

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Matthews International Corporation,

Plaintiff,

v.

C.A. No. 11-0269

BioSafe Engineering, LLC, and
Digestor, LLC,

Defendants.

FIRST AMENDED COMPLAINT

Matthews International Corporation (“Matthews”) submits the following Complaint against BioSafe Engineering, LLC (“BioSafe”) and Digestor, LLC (“Digestor”) (together, “BioSafe/Digestor”).

INTRODUCTION

1. Bereaved family members are more frequently opting for cremation as an alternative to traditional burials for the deceased.

2. Matthews, through its Cremation Division, is active in the cremation industry.

3. Matthews is currently and actively marketing to the funeral industry an environmentally friendly alternative to standard flame-based cremations. See <http://biocrementationinfo.com>.

4. Under the name “Bio Cremation™,” Matthews is marketing to funeral homes and others equipment that uses an alkaline hydrolysis process, instead of incineration, to cremate human remains.

5. BioSafe/Digestor is trying to position itself as a competitor to Matthews in the fledgling market for sales of alkaline hydrolysis equipment for the disposition of human remains.

6. However, rather than engaging in fair competition, BioSafe/Digestor has instead wrongly accused Matthews of patent infringement, and has made false accusations about Matthews to Matthews's customers, potential customers, and employees.

7. Matthews has not infringed any valid patent or other intellectual property rights of BioSafe or its affiliate, Digestor.

8. Instead, it was BioSafe's/Digestor's predecessors who engaged in inequitable and bad faith conduct in order to obtain certain patents, and BioSafe/Digestor is currently misrepresenting the nature and scope of those ill-gotten patents.

9. BioSafe/Digestor's conduct has caused harm, and threatens to cause further harm, to Matthews in the marketplace.

10. In order to bring to a close the controversy that BioSafe/Digestor has created through its wrongful acts and accusations, Matthews requests that the Court issue a declaration that Matthews is not violating any valid patent or other intellectual property rights of BioSafe or Digestor, declare invalid and unenforceable certain patents that Digestor holds, enjoin BioSafe and Digestor from making any further false accusations about Matthews to the marketplace, and award Matthews any additional relief to which Matthews is entitled.

PARTIES

11. Matthews is a Delaware corporation with its principal place of business at Two North Shore Center, Pittsburgh, Pennsylvania 15212.

12. Matthews is Pittsburgh's oldest corporation, in continuous operation since 1850.

13. Matthews is a leading participant in the death care industry. Matthews and its subsidiaries manufacture caskets and bronze memorial products. Matthews also manufactures and sells cremation equipment to funeral homes.

14. BioSafe is an Indiana limited liability company with its principal place of business in Brownsburg, Indiana.

15. Digestor is an Indiana limited liability company with its principal place of business in Brownsburg, Indiana.

16. BioSafe is the manager of Digestor. BioSafe holds itself out as the owner of patents related to the alkaline hydrolysis process even though, according to the United States Patent and Trademark Office ("PTO"), Digestor is the assignee of patents formerly held by BioSafe.

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the controversy between the parties is based on accusations that Matthews is infringing BioSafe's and/or Digestor's alleged U.S. patent rights.

18. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because of the parties' diverse citizenship, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs. The cost to each funeral home purchaser for a Bio Cremation™ unit will exceed \$75,000.

19. In addition to its original jurisdiction pursuant to 28 U.S.C. § 1332, the Court has supplemental jurisdiction over Matthews's state law claims pursuant to 28 U.S.C. § 1367. Matthews also brings this action pursuant to 28 U.S.C. §§ 2201 *et seq.*

20. BioSafe and Digestor are subject to jurisdiction in this district because they have minimum contacts with this district and engage in business here.

21. According to BioSafe/Digestor's website, BioSafe/Digestor does business with the University of Pittsburgh and with Penn State University.

22. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) and 1391(c) because BioSafe and Digestor are subject to personal jurisdiction in this district and because a substantial part of the events giving rise to Matthews's claims occurred in this district.

ALKALINE HYDROLYSIS PROCESS

23. Alkaline hydrolysis generally refers to a process of subjecting material to sodium or potassium hydroxide and heat in order to "reduce" the material to a sterile and benign solution that can be more easily and/or safely disposed of than the original material.

24. The use of alkaline hydrolysis to reduce biological materials to a benign solution dates back to at least the nineteenth century. For example, a copy of U.S. Patent No. 394,982 ("Process of Separating Gelatine from Bones") is attached as Exhibit 1.

MATTHEWS BIO CREMATION™ EQUIPMENT

25. Resomation Ltd. ("Resomation") is a Scottish corporation that manufactures and licenses equipment that uses an alkaline hydrolysis process to cremate human remains.

26. Resomation has granted Matthews the exclusive rights to market and sell Resomation alkaline hydrolysis equipment in the United States.

27. Under the brand name Bio Cremation™, Matthews is marketing the Resomation equipment for sale in the United States.

28. Matthews has made substantial investments in Bio Cremation™. Bio Cremation™ is a prominent part of the product line offered by Matthews's Cremation Division. See www.matthewscremation.com.

29. Bio Cremation™ equipment is not marketed or sold for purposes of disposing of regulated medical waste, hazardous waste, infectious agents, or radioactive materials.

30. Instead, Matthews is marketing Bio Cremation™ equipment to funeral directors and other buyers for the disposal of human cadavers, as an alternative to burial or flame cremation. A description of the Bio Cremation™ alkaline hydrolysis process is available at <http://biocremationinfo.com>.

BIOSAFE/DIGESTOR PATENTS

A. The '532 Patent – Radioactive Materials

31. U.S. Patent No. 5,332,532 (the "'532 Patent") was issued on July 26, 1994. A copy of the '532 Patent is attached as Exhibit 2.

32. The inventors who applied for and received the '532 Patent were Gordon I. Kaye ("Kaye") and Peter B. Weber ("Weber").

33. The initial assignee of the '532 Patent was a company founded by Kaye called Waste Reduction by Waste Reduction, Inc. ("WR2").

34. Digester is the current assignee of record for the '532 Patent.

35. The '532 Patent involves (and is limited to) the application of an alkaline hydrolysis process to "animal tissue containing radioactive materials."

B. BioSafe/Digester's Other Patents

36. Digester, as assignee from BioSafe, also is the record holder of U.S. Patent No. 6,437,211 (the "'211 Patent"), U.S. Patent No. 6,472,580 (the "'580 Patent"), U.S. Patent No. 7,183,453 (the "'453 Patent"), U.S. Patent No. 7,829,755 (the "'755 Patent"), and U.S. Patent No. 7,910,788 (the "'788 Patent"). A copy of the '211 Patent is attached as Exhibit 3. A copy of the '580 Patent is attached as Exhibit 4. A copy of the '453 Patent is attached as Exhibit 5. A copy of the '755 Patent is attached as Exhibit 6. A copy of the '788 Patent is attached as Exhibit 7.

37. The '211 Patent and the '580 Patent relate to the application of the alkaline hydrolysis process to the disposal of "regulated medical waste," "infectious agents," "hazardous waste solutions," and waste formaldehyde and glutaraldehyde.

38. The alkaline hydrolysis method described in the '453 Patent involves "initiating a vacuum," "creating a vacuum," and "balancing the vacuum."

39. The '755 Patent relates to the application of the alkaline hydrolysis process to the disposal of "hazardous or biohazardous agents," "regulated medical waste containing infectious agents," and "biologically infectious materials."

40. The '788 Patent relates to the application of the alkaline hydrolysis process in a system for digesting or neutralizing "biologically hazardous materials."

THE ALBANY INSTALLATION

41. In the 1980s and early 1990s, Kaye was employed by or affiliated with the Albany Medical Center (“AMC”) in Albany, NY.

42. In late 1993, AMC acquired and installed alkaline hydrolysis equipment in order to dispose of laboratory animal tissue containing radioactive material.

43. In January 1994, AMC put that equipment into operation for the disposal of radioactive animal tissue, consistent with the ‘532 Patent.

44. AMC, however, was only able to utilize its alkaline hydrolysis equipment infrequently for the disposal of radioactive biological waste.

45. AMC, with Kaye at the fore, decided to expand the use of AMC’s alkaline hydrolysis equipment beyond just the disposal of radioactive waste. AMC and Kaye decided to use the equipment to also dispose of non-radioactive animal waste and “regulated medical waste” with potentially infectious agents.

46. Kaye found that the alkaline hydrolysis unit at AMC worked as well on non-radioactive material and “regulated medical waste” as it did on radioactive biological waste.

47. Beginning in 1994, AMC also used its alkaline hydrolysis unit regularly to dispose of waste formaldehyde and glutaraldehyde, which are generally characterized as hazardous wastes.

FLORIDA INSTALLATIONS

48. By no later than April 1996, a WR2 alkaline hydrolysis unit was installed and put into operation by the Florida Anatomical Board at Shands Hospital in Gainesville, Florida.

49. The Florida Anatomical Board used that unit to dispose of human cadavers from medical education.

50. In or about April 1998, the University of Florida purchased and installed another WR2 unit.

51. That unit was used to dispose of animal carcasses and also hospital anatomic material.

52. WR2 publicized descriptions and specifications for its alkaline hydrolysis “tissue digestors,” including its University of Florida installation. A copy of a fax transmittal of a description and drawings of the WR2 process, transmitted on December 9, 1997, is attached as Exhibit 8. Copies of archived WR2 web pages, last modified in 1999, are attached as Exhibit 9.

**APPLICATIONS FOR THE ‘580 AND
‘211 PATENTS AND OTHER INEQUITABLE CONDUCT**

53. Kaye and Weber filed Application No. 09/171447 on October 20, 1998. That Application eventually led to the issuance of the ‘580 Patent and the related ‘211 Patent, the subjects of which are the use of the alkaline hydrolysis process on “regulated medical waste,” “hazardous waste,” and “infectious agents.”

54. In March 2000, the PTO rejected the claims set forth in Application 09/171447 as anticipated by and/or obvious due to prior patents, including the ‘532 Patent. The PTO contended, *inter alia*, that it would have been obvious to one skilled in the art that, if the alkaline hydrolysis process sterilized and permitted the safe disposal of radioactive biological material (as per the ‘532 Patent), it would similarly sterilize and permit the safe disposal of regulated medical waste including biological materials containing infectious agents and other hazardous waste.

55. Kaye and Weber responded to the denial, asking for reconsideration based on their attempts to distinguish the prior patents, including the '532 Patent, from their new "invention."

56. In August 2000, the PTO again rejected Kaye's and Weber's claims.

57. In October 2000, Kaye and Weber responded again in an effort to gain approval of the Application, but, in November 2000, the PTO again refused to issue a patent.

58. In February 2001, in response to the PTO's multiple adverse actions, Kaye and Weber amended their claims and, in connection therewith, submitted a sworn declaration from Kaye in an effort to convince the PTO that the putative invention was legitimate and valid and not anticipated by or obvious over the '532 Patent. A copy of the February 2001 Amendment, including the attachments thereto, is attached as Exhibit 10.

59. That Amendment, on the heels of the PTO's multiple rejections of Application 09/171447, constitutes improper and inequitable conduct and bad faith by the putative inventors in their dealings with the PTO.

60. In the Amendment, Kaye and Weber, through counsel, asserted that:

radioactive biological waste and infectious waste are two very different and completely separate waste streams regulated by different laws and regulations, as well as by different agencies. Processes intended for the treatment and disposal of one of these waste streams would not be expected to be applicable to the other. One of skill who was looking for a method for treating infectious waste would have no motivation to try a method known only to be effective in radioactive waste.

(Emphasis in original).

61. Kaye and Weber, through counsel, also affirmatively declared, in an effort to distinguish the Application from the '532 Patent, that “regulated medical waste, hazardous waste, and infectious agents are terms of art which do not include radioactive material.”

62. Kaye and Weber attached examples of regulations that defined those terms of art. None of the appended regulations expressly *included* human cadavers in the definitions of “regulated medical waste,” and several states’ regulations expressly *excluded* human cadavers from the definitions of regulated medical waste.

63. In his Declaration which accompanied the February 2001 Amendment, Kaye represented to the PTO – under oath – that the efficacy of the alkaline hydrolysis process on regulated medical waste was “novel and nonobvious.” He also declared under oath that “one of skill in the art who treats infectious waste would not expect alkaline hydrolysis to be effective in treating infectious agents.”

64. Kaye’s 2001 representations to the PTO that it was “surprising” and “completely unexpected” that alkaline hydrolysis could effectively treat “infectious agents” is in stark contrast to statements Kaye and Weber published in a 1998 article, entitled Efficacy of Alkaline Hydrolysis as an Alternative Method for Treatment and Disposal of Infectious Animal Waste, which appeared in the journal *Contemporary Topics in Lab. Animal Science*. A copy of Kaye’s 1998 article (the “Article”) is attached as Exhibit 11.

65. In the Article, which describes the results of Kaye’s and Weber’s application at AMC of the alkaline hydrolysis process to “infectious agents” rather than radioactive material, Kaye and Weber (and their co-authors) wrote:

We concluded from analysis of the data that alkaline hydrolysis effectively destroys potential infectious agents representing several classes of agents used by the New York State Department of Health Regulated Waste Program for efficacy testing of sterilization processes and of methods for treatment of regulated medical waste. This was not surprising, considering that bacteria, fungi, viruses, and *Giardia* are composed of the same classes of biological macromolecules, namely proteins, polysaccharides, lipids, and nucleic acids that are found in the animal carcasses and tissues that are solubilized and digested by the hot NaOH solution.

(Emphasis added).

66. Thus, in the 1998 Article, Kaye and Weber declared that it “was not surprising,” and also that it was “anticipated,” that the AMC alkaline hydrolysis equipment that had been used to treat radioactive material would also be effective in the treatment of regulated medical waste containing infectious agents. But, in his 2001 Declaration to the PTO, in response to repeated rejections of his new “invention,” Kaye declared under oath that the efficacy of the AMC equipment for the treatment of regulated medical waste was “novel,” “nonobvious,” “surprising,” and “completely unexpected.”

67. Moreover, the regular use of the AMC unit since 1994 to dispose of formaldehyde and glutaraldehyde predated by more than one year the applications that led to the ‘211 Patent and the ‘580 Patent, which include claims related to the disposal of formaldehyde and glutaraldehyde.

68. There is nothing in the PTO record to indicate that the applicants disclosed to the PTO that particular use of the AMC unit prior to the issuance of any of the BioSafe/Digestor Patents.

69. The Florida Anatomical Board and University of Florida alkaline hydrolysis units include many, if not all, of the claimed features in claim 1 of the '453 Patent, claim 9 of the '755 Patent, and claim 1 of the '788 Patent.

70. The inventors/applicants had a duty to disclose to the PTO the sale and use of the Florida units and the commercial exploitation thereof because those facts subject certain of the claims of the '453 Patent, the '755 Patent, and the '788 Patent to a one-year on-sale or public use bar, and also because those facts are relevant to novelty and non-obviousness inquiries related to the '453, '755, and '788 Patents.

71. There is nothing in PTO record in connection with the applications that led to the '453, '755, and the '788 Patents to indicate that the applicants disclosed the Florida installations, the features of those installations, the timing of those sales, or the uses of those alkaline hydrolysis units to the PTO.

**BIOSAFE ACCUSES MATTHEWS OF PATENT INFRINGEMENT
AND OTHER IMPROPER CONDUCT**

72. BioSafe/Digestor has accused Matthews of infringing patent rights that BioSafe or Digestor allegedly holds.

73. BioSafe/Digestor contends that the Bio Cremation™ equipment that Matthews is marketing violates the '580 Patent and other (unspecified) patent rights allegedly held by BioSafe or Digestor.

74. BioSafe/Digestor made its accusations directly to Matthews in late 2008 and early 2009.

75. On or about December 29, 2008, BioSafe's then-President Bradley D. Crain ("Crain") spoke with Steven P. Schaal ("Schaal"), the President of the North American Region of Matthews's Cremation Division. During that conversation, Crain asserted that Matthews's sale of Resomation/Bio Cremation™ equipment would infringe BioSafe/Digestor's alleged intellectual property rights. A copy of a letter dated December 31, 2008 from Matthews's General Counsel, Brian D. Walters, to Crain, confirming the conversation between Crain and Schaal is attached as Exhibit 12.

76. BioSafe/Digestor's outside counsel responded by letter dated February 2, 2009. A copy of that letter is attached as Exhibit 13. In that letter, BioSafe/Digestor's counsel referred to BioSafe's ownership of multiple patents, citing the '580 Patent as but one example, and stated that Resomation's alkaline hydrolysis equipment and related marketing was encroaching on BioSafe's intellectual property rights. BioSafe/Digestor's counsel suggested that BioSafe/Digestor could pursue a "variety of remedies" for "disputes involving intellectual property rights" including specifically for alleged "patent infringement."

77. BioSafe/Digestor's accusations made, and continue to make, Matthews apprehensive that BioSafe intends to attempt to impose liability on, and seek damages from, Matthews based on Matthews's marketing and sale of Bio Cremation™ equipment.

78. Matthews investigated BioSafe/Digestor's accusations and responded to BioSafe/Digestor in March 2009, denying any infringement of the '580 Patent or any of BioSafe/Digestor's other intellectual property rights. A copy of the March 16, 2009 response from Matthews's counsel to BioSafe's counsel is attached as Exhibit 14.

79. After Matthews responded, BioSafe/Digestor took no legitimate action to attempt to enforce the '580 Patent or any of BioSafe/Digestor's other alleged intellectual property rights.

80. BioSafe/Digestor did not contest or attempt to refute Matthews's response to and denials of BioSafe/Digestor's accusations.

81. BioSafe/Digestor filed no action against Matthews or Resomation for patent infringement or for any other alleged violations of BioSafe/Digestor's intellectual property rights.

82. BioSafe did not, however, withdraw or retract its accusations.

83. Instead, despite the plain inapplicability of BioSafe/Digestor's patents to the use of alkaline hydrolysis to cremate human remains, despite the invalidity of those patents as set forth above, and despite BioSafe/Digestor's current contention in this action that it does not know of any infringement by Matthews, BioSafe/Digestor launched a bad faith whispering campaign in the funeral home marketplace, by making accusations and veiled threats to potential customers that Matthews's Bio Cremation™ equipment infringes BioSafe/Digestor's patents or other alleged intellectual property rights.

84. Through those bad faith actions, BioSafe/Digestor seeks an unfair advantage in the nascent market for the sale of alkaline hydrolysis equipment to the funeral industry.

BIOSAFE'S DENIGRATION OF MATTHEWS IN THE MARKETPLACE

85. BioSafe/Digestor has made accusations to Matthews's customers and potential customers in the funeral industry that Matthews's Bio Cremation™ equipment and process infringe BioSafe/Digestor's alleged patent rights. BioSafe/Digestor's wrongful actions have

created reluctance and concern among potential customers about purchasing Bio Cremation™ equipment from Matthews.

86. In October 2009, at a funeral industry convention in Boston, a BioSafe/Digestor representative, in a conversation with an Olyphant, Pennsylvania funeral home owner, accused Matthews, through its Bio Cremation™ products, of infringing BioSafe/Digestor's patent rights.

87. In March 2010, Paul Rahill, the President of Matthews's Cremation Division, had a discussion with a representative from Stewart Enterprises, Inc. ("SEI"), a major funeral home customer. That representative stated that she had recently met with BioSafe/Digestor representatives at BioSafe/Digestor's Indiana offices. At that meeting, BioSafe/Digestor accused Matthews of infringing BioSafe/Digestor's patent rights, and BioSafe/Digestor cautioned the individual that SEI should not purchase Matthews's Bio Cremation™ equipment because of Matthews's alleged patent infringement, and because of the negative consequences that such infringement would generate for any purchaser of Matthews's Bio Cremation™ equipment.

88. That representative, on behalf of SEI, expressed to Rahill reluctance to purchase Bio Cremation™ equipment from Matthews due to the accusations BioSafe/Digestor made, and the uncertainties that those accusations created.

89. On or about June 11, 2010, at the Independent Funeral Directors of Florida convention in Tampa, Florida, Crain, BioSafe's then-President, asserted to Matthews's Rahill that Matthews's Bio Cremation™ equipment infringed on BioSafe/Digestor's patent rights.

90. In October 2010, at an industry convention in New Orleans, a BioSafe/Digestor representative, in a conversation with a funeral home owner, accused Matthews, through its Bio Cremation™ products, of infringing BioSafe/Digestor's patent rights.

91. To the extent that BioSafe/Digestor has any valid patent rights related to alkaline hydrolysis (which is denied), those rights do not extend to funeral home industry applications. Thus, BioSafe/Digestor's statements and threats to Matthews and Matthews's customers and potential customers in the funeral industry were made in bad faith and not privileged.

92. BioSafe/Digestor's repeated accusations and threats -- made directly to Matthews and also to Matthews's potential customers for Bio Cremation™ equipment -- have made Matthews apprehensive about BioSafe/Digestor's conduct in the marketplace and with regard to BioSafe/Digestor's threats of litigation and liability.

93. Matthews is not infringing any valid patents through the marketing and sale of Bio Cremation™ equipment, or in any other way violating any of BioSafe's or Digestor's rights.

COUNT I

DECLARATORY RELIEF – NON-INFRINGEMENT

94. Matthews incorporates paragraphs 1 through 93 of its Complaint.

95. BioSafe/Digestor has accused Matthews of infringing BioSafe's or Digestor's patent rights by marketing and selling Bio Cremation™ equipment. Thus, there is a case of actual controversy surrounding the alleged infringement of, the validity of, and/or the enforceability of the BioSafe/Digestor patents.

96. Matthews Bio Cremation™ equipment is used for the disposal of human cadavers.

97. Matthews Bio Cremation™ equipment is not used for the disposal of radioactive material, hazardous waste, regulated medical waste, or infectious agents.

98. Bio Cremation™ equipment and the alkaline hydrolysis process it employs does not involve the initiation, creation, or balancing of any vacuum.

99. Matthews's marketing and sale of Bio Cremation™ products have not infringed and will not infringe any valid patent rights held by BioSafe or Digestor.

100. Matthews is entitled to a declaration that its Bio Cremation™ products do not infringe BioSafe's or Digestor's alleged patent rights. Matthews also requests that the Court enjoin BioSafe and Digestor from asserting that Matthews's marketing and sale of Bio Cremation™ equipment, or that any purchaser's purchase and use of such equipment, violate any patent or other intellectual property right held by BioSafe or Digestor.

COUNT II

DECLARATORY RELIEF – INVALIDITY

101. Matthews incorporates paragraphs 1 through 100 of its Complaint.

102. The BioSafe/Digestor patents are invalid as anticipated or obvious over the '532 Patent, the AMC unit, and/or the Florida installations.

103. The BioSafe/Digestor patents are invalid, in whole or in part, due to the prior art reflected in the '532 Patent, the AMC unit, and/or the Florida installations.

104. Thus, to the extent that BioSafe or Digestor contends that it holds any valid patents related to the use of alkaline hydrolysis for the disposal of human cadavers, those patents are invalid.

105. Matthews requests that the Court declare invalid the '211 Patent, the '580 Patent, the '453 Patent, the '755 Patent, and the '788 Patent.

COUNT III

INEQUITABLE CONDUCT

106. Matthews incorporates paragraphs 1 through 105 of its Complaint.

107. The inventors/applicants for the patents ('211, '580, '453, '755, and '788 Patents) now held by BioSafe/Digestor engaged in inequitable conduct. That conduct invalidates and renders unenforceable the patents that BioSafe/Digestor holds.

108. As set forth above, the applicants made affirmative and material misrepresentations and submitted false information to the PTO. The applicants also failed to disclose material information. In so doing, the applicants intended to deceive the PTO.

109. The applicants did not act in good faith and were not candid with the PTO in connection with the applications and the prosecutions of those applications.

110. Specifically, the applicants:

- (a) in connection with the application that matured into the '580 Patent, represented to the PTO that the effective application of the '532 process for radioactive material to infectious agents and regulated medical waste was "surprising," "novel," "nonobvious," and "completely unexpected," when, in fact, the inventors, in a prior publication, had acknowledged the opposite – that the

efficacy of the alkaline hydrolysis process for the disposal of regulated medical waste and infectious agents was “not surprising” and “anticipated.” These false or inconsistent statements are material to the patentability of at least claims 1 and 20 of the ‘580 Patent, claims 1 and 20 of the ‘211 Patent, and claims 1 and 7 of the ‘755 Patent;

- (b) in connection with the applications that matured into the ‘211 and ‘580 Patents, the applicants failed to disclose the regular use, beginning in 1994, of the AMC unit to dispose of formaldehyde and glutaraldehyde. This information is material to the patentability of at least claim 22 of the ‘211 Patent and claim 22 of the ‘580 Patent; and
- (c) in connection with the applications that matured into the ‘453, ‘755, and ‘788 Patents, failed to disclose that the Florida installations and publications related thereto predated the applications by more than one year. The Florida installations contain many of the features claimed in the ‘453 and ‘755 Patents. The Florida installations are material to the patentability of at least claim 1 of the ‘453 Patent, claim 9 of the ‘755 Patent, and claim 1 of the ‘788 Patent.

111. The applicants for the ‘211, ‘580, ‘453, ‘755, and ‘788 patents were under a duty to disclose information material to patentability of any of the claims under examination in said patents, per 37 CFR 1.56. The applicants for the ‘211, ‘580, ‘453, ‘755, and ‘788 patents knew of the prior inconsistent statements of the inventors, the AMC unit and the Florida installations, yet chose not to disclose this information to the PTO. This information was material to patentability and examination of one or more claims in the applications leading to the subject patents. The applicants’ knowing failure to disclose material information to the PTO with the intent to deceive the PTO constitutes inequitable conduct, rendering the subject patents unenforceable. Based on the applicants’ inequitable conduct, Matthews requests that the Court

declare invalid and unenforceable the '211 Patent, the '580 Patent, the '453 Patent, the '755 Patent, and the '788 Patent.

COUNT IV

INJURIOUS FALSEHOOD – TRADE LIBEL

112. Matthews incorporates paragraphs 1 through 111 of its Complaint.

113. BioSafe/Digestor's accusations against Matthews of patent infringement and other violations of BioSafe/Digestor's alleged intellectual property rights are false.

114. BioSafe made the accusations in bad faith as set forth above and as follows.

115. By making those false accusations, BioSafe/Digestor intended to benefit itself in the marketplace, and to cause harm to Matthews's business and marketplace position.

116. BioSafe/Digestor recognized that its false accusations would cause that harm to Matthews, or BioSafe/Digestor should have recognized that its accusations would have that effect.

117. BioSafe/Digestor knew the accusations were false, or acted in reckless disregard to the falsity of its accusations.

118. BioSafe/Digestor made such statements without privilege or justification and under circumstances where it knew or should have known that the subject patents were invalid, unenforceable and not infringed.

119. BioSafe/Digestor's accusations cast doubt, and were intended to cast doubt, on the quality of Matthews's Bio Cremation™ products, on Matthews's ability to sell those

products legally, and on the ability of customers to purchase those products, and use those products, without infringing BioSafe/Digestor's alleged patent rights.

120. BioSafe/Digestor's false accusations have caused Matthews harm in the marketplace. BioSafe/Digestor has created uncertainty about Matthews's ability to sell, and customers' ability to purchase, Bio Cremation™ products without violating BioSafe/Digestor's alleged rights.

121. In addition to causing customer confusion and harming Matthews's reputation in the marketplace for alkaline hydrolysis equipment, BioSafe/Digestor's conduct has caused Matthews to incur expenses reasonably necessary to counteract BioSafe/Digestor's publication of its false accusations, specifically the legal fees and expenses incurred to respond to the accusations and to pursue this action in order to establish the propriety of Matthews's actions and its ability to market and sell its Bio Cremation™ products.

COUNT V

DEFAMATION

122. Matthews incorporates paragraphs 1 through 121 of its Complaint.

123. BioSafe/Digestor has published false accusations about Matthews, as set forth above.

124. The accusations were defamatory in character because they would tend to harm Matthews's reputation, lower Matthews in the estimation of the business community, and deter third persons from dealing with Matthews.

125. The accusations were also defamatory *per se* because they were accusations of business misconduct.

126. The recipients of the accusations understood the defamatory meaning of the accusation and understood that BioSafe/Digestor directed those accusations to Matthews.

127. Those accusations had the intended effect. The accusations have caused harm to Matthews's reputation and have made potential customers reluctant to deal with Matthews in the market for alkaline hydrolysis equipment.

128. There is no privilege or justification for BioSafe/Digestor's actions. BioSafe acted in bad faith as set forth above.

129. BioSafe/Digestor's conduct was intentional or, at a minimum, negligent in that BioSafe/Digestor knew or should have known that the subject patents were invalid, unenforceable and not infringed.

130. Matthews is entitled to an award of damages as compensation for the damage to its reputation, an injunction to prevent BioSafe/Digestor from further such acts of defamation, and punitive damages.

COUNT VI

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACT

131. Matthews incorporates paragraphs 1 through 130 of its Complaint.

132. Matthews has a current business relationship with SEI for Matthews's funeral and memorialization products.

133. SEI is a significant prospective customer for Matthews's Bio Cremation™ products.

134. BioSafe/Digestor intentionally interfered with Matthews's prospective relationship with SEI by making false accusations about Matthews and its Bio Cremation™ products.

135. BioSafe/Digestor's conduct was also wrongful, improper, without privilege or justification, and in violation of the "rules of the game" of fair competition.

136. BioSafe/Digestor's motives were to gain an unfair marketplace advantage over Matthews, and to cause Matthews harm in the marketplace, by making those false accusations about Matthews's conduct and the extent of BioSafe/Digestor's intellectual property rights.

137. BioSafe/Digestor's improper conduct includes misrepresentations, explicit and implicit threats of litigation against Matthews and prospective Bio Cremation™ customers, and anti-competitive/antitrust violations in that BioSafe/Digestor wrongly contends that it has a monopoly power over the use of an alkaline hydrolysis process to dispose of human remains.

138. BioSafe/Digestor acted in bad faith as set forth above.

139. BioSafe/Digestor's actions have caused Matthews's harm in the nascent marketplace for alkaline hydrolysis products.

140. SEI has not placed any orders for Bio Cremation™ equipment and has expressed to Matthews SEI's unwillingness to do so is a result of the uncertainty created by BioSafe/Digestor's false accusations.

141. Matthews is entitled to an award of damages and an injunction to prevent BioSafe/Digestor from further intentional and improper acts of interference with Matthews's prospective contractual relationship with SEI and others.

WHEREFORE, Matthews requests that the Court enter judgment in favor of Matthews and against BioSafe/Digestor and:

- (a) issue a declaration that Matthews's marketing and sale of Bio Cremation™ equipment does not infringe any valid patent or other intellectual property right of BioSafe or Digestor;
- (b) issue a declaration that U.S. Patent No. 6,437,211, U.S. Patent No. 6,472,580, U.S. Patent No. 7,183,453, U.S. Patent No. 7,829,755, and U.S. Patent No. 7,910,788 are invalid and/or unenforceable;
- (c) enjoin BioSafe and Digestor from making any further statements or accusations to anyone that Matthews's marketing and sale of Bio Cremation™ equipment infringes any valid patent or other intellectual property right of BioSafe or Digestor; and

- (d) award Matthews compensatory and punitive damages, and all other relief to which Matthews is entitled, plus attorneys' fees and all other costs of investigating, preparing, and pursuing this action, and interest.

Respectfully submitted,

Dated: May 13, 2011

/s/ Kevin P. Allen
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