

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

AG LEADER TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 4:08-cv-168
	)	
v.	)	Judge John A. Jarvey
	)	Magistrate Celeste F. Bremer
NTECH INDUSTRIES, INC.,	)	
	)	
Defendant.	)	
	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Ag Leader Technology, Inc. (hereinafter "Ag Leader"), by way of Amended Complaint against NTech Industries, Inc. (hereinafter "NTech"), which may be made as a matter of right since no responsive pleading has been filed, dismisses Holland Scientific, Inc. and alleges as follows:

**PARTIES**

1. Plaintiff Ag Leader is an Iowa corporation with its principal place of business at 2202 S. Riverside Drive, P.O. Box 2348, Ames, Iowa 50010.
2. Defendant NTech is a Delaware corporation with its principal place of business at 740 S. State Street, Ukiah, California 95482.

**JURISDICTION AND VENUE**

4. Ag Leader brings this action under the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202, to obtain a judicial declaration that United States Letters Patent 5,585,626 ("the '626 patent"), United States Letters Patent 5,763,873 ("the '873 patent"), United States Letters

Patent 5,809,440 ("the '440 patent") and United States Letters Patent 6,596,996 ("the '996 patent") (collectively "the patents-in-suit") are invalid. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and is based upon an actual and justiciable controversy between the parties with respect to the validity of the patents-in-suit. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202. Diversity of citizenship also exists under 28 U.S.C. § 1332 and the amount in controversy exceeds \$75,000 exclusive of costs and interests.

5. Upon information and belief, NTech regularly does business in Iowa and has sold and distributes its product to third parties located in Iowa and in this district.

6. Personal jurisdiction is proper before this Court under both the United States Constitution and the Iowa Long-Arm Statute, and under Iowa Rule of Civil Procedure 1.306.

7. Venue is proper before this Court pursuant to 28 U.S.C. § 1391 because the claims involve federal questions of patent law and as well as the actions upon which Plaintiff claim for relief is based occurred at least in part in the state of Iowa and in this district and NTech is subject to personal jurisdiction in this district.

### **FACTUAL BACKGROUND**

8. In January 2007, Roger Zielke, a New Business Development Manager for Ag Leader had initial conversations with Kyle Holland, president of Holland Scientific, Inc., ("Holland") a recognized leader in the design and manufacture of active crop canopy sensing technology, requesting information about Holland's sensor products because Ag Leader was interested in possibly purchasing some of Holland's sensor products.

11. In February 2007, Al Myers, the president of Ag Leader met with Kyle Holland, and as a result, the parties entered into a non-disclosure agreement in order to further their discussions relating to Holland's sensor products.

12. The following June, Ag Leader borrowed a sensor system from Holland to field test the product performing variable rate application of nitrogen in corn in one Iowa corn field.

13. Being pleased with its performance, Mr. Myers and Mr. Zielke met with Holland in Lincoln Nebraska on August 2, 2007 to first discuss partnering with Holland to market and sell the sensor products in the production agricultural market.

14. Myers and Holland met again on September 13, 2007 to discuss the terms of a distributorship agreement at which time the basic structure of the agreement was proposed. Recognizing that certain electromechanical modifications would be needed for these products to work with Ag Leader's pre-existing standard cable systems and to enable large volume production, it was the parties' expectation that Ag Leader would not start distribution until 2009, prior to which time the parties would work together on making the necessary modifications.

15. Shortly thereafter, Myers contacted Ag Leader's general counsel to seek assistance in drafting the agreement defining their relationship which was finally signed on March 28, 2008.

16. Between August and December 2007 following their initial discussions, Zielke and Holland had several additional communications and correspondence to address issues relating to the sensor product functionality required by Ag Leader.

17. Additionally, starting in January 2007, consistent with the final terms of the parties' ultimate agreement, two of Ag Leader's engineers met with, and emailed with, Holland to work on a new design of an injection molded sensor housing and a Controller Area Network

(CAN) module communication protocol that would act as a bridge between Holland's sensors and the displays of Ag Leader.

18. Prior to May 1, 2007, Ag Leader took additional steps to prepare to market and sell Holland's sensor products. Among other things, Ag Leader hired a retired USDA Senior Agronomist to set up additional field tests in connection with some potential farmer and University clients.

19. Ag Leader and Holland issued a press release on May 1, 2008 announcing the existence of their partnership.

20. On March 11, 2008, NTech filed suit against Holland Scientific, Inc. in the United States District Court for the District of Arizona, Civ. 08-475-PHX-SRB ("the Arizona case") alleging infringement of the '626, '873, '440, and '996 patents through Holland's manufacture, use, offering for sale, sale and/or importation of products and/or methods as claimed in each of the patents-in-suit.

21. NTech thereafter issued a public press release about its Arizona case against Holland's "Crop Circle products," and stating each of these patents-in-suit to be infringed, alleging that it filed the suit because it would not allow their competitors to take NTech's most valuable technology and disregard important patent rights, and then finally announcing to the public that NTech seeks injunctive relief. Copies of this news release have reached Iowa and this district.

22. Upon information and belief, the timing of the filing of this lawsuit was intended to disrupt and destroy the soon to be consummated Distributorship Agreement between Holland and Ag Leader.

23. Holland moved to dismiss the Arizona case and/or transfer it to the Southern District of Iowa, asserting that Ag Leader was a necessary and indispensable party over whom there is no personal jurisdiction in Arizona. In responding to this motion, NTech argued that Ag Leader was not a necessary party as it was a mere distributor and indicated that it did not presently have a case against Ag Leader. The Arizona Court denied the Motion to Dismiss without opinion on July 8, 2008.

24. Ag Leader, however, has already engaged in meaningful preparations to use and sell Holland's allegedly infringing products charged in Arizona, and under these circumstances there is a substantial controversy between Holland and Ag Leader having sufficient immediacy and reality to warrant the issuance of a declaratory judgment on infringement and validity of the NTech patents.

**COUNT I**  
**(Declaratory Judgment Regarding The '626 Patent)**

25. All the foregoing paragraphs are incorporated by reference as if fully set forth herein.

26. There is an actual and judiciable controversy between the parties concerning infringement of the asserted patents arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

27. The '626 is invalid for failure to comply with one or more of 35 U.S.C. §§ 100, 101, 102, 103 and 112.

28. None of Ag Leader's current or proposed activities relating the manufacture and sale infringe directly, by inducement, or by contribution, any valid claim of the '626 patent within the meaning of 35 U.S.C. § 271.

**COUNT II**  
**(Declaratory Judgment Regarding the '873 Patent)**

29. All the foregoing paragraphs are incorporated by reference as if fully set forth herein.

30. There is an actual and judiciable controversy between the parties concerning infringement of the asserted patents arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

31. The '873 patent is invalid for failure to comply with one or more of 35 U.S.C. §§ 100, 101, 102, 103 and 112.

32. None of Ag Leader's current or proposed activities relating the manufacture and sale infringe directly, by inducement, or by contribution, any valid claim of the '873 patent within the meaning of 35 U.S.C. § 271.

**COUNT III**  
**(Declaratory Judgment Regarding the '440 Patent)**

33. All the foregoing paragraphs are incorporated by reference as if fully set forth herein.

34. There is an actual and judiciable controversy between the parties concerning infringement of the asserted patents arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

35. The '440 patent is invalid for failure to comply with one or more of 35 U.S.C. §§ 100, 101, 102, 103 and 112.

36. None of Ag Leader's current or proposed activities relating the manufacture and sale infringe directly, by inducement, or by contribution, any valid claim of the '440 patent within the meaning of 35 U.S.C. § 271.

**COUNT IV**  
**(Declaratory Judgment Regarding the '996 Patent)**

37. All the foregoing paragraphs are incorporated by reference as if fully set forth herein.

38. There is an actual and judiciable controversy between the parties concerning infringement of the asserted patents arising under the Patent Act, 35 U.S.C. § 1 *et seq.*

39. The '996 patent is invalid for failure to comply with one or more of 35 U.S.C. §§ 100, 101, 102, 103 and 112.

40. None of Ag Leader's current or proposed activities relating the manufacture and sale infringe directly, by inducement, or by contribution, any valid claim of the '626 patent within the meaning of 35 U.S.C. § 271.

**PRAYER FOR RELIEF**

WHEREFORE, Ag Leader asks this Court to enter judgment in their favor against NTech granting the following relief:

- A. A declaration that the '626 patent is invalid and/or not infringed;
- B. A declaration that the '873 patent is invalid and/or not infringed;
- C. A declaration that the '440 patent is invalid and/or not infringed;
- D. A declaration that the '996 patent is invalid and/or not infringed;
- E. An award of Ag Leader's costs of suit and attorneys' fees under any and all applicable statutes; and
- F. Any such other and further relief that this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Ag Leader under Rule 38 of the Federal Rules of Civil Procedure requests a trial by jury of any issues so triable by right.

Respectfully submitted,

/s/ Edmund J. Sease

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*ATTORNEYS FOR PLAINTIFF*



## CERTIFICATE OF SERVICE

I hereby certify that on July 24th, 2008, I filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

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