

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PHILIP MORRIS PRODCUTS S.A.,)
)
) Civil Action
Counterclaim Plaintiff,) No. 1:20-cv-00393-LMB/TCB
)
v.) June 10, 2022
) 9:13 a.m.
R.J. REYNOLDS VAPOR COMPANY,)
)
)
Counterclaim Defendant.)
)
)

VOLUME 3 - MORNING SESSION
TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE LEONIE M. BRINKEMA,
UNITED STATES DISTRICT COURT JUDGE

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10:07AM **1** Q. What label does Claim 1 of the '911 Patent use for the
 10:07AM **2** largest cross-sectional dimension?
 10:07AM **3** A. **Claim 1, and you can see the text down at the bottom**
 10:07AM **4** **where it specifies blind hole, uses the dimension X, and that**
 10:07AM **5** **dimension X is shown in Figures 3 and 4 of the patent. And**
 10:07AM **6** **again, that's for the claim limitation of the**
 10:08AM **7** **0.5-to-1 millimeter range.**
 10:08AM **8** Q. Now, again, assuming that the annular groove in the
 10:08AM **9** Solo G2 could be a blind hole as Dr. Abraham contends, how would
 10:08AM **10** you measure the largest cross-sectional dimension of that space?
 10:08AM **11** A. **So you can see on the left-hand view, it's the same view**
 10:08AM **12** **in red, that's the dimension that Dr. Abraham is proposing is**
 10:08AM **13** **the largest cross-sectional dimension. On the right-hand side**
 10:08AM **14** **would be in green, would be the proper dimension to measure.**
 10:08AM **15** **That's the largest cross-sectional dimension of the annular**
 10:08AM **16** **groove, and that largest cross-sectional dimension would be**
 10:08AM **17** **basically the diameter of that annular groove.**
 10:08AM **18** Q. Now, let's talk some about the actual measurements of
 10:08AM **19** what Dr. Abraham alleges is the blind hole in the Solo G2. Did
 10:08AM **20** Dr. Abraham measure what you just explained is in your opinion
 10:08AM **21** the largest cross-sectional dimension?
 10:08AM **22** A. **He only measured the one on the left, the red. He did**
 10:08AM **23** **not measure what I would call the largest dimension, largest**
 10:09AM **24** **cross-sectional dimension.**
 10:09AM **25** Q. And how did you measure the largest cross-sectional

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10:09AM **1** dimension?
 10:09AM **2** A. **So, again, I had the mouthpiece that was cut in half, I**
 10:09AM **3** **was able to measure inside of that annular groove. In addition,**
 10:09AM **4** **I had the 3D CAD files to confirm those measurements, and that**
 10:09AM **5** **measurement was 4 millimeters.**
 10:09AM **6** Q. And is the measurement of 4 millimeters within the
 10:09AM **7** required dimensional range of .5 millimeters to 1 millimeter in
 10:09AM **8** the '911 Patent claims?
 10:09AM **9** A. **No. Again, it's almost four times larger than the**
 10:09AM **10** **maximum claim of 0.5 and 1 millimeter.**
 10:09AM **11** Q. Please summarize your opinion regarding whether the Vuse
 10:09AM **12** Solo GT infringes Claim 1 of the '911 Patent.
 10:09AM **13** A. **So the Vuse Solo 2, again, it does not have a blind hole,**
 10:09AM **14** **it has an annular groove, so it doesn't meet that claim**
 10:09AM **15** **limitation.**
 10:09AM **16** **In addition, if we take and measure the largest**
 10:09AM **17** **dimension, largest cross-examination dimension, it does not**
 10:09AM **18** **fall within the range of 0.5 and 1 millimeter. In fact, it's**
 10:09AM **19** **almost -- it's four times larger than the maximum dimension**
 10:09AM **20** **allowed.**
 10:09AM **21** Q. Did you also consider whether the Vuse Solo G2 infringes
 10:10AM **22** Claims 11 and 13 of the '911 Patent?
 10:10AM **23** A. **I did, yes, similarly to the Alto.**
 10:10AM **24** Q. And what was your opinion with respect to those claims?

10:10AM **1** **Solo -- the Vuse Solo G2 does not meet the blind hole limitation**
 10:10AM **2** **nor does it meet the dimensional limitation. Again, Claim 1 is**
 10:10AM **3** **the independent claim, right, and Claim 11 and 13 are dependent**
 10:10AM **4** **claims, so they require all of those requirements of Claim 1 and**
 10:10AM **5** **then they add in some additional requirements, but because the**
 10:10AM **6** **Vuse Solo does not meet those claim limitations of Claim 1, it**
 10:10AM **7** **cannot infringe Claim 11 and Claim 13.**
 10:10AM **8** Q. All right. So we've been talking this morning so far
 10:10AM **9** about your noninfringement opinions. I'm going to change gears
 10:10AM **10** a little bit and talk about invalidity. I think the jury has
 10:10AM **11** heard a little bit about invalidity in Your Honor's initial
 10:10AM **12** instructions in this case. Did you arrive at an opinion
 10:10AM **13** regarding the invalidity of the '911 Patent?
 10:10AM **14** A. **Yes, I did.**
 10:10AM **15** Q. If what was your opinion?
 10:10AM **16** A. **So the '911 Patent is invalid based upon the prior art**
 10:11AM **17** **that I reviewed and also the prior art as reviewed by a POSA.**
 10:11AM **18** **Remember we talked in the beginning sort of what a POSA --**
 10:11AM **19** **patents are written for POSAs, with POSAs in mind, so the POSA**
 10:11AM **20** **would have these given requirements, and so when we analyze**
 10:11AM **21** **prior art to determine invalidity based on obviousness, for**
 10:11AM **22** **example, then we have to read those patents and analyze them**
 10:11AM **23** **based upon the viewpoint of a POSA.**
 10:11AM **24** Q. What did you review as part of your evaluation of the
 10:11AM **25** invalidity of the '911 Patent?

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10:11AM **1** A. **So I viewed the '911 Patent, of course, but also the**
 10:11AM **2** **prior art, as well as the file history and the prior art that's**
 10:11AM **3** **listed in the file history. So prior art is basically, you**
 10:11AM **4** **know, any patent or any information, really, that existed and**
 10:11AM **5** **was known before the application date of the '911 Patent. The**
 10:11AM **6** **application date of the '911 Patent was December of 2010, so any**
 10:11AM **7** **patent that was issued or applied for before that and/or any**
 10:12AM **8** **other marketing materials or, you know, Websites, even**
 10:12AM **9** **newspapers -- other people may not read newspapers anymore, but**
 10:12AM **10** **in 2010 certainly they were published -- much more widely**
 10:12AM **11** **publicized, and even products, so if you can prove that the**
 10:12AM **12** **product existed from 2010, before the patent was applied for,**
 10:12AM **13** **and had the same features or technology, then that would**
 10:12AM **14** **invalidate the patent due to obviousness.**
 10:12AM **15** **Primarily, what I'll show you today, though, is there are**
 10:12AM **16** **going to be patents that are -- the information that's more**
 10:12AM **17** **easily to rely upon just because the dates are more easy to**
 10:12AM **18** **verify.**
 10:12AM **19** Q. Does Dr. Abraham dispute that the references you're going
 10:12AM **20** to talk about today are prior art to the '911 Patent?
 10:12AM **21** A. **No, I don't believe so.**
 10:12AM **22** Q. In forming your opinions about invalidity, did you
 10:12AM **23** consider that from the view of a person having ordinary skill in
 10:12AM **24** the art that we talked about earlier?

10:22AM **1** of liquid aerosol condensate from the aerosol-generating
 10:22AM **2** systems?
 10:22AM **3 A. Yes, it is. That cavity is designed to capture the**
 10:22AM **4 condensate.**
 10:22AM **5 Q.** Does Hahn's cavity collect liquid condensate formed from
 10:23AM **6** the aerosol-forming substrate?
 10:23AM **7 A. It does, yes. The language, they're talking about the**
 10:23AM **8 smaller drips forming the larger drips, condensing into larger**
 10:23AM **9 drips, and being captured in the cavity.**
 10:23AM **10 Q.** What's aerosol-forming substrate?
 10:23AM **11 A. Aerosol-forming substrate is just e-liquid, basically, so**
 10:23AM **12 the liquid that's being vaporized.**
 10:23AM **13 Q.** All right. Let's look at limitation C in Claim 1 of the
 10:23AM **14** '911 Patent, Claim 1. Now, you testified earlier that Han
 10:23AM **15** discloses a cavity, right?
 10:23AM **16 A. That's correct.**
 10:23AM **17 Q.** And you understand that Philip Morris's position is that
 10:23AM **18** an annular groove can be a blind hole, right?
 10:23AM **19 A. I understand that is, yes.**
 10:23AM **20 Q.** Do you agree with that?
 10:23AM **21 A. I do not.**
 10:23AM **22 Q.** But if the '911 Patent claims cover an annular groove,
 10:23AM **23** like Philip Morris contends, how would that affect your
 10:23AM **24** invalidity opinions?
 10:23AM **25 A. So, again, the Han Patent reveals an annual groove, or**
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10:23AM **1 cavity, but if we make the assumption that Philip Morris's**
 10:23AM **2 contention that the blind hole is the same as annular groove,**
 10:23AM **3 you can see that in Figure 1 on the Han Patent it reveals also a**
 10:24AM **4 blind hole, which would meet the limitation of -- it would tie**
 10:24AM **5 in with the limitation requirement highlighted in C there.**
 10:24AM **6 Q.** If Hahn's cavity that we see on the screen here is
 10:24AM **7** considered a blind hole, as Philip Morris contends, does that
 10:24AM **8** blind hole have an open end as required by the claim?
 10:24AM **9 A. It does, yes. On the left-hand side of Figure 1 would be**
 10:24AM **10 the open end of the cavity, or blind hole.**
 10:24AM **11 Q.** And if Hahn's cavity is considered a blind hole, as
 10:24AM **12** Philip Morris contends, does that blind hole have a closed end
 10:24AM **13** that's required by the claim?
 10:24AM **14 A. It does. So on the right-hand side of that image would**
 10:24AM **15 be the closed end of the blind hole.**
 10:24AM **16 Q.** Now, you remember Dr. Abraham had some slides with a
 10:24AM **17** couple of eyes looking at the --
 10:24AM **18 A. Oh, right.**
 10:24AM **19 Q.** -- at the ends of device?
 10:24AM **20 A. Yes.**
 10:24AM **21 Q.** Don't talk when I'm talking --
 10:24AM **22 A. Sorry.**
 10:24AM **23 Q.** -- because the court reporter will throw something at me,
 10:24AM **24** so let me ask that again.

10:24AM **1** eyeballs looking at the ends of devices?
 10:24AM **2 A. Yes.**
 10:24AM **3 Q.** So, if you were to use those eyeballs on your slide,
 10:25AM **4** where would they be pointing?
 10:25AM **5 A. So the eyeballs would be sort of where the B1 letter is,**
 10:25AM **6 and they'd be pointing to the left.**
 10:25AM **7 Q.** What does that indicate?
 10:25AM **8 A. That was just trying to indicate that the blind holes are**
 10:25AM **9 not visible, meaning the closed end would not be visible on the**
 10:25AM **10 right-hand side of the mouthpiece.**
 10:25AM **11 Q.** If Hahn's cavity is considered a blind hole as Philip
 10:25AM **12** Morris contends, does that blind hole have a longitudinal
 10:25AM **13** direction extending between the open end and the closed end that
 10:25AM **14** you just identified?
 10:25AM **15 A. It does, yes, so the longitudinal direction would travel**
 10:25AM **16 from the open end to the closed end, so basically on the screen**
 10:25AM **17 it would be along the axis from the left to the right.**
 10:25AM **18 Q.** Now, let's look at claim limitation D in Claim 1. Does
 10:25AM **19** Han disclose all the requirements of limitation D of Claim 1 of
 10:25AM **20** the '911 Patent?
 10:25AM **21 A. It doesn't. Han does not have any dimensional**
 10:25AM **22 requirement for the size of the blind hole.**
 10:25AM **23 Q.** So Han doesn't say anything about the size of the blind
 10:26AM **24** hole that is in the mouthpiece?
 10:26AM **25 A. It doesn't have any specific dimensions for that blind**
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10:26AM **1 hole.**
 10:26AM **2 Q.** Now, you mentioned earlier that you had designed
 10:26AM **3** e-cigarettes, right?
 10:26AM **4 A. Yes.**
 10:26AM **5 Q.** During your work designing e-cigarettes, have you ever
 10:26AM **6** worked on designing blind holes in those devices?
 10:26AM **7 A. Blind cavities, annular grooves, blind holes, yes.**
 10:26AM **8 Q.** Have you had experience in determining how you might size
 10:26AM **9** some of those parts of an e-cigarette in your work?
 10:26AM **10 A. Sure. So when you start with -- if you -- remember we**
 10:26AM **11 have to look at this from the state of the art in 2010, right,**
 10:26AM **12 so the products that were on the market were typically called**
 10:26AM **13 cigalikes, right? They were trying to sort of simulate or look**
 10:26AM **14 like cigarettes, so they had a similar diameter and a similar**
 10:26AM **15 look. A lot of times the mouthpiece would be sort of the brown**
 10:26AM **16 color that's on the filter of a cigarette and the white portion**
 10:26AM **17 would be the battery.**
 10:26AM **18 And also they had similar diameters, as I mentioned.**
 10:26AM **19 Typical diameters for a cigarette are anywhere from 7, 8, 9**
 10:26AM **20 millimeters in diameter, so if we take that as a starting point,**
 10:27AM **21 the outer diameter being, let's say, 7 millimeters, and then we**
 10:27AM **22 have to add in all these walls, right, the outer walls, two**
 10:27AM **23 outer walls, the two inner walls that form the mouth hole, the**
 10:27AM **24 actual mouth hole, it would be obvious to end up with a**

10:27AM **1** 1 millimeter.

10:27AM **2** Q. Now, before the '911 Patent, was there a patent that

10:27AM **3** disclosed a preferred size for a smokeless cigarette?

10:27AM **4** A. **There was, yes, there was a Shimizu patent.**

10:27AM **5** Q. And what does the --

10:27AM **6** MR. MAIORANA: For the record, that's RX 1224.

10:27AM **7** BY MR. MAIORANA:

10:27AM **8** Q. What does Shimizu disclose?

10:27AM **9** A. **Shimizu discloses a preferable outer diameter for the**

10:27AM **10 device of 7 to 15 millimeters, and the reason why Shimizu**

10:27AM **11 mentions that to make the device more portable and also to make**

10:27AM **12 the device sort of replace cigarettes, meaning to look like or**

10:27AM **13 be -- to look like an actual cigarette.**

10:28AM **14** Q. Please summarize for the jury your opinion regarding

10:28AM **15** invalidity of Claim 1?

10:28AM **16** A. **So the '911 Patent is invalid. It would have been**

10:28AM **17 obvious to a person of skill in the art or a person in industry**

10:28AM **18 that the prior art existed that would make each one of these**

10:28AM **19 claim requirements obvious at the time of the filing date of**

10:28AM **20 2010, December.**

10:28AM **21** Q. Now, we talked about -- so far on invalidity, we've

10:28AM **22** talked about Claim. Did you look at the dependent claims with

10:28AM **23** respect to validity?

10:28AM **24** A. **Yes, I did.**

10:28AM **25** Q. All right. Let's look at dependent Claim 11. What

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10:28AM **1** additional requirement does dependent Claim 11 add to

10:28AM **2** independent Claim 1?

10:28AM **3** A. **So, again, as we talked about, these are all the**

10:28AM **4 dependent claims, right, so they require all of the requirements**

10:28AM **5 of Claim 1 and then they add on additional feature or**

10:28AM **6 technology. For Claim 11, it's adding in the requirement of**

10:28AM **7 electric heater.**

10:29AM **8** Q. Does Han disclose an electric heater?

10:29AM **9** A. **It does. Han is an electric cigarette, and the atomizer**

10:29AM **10 has an electric heater inside of it. Han calls it an electric**

10:29AM **11 heating rod, which I've highlighted over on the right-hand side,**

10:29AM **12 but it's the same thing, yeah, as an electric heater.**

10:29AM **13** Q. Would Claim 11 have been obvious to a person of ordinary

10:29AM **14** skill in the art?

10:29AM **15** A. **Yes, it would have.**

10:29AM **16** Q. Let's talk about dependent Claim 13. What additional

10:29AM **17** requirement does dependent Claim 13 add to independent Claim 1?

10:29AM **18** A. **So dependent Claim 13, adds the requirement of the cavity**

10:29AM **19 being a toroidal shape.**

10:29AM **20** Q. What's toroidal shape?

10:29AM **21** A. **So we talked about annual groove, and maybe I should back**

10:29AM **22 up and explain a little bit what that means and relate that to**

10:29AM **23 toroidal. So "annular groove" basically means sort of a ring**

10:29AM **24** shape, right, so a shape that's round or revolved around an

10:29AM **1** that's revolved. There's also, more specifically, something

10:29AM **2** called a torus, which is really what a doughnut would be shaped

10:30AM **3** like, meaning that's a round cross-section that's been revolved.

10:30AM **4** Q. Does Dr. Abraham contend that the Vuse Solo product has a

10:30AM **5** toroidal shape?

10:30AM **6** A. **He does, yes.**

10:30AM **7** Q. And what part of the mouthpiece is he talking about?

10:30AM **8** A. **So the annual groove that's in the mouthpiece he contends**

10:30AM **9** is a toroidal shape.

10:30AM **10** Q. So if you assume for purposes of your analysis that the

10:30AM **11** annular groove in the Solo G2 product could be a toroidal shape,

10:30AM **12** does the Han Patent disclose that?

10:30AM **13** A. **Yes, it does. So you can see the shape of the cavity**

10:30AM **14 shown on the right-hand side that's highlighted in yellow on**

10:30AM **15 Figure 1. That is -- in other figures for Han it shows the**

10:30AM **16 device as being round, so, again, this cavity would be similar**

10:30AM **17 to what's shown in Figures 5 and 6 in the '911 Patent, and that**

10:30AM **18 would be interpreted to be a cavity.**

10:30AM **19** Q. Would Claim 13 have been obvious to a person of ordinary

10:31AM **20** skill in the art?

10:31AM **21** A. **It would, yes.**

10:31AM **22** Q. Let's talk about dependent Claim 2. What additional

10:31AM **23** requirement does dependent Claim 2 of the '911 Patent add to

10:31AM **24** Claim 1?

10:31AM **25** A. **So dependent Claim 2 adds the requirement of having a**

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10:31AM **1** capillary material. Remember we talked about capillary action,

10:31AM **2** and capillary materials, and in this case it's saying to add a

10:31AM **3** capillary material, which means a material that would be sort of

10:31AM **4** spongelike, a material that would actually absorb material

10:31AM **5** inside the cavity.

10:31AM **6** Q. Does Han disclose anything about capillary material in in

10:31AM **7** his cavity?

10:31AM **8** A. **It does not.**

10:31AM **9** Q. Did you see any patents prior to the '911 Patent that

10:31AM **10** used capillary materials in a cavity of an e-cigarette?

10:31AM **11** A. **Yes, there's an aerosol-generating system patent from**

10:31AM **12** Murphy that shows an absorbant material that's inside the

10:31AM **13** cavity.

10:31AM **14** MR. MAIORANA: And for the record, Murphy is RX 1422.

10:31AM **15** THE COURT: All right.

10:31AM **16** BY MR. MAIORANA:

10:31AM **17** Q. And what technology does in Murphy disclose, Mr. Kodama?

10:31AM **18** A. **So it's an aerosol-generating system, and the image I**

10:31AM **19** show you on the right-hand side has some wording from the

10:32AM **20** specification, so there's an absorbant pad, which I highlighted

10:32AM **21** in yellow, which would be a capillary material, and that's

10:32AM **22** inside what's called the second passageway in the patent and

10:32AM **23** that's a cavity. So it discloses an absorbant pad or capillary

10:32AM **24** material inside of the cavity.

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