

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

R.J. REYNOLDS VAPOR COMPANY,
Petitioners

v.

FONTEM HOLDINGS 1 B.V.,
Patent Owner

Case **IPR2016-01268**
Patent No. **8,365,742**

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

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner Fontem Holdings 1 B.V. objects to the evidence submitted by Petitioner R.J. Reynolds Vapor Company with the Reply (Paper 30) filed July 5, 2017.

Exhibit 1022

Patent owner objects to Exhibit 1022 (Rough transcript of June 6, 2017 deposition of Richard Meyst in IPR2016-01272) under FRE 401 and 402. Because Petitioner does not rely on Exhibit 1022 in its Reply, the Exhibit does not include any fact of consequence and has no tendency to make a fact more or less probable than it would be without its admission.

Patent Owner further objects to Exhibit 1022 as an incomplete copy, and thus an inadmissible duplicate pursuant to FRE 1002 and 1003. If the Board admits Exhibit 1022, Patent Owner objects that it is only part of a writing under FRE 106.

Exhibit 1027

Patent Owner objects to Exhibit 1027 (Reply Declaration of Robert H. Sturges) as outside of the scope permitted by 37 C.F.R. § 42.23(b) and therefore unfairly prejudicial under FRE 403. Patent Owner further objects to Exhibit 1027 as lacking sound evidentiary basis, biased, vague, misleading, confusing the issues, and more prejudicial than probative under FRE 403. The following examples are

illustrative.

- Paragraphs 9, 16, 25-33, 44, and 46 of Exhibit 1027 offer opinions regarding “deformation” that were not raised in the Petition or in Exhibits 1015 or 1020, and do not respond to arguments raised in Patent Owner’s Response.
- Paragraphs 18, 19, and 23-32 of Exhibit 1027 offer opinions regarding axial displacement “with respect to” or “relative to” the cavity wall that were not raised in the Petition or in Exhibits 1015 or 1020, and do not respond to arguments raised in Patent Owner’s Response.
- Paragraphs 10, 30, 31, and 44 of Exhibit 1027 offer opinions regarding radial support of liquid-filled “low rigidity” porous material that were not raised in the Petition or in Exhibits 1015 or 1020, and do not respond to arguments raised in Patent Owner’s Response.
- Paragraphs 18 and 19 offer opinions regarding “misalignment” that were not raised in the Petition or in Exhibits 1015 or 1020, and do not respond to arguments raised in Patent Owner’s Response.
- Paragraphs 33-67 offer opinions regarding airflow, aerosols, pore sizes, “standard drawing practices,” “aerodynamic forces,” compression, tensile strength, “providing the needed holes,” electrical

resistance, atomization, a “slipstream,” thermal efficiency, and “heating wire in lightbulbs, heaters and other things” that are not based on sufficient facts or data and are not the product of reliable principles and methods.

If Sturges is presented as a lay witness, Patent Owner objects under FRE 701 that the testimony is based on alleged scientific and/or technical knowledge. If Sturges is presented as an expert witness, Patent Owner 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. Patent Owner further objects under FRE 703 that the facts or data are not of a type reasonably relied upon by experts.

Patent Owner further objects to Exhibit 1027 to the extent that any paragraph relies upon an exhibit that is objected to herein or that Patent Owner objected to previously for the reasons set forth in those objections. Any paragraph in Exhibit 1027 that relies upon any exhibit not relied upon by the PTAB to institute this proceeding is further objected to as not being relevant and therefore being inadmissible under FRE 401 and 402.

Exhibit 1028

Patent Owner objects to Exhibit 1028 (Mitchell, AAPS PharmSciTech 2003 4 Article 54) as hearsay under FRE 801 and 802.

Patent Owner further objects to Exhibit 1028 as outside of the scope permitted by 37 C.F.R. § 42.23(b) and as irrelevant, misleading, confusing the issues, and unfairly prejudicial under FRE 401, 402, and 403.

Exhibit 1029

Patent Owner objects to Exhibit 1029 (Breon, Science 01 Feb 2002 Vol 295 Issue 5556 pp 834-838) as hearsay under FRE 801 and 802.

Patent Owner further objects to Exhibit 1029 as outside of the scope permitted by 37 C.F.R. § 42.23(b) and as irrelevant, misleading, confusing the issues, and unfairly prejudicial under FRE 401, 402, and 403.

Exhibit 1030

Patent Owner objects to Exhibit 1030 (U.S. Patent No. 4,957,543) as outside of the scope permitted by 37 C.F.R. § 42.23(b) and as irrelevant, misleading, confusing the issues, and unfairly prejudicial under FRE 401, 402, and 403.

Exhibit 1031

Patent Owner objects to Exhibit 1031 (U.S. Patent No. 6,932,925) as outside of the scope permitted by 37 C.F.R. § 42.23(b) and as irrelevant, misleading, confusing the issues, and unfairly prejudicial under FRE 401, 402, and 403.

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