

**PUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

TOPSOE, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
CASALE S.A.,	§	
	§	
Defendant.	§	
	§	
CASALE S.A.,	§	Civil Action No. 3:24-cv-00033
	§	Jury Trial Demanded
Counterclaim Plaintiff,	§	
	§	
v.	§	
	§	
TOPSOE, INC. AND TOPSOE A/S,	§	
	§	
Counterclaim Defendants.	§	

**TOPSOE’S ANSWER TO DEFENDANT’S ANSWER TO SECOND AMENDED
COMPLAINT AND COUNTERCLAIMS**

Plaintiff Topsoe, Inc. and Counterclaim Defendant Topsoe A/S (together “Topsoe”), by and through its attorneys, submit this Answer and Affirmative Defenses to Defendant’s Answer to Second Amended Complaint and Counterclaims, Dkt. 222 (the “Counterclaims”). Except as expressly admitted below, Topsoe denies each allegation in the Counterclaims.

NATURE OF THE COUNTERCLAIM

The unnumbered Paragraph immediately following “COUNTERCLAIMS” recites legal conclusions to which no response is required, but to the extent a response is required,

Topsoe denies the allegations of the Paragraph. Except as expressly admitted, the remainder of the allegations are denied.

PARTIES

1. Topsoe admits that Casale S.A. is a Swiss company with headquarters in Lugano, Switzerland. Topsoe lacks information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Counterclaims, and therefore denies them.

2. Topsoe admits that Topsoe, Inc. is a Texas corporation with its principal place of business at 18050 Saturn Lane, Suite 400, Houston, Texas 77058. Topsoe lacks information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 2 of the Counterclaims, and therefore denies them.

3. Topsoe admits the allegations of Paragraph 3 of the Counterclaims.

4. Topsoe admits the allegations of Paragraph 4 of the Counterclaims.

JURISDICTION AND VENUE

5. The allegations of Paragraph 5 contain legal conclusions that require no response. Topsoe admits that the Counterclaims purport to allege a claim for patent infringement. Topsoe denies the remaining allegations in Paragraph 5 of the Counterclaims.

6. The allegations of Paragraph 6 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 6 of the Counterclaims.

7. The allegations of Paragraph 7 contain legal conclusions that require no response. Topsoe admits that Topsoe, Inc. has its principal place of business in this district. Topsoe denies the remaining allegations in Paragraph 7 of the Counterclaims.

8. The allegations of Paragraph 8 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 8 of the Counterclaims.

9. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 9 of the Counterclaims.

10. Topsoe lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Counterclaims, and therefore denies them.

11. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 11 of the Counterclaims.

12. Topsoe lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Counterclaims, and therefore denies them.

13. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 13 of the Counterclaims.

14. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 14 of the Counterclaims.

15. Topsoe lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 15 of the Counterclaims, and therefore denies them.

16. The allegations of Paragraph 16 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 16 of the Counterclaims.

17. Topsoe denies the allegations in Paragraph 17 of the Counterclaims.

18. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 18 of the Counterclaims.

19. Topsoe, Inc.’s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 19 of the Counterclaims.

20. Topsoe denies the allegations in Paragraph 20 of the Counterclaims.

21. Topsoe denies the allegations in Paragraph 21 of the Counterclaims.

22. Topsoe denies the allegations in Paragraph 22 of the Counterclaims.

23. The allegations of Paragraph 23 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 23 of the Counterclaims.

24. Topsoe admits that Topsoe, Inc. has its principal place of business in this district. Topsoe denies the remaining allegations in Paragraph 24 of the Counterclaims.

25. The allegations of Paragraph 25 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 25 of the Counterclaims.

FACTS

26. Topsoe admits that Exhibit A is a copy of U.S. Patent No. 11,286,168 (“the ’168 Patent”) as it originally issued on March 29, 2022. Topsoe lacks information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26 of the Counterclaims, and therefore denies them.

27. Topsoe lacks information sufficient to form a belief as to the truth of the allegations of Paragraph 27 of the Counterclaims, and therefore denies them.

28. The findings and actions of the United States Patent & Trademark Office speak for themselves. Topsoe denies the remaining allegations in Paragraph 28 of the Counterclaims.

29. Topsoe admits that claim 1 of the '168 Patent was amended during reexamination to include the quoted language. Topsoe denies the remaining allegations in Paragraph 29 of the Counterclaims.

30. The findings and actions of the United States Patent & Trademark Office speak for themselves. Topsoe admits that Exhibit B is a copy of the '168 Patent Ex Parte Reexamination Certificate dated July 16, 2024. Topsoe denies the remaining allegations in Paragraph 30 of the Counterclaims.

31. The allegations of Paragraph 31 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 31 of the Counterclaims.

32. The findings and actions of the European Patent Office speak for themselves. Topsoe denies the remaining allegations in Paragraph 32 of the Counterclaims.

I. CASALE S.A.'S '168 PATENT

33. Topsoe admits that the title of the '168 Patent is "Process for the synthesis of ammonia with low emissions of CO₂ in atmosphere." Topsoe denies the remaining allegations in Paragraph 33 of the Counterclaims.

34. Topsoe denies the allegations in Paragraph 34 of the Counterclaims.

35. Topsoe admits that the abstract of the '168 Patent includes the words "a part of the CO₂-depleted synthesis gas" and "is separated and used as fuel fraction for one or more furnaces of the conversion section." Topsoe denies the remaining allegations in Paragraph 35 of the Counterclaims.

36. Topsoe admits that ammonia production processes may generally involve hydrogen production, hydrocarbon reforming, and purification. Topsoe denies the remaining allegations in Paragraph 36 of the Counterclaims.

37. Topsoe admits that Fig. 1 is included in the '168 Patent as it originally issued on March 29, 2022. Topsoe denies the allegations in Paragraph 37 of the Counterclaims.

38. The figures and descriptions in the '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 38 of the Counterclaims.

39. The figures and descriptions in the '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 39 of the Counterclaims.

40. The figures and descriptions in the '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 40 of the Counterclaims.

41. The figures and descriptions in the '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 41 of the Counterclaims.

42. The figures and descriptions in the '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 42 of the Counterclaims.

II. THE TOPSOE ENTITIES' INFRINGING OF THE '168 PATENT

A. The Topsoe Entities' SynCOR™ Blue Ammonia Process

43. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 43 of the Counterclaims.

44. Topsoe's website speaks for itself. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 44 of the Counterclaims.

45. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 45 of the Counterclaims.

46. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 46 of the Counterclaims.

47. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 47 of the Counterclaims.

48. Topsoe's website speaks for itself. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 48 of the Counterclaims.

B. The Topsoe Entities' Use of the Accused Processes in the United States

49. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 49 of the Counterclaims.

50. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 50 of the Counterclaims.

C. The Topsoe Entities' Direct Infringement of the '168 Patent

51. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 51 of the Counterclaims.

52. Topsoe denies the allegations in Paragraph 52 of the Counterclaims.

53. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 53 of the Counterclaims.

54. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 54 of the Counterclaims.

55. Topsoe admits that Topsoe offers licenses to technology under the name SynCOR™ Ammonia that may be used for ammonia production. Topsoe denies the remaining allegations in Paragraph 55 of the Counterclaims.

56. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 56 of the Counterclaims.

57. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 57 of the Counterclaims.

58. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 58 of the Counterclaims.

59. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 59 of the Counterclaims.

60. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 60 of the Counterclaims.

61. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 61 of the Counterclaims.

62. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 62 of the Counterclaims.

63. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 63 of the Counterclaims.

64. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 64 of the Counterclaims.

65. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 65 of the Counterclaims.

66. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 66 of the Counterclaims.

67. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 67 of the Counterclaims.

68. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 68 of the Counterclaims.

69. Topsoe denies the allegations in Paragraph 69 of the Counterclaims.

70. The claims of the post-certificate '168 Patent speak for themselves. Topsoe denies the remaining allegations in Paragraph 70 of the Counterclaims.

71. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 71 of the Counterclaims.

72. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 72 of the Counterclaims.

73. Topsoe denies the allegations in Paragraph 73 of the Counterclaims, including the alleged date of February 24, 2022.

74. Topsoe, Inc.'s statements in this lawsuit speak for themselves. Topsoe denies the remaining allegations in Paragraph 74 of the Counterclaims.

75. Topsoe admits that it was aware of the originally issued '168 Patent at least as of March 23, 2023. Topsoe denies the remaining allegations in Paragraph 75 of the Counterclaims.

76. The allegations of Paragraph 76 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 76 of the Counterclaims.

77. Topsoe admits that it has identified prior art to the '168 Patent to Casale. Topsoe denies the remaining allegations in Paragraph 77 of the Counterclaims.

COUNT I

Direct Infringement of U.S. Patent No. 11,286,168 Pursuant to 35 U.S.C. § 271(a)

78. The allegations of Paragraph 78 require no response. To the extent a response is required, Topsoe denies the allegations in Paragraph 78 of the Counterclaims.

79. The allegations of Paragraph 79 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 79 of the Counterclaims.

80. The allegations of Paragraph 80 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 80 of the Counterclaims.

81. The allegations of Paragraph 81 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 81 of the Counterclaims.

82. The allegations of Paragraph 82 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 82 of the Counterclaims.

83. The allegations of Paragraph 83 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 83 of the Counterclaims.

84. The allegations of Paragraph 84 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 84 of the Counterclaims.

85. The allegations of Paragraph 85 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 85 of the Counterclaims.

86. The allegations of Paragraph 86 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 86 of the Counterclaims.

COUNT II

Indirect Infringement of U.S. Patent No. 11,286,168 Pursuant to 35 U.S.C. § 271(b)

87. The allegations of Paragraph 87 require no response. To the extent a response is required, Topsoe denies the allegations in Paragraph 87 of the Counterclaims.

88. The allegations of Paragraph 88 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 88 of the Counterclaims.

89. Topsoe's website speaks for itself. Topsoe denies the remaining allegations in Paragraph 89 of the Counterclaims.

90. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 90 of the Counterclaims.

91. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 91 of the Counterclaims.

92. The allegations of Paragraph 92 contain legal conclusions that require no response. Topsoe admits that Topsoe offers licenses to technology that may be used for ammonia production under the name SynCOR™ Ammonia. Topsoe denies the remaining allegations in Paragraph 92 of the Counterclaims.

93. The allegations of Paragraph 93 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 93 of the Counterclaims.

94. The allegations of Paragraph 94 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 94 of the Counterclaims.

95. The allegations of Paragraph 95 contain legal conclusions that require no response. Topsoe denies the remaining allegations in Paragraph 95 of the Counterclaims.

JURY TRIAL DEMANDED

This section of the Counterclaim is a legal statement to which no response is required.

PRAYER FOR RELIEF

Topsoe denies Casale S.A. is entitled to any of the relief requested in the section of the Counterclaim titled “Prayer for Relief” including subsections A-F.

AFFIRMATIVE DEFENSES

1. Topsoe sets forth below its affirmative defenses. Each defense is asserted as to all Counterclaims against Topsoe. By setting forth these affirmative defenses, Topsoe does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Casale. Nothing stated herein is intended or shall be

construed as an admission that any particular issue or subject matter is relevant to Casale's Counterclaims.

2. As further described in Topsoe's Second Amended Complaint and incorporated herein, the claims of the '168 Patent are unenforceable because of Casale's inequitable conduct before the U.S. Patent and Trademark Office.

3. The claims of the '168 Patent are unenforceable as asserted, in whole or in part, by the doctrines of waiver, laches, and/or estoppel.

4. As further described in Topsoe's Second Amended Complaint and incorporated herein, Casale's counterclaims in this suit are barred by Casale's misuse of the '168 Patent to gain an unfair competitive advantage over Topsoe and other market competitors. Casale has misused the '168 Patent by seeking to impermissibly broaden the scope of rights, in terms of both subject matter and geography, beyond what would normally be permitted thereunder and by seeking enforcement of such impermissibly broadened rights against Topsoe through the Counterclaims. As a result of Casale's patent misuse, each claim of the '168 Patent is unenforceable.

5. As further described in Topsoe's Second Amended Complaint and incorporated herein, the '168 Patent is anticipated or obvious under 35 U.S.C. § 102 and/or § 103. One or more claim terms in the asserted '168 Patent are indefinite under 35 U.S.C. § 112. The asserted '168 Patent claims lack the written description required under 35 U.S.C. § 112. The asserted '168 Patent claims are not enabled under 35 U.S.C. § 112.

6. The claims of the '168 Patent are unpatentable and should be cancelled by the United States Patent Office, for the reasons set forth in Topsoe's IPR petitions in IPR2025-01454 and IPR2025-01455.

7. The counterclaims fail to state a claim upon which relief should be granted under Fed. R. Civ. P. 12(b)(6) and 12(c), at least because they fail to identify any alleged direct infringement by performance of a claimed method by Topsoe or a third party as directed or encouraged by Topsoe.

8. As further described in Topsoe's Second Amended Complaint and incorporated herein, Topsoe has not engaged in any act of infringement. During the term of the patent, Topsoe has not made, used, sold, or offered to sell any processes that are covered by any claims of the '168 Patent.

9. As further described in Topsoe's Second Amended Complaint and incorporated herein, Topsoe has not induced any act of direct infringement. During the term of the patent, Topsoe has not knowingly induced a customer to infringe any claims of the '168 Patent.

10. As further described in Topsoe's Second Amended Complaint and incorporated herein, Casale's counterclaims in this suit are barred by the doctrine of intervening rights and the pre-certificate bar. The '168 Patent claims were amended, added, or substantively changed during the reexamination and reissuance of the '168 Patent. Topsoe is thus entitled to the pre-certificate bar, absolute, and/or equitable intervening rights, and Casale is barred from recovering damages or obtaining injunctive relief for any acts of making, using, offering to sell, selling, or importing that occurred before the grant

of the reissued and amended '168 Patent or that relate to the investments or activities undertaken before the issuance of the reexamination certificate or in reliance on the original '168 Patent claims.

11. Topsoe has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert or rely upon other applicable defenses that may become available or apparent during discovery in this matter. Topsoe reserves the right to amend or seek to amend its Answer and/or affirmative defenses.

PRAYER

For these reasons, Topsoe respectfully requests that the Court, after final hearing or trial, grant judgment in Topsoe's favor and against Defendant, dismiss Defendant's counterclaims, find the case exceptional, award Topsoe attorney fees under 35 U.S.C. § 285, and provide to Topsoe all other relief to which it is entitled.

Dated: June 8, 2026

Respectfully submitted,

/s/ Jeffrey A. Andrews

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CERTIFICATE OF SERVICE

I certify that on June 8, 2026, a true and correct copy of the foregoing was served on the counsel of record through the Court's electronic filing system.

/s/ Jeffrey A. Andrews

Jeffrey A. Andrews