



BIOFUEL PROCESS PATENTS

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In the modern economy, the manufacturing of a product may occur in many countries. Financial, regulatory and geopolitical pressures may dictate that some products are produced in a given country principally or exclusively for export. As such, many different international endeavours and cooperation initiatives are developing in the biofuels industry as the global demand for renewable fuels continues to grow. International talks and collaborations regarding ethanol have been observed between organizations in Japan, Brazil and South America. The Mexican firm PetroSun reportedly has plans to erect algae-to-biodiesel systems and oil extraction plants in the United States, Mexico and Australia. Biodiesel plants are also being constructed and operated from Lima, Peru, to Hamilton, Canada, as well as from the soybean-belt of the United States to Novi Sad, Serbia.

While the basic compounds and compositions of biodiesel and ethanol biofuels are not new, one main thrust of biofuels research is geared to improving production processes to boost efficiency and drive down cost. Therefore, process inventions account for a significant slice of the patenting in this field. If the exclusive rights of a process patent are limited to the country in which it is granted, does the patent owner have any recourse if the process is used abroad?

The answer is twofold. On one hand, the patent owner cannot prevent its process from being exploited in any country where it does not hold a patent. On the other hand, the patent owner can stop importation into the country where it holds a process patent, if the product is produced by the patented process abroad.

For instance, if a process for producing ethanol from cellulose feedstocks is patented in the United States and the process is being utilized in South America, the ethanol produced by this process can be exported to any country except the United States. The patent potential of a new technology is thus evaluated on a country-by-country basis with a focus on the import-export possibilities of the consumable product.

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The specific application of infringement by importation may vary depending on jurisdiction. Its applicability also depends on the imported item and the end-product of the patented process. For instance, according to the Saccharin doctrine, which is in force in some countries such as Canada and the United Kingdom; when the imported product is not precisely the same as the one resulting from the patented process, however is an intermediate used in the production of the final product, the importation will nevertheless be an infringement if the patented process is important and not merely incidental to the imported product. For biofuels, this may be pertinent if the imported product is a pretreated or genetically modified feedstock.

In general, Canadian case law defines infringement as “any act that interferes with the full enjoyment of the monopoly granted to the patentee,” or any activity that deprives the inventor of full enjoyment of the monopoly conferred by law. Process patents should not be undervalued by research and development-driven entities, nor should they be underestimated by those involved in the manufacture or import-export of biofuels.

