

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**MALLARD CREEK POLYMERS, INC.**

**Plaintiff,**

**v.**

**THE DOW CHEMICAL COMPANY**

**Defendant.**

**C.A. No.** \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

For its Complaint, Plaintiff Mallard Creek Polymers, Inc. (“Mallard Creek” or “Plaintiff”) alleges against the Defendant as follows:

**THE PARTIES**

1. Plaintiff is a company headquartered in Charlotte, North Carolina, with a principal place of business at 8901 Research Drive, Charlotte, NC 28262.
2. Upon information and belief, Defendant The Dow Chemical Company (“Dow” or “Defendant”) is a corporation organized under the laws of Delaware with a principal place of business at 2030 Dow Center, Midland, Michigan 48674. Dow has appointed The Corporation Trust Company, 1209 Orange St., Wilmington, DE 19801 as its agent for service of process. Upon information and belief, Dow has a plant located at 6101 Orr Road, Charlotte, NC 28213.

### **NATURE OF THE ACTION**

3. This is an action for patent infringement, arising pursuant to the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* and seeking damages, along with permanent injunctive relief pursuant to 35 U.S.C. §§ 281-285.

### **JURISDICTION AND VENUE**

4. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Dow because Dow has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271, and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of North Carolina, including in this District. Such acts by Dow cause injury to Mallard Creek within this District. Upon information and belief, Dow derives substantial revenue from the sale of infringing products within this District, and derives substantial revenue from interstate and international commerce.

6. Because Dow has committed and/or induced acts of patent infringement in this judicial district, and because Dow provides goods in this judicial district, and otherwise maintains minimum contacts here, and because Mallard Creek's principal place of business is in this district and Mallard Creek suffered harm in this district, venue is proper pursuant to 28 U.S.C. §§ 1391(b), (c), and 1400(b).

### **STATEMENT OF THE FACTS**

7. On July 19, 2011, U.S. Patent No. 7,981,946 (“the ‘946 Patent”), entitled “Antimicrobial and Antistatic Polymers and Methods of Using Such Polymers on Various Substrates” was duly and legally issued by the United States Patent & Trademark

Office. A true and accurate copy of the '946 Patent is attached hereto and incorporated by reference as Exhibit A.

8. On February 17, 2009, U.S. Patent No. 7,491,753 ("the '753 Patent"), entitled "Antimicrobial and Antistatic Polymers and Methods of Using Such Polymers on Various Substrates" was duly and legally issued by the United States Patent & Trademark Office. A true and accurate copy of the '753 Patent is attached hereto and incorporated by reference as Exhibit B.

9. Plaintiff owns all right, title, and interest in and to the '946 Patent and the '753 Patent.

10. Defendant Dow has directly infringed, or induced or contributed to the infringement of the '946 Patent and the '753 Patent by making, using, selling, or offering for sale in this judicial district and elsewhere certain polymers, including its OPULYN PQG product, that practice at least one claim of the '946 Patent and the '753 Patent.

11. Prior to the filing of this Complaint, Mallard Creek has given Dow written notice of infringement of the '946 Patent and the '753 Patent. Dow has had knowledge of the '946 Patent and the '753 Patent since at least as early as September 2012.

12. Dow's infringement has damaged Mallard Creek, in an amount yet to be ascertained, and has irreparably harmed, and continues to irreparably harm, Mallard Creek, including by usurping Mallard Creek's sales and business opportunities.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,981,946**

13. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1-12 of this Complaint as if fully set forth herein.

14. Defendant has directly infringed and continues to infringe one or more claims of the '946 Patent, either literally or under the doctrine of equivalents, by making, using,

offering for sale, or selling certain polymers, including its OPULYN PQG product, that embody each element of at least one claim of the '946 Patent, without the authorization, consent, or permission of Plaintiff.

15. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to use, sell, offer for sale, and/or import polymers that Dow knows to infringe the '946 Patent, including by selling its OPULYN PQG product to customers, and explicitly promoting and instructing that such OPULYN PQG product be incorporated into products such as body washes, shampoos, and conditioners.

16. Defendant has contributed to the infringement of the '946 Patent and continues to do so by making, using, offering for sale, or selling polymers, including its OPULYN PQG product, to customers, knowing that these products directly infringe the '946 Patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the '946 Patent, and have no substantial non-infringing uses.

17. Dow's past and continuing infringement of the '946 Patent has damaged Mallard Creek in an amount to be determined at trial.

18. Dow's past and continuing infringement of the '946 Patent has irreparably harmed Mallard Creek, and Dow's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

19. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling Plaintiff to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

**COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,491,753**

20. Plaintiff realleges and incorporates by reference the allegations stated in paragraphs 1-12 of this Complaint as if fully set forth herein.

21. Defendant has directly infringed and continues to infringe one or more claims of the ‘753 Patent, either literally or under the doctrine of equivalents, by making, using, offering for sale, or selling certain polymers, including its OPULYN PQG product, that embody each element of at least one claim of the ‘753 Patent, without the authorization, consent, or permission of Plaintiff.

22. Defendant has knowingly and intentionally induced, and continues to knowingly and intentionally induce, others in this judicial district and throughout the United States to use, sell, offer for sale, and/or import polymers that Dow knows to infringe the ‘753 Patent, including by selling its OPULYN PQG product to customers, and explicitly promoting and instructing that such OPULYN PQG product be incorporated into products such as body washes, shampoos, and conditioners.

23. Defendant has contributed to the infringement of the ‘753 Patent and continues to do so by making, using, offering for sale, or selling polymers, including its OPULYN PQG product, to customers, knowing that these products directly infringe the ‘753 Patent, constitute a material part of the invention, were especially made or especially adapted for use in infringement of the ‘753 Patent, and have no substantial non-infringing uses.

24. Dow’s past and continuing infringement of the ‘753 Patent has damaged Mallard Creek in an amount to be determined at trial.

25. Dow's past and continuing infringement of the '753 Patent has irreparably harmed Mallard Creek, and Dow's infringement will continue unless enjoined by this Court pursuant to 35 U.S.C. § 283.

26. Upon information and belief, such infringement has been, and will continue to be, willful, making this an exceptional case and entitling Plaintiff to increased damages and reasonable attorneys' fees pursuant to 35 U.S.C. §§ 284 and 285.

**PRAYER FOR RELIEF**

WHEREFORE, Mallard Creek respectfully requests that the Court:

(1) Declare that Dow has directly infringed, induced others to infringe, and/or contributed to the infringement of the '946 Patent and/or the '753 Patent, and that Dow has willfully infringed Mallard Creek's patent rights, as asserted herein;

(2) Enjoin Dow from directly infringing, inducing others to infringe, or contributing to the infringement of the '946 Patent and/or the '753 Patent, including by specifically prohibiting Dow and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with them, from making, using, offering to sell, selling, and importing into the United States any product which falls within the scope of any claim of the '946 Patent or the '753 Patent;

(3) Award Mallard Creek damages in an amount to be proved at trial to compensate Mallard Creek for damages caused by Dow's direct and indirect infringement of the '946 Patent or the '753 Patent;

(4) Award Mallard Creek increased damages pursuant to 35 U.S.C. § 284;

(5) Award Mallard Creek its reasonable attorneys' fees and litigation expenses, pursuant to 35 U.S.C. § 285;

(6) Award Mallard Creek prejudgment interest and costs pursuant to 35 U.S.C. § 284;

(7) Award Mallard Creek such other and further relief as the Court may deem appropriate.

**JURY DEMAND**

Plaintiff hereby demands a jury trial on all the facts and claims so triable herein.

Respectfully submitted on this 6th day of December, 2013.

WOMBLE CARLYLE SANDRIDGE & RICE LLP

By: /s/ Kurt E. Lindquist

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