

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 No. IPR2016-01268

Patent No. 8,365,742

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE
UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), R.J. Reynolds Vapor Company (“Reynolds” or “Petitioner”) objects to the evidence submitted by Patent Owner Fontem Holdings 1 B.V. with the Patent Owner Opposition To Petition For *Inter Partes* Review (Paper 24) filed on April 4, 2017.

Petitioner objects to Exhibit 2015 (Declaration of Richard Meyst) as lacking sound evidentiary basis, biased, vague, misleading, confusing the issues, and more prejudicial than probative under FRE 403. For example, paragraphs 25-30, 37-88, and 98-105 offer opinions regarding construction of the term “supported by” and regarding “atomize,” “friction fit,” “bonding material,” “airflow,” “frame,” “support,” “axial displacement,” “shear forces,” “deformation,” “radial support,” and “improvement in overall thermal efficiency” that are not based on sufficient facts or data and are not the product of reliable principles and methods. If Meyst is presented as a lay witness, Petitioner objects under FRE 701 that the testimony is based on alleged scientific and/or technical knowledge. If Meyst is presented as an expert witness, Petitioner objects under FRE 702 that the testimony is not based upon sufficient facts or data and is not the result of application of reliable principles and methods. Petitioner further objects under FRE 703 that the facts or data are not of a type reasonably relied upon by experts. Petitioner further objects to the Meyst Declaration to the extent that any paragraph relies upon an exhibit that is objected to herein for the reasons set forth in those objections. Any

paragraph in the Meyst Declaration that relies upon any exhibit not relied upon by the PTAB in this proceeding is further objected to as not being relevant and therefore being inadmissible under FRE 401 and 402.

Petitioner objects to Ex. 2018 as hearsay under FRE 801 and 802. Petitioner objects to Ex. 2018 under FRE 401, 402 or 403 as irrelevant, confusing or a waste of time to any issue at trial.

Petitioner objects to Ex. 2019 because it is not authenticated under FRE 901, 902, or 903. Petitioner objects to Ex. 2019 as hearsay under FRE 801 and 802. Petitioner also objects to Ex. 2019 under FRE 401, 402 or 403 as irrelevant, confusing or a waste of time to any issue at trial.

Petitioner objects to Ex. 2024 because it is not authenticated under FRE 901, 902, or 903. Petitioner objects to Ex. 2024 as hearsay under FRE 801 and 802. Petitioner also objects to Ex. 2024 under FRE 401, 402 or 403 as irrelevant, confusing or a waste of time to any issue at trial. Petitioner objects to Ex. 2024 under FRE 106 as being part of a writing, not including any other part that in fairness ought to be considered at the same time.

Petitioner objects to Ex. 2025 as hearsay under FRE 801 and 802. Petitioner objects to Ex. 2025 under FRE 401, 402 or 403 as irrelevant, confusing or a waste of time to any issue at trial. Petitioner objects to Ex. 2025 under FRE 106 as being

part of a writing, not including any other part that in fairness ought to be considered at the same time.

Dated: April 11, 2017

Respectfully submitted,

/s/ Robert Mallin

Ralph J. Gabric (Reg. No. 34,167)

Robert Mallin (Reg. No. 35,596)

Yuezhong Feng (Reg. No. 58,657)

Brinks Gilson & Lione

NBC Tower – Suite 3600

455 N. Cityfront Plaza Dr.

Chicago, Illinois 60611

Attorneys for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 CFR §§ 42.6(e)(4)(i) *et seq.* and 42.105(b), the undersigned certifies that on April 11, 2017, a complete and entire copy of this Petitioner's Objections To Patent Owner's Evidence Under 37 C.F.R. § 42.64(b)(1) was served by Electronic submission through the USPTO Patent Trial and Appeal Board End-to-End System and by e-mail to

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)
Amy Candeloro (ACandeloro@perkinscoie.com)
patentprocurement@perkinscoie.com

Dated: April 11, 2017

/s/ Robert Mallin
Robert Mallin (Reg. No. 35,596)
Brinks Gilson & Lione
NBC Tower – Suite 3600
455 N. Cityfront Plaza Dr.
Chicago, Illinois 60611
Attorney for Petitioner