

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DSM DESOTECH, INC., a Delaware
corporation, and

DSM I.P. ASSETS, B.V., a Netherlands
corporation,

Plaintiffs,

v.

CORNING INCORPORATED, a New York
corporation,

Defendant.

No.: 1:14-cv-08111

Hon. Manish S. Shah

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs DSM Desotech, Inc. (“DSM Desotech”) and DSM I.P. Assets B.V. (“DSM IP Assets”) (collectively, “Plaintiffs”), allege as follows against Defendant Corning Incorporated (“Corning” or “Defendant”):

NATURE OF THE ACTION

1. This is an action by DSM Desotech for breach of contract and by Plaintiffs for patent infringement against Defendant arising out of a dispute regarding a long-term supply contract for DSM Desotech’s proprietary optical fiber coatings (the “Supply Agreement,” collectively with amendments attached hereto at Exhibit A).

PARTIES

2. Plaintiff DSM Desotech is a Delaware corporation with its principal place of business at 1122 Saint Charles Street, Elgin, Illinois 60120.

3. Plaintiff DSM I.P. Assets is a Netherlands corporation with a registered place of business at Het Overloon 1, 6411 Te Heerlen, Netherlands.

4. Defendant Corning Incorporated is a New York corporation with its principal place of business at One Riverfront Plaza, Corning, New York 14831.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant Corning pursuant to Article 14 of the Supply Agreement with DSM Desotech, which states, *inter alia*, that any action related to or arising from the Supply Agreement must be brought within the state of Illinois. (Ex. A, Art. 14.)

6. This Court has jurisdiction over the breach of contract claims asserted herein under 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds seventy-five thousand (\$75,000) dollars.

7. This Court has jurisdiction over the patent infringement claims under 28 U.S.C. §§ 1331, 1338, and 1367.

8. The substantial and related patent infringement claims under the patent laws of the United States, Title 35 of the United States Code, § 1 *et. seq.* relate to and arise out of the Supply Agreement and are joined with the breach of contract claims.

9. On information and belief, Corning has conducted and currently conducts business within the State of Illinois.

10. Corning directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products in the United States, the State of Illinois, and the Northern District of Illinois.

11. Corning has purposefully and voluntarily placed its optical fiber products into the stream of commerce with the expectation that they will be purchased and used by consumers in the Northern District of Illinois. On information and belief, these infringing products have been and continue to be purchased by consumers in the Northern District of Illinois.

12. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims asserted herein occurred in this district.

13. Venue is also proper in this district pursuant to Article 14 of the Supply Agreement, which states that the Supply Agreement shall be deemed to have been made and entered into in, and to be performed in, the state of Illinois.

BACKGROUND OF THE DISPUTE

14. Without appropriate protective coatings, glass optical fibers are not commercially viable because they are fragile and cannot be used effectively in the field, including high-speed optical fiber networks.

15. For over 40 years, DSM Desotech (or its predecessors) has dedicated significant resources to the research and development of improved optical fiber coatings. It specializes in UV-curable optical fiber coatings, a critical component of high-speed optical fiber networks. With more than three decades of experience in fiber coatings development, it is the world's leading developer of such coatings.

Longstanding Relationship Between DSM and Corning

16. DSM Desotech has been an exclusive supplier to Corning of proprietary and patented coating materials for application to optical fibers since at least the early 1990s.

17. DSM Desotech and Corning are currently parties to a Supply Agreement dated January 1, 2011, between DSM Desotech and Corning, as amended, and which is effective

through December 31, 2014 (the agreement collectively with amendments, “Supply Agreement”).

18. Article 1 of the Supply Agreement requires DSM Desotech to manufacture and Corning to purchase 100% of Corning’s requirements for acrylate coatings used by Corning in the production of glass optical fibers manufactured by Corning intended to be deployed in either terrestrial or submarine telecommunications networks (subject to certain narrow exceptions).

19. The Supply Agreement also requires Corning to provide DSM Desotech with the first opportunity to supply any new coating as may be desired by Corning. Specifically, under Article 3 of the Supply Agreement, Corning can engage in production of new coating compositions only after expiration of the Supply Agreement unless Corning first “present[s] DSM with the opportunity to produce the new coating” and “advise[s] DSM [Desotech] of the desired technical and performance specifications as well as Corning’s purchase requirements therefore during the remaining term of this Agreement.” (Ex. A, Art. 3.)

20. The Supply Agreement further grants Corning a limited patent license to DSM’s patents to manufacture optical fiber solely using coatings purchased from DSM Desotech.

21. DSM Desotech has dedicated significant amounts of resources, including for research and development, that led to the development of coatings specifically for Corning, which is DSM Desotech’s largest customer.

22. The course of the relationship between DSM Desotech and Corning also has involved large joint development efforts, in which case Corning had access to and the first right of refusal to produce and supply any fiber optic coating that DSM Desotech developed.

23. Without coatings, glass optical fibers are unusable because they are fragile and cannot be deployed into the field.

24. DSM Desotech helped Corning establish the fiber optic market through the development of fiber optic coatings, including but not limited to providing technical assistance, helping with problem solving and co-marketing efforts. The results of this collaboration resulted in building and expanding the fiber optic business for Corning and expanding its sales.

25. The coatings that DSM Desotech developed for and sold to Corning over the years include the coatings identified by Corning as CPC1, CPC2, CPC3, CPC4, CPC5, CPC6, and CPC6i. DSM Desotech has continually supported the needs of Corning to support its requirements for increases in productivity, increases in demands from its customers, and developing new coatings to meet Corning's specific needs. DSM Desotech has been involved in providing and sponsoring customer outreach, education and events over the years to support and promote Corning products.

26. Notably, in the early 2000s, DSM Desotech built a plant in Stanley, North Carolina to exclusively support the coating needs of Corning in United States at that time. DSM Desotech has also worked with its affiliates to provide coating plant support to Corning in Europe, China and India.

27. DSM Desotech has invested significant resources to support its important relationship and contractual obligations with Corning. Corning has about 20% of the global optical fiber market.

Development of DSM's Extensive Patent Portfolio

28. DSM and its affiliates have obtained more than 120 U.S. patents in UV-curable technology, and have obtained numerous patents in UV-curable technology in Europe, Asia-Pacific, Australia and Canada. As detailed further in this Complaint, the patents held by DSM include the following:

a. U.S. Patent No. 7,067,564 (the “’564 Patent”) entitled “Coated optical fibers.” Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the ’564 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the ’564 Patent is attached hereto at Exhibit B.

b. U.S. Patent No. 7,706,659 (the “’659 Patent”) entitled “Coated optical fibers.” Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the ’659 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the ’659 Patent is attached hereto at Exhibit C.

c. United States Patent No. 7,865,055 (the “’055 Patent”) entitled “Coated optical fibers.” Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the ’055 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the ’055 Patent is attached hereto at Exhibit D.

d. United States Patent No. 7,171,103 (the “’103 Patent”) entitled “Coated optical fibers.” Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the ’103 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the ’103 Patent is attached hereto at Exhibit E.

e. United States Patent No. 6,961,508 (the “’508 Patent”) entitled “Coated optical fibers.” Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the ’508 Patent. DSM Desotech exclusively licenses/holds

all substantial rights thereof, including the right to bring this lawsuit. A copy of the '508 Patent is attached hereto at Exhibit F.

f. United States Patent No. 6,339,666 (the "'666 Patent") entitled "Radiation-curable optical glass fiber coating compositions, coated optical glass fibers, and optical glass fiber assemblies." Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the '666 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the '666 Patent is attached hereto at Exhibit G.

g. United States Patent No. 6,438,306 (the "'306 Patent") entitled "Radiation curable resin composition." Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the '306 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the '306 Patent is attached hereto at Exhibit H.

h. United States Patent No. 6,298,189 (the "'189 Patent") entitled "Radiation-curable optical glass fiber coating compositions, coated optical glass fibers, and optical glass fiber assemblies." Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the '189 Patent. DSM Desotech exclusively licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the '189 Patent is attached hereto at Exhibit I.

i. United States Patent No. 7,276,543 (the "'543 Patent") entitled "Radiation curable resin composition." Plaintiff DSM IP Assets is the owner by assignment, and Plaintiff DSM Desotech is the exclusive licensee of the '543 Patent. DSM Desotech exclusively

licenses/holds all substantial rights thereof, including the right to bring this lawsuit. A copy of the '543 Patent is attached hereto at Exhibit J.

29. The patents described in Paragraph 28, a.-c. above are herein collectively referred to as the "Cavitation Patents." The patents described in Paragraph 28, d.-i. above are herein collectively referred to as the "IPR Patents." The Cavitation Patents and IPR Patents are collectively referred to as the "Asserted Patents."

History of the Negotiations of the Supply Agreement

30. In 2010, the parties began negotiating renewal of a supply agreement. Corning executed the Supply Agreement on March 31, 2011, but the term of the agreement retroactively took effect as of January 1, 2011.

31. In about 2010-11, during negotiations for the renewal of the Supply Agreement, talks broke down concerning the price to be charged for the DSM Desotech coatings. Wanting to maintain a continuous supply of coating materials and to continue the longstanding relationship, Corning and DSM Desotech entered into a new supply contract in early 2011, the Supply Agreement. (Ex. A.)

32. By no later than mid-2010, however, on information and belief, Corning started evaluating various alternative coating material supply options.

33. On information and belief, Corning developed its own alternative coatings during the term of the Supply Agreement.

34. On information and belief, Corning also sought an alternative supply of coatings in lieu of renewing the Supply Agreement during the term of the Supply Agreement.

35. Corning actions also included, but were not limited to, an examination of Plaintiffs' extensive patent portfolio and alleged prior art as Corning went on the offensive in trying to attack DSM's patents, as well as pursuing alternative coating material suppliers.

36. For example, Robert L. Carlson, Corning's Division Patent Counsel for Optical Fiber and Specialty Materials – Advanced Optics Division, and others at his direction at Corning began reviewing various DSM patents on Corning's behalf in 2010.

37. On information and belief, through its examination of Plaintiffs' patent portfolio beginning in mid-2010, Corning became aware of the Asserted Patents.

38. On information and belief, as part of this review, Corning conducted legal assessments with respect to certain claims of the U.S. patents in DSM's portfolio, and evaluated prior art patents potentially relevant to the IPR Patents. As a result, Corning identified a number of prior art patents it believed to be potentially relevant to one or more claims in the IPR Patents. A team of Corning scientists prepared and tested specific formulations disclosed in these prior art patents as part of a major effort to attack the validity of DSM's patents.

39. On information and belief, especially given the extensive time and resources Corning devoted to its efforts to attack DSM's patents, Corning had knowledge that its alternative coatings infringe the IPR Patents.

40. Despite various requests, Corning has not informed or provided DSM Desotech with any of the formulation details or samples of Corning's alternative or "proprietary" coatings.

The Set-Up By Corning

41. On May 2, 2011, Corning sent a letter to DSM Desotech, stating that it was "interested in obtaining a new acrylate coating per the UV acrylate coating supply agreement" between Corning and DSM. (*See* Exhibit K.) Corning provided certain technical and performance information to DSM with this request, but ultimately what Corning provided DSM Desotech was insufficient and, on information and belief, Corning intentionally set up DSM Desotech to fail in producing the new coating.

42. Corning represented to DSM Desotech that the coating requested in May 2011 was a coating for a “specialty fiber” in a “niche market”. Corning identified relatively small amounts of the new coating for its requirements in 2012 and 2013, further leading DSM Desotech to believe that the new coating would be a specialty coating. The amounts requested by Corning were only a fraction of the thousands of metric tons of coatings that Corning purchases from DSM Desotech (e.g., at most around 0.3% of the typical volume for Corning). In other words, DSM Desotech was led to believe that this specialty coating would not be the type of high-volume, work horse coating that it has been providing to Corning for over two decades. DSM Desotech relied on the representations by Corning when it eventually decided to stop pursuing development and an opportunity for production of the requested new coating.

Multiple Coatings

Multiple Coatings by Corning

43. In addition, in its improperly filed, co-pending Complaint in Delaware, Corning asserts that it has more than one proprietary coating that it developed during the term of the Supply Agreement, including but not limited to the Kuna coatings. (*See Exhibit L*). Thus, on information and belief, Corning has been producing multiple proprietary coatings during the term of the Supply Agreement, not only the Kuna coatings. To the extent Corning has such additional coatings, it never provided DSM Desotech any opportunity to produce and supply them to Corning as required by the Supply Agreement.

Corning’s Failed Attempt to Invalidate the IPR Patents

44. Because, on information and belief, Corning knew that its alternative coatings infringe the DSM Patents, in November 2012 Corning filed ten (10) petitions at the Patent Trial and Appeal Board (“PTAB”) in the United States Patent & Trademark Office (“USPTO”) seeking *Inter Partes* Review (“IPR”) of 8 DSM patents, including the IPR Patents.

45. In the IPR proceedings, Corning submitted more than 70 tests of the prior art supported by more than 1900 pages of declaration testimony. The PTAB then instituted trial on 215 of 225 challenged patent claims. Extensive litigation ensued before the PTAB. In USPTO fees alone (to say nothing about its likely attorneys' fees and internal research and development costs), Corning spent more than \$300,000 in filing fees to *merely file* the 10 IPRs. As DSM Desotech learned during the IPRs, Corning began trying to invalidate DSM's patents at least as early as mid-2010, and involved many Corning scientists and technicians. During the IPRs, Corning relied on two employee witnesses and four outside experts. In other words, Corning invested significant personnel and monetary resources over an extended period of time in trying to attack DSM's patents and continues to do so today.

46. However, in its Final Written Decisions in May 2014, the PTAB denied Corning's request for cancellation on approximately 70% of those 215 claims and outright denied five of the Corning's petitions in their entirety (IPR2013-00043, 00044, 00045, 00047 & 00049). Corning has filed notices of appeal in five these cases (IPR2013-00043, 00044, 00045, 00048 and 00049).

47. Under 35 U.S.C. § 315(e), Corning is estopped from asserting in litigation that any of the 162 challenged claims which it was unable to prove unpatentable in the *inter partes* review proceedings is invalid on any ground that Corning raised or reasonably could have raised during *inter partes* review.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Corning's Delaware Lawsuit

50. Having lost the vast majority of its challenges at the PTAB, on August 21, 2014, Corning filed a lawsuit against Plaintiffs in the United States District Court for the District of Delaware seeking a declaratory judgment of non-infringement of any valid and enforceable claim of the IPR Patents (the "Delaware Complaint," attached hereto at Exhibit L).

51. Corning states in the Delaware Complaint that it has developed and manufactures, or has third parties manufacture for its exclusive use, acrylate coatings for optical fibers, including its "Kuna" coatings.

52. On information and belief, Corning is already using and further intends to use its own proprietary or third-party coatings, such as its "Kuna" coatings, in the United States and throughout the world to replace the optical coatings supplied by DSM Desotech.

53. On information and belief, Corning is already infringing and is further preparing to infringe and/or inducing or contributing to the infringement of the Asserted Patents by others by making, using, offering to sell, and/or selling in the United States, and/or importing into or preparing to import into the United States, products or processes that practice one or more inventions claimed in the Asserted Patents.

54. On information and belief, Corning provides product specifications to third parties from which it obtains its alternative acrylate coatings with knowledge that the alternative acrylate coatings meeting those product specifications fall within the scope of the Asserted Patents.

55. On information and belief, Corning is inducing, with the specific intent to induce, others to infringe the Asserted Patents by having others make, use, offer to sell, and/or sell in the

United States, and/or import into the United States, products or processes that practice one or more inventions claimed in the Asserted Patents.

56. On information and belief, Corning is contributing to the infringement of the Asserted Patents by having others make, use, offer to sell, and/or sell in the United States, and/or import into the United States, products or processes that practice one or more inventions claimed in the Asserted Patents, knowing that such products or processes are especially made to infringe the Asserted Patents and have no substantial noninfringing uses.

57. On information and belief, Corning will profit or has profited through the breach of the Supply Agreement and infringement of the Asserted Patents. As a result of Corning's infringement of the Asserted Patents, Plaintiffs will or have suffered and will continue to suffer damage. Plaintiffs' are entitled to recover from Defendant the damages suffered by Plaintiffs as a result of Defendant's unlawful acts.

58. On information and belief, Corning's infringement, inducement of infringement, and contributory infringement of the Asserted Patents are willful and deliberate, entitling DSM to enhanced damages and reasonable attorney fees and costs.

59. On information and belief, there is no objectively reasonable basis for concluding that the Asserted Patents are invalid by clear and convincing evidence as the claimed subject matter was not taught or suggested in the prior art, the claims contain definite terms, and the specification enables a person of ordinary skill in the art to make and use the claimed subject matter.

60. On information and belief, Corning's infringing activities were performed despite an objectively high likelihood that those activities constituted infringement of the valid Asserted Patents.

61. On information and belief, Corning intends to continue its unlawful infringing activity, and Plaintiffs continue to and will continue to suffer irreparable harm—for which there is no adequate remedy at law—from such unlawful infringing activity unless Corning is enjoined by this court.

62. Unless enjoined by this Court, Corning's current and planned activities would cause irreparable harm to DSM Desotech, including but not limited to layoffs, plant closures, reduction in its research and development efforts, and loss of revenues. DSM Desotech would lose goodwill in the marketplace and because of its entrenched relationship with Corning for over two decades, DSM Desotech would not be able to fill the void left by Corning with other customers.

COUNT I – BREACH OF THE SUPPLY AGREEMENT

63. DSM Desotech re-alleges and incorporates by reference the allegations of Paragraphs 1 through 62 above as though fully set forth herein.

64. The Supply Agreement between DSM Desotech and Corning is a valid, enforceable, written contract, with definite and certain terms.

65. DSM Desotech has performed and is still performing all of its required obligations under the Supply Agreement.

66. In paragraph 22 of Corning's Delaware Complaint for Declaratory Judgment, Corning states that it "has developed and manufactures, or has third parties manufacture *for its exclusive use*, proprietary coatings of its own, including its 'Kuna' coating." (Ex. L (emphasis added).)

67. In paragraph 27 of Corning's Delaware Complaint for Declaratory Judgment Corning states that it has the "intention of using its own proprietary coatings, such as its 'Kuna' coating, instead of optical coatings supplied by DSM Desotech." (Ex. L.)

68. On information and belief, Corning's admissions in the Delaware Complaint regarding its proprietary coatings, including the "Kuna" coatings, are a direct violation of Article 1(a) of the Supply Agreement with DSM Desotech that requires Corning Incorporated to purchase 100 percent of its acrylate coatings for optical fiber requirements from DSM, subject to limited exceptions.

69. On information and belief, Corning's admissions in the Delaware Complaint regarding the existence of its proprietary coatings, including the "Kuna" coatings, are a direct violation of Article 3 of the Supply Agreement with DSM Desotech that requires Corning Incorporated to present DSM Desotech with the opportunity to produce new acrylate coatings before it can do so itself or through any third party. On information and belief, Corning failed to present DSM Desotech with a good faith opportunity to make the Kuna coatings, and failed to present DSM Desotech with an opportunity to make any other proprietary coatings as required by Article 3. In addition, on information and belief, Corning failed to act in good faith when it provided DSM Desotech with a May 2, 2011, new coating system request but failed to cooperate with DSM Desotech and refused to provide DSM Desotech with fundamental technical information necessary to develop such coating system, further evidencing its violation of Article 3 of the Supply Agreement.

70. Corning's Delaware Complaint itself is a direct violation of Article 14 of the Supply Agreement with DSM Desotech that requires any action related to or arising from the Supply Agreement be brought only in a local, state or federal court located within the State of Illinois.

71. As a result of Corning's violation of the Supply Agreement, DSM Desotech has suffered damages in an amount to be determined at trial.

72. In the alternative, to the extent that Corning contends DSM Desotech permitted Corning to operate under the exception set forth in Article 3 of the Supply Agreement, on information and belief, Corning procured such exception by fraud, making the exception ineffective and unenforceable. On information and belief, Corning made false statements of material facts that Corning knew were false or misleading; Corning intended to and did, in fact, induce DSM Desotech to reasonably rely on and act on Corning's statements and representations; and Corning's actions have caused injury to DSM Desotech. Specifically, Corning represented to DSM Desotech that the new coating it was seeking in its May 2011 proposal was for a specialty fiber in a niche market for which Corning would only purchase in small quantities. DSM Desotech relied on these representations that formed a material part of DSM Desotech's decision to stop development for production of this coating. As a result, to the extent that Corning is permitted to proceed with making and use of such a coating, DSM will be irreparably harmed.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,067,564

73. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 72 above as though fully set forth herein.

74. On information and belief, Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '564 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the '564 Patent, including Corning proprietary coatings, by way of example and without limitation, the "Kuna" coatings for optical fibers.

75. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

76. Being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s alternative coatings, Plaintiffs are led to believe that Corning’s “Kuna” coatings and other alternative coatings fall within the scope of one or more claims of the ’564 Patent.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,706,659

77. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 76 above as though fully set forth herein.

78. On information and belief, Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the ’659 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the ’659 Patent, including Corning proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

79. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

80. Being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s alternative coatings, Plaintiffs are led to believe that Corning’s “Kuna” coatings and other alternative coatings fall within the scope of one or more claims of the ’659 Patent.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 7,865,055

81. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 80 above as though fully set forth herein.

82. On information and belief, Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '055 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the '055 Patent, including Corning proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

83. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

84. Being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s alternative coatings, Plaintiffs are led to believe that Corning’s “Kuna” coatings and other alternative coatings fall within the scope of one or more claims of the '055 Patent.

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 7,171,103

85. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 84 above as though fully set forth herein.

86. On information and belief, Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '103 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the '103 Patent,

including Corning proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

87. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

88. Corning challenged the patentability seeking cancellation of all of the claims of the ’103 Patent in IPR2013-00043. After an administrative trial on the merits, the PTAB denied Corning’s cancellation request with respect to all of the claims because Corning had not met its burden of showing by a preponderance of the evidence that any of the claims of the ’103 patent were unpatentable over the prior art identified by Corning.

89. Given the great lengths Corning has taken to attempt to invalidate DSM’s patents, namely hard-fought, expensive, and protracted *inter partes* review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the ’103 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s new coatings, Plaintiffs are led to believe that such coatings infringe one or more claims of the ’103 Patent.

COUNT VI – INFRINGEMENT OF U.S. PATENT NO. 6,961,508

90. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 89 above as though fully set forth herein.

91. Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the ’508 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the ’508 Patent, including Corning

proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

92. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

93. Corning challenged the patentability seeking cancellation of all of the claims of the ’508 Patent in IPR2013-00044. After an administrative trial on the merits, the PTAB denied Corning’s cancellation request with respect to all of the claims because Corning had not met its burden of showing by a preponderance of the evidence that any of the claims of the ’508 patent were unpatentable over the prior art identified by Corning.

94. Given the great lengths Corning has taken to attempt to invalidate DSM’s patents, namely hard-fought and protracted inter partes review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the ’508 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s new coatings, Plaintiffs are led to believe that such coatings infringe one or more claims of the ’508 Patent.

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 6,399,666

95. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 94 above as though fully set forth herein.

96. Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the ’666 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more of claims 4-7, 9, 13-15 and 19-20 of the ’666

Patent, including Corning proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

97. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

98. Given the great lengths Corning has taken to attempt to invalidate DSM’s patents, namely hard-fought and protracted *inter partes* review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the ’666 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning’s new coatings, Plaintiffs are led to believe that such coatings infringe one or more of claims 4-7, 9, 13-15 and 19-20 of the ’666 Patent.

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 6,438,306

99. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 98 above as though fully set forth herein.

100. Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the ’306 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more of claims 10 and 11 of the ’306 Patent, including Corning proprietary coatings, by way of example and without limitation, the “Kuna” coatings for optical fibers.

101. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its “Kuna” coatings, for testing. Corning has refused.

102. Corning challenged the patentability seeking cancellation of all of the claims of the '306 Patent in IPR2013-00047. After an administrative trial on the merits, the Patent Trial and Appeal Board denied Corning's cancellation request with respect to all of the claims because Corning had not met its burden of showing by a preponderance of the evidence that any of the claims of the '306 patent were unpatentable over the prior art identified by Corning.

103. Given the great lengths Corning has taken to attempt to invalidate DSM's patents, namely hard-fought and protracted *inter partes* review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the '306 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning's new coatings, Plaintiffs are led to believe that such coatings infringe one or more of claims 10 and 11 of the '306 Patent.

COUNT VI – INFRINGEMENT OF U.S. PATENT NO. 6,298,189

104. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 103 above as though fully set forth herein.

105. Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '189 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more claims of the '189 Patent, including Corning proprietary coatings, by way of example and without limitation, the "Kuna" coatings for optical fibers.

106. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its "Kuna" coatings, for testing. Corning has refused.

107. Given the great lengths Corning has taken to attempt to invalidate DSM's patents, namely hard-fought and protracted *inter partes* review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the '189 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning's new coatings, Plaintiffs are led to believe that such coatings infringe one or more claims of the '189 Patent.

COUNT VII – INFRINGEMENT OF U.S. PATENT NO. 7,276,543

108. Plaintiffs re-allege and incorporate by reference the allegations of Paragraphs 1 through 107 above as though fully set forth herein.

109. Corning will, has been and/or is directly infringing and/or inducing infringement of and/or contributorily infringing the '543 Patent by, among other things, making, using, offering to sell or selling in the United States, or importing into the United States, products and/or services that are covered by one or more of claims 1-10, 24-25, 40-43, and 45-49 of the '543 Patent, including Corning proprietary coatings, by way of example and without limitation, the "Kuna" coatings for optical fibers.

110. Plaintiffs have repeatedly requested that Corning provide samples and formulation information for its alternative acrylate coatings for optical fibers, including its "Kuna" coatings, for testing. Corning has refused.

111. Given the great lengths Corning has taken to attempt to invalidate DSM's patents, namely hard-fought and protracted *inter partes* review proceedings followed by appeals of adverse rulings in those proceedings and a declaratory judgment action seeking a declaration of no liability for infringement of the '543 Patent, and being deprived by Corning of information to enable Plaintiffs to independently evaluate Corning's new coatings, Plaintiffs are led to believe

that such coatings infringe one or more claims of claims 1-10, 24-25, 40-43, and 45-49 of the '543 Patent.

PRAYER FOR RELIEF

Wherefore, DSM prays for relief as follows:

1. A judgment that Corning breached the parties' valid, enforceable, written Supply Agreement;
2. A preliminary injunction enjoining business activities—including the use, development, sourcing, manufacturing and marketing—for any coatings developed by Corning that Corning intends to use in place of the coatings supplied by DSM Desotech under the Supply Agreement, including Corning's "Kuna" coatings;
3. A preliminary injunction enjoining Corning from patent infringement;
4. For a judgment awarding Plaintiffs compensatory damages as a result of Corning's breach of the Supply Agreement together with interest and costs for damages for which an adequate remedy at law exists;
5. For a judgment declaring that Corning has infringed one or more asserted claims of the Asserted Patents;
6. For a judgment awarding Plaintiffs compensatory damages as a result of Corning's infringement of the asserted patents, together with interest and costs, consistent with lost profits and in no event less than a reasonable royalty;
7. For a judgment declaring that Corning's infringement of the Asserted Patents has been willful and deliberate;
8. For a judgment awarding DSM treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of Corning's willful and deliberate infringement of the DSM Patents;

9. A judgment declaring that this case is exceptional and awarding Plaintiffs its expenses, costs, and attorneys fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure;

10. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining Corning from further acts of infringement; and

11. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all issues triable by a jury.

Dated: January 7, 2015

Respectfully submitted,

By: /s/ Joseph A. Mahoney

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on January 7, 2015, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** was electronically filed UNDER SEAL with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record. I certify that on January 7, 2015, a true and correct copy of the foregoing document was served via electronic mail on the following:

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