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8 *FONTEM VENTURES B.V.* and
FONTEM HOLDINGS 1 B.V.

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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.

FIN BRANDING GROUP, LLC, an
Illinois limited liability company;
ELECTRONIC CIGARETTES
INTERNATIONAL GROUP, LTD., a
Nevada Corporation, and DOES 1-5,
Inclusive,

Defendants.

Case No. CV14-9268 GW (MRWx)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 For its First Amended Complaint against Defendants FIN BRANDING
2 GROUP, LLC and ELECTRONIC CIGARETTES INTERNATIONAL GROUP,
3 LTD. (together, “the Defendants”), Plaintiff Fontem Ventures B.V. (“Fontem
4 Ventures”) and Plaintiff Fontem Holdings 1 B.V. (“Fontem Holdings”) allege as
5 follows:

6 **JURISDICTION AND VENUE**

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

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

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

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

17 **PARTIES**

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

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

26 7. Plaintiffs Fontem Ventures and Fontem Holdings (together, “the
27 Plaintiffs”) are informed and believe that: Defendant FIN BRANDING GROUP,
28 LLC (“FIN”) is a limited liability company organized and existing under the laws

1 of the State of Illinois, having its principal place of business at 4080 Commercial
2 Ave., Northbrook, Illinois, 60062-1829, USA. FIN is doing business in this judicial
3 district related to the claims asserted in this First Amended Complaint.

4 8. The Plaintiffs are informed and believe that: Defendant
5 ELECTRONIC CIGARETTES INTERNATIONAL GROUP, LTD. (“ECIG”) is a
6 corporation organized and existing under the laws of the State of Nevada, having its
7 principal place of business at 11335 Apple Drive, Nunica, Michigan, 49448, USA.
8 ECIG is doing business in this judicial district related to the claims asserted in this
9 First Amended Complaint.

10 9. The Plaintiffs are informed and believe that: On February 12, 2014,
11 ECIG (f/k/a Victory Electronic Cigarettes Corporation) and FIN announced an
12 agreement to merge their two companies, creating a single electronic cigarette
13 company.¹ As of the date of filing this First Amended Complaint, FIN continues to
14 sell its FIN and Finiti brands of electronic cigarette and ECIG continues to sell its
15 VICTORY brand of electronic cigarette.

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

22 **FIRST CAUSE OF ACTION**

23 (Infringement of U.S. Patent No. 8,899,239)

24 11. The Plaintiffs incorporate by reference the allegations contained in
25 paragraphs 1-10 above.

26 _____
27 ¹ See [http://ecig.co/press-release/victory-electronic-cigarettes-and-fin-
28 branding-group-complete-merger-creating-one-of-the-worlds-largest-independent-ecig-companies/](http://ecig.co/press-release/victory-electronic-cigarettes-and-fin-branding-group-complete-merger-creating-one-of-the-worlds-largest-independent-ecig-companies/) (last visited December 16, 2014).

1 12. Plaintiff Fontem Holdings is the owner of the entire right, title, and
2 interest in and to United States Patent No. 8,899,239 (“the ’239 Patent”) and
3 Plaintiff Fontem Ventures is the exclusive licensee of the ’239 Patent. The ’239
4 Patent was duly and legally issued by the United States Patent Office on December
5 2, 2014 and is valid, subsisting, and in full force and effect. A copy of the ’239
6 Patent is attached to this First Amended Complaint as Exhibit A.

7 13. Defendants have knowledge of the ’239 Patent, and of the Plaintiffs’
8 rights therein, at least as of the date of service for this First Amended Complaint.

9 14. The Plaintiffs are informed and believe that: Defendants directly
10 infringe the ’239 Patent in violation of at least 35 U.S.C. § 271(a), by themselves
11 and/or through their agents, unlawfully and wrongfully making, using, importing,
12 offering to sell, and/or selling electronic cigarette products embodying one or more
13 of the inventions claimed in the ’239 Patent, within and/or from the United States
14 without permission or license from the Plaintiffs, and will continue to do so unless
15 enjoined by this Court. Examples of electronic cigarette products that directly
16 infringe the ’239 Patent either literally or under the doctrine of equivalents include,
17 but are not limited to, (1) FIN Rechargeable Electronic Cigarettes as found in
18 Starter Kits such as the FIN Rechargeable Starter Kit, the FIN Rechargeable Deluxe
19 Kit, and the FIN Rechargeable Platinum Kit; (2) FIN Cartomizer Refill Packs for
20 use with FIN Rechargeable Batteries; (3) FIN Non-Rechargeable Electronic
21 Cigarettes; (4) VICTORY Rechargeable Electronic Cigarettes as found in Starter
22 Kits such as the VICTORY Mega E Cigarette Starter Kit, the VICTORY Premium
23 Electronic Cigarette Starter Kit, the VICTORY Rechargeable Deluxe Kit, and the
24 VICTORY Basic Rechargeable Starter Kit; (5) VICTORY Vapor Cartridge Refills
25 for use with VICTORY Rechargeable Batteries purchased separately or as part of a
26 VICTORY Starter Kit; (6) VICTORY Replacement Rechargeable Batteries; (7)
27 VICTORY Disposable 500 Puff Electronic Cigarettes; and (8) Victory King
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1 Disposable Electronic Cigarettes. Such products infringe at least claims 1 and 13 of
2 the '239 Patent.

3 15. The Plaintiffs are informed and believe that: Defendants induce
4 infringement of the '239 Patent in violation of at least 35 U.S.C. § 271(b) by,
5 themselves and/or through their agents, inducing acts by their customers that
6 constitute the direct infringement of one or more claims of the '239 Patent, within
7 and/or from the United States without permission or license from the Plaintiffs, and
8 will continue to do so unless enjoined by this Court. For example, Defendants
9 induce acts by their customers that constitute direct infringement of the '239 Patent
10 based on electronic cigarette products that include, but are not limited to, (1) FIN
11 Rechargeable Electronic Cigarettes as found in Starter Kits such as the FIN
12 Rechargeable Starter Kit, the FIN Rechargeable Deluxe Kit, and the FIN
13 Rechargeable Platinum Kit; (2) FIN Cartomizer Refill Packs for use with FIN
14 Rechargeable Batteries; (3) FIN Non-Rechargeable Electronic Cigarettes; (4)
15 VICTORY Rechargeable Electronic Cigarettes as found in Starter Kits such as the
16 VICTORY Mega E Cigarette Starter Kit, the VICTORY Premium Electronic
17 Cigarette Starter Kit, the VICTORY Rechargeable Deluxe Kit, and the VICTORY
18 Basic Rechargeable Starter Kit; (5) VICTORY Vapor Cartridge Refills for use with
19 VICTORY Rechargeable Batteries purchased separately or as part of a VICTORY
20 Starter Kit; (6) VICTORY Replacement Rechargeable Batteries; (7) VICTORY
21 Disposable 500 Puff Electronic Cigarettes; and (8) Victory King Disposable
22 Electronic Cigarettes.

23 16. The Plaintiffs are informed and believe that: Having knowledge of the
24 '239 Patent at least as of the date of service for this First Amended Complaint,
25 Defendants provide instructions to use their electronic cigarette products in a
26 manner known to be infringing. For example, Defendants maintain websites that
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1 instruct their customers on how their electronic cigarette products work.²
2 Defendants’ websites specifically direct customers to use Defendants’ electronic
3 cigarette products in a manner that infringes one or more claims of the ’239 Patent,
4 explaining, for example, that “[w]hen you inhale the led tip glows,” and that every
5 e-cigarette is manufactured “with a white LED light to clearly communicate that
6 FIN is not a traditional cigarette—and its ‘smoke’ is vapor.”³ Defendants know
7 that their actions induce infringement of the ’239 Patent, because for example, they
8 know that the use of their electronic cigarette products infringes the ’239 Patent.
9 Based on Defendants’ instructions to their customers on their website, Defendants
10 induce actions by their customers that directly infringe at least claim 17 of the ’239
11 Patent.

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

15 18. Defendants’ continuing infringement has inflicted and, unless
16 restrained by this court, will continue to inflict great and irreparable harm upon the
17 Plaintiffs. The Plaintiffs have no adequate remedy at law. The Plaintiffs are
18 entitled to preliminary and permanent injunctions enjoining Defendants from
19 engaging in further acts of infringement.

20 **SECOND CAUSE OF ACTION**

21 (Infringement of U.S. Patent No. 8,910,641)

22 19. The Plaintiffs incorporate by reference the allegations contained in
23 paragraphs 1-10 above.

24 20. Plaintiff Fontem Holdings is the owner of the entire right, title, and
25 interest in and to United States Patent No. 8,910,641 (“the ’641 Patent”) and

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27 ² See, e.g., <http://victoryecigs.com/how-it-works.aspx>;
28 <http://www.fincigs.com/blog/e-cigarette-experience/> (last visited December 16,
2014).³ *Id.*

1 Plaintiff Fontem Ventures is the exclusive licensee of the '641 Patent. The '641
2 Patent was duly and legally issued by the United States Patent Office on December
3 16, 2014 and is valid, subsisting, and in full force and effect. A copy of the '641
4 Patent is attached to this First Amended Complaint as Exhibit B.

5 21. The Plaintiffs are informed and believe that: Defendants directly
6 infringe the '641 Patent in violation of at least 35 U.S.C. § 271(a), by themselves
7 and/or through their agents, unlawfully and wrongfully making, using, importing,
8 offering to sell, and/or selling electronic cigarette products embodying one or more
9 of the inventions claimed in the '641 Patent, within and/or from the United States
10 without permission or license from the Plaintiffs, and will continue to do so unless
11 enjoined by this Court. Examples of electronic cigarette products that directly
12 infringe the '641 Patent either literally or under the doctrine of equivalents include,
13 but are not limited to, (1) FIN Rechargeable Electronic Cigarettes as found in
14 Starter Kits such as the FIN Rechargeable Starter Kit, the FIN Rechargeable Deluxe
15 Kit, and the FIN Rechargeable Platinum Kit; (2) FIN Cartomizer Refill Packs for
16 use with FIN Rechargeable Batteries; (3) FIN Non-Rechargeable Electronic
17 Cigarettes; (4) VICTORY Rechargeable Electronic Cigarettes as found in Starter
18 Kits such as the VICTORY Mega E Cigarette Starter Kit, the VICTORY Premium
19 Electronic Cigarette Starter Kit, the VICTORY Rechargeable Deluxe Kit, and the
20 VICTORY Basic Rechargeable Starter Kit; (5) VICTORY Vapor Cartridge Refills
21 for use with VICTORY Rechargeable Batteries purchased separately or as part of a
22 VICTORY Starter Kit; (6) VICTORY Replacement Rechargeable Batteries; (7)
23 VICTORY Disposable 500 Puff Electronic Cigarettes; and (8) Victory King
24 Disposable Electronic Cigarettes. Such products infringe at least claims 1 and 17 of
25 the '641 Patent.

26 22. As a direct and proximate result of the foregoing acts of Defendants,
27 the Plaintiffs have suffered, and are entitled to, monetary damages in an amount not
28 yet determined. The Plaintiffs are also entitled to the costs of suit and interest.

1 23. Defendants’ continuing infringement has inflicted and, unless
2 restrained by this court, will continue to inflict great and irreparable harm upon the
3 Plaintiffs. The Plaintiffs have no adequate remedy at law. The Plaintiffs are
4 entitled to preliminary and permanent injunctions enjoining Defendants from
5 engaging in further acts of infringement.

6 **PRAYER FOR RELIEF**

7 The Plaintiffs request entry of judgment that:

8 A. The ’239 Patent and the ’641 Patent are valid and enforceable;

9 B. Defendants are liable for infringement of the ’239 Patent under at least
10 the provisions of 35 U.S.C. § 271(a) and (b) and are liable for infringement of the
11 ’641 Patent under at least the provisions of 35 U.S.C. § 271(a);

12 C. Defendants and all affiliates, subsidiaries, officers, employees, agents,
13 representatives, licensees, successors, assigns, and all those acting in concert with,
14 or for or on behalf of Defendants, shall be enjoined from infringing the ’239 Patent
15 and the ’641 Patent;

16 D. Defendants shall pay damages to the Plaintiffs resulting from
17 Defendants’ patent infringement pursuant to 35 U.S.C. § 284;

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

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

22 DATED: December 16, 2014

Respectfully submitted,

PERKINS COIE LLP

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

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

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DEMAND FOR JURY TRIAL

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

DATED: December 16, 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.