

R.J. Reynolds Vapor Company
Petitioner
v.
Healthier Choices Management Corp.
Patent Owner

IPR2024-01458
PATENT 9,538,788 B2
Oral Argument
December 10, 2025

'788 Patent


US009538788B2

(12) **United States Patent**
Cyphert et al.

(10) **Patent No.:** US 9,538,788 B2
(45) **Date of Patent:** Jan. 10, 2017

(54) **ELECTRONIC CIGARETTE**

(71) Applicant: **Vapor Corp.**, Dania Beach, FL (US)

(72) Inventors: **Gilbert Cyphert**, Phoenix, AZ (US);
Xuandong Huang, Sichuan (CN);
Edwin Balder, Mesa, AZ (US)

(73) Assignee: **VAPOR CORP.**, Dania Beach, FL (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 112 days.

(21) Appl. No.: 13/999,652

(22) Filed: **Mar. 14, 2014**

(65) **Prior Publication Data**
US 2015/0047658 A1 Feb. 19, 2015

Related U.S. Application Data
(60) Provisional application No. 61/852,336, filed on Mar. 15, 2013.

(51) **Int. Cl.**
A24F 47/00 (2006.01)

(52) **U.S. Cl.**
CPC **A24F 47/008** (2013.01)

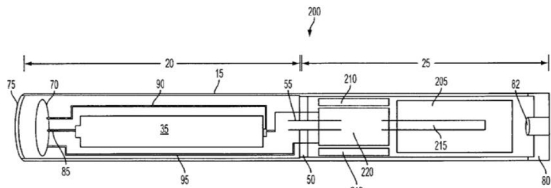
(58) **Field of Classification Search**
CPC **A24F 47/008**
See application file for complete search history.

(56) **References Cited**
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4,074,111 A * 2/1978 Hunter A61L 9/03
392/393
4,508,991 A * 4/1985 Wurster B101K 1/32
313/579
7,832,410 B2 11/2010 Hon A24F 47/00
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2013/0042865 A1 * 2/2013 Monsees A61M 15/06
128/203/27
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128/202/21
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131/328

FOREIGN PATENT DOCUMENTS
CN 102423145 4/2012
* cited by examiner
Primary Examiner — Michael H Wilson
Assistant Examiner — Eric Yaary
(74) Attorney, Agent, or Firm — Geoffrey A. Lottenberg

(57) **ABSTRACT**
An electronic cigarette is provided. The electronic cigarette includes a casing having two chambers located sequentially within the casing. A battery and a fluid are located in the casing. A sealing element forms a partition between the chambers. A tube element is located in the second chamber, providing an air passage between the two chambers. Also included is a fiber element that transfers fluid from a fluid containing member to a heating assembly.

13 Claims, 9 Drawing Sheets



RJR Exhibit 1001
RJR v. Healthier Choices Mgmt.
Page 4

The '788 Patent relates to an **electronic cigarette** comprising a cylinder casing that includes a first chamber, a second chamber, with the chambers located sequentially within the cylindrical casing.

Ex. 1001 at 2:60-67.

Cargill v. Bunge Loders Croklaan USA, LLC, IPR2024-01360, Paper 18, p. 4-5 (April 29, 2025)

Trials@uspto.gov
571-272-7822

Paper 18
Date: April 29, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CARGILL, INCORPORATED,
Petitioner,

v.

BUNGE LODERS CROKLAAN USA, LLC,
Patent Owner.

IPR2024-01360
Patent 7,645,473 B2

Before GRACE KARAFFA OBERMANN, KIMBERLY MCGRAW, and
DEBRA L. DENNETT, *Administrative Patent Judges*.

DENNETT, *Administrative Patent Judge*.

DECISION
Denying Petitioner's Request for Rehearing of
Decision Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.71(d)

As discussed in the Decision, “obviousness concerns whether a skilled artisan not only *could have made* but *would have been motivated to make* the combinations or modifications of prior art to arrive at the claimed invention.” *Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 1073 (Fed. Cir. 2015) (citing *InTouch Technologies, Inc. v. VGO Communications, Inc.*, 751 F.3d 1327, 1352 (Fed. Cir. 2014)). No matter the result of combining the allegedly “readily available and well-known” information taken from particular examples from the “documentary evidence” with Petruskaite’s disclosure, a POSITA had to have been motivated to do so at the time the

invention was made.¹ What is missing from the Petition is the “why.” The only motivating force in this case appears to be hindsight spurring Petitioner on to choose particular examples of palm stearin disclosed in Deffense and the soybean oil in Neff in order to justify its assertion that Petruskaite discloses the claimed wt% ranges of triglyceride classes.

GILBERT

United States Patent Office

3,200,819

Patented Aug. 17, 1965

1

3,200,819

SMOKELESS NON-TOBACCO CIGARETTE
Herbert A. Gilbert, 278 McKinley Road, Beaver Falls, Pa.
Filed Apr. 17, 1963, Ser. No. 273,624
10 Claims. (Cl. 128—208)

The present invention relates to a smokeless non-tobacco cigarette and has for an object to provide a safe and harmless means for and method of smoking by replacing burning tobacco and paper with heated, moist, flavored air; or by inhaling warm medication into the lungs in case of a respiratory ailment under direction of a physician.

Another object of the invention is to provide an article of manufacture resembling a cigarette by which air may be drawn through a porous substance of a cartridge which has been moistened with a chemically harmless flavoring preparation, combining moisture and taste following which the moist and flavored air passes through a section of the device heated by a suitable heating element so that warm, moist and flavored air is drawn into the mouth and if desired into the lungs of the user.

A further object of the invention is to provide a smokeless non-tobacco cigarette in which provision is made for circulating the fluid around the heating element in a turbulent manner to suitably raise the temperature of the inhaled mixture, with the purpose that the temperature of the flavored air may approximate that of cigarette smoke.

A further object is to insulate the heat source so that the "cigarette" may be held in the fingers without discomfort to the user's hand.

With the foregoing and other objects in view, the invention will be more fully described hereinafter, and will be more particularly pointed out in the claims appended hereto.

In the drawings, wherein like symbols refer to like or corresponding parts throughout the several views:

FIGURE 1 is a side elevational view of the completed article constructed in accordance with the invention in simulation of a cigarette.

FIGURE 2 is a longitudinal section taken through the same with all interior parts assembled.

FIGURE 3 is a cross-sectional view taken on the line 3—3 in FIGURE 2.

FIGURE 4 is a side elevational view of a form of flavor cartridge employed.

FIGURE 5 is a transverse sectional view taken on the line 5—5 in FIGURE 2.

FIGURE 6 is a similar view taken on the line 6—6 in FIGURE 2.

FIGURE 7 is a longitudinal sectional view of a form of outer tube.

FIGURE 8 is a similar view of a form of insulating liner.

FIGURE 9 is a longitudinal sectional view of a form of mouthpiece that may be employed.

FIGURE 10 is a side elevational view of a form of heating element or vacuum tube or bulb that may be employed.

Referring more particularly to the drawings, 15 designates an external tube made preferably in the size, color and form of a cigarette, such tube having an outer end portion 16 and an inner end portion 17.

Subdividing the interior space of the external tube is an internal shoulder 18 which is preferably closer to the outer end portion 16 than to the opposite inner end portion 17, thus dividing the tube into relatively short and substantially longer chambers.

The tube 15 is supplied at the inner end portion 17

2

with internal threads 19 or some other means of connection for a mouthpiece as later described.

In the outer end portion 16 is detachably fitted a flavor cartridge 20 of some suitable absorbent material, preferably having longitudinal spaced passages 21 there-through of a small diameter. The cartridge 20 is abutted against the outer edge of the internal shoulder 18 and is of an external diameter to fit snugly into the outer end portion 16 so that it will be held therein by friction or other suitable means.

Within the more forward chamber of the outer tube 15 is received a tubular liner 22 preferably of an insulating material and having an internal wall 23 of a form and character to tumble the air or create turbulence therein. This internal wall may be spiralled or rifled as indicated.

A mouthpiece 24 is affixed to the inner end portion 17 of the tube 15 in any appropriate manner, preferably detachably as by external threads 26 on the hollow shank 25 of the mouthpiece which mate with the internal threads 19 in the inner end portion of the outer tube 15.

As shown in FIGURE 2, the free outer end of the hollow shank 25, when fitted home in the outer tube, will encounter and push the insert 22 against the inner wall of the internal shoulder 18 thus holding the insert 22 immovably in place.

The hollow shank 25 will preferably have an outstanding shoulder 27 forwardly of the threads 26 to engage the inner end of the tube 15 in the completely assembled position of the mouthpiece 24 relatively to the outer tube 15.

As best seen in FIGURE 6 showing a cross-section through the hollow shank portion 25 of the mouthpiece, a spider formation is shown providing air draft spaces 28 between the hollow shank 25 and an inner ring 29 spaced inwardly from the hollow shank 25 and connected therewith by radial arms 30. The air draft spaces 28 communicate with the suction orifice 40 of the mouthpiece at the inner end and at the outer end with the space circumscribed by the inner wall 23 of the tubular insert 22.

Within the inner ring 29 is a threaded electric socket 30 and forwardly thereof a battery cavity 31 for detachably receiving a battery 32 having an inner contact 33 and an outer contact 34 with a contact strip 35 between the inner contact 33 and the socket 30.

The heating element is preferably a vacuum tube or bulb 36 having a screw plug 37 for detachable engagement with the socket 30. The screw plug 37 has an end contact 38 adapted to close against the outer battery contact 34. The bulb or tube 36, similar to a light bulb, is preferably elongated and of a diameter to fit within the insert 22 in such manner as to provide an elongated heating passage throughout the length of the bulb and around the complete circumference of the bulb 36.

In assembly, the flavor cartridge 20 can be introduced and removed without regard to the other units of the device.

Before the mouthpiece 24 is assembled to the external tube 15, the liner 22 is slid through the open inner end portion of the tube until the outer end of the liner 22 encounters the internal shoulder 18. The bulb 36 will be mounted to the socket 30 while the mouthpiece 24 is detached from the tube 15 whereupon the bulb 36 may be introduced into the insert 22 as the mouthpiece 24 is put into place and rotated to effect attachment of the mouthpiece to the outer tube 15. The final home position of the parts is indicated in FIGURE 2 in which the hollow shank 25 engages the inner end of the insert 22 while the outer end of the insert is abutted against the internal shoulder 18.

When the bulb 36 is assembled to the socket 30 its tip end 38 will engage the inner battery contact 33 and com-

3,200,819

SMOKELESS NON-TOBACCO CIGARETTE
Herbert A. Gilbert, 278 McKinley Road, Beaver Falls, Pa.
Filed Apr. 17, 1963, Ser. No. 273,624
10 Claims. (Cl. 128—208)

The present invention relates to a smokeless non-tobacco cigarette and has for an object to provide a safe and harmless means for and method of smoking by replacing burning tobacco and paper with heated, moist, flavored air; or by inhaling warm medication into the lungs in case of a respiratory ailment under direction of a physician.

LEE



(19) Korean Intellectual Property Office (KR)
(12) Patent Publication (B1)

(11) Publication No. 10-2012-0080287
(43) Publication Date July 17, 2012

(51) Int. Cl.	A24 F 47/00 (2006. 01)	A61M 15/16 (2006. 01)	(71) Applicant	LEE Young In
(21) Application No.	10-2011-0001642			Godeokro 20 Ga Gil 59 Gangdong-gu, Seoul
(22) Application Date	January 07, 2011		(72) Inventor	LEE Young In
Date of Request for Examination	January 07, 2011			Godeokro 20 Ga Gil 59 Gangdong-gu, Seoul
			(74) Representative	GOH Byeong Rok, LEE Sung Ha

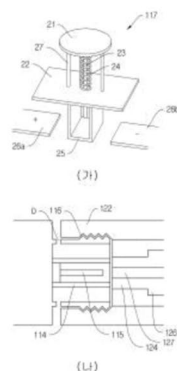
Total Number of Claims: 5

(54) External Air Inlet Structure Applied To An E-Cigarette

(57) Summary

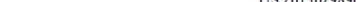
This invention is about an external air inflow structure applied to an e-cigarette, and specifically relates to an external air inflow structure applied to an e-cigarette capable of inducing external air required for vaporization of a nicotine solution to a heating element. An external air inlet structure for an electronic cigarette including a battery assembly for supplying power, a heating element for vaporizing nicotine solution, and a storage housing for supplying nicotine solution is formed in the battery assembly, and it includes a connection chamber (113) with a connecting screw surface (116) formed on the circumferential surface; an air guide path (115) formed inside the contact piece (114) inside the connection chamber (113); an guide chamber (12) having an coupling screw surface (123) coupled to the connecting screw surface (116); a connecting piece (124) with its end in contact with the contact piece (114); an air inlet path (127) formed inside the connecting piece (124); an inlet groove (G) formed on the surface in contact with the connecting piece (124); and an inlet hole (D) penetrated into the connection chamber (113) from the outside.

Representative Figure – Figure 2a



Ranges of Claim

This invention is about an external air inflow structure applied to an e-cigarette, and specifically relates to an external air inflow structure applied to an e-cigarette capable of inducing external air required for vaporization of a nicotine solution to a heating element. **An external air inlet structure for an electronic cigarette** including a battery assembly for supplying power, a heating element for vaporizing nicotine solution, and a storage housing for supplying nicotine solution is formed in the battery assembly, and it includes a connection chamber (113) with a connecting screw surface (116) formed on the circumferential surface; an air guide path (115) formed inside the contact piece (114) inside the connection chamber (113); an guide chamber (12) having an coupling screw surface (123) coupled to the connecting screw surface (116); a connecting piece (124) with its end in contact with the contact piece (114); an air inlet path (127) formed inside the connecting piece (124); an inlet groove (G) formed on the surface in contact with the connecting piece (124); and an inlet hole (D) penetrated into the connection chamber (113) from the outside.



US 20130298905A1

(12) **Patent Application Publication**
Levin et al.

(10) Pub. No.: US 2013/0298905 A1
(43) Pub. Date: Nov. 14, 2013

(54) ELECTRONIC VAPORIZING DEVICE AND METHODS FOR USE

(52) **U.S. Cl.**
CPC *A24F 47/008* (2013.01)
USPC **128/202.21**

(71) Applicant: UpToke, LLC

(72) Inventors: **Jason R. Levin**, Berkeley, CA (US); **Adam J. Tavin**, East Palo Alto, CA (US); **Artem Mishin**, Pacifica, CA (US); **Howard Allen Wilson**, Campbell, CA (US); **Saroj Kumar Sahu**, Mountain House, CA (US); **James Juma**, Palo Alto, CA (US)

(57) **ABSTRACT**

Devices and methods for vaporizing active ingredients of a selected substance for inhalation using a portable vaporization device are provided herein. In certain aspects, the device includes a portable power source, a heating portion, an inhalation sensor, a temperature sensor, a distal light source, and a grinding portion. In response to an inhalation by a user, the portable power source energizes a heating element of the heating portion so as to heat air flow to a desired vaporization temperature within a few seconds of detecting inhalation, using convection and radiative heating. The device may include a receptacle for receiving a cartridge containing a pre-prepared substance, such as a liquid, gel, powder, or solid brick, and a grinding portion to allow a user to grind intact portions of cellulose-based material into smaller pieces to facilitate vaporization by manually rotating portions of the device relative to each other.

(21) Appl. No.: 13/797,905

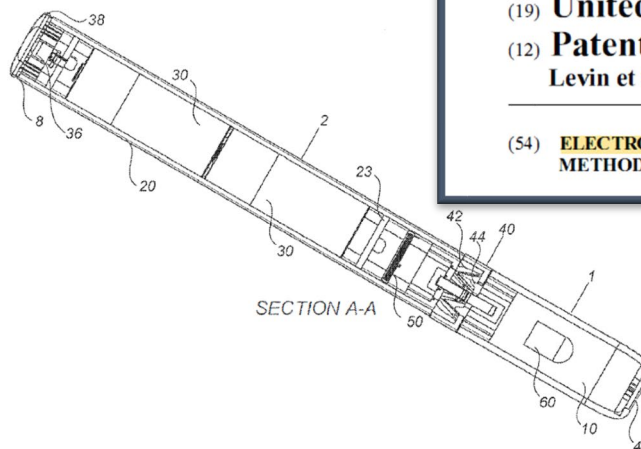
(22) Filed: **Mar. 12, 2013**

Related U.S. Application Data

(60) Provisional application No. 61/609,813, filed on Mar. 12, 2012.

Publication Classification

(51) Int. Cl.
A24F 47/00 (2006.01)



(19) **United States**

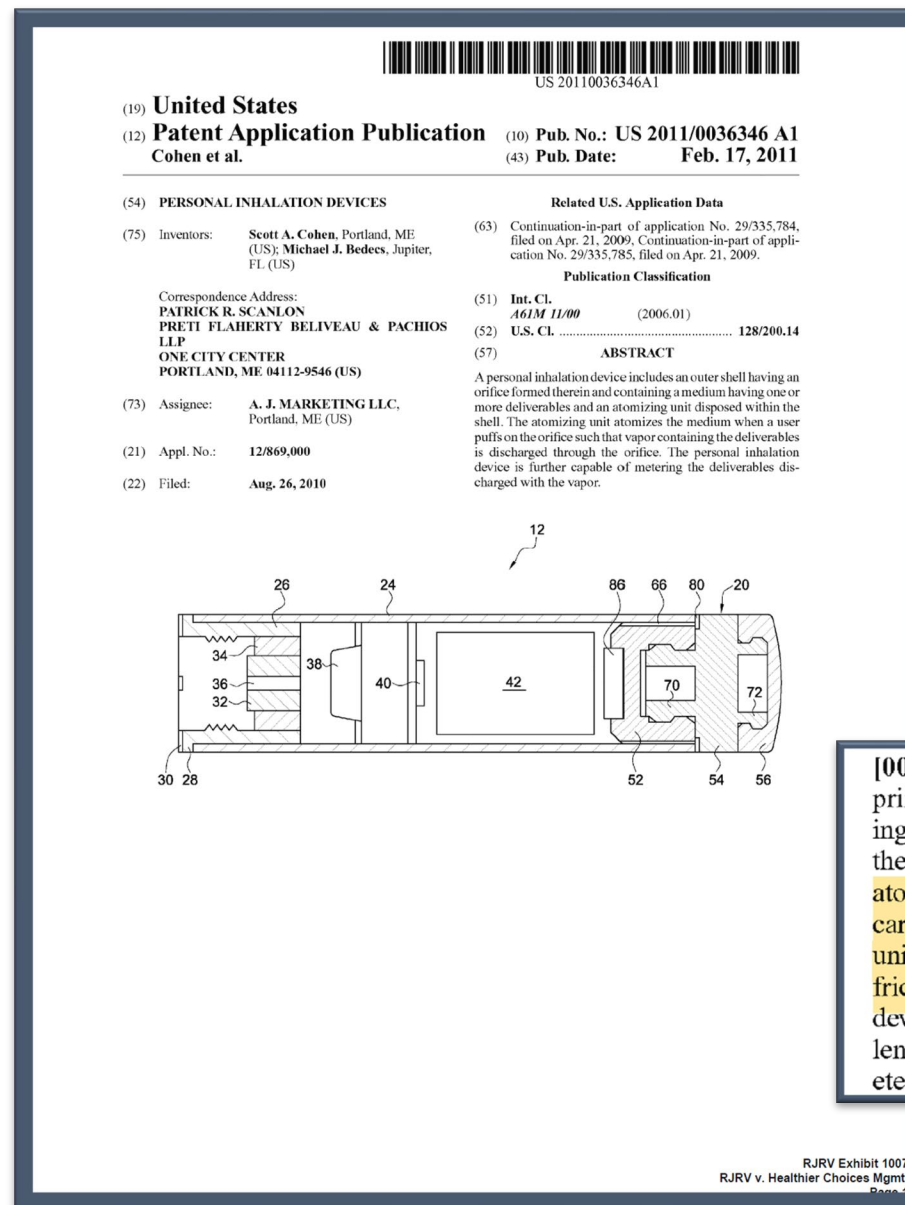
(12) **Patent Application Publication**
Levin et al.

(10) Pub. No.: US 2013/0298905 A1
(43) Pub. Date: Nov. 14, 2013

(54) **ELECTRONIC VAPORIZING DEVICE AND METHODS FOR USE**

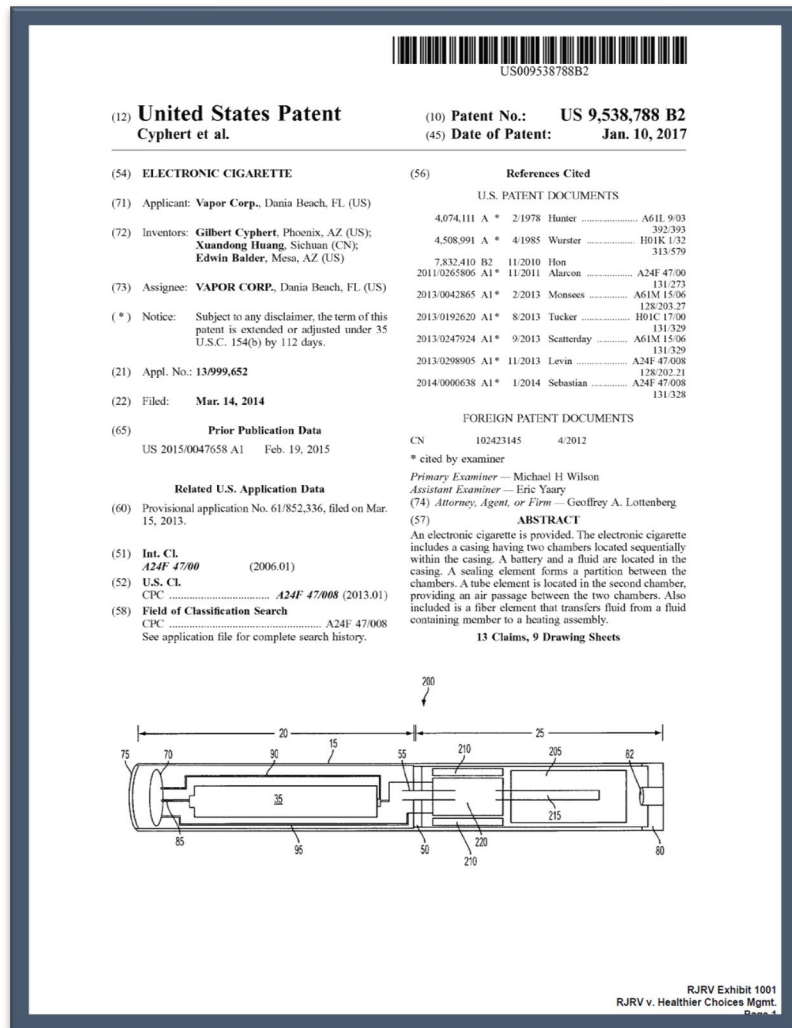
(52) **U.S. Cl.**
CPC *A24F 47/008* (2013.01)
USPC **128/202.21**

COHEN



[0018] The personal inhalation device 10 includes three principal components: an electronics section 12, an atomizing unit 14 and a cartridge 16. In the illustrated embodiment, the electronics section 12 is connected to one end of the atomizing unit 14 by means of a screw-on connection, and the cartridge 16 is connected to the other end of the atomizing unit 14 by an interference fit (sometimes referred to as a friction fit). When so assembled, the personal inhalation device 10 defines an elongated, cylindrical shape having a length-to-diameter ratio that is similar to the length-to-diameter ratio of a standard cigarette. As described in more detail

'788 Patent



An electronic cigarette, comprising:

...
[1i] wherein the heating wire heats the bulb, and wherein the bulb heats **fluid** introduced to and coming in contact with the bulb through the fluid passageway.

Ex. 1001, Claim 1

Gilbert

Patent Owner Expert: Dr. Charles Garris

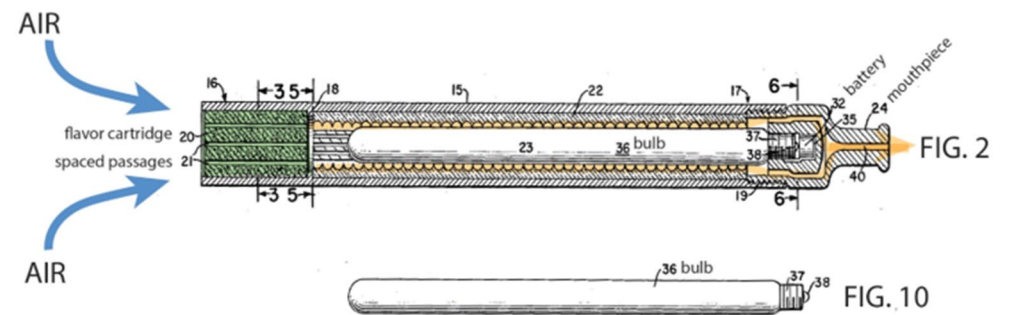
89. A POSA would understand that the fluid from the fluid container in the Patent Owner's claim being heated by the bulb is different and not the same as Gilbert's disclosure of a mixture of air and flavoring. Consistent with this view, Gilbert discloses that the "air from the ambient atmosphere...impregnated with suitable flavoring material" is what "passes into the heating chamber and is caused to flow around the heating bulb." Ex. 1004, 3:10-15. Therefore, it is not the fluid from the cartridge of Gilbert that makes contact with the bulb.

Ex. 2001 at 89

Petitioner Expert: Kelly Kodama

99. The device described in Gilbert allows a user to inhale on the device, causing external air flowing into the device to capture fluid stored inside the device, and the air/fluid combination then contacts the bulb and gets heated up before being inhaled by the user.

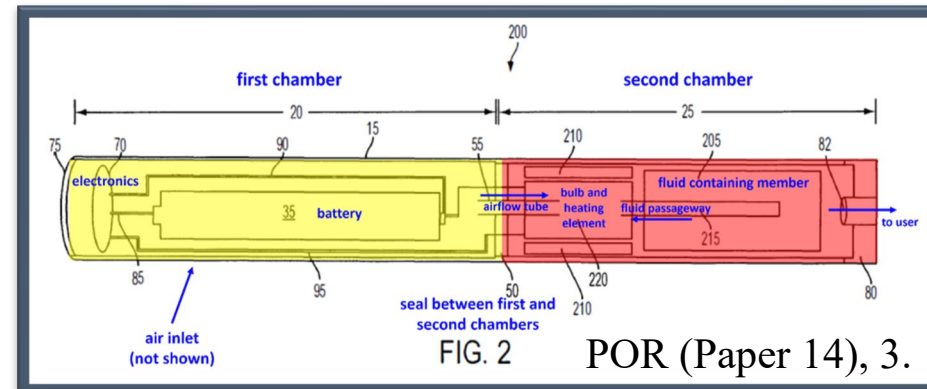
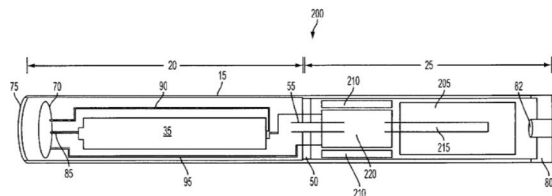
Ex. 1003 at 99



Ex. 2001 at 19

'788 Patent

 US009538788B2	
(12) United States Patent Cyphert et al.	(10) Patent No.: US 9,538,788 B2 (45) Date of Patent: Jan. 10, 2017
(54) ELECTRONIC CIGARETTE	(56) References Cited
(71) Applicant: Vapor Corp. , Dania Beach, FL (US)	U.S. PATENT DOCUMENTS
(72) Inventors: Gilbert Cyphert , Phoenix, AZ (US); Xuandong Huang , Sichuan (CN); Edwin Balder , Mesa, AZ (US)	4,074,111 A * 2/1978 Hunter A61L 9/03 392/393 4,508,991 A * 4/1985 Wurster H01K 1/32 313/579
(73) Assignee: VAPOR CORP. , Dania Beach, FL (US)	7,832,410 B2 11/2010 Hon A24F 47/00 131/273 2011/0265806 A1* 11/2011 Alarcon A61M 15/06 128/203/27 2013/0042865 A1* 2/2013 Monsees H01C 17/00 131/329 2013/0192620 A1* 8/2013 Tucker A61M 15/06 128/202/21 2013/0247924 A1* 9/2013 Scatterday A24F 47/008 131/328 2013/0298905 A1* 11/2013 Levin A24F 47/008 131/328 2014/0006638 A1* 1/2014 Sebastian A24F 47/008 131/328
(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 112 days.	FOREIGN PATENT DOCUMENTS
(21) Appl. No.: 13/999,652	CN 102423145 4/2012
(22) Filed: Mar. 14, 2014	* cited by examiner
(65) Prior Publication Data US 2015/0047658 A1 Feb. 19, 2015	Primary Examiner—Michael H Wilson Assistant Examiner—Eric Yaary (74) Attorney, Agent, or Firm—Geoffrey A. Lottenberg
Related U.S. Application Data	(57) ABSTRACT
(60) Provisional application No. 61/852,336, filed on Mar. 15, 2013.	An electronic cigarette is provided. The electronic cigarette includes a casing having two chambers located sequentially within the casing. A battery and a fluid are located in the casing. A sealing element forms a partition between the chambers. A tube element is located in the second chamber, providing an air passage between the two chambers. Also included is a fiber element that transfers fluid from a fluid containing member to a heating assembly.
(51) Int. Cl. A24F 47/00 (2006.01)	
(52) U.S. Cl. CPC A24F 47/008 (2013.01)	
(58) Field of Classification Search CPC A24F 47/008 See application file for complete search history.	13 Claims, 9 Drawing Sheets

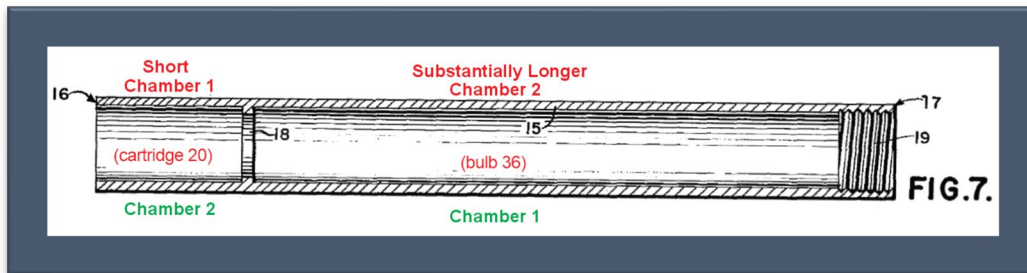


The battery and the electronics are located in the first chamber, and a fluid containing member and a bulb that contains a heating element are located in the second chamber.

Ex. 1001 at 5:1-14

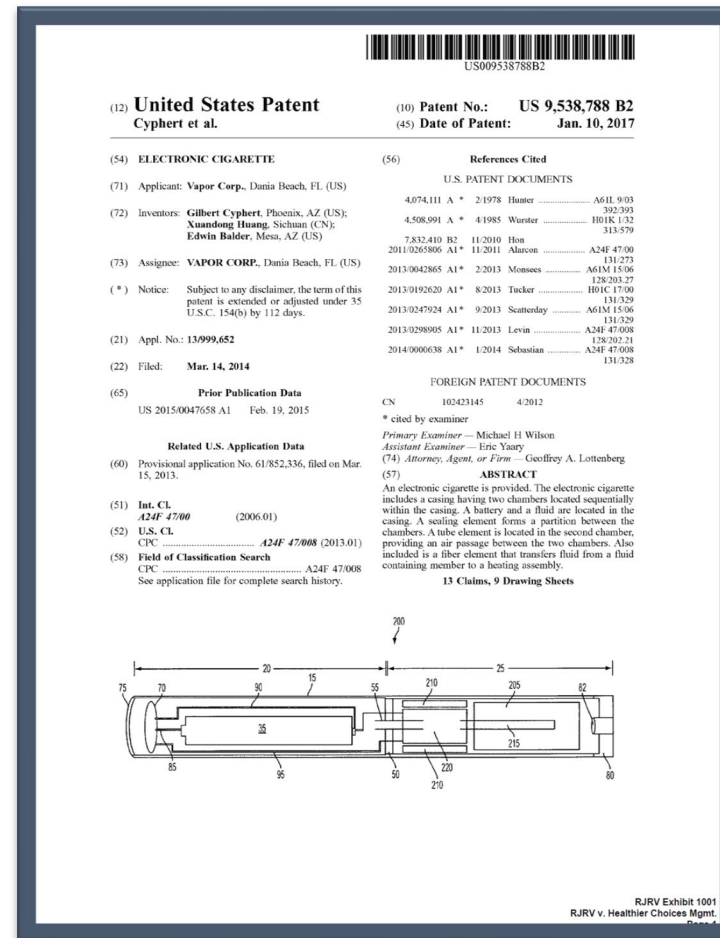
Gilbert

POR (Paper 14), 19



electronic device described and claimed in the '788 Patent. Gilbert discloses a tube that includes an internal space subdivided by internal shoulders 18 into two chambers that include (1) a relatively short chamber, and (2) a substantially longer chamber. Ex. 1004, 1:65-71. Within the “more forward chamber,” i.e., the second chamber, the tube includes an insert 22 that has a diameter to fit a bulb or tube 36, similar to a light bulb. *Id.* at 2:11-54. Within the first chamber, a cartridge 20, i.e., the fluid containing member, is disposed and abutted against the outer edge of the internal shoulders 18 of the tube. *Id.* at 2:6-10; see Fig. 7 (annotated).

POR (Paper 14), 19



An electronic cigarette, comprising:

...
[1c] a fluid containing member located in the second chamber
...

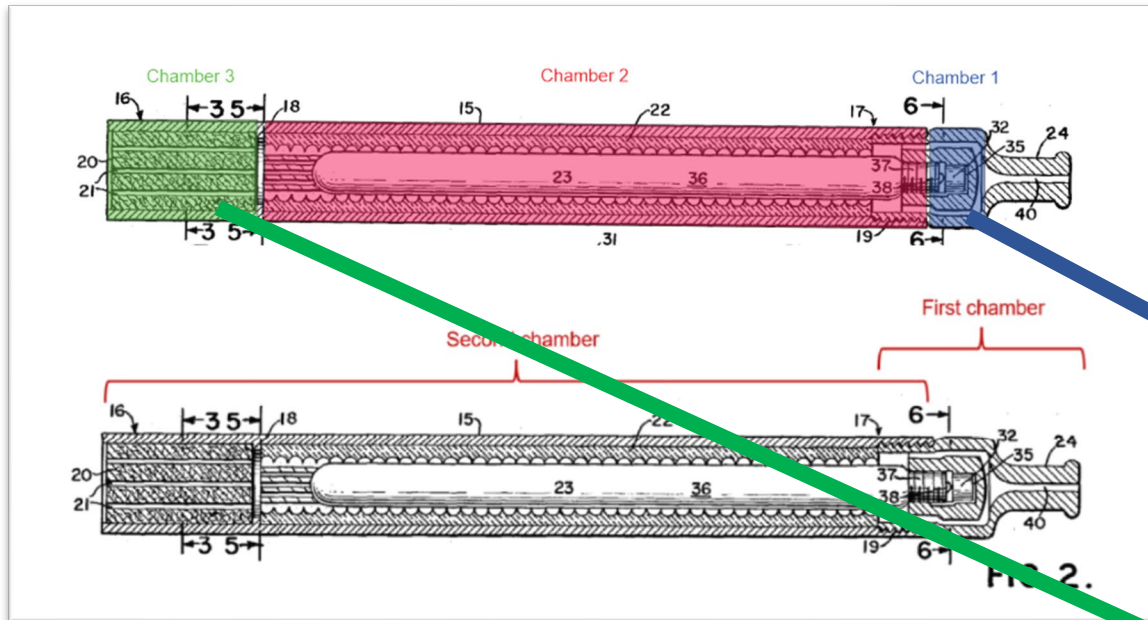
Ex. 1001, Claim 1

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

PODX11

Gilbert

SR (Paper 19), 3



Petitioner Expert: Kelly Kodama

11. As Reynolds acknowledged in the Petition, Gilbert does describe dividing tube 15 into additional, smaller chambers (Pet., 39n.4), but this does not mean that tube 15 itself is not also a chamber. A POSA would have understood that chambers, both generally and in the context of the '788 Patent, could also have sub-chambers. And nothing in the specification of the '788 Patent precludes this, or would lead a POSA to believe otherwise.

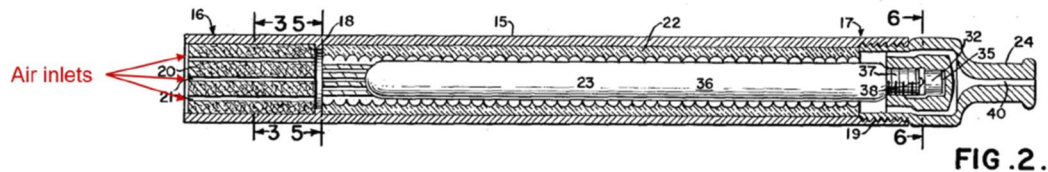
Ex. 1026 at 11

Shank 25 – Chamber 1 - (Battery)

Shoulder 18 – Chamber 3 – (Fluid Containing Member)

SR (Paper 19), 2

Gilbert



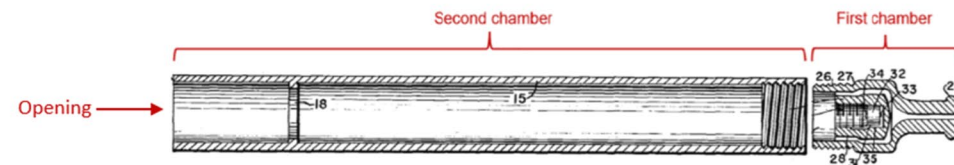
the heating chamber and is caused to flow around the heating bulb 20, the heated and flavored air finally passing through the mouth piece 24 into the mouth and also, if desired, into the lungs.” Ex. 1004 at 3:9-18. The air inlets, as described, are shown in annotated FIG. 2 below.

Pet (Paper 1), 47

Petition

Petitioner Reply

chamber and around the heating bulb” (Pet., 20); in other words, the Petition pointed to ambient air being drawn into the interior of the device via the opening formed at the end of the external tube:



PR (Paper 17), 12

Netflix, Inc. v. DivX, LLC, 84 F. 4th 1371, 1377 (Fed. Circ. 2023)

NETFLIX, INC. v. DIVX, LLC
Cite as 84 F.4th 1371 (Fed. Cir. 2023)

1371

eral Practice & Procedure § 1473 (3d. ed., April 2023 update) (A “basic policy” of the Federal Rules is “that pleadings are not an end in themselves but are only a means to assist in the presentation of a case to enable it to be decided on the merits.”).

We do not require that the Claims Court allow such amendment. We intend only to require the Claims Court to consider whether such amendment should be allowed under the typical standards governing amendments under Rule 15(a)(2) of the United States Court of Federal Claims. We therefore vacate the Claims Court’s dismissal and remand for proceedings consistent with this opinion.⁵

AFFIRMED IN PART, VACATED AND REMANDED IN PART

COSTS

No costs.



NETFLIX, INC., Appellant
v.

DIVX, LLC, Appellee
2022-1203, 2022-1204

United States Court of Appeals,
Federal Circuit.

Decided: October 25, 2023

Background: Patent challenger appealed two final written decisions of the Patent

Trial and Appeal Board (PTAB), 2021 WL 4859625, 2021 WL 4859708, in inter partes review (IPR) finding that challenged claims in two patents directed to a method for adaptive bitrate streaming of digital-media content on a playback device, such as a mobile phone or personal computer, were not unpatentable as obvious.

Holdings: The Court of Appeals, Chen, Circuit Judge, held that:

- (1) challenger forfeited argument, by not raising it in challenger’s petition, that embodiment in certain prior-art reference disclosing creation of a new file manifest taught limitation in first challenged patent requiring filtering a list of assets associated with a piece of content;
- (2) challenger forfeited argument, by not raising it in challenger’s petition, that certain prior-art reference taught limitation in first challenged patent requiring filtering a list of assets associated with a piece of content;
- (3) challenger forfeited argument, by not raising it in challenger’s petition, that certain prior-art reference, without modification, disclosed limitations in both challenged patents requiring retrieving a list of assets associated with a piece of content; and
- (4) challenger forfeited argument, by not raising it in challenger’s petition, that embodiment in a prior-art reference disclosing the creation of a new file

States v. 6,321 Acres of Land More or Less In Suffolk Cty., 479 F.2d 404, 406 (1st Cir. 1973) (recognizing the “the general rule making non-compensable [under the Takings Clause] an expectation of taxes”); *Adams v. United States*, 391 F.3d 1212, 1225 (Fed. Cir. 2004) (declining “to treat a statutory right to be paid money as a legally-recognized property interest”).

5. There is an additional issue presented by the complaint here that we do not reach: whether expected tax revenue is a compensable property interest under the Takings Clause. See, e.g., 2 Julius L. Sackman et al., *Nichols on Eminent Domain* § 5.03[6][iii] (3d ed. 2023) (“A tax[ing] [authority] does not have a compensable interest in a property taken by eminent domain.” (capitalization altered)); *United*

clearly made. A petitioner may not rely on a vague, generic, and/or meandering petition and later fault the Board for failing to understand what the petition really meant. Ultimately, it is the petitioner’s burden to present a clear argument. *Intelligent Bio-Systems*, 821 F.3d at 1367 (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each

claim.’”) (quoting 35 U.S.C. § 312(a)(3) (2012)); see also 37 C.F.R. § 42.104(b)(4)–(5) (2012) (requiring a petitioner to identify “[h]ow the construed claim is unpatentable,” “specify where each element of the claim is found in the prior art patents or printed publications relied upon,” and identify “[t]he exhibit number of the supporting evidence relied upon to support the challenge and the relevance of the evidence to the challenge raised, including identifying specific portions of the evidence that support the challenge”).

SR (Paper 19), 4

(19) Korean Intellectual Property Office (KR)		(11) Publication No.	10-2012-0080287
(12) Patent Publication (B1)		(43) Publication Date	July 17, 2012
(51) Int. Cl.		(71) Applicant	
A24 F 47/00 (2006. 01)	A61M 15/16 (2006. 01)	LEE Young In	
(21) Application No.	10-2011-0001642	Godeokro 20 Ga Gil 59 Gangdong-gu, Seoul	
(22) Application Date	January 07, 2011	(72) Inventor	
Date of Request for Examination	January 07, 2011	LEE Young In	
		Godeokro 20 Ga Gil 59 Gangdong-gu, Seoul	
		(74) Representative	
		GOH Byeong Rok, LEE Sung Ha	

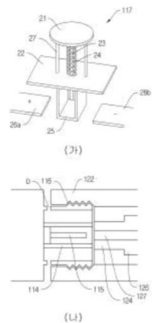
Total Number of Claims: 5

(54) External Air Inlet Structure Applied To An E-Cigarette

(57) Summary

This invention is about an external air inflow structure applied to an e-cigarette, and specifically relates to an external air inflow structure applied to an e-cigarette capable of inducing external air required for vaporization of a nicotine solution to a heating element. An external air inlet structure for an electronic cigarette including a battery assembly for supplying power, a heating element for vaporizing nicotine solution, and a storage housing for supplying nicotine solution is formed in the battery assembly, and it includes a connection chamber (113) with a connecting screw surface (116) formed on the circumferential surface; an air guide path (115) formed inside the contact piece (114) inside the connection chamber (113); an guide chamber (12) having an coupling screw surface (123) coupled to the connecting screw surface (116); a connecting piece (124) with its end in contact with the contact piece (114); an air inlet path (127) formed inside the connecting piece (124); an inlet groove (G) formed on the surface in contact with the connecting piece (124); and an inlet hole (D) penetrated into the connection chamber (113) from the outside.

Representative Figure – Figure 2a



Ranges of Claim

Ex. 1005

RJRV Exhibit 1005
RJRV v. Healthier Choices Mgmt.

FIGURE 1a

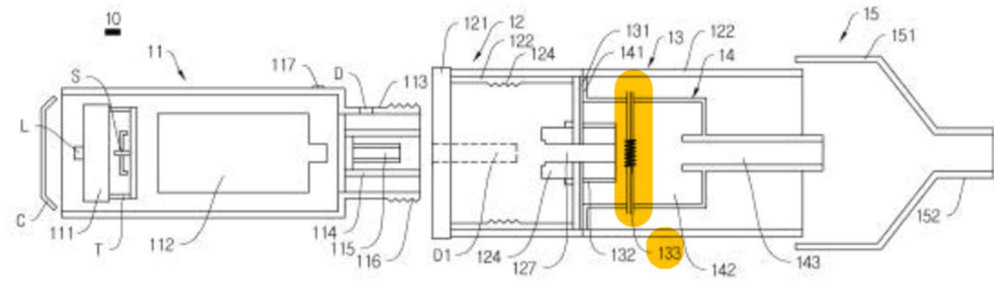
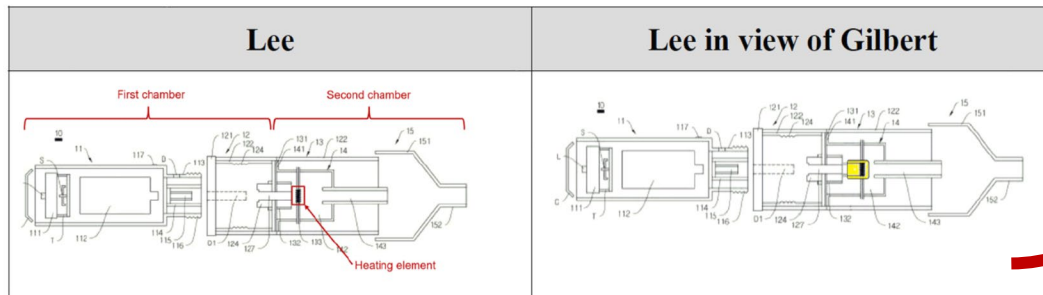


FIGURE 1b

[0029] The air introduced into the storage housing (13) through the air conduit (127a) can be supplied to the heating element (133), and the heating element (133) vaporizes the nicotine solution supplied from the storage housing (13) together with air. The nicotine solution may be discharged to the outside of the storage housing (13). The nicotine solution stored in the storage housing (13) may be delivered to the heating element (133) through a nicotine solution supply means. The nicotine solution supply means may be a fiber aggregate (F) described below, but is not limited thereto, and various nicotine solution supply means may be used according to the structure of the heating element (133). In the embodiment shown in FIGS. 1a and 1b, the nicotine solution stored in the storage housing (13) has a structure penetrating the inside of the heating element (133) such as nichrome wire, but this invention is not limited thereto.

Proposed Modification



Offers No Explanation

Petitioner Expert: Kelly Kodama

116. While Lee does not expressly describe a “bulb” containing the heating wire, such a structure would have been obvious to a POSITA at least in view of Gilbert. As I described above, Gilbert discloses a heating assembly that comprises

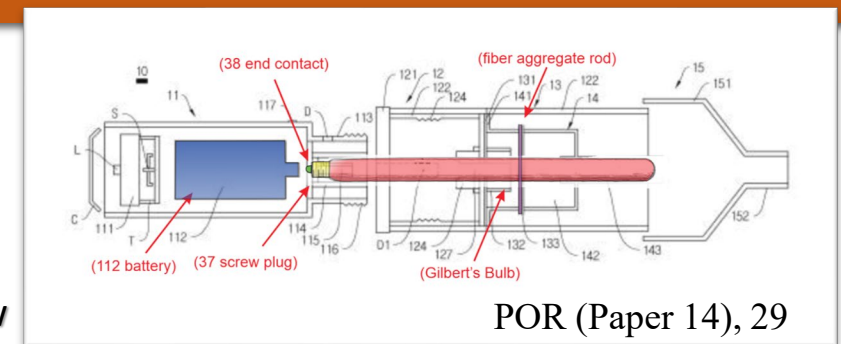
a “bulb containing a heating wire” and it would have been obvious to modify the Lee device to include a bulb structure similar to that of the bulb structure described in the Gilbert device.

Ex. 1003 at 116

Petitioner Expert: Kelly Kodama

29. Next, I understand that HCMC contends that in the proposed modification, the device would be non-functional because the fiber rod would be encapsulated within the bulb. The combination that I proposed, however, did not include encapsulating the fiber rod inside the bulb. As can be seen in the figure that I provided on page 62/paragraph 118 of my original declaration, the fiber rod extends to, and makes contact with, the outside of the bulb, thus putting the fluid into direct contact with the bulb, with no part of the fiber rod residing inside the bulb.

Offers No Explanation How
Modification Would Work



POR (Paper 14), 29

Ex. 1026 at 29

POSITA Knowledge

Petitioner Expert: Kelly Kodama

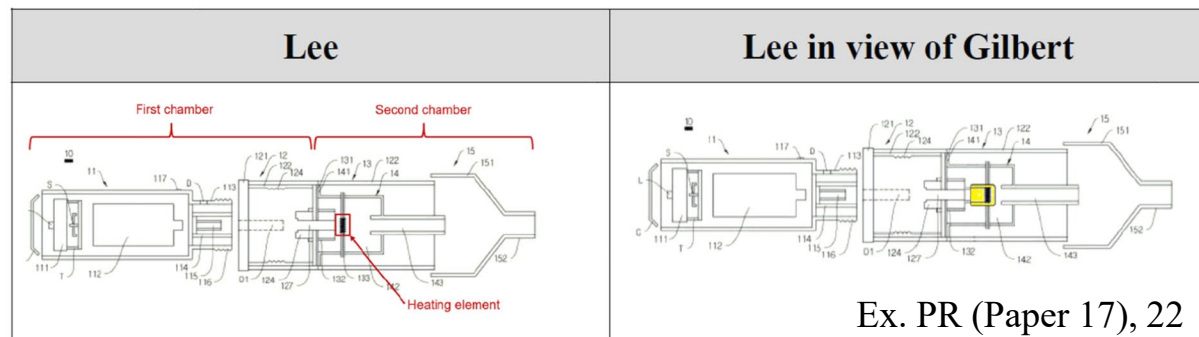
31. A POSA would have understood that these modifications are an elementary swapping of one heater configuration for another, and it would have been well within the POSA's skill to address these types of minor implementation details.

Ex. 1026 at 31



Proposed Modification

POSITA Knowledge



Lee does not disclose a “bulb” containing a heating wire, however such an alternative heating assembly would have been obvious to a POSA at least in view of Gilbert. As described above in Section V(B)(1)(e), Gilbert discloses a heating assembly that comprises a “bulb containing a heating wire.” It would have been obvious to modify Lee to include a bulb structure like that of Gilbert. Notably, the ’788 patent discloses that a heating wire wrapped around a wick – similar to that used in Lee – is

Pet (Paper 1), 56

Patent Owner Expert: Dr. Charles Garriss

100. I also disagree with Mr. Kodama’s opinion that “it would have been obvious to modify the Lee device to include a bulb structure similar to that of the bulb structure in the Gilbert device,” as such a modification would render Lee inoperable and go against Lee’s intended purpose.

Ex. 2001 at 100

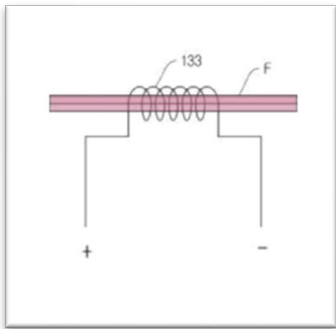
Patent Owner Expert: Dr. Charles Garriss

so that the bulb makes contact with the battery, as disclosed. Neither Kodama nor the Petitioner explains how the Lee device, as proposed to be modified, would deliver the liquid nicotine solution to the bulb since such a modification would preclude the use of a fiber wick running through the heating coil.

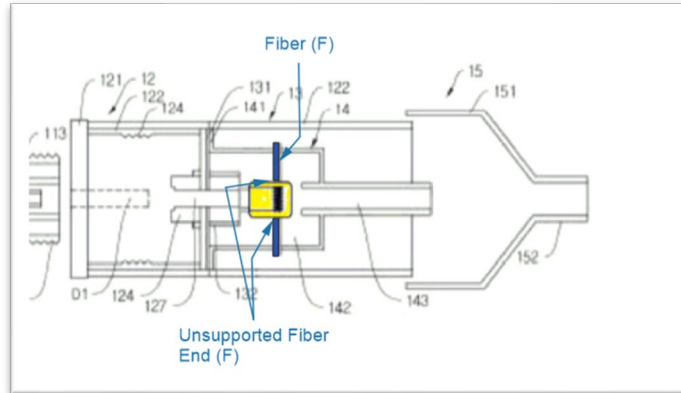
Ex. 2001 at 104

POSITA KNOWLEDGE

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE



POR (Paper 14), 28



SR (Paper 19), 17

Patent Owner Expert: Dr. Charles Garris

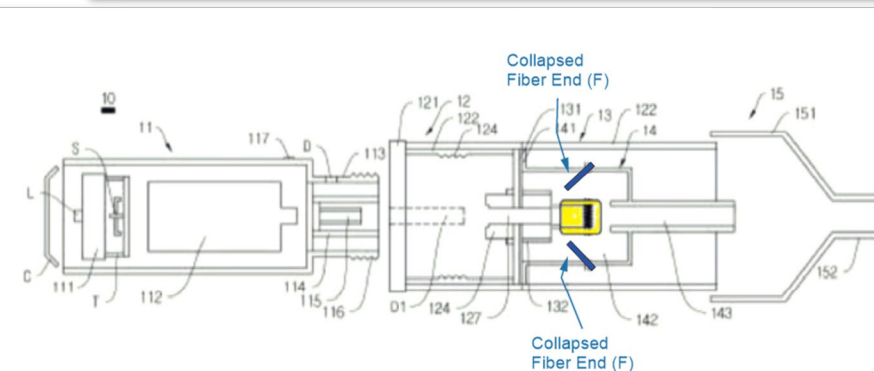
111. Alternatively, a POSA might wish to design around this difficulty by modifying the structure surrounding the aggregate rod, which would result in a substantial reconstruction in at least the supply passage, the support structures supporting the nichrome wire and rod, and the vaporization chamber so that there is space for Levin's reflector and Lee's fiber aggregate rod to continue to make contact with the heating unit.

Ex. 2001 at 111

Patent Owner Expert: Dr. Charles Garris

it is vaporized due to the heating. Ex. 1005, ¶ 29. With the removal of the nichrome wire, the fiber aggregate rod would also have to be removed. This would prevent the nicotine solution from reaching the heating unit, rendering Lee nonfunctional. Lee would also have to be modified to incorporate the reflector of the heating unit taught by Levin.

Ex. 2001 at 110



SR (Paper 19), 18

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

PODX19

Whatfix Inc. v. Walkme Ltd., IPR2024-00065, Paper 34, p. 60 (Mar. 28, 2025)

Trials@uspto.gov
571-272-7822

Paper 34
Entered: March 28, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WHATFIX INC.,
Petitioner,

v.

WALKME LTD.,
Patent Owner.

IPR2024-00065
Patent 11,558,317 B2

Before CHARLES J. BOUDREAU, KARA L. SZPONDOWSKI, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

Petitioner's reasoning fails to explain "how the combination of the two references was supposed to work." *See Personal Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017). More specifically, Petitioner fails to explain how or why a person of ordinary skill in the art would be motivated to perform Krishnan's automation process (i.e., fulfilling customer requests) by implementing an "automation process by interacting with a Graphical User Interface (GUI)" and "simulating user

(i.e., the simulation on the displayed user interface) as applied in Krishnan would work or provide sufficient reasoning to do so. *See Personal Web*, 848 F.3d at 993–994 ("[I]t does not imply a motivation to pick out . . . two references and combine them to arrive at the claimed invention"); *In re Kahn*, 441 F.3d 977, 986 (Fed. Cir. 2006) ("[M]ere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole").

POR (Paper 14), 26

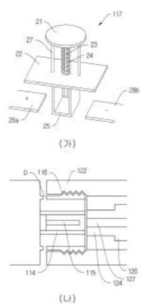
SR (Paper 19), 21

(19) Korean Intellectual Property Office (KR)		(11) Publication No.	10-2012-0080287
(12) Patent Publication (B1)		(43) Publication Date	July 17, 2012
(51) Int. Cl.		(71) Applicant	
A24 F 47/00 (2006. 01)	A61M 15/16 (2006. 01)	LEE Young In	
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		Godeokro 20 Ga Gil 59 Gangdong-gu, Seoul	
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(54) External Air Inlet Structure Applied To An E-Cigarette			

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This invention is about an external air inflow structure applied to an e-cigarette, and specifically relates to an external air inflow structure applied to an e-cigarette capable of inducing external air required for vaporization of a nicotine solution to a heating element. An external air inlet structure for an electronic cigarette including a battery assembly for supplying power, a heating element for vaporizing nicotine solution, and a storage housing for supplying nicotine solution is formed in the battery assembly, and it includes a connection chamber (113) with a connecting screw surface (116) formed on the circumferential surface; an air guide path (115) formed inside the contact piece (114) inside the connection chamber (113); an guide chamber (12) having an coupling screw surface (123) coupled to the connecting screw surface (116); a connecting piece (124) with its end in contact with the contact piece (114); an air inlet path (127) formed inside the connecting piece (124); an inlet groove (G) formed on the surface in contact with the connecting piece (124); and an inlet hole (D) penetrated into the connection chamber (113) from the outside.

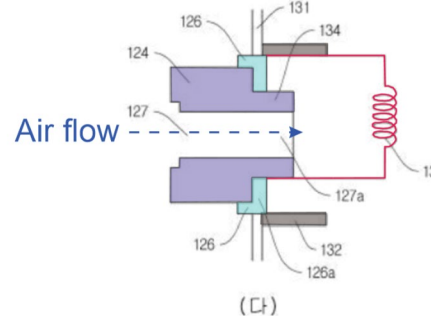
Representative Figure - Figure 2a



Ranges of Claim

Ex. 1005

RJRV Exhibit 1005
RJRV v. Healthier Choices Mgmt.



[0032] Referring to FIG. 1c, the vaporization unit (14) includes a fixed plate (141) coupled to the separating plate (131), a vaporization chamber (142) extending from the fixed plate (141), a supply passage (143) for supplying a nicotine solution and a discharge tube (144) coupled to one side of the vaporization chamber (142). The fixed plate (141) may have an arbitrary plate shape that can be rigidly coupled to the separating plate (131) or firmly fixed to the separating plate (131) to the separating plate (131), for example, by an adhesive. The vaporization chamber (142) may have a hollow cylinder shape and a heating element (133) is accommodated. The supply passage (143) may have, for example, a shape of a through-hole formed in the circumferential surface of the vaporization chamber (142). As shown in FIG. 1c, when the nicotine solution is supplied to the heating element (133) by the fiber assembly (F), the supply passage (143) can be two through-holes formed on the circumferential surface to allow the fiber assembly (F) to pass. The nicotine solution stored inside the storage housing (13) and outside the vaporization unit (14) may be supplied to the heating element (133) disposed inside the vaporization unit (14) through the supply passage (143). The nicotine solution supplied to the heating element (133) may be vaporized together with the air introduced through the air conduit (127a) and discharged to the outside of the vaporization unit (14) and the storage housing (13) through the discharge tube (144).



US 20130298905A1

(19) **United States**
 (12) **Patent Application Publication** (10) Pub. No.: **US 2013/0298905 A1**
 Levin et al. (43) Pub. Date: **Nov. 14, 2013**

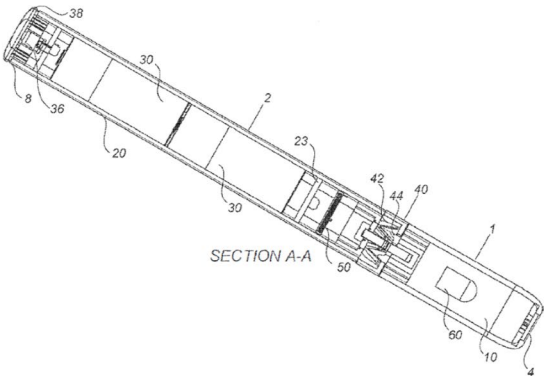
(54) **ELECTRONIC VAPORIZING DEVICE AND METHODS FOR USE** (52) **U.S. CL.**
 (71) Applicant: **UpToke, LLC** CPC **A24F 47/008** (2013.01)
 (72) Inventors: **Jason R. Levin, Berkeley, CA (US); Adam J. Tavin, East Palo Alto, CA (US); Artem Mishin, Pacifica, CA (US); Howard Allen Wilson, Campbell, CA (US); Saroj Kumar Sahu, Mountain House, CA (US); James Juma, Palo Alto, CA (US)** USPC **128/202.21**

(21) Appl. No.: **13/797,905** (57) **ABSTRACT**
 (22) Filed: **Mar. 12, 2013**
 (60) Provisional application No. 61/609,813, filed on Mar. 12, 2012.

Related U.S. Application Data
 (60) Provisional application No. 61/609,813, filed on Mar. 12, 2012.

Publication Classification
 (51) Int. Cl. **A24F 47/00** (2006.01)

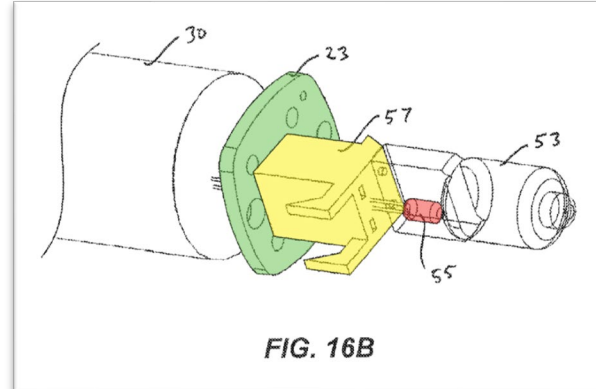
Devices and methods for vaporizing active ingredients of a selected substance for inhalation using a portable vaporization device are provided herein. In certain aspects, the device includes a portable power source, a heating portion, an inhalation sensor, a temperature sensor, a distal light source, and a grinding portion. In response to an inhalation by a user, the power source energizes a heating element of the heating portion so as to heat air flow to a desired vaporization temperature within a few seconds of detecting inhalation, using convection and radiative heating. The device may include a receptacle for receiving a cartridge containing a pre-prepared substance, such as a liquid, gel, powder, or solid brick, and a grinding portion to allow a user to grind intact portions of cellulose-based material into smaller pieces to facilitate vaporization by manually rotating portions of the device relative to each other.



SECTION A-A

RJRV Exhibit 1009
 RJRV v. Healthier Choices Mgmt.
 Page 1

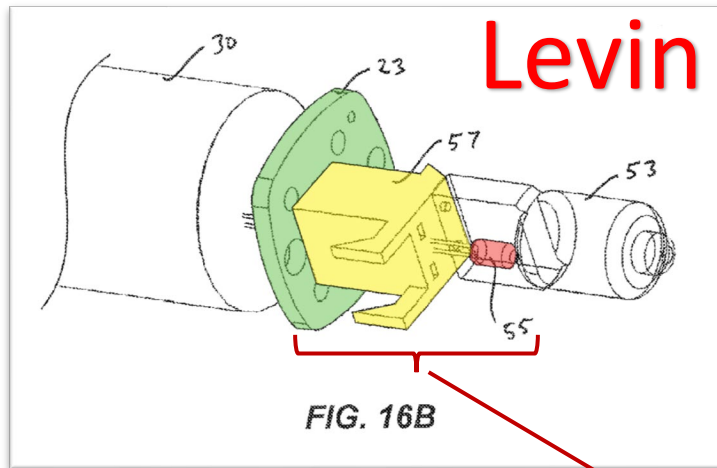
Ex. 1005



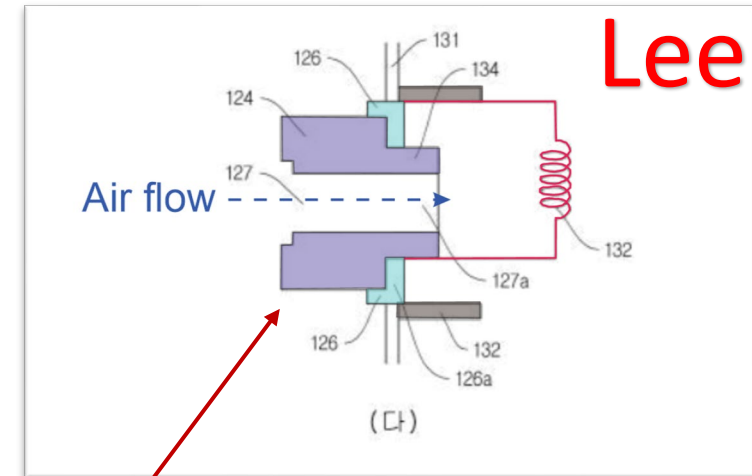
SR (Paper 19), 21

[0057] For example, as shown in FIGS. 15A-15D, the distal portion of the device includes a PCB 23 electrically coupled with a lamp holder 57 on which the bulb heater 53 is mounted protruding proximally within the grinding chamber such that the glass of the bulb contacts the selected substance in the chamber sufficiently to vaporize an active ingredient in the substance. The PCB 23 is adapted to selectively energize the bulb heater 53 based on a temperature measurement from a thermistor 55 disposed adjacent the bulb to inhibit or prevent incineration of the selected substance during vaporization. The thermistor 55 may be mounted on the lamp holder 57 on which the bulb heater is mounted. The PCB 23 may be configured with one or more holes through which inhaled air passes so that the inhaled air passes directly by the bulb heater 53 providing efficient heating of the inhaled hair.

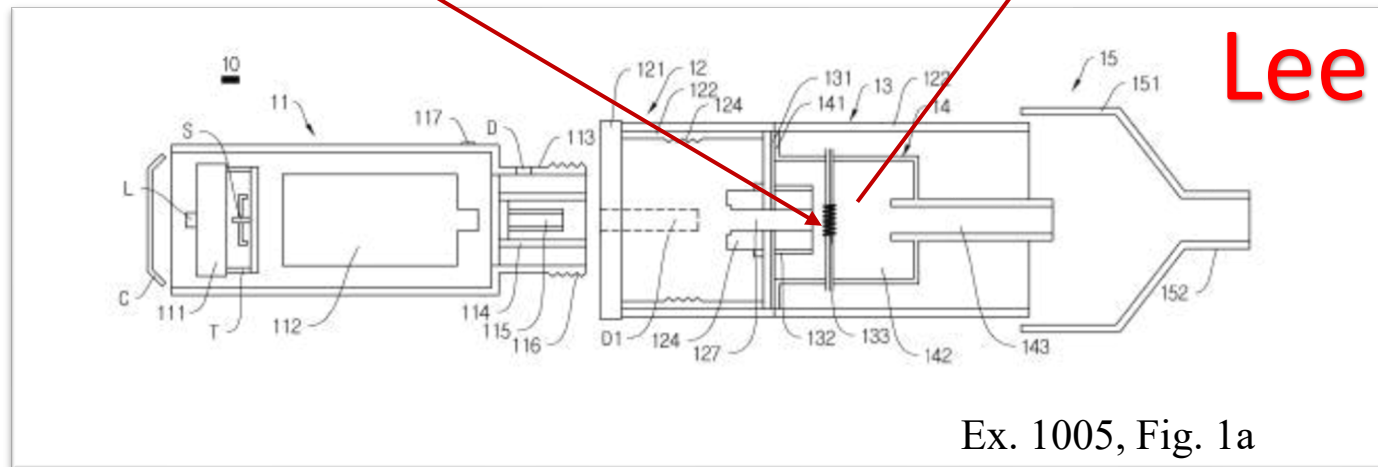
Proposed Modification



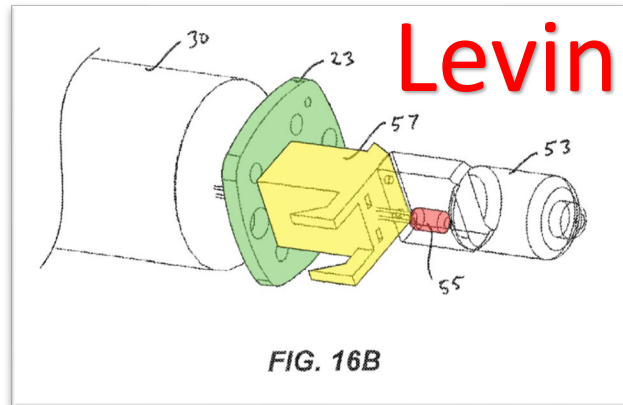
SR (Paper 19), 21



SR (Paper 19), 21



Proposed Modification

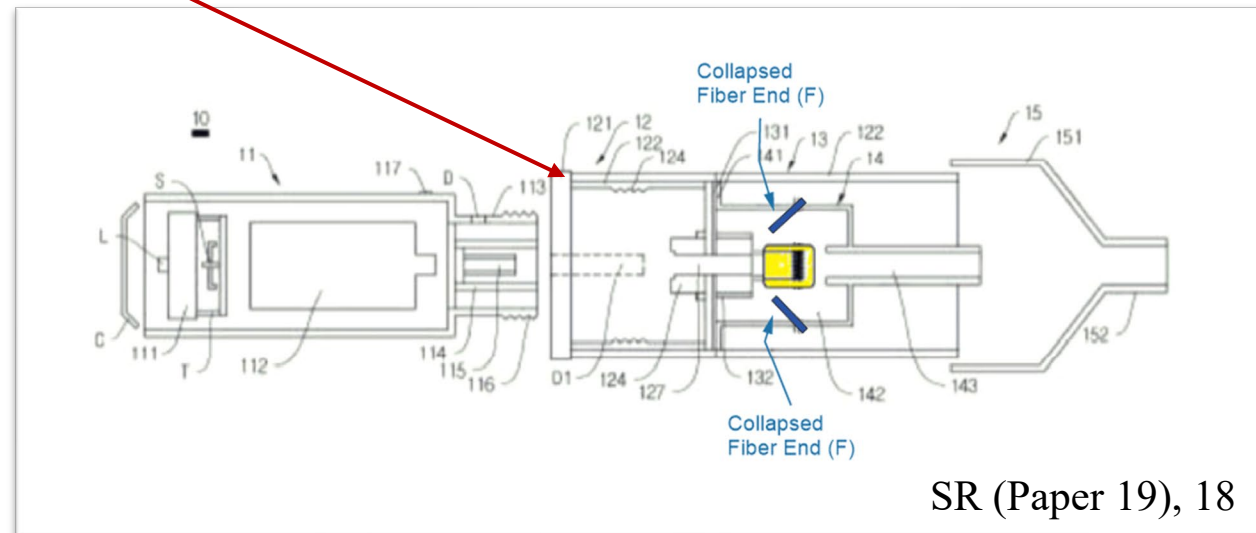


SR (Paper 19), 21

Patent Owner Expert: Dr. Charles Garriss

it is vaporized due to the heating. Ex. 1005, ¶ 29. With the removal of the nichrome wire, the fiber aggregate rod would also have to be removed. This would prevent the nicotine solution from reaching the heating unit, rendering Lee nonfunctional. Lee would also have to be modified to incorporate the reflector of the heating unit taught by Levin.

Ex. 2001 at 110



POSITA Knowledge

Petitioner Expert: Kelly Kodama

31. A POSA would have understood that these modifications are an elementary swapping of one heater configuration for another, and it would have been well within the POSA's skill to address these types of minor implementation details.

Ex. 1026 at 31



Xerox Corp. v. Bytemark, Inc, IPR2022-00624, Paper 9, p. 15 (Aug. 24, 2022)

VI. XEROX CORP. V. BYTEMARK, INC., IPR2022-00624, PAPER 9 (AUGUST 24, 2022) (DESIGNATED: FEBRUARY 10, 2023) ("XEROX")

At issue in this case was the weight given to expert declaration testimony used to supply a missing claim limitation that simply repeated, verbatim, unsupported and conclusory assertions of a petition.

In *Xerox*, the Petitioner challenged a patent claim that required a server to “store in a data record associated with the user account a data value indicating the fraudulent activity.” *Xerox* at 13. For this limitation, the Petitioner asserted that a reference (“Terrell”) taught “after fraudulent activity is detected, ‘the purchaser of the ticket could be blocked from further use of the system or pursued in respect of their potential fraud.’” *Id.* The Petitioner then stated that “[a] POSITA would understand that such a blocking would require recording the blocking in a data record associated with that user’s account” and “[a] POSITA would find it obvious that blocking the account of the purchaser from further use of the system would include storing a data value indicating the fraudulent activity in a data record associated with the user account....” *Id.* The Petitioner further stated that “[t]his is especially true in light of Terrell’s teaching that ‘if two tickets were found to have the same unique ticket number, the scanner would be configured to provide an alert to the inspector,’ and that ‘all barcode scan records may be centrally collated and analyzed to identify potential fraudulent use.’” *Id.*

The Patent Owner disagreed with Petitioner’s contentions, arguing against the Petition’s analysis of Terrell’s disclosure, as well as the Petitioner’s argument “that a POSITA’s ‘understanding’ would find this limitation obvious . . . [as] an improper attempt to use a POSITA’s common knowledge to supply a wholly missing claim limitation without evidentiary support or satisfying the ‘searching’ standard required by the Federal Circuit.” *Xerox* at 14. Patent Owner concluded that Petitioner’s “entire analysis consists of conclusory statements.” *Id.*

The Board agreed with Patent Owner, denying institution. The Board noted that “‘Petitioner does not provide sufficient evidence or persuasive reasoning’ to support its assertions.” *Xerox* at 14. The Board first explained that Terrell does not teach “blocking the account of the purchaser” and instead teaches “‘blocking the purchaser,” which makes it “far from clear that blocking the purchaser would ‘require’ recording the blocking in a record in the purchaser’s account, as opposed to...deleting the purchaser’s account altogether.” *Id.*, 14-15. The Board then explained that “Petitioner’s only evidence in support of its assertion that blocking the purchaser would require recording the blocking in a record in the user’s account is the opinion of its Declarant, Dr. Jones” but noted that “Dr. Jones’ declaration...merely repeats, verbatim, the conclusory assertion for which it is offered to support.”

Director Vidal initiated *sua sponte* Director Review, determining that the Board was “correct in giving little weight” to the expert testimony because the “‘declaration merely offered conclusory assertions without underlying factual support and repeated, verbatim” the Petitioner’s conclusory arguments. IPR2022-00624, Paper 12 at 5.

POR (Paper 14), 31

POSITA KNOWLEDGE

Skip to main content [r/electronic_cigarette](#) Search in r/electronic_cigarette Log In

EXHIBIT G

r/electronic_cigarette • 11 yr. ago
hazaarider

Dangers of Nichrome

Someone recently told me that using Nichrome is dangerous because it can release chromium fumes. Did a little googling and found that nichrome does release those fumes however I was only able to find info on welding websites, etc.

Wondering if anyone knows anything about this when it comes to vaping? Really liking Nichrome :/

7 19 Share

Join the conversation

Sort by: Best

amalyse • 11y ago

Because nichrome only outgasses at temps much higher than we use. Kanthal has chromium in it too. Tell your friend or whatever that if they drive on the freeway with the window open, they are getting much more heavy metal poisoning than you ever will using nichrome to vape with.

6 Reply Share

caul_of_the_void • 11y ago

Ok, but what about releasing nickel? Could allergy issues be a concern at the temperatures commonly used in vaping? I've been doing a bit of googling on this, and can't find anything conclusive.

2 Reply Share

amalyse • 11y ago

Some people are allergic to contact with nickel, not too sure about outgassing. I do know that nickel wire has been tested over and over for different applications. I just don't worry about it, because I don't obsess over safety. Nothing is 100% safe.

4 Reply Share

Dylan5019 • 11y ago

I'm allergic to nickel and have had no issues. Been on rdas for over a year now.

4 Reply Share

wessiide • 11y ago

Ex. 2003, Ex. G

VAPING UNDERGROUND THE WORLD'S LARGEST VAPING FORUM

RSS Feed Forums What's new Members Vaping Deals Log in Register

New posts

VAPOR★JOES
...an unbiased look at the deals in the vaping community
CHEAPEST GAS PRICES ONLINE!

Pasito Mini
see you again

EXHIBIT H

Become a member

Forums > NEW VAPERS - START HERE! > **Help I have questions!**

New Builder: Kanthal vs Nichrome -- Help I don't understand

NitroBex • Jun 4, 2014

What is Resistance Wire?

Resistance wire is a high-resistance electrical wire that is often found in industrial applications including electrical ovens, toasters, and heating elements. The two major types of resistance wire are Kanthal and Nichrome wire. Kanthal is a ferritic iron-chromium-aluminum alloy that can be in high temperature applications. It is often used in large, industrial applications and chosen for its high resistivity and excellent oxidation resistance.

1/12

Ex. 2003, Ex. H

An official website of the United States government
[Here's how you know.](#)

FULL TEXT LINKS
ELSEVIER
FULL-TEXT ARTICLE

EXHIBIT F

Environ Res. 2017 Jan;152:221-225. doi: 10.1016/j.envres.2016.09.026. Epub 2016 Oct 28.

E-cigarettes as a source of toxic and potentially carcinogenic metals

Catherine Ann Hess ¹, Pablo Olmedo ², Ana Navas-Acien ³, Walter Goessler ⁴, Joanna E Cohen ⁵, Ana Maria Rule ²

Affiliations
PMID: 27810679 PMCID: PMC5135636 DOI: 10.1016/j.envres.2016.09.026

Abstract

Background and aims: The popularity of electronic cigarette devices is growing worldwide. The health impact of e-cigarette use, however, remains unclear. E-cigarettes are marketed as a safer alternative to cigarettes. The aim of this research was the characterization and quantification of toxic metal concentrations in five, nationally popular brands of cig-a-like e-cigarettes.

Methods: We analyzed the cartomizer liquid in 10 cartomizer refills for each of five brands by Inductively Coupled Plasma Mass Spectrometry (ICP-MS).

Results: All of the tested metals (cadmium, chromium, lead, manganese and nickel) were found in the e-liquids analyzed. Across all analyzed brands, mean (SD) concentrations ranged from 4.89 (0.893) to 1970 (1540) µg/L for lead, 53.9 (6.95) to 2110 (5220) µg/L for chromium and 58.7 (22.4) to 22,600 (24,400) µg/L for nickel. Manganese concentrations ranged from 28.7 (9.79) to 6910.2 (12,200) µg/L. We found marked variability in nickel and chromium concentration within and between brands, which may come from heating elements.

Conclusion: Additional research is needed to evaluate whether e-cigarettes represent a relevant exposure pathway for toxic metals in users.

Keywords: Carcinogens; Electronic nicotine delivery devices; Non-cigarette tobacco products.

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[PubMed Disclaimer](#)

Figures

Ex. 2003, Ex. F

POSITA KNOWLEDGE

 An official website of the United States government
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FULL TEXT LINKS

ELSEVIER
FULL-TEXT ARTICLE

EXHIBIT
F

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Background and aims: The popularity of electronic cigarette devices is growing worldwide. The health impact of e-cigarette use, however, remains unclear. E-cigarettes are marketed as a safer alternative to cigarettes. The aim of this research was the characterization and quantification of toxic metal concentrations in five, nationally popular brands of cig-a-like e-cigarettes.

Methods: We analyzed the cartomizer liquid in 10 cartomizer refills for each of five brands by Inductively Coupled Plasma Mass Spectrometry (ICP-MS).

Results: All of the tested metals (cadmium, chromium, lead, manganese and nickel) were found in the e-liquids analyzed. Across all analyzed brands, mean (SD) concentrations ranged from 4.89 (0.893) to 1970 (1540) µg/L for lead, 53.9 (6.95) to 2110 (5220) µg/L for chromium and 58.7 (22.4) to 22,600 (24,400) µg/L for nickel. Manganese concentrations ranged from 28.7 (9.79) to 6910.2 (12,200) µg/L. We found marked variability in nickel and chromium concentration within and between brands, which may come from heating elements.

Conclusion: Additional research is needed to evaluate whether e-cigarettes represent a relevant exposure pathway for toxic metals in users.

Keywords: Carcinogens; Electronic nicotine delivery devices; Non-cigarette tobacco products.

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Figures

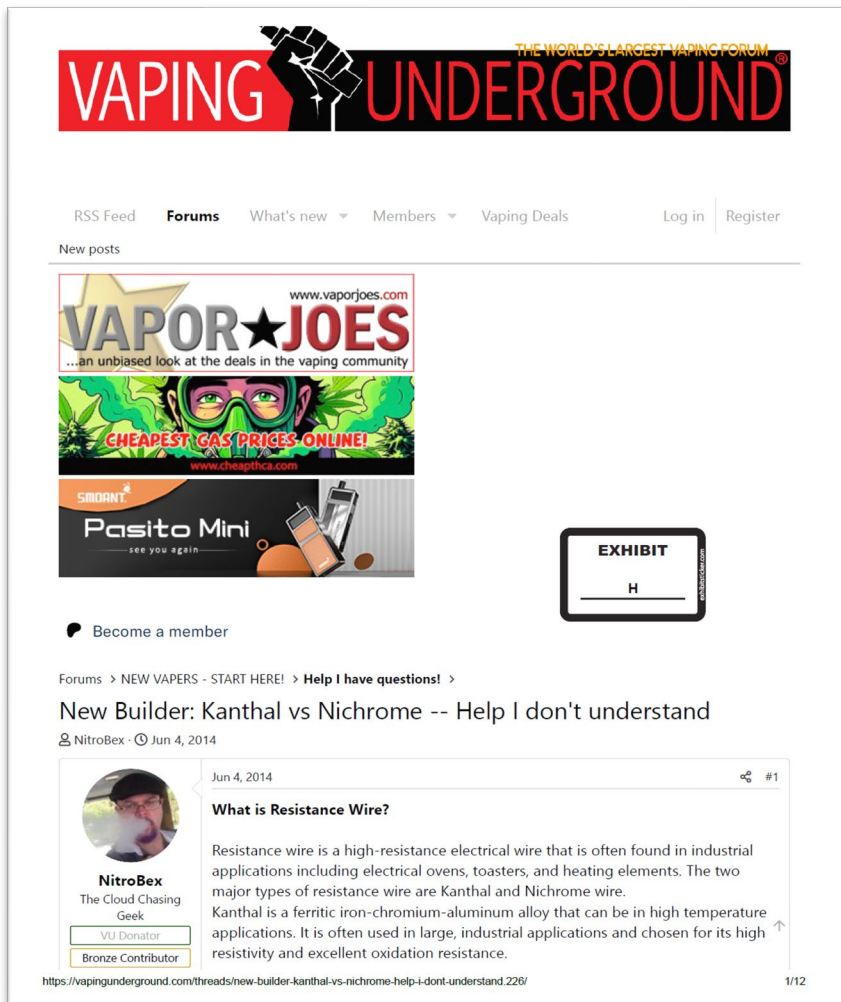
Ex. 2003, Ex. F

Petitioner Expert: Kelly Kodama

9 Q Did you actually review the entire journal
10 article to which this abstract here relates?
11 A No.
12 Q And reviewing the body of this document, which
13 starts with "Abstract" and it says "background names,
14 methods, results, conclusions, key words." Please
15 review that and let me know when you're done.
16 A Okay.
17 Q And you would agree that nothing in that text
18 relates to or references a glass covered heating bulb
19 or any sort of covered heating element?
20 A There's nothing on this page that discusses the
21 construction of the e-cigarette.

Ex. 2003 at 18:9-21

POSITA KNOWLEDGE



Ex. 2003, Ex. H

Petitioner Expert: Kelly Kodama

9 Q Do you recall reviewing -- I'll call it a forum
10 thread -- do you recall reviewing this thread in
11 connection with preparing the declaration?

12 A Yes.

Ex. 2003 at 21:9-12

18 Q And you'd agree that that date is after the
19 March 15th, 2013, day of invention that you've stated
20 in your report?

21 A Yes.

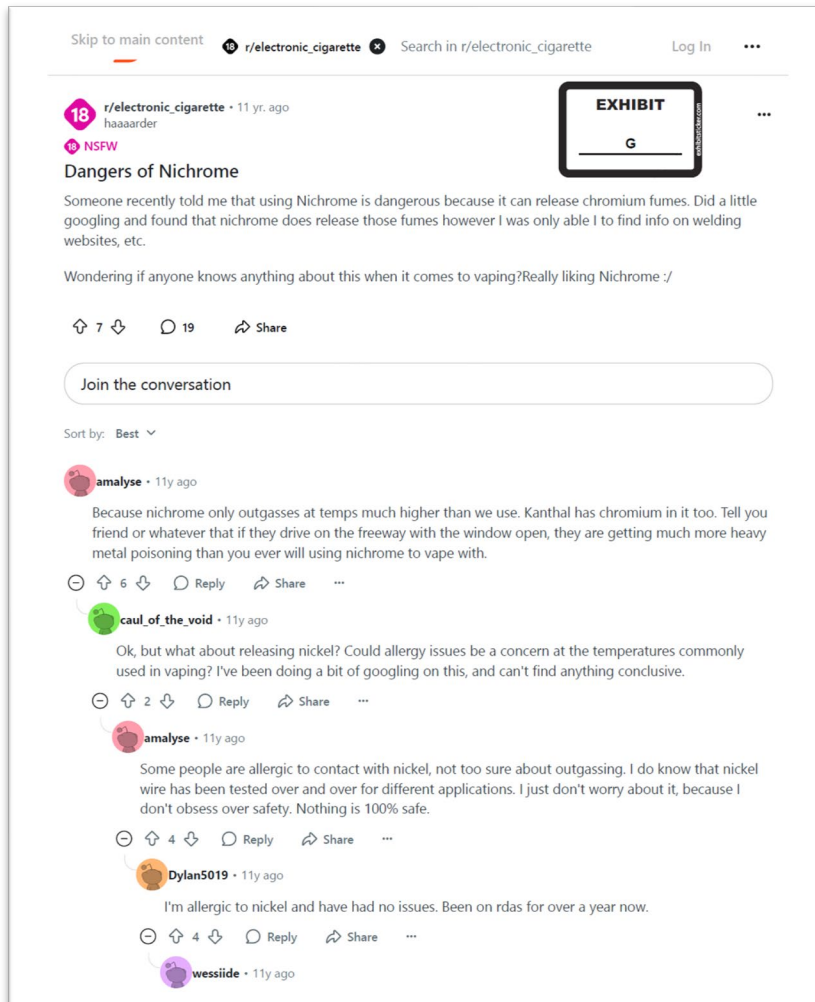
Ex. 2003 at 21:18-21

3 You would agree that nothing there is referring
4 to a glass bulb heater for an e-cigarette, right?

5 A Correct.

Ex. 2003 at 26:3-5

POSITA KNOWLEDGE



Ex. 2003, Ex. G

Petitioner Expert: Kelly Kodama

20 Q Do you know whether the date of the posting on
21 Reddit that you reviewed was before March 15th, 2013?
22 A I believe that's why I put it in my declaration
23 in paragraph 118. Ex. 2003 at 19:20-22

8 Q And looking at the headers of the posts on this
9 Reddit page, you see, for example, next to the first
10 post, which is at the top, it lists a date of 11 years
11 ago.
12 A Yes.
13 Q And you would agree that 11 years ago is not
14 before March 15th, 2023, right?
15 A If the screenshots were to be taken on the date
16 in the header, looks like May 30th, 2025, so 11 years
17 ago would be 2014 approximately. Ex. 2003 at 20:8-17

DEMONSTRATIVE EXHIBIT - NOT EVIDENCE

PODX30

WBIP, LLC v. Kohler Co., 829 F.3d 1317, 1337 (Fed. Circ. 2016)

WBIP, LLC v. Kohler Co., 829 F.3d 1317 (2016) 119 U.S.P.Q.2d 1301	
829 F.3d 1317 United States Court of Appeals, Federal Circuit.	district court did not abuse its discretion in enhancing damages.
WBIP, LLC, Plaintiff-Cross-Appellant, v. KOHLER CO., Defendant-Appellant.	Affirmed in part, vacated in part, and remanded.
2015-1038, 2015-1044 Decided: July 19, 2016	Procedural Posture(s): On Appeal; Motion for Judgment as a Matter of Law (JMOL)/Directed Verdict.
Synopsis Background: Patentee brought action against competitor alleging infringement of two patents for marine engine exhaust systems. Following a jury verdict for patentee, the United States District Court for the District of Massachusetts, Nathaniel M. Gorton, J., denied competitor's motion for judgment as a matter of law and denied patentee's motion for permanent injunction. Competitor appealed and patentee cross-appealed.	*1323 Appeals from the United States District Court for the District of Massachusetts in No. 1:11-cv-10374-NMG, Judge Nathaniel M. Gorton.
Holdings: The Court of Appeals, Moore, Circuit Judge, held that: substantial evidence supported jury's presumed finding that a nexus existed between the objective evidence of non-obviousness of patents and merits of claimed invention; substantial evidence supported jury's presumed finding that patents solved long-felt need for reduction in carbon monoxide emissions from marine engines; substantial evidence supported jury's presumed finding of industry praise for patentee's claimed invention; substantial evidence supported jury's presumed factual finding that there was skepticism in the industry that low-carbon monoxide marine generators could be produced; substantial evidence supported jury's presumed finding that competitor copied patentee's claimed invention; substantial evidence supported jury's presumed finding that objective evidence of non-obviousness of patented invention outweighed evidence of obviousness; and	Attorneys and Law Firms David Andrew Simons, K&L Gates LLP, Boston, MA, argued for plaintiff-cross-appellant. Also represented by Andrea B. Reed; Michael E. Zelig, Palo Alto, CA. E. Joshua Rosenkranz, Orrick, Herrington & Sutcliffe LLP, New York, NY, argued for defendant-appellant. Also represented by Rachel Wainer Apter; Brian Philip Goldman, San Francisco, CA; Katherine M. Kopp, T. Vann Pearce, Jr., Eric Shumsky, Washington, DC; *1324 Steven M. Bauer, William David Dalsen, Safraz Ismael, Proskauer Rose LLP, Boston, MA. Before Moore, O'Malley, and Chen, Circuit Judges. Opinion Moore, Circuit Judge. Kohler Co. appeals from the United States District Court for the District of Massachusetts' denial of judgment as a matter of law that claims 1–6, 8, and 10–12 of U.S. Patent No. 7,314,044 and claims 26 and 28 of U.S. Patent No. 7,832,196 (collectively "asserted claims") would have been obvious and lack sufficient written description and the determination that Kohler willfully infringed the asserted claims. WBIP, LLC cross-appeals the court's denial of its post-trial motion for a permanent injunction. We affirm the court's denial of judgment as a matter of law on all issues raised by Kohler and its willful infringement determination, vacate the court's denial of WBIP's motion for a permanent injunction, and remand for further consideration.
BACKGROUND	

art at the relevant time. Too often the obviousness analysis is framed as an inquiry into whether a person of skill, with two (and only two) references sitting on the table in front of him, would have been motivated to combine (or, in Kohler's view, could have combined) the references in a way that renders the claimed invention obvious. The real question is whether that skilled artisan would have plucked one reference out of the sea of prior art (Phipps) and combined it with conventional coolant elements to address some need present in the field (the need for low-carbon monoxide emission marine gen-sets). Whether a skilled artisan would be motivated to make a combination includes whether he would select particular references in order to combine their elements. This is part of the fact question and we must give deference to the jury's findings on this point. Objective indicia minimize hindsight's impact. And in this case, the objective indicia point to the nonobviousness of the claimed combination. They are substantial evidence that one of skill would not have found the claimed combination obvious. We see no legal error in the ultimate conclusion that Kohler failed to prove that the asserted claims would have been obvious by clear and convincing evidence.

SR (Paper 19), 8

Plant Genetic Sys., N.V. v. DeKalb Genetics Corp., 315 F.3d 1335, 1346 (Fed. Cir. 2003)

Plant Genetic Systems, N.V. v. DeKalb Genetics Corp., 315 F.3d 1335 (2003)
65 U.S.P.Q.2d 1452

315 F.3d 1335
United States Court of Appeals,
Federal Circuit.

PLANT GENETIC SYSTEMS, N.V. (now known
as Aventis CropScience N.V.), Plaintiff-Appellant,
and
Biogen, Inc., Plaintiff,
v.
DEKALB GENETICS
CORPORATION, Defendant-Appellee.

No. 02-1011.

DECIDED: Jan. 13, 2003.

Rehearing and Rehearing En Banc Denied: Feb. 20, 2003.

Synopsis

Patent holder brought action against competitor relating to patent on use of Agrobacterium to insert bar gene into both dicotyledons and monocotyledons. The United States District Court for the District of Connecticut, Dominic J. Squatrito, J., granted judgment for competitor, 175 F.Supp.2d 246. Patentee appealed. The Court of Appeals, Michel, Circuit Judge, held that: (1) district court's failure to make findings on "pioneer" status of patent, without more, was not erroneous; (2) district court did not shift burden of proof by using findings in another case to determine state of art for particular period of time, as starting point for analysis of whether patent was enabled; (3) district court did not commit legal error for not reciting every piece of evidence in its opinion; (4) district court properly used post-filing work relevant to later-existing state of art to test whether patent claims were enabled; and (5) patent claims effectively excluded monocots from claims.

Affirmed.

Attorneys and Law Firms

*1337 Eric H. Weisblatt, Burns, Doane, Swecker & Mathis, L.L.P., of Alexandria, VA, argued for plaintiff-appellant. With him on the brief were Susan J. Dadio, R. Danny Huntington, and Barbara Webb Walker.

John F. Lynch, Howrey Simon Arnold & White, LLP, of Houston, TX, argued for defendant-appellee. With him on the brief were Thomas A. Miller, and Richard L. Stanley.

Of counsel on the brief Daniel T. Shvodian, Howrey Simon Arnold & White, LLP, of Menlo Park, CA. Of counsel was Hemant H. Kewalramani, Howrey Simon Arnold & White, LLP, of Houston, TX.

Before NEWMAN, MICHEL, and PROST, Circuit Judges.

Opinion

MICHEL, Circuit Judge.

Plant Genetic Systems, N.V. ("PGS") appeals the September 7, 2001 decision of the United States District Court for the District of Connecticut, *Plant Genetic Sys., N.V. v. DeKalb Genetics Corp.*, 175 F.Supp.2d 246 (D.Conn.2001), entering judgment for the accused infringer, DeKalb Genetics Corporation ("DeKalb"), on all counts of the complaint in this patent infringement suit. The case was tried to the bench for thirteen days. At the end of the trial, the district court concluded that claims 1-5 and 10-11 of PGS' patent, U.S. Pat. No. 5,561,236 ("the '236 patent"), were invalid for lack of enablement and that claims 8-9 and 12-15, the remaining asserted claims, were not infringed. *Id.* at 270. Because as to enablement, the defendant established a need for undue experimentation and as to non-infringement, that the properly construed claims did not cover the defendant's products, we affirm.

BACKGROUND

This case involves only one patent, the '236 patent, which claims a priority date of March 11, 1987. The patent issued on October 1, 1996 to inventors from PGS and Biogen Corporation and is directed to transgenic plant cells, plants, and seeds. DeKalb makes and sells transgenic corn seeds. PGS sued DeKalb for patent infringement the day the '236 patent issued.

The '236 patent and DeKalb's transgenic corn products relate to the herbicide-resistant characteristics of a plant or plant cell. Non-selective herbicides may indiscriminately kill most plants by blocking an essential biochemical process of these plants—metabolizing ammonia via the action of glutamine synthetase. Thus, these herbicides are also called glutamine synthetase inhibitors. Two structurally-related compounds, bialaphos and glufosinate, are such herbicides. It has been desirable to obtain food plants that are resistant to non-selective herbicides. Herbicide-resistant plants can grow in

CONCLUSION

We hold that the district court did not err in concluding that claims 1-5 and 10-11 were proven by defendant to be invalid for lack of enablement. We also hold that the district court correctly construed claims 8-9 and 12-15 to exclude monocots and therefore could not have erred, much less clearly erred, in holding that these claims were not infringed. Accordingly, the judgment of the district court is, in all respects challenged on appeal,

AFFIRMED.

CERTIFICATE OF SERVICE (37 CFR 42.6(e)(4))

I hereby certify that on December 1, 2025, PATENT OWNER'S DEMONSTRATIVES were served via email to the following counsel of record for the Petitioner. The foregoing PATENT OWNER'S DEMONSTRATIVES are herewith being filed on December 3, 2025 through the P-TACTS System, which in turn is delivering a copy of the same via electronic mail to the following addresses on the service list.

/Geoffrey Lottenberg/

Geoffrey Lottenberg

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