

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NJOY, LLC and NJOY HOLDINGS, INC.,
Petitioner,

v.

JUUL LABS, INC.,
Patent Owner.

IPR2024-00567
Patent RE49,114 E

Before CHRISTOPHER M. KAISER, KIMBERLY MCGRAW, and
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314, 37 C.F.R. § 42.4

I. INTRODUCTION

NJOY, LLC and NJOY Holdings, Inc. (collectively, “Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1, 5–7, 29–30, 36, 43, 44, 76, 77, 80, 81, 86, 89, and 93 of U.S. Patent No. RE49,114 E (Ex. 1001, “the ’114 patent”). JUUL Labs, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6 (“Prelim. Resp.”). On July 11, 2024, Patent Owner filed a request disclaiming claims 1, 5–7, 29–30, and 36. Ex. 3001. Accordingly, we limit our discussion to the remaining claims 43, 44, 76, 77, 80, 81, 86, 89, and 93.

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a). The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless the Director determines . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least [one] of the claims challenged in the petition.”

For the reasons set forth below, upon considering the Petition, Preliminary Response, and evidence of record, we determine that Petitioner has not established a reasonable likelihood of prevailing with respect to at least one challenged claim. Accordingly, we do not institute an *inter partes* review.

A. *Real Parties-in-Interest*

Petitioner identifies NJOY, LLC, NJOY Holdings, Inc. Altria Group, Inc., Altria Group Distribution Company, Altria Client Services LLC, and Shenzhen Smoore Technology Limited as real parties-in-interest. Pet. 1.

Patent Owner identifies itself as the real party-in-interest. Paper 5, 2.

B. Related Proceedings

The parties identify *Certain Vaporizer Devices, Cartridges Used Therewith, and Components Thereof*, 337-TA-1368 (ITC) and *JUUL Labs, Inc. v. NJOY, LLC et al.*, 23-cv-01204 (D. Ariz.) as related proceedings. Pet. 1; Paper 5, 2.

Patent Owner further identifies IPR2024-00223 (U.S. Patent No. 10,709,173), IPR2024-00231 (U.S. Patent No. 10,130,123), IPR2024-00267 (U.S. Patent No. 11,134,722 B2), IPR2024-00268 (U.S. Patent No. 11,606,981), and IPR2024-00536 (U.S. Patent No. 11,606,981), as related matters. Paper 5, 2.

C. The '114 patent

The '114 patent, titled “Electronic Cigarette with Liquid Reservoir, issued on June 28, 2022, as a reissue of U.S. Patent No. 9,596,887, issued March 21, 2017. Ex. 1001, code (45), (64). The '114 patent describes “an electronic cigarette with an internal liquid reservoir.” *Id.* at 1:15–17.

Figure 1 is illustrative of the electronic cigarette, and is reproduced below.

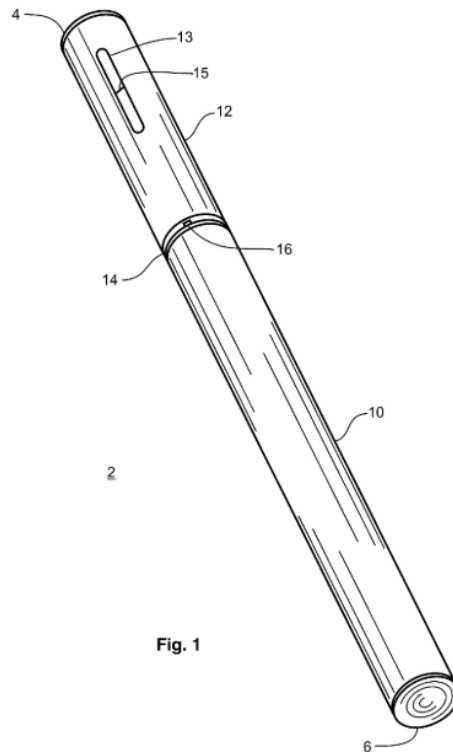


Figure 1 is a perspective view of an electronic cigarette. Ex. 1001, 2:46–48.

Figure 1 shows electronic cigarette 2 that includes an elongated end 10 with tip end 6, a cartridge 12 with mouthpiece end 4, air inlet vents 16 for allowing airflow into the cartridge 12, and a window 13 showing liquid level 15 in the cartridge 12. *Id.* at 4:13–29.

Figure 7 is illustrative and reproduced below, and shows a side view diagram of liquid reservoir cartridge 12.

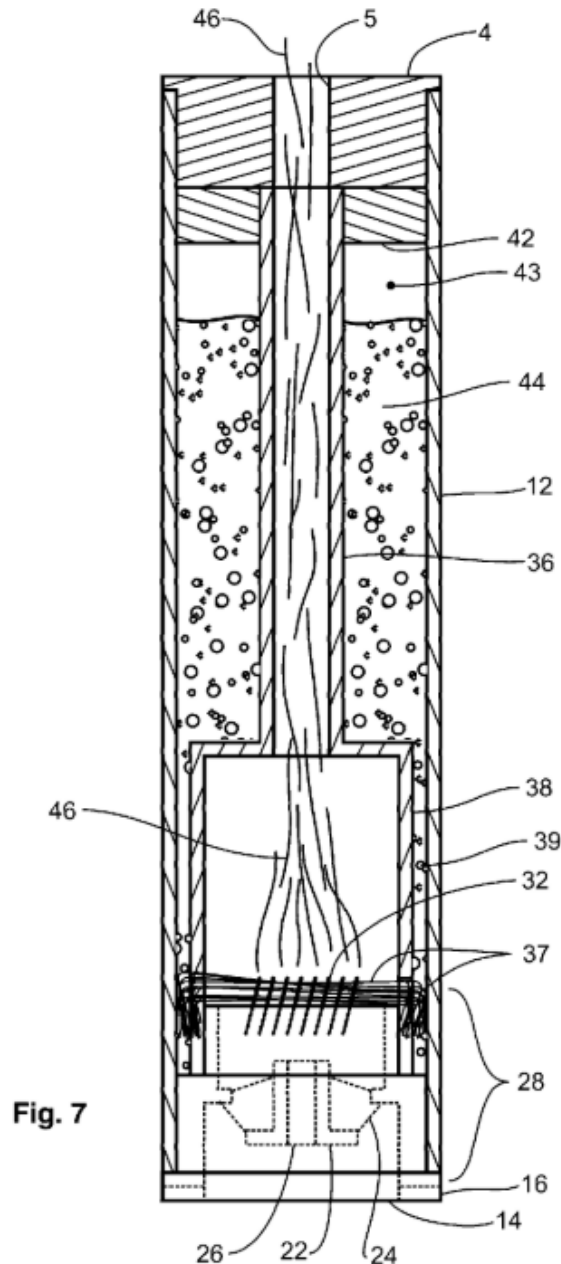


Fig. 7

Figure 7 is side sectional view of a liquid reservoir cartridge. *Id.* at 3:1–3.

The cartridge includes outer housing 12 with tip end 4 and aerosol port 5 formed therethrough, air inlet vents 16, atomizer assembly 28, and atomizing chamber 38 coupled to a chimney 36. *Id.* at 6:3–18. Figure 7 shows “annular space 43 between the chimney 36 and the interior of the housing 12 [which] defines the liquid reservoir 43.” *Id.* at 6:19–20. Figure

7 shows that “there is a thinner annular cavity 39 formed between the exterior of the atomizing chamber 38 and interior of the cartridge housing 12.” *Id.* at 6:21–23. Figure 7 shows that “fluid 44 is stored in the fluid reservoir 43,” which can flow “into the annular cavity 39 to saturate the wick 37.” *Id.* at 6:23–25; *see also id.* at 6:40–43 (“As the liquid in the wick 37 is depleted by the atomizer 32, capillary action draws additional liquid from the liquid reservoir 43, through the cavity 39 and to the atomizer 32”).

D. Illustrative Claim

Petitioner challenges claims 43, 44, 76, 77, 80, 81, 86, 89, and 93 of the ’114 patent. Independent claim 43 is illustrative of the claimed subject matter and is reproduced below¹.

Claim 43.

[A] A cartridge comprising:

[B] a cartridge housing;

[C] a mouthpiece end comprising an aerosol outlet;

[D] an atomizing chamber disposed within the cartridge housing proximate a lower end of the cartridge housing opposite the mouthpiece end,

[E] the atomizing chamber comprising an atomizer outlet and an atomizing chamber air inlet;

[F] the atomizing chamber further comprising a first wick aperture and a second wick aperture;

[G] a liquid reservoir at least partially defined by an interior of the cartridge housing and an exterior of the atomizing chamber,

[H] the liquid reservoir configured to contain an atomization liquid;

¹ For convenience, we adopt Petitioner’s annotated claim format.

- [I] a chimney forming at least part of an aerosol outlet path sealably passing through the reservoir between the atomizer outlet and the aerosol outlet;
- [J] an atomizer disposed within the atomizing chamber,
- [K] the atomizer comprising a resistive heating element; and
- [L] a wick in contact with the atomization liquid in the liquid reservoir through the first wick aperture and the second wick aperture,
- [M] the wick disposed between the liquid reservoir and the atomizer.

Ex. 1001, 11:27–11:49.

E. The Asserted Unpatentability Challenges

Petitioner asserts that claims 43, 44, 76, 77, 80, 81, 86, 89, and 93 would have been unpatentable based on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
43, 44, 76, 77, 81, 86, 89, 93	102(a)	Cho ²
80	103(a)	Cho, Nielsen ³

Pet. 7. Petitioner also relies on declaration testimony of Joseph C. McAlexander III (Ex. 1003). Patent Owner relies on declaration testimony of Dr. John Collins (Ex. 2001).

II. ANALYSIS

A. Principles of Law

In an *inter partes* review, “the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”

² Cho, WO 2011/065754 A2, published June 3, 2011 (Ex. 1005, “Cho”).

³ Nielsen et al., U.S. Patent Pub. No. 2009/0283103 A1, published Nov. 19, 2009 (Ex. 1006, “Nielsen”).

Harmonic Inc. v. Avid Tech., Inc., 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (2012) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). This burden of persuasion never shifts to the patent owner. See *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

To anticipate, a reference must “show all of the limitations of the claims arranged or combined in the same way as recited in the claims.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1370 (Fed. Cir. 2008); *accord In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

We analyze the challenges presented in the Petition in accordance with the above-stated principles.

B. Level of Ordinary Skill in the Art

We review the grounds of unpatentability in view of the understanding of a person of ordinary skill in the art at the time of the invention. *Graham*, 383 U.S. at 17.

Petitioner contends that a person of ordinary skill in the art “would have at least a B.S. degree in Mechanical Engineering, Electrical Engineering, Industrial Design, Product Design, or similar field, with at least two years of industry experience in one of these fields, and such POSA would have been familiar with electrically powered vaporizing articles, their components, or the underlying technologies.” Pet. 7.

Patent Owner argues that a person of ordinary skill in the art “at the time of the ’114 patent would have had a B.S. in mechanical engineering, electrical engineering, or an equivalent degree, and either at least two

years of experience designing electro-mechanical consumer products or an advanced degree in mechanical engineering, electrical engineering, or an equivalent field.” Prelim. Resp. 2 (citing Ex. 2001 ¶¶ 19). Patent Owner submits that “the arguments in this Response apply regardless of which standard is adopted,” and that “Patent Owner’s expert, Dr. John Collins, was a POSITA at the time of the ’114 patent under either [Petitioner’s or Patent Owner’s] definition.” *Id.* (citing Ex. 2001 ¶ 22).

In light of the record before us, and for purposes of this Decision, we adopt Petitioner’s proposal regarding the level of ordinary skill in the art. Based on our review of the ’114 patent and the prior art of record, we determine that the definition offered by Petitioner comports with the qualifications a person would have needed to understand the ’114 patent and the prior art.

C. Claim Construction

We construe claim terms according to the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc); 37 C.F.R. § 42.100(b) (2019). Under *Phillips*, we give claim terms “their ordinary and customary meaning.” *Phillips*, 415 F.3d at 1312. “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Id.* at 1313. “Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” *Id.*

Petitioner asserts “Petitioners are unaware of any prior construction determination related to the ’114 patent.” Pet. 7–8. However, Petitioner

identifies constructions for four terms proposed by the parties in the related ITC litigation. *Id.* at 8. Petitioner also asserts “in the analysis of the prior art in this Petition, the asserted prior art anticipates or renders obvious the challenged claims under both Patent Owner’s and Petitioners’ interpretations.” *Id.*

Patent Owner asserts that “[w]ith the *exception of the preamble of claim 1*, in this preliminary stage, it is not necessary for the Board to resolve the construction of any terms.” Prelim. Resp. 3. The preamble of claim 44 recites an “electronic cigarette.” *Id.* at 11:50. Patent Owner argues that term “electronic cigarette” is limiting because it is an essential structure that is necessary to give meaning to the claims. Prelim. Resp. 3–4 (citing Ex. 1001, 1:19–24, 28–39, 2:46–3:25, 4:1–5; Ex. 2001 ¶¶ 38–44). Patent Owner argues that “electronic cigarette” is essential for the invention of a nicotine delivery system replacement that delivers nicotine by atomizing liquid instead of burning tobacco. *Id.* at 5 (citing Ex. 2001 ¶ 43). Patent Owner submits that the invention of the ’114 patent is not a vaporizer for health supplements and that the invention of Cho is for vaporizing a substance that is beneficial to the human body. *Id.* at 5–6 (citing Ex. 1005 ¶ 1).

For purposes of this Decision, we need not expressly construe any claim terms, including “electronic cigarette.” *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (holding that “only those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy”); *see also Nidec Motor Corp. v.*

Zhongshan Broad Ocean Motor Co., 868 F.3d 1013, 1017 (Fed. Cir. 2017) (citing *Vivid Techs.* in the context of an *inter partes* review).

D. Challenges based on Cho

Petitioner alleges that Cho anticipates claims 43, 44, 76, 77, 81, 86, 89, and 93 of the '114 patent. Pet. 11–64. Petitioner further alleges that the combination of Cho and Nielsen would have rendered obvious claim 80 of the '114 patent. Pet. 64–70. Petitioner relies on the testimony of Mr. McAlexander to support its arguments. *See id.*

1. Overview of Cho (Ex. 1005)

Cho is titled “Device for Vaporisation and Inhalation, a Composition for Vaporisation and Inhalation Used Therewith, and a Method for Vaporizing the Composition for Vaporisation and Inhalation.” Ex. 1005, code (54). Cho’s Figure 7 is reproduced below, showing such a device.

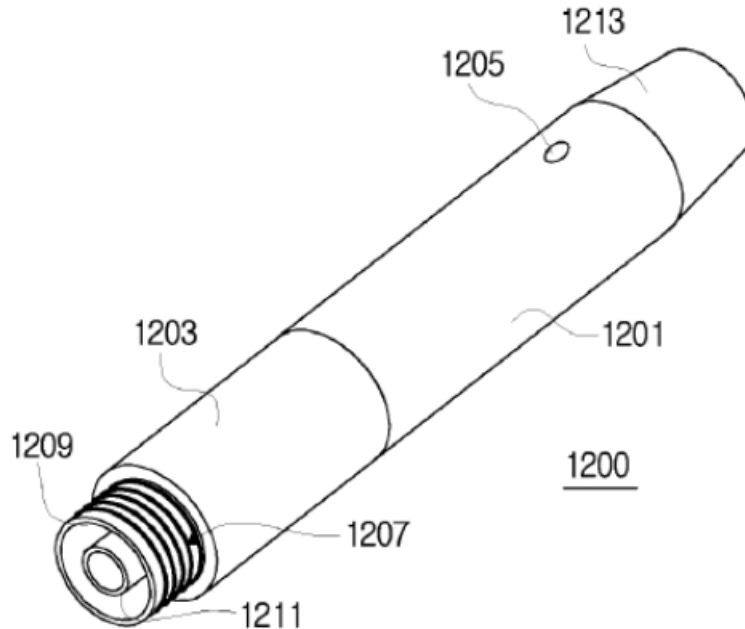


Figure 7 is a perspective view showing a vaporisation unit of an inhalation nozzle side of the device for vaporisation and inhalation. *Id.* ¶ 24.

Figure 7 illustrates vaporization unit 1200 with storage container 1201, atomization chamber 1203, liquid introduction valve 1205, inhalation port 1211, and inhalation contact 1213. Ex. 1005 ¶¶ 73–78. In Figure 7, “an inhalation contact 1213 for inhaling the mixed composition through body contact is provided in the vapourisation unit 1200 on the inhalation nozzle side having a cylindrical structure.” *Id.* ¶ 73. In storage container 1201, “a predetermined filling space is secured so that the mixed composition can be filled in a liquid state and an atomization container 1203 for vaporizing the mixed composition by direct or indirect heating through a predetermined heating member after inducing the mixed composition of the storage container 1201 using capillarity.” *Id.*

Figure 11 is reproduced below.

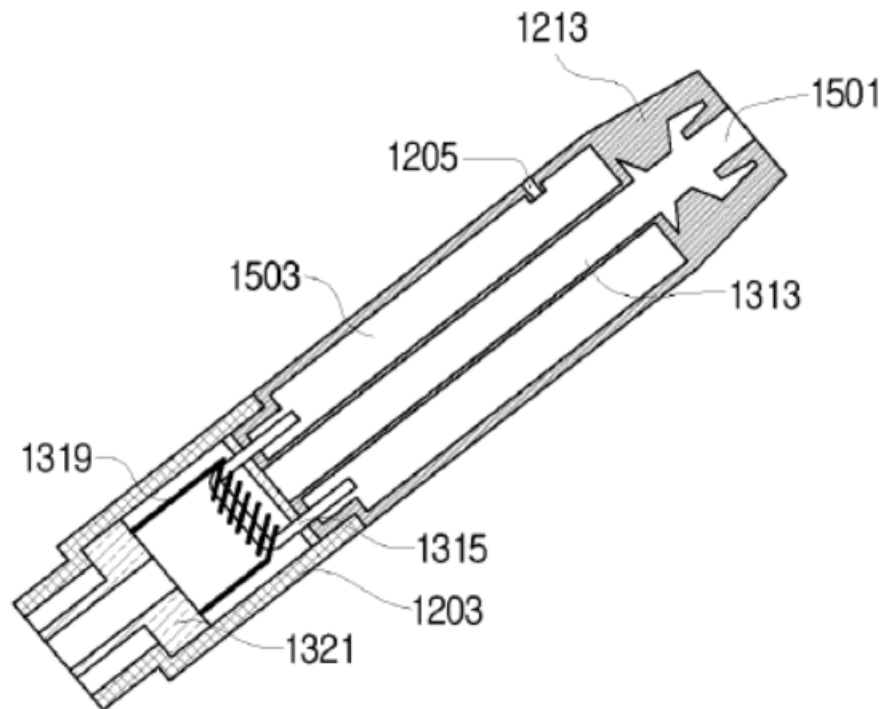


Figure 11 is a cross-sectional view of an assembled vaporisation unit 1200. Ex. 1005 ¶¶ 28, 89. Cho describes that unit 1200 “has a hollow structure,” and that Figure 11 shows “cylindrical air inhalation tube 1313” in its center,

where “air inhalation tube 1313 communicates with an inhalation nozzle 1501 of the inhalation contact 1213.” *Id.* at ¶ 89. Cho describes that storage container 1201 has a loading portion 1503, which is loaded with the mixed composition through the liquid introduction valve 1205. *Id.* Cho explains that the “mixed composition comes into contact with one end of the inductor 1315 pressed-in and installed through the inductor insertion hole 1311, and the inductor 1315 adsorbs the mixed composition by capillarity and is heated by the heating member 1319.” *Id.*

2. *Analysis of Claim 43*

Petitioner contends that Cho discloses a cartridge and a mouthpiece end comprising an aerosol outlet. Pet. 46 (citing Pet. 11–13; Ex. 1003 ¶¶ 49–52; Ex. 1005 ¶¶ 1, 9, 53–57, 73, 77, 81, 89, Figs. 7 and 11). Petitioner argues that Cho discloses an atomizing chamber disposed within the cartridge housing proximate a lower end of the cartridge housing opposite the mouthpiece end and that the atomizing chamber comprises an atomizer outlet and an atomizing chamber air inlet. *Id.* at 46–48 (citing Pet. 22–24; Ex. 1003 ¶¶ 68–71, 129–132; Ex. 1005 ¶¶ 73, 78, 82–83, 89, Figs. 9 and 11). The atomizing chamber further comprises a first wick aperture and a second wick aperture. *Id.* at 48 (citing Pet. 22–24; Ex. 1001, 6:28–31, 6:51–54, 6:57–65, 7:3–8, 7:58–61; Ex. 1003 ¶¶ 72–74; Ex. 1005 ¶¶ 83, 88, Figs. 8 and 11; Ex. 1014.002).

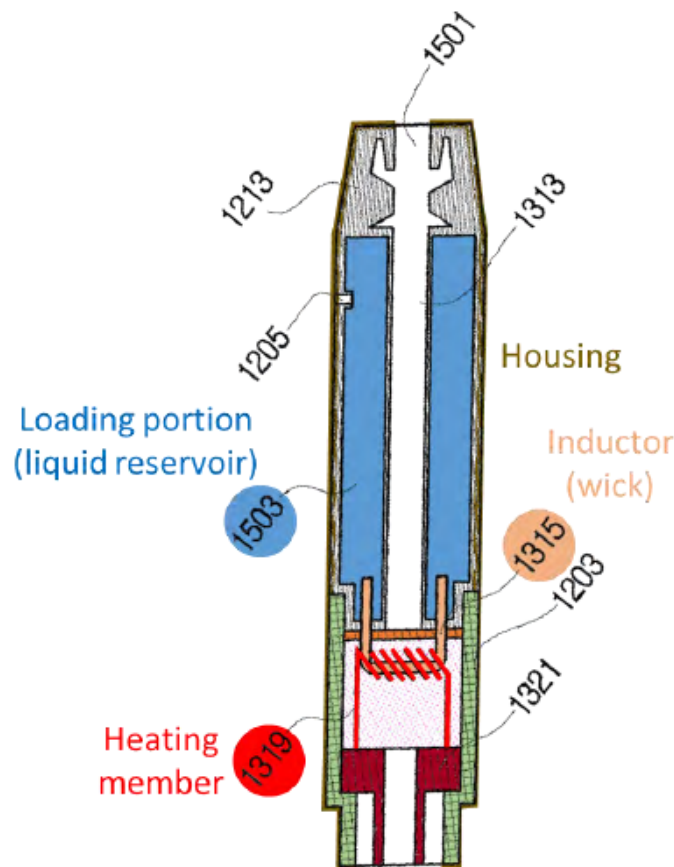
Petitioner contends that Cho discloses a liquid reservoir defined by an interior of the cartridge housing and an exterior of the atomizing chamber and that the liquid reservoir is configured to contain an atomization liquid. Pet. 48–52 (citing Ex. 1003 ¶¶ 135–142; Ex. 1005 ¶¶ 74, 76, 81, 84, 89, Fig. 11). Petitioner asserts that Cho discloses a chimney forming at least part of

an aerosol outlet path sealably passing through the reservoir between the atomizer outlet and the aerosol outlet. *Id.* at 52–53 (citing Pet. 15–17; Ex. 1003 ¶¶ 58–62; Ex. 1005 ¶¶ 73, 81, 83, 89, Fig. 11). Petitioner contends that Cho discloses an atomizer disposed within the atomizing chamber and that the atomizer comprising a resistive heating element. *Id.* at 53 (citing Pet. 15–17, 36–37; Ex. 1001, 6:27–28; Ex. 1003 ¶¶ 93–104, 143–146; Ex. 1005 ¶¶ 39, 73, 77, 81–83, Fig. 11). Petitioner argues that Cho discloses a wick in contact with the atomization liquid in the liquid reservoir through the first wick aperture and the second wick aperture so that the wick is disposed between the liquid reservoir and the atomizer. *Id.* at 53–54 (citing Pet. 28–32; Ex. 1003 ¶¶ 83–90; Ex. 1005 ¶¶ 83, 88–90, Fig. 11; Ex. 1014, 2).

Patent Owner argues that Cho does not disclose a “liquid reservoir [that] is partially defined by the exterior of an atomizing chamber” (Prelim. Resp. 8 (citing Ex. 2001 ¶ 47)), that the Petitioner’s “integrated embodiment” mixes and matches embodiments in a ground presented as anticipatory (*id.* at 9), and that the “integrated embodiment” is not enabled (*id.*). Because we agree with Patent Owner that Petitioner has failed to establish that Cho describes a “liquid reservoir [that] is partially defined by the exterior of an atomizing chamber”—and this issue is dispositive—we address only this issue below.

whether Cho discloses a liquid reservoir at least partially defined by an exterior of the atomizing chamber in either the “separated embodiment” or the “integrated embodiment”⁴

Petitioner contends that Cho discloses a liquid reservoir defined by an interior of the cartridge housing and an exterior of the atomization chamber. Pet. 48–50 (citing Ex. 1003 ¶¶ 135–138; Ex. 1005 ¶¶ 74, 81, 89, Fig. 11). Petitioner’s annotated version of Cho’s Figure 11 is depicted below, i.e., the “separated embodiment.”



Id. at 30 (“Annotated Fig. 11” or “Ann. Fig. 11”). Annotated Figure 11 shows storage container (or housing) (brown), connected to atomization

⁴ Patent Owner utilizes the terms “separated embodiment” and “integrated embodiment” to describe Petitioner’s alternative embodiments. *See* Prelim. Resp. 12. For consistency and convenience, we similarly adopt these terms.

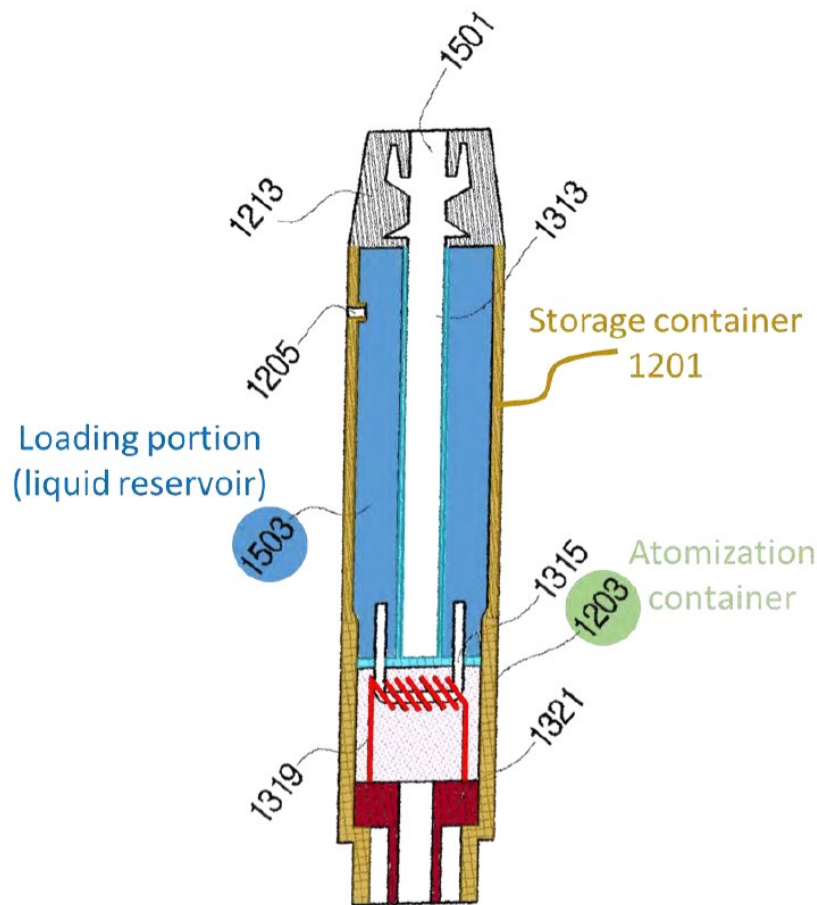
container 1203 (light green), with hollow air inhalation tube 1313 located in the center of storage container 1201. Ex. 1005 ¶ 89. Atomization container 1203 includes heating member 1319 (red) coiled around inductor 1315 or wick (peach) where the ends of inductor 1315 pass through holes in fixing plate (orange), and into loading portion 1503 (i.e., the liquid reservoir) (blue).

Petitioner asserts that

Cho discloses liquid loading portion 1503 (liquid reservoir) is defined as the space inside the storage container 1201 but outside air inhalation tube 1313 (chimney). EX1005, ¶ [89] (“the storage container 1201 has a loading portion 1503 as the remaining space except for the air inhalation tube 1313, and the loading portion 1503 is loaded with the mixed composition through the liquid introduction valve 1205”).

Id. at 49.

Petitioner alternatively asserts that “Cho further discloses an embodiment whereby the storage container 1201 and atomization container 1203 are integrated into a single structure.” *Id.* (citing Ex. 1005 ¶ 74). Petitioner creates an integrated embodiment version of Cho Figure 11, reproduced below.



Id. (“Integrated Figure 11” or “Integrated Fig. 11”). Integrated Figure 11 is a cross-sectional view of an assembled vaporization unit 1200 as an “integrated embodiment” as proposed by Petitioner. Integrated Figure 11 depicts the exterior of storage container 1201 and atomization container 1203 as an integrated structure (tan), loading portion (i.e., liquid reservoir) 1503 (blue), cylindrical air inhalation tube 1313 (light blue), heating member 1319 (red), and the interior of the atomization container (pink). Petitioner explains that “[i]n this integrated embodiment, the exterior of the atomizing chamber further defines liquid loading portion 1503 because the exterior of the atomizing chamber is integrated with the air inhalation tube 1313 (chimney).” *Id.* (citing Ex. 1005 ¶ 81).

Patent Owner asserts that claim 43 requires that the liquid reservoir is “defined by an interior of the cartridge housing and an exterior of the atomizing chamber,” but “Cho’s alleged liquid reservoir is defined entirely by the interior of its storage container 1201.” Prelim. Resp. 8. Patent Owner contends “[n]othing about Cho’s disclosure [in Figures 8 and 10 and paragraph 89] indicates that the liquid reservoir is partially defined by the exterior of an atomizing chamber.” *Id.* (citing Ex. 2001 ¶ 47).

With respect to the “integrated embodiment,” Patent Owner further asserts that Cho’s single sentence that “the atomization container and the storage container are molded into a mutually integrated structure . . . the shape of the atomization container itself becomes unnecessary” (Ex. 1005 ¶ 74) does not disclose that the claimed liquid reservoir that is “defined by . . . an exterior of the atomizing chamber.” Prelim. Resp. 9 (citing Ex. 2001 ¶¶ 48–49). Patent Owner asserts that Petitioner’s Cho does not depict any figures showing this integrated structure and that Petitioner’s representation of Cho’s Figure 11 was fabricated in an attempt to imagine what the integrated structure might look like. *Id.* at 10 (citing Ex. 2001 ¶¶ 50–51). Patent Owner argues that Petitioner’s edited Figure 11 nonetheless does not show that the liquid reservoir 1503 is defined by an exterior of the atomizing chamber as required by the claim. *Id.* at 11–13 (citing Ex. 2001 ¶¶ 52–53).

We are persuaded that Petitioner has not shown that Cho describes a “liquid reservoir [that] is partially defined by the exterior of an atomizing chamber” in either of the “separated embodiment” or the “integrated embodiment.” Pet. 48–50. With respect to the “separated embodiment,” Petitioner identifies the inside of storage container 1201 as the “interior of

the cartridge housing” and the outside of air inhalation tube 1313 as the “exterior of the atomizing chamber.” *Id.* But Annotated Figure 11 does not show air inhalation tube 1313 as part of atomizing chamber 1203.

Therefore, the liquid reservoir, i.e., loading portion 1205, is not “at least partially defined by . . . an exterior of the atomizing chamber.”

Petitioner’s “integrated embodiment” fares no better. Citing Cho paragraph 81, Petitioner states that in the “integrated embodiment, the exterior of the atomizing chamber further defines liquid loading portion 1503 because the exterior of the atomizing chamber is integrated with the air inhalation tube 1313 (chimney).” Pet. 49. Cho, however, explains that “[t]he storage container 1201 has a hollow structure in which an air inhalation tube 1313 is buried in the center, and the air inhalation tube 1313 has an integrated communication structure therearound (Ex. 1005 ¶ 81)” and does not describe the atomization container as integrated with the inhalation tube or chimney. Neither Petitioner nor its declarant, Mr. McAlexander, explain why the inhalation tube 1313 is part of atomization container 1203 or direct our attention to any portion of Cho that describes why the inhalation tube 1313 as being integrated into atomizing chamber 1203. That inhalation tube 1313 releases vapor and is in fluid communication with atomization container 1203, does not mean that it is integrated into atomization container 1203 such that liquid reservoir 1503 is “at least partially defined by . . . an exterior of the atomizing chamber,” as claimed. Petitioner bears the burden of showing why it believes the challenged claims are unpatentable and we decline to fill in the gaps and supply the missing analysis ourselves. *Cf. SmithKline Beecham Corp. v. Apotex Corp.*, 439

F.3d 1312, 1320 (Fed. Cir. 2006)(explaining that judges should not have to hunt for arguments and evidence in the briefs).

Therefore, Petitioner has not shown a reasonable likelihood that Cho describes “a liquid reservoir at least partially defined by an interior of the cartridge housing and an exterior of the atomizing chamber” in either of the “separated embodiment” or the “integrated embodiment.” For at least this reason, and based on the current record, Petitioner has failed to establish that claim 43 is anticipated by Cho.

3. *Remaining Claims 44, 76, 77, 80, 81, 86, 89, and 93*

Petitioner asserts that claims 44, 76, 77, 81, 86, 89, and 93 are anticipated by Cho. Pet. 35–46, 54–64. In addition, Petitioner alleges that the combination of Cho and Nielsen would have rendered obvious claim 80 of the ’114 patent. Pet. 64–70. Each of claims 44, 76, 77, 80, 81, 86, 89, and 93 requires a “liquid reservoir at least partially defined by an interior of the cartridge housing and an exterior of the atomizing chamber,” either by virtue of dependence (claims 76, 77, 80, 81, 86, 89, and 93) or independent recitation (claim 44). Ex. 1001, 11:50–12:9, 19:1–19:63. Because Petitioner has failed to show a reasonable likelihood that Cho teaches a “liquid reservoir at least partially defined by an interior of the cartridge housing and an exterior of the atomizing chamber,” we decline to institute on the remaining claims.

III. CONCLUSION

For the foregoing reasons, we determine that Petitioner has demonstrated a reasonable likelihood that it would prevail with respect to at least one of the claims challenged in the Petition. Accordingly, we do not institute an *inter partes* review of the ’114 patent.

IV. ORDER

It is ORDERED that the Petition is denied as to all challenged claims of the '114 patent and no trial is instituted.

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