UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PHILIP MORRIS PRODUCTS S.A. Plaintiff, v. R.J. REYNOLDS VAPOR COMPANY Defendant.	Case No. 1:20-cv-00393-LO-TCB

PHILIP MORRIS' MOTION *IN LIMINE* TO PRECLUDE REYNOLDS FROM PRESENTING IMPROPER ARGUMENTS REGARDING THE ALTO'S MOUTHPIECE

Philip Morris respectfully moves the Court *in limine* to preclude Reynolds from arguing or suggesting that if the jury finds that the black tip of the accused VUSE Alto product ***meets*** the "mouthpiece" limitation recited in the claims of the '265 patent, they may find non-infringement with no further analysis.

The asserted claims of the '265 patent require (i) "a mouthpiece" and (ii) "a heating device, configured to be connected to the mouthpiece." Reynolds, however, previewed at the charge conference an intent to tell the jury that they may find non-infringement by concluding that the black tip of the Alto meets the "mouthpiece" element. This is false, will mislead the jury, and is contrary to the Jury's charge to evaluate infringement based on whether the accused product includes "each and every limitation set forth in a claim."[1] *V-Formation, Inc. v. Benetton Grp. SpA*, 401 F.3d 1307, 1312 (Fed. Cir. 2005).

[1] There is substantial record evidence, including the testimony of, e.g., Mr. Walbrink, Mr. Hunt, and Dr. Suhling, that the black tip is "configured to be connected" to the heater based on the plain language of the claims.

Reynolds should thus be precluded from arguing or suggesting that the jury may find non-infringement solely based on concluding that the black tip meets the "mouthpiece" limitation.

Dated: June 14, 2022

Respectfully submitted,

By: */s/ Maximilian A. Grant*

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2022, a true and correct copy of the foregoing was served using the Court's CM/ECF system, with electronic notification of such filing to all counsel of record.

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