

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CB DISTRIBUTORS, INC. and  
DR DISTRIBUTORS, LLC  
Petitioner

v.

RUYAN INVESTMENT (HOLDINGS) LIMITED  
Patent Owner

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Case IPR2013-00387  
Patent 8,156,944 B2

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Before JACQUELINE WRIGHT BONILLA, BRIAN J. McNAMARA, and  
TRENTON A. WARD, *Administrative Patent Judges*.

BONILLA, *Administrative Patent Judge*.

DECISION  
Institution of *Inter Partes* Review  
37 C.F.R. § 42.108

## I. INTRODUCTION

CB Distributors, Inc. and DR Distributors, LLC (collectively “CB Distributors”) filed a petition (Paper 1, “Pet.”) to institute an *inter partes* review of claims 1-12, 15-26, and 33-41 of U.S. Patent No. 8,156,944 B2 (Ex. 1001) (“the ’944 patent”) pursuant to 35 U.S.C. § 311 *et seq.* Ruyan Investment (Holdings) Limited (“Ruyan”) did not file a preliminary response. We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides:

**THRESHOLD**—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

For the reasons set forth below, we conclude that CB Distributors has established a reasonable likelihood that it will prevail in showing the unpatentability of at least one challenged claim. Pursuant to 35 U.S.C. § 314, we institute an *inter partes* review of claims 1-12, 15-26, and 33-38, but not claims 39-41, of the ’944 patent.

### A. Related Matters

CB Distributors indicates that a third party, Fin Branding Group, LLC (“Fin”), requested *inter partes* reexamination of the ’944 patent, i.e., reexamination proceeding 95/002,235. Pet. 1. In an Order entered July 24, 2013, the Board stayed that reexamination in view of this *inter partes* review. Paper 6.

CB Distributors also indicates that Ruyan filed lawsuits asserting infringement of the ’944 patent against nine different defendants in U.S. District

Court for the Central District of California, including *Ruyan Investment (Holdings) Limited v. CB Distributors, Inc. and DR Distributors, LLC*, No. CV12-5456, and *Ruyan Investment (Holdings) Limited v. Fin Branding Group, LLC*, No. CV12-5468. Pet. 1-2. The district court consolidated all nine cases for pre-trial purposes as *Ruyan Investment (Holdings) Limited v. Sottera, Inc.*, No. CV12-5454. *Id.* at 2. On February 25, 2013, the district court stayed all proceedings in light of the *inter partes* reexamination requested by Fin. *Id.*

### B. The '944 Patent (Ex. 1001)

The '944 patent relates generally to an aerosol electronic cigarette that contains nicotine, but not tar, and “substitutes for cigarettes and helps the smokers to quit smoking.” Ex. 1001, 1: 5-7, 57-60. Figure 1 of the '944 patent, as reproduced in better quality in the petition, is reproduced below.

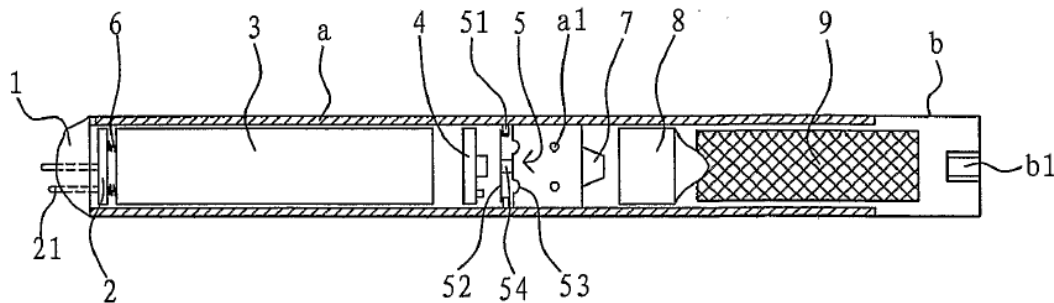


图1

Pet. 4; Ex. 1001, Fig. 1. Figure 1 depicts a side section view of an aerosol electronic cigarette comprising a battery assembly, an atomizer assembly, a cigarette bottle assembly, and shell a. *Id.* at 5:38-42; 1:62-65. The battery assembly includes battery 3, operating indicator 1, electronic circuit board 4, and airflow sensor 5. The atomizer assembly is atomizer 8. *Id.* at 6:13-15. The cigarette bottle assembly includes a perforated component for liquid storage 9 inside hollow cigarette holder shell b. *Id.* at 6:56-58.

Figures 5-8 of the '944 patent, as reproduced in better quality in the petition, are reproduced below.

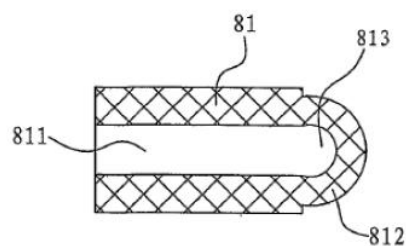


图5

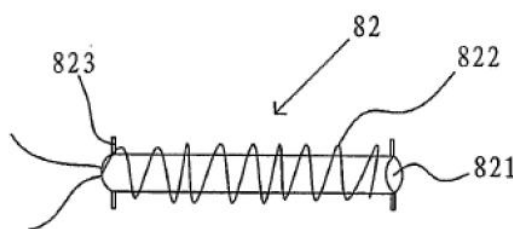


图6

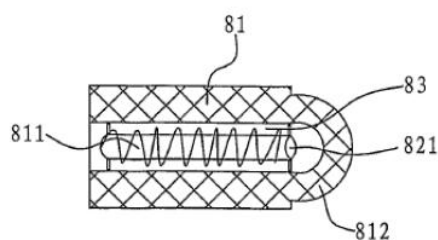


图7

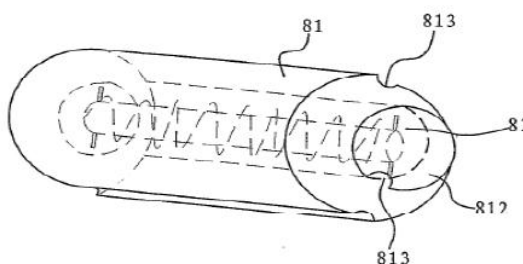


图8

Pet. 5; Ex. 1001, Figs. 5-8. Figure 5 depicts a side section view of porous component 81 and run-through atomizing chamber 811 of atomizer 8 (shown in Figure 1). Figure 6 depicts electric heating rod 82 of atomizer 8. Figure 7 depicts a side section of atomizer 8, including porous component 81, electric heating rod 82 (shown in Figure 6), and negative pressure cavity 83. Figure 8 depicts a cubic structure of atomizer 8. Ex. 1001, 4:44-55; 6:13-42.

### C. Illustrative Claims

Claims 1, 10, 39, and 41 are independent. Claims 2-9 depend, directly or indirectly, on claim 1, which is reproduced below:

1. An aerosol electronic cigarette, comprising:
  - a battery assembly, an atomizer assembly, a cigarette-solution storage area, and a hollow shell having a mouthpiece;

the battery assembly connects with the atomizer assembly, and both are located in the shell;

the *cigarette solution storage area* is located in one end of the shell adjacent to the mouthpiece, and *fits with at least a portion of the said atomizer assembly inside it*;

the shell has through-air-inlets;

*the atomizer assembly includes an atomizer comprising an electric heating rod and a run-through atomizing chamber*;

the electric heating rod comprises a cylinder and a heating element provided at the wall of the cylinder,

the electric heating rod is in the said atomizing chamber *and there is a negative pressure cavity in the atomizing chamber*.

*Id.* at 9:2-16 (emphasis and indentation added).

Claims 11, 12, 15-26, and 33-38 depend, directly or indirectly, on claim 10, which is reproduced below:

10. An aerosol electronic cigarette, comprising:

a battery assembly, an atomizer assembly, a cigarette solution storage area, and a shell that is hollow and comprises a mouthpiece;

the said battery assembly connects with the said atomizer assembly, and both are located in the said shell;

the said *cigarette solution storage area* is located in one end of the shell proximal to the mouthpiece, and *fits with at least a portion of the said atomizer assembly inside it*;

the said shell has through-air-inlets;

*the atomizer assembly is an atomizer, which includes a porous component and an electric heating rod*;

wherein the electric heating rod comprises a cylinder and a heating element provided at the wall of the cylinder, *the said porous component has a run-through atomizing chamber*;

the electric heating rod is in the said atomizing chamber *and there is a negative pressure cavity in the atomizing chamber*.

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