

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

---

NESTE OIL OYJ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.:
	)	
DYNAMIC FUELS, LLC,	)	
SYNTROLEUM CORPORATION, and	)	
TYSON FOODS, INC.,	)	
	)	
Defendants.	)	

---

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Neste Oil Oyj (“Neste Oil”), by and for its Complaint for patent infringement against Defendants Dynamic Fuels, LLC (“Dynamic Fuels”), Syntroleum Corporation (“Syntroleum”), and Tyson Foods, Inc. (“Tyson Foods”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement of Neste Oil’s U.S. Patent No. 8,187,344 (“the ’344 patent”) directed to fuel compositions.

**THE PARTIES**

2. Neste Oil is a corporation organized and existing under the laws of Finland, with its corporate headquarters at Keilaranta, P.O. Box 95, 00095 NESTE OIL, Finland.

3. Neste Oil is engaged in researching, developing, manufacturing, and selling transportation fuels and other products. Neste Oil has developed a renewable diesel fuel that it has begun marketing in the United States under the name NExBTL®.

4. Dynamic Fuels is a Delaware limited liability company having its principal place of business at 445 North Boulevard, Geismar, Louisiana 70802.

5. Dynamic Fuels is a joint venture of Syntroleum and Tyson Foods.

6. Syntroleum is a Delaware corporation having its corporate offices and principal place of business at 5416 South Yale Avenue, Suite 400, Tulsa, Oklahoma 74135. Syntroleum regularly conducts business in the State of Delaware and uses the offices of the State of Delaware to conduct its business. This conduct includes but is not limited to using the Delaware Limited Liability Company Act to govern its joint venture with Tyson Foods; selecting Delaware as the corporate home for four of its wholly owned U.S. subsidiaries; and using the Delaware General Corporation Law to conduct its business. In 2005, Syntroleum merged one of its subsidiaries into itself under the Delaware General Corporation Law.

7. Tyson Foods is a Delaware corporation having its corporate offices and principal place of business at 2200 Don Tyson Parkway, Springdale, Arkansas 72762. Tyson Foods regularly conducts business in the State of Delaware and uses the offices of the State of Delaware to conduct its business. This conduct includes but is not limited to bringing litigation in the Delaware court systems; using the Delaware Limited Liability Company Act to govern its joint venture with Syntroleum; selecting Delaware as the corporate home for forty-three of its approximately fifty-two wholly owned U.S. subsidiaries; using Delaware as the corporate home for its primary international subsidiaries; and using the Delaware General Corporation Law to conduct its business. On information and belief, Tyson Foods primarily operates its international subsidiaries through two wholly owned Delaware subsidiaries, Cobb-Vantress, Inc. and New Canada Holdings, Inc.

### **JURISDICTION, VENUE, AND JOINDER**

8. This civil action for patent infringement arises under the Patent Laws of the United States, Title 35, United States Code.

9. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338(a).

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

11. This Court has personal jurisdiction over Defendants.

12. Defendants are properly joined in this action under 35 U.S.C. § 299.

### **COUNT I: DIRECT INFRINGEMENT**

13. On May 29, 2012, the '344 patent, entitled "Fuel Composition for a Diesel Engine," was duly and lawfully issued to Neste Oil by the United States Patent and Trademark Office ("PTO"). Neste Oil owns the '344 patent and holds all right, title, and interest in the '344 patent, including the rights to sue for infringement and to seek damages and injunctive relief. A copy of the '344 patent is attached as Exhibit A.

14. The '344 patent discloses and claims fuel compositions.

15. On information and belief, after the '344 patent issued, Defendants made, used, offered to sell, or sold synthetic renewable diesel fuels ("the Accused Products") in the United States, including Accused Products produced at Dynamic Fuels' plant in Geismar, Louisiana.

16. Defendants have directly infringed at least one claim of the '344 patent under 35 U.S.C. § 271(a). Defendants' infringing acts include their making, using, offering for sale, or selling the Accused Products in the United States.

17. Defendants have no license or other authorization to use the inventions described and claimed in the '344 patent.

## **COUNT II: ACTIVE INDUCEMENT OF INFRINGEMENT**

18. Neste Oil incorporates by reference the allegations of paragraphs 1-17 of this Complaint as if fully set forth herein.

19. In 2007, Syntroleum and Tyson Foods formed Dynamic Fuels as a 50/50 joint venture. The primary objective of the joint venture was to build and operate one or more refineries capable of producing the Accused Products from biological feedstocks. Tyson Foods would supply the necessary biological feedstocks such as animal fats, greases, and vegetable oils. Syntroleum would provide engineering services and related technical support. Syntroleum and Tyson Foods selected a location in Geismar, Louisiana to build the first Dynamic Fuels plant.

20. Construction of the Dynamic Fuels plant in Geismar, Louisiana began in October 2008 and was completed in October 2010. Syntroleum and Tyson Foods invested more than \$150 million to construct this plant.

21. In November 2010, Syntroleum and Tyson Foods announced the start of commercial production of the Accused Products at the Dynamic Fuels plant. Since that time Dynamic Fuels has been selling substantial volumes of Accused Products to distributors, customers, and others in the United States. The Dynamic Fuels plant is designed to produce up to 75 million gallons of Accused Products each year.

22. On February 1, 2012, the PTO issued a Notice of Allowance with a Notice of Allowability in the patent application corresponding to the '344 patent. On or about that same day, both documents became publicly available to the Defendants and others on the PTO's website, PAIR. The Notice of Allowability specified that application claims 23 to 42 were allowed.

23. On May 9, 2012, the PTO issued an Issue Notification stating that the '344 patent would issue on May 29, 2012. That Issue Notification became publicly available to the Defendants and others by May 10, 2012.

24. Distributors, customers, and others who purchase the Accused Products in the United States use them as diesel fuels in a manner that directly infringes at least one claim of the '344 patent.

25. From at least the date of this complaint, Defendants know or should know that their steps in actively advertising, marketing, packaging, offering for sale, selling, or distributing the Accused Products cause, urge, encourage, or aid distributors, customers, and others to directly infringe at least one claim of the '344 patent. Defendants have therefore actively induced infringement of the '344 patent under 35 U.S.C. § 271(b).

26. Syntroleum knows or should know that its steps in actively providing engineering services, technical assistance, financial support, and other services and products to Dynamic Fuels cause, urge, encourage, or aid Dynamic Fuels and others to directly infringe at least one claim of the '344 patent. Dynamic Fuels would be unable to commercially produce and sell the Accused Products in the United States without Syntroleum's engineering services, technical assistance, financing, and other support. Syntroleum has therefore actively induced infringement of the '344 patent under 35 U.S.C. § 271(b).

27. Tyson Foods knows or should know that its steps in actively providing biological feedstocks and financial support to Dynamic Fuels cause, urge, encourage, or aid Dynamic Fuels and others to directly infringe at least one claim of the '344 patent. Dynamic Fuels would be unable to commercially produce and sell the Accused Products in the United States without

Tyson Foods' biological feedstocks, financing, and other support. Tyson Foods has therefore actively induced infringement of the '344 patent under 35 U.S.C. § 271(b).

**DAMAGES AND OTHER HARM SUFFERED BY NESTE OIL**

28. Neste Oil has been damaged in an amount not yet determined as a result of the infringing activities complained of herein. Neste Oil has also been irreparably harmed by Defendants' patent infringement. Neste Oil will continue to suffer damages and irreparable harm until this Court permanently enjoins Defendants from further infringement of the '344 patent.

**PRAYER FOR RELIEF**

WHEREFORE, Neste Oil respectfully requests that this Court enter a judgment:

- (1) finding Defendants liable to Neste Oil for infringement of the '344 patent;
  - (2) permanently enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those other persons or entities in active concert or participation with them, from infringing any claim of the '344 patent until the '344 patent expires;
  - (3) awarding Neste Oil damages adequate to compensate it for Defendants' infringement of the '344 patent, together with pre- and post-judgment interest on all damages;
- and

(4) awarding Neste Oil reasonable attorney fees under 35 U.S.C. § 285, costs of suit, and such further and additional relief as this Court deems just and proper.

/s/ John W. Shaw

John W. Shaw (No. 3362)  
Karen E. Keller (No. 4489)  
SHAW KELLER LLP  
300 Delaware Avenue  
Suite 1120  
Wilmington, DE 19801  
(302) 298-0700  
*Attorneys for Neste Oil Oyj*

*Of Counsel:*

Michael J. Flibbert  
Megan R. Leinen  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP  
901 New York Avenue, NW  
Washington, DC 20001-4413  
(202) 408-4000

Dated: May 29, 2012