

1 MARK D. MILLER, Ca. Bar No. 116349
2 MARCUS N. DiBUDUO, Ca. Bar No. 258684
3 SIERRA IP LAW PC
4 7030 N. Fruit Avenue, Suite 110
5 Fresno, CA 93711
6 Telephone: (559) 436-3800
7 Facsimile: (559) 436-4800

8 ANDREW C. RYAN (to be admitted *pro hac vice*)
9 CANTOR COLBURN LLP
10 20 Church St., 22nd Floor
11 Hartford, CT 06103
12 Telephone: (860) 286-2929
13 Facsimile: (860) 286-0115

14 *Attorneys for Plaintiff*
15 GS CLEANTECH CORPORATION

16
17 **UNITED STATES DISTRICT COURT**
18
19 **EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION**

20 * * *

21 GS CLEANTECH CORPORATION, a
22 Delaware corporation,

23 *Plaintiff,*

24 v.

25 AEMETIS, INC., a Delaware corporation,
26 and AEMETIS ADVANCED FUELS
27 KEYES, INC., a Delaware corporation,

28 *Defendants.*

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, GS CleanTech Corporation, for its Complaint, 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 5950 Shiloh Road East, Suite N, Alpharetta, Georgia 30005. GS CleanTech is a wholly-owned subsidiary of GreenShift Corporation (hereinafter “GreenShift”), a Delaware corporation having its principal place of business at 5950 Shiloh Road East, Suite N, Alpharetta, Georgia 30005.

1 2. Upon information and belief, Defendant Aemetis, Inc. (hereinafter “Aemetis”) is
2 a Delaware corporation having its principal place of business at 20400 Stevens Creek Blvd.,
3 Suite 700, Cupertino, California 95014.

4 3. Upon information and belief, Defendant Aemetis Advanced Fuels Keys, Inc.
5 (“AEAFK”) is a Delaware corporation and wholly owned subsidiary of Aemetis having its
6 principal place of business at 20400 Stevens Creek Blvd., Suite 700, Cupertino, California
7 95014.

8 **JURISDICTION**

9 4. This is a claim for patent infringement and arises under the patent laws of the
10 United States, Title 35 of the United States Code. This Court has original jurisdiction over the
11 subject matter of this claim under 28 U.S.C. §§ 1331 and 1338(a).

12 5. The Court has personal jurisdiction over Defendants because, upon information
13 and belief and among other things, they reside in and/or directly, or indirectly through their
14 agents, transact business in this judicial District, have committed acts within this judicial District
15 giving rise to this action and/or at least by offering to sell, selling, purchasing, and/or advertising
16 the infringing products and/or placing them into the stream of commerce in such a way as to
17 reach customers in this judicial District, and/or because they have sufficient minimum contacts
18 with this judicial District. Requiring Defendants to respond to this action will not violate due
19 process.

20 **VENUE**

21 6. Upon information and belief, Defendants reside in this judicial District, directly,
22 or indirectly through their agents, transact business in this judicial District and/or have
23 committed acts within this judicial District giving rise to this action. Venue is proper in this
24 judicial District under 28 U.S.C. §§ 1391(b), (c) and 1400(b).

25 **BACKGROUND FACTS**

26 7. GS CleanTech is the owner by assignment of United States Patent No. 7,601,858,
27 entitled “Method Of Processing Ethanol Byproducts And Related Subsystems,” issued on
28 October 13, 2009 (“the ‘858 patent”). A true and correct copy of the ‘858 patent is attached

1 hereto as Exhibit A. The ‘858 patent issued from a patent application originally filed on May 5,
2 2005 as Serial No. 11/122,859 (“the ‘859 application”) and published on February 23, 2006 as
3 U.S. Patent Application Publication 2006/0041152. See Exhibit A. Both the ‘858 patent and the
4 ‘859 application claim priority to GS CleanTech’s first patent application related to its novel
5 corn oil extraction methods and systems, which was filed in August of 2004 as a provisional
6 application (Serial No. 60/602,050) (“the ‘050 provisional application”). *Id.* The ‘858 patent
7 and the ‘859 patent application are generally directed to the recovery of corn oil from the
8 byproducts produced during the manufacture of ethanol from corn. *Id.*

9 8. GS CleanTech has standing to sue for infringement of the ‘858 patent because it
10 owns all right, title and interest in and to the patents-in-suit, including the right to collect for past
11 and future damages. GS CleanTech has suffered injury from Defendant’s acts of patent
12 infringement.

13 9. GS CleanTech invented a novel patented process to extract corn oil from the
14 byproducts created during the manufacture of ethyl alcohol. This process is claimed in the ‘858
15 patent.

16 10. Recently, significant attention has been given to the production of ethyl alcohol,
17 or “ethanol,” for use as an alternative fuel. Ethanol not only burns cleaner than fossil fuels, but
18 also can be produced using grains such as corn, which are abundant and renewable domestic
19 resources.

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

22 12. A popular method of producing ethanol is known as “dry milling,” whereby the
23 starch in the corn is used to produce ethanol through fermentation. In a typical dry milling
24 method, the process starts by grinding each kernel of corn into meal, which is then slurried with
25 water into mash. Enzymes are added to the mash to convert the starch to sugar. Yeast is then
26 added in fermentors to convert the sugar to ethanol and carbon dioxide. After fermentation, the
27 mixture is transferred to distillation columns where the ethanol is evaporated and recovered as
28

1 product, leaving an intermediate product called “whole stillage.” The whole stillage contains the
2 corn oil and the parts of each kernel of corn that were not fermented into ethanol.

3 13. Despite containing valuable corn oil, the whole stillage has traditionally been
4 treated as a byproduct of the dry milling fermentation process and used primarily to supplement
5 animal feed mostly in the form of a product called “dried distillers grains with solubles”
6 (hereinafter “DDGS”).

7 14. Prior to GS CleanTech’s invention, efforts to recover the valuable corn oil from
8 the whole stillage had not been successful in terms of efficiency or economy. A need therefore
9 existed for a more efficient and economical manner of recovering corn oil. GS CleanTech has
10 filled that need with its novel and inventive process.

11 15. The inventors of the novel process, David Cantrell and David Winsness,
12 completed feasibility testing with an early-stage corn oil extraction prototype in 2004 and
13 demonstrated, for the first time, that efficient extraction of the corn oil trapped in the dry milling
14 byproducts was economically feasible.

15 16. In August of 2004, the inventors filed the ‘050 provisional application directed to
16 their novel corn oil extraction methods and systems. The patent-in-suit claims priority back to
17 the ‘050 provisional application.

18 17. In one embodiment, GS CleanTech’s patented method comprises initially
19 processing the whole stillage by mechanically separating (such as by using a centrifugal
20 decanter) the whole stillage into distillers wet grains and thin stillage, and then introducing the
21 thin stillage into an evaporator to form a concentrated byproduct or “syrup.” Prior to
22 recombining the now concentrated syrup with the distillers wet grains, the syrup is introduced
23 into a second mechanical separator, such as a second centrifuge, which is different from the
24 centrifuge that mechanically separated the whole stillage into distillers wet grains and thin
25 stillage. This second centrifuge separates corn oil from the syrup thereby allowing for the
26 recovery of usable corn oil. The syrup that exits the centrifuge is then recombined with the
27 distillers wet grain and dried in a dryer to form the DDGS. The corn oil that is extracted from
28 the syrup can be used for various purposes such as feedstock for producing biodiesel.

1 18. After filing the '050 provisional application in 2004, the inventors of GS
2 CleanTech's novel corn oil extraction method began to engage the ethanol manufacturing
3 industry to explain and market the corn oil extraction method itself and the benefits to be had by
4 ethanol manufacturers if they were to install these systems in their facilities. In fact, in 2005, the
5 inventors invited ethanol manufacturers to a symposium to hear about the advantages of this
6 method and about 30 percent of the industry attended.

7 19. Upon information and belief, Defendants infringe, and will continue to infringe,
8 the '858 patent by virtue of the corn oil separation technology in use at their production facility
9 located in Keyes, California.

10 **COUNT I**

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

12 20. GS CleanTech repeats and realleges paragraphs 1-19, above, as though fully set
13 forth herein.

14 21. Defendants infringe and will continue to infringe one or more of the claims of the
15 '858 patent by, among other activities, practicing the claimed methods and/or processes.

16 22. Defendants' infringement has injured GS CleanTech, and GS CleanTech is
17 entitled to recover damages adequate to compensate it for such infringement.

18 23. Defendants' infringement has been willful, deliberate, and objectively reckless.

19 24. Defendants' infringing activities have injured and will continue to injure GS
20 CleanTech, unless and until this Court enters an injunction prohibiting further infringement and,
21 specifically, enjoining further manufacture, use, sale, importation, and/or offer for sale of
22 products or practice of any methods and/or processes that come within the scope of the claims of
23 the '858 patent.

24 **PRAYER FOR RELIEF**

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

