

**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

**REYNOLDS'S MEMORANDUM IN SUPPORT OF REYNOLDS'S MOTION *IN*
LIMINE NO. 10 TO EXCLUDE EVIDENCE OR ARGUMENT THAT REYNOLDS
INFRINGED OR HAS BEEN ACCUSED OF INFRINGING THIRD-PARTY PATENTS**

TABLE OF CONTENTS

| | Page |
|--|-------------|
| INTRODUCTION | 1 |
| BACKGROUND | 1 |
| ARGUMENT | 2 |
| I. ANY EVIDENCE OR ARGUMENT OF THIRD-PARTY INFRINGEMENT ACTIONS AGAINST REYNOLDS SHOULD BE EXCLUDED | 3 |
| II. A LIMITED CARVE-OUT IS WARRANTED FOR DAMAGES ONLY | 6 |
| CONCLUSION..... | 8 |

TABLE OF AUTHORITIES

| | Page |
|--|-------------|
| CASES | |
| <i>Averitt v. Southland Motor Inn</i> 720 F.2d 1178 (10th Cir. 1983) | 5 |
| <i>Crawford v. Yellow Cab Co.</i> , 572 F. Supp. 1205 (N.D. Ill. 1983) | 5 |
| <i>Fontem Ventures B.V. v. R.J. Reynolds Vapor Co.</i> , No. 1:16-cv-01255-CCE-JEP (M.D.N.C. Apr. 4, 2016)..... | 2 |
| <i>LaserDynamics, Inc. v. Quanta Computer, Inc.</i> , 694 F.3d 51 (Fed. Cir. 2012)..... | 4 |
| <i>Luce v. United States</i> , 469 U.S. 38 (1984)..... | 3 |
| <i>Novartis Pharms. Corp. v. Teva Pharms. USA, Inc.</i> , No. 05-CV-1887 (DMC), 2009 WL 3754170 (D.N.J. Nov. 5, 2009)..... | 3, 5 |
| <i>Ross v. Am. Red Cross</i> , No. 2:09-cv-00905-GLF-MRA, 2012 WL 2004810 (S.D. Ohio June 5, 2012), <i>aff'd</i> , 567 F. App'x 296 (6th Cir. 2014)..... | 4, 5 |
| <i>Schenone v. Zimmer, Inc.</i> , No. 3:12-cv-1046-J-39MCR, 2014 WL 12619911 (M.D. Fla. Aug. 27, 2014)..... | 3 |
| <i>United States v. AseraCare Inc.</i> , No. 2:12-CV-245-KOB, 2015 WL 5444124 (N.D. Ala. Sept. 15, 2015)..... | 4 |
| OTHER AUTHORITIES | |
| 1 McCormick On Evid. § 186 (8th ed.) | 5 |
| E.D. Va. L.R. 7(E) | 2 |
| Fed. R. Evid. 401 | 3 |
| Fed. R. Evid. 402 | 3 |

TABLE OF AUTHORITIES
(continued)

| | Page |
|-------------------------|-------------|
| Fed. R. Evid. 403 | 3, 4, 6, 7 |
| Fed. R. Evid. 404 | 3, 4, 5 |
| Fed. R. Evid. 801 | 5 |
| Fed. R. Evid. 802 | 3, 5 |

INTRODUCTION

RAI Strategic Holdings, Inc. (“RAI”) and R.J. Reynolds Vapor Company (“RJR”) (collectively “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 that Reynolds infringed or has been accused of infringing third-party patents. It would be irrelevant and unfairly prejudicial for PM/Altria to refer to third-party infringement allegations against Reynolds, to insinuate that Reynolds has infringed any such patents, or to suggest that Reynolds is a serial infringer.

Reynolds recognizes that one limited carve-out from such preclusion is appropriate. Specifically, given each side’s discussion of the Reynolds litigation settlement agreement with third-party Fontem Ventures B.V. and Fontem Holdings 1 B.V. (collectively, “Fontem”), that agreement and the underlying litigation may be referenced for the sole purpose of the damages analysis. Reynolds similarly is willing to limit its discussion of Fontem’s allegations of infringement against [REDACTED] [REDACTED] to the extent that the [REDACTED] Settlement Agreement is deemed relevant to and admissible for purposes of any damages analysis.¹

BACKGROUND

Reynolds filed its patent infringement complaint on April 9, 2020, as amended July 13, 2020. (Dkt. Nos. 1, 52.) In response, PM/Altria filed counterclaims of infringement and willful

¹ PM/Altria’s damages expert’s reliance on the 2016 “U.S. Settlement and License Agreement between [REDACTED],” PX-124, (“[REDACTED] Settlement Agreement”) is the subject of a concurrently filed motion to exclude certain testimony of Paul K. Meyer.

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.