

**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-LO-TCB

**PMI/ALTRIA'S OPPOSITION TO RJR'S MOTION TO LIMIT THE NUMBER OF
ASSERTED COUNTERCLAIM PATENTS AND/OR CLAIMS**

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I. INTRODUCTION

RJR's motion is premature and disingenuous. RJR's assertion that PMI/Altria "refused" to reduce the number of asserted claims for trial is false. PMI/Altria confirmed that it will participate in a mutual streamlining of the issues for trial, including reducing the number of asserted claims. To facilitate that process, PMI/Altria asked RJR to (i) identify the specific prior art it intends to present at trial, since it has refused to stipulate that it will not go beyond the references and combinations disclosed in its expert reports (*see, e.g.*, Dkt. 901, MIL Nos. 2-3 at 3-5 and Dkt. 1101 at 3-4), and (ii) state its claim reduction proposal. RJR did neither. Instead, it demanded that PMI/Altria immediately join a phone call as a formality¹ so that it could file its pre-written motion. That is not how the parties should approach trial.

Even in its motion, RJR fails to state its claim reduction proposal, much less offer to mutually reduce its invalidity presentation. That is telling and should be dispositive. The Court should deny RJR's unnecessary motion as premature and direct the parties to engage in an orderly process to mutually narrow the issues for trial. Specifically, PMI/Altria respectfully requests that the Court order the parties to engage in the following *mutual* narrowing of the issues for trial: (i) within 7 days of this Court's rulings on the pending *Daubert* and *in limine* motions, PMI/Altria will identify the 25 claims it intends to present at trial, and (ii) 7 days later, RJR will identify no more than 3 prior art references and no more than 2 obviousness combinations for each of the three asserted patents on which it challenges validity. That bilateral proposal is reasonable, fair, and will meaningfully streamline the case to make efficient use of the Court's and the jury's time.

¹ Plaintiffs PMI/Altria understood RJR's interest in conferring was to narrow the issues for trial. RJR only disclosed it planned to file a motion shortly before unilaterally setting a conference call time and demanding Plaintiffs join, making plain it did not want to confer on streamlining for trial purposes, but merely to file an unnecessary motion without substantively conferring. Mot., Ex. B at 1 (3/11/2022 Email from M. Grant).

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