



Cannabis Litigation Update: United Cannabis Corp v Pure Hemp Collective Inc.

May 2, 2019

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Last September, before the new world of legalized recreational cannabis had opened-up in Canada, we reported on the state of IP litigation in the cannabis industry. Notably at that time, proceedings commenced July 30, 2018 for infringement of a “cannabis patent” were underway in the US District Court for the District of Colorado in [United Cannabis Corp v Pure Hemp Collective Inc.](#) In the action, United Cannabis seeks to assert U.S. Patent No. 9,730,911, which relates to liquid formulations of highly enriched extracts of plant cannabinoids.

The District Court issued its first substantive decision in the proceedings on April 17, 2019, denying a motion for summary judgment brought by the defendant, Pure Hemp Collective. Pure Hemp moved to have the patent declared invalid under the two-step *Alice* patentability test, which protects against monopolizing laws of nature, natural phenomena (including products of nature) and abstract ideas. The Court decided the motion at the first step of the analysis where the issue is “whether the claims are directed to one of those patent ineligible concepts”.

The Court accepted United Cannabis’ argument that the primary claims in issue are for human-modified liquid formulations that require converting solid cannabinoids into a different state, *i.e.* for novel liquid formulations. It held that Pure Hemp had failed to establish “beyond genuine dispute” (the applicable standard on summary judgment) that a liquefied version of cannabinoids and related chemicals at the concentrations specified in the ’911 Patent is anything like a naturally occurring product of nature. It further held that Pure Hemp nowhere claimed that the precise concentrations covered by the patent, or anything close to them, occur in liquid form in nature.

It is not surprising that Pure Hemp failed to establish the ’911 Patent covered ineligible subject matter given the Court’s findings the claims cover liquid formulations that did not previously exist in nature. However, despite the dismissal of Pure Hemp’s motion, the Court did telegraph its views on the overall validity of the patent stating that it “sees reasons to question whether the ’911 patent claims are anything novel, useful, or nonobvious.” As the sole active cannabis patent infringement proceeding in the United States or Canada, it will be interesting to see how these issues develop and make their way through the District Court. We will continue to provide updates on future noteworthy developments.

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