

EXHIBIT 5



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Transcript of Ryan Sullivan, Ph.D.

Date: May 11, 2021

Case: RAI Strategic Holdings, Inc. -v- Altria Client Services, LLC, et al.

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Conducted on May 11, 2021

25	<p>1 patent.</p> <p>2 Q. Right.</p> <p>3 And just so we're clear, you haven't</p> <p>4 performed any infringement analysis to determine</p> <p>5 whether any Reynolds products practices a patent</p> <p>6 owned by a third party; correct?</p> <p>7 A. For the reasons I just mentioned, that</p> <p>8 is correct.</p> <p>9 Q. And the same is true for any Nu Mark</p> <p>10 product; correct?</p> <p>11 A. Yes, that's right, I have not performed</p> <p>12 an independent determination of infringement.</p> <p>13 Q. And you're not offering any opinions on</p> <p>14 the enforceability or validity of the asserted</p> <p>15 patents; correct?</p> <p>16 A. Not on the enforceability and not on</p> <p>17 validity in terms of ultimate conclusions on</p> <p>18 validity.</p> <p>19 However, somewhat similar to what we</p> <p>20 were talking about earlier, I have performed work</p> <p>21 in analyses that can bear upon secondary</p> <p>22 considerations of non-obviousness.</p>	27	<p>1 A. I have not done a search for those</p> <p>2 words. I don't recall them being in there.</p> <p>3 I suppose one of the benefits of being</p> <p>4 on the Zoom is I have an electronic version, I can</p> <p>5 always do a -- a search, if that's helpful.</p> <p>6 Q. Sitting here right now, you don't recall</p> <p>7 the words "nexus" or "secondary considerations" of</p> <p>8 non-obviousness or objective -- "evidence of</p> <p>9 non-obviousness" being in any of your reports;</p> <p>10 right, sir?</p> <p>11 A. I think I have a view on that. I'm</p> <p>12 looking right now.</p> <p>13 I don't recall. It's going really slow.</p> <p>14 I'm not sure why.</p> <p>15 But, you know, I don't recall using the</p> <p>16 terms "nexus" or "secondary considerations." Yet,</p> <p>17 as I noted, the work that I did does bear upon</p> <p>18 those issues.</p> <p>19 Q. Your reports do not include any opinion</p> <p>20 that there is a nexus or there is not a nexus</p> <p>21 between any of the asserted claims and any</p> <p>22 objective evidence of non-obviousness; correct?</p>
26	<p>1 Q. Your report, sir, doesn't mention</p> <p>2 anything about secondary consideration of</p> <p>3 non-obviousness; correct?</p> <p>4 A. I -- I disagree.</p> <p>5 I have research that I provided in my</p> <p>6 reports that bear upon those issues. I've not</p> <p>7 undertaken a separate analysis of secondary</p> <p>8 considerations. Yet, the analysis I performed</p> <p>9 bears upon those issues.</p> <p>10 Q. And you didn't discuss with any Reynolds</p> <p>11 technical expert any issues relating to secondary</p> <p>12 considerations; correct?</p> <p>13 A. I would not put it that way.</p> <p>14 They have provided me with</p> <p>15 understandings of contributions of technologies</p> <p>16 and, you know, issues surrounding alternatives and</p> <p>17 prior art. And those type of issues bear upon</p> <p>18 nexus issues as it would relate to secondary</p> <p>19 considerations.</p> <p>20 Q. So the words "nexus" and "secondary</p> <p>21 consideration" never appear in any of your</p> <p>22 reports; correct?</p>	28	<p>1 A. I have not made a separate determination</p> <p>2 of nexus in terms of a binary outcome, like, you</p> <p>3 know, meaning there is a nexus or there's not a</p> <p>4 nexus. Yet, as I talked about, for example, in</p> <p>5 Section 7 of my report, I have addressed those</p> <p>6 issues.</p> <p>7 Q. Understood.</p> <p>8 Let's shift gears and talk a little bit</p> <p>9 about your reasonable royalty opinions in the</p> <p>10 case, and starting with the royalty structure.</p> <p>11 Okay?</p> <p>12 A. Okay.</p> <p>13 Q. Now, you and Mr. Meyer agree that a</p> <p>14 running royalty is the economically-appropriate</p> <p>15 royalty structure for each of the five asserted</p> <p>16 patents; correct?</p> <p>17 A. I do recall that is Mr. Meyer's opinion.</p> <p>18 And I agree that a running royalty structure is</p> <p>19 the most likely outcome. It is economically</p> <p>20 reasonable in this case.</p> <p>21 Q. Now, as a hypothetical negotiation for</p> <p>22 each asserted patent, it's your opinion that the</p>

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1 patent owner and RJRV would agree to a license
 2 that includes a running royalty rate based on net
 3 sales; correct?
 4 **A. I believe that is economically**
 5 **reasonable, yes.**
 6 Q. And a running royalty can either be
 7 expressed as a percentage of a net sales or a
 8 per-unit royalty; right?
 9 **A. The evidence here lends itself to a**
 10 **percentage-based running royalty. Yet, one could,**
 11 **if done appropriately, think about that in terms**
 12 **of a per unit.**
 13 Q. You expressed that -- the reasonable
 14 royalty for each patent in both a percentage of
 15 net sales as well as a per-unit royalty; correct?
 16 **A. Yes, I have done so.**
 17 Q. Why is a running royalty the appropriate
 18 structure of damages in this case, in your
 19 opinion?
 20 **A. I address that in various parts of my**
 21 **report, including Section 11.4.**
 22 **In my view, it's not the structure in**

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1 **and of itself that is determinative of the**
 2 **reasonable royalty but, rather, it's the amount of**
 3 **the royalty.**
 4 **The structure of a running royalty**
 5 **enables the royalty to scale with the use of the**
 6 **technology, or lack of use, and the benefits, or**
 7 **lack of benefits of the technology. And in my**
 8 **view, that's important.**
 9 Q. And you and Mr. Meyer both used what's
 10 commonly referred to as the "hypothetical
 11 negotiation framework" to determine a reasonable
 12 royalty for each of the five patents asserted in
 13 this case; is that fair?
 14 **A. Very close.**
 15 **I -- Mr. Meyer combines three of the**
 16 **patents into a single hypothetical negotiation,**
 17 **and I looked at five separate hypothetical**
 18 **negotiations.**
 19 Q. But you and Mr. Meyer both rely on the
 20 hypothetical negotiation framework to determine a
 21 reasonable royalty for the asserted patents;
 22 correct?

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1 **A. Yes.**
 2 Q. Okay. Do you agree with Mr. Meyer that
 3 RJRV would be the licensee at each hypothetical
 4 negotiation?
 5 Is that true?
 6 **A. I do not recall Mr. Meyer having a**
 7 **different view on that than I do.**
 8 **As I've explained in my report, that I**
 9 **view RJRV as the licensee. And that to the extent**
 10 **RAI is involved, I do not see that being impactful**
 11 **to the hypothetical negotiations.**
 12 Q. Now, I think it's important here, just
 13 to be clear -- so you said "RAI." You're
 14 referring to RJRV's parent company, Reynolds
 15 American, Incorporated; is that right?
 16 **A. Yes.**
 17 Q. There is also another party in this
 18 case, RAISH, or RAI Strategic Holdings. Is that
 19 your understanding, sir?
 20 **A. Yes.**
 21 Q. And you don't criticize Mr. Meyer --
 22 well, let me take a step back.

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1 In your view, is RAISH at the
 2 hypothetical negotiations for the asserted
 3 patents?
 4 **A. I'm sorry. I missed that.**
 5 Q. Sure.
 6 You testified earlier that, in your
 7 view, RJRV is the licensee at the hypothetical
 8 negotiation. And my question is: In your view,
 9 is RAISH included in any of the hypothetical
 10 negotiation?
 11 **A. I do not think of them as being a**
 12 **participant to the hypothetical negotiations.**
 13 **Yet, I also, similar to RAI, would not view that**
 14 **to be impactful.**
 15 Q. So you wouldn't criticized Mr. Meyer if
 16 he included RAI or RAISH at the hypothetical
 17 negotiation; is that true?
 18 **A. Not in and of itself.**
 19 **You know, to the extent that there's**
 20 **implications there that are inappropriate,**
 21 **certainly I would give those consideration. But**
 22 **not in and of itself.**

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1 any questions?
 2 MR. VITT: No.
 3 The entire transcript should be treated
 4 as confidential, business information under
 5 the protective order.
 6 THE VIDEOGRAPHER: Yes, sir.
 7 Okay. With that, this then concludes
 8 the deposition. The time, 8:53 p.m. Eastern
 9 Standard. We're going off the video record.

10
 11 AND FURTHER THIS DEPONENT SAITH NOT.
 12 SIGNATURE RIGHTS RESERVED.
 13 (Videotaped Deposition concluded at 8:53 p.m. EST)

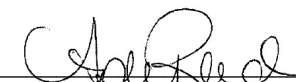
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1 STATE OF NORTH CAROLINA:
 2 COUNTY OF MECKLENBURG :
 3 I, April Reid, Court Reporter and Notary
 4 Public in and for the State of North Carolina,
 5 and whose commission expires March 4, 2025,
 6 do certify that the aforementioned appeared
 7 before me, was sworn by me, and was thereupon
 8 examined by counsel; and that the foregoing is a
 9 true, correct, and full transcript of the
 10 testimony adduced.

11 I further certify that I am neither
 12 related to nor associated with any counsel or
 13 party to this proceeding, nor otherwise interested
 14 in the event thereof.

15 Given under my hand and notarial seal in
 16 Charlotte, North Carolina, this 13th day of May,
 17 2021.

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 19 
 20 April Reid, RPR, CRR, Notary Public
 21 State of North Carolina, County of Mecklenburg
 22 Notary Registration No. 20012210079