

Filed on behalf of: Philip Morris Products, S.A.

Entered: July 21, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PHILIP MORRIS PRODUCTS, S.A.,
Petitioner,

v.

RAI STRATEGIC HOLDINGS, INC.,
Patent Owner.

Case IPR2020-00919
Patent 9,901,123

**PETITIONER'S REQUEST FOR REHEARING
OF THE INSTITUTION DECISION**

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OTHER AUTHORITIES

Current Cigarette Smoking Among Adults in the United States, CDC,
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Exhibit List

Ex.	Description
1001	U.S. Patent No. 9,901,123 (“the ’123 patent”)
1002	File History for U.S. Patent No. 9,901,123
1003	Declaration of Dr. Seetharama C. Deevi in Support of Petition for <i>Inter Partes</i> Review of ’123 Patent (“Deevi Decl”)
1004	Curriculum Vitae of Dr. Seetharama C. Deevi
1005	U.S. Patent No. 5,249,586 (“Morgan”)
1006	U.S. Patent No. 4,947,874 (“Brooks”)
1007	U.S. Patent Application Publication No. 2007/0102013 (“Adams”)
1008	U.S. Patent No. 5,144,962 (“Counts-962”)
1009	U.S. Patent No. 5,060,671 (“Counts-671”)
1010	<i>Chemical and Biological Studies on New Cigarette Prototypes that Heat Instead of Burn Tobacco</i> , R. J. Reynolds Tobacco Company Monograph (1988) (“RJR’s 1988 Monograph”) (markings on exhibit appeared in the used copy purchased by counsel)
1011	U.S. Patent No. 5,692,525 (“Counts-525”)
1012	U.S. Patent No. 5,095,921 (“Losee”)
1013	U.S. Patent No. 5,591,368 (“the ’368 patent”)
1014	International Patent Application Publication No. WO 96/32854 (“Baggett”)
1015	Korean Patent No. 10-0636287 (“Park”) (including certified English translation and original Korean version of patent)
1016	Philip Morris Incorporated Invention Record (submitted May 19, 1994; witnessed May 23, 1994) (“May 1994 Invention Record”)
1017	U.S. Patent No. 4,510,950 (“Keritsis”)

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