

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

BUTAMAX(TM) ADVANCED BIOFUELS LLC)
)
) Plaintiff,)
)
) v.)
)
) GEVO, INC.)
)
) Defendant.)
)
_____)

C.A. No. _____

JURY TRIAL DEMANDED

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. 7,993,889 (“the ‘889 patent”) entitled FERMENTIVE PRODUCTION OF FOUR CARBON ALCOHOLS, duly and legally issued on August 9, 2011 to inventors Gail K. Donaldson, Andrew C. Eliot, Dennis Flint, Lori Ann Maggio-Hall and Vasantha Nagarajan. The ‘889 patent is assigned to Butamax.

7. The ‘889 patent discloses and claims methods for producing isobutanol using recombinant yeast microorganisms expressing an engineered isobutanol biosynthetic pathway. A true and correct copy of the ‘889 patent is attached hereto as Exhibit A.

8. On information and belief, Gevo infringes and will continue to infringe the ‘889 patent by producing isobutanol using recombinant yeast microorganisms as claimed in the ‘899 patent.

9. On information and belief, Gevo produces isobutanol using recombinant yeast microorganisms engineered to express an isobutanol pathway. The pathway comprises the following enzyme catalyzed substrate to product conversions: 1) pyruvate to acetolactate; 2)

acetolactate to 2,3-dihydroxyisovalerate; 3) 2,3-dihydroxyisovalerate to α -ketoisovalerate; 4) α -ketoisovalerate to isobutyraldehyde and 5) isobutyraldehyde to isobutanol. Isobutanol is produced by the enzymatic conversions of this pathway.

10. On information and belief, Gevo's production of isobutanol using recombinant yeast microorganisms as claimed in the '899 patent, its inducement of others to produce isobutanol using recombinant yeast microorganisms as claimed in the '899 patent, and/or its importation into the United States of isobutanol produced using recombinant yeast microorganisms as claimed in the '899 patent infringes the '889 patent.

11. On information and belief, Gevo has produced isobutanol using recombinant yeast microorganisms 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 yeast microorganisms. Gevo has also engaged third parties to retrofit additional ethanol production plants to isobutanol production using recombinant yeast microorganisms.

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 yeast microorganisms.

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 directly and/or indirectly infringes and will continually infringe, either literally or by the doctrine of equivalents, one or more claims of the '889 patent, pursuant to 35 U.S.C. § 271.

15. On information and belief, Gevo's infringement of the '889 patent 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.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

(a) That a declaratory judgment be entered declaring that Gevo infringes one or more claims of the '889 patent and that Gevo's production of isobutanol using recombinant yeast microorganisms, its inducement of others to produce isobutanol using recombinant yeast microorganisms and/or its importation into the United States of isobutanol produced using recombinant yeast microorganisms are acts of infringement of one or more claims of the '889 patent;

(b) 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 producing or inducing others to produce isobutanol using recombinant yeast microorganisms according to the claimed methods of the '889 patent and from importing into the United States isobutanol produced according to methods claimed in the '889 patent;

(c) That judgment be entered awarding Plaintiff damages resulting from Gevo's infringement in an amount no less than a reasonable royalty;

(d) That interest, costs and expenses be awarded in favor of Plaintiff;

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

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable, pursuant to Federal Rule of Civil

Procedure 38.

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