

EXHIBIT 5

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RAI STRATEGIC HOLDINGS, INC. and
R.J. REYNOLDS VAPOR COMPANY,

Plaintiffs and Counterclaim
Defendants,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA, INC.; and PHILIP
MORRIS PRODUCTS S.A.,

Defendants and Counterclaim
Plaintiffs.

Case No. 1:20-cv-00393

**REPORT OF
RYAN SULLIVAN, Ph.D.**

A handwritten signature in black ink, appearing to read "R. Sullivan", written over a horizontal line.

Ryan Sullivan, Ph.D.

March 24, 2021

11.4. Royalty structure

- (211) As discussed in Section 1.3, a reasonable royalty is designed to compensate the patent owner for the accused infringement. Thus, it is the amount of total royalties, not the royalty structure *per se*, that is relevant for an evaluation of economic damages. As described herein, reasonable royalties are calculated by “applying sound economic principles to case-specific facts.”⁴³⁸
- (212) In theory, a reasonable royalty could be determined using different royalty structures, yet as a practical matter, licenses often have a defined royalty structure, such as a lump-sum payment, a per-unit royalty, a percentage royalty, or some combination of these.
- (213) Several factors indicate that a running royalty is the economically appropriate royalty structure in this case. A running royalty structure allows for payments to be commensurate with the actual value contribution of the technology over time as sales may grow or shrink due to marketplace factors and/or other factors. A running royalty also allows for the sharing between licensor and licensee of risks associated with overpayment or underpayment relative to the value earned in the marketplace on licensed products.⁴³⁹ Furthermore, [REDACTED]
[REDACTED]
[REDACTED].⁴⁴⁰
- (214) Accordingly, it is likely that the parties at the hypothetical negotiation would have agreed to a running royalty, either as a percentage of net sales or as a per-unit royalty.

⁴³⁸ Sullivan, Ryan and John Scherling (2011), “Rational Reasonable Royalty Damages: A Return to the Roots,” *Landslide* 4(2): 1–4, at 1.

⁴³⁹ Razgaitis, Richard (2003), *Valuation and Pricing of Technology-Based Intellectual Property*, New Jersey: John Wiley & Sons, Inc., at 299. (“[Running royalties] provide an opportunity for the seller to receive more than the parties would have or could have expected because the outcome of the license has been greater than expected. Likewise, they can be an advantage to the buyer if the market turns out to be much smaller than expected.”)

Teece, David (2002), *Managing Intellectual Capital*, New York: Oxford University Press Inc., at 153. (“The payment mechanism itself (up front lump sum versus royalties) may also impact the amount actually paid, as it may significantly impact risk sharing. An attractive feature of a licensee running with a royalty on sales is that the licensee does not have to pay unless it is successful with the licensed technology and/or intellectual property. As compared to a lump sum, the running royalty tends to delay the payment of cash and results in risk sharing between licensor and licensee.”)

⁴⁴⁰ Nicholas Gilley, Dep. Tr., 12/3/2020, at 26:23–28:22. ([REDACTED]
[REDACTED]
[REDACTED])