



# SCHMEISER, OLSEN & WATTS LLP

PATENTS, TRADEMARKS & COPYRIGHTS

18 EAST UNIVERSITY DRIVE, SUITE 101, MESA, AZ 85201

Phone (480) 655-0073 ♦ Fax (480) 655-9536 ♦ AZ@IPLawUSA.com ♦ www.iplawusa.com

ALBERT L. SCHMEISER

MANAGING PARTNER

ADMITTED IN NEW YORK AND IN THE

UNITED STATES PATENT AND TRADEMARK OFFICE

May 20, 2020

Mr. Joel B. Rothman  
SR IP Law  
21301 Powerline Road, Suite 100  
Boca Raton, FL 33433

Re: Response to Letter of March 13, 2020

Dear Mr. Rothman,

This correspondence is in response to your letter on March 13, 2020 providing further discussion of U.S. Patent No. 8,205,622 (hereinafter “the ‘622 Patent”) and claiming infringement. We have had several discussion with our client and considered your input carefully and provide the following in response.

In an effort to keep this interaction straight forward and to avoid litigating this matter through letter we will we will focus this letter on just one issue that we believe should bring this matter to a resolution. As we have previously discussed in our previous letter, the Examiner’s reason for allowance was that the cited references did not teach or suggest using a diaphragm microphone. In your March 13 letter, you provided references to website and a certified translation of the priority document to present your asserted scope of the term “diaphragm microphone.” Based on your assertion you provided an analysis of why our client’s sensor would therefore read on your claim construction analysis of “diaphragm microphone.”

While we strongly disagree with your position and claim construction analysis, that is immaterial at this point. Attached is copy of an International Patent Application having International Publication Number WO2008/138650 (hereinafter “the ‘650 Application”). As seen on the front page of the ‘650 Application, this application was filed February 4, 2008 more than a year before the priority date of the ‘622 Patent, and further the ‘650 Application has a priority date of May 11, 2007, almost two years before the priority date of the ‘622 Patent. Accordingly, this reference qualifies as priort art to the ‘622 Patent.

The ‘650 Application describes a smoking device that has a sensor device that is a microphone. There are several instances of this description in the specification and claims of the ‘650 Application. One illustrative portion can be found in paragraph [0026] and [0027] where the sensor device 24 is described as a microphone that has the main

Mr. Joel B. Rothman  
SR IP Law  
May 20, 2020  
Page 2

purpose to detect airflow and send a signal to control electronics 23 to activate the heating device 22. It appears clear that the use of a microphone that includes a diaphragm was known and disclosed for use within a smoking device nearly two years before the priority of the '622 Patent, and would be proper prior art for purposes of invalidity of the '622 Patent.

Based on this information, we believe that any action or threatened action asserted against our client would be met with a claim of invalidity or a filing of reexamination of the '622 Patent in light of the '650 Application. Accordingly, we will consider this matter closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Albert L. Schmeiser".

Albert L. Schmeiser  
aschmeiser@iplawusa.com

ALS: sa