

# EXHIBIT 2

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 9, 2022  
 ) 9:20 a.m.  
 R.J. REYNOLDS VAPOR COMPANY, )  
 )  
 Counterclaim Defendant. )  
 )

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

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09:20AM **1** **MORNING SESSION, JUNE 9, 2022**

09:20AM **2** (9:20 a.m.)

09:20AM **3** THE COURTROOM CLERK: Civil Action 20-393, Philip Morris

09:20AM **4** Products, S.A. versus R.J. Reynolds Vapor Company.

09:20AM **5** Would counsel please note their appearances for the

09:20AM **6** record.

09:20AM **7** MR. GRANT: Good morning, Your Honor. Your prediction

09:20AM **8** about the traffic turned out to be a little bit correct.

09:20AM **9** THE COURT: Yeah.

09:20AM **10** MR. GRANT: Max Grant, Thomas Yeh, Matt Moore, and Brett

09:20AM **11** Sandford will be the attorneys speaking in court today.

09:20AM **12** THE COURT: Very good. Good morning.

09:20AM **13** MS. PARKER: Good morning, Your Honor. Stephanie Parker;

09:20AM **14** Bill Devitt; Dr. Figlar, our client representative; Ms. Emily

09:20AM **15** Baker. She'll be handling one of the witnesses today. You

09:20AM **16** remember Dave Maiorana from yesterday, and Ron McCrum is going to

09:20AM **17** be handling a witness today also.

09:20AM **18** THE COURT: All right. Good morning. The jury is now

09:20AM **19** here. There are really no preliminary matters we need to

09:20AM **20** address. We need to have Mr. Walbrink, who is back on the stand

09:20AM **21** and still under oath.

09:20AM **22** We'll bring the jury in, all right?

09:20AM **23** THE COURT SECURITY OFFICER: Yes, Judge.

09:20AM **24** THE COURT: Good morning, ladies and gentlemen. Thank you

09:20AM **25** for being here. I note traffic is rough and at least one of you

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09:21AM **1** we had just finished talking about the heating device configured

09:21AM **2** to be connected limitation, right?

09:21AM **3** **A. Yes.**

09:21AM **4** **Q.** And what were your opinions with respect to that opinion?

09:21AM **5** **A. I found that this plain limitation was also met.**

09:22AM **6** **Q.** Now, turning to the next limitation, this one's a bit

09:22AM **7** longer, so we'll break it up.

09:22AM **8** What is the first requirement of this limitation?

09:22AM **9** **A. Well, first of all, it requires a thermal resistor, which**

09:22AM **10** **is basically a heater. And so I looked at the Reynolds**

09:22AM **11** **document, the PMTA, which we talked about yesterday, and it**

09:22AM **12** **describes the heater as having a resistive heating element,**

09:22AM **13** **which is a thermal resistor. If you recall, when you pass**

09:22AM **14** **electricity across it, a current runs through it and it heats**

09:22AM **15** **up.**

09:22AM **16** **Q.** And turning to the next part of this limitation, what are

09:22AM **17** the requirements with respect to the materials that the thermal

09:22AM **18** resistor is made of?

09:22AM **19** **A. Yes. It requires the resistor to be of a metallic foil**

09:23AM **20** **or a thin sheet.**

09:23AM **21** **Q.** And if we look at the bottom half of this slide, the

09:23AM **22** excerpt from PX O28, the PMTA, what does that tell us about the

09:23AM **23** materials that the resistive heating element of the Alto is made

09:23AM **24** of?

09:23AM **25** **A. Well, the Reynolds' document describes the heater as**

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09:20AM **1** comes from Leesburg, which is a really long trip out from here,

09:20AM **2** so we really do appreciate you being here, and we're going to be

09:20AM **3** able to get started with the continued testimony of Mr. Walbrink.

09:20AM **4** I just want to make sure. I'm assuming none of you bumped

09:20AM **5** into any problems last night. You followed my instructions, and

09:20AM **6** you didn't do any investigation, correct? Everybody is still

09:20AM **7** nice and healthy, and hopefully your families are as well. Very

09:20AM **8** good.

09:20AM **9** You should have plenty of water with you. If you start to

09:20AM **10** run out, we'll make sure you get some, so raise your hand if you

09:20AM **11** need anything, all right?

09:21AM **12** (Brief pause in proceedings.)

09:21AM **13** THE COURT: All right. We can now continue.

09:21AM **14** MR. YEH: Good morning. May I proceed?

09:21AM **15** THE COURT: Yes, sir.

09:21AM **16** MR. YEH: Thank you.

09:20AM **17** CONTINUED DIRECT EXAMINATION OF HAROLD WALBRINK

09:21AM **18** BY MR. YEH:

09:21AM **19** **Q.** Welcome back, Mr. Walbrink.

09:21AM **20** **A. Good morning, Mr. Yeh.**

09:21AM **21** **Q.** So let's pick up where we left off and just keep on

09:21AM **22** trucking.

09:21AM **23** MR. YEH: Can we please turn to Slide 16?

09:21AM **24** BY MR. YEH:

09:23AM **1** **being made of low chromium nickel iron alloy, which are all**

09:23AM **2** **metals.**

09:23AM **3** **Q.** And what significance is that to have the claim materials

09:23AM **4** of a metallic foil or thin sheet?

09:23AM **5** **A. Well, it says that the thermal resistor is, in fact, a**

09:23AM **6** **metallic foil.**

09:23AM **7** **Q.** And I'm pulling up Slide Number 19. Can you explain to

09:23AM **8** the jury what this picture, PX 082, is showing?

09:23AM **9** **A. Yes. This is -- as I mentioned the other day, I took**

09:24AM **10** **some photographs when I tore the Alto device apart. On the**

09:24AM **11** **left-hand side is an exploded view of the heater assembly. You**

09:24AM **12** **can see the heater S-shape, sinuous shape, and then I cut that**

09:24AM **13** **heater assembly in half, turned it on its side in the upper**

09:24AM **14** **right-hand illustration of that particular slide or diagram, and**

09:24AM **15** **I measured the thickness of the resistor heating element. And I**

09:24AM **16** **measured it to be about .14 millimeters, which is about the**

09:24AM **17** **thickness of a sheet of paper. It's very thin.**

09:24AM **18** **Q.** And just to orient ourselves, is this image that you took

09:24AM **19** showing the pictures we had -- the same thing as the pictures

09:24AM **20** we've been looking at of that structure from the PMTA?

09:24AM **21** **A. Yes, in the PMTA, the diagram on the right is -- there**

09:24AM **22** **are two views in three dimensions. This is the assembly that I**

09:25AM **23** **sectioned and measured the thickness of the thermal resistor.**

09:25AM **24** **Q.** And so have you reached an opinion as to whether the

09:25AM **1** materials, a metal foil or a thin sheet?

09:25AM **2 A. Yes, I find that limitation is met.**

09:25AM **3 Q.** What does the next part of this claim require?

09:25AM **4 A. It requires that the thermal resistor is in a particular**

09:25AM **5 shape, the shape of a dual coil or a sinuous line having two**

09:25AM **6 ends. And so sinuous line is, as I explained yesterday, wavy,**

09:25AM **7 curvy figure.**

09:25AM **8 Q.** And can you tell us on the bottom half of this slide,

09:25AM **9** which shows PX 028 at 34, what does that tell us about the Vuse

09:25AM **10** Alto and the requirement -- the shape requirement of this

09:25AM **11** limitation?

09:25AM **12 A. Yes. From the rental -- Reynolds documents, the PMTA,**

09:26AM **13 they describe the resistive heating element as being an S-shape**

09:26AM **14 trace or a sinuous line.**

09:26AM **15 Q.** And what does the final part -- so we just talked about

09:26AM **16** shape. Now, what does the final part of this limitation

09:26AM **17** require?

09:26AM **18 A. Well, it requires dimensions substantially, the same**

09:26AM **19 cross-section of a cigarette or a cigar.**

09:26AM **20 Q.** And, Mr. Walbrink, on the bottom half of this slide, you

09:26AM **21** have an excerpt from PX 002, the patent. What does that tell us

09:26AM **22** about the goals of this patent and how that relates to the

09:26AM **23** thermal resistor size?

09:26AM **24 A. Well, it tells us the goal, again, is to come up with an**

09:26AM **25 e-cigarette that's a substitute for a conventional cigarette**

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09:26AM **1 that you can hold between your fingers and smoke it like a**

09:26AM **2 cigar, and in order to retain the consumer experience, you know,**

09:26AM **3 of handling a cigarette, smoking a cigarette.**

09:27AM **4 Q.** And did you prepare some demonstratives to show us your

09:27AM **5** analysis of this limitation?

09:27AM **6 A. Yes, I did.**

09:27AM **7** MR. YEH: At this time, can I please switch to the ELMO

09:27AM **8** and, Mr. Smith if you could put up PPX 019, which I understand is

09:27AM **9** not objected to.

09:27AM **10** BY MR. YEH:

09:27AM **11 Q.** And while we're switching to the ELMO, Mr. Walbrink, do

09:27AM **12** the claims require any specific dimensions?

09:27AM **13 A. No, they require no dimensions, specifically numerically,**

09:27AM **14 and this -- you know, cigarettes come in various shapes -- or**

09:27AM **15 various sizes, and the -- all that's required is that the**

09:27AM **16 thermal resistor is about the size of a cigarette to enable a**

09:27AM **17 device to be made that you can handle like a cigarette and smoke**

09:27AM **18 it like a conventional combustible cigarette.**

09:28AM **19 Q.** All right. So now we're looking at what Mr. Smith has

09:28AM **20** placed on the ELMO. Can you tell us what this is showing? And,

09:28AM **21** again, it's PPX 019.

09:28AM **22 A. Yes. This is the actual heater assembly from the -- out**

09:28AM **23 of the Alto that I took out, and you can see the S-shaped**

09:28AM **24 resistive element there, thermal resistor on the back of it**

09:28AM **1** MR. YEH: And, Mr. Smith, if you could put up PDX 3.043,

09:28AM **2** and place the PPX 019 sort of above, under where it says 10.

09:28AM **3** Now -- thank you, Mr. Smith.

09:28AM **4** BY MR. YEH:

09:28AM **5 Q.** Now, Mr. Walbrink, can you explain to the jury what we're

09:28AM **6** seeing on this screen?

09:28AM **7 A. Yes. So as I mentioned, cigarettes come in various**

09:29AM **8 sizes. These are cross-section views. In other words, if you**

09:29AM **9 take the cigarette and you turn it on its end, and you're**

09:29AM **10 looking at the end of the cigarette, this is a range of sizes of**

09:29AM **11 cigarettes that are in the marketplace. And you'll notice that**

09:29AM **12 the resistive heating element, that sinuous line on the back of**

09:29AM **13 the heater, it is sized about the size of these cigarettes. It**

09:29AM **14 would enable making a cigarette that you can hold in your hand**

09:29AM **15 and smoke it like a conventional tobacco cigarette.**

09:29AM **16** MR. YEH: Now, at this time, I'm going to ask with Your

09:29AM **17** Honor's permission, that the courtroom security officer hand up

09:29AM **18** PPX 019 to the witness. And I have another physical

09:29AM **19** demonstrative that I understand Reynolds has not objected to, but

09:29AM **20** with Your Honor's permission to also hand up.

09:30AM **21** THE COURT: All right. All right.

09:30AM **22** MR. YEH: All right. Thank you.

09:30AM **23** BY MR. YEH:

09:30AM **24 Q.** So using those demonstratives, Mr. Walbrink, can you

09:30AM **25** explain your analysis of this size requirement, the dimensions

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09:30AM **1** requirement to the jury?

09:30AM **2 A. Yes. Well, as I mentioned, there's no numbers given in**

09:30AM **3 the patent specifically. And so what is important, that the**

09:30AM **4 heater is about the size of a cigarette dimension, the**

09:30AM **5 cross-section, so that you could have -- you'd end up making a**

09:30AM **6 cigarette that you could smoke between your fingers, put it up**

09:30AM **7 to your lips, and it would provide the vapor in an e-cig.**

09:30AM **8 Q.** Now, Mr. Walbrink, to be clear, are you comparing the

09:31AM **9** size of the entire cigarette, looking at its length, to the

09:31AM **10** resistive heating element, or what is the correct comparison

09:31AM **11** here?

09:31AM **12 A. Well, as I showed in the diagram, it's the end, the**

09:31AM **13 cross-section. In other words, the heater would go in -- into**

09:31AM **14 the device like this, and so we look at the cross-section and we**

09:31AM **15 look at the resistive element on the heater assembly. And it**

09:31AM **16 would enable -- it's about the size of the cross-section, this**

09:31AM **17 cigarette. This is a Reynolds cigarette, by the way.**

09:31AM **18** MR. YEH: And with Your Honor's permission, we'd like to

09:31AM **19** have Mr. Walbrink put the exhibit and demonstrative in the tray

09:31AM **20** so the jury can inspect it. It's quite small.

09:31AM **21** THE COURT: All right. All right.

09:33AM **22** (Brief pause in proceedings.)

09:33AM **23** BY MR. YEH:

09:33AM **24 Q.** And so, Mr. Walbrink, after conducting your analysis,

09:33AM **1** resistive heating element of the Alto meets the limitation

09:33AM **2** dimension, substantially the same as a cross-section of a

09:33AM **3** cigarette or cigar?

09:33AM **4** **A. I find this limitation is met as well.**

09:33AM **5** **Q.** And have you reached any opinions as to the entire longer

09:33AM **6** limitation we've just been talking about that starts a thermal

09:33AM **7** resistor?

09:33AM **8** **A. Yes, I find all the elements of this limitation met as**

09:34AM **9** **well.**

09:34AM **10** **Q.** What does the next limitation of the '265 Patent Claim 1

09:34AM **11** require?

09:34AM **12** **A. It requires wherein in the inner spaces of the shape are**

09:34AM **13** **configured to allow fluid -- the flow of fluid throughout.**

09:34AM **14** **Q.** And, Mr. Walbrink, what shape is it referring to when the

09:34AM **15** limitation says "the shape"?

09:34AM **16** **A. It's referring to the thermal resistor, that sinuous**

09:34AM **17** **line, that shape.**

09:34AM **18** **Q.** And I'm going to pull up the next slide, 23. Can you

09:34AM **19** explain what we're seeing on the bottom half of this slide,

09:34AM **20** which is PX 084?

09:34AM **21** **A. Yes. This is a photograph of the teardown that I did,**

09:34AM **22** **and on the left-hand side is a magnified view of the heater you**

09:34AM **23** **just looked at. And clearly there are inner spaces within the**

09:34AM **24** **S-shaped curve that allow the fluid to flow through.**

09:35AM **25** **Q.** And so have you reached any opinions on whether the

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09:35AM **1** limitation wherein inter spaces of the shape are configured to

09:35AM **2** allow a flow of fluid there through is met?

09:35AM **3** **A. Yes, I find this limitation is met as well.**

09:35AM **4** **Q.** So the next limitation is fairly long as well, and so

09:35AM **5** we'll break it down.

09:35AM **6** And can you tell us what the first part of this

09:35AM **7** limitation requires?

09:35AM **8** **A. Yes. It requires at least one contact tab.**

09:35AM **9** **Q.** And on the bottom of this slide, you have PX 028. Can

09:35AM **10** you show us where the contact tabs are?

09:35AM **11** **A. Yes. The contact tabs are highlighted in blue.**

09:35AM **12** **Q.** And just to back up, what is a contact tab, Mr. Walbrink?

09:36AM **13** **A. A contact tab is where the electricity is supplied to the**

09:36AM **14** **thermal resistor.**

09:36AM **15** **Q.** And what does the next part of this limitation require?

09:36AM **16** **A. It requires the first contact tab and a second contact**

09:36AM **17** **tab being connected to respective opposed ends of the dual coil**

09:36AM **18** **or sinuous line of the thermal resistor.**

09:36AM **19** **Q.** And can you explain to us what the bottom half of the

09:36AM **20** slide, the excerpt from PX 028 shows us about that requirement?

09:36AM **21** **A. Yes. This shows highlighted in blue that, in fact,**

09:36AM **22** **they -- there are two contact tabs. They are at the end of that**

09:36AM **23** **sinuous line, and of the resistor, and they're at opposing ends**

09:36AM **24** **or opposed ends of that thermal resistor.**

09:37AM **1** limitation requires?

09:37AM **2** **A. It requires that the first contact tab and the second**

09:37AM **3** **contact tab not being in direct contact with each other.**

09:37AM **4** **Q.** And can you explain how -- what is shown in the Alto PMTA

09:37AM **5** PX 028 at the bottom half?

09:37AM **6** **A. Again, referring to the same diagram with the blue**

09:37AM **7** **contact tabs highlighted in blue, you can see they clearly do**

09:37AM **8** **not come in contact with one another.**

09:37AM **9** **Q.** And so have you reached any opinions with respect to the

09:37AM **10** limitation that starts "a contact tab"?

09:37AM **11** **A. Yes. I find all of the elements of this limitation met**

09:37AM **12** **as well.**

09:37AM **13** **Q.** And the next limitation is fairly long as well, so we'll

09:37AM **14** go step-by-step through that one.

09:37AM **15** **A. All right.**

09:37AM **16** **Q.** What does the first part of the next limitation require?

09:37AM **17** **A. It requires at least one vaporizer membrane.**

09:38AM **18** **Q.** And can you explain to the jury what a vaporizer membrane

09:38AM **19** is?

09:38AM **20** **A. Yes. Essentially it's a barrier that controls the flow**

09:38AM **21** **of fluid through it.**

09:38AM **22** **Q.** And what is shown on the bottom half of the slide, the

09:38AM **23** excerpt from PX 028?

09:38AM **24** **A. Yes. This is, again, a three-dimensional view of the**

09:38AM **25** **heater assembly, and the vaporizer membrane has been highlighted**

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09:38AM **1** **in green.**

09:38AM **2** **Q.** And I'm going to put up Slide Number 28. First, on the

09:38AM **3** bottom half is another image, Figure H-13 from PX 028. Can you

09:38AM **4** tell us what this is showing with respect to the vaporizer

09:38AM **5** membrane?

09:38AM **6** **A. Sure. So this is a cross-section of this device, the**

09:38AM **7** **cartridge, so it's sliced lengthways, like this, and it's an**

09:39AM **8** **exploded view on the right-hand side, and it shows the pink is**

09:39AM **9** **the solution, the e-liquid, and the green, again, is the**

09:39AM **10** **vaporizer membrane, and the dark pink arrows show the flow of**

09:39AM **11** **the e-liquid through the membrane, and there's an arrow here on**

09:39AM **12** **the bottom of the membrane. That's pointing to the resistive**

09:39AM **13** **heater, the thermal resistor.**

09:39AM **14** **Q.** And how is this significant to your opinions as to

09:39AM **15** whether the Vuse Alto accused devices include a vaporizer

09:39AM **16** membrane as claimed?

09:39AM **17** **A. I find it does include a vaporizer membrane. And even if**

09:39AM **18** **you weren't to find it literally included in there, it also**

09:39AM **19** **meets the requirements underneath an analysis called the**

09:39AM **20** **doctrine of equivalents.**

09:39AM **21** **Q.** So before jumping into the doctrine of equivalents, do

09:40AM **22** you understand that Reynolds is claiming or arguing that what's

09:40AM **23** shown in green is not a vaporizer membrane?

09:40AM **24** **A. Yes.**

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