

EXHIBIT 5

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**

APPEARANCES:

For the Plaintiffs:	Charles Bennett Molster, III, Esq.
	The Law Offices of Charles B. Molster III, PLLC 2141 Wisconsin Ave NW, Suite M Washington, DC 20007 703-346-1505 Email: Cmolster@molsterlaw.com

William E. Devitt, Esq.
Jones Day
77 West Wacker, Suite 3500
Chicago, Illinois 60601-1692
312-269-4240
Email: Wdevitt@jonesday.com

John A. Marlott, Esq.
Jones Day
77 West Wacker, Suite 3500
Chicago, Illinois 60601-1692
312-269-4326
Email: Jamarlott@jonesday.com

APPEARANCES: Cont.

For the Plaintiffs:

Geoffrey K. Gavin, Esq.

Jones Day
1420 Peachtree Street, N.E.,
Suite 800
Atlanta, Georgia 30309-3053
404-521-3939
Email: Ggavin@jonesday.com

Sanjiv Prakash Laud, Esq.

Jones Day
90 South Seventh Street,
Suite 4950,
Minneapolis, MN, 55402
612-217-8800
Email: Slaud@jonesday.com

For the Defendants:

Maximilian Antony Grant, Esq.

Latham & Watkins LLP (DC)
555 11th St NW, Suite 1000
Washington, DC 20004-1304
202-637-2200
Email: Max.grant@lw.com

Thomas W. Yeh, Esq.

Latham & Watkins LLP (CA)
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
213-891-8050
Email: Thomas.yeh@lw.com

Clement Joseph Naples, Esq.

Latham & Watkins, LLP
885 Third Avenue 25th Floor
New York, NY 10022
212-906-1200
Email: Dement.naples@lw.com

Gregory K. Sobolski, Esq.

Latham & Watkins, LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111-6538
202-637-2267
Email: Max.grant@lw.com

APPEARANCES: (Cont.)

Court Reporter: **Scott L. Wallace, RDR, RMR, CRR**
Official Court Reporter
United States District Court
401 Courthouse Square
Alexandria, VA 2231-5798
703.549.4626
scottwallace.edva@gmail.com

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

1 Now, counsel also -- you heard him say this is a
2 consisting essentially of term. It's not a consisting of term
3 because you saw some plain language that used that. This is a
4 consisting essentially of term.

5 Go to the next one, Bill. And everyone agrees that this
6 is the standard for excluding something in a consisting
7 essentially of term. It has to be something that materially
8 affects the basic and novel properties of the invention.

9 And you didn't hear anything from counsel and there's
10 nothing in their brief that tells you what the basic and novel
11 properties of the invention are. So what they're really doing is
12 trying to skip this and jump right to the disclaimer, which is
13 clear and unmistakable and they can't do, But I wanted to frame
14 that for the Court.

15 If you go to the next slide. Your Honor, there's no
16 expert testimony in their brief about what would affect the basic
17 and novel properties. There's no analysis of how an electret
18 layer anywhere in the product would affect it, no analysis of any
19 material between the membrane and the back plate would affect the
20 invention, and there's no identification at all, Your Honor, of
21 what the basic and novel properties of the invention are.

22 In these circumstances, the Federal Circuit has recognized
23 that the jury decides, after counsel argues, that the basic and
24 novel properties are affected by including something in the
25 claim.

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.