

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BUTAMAX™ ADVANCED BIOFUELS LLC  
Petitioner

v.

GEVO, INC.  
Patent Owner

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CASE IPR Unassigned  
Patent 8,273,565 B2

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**BUTAMAX™ ADVANCED BIOFUELS LLC'S MOTION FOR  
JOINER WITH RELATED INSTUTITED INTER PARTES  
REVIEW UNDER 37 C.F.R. §§ 42.22 AND 42.122(B)**

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Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

BUTAMAX'S MOTION FOR JOINDER WITH CASE IPR2013-00539  
Patent No. 8,273,565 B2

Petitioner ("Butamax") requests that the instant proceeding be joined with Case IPR2013-00539 for at least the following reasons: (1) joinder is appropriate under the governing law, rules, and precedent; (2) this Motion for Joinder is timely filed; (3) the two proceedings concern the same parties, same patent, and overlapping prior art; (4) Butamax relies on testimony from the same expert witness in both proceedings; (5) joinder would neither complicate the issues in nor unduly delay the existing schedule of Case IPR2013-00539; (6) briefing and discovery can be simplified to minimize schedule impact; (7) joinder will not prejudice patent owner, Gevo, Inc.; and (8) joinder will secure a just, speedy, and inexpensive resolution in both proceedings.

**RELIEF REQUESTED**

Butamax respectfully requests joinder under 35 U.S.C. § 315(c) of the instant *inter partes* review proceeding with related and instituted proceeding, Case IPR2013-00539.

**GOVERNING LAW, RULES, AND PRECEDENT**

Title 35 U.S.C. § 315(c) states:

If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the

BUTAMAX'S MOTION FOR JOINDER WITH CASE IPR2013-00539  
Patent No. 8,273,565 B2

Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

Title 37 C.F.R. § 42.122(b) states:

Joinder may be requested by a patent owner or petitioner. Any request for joinder must be filed, as a motion under §42.22, no later than one month after the institution date of any inter partes review for which joinder is requested. The time period set forth in §42.101(b) shall not apply when the petition is accompanied by a request for joinder.

In accordance with the governing law and rules, the Board has identified certain matters that must be addressed in motions for joinder of *inter partes* review proceedings. *Kyocera Corp. v. Softview, LLC*, Case IPR2013-00004, Paper 15 at 4 (April 24, 2013). Specifically, motions for joinder under 37 C.F.R. § 42.122(b) must (1) provide the reasons why joinder is appropriate; (2) identify any new grounds of unpatentability being raised in the subsequent petition; (3) explain what impact (if any) there will be on the trial schedule for the existing review; and (4) address how briefing and/or discovery may be simplified to minimize schedule impact. *Id.*; see also, *Samsung Elecs. Co. Ltd. v. Unifi Sci. Batteries, LLC*, Case IPR2013-00236, Paper 22 at 3 (Oct. 17, 2013).

The Board has allowed joinder of *inter partes* review proceedings when a

BUTAMAX'S MOTION FOR JOINDER WITH CASE IPR2013-00539  
Patent No. 8,273,565 B2

second petition concerned additional grounds of unpatentability raised by the same petitioner and against the same patent from the first proceeding. For example, in *Microsoft Corp. v. Proxyconn, Inc.*, Case IPR2013-00109, the Board granted the petitioner's motion for joinder on the bases that (i) the two proceedings involved the same patent and same parties; (ii) there was an overlap in the cited prior art; (iii) there was no discernable prejudice to either party; (iv) the petitioner had been diligent and timely in filing the motion for joinder; and (v) joinder would not unduly delay the schedule of the existing proceeding. Case IPR2013-00109, Paper 15 at 4-5 (Feb. 25, 2013). The Board in *Microsoft* found that permitting joinder would "help 'secure the just, speedy, and inexpensive resolution' of these proceedings." *Id.* at 3 (citing 37 C.F.R. § 42.1(b)); *see also, LaRose Indus., LLC v. Capriola Corp.*, Case IPR2013-00121, Paper 11 (June 28, 2013); *ABB, Inc. v. ROY-G-BIV Corp.*, Case IPR2013-00282, Paper 15 (Aug. 9, 2013) and Case IPR2013-00286, Paper 14 (Aug. 9, 2013); *Ariosa Diagnostics v. Isis Innovation, Ltd.*, Case IPR2013-00250, Paper 24 (Sept. 3, 2013); and *Cardiocom, LLC v. Robert Bosch Healthcare Sys., Inc.*, Case IPR2013-00469, Paper 21 (Jan. 28, 2014).

**STATEMENT OF MATERIAL FACTS**

1. On August 30, 2013, Butamax filed a Petition for *Inter Partes* Review of U.S. Patent No. 8,273,565 B2 ("the '565 patent"), seeking cancellation of claims 1-19. Case IPR2013-00539, Paper 4 (Aug. 30, 2013) ("First Petition").

2. Butamax's First Petition raised five Grounds for Unpatentability of claims 1-19 of the '565 patent. *Id.*

3. On March 4, 2014, the Board instituted trial on claims 1-9, and 10-19 of the '565 patent. *Id.*, Paper 9 at 29 (Mar. 4, 2014).

4. Butamax is filing a Second Petition for *Inter Partes* Review of claims 5 and 10 of the '565 patent concurrently with this Motion.

5. Butamax's Second Petition relies on prior art references already before the Board in Case IPR2013-00539, such as Flint, Intl. Appl. Publ. No. WO 2011/1033000 A2 and its U.S. Prov. Appl. No. 61/305,333 (Case IPR2013-00539, BMX1003 and BMX1004); Anthony, U.S. Pat. Appl. Publ. 2010/0081179 (Case IPR2013-00539, BMX1005); Puig, S., *et al.*, *Cell* 120:99-110 (2005) (Case IPR2013-539, BMX1006); and Ojeda, L., *et al.*, *Journal of Biological Chemistry* 281(26): 17661-17669 (2006) (Case IPR2013-00539, BMX1007).



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