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17 **UNITED STATES DISTRICT COURT**

18 **IN AND FOR THE DISTRICT OF ARIZONA**

19 SOILWORKS, LLC, an Arizona
 20 corporation,

21 Plaintiff / Counterdefendant /
 Counterclaimant,

22 v.

23 MIDWEST INDUSTRIAL SUPPLY, INC.,
 24 an Ohio corporation authorized to do
 business in Arizona,

25 Defendant / Counterclaimant /
 26 Counterdefendant.

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

**JOINT PROPOSED PRELIMINARY
 JURY INSTRUCTION**

1 The plaintiff and the defendant are competitors and both market dust control and soil
2 stabilization products. Each party alleges that the other party is liable for problems they each
3 believe arise from how they compete in that industry. You will be charged with determining
4 whether either party is liable and any damages involved based on the evidence, testimony,
5 and the law as I instruct you at the end of this trial.
6

7 First, as to the plaintiff's, Soilworks LLC's, claim against the defendant, Midwest
8 Industrial Supply, Inc, Soilworks claims that Midwest made false statements about
9 Soilworks' products, and about the scope of patents issued to Midwest. Soilworks' claim is
10 based on two letters sent by Midwest to one of Soilworks' distributor in Alaska, along with a
11 comparison chart on Midwest's website and a press release written by Midwest. You must
12 determine whether the statements made by Midwest were false. Also, that Midwest made
13 these statements in bad faith. I will explain the meaning of these terms as this trial draws to
14 a close.
15
16

17 Second, as to Midwest's claims against Soilworks, Midwest alleges that Soilworks has
18 falsely stated that it is a manufacturer. For this claim, you must determine whether the
19 statement made by Soilworks was false, was a statement of fact, was deceptive, influenced
20 the purchasing decision of consumers, and has injured Midwest by costing Midwest potential
21 sales.
22

23 Next, Midwest claims that Soilworks willfully infringed on one of Midwest's
24 registered trademarks, a trademark called Soil-Sement® where the word "Sement" is spelled
25 with an "S." This Court has already determined that Soilworks infringed on Midwest's
26 trademark for Soil-Sement®. You must determine whether Soilworks' infringement was
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