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-LMB-TCB

REYNOLDS'S MEMORANDUM IN SUPPORT OF RULE 50(a) MOTION FOR JUDGMENT AS A MATTER OF LAW OF INVALIDITY OF '911 PATENT

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I. INTRODUCTION

Reynolds respectfully requests that the Court grant its Rule 50(a) Motion for Judgment as a Matter of Law of Invalidity of the '911 Patent. Reynolds moves at this time, after it has been "fully heard" on invalidity, but "before the case is submitted to the jury," in order to preserve this issue. *See* Fed. R. Civ. P. 50(a)(2). However, Reynolds recognizes that the Court may reserve its ruling "for a post-verdict decision," "because a jury verdict for the moving party moots the issue." In these circumstances, "it is not inappropriate for the moving party to suggest such a postponement of the ruling until after the verdict has been rendered. *See* Fed. R. Civ. P. 50, Advisory Committee Notes to 1991 Amendment. Judgment as a matter of law of invalidity is warranted, but in the interest of conserving the Court's and the parties' resources, Reynolds suggests that the Court postpone ruling on its motion until after the jury has rendered its verdict.

II. LEGAL STANDARDS

A. Judgment as a Matter of Law

Judgment as matter of law is appropriate "[i]f a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a)(1). In a patent case, the law of the regional circuit governs a motion for judgment as a matter of law under Rule 50. *SynQor, Inc. v. Artesyn Techs.*, 709 F.3d 1365, 1373 (Fed. Cir. 2013). The Court must enter judgment as a matter of law if "a reasonable jury could reach only one conclusion based on the evidence or if the verdict in favor of the nonmoving party would necessarily be based upon speculation and conjecture." *Myrick v. Prime Ins. Syndicate, Inc.*, 395 F.3d 485, 489 (4th Cir. 2005). The Court must view the evidence in the light most favorable to the nonmoving party, *see id.* at 490, and it may not make credibility determinations, *Price v. City of Charlotte, N.C.*, 93 F.3d 1241, 1249–50 (4th Cir. 1996). Even so, a "'mere scintilla of evidence is insufficient'" to create

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a jury question, and inferences to support a jury's verdict "'must be reasonably probable." *Charleston Area Med. Ctr., Inc. v. Blue Cross & Blue Shield Mut. of Ohio, Inc.*, 6 F.3d 243, 248 (4th Cir. 1993) (quoting *Lust v. Clark Equipment Co.*, 792 F.2d 436, 437 (4th Cir. 1986)). There must be "substantial evidence in the record to support" a jury finding for the nonmovant. *Wilhelm v. Blue Bell, Inc.*, 773 F.2d 1429, 1433 (4th Cir. 1985).

B. Obviousness

"A patent claim is invalid as obvious if the claimed invention as a whole would have been obvious to a person having ordinary skill in the art at the time of the invention." *SSL Servs., LLC v. Citrix Sys.*, 769 F.3d 1073, 1089 (Fed. Cir. 2014). A patent claim is invalid under 35 U.S.C. § 103 if the differences between the subject matter claimed and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art ("POSA"). *KSR Int'l, Co. v. Teleflex, Inc.*, 550 U.S. 398, 406 (2007). "Obviousness is a question of law based on underlying findings of fact," including: "(1) the scope and content of the prior art, (2) the differences between the prior art and the claims at issue, (3) the level of ordinary skill in the art, and (4) any relevant secondary considerations . . . ." *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1237 (Fed. Cir. 2010) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966)). A patent challenger must prove invalidity by clear-and-convincing Where "the PTO did not have all material facts before it. . . the challenger's burden to persuade the jury of its invalidity defense by clear and convincing evidence may be easier to sustain." *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 111 (2011).

III. ARGUMENT

At trial, Reynolds presented clear and convincing evidence through its expert Mr. Kelly Kodama that the asserted claims are invalid as obvious over U.S. Patent No. 8,156, 944 ("Han") (RX-972), combined with WO 0139619 ("Shizumu") (RX-1224), WO 2009/135729 ("Murphy")

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