IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BUTAMAX(TM) ADVANCED BIOFUELS LLC,	)	
Plaintiff,	)	
	)	C.A. No. _____
v.	)	
	)	**JURY TRIAL DEMANDED**
GEVO, INC.,	)	
Defendant.	)	

COMPLAINT

Plaintiff Butamax™ 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 has developed methods of making isobutanol, 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. Isobutanol can also be used as a feedstock chemical in the production of various plastics, fibers and other products.

2. Butamax has developed novel methods of producing isobutanol with recombinant microorganisms comprising an engineered isobutanol biosynthetic pathway.

3. 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

4. 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.

5. 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.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

BACKGROUND

7. United States Patent No. 8,178,328 ("the '328 patent") entitled, FERMENTIVE PRODUCTION OF FOUR CARBON ALCOHOLS duly and legally issued on May 15, 2012 to inventors Gail K. Donaldson, Andrew C. Eliot, Dennis Flint, Lori Ann Maggio-Hall and Vasantha Nagarajan. The '328 patent is assigned to Butamax. Butamax owns the '328 patent and has owned the patent since it issued. The '328 patent issued from a continuation application of application No. 12/018,216, now Pat. No. 7,993,889 ("the '889 patent"), which is a divisional application of No. 11/586,315, now Pat. No. 7,851,188 ("the '188 patent). The '889 and '188 patents are involved in pending litigation between Butamax and Gevo.

8. The '328 patent discloses and claims certain recombinant microbial host cells comprising an engineered isobutanol biosynthetic pathway. A true and correct copy of the '328 patent is attached hereto as Exhibit A.

9. On information and belief, Gevo makes and uses recombinant microbial host cells that embody the invention of the '328 patent.

10. On information and belief, Gevo makes and uses recombinant microbial host cells comprising an engineered isobutanol biosynthetic pathway capable of producing isobutanol through the following substrate to product conversions:

(a) pyruvate to acetolactate;

(b) the acetolactate from (a) to 2,3-dihydroxy-isovalerate;

(c) 2,3-dihydroxy-isovalerate from (b) to a-ketoisovalerate;

(d) the a-ketoisovalerate from (c) to isobutyraldehyde; and

(e) the isobutyraldehyde from (d) to isobutanol;

11. On information and belief, Gevo's U.S. Patent 8,097,440 provides examples of such recombinant microbial hosts that Gevo makes and uses.

12. Gevo's U.S. Patent 8,097,440, provides examples of recombinant yeast that recombinantly express acetolactate synthase (ALS), acetohydroxy acid isomeroreductase (KARI), acetohydroxy acid dehydratase (DHAD), ketoisovalerate decarboxylase (KIVD), and alcohol dehydrogenase (ADH) enzymes from chimeric genes. These enzymes perform the substrate to product conversions a-e recited in paragraph 10.

13. During a recent earnings conference call, Gevo stated that the yeast of Gevo's U.S. Patent 8,097,440 were genetically engineered for purposes of producing isobutanol on a commercial basis. Further, in its Q1 2012 Presentation to Investors, available on Gevo's corporate website, Gevo identified the 8,097,440 patent as the "foundational aspect of Gevo's yeast technology."[1]

14. On information and belief, Gevo owns an ethanol production facility and plans this year to complete retrofitting this facility to produce isobutanol commercially using its

[1] *Webcasts and Presentations*, FIRST QUARTER 2012 PRESENTATION SLIDES (May 1, 2012), http://ir.gevo.com/phoenix.zhtml?c=238618&p=irol-presentations.

recombinant yeast that recombinantly express the ALS, KARI, DHAD, KIVD and ADH enzymes. Gevo has entered into contracts with third parties to supply them with isobutanol produced from this facility. Gevo also plans to purchase additional facilities for the commercial production of isobutanol using its recombinant yeast.

15. On information and belief, at least Gevo's making and using of such microbial host cells and/or its inducement of others to make and use such microbial host cells infringes the '328 patent. Gevo will continue to infringe unless enjoined.

COUNT I - PATENT INFRINGEMENT

16. Each of the preceding paragraphs, 1-16 is incorporated as if fully set forth herein.

17. On information and belief, Gevo directly and/or indirectly infringes and will continually infringe, either literally or under the doctrine of equivalents, one or more claims of the '328 patent, pursuant to 35 U.S.C. § 271.

18. On information and belief, Gevo's infringement of the '328 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 '328 patent and that Gevo's making and using recombinant microbial host cells comprising an engineered isobutanol biosynthetic pathway, and/or its inducement of others to make and use recombinant microbial host cells comprising engineered isobutanol biosynthetic pathway are acts of infringement of one or more claims of the '328 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 making and using recombinant microbial host cells comprising engineered isobutanol biosynthetic pathway claimed by the ‘328 patent or inducing others to produce recombinant microbial host cells comprising engineered isobutanol biosynthetic pathway claimed by the ‘328 patent;

(c) That judgment be entered awarding Plaintiff damages resulting from Gevo’s infringement in an amount no less than a reasonable royalty, and that such amount be multiplied based on Gevo’s continuing willful and deliberate infringement, pursuant to 35 U.S.C. § 285;

(d) That this case be deemed exceptional and attorneys’ fees be awarded pursuant to 35 U.S.C. § 285;

(e) That interest, costs and expenses be awarded in favor of Butamax;

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

JURY DEMAND

Butamax hereby demands trial by jury in this action on all issues so triable.

Respectfully submitted,

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Dated: May 15, 2012
1059339 / 36429

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