Exhibit 16

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

RAI STRATEGIC HOLDINGS, INC. and R.J. REYNOLDS VAPOR COMPANY, Plaintiffs and Counterclaim Defendants, v. ALTRIA CLIENT SERVICES LLC; PHILIP MORRIS USA, INC.; and PHILIP MORRIS PRODUCTS S.A., Defendants and Counterclaim Plaintiffs.	**Case No. 1:20cv00393-LO-TCB**

RAI STRATEGIC HOLDINGS, INC. AND R.J. REYNOLDS VAPOR COMPANY'S SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO ALTRIA CLIENT SERVICES LLC, PHILIP MORRIS USA, INC., AND PHILIP MORRIS PRODUCTS S.A.'S EIGHTH SET OF INTERROGATORIES (NO. 30)

Pursuant to Federal Rules of Civil Procedure 26 and 33, RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (collectively, "Reynolds") hereby supplements its response to Altria Client Services LLC, Philip Morris USA, Inc., and Philip Morris Products S.A.'s (collectively, "Defendants" or "Counterclaim Plaintiffs") Eighth Set of Interrogatories (No. 30) as follows.

PRELIMINARY STATEMENT AND OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Reynolds incorporates and reiterates its preliminary statement and objections to the Definitions and Instructions.

INTERROGATORIES

INTERROGATORY NO. 30:

To the extent you contend that PMP is not entitled to permanent injunctive relief, describe in detail the complete factual and legal basis for Your contention, including but not limited to any contention (i) that PMP has not suffered irreparable injury, (ii) that remedies available at law, such

as monetary damages, are adequate to compensate for that injury, (iii) that considering the balance of hardships between You and PMP, a remedy in equity is unwarranted, and (iv) that the public interest would be disserved by a permanent injunction, and identify the three (3) individuals most knowledgeable of the foregoing subjects, as well as all Documents and things on which You intend to rely to support Your contention.

OBJECTIONS:

Reynolds objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work product doctrine, the common interest privilege, or any other applicable privilege or immunity. Reynolds objects to this interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to any claim or defense in this case to the extent it seeks information relating to Defendants'/Counterclaim Plaintiffs' overly broad definition of the terms "You" and "Your." For instance, this interrogatory seeks information regarding entities on whose behalf Reynolds lacks the authority and information to respond and regarding entities that have no involvement or relevance to any claims or defenses in this action. Reynolds objects to this interrogatory as overly broad, unduly burdensome, and seeking information that is not relevant to any claim or defense in this case to the extent it seeks "all" factual and legal bases for Reynolds's contention that PMP is not entitled to permanent injunctive relief. Reynolds objects to this interrogatory because it is composed of multiple discrete subparts under Fed. R. Civ. P. 33, which, when counted with other interrogatories served by Defendants/Counterclaim Plaintiffs that also contain multiple subparts, exceeds the number of interrogatories permitted by the Rule 16(b) Scheduling Order and the parties' Joint Discovery Plan. *See* Dkt. Nos. 97, 99. Reynolds objects to this interrogatory to the extent it seeks information that is not in Reynolds's possession and/or information that is dependent upon discovery from Defendants and third parties.

RESPONSE:

Subject to and without waiving its objections, Reynolds responds as follows:

Reynolds contends that no injunctive relief should be awarded with respect to any alleged infringement of the PMP asserted patents because the PMP asserted patents are not infringed directly, indirectly, literally, or under the doctrine of equivalents as described in Reynolds's responses to Defendants' Interrogatory No. 1 and in the rebuttal expert reports of Kelly R. Kodama and Jeffrey C. Suhling served March 24, 2021. Moreover, the claims of the PMP asserted patents are invalid under one or more sections of the Patent Act, for the reasons described in Reynolds's responses to Defendants' Interrogatory No. 2 and in the expert invalidity reports of Kelly R. Kodama and Jeffrey C. Suhling served February 24, 2021. Injunctive relief can only be awarded upon a finding of infringement, and there can be no infringement of an invalid patent. *See*, *e.g.*, *Viskase Corp. v. Am. Nat'l Can Co.*, 261 F.3d 1316, 1323 (Fed. Cir. 2001).

Reynolds maintains that PMP must set forth a theory and basis for its requested injunctive relief and explain in detail why PMP allegedly is entitled to such relief. When PMP does so, Reynolds will respond. Reynolds further states that it is premature to identify the three persons most knowledgeable about its contention that PMP is not entitled to injunctive relief because

Reynolds will be formulating those theories in response to PMP's theory and basis for requesting injunctive relief.

Preliminarily, however, Reynolds identifies PMP's request for "[a]n award of damages adequate to compensate PMP for the infringement that has occurred, pursuant to 35 U.S.C. § 284, including prejudgment and post-judgment interest" and other money damages in its prayer for relief in its second amended counterclaims, as well as the Opening Expert Report of Paul K. Meyer, as evidence, should PMP prevail on liability, that PMP has not suffered irreparable injury and that remedies available at law, such as monetary damages, are adequate to compensate PMP for any alleged injury. Reynolds will supplement its response to this interrogatory as discovery on PMP's request for injunctive relief progresses and to the extent that PMP provides its contentions with respect to why it claims to be entitled to injunctive relief for alleged infringement by any Reynolds accused product of any asserted claim of the PMP asserted patents in response to Reynolds's Interrogatory Nos. 23-24 and/or in an expert report.

FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 30 (Apr. 30, 2021):

Subject to and without waiving its objections, Reynolds supplements its response as follows:

I. PMP's Irreparable Harm Theory Relies Exclusively On The Alleged Impact That The Reynolds Accused Products Have On Sales Of IQOS Products, Which Theory Will Disappear If And When The Infringing IQOS Products Are Excluded From The US Market.

PMP rests its new claim of irreparable harm on the notion that sales of the VUSE Solo, Vibe, Ciro, and Alto (collectively, the "Reynolds Accused Products") are somehow impeding the success of, and taking sales away from, the IQOS products. (PMP Resp. to 6th Set of Interrogatories (Nos. 23-24), at 6-7 (April 9, 2021) [hereinafter "PMP Resp."].) As discussed in Part II below, this theory is groundless as a matter of fact, since—according to PMP's own market research and experts before the U.S. International Trade Commission ("ITC")—the abject failure of the IQOS products in the marketplace (and particularly in the United States) has absolutely no relation to the Reynolds Accused Products. Before turning to those facts, however, it is important to note that PMP's entire theory of irreparable harm, and thus its entire claim for injunctive relief, will evaporate should Reynolds prevail in parallel proceedings before the ITC, which will be decided this year.

VUSE products were to be excluded from the marketplace. The Reynolds Accused Products are central to Reynolds's present and future business, Reynolds has invested heavily in these products, and (unlike IQOS) the Reynolds Accused Products have been very successful in the marketplace.

VUSE is Reynolds's flagship e-cigarette product line, and permanent injunction of the Reynolds Accused Products would irreparably harm Reynolds's reputation as an innovator, and in particular Reynolds's recognized standing as a digital vapor technology pioneer, as well as Reynolds's U.S. vapor market share and the goodwill that Reynolds has built up over the years since VUSE was first marketed. Reynolds first entered the U.S. market with the launch of VUSE Solo in 2013, followed by Vibe in 2015, and then Ciro and Alto. (*See, e.g.*, VUSE Website, Devices, https://vusevapor.com/devices (accessed 4/30/2021) ("Vuse has pioneered vapor technology since launching the world's first truly digital vapor cigarette in 2013."); R.J. Reynolds Vapor Company Website, Vapor, https://www.rjrvapor.com/products/vapor (accessed 4/30/2021).)

Upon its release of Solo, significant market analysts noted that VUSE was "technologically interesting," and that "[n]ear-term, [VUSE] clearly raises the competitive stakes[.]" (Morgan Stanley, "Reynolds American Blazing a Digital Vapor Trail with VUSE Launch," 6/6/2013, at 1.) Reynolds was the market share leader from 2015 to 2017 (Levy, David T. *et al.* (2019), "An Economic Analysis of the Pre-Deeming U.S. Market for Nicotine Vaping Products," *Tobacco Regulatory Science*, at 6, and 20, Table 2), and e-vapor developments have been part of Reynolds's "multi-decade track-record of thought-leading innovation" in the U.S. tobacco industry. (Cowen and Company, "MA+Innovation = Structurally Advantaged Growth; Groans Over Guidance Priced In," 8/15/2016, at 1. ("As seen in Figure 1, RAI has a multidecade track-record of thought-

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