

**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

REDACTED

**PLAINTIFFS' REPLY IN SUPPORT OF SECOND MOTION TO COMPEL
PRODUCTION OF RESPONSIVE DOCUMENTS RELATED TO
DEFENDANTS' '374 PATENT INFRINGEMENT COUNTERCLAIM**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION..... 1

ARGUMENT..... 2

I. This Court Should Compel Defendants to Produce Responsive Documents 2

II. Reynolds’s Second Motion to Compel is Not a Motion for Reconsideration 5

III. Defendants Have Control Over Smart Chip and Minilogic 6

CONCLUSION 7

TABLE OF AUTHORITIES

	Page
CASES	
<i>In re Norfolk S. Ry. Co.</i> , 756 F.3d 282 (4th Cir. 2014)	5
<i>Navient Sols., LLC v. L. Offs. of Jeffrey Lohman, P.C.</i> , No. 119CV461LMBTCB, 2020 WL 6379233 (E.D. Va. Sept. 4, 2020).....	5
<i>Susko v. City of Weirton</i> , No. 5:09-cv-1, 2011 WL 98557 (N.D. W.Va. Jan. 12, 2011).....	4
<i>Tensor L. P.C. v. Rubin</i> , No. 2:18-CV-01490-SVW-SK, 2019 WL 3249595 (C.D. Cal. Apr. 10, 2019)	5

INTRODUCTION

Nothing in Defendants' 22-page opposition to Reynolds's 11-page motion to compel changes the fact that an order compelling Defendants to comply with their discovery obligations with respect to the '374 patent is necessary because Defendants have shown that, left to their own devices, they will frustrate that discovery at every turn, intentionally or not. The sequence has grown familiar: Defendants fail to produce requested documents, offer vague or contradictory responses when Reynolds follows up, point to a belated production when Reynolds seeks the Court's assistance in obtaining Defendants' compliance with the rules of litigation, and then claim Reynolds's motion is moot or meritless. That is exactly what Defendants did in December—before a report from one of Defendant's experts revealed that Defendants had not made a complete production, despite the assurances of Defendants' counsel in filings and statements to this Court. And that is also what they argue now. Once bitten, twice shy: In light of Defendants' pattern of empty promises, the Court should not force Reynolds to take Defendants' word that production is *now* complete, no matter what happened before. Instead, the Court should compel Defendants to live up to their obligations by conducting a complete investigation into the existence of responsive documents and producing those documents before Reynolds is further prejudiced.¹

¹ Defendants claim that the parties were not at an impasse on these issues, but that is incorrect. Rather, when Reynolds pointed out the previously unproduced documents contained in Defendants' expert reports and requested a full production, Defendants responded three days later—and an hour after the Friday motions deadline—with an assertion that Reynolds's position was “wholly without basis.” (Dkt. No. 489, Ex. J.) The parties then met and conferred. Contrary to Defendants' suggestion, Defendants never stated that they would make a further investigation and production, outside of a narrow category of documents concerning the first and last date on which Defendants bought a Smart Chip sensor. *Id.* Defendants' latest change of heart confirms the need for an order compelling Defendants to comply with their discovery obligations.

ARGUMENT

I. THIS COURT SHOULD COMPEL DEFENDANTS TO PRODUCE RESPONSIVE DOCUMENTS

In light of Defendants' past misstatements and incomplete productions, the Court should compel Defendants to conduct a thorough investigation and produce any remaining documents responsive to Reynolds's discovery requests relating to the '374 patent—namely RFPs 278–288 and 293–294. Contrary to Defendants' characterization, Reynolds's motion is not limited to nonmetallic components or a single RFP. (Defs.' Resp. at 7.) Rather, those are simply examples of a much larger problem—Defendants' failure to comply with their discovery obligations with respect to the '374 patent absent a court order.

In November, Reynolds served detailed requests for production on Defendants. (Dkt. No. 489, Ex. A.) Those requests sought, among other things:

- “[a]ll Documents relating to the purchase or acquisition of any technical designs, specifications, manufacturing information, prototypes, intellectual property, or other technological information relating to pressure sensors from Smart Chip Microelectronic or Minilogic Device Corporation” (RFP No. 278);
- “[a]ll Documents relating to pressure sensors, pressure sensor assemblies, or devices containing the same made, designed, purchased, or sold by Smart Chip Microelectronic or Minilogic Device Corporation prior to July 7, 2015” (RFP No. 279);
- technical documents relating to the design, development, operation, engineering, manufacture, specifications, test procedures or structure of any pressure sensor, capacitor diaphragm, source code, or digital controller “used in [Defendants’] MarkTen Products prior to July 7, 2015” (RFP Nos. 281–285);
- “[a]ll Documents concerning puff sensors made by Weifang Qinyi Electron Science & Technology Co., Ltd.” or “by Hangzhou Toll Microelectronic Co., Ltd., f/k/a Hangzhou Sungol Technology Co., Ltd., prior to July 7, 2015” (RFP No. 286–287);
- “[d]ocuments sufficient to show each puff sensor known to ACS or its affiliates and in public use or on sale prior to July 7, 2015” (RFP No. 288); “[a]ll Documents concerning the awareness of” the inventor, inventor’s attorneys, individuals associated with ACS, or any other individuals involved in the prosecution of the '374 patent of puff sensors in public use or on sale prior to July 7, 2015” (RFP No. 293); and

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