

1 Michael J. Wise, Bar No. 143501
Mwise@perkinscoie.com
2 Joseph P. Hamilton, Bar No. 211544
JHamilton@perkinscoie.com
3 Lara J. Dueppen, Bar No. 259075
LDueppen@perkinscoie.com
4 PERKINS COIE LLP
1888 Century Park E., Suite 1700
5 Los Angeles, CA 90067-1721
Telephone: 310.788.9900
6 Facsimile: 310.788.3399

7 Attorneys for Plaintiffs
8 *FONTEM VENTURES B.V. and*
 FONTEM HOLDINGS 1 B.V.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

VAPOR CORP., a Delaware
corporation, and DOES 1-5, Inclusive,

Defendant.

Case No. CV14-8155 GW (MRWx)
**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**
DEMAND FOR JURY TRIAL

1 For its First Amended Complaint against Defendant VAPOR CORP.
2 (“Defendant”), Plaintiff Fontem Ventures B.V. (“Fontem Ventures”) and Plaintiff
3 Fontem Holdings 1 B.V. (“Fontem Holdings”) allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a civil action for patent infringement arising under the patent
6 laws of the United States, 35 U.S.C. §§ 101, et seq., and in particular § 271.

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

9 3. This Court has personal jurisdiction over Defendant because it solicits
10 and conducts business in California, including the provision of goods over the
11 Internet, derives revenue from goods sold in California and within this judicial
12 district, and has committed acts of infringement in this judicial district.

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

15 **PARTIES**

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

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

24 7. Plaintiffs Fontem Ventures and Fontem Holdings (together, “the
25 Plaintiffs”) are informed and believe that: Defendant VAPOR CORP. (“VAPOR”)
26 is a corporation organized and existing under the laws of the State of Delaware,
27 having its principal place of business at 3001 Griffin Road, Dania Beach, Florida,
28

1 33312, USA. VAPOR is doing business in this judicial district related to the claims
2 asserted in this First Amended Complaint.

3 8. The true names and capacities, whether individual, corporate,
4 associate, or otherwise of defendants sued herein as DOES 1 through 5, inclusive,
5 are unknown to the Plaintiffs at the present time, and the Plaintiffs therefore sue
6 said Defendants by such fictitious names. The Plaintiffs, after obtaining leave of
7 court, if necessary, will amend this First Amended Complaint to show such true
8 names and capacities when the same have been ascertained.

9 **FIRST CAUSE OF ACTION**

10 (Infringement of U.S. Patent No. 8,863,752)

11 9. The Plaintiffs incorporate by reference the allegations contained in
12 paragraphs 1-8 above.

13 10. Plaintiff Fontem Holdings is the owner of the entire right, title, and
14 interest in and to United States Patent No. 8,863,752 (“the ’752 Patent”) and
15 Plaintiff Fontem Ventures is the exclusive licensee of the ’752 Patent. The ’752
16 Patent was duly and legally issued by the United States Patent Office on October
17 21, 2014 and is valid, subsisting, and in full force and effect. A copy of the ’752
18 Patent is attached to this First Amended Complaint as Exhibit A.

19 11. The Plaintiffs are informed and believe that: Defendant has directly
20 infringed the ’752 Patent in violation of at least 35 U.S.C. § 271(a), by itself and/or
21 through its agents, unlawfully and wrongfully making, using, importing, offering to
22 sell, and/or selling electronic cigarette products embodying one or more of the
23 inventions claimed in the ’752 Patent, within and/or from the United States without
24 permission or license from the Plaintiffs, and will continue to do so unless enjoined
25 by this Court. Examples of electronic cigarette products that directly infringe the
26 ’752 Patent either literally or under the doctrine of equivalents include, but are not
27 limited to, (1) Fifty-One Duo (2.0) Rechargeable Electronic Cigarettes as found in
28 Fifty-One Duo (2.0) Starter Kits; (2) Fifty-One 2.0 Cartomizer Refills for use with

1 Fifty-One Duo Rechargeable Batteries purchased separately or as part of a Fifty-
2 One (2.0) Starter Kit; (3) Krave Rechargeable Electronic Cigarettes, including
3 Krave King Rechargeable Electronic Cigarettes and Krave Classic Rechargeable
4 Electronic Cigarettes; and (4) Krave Refill Filters for use with Krave Rechargeable
5 Electronic Cigarette Batteries purchased separately or as part of a Krave Starter Kit.
6 Such products infringe at least claims 1, 11, 14, 16, and 19 of the '752 Patent.

7 12. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined. The Plaintiffs are also entitled to the costs of suit and interest.

10 13. Defendant's continuing infringement has inflicted and, unless
11 restrained by this court, will continue to inflict great and irreparable harm upon the
12 Plaintiffs. The Plaintiffs have no adequate remedy at law. The Plaintiffs are
13 entitled to preliminary and permanent injunctions enjoining Defendant from
14 engaging in further acts of infringement.

15 **SECOND CAUSE OF ACTION**

16 (Infringement of U.S. Patent No. 8,893,726)

17 14. The Plaintiffs incorporate by reference the allegations contained in
18 paragraphs 1-8 above.

19 15. Plaintiff Fontem Holdings is the owner of the entire right, title, and
20 interest in and to United States Patent No. 8,893,726 ("the '726 Patent") and
21 Plaintiff Fontem Ventures is the exclusive licensee of the '726 Patent. The '726
22 Patent was duly and legally issued by the United States Patent Office on November
23 25, 2014 and is valid, subsisting, and in full force and effect. A copy of the '726
24 Patent is attached to this First Amended Complaint as Exhibit B.

25 16. The Plaintiffs are informed and believe that: Defendant has directly
26 infringed the '726 Patent in violation of at least 35 U.S.C. § 271(a), by itself and/or
27 through its agents, unlawfully and wrongfully making, using, importing, offering to
28 sell, and/or selling electronic cigarette products embodying one or more of the

1 inventions claimed in the '726 Patent, within and/or from the United States without
2 permission or license from the Plaintiffs, and will continue to do so unless enjoined
3 by this Court. Examples of electronic cigarette products that directly infringe the
4 '726 Patent either literally or under the doctrine of equivalents include, but are not
5 limited to:

- 6 a. Fifty-One Duo (2.0) Rechargeable Electronic Cigarettes, including (1)
7 Fifty-One Duo (2.0) Rechargeable Electronic Cigarettes as found in
8 Fifty-One Duo (2.0) Starter Kits; (2) Fifty-One 2.0 Cartomizer Refills
9 for use with Fifty-One Duo Rechargeable Batteries purchased
10 separately or as part of a Fifty-One (2.0) Starter Kit; and (3) Fifty-One
11 Duo Replacement Electronic Cigarette Batteries. Such products
12 infringe at least claims 1, 14, and 15 of the '726 Patent.
 - 13 b. Fifty-One Trio Rechargeable Electronic Cigarettes, including (1) Fifty-
14 One Trio Rechargeable Electronic Cigarettes as found in Fifty-One
15 Trio Starter Kits; (2) Fifty-One Trio Replacement Rechargeable
16 Electronic Cigarette Batteries; (3) Fifty-One Trio Replacement
17 Atomizers; and (4) Fifty-One Trio Cartridge Refills for use with Fifty-
18 One Trio Rechargeable Batteries and Atomizers purchased separately
19 or as part of a Fifty-One Trio Starter Kit. Such products infringe at
20 least claims 1, 14, and 15 of the '726 Patent.
 - 21 c. Fifty-One Disposable Electronic Cigars. Such products infringe at
22 least claims 1, 14, and 15 of the '726 Patent.
 - 23 d. Krave Rechargeable Electronic Cigarettes as found in a Krave Starter
24 Kit; and (2) Krave Refill Filters for use with Krave Rechargeable
25 Electronic Cigarette Batteries purchased separately or as part of a
26 Krave Starter Kit. Such products infringe at least claims 1, 14, and 15
27 of the '726 Patent.
- 28

1 e. Krave Disposable Electronic Cigarettes. Such products infringe at
2 least claims 1, 14, and 15 of the '726 Patent.

3 f. VaporX Electronic Cigarette Products, including Hookah Stix
4 Disposable E-Hookahs and VaporX Exite Electronic E-Cigarette.
5 Such products infringe at least claims 1, 14, and 15 of the '726 Patent.

6 17. As a direct and proximate result of the foregoing acts of Defendant, the
7 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
8 determined. The Plaintiffs are also entitled to the costs of suit and interest.

9 18. Defendant's continuing infringement has inflicted and, unless
10 restrained by this court, will continue to inflict great and irreparable harm upon the
11 Plaintiffs. The Plaintiffs have no adequate remedy at law. The Plaintiffs are
12 entitled to preliminary and permanent injunctions enjoining Defendant from
13 engaging in further acts of infringement.

14 **PRAYER FOR RELIEF**

15 The Plaintiffs request entry of judgment that:

16 A. The '752 Patent and the '726 Patent are valid and enforceable;

17 B. Defendant is liable for infringement of the '752 Patent and the '726
18 Patent under at least the provisions of 35 U.S.C. § 271(a);

19 C. Defendant and all affiliates, subsidiaries, officers, employees, agents,
20 representatives, licensees, successors, assigns, and all those acting in concert with,
21 or for or on behalf of Defendant, shall be enjoined from infringing the '752 Patent
22 and the '726 Patent;

23 D. Defendant shall pay damages to the Plaintiffs resulting from
24 Defendant's patent infringement pursuant to 35 U.S.C. § 284;

25 E. The Plaintiffs be entitled to prejudgment interest and post-judgment
26 interest on the damages; and

27 F. The Plaintiffs be awarded such other and further relief, in law or in
28 equity, as the Court deems just, equitable or appropriate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: November 25, 2014

Respectfully submitted,

PERKINS COIE LLP

By: /s/ Joseph P. Hamilton
Joseph P. Hamilton

Attorneys for Plaintiff
 FONTEM VENTURES B.V. and
 FONTEM HOLDINGS I B.V.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs Fontem Ventures and Fontem Holdings hereby demand a trial by jury of all issues triable by a jury.

DATED: November 25, 2014

PERKINS COIE LLP

By: /s/ Joseph P. Hamilton
Joseph P. Hamilton

Attorneys for Plaintiff
FONTM VENTURES B.V. and
FONTM HOLDINGS I B.V.