

Aug 24, 2018

First Cannabis-Related Patent Infringement Case Filed in the United States

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Question: Can a patent representing a federally-mandated exclusionary right be enforced against infringers participating in illicit activity?

Answer: The first cannabis-related patent infringement case is on the books in the United States which will address this very issue. On July 30, 2018, United Cannabis, a biotechnology company specializing in medicinal cannabis, filed a complaint for infringement of U.S. Patent No. 9,730,911 in the U.S. District Court for the District of Colorado against Pure Hemp, a wellness company that makes, markets and sells a variety of cannabis products. The patent, entitled “Cannabis extracts and methods of preparing and using same,” has claims directed to liquid cannabinoid formulations comprising tetrahydrocannabinol (THC), cannabidiol (CBD) and various terpenes.

Given that the legalization of cannabis varies from state to state, but it remains illegal under U.S. federal law, an interesting conundrum is before the U.S. courts with respect to enforcing cannabis-related patent rights. Despite this, there is still value in protecting cannabis-related technology, not only because the laws in this area are constantly evolving, but with the legalization of cannabis in Canada, Canadian courts will not have their hands tied with respect to this issue. In fact, patent filings are increasing in this area, and, no doubt in this lucrative market, litigation will follow suit.

With the implementation of the *Cannabis Act* set to come into force in Canada on October 17, 2018, there is increased “buzz” around the business of legalized cannabis. On July 11, 2018, the regulations supporting the implementation of the Act were published adding 218 pages of detail to the basic cannabis legalization framework established by the Act. On August 13, 2018, the Ontario provincial government confirmed that the province would reverse the previous government’s plan allowing private retailers to sell cannabis in retail locations. That being said, with the Canadian recreational marijuana market estimated to generate \$5 billion in annual revenue, there is a huge incentive for innovators in cannabis-related areas to not only continue to innovate, but to carve out their share of the monopoly through patent protection. Of note, United Cannabis has a corresponding pending Canadian Patent Application No. 2965493, which, when granted, would allow for enforcement proceedings to find its way to Canada.

We will continue to follow this case to see how cannabis-related patent enforcement evolves in North American courts.

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