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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/244,376	04/03/2014	Lik Hon	111971.8012.US04	2981
34055	7590	09/04/2014	EXAMINER	
PERKINS COIE LLP - LOS General			MAYES, DIONNE WALLS	
POST OFFICE BOX 1247			ART UNIT	PAPER NUMBER
SEATTLE, WA 98111-1247			1747	
			NOTIFICATION DATE	DELIVERY MODE
			09/04/2014	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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patentprocurement@perkinscoie.com



## DETAILED ACTION

### ***Notice of Pre-AIA or AIA Status***

1. The present application is being examined under the pre-AIA first to invent provisions.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Independent claims 1, 8 and 10 recite an atomizer assembly housing “plugged or threaded into” the battery assembly housing (or similar words to that effect); however, the specification does not appear to provide support for this recitation.

Correction/Amendment in the appropriate manner is requested.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory double patenting rejection is appropriate where the claims at issue are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*,

686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the reference application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. A terminal disclaimer must be signed in compliance with 37 CFR 1.321(b).

The USPTO internet Web site contains terminal disclaimer forms which may be used. Please visit <http://www.uspto.gov/forms/>. The filing date of the application will determine what form should be used. A web-based eTerminal Disclaimer may be filled out completely online using web-screens. An eTerminal Disclaimer that meets all requirements is auto-processed and approved immediately upon submission. For more information about eTerminal Disclaimers, refer to <http://www.uspto.gov/patents/process/file/efs/guidance/eTD-info-I.jsp>.

4. Claims 1, 4-8 and 15 are rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-41 of Han (US. Pat. No. 8,156,944). Although the claims at issue are not identical, they are not patentably distinct from each other because the claims of Han fully encompass the above-referenced claims of the instant application.

5. Claims 1-15 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1-15 of copending Application No.

13/740,011. Although the claims at issue are not identical, they are not patentably distinct from each other because the claimed of copending Application No. 13/740,011 fully encompass those of the instant application.

This is a provisional nonstatutory double patenting rejection because the patentably indistinct claims have not in fact been patented.

***Presence of Allowable Subject Matter***

6. A reading of the claims indicates the presence of allowable subject matter. Independent claims 1, 8 and 10 each disclose subject matter which does not appear to be taught or suggested by the prior art of record. Namely, the Brooks (US. Pat. No. 4,947,874) and Counts et al (US. Pat. No. 5,144,962) references fail to teach or suggest an electronic cigarette having a battery assembly connected to/with an atomizer assembly, wherein said atomizer assembly includes a porous component having a through hole with a heating element in an airflow path in the through hole, and the porous component being in contact with a liquid storage component.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIONNE WALLS MAYES whose telephone number is (571)272-5836. The examiner can normally be reached on Monday thru Friday, 8:00A - 4:30P EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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