

**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

**ORAL ARGUMENT REQUESTED**



**PMI/ALTRIA'S OPPOSITION TO RJR'S MOTIONS *IN LIMINE* NOS. 4 AND 5**

**TABLE OF CONTENTS**

	<b>Page</b>
I. RJR’S MIL #4: RELEVANT EVIDENCE SHOULD NOT BE CATEGORICALLY EXCLUDED MERELY BECAUSE IT OVERLAPS WITH PMP’S CLAIM FOR INJUNCTIVE RELIEF .....	1
II. RJR’S MIL #5 SHOULD BE DENIED AS MOOT.....	6
III. CONCLUSION.....	7

**TABLE OF AUTHORITIES**

**CASES**

*Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*  
 No. 10-cv-910, 2012 WL 12832376 (E.D. Va. Mar. 30, 2012) ..... 1, 3, 5

*Dexcowin Glob., Inc. v. Aribex, Inc.*,  
 No. 16-cv-143, 2017 WL 3478492 (C.D. Cal. June 29, 2017)..... 5

*Evolved Wireless, LLC v. Apple Inc.*,  
 No. 15-542-JFB-SRF, 2019 WL 1100471 (D. Del. Mar. 7, 2019) ..... 5

*Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp, LLC*,  
 879 F.3d 1332 (Fed. Cir. 2018) ..... 2

*FieldTurf USA, Inc. v. AstroTurf, LLC*,  
 No. 10-cv-12492, 2015 WL 13919659 (E.D. Mich. Sept. 10, 2015) ..... 4

*Fujifilm Corp. v. Motorola Mobility LLC*,  
 No. 12-cv-3587, 2015 WL 12622055 (N.D. Cal. Mar. 19, 2015)..... 5

*Intelligent Verification Sys., LLC v. Microsoft Corp.*,  
 No. 12-cv-525, 2015 WL 1518099 (E.D. Va. Mar. 31, 2015) ..... 3, 4

*MediaTek Inc. v. Freescale Semiconductor, Inc.*,  
 No. 11-cv-5341, 2014 WL 587098 (N.D. Cal. Feb. 13, 2014)..... 2

*Saint Lawrence Commc’ns LLC v. ZTE Corp.*,  
 No. 15-cv-349, 2017 WL 11517123 (E.D. Tex. Mar. 2, 2017)..... 2

*Smartflash LLC v. Apple Inc.*,  
 No. 13-cv-447, 2015 WL 11089593 (E.D. Tex. Jan. 25, 2015) ..... 5

*TecSec, Inc. v. Adobe Inc.*,  
 No. 10-cv-115, 2018 WL 11388472 (E.D. Va. Nov. 21, 2018)..... 6

*Ultratec, Inc. v. Sorenson Commc’ns, Inc.*,  
 No. 13-cv-346, 2014 WL 4829173 (W.D. Wis. Sept. 29, 2014)..... 2

**I. RJR'S MIL #4: RELEVANT EVIDENCE SHOULD NOT BE CATEGORICALLY EXCLUDED MERELY BECAUSE IT OVERLAPS WITH PMP'S CLAIM FOR INJUNCTIVE RELIEF**

PMI/Altria told RJR during the meet and confer process that it does not intend to reference Philip Morris Products S.A.'s ("PMP") claim for injunctive relief or present evidence solely relevant to that claim at trial. RJR did not respond<sup>1</sup>, yet now seeks to categorically exclude "*any evidence or argument* relating to" injunctive relief.<sup>2</sup> Dkt. 832 at 6. That overbroad relief would improperly exclude evidence that is probative of issues the jury will decide, such as damages and willful infringement. It should be denied.

RJR provides no basis supporting its sweeping request to exclude "any evidence or argument" related to injunctive relief. Dkt. 832 at 6. Nor could it. RJR's own cited cases have rejected RJR's overbroad approach.<sup>3</sup> *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.* is instructive. No. 10-cv-910, 2012 WL 12832376, at \*1 (E.D. Va. Mar. 30, 2012) (cited by RJR, Dkt. 832 at 4). There, Judge Brinkema precluded references to "the impact of injunctive relief on [defendant's] business" but expressly stated: "This ruling in no respect limits defendant's ability to cross-examine the defendant's damages expert. If reference to injunctive relief is relevant to that cross-examination, it will be permitted." *Id.* Likewise, in *Ultratec, Inc. v. Sorenson Communications, Inc.*, the court excluded evidence "submitted *purely* for the purpose of disclosing plaintiffs' requests for injunctive relief" but explained that "some evidence [underlying the claim] may be

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<sup>1</sup> RJR represents that "[t]he parties were unable to reach a resolution on these issues," Dkt. 832 at 3, but fails to inform the Court that RJR never proposed a stipulation or even followed up after PMI/Altria initially confirmed it did not intend to reference PMP's injunctive relief claim at trial.

<sup>2</sup> All emphasis added, and internal citations and quotation marks omitted, unless otherwise noted.

<sup>3</sup> RJR relies on the Patent Case Management Judicial Guide (Dkt. 839 at 3), which confirms that RJR's motion should be denied because, as it explains, where "the relevance to an issue before the jury is shown," a MIL to "to preclude any evidence or argument to the jury disclosing that the patentee seeks an injunction ... should generally be denied." Ex. G § 7.5.4.4.

relevant to other issues in the trial” and, “to the extent such evidence exists, its admissibility must be determined on a case-by-case basis at trial.” No. 13-cv-346, 2014 WL 4829173, at \*4 (W.D. Wis. Sept. 29, 2014); *see also, e.g., MediaTek Inc. v. Freescale Semiconductor, Inc.*, No. 11-cv-5341, 2014 WL 587098, at \*1 (N.D. Cal. Feb. 13, 2014) (bifurcating “evidence related *solely* to injunctive relief for the impending trial, reserving the option of allowing such evidence to be presented if relevant and necessary”); *Saint Lawrence Commc’ns LLC v. ZTE Corp.*, No. 15-cv-349, 2017 WL 11517123, at \*4 (E.D. Tex. Mar. 2, 2017) (precluding “any suggestion that there is something inherently unfair or inappropriate about seeking injunctive relief” but finding that *in limine* order “does not extend to testimony or argument” relevant to damages).

The Court should follow the same approach here. RJR does not (and cannot) dispute that the jury may properly consider evidence relating to damages and willful infringement at trial. *Exmark Mfg. Co. v. Briggs & Stratton Power Prods. Grp, LLC*, 879 F.3d 1332, 1353 (Fed. Cir. 2018) (“[T]he entire willfulness determination is to be decided by the jury”). That is dispositive because much of the evidence supporting PMP’s ultimate claim for injunctive relief overlaps with issues the jury will decide, such as damages and willful infringement. Ex. F (PMP’s Supp. Resp. to Interr. No. 23), *passim* (describing the factual basis for PMP’s claim for injunctive relief).

For example, RJR’s overbroad request would exclude evidence bearing on [REDACTED]  
[REDACTED]  
[REDACTED]. *See id.* at 5-6, 14-15, 39-40. But that evidence is relevant to both damages and injunctive relief, as it shows the [REDACTED]  
[REDACTED]. *See Ex. A (Meyer Op.)* ¶¶ 347, 354-58. RJR’s request would also exclude evidence of [REDACTED]  
[REDACTED]. *Id.* ¶ 358 n.512. Yet *Georgia Pacific Factor*

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