

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

GS CLEANTECH CORPORATION,

Plaintiff,

v.

FLOTTWEG SEPARATION  
TECHNOLOGY, INC

Defendant.

Civil Action No. 3:10-cv-01619-CFD

**JURY TRIAL DEMANDED**

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**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, GS CleanTech Corporation, does hereby, through its attorneys, allege as follows:

**THE PARTIES**

1. Plaintiff, GS CleanTech Corporation (hereinafter “GS CleanTech”), is a Delaware corporation having its principal place of business at 1 Penn Plaza, Suite 1612, New York, New York 10119. GS CleanTech is a wholly-owned subsidiary of GreenShift Corporation (hereinafter “GreenShift”), a Delaware corporation having its principal place of business at 1 Penn Plaza, Suite 1612, New York, New York 10119.

2. Upon information and belief, Defendant Flottweg Separation Technology, Inc. is a Kentucky corporation having a place of business at 143 A Rowayton Avenue, Norwalk Connecticut 06853 (hereinafter “Flottweg”).

**JURISDICTION**

3. This is a claim for patent infringement and arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

4. The Court has personal jurisdiction over Flottweg because, upon information and belief and among other things, Flottweg directly, or indirectly through its agents, transacts business in this judicial District and owns, uses or possesses real property situated within this judicial District.

**VENUE**

5. Venue is proper in this judicial District under 28 U.S.C. §§ 1391(b), (c) and 1400(b).

**BACKGROUND FACTS**

6. GS CleanTech is the owner by assignment of United States Patent No. 7,601,858, entitled “Method Of Processing Ethanol Byproducts And Related Subsystems,” issued on October 13, 2009 (the “‘858 patent”). A true and correct copy of the ‘858 patent is attached hereto as Exhibit A.

7. The ‘858 patent issued from a patent application originally filed on May 5, 2005 as Serial No. 11/122,859 (the “‘859 application”), which published on February 23, 2006 as U.S. Patent Application Publication 2006/0041152. *See* Exhibit A.

8. The ‘858 patent and the ‘859 patent application are generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

9. Both the ‘858 patent and the ‘859 application claim priority to GS CleanTech’s first patent application related to its novel corn oil extraction methods and systems, which was

filed in August of 2004 as a provisional application (Serial No. 60/602,050) (the “‘050 provisional application”).

10. GS CleanTech has standing to sue for infringement of the ‘858 patent because it owns all right, title and interest in and to the ‘858 patent, including the right to collect for past and future damages. GS CleanTech has suffered injury from Flottweg’s acts of patent infringement.

11. GS CleanTech invented a novel patented process to extract corn oil from the byproducts created during the manufacture of ethyl alcohol. This process is claimed in GS CleanTech’s ‘858 patent and pending patent applications.

12. Recently, significant attention has been given to the production of ethyl alcohol, or “ethanol,” for use as an alternative fuel. Ethanol not only burns cleaner than fossil fuels, but also can be produced using grains such as corn, which are abundant and renewable domestic resources.

13. In the United States, ethanol is typically produced from corn. Corn contains significant amounts of sugar and starch, which are fermented to produce ethanol.

14. A popular method of producing ethanol is known as “dry milling,” whereby the starch in the corn is used to produce ethanol through fermentation. In a typical dry milling method, the process starts by grinding each kernel of corn into meal, which is then slurried with water into mash. Enzymes are added to the mash to convert the starch to sugar. Yeast is then added in fermentors to convert the sugar to ethanol and carbon dioxide. After fermentation, the mixture is transferred to distillation columns where the ethanol is evaporated and recovered as product, leaving an intermediate product called “whole stillage.” The whole stillage contains the corn oil and the parts of each kernel of corn that were not fermented into ethanol.

15. Despite containing valuable corn oil, the whole stillage has traditionally been treated as a byproduct of the dry milling fermentation process and used primarily to supplement animal feed mostly in the form of a product called “dried distillers grains with solubles” (hereinafter “DDGS”).

16. Prior to GS CleanTech’s invention, efforts to recover the valuable corn oil from the whole stillage had not been successful in terms of efficiency or economy. A need therefore existed for a more efficient and economical manner of recovering corn oil. GS CleanTech has filled that need with its novel and inventive process.

17. The inventors of the novel process, David Cantrell and David Winsness, completed feasibility testing with an early-stage corn oil extraction prototype in 2004 and demonstrated, for the first time, that efficient extraction of the corn oil trapped in the dry milling byproducts was economically feasible.

18. In August of 2004, the inventors filed the ‘050 provisional application directed to their novel corn oil extraction methods and systems. The ‘858 patent claims priority back to the ‘050 provisional application.

19. In one embodiment, GS CleanTech’s patented method comprises initially processing the whole stillage by mechanically separating (such as by using a centrifugal decanter) the whole stillage into distillers wet grains and thin stillage, and then introducing the thin stillage into an evaporator to form a concentrated byproduct or “syrup.” Prior to recombining the now concentrated syrup with the distillers wet grains, the syrup is introduced into a second mechanical separator, such as a second centrifuge, which is different from the centrifuge that mechanically separated the whole stillage into distillers wet grains and thin stillage. This second centrifuge separates corn oil from the syrup thereby allowing for the

recovery of usable corn oil. The syrup that exits the centrifuge is then recombined with the distillers wet grain and dried in a dryer to form the DDGS. The corn oil that is extracted from the syrup can be used for various purposes such as feedstock for producing biodiesel.

20. After filing the '050 provisional application in 2004, the inventors of GS CleanTech's novel corn oil extraction method began to engage the ethanol manufacturing industry to explain and market the corn oil extraction method itself and the benefits to be had by ethanol manufacturers if they were to install these systems in their facilities. In fact, in 2005, the inventors of GS CleanTech's novel corn oil extraction method invited ethanol manufacturers to a symposium to hear about the advantages of this method and about 30 percent of the industry attended.

21. Upon information and belief, Flottweg infringes, and will continue to infringe, one or more of the claims of the '858 patent.

22. In a separate lawsuit filed in U.S. District Court for the District of Kansas, No. 09-cv-01315-WEB-KMH (the "ICM Suit"), ICM, Inc. filed a complaint ("ICM Complaint") for declaratory judgment of non-infringement and invalidity of the '858 patent and has also alleged unfair competition under Kansas state law against GS CleanTech and GreenShift.

23. In the ICM Complaint in the ICM Suit, ICM admits that it "designs and builds ethanol production plants for customers and promotes, sells and installs centrifuge equipment to such customers for recovering oil from corn byproducts." ICM further admits that it "sell[s] and/or use[s] equipment to practice corn oil recovery methods that are in part the subject of the claims of the '858 Patent."

24. The processes used by the ethanol production plants described in the ICM Complaint in the ICM Suit directly infringes the claims of the '858 patent.

25. On information and belief, the processes used by the ethanol production plants described in the ICM Complaint in the ICM Suit, employ centrifuges solely supplied by Flottweg.

26. On information and belief, as part of at least the start-up of any infringing corn oil extraction system installed by ICM, one or more Flottweg representatives is on site at such ethanol manufacturer's facility for purposes of and with the intent to instruct each ethanol manufacturer on how to perform one or more steps of the claims of the '858 patent.

27. On information and belief, Flottweg supplies centrifuges directly to ethanol manufacturers with the intent that such ethanol manufacturers use such centrifuge to perform one or more steps of the claims of the '858 patent, and Flottweg instructs such ethanol manufacturer on how to use such centrifuge to perform one or more steps of the claims of the '858 patent.

28. On information and belief, the ethanol manufacturers to whom Flottweg directly supplies centrifuges directly infringe one or more claims of the '858 patent.

30. In the fall of 2006, a representative of Flottweg contacted GreenShift for purposes of offering to sell Flottweg's centrifuges to GreenShift, or GreenShift ethanol production customers for purposes using such centrifuges to recover corn oil from the byproducts produced during the manufacture of ethanol from corn.

31. In February of 2008, the same representative from Flottweg who previously contacted GreenShift in the fall of 2006, approached the same representative of GreenShift at a biodiesel trade show. The representative from Flottweg again offered to sell Flottweg's centrifuges to GreenShift or GreenShift ethanol production customers for purposes of using such centrifuges to recover corn oil from the byproducts produced during the manufacture of ethanol from corn. During the conversation, when asked by the GreenShift representative, the Flottweg

representative stated that Flottweg was well aware of GS CleanTech's then pending patent applications directed to recovering corn oil from the byproducts produced during the manufacture of ethanol from corn.

32. On November 27, 2006, nine months following the publication of the '859 application, which occurred on February 23, 2006, Flottweg filed a patent application entitled "Method of and Device For Increasing the Yield of Oil Production In a Process of Producing Bio-Ethanol" bearing serial number 11/604,435 (the "'435 application").

33. The claims of the published '435 application reveal that, shortly after the publication of GS CleanTech's '859 application (which disclosed GS CleanTech's invention directed to methods for recovering corn oil from the byproducts produced during the manufacture of ethanol from corn), Flottweg attempted to claim that it invented a device and method for recovering corn oil from the byproducts produced during the manufacture of ethanol from corn.

34. In an Office Action dated November 25, 2009 in connection with the '435 application, the examiner at the United States Patent and Trademark Office ("USPTO") rejected all of Flottweg's then pending claims, in part, under 35 U.S.C. § 103 as being unpatentable over a United States published patent application 2008/0110577 to David Winsness ("GS CleanTech Prior Art").

35. David Winsness is not only the Chief Technology Officer for GS CleanTech but is also an inventor of the '858 patent.

36. In an Amendment filed on February 25, 2010, in response to the November 25, 2009 Office Action, Flottweg amended its proposed claims in an attempt to distinguish its claims over the GS CleanTech Prior Art.

37. In an Office Action dated June 10, 2010, the examiner at the USPTO again rejected all of Flottweg's pending claims, in part, under 35 U.S.C. § 103 as being unpatentable over the GS CleanTech Prior Art in view of Herman et al. (US Patent 5,795,477).

38. The GS CleanTech Prior Art incorporates the disclosure of the '859 application into the GS CleanTech Prior Art by reference.

39. Flottweg advertises in Ethanol Producer Magazine, which is a publication published monthly that provides information to ethanol industry professionals worldwide, that Flottweg's centrifuges can, in connection with bioethanol production, be used for corn oil separation.

### **COUNT I**

#### **(Infringement of U.S. Patent No. 7,601,858 by Flottweg)**

40. GS CleanTech repeats and realleges paragraphs 1-39, above, as though fully set forth herein.

41. On information and belief, Flottweg has knowledge of the '858 patent.

42. Flottweg actively induced and will continue to actively induce third parties to directly infringe one or more claims of the '858 patent.

43. Flottweg knew or should have known that its actions would induce actual infringement of one or more claims of the '858 patent.

44. Flottweg actively induced infringement of one or more claims of the '858 patent.

45. Flottweg's infringement has injured GS CleanTech, and GS CleanTech is entitled to recover damages adequate to compensate it for such infringement.

46. Flottweg's infringement has been willful, deliberate, and objectively reckless.



47. Flottweg's infringing activities have injured and will continue to injure GS CleanTech, unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further actively inducing third parties to directly infringe one or more claims of the '858 patent.

**PRAYER FOR RELIEF**

WHEREFORE, GS CleanTech respectfully asks this Court to enter judgment against Flottweg and against its respective subsidiaries, successors, parents, affiliates, officers, directors, agents, servants and employees, and all persons in active concert or participation with it, granting the following relief:

- A. The entry of judgment in favor of GS CleanTech and against Flottweg;
- B. A preliminary injunction prohibiting further infringement of the '858 patent;
- C. A permanent injunction prohibiting further infringement of the '858 patent;
- D. An award of damages adequate to compensate GS CleanTech for the infringement that has occurred, but in no event less than a reasonable royalty for the use made of the inventions of the '858 patent as provided in 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- E. An award to GS CleanTech of all remedies available under 35 U.S.C. § 284;
- F. An award to GS CleanTech of all remedies available under 35 U.S.C. § 285; and
- G. Such other relief to which GS CleanTech is entitled under law, and any other and further relief that this Court or a jury may deem just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), GS CleanTech demands a trial by jury on all issues so triable.

Date: November 15, 2010

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF  
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