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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 FONTEM VENTURES B.V., a  
17 Netherlands company; and FONTEM  
18 HOLDINGS 1 B.V., a Netherlands  
19 company,

20 Plaintiffs,

21 v.

22 NU MARK LLC, a Virginia Limited  
23 Liability Company,

24 Defendant.

Case No. 2:16-cv-4537

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 For their Complaint (“Complaint”) against Defendant Nu Mark LLC (“Nu  
2 Mark” or “Defendant”), Plaintiff Fontem Ventures B.V. (“Fontem Ventures”) and  
3 Plaintiff Fontem Holdings 1 B.V. (“Fontem Holdings”) allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a civil action for patent infringement arising under Title 35 of  
6 the United States Code, and in particular 35 U.S.C. §§ 271, 282, 284, and 285.

7 2. This Court has subject matter jurisdiction over this patent infringement  
8 action under 28 U.S.C. §§ 1331 and 1338(a).

9 3. This Court has personal jurisdiction over Defendant because it solicits  
10 and conducts business in California, including the provision of goods, derives  
11 revenue from goods sold in California and within this judicial district, and has  
12 committed acts of infringement in this judicial district, including but not limited to  
13 offering to sell and selling the accused products in this judicial district.

14 4. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and  
15 (c), and 1400(b).

16 **PARTIES**

17 5. Plaintiff Fontem Ventures is a company organized and existing under  
18 the laws of the Netherlands, with its principal place of business at Barbara  
19 Strozziilaan 101, 12th Floor, 1083 HN Amsterdam, The Netherlands. Fontem  
20 Ventures is in the business of developing and selling innovative non-tobacco  
21 products, including electronic cigarettes.

22 6. Plaintiff Fontem Holdings is a company organized and existing under  
23 the laws of the Netherlands, with its principal place of business at Barbara  
24 Strozziilaan 101, 12th Floor, 1083 HN Amsterdam, The Netherlands.

25 7. Upon information and belief, Defendant Nu Mark LLC is a Limited  
26 Liability Company organized and existing under the laws of the State of Virginia,  
27 having its principal place of business at 6603 West Broad Street, Richmond  
28

1 and GreenSmoke Cartridge, and MarkTen, MarkTenXL, and GreenSmoke Battery  
2 when sold separately, have no substantial non-infringing uses other than to provide  
3 users with the ability to assemble and use an electronic vaporizing device that  
4 infringes the '549 Patent, and, therefore, that they are especially made or adapted  
5 for use in infringement of the '549 Patent.

6 562. As a direct and proximate result of the foregoing acts of Defendant,  
7 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not  
8 yet determined, which include but are not limited to, lost profits on the infringing  
9 sales Plaintiffs may have made and reasonable royalties on sales not made.  
10 Plaintiffs are also entitled to their costs of suit and interest.

11 563. Defendant's continuing infringement has inflicted and, unless  
12 restrained by this Court, will continue to inflict irreparable harm upon Plaintiffs,  
13 such as reduction of Plaintiffs' proper market share and deprivation of Plaintiffs'  
14 rights to exclude others. Plaintiffs have no adequate remedy at law. Plaintiffs are  
15 entitled to injunctive relief enjoining Defendant from engaging in further acts of  
16 infringement.

17 **FOURTH CLAIM FOR RELIEF**

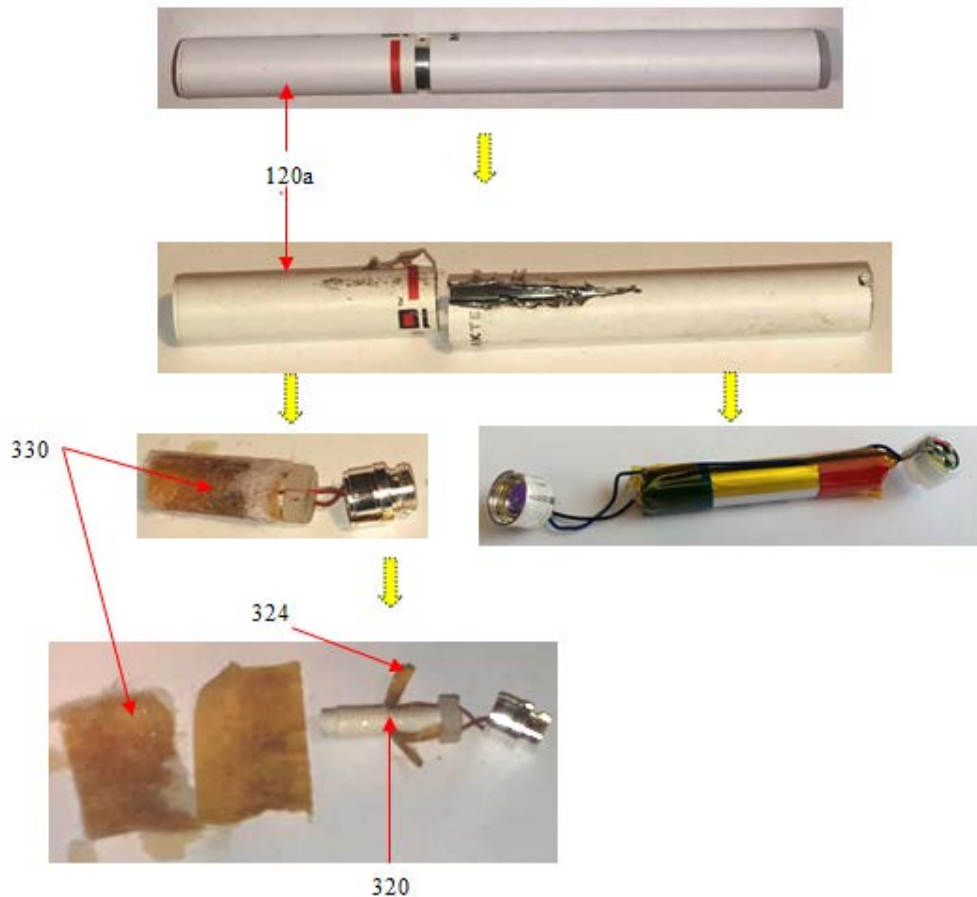
18 (Infringement of U.S. Patent No. 9,326,550)

19 564. Plaintiffs incorporate by reference the allegations contained in  
20 paragraphs 1–563 above.

21 565. Fontem Holdings is the owner of the entire right, title, and interest in  
22 and to United States Patent No. 9,326,550 ("the '550 Patent") (Exhibit D). Fontem  
23 Holdings has granted Fontem Ventures an exclusive license to the '550 Patent,  
24 including the right to sublicense the '550 Patent. The '550 Patent was duly and  
25 legally issued by the USPTO on May 3, 2016, and is valid, subsisting, and in full  
26 force and effect.

27 566. Defendant has directly infringed the '550 Patent in violation of 35  
28 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully

1           577. The MarkTen includes “an atomizer [320] having a porous body [324],  
2           and a liquid supply [330] in the tubular atomizer assembly housing [120a]” as  
3           recited in claim 1 of the ’550 Patent.



1           621. As such, Defendant knows that the MarkTen and GreenSmoke  
2 Products and components of the MarkTen and GreenSmoke Products, including,  
3 but not limited to, the MarkTen and GreenSmoke Cartridge, and MarkTen and  
4 GreenSmoke Battery when sold separately, have no substantial non-infringing uses  
5 other than to provide users with the ability to assemble and use a vaporizing device  
6 that infringes the '550 Patent, and, therefore, that they are especially made or  
7 adapted for use in infringement of the '550 Patent.

8           622. As a direct and proximate result of the foregoing acts of Defendant,  
9 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not  
10 yet determined, which include but are not limited to, lost profits on the infringing  
11 sales Plaintiffs may have made and reasonable royalties on sales not made.  
12 Plaintiffs are also entitled to their costs of suit and interest.

13           623. Defendant's continuing infringement has inflicted and, unless  
14 restrained by this Court, will continue to inflict irreparable harm upon Plaintiffs,  
15 such as reduction of Plaintiffs' proper market share and deprivation of Plaintiffs'  
16 rights to exclude others. Plaintiffs have no adequate remedy at law. Plaintiffs are  
17 entitled to injunctive relief enjoining Defendant from engaging in further acts of  
18 infringement.

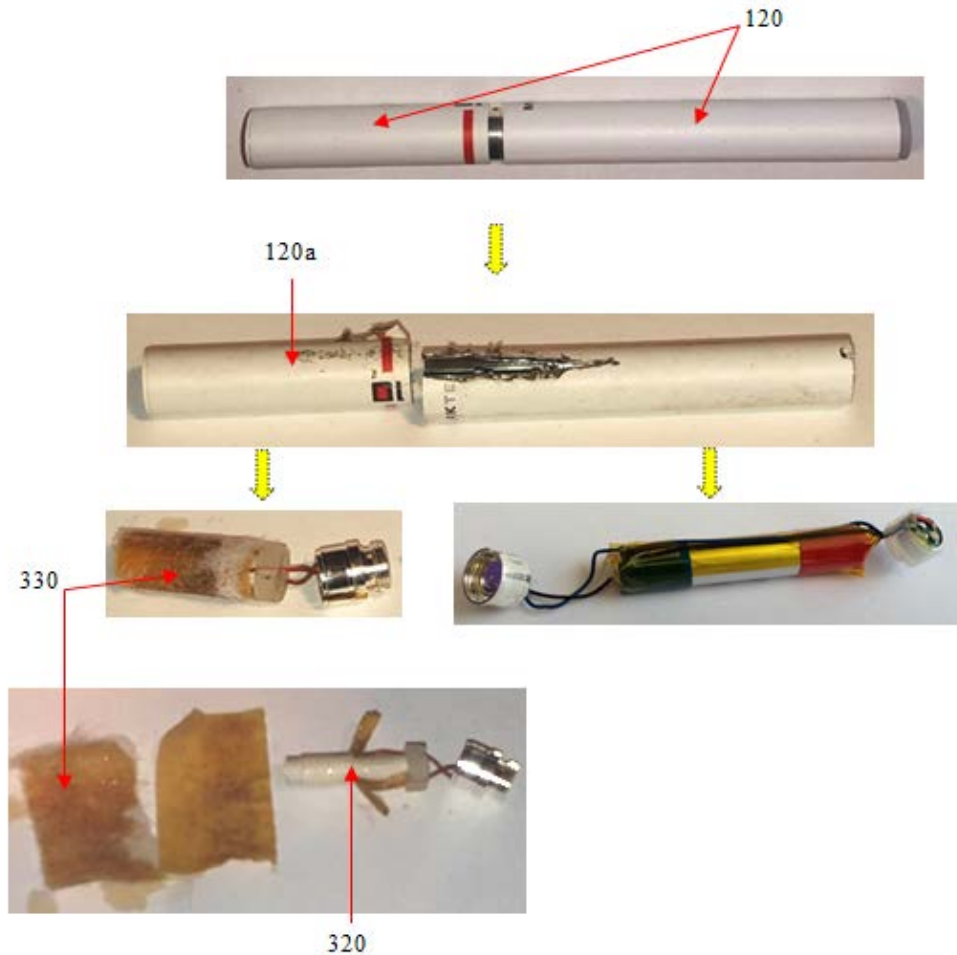
19                           **FIFTH CLAIM FOR RELIEF**

20                           (Infringement of U.S. Patent No. 9,326,551)

21           624. Plaintiffs incorporate by reference the allegations contained in  
22 paragraphs 1–623 above.

23           625. Fontem Holdings is the owner of the entire right, title, and interest in  
24 and to United States Patent No. 9,326,551 (“the '551 Patent”) (Exhibit E). Fontem  
25 Holdings has granted Fontem Ventures an exclusive license to the '551 Patent,  
26 including the right to sublicense the '551 Patent. The '551 Patent was duly and  
27 legally issued by the USPTO on May 3, 2016, and is valid, subsisting, and in full  
28 force and effect.

633. The MarkTen includes “an atomizer [320] and a liquid supply [330] in the tubular atomizer assembly housing [120a]” as recited in claim 1 of the ’551 Patent.



1 sales Plaintiffs may have made and reasonable royalties on sales not made.  
2 Plaintiffs are also entitled to their costs of suit and interest.

3 760. Defendant's continuing infringement has inflicted and, unless  
4 restrained by this Court, will continue to inflict irreparable harm upon Plaintiffs,  
5 such as reduction of Plaintiffs' proper market share and deprivation of Plaintiffs'  
6 rights to exclude others. Plaintiffs have no adequate remedy at law. Plaintiffs are  
7 entitled to injunctive relief enjoining Defendant from engaging in further acts of  
8 infringement.

9 **SIXTH CLAIM FOR RELIEF**

10 (Infringement of U.S. Patent No. 9,339,062)

11 761. Plaintiffs incorporate by reference the allegations contained in  
12 paragraphs 1–760 above.

13 762. Fontem Holdings is the owner of the entire right, title, and interest in  
14 and to United States Patent No. 9,339,062 (“the ’062 Patent”) (Exhibit F). Fontem  
15 Holdings has granted Fontem Ventures an exclusive license to the ’062 Patent,  
16 including the right to sublicense the ’062 Patent. The ’062 Patent was duly and  
17 legally issued by the USPTO on May 17, 2016, and is valid, subsisting, and in full  
18 force and effect.

19 763. Defendant has directly infringed the ’062 Patent in violation of 35  
20 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully  
21 making, using, importing, offering to sell, and/or selling electronic cigarette  
22 products embodying one or more of the inventions claimed in the ’062 Patent, in  
23 this judicial district and within, from and/or into the United States without  
24 permission or license from Plaintiffs, and will continue to do so unless enjoined by  
25 this Court.

26 764. Examples of electronic cigarette products that directly infringe the  
27 ’062 Patent include, but are not limited to, the MarkTen Products and GreenSmoke  
28 Products.

1           775. The MarkTen includes “an atomizer [320] and a liquid supply [330] in  
2 the tubular atomizer assembly housing [120a]” as recited in claim 1 of the ’062  
3 Patent.

