

**IN THE 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. 1:20-cv-00393-LO-TCB

**PLAINTIFFS' OPPOSITION TO DEFENDANT PHILIP MORRIS PRODUCTS S.A.'S
MOTION FOR LEAVE TO AMEND COUNTERCLAIMS TO ADD INJUNCTIVE RELIEF**

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INTRODUCTION

On June 29, 2020, Defendant Phillip Morris Products, S.A. (“PMP”) lodged counterclaims against Plaintiff R.J. Reynolds Vapor Company (“Reynolds”), asserting infringement of three patents. (Dkt. 40 at ¶¶ 17-46.) PMP was clear in that pleading that the *only* relief it sought to redress Reynolds’s alleged infringement of these patents was money damages. (*Id.* at 44.) PMP made no mention of injunctive relief in those counterclaims, or at any time in the ensuing eight months, even as the Parties pursued extensive fact discovery to prepare this matter for trial. PMP provided no initial disclosures to indicate that it would seek injunctive relief, nor did PMP identify any witness(es) who could support such a claim. In addition, the case was stayed for weeks, during which time PMP easily could have reached out to preview this issue, and to work out a fair adjustment to the schedule that the Parties could propose in order to accommodate any discovery that Reynolds would need. Instead, PMP said nothing. Indeed, even after the stay was lifted and PMP submitted its opening expert reports relating to these counterclaim patents on February 24, 2021, PMP still said *not one word* about injunctive relief. It was not until the evening of Friday, February 26, that PMP first gave notice of its intention “to file a motion for leave to amend its counterclaims to add the remedy of injunctive relief,” seeking to exclude from the market at least one, and perhaps even all, of Reynolds’s widely-used VUSE vaping products. (Ex. 1, Feb. 26, 2021, J. Koh e-mail.) This motion should be denied, for numerous reasons.

First, Federal Rule of Civil Procedure 15 does not permit amendment where it would cause prejudice to the non-moving party. And that is absolutely the case here. Document production in this matter is substantially complete; opening expert reports already have been exchanged; discovery is set to close April 12; and the final pretrial conference will take place before Judge O’Grady on April 16 —preceded by the submission of witness and exhibit lists. In PMP’s own

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