

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before The Honorable Clark S. Cheney
Administrative Law Judge**

In the Matter of

**CERTAIN TOBACCO HEATING
ARTICLES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1199

**RESPONSE OF RESPONDENTS PHILIP MORRIS INTERNATIONAL INC. AND
PHILIP MORRIS PRODUCTS S.A. TO THE COMPLAINT AND NOTICE OF
INVESTIGATION**

RESPONDENTS:

Altria Client Services LLC
6601 W. Broad Street
Richmond, VA 23230
Tel: (804) 274-2200

Altria Group, Inc.
6601 W. Broad Street
Richmond, VA 23230
Tel: (804) 274-2200

Philip Morris USA, Inc.
6601 W. Broad Street
Richmond, VA 23230
Tel: (804) 274-2000

Philip Morris International Inc.
120 Park Avenue
New York, NY 10017
Tel: (917) 663-2000

Philip Morris Products S.A.
Quai Jeanrenaud 3
2000 Neuchâtel
Switzerland
Tel: 41-58-242-00-00

COUNSEL FOR RESPONDENTS:

Maximilian A. Grant
Bert C. Reiser
Matthew J. Moore
Jamie D. Underwood
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Suite 1000
Washington, DC 20004
Telephone: (202) 637-2200
Facsimile: (202) 637-2201

Brenda L. Danek
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767

RESPONSE TO COMPLAINT

Pursuant to Commission Rule 210.13 (19 C.F.R. § 210.13), Respondents Philip Morris International Inc. and Philip Morris Products S.A. hereby respond to the Complaint filed on April 9, 2020 by Complainants RAI Strategic Holdings, Inc., R.J. Reynolds Vapor Company, and R.J. Reynolds Tobacco Company (collectively “Complainants”) under Section 337 of the Tariff Act of 1930, as amended, and to the Commission’s Notice of Investigation. Unless specifically referred to separately, Philip Morris International Inc. and Philip Morris Products S.A. shall be collectively referred to herein as “Respondents” for purposes of convenience.

Respondents deny that they have directly or through their affiliates or third parties engaged in acts of unfair competition in violation of Section 337 by importing, selling for importation, and/or selling within the United States after importation any product that infringes literally and/or under the doctrine of equivalents, contributorily, and/or by inducement, any valid and enforceable asserted claim of U.S. Patent Nos. 9,839,238 (“the ’238 patent”), 9,901,123 (“the ’123 patent”) and 9,930,915 (“the ’915 patent”) (collectively, “the Asserted Patents”). Respondents also deny that asserted claims of the Asserted Patents are valid and/or enforceable. Except as expressly admitted herein, Respondents deny each and every allegations of the Complaint.

Respondents have not had sufficient time and opportunity to collect and review all of the information that may be relevant and necessary to respond to the allegations raised in the Complaint. To the extent that any allegations of the Complaint refer to and/or rely upon such information, Respondents lack sufficient information on which to admit or deny such allegations and, on that basis, deny such allegations. Moreover, Respondents reserve the right to take further positions and raise additional defenses as may become apparent as a result of additional information that may be discovered subsequent to the filing of this response.

ADMISSIONS AND DENIALS OF SPECIFIC ALLEGATIONS

The numbered Paragraphs herein correspond with and respond to the numbered Paragraphs set forth in the Complaint.

I. INTRODUCTION¹

1. Respondents admit that RAI Holdings, Inc. (“RAI”), R.J. Reynolds Vapor Company (“RJR”), and R.J. Reynolds Tobacco Company (“RJRT”) (collectively, “Complainants”) filed its Complaint under Section 337 of the Tariff Act of 1930, as amended, 19 C.F.R. § 1337. Respondents deny the remaining allegations of paragraph 1.

2. Respondents admit that documents purporting to be copies of the Asserted Patents (as defined in paragraph 2 of the Complaint) are attached to the Complaint as Exhibits 1, 2, and 3. Respondents admit that the table in paragraph 2 lists the claims asserted in the Complaint. Respondents deny the remaining allegations of paragraph 2.

3. Respondents deny that the Asserted Patents are valid and enforceable. Respondents lack sufficient information upon which to admit or deny the remaining allegations of paragraph 3 and, on that basis, deny the remaining allegations of paragraph 3.

4. Respondents deny the allegations of paragraph 4.

5. The allegations of paragraph 5 contain legal conclusions as to which no response is required. To the extent a response is required, Respondents deny the allegations of paragraph 5.

6. The allegations of paragraph 6 contain legal conclusions as to which no response is required. To the extent a response is required, Respondents deny the allegations of paragraph 6.

¹ For ease of reference, Respondents respond to the Complaint using the same headings used by Complainants. Use of these headings, however, does not constitute and should not be interpreted as admissions by Respondents as to any facts and/or allegations contained within the Complaint.

Respondents further deny that Complainants are entitled to any relief under 19 U.S.C. § 1337.

II. THE PARTIES

A. Complainants

7. Respondents lack sufficient information upon which to admit or deny the allegations of paragraph 7, on that basis, deny the allegations of paragraph 7.

8. Respondents lack sufficient information upon which to admit or deny the allegations of paragraph 8, on that basis, deny the allegations of paragraph 8.

9. Respondents lack sufficient information upon which to admit or deny the allegations of paragraph 9, on that basis, deny the allegations of paragraph 9.

B. Respondents

1. Altria Client Services LLC

10. Respondents admit that a document purporting to be a PMTA Coversheet: Technical Project Lead Review is attached to the Complaint as Exhibit 8. Respondents admit that Exhibit 8 states that “PMP S.A.’s parent company, Philip Morris International Management S.A. (PMI) has entered into a distribution agreement with Altria Client Services LLC (ALCS) by which ALCS and an ALCS affiliate, Philip Morris USA Inc. (PM USA), will be licensed to distribute and sell the IQOS® system and the Marlboro Heatsticks in the U.S. upon receipt of a marketing authorization.” Respondents admit that Altria Client Services LLC and Philip Morris USA, Inc. are licensed to distribute and sell IQOS® systems and disposable tobacco sticks in the United States. Respondents deny that any tobacco heating articles and components thereof, including disposable tobacco sticks infringe the Asserted Patents. Respondents lack sufficient information upon which to admit or deny the remaining allegations of paragraph 10, on that basis, deny the remaining allegations of paragraph 10.

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.