

EXHIBIT 3

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. 1:20cv00393-LO-TCB

**RAI STRATEGIC HOLDINGS, INC. AND R.J. REYNOLDS VAPOR COMPANY'S
TWENTY-THIRD SUPPLEMENTAL RESPONSES TO ALTRIA CLIENT
SERVICES LLC, PHILIP MORRIS USA, INC., AND PHILIP MORRIS
PRODUCTS S.A.'S FIRST SET OF INTERROGATORIES (NO. 3)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, "Reynolds") hereby supplement their response to Altria Client Services LLC, Philip Morris USA, Inc., and Philip Morris Products S.A.'s (collectively, "Defendants" or "Counterclaim Plaintiffs") First Set of Interrogatories (No. 3) as follows.

**PRELIMINARY STATEMENT AND
OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

Reynolds incorporates and reiterates its preliminary statement and objections to the Definitions and Instructions.

INTERROGATORY NO. 3:

Separately for each of the Counterclaim Asserted Patents, describe in detail Your awareness or knowledge of the patent and any applications relating to the patent, including the date You first became aware, how You became aware, the substance of what You knew, and any actions You took as a result of that knowledge, each Document that supports Your response or to which You referred in preparing Your response, and identify the three (3) Persons most knowledgeable about Your awareness or knowledge.

OBJECTIONS:

Reynolds objects to this interrogatory to the extent that it seeks information subject to the attorney-client privilege, attorney work product immunity, the common interest privilege, or any other applicable privilege or immunity against disclosure. In particular, this interrogatory seeks information that may implicate discussions with counsel for the purposes of rendering legal advice, which are not the proper subject of discovery. Reynolds objects to this interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to any claim or defense in this case to the extent it seeks information relating to “any” applications relating to the patent(s). The burden and expense of complying with the requested discovery far outweighs any likely benefit of obtaining that discovery, and therefore is not proportional to the needs of this case. Reynolds objects to this interrogatory as composed of multiple discrete subparts under Fed. R. Civ. P. 33, which causes this interrogatory to count as more than one interrogatory.

RESPONSE:

Subject to and without waiving its objections, Reynolds responds as follows:

Based on its investigation to date, Reynolds states that it first became aware of the '374 Patent and '556 Patent upon receiving notice of the filing of the counterclaims in this action, which were first filed on June 29, 2020.

Based on its investigation to date, Reynolds states that its first awareness of the '265 Patent or corresponding U.S. Patent Publication No. 2014/0305454 may have occurred when cited during prosecution of U.S. Patent No. 10,206,429; Reynolds states that persons knowledgeable about the prosecution citation(s) of the '265 Patent or corresponding U.S. Patent Publication No. 2014/0305454 may include the prosecuting attorney(s) of record for this patent.

Based on its investigation to date, Reynolds states that its first awareness of the '911 patent or corresponding U.S. Patent Publication No. 2013/0306064 may have occurred when cited during prosecution of one of the following applications or issued patents: U.S. Patent No. 9,095,175; U.S. Patent No. 9,259,035; U.S. Patent No. 9,352,288; U.S. Patent No. 9,427,711; U.S. Patent No. 9,555,203; U.S. Patent No. 9,743,691; U.S. Patent No. 9,861,772; U.S. Patent No. 9,861,773; U.S. Patent No. 9,999,250; U.S. Patent No. 10,092,713; U.S. Patent No. 10,136,672; U.S. Patent No. 10,159,278; U.S. Patent No. 10,274,539; U.S. Patent No. 10,362,809; U.S. Patent No. 10,426,200; U.S. Patent No. 10,492,542; U.S. Patent No. 10,531,691; U.S. Patent No. 10,753,974; Reynolds states that persons knowledgeable about the prosecution citation(s) of the '911 Patent or corresponding U.S. Patent Publication No. 2013/0306064 may include the prosecuting attorney(s) of record for these applications or issued patents.

Based on its investigation to date, Reynolds states that its first awareness of the '545 Patent was at least as of August 13, 2012; Reynolds states that persons knowledgeable about its awareness of the '545 Patent as of August 13, 2012, include August Borschke and Ryan Cagle, and was in connection with Reynolds's efforts to protect the development of electronically-powered alternative smoking articles. Reynolds further states that its factual investigation is ongoing and it reserves the right to supplement its response to this interrogatory in light of further investigation or discovery, in accordance with the procedures and timetables established by the Court.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3 (JULY 9, 2021):

Subject to and without waiving its objections, Reynolds supplements its response as follows:

Reynolds states that its first awareness of the '265 patent was on November 21, 2017, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of the '265 patent. *See* RJREDVA_001621875. Reynolds further states that its first awareness of U.S. Patent Publication No. 2014/0305454, which led to the '265 patent, was on October 30, 2014, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of U.S. Patent Publication No. 2014/0305454. *See* RJREDVA_001678493.

Reynolds states that its first awareness of the '911 patent was on December 4, 2018, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of the '911 patent. *See* RJREDVA_001679169. Reynolds states that its first awareness of U.S. Patent Publication No. 2013/0306064, which led to the '911 patent, was on December 3, 2013, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of U.S. Patent Publication No. 2013/0306064. *See* RJREDVA_001619152.

Reynolds states that it first became aware of the '374 patent upon receiving notice of the filing of the counterclaims in this action, which were first filed on June 29, 2020. Reynolds states that its first awareness of U.S. Patent Publication No. 2015/0305410, which led to the '374 patent, was on November 10, 2015, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of U.S. Patent Publication No. 2015/0305410. *See* RJREDVA_001678354.

Reynolds states that its first awareness of the '556 patent was on February 28, 2020, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of the '556 patent. *See* RJREDVA_001678552. Reynolds states that its first awareness of U.S.

Patent Publication No. 2016/0353802, which led to the '556 patent, was on December 20, 2016, when it received a report as described in the testimony of Dr. James Figlar identifying the publication of U.S. Patent Publication No. 2016/0353802. *See* RJREDVA_001681223.

Reynolds states that its first awareness of the '545 Patent was at least as of August 13, 2012; Reynolds states that persons knowledgeable about its awareness of the '545 Patent as of August 13, 2012, include August Borschke and Ryan Cagle, and was in connection with Reynolds's efforts to protect the development of electronically-powered alternative smoking articles.

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