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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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GENIFUEL CORPORATION, a Delaware corporation; and JAMES R. OYLER, an individual and resident of the state of Utah,

Plaintiffs,

vs.

GEORGE A. OYLER, an individual and resident of the state of Nebraska,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY JUDGMENT**

Judge \_\_\_\_\_

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Plaintiff Genifuel Corporation, (hereinafter referred to as “Genifuel”) and James R. Oyler (hereinafter “JRO”) (collectively “the Plaintiffs”), by and through counsel, hereby file this Complaint for Declaratory Judgment with Jury Demand against Defendant George A. Oyler (hereinafter “GAO”).

## **COMPLAINT**

Genifuel complains and alleges as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Genifuel is a Delaware corporation, having a principal place of business at 1873 Carrigan Circle, Salt Lake City, Utah 84109.
2. Plaintiff JRO is a resident of the state of Utah.
3. Upon information and belief, Defendant GAO is a resident of the state of Nebraska.
4. Plaintiffs bring this action under Title 35, United States Code § 101 *et seq.* and under the Federal Declaratory Judgment Statute, Title 28, United States Code §§2201, 2202.
5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1332, and 1338.
6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391.
7. Additionally, upon information and belief, this Court has general and specific personal jurisdiction over the Defendant.

### **GENERAL ALLEGATIONS**

8. Genifuel is the creation of Mr. James R. Oyler (“JRO”), an inventor, businessman, and entrepreneur. In 2006, JRO invented methods and devices related to the production of useable fuel and/or fertilizer from plant products such as algae (“JRO’s Inventions”). One of Genifuel’s primary activities is research and development to produce useable fuel and/or fertilizer from plant products such as algae.
9. Provisional patent applications related to JRO’s invention were filed with the United States Patent and Trademark Office as U.S. Prov. Application Nos. 60/877,786 (Integrated

Processes and Systems for Production of Biofuels), 60/877,774 (Controlled Growth Environments for Algae Cultivation), and 60/926,625 (Process to Efficiently Produce Nitrogen Fertilizer from Biomass or Algae) (“the Provisional Applications”).

10. Specifically, U.S. Provisional Application No. 60/877/786 was filed on or about December 29, 2006, U.S. Provisional Application No. 60/877,774 was filed on or about December 29, 2006, and U.S. Provisional Application No. 60/926,625 was filed on or about April 26, 2007.

11. Numerous patent applications related to JRO’s Invention were filed with the United States Patent and Trademark Office as U.S. Pat. Application Nos. 11/966,909 (Integrated Processes and Systems for Production of Biofuels, 2471-002.NP); 11/966,898 (Process of Producing Oil from Algae Using Biological Rupturing, 2471-002.NP4); 11/966,885 (Controlled Growth Environments for Algae Cultivation, 2471-003.NP); 11/966,917 (Two-Stage Process for Producing Oil from Microalgae, 2471-002.NP3); 12/790,588 (Process of Producing Oil from Algae Using Biological Rupturing, 2471-002.NP4.CON); 12/148,527 (Process to Efficiently Produce Nitrogen Fertilizer from Biomass, 2471-004.NP); 13/026,767 (Two-Stage Process for Producing Oil from Microalgae, 2471-002.NP3.CON); 13/026,774 (Integrated Processes and Systems for Production of Biofuels, 2471-002.NP.CON); and 13/026,780 (Integrated Processes and Systems for Production of Biofuels, 2471-002.NP.CON2 (hereinafter collectively “the Utility Applications”).

12. U.S. Pat. Application No. 11/966,909 was filed on or about December 28, 2007; 11/966,898 was filed on or about December 28, 2007; 11/966,885 was filed on or about

December 28, 2007; 11/966,917 was filed on or about December 28, 2007; 12/790,588 was filed on or about May 8, 2010; 12/148,527 was filed on or about April 17, 2008; 13/026,767 was filed on or about February 14, 2011; 13/026,774 was filed on or about February 14, 2011; and 13/026,780 was filed on or about February 14, 2011.

13. U.S. Pat. Application Nos. 11/966,917 and 11/966,909 have matured into U.S. Pat. Nos. 7,905,930 and 7,977,076, respectively (collectively the “Issued Patents”).

14. The Issued Patents, the Utility Applications and the Provisional Applications are hereafter referred to collectively as the “Genifuel IP.”

15. On or about February 5, 2008, pursuant to an agreement between several parties including GAO and JRO, GAO and any of his affiliated business entities assigned, sold, and/or otherwise transferred each and every right that GAO may have had in and to the Genifuel IP, as well as future applications related thereto to JRO.

16. JRO is presently listed as the sole inventor on the Utility Applications and the Issued Patents.

17. On or about June 12, 2011 GAO, through his attorney, sent a letter to JRO raising a question of inventorship of certain of the Genifuel IP.

18. In particular, GAO contends that he contributed in a significant manner to the conception to certain of the Genifuel IP and as such should be listed as an inventor on certain of the Utility Applications and the Issued Patents.

19. JRO conducted an investigation into the claims made by GAO and has repeatedly requested evidence from GAO to support his claims. However, due to the lack of evidence

provided by GAO in support of his claims, JRO determined that the inventorship associated with the Utility Applications and the Issued Patents was correct.

20. While JRO sought to amicably resolve the dispute with GAO, GAO has made public his contentions that he is a co-inventor of subject matter contained with the Utility Applications and the Issued Patents and has asserted that the Issued Patents are invalid for failure to list the proper inventors.

21. JRO desires to license to third parties his rights in and to the Issued Patents as well as any other patents that may issue from the Utility Applications.

22. GAO's continued declaration to the public that the Issued Patents are invalid due to incorrect inventorship is limiting JRO's ability to license his rights and otherwise make use of the Issued Patents.

23. Due to GAO's allegations, a definite and concrete dispute now exists between GAO and JRO with respect to GAO's status as a co-inventor on the Issued Patents.

24. While Plaintiffs believe the evidence before it establishes that JRO is the sole inventor of the Issued Patents, to the extent the Court determines that Defendant should be named a co-inventor of the Issued Patents, any error of omitting Defendant as an inventor was committed without deceptive intent.

25. As such, to the extent the Court determines that Defendant should be named as a co-inventor of the Issued Patents, Plaintiffs are entitled to an order declaring that inventorship of the Issued Patents be corrected.

**FIRST CAUSE OF ACTION**  
**Declaratory Relief Regarding Correct Inventorship**  
**(28 U.S.C. §§2201, 2202 and 35 U.S.C. §101)**

26. Plaintiffs hereby incorporate by this reference each and every preceding allegation contained in paragraphs 1-25 as if set forth fully herein.

27. Plaintiffs have an ownership interest in and to the Issued Patents which Plaintiffs desire to license.

28. Defendant's public claim that the Issued Patents are invalid because he is not listed as an inventor on the Issued Patents is limiting Plaintiffs' ability to license rights associated with the Issued Patents.

29. Despite the Defendant's claims that he is a co-inventor of the Issued Patents, he has proffered no evidence to substantiate his claim.

30. Due to GAO's allegations, a definite and concrete dispute now exists between GAO and JRO with respect to GAO's status as a co-inventor on the Issued Patents.

31. As such, Plaintiffs are entitled to an order declaring that Defendant is not an inventor on the Issued Patents and that inventorship on the Issued Patents is correct.

**SECOND CAUSE OF ACTION**  
**Alternative Declaratory Relief Regarding Correction of Inventorship**  
**(28 U.S.C. §§2201, 2202 and 35 U.S.C. §256)**

32. Plaintiffs hereby incorporate by this reference each and every preceding allegation contained in paragraphs 1-31 as if set forth fully herein.

33. Plaintiffs have an ownership interest in and to the Issued Patents which Plaintiffs' desire to license.

34. Defendant's public claim that the Issued Patents are invalid because he is not listed as an inventor on the Issued Patents is limiting Plaintiffs' ability to license rights associated with the Issued Patents.

35. Due to GAO's allegations, a definite and concrete dispute now exists between GAO and JRO with respect to GAO's status as a co-inventor on the Issued Patents.

36. While Plaintiff's believe the evidence before it establishes that JRO is the sole inventor of the Issued Patents, to the extent the Court determines that Defendant should be named as a co-inventor of the Issued Patents, any error of omitting Defendant as an inventor was committed without deceptive intent.

37. As such, to the extent the Court determines that Defendant should be named as a co-inventor of the Issued Patents; Plaintiffs are entitled to an order declaring that inventorship of the Issued Patents be corrected.

**WHEREFORE**, it is respectfully requested that the Court enter a judgment in favor of Plaintiffs as follows:

A. That the Court enter judgment declaring that James R. Oyler is the sole inventor of the Issued Patents pursuant to 35 U.S.C. §101 *et seq.*

B. Alternatively, to the extent the Court determines that George A. Oyler is a co-inventor of the Issued Patents, that the Court enter judgment that the omission of Mr. Oyler as an inventor from the Issued Patents was committed without any deceptive intent and that the inventorship on the Issued Patents be corrected pursuant to 35 U.S.C. §256.

C. That the Plaintiffs have such other and further relief as shall seem just and proper to the Court.

DATED this 15<sup>th</sup> day of September, 2011.

/Jed H. Hansen/  
David W. Osborne  
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THORPE NORTH & WESTERN LLP