

January 8, 2009

Mr. Gary Birk  
EOS Remediation, LLC  
[www.eosremediation.com](http://www.eosremediation.com)

Re: RE40448 – Method for Remediation of Aquifers

Dear Mr. Birk:

This letter is to resolve any confusion about US patent “RE40448-Method for Remediation of Aquifers” licensed to EOS Remediation, LLC by Solutions-IES, Inc. We understand that Mr. William Newman of RNAS has raised a number of issues in a post to the Bioremediation Discussion Group (BioGroup) list server on January 8, 2009 related to the applicability of RE40448. Unfortunately, several statements by Mr. Newman are not supported by the facts.

1. Mr. Newman stated that “reissued US patent RE40448 ... has been recalled”. This is not correct. First, Mr. Newman’s request for re-examination of the patent did not seek re-examination of claims directed to microemulsions. The only two claims (42 and 43) that he challenged cover a particular method of using emulsified mixtures and are not limited to microemulsions. The remaining 68 claims have not been challenged. Second, Mr. Newman has only CHALLENGED claims 42 and 43. None of the claims have been recalled. US patent RE40448 is in full force at this time. Neither a re-examination request, nor an order granting re-examination, invalidates a patent.
2. Mr. Newman asserts as though it were fact that the emulsified oil products sold by RNAS may not be classified as “microemulsions” based on certain published definitions. However, in his challenge to our Australian patent, Mr. Newman’s expert noted that “there is no official or universally accepted definition of what constitutes a microemulsion”. More importantly, the US Patent Office ([www.uspto.gov](http://www.uspto.gov)) states “a patentee can act as his own lexicographer”. The Delegate of the Australian Commissioner of Patents agreed when he wrote “There is no clear droplet size understood in the art, but the specification asserts that a droplet size up to 1 micron will produce a microemulsion. This is the sense in which the term is used in the specification.” We can understand why Mr. Newman is reluctant to accept the definition given in the patent and affirmed in Australia, particularly when he admits that the emulsions sold by RNAS have droplets ranging from 0.15 microns to 0.60 microns.

3. Mr. Newman seems to imply that he won in Australia. This is not true. The Delegate of the Australian Commissioner of Patents wrote  
“All claims found to be novel and inventive....  
There is no evidence that it was a matter to routine to prepare a microemulsion with droplets less than one micron....  
Costs are awarded against the opponent.”
4. Mr. Newman is accurate that an opposition filed by RNAS to our European patent is still pending. But, unless and until the EU patent office issues a ruling in his favor, our European patent (EP 1315675) is in full force. In other words, nothing suggests that the opposition in Europe—or, for that matter, in any forum—will suffer a better fate than did the opposition filed in Australia. In Australia, RNAS not only lost but was ordered to reimburse our expenses.

In his closing statement, Mr. Newman suggests that BioGroup members contact him with any questions related to the patenting issues raised in his post. We are not aware that Mr. Newman is qualified as an expert in patent law. Rather than depending on statements by RNAS or others, we would encourage your customers, many of whom may be BioGroup members, to consult with a qualified, INDEPENDENT expert.

If you have any additional questions or concerns related to RE40448, please feel free to contact me at [aborden@solutions-ies.com](mailto:aborden@solutions-ies.com).

Yours Truly,

A handwritten signature in dark ink, appearing to read 'Ann M. Borden', with a long horizontal line extending to the right.

Ann M. Borden  
President