

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

MICROSOURCE, LLC; and GAVILON
FERTILIZER, LLC,

Plaintiffs,

v.

ECO WORLD GROUP, LLC, d/b/a
PRESIDION AG.; ECO AGRO
RESOURCES, LLC; and THOMAS
STANTON,

Defendants.

CASE NO. 5:19-CV-04016-CJW-MAR

**SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs submit this Complaint pursuant to Federal Rule of Civil Procedure 15 supplementing their Amended Complaint. Plaintiffs allege as follows:

NATURE OF ALLEGATIONS

1. This is an action for declaratory judgment of noninfringement and invalidity arising under the patent laws of the United States, Title 35 of the United States Code, and asserting claims for tortious interference with prospective advantage and defamation.

2. This case involves products called "fertilizer additives" designed to be added to fertilizers in the agriculture industry. Fertilizer additives reduce the loss of fertilizer nutrients available during periods of crop development. Fertilizer additives are typically made by using certain liquids, called "solvents," to dissolve

solid-state "inhibitors" to create a liquid-state fertilizer additive. This liquid-state fertilizer additive may then be blended with liquid fertilizers or incorporated into or coated on fertilizer granules for field application by farmers.

3. The dispute here involves patents for fertilizer additives that claim particular mixtures of solvents for dissolving the solid-state inhibitors into liquid delivery formulations.

4. Plaintiffs' fertilizer additives do not infringe those patents because, among other things, they do not use the particular mixtures of solvents claimed in those patents to dissolve the solid-state inhibitors.

5. Defendants have been engaged in a campaign to damage Plaintiffs by leading Plaintiffs' customer to believe that the claims of the patents in question are broader than they are in fact. In doing so, Defendants ignore key limitations in the patent claims.

THE PARTIES

6. Plaintiff Gavilon Fertilizer, LLC ("Gavilon Fertilizer") is a Delaware limited liability company. Its headquarters is in Omaha, Nebraska.

7. Plaintiff MicroSource, LLC ("MicroSource") is a Delaware limited liability company. It has a manufacturing facility in Minnesota, and its headquarters is in Savannah, Georgia.

8. Defendant Eco World Group, LLC, d/b/a Presidion Ag. ("Presidion"), is a Wyoming limited liability company formed in April 2018. Presidion claims that its principal place of business is 1712 Pioneer Avenue 994, Cheyenne, Wyoming. On

information and belief, there is no real-world Suite 994 at 1712 Pioneer Avenue in Cheyenne, Wyoming. That building houses Wyoming Corporate Services, Inc., a company that has a website at <https://wyomingcompany.com/> and that has been the subject of an article on REUTERS titled *Special Report – A little house of secrets on the Great Plains* <https://www.reuters.com/article/oukwd-uk-usa-shell-companies-idAFTRE75R22L20110628>. Both Wyoming Corporate Services, Inc. and that REUTERS article are discussed in the opinion *Wyoming Corp. Services v. CNBC, LLC*, 32 F. Supp. 3d 1177, 1186 (D. Wyo. 2014), which granted summary judgment for defendants and stated, among other things, that it was "substantially true" that Wyoming Corporate Services, Inc. offered "paper companies" for sale. Email addresses for Wyoming Corporate Services, Inc. have been used on Presidion's filings with the Wyoming Secretary of State. On information and belief, Presidion does not conduct business from any office location in Wyoming, and it does not have any employees located in Wyoming. Presidion does have a registered agent in Wyoming.

9. Raymond Perkins ("Perkins") is Presidion's President. On information and belief, Perkins resides and works in Florida.

10. Defendant Thomas Stanton ("Stanton") is Presidion's National Accounts Manager. He resides at 802 West 2nd St., Alta, Iowa in Buena Vista County, Iowa, and he conducts business from Alta, Iowa on behalf of Presidion.

11. Defendant Eco Agro, LLC ("Eco Agro"), is a North Carolina limited liability company with its principal place of business in Tierra Verde, Florida.

12. In addition to being Presidion's President, Perkins is a managing member of Eco Agro.

13. Upon information and belief, Defendant Stanton has worked for Eco Agro from his residence in Alta, Iowa.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). This action involves claims arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Court has jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1338 because they present a substantial issue of patent law. Alternatively, there is jurisdiction over those claims pursuant to the supplemental jurisdiction statute, 28 U.S.C. § 1367, and it is proper for the Court to exercise that supplemental jurisdiction pursuant to the factors listed in 28 U.S.C. § 1367(c).

15. Personal jurisdiction and venue are proper in this Court pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400. A substantial part of the events giving rise to the claim occurred in this District, the Defendants are all subject to personal jurisdiction in this District, and one or more Defendants reside in this District. Iowa Rule of Civil Procedure 1.306 authorizes service of process. Defendants have directed and continue to direct acts to and in this District pertaining to the Patents-In-Suit. Defendants are subject to personal jurisdiction in this District because the

claims arise from and relate to wrongful actions taken by Stanton in this District on behalf of Defendants.

16. For the reasons set forth in more detail below, a substantial controversy exists between the parties that warrants declaratory relief.

FACTUAL BACKGROUND

A. Fertilizers and Nitrogen Stabilizers.

17. To promote crop health and growth, farmers apply fertilizers to the soil that provide essential macronutrients, such as nitrogen (N).

18. Nitrogen may be applied to the soil in various liquid or solid forms of fertilizers, some of the most popular being urea ($\text{CO}(\text{NH}_2)_2$),¹ urea ammonium nitrate ("UAN"),² monoammonium dihydrogen phosphate ($\text{NH}_4\text{H}_2\text{PO}_4$), diammonium phosphate ($(\text{NH}_4)_2\text{HPO}_4$), and anhydrous ammonia (NH_3).

19. All of those forms have a high water solubility. That high water solubility is problematic when irrigating crops or during a rainstorm, because it results in an undesirable loss of nitrogen through run-off, erosion, and leaching. Nitrogen also can be lost to the atmosphere through a natural conversion process in which urea rapidly transforms to ammonia gas in the presence of an enzyme called "urease," commonly found in soil bacteria.

¹ Urea can be produced in a solid or liquid form.

² UAN is a liquid solution of urea ($\text{CO}(\text{NH}_2)_2$) and ammonium nitrate (NH_4NO_3) in water (H_2O).

20. To address those problems, retailers or wholesalers often add fertilizer additives called "nitrogen stabilizers" to their fertilizer to help farmers minimize nitrogen losses in the field.

21. Plaintiff MicroSource manufactures, markets, and sells nitrogen stabilizer products defined as the "MicroSource Products" in Paragraph 29 below.

22. Plaintiff Gavilon markets and sells the nitrogen stabilizer products defined as the "MicroSource Products" in Paragraph 29 below.

23. The nitrogen stabilizers sold by MicroSource and Gavilon include urease and nitrification inhibitors.

24. A urease inhibitor slows the natural nitrogen (N) cycle *on or above* the soil surface during conversion of urea ($\text{CO}(\text{NH}_2)_2$) to ammonia gas (NH_3). If that conversion takes place on the soil surface, the ammonia gas is subject to loss through atmospheric emissions called volatilization. Volatilization is an undesirable outcome because it reduces nutrient availability for plants, thus reducing crop yields. The purpose of a urease inhibitor is to slow that conversion process by moving the urea nitrogen below the soil surface, to reduce the risk of volatilization.

25. One popular urease inhibitor is commonly known as NBPT.³ NBPT exists in a solid-state form. NBPT is the only urease inhibitor defined by the American Plant Food Control Officials ("AAPFCO").⁴

³ The full name of NBPT is N-(n-butyl) thiophosphoric triamide, also known as N-butyl thiophosphoric triamide.

⁴ AAPFCO is an organization of fertilizer control officials from each State in the United States, from Canada, and from Puerto Rico actively engaged in administering fertilizer laws and regulations. See <http://www.aapfco.org/>.

26. A nitrification inhibitor slows the natural nitrogen (N) cycle *below* the soil surface during the conversion of ammonium (NH_4^+) to nitrate (NO_3^-). Plants absorb soil nitrogen in the forms of ammonium and nitrate, which are valuable to a crop's nutrition. However, once nitrogen converts to nitrate, it has a negative charge. Because soil also carries a negative charge, the nitrate is subject to nitrogen loss through leaching and denitrification. Leaching and denitrification have undesirable outcomes for the environment and reduce the amount of nutrients available for plants, thus lowering crop yields. The purpose of a nitrification inhibitor is to slow that conversion process. For instance, because the ammonium form has a positive charge, it is held in the negative charged soil, where negative and positive charged particles are drawn towards each other. Thus, when used as a fertilizer additive, nitrification inhibitors provide a benefit by reducing nutrient losses to the environment (e.g., gaseous losses, leaching or runoff) and by delivering more nutrients to plants.

27. One popular nitrification inhibitor is commonly known as DCD.⁵ DCD exists in a solid-state form. DCD is a defined nitrification inhibitor by AAPFCO. There is only one other nitrification inhibitor defined by AAPFCO, but it is labeled a pesticide by the U.S. Environmental Protection Agency. DCD is not a labeled pesticide.

⁵ The full name of DCD is dicyandiamide.

28. Gavilon has been selling nitrogen stabilizers with NBPT since 2007. MicroSource has been selling nitrogen stabilizers with NBPT since it was founded in 2011.

B. The MicroSource Products at Issue.

29. At issue in this lawsuit are the following four MicroSource nitrogen stabilizers containing urease and/or nitrification inhibitors (collectively, the "MicroSource Products"):

a. "Source NBPT 20" is a liquid fertilizer additive for Urea and UAN fertilizers that reduces nitrogen volatility by inhibiting the activity of the urease enzyme. Source NBPT 20 includes the solid-state urease inhibitor NBPT dissolved using a proprietary solvent purchased from a supplier. Source NBPT 20 provides a user benefit by slowing nitrogen loss.⁶ Source NBPT 20-treated urea and UAN solutions may be used in any soil type and with any crop where best management practices call for the surface application of nitrogen fertilizers.

b. "Source DCD 25" is a liquid fertilizer additive for UAN fertilizers that includes the solid-state nitrification inhibitor DCD dissolved using a solvent commonly known as DMSO.⁷ Source DCD 25 provides a user benefit by slowing the conversion of ammonium to nitrate.⁸ Nitrogen fertilizers treated with

⁶ Source NPBT 20 stabilizes surface-applied urea and urea ammonium nitrate solutions by inhibiting the activity of the urease enzyme. Inhibiting the urease enzyme reduces nitrogen loss by slowing hydrolysis and minimizing ammonia volatilization.

⁷ The full name of DMSO is dimethyl sulfoxide.

⁸ Source DCD 25 slows the conversion of ammonium to nitrate by temporarily disrupting the bacteria Nitrosomonas.

Source DCD 25 may be used in any soil type and with any crop where best management practices call for the application of stabilized nitrogen fertilizers.

c. HI-TEST™ (hereinafter, "Hi-Test") is a liquid fertilizer additive for UAN fertilizers that is a combination of the finished products Source NBPT 20 and Source DCD 25. The act of combining the finished products Source NBPT 20 and Source DCD 25 does not cause the urease or nitrification inhibitors to be further dissolved or altered. The urease inhibitor NBPT and nitrification inhibitor DCD are previously dissolved during the manufacture of the Source NBPT 20 and Source DCD 25 products by their respective solvents.

d. NITROLOCK® (hereinafter, "Nitrolock") is a liquid fertilizer additive for Urea and UAN fertilizers that is a combination of the finished products Source NBPT 20 and Source DCD 25. The act of combining the finished products Source NBPT 20 and Source DCD 25 does not cause the urease or nitrification inhibitors to be further dissolved or altered. The urease inhibitor NBPT and nitrification inhibitor DCD are previously dissolved during the manufacture of the Source NBPT 20 and Source DCD 25 products by their respective solvents.

C. Presidion's Contacts to Plaintiffs.

30. On October 23, 2018, Perkins, describing himself as Presidion's President, sent MicroSource an email on which he copied Stanton, Presidion's National Accounts Manager.

31. In that email, Perkins told MicroSource that Presidion was the "exclusive licensee" in the United States of certain technologies, including but not

limited to: U.S. Patent No. 9,637,420; U.S. Patent No. 9,650,306; U.S. Patent No. 9,732,008; U.S. Patent Application No. 15/793,326; and U.S. Patent Application No. 15/636,211.⁹

32. Perkins also provided a link to the USPTO website.

33. Perkins suggested meeting to discuss potential cross-licensing, licenses, and transactional sales. He said Stanton would "be in touch from here" regarding potential meeting times and dates.

34. Perkins sent MicroSource additional emails on January 17 and 18, 2019. In those emails, he included a reference to what he described as a portion of Presidion's patent portfolio and requested a meeting. He copied Stanton on those emails.

35. On January 22, 2019, Perkins emailed MicroSource regarding a recent notice of allowance from the USPTO. He copied Stanton on that email.

36. In the January 22nd email, Perkins requested a meeting and also requested copies of any MicroSource patents "to review prior to our meeting in order for us to assure we are not infringing on any Gavilon, Maurebeni [sic] or Micro Source IP (and vice versa)...."

37. In that email, Perkins again suggested discussing sales or cross-licensing.

⁹ U.S. Patent Application No. 15/793,326 issued as U.S. Patent No. 10,221,108 by the United States Patent and Trademark Office ("USPTO") on March 5, 2019.

38. On January 24, 2019, Perkins emailed MicroSource following-up on his previous meeting requests. He copied Stanton on that email.

39. On February 4, 2019, Perkins emailed MicroSource asking when he could meet with MicroSource. He copied Stanton on that email.

40. On February 8, 2019, Gavilon responded to Perkins' repeated contacts and informed him that MicroSource had evaluated Presidion's patent portfolio and determined that MicroSource's products did not infringe those patents. Gavilon further stated that MicroSource considered its products trade secrets and proprietary and did not want to license with Presidion.

D. Presidion's False Statements to a MicroSource Customer.

41. On February 14, 2019, Stanton contacted a Gavilon and MicroSource customer, Nutrien Ag. Solutions ("Nutrien"), which is one of the top 10 agricultural retailers in the United States. Stanton spoke with a Marketing Manager at Nutrien named Neil Tobkin.

42. During the conversation between Stanton and Tobkin, the topic of MicroSource and its nitrogen stabilizer products arose.

43. Stanton falsely told Tobkin that Presidion was suing MicroSource for patent infringement. He also falsely stated that MicroSource was prohibited from marketing its nitrogen stabilizer products. That reference was to the MicroSource Products defined in Paragraph 29. This necessarily implied that Gavilon was prohibited from selling those MicroSource Products as well.

44. Tobkin later informed MicroSource of the statements by Stanton when MicroSource was trying to persuade Tobkin to buy nitrogen stabilizer products from MicroSource. He confirmed his recollection of Stanton's statements in an e-mail to MicroSource employee, Larry Grote. An accurate copy of that e-mail is attached as Exhibit 7.

E. Additional Contact by Presidion to MicroSource and Gavilon.

45. On March 11, 2019, Perkins e-mailed Gavilon and MicroSource, sending a press release announcing that U.S. Patent No. 10,221,108 was granted by the USPTO.

46. The press release broadly stated that: "This patent contains multiple claims of a composition comprised of Urea, NBPT and Dimethyl Sulfoxide."

47. The press release also stated: "Presidion Ag. is the Exclusive [sic] licensee in the United States of this patented technology."

48. The press release said: "In addition to Presidion Ag. having *the exclusive rights to sublicense* these technologies for use on Urea or UAN, in the United States of America, Presidion Ag also has *full rights to enforce the patent.*" (emphasis added).

49. The press release still further stated, "To obtain a patent license covered under this patent, or for further information please email to: info@presidionag.com."

50. Eco Agro had previously issued a press release on May 12, 2017, announcing that U.S. Patent No. 9,637,420; U.S. Patent No. 9,650,306; and U.S.

Patent No. 9,732,008 had been allowed by the USPTO. The press release said: "The allowed patents protect hundreds of possible combinations of active ingredients used to stabilize fertilizer, such as NBPT, DMPP, DCD, Nitrapyrin and multiple solvent options."

F. The Substantial Controversy Under the Patent Laws.

51. There is a real and substantial controversy between the parties, including regarding whether the MicroSource Products infringe the Presidion Patents-In-Suit in view of Presidion's repeated contacts with MicroSource about its patents and requests to discuss licensing, and Presidion's contacts with Gavilon and MicroSource's customer alleging that the MicroSource Products infringe Presidion's patents and falsely stating that Presidion is suing MicroSource for patent infringement and MicroSource (and by implication Gavilon) is prohibited from selling the MicroSource Products. Because of Presidion's actions, Plaintiffs have a reasonable apprehension that they will be sued for patent infringement by Defendants.

G. The Patents-In-Suit.

52. On May 2, 2017, the USPTO issued U.S. Patent No. 9,637,420 ("the '420 Patent") entitled "Increased Longevity of the Nitrogen Content of Soil Through Improved Liquid Delivery Formulations of Urease Inhibitors and/or Nitrification Inhibitors Designed for Urea and Manure Based Fertilizers." A copy of the '420 Patent is attached hereto as Exhibit 1.

53. On May 16, 2017, the USPTO issued U.S. Patent No. 9,650,306 ("the '306 Patent") entitled "Compositions and Methods Comprising Nitrification Inhibitors Containing a Mixture of Protic and Aprotic Solvent Systems." A copy of the '306 patent is attached hereto as Exhibit 2.

54. On August 15, 2017, the USPTO issued U.S. Patent No. 9,732,008 ("the '008 patent") entitled "Liquid Formulations of Urease Inhibitors for Fertilizers." A copy of the '008 Patent is attached hereto as Exhibit 3.

55. On March 5, 2019, the USPTO issued U.S. Patent No. 10,221,108 ("the '108 Patent") entitled "Liquid Formulations of Urease Inhibitors for Fertilizers." A copy of the '108 Patent is attached hereto as Exhibit 4.

56. On May 28, 2019, the USPTO issued Patent No. 10,301,231 ("the '231 Patent") entitled "Liquid Formulations of Urease Inhibitors for Fertilizers." A copy of the '231 Patent is attached hereto as Exhibit 5

57. The '420 Patent, the '306 Patent, the '008 Patent, the '108 Patent, and the '231 Patent are collectively described as the "Patents-In-Suit."

H. Patent Application that Received a Notice of Allowance.

58. As previously explained in Plaintiffs' Complaint And Demand For Jury Trial (Doc. No. 1, ¶ 57) and First Amended Complaint And Demand For Jury Trial (Doc. No. 10, ¶ 57), Plaintiffs anticipated supplementing to include declaratory judgment claims regarding U.S. Patent Application No. 15/636,211 ("the '211 Application") when it issued as a patent, which it did as the '231 Patent on May 28, 2019. The claims of the '231 Patent are related to those in the '108 Patent.

Moreover, the '231 Patent claims priority to the same provisional patent application as the '108 Patent, has the same title of invention, and has the same inventors. If additional relevant applications issue as patents during the course of this lawsuit, Plaintiffs might seek leave to file a Supplemental Complaint with claims regarding any such newly-issued patents.

I. Assignments of and Exclusive Licenses to the Patents-In-Suit.

59. All of the Patents-In-Suit have been assigned to an entity called Worldsource Enterprises, LLC ("Worldsource"). On information and belief, Worldsource was formed in the Caribbean nation of St. Kitts and Nevis and has its principal place of business in St. Kitts and Nevis. Some of the Patents-In-Suit were assigned to Worldsource during their application phase, and others were assigned to Worldsource after issuance. Some were assigned directly from the named inventors to Worldsource, and others were initially assigned to an entity called Eco World Research and Development Group, LLC ("Eco World Research"), and later assigned from Eco World Research to Worldsource.¹⁰

¹⁰ The application that became the '420 Patent was assigned to Eco World Research in an assignment recorded with the USPTO on October 30, 2015. The assignment from Eco World Research to Worldsource was initially recorded with the USPTO on June 30, 2016, and a corrected entry fixing the application number was recorded on May 11, 2017. The '306 Patent was assigned directly from the named inventors to Worldsource in an assignment recorded with the USPTO on December 19, 2018. The application that became the '008 Patent was assigned from the named inventors to Eco World Research in an assignment recorded with the USPTO on October 23, 2015, and it was assigned from Eco World Research to Worldsource in an assignment recorded with the USPTO on June 30, 2016. The application that became the '108 Patent was assigned directly from the named inventors to Worldsource in an assignment recorded with the USPTO on October 29, 2018. The application that became the '231 Patent was assigned directly from the named

60. Defendants Presidion and Eco Agro have made conflicting representations to Gavilon and to Courts about which entities hold rights to the Patents-In-Suit.

61. In an email dated October 23, 2018, Perkins stated that Presidion was the "exclusive licensee" of all of the Patents-In-Suit.

62. In a Complaint filed on January 15, 2019, in the United States District Court for the Middle District of North Carolina, Eco Agro (along with Eco World Research and Worldsource) represented to the Court that Eco Agro "is the licensee" to the '008 Patent, the '306 Patent, and the '420 Patent, with "sublicense rights and the rights to defend the intellectual property."¹¹ In that Complaint, Eco Agro (along with Eco World Research and Worldsource) also represented to the Court that Eco Agro has been the "licensee" of the '008 Patent, the '306 Patent, and the '420 Patent "at all times relevant to this action."¹²

63. In that Complaint, Eco Agro (along with Eco World Research and Worldsource) also represented to the Court that Eco World Research was the "owner by assignment of all right, title and interest" to the '306 Patent.¹³

inventors to Worldsource in an assignment recorded with the USPTO on December 7, 2018. Copies of the Abstracts of Title for those Patents are attached collectively hereto as Exhibit 6.

¹¹ Filing No. 1, ¶¶ 15, 18, and 21, in *Eco Agro Resource, LLC et al. v. Hocking Int'l Labs., LLC*, Case No. 1:19-cv-00082-WO-JEP, United States District Court for the Middle District of North Carolina.

¹² *Id.* ¶¶ 16, 19, 22.

¹³ *Id.* ¶ 17.

64. Contrary to that representation to the Court, the USPTO's Abstract of Title does not list any assignment of the '306 Patent to Eco World Research. It lists only an assignment from the named inventors to Worldsource, dated December 19, 2018.

65. Presidion, Eco Agro, and Eco World Research represented to the Circuit Court of Talladega County, Alabama, in a filing made on February 14, 2019, that Presidion is the licensee to the '306 and '420 Patents with "sublicense rights and the right to defend the intellectual property."¹⁴ In that same filing, Presidion, Eco Agro, and Eco World Research represented that Eco Agro is the licensee to the '008 Patent.¹⁵ Perkins made the same representations in an Affidavit submitted to that Court.¹⁶

66. On information and belief, based on the representations by Presidion to MicroSource, all substantial rights in the Patents-In-Suit have been transferred to Presidion through exclusive licenses that include the right to sublicense and the right to sue for patent infringement.

67. If Eco Agro is the proper licensee for the '108 Patent or any of the other Patents-In-Suit, then Perkins (who is a Managing Member of Eco Agro) has been acting on behalf of Eco Agro when representing that he had the rights to discuss licensing arrangements as to the '008 Patent and Stanton was doing so when being

¹⁴ *Defendant's Response to Hocking International Laboratories, LLC's Motion for Temporary Restraining Order*, Document 32, p. 5, Case No. 61-CV-2019-900061.00, In the Circuit Court of Talladega County, Alabama.

¹⁵ *Id.*

¹⁶ *Id.* Ex. A ¶¶ 12, 14, & 16.

copied on an email by Perkins making those statements, without contradicting Perkins.

J. Additional Facts Relevant to the Tortious Interference and Defamation Claims.

68. On February 14, 2019, the Circuit Court of Talladega County, Alabama entered a Temporary Restraining Order prohibiting Presidion, Eco World Research, Stanton and Perkins from "making false, disparaging, intimidating, and/or threatening statements, including threats of litigation" to customers of Hocking Laboratories, LLC.¹⁷

69. On February 22, 2019, that Court held a hearing relating to a requested preliminary injunction.

70. On March 3, 2019, that Court entered an Order extending the Temporary Restraining Order for 60 days and directing the parties to mediate. The Court ordered that Eco Agro, Eco World Research, Stanton, and Perkins were "restrained and enjoined from making false, disparaging, intimidating, and/or threatening statements, including threats of unfounded litigation, to Innvictus Crop Care LLC, D&L and CHS, INC."¹⁸ The Court stated that: "Nothing in this TRO shall prohibit the Defendants from making truthful comments about potential patent infringements or to restrict them from defending legitimate patent

¹⁷ *Temporary Restraining Order*, Document 43, Case No. 61-CV-2019-9000061.00, Circuit Court of Talladega County, Alabama.

¹⁸ *Order Extending Temporary Restraining Order*, Document 136, p. 2, Case No. 61-CV-2019-9000061.00, Circuit Court of Talladega County, Alabama.

infringement. Furthermore, nothing in this TRO shall prohibit the Defendants from pursuing and entering into lawful license agreements with other companies."¹⁹

71. Eco Agro, Eco World Research, Stanton, and Perkins have filed a notice of appeal from that Order of March 3, 2019, and that appeal has been given Case No. 1180457 in the Alabama Supreme Court.

72. In the docketing statement for that appeal, the appellants stated that the "Eco Defendants do not own or operate manufacturing facilities, but rather operate by selling small amounts of product for proof of concept and then licensing the rights to manufacture product to other entities...."²⁰

COUNT ONE - AGAINST PRESIDION AND ECO AGRO
Declaration of Noninfringement of U.S. Patent No. 9,637,420

73. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

74. Plaintiffs have not infringed and do not infringe the claims of the '420 Patent, either directly or indirectly, literally or under the doctrine of equivalents, including through the making, use, sale, and/or offer for sale of the MicroSource Products.

75. The '420 Patent includes a total of 18 claims, of which claims 1, 9 and 13 are independent.

¹⁹ *Id.*

²⁰ *Docketing Statement of Appeal to Supreme Court of Alabama*, Document 148, Ex. B, p. 2, Case No. 61-CV-2019-900061.00, In the Circuit Court of Talledega County, Alabama.

76. The '420 Patent's independent claims are directed towards a composition, a fertilizer additive, or a method of making a composition.

77. Independent claims 1 and 9 of the '420 Patent require one or more nitrification inhibitors and one or more urease inhibitors. Independent claim 13 requires one or more urease inhibitors.

78. The '420 Patent's independent claims further require that the nitrification and urease inhibitors are dissolved in an "organic liquid solvating system" that includes a certain mixture of aprotic solvents, particularly, a mixture of *two aprotic solvents*. The *first aprotic solvent* must be DMSO, dialkyl sulfoxide, diaryl sulfoxide, or an alkylarylsulfoxide having a specific formula. The *second aprotic solvent* must be at least one of the following C₁-C₁₂ esters and no others:

- a) an alcohol or polyol from the family of C₁₋₁₀ alkynols and poly(C₁₋₁₀ alkylene) glycols,
- b) an alkylene glycol that is ethylene, propylene, or butylene glycol,
- c) glycerin, and
- d) an alkylene glycol alkyl ether that is dipropylene glycol methyl ether, tripropylene glycol methyl ether, or tripropylene glycol butyl ether.

79. None of the MicroSource Products include the organic liquid solvating system that has the certain mixture of two aprotic solvents claimed in the '420 Patent.

80. None of the MicroSource Products include the specific second aprotic solvent claimed in the '420 Patent.

81. Accordingly, at least for the above reasons, the MicroSource Products do not infringe the independent claims of the '420 Patent.

82. Because the MicroSource Products do not infringe the '420 Patent's independent claims, they also do not infringe the dependent claims that include the aforementioned limitations.

83. Plaintiffs also do not induce infringement of the '420 Patent or otherwise indirectly infringe the '420 Patent for at least the reasons stated above and because there is no direct infringement of the '420 Patent, either literally or under the doctrine of equivalents.

84. Despite knowing the actual limitations in the '420 Patent claims, Eco Agro has publicly asserted the objectively baseless position that the '420 Patent is infringed by "combining NBPT products with DCD *in the presence of* DMSO and Glycol and/or combining NBPT and DCD *in the presence of* DMSO and Glycol on urea or into UAN."²¹ To the contrary, the independent claims of the '420 Patent require nitrification and urease inhibitors dissolved in an organic liquid solvating system that includes a certain mixture of aprotic solvents, particularly, a mixture of *two aprotic solvents*. Thus, Eco Agro's public assertions attempt to give an impression that the '420 Patent is broader in scope than the patent claims allowed by the USPTO.

²¹ Filing No. 1, ¶ 108, *Eco Agro Resources, LLC et al. v. Hocking International Laboratories, LLC*, Case No. 1:19-cv-00082-WO-JEP, in the United States District Court for the Middle District of North Carolina. Filing Date January 15, 2019. (emphasis added).

85. As set forth above, an actual controversy exists between Plaintiffs and Defendants with respect to alleged infringement of the '420 Patent, and this controversy is likely to continue. Accordingly, Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties with respect to the '420 Patent.

86. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the claims of the '420 Patent.

COUNT TWO - AGAINST PRESIDION AND ECO AGRO
Declaration of Noninfringement of U.S. Patent No. 9,650,306

87. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

88. Plaintiffs have not infringed and do not infringe the claims of the '306 Patent, either directly or indirectly, literally or under the doctrine of equivalents, including through the making, use, sale, and/or offer for sale of the MicroSource Products.

89. The '306 Patent includes a total of 18 claims, of which claims 1, 9 and 13 are independent.

90. The '306 Patent's independent claims are directed towards a composition, a fertilizer additive, or a method of making a composition.

91. The '306 Patent's independent claims require one or more nitrification inhibitors.

92. The '306 Patent's independent claims further require that the nitrification inhibitors are dissolved in an "organic liquid solvating system" that

includes a certain mixture of *aprotic solvents* and *protic solvents*. The *aprotic solvent* must be DMSO, dialkyl sulfoxide, diaryl sulfoxide, or an alkylaryl sulfoxide having a specific formula. The *protic solvent* must be at least one of the following and no others:

- a) an alcohol or polyol from the family of alkylene and poly(alkylene) glycols,
- b) an alkylene glycol selected from the group consisting of ethylene, propylene, and butylene glycol,
- c) glycerin,
- d) an alkylene glycol alkyl ether selected from the group comprising of dipropylene glycol methyl ether, tripropylene glycol methyl ether, and tripropylene glycol butyl ether, and
- e) ethyl, propyl, or butyl lactate.

93. Independent claim 13 further requires a method step of "heating" the one or more nitrification inhibitors in the organic liquid solvating system that includes the certain mixture of aprotic solvents and protic solvents.

94. None of the MicroSource Products include the organic liquid solvating system that has the certain mixture of aprotic and protic solvents claimed in the '306 Patent.

95. None of the MicroSource Products include the method step of heating the one or more nitrification inhibitors in the organic liquid solvating system that includes the certain mixture of aprotic solvents and protic solvents as recited in independent claim 13.

96. Accordingly, at least for the above reasons, the MicroSource Products do not infringe the '306 Patent's independent claims.

97. Because the MicroSource Products do not infringe the '306 Patent's independent claims, those products also do not infringe the dependent claims that include the aforementioned limitations.

98. Plaintiffs also do not induce infringement of the '306 Patent or otherwise indirectly infringe the '306 Patent for at least the reasons stated above and because there is no direct infringement of the '306 Patent, either literally or under the doctrine of equivalents.

99. Despite knowing the actual limitations in the '306 Patent claims, Eco Agro has publicly asserted the objectively baseless position that the '306 Patent is infringed by "combining NBPT products with DCD *in the presence of* DMSO and Glycol and/or combining NBPT and DCD *in the presence of* DMSO and Glycol on urea or into UAN."²² To the contrary, the independent claims of the '306 Patent require nitrification inhibitors to be dissolved in an organic liquid solvating system that includes a certain mixture of *aprotic solvents* and *protic solvents*. Thus, Eco Agro's public assertions attempt to give an impression that the '306 Patent is broader in scope than the patent claims allowed by the USPTO.

²² Filing No. 1, ¶ 108, *Eco Agro Resources, LLC et al. v. Hocking International Laboratories, LLC*, Case No. 1:19-cv-00082-WO-JEP, in the United States District Court for the Middle District of North Carolina. Filing Date January 15, 2019. (emphasis added).

100. As set forth above, an actual controversy exists between Plaintiffs and Defendants with respect to alleged infringement of the '306 Patent, and this controversy is likely to continue. Accordingly, Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties with respect to the '306 Patent.

101. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the claims of the '306 Patent.

COUNT THREE - AGAINST PRESIDION AND ECO AGRO
Declaration of Noninfringement of U.S. Patent No. 9,732,008

102. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

103. Plaintiffs have not infringed and do not infringe the claims of the '008 Patent, either directly or indirectly, literally or under the doctrine of equivalents, including through the making, use, sale, and/or offer for sale of the MicroSource Products.

104. The '008 Patent includes a total of 18 claims of which claims 1, 12 and 16 are independent.

105. The '008 Patent's independent claims are directed towards a formulation, a fertilizer additive or a method of reducing urea fertilizer volatility.

106. The '008 Patent's independent claims require NBPT dissolved in DMSO or $R_1S(O)R_2$ wherein R_1 is methyl, ethyl, n-propyl, phenyl or benzyl and R_2 is ethyl, n-propyl, phenyl or benzyl.

107. The '008 Patent's independent claims further require at least one of the following and no others:

- a) ethylene or propylene carbonate or mixtures thereof,
- b) an alcohol or a polyol that is alkylene and poly(alkylene) glycols,
- c) glycerin, and
- d) ethyl, propyl or butyl lactate.

108. None of the MicroSource Products dissolve NBPT into DMSO or $R_1S(O)R_2$ as claimed in the '008 Patent.

109. None of the MicroSource Products include $R_1S(O)R_2$ as claimed in the '008 Patent.

110. None of the MicroSource Products include ethylene or propylene carbonate or mixtures thereof, an alcohol or a polyol that is alkylene and poly(alkylene) glycols, glycerin, or ethyl, propyl or butyl lactate as claimed in the '008 Patent.

111. Accordingly, at least for the above reasons, the MicroSource Products do not infringe the '008 Patent's independent claims.

112. Because the MicroSource Products do not infringe the '008 Patent's independent claims, those products also do not infringe the dependent claims that include the aforementioned limitations.

113. Plaintiffs also do not induce infringement of the '008 Patent or otherwise indirectly infringe the '008 Patent for at least the reasons stated above

and because there is no direct infringement of the '008 Patent, either literally or under the doctrine of equivalents.

114. As set forth above, an actual controversy exists between Plaintiffs and Defendants with respect to alleged infringement of the '008 Patent, and this controversy is likely to continue. Accordingly, Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties with respect to the '008 Patent.

115. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the claims of the '008 Patent.

COUNT FOUR - AGAINST PRESIDION AND ECO AGRO
Declaration of Noninfringement of U.S. Patent No. 10,221,108

116. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

117. Plaintiffs have not infringed and do not infringe the claims of the '108 Patent, either directly or indirectly, literally or under the doctrine of equivalents, including through the making, use, sale, and/or offer for sale of the MicroSource Products.

118. The '108 Patent includes a total of 20 claims, of which claims 1, 6 and 18 are independent.

119. The '108 Patent's independent claims are directed towards compositions that include urea.

120. Independent claims 1 and 18 of the '108 Patent require a "liquid solution." That liquid solution must be NBPT dissolved in an *aprotic solvent*, wherein the *aprotic solvent* includes DMSO.

121. Independent claim 6 of the '108 Patent requires a "liquid fertilizer additive." That liquid fertilizer additive must include a urease inhibitor dissolved in a certain mixture of *polar aprotic solvents* and one or more of the following and no others: *aprotic* or *protic solvents*.

122. Independent claim 6 further requires that the *polar aprotic solvent* must be one or more of the following and no others: DMSO; or dialkyl, diaryl, or alkylaryl sulfoxides having a specific formula recited in the claim.

123. None of the MicroSource Products include NBPT dissolved in an *aprotic solvent*.

124. None of the MicroSource Products include NBPT dissolved in DMSO.

125. None of the MicroSource Products include a urease inhibitor dissolved in that certain mixture of *polar aprotic* solvents and one or more of the following and no others: *aprotic* or *protic solvents*.

126. None of the MicroSource Products include a urease inhibitor dissolved in a *polar aprotic solvent* that is one or more of the following and no others: DMSO; or dialkyl, diaryl, or alkylaryl sulfoxides having a specific formula recited in the claim.

127. Accordingly, at least for the above reasons, the MicroSource Products do not infringe the independent claims of the '108 Patent.

128. Because the MicroSource Products do not infringe the '108 Patent's independent claims, those products also do not infringe the dependent claims that include the aforementioned limitations.

129. Plaintiffs also do not induce infringement of the '108 Patent or otherwise indirectly infringe the '108 Patent for at least the reasons stated above and because there is no direct infringement of the '108 Patent, either literally or under the doctrine of equivalents.

130. As set forth above, an actual controversy exists between Plaintiffs and Defendants with respect to alleged infringement of the '108 Patent, and this controversy is likely to continue. Accordingly, Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties with respect to the '108 Patent.

131. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the claims of the '108 Patent.

COUNT FIVE – AGAINST PRESIDION AND ECO AGRO
Declaration of Noninfringement of U.S. Patent No. 10,301,231

132. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

133. Plaintiffs have not infringed and do not infringe the claims of the '231 Patent, either directly or indirectly, literally or under the doctrine of equivalents, including through the making, use, sale, and/or offer for sale of the MicroSource Products.

134. The '231 Patent includes a total of 17 claims of which claims 1, 6, 8 and 16 are independent.

135. The independent claims of the '231 Patent are directed towards a liquid fertilizer additive.

136. Independent claim 1 of the '231 Patent requires "one or more urease inhibitor(s) and one or more aprotic solvents." Independent claim 1 further recites particular *aprotic solvents*, which include DMSO.

137. The MicroSource Products do not infringe claim 1. The phrase "comprising one or more urease inhibitor(s) and one or more aprotic solvents" in claim 1 must be construed to require that the urease inhibitor(s) are dissolved into the particular aprotic solvent(s) specified in that claim. This construction is required by, among other things, the intrinsic evidence, including the specification and statements applicant made during prosecution before the USPTO. The MicroSource products do not include urease inhibitors dissolved into the particular aprotic solvents specified in claim 1.

138. Independent claim 6 of the '231 Patent requires "dissolution of the [NBPT] into the [DMSO] and mixing the [NBPT] and [DMSO] to attain a composition."

139. The MicroSource Products do not infringe claim 6. None of the MicroSource Products include NBPT dissolved in DMSO, and none of the MicroSource Products mix NBPT and DMSO to attain a composition.

140. Independent claim 8 of the '231 Patent requires "one or more urease inhibitor(s), dimethyl sulfoxide, and one or more solvents selected from the group consisting of aprotic and protic solvents." Independent claim 8 further recites particular *aprotic* and *protic solvents*.

141. The MicroSource products do not infringe claim 8. The phrase "one or more urease inhibitor(s), dimethyl sulfoxide, and one or more solvents selected from the group consisting of aprotic and protic solvents" in claim 8 must be construed to require that the urease inhibitor(s) are dissolved into the DMSO and the particular *aprotic* and/or *protic solvent(s)* specified in that claim. This construction is required by, among other things, the intrinsic evidence, including the specification and statements applicant made during prosecution before the USPTO. None of the MicroSource Products include urease inhibitors dissolved into DMSO and the particular aprotic and/or protic solvents specified in claim 8.

142. Independent claim 16 of the '231 Patent requires "the dissolution of the [NBPT] into the one or more solvents comprising [DMSO], and the one or more aprotic and protic solvents and mixing to attain a composition."

143. The MicroSource Products do not infringe claim 16. None of the MicroSource Products include NBPT dissolved in DMSO. None of the MicroSource Products include urease inhibitor(s) dissolved in the particular *aprotic solvent(s)* specified in that claim. None of the MicroSource Products mix NBPT and DMSO to attain a composition as required by claim 16.

144. Because the MicroSource Products do not infringe the independent claims of the '231 Patent, consequently, these products also do not infringe the dependent claims encompassing the aforementioned limitations.

145. Plaintiffs also do not induce infringement of the '231 Patent or otherwise indirectly infringe the '231 Patent for at least the reasons stated above and because there is no direct infringement of the '231 Patent, either literally or under the doctrine of equivalents.

146. As set forth above, an actual controversy exists between Plaintiffs and Defendants with respect to alleged infringement of the '231 Patent, and this controversy is likely to continue. Accordingly, Plaintiffs desire a judicial determination and declaration of the respective rights and duties of the parties with respect to the '231 Patent.

147. A judicial declaration is necessary and appropriate so that the Plaintiffs may ascertain their rights regarding the claims of the '231 Patent.

COUNT SIX - AGAINST PRESIDION AND ECO AGRO
Declaration of Invalidity of U.S. Patent No. 9,637,420

148. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

149. An actual and justiciable controversy exists between Plaintiffs and Defendants concerning invalidity of the Patents-In-Suit.

150. Defendants have taken the improper position that the '420 Patent is infringed by "combining NBPT products with DCD *in the presence of* DMSO and

Glycol and/or combining NBPT and DCD *in the presence of* DMSO and Glycol on urea or into UAN." *See, e.g., supra* at ¶ 84.

151. The '420 Patent should not be construed as broadly as Defendants contend, but if it were, it would be invalid because it would not comply with the requirements for patentability in 35 U.S.C. § 112. As a non-limiting example, if the claims were improperly construed as Defendants contend, the claims would be invalid for indefiniteness and lack of written description. Claim 1 of the '420 Patent recites "[a] composition comprising one or more nitrification inhibitors and one or more urease inhibitors in an organic liquid solvating system comprising a mixture of aprotic solvents wherein a first aprotic solvent is dimethyl sulfoxide [DMSO], dialkyl sulfoxide, diaryl sulfoxide, or an alkylaryl sulfoxide having the formula R₁-S(O)-R₂, wherein R₁ is methyl, ethyl, n-propyl, phenyl or benzyl and R₂ is ethyl, n-propyl, phenyl or benzyl." If the claim was construed as Defendants improperly contend so that the nitrification inhibitors and urease inhibitors are not dissolved in the organic liquid solvating system comprising a mixture of solvents, but rather the nitrification inhibitors and urease inhibitors are merely *in the presence* of the organic liquid solvating system, then claim 1 would cover compositions that are not described in the specification. A person of ordinary skill in the art reading the original patent application for the '420 Patent would not have reasonably concluded that the specification describes a fertilizer additive composition that does *not* dissolve the nitrification inhibitors and urease inhibitors in the organic liquid solvating system, particularly when, among other things, the specification's

embodiments and examples state that the nitrification inhibitors and/or urease inhibitors are added under agitation to the liquid solvating system until "completely dissolved."²³ And a person of ordinary skill in the art would not have reasonably recognized that the inventors of the '420 Patent supposedly had possession of a fertilizer additive composition based on Defendants' improper construction of the liquid solvating system limitation by the filing date of the original application for the '420 Patent. Moreover, Defendants' improper construction of the liquid solvating system limitation in the claims would be inconsistent with the specification and therefore would not clearly and precisely inform persons skilled in the art of the boundaries of protected subject matter. Under Defendants' improper construction, the other claims of the '420 Patent also would be invalid under 35 U.S.C. § 112, for at least a lack of written description and/or indefiniteness just as Claim 1 would be.

152. An actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Plaintiffs and Defendants concerning invalidity of the '420 Patent.

153. Consequently, a declaratory judgment should be entered declaring the '420 Patent invalid if construed as Defendants contend.

COUNT SEVEN - AGAINST PRESIDION AND ECO AGRO
Declaration of Invalidity of U.S. Patent No. 9,650,306

154. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

²³ The '420 Patent, col. 7, ll. 31-39, 61-67; col. 8, ll. 21-25; Examples 1-20.

155. An actual and justiciable controversy exists between Plaintiffs and Defendants concerning invalidity of the Patents-In-Suit.

156. Defendants have taken the improper position that the '306 Patent is infringed by "combining NBPT products with DCD *in the presence of* DMSO and Glycol and/or combining NBPT and DCD *in the presence of* DMSO and Glycol on urea or into UAN." *See, e.g., supra* at ¶ 99.

157. The '306 Patent should not be construed as broadly as Defendants contend, but if it were, it would be invalid because it would not comply with the requirements for patentability in 35 U.S.C. § 112. As a non-limiting example, if the claims were improperly construed as Defendants contend, the claims would be invalid for indefiniteness and lack of written description. Claim 1 of the '306 Patent recites "[a] composition comprising one or more nitrification inhibitors in an organic liquid solvating system comprising a mixture of aprotic solvents and protic solvents wherein a first aprotic solvent is dimethyl sulfoxide [DMSO], dialkyl sulfoxide, diaryl sulfoxide, or an alkylaryl sulfoxide having the formula $R_1-S(O)-R_2$, wherein R_1 is methyl, ethyl, n-propyl, phenyl or benzyl and R_2 is ethyl, n-propyl, phenyl or benzyl." If the claim was construed as Defendants improperly contend so that the nitrification inhibitors are not dissolved in the organic liquid solvating system comprising a mixture of solvents, but rather the nitrification inhibitors are merely *in the presence of* the organic liquid solvating system, then claim 1 would cover compositions that are not described in the specification. A person of ordinary skill in the art reading the original patent application for the '306 Patent would not have

reasonably concluded that the specification describes a fertilizer additive composition that does *not* dissolve the nitrification inhibitors in the organic liquid solvating system, particularly when, among other things, the specification's embodiments and examples state that the nitrification inhibitors and/or urease inhibitors are added under agitation to the liquid solvating system until "completely dissolved."²⁴ And a person of ordinary skill in the art would not have reasonably recognized that the inventors of the '306 Patent supposedly had possession of a fertilizer additive composition based on Defendants' improper construction of the liquid solvating system limitation by the filing date of the original application for the '306 Patent. Moreover, Defendants' improper construction of the liquid solvating system limitation in the claims would be inconsistent with the specification and therefore would not clearly and precisely inform persons skilled in the art of the boundaries of protected subject matter. Under Defendants' improper construction, the other claims of the '306 Patent also would be invalid under 35 U.S.C. § 112, for at least a lack of written description and/or indefiniteness just as Claim 1 would be.

158. An actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Plaintiffs and Defendants concerning invalidity of the '306 Patent.

159. Consequently, a declaratory judgment should be entered declaring the '306 Patent invalid if construed as Defendants contend.

COUNT EIGHT - AGAINST PRESIDION AND ECO AGRO

²⁴ The '306 Patent, col. 6, ll. 32-42; col. 6, l. 65 – col. 7, l. 11; Examples 1-21.

Declaration of Invalidity of U.S. Patent No. 9,732,008

160. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

161. An actual and justiciable controversy exists between Plaintiffs and Defendants concerning invalidity of the '008 Patent.

162. The claims of the '008 Patent are invalid because they do not comply with one or more of the requirements for patentability set forth in 35 U.S.C. § 103.

163. One non-limiting example of how one or more claims of the '008 Patent are invalid is that the claims are obvious under 35 U.S.C. § 103 over prior art references CN 101200400B (properly translated) in view of U.S. 10,173,935, alone or in combination, teaching formulations that include NBPT dissolved in DMSO, propylene carbonate, glycerine and ethyl lactate.

164. An actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Plaintiffs and Defendants concerning invalidity of the '008 Patent.

165. Consequently, a declaratory judgment should be entered declaring the '008 Patent invalid.

COUNT NINE - AGAINST PRESIDION AND ECO AGRO
Declaration of Invalidity of U.S. Patent No. 10,221,108

166. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

167. An actual and justiciable controversy exists between Plaintiffs and Defendants concerning invalidity of the '108 Patent.

168. The claims of the '108 Patent are invalid because they do not comply with one or more of the requirements for patentability set forth in 35 U.S.C. § 103.

169. One non-limiting example of how one or more claims of the '108 Patent are invalid is that the claims are obvious under 35 U.S.C. § 103 over prior art references CN 101200400B (properly translated) in view of U.S. 10,173,935, alone or in combination, teaching compositions that include urea, NBPT dissolved in DMSO, aprotic solvents, protic solvents, water, and surfactants.

170. An actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Plaintiffs and Defendants concerning invalidity of the '108 Patent.

171. Consequently, a declaratory judgment should be entered declaring the '108 Patent invalid.

COUNT TEN – AGAINST PRESIDION AND ECO AGRO
Declaration of Invalidity of U.S. Patent No. 10,301,231

172. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

173. An actual and justiciable controversy exists between Plaintiffs and Defendants concerning invalidity of the '231 Patent.

174. The claims of the '231 Patent are invalid because they do not comply with one or more of the requirements for patentability set forth in 35 U.S.C. § 103.

175. One non-limiting example of how one or more claims of the '231 Patent are invalid is that the claims are obvious under 35 U.S.C. § 103 over prior art references CN 101200400B (properly translated) in view of U.S. 10,173,935, alone

or in combination, teaching compositions that include urease inhibitors (e.g., NBPT) dissolved in DMSO, aprotic solvents, protic solvents, polyalkylene glycols, water, and surfactants.

176. Furthermore, if Defendants take the improper position that the '231 Patent must be construed to claim urease inhibitors (e.g., NBPT) are not dissolved in the particular aprotic solvents (e.g., DMSO) (*see, e.g., supra* at ¶¶ 84, 99), the '231 Patent would be invalid because it would not comply with the requirements for patentability in 35 U.S.C. § 112. As a non-limiting example, if the claims were construed in such a manner, the claims would be invalid for indefiniteness and lack of written description. Claim 1 of the '231 Patent recites "[a] liquid fertilizer additive composition comprising one or more urease inhibitor(s) and one or more aprotic solvents." If the claim was construed so broadly that the urease inhibitors are not dissolved in the one or more aprotic solvents, but rather the urease inhibitors are merely *in the presence* of the aprotic solvents, then claim 1 would cover compositions that are not described in the specification. A person of ordinary skill in the art reading the original patent application for the '231 Patent would not have reasonably concluded that the specification describes a fertilizer additive composition that does *not* dissolve the urease inhibitors in the aprotic solvents, particularly when, among other things, the specification's embodiments and examples explain that the formulations are "made by dissolving the NBPT into an

aprotic solvent" that may include DMSO.²⁵ And a person of ordinary skill in the art would not have reasonably recognized that the inventors of the '231 Patent supposedly had possession of a fertilizer additive composition based on Defendants' improper construction by the filing date of the original application for the '231 Patent. Moreover, Defendants' improper construction would be inconsistent with the specification and therefore would not clearly and precisely inform persons skilled in the art of the boundaries of protected subject matter. Under the Defendants' improper construction, the other claims of the '231 Patent also would be invalid under 35 U.S.C. § 112, for at least a lack of written description and/or indefiniteness just as claim 1 would be.

177. An actual and justiciable controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists between Plaintiffs and Defendants concerning invalidity of the '231 Patent.

178. Consequently, a declaratory judgment should be entered declaring the '231 Patent invalid.

COUNT ELEVEN - AGAINST PRESIDION, ECO AGRO, AND STANTON
Tortious Interference with Prospective Economic Advantage

179. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

²⁵ The 231 Patent, Summary of the Invention, col. 4, ll. 62-64; *see also* Examples 1, 3, 4, 6, 8, 10, 12, (stating "[a]n NBPT *solution* was prepared...." (emphasis added)). The term *solution* must be construed as the condition of being dissolved.

180. MicroSource was in communication with Neil Tobkin, a Marketing Manager at Nutrien, about potentially selling the MicroSource Products to Nutrien through decisions made by Tobkin.

181. MicroSource previously sold the MicroSource Products to Nutrien in purchases made by other Nutrien employees, and it had an ongoing relationship with Tobkin of Nutrien. The part of Nutrien in which Tobkin works has a need for nitrogen stabilizer products from some supplier, just as do the other parts of Nutrien to which MicroSource has been selling the MicroSource Products. Those facts made it reasonably likely that MicroSource would sell the MicroSource products to Nutrien through decisions by Tobkin, absent the improper interference by Stanton described herein.

182. Stanton, acting on behalf of Presidion, knew of the current and ongoing relationship between Nutrien and MicroSource, as well as the prospective relationship with Tobkin and his division of Nutrien through previous sales of various products. Stanton, acting on behalf of Presidion, intentionally and improperly interfered with the relationship and prospective relationship between Nutrien (through decisions by Tobkin) and MicroSource and Gavilon regarding the MicroSource Products at issue by making false statements about MicroSource and the MicroSource Products. Stanton, acting on behalf of Presidion, falsely told Tobkin that Presidion had filed a lawsuit against MicroSource and that MicroSource was prohibited from selling its nitrogen stabilizer products. That

necessarily implied that Gavilon was prohibited from selling the MicroSource Products.

183. In making those false statements about MicroSource and the MicroSource products to Tobkin of Nutrien, Stanton, acting on behalf of Presidion, acted with the predominant or sole purpose of injuring MicroSource and Gavilon. He also interfered by improper means by making defamatory comments.

184. In making the false statements, Stanton, acting on behalf of Presidion, explicitly or implicitly falsely indicated that there was a factual basis for making the statements, when in fact there was none.

185. Stanton, acting on behalf of Presidion, interfered with MicroSource's and Gavilon's expectancy of selling the MicroSource Products to Nutrien, thus causing damage to MicroSource and Gavilon.

186. As a result of Stanton's false statements, MicroSource and Gavilon have not sold any of the MicroSource Products in question to Nutrien through decisions by Tobkin, and that prospective business relationship has failed to materialize.

187. The false statements were made in bad faith. They were made with the knowledge that they were false or with reckless disregard for whether they were true or false. They also were objectively baseless. They had no basis in the claims of the Patents-In-Suit and ignored key limitations recited in those patent claims.

188. On information and belief, when Stanton made those statements to Tobkin, Stanton was acting on behalf of Eco Agro in addition to Presidion. That

information and belief is based upon public statements by Eco Agro and Presidion described above about supposed patent rights.

189. On information and belief, Stanton, acting on behalf of Presidion, also knew that Gavilon was the sole member of MicroSource and that Gavilon purchases and resells the MicroSource Products. That information and belief is based on the fact that Stanton has been in the industry for a long period of time, and Stanton had been designated as the point of contact in Presidion's efforts to enter into a licensing agreement with Gavilon and MicroSource, as described above.

190. In making false statements about MicroSource and the MicroSource products, Stanton, acting on behalf of Presidion, acted with the sole or predominant purpose of injuring Gavilon's expectancy of selling MicroSource Products. He also interfered by improper means by making defamatory statements relating to the MicroSource Products that Gavilon would sell.

191. It is proper to enter an injunction to prevent further interference by Defendants.

192. In the absence of injunctive relief, there will be irreparable harm to Plaintiffs because Presidion's actions threaten Plaintiffs' future business. If granted by the Court, injunctive relief will prevent Defendants from making false accusations to Plaintiffs' customer, Nutrien.

193. Such injunctive relief by the Court would promote the public interest.

COUNT TWELVE - AGAINST PRESIDION, ECO AGRO, AND STANTON
Defamation

194. Plaintiffs incorporate by reference the preceding allegations of this Complaint.

195. Stanton, acting on behalf of Presidion, has made false and defamatory statements about MicroSource and the MicroSource Products sold by MicroSource and Gavilon. Stanton, acting on behalf of Presidion, falsely stated that MicroSource is being sued for patent infringement and was prohibited from selling MicroSource's nitrogen stabilizers, which necessarily meant that Gavilon could not sell the MicroSource Products at issue here, either.

196. Stanton, acting on behalf of Presidion, published those false statements to an employee of Nutrien, which is a customer of both MicroSource and Gavilon. On information and belief, Stanton also made those statements on behalf of Eco Agro.

197. The false, defamatory statements were defamatory *per se*. In addition, they have caused damage to MicroSource and Gavilon as described in Paragraphs 182 through 193 above.

198. The false, defamatory statements were made maliciously.

199. The false, defamatory statements were made in bad faith. They were made with the knowledge that they were false or with reckless disregard for whether they were true or false. They also were objectively baseless. They had no basis in the claims of the Patents-In-Suit and ignored key limitations recited in those patent claims. They explicitly or implicitly falsely indicated that there was a factual basis for making the statements, when in fact there was none.

200. The false and defamatory statements have caused and will cause irreparable harm to MicroSource and Gavilon.

201. Injunctive relief, if granted by the Court, will only prevent Defendants from making false statements to Plaintiffs' customer, Nutrien.

202. Injunctive relief by the Court would promote the public interest.

JURY DEMAND

203. Plaintiffs demand a jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs Gavilon and MicroSource respectfully request that judgment be entered:

A. Declaring that Plaintiffs do not infringe the identified Patents-In-Suit, directly or indirectly, literally or under the doctrine of equivalents, by the making, using, selling, and/or offering to sell, the MicroSource Products;

B. Declaring that the identified Patents-In-Suit are invalid under 35 U.S.C. §§ 103 and/or 112;

C. Granting injunctive relief prohibiting Defendants from contacting Plaintiffs' customer Nutrien regarding any infringement of the Patents-In-Suit by the Plaintiffs in the making, using, selling, and/or offering to sell, the MicroSource Products;

D. Awarding Plaintiffs damages to be proven at trial;

E. Awarding Plaintiffs their reasonable attorneys' fees under 35 U.S.C. § 285; and

F. Awarding any other remedy to which Plaintiffs may be entitled and that the Court concludes is appropriate.

Dated: November 4, 2019

Respectfully submitted,

/s/Luke C. Holst

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Plaintiffs' Attorneys

Certificate of Service

The undersigned hereby certifies that on November 4, 2019, he filed this Proposed Second Amended and Supplemental Complaint and Demand for Jury Trial with the Court using the CM/ECF system, which should send notification to counsel of record for all Defendants.

/s/Luke C. Holst _____

Luke C. Holst