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

R.J. REYNOLDS VAPOR COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR ENTRY OF JUDGMENT UNDER RULE 54(b)

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INTRODUCTION

R.J. Reynolds Vapor Company ("RJRV") seeks Federal Rule of Civil Procedure 54(b) judgment on all claims regarding Philip Morris Products S.A.'s ("PMP's") asserted patents (PMP's Counterclaims I and III), which were fully resolved in the Court's Amended Judgment on the jury verdict (Dkt. 1415) and the Court's March 30th judgment regarding equitable relief (Dkt. 1457). All trial and post-trial proceedings relating to PMP's patents are now complete and final. There is no just reason to delay appeal of all issues pertaining to PMP's patents. Indeed, such a delay would be unjust to RJRV, since ongoing royalties continue to accrue and there is a risk of piecemeal appeals relating to PMP's patents—one with respect to the injunction and interrelated merits,[1] and a second appeal for all other issues concerning PMP's patent claims.

Importantly, the requested Rule 54(b) judgment would permit all issues related to PMP's asserted patents to proceed immediately to appeal without waiting for adjudication of the claims and counterclaims pertaining to the five remaining RJRV and RAI Strategic Holdings (together with RJRV, "Reynolds") asserted patents, all of which have been stayed since December 7, 2020 (and some of which were stayed even earlier in June 2020) in light of other pending proceedings. *See* Dkts. 27, 432. While the Court's March 30th Order directed that this case be closed and that the order constituted a final judgment for appellate purposes (Dkt. 1456), given that other claims remain pending, Reynolds respectfully submits that the March 30th judgment (Dkt. 1457) does not constitute a final, appealable judgment.

[1] The Court's denial of PMP's requested injunction is immediately appealable under 28 U.S.C. §§ 1292(a)(1) and 1292(c)(1). The Federal Circuit may also consider related merits determinations, such as those of validity and infringement, that are intertwined with the merits of the injunction request. Even if PMP were to immediately appeal the denial of its injunction request, Rule 54(b) certification would be still be warranted to clearly ensure that all issues with respect to PMP's patents could be appealed simultaneously.

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