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**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

**Before the Honorable Clark S. Cheney  
Administrative Law Judge**

**In the Matter of**

**CERTAIN TOBACCO HEATING  
ARTICLES AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-1199**

**RESPONDENTS' JOINT DISCLOSURE OF INITIAL CONTENTIONS  
IN RESPONSE TO INDIVIDUAL INTERROGATORY NO. 12**

**I. INTRODUCTION**

Pursuant to the Procedural Schedule set forth in Order No. 5, Respondents Altria Client Services LLC, Altria Group, Inc., Philip Morris USA, Inc., Philip Morris International Inc., and Philip Morris Products S.A. (collectively, "Respondents") provide their initial invalidity contentions in response to Individual Interrogatory No. 12.

Complainants assert claims from U.S. Patent No. 9,839,238 ("the '238 patent"); U.S. Patent No. 9,930,915 ("the '915 patent"); and U.S. Patent No. 9,901,123 ("the '123 patent") (collectively, "the Asserted Patents"). In particular, Complainants allege that Respondents infringe claim 19 of the '238 patent; claims 1, 2, and 5 of the '915 patent; and claims 27-30 of the '123 patent (collectively, "the Asserted Claims"). Complainants also contend that their Domestic Industry Products practice claims 1-3, 5-11, 13, 15-16, 18-21 of the '238 patent; claims 1-4 of the '915 patent; and claims 1-7, 9, 11-19, 21, 23-26 of the '123 patent (collectively, "the Domestic Industry Claims"). Respondents' initial invalidity contentions address the Asserted Claims and the Domestic Industry Claims of the Asserted Patents.

RAI Strategic Holdings, Inc.  
Exhibit 2028  
Philip Morris Products, S.A. v. RAI Strategic Holdings, Inc.  
IPR2020-00919

## 2. Prior Art Patents, Patent Applications, and Publications

The patents, patent applications, and publications identified in the table below are prior art to the '123 patent, and they anticipate and/or render obvious the Asserted and/or Domestic Industry Claims of the '123 patent.

Prior Art	Issuing Country	Date	Inventor(s)/Author(s)	Exhibit
U.S. Patent No. 5,249,586 ("Morgan")	U.S.	Oct. 5, 1993	Morgan, Constance H. Nichols, Walter A.	C1 <sup>9</sup>
U.S. Patent Application Publication No. 2007/0102013 ("Adams")	U.S.	Sept. 28, 2006	Adams, John M. Crowe, William J., <i>et al.</i>	C1
U.S. Patent No. 5,144,962 ("Counts-962")	U.S.	Sept. 8, 1992	Counts, Mary E. Hajaligol, Mohammad R., <i>et al.</i>	C1
International Patent Application Publication No. WO 95/27412 ("Hajaligol")	WIPO	Oct. 19, 1995	Hajaligol, Mohammad R. Fleischhauer, Grier S., <i>et al.</i>	C2
Chinese Patent No. 2719043 ("Hon '043")	China	Aug. 24, 2005	Lik, Hon	C4
Chinese Patent No. 1775123 ("Yang")	China	May, 24, 2006	Yinhai, Yang	C5
U.S. Patent No. 8,375,957 ("Hon '957")	U.S.	May 16, 2006	Lik, Hon	C6
U.S. Patent No. 4,947,874 ("Brooks")	U.S.	Aug. 14, 1990	Brooks, Johnny L. Roberts, Donald L. Simmons, Jerry S.	Addressed as appropriate
U.S. Patent No. 5,060,671 ("Counts-671")	U.S.	Oct. 29, 1991	Counts, Mary E. LaRoy, Bernard C., <i>et al.</i>	Addressed as appropriate
U.S. Patent No. 5,692,525 ("Counts-525")	U.S.	Dec. 2, 1997	Counts, Mary E. Houck, Willie G., Jr. <i>et al.</i>	Addressed as appropriate

<sup>9</sup> Exhibit C1 is a copy of the petition for IPR in PTAB Case No. IPR2020-00919. That petition and all of its accompanying exhibits are incorporated by reference, in full.

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between the inner surface of the outer container 20 and the outer surface of the cartridge 85.” ’123 patent at 22:28-34; Fig. 1. Where the ’123 patent addresses a “cartridge” “adapted for airflow therethrough,” it describes such a cartridge in the context of an embodiment containing a “tobacco rod . . . blended with tobacco filler.” ’123 patent at 25:28-39; Fig. 2.

**6. 35 U.S.C. § 112 – Indefiniteness**

A person of ordinary skill in the art would not be able to determine the scope of the invention because of the indefiniteness of at least the following terms:

- “the elongated portion of the resistance heating element positioned proximal to the center of the outer housing”

’123 patent, cl. 27. A person of ordinary skill would not understand with reasonable certainty the scope of this claim limitation, in particular when an elongated portion of a resistance heating element is, or is not, positioned “proximal” to the center of the smoking device’s outer housing.

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