

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RAI STRATEGIC HOLDINGS, INC. and
R.J. REYNOLDS VAPOR COMPANY,

Plaintiffs,

v.

ALTRIA CLIENT SERVICES LLC; PHILIP
MORRIS USA INC.; and PHILIP MORRIS
PRODUCTS S.A.

Defendants.

Civil Action No. 1:20-cv-393



**PHILIP MORRIS PRODUCTS S.A.'S OPPOSITION TO REYNOLDS'
PARTIAL MOTION TO STAY INJUNCTIVE RELIEF DISCOVERY**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
III. REYNOLDS’ REQUEST FOR A STAY OF REMAINING INJUNCTION DISCOVERY SHOULD BE DENIED	4
A. A Stay Of The Nearly Complete Injunction Discovery Would Be Inefficient And Unproductive.....	5
B. The Outcome Of The ITC Proceedings As To PMP’s IQOS Product Is Far From Final.....	6
1. The ITC IQOS Investigation Is Still Ongoing	6
2. The Public Interest Review In The ITC IQOS Investigation Is Ongoing.....	8
3. Any Finding Of A Violation By The Commission Would Be Subject To Presidential Review	9
4. The Commission’s Final Determination Is Subject To Appellate Review	10
C. PMP’s Injunction Demand Would Not Be Mooted By An ITC IQOS Exclusion Order	10
IV. CONCLUSION.....	13

TABLE OF AUTHORITIES

Page(s)

CASES

Amgen Inc. v. Sandoz Inc.,
 No. 16-cv-02581-RS (MEJ), 2017 WL 3641813 (N.D. Cal. Aug. 24, 2017) 4

Amkor Tech, Inc. v. ITC,
 692 F.3d 1250 (Fed. Cir. Aug. 22, 2012) 10

Certain Automatic Crankpin Grinders, Inv.
 No. 337-TA-60, 0079 WL 419349 (Dec. 1979)..... 9

Certain Baseband Processor Chips & Chipsets, Transmitter & Receiver (Radio) Chips, Power Control Chips, & Prods. Containing Same, Including Cellular Tel. Handsets,
 Inv. No. 337-TA-543, 2007 WL 9676556, (June 19, 2007)..... 9

Certain Inclined Field Acceleration Tubes,
 Inv. No. 337-TA-67, 0080 WL 594319 (Dec. 1980)..... 8

Certain Male Prophylactic Devices,
 Inv. No. 337-TA-546, 2008 WL 2952724 (May 2008)..... 7

Certain Personal Data & Mobile Commc’ns Devices & Related Software,
 Inv. No. 337-TA-710, 2011 WL 12488979 (Dec. 29, 2011)..... 9

Certain Television Sets, Television Receivers, Television Tuners, & Components Thereof,
 Inv. No. 337-TA-910, 2015 WL 13818922 (Feb. 27, 2015)..... 9

Crocs, Inc. v. ITC,
 598 F.3d 1294 (Fed. Cir. Feb. 24, 2010) 10

Elec. Connectors, Components Thereof, & Prods Containing the Same,
 Inv. No. 337-TA-1043, Comm’n Op., 2019 WL 9596562 (Sept. 5, 2019)..... 7

Kreb v. Jacksons Food Stores, Inc.,
 No. 3:16-cv-00444-REB, 2020 WL 497156 (D. Idaho Jan. 30, 2020) 12

Lamon v. City of Shawnee,
 No. 88-4200-S, 1990 WL 120831 (D. Kan. Jul. 10, 1990) 4

LG Elecs. MobileComm USA v. ITC,
 243 F. App’x 598 (Fed. Cir. 2007)..... 9, 10

Techtronic Indus. Co. v. ITC,
 944 F.3d 901 (Fed. Cir. Dec. 12, 2019)..... 10

Vizio Inc. v. ITC,
605 F.3d 1330 (Fed. Cir. 2010) 9

RULES

19 C.F.R. § 210.42(a)(1)(ii)(A) 6
19 C.F.R. § 210.42(h) 7
19 C.F.R. § 210.42(i) 7
19 C.F.R. § 210.45(c)..... 7
19 C.F.R. § 210.50 8
19 C.F.R. § 210.50(a)(2)..... 8
19 C.F.R. § 210.50(a)(4)..... 8
19 C.F.R. § 210.50(a)(4)(v) 8
19 U.S.C. § 1337(d) 8
19 U.S.C. § 1337(j)..... 9

I. INTRODUCTION

Reynolds' request that injunction-related discovery be stayed at this juncture makes no sense. The parties have worked diligently to complete all fact discovery—including injunction fact discovery—and are within weeks of doing so. First, PMP and Reynolds have agreed to complete their injunction-related document productions by June 7.¹ Second, just three fact witnesses remain to be deposed—two of which will be deposed regardless of any stay because they are also relevant to liability and damages issues. Although Reynolds stonewalled in providing a deposition date for its one remaining witness—presumably hoping the forthcoming ITC Initial Determination might bolster its case for delay—Reynolds has now stipulated to make its remaining witness available for deposition on June 24 in response to PMP's motion to compel. Deposition discovery will be completed by June 25. Efficiency dictates that the parties complete this limited additional injunction fact discovery now.

Like its bloated portrayal of the remaining discovery effort, Reynolds exaggerates the current posture of the ITC case. Reynolds would have the Court believe that the ITC proceedings are all but over. But that is far from the truth. The ALJ's *Initial Determination* is chock full of fact and legal issues, both of which will be considered *de novo* by the Commission and scrutinized during the course of at least three more levels of potential review.² And, as Reynolds knows well,

¹ The Court has not authorized or scheduled expert discovery, nor would such discovery be typical for injunction proceedings. Rather, such proceedings are typically handled through post-trial briefing and declarations, as needed. In any event, whatever process the Court orders regarding experts can readily be accomplished in post-trial proceedings.

² The ALJ rejected Reynolds' claims as to one of its three patents, and there are numerous factual and legal errors that will be addressed regarding its other two patents during the Commission and subsequent review processes. Additionally, the ALJ's factual and legal recommendations—on both technical and public interest issues—will be considered *de novo* by the Commission. The public interest issue spans all three of the patents, and alone warrants reversal of the ALJ's Initial Determination.

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