

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                                    |   |                            |
|------------------------------------|---|----------------------------|
| BUTAMAX(TM) ADVANCED BIOFUELS LLC, | ) |                            |
|                                    | ) |                            |
| Plaintiff,                         | ) |                            |
|                                    | ) | C.A. No. _____             |
| v.                                 | ) |                            |
|                                    | ) | <b>JURY TRIAL DEMANDED</b> |
| GEVO, INC.,                        | ) |                            |
|                                    | ) |                            |
| Defendant.                         | ) |                            |

**COMPLAINT**

Plaintiff Butamax(TM) Advanced Biofuels LLC (“Butamax”), by its attorneys, for its Complaint against Defendant Gevo, Inc. (“Gevo”), alleges as follows:

**THE PARTIES**

1. Butamax is a limited liability company organized and existing under the laws of the state of Delaware, with its principal place of business in Wilmington, Delaware. Butamax is dedicated to the development of premium biofuels. Butamax has developed methods of making biobutanol, an advanced biofuel that will provide improved options for increasing energy supplies and facilitate the transition to renewable transportation fuels which lower overall greenhouse gas emissions. Biobutanol can also be used as a feedstock chemical in the production of various plastics, fibers and other products. In particular, Butamax has developed biological methods of producing isobutanol.

2. On information and belief, Gevo is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Englewood, Colorado.

**JURISDICTION AND VENUE**

3. This action arises under the Declaratory Judgment Act and the Patent Statute of the United States of America, Titles 28 and 35 of the United States Code. This Court has

jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

4. On information and belief, this Court has personal jurisdiction over Gevo because it is a Delaware corporation with a registered Delaware agent and has purposefully availed itself of the benefits and protections of this state.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

#### **BACKGROUND**

6. United States Patent No. 7,851,188 B2 (“the ‘188 patent”) entitled FERMENTIVE PRODUCTION OF FOUR CARBON ALCOHOLS, duly and legally issued on December 14, 2010 to inventors Gail K. Donaldson, Andrew C. Eliot, Dennis Flint, Lori Ann Maggio-Hall and Vasantha Nagarajan. The ‘188 patent is assigned to Butamax.

7. The ‘188 patent discloses and claims recombinant microbial host cells that produce isobutanol and methods for the production of isobutanol with such host cells. A true and correct copy of the ‘188 patent is attached hereto as Exhibit A.

8. On information and belief, Gevo has infringed and will continue to infringe the ‘188 patent by making and using recombinant microbial host cells that convert sugars derived from biomass to isobutanol.

9. On information and belief, Gevo makes recombinant microbial host cells by engineering DNA constructs containing isobutanol pathway genes and integrating them into the cells. These DNA constructs encode enzymes that catalyze the conversion of 1) pyruvate to acetolactate; 2) acetolactate to 2,3-dihydroxyisovalerate; 3) 2,3-dihydroxyisovalerate to  $\alpha$ -ketoisovalerate; and 4)  $\alpha$ -ketoisovalerate to isobutyraldehyde. These host cells produce

isobutanol through this pathway. The recombinant microbial host cells made and used by Gevo include strains of bacteria and yeast.

10. On information and belief, Gevo's making, using, selling, offering to sell or importation of such recombinant microbial host cells infringes the '188 patent.

11. On information and belief, Gevo has produced isobutanol using such recombinant microbial host cells in a retrofitted former ethanol production facility. Gevo has also purchased another ethanol production facility in order to convert it to the production of isobutanol using recombinant microbial host cells. Gevo has also engaged third parties to retrofit additional ethanol production plants to isobutanol production using recombinant microbial host cells.

12. On information and belief, Gevo has also entered into relationships with third parties in the petrochemicals industry and high volume consumers of fuel to supply them with isobutanol produced by recombinant microbial host cells.

**COUNT I - PATENT INFRINGEMENT**

13. Each of the preceding paragraphs, 1-12 is incorporated as if fully set forth herein.

14. On information and belief, Gevo has directly and/or indirectly infringed and will continually infringe, either literally or by the doctrine of equivalents, one or more claims of the '188 patent, pursuant to 35 U.S.C. § 271.

15. On information and belief, Gevo's infringement of the '188 patent has already occurred and will continue, unless enjoined by this Court. Gevo's infringement causes harm to Butamax. Thus, there is a real and actual controversy between Butamax and Gevo.

16. On information and belief, Gevo has acted with knowledge of the '188 patent and without a reasonable basis for a good faith belief that it would not be liable for infringement of the '188 patent. Thus, Gevo's ongoing infringement is willful and deliberate, making this an exceptional case.

**REQUEST FOR RELIEF**

**WHEREFORE**, Butamax respectfully requests the following relief:

(a) That a declaratory judgment be entered declaring that Gevo has infringed one or more claims of the '188 patent and that Gevo's making, using, selling, offering to sell or importation of recombinant microbial host cells that produce isobutanol are acts of infringement of one or more claims of the '188 patent;

(b) That a declaratory judgment be entered declaring that Gevo has willfully and deliberately infringed one or more claims of the '188 patent;

(c) That Gevo and its officers, employees, agents, attorneys, affiliates, successors, assigns and others acting in privity or concert with it be preliminarily and permanently enjoined from making, using, selling, offering to sell or importing host cells

claimed in the '188 patent and from producing isobutanol according to methods claimed in the '188 patent;

(d) That judgment be entered awarding Butamax damages resulting from Gevo's infringement in an amount no less than a reasonable royalty, and that such amount be multiplied based on Gevo's willful and deliberate infringement, pursuant to 35 U.S.C. § 285;

(e) That this case be deemed exceptional and attorneys' fees be awarded to Butamax pursuant to 35 U.S.C. § 285;

(f) That interest, costs and expenses be awarded in favor of Butamax;

(g) That this Court order such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Butamax hereby demands trial by jury in this action on all issues so triable.

Respectfully submitted,

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