

EXHIBIT 4

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 8, 2022
) 1:55 p.m.
 R.J. REYNOLDS VAPOR COMPANY,)
)
 Counterclaim Defendant.)
)

VOLUME 1 - AFTERNOON SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

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02:44PM **1** Q. Okay. Let's look at Slide Number 3, Demonstrative 3.

02:44PM **2** What is a person of ordinary skill in the art in the context of

02:44PM **3** the '911 Patent?

02:44PM **4** **A. In the context of the '911 Patent, a person of ordinary**

02:44PM **5** **skill in the art would have at least a bachelor's degree in one**

02:44PM **6** **of the areas listed on the screen. In addition, they would have**

02:44PM **7** **at least two years of experience designing devices that involve**

02:44PM **8** **fluid flow, fluid vaporization, and something called phase**

02:44PM **9** **change.**

02:44PM **10** Q. And are you, sir, at least a person of ordinary skill in

02:44PM **11** the art?

02:44PM **12** **A. Yes, I am.**

02:44PM **13** Q. Now, do you understand that Reynolds has a different view

02:44PM **14** of what a person of ordinary skill in the art would be for the

02:44PM **15** '911 Patent?

02:44PM **16** **A. Yes, they do.**

02:45PM **17** Q. Have you considered Reynolds's view of a person of

02:45PM **18** ordinary skill in the art?

02:45PM **19** **A. Yes, I have.**

02:45PM **20** Q. And how does that impact your opinions about

02:45PM **21** infringement?

02:45PM **22** **A. It does not impact my opinions about infringement.**

02:45PM **23** Q. Sir, let's turn to --

02:45PM **24** THE COURT: I'm sorry. I think the jury might want to

02:45PM **25** know, what is your understanding of the defendant's definition of

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02:45PM **1** "one of ordinary skill in the art"?

02:45PM **2** THE WITNESS: If I recall correctly, their definition had

02:45PM **3** a different length of industrial experience. If I recall

02:45PM **4** correctly, that was the difference, but it was the same

02:45PM **5** baccalaureate degree.

02:45PM **6** THE COURT: The same BS in mechanical engineering,

02:45PM **7** physics, or material science.

02:45PM **8** THE WITNESS: They may not have had -- there might have

02:45PM **9** been a slight difference in the degree topics. For example, they

02:45PM **10** may not have listed physics, as an example.

02:45PM **11** THE COURT: But you think that the difference is primarily

02:46PM **12** the amount of years of experience in the field?

02:46PM **13** THE WITNESS: That's what I recall.

02:46PM **14** THE COURT: All right.

02:46PM **15** BY MR. SOBOLSKI:

02:46PM **16** Q. Let's turn to Demonstrative Number 4, please, for a

02:46PM **17** moment. Dr. Abraham, how did you go about forming your opinions

02:46PM **18** on whether the Reynolds products that we're talking about

02:46PM **19** infringe the '911 Patent?

02:46PM **20** **A. Well, as you can see in the screen, there were three**

02:46PM **21** **important steps that I took. First of all, I analyzed the**

02:46PM **22** **patent and what's called the file history, which is the**

02:46PM **23** **back-and-forth communications between the people trying to get**

02:46PM **24** **the patent and the Patent Office.**

02:46PM **1** **including their engineering programs or their engineering files,**

02:46PM **2** **and in addition to that, I tested their samples. I tested the**

02:46PM **3** **samples of the Reynolds products that I analyzed.**

02:47PM **4** Q. Okay. Let's talk about that for a moment. Now,

02:47PM **5** Dr. Abraham, you have certain physical exhibits up there with

02:47PM **6** you, some samples of products. I believe they're PPX 348 and 9;

02:47PM **7** is that right?

02:47PM **8** **A. I have these physical samples here (indicating).**

02:47PM **9** Q. Explain to the jury what you're holding in your hands?

02:47PM **10** **A. So I'm holding a Vuse and a Solo G2.**

02:47PM **11** Q. And those are the Reynolds products that you analyzed for

02:47PM **12** infringement; is that right?

02:47PM **13** **A. That's correct.**

02:47PM **14** MR. SOBOLSKI: If it's okay with the Court, we would like

02:47PM **15** to allow --

02:47PM **16** THE COURT: I'll have my court security officer take each

02:47PM **17** device and let the jurors handle them briefly.

02:47PM **18** BY MR. SOBOLSKI:

02:47PM **19** Q. While they look at that, Dr. Abraham, for reference,

02:47PM **20** which is the Alto and which is the Solo?

02:47PM **21** **A. The Solo is the one with the circular cross-section --**

02:47PM **22** **it's the thinner one -- and the Alto is the more oblong one, and**

02:48PM **23** **I believe it's got a greenish tint color to it.**

02:49PM **24** THE WITNESS: Thank you.

02:49PM **25** BY MR. SOBOLSKI:

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02:49PM **1** Q. Dr. Abraham, you testified here in connection with your

02:49PM **2** Slide Number 4 that you performed testing on physical samples of

02:49PM **3** the Reynolds devices; is that right?

02:49PM **4** **A. That is correct.**

02:49PM **5** MR. SOBOLSKI: Let's turn to the next slide, Number 5,

02:49PM **6** please.

02:49PM **7** BY MR. SOBOLSKI:

02:49PM **8** Q. And would you tell the jury, Dr. Abraham, what tests you

02:49PM **9** performed and why?

02:49PM **10** **A. Sure. I performed two tests. One of them I'm calling a**

02:49PM **11** **vaporization activation test, and what that means is I turned**

02:49PM **12** **the device on and I used it because I wanted to confirm my**

02:49PM **13** **understanding of how it functioned.**

02:49PM **14** **In addition, I performed what I'll call a liquid**

02:49PM **15** **injection test where I purposely injected e-liquid into the**

02:49PM **16** **device to determine what would happen to that e-liquid, and that**

02:49PM **17** **test is listed on the screen, and the reason why I performed**

02:49PM **18** **those tests is I wanted to be sure of my opinions. I formed**

02:50PM **19** **some opinions by reading the patent in the file history and by**

02:50PM **20** **analyzing Reynolds' documentation, but I wanted to double- and**

02:50PM **21** **triple-check my opinions.**

02:50PM **22** Q. Let's turn to the '911 Patent then, Dr. Abraham, please.

02:50PM **23** If we could, let's advance to the next slide, Number 6.

02:50PM **24** Can you explain to the jury what the '911 Patent is

03:01PM **1 Q.** Is there any other additional information in the '911

03:01PM **2** Patent record that confirms that Figures 4 and 6 each have blind

03:01PM **3** holes?

03:01PM **4 A. Yes, there is.**

03:02PM **5** MR. SOBOLSKI: Let's turn to the next demonstrative,

03:02PM **6** please, Number 16.

03:02PM **7** BY MR. SOBOLSKI:

03:02PM **8 Q.** And what have you shown here, Dr. Abraham?

03:02PM **9 A. Well, what I'm showing on the bottom -- the two images**

03:02PM **10 are Figures 4 and Figure 6 of the patent, and on the bottom is**

03:02PM **11 part of an interview summary with the patent examiner. It's PX**

03:02PM **12 8A at 16296, and this is an interview summary, so this is what**

03:02PM **13 the patent examiner said after having an interview with the**

03:02PM **14 applicants.**

03:02PM **15 And I've got to tell you -- I have 16 patents; I've gone**

03:02PM **16 through these interviews before -- they're very thorough -- and**

03:02PM **17 the patent examiner wrote a summary, and here's what the patent**

03:02PM **18 examiner said:**

03:02PM **19 "The two blind holes of Figures 3 and 4 and/or the blind**

03:02PM **20 hole being toroid of Figures 5 and 6," so the patent examiner**

03:02PM **21 agrees that both of these figures show a blind hole, and I want**

03:02PM **22 to take a moment to explain what a toroid is. I mean, that's**

03:02PM **23 not a word we commonly hear. That just means doughnut. It's a**

03:03PM **24 doughnut-shaped hole, but the technical term for it is a toroid.**

03:03PM **25 So one of the reasons I know that these two figures have blind**

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03:03PM **1 holes is because the personality examiner said so, and I agree**

03:03PM **2 with the patent examiner.**

03:03PM **3 Q.** Thank you, Dr. Abraham. The '911 leakage preventer

03:03PM **4** patent teaches still further ways to design these cavities that

03:03PM **5** are blind holes?

03:03PM **6 A. Yes, it does.**

03:03PM **7 Q.** Let's look at that. Let's go to Demonstrative 17,

03:03PM **8** please, and please explain to the jury these additional ways.

03:03PM **9 A. On your screen you see Figures 4 and 6 of the patent, and**

03:03PM **10 these are figures we're familiar with. Underneath the figures**

03:03PM **11 you see text that explains the figures, and the text is from**

03:03PM **12 PX 3 at column 11, lines 28 through 33, and column 12, line 40**

03:03PM **13 through 50.**

03:03PM **14 And what the -- the other engineering aspect that the**

03:03PM **15 '911 Patent has is their size. The patent tells us how big they**

03:04PM **16 should be, and it even tells us how to make the measurement. As**

03:04PM **17 you'll notice in those images, the patent is showing us how to**

03:04PM **18 make the measurements, and it's telling us to make the**

03:04PM **19 measurements from one wall to another across the cavity.**

03:04PM **20 Q.** Why do those dimensions and the way they're measured

03:04PM **21** matter?

03:04PM **22 A. Well, because the distance between the walls -- that's**

03:04PM **23 the cross-section of dimension -- that's the dimension that**

03:04PM **24** tells you or that holds the liquid. There's something called

03:04PM **1 that is the important distance with respect to holding liquid.**

03:04PM **2** MR. SOBOLSKI: Let's turn to Demonstrative 18, please.

03:04PM **3** BY MR. SOBOLSKI:

03:04PM **4 Q.** Does the '911 Patent teach anything about why these

03:04PM **5** particular dimensions, the sizes of the cavities that are blind

03:04PM **6** hole, have an advantage?

03:05PM **7 A. Yeah, it mentions it. In fact, we see what the patent**

03:05PM **8 says right on your screen, but these sizes are optimized to be**

03:05PM **9 large enough to hold a sufficient amount of liquid but small**

03:05PM **10 enough to trap the liquid in the cavity by what's called**

03:05PM **11 capillary action.**

03:05PM **12** THE COURT: Why don't you explain for the jury "capillary

03:05PM **13** action."

03:05PM **14** THE WITNESS: Sure. So capillary action is a special

03:05PM **15** force that exists on fluids, and it allows -- it allows fluids to

03:05PM **16** be held and moved in small spaces.

03:05PM **17** Let me give you an example. How does water get to the

03:05PM **18** leaves on a tree? Imagine a tree 200 feet tall, how does water

03:05PM **19** get up there? There's no pump. The tree actually has these

03:05PM **20** little tubes that are in them, and they run all the way up, and

03:05PM **21** those tubes draw up liquid all the way up to the top. There's no

03:05PM **22** pump, there's no, you know, squirrel running a turbine at the

03:05PM **23** bottom. It's drawn up to the top by capillary action. So

03:06PM **24** capillary action is a force that is exerted on fluids in small

03:06PM **25** spaces.

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03:06PM **1** THE COURT: And the trick is small spaces, though, right?

03:06PM **2** If there were too wide a space...

03:06PM **3** THE WITNESS: Yeah, that's right. If the tube is too

03:06PM **4** wide, you can't draw the liquid up. So the easy way to think of

03:06PM **5** it is, the smaller the space, the larger the force. The smaller

03:06PM **6** the space, the larger the force.

03:06PM **7** Thank you, Your Honor.

03:06PM **8** BY MR. SOBOLSKI:

03:06PM **9 Q.** Thank you, Dr. Abraham. Let's turn to infringement.

03:06PM **10** MR. SOBOLSKI: Let's turn to Slide 19, please.

03:06PM **11** BY MR. SOBOLSKI:

03:06PM **12 Q.** And please explain to the jury how you analyzed the first

03:06PM **13** Reynolds device, the Solo G2.

03:06PM **14 A. The Solo G2, which is this device (indicating), I**

03:06PM **15 analyzed this device against Claims 11 and 13 of the patent.**

03:06PM **16 Q.** Okay. Let's go to the next demonstrative, 20, and tell

03:06PM **17** the jury a little bit about what the Solo G2 device is?

03:06PM **18 A. Sure. So the Solo G2 has a silver part that's got your**

03:07PM **19 battery -- that provides the energy -- and then inside this**

03:07PM **20 cartridge is the e-liquid, and there's a heater in here, and**

03:07PM **21 when you connect them, the battery sends energy to the heater**

03:07PM **22 and creates the vapor that then aerosolizes and you inhale.**

03:07PM **23** MR. SOBOLSKI: Okay. So let's turn to Slide 21.

03:07PM **24** BY MR. SOBOLSKI:

03:12PM **1** to that second part of the claim.

03:12PM **2** BY MR. SOBOLSKI:

03:12PM **3** **Q.** Explain to the jury how you reach your conclusion about

03:12PM **4** the aerosol-forming chamber?

03:12PM **5** **A.** Sure. What you see in the slide is a snippet from that

03:12PM **6** PMTA that I just showed you, and, in fact, it's PX 23 at page

03:13PM **7** 40. On this slide you see two colored arrows, and those are

03:13PM **8** colored arrows that Reynolds drew on the diagram, so I didn't

03:13PM **9** put those colored arrows in, but what I want to draw your

03:13PM **10** attention to is the aerosol-forming chamber which I've

03:13PM **11** highlighted in yellow, so I know from Reynolds's own

03:13PM **12** documentation that the Solo G2 has an aerosol-forming chamber.

03:13PM **13** **Q.** Let's move on to Slide 27, please, Dr. Abraham. So in

03:13PM **14** summary, what did you find about the Solo G2 for the second

03:13PM **15** aspect of Claim 1?

03:13PM **16** **A.** I found that it met the second aspect of Claim 1.

03:13PM **17** **Q.** Let's turn then to the third part of Claim 1,

03:13PM **18** Dr. Abraham. What did you conclude?

03:13PM **19** **A.** Well, my conclusion, through my investigation, was that

03:13PM **20** the Solo G2 has a leakage prevention means configured to prevent

03:13PM **21** or reduce leakage of liquid aerosol condensate from the

03:13PM **22** aerosol-generating system, and the structures that provide that

03:14PM **23** means is described in the claim.

03:14PM **24** **Q.** So, we've gotten to a part of the '911 Patent that talks

03:14PM **25** here about that leakage prevention, right?

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03:14PM **1** **A.** That's correct.

03:14PM **2** MR. SOBOLSKI: Let's bring up Exhibit PX 30 for a moment,

03:14PM **3** please, Mr. Smith.

03:14PM **4** BY MR. SOBOLSKI:

03:14PM **5** **Q.** Explain to the jury what PX 30 is, Dr. Abraham.

03:14PM **6** **A.** This is documentation that was part of a regulatory

03:14PM **7** submission between Reynolds -- in support of their Vuse Solo

03:14PM **8** device -- that's the device I'm holding in my hand -- and this

03:14PM **9** document was signed by Mr. Eric Hunt, and we actually saw his

03:14PM **10** videotaped deposition testimony earlier in this trial.

03:14PM **11** MR. SOBOLSKI: Let's turn to Slide 28.

03:14PM **12** BY MR. SOBOLSKI:

03:14PM **13** **Q.** Please explain to the jury what that exhibit shows?

03:14PM **14** **A.** Well, this exhibit is from that technical document, and

03:14PM **15** it's PX 30 at page 13, so this is Reynolds's own words

03:14PM **16** describing their product, and they say there's a design feature

03:15PM **17** intended to minimize the condensate from exiting the cartridge,

03:15PM **18** and then they say that a raised lip minimizes leakage, and that

03:15PM **19** confirms my understanding of how this device works and also

03:15PM **20** shows that it meets this part of the claim.

03:15PM **21** **Q.** Thank you, Dr. Abraham. Let's turn to the next

03:15PM **22** demonstrative. I think it's Number 29.

03:15PM **23** And did you do anything else to confirm your opinion that

03:15PM **24** the Solo G2 practices this part of Claim 1?

03:15PM **1** documentation -- I wanted to do my own investigation -- and so I

03:15PM **2** went to the CAD files, and this is an image of the computer CAD

03:15PM **3** file. Again, it's been cut open so it's a section view. It's

03:15PM **4** Exhibit Number PX 262A, and in their CAD file I found these

03:15PM **5** leakage prevention means that I'm highlighting in yellow.

03:15PM **6** **Q.** What else did you do, if anything?

03:16PM **7** **A.** Well, I wanted to double- or triple-check, I guess, to

03:16PM **8** double-check. I did my own experimentation, and in my first

03:16PM **9** experimentation I actually activated the device -- I turned it

03:16PM **10** on and I used it -- and I wanted to know, in use, would this

03:16PM **11** device meet this claim language.

03:16PM **12** **Q.** And what did you find based on that experiment?

03:16PM **13** **A.** Well, what I found is shown on the screen. It's a little

03:16PM **14** complex so I'm going to take just a moment to explain. I used

03:16PM **15** what's called stereomicroscopy, which is just a very

03:16PM **16** high-powered microscope that can get really close pictures. The

03:16PM **17** microscope I used is shown on the right.

03:16PM **18** But after I activated the device and used it, I cut it

03:16PM **19** open, and I found droplets of condensate in the area that

03:16PM **20** Reynolds had indicated would catch condensate in their own

03:16PM **21** documentation, and I'm calling that out with two red arrows

03:16PM **22** saying "liquid aerosol condensate," so my own experiments

03:16PM **23** confirm what Reynolds said about their product and confirmed the

03:16PM **24** structures in the CAD file.

03:16PM **25** THE COURT REPORTER: Counsel -- can you slow down,

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03:16PM **1** please?

03:17PM **2** THE WITNESS: Sure. I'm so sorry.

03:17PM **3** **Q.** Thank you, Dr. Abraham. So that's one experiment you

03:17PM **4** performed. Did you perform any others to confirm infringement

03:17PM **5** by the Solo G2 device for this part of Claim 1?

03:17PM **6** **A.** Yes, I did.

03:17PM **7** **Q.** What was that?

03:17PM **8** **A.** Well, I triple-checked my conclusions, and to complement

03:17PM **9** what I'm already showing on the screen, I performed yet another

03:17PM **10** experiment which I'm calling the liquid injection experiment.

03:17PM **11** And I can explain that in more detail if you would like.

03:17PM **12** **Q.** Sure, please. Let's turn to Slide 30, and explain to the

03:17PM **13** jury what that liquid injection test is that you performed.

03:17PM **14** **A.** So, I took the device, and I took a special syringe for

03:17PM **15** e-liquid, and I ejected the e-liquid into the cavities, and then

03:17PM **16** I turned it upside down, as you see in the animation, and I

03:18PM **17** noticed that liquid did not leak out. The leakage preventers

03:18PM **18** held the liquid there.

03:18PM **19** Now, on the right-hand side you see the photograph after

03:18PM **20** I performed the experiment. I've highlighted the liquid in

03:18PM **21** yellow, and I've also cut open the device, but this is following

03:18PM **22** my experiment. So, basically, no matter how it re-entered the

03:18PM **23** device, the liquid would stay inside.

03:18PM **24** **Q.** And just so it's clear for the jury, on this Slide 30,

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