

INDEX TO MOTION TO DISMISS PLAINTIFF'S COMPLAINT

2:06-CV-02141-DGC

SOILWORKS, LLC V. MIDWEST INDUSTRIAL SUPPLY, INC.

Exhibit 1	Letter dated June 8, 2006 from John M. Skeriotis to Douglas H. Allsworth
Exhibit 2	Letter dated July 18, 2006 to John M. Skeriotis from John P. Passarelli
Exhibit 3	Letter dated August 8, 2006 to John P. Passarelli from John M. Skeriotis
Exhibit 4	Durasoil Material Safety Data Sheet

EXHIBIT 1



John M. Skeriotis
Attorney at Law
jskeriotis@brouse.com

388 S. Main Street
Suite 500
Akron, OH 44311-4407
Office: 330.535.5711
Fax: 330.253.8601
1001 Lakeside Avenue
Suite 1600
Cleveland, OH 44114-1151
Office: 216.830.6830
Fax: 216.830.6807
www.brouse.com

June 8, 2006

Douglas H. Allsworth, Esq.
Kutak Rock LLP
Suite 300
8601 North Scottsdale Rd.
Scottsdale, AZ 85253-2742

Re: Upcoming Issuance of U.S. Patents Directed Toward
Chemical Soil Stabilization and Dust Control
Our Ref. No.: 21786.27486

Dear Mr. Allsworth:

As you know, we represent Midwest Industrial Supply, Inc. ("Midwest") with respect to its intellectual property matters.

Midwest is a leading manufacturer and distributor of dust stabilization and suppressant materials. Midwest's product line includes a stabilization material that includes an emulsion of aliphatic and cyclic organic compounds with carboxylic acids and polyolefins. Additionally, Midwest has invented and developed a method of applying its materials to maximize their stabilizing and suppressing effects. Since significant sums of money were spent researching and developing these and other breakthroughs, Midwest has filed numerous patent applications to protect its technology. We have recently received a Notice of Allowance for two of these pending patent applications, namely, Publication Nos. 2004/0234682 and 2005/0124527 (collectively the "Applications"), and we expect to receive the actual patent numbers themselves at any moment.

Your client, Soilworks, LLC ("Soilworks") also offers products for soil stabilization and dust suppression, one of which is marketed under the trade name Durasoil[®]. According to the Durasoil website, Durasoil is listed as being an "Ultra-Pure Synthetic Organic Dust Control Agent." From reviewing the available public information, which includes your MSDS sheet, we feel that at least some of the claims in the two patent applications cited above could potentially affect your client's ability to make, use and sell Durasoil in the future.

We are hopeful we can resolve the issues regarding your client's sales of Durasoil in view of our two pending patent applications. While no legal actions are contemplated by Midwest at this time, we ask you to kindly review the claims in the Applications, which are enclosed herewith, as a first step toward entering into a good-faith resolution of the outstanding issues.

I look forward to discussing these issues with you in the near future, and coming to an amicable resolution. As always, please feel free to call me if you would like to discuss this matter further.

Very truly yours,

BROUSE MCDOWELL

John M. Skeriotis

John M. Skeriotis

EXHIBIT 2

KUTAK ROCK LLP

THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 68102-2186
402-346-6000
FACSIMILE 402-346-1148
www.kutakrock.com

ATLANTA
CHICAGO
DENVER
DES MOINES
FAYETTEVILLE
IRVINE
KANSAS CITY
LITTLE ROCK
LOS ANGELES
OKLAHOMA CITY
PASADENA
RICHMOND
SCOTTSDALE
WASHINGTON
WICHITA

JOHN P. PASSARELLI
john.passarelli@kutakrock.com
(402) 346-6000

July 18, 2006

Mr. John M. Skeriotis
Brouse McDowell
388 South Main Street
Suite 500
Akron, OH 44311-4407

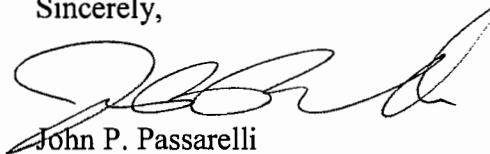
Dear Mr. Skeriotis:

Please be advised that Scott Dosek has referred this matter to me. I have had an opportunity to review your correspondence dated June 8, 2006, and the materials you provided with regard to your client's position on its alleged patent rights. I have also had an opportunity to conduct a preliminary investigation concerning these matters. On the basis of these efforts, I am aware of no factual or legal basis which would support your position that our client is infringing upon any of your client's proprietary rights or that our client's product and service offerings in any way fall within the scope of the purported claims.

As you know, patent owners are required to conduct investigations and to map them to each element of an asserted patent claim. I refer you to *View Engineering, Inc. v. Robotic Vision Systems, Inc.*, 208 F.3d 981 (Fed. Cir. 2000). I assume you have conducted the required investigation and prepared an applicable claims chart. I would be happy to review the foregoing and take that into consideration in advising our client with respect to this matter.

I look forward to hearing from you.

Sincerely,



John P. Passarelli

slm

cc: Soilworks, LLC
E. Scott Dosek

EXHIBIT 3



■ John M. Skeriotis

388 S. Main St., Suite 500
Akron, Ohio 44311-4407
Telephone: 330.535.5711
Facsimile: 330.253.8601
jms@brouse.com

Internet: www.brouse.com

August 8, 2006

John P. Passarelli, Esq.
Kutak Rock, LLP
The Omaha Building
1650 Farnham Street
Omaha, NE 68102

VIA E-MAIL
ORIGINAL BY MAIL
john.passarelli@kutakrock.com

Re: Issuance of U.S. Patent Nos. 7,074,266 B2 and 7,081,270 B2
Our Ref. No.: 21786.27486

Dear Mr. Passarelli,

I am in receipt of your letter dated July 18, 2006. I note, as a matter of first response, that your letter has not offered any substantive response to the concerns raised by me about the potential impact of my client's now issued patents (copies of which have been enclosed for your review) on Soilwork's product line. In my letter of June 8, I indicated that our investigation of Durasoil[®] was based on, amongst other things, the Durasoil[®] MSDS information.

Despite assurances from your colleague that I would receive a substantive response to my letter, which I hoped would resolve this matter, I received nothing for over a month, and, when I did receive a response, it was entirely non-substantive. By our review, the claims of the two enclosed patents are not complicated and, if your client has conducted any sort of investigation of its own product and determined them not to come within the scope of the claims, then, I simply ask that you let me know the grounds for that position so that we can set this matter aside. Your silence in responding provides us assurances of our review, that your client infringes. If Durasoil does not infringe the claims of Midwest's newly issued patents, and, parenthetically, based on the trade secret and proprietary knowledge that Soilworks holds, Soilworks is in the best position currently to make that determination, then I ask again that you contact me in that regard.

Mr. John P. Passarelli
August 8, 2006
Page 2 of 2

I look forward to your response.

Very truly yours,

BROUSE MCDOWELL

John M. Skeriotis

John M. Skeriotis

JMS/cjn
Enclosure
652343.1

EXHIBIT 4



Ultra-Pure Synthetic Organic Dust Control Agent

(800) 545-5420 Toll Free

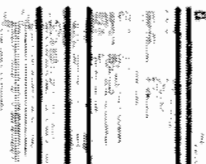


Wednesday
October 11th

- Home
- Product Information
- Applications / Uses
- Application Equipment
- Application Methods
- Application Rates
- Shipping Containers
- Photo Gallery
- MSDS
- FAQ
- Price Schedule
- Tests & Evaluations
- Environmental Data
- Downloads
- Industry Regulations
- Industry News
- Industry Links
- Free Durasoil Sample
- Contact Us



Durasoil Material Safety Data Sheet (MSDS)



Click Here for a Downloadable
Material Safety Data Sheet (MSDS)
3 pages
(88 KB)



Material Safety Data Sheet	
Section 1 Material Identification	
Product Name	Durasoil® (Durasoil is a registered trademark of Soilworks, LLC)
Manufacturer	Soilworks, LLC 881 North Monterey Street, Suite 101 Gilbert, Arizona 85233-3818
Telephone Number	(800) 545-5420
Emergency Telephone Numbers	(800) 545-5420
Online Information	www.Durasoil.com
Revision Date	August 2004
Emergency Overview	
Physical Form	Bright clear viscous liquid
Color	Colorless
Odor	Odorless
Hazards	This material is NOT HAZARDOUS according to the OSHA Hazard Communication Standard, 29 CFR 1910.1200
C.A.S. Chemical Name	Synthetic Organic Dust Control Agent
Synonyms	Dust Palliative, Dust Retardant, Dust Suppressant, Dust Control Material, Dust Inhibitor
Chemical Family	N/A
Empirical Formula	Mixture
Intended Use	Control Dust, Retard Dust, Suppress Dust, Inhibit Dust
Revision Notes	None



Section 2 Ingredients		CAS Number and Chemical Name
# / Chemical Name	%	
1. Complex mixture of severely hydro-treated, branched alkanes and alkylated saturated ring compounds	Trade secret	Non-hazardous
2. Proprietary ingredients	Trade secret	Non-hazardous
Section 3 Health Hazards		
Routes of Exposure	Skin, inhalation Mist 8 hour ACGIH TLV: TWA 5mg/m ³ This product may cause irritation to the eyes, nose, throat, lungs and skin after prolonged or repeated exposure.	
Carcinogens under OSHA, ACGIH, NTP, IARC	None of the components present in this material at concentrations equal to or greater than 0.1% are listed by IARC, NTP, OSHA, or ACGIH as a carcinogen.	
Section 4 First Aid		
Eye Contact	Flush eyes with flowing water and continue flushing until irritation subsides. If irritation persists, seek medical attention.	
Skin Contact	Remove contaminated clothing and shoes. Wash affected area with soap and water. If redness or irritation occurs, seek medical attention.	
Inhalation	This material has a low vapor pressure and is not expected to present an inhalation exposure at ambient conditions. If vapor or mist is generated when the material is heated or handled, move subject to fresh air. If breathing has stopped or is irregular, administer artificial respiration and supply oxygen if it is available. If subject is unconscious, remove to fresh air and seek immediate medical attention.	
Ingestion	Do not induce vomiting due to aspiration hazard. Seek immediate medical attention.	
Section 5 Fire and Explosion Data		
Flash Point (closed cup)	>300 F (>149 C)	
Test Method	ASTM D-93 (PMCC)	
Flammable Limits in Air	No Data Available	
Autoignition Temperature	No Data Available	
Extinguishing Media	Use dry chemical, foam, or carbon dioxide.	
Special Fire Fighting Procedures	Water may be ineffective but can be used to cool containers exposed to heat or flame.	
Unusual Fire and Explosion Hazards	Dense smoke may be generated while burning. Carbon monoxide, carbon dioxide, and other oxides may be generated as products of combustion.	
Section 6 Accidental Release Measures		
Containment Techniques	Remove all sources of ignition. Stop the leak, if possible.	
Clean-up Procedures	Contain spill immediately. Do not allow spill to enter sewers or open bodies of water. Absorb with inert absorbent materials. Large spills may be picked up using vacuum pumps, shovels, buckets, or other means and place in drums or other suitable containers.	
Section 7 Handling and Storage		
Storage	Do not transfer to unmarked containers. Store in a cool, well ventilated area in closed containers away from heat, sparks, open flame or oxidizing materials.	
Handling	Avoid breathing vapors or mist. Avoid contact with eyes. Avoid prolonged or repeated contact with skin. Wash thoroughly after handling. Wash clothing prior to reuse. May be slippery when spilled	
Section 8 Personal Protection / Exposure Control		
Exposure Limits and Guidelines	This product does not contain any components with OSHA or ACGIH exposure limits. If mist is generated, exposure limits apply.	
	OSHA PEL	TWA 5 mg/m ³
	ACGIH TLV	TWA 5 mg/m ³
Eye Protection		STEL 10 mg/m ³
	Eye protection is not required under conditions of normal use. If material is handled such that it could be splashed into eyes, wear splash-proof safety goggles.	
Skin Protection	No skin protection is required for single, short duration exposures. For prolonged or repeated exposures, use impervious synthetic rubber (boots, gloves, aprons, etc.) over parts of the body subject to exposure (Nitrile recommended). Launder soiled cloths.	
Respiratory Protection	Not required under normal conditions in a well-ventilated workspace. An organic vapor respirator National Institute for Occupational Safety and Health (NIOSH) approved for organic vapors is recommended under emergency conditions.	

Engineering Controls	If vapor or mist is generated when the material is heated or handled, adequate ventilation in accordance with good engineering practice must be provided to maintain concentrations below the specified exposure or flammable limits.
Work and Hygienic Practices	Always wash hands and face with soap and water before eating, drinking, or smoking. Section 9 Typical Physical and Chemical Properties
Physical Form	Bright clear viscous liquid
Color	None, Colorless
Odor	None, Odorless
pH	N/A, Not an aqueous solution
Vapor Pressure	<1 (mm Hg)
Vapor Density (Air=1)	>1
Boiling Point	>500 F (>260 C)
Melting Point	No Data Available
Solubility in Water	Insoluble in water
Specific Gravity (Water=1)	0.845-0.865
Pour Point	-5 F (-15 C) Section 10 Stability and Reactivity
Chemical Stability	Stable.
Conditions to Avoid	Heat, sparks, flame.
Incompatibility (Materials to Avoid)	May react with strong oxidizing agents.
Hazardous Decomposition Products	Carbon monoxide, carbon dioxide, and other oxides may be generated as products of combustion.
Hazardous Polymerization	Will not occur. Section 11 Toxicological Properties
Acute Oral Toxicity (LD50, Rat)	No Data
Acute Dermal Toxicity (LD50 Rabbit)	No Data
Acute Inhalation Toxicity (LC50, Rat)	No Data
Irritation Effects Data	No Data
Chronic/Subchronic Data	No Data Section 12 Ecological Information
No Data	
	Section 13 Disposal Considerations
Regulatory Information	All disposals must comply with federal, state and local regulations. This material, if spilled or discarded, may be a regulated waste. Refer to state and local regulations. Department of Transportation (DOT) regulations may apply for transporting this material when spilled.
Waste Disposal Methods	Waste materials may be landfilled or incinerated at an approved facility. Materials should be recycled if possible. Section 14 Transport Information
DOT Non-Bulk Shipping Name	Not Regulated
DOT Bulk Shipping Name	Not Regulated
IMO Shipping Data	Not Regulated
ICAO/IATA Shipping Data	Not Regulated Section 15 Regulatory Information US Federal Regulations
Toxic Substances Control Act (TSCA)	None
Toxic Substance Control Act (TSCA) 12(b) Component(s)	None
OSHA Hazard Communication Standard	None

(29CFR1310.1200) hazard class(es)	
EPA SARA Title III Section 312 (40CFR370) hazard class	None
EPA SARA Title III Section 313 (40CFR372) toxic chemicals above "de minimis" level are	None
Canadian Regulations	
This product is not a controlled product under the Canadian Workplace Hazardous Material Information System (WHMIS).	
Section 16 International Regulations	
The data in this Material Safety Data Sheet relates only to the specific material designated herein and does not relate to use in combination with any other material or in any process	
End	

[Home](#) | [Durasoil](#) | [Uses](#) | [Equipment](#) | [Shipping](#) | [Photos](#) | [MSDS](#) | [FAQ](#) | [Tests](#) | [Environment](#) | [Downloads](#) | [Regulations](#) | [News](#) | [Links](#) | [Contact Us](#)

Copyright © Soliworks, LLC 2006. All Rights Reserved. Soliworks, Durasoil, the Durasoil logo, Surtae, Gortla-Snot, Soltae and the Soltae logo are registered trademarks of Soliworks, LLC. Last modified 3/29/06.