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9 FONTEM VENTURES B.V. and
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
15 HOLDINGS 1 B.V., a Netherlands
company,

16 Plaintiffs,

17 v.

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

20 Defendant.

21 AND RELATED COUNTERCLAIMS

Case No. CV14-1645 GW (MRWx)
and related cases

Case No. CV14-1649 GW (MRWx)

Case No. CV14-1650 GW (MRWx)

Case No. CV14-1651 GW (MRWx)

Case No. CV14-1652 GW (MRWx)

Case No. CV14-1653 GW (MRWx)

Case No. CV14-1654 GW (MRWx)

Case No. CV14-1655 GW (MRWx)

**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
27 corporation; DR DISTRIBUTORS,
LLC, *etc. et al.*,

28 Defendants.

Case No. CV14-1649 GW (MRWx)

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

3 Plaintiffs,

4 v.

5 VAPOR CORP., a Delaware
6 corporation, *etc.*,

7 Defendant.

Case No. CV14-1650 GW (MRWx)

8 AND RELATED COUNTERCLAIMS

9 FONTEM VENTURES B.V., a
10 Netherlands company; *etc. et al.*,

11 Plaintiffs,

12 v.

13 FIN BRANDING GROUP, LLC, an
14 Illinois limited liability company;
15 VICTORY ELECTRONIC
16 CIGARETTES CORPORATION, *etc.*
17 *et al.*,

18 Defendants.

Case No. CV14-1651 GW (MRWx)

19 AND RELATED COUNTERCLAIMS

20 FONTEM VENTURES B.V., a
21 Netherlands company; *etc. et al.*,

22 Plaintiffs,

23 v.

24 BALLANTYNE BRANDS, LLC, *etc.*,

25 Defendant.

Case No. CV14-1652 GW (MRWx)

26 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 (MRWx)

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 (MRWx)

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 (MRWx)

21 AND RELATED COUNTERCLAIMS
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Pursuant to the Court's Scheduling and Case Management Order and Order to limit the claims terms for construction to fifteen terms (Dkt. # 29) 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 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 parties have met and conferred in an attempt to narrow the disputes and terms requiring the Court's construction.

DISPUTED CLAIM CONSTRUCTIONS

The Parties reached agreement on the construction that the Court should adopt for two claim terms. The agreed-to constructions are set forth in Exhibit A, attached.

For each disputed claim term or phrase, Exhibit B, attached, presents each party's proposed construction and identifies preliminary supporting intrinsic and extrinsic evidence.

The Parties may continue to meet and confer regarding the parties claim constructions. The Parties also expressly reserve the right to rely on any evidence identified by the other party, and any evidence obtained, or that may be obtained,

¹ CV14-1645 GW (MRWx) [Dkt. 22], Case No. CV14-1649 GW (MRWx) [Dkt. 22], CV14-1650 GW (MRWx) [Dkt. 34], CV14-1651 GW (MRWx) [Dkt. 34], CV14-1652 GW (MRWx) [Dkt. 29], CV14-1653 GW (MRWx) [Dkt. 21], CV14-1654 GW (MRWx) [Dkt. 29], Case No. CV14-1655 GW (MRWx) [Dkt. 31].

1 through claim construction discovery. The Parties expressly reserve the right to
 2 amend, correct, or supplement its claim construction positions and supporting or
 3 rebuttal evidence in response to any change of position by the other party, in
 4 response to information received during claim construction discovery, or for other
 5 good cause.

CLAIM CONSTRUCTION HEARING

6 The parties believe that three hours will be sufficient for the claim
 7 construction hearing with Fontem being allocated half of the time and Defendants
 8 being allocated half of the time. Subject to the Court's preference, the Parties have
 9 agreed to present the disputed claim terms term-by-term, with Fontem presenting
 10 first for the first term, and Defendants first for the second term, and so forth.
 11 Neither side currently plans to call any witness at the claim construction hearing,
 12 but reserve the right to do so in the future.

14 DATED: September 30, 2014

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20 DATED: September 30, 2014

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EXHIBIT A

	Term	Agreed-to Construction
1	atomizer; atomizing '742 Patent claims 1-3; '331 Patent claims 1-2; '628 Patent claims 1, 3, 6-8; '957 Patent claims 1, 10, 23 '805 Patent claim 1	<i>atomizer</i> : a component that converts liquid into aerosol or vapor <i>atomizing</i> : converting liquid into aerosol or vapor

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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	See, e.g., '331 Patent: 1:63-64; 2:43-45 3:46-55; Figs. 1-3, 6, 8 See, e.g., '628 Patent: 1:63-64; 2:45-47; 3:45-54; Figs. 1-3, 6, 8 <u>Extrinsic Evidence</u> See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 197 (11th ed. 2003): (defining "cavity" as "an unfilled space within a mass...a hollowed out space" See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 222 (1st ed. 2003): (defining "cavity" as "a hollow within a solid body")	a hollow space within and completely surrounded by the body of the atomizer	'331 Patent: 1:63-64; 2:45-3:1; 3:46-64; Figs. 1-4, 6-8. '628 Patent: 1:63-64; 2:43-65; 3:45-54; Figs. 1-4 and 6-8. Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/cavity (defining "cavity" as "a hole or space inside something")
2 cigarette bottle assembly '742 Patent claim 1	no construction necessary or, alternatively, components that include a container for storing liquid	<u>Intrinsic Evidence</u> See, e.g., '742 Patent: 1:38-39; 2:30-38; 3:15-27; 3:44-51; 4:36-40; 5:49-50; Figs. 1-4, 11-12, and 19	components that include a bottle for storing liquid	'742 Patent: 2:35-37; 3:49-61; Figs. 1-4. '742 Patent File History August 7, 2012 Amendment

- 8 -

Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
3 frame '742 Patent claims 1-3	no construction necessary or, alternatively, a support	Intrinsic Evidence See, e.g., '742 Patent: 5:42-49; Figs. 17 and 18 Extrinsic Evidence See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 497 (11th ed. 2003) (defining "frame: as "the underlying constructional system or structure that gives shape or strength" and "an open case or structure made for admitting, enclosing, or supporting something") See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 581 (1st ed. 2003) (defining "frame" as "the basic rigid supporting structure of anything")	an underlying, rigid structure on which the porous component is set	'742 Patent: 5:42-49; Figs. 17-18. Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/frame (defining "frame" as "the underlying constructional system or structure that gives shape or strength")
4 housing '742 Patent claims 1-3; '331 Patent claims 1, 2-5; '628 Patent claims 1-8; '957 Patent claims 1, 2, 5,	no construction necessary or, alternatively, a casing	Intrinsic Evidence See, e.g., '742 Patent: Abstract; 1:30-34; 2:30-38; 3:42-62; 5:9-30; Figs. 1-3, and 19 See, e.g., '331 Patent: Abstract; 1:56-62; 2:33-37; 3:65-4:3; 4:48-51; 4:56-60;	a one-piece shell	'742 Patent: Figs. 1-2, 19; 1:28-33; 2:30-38; 3:42-44. '742 Patent File History August 7, 2012 Amendment '331 Patent: Abstract;

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
10, 23		Figs. 1-3 See, e.g., '628 Patent: Abstract; 1:56-62; 2:31-35; 3:64-4:2; 4:45-48; 4:53-57; Figs. 1-3 See, e.g., '957 Patent: 2:1-3; 3:4-14; 3:32-42; 3:50-53; 4:49-51; 4:54-57; Figs. 1, 2A, 2B, 3, and 12 Extrinsic Evidence See, e.g., <i>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)" See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 712 (1st ed. 2003): (defining "housing" as "a rigid casing")		1:56-62; 2:34-37; 3:4-6; 3:65-4:3; 4:48-51; 4:56-57; Figs. 1-3, 11. '628 Patent: Abstract; 1:56-62; 2:31-35; 3:1-4; 3:64-4:2; 4:45-48; 4:53-57; Figs. 1-3, 11. '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.
5	inlet '742 Patent claims 1-2; '331 Patent claims 1-5; '628 Patent	no construction necessary or, alternatively, an opening allowing air from outside the electronic cigarette to	opening on the external wall of the housing for air intake	'331 Patent: Abstract; 2:33-24; 3:13-15; Figs. 1-3. '331 Patent File History July 27, 2012 Amendment

- 10 -
Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
claims 1-5, 7, 8	enter the electronic cigarette.	<i>Collegiate Dictionary</i> 644 (11th ed. 2003): (defining “inlet” as “a way of entering...an opening for intake”) See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 769 (1st ed. 2003): (defining “inlet” as “[a] way of entry”)		'628 Patent: 2:31-32; Figs. 1-2,
6 integrally formed '742 Patent claim 1	no construction necessary or, alternatively, formed by parts that make up a whole	Intrinsic Evidence See, e.g., '742 Patent: 2:30-38; 3:42-48; Figs. 1-2, 19 Extrinsic Evidence See, e.g., <i>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”) See, e.g., <i>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”)	made of one piece	'742 Patent: Abstract; 2:30-38; 3:42-44; Figs. 1-2, 19. https://www.ahdictionary.com/word/search.html?q=integral (defining “integral” as “a complete unit; a whole”)

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
7 a liquid conduction component in contact with the liquid permeating component and the liquid storage component '805 Patent claim 3	no construction necessary	<u>Intrinsic Evidence</u> See, e.g., '805 Patent, 1:62-2:3; 3:14-21; 5:4-14; 5:44-48; Fig. 1, 1A, and 2-4	a component that transports liquid from the liquid storage component to the liquid permeating component	'805 Patent: 1:63-2:3; 3:13-27; 4:32-39; 5:44-54; Figs 1-4, 6. Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/conduct (defining "conduct" as "to act as a medium for conveying or transmitting")
8 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	<u>Intrinsic Evidence</u> See, e.g., '805 Patent: 1:36-40; 2:64-66; 4:32-33; 5:27-32; Figs. 1, 1A, 2-4, 6 <u>Extrinsic Evidence</u> See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 1172 (11th ed. 2003): (defining "sleeve" as "a tubular part...designed to fit over another part" See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 1427 (1st ed. 2003): (defining "sleeve" as "a tube enclosing a rod or smaller tube")	a tubular component that permeates liquid to the electric heater fitted around and oriented in the same axial direction as the heater	'805 Patent: 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. 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") Dictionary.com: http://dictionary.reference.com

- 12 -
Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
9	liquid storage component '742 Patent claim 2	no construction necessary or, alternatively, a component that stores a reserve of liquid		ce.com/browse/sleeve?s=t (defining "sleeve" as "Machinery. a tubular piece, as of metal, fitting over a rod or the like.") '742 Patent: 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. '742 Patent File History August 7, 2012 Amendment
10	liquid supply '742 claim 3; '331 Patent claims 1-2, 5; '628 Patent claims 1, 5-8	no construction necessary or, alternatively, a component that stores a reserve of liquid	For '742: "a bottle for storing liquid" <i>In the alternative,</i> "a container for storing liquid" For '331 and '628: "a container for storing liquid" For '331 and '628: "a bottle for storing liquid"	'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. '742 Patent File History August 7, 2012 Amendment '331 Patent: 2: 22-23; 2:36; 2:45-47; 3:3-15; 3:61-43; 4:41-47; Figs. 1-3, 11.

- 13 -

Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
		See, e.g., '331 Patent File History, August 8, 2012 Remarks at 7-8 See, e.g., '331 Patent File History, October 30, 2012 Office Action at 2 Extrinsic Evidence See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 1256 (11th ed. 2003) (defining "supply" as "something that maintains or constitutes a supply") See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 1535 (1st ed. 2003) (defining ("supply" as "a stock, store, amount, etc., of something provided or obtainable")		'331 Patent File History April 12, 2012 Amendment '628 Patent: 2: 22-23; 2:34; 2:43-45; 3:1-13; 3:60-4:2; 4:38-42; Figs. 1-3, 11.
11 a mouthpiece on the housing '331 Patent claims 1-2	no construction necessary for the phrase or, alternatively, for the term mouthpiece, the part of an electronic	Intrinsic Evidence See, e.g., '331 Patent:1:56-62; Figs. 1-3, 11 Extrinsic Evidence See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 812 (11th ed. 2003): (defining	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.

- 14 -
Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
	cigarette that is placed at or in the user's mouth The term housing is construed by all parties separately herein.	"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" <i>See, e.g., Oxford American Dictionary & Thesaurus</i> 976 (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., evidence cited for "housing"</i>		
12	porous '742 Patent claims 1-3; '331 Patent claim 5; '628 Patent claims 1, 6-8; '957 Patent claims 1, 9-11, 23	no construction necessary or alternatively, having interconnecting spaces to absorb or pass liquid or gas	having small holes that allow air or liquid to pass through	'742 Patent: 3:6-9; 3:23-27; 3:63-67; 4:18-22; 4:25-27; 4:36-40; 5:49-52; Figs. 5, 7, 8, 14-19. '331 Patent: 2:63-66; 3:6-14; 3:48-63; Figs. 6, 8. '628 Patent: 2:61-64; 3:6-14; 3:48-63; Fig. 6 and 8.

- 15 -

Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
		See, e.g., '957 Patent: 1:53-66; 4:6-13; 4:25-39; 5:20-23; Figs. 8, 10 See, e.g., '742 Patent File History, July 19, 2012 Office Action at 3: See, e.g., '331 Patent File History, October 30, 2012 Office Action at 4 <u>Extrinsic Evidence</u> See, e.g., <i>Merriam-Webster's Collegiate Dictionary</i> 966 (11th ed. 2003) (defining "porous" as "possessing or full of pores"; and "pore" as "a small interstice (as in soil) admitting absorption or passage of liquid") See, e.g., <i>Oxford American Dictionary & Thesaurus</i> 1159 (1st ed. 2003) (defining "porous" as "full of pores...letting through air, water, etc."; and "pore" as "a minute opening in a surface through which		'957 Patent: 1:54-66; 4:6-10; 4:25-39; 5:20-23; Figs. 3, 5A, 5B, 8-12. Merriam Webster Dictionary: http://www.merriam-webster.com/dictionary/porous (defining "porous" as "having small holes that allow air or liquid to pass through")

- 16 -
Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
		gases, liquids, or fine solids may pass") <i>See, e.g., McGraw-Hill Dictionary of Scientific and Technical Terms</i> 1549 (5th ed. 1994) (defining "porous" as "[f]illed with pores...[c]apable of absorbing liquids") <i>See, e.g., Hawley's Condensed Chemical Dictionary</i> 906-907 (14th ed.) (defining "pore" as "a void or interstice between particles of a solid such as sand minerals or powdered metals, that permits passage of liquids or gases through the material in either direction.")		
13	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.

- 17 -

Exhibit B to Revised Joint Claim Construction and Prehearing Statement

LEGAL123636444.1

Term	Fontem's Construction	Fontem's Evidence	Defendants' Construction	Defendants' Evidence
14 substantially '742 Patent claim 1, 2	no construction necessary or, alternatively, at least largely	Intrinsic Evidence See, e.g., '742 Patent: Abstract; 2:36-37; 3:15-23; 4:36-40; 5:49-50; Figs. 1, 19 Extrinsic Evidence See, e.g., <i>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.
15 solution storage area '957 Patent claims 1, 2, 8, 10, 23, 24	no construction necessary or, alternatively, an area for storing a solution	Intrinsic Evidence See, e.g., '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.

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- 18 -
Exhibit B to Revised Joint Claim Construction and Prehearing Statement