EXHIBIT 10

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 14, 2022
R.J. REYNOLDS VAPOR COMPANY,	)	9:21 a.m.
	)	
	)	
Counterclaim Defendant.	)	
	)	
	)	
	)	

VOLUME 5 - MORNING and AFTERNOON 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

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

Lawrence Jay Gotts, Esq.
Latham & Watkins LLP (DC)
555 11th St NW
Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Lawrence.gotts@lw.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

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
Email: Dmaiorana@jonesday.com

William Edward Devitt, Esq.
Jones Day (IL)
77 West Wacker
Suite 3500
Chicago, IL 60601
312-269-4240
Email: Wdevitt@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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C O N T E N T S

EXHIBITS

10:34AM testified, "There's no leakage, it's extremely important to
10:34AM customers, and the commercial success that Reynolds' has comes
10:34AM from this invention." That's further evidence that the patents
10:35AM are not obvious.
10:35AM Let's talk about damages. There are two agreements that
10:35AM are undisputedly comparable, technically and economically.
10:35AM What's that mean? It means we're trying to figure out what the
10:35AM fair rent is for the house that Reynolds has been squatting in
10:35AM that we own, and right next door, we have an identical house that
10:35AM rent is being paid on and so we can make an apples-to-apples
10:35AM comparison, and that's what Mr. Meyer did.
10:35AM Now, one question you may ask yourself, because Scott
10:35AM Pettycord testified about it and Mr. Gilley testified about the
10:35AM discussions these financial executives at Reynolds had with
10:35AM Dr. Ryan Sullivan, Reynolds' damages expert. Where was
10:35AM Dr. Sullivan? Dr. Sullivan didn't come here to rebut Mr. Meyer's
10:35AM testimony for good reason. Probably a similar reason to the one
10:35AM that Mr. Kodama didn't bother to turn on the device. He had
10:35AM nothing to say.
10:35AM There's no dispute that 5.25 is the right starting point.
10:36AM The Reynolds agreement shows it, the NuMark, which is an
10:36AM affiliate of Philip Morris USA, agreement shows it, and all nine
10:36AM other licenses show it. This is a neighborhood with 12 houses.
10:36AM We want to figure out what the rent is on ours, and all 11 that
10:36AM are identical rent for the same value, 5.25 percent is the right

10:36AM starting point. You heard Mr. McAlexander testify about
10:36AM apportionment. His testimony was unrebutted. You didn't hear
10:36AM from any witness from Reynolds challenging his apportionment.
10:36AM Those apportionments result in the correct baseline royalty rate
10:36AM of .53 and 1.84. And then you heard Mr. Meyer testify in detail
10:36AM how he took those 15 factors that the law requires him to apply
10:36AM and then he adjusted those to come up with the correct reasonable
10:36AM royalty rates.
10:36AM And go back, go back to the Reynolds agreement. This is
10:36AM an important point. Back. This Reynolds agreement, it's not
10:37AM just 5.25, but Reynolds agreed in the agreement that that was a
10:37AM reasonable amount. That's an admission by Reynolds that 5.25 is
10:37AM not just the right starting appointment, it's the reasonable
10:37AM starting point for a reasonable royalty.
10:37AM Let's go back to the last slide.
10:37AM Mr. Meyer testified that .6 percent of net sales is the
10:37AM right royalty rate for the '265 Patent and that 2 percent of net
10:37AM sales is the right royalty rate for the '911 Patent. His
10:37AM testimony is unrebutted. We never saw, heard from Dr. Sullivan
10:37AM other than the testimony of the financial executives that took
10:37AM the time to speak to him.
10:37AM If you multiply that by the approximately $1.4 billion of
10:37AM sales of the devices, you get the damages of 8 million and 29
10:37AM million adding up to 37.4 million.

10:38AM infringe these patents, even if justice is done in this
10:38AM courtroom, would have been a profitable one. They sold
10:38AM 1.4 billion and we're only asking for $37.2 million. I ask you
10:38AM to return a verdict of infringement, validity on the '911 Patent,
10:38AM infringement on the '265 Patent, infringement under the doctrine
10:38AM of equivalents on both patents, and to award a more than
10:38AM reasonable 37.2, which is based on utterly conservative
10:38AM estimates. Nobody rebutted that. And if you believe the
10:38AM evidence shows it, you're entitled to award more.
10:38AM One last thing. That's PX 133. That will be in the
10:38AM evidence that you'll have with you in the jury room.
10:38AM THE COURT: All right. Reynolds'.
10:38AM **CLOSING ARGUMENT ON BEHALF OF THE DEFENDANTS**
10:39AM MS. PARKER: May it please the Court and counsel. Good
10:39AM morning, ladies and gentlemen. So it's been about a week since
10:39AM the last time I got to talk to you, and remember, it was last
10:39AM Wednesday when you all came in for jury selection, and after you
10:39AM all were selected to be on the jury, we had a chance to talk to
10:39AM you then, and in that week, you all have seen a lot of very
10:39AM complicated and complex evidence because this is a patent case,
10:39AM but you guys have hung in there and we all appreciate that.
10:39AM Let me tell you what I'm going to do this morning. I'm
10:39AM going to go through the evidence in the case and I'm going to
10:40AM boil it down to what really matters, and then I'm going to go
10:40AM through the verdict form and I'm going to show you how the

10:40AM evidence in the case answers the questions on the verdict form
10:40AM that should be in favor of Reynolds, okay?
10:40AM So when I talked to you about a week ago, I told you then
10:40AM that this case is a business dispute, it's a business dispute
10:40AM between two competitors, and I think you all have seen that in
10:40AM the evidence over the last week.
10:40AM I also told you that the contrast between these two
10:40AM companies and the products, these e-cigarette products, could not
10:40AM be any greater, and I think you've seen that, too.
10:40AM Reynolds has a leading e-cigarette brand, the number one
10:40AM selling e-cigarette brand. They have no -- Philip Morris has no
10:40AM e-cigarette on sale in the United States at all. And I also told
10:40AM you when I talked to you about a week ago that we were going to
10:40AM bring you the most knowledgeable witnesses, and that's really
10:41AM important because the evidence in the case depends on who's
10:41AM telling you, and it's part of your job to decide who you believe,
10:41AM who's credible.
10:41AM So who did we bring you as witnesses? We brought you
10:41AM Dr. Jim Figlar and you heard him say he spent over 20 years
10:41AM working at Reynolds before he retired. He was head of over 300
10:41AM people that work in the R & D, the research and development
10:41AM department. He was also head of all the FDA work there. And he
10:41AM started working on developing new technology right after he came
10:41AM to the company. These products are his baby, and that's why he

this case.

We also brought you Eric Hunt, and for the people who are working at Reynolds today, Eric knows more than anybody else on the planet about these products, and I think you all know that from the testimony that he gave. That's his job. He's the person in charge of these products at Reynolds.

We also brought you Kelly Kodama. Now, Mr. Kodama actually worked in the e-cigarette area. He actually -- he's not just somebody that came off the street with no experience about e-cigarettes. He actually developed and designed e-cigarettes for other companies, and that's why he didn't do some of the testing that you heard Mr. Grant talk about. You heard what he said. He said, "I already know that. I know that because I design e-cigarettes."

So we brought you three, the most experienced witnesses, and the most knowledgeable witnesses. Who did they bring you? Well, their first witness was Dr. Gilchrist here. Remember, she's the first person who took the stand for them, and respectfully, she knows nothing about patents. She knows nothing about the patents at issue in this case. She's their PR spokesperson. Remember, she said she's the person who goes on TV and answers questions. She's the person who does their Twitter account. She tweets about all of this. She doesn't know about the products and the patents in this case.

Who else did they bring you? Well, where are the

inventors? Why didn't they bring the inventors? You're going to have the patents at issue in the case. You're going to have them in evidence. They're going to be back there in the jury room with you, and on the first page of both of those patents it lists the inventors. Why didn't they bring them?

We brought you people who actually worked on e-cigarettes. They brought you zero witnesses who actually have knowledge and actually worked on e-cigarettes. That's important because they're the ones who have the burden of proof here. We brought you the witnesses who do have that knowledge because we want you to know the truth about what happened here, so we brought you the people who actually know -- knew what happened. They could have brought anybody from Philip Morris.

Now, another thing I told you when I talked to you last week is that you would see at trial that these patent requirements are narrow, and I think you've seen that during the evidence over the last week, and these narrow requirements, the shapes, the materials, the sizes, the positions, and the functions, they're going to show that the Vuse products do not match those requirements. That's the main thing at the end of the day when it comes to infringement.

The Vuse products are different. They have to match exactly perfectly the requirements, and they don't. I'm going to talk about that.

last week, a lot of complicated evidence about patents and all, so I'm going to try to boil all that down for you into five simple truths about what happened here.

The first truth is Reynolds did its own work to develop these products. Now, I want to stop right now and address something. So Mr. Grant said, "Oh, they didn't develop all of this. They bought some of it." That's correct. That's exactly what you do when you innovate. You don't have to invent every single thing. You get the best products out there and you bring them in and you innovate and you use that as your platform to go forward.

Elon Musk didn't invent every single thing that went on the Tesla. He went out and figured what they needed to buy to acquire to move forward, and he used that as a new platform, and now we have the Tesla car. It's the same thing.

So we brought you the most knowledgeable people about what Reynolds actually did, and you heard Dr. Figlar tell you about all that work, starting in the 1980s and going through the 1990s, continuing on, that led to the development of these products.

And you heard that from Mr. Hunt also, and you know he worked firsthand with these products.

Reynolds was the first company to get authorization from the FDA. Reynolds is the true innovator. They're the first company to get authorization from the FDA to sell these products in the United States. That's very important, and that's proof of

what we're saying here about Reynolds being the innovator.

Remember you heard Dr. Figlar talk about all the work that went into getting that FDA authorization, and one of the things he told you was that the application itself was over 150,000 pages. Well, if y'all can see -- I don't know if y'all can see over here. This stack of paper, this is 2,500 pages. Multiply this times 60 -- take up all this room here. Multiply this times 60, and that gets the number of pages that Reynolds provided to the FDA to show all of the work they did as part of the innovation to get the authorization.

And those applications that they filed have been successful, as you can see there on the screen.

Philip Morris has not met its burden of proof. They're the ones who have the burden of proof here. They have not met it. Again, they haven't brought any witnesses who know about e-cigarettes. We brought you Dr. Figlar. We brought you Mr. Hunt, Kelly Kodama. All of them have massive amounts of experience in this product area. They brought you zero witnesses in this area.

And that's why your verdict here is so important. When a company goes out and spends all the time and effort and money to try to develop new products and are successful like that, it's not right, it's not fair for a competitor to be able to come into court and to try to get money damage the way they have here.

difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are to be governed by the instructions. You are not to single out any one instruction alone as stating the law but must consider the instructions as a whole. Neither are you to be concerned about the wisdom of any rules of law stated by the Court. You must apply -- you must follow and apply the law, regardless of any opinion you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any view of the law, other than that given in the instructions of the Court, just as it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in the case.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

Justice through trial by jury always depends on the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors and to arrive at a verdict by applying the same rules of law as are being given to you in the instructions of the Court.

You must perform your duty as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider

all the evidence, follow the law as it is now being given to you, and reach a just verdict regardless of the consequences.

Now, during this trial I permitted you to take notes. Many courts do not permit note-taking by jurors and a word of caution is in order. There's always a tendency to place undue importance to matters which one has written down. Some testimony which is considered unimportant at the time presented, and, thus, not written down, takes on greater importance later in the trial in light of all the evidence presented. Therefore, you are instructed that your notes are only a tool to aid in your own individual memory, and you should not compare your notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial.

Above all, your memory should be your greatest asset when it comes time to deliberate and render a decision in this case. Moreover, you are coequal judges of the facts, and each juror's memory of and opinion about the evidence is worthy of consideration by all the other jurors. That a juror may have taken extensive notes does not mean that his or her memory or opinion is worthy of more consideration than the memory or the opinion of a juror who took few or no notes.

This case should be considered and decided by you as an

equal worth, and holding the same or similar stations of life.

A corporation is entitled to the same fair trial at your hands as a private individual, regardless of its size, wealth, or place of incorporation.

All persons, including corporations, partnerships, unincorporated associations, and other organizations stand equal before the law and are to be dealt with as equals in the court of justice.

Now, there is nothing particularly different in the way that a juror should consider the evidence in a trial from the way in which any reasonable and careful person would treat any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case for only those purposes for which it has been received and to give such evidence a reasonable and fair consideration in the light of your common knowledge of the natural tendencies and inclinations of human beings.

Now, it's the sworn duty of attorneys on each side of the case to object when the other side offers testimony or exhibits which that attorney believes is not properly admissible. Only by raising an objection can a lawyer request and obtain a ruling from the Court on the admissibility of the evidence being offered by the other side. You should not be influenced against an attorney or his or her client because an attorney has made

objections.

Moreover, do not attempt to interpret my rulings on objections as somehow indicating to you what I believe the outcome of the case should be.

Now, the evidence in the case consists of the sworn testimony of the witnesses, regardless of who may have called them, all exhibits received in evidence, regardless of who may have produced them, and all facts which have been admitted or stipulated.

When the attorneys on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard the fact as proved.

Statements, arguments, questions, and objections of counsel are not evidence in the case. Any evidence to which an objection was sustained by the Court and any evidence ordered stricken by the Court must be entirely disregarded. Anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. You are to consider only the evidence in the case, but in your consideration of the evidence, you are not limited to the literal statements of the witnesses. In other words, you're not limited solely to what you see and hear as the witnesses testify. Instead, you are permitted to draw from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of your

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