

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GEVO, INC.,)
)
Plaintiff,)
)
v.)
) C.A. No. 2:12-cv-435
)
BUTAMAX(TM) ADVANCED BIOFUELS)
LLC, E.I. DUPONT DE NEMOURS AND) JURY TRIAL DEMANDED
CO., BP p.l.c. d/b/a BP CORPORATION)
NORTH AMERICA INC., and BP BIOFUELS)
NORTH AMERICA LLC,)
)
Defendants.

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

Plaintiff Gevo, Inc. (“Gevo”), by its attorneys, for its Complaint against Defendants Butamax (TM) Advanced Biofuels LLC’s (“Butamax”), E.I. DuPont de Nemours and Co. (“DuPont”), BP p.l.c. (“BP”), BP Corporation North America Inc. (“BP Corp North America”), and BP Biofuels North America LLC (“BP Biofuels North America”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for a declaratory judgment to find U.S. Patent No. 8,241,878 (the “’878 Patent”) invalid and not infringed.

THE PARTIES

2. Gevo is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Englewood, Colorado.

3. 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, an indirect subsidiary of BP.

4. DuPont is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business in Wilmington, Delaware.

5. On information and belief, DuPont has multiple facilities located in this district including facilities at 5470 North Twin City Highway, Nederland, TX 77627 and on Farm Road 1006, Orange, Texas 77630.

6. BP is a public limited corporation incorporated under the laws of England and Wales, and is doing business in the United States through various subsidiaries including BP Corp North America, an Indiana corporation.

7. On information and belief, BP maintains its North American headquarters at 501 Westlake Park Blvd., Houston, Texas 77079.

8. On information and belief, BP Corp North America has a principal place of business at 501 Westlake Park Blvd., Houston, Texas 77079.

9. On information and belief, BP or BP Corp North America, has a facility located at 2800 Stanolind St., Longview, Texas, 75604.

10. BP Biofuels North America is a limited liability corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 501 Westlake Park Blvd., Houston, Texas 77079.

11. On information and belief, BP Biofuels North America has a Biofuels facility in Jennings, Louisiana, which is in close proximity to this district.

12. On information and belief, BP's agents, BP Corp North America and BP Biofuels North America do business in Texas. On information and belief, BP Corp North America, and BP Biofuels North America are both wholly-owned subsidiaries of BP. BP controls both BP Corp North America and BP Biofuels North America, among other subsidiaries. On information

and belief, BP's Commercial and Financial Analysts and the NAGP arm of Integrated Supply and Trading are concentrated in Texas.

13. On information and belief, Butamax was formed in July 2009 for the purpose of commercializing technology that BP Biofuels North America and DuPont have been jointly developing since 2004.

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

15. On information and belief, individuals employed by BP Biofuels North America engage in research and development activities related to the subject matter of this action.

16. 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.

17. On information and belief, BP, through its subsidiaries BP Corp North America and BP Biofuels North America, 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.

18. On information and belief, BP Corp North America, through its subsidiary BP Biofuels North America, 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.

19. On information and belief, BP Biofuels North America 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.

20. On information and belief, DuPont and BP Biofuels North America are exclusive licensees of the '878 Patent. On information and belief, that license extends to BP Corp North America and BP as parents of BP Biofuels North America.

JURISDICTION AND VENUE

21. This action arises under the Declaratory Judgment Act and the patent laws of the United States, including Title 35, United States Code, and under the Declaratory Judgment Act, 28 U.S.C. § 2201. This court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

22. Gevo sued Butamax, DuPont, BP, BP Corp North America, and BP Biofuels North America for patent infringement of Gevo's 8,232,089 patent (the '089 Patent) in this district, docket number 2:12-cv-00417. Gevo's '089 Patent claims, among other things, a dihydroxy acid dehydratase ("DHAD") protein motif. Butamax's '878 Patent also claims DHAD motifs.

23. Butamax and DuPont have sued Gevo on Butamax and/or DuPont patents relating to processes for making isobutanol.

24. The '878 Patent relates to processes for making isobutanol.

25. On information and belief, Butamax, DuPont, BP, BP Corp North America, and/or BP Biofuels North America will seek to enforce the '878 Patent against Gevo.

26. By virtue of the foregoing, there is a continuing justiciable controversy between the parties as to Butamax's, DuPont's, BP's, BP Corp North America's, and BP Biofuels North America's right to a patent monopoly, and as to the validity, enforceability, and scope of the patent rights against Gevo.

27. On information and belief, this court has personal jurisdiction over DuPont

because DuPont has multiple facilities located in this district, and it has availed itself of the benefits and protections of this state. 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.

28. On information and belief, this Court also has personal jurisdiction over BP under agency and alter ego principles, and it has availed itself of the benefits and protections of this state. Through its subsidiaries, BP maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over BP would not offend traditional notions of fair play and substantial justice.

29. On information and belief, this court has personal jurisdiction over BP Corp North America because its headquarters are located in Houston, Texas, and it has availed itself of the benefits and protections of this state. BP Corp North America maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over BP would not offend traditional notions of fair play and substantial justice.

30. On information and belief, this court has personal jurisdiction over BP Biofuels North America because its principal place of business is located in Houston, Texas, and it has availed itself of the benefits and protections of this state. BP Biofuels North America maintains continuous and systematic contacts with the forum such that the exercise of jurisdiction over BP Biofuels North America would not offend traditional notions of fair play and substantial justice.

31. On information and belief, this court has personal jurisdiction over Butamax because Butamax is jointly owned by DuPont and BP Biofuels North America, a subsidiary of BP and/or BP Corp North America. Butamax, through its parent corporations, 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.

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

THE PATENT-IN-SUIT

33. On information and belief, on August 14, 2012, the '878 Patent entitled "Recombinant Yeast Host Cell With Fe-S Cluster Proteins and Methods of Using Thereof" issued to Larry C. Anthony, Dennis Flint, Wonchul Suh, Rick W Ye, Steven C. Rothman, and Jean-Francois Tomb.¹ The entire right, title, and interest to the '878 Patent has been assigned to Butamax. Butamax is the owner and possessor of all rights pertaining to the '878 Patent.

34. On information and belief, the '878 Patent discloses and claims, among other things, a method for converting 2,3-dihydroxyisovalerate to α -ketoisovalerate in recombinant yeast microorganisms expressing a heterologous dihydroxy acid dehydratase ("DHAD") protein, which catalyzes the conversion, said DHAD comprising at least 95% identity to the disclosed SEQ ID NO: 179 or SEQ ID NO: 187; and three conserved cysteine residues that correspond to positions 56, 129, and 201 of SEQ ID NO: 179. The patent also claims methods for the use of and producing the microorganism.

COUNT I

Declaration of Invalidity and/or Non-Infringement of the '878 Patent

35. Gevo incorporates by reference the allegations set forth in paragraphs 1-34 of this Complaint.

36. Butamax claims to be the owner of the '878 Patent.

37. Gevo is not infringing, has not infringed, and is not liable for any infringement of any valid claim of the '878 Patent, and Butamax, DuPont, BP, BP Corp North America, and BP

¹ The '878 Patent issued on August 14, 2012 at 12:00 a.m. EDT, as shown on the July 25, 2012 Issue Notification attached as Exhibit 1, however, a paper copy of the patent is not yet available. We will file a hard copy of the patent once it becomes available.

Biofuels North America are entitled to no relief.

38. Gevo seeks a declaration that it has not and does not infringe any valid claim of the '878 Patent and that it is not otherwise liable for infringement.

39. The '878 Patent is invalid for failure to meet one or more of the conditions or requirements for patentability specified in 35 U.S.C. §§ 101, 102, 103, and/or 112.

40. Gevo seeks a declaration that the claims of the '878 Patent are invalid for failure to satisfy one or more of the conditions or requirements for patentability specified in Title 35 U.S.C., or the rules, regulations, and law related thereto, including, without limitation, in 35 U.S.C. §§ 101, 102, 103, and/or 112.

41. On information and belief, absent a declaration of invalidity and/or non-infringement of the '878 Patent, Butamax, DuPont, BP, BP Corp North America, and/or BP Biofuels North America will assert the '878 Patent against Gevo and will in this way cause damage to Gevo.

PRAYER FOR RELIEF

WHEREFORE, Gevo respectfully requests for the following judgment:

- a) Declaring that Gevo does not infringe any valid claims of the '878 Patent and that Gevo is not liable for infringement;
- b) Declaring that the '878 Patent and each claim thereof is invalid;
- c) Temporarily, preliminarily, and permanently enjoining Butamax, DuPont, BP, BP Corp North America, and BP Biofuels North America from infringement litigation or threatening litigation related to the '878 Patent against Gevo or any of Gevo's customers or business relations;
- d) That this Court declare that this case is exceptional and award Gevo its expenses

including its attorneys' fees;

- e) That interests, costs, and expenses be awarded in favor of Gevo.
- f) That this Court order such other and further relief as the Court may deem just and

proper.

DEMAND FOR JURY TRIAL

Gevo respectfully requests a trial by jury on all issues triable thereby.

/s/ T. John Ward, Jr. _____
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