

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PHILIP MORRIS PRODCUTS S.A.,)
)
Counterclaim Plaintiff,) Civil Action
) No. 1:20-cv-00393-LMB/TCB
)
v.) June 13, 2022
) 9:23 a.m.
R.J. REYNOLDS VAPOR COMPANY,)
)
Counterclaim Defendant.)
)

VOLUME 4 - MORNING SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

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11:26AM **1 A. I strongly disagree with his opinion.**

11:26AM **2 Q.** Have you prepared demonstratives for your rebuttal

11:26AM **3** presentation today?

11:26AM **4 A. Yes, I have.**

11:26AM **5 Q.** Let's go --

11:27AM **6** MR. SOBOLSKI: Put those up on the screen, please, for

11:27AM **7** Demonstrative Number 2.

11:27AM **8** BY MR. SOBOLSKI:

11:27AM **9 Q.** Explain to the jury, Dr. Abraham, why you strongly

11:27AM **10** disagree with Mr. Kodama that the '911 Claims 2, 11, 12, and 13

11:27AM **11** are obvious?

11:27AM **12 A. I will. I notice that they're not on the screen now, so**

11:27AM **13 I don't know if there's a technical issue that I should wait**

11:27AM **14 for. Thank you so much.**

11:27AM **15 Well, there are a number of reasons why I disagree with**

11:27AM **16 his opinion that the '911 is obvious. First of all, none of the**

11:27AM **17 references that he cited have any -- none of the references he**

11:27AM **18 cited have the claimed cross-sectional dimension.**

11:27AM **19 Furthermore, none of the references he cited have any**

11:27AM **20 internal dimensions of any structure in any of the products. No**

11:27AM **21 dimensions are given.**

11:27AM **22 And none of the references indicate that their drawings**

11:28AM **23 are to scale, and if I could just ask -- should I pause now**

11:28AM **24 because the screen is not shown?**

11:28AM **25 Q.** Looks like we have it back.

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11:29AM **1** item, "no disclosure of the largest cross-sectional dimension"

11:29AM **2** requirement in Claim 1 of the '911 Patent.

11:30AM **3** Let's turn to the next demonstrative, Number 4, please,

11:30AM **4** and explain to the jury how you applied your analysis of the

11:30AM **5** prior art Mr. Kodama identified with respect to this requirement.

11:30AM **6 A. On the screen you see Claim 1 of the '911 Patent and**

11:30AM **7 Figures 4 and 6 of the '911 Patent.**

11:30AM **8 And the patent provides context to what the patent is**

11:30AM **9 intending to convey. It provides context to the claims, and**

11:30AM **10 I've underlined three areas that I want to draw our attention**

11:30AM **11 to. In the first underlined statement, "at least one cavity in**

11:30AM **12 a wall."**

11:30AM **13 In the second underlined statement at the "at least one**

11:30AM **14 cavity is a blind hole recessed in the wall," now, they've**

11:30AM **15 mentioned "wall" twice, and that conveys the importance of the**

11:30AM **16 wall. Why is the wall important? Because it's the walls that**

11:31AM **17 help hold the liquid condensate. The walls matter.**

11:31AM **18 Imagine that you're in a room with a floor and you've got**

11:31AM **19 a wall here and a wall here (indicating). What is the**

11:31AM **20 cross-section of your room? It's from one wall to another.**

11:31AM **21 That's how I interpret it. That's how the patent's context**

11:31AM **22 tells me to interpret this dimension.**

11:31AM **23 And, in fact, in the last statement that's underlined,**

11:31AM **24 the "at least one cavity has a largest cross-sectional dimension**

11:31AM **25 X taken along a cross-section."**

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11:28AM **1 A. Thank you so much. And I apologize for that.**

11:28AM **2 In addition --**

11:28AM **3** THE COURT: That's difficult to watch, so we need to get

11:28AM **4** this -- there we go.

11:28AM **5** (Brief pause in proceedings.)

11:28AM **6** THE WITNESS: Your Honor, can I continue?

11:28AM **7** THE COURT: Yes.

11:28AM **8** THE WITNESS: Thank you.

11:28AM **9** Secondly, these four patents that he used are different

11:28AM **10** and they operate under fundamentally different manners,

11:28AM **11** fundamentally different ways. There's no motivation to do what's

11:28AM **12** called combining them. There's no motivation to bring them

11:29AM **13** together to fashion the '911 Patent, but even if you did bring

11:29AM **14** them together, there's no indication in any of those references

11:29AM **15** that point to the specific dimensions.

11:29AM **16** Third, there would be no reason, especially considering

11:29AM **17** the differences of these references, for someone to be

11:29AM **18** successful. Bringing together four disparate prior art patents

11:29AM **19** would not lead you to expect success.

11:29AM **20** And then, lastly, hindsight. What you have to do is you

11:29AM **21** have to put yourself in the mind of a designer 12 years ago.

11:29AM **22** What did they know before the '911 Patent came out? And it's my

11:29AM **23** opinion Mr. Kodama did not do that.

11:29AM **24** BY MR. SOBOLSKI:

11:31AM **1** So those statements together are telling me that the

11:31AM **2** measurement is wall to wall.

11:31AM **3** Now, the images that you see on the right-hand side of

11:31AM **4** your screen add further confirmation that that's how the

11:31AM **5** measurement should be made. So I evaluated his opinions and the

11:31AM **6** prior art through the context provided by the patent.

11:31AM **7** BY MR. SOBOLSKI:

11:31AM **8 Q.** And those images on Slide 3, that's Figure 3 and Figure 4

11:32AM **9** and Figure 6 of the '911 Patent; is that right?

11:32AM **10 A. That is correct.**

11:32AM **11 Q.** Very good, Dr. Abraham.

11:32AM **12** Let's turn to your next demonstrative and talk about the

11:32AM **13** references that Mr. Kodama presented.

11:32AM **14** Now, from what perspective did you analyze those

11:32AM **15** references?

11:32AM **16 A. I analyzed the references from the perspective of a**

11:32AM **17 person of ordinary skill in the art.**

11:32AM **18 Q.** And as of what date?

11:32AM **19 A. The date of 2010.**

11:32AM **20 Q.** And did you apply both your understanding of a person of

11:32AM **21** ordinary skill and Mr. Kodama's?

11:32AM **22 A. I did.**

11:32AM **23 Q.** Did that affect your opinions at all?

11:32AM **24 A. No, the conclusions are the same.**

12:06PM **1** It's the same exact issue we've already presented to Your
 12:06PM **2** Honor, and Your Honor has already denied it. So this -- now they
 12:06PM **3** filed a motion -- I understand they want to preserve the
 12:06PM **4** objection, but now we have to respond to a motion on an argument
 12:06PM **5** that we already won, and I think it's not a good use of the
 12:06PM **6** Court's time.
 12:06PM **7** With respect to the plain and ordinary meaning, certainly,
 12:06PM **8** as you know, Your Honor, we presented claim construction
 12:06PM **9** arguments to Judge O'Grady in the *Markman* proceeding, so we would
 12:06PM **10** like to preserve that we have made those claim constructions and
 12:07PM **11** that Judge O'Grady found that the claim terms all have their
 12:07PM **12** plain and ordinary meaning. For purposes of appeal, we want to
 12:07PM **13** preserve that objection, but we don't have an objection to
 12:07PM **14** proceeding under Judge O'Grady's *Markman* order, as you've said.
 12:07PM **15** THE COURT: All right. Well, I've expressed my
 12:07PM **16** discomfort, but, again, I feel that has been the law of the case
 12:07PM **17** for some time, and both sides have an objection to the case going
 12:07PM **18** in the jury in the format that it's going to go.
 12:07PM **19** Both sides should think about what that means down the
 12:07PM **20** road because one of you, I'm assuming -- well, it's possible you
 12:07PM **21** could both lose, that's actually maybe more than just possible.
 12:07PM **22** But anyway, I mean, you could have the jury find in either side's
 12:07PM **23** favor, but of course, that opens up still the right to appeal,
 12:07PM **24** and this is a wide-open issue in the appellate record, all right?
 12:07PM **25** And so I just think both sides should be thinking about that.

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C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Scott L. Wallace	6/13/22
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Scott L. Wallace, RDR, CRR	Date
Official Court Reporter	

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12:08PM **1** If there were a way of cleaning up that record, I would be
 12:08PM **2** willing to entertain that. Otherwise, that's how it goes to the
 12:08PM **3** jury, all right?
 12:08PM **4** MR. MAIORANA: And given that all the evidence is in, Your
 12:08PM **5** Honor, I don't see a practical way to clean that issue up. I
 12:08PM **6** completely concur with Your Honor's concern, and given that claim
 12:08PM **7** construction is *de novo*, it's going to be considered by the Court
 12:08PM **8** of Appeals at the Federal Circuit *de novo*, but we have the order
 12:08PM **9** from Judge O'Grady that we had to present the evidence based on
 12:08PM **10** that. Certainly we want to preserve our objections to that, and
 12:08PM **11** we certainly don't concede or acquiesce to what Mr. Grant just
 12:08PM **12** said, that Judge O'Grady said a blind hole can never have open
 12:08PM **13** sides. That's for the jury to decide. That's a question of
 12:08PM **14** infringement, which is what Judge O'Grady said, and I just want
 12:08PM **15** to make sure I'm not acquiescing to Mr. Grant's statement.
 12:08PM **16** THE COURT: I'll look at the papers. Obviously, I want to
 12:08PM **17** give it careful attention, so the plan is to reconvene at 2:00,
 12:08PM **18** and again, that should give again, especially my court reporter,
 12:08PM **19** an opportunity so the transcript issue will not be a problem in
 12:09PM **20** terms of what was raised earlier, all right? All right. We'll
 12:09PM **21** see you back at 2:00.
 12:09PM **22** (Thereupon, a luncheon recess was had beginning at
 12:09PM **23** 12:09 p.m.)
 24
 25