

**IN THE 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.

Case No. 1:20-cv-00393-LMB-WEF

**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION
FOR LEAVE TO FILE DOCUMENTS UNDER SEAL**

Pursuant to Local Civil Rule 5(C), Defendant R.J. Reynolds Vapor Company (“RJR”) respectfully moves the Court for leave to file under seal its Memorandum in Opposition to Plaintiff’s Motion for a Permanent Injunction or, Alternatively, an Ongoing Royalty (“Opposition Brief”) and Exhibits 1-4, 9-14, 18-21, 23, 25-26, 28-31, 39, 42, and 44 thereto (collectively, “Exhibits”).

I. DESCRIPTION OF MATERIALS SOUGHT TO BE SEALED

RJR respectfully seeks leave to file the following documents under seal:

- An unredacted version of its Opposition Brief.
- An unredacted version of Exhibit 1 to RJR’s Opposition Brief, which is the confidential declaration of Christy Canary-Garner, dated August 31, 2022.
- An unredacted version of Exhibit 2 to RJR’s Opposition Brief, which is the confidential declaration of Dr. Jeffrey C. Suhling, dated September 1, 2022.

- An unredacted version of Exhibit 3 to RJRV’s Opposition Brief, which is the confidential declaration of Ryan Sullivan, Ph.D and attachments thereto, dated September 1, 2022.
- Exhibit 4 to RJRV’s Opposition Brief, which includes excerpts from the confidential version of the ITC Commission Opinion, issued on September 29, 2021 in *Certain Tobacco Heating Articles*, Inv. No. 337-TA-1199 (U.S.I.T.C.) (the “ITC Investigation” or “ITC”), that Plaintiff Philip Morris Products S.A. (“PMP”) and/or Altria Client Services, LLC/Philip Morris USA Inc. (collectively, “Altria/PM”) designated as containing confidential business information subject to the Protective Order.
- Exhibit 9 to RJRV’s Opposition Brief, which includes excerpts from PMP’s 3rd Supplemental Responses to RJRV’s 2nd Set of E.D. Va. Interrogatories (No. 14), dated April 6, 2021, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 10 to RJRV’s Opposition Brief, which includes excerpts from the deposition transcript of Martin King, dated June 25, 2021, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 11 to RJRV’s Opposition Brief, which includes excerpts from ITC Hearing Exhibit RX-0188, a distribution agreement that Altria/PM produced and designated as confidential business information subject to the Protective Order.
- Exhibit 12 to RJRV’s Opposition Brief, which includes excerpts from ITC Hearing Exhibit RX-0544, a relationship agreement that PMP produced and designated as confidential business information subject to the Protective Order.

- Exhibit 13 to RJRV's Opposition Brief, which includes excerpts from the deposition transcript of Dr. Moira Gilchrist, dated June 18, 2021, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 14 to RJRV's Opposition Brief, which includes excerpts from Altria/PM's 8th Supplemental Responses to RJRV's ITC Interrogatories (Nos. 1-19), dated September 25, 2020, that Altria/PM designated as confidential business information subject to the Protective Order.
- Exhibit 18 to RJRV's Opposition Brief, which includes excerpts from Dr. Stacey M. Benson's ITC Expert Rebuttal Report, dated October 23, 2020, that PMP and/or Altria/PM designated as confidential business information subject to the Protective Order.
- Exhibit 19 to RJRV's Opposition Brief, which includes excerpts from Dr. Jonathan Arnold's ITC Expert Rebuttal Report, dated October 23, 2020, that PMP and/or Altria/PM designated as confidential business information subject to the Protective Order.
- Exhibit 20 to RJRV's Opposition Brief, which includes excerpts from Stacy Ehrlich's ITC Expert Rebuttal Report, dated Oct. 23, 2020, that PMP and/or Altria/PM designated as confidential business information subject to the Protective Order.
- Exhibit 21 to RJRV's Opposition Brief, which includes excerpts from Brad Rodu's ITC Expert Report, dated Oct. 5, 2020, that PMP and/or Altria/PM designated as confidential business information subject to the Protective Order.

- Exhibit 23 to RJRV's Opposition Brief, which includes excerpts from PMP's 3rd Supplemental Responses to RJRV's 2nd Set of E.D. Va. Interrogatories (No. 14), dated April 6, 2021, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 25 to RJRV's Opposition Brief, which includes excerpts from the deposition transcript of Edward Kiernan, dated April 16, 2021, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 26 to RJRV's Opposition Brief, which includes excerpts from the June 8-15, 2022 trial transcript in the above-captioned action, which has not yet been publicly released.
- Exhibit 28 to RJRV's Opposition Brief, which includes excerpts from ITC Hearing Exhibit CX-0183C, a presentation that Altria/PM produced and designated as confidential business information subject to the Protective Order.
- Exhibit 29 to RJRV's Opposition Brief, which includes excerpts from ITC Hearing Exhibit CX-0190C, a presentation that Altria/PM produced and designated as confidential business information subject to the Protective Order.
- Exhibit 30 to RJRV's Opposition Brief, which includes excerpts from ITC Hearing Exhibit CX-0614C, a regulatory document that PMP produced and designated as confidential business information subject to the Protective Order.
- Exhibit 31 to RJRV's Opposition Brief, which includes excerpts from the confidential version of RJRV's March 31, 2021 Opening Post-Hearing Brief filed in the ITC Investigation, that PMP and/or Altria/PM designated as containing confidential business information subject to the Protective Order.

- Exhibit 39 to RJRV’s Opposition Brief, which is a PMP intellectual property assignment agreement, that PMP produced and designated as confidential business information subject to the Protective Order.
- Exhibit 42 to RJRV’s Opposition Brief, which includes excerpts from PMP’s 8th Supplemental Responses to RJRV’s 1st Set of ITC Interrogatories (Nos. 1-19), dated September 25, 2020, that PMP designated as confidential business information subject to the Protective Order.
- Exhibit 44 to RJRV’s Opposition Brief, which is Trial Exhibit PX-125, a RJRV settlement and license agreement, that RJRV produced and designated as confidential business information subject to the Protective Order.

II. LEGAL STANDARD

The law of the regional circuit applies to non-substantive issues of patent law, including the question whether to seal district court records. *See Uniloc 2017 LLC v. Apple, Inc.*, 964 F.3d 1351, 1357 (Fed. Cir. 2020). A motion to seal implicates both substantive and procedural requirements. *Va. Dep’t of State Police v. Wash. Post*, 386 F.3d 567, 576 (4th Cir. 2004).

Substantively, the Court must determine the nature of the information and the public’s right to access. *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180-81 (4th Cir. 1988). “The right of public access to documents or materials filed in a district court derives from two independent sources: the common law and the First Amendment.” *Va. Dep’t of State Police*, 386 F.3d at 575. “While the common law presumption in favor of access attaches to all ‘judicial records and documents,’ the First Amendment guarantee of access has been extended only to particular judicial records and documents.” *Stone*, 855 F.2d at 180 (internal citation omitted). Moreover, the common law right to inspect records and documents “is not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). Accordingly, some documents “fall within the

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