

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

---

HYDRITE CHEMICAL CO.,

Plaintiff,

v.

Case No. 2:15-cv-856

SOLENIS TECHNOLOGIES L.P., and  
SOLENIS, LLC,

**JURY TRIAL DEMANDED**

Defendants.

---

**COMPLAINT**

---

Plaintiff, Hydrite Chemical Co. (“Hydrite”), by its attorneys, Quarles & Brady LLP, alleges its Complaint against Defendants, Solenis Technologies L.P. and Solenis, LLC (collectively “Solenis”) as follows:

**THE PARTIES**

1. Hydrite is a company duly organized and existing under the laws of the State of Wisconsin. Hydrite has a principal place of business at 300 North Patrick Boulevard, Brookfield, Wisconsin 53045.

2. Hydrite, among other things, is one of the largest and most respected providers of chemicals and related services in the United States. Hydrite makes, supplies, distributes, and markets a variety of chemicals, chemical products, and services in this judicial district and across the United States.

3. On information and belief, Solenis Technologies L.P. is a limited partnership organized and existing under the laws of the State of Delaware, having a principal place of business at 3 Beaver Valley Road, Suite 500, Wilmington, Delaware 19803.

4. On information and belief, Solenis, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 3 Beaver Valley Road, Suite 500, Wilmington, Delaware 19803.

5. On information and belief, Solenis Technologies, L.P. is commonly owned with Solenis, LLC.

#### **THE PATENTS-AT-ISSUE**

6. Solenis Technologies, L.P. is the owner and assignee of U.S. Patent No. 8,841,469, entitled “Chemical Additives and Use Thereof in Stillage Processing Operations,” which issued September 23, 2014. A true and correct copy of the ’469 Patent is attached as **Exhibit A**.

7. Solenis Technologies, L.P. is the owner and assignee of U.S. Patent No. 8,962,059, entitled “Bio-Based Oil Composition and Method for Producing the Same,” which issued February 24, 2015. A true and correct copy of the ’059 Patent is attached as **Exhibit B**.

8. Superior Oil Company, Inc. assigned substantial rights in the ’059 Patent to Solenis Technologies, L.P. on June 9, 2015. A true and correct copy of this assignment is attached as **Exhibit C**.

9. On information and belief, Superior Oil Company, Inc. owned all substantial rights in the ’059 Patent through assignments from the inventors to Superior Oil Company, Inc. True and correct copies of these assignments are attached as **Exhibit D**.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338, with reference to the United States Patent Laws, 35 U.S.C. § 1, *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

11. This Court has personal jurisdiction over Solenis. On information and belief, Solenis maintains substantial, continuous, and systematic contacts with Wisconsin, including maintaining and operating a water technology facility in Milwaukee, Wisconsin, and maintains a permanent sales staff in Milwaukee and Green Bay, Wisconsin.

12. This Court has personal jurisdiction over Solenis under 28 U.S.C. § 1400 and Wis. Stat. § 801.55.

13. This Court may declare the rights and other legal relations of the parties under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, because this action presents a case of actual controversy within this Court's jurisdiction.

14. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

#### **THE PRESENCE OF AN ACTUAL CONTROVERSY**

15. Hydrite was approached by Solenis through a series of telephone calls between September 26, 2014 and October 10, 2014 that resulted in a meeting between Solenis and Hydrite at the offices of Solenis in Wilmington, Delaware on October 30, 2014, during which Solenis offered Hydrite a non-exclusive license to its '469 Patent.

16. Between October 30, 2014 and February 24, 2015, Hydrite engaged in licensing negotiations with Solenis, but those negotiations ended without resulting in a license agreement.

17. On July 2, 2015, Solenis again approached Hydrite regarding obtaining a license for both the '469 Patent and the '059 Patent upon similar terms and conditions that caused the previous negotiations to end in February without resulting in a license agreement.

18. Additionally, Solenis has shown preparedness, intent, and willingness to file suit, as demonstrated by a declaratory judgment action currently pending, filed by Buckman Laboratories, Inc. against Solenis.

19. On information and belief, prior to January 23, 2015, Solenis sent a demand letter to Buckman Laboratories, Inc.

20. On January 23, 2015, Buckman Laboratories, Inc. filed under seal a declaratory judgment action against Solenis Technologies, L.P. and Solenis, LLC in the Western District of Tennessee (Case No. 2:15-cv-02063). *See Exhibit E.*

21. On information and belief, the Western District of Tennessee action involves the '469 Patent.

22. On November 3, 2014, Solenis, LLC issued a press release threatening enforcement of the '469 Patent. *See Exhibit F.* The press release explained that the '469 Patent was “issued to Solenis on September 23, 2014,” and that “Solenis has the right to exclude others from practicing” the invention. *Id.* at 1.

23. Solenis also threatened enforcement of the '469 Patent on its website. The document entitled Frequently Asked Questions About Solenis's Corn Oil Extraction Patent, published on the Solenis, LLC website, states, “The awarding of the ['469] patent means that with respect to Solenis' patented corn oil extraction method, Solenis has the right to exclude others from making, using, offering for sale or selling the invention throughout the United States.” *See Exhibit G.* Solenis, LLC declared its authority to enforce the '469 Patent: “[W]e will defend our intellectual property, including patent rights, in any manner we deem appropriate to protect any actual or potential violation of those rights.” *Id.* at 3.

24. Solenis's preparedness, intent, and willingness to file suit, is further demonstrated by a patent interference suit between Solenis and Superior Oil Company, Incorporated in the District of Delaware (Case No. 1:15-cv-00183-UNA).

25. In the District of Delaware action, Superior Oil Company, Incorporated sought an adjudication that an interference-in-fact existed between the '059 Patent and the '469 Patent, and that the inventors of the '059 Patent were first to invent the subject matter of the interfering claims. *See Exhibit H.*

26. On June 1, 2015, Solenis, issued a press release publicizing its resolution of the patent dispute with Superior Oil Company and its ownership of the '059 Patent. *See Exhibit I.* The press release also referenced the '469 Patent. *Id.*

27. Hydrite filed petitions with the U.S. Patent & Trademark Office for *inter partes* review of the '469 Patent and the '059 Patent on July 14, 2015.

28. Hydrite believes it has a right to continue to manufacture, use, sell, and offer to sell its products because the '469 Patent and '059 Patent are invalid and not infringed.

29. Under all of the circumstances, there is a substantial controversy between Solenis and Hydrite of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

**COUNT I**  
**DECLARATION OF INVALIDITY OF THE '469 PATENT**

30. Hydrite realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 29.

31. The claims of the '469 Patent are invalid for failing to satisfy the conditions of patentability set forth in the provisions of the patent laws, 35 U.S.C. § 100 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

32. For example, and without limitation, upon information and belief the '469 Patent is invalid pursuant to 35 U.S.C. §§ 102 and 103 based upon some or all of the following references: U.S. Patent Nos. 4,702,798, 5,283,322, 5,558,781, 6,013,157, 6,548,102; U.S. Patent

Application Pub. Nos. 2008/0110577, 2007/0210007; George Alther, "Put the Breaks On," Chemical Engineering, Vol. 5, No. 3 (March 1998), "The HLB System a time-saving guide to emulsifier selection," ICI Americas Inc. (March 1980), Suzanne Frison-Norrie and Peter Sporns, "Investigating the Molecular Heterogeneity of Polysorbate Emulsifiers by MALDI-TOF MS," J. Agric. Food Chem., Vol. 49, Issue 7, pp. 3335-3340 (July 2001), McCutcheon's Division, "McCutcheon's Volume 1: Emulsifiers & Detergents North American Edition," p. 211 (1997), IUPAC: Compendium of Chemical Terminology, Version 2.3.3., pp. 60, 605 (2014), IUPAC-IUB Commission on Biochemical Nomenclature, "The Nomenclature of Lipids," Biochem J., Vol. 171, Issue 1, pp. 21-35 (April 1978), Vigen K. Babayan, "Specialty Lipids and Their Biofunctionality," LIPIDS, Vol. 22, No. 6, pp. 417-20 (1987), D. Mukesh et al., "Lipase Catalysed Esterification of Isosorbide and Sorbitol," Biotechnology Letters, Vol. 15, No. 12, pp. 1243-46 (Dec. 1993).

33. There is a justiciable controversy between the parties regarding the invalidity of the '469 Patent, and Hydrite is entitled to a declaratory judgment that will finally resolve this issue.

**COUNT II**  
**DECLARATION OF NON-INFRINGEMENT OF THE '469 PATENT**

34. Hydrite realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 33.

35. Hydrite has not infringed and does not infringe any of the claims of the '469 Patent, directly or indirectly, literally or under the doctrine of equivalents.

36. There is a justiciable controversy between the parties regarding the noninfringement of the '469 Patent, and Hydrite is entitled to a declaratory judgment that will finally resolve this issue.

**COUNT III**  
**DECLARATION OF INVALIDITY OF THE '059 PATENT**

37. Hydrite realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 36.

38. The claims of the '059 Patent are invalid for failing to satisfy the conditions of patentability set forth in the provisions of the patent laws, 35 U.S.C. § 100 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112.

39. For example, and without limitation, upon information and belief the '059 Patent is invalid pursuant to 35 U.S.C. §§ 102 and 103 based upon some or all of the following references: U.S. Patent Nos. 4,702,798, 5,283,322, 5,558,781, 7,309,602; U.S. Patent Application Pub. Nos. 2008/0110577, 2007/0210007; George Alther, "Put the Breaks On," Chemical Engineering, Vol. 5, No. 3 (March 1998), "The HLB System a time-saving guide to emulsifier selection," ICI Americas Inc. (March 1980), Pasupati Mukerjee and Karol J. Mysels, "Critical Micelle Concentrations of Aqueous Surfactant Systems," Nat. Stand. Ref. Data Ser., Nat. Bur. Stand. (Feb. 1971), McCutcheon's Division, "McCutcheon's Volume 1: Emulsifiers & Detergents North American Edition," p. 211 (1997), IUPAC: Compendium of Chemical Terminology, Version 2.3.3., pp. 60, 605 (2014), IUPAC-IUB Commission on Biochemical Nomenclature, "The Nomenclature of Lipids," Biochem J., Vol. 171, Issue 1, pp. 21–35 (April 1978), Vigen K. Babayan, "Specialty Lipids and Their Biofunctionality," LIPIDS, Vol. 22, No. 6, pp. 417–20 (1987), Food and Drugs, 21 C.F.R. § 172.840, "Polysorbate 80" (2015), Food and Drugs, 21 C.F.R. § 573.860, "Polysorbate 80" (2015).

40. There is a justiciable controversy between the parties regarding the invalidity of the '059 Patent, and Hydrite is entitled to a declaratory judgment that will finally resolve this issue.

**COUNT IV**  
**DECLARATION OF NON-INFRINGEMENT OF THE '059 PATENT**

41. Hydrite realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 40.

42. Hydrite has not infringed and does not infringe any of the claims of the '059 Patent, directly or indirectly, literally or under the doctrine of equivalents.

43. There is a justiciable controversy between the parties regarding the noninfringement of the '059 Patent, and Hydrite is entitled to a declaratory judgment that will finally resolve this issue.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Hydrite Chemical Co., respectfully requests judgment and relief against Solenis Technologies L.P. and Solenis, LLC as follows:

- A. This Court declare that every claim of the '469 Patent is invalid;
- B. This Court declare that Hydrite has not infringed and is not infringing any claim of the '469 Patent;
- C. This Court declare that every claim of the '059 Patent is invalid;
- D. This Court declare that that Hydrite has not infringed and is not infringing any claim of the '059 Patent;
- E. This Court enter judgment declaring that this case is exceptional, and that Hydrite is entitled to recover its costs and reasonable attorneys' fees incurred in this action, under 35, U.S.C. § 285; and
- F. This Court award Hydrite such other and further relief as this Court deems just and proper.



**JURY DEMAND**

Hydrite demands a trial by jury on all issues properly tried to a jury.

Dated this 14th day of July, 2015.

s/Johanna M. Wilbert  
Respectfully submitted,  
David R. Cross, Bar No. 1002866  
[david.cross@quarles.com](mailto:david.cross@quarles.com)  
Johanna M. Wilbert, Bar No. 1060853  
[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)  
Michael T. Piery, Bar No. 1094654  
[michael.piery@quarles.com](mailto:michael.piery@quarles.com)  
QUARLES & BRADY LLP  
411 East Wisconsin Avenue, Suite 2350  
Milwaukee, WI 53202  
Tel.: 414.277.5000  
Fax: 414.978.8942

Christopher J. Fahy, Bar No. 1055445  
[christopher.fahy@quarles.com](mailto:christopher.fahy@quarles.com)  
QUARLES & BRADY LLP  
300 N. LaSalle Street, Suite 4000  
Chicago, Illinois, 60654  
Tel.: 312.715.5000  
Fax: 312.715.5155

*Attorneys for Plaintiff Hydrite Chemical Co.*