

**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,

Case No. 1:20-cv-00393-LO-TCB

v.

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

Defendants and  
Counterclaim Plaintiffs.

**MEMORANDUM IN SUPPORT OF PHILIP MORRIS' MOTION TO INCLUDE A  
SUMMARY OF CLAIM CONSTRUCTIONS IN THE JUROR NOTEBOOKS**

Philip Morris respectfully requests that the juror notebooks include a one-page chart summarizing the Court's claim construction rulings for relevant terms from the Asserted Patents in this case.

Following the Court's instruction at the June 3, 2022 hearing, Plaintiff Philip Morris conferred with Defendant Reynolds about the content of the juror notebooks. 6/3/2022 Hearing Tr. at 15:5-18. The parties agree that they should include the Asserted Patents. As is typical in patent cases in which the court has issued a claim construction ruling, Philip Morris also requested including a single page chart indicating the Court's ruling that seven disputed claim terms from the Asserted Patents should be given their plain and ordinary meaning. Ex. A (P. Weinand 6/5/2022 Email). The jurors should be able to use that chart (attached as Exhibit B) as a reference as they evaluate the infringement and validity issues at trial.<sup>1</sup> Reynolds refused to include it.

There is no basis for Reynolds' refusal. On the meet and confer, Reynolds argued that the chart is unnecessary because it would allegedly confuse the jury. The opposite is true. These terms were part of a fulsome claim construction process before Judge O'Grady, including 150 pages of briefing and a hearing. In each instance, the key dispute was whether the terms should be given their plain and ordinary meaning, as Philip Morris argued, or whether the terms should have more restrictive constructions based on importing purported limitations and disclaimers from the specification and file histories, as Defendants argued.

Judge O'Grady "reviewed the parties' submissions, including the patents, prosecution histories, and other pertinent materials and considered the oral arguments of the parties." Dkt. 360 at 1. The Court ruled that none of the terms "should be modified" because "[t]hey are all well

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<sup>1</sup> For the term from the '374 patent, it was originally construed in the context of claim 1. Claim 16 was subsequently added to the case and contains the identical claim language.

known common English words given their common meaning.” Dkt. 360 at 1. The Court also found that “[n]one of the terms were modified by a clear disclaimer in the prosecution, although there were debates with the examiner.” *Id.* As this Court instructed the parties at the June 2, 2022 hearing, Judge O’Grady’s prior ruling is the law of the case. 6/2/2022 Hearing Tr. at 10:20-23.

Defendants’ refusal to include this uncontroversial summary chart suggests that they intend to have their experts improperly testify on claim construction, including in connection with infringement and validity, in a manner that contradicts the Court’s Order. That is contrary to law. Indeed, the Federal Circuit has explained that “[t]he risk of confusing the jury is high when experts opine on claim construction before the jury.” *CytoLogix Corp. v. Ventana Med. Sys., Inc.*, 424 F.3d 1168, 1172 (Fed. Cir. 2005); *see also TEK Glob., S.R.L. v. Sealant Sys. Int’l, Inc.*, 920 F.3d 777, 787 (Fed. Cir. 2019) (“Because the district court expressly rejected SSI’s interpretation when it determined that the term should have its plain and ordinary meaning . . . and SSI does not appeal the district court’s claim construction order rejecting its interpretation of the plain and ordinary meaning, our inquiry is limited to whether substantial evidence supports the jury’s infringement verdict under the issued claim construction.”).

To ensure that the jury has a reference about how the Court construed these claims terms, Plaintiffs respectfully request that the Court include Exhibit B in the juror notebooks.

Dated: June 7, 2022

Respectfully submitted,

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