

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

-----X		
	:	
OSMOSE, INC.,	:	
	:	
<b>Plaintiff,</b>	:	
	:	<b>C.A. No. 2:10 cv 108</b>
	:	
<b>v.</b>	:	
	:	
<b>ARCH CHEMICALS, INC.,</b>	:	
<b>ARCH WOOD PROTECTION, INC.,</b>	:	
<b>ARCH TREATMENT TECHNOLOGIES, INC.,</b>	:	
<b>COX INDUSTRIES, INC.,</b>	:	
<b>ROCKY TOP BUILDING PRODUCTS, INC., and</b>	:	
<b>MADISON WOOD PRESERVERS, INC.,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
-----X		

## AMENDED COMPLAINT

## JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. Jurisdiction and venue are based on 28 U.S.C. §§ 1331, 1338(a), 1391(b), 1400(b), 2201, 2202, and 35 U.S.C. § 271.

2. This Court has original jurisdiction over Plaintiff's federal patent claims.

3. There has been and is now an actual controversy between Defendants Arch Chemicals, Inc., Arch Wood Protection, Inc., and Arch Treatment Technologies, Inc. (collectively, “Arch”) and Plaintiffs as to whether Arch has actively induced and/or contributed

and will continue to actively induce and/or contribute to the infringement of United States Patent No. 7,674,481 (“the ‘481 patent”) (Exhibit “A” hereto).

4. There has been and is now an actual controversy between Defendants Cox Industries, Inc., Rocky Top Building Products, Inc., and Madison Wood Preservers, Inc., and Plaintiffs as to whether they have infringed and will continue to infringe the ‘481 patent.

#### **THE PARTIES**

5. Plaintiff Osmose, Inc. (“Osmose”) is a company, organized and existing under the law of Delaware, having its principal place of business at 1016 Everree Inn Road, Griffin, Georgia 30224. Osmose owns the ‘481 patent.

6. On information and belief, Arch Chemicals, Inc. is a United States entity, having its headquarters and principal place of business at 501 Merritt 7, P.O. Box 5204, Norwalk, CT 06856.

7. On information and belief, Arch Wood Protection, Inc. and Arch Treatment Technologies, Inc. are each a United States entity, with each having its headquarters and principal place of business at 5660 New Northside Dr., Suite 1100, Atlanta, GA 30328.

8. On information and belief, Cox Industries, Inc. (“Cox”) is a United States entity, having its headquarters and principal place of business at 860 Cannon Bridge Road Orangeburg, SC 29115.

9. On information and belief, Madison Wood Preservers, Inc. (“Madison”) is a United States entity, having its headquarters and principal place of business at 216 Oak Park Road, Madison VA, 22727.

10. On information and belief, Rocky Top Building Products, Inc. (“Rocky Top”) is a United States entity, having its headquarters and principal place of business at PO Box 508, Rocky Mount, VA 24151.

11. On information and belief, Arch Chemicals, Inc., Arch Wood Protection, Inc., Arch Treatment Technologies, Inc., Cox Industries, Inc., Madison Wood Preservers, Inc., and Rocky Top Building Products, Inc. (collectively, “Defendants”) regularly do or solicit business in Virginia, have continuous and systematic contacts with Virginia, and through their various entities have engaged in activities related to the subject matter of this action and thus are subject to personal jurisdiction in this judicial district.

12. On information and belief, Cox sells and/or offers to sell in this judicial district “Durapine<sup>®</sup>” pressure-treated wood products, made using formulations obtained from or supplied by Arch specifically for this purpose, that infringe the ‘481 patent as described below.

13. On information and belief, Madison sells and/or offers to sell in this judicial district “Wolmanized<sup>®</sup>” pressure-treated wood products, made using formulations obtained from or supplied by Arch specifically for this purpose, that infringe the ‘481 patent as described below.

14. On information and belief, Rocky Top sells and/or offers to sell in this judicial district “ProSelect<sup>™</sup>” pressure-treated wood products, made using formulations obtained from or supplied by Arch specifically for this purpose, that infringe the ‘481 patent as described below.

15. On information and belief, Cox, Madison, and Rocky Top sell and/or offer to sell in this judicial district infringing products as Arch’s “licensed producers” of such products in Virginia.

**CLAIM FOR RELIEF: THE '481 PATENT**

16. Plaintiff Osmose, Inc. ("Osmose") reallege paragraphs 1-15, above, as if set forth specifically here.

17. The '481 patent, entitled "Micronized Wood Preservative Formulations," issued on March 9, 2010 in the names of the inventors Robert M. Leach and Jun Zhang, and names Osmose, Inc. as the assignee.

18. Plaintiff Osmose, Inc. is the exclusive holder of all right and title in and to the '481 patent in the United States.

19. On information and belief, Arch have infringed the '481 patent under 35 U.S.C. § 271(b) and (c) at least by engaging in the commercial manufacture, use, sale and/or offer for sale, or have made meaningful preparations to do so, of their micronized copper wood preservative formulations ("Micronized Copper Formulations"), which are formulated specifically for use in pressure-treating wood to produce infringing products, including Durapine<sup>®</sup>, Wolmanized<sup>®</sup>, and ProSelect<sup>™</sup> products by or for Cox, Madison, and Rocky Top, respectively. Said Micronized Copper Formulations have no commercial use except in connection with the production of pressure-treated wood products containing micronized copper distributed within the wood to render it resistant to fungal decay, as claimed in the '481 patent.

20. On information and belief, Arch have developed, manufacture, sell and/or offer for sale, and distribute Micronized Copper Formulations by themselves and/or through affiliates or third parties.

21. On information and belief, Arch manufacture, offer to sell, and/or sell Micronized Copper Formulations to others in the United States either themselves or through

third parties which results in the direct infringement of the '481 patent. On information and belief, these acts of direct infringement occur at Arch's active behest and with Arch's intent, knowledge, and encouragement. On information and belief, Arch actively encourage, aid, and abet these acts of direct infringement with knowledge that they are in contravention of Plaintiffs' rights under the '481 patent.

22. On information and belief, the manufacture, use and sale and offer for sale of Arch's Micronized Copper Formulations induces and contributes to the infringement of, and, absent the relief sought herein, will continue to induce and contribute to the infringement of the '481 patent.

23. On information and belief, Cox has directly infringed the '481 patent under 35 U.S.C. § 271(a) by engaging in the commercial manufacture, use, sale and/or offer for sale, or has made meaningful preparations to do so, of Durapine<sup>®</sup> pressure-treated wood products treated with Micronized Copper Formulations obtained from Arch, which comprise micronized copper distributed within the wood to render it resistant to fungal decay, as claimed in the '481 patent.

24. On information and belief, Cox has developed, manufactures, sells and/or offers for sale, and distributes Durapine<sup>®</sup> pressure-treated wood products by itself and/or through affiliates or third parties.

25. On information and belief, the manufacture, use and sale and offer for sale of Cox's Durapine<sup>®</sup> pressure-treated wood products directly infringes, and, absent the relief sought herein, will continue to directly infringe the '481 patent.

26. On information and belief, Madison has directly infringed the '481 patent under 35 U.S.C. § 271(a) by engaging in the commercial manufacture, use, sale and/or

offer for sale, or has made meaningful preparations to do so, of Wolmanized<sup>®</sup> pressure-treated wood products treated with Micronized Copper Formulations obtained from Arch, which comprise micronized copper distributed within the wood to render them resistant to fungal decay, as claimed in the '481 patent.

27. On information and belief, Madison has developed, manufactures, sells and/or offers for sale, and distributes Wolmanized<sup>®</sup> pressure-treated wood products by itself and/or through affiliates or third parties.

28. On information and belief, the manufacture, use and sale and offer for sale of Madison's Wolmanized<sup>®</sup> pressure-treated wood products directly infringes, and, absent the relief sought herein, will continue to directly infringe the '481 patent.

29. On information and belief, Rock Top has directly infringed the '481 patent under 35 U.S.C. § 271(a) by engaging in the commercial manufacture, use, sale and/or offer for sale, or has made meaningful preparations to do so, of ProSelect<sup>™</sup> pressure-treated wood products treated with Micronized Copper Formulations obtained from Arch, which comprise micronized copper distributed within the wood to render them resistant to fungal decay, as claimed in the '481 patent.

30. On information and belief, Rocky Top has developed, manufactures, sells and/or offers for sale, and distributes ProSelect<sup>™</sup> pressure-treated wood products by itself and/or through affiliates or third parties.

31. On information and belief, the manufacture, use and sale and offer for sale of Rock Top's ProSelect<sup>™</sup> pressure-treated wood products directly infringes, and, absent the relief sought herein, will continue to directly infringe the '481 patent.

WHEREFORE, Plaintiffs respectfully request the following relief:

- (a) A judgment declaring that the '481 patent is infringed by Arch's continued manufacture, use, offer to sell and sale of Micronized Copper Formulations in the United States prior to the expiration of such patent;
  - (b) A judgment declaring that the '481 patent is infringed by Cox's, Madison's, and Rocky Top's continued manufacture, use, offer to sell and sale of their respective Durapine<sup>®</sup>, Wolmanized<sup>®</sup>, and ProSelect<sup>™</sup> pressure-treated wood products;
  - (c) A permanent injunction against any infringement by Defendants of the '481 patent;
  - (d) A judgment that Defendants' conduct is willful;
  - (e) A judgment that Defendants' conduct is exceptional;
  - (f) Attorneys' fees in this action under 35 U.S.C. § 285;
  - (g) Damages adequate to compensate for the infringement and enhanced damages under 35 U.S.C. § 284;
  - (h) Costs and expenses in this action; and
  - (i) Such other relief as this Court may deem proper.
- A trial by jury is demanded.

Dated: March 12, 2010

MILBANK, TWEED, HADLEY  
& McCLOY LLP

/s/  
Robert J. Koch (VSB 13676)  
1850 K Street NW, Suite 1100  
Washington, DC 20006  
(202) 835-7500

*Attorney for Plaintiff*  
Osmose, Inc.