

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

GS CLEANTECH CORPORATION

Plaintiff,

v.

GEA WESTFALIA SEPARATOR, INC.;
ACE ETHANOL, LLC; ICM, INC.;
LIFELINE FOODS LLC; and
DOES 1 - 30, INCLUSIVE

Defendant.

Civil Action No. 09-cv-08642-SAS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, GS CleanTech Corporation, for its First Amended Complaint against Defendants, GEA Westfalia Separator, Inc., Ace Ethanol, LLC, ICM, Inc., Lifeline Foods LLC, and DOES 1 - 30 (collectively "Defendants"), alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a claim for patent infringement and arises under the patents 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).

2. 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.

3. 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”). The ‘858 patent issued from a patent application originally filed on May 5, 2005 as Serial No. 11/122,859 (the “ ‘859 application”) and published on February 23, 2006 as U.S. Patent Application Publication 2006/0041152. 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”). The patent and patent application are generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

4. 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 the Defendants’ acts of patent infringement.

5. Upon information and belief, GEA Westfalia Separator, Inc. (hereinafter “Westfalia”) is a New York corporation having its principal place of business at 100 Fairway Court, Northvale, New Jersey 07647.

6. Upon information and belief, Ace Ethanol, LLC (hereinafter “Ace Ethanol”) is a Wisconsin limited liability company having a place of business in Stanley, Wisconsin.

7. Upon information and belief, Ace Ethanol is one of Westfalia’s customers. Ace Ethanol uses Westfalia’s product to infringe, and will continue to infringe, one or more of the claims of the ‘858 patent.

8. Upon information and belief, ICM, Inc. (hereinafter "ICM") is a Kansas corporation having a place of business at 310 North First Street, Colwich, Kansas.

9. Upon information and belief, Lifeline Foods LLC (hereinafter "Lifeline Foods") is a Missouri limited liability company having a place of business at 2811 S 11th Street, Saint Joseph, Missouri.

10. Upon information and belief, Lifeline Foods is one of ICM's customers and is forth-nine percent (49%) owned by ICM. Lifeline Foods uses ICM's product to infringe, and will continue to infringe, one or more of the claims of the '858 patent.

11. The true names and capacities of the Defendants DOES 1-30 inclusive are unknown to GS CleanTech, who therefore sues them by such fictitious names. GS CleanTech will seek leave to amend this Complaint to allege their true names and capacities when they have been ascertained. GS CleanTech is informed and believes and thereon alleges that each of the fictitiously named Defendants infringe and will continue to infringe the '858 patent.

12. Upon information and belief, Westfalia has sold products to Ace Ethanol and one or more of the Defendants DOES 1-30 inclusive that contributorily infringe one or more of the claims of the '858 patent. Westfalia has also actively induced Ace Ethanol and one or more of the Defendants DOES 1-30 inclusive to infringe one or more of the claims of the '858 patent.

13. Upon information and belief, ICM has sold products to Lifeline Foods and one or more of the Defendants DOES 1-30 inclusive that contributorily infringe one or more of the claims of the '858 patent. ICM has also actively induced Lifeline Foods and one or more of the Defendants DOES 1-30 inclusive to infringe one or more of the claims of the '858 patent.

14. In a separate lawsuit filed in this Court, No. 09-cv-7686 (LMM) (the “Westfalia/Ace Ethanol Suit”), Westfalia and Ace Ethanol filed a First Amended Complaint (“Westfalia/Ace Ethanol First Amended Complaint”) for declaratory judgment of non-infringement and invalidity and have alleged that they have suffered injuries as a result of GreenShift’s notification of GS CleanTech’s then-pending patent applications.

15. 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 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. However, that Court has no jurisdiction over either GS CleanTech or GreenShift.

16. The Court has personal jurisdiction over Defendants because, among other things, they reside in and/or transact business in this District, at least by offering to sell, selling, purchasing, and/or advertising the infringing products and/or placing them into the stream of commerce in such a way as to reach customers in this judicial District, and/or because they have sufficient minimum contacts with this judicial District. New York’s long-arm statute, N.Y. CPLR § 302(a), also permits personal jurisdiction over Defendants because the claims arise from their transaction of business within the state or its contracts to supply goods or services in the state.

17. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

BACKGROUND FACTS

18. GS CleanTech has 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.

19. 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.

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

21. 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.

22. 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” (“DDGS”).

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 invited ethanol manufacturers to a symposium to hear about the advantages of this method and about 30 percent of the industry attended.

28. In the Westfalia/Ace Ethanol First Amended Complaint in the Westfalia/Ace Ethanol Suit, Westfalia admits that its customers directly infringe the claims of the '858 patent. Westfalia further admits that, at a minimum, it indirectly infringes the '858 patent. In fact, Westfalia seems to boast about this infringement by admitting that, as of the date the Westfalia/Ace Ethanol First Amended Complaint was filed, it "sold twenty-nine centrifuges designed for corn oil recovery to twenty different ethanol plants across the country" which has resulted in "**over \$15 million** in total sales for Westfalia." Westfalia further seems to boast that it "is negotiating the sale of more than twenty additional machines" at the time of the filing of the Westfalia/Ace Ethanol First Amended Complaint.

29. Westfalia asserts that, in 1998, some six years prior to the filing of the '050 provisional application, Westfalia began to market its centrifuges to the ethanol industry. However, at that time, Westfalia was not marketing centrifuges for the purpose of extracting corn oil from dry milling byproducts because the corn oil extraction process had not yet been invented. Instead, Westfalia marketed its centrifuges to be used to mechanically separate the whole stillage into distillers wet grains and thin stillage.

30. Interestingly, by Westfalia's own admission, and surely not by coincidence, it was not until 2005 - after the inventors of the corn oil extraction technology began marketing these new corn oil extraction methods and systems to the ethanol industry - that Westfalia started to market its centrifuges to those same ethanol manufacturers for purposes of extracting corn oil by the methods taught in the '858 patent.

31. Westfalia admits that the centrifuges that it has supplied to its customers for purposes of corn oil extraction are designed for that specific purpose. Westfalia also specifies the process that its customers employ to extract corn oil from the condensed thin stillage (i.e., syrup) using Westfalia's centrifuges.

32. In the Westfalia/Ace Ethanol First Amended Complaint, Ace Ethanol admits that it is one of Westfalia's customers, and that since August 2008, it has employed "a Westfalia centrifuge to separate corn oil from condensed thin stillage." Ace Ethanol further admits that it directly infringes the claims of the '858 patent.

33. 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."

34. The process used by Ace Ethanol and the Defendants DOES 1-30 inclusive, as described by Westfalia and Ace Ethanol in the Westfalia/Ace Ethanol First Amended Complaint, and the process used by Lifeline Foods and the Defendants DOES 1-30 inclusive, as described by ICM in the ICM Complaint, infringe the claims of GS CleanTech's patent applications as published and as issued in the '858 patent.

35. GS CleanTech is entitled to provisional rights under 35 U.S.C. § 154(d) because Ace Ethanol, Lifeline Foods, and the Defendants DOES 1-30 inclusive make, use, offer for sale, or sell in the United States the invention as claimed in the published '859 application; Ace Ethanol, Lifeline Foods, and the Defendants DOES 1-30 inclusive had actual notice of the published '859 application; and the issued claims in the '858 patent are substantially identical to the originally published claims in the '859 application.

36. In the Westfalia/Ace Ethanol First Amended Complaint, Westfalia and Ace Ethanol admit that they "have separated corn oil through evaporation followed by centrifugation and intend to continue to do so." Westfalia further admits that it "has previously sold and intends to continue to sell centrifuges to customers like Ace Ethanol that will be used in the corn oil recovery process."

COUNT I

(Infringement of U.S. Patent No. 7,601,858)

37. GS CleanTech repeats and realleges paragraphs 1-36, above, as though fully set forth herein.

38. Defendants infringe and will continue to infringe one or more of the claims of the '858 patent, by, among other activities, practicing the claimed methods and/or processes, and/or by knowingly and actively inducing others to infringe, and/or by contributing to the infringement of others.

39. Defendants' infringement, contributory infringement and/or inducement to infringe has injured GS CleanTech, and GS CleanTech is entitled to recover damages adequate to compensate it for such infringement.

40. Defendants' infringement, contributory infringement and/or inducement to infringe has been willful, deliberate, and objectively reckless.

41. Defendants' 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 manufacture, use, sale, importation, and/or offer for sale of products or practice of any methods and/or processes that come within the scope of the claims of the '858 patent.

PRAYER FOR RELIEF

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

- A. The entry of judgment in favor of GS CleanTech and against Defendants;
- B. A preliminary injunction prohibiting further infringement, inducement, and/or contributory infringement of the '858 patent;
- C. A permanent injunction prohibiting further infringement, inducement, and/or contributory infringement of the '858 patent;
- D. An award of damages adequate to compensate GS CleanTech for the infringement that has occurred, 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;

- G. An award to GS CleanTech of all remedies available under 35 U.S.C. § 154(d);
and
- H. 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.

JURY DEMAND

GS CleanTech demands a trial by jury on all issues so triable.

Done this 15th day of October, 2009.

Respectfully submitted,
CANTOR COLBURN, LLP

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