

**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**

**MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTION *IN LIMINE* NO. 9 TO  
EXCLUDE EVIDENCE, ARGUMENT, OR TESTIMONY RELATING TO INCORRECT  
IMAGES, DIAGRAMS, DRAWINGS, OR DESCRIPTIONS OF THE VUSE ALTO  
CARTRIDGE**

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## INTRODUCTION

RAI Strategic Holdings, Inc. and R.J. Reynolds Vapor Company (“Reynolds”) respectfully move *in limine* to preclude Altria Client Services LLC (“ACS”), Philip Morris USA, Inc. (“PM USA”), and Philip Morris Products S.A. (“PMP”) (collectively, “PM/Altria”) from introducing any evidence or argument relating to incorrect images, diagrams, drawings, or descriptions of the VUSE Alto cartridge; [REDACTED]; or any testimony relating to incorrect images, diagrams, drawings, or descriptions of the VUSE Alto cartridge.

## BACKGROUND

PMP asserts U.S. Patent No. 10,104,911 (the “911 patent”) against Reynolds’s VUSE Alto product. Reynolds has sold its VUSE Alto product, which includes a power unit and disposable liquid-containing cartridges, since August 2018. Ex. 2 at 299:2-8. Reynolds [REDACTED]; [REDACTED]; [REDACTED]. *See id.* at 51:20-52:3.

Before this litigation, Reynolds had received [REDACTED]; [REDACTED]; [REDACTED]. *Id.* at 356:4-7. Believing [REDACTED] to be accurate, [REDACTED]; [REDACTED]. *Id.* at 312:18-314:3. And during fact discovery in this case, on October 16, 2020, Reynolds [REDACTED]; [REDACTED] (RJREDVA\_001281360; RJREDVA\_001526194-95), [REDACTED]; [REDACTED]. To illustrate the design and structure of the

VUSE Alto cartridge as sold, Reynolds also produced other documents and things, [REDACTED] [REDACTED] (RJREDVA\_001449207) as well as physical samples of the VUSE Alto product itself (PPHYS026-PPHYS035).

In February 2021, Reynolds discovered that the [REDACTED] [REDACTED] Ex. 2 at 314:4-20. Specifically, [REDACTED] [REDACTED] *Id.* [REDACTED] was pertinent to PMP’s claim for infringement of the ’911 patent, which requires, in part, a structure having “at least one cavity” that is “a blind hole.” ’911 patent at 18:18-23. Upon discovering this inaccuracy, Reynolds [REDACTED] and immediately produced it to PM/Altria (RJREDVA\_001642024). Reynolds also immediately withdrew its identification of the previously-produced [REDACTED] in its interrogatory responses. *See* Ex. 5, Reynolds’s 4th Supp. Response to PM/Altria’s Second Set of Interrogatories (No. 16), served February 19, 2021. In addition, Reynolds designated a corporate witness, Mr. Eric Hunt, to provide deposition testimony over the course of three hours and eighteen minutes regarding [REDACTED] Ex. 2 at 297:18-298:9; *see generally id.* at 293:2-485:12; Ex. 1. Mr. Hunt testified that [REDACTED] (RJREDVA\_001281360; RJREDVA\_001526194-95) [REDACTED] [REDACTED] (RJREDVA\_001642024) [REDACTED] Ex. 2 at 344:20-346:3, 347:13-18, 351:3-13.

Following Reynolds’s production of [REDACTED] the supplemental response to Interrogatory No. 16, and the additional corporate deposition testimony

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