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'S SUPPLEMENTAL BRIEF REGARDING CROSS-EXAMINATION TESTIMONY OF MR. RICHARD MEYST IN RELATED IPR2016-01692

I. Introduction

Pursuant to the Board's Order of Sept. 14, 2017 (Paper 45), R.J. Reynolds Vapor Company ("Petitioner") submits this supplemental brief addressing the relevance of cross-examination testimony of Patent Owner's expert Mr. Richard Meyst (Ex. 1035) in the related IPR2016-01692 ("1692 IPR") concerning U.S. Pat. No. 9,326,548 ("548 patent"), attached hereto as Ex. A, which issued from a continuation application from the patent at issue in this IPR, U.S. Pat. No. 8,365,742 ("742 patent").

II. Hon 043's Porous Body Is "Supported By" The Cavity Wall

In this proceeding, Meyst opines that Hon 043's porous body is not "supported by" the cavity wall, arguing, *inter alia*, that Hon 043's porous body requires no support because it is a rigid material. *See e.g.*, Ex. 2015, ¶¶ 70, 80-88. Yet, in the 1692 IPR Meyst acknowledged that the porous component of the 742 patent (which is made from the same materials as Hon 043's porous body) "could be a very soft, pliable material. ***It needs to be supported*** in that function, in that position, in that location [] to work." Ex. 1035, 17:19-18:17 (emphasis added).[1]

[1] The porous component of the 742 and 548 patents, which share nearly identical disclosures, and the porous body of Hon 043 are made from the same materials. Ex. A (548 patent), 6:2-4; Ex. 1001 (742 patent), 5:50-52 ("The porous

Meyst further noted that the 742 patent's porous component is "***not [] necessarily a rigid material***. It could [] have a wide range of properties." *Id.* at 17:21-23 (emphasis added). If the porous component of the 742 patent requires support because it is "not necessarily a rigid material," then the porous body of Hon 043, which is made from the same materials as the 742 patent's porous component, also requires support, which, as Petitioner's expert Dr. Sturges opines, is provided by the cavity wall. *See e.g.*, Ex. 1015, ¶¶ 41-50, 63; Ex. 1020, ¶¶ 4-11; Ex. 1027, ¶¶ 6-13, 16-48.

In an effort to demonstrate that Hon 043's porous body is necessarily made from a rigid material that purportedly requires no support, Meyst also relies in this proceeding on stress-strain curves. *See* Ex. 2015, ¶¶ 76-85.[2] However, Meyst's

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component (81) is made of foamed nickel, stainless steel fiber felt, macromolecular polymer foam or foamed ceramics."); Ex. 1003 (Hon 043), p. 9, ll. 22-24 ("… porous body 27, which can be made of foam nickel, stainless steel fiber felt, high molecule polymer foam and foam ceramic."); *see also* Ex. 1027, ¶ 10.

[2] Meyst relies on stress-strain curves from Choe and Xi, which were marked, respectively, as Exs. 2035 and 2036 in the 1692 IPR and Exs. 2019 and 2018 in this IPR.

1692 IPR testimony confirmed that, just as Dr. Sturges opines in this proceeding (*see e.g.* Ex. 1027, ¶ 44; Ex. 1034, ¶ 11), the stress-strain curves do ***not*** reflect how much Hon 043's porous body would bend or sag when filled with liquid or subjected to over-pressure, but instead are a measure of the extent to which a material will compress in response to certain applied forces. Ex. 1035, 68:1-70:12. As Dr. Sturges explains, and as confirmed by Meyst's 1692 IPR testimony, compression does not measure the propensity of a material to bend or sag. *See* Ex. 1027, ¶ 44; Ex. 1034, ¶ 11; Ex. 1035, 68:1-70:12.

In an attempt to demonstrate that foamed ceramic (*i.e.*, one of the materials identified in Hon 043 for the porous body) is rigid, Meyst relies on the tensile strengths of various ceramics reported in the Materials Data Book. *See* Ex. 2015, ¶ 86; Ex. 1020-00014-55.[3] However, during cross-examination in the 1692 IPR, Meyst confirmed that tensile strength measures the extent to which a material stretches in response to a pulling force, ex. 1035, 70:13-71:10, not the extent to which a material will bend or sag. *See e.g.* Ex. 1027, ¶ 44; Ex. 1034, ¶ 11. And to the extent tensile strength is even relevant (it is not), Meyst admitted that the tensile strengths reported in the Materials Data Book are for ceramics, ***not foamed*** ceramics. Ex. 1035, 73:4-75:20.[4]

[3] Materials Data Book is marked as Ex. 1026-00045-86 in the 1692 IPR.

[4] Meyst also acknowledged that he is not an expert in ceramics. *Id.*, 75:16-20.

Meyst also disputes – in this proceeding - that there is an interfering fit or bonding between Hon 043's porous body and cavity wall. Ex. 2015, ¶ 41. Yet, in the 1692 IPR, Meyst conceded that there is a "line-to-line" fit, and thus Hon 043's porous body and cavity wall "work together in cooperation to form one part which doesn't allow for any movement" of the two parts relative to each other. Ex. 1035, 58:7-59:13. Thus, regardless of whether there is a bonding, an interference or line-to-line fit, Meyst's 1692 IPR testimony is consistent with Dr. Sturges' opinion that Hon 043's cavity wall prevents axial displacement of the porous body relative to the cavity wall. *See* Ex. 1015, ¶ 45; Ex. 1027, ¶¶ 18-20, 23-32.

Finally, although Meyst opines in this IPR that Hon 043's porous body is not supported by the cavity wall, he testified in the 1692 IPR that the porous component of the 548 patent is held in place because the internal diameter of the porous component is contacting the external diameter of the frame. Ex. 1035 at 33:1-23. Yet, this arrangement is also found in Hon 043. *See* Ex. 1003, Fig. 6. Thus, Meyst's testimony confirms that Hon 043's porous body is held in place because, among other reasons, the internal diameter of the porous body is contacting the external diameter of the cavity wall.

III. Whittemore's Wire-Wrapped Wick Improves Hon 043's Atomization Efficiency

In this IPR, Meyst disputes that Whittemore's wire-wrapped wick would improve the overall efficiency of the Hon 043 device, and even argues that the

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