

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GoFire, Inc.,
Petitioner

v.

Canopy Growth Corporation,
Patent Owner

Case: PGR2020-00044

U.S. Patent No. 10,327,479 B2

PETITION FOR POST-GRANT REVIEW

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Submitted electronically via the Patent Trial and Appeal Board End to End System

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Mandatory Notices (37 C.F.R. § 42.8)	3
A. Real Parties-In-Interest.....	3
B. Related Matters.....	3
C. Notice of Lead and Backup Counsel; Service Information.....	3
III. Grounds for Standing (37 C.F.R. § 42.204(a)).....	4
IV. Payment of Fees (37 C.F.R. § 42.203)	5
V. Identification of Challenged Claims and Specific Statutory Grounds (37 C.F.R. § 42.204(b)(1)-(2))	5
VI. Effective Filing Date of the Challenged Claims and Eligibility for Post-Grant Review	8
VII. Background and Summary of the ‘479 Patent.....	8
A. Summary of the ‘479 Patent’s Specification	9
B. Summary of Prosecution History	13
VIII. Claim Construction and Level of Skill in the Art.....	26
A. Proposed Claim Constructions	27
B. Level of Skill in the Art.....	28
IX. Grounds of Unpatentability Regarding 35 U.S.C. § 102.....	29
A. Ground 1: Claims 1-6 are invalid under 35 U.S.C. § 102 as being unpatentable over <i>Woodbine</i>	29
B. Ground 2: Claims 7-9, 13, 14, 17, 18, 19, 20, and 21 are invalid under 35 U.S.C. § 102 as being unpatentable over <i>Woodbine</i>	43
X. Grounds of Unpatentability Regarding 35 U.S.C. § 103.....	57
A. Ground 3: Claims 1-6 and 7-9, 13, 14, 17, and 19-21 are invalid under 35 U.S.C. § 103 as being unpatentable over <i>Woodbine</i> in view of <i>Hawes</i>	58
B. Ground 4: Claims 1-6 and 7-9, 13, 14, 17, and 19-21 are invalid under 35 U.S.C. § 103 as being unpatentable over <i>Woodbine</i> in view of <i>Frija</i>	63

C. Ground 5: Claims 1-6 and 7-9, 13, 14, 17, and 19-21 are invalid under 35 U.S.C. § 103 as being unpatentable over *Woodbine* in view of *Conley*. 67

D. Ground 6: Claims 1-6 and 7-21 are invalid under 35 U.S.C. § 103 as being unpatentable over *Woodbine* in view of *Bowen*. 69

E. Ground 7: Claims 8, 10, 11, 12, 13, 15, and 16 are invalid under 35 U.S.C. § 103 as being unpatentable over *Woodbine* in the same combinations with *LaMothe*, *Duncan*, *Bleloch*, *Kimmel*, and *Frija* as noted by the Examiner in the Final Office Action of September 4, 2018. 74

XI. Conclusion 77

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>Hewlett-Packard Co. v. MPHJ Tech. Invs., LLC</i> , 2013 WL 8563946 (P.T.A.B. Nov. 21, 2013)	38
<i>Medline Indus., Inc. v. Paul Hartmann AG</i> , 2013 WL 8595518 (P.T.A.B. Jun. 20, 2013)	38
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	27, 38, 39, 40
<i>SuperGuide Corp. v. DirecTV Enters., Inc.</i> , 358 F.3d 870 (Fed. Cir. 2004).....	38
<i>Zynga, Inc. v. Personalized Media Commc'ns, LLC</i> , 2013 WL 8595512 (P.T.A.B. Jul. 25, 2013)	38
Statutes	
35 U.S.C. § 102.....	passim
35 U.S.C. § 103.....	passim
35 U.S.C. § 282(b).....	27
35 U.S.C. § 321.....	1, 4
37 C.F.R. § 42.200.....	1, 4, 26
37 C.F.R. § 42.203.....	4
37 C.F.R. § 42.6	5
C.F.R. § 42.15.....	4
Other Authorities	
AIA § 3(n)(1).....	7
AIA § 6(f)(2)(A).....	7

EXHIBIT LIST

Ex. 1001	U.S. Patent No. 10,327,479 (“the ‘479 Patent”)
Ex. 1002	Prosecution History of the ‘479 Patent
Ex. 1003	U.S. Patent Pub. 2018/0177231 (“ <i>Woodbine</i> ”)
Ex. 1004	U.S. Patent Pub. 2018/0177231 (“ <i>Hawes</i> ”)
Ex. 1005	U.S. Patent Pub. 2015/0122252 (“ <i>Frija</i> ”)
Ex. 1006	U.S. Patent Pub. 2013/0220315 (“ <i>Conley</i> ”)
Ex. 1007	U.S. Patent Pub. 2018/0043114 (“ <i>Bowen</i> ”)
Ex. 1008	U.S. Patent Pub. 2015/0320116 (“ <i>Bleloch</i> ”)
Ex. 1009	U.S. Patent Pub. 2014/0096782 (“ <i>Ampolini</i> ”)
Ex. 1010	U.S. Patent Pub. 2014/0107815 (“ <i>LaMothe</i> ”)
Ex. 1011	U.S. Patent Pub. 2016/0114407 (“ <i>Duncan</i> ”)
Ex. 1012	U.S. Patent Pub. 2016/0106936 (“ <i>Kimmel</i> ”)
Ex. 1013	Claim Chart for Invalidity of the ‘479 Patent
Ex. 1014	Declaration of Joe Keenan
Ex. 1015	Declaration of Dr. Vladislav Babinsky
Ex. 1016	Declaration of James G. Sawtelle Regarding Motion for Admission to Practice <i>Pro Hac Vice</i>

I. Introduction

Pursuant to 35 U.S.C. § 321, § 18 of the Leahy-Smith America Invents Act (“AIA”),” and 37 C.F.R. § 42.200, Petitioner GoFire, Inc. (“GoFire”), submits this petition (“Petition”) for post-grant review of claims 1-21 (the “Challenged Claims”) of U.S. Patent 10,327,479 B2 (“the ‘479 Patent”) (Ex. 1001). The ‘479 Patent is entitled, “System and Method for an Improved Personal Vapourization Device” and is owned by Respondent Canopy Growth Corporation (“Canopy” or “Respondent”).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.