

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

REPLY DECLARATION OF DR. ROBERT H. STURGES

R.J. Reynolds Vapor

I. INTRODUCTION

1. I have been retained by the law firm of Brinks Gilson & Lione on behalf of R.J. Reynolds Vapor Company (“Petitioner”) in connection with IPR2016-01268. I previously provided two declarations (“Petition Declaration,” Ex. 1015; “Supplemental Declaration,” Ex. 1020) concerning the technical subject matter relevant to the petition in IPR2016-01268.

2. My background and qualification are contained in my Petition Declaration.

3. Attached as Ex. A is an updated list of my prior testimony.

4. Besides the information listed in ¶ 8 of my Petition Declaration, I have also considered the record of IPR2016-01268.

II. CLAIM CONSTRUCTION

5. My understanding of the legal standards for claim construction is contained in my Petition Declaration.

6. In claim 2, the term “supported by” is used. As Mr. Richard Meyst, Patent Owner’s expert, has acknowledged that the term “supported by” is not used or defined in the 742 patent specification. Ex. 2015 (Declaration of Richard Meyst In Support Of Patent Owner’s Opposition To Petition For *Inter Partes* Review) at ¶ 28; Paper 24 (Patent Owner Opposition To Petition For *Inter Partes* Review) at p. 9.

7. In my opinion, the broadest reasonable interpretation of the term “supported by” is “to hold up, serve as a foundation or prop for, carry all or part of the weight of, or give strength to.” This interpretation is consistent with the plain and ordinary meaning of the term. *See* Ex. 1025 (Oxford Modern English 1996, defining “support” as “keep from falling or sinking or failing,” “give strength to”); Ex. 1024 (Merriam-Webster's Collegiate Dictionary (11th ed. 2003), defining “support” as “to hold up or serve as a foundation or prop for”); Ex. 1026 (Concise Oxford American Dictionary, defining “support” as “bear all or part of the weight of; hold up”). This interpretation is also consistent with how the term is used in claim 2 (“supported by a frame”). The support that a frame provides is commonly understood to mean “gives shape or strength.” Ex. 1024 (defining “frame” as “the underlying constructional system or structure that gives shape or strength (as to a building)”); Ex. 2016 (Sturges Dep. Tr.) at 37:11-38:25 (“supported by” means “bear all or part of the weight of” as the more limited case but also means “to provide form or shape,” and “to maintain or define the shape of the porous component with respect to applied forces.”).

8. My interpretation of the term “supported by” to include both weight-bearing support and other types of support is consistent with the 742 specification. Meyst confirmed that claims 2 and 3 relate to the embodiment disclosed in Figs. 17-18. Ex. 1023 (Meyst Dep. Tr.) at 10:7-12. As Meyst explained, the frame 82

provides weight-bearing support to the porous component 81 in that the frame holds up the mass of the top part of the porous component against gravitational force. Ex. 1023 (Meyst Dep. Tr.) at 48:21-49:14. I agree with Mr. Meyst.

9. The 742 patent specification also discloses that the frame “gives strength to” the porous component, by providing axial support to the porous component. As illustrated in annotated Fig. 19 below, one end of the porous component (the protuberance/bulge 812) is inserted into and “fits with the cigarette assembly bottle.” Ex. 1001 at 3:63-66, 5:49-50, Figs. 1, 2, 19. The insertion of the protuberance is forcible as revealed by the indentation of the perforated component for liquid storage 9 within the cigarette bottle assembly for liquid storage 9 within the cigarette bottle assembly.

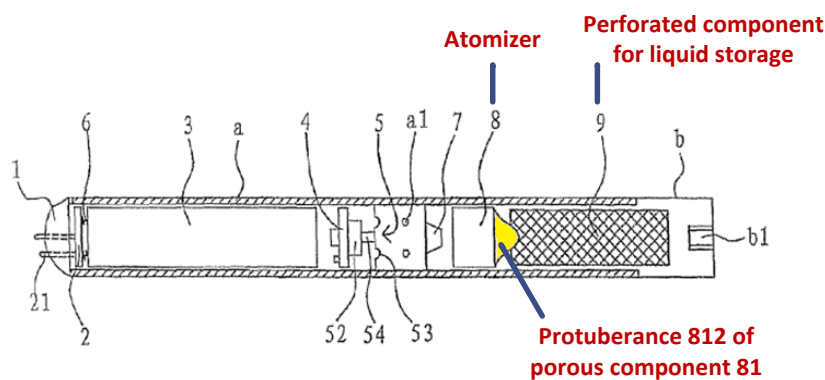
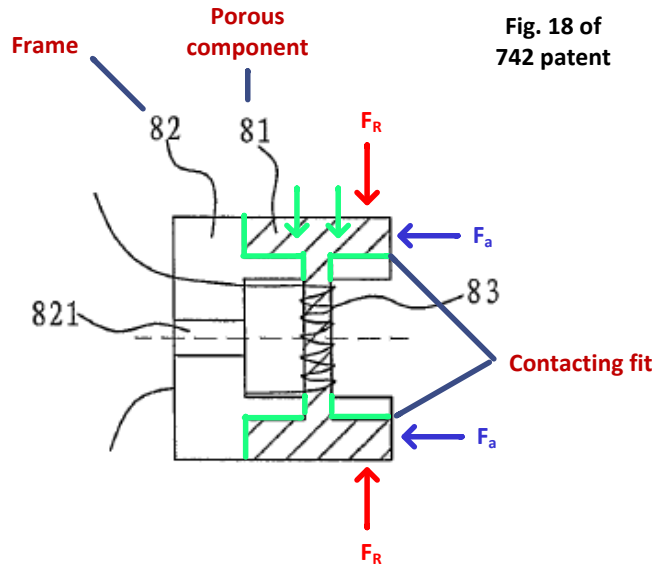


Figure 19

The forcible insertion of the porous component (protuberance) into the cigarette bottle assembly creates a compressive force on the porous body. The contacting fit (*i.e.*, friction or bonding) between the frame 82 and the porous component 81 allows the frame to react to the compressive forces and prevent the deformation of the porous component, thus providing axial support to the porous component.



10. The frame in the 742 patent also provides radial support for the porous component. The porous component in the 742 patent is made of “foamed nickel, stainless steel fiber felt, macromolecular polymer foam or foamed ceramics,” the same materials for the porous body of Hon 043. Ex 1001 at 5:50-52; Ex 1003 at 9. As discussed in Ex. 1020, ¶¶ 5-8 and below at ¶¶ 22, 30, the porous body of Hon 043 may be made from a range of materials having a wide range of rigidities. When made from a relatively low rigidity material, the porous body would sag and potentially collapse when saturated with liquid but for the radial support provided by the cavity wall. The porous component of the 742 patent is made of the same materials as described in Hon 043, and thus would also sag and potentially collapse when saturated with liquid but for the radial support provided by the frame. Thus, by preventing the porous component from sagging or otherwise impinging on the

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