

EXHIBIT 2 (PUBLIC)



INTENSITY, LLC
12730 High Bluff Drive, Suite 300
San Diego, California 92130
telephone 858.876.9101

www.intensity.com

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

**REPORT OF
RYAN SULLIVAN, Ph.D.**

A handwritten signature in black ink, appearing to read "Ryan Sullivan", written over a horizontal line.

Ryan Sullivan, Ph.D.

March 24, 2021

(164) [REDACTED]

(165) [REDACTED]

8.3.4. Relative value

(166) The Meyer Report claims that the '545, '911, and '265 patents are equally or more valuable than the Fontem patent families they are compared to,³⁸¹ yet does not acknowledge that the Fontem patents are widely licensed whereas the asserted patents are not.³⁸² Indeed, each of the VUSE products mark at least 38 of the Fontem patents (see Attachment D-1), and Altria's Nu Mark products collectively marked at least 14 of the Fontem patents.³⁸³

(167) Furthermore, the patents contained within the Fontem agreement are foundational patents relating to e-cigarette technology. The patents at issue were acquired by Fontem when they

³⁸¹ Meyer Report, 2/24/2021, ¶¶ 205–212.

³⁸² ACS and PM USA identify only four agreements that are comparable to the '545 and '374 patents. Notably, two of the agreements are the Fontem-RJRV (RJREDVA_001521385–1559) and [REDACTED] which do not include the asserted patents. See Sections 12.2.1 and 12.2.2. The other two agreements are the [REDACTED] and [REDACTED] agreements. See Sections 12.3.4 and 12.4.1. See also:

Altria Client Services LLC and Philip Morris USA Inc.'s Second Supplemental Objections and Responses to Plaintiffs' Third Set of Interrogatories (No. 18), 2/23/2021, at Supplemental Response to Interrogatory No. 18 (Nov. 2, 2020), Second Supplemental Response to Interrogatory No. 18 (Feb. 23, 2021).

Similarly, PMP identifies only three agreements that are comparable to the '265, '911, and '556 agreements, two of which are also the Fontem-RJRV and [REDACTED]. The third agreement is the [REDACTED]. See Section 12.4.2. See also:

Philip Morris Products S.A.'s Second Supplemental Objections and Responses to Plaintiffs' Third Set of Interrogatories (No. 18), 2/23/2021, at Supplemental Response to Interrogatory No. 18 (Nov. 2, 2020), Second Supplemental Response to Interrogatory No. 18 (Feb 23, 2021).

³⁸³ The Nu Mark products marked U.S. Patent Nos. 8,365,742; 8,375,957; 8,393,331; 8,490,628; 8,689,805; 8,863,752; 8,893,726; 8,899,239; 9,320,300; 9,326,548; 9,326,549; 9,326,551; 9,364,027; and 9,370,205, each of which is identified as a licensed patent in the Fontem-Nu Mark agreement. See:

Altria Website, Nu Mark Patent Information, via Internet Archive (as displayed 10/2/2018), <http://web.archive.org/web/20181002235800/http://www.altria.com/About-Altria/our-companies/nu-mark/Documents/NuMark-Patents.pdf> (accessed 3/18/2021).

[REDACTED]

bought Dragonite, an e-cigarette company founded by Hon Lik, in 2013.³⁸⁴ Mr. Lik's patents cover broad e-cigarette concepts; examples of the titles of patents include: "aerosol electronic cigarette", "electronic atomization cigarette", and "electronic cigarette".³⁸⁵

(168) The Meyer Report cites to Mr. McAlexander, Mr. Walbrink, and Dr. Abrahams to support its assertion that the '545, '265, and '911 patents are of equal or greater value than the Fontem Spray Atomizer, Air Channel, and Shell Design families respectively.³⁸⁶ However, I understand the technology claimed in the Spray Atomizer family of patents is at least as valuable as the technology claimed by the '545 patent.³⁸⁷ I also understand that the technology claimed in the Air Channel family is at least as valuable, if not more valuable, than the technology claimed by the '265 patent.³⁸⁸ I further understand that Dr. Abraham's conclusion that the '911 patent is more valuable than the Shell Design family does not account for the value of the absence of a detailed dimensional requirement for the interior structure of an e-cigarette device from the claims of the Shell Design family patents.³⁸⁹

(169) In addition, the Meyer Report "assign[s] no economic value to the technology claimed in the patents in [REDACTED]." ³⁹⁰ The Meyer Report claims that Fontem neither asserted nor litigated any patent from these families.³⁹¹ The Meyer Report also claims that Fontem abandoned several patent applications in these families leaving several families with no issued patents, and that because these families never included any issued patents, Fontem never had any enforceable intellectual property rights with respect to these patent families.³⁹² The Meyer Reports conclusion is flawed for several reasons. First, just because the patents were not litigated does not mean that they have no value. Second, even if certain families did not include issued patents, this does not mean that there was no value at the time the Fontem-RJRV agreement was entered into. Third, it is

³⁸⁴ Financial Times, "Imperial fires up e-cigarette legal battle," 3/10/2014 <https://www.ft.com/content/0d5e20ec-a877-11e3-a946-00144feab7de>.

³⁸⁵ The Economist, "A Case of the Vapers; E-cigarette Patent Wars," 3/17/2014, <https://www.economist.com/schumpeter/2014/03/17/a-case-of-the-vapers>.

³⁸⁶ Meyer Report, 2/24/2021, ¶¶ 205, 208, 212.

³⁸⁷ Interview with Travis Blalock. See Attachment A-5.

³⁸⁸ Interview with Jeffrey C. Suhling. See Attachment A-6.

³⁸⁹ Interview with Kelly R. Kodama. See Attachment A-7.

³⁹⁰ Meyer Report, 2/24/2021, ¶ 228.

³⁹¹ Meyer Report, 2/24/2021, ¶ 228.

³⁹² Meyer Report, 2/24/2021, ¶ 228.

[REDACTED]

12.4.2. [REDACTED]

(252)

[REDACTED]

559

[REDACTED]

560

[REDACTED]

[REDACTED]

561

[REDACTED]

[REDACTED]

562

[REDACTED]

563

[REDACTED]

564

[REDACTED]

[REDACTED]

[REDACTED]

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.