

**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

**OPPOSITION TO PLAINTIFF/COUNTERCLAIM DEFENDANT  
R.J. REYNOLDS VAPOR COMPANY'S MOTION TO SEVER DEFENDANTS'  
INFRINGEMENT COUNTERCLAIMS AND TRANSFER THEM TO THE  
MIDDLE DISTRICT OF NORTH CAROLINA**

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	3
A. The Parties and Their Development of Smoking Alternative Products.....	3
1. Defendants’ Development of IQOS.....	3
2. RJR’s Development of VUSE .....	4
B. RJR Sues ACS, PM USA, and PMP in the ITC and EDVa.....	5
C. RJR Concedes That There Are Overlapping Issues Between the Accused Products in RJR’s Claims and in Defendants’ Counterclaims in EDVa .....	6
D. ACS and Another Subsidiary File an Unrelated Suit in North Carolina .....	6
III. ARGUMENT .....	7
A. Severance of Defendants’ Counterclaims Is Not Warranted .....	7
1. The Issues Sought to Be Tried Are Not Significantly Different.....	7
2. The Issues Will Involve Overlapping Witnesses and Evidence .....	9
3. Defendants Will Be Prejudiced If Severance Is Granted.....	10
4. RJR Will Not Be Prejudiced If Severance Is Not Granted .....	11
B. The Case Should Not Be Transferred to MDNC .....	12
1. Defendants’ Choice of Venue Is Entitled to Substantial Deference.....	13
2. Witness Convenience and Access.....	14
3. Convenience of the Parties.....	15
4. Interest of Justice .....	17
5. PMP Has No Connection to MDNC.....	20
IV. CONCLUSION.....	20

**TABLE OF AUTHORITIES****Cases**

<i>A&amp;E Prods. Grp. L.P. v. Accessory Corp.</i> , No. 00 CIV. 7271(LMM), 2002 WL 1041321 (S.D.N.Y. May 23, 2002) .....	7
<i>Acterna, LLC v. Adtech, Inc.</i> , 129 F. Supp. 2d 936 (E.D. Va. 2001) .....	16
<i>Adiscov, LLC v. Autonomy Corp., PLC</i> , No. 2:11cv201, 2011 WL 11536971 (E.D. Va. Jun. 9, 2011) .....	16
<i>Allstate Ins. Co. v. Electrolux Home Prods., Inc.</i> , No. 4:16-cv-03666-RBH, 2017 WL 2216298 (D.S.C. May 19, 2017).....	7
<i>Automated Tracking, Solutions, LLC v. Validfill, LLC</i> , No. 3:15cv142-HEH, 2015 WL 9025703 (E.D. Va. Dec. 15, 2015).....	16
<i>Baergas v. New York</i> , No. 04CIV2944(BSJ) (HBP), 2005 WL 2105550 (S.D.N.Y. 2005) .....	7
<i>Bel IP LLC v. Boomerangit Inc.</i> , No. 2:11-cv-188, 2011 WL 13228481 (E.D. Va. Aug. 26, 2011) .....	11
<i>Broadcom Corp. v. Sony Corp.</i> , No. 16-1052 JVS (JCGx), 2016 WL 9108039 (C.D. Cal. Dec. 20, 2016) .....	9, 10, 11
<i>Brooks v. S.C. Dept. of Corrections</i> , No. 2:18-00721-TMC-MGB, 2020 U.S. Dist. LEXIS 102989 (D. S.C. Apr. 14, 2020).....	14
<i>Capital Sec. Sys., Inc. v. ABNB Fed. Credit Union</i> , No. 2:14cv265, 2014 WL 5334270 (E.D. Va. Oct. 20, 2014) .....	16
<i>Chrysler Credit Corp. v. Country Chrysler, Inc.</i> , 928 F.2d 1509 (10th Cir. 1991) .....	12
<i>Cobalt Boats, LLC v. Sea Ray Boats, Inc.</i> , No. 2:15-cv-21, 2015 WL 1800274 (E.D. Va. Apr. 16, 2015).....	16
<i>Collins v. Straight, Inc.</i> , 748 F.2d 916 (4th Cir. 1984) .....	13
<i>comScore, Inc. v. Integral Ad Sci., Inc.</i> , 924 F. Supp. 2d 677 (E.D. Va. 2013) .....	15, 16
<i>Contract Sec. Forces v. Phila. Indem. Ins. Co.</i> , No. 1:17-cv-00814-LO-TCB, 2017 WL 115101506 (E.D. Va. Sept. 29, 2017) .....	14

*Cornerstone Sys., Inc. v. Prestress Servs. Indus. of Tenn., LLC*,  
 No. 2:15-cv-02255-JPM-cgc, 2016 WL 367829 (W.D. Tenn. Jul. 7, 2016) ..... 20

*CVI/Beta Ventures, Inc. v. Custom Optical Frames, Inc.*,  
 896 F. Supp. 505 (D. Md. 1995)..... 9

*Dantzler-Hoggard v. Graystone Acad. Charter Sch.*,  
 No. 12-0536, 2012 WL 2054779 (E.D. Pa. Jun. 6, 2012)..... 11

*Gen. Elec. Co. v. Marvel Rare Metal Co.*,  
 287 U.S. 430 (1932)..... 14

*Georgia-Pacific Corp. v. U.S. Plywood Corp.*,  
 318 F. Supp. 1116 (S.D.N.Y. 1970)..... 10

*Global Tel\*Link Corp. v. Securus Techs., Inc.*,  
 No.3:13-CV-713, 2014 WL 860609 (E.D. Va. Mar. 5, 2014)..... 16

*Gulf Oil v. Gilbert*,  
 330 U.S. 501 (1946)..... 13

*Heinz Kettler GMBH & Co. v. Razor USA, LLC*,  
 750 F. Supp. 2d 660 (E.D. Va. 2010) ..... 12, 13, 16, 17

*HollyAnne Corp. v. TFT, Inc.*,  
 199 F.3d 1304 (Fed. Cir. 1999)..... 15

*Intellectual Ventures I LLC v. Capital One Finance Corp.*, No PWG-14-111, 2014 WL 979198  
 (S.D. Md. Mar. 12, 2014)..... 19

*Jalin Realty Capital Advisors, LLC v. A Better Wireless, NISP, LLC*,  
 No. 11-0165, 2012 WL 838439 (D. Minn. Mar. 12, 2012) ..... 14

*JM & GW Enters. v. Matworks Co. LLC*,  
 No. PJM 18-3650, 2019 WL 2436751 (D. Md. June 11, 2019) ..... 7

*JTH Tax, Inc. v. Lee*,  
 482 F. Supp. 2d 731 (E.D. Va. 2007) ..... 15

*Kraft Foods Holdings, Inc. v. Proctor & Gamble Co.*,  
 No. 07-cv-613-jcs, 2008 WL 4559703 (W.D. Wis. Jan. 24, 2008)..... 9

*Lycos, Inc. v. TiVo, Inc.*,  
 499 F. Supp. 2d 685 (E.D. Va. 2007) ..... 19

*Merial Ltd. v. Cipla Ltd.*,  
 681 F.3d 1283 (Fed. Cir. 2012)..... 13

*Mylan Pharms. Inc. v. Am. Safety Razor Co.*,  
265 F. Supp. 2d 635 (N.D.W. Va. 2002) ..... 12

*N. Jersey Media Grp., Inc. v. Fox News Network, LLC*,  
312 F.R.D. 111 (S.D.N.Y. 2015) ..... 12

*Pragmatus AV, LLC v. Facebook, Inc.*,  
769 F. Supp. 2d 991 (E.D. Va. 2011) ..... 16

*Samsung Elecs. Co. v. Nvidia Corp.*,  
No. 3:14cv757, 2015 WL 13723075 (E.D. Va. May 19, 2015)..... 9, 15

*Sony Music Entm’t v. Cox Commc’ns, Inc.*,  
No. 1:18-cv-950, 2018 WL 6059386 (E.D. Va. Nov. 19, 2018) ..... 19

*SRC Labs, LLC v. Microsoft Corp.*,  
No. 1:17-cv-1172, 2018 WL 10425506 (E.D. Va. Feb. 26, 2018) ..... 16

*Stewart Org., Inc. v. Ricoh Corp.*,  
487 U.S. 22 (1988)..... 17

*Teva Pharm. USA, Inc. v. Mylan Pharm., Inc.*,  
No. 1:17CV7, 2017 WL 958324 (N.D. W.Va. Mar. 10, 2017) ..... 19

*Trs. of the Plumbers & Pipefitters Nat’l Pension Fund v. Plumbing Servs., Inc.*,  
791 F.3d 436 (4th Cir. 2015) ..... 12, 14

*United Mine Workers of Am. v. Gibbs*,  
383 U.S. 715 (1966)..... 10

*Va. Innovation Scis., Inc. v. Samsung Elecs. Co.*,  
928 F. Supp. 2d 863 (E.D. Va. 2013) ..... 15

*Verizon Online Servs., Inc. v. Ralsky*,  
203 F. Supp. 2d 601 (E.D. Va. 2002) ..... 12

*Winner Int’l Royalty Corp. v. Wang*,  
202 F.3d 1340 (Fed. Cir. 2000)..... 12

**Statutes**

28 U.S.C. § 1404(a) ..... 12

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.