

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

BUTAMAX™ ADVANCED BIOFUELS LLC)
and E. I. DU PONT DE NEMOURS AND)
COMPANY,)

Plaintiffs,)

v.)

GEVO, INC.)

Defendant.)

C.A. No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT, AND INVALIDITY,**

Plaintiffs Butamax™ Advanced Biofuels LLC ("Butamax") and E. I. du Pont de Nemours and Company ("DuPont"), by their attorneys, for their Complaint against Defendant Gevo, Inc. ("Gevo"), aver as follows:

NATURE OF THE ACTION

1. This is a civil action for a declaratory judgment to hold U.S. Patent No. 8,273,565 ("the '565 patent") invalid, and not infringed.

THE PARTIES

2. 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 developing biobutanol – an advanced premium biofuel molecule.

3. DuPont is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in Wilmington, Delaware. DuPont is a science company with leading capabilities in biotechnology.

4. 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.

5. Gevo purports to be the owner of the right, title, interest and application in, to and for the '565 patent.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, Title 35 of the United States Code, and under the Declaratory Judgment Act, 28 U.S.C. § 2201. The court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a) and 2202.

7. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b) because a substantial part of the events which give rise to the claims herein occurred in this district and because Gevo is subject to personal jurisdiction in this district.

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

9. Butamax has previously sued Gevo for patent infringement in this district, and Gevo has countersued, also alleging patent infringement. This Court took jurisdiction of these related cases, which are continuing to be litigated in this district and have been assigned to the Honorable Judge Sue L. Robinson (SLR) with the following docket numbers:

- 1:11-cv-00054-SLR
- 1:12-cv-00070-SLR
- 1:12-cv-00298-SLR
- 1:12-cv-00301-SLR
- 1:12-cv-00448-SLR
- 1:12-cv-00602-SLR

- 1:12-cv-00999-SLR
- 1:12-cv-01014-SLR
- 1:12-cv-01036-SLR

10. Gevo has alleged, and continues to allege that Plaintiffs' recombinant yeast strains infringe Gevo's U.S. Patent No. 8,017,376 ('376 patent) in which each claim is specifically limited to yeast comprising a recombinantly overexpressed polynucleotide encoding a dihydroxy acid dehydratase (DHAD) enzyme and, a recombinantly overexpressed polynucleotide encoding an activator of ferrous transport (Aft) protein which increases the activity of the DHAD, despite the fact that prior to being sued the General Counsel for Butamax sent a letter to the General Counsel for Gevo informing him that Butamax's technology going forward does not meet the limitation of the '376 patent. (*See, e.g.*, 1:11-cv-00054-SLR Dkt 122 paras 35-53). Gevo's filing and maintaining infringement allegations on the '376 patent against Plaintiffs indicates Gevo's willingness to assert other related patents in litigation against Plaintiffs.

11. By virtue of the foregoing, there is a continuing justiciable controversy between the parties as to Gevo's right to a patent monopoly, and as to the validity, enforceability and scope of the patent rights of the '376 patent and related patents against the Plaintiffs.

THE PATENT-IN-SUIT

12. On information and belief, on September 25, 2012, the '565 patent¹ entitled "Methods Of Increasing Dihydroxy Acid Dehydratase Activity To Improve Production Of Fuels, Chemicals, And Amino Acids" issued to Catherine Asleson Dundon, Aristos Aristidou, Andrew Hawkins, Doug Lies, and Lynne H. Albert.

¹ The '565 patent issued on September 25, 2012 at 12:00am EDT, as shown on the September 5, 2012 Issue Notification attached as **Exhibit A**. A paper copy will be filed with the Court as soon as it becomes available.

13. The '565 patent is related to the '376 patent. The '565 patent issued from an application that is a divisional of application No. 13/228,342, which is a divisional of application No. 12/953,884, which issued at U.S. Patent No. 8,017,376.

14. The '565 patent claims are specifically limited to a recombinant yeast microorganism comprising a recombinantly overexpressed polynucleotide encoding a dihydroxy acid dehydratase (DHAD), wherein said recombinant yeast microorganism is engineered to comprise at least one inactivated monothiol glutaredoxin selected from the group consisting of monothiol glutaredoxin-3 (GRX3) and monothiol glutaredoxin-4 (GRX4), and wherein said inactivated monothiol glutaredoxin results from the deletion of one or more nucleotides of an endogenous gene encoding said monothiol glutaredoxin, the insertion of one or more nucleotides into an endogenous gene encoding said monothiol glutaredoxin, or combinations thereof.

15. Plaintiffs have considered the '565 patent and its relevance to their recombinant yeast and do not agree that they infringe any valid claim of the '565 patent.

FIRST CLAIM FOR RELIEF

(DECLARATION OF NON-INFRINGEMENT OF THE '565 PATENT)

16. Plaintiffs restate and incorporate by reference each of the averments of the foregoing paragraphs of this Complaint.

17. Gevo claims to be the owner of the '565 patent.

18. Plaintiffs are not infringing, have not infringed, and are not liable for any infringement of any valid claim of the '565 patent, and Gevo is entitled to no relief.

19. Plaintiffs seek a declaration that they have not and do not infringe the '565 patent and that they are not otherwise liable for infringement.

20. On information and belief, absent a declaration of non-infringement of the '565 patent, Gevo will assert the '565 patent against Plaintiffs, thus causing damage to Plaintiffs.

SECOND CLAIM FOR RELIEF

(DECLARATION OF INVALIDITY OF THE '565 PATENT)

21. Plaintiffs restate and incorporate by reference each of the averments of the foregoing paragraphs of this Complaint.

22. Gevo claims to be the owner of the '565 patent.

23. The '565 patent is invalid for failure to meet one or more of the conditions or requirements for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, in 35 U.S.C. §§ 101, 102, 103 and/or 112.

24. Plaintiffs seek a declaration that the claims of the '565 patent are invalid for failure to meet one or more of the conditions or requirements for patentability specified in Title 35, U.S.C., or the rules, regulations, and law related thereto, including, without limitation, in 35 U.S.C. §§ 101, 102, 103 and/or 112.

25. On information and belief, absent a declaration of invalidity of the '565 patent, Gevo will assert the '565 patent against Plaintiffs, thus causing damage to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Butamax and DuPont respectfully pray for judgment against Defendant Gevo as follows:

- i. for entry of judgment declaring that the claims of the '565 patent are not infringed by Plaintiffs and that Plaintiffs are not liable for infringement;
- ii. for entry of judgment declaring that the claims of the '565 patent are invalid;
- iii. for entry of a preliminary and permanent injunction enjoining Gevo from pursuing infringement litigation or threatening litigation related to the '565 patent against Plaintiffs or any of Plaintiffs' customers or business relations;

- iv. that the case be declared exceptional and that Plaintiffs be awarded their attorneys' fees; and
- v. that Plaintiffs have such other and further relief as the Court shall deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rule of Civil Procedure, Plaintiffs demand a jury trial of all issues triable to a jury in this action.

Respectfully submitted,

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