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Attorneys for Plaintiff ACULON, INC.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ACULON, INC., a California corporation,

Plaintiff,

v.

ELECTROLAB, INC., a Texas corporation; E9 TREATMENTS, INC., a Delaware corporation,

Defendants.

Case No.: **'22CV1319 BEN WVG**

COMPLAINT FOR:

1. **Correction of Patents (35 USC § 256)**
2. **Misappropriation of Trade Secrets**
3. **Intentional Interference With Contractual Relations**
4. **Intentional Interference With Prospective Economic Relations**
5. **Negligent Interference With Prospective Economic Relations**
6. **Conversion**
7. **Patent Infringement**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, Aculon, Inc ("Aculon") by its attorneys, Genevieve M. Sauter and Blynn L. Shideler, to file this Complaint seeking preliminary and permanent injunctive relief, and other relief as the Court deems appropriate, against Defendants Electrolab, Inc. ("Electrolab") and E9 Treatments, Inc. ("E9"):

PRELIMINARY STATEMENT

1. This is an action addressing the usurpation of Aculon's patent rights by Defendants Electrolab and E9 with Aculon herein seeking to correct the inventorship of patents under U.S. patent law, specifically under 35 U.S.C. § 256; Misappropriation of Trade Secrets by Defendants Electrolab and E9 in violation of the California Uniform Trade Secrets Act arising under Cal. Civ. Code §3426 *et seq.*; Conversion of Aculon's property rights; Intentional Interference with Contractual Relations; Intentional and Negligent Interference with Prospective Economic Advantage by E9 in violation of California common law; and Willful Infringement of Aculon's Patents by Defendant E9 arising under the U.S. patent statutes, specifically 35 U.S.C. § 271.

2. In summary, Defendant Electrolab conceived of use of Aculon's pre-existing technology for the reduction of Paraffin (in more common parlance a "waxy substance") and Asphaltene (also called mineral tar or mineral pitch) deposition on sensor components in crude oil service. Electrolab was unable to get Aculon's proprietary pre-existing formulations to be commercially viable for this application and approached Aculon to help solve the issues. Aculon, including its Vice President of Technology Dr. Eric Hanson and its Chief Executive Officer Edward Hughes, willingly worked with Electrolab to develop new formulations and techniques for this application. Electrolab commercialized the new formulations and techniques developed in conjunction with Aculon and then secretly ran to the patent office, attempting to claim Aculon's proprietary improvements as their own. Aculon later discovered Electrolab's misappropriation of its inventorship status and requested that Electrolab correct the record and the patent. When Electrolab refused, Aculon filed a continuing application within the patent office correctly listing both the Aculon

employee inventors and the alleged Electrolab employee inventors, as well as including a public discussion of some of the facts surrounding the development of the new formulation by Aculon. Electrolab ineffectually used improper pressure tactics to attempt to stop this continuing application, but that misguided and improper effort failed, and a patent with the correct inventorship listing eventually issued. Aculon also ceased producing its proprietary new formulation for Electrolab.

3. Electrolab continued to prosecute a collection of patents that included Aculon improvements. Electrolab formed a subsidiary, E9. Electrolab and E9 are believed to have improperly reverse engineered the new formulation developed by Aculon and utilized Aculon's trade secrets to improperly develop a replacement formulation. In or about May 2022, Aculon discovered that E9 was threatening Aculon customers with respect to certain later-obtained patents. However, these patents are based upon Aculon's own inventive contributions and should, at a minimum, be co-owned by Aculon. Aculon tested the replacement formulation now sold by E9 and discovered the formulation falls within the scope of several Aculon patents. The new formulation is clearly based upon the prior, proprietary Aculon formulation.

JURISDICTION AND VENUE

4. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § §1331, 1332, and 1338.

5. This court has personal jurisdiction over Defendants because, on information and belief, each of the Defendants conducts business in California and directly or indirectly distributes, markets, offers to sell and/or sells products and/or services in this judicial district, and has purposely directed activities to this judicial district in the development of the technologies involved in this dispute.

6. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b).

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THE PARTIES

7. Plaintiff Aculon, Inc. is a California corporation (California Entity Number 2291704) with its principal place of business at 10110 Sorrento Valley Road, Suite C, San Diego, California 92121.

8. Defendant Electrolab, Inc. is a Texas Corporation (Texas Taxpayer Number 17418823419) with its principal place of business at 159 Enterprise Parkway, Boerne, Texas 78006.

9. Defendant E9 Treatments, Inc. is a Delaware corporation (Delaware File Number 6041397) with its principal place of business at 159 Enterprise Parkway, Boerne, Texas 78006. Defendant E9 is believed to be a wholly owned subsidiary of Electrolab formed in about May 2016.

DETAILED BACKGROUND

Aculon Patents 8,025,974 and 8,236,426

10. Aculon was founded in 2004 and has been an innovator and leader in surface nano-coating technology with surface modification experts who develop and produce surface nano-coating technologies to modify a broad variety of surfaces, such as metal, glass, and polymers.

11. Aculon has worked on thousands of implementations of surface modification technologies. Aculon has invested hundreds of thousands of hours to develop over 100 products. Aculon has been granted over 35 patents and has won numerous awards.

12. On April 4, 2007, Aculon caused to be filed a provisional patent application serial number 60/921,769, directed to metal substrates with hydrophobic surface layers and to their methods of preparation.

13. On March 31, 2008, Aculon caused to be filed a regular patent application serial number 12/080,057 titled “Inorganic substrates with hydrophobic surface layers”, directed to metal substrates with hydrophobic surface layers and to their methods of preparation.

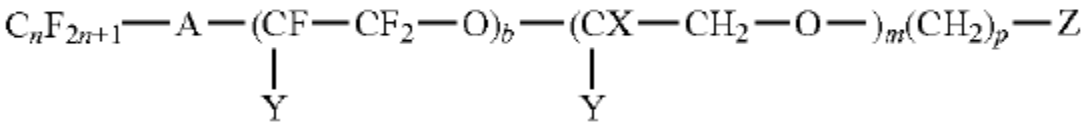
14. Patent application serial number 12/080,057 claims priority to provisional patent application serial number 60/921,769.

15. Patent application serial number 12/080,057 issued as U.S. patent 8,025,974 on September 27, 2011. A copy of U.S. patent 8,025,974 is attached as Exhibit 1.

16. Aculon is the assignee of the entire right, title, and interest to U.S. patent 8,025,974, which remains valid and enforceable.

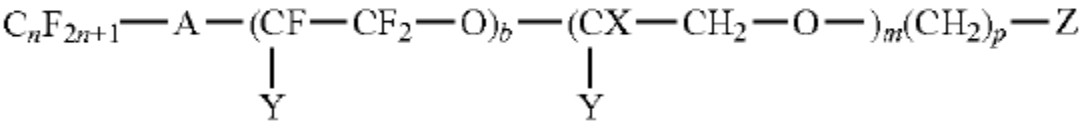
17. U.S. patent 8,025,974 issued with 28 claims. Claims 1 and 19 are independent and define:

1. An inorganic substrate with a surface layer of a fluorinated material having the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative.

19. A method of depositing a fluorinated material on an inorganic substrate surface comprising: (a) contacting the surface either directly or through an intermediate organometallic layer with a fluorinated material in a diluent, in which the fluorinated material has the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative; (b) forming a film on the substrate.

18. On April 13, 2011, Aculon caused to be filed a regular patent application serial number 13/066,389, titled "Inorganic substrates with hydrophobic surface layers" directed to metal substrates with hydrophobic surface layers and to their methods of preparation.

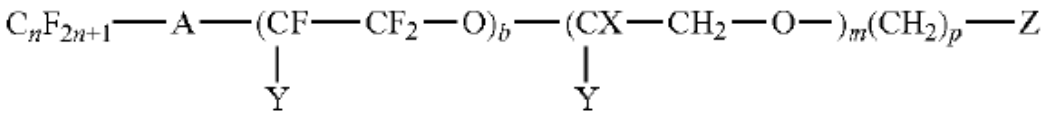
19. Patent application serial number 13/066,389 claims priority to, and is a continuing application of, patent application serial number 12/080,057.

20. Patent application serial number 13/066,389 issued as U.S. patent 8,236,426 on August 7, 2012. A copy of U.S. patent 8,236,426 is attached as Exhibit 2.

21. Aculon is the assignee of the entire right title and interest to U.S. patent 8,236,426 which remains valid and enforceable.

22. U.S. patent 8,236,426 issued with 24 claims, claim 1 of which is independent and defines:

1. An inorganic substrate with a surface layer of a fluorinated material having the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 20; Y is H, F,

C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is at least 1, m is 0 to 50, p is 1 to 20 and Z is a phosphorus acid group.

Defendant Electrolab's February 28, 2013 Provisional Patent Filing

23. Upon information and belief, sometime at least as early as February 2013, employees of Electrolab proposed using Aculon's then-commercially available Self-Assembled Monolayers of Phosphonates (SAMP) impregnated in wipes as a coating for the reduction of paraffin and asphaltene deposition on stainless steel and other nickel alloy components of sensors in crude oil service. This commercially available treatment was known as Aculon's Nanoclear Metal Stencil Treatment and was Aculon's oleophobic metal treatment technology.

24. On February 28, 2013, Defendant Electrolab caused to be filed a provisional patent application serial number 61/770,963 directed to a method "for petroleum facility owner/operators to address common paraffin/asphaltene deposition on stainless steel and nickel allow sensor component and instrumentation." A copy of provisional patent application serial number 61/770,963 is found in the prosecution history of this application, which is attached hereto as Exhibit 3.

25. Upon information and belief, the ownership rights in provisional patent application serial number 61/770,963 were assigned from the inventors to Electrolab, and then from Electrolab to E9.

Aculon and Defendant Electrolab's Co-Developments

26. In or around March 2013, Electrolab approached Aculon concerning problems it experienced implementing its concept. Electrolab requested a meeting with Aculon to discuss and advance the technology. Aculon agreed, and a meeting between Electrolab and Aculon was conducted on June 21, 2013.

27. During the June 21, 2013 meeting between Electrolab and Aculon, Electrolab informed Aculon that although some promising tests were conducted, the existing commercially available SAMP compositions were unsuitable for

manufacturing applications as a coating for the reduction of paraffin and asphaltene deposition on stainless steel and other nickel alloy components of sensors in crude oil service.

28. During the June 21, 2013 meeting, Dr. Hanson, an Aculon employee, first proposed options to slow the rate of evaporation of the Aculon SAMP formulations for acceptable results in the proposed application, including reformulation of the product with slower drying solvents and the use of glycol-based carrier chemistries.

29. During the June 21, 2013 meeting, it was determined that Dr. Hanson and Aculon would attempt to further develop methods and alternative chemistries that would work in Electrolab's intended application of use of the technology.

30. From June 21, 2013 until August 2013, Dr. Hanson and others at Aculon conceived, developed, and tested several variations of the chemistry with the goals of the resulting formulations being: (1) a coating for the reduction of paraffin and asphaltene on treated substrates; (2) slow drying relative to existing commercial formulations; (3) able to be maintained within a wipe application; (4) functional for the treatment of sensors; and (5) able to withstand the adversities in crude oil service.

31. By August 2013, after several weeks of development and testing, two new chemistries conceived and developed by Dr. Hanson and Mr. Hughes at Aculon were concluded to be acceptable for the proposed application, including a SAMP formulation with a glycol-based carrier component. One of these formulations was concluded to be preferable, namely a SAMP formulation with a glycol-based carrier component, which formulation was named NC-SLO™ (shorthand for Nano-clear Slow Drying).

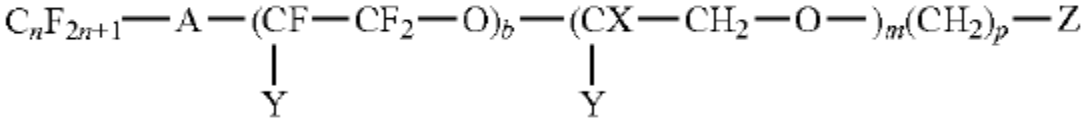
32. On or about October 23, 2013, samples of the NC-SLO™ product were shipped to Electrolab for testing. Electrolab informed Aculon on or about November 5, 2013 that results were acceptable.

33. Later in November 2013, Aculon entered into an agreement to supply the NC-SLO™ formulation to Electrolab. Under the terms of the agreement, the chemistry would be private labeled as Electrolab's Anti-Paraffin Treatment™.

34. Aculon maintained the specific formulation of the NC-SLO™ as confidential, and the parties' agreement set forth that Electrolab would not analyze or reverse engineer the particulars of the formulation. A copy of the terms and conditions set forth in this agreement is attached hereto as Exhibit 4.

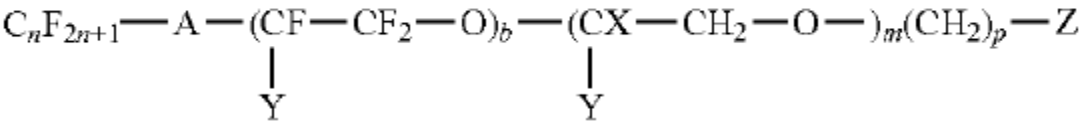
35. Shipment of the NC-SLO™ formulation from Aculon to Electrolab began on or about December 18, 2013.

36. The use of the NC-SLO™ formulation from Aculon on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



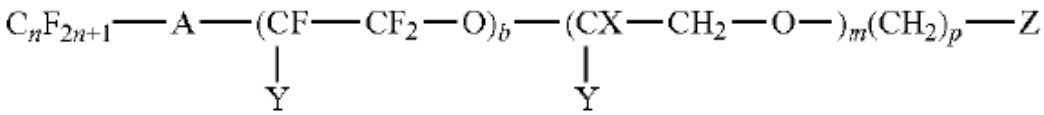
where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative. This substrate is falls within the scope of at least claim 1 of Aculon's patent number 8,025,974.

37. The use of the NC-SLO™ formulation from Aculon on an inorganic substrate yields a method of depositing a fluorinated material on an inorganic substrate surface comprising: (a) contacting the surface either directly or through an intermediate organometallic layer with a fluorinated material in a diluent, in which the fluorinated material has the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative; (b) forming a film on the substrate. This method falls within the scope of at least claim 19 of Aculon's patent number 8,025,974.

38. The use of the NC-SLO™ formulation from Aculon on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 20; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is at least 1, m is 0 to 50, p is 1 to 20 and Z is a phosphorus acid group. This substrate falls within the scope of at least claim 1 of Aculon's patent number 8,236,426.

39. Dr. Hanson and Mr. Hughes conceived and developed improvements to the originally proposed cleaning, drying, and application steps originally proposed by Electrolab, and Aculon communicated each of these improvements to Electrolab. Mr. Hughes conceived of and proposed expanding the application beyond sensor components in the crude oil industry and suggested the application of the developed

technology to any metal component subject to debilitating deposition. Mr. Hughes conceived of and proposed several specific components to be treated, as well as the construction of commercial kits with wipes and instructions.

Electrolab's Filing of Application 14/099,497 With Aculon Improvements Therein

40. On December 6, 2013, Electrolab caused to be filed U.S. regular patent application 14/099,497.

41. U.S. regular patent application 14/099,497 claimed priority to provisional patent application serial number 61/770,963.

42. A significant amount of new material was added to the disclosure of regular patent application 14/099,497 that was not found in provisional patent application serial number 61/770,963.

43. Much of the new material added to the disclosure of regular patent application 14/099,497 was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

44. As of the filing of regular patent application 14/099,497, neither Aculon, nor Dr. Hanson, nor Mr. Hughes were aware of, or gave permission to, Electrolab to incorporate subject matter into the application that was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

45. Aculon owned, and maintains ownership of, developments conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

46. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that "the SAMP may be combined with a glycol carrier for use in the treatment of components used in crude oil service operation" and that "using a glycol-based carrier is unique in the crude oil environments." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

47. The specification of regular patent application 14/099,497 notes that "as described above, utilization of a glycol-based carrier component to the SAMP composition may enhance crude oil process/service applications" and that the "present invention is a new application of a modified, existing chemical technology." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

48. The SAMP combined with a glycol carrier discussed in the regular patent application 14/099,497 as a "modified, existing chemical technology" is the inventive concept of Dr. Hanson and Mr. Hughes.

49. Dr. Hanson and Mr. Hughes communicated to Electrolab that the existing cleaning wipes with which Electrolab first experimented contained phosphate-based detergent and may not be best for cleaning all components of the sensor. Dr. Hanson and Mr. Hughes conceived of and discussed the use of alcohol-based cleaning for select components, such as electronic containing components.

50. Electrolab raised concerns about improving the process for manufacturing scale, and Dr. Hanson and Mr. Hughes conceived of and conveyed to Electrolab that alcohol laden sponges and/or phosphate-based laden sponges would improve this aspect.

51. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that the "entire sensor assembly is thoroughly cleaned on all sides with an alcohol or phosphate-based detergent laden sponge or wipe 60 to remove any mill oil, dirt, grease, etc. and liberally flushed with clean water." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

52. Dr. Hanson and Mr. Hughes conceived of and conveyed to Electrolab that the process would benefit from isolation or disassembly of the components for effective treatment.

53. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that first "the sensor is disassembled and the nano-treatment is completed" and after treatment the "complete assembly is thoroughly dried and reassembled." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

54. Dr. Hanson and Mr. Hughes conceived of and conveyed to Electrolab that the process of drying the cleaned components before applying the new formulation developed by Aculon could preferably use a clean lint-free cloth.

55. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that the "assembly is thoroughly dried using clean, lint-free cloth or absorbent paper towels." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

56. Dr. Hanson and Mr. Hughes conceived of and conveyed to Electrolab that the process of applying the new Aculon developed formulation would use a contact or dwell time of approximately one minute, after which excess residue may be removed.

57. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that "After approximately 1 minute of contact time, excess SAMP composition residue is removed and the complete assembly is thoroughly dried and reassembled." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

58. Mr. Hughes conceived and proposed the application of the new Aculon formulation to any metal component subject to debilitating deposition and construction of commercial kits with wipes and instructions.

59. The disclosure of regular patent application 14/099,497 includes new material that was not found in provisional patent application serial number 61/770,963 which describes that "It is anticipated that the present method may be utilized with a wide range of metals as well as non-metallic components", and that the "kit includes a cleaner wipe impregnated with a cleaning substance for cleaning the component; a nano-coating wipe impregnated with a SAMP for applying a nano-coating of the SAMP to the component; and instructions for treating said component utilizing the cleaner wipe and the nano-coating wipe." This material was conceived in whole or in part by Aculon employees Dr. Hanson and Mr. Hughes.

Aculon Discovers Electrolab's Attempted Usurpation of Its Inventions

60. In the spring of 2016, Aculon first learned of the filing of regular patent application 14/099,497 and the inclusion of the inventions of at least Dr. Hanson in the application without Aculon's authorization and without properly listing Dr. Hanson as an inventor.

61. Mr. Hughes sent several letters, dated April 13, 14, 21 and 29, 2016, and May 12, 2016, to Electrolab requesting the addition of Aculon personnel as inventors to regular patent application 14/099,497. Electrolab refused to make any correction of inventorship to regular patent application 14/099,497.

62. In June 2016, Aculon (through its counsel) caused to be filed on July 15, 2016, U.S. patent application serial number 15/211,224 titled "Method and Kit for Treatment of Components Utilized in Crude Oil Service Operation", listing inventors from both Aculon and Electrolab.

63. U.S. patent application serial number 15/211,224 is a continuing case of U.S. patent application serial number 14/099,497.

64. The specification of U.S. patent application serial number 15/211,224 includes the disclosure of U.S. patent application serial number 14/099,497 and

further includes a clarification of some aspects of the development of the invention disclosed therein.

65. Aculon invited Electrolab to be added as an applicant to U.S. patent application serial number 15/211,224. Electrolab declined Aculon's offer.

66. Aculon made attempts to obtain signed inventorship declarations from the listed Electrolab inventors. Aculon did not receive a response, and substitute statements were accordingly made under 37 C.F.R. §1.64(b).

67. Aculon's primary purpose in filing and prosecuting U.S. patent application serial number 15/211,224 was to inform the public of the proper inventorship of its technology that it considers to be primarily Aculon's invention, given that Electrolab's original attempts showed some promising test results but Electrolab considered the then-existing commercially available SAMP compositions unsuitable for manufacturing applications.

68. U.S. patent Application serial number 15/211,224 issued as U.S. patent 10,053,640 on August 21, 2018. A copy of U.S. patent 10,053,640 is attached hereto as Exhibit 5.

Electrolab Improperly Attempts to Stop Aculon From Prosecuting Patent Application Serial No. 15/211,224

69. Electrolab desired to stop the prosecution, publication, and issuance of U.S. patent application serial number 15/211,224.

70. Electrolab asserted that Aculon could not pursue a continuing application without Electrolab's participation, which is a wholly inaccurate assessment of U.S. patent law.

71. Electrolab's position would improperly allow any party that hijacks the invention rights of a third party, as Electrolab did here, to exclusively control the prosecution and issuance of such rights as a patent. The U.S. Patent Office rules do not allow this result. 35 U.S.C. § 256 actions, such as invoked here, are only relevant for issued patents.

72. Electrolab, through its counsel, contacted counsel for Aculon and threatened that if the U.S. patent application serial number 15/211,224 was not abandoned, Electrolab's counsel would file an ethics complaint regarding the filing.

73. Electrolab's counsel was obviously well-aware that if there was an alleged ethics violation, and there clearly was no such violation here, the rules of professional conduct require the alleged violation be reported and such an alleged violation cannot be used as a bargaining chip to advance his client's position.

74. Aculon and Aculon's counsel ignored the ill-conceived threat and the proper prosecution of U.S. patent application serial number 15/211,224 continued through to the issuance of U.S. patent 10,053,640.

75. Electrolab's counsel did follow through with the ill-conceived threat and an ethics complaint was filed with the U.S. Patent and Trademark Office's Office of Enrollment and Discipline (USPTO OED). Aculon's counsel responded to the inquiry from the USPTO OED (including a reporting of and outlining of Electrolab's improper pressure tactics) and the investigation into Aculon's counsel was terminated with no further action, as all action taken by Aculon's counsel was proper within the patent office rules. It is unknown if the USPTO OED took any action with respect to Mr. Shideler's report of Electrolab's improper conduct.

76. Electrolab's conduct shows a gross disregard for the intellectual property rights of others and lack of fundamental understanding of the patenting process.

Aculon Terminates Its Business Relationship With Electrolab

77. Aculon terminated the business relationship with Electrolab in early 2016 due to Electrolab's theft of Aculon's inventive concepts. After termination, Aculon no longer supplied the NC-SLO™ formulation from to Electrolab.

78. Aculon continued the prosecution of U.S. patent application serial number 15/211,224 to make the public aware of the proper inventorship of its technology, which it considers to be primarily Aculon's invention.

79. Aculon was largely unaware of Electrolab or E9's continued prosecution of the patent applications in this patent family, nor of the formation of E9, nor E9's commercialization efforts, until a trade show in about early 2022.

E9 Improperly Threatens to Enforce Patents Against Aculon's Customers

80. At an International School of Hydrocarbon Measurements (ISHM) trade show in or about May 2022, E9 approached an Aculon customer and threatened to enforce patents allegedly owned by E9 against Aculon's customer if the customer did not begin purchasing E9's commercial SAMP formulation products from E9 instead of Aculon. However, the patents should include Aculon inventors and should be at least partially owned by Aculon.

81. The patents cited by E9 at the trade show all stem from patent application 14/099,497.

82. All the patents that were cited by E9 at the trade show include inventive contributions of Aculon employees in the claimed subject matter and should properly include these Aculon employees as inventors.

83. Aculon owns the patent rights of these Aculon employees.

84. Assuming that any of these patents are valid, Aculon should own at least a partial interest in each of these patents.

85. Aculon is shocked and appalled that its own technological improvements are being used to obtain patents and that E9 is attempting to use the patents against Aculon and its customers.

86. E9 continues to improperly assert patents claiming Aculon-based technological improvements against Aculon customers and business partners in an attempt to sell E9's commercial SAMP formulation products. E9 further continues to improperly threaten infringement actions in patents it knows it does not have clear title to.

87. E9's conduct in improperly asserting Aculon patents continues its pattern of reckless disregard of the intellectual property rights of others.

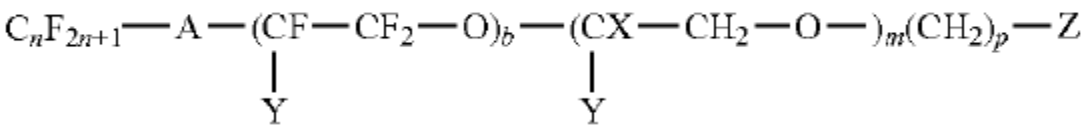
Aculon's Analysis of E9's Commercial Product

88. At the ISHM tradeshow in 2022, Aculon became aware of E9's commercial SAMP formulation products and became aware of its relationship to Electrolab.

89. Aculon obtained a sample of E9's SAMP formulation product with no contractual restrictions upon the use of this product.

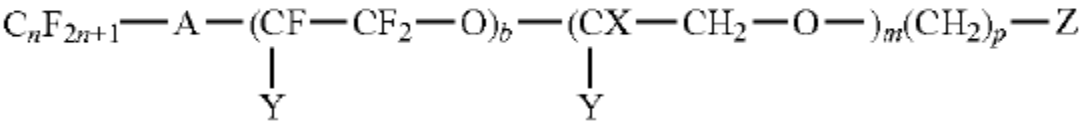
90. Aculon had an independent analysis performed on E9's SAMP formulation product.

91. The analysis confirmed that the use of E9's SAMP formulation product on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



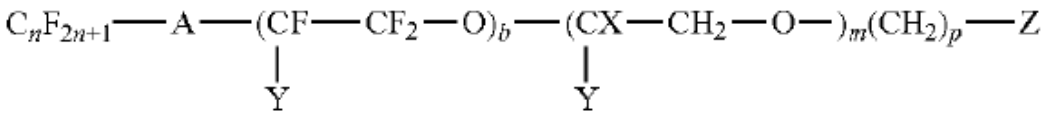
where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative. This substrate falls within the scope of at least claim 1 of Aculon's patent number 8,025,974.

92. The analysis confirmed that the use of E9's SAMP formulation product on an inorganic substrate yields a method of depositing a fluorinated material on an inorganic substrate surface comprising: (a) contacting the surface either directly or through an intermediate organometallic layer with a fluorinated material in a diluent, in which the fluorinated material has the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative; (b) forming a film on the substrate. This method falls within the scope of at least claim 19 of Aculon's patent number 8,025,974.

93. The analysis confirmed that the use of the E9's SAMP formulation product on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 20; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is at least 1, m is 0 to 50, p is 1 to 20 and Z is a phosphorus acid group. This substrate is falls within the scope of at least claim 1 of Aculon's patent number 8,236,426.

94. The review of E9's SAMP formulation indicates that E9's SAMP formulation product was based upon an analysis of the specific commercial formulation of the NC-SLO™ formulation.

95. Aculon maintained the specific formulation of the NC-SLO™ formulation as confidential. The agreement between Aculon and Electrolab provides that Electrolab will not analyze or reverse engineer the particulars of the formulation.

96. Upon information and belief, Defendants Electrolab and/or E9 improperly conducted an analysis of the NC-SLO™ formulation to improperly advance their own research and development of a SAMP product following termination of the relationship with Aculon.

97. Upon information and belief, Defendants Electrolab and/or E9 improperly used Aculon's trade secrets to develop a commercial product to replace the NC-SLO™ formulation.

FIRST CAUSE OF ACTION

CORRECTION OF PATENTS UNDER 35 U.S.C. §256

(Against All Defendants)

98. Paragraphs 1 through 97, inclusive, are incorporated and included herein by reference as if repeated in full herein.

99. Aculon's Dr. Hanson and Mr. Hughes made inventive contributions to at least one claim of each of U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497.

100. Aculon is the owner of the inventive contributions of Dr. Hanson and Mr. Hughes.

101. Through error, Dr. Hanson and Mr. Hughes were not named as co-inventors of each of U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497.

102. Aculon does not acquiesce to the validity of any of U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497 over the prior art at the time these inventions were filed; however, to the

extent that one or more of these patents remain valid, Aculon should retain an ownership interest therein.

103. Aculon requests the correction of the inventorship of U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497 under 35 U.S.C. § 256 by adding Dr. Hanson and Mr. Hughes as co-inventors.

a. Patent 9,476,754

104. U.S. patent 9,476,754 issued from U.S. patent application serial number 14/099,497 filed on December 6, 2013. A copy of U.S. patent 9,476,754 is attached hereto as Exhibit 6.

105. U.S. patent 9,476,754 issued on October 25, 2016 with one claim.

106. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claim of U.S. patent 9,476,754.

107. The claim of U.S. patent 9,476,754 defines:

> 1. A method for treating cooperating surfaces of an elongated stainless steel tube and a float carrier of a digital level sensor utilized in a crude oil service operation comprising the steps of cleaning the outer surface of said tube and an inner cooperating surface of said float carrier to remove surface contamination; drying said cleaned surfaces of said tube and said float carrier; applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to said cleaned and dried surfaces of said tube and float carrier to form treated components; and installing said treated components into a section of a crude oil service operation, said coating reducing paraffin/asphaltene deposition

on said treated components.

108. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "cleaning the outer surface of said tube and an inner cooperating surface of said float carrier to remove surface contamination" and these contributions can be found in at least column 4 lines 26-31 of U.S. patent 9,476,754.

109. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "drying said cleaned surfaces of said tube and said float carrier" and these contributions can be found in at least column 4 lines 32-33 of U.S. patent 9,476,754.

110. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to said cleaned and dried surfaces of said tube and float carrier" and these contributions can be found in at least column 4 lines 34-42 of U.S. patent 9,476,754.

111. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and these contributions can be found in at least column 2 line 64 to column 3 line 1; column 3 lines 40-43, column 3 lines 55-57 of U.S. patent 9,476,754.

112. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of installing said treated components into a section of a crude oil service operation, through their developments regarding isolating the components via disassembly, treatment then reassembly of the components which can be found in at least column 4 line 22 to 43 of U.S. patent 9,476,754.

113. This court is requested to order the correction of U.S. patent 9,476,754 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be

corrected under this section, to hold the U.S. patent 9,476,754 as invalid under U.S. patent law.

b. Patent 9,688,926

114. U.S. patent 9,688,926 issued from U.S. patent application serial number 15/164,842 filed on May 25, 2016. A copy of U.S. patent 9,688,926 is attached hereto as Exhibit 7.

115. U.S. patent application serial number 15/164,842 was filed as a continuation of U.S. patent application serial number 14/099,497.

116. U.S. patent application serial number 15/164,842 contains a similar disclosure to the disclosure of U.S. patent Application serial number 14/099,497.

117. U.S. patent 9,476,754 issued on June 27, 2017 with nine claims.

118. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 9,688,926.

119. Claim 1 of U.S. patent 9,688,926 defines:

> 1. A method for installing a level sensor into a crude oil service operation, wherein the level sensor comprises an elongated tube having an outer surface and comprises a float carrier having an inner surface, wherein the outer surface and the inner surface are cooperating surfaces, and wherein at least one of the surfaces comprises a Self-Assembled Monolayer of Phosphonate (SAMP) composition, said SAMP composition reducing paraffin or asphaltene deposition on the at least one of the surfaces, the method comprising the step of: Installing said level sensor into a section of a crude oil service operation.

120. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step in claim 1 of "wherein at least one of the surfaces comprises a Self-Assembled Monolayer of Phosphonate (SAMP) composition", and these contributions can be found in at least column 3 lines 15-19; column 3 lines 63-65; and column 4 lines 10-12 of U.S. patent 9,688,926.

121. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step in claim 1 of "Installing said level sensor into a section of a crude oil service operation" through their developments regarding isolating the components via disassembly, treatment then reassembly of the components which can be found in at least column 4 line 51 to column 5 line 5 of U.S. patent 9,688,926.

122. Claim 2 of U.S. patent 9,688,926 defines: "The method of claim 1, wherein both of the surfaces comprises a Self-Assembled Monolayer of Phosphonate (SAMP) composition."

123. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed subject matter added in claim 2 both in the glycol carrier-based composition developed by them and encompassed by the claim and the isolation and individual treatment of components discussed above for treating both surfaces developed by them. These contributions can be found in at least column 3 lines 15-19; column 3 lines 63-65; column 4 lines 10-12; and column 4 line 51 to column 5 line 5 of U.S. patent 9,688,926.

124. Claim 7 of U.S. patent 9,688,926 defines:

> 7. A level sensor comprising: An elongated tube having an outer surface; and, A float carrier having an inner surface; Wherein the outer surface and the inner surface form cooperating surfaces, and wherein at least one of the surfaces comprises a Self-Assembled Monolayer of

Phosphonate (SAMP), said SAMP reducing paraffin or asphaltene deposition on the at least one of the surfaces.

125. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed subject matter added in claim 2 both in the glycol carrier-based composition developed by them and encompassed by the claim.

126. Claim 8 of U.S. patent 9,688,926 defines: "The level sensor of claim 7, wherein both of the surfaces comprise a Self-Assembled Monolayer of Phosphonate (SAMP)."

127. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed subject matter added in claim 7 both in the glycol carrier-based composition developed by them and encompassed by the claim, and the isolation and individual treatment of components discussed above for treating both surfaces developed by them. These contributions can be found in at least column 3 lines 15-19; column 3 lines 63-65; column 4 lines 10-12; and column 4 line 51 to column 5 line 5 of U.S. patent 9,688,926.

128. This court is requested to order the correction of U.S. patent 9,688,926 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be corrected under this section, to hold the U.S. patent 9,688,926 as invalid under U.S. patent law.

c. Patent 10,059,892

129. U.S. patent 10,059,892 issued from U.S. patent Application Serial number 15/633,690 filed on June 26, 2017. A copy of U.S. patent 10,059,892 is attached hereto as Exhibit 8.

130. U.S. patent application serial number 15/633,690 was filed as a continuation of U.S. patent application serial number 15/164,842 which in turn was a continuation of U.S. patent application serial number 14/099,497.

131. U.S. patent Application Serial number 15/633,690 contains a similar disclosure to the disclosure of U.S. patent Application serial number 14/099,497.

132. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 10,059,892.

133. U.S. patent 10,059,892 issued on August 28, 2018 with fifteen claims.

134. Claim 1 of U.S. patent 10,059,892 defines:

> 1. A method for treating cooperating surfaces comprising a first cooperating surface and a second cooperating surface, the method comprising the steps of: cleaning at least one of the cooperating surfaces to remove surface contamination; drying the at least one cleaned surfaces; and, applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to at least one of said cleaned and dried surfaces, said SAMP composition reducing paraffin or asphaltene deposition on the at least one of said surfaces.

135. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "cleaning at least one of the cooperating surfaces to remove surface contamination" and these contributions can be found in at least column 4 lines 57-60 of U.S. patent 10,059,892.

136. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "drying the at least one cleaned surfaces" and these contributions can be found in at least column 4 lines 63-64 of U.S. patent 10,059,892.

137. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to said cleaned and dried surfaces" and these contributions can be found in at least column 4 line 65 to column 5 line 7 of U.S. patent 10,059,892.

138. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and these contributions can be found in at least column 3 lines 18 to 22; column 3 lines 65 to 67; and column 4 lines 12-14 of U.S. patent 10,059,892.

139. Claim 2 defines "The method of claim 1, wherein the applying step comprises applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to both of said cleaned and dried surfaces."

140. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and the cleaning and drying steps set forth in claim 2.

141. Claim 4 defines "A method for treating cooperating surfaces comprising a first cooperating surface and a second cooperating surface, the method comprising the steps of: applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to at least one of said surfaces, said SAMP composition reducing paraffin or asphaltene deposition on the at least one of said surfaces."

142. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and the application thereof set forth in claim 4.

143. Claim 5 defines "The method of claim 4, wherein the applying step comprises applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition to both of said surfaces."

144. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and the isolation of components for applying to both surfaces thereof set forth in claim 5.

145. Claim 7 defines "A method for installing a device into a crude oil service operation, wherein the device comprises cooperating surfaces comprising a first cooperating surface and a second cooperating surface, and wherein at least one of the surfaces comprises a Self-Assembled Monolayer of Phosphonate (SAMP)

composition, said SAMP composition reducing paraffin or asphaltene deposition on the at least one of said surfaces, the method comprising the step of: Installing said device into a section of a crude oil service operation."

146. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and the installation of reassembled components set forth in claim 7.

147. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition set forth in claim 8.

148. Claim 13 defines "A device comprising: a first surface; and, a second surface; wherein the first surface and the second surface form cooperating surfaces, and wherein at least one of the surfaces comprises a Self-Assembled Monolayer of Phosphonate (SAMP), said SAMP composition reducing paraffin or asphaltene deposition on the at least one of said surfaces."

149. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition set forth in claim 13.

150. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and the isolation of components for applying to both surfaces thereof set forth in claim 14.

151. This court is requested to order the correction of U.S. patent 10,059,892 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be corrected under this section, to hold the U.S. patent 10,059,892 as invalid under U.S. patent law.

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d. Patent 10,150,924

152. U.S. patent 10,150,924 issued from U.S. patent application serial number 15/633,704 filed on June 26, 2017. A copy of U.S. patent 10,150,924 is attached hereto as Exhibit 9.

153. U.S. patent application serial number 15/633,704 was filed as a continuation of U.S. patent application serial number 15/164,842 which in turn was a continuation of U.S. patent application serial number 14/099,497.

154. U.S. patent application serial number 15/633,704 contains a similar disclosure to the disclosure of U.S. patent application serial number 14/099,497.

155. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 10,150,924.

156. U.S. patent 10,150,924 issued on December 11, 2018 with seven claims.

157. Claim 1 of U.S. patent 10,150,924 defines "A system comprising a liquid environment that comprises at least one contaminant selected from the group consisting of paraffins and asphaltene; and, a protective layer comprising a surface, said surface residing within and in contact with the environment, wherein the protective layer comprises a self assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between an underlying metal substrate and the protective layer, said bonded layer reducing paraffin or asphaltene deposition on the underlying metal substrate."

158. Claim 5 of U.S. patent 10,150,924 defines a "system comprising: a conduit having an internal surface comprising a protective layer; a metal body portion underlying the protective layer, wherein the conduit is selected from the group consisting of a pipeline, line, and tubing, and, wherein the protective layer comprises a self assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between the metal body portion and said metal body portion; and, hydrocarbon liquids present in the conduit and in contact with the internal surface."

159. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed "self assembled monolayer of phosphonate, with a metal-phosphorous covalent bond formed between the metal body portion and said metal body portion" set forth in claims 1 and 5 and these contributions can be found in at least column 3 lines 19 to 23; column 3 lines 65 to 67; and column 4 lines 12-14 of U.S. patent 10,150,924.

160. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the formation of the claimed system and these contributions can be found in at least column 4 line 53 to column 5 line 7 of U.S. patent 10,150,924.

161. This court is requested to order the correction of U.S. patent 10,059,892 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be corrected under this section, to hold the U.S. patent 10,150,924 as invalid under U.S. patent law.

e. Patent 10,822,559

162. U.S. patent 10,822,559 issued from U.S. patent application serial number 15/332,949 filed on October 24, 2016. A copy of U.S. patent 10,822,559 is attached hereto as Exhibit 10.

163. U.S. patent application serial number 15/332,949 was filed as a continuation of U.S. patent application serial number 14/099,497.

164. U.S. patent application serial number 15/332,949 contains a similar disclosure to the disclosure of U.S. patent application serial number 14/099,497, in that the subject matter found in U.S. patent application serial number 14/099,497 is present in U.S. patent application serial number 15/332,949.

165. The Defendant Electrolab asserted to the U.S. Patent and Trademark Office that U.S. patent application serial number 15/332,949 did not contain any "new matter" not found in U.S. patent application serial number 14/099,497.

166. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 10,822,559.

167. U.S. patent 10,822,559 issued on November 3, 2020 with twenty-three claims.

168. Claim 1 of U.S. patent 10,822,559 defines "a system comprising a liquid environment that comprises at least one contaminant selected from the group consisting of paraffins and asphaltene; and, a surface residing within the environment comprising a Self Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or as a bis, gem-bis or tris headed form, and is phosphonate; wherein the monolayer resists deposition of paraffins or asphaltenes on the surface residing within the environment."

169. Claim 9 of U.S. patent 10,822,559 defines a "system comprising a hydrocarbon environment; and, a surface residing within the environment comprising a Self Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or as a bis, gem-bis or tris headed form, and is phosphonate; wherein the monolayer is anti-paraffin."

170. Claim 16 of U.S. patent 10,822,559 defines a "system comprising a hydrocarbon environment; and, a surface residing within the environment comprising a Self Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or as a bis, gem-bis or tris headed form, and is phosphonate; wherein the monolayer is resistant to an initial affixation of paraffin or asphaltene on the surface."

171. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed "self assembled monolayer" which is phosphonate set forth in claims 1, 9 and 16 and these contributions can be found in at least column 8 lines 61-65; column 11, lines 55-57; and column 12 lines 4-6 of U.S. patent 10,822,559.

172. Mr. Hughes of Aculon made inventive contributions to the claimed expansion of use of the surface treatment beyond sensors described in column 8 lines 45-60; column 9 lines 15-18; column 9 lines 38-41; and column 15 lines 27 to column

18 line 33 of U.S. patent 10,822,559, and these contributions are expressly claimed in claims 6-8, 13-15, and 21-23 of U.S. patent 10,822,559.

173. Dr. Hanson of Aculon made inventive contributions to the claimed phosphonate structure wherein the moiety comprises a di or tri headed or as a bis, gem-bis or tris headed form, and is phosphonate, and these contributions appear in Column 9 lines 19-38; column 9 lines 41-49, column 9 lines 55-67; column 10, lines 6-21; column 10 lines 28-39; column 10 lines 43-57; column 10 line 60-column 11 line 7; column 11 lines 11-25; and column 14 line 59 to column 15 line 26 of U.S. patent 10,822,559.

174. Regarding the "di or tri headed or as a bis, gem-bis or tris headed" phosphonate, this was not the form proposed by Aculon, which is skilled in these chemistries, to Electrolab for this application. Dr. Hanson of Aculon was considering the use of fluorocarbon phosphonic acids with two groups at the "headgroup" and is believed to have discussed this with Electrolab in laying out the possible alternative compositions. Thus Dr. Hanson is reasonably believed to have made inventive contributions to the claimed phosphonate structure wherein the moiety comprises a di or tri headed or as a bis, gem-bis or tris headed form, and is phosphonate, and these contributions appear in column 9 lines 19-38; column 9 lines 41-49, column 9 lines 55-67; column 10 lines 6-21; column 10 lines 28-39; column 10 lines 43-57; column 10 line 60-column 11 line 7; column 11 lines 11-25; and column 14 line 59 to column 15 line 26 of U.S. Patent 10,822,559. Subsequent testing by Aculon confirmed that the use of fluorocarbon phosphonic acids with two groups or more at the "headgroup" site are actually less stable than a "mono-headed" phosphonate since the hydrolysis products are more water-soluble as the number of phosphonate groups increases.

175. This court is requested to order the correction of U.S. patent 10,822,559 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be

corrected under this section, to hold the U.S. patent 10,822,559 as invalid under U.S. patent law.

f. Patent 10,844,299

176. U.S. patent 10,844,299 issued from U.S. patent application serial number 15/332,935 filed on October 24, 2016. A copy of U.S. patent 10,844,299 is attached hereto as Exhibit 11.

177. U.S. patent application serial number 15/332,935 was filed as a continuation of U.S. patent application serial number 14/099,497.

178. U.S. patent application serial number 15/332,935 contains a similar disclosure to the disclosure of U.S. patent application serial number 14/099,497, in that the subject matter found in U.S. patent application serial number 14/099,497 is present in U.S. patent application serial number 15/332,935.

179. The Defendant Electrolab asserted to the U.S. Patent and Trademark Office that U.S. patent application serial number 15/332,935 did not contain any "new matter" not found in U.S. patent application serial number 14/099,497.

180. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 10,844,299.

181. U.S. patent 10,844,299 issued on November 24, 2020 with twenty-three claims.

182. Claim 1 of U.S. patent 10,844,299 defines a "system comprising a liquid environment that comprises at least one contaminant selected from the group consisting of paraffins and asphaltene; and, a surface residing within the environment comprising a Self Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or bis, gem-bis or tris headed form, and is selected from the group consisting of thiols, amines, silanes, siloxanes, selenides, tellurides, isocyanides, or heterocycle, and wherein the monolayer operates to reduce contaminant deposition on the surface residing within the environment."

183. Claim 9 of U.S. patent 10,844,299 defines a "system comprising a hydrocarbon environment; and, a surface residing within the environment comprising a Self-Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or bis, gem-bis or tris headed form, and is selected from the group consisting of thiols, amines, silanes, siloxanes, selenides, tellurides, isocyanides, or heterocycle; wherein the monolayer is anti-paraffin."

184. Claim 16 of U.S. patent 10,844,299 defines a "system comprising a hydrocarbon environment; and, a surface residing within the environment comprising a Self Assembled Monolayer of a moiety, wherein the moiety comprises a di or tri headed or bis, gem-bis or tris headed form, and is selected from the group consisting of thiols, amines, silanes, siloxanes, selenides, tellurides, isocyanides, or heterocycle; wherein the monolayer is resistant to an initial affixation of paraffin or asphaltene on the surface."

185. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed "self assembled monolayer" set forth in claims 1, 9 and 16 and these contributions can be found in at least column 8 lines 61 to 65; column 11, lines 49-51; and column 11 lines 65-67 of U.S. patent 10,844,299.

186. Mr. Hughes of Aculon made inventive contributions to the claimed expansion of use of the surface treatment beyond sensors described in column 8 lines 45-60; column 9 lines 15-18; column 9 lines 38-41; and column 15 lines 21-column 18 line 26 of U.S. patent 10,844,299, and these contributions are expressly claimed in claims 6-8, 13-15 and 21-23 of U.S. patent 10,844,299.

187. Regarding the use of different monolayer types, Aculon was well-aware that many different monolayer types can be used on metals, but for stainless steel phosphonic acids are the best choice, particularly in this application. In discussing alternatives with Electrolab, Dr. Hanson is believed to have discussed that each of Silanes/carboxylates/phosphates may be used, but they are not as stable as phosphonates, and explained that this is why "SAMPs" are preferred.

188. This court is requested to order the correction of U.S. patent 10,844,299 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be corrected under this section, to hold the U.S. patent 10,844,299 as invalid under U.S. patent law.

g. Patent 10,934,497

189. U.S. patent 10,934,497 issued from U.S. patent application serial number 15/164,862 filed on May 25, 2016. A copy of U.S. patent 10,934,497 is attached hereto as Exhibit 12.

190. U.S. patent application serial number 15/164,862 was filed as a continuation of U.S. patent application serial number 14/099,497.

191. U.S. patent application serial number 15/164,862 contains a similar disclosure to the disclosure of U.S. patent application serial number 14/099,497.

192. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to at least one claim of U.S. patent 10,934,497.

193. U.S. patent 10,934,497 issued on March 2, 2021 with thirteen claims.

194. Claim 1 of U.S. patent 10,934,497 sets forth a "method for treating a device utilized in a crude oil service operation, wherein the device comprises at least one surface, the method comprising the steps of: cleaning the surface to remove surface contamination; drying the cleaned surface of the device; applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition that repels paraffins or asphaltenes to the clean and dried surfaces of said device to form deposition resistant treated surfaces; installing said treated device into a section of a crude oil service operation in which a deposition forming contaminant is present; and, contacting the deposition resistant treated surfaces with the contaminant, wherein the contaminant is selected from the group consisting of paraffins and asphaltenes."

195. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "cleaning the surface to remove surface contamination" and these contributions can be found in at least column 4 lines 57-60 of U.S. patent 10,934,497.

196. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "drying the cleaned surface of the device" and these contributions can be found in at least column 4 lines 63-64 of U.S. patent 10,934,497.

197. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed step of "applying a coat of a Self-Assembled Monolayer of Phosphonate (SAMP) composition that repels paraffins or asphaltenes to the clean and dried surfaces of said device" and these contributions can be found in at least column 4 line 65 to column 5 line 7 of U.S. patent 10,934,497.

198. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition and these contributions can be found in at least column 3 lines 18-22; column 3 lines 65-67; and column 4 lines 12-14 of U.S. patent 10,934,497.

199. Mr. Hughes of Aculon made inventive contributions to the claimed expansion of use of the surface treatment beyond sensors described in column 8 lines 45-60; column 9 lines 15-18; column 9 lines 38-41; and column 15 lines 21-column 18 line 26 of U.S. patent 10,844,299 and these contributions are expressly claimed in claims 5-6 and 12-13 of U.S. patent 10,844,299.

200. Claim 8 defines a "A method for installing a device into a crude oil service operation, the method comprising the steps of: installing the device into a section of the crude oil service operation in which a deposition forming contaminant is present, wherein the device comprises a surface comprising a Self-Assembled Monolayer of Phosphonate (SAMP) coating that repels paraffins or asphaltenes; and, contacting the surface with the contaminant, wherein the contaminant is selected from the group consisting of paraffins and asphaltenes.."

201. Dr. Hanson and Mr. Hughes of Aculon made inventive contributions to the claimed Self-Assembled Monolayer of Phosphonate (SAMP) composition set forth in claim 8.

202. This court is requested to order the correction of U.S. patent 10,934,497 to add Dr. Hanson and Mr. Hughes of Aculon as co-inventors thereof pursuant to 35 U.S.C. § 256, or, in the alternative, if this court determines the inventorship cannot be corrected under this section, to hold the U.S. patent 10,934,497 as invalid under U.S. patent law.

SECOND CAUSE OF ACTION

Misappropriation of Trade Secrets

(Against All Defendants)

203. Paragraphs 1 through 202, inclusive, are incorporated and included herein by reference as if repeated in full herein.

204. Aculon is the owner of trade secrets including the specific formulation of Aculon's NC-SLO™ and the use of a glycol carrier to slow the drying process and improve results in the field ("Aculon's Trade Secrets"). At the time of Defendants' misappropriation as set forth *infra*, Aculon's Trade Secrets constituted trade secrets under California Civil Code § 3426 *et seq.*

205. Aculon maintained the specific formulation of the commercial NC-SLO™ formulation developed for the application discussed and jointly developed with Electrolab as confidential. The specific formulation of NC-SLO™ was the subject of efforts to maintain its secrecy.

206. The agreement Aculon engaged in with Electrolab expressly set forth that Electrolab would not analyze the formulation.

207. The agreement Aculon engaged in with Electrolab further expressly set forth that Electrolab would maintain the formulation in confidence without analysis.

208. Upon information and belief, following termination of the business relationship between Aculon and Electrolab, Electrolab and/or E9 conducted an

analysis of Aculon's NC-SLO™ formulation, in direct violation of the parties' agreement. Defendants knew or should have known that the trade secret was acquired by improper means. Defendants improperly conducted their analysis to advance their own research and development of a SAMP product following termination of the relationship with Aculon.

209. The specific formulation of the commercial NC-SLO™ formulation derived independent economic value, actual and potential, from not being generally known to the public or to other persons who can derive economic value from its use.

210. Upon information and belief, Defendants Electrolab and/or E9 improperly used the trade secrets to develop a commercial product to replace the NC-SLO™ formulation of Aculon, referenced herein as E9's commercial SAMP formulation products.

211. In addition to the specific commercial formulation of the NC-SLO™ formulation, Aculon maintained trade secrets in the use of a glycol carrier, and separately in the purpose of this carrier, which is to slow the drying process to improve results in the field. This trade secret derived independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, and was the subject of reasonable efforts to maintain its secrecy.

212. The use of the glycol carrier represented an inventive development of Aculon employees which Electrolab usurped and attempted to claim as in patent application 14/099,497 and applications claiming benefit thereto.

213. The publication of this patent application 14/099,497 filed by Electrolab on August 28, 2014 destroyed the trade secret status of using this glycol carrier by making the public aware of this secret. Defendants knew or should have known that this trade secret was acquired by improper means.

214. Patent application 14/099,497 did not disclose the purpose of this glycol carrier, namely using slower drying solvents for this field of use. This purpose

remained an Aculon trade secret until May 11, 2017, with the publication of U.S. patent application 15/211,224 by Aculon.

215. The purpose of this carrier was included in the publication of U.S. patent application 15/211,224 by Aculon to establish, outline, and yield background to the inventorship of Aculon employees related to the glycol carrier.

216. Upon information and belief, Defendants Electrolab and/or E9 improperly used the trade secret of the purpose of the glycol carrier prior to May 11, 2017 to develop a commercial product with alternative slow drying solvents to replace the NC-SLO™ formulation of Aculon.

217. Defendants Electrolab and/or E9's actions are in violation of the Uniform Trade Secrets Act set forth in California Civil Code § 3426 *et seq*.

218. Aculon has been harmed by Defendants' misappropriation of the Aculon Trade Secrets. In addition, Defendants have been unjustly enriched by their misappropriation of the Aculon Trade Secrets.

219. Defendants' misappropriation of Aculon's Trade Secrets was a substantial factor in causing Aculon's harm and in unjustly enriching Defendants.

220. As a result of Defendants' misappropriation, Aculon has suffered actual damages in an amount according to proof. Aculon is also entitled to damages for unjust enrichment to Defendants in an amount according to proof. In the alternative, Aculon is entitled to payment of a reasonable royalty. *See* Cal. Civ. Code § 3426.3.

221. The misappropriation of Aculon trade secrets by Defendants including those discovered in an analysis of the NC-SLO™ formulation of Aculon, and the use of the need for a slow drying solvent, was willful and malicious such that Aculon is entitled to exemplary damages under California Civil Code § 3426.3(c). Aculon is further entitled to reasonable attorneys' fees and costs.

222. In addition, Aculon requests that the misappropriation of trade secrets by Defendants be enjoined and the injunction continued for a period of time in order to

eliminate commercial advantage that otherwise would be derived from this misappropriation pursuant to California Civil Code § 3426.2(a).

THIRD CAUSE OF ACTION

Intentional Interference With Contractual Relations

(Against All Defendants)

223. Paragraphs 1 through 222, inclusive, are incorporated and included herein by reference as if repeated in full herein.

224. Aculon was in a contractual business relationship with Kopman LLC, a Texas Limited Liability Company, DBA Kopman Industries ("Kopman LLC").

225. Defendants knew of the contractual relationship between Aculon and Kopman LLC pursuant to which Aculon supplied proprietary SAMP products to Kopman LLC for use in the crude oil industry.

226. Defendants have wrongfully asserted patents against Kopman LLC, namely U.S. patents 10,059,892; 10,150,924; and 10,934,497; alleging that Kopman LLC's use of Aculon SAMP products in the crude oil industry infringed at least U.S. patents 10,059,892; 10,150,924; and 10,934,497.

227. U.S. patents 10,059,892; 10,150,924; and 10,934,497 claim subject matter co-invented by Aculon employees. Aculon owns the inventive contribution of its employees in U.S. patents 10,059,892; 10,150,924; and 10,934,497. If U.S. patents 10,059,892; 10,150,924; and 10,934,497 are valid, U.S. patents 10,059,892; 10,150,924; and 10,934,497 should be co-owned by Aculon.

228. Defendants' conduct in wrongfully asserting Aculon-developed and Aculon-owned patents against Kopman LLC was intended to disrupt the contract between Aculon and Kopman LLC. Alternatively, Defendants knew that disruption of the contract was certain or substantially certain to occur as a result of their conduct.

229. Defendants' conduct in wrongfully asserting Aculon-developed and Aculon-owned technology against Kopman LLC disrupted the contractual

relationship between Aculon and Kopman LLC.

230. As a result of Defendants' wrongful conduct, Aculon has been harmed.

231. Aculon is entitled to compensatory damages, including lost profits, in an amount according to proof.

232. Aculon is further entitled to punitive damages pursuant to California Civil Code § 3294(a).

233. This court is requested to grant a preliminary and permanent injunction in accordance with the principles of equity against Defendants from asserting U.S. patents claiming Aculon-developed and Aculon-owned technologies.

FOURTH CAUSE OF ACTION

Intentional Interference With Prospective Economic Relations

(Against All Defendants)

234. Paragraphs 1 through 233, inclusive, are incorporated and included herein by reference as if repeated in full herein.

235. Aculon has developed business relationships with business partners in the crude oil industry for use of Aculon's SAMP products. These partners include, but are not limited to, Kopman LLC.

236. Aculon and Kopman LLC were in an economic relationship that probably would have resulted in an economic benefit to Aculon. Indeed, Aculon supplied proprietary SAMP products to Kopman LLC for use in the crude oil industry.

237. Defendants knew of the business relationship between Aculon and Kopman LLC, including that Kopman LLC was obtaining its SAMP products from Aculon for use in the crude oil industry.

238. Defendants have wrongfully asserted patents against Kopman LLC, namely U.S. patents 10,059,892; 10,150,924; and 10,934,497; alleging that Kopman LLC's use of Aculon SAMP products in the crude oil industry infringed at least U.S. patents 10,059,892; 10,150,924; and 10,934,497. Defendants' conduct is both

intentional and was designed to disrupt the relationship between Aculon and Kopman LLC.

239. U.S. patents 10,059,892; 10,150,924; and 10,934,497 claim subject matter co-invented by Aculon employees. Aculon owns the inventive contribution of its employees in U.S. patents 10,059,892; 10,150,924; and 10,934,497. If U.S. patents 10,059,892; 10,150,924; and 10,934,497 are valid, U.S. patents 10,059,892; 10,150,924; and 10,934,497 should be co-owned by Aculon. Accordingly, Defendants' assertion of Aculon-developed and Aculon-owned technology against Aculon customers is improper.

240. Defendants' assertion of Aculon-developed and Aculon-owned technology against Aculon customers has detrimentally affected and disrupted Aculon's business relationship with its customers, including by limiting and altering business relationships.

241. Upon information and belief, Defendants have approached other Aculon customers, potential customers, and business partners to threaten them with U.S. patents claiming Aculon-developed and Aculon-owned technologies.

242. As a result of Defendants' wrongful conduct, Aculon has been harmed.

243. Aculon is entitled to compensatory damages, including lost profits, in an amount according to proof.

244. Aculon is further entitled to punitive damages pursuant to California Civil Code § 3294(a).

245. This court is requested to grant a preliminary and permanent injunction in accordance with the principles of equity against Defendants from asserting U.S. patents claiming Aculon-developed and Aculon-owned technologies.

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FIFTH CAUSE OF ACTION

Negligent Interference With Prospective Economic Relations

(Against All Defendants)

246. Paragraphs 1 through 245, inclusive, are incorporated and included herein by reference as if repeated in full herein.

247. Aculon has developed business relationships with business partners in the crude oil industry for using Aculon's SAMP products. These partners include, but are not limited to, Kopman LLC, a Texas limited liability company, DBA Kopman Industries.

248. Aculon and Kopman LLC were in an economic relationship that probably would have resulted in an economic benefit to Aculon. Indeed, Aculon supplied proprietary SAMP products to Kopman LLC for use in the crude oil industry.

249. Defendants knew or should have known of the business relationship between Aculon and Kopman LLC, including that Kopman LLC was obtaining its SAMP products from Aculon for use in the crude oil industry.

250. Defendants knew or should have known that the relationship between Aculon and Kopman LLC would be disrupted if it failed to act with reasonable care.

251. Defendants have wrongfully asserted patents against Kopman LLC, namely U.S. patents 10,059,892; 10,150,924; and 10,934,497; alleging that Kopman LLC's use of Aculon SAMP products in the crude oil industry infringed at least U.S. patents 10,059,892; 10,150,924; and 10,934,497. In engaging in this conduct, Defendants failed to act with reasonable care.

252. U.S. patents 10,059,892; 10,150,924; and 10,934,497 claim subject matter co-invented by Aculon employees. Aculon owns the inventive contribution of its employees in U.S. patents 10,059,892; 10,150,924; and 10,934,497. If U.S. patents 10,059,892; 10,150,924; and 10,934,497 are valid, U.S. patents 10,059,892; 10,150,924; and 10,934,497 should be co-owned by Aculon. Accordingly,

Defendants' assertion of Aculon-developed and Aculon-owned technology against Aculon customers is improper.

253. Defendants' assertion of Aculon-developed and Aculon-owned technology against Aculon customers has detrimentally affected and disrupted Aculon's business relationship with its customers, including by limiting and altering business relationships.

254. Upon information and belief, Defendants have approached other Aculon customers, potential customers, and business partners to threaten them with U.S. patents claiming Aculon-developed and Aculon-owned technologies.

255. As a result of Defendants' wrongful conduct, Aculon has been harmed.

256. Aculon is entitled to compensatory damages in an amount according to proof.

257. This court is requested to grant a preliminary and permanent injunction in accordance with the principles of equity against Defendants from asserting U.S. patents claiming Aculon-developed and Aculon-owned technologies.

SIXTH CAUSE OF ACTION

Conversion of Aculon's Property Rights

(Against All Defendants)

258. Paragraphs 1 through 257, inclusive, are incorporated and included herein by reference as if repeated in full herein.

259. Aculon had and has ownership of the inventive contributions of the Aculon inventors.

260. These inventive contributions were maintained as valuable trade secrets of Aculon, at least until some of these rights were destroyed by Electrolab, and as such they were exclusive property rights that cannot be appropriated or used by others without just compensation.

261. These inventive contributions, when found in a patent, confers upon the owner an exclusive property right in the patented invention that cannot be appropriated or used by others without just compensation.

262. The NC-SLO™ products that Aculon manufactured and sold to Defendant Electrolab represented physical property of Aculon which was sold to Electrolab with restrictions upon its use and Aculon was not compensated for use of this physical property outside of this restriction.

263. The Defendants' actions as set forth herein deprived Aculon of its physical and intellectual property and interfered with Aculon's use of this physical and intellectual property.

264. Defendants' actions in 2022 of using Aculon's patent and trade secret rights in the inventive contributions of the Aculon inventors, developed through unauthorized use of Aculon NC-SLO products, caused Aculon to suffer economic damages.

SEVENTH CAUSE OF ACTION

Patent Infringement

(Against Defendant E9)

265. Paragraphs 1 through 264, inclusive, are incorporated and included herein by reference as if repeated in full herein.

266. Aculon is the assignee of the entire right, title, and interest to U.S. patent 8,025,974, which remains valid and enforceable and maintenance fees have been paid.

267. U.S. patent 8,025,974 was cited in the prosecution of Defendant's application serial numbers 14/099,497 and was well known to the Defendants.

268. U.S. patent 8,025,974 issued with 28 claims, claim 1 and 19 of which are independent, defining "an inorganic substrate with a surface layer of a fluorinated material" and a "method of depositing a fluorinated material on an inorganic substrate surface", respectively.

269. Aculon is the assignee of the entire right, title, and interest to U.S. patent 8,236,426, which remains valid and enforceable and the relevant maintenance fees having been paid.

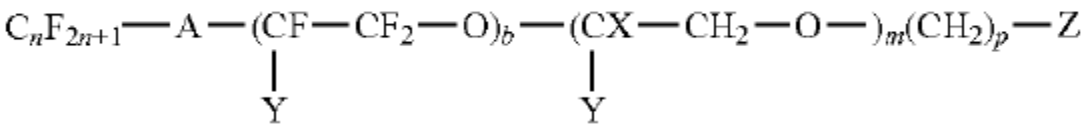
270. Aculon's U.S. patent 8,236,426 issued with 24 claims, claim 1 of which is independent and defines inorganic substrate with a surface layer of a fluorinated material.

271. Aculon's U.S. patent 8,236,426 was cited in the prosecution of Defendant's application serial numbers 14/099,497 and was well known to the Defendants.

272. Upon information and belief, following termination of the business relationship between Aculon and Defendant Electrolab, Defendants Electrolab and/or E9 improperly conducted an analysis of the NC-SLO™ formulation to advance their own research and development of an E9 commercial SAMP product.

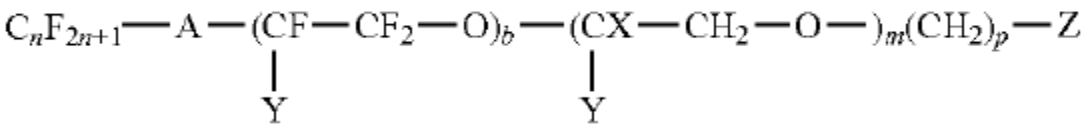
273. E9's commercial SAMP formulation products closely follows the NC-SLO™ formulation and falls within the scope of at least one of the claims of each of U.S. patent 8,025,974 and U.S. patent 8,236,426.

274. The use of the E9's SAMP formulation product on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



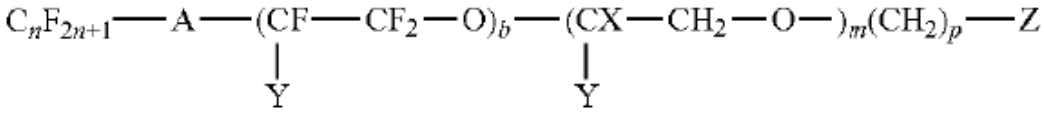
where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative. This substrate is falls within the scope of at least claim 1 of Aculon's patent number 8,025,974.

275. The use of E9's SAMP formulation product on an inorganic substrate yields a method of depositing a fluorinated material on an inorganic substrate surface comprising: (a) contacting the surface either directly or through an intermediate organometallic layer with a fluorinated material in a diluent, in which the fluorinated material has the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 6; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is 5-12, m is 1 to 6, p is 2 to 4, and Z is an acid group or an acid derivative; (b) forming a film on the substrate. This method falls within the scope of at least claim 19 of Aculon's patent number 8,025,974.

276. The use of the E9's SAMP formulation product on an inorganic substrate yields an inorganic substrate with a surface layer of a fluorinated material having the following structure:



where A is an oxygen radical or a chemical bond; n is 1 to 20; Y is H, F, C_nH_{2n+1} or C_nF_{2n+1}; X is H or F; b is at least 1, m is 0 to 50, p is 1 to 20 and Z is a phosphorus acid group. This substrate is falls within the scope of at least claim 1 of Aculon's patent number 8,236,426.

277. Since termination of the business relationship with Defendant Electrolab in 2016, Aculon has not authorized Defendants to make, use, offer to sell, or sell subject matter covered under Aculon's patent numbers 8,025,974 and 8,236,426.

278. E9 and/or customers of E9 using E9's SAMP formulation product on an inorganic substrate are infringing Aculon's patent numbers 8,025,974 and 8,236,426.

279. E9 is actively inducing infringement of Aculon's patent numbers 8,025,974 and 8,236,426 through the sale, advertisement, and support of E9 using E9's SAMP formulation product.

280. E9's SAMP formulation product is a component of a patented composition set forth in Aculon's patent numbers 8,025,974 and 8,236,426 and a material for use in practicing a patented process, constituting a material part of the invention set forth in Aculon's patent number 8,025,974.

281. E9 knows its SAMP formulation product to be especially made or especially adapted for use in an infringement of Aculon's patent numbers 8,025,974 and 8,236,426, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

282. E9 is a contributory infringer of Aculon's patent numbers 8,025,974 and 8,236,426.

283. Defendant E9 has willfully infringed Aculon's patent numbers 8,025,974 and 8,236,426.

284. Aculon is entitled to compensatory damages in an amount according to proof, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

285. Aculon is further entitled to an award of attorneys' fees pursuant to 35 35 U.S.C. § 285.

286. Aculon is also entitled to treble damages pursuant to 35 U.S.C. § 284.

287. This court is requested, pursuant to 35 U.S.C. § 283, to grant a preliminary and permanent injunction in accordance with the principles of equity

against Defendants E9 from the offer for sale of E9's SAMP formulation product to prevent the violation of any right secured by Aculon's patent numbers 8,025,974 and 8,236,426, on such terms as the court deems reasonable.

PRAYER FOR RELIEF

Wherefore, Plaintiff Aculon prays for judgment against Defendants in an amount of at least $3,500,000 as follows:

1. For an Order correcting the inventorship of U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497 to add Dr. Hanson and Mr. Hughes as co-inventors pursuant to 35 USC § 256; or in the alternative, an order holding U.S. patents 9,476,754, 9,688,926, 10,059,892, 10,150,924, 10,844,299, 10,822,559, and 10,934,497 invalid;

2. For compensatory damages in an amount according to proof;

3. For unjust enrichment damages in an amount according to proof;

4. For payment of a reasonable royalty;

5. For exemplary damages pursuant to Cal. Civ. Code § 3426.3(c);

6. For temporary, preliminary, and permanent injunctive relief as requested herein;

7. For interest as allowed by law;

8. For attorneys' fees as allowed by law;

9. For costs of suit incurred herein; and

10. Such other and further relief as may be proper.

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JURY DEMAND

Pursuant to Federal Rules of Civil Procedure, Rule 38, Aculon demands a trial by jury as to all issues so triable.

Dated: September 2, 2022 NOONAN LANCE BOYER & BANACH LLP

By: */s/ Genevieve M. Sauter*
Genevieve M. Sauter
Attorney for Plaintiff ACULON, INC.