

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUTAMAX™ ADVANCED BIOFUELS LLC

Petitioner

v.

GEVO, INC.

Patent Owner

CASE IPR: Unassigned

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO.
8,273,565 B2 UNDER 35 U.S.C. §§ 311-319 and 37 C.F.R. §§ 42.1-.80,
42.100-.123**

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1 **I. INTRODUCTION**

2 BUTAMAX™ ADVANCED BIOFUELS LLC'S ("**Petitioner**") Petition for *Inter*
3 *Partes* Review ("**Petition**") seeks cancellation of claims 5 and 10 of U.S. Patent
4 No. 8,273,565 ("**the '565 patent**") (BMX1001).

5 **II. OVERVIEW**

6 On March 4, 2014, the Patent Trial and Appeal Board ("**Board**") instituted
7 *inter partes* review ("**IPR**") of claims 1-9 and 11-19 of the '565 patent. In its
8 decision on institution, the Board found that the '565 patent claims are not
9 supported by the limited disclosure in the provisional applications to which the
10 '565 patent claims priority benefit. Case IPR2013-00539, Paper 9 at pp. 13-16
11 (Mar. 4, 2014). The Board also found that it is reasonably likely that claims 1-4, 6-
12 8, and 11-19 are anticipated (*id.* at pp. 16-18) and that claims 1-9 and 11-19 would
13 have been obvious over the prior art (*id.* at pp. 19-27).

14 In its decision on institution, the Board concluded that Petitioner "has not
15 demonstrated a reasonable likelihood it will prevail on the ground that claim 5 is
16 unpatentable as anticipated by Flint" because "Paragraph 0118 of the Flint '333
17 provisional, however, does not [incorporate by reference U.S. Patent Application
18 Publication No. 2010/0197519 ("**the '519 publication**")]." *Id.* at p. 18. But, as
19 explained in detail below, Paragraph 0118 of the Flint '333 provisional does
20 incorporate the '519 publication by reference, albeit by reference to its application

1 serial number. This evidence establishes a reasonable likelihood that Flint
2 anticipates claim 5.

3 The Board did not institute IPR for claim 10 because Petitioner allegedly (i)
4 "has not directed us to any disclosure of an inactivated GPD" and (ii) "has not
5 pointed to any disclosure in Overkamp or otherwise explained why one of
6 ordinary skill would have reasoned that deleting GPD would result in increased
7 levels of pyruvate available for use in isobutanol production." *Id.* at p. 28. But, as
8 explained in detail below and supported by the accompanying declaration of Dr.
9 Dennis J. Thiele, ("**Thiele Dec.**" BMX1002), the prior art described inactivating
10 GPD. And, in view of the prior art, a person of ordinary skill in the art ("**POSA**")
11 had a reason, and the know-how, to arrive at the recombinant yeast of claim 10
12 with a reasonable expectation of success. This is because the prior art presented
13 herein teaches inactivating GPD so as to increase production of products made
14 from pyruvate. Thus, motivating a POSA to inactivate GPD when expressing a
15 recombinant pathway for making isobutanol from pyruvate.

16 This Petition squarely addresses the alleged deficiencies identified by the
17 Board making it reasonably likely that Petitioner will prevail with respect to each
18 of claims 5 and 10 in view of the Grounds presented in this Petition.

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