EXHIBIT 71

No. 22-1227

United States Court of Appeals for the Federal Circuit

PHILIP MORRIS PRODUCTS S.A., PHILIP MORRIS USA, INC., ALTRIA CLIENT SERVICES LLC,

Appellants

v.

INTERNATIONAL TRADE COMMISSION,

Appellee

RAI STRATEGIC HOLDINGS, INC., R.J. REYNOLDS VAPOR COMPANY, AND R.J. REYNOLDS TOBACCO COMPANY,

Intervenors

Appeal from the United States International Trade Commission in Investigation No. 337-TA-1199

CORRECTED NON-CONFIDENTIAL RESPONSE BRIEF FOR INTERVENORS

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essentially a private FDCA enforcement action, which is prohibited. 923 F.3d at 962, 968. Here, Reynolds did not sue for violations of the FDCA; it sued to enforce its patent rights. The Commission properly investigated that complaint and remedied the wrong.

Second, PM says the Commission made *de facto* determinations that all e-cigarettes are purportedly substitutable for IQOS. Br.66. It did no such thing. There are many e-cigarettes available to consumers under FDA's current enforcement policy. All of those products are substitutes for IQOS under Commission precedent; that is enough to address the statutory public-interest factors. Appx68-69. And FDA's premarket authorizations for Reynolds's tobacco-flavored Solo and Vibe products (in addition to other products, such as Logic and NJOY) further show the numerous available substitutes for IQOS. https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders.

IV. THE COMMISSION APPROPRIATELY CONSULTED WITH OTHER AGENCIES

PM leads its brief with a never-before-made argument—that the Commission violated Section 337(b)(2) by failing to consult with HHS. In addition to being forfeited and waived, this new argument fails on its merits.

CONCLUSION

The Commission's final determination and orders should be affirmed.

Dated: June 17, 2022

Respectfully submitted,

/s/ Gregory A. Castanias

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