

EXHIBIT 1

01:54PM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ALTRIA CLIENT SERVICES, LLC,)
)
 et al.,) Civil Action
) No. 1:20-cv-00393-LO-TCB
 Plaintiffs,)
) June 10, 2022
 v.) 9:13 a.m.
)
 RAI STRATEGIC HOLDINGS, INC.,)
 et al.,)
 Defendants.)

DAY 2 - MORNING SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: **Maximilian Antony Grant, Esq.**
Latham & Watkins LLP (DC)
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Max.grant@lw.com

Clement Joseph Naples, Esq.
Latham & Watkins, LLP
885 Third Avenue 25th Floor
New York, NY 10022
212-906-1200
Email: Dement.naples@lw.com

Gregory K. Sobolski, Esq.
Latham & Watkins, LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538
202-637-2267
Email: Max.grant@lw.com

Scott L. Wallace, RDR, CRR, Official Court Reporter

APPEARANCES: (Cont.)

For the Defendants: **Michael Shamus Quinlan, Esq.**
Jones Day (OH-NA)
901 Lakeside Avenue
Cleveland, OH 44114-1190
216-586-3939
Fax: 216-579-0212
Email: Msquinlan@jonesday.com

Jason Todd Burnette, Esq.
Jones Day (GA)
1420 Peachtree Street, NE
Suite 800
Atlanta, GA 30309
404-521-3939
Email: Jburnette@jonesday.com

David Michael Maiorana, Esq.
Jones Day (OH)
901 Lakeside Ave
Cleveland, OH 44114
216-586-3939
Fax: 216-579-0212
Email: Dmaiorana@jonesday.com

Court Reporter: **Scott L. Wallace, RDR, RMR, CRR**
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, VA 2231-5798
202-277-3739
scottwallace.edva@gmail.com

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Scott L. Wallace, RDR, CRR, Official Court Reporter

APPEARANCES: (Cont.)

For the Plaintiffs: **Thomas W. Yeh, Esq.**
Latham & Watkins LLP (CA)
355 South Grand Avenue
Suite 100
Los Angeles, CA 90071-1560
213-891-8050
Email: Thomas.yeh@lw.com

Matthew John Moore, Esq.
Latham & Watkins LLP (DC)
555 11th Street, NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Matthew.moore@lw.com

Dale Chang, Esq.
Latham & Watkins LLP (CA)
355 South Grand Avenue
Suite 100
Los Angeles, CA 90071-1560
213-891-8050
Email: Dale.chang@lw.com

Elizabeth Stotland Weiswasser, Esq.
Weil Gotshal & Manges, LLP (NY-NA)
767 5th Avenue
New York, NY 10153
212-310-8000
Email: Elizabeth.weiswasser@weil.com

For the Defendants: **Charles Bennett Molster, III, Esq.**
The Law Offices of Charles B.
Molster III, PLLC
2141 Wisconsin Avenue NW, Suite M
Washington, DC 20007
703-346-1505
Email: Cmolster@molsterlaw.com

Stephanie Ethel Parker, Esq.
Jones Day (GA)
1420 Peachtree Street, NE
Suite 800
Atlanta, GA 30309

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10:17AM **1** Q. How did you decide whether or not any of these claims was
 10:17AM **2** invalid as obvious?
 10:17AM **3** A. **So I reviewed and analyzed the prior art, again,**
 10:18AM **4** **primarily the patents that existed before the 2000 -- December**
 10:18AM **5** **2010 date of the '911 Patent, and analyzed their features and**
 10:18AM **6** **their functions and their claims and compared it to the '911**
 10:18AM **7** **claims.**
 10:18AM **8** Q. All right. You mentioned the Han Patent. Let's talk
 10:18AM **9** about that. And, for the record, that's RX 972.
 10:18AM **10** Were you in the courtroom the other day when I talked
 10:18AM **11** with Dr. Abraham about the Han Patent?
 10:18AM **12** A. **Yes. That's correct.**
 10:18AM **13** Q. And is the Han Patent one of the pieces of prior art that
 10:18AM **14** you looked at?
 10:18AM **15** A. **It is, yes.**
 10:18AM **16** Q. And why is it called the Han Patent?
 10:18AM **17** A. **So the inventor, his last name is Han.**
 10:18AM **18** Q. Now, what's on the left side of this demonstrative,
 10:18AM **19** Mr. Kodama?
 10:18AM **20** A. **So the left side is what you're familiar with -- again,**
 10:18AM **21** **that's Claim 1 -- and what I've done is I've broken down the**
 10:18AM **22** **requirements with letters just to make it a little more clear so**
 10:18AM **23** **you can see letter A, B, C, and D, and I added those to the**
 10:18AM **24** **claim language. And on the right-hand side you can see just the**
 10:18AM **25** **title page of the Han Patent.**

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10:18AM **1** Q. Please tell the jury generally, what does the Han Patent
 10:19AM **2** disclose?
 10:19AM **3** A. **So the Han Patent discloses an electronic cigarette and**
 10:19AM **4** **also discloses a leakage prevention method.**
 10:19AM **5** Q. Now, have you compared the '911 Patent claims to the
 10:19AM **6** disclosures of the Han Patent?
 10:19AM **7** A. **Yes, I have.**
 10:19AM **8** Q. All right. Let's talk about the introductory language in
 10:19AM **9** Claim 1. Does the Han patent disclose "an aerosol-generating
 10:19AM **10** system for heating a liquid aerosol-forming substrate"?
 10:19AM **11** A. **Right. So that's the preamble for the Claim 1, and on**
 10:19AM **12** **the right-hand side you can see -- excuse me, you can see the**
 10:19AM **13** **words that I've highlighted that said "aerosol electronic**
 10:19AM **14** **cigarette." So I've compared those two.**
 10:19AM **15** Q. Now, we talked about this Han U.S. patent. Is there an
 10:19AM **16** international counterpart to the Han U.S. patent?
 10:19AM **17** A. **There is. There's a Chinese version of the patent. We**
 10:19AM **18** **used images from the Chinese patent because they were of much**
 10:19AM **19** **better quality, but they're the same images as what's in the Han**
 10:20AM **20** **U.S. patent.**
 10:20AM **21** Q. So the pictures of the Han device we see in the slides,
 10:20AM **22** those are from the Chinese counterpart?
 10:20AM **23** A. **They're from the Chinese counterpart, yes, but they're**
 10:20AM **24** **the same as what's shown in the U.S. patent. They're just much**

10:20AM **1** MR. MAIORANA: For the record, the Han counterpart is
 10:20AM **2** RX 1363.
 10:20AM **3** THE COURT: All right.
 10:20AM **4** BY MR. MAIORANA:
 10:20AM **5** Q. Now, Mr. Kodama, where did the figure in the bottom right
 10:20AM **6** corner of this demonstrative come from?
 10:20AM **7** A. **So that's Figure 1 from the Han Patent, and what I've**
 10:20AM **8** **highlighted in different colors is the different components from**
 10:20AM **9** **that Figure 1. So you can see item 8 that's highlighted in**
 10:20AM **10** **orange is the atomizer, item 9 that's highlighted in blue is the**
 10:20AM **11** **liquid storage, and the item that's in red is the air channel**
 10:20AM **12** **and also the area in the mouthpiece.**
 10:20AM **13** Q. What's an atomizer?
 10:20AM **14** A. **An atomizer is what creates the aerosol.**
 10:20AM **15** Q. How does that work?
 10:20AM **16** A. **Typically there's a heater inside of the atomizer and**
 10:20AM **17** **then there's some sort of liquid source and capillary material**
 10:21AM **18** **that provides the liquid to the heater, and the heater is**
 10:21AM **19** **activated, gets hot, and it generates aerosol from the liquid.**
 10:21AM **20** Q. All right. Let's talk about the claim requirement
 10:21AM **21** labeled A in Claim 1 of the '911 Patent. Does the Han Patent
 10:21AM **22** disclose an aerosol-forming chamber?
 10:21AM **23** A. **It does, yes. So on the left-hand side you can see the**
 10:21AM **24** **Claim 1. Again, it says "aerosol-forming chamber" as**
 10:21AM **25** **requirement A, and on the right-hand side, those three**

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10:21AM **1** **components that I pointed out to you before, the atomizer liquid**
 10:21AM **2** **storage and air channel, those formulate an aerosol-forming**
 10:21AM **3** **chamber, which I've sort of surrounded in a red box.**
 10:21AM **4** Q. Let's talk about the claim requirement you've labeled as
 10:21AM **5** B in Claim 1 of the '911 Patent. Does the Han Patent disclose
 10:21AM **6** all the requirements in 1-B?
 10:21AM **7** A. **It does, yes.**
 10:21AM **8** Q. What do we see on the right-hand side of this slide?
 10:21AM **9** A. **So, again, on the left-hand side I've highlighted claim**
 10:21AM **10** **B, and on the right-hand side is the Han Patent. You can see**
 10:21AM **11** **from the patent specification it talks about fine drips which**
 10:22AM **12** **are then condensed into bigger drips and then those drips will**
 10:22AM **13** **fall into the cavity, so, again, they're -- the Han Patent is**
 10:22AM **14** **discussing and disclosing a way to capture condensate.**
 10:22AM **15** Q. Does the Han Patent disclose the leakage prevention means
 10:22AM **16** that's claimed in the '911 Patent?
 10:22AM **17** A. **Yes, it does.**
 10:22AM **18** Q. What structure forms the cavity in the Han Patent?
 10:22AM **19** A. **So there's a cavity that's around the mouth hole that's**
 10:22AM **20** **in the mouthpiece, and I've highlighted that in this Figure 1.**
 10:22AM **21** **You can see in yellow. So, again, it's very similar to what we**
 10:22AM **22** **saw in Figure 6 of the '911 Patent, but there's a cavity there**
 10:22AM **23** **that's surrounding the mouthpiece air hole, and that's what's**
 10:22AM **24** **designed to capture the condensate.**

10:22AM **1** of liquid aerosol condensate from the aerosol-generating
 10:22AM **2** systems?
 10:22AM **3 A. Yes, it is. That cavity is designed to capture the**
 10:22AM **4 condensate.**
 10:22AM **5 Q.** Does Hahn's cavity collect liquid condensate formed from
 10:23AM **6** the aerosol-forming substrate?
 10:23AM **7 A. It does, yes. The language, they're talking about the**
 10:23AM **8 smaller drips forming the larger drips, condensing into larger**
 10:23AM **9 drips, and being captured in the cavity.**
 10:23AM **10 Q.** What's aerosol-forming substrate?
 10:23AM **11 A. Aerosol-forming substrate is just e-liquid, basically, so**
 10:23AM **12 the liquid that's being vaporized.**
 10:23AM **13 Q.** All right. Let's look at limitation C in Claim 1 of the
 10:23AM **14** '911 Patent, Claim 1. Now, you testified earlier that Han
 10:23AM **15** discloses a cavity, right?
 10:23AM **16 A. That's correct.**
 10:23AM **17 Q.** And you understand that Philip Morris's position is that
 10:23AM **18** an annular groove can be a blind hole, right?
 10:23AM **19 A. I understand that is, yes.**
 10:23AM **20 Q.** Do you agree with that?
 10:23AM **21 A. I do not.**
 10:23AM **22 Q.** But if the '911 Patent claims cover an annular groove,
 10:23AM **23** like Philip Morris contends, how would that affect your
 10:23AM **24** invalidity opinions?
 10:23AM **25 A. So, again, the Han Patent reveals an annual groove, or**

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10:23AM **1 cavity, but if we make the assumption that Philip Morris's**
 10:23AM **2 contention that the blind hole is the same as annular groove,**
 10:23AM **3 you can see that in Figure 1 on the Han Patent it reveals also a**
 10:24AM **4 blind hole, which would meet the limitation of -- it would tie**
 10:24AM **5 in with the limitation requirement highlighted in C there.**
 10:24AM **6 Q.** If Hahn's cavity that we see on the screen here is
 10:24AM **7** considered a blind hole, as Philip Morris contends, does that
 10:24AM **8** blind hole have an open end as required by the claim?
 10:24AM **9 A. It does, yes. On the left-hand side of Figure 1 would be**
 10:24AM **10 the open end of the cavity, or blind hole.**
 10:24AM **11 Q.** And if Hahn's cavity is considered a blind hole, as
 10:24AM **12** Philip Morris contends, does that blind hole have a closed end
 10:24AM **13** that's required by the claim?
 10:24AM **14 A. It does. So on the right-hand side of that image would**
 10:24AM **15 be the closed end of the blind hole.**
 10:24AM **16 Q.** Now, you remember Dr. Abraham had some slides with a
 10:24AM **17** couple of eyes looking at the --
 10:24AM **18 A. Oh, right.**
 10:24AM **19 Q.** -- at the ends of device?
 10:24AM **20 A. Yes.**
 10:24AM **21 Q.** Don't talk when I'm talking --
 10:24AM **22 A. Sorry.**
 10:24AM **23 Q.** -- because the court reporter will throw something at me,
 10:24AM **24** so let me ask that again.

10:24AM **1** eyeballs looking at the ends of devices?
 10:24AM **2 A. Yes.**
 10:24AM **3 Q.** So, if you were to use those eyeballs on your slide,
 10:25AM **4** where would they be pointing?
 10:25AM **5 A. So the eyeballs would be sort of where the B1 letter is,**
 10:25AM **6 and they'd be pointing to the left.**
 10:25AM **7 Q.** What does that indicate?
 10:25AM **8 A. That was just trying to indicate that the blind holes are**
 10:25AM **9 not visible, meaning the closed end would not be visible on the**
 10:25AM **10 right-hand side of the mouthpiece.**
 10:25AM **11 Q.** If Hahn's cavity is considered a blind hole as Philip
 10:25AM **12** Morris contends, does that blind hole have a longitudinal
 10:25AM **13** direction extending between the open end and the closed end that
 10:25AM **14** you just identified?
 10:25AM **15 A. It does, yes, so the longitudinal direction would travel**
 10:25AM **16 from the open end to the closed end, so basically on the screen**
 10:25AM **17 it would be along the axis from the left to the right.**
 10:25AM **18 Q.** Now, let's look at claim limitation D in Claim 1. Does
 10:25AM **19** Han disclose all the requirements of limitation D of Claim 1 of
 10:25AM **20** the '911 Patent?
 10:25AM **21 A. It doesn't. Han does not have any dimensional**
 10:25AM **22 requirement for the size of the blind hole.**
 10:25AM **23 Q.** So Han doesn't say anything about the size of the blind
 10:26AM **24** hole that is in the mouthpiece?
 10:26AM **25 A. It doesn't have any specific dimensions for that blind**

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10:26AM **1 hole.**
 10:26AM **2 Q.** Now, you mentioned earlier that you had designed
 10:26AM **3** e-cigarettes, right?
 10:26AM **4 A. Yes.**
 10:26AM **5 Q.** During your work designing e-cigarettes, have you ever
 10:26AM **6** worked on designing blind holes in those devices?
 10:26AM **7 A. Blind cavities, annular grooves, blind holes, yes.**
 10:26AM **8 Q.** Have you had experience in determining how you might size
 10:26AM **9** some of those parts of an e-cigarette in your work?
 10:26AM **10 A. Sure. So when you start with -- if you -- remember we**
 10:26AM **11 have to look at this from the state of the art in 2010, right,**
 10:26AM **12 so the products that were on the market were typically called**
 10:26AM **13 cigalikes, right? They were trying to sort of simulate or look**
 10:26AM **14 like cigarettes, so they had a similar diameter and a similar**
 10:26AM **15 look. A lot of times the mouthpiece would be sort of the brown**
 10:26AM **16 color that's on the filter of a cigarette and the white portion**
 10:26AM **17 would be the battery.**
 10:26AM **18 And also they had similar diameters, as I mentioned.**
 10:26AM **19 Typical diameters for a cigarette are anywhere from 7, 8, 9**
 10:26AM **20 millimeters in diameter, so if we take that as a starting point,**
 10:27AM **21 the outer diameter being, let's say, 7 millimeters, and then we**
 10:27AM **22 have to add in all these walls, right, the outer walls, two**
 10:27AM **23 outer walls, the two inner walls that form the mouth hole, the**
 10:27AM **24 actual mouth hole, it would be obvious to end up with a**

10:27AM **1** 1 millimeter.

10:27AM **2** Q. Now, before the '911 Patent, was there a patent that

10:27AM **3** disclosed a preferred size for a smokeless cigarette?

10:27AM **4** A. **There was, yes, there was a Shimizu patent.**

10:27AM **5** Q. And what does the --

10:27AM **6** MR. MAIORANA: For the record, that's RX 1224.

10:27AM **7** BY MR. MAIORANA:

10:27AM **8** Q. What does Shimizu disclose?

10:27AM **9** A. **Shimizu discloses a preferable outer diameter for the**

10:27AM **10 device of 7 to 15 millimeters, and the reason why Shimizu**

10:27AM **11 mentions that to make the device more portable and also to make**

10:27AM **12 the device sort of replace cigarettes, meaning to look like or**

10:27AM **13 be -- to look like an actual cigarette.**

10:28AM **14** Q. Please summarize for the jury your opinion regarding

10:28AM **15** invalidity of Claim 1?

10:28AM **16** A. **So the '911 Patent is invalid. It would have been**

10:28AM **17 obvious to a person of skill in the art or a person in industry**

10:28AM **18 that the prior art existed that would make each one of these**

10:28AM **19 claim requirements obvious at the time of the filing date of**

10:28AM **20 2010, December.**

10:28AM **21** Q. Now, we talked about -- so far on invalidity, we've

10:28AM **22** talked about Claim. Did you look at the dependent claims with

10:28AM **23** respect to validity?

10:28AM **24** A. **Yes, I did.**

10:28AM **25** Q. All right. Let's look at dependent Claim 11. What

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10:28AM **1** additional requirement does dependent Claim 11 add to

10:28AM **2** independent Claim 1?

10:28AM **3** A. **So, again, as we talked about, these are all the**

10:28AM **4 dependent claims, right, so they require all of the requirements**

10:28AM **5 of Claim 1 and then they add on additional feature or**

10:28AM **6 technology. For Claim 11, it's adding in the requirement of**

10:28AM **7 electric heater.**

10:29AM **8** Q. Does Han disclose an electric heater?

10:29AM **9** A. **It does. Han is an electric cigarette, and the atomizer**

10:29AM **10 has an electric heater inside of it. Han calls it an electric**

10:29AM **11 heating rod, which I've highlighted over on the right-hand side,**

10:29AM **12 but it's the same thing, yeah, as an electric heater.**

10:29AM **13** Q. Would Claim 11 have been obvious to a person of ordinary

10:29AM **14** skill in the art?

10:29AM **15** A. **Yes, it would have.**

10:29AM **16** Q. Let's talk about dependent Claim 13. What additional

10:29AM **17** requirement does dependent Claim 13 add to independent Claim 1?

10:29AM **18** A. **So dependent Claim 13, adds the requirement of the cavity**

10:29AM **19 being a toroidal shape.**

10:29AM **20** Q. What's toroidal shape?

10:29AM **21** A. **So we talked about annual groove, and maybe I should back**

10:29AM **22 up and explain a little bit what that means and relate that to**

10:29AM **23 toroidal. So "annular groove" basically means sort of a ring**

10:29AM **24** shape, right, so a shape that's round or revolved around an

10:29AM **1** that's revolved. There's also, more specifically, something

10:29AM **2** called a torus, which is really what a doughnut would be shaped

10:30AM **3** like, meaning that's a round cross-section that's been revolved.

10:30AM **4** Q. Does Dr. Abraham contend that the Vuse Solo product has a

10:30AM **5** toroidal shape?

10:30AM **6** A. **He does, yes.**

10:30AM **7** Q. And what part of the mouthpiece is he talking about?

10:30AM **8** A. **So the annual groove that's in the mouthpiece he contends**

10:30AM **9** is a toroidal shape.

10:30AM **10** Q. So if you assume for purposes of your analysis that the

10:30AM **11** annular groove in the Solo G2 product could be a toroidal shape,

10:30AM **12** does the Han Patent disclose that?

10:30AM **13** A. **Yes, it does. So you can see the shape of the cavity**

10:30AM **14 shown on the right-hand side that's highlighted in yellow on**

10:30AM **15 Figure 1. That is -- in other figures for Han it shows the**

10:30AM **16 device as being round, so, again, this cavity would be similar**

10:30AM **17 to what's shown in Figures 5 and 6 in the '911 Patent, and that**

10:30AM **18 would be interpreted to be a cavity.**

10:30AM **19** Q. Would Claim 13 have been obvious to a person of ordinary

10:31AM **20** skill in the art?

10:31AM **21** A. **It would, yes.**

10:31AM **22** Q. Let's talk about dependent Claim 2. What additional

10:31AM **23** requirement does dependent Claim 2 of the '911 Patent add to

10:31AM **24** Claim 1?

10:31AM **25** A. **So dependent Claim 2 adds the requirement of having a**

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10:31AM **1** capillary material. Remember we talked about capillary action,

10:31AM **2** and capillary materials, and in this case it's saying to add a

10:31AM **3** capillary material, which means a material that would be sort of

10:31AM **4** spongelike, a material that would actually absorb material

10:31AM **5** inside the cavity.

10:31AM **6** Q. Does Han disclose anything about capillary material in in

10:31AM **7** his cavity?

10:31AM **8** A. **It does not.**

10:31AM **9** Q. Did you see any patents prior to the '911 Patent that

10:31AM **10** used capillary materials in a cavity of an e-cigarette?

10:31AM **11** A. **Yes, there's an aerosol-generating system patent from**

10:31AM **12** Murphy that shows an absorbant material that's inside the

10:31AM **13** cavity.

10:31AM **14** MR. MAIORANA: And for the record, Murphy is RX 1422.

10:31AM **15** THE COURT: All right.

10:31AM **16** BY MR. MAIORANA:

10:31AM **17** Q. And what technology does in Murphy disclose, Mr. Kodama?

10:31AM **18** A. **So it's an aerosol-generating system, and the image I**

10:31AM **19** show you on the right-hand side has some wording from the

10:32AM **20** specification, so there's an absorbant pad, which I highlighted

10:32AM **21** in yellow, which would be a capillary material, and that's

10:32AM **22** inside what's called the second passageway in the patent and

10:32AM **23** that's a cavity. So it discloses an absorbant pad or capillary

10:32AM **24** material inside of the cavity.

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