Judge maintains status quo in biofuels patent case(2)

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A federal judge in Delaware ordered Friday that previously imposed restrictions on Gevo Inc.'s entry into the automobile fuels market remain in place pending an appeal filed by Butamax Advanced Biofuels in a patent fight between the companies.

U.S. District Judge Sue Robinson in Wilmington said Gevo is prohibited from transferring isobutanol from its startup facility in Luverne, Minn., for any purpose related to the automotive fuel blending market until the appeal by Butamax is resolved.

She conditioned her ruling on Butamax seeking an expedited appeal and posting a bond, and ordered attorneys to submit arguments by July 20 on the appropriate bond amount.

Butamax, a joint venture between the DuPont Co. and BP, is appealing Robinson's denial last month of a preliminary injunction in a patent infringement lawsuit it filed against Colorado-based Gevo.

Pending the injunction ruling, Robinson had ordered that sales of isobutanol produced at Gevo's Luverne plant be limited to a subsidiary of South Africa-based energy and chemicals company Sasol for chemical applications, and to the U.S. Air Force for jet fuel testing applications.

After the injunction ruling, in which Robinson concluded that Butamax did not hold a valid patent, Gevo declared that it was free to sell its isobutanol to any customer in any market, including the fuels industry.

But Butamax, which is developing biobutanol for use as an additive in automobile fuel, argued that it would suffer irreparable harm if Gevo is allowed to enter the fuels market before a final court determination on whether it is infringing on Butamax patents.

"We are pleased with the reinstatement of the temporary restraining order while we pursue appeal of the June 20 preliminary injunction decision," Butamax CEO Paul Beckwith said in a prepared statement. "We are confident in the merits of our appeal."

Robinson noted in her ruling Friday that the sole target market for Butamax is the automobile fuel blending industry, while Gevo's business plan "is not so limited." If the appeals court finds that Butamax does indeed have a valid patent that Gevo infringed, Butamax would be irreparably harmed if Gevo were allowed to even

"seed" the automobile fuels market, she concluded.

At a hearing last week, Gevo argued that maintaining the restrictions on its entry into the fuels markets would cause it irreparable harm, despite having represented previously that 95 percent of its sales are for non-fuel purposes. Robinson noted that when faced with limitations on the remaining 5 percent of its activities, Gevo described them as "critical to developing relationships in the long term with refiners and with validating (defendant's) commercial plan."

"Despite defendant's excellent word-smithing, the court rejects the notion that defendant's activities in the fuel markets can be critical to defendant's business survival but not critical to plaintiff's future success," she wrote.

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