

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

IN RE: METHOD OF PROCESSING  
ETHANOL BYPRODUCTS AND  
RELATED SUBSYSTEMS ('858)  
PATENT LITIGATION

**Master Case No.: 1:10-ml-2181-LJM-DML**  
Associated Case No. 1:10-cv-08010-LJM-DML

**JURY TRIAL DEMANDED**

**THRID AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff, GS CleanTech Corporation, for its Third Amended Complaint against defendant Flottweg Separation Technology, Inc. ("Flottweg") 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 is the owner by assignment of U.S. Pat. No. 8,008,516 ("the '516 Patent"), entitled "Method Of Processing Ethanol Byproducts And Related Subsystems," issued on August 30, 2011. A true and correct copy of the '516 patent is attached hereto as Exhibit B. The '516 patent issued from a patent application originally filed on September 30, 2005 as Serial No. 11/241,231 (the "'231 application") and published on February 23, 2006 as U.S. Patent Application Publication 2006/0041153. The '516 patent is a continuation of, and claims priority to the '858 patent, that in turn claims priority to the '050 provisional application. The '516 patent is generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

11. GS CleanTech is the owner by assignment of U.S. Pat. No. 8,008,517 ("the '517 Patent"), entitled "Method Of Recovering Oil From Thin Stillage," issued on August 30, 2011. A true and correct copy of the '517 patent is attached hereto as Exhibit C. The '517 patent issued from a patent application originally filed on September 14, 2009 as Serial No. 12/559,136 (the "'136 application") and published on January 7, 2010 as U.S. Patent Application Publication 2010/0004474. The '517 patent is a continuation of, and claims priority to the '858 patent, that in turn claims priority to the '050 provisional application. The '517 patent is generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

12. GS CleanTech is the owner by assignment of U.S. Pat. No. 8,283,484 (“the ‘484 Patent”), entitled “Method Of Processing Ethanol Byproducts And Related Subsystems,” scheduled to issue on October 9, 2012. A true and correct copy of the ‘484 patent is attached hereto as Exhibit D. The ‘484 Patent was filed as Application Serial No. 13/107,197, (the “ ‘197 application”) which was allowed on September 4, 2012, and is scheduled to issue on October 9, 2012. The ‘484 patent is a continuation of, and claims priority to the ‘858 patent, that in turn claims priority to the ‘050 provisional application. The ‘484 patent is generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

13. GS CleanTech is the owner by assignment of U.S. Pat. No. 8,168,037 (“the ‘037 Patent”), entitled “Method And Systems For Enhancing Oil Recovery From Ethanol Production Byproducts,” issued on May 1, 2012. A true and correct copy of the ‘037 patent is attached hereto as Exhibit E. The ‘037 patent issued from a patent application originally filed on September 17, 2007 as Serial No. 11/856,150 (the “ ‘150 application”) and published on May 15, 2008 as U.S. Patent Application Publication 2008/0115077. The ‘037 patent is a continuation of, and claims priority to International Application No. PCT/US2006/009238 filed on March 15, 2005 (the “ ‘238 PCT application”). The ‘037 patent is generally directed to the recovery of corn oil from the byproducts produced during the manufacture of ethanol from corn.

14. GS CleanTech has standing to sue for infringement of the ‘858, ‘516, ‘517, ‘484 and ‘037 patents (collectively “the patents-in-suit”) because it owns all right, title and interest in and to the patents-in-suit, including the right to collect for past and future damages. GS CleanTech has suffered injury from Flottweg’s acts of patent infringement.

15. Upon information and belief, Flottweg has had specific knowledge of the existence of the ‘858 patent since the day that it issued on October 13, 2009.

16. Upon information and belief, Flottweg has had specific knowledge of the existence of the '231 application that issued as the '516 patent since at least about October 2009.

17. Upon information and belief, Flottweg has had specific knowledge of the existence of the '516 patent since it issued on August 30, 2011.

18. Upon information and belief, Flottweg has had specific knowledge of the existence of the '136 application that issued as the '517 patent since at least about October 2009.

19. Upon information and belief, Flottweg has had specific knowledge of the existence of the '517 patent since it issued on August 30, 2011.

20. 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 patents-in-suit.

21. 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.

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

23. 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.

24. 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”).

25. 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.

26. 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.

27. In August of 2004, the inventors filed the ‘050 provisional application directed to their novel corn oil extraction methods and systems. The ‘858, ‘516, ‘517, and ‘484 Patents claim priority back to the ‘050 provisional application.

28. 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.

29. 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.

30. Upon information and belief, Flottweg infringes, and will continue to infringe, one or more of the claims of the patents-in-suit.

31. 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 First Amended 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. A true and correct copy of the ICM Complaint (without exhibits) is attached as Exhibit F.

32. 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." (Exh. F., ¶ 9) 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.” Id.

33. The processes used by the ethanol production plants described in the ICM Complaint in the ICM Suit directly infringe the claims of the patents-in-suit.

34. 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.

35. 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 patents-in-suit.

36. 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 patents-in-suit, and Flottweg instructs such ethanol manufacturer on how to use such centrifuge to perform one or more steps of the claims of the patents-in-suit.

37. On information and belief, the ethanol manufacturers to whom Flottweg directly supplies centrifuges directly infringe one or more claims of the patents-in-suit.

38. 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.



39. 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.

40. 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").

41. 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.

42. 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").

43. David Winsness is not only the Chief Technology Officer for GS CleanTech but is also an inventor of the patents-in-suit.

44. 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.

45. 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).

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

47. 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)**

48. GS CleanTech repeats and realleges paragraphs 1-47, above, as though fully set forth herein.

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

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

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

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

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

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

55. 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.

**COUNT II**  
**(Infringement of U.S. Patent No. 8,008,516 by Flottweg)**

56. GS CleanTech repeats and realleges paragraphs 1-55, above, as though fully set forth herein.

57. On information and belief, Flottweg has knowledge of the '516 patent.

58. Flottweg actively induced and will continue to actively induce third parties to directly infringe one or more claims of the '516 patent.

59. Flottweg knew or should have known that its actions would induce actual infringement of one or more claims of the '516 patent.

60. Flottweg actively induced infringement of one or more claims of the '516 patent.

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

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

63. 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 '516 patent.

**COUNT III**  
**(Infringement of U.S. Patent No. 8,008,517 by Flottweg)**

64. GS CleanTech repeats and realleges paragraphs 1-63, above, as though fully set forth herein.

65. On information and belief, Flottweg has knowledge of the '517 patent.

66. Flottweg actively induced and will continue to actively induce third parties to directly infringe one or more claims of the '517 patent.

67. Flottweg knew or should have known that its actions would induce actual infringement of one or more claims of the '517 patent.

68. Flottweg actively induced infringement of one or more claims of the '517 patent.

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

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

71. 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 '517 patent.

**COUNT IV**  
**(Infringement of U.S. Patent No. 8,283,484 by Flottweg)**

72. GS CleanTech repeats and realleges paragraphs 1-71, above, as though fully set forth herein.

73. On information and belief, Flottweg has knowledge of the '484 patent.

74. Flottweg actively induced and will continue to actively induce third parties to directly infringe one or more claims of the '484 patent.

75. Flottweg knew or should have known that its actions would induce actual infringement of one or more claims of the '484 patent.

76. Flottweg actively induced infringement of one or more claims of the '484 patent.

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

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

79. 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 '484 patent.

**COUNT V**  
**(Infringement of U.S. Patent No. 8,168,037 by Flottweg)**

80. GS CleanTech repeats and realleges paragraphs 1-79, above, as though fully set forth herein.

81. On information and belief, Flottweg has knowledge of the '037 patent.

82. Flottweg actively induced and will continue to actively induce third parties to directly infringe one or more claims of the '037 patent.

83. Flottweg knew or should have known that its actions would induce actual infringement of one or more claims of the '037 patent.

84. Flottweg actively induced infringement of one or more claims of the '037 patent.

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

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

87. 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 '037 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 patents-in-suit;
- C. A permanent injunction prohibiting further infringement of the patents-in-suit;
- 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 patents-in-suit 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 9, 2012

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF  
GS CLEANTECH CORPORATION

**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2012, a copy of the foregoing **THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Michael J. Rye  
Michael J. Rye, Esq.