

AMENDED APPENDIX B

STATEMENT OF DISPUTED FACTS — ACE ETHANOL

Ace Ethanol LLC (“Ace”) hereby submits its statement of material facts in dispute in response to Plaintiff’s statement of material facts not in dispute at pp. 2-10 of Plaintiff’s memorandum. Ace agrees that there is no dispute as to the facts stated in paragraphs 1, 3-4, 6-11, 13-26, and 29.

Ace does dispute and/or objects to the factual allegations of the following paragraphs using Plaintiff’s paragraph numbers:

2. This statement of fact is incomplete. Ace agrees that it began its use of a corn oil extraction system to extract corn oil from concentrated thin stillage **REDACTED** ; however, this statement is incomplete because **REDACTED**

REDACTED
REDACTED
REDACTED
REDACTED

5. This statement of fact is incomplete. **REDACTED**

REDACTED
REDACTED
REDACTED
REDACTED
REDACTED

[REDACTED]

[REDACTED]

12. This statement of fact is incomplete. Ace objects to the reference to the light phase

[REDACTED] The light phase or oil stream [REDACTED]

[REDACTED] contains not only corn oil, but also water and solids, and it is

this mixture which [REDACTED] Further, although the heavy phase

[REDACTED] referred to as “de-oiled syrup,” according to Ace’s

and Plaintiff’s test results, the “de-oiled syrup” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. This statement of fact is incomplete. Ace objects to the reference to the light phase

[REDACTED] as “corn oil.” The light phase or oil stream produced [REDACTED]

[REDACTED] process contains not only corn oil, but also water and solids, and it is

this mixture [REDACTED]

28. Ace admits that the test results are accurately represented but submits that these values are irrelevant to the infringement determination for the reasons set forth in the memorandum of law.

30. Ace agrees that the referenced samples AE-12A and AE-12C are typical [REDACTED]

[REDACTED]

[REDACTED]

31. Ace has no information as to the authenticity or accuracy of the photograph shown in paragraph 31 and therefore disputes paragraph 31. However, Ace notes that stationary samples that have been allowed to settle are not “representative” of the actual streams flowing in the systems.
32. Ace disputes this paragraph. The statements contained therein are legal conclusions, rather than undisputed facts. As discussed at length in the Memorandum of Law in Support of Ace’s Motion for Summary Judgment of Non-Infringement (Master Docket No. 394) the de-oiled syrup stream exiting the centrifuge is not substantially free of the oil that was present in the syrup stream before entering the centrifuge, as required by the claims of the ‘858, ‘516, and ‘517 patents. Further, the oil stream coming out of the centrifuge is not corn oil, but a mixture of corn oil, water, and solids and therefore is not substantially oil.
33. Ace admits this paragraph but submits that it is irrelevant to the infringement determination.
34. Ace admits this paragraph but submits that it is irrelevant to the infringement determination.

Ace submits the following additional paragraphs that relate to material facts for the asserted claims of the ‘858, ‘516, and ‘517 patents that Plaintiff failed to address:

1. Ace objects to Plaintiff’s references to the light phase oil stream **REDACTED**

REDACTED samples thereof as “corn oil” because the oil stream is not purely oil but contains water and solids in addition to oil.

2. Ace objects to Plaintiff’s references to the heavy phase **REDACTED** “de-oiled syrup” to the extent this is intended to infer that the heavy phase is oil-free. Although it is referred to as “de-oiled syrup,” according to Ace’s and Plaintiff’s test results, the “de-oiled syrup” **REDACTED**

[REDACTED]

[REDACTED]

[REDACTED]

3. Ace obtained **REDACTED**

[REDACTED]

[REDACTED]

[REDACTED]

4. As noted in paragraph 13 of Plaintiff’s statement of undisputed facts, **REDACTED**

[REDACTED]

[REDACTED]

[REDACTED]