

EXHIBIT D

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In the Matter of

CERTAIN TOBACCO HEATING
ARTICLES AND COMPONENTS
THEREOF

Inv. No. 337-TA-_____

COMPLAINANTS' STATEMENT ON PUBLIC INTEREST

Pursuant to U.S. International Trade Commission ("Commission") Rule 19 C.F.R. § 210.8(b), Complainants RAI Strategic Holdings, Inc. ("RAI"), R.J. Reynolds Vapor Company ("RJR"), and R.J. Reynolds Tobacco Company ("RJRT") (collectively, "Complainants") respectfully submit this Statement on Public Interest with respect to the remedial orders they seek against proposed Respondents Altria Client Services LLC ("ACS"), Altria Group, Inc. ("AGI"), Philip Morris USA, Inc. ("PM USA"), Philip Morris International Inc. ("PMI"), and Philip Morris Products S.A. ("PMP") ("Proposed Respondents").

Complainants seek a permanent, limited exclusion order, specifically directed to Proposed Respondents and their agents, prohibiting from entry into the United States certain tobacco heating articles and components thereof that infringe one or more of U.S. Patent No. 9,839,238 ("the '238 patent"), U.S. Patent No. 9,901,123 ("the '123 patent"), and U.S. Patent No. 9,930,915 ("the '915 patent") (collectively, "the Asserted Patents"). Complainants also seek a cease and desist order pursuant to 19 U.S.C. § 1337(f). The Commission's grant of these remedial orders will serve the public interest.

I. THE REQUESTED REMEDIAL ORDERS ARE IN ACCORD WITH THE PUBLIC INTEREST

There is a strong public interest in protecting intellectual property rights. *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chip, Power Control*

Chips, & Products Containing Same, Including Cellular Telephone Handsets, Inv. No. 337-TA-543, USITC Pub. 4258 (Nov. 2011). As the Commission has noted, “protection of intellectual property rights in the United States provides foreign and domestic businesses alike with a climate of predictability that fosters investment, innovation, and the exchange of technology and associated intellectual property rights.” *Certain Digital Televisions and Certain Products Containing the Same and Methods of Using the Same*, Inv. No. 337-TA-617, Comm’n Op., at 17 (April 2009). The public interest in protecting intellectual property rights can only be precluded in the rarest circumstances. *Certain Baseband Processor Chips*, Comm’n Op., at 153-54 (June 2007). Here, the strong public interest in protecting Complainants’ intellectual property rights outweighs any alleged adverse impact on the public.

A. How The Articles Potentially Subject To The Requested Remedial Orders Are Used In The United States

The infringing products are tobacco heating articles and components thereof, including disposable tobacco sticks, marketed as “the IQOS[®] system.” Proposed Respondents are authorized by FDA to import, offer for sale, and sell the products in the United States and have done so since approximately October 2019.

The IQOS[®] system is part of a category known as “potentially reduced-risk products.” Some such products, like IQOS[®], include tobacco; these are commonly known as “tobacco heating products.” Other such products include a nicotine-containing liquid, and are commonly known as “electronic nicotine delivery systems” or “ENDS.” Still other such products include oral tobacco and nicotine products.

The infringing IQOS[®] system is a tobacco heating product with three components: a holder, disposable tobacco sticks, and a charger. The IQOS[®] holder is an electrically powered and rechargeable unit that holds and heats the disposable tobacco sticks during use to generate a

nicotine-containing aerosol. The IQOS[®] holder includes a casing or housing, control electronics, a battery, and a heating blade. The IQOS[®] holder has an end for receiving the tobacco stick, and it heats the disposable tobacco stick using a ceramic blade, which is pushed into the tobacco stick by the act of inserting the tobacco stick into the holder.

The user turns on the device by a pushbutton switch, which causes the battery to produce and supply electrical current to the heating blade, heating the aerosol forming materials in the tobacco stick, generating an inhalable nicotine-containing aerosol for the user. The temperature of the heating blade is reported not to exceed 350°C, which heats the tobacco below the level of combustion, producing an aerosol.

B. Identification Of Any Public Health, Safety, Or Welfare Concerns Relating To The Requested Remedial Orders

Public health, safety, and welfare concerns do not bar Complainants' requested relief. There is belief among public health officials (and Complainants and Proposed Respondents) that ENDS products may be a potentially reduced-risk alternative to traditional combustible cigarettes. (*See FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes That Appeal to Children, Including Fruit and Mint*, January 2, 2020, <https://www.hhs.gov/about/news/2020/01/02/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes.html>; *How FDA is Regulating E-Cigarettes*, Ned Sharpless, M.D., Acting FDA Commissioner, July 10, 2019, <https://www.fda.gov/news-events/fda-voices-perspectives-fda-leadership-and-experts/how-fda-regulating-e-cigarettes>.) Certain complainants currently sell ENDS products in the U.S. market, as do multiple other companies. Thus, there are ENDS products in the U.S. currently available to adult American smokers looking for a potentially reduced-risk alternative to traditional cigarettes. If the Commission grants Complainants' requested relief regarding the IQOS[®] system, adult American smokers looking for

potentially reduced-risk alternatives could turn to Complainants' ENDS and other products on the market at that time, as discussed below.

One or more Proposed Respondents have stated publicly that ENDS products have the potential to be reduced-risk alternatives to traditional cigarettes. For example, proposed Respondent AGI invested \$12.8 billion in JUUL Labs, Inc., a U.S. ENDS products company. AGI stated that the deal "will accelerate JUUL's mission to switch adult smokers to e-vapor products." (See <http://investor.altria.com/file/Index?KeyFile=396169695>.) Thus, the availability in the U.S. of Complainants' ENDS and other products belies any argument by Proposed Respondents that Complainants' requested relief would harm the public interest by denying adult smokers access to a potentially reduced-risk alternative.

C. Identification Of Like Or Directly Competitive Articles That Complainants, Their Licensees, Or Third Parties Make Which Could Replace The Subject Articles If They Were Excluded

Were the Commission to exclude Proposed Respondents' infringing tobacco heating products and components thereof from entry into the U.S., there are several non-infringing ENDS products available in the U.S. that are directly competitive with the Accused Products. These products include Complainants' VUSE[®] products: VUSE[®] Vibe, VUSE[®] Solo, VUSE[®] Alto, and VUSE[®] Ciro. (www.vusevapor.com). Complainants' Eclipse[®] product is another alternative available in the U.S. Like IQOS[®], Eclipse[®] is a tobacco heating product that heats but does not burn the tobacco. Several oral tobacco and nicotine products are also available in the U.S., including, but not limited to, Camel[®] Snus, Grizzly[®] Snuff, Kodiak[®] Snuff, (www.northerner.com/us), VELO[®] nicotine pouches, REVEL nicotine lozenges, and Nicorette[®] Gum (www.nicorette.com/products/nicorette-gum.html).

Such products would continue to be available to adult American smokers looking for a potentially reduced-risk alternative to traditional combustible cigarettes. Should the Commission

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