

**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

**COUNTERCLAIM PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION TO  
COMPEL REYNOLDS' 30(b)(6) DEPOSITION ON TOPICS 28, 54, AND 78**

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## I. INTRODUCTION

Fact discovery in this case closes in ten days. Yet Counterclaim Defendant R.J. Reynolds Vapor Company (“Reynolds” or “RJR”) refuses to provide witnesses on several 30(b)(6) deposition topics—topics outstanding since October and November 2020—seeking undisputedly discoverable and relevant information. Reynolds’ continued stone-walling on facially relevant discovery must stop, and the Court should compel Reynolds to provide the requested testimony.

*First*, Reynolds should be compelled to provide a fully prepared witness on Topic 28 directed to [REDACTED]. Reynolds produced Mr. Nicholas Gilley to testify on this topic, but Mr. Gilley was indisputably unprepared to testify on the full scope of the topic. He had no personal knowledge of [REDACTED], [REDACTED] and instead [REDACTED]

[REDACTED] Ex. 1 (Gilley Dep.) at 214:5-217:2. Mr. Gilley was unable to testify, for example, about Reynolds’ analyses and assessment of the consideration, any internal communications or communications with [REDACTED], or negotiations leading to the agreement. Counterclaim Plaintiffs are entitled to a fully prepared witness on the [REDACTED], [REDACTED] [REDACTED].

*Second*, Reynolds must also make Mr. Gilley available for a one-hour personal fact deposition on the subject matter of his discussion with Reynolds’ damages expert, which occurred months after Mr. Gilley’s December 2020 deposition. During that conversation, Mr. Gilley provided information about [REDACTED]

[REDACTED] Ex. 2 (Sullivan Rbt. Rpt.) at Attachment 8. However, until Reynolds served its rebuttal damages expert report on March 23, 2021, Reynolds provided no information about, or notice to Counterclaim Plaintiffs, on

██████████ Counterclaim Plaintiffs should be able to explore Mr. Gilley’s knowledge on ██████████, which did not become a disputed issue until months after his initial deposition.

*Third*, Reynolds must provide a witness on Topic 54 directed at non-infringing alternatives for the ’556 patent. Reynolds’ technical expert, Mr. Kodama, contends ██████████ ██████████ ██████████. Reynolds, however, refuses to provide a corporate designee on Reynolds’ knowledge of the features its expert contends are “comparable.” Counterclaim Plaintiffs are entitled to explore fully Reynolds’ corporate knowledge of the facts pertaining to Reynolds’ own products that underlie the factual underpinnings of Mr. Kodama’s assertions regarding non-infringing alternatives.

*Fourth*, Reynolds must provide a witness on Topic 78, which relates to Reynolds’ ██████████ ██████████ ██████████ Counterclaim Plaintiffs contend—and Reynolds disputes—██████████ ██████████, and are therefore relevant to damages, validity (secondary considerations of nonobviousness), and willfulness. Reynolds produced documents—which both parties’ experts rely on—showing that ██████████ but Reynolds refuses to produce a witness to testify about its knowledge of ██████████. Reynolds cannot refuse to provide a witness on this topic, which covers its own documents and is undisputedly relevant to multiple important issues in this case.

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<sup>1</sup> Nu Mark is a former e-vapor operating company of Altria Group, Inc., the parent company of Counterclaim Plaintiffs Philip Morris USA Inc. and Altria Client Services LLC.

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