

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

BUTAMAX™ ADVANCED BIOFUELS LLC)
and E. I. DU PONT DE NEMOURS AND)
COMPANY,)
)
Plaintiffs,)
)
v.)
)
GEVO, INC.)
)
Defendant.)

C.A. No. _____

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT
OF NON-INFRINGEMENT**

Plaintiffs Butamax™ Advanced Biofuels LLC ("Butamax") and E.I. DuPont de Nemours and Co. ("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 hold U.S. Patent No. 8,283,505 ("the '505 patent") 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. Butamax is developing biobutanol – an advanced premium biofuel molecule.

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. DuPont is a science company with leading capabilities in biotechnology.

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 the right, title, interest and application in, to and for the '505 patent.

JURISDICTION AND VENUE

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 information and belief, this Court has personal jurisdiction over Gevo because, at a minimum, it is a Delaware corporation with a registered Delaware agent and has purposefully availed itself of the benefits and protections of this state.

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:

- 1:11-cv-00054-SLR
- 1:12-cv-00070-SLR
- 1:12-cv-00298-SLR
- 1:12-cv-00301-SLR
- 1:12-cv-00448-SLR
- 1:12-cv-00602-SLR
- 1:12-cv-00999-SLR
- 1:12-cv-01014-SLR
- 1:12-cv-01036-SLR
- 1:12-cv-1200-SLR

- 1:12-cv-1201-SLR
- 1:12-cv-1202-SLR

10. Gevo has alleged, and continues to allege that Plaintiffs' isobutanol production process infringes Gevo's U.S. Patent No. 8,101,808 ("the '808 patent"), which relates generally to methods for recovery of C3-C6 alcohols from dilute aqueous solutions, such as fermentation broths.

11. Gevo's filing and maintaining infringement allegations on the '808 patent against Plaintiffs indicates Gevo's willingness to assert other related patents in litigation against Plaintiffs.

12. 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 of the '808 patent and related patents against the Plaintiffs.

THE PATENT-IN-SUIT

13. On information and belief, on October 9, 2012, the '505 patent¹ entitled "Recovery Of Higher Alcohols From Dilute Aqueous Solutions" issued to William A. Evanko, Aharon M. Eyal, David A. Glassner, Fudu Miao, Aristos A. Aristidou, Kent Evans, Patrick R. Gruber, and Andrew C. Hawkins.

14. The '505 patent is related to the '808 patent. The '505 patent issued from an application that is a continuation of application No. 12/342,992, which issued as U.S. Patent No. 8,101,808.

¹ The '505 patent issued on October 9, 2012 at 12:00am EDT, as shown on the September 19, 2012 Issue Notification attached as **Exhibit A**. A paper copy will be filed with the Court as soon as it becomes available.

15. The '505 patent claims are specifically limited to a method for producing isobutanol comprising at least:

- (a) culturing a microorganism capable of producing isobutanol in a fermentor, thereby forming a fermentation broth comprising microorganisms and isobutanol;
- (b) removing a portion of the fermentation broth from the fermentor;
- (c) distilling the portion, thereby forming an isobutanol-depleted liquid phase and an isobutanol-enriched vapor phase comprising water and isobutanol;
- (d) condensing the isobutanol-enriched vapor phase formed in step (c), thereby forming an isobutanol-rich liquid phase and a water-rich liquid phase; and
- (e) separating the isobutanol-rich phase liquid from the water-rich liquid phase using a liquid-liquid separator:

wherein:

- (1) said steps (b)-(e) are conducted simultaneously with step (a);
- (2) the isobutanol-depleted liquid phase comprises viable microorganisms; and
- (3) the isobutanol-depleted liquid phase is returned to the fermentor.

16. Plaintiffs have considered the '505 patent and its relevance to their activities and do not agree that they infringe any properly construed claim of the '505 patent.

CLAIM FOR RELIEF

(DECLARATION OF NON-INFRINGEMENT OF THE '505 PATENT)

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 '505 patent.

19. Plaintiffs are not infringing, have not infringed, and are not liable for any infringement of any valid claim of the '505 patent, and Gevo is entitled to no relief.

20. Plaintiffs seek a declaration that they have not and do not infringe the '505 patent and that they are not otherwise liable for infringement.

21. On information and belief, absent a declaration of non-infringement of the '505 patent, Gevo will assert the '505 patent against Plaintiffs, thus causing damage to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Butamax and DuPont respectfully pray for judgment against Defendant Gevo as follows:

- i. for entry of judgment declaring that the claims of the '505 patent are not infringed by Plaintiffs and that Plaintiffs are not liable for infringement;
- ii. for entry of a preliminary and permanent injunction enjoining Gevo from pursuing infringement litigation or threatening litigation related to the '505 patent against Plaintiffs or any of Plaintiffs' customers or business relations;
- iii. that the case be declared exceptional and that Plaintiffs be awarded their attorneys' fees; and
- iv. that Plaintiffs have such other and further relief as the Court shall deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rule of Civil Procedure, Plaintiffs demand a jury trial of all issues triable to a jury in this action.

Respectfully submitted,

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