phoenix, Arizona, this 15th day of
21 April, 2008.

22
23
24 Linda Blackmon, RPR/RMR
Certified Reporter
Certificate No. 50320
25