UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

PHILIP MORRIS PRODUCTS S.A., Plaintiff, v. R.J. REYNOLDS VAPOR COMPANY, Defendant.	Civil Action No. 1:20-cv-00393-LMB-TCB

REPLY IN SUPPORT OF PHILIP MORRIS' UNOPPOSED MOTION TO LIFT THE PARTIAL STAY ON PHILIP MORRIS' CLAIM FOR PERMANENT INJUNCTIVE RELIEF

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I. INTRODUCTION

Reynolds "does not object" to lifting the stay on injunctive relief and "agrees" with the briefing schedule for injunctive relief. Opp. at 1, 5 n.2. That should be dispositive. But Reynolds seeks to impose two unnecessary requirements. The Court should reject both.

First, the Court should not reopen fact discovery on injunctive relief. Reynolds provides no reason to "reserve" ruling on whether additional discovery should be allowed. Opp. at 3. Judge O'Grady determined that the parties completed fact discovery on injunctive relief in 2021, after having a full and fair opportunity to take discovery on that issue. Reynolds claims that additional discovery "might be required" because it "does not know what supposed facts" Philip Morris will rely on. *Id.* That is not credible. Reynolds took extensive discovery ***after*** receiving Philip Morris' 44-page interrogatory response on injunctive relief. No additional discovery is warranted.

Second, Reynolds provides no basis for deviating from the normal practice of separately briefing injunctive relief and an ongoing royalty. None exists. The latter is "***alternative*** relief" that is moot if the Court grants a permanent injunction.[1] Opp. at 1. Briefing an ongoing royalty in the first instance would be inefficient and waste judicial and party resources. It would also strip Philip Morris of the "opportunity to negotiate the terms of the royalty," which is the "minimal protection" afforded to the patentee in "most cases" and expressly "encouraged" by the Federal Circuit. *Telcordia Techs., Inc. v. Cisco Sys., Inc.*, 612 F.3d 1365, 1367, 1379 (Fed. Cir. 2010); *Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1315 (Fed. Cir. 2007). This approach should be followed here if the Court declines to impose permanent injunctive relief.

Accordingly, the should Court (i) lift the stay on injunctive relief, (ii) enter the agreed briefing schedule on injunctive relief, (iii) provide guidance on the Court's preference regarding

[1] All emphasis added unless otherwise noted.

declarations for injunctive relief, and (iv) reject Reynolds' requests to reopen fact discovery and concurrently brief the issues of injunctive relief and an ongoing royalty.

II. ARGUMENT

A. The Court Should Lift The Partial Stay And Enter The Agreed Briefing Schedule On Injunctive Relief

The Court should lift the stay and enter the agreed briefing schedule on injunctive relief (Dkt. 1372 at 5). First, Reynolds "does not object to lifting the stay" on injunctive relief. Opp. at 1. Second, Reynolds "agrees to the briefing schedule and page limits" that Philip Morris proposed on injunctive relief.[2] Opp. at 5 n.2 (agreeing with schedule on page 5 of Dkt. 1372). Because the relief sought is unopposed, the Court should lift the stay and enter the agreed briefing schedule.

B. The Court Should Reject Reynolds' Unnecessary Requests

While Reynolds does not dispute the relief that Philip Morris seeks, Reynolds argues that unidentified fact discovery "may be required" and the parties should brief injunctive relief and an ongoing royalty together. Opp. at 1-2. Both requests are unnecessary and should be rejected.

1. Fact Discovery On Injunctive Relief Should Not Be Reopened

The Court should reject Reynolds' request to "reserve any ruling about whether further discovery is necessary" on injunctive relief until "after [Philip Morris'] injunction motion is filed." Opp. at 4. No ruling is necessary because fact discovery on injunctive relief is complete. Dkts. 534-35; Dkt. 1372-1 (6/8 a.m. Tr.) at 43:13-44:25, 47:21-48:12 ("[The Court] would be surprised if more [discovery] is needed."). Both parties served discovery requests and took depositions on injunctive relief, and completed fact discovery in 2021. Mot. at 2. Reynolds does not (i) ask the Court to re-open discovery, (ii) apply the legal standard for doing so, or (iii) identify any discovery

[2] Philip Morris will follow the Court's guidance on whether to include declarations. (Mot. at 5-6). But the parties should be permitted to depose any declarants before filing response/reply briefs.

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