

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

R.J. REYNOLDS VAPOR COMPANY,

PETITIONER

v.

FONTEM HOLDINGS 1 B.V.,

PATENT OWNER

---

Case IPR2016-01268

Patent 8,365,742

---

**PETITIONER R.J. REYNOLDS VAPOR COMPANY'S NOTICE OF  
APPEAL**

Office of the General Counsel  
Patent and Trademark Office  
Madison East  
10B20 600 Dulany Street  
Alexandria, VA 22314

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Petitioner R.J. Reynolds Vapor Company (“Reynolds”) hereby appeals under 35 U.S.C. §§ 141 and 142 to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on December 19, 2017 (Paper No. 63) (the “Final Written Decision”), and all underlying orders, decisions, rulings, and opinions. A copy of the Final Written Decision is attached.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Petitioner anticipates that the issues on appeal may include the following as well as any underlying findings, determinations, rulings, decisions, opinions, or other related issues:

- Whether the Board erred in finding that Reynolds failed to show by a preponderance of the evidence that claims 2-3 of U.S. Patent 8,365,742 (“’742 patent”) are unpatentable as obvious under 35 U.S.C. § 103, and any findings or determinations supporting or related to that issue, as well as all other issues decided adversely to Reynolds in any orders, decisions, rulings, and opinions;

- Whether the Board erred in finding that a person having ordinary skill in the art (“POSA”) would not have combined the teachings of the prior art to the ’742 patent, and any findings or determinations supporting or related to that issue; and
- Whether the Board erred in making findings about whether the subject matter of claims 2-3 of the ’742 patent was obvious to a POSA without making findings about level of skill in the art.

Copies of this Notice of Appeal are being filed simultaneously with the Director, the Patent Trial and Appeal Board, and the Clerk of the United States Court of Appeals for the Federal Circuit, along with the filing fee to the Federal Circuit.

Dated: February 19, 2018

Respectfully Submitted,

/Ralph J. Gabric/

Ralph J. Gabric, Reg. No. 34,167  
Lead Counsel for Petitioner  
BRINKS GILSON & LIONE  
455 N. Cityfront Plaza Drive Ste 3600  
Chicago, IL 60611-5599  
T: 312-321-4200  
F: 312-321-4299

### **CERTIFICATE OF FILING**

I hereby certify that a true and correct copy of the foregoing “Petitioner R.J. Reynolds Vapor Company’s Notice Of Appeal,” was filed electronically through the Patent Trial and Appeal Board’s E2E on this 19th day of February, 2018.

### **CERTIFICATE OF FILING**

I hereby certify that a true and correct copy of the foregoing “Petitioner R.J. Reynolds Vapor Company’s Notice Of Appeal,” along with the required \$500 filing fee, was filed electronically by CM/ECF on this 19th day of February, 2018, with the United States Court of Appeals for the Federal Circuit.

## **CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Patent Owner a true and correct copy of the foregoing “Petitioner R.J. Reynolds Vapor Company’s Notice Of Appeal,” by electronic means on February 19, 2018 at the following addresses of record:

Michael J. Wise, Lead Counsel (MWise@perkinscoie.com)  
Joseph P. Hamilton, Back-up Counsel  
(JHamilton@perkinscoie.com)  
Jenna M. DeRosier (JDeRosier@perkinscoie.com)  
Tyler R. Bowen, Back-up Counsel  
(TBowen@perkinscoie.com)  
Nathan R. Kassebaum (NKassebaum@perkinscoie.com)  
Amy Candeloro (ACandeloro@perkinscoie.com)  
patentprocurement@perkinscoie.com

Dated: February 19, 2018

Respectfully Submitted,

/James Donnelly/

James Donnelly  
Brinks Gilson & Lione  
NBC Tower – Suite 3600  
455 N. Cityfront Plaza Dr.  
Chicago, Illinois 60611