

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
SUBJECT TO PROTECTIVE ORDER**

**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. 1:20cv00393-LO-TCB

**REDACTED
FILED UNDER SEAL**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' PARTIAL MOTION TO STAY
FURTHER PROCEEDINGS ON THE CLAIM OF PHILIP MORRIS PRODUCTS S.A.
SEEKING INJUNCTIVE RELIEF**

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I. INTRODUCTION

Since the Court entered its Order on March 12, 2021 (Dkt. No. 483), allowing Defendant Philip Morris Products S.A. (“PMP”) to add a claim for injunctive relief relating to its allegation that three PMP patents are infringed by Reynolds’s VUSE line of vaping products, the parties have been hard at work on injunction-related discovery. But much remains to be done, both in terms of fact discovery around the bases for PMP’s claims on each of the *eBay* factors and (at least for Reynolds) expert discovery to rebut those claims. On May 14, 2021, however, the presiding Administrative Law Judge issued a decision in the parallel proceedings before the International Trade Commission (“ITC”) [REDACTED]

[REDACTED].

Specifically, Administrative Law Judge Clark S. Cheney issued a 132-page Initial Determination in the ITC Investigation, finding that Defendants infringe [REDACTED] Reynolds’s U.S. Patent No. 9,901,123 (the “Robinson ’123 patent”) and [REDACTED] Reynolds’s U.S. Patent No. 9,930,915 (the “Worm ’915 patent”), and that those patents are not invalid. (See 5/14/2021 Initial Determination, attached as Ex. A, at 25-64, 99-100, 131.) Accordingly, Defendants violate Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1337(a)(1)-(2), [REDACTED]

[REDACTED] (Id. at 131.)

[REDACTED]. (Id. at 125-26.) PMP’s claim for an injunction in this case [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] Reynolds respectfully requests that the Court issue an order staying any further proceedings, including fact and expert discovery, relating to PMP's claim for injunctive relief pending the full Commission's decision. The requested stay will conserve resources for all parties and the Court, as they work to prepare this matter for trial on the merits. Moreover, the stay will not prejudice Defendants in any way. The decision of the full Commission is expected in September 2021, so the requested stay is of limited duration. And, as Defendants have assured the Court previously, there is no need for discovery around injunctive relief issues to be completed before a trial on the merits of the underlying patent claims.

II. STATEMENT OF FACTS

A. PMP's Claims Of Irreparable Harm And Inadequate Remedy At Law Are

[REDACTED]

Shortly after PMP was allowed to add its claim for injunctive relief, Reynolds served Interrogatory No. 23, seeking a complete description of PMP's contentions on each of the injunction factors as to which it bears the burden of proof under *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 291 (2006). Specifically, Reynolds asked:

[Interrogatory No. 23.] Separately for each of the [PMP counterclaim patents], describe the complete factual and legal basis

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