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16	Midwest Industrial Supply, Inc.				
17		DISTRICT COURT			
18	IN AND FOR THE DI	STRICT OF ARIZONA			
19	SOILWORKS, LLC, an Arizona corporation,	NO.: 2:06-CV-2141-DGC			
20	Plaintiff / Counterdefendant /	JOINT PROPOSED PRELIMINARY JURY INSTRUCTION			
21	Counterclaimant,	JORI HADIRUCHUM			
22	v.				
23	MIDWEST INDUSTRIAL SUPPLY, INC., an Ohio corporation authorized to do				
24	business in Arizona,				
25	Defendant / Counterclaimant / Counterdefendant.				
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27					
28					

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

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

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

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

willful. If you find willful infringement, you must then determine the amount of monetary relief to which Midwest is entitled due to Soilworks' willful trademark infringement.

Midwest also alleges that Soilworks' Durasoil product infringes two of Midwest's registered patents. If Midwest proves that Soilworks infringed its patents, you must determine the amount of monetary relief to which Midwest is entitled due to Soilworks' patent infringement.

Finally, Midwest claims that Soilworks has been unjustly enriched by its competitive practices, in essence, by the use of Midwest's Soil-Sement trademark and the infringement of Midwest's patents. You must determine whether Soilworks was enriched to Midwest's detriment. If you determine that Soilworks was unjustly enriched, you must then determine the amount of the unjust enrichment as monetary damage to Midwest.

Dated this 9th day of January, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2009, the foregoing **JOINT PROPOSED PRELIMINARY JURY INSTRUCTION** 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.

/s Amy S. Fletcher
Amy S. Fletcher

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