

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

BUTAMAX(TM) ADVANCED)	
BIOFUELS LLC and E. I. DU PONT DE)	
NEMOURS AND COMPANY,)	
)	
Plaintiffs,)	C.A. No. _____
)	
v.)	JURY TRIAL DEMANDED
)	
GEVO, INC.,)	
)	
Defendant.)	

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

Plaintiffs ButamaxTM 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 find U.S. Patent No. 8,232,089 (“the ’089 Patent”)—attached hereto as **Exhibit A**—invalid, unenforceable 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.

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, 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 right, title, interest and application in, to and for the '089 Patent.

JURISDICTION

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 July 30, 2012, Gevo alleged infringement of the '089 Patent in the United States District Court for the Eastern District of Texas (Marshall Division) by Butamax and E.I. DuPont de Nemours and Co. ("DuPont"), BP p.l.c. d/b/a/ BP Corporation North America Inc., and BP Biofuels North America LLC (collectively "BP").

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:

- C.A. No. 1:11-cv-00054-SLR
- C.A. No. 1:12-cv-00070-SLR
- C.A. No. 1:12-cv-00298-SLR
- C.A. No. 1:12-cv-00301-SLR
- C.A. No. 1:12-cv-00448-SLR
- C.A. No. 1:12-cv-00602-SLR

10. 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 against the Plaintiffs.

First Claim for Relief

(DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT NO 8,232,089)

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

12. Gevo claims to be the owner of the '089 patent.

13. Gevo has alleged that Butamax infringes the '089 patent.

14. Plaintiffs are not infringing, have not infringed, and are not liable for any infringement of any valid claim of the '089 patent, and Gevo is entitled to no relief.

15. Absent a declaration of non-infringement of the '089 patent, Gevo will continue to assert the '089 patent against Plaintiffs and will in this way cause damage to Plaintiffs.

16. Plaintiffs seek a declaration that they have not and do not infringe the '089 patent and that they are not otherwise liable for infringement.

Second Claim for Relief

(DECLARATION OF INVALIDITY OF U.S. PATENT NO. 8,232,089)

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

18. Gevo claims to be the owner of the '089 patent.

19. Gevo has alleged that Plaintiffs infringe the '089 patent.

20. The '089 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.

21. Absent a declaration of invalidity of the '089 patent, Gevo will continue to assert the '089 patent against Plaintiffs and will in this way cause damage to Plaintiffs.

22. Plaintiffs seek a declaration that the claims of the '089 patent are invalid for failure to satisfy 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, rendering the claims invalid, unenforceable, and void.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs Butamax and DuPont pray for judgment against defendant Gevo as follows:

- i. for entry of judgment declaring that the claims of the '089 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 '089 patent are invalid and unenforceable;
- iii. for entry of a preliminary and permanent injunction enjoining Gevo from pursuing infringement litigation or threatening litigation related to the '089 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 Federal Rule of Civil Procedure 38, Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

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Attorneys for Plaintiffs