

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

GEVO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	C.A. No.
BUTAMAX(TM) ADVANCED BIOFUELS	)	
LLC, a Delaware limited liability company,	)	JURY TRIAL DEMANDED
and E.I. DUPONT DE NEMOURS AND CO.,	)	
a Delaware corporation,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Gevo, Inc. (“Gevo”), by its attorneys, for its Complaint against Defendants Butamax(TM) Advanced Biofuels LLC (“Butamax”) and E.I. DuPont de Nemours and Co. (“DuPont”), alleges as follows:

**THE PARTIES**

1. Gevo is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Englewood, Colorado.
2. Butamax is a limited liability corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Wilmington, Delaware. Butamax is jointly owned by DuPont and BP Biofuels North America LLC, an indirect subsidiary of BP p.l.c. (“BP”).
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, Butamax was formed in July 2009 for the purpose of commercializing technology that DuPont and BP have been jointly developing since 2004.

5. On information and belief, individuals employed by DuPont engage in research and development activities related to the subject matter of this action.

6. On information and belief, Butamax engages in research and development related to the subject matter of this action using facilities located in the DuPont Experimental Station which is located in Wilmington, Delaware.

7. On information and belief, DuPont directs Butamax to engage in research and development activities related to the subject matter of this action, and controls the manner in which these activities are performed.

#### **JURISDICTION AND VENUE**

8. This action arises under the patent laws of the United States, including Title 35, United States Code. This court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This court has personal jurisdiction over Butamax because Butamax is a Delaware limited liability company and has committed acts within Delaware and this judicial district which give rise to this action, including ongoing research and development activities related to the subject matter of this complaint. Butamax maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over Butamax would not offend traditional notions of fair play and substantial justice.

10. This court has personal jurisdiction over DuPont because DuPont is incorporated in Delaware and has committed acts within Delaware and this judicial district which give rise to this action, including ongoing research and development activities related to the subject matter of this complaint. DuPont maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over DuPont would not offend traditional notions of fair play and substantial justice.

11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

### **THE PATENT-IN-SUIT**

12. On September 25, 2012, United States Patent No. 8,273,565 (“the ’565 Patent”) entitled “Methods of Increasing Dihydroxy Acid Dehydratase Activity to Improve Production of Fuels, Chemicals, and Amino Acids” issued to Jun Urano, Catherine Asleson Dundon, Peter Meinhold, Reid M. Renny Feldman, Aristos Aristidou, Andrew Hawkins, Thomas Buelter, Matthew Peters, Doug Lies, Stephanie Porter-Scheinman, Christopher Smith, and Lynne Albert.<sup>1</sup> The entire right, title, and interest to the ’565 Patent has been assigned to Gevo. Gevo is the owner and possessor of all rights pertaining to the ’565 Patent.

13. On February 2, 2012, United States Patent Publication No. US 2012/0028322 A1 (“the ’322 Publication”) was published. A true and correct copy of the ’322 Publication is attached hereto as Exhibit 2. The application that forms the basis of the ’322 Publication issued as the ’565 Patent, and the ’322 Publication includes claims that are identical or substantially identical to claims of the ’565 Patent.

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<sup>1</sup> The ’565 Patent issued on September 25, 2012, as shown on the September 5, 2012 Issue Notification attached as Exhibit 1, however, a copy is not yet available. We will file a copy of the patent once it becomes available.

14. On information and belief, Butamax and DuPont had knowledge of the '322 Publication prior to the issuance of the '565 Patent.

15. The '565 Patent and the '322 Publication disclose and claim recombinant yeast microorganisms comprising a recombinantly overexpressed polynucleotide encoding a dihydroxy acid dehydratase (DHAD), wherein the microorganism is engineered to comprise at least one inactivated monothiol glutaredoxin selected from the group consisting of GRX3 and GRX4.

16. On information and belief, Butamax and/or DuPont produce isobutanol through the deletion, mutation, and/or substitution of either of the endogenous genes Grx3 and/or Grx4 in recombinant yeast strains, whereby increased Fe-S cluster biosynthesis results in increased specific activity of the dihydroxy-acid dehydratase polypeptide (DHAD) and increased output of associated biosynthetic pathways responsible for the production of branched chain amino acids, pantothenic acid, and isobutanol. Several examples of how this is done are described in U.S. Patent Publication No. 2012/0064561 A1, which, on information and belief, is assigned to Butamax and lists inventors who are affiliated with Butamax and/or DuPont.

### **COUNT I**

#### **Infringement of the '565 Patent Against Butamax and DuPont**

17. Gevo incorporates by reference the allegations set forth in paragraphs 1-16 of this Complaint.

18. On information and belief, Butamax is infringing and will infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, one or more claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16

without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery. On information and belief, Butamax's infringement pursuant to 35 U.S.C. § 271 will continue unless Butamax's conduct is enjoined.

19. On information and belief, DuPont is infringing or will infringe, directly and/or indirectly, either literally or under the doctrine of equivalents, one or more claims of the '565 Patent by performing and/or directing others to perform the methods described in paragraph 16 without Gevo's authorization. Gevo believes it will develop further evidence for this allegation after a reasonable opportunity for further investigation and discovery. On information and belief, DuPont's infringement pursuant to 35 U.S.C. § 271 will continue unless DuPont's conduct is enjoined.

20. On information and belief, Butamax and DuPont's activities have already occurred or are occurring and will continue unless enjoined by this Court. Butamax and DuPont's infringement of the '565 Patent causes harm to Gevo. Thus, a real and substantial controversy exists between Gevo, on one hand, and Butamax and DuPont on the other.

21. As a result of Butamax and/or DuPont's infringement of the '565 Patent, Gevo has suffered irreparable harm for which Gevo has no adequate remedy at law.

## **COUNT II**

### **Infringement of Gevo's Provisional Rights in the '565 Patent Against Butamax and DuPont**

22. Gevo incorporates by reference the allegations set forth in paragraphs 1-21 of this Complaint.

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