

Exhibit 12

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

1 them.

2 There can be several claims in a patent. Each claim may
3 be narrower or broader than another claim by including more or
4 fewer elements. The coverage of a patent is assessed claim by
5 claim. You must use the same claim meaning for both your
6 decisions on infringement and your decisions on invalidity.

7 You should give the words and the claims their plain and
8 ordinary meaning to a person of ordinary skill in the art in the
9 context of the patent specifications and prosecution history.

10 MR. GRANT: Your Honor, I believe you misread the last
11 sentence of the first paragraph.

12 THE COURT: Of 17?

13 MR. GRANT: Yes, ma'am.

14 THE COURT: If, and only if, a device satisfies all the
15 elements of a particular claim, then that device infringes that
16 claim. I'm sorry.

17 MR. MAIORANA: On that same point, Your Honor, I think you
18 misspoke. You said that if a claim has four elements and it only
19 meets one of them, then that's enough. That's what I see in the
20 realtime, Your Honor.

21 THE COURT: The claims are intended to define the
22 boundaries of the inventor's rights. This is done by using words
23 which set forth a set of requirements called elements. Each
24 claim sets forth its elements in a single sentence which can be
25 very long. As you saw during the trial, a claim often has many

1 elements. If, and only if a device satisfies all the elements of
2 a particular claim, then the device infringes that claim.

3 That's the proper reading of that. Sorry, folks. But
4 you'll have these written instructions, so that's what you're
5 going to go by.

6 There can be several claims in a patent. Each claim may
7 be narrower or broader than another claim by including more or
8 fewer elements. The coverage of a patent is assessed claim by
9 claim. You must use the same claimed meaning for both your
10 decision on infringement and your decision on invalidity.

11 You should give the words in the claims their plain and
12 ordinary meaning to a person of ordinary skill in the art in the
13 context of the patent specification and prosecution history.

14 Now, patent law gives the owner of a valid patent the
15 right to exclude others from importing, making, using, offering
16 to sell, or selling the patented invention within the United
17 States during the term of the patent.

18 If the patent is valid, then any person or business entity
19 that is engaged in any of those acts without the patent owner's
20 permission infringes the patent.

21 To determine whether there has been an act of direct
22 infringement, you must compare the accused product with each
23 asserted claim. Direct infringement of an asserted claim occurs
24 when the patent holder proves by a preponderance of the evidence
25 that an accused product includes all the elements of that claim.

1 work today, and we'll see you tomorrow at 9:30. You don't need
2 to come into court for a formal -- anything formal. Just once
3 the six of you are together, you can start your deliberations,
4 all right? All right. You're all free to go, and we'll recess
5 court for the evening.

6 (Proceedings adjourned at 6:02 p.m.)

7 C E R T I F I C A T E

8 I, Scott L. Wallace, RDR-CRR, certify that
9 the foregoing is a correct transcript from the record of
10 proceedings in the above-entitled matter.

11 /s/ Scott L. Wallace

6/14/22

12 -----
13 **Scott L. Wallace, RDR, CRR**
14 **Official Court Reporter**

15 **Date**