

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GEVO, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No.
BUTAMAX(TM) ADVANCED BIOFUELS)	
LLC, a Delaware limited liability company,)	JURY TRIAL DEMANDED
and E.I. DUPONT DE NEMOURS AND CO.,)	
a Delaware corporation,)	
)	
Defendants.)	

COMPLAINT

Plaintiff Gevo, Inc. (“Gevo”), by its attorneys, for its Complaint against Defendants Butamax(TM) Advanced Biofuels LLC (“Butamax”) and E.I. DuPont de Nemours and Co. (“DuPont”), alleges as follows:

THE PARTIES

1. Gevo is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Englewood, Colorado.
2. Butamax is a limited liability corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Wilmington, Delaware. Butamax is jointly owned by DuPont and BP Biofuels North America LLC, an indirect subsidiary of BP p.l.c. (“BP”).
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.

4. On information and belief, Butamax was formed in July 2009 for the purpose of commercializing technology that DuPont and BP have been jointly developing since 2004.

5. On information and belief, individuals employed by DuPont engage in research and development activities related to the subject matter of this action.

6. On information and belief, Butamax engages in research and development related to the subject matter of this action using facilities located in the DuPont Experimental Station which is located in Wilmington, Delaware.

7. On information and belief, DuPont directs Butamax to engage in research and development activities related to the subject matter of this action, and controls the manner in which these activities are performed.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, including Title 35, United States Code. This court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This court has personal jurisdiction over Butamax because Butamax is a Delaware limited liability company and has committed acts within Delaware and this judicial district which give rise to this action, including ongoing research and development activities related to the subject matter of this complaint. Butamax maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over Butamax would not offend traditional notions of fair play and substantial justice.

10. This court has personal jurisdiction over DuPont because DuPont is incorporated in Delaware and has committed acts within Delaware and this judicial district which give rise to this action, including ongoing research and development activities related to the subject matter of this complaint. DuPont maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over DuPont would not offend traditional notions of fair play and substantial justice.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

THE PATENT-IN-SUIT

12. On September 25, 2012, United States Patent No. 8,273,565 (“the ’565 Patent”) entitled “Methods of Increasing Dihydroxy Acid Dehydratase Activity to Improve Production of Fuels, Chemicals, and Amino Acids” issued to Jun Urano, Catherine Asleson Dundon, Peter Meinhold, Reid M. Renny Feldman, Aristos Aristidou, Andrew Hawkins, Thomas Buelter, Matthew Peters, Doug Lies, Stephanie Porter-Scheinman, Christopher Smith, and Lynne Albert.¹ The entire right, title, and interest to the ’565 Patent has been assigned to Gevo. Gevo is the owner and possessor of all rights pertaining to the ’565 Patent.

13. On February 2, 2012, United States Patent Publication No. US 2012/0028322 A1 (“the ’322 Publication”) was published. A true and correct copy of the ’322 Publication is attached hereto as Exhibit 2. The application that forms the basis of the ’322 Publication issued as the ’565 Patent, and the ’322 Publication includes claims that are identical or substantially identical to claims of the ’565 Patent.

¹ The ’565 Patent issued on September 25, 2012, as shown on the September 5, 2012 Issue Notification attached as Exhibit 1, however, a copy is not yet available. We will file a copy of the patent once it becomes available.

14. On information and belief, Butamax and DuPont had knowledge of the '322 Publication prior to the issuance of the '565 Patent.

15. The '565 Patent and the '322 Publication disclose and claim recombinant yeast microorganisms comprising a recombinantly overexpressed polynucleotide encoding a dihydroxy acid dehydratase (DHAD), wherein the microorganism is engineered to comprise at least one inactivated monothiol glutaredoxin selected from the group consisting of GRX3 and GRX4.

16. On information and belief, Butamax and/or DuPont produce isobutanol through the deletion, mutation, and/or substitution of either of the endogenous genes Grx3 and/or Grx4 in recombinant yeast strains, whereby increased Fe-S cluster biosynthesis results in increased specific activity of the dihydroxy-acid dehydratase polypeptide (DHAD) and increased output of associated biosynthetic pathways responsible for the production of branched chain amino acids, pantothenic acid, and isobutanol. Several examples of how this is done are described in U.S. Patent Publication No. 2012/0064561 A1, which, on information and belief, is assigned to Butamax and lists inventors who are affiliated with Butamax and/or DuPont.

COUNT I

Infringement of the '565 Patent Against Butamax and DuPont

17. Gevo incorporates by reference the allegations set forth in paragraphs 1-16 of this Complaint.

18. On information and belief, Butamax is infringing and will infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, one or more claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16

without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery. On information and belief, Butamax's infringement pursuant to 35 U.S.C. § 271 will continue unless Butamax's conduct is enjoined.

19. On information and belief, DuPont is infringing or will infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, one or more claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16 without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery. On information and belief, DuPont's infringement pursuant to 35 U.S.C. § 271 will continue unless DuPont's conduct is enjoined.

20. On information and belief, Butamax and DuPont's activities have already occurred or are occurring and will continue unless enjoined by this Court. Butamax and DuPont's infringement of the '565 Patent causes harm to Gevo. Thus, a real and substantial controversy exists between Gevo, on one hand, and Butamax and DuPont on the other.

21. As a result of Butamax and/or DuPont's infringement of the '565 Patent, Gevo has suffered irreparable harm for which Gevo has no adequate remedy at law.

COUNT II

Infringement of Gevo's Provisional Rights in the '565 Patent Against Butamax and DuPont

22. Gevo incorporates by reference the allegations set forth in paragraphs 1-21 of this Complaint.

23. On information and belief, pursuant to 35 U.S.C. § 154(d), Butamax has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, Gevo's provisional patent rights in one or more of the claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16 without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery.

24. On information and belief, pursuant to 35 U.S.C. § 154(d), DuPont has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, Gevo's provisional patent rights in one or more of the claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16 without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery.

25. Butamax and/or DuPont's infringement of Gevo's provisional rights in the claims of the '565 Patent harmed Gevo. Thus, a real and substantial controversy exists between Gevo, on one hand, and Butamax and DuPont on the other.

26. As a result of Butamax and/or DuPont's infringement of Gevo's provisional rights in the claims of the '565 Patent, Gevo is entitled to recover a reasonable royalty pursuant to 35 U.S.C. § 154(d)(1).

COUNT III

Indirect Infringement of the '565 Patent Against Butamax and DuPont

27. Gevo incorporates by reference the allegations set forth in paragraphs 1-26 of this Complaint.

28. On information and belief, Butamax and DuPont are and will be actively and knowingly assisting with, participating in, contributing to, and/or directing others to perform the method described in paragraph 16 without Gevo's authorization. On information and belief, Butamax and/or DuPont are aware of the application that issued as the '565 Patent and are aware that the '565 Patent would issue while they are engaging in these knowing and purposeful activities referred to above. On information and belief, the method described in paragraph 16 is not a staple article or commodity of commerce suitable for substantial non-infringing uses, and is known by Butamax and/or DuPont to be especially made or especially adapted for use in infringement of the '565 Patent.

29. On information and belief, under 35 U.S.C. § 271(b), Butamax and/or DuPont are inducing and will induce the infringement of the '565 Patent by actively and knowingly aiding and abetting others to perform the method described in paragraph 16 without Gevo's authorization and with knowledge that the induced acts constitute infringement of the '565 Patent.

30. On information and belief, under 35 U.S.C. §§ 154(d) and 271(b), Butamax and/or DuPont have induced or will induce others to infringe Gevo's provisional rights in the claims of the '565 Patent by actively and knowingly aiding and abetting others to perform the method described in paragraph 16 without Gevo's authorization and with knowledge that the induced acts constitute infringement of the '565 Patent.

PRAYER FOR RELIEF

WHEREFORE, Gevo respectfully requests the following relief:

a) That judgment be entered declaring that Butamax and DuPont has/have infringed one or more claims of the '565 Patent, and Gevo's provisional rights in those claims, by manufacturing isobutanol through fermentation and extracting that isobutanol using methods described and claimed in the '565 Patent and/or by importing isobutanol that has been manufactured in that manner.

b) That judgment be entered declaring that Butamax and DuPont has/have induced others to infringe one or more of the claims of the '565 Patent, and Gevo's provisional rights in those claims, by without Gevo's authorization assisting, abetting, and encouraging others to manufacture isobutanol through fermentation and extract that isobutanol using methods described and claimed in the '565 Patent and/or to import isobutanol that has been manufactured in that manner, and that Butamax and/or DuPont's inducement of others to infringe are acts of infringement of one or more claims of the '565 Patent.

c) That this Court adjudge and decree that Butamax and DuPont have been and/or are currently infringing the '565 Patent.

d) That this Court adjudge and decree that Butamax and DuPont infringed Gevo's provisional rights in the claims of the '565 Patent.

e) That this Court adjudge and decree that Butamax and DuPont have been and/or are currently inducing others to infringe the '565 Patent.

f) That this Court adjudge and decree that Butamax and DuPont have induced or will induce others to infringe Gevo's provisional rights in the claims of the '565 Patent.

g) That this Court enter an order that Butamax and DuPont and their officers, agents, servants, employees, successors and assigns, and those persons acting in concert with them, be preliminarily and permanently enjoined from infringing the '565 Patent.

h) That this Court enter an order that Butamax and DuPont and their officers, agents, servants, employees, successors and assigns, and those persons acting in concert with them, be preliminarily and permanently enjoined from inducing others to infringe the '565 Patent.

i) That this Court award damages to Gevo to compensate it for each of the unlawful actions set forth in the Complaint.

j) That interest, costs and expenses be awarded in favor Gevo.

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

DEMAND FOR JURY TRIAL

Gevo respectfully requests a trial by jury on all issues triable thereby.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)
Jeremy A. Tigan (#5239)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
jblumenfeld@mnat.com
jtigan@mnat.com
Attorneys for Plaintiff Gevo, Inc.

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