

EXHIBIT 1

From: Michalik, John M.
Sent: Tuesday, June 7, 2022 10:02 AM
To: Paul.Weinand@lw.com; RJREDVA; cmolster@molsterlaw.com
Cc: pmiedva.lwteam@lw.com; Altria.RJRV@weil.com
Subject: RE: Case No. 1:20-cv-00393-LO-TCB (Trial Disclosure, June 6)
Attachments: (2022-06-07 JD edits) Draft Stip re Design Arounds.DOCX

Paul - -

First, we have slightly revised the original version of the stipulation you sent and removed the language that you raised last night and to make clear that this stipulation only relates to the presentation of evidence to the jury, and does not, for instance, restrict Reynolds's ability to present evidence in connection with PMP's injunction claim.

Second, to resolve the dispute regarding your designation of Mr. Hunt's deposition at 21:11-21:13; and 21:20-22:03, we agree to your proposed stipulation with the following addition: The parties stipulate to not challenge the accuracy of PX-028, to the extent it relates to text, figures, and portions of figures apart from the corrected portions of the mouthpiece, consistent with the Court's prior ruling on Reynolds's MIL 9. We acknowledge that PM has withdrawn its designation of Mr. Hunt's deposition at 23:4-6 and 23:9-10.

Third, regarding Mr. Hunt's deposition at 215:01-215:16, since that questioning references "the other Vuse products" and "all the Vuse products," we maintain that our counter-designations (455:16-19; 455:21-22; 456:1-5) should be played for completeness. Likewise, regarding Mr. Hunt's deposition at 249:14-250:01; 255:08-255:12; 255:15-255:22; 256:03-256:04, we maintain that our counter-designations (257:1-4; 257:7-11) should be played for completeness. Also, your email does not mention your prior designations at 468:18-468:21; 469:02-469:03; 477:08-477:10; or 477:13-477:14; has PM withdrawn these designations?

Fourth, we agree.

Fifth, your email does not accurately reflect our agreement. For Ms. Calderon's November 12, 2020 designations, the parties agreed to withdraw their respective objections provided that Reynolds will withdraw its counter designations at 119:20 and 201:2-3. Reynolds did not withdraw its counter designation at 116:10-15.

Sixth, regarding juror notebooks, the jurors will be instructed that all terms in the claims will have their plain and ordinary meaning. Thus, we see no reason to single out a specific subset of claim language that also will have their plain and ordinary meaning. Given that you already filed your motion, we will address this issue with the Court tomorrow.

Finally, we do not believe our previous communication parsed any words. It quoted Judge O'Grady's order on PM's MIL 7, which we intend to abide by.

John M. Michalik
Partner
[JONES DAY® - One Firm WorldwideSM](#)
110 North Wacker Drive
Suite 4800
Chicago, Illinois 60606
Office +1.312.269.4215

Mobile +1.312.315.5926
jmichalik@jonesday.com

From: Paul.Weinand@lw.com <Paul.Weinand@lw.com>
Sent: Tuesday, June 7, 2022 12:26 AM
To: Michalik, John M. <jmichalik@JonesDay.com>; RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com
Cc: pmiedva.lwteam@lw.com; Altria.RJRV@weil.com
Subject: RE: Case No. 1:20-cv-00393-LO-TCB (Trial Disclosure, June 6)

**** External mail ****

John,

We write to memorialize our discussions from tonight's meet-and-confer.

First, we do not agree with your changes to the draft stipulation, which add language suggesting that certain accused products are non-infringing alternatives to the '911 and/or '265 patents. Reynolds' experts never disclosed any opinion that these products are non-infringing alternatives to the '265 and '911 patents. Dr. Sullivan never accounted for these products as alleged non-infringing alternatives to the 265 and 911 patents in his damages analysis—instead, he relied solely on the alleged design arounds that Reynolds withdrew today. Even if they were disclosed in response to Interrogatory No. 4 as you contend, it is legally erroneous to suggest to the jury that these products are “non-infringing alternatives” to the '265 and '911 patents merely because they are not accused in this case. *See, e.g., Acceleration Bay LLC v. Activision Blizzard Inc.*, No. 1:16-CV-00453-RGA, 2019 WL 4194060, at *5 (D. Del. Sept. 4, 2019). Please confirm that we have your permission to file the stipulation as originally proposed.

Second, with respect to the objected-to designations and counter-designations of Mr. Hunt's November 16, 2020 deposition, we propose the following stipulation to resolve the parties' objections:

- Plaintiffs will withdraw 23:4-6 and 23:9-10 of Mr. Hunt's November 16, 2020 deposition designation and Defendants will withdraw counter-designations to the same (305:3-11, 305:13-20, 208:19-21, 309:7-9, 309:12-14, 309:16-19). The parties stipulate to not challenge the accuracy of PX-028, to the extent it relates to text, figures, and portions of figures apart from the corrected portions of the mouthpiece.

Third, for Mr. Hunt's November 16, 2020 designations at 215:1-16, 249:14-250:1, 255:8-12, 255:15-22, and 256:3-4, our designations are proper. That Reynolds disagrees with the substance of Mr. Hunt's testimony is not a proper reason to exclude the designations thereof. Moreover, any scope objections are waived because they were not contemporaneously made—and Mr. Hunt's testimony was within the scope of his designations, regardless. We withdraw our designation at 52:09-12. Further, we maintain our objections that Reynolds' counter-designations for Mr. Hunt's November 16, 2021 deposition at 455:16-19 and 455:21- 456:5 are improper, not for completeness, and beyond the scope of our designations.

Fourth, for Dr. Figlar's May 3, 2021 designations, you stated that if we agree to remove the designations starting at 41:19 and end at 67:12, Reynolds will agree to remove all of its counter designations. Please confirm that common understanding in writing.

Fifth, for Ms. Calderon's November 12, 2020 designations, the parties agreed to withdraw their respective objections, and that Reynolds will withdraw its designations at 116:10-15, 119:20, and 201:2-3.

Sixth, Reynolds refuses to include a simple summary of the court's rulings on claim construction in the juror notebooks. The parties are at an impasse.

Finally, with respect to Dr. Figlar's anticipated testimony, your email is parsing words, is inconsistent with your vague representations on the call about his anticipated testimony about the patents and product functionality and are inconsistent with Dr. Figlar's explanation about the subject matter he intended to testify about at trial. Unless you can confirm Dr. Figlar will not testify regarding: (i) any details about the components or functionality of the accused products; (ii) the substance of the asserted patents; (iii) any comparison between the accused products and the asserted patents; and (iv) any other theories related to non-infringement, invalidity, or the patent claims, the parties are at an impasse.

Thanks,
Paul

Paul Weinand

LATHAM & WATKINS LLP

200 Clarendon Street | Boston, MA 02116
D: +1.617.880.4580 | M: +1.609.558.8101

From: Michalik, John M. <jmichalik@JonesDay.com>

Sent: Monday, June 6, 2022 11:30 PM

To: Weinand, Paul (BN) <Paul.Weinand@lw.com>; RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com

Cc: #C-M PMIEDVA - LW TEAM <pmiedva.lwteam@lw.com>; Altria.RJRV@weil.com

Subject: RE: Case No. 1:20-cv-00393-LO-TCB (Trial Disclosure, June 6)

Counsel - -

Following up on a few items from our meet and confer, Reynolds confirms it will not present the opinions in the paragraphs listed below from the expert reports of Dr. Suhling, Mr. Kodama, Dr. Sullivan, and Mr. Clissold. In addition, regarding our proposed edits to the joint stipulation on NIAs, please see Reynolds's 4th supplemental response to Interrogatory No. 4 (attached), which is consistent with our proposed edits to the stipulation on the '911 and '265 patents. Finally, we confirm we will not elicit testimony from Dr. Figlar regarding theories of infringement, theories of invalidity, or the patent claims, consistent with the Court's ruling on PM's MIL 7.

John M. Michalik
Partner

[JONES DAY® - One Firm WorldwideSM](#)

110 North Wacker Drive
Suite 4800

Chicago, Illinois 60606

Office +1.312.269.4215

Mobile +1.312.315.5926

jmichalik@jonesday.com

From: Paul.Weinand@lw.com <Paul.Weinand@lw.com>

Sent: Monday, June 6, 2022 8:29 PM

To: RJREDVA <RJREDVA@jonesday.com>; cmolster@molsterlaw.com

Cc: pmiedva.lwteam@lw.com; Altria.RJRV@weil.com

Subject: Case No. 1:20-cv-00393-LO-TCB (Trial Disclosure, June 6)

**** External mail ****

John,

Pursuant to ¶ 4 of the Parties' Joint Trial Disclosure Agreement and Stipulation (D.I. 1244), Plaintiffs disclose the attached objections to Reynolds' counter-designations.

Further, Plaintiffs will agree to drop their initial designations spanning pages 298-417 from Eric Hunt's April 14, 2021 deposition if Reynolds (1) agrees to the attached stipulation and (2) agrees not to present the opinions identified below at trial. Please confirm before our meet and confer tonight. If we do not receive confirmation by then, we intend to present Mr. Hunt's designated testimony at trial.

- Paragraphs 199-208 of Dr. Suhling's March 24, 2021 Rebuttal Expert Report
- Paragraphs 177-198 of Mr. Kodama's March 24, 2021 Rebuttal Expert Report (911)
- Paragraphs 130-150 of Mr. Kodama's May 14, 2021 Supplemental Expert Report (911)
- Paragraphs 119-49 of Mr. Kodama's May 31, 2021 Supplemental Responsive Expert Report (911)
- Paragraphs 198, 201, 282-295, 345 (third sentence), 378 (the last three sentences) of Dr. Sullivan's March 24, 2021 Rebuttal Expert Report
- Paragraphs 9, 35-38, 40, 50-51, 55-57 of Mr. Clissold's March 24, 2021 Rebuttal Expert Report (and corresponding paragraphs in amended and supplemented report)

Additionally, we intend file a motion with the Court regarding Reynolds' refusal to include a simple summary of the court's rulings on claim construction in the juror notebooks. Please be prepared to discuss this issue during the 9:30 meet and confer.

We also intend to seek a Court order prohibiting Dr. Figlar from providing expert testimony, including providing any testimony about the asserted patents or a comparison between the asserted patents and accused claims. Please be prepared to discuss this issue during the 9:30 meet and confer.

Thanks,
Paul

Paul Weinand

LATHAM & WATKINS LLP

200 Clarendon Street | Boston, MA 02116
D: +1.617.880.4580 | M: +1.609.558.8101

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