

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUUL LABS, INC.,

Petitioner,

v.

NJOY, LLC,

Patent Owner.

Inter Partes Review No.

IPR2023-00161

Patent 10,334,881

Title: Electronic Vaporizer

Filing Date: December 13, 2016

Issue Date: November 15, 2022

PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 10,334,881

NJOY Exhibit 1047.001
NJOY v. Juul
IPR2024-00231

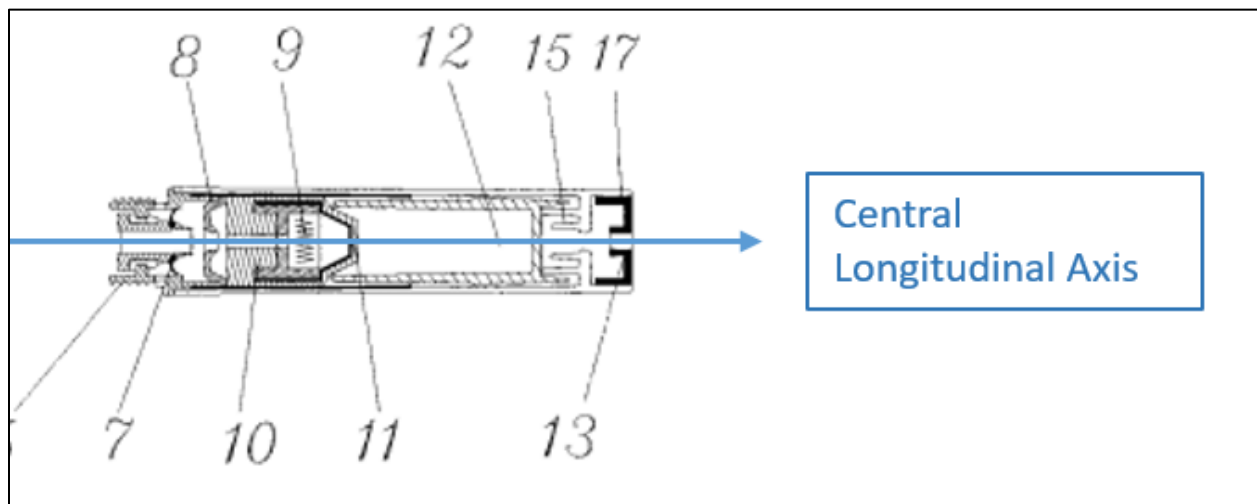
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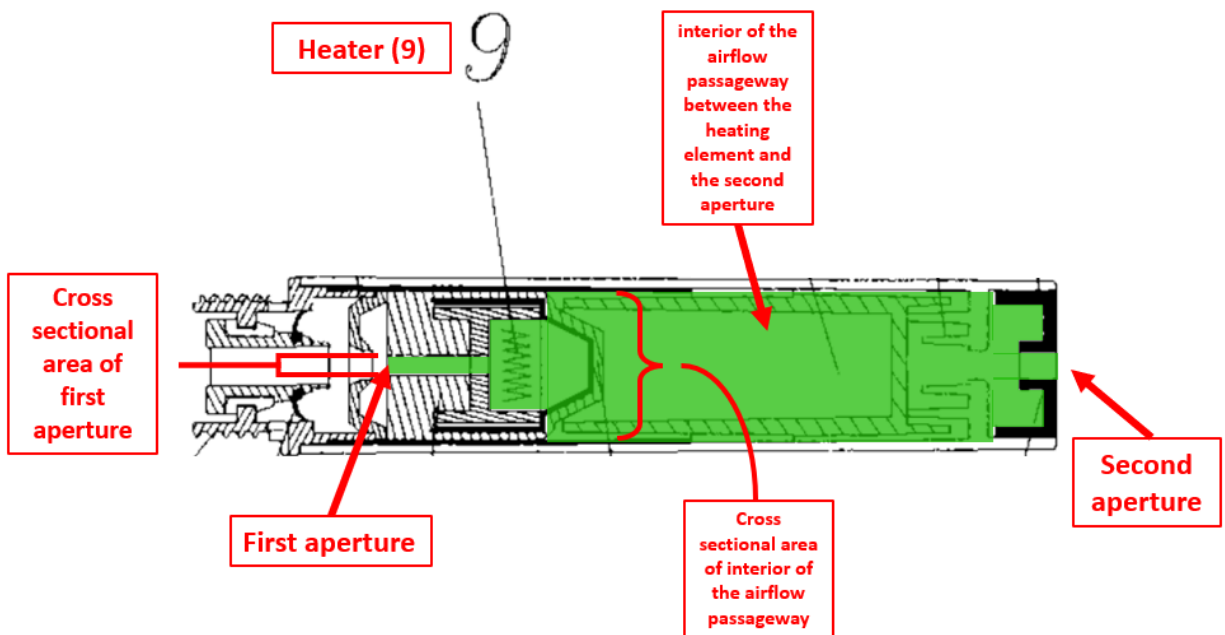
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**3. Claim 3: central/axial first aperture equal to or smaller than
airflow passageway and second aperture**

i. Xia

As illustrated in the Xia figures below, the interior of Xia's airflow passageway has a cross sectional area larger than the first aperture. As also shown (and described above), the first aperture is located centrally and axially with respect to the housing.





Ex. 1004, Fig. 2 (partial, annotated).

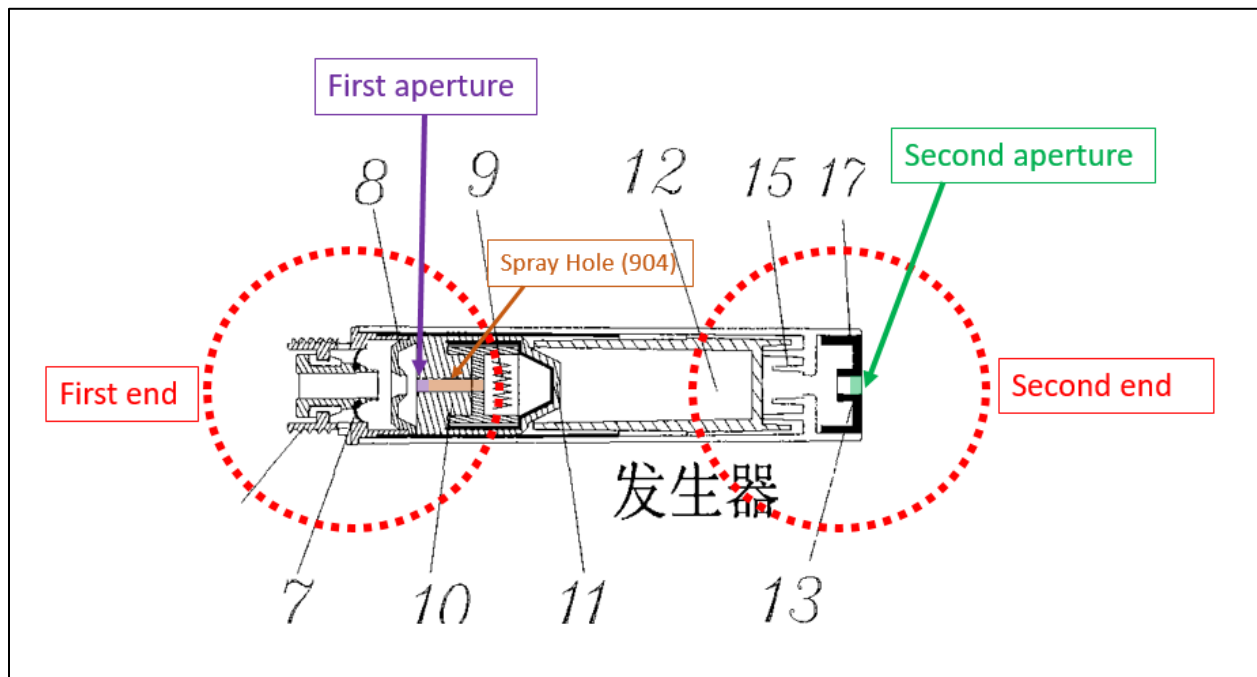
ii. Xia with Wang and/or Fang

The identified obvious combinations of Xia with Wang and/or Fang also disclose this limitation, as explained in Ground 2, claim 3, and as described and depicted in elements 1[b2]-[d] above. Ex.1007 ¶179.

4. Claim 4: first aperture smaller than second aperture

i. Xia

Xia illustrates the first aperture, on the first end, smaller than the second aperture, on the second end:



Ex. 1004, Figs. 1, 2.

ii. Xia with Wang and/or Fang

There would be no need or reason to change the foregoing aperture sizes in the proposed combinations of Xia with Wang and/or Fang, so those combinations disclose this limitation for the reasons above. Ex.1007 ¶182.

5. Claim 5: absorbent material or reservoir

Xia discloses at least a solution holding medium including absorbent material. “The liquid storage chamber 12 is a cylindrical object with one end open, medicinal cotton fibers are placed in the middle, and then raw chemical liquid is charged in.” Ex. 1004, 13. See [8a] regarding reservoir.

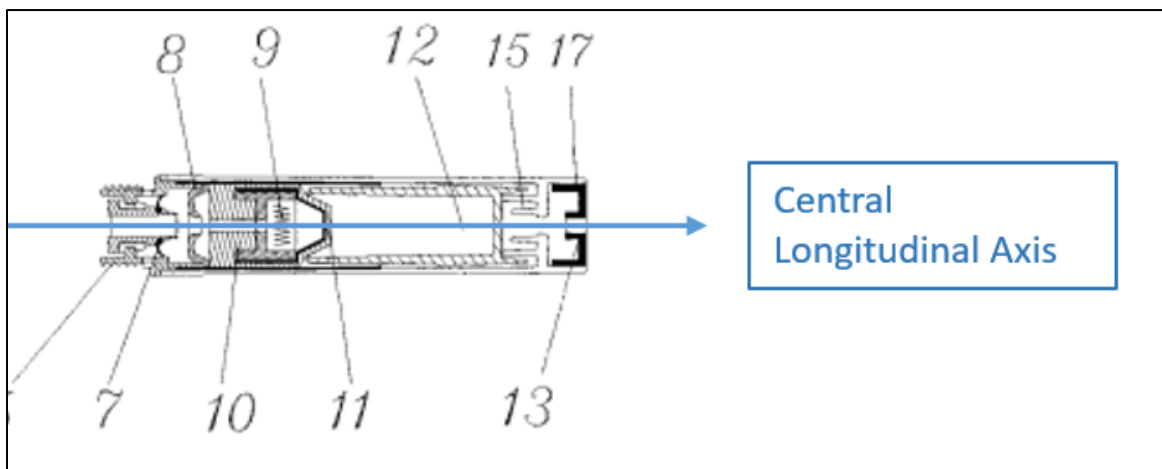
6. Claim 6: propylene glycol or nicotine solution

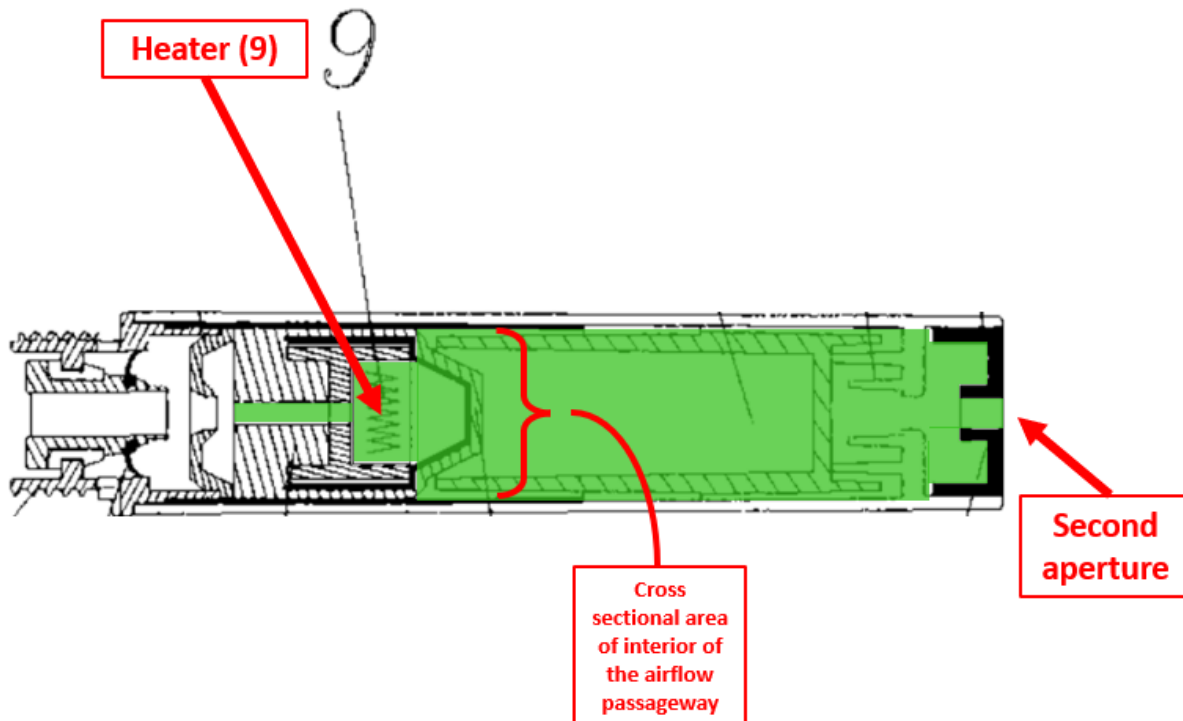
Xia and its obvious combinations with Wang and Fang disclose this limitation. Xia identifies the solution in liquid storage container 10 as “nicotine liquid.” Ex. 1004, 15. Likewise, Wang and Fang both describe the solutions to be vaporized as containing nicotine. See Ex. 1005, 7 Ex. 1006, 4.

7. Claim 7: uniform airflow passageway between the heating element and the second aperture

i. Xia

As depicted below and established above, Xia’s airflow passageway (highlighted in green) between the heating element and the second aperture has a uniform cross-sectional area measured perpendicular to a central longitudinal axis of the housing between the heating element (9) and the second aperture (13):





Ex. 1004, Fig. 2 (partial) (annotated).

ii. Xia with Wang

As established above and depicted below, the airflow passageway in Wang meets this limitation, and Xia modified with Fang would maintain Xia's passageway uniformity:

Factor (f) is inapplicable because none of the asserted combinations were substantively considered by the Examiner. The Board has consistently declined exercising its discretion under Section 325(d) when the only fact a Patent Owner can point to is that a reference was disclosed to the Examiner during the prosecution. *See, e.g., Digital Check Corp. d/b/a ST Imaging v. E-Imagedata Corp.*, IPR2017-00178, slip op. at 12–13 (PTAB Apr. 25, 2017) (Paper 6) (acknowledging that a prior art reference was cited in an IDS, but granting institution because there was no indication that the claims were rejected based on those references or that the Examiner substantively discussed those references during prosecution). Weighing the factors together, non-institution under § 325 would be improper.

XIII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that *inter partes* review be instituted and that the Challenged Claims be found unpatentable.

U.S. Patent No. 10,334,881 B1
Petition for *Inter Partes* Review

Dated: November 8, 2023

/s/ William A. Meunier

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), Petitioner hereby certifies, in reliance on the word count of the word-processing system (Microsoft Office Word 2010) used to prepare this petition, that the number of words in this paper is 13,852. This word count excludes the tables of contents, tables of authorities, mandatory notices under 37 C.F.R. § 42.8, certificate of word count, certificate of service, or appendix of exhibits or claim listing. Petitioner certifies that this Petition for *Inter Partes* Review does not exceed the applicable type-volume limit of 37 C.F.R. § 42.24(a).

Dated: November 8, 2023

/s/ William A. Meunier
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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Petition for *Inter Partes* Review, all referenced exhibits, and the Petitioner's Power of Attorney were served on November 9, 2023, via overnight courier upon the following counsel of record for Patent Owner:

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Courtesy copies of this Petition and accompanying exhibits were also served via electronic mail on Patent Owner's counsel of record in a related litigation at:

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