

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

REMEDICATION PRODUCTS, INC.            )  
  )  
                  Plaintiff,                            )  
  )  
v.    )  
  )  
  )  
ADVENTUS AMERICAS INC.,                )  
a Delaware Corporation, and                )  
ENVIROMETAL TECHNOLOGIES                )  
INC., a Canadian Corporation,                )  
  )  
  )  
  Defendants.    )  
\_\_\_\_\_)

Civil Action No. \_\_\_\_\_  
(Jury Trial Demanded)

**COMPLAINT**

For their complaint in this action, plaintiff Remediation Products, Inc. ("RPI") shows to the Court and alleges as follows:

**NATURE OF ACTION AND JURISDICTION**

1. This is an action for declaratory judgment of where there is a case and controversy relating to whether RPI's use of its BOS 100® product for soil and groundwater remediation constitutes infringement of United States Patent Nos. 5,266,213 and 5,534,154. RPI contends, among other things, that use of the BOS 100® product does not infringe these patents, and that the patents are invalid. This Court has jurisdiction over this declaratory judgment action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

2. This also is an action under the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 (the "UDTPA"). Defendants are falsely claiming, *inter alia*, that their licensed technology is the functional and compositional equivalent of RPI's BOS 100® product. The Court has diversity and supplementary jurisdiction over this matter pursuant to 25 U.S.C. §§ 1332, 1367.

### **VENUE**

3. Venue lies in this district pursuant to 28 U.S.C. § 1391(a), (b) and § 1400(b) because a substantial part of the events giving rise to the claims herein occurred in the State of North Carolina.

### **THE PARTIES**

4. Plaintiff Remediation Products, Inc. ("RPI") is a corporation organized and existing under the laws of the State of Colorado with its principal place of business in Golden, Colorado. RPI is an environmental-remediation technology and services company that creates and markets products that assist in removal of chlorinated compounds and hydrocarbons from contaminated soils and groundwater. RPI markets its BOS 100® and other products in North Carolina and other states.

5. EnviroMetal Technologies Inc. ("ETI") is a Canadian corporation with its principal place of business in Ontario, Canada. It is an operating subsidiary of Adventus Intellectual Property Inc. ETI licenses and markets environmental-remediation technology and services that assist in the treatment of groundwater, among other things. Upon information and belief, ETI has marketed, licensed, and performed environmental remediation in North Carolina and other states.

6. Adventus Americas Inc. ("Adventus") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Freeport, Illinois. It is an operating subsidiary of Adventus Intellectual Property Inc. Adventus also is an environmental-remediation technology and services company that creates and markets products that assist in removal of contamination from soils and groundwater. Upon information and belief, Adventus has marketed, licensed, and performed environmental remediation in North Carolina and other states.

### **GENERAL ALLEGATIONS**

#### **The licensing program carried out by EnviroMetal and Adventus**

7. Defendant EnviroMetal is the exclusive licensee of the University of Waterloo-Canada under U.S. Patent No. 5,266,213, entitled Cleaning Halogenated Contaminants from Groundwater, issued November 30, 1993 (hereinafter, "the '213 Patent"). Attached hereto as Exhibit A is a true and correct copy of the '213 Patent. Upon information and belief, EnviroMetal has the right and obligation under its exclusive license to bring actions for alleged infringement of the '213 patent without joining the University of Waterloo-Canada as a party.

8. Defendant EnviroMetal is also the exclusive licensee of the University of Waterloo-Canada under U.S. Patent No. 5,534,154, entitled System for Cleaning Contaminated Soil, issued July 9, 1996 (hereinafter, "the '154 Patent"). Attached hereto as Exhibit B is a true and correct copy of the '154 Patent. Upon information and belief, EnviroMetal has the right and obligation under its exclusive license to bring actions for alleged infringement of the '154 patent without joining the University of Waterloo-Canada as a party.

9. Defendant Adventus is a sublicensee under the '213 Patent.

10. Defendant Adventus is a sublicensee under the '154 Patent.

11. Defendants EnviroMetal and Adventus operate in tandem in marketing technology purportedly protected by the '213 and/or '154 Patents. Both Defendants share responsibility for marketing said technology in the United States. Approximately ninety percent of EnviroMetal's and Adventus' sales have occurred in the United States.

12. Defendants EnviroMetal and Adventus operate a licensing program for technology purportedly protected by the '213 and '154 Patents in the United States. Both Defendants have filed suit in the United States alleging infringement of the '213 patent against at least two other companies that have refused to take a license.

13. Upon information and belief, Adventus and EnviroMetal have conducted licensing activities relating to the '213 and/or '154 Patents in the Western District of North Carolina. Adventus plays a vital role for ETI in sub-licensing activities related to the '213 and/or '154 patents in the United States. The responsibilities of the president of Adventus include facilitating business operations in the United States and Europe for EnviroMetal.

**EnviroMetal and Adventus have threatened RPI**

14. Plaintiff RPI is engaged in projects relating to the use of its BOS 100® product for the remediation of soil and groundwater at a site located in the Western District of North Carolina and in other states.

15. On January 27, 2005, counsel purporting to represent "Adventus" wrote to RPI and stated that "Adventus recently acquired [ETI] and rights to" the '213 and '154 Patents. The letter concluded by stating, "The [patent owner] is committed to the vigorous defense of its intellectual property rights . . . . [This owner] is prepared to allow Adventus to act on its behalf.

As we have stated previously, Adventus is prepared to grant reasonable licenses to these patents to both end users and installation contractors. If you are interested in such a license, or if you have information that you believe indicates that your technology is unrelated to these patents, we would be pleased to review it.”

16. ETI distributed as marketing material an “Open Letter to the Remediation Industry”, dated March 31, 2005. It stated that, “[T]here has been considerable confusion and speculation in the industry concerning [ETI’s] intellectual property rights as they relate to iron-based technologies for treatment of halogenated organic compounds in groundwater. We wrote this letter to make our position as clear as possible. . . . ETI is now a member of the Adventus Group of Companies. ETI’s core technology is that embodied in the [‘213 Patent]. . . . ETI and Adventus Remediation Technologies are committed to enforcing their patent rights. It is unfair to the licensees who respect patent law, and thus obtain a license, to be at a cost disadvantage to those who misappropriate our patented technology.”

17. In July 2005, a representative of ETI met with RPI in Colorado to discuss whether the use of the BOS 100® product infringed the ‘213 and ‘154 Patents. RPI denied infringement at that meeting.

18. On October 5, 2005, ETI wrote to RPI that “We do not feel it is in the interest of either RPI or ETI to enter into an expensive, drawn out legal battle to decide [infringement], when there are two alternative avenues for moving forward . . . .” The two “alternative avenues” identified would be for (a) RPI to share end-user information with ETI so that ETI could collect license fees from such end-users, or (b) RPI to pay a royalty to ETI. RPI rejected both alternatives.

19. On May 1, 2006, counsel for Adventus and ETI wrote to RPI and stated, “It has been since October of last year that we contacted you because we have been pursuing another infringer. . . . To avoid initiation of legal action against RPI, we are also willing” to enter into licensing agreements with RPI.

20. On July 7, 2006, counsel for RPI wrote to counsel for Adventus and ETI, denying infringement and concluding, “At this time, RPI considers this matter closed.”

21. On July 27, 2006, counsel for Adventus and ETI wrote to counsel for RPI and stated, “Unfortunately, we cannot consider the matter concerning [RPI’s] BOS 100® material closed. . . . I find it difficult to understand why your client continues to maintain that RPI’s BOS 100® material does not infringe [the ‘213 and ‘154 patents] . . . . My client is certainly justified in asking for a reasonable license from RPI for their application of the BOS 100® material. Based on the above analysis, I trust RPI will revisit my client’s license proposal.”

22. RPI continues to maintain its position that use of its BOS 100® product does not infringe the ‘213 or ‘154 Patents. RPI refuses to take a license from ETI and Adventus because the use of BOS 100® does not infringe the ‘213 or ‘154 Patents.

**RPI’s business involves remediating contaminated sites in North Carolina**

23. The State of North Carolina has appropriated funds to assist property owners with cleaning contaminated groundwater at certain locations across the state. The contaminated groundwater poses a serious threat to the environment and health of residents of North Carolina who live or work near the contaminated sites. The cost of cleaning up the contaminated sites in North Carolina may be at least 25 million dollars.

24. The State of North Carolina and at least one property owner have begun to use and test RPI's BOS 100® product and related technology to clean up a contaminated site that is located in Charlotte, North Carolina and this District.

25. RPI's BOS 100® product and its application are substantially superior to the technology that is disclosed in the '213 and '154 Patents and licensed by ETI and Adventus. RPI's BOS 100® product and technology can eliminate essentially all of the contamination or reduce it to acceptable levels at a particular site in less than six months whereas ETI and Adventus' licensed technology frequently takes up to five years or more to achieve the same result. RPI's BOS 100® product and its use are covered by United States Patent No. 6,787,034, which is owned by RPI. The use of RPI's BOS 100® product to remediate contaminated sites in North Carolina will result in removing contamination from groundwater in North Carolina far more quickly and efficiently than the use of defendants' licensed technology.

**In North Carolina, ETI and Adventus have misused the '213 and '154 patents, have interfered with RPI's business relationships, and have made false or deceptive claims in attempts to sell their own product and/or extract licensing fees**

26. In January 2007, counsel for ETI and Adventus contacted at least one North Carolina company doing business with RPI and planning to use the BOS 100® product for a contaminated site that the company owns in Charlotte, North Carolina and accused the use of the BOS 100® product of infringing the '213 and/or the '154 patents. ETI and Adventus have demanded a royalty from the property owner for its use of RPI's BOS 100® product and technology. The property owner has demanded that RPI reimburse the property owner for its payment of the royalty. This activity by ETI and Adventus is adversely affecting and interfering with RPI's ability to conduct business in North Carolina and causing damage to RPI's business.

27. ETI and Adventus are also misusing the '213 and '154 patents by impermissibly expanding the scope of the claims of the patents with anticompetitive effect. ETI and Adventus have asserted the '213 and '154 patents against companies, including RPI, who provide remediation services that do not fall within any claim of the '213 or '154 patents and have collected royalties on remediation methods that are not covered by any valid claim of the '213 and '154 patents. ETI and Adventus' assertion of the '213 and '154 patents has resulted in loss of business or increased cost to RPI and others who do not offer or practice any method that infringes any claim of the '213 or '154 patents.

28. Upon information and belief, Adventus and/or ETI have said or suggested to the North Carolina company that ETI and Adventus could provide the same or essentially the same product as the BOS 100® product for less money. Defendants' statement that it can provide the same product or essentially the same product for less money is not true and is unfair and deceptive. RPI's BOS 100® product is an activated carbon-based product that enables the remediation of groundwater contamination at a site in less than six months. RPI's BOS 100® product is expensive to manufacture.

29. ETI and Adventus' claim that their product utilizes "carbon and iron" to remediate groundwater. Upon information and believe, defendants' use of the term "carbon" is misleading and relates merely to organic waste.

30. Neither RPI nor any of its clients, customers, or suppliers has infringed any claim of the '213 Patent by using, selling, or offering for sale any method that directly infringes the '213 Patent, nor has contributorily infringed nor induced infringement of the '213 Patent.

31. Neither RPI nor any of its clients, customers, or suppliers has infringed any claim of the '154 Patent by using, selling, or offering for sale any method that directly infringes the '154 Patent, nor has contributorily infringed nor induced infringement of the '154 Patent.

32. As a result of the admissions and representations made during the prosecution of the application resulted in the issuance of the '154 Patent by or on behalf of the applicant in order to obtain the issuance of the '154 patent, defendants are estopped from asserting or obtaining any construction of the claims of the '154 patent that would result in any of the claims covering the use of RPI's BOS 100® product and technology.

33. As a direct result of ETI and Adventus' claims of infringement of the '213 and/or '154 Patents, RPI's BOS 100® product and related technology will not be used by some, if not all, property owners, or will only be used if RPI pays for a license from ETI and Adventus, or if RPI reimburses its customers for the cost of a license from ETI and Adventus. As a result of defendants' claims of infringement relating to RPI's BOS 100®, RPI has been damaged and RPI's BOS 100® may not be used to clean up contaminated sites in North Carolina. The state of North Carolina and its residents will be harmed if RPI's BOS 100® product and technology are not used because the use of RPI's BOS 100® product removes certain contaminants much more quickly and effectively than other technologies, including ETI and Adventus' licensed technology.

34. Upon information and belief, the '213 Patent is invalid, unenforceable, and/or void under 35 U.S.C. §§ 102, 103, and/or 112.

35. Upon information and belief, the '154 Patent is invalid unenforceable and/or void under 35 U.S.C. §§ 102, 103, and/or 112.

**COUNT I**

**(Declaration of Non-Infringement, Unenforceability and Invalidity of the '213 Patent)**

36. Paragraphs 1 through 34 are incorporated by reference as if stated fully herein.

37. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that RPI has not infringed the '213 Patent.

38. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that the '213 Patent is invalid, unenforceable and/or void under 35 U.S.C. §§ 102, 103 and/or 112.

39. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that the '213 patent is unenforceable as a result of ETI and Adventus' misuse of the '213 patent.

40. An actual and judiciable controversy exists between RPI and defendants, ETI and Adventus, regarding infringement and validity of the '213 patent.

41. RPI has no adequate remedy at law.

**COUNT II**

**(Declaration of Non-Infringement, Unenforceability and Invalidity of the '154 Patent)**

42. Paragraphs 1 through 33 and 35 are incorporated by reference as if stated fully herein.

43. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that RPI has not infringed the '154 Patent.

44. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that the '154 Patent is invalid, unenforceable and/or void 35 U.S.C. §§ 102, 103 and/or 112.

45. RPI requests entry of a declaratory judgment, pursuant to 28 U.S.C. §§ 2201, that the '154 patent is unenforceable as a result of ETI and Adventus' misuse of the '154 patent.

46. An actual and judiciable controversy exists between RPI and defendants, ETI and Adventus, regarding infringement and validity of the '154 patent.

47. RPI has no adequate remedy at law.

**COUNT III**  
**(Violation of N.C. Gen Stat. § 75-1.1 (UDTPA))**

48. Paragraphs 1 through 33 are incorporated by reference as if stated fully herein.

49. Adventus and ETI compete with RPI in the field of environmental remediation.

50. Adventus and ETI have made misrepresentations to one or more owners of contaminated property in North Carolina about their licensed technology and RPI's BOS 100® product, which have deceived or have a tendency to deceive owners of contaminated property who are customers or potential customers of RPI and who are required by the State of North Carolina to clean up the contamination. Adventus and ETI's actions are unfair, unethical, deceptive, and unscrupulous and are in and affecting commerce in North Carolina.

51. Adventus and ETI's unfair and deceptive acts are the direct and proximate cause of damages to RPI, including lost profits and injury to RPI's reputation in the industry and among its customer base, and loss of goodwill.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Remediation Products, Inc. respectfully requests that this Court enter a judgment or decree against defendants:

- (a) Declaring the RPI has not infringed the '213 Patent;
- (b) Declaring the RPI has not infringed the '154 Patent;
- (c) Declaring that the '213 Patent is invalid, unenforceable, and/or void;
- (d) Declaring that the '154 Patent is invalid, unenforceable, and/or void;

(e) Declaring that ETI and Adventus have misused the '213 and '154 patents rendering them unenforceable;

(f) Enjoining ETI, Adventus, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with it, from accusing (either verbally or in writing) RPI and/or any current or potential buyers, sellers, or users of RPI's services and products, and any of their agents, suppliers or servants, of infringement of the '213 Patent and/or '154 Patent relating to use of the BOS 100® product;

(g) Enjoining Adventus and ETI from making false and deceptive statements about their technology and RPI's technology and unfairly competing against RPI;

(h) Awarding RPI the costs of this action against defendants;

(i) Finding the case is exceptional and awarding RPI its reasonable attorney fees under 35 U.S.C. § 285;

(j) Awarding RPI damages and trebling thereof on its claim for defendants' violation of N.C. Gen. Stat. §75-1.1 and its reasonable attorney fees under N.C. Gen. Stat. § 75-16.1; and

(k) Granting RPI such additional and further relief as this Court deems just and proper.

### **Demand for Jury Trial**

Plaintiff Remediation Products, Inc. demands a trial by jury on all issues triable to a jury in this case as a matter of right.

Respectfully submitted this 6<sup>th</sup> day of April, 2007.

s/John P. Higgins  
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(N.C. State Bar No. 17442)  
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