

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

R.J. REYNOLDS VAPOR COMPANY,
Petitioner,

v.

PHILIP MORRIS PRODUCTS S.A.,
Patent Owner.

IPR2021-00826
Patent 9,814,265 B2

Before GRACE KARAFFA OBERMANN, JAMES J. MAYBERRY, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

ROESEL, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

R.J. Reynolds Vapor Company (“Petitioner”) filed a Petition (Paper 1, “Pet.”) seeking an *inter partes* review of claims 1, 3–5, 8, and 17 (the “challenged claims”) of U.S. Patent No. 9,814,265 B2 (Ex. 1001, “the ’265 Patent”). Philip Morris Products, S.A. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”).

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2021). An *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). After considering the parties’ arguments and evidence, we determine that the reasonable likelihood standard is not met. Accordingly, we deny institution of *inter partes* review.

B. *Related Matters*

The parties indicate that the ’265 Patent is being asserted in the following district court action: *RAI Strategic Holdings, Inc. v. Altria Client Services LLC*, No. 1:20-cv-00393-LO-TCB (E.D. Va. Filed May 28, 2020). Pet. 72; Paper 4, 1.

C. *The ’265 Patent (Ex. 1001)*

The ’265 Patent is titled, “Permeable electric thermal resistor foil for vaporizing fluids from single-use mouthpieces with vaporizer membranes” and relates to an electronic cigarette or e-cigarette. Ex. 1001, code (54), 1:14–16, 4:36–43, 5:38–42.

The '265 Patent describes “a vaporizer device for vaporizing substances containing active and/or aroma materials.” Ex. 1001, 5:47–50. The vaporizer device comprises: (1) a heating device comprising a permeable thermal resistor foil configured as a dual coil and/or sinuous line; and (2) a permeable vaporizer membrane in large-area contact with the thermal resistor. *Id.* at 4:51–54, 5:50–56. According to the '265 Patent, the large contact area between the thermal resistor foil and the vaporizer membrane “achieves not only a very high vaporizing efficiency but also the highest possible degree of vaporization uniformity.” *Id.* at 5:59–64.

Figure 1 of the '265 Patent is reproduced below.

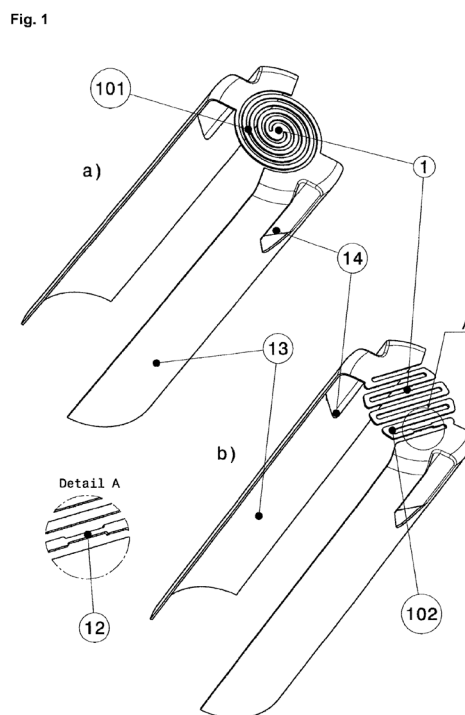


Figure 1 shows two variants of a heating device that includes thermal resistor 1, where the heating device is produced from a single piece of metal foil. Ex. 1001, 7:21–25. In Figure 1a, thermal resistor 1 takes the form of dual coil 101, and in Figure 1b, thermal resistor 1 takes the form of sinuous line 102. *Id.* at 7:26–28.

Figure 2 of the '265 Patent is reproduced below.

Fig. 2

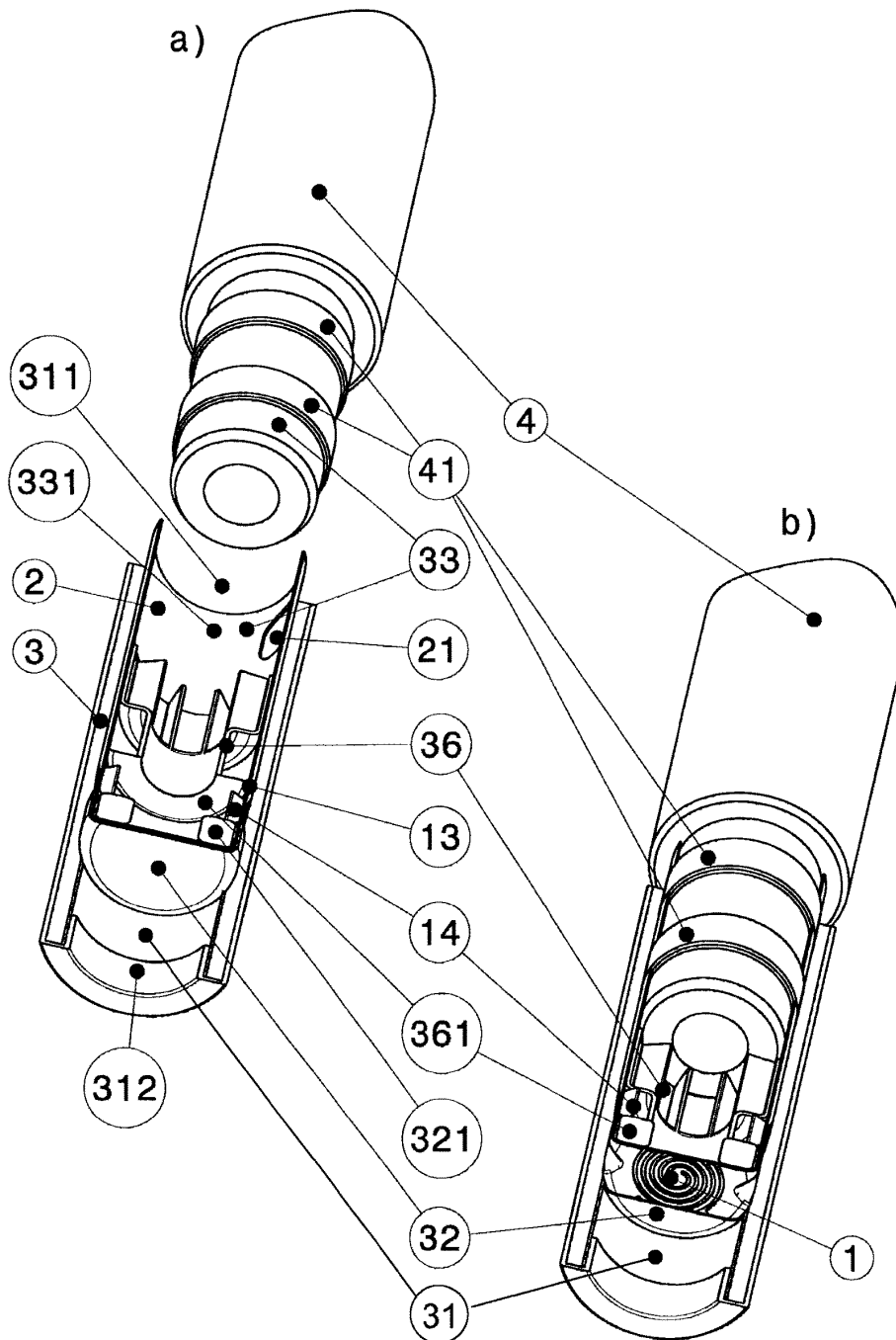


Figure 2 shows a vaporizer device, including thermal resistor 1, insulation foil 2, mouthpiece 3, and voltage source 4, among other structures.

Ex. 1001, 7:29–41, 8:56–9:20 (Table 1). In Figure 2a, mouthpiece 3 is shown in an inactive storage condition with voltage source 4 not yet attached, and in Figure 2b, mouthpiece 3 is shown in an activated condition of use with voltage source 4 attached. *Id.* at 7:42–47.

D. Illustrative Claim

Petitioner challenges claims 1, 3–5, 8, and 17 of the '265 Patent. Pet. 1, 17. Claims 1 and 17 are independent claim. Claim 1 is reproduced below.

1. A vaporizer device for vaporizing a substance containing at least one active and/or aroma material, comprising:

 a mouthpiece, having at least one fluid inlet and at least one fluid outlet; and

 a heating device, configured to be connected to the mouthpiece, comprising:

 a thermal resistor comprising a metallic foil or a thin sheet in a shape of a dual coil and/or sinuous line, having two ends and dimensions substantially the same as a cross-section of a cigarette or a cigar,

 wherein interspaces of the shape are configured to allow a flow of fluid therethrough;

 at least one contact tab including a first contact tab and a second contact tab being connected to respective opposed ends of the dual coil and/or sinuous line of the thermal resistor, the first contact tab and the second contact tab not being in direct contact with each other; and

 at least one vaporizer membrane disposed in contact with the thermal resistor and being permeable to the flow of fluid, and which is wetted or can be wetted with the substance containing the at least one active and/or aroma material,

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