

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’s (“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 B.P. 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 BP and DuPont 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.

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 Declaratory Judgment Act and 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, 1338(a), 2201 and 2202.

9. This court has personal jurisdiction over Butamax because Butamax is 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 PATENTS-IN-SUIT**

12. On March 13, 2012, United States Patent No. 8,133,715 (“the ‘715 Patent”) entitled “Reduced By-Product Accumulation for Improved Production of Isobutanol” issued to Thomas Buelter, Andrew Hawkins, Stephanie Porter-Scheinman, Peter Meinhold, Catherine Asleson Dundon, Aristos Aristidou, Jun Urano, Matthew Peters, Melissa Dey, Justas Jancauskas, Julie Kelly, and Ruth Berry. A true and correct copy of the ‘715 Patent is attached hereto as Exhibit 1. The entire right, title, and interest to the ‘715 Patent has been assigned to Gevo. Gevo is the owner and possessor of all rights pertaining to the ‘715 Patent.

13. The ‘715 Patent discloses and claims recombinant isobutanol-producing microorganisms containing a disruption in the expression or activity of an endogenous 3-keto acid reductase activity and methods for producing isobutanol using such organisms.

14. On information and belief, Butamax and/or DuPont make recombinant microorganisms comprising an isobutanol producing metabolic pathway and further comprising a disruption in the expression or activity of an endogenous enzyme having 3-keto acid reductase activity through deletion or inactivation of the YMR226c gene, and use such microorganisms to produce isobutanol. Examples of how this is done are described in PCT Publication No. WO/2011/159853, which, on information and belief, was filed by Butamax and lists inventors who are affiliated with DuPont.

### **COUNT I** **Infringement of the ‘715 Patent** **Against Butamax and DuPont**

15. Gevo incorporates by reference the allegations set forth in paragraphs 1-14 of this Complaint.

16. On information and belief, Butamax has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, one or more claims of the '715 Patent by performing and/or directing others to perform the methods described in paragraph 19 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.

17. On information and belief, DuPont has directly and/or indirectly infringed, either literally or under the doctrine of equivalents, one or more claims of the '715 Patent by performing and/or directing others to perform the methods described in paragraph 19 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.

18. On information and belief, Butamax and/or DuPont's infringing activities have already occurred and will continue unless enjoined by this Court. Butamax and/or DuPont's infringement of the '715 Patent causes harm to Gevo. Thus, a real and substantial controversy exists between Gevo, on one hand, and Butamax and DuPont on the other.

19. As a result of Butamax's and/or DuPont's infringement of the '715 Patent, Gevo has suffered irreparable harm for which Gevo has no adequate remedy at law.

## **PRAYER FOR RELIEF**

WHEREFORE, Gevo respectfully requests the following relief:

a) That judgment be entered declaring that Butamax and/or DuPont has/have infringed one or more claims of the '715 Patent by without Gevo's authorization making recombinant microorganisms comprising an isobutanol producing metabolic pathway and further comprising a disruption in the expression or activity of an endogenous enzyme having 3-keto acid reductase activity through deletion or inactivation of the YMR226c gene, using such microorganisms to produce isobutanol, and/or by importing isobutanol that has been manufactured in that manner.

b) That judgment be entered declaring that Butamax and/or DuPont have induced others to infringe one or more of the claims of the '715 Patent by without Gevo's authorization assisting, abetting, and encouraging others to make recombinant microorganisms comprising an isobutanol producing metabolic pathway and further comprising a disruption in the expression or activity of an endogenous enzyme having 3-keto acid reductase activity through deletion or inactivation of the YMR226c gene, use such microorganisms to produce isobutanol, and/or import isobutanol that has been manufactured in that manner.

c) That this Court adjudge and decree that Butamax and/or DuPont have been and are currently infringing the '715 Patent.

d) That this Court adjudge and decree that Butamax and/or DuPont have been and are currently inducing others to infringe the '715 Patent.

e) That this Court enter an order that Butamax and/or 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 '715 Patent.

f) That this Court enter an order that Butamax and/or 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 '715 Patent.

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

h) That this Court award interest on such damages to Gevo.

i) That this Court determine that this patent infringement case is exceptional and award Gevo its expenses including its attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285.

j) That interests, 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/ Thomas C. Grimm*

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