

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RAI STRATEGIC HOLDINGS, INC.,)	
)	
et al.,)	Civil Action
)	No. 1:20-cv-00393-LO-TCB
Plaintiffs,)	
)	November 18, 2020
v.)	1:00 p.m.
)	
ALTRIA CLIENT SERVICES, LLC,)	
)	
et al.,)	
)	
Defendants.)	

**TRANSCRIPT OF MARKMAN HEARING PROCEEDINGS
BEFORE THE HONORABLE LIAM O'GRADY,
UNITED STATES DISTRICT COURT JUDGE**

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1 And if you go to the next page now, bill, you see
2 Allowable Subject Matter, Claim 26, allowed. That's why Claim 26
3 was initially removed and then added back, Your Honor. There is
4 no basis to exclude air, anything between the plate. Your Honor,
5 there is absolutely no basis to exclude all electret layers from
6 this claim. Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 MR. LAUD: Two more terms for this patent, Your Honor.

9 THE COURT: Yes, sir.

10 MR. LAUD: The next one, I'll be brief. Detect a Blowing
11 Action. If Your Honor's read the briefs, you'll understand there
12 isn't much of a dispute on this term between the parties at this
13 point.

14 Our construction, we believe -- if you go to the next
15 slide, Matt -- we're not intending to alter the meaning of the
16 phrase in the claim. We simply want what we believe is a plain
17 and ordinary construction of that. But as we pointed out in our
18 opening brief, Your Honor, the infringement contentions that we
19 received from the other side lead us to believe or led us to
20 believe that they were taking a very different view of that
21 requirement.

22 In their response brief, they say we are not trying to
23 read that limitation out of the claims. Let me back up and
24 explain. So, the claim requires sensing the rate and direction
25 of airflow, detecting a drawing action, an inhale based on the

1 rate and direction of air flow, detect a blowing action based on
2 the same thing, and then actuate the heater for the drawing
3 action but not the blowing action.

4 So it's detect both conditions and only actuate for one.

5 Now, our understanding from their infringement contentions
6 was that you didn't actually need to detect the blowing action.
7 If your device, like ours, simply didn't know that a blowing
8 action was happening because it can't distinguish blowing from
9 nothing happening at all, then we understood them to believe that
10 that meant our device still infringed the patent because they
11 were reading this out. If they're going to stand by the
12 representations in their responsive claim construction brief that
13 the device really does have to detect something, then we're fine
14 with the plain and ordinary meaning of the claim term, but it's
15 that understanding that's really important to us, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. NAPLES: I guess, Your Honor, I appreciate them trying
18 to rewrite the claim to avoid infringement. If they're saying
19 they agree with the plain and ordinary meaning, I'll just sit
20 down.

21 Is that what you agree with? Or I can continue to argue,
22 Your Honor. But changing "detect" to "determine" is obviously
23 not proper. The claims use the words differently, the
24 specification repeatedly says you're going to detect this blowing
25 action. We don't think any construction is necessary.

1 THE COURT: They got the sense that you were trying to
2 read out the word "detect".

3 MR. NAPLES: We're not, Your Honor.

4 THE COURT: All right. Does that bring us back to plain
5 and ordinary meaning then?

6 MR. LAUD: Yes, Your Honor, with the understanding that
7 the device has to detect something and can't simply -- it's not
8 the actuation that tells you whether it detected it, it has to
9 detect something. There must be a requirement there. That's our
10 purpose, and maybe it would help if I showed you what is in their
11 infringement contentions. That might help to clarify the issue.
12 I proposed something, and I think Mr. Naples proposed something
13 slightly different, which is that --

14 THE COURT: You wanted to define the term "detect" now.

15 MR. LAUD: So, we proposed a construction that "detect"
16 means determine the presence of something. So, for example, if I
17 hear my wife say, Hey, honey, and I ignore her, that's detecting
18 her saying that, and then not doing anything in response to that.
19 If I can't hear her because I have headphones on, that's a
20 different thing. I'm not detecting her telling me, Hey, honey.
21 That's the point, Your Honor.

22 THE COURT: Okay.

23 MR. NAPLES: Your Honor, our -- their construction is
24 "determine the presence of a blowing action at a mouthpiece."
25 The claim requires "detecting a blowing action," okay. As long

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