

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

BUTAMAX(TM) ADVANCED
BIOFUELS LLC,

Plaintiff,

v.

GEVO, INC.

Defendant.

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C.A. No. _____

JURY TRIAL DEMANDED

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. 8,222,017 (“the ‘017 patent”) entitled, KETOL-ACID REDUCTOISOMERASE USING NADH duly and legally issued on July 17, 2012 to inventors Yougen Li, Der-Ing Liao, Mark Nelson, and Daniel O’Keefe. The ‘017 patent is assigned to Butamax. Butamax owns the ‘017 patent and has owned the patent since it issued. The ‘017 patent issued from U.S. Patent App. No. 13/296,929, filed on November 15, 2011. The ‘017 patent is a continuation of U.S. Patent App. No. 12/337,736, now Patent No. 8,129,162 (“the ‘162 patent”), and claims priority to U.S. Provisional App. Nos. 61/015,346 and 61/109,297. The ‘162 patent is involved in pending litigation between Butamax and Gevo.

8. The ‘017 patent discloses and claims certain recombinant mutant ketol-acid reductoisomerase enzymes. Ketol-acid reductoisomerase enzymes are commonly abbreviated as “KARI” enzymes. A true and correct copy of the ‘017 patent is attached hereto as Exhibit A.

9. On information and belief, Gevo currently makes and uses KARI enzymes that embody the invention of the ‘017 patent.

10. On information and belief, Gevo’s U.S. Patent 8,097,440 and U.S. Patent Publication No. 2012/0190089 provide the sequences of recombinant mutant KARI enzymes that Gevo makes and uses.

11. For example, on information and belief, SEQ ID NO: 44 of Gevo's U.S. Patent 8,097,440 is an amino acid sequence of a recombinant mutant KARI enzyme that Gevo makes and uses to produce isobutanol. In addition, on information and belief, U.S. Patent Publication No. 2012/0190089 provides additional amino acid sequences of recombinant mutant KARI enzymes that Gevo makes and uses to produce isobutanol.

12. 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

13. In a recent press release², Gevo confirmed that it has made commercial quantities of isobutanol using recombinant yeast in its Luverne, Minnesota production facility. On information and belief the yeast used at Luverne contain mutant KARI enzymes that infringe the '017 patent. 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.

14. On information and belief, at least Gevo's making and using of such KARI enzymes and/or its inducement of others to make and use such mutant enzymes infringes the '017 patent.

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

² <http://ir.gevo.com/phoenix.zhtml?c=238618&p=irol-newsArticle&ID=1713093&highlight=>

15. Gevo had knowledge of the '017 patent and of their infringement thereof at least as early as July 10, 2012. Gevo had knowledge of the 13/296,969 application, from which the '017 patent issued, at least as early as June 4, 2012.

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 '017 patent, pursuant to 35 U.S.C. § 271.

18. On information and belief, Gevo's infringement of the '017 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 '017 patent and that Gevo's making and using recombinant mutant KARI enzymes, and/or its inducement of others to make and use recombinant mutant KARI enzymes are acts of infringement of one or more claims of the '017 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 mutant KARI enzymes claimed by the '017 patent or inducing others to produce recombinant mutant KARI enzymes claimed by the '017 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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