IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BUTAMAX(TM) ADVANCED BIOFUELS LLC,	)	
Plaintiff,	)	C.A. No. 11-54-SLR-MPT
v.	)	**JURY TRIAL DEMANDED**
GEVO, INC.,	)	
Defendant.	)	

AMENDED COMPLAINT

Plaintiff Butamax(TM) 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 is dedicated to the development of premium biofuels. Butamax has developed methods of making biobutanol, 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. Biobutanol can also be used as a feedstock chemical in the production of various plastics, fibers and other products. In particular, Butamax has developed biological methods of producing isobutanol.

2. 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

3. 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.

4. 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.

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

BACKGROUND

6. United States Patent No. 7,851,188 B2 ("the '188 patent") entitled FERMENTIVE PRODUCTION OF FOUR CARBON ALCOHOLS, duly and legally issued on December 14, 2010 to inventors Gail K. Donaldson, Andrew C. Eliot, Dennis Flint, Lori Ann Maggio-Hall and Vasantha Nagarajan. The '188 patent is assigned to Butamax.

7. The '188 patent discloses and claims recombinant microbial host cells that produce isobutanol and methods for the production of isobutanol with such host cells. A true and correct copy of the '188 patent is attached hereto as Exhibit A.

8. On information and belief, Gevo has infringed and will continue to infringe the '188 patent by making and using recombinant microbial host cells that convert sugars derived from biomass to isobutanol.

9. United States Patent No. 7,993,889 ("the '889 patent") entitled FERMENTIVE PRODUCTION OF FOUR CARBON ALCOHOLS, duly and legally issued on August 9, 2011

to inventors Gail K. Donaldson, Andrew C. Eliot, Dennis Flint, Lori Ann Maggio-Hall and Vasantha Nagarajan. The ‘889 patent is assigned to Butamax.

10. The ‘889 patent discloses and claims methods for producing isobutanol using recombinant yeast microorganisms expressing an engineered isobutanol biosynthetic pathway. A true and correct copy of the ‘889 patent is attached hereto as Exhibit B.

11. On information and belief, Gevo infringes and will continue to infringe the ‘889 patent by producing isobutanol using recombinant yeast microorganisms as claimed in the ‘889 patent.

12. On information and belief, Gevo makes recombinant microbial host cells, including recombinant microorganisms such as yeast, by engineering DNA constructs containing isobutanol pathway genes and integrating them into the cells. These DNA constructs encode enzymes that catalyze the conversion of 1) pyruvate to acetolactate; 2) acetolactate to 2,3-dihydroxyisovalerate; 3) 2,3-dihydroxyisovalerate to α-ketoisovalerate; 4) α-ketoisovalerate to isobutyraldehyde; and 5) isobutyraldehyde to isobutanol. Isobutanol is produced by the enzymatic conversions of this pathway. The recombinant microbial host cells made and used by Gevo include strains of bacteria, as well as yeast.

13. On information and belief, Gevo’s making, using, selling, offering to sell or importation of such recombinant microbial host cells infringes the ‘188 patent.

14. On information and belief, Gevo’s production of isobutanol using recombinant yeast microorganisms as claimed in the ‘889 patent, its inducement of others to produce isobutanol using recombinant yeast microorganisms as claimed in the ‘889 patent, and/or its importation into the United States of isobutanol produced using recombinant yeast microorganisms as claimed in the ‘889 patent infringes the ‘889 patent.

15. On information and belief, Gevo has produced isobutanol using such recombinant microbial host cells, including recombinant yeast microorganisms, in a retrofitted former ethanol production facility. Gevo has also purchased another ethanol production facility in order to convert it to the production of isobutanol using recombinant microbial host cells, including recombinant yeast microorganisms. Gevo has also engaged third parties to retrofit additional ethanol production plants to isobutanol production using recombinant microbial host cells, including recombinant yeast microorganisms.

16. On information and belief, Gevo has also entered into relationships with third parties in the petrochemicals industry and high volume consumers of fuel to supply them with isobutanol produced by recombinant microbial host cells.

COUNT I - INFRINGEMENT OF '188 PATENT

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

18. On information and belief, Gevo has directly and/or indirectly infringed and will continually infringe, either literally or by the doctrine of equivalents, one or more claims of the '188 patent, pursuant to 35 U.S.C. § 271.

19. On information and belief, Gevo's infringement of the '188 patent has already occurred and 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.

20. On information and belief, Gevo has acted with knowledge of the '188 patent and without a reasonable basis for a good faith belief that it would not be liable for infringement of the '188 patent. Thus, Gevo's ongoing infringement is willful and deliberate, making this an exceptional case.

COUNT II - INFRINGEMENT OF '889 PATENT

21. Each of the preceding paragraphs, 1-20 is incorporated as if fully set forth herein.

22. On information and belief, Gevo directly and/or indirectly infringes and will continually infringe, either literally or by the doctrine of equivalents, one or more claims of the '889 patent, pursuant to 35 U.S.C. § 271.

23. On information and belief, Gevo's infringement of the '889 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, Butamax respectfully requests the following relief:

(a) That a declaratory judgment be entered declaring that Gevo has infringed one or more claims of the '188 patent and that Gevo's making, using, selling, offering to sell or importation of recombinant microbial host cells to produce isobutanol are acts of infringement of one or more claims of the '188 patent;

(b) That a declaratory judgment be entered declaring that Gevo has willfully and deliberately infringed one or more claims of the '188 patent;

(c) 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, using, selling, offering to sell or importing host cells claimed in the '188 patent and from producing isobutanol according to methods claimed in the '188 patent;

(d) That a declaratory judgment be entered declaring that Gevo infringes one or more claims of the '889 patent and that Gevo's production of isobutanol using recombinant

yeast microorganisms, its inducement of others to produce isobutanol using recombinant yeast microorganisms and/or its importation into the United States of isobutanol produced using recombinant yeast microorganisms are acts of infringement of one or more claims of the '889 patent;

(e) 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 producing or inducing others to produce isobutanol using recombinant yeast microorganisms according to the claimed methods of the '889 patent and from importing into the United States isobutanol produced according to methods claimed in the '889 patent;

(f) That judgment be entered awarding Butamax 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 willful and deliberate infringement, pursuant to 35 U.S.C. § 285;

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

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

(i) 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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