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FONTEM VENTURES B.V. and
9 FONTEM HOLDINGS 1 B.V.

10 [Defendants' Counsel listed on signature page]

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 FONTEM VENTURES B.V., a
14 Netherlands company; and FONTEM
HOLDINGS 1 B.V., a Netherlands
15 company,

16 Plaintiffs,

17 v.

18 NJOY, INC., a Delaware corporation,
and DOES 1-5, Inclusive,

19 Defendant.
20

21 AND RELATED COUNTERCLAIMS

Case No. CV14-1645 GW (MRW_x)
and related cases
Case No. CV14-1649 GW (MRW_x)
Case No. CV14-1650 GW (MRW_x)
Case No. CV14-1651 GW (MRW_x)
Case No. CV14-1652 GW (MRW_x)
Case No. CV14-1653 GW (MRW_x)
Case No. CV14-1654 GW (MRW_x)
Case No. CV14-1655 GW (MRW_x)

**SECOND REVISED JOINT CLAIM
CONSTRUCTION AND
PREHEARING STATEMENT**

22 FONTEM VENTURES B.V., a
23 Netherlands company; *etc. et al.*,

24 Plaintiffs,

25 v.

26 CB DISTRIBUTORS, INC., an Illinois
corporation; DR DISTRIBUTORS,
27 LLC, *etc. et al.*,

28 Defendants.

Case No. CV14-1649 GW (MRW_x)

<p>1 FONTEM VENTURES B.V., a 2 Netherlands company; <i>etc. et al.</i>, 3 4 v. 5 VAPOR CORP., a Delaware 6 corporation, <i>etc.</i>, 7 Defendant.</p>	<p>Case No. CV14-1650 GW (MRW_x)</p>
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AND RELATED COUNTERCLAIMS

<p>9 FONTEM VENTURES B.V., a 10 Netherlands company; <i>etc. et al.</i>, 11 12 v. 13 FIN BRANDING GROUP, LLC, an 14 Illinois limited liability company; 15 VICTORY ELECTRONIC 16 CIGARETTES CORPORATION, <i>etc.</i> 17 <i>et al.</i>, 18 Defendants.</p>	<p>Case No. CV14-1651 GW (MRW_x)</p>
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AND RELATED COUNTERCLAIMS

<p>18 FONTEM VENTURES B.V., a 19 Netherlands company; <i>etc. et al.</i>, 20 21 Plaintiffs, 22 v. 23 BALLANTYNE BRANDS, LLC, <i>etc.</i>, 24 Defendant.</p>	<p>Case No. CV14-1652 GW (MRW_x)</p>
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AND RELATED COUNTERCLAIMS

1 FONTEM VENTURES B.V., a
2 Netherlands company; *etc. et al.*,

3 Plaintiffs,

4 v.

5 SPARK INDUSTRIES, LLC, *etc.*,

6 Defendant.

Case No. CV14-1653 GW (MRW_x)

7 FONTEM VENTURES B.V., a
8 Netherlands company; *etc. et al.*,

9 Plaintiffs,

10 v.

11 LOGIC TECHNOLOGY
12 DEVELOPMENT LLC, *etc.*,

13 Defendant.

Case No. CV14-1654 GW (MRW_x)

14 FONTEM VENTURES B.V., a
15 Netherlands company; *etc. et al.*,

16 Plaintiffs,

17 v.

18 VMR PRODUCTS, LLC, dba
19 V2CIGS, *etc.*,

20 Defendant.

Case No. CV14-1655 GW (MRW_x)

21 AND RELATED COUNTERCLAIMS

After submitting the Revised Joint Claim Construction and Prehearing Statement (Dkt. # 34) but prior to filing Opening Claim Construction Briefs, the parties further agreed to narrow the disputes and terms requiring the Court's construction as set forth herein. Accordingly, in each of the cases in the captions above ("the Related Cases"),¹ Plaintiffs Fontem Ventures B.V. and Fontem Holdings 1 B.V. (together, "Fontem"), along with Defendants NJOY, Inc. ("NJOY"), CB Distributors, Inc. and DR Distributors, LLC ("CB/DR"), Vapor Corp. ("Vapor"), FIN Branding Group, LLC and Victory Electronic Cigarettes Corporation ("FIN/Victory"), Ballantyne Brands, LLC ("Ballantyne"), Spark Industries, LLC ("Spark"), Logic Technology Development LLC ("Logic"), and VMR Products, LLC ("VMR") (together, "the Defendants") hereby submit this Second Revised Joint Claim Construction and Prehearing Statement for U.S. Patent Nos. 8,365,742 (the '742 patent); 8,375,957 (the '957 patent); 8,393,331 (the '331 patent); 8,490,628 (the '628 patent); and 8,689,805 (the '805 patent) ("the Revised Statement") (Dkt. # 34).

AMENDMENTS TO DISPUTED CLAIM CONSTRUCTIONS

The Parties agreed that two of the disputed terms ("cigarette bottle assembly" and "porous") need not be construed, thereby eliminating the dispute over their construction.

In addition, the parties made amendments relating to the proposed constructions of five disputed terms ("inlet," "a liquid permeating component sleeved on the electric heater," "liquid storage component," "liquid supply," and "solution storage area").

¹ CV14-1645 GW (MRWx), Case No. CV14-1649 GW (MRWx), CV14-1650 GW (MRWx), CV14-1651 GW (MRWx), CV14-1652 GW (MRWx), CV14-1653 GW (MRWx), CV14-1654 GW (MRWx), Case No. CV14-1655 GW (MRWx).

1 An updated chart which reflects these amendments is set forth in Exhibit B,
2 attached.

3 The Parties may continue to meet and confer regarding the parties claim
4 constructions. The Parties also expressly reserve the right to rely on any evidence
5 identified by the other party, and any evidence obtained, or that may be obtained,
6 through claim construction discovery. The Parties expressly reserve the right to
7 amend, correct, or supplement its claim construction positions and supporting or
8 rebuttal evidence in response to any change of position by the other party, in
9 response to information received during discovery, or for other good cause.

10 **CLAIM CONSTRUCTION HEARING**

11 The parties continue to believe that three hours will be sufficient for the
12 claim construction hearing with Fontem being allocated half of the time and
13 Defendants being allocated half of the time. Subject to the Court's preference, the
14 Parties have agreed to present the disputed claim terms term-by-term, with Fontem
15 presenting first for the first term, and Defendants first for the second term, and so
16 forth. Neither side currently plans to call any witness at the claim construction
17 hearing.

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20 DATED: December 12, 2014

PERKINS COIE LLP

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26 FONTEM HOLDINGS 1 B.V.
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17 LLC

EXHIBIT B

EXHIBIT B

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
1	cavity '331 Patent claims 1-2; '628 Patent claim 3	no construction necessary or, alternatively, a hollow space	<p><i>See, e.g., '331 Patent:</i> 1:63-64; 2:43-45 3:46-55; Figs. 1-3, 6, 8</p> <p><i>See, e.g., '628 Patent:</i> 1:63-64; 2:45-47; 3:45-54; Figs. 1-3, 6, 8</p> <p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 197 (11th ed. 2003): (defining "cavity" as "an unfilled space within a mass...a hollowed out space"</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 222 (1st ed. 2003): (defining "cavity" as "a hollow within a solid body")</p>	a hollow space within and completely surrounded by the body of the atomizer	<p><u>'331 Patent:</u> 1:63-64; 2:45-3:1; 3:46-64; Figs. 1-4, 6-8.</p> <p><u>'628 Patent:</u> 1:63-64; 2:43-65; 3:45-54; Figs. 1-4 and 6-8.</p> <p>Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/cavity (defining "cavity" as "a hole or space inside something")</p>
2	frame '742 Patent claims 1-3	no construction necessary or, alternatively, a support	<p><u>Intrinsic Evidence</u> <i>See, e.g., '742 Patent:</i> 5:42-49; Figs. 17 and 18</p> <p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 497 (11th ed. 2003) (defining "frame: as "the underlying</p>	an underlying, rigid structure on which the porous component is set	<p><u>'742 Patent:</u> 5:42-49; Figs. 17-18.</p> <p>Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/frame (defining "frame" as "the underlying</p>

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Exhibit B to Second Revised Joint Claim Construction and Prehearing Statement
111971-0003.0001/LEGAL124125875.1

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
			<p>constructional system or structure that gives shape or strength" and "an open case or structure made for admitting, enclosing, or supporting something")</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 581 (1st ed. 2003) (defining "frame" as "the basic rigid supporting structure of anything")</p>		<p>constructional system or structure that gives shape or strength")</p>
3	<p>housing</p> <p>'742 Patent claims 2-3;</p> <p>'331 Patent claims 1-2;</p> <p>'628 Patent claims 1, 2, 4, 7, 8;</p> <p>'957 Patent claims 1, 2, 5, 10, 23;</p>	<p>no construction necessary or, alternatively, a casing</p>	<p><u>Intrinsic Evidence</u></p> <p><i>See, e.g., '742 Patent:</i> Abstract; 1:30-34; 2:30-38; 3:42-62; 5:9-30; Figs. 1-3, and 19</p> <p><i>See, e.g., '331 Patent:</i> Abstract; 1:56-62; 2:33-37; 3:65-4:3; 4:48-51; 4:56-60; Figs. 1-3</p> <p><i>See, e.g., '628 Patent:</i> Abstract; 1:56-62; 2:31-35; 3:64-4:2; 4:45-48; 4:53-57; Figs. 1-3</p> <p><i>See, e.g., '957 Patent:</i> 2:1-3; 3:4-14; 3:32-42; 3:50-53;</p>	<p>a one-piece shell</p>	<p><u>'742 Patent:</u> Figs. 1-2, 19; 1:28-33; 2:30-38; 3:42-44.</p> <p>'742 Patent File History August 7, 2012 Amendment</p> <p><u>'331 Patent:</u> Abstract; 1:56-62; 2:34-37; 3:4-6; 3:65-4:3; 4:48-51; 4:56-57; Figs. 1-3, 11.</p> <p><u>'628 Patent:</u> Abstract; 1:56-62; 2:31-35; 3:1-4; 3:64-4:2; 4:45-48; 4:53-57; Figs. 1-3, 11.</p>

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
			<p>4:49-51; 4:54-57; Figs. 1, 2A, 2B, 3, and 12</p> <p>Extrinsic Evidence <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 603 (11th ed. 2003): (defining "housing" as "something that covers or protects: as a case or enclosure (as for a mechanical part or an instrument)")</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 712 (1st ed. 2003): (defining "housing" as "a rigid casing")</p>		<p>'957 Patent: 1:46-51; 1:66-67; 2:25-38; 2:60-3:8; 3:32-38; 3:48-52; 5:4-7; Figs. 1-5B, 12.</p>
4	<p>inlet</p> <p>'742 Patent claims 1-3; '331 Patent claims 1-2; '628 Patent claims 1, 7, 8</p>	<p>no construction necessary or, alternatively, an opening for air intake.</p>	<p>Intrinsic Evidence <i>See, e.g., '628 Patent</i>: 3:45-48; Figs 1-3</p> <p>Extrinsic Evidence <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 644 (11th ed. 2003): (defining "inlet" as "a way of entering...an opening for intake")</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 769 (1st ed. 2003): (defining</p>	<p>opening on the external wall of the housing for air intake</p>	<p>'331 Patent: Abstract; 2:33-24; 3:13-15; Figs. 1-3.</p> <p>'331 Patent File History July 27, 2012 Amendment</p> <p>'628 Patent: 2:31-32; Figs. 1-2,</p>

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
5	integrally formed '742 Patent claim 1	no construction necessary or, alternatively, formed by parts that make up a whole	<p>"inlet" as "[a] way of entry")</p> <p><u>Intrinsic Evidence</u> <i>See, e.g.,</i> '742 Patent: 2:30-38; 3:42-48; Figs. 1-2, 19</p> <p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 650 (11th ed. 2003): (defining "integral" as "essential to completeness : constituent" and "formed as a unit with another part" and "composed of constituent parts"</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 778 (1st ed. 2003): (defining "integral" as "of a whole or necessary to the completeness of a whole...whole; complete")</p>	made of one piece	<p>'742 Patent: Abstract; 2:30-38; 3:42-44; Figs. 1-2, 19.</p> <p>https://www.ahdictionary.com/word/search.html?q=integral (defining "integral" as "a complete unit; a whole")</p>
6	a liquid conduction component in contact with the liquid permeating component and the liquid storage	no construction necessary	<p><u>Intrinsic Evidence</u> <i>See, e.g.,</i> '805 Patent, 1:62-2:3; 3:14-21; 5:4-14; 5:44-48; Fig. 1, 1A, and 2-4</p>	a component that transports liquid from the liquid storage component to the liquid permeating component	<p>'805 Patent: 1:63-2:3; 3:13-27; 4:32-39; 5:44-54; Figs 1-4, 6.</p> <p>Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/conduct (defining</p>

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
	component '805 Patent claim 3				"conduct" as "to act as a medium for conveying or transmitting")
7	a liquid permeating component sleeved on the electric heater '805 Patent claim 2	no construction necessary or, alternatively, a liquid permeating component fitted around the electric heater	<p><u>Intrinsic Evidence</u> <i>See, e.g., '805 Patent:</i> 1:36-40; 2:64-66; 4:32-33; 5:27-32; Figs. 1, 1A, 2-4, 6</p> <p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 1172 (11th ed. 2003): (defining "sleeve" as "a tubular part...designed to fit over another part")</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 1427 (1st ed. 2003): (defining "sleeve" as "a tube enclosing a rod or smaller tube")</p>	a liquid permeating component fitted around and oriented in the same axial direction as the heater	<p><u>'805 Patent:</u> 1:36-45; 1:66-67; 2:64-66; 3:13-27; 4:32-39; 4:52-58; 5:4-11; 5:27-32; 5:49-54; 6:36-42; Figs 1-4, 6.</p> <p>Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/sleeve (defining "sleeve" as "a tubular part (as a hollow axle or a bushing) designed to fit over another part")</p> <p>Dictionary.com: http://dictionary.reference.com/browse/sleeve?s=t (defining "sleeve" as "<i>Machinery.</i> a tubular piece, as of metal, fitting over a rod or the like.")</p>
8	liquid storage component '742 Patent claim 2;	no construction necessary	<p><u>Intrinsic Evidence</u> <i>See, e.g., '742 Patent:</i> 1:38-39; 3:49-57; Figs. 1, 3-4, 11-12, 19</p>	"a hollow, walled container for storing liquid"	<p><u>'742 Patent:</u> 1:48-52; 1:66-67; 2:1; 3:49-57; 3:63-67; 4:36-40; 5:12-18; Figs. 1-4, 11, 12, 19.</p>

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
					'742 Patent File History August 7, 2012 Amendment
9	liquid supply '742 claim 3; '331 Patent claims 1-2, 5; '628 Patent claims 1, 5-8	no construction necessary	<p><u>Intrinsic Evidence</u></p> <p><i>See, e.g.,</i> '742 Patent: 1:38-39; 3:49-54; 3:63-67; 4:36-40; 4:53-54; Figs. 1-5, 7-8, 11-12, 14-17, 19, 22</p> <p><i>See, e.g.,</i> '628 Patent: Abstract; 1:56-67; 2:31-35; 2:43-45; 3:1-10; 3:60-4:2; 4:38-43; Figs. 1-3</p> <p><i>See, e.g.,</i> '331 Patent: Abstract; 1:56-67; 2:33-37; 2:45-47; 3:3-12; 3:61-4:3; 4:41-45; Figs. 1-3</p> <p><i>See, e.g.,</i> '331 Patent File History, August 8, 2012 Remarks at 7-8</p> <p><i>See, e.g.,</i> '331 Patent File History, October 30, 2012 Office Action at 2</p>	"liquid-supplying bottle"	<p>'742 Patent: Abstract; 1:37-38; 1:48-52; 1:66-67; 2:1; 2:35-37; 3:46-62; 3:63-67; 4:36-40; 5:9-18; Figs. 1-4, 11, 12, 19.</p> <p>'742 Patent File History August 7, 2012 Amendment</p> <p><u>'331 Patent</u>: 2: 22-23; 2:36; 2:45-47; 3:3-15; 3:61-4:3; 4:41-47; Figs. 1-3, 11.</p> <p>'331 Patent File History April 12, 2012 Amendment</p> <p><u>'628 Patent</u>: 2: 22-23; 2:34; 2:43-45; 3:1-13; 3:60-4:2; 4:38-42; Figs. 1-3, 11.</p>

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
			<p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 1256 (11th ed. 2003) (defining "supply" as "something that maintains or constitutes a supply")</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 1535 (1st ed. 2003) (defining ("supply" as "a stock, store, amount, etc., of something provided or obtainable")</p>		
10	a mouthpiece on the housing '331 Patent claims 1-2	<p>no construction necessary for the phrase or, alternatively,</p> <p>for the term mouthpiece, the part of an electronic cigarette that is placed at or in the user's mouth</p> <p>The term housing is construed by all parties separately herein.</p>	<p><u>Intrinsic Evidence</u> <i>See, e.g., '331 Patent</i>:1:56-62; Figs. 1-3, 11</p> <p><u>Extrinsic Evidence</u> <i>See, e.g., Merriam-Webster's Collegiate Dictionary</i> 812 (11th ed. 2003): (defining "mouthpiece" as "something placed at or forming a mouth" or "a part (as of an instrument) that goes in the mouth or to which the mouth is applied"</p> <p><i>See, e.g., Oxford American Dictionary & Thesaurus</i> 976</p>	a structure that is adapted to be gripped by the user's mouth and that is attached on the housing	'331 Patent: Abstract; 1:56-62; 2:22-23; 2:32-35; 3:13-15; 3:65-4:3; Figs. 1-3, 11.

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
			(1st ed. 2003): (defining "mouthpiece" as "the part of a musical instrument placed between or against the lips...the part of a tobacco pipe placed between the lips") <i>See also, e.g.,</i> evidence cited for "housing"		
11	projecting into '628 Patent claims 1, 6 extending into '628 Patent claims 7, 8	no construction necessary		having only a portion that protrudes into	'628 Patent: 2:43-45; 3:60-63; 4:41-44; Figs. 1, 2, 3, 6, 8.
12	substantially '742 Patent claim 1, 2	no construction necessary or, alternatively, at least largely	<u>Intrinsic Evidence</u> <i>See, e.g.,</i> '742 Patent: Abstract; 2:36-37; 3:15-23; 4:36-40; 5:49-50; Figs. 1, 19 <u>Extrinsic Evidence</u> <i>See, e.g., Oxford American Dictionary & Thesaurus</i> 1523 (1st ed. 2003): (defining "substantial" as "of large size or amount")	largely but not completely	'742 Patent: 3:15-16; 3:63-67; 4:36-40; 5:49-50; Figs. 1-2, 19.

	Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
13	solution storage area '957 Patent claims 1, 2, 8, 10, 23, 24	no construction necessary	<u>Intrinsic Evidence</u> <i>See, e.g.,</i> '957 Patent: claims 1, 2, 8, 10, 23, 24; Figs. 4, 5A, 5B, 12	a bottle for storing liquid	'957 Patent: Abstract; 1:46-51; 1:66-67; 2:33-34; 2:60-64; 3:1-3; 3:33-36; 3:48-50; 3:57-61; 4:39-45; 5:4-7; Figs. 1, 4, 5A, 5B, 12.