

Petition for *Inter Partes* Review of U.S. Patent No. 8,393,331

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

R.J. REYNOLDS VAPOR COMPANY,

Petitioner

v.

FONTEM HOLDINGS 1 B.V.,

Patent Owner

U.S. Patent 8,393,331

Issue Date: March 12, 2013

Title: Electronic Atomization Cigarette

Inter Partes Review No. IPR2018-00627

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,393,331 PURSUANT TO
35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42**

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TABLE OF AUTHORITIES

CASES

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