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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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11 FONTEM VENTURES B.V., a
12 Netherlands company; and FONTEM
13 HOLDINGS 1, B.V., a Netherlands
14 company,

Plaintiffs,

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v.

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17 NJOY, INC., a Delaware corporation;
18 and DOES 1-5, Inclusive,

Defendants.

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AND RELATED COUNTERCLAIMS

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Consolidated Case No.
CV 14-01645 GW (MRW)
and Related Consolidated Cases:

CV-14-01649, CV-14-01650,
CV-14-01651, CV-14-01652,
CV-14-01653, CV-14-01654,
CV-14-01655, CV 14-08144,
CV 14-08154, CV 14-08155,
CV 14-08156, CV 14-08157,
CV 14-08158, CV 14-08160,
CV 14-08161, CV 14-09263,
CV 14-09266, CV 14-09267,
CV 14-09268, CV 14-09269,
CV 14-09270, CV 14-09271,
CV 14-09273

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT OF
INVALIDITY OF U.S. PATENT
NOS. 8,899,239; 8,910,641; AND
8,689,805**

Date: October 22, 2015
Time: 8:30 a.m.
Judge Hon. George H. Wu
Courtroom: 10

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, at the time and place stated above, or as soon
3 thereafter as the matter may be heard in the courtroom of the Honorable George H.
4 Wu, United States District Judge, Central District of California, located at
5 312 North Spring Street, Los Angeles, CA 90012-4701, Defendants NJOY, Inc.
6 (“NJOY”), CB Distributors, Inc. and DR Distributors, LLC (together, “CB/DR”), ,
7 FIN Branding Group, LLC and Electronic Cigarettes International Group, Ltd.
8 (f/k/aVictory Electronic Cigarettes Corporation) (together, “FIN/Victory”),
9 Ballantyne Brands, LLC (“Ballantyne”), Spark Industries, LLC (“Spark”), Logic
10 Technology Development LLC (“Logic”), and VMR Products, LLC (“VMR”)
11 (collectively, “Defendants”) will and hereby do move this Court for an order of
12 summary judgment of invalidity of U.S. Patent Nos. 8,899,239; 8,910,641; and
13 8,689,805.

14 This Motion is based on the following grounds:

15 (a) U.S. Patent No. 8,910,641 is invalid under 35 U.S.C. § 112 for lack of
16 written description support regarding the “liquid source” and “solution storage”
17 limitations. In addition, if the “liquid storage container” term of U.S. Patent
18 No. 8,899,239 is construed to have the same scope as the “liquid source” and
19 “solution storage” terms of U.S. Patent No. 8,910,641, U.S. Patent No. 8,899,239 is
20 also invalid under 35 U.S.C. § 112.

21 (b) U.S. Patent Nos. 8,910,641 and 8,899,239 are invalid on separate and
22 independent grounds for anticipation under 35 U.S.C. § 112 in light of the proper
23 priority date.

24 (c) U.S. Patent No. 8,689,805 is invalid for obviousness under 35 U.S.C.
25 § 103 based on Wang in view of Liu.

26 This Motion is made following the conference of counsel pursuant to Local
27 Rule 7-3, which took place on September 8, 2015. Fontem stated that it would
28 oppose this Motion.



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The present Motion is based upon this Notice of Motion and Motion, the concurrently filed Memorandum of Points and Authorities in support thereof, the [Proposed] Order, and all other evidence that may be presented at any hearing on this matter.

1 Dated: September 17, 2015

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