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 that 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 useful for 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. 8,241,878 ("the '878 patent"), titled "Recombinant Yeast Host Cell with Fe-S Cluster Proteins and Methods of Using Thereof," duly and legally issued on August 14, 2012 to inventors Larry C. Anthony, Dennis Flint, Wonchul Suh, Rick W. Ye, Steven C. Rothman, and Jean-Francois Tomb.[1] The '878 patent is assigned to Butamax, the owner of the '878 patent since issuance. The '878 patent issued from U.S. Patent App. No. 13/296,944 (filed on November 15, 2011) and is a divisional of U.S. Patent App. No. 12/569,069. The '878 patent claims priority to U.S. Provisional Application Nos. 61/100,801 and 61/100,806, each filed September 29, 2008.

8. The '878 patent discloses and claims a method for the conversion of 2,3-dihydroxyisovalerate to α-ketoisovalerate using recombinant yeast host cells expressing a heterologous dihydroxy-acid dehydratase (DHAD) protein.

9. On information and belief, Gevo currently utilizes methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate that embody the invention of the '878 patent.

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[1] The '878 Patent issued on August 14, 2012 at 12:00 am EDT, as shown on the July 25, 2012 Issue Notification attached as **Exhibit A**. A paper copy will be filed with the Court as soon as it becomes available.

10. On information and belief, Gevo's U.S. Patent No. 8,232,089 discloses methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate and provides amino acid sequences of heterologous DHAD proteins which are expressed in recombinant yeast that convert 2,3-dihydroxyisovalerate to α-ketoisovalerate. In a recent press release,[2] Gevo announced that it uses these DHAD enzymes in its commercial-scale, renewable isobutanol facility in Luverne, Minnesota.

11. On information and belief, the method used at Luverne includes converting 2,3-dihydroxyisovalerate to α-ketoisovalerate in recombinant yeast host cells expressing the heterologous dihydroxy-acid dehydratase (DHAD) protein and thereby infringes the '878 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 to infringe the '878 patent.

12. On information and belief, at least Gevo's making and using yeast host cells expressing certain recombinant DHAD enzymes to convert 2,3-dihydroxyisovalerate to α-ketoisovalerate and/or its inducement of others to make and use such host cells infringes the '878 patent.

COUNT I – PATENT INFRINGEMENT

13. Each of the preceding paragraphs, 1–12 is incorporated as if fully set forth herein.

14. 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 '878 patent, pursuant to 35 U.S.C. § 271.

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[2] http://ir.gevo.com/phoenix.zhtml?c=238618&p=irolnewsArticle&ID=1720226&highlight=. ("Gevo Awarded Patent for Further Improvement in Efficiency of Its Proprietary Process for Bio-Based Production of Isobutanol," July 31, 2012; Last Accessed on August 13, 2012).

15. On information and belief, Gevo's infringement of the '878 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 '878 patent and that Gevo's use of methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate using recombinant yeast host cells with a heterologous dihydroxy-acid dehydratase (DHAD) protein, and/or its inducement of others to use methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate using recombinant yeast host cells with a heterologous dihydroxy-acid dehydratase (DHAD) protein are acts of infringement of one or more claims of the '878 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 using methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate using recombinant yeast host cells with a heterologous dihydroxy-acid dehydratase (DHAD) protein claimed by the '878 patent or inducing others to use methods of converting 2,3-dihydroxyisovalerate to α-ketoisovalerate using recombinant yeast host cells with a heterologous dihydroxy-acid dehydratase (DHAD) protein;

(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; and

(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,

POTTER ANDERSON & CORROON LLP

By: */s/ Richard L. Horwitz*
Richard L. Horwitz (#2246)
David E. Moore (#3983)
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
rhorwitz@potteranderson.com
dmoore@potteranderson.com

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Attorneys for Plaintiff
Butamax™ Advanced Biofuels LLC