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 OPPOSITION TO PHILIP MORRIS' MOTION FOR JUDGMENT AS A MATTER OF LAW OF INFRINGEMENT OR, ALTERNATIVELY, A NEW TRIAL

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I. INTRODUCTION

The jury verdict that VUSE Alto does not infringe the '911 patent is well-supported by the evidence. As set out below, PMP failed to prove that Alto met at least three requirements of the '911 patent, each of which was required for a finding of infringement, and thus each of these three failures of proof independently supports the jury's verdict. The Court should therefore deny PMP's motion for judgment as a matter of law or a new trial.

II. LEGAL STANDARD

"A trial court may not appropriately enter [JMOL] unless it concludes, after consideration of the record as a whole in the light most favorable to the non-movant, that the evidence presented supports only one reasonable verdict, in favor of the moving party." *Dotson v. Pfizer, Inc.*, 558 F.3d 284, 292 (4th Cir. 2009). If the party moving for judgment as a matter of law bears the burden of proof on the claim, the court may only grant the motion if: "(1) the movant has established its case by evidence that the jury would not be at liberty to disbelieve and (2) the only reasonable conclusion is in the movant's favor." *Nobelpharma AB v. Implant Innovations, Inc.*, 141 F.3d 1059, 1065 (Fed. Cir. 1998) (quoting *Hurd v. Am. Hoist & Derrick, Co.*, 734 F.2d 495, 499 (10th Cir. 1984)). "Courts grant JMOL for the party bearing the burden of proof only in extreme cases." *Mentor H/S, Inc. v. Med. Device Alliance, Inc.*, 244 F.3d 1365, 1375 (Fed. Cir. 2001); *see also, e.g.*, *EEOC v. Massey Yardley Chrysler Plymouth, Inc.*, 117 F.3d 1244, 1250 (11th Cir. 1997) ("Were we to accept the EEOC's argument, we would have to take the extreme step of directing a verdict in favor of the party having the burden of proof.").

A party seeking a new trial under Rule 59 must shoulder a similarly heavy burden. A party is not entitled to a new trial unless that party can show that the verdict (1) was against the clear weight of the evidence, (2) is based on evidence that is false, or (3) will result in a miscarriage of justice. *Cobalt Boats, LLC v. Brunswick Corp.*, No. 2:15cv21, 2017 WL 6034504, at *2 (E.D. Va.

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