

**IN THE 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

**REPLY IN SUPPORT OF REYNOLDS'S MOTION TO LIMIT THE NUMBER OF
ASSERTED COUNTERCLAIM PATENTS AND/OR CLAIMS**

TABLE OF CONTENTS

| | Page |
|--|-------------|
| INTRODUCTION | 1 |
| ARGUMENT | 2 |
| I. THIS COURT CAN AND SHOULD LIMIT PM/ALTRIA TO 10 ASSERTED CLAIMS FOR TRIAL | 2 |
| II. PM/ALTRIA’S ARGUMENT ABOUT THE PRIOR ART IS A RED HERRING | 6 |
| A. There Is No Basis For Any Order Requiring Reynolds To Further Limit Its Prior Art | 6 |
| B. PM/Altria’s Proposed Rules For Narrowing The Issues Are Unfair To Reynolds | 7 |
| CONCLUSION | 8 |

TABLE OF AUTHORITIES

| | Page |
|---|------|
| CASES | |
| <i>Acantha LLC v. DePuy Orthopaedics Inc.</i> , No. 15-C-1257, 2017 WL 5186376 (E.D. Wis. Nov. 8, 2017)..... | 7 |
| <i>Adobe Sys. Inc. v. Wowza Media Sys. LLC</i> , No. 3:11-cv-02243-JST, Dkt. No. 547 (N.D. Cal. Feb. 13, 2015)..... | 5 |
| <i>Adobe Sys. Inc. v. Wowza Media Sys. LLC</i> , No. 11-CV-02243-JST, 2013 WL 9541126 (N.D. Cal. May 6, 2013) | 4 |
| <i>Allergan, Inc. v. Teva Pharms. USA</i> , No. 2:15-cv-1455-WCB, 2017 WL 373462 (E.D. Tex. Jan. 26, 2017)..... | 6 |
| <i>Apple, Inc. v. Samsung Elecs. Co.</i> , No. 12-CV-00630-LHK, Dkt. No. 471 (N.D. Cal. Apr. 24, 2013)..... | 2 |
| <i>Automated Merchandising Sys., Inc. v. Crane Co.</i> , No. 3:03-CV-88 (L), Dkt. 548 (N.D. W.V. Feb. 15, 2012) | 5 |
| <i>BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Rsch. Org.</i> , No. 2:17-cv-503, Dkt. No. 276 (E.D. Va. May 3, 2019) | 3 |
| <i>Centripetal Networks, Inc. v. Cisco Sys., Inc.</i> , No. 2:18cv94, Dkt. No. 75 (E.D. Va. Oct. 10, 2019) | 3 |
| <i>Certusview Techs., LLC v. S & N Locating Servs., LLC</i> , No. 2:13-CV-346, 2014 WL 4930803 (E.D. Va. Oct. 1, 2014)..... | 4, 8 |
| <i>Classen Immunotherapies, Inc. v. Biogen Idec</i> , No. 1:04-cv-02607-WDQ, Dkt. No. 313 (D. Md. July 15, 2014)..... | 5 |
| <i>Classen Immunotherapies, Inc. v. Biogen Idec</i> , No. WDQ-04-2607, 2013 WL 680379 (D. Md. Feb. 22, 2013) | 5 |
| <i>Gentherm Canada, Ltd v. IGB Auto., Ltd.</i> , No. 13-11536, 2016 WL 1170801 (E.D. Mich. Mar. 25, 2016)..... | 3 |

TABLE OF AUTHORITIES
(continued)

| | Page |
|---|-------------|
| <i>Glaukos Corp. v. Ivantis, Inc.</i> , No. SACV 18-00620 JVS (JDEx), 2021 WL 4539047 (C.D. Cal. Aug. 11, 2021) | 3, 4 |
| <i>Hearing Components, Inc. v. Shure, Inc.</i> , No. 9:07CV104, 2008 WL 2485426 (E.D. Tex. June 13, 2008) | 3 |
| <i>Honeywell Int’l Inc. v. Furuno Elec. Co.</i> No. 09-cv-3601, 2014 WL 12599633 (D. Minn. Jan. 29, 2014) | 4 |
| <i>Honeywell Int’l Inc. v. Furuno Elec. Co.</i> , No. 09-cv-03601, Dkt. No. 376 (D. Minn. Sept. 25, 2015) | 4 |
| <i>Huawei Techs., Co. v. Samsung Elecs. Co.</i> , No. 3:16-cv-02787-WHO, Dkt. No. 143 (N.D. Cal. June 2, 2017) | 3 |
| <i>LG Display Co. v. AU Optronics Corp.</i> , 686 F. Supp. 2d 429 (D. Del. 2010) | 2 |
| <i>Limelight Networks, Inc. v. XO Commn’ns, LLC</i> , No. 3:15-cv-720-JAG, Dkt. No. 208 (E.D. Va. Oct. 31, 2016) | 3 |
| <i>Memory Integrity, LLC v. Intel Corp.</i> , No. 3:15-cv-00262-SI, 2015 WL 6659674 (D. Or. Oct. 30, 2015) | 3, 4, 8 |
| <i>Oracle Am., Inc. v. Google Inc.</i> , No. C 10-03561 WHA, 2011 WL 12209477 (N.D. Cal. May 3, 2011) | 2 |
| <i>Rembrandt Social Media, LP v. Facebook, Inc.</i> , No. 1:13cv00158, Dkt. No. 178 (E.D. Va. July 12, 2013) | 2 |
| <i>Sherwin-Williams Co. v. PPG Indus.</i> , No. 17-1023, 2021 WL 1110568 (W.D. Pa. Mar. 23, 2021) | 3, 4 |
| <i>Universal Elecs. Inc. v. Roku Inc.</i> , No. SACV 18-1580 JVS (ADx), 2019 WL 1878351 (C.D. Cal. Mar. 14, 2019) | 4, 5, 6 |
| <i>Univ. of Va. Pat. Found. v. Gen. Elec. Co.</i> , No. 3:14CV51, 2015 WL 6958073 (W.D. Va. Nov. 10, 2015) | 5 |

TABLE OF AUTHORITIES
(continued)

Page

Unwired Planet LLC v. Google Inc.,
No. 3:12-CV-0505-MMD (VPC), 2013 WL 5592896 (D. Nev. Oct. 10, 2013)8

STATUTES

35 U.S.C. § 102.....6
35 U.S.C. § 103.....6

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.