

Cannabis Patent Survives Eligibility Challenge In Colo.

By **Matthew Bultman**

Law360 (April 18, 2019, 4:42 PM EDT) -- The first cannabis patent to be enforced in district court litigation survived an early test on Wednesday when a Colorado federal judge ruled that the patent is not directed to a naturally occurring phenomenon.

U.S. District Judge William Martinez denied a request for summary judgment from Pure Hemp Collective, which argued that United Cannabis' liquid cannabinoid formulations are not eligible for a patent under U.S. Supreme Court decisions that natural phenomena cannot be patented.

While he questioned the usefulness of the patented formulations, Judge Martinez said they are United Cannabis' own "handiwork." Nothing like the liquified version of cannabinoids at the concentrations specified in the patent occur in nature, he said.

"To be clear, the court sees reasons to question whether the [patent] claims anything novel, useful, or nonobvious," Judge Martinez wrote. "But as far as the Alice inquiry goes, the [patent] is not 'directed to' an unpatentable law of nature, a natural phenomenon, or an abstract idea."

The Alice inquiry is a reference to the two-part test the Supreme Court outlined in a landmark 2014 ruling to help courts determine whether a patent covers material that is ineligible for patenting, such as a natural phenomenon or an abstract idea.

The Colorado lawsuit is the first cannabis-related patent infringement case to be filed in a federal court. It is being closely watched as an important test case for patent enforcement in the burgeoning cannabis industry.

"A decision like this is only going to spur further interest in this technology area," said Pauline Pelletier, an attorney at Sterne Kessler Goldstein & Fox PLLC who has been tracking the case.

United Cannabis' patent covers various liquid cannabinoid formulations. This includes formulations that require at least 95% of the total cannabinoids be CBD, a nonintoxicating component of marijuana that is purported to help treat chronic pain and other ailments.

United Cannabis, a medical cannabis company that goes by UCANN, sued Pure Hemp in July 2018 and accused its in-state rival of selling products that have the same liquid formulations covered by its patent.

Pure Hemp, which has labeled itself the “first victim” in UCANN’s attempt to use patent litigation to monopolize the market for liquid CBD products, argued that the patent is invalid because it is directed to chemicals found naturally in cannabis plants.

“There is no difference between the CBD that can be found naturally within the cannabis plant, and the CBD that is the subject [of claims in the patent],” it wrote in a November court filing.

UCANN responded that the liquidized version doesn’t occur naturally and requires human modification. Siding with the company, Judge Martinez said even if it were “theoretically possible” that cannabinoids appear in nature in a liquid form, the patent specifies threshold concentrations of those cannabinoids.

“Pure Hemp nowhere claims that these precise concentrations, or anything close to them, occur in liquid form in nature,” he wrote, concluding that the patent is “‘directed to’ a non-naturally occurring delivery method of naturally occurring chemicals in non-naturally occurring proportions and concentrations.”

An attorney for Pure Hemp declined to comment on the ruling. Counsel for UCANN could not immediately be reached for comment.

The patent at issue is U.S. Patent No. 9,730,911.

United Cannabis is represented by Orion Armon and Mark Zambarda of Cooley LLP.

Pure Hemp is represented by James Robert Gourley of Carstens & Cahoon LLP and Donald Emmi of Hunsaker Emmi PC.

The case is United Cannabis Corp. v. Pure Hemp Collective Inc., case number 18-cv-01922, in the U.S. District Court for the District of Colorado.

--Editing by Haylee Pearl.