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 REPLY TO MOTION FOR ENTRY OF JUDGMENT UNDER RULE 54(b) AND OPPOSITION TO PHILIP MORRIS PRODUCTS S.A.'S CROSS-MOTION TO LIFT THE STAY AS TO U.S. PATENT NO. 9,901,123

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INTRODUCTION

R.J. Reynolds Vapor Company ("RJRV") respectfully requests that this Court enter judgment under Rule 54(b) on the claims relating to Philip Morris Products S.A.'s ("PMP's") asserted patents. PMP does not actually dispute that the requirements for a Rule 54(b) judgment are met. All claims regarding PMP's asserted patents have been fully resolved by way of the judgments at Dkts. 1415 and 1457, and there is no just reason to delay appeal of *all* issues pertaining to those patents. PMP cites no reason as to why this Court should defer entry of judgment.

Instead, PMP raises a separate issue: PMP seeks to partially lift the stay to litigate one of three remaining Reynolds asserted patents (U.S. Patent No. 9,901,123 ("the '123 patent")). But that has no bearing on the Rule 54(b) motion. Even if the stay were partially lifted tomorrow (which it should not be), Rule 54(b) judgment is appropriate now because all issues pertaining to PMP's patents have been adjudicated and should be appealed together. Thus, Reynolds's motion should be granted.

On the question of PMP's cross-motion to partially lift the stay, PMP's requested relief would create piecemeal litigation and may result in multiple additional trials. As a result, that cross-motion should be denied. It is entirely inefficient to lift the stay as to one of three remaining RJRV and RAI Strategic Holdings, LLC (collectively "Reynolds") patents that are all asserted against the same defendants (PMP, Altria Client Services LLC and Philip Morris USA, Inc.[1]), asserted against the same products (IQOS), and concern the same activity (importing, selling, offering for sale, and/or distributing the IQOS system in the United States). *See* Dkt. 52 (Counts

[1] Altria Client Services LLC and Philip Morris USA, Inc. (collectively "Altria"), did not join in PMP's motion, and Reynolds does not know Altria's current position as to whether there should be a partial lifting of the stay.

Three, Four, and Five). This Court stayed the claims as to the '123 patent (and U.S. Patent No. 9,930,915 ("the '915 patent") asserted in the ITC and this action) and then subsequently stayed the "entire action, including all claims and counterclaims" to allow challenges to Reynolds's patents at the Patent Trial and Appeal Board ("PTAB"). Dkt. 432. All three of Reynolds's remaining asserted patents were the subject of PTAB proceedings, and all three are the subject of pending appeals assigned to the same panel in designated "companion cases" before the Federal Circuit (meaning that they will be argued before the same panel and likely decided at or around the same time).

PMP's equitable arguments do not justify lifting of the stay. It made its own strategic decisions as to what grounds of invalidity to assert and in what forum. Moreover, both the '123 and '915 patents are bases for the current ITC exclusion order, so even if PMP were successful in invalidating the '123 patent, it would not affect the exclusion order, contrary to what PMP contends. Thus, the circumstances justifying the stay in December 2020 remain true today. The stay should remain in place pending resolution of the appeals on all three remaining Reynolds patents so that all remaining claims can be litigated and, if needed, tried together.[2]

ARGUMENT

I. JUDGMENT UNDER RULE 54(b) ON PMP'S PATENTS SHOULD BE GRANTED

A. PMP Does Not Contest That The Requirements For Rule 54(b) Are Met

As explained in RJRV's opening memorandum (Dkt. 1480), judgment under Rule 54(b) regarding PMP's asserted patents is appropriate now because both of that Rule's requirements are undisputedly met: (1) all issues pertaining to PMP's asserted patents were resolved in judgments that are effectively final as to those claims, and (2) there is no just reason to delay appeal of all

[2] Reynolds anticipates that the appeals will be decided by Q3 or Q4 of this year, but there is no way to predict that timing with certainty.

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