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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 Plaintiff / Counterdefendant /  
 13 Counterclaimant,

14 v.

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

17 Defendant / Counterclaimant /  
 18 Counterdefendant.

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

**REPLY TO MIDWEST INDUSTRIAL  
 SUPPLY, INC.'S COUNTERCLAIMS**

19 Plaintiff, Soilworks, LLC (“Soilworks”), through the undersigned counsel of record,  
 20 hereby replies to the Counterclaims of Midwest Industrial Supply, Inc. (“Defendant”) as  
 21 follows:

22 1. Soilworks admits the allegations contained in Paragraph 1 of the  
 23 Counterclaims.

24 2. Soilworks admits the allegations contained in Paragraph 2 of the  
 25 Counterclaims.

26 3. Soilworks admits that this Court has subject matter jurisdiction over the claims  
 27 and counterclaims asserted herein, that there is complete diversity between Midwest and  
 28

1 Soilworks and that Defendant's Counterclaims purport to assert an amount in controversy  
2 that exceeds \$75,000 and, except as so admitted, denies the allegations contained in  
3 Paragraph 3 of the Counterclaims.

4 4. Soilworks admits that this Court has personal jurisdiction over Soilworks and  
5 that its principal place of business is in the State of Arizona and that it does business in the  
6 State of Arizona, but otherwise denies all of the remaining allegations contained in  
7 Paragraph 4 of the Counterclaims.

8 5. Soilworks admits that venue is proper in this Court and, except as so admitted,  
9 denies the allegations contained in Paragraph 5 of the Counterclaims.

10 6. Soilworks is without sufficient information to form a belief as to the  
11 allegations of Paragraph 6 of the Counterclaims and, on that basis, denies the allegations  
12 contained in Paragraph 6 of the Counterclaims.

13 7. Soilworks is without sufficient information to form a belief as to the  
14 allegations of Paragraph 7 of the Counterclaims and, on that basis, denies the allegations  
15 contained in Paragraph 7 of the Counterclaims.

16 8. Soilworks is without sufficient information to form a belief as to the  
17 allegations of Paragraph 8 of the Counterclaims and, on that basis, denies the allegations  
18 contained in Paragraph 8 of the Counterclaims.

19 9. Soilworks is without sufficient information to form a belief as to the  
20 allegations of Paragraph 9 of the Counterclaims and, on that basis, denies the allegations  
21 contained in Paragraph 9 of the Counterclaims.

22 10. Soilworks denies the allegations contained in Paragraph 10 of the  
23 Counterclaims.

24 11. Soilworks admits the allegations contained in Paragraph 11 of the  
25 Counterclaims.

26 12. Soilworks admits the allegations contained in Paragraph 12 of the  
27 Counterclaims.

1           13. Soilworks denies the allegations contained in Paragraph 13 of the  
2 Counterclaims.

3           14. Soilworks denies the allegations contained in Paragraph 14 of the  
4 Counterclaims.

5           15. Soilworks denies the allegations contained in Paragraph 15 of the  
6 Counterclaims.

7           16. Soilworks denies the allegations contained in Paragraph 16 of the  
8 Counterclaims.

9           17. Soilworks repeats and realleges its reply to Paragraphs 1 through 16 as if fully  
10 set forth herein.

11           18. Soilworks denies the allegations contained in Paragraph 18 of the  
12 Counterclaims.

13           19. Soilworks denies the allegations contained in Paragraph 19 of the  
14 Counterclaims.

15           20. Soilworks denies the allegations contained in Paragraph 20 of the  
16 Counterclaims.

17           21. Soilworks denies the allegations contained in Paragraph 21 of the  
18 Counterclaims.

19           22. Soilworks denies the allegations contained in Paragraph 22 of the  
20 Counterclaims.

21           23. Soilworks denies the allegations contained in Paragraph 23 of the  
22 Counterclaims.

23           24. Soilworks denies the allegations contained in Paragraph 24 of the  
24 Counterclaims.

25           25. Soilworks denies the allegations contained in Paragraph 25 of the  
26 Counterclaims.

27           26. Soilworks denies the allegations contained in Paragraph 26 of the  
28 Counterclaims.

1           27. Soilworks repeats and realleges its reply to Paragraphs 1 through 26 as if fully  
2 set forth herein.

3           28. Soilworks denies the allegations contained in Paragraph 28 of the  
4 Counterclaims.

5           29. Soilworks denies the allegations contained in Paragraph 29 of the  
6 Counterclaims.

7           30. Soilworks denies the allegations contained in Paragraph 30 of the  
8 Counterclaims.

9           31. Soilworks denies the allegations contained in Paragraph 31 of the  
10 Counterclaims.

11          32. Soilworks denies the allegations contained in Paragraph 32 of the  
12 Counterclaims.

13          33. Soilworks repeats and realleges its reply to Paragraphs 1 through 32 as if fully  
14 set forth herein.

15          34. Soilworks admits the allegations contained in Paragraph 34 of the  
16 Counterclaims.

17          35. Soilworks admits the allegations contained in Paragraph 35 of the  
18 Counterclaims.

19          36. Soilworks repeats and realleges its reply to Paragraphs 1 through 35 as if fully  
20 set forth herein.

21          37. Soilworks denies the allegations contained in Paragraph 37 of the  
22 Counterclaims.

23          38. Soilworks denies the allegations contained in Paragraph 38 of the  
24 Counterclaims.

25          39. Soilworks repeats and realleges its reply to Paragraphs 1 through 38 as if fully  
26 set forth herein.

27          40. Soilworks denies the allegations contained in Paragraph 40 of the  
28 Counterclaims.





**COUNTERCLAIM FOR DECLARATORY JUDGMENT  
FOR INVALIDITY AND NONINFRINGEMENT  
OF THE '266 AND '270 PATENTS**

5. Soilworks repeats and realleges the allegations of Paragraphs 1 through 4 of its Counterclaim.

6. This Declaratory Judgment Counterclaim is asserted against Defendant under the patent laws, Title 35, United States Code and under Title 28, United States Code §§ 2201 and 1338(a).

7. Defendant has averred that the '266 and '270 Patents were duly and legally issued, it is the lawful owner of those two patents, including the right to sue and recover for any and all infringement of the '266 and '270 Patents and that Midwest infringes the "266 and/or '270 Patents.

8. Soilworks denies that, either directly, contributorily and by inducement, it has infringed, and that it is infringing, any valid and/or enforceable claim of the '266 and '270 Patents and Soilworks further asserts that the '266 and '270 Patents are invalid for failing to satisfy the conditions for patentability set forth in Part II of Title 35 of the United States Code including, but not limited to, §§ 101, 102, 103 and 112.

9. Therefore, there has been and is now an actual controversy between Soilworks and Defendant as to the invalidity and noninfringement of the '266 and '270 Patents.

**PRAYER FOR RELIEF**

WHEREFORE, Soilworks prays that this Court:

(a) Dismiss the Counterclaims of Defendant against Soilworks with prejudice.

(b) Declare that Soilworks has not, and does not, infringe any valid and/or enforceable claim of the '266 Patent directly or indirectly, literally or by equivalence.

(c) Declare that Soilworks has not, and does not, infringe any valid and/or enforceable claim of the '270 Patent directly or indirectly, literally or by equivalence.

(d) Declare that each claim of the '266 Patent is invalid.

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(e) Declare that each claim of the '270 Patent is invalid.

(f) Enjoin Defendant, their officers, agents, representatives, distributors, employees, affiliates, parent and subsidiary corporations, attorneys and other persons in active concert or participation with them from charging infringement or instituting any action for infringement of the '266 and '270 Patents against Soilworks or anyone in privity with Soilworks, including its successors, assigns, agents, suppliers, customers, licensees and sublicensees.

(g) Award Soilworks costs, together with reasonable attorneys' fees and all other expenses for the suit under governing law.

(h) Award Soilworks such other relief as this Court may deem just and proper.

Dated this 16th day of April, 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*



CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2007, the foregoing Reply to Midwest Industrial Supply, Inc.'s Counterclaims was filed electronically. Notice of this filing will be sent to all parties by operations of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/  
Amy S. Fletcher

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