

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NESPRESSO USA, INC.)Case: IPR2022-01574
)
Petitioner,)U.S. Patent No. 11,254,491
)
v.)
)
K-FEE SYSTEM GMBH,)
)
Patent Owner.)
-----)

DEPOSITION OF LAURENS HOWLE, PH.D.
WEDNESDAY, SEPTEMBER 13, 2023

REPORTED BY NANCY J. MARTIN
CSR. NO. 9504, RMR, RPR
PAGES 1 - 204

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

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- - -
Wednesday, September 13, 2023
- - -

Deposition of LAURENS HOWLE, PH.D.,
beginning at 9:43 a.m., before Nancy J. Martin, a
Registered Merit Reporter, Certified Shorthand
Reporter.

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I N D E X

TESTIMONY OF LAURNS HOWLE, PH.D. PAGE

BY MR. MCCRAW 5

BY MR. PLEUNE 189

E X H I B I T S

EXHIBITS PREVIOUSLY MARKED

NUMBER	PAGE
Exhibit 1001	62
Exhibit 1004	122
Exhibit 1041	173
Exhibit 1047	131
Exhibit 2021	10
Exhibit 2025	134

NEW EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 1057	Declaration of Dr. Laurens Howle	125
Exhibit 2026	Updated Curriculum Vitae of Laurens Howle, Ph.D.	194

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

Page 4 of 265

1
2 RALEIGH, NORTH CAROLINA,
3 WEDNESDAY, SEPTEMBER 23, 2023; 9:43 A.M.

4 - - -

5
6 LAURENS HOWLE, PH.D.,
7 having been sworn/affirmed,
8 was examined and testified as follows:

9
10 EXAMINATION

11 BY MR. MCCRAW:

12 Q. Good morning, Dr. Howle. My name is Clayton
13 McCraw. I'll be taking your deposition today. I'm
14 counsel for petitioner, Nespresso USA.

15 It's nice to meet you.

16 A. You too.

17 Q. Could you please state your name for the
18 record.

19 A. My name is Laurens Edward Howle.

20 Q. And what's your current work address?

21 A. I work at Duke University in the department
22 of mechanical engineering.

23 Q. You've had your deposition taken before; is
24 that right?

25 A. Yes, sir.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. How many times have you been deposed before
2 today?

3 A. I believe six times.

4 Q. So I'm not going to go over all the general
5 rules, but just some important reminders.

6 Obviously, we should not talk over one
7 another today. Does that make sense?

8 A. Yes, sir.

9 Q. If you don't understand a question I'm
10 asking, you can just ask me for clarification. I'll
11 try to clarify. Okay?

12 A. Will do.

13 Q. If you don't ask for clarification, we're
14 going to agree that you understood the question.

15 Does that make sense?

16 A. That's reasonable.

17 Q. And you understand that even if your attorney
18 objects, you have to answer the question unless he
19 instructs you not to answer.

20 A. I do understand that, yes.

21 Q. Okay.

22 And you understand that you're under oath
23 today to testify truthfully; right?

24 A. Yes, sir.

25 Q. Is there any reason why you can't testify?
Nespresso USA, Inc. Ex. 1066

1 truthfully and accurately today?

2 A. No reason.

3 Q. Did you do anything to prepare for today's
4 deposition?

5 A. Yes, sir.

6 Q. What did you do?

7 A. Well, I read, reviewed many of the case
8 documents. I met with the attorneys here in this room
9 yesterday and went over some of those case documents.

10 Q. Did you meet any other times than yesterday?

11 A. For preparation, no, sir.

12 Q. How long was yesterday's meeting?

13 A. It was a full business day.

14 Q. Did anyone join by phone or video?

15 A. Yes, sir.

16 Q. Who is that?

17 A. Mr. Brooks.

18 Q. Were there any non-attorneys present during
19 your meeting?

20 A. No, sir.

21 Q. Have you spoken to anyone else regarding this
22 deposition?

23 A. I have not.

24 Q. What documents did you review in preparation
25 for today's deposition?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. Various documents. My deposition, other
2 depositions, patents. I believe I might have looked
3 at some prosecution history. I might be mistaken on
4 that, but it all related to this case.

5 Q. What other deposition transcripts did you
6 review?

7 A. Yesterday? I looked at Mr. Jobin's
8 deposition transcript.

9 Q. Did you review any documents that are not
10 exhibits of record in this proceeding?

11 A. I honestly don't know.

12 Q. So other than the lawyers in this room, have
13 you ever talked to any employees or officers of K-Fee
14 about this case?

15 A. No, sir, I have not.

16 Q. So you've never spoken to Marc Kruger before?

17 A. No, sir. May I correct an earlier -- I did
18 read Mr. Kruger's deposition. I forgot to mention
19 that.

20 Q. Thank you.

21 Have you spoken to any other experts in
22 connection with this case?

23 A. No, sir.

24 Q. How did you come to be an expert for this
25 case?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. I was contacted by one of the attorneys. I
2 don't -- Kathy Pappas, I believe was her name. She
3 reached out to me.

4 Q. And when were you first contacted?

5 A. I don't recall exactly. It would have been
6 toward the end of last year or the beginning of this
7 year. I'm sorry I can't be more precise. I just
8 don't recall.

9 Q. Have you worked as an expert witness in any
10 other legal cases in the past?

11 A. Yes, sir.

12 Q. What cases? I guess -- strike that.

13 How many cases?

14 A. Approximately 20, depending on how you count
15 them.

16 Q. When you say, "depending upon how you count
17 them," what do you mean?

18 A. Yes, sir. Some cases might have involved
19 four different cases that were consolidated.

20 Q. Could you please walk me through the cases
21 you've been an expert on?

22 A. Yes, sir. If you'll hand me my report, I
23 actually have some of those listed out.

24 Q. Certainly.

25 A. Those were the ones that were most relevant.
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1 to the reason we're here today.

2 MR. MCCRAW: I'd like to introduce what's
3 been previously marked as Exhibit 2021 in this
4 proceeding, the "DECLARATION OF LAURENS HOWLE IN
5 Support OF PATENT OWNER'S RESPONSE."

6 (Previously marked Exhibit 2021 was made
7 available to the witness.)

8 THE WITNESS: Okay. And I list these
9 particular cases out here in Paragraph 12 of my
10 declaration. Several of these were IPC courses --
11 cases, I'm sorry. 337-TA-929, for example, was one of
12 those cases. Then there was a follow-up proceeding
13 related to that case, same course number -- case
14 number. It was an enforcement and rescission
15 proceedings.

16 Then I was involved with the case Eko Brands
17 v. Adrian Rivera Maynez Enterprises, CV15-0522RSL.

18 Another Fortack CV16-2702.

19 Then a series of cases in Los Angeles that
20 were consolidated. CV16-04676 JAK.

21 Then I list another one. Rivera V Remington
22 Design. Rivera V -- I'm sorry. Remington Design;
23 Rivera V Eko Brands and Espresso Supply. That is
24 4:20-cv-03732.

25 And those were the ones most relevant to this
IPB2023-00502
Nespresso USA, Inc. Ex. 1066

1 case. I have worked on, as I said, close to 20 cases.

2 BY MR. MCCRAW:

3 Q. Did all of these cases relate to Adrian
4 Rivera patents?

5 A. And other patents as well, but they at least
6 related to Adrian Rivera patents.

7 Q. What were the issues in the Adrian Rivera
8 patent disputes?

9 MR. PLEUNE: Object to the form.

10 THE WITNESS: Sorry.

11 MR. PLEUNE: You can answer.

12 THE WITNESS: So these were International
13 Trade Commission cases for the most part. One of
14 those -- well, some of them are civil cases. They're
15 noted there.

16 So typical patent litigation issues involving
17 allegations of invalidity, allegations of infringement
18 and so forth.

19 BY MR. MCCRAW:

20 Q. And who did you represent in those
21 proceedings?

22 A. Let's see. I'll walk through these. The
23 first one I list, the 337-TA-929, I represented
24 Solofill, the respondent.

25 The next related case, 337-TA-929, EkdPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Brands.

2 C15-0522RSL, that would have been the
3 respondent.

4 And the next one, LA CV16-04676, that would
5 have been Eko Brands.

6 The case Rivera v. Solofill, I represented
7 Solofill.

8 Rivera v. Creative Concepts, that would have
9 been Creative Concepts.

10 Eko Brands V Solofill and Robert Vu, that
11 would have been Eko Brands.

12 Unless I missed one, those are all that are
13 listed here.

14 Q. Was Solofill accused of infringing patents?

15 A. Yes, sir.

16 Q. And was your opinion in those cases that the
17 patents were invalid?

18 A. Yes, sir.

19 Q. You said you represented Eko Brands as well?

20 A. Yes, sir.

21 Q. Was Eko Brands accused of infringing patents?

22 A. Yes, sir.

23 Q. And it was your opinion that the patents were
24 invalid; is that correct?

25 A. That is correct.

1 Q. You also represented Remington Designs; is
2 that correct?

3 A. That was -- no, sir. I might have been
4 mistaken. I believe that's incorrectly listed.
5 Rivera and Remington Designs V Eko Designs. I think I
6 mistyped that.

7 Q. Okay. So in that matter you represented
8 Eko Brands as well?

9 A. Yes, sir.

10 Q. And then in Rivera V Creative Concepts you
11 represented Creative Concepts; is that right?

12 A. Yes, sir.

13 Q. And was Creative Concepts accused of
14 infringing patents?

15 A. They must have been. That case settled
16 shortly after it began.

17 Q. Did you form opinions that the patents were
18 invalid in those cases? Strike that.

19 Did you form opinions that the patents were
20 invalid in that case?

21 A. I don't know that we ever reached that point.

22 Q. Okay. What types of products does Solofill
23 make?

24 A. Single serve coffee capsules.

25 Q. Does Solofill make single fill coffee IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 machines?

2 A. No, sir, not that I'm aware.

3 Q. So in these matters where you represented
4 Solofill, Solofill's capsules were accused of
5 infringing a capsule patent; is that correct?

6 A. That's correct, yes, sir.

7 Q. What kind of products does Eko Brands make?

8 A. They also make single serve coffee pots,
9 refillable coffee pots.

10 Q. Eko Brands does not make beverage machines;
11 is that correct?

12 A. I can't answer that completely. I did not
13 use any of their machines. I'm not aware of any.

14 Q. So you didn't work on any Eko Brands
15 machines?

16 A. Correct. Yes, sir. I did not work on any
17 Eko Brands machines.

18 Q. Okay.

19 And Creative Concepts. What kind of products
20 does Creative Concepts make?

21 A. They imported the same type of product, the
22 single serve refillable coffee capsules.

23 Q. They did not make coffee machines; is that
24 correct?

25 A. I have no idea what they make, sir. IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. And you did not analyze any Creative Concepts
2 coffee machines; is that right?

3 A. Correct.

4 Q. What coffee machines were these capsules
5 designed to be used with?

6 A. For the most part, with Keurig brand machines
7 of various model numbers.

8 Q. Do you know the time period of the machines
9 in question in these cases?

10 A. It would have been, I expect -- precisely, I
11 cannot tell you what those were, but I know that
12 Keurig machines had a Generation 1 and Generation 2,
13 and I worked on both. So that might be able to date
14 the time frame.

15 Q. And what was the time period that you were an
16 expert in these cases? When did you begin to work on
17 the matters listed in Paragraph 12 of your
18 declaration?

19 A. I expect that would have been the mid-2010's.
20 I would have to consult my records for that.

21 Q. And when you say, "mid-2010's," you mean in
22 or about 2015?

23 A. Plus or minus a few years. I don't recall.

24 Q. Okay. But not before 2010; is that correct?

25 A. I believe that is correct.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. And how long did these cases go on for?

2 A. The ITC cases are relatively rapid. So those
3 would have been less than a year. Typically, six
4 months. The civil cases, likely for a year or so,
5 perhaps a bit more.

6 Q. Let me ask a better question.

7 When did you -- when did your engagement on
8 these matters end?

9 A. I cannot give you dates on those. It would
10 have ended after the trial. So I suppose that we
11 could look up the trial dates, and that would have
12 been close to the end dates.

13 Q. Do you have an estimation of approximately
14 when it was?

15 A. Well, the first of these, 337-TA-929, I would
16 say that was roughly six months since it was an ITC
17 trial. And since I was assigned a relatively large
18 margin of error to my start date, it would have been
19 that date, same era, plus six months.

20 Q. What I'm trying to understand is the time
21 period over which -- when you say that you've
22 accumulated more than 1,300 hours designing and
23 analyzing and evaluating single serve systems, I'm
24 just trying to understand the time period over which
25 that occurred.

1 Could you estimate that for me?

2 A. The time period starting with my first case
3 up until recently.

4	Q. Okay. Got it.
---	------------------

5 And when you say --

6 A. Specifically, with coffee machines.

7 Q. When you say, "up until recently," are you
8 referring to your work on this matter?

9 A. Yes, sir.

10 Q. Are you referring to any other work?

11 A. I have one case that might or might not be
12 ongoing. I haven't heard from those folks for a
13 while.

14 Q. And that case relates to single serve
15 beverage systems?

16 A. Yes, sir. I should clarify my previous
17 response. My one case I have possibly ongoing
18 regarding coffee technology might or might not be
19 ongoing. I work in other areas also.

20 Q. When you say, "coffee technology," what are
21 you referring to?

22 A. Typically, single serve beverage brewers.

23	Q. Okay.
----	----------

24 You mentioned that there was some other cases
25 where you were an expert that you did not list here. IPB2023-00

1 Can you identify those cases?

2 A. I -- let's see. I don't know if we have
3 provided to you my case history. I cannot give you
4 the case numbers off the top of my head, but they
5 involve various technologies. Wind turbines. I do
6 quite a bit of work in wind turbines. Power tools,
7 hydraulic machinery, high end racing bikes, fire
8 suppression equipment, various fluid mechanical
9 devices, such as paint guns for commercial work.

10 Just to think of a few off the top of my
11 head. There might be a couple of other technologies
12 that I'm leaving out.

13 Q. And these are technologies where you serve as
14 an expert witness in legal cases; is that correct?

15 A. Yes, sir.

16 Q. And are these all patent cases?

17 A. No, sir.

18 Q. Could you tell me what other types of cases
19 these are.

20 A. Some have to do with arbitration. Serial
21 defect related cases. Some have to do with product
22 liability, product failures.

23 Q. Do you know the names of the parties
24 associated with any of the technologies you listed?

25 A. Yes, sir. I can come up with some of these.
Nespresso USA, Inc. Ex. 1066

1 So in wind turbine technologies, Green Pastures. I
2 think Nordex is on the other side of that case.

3 Delta Machinery, Delta power tools. Let's
4 see. Fire suppression, I don't recall. Related to
5 the spray guns, Graco is one of the parties, and I
6 believe Harbor Freight is another.

7 I remember a case involving Dollar Tree
8 Stores. And to give you a full listing, I would
9 really need to refer to my case history.

10 Q. Do you remember the names of the parties
11 regarding the racing bicycles?

12 A. Yes, sir. Sram, S-r-a-m, and Princeton
13 Carbon Works.

14 Q. Okay. The wind turbine case between Nordex
15 and Green Pastures --

16 A. Uh-huh.

17 Q. -- who do you represent?

18 A. Green Pastures in that one.

19 Q. What's the nature of the dispute in that
20 case?

21 A. It's alleged that the machines provided by
22 Nordex have a various number of serial defects. So,
23 and that case it's currently ongoing.

24 Q. In the Delta Machinery power tools case, who
25 do you represent?

1 A. Delta, that one is no longer ongoing. They
2 settled.

3 Q. What was the nature of the dispute?

4 A. Allegations of patent infringement.

5 Q. For the racing bikes, who did you represent?

6 A. Sram in that one.

7 Q. What was the nature of the dispute?

8 A. Patent infringement.

9 Q. For the fire suppression matter, do you
10 remember who you represented?

11 A. That would have been the complainant in that
12 case, but I served only as a consultant in that
13 particular case.

14 Q. Okay. In the Graco and Harbor Freight
15 dispute, who do you represent?

16 A. I just got engaged with that, and honestly, I
17 don't know yet.

18 Q. Okay.

19 Have you been retained to offer any opinions
20 in any other matters outside of this one for K-Fee?

21 A. No, sir. Well, let me strike that.

22 I understand there is a body of litigation
23 ongoing by K-Fee, and as I sit here today, this is the
24 only case that -- well, strike that.

25 Yes, sir.

1 Q. What other matters have you been retained by
2 K-Fee to provide opinions on?

3 A. I think -- well, I don't have that in this
4 report. I submitted a deposition for the -340. I'm
5 sorry. Not a deposition. A declaration for -340.
6 This one for -491 -- -430. I'm sorry.

7 This -491 case, and I understand there are a
8 number of civil cases involving the same parties, and
9 I've been given no assignment. I might or might not
10 work on those.

11 Q. So have you formed any opinions about any of
12 the issues in the civil litigations between K-Fee and
13 Nespresso?

14 A. No, sir.

15 Q. Is any of your research or work sponsored by
16 K-Fee?

17 A. No, sir.

18 Q. Is any of your research or work sponsored by
19 the Kruger Group?

20 A. The Kruger Group, no, sir.

21 Q. Is any of your research or work sponsored by
22 any other coffee or beverage companies?

23 A. No, sir.

24 Q. Let's turn back to Exhibit 2021, which was
25 previously introduced. Do you have it?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. You can confirm that this is the declaration
3 you submitted in this IPR; correct?

4 A. I do confirm that, yes.

5 Q. And if you turn to the very last page, that
6 is your signature?

7 A. That is my signature.

8 Q. And you signed it under penalty of perjury;
9 correct?

10 A. I did, yes.

11 Q. Have any of your opinions changed in your
12 declaration since you signed it?

13 A. No, sir.

14 Q. Is there anything inaccurate in this
15 declaration?

16 A. No, sir, except for the earlier mentioned
17 case number, the case that we talked about.

18 Q. Sitting here today, is there anything you'd
19 like to correct in your declaration?

20 A. No, sir. Other than that same case number.

21 Q. Does your declaration contain all of the
22 opinions you intend to offer in this proceeding as of
23 today?

24 A. As of today, these are all the opinions I
25 have formed.

1 Q. Does this declaration include all of the
2 analysis you believe is necessary to support your
3 opinions?

4 A. Actually, I'd like to correct that previous
5 question. Your question was actually quite broad. It
6 did not limit it to this case.

7 So if we can go back, I will also respond
8 that these are all the opinions I have regarding this
9 particular petition at this point.

10 Q. Thank you. Let me try to ask that again.

11 A. Yes, sir.

12 Q. Does your declaration -- strike that.

13 Does this declaration contain all the
14 opinions you intend to offer in this proceeding as of
15 today?

16 A. As of today, yes.

17 Q. Okay. And does this declaration include all
18 of the analysis you believe is necessary to support
19 your opinions?

20 MR. PLEUNE: Object to the form to the extent
21 it seeks a legal conclusion.

22 BY MR. MCCRAW:

23 Q. I'm just asking about your opinions.

24 A. Please restate the question.

25 Q. Sure.

1 Does this declaration include all of the
2 analysis you believe is necessary to support your
3 opinions?

4 MR. PLEUNE: Same objection.

5 You can answer.

6 THE WITNESS: I can't say that it does or
7 does not at this point.

8 BY MR. MCCRAW:

9 Q. So you don't know whether this declaration
10 includes sufficient analysis to support your opinions?

11 MR. PLEUNE: Object to form.

12 Dr. Howle, I'm going to ask you to let me
13 have a moment to make my objection, and then you can
14 give your response. Okay?

15 THE WITNESS: Yes, sir.

16 MR. PLEUNE: If you need Counsel to read back
17 the question again, that might help us reset.

18 THE WITNESS: Okay. Yes, sir.

19 Would you please read back the question.

20 MR. MCCRAW: Would you read back the
21 question, please.

22 (Record read.)

23 THE WITNESS: It does include sufficient
24 analysis to support my opinions.

25 BY MR. MCCRAW:

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. Okay. So no other analysis is needed beyond
2 this declaration to support your opinions?

3 A. Again, that's very broad. We're restricting
4 that to this particular matter; right?

5 Q. Yes.

6 A. Okay. As it is written, I need no other
7 analysis to support the opinions as written.

8 Q. So without disclosing the content of any
9 conversations with your attorneys -- I don't want to
10 hear about that -- tell me about the process of
11 preparing this declaration.

12 A. Well, we started several months ago.
13 Multiple phone calls discussing the various
14 references, meetings discussing the references.
15 Drafting the report. I'm sorry. I keep calling it a
16 report. I'm used to writing reports. So just
17 understand that declaration is what I mean.

18 Q. Understood.

19 A. Drafting the declaration. Refining that, and
20 ultimately submitting it.

21 Q. Did you draft the declaration yourself?

22 A. I worked with the legal team in doing so.

23 Q. Did you prepare the first draft of the
24 declaration?

25 A. That was a collaborative effort. In some
Nespresso USA, Inc. Ex. 1066

1 cases I gave my opinion and they drafted that up. In
2 other cases, I wrote portions of it.

3 Q. Who else participated in this collaborative
4 effort?

5 A. As far as I know, the attorneys here in this
6 room. I think Mr. Brooks might have.

7 Q. Did any non-lawyers participate in the
8 collaborative effort?

9 A. Not that I'm aware of. I don't know.

10 Q. Was anyone at K-Fee systems involved in the
11 preparation of your declaration?

12 A. Not as far as I'm aware.

13 Q. Was anyone at the Kruger Group involved in
14 the preparation of your declaration?

15 A. Not as far as I'm aware.

16 Q. Was Marc Kruger involved in the preparation
17 of your declaration?

18 A. I've heard no indication that he was. I do
19 not believe so, no, sir.

20 Q. Approximately how long did you spend
21 reviewing materials in this IPR before preparing your
22 declaration?

23 A. I don't know that I have those numbers broken
24 up that way.

25 Q. Did you review the petition?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. Do you recall how long you spent reviewing
3 the petition?

4 A. No, sir.

5 Q. Did you review the '491 patent?

6 A. Yes, sir.

7 Q. Do you recall how long you spent reviewing
8 the '491 patent?

9 A. Particularly, no, sir. I've reviewed these
10 documents several different times, several different
11 days, as we refined. So I can't give you a precise
12 answer to any one of those individual documents.

13 Q. Did you review the deposition -- strike that.
14 Did you review the declaration of Michael
15 Jobin.

16 A. The declaration, yes, sir.

17 Q. Do you recall how long you spent reviewing
18 that declaration?

19 A. That's going to be the same answer to all of
20 those individual documents.

21 Q. Did you review the Board's institution
22 decision?

23 A. Yes, sir, I did.

24 Q. Do you recall how long you spent reviewing
25 the institution decision?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. I think that was relatively short. I don't
2 recall how much time I spent particularly with that.

3 Q. Did you review the prior art references cited
4 in the petition?

5 A. I reviewed -- I can't remember off the top of
6 my head if the prior art references included all of
7 the references of '491. Those are a lot of
8 references. I reviewed what I thought to be the
9 important references from that.

10 Q. Did you review all of the references cited in
11 Nespresso's petition?

12 A. If you can give me that petition, I can
13 compare it against my declaration and we can go line
14 by line.

15 Q. Well, actually, we can maybe do this in an
16 easier manner than that.

17 Let's turn to Page 5 of your declaration,
18 Exhibit 2021.

19 A. Yes, sir.

20 Q. And there's a section called "Materials
21 Considered." Is this chart on Page 5 through 10 the
22 complete list of documents you reviewed in preparation
23 of your declaration?

24 A. Complete list, no, sir.

25 Q. What other documents that are not listed here
Nespresso USA, Inc. Ex. 1066

1 did you review in preparation for your declaration?

2 A. I've reviewed several that I did not actually
3 include in my declaration. Everything I've considered
4 particularly to form these opinions is listed here,
5 but I did see some documents in the petition that I
6 thought were particularly interesting, and I got some
7 of those and read those. Since I have worked in this
8 field, I found those interesting.

9 Q. Okay. I'd like to direct you to this
10 sentence in Paragraph 15.

11 A. Uh-huh.

12 Q. "In forming the opinions expressed in this
13 Declaration, while drawing on my experience, I
14 reviewed the following documents." Then the chart on
15 Pages 5 through 10 follows.

16 Is it correct that you reviewed every single
17 one of these documents that are listed here?

18 A. Yes, sir.

19 Q. Are there any documents that are not listed
20 here that you reviewed in preparation for this
21 declaration?

22 A. Not that were included in this declaration.

23 Q. What other documents were not included in
24 this declaration that you reviewed in preparation?

25 A. I remember that I did see an interesting book
Nespresso USA, Inc. Ex. 1066

1 on the science of coffee that I actually bought and
2 read large sections of.

3 Q. Do you remember the name?

4 A. It's in -- it might be in the petition
5 itself. If you give me that, I'll see if I can locate
6 it.

7 Q. Could you turn to Page 8 of your declaration.

8 A. Yes, sir.

9 Q. Are you referring to Exhibit 1056, "Espresso
10 coffee: The science of quality"?

11 A. Yes, sir. That is it. Thank you.

12 Q. So what I'm trying to understand is anything
13 outside of this chart that you reviewed in preparation
14 for your declaration.

15 A. The question is narrowed to in preparation
16 for this declaration. So I would say this is an
17 accurate chart.

18 Q. Okay. Do you recall any documents you've
19 reviewed that are not listed here that you've reviewed
20 in connection with your engagement in this IPR?

21 A. In this particular IPR. Is that the narrow
22 scope of the question?

23 Q. Yes. But not necessarily in preparation for
24 this declaration.

25 A. Yes, sir.

1 There might have been, but I don't know that
2 I can answer that accurately.

3 Q. Did you review any other patents?

4 A. Yes, sir.

5 Q. Do you recall what any of those patents were?

6 A. No, sir.

7 Q. Did you review any other books or chapters?

8 A. Yes, sir.

9 Q. Do you recall what any of those books or
10 chapters were?

11 A. There are some that I've used in several
12 previous cases, and some of those come from
13 peer-reviewed food science literature.

14 There is another book having to do with the
15 science of coffee making, similar to Exhibit 1056,
16 that I have and I've used regularly.

17 Q. Do you recall the names of any of those
18 articles you were just referring to that are peer
19 reviewed?

20 A. No, sir, I do not off the top of my head.

21 Q. Okay. What subject matter are those articles
22 directed to? Do you recall?

23 A. Coffee science.

24 Q. Okay. I'd like to direct you to Page 10 of
25 your report. Do you see Exhibits 2022 through 2025?

IPB2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. Do you understand that those are cited in
3 your report?

4 A. We're talking about my declaration?

5 Q. Yes.

6 A. Yes, I do see that those are cited in my
7 declaration.

8 Q. Were these documents provided to you, or did
9 you find them yourself?

10 A. I don't know the answer to that. I often go
11 to the USPTO office and pull in patents or
12 applications for use in my work.

13 Q. Do you recall --

14 A. I can let you know that I think Exhibit 2025
15 was provided to me.

16 MR. MCCRAW: Okay.

17 (Pause.)

18 BY MR. MCCRAW:

19 Q. Is there anything you've reviewed, since
20 submitting this declaration, that has changed any of
21 your opinions contained in this declaration?

22 A. No, sir.

23 Q. Is there anything you've reviewed since
24 submitting this declaration that you believe
25 supplements your opinions contained in this

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 declaration?

2 A. Yes, sir.

3 Q. And what is that?

4 A. Some of Mr. Jobin's own analysis.

5 Q. Are you referring to the deposition
6 transcript of Mr. Jobin?

7 A. Certainly, that is one of the documents. I
8 believe I also re-reviewed his declaration a number of
9 times.

10 Q. Are there any documents not listed in your
11 report that you've reviewed that you believe
12 supplements your opinions?

13 A. With the exception of the documents I've
14 already cited, there's nothing that's coming to mind
15 right now. Well, no, sir, that's not true.

16 THE WITNESS: Stand by one second while the
17 gray matter works.

18 I have reviewed some documents involving
19 opinions -- recent opinions by two examiners. One was
20 Jenison, I believe. The other one was Cho.

21 BY MR. MCCRAW:

22 Q. Anything else?

23 A. Nothing is coming to mind at present.

24 MR. MCCRAW: Okay.

25 (A discussion was held off the record.)
Nespresso USA, Inc. Ex. 1066

1 BY MR. MCCRAW:

2 Q. Let's turn to your declaration. I'd like to
3 turn to Paragraph 3.

4 In Paragraph 3 of your declaration you state
5 that you were the plant manager and vice president of
6 Kaye Products from 1983 to 1989; is that correct?

7 A. Yes, sir, that's accurate.

8 Q. What is Kaye Products?

9 A. Kaye Products is a company based in Research
10 Triangle Park here that manufactures durable medical
11 equipment. In particular, supportive equipment for
12 handicapped children. Walkers, various supportive
13 furniture, and with that, as I mentioned, I was
14 involved in all phases of the manufacturing of that
15 equipment.

16 Q. Did any of your work at Kaye Products involve
17 any work on beverage systems?

18 A. On beverage systems per se, no, it did not,
19 but much of my work involved designing and building
20 automated systems for manufacturing that would involve
21 fluid mechanics, pumps, heat transfer, various sensing
22 methods, including optical measurements. And those
23 are the same technologies that we find in the
24 coffee-making area.

25 Q. What types of systems were those that you
Nespresso USA, Inc. Ex. 1066

1 developed that you just listed?

2 A. Systems, manufacturing systems, jigging,
3 fixturing, forming equipments, robotics, material
4 handling systems, measurement systems using various
5 techniques.

6 I think I've listed some here in my report.
7 Hall effect transducers, optical transducers, IR photo
8 emitter/detector pairs. I've used CCD cameras, strain
9 gauges, thermocouples, thermisters, pressure gauges.

10 Q. What systems did you design using CCD
11 cameras?

12 A. I used one to -- this was not at Kaye
13 Products. It was later at Duke, but this was one
14 where I developed techniques to actively suppress or
15 enhance various unstable fluid motions in bulk fluid
16 and fluid saturated course media.

17 Q. Okay. Going back to your work at Kaye
18 Products, to be clear, it never worked -- strike that.

19 Your work at Kaye Products never involved any
20 work on coffee systems, did it?

21 MR. PLEUNE: Object to form. Asked and
22 answered.

23 THE WITNESS: I was involved in manufacturing
24 of this medical equipment.

25 BY MR. MCCRAW:

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. But no coffee systems.

2 A. At Kaye Products I did not work on coffee
3 systems.

4 Q. Okay. So in Paragraph 4 you state that "at
5 Kaye Products, I programmed custom bar codes for use
6 in inventory control of more than 250 different raw
7 materials and components." Do you see that?

8 A. I do see that, yes, sir.

9 Q. Is that work directed to a specific product?

10 A. That was with the raw materials that were
11 used in all the products.

12 Q. And what kinds of raw materials were those?

13 A. Various fasteners, nuts, bolts, plywood,
14 various aluminum extrusions, polyurethane finish. All
15 of the materials, really, that were used in that
16 production process, even the packaging materials.

17 Q. The second sentence says, "These bar codes
18 were integrated with the custom line-of-business
19 software system I wrote for controlling and tracking
20 product manufacturing." Do you see that?

21 A. I do, yes, sir.

22 Q. Explain how you programmed custom bar codes,
23 please.

24 A. Yes, sir. I programmed barcodes to print out
25 exactly the labels that we needed. I wrote my own

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 program for that to be affixed to bins for these
2 different raw materials that I mentioned. And systems
3 that would integrate, read that, and then incorporate
4 that into this line of business offer that I mentioned
5 in that paragraph.

6 Q. What kinds of barcodes were you programming?

7 A. Back in those days, it was fairly simple
8 linear barcodes.

9 Q. In Paragraph 8 you state that "from 2008 to
10 the present, I have been owner and manager member of
11 BelleQuant Engineering. Do you see that?

12 A. Yes, sir, I do.

13 Q. My question is what did you do between 1989
14 and 2008? Could you walk me through your work
15 history?

16 A. Yes, sir. I think all that is mentioned,
17 although I don't have the dates, and I apologize for
18 that. But I've been employed at Duke University
19 since -- let's see. I started as an undergraduate.
20 That's not really employment.

21 Q. When did you start as an undergraduate at
22 Duke?

23 A. I transferred from NC State in approximately
24 '87, and I graduated with my bachelor's in mechanical
25 engineering and material science in '89.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 That's about the time that I left Kaye
2 Products to become a graduate student. I was
3 supported under an assistantship the whole time I was
4 there. I got my master's in '91, completed my Ph.D.
5 work in '93. I was hired directly onto the faculty
6 the next day. So I got no break. And then have been
7 at Duke since that time.

8 And at Duke I've been promoted through the
9 ranks starting as assistant professor to associate
10 professor to full professor, and then next August,
11 I'll become an emeritus professor. So that covers the
12 period that you were asking.

13 And in addition, 2008, that's in addition to
14 what I've been doing at Duke University.

15 Q. Thank you.

16 Between 1989 and 2008, did you work at any
17 companies?

18 A. I've done consulting work for many different
19 companies and governmental and nongovernmental
20 agencies. I was not an employee at any of the
21 companies.

22 Q. What types of consulting work did you do
23 between 1989 and 2008?

24 A. Some of it was what I would describe as nuts
25 and bolts engineering, doing computer automated

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 design, finite element analysis of various structural
2 components. Then I've done quite a bit of software
3 development. I've been involved with several projects
4 with the Defense Advance Research Projects Agency
5 making propulsors for special warfare.

6 I've been involved with several different
7 groups concerning marine conservation. New England
8 Aquarium, Chicago Zoological Society, Alaska Sea Life
9 Center. I've worked outside of Duke with the Bureau
10 of Ocean Energy Management and also the National
11 Oceanographic & Atmospheric Administration. I've
12 developed software for the Navy experimental diving
13 units at the naval support activity in Panama City.

14 Several different companies that might have
15 had problems with either manufacturing or reliability
16 of their products, I've worked as a consultant for
17 those.

18 Q. Were any of those products beverage systems?

19 A. Several were material -- were fluid handling
20 systems but never directed toward beverages or coffee.

21 Q. So none of the consulting work that you did
22 between 1989 and 2008 involved beverage systems; is
23 that correct?

24 A. That's an accurate statement, yes, sir.

25 Q. None of your consulting work between 1989 and 2008
Nespresso USA, Inc. Ex. 1066

1 2008 involved coffee systems; is that correct?

2 A. That is correct.

3 MR. MCCRAW: Let's take a quick break.

4 (A recess was taken from 10:31 a.m.
5 to 10:47 a.m.)

6 BY MR. MCCRAW:

7 Q. Thank you, Dr. Howle.

8 During the break, did you speak with any of
9 your counsel about the substance of your testimony?

10 A. I did not.

11 Q. Let's go to Paragraph 8 of your declaration.

12 In Paragraph 8 you state that "from 2008 to the
13 present, I have been owner manager member of
14 BelleQuant Engineering, a North Carolina based and
15 licensed professional engineering consulting firm."

16 Do you see that?

17 A. I do see that.

18 Q. Could you please describe your work with
19 BelleQuant starting in 2008?

20 A. Okay. It's a company that I own. I do many
21 different engineering consultant projects. Mostly
22 these day it involves scientific software development
23 for a number of applications. One of those
24 applications could be -- or is computational finance.

25 Another is I developed a line of business software
JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 solution for a mortgage company. I'm currently
2 working with BOEM that I mentioned earlier --

3 (The Reporter requested clarification.)

4 THE WITNESS: BOEM, B-O-E-M, the Bureau of
5 Ocean Energy Management, and the National
6 Oceanographic and Atmospheric Administration, writing
7 software to simulate entanglement severity and
8 probability of various critically endangered marine
9 animals with offshore wind turbines.

10 Also the work that I do as an expert witness
11 I bring through my engineering company. And I forgot
12 to mention in this report, I believe, but I am a
13 licensed engineer in state of North Carolina.

14 BY MR. MCCRAW:

15 Q. Thank you. Starting in 2008, does any of
16 your work at BelleQuant involve any work on beverage
17 systems?

18 A. Yes, sir.

19 Q. What work would that be?

20 A. All of the cases I've cited previously that
21 have to do with beverage systems.

22 Q. Outside of your services as an expert witness
23 in those legal cases, does any of your work at
24 BelleQuant involve design of beverage machines?

25 A. Through those cases I have done design of
Nespresso USA, Inc. Ex. 1066

1 beverage machines, but outside of those cases I can't
2 say that it -- no, I don't believe any of it has.

3 Q. Okay. And outside of those legal cases you
4 just mentioned, none of your design work at BelleQuant
5 involves design of coffee machines; is that correct?

6 MR. PLEUNE: Object to form.

7 THE WITNESS: My work with coffee machines?
8 Is that the question?

9 BY MR. MCCRAW:

10 Q. Yes.

11 A. Okay. My work with coffee machines through
12 BelleQuant Engineering involved those various cases
13 and spin-offs from those cases.

14 Q. So the question was outside of those cases.

15 A. Outside of those cases. No, I don't. I
16 can't think of any.

17 Q. What is WhalePower Corp?

18 A. It's a company that is now closed. It was
19 incorporated in Toronto, I believe. It was used -- it
20 had license to a patent developed by a colleague of
21 mine, Professor Frank Fish, and they developed -- or
22 tried to license various technology for improvements
23 of wind turbine blades, of fan systems, of turbo
24 machinery and wings and related devices.

25 Q. Is it correct that between 2007 and 2016 you
Nespresso USA, Inc. Ex. 1066

1 worked at WhalePower Corp?

2 A. I worked with WhalePower Corp. I've been
3 employed continuously at Duke Engineering -- at Duke
4 University in the engineering department since 1993.
5 So this is work in addition to that.

6 Q. Did your work at WhalePower Corp involve any
7 work on beverage systems?

8 A. It did not.

9 Q. And so your work at WhalePower Corp did not
10 involve any work on coffee systems?

11 A. That is correct.

12 Q. Let's go to Paragraph 11 of your declaration.

13 You state, "I am the lead inventor on
14 United States Patent No. 9,884,166 titled 'Jetless
15 Intravenous Catheters and Mechanical Assist Devices
16 for Hand Injection of Contrast Media During Dynamic
17 Computer Tomography and Methods of Using Same."

18 Do you see that?

19 A. I see that.

20 Q. Beyond the title, what is this patent
21 generally directed to?

22 A. It's directed to injecting iodinated contrast
23 media at a high rate into patients for various
24 studies. For example, abdominal imaging studies, and
25 it involves some fairly complicated fluid mechanics,

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 pumps, injectors, the control of those pumps. They
2 can be coupled to various sensing mechanisms used in
3 the computing tomography machines, but it's directed
4 generally to high rate power injection of contrast
5 media for radiological studies.

6 Q. But it's not directed to beverage systems;
7 right?

8 A. Specifically, no, not to beverage systems.

9 Q. And you're not an inventor on any patents
10 directed to beverage systems; right?

11 A. I am not.

12 Q. Earlier, I believe you testified that your
13 work on the series of litigations listed in
14 Paragraph 12 involved design of beverage systems.

15 A. Yes, sir.

16 Q. Please explain to me what you designed in
17 connection with those litigations.

18 A. I was asked at several points to look at
19 various options of pumps, nozzles, spray nozzles, for
20 example, all having to do with these beverage systems
21 and different alternatives. I don't believe I was
22 asked to do anything with the heating elements in
23 there, but certainly, with the fluid mechanic portions
24 of those.

25 Q. Okay. But you didn't design a new coffee
Nespresso USA, Inc. Ex. 1066

IPB2023-00502

1 system; is that correct?

2 MR. PLEUNE: Object to the form.

3 THE WITNESS: I did not design, from the
4 ground up, a complete coffee system.

5 BY MR. MCCRAW:

6 Q. You didn't design any kind of new coffee
7 capsule, did you?

8 A. I analyzed various components of coffee
9 capsules. I can't tell you whether those designs that
10 I worked on were ever implemented in a device that
11 went to market.

12 Q. Was this work in connection with attempting
13 to design noninfringing alternatives in a patent
14 litigation?

15 A. That, or analyzing other people's attempts to
16 get around patents.

17 Q. In analyzing whether or not those systems met
18 the claims of the patents; is that right?

19 A. Somewhat. Also trying to improve the systems
20 themselves outside of patent litigation.

21 Q. And this didn't take place earlier than 2015;
22 is that correct?

23 A. Plus or minus however many years we've
24 assigned to my lack of certainty, I agree with that.

25 Q. Do you recall what the patents asserted by
Nespresso USA, Inc. Ex. 1066

JP2023-00502
Page 45 of 265

1 Adrian Rivera were directed to?

2 A. Specifically to the refillable single serve
3 coffee capsules for use in single serve machines.

4 Q. And do you recall, what was the alleged
5 novelty in those proceedings?

6 A. I think they had a tamping feature they
7 claimed. That was one of them.

8 Q. When you say, "tamping feature," what do you
9 mean?

10 A. For packing the coffee grounds once the
11 capsule is closed, before it's placed into the
12 machine.

13 Q. Were these -- go ahead. I'm sorry.

14 A. I believe another one of the claimed novel
15 inventions had to do with the spray nozzle that was
16 the inlet for the heated fluid as it went into the
17 capsule.

18 I can't tell you the entire patent number,
19 but I believe the last three were '340.

20 Q. So there was a patent directing to the
21 manufacturing process for making a capsule where you
22 were tamping the capsule; is that correct?

23 A. No, sir.

24 Q. Please correct me.

25 A. Okay. It had to do with the capsule itself,
Nespresso USA, Inc. Ex. 1066

1 not the manufacturing process.

2 Q. Okay. So the capsule was tamping during the
3 brewing process?

4 A. Before being inserted into the machine, yes,
5 sir.

6 Q. Okay. And the spray nozzle was a component
7 of the machine?

8 A. It is a component of the capsule, and there
9 were other alleged novel features that I don't recall
10 off the top of my head.

11 Q. Were any of the patents directed to beverage
12 machines as opposed to capsules?

13 A. They included beverage machines. I don't
14 recall that any were directed solely to beverage
15 machines.

16 Q. So your analysis of your client's capsules
17 did not involve an analysis of whether machines met
18 the limitations of a claim; is that correct?

19 MR. PLEUNE: Objection. Misstates testimony.

20 THE WITNESS: My work on those capsules also
21 involved analysis of the machines in that they're
22 coupled to how those capsules work.

23 BY MR. MCCRAW:

24 Q. I believe earlier you said that you worked on
25 trying to improve the beverage systems themselves

JBB2023-00502
Nespresso USA, Inc. Ex. 1066

1 outside of the litigation.

2 Does that mean you were engaged for an
3 expert -- as an expert with these companies outside of
4 litigation?

5 A. Outside of that litigation, no, sir, I was
6 not engaged by them.

7 Q. So you did not develop any beverage systems
8 that were -- that ever went to market; is that
9 correct?

10 A. Well, that's a fairly broad -- beverage
11 systems. You're talking about the machines
12 themselves?

13 Q. It can include that, yes.

14 A. Okay. So I have not developed any machines
15 that went to market, and I cannot tell you whether any
16 of the improvements I designed for the capsules went
17 to market or not. I just don't know that.

18 Q. Okay. And these are for machines that were
19 on the market in or about 2015 and going forward?

20 MR. PLEUNE: Object to form.

21 THE WITNESS: Some of those machines could
22 have been. Some might have been much older than that.

23 BY MR. MCCRAW:

24 Q. But you weren't designing machines prior to
25 2010; right?

1 A. Specific to coffee machines, no. But one of
2 the powerful things about a background in mechanical
3 engineering is that you learn principles that can be
4 applied to many different areas. It need not be
5 specific to one particular product line or
6 application.

7 Q. But you weren't designing beverage systems
8 prior to 2010; right?

9 A. Correct. I think we've already established
10 that.

11 Q. Going back to the Adrian Rivera litigations,
12 was one of your opinions that the patent was invalid
13 for lack of written description?

14 A. Yes, sir.

15 Q. So in that instance you believed the examiner
16 made a mistake by allowing those patents; is that
17 right?

18 A. I believe that was -- that patent should not
19 have been issued, those claims.

20 Q. You agree examiners can make mistakes?

21 A. I have been informed examiners can make
22 mistakes.

23 Q. So I wanted to stay on Paragraph 12 for a
24 quick second to make sure I understand something.

25 The last sentence you say, "I've accumulated
Nespresso USA, Inc. Ex. 1066

1 more than 1,300 hours designing, analyzing, and
2 evaluating single-serve beverage brewing systems."

3 How much of those 300 -- strike that.

4 How much of those 1,300 hours was spent
5 designing components of single-serve brewing systems?

6 A. I would also have to put a fairly large
7 margin of error on that, but I would say
8 approximately, 100 hours.

9 Q. Were the other 1,200 hours involved in
10 consulting on legal issues?

11 MR. PLEUNE: Object to form.

12 THE WITNESS: No, sir. I've never offered an
13 opinion on a legal issue. I'm not a lawyer.
14 Generally, the law is better off because of it.

15 BY MR. MCCRAW:

16 Q. Was the other 1,200 hours spent reviewing
17 patents and comparing products to those patents?

18 A. Portions of it, yes.

19 Q. And the other -- and then portions of that
20 1,200 hours also involved comparing prior art to those
21 patents; is that right?

22 A. That was also involved in some of those
23 hours.

24 Q. Is there anything else I'm not mentioning
25 that was involved in the 1,200 hours you're referring

11/13/23 11:05 AM
Nespresso USA, Inc. Ex. 1066

1 to?

2 A. Yes. In fact, I did quite a bit of work
3 testing the extraction of trimethylxanthine using
4 titration tests related to these devices and the
5 capsules.

6 Much of this work was according to the
7 standards set up by the Specialty Coffee Association
8 of American, SCAA.

9 Q. And what were the types of tests that you
10 performed?

11 A. A titration test to measure the extraction of
12 caffeine, trimethylxanthine, the strength of the
13 coffee.

14 Q. So this testing -- strike that.

15 The testing you were referring to here
16 involved testing the coffee itself, not the beverage
17 system; is that right?

18 A. Those two cannot be separated.

19 Q. Well, you said you were testing the amount of
20 caffeine; is that correct?

21 A. Yes, sir.

22 Q. But you weren't testing the operation of the
23 machine; is that right?

24 A. No, that's not correct.

25 Q. Why is that not correct?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Because the coffee is made by the operation
2 of the machine, and the operation of the machine might
3 influence the extraction of -- of the coffee itself.

4 Q. I see. What were the results of your
5 findings in those testings?

6 A. In that case I was comparing different
7 capsule technology on the extraction strength that
8 came from various capsules.

9 Q. And did that differ based on the amount of
10 coffee in the capsule?

11 A. According to the SCAA standards that I used,
12 the coffee -- the amount of coffee, the amount of
13 water, and the method is all very carefully
14 controlled. So this was a test that would have
15 withstood the rigors of peer review.

16 Q. Okay. And that testing took place after
17 2015; is that right?

18 A. After whatever date we're going to assign,
19 yes, sir.

20 Q. Okay. And those -- that testing involved
21 machines and capsules that were on the market present
22 day in 2015 and onward; is that correct?

23 MR. PLEUNE: Objection. Misstates testimony.

24 THE WITNESS: Okay. Please repeat the
25 question again. If

1 MR. MCCRAW: Sure.

2 Can you read that back, please.

3 (Record read.)

4 THE WITNESS: I can't say that. I think some
5 of those actually existed before that time.

6 BY MR. MCCRAW:

7 Q. Okay. Do you know how long before?

8 A. No, sir.

9 Q. Okay. Do you have any reason to believe
10 those machines and capsules predated 2010?

11 A. Likely, certainly the machines did.

12 Q. What's your basis for that?

13 A. The machines were so old, they were hard to
14 find.

15 Q. The test you were just referring to, that you
16 described as being sufficient for peer review, you
17 were testing the quality of the coffee itself; is that
18 right?

19 A. I was measuring that in connection with how
20 the machine makes the coffee. Those two, as I
21 mentioned, they cannot be separated.

22 Q. What aspect of how the machine makes the
23 coffee was considered in those testings?

24 A. Dwell time, lost mass, temperature, flow
25 rate, filter components. For example, it's well known

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 that paper filters will attract lipids. And so that
2 changes the mouth feel and the flavor of the coffee.
3 So that was one of the tests I did.

4 Let's see what else would have been -- color,
5 according to standards by the Specialty Coffee
6 Association of America. And as I mentioned, with many
7 of these tests I did titration test to measure
8 extraction of caffeine.

9 Others involved an interferometer. It's a --
10 it is an interferometer. I might be mistaken on that,
11 but it's a way that the strength of coffee can be
12 measured using optical properties.

13 Q. Okay. Can you tell me some types of safety
14 considerations that need to be taken into account when
15 designing a brewing system.

16 A. Generally -- since that's a broad question,
17 I'll answer in a broad way.

18 So safety concerns. Operator is one safety
19 concern. Whoever is using the coffee, there are
20 concerns that they might get burnt, for example.

21 You have to be concerned with whatever is put
22 into the system can withstand -- can withstand the
23 rigors of the pressure and the temperature that will
24 be placed throughout the machine and the various
25 components, including the items to be brewed during

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 the process.

2 Q. Anything else?

3 A. I'm sure I could come up with many more
4 depending on how long we sit here.

5 Q. Is there any that are on the top of your head
6 right now?

7 A. You said specifically safety concerns;
8 correct?

9 Q. Safety considerations.

10 A. Safety considerations. Okay.

11 Well, certainly, the suitability for a
12 capsule in a particular machine.

13 Q. What does it mean to you to be suitable for a
14 capsule in a particular machine?

15 A. One example might be that it fits in the
16 machine and won't fall out of the machine, generally
17 speaking.

18 Q. Any other examples?

19 A. Well, I mentioned previously that the
20 components placed into the machine need to be able to
21 withstand the rigors of the temperature and the
22 pressure of the extraction process. So I think that's
23 important.

24 Q. It needs to be a capsule that's going to make
25 a correct beverage in connection with how the machine

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 is intended to operate; is that right?

2 A. I don't understand what you mean by "correct
3 beverage."

4 Q. What I mean is to create a beverage in the
5 manner that the machine intends.

6 MR. PLEUNE: Object to form.

7 MR. MCCRAW: Let me ask it differently.

8 Q. It needs to be designed -- strike that.

9 Would suitability include ensuring that a
10 capsule makes a beverage in a machine that's of
11 sufficient quality for what the machine intends?

12 MR. PLEUNE: Object to the form.

13 THE WITNESS: I don't know how we're going to
14 define "quality." Can you give me some guidance on
15 what you're asking?

16 BY MR. MCCRAW:

17 Q. Well, you spent a lot of time testing
18 capsules according to standard qualities; right?

19 MR. PLEUNE: Objection to form.

20 THE WITNESS: According to standard methods.

21 BY MR. MCCRAW:

22 Q. Right.

23 So what kind of standard quality did you
24 encounter during those tests?

25 A. Caffeine extraction. I think I mentioned it.
Nespresso USA, Inc. Ex. 1066

1 that already. Also -- and this is specifically to
2 coffee, but brewers can make different types of
3 beverages. We talked about caffeine extraction. We
4 also talked about the strength of the coffee, and
5 that's measurable by one of these PAL refractometers.
6 I now remember that it is a reflectometer and not an
7 interferometer. So I'd like to correct my previous
8 statement on that particular device.

9 And so those -- if I recall your question
10 correctly, which I might not have because I've been
11 running my mouth a bit, of measurable qualities, that
12 would be measure -- those would be measurable
13 qualities, for example.

14 Q. Okay. So for a capsule to be suitable for
15 use with a machine, it would need to properly extract
16 the right amount of caffeine and create a coffee of
17 such strength; is that right?

18 A. I don't understand the question. Properly
19 extract? You can have some that people don't like
20 particularly, and that might be judged by the person
21 to be improperly extracting that.

22 Q. So does -- strike that.

23 So a determination of what's suitable for use
24 in a coffee machine might vary upon the individual
25 who's using the machine; is that right?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 MR. PLEUNE: Object to form.

2 THE WITNESS: That's a very broad statement,
3 "suitable for use." I think your question goes,
4 actually, to the particular taste of the individual
5 using the coffee. So an individual could use
6 different flavors, for example.

7 BY MR. MCCRAW:

8 Q. So whether a capsule is suitable for use in a
9 machine might vary based on the taste of the
10 individual using the machine; is that right?

11 MR. PLEUNE: Object to form.

12 THE WITNESS: No. That's far too broad, and
13 that also, I think, misstates what I just said.

14 So suitable for use and taste of a person, I
15 think, are being improperly conflated here.

16 BY MR. MCCRAW:

17 Q. What I'm trying to understand is whether
18 suitable for use includes a capsule that would
19 incorrectly make the beverage according to how the
20 machine is designed.

21 A. Can you give an example of what "incorrectly
22 make the beverage means."

23 Q. If the machine is designed to extract a
24 particular capsule with a particular strength of
25 coffee but a capsule is inserted that fails to

BB2023-00502
Nespresso USA, Inc. Ex. 1066

1 that, is that capsule suitable for the machine?

2 A. I can't get into whether or not it's the
3 taste or whether it will function in the machine, or
4 whether it's -- would -- whether the parameters, such
5 as heat transfer fluid mechanics, whether those
6 parameters would be exceeded. That, in my mind, would
7 go toward suitability, for example.

8 Q. If a capsule operates with the machine but
9 creates a safety hazard, is that capsule suitable for
10 the machine?

11 A. I would say no.

12 Q. Going back to the patents and systems you
13 evaluated in the Adrian Rivera case, did the machines
14 in those cases have a seal that pressed against the
15 top of the capsule?

16 A. Generally, I don't recall if that was one of
17 the claim terms. So we're just talking about the
18 machines themselves?

19 Q. Correct.

20 A. So a seal -- your question was whether it had
21 a seal that pressed against the top of the capsule; is
22 that right?

23 Q. Correct.

24 A. Yes, they did.

25 Q. Okay. Did those systems utilize pumps?
Nespresso USA, Inc. Ex. 1066

1 move the water?

2 A. Yes.

3 Q. Okay. So K-Fee did not invent using seals or
4 pumps in a coffee system; is that right?

5 A. I cannot say that they did. You're talking
6 about the original invention? That was your question?

7 Q. I'm just asking whether K-Fee in the '951
8 patent -- strike that.

9 Whether K-Fee, in the '491 patent, invented
10 using seals or pumps with the coffee machine?

11 MR. PLEUNE: Objection. Outside the scope.

12 THE WITNESS: I have not actually formed an
13 opinion on when these devices were invented.

14 BY MR. MCCRAW:

15 Q. Well, you just testified that the machines
16 that you evaluated in the Adrian Rivera case had
17 seals; right?

18 MR. PLEUNE: Objection. Outside the scope.

19 THE WITNESS: I did.

20 BY MR. MCCRAW:

21 Q. And you testified that those systems also
22 utilized water pumps; correct?

23 A. I did testify to that, yes.

24 Q. And you testified that those machines likely
25 predated 2010 because they were hard to come by?

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Those machines, yes, that's what I testified.
2 That's correct.

3 Q. Do you drink coffee?

4 A. In fact, I don't.

5 Q. When is the last time you tried coffee?

6 A. When I was in the Army.

7 Q. How long ago was that?

8 A. A long time ago. 40 years. But then
9 scientific rigor would dictate that one should not
10 insert oneself in one's own experiments.

11 Q. Let's go back to your declaration for a
12 minute. As part of forming the opinions in your
13 declaration, did you interpret the claim language of
14 the '491 patent?

15 A. The claim language of the '491 patent, as I
16 state here, I used the plain and ordinary meaning.

17 Q. What process did you use to interpret the
18 claim language?

19 A. The plain and ordinary meaning as it would be
20 understood by a person of ordinary skill.

21 Q. How did you determine that the plain and
22 ordinary meaning should apply and not other
23 construction?

24 A. I saw no need for any other construction.

25 Q. How did you go about determining what
Nespresso USA, Inc. Ex. 1066

1 person of ordinary skill in the art would understand
2 as of 2010?

3 A. Being a person of ordinary skill, I used my
4 own understanding of what they would understand.

5 Q. Were you asked to apply any particular claim
6 interpretations in your analysis?

7 A. I was not.

8 Q. Were you given any assumptions to apply in
9 the analysis in this declaration?

10 A. I was not.

11 Q. What does the term "pattern" mean to you in
12 the context of the '491 patent?

13 MR. PLEUNE: Object to the form to the extent
14 it seeks a legal conclusion.

15 THE WITNESS: "Pattern"?

16 BY MR. MCCRAW:

17 Q. I'm just asking what the term means to you.

18 A. Can you point me to the '491 patent where it
19 says, "pattern"?

20 MR. MCCRAW: Sure. I'd like to introduce
21 what has been previously marked as Exhibit 1001 in
22 this proceeding.

23 (Previously marked Exhibit 1001 was made
24 available to the witness.)

25 MR. MCCRAW: This is U.S. Patent IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 No. 11,254,491.

2 THE WITNESS: Thank you for that.

3 (The witness reviewed Exhibit 1001.)

4 THE WITNESS: Could you point me to where it
5 says the term in question, "pattern," I believe it
6 was?

7 BY MR. MCCRAW:

8 Q. Sure. Let's go to Column 13. This is
9 Claim 1. It's Line 9.

10 A. That particular element says, "an identifier,
11 which includes a repeat pattern, provided on the
12 bottom side of the flange."

13 Q. Correct. And I'm asking you: What does the
14 term "pattern" mean in that phrase?

15 MR. PLEUNE: Objection. Just to interpose an
16 objection to the extent it's seeking a legal
17 conclusion.

18 THE WITNESS: From a technical standpoint, I
19 have not provided an opinion on pattern.

20 BY MR. MCCRAW:

21 Q. Dr. Howle, did you provide an opinion on
22 whether the September German application supports the
23 claims in the '491 patent?

24 A. I did, yes.

25 Q. Okay. So to do so, you had to determine
Nespresso USA, Inc. Ex. 1066

1 whether you believed the September German application
2 included a repeat pattern; is that correct?

3 A. I would have, yes.

4 Q. So I'm asking you in connection with your
5 analysis in this case, what do you understand a
6 pattern to be?

7 A. I have not provided a construction for the
8 word "pattern."

9 Q. I'm not asking you to provide a construction.
10 I'm asking you to the extent you're applying the plain
11 and ordinary meaning, what you understand that plain
12 and ordinary meaning to be.

13 A. Well, I believe what I say in my document is
14 a repeat pattern, is a pattern that is repeated.

15 Q. So what is a pattern? How would you know if
16 it's repeated?

17 MR. PLEUNE: Object to form.

18 THE WITNESS: Okay. So that's a very broad
19 question. So I understand you're asking outside of
20 the scope of this patent; is that correct?

21 BY MR. MCCRAW:

22 Q. No, it's not.

23 A. It's narrowly focused to this patent?

24 Q. I'm asking you what the term "pattern" means
25 in the context of the '491 patent?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 MR. PLEUNE: Objection to the extent it seeks
2 a legal conclusion.

3 THE WITNESS: It's something that a person of
4 ordinary skill would recognize as a pattern.

5 BY MR. MCCRAW:

6 Q. So I'm asking you what is something a person
7 of ordinary skill in the art would recognize as a
8 pattern?

9 A. Again, I did not specifically form an opinion
10 on the definition of pattern. I simply applied what I
11 would think as a person of ordinary skill would be
12 applied to these claim terms.

13 Q. So sitting here, you can't tell me what the
14 word "pattern" means to you?

15 A. I would need to review the document again,
16 including all of the supporting documents, to be able
17 to give you a definition that is -- that seems to be
18 what you're after.

19 Q. What is the plain and ordinary meaning of the
20 term "pattern"?

21 A. Well, if we have a dictionary, we can pull it
22 up and look at it.

23 Q. Let me ask you: Did you utilize a dictionary
24 in connection with this report?

25 A. I do not believe I did.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. Okay. So how in this report did you form a
2 conclusion about whether the word "pattern" is met by
3 the September German application?

4 A. Just as I would understand that as a person
5 of ordinary skill in applying that term.

6 Q. And so what does that mean?

7 A. A repeat pattern means a pattern that's
8 repeated. I believe I have that here in my document.

9 Q. But to know whether a repeat pattern --
10 strike that.

11 But to know whether a pattern is repeated,
12 you would need to know what does and doesn't
13 constitute a pattern; right?

14 A. Well, a person looking -- a person of
15 ordinary skill looking at something, if they would
16 recognize it as a pattern, would fall into that. They
17 would recognize that as a pattern.

18 Q. And so that's precisely what I'm asking is
19 what does a person of ordinary skill in the art
20 recognize as a pattern?

21 A. It can vary.

22 Q. "It can vary."

23 Is a single triangle a pattern?

24 A. We're talking about specific to this patent?

25 Q. I'm talking about your understanding of the
Nespresso USA, Inc. Ex. 1066

JPR2023-00502

1 word "pattern" in connection with this patent, that's
2 correct.

3 A. Okay. Perhaps you can point me in the patent
4 where it says, "single triangle."

5 Q. I'm not asking about whether there's a single
6 triangle in the patent. I'm asking you about the word
7 "patent" that is -- strike that.

8 I'm asking about the word "pattern" that is
9 in the '491 patent, and I'm asking you does a single
10 triangle satisfy the word "pattern" in connection with
11 the '491 patent?

12 A. I would have to read it in context.

13 Q. Are three circles in a row a pattern?

14 MR. PLEUNE: Objection. Incomplete
15 hypothetical.

16 THE WITNESS: Again, I would have to read
17 that in context.

18 BY MR. MCCRAW:

19 Q. And what context would you need to know
20 whether something is a pattern?

21 A. In the context of something that's in this
22 document.

23 Q. What in this document informs you about what
24 the word "pattern" means?

25 A. Okay. I'll read to you from my report, IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Starting at the page just above 27. It says, "An
2 Identifier, which includes a repeat pattern, provided
3 on the bottom side of the flange."

4 Then I have, "In its decision instituting the
5 IPR, the Board stated:

6 "[w]e are also not convinced that the
7 toothed ring represents a repeat pattern as that term
8 is used in the second German application. As
9 Petitioner argues, the use of the phrase "repeat
10 pattern" is associated with an ink-printed identifier
11 Preliminary Reply 7; Exhibit 1007,33. It is not
12 clear, on the current record, that the term "repeat
13 pattern" would encompass a physical arrangement of
14 gear-like teeth, as neither party has offered a
15 construction of that claim term.

16 "IPR 2022-01574, Paper 12 at 25. The term
17 'repeat pattern' is entitled to its plain and ordinary
18 meaning, consistent with the broad description of
19 'identifiers' in the '491 Patent, and my
20 interpretation of this limitation is consistent with
21 both the specification of the '491 patent and the
22 disclosure in the second German application. It
23 simply means a pattern that is repeated.

24 "The term identifier is broadly used in the
25 '491 Patent. The specification describes that the
IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 identifier is used 'to individualize the capsule'
2 (Exhibit 1001 at Column 1 Lines 33 through 34 and
3 Column 1 at 61-62) and recites numerous different
4 examples, including printed, radio identification,
5 electromagnetic, shape and mechanical identifiers.
6 For example, the Summary section of the '491 Patent
7 discloses that an identifier may be 'composed of
8 surface areas having different optical properties,'
9 id. at 2:26 to 27. It may be 'encoded in the recess
10 and/or the bulge,' and read as 'a result from
11 mechanical and/or optical method.' Id. at 2:46 to 49.

12 "The identifier is also further described in
13 the '491 Patent as preferably being 'a machine
14 readable imprint,' which can be 'a print in food
15 approved color,' '[f]luorescent material,' 'a barcode,
16 a logo, or a repeat pattern.' Id. at 3:1-6. As yet
17 another example, the identifier described as being 'an
18 electrically conductive section,' ferromagnetic
19 material,' 'a RFID chip' or a 'weakening in the bottom
20 area of the capsule.' Id. at 3:7-19, 3:42-43.

21 "As Mr. Jobin readily admits, the second
22 German application provides 'several distinct
23 embodiments of identifier.' Example 1003 at
24 Paragraph 158. This includes, 'several raised areas'
25 (id.); 'a barcode on the edge area of the base

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 element' (id. at 160); 'identifiers consisting of
2 indentations, barcodes, bulges, reflective and blunt
3 zones, widened rings, ferromagnetic material, or
4 metallic built-in element like a sieve." (id. at 161);
5 and 'a toothed ring' around the 'outer regions' of the
6 flange or peripheral region 2.4.' Mr. Jobin concedes
7 that all of these different forms of 'identifiers'" --
8 I'm sorry. Let me re-correct that sentence. I stated
9 it incorrectly.

10 "Mr. Jobin concedes that all of these are
11 different forms of 'identifiers,' and that each can be
12 used for" the "purposes of individualizing the portion
13 capsule, as disclosed in the second German
14 application.

15 "When discussing other references that also
16 disclosed alternative identifiers, Mr. Jobin admitted
17 that a POSITA at" the time -- "at this time would know
18 that these" are different identifiers -- "would know
19 that these different identifiers could each be applied
20 to the subject capsule of the reference. See
21 Exhibit 2012 at" 78:10 to 78 tab 20. I'm sorry.

22 "...to 88:20 (characterizing 'indents, cutouts,
23 protrusions or holes which can be identified by a
24 mechanical sensor' as 'identifiers') (all objections
25 omitted) 88:22 to 98:6 (characterizing 'a barcode

1 printed onto the body of the package, a pattern of
2 through holes on the package, a pattern of contrasting
3 tones or colours printed on the package' as 'alternate
4 identifier means); 90:7 to 92:1 (characterizing
5 'strips of a magnetic material applied to the body of
6 the package' and 'one or more shaped or divided areas
7 of metal foil' as 'magnetic or inductive alternatives
8 to the previous recognition means that were
9 discussed'); 91:10 to 92:25. '[I]t's my view in the
10 reading of these paragraphs that the recognition and
11 the alternatives discussed apply to the capsule or
12 package that is the subject of this investigation.

13 "The added description of a 'repeat pattern'
14 is just that." An "identifier is repeated. The Board
15 is correct that the second German application
16 explicitly uses the term 'repeat pattern' in
17 describing a certain machine-readable print. This
18 confirms that the identifier can be repeated. Simply
19 because that term is used in the second German
20 application in connection with the machine-readable
21 print, does not mean that the physical identifier
22 disclosed and described with respect to Figures 16, 17
23 and 18 are not repeated on the flange of the capsule.
24 The 'toothed ring' pattern is plainly repeated in"
25 these "Figures."

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 So that is what I have applied to the case in
2 question.

3 Q. Okay. Thank you for reading your report to
4 me, Dr. Howle.

5 A. Yes, sir.

6 Q. I'd like to take you back to Paragraph 27,
7 the last sentence directly above Paragraph 28.

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8         You say, "It simply means a pattern that is
9         repeated." Do you see that?
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10 A. Let's see. Oh, yes, sir, I see that.

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11      Q.  What I'm asking you is what is a pattern?
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12 MR. PLEUNE: Objection. Asked and answered.

13 MR. MCCRAW: It definitely was not answered.

14 MR. PLEUNE: You just ask questions, Counsel.
15 We don't need to have your commentary on the record.

16 THE WITNESS: Again, I was not asked nor did
17 I need to form a construction for the word "pattern."

18 BY MR. MCCRAW:

19 Q. So you didn't form an opinion on what does or
20 does not constitute a pattern; is that right?

21 MR. PLEUNE: Objection. Misstates testimony.

22 THE WITNESS: No, that is incorrect.

23 BY MR. MCCRAW:

24 Q. Okay. So what is your opinion on what
25 constitutes a pattern? I

1 A. It's what a person of ordinary skill would
2 recognize as a pattern.

3 Q. And as a person of ordinary skill that you
4 purport to be, what do you recognize as a pattern?

5 A. Well, if you give me some examples to look
6 at, we can discuss those.

7 Q. I'm asking you, as a person of ordinary skill
8 in the art, what do you recognize as a pattern?

9 MR. PLEUNE: Objection. Asked and answered.

10 THE WITNESS: With respect to something that
11 a person of ordinary skill would recognize as a
12 pattern.

13 BY MR. MCCRAW:

14 Q. So let me give you this example. Is a
15 triangle a pattern?

16 A. We discussed that one already. It would have
17 to be considered in context.

18 Q. What would be an example where a triangle is
19 a pattern?

20 A. Okay. So that is a broad question completely
21 outside the scope of the '491 patent.

22 Q. No, it's not. I'm asking you --

23 A. Okay. Specifically, to the '491 patent,
24 please show me the triangle in the '491 patent.

25 Q. I'm asking you to apply something outside of
Nespresso USA, Inc. Ex. 1066

1 the '491 patent to the claim of the '491 patent.

2 Do you understand that?

3 A. You're asking me to apply this hypothetical
4 triangle that's outside of the '491 patent to the
5 '491 patent?

6 Q. I'm asking you whether a single triangle
7 could be a pattern. It's very simple.

8 MR. PLEUNE: Object to form. Incomplete
9 hypothetical.

10 THE WITNESS: I think one of the issues
11 here -- or the reason we're not having a connection on
12 this is the claim actually has the term repeat
13 pattern, and you're trying to narrow that down only to
14 a pattern.

15 BY MR. MCCRAW:

16 Q. Let's talk about that.

17 What is the difference between a pattern that
18 does and does not repeat?

19 A. Again, there's no non-repeating pattern
20 mentioned in the claims that I recall. So that is
21 something that I have not been asked to form an
22 opinion on.

23 Q. Well, in order to evaluate the scope of the
24 claims, you would need to know whether or not a
25 pattern repeats or does not repeat in order to IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 determine whether something meets the scope of the
2 claim; correct?

3 A. I agree with that.

4 Q. Okay. So what I'm asking you is what is the
5 difference between a pattern that does and does not
6 repeat?

7 A. One is repeated, one is not.

8 Q. And what does it mean to repeat?

9 MR. PLEUNE: Object to form.

10 THE WITNESS: Well, I think I've mentioned
11 this, and I've actually read this to you before, but
12 my opinion on this, which is the same sentence you
13 pointed to a few minutes ago, the sentence before
14 Paragraph 28, a repeat pattern is simply a pattern
15 that is repeated. It's as simple as that.

16 BY MR. MCCRAW:

17 Q. That's the word "repeat." So I'm asking you
18 what does it mean to be repeated?

19 A. Well, a person of ordinary skill looking at
20 something in the context of the '491 would understand
21 if a pattern is repeated or not.

22 Q. And how would a person of ordinary skill,
23 evaluating the '491 patent, understand whether or not
24 something is a pattern according to these claims?

25 A. Whether they just recognize that as a IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 pattern.

2 Q. Okay. So sitting here today, you are unable
3 to explain to me your opinion on the definition of
4 pattern or repeat pattern outside of what is written
5 in this report; is that right?

6 MR. PLEUNE: Object to the form.

7 THE WITNESS: No, sir, I'm not unable to do
8 anything of the type. I'm telling you how I applied
9 this in this particular patent.

10 BY MR. MCCRAW:

11 Q. Sitting here today, are you able to tell me
12 something that falls outside the scope of the word
13 "pattern" in the context of the '491 patent?

14 A. It falls outside of the scope?

15 Q. Correct.

16 A. So you're asking me --

17 THE WITNESS: I'm sorry. Could you please
18 repeat the question?

19 (Record read.)

20 MR. PLEUNE: Object to form. Outside the
21 scope. Ambiguous.

22 THE WITNESS: I'm sorry. Was this within or
23 without the context of the '491?

24 MR. MCCRAW: Could you please read back the
25 question.

1 (Record read.)

2 THE WITNESS: Thank you.

3 So in the context of the '491 patent...

4 (The witness reviewed the document.)

5 THE WITNESS: Outside of the scope of the
6 patent, I would say that something that is random is
7 not a pattern. Randomness has no pattern.

8 BY MR. MCCRAW:

9 Q. Is a single triangle random?

10 MR. PLEUNE: Object to form. Incomplete
11 hypothetical. Lacks foundation.

12 (The witness further reviewed the document.)

13 THE WITNESS: So your complete question was:
14 Is a single triangle random; is that correct?

15 BY MR. MCCRAW:

16 Q. That's correct. That question was in
17 response to your answer about the scope of the word
18 "pattern."

19 A. So we're back to the scope of the patent; is
20 that right?

21 Q. We're on the scope of the pattern.

22 A. "Scope of the pattern." Okay.

23 (The witness reviewed the document.)

24 THE WITNESS: So we want to know if a single
25 triangle is random. So are we discussing the location

1PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 of -- of the single triangle, the orientation of the
2 single triangle?

3 BY MR. MCCRAW:

4 Q. So your answer about something that would be
5 outside the scope of the patent in connection with the
6 word "pattern," you said something that is random is
7 not a pattern. So my question for you is: Is a
8 single triangle random and not a pattern?

9 MR. PLEUNE: Objection. Incomplete
10 hypothetical. Lacks foundation.

11 THE WITNESS: A single triangle is not a
12 pattern that is repeated, and that's the actual claim
13 term at issue. I don't think pattern can be separated
14 from repeatable.

15 BY MR. MCCRAW:

16 Q. So it's your testimony that pattern and
17 repeated mean the same thing?

18 A. No, sir.

19 Q. What is an example of a pattern that's not
20 repeated?

21 MR. PLEUNE: Object to the form. Incomplete
22 hypothetical. Lacks foundation. Outside the scope.

23 THE WITNESS: Since that was a very broad
24 question, all of that question was what is an example
25 of a pattern that is not repeated. A Fibonacci

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 sequence is a pattern that's not repeated. And again,
2 that's completely outside of the scope of the patent
3 or the context of the patent, but that was your
4 question.

5 BY MR. MCCRAW:

6 Q. I see.

7 And the Fibonacci sequence is a series of
8 numbers; is that correct?

9 A. That's correct.

10 Q. And they don't repeat?

11 A. Correct.

12 Q. Would a single number from the Fibonacci
13 sequence be a pattern?

14 MR. PLEUNE: Objection. Incomplete
15 hypothetical. Lacks foundation. Outside the scope.

16 THE WITNESS: In the context of this
17 particular example, a single number is not the
18 Fibonacci sequence, which is the pattern that is --
19 let's see. I forgot what my answer was for that.

20 (Pause.)

21 THE WITNESS: I'm sorry. I lost the
22 question.

23 MR. MCCRAW: Can you read the question back?

24 (Record read.)

25 THE WITNESS: Certainly in the context of a
Nespresso USA, Inc. Ex. 1066

IPB2023-00502

1 Fibonacci sequence, that would not be a pattern.

2 BY MR. MCCRAW:

3 Q. Okay. Going back to your answer about what
4 would not constitute a pattern in the context of the
5 '491 patent, you said that something that is random is
6 not a pattern. Do you remember that?

7 A. I do remember that. I don't remember if I
8 specifically was narrowing that to the context of the
9 '491 patent.

10 Q. So I'm asking you in the context of the
11 '491 patent, a person of ordinary skill in the art --
12 strike that.

13 In the context of the '491 patent, what
14 qualifies as random would be different to different
15 people; is that right?

16 MR. PLEUNE: Object to the form. Lacks
17 foundation.

18 THE WITNESS: No, sir. That's not right.

19 BY MR. MCCRAW:

20 Q. So what's the standard for determining
21 whether something is random versus a pattern in the
22 '491 patent?

23 MR. PLEUNE: Objection. Lacks foundation.

24 THE WITNESS: There is no discussion of
25 randomness in the '491 patent.

1 BY MR. MCCRAW:

2 Q. So there's no discussion of what is or is not
3 a pattern in the '491 patent; is that right?

4 MR. PLEUNE: Objection. Misstates testimony.

5 THE WITNESS: That's not what I said. No,
6 sir.

7 MR. PLEUNE: We've been going for a little
8 over an hour. Is now a good time for a break?

9 MR. MCCRAW: Yeah. I was going to say the
10 same thing. Thanks.

11 (A recess was taken from 11:50 a.m.
12 to 12:07 p.m.)

13 MR. MCCRAW: Back on the record.

14 Q. Can we go to Paragraph 73 of your
15 declaration.

16 A. Yes, sir. 73. Okay.

17 Q. All right. You indicate that you reviewed
18 the declaration of Marc Kruger, which is Exhibit 2020;
19 is that correct?

20 A. Yes, sir. That's correct.

21 Q. Okay. Did you receive any other documents
22 beyond Exhibit 2020 that corroborate the statements in
23 that declaration?

24 A. That corroborates his statements in that --

25 Q. Correct.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. No, sir.

2 Q. So you've not read any lab notebooks from
3 Mr. Kruger?

4 A. I have not read any lab notebooks, that's
5 correct.

6 Q. And that would include any lab notebooks that
7 dated back to 2010 or prior; is that correct?

8 A. That's correct.

9 Q. Okay. And you've not read any other
10 invention disclosure documents from Mr. Kruger outside
11 of the priority documents; is that right?

12 A. Outside of priority documents -- I understand
13 your "priority documents" mean all three of those
14 German applications, for example.

15 Q. Correct.

16 A. Outside of those, I have not.

17 Q. Okay. So your opinions are based in part on
18 what you've read in Exhibit 2020; is that correct?

19 A. No, sir.

20 Q. So no -- so -- strike that.

21 So Mr. Kruger's declaration does not inform
22 any of your opinions in this proceeding; is that
23 correct?

24 A. It corroborates my opinions in this
25 proceeding.

1 Q. You understand that Mr. Kruger's declaration
2 is dated July 7, 2023; correct?

3 A. I will take your word for that. I don't have
4 that document before me.

5 Q. Well, you understand that that declaration is
6 not dated 2010; correct?

7 A. Yes, sir. I understand that.

8 Q. So this declaration is Mr. Kruger, today,
9 explaining what he believes he invented in 2010.
10 That's your understanding?

11 A. I don't want to quibble with the
12 characterization of what he believes. Certainly, it's
13 what he said. I can't speak to what he believes.

14 Q. All right. But that's what he said in the
15 declaration?

16 A. Yes, sir. That's correct.

17 Q. Okay. Let's go back to Exhibit 1001, the
18 '491 patent. I'd like to direct you back to Claim 1,
19 Column 12, Lines 61 to 64.

20 Claim 1 requires "the base element being
21 symmetrical about a central longitudinal axis."

22 Do you see that?

23 A. Yes, sir, I see that.

24 Q. What's your understanding of the term
25 "symmetrical about a central axis" in the context of
JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 the -- strike that.

2 What's your understanding of the term
3 "symmetrical about a central longitudinal axis" in the
4 context of the '491 patent?

5 MR. PLEUNE: Objection. Seeks a legal
6 conclusion.

7 (The witness reviewed Exhibit 1001.)

8 THE WITNESS: So my opinion is that this
9 would be understood by a person of ordinary skill in
10 the art, at the time of the invention, to have a
11 longitudinal access with symmetry about that where a
12 decided object is the base element that's symmetric
13 about that longitudinal axis.

14 Again, like the other issues we discussed, I
15 did not form or give a construction on that. It's
16 simply as would be understood by a person of ordinary
17 skill.

18 BY MR. MCCRAW:

19 Q. Claim 1 also requires "a barrier layer to
20 prevent moisture or aroma from escaping out of the
21 single-serve capsule. Do you see that?

22 A. Let me just find that. Is that in Column 13?

23 Q. Correct. Column 13 lines 8 through 9.

24 A. Okay. Thank you.

25 Yes, sir, I do see that.

1 Q. Okay. What's your understanding of the term
2 "barrier layer" in the context of the '491 patent?

3 A. Well, like all of the other elements and all
4 of the claims, I did not provide a construction on
5 that, but my understanding is that it would be
6 something that would prevent moisture or aroma from
7 escaping out of a single-serve capsule.

8 Q. So something that does not prevent moisture
9 aroma from escaping is not a barrier layer?

10 A. I'm sorry if that's what I said. Something
11 that prevents moisture or aroma from escaping out of
12 the single-serve capsule.

13 Q. Right. So my question is if something did
14 not prevent moisture or aroma from escaping, that
15 would not be a barrier layer; right?

16 A. If it allowed moisture or aroma to escape, in
17 other words.

18 Q. Yes, sir. That's correct.

19 (The witness further reviewed Exhibit 1001.)

20 MR. PLEUNE: Objection. Incomplete
21 hypothetical. Outside the scope.

22 THE WITNESS: I just want to make sure I'm
23 understanding. So your question is specific to this
24 one claim element; right? So a barrier layer to
25 prevent moisture or aroma from escaping out of the

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 single-serve capsule. And it is in only that context;
2 is that right? So you're asking me if something
3 allowed moisture or aroma to escape, would that not
4 fall under this barrier layer; is that correct?

5 BY MR. MCCRAW:

6 Q. Correct.

7 A. Okay.

8 (The witness further reviewed Exhibit 1001.)

9 THE WITNESS: So if the layer allowed
10 moisture or aroma to escape, then it would not meet
11 the limitations of this claim element marked as
12 Roman iv in Claim 1.

13 BY MR. MCCRAW:

14 Q. So it would not be a barrier layer?

15 A. If a barrier layer is required to prevent
16 moisture or aroma from escaping.

17 Q. Thank you. Claim 1 also requires "a
18 receptacle configured to receive the single-serve
19 capsule." Do you see that? I believe it's Column 13,
20 Lines 13 and 14.

21 A. Yes, sir. I see that.

22 Q. What's your understanding of the term
23 "receptacle" in the context of the '491 patent?

24 A. Well, as with the other terms we've been
25 discussing, and likely no doubt to discuss, I have not
Nespresso USA, Inc. Ex. 1066

1 provided a construction of that. So my understanding
2 is as it would be applied by a person of ordinary
3 skill.

4 Q. And what does a "receptacle" mean in the
5 context of the '491 patent to a person of ordinary
6 skill?

7 A. Well, we could go back to the specification,
8 and I can point that out to you.

9 (Pause.)

10 THE WITNESS: I'm sorry. I'm just scanning
11 through here to find the word "receptacle" so I can
12 interpret that claim in light of the specification.

13 (The witness reviewed document.)

14 THE WITNESS: It's simply something that
15 receives a single-serve capsule.

16 BY MR. MCCRAW:

17 Q. So it's your testimony that the plain and
18 ordinary meaning of the word "receptacle" is something
19 that receives a single-serve capsule?

20 MR. PLEUNE: Object to form. Outside the
21 scope. Seeks legal conclusion.

22 (The witness further reviewed the document.)

23 THE WITNESS: Well, my testimony is that that
24 claim element, 1B Roman ii, "a receptacle configured
25 to receive the single-serve capsule" is something that

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 would be understood by a person of ordinary skill.

2 BY MR. MCCRAW:

3 Q. And what would they understand that to be?

4 A. Well, with that element by itself, it would
5 be something that receives a single-serve capsule.

6 Q. Is a receptacle different from a media chute?

7 A. Point me to where "media chute" is, please.

8 Q. Do you have an understanding, as a person of
9 ordinary skill in the art, what the term "media chute"
10 means?

11 MR. PLEUNE: Objection. Outside the scope.

12 THE WITNESS: It would need to be understood
13 in the context of the patent, and I believe we're
14 talking about everything in the context of the patent;
15 is that right?

16 BY MR. MCCRAW:

17 Q. So you can't answer my question as to whether
18 you understand what the term "media chute" means to a
19 person of ordinary skill in the art?

20 MR. PLEUNE: Object to the form.

21 THE WITNESS: Well, again, that's a very
22 broad question. So "media chute" could mean many
23 different things. In the context of the '491 patent
24 it, I believe, would be fairly specific.

25 BY MR. MCCRAW:

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. And what do you understand that it would
2 mean?

3 A. Media chute we're talking about now and not
4 receptacle?

5 Q. Correct.

6 A. Okay.

7 (Pause.)

8 THE WITNESS: Well, may I ask you to point me
9 to an area in the claim where they discuss media
10 chute.

11 BY MR. MCCRAW:

12 Q. Sure. I'll point you to an area of the
13 specification. If you go to Column 2 --

14 A. Okay.

15 Q. -- starting at Line 20 through 25. Let me
16 know when you get there.

17 A. Column 2, 20 through 25. Give me just a sec
18 to read it, please.

19 Q. I'll read it for you. The '491 patent
20 states, "Alternatively or additionally means, in
21 particular mechanical means, more preferably, one or
22 more gearwheels, may be added to the media chute in
23 order to guarantee that incorrect portion capsule
24 cannot be inserted into coffee machines by passing the
25 media chute."

1 A. Yes, sir, I see that.

2 Q. What do you understand the media chute to be
3 in the context of the '491 patent?

4 MR. PLEUNE: Objection to form. Outside the
5 scope.

6 (The witness further reviewed the document.)

7 THE WITNESS: Just scanning for other
8 inferences of media chute so I can understand the
9 entirety in context.

10 For example, just above that, Column 2,
11 starting at 13, at the end of that, "Preferably the
12 detection system is placed in the region of the coffee
13 machine's media chute designed for the portion
14 capsules."

15 (The witness further reviewed the document.)

16 THE WITNESS: Later in Column 2, at around 49
17 to it looks like around 55, "Alternatively or
18 additionally, the identifier can be used to avoid that
19 the portion capsule is inserted into the coffee
20 machine. This applies in particular to the media
21 chute."

22 BY MR. MCCRAW:

23 Q. So based on these references, Dr. Howle, what
24 is your understanding of the term "media chute" in the
25 context of the '491 patent?

1 A. As I mentioned, it's something that I've not
2 opined on. I've not provided a construction of that.
3 It's something that would be understood by a person of
4 ordinary skill.

5 Q. And you're a person of ordinary skill; right?

6 A. I'm a person of ordinary skill, yes.

7 Q. And so what do you understand the term "media
8 chute" to mean?

9 MR. PLEUNE: Objection. Form. Outside the
10 scope.

11 (The witness further reviewed the document.)

12 THE WITNESS: Well, I would understand, for
13 example -- and again, I'm back to Column 2, up to 13,
14 where it says, "Preferably the detection system is
15 placed in the region of the coffee machine's media
16 chute designed for the portion capsule."

17 So that would be a portion of my
18 understanding.

19 BY MR. MCCRAW:

20 Q. And what would that mean?

21 A. I would need to actually read all of these.
22 That would mean its plain and ordinary meaning as
23 understood by a person of ordinary skill.

24 Q. Can you tell me in plain words what a media
25 chute is in the context of the '491 patent? IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 MR. PLEUNE: Object to the form. Outside the
2 scope.

3 (The witness further reviewed the document.)

4 THE WITNESS: According to the specification,
5 it's something that may have gearwheels.

6 BY MR. MCCRAW:

7 Q. So if a pump had gearwheels, would a pump be
8 a media chute?

9 MR. PLEUNE: Object to form.

10 (The witness further reviewed the document.)

11 THE WITNESS: I'm sorry. I'm just looking
12 for media chute again. That was in Claim 1. Can you
13 refresh my memory exactly where it was?

14 BY MR. MCCRAW:

15 Q. I don't know that it's in Claim 1 of this
16 patent. I'm asking you about what it means in the
17 context of the specification, what that word means?

18 A. That's right.

19 You didn't point to the claims before.

20 Q. Dr. Howle, I'm not trying to trick you or ask
21 a difficult question. I just want to know as a person
22 of ordinary skill in the art, what does the term
23 "media chute" mean to you in plain words?

24 MR. PLEUNE: Objection. Outside the scope.

25 THE WITNESS: Plain words outside of the
Nespresso USA, Inc. Ex. 1066

1 scope of the patent?

2 MR. MCCRAW: Can you read back the question,
3 please?

4 (Record read.)

5 THE WITNESS: Okay. So I did not hear in the
6 context of the patent in that question.

7 BY MR. MCCRAW:

8 Q. Let me rephrase it, then, if you require that
9 information.

10 I just want to know what a person of ordinary
11 skill in the art would understand the term "media
12 chute" to mean in plain words in the context of the
13 '491 patent.

14 MR. PLEUNE: Objection. Seeks legal
15 conclusion. It's outside the scope.

16 THE WITNESS: Before I answer that, I would
17 want to review the patent in some detail, and I might
18 also want to review some of the related documents.

19 BY MR. MCCRAW:

20 Q. You reviewed your declaration in preparation
21 for this deposition; right?

22 A. Yes, sir.

23 Q. And you reviewed the '491 patent in
24 preparation for this declaration?

25 A. Yes, sir.

1 Q. Strike that.

2 You reviewed the '491 patent in preparation
3 for this deposition; right?

4 A. Yes, sir.

5 Q. Okay. So I'm asking you, based on your
6 understanding of the '491 patent and the analysis that
7 you've done of it as of today, what is your
8 understanding in plain words of the term "media
9 chute"?

10 MR. PLEUNE: Objection to extent it seeks a
11 legal conclusion, and outside the scope.

12 THE WITNESS: Can you point me to the section
13 in my declaration where I discuss that, please.

14 BY MR. MCCRAW:

15 Q. I'm just asking in the context of the
16 '491 patent that you reviewed in this proceeding, what
17 does the term "media chute" mean to you as a person of
18 ordinary skill in the art.

19 A. Well, you seem to be asking me to form a
20 construction for the term "media chute" and I've not
21 opined on any construction. It's just something that
22 a person of ordinary skill would understand when
23 reading the specification of the patent.

24 Q. Okay. And in plain words, what would a
25 person of ordinary skill understand that word to mean?

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 MR. PLEUNE: Objection to the extent it seeks
2 a legal conclusion. Outside the scope.

3 THE WITNESS: I'll go back to Column 2.
4 That's where we found some of the discussion of that.

5 (The witness reviewed the document.)

6 THE WITNESS: "Preferably, the detection
7 system is placed in the region of the coffee machine's
8 media chute designed for the portion capsules." So
9 this would inform me that the media chute has to be in
10 the region of the portion capsules. It has to have
11 the detection system placed in the region of the
12 coffee machine's media chute. So that is some of what
13 would inform me of what a media chute is.

14 Then just going through the analysis that I
15 would go through, if I were evaluating certain terms
16 in the specification, I would repeat this exercise for
17 each indication of media chute --

18 BY MR. MCCRAW:

19 Q. But sitting here -- please, go ahead.

20 A. -- but before giving an opinion on a
21 particular construction of the term "media chute."

22 Q. Sir, I'm not asking for a construction of the
23 term. I'm just asking your understanding of the plain
24 and ordinary meaning, and as I understand it, you are
25 not able to give me that sitting here today; is that

JP2023-00502
Nespresso USA, Inc. Ex. 1066

1 right?

2 MR. PLEUNE: Objection. Misstates the
3 testimony. Asked and answered.

4 BY MR. MCCRAW:

5 Q. I've been asking questions for 15 minutes on
6 this, and I've been unable to get from you in plain
7 words what "media chute" means in the context of the
8 '491 patent. That's all I'm asking.

9 MR. PLEUNE: You've been asking about terms
10 that are not in the claims, and you've been focusing
11 on the specification. If you're going to keep
12 characterizing your question, I can characterize your
13 question.

14 MR. MCCRAW: I'm here asking questions today.
15 I'd like you to stop your speaking objections now.

16 MR. PLEUNE: Then don't -- then ask your
17 questions. Don't characterize your questions,
18 Counsel.

19 BY MR. MCCRAW:

20 Q. As a person of ordinary skill in the art,
21 sitting here right now, can you tell me the plain
22 meaning in plain words of the term "media chute,"
23 "yes" or "no"?

24 MR. PLEUNE: Objection. Asked and answered.

25 THE WITNESS: We're still in context of this
JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 patent; correct?

2 BY MR. MCCRAW:

3 Q. Yes.

4 A. So as I responded, with respect, I would want
5 to have the time to go through the entire
6 specification to pull out all examples of media chute
7 so I can give you a reasonable answer.

8 Q. But without doing that right now, you're
9 unable to give me an explanation of what that term
10 means to you as a person of ordinary skill in the art?

11 A. Without doing that right now, I'm afraid that
12 you might mischaracterize my response.

13 Q. Is a receptacle different from a media chute?

14 A. Show me how they're used, and let's discuss
15 that.

16 Q. Okay. Well, you already testified that a
17 receptacle is something that receives the single-serve
18 capsule. Do you remember that?

19 A. Yes, I do.

20 Q. Okay. So is the media chute something
21 different from that, or is it the same?

22 MR. PLEUNE: Objection. Outside the scope.
23 Incomplete hypothetical.

24 THE WITNESS: I do not believe they would be
25 differentiated if they were the same.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 BY MR. MCCRAW:

2 Q. So you're saying they're different?

3 A. I'm saying I do not believe they would be
4 differentiated if they were the same.

5 Q. So you're saying that they're the same?

6 MR. PLEUNE: Objection. Misstates the
7 testimony.

8 BY MR. MCCRAW:

9 Q. Dr. Howle, I'm just asking you a binary
10 question of are they the same or not the same?

11 MR. PLEUNE: Objection. Asked and answered.

12 THE WITNESS: Sir, often binary --
13 frequently, there are no binary questions. So I would
14 see the context in which you're comparing the two so I
15 could tell you whether or not they're the same.

16 BY MR. MCCRAW:

17 Q. Okay. The context is the terms as used in
18 the '491 patent.

19 A. Okay. Can you please point to a specific
20 package -- passage with media chute and receptacle,
21 and let's compare those two items.

22 Q. Sir, I've already pointed you to the
23 receptacle in the claims, and I've pointed you to
24 several instances of media chute in the patent. So
25 I'm asking you to tell me whether, as a person

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 ordinary skill in the art, you understand those two
2 terms to be the same element or to describe something
3 different.

4 A. Well, since they are differentiated, I would
5 interpret those to be something different.

6 Q. Okay. Is a receptacle different from an
7 insertion shaft?

8 A. I'm going to ask you to please point me to
9 the insertion shaft in the claims since we know
10 receptacle is in the claims, and then we can compare
11 those two.

12 Q. I'll just point you to the abstract of the
13 '491 patent. In the center of the abstract on the
14 first page it says, "The machine includes: a
15 sensor/detector; an insertion shaft configured to
16 receive the capsule."

17 So I'm asking you is an insertion shaft and
18 receptacle the same thing.

19 MR. PLEUNE: Objection. Outside the scope.
20 Calls for an incomplete hypothetical. Lacks
21 foundation.

22 (The witness reviewed the document.)

23 THE WITNESS: Well, I would say that an
24 insertion shaft could contain a receptacle. So in my
25 view, a receptacle might be a subset of an insertion

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 shaft. So your question was are they the same. I
2 would have to respond no.

3 BY MR. MCCRAW:

4 Q. Okay. Let's go back to the claims of the
5 '491 patent. '491 patent Claim 1 includes the
6 limitation "a seal that is at least partially seated
7 in the groove and configured to bear against the top
8 side of the cover in a region between a peripheral
9 edge of the cover and the region of the cover that is
10 pierced by the chamfered mandrel."

11 Do you see that?

12 A. Yes, sir.

13 Q. That's in Column 13, Lines 26 to 30.

14 A. Yes, sir. I have that.

15 Q. Now, you've interpreted that term in your
16 analysis in this declaration; correct?

17 A. I have applied that term.

18 Q. Okay. What's your understanding of what a
19 "seal" in Claim 1 means?

20 A. Well, it would have to be something that is
21 at least partially seated in the groove, and then
22 there's discussion of that in the specification. So
23 I'll walk through the specification and we can discuss
24 what else that seal has to do.

25 In fact, I might have done this already in my
Nespresso USA, Inc. Ex. 1066

1 declaration. So I'll, with respect, save some time
2 and see if I can find that so we don't have to go
3 through this exercise.

4 Q. Is your understanding of the term "seal" in
5 the context of the '491 patent limited to what is
6 stated about a seal in the '491 patent?

7 MR. PLEUNE: Object to the form.

8 THE WITNESS: Limited to was your question?
9 I believe that was the question. Is it limited to
10 what's stated in the specifications?

11 BY MR. MCCRAW:

12 Q. Correct.

13 (The witness reviewed the document.)

14 THE WITNESS: Well, it must at least be
15 consistent with what's stated in the specification.

16 BY MR. MCCRAW:

17 Q. Are you offering a claim construction for the
18 term "seal" in this case?

19 A. I have not offered a claim construction on
20 anything in this case.

21 Q. Okay. Is your opinion that the term "seal"
22 needs to be construed in this case?

23 A. I have not construed seal in this case.

24 Q. What's your understanding of a seal in the
25 context of -- strike that.

1 What's your context of a seal in the context
2 of the '491 patent?

3 MR. PLEUNE: Object to the form.

4 (The witness reviewed the document.)

5 THE WITNESS: My understanding, it would come
6 from the specification. So we can go through the
7 entire specification to figure that out. So starting
8 at the abstract, it has to be -- and I'm at the last
9 three sentences here -- "and a seal that is at least
10 partially seated in the groove and configured to bear
11 the cover."

12 So a seal must be, in the context of the
13 patent, at least partially seated in the groove and
14 configured to bear against the cover.

15 BY MR. MCCRAW:

16 Q. That's where the seal is. I'm asking you
17 what the seal is.

18 A. Sir, I'm not finished yet. I'm looking for
19 the rest of the specifications so I can read the
20 entirety of what the seal is claimed to be.

21 (The witness further reviewed the document.)

22 BY MR. MCCRAW:

23 Q. Sir, do you have to read the entire
24 specification right now to answer my question?

25 A. I want to make sure I don't miss anything.
Nespresso USA, Inc. Ex. 1066

1 (The witness further reviewed the document.)

2 THE WITNESS: I do recall discussion of the
3 seal in the chamfered mandrel and water flow, and
4 that's the particular part I'm looking for right now.

5 (The witness further reviewed the document.)

6 THE WITNESS: And that will bear to
7 Figure 16A. And I expect you probably have this
8 electronically on your computer. It might be quicker
9 if you search the specification for seal, and if you
10 can point me to those, we can -- I can save some of
11 your time.

12 (Pause.)

13 BY MR. MCCRAW:

14 Q. Let's go to Column 10, Lines 28 through 31.

15 "Preferably, it is provided that the edge
16 region has a sealing surface 2.4.1, which sealingly
17 interacts with the seal 31 attached to the brewing
18 chamber 27, on the interior side of the gearwheel."

19 Do you see that?

20 A. Yes, sir, I do.

21 Q. The next sentence states, "The seal 31 makes
22 sure that the water coming from a water inlet flows
23 through the portion capsule by passing an opening,
24 which is made by a mandrel, than around it."

25 Do you see that?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. What's your understanding of the term "seal"
3 in the context of the '491 patent?

4 A. Just may I ask you if those are all of the
5 instances of seal within the specification? As I
6 mentioned, I want to understand the entirety of how
7 it's used in the specification before I respond to
8 your question.

9 Q. That's the only instance I see right now.

10 A. That you see right now. Okay.

11 (The witness reviewed the document.)

12 THE WITNESS: My further understanding, in
13 addition to what I said before in relation to the
14 specification, is that the seal sealingly interacts
15 with an edge region that has a sealing surface.
16 Further, the seal makes sure that water coming out of
17 the water inlet 28 flows through the portion capsule
18 by passing an opening which has been made by a mandrel
19 28 and around it.

20 So I would interpret this to mean that the
21 seal absolutely prevents water from flowing past the
22 seal.

23 BY MR. MCCRAW:

24 Q. So it's your opinion that the language "makes
25 sure that the water coming from a water inlet flows

IPB2023-00502
Nespresso USA, Inc. Ex. 1066

1 through the portion capsule by passing an opening,
2 which has been made by a mandrel" and does not flow
3 around the capsule is a limitation of the term "seal"?

4 MR. PLEUNE: Object to the form.

5 THE WITNESS: Limitation is something that,
6 to my knowledge, appears in a claim. So I've never
7 been informed that limitations can be drawn from the
8 specification. Rather, I've been taught that the
9 claims are read in light of the specification.

10 BY MR. MCCRAW:

11 Q. Let me ask a better question.

12 Is the phrase "make sure that the water
13 coming from a water inlet flows through the portion
14 capsule by passing an opening, which has been made by
15 the mandrel" and does not flow around the capsule, is
16 that a requirement of the claimed seal?

17 MR. PLEUNE: Objection. Seeks a legal
18 conclusion.

19 THE WITNESS: Well, if we go back to Claim 1,
20 the last element in that claim, it says, "a seal that
21 is at least partially seated in the groove configured
22 to bear against the top side of the cover in a region
23 between a peripheral edge of the cover and a region of
24 the cover that is pierced by the chamfered mandrel."

25 So what I've been taught is that an element
Nespresso USA, Inc. Ex. 1066

1 like that would be interpreted in light of the
2 specification. So then we went to the specification,
3 and we've been through that exercise already.

4 BY MR. MCCRAW:

5 Q. So is it your opinion that the term "seal"
6 means, to a person of ordinary skill in the art in the
7 context of the '491 patent, something that makes sure
8 that the water coming from the water inlet flows
9 through the portion capsule by passing an opening
10 which has been made by a mandrel and does not flow
11 around the capsule?

12 MR. PLEUNE: Objection. Seeks a legal
13 conclusion.

14 (The witness reviewed the document.)

15 THE WITNESS: Well, with respect, the concern
16 I'm having here is that you seem to be trying to get
17 me to insert the specification into the patent.

18 BY MR. MCCRAW:

19 Q. I'm only asking, Dr. Howle, whether it's your
20 opinion, "yes" or "no," that a seal, in the context of
21 the '491 patent, must make sure that the water coming
22 from the water inlet flows through the portion capsule
23 by passing an opening which was made by the mandrel
24 and does not flow around the capsule, "yes" or "no"?

25 MR. PLEUNE: Objection. Ambiguous. Seeks a
Nespresso USA, Inc. Ex. 1066

1 legal conclusion.

2 (The witness reviewed the document.)

3 THE WITNESS: Well, with respect, the problem
4 I'm having with your question is it seems to be that
5 you're reading the specification to narrow the claim
6 rather than the claim narrowing the specification.

7 BY MR. MCCRAW:

8 Q. Okay. So it's your opinion that the language
9 from the specification makes sure that the water
10 coming from the water inlet flows through the portion
11 capsule by passing an opening which has been made by a
12 mandrel and does not flow around the capsule, that
13 language would not be imported into the definition of
14 "seal"; is that right?

15 A. Seal would be interpreted in light of that
16 information.

17 Q. Okay. So to a person of ordinary skill in
18 the art reading the '491 patent, must a seal make sure
19 that the water coming from the water inlet flows
20 through the portion capsule by passing an opening
21 which has been made by a mandrel and does not flow
22 around the capsule?

23 MR. PLEUNE: Objection. Ambiguous. Asked
24 and answered.

25 THE WITNESS: Sir, I'm having the same PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 problem with that question.

2 BY MR. MCCRAW:

3 Q. I'm just asking you if that's a requirement
4 of the seal or not. It sounds like you're saying that
5 that should not be imported from the specification
6 into the definition of "seal," and that's what I'm
7 just trying to understand.

8 A. Okay.

9 Q. So is it your testimony that the plain and
10 ordinary meaning of the word "seal," in the context of
11 the '491 patent, requires a seal to make sure that the
12 water coming from the water inlet flows through the
13 portion capsule by passing an opening which has been
14 made by the mandrel and does not flow around the
15 capsule?

16 MR. PLEUNE: Objection. Misstates testimony.
17 Asked and answered.

18 (The witness reviewed the document.)

19 THE WITNESS: So a person of ordinary skill
20 reading that claim in light of the specification term
21 that we've now recited -- or specification package
22 that -- passage that we've now recited several times,
23 if I, as a person of ordinary skill, read that claim
24 passage and it had the behavior of that specification,
25 those would be consistent to me.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 BY MR. MCCRAW:

2 Q. So it's your opinion that that language
3 should be imported as a limitation of Claim 1?

4 MR. PLEUNE: Objection. Misstates the
5 testimony.

6 THE WITNESS: My testimony from just a second
7 ago was that if that claim element includes the
8 behavior from the specification, that that would
9 certainly be consistent with the specification.

10 BY MR. MCCRAW:

11 Q. Okay. So it's your testimony that a seal, in
12 order to be a seal in the context of the '491 patent,
13 needs to perform what's in this phrase?

14 MR. PLEUNE: Objection. Vague. Misstates
15 testimony.

16 (The witness reviewed the document.)

17 THE WITNESS: I apologize for not remembering
18 this, but can you point me -- was it Column 10 that we
19 were looking at for --

20 MR. MCCRAW: It was Column 10, Lines 31
21 through 34.

22 THE WITNESS: Okay. Thank you.

23 (The witness further reviewed the document.)

24 THE WITNESS: So back to Claim 1, the "seal
25 that is at least partially seated in the groove and

JP2023-00502
Nespresso USA, Inc. Ex. 1066

1 configured to bear against a top side of the cover in
2 a region between a peripheral edge of the cover and a
3 region of the cover that is pierced by the mandrel,"
4 that claim term -- and now I'll go to the
5 specification.

6 We're back to Column 10 where you helpfully
7 pointed me to a minute ago. "The seal 31 makes sure
8 that the water coming" out of the "water inlet flows
9 through a portion of the capsule by passing an
10 opening, which has been made by mandrel 29, then
11 around it."

12 So if I saw a device that had that claim
13 element that practiced -- not practiced, but was
14 consistent with that passage in the specification,
15 that that would be consistent with that claim element.

16 MR. MCCRAW: Thank you.

17 We've been going for about an hour. Let's
18 take a break.

19 (A recess was taken from 1:06 p.m.
20 to 1:56 p.m.)

21 BY MR. MCCRAW:

22 Q. Did you speak with counsel about the
23 substance of your testimony during the break?

24 A. No, sir.

25 Q. Did you speak with counsel about the IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 substance of my questions during the break?

2 A. No, sir.

3 Q. I'd like to go back to the '491 patent
4 Claim 1. I'd like to go to Column 13, Lines 24 and 25
5 that recite, "a groove that is laterally offset from
6 the chamfered mandrel." Do you see that?

7 A. Yes, sir. I see that.

8 Q. Okay. Do you have an understanding of what a
9 groove is in the context of the '491 patent?

10 A. Let me just start off by saying as with the
11 other terms, I did not provide a construction for that
12 particular element.

13 Q. So it's your opinion that the term "grooved"
14 does not need to be construed; is that right?

15 A. I have applied a plain and ordinary meaning
16 to the terms.

17 Q. So you are not offering a claim construction
18 for the term "groove"; is that right?

19 A. Yes, sir. That's right.

20 Q. Does the '491 patent recite a definition for
21 the term "groove"?

22 THE WITNESS: Let's see.

23 (The witness reviewed the document.)

24 BY MR. MCCRAW:

25 Q. And to be clear, I'm talking about grooves in
Nespresso USA, Inc. Ex. 1066

1 the context of a seal, not grooves on the body of the
2 capsule.

3 A. Yes, sir. That's how I interpreted your
4 question, but thank you for that clarification.

5 THE WITNESS: I'm just scanning the
6 specification here now for Element 31.

7 (The witness further reviewed the document.)

8 BY MR. MCCRAW:

9 Q. If you're looking for 31, I'd like to direct
10 you to Column 10, Lines 28 through 34.

11 A. I had found that, but that's not actually
12 what I need. It looks like 17 is -- no.

13 Q. Would it surprise you that the term "groove"
14 is not used in the '491 patent in connection with the
15 term "seal"?

16 A. In the claims, or just the specification?

17 Q. I'm referring to the specification.

18 A. Specification.

19 MR. PLEUNE: Object to the form.

20 BY MR. MCCRAW:

21 Q. So since the term "groove" is not used in the
22 '491 patent in the specification in connection with
23 the term "seal," what is your understanding of that
24 groove based on?

25 MR. PLEUNE: Objection. Vague. IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 MR. MCCRAW: Counsel, I'm sorry. I've been
2 very lenient in this deposition with the speaking
3 objections, but I want to direct you to the Patent
4 Trial and Appeal Board consolidated practice guide,
5 Page 128 that says, "Objection, vague is an example of
6 an objection that would not be proper."

7 And so I'd like you to suggest
8 non-argumentative and non-suggestive objections, such
9 as Objection form, objection relevance, or objection
10 foundation.

11 MR. PLEUNE: Okay. Objection. Vague and
12 ambiguous.

13 MR. MCCRAW: That is also not proper. That
14 suggests what the objection is. I'd like you to use
15 Objection. Form. It's in the trial guide.

16 MR. PLEUNE: I disagree. I don't think that
17 I've made any speaking objections at all, but I'll
18 take a look at the section of the trial guide that
19 you're referring to, and we can discuss it further if
20 need be.

21 THE WITNESS: So I think there are at least
22 two pending questions?

23 MR. MCCRAW: Can you please read back my last
24 question.

25 (Record read.)

1 THE WITNESS: Well, first of all, if you're
2 representing to me that groove is not used with seal,
3 I'll take your word for it.

4 BY MR. MCCRAW:

5 Q. Okay.

6 A. So represented. So let me just look a little
7 bit here. So my broad overall understanding how it
8 would be interpreted or how it would be understood by
9 a person of ordinary skill in the art.

10 Q. Yes. And that's what I'm asking you is how
11 the term "groove" would be interpreted to a person of
12 ordinary skill in the art in the context of the
13 '491 patent.

14 (The witness reviewed the document.)

15 MR. PLEUNE: Objection. Seeks a legal
16 conclusion.

17 THE WITNESS: Well, my conclusion about how
18 that would be interpreted would be at least driven by
19 I'm looking at Claim 1, Roman vi. "a seal that is at
20 least partially seated in the groove and configured
21 there against a top side of the cover in a region
22 between a peripheral edge of the cover and region of
23 the cover that is pierced by the chamfered mandrel."

24 Above that at v, "a groove that is laterally
25 offset by the chamfered mandrel." That gives me
Nespresso USA, Inc. Ex. 1066

1 geometric information that is used to interpret that.

2 BY MR. MCCRAW:

3 Q. Okay.

4 A. And then -- so it says, "a seal that is at
5 least partially seated in the groove." So I disagree
6 with your previous assertion that groove is not shown
7 in relationship to seal.

8 Q. My statement was directed to whether the term
9 "groove" was used in the specification, not the
10 claims, but I understand your clarification.

11 Is it your testimony that the term "groove,"
12 in the context of the '491 patent, is something that
13 has a seal at least partially seated in it?

14 MR. PLEUNE: Objection to the extent it seeks
15 a legal conclusion.

16 THE WITNESS: Well, reading Claim 1, as a
17 person of ordinary skill, I would say that a groove is
18 at least partially seated -- I'm sorry. A seal is at
19 least partially seated in the groove in a particular
20 embodiment.

21 BY MR. MCCRAW:

22 Q. Okay. I'm just asking what the term "groove"
23 means. Not what the claim says, necessarily, but what
24 the term "groove" means in the context of the
25 '491 patent.

1 MR. PLEUNE: Same objection.

2 THE WITNESS: Well, again, I have not offered
3 a construction on that term, which I think I'm going
4 to say a lot and I've said a lot already. So I'll
5 just looked at the requirements of Claim 1 here, and I
6 can tell you what it means to me reading this claim.

7 So it needs to be laterally offset from a
8 chamfered manual -- so it's something that does
9 that -- and it needs to be able to have a seal at
10 least partially seated in it. So that would guide my
11 understanding.

12 BY MR. MCCRAW:

13 Q. Those are the things that must be around the
14 groove, but my question is what is a groove to a
15 person of ordinary skill in the art in plain words in
16 the context of the '491 patent?

17 MR. PLEUNE: Same objection.

18 THE WITNESS: It's defined exactly as the --
19 as it was intended, I suppose, in Claim 1. So that
20 would be my definition that I would apply.

21 BY MR. MCCRAW:

22 Q. Okay. So you have no further interpretation
23 of the term "groove" beyond what's stated in Claim 1;
24 is that right?

25 A. No, sir, that's not what I said. IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 So again, like all the other claim terms
2 we've been talking about, I have not provided a
3 construction. We don't have time to go through
4 everything here and do that for all these terms.

5 So I am interpreting that as it would be
6 understood by a person of ordinary skill, and that
7 person of ordinary skill would look at this and
8 understand that the term "groove" is used
9 appropriately.

10 Q. Okay. So Dr. Howle, you have spent 1,300
11 hours analyzing coffee systems in the past; is that
12 right?

13	A. Yes, sir.
----	--------------

14 Q. And you reviewed the '491 patent in
15 connection with this case; right?

16	A. Yes, sir.
----	--------------

17 Q. And you reviewed Mr. Jobin's deposition
18 transcript; is that right?

19	A. Yes, sir.
----	--------------

20 Q. And you reviewed the petition in that case --
21 in this case; right?

22 A. Yes, sir.

23 Q. Okay. And you prepared for today's
24 deposition?

25 A. I did, yes, sir.

1 Q. Okay. So with all of that, sitting here, you
2 cannot tell me what the plain meaning is in words, as
3 a person of ordinary skill in the art, of the term
4 "groove" in this patent; is that right?

5 MR. PLEUNE: Object to the form.

6 THE WITNESS: No, sir. That's not right. I
7 think I've already said in plain words, as they're
8 stated in the patent, it is something that is
9 laterally offset from the chamfered mandrel, and it
10 allows the seal to be at least partially seated in it.
11 And also, there are additional requirements -- I'm
12 sorry. That's for the seal and not the groove.

13 BY MR. MCCRAW:

14 Q. So those words you just pointed to provide
15 the meaning, the plain and ordinary meaning to a
16 person of ordinary skill in the art of what a groove
17 is; is that right?

18 A. Those words, a person of ordinary skill would
19 not need to go beyond those words and perhaps look at
20 the figures and read the specification in order to
21 interpret this.

22 Q. In connection with your declaration you
23 analyzed whether or not the September German
24 application meets each and every limitation of the
25 '491 patent claims; is that right?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. In doing so, you had to determine whether or
3 not the September German application discloses a
4 groove; correct?

5 A. Correct.

6 Q. In plain words, what qualification did you
7 use to assess whether or not a groove was disclosed in
8 the September German application?

9 MR. PLEUNE: The plain and ordinary meaning.

10 BY MR. MCCRAW:

11 Q. And what is the plain and ordinary meaning of
12 the term "groove" in plain words?

13 A. In plain words, it is laterally offset from
14 the chamfered mandrel, and it allows the seal to be at
15 least partially seated in it.

16 Q. Okay.

17 And you would agree with me, Dr. Howle, that
18 the language -- I believe you said it several times
19 now -- says that the groove is laterally offset from
20 the chamfered mandrel. Do you see that?

21 A. Yes, sir. I do recall that.

22 Q. The claim does not state that the groove is
23 laterally offset from the central axis, does it?

24 A. It does not say that, that's right.

25 Q. And the word "medial" is not found anywhere
Nespresso USA, Inc. Ex. 1066

1 in the '491 patent; is that correct?

2 A. I can't tell you off the top of my head, but
3 if you represent to me that that's the case, I'll take
4 you at your word.

5 Q. Okay. I'd like to move on.

6 I'd like to go back to your declaration.
7 Exhibit 2021. Paragraph 97 on Page -- labeled
8 Page 57.

9 A. Yes, sir. I'm there.

10 Q. In Paragraph 97, it is your opinion that
11 Yoakim does not disclose a machine that determines
12 whether a capsule is suitable for use; is that right?

13 THE WITNESS: Hold on. Let me read that
14 paragraph quickly, please.

15 (The witness reviewed the document.)

16 THE WITNESS: Okay. I'm sorry. Could you
17 repeat the question now?

18 BY MR. MCCRAW:

19 Q. Okay. I was just asking that in
20 Paragraph 97, it is your opinion that the Yoakim
21 reference does not disclose a machine that determines
22 whether the capsule is suitable for use.

23 Is that your opinion?

24 A. It's right at the end of that particular
25 paragraph. So "That is because Yoakim does not
Nespresso USA, Inc. Ex. 1066

1 disclose this element."

2 Q. So it's your opinion that Yoakim does not
3 disclose a machine that determines whether the capsule
4 is suitable for us?

5 THE WITNESS: Let me make sure I'm agreeing
6 with how you're phrase that question.

7 MR. MCCRAW: Sure.

8 MR. PLEUNE: Objection. Lacks foundation.

9 (The witness further reviewed the document.)

10 THE WITNESS: Please give me, again, the
11 precise language you're using.

12 MR. MCCRAW: Can you read back the question,
13 please.

14 (Record read.)

15 THE WITNESS: It's stated such in the
16 paragraph above. That's 96.

17 BY MR. MCCRAW:

18 Q. Okay. So and Dr. Howle, what I'm trying to
19 understand, really, is what's in Paragraph 97, the
20 last two sentences, which is "Tellingly, Petitioner
21 points to no disclosure in Yoakim regarding the
22 determination that the capsule is 'suitable for use
23 with the beverage machine' or that 'the detected
24 identifier agrees with a stored reference.' That is
25 because Yoakim does not disclose this element."

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Do you see that?

2 A. Yes, sir.

3 Q. What I'm trying to understand is: Is that
4 your opinion, saying that Yoakim does not disclose a
5 capsule that's suitable for use with the beverage
6 machine?

7 A. Well, it says here, "regarding the
8 determination that the capsule is 'suitable for use in
9 a beverage machine," which I think is different from
10 the question you just posed.

11 Q. Let me ask the question differently, then.
12 Is it your opinion that Yoakim discloses the
13 determination that the capsule is suitable for use
14 with the beverage machine?

15 THE WITNESS: May I have Yoakim, please.

16 MR. MCCRAW: I'd like to introduce what has
17 been previously marked as Exhibit 1004. This is U.S.
18 Patent Publication 2010/0239734, U.S. patent to
19 Yoakim.

20 (Previously marked Exhibit 1004 was made
21 available to the witness.)

22 THE WITNESS: So I think this would answer
23 your question. I'm now going to read Paragraph 98
24 from my report.

25 So it says, "Specifically, Yoakim's IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 description of an 'identification means for
2 identifying the different capsules, and control means
3 capable of operating the device...according to
4 predetermined liquid food preparation parameters,
5 including the fluid rate and the volume of liquid to
6 be injected into the capsule, with the identification
7 means comprising capsule recognition means which are
8 recognized by sensing means connected to the control
9 means of the device to control the preparation
10 parameters accordingly' does not disclose or render
11 obvious that a pump supplies water to the capsule only
12 when the sensor or detector detects it."

13 BY MR. MCCRAW:

14 Q. My question to you, sir, is not about whether
15 there's a disclosure of a pump supplying water to the
16 capsule only when a sensor is detected.

17 My question to you is whether Yoakim
18 discloses a system that determines whether the capsule
19 is suitable for use with the beverage machine.

20 MR. PLEUNE: Object to the form.

21 THE WITNESS: It states it has identification
22 means for identifying the different capsules, and
23 control means capable of operating the device. And
24 then it requires predetermined liquid food preparation
25 parameters, including what is listed there.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 BY MR. MCCRAW:

2 Q. Okay. So let's go back to the question that
3 I asked.

4 Does Yoakim disclose a system that determines
5 whether the capsule is suitable for use with the
6 beverage machine, "yes" or "no"?

7 MR. PLEUNE: Object to form.

8 BY MR. MCCRAW:

9 Q. Suitable for use is a claim limitation in the
10 '491 patent, and I'm trying to understand whether it's
11 your opinion that Yoakim does meet that claim
12 limitation or does not meet that claim limitation.

13 MR. PLEUNE: Object to form.

14 (The witness reviewed the document.)

15 THE WITNESS: Off the top of my head, I do
16 not recall from Yoakim the discussion of suitability
17 for use. Rather, the identification would give
18 parameters to be used in food preparation, but I would
19 want to...

20 BY MR. MCCRAW:

21 Q. And just to be clear, providing beverage food
22 preparation parameters is not a determination of
23 whether something is suitable for use; is that right?

24 A. I think we went through this in quite a bit
25 of detail earlier today, and I think -- let's see. JBB-2023-00502
Nespresso USA, Inc. Ex. 1066

1 Suitable for use. You're asking in the context of
2 '491; right?

3 Q. I'm just asking in the context of the
4 '491 patent whether providing beverage preparation
5 parameters --

6 A. Yes.

7 Q. -- is a determination of whether the capsule
8 is suitable for use.

9 (The witness reviewed the document.)

10 THE WITNESS: So we talked at length about
11 safety in regard to suitability for use, and I'm not
12 making the connection between safety and parameters
13 for preparation of the food substance.

14 BY MR. MCCRAW:

15 Q. Okay. So providing brewing parameters is not
16 a determination of whether the capsule is suitable for
17 use; is that right?

18 A. I think that's a reasonable statement.

19 MR. MCCRAW: I'd like to introduce a new
20 exhibit. I believe this will be Exhibit 1057.

21 (Exhibit 1057 was marked and made
22 available to the deponent.)

23 BY MR. MCCRAW:

24 Q. This is the declaration of Dr. Laurens Howle
25 in support of motion for priority determination and

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

invalidity, filed in the United States District Court,
Central District of California In Re: Adrian Rivera,
Lead Case No. 2:16-CV-04676-JAKSS.

Mr. Howle, I'd like you to turn to Page 29 of 62 of the document.

A. Yes, sir.

Q. Is that your signature (indicating)?

A. It is.

Q. And you signed that document on November 21, 2017; is that correct?

A. Apparently so.

Q. And you declared under the penalty of perjury that the contents are true and correct; is that right?

A. That is correct, yes, sir.

Q. Do you recall offering an opinion on priority and written description in this matter?

A. This was the California case. I believe I did, but I don't recall the details. I'm sure they're here.

Q. And this case is one of the cases involved where you spent a total of 1,300 hours --

A. One of those cases, yes, sir.

0. One of those cases.

Okay. I'd like to direct you to Paragraph 45
of your declaration. IPR2023-00

1 And starting at the third line, you write, "A
2 court must examine whether the disclosure of the
3 earlier application reasonably conveys to a POSITA
4 that the inventor had possession at the time of all of
5 the later claimed subject matter."

6 Do you see that?

7 A. Yes, sir.

8 Q. Is that a correct statement?

9 A. That is a correct statement, as far as I
10 know. If you're asking me of a legal conclusion, I'm
11 not a lawyer. I can't give you a legal opinion. That
12 is my understanding.

13 Q. Sure. And the following sentence says, "In
14 other words, the question is whether one skilled in
15 the art reading the original specification would
16 immediately discern all the limitations of the claim
17 in the parent."

18 Do you see that?

19 A. Yes, sir, I did put that there.

20 Q. Did you believe that was a correct statement
21 when you wrote it?

22 A. I did, yes, sir.

23 Q. Do you still believe that's a correct
24 statement today?

25 A. I don't know that I would use the term
Nespresso USA, Inc. Ex. 1066

1 "immediately."

2 Q. Okay. So you would like to apply a different
3 standard for determining priority today than you did
4 in 2017; is that right?

5 MR. PLEUNE: Object to the form.

6 (The witness reviewed the document.)

7 THE WITNESS: No, sir, that's not what I'm
8 saying.

9 BY MR. MCCRAW:

10 Q. Let's go to the next sentence. "The prior
11 disclosure may not be relied upon unless it
12 constitutes a full, clear, concise, and exact
13 description of the invention claimed in the patent to
14 one of ordinary skill of each and every claim
15 limitation."

16 Do you see that?

17 A. I do see that.

18 Q. Is that an accurate statement?

19 (The witness reviewed the document.)

20 THE WITNESS: There are some qualifiers here
21 that I don't know that I would use, similar to the
22 previous expression, as my understanding has evolved.

23 BY MR. MCCRAW:

24 Q. So you're saying that this was not a correct
25 statement at the time you filed it and signed this?

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 declaration under penalty of perjury.

2 A. I'm --

3 MR. PLEUNE: Objection to form.

4 Dr. Howle, let me make my objection, and then
5 you can give your response. Okay?

6 THE WITNESS: Yes, sir.

7 MR. PLEUNE: Thank you.

8 THE WITNESS: The question was --

9 MR. MCCRAW: Read back the question.

10 (Record read.)

11 THE WITNESS: That was my understanding at
12 the time that I signed this.

13 BY MR. MCCRAW:

14 Q. Okay. Is this the standard for priority that
15 you are using in -- strike that.

16 Is this the same standard for priority that
17 you are using in this proceeding?

18 THE WITNESS: Let me go to that, and I'll
19 show you the -- see if I can find that.

20 (Pause.)

21 THE WITNESS: So the standard I'm using --
22 and again, I'm not a lawyer. So I have to rely upon
23 talented employers to inform me, but I have been
24 informed and understand that a patent is entitled to
25 the filing date of its earlier filed applications.

JP2023-00502
Nespresso USA, Inc. Ex. 1066

1 long as the earlier filed applications provide written
2 description support by disclosing the claimed
3 invention to the POSITA with all of the POSITA's
4 knowledge and creativity.

5 BY MR. MCCRAW:

6 Q. That's the standard you applied in this
7 proceeding?

8 A. Yes, sir.

9 Q. And that standard did not apply -- you did
10 not apply the last two sentences of Paragraph 45 in
11 Exhibit 1057?

12 MR. PLEUNE: Object to form.

13 THE WITNESS: No, sir. In that case, I
14 applied the standards that are written there.

15 BY MR. MCCRAW:

16 Q. Okay. And you would agree that those were
17 not the same; correct?

18 MR. PLEUNE: Object to the form.

19 THE WITNESS: Word for word they're not the
20 same.

21 MR. MCCRAW: I'd like to introduce what has
22 been previously marked as Exhibit 1047 in this
23 proceeding, which is a copy of the September 2, 2010
24 German priority document and translation, provided by
25 K-Fee to the U.S. patent office.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 (Previously marked Exhibit 1047 was made
2 available to the witness.)

3 BY MR. MCCRAW:

4 Q. Have you seen this document before?

5 A. Yes, sir.

6 Q. What do you understand this document to be?

7 A. I understand this to be one of the three
8 German patent applications that have been discussed in
9 this case. This is the second application, if I'm
10 reading the date correctly.

11 Q. I'd like to direct you to what is marked as
12 Page 46 of 61 at the bottom of the document.

13 A. Yes, sir.

14 Q. Do you understand that to be a series of
15 claims shown on Pages 46 and 47?

16 A. I'm at the top of Page 46 of 61. It says,
17 "Patent claims." So I think, yes.

18 Q. Okay. Can you point me to any claim that
19 meets each and every limitation of Claim 1 of the
20 '491 patent?

21 A. Okay. The question was can I point to these
22 claims and duplicate that from '491? Is that --

23 Q. I'm asking whether you can point me to a
24 claim in Exhibit 1047, on Pages 46 through 48, that
25 disclose each and every limitation of Claim 1 of the

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 '491 patent.

2 (The witness reviewed the document.)

3 THE WITNESS: So I'm going to read from
4 Paragraph 45 from my declaration where I state that
5 "It is my opinion that Figures 16, 17, and 18 of the
6 second German application and their accompanying
7 descriptions, which show 'embodiments of the portion
8 capsule according to figure 16' recite each and every
9 limitation of at least independent claim 1 of the
10 '491 Patent."

11 So I have used the claims, the figures, and
12 the specification.

13 BY MR. MCCRAW:

14 Q. But there are no combination of claims alone
15 that disclose each and every element of the
16 '491 patent; is that correct?

17 A. I did not give an opinion on that.

18 Q. Okay. Can you point me to a claim in this
19 set that describes a repeat pattern on the bottom of
20 the flange combined with a bowed cover, a seal,
21 grooves, and a holding arm?

22 A. And you're restricting my search to the
23 claims only?

24 Q. Correct.

25 A. No, sir, I cannot, with the caveat that as I
Nespresso USA, Inc. Ex. 1066

1 previously mentioned, I relied on Figures 16, 17, and
2 18 and the specification in reaching my conclusions.

3 Q. Okay. So the multiple dependent Claims in
4 Exhibit 1047 do not disclose each and every element of
5 the '491 patent claims; is that right?

6 A. It's clearly discussed in this application
7 that the various elements could be substituted for one
8 another, and we could reach all of the claims in
9 '491 clearly that way.

10 MR. MCCRAW: Yeah. But I'm asking you --
11 thank you, Dr. Howle, but you didn't answer my
12 question.

13 Can you please read back my question?

14 (Record read.)

15 MR. PLEUNE: Object to form.

16 THE WITNESS: I did not opine that they did.

17 BY MR. MCCRAW:

18 Q. Thank you.

19 Sitting here today, do you have an opinion
20 that those claims do?

21 A. That the claims recite each and every
22 element? Is that the question?

23 Q. Correct.

24 A. Okay. Well, sitting here today, it's my
25 opinion that the claims, together with the figures, JPB2023-00502
Nespresso USA, Inc. Ex. 1066

1 together with the specification, recite each and every
2 elements of the claims of '491.

3 Q. Okay. But not the claims alone?

4 A. I have not opined as to that point.

5 Q. Okay. What I'm trying to understand is to
6 make sure that you don't later have an opinion that is
7 contrary to that.

8 So do you have an opinion -- or is it your
9 opinion, rather, that the claims in Exhibit 1047
10 disclose each and every element of the '491 patent
11 claims?

12 MR. PLEUNE: Object to the form.

13 THE WITNESS: Well, sir, I have not opined on
14 that, and I can't tell you what my opinions will be in
15 the future.

16 MR. MCCRAW: Okay. Let's move on.

17 (Previously marked Exhibit 2025 was made
18 available to the witness.)

19 MR. MCCRAW: I'd like to introduce what has
20 been previously marked as Exhibit 2025. This is a
21 printout of the website WWW.BIALETTI.COM of a Moka
22 Pot.

23 Q. Have you seen this document before,
24 Dr. Howle?

25 A. In talking about this, I did indicate that
IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 this was not one I found on my own, but I was directed
2 to this.

3 Q. I'd like to direct you to Paragraph 101 of
4 your declaration.

5 A. Thank you. That's what I was looking for.

6 Q. In particular, I'd like to direct you to the
7 sentence that you wrote, saying, "Indeed, many capsule
8 machine systems at the time of the invention were
9 known to operate without a pump. One such example of
10 a pump-less espresso machine is the Moka Pot. Do you
11 see that?

12 A. Yes, sir.

13 Q. The Moka Pot does not use any capsules to
14 make espresso, does it?

15 A. It does not.

16 Q. So the Moka Pot is not one such example of a
17 machine at the time of the invention known to
18 operate -- strike that.

19 So the Moka Pot was not a capsule machine
20 system at the time of the invention, was it?

21 MR. PLEUNE: Object to form. Lacks
22 foundation.

23 (The witness reviewed the document.)

24 THE WITNESS: My previous work on the cases
25 that we've discussed, including the other declaration

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 that you showed me, involved refillable capsules. And
2 if we look at the bottom of what's marked as Page 8 of
3 4 (sic), that is a refillable capsule that can be used
4 with that Moka Pot.

5 BY MR. MCCRAW:

6 Q. So to be clear, Dr. Howle, it's your
7 testimony that the container that resides in the Moka
8 Pot constitutes a capsule, a single use capsule?

9 A. Not in the context of any of the patents at
10 issue. I have not opined as to that.

11 Q. Okay. Is the Moka Pot container shown in
12 Page 4 of Exhibit 2025 a single use capsule in the
13 context of the '491 patent claim?

14 A. I don't know the answer to that.

15 MR. MCCRAW: Thank you.

16 Let's take a very quick break.

17 (A recess was taken from 2:51 p.m.
18 to 3:09 p.m.)

19 MR. MCCRAW: Thank you.

20 Q. Dr. Howle, did you speak with counsel about
21 the substance of your testimony during the break?

22 A. I did not.

23 Q. Did you speak with counsel about the
24 substance of my questions during the break?

25 A. I did not.

1 Q. I'd like to direct you to Paragraph 93 of
2 your declaration.

3 A. 93. Okay.

4 Q. Okay. In this paragraph you indicate that
5 you were informed about things that happened in the
6 prosecution of a Jarisch reference entitled "(U.S.
7 Patent No. 10,800,600)." Do you see that?

8 A. Yes, I do.

9 Q. At the end of this paragraph you cite
10 "IPR2021-01222, Paper 6, Exhibit2002-1 at 393."

11 Do you see that?

12 A. Yes, sir, I do.

13 Q. What exactly did you review in that citation?

14 THE WITNESS: Would you please give me that
15 citation.

16 MR. MCCRAW: I don't have it because it's not
17 an exhibit of record in the case.

18 (The witness reviewed the document.)

19 MR. PLEUNE: I'm going to object to the form.
20 I believe -- I'm conscientious of the discussion that
21 we've had so far.

22 Just what document are you referring to,
23 Counsel?

24 MR. MCCRAW: That's actually what I'm trying
25 to understand, is what document this citation refers

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 to, which is IPR 2021-01122, Paper 6, Exhibit 2002-1
2 at 393.

3 MR. PLEUNE: And there's no document with the
4 citation?

5 MR. MCCRAW: I don't believe you all made
6 this evidence of record in the patent owner response.

7 MR. PLEUNE: But it's a citation.

8 MR. MCCRAW: Okay. So I'm asking what he
9 looked at in this citation.

10 MR. PLEUNE: I think he asked you for a copy
11 of it.

12 MR. MCCRAW: Dr. Howle, I'm going to
13 represent to you that Paper No. 6 is a -- well,
14 actually, strike that. Before I represent that, let
15 me make sure I'm right.

16 (Pause.)

17 THE WITNESS: 2002. So that's the
18 prosecution history on the stated application;
19 correct?

20 BY MR. MCCRAW:

21 Q. So I'm going to represent to you that Paper
22 No. 6 in IPR 2021-01222 is the patent owner
23 preliminary response. What I'm trying to understand
24 is did you review the preliminary response or did you
25 review the file history of Exhibit 2002?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. That is an excellent question, and I
2 apologize for being unclear in my report.

3 To the best of my recollection, I actually --
4 if -- I know I reviewed the prosecution history that's
5 stated as Exhibit 2002 in my list of materials
6 considered.

7 Q. Okay.

8 A. I think I also reviewed the IPR. I can't be
9 certain without seeing it.

10 Q. You cite Page 393.

11 A. Yes. That's fairly specific. So I must
12 have.

13 Q. Did you review the office action rejections
14 in the prosecution from the Jarisch reference?

15 A. I think so, but to be honest, I can't tell
16 with you any certainty.

17 Q. Did you review the Jarisch Claims that were
18 rejected in the file history for Patent
19 No. 10,800,600?

20 MR. PLEUNE: Object to the form.

21 THE WITNESS: Do I rely on those at any point
22 in my declaration?

23 BY MR. MCCRAW:

24 Q. It's your declaration. You tell me, sir.

25 A. I'm trying to keep from taking too much time.
Nespresso USA, Inc. Ex. 1066

1 (The witness reviewed the document.)

2 THE WITNESS: I'm not seeing that I relied on
3 anything for those here, and to be honest, I can't
4 tell you how much I relied upon those.

5 BY MR. MCCRAW:

6 Q. Okay. Do you agree that the claims at issue
7 in the Jarisch Patent 10,800,600 that were rejected at
8 the time of your 393 citation here are different in
9 scope than the '491 patent claims?

10 MR. PLEUNE: Object to form. Lacks
11 foundation.

12 (The witness reviewed the document.)

13 THE WITNESS: You said, "393"?

14 BY MR. MCCRAW:

15 Q. That's the page citation that you've provided
16 in your declaration.

17 A. I'm sorry. I thought you were referring to a
18 patent.

19 MR. MCCRAW: Could you please read back the
20 question?

21 (Record read.)

22 THE WITNESS: I would have to review those
23 again.

24 BY MR. MCCRAW:

25 Q. So sitting here today, you don't know?
Nespresso USA, Inc. Ex. 1066

1 A. Off the top of my head, I do not recall.

2 Q. Okay. Let's go back to Paragraph 93 of your
3 declaration. The second sentence says, "I have been
4 informed that during prosecution of a similar Jarisch
5 reference (U.S. Patent No. 10,800,600), a parent
6 application to Yoakim was cited by the examiner
7 (WO 2008/148641," titled "Yoakim '601)."

8 Do you see that?

9 A. Yes.

10 Q. Did you review the Yoakim '601 reference?

11 A. I would have, yes.

12 Q. You did.

13 So show me where in your materials considered
14 that you considered the Yoakim '601 reference because
15 I couldn't find it.

16 MR. PLEUNE: Objection to form.

17 THE WITNESS: I don't see it either. I
18 apologize for leaving that off my list.

19 BY MR. MCCRAW:

20 Q. So you're representing to me that you
21 reviewed the Yoakim '601 reference; is that correct?

22 A. Yes, sir.

23 Q. Okay. The Yoakim '601 reference is a brewing
24 system that doesn't have any code reader system on it,
25 does it?

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. I don't recall sir.

2 Q. Well, you reviewed it; right?

3 A. Yes, sir.

4 MR. PLEUNE: Object to form.

5 BY MR. MCCRAW:

6 Q. One of the references cited by the examiner
7 is a reference called Paladay 333, which is U.S.
8 Patent No. 6,698,333. Did you review that patent in
9 connection with this declaration?

10 MR. PLEUNE: Were you reading from the
11 declaration? I apologize, Counsel.

12 MR. MCCRAW: No, I'm not reading from the
13 declaration. That's just a reference that was cited
14 in the prosecution history his declaration refers to.
15 So I'm asking if he reviewed it.

16 MR. PLEUNE: The witness asked for that
17 prosecution history a long time ago, and so I do
18 believe that this has turned into some type of odd
19 memory test, and I do believe that it's appropriate
20 that the document be in front of him if you're going
21 to ask him questions about the document.

22 BY MR. MCCRAW:

23 Q. You can answer.

24 A. I would have to see that document. I cannot
25 say one way or the other that I with certainty have.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. I'd like to direct you to Page 53 of your
2 declaration which is Paragraph 94. It spills over
3 onto Page 53. It's the second to the last sentence
4 before Paragraph 95. It states, Yoakim (Exhibit
5 1004), is a continuation-in-part of the Yoakim '601
6 reference and that the references have different
7 disclosures." What do you mean by that sentence?

8 A. May I have those documents, please?

9 Q. I think you already have a copy of
10 Exhibit 1004. I don't have a copy of the Yoakim '601
11 reference because it's not of record in the
12 proceeding.

13 MR. PLEUNE: Object to the form.

14 (The witness reviewed the document.)

15 BY MR. MCCRAW:

16 Q. Let me ask you this, Dr. Howle: Do you agree
17 that the Yoakim '601 reference and the Yoakim
18 Exhibit 1004 have different disclosures?

19 A. Well, that's what I was just trying to figure
20 out when I'm trying to recall the '601, but I'm going
21 to have difficulty in answering that without having
22 the two documents and being able to compare them.

23 Q. Okay. And to be clear, nowhere in your
24 declaration do you analyze the difference between
25 Yoakim '601 and the Yoakim Exhibit 1004, do you?

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. I do not remember opining on that. So...

2 Q. And nowhere in your declaration do you
3 provide an opinion on the difference between the
4 Jarisch '929 reference and any of the prior art
5 references cited by the examiner in Exhibit 2002 that
6 we're referring to here?

7 A. Do I analyze differences? Is that the
8 question?

9 Q. Yes. Did you analyze any differences between
10 the Jarisch '929 reference and the references used by
11 the examiner during the Jarisch prosecution?

12 A. Oh. "Used by the examiner."

13 I don't believe I did.

14 Q. And your declaration doesn't analyze any of
15 the differences of claim scope between the Jarisch
16 10,800,600 patent and the '491 patent claims, does it?

17 MR. PLEUNE: Object to the form.

18 THE WITNESS: "Claim scope," which is a legal
19 term. Please explain to me what you mean by that.

20 BY MR. MCCRAW:

21 Q. Sure.

22 What I'm referring to is whether you opined
23 about similarities or differences between the claims
24 that were rejected in the Jarisch prosecution versus
25 the '491 patent claims.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 A. No, sir, I don't think I opined on that.

2 Q. Let's move on.

3 Let's turn to Exhibit 1047. Specifically,
4 Page 38 of 61.

5 A. Okay. I have that.

6 Q. Okay. I'd like to direct you to the
7 paragraph that begins with the bolded word "Figure 2."
8 Do you see that?

9 A. Yes, sir.

10 Q. Okay. Does this description of Figure 2 ever
11 mention the outer edge of the peripheral region of the
12 capsule?

13 THE WITNESS: Let me just scan this, please.

14 MR. MCCRAW: Sure.

15 (The witness reviewed the document.)

16 THE WITNESS: The words "outer edge" do not
17 appear in that paragraph.

18 BY MR. MCCRAW:

19 Q. Does that description -- strike that.

20 Does the paragraph you just read mention the
21 location of Element 2.4.2?

22 A. So in other words, does it specifically have
23 the No. 2.4.2?

24 Q. Does it have anywhere in it that it describes
25 Element 2.4.2.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 THE WITNESS: Okay. I'm just going to refer
2 to the drawing so I can pick up that element then.

3 (The witness reviewed the document.)

4 THE WITNESS: Okay. So first, let me direct
5 your attention to Figure 16 where it calls out 2.4.2.
6 That's on Page 24 of 61.

7 BY MR. MCCRAW:

8 Q. Okay.

9 A. So there's 2.4.2.

10 Now I'm turning to Page 44 of 61, where it
11 says, "List of designations," and at Line 10 it
12 identifies 2.4.2 as "Form-fitting means,
13 friction-fitting means and/or detection means."

14 Q. Okay.

15 A. So now we'll go back to the paragraph in
16 question, which is on 38 of 61. So it says, "Figure 2
17 shows a further embodiment of the portion capsule
18 according to the invention. In the present case, the
19 capsule has a barcode" -- that's the "detection"
20 means -- "in the region of the upper side of the
21 membrane. This barcode can be printed on, by material
22 removal" -- other detection means -- "or can be
23 produced by optically detectable means, for example
24 fluorescent means, which are present on the sheet
25 material. As an alternative, appropriate metal rings

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 then may form part of the sheet material or be applied
2 to the sheet material.

3 "The regions of the barcode may consist of a
4 ferro-magnetic material. As an alternative, it is
5 possible, as symbolized by arrow 15" -- I don't know
6 for certain if that's Figure 2. Arrow 15, I would
7 direct your attention to Figure 2, if I recall. Let
8 me confirm.

9 Yeah. Figure 2, Page 18 of 61 clearly shows
10 arrow 15.

11 -- "for the barcode to be provided on that
12 side of the peripheral region of the basic element
13 which is directed away from the membrane." And away
14 from the membrane would be consistent, with my
15 understanding as a person of ordinary skill and
16 viewing Figure 2 and looking at arrow 15.

17 Let's see if I lost my place.

18 ..."directed away from the membrane.

19 "This barcode is read by the detector 13, for
20 example, in an insertion shaft. The barcode
21 constitutes the identifier according to the
22 invention".

23 Q. Okay. Where does it state that a barcode is
24 a detection means in this document?

25 THE WITNESS: Okay. There's a specific
Nespresso USA, Inc. Ex. 1066

1 portion I'm going to look for. It might take me a
2 minute to get there.

3 (The witness reviewed the document.)

4 THE WITNESS: I might have that listed in my
5 declaration. I'll scan that for a second.

6 (The witness reviewed the document.)

7 BY MR. MCCRAW:

8 Q. I apologize, Dr. Howle, but it's been over
9 five minutes. Can you tell me where in Exhibit 1047
10 states that a barcode is a detection means?

11 A. Yes, I apologize. There was a specific part
12 of this that I was trying to find so I can point you
13 to that. So, you know, without being able to allow --
14 without being able to finish my search, I can at least
15 point to Page 33 of 61 where it discusses the print,
16 and I'm looking around Line 5.

17 "Further preferred printing material or
18 printing materials are constituted by fluorescent
19 materials with optical properties which change under
20 the influence of temperature. The print is preferably
21 a barcode, a logo or a repeat pattern."

22 And there's more I recall from this. Would
23 you like me to continue?

24 Q. Where does Exhibit 1047 indicate that
25 anything you just pointed to is a detection means?

JRB-2023-00502
Nespresso USA, Inc. Ex. 1066

1 (The witness further reviewed the document.)

2 THE WITNESS: There's a specific passage I'm
3 looking for.

4 (The witness further reviewed the document.)

5 THE WITNESS: The specific passage discusses
6 substitution of the various, different detection
7 means.

8 BY MR. MCCRAW:

9 Q. Is the phrase you're referring to on Page 38
10 of 61, Lines 8 and 9 that says, "What has been said in
11 relation to the identifier applies to all the other
12 examples"?

13 A. Yes, sir. Thank you.

14 Q. Thank you.

15 So that sentence is your support for why a
16 barcode is a detection means; is that correct?

17 A. That is part of my support.

18 Q. Okay. What else?

19 A. I read the other passage earlier.

20 Q. Okay. Anything else?

21 A. I would have to go through this in a bit more
22 detail.

23 Q. Can we go to Page 44 of 61.

24 A. Yes, sir.

25 Q. Which is a list of designations.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Do you see that?

2 A. Yes, sir.

3 Q. I believe earlier, you pointed me to
4 Element 2.4.2 the "Form-fitting means,
5 friction-fitting means and/or detection means."

6 Do you see that?

7 A. Yes, sir.

8 Q. I'd like to direct you down to Element
9 No. 17. Do you see where that says, "17 Barcode"?

10 A. I see that, yes, sir.

11 Q. So you would agree that this document labels
12 a barcode as a different element than the
13 form-fitting, friction-fitting, or detection means?

14 A. As a different element. In other words, it's
15 indicated by a different number. I'll agree with
16 that.

17 Q. Okay. It's not indicated by the same number?

18 A. It is not indicated by the same number. I
19 agree with that, yes, sir.

20 Q. Okay. Let's turn to Figure 1 of
21 Exhibit 1047. Page 50 of 61.

22 A. Yes, sir.

23 Q. And if I say "brewing chamber" in connection
24 with Exhibit -- with Figure 1, do you understand that
25 to be Element 12?

1 A. Let me verify this. Page 44 of 61 at
2 Element 12, it says, "brewing chamber."

3 Q. Do you see where there is a spike at the base
4 of that brewing chamber that pierces the bottom of the
5 capsule?

6 A. I see there's a triangle at the bottom. If
7 you're talking about the upper part as the bottom.

8 Q. I'm talking about the portion that does not
9 have the flange.

10 A. By "flange," do you mean Element 24 which is
11 a form-fitting means opinion, as indicated in the list
12 of designations?

13 Q. No. I believe what that is is 2.4, the
14 peripheral region of the flange.

15 A. Okay. 2.4. If that's a 2.4, with my limited
16 eyesight, then it does say peripheral region.

17 Q. What I'm trying to understand, Dr. Howle, is
18 do you see the piercing spike at the base of that
19 brewing chamber that would interface with Element 2.2
20 when the capsule is inserted?

21 MR. PLEUNE: Object to form.

22 (The witness reviewed the document.)

23 THE WITNESS: Okay. Piercing spike has the
24 designation 29, and I'm looking on 44 of 61. And let
25 me scan the figures again. I'm not seeing 29

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 annotated, but if you believe that it is, if you can
2 point me to the figure, I will take a look at that.

3 BY MR. MCCRAW:

4 Q. Let me ask you this, Dr. Howle: In, say,
5 Figure 1 as well as Figure 3 what do you understand
6 the triangle to be at the base of the brewing chamber?

7 THE WITNESS: Let me just confirm my
8 understanding.

9 (The witness reviewed the document.)

10 THE WITNESS: I didn't see it annotated. Let
11 me scan quickly. I'm trying to be respectful of your
12 time.

13 If you look here at 41 of 61, at Line 34,
14 "seal 21 ensures that water which flows through the
15 water inlet 28 into the capsule through the opening
16 and the latter produced by the piercing spike 29, and
17 does not show flow around the capsule."

18 (The witness further reviewed th document.)

19 THE WITNESS: We finally find 29. So I'm
20 looking now at 24 of 61, and piercing spike is 29,
21 which would be not the triangle from Figure 1.

22 BY MR. MCCRAW:

23 Q. So thank you for describing Figure 16.

24 My question was in connection with Figures 1
25 and 3, what you understand, as a person of ordinary

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 skill in the art, the triangle at the base of the
2 brewing chamber to be.

3 MR. PLEUNE: Object to form.

4 (The witness reviewed the document.)

5 THE WITNESS: Well, looking at Figure 1 as a
6 person of ordinary skill, I would recognize that to be
7 a different embodiment than what is shown in
8 Figure 16. Figure 16 is the one that purely
9 delineates or lays out what a piercing spike is,
10 element 29.

11 BY MR. MCCRAW:

12 Q. Got it.

13 A. So Figure 1, it's not indicated on Figure 1
14 what that triangle happens to be, and I believe you're
15 talking about the triangle at the top, which you
16 called the -- yes. Do we agree?

17 Q. We're referring to the same triangle. It is
18 as shown on the page above the capsule, but it is the
19 base of the capsule that's going into it.

20 A. Yes, sir. Okay.

21 So it's not delineated on that figure.

22 Q. Right. And you would agree that Figure 3 is
23 also a different embodiment from what's shown in
24 Figure 16; is that right?

25 MR. PLEUNE: Object to the form.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 (The witness reviewed the document.)

2 THE WITNESS: I'm comparing Figures 1 to 3.

3 I see different -- let's see.

4 Just hang on one second, please.

5 (The witness further reviewed the document.)

6 THE WITNESS: All right. So we're comparing
7 Figures 1 and 3 if I recall your question.

8 BY MR. MCCRAW:

9 Q. I don't believe that was my question.

10 A. Oh, I'm sorry.

11 Q. Sorry. Let me try to be clearer.

12 I believe, Dr. Howle, you already testified
13 that you understand Figure 1 to be a different
14 embodiment than Figure 16, and I was just trying to
15 ask a straightforward question of whether you also
16 understand Figure 3 to be a different embodiment from
17 Figure 16.

18 MR. PLEUNE: Objection to the form.

19 Misstates the testimony.

20 (The witness further reviewed the document.)

21 THE WITNESS: Okay. So it appears that
22 Figures 1 and 3 have different features that could be
23 identifiers, and then I go back to Page 38 of 61 where
24 I repeat what I read earlier, "what has been said in
25 relation to the identifier applies to all other

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 examples."

2 So I don't know that I would characterize
3 those as different embodiments.

4 BY MR. MCCRAW:

5 Q. Okay. But you would agree that in Figure 1
6 the brewing chamber is a different brewing chamber
7 than the one found in Figure 16; is that correct?

8 MR. PLEUNE: Object to form.

9 THE WITNESS: So comparing Figures 1 and 3,
10 the brewing chamber, which is Element 12, is called
11 out on Figure 1. It's not called out on Figure 3, but
12 we can assume that it refers to the same -- I will
13 assume that it refers to the same feature there.

14 So the difference in those two, I would not
15 say that the brewing chamber is different.

16 BY MR. MCCRAW:

17 Q. Right. Between Figures 1 and 3?

18 A. Between Figures 1 and 3, yes.

19 Q. Right. But Figure 16 is a different brewing
20 chamber?

21 MR. PLEUNE: Object to form.

22 (The witness further reviewed the document.)

23 THE WITNESS: Brewing chamber, which has the
24 call out 12, I don't see that in Figure 16.

25 BY MR. MCCRAW:

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 Q. But you also agree you don't see it called
2 out in Figure 3 either, but you agreed that that was a
3 brewing chamber; is that right?

4 A. Yes, sir, I do.

5 Q. And there's nothing shown in Figure 16, like
6 any kind of triangle shown in Figure 1, that might
7 pierce to the base of the capsule in Figure 16, is
8 there?

9 A. I'm sorry. Did you say 17?

10 MR. MCCRAW: Can you read back the question,
11 please?

12 (Record read.)

13 THE WITNESS: Well, I'm not seeing a brewing
14 chamber. Therefore, I don't see a triangle on a
15 brewing chamber. On the bottom of that, however,
16 there is a triangular spike 29 shown in Figure 16.

17 BY MR. MCCRAW:

18 Q. Right. And that's shown in a different
19 position than the triangle from Figure 1; right?

20 MR. PLEUNE: Object to form.

21 THE WITNESS: The triangle in Figure 16 is
22 not the same as the triangle in Figure 1.

23 MR. MCCRAW: Okay. Let's move on.

24 Actually, how long have we been going?

25 THE REPORTER: 56 minutes.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 MR. MCCRAW: Let's take a quick break.

2 (A recess was taken from 4:05 p.m.

3 to 4:17 p.m.)

4 BY MR. MCCRAW:

5 Q. Dr. Howle, did you speak with counsel about
6 the substance of your testimony during the break?

7 A. No, I did not.

8 Q. Did you speak with counsel about the
9 substance of any questions over the break?

10 A. No, sir.

11 Q. I'd like to direct you back to Exhibit 1004
12 the Yoakim reference, which we discussed earlier.

13 Let me know when you have that.

14 A. I have that.

15 Q. I believe you confirmed as part of your
16 analysis you reviewed the Yoakim reference; right?

17 A. Yes, sir.

18 Q. Okay. You generally have an understanding of
19 how the Yoakim reference operates; is that right?

20 A. I believe so.

21 Q. Is it accurate to say that Yoakim is a
22 capsule-based system that brews by centrifugation?

23 (The witness reviewed the document.)

24 THE WITNESS: Yes, sir.

25 BY MR. MCCRAW:

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. In Paragraph 33 you indicate that Yoakim used
2 centrifugal forces to rotate the capsule in order for
3 liquid to flow through the capsule and prepare the
4 beverage; is that right?

5 A. More or less, to prepare the liquid food.

6 Q. Which can be a beverage; right?

7 A. Yes, sir, it can.

8 Q. In Paragraph 34 you indicate that water can
9 be fed into the beverage preparation module at low or
10 no pressure; is that right?

11 A. I used low pressure, "'substantially no
12 pressure'" to describe that. So yes, sir. I think
13 that's consistent with what you asked.

14 Q. So staying on Paragraph 34, you agree that
15 there are various ways of introducing water into a
16 capsule; is that right?

17 A. Well, staying on 34, that's specific to
18 Yoakim, but I didn't hear you make your question
19 specific to Yoakim. So specific to Yoakim, I do state
20 that it can be fed, for example, "using a principle of
21 aspiration or vaporization" That's more than one
22 method.

23 So I think if I understand your question,
24 then my response would be in this example there are at
25 least two methods, and I think I might have also

BR2023-00502
Nespresso USA, Inc. Ex. 1066

1 discussed gravity. I think I saw that somewhere.

2 Q. And you would agree that Yoakim discloses a
3 pump as one example of how water enters the capsule;
4 right?

5 A. They do mention that, for example, "'low
6 pressure pump such as peristaltic or diaphragm pump
7 and the like.'" "

8 Q. Okay. And what the pump is designed to do
9 here is move stationary water from the reservoir into
10 the capsule; is that right?

11 A. To "move stationary water from the reservoir
12 into the capsule."

13 Q. That's right.

14 A. Yes, sir, I agree with that.

15 Q. Okay. And generally speaking, is a water
16 pump capable of changing the flow rate of liquid?

17 MR. PLEUNE: Object to the form.

18 THE WITNESS: Is it capable of changing the
19 flow rate. General question, you said?

20 BY MR. MCCRAW:

21 Q. (Nods head.)

22 THE WITNESS: I can't answer that question as
23 posed. It depends on many parameters. Generally,
24 flow is incompressible for fluids. So if we have a
25 pump, we're going to have to have the same mass flow

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 rate on the inlet as the outlet --

2 BY MR. MCCRAW:

3 Q. Uh-huh.

4 A. -- but if the areas of the pipes on the two
5 sides are different, then it's going to have the
6 different speeds on the different side.

7 Q. And what happens if you change the speed of
8 the pump? Does that change the flow rate of the
9 fluid?

10 MR. PLEUNE: Object to form.

11 THE WITNESS: Does that change the flow of
12 the fluid if you change the speed of the pump? It
13 necessarily would, yes.

14 BY MR. MCCRAW:

15 Q. I'd like to direct you to Paragraph [428] of
16 Yoakim.

17 A. I'm sorry. [428].

18 Q. It's on Page 55 of 65 of the labeled
19 document, and it's Paragraph [428].

20 THE WITNESS: May I have one second to read
21 this?

22 MR. MCCRAW: Sure. And in particular, I'm
23 going to ask you about the last sentence.

24 THE WITNESS: Okay. Thank you.

25 (The witness reviewed Exhibit 1004.) IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 THE WITNESS: Okay.

2 BY MR. MCCRAW:

3 Q. All right. So you would agree that one of
4 the types of pumps that Yoakim could use is a piston
5 pump; correct?

6 A. Let's see. They mention specifically
7 peristaltic or diaphragm pump. I'll have to scan to
8 see if they -- oh, piston pump. It's right there
9 (indicating). Yes, sir.

10 Q. Okay. So piston pump is one of the types of
11 pumps that Yoakim could use; correct?

12 MR. PLEUNE: Object to the form.

13 THE WITNESS: Well, the last sentence that
14 we're discussing says, "Water at higher pressure than
15 2 bar can also be delivered if a pressure pump is --
16 if a pressure pump is utilized such as a piston pump."

17 BY MR. MCCRAW:

18 Q. And you agree that piston pumps can be used
19 to create high pressure in a beverage system; right?

20 MR. PLEUNE: Object to form.

21 THE WITNESS: In general, piston pumps can be
22 used to create high pressure, but my understanding of
23 the Yoakim device here is that it actually uses
24 centrifugal forces, body forces rather than surface
25 forces, as a person of ordinary skill would understand

JP2023-00502
Nespresso USA, Inc. Ex. 1066

this, to produce the high pressures.

MR. MCCRAW: We'll get to that.

Q. But in Paragraph [428] Yoakim states that if you wanted water at a higher pressure than 2 bar, you could use a pressure pump such as a piston pump; right?

A. It does state that, yes sir.

Q. Okay. And I believe you just stated that another way to change the pressure in the system is through centrifugal rotation; is that right?

A. The speed, yes, sir.

Q. And you would agree that increasing the speed of the centrifugal rotation would increase the pressure of the liquid in the system; right?

A. At certain locations in the system, yes, sir. On other locations it might actually lower it.

Q. And espresso is made using high pressure, generally; right?

A. Yes, sir.

Q. That's all for that.

I'd like to turn to Figures 23 and 24 of the Yoakim reference. Once you take a look, can you tell me what you understand these figures to be?

(The witness further reviewed Exhibit 1004.)

THE WITNESS: So it says here in the IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 patent -- and I'm at [52] and [53]. So [52]. It
2 says, "Figure 23 shows a schematic view of the system
3 according to still another embodiment."

4 24 says -- I'm sorry. 53 says, "Figure 24
5 shows a view of a capsule according to another mode of
6 the invention."

7 BY MR. MCCRAW:

8 Q. I'm sorry. Where are you right now?

9 A. I'm sorry. I should have stated that. 38 of
10 56, and I was at Paragraphs [52] and [53].

11 Q. Got it. Okay. Understood.

12 Let's turn to Paragraph [205] of Yoakim.

13 A. [205], yes, sir.

14 Q. Is it correct that this paragraph talks about
15 having a gripping structure to form a lock -- strike
16 that. Let me just read from Paragraph [205].

17 In the middle of the paragraph it says, "This
18 gripping structure forms a lock into which is fitted a
19 complimentary engaging structure 450, i.e., a key, of
20 the capsule holder." Do you see that?

21 A. Yes, sir, I see that.

22 Q. And what do you understand the function of
23 that structure to be?

24 (The witness further reviewed Exhibit 1004.)

25 THE WITNESS: I'll read the sentence after
Nespresso USA, Inc. Ex. 1066

1 the one you just read. It says, "The complimentary
2 shapes of the capsule and capsule holder enable to
3 fulfill both the" -- I think it says, "gearing." It's
4 covered up somewhat -- "function for driving the
5 capsule at high speeds in rotation and a safety
6 function for ensuring that only capsules adapted to
7 the system can be used and brewed successfully."

8 BY MR. MCCRAW:

9 Q. Now, if a counterfeit capsule was shaped the
10 same as that gripping structure for the machine,
11 Yoakim would still operate; right?

12 MR. PLEUNE: Object to the form. Incomplete
13 hypothetical.

14 MR. MCCRAW: Speaking objection.

15 MR. PLEUNE: I don't agree.

16 And you misread the portion of the PTAB trial
17 practice guide. And so if you want to read that
18 together, we certainly can. That is not a speaking
19 objection, and the trial practice guide makes it gear.

20 MR. MCCRAW: It conveys to the witness what
21 problem you have with the question. It's a speaking
22 objection.

23 MR. PLEUNE: It is not. It is basically
24 preserving for the record the problem that I have to
25 your question.

1 MR. MCCRAW: Objection to form preserves
2 that.

3 MR. PLEUNE: And clearly, the trial practice
4 guide does not limit me to the objection to form as it
5 clearly says, and you did not quote before.

6 THE WITNESS: I'm going to have to ask the
7 reporter to read back the question, please.

8 (Record read.)

9 THE WITNESS: By "counterfeit," do you mean
10 the capsule that is otherwise identical except for,
11 perhaps, branding logo?

12 BY MR. MCCRAW:

13 Q. I'm talking about a capsule that's not
14 intended to be used with the system.

15 A. Not intended to be used. Okay. That's
16 something separate than counterfeit.

17 So I think your question, as I understand it,
18 is can a capsule that is not intended to be used in
19 the machine but is otherwise the same, can that be
20 used in the machine.

21 Q. Does the shape of the gripping structure stop
22 an identically shaped capsule that's not meant to be
23 used with the machine?

24 A. No, sir, it does not.

25 Q. And the shape of that gripping structure does
Nespresso USA, Inc. Ex. 1066

1 not indicate whether or not a capsule has been used
2 before, does it?

3 MR. PLEUNE: Object to the form.

4 (The witness reviewed the document.)

5 THE WITNESS: Please read back the exact
6 question.

7 (Record read.)

8 (The witness further reviewed the document.)

9 THE WITNESS: So I'm looking at 23 and 24 and
10 I'm comparing that to 4. And 4 you see elements 51,
11 which are called piercing elements, and I'm looking
12 now at Page 8 about halfway down Paragraph [186].

13 And these piercing elements would modify the
14 capsule before and after use. So during use. And it
15 looks like the piercing elements, Figure 23 at 75.
16 Let me find that.

17 (The witness further reviewed the document.)

18 THE WITNESS: I'm not finding 75 immediately,
19 but it looks like these piercing elements interact in
20 at least the vicinity of the element 75, and it would
21 modify the capsule at at least those locations.
22 Additionally, there's a spike 50 that would modify.
23 What was 50 called?

24 BY MR. MCCRAW:

25 Q. Where does it state in Yoakim that once a
Nespresso USA, Inc. Ex. 1066

1 capsule is brewed, it would be prevented from being
2 used again?

3 (The witness further reviewed the document.)

4 THE WITNESS: I don't recall that it mentions
5 that it would be prevented from being used again.

6 BY MR. MCCRAW:

7 Q. Does Yoakim identify anywhere -- strike that.

8 Where does Yoakim say that the gripping
9 structures of Paragraph [205] prevent the capsule from
10 being used a second time?

11 A. [205]?

12 (The witness reviewed the document.)

13 THE WITNESS: [205] does not indicate that
14 the gripping structure would prevent the capsule from
15 being used again.

16 BY MR. MCCRAW:

17 Q. Okay. Let's move on. I'd like to direct you
18 to Paragraph 58 of your declaration.

19 A. 58. Okay.

20 Q. All right. I specifically want to ask about
21 Lines 2 through 4 of this paragraph where you state,
22 "A person of ordinary skill in the art would have
23 understood that other 'detection means,' such as a
24 barcode, could be used interchangeably in the same
25 location" as the tooth ring in Figures 15 and 17.

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Do you see that?

2 A. Yes, sir.

3 Q. You agree that there's no exact description
4 of a barcode used interchangeably as the tooth ring in
5 Exhibit 1047; correct?

6 (The witness reviewed the document.)

7 THE WITNESS: I'll go back to Page 38 of 61
8 where it says what has been said in relation to the
9 other identifier applies to all other examples. But
10 if you're asking me to find an exact quote with -- as
11 you stated, I will not be able to do so.

12 BY MR. MCCRAW:

13 Q. Okay. So that the idea here is that a person
14 of ordinary skill in the art could swap in a barcode
15 into that location, Figure 16. That's your opinion;
16 right?

17 A. My opinion is that the application teaches
18 that.

19 Q. Okay. Well, that's not what you say here.
20 You say that the barcode could be used
21 interchangeably.

22 You don't say that it is, do you?

23 MR. PLEUNE: Object to form.

24 THE WITNESS: I wrote while the means 2.4.2

25 can be a tooth ring as depicted in Figure 16, 17A, 17B
Nespresso USA, Inc. Ex. 1066

1 and 17C, a POSITA would have understood that" -- I
2 apologize for that typo -- "other detection means such
3 as a barcode could be used interchangeably in the same
4 location." That's exactly what I wrote.

5 BY MR. MCCRAW:

6 Q. Okay. Understood. So it's your opinion that
7 Exhibit 1047 teaches a person of ordinary skill in the
8 art that these features could be used interchangeably?

9 A. I think that's far too broad. I think for
10 this particular patent example, this explicitly says
11 that those could be used. In other words, what has
12 been said in relation to the identifier applies to all
13 other examples.

14 Q. Okay. And it's your opinion that that
15 statement teaches a person of ordinary skill in the
16 art that you could swap the barcode with the tooth
17 ring?

18 A. That's what I put in my report. Yes, sir.

19 Q. Thank you.

20 Okay. Let's stay on Exhibit 1047. I'd like
21 to direct you to Figure 16.

22 A. Okay. Figure 16.

23 Q. Do you see the shading on the left side of
24 the capsule?

25 A. Are you talking about vertically along the
Nespresso USA, Inc. Ex. 1066

1 left side of the capsule?

2 Q. Correct.

3 A. Yes, sir. I do see the shading.

4 Q. Okay. And you understand that element 29 is
5 a mandrel that pierces the capsule; correct?

6 A. Yes, sir.

7 Q. Okay. And you see that the sharp point at
8 the end of element 29 has entered the capsule.

9 You agree with that?

10 A. I would say from this image, that looks to be
11 the case, yes, sir.

12 Q. So you understand Figure 16 to depict a
13 pierced capsule?

14 MR. PLEUNE: Object to the form.

15 THE WITNESS: I would say that 29 has entered
16 the capsule.

17 BY MR. MCCRAW:

18 Q. Which means that it's a pierced capsule?

19 A. Pierced is not a claim term. I don't
20 remember constructing that, but I think that could be
21 a characterization.

22 Q. Okay. Let's go to Paragraph 53 of your
23 declaration. And I'm looking at the sentence that
24 goes to the last line of that page. It says, "A

25 POSITA would have understood that an intact portion
Nespresso USA, Inc. Ex. 1066

1 capsule could have an outwardly-bowed cover because
2 of, for example, differential pressure inside and
3 outside of the capsule." Do you see that?

4 A. Yes, sir.

5 Q. Okay. Does Exhibit 1047 ever discuss
6 pressurizing the capsule?

7 A. No, sir, I don't recall that being there.

8 Q. Okay. Moving on in Paragraph 53, you say in
9 the last sentence, "A POSITA would also understand
10 that once the capsule's top is pierced by the mandrel
11 and/or the water inlet feature, air would escape and
12 the foil cover could then become flattened, which
13 Figure 16 depicts." Do you see that?

14 A. Yes, sir, I do see that.

15 Q. So is it your opinion that Figure 16 depicts
16 a foil cover that is flattened?

17 A. No, sir.

18 Q. No, it's not. So it's your opinion that
19 Figure 16 has been pierced but is not, in fact,
20 flattened?

21 A. It is not, in fact, flattened nor does it
22 necessarily have to be.

23 Q. Okay.

24 A. It might be less bowed than it was before.

25 If this is showing it during the brewing process, then
Nespresso USA, Inc. Ex. 1066

1 the pressure would cause it to bow out.

2 Q. But everything -- strike that.

3 There's no disclosure in Exhibit 1047 that
4 Figure 16 depicts the capsule during the brewing
5 process, is it?

6 A. There's no disclosure to that effect.

7 Q. Okay. Let's go back to Figure 16 in 1047.
8 You understand element 28 to be the water inlet?

9 A. Yes, sir. Let me just make sure that that is
10 the term that's used in this. I believe that's
11 correct. Yes, sir. Water inlet 28.

12 Q. Do you understand that the water inlet --
13 strike that.

14 Do you understand that the arms of the water
15 inlet sit flush with the rim of the capsule in this
16 figure?

17 A. It's difficult to tell. It's possible that
18 they do.

19 Q. Okay. Why don't we go to the '491 patent,
20 which is Exhibit 1001.

21 A. So are you directing me to Figure 16A?

22 Q. I sure am.

23 A. Yes, sir.

24 Q. You see the water inlet 28 there?

25 A. Yes, sir.

1 Q. And you see the arms that extend horizontally
2 as part of 28, do you?

3 A. I see what I believe you're indicating.

4 Q. Okay.

5 And you see that those horizontal arms of
6 element 28 are actually positioned below what you have
7 articulated as the cover; correct?

8 A. Yes, sir. They could be behind it, for
9 example.

10 (Pause.)

11 BY MR. MCCRAW:

12 Q. Does Exhibit 1047 ever describe the water
13 inlet being positioned behind the bowed cover of the
14 capsule?

15 A. 1047.

16 (The witness reviewed the document.)

17 THE WITNESS: Just off the top of my head, I
18 do not recall a positional relationship.

19 MR. MCCRAW: That's all on that.

20 (Pause.)

21 MR. MCCRAW: I'd like to introduce what's
22 been previously marked as Exhibit 1041. This is WIPO
23 Publication 2010/099806 to Rossi.

24 (Previously marked Exhibit 1041 was made
25 available to the witness.)

1 BY MR. MCCRAW:

2 Q. Have you seen this reference before,
3 Dr. Howle?

4 A. Yes, sir.

5 Q. As part of your analysis, did you review the
6 Rossi reference?

7 A. I did, yes, sir.

8 Q. And you generally have an understanding of
9 how the Rossi reference operates; is that right?

10 A. Yes, sir.

11 Q. I'd like to go to Page -- let me just ask you
12 a question without a page.

13 You would agree that Rossi is a system for
14 controlling the operation of a beverage machine using
15 single-serve capsules; right?

16 A. I stated here that Rossi relates generally to
17 a process and system for controlling the operation of
18 an edible product-making machine that uses
19 single-serve capsules.

20 Q. Okay. So do you agree with my question?

21 A. I think your question agrees with my
22 sentence.

23 Q. We're in agreement?

24 A. Seems so.

25 Q. And in Paragraph 39 you describe part of the
Nespresso USA, Inc. Ex. 1066

IPR2023-00502

1 operation of Rossi; is that right?

2 A. Yes, sir.

3 Q. There's two initial steps. One involves an
4 identification element and a validation. Strike
5 that.

6 There's two initial steps. One involves an
7 identification element, and another involves a
8 validation element; is that correct?

9 A. I write specifically, "the first step may
10 consist of 'unlocking the machine when both the
11 identification element and the unvalidated validation
12 element are recognized.'" Then I write, "The second
13 step of validation of the validation element may
14 consist of 'mechanical destruction of the validation
15 element' which ensures that the validation element
16 cannot be re-recognized."

17 You specifically asked about the first two
18 steps. There is a third, but I'll not read that since
19 you haven't asked.

20 Q. Why don't you tell me what the third step is.

21 A. I'll be happy to, yes, sir.

22 "In the third activation step, the machine
23 'activates a cycle of edible-product production' after
24 it recognizes on the capsule the same identifying
25 element and the" validation element -- "validated"

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 validation element."

2 Q. Okay. So it's your opinion, reading Rossi,
3 that the production cycle won't be activated if a
4 validated validation element is not sensed; is that
5 right?

6 (Pause.)

7 THE WITNESS: That sounds accurate, yes, sir.

8 BY MR. MCCRAW:

9 Q. Okay. Just to follow up, it's also your
10 opinion, reading Rossi, that the production cycle
11 won't be activated if an identification element is
12 never sensed; is that right?

13 A. So it requires unlocking the machine when
14 both the identification element and the unvalidated
15 validation element are recognized.

16 Q. So you would agree that means you need an
17 identification element to be identified to operate the
18 brewing cycle; right?

19 A. At least.

20 (Pause.)

21 MR. MCCRAW: Let's put that aside for a
22 second.

23 Q. Let's go to Exhibit 1004, the Yoakim
24 reference.

25 A. Okay.

1 Q. Well, actually, before we do that, what we
2 probably ought to do is look at your declaration.
3 Let's go to the table of contents. Sorry to make you
4 jump around.

5 I'm looking at Page ii, 2 that says, B, C,
6 and D at the top of the page in the table of contents.

7 A. You're talking about my -- I'm sorry.

8 Q. That's okay.

9 A. Little ii, 2. Here (indicating)?

10 Q. Yes.

11 A. Okay. And where in particular?

12 Q. Okay. Well, so in Section 9 b. It's your
13 opinion that "Yoakim, Jarisch 929, and Rossi fail to
14 disclose or render obvious" the limitation "'a pump
15 controlled to supply water into the single-serve
16 capsule only upon detection of the identifier by the
17 sensor/detector and a determination by the beverage
18 machine that the single-serve capsule is suitable for
19 use with the beverage machine' as required by
20 Claim 1"; is that correct?

21 A. That's what I wrote, yes, sir.

22 Q. And then moving on to 9 C, it's your opinion
23 that "Yoakim, Jarisch 929, and Rossi fail to disclose
24 or render obvious 'a groove that is laterally offset
25 from the chamfered mandrel' and 'a seal that is at

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 least partially seated in the groove and configured to
2 bear against the top side of the cover in a region
3 between the peripheral edge of the cover and the
4 region of the cover that is pierced by the chamfered
5 mandrel,' as required by claim 1"; is that correct?

6 A. Yes, sir.

7 Q. Okay. And moving on to Section D, it is your
8 opinion that "Yoakim, Jarisch 929, and Rossi fail to
9 disclose or render obvious at least 'a ledge at an
10 upper region [of an inside wall], the ledge projects
11 from the inside wall towards the central longitudinal
12 axis,' as required by claim 5"; is that correct?

13 A. Yes, sir.

14 Q. Is it your opinion that the remaining
15 limitations of the '491 patent claims are disclosed by
16 Yoakim, Jarisch 929, and Rossi?

17 MR. PLEUNE: Object to the form.

18 THE WITNESS: The remaining beyond Claims 1
19 and 5. Is that your question?

20 BY MR. MCCRAW:

21 Q. My question is a little different.

22 A. Okay.

23 Q. I understand, from reading this table of
24 contents, that there's a series of limitations that
25 you dispute are met by Yoakim, Jarisch '929, and

BR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Rossi. One involves a pump. One involves a groove.
2 One involves a seal. One involves a ledge.

3 A. Yes, sir.

4 Q. Okay. But there's other limitations in the
5 '491 patent; right?

6 A. There are, yes.

7 Q. Okay. So my question is: Is it your opinion
8 that the remaining limitations of the '491 patent
9 claims that you haven't identified here are disclosed
10 by Yoakim, Jarisch 929, and Rossi?

11 A. I have not --

12 MR. PLEUNE: Let me make my objection, and
13 then you can answer the question.

14 THE WITNESS: I'm sorry.

15 MR. PLEUNE: So I'm going to say object to
16 the form.

17 You can go ahead and answer.

18 THE WITNESS: Okay. In responding to your
19 question, I have not provided opinions on those
20 points.

21 BY MR. MCCRAW:

22 Q. Okay. But to be clear, you have not provided
23 an opinion that any of the other limitations failed to
24 be met by Yoakim, Jarisch 929 or Rossi; correct?

25 A. I have not provided any opinions on those
Nespresso USA, Inc. Ex. 1066

1 matters.

2 Q. Have you formed an opinion, sitting here
3 today, on any of the other limitations beyond the ones
4 identified in B, C, and D?

5 A. Have I formed them sitting here today?

6 Q. Do you have any opinions on those other
7 limitations as to whether they are met by Yoakim,
8 Jarisch 929, and Rossi sitting here today?

9 A. I would need to do that analysis. So I have
10 not formed those opinions.

11 Q. How did you select these limitations but not
12 the others to form opinions on?

13 MR. PLEUNE: I'm going to caution the
14 witness, you can certainly describe your analysis, but
15 don't disclose any conversations that you had with
16 counsel in this matter.

17 (The witness reviewed the document.)

18 THE WITNESS: What I would have to do is I
19 would have to go back and check the petition to see
20 exactly which claims were challenged. I would not
21 have analyzed any that are not challenged, I believe.
22 One certainly is an independent claim. So several
23 dependent from 1, including 5 that depends through 4.

24 BY MR. MCCRAW:

25 Q. Let me ask a different question. IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 A. Yes, sir.

2 Q. Your declaration submitted in this matter
3 does not challenge that Yoakim, Jarisch 929, and Rossi
4 disclose elements of the '491 patent except for the
5 elements identified in B, C, and D; is that right?

6 THE WITNESS: Let me just scan and make sure
7 that's an accurate statement.

8 (The witness reviewed the document.)

9 THE WITNESS: I'd like to revisit the
10 previous question, which is the particular claims that
11 I listed that you read out in the table of contents.
12 Here, I do say that because some of the claims depend
13 from the others, and it's my opinion that the
14 previously cited ones are valid, that I did not see
15 the necessity to analyze those other patents.

16 BY MR. MCCRAW:

17 Q. Okay. So if I understand what you're saying
18 correctly, you're saying that for any dependent claim
19 that has the same feature as the ones identified in B,
20 C, and D, you didn't provide a further analysis, but
21 you contend that that limitation is not met from B, C,
22 and D. Is that what you're saying?

23 A. Well, what I'm saying specifically is because
24 Claims 4 through 6 depend from Claim 1, Yoakim,
25 Jarisch 929, and Rossi also fail to invalidate these

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 claims. And I'm reading here Page 57 at 96,
2 Paragraph 96.

3 And I discussed Claims 10 and 7 in that one.
4 "In Yoakim, Petitioner identifies the 'low pressure
5 pump 6'" -- and I'm reading at 97 -- "as disclosing a
6 pump controlled to supply water to the capsule, and
7 the 'identification means for identifying the
8 different capsules' as disclosing the identifier
9 required by claims 1, 7, and 10."

10 So I believe that's how I came to the
11 particular claims to analyze.

12 Q. Okay.

13 A. And I apologize. If we can go to the
14 immediately pending question, which because I ran my
15 mouth, I have forgotten.

16 Q. That's okay. I think you answered my
17 question sufficiently.

18 Let me ask another question, please, which
19 is -- actually, before I do that, I'd like to direct
20 you to the '491 patent. Let's go to Column 12,
21 Line 59. I'm directing you to Claim 1 of the
22 '491 patent.

23 Let me know when you're there.

24 A. Yes, sir. I'm there. I'm just scanning the
25 claim.

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

1 Q. Okay. We can start at the beginning.

2 Do you see where it says, "A beverage system
3 for making a beverage"?

4 A. Yes, sir, I see that.

5 Q. Does Yoakim, Exhibit 1004, disclose a
6 beverage system for making a beverage?

7 MR. PLEUNE: Object to the form.

8 (The witness reviewed the document.)

9 THE WITNESS: I do not give an opinion on
10 that.

11 BY MR. MCCRAW:

12 Q. I'm asking you, sir, as a person of ordinary
13 skill in the art, looking at Yoakim, does Yoakim
14 disclose a beverage system for making a beverage?

15 A. I have not provided an opinion for that, sir.

16 Q. Okay. So just so I understand, you have
17 spent 1,300 hours analyzing coffee system patents and
18 products; is that right?

19 A. That's correct, yes, sir.

20 Q. Okay. And you've reviewed the petition in
21 this case?

22 A. Yes, sir.

23 Q. And you've reviewed the '491 patent?

24 A. I have, yes, sir.

25 Q. And you've reviewed the Yoakim reference?
Nespresso USA, Inc. Ex. 1066

IPB2023-00502

1 A. I have, yes, sir.

2 Q. And you contend you're a person of ordinary
3 skill in the art?

4 A. Yes, sir.

5 Q. And you, sitting here today, cannot tell me
6 whether or not Yoakim discloses a beverage system for
7 making a beverage; is that right?

8 A. I'm saying that I have not provided that
9 opinion.

10 Q. Okay. I'm asking you now to tell me, as an
11 expert, does Yoakim disclose a beverage system for
12 making a beverage?

13 MR. PLEUNE: Object to form. Outside the
14 scope.

15 (The witness reviewed the document.)

16 THE WITNESS: What I state in my report, and
17 I'm here at Page 17, Paragraph 33, "Yoakim generally
18 relates to a capsule-based system and method for
19 preparing a liquid food or beverage through
20 centrifugation."

21 BY MR. MCCRAW:

22 Q. Okay. So I'm asking you does Yoakim meet the
23 claim limitation of a beverage system for making a
24 beverage?

25 A. And in order to be able to answer that PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 accurately, I would need to go through all of the
2 analysis, looking at Yoakim, reading the claims in
3 light of the specifications, and possibly referring to
4 other materials, such as prosecution history. It
5 would take me quite a while to do that.

6 Q. So sitting here today, you can't answer the
7 question of whether Yoakim discloses a beverage system
8 for making a beverage; is that right?

9 A. Sitting here today, I represent to you that I
10 have not given an opinion on that matter.

11 MR. MCCRAW: That's all for that.

12 MR. PLEUNE: Counsel, I believe we've been
13 going for about an hour. Is now a good time for a
14 break?

15 MR. MCCRAW: Sure.

16 (A recess was taken from 5:17 p.m.
17 to 5:35 p.m.)

18 BY MR. MCCRAW:

19 Q. All right. Dr. Howle, did you speak with
20 counsel about the substance of your testimony during
21 the break?

22 A. No, sir.

23 Q. Did you speak with counsel about the
24 substance of my questions during the break?

25 A. I did not.

1 Q. Okay. I would like to direct you to
2 Exhibit 1047.

3 A. Okay.

4 Q. And specifically, Page 41 of 61. Lines 31
5 through 35. And that passage says, "This seal 21
6 ensures that the water which flows through the water
7 inlet 28 flows into the capsule through an opening in
8 the latter produced by the piercing spike, and does
9 not flow around the capsule."

10 Do you see that?

11 A. Yes, sir. I see where that's written.

12 Q. I'd like to direct you to your declaration
13 now at Paragraph 67. And specifically -- in Line 5
14 you say, "Specifically, the accompanying text
15 describes the flow of water through a water inlet 28
16 and into the capsule, and then out through the opening
17 made by a mandrel or piercing spike," and you cite
18 Exhibit 1047 at 41, Lines 31 through 35 that I just
19 read back to you.

20 A. Yes, sir.

21 Q. My question for you is: Which is it? Does
22 the water flow into the capsule from the piercing
23 spike or out of the capsule from the opening from the
24 piercing spike?

25 A. I actually wrote that incorrectly. So I

PR2023-00502
Nespresso USA, Inc. Ex. 1066

1 is -- where are we. As stated in the application,
2 water flows through the water inlet 28, flows into the
3 capsule through an opening in the latter produced by
4 the piercing spike 29 and does not flow around the
5 capsule.

6 Q. Okay.

7 A. That's the accurate statement.

8 Q. Okay. So this is an error in your report?

9 A. Yes, sir. I apologize for making that error.

10 Q. That's okay.

11 Going back to your report, does your report
12 include any kind of technology background section that
13 explains the state of the art?

14 A. It explains the background of the patents
15 themselves, but as far as state of the art is
16 concerned, I did not provide a technology background
17 for that.

18 Q. Did you review the expert report of
19 Mr. Michael Jobin?

20 A. Yes, sir, I did.

21 Q. Do you recall a technology background section
22 in his report?

23 A. I think we're talking about declarations;
24 correct?

25 Q. Correct.

1 A. I started that. So I apologize. Yes. And
2 did I read the technology background? I would have if
3 it's part of that report.

4 Q. Okay. Do you agree with his description of
5 the state of the art in that technology background?

6 A. Sitting here, I don't recall his description
7 of the state of the art.

8 Q. But your declaration does not include any
9 opinions disagreeing with his description of the state
10 of the art; correct?

11 A. It does not include any opinions at all about
12 the state of the art.

13 Q. Okay. So in this proceeding you aren't
14 offering any explanation of the state of the art in
15 2010 beyond what you've stated in this declaration; is
16 that right?

17 A. Can you say the first part? "In this
18 proceeding," was that the --

19 MR. MCCRAW: Could you please read back the
20 question.

21 (Record read.)

22 THE WITNESS: In my declaration, I've not
23 given any opinion on the state of the art.

24 MR. MCCRAW: Okay. That's all I have.

25 MR. PLEUNE: Okay. Let us take a break.
Nespresso USA, Inc. Ex. 1066

1 MR. MCCRAW: Okay.

2 (A recess was taken from 5:41 p.m.

3 to 6:18 p.m.)

4

5 EXAMINATION

6 BY MR. PLEUNE:

7 Q. Dr. Howle, I'm going to ask you to turn to
8 Exhibit 1057, if you could.

9 A. I have what I believe is 1057. Yes.

10 Q. Yes. And this is a document that counsel for
11 petitioner asked you about during your deposition
12 today; correct?

13 A. Yes, sir that's correct.

14 Q. Can you turn to Exhibit A of this document.

15 A. Exhibit A. My CV. Yes, sir.

16 Q. You kind of beat me to it.

17 Can you tell me what this document is?

18 A. This is my CV.

19 Q. What is listed on the first page of this
20 document?

21 A. This would be current positions, a link to a
22 Google scholar citation listing some of my
23 professional history, some of my additional
24 experience. And then finally, honors and awards
25 begins on that page.

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. If you turn to the next page, what else do
2 you see from there?

3 A. I discuss my education at Duke University.
4 My professional certifications, professional
5 memberships, and my research interests, and then it
6 begins with my refereed publications.

7 Q. And it looks like your refereed publications
8 continue on to Page 8. And if you could turn to
9 Page 8 and tell me what appears on that page.

10 A. Page 8. These are some of my publications
11 that fall under the category of contributed papers.
12 Oh, I'm sorry. Wrong page.

13 You asked me to identify what's on this; is
14 that right?

15 Q. Uh-huh.

16 A. Okay. So peer reviewed papers and press.
17 Peer reviewed papers and reviews. Book chapters, and
18 begins a listing of contributed papers.

19 Q. Okay.

20 A. And this is quite out of date by now.

21 Q. It continues on to Page 10. What can you
22 tell me is on Page 10?

23 A. Page 10 are various reports that I've done.

24 Q. What about on Page 11?

25 A. Page 11, published abstracts for scientific
Nespresso USA, Inc. Ex. 1066

1 meetings.

2 Q. And then turning to Page 19, what do you see
3 there?

4 A. In response to letters to the editor from my
5 publication record, and then I begin my funding
6 history.

7 Q. Okay. And then if we turn to Page 24, what
8 appears there?

9 A. 24, conference and other presentations. And
10 on 21 we also have my invited presentations.

11 Q. So on Page 21 begins your invited
12 presentations, and on Page 24 your conference and
13 other presentations; is that right?

14 A. Yes, sir, that's correct.

15 Q. What about on Page 25?

16 A. Page 25 is the patent that I was issued.

17 Q. Did counsel ask you about that patent today?

18 A. He did, yes, sir.

19 Q. Okay. And then what about Page 26?

20 A. Fairly highly abbreviated listing of my
21 consulting activities.

22 Q. Is there anything else on Page 26?

23 A. Also media coverage, mostly from my research
24 work at Duke University.

25 Q. What about on Page 30?

1 A. Page 30 lists my teaching experience, also
2 research activities at Duke University.

3 Q. What about Page 31?

4 A. 31 contains a listing of peer reviewed
5 journals for which I provide peer review, and then
6 finally graduate students, mentored, and degrees
7 awarded.

8 (The Reporter requested clarification.)

9 THE WITNESS: My graduate students, mentored,
10 and degrees awarded.

11 BY MR. PLEUNE:

12 Q. And do you believe that this is an accurate
13 copy of your CV as of this time?

14 A. As of this time --

15 MR. MCCRAW: Objection to form. Objection.
16 Relevance. Objection. Leading.

17 BY MR. PLEUNE:

18 Q. You can respond.

19 A. Okay. Yes, at that time, that was an
20 accurate representation of my CV.

21 Q. Do you believe that there's any inaccuracies
22 in this copy of your CV?

23 MR. MCCRAW: Objection. Leading. Objection
24 relevance. Objection. Outside the scope.

25 THE WITNESS: I can answer?

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 BY MR. PLEUNE:

2 Q. Yeah.

3 A. I'm not aware of any inaccuracies.

4 Q. Can you identify any inaccuracies?

5 MR. MCCRAW: Same objections.

6 THE WITNESS: I can find no inaccuracies to
7 identify.

8 BY MR. PLEUNE:

9 Q. If you could turn to Paragraph 14 of
10 Exhibit 2021.

11 A. 2021. That's my declaration. Okay.

12 Q. Can you read Exhibit -- Paragraph 14 to
13 Exhibit 2021?

14 A. Paragraph 14.

15 Q. Yes.

16 A. Paragraph 14 of Exhibit 2021 reads,
17 "Additional information regarding my education and
18 technical experience included in my Curriculum Vitae,
19 which is attached to this Report as Appendix A."

20 Q. And did Counsel ask you about your education
21 and technical experience during the deposition today?

22 MR. MCCRAW: Objection. Form. Objection
23 leading. Objection. Outside the scope.

24 THE WITNESS: Yes, sir.

25 BY MR. PLEUNE:

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 Q. What did counsel for petitioner ask you with
2 respect to your education?

3 MR. MCCRAW: Same objections.

4 THE WITNESS: As I recall, he asked me my
5 educational background, and he also went into a number
6 of questions regarding my research work while at
7 Duke University.

8 BY MR. PLEUNE:

9 Q. And what about your technical experience?
10 What did counsel ask you with respect to your
11 technical experience?

12 MR. MCCRAW: Objection. Leading. Object to
13 form.

14 THE WITNESS: He asked me specific questions
15 about the subject matter of my various technical
16 expertise having to do, typically, with coffee makers.

17 MR. PLEUNE: I'm handing you a document that
18 has been marked as Exhibit 2026.

19 Can you identify this for me.

20 (Deposition Exhibit 2026 was marked for
21 identification.)

22 MR. MCCRAW: I'm sorry. Before we go any
23 further, is this -- this is a new exhibit. You're
24 adding a new exhibit to the record?

25 MR. PLEUNE: Just like you added a new
Nespresso USA, Inc. Ex. 1066

1 exhibit to the record, yes, Counsel, I'm adding a new
2 exhibit to the record.

3 THE WITNESS: This is my more recent CV. On
4 the back page it indicates this was last updated on
5 April 25 of this year.

6 BY MR. PLEUNE:

7 Q. Is this the document that you reference at
8 Paragraph 14 of Exhibit 2021?

9 A. It is, and I neglected to attach that. I
10 apologize for doing so.

11 Q. What is on Page 2 of Exhibit 2026 with
12 respect to your education?

13 A. I have the degrees I was awarded, the subject
14 in which I was awarded those degrees, the university
15 from which I was awarded those degrees, Duke
16 University, and the dates of the awarding of those
17 degrees.

18 (Pause.)

19 BY MR. PLEUNE:

20 Q. If you could turn to Page 1 of Exhibit 2026,
21 can you tell me what additional experience you had
22 between 2007 and 2010?

23 MR. MCCRAW: Objection. Leading. Object to
24 form.

25 THE WITNESS: Okay. So as you mentioned,
Nespresso USA, Inc. Ex. 1066

1 this is a partial listing. So between 2007 and -10?
2 Was that the -- okay. So starting at 2007 I was a
3 visiting professor with the United States Naval
4 Academy, and then also chief science officer at
5 Whalepower Corporation.

6 BY MR. PLEUNE:

7 Q. What is Whalepower Corporation?

8 MR. MCCRAW: Object to form.

9 Go ahead.

10 THE WITNESS: It's a company that was founded
11 to license certain patent technology targeted toward
12 wind power fans, wings and so forth.

13 BY MR. PLEUNE:

14 Q. And did counsel for petitioner ask you about
15 your time at this corporation during the deposition
16 today?

17 A. Yes, sir, he did.

18 Q. Does your CV provide additional background
19 information regarding the questions that Counsel asked
20 today with respect to your education and technical
21 experience?

22 MR. MCCRAW: Objection. Leading. Object to
23 form.

24 THE WITNESS: Yes, sir, it does provide
25 information on my education and technical experience.

JPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 BY MR. PLEUNE:

2 Q. You can put that aside, Dr. Howle.

3 Can you please turn to Page 22 of
4 Exhibit 2021.

5 A. Page 22. Okay. Yes, sir.

6 Q. And what section of your report appears on
7 Page 22 of Exhibit 2021?

8 A. That's my summary of opinions in this matter.

9 Q. And can you read Paragraph 42, please.

10 MR. MCCRAW: Objection. Leading.

11 THE WITNESS: Yes, sir.

12 "In particular, none of Yoakim, Jarisch 929,
13 Rossi or Castellani, alone or in combination, disclose
14 a 'pump controlled to supply water into the
15 single-serve capsule only upon detection of the
16 identifier by the sensor/detector and a determination
17 by the beverage machine that the single-serve capsule
18 is suitable for use with the beverage machine;' a
19 'groove that is laterally offset from the chamfered
20 mandrel;' or 'a seal that is at least partially seated
21 in the groove and configured to bear against the top
22 side of the cover in a region between a peripheral
23 edge of the cover and a region of the cover that is
24 pierced by the chamfered mandrel.' Nor do

25 Petitioner's references disclose a 'ledge at an upper
Nespresso USA, Inc. Ex. 1066

IPR2023-00502

1 region [of the inside wall], the ledge projects from
2 the inside wall towards the central longitudinal
3 axis.'"

4 BY MR. PLEUNE:

5 Q. So can you tell me what is your position with
6 respect to these claim limitations and the prior art
7 references Yoakim, Jarisch 929, Rossi, and Castellani?

8 MR. MCCRAW: Object to form. Objection.
9 Leading. Objection. Foundation.

10 THE WITNESS: My opinions are that they do
11 not disclose these elements.

12 BY MR. PLEUNE:

13 Q. And these elements regardless of what claim
14 they appear in; correct?

15 A. Yes, sir.

16 Q. If you could turn to Page 53 of your
17 declaration, Exhibit 2021.

18 A. Page 53. Yes, sir.

19 Q. And this is Section 9B of your report;
20 correct?

21 A. Yes, sir. If you represent that it starts at
22 9, then yes, I'll take that representation.

23 Q. And in Paragraph 97 you specifically address
24 Claims 1, 7, and 10; correct?

25 MR. MCCRAW: Objection. Leading. IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 THE WITNESS: Yes, sir, I do address those
2 claims, 1, 7, and 10.

3 BY MR. PLEUNE:

4 Q. And tell me, what claim do you address in the
5 last -- the second to the last sentence of
6 Paragraph 97?

7 MR. MCCRAW: Objection. Leading.

8 THE WITNESS: The peripenultimate claims are
9 addressed as Claims 1, 10, and Claim 7.

10 BY MR. PLEUNE:

11 Q. And then what is your opinion with respect to
12 those limitations?

13 MR. MCCRAW: Object to form. Objection.
14 Foundation.

15 THE WITNESS: My opinion is that Yoakim does
16 not disclose that element.

17 BY MR. PLEUNE:

18 Q. And that's clearly stated in your report;
19 correct?

20 A. Yes. That's correct.

21 MR. MCCRAW: Objection. Leading. Objection
22 to form.

23 MR. PLEUNE: That's all the questions we
24 have.

25 MR. MCCRAW: I have no further questions.
Nespresso USA, Inc. Ex. 1066

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(Witness excused.)

(Deposition concluded at 6:35 P.M.)

C E R T I F I C A T E

I do hereby certify that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.



Nancy J. Martin, RMR, CSR

Dated: September 15, 2023

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

IPR2023-00502
Nespresso USA, Inc. Ex. 1066

1 S Benjamin Pleune

2 ben.pleune@alston.com

3 September 15th, 2023

4 RE: Nespresso USA, Inc. v. K-Fee System GMBH

5 9/13/2023, Laurens Howle , Ph.D. (#6094502)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 (cs-carolinas@veritext.com).

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,
23 Veritext Legal Solutions
24

25 IPR2023-00502
Nespresso USA, Inc. Ex. 1066

Nespresso USA, Inc. v. K-Fee System GMBH

Laurens Howle , Ph.D. (#6094502)

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Laurens Howle , Ph.D.

Date

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

Page 203 of 265

Nespresso USA, Inc. v. K-Fee System GMBH

Laurens Howle , Ph.D. (#6094502)

ACKNOWLEDGEMENT OF DEPONENT

I, Laurens Howle , Ph.D., do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Laurens Howle , Ph.D.

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

_____ DAY OF _____, 20____.

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IPR2023-00502

Nespresso USA, Inc. Ex. 1066

Page 204 of 265

[& - 17a]

Page 1

&	10 4:16 28:21	148:9,24	131 4:15
& 3:9,15 39:11	29:15 31:24	150:21 168:5	134 4:17
0	103:14 109:18	169:7,20 171:5	14 86:20 193:9
03732 10:24	109:20 110:6	172:3,7 173:12	193:12,14,16
04676 126:3	112:10 146:11	173:15 186:2	195:8
1	182:3,9 190:21	186:18	14th 3:4
1 1:25 15:12	190:22,23	1056 30:9	15 29:10 96:5
63:9 69:2,3	196:1 198:24	31:15	147:5,6,10,16
83:18,20 84:19	199:2,9	1057 4:22	167:25 201:17
86:12,17 92:12	10,800,600	125:20,21	158 69:24
92:15 100:5,19	137:7 139:19	130:11 189:8,9	15th 202:3
105:19 109:3	140:7 141:5	10:31 40:4	16 71:22 132:5
109:24 111:4	144:16	10:47 40:5	132:8 133:1
114:19 115:16	100 50:8	11 43:12	146:5 152:23
116:5,19,23	1001 4:12	190:24,25	153:8,8,24
131:19,25	62:21,23 63:3	11,254,491 1:6	154:14,17
132:9 150:20	69:2 83:17	2:6 63:1	155:7,19,24
150:24 152:5	84:7 85:19	1120 3:10	156:5,7,16,21
152:21,24	86:8 172:20	11:50 81:11	168:15,25
153:5,13,13	10020 3:5	12 10:9 15:17	169:21,22
154:2,7,13,22	1003 69:23	44:14 49:23	170:12 171:13
155:5,9,11,17	1004 4:13	68:16 83:19	171:15,19
155:18 156:6	122:17,20	150:25 151:2	172:4,7
156:19,22	143:5,10,18,25	155:10,24	160 70:1
177:20 178:5	157:11 160:25	182:20	161 70:4
178:18 180:23	162:24 163:24	122 4:13	16a 103:7
181:24 182:9	176:23 183:5	1221 3:4	172:21
182:21 195:20	1007,33 68:11	125 4:22	17 71:22
198:24 199:2,9	101 135:3	128 113:5	112:12 132:5
1,200 50:9,16	1041 4:14	12:07 81:12	133:1 150:9,9
50:20,25	173:22,24	13 1:15 2:13	156:9 167:25
1,300 16:22	1047 4:15	63:8 84:22,23	184:17
50:1,4 117:10	130:22 131:1	86:19,20 90:11	173 4:14
126:21 183:17	131:24 133:4	91:13 100:13	17a 168:25
	134:9 145:3	111:4 147:19	IPR2023-00502
		Nespresso USA, Inc. Ex. 1066	

[17b - 2:46]

Page 2

17b 168:25 17c 169:1 18 71:23 132:5 133:2 147:9 186 166:12 189 4:4 19 191:2 194 4:23 1983 34:6 1989 34:6 37:13 38:16,23 39:22,25 1993 43:4 1:06 110:19 1:56 110:20 1b 87:24	2.4.2. 145:25 146:5,9 20 9:14 11:1 70:21 89:15,17 204:15 20001 3:17 2002 138:17,25 139:5 144:5 2002-1 138:1 2007 42:25 195:22 196:1,2 2008 37:9,14 38:13,16,23 39:22 40:1,12 40:19 41:15 2008/148641 141:7 2010 15:24 42:25 48:25 49:8 53:10 60:25 62:2 82:7 83:6,9 130:23 188:15 195:22 2010's 15:19,21 2010/0239734 122:18 2010/099806 173:23 2012 70:21 2015 15:22 45:21 48:19 52:17,22 2017 126:10 128:4	2020 81:18,22 82:18 2021 4:16 10:3 10:6 21:24 28:18 120:7 193:10,11,13 193:16 195:8 197:4,7 198:17 2021-01122 138:1 2021-01222 138:22 2022 31:25 2022-01574 68:16 2023 1:15 2:13 5:3 83:2 201:17 202:3 2025 4:17 31:25 32:14 134:17,20 136:12 2026 4:23 194:18,20 195:11,20 204 1:25 205 163:12,13 163:16 167:9 167:11,13 21 126:9 152:14 186:5 191:10,11 212 3:5 22 197:3,5,7	23 5:3 162:21 163:2 166:9,15 24 111:4 146:6 151:10 152:20 162:21 163:4,4 166:9 191:7,9 191:12 25 68:16 89:15 89:17 111:4 191:15,16 195:5 250 36:6 26 100:13 191:19,22 27 68:1 69:9 72:6 103:18 28 72:7 75:14 103:14 104:17 104:19 112:10 152:15 172:8 172:11,24 173:2,6 186:7 186:15 187:2 28203 3:11 29 110:10 126:4 151:24 151:25 152:16 152:19,20 153:10 156:16 170:4,8,15 187:4 2:16 126:3 2:26 69:9 2:46 69:11 IPR2023-00502
2			
2 15:12 89:13 89:17 90:10,16 91:13 95:3 130:23 145:7 145:10 146:16 147:6,7,9,16 161:15 162:4 167:21 177:5,9 195:11 2.2 151:19 2.4 151:13,15 2.4. 70:6 151:15 2.4.1 103:16 2.4.2 145:21,23 146:12 150:4 168:24			

Nespresso USA, Inc. Ex. 1066

[2:51 - 601]

Page 3

2:51 136:17	3:09 136:18	73:23,24 74:1	4:17 157:3
3	3:1-6 69:16	74:1,4,5 75:20	4:20 10:24
3 34:3,4 152:5 152:25 153:22 154:2,7,16,22 155:9,11,17,18 156:2	3:42-43 69:20 3:7-19 69:20	75:23 76:13,23 77:3 80:5,9,11 80:13,22,25 81:3 83:18 84:4 85:2 86:23 87:5 88:23 89:19 90:3,25 91:25 93:13,23 94:2 94:6,16 96:8 98:18 99:13 100:5,5 101:5 101:6 102:2 104:3 106:7,21 107:18 108:11 109:12 111:3,9 111:20 112:14 112:22 114:13 115:12,25 116:16 117:14 118:25 120:1 124:10 125:2,4 131:20,22 132:1,10,16 133:5,9 134:2 134:10 136:13 140:9 144:16 144:25 172:19 178:15 179:5,8 181:4 182:20 182:22 183:23	5
30 100:13 191:25 192:1 202:17	4		5 4:3 28:17,21 29:15 148:16 178:12,19 180:23 186:13
300 3:10 50:3	4 36:4 136:3,12 166:10,10 167:21 180:23 181:24		50 150:21 166:22,23
31 103:14,17,21 109:20 110:7 112:6,9 186:4 186:18 192:3,4	40 61:8 41 152:13 186:4,18		500 3:16 506-2649 3:5
33 69:2 148:15 158:1 184:17	42 197:9 428 160:15,17 160:19 162:3		51 166:10
333 142:7	430 21:6		52 163:1,1,10
337 10:11 11:23,25 16:15	44 146:10 149:23 151:1 151:24		53 143:1,3 163:1,4,10 170:22 171:8 198:16,18
34 69:2 109:21 112:10 152:13 158:8,14,17	444-1098 3:12		55 90:17 160:18
340 21:4,5 46:19	45 126:24 130:10 132:4		56 156:25 163:10
35 186:5,18	450 163:19		57 120:8 182:1
38 145:4 146:16 149:9 154:23 163:9 168:7	46 131:12,15,16 131:24		58 167:18,19
39 174:25	47 131:15		59 182:21
393 137:10 138:2 139:10 140:8,13	48 131:24		5:17 185:16 5:35 185:17 5:41 189:2
	49 69:11 90:16		6
	491 21:6,7 27:5 27:8 28:7 60:9 61:14,15 62:12 62:18 63:23 64:25 67:9,11 68:19,21,25 69:6,13 73:21	4:05 157:2	6 137:10 138:1 138:13,22 181:24 182:5 6,698,333 142:8 601 141:7,10,14 141:21,23 100502

Nespresso USA, Inc. Ex. 1066

[601 - activities]

Page 4

143:5,10,17,20 143:25 6094502 202:5 203:2 204:2 61 83:19 131:12,16 145:4 146:6,10 146:16 147:9 148:15 149:10 149:23 150:21 151:1,24 152:13,20 154:23 168:7 186:4 61-62 69:3 62 4:12 126:5 64 83:19 65 160:18 67 186:13 6:18 189:3 6:35 200:2	166:12 190:8,9 190:10 87 37:24 88:20 70:22 88:22 70:25 89 37:25	97 120:7,10,20 121:19 182:5 198:23 199:6 975 201:14 98 122:23 98:6 70:25 9:43 2:16 5:3 9b 198:19	academy 196:4 access 84:11 accompanying 132:6 186:14 account 54:14 accumulated 16:22 49:25 accuracy 202:9 accurate 30:17 34:7 39:24 128:18 157:21 176:7 181:7 187:7 192:12 192:20 accurately 7:1 31:2 185:1 accused 12:14 12:21 13:13 14:4 acknowledge... 204:3 acknowledg... 202:12 action 139:13 201:12 activated 176:3 176:11 activates 175:23 activation 175:22 actively 35:14 activities 191:21 192:2 IPR2023-00502
	9	a	
	9 63:9 84:23 149:10 177:12 177:22 198:22 9,884,166 43:14 9/13/2023 202:5 90:7 71:4 91 38:4 91:10 71:9 929 10:11 11:23,25 16:15 144:4,10 177:13,23 178:8,16,25 179:10,24 180:8 181:3,25 197:12 198:7 92:1 71:4 92:25 71:9 93 38:5 137:1,3 141:2 94 143:2 95 143:4 9504 1:24 951 60:7 96 121:16 182:1,2	a.m. 2:16 5:3 40:4,5 81:11 abbreviated 191:20 abdominal 43:24 able 15:13 55:20 65:16 76:11 95:25 116:9 143:22 148:13,14 168:11 184:25 above 68:1 72:7 90:10 114:24 121:16 153:18 202:6 204:7 absolutely 104:21 abstract 99:12 99:13 102:8 abstracts 190:25 aburrowbridge 3:17	
7			
7 68:11 83:2 182:3,9 198:24 199:2,9 704 3:12 73 81:14,16 75 166:15,18,20 78 70:21 78:10 70:21			
8			
8 30:7 37:9 40:11,12 84:23 136:2 149:10			

Nespresso USA, Inc. Ex. 1066

activity 39:13 actual 78:12 actually 9:23 23:4,5 28:15 29:2 30:1 53:5 58:4 60:12 74:12 75:11 91:21 112:11 137:24 138:14 139:3 156:24 161:23 162:16 173:6 177:1 182:19 186:25 adam 3:15 adapted 164:6 added 71:13 89:22 194:25 adding 194:24 195:1 addition 38:13 38:13 43:5 104:13 additional 118:11 189:23 193:17 195:21 196:18 additionally 89:20 90:18 166:22 additions 204:6 address 5:20 198:23 199:1,4 addressed 199:9	administration 39:11 41:6 admits 69:21 admitted 70:16 adrian 10:17 11:3,6,7 46:1 49:11 59:13 60:16 126:2 advance 39:4 affirmed 5:7 affixed 37:1 aforesaid 201:2 afraid 97:11 agencies 38:20 agency 39:4 ago 25:12 61:7 61:8 75:13 109:7 110:7 142:17 agree 6:14 45:24 49:20 75:3 119:17 130:16 140:6 143:16 150:11 150:15,19 153:16,22 155:5 156:1 158:14 159:2 159:14 161:3 161:18 162:12 164:15 168:3 170:9 174:13 174:20 176:16 188:4	agreed 156:2 agreeing 121:5 agreement 174:23 agrees 121:24 174:21 ahead 46:13 95:19 179:17 196:9 aided 201:9 air 171:11 alaska 39:8 allegations 11:17,17 20:4 alleged 19:21 46:4 47:9 allotted 202:20 allow 148:13 allowed 85:16 86:3,9 allowing 49:16 allows 118:10 119:14 alston 3:9 alston.com 3:12 202:2 alternate 71:3 alternative 70:16 146:25 147:4 alternatively 89:20 90:17 alternatives 44:21 45:13 71:7,11	aluminum 36:14 amanda 3:3 ambiguous 76:21 106:25 107:23 113:12 america 54:6 american 51:8 americas 3:4 amount 51:19 52:9,12,12 57:16 analysis 23:2 23:18 24:2,10 24:24 25:1,7 33:4 39:1 47:16,17,21 62:6,9 64:5 94:6 95:14 100:16 157:16 174:5 180:9,14 181:20 185:2 analyze 15:1 143:24 144:7,9 144:14 181:15 182:11 analyzed 45:8 118:23 180:21 analyzing 16:23 45:15,17 50:1 117:11 183:17 angeles 10:19 animals 41:9 IPR2023-00502
--	--	--	---

Nespresso USA, Inc. Ex. 1066

[annotated - asked]

Page 6

annotated 152:1,10 answer 6:18,19 11:11 14:12 24:5 27:12,19 31:2 32:10 54:17 77:17 78:4 79:19 80:3 88:17 93:16 97:7 102:24 122:22 133:11 136:14 142:23 159:22 179:13,17 184:25 185:6 192:25 answered 35:22 72:12,13 73:9 96:3,24 98:11 107:24 108:17 182:16 answering 143:21 apologize 37:17 109:17 139:2 141:18 142:11 148:8,11 169:2 182:13 187:9 188:1 195:10 apparently 126:11 appeal 1:3 2:3 113:4 appear 145:17 198:14	appears 105:6 154:21 190:9 191:8 197:6 appended 204:7 appendix 193:19 applicable 202:8 application 49:6 63:22 64:1 66:3 68:8 68:22 69:22 70:14 71:15,20 118:24 119:3,8 127:3 131:9 132:6 133:6 138:18 141:6 168:17 187:1 applications 32:12 40:23,24 82:14 129:25 130:1 131:8 applied 49:4 65:10,12 70:19 71:5 72:1 76:8 87:2 100:17 111:15 130:6 130:14 147:1 applies 90:20 149:11 154:25 168:9 169:12 apply 61:22 62:5,8 71:11 73:25 74:3	116:20 128:2 130:9,10 201:22 applying 64:10 66:5 appropriate 142:19 146:25 appropriately 117:9 approved 69:15 approximately 9:14 16:13 26:20 37:23 50:8 april 195:5 aquarium 39:8 arbitration 18:20 area 34:24 69:20,25 89:9 89:12 areas 17:19 49:4 69:8,24 71:6 160:4 argues 68:9 argumentative 113:8 arm 132:21 arms 172:14 173:1,5 army 61:6 aroma 84:20 85:6,9,11,14,16 85:25 86:3,10	86:16 arrangement 68:13 arrow 147:5,6 147:10,16 art 28:3,6 50:20 62:1 65:7 66:19 73:8 80:11 84:10 88:9,19 92:22 93:11 94:18 96:20 97:10 99:1 106:6 107:18 114:9,12 116:15 118:3 118:16 127:15 144:4 153:1 167:22 168:14 169:8,16 183:13 184:3 187:13,15 188:5,7,10,12 188:14,23 198:6 articles 31:18 31:21 articulated 173:7 aside 176:21 197:2 asked 35:21 44:18,22 62:5 72:12,16 73:9 74:21 96:3,24 102:24
--	--	---	--

Nespresso USA, Inc. Ex. 1066

[asked - barcode]

Page 7

98:11 107:23 108:17 124:3 138:10 142:16 158:13 175:17 175:19 189:11 190:13 194:4 194:14 196:19 asking 6:10 23:23 38:12 56:15 60:7 62:17 63:13 64:4,9,10,19,24 65:6 66:18 67:5,6,8,9 72:11 73:7,22 73:25 74:3,6 75:4,17 76:16 80:10 86:2 92:16 94:5,15 94:19 95:22,23 96:5,8,9,14 98:9,25 99:17 102:16 106:19 108:3 114:10 115:22 120:19 125:1,3 127:10 131:23 133:10 138:8 142:15 168:10 183:12 184:10,22 aspect 53:22 aspiration 158:21 asserted 45:25	assertion 115:6 assess 119:7 assign 52:18 assigned 16:17 45:24 assignment 21:9 assist 43:15 assistant 38:9 assistantship 38:3 associate 38:9 associated 18:24 68:10 association 51:7 54:6 assume 155:12 155:13 assumptions 62:8 atmospheric 39:11 41:6 attach 195:9 attached 103:17 193:19 202:11 attempting 45:12 attempts 45:15 attention 146:5 147:7 attorney 3:3,9 6:17 202:13 attorneys 7:8 7:18 9:1 25:9	26:5 attract 54:1 august 38:10 automated 34:20 38:25 available 10:7 62:24 122:21 125:22 131:2 134:18 173:25 202:6 avenue 3:4 avoid 90:18 awarded 192:7 192:10 195:13 195:14,15 awarding 195:16 awards 189:24 aware 14:2,13 26:9,12,15 193:3 axis 83:21,25 84:3,13 119:23 178:12 198:3	61:11 72:6 76:24 77:19 79:23 80:3 81:13 82:7 83:17,18 87:7 91:13 93:2 95:3 100:4 105:19 109:24 110:6 111:3 113:23 120:6 121:12 124:2 129:9 133:13 140:19 141:2 146:15 154:23 156:10 157:11 165:7 166:5 168:7 172:7 180:19 186:19 187:11 188:19 195:4 background 49:2 187:12,14 187:16,21 188:2,5 194:5 196:18 bar 36:5,17,22 161:15 162:4 barcode 69:15 69:25 70:25 146:19,21 147:3,11,19,20 147:23 148:10 148:21 149:16 150:9,12 167:24 168:4
		b	
		b 4:6 41:4 177:5,12 180:4 181:5,19,21 bachelor's 37:24 back 21:24 23:7 24:16,19 24:20 35:17 37:7 49:11 53:2 59:12	167:24 168:4 169:24 169:4 170:24 170:4 171:24 171:4 172:24 172:4 173:24 173:4 174:24 174:4 175:24 175:4 176:24 176:4 177:24 177:4 178:24 178:4 179:24 179:4 180:24 180:4 181:24 181:4 182:24 182:4 183:24 183:4 184:24 184:4 185:24 185:4 186:24 186:4 187:24 187:4 188:24 188:4 189:24 189:4 190:24 190:4 191:24 191:4 192:24 192:4 193:24 193:4 194:24 194:4 195:24 195:4 196:24 196:4 197:24 197:4 198:24 198:4 199:24 199:4 200:24 200:4 201:24 201:4 202:24 202:4 203:24 203:4 204:24 204:4 205:24 205:4 206:24 206:4 207:24 207:4 208:24 208:4 209:24 209:4 210:24 210:4 211:24 211:4 212:24 212:4 213:24 213:4 214:24 214:4 215:24 215:4 216:24 216:4 217:24 217:4 218:24 218:4 219:24 219:4 220:24 220:4 221:24 221:4 222:24 222:4 223:24 223:4 224:24 224:4 225:24 225:4 226:24 226:4 227:24 227:4 228:24 228:4 229:24 229:4 230:24 230:4 231:24 231:4 232:24 232:4 233:24 233:4 234:24 234:4 235:24 235:4 236:24 236:4 237:24 237:4 238:24 238:4 239:24 239:4 240:24 240:4 241:24 241:4 242:24 242:4 243:24 243:4 244:24 244:4 245:24 245:4 246:24 246:4 247:24 247:4 248:24 248:4 249:24 249:4 250:24 250:4 251:24 251:4 252:24 252:4 253:24 253:4 254:24 254:4 255:24 255:4 256:24 256:4 257:24 257:4 258:24 258:4 259:24 259:4 260:24 260:4 261:24 261:4 262:24 262:4 263:24 263:4 264:24 264:4 265:24 265:4 266:24 266:4 267:24 267:4 268:24 268:4 269:24 269:4 270:24 270:4 271:24 271:4 272:24 272:4 273:24 273:4 274:24 274:4 275:24 275:4 276:24 276:4 277:24 277:4 278:24 278:4 279:24 279:4 280:24 280:4 281:24 281:4 282:24 282:4 283:24 283:4 284:24 284:4 285:24 285:4 286:24 286:4 287:24 287:4 288:24 288:4 289:24 289:4 290:24 290:4 291:24 291:4 292:24 292:4 293:24 293:4 294:24 294:4 295:24 295:4 296:24 296:4 297:24 297:4 298:24 298:4 299:24 299:4 300:24 300:4 301:24 301:4 302:24 302:4 303:24 303:4 304:24 304:4 305:24 305:4 306:24 306:4 307:24 307:4 308:24 308:4 309:24 309:4 310:24 310:4 311:24 311:4 312:24 312:4 313:24 313:4 314:24 314:4 315:24 315:4 316:24 316:4 317:24 317:4 318:24 318:4 319:24 319:4 320:24 320:4 321:24 321:4 322:24 322:4 323:24 323:4 324:24 324:4 325:24 325:4 326:24 326:4 327:24 327:4 328:24 328:4 329:24 329:4 330:24 330:4 331:24 331:4 332:24 332:4 333:24 333:4 334:24 334:4 335:24 335:4 336:24 336:4 337:24 337:4 338:24 338:4 339:24 339:4 340:24 340:4 341:24 341:4 342:24 342:4 343:24 343:4 344:24 344:4 345:24 345:4 346:24 346:4 347:24 347:4 348:24 348:4 349:24 349:4 350:24 350:4 351:24 351:4 352:24 352:4 353:24 353:4 354:24 354:4 355:24 355:4 356:24 356:4 357:24 357:4 358:24 358:4 359:24 359:4 360:24 360:4 361:24 361:4 362:24 362:4 363:24 363:4 364:24 364:4 365:24 365:4 366:24 366:4 367:24 367:4 368:24 368:4 369:24 369:4 370:24 370:4 371:24 371:4 372:24 372:4 373:24 373:4 374:24 374:4 375:24 375:4 376:24 376:4 377:24 377:4 378:24 378:4 379:24 379:4 380:24 380:4 381:24 381:4 382:24 382:4 383:24 383:4 384:24 384:4 385:24 385:4 386:24 386:4 387:24 387:4 388:24 388:4 389:24 389:4 390:24 390:4 391:24 391:4 392:24 392:4 393:24 393:4 394:24 394:4 395:24 395:4 396:24 396:4 397:24 397:4 398:24 398:4 399:24 399:4 400:24 400:4 401:24 401:4 402:24 402:4 403:24 403:4 404:24 404:4 405:24 405:4 406:24 406:4 407:24 407:4 408:24 408:4 409:24 409:4 410:24 410:4 411:24 411:4 412:24 412:4 413:24 413:4 414:24 414:4 415:24 415:4 416:24 416:4 417:24 417:4 418:24 418:4 419:24 419:4 420:24 420:4 421:24 421:4 422:24 422:4 423:24 423:4 424:24 424:4 425:24 425:4 426:24 426:4 427:24 427:4 428:24 428:4 429:24 429:4 430:24 430:4 431:24 431:4 432:24 432:4 433:24 433:4 434:24 434:4 435:24 435:4 436:24 436:4 437:24 437:4 438:24 438:4 439:24 439:4 440:24 440:4 441:24 441:4 442:24 442:4 443:24 443:4 444:24 444:4 445:24 445:4 446:24 446:4 447:24 447:4 448:24 448:4 449:24 449:4 450:24 450:4 451:24 451:4 452:24 452:4 453:24 453:4 454:24 454:4 455:24 455:4 456:24 456:4 457:24 457:4 458:24 458:4 459:24 459:4 460:24 460:4 461:24 461:4 462:24 462:4 463:24 463:4 464:24 464:4 465:24 465:4 466:24 466:4 467:24 467:4 468:24 468:4 469:24 469:4 470:24 470:4 471:24 471:4 472:24 472:4 473:24 473:4 474:24 474:4 475:24 475:4 476:24 476:4 477:24 477:4 478:24 478:4 479:24 479:4 480:24 480:4 481:24 481:4 482:24 482:4 483:24 483:4 484:24 484:4 485:24 485:4 486:24 486:4 487:24 487:4 488:24 488:4 489:24 489:4 490:24 490:4 491:24 491:4 492:24 492:4 493:24 493:4 494:24 494:4 495:24 495:4 496:24 496:4 497:24 497:4 498:24 498:4 499:24 499:4 500:24 500:4 501:24 501:4 502:24 502:4 503:24 503:4 504:24 504:4 505:24 505:4 506:24 506:4 507:24 507:4 508:24 508:4 509:24 509:4 510:24 510:4 511:24 511:4 512:24 512:4 513:24 513:4 514:24 514:4 515:24 515:4 516:24 516:4 517:24 517:4 518:24 518:4 519:24 519:4 520:24 520:4 521:24 521:4 522:24 522:4 523:24 523:4 524:24 524:4 525:24 525:4 526:24 526:4 527:24 527:4 528:24 528:4 529:24 529:4 530:24 530:4 531:24 531:4 532:24 532:4 533:24 533:4 534:24 534:4 535:24 535:4 536:24 536:4 537:24 537:4 538:24 538:4 539:24 539:4 540:24 540:4 541:24 541:4 542:24 542:4 543:24 543:4 544:24 544:4 545:24 545:4 546:24 546:4 547:24 547:4 548:24 548:4 549:24 549:4 550:24 550:4 551:24 551:4 552:24 552:4 553:24 553:4 554:24 554:4 555:24 555:4 556:24 556:4 557:24 557:4 558:24 558:4 559:24 559:4 560:24 560:4 561:24 561:4 562:24 562:4 563:24 563:4 564:24 564:4 565:24 565:4 566:24 566:4 567:24 567:4 568:24 568:4 569:24 569:4 570:24 570:4 571:24 571:4 572:24 572:4 573:24 573:4 574:24 574:4 575:24 575:4 576:24 576:4 577:24 577:4 578:24 578:4 579:24 579:4 580:24 580:4 581:24 581:4 582:24 582:4 583:24 583:4 584:24 584:4 585:24 585:4 586:24 586:4 587:24 587:4 588:24 588:4 589:24 589:4 590:24 590:4 591:24 591:4 592:24 592:4 593:24 593:4 594:24 594:4 595:24 595:4 596:24 596:4 597:24 597:4 598:24 598:4 599:24 599:4 600:24 600:4 601:24 601:4 602:24 602:4 603:24 603:4 604:24 604:4 605:24 605:4 606:24 606:4 607:24 607:4 608:24 608:4 609:24 609:4 610:24 610:4 611:24 611:4 612:24 612:4 613:24 613:4 614:24 614:4 615:24 615:4 616:24 616:4 617:24 617:4 618:24 618:4 619:24 619:4 620:24 620:4 621:24 621:4 622:24 622:4 623:24 623:4 624:24 624:4 625:24 625:4 626:24 626:4 627:24 627:4 628:24 628:4 629:24 629:4 630:24 630:4 631:24 631:4 632:24 632:4 633:24 633:4 634:24 634:4 635:24 635:4 636:24 636:4 637:24 637:4 638:24 638:4 639:24 639:4 640:24 640:4 641:24 641:4 642:24 642:4 643:24 643:4 644:24 644:4 645:24 645:4 646:24 646:4 647:24 647:4 648:24 648:4 649:24 649:4 650:24 650:4 651:24 651:4 652:24 652:4 653:24 653:4 654:24 654:4 655:24 655:4 656:24 656:4 657:24 657:4 658:24 658:4 659:24 659:4 660:24 660:4 661:24 661:4 662:24 662:4 663:24 663:4 664:24 664:4 665:24 665:4 666:24 666:4 667:24 667:4 668:24 668:4 669:24 669:4 670:24 670:4 671:24 671:4 672:24 672:4 673:24 673:4 674:24 674:4 675:24 675:4 676:24 676:4 677:24 677:4 678:24 678:4 679:24 679:4 680:24 680:4 681:24 681:4 682:24 682:4 683:24 683:4 684:24 684:4 685:24 685:4 686:24 686:4 687:24 687:4 688:24 688:4 689:24 689:4 690:24 690:4 691:24 691:4 692:24 692:4 693:24 693:4 694:24 694:4 695:24 695:4 696:24 696:4 697:24 697:4 698:24 698:4 699:24 699:4 700:24 700:4 701:24 701:4 702:24 702:4 703:24 703:4 704:24 704:4 705:24 705:4 706:24 706:4 707:24 707:4 708:24 708:4 709:24 709:4 710:24 710:4 711:24 711:4 712:24 712:4 713:24 713:4 714:24 714:4 715:24 715:4 716:24 716:4 717:24 717:4 718:24 718:4 719:24 719:4 720:24 720:4 721:24 721:4 722:24 722:4 723:24 723:4 724:24 724:4 725:24 725:4 726:24 726:4 727:24 727:4 728:24 728:4 729:24 729:4 730:24 730:4 731:24 731:4 732:24 732:4 733:24 733:4 734:24 734:4 735:24 735:4 736:24 736:4 737:24 737:4 738:24 738:4 739:24 739:4 740:24 740:4 741:24 741:4 742:24 742:4 743:24 743:4 744:24 744:4 745:24 745:4 746:24 746:4 747:24 747:4 748:24 748:4 749:24 749:4 750:24 750:4 751:24 751:4 752:24 752:4 753:24 753:4 754:24 754:4 755:24 755:4 756:24 756:4 757:24 757:4 758:24 758:4 759:24 759:4 760:24 760:4 761:24 761:4 762:24 762:4 763:24 763:4 764:24 764:4 765:24 765:4 766:24 766:4 767:24 767:4 768:24 768:4 769:24 769:4 770:24 770:4 771:24 771:4 772:24 772:4 773:24 773:4 774:24 774:4 775:24 775:4 776:24 776:4 777:24 777:4 778:24 778:4 779:24 779:4 780:24 780:4 781:24 781:4 782:24 782:4 783:24 783:4 784:24 784:4 785:24 785:4 786:24 786:4 787:24 787:4 788:24 788:4 789:24 789:4 790:24 790:4 791:24 791:4 792:24 792:4 793:24 793:4 794:24 794:4 795:24 795:4 796:24 796:4 797:24 797:4 798:24 798:4 799:24 799:4 800:24 800:4 801:24 801:4 802:24 802:4 803:24 803:4 804:24 804:4 805:24 805:4 806:24 806:4 807:24 807:4 808:24 808:4 809:24 809:4 810:24 810:4 811:24 811:4 812:24 812:4 813:24 813:4 814:24 814:4 815:24 815:4 816:24 816:4 817:24 817:4 818:24 818:4 819:24 819:4 820:24 820:4 821:24 821:4 822:24 822:4 823:24 823:4 824:24 824:4 825:24 825:4 826:24 826:4 827:24 827:4 828:24 828:4 829:24 829:4 830:24 830:4 831:24 831:4 832:24 832:4 833:24 833:4 834:24 834:4 835:24 835:4 836:24 836:4 837:24 837:4 838:24 838:4 839:24 839:4 840:24 840:4 841:24 841:4 842:24 842:4 843:24 843:4 844:24 844:4 845:24 845:4 846:24 846:4 847:24 847:4 848:24 848:4 849:24 849:4 850:24 850:4 851:24 851:4 852:24 852:4 853:24 853:4 854:24 854:4 855:24 855:4 856:24 856:4 857:24 857:4 858:24 858:4 859:24 859:4 860:24 860:4 861:24 861:4 862:24 862:4 863:24 863:4 864:24 864:4 865:24 865:4 866:24 866:4 867:24 867:4 868:24 868:4 869:24 869:4 870:24 870:4 871:24 871:4 872:24 872:4 873:24 873:4 874:24 874:4 875:24 875:4 876:24 876:4 877:24 877:4 878:24 878:4 879:24 879:4 880:24 880:4 881:24 881:4 882:24 882:4 883:24 883:4 884:24 884:4 885:24 885:4 886:24 886:4 887:24 887:4 888:24 888:4 889:24 889:4 890:24 890:4 891:24 891:4 892:24 892:4 893:24 893:4 894:24 894:4 895:24 895:4 896:24 896:4 897:24 897:4 898:24 898:4 899:24 899:4 900:24 900:4 901:24 901:4 902:24 902:4 903:24 903:4 904:

[barcode - bottom]

Page 8

168:14,20 169:3,16 barcodes 36:24 37:6,8 70:2 barrier 84:19 85:2,9,15,24 86:4,14,15 base 69:25 83:20 84:12 151:3,18 152:6 153:1,19 156:7 based 34:9 40:14 52:9 58:9 82:17 90:23 94:5 112:24 157:22 184:18 basic 147:12 basically 164:23 basis 53:12 bear 100:7 102:10,14 103:6 105:22 110:1 178:2 197:21 beat 189:16 began 13:16 beginning 2:16 9:6 183:1 begins 145:7 189:25 190:6 190:18 191:11 behavior 108:24 109:8	believe 6:3 8:2 9:2 13:4 15:25 19:6 23:2,18 24:2 26:19 32:24 33:8,11 33:20 41:12 42:2,19 44:12 44:21 46:14,19 47:24 49:18 53:9 63:5 64:13 65:25 66:8 86:19 88:13,24 97:24 98:3 101:9 119:18 125:20 126:17 127:20 127:23 137:20 138:5 142:18 142:19 144:13 150:3 151:13 152:1 153:14 154:9,12 157:15,20 162:8 172:10 173:3 180:21 182:10 185:12 189:9 192:12 192:21 believed 49:15 64:1 believes 83:9 83:12,13 bellequant 37:11 40:14,19 41:16,24 42:4	42:12 ben.pleune 3:12 202:2 benjamin 3:8 202:1 best 139:3 better 16:6 50:14 105:11 beverage 14:10 17:15,22 21:22 34:17,18 39:18 39:22 41:16,21 41:24 42:1 43:7 44:6,8,10 44:14,20 47:11 47:13,14,25 48:7,10 49:7 50:2 51:16 55:25 56:3,4 56:10 58:19,22 121:23 122:5,9 122:14 123:19 124:6,21 125:4 158:4,6,9 161:19 174:14 177:17,19 183:2,3,6,6,14 183:14 184:6,7 184:11,12,19 184:23,24 185:7,8 197:17 197:18 beverages 39:20 57:3	beyond 25:1 43:20 81:22 116:23 118:19 178:18 180:3 188:15 bicycles 19:11 bikes 18:7 20:5 binary 98:9,12 98:13 bins 37:1 bird 3:9 bit 16:5 18:6 39:2 51:2 57:11 114:7 124:24 149:21 blades 42:23 blunt 70:2 board 1:3 2:3 68:5 71:14 113:4 board's 27:21 body 20:22 71:1,5 112:1 161:24 boem 41:2,4 bolded 145:7 bolts 36:13 38:25 bonner 3:3 book 29:25 31:14 190:17 books 31:7,9 bottom 63:12 68:3 69:19 131:12 132:19 131:12 132:19
--	---	--	---

Nespresso USA, Inc. Ex. 1066
Page 212 of 265

[bottom - capsule]

Page 9

136:2 151:4,6 151:7 156:15 bought 30:1 bow 172:1 bowed 132:20 171:1,24 173:13 brand 15:6 branding 165:11 brands 10:16 10:23 12:1,5 12:10,11,19,21 13:8 14:7,10 14:14,17 break 38:6 40:3 40:8 81:8 110:18,23 111:1 136:16 136:21,24 157:1,6,9 185:14,21,24 188:25 brewed 54:25 164:7 167:1 brewers 17:22 57:2 brewing 47:3 50:2,5 54:15 103:17 125:15 141:23 150:23 151:2,4,19 152:6 153:2 155:6,6,10,15 155:19,23	156:3,13,15 171:25 172:4 176:18 brews 157:22 bring 41:11 broad 23:5 25:3 48:10 54:16,17 58:2 58:12 64:18 68:18 73:20 78:23 88:22 114:7 169:9 broadly 68:24 broken 26:23 brooks 7:17 26:6 brown 3:3 building 3:16 34:19 built 70:4 bulge 69:10 bulges 70:2 bulk 35:15 bureau 39:9 41:4 burnt 54:20 burrowbridge 3:15 business 7:13 36:18 37:4 40:25	c15-0522rsl 12:2 caffeine 51:12 51:20 54:8 56:25 57:3,16 california 126:2,17 call 155:24 called 28:20 142:7 153:16 155:10,11 156:1 166:11 166:23 calling 25:15 calls 25:13 99:20 146:5 cameras 35:8 35:11 capable 123:3 123:23 159:16 159:18 capitol 3:16 capsule 14:5 45:7 46:11,17 46:21,22,25 47:2,8 52:7,10 55:12,14,24 56:10 57:14 58:8,18,24,25 59:1,8,9,15,21 69:1,20 70:13 70:20 71:11,23 84:21 85:7,12 86:1,19 87:15 87:19,25 88:5	89:23 90:19 91:16 97:18 99:16 103:23 104:17 105:1,3 105:14,15 106:9,11,22,24 107:11,12,20 107:22 108:13 108:15 110:9 112:2 120:12 120:22 121:3 121:22 122:5,8 122:13 123:6,7 123:11,16,18 124:5 125:7,16 132:8 135:7,19 136:3,8,8,12 145:12 146:17 146:19 151:5 151:20 152:15 152:17 153:18 153:19 156:7 157:22 158:2,3 158:16 159:3 159:10,12 163:5,20 164:2 164:2,5,9 165:10,13,18 165:22 166:1 166:14,21 167:1,9,14 169:24 170:1,5 170:8,13,16,18 171:1,3,6 172:4,15
	c		
	c 3:1 177:5,22 180:4 181:5,20 181:21 201:1,1		

[capsule - characterize]

Page 10

173:14 175:24 177:16,18 182:6 184:18 186:7,9,16,22 186:23 187:3,5 197:15,17 capsule's 171:10 capsules 13:24 14:4,22 15:4 45:9 46:3 47:12,16,20,22 48:16 51:5 52:8,21 53:10 56:18 90:14 95:8,10 123:2 123:22 135:13 136:1 164:6 174:15,19 182:8 carbon 19:13 carefully 52:13 carolina 3:11 5:2 40:14 41:13 carolinas 202:15 case 1:5 2:5 7:7 7:9 8:4,14,22 8:25 10:13,13 10:16 11:1,25 12:6 13:15,20 17:2,11,14,17 18:3,4 19:2,7,9 19:14,20,23,24	20:12,13,24 21:7 22:17,17 22:20 23:6 52:6 59:13 60:16 64:5 72:1 101:18,20 101:22,23 117:15,20,21 120:3 126:3,17 126:20 130:13 131:9 137:17 146:18 170:11 183:21 cases 9:10,12 9:13,18,19,20 10:9,11,12,19 11:1,3,13,14 12:16 13:18 15:9,16 16:1,2 16:4 17:24 18:1,14,16,18 18:21 21:8 26:1,2 31:12 41:20,23,25 42:1,3,12,13,14 42:15 59:14 126:20,22,23 135:24 castellani 197:13 198:7 category 190:11 catheters 43:15 cause 172:1	caution 180:13 caveat 132:25 ccd 35:8,10 center 39:9 99:13 central 83:21 83:25 84:3 119:23 126:2 178:11 198:2 centrifugal 158:2 161:24 162:10,13 centrifugation 157:22 184:20 certain 71:17 95:15 139:9 147:6 162:15 196:11 certainly 9:24 33:7 44:23 53:11 55:11 79:25 83:12 109:9 164:18 180:14,22 certainty 45:24 139:16 142:25 certification 201:21 certifications 190:4 certified 2:17 certify 201:2 certifying 201:24	challenge 181:3 challenged 180:20,21 chamber 103:18 150:23 151:2,4,19 152:6 153:2 155:6,6,10,15 155:20,23 156:3,14,15 chamfered 100:10 103:3 105:24 111:6 114:23,25 116:8 118:9 119:14,20 177:25 178:4 197:19,24 change 148:19 160:7,8,11,12 162:9 203:4,7 203:10,13,16 203:19 changed 22:11 32:20 changes 54:2 202:10 204:6 changing 159:16,18 chapters 31:7 31:10 190:17 characterizati... 83:12 170:21 characterize 96:12,17 195:2
---	--	---	--

Nespresso USA, Inc. Ex. 1066

[characterizing - coffee]

Page 11

characterizing 70:22,25 71:4 96:12 charlotte 3:11 chart 28:21 29:14 30:13,17 check 180:19 chicago 39:8 chief 196:4 children 34:12 chip 69:19 cho 33:20 chute 88:6,7,9 88:18,22 89:3 89:10,22,25 90:2,8,13,21,24 91:8,16,25 92:8,12,23 93:12 94:9,17 94:20 95:8,9 95:12,13,17,21 96:7,22 97:6 97:13,20 98:20 98:24 circles 67:13 citation 137:13 137:15,25 138:4,7,9 140:8,15 189:22 cite 137:9 139:10 186:17 cited 28:3,10 32:2,6 33:14 41:20 141:6	142:6,13 144:5 181:14 city 39:13 civil 11:14 16:4 21:8,12 claim 47:18 59:17 61:13,15 61:18 62:5 63:9 65:12 68:15 74:1,12 75:2 78:12 83:18,20 84:19 85:24 86:11,12 86:17 87:12,24 89:9 92:12,15 100:5,19 101:17,19 105:6,19,20 107:5,6 108:20 108:23 109:3,7 109:24 110:4 110:12,15 111:4,17 114:19 115:16 115:23 116:5,6 116:19,23 117:1 119:22 124:9,11,12 127:16 128:14 131:18,19,24 131:25 132:9 132:18 136:13 144:15,18 170:19 177:20 178:5,12	180:22 181:18 181:24 182:21 182:25 184:23 198:6,13 199:4 199:9 claimed 46:7 46:14 102:20 105:16 127:5 128:13 130:2 claims 45:18 49:19 63:23 74:20,24 75:24 85:4 92:19 96:10 98:23 99:9,10 100:4 105:9 112:16 115:10 118:25 131:15,17,22 132:11,14,23 133:3,5,8,20,21 133:25 134:2,3 134:9,11 139:17 140:6,9 144:16,23,25 178:15,18 179:9 180:20 181:10,12,24 182:1,3,9,11 185:2 198:24 199:2,8,9 clarification 6:10,13 41:3 112:4 115:10 192:8	clarify 6:11 17:16 clayton 3:2 5:12 clear 35:18 68:12 111:25 124:21 128:12 136:6 143:23 179:22 clearer 154:11 clearly 133:6,9 147:9 165:3,5 199:18 client's 47:16 close 11:1 16:12 closed 42:18 46:11 cmccraw 3:6 code 141:24 codes 36:5,17 36:22 coffee 13:24,25 14:8,9,22,23 15:2,4 17:6,18 17:20 21:22 30:1,10 31:15 31:23 34:24 35:20 36:1,2 39:20 40:1 42:5,7,11 43:10 44:25 45:4,6,8 46:3 46:10 49:1 51:7,19,26
---	---	--	---

Nespresso USA, Inc. Ex. 1066

[coffee - conflated]

Page 12

52:1,3,10,12,12 53:17,20,23 54:2,5,11,19 57:2,4,16,24 58:5,25 60:4 60:10 61:3,5 89:24 90:12,19 91:15 95:7,12 117:11 183:17 194:16 collaborative 25:25 26:3,8 colleague 42:20 color 54:4 69:15 colours 71:3 column 63:8 69:2,3 83:19 84:22,23 86:19 89:13,17 90:10 90:16 91:13 95:3 100:13 103:14 109:18 109:20 110:6 111:4 112:10 182:20 combination 132:14 197:13 combined 132:20 come 8:24 18:25 31:12 55:3 60:25 102:5	coming 33:14 33:23 103:22 104:16,25 105:13 106:8 106:21 107:10 107:19 108:12 110:8 commentary 72:15 commercial 18:9 commission 11:13 companies 21:22 38:17,19 38:21 39:14 48:3 company 34:9 40:20 41:1,11 42:18 196:10 compare 28:13 98:21 99:10 143:22 comparing 50:17,20 52:6 98:14 154:2,6 155:9 166:10 complainant 20:11 complete 28:22 28:24 45:4 77:13 204:8 completed 38:4 202:17	completely 14:12 73:20 79:2 complicated 43:25 complimentary 163:19 164:1 component 47:6,8 components 36:7 39:2 45:8 50:5 53:25 54:25 55:20 composed 69:7 comprising 123:7 computational 40:24 computer 38:25 43:17 103:8 201:9 computing 44:3 concedes 70:6 70:10 concepts 12:8,9 13:10,11,13 14:19,20 15:1 concern 54:19 106:15 concerned 54:21 187:16 concerning 39:7	concerns 54:18 54:20 55:7 concise 128:12 concluded 200:2 conclusion 23:21 62:14 63:17 65:2 66:2 84:6 87:21 93:15 94:11 95:2 105:18 106:13 107:1 114:16 114:17 115:15 127:10 conclusions 133:2 conductive 69:18 conference 191:9,12 configured 86:18 87:24 99:15 100:7 102:10,14 105:21 110:1 114:20 178:1 197:21 confirm 22:2,4 147:8 152:7 confirmed 157:15 confirms 71:18 conflated 58:15 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
--	--	---	---

[connected - copy]

Page 13

connected 123:8	113:4	contained 32:21,25	continuation 143:5
connection 8:22 30:20 44:17 45:12 53:19 55:25 64:4 65:24 67:1,10 71:20 74:11 78:5 112:14,22 117:15 118:22 125:12 142:9 150:23 152:24	constitute 66:13 72:20 80:4	container 136:7,11	continue 148:23 190:8
	constituted 148:18	contains 192:4	continues 190:21
	constitutes 72:25 128:12 136:8 147:21	contend 181:21 184:2	continuously 43:3
	constructing 170:20	content 25:8	contrary 134:7
	construction 61:23,24 64:7 64:9 68:15 72:17 84:15 85:4 87:1 91:2 94:20,21 95:21 95:22 101:17 101:19 111:11 111:17 116:3 117:3	contents 126:13 177:3,6 178:24 181:11	contrast 43:16 43:22 44:4
conscientious 137:20		context 62:12 64:25 67:12,17 67:19,21 73:17 75:20 76:13,23 77:3 79:3,16 79:25 80:4,8 80:10,13 83:25 84:4 85:2 86:1 86:23 87:5 88:13,14,23 90:3,9,25 91:25 92:17 93:6,12 94:15 96:7,25 98:14 98:17 101:5,25 102:1,1,12 104:3 106:7,20 108:10 109:12 111:9 112:1 114:12 115:12 115:24 116:16 125:1,3 136:9 136:13	contrasting 71:2
conservation 39:7			contributed 190:11,18
considerations 54:14 55:9,10			control 36:6 44:1 123:2,8,9 123:23 201:23
considered 28:21 29:3 53:23 73:17 139:6 141:13 141:14	construed 101:22,23 111:14		controlled 52:14 177:15 182:6 197:14
consist 147:3 175:10,14	consult 15:20		controlling 36:19 174:14 174:17
consistent 68:18,20 101:15 108:25 109:9 110:14 110:15 147:14 158:13	consultant 20:12 39:16 40:21		conversations 25:9 180:15
consisting 70:1	consulting 38:18,22 39:21 39:25 40:15 50:10 191:21		conveys 127:3 164:20
consolidated 9:19 10:20	contacted 9:1,4 contain 22:21 23:13 99:24		convinced 68:6 copies 202:14 copy 130:23 138:10 143:9 143:10 192:13 192:22 IPR2023-00502

Nespresso USA, Inc. Ex. 1066

[corp - d]

Page 14

corp 42:17 43:1 43:2,6,9 corporation 196:5,7,15 correct 8:17 12:24,25 13:2 14:5,6,11,16,24 15:3,24,25 18:14 22:3,9 22:19 23:4 29:16 34:6 39:23 40:1,2 42:5,25 43:11 45:1,22 46:22 46:24 47:18 48:9 49:9 51:20,24,25 52:22 55:8,25 56:2 57:7 59:19,23 60:22 61:2 63:13 64:2,20 67:2 70:8 71:15 75:2 76:15 77:14,16 79:8 79:9,11 81:19 81:20,25 82:5 82:7,8,15,18,23 83:2,6,16 84:23 85:18 86:4,6 89:5 97:1 100:16 101:12 119:4,5 120:1 126:10 126:13,14	127:8,9,20,23 128:24 130:17 132:16,24 133:23 138:19 141:21 149:16 155:7 161:5,11 163:14 168:5 170:2,5 172:11 173:7 175:8 177:20 178:5 178:12 179:24 183:19 187:24 187:25 188:10 189:12,13 191:14 198:14 198:20,24 199:19,20 201:10 204:8 corrections 204:6 correctly 57:10 131:10 181:18 201:7 corroborate 81:22 corroborates 81:24 82:24 counsel 3:6,13 3:18 5:14 24:16 40:9 72:14 96:18 110:22,25 113:1 136:20 136:23 137:23 142:11 157:5,8	180:16 185:12 185:20,23 189:10 191:17 193:20 194:1 194:10 195:1 196:14,19 201:11 202:14 count 9:14,16 counterfeit 164:9 165:9,16 couple 18:11 coupled 44:2 47:22 course 10:13 35:16 courses 10:10 court 126:1 127:2 cover 100:8,9,9 102:11,14 105:22,23,24 110:1,2,3 114:21,22,23 132:20 171:1 171:12,16 173:7,13 178:2 178:3,4 197:22 197:23,23 coverage 191:23 covered 164:4 covers 38:11 create 56:4 57:16 161:19 161:22	creates 59:9 creative 12:8,9 13:10,11,13 14:19,20 15:1 creativity 130:4 critically 41:8 cs 202:15 csr 1:24 201:15 current 5:20 68:12 189:21 currently 19:23 41:1 curriculum 4:23 193:18 custom 36:5,18 36:22 cutouts 70:22 cv 10:24 126:3 189:15,18 192:13,20,22 195:3 196:18 cv15-0522rsl 10:17 cv16-04676 10:20 12:4 cv16-2702 10:18 cycle 175:23 176:3,10,18 d d 4:1 177:6 178:7 180:4 181:5,20,22 IPR2023-00502
--	---	--	--

Nespresso USA, Inc. Ex. 1066

[d.c. - descriptions]

Page 15

d.c. 3:17 date 15:13 16:18,19 52:18 129:25 131:10 190:20 203:24 204:12 dated 82:7 83:2 83:6 201:17 dates 16:9,11 16:12 37:17 195:16 day 7:13 38:6 40:22 52:22 204:15 days 27:11 37:7 202:17 decided 84:12 decision 27:22 27:25 68:4 declaration 4:22 10:4,10 15:18 21:5 22:2,12,15,19 22:21 23:1,12 23:13,17 24:1 24:9 25:2,11 25:17,19,21,24 26:11,14,17,22 27:14,16,18 28:13,17,23 29:1,3,13,21,22 29:24 30:7,14 30:16,24 32:4 32:7,20,21,24 33:1,8 34:2,4	40:11 43:12 61:11,13 62:9 81:15,18,23 82:21 83:1,5,8 83:15 93:20,24 94:13 100:16 101:1 118:22 120:6 125:24 126:25 129:1 132:4 135:4,25 137:2 139:22 139:24 140:16 141:3 142:9,11 142:13,14 143:2,24 144:2 144:14 148:5 167:18 170:23 177:2 181:2 186:12 188:8 188:15,22 193:11 198:17 declarations 187:23 declare 204:4 declared 126:12 deemed 204:6 defect 18:21 defects 19:22 defense 39:4 define 56:14 defined 116:18 definitely 72:13 definition 65:10,17 76:3	107:13 108:6 111:20 116:20 degrees 192:6 192:10 195:13 195:14,15,17 delineated 153:21 delineates 153:9 delivered 161:15 delta 19:3,3,24 20:1 department 5:21 43:4 depend 181:12 181:24 dependent 133:3 180:23 181:18 depending 9:14 9:16 55:4 depends 159:23 180:23 depict 170:12 depicted 168:25 depicts 171:13 171:15 172:4 deponent 125:22 201:4,6 202:13 204:3 deposed 6:1 deposing 202:13	deposition 1:14 2:15 5:13,23 7:4,22,25 8:1,5 8:8,18 21:4,5 27:13 33:5 93:21 94:3 113:2 117:17 117:24 189:11 193:21 194:20 196:15 200:2 201:9 depositions 8:2 describe 38:24 40:18 99:2 158:12 173:12 174:25 180:14 described 53:16 69:12,17 71:22 describes 68:25 132:19 145:24 186:15 describing 71:17 152:23 description 4:21 49:13 68:18 71:13 123:1 126:16 128:13 130:2 145:10,19 168:3 188:4,6 188:9 descriptions 132:7 IPR2023-00502
---	---	--	--

Nespresso USA, Inc. Ex. 1066

design 10:22,22 35:10 39:1 41:24,25 42:4 42:5 44:14,25 45:3,6,13 designation 151:24 designations 146:11 149:25 151:12 designed 15:5 44:16 48:16 56:8 58:20,23 90:13 91:16 95:8 159:8 designing 16:22 34:19 48:24 49:7 50:1,5 54:15 designs 13:1,5 13:5 45:9 destruction 175:14 detail 93:17 124:25 149:22 details 126:18 detectable 146:23 detected 121:23 123:16 detection 90:12 91:14 95:6,11 146:13,19,22 147:24 148:10 148:25 149:6	149:16 150:5 150:13 167:23 169:2 177:16 197:15 detector 35:8 99:15 123:12 147:19 177:17 197:16 detects 123:12 determination 57:23 121:22 122:8,13 124:22 125:7 125:16,25 177:17 197:16 determine 61:21 63:25 75:1 119:2 determines 120:11,21 121:3 123:18 124:4 determining 61:25 80:20 128:3 develop 48:7 developed 35:1 35:14 39:12 40:25 42:20,21 48:14 development 39:3 40:22 device 45:10 57:8 110:12 123:3,9,23	161:23 devices 18:9 42:24 43:15 51:4 60:13 diaphragm 159:6 161:7 dictate 61:9 dictionary 65:21,23 differ 52:9 difference 74:17 75:5 143:24 144:3 155:14 differences 144:7,9,15,23 different 9:19 27:10,10 36:6 37:2 38:18 39:6,14 40:21 44:21 49:4 52:6 57:2 58:6 69:3,8 70:7,11 70:18,19 80:14 80:14 88:6,23 97:13,21 98:2 99:3,5,6 122:9 123:2,22 128:2 140:8 143:6,18 149:6 150:12 150:14,15 153:7,23 154:3 154:13,16,22 155:3,6,15,19 156:18 160:5,6	160:6 178:21 180:25 182:8 differential 171:2 differentiated 97:25 98:4 99:4 differently 56:7 122:11 difficult 92:21 172:17 difficulty 143:21 direct 29:9 31:24 83:18 112:9 113:3 126:24 131:11 135:3,6 137:1 143:1 145:6 146:4 147:7 150:8 157:11 160:15 167:17 169:21 182:19 186:1,12 201:23 directed 31:22 36:9 39:20 43:21,22 44:3 44:6,10 46:1 47:11,14 115:8 135:1 147:13 147:18 directing 46:20 172:21 182:21 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
---	---	--	---

[directly - draft]

Page 17

directly 38:5 72:7 disagree 113:16 115:5 disagreeing 188:9 discern 127:16 disclose 120:11 120:21 121:1,3 121:25 122:4 123:10 124:4 131:25 132:15 133:4 134:10 177:14,23 178:9 180:15 181:4 183:5,14 184:11 197:13 197:25 198:11 199:16 disclosed 70:13 70:16 71:22 119:7 178:15 179:9 discloses 69:7 119:3 122:12 123:18 159:2 184:6 185:7 disclosing 25:8 130:2 182:5,8 disclosure 68:22 82:10 121:21 123:15 127:2 128:11 172:3,6	disclosures 143:7,18 discuss 73:6 86:25 89:9 94:13 97:14 100:23 113:19 171:5 190:3 discussed 71:9 71:11 73:16 84:14 131:8 133:6 135:25 157:12 159:1 182:3 discusses 148:15 149:5 discussing 25:13,14 70:15 77:25 86:25 161:14 discussion 33:25 80:24 81:2 95:4 100:22 103:2 124:16 137:20 dispute 19:19 20:3,7,15 178:25 disputes 11:8 distinct 69:22 district 126:1,2 divided 71:6 diving 39:12 document 64:13 65:15 66:8 67:22,23	77:4,12,23 83:4 87:13,22 90:6,15 91:11 92:3,10 95:5 99:22 101:13 102:4,21 103:1 103:5 104:11 106:14 107:2 108:18 109:16 109:23 111:23 112:7 114:14 120:15 121:9 124:14 125:9 126:5,9 128:6 128:19 130:24 131:4,6,12 132:2 134:23 135:23 137:18 137:22,25 138:3 140:1,12 142:20,21,24 143:14 145:15 146:3 147:24 148:3,6 149:1 149:4 150:11 151:22 152:9 152:18 153:4 154:1,5,20 155:22 157:23 160:19 166:4,8 166:17 167:3 167:12 168:6 173:16 180:17 181:8 183:8 184:15 189:10	189:14,17,20 194:17 195:7 documents 7:8 7:9,24 8:1,9 27:10,12,20 28:22,25 29:5 29:14,17,19,23 30:18 32:8 33:7,10,13,18 65:16 81:21 82:10,11,12,13 93:18 143:8,22 doing 25:22 38:14,25 97:8 97:11 119:2 195:10 dollar 19:7 doubt 86:25 dr 4:22 5:12 24:12 40:7 63:21 72:4 90:23 92:20 98:9 106:19 117:10 119:17 121:18 125:24 129:4 133:11 134:24 136:6 136:20 138:12 143:16 148:8 151:17 152:4 154:12 157:5 174:3 185:19 189:7 197:2 draft 25:21,23 IPR2023-00502
--	---	---	--

Nespresso USA, Inc. Ex. 1066

[drafted - engaging]

Page 18

drafted 26:1 drafting 25:15 25:19 drawing 29:13 146:2 drawn 105:7 drink 61:3 driven 114:18 driving 164:4 duke 5:21 35:13 37:18,22 38:7,8,14 39:9 43:3,3 190:3 191:24 192:2 194:7 195:15 duly 201:4 duplicate 131:22 durable 34:10 dwelt 53:24 dynamic 43:16	easier 28:16 edge 69:25 100:9 103:15 104:15 105:23 110:2 114:22 145:11,16 178:3 197:23 edible 174:18 175:23 editor 191:4 education 190:3 193:17 193:20 194:2 195:12 196:20 196:25 educational 194:5 edward 5:19 effect 35:7 172:6 effort 25:25 26:4,8 either 39:15 141:17 156:2 eko 10:16,23 11:25 12:5,10 12:11,19,21 13:5,8 14:7,10 14:14,17 electrically 69:18 electromagne... 69:5 electronically 103:8	element 39:1 63:10 70:1,4 83:20 84:12 85:24 86:11 87:24 88:4 99:2 105:20,25 109:7 110:13 110:15 111:12 112:6 121:1,25 132:15 133:4 133:22 134:10 145:21,25 146:2 147:12 150:4,8,12,14 150:25 151:2 151:10,19 153:10 155:10 166:20 170:4,8 172:8 173:6 175:4,7,8,11,12 175:13,15,15 175:25,25 176:1,4,11,14 176:15,17 199:16 elements 44:22 85:3 133:7 134:2 166:10 166:11,13,15 166:19 181:4,5 198:11,13 embodiment 115:20 146:17 153:7,23 154:14,16	163:3 embodiments 69:23 132:7 155:3 emeritus 38:11 emery 3:15 emitter 35:8 employed 37:18 43:3 employee 38:20 employees 8:13 employers 129:23 employment 37:20 enable 164:2 encoded 69:9 encompass 68:13 encounter 56:24 endangered 41:8 ended 16:10 energy 39:10 41:5 enforcement 10:14 engaged 20:16 48:2,6 engagement 16:7 30:20 engaging 163:19 IPR2023-00502
e			
e 3:1,1 4:1,6 41:4 68:6 201:1,1 203:3 203:3,3 earlier 8:17 22:16 41:2 44:12 45:21 47:24 124:25 127:3 129:25 130:1 149:19 150:3 154:24 157:12			

Nespresso USA, Inc. Ex. 1066

engineer 41:13 engineering 5:22 37:11,25 38:25 40:14,15 40:21 41:11 42:12 43:3,4 49:3 england 39:7 enhance 35:15 ensures 152:14 175:15 186:6 ensuring 56:9 164:6 entanglement 41:7 entered 170:8 170:15 enterprises 10:17 enters 159:3 entire 46:18 97:5 102:7,23 entirety 90:9 102:20 104:6 entitled 68:17 129:24 137:6 equipment 18:8 34:11,11 34:15 35:24 equipments 35:3 era 16:19 errata 202:11 202:13,17	error 16:18 50:7 187:8,9 escape 85:16 86:3,10 171:11 escaping 84:20 85:7,9,11,14,25 86:16 espresso 10:23 30:9 135:10,14 162:17 esq 3:2,8,15 established 49:9 estimate 17:1 estimation 16:13 evaluate 74:23 evaluated 59:13 60:16 evaluating 16:23 50:2 75:23 95:15 evidence 138:6 evolved 128:22 exact 128:12 166:5 168:3,10 exactly 9:5 36:25 92:13 116:18 137:13 169:4 180:20 examination 5:10 189:5 examine 127:2 examined 5:8	examiner 49:15 141:6 142:6 144:5,11,12 examiners 33:19 49:20,21 example 10:11 43:24 44:20 53:25 54:20 55:15 57:13 58:6,21 59:7 69:6,17,23 73:14,18 78:19 78:24 79:17 82:14 90:10 91:13 113:5 135:9,16 146:23 147:20 158:20,24 159:3,5 169:10 171:2 173:9 examples 55:18 69:4 73:5 97:6 149:12 155:1 168:9 169:13 exceeded 59:6 excellent 139:1 except 22:16 165:10 181:4 exception 33:13 excused 200:1 exercise 95:16 101:3 106:3 exhibit 4:12,13 4:14,15,16,17	4:22,23 10:3,6 21:24 28:18 30:9 31:15 32:14 62:21,23 63:3 68:11 69:2 70:21 81:18,22 82:18 83:17 84:7 85:19 86:8 120:7 122:17 122:20 125:20 125:20,21 130:11,22 131:1,24 133:4 134:9,17,20 136:12 137:17 138:1,25 139:5 143:4,10,18,25 144:5 145:3 148:9,24 150:21,24 157:11 160:25 162:24 163:24 168:5 169:7,20 171:5 172:3,20 173:12,22,24 176:23 183:5 186:2,18 189:8 189:14,15 193:10,12,13 193:16 194:18 194:20,23,24 195:1,2,8,11,20 197:4,7 198:17 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
--	--	--	--

exhibit2002-1 137:10 exhibits 4:10 4:20 8:10 31:25 existed 53:5 expect 15:10,19 103:7 experience 29:13 189:24 192:1 193:18 193:21 194:9 194:11 195:21 196:21,25 experimental 39:12 experiments 61:10 expert 8:24 9:9 9:21 15:16 17:25 18:14 41:10,22 48:3 48:3 184:11 187:18 expertise 194:16 experts 8:21 explain 36:22 44:16 76:3 144:19 explaining 83:9 explains 187:13 187:14 explanation 97:9 188:14	explicitly 71:16 169:10 expressed 29:12 expression 128:22 extend 173:1 extent 23:20 62:13 63:16 64:10 65:1 94:10 95:1 115:14 extract 57:15 57:19 58:23 extracting 57:21 extraction 51:3 51:11 52:3,7 54:8 55:22 56:25 57:3 extrusions 36:14 eyesight 151:16 f f 69:15 201:1 fact 51:2 61:4 100:25 171:19 171:21 faculty 38:5 fail 177:13,23 178:8 181:25 failed 179:23 fails 58:25 202:19	failures 18:22 fairly 37:7 43:25 48:10 50:6 88:24 139:11 191:20 fall 55:16 66:16 86:4 190:11 falls 76:12,14 fan 42:23 fans 196:12 far 26:5,12,15 58:12 127:9 137:21 169:9 187:15 fasteners 36:13 feature 46:6,8 155:13 171:11 181:19 features 47:9 154:22 169:8 fed 158:9,20 fee 1:8 2:8 8:13 20:20,23 21:2 21:12,16 26:10 60:3,7,9 130:25 202:4 203:1 204:1 feel 54:2 ferro 147:4 ferromagnetic 69:18 70:3 fibonacci 78:25 79:7,12,18 80:1	field 29:8 figure 102:7 103:7 132:8 143:19 145:7 145:10 146:5 146:16 147:6,7 147:9,16 150:20,24 152:2,5,5,21,23 153:5,8,8,13,13 153:21,22,24 154:13,14,16 154:17 155:5,7 155:11,11,19 155:24 156:2,5 156:6,7,16,19 156:21,22 163:2,4 166:15 168:15,25 169:21,22 170:12 171:13 171:15,19 172:4,7,16,21 figures 71:22 71:25 118:20 132:5,11 133:1 133:25 151:25 152:24 154:2,7 154:22 155:9 155:17,18 162:21,23 167:25 file 138:25 139:18 IPR2023-00502
---	---	--	---

[filed - form]

Page 21

filed 126:1 128:25 129:25 130:1 filing 129:25 fill 13:25 filter 53:25 filters 54:1 finally 152:19 189:24 192:6 finance 40:24 find 32:9 34:23 53:14 84:22 87:11 101:2 129:19 141:15 148:12 152:19 166:16 168:10 193:6 finding 166:18 findings 52:5 finish 36:14 148:14 finished 102:18 finite 39:1 fire 18:7 19:4 20:9 firm 40:15 first 9:4 11:23 16:15 17:2 25:23 99:14 114:1 146:4 175:9,17 188:17 189:19 fish 42:21 fits 55:15	fitted 163:18 fitting 146:12 146:13 150:4,5 150:13,13 151:11 five 148:9 fixturing 35:3 flange 63:12 68:3 70:6 71:23 132:20 151:9,10,14 flattened 171:12,16,20 171:21 flavor 54:2 flavors 58:6 floor 3:4 flow 53:24 103:3 105:2,15 106:10,24 107:12,21 108:14 152:17 158:3 159:16 159:19,24,25 160:8,11 186:9 186:15,22 187:4 flowing 104:21 flows 103:22 104:17,25 105:13 106:8 106:22 107:10 107:19 108:12 110:8 152:14 186:6,7 187:2	187:2 fluid 18:8 34:21 35:15,15 35:16 39:19 43:25 44:23 46:16 59:5 123:5 160:9,12 fluids 159:24 fluorescent 146:24 148:18 flush 172:15 focused 64:23 focusing 96:10 foil 71:7 171:12 171:16 folks 17:12 follow 10:12 176:9 following 29:14 127:13 follows 5:8 29:15 food 31:13 69:14 123:4,24 124:18,21 125:13 158:5 184:19 forces 158:2 161:24,24,25 foregoing 201:21 204:5 forgot 8:18 41:11 79:19 forgotten 182:15	form 11:9 13:17,19 23:20 24:11 29:4 35:21 42:6 45:2 48:20 50:11 56:6,12 56:19 58:1,11 62:13 64:17 65:9 66:1 72:17,19 74:8 74:21 75:9 76:6,20 77:10 78:21 80:16 84:15 87:20 88:20 90:4 91:9 92:1,9 94:19 101:7 102:3 105:4 112:19 113:9 113:15 118:5 123:20 124:7 124:13 128:5 129:3 130:12 130:18 133:15 134:12 135:21 137:19 139:20 140:10 141:16 142:4 143:13 144:17 146:12 147:1 150:4,13 151:11,21 153:3,25 154:18 155:8 155:21 156:20 159:17 160:10
---	---	--	--

Nespresso USA, Inc. Ex. 1066

[form - go]

Page 22

161:12,20	four 9:19	future 134:15	73:5,14 84:15
163:15 164:12	frame 15:14	g	89:17 95:25
165:1,4 166:3	frank 42:21	gauges 35:9,9	97:7,9 121:10
168:23 170:14	freight 19:6	gear 68:14	124:17 127:11
178:17 179:16	20:14	164:19	129:5 132:17
180:12 183:7	frequently	gearing 164:3	137:14 183:9
184:13 192:15	98:13	gearwheel	given 21:9 62:8
193:22 194:13	friction 146:13	103:18	185:10 188:23
195:24 196:8	150:5,13	gearwheels	201:10 204:9
196:23 198:8	front 142:20	89:22 92:5,7	gives 114:25
199:13,22	fulfill 164:3	general 6:4	giving 95:20
formed 21:11	full 7:13 19:8	159:19 161:21	gmbh 1:8 2:8
22:25 60:12	38:10 128:12	generally 43:21	202:4 203:1
180:2,5,10	function 59:3	44:4 50:14	204:1
forming 29:12	163:22 164:4,6	54:16 55:16	go 6:4 16:1
35:3 61:12	funding 191:5	59:16 157:18	23:7 28:13
forms 70:7,11	furniture 34:13	159:15,23	32:10 40:11
163:18	further 69:12	162:18 174:8	43:12 46:13
fortack 10:18	77:12 85:19	174:16 184:17	59:7 61:11,25
forth 11:18	86:8 87:22	generation	63:8 81:14
196:12	90:6,15 91:11	15:12,12	83:17 87:7
forward 48:19	92:3,10 102:21	geometric	89:13 95:3,15
found 29:8	103:1,5 104:12	115:1	95:19 97:5
95:4 112:11	104:16 109:23	german 63:22	100:4 101:2
119:25 135:1	112:7 113:19	64:1 66:3 68:8	102:6 103:14
155:7	116:22 121:9	68:22 69:22	105:19 110:4
foundation	146:17 148:17	70:13 71:15,19	111:3,4 117:3
77:11 78:10,22	149:1,4 152:18	82:14 118:23	118:19 120:6
79:15 80:17,23	154:5,20	119:3,8 130:24	124:2 128:10
99:21 113:10	155:22 162:24	131:8 132:6	129:18 141:2
121:8 135:22	163:24 166:8	give 16:9 18:3	146:15 149:21
140:11 198:9	166:17 167:3	19:8 24:14	149:23 154:23
199:14	181:20 194:23	27:11 28:12	168:7 170:22
founded 196:10	199:25	30:5 56:14	172:7,19
		58:21 65:17	174:14 176:29

Nespresso USA, Inc. Ex. 1066
PR 2023-00502

[go - holes]

Page 23

177:3 179:17 180:19 182:13 182:20 185:1 194:22 196:9 goes 58:3 170:24 going 6:4,14 24:12 27:19 35:17 48:19 49:11 52:18 55:24 56:13 59:12 80:3 81:7,9 95:14 96:11 99:8 110:17 116:3 122:23 132:3 137:19 138:12 138:21 142:20 143:20 146:1 148:1 153:19 156:24 159:25 160:5,23 165:6 179:15 180:13 185:13 187:11 189:7 good 5:12 81:8 185:13 google 189:22 governmental 38:19 graco 19:5 20:14 graduate 38:2 192:6,9	graduated 37:24 gravity 159:1 gray 33:17 green 19:1,15 19:18 gripping 163:15,18 164:10 165:21 165:25 167:8 167:14 groove 100:7 100:21 102:10 102:13 105:21 109:25 111:5,9 111:18,21 112:13,21,24 114:2,11,20,24 115:5,6,9,11,17 115:19,22,24 116:14,14,23 117:8 118:4,12 118:16 119:4,7 119:12,19,22 177:24 178:1 179:1 197:19 197:21 grooved 111:13 grooves 111:25 112:1 132:21 ground 45:4 grounds 46:10 group 21:19,20 26:13	groups 39:7 guarantee 89:23 guess 9:12 guidance 56:14 guide 113:4,15 113:18 116:10 164:17,19 165:4 guns 18:9 19:5 h h 4:6 203:3 halfway 166:12 hall 35:7 hand 9:22 43:16 handicapped 34:12 handing 194:17 handling 35:4 39:19 hang 154:4 happened 137:5 happens 153:14 160:7 happy 175:21 harbor 19:6 20:14 hard 53:13 60:25 hazard 59:9 head 18:4,11 28:6 31:20 47:10 55:5	120:2 124:15 141:1 159:21 173:17 hear 25:10 93:5 158:18 heard 17:12 26:18 heat 34:21 59:5 heated 46:16 heating 44:22 held 33:25 help 24:17 helpfully 110:6 hereto 204:7 high 18:7 43:23 44:4 161:19,22 162:1,17 164:5 higher 161:14 162:4 highly 191:20 hired 38:5 history 8:3 18:3 19:9 37:15 138:18 138:25 139:4 139:18 142:14 142:17 185:4 189:23 191:6 hold 120:13 holder 163:20 164:2 holding 132:21 holes 70:23 71:2 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
--	---	---	--

[honest - incorporate]

Page 24

honest 139:15 140:3 honestly 8:11 20:16 honors 189:24 horizontal 173:5 horizontally 173:1 hour 81:8 110:17 185:13 hours 16:22 50:1,4,8,9,16 50:20,23,25 117:11 126:21 183:17 howle 1:14 2:15 4:2,22,23 5:6,12,19 10:4 24:12 40:7 63:21 72:4 90:23 92:20 98:9 106:19 117:10 119:17 121:18 125:24 126:4 129:4 133:11 134:24 136:6,20 138:12 143:16 148:8 151:17 152:4 154:12 157:5 174:3 185:19 189:7 197:2 202:5 203:2,24 204:2	204:4,12 huh 19:16 29:11 160:3 190:15 hydraulic 18:7 hypothetical 67:15 74:3,9 77:11 78:10,22 79:15 85:21 97:23 99:20 164:13	154:25 168:9 169:12 177:16 182:8 197:16 identifiers 68:19 69:5 70:1,7,11,16,18 70:19,24 154:23 identifies 146:12 182:4 identify 18:1 167:7 190:13 193:4,7 194:19 identifying 123:2,22 175:24 182:7 ii 87:24 177:5,9 image 170:10 imaging 43:24 immediately 127:16 128:1 166:18 182:14 implemented 45:10 important 6:5 28:9 55:23 imported 14:21 107:13 108:5 109:3 imprint 69:14 improperly 57:21 58:15 improve 45:19 47:25	improvements 42:22 48:16 inaccuracies 192:21 193:3,4 193:6 inaccurate 22:14 include 23:1,17 24:1,23 29:3 48:13 56:9 82:6 187:12 188:8,11 included 28:6 29:22,23 47:13 64:2 193:18 includes 24:10 58:18 63:11 68:2 69:24 99:14 100:5 109:7 including 34:22 54:25 65:16 69:4 123:5,25 135:25 180:23 incomplete 67:14 74:8 77:10 78:9,21 79:14 85:20 97:23 99:20 164:12 incompressible 159:24 incorporate 37:3 IPR2023-00502
	i		
	i.e. 163:19 idea 14:25 168:13 identical 165:10 identically 165:22 identification 69:4 123:1,6 123:21 124:17 175:4,7,11 176:11,14,17 182:7 194:21 identified 70:23 176:17 179:9 180:4 181:5,19 identifier 63:10 68:2,10,24 69:1,7,12,17,23 71:4,14,18,21 90:18 121:24 147:21 149:11		

Nespresso USA, Inc. Ex. 1066

[incorporated - intravenous]

Page 25

incorporated 42:19	individualizing 70:12	171:11 172:8	interacts 103:17 104:14
incorrect 72:22 89:23	inductive 71:7	172:11,12,15	interchangea... 167:24 168:4
incorrectly 13:4 58:19,21 70:9 186:25	inferences 90:8	172:24 173:13	168:21 169:3,8
increase 162:13	influence 52:3 148:20	186:7,15 187:2	interested 201:12
increasing 162:12	inform 82:21	insert 61:10 106:17	interesting 29:6,8,25
indentations 70:2	95:9,13 129:23	inserted 47:4 58:25 89:24	interests 190:5
indents 70:22	information 93:9 107:16	90:19 151:20	interface 151:19
independent 132:9 180:22	115:1 193:17	insertion 99:7,9 99:15,17,24,25	interferometer 54:9,10 57:7
indicate 81:17 134:25 137:4	196:19,25	147:20	interior 103:18
148:24 158:1,8	informed 49:21 105:7 129:24	inside 171:2 178:10,11	international 11:12
166:1 167:13	137:5 141:4	198:1,2	interpose 63:15
indicated 150:15,17,18	informs 67:23	instance 49:15 104:9	interpret 61:13 61:17 87:12
151:11 153:13	infringement 11:17 20:4,8	instances 98:24 104:5	99:5 104:20
201:4	infringing 12:14,21 13:14	instituting 68:4	115:1 118:21
indicates 195:4	14:5	institution 27:21,25	interpretation 68:20 116:22
indicating 126:7 161:9	initial 175:3,6	instructs 6:19	interpretations 62:6
173:3 177:9	injected 123:6	intact 170:25	interpreted 100:15 106:1
indication 26:18 95:17	injecting 43:22	integrate 37:3	107:15 112:3
individual 27:12,20 57:24	injection 43:16 44:4	integrated 36:18	114:8,11,18
58:4,5,10	injectors 44:1	intend 22:22 23:14	interpreting 117:5
individualize 69:1	ink 68:10	intended 56:1 116:19 165:14	intravenous 43:15
	inlet 46:16	165:15,18	IPR2023-00502
	103:22 104:17	intends 56:5,11	Nespresso USA, Inc. Ex. 1066
	104:25 105:13	interact 166:19	
	106:8,22		
	107:10,19		
	108:12 110:8		
	152:15 160:1		

[introduce - know]

Page 26

introduce 10:2 62:20 122:16 125:19 130:21 134:19 173:21 introduced 21:25 introducing 158:15 invalid 12:17 12:24 13:18,20 49:12 invalidate 181:25 invalidity 11:17 126:1 invent 60:3 invented 60:9 60:13 83:9 invention 60:6 82:10 84:10 128:13 130:3 135:8,17,20 146:18 147:22 163:6 inventions 46:15 inventor 43:13 44:9 127:4 inventory 36:6 investigation 71:12 invited 191:10 191:11 involve 18:5 34:16,20 41:16	41:24 43:6,10 47:17 involved 9:18 10:16 26:10,13 26:16 34:14,19 35:19,23 39:3 39:6,22 40:1 42:12 44:14 47:21 50:9,20 50:22,25 51:16 52:20 54:9 126:20 136:1 involves 40:22 42:5 43:25 175:3,6,7 179:1,1,2,2 involving 11:16 19:7 21:8 33:18 iodinated 43:22 ipc 10:10 ipr 22:3 26:21 30:20,21 68:5 68:16 138:1,22 139:8 ipr2021-01222 137:10 ipr2022-01574 1:5 2:5 ir 35:7 issue 50:13 78:13 136:10 140:6 issued 49:19 191:16	issues 11:7,16 21:12 50:10 74:10 84:14 itc 16:2,16 items 54:25 98:21 iv 86:12 j j 1:23 2:16 201:15 jak 10:20 jakss 126:3 jarisch 137:6 139:14,17 140:7 141:4 144:4,10,11,15 144:24 177:13 177:23 178:8 178:16,25 179:10,24 180:8 181:3,25 197:12 198:7 jenison 33:20 jennifer 3:9 jetless 43:14 jigging 35:2 jobin 27:15 33:6 69:21 70:6,10,16 187:19 jobin's 8:7 33:4 117:17 join 7:14 journals 192:5	judged 57:20 july 83:2 jump 177:4 k k 1:8 2:8 8:13 20:20,23 21:2 21:12,16 26:10 60:3,7,9 130:25 202:4 203:1 204:1 kathy 9:2 kaye 34:6,8,9 34:16 35:12,17 35:19 36:2,5 38:1 keep 25:15 96:11 139:25 keurig 15:6,12 key 163:19 kin 201:11 kind 14:7,19 45:6 56:23 156:6 187:12 189:16 kinds 36:12 37:6 know 8:11 13:21 15:8,11 18:2,23 20:17 24:9 26:5,9,23 31:1 32:10,14 48:17 53:7 56:13 64:15 66:9 11:12 67:19 70:17,18
--	---	--	---

Nespresso USA, Inc. Ex. 1066
IPR2023-00502

[know - lines]

Page 27

74:24 77:24 89:16 92:15,21 93:10 99:9 127:10,25 128:21 136:14 139:4 140:25 147:5 148:13 155:2 157:13 182:23 knowledge 105:6 130:4 known 53:25 135:9,17 kruger 8:16 21:19,20 26:13 26:16 81:18 82:3,10 83:8 kruger's 8:18 82:21 83:1	104:24 107:8 107:13 109:2 119:18 121:11 large 16:17 30:2 50:6 laterally 111:5 114:24 116:7 118:9 119:13 119:19,23 177:24 197:19 laurens 1:14 2:15 4:22,23 5:6,19 10:4 125:24 202:5 203:2,24 204:2 204:4,12 laurns 4:2 law 3:3,9 50:14 lawyer 50:13 127:11 129:22 lawyers 8:12 26:7 layer 84:19 85:2,9,15,24 86:4,9,14,15 lays 153:9 lead 43:13 126:3 leading 192:16 192:23 193:23 194:12 195:23 196:22 197:10 198:9,25 199:7 199:21	learn 49:3 leaving 18:12 141:18 ledge 178:9,10 179:2 197:25 198:1 left 38:1 169:23 170:1 legal 9:10 18:14 23:21 25:22 41:23 42:3 50:10,13 62:14 63:16 65:2 84:5 87:21 93:14 94:11 95:2 105:17 106:12 107:1 114:15 115:15 127:10 127:11 144:18 202:23 length 125:10 lenient 113:2 letters 191:4 liability 18:22 license 42:20 42:22 196:11 licensed 40:15 41:13 life 39:8 light 87:12 105:9 106:1 107:15 108:20 185:3	likely 16:4 53:11 60:24 86:25 limit 23:6 165:4 limitation 68:20 100:6 105:3,5 109:3 118:24 124:9 124:12,12 128:15 131:19 131:25 132:9 177:14 181:21 184:23 limitations 47:18 86:11 105:7 127:16 178:15,24 179:4,8,23 180:3,7,11 198:6 199:12 limited 101:5,8 101:9 151:15 line 28:13,14 36:18 37:4 40:25 49:5 63:9 89:15 127:1 146:11 148:16 152:13 170:24 182:21 186:13 203:4,7 203:10,13,16 203:19 linear 37:8 lines 69:2 83:19 84:23 86:20
l			
la 12:4 lab 82:2,4,6 labeled 120:7 160:18 labels 36:25 150:11 lack 45:24 49:13 lacks 77:11 78:10,22 79:15 80:16,23 99:20 121:8 135:21 140:10 language 61:13 61:15,18			

Nespresso USA, Inc. Ex. 1066

[lines - machines]

Page 28

100:13 103:14 109:20 111:4 112:10 149:10 167:21 186:4 186:18 link 189:21 lipids 54:1 liquid 123:4,5 123:24 158:3,5 159:16 162:14 184:19 list 10:8,21 11:23 17:25 28:22,24 139:5 141:18 146:11 149:25 151:11 listed 9:23 12:13 13:4 15:17 18:24 28:25 29:4,17 29:19 30:19 33:10 35:1,6 44:13 123:25 148:4 181:11 189:19 listing 19:8 189:22 190:18 191:20 192:4 196:1 lists 192:1 literature 31:13 litigation 11:16 20:22 45:14,20 48:1,4,5	litigations 21:12 44:13,17 49:11 little 81:7 114:6 177:9 178:21 llp 3:3,9 locate 30:5 location 77:25 145:21 167:25 168:15 169:4 locations 162:15,16 166:21 lock 163:15,18 logo 69:16 148:21 165:11 long 7:12 16:1 26:20 27:2,7 27:17,24 53:7 55:4 61:7,8 130:1 142:17 156:24 longer 20:1 longitudinal 83:21 84:3,11 84:13 178:11 198:2 look 16:11 44:18 65:22 73:5 113:18 114:6 117:7 118:19 136:2 148:1 152:2,13 162:22 177:2	looked 8:2,7 116:5 138:9 looking 66:14 66:15 75:19 92:11 102:18 103:4 109:19 112:9 114:19 135:5 147:16 148:16 149:3 151:24 152:20 153:5 166:9,11 170:23 177:5 183:13 185:2 looks 90:17 112:12 166:15 166:19 170:10 190:7 los 10:19 lost 53:24 79:21 147:17 lot 28:7 56:17 116:4,4 low 158:9,11 159:5 182:4 lower 162:16 luorescent 69:15 m m 19:12 41:4 machine 46:12 47:4,7 51:23 52:2,2 53:20 53:22 54:24 55:12,14,16,16 55:20,25 56:5	56:10,11 57:15 57:24,25 58:9 58:10,20,23 59:1,3,8,10 60:10 69:13 71:17,20 90:20 99:14 120:11 120:21 121:3 121:23 122:6,9 122:14 123:19 124:6 135:8,10 135:17,19 164:10 165:19 165:20,23 174:14,18 175:10,22 176:13 177:18 177:19 197:17 197:18 201:7 machine's 90:13 91:15 95:7,12 machinery 18:7 19:3,24 42:24 machines 14:1 14:10,13,15,17 14:23 15:2,4,6 15:8,12 17:6 19:21 41:24 42:1,5,7,11 44:3 46:3 47:12,13,15,17 47:21 48:11,14 48:18,21,24 49:13 52:21
---	---	--	---

Nespresso USA, Inc. Ex. 1066

[machines - mccraw]

Page 29

53:10,11,13 59:13,18 60:15 60:24 61:1 89:24 made 10:6 49:16 52:1 62:23 103:24 104:18 105:2 105:14 106:10 106:23 107:11 107:21 108:14 110:10 113:17 122:20 125:21 131:1 134:17 138:5 162:17 173:24 186:17 204:5 magnetic 71:5 71:7 147:4 make 6:7,15 13:23,25 14:7 14:8,10,20,23 14:25 24:13 49:20,21,24 55:24 57:2 58:19,22 85:22 102:25 105:12 106:21 107:18 108:11 121:5 129:4 134:6 135:14 138:15 158:18 172:9 177:3 179:12 181:6	makers 194:16 makes 53:20,22 56:10 103:21 104:16,24 106:7 107:9 110:7 164:19 making 31:15 34:24 39:5 46:21 125:12 174:18 183:3,6 183:14 184:7 184:12,23 185:8 187:9 management 39:10 41:5 manager 34:5 37:10 40:13 mandrel 100:10 103:3 103:24 104:18 105:2,15,24 106:10,23 107:12,21 108:14 110:3 110:10 111:6 114:23,25 118:9 119:14 119:20 170:5 171:10 177:25 178:5 186:17 197:20,24 manner 28:16 56:5 manual 116:8	manufactures 34:10 manufacturing 34:14,20 35:2 35:23 36:20 39:15 46:21 47:1 marc 8:16 26:16 81:18 margin 16:18 50:7 marine 39:7 41:8 marked 4:10 10:3,6 62:21 62:23 86:11 122:17,20 125:21 130:22 131:1,11 134:17,20 136:2 173:22 173:24 194:18 194:20 market 45:11 48:8,15,17,19 52:21 martin 1:23 2:16 201:15 mass 53:24 159:25 master's 38:4 material 35:3 37:25 39:19 69:15,19 70:3 71:5 146:21,25	147:1,2,4 148:17 materials 26:21 28:20 36:7,10 36:12,15,16 37:2 139:5 141:13 148:18 148:19 185:4 matter 13:7 17:8 20:9 25:4 31:21 33:17 126:16 127:5 180:16 181:2 185:10 194:15 197:8 matters 14:3 15:17 16:8 20:20 21:1 180:1 mayer 3:3 mayerbrown.... 3:6 maynez 10:17 mccraw 3:2 4:3 5:11,13 10:2 11:2,19 23:22 24:8,20,25 32:16,18 33:21 33:24 34:1 35:25 40:3,6 41:14 42:9 45:5 47:23 48:23 50:15 53:1,6 56:7,16 56:21 58:7,16
--	--	---	--

Nespresso USA, Inc. Ex. 1066

[mccraw - measurement]

Page 30

60:14,20 62:16	124:1,8,20	180:24 181:16	111:15 118:2
62:20,25 63:7	125:14,19,23	183:11 184:21	118:15,15
63:20 64:21	128:9,23 129:9	185:11,15,18	119:9,11
65:5 67:18	129:13 130:5	188:19,24	means 58:22
72:13,18,23	130:15,21	189:1 192:15	62:17 64:24
73:13 74:15	131:3 132:13	192:23 193:5	65:14 66:7
75:16 76:10,24	133:10,17	193:22 194:3	67:24 68:23
77:8,15 78:3	134:16,19	194:12,22	71:4,8 72:8
78:15 79:5,23	136:5,15,19	195:23 196:8	88:10,18 89:20
80:2,19 81:1,9	137:16,24	196:22 197:10	89:21 92:16,17
81:13 84:18	138:5,8,12,20	198:8,25 199:7	96:7 97:10
86:5,13 87:16	139:23 140:5	199:13,21,25	100:19 106:6
88:2,16,25	140:14,19,24	mcdermott	115:23,24
89:11 90:22	141:19 142:5	3:15,16	116:6 123:1,2
91:19 92:6,14	142:12,22	mean 9:17	123:7,7,8,9,22
93:2,7,19	143:15 144:20	15:21 25:17	123:23 146:12
94:14 95:18	145:14,18	46:9 48:2	146:13,13,20
96:4,14,19	146:7 148:7	55:13 56:2,4	146:22,23,24
97:2 98:1,8,16	149:8 152:3,22	62:11 63:14	147:24 148:10
100:3 101:11	153:11 154:8	66:6 71:21	148:25 149:7
101:16 102:15	155:4,16,25	75:8,18 78:17	149:16 150:4,5
102:22 103:13	156:10,17,23	82:13 87:4	150:5,13
104:23 105:10	157:1,4,25	88:22 89:2	151:11 167:23
106:4,18 107:7	159:20 160:2	91:8,20,22	168:24 169:2
108:2 109:1,10	160:14,22	92:23 93:12	170:18 176:16
109:20 110:16	161:2,17 162:2	94:17,25	182:7 201:23
110:21 111:24	163:7 164:8,14	104:20 143:7	meant 165:22
112:8,20 113:1	164:20 165:1	144:19 151:10	measurable
113:13,23	165:12 166:24	165:9	57:5,11,12
114:4 115:2,21	167:6,16	meaning 61:16	measure 51:11
116:12,21	168:12 169:5	61:19,22 64:11	54:7 57:12
118:13 119:10	170:17 173:11	64:12 65:19	measured
120:18 121:7	173:19,21	68:18 87:18	54:12
121:12,17	174:1 176:8,21	91:22 95:24	measurement
122:16 123:13	178:20 179:21	96:22 108:10	35:4

Nespresso USA, Inc. Ex. 1066
September 13, 2023-00502

measurements 34:22	meeting 7:12 7:19	merit 2:17	96:2 98:6
measuring 53:19	meetings 25:14 191:1	met 7:8 45:17 47:17 66:2 178:25 179:24 180:7 181:21	108:16 109:4 109:14 154:19
mechanic 44:23	meets 75:1	metal 71:7 146:25	mistake 49:16
mechanical 5:22 18:8 37:24 43:15 49:2 69:5,11 70:24 89:21 175:14	118:24 131:19	metallic 70:4	mistaken 8:3 13:4 54:10
mechanics 34:21 43:25 59:5	member 37:10 40:13	method 52:13 69:11 158:22 184:18	mistakes 49:20 49:22
mechanisms 44:2	memberships 190:5	methods 34:22 43:17 56:20 158:25	mistyped 13:6
media 35:16 43:16,23 44:5 88:6,7,9,18,22 89:3,9,22,25 90:2,8,13,20,24 91:7,15,24 92:8,12,23 93:11 94:8,17 94:20 95:8,9 95:12,13,17,21 96:7,22 97:6 97:13,20 98:20 98:24 191:23	membrane 146:21 147:13 147:14,18	michael 27:14 187:19	mode 163:5
medial 119:25	memory 92:13 142:19	mid 15:19,21	model 15:7
medical 34:10 35:24	mention 8:18 41:12 145:11 145:20 159:5 161:6	middle 163:17	modify 166:13 166:21,22
meet 5:15 7:10 86:10 124:11 124:12 184:22	mentioned 17:24 22:16 34:13 37:2,4 37:16 41:2 42:4 53:21 54:6 55:19 56:25 74:20 75:10 91:1 104:6 133:1 195:25	mind 33:14,23 59:6	module 158:9
	mentioning 50:24	mine 42:21	moisture 84:20 85:6,8,11,14,16 85:25 86:3,10 86:16
	mentions 167:4	minus 15:23 45:23	moka 134:21 135:10,13,16 135:19 136:4,7 136:11
	mentored 192:6,9	minute 61:12 110:7 148:2	moment 24:13
		minutes 75:13 96:5 148:9 156:25	months 16:4,16 16:19 25:12
		mischaracteri... 97:12	morning 5:12
		misread 164:16	mortgage 41:1
		missed 12:12	motion 125:25
		misstates 47:19 52:23 58:13 72:21 81:4	motions 35:15
			mouth 54:2 57:11 182:15
			move 60:1 120:5 134:16 145:2 156:23 159:9,11

[move - object]

Page 32

167:17 moving 171:8 177:22 178:7 multiple 25:13 133:3 mwe.com 3:17	necessity 181:15 need 19:9 24:16 25:6 49:4 54:14 55:20 57:15 61:24 65:15 66:12 67:19 72:15,17 74:24 88:12 91:21 111:14 112:12 113:20 118:19 176:16 180:9 185:1 needed 25:1 36:25 needs 55:24 56:8 101:22 109:13 116:7,9 neglected 195:9 neither 68:14 201:11 nespresso 1:5 2:5 5:14 21:13 202:4 203:1 204:1 nespresso's 28:11 never 8:16 35:18,19 39:20 50:12 105:6 176:12 new 3:5,5 4:20 39:7 44:25 45:6 125:19 194:23,24,25	195:1 nice 5:15 nods 159:21 non 7:18 26:7 74:19 113:8,8 nongovernm... 38:19 noninfringing 45:13 nordex 19:2,14 19:22 north 3:11,16 5:2 40:14 41:13 notary 204:13 204:19 note 202:10 notebooks 82:2 82:4,6 noted 11:15 204:7 notice 201:3 novel 46:14 47:9 novelty 46:5 november 126:9 nozzle 46:15 47:6 nozzles 44:19 44:19 number 4:11 4:21 10:13,14 19:22 21:8 22:17,20 33:8	40:23 46:18 79:12,17 150:15,17,18 194:5 numbers 15:7 18:4 26:23 79:8 numerous 69:3 nuts 36:13 38:24 nw 3:16
n			o
n 3:1 4:1 name 5:12,17 5:19 9:2 30:3 names 18:23 19:10 31:17 nancy 1:23 2:16 201:15 narrow 30:21 74:13 107:5 narrowed 30:15 narrowing 80:8 107:6 narrowly 64:23 national 39:10 41:5 nature 19:19 20:3,7 naval 39:13 196:3 navy 39:12 nc 37:23 necessarily 30:23 115:23 160:13 171:22 necessary 23:2 23:18 24:2 204:6			o 41:4 oath 6:22 object 11:9 23:20 24:11 35:21 42:6 45:2 48:20 50:11 56:6,12 58:1,11 62:13 64:17 74:8 75:9 76:6,20 77:10 78:21 80:16 84:12 87:20 88:20 92:1,9 101:7 102:3 105:4 112:19 118:5 123:20 124:7 124:13 128:5 130:12,18 133:15 134:12 135:21 137:19 139:20 140:10 142:4 143:13

Nespresso USA, Inc. Ex: 1066
IPR2023-00502

[object - okay]

Page 33

144:17 151:21 153:3,25 155:8 155:21 156:20 159:17 160:10 161:12,20 164:12 166:3 168:23 170:14 178:17 179:15 183:7 184:13 194:12 195:23 196:8,22 198:8 199:13 objection 24:4 24:13 47:19 52:23 56:19 60:11,18 63:15 63:16 65:1 67:14 72:12,21 73:9 78:9 79:14 80:23 81:4 84:5 85:20 88:11 90:4 91:9 92:24 93:14 94:10 95:1 96:2,24 97:22 98:6,11 99:19 105:17 106:12 106:25 107:23 108:16 109:4 109:14 112:25 113:5,6,9,9,9 113:11,14,15 114:15 115:14 116:1,17 121:8	129:3,4 141:16 154:18 164:14 164:19,22 165:1,4 179:12 192:15,15,16 192:23,23,24 193:22,22,23 194:12 195:23 196:22 197:10 198:8,9,25 199:7,13,21,21 objections 70:24 96:15 113:3,8,17 193:5 194:3 objects 6:18 obvious 123:11 177:14,24 178:9 obviously 6:6 occurred 16:25 ocean 39:10 41:5 oceanographic 39:11 41:6 odd 142:18 offer 20:19 22:22 23:14 37:4 offered 50:12 68:14 101:19 116:2 offering 101:17 111:17 126:15 188:14	office 1:1 2:1 32:11 130:25 139:13 officer 196:4 officers 8:13 offs 42:13 offset 111:5 114:25 116:7 118:9 119:13 119:19,23 177:24 197:19 offshore 41:9 oh 72:10 144:12 154:10 161:8 190:12 okay 6:11,21 10:8 13:7,22 14:18 15:24 17:4,23 19:14 20:14,18 23:17 24:14,18 25:1 25:6 29:9 30:18 31:21,24 32:16 33:24 35:17 36:4 40:20 42:3,11 44:25 46:25 47:2,6 48:14 48:18 52:16,20 52:24 53:7,9 54:13 55:10 57:14 59:25 60:3 63:25 64:18 66:1 67:3,25 72:3	72:24 73:20,23 75:4 76:2 77:22 80:3 81:16,21 82:9 82:17 83:17 84:24 85:1 86:7 89:6,14 93:5 94:5,24 97:16,20 98:17 98:19 99:6 100:4,18 101:21 104:10 107:8,17 108:8 109:11,22 111:8 113:11 114:5 115:3,22 116:22 117:10 117:23 118:1 119:16 120:5 120:16,19 121:18 124:2 125:15 126:24 128:2 129:5,14 130:16 131:18 131:21 132:18 133:3,24 134:3 134:5,16 136:11 137:3,4 138:8 139:7 140:6 141:2,23 143:23 145:5,6 145:10 146:1,4 146:8,14 147:23,25 149:16,20 150:18,20
---	--	---	--

PR 2023-000502
Nespresso USA, Inc. Ex. 1066

[okay - ordinary]

Page 34

150:17,20	once 46:10	136:10 144:22	22:22,24 23:3
151:15,23	162:22 166:25	145:1	23:8,14,19,23
153:20 154:21	171:10	opining 144:1	24:3,10,24
155:5 156:23	one's 61:10	opinion 12:16	25:2,7 29:4,12
157:18 159:8	ones 9:25 10:25	12:23 26:1	32:21,25 33:12
159:15 160:24	180:3 181:14	50:13 60:13	33:19,19 49:12
161:1,10 162:8	181:19	63:19,21 65:9	61:12 82:17,22
163:11 165:15	oneself 61:10	72:19,24 74:22	82:24 134:14
167:17,19	ongoing 17:12	75:12 76:3	179:19,25
168:13,19	17:17,19 19:23	84:8 95:20	180:6,10,12
169:6,14,20,22	20:1,23	101:21 104:24	188:9,11 197:8
170:4,7,22	onward 52:22	106:5,20 107:8	198:10
171:5,8,23	opening 103:23	109:2 111:13	opposed 47:12
172:7,19 173:4	104:18 105:1	120:10,20,23	optical 34:22
174:20 176:2,9	105:14 106:9	121:2 122:4,12	35:7 54:12
176:25 177:8	106:23 107:11	124:11 126:15	69:8,11 148:19
177:11,12	107:20 108:13	127:11 132:5	optically
178:7,22 179:4	110:10 152:15	132:17 133:19	146:23
179:7,18,22	186:7,16,23	133:25 134:6,8	options 44:19
181:17 182:12	187:3	134:9 144:3	order 74:23,25
182:16 183:1	operate 56:1	151:11 168:15	89:23 109:12
183:16,20	135:9,18	168:17 169:6	118:20 158:2
184:10,22	164:11 176:17	169:14 171:15	184:25
186:1,3 187:6	operates 59:8	171:18 176:2	ordinary 61:16
187:8,10 188:4	157:19 174:9	176:10 177:13	61:19,20,22
188:13,24,25	operating	177:22 178:8	62:1,3 64:11
189:1 190:16	123:3,23	178:14 179:7	64:12 65:4,7
190:19 191:7	operation	179:23 180:2	65:11,19 66:5
191:19 192:19	51:22 52:1,2	181:13 183:9	66:15,19 68:17
193:11 195:25	174:14,17	183:15 184:9	73:1,3,7,11
196:2 197:5	175:1	185:10 188:23	75:19,22 80:11
old 53:13	operator 54:18	199:11,15	84:9,16 87:2,5
older 48:22	opine 133:16	opinions 13:17	87:18 88:1,9
omitted 70:25	opined 91:2	13:19 20:19	88:19 91:4,5,6
	94:21 134:4,13	21:2,11 22:11	91:22,23 92:22

Nespresso USA, Inc. Ex. 1066

[ordinary - paragraph]

Page 35

93:10 94:18,22 94:25 95:24 96:20 97:10 99:1 106:6 107:17 108:10 108:19,23 111:15 114:9 114:12 115:17 116:15 117:6,7 118:3,15,16,18 119:9,11 128:14 147:15 152:25 153:6 161:25 167:22 168:14 169:7 169:15 183:12 184:2 orientation 78:1 original 60:6 127:15 ought 177:2 outcome 201:13 outer 70:5 145:11,16 outlet 160:1 outside 20:20 30:13 39:9 41:22 42:1,3 42:14,15 45:20 48:1,3,5 60:11 60:18 64:19 73:21,25 74:4 76:4,12,14,20	77:5 78:5,22 79:2,15 82:10 82:12,16 85:21 87:20 88:11 90:4 91:9 92:1 92:24,25 93:15 94:11 95:2 97:22 99:19 171:3 184:13 192:24 193:23 outwardly 171:1 overall 114:7 own 33:4 36:25 40:20 61:10 62:4 135:1 owner 1:9 2:9 3:13,18 37:10 40:13 138:6,22 owner's 10:5 p p 3:1,1 p.m. 81:12 110:19,20 136:17,18 157:2,3 185:16 185:17 189:2,3 200:2 package 71:1,2 71:3,6,12 98:20 108:21 packaging 36:16 packing 46:10	page 4:2,11,21 22:5 28:17,21 30:7 31:24 68:1 99:14 113:5 120:7,8 126:4 131:12 131:16 136:2 136:12 139:10 140:15 143:1,3 145:4 146:6,10 147:9 148:15 149:9,23 150:21 151:1 153:18 154:23 160:18 166:12 168:7 170:24 174:11,12 177:5,6 182:1 184:17 186:4 189:19,25 190:1,8,9,9,10 190:12,21,22 190:23,24,25 191:2,7,11,12 191:15,16,19 191:22,25 192:1,3 195:4 195:11,20 197:3,5,7 198:16,18 203:4,7,10,13 203:16,19 pages 1:25 29:15 131:15 131:24	paint 18:9 pairs 35:8 pal 57:5 paladay 142:7 panama 39:13 paper 54:1 68:16 137:10 138:1,13,21 papers 190:11 190:16,17,18 pappas 9:2 paragraph 10:9 15:17 29:10 34:3,4 36:4 37:5,9 40:11,12 43:12 44:14 49:23 69:24 72:6,7 75:14 81:14 120:7,10,14,20 120:25 121:16 121:19 122:23 126:24 130:10 132:4 135:3 137:1,4,9 141:2 143:2,4 145:7,17,20 146:15 158:1,8 158:14 160:15 160:19 162:3 163:12,14,16 163:17 166:12 167:9,18,21 170:22 171:8 174:25 182:2 182:25 189:502
---	--	--	--

Nespresso USA, Inc. Ex. 1066

[paragraph - patents]

Page 36

184:17 186:13 193:9,12,14,16 195:8 197:9 198:23 199:6 paragraphs 71:10 163:10 parameters 59:4,6 123:4 123:10,25 124:18,22 125:5,12,15 159:23 parent 127:17 141:5 park 34:10 part 11:13 15:6 61:12 82:17 103:4 143:5 147:1 148:11 149:17 151:7 157:15 173:2 174:5,25 188:3 188:17 partial 196:1 partially 100:6 100:21 102:10 102:13 105:21 109:25 114:20 115:5,13,18,19 116:10 118:10 119:15 178:1 197:20 participate 26:7	participated 26:3 particular 10:9 20:13 23:9 25:4 30:21 34:11 49:5 55:12,14 57:8 58:4,24,24 62:5 63:10 76:9 79:17 89:21 90:20 95:21 103:4 111:12 115:19 120:24 135:6 160:22 169:10 177:11 181:10 182:11 197:12 particularly 27:9 28:2 29:4 29:6 57:20 parties 18:23 19:5,10 21:8 party 68:14 201:12 passage 98:20 108:22,24 110:14 149:2,5 149:19 186:5 passing 89:24 103:23 104:18 105:1,14 106:9 106:23 107:11 107:20 108:13 110:9	past 9:10 104:21 117:11 pastures 19:1 19:15,18 patent 1:1,3,6,9 2:1,3,6,9 3:13 3:18 10:5 11:8 11:16 14:5 18:16 20:4,8 27:5,8 42:20 43:14,20 45:13 45:20 46:18,20 49:12,18 60:8 60:9 61:14,15 62:12,18,25 63:23 64:20,23 64:25 66:24 67:1,3,6,7,9,11 68:19,21,25 69:6,13 73:21 73:23,24 74:1 74:1,4,5 75:23 76:9,13 77:3,6 77:19 78:5 79:2,3 80:5,9 80:11,13,22,25 81:3 83:18 84:4 85:2 86:23 87:5 88:13,14,23 89:19 90:3,25 91:25 92:16 93:1,6,13,17,23 94:2,6,16,23 96:8 97:1	98:18,24 99:13 100:5,5 101:5 101:6 102:2,13 104:3 106:7,17 106:21 107:18 108:11 109:12 111:3,9,20 112:14,22 113:3 114:13 115:12,25 116:16 117:14 118:4,8,25 120:1 122:18 122:18 124:10 125:4 128:13 129:24 130:25 131:8,17,20 132:1,10,16 133:5 134:10 136:13 137:7 138:6,22 139:18 140:7,9 140:18 141:5 142:8,8 144:16 144:16,25 163:1 169:10 172:19 178:15 179:5,8 181:4 182:20,22 183:23 191:16 191:17 196:11 patents 8:2 11:4,5,6 12:14 12:17,21,23 13:14,17,19 14:17,19
---	--	---	--

Nespresso USA, Inc. Ex. 1066

31:3,5 32:11 44:9 45:16,18 45:25 47:11 49:16 50:17,17 50:21 59:12 136:9 181:15 183:17 187:14 patients 43:23 pattern 62:11 62:15,19 63:5 63:11,14,19 64:2,6,8,14,14 64:15,24 65:4 65:8,10,14,20 66:2,7,7,9,11 66:13,16,17,20 66:23 67:1,8 67:10,13,20,24 68:2,7,10,13,17 68:23 69:16 71:1,2,13,16,24 72:8,11,17,20 72:25 73:2,4,8 73:12,15,19 74:7,13,14,17 74:19,25 75:5 75:14,14,21,24 76:1,4,4,13 77:7,7,18,21,22 78:6,7,8,12,13 78:16,19,25 79:1,13,18 80:1,4,6,21 81:3 132:19 148:21	pause 32:17 79:20 87:9 89:7 103:12 129:20 138:16 173:10,20 176:6,20 195:18 peer 31:13,18 52:15 53:16 190:16,17 192:4,5 penalty 22:8 126:12 129:1 pending 113:22 182:14 people 57:19 80:15 people's 45:15 perform 109:13 performed 51:10 period 15:8,15 16:21,24 17:2 38:12 peripenultim... 199:8 peripheral 70:6 100:8 105:23 110:2 114:22 145:11 147:12 151:14,16 178:3 197:22 peristaltic 159:6 161:7	perjury 22:8 126:12 129:1 person 57:20 58:14 61:20 62:1,3 65:3,6 65:11 66:4,14 66:14,19 73:1 73:3,7,11 75:19,22 80:11 84:9,16 87:2,5 88:1,8,19 91:3 91:5,6,23 92:21 93:10 94:17,22,25 96:20 97:10 98:25 106:6 107:17 108:19 108:23 114:9 114:11 115:17 116:15 117:6,7 118:3,16,18 147:15 152:25 153:6 161:25 167:22 168:13 169:7,15 183:12 184:2 petition 23:9 26:25 27:3 28:4,11,12 29:5 30:4 117:20 180:19 183:20 petitioner 1:6 2:6 3:6 5:14 68:9 121:20	182:4 189:11 194:1 196:14 petitioner's 197:25 ph.d. 1:14 2:15 4:2,23 5:6 38:4 202:5 203:2,24 204:2,4,12 phase 121:6 phases 34:14 phone 7:14 25:13 photo 35:7 phrase 63:14 68:9 105:12 109:13 149:9 physical 68:13 71:21 pick 146:2 pierce 156:7 pierced 100:10 105:24 110:3 114:23 170:13 170:18,19 171:10,19 178:4 197:24 pierces 151:4 170:5 piercing 151:18 151:23 152:16 152:20 153:9 166:11,13,15 166:19 186:8 186:17,22,24 187:4
--	--	---	---

[pipes - portion]

Page 38

pipes 160:4	121:10,13	107:23 108:16	196:13 197:1
piston 161:4,8	122:15 133:13	109:4,14	198:4,12 199:3
161:10,16,18	137:14 140:19	112:19,25	199:10,17,23
161:21 162:5	143:8 144:19	113:11,16	202:1
place 45:21	145:13 154:4	114:15 115:14	plus 15:23
52:16 147:17	156:11 165:7	116:1,17 118:5	16:19 45:23
201:4	166:5 182:18	119:9 121:8	plywood 36:13
placed 46:11	188:19 197:3,9	123:20 124:7	point 13:21
54:24 55:20	pleune 3:8 4:4	124:13 128:5	23:9 24:7
90:12 91:15	11:9,11 23:20	129:3,7 130:12	62:18 63:4
95:7,11	24:4,11,16	130:18 133:15	67:3 87:8 88:7
plain 61:16,19	35:21 42:6	134:12 135:21	89:8,12 92:19
61:21 64:10,11	45:2 47:19	137:19 138:3,7	94:12 98:19
65:19 68:17	48:20 50:11	138:10 139:20	99:8,12 103:10
87:17 91:22,24	52:23 56:6,12	140:10 141:16	109:18 131:18
92:23,25 93:12	56:19 58:1,11	142:4,10,16	131:21,23
94:8,24 95:23	60:11,18 62:13	143:13 144:17	132:18 134:4
96:6,21,22	63:15 64:17	151:21 153:3	139:21 148:12
108:9 111:15	65:1 67:14	153:25 154:18	148:15 152:2
116:15 118:2,7	72:12,14,21	155:8,21	170:7
118:15 119:6,9	73:9 74:8 75:9	156:20 159:17	pointed 75:13
119:11,12,13	76:6,20 77:10	160:10 161:12	98:22,23 110:7
plainly 71:24	78:9,21 79:14	161:20 164:12	118:14 148:25
plant 34:5	80:16,23 81:4	164:15,23	150:3
please 5:17	81:7 84:5	165:3 166:3	points 44:18
9:20 23:24	85:20 87:20	168:23 170:14	121:21 179:20
24:19,21 36:23	88:11,20 90:4	178:17 179:12	polyurethane
40:18 44:16	91:9 92:1,9,24	179:15 180:13	36:14
46:24 52:24	93:14 94:10	183:7 184:13	portion 70:12
53:2 73:24	95:1 96:2,9,16	185:12 188:25	89:23 90:13,19
76:17,24 88:7	96:24 97:22	189:6 192:11	91:16,17 95:8
89:18 93:3	98:6,11 99:19	192:17 193:1,8	95:10 103:23
94:13 95:19	101:7 102:3	193:25 194:8	104:17 105:1
98:19 99:8	105:4,17	194:17,25	105:13 106:9
113:23 120:14	106:12,25	195:6,19 196:6	106:22 107:10

Nespresso USA, Inc. Ex. 1066

[portion - printing]

Page 39

107:20 108:13 110:9 132:7 146:17 148:1 151:8 164:16 170:25 portions 26:2 44:23 50:18,19 posed 122:10 159:23 posita 70:17 127:3 130:3 169:1 170:25 171:9 posita's 130:3 position 156:19 198:5 positional 173:18 positioned 173:6,13 positions 189:21 possession 127:4 possible 147:5 172:17 possibly 17:17 185:3 pot 134:22 135:10,13,16 135:19 136:4,8 136:11 pots 14:8,9 power 18:6 19:3,24 44:4	196:12 powerful 49:2 practice 113:4 164:17,19 165:3 practiced 110:13,13 precise 9:7 27:11 121:11 precisely 15:10 66:18 predated 53:10 60:25 predetermined 123:4,24 preferably 69:13 89:21 90:11 91:14 95:6 103:15 148:20 preferred 148:17 preliminary 68:11 138:23 138:24 preparation 7:11,24 26:11 26:14,16 28:22 29:1,20,24 30:13,15,23 93:20,24 94:2 123:4,9,24 124:18,22 125:4,13 158:9	prepare 7:3 25:23 158:3,5 prepared 117:23 preparing 25:11 26:21 184:19 present 7:18 33:23 37:10 40:13 52:21 146:18,24 presentations 191:9,10,12,13 preserves 165:1 preserving 164:24 president 34:5 press 190:16 pressed 59:14 59:21 pressure 35:9 54:23 55:22 158:10,11,12 159:6 161:14 161:15,16,19 161:22 162:4,5 162:9,14,17 171:2 172:1 182:4 pressures 162:1 pressurizing 171:6	prevent 84:20 85:6,8,14,25 86:15 167:9,14 prevented 167:1,5 prevents 85:11 104:21 previous 17:16 23:4 31:12 57:7 71:8 115:6 128:22 135:24 181:10 previously 4:10 10:3,6 21:25 41:20 55:19 62:21,23 122:17,20 130:22 131:1 133:1 134:17 134:20 173:22 173:24 181:14 princeton 19:12 principle 158:20 principles 49:3 print 36:24 69:14 71:17,21 148:15,20 printed 68:10 69:4 71:1,3 146:21 printing 148:17 148:18 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
---	---	---	---

[printout - put]

Page 40

printout 134:21 prior 28:3,6 48:24 49:8 50:20 82:7 128:10 144:4 198:6 priority 82:11 82:12,13 125:25 126:15 128:3 129:14 129:16 130:24 probability 41:8 probably 103:7 177:2 problem 107:3 108:1 164:21 164:24 problems 39:15 proceeding 8:10 10:4,12 22:22 23:14 62:22 82:22,25 94:16 129:17 130:7,23 143:12 188:13 188:18 proceedings 10:15 11:21 46:5 process 25:10 36:16 46:21 47:1,3 55:1,22 61:17 171:25	172:5 174:17 produce 162:1 produced 146:23 152:16 186:8 187:3 product 14:21 18:21,22 36:9 36:20 49:5 174:18 175:23 production 36:16 175:23 176:3,10 products 13:22 14:7,19 34:6,8 34:9,16 35:13 35:18,19 36:2 36:5,11 38:2 39:16,18 50:17 183:18 professional 40:15 189:23 190:4,4 professor 38:9 38:10,10,11 42:21 196:3 program 37:1 programmed 36:5,22,24 programming 37:6 projects 39:3,4 40:21 178:10 198:1 promoted 38:8	proper 113:6 113:13 properly 57:15 57:18 properties 54:12 69:8 148:19 propulsors 39:5 prosecution 8:3 137:6 138:18 139:4,14 141:4 142:14,17 144:11,24 185:4 protrusions 70:23 provide 21:2 63:21 64:9 85:4 111:11 118:14 130:1 144:3 181:20 187:16 192:5 196:18,24 provided 18:3 19:21 32:8,15 63:11,19 64:7 68:2 87:1 91:2 103:15 117:2 130:24 140:15 147:11 179:19 179:22,25 183:15 184:8 provides 69:22	providing 124:21 125:4 125:15 ptab 164:16 public 204:19 publication 122:18 173:23 191:5 publications 190:6,7,10 published 190:25 pull 32:11 65:21 97:6 pump 92:7,7 123:11,15 135:9,10 159:3 159:6,6,8,16,25 160:8,12 161:5 161:7,8,10,15 161:16,16 162:5,5 177:14 179:1 182:5,6 197:14 pumps 34:21 44:1,1,19 59:25 60:4,10 60:22 161:4,11 161:18,21 purely 153:8 purport 73:4 purposes 70:12 pursuant 201:3 put 50:6 54:21 127:19 146:18 171:19 191:10
--	---	--	--

Nespresso USA, Inc. Ex. 1066

[put - read]

Page 41

176:21 197:2	121:12 122:10	quickly 120:14	raw 36:6,10,12
q	122:11,23	152:11	37:2
qualification	123:14,17	quite 18:6 23:5	reach 133:8
119:6	124:2 127:14	39:2 51:2	reached 9:3
qualifiers	129:8,9 131:21	124:24 185:5	13:21
128:20	133:12,13,22	190:20	reaching 133:2
qualifies 80:14	139:1 140:20	quote 165:5	read 7:7 8:18
qualities 56:18	144:8 146:16	168:10	24:16,19,20,22
57:11,13	152:24 154:7,9	r	29:7 30:2 37:3
quality 30:10	154:15 156:10	r 3:1 19:12	53:2,3 67:12
53:17 56:11,14	158:18,23	201:1 203:3,3	67:16,25 69:10
56:23	159:19,22	racing 18:7	75:11 76:19,24
question 6:9,14	164:21,25	19:11 20:5	77:1 79:23,24
6:18 15:9 16:6	165:7,17 166:6	radio 69:4	82:2,4,9,18
23:5,5,24	174:12,20,21	radiological	89:18,19 91:21
24:17,19,21	178:19,21	44:5	93:2,4 102:19
30:15,22 37:13	179:7,13,19	raised 69:24	102:23 105:9
42:8,14 52:25	180:25 181:10	raleigh 5:2	108:23 113:23
54:16 57:9,18	182:14,17,18	ran 182:14	113:25 118:20
58:3 59:20	185:7 186:21	random 77:6,9	120:13 121:12
60:6 63:5	188:20	77:14,25 78:6	121:14 122:23
64:19 72:2	questions 72:14	78:8 80:5,14	129:9,10 132:3
73:20 76:18,25	96:5,14,17,17	80:21	133:13,14
77:13,16 78:7	98:13 111:1	randomness	140:19,21
78:24,24 79:4	113:22 136:24	77:7 80:25	145:20 147:19
79:22,23 85:13	142:21 157:9	ranks 38:9	149:19 154:24
85:23 88:17,22	185:24 194:6	rapid 16:2	156:10,12
92:21 93:2,6	194:14 196:19	rate 43:23 44:4	160:20 163:16
96:12,13 98:10	199:23,25	53:25 123:5	163:25 164:1
100:1 101:8,9	quibble 83:11	159:16,19	164:17 165:7,8
102:24 104:8	quick 40:3	160:1,8	166:5,7 175:18
105:11 107:4	49:24 136:16	rather 105:8	181:11 186:19
108:1 112:4	157:1	107:6 124:17	188:2,19,21
113:24 116:14	quicker 103:8	134:9 161:24	193:12 197:9
120:17 121:6			202:9 204:9

Nespresso USA, Inc. Ex. 1066

[readable - referring]

Page 42

readable 69:14 71:17,20 reader 141:24 readily 69:21 reading 71:10 72:3 94:23 107:5,18 108:20 115:16 116:6 127:15 131:10 142:10 142:12 176:2 176:10 178:23 182:1,5 185:2 reads 193:16 really 19:9 36:15 37:20 121:19 reason 6:25 7:2 10:1 53:9 74:11 202:11 203:6,9,12,15 203:18,21 reasonable 6:16 97:7 125:18 reasonably 127:3 recall 9:5,8 15:23 19:4 27:2,7,17,24 28:2 30:18 31:5,9,17,22 32:13 45:25 46:4 47:9,14 57:9 59:16	74:20 103:2 119:21 124:16 126:15,18 141:1 142:1 143:20 147:7 148:22 154:7 167:4 171:7 173:18 187:21 188:6 194:4 receipt 202:18 receive 81:21 86:18 87:25 99:16 receives 87:15 87:19 88:5 97:17 recent 33:19 195:3 recently 17:3,7 receptacle 86:18,23 87:4 87:11,18,24 88:6 89:4 97:13,17 98:20 98:23 99:6,10 99:18,24,25 recess 40:4 69:9 81:11 110:19 136:17 157:2 185:16 189:2 recite 111:5,20 132:8 133:21 134:1	recited 108:21 108:22 recites 69:3 recognition 71:8,10 123:7 recognize 65:4 65:7 66:16,17 66:20 73:2,4,8 73:11 75:25 153:6 recognized 123:8 175:12 175:16 176:15 recognizes 175:24 recollection 139:3 record 5:18 8:10 24:22 33:25 53:3 68:12 72:15 76:19 77:1 79:24 81:13 93:4 113:25 121:14 129:10 133:14 137:17 138:6 140:21 143:11 156:12 164:24 165:8 166:7 188:21 191:5 194:24 195:1,2 201:10 recorded 201:7 records 15:20	refer 19:9 146:1 refereed 190:6 190:7 reference 70:20 120:21 121:24 137:6 139:14 141:5,10,14,21 141:23 142:7 142:13 143:6 143:11,17 144:4,10 157:12,16,19 162:22 174:2,6 174:9 176:24 183:25 195:7 referenced 202:6 references 25:14,14 28:3 28:6,7,8,9,10 70:15 90:23 142:6 143:6 144:5,10 197:25 198:7 referring 17:8 17:10,21 30:9 31:18 33:5 50:25 51:15 53:15 112:17 113:19 137:22 140:17 144:6 144:22 149:9 153:17 185:3 IPR2023-00502
--	---	---	--

Nespresso USA, Inc. Ex. 1066

[refers - represent]

Page 43

refers 137:25 142:14 155:12 155:13 refillable 14:9 14:22 46:2 136:1,3 refined 27:11 refining 25:19 reflective 70:2 reflectometer 57:6 refractometers 57:5 refresh 92:13 regard 125:11 regarding 7:21 17:18 19:11 23:8 121:21 122:7 193:17 194:6 196:19 regardless 198:13 region 70:6 90:12 91:15 95:7,10,11 100:8,9 103:16 104:15 105:22 105:23 110:2,3 114:21,22 145:11 146:20 147:12 151:14 151:16 178:2,4 178:10 197:22 197:23 198:1	regions 70:5 147:3 registered 2:17 regularly 31:16 rejected 139:18 140:7 144:24 rejections 139:13 relate 11:3 related 8:4 10:13 11:6,25 18:21 19:4 42:24 51:4 93:18 relates 17:14 174:16 184:18 relation 104:13 149:11 154:25 168:8 169:12 relationship 115:7 173:18 relatively 16:2 16:17 28:1 relevance 113:9 192:16 192:24 relevant 9:25 10:25 reliability 39:15 relied 128:11 133:1 140:2,4 rely 129:22 139:21	remaining 178:14,18 179:8 remember 19:7 19:10 20:10 28:5 29:25 30:3 57:6 80:6 80:7,7 97:18 144:1 170:20 remembering 109:17 reminders 6:5 remington 10:21,22 13:1 13:5 removal 146:22 render 123:10 177:14,24 178:9 repeat 52:24 63:11 64:2,14 66:7,9 68:2,7,9 68:12,17 69:16 71:13,16 74:12 74:18,25 75:6 75:8,14,17 76:4,18 79:10 95:16 120:17 132:19 148:21 154:24 repeatable 78:14 repeated 64:14 64:16 66:8,11 68:23 71:14,18	71:23,24 72:9 75:7,15,18,21 78:12,17,20,25 79:1 repeating 74:19 repeats 74:25 rephrase 93:8 reply 68:11 report 9:22 21:4 25:15,16 31:25 32:3 33:11 35:6 41:12 65:24 66:1 67:25 72:3 76:5 122:24 139:2 169:18 184:16 187:8,11,11,18 187:22 188:3 193:19 197:6 198:19 199:18 reported 1:23 reporter 2:17 2:18 41:3 156:25 165:7 192:8 201:24 reports 25:16 190:23 represent 11:20 19:17,25 20:5,15 120:3 138:13,14,21 185:9 198:21 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
--	---	---	---

[representation - right]

Page 44

representation 192:20 198:22	reset 24:17 resides 136:7	review 7:24 8:6 8:9 26:25 27:5	117:17,20 120:15 121:9
represented 11:23 12:6,19 13:1,7,11 14:3 20:10 114:6	respect 71:22 73:10 97:4 101:1 106:15 107:3 194:2,10 195:12 196:20 198:6 199:11	27:13,14,21 28:3,10 29:1 31:3,7 52:15 53:16 65:15 93:17,18 137:13 138:24 138:25 139:13 139:17 140:22 141:10 142:8 174:5 187:18 192:5 202:7	124:14 125:9 128:6,19 132:2 135:23 137:18 139:4,8 140:1 140:12 141:21 142:2,15 143:14 145:15 146:3 148:3,6 149:1,4 151:22 152:9,18 153:4 154:1,5,20 155:22 157:16 157:23 160:25 162:24 163:24 166:4,8,17 167:3,12 168:6 173:16 180:17 181:8 183:8,20 183:23,25 184:15 190:16 190:17 192:4
representing 114:2 141:20	respectful 152:11	reviewed 7:7 27:9 28:5,8,22 29:2,14,16,20 29:24 30:13,19 30:19 31:13,19 32:19,23 33:8 33:11,18 63:3 77:4,12,23 81:17 84:7 85:19 86:8 87:13,22 90:6 90:15 91:11 92:3,10 93:20 93:23 94:2,16 95:5 99:22 101:13 102:4 102:21 103:1,5 104:11 106:14 107:2 108:18 109:16,23 111:23 112:7 114:14 117:14	reviewing 26:21 27:2,7 27:17,24 50:16 reviews 190:17 revisit 181:9 rfid 69:19 right 5:24 6:23 13:11 15:2 25:4 33:15 44:7,10 45:18 48:25 49:8,17 50:21 51:1,2,3 50:21 51:1,2,3
represents 68:7	respond 23:7 100:2 104:7 192:18		
reproduction 201:22	responded 97:4		
requested 41:3 192:8	respondent 11:24 12:3		
require 93:8	responding 179:18		
required 86:15 177:19 178:5 178:12 182:9 204:13	response 10:5 17:17 24:14 77:17 97:12 129:5 138:6,23 138:24 158:24 191:4		
requirement 105:16 108:3	rest 102:19		
requirements 116:5 118:11	restate 23:24		
requires 83:20 84:19 86:17 108:11 123:24 176:13	restricting 25:3 132:22		
rescission 10:14	result 69:10		
research 21:15 21:18,21 34:9 39:4 190:5 191:23 192:2 194:6	results 52:4 retained 20:19 21:1		
reservoir 159:9 159:11	return 202:13 202:17		

Nespresso USA, Inc. Ex. 1066

[right - scientific]

Page 45

52:17 53:18	163:8 164:11	175:1 176:2,10	184:8
55:6 56:1,18	167:20 168:16	177:13,23	says 36:17
56:22 57:16,17	174:9,15 175:1	178:8,16 179:1	62:19 63:5,10
57:25 58:10	176:5,12,18	179:10,24	67:4 68:1
59:22 60:4,17	179:5 181:5	180:8 181:3,25	91:14 99:14
66:13 72:20	183:18 184:7	197:13 198:7	105:20 113:5
76:5 77:20	185:8,19	rotate 158:2	115:4,23
80:15,18 81:3	188:16 190:14	rotation 162:10	119:19 122:7
81:17 82:11	191:13	162:13 164:5	122:25 127:13
83:14 85:13,15	rigor 61:9	roughly 16:16	131:16 141:3
85:24 86:2	rigors 52:15	row 67:13	146:11,16
88:15 91:5	54:23 55:21	rpr 1:24	149:10 150:9
92:18 93:21	rim 172:15	rules 6:5	151:2 161:14
94:3 96:1,21	ring 68:7 70:5	running 57:11	162:25 163:2,4
97:8,11 102:24	71:24 167:25	s	163:4,17 164:1
103:4 104:9,10	168:4,25	s 3:1,8 4:6	164:3 165:5
107:14 111:14	169:17	19:12 202:1	168:8 169:10
111:18,19	rings 70:3	203:3	170:24 177:5
116:24 117:12	146:25	safety 54:13,18	183:2 186:5
117:15,18,21	rivera 10:17,21	54:18 55:7,9	scaa 51:8 52:11
118:4,6,17,25	10:22,23 11:4	55:10 59:9	scan 145:13
119:24 120:12	11:6,7 12:6,8	125:11,12	148:5 151:25
120:24 124:23	13:5,10 46:1	164:5	152:11 161:7
125:2,17	49:11 59:13	satisfy 67:10	181:6
126:13 128:4	60:16 126:2	saturated	scanning 87:10
133:5 138:15	rmr 1:24	35:16	90:7 112:5
142:2 153:22	201:15	save 101:1	182:24
153:24 154:6	robert 12:10	103:10	schematic
155:17,19	robotics 35:3	saw 61:24	163:2
156:3,18,19	roman 86:12	110:12 159:1	scholar 189:22
157:16,19	87:24 114:19	saying 98:2,3,5	science 30:1,10
158:4,6,10,16	room 7:8 8:12	108:4 111:10	31:13,15,23
159:4,10,13	26:6	122:4 128:8,24	37:25 196:4
161:3,8,19	rossi 173:23	135:7 181:17	scientific 40:22
162:6,10,14,18	174:6,9,13,16	181:18,22,23	61:9 190:25

Nespresso USA, Inc. Ex. 1066

[scope - sensor]

Page 46

scope 30:22 60:11,18 64:20 73:21 74:23 75:1 76:12,14 76:21 77:5,17 77:19,21,22 78:5,22 79:2 79:15 85:21 87:21 88:11 90:5 91:10 92:2,24 93:1 93:15 94:11 95:2 97:22 99:19 140:9 144:15,18 184:14 192:24 193:23 se 34:18 sea 39:8 seal 59:14,20 59:21 100:6,19 100:24 101:4,6 101:18,21,23 101:24 102:1,9 102:12,16,17 102:20 103:3,9 103:17,21 104:2,5,14,16 104:21,22 105:3,16,20 106:5,20 107:14,15,18 108:4,6,10,11 109:11,12,24 110:7 112:1,15	112:23 114:2 114:19 115:4,7 115:13,18 116:9 118:10 118:12 119:14 132:20 152:14 177:25 179:2 186:5 197:20 sealing 103:16 104:15 sealingly 103:16 104:14 seals 60:3,10,17 search 103:9 132:22 148:14 seated 100:6,21 102:10,13 105:21 109:25 114:20 115:5 115:13,18,19 116:10 118:10 119:15 178:1 197:20 sec 89:17 second 33:16 36:17 49:24 68:8,22 69:21 70:13 71:15,19 109:6 131:9 132:6 141:3 143:3 148:5 154:4 160:20 167:10 175:12 176:22 199:5	section 28:20 69:6,18 94:12 113:18 177:12 178:7 187:12 187:21 197:6 198:19 sections 30:2 see 11:22 18:2 19:4 29:5,25 30:5 31:25 32:6 36:7,8,20 37:11,19 40:16 40:17 43:18,19 52:4 54:4 70:20 72:9,10 72:10 79:6,19 83:22,23 84:21 84:25 86:19,21 90:1 98:14 100:11 101:2 103:19,25 104:9,10 111:6 111:7,22 119:20 122:1 124:25 127:6 127:18 128:16 128:17 129:19 135:11 137:7 137:11 141:8 141:17 142:24 145:8 147:17 150:1,6,9,10 151:3,6,18 152:10 154:3,3 155:24 156:1	156:14 161:6,8 163:20,21 166:10 168:1 169:23 170:3,7 171:3,13,14 172:24 173:1,3 173:5 180:19 181:14 183:2,4 186:10,11 190:2 191:2 seeing 139:9 140:2 151:25 156:13 seeking 63:16 seeks 23:21 62:14 65:1 84:5 87:21 93:14 94:10 95:1 105:17 106:12,25 114:15 115:14 seem 94:19 106:16 seems 65:17 107:4 174:24 seen 131:4 134:23 174:2 select 180:11 sense 6:7,15 sensed 176:4,12 sensing 34:21 44:2 123:8 sensor 70:24 99:15 123:12 125:16 179:19
---	--	--	--

PR 2023-00102
Nespresso USA, Inc. Ex. 1066

[sensor - sir]

Page 47

197:16 sent 202:14 sentence 29:10 36:17 49:25 70:8 72:7 75:12,13 103:21 127:13 128:10 135:7 141:3 143:3,7 149:15 160:23 161:13 163:25 170:23 171:9 174:22 199:5 sentences 102:9 121:20 130:10 separate 165:16 separated 51:18 53:21 78:13 september 1:15 2:13 5:3 63:22 64:1 66:3 118:23 119:3,8 130:23 201:17 202:3 sequence 79:1 79:7,13,18 80:1 serial 18:20 19:22 series 10:19 44:13 79:7 131:14 178:24	serve 13:24 14:8,22 16:23 17:14,22 18:13 46:2,3 50:2,5 84:21 85:7,12 86:1,18 87:15 87:19,25 88:5 97:17 174:15 174:19 177:15 177:18 197:15 197:17 served 20:12 services 41:22 set 51:7 132:19 settled 13:15 20:2 several 10:10 25:12 27:10,10 29:2 31:11 39:3,6,14,19 44:18 69:22,24 98:24 108:22 119:18 180:22 severity 41:7 shading 169:23 170:3 shaft 99:7,9,15 99:17,24 100:1 147:20 shape 69:5 165:21,25 shaped 71:6 164:9 165:22 shapes 164:2	sharp 170:7 sheet 146:24 147:1,2 202:11 short 28:1 shorthand 2:17 201:7,24 shortly 13:16 show 73:24 97:14 129:19 132:7 141:13 152:17 showed 136:1 showing 171:25 shown 115:6 131:15 136:11 153:7,18,23 156:5,6,16,18 shows 146:17 147:9 163:2,5 sic 136:3 side 19:2 63:12 68:3 100:8 103:18 105:22 110:1 114:21 146:20 147:12 160:6 169:23 170:1 178:2 197:22 sides 160:5 sieve 70:4 sign 202:12 signature 22:6 22:7 126:7 201:14	signed 22:8,12 126:9 128:25 129:12 202:20 similar 31:15 128:21 141:4 similarities 144:23 simple 37:7 74:7 75:15 simply 65:10 68:23 71:18 72:8 75:14 84:16 87:14 simulate 41:7 single 13:24,25 14:8,22 16:23 17:14,22 29:16 46:2,3 50:2,5 66:23 67:4,5,9 74:6 77:9,14 77:24 78:1,2,8 78:11 79:12,17 84:21 85:7,12 86:1,18 87:15 87:19,25 88:5 97:17 136:8,12 174:15,19 177:15,18 197:15,17 sir 5:25 6:8,24 7:5,11,15,20 8:15,17,23 9:11,18,22 12:15,18,20,22 13:5,9,12 14:2 15:2
---	---	--	--

Nespresso USA, Inc. Ex. 1066

[sir - sorry]

Page 48

14:6,16,25	112:3 116:25	183:22,24	107:17 108:19
17:9,16 18:15	117:13,16,19	184:1,4 185:22	108:23 114:9
18:17,25 19:12	117:22,25	186:11,20	114:12 115:17
20:21,25 21:14	118:6 119:1,21	187:9,20	116:15 117:6,7
21:17,20,23	120:9 122:2	189:13,15	118:3,16,18
22:1,13,16,20	123:14 126:6	191:14,18	128:14 147:15
23:11 24:15,18	126:14,22	193:24 196:17	153:1,6 161:25
26:19 27:1,4,6	127:7,19,22	196:24 197:5	167:22 168:14
27:9,16,23	128:7 129:6	197:11 198:15	169:7,15
28:19,24 29:18	130:8,13 131:5	198:18,21	183:13 184:3
30:8,11,25	131:13 132:25	199:1	skilled 127:14
31:4,6,8,20	134:13 135:12	sit 20:23 55:4	society 39:8
32:1,22 33:2	137:12 139:24	172:15	software 36:19
33:15 34:7	141:22 142:1,3	sitting 22:18	39:2,12 40:22
36:8,21,24	145:1,9 149:13	65:13 76:2,11	40:25 41:7
37:12,16 39:24	149:24 150:2,7	95:19,25 96:21	solely 47:14
41:18 44:15	150:10,19,22	118:1 133:19	solofill 11:24
46:23 47:5	153:20 156:4	133:24 140:25	12:6,7,10,14
48:5 49:14	157:10,17,24	180:2,5,8	13:22,25 14:4
50:12 51:21	158:7,12	184:5 185:6,9	solofill's 14:4
52:19 53:8	159:14 161:9	188:6	solution 41:1
72:5,10 76:7	162:7,11,15,19	six 6:3 16:3,16	solutions
78:18 80:18	163:13,21	16:19	202:23
81:6,16,20	165:24 168:2	skill 61:20 62:1	somewhat
82:1,19 83:7	169:18 170:3,6	62:3 65:4,7,11	45:19 164:4
83:16,23 84:25	170:11 171:4,7	66:5,15,19	sorry 9:7 10:11
85:18 86:21	171:14,17	73:1,3,7,11	10:22 11:10
90:1 93:22,25	172:9,11,23,25	75:19,22 80:11	21:5,6 25:15
94:4 95:22	173:8 174:4,7	84:9,17 87:3,6	46:13 70:8,21
98:12,22	174:10 175:2	88:1,9,19 91:4	76:17,22 79:21
100:12,14	175:21 176:7	91:5,6,23	85:10 87:10
102:18,23	177:21 178:6	92:22 93:11	92:11 113:1
103:20 104:1	178:13 179:3	94:18,22,25	115:18 118:12
107:25 110:24	181:1 182:24	96:20 97:10	120:16 140:17
111:2,7,19	183:4,12,15,19	99:1 106:6	154:10,11

Nespresso USA, Inc. Ex. 1066

[sorry - statements]

Page 49

156:9 160:17 163:4,8,9 177:3,7 179:14 190:12 194:22 sounds 108:4 176:7 south 3:10,11 speak 40:8 83:13 110:22 110:25 136:20 136:23 157:5,8 185:19,23 speaking 55:17 96:15 113:2,17 159:15 164:14 164:18,21 special 39:5 specialty 51:7 54:5 specific 36:9 49:1,5 66:24 85:23 88:24 98:19 139:11 147:25 148:11 149:2,5 158:17 158:19,19 194:14 specifically 17:6 44:8 46:2 55:7 57:1 65:9 73:23 80:8 122:25 145:3 145:22 161:6 167:20 175:9 175:17 181:23	186:4,13,14 198:23 specification 68:21,25 87:7 87:12 89:13 92:4,17 94:23 95:16 96:11 97:6 100:22,23 101:15 102:6,7 102:24 103:9 104:5,7,14 105:8,9 106:2 106:2,17 107:5 107:6,9 108:5 108:20,21,24 109:8,9 110:5 110:14 112:6 112:16,17,18 112:22 115:9 118:20 127:15 132:12 133:2 134:1 specifications 101:10 102:19 185:3 speed 160:7,12 162:11,12 speeds 160:6 164:5 spend 26:20 spent 27:2,7,17 27:24 28:2 50:4,16 56:17 117:10 126:21 183:17	spike 151:3,18 151:23 152:16 152:20 153:9 156:16 166:22 186:8,17,23,24 187:4 spills 143:2 spin 42:13 spoken 7:21 8:16,21 sponsored 21:15,18,21 spray 19:5 44:19 46:15 47:6 sram 19:12 20:6 stand 33:16 standard 56:18 56:20,23 80:20 128:3 129:14 129:16,21 130:6,9 standards 51:7 52:11 54:5 130:14 standpoint 63:18 start 16:18 37:21 111:10 183:1 started 25:12 37:19 188:1 starting 17:2 38:9 40:19	41:15 68:1 89:15 90:11 102:7 127:1 196:2 starts 198:21 state 5:17 34:4 36:4 37:9,23 40:12 41:13 43:13 61:16 119:22 132:4 147:23 158:19 162:7 166:25 167:21 184:16 187:13,15 188:5,7,9,12,14 188:23 stated 68:5 70:8 101:6,10 101:15 116:23 118:8 121:15 138:18 139:5 162:8 163:9 168:11 174:16 187:1 188:15 199:18 statement 39:24 57:8 58:2 115:8 125:18 127:8,9 127:20,24 128:18,25 169:15 181:7 187:7 statements 81:22,24
---	---	---	---

PR-2023-00502
Nespresso USA, Inc. Ex. 1066

[states - sure]

Page 50

states 1:1 2:1 43:14 89:20 103:21 123:21 126:1 143:4 148:10 162:3 196:3 stationary 159:9,11 stay 49:23 169:20 staying 158:14 158:17 step 175:9,13 175:20,22 steps 175:3,6 175:18 stop 96:15 165:21 stored 121:24 stores 19:8 straightforward 154:15 strain 35:8 street 3:10,16 strength 51:12 52:7 54:11 57:4,17 58:24 strike 9:12 13:18 20:21,24 23:12 27:13 35:18 50:3 51:14 56:8 57:22 60:8 66:10 67:7 80:12 82:20	84:1 94:1 101:25 129:15 135:18 138:14 145:19 163:15 167:7 172:2,13 175:4 strips 71:5 structural 39:1 structure 163:15,18,19 163:23 164:10 165:21,25 167:14 structures 167:9 student 38:2 students 192:6 192:9 studies 43:24 43:24 44:5 subject 31:21 70:20 71:12 127:5 194:15 195:13 submitted 21:4 22:3 181:2 submitting 25:20 32:20,24 subscribed 204:14 subset 99:25 substance 40:9 110:23 111:1 125:13 136:21 136:24 157:6,9	185:20,24 substantially 158:11 substituted 133:7 substitution 149:6 successfully 164:7 sufficient 24:10 24:23 53:16 56:11 sufficiently 182:17 suggest 113:7 suggestive 113:8 suggests 113:14 suitability 55:11 56:9 59:7 124:16 125:11 suitable 55:13 57:14,23 58:3 58:8,14,18 59:1,9 120:12 120:22 121:4 121:22 122:5,8 122:13 123:19 124:5,9,23 125:1,8,16 177:18 197:18 suite 3:10 summary 69:6 197:8	supervision 201:8,24 supplements 32:25 33:12 supplies 123:11 supply 10:23 177:15 182:6 197:14 supplying 123:15 support 10:5 23:2,18 24:2 24:10,24 25:2 25:7 39:13 125:25 130:2 149:15,17 supported 38:3 supporting 65:16 supportive 34:11,12 supports 63:22 suppose 16:10 116:19 suppress 35:14 suppression 18:8 19:4 20:9 sure 23:25 49:24 53:1 55:3 62:20 63:8 85:22 89:12 102:25 103:22 104:16 104:25 105:12 106:7,24 107:9
---	---	---	--

Nespresso USA, Inc. Ex. 1066

107:18 108:11 110:7 121:5,7 126:18 127:13 134:6 138:15 144:21 145:14 160:22 172:9 172:22 181:6 185:15 surface 69:8 103:16 104:15 161:24 surprise 112:13 swap 168:14 169:16 sworn 5:7 201:5 204:14 symbolized 147:5 symmetric 84:12 symmetrical 83:21,25 84:3 symmetry 84:11 system 1:8 2:8 36:19 45:1,4 51:17 54:15,22 60:4 90:12 91:14 95:7,11 123:18 124:4 135:20 141:24 141:24 157:22 161:19 162:9 162:14,15 163:2 164:7	165:14 174:13 174:17 183:2,6 183:14,17 184:6,11,18,23 185:7 202:4 203:1 204:1 systems 16:23 17:15 26:10 34:17,18,20,25 35:2,2,4,4,10 35:20 36:1,3 37:2 39:18,20 39:22 40:1 41:17,21 42:23 43:7,10 44:6,8 44:10,14,20 45:17,19 47:25 48:7,11 49:7 50:2,5 59:12 59:25 60:21 117:11 135:8 t t 4:6 201:1,1 203:3,3 t's 71:9 ta 10:11 11:23 11:25 16:15 tab 70:21 table 177:3,6 178:23 181:11 take 40:3 45:21 72:6 83:3 110:18 113:18 114:3 120:3 136:16 148:1	152:2 157:1 162:22 185:5 188:25 198:22 taken 5:23 40:4 54:14 81:11 110:19 136:17 157:2 185:16 189:2 201:3 talented 129:23 talk 6:6 74:16 talked 8:13 22:17 57:3,4 125:10 talking 32:4 48:11 59:17 60:5 66:24,25 88:14 89:3 111:25 117:2 134:25 151:7,8 153:15 165:13 169:25 177:7 187:23 talks 163:14 tamping 46:6,8 46:22 47:2 targeted 196:11 taste 58:4,9,14 59:3 taught 105:8 105:25 teaches 168:17 169:7,15 teaching 192:1	team 25:22 technical 63:18 193:18,21 194:9,11,15 196:20,25 techniques 35:5,14 technologies 18:5,11,13,24 19:1 34:23 technology 17:18,20 42:22 52:7 187:12,16 187:21 188:2,5 196:11 teeth 68:14 tell 15:11 18:18 25:10 45:9 46:18 48:15 54:13 65:13 76:11 91:24 96:21 98:15,25 116:6 118:2 120:2 134:14 139:15,24 140:4 148:9 162:22 172:17 175:20 184:5 184:10 189:17 190:9,22 195:21 198:5 199:4 201:5 telling 76:8 tellingly 121:20 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
--	---	--	--

[temperature - timeframe]

Page 52

temperature 53:24 54:23 55:21 148:20 term 62:11,17 63:5,14 64:24 65:20 66:5 68:7,12,15,16 68:24 71:16,19 74:12 78:13 83:24 84:2 85:1 86:22 88:9,18 90:24 91:7 92:22 93:11 94:8,17 94:20 95:21,23 96:22 97:9 100:15,17 101:4,18,21 104:2 105:3 106:5 108:20 110:4 111:13 111:18,21 112:13,15,21 112:23 114:11 115:8,11,22,24 116:3,23 117:8 118:3 119:12 127:25 144:19 170:19 172:10 terms 59:17 65:12 86:24 95:15 96:9 98:17 99:2 111:11,16 117:1,4	test 51:11 52:14 53:15 54:7 142:19 testified 5:8 44:12 60:15,21 60:24 61:1 97:16 154:12 testify 6:23,25 60:23 testimony 4:2 40:9 47:19 52:23 72:21 78:16 81:4 87:17,23 96:3 98:7 108:9,16 109:5,6,11,15 110:23 115:11 136:7,21 154:19 157:6 185:20 201:2,6 201:10 202:9 202:18 204:8 testing 51:3,14 51:15,16,19,22 52:16,20 53:17 56:17 testings 52:5 53:23 tests 51:4,9 54:3,7 56:24 text 186:14 th 152:18 thank 8:20 23:10 30:11 38:15 40:7	41:15 63:2 72:3 77:2 84:24 86:17 109:22 110:16 112:4 129:7 133:11,18 135:5 136:15 136:19 149:13 149:14 152:23 160:24 169:19 thanks 81:10 thereof 201:13 thermistors 35:9 thermocouples 35:9 thing 78:17 81:10 99:18 things 49:2 88:23 116:13 137:5 think 13:5 18:10 19:2 21:3 26:6 28:1 32:14 35:6 37:16 42:16 46:6 49:9 53:4 55:22 56:25 58:3,13,15 65:11 74:10 75:10 78:13 113:16,21 116:3 118:7 122:9,22 124:24,25	125:18 131:17 138:10 139:8 139:15 143:9 145:1 158:12 158:23,25 159:1 164:3 165:17 169:9,9 170:20 174:21 182:16 187:23 third 127:1 175:18,20,22 thought 28:8 29:6 140:17 three 46:19 67:13 82:13 102:9 131:7 time 15:8,14,15 16:20,24 17:2 28:2 38:1,3,7 53:5,24 56:17 61:5,8 70:17 70:17 81:8 84:10 97:5 101:1 103:11 117:3 127:4 128:25 129:12 135:8,17,20 139:25 140:8 142:17 152:12 167:10 185:13 192:13,14,19 196:15 201:3 202:19 timeframe 202:8
--	--	--	--

2023-00502
Nespresso USA, Inc. Ex. 1066

[times - turning]

Page 53

times 6:1,3 7:10 27:10 33:9 108:22 119:18 title 43:20 titled 43:14 141:7 titration 51:4 51:11 54:7 today 5:13 6:2 6:7,23 7:1 10:1 20:23 22:18,23 22:24 23:15,16 76:2,11 83:8 94:7 95:25 96:14 124:25 127:24 128:3 133:19,24 140:25 180:3,5 180:8 184:5 185:6,9 189:12 191:17 193:21 196:16,20 today's 7:3,25 117:23 together 133:25 134:1 164:18 tomography 43:17 44:3 tones 71:3 took 52:16 tools 18:6 19:3 19:24	tooth 167:25 168:4,25 169:16 toothed 68:7 70:5 71:24 top 18:4,10 28:5 31:20 47:10 55:5 59:15,21 100:7 105:22 110:1 114:21 120:2 124:15 131:16 141:1 153:15 171:10 173:17 177:6 178:2 197:21 toronto 42:19 total 126:21 toward 9:6 39:20 59:7 196:11 towards 178:11 198:2 tracking 36:19 trade 11:13 trademark 1:1 2:1 transcribed 201:8 transcript 8:8 33:6 117:18 201:21 202:6 202:20 204:5,8 transcription 201:9	transcripts 8:5 transducers 35:7,7 transfer 34:21 59:5 transferred 37:23 translation 130:24 tree 19:7 trial 1:3 2:3 16:10,11,17 113:4,15,18 164:16,19 165:3 triangle 34:10 66:23 67:4,6 67:10 73:15,18 73:24 74:4,6 77:9,14,25 78:1,2,8,11 151:6 152:6,21 153:1,14,15,17 156:6,14,19,21 156:22 triangular 156:16 trick 92:20 tried 42:22 61:5 trimethylxant... 51:3,12 true 33:15 126:13 201:10 204:8	truth 201:5,5,6 truthfully 6:23 7:1 try 6:11 23:10 154:11 trying 16:20,24 30:12 45:19 47:25 58:17 74:13 92:20 106:16 108:7 121:18 122:3 124:10 134:5 137:24 138:23 139:25 143:19 143:20 148:12 151:17 152:11 154:14 tryon 3:10 turbine 19:1,14 42:23 turbines 18:5,6 41:9 turbo 42:23 turn 21:24 22:5 28:17 30:7 34:2,3 126:4 145:3 150:20 162:21 163:12 189:7,14 190:1 190:8 191:7 193:9 195:20 197:3 198:16 turned 142:18 turning 146:10 191:2
--	---	--	---

Nespresso USA, Inc. Ex. 1066

[two - used]

Page 54

two 33:19 51:18 53:20 98:14,21 99:1 99:11 113:22 121:20 130:10 143:22 155:14 158:25 160:4 175:3,6,17 type 14:21 76:8 142:18 types 13:22 18:18 34:25 38:22 51:9 54:13 57:2 161:4,10 typical 11:16 typically 16:3 17:22 194:16 typo 169:2	148:19 190:11 201:8,23 undergraduate 37:19,21 understand 6:9 6:17,20,22 16:20,24 20:22 21:7 25:17 30:12 32:2 49:24 56:2 57:18 58:17 62:1,4 64:5,11 64:19 66:4 74:2 75:20,23 82:12 83:1,5,7 88:3,18 89:1 90:2,8 91:7,12 93:11 94:22,25 95:24 99:1 104:6 108:7 115:10 117:8 121:19 122:3 124:10 129:24 131:6,7,14 134:5 137:25 138:23 150:24 151:17 152:5 152:25 154:13 154:16 158:23 161:25 162:23 163:22 165:17 170:4,12 171:9 172:8,12,14 178:23 181:17 183:16	understanding 62:4 66:25 83:10,24 84:2 85:1,5,23 86:22 87:1 88:8 90:24 91:18 94:6,8 95:23 100:18 101:4,24 102:5 104:2,12 111:8 112:23 114:7 116:11 127:12 128:22 129:11 147:15 152:8 157:18 161:22 174:8 understood 6:14 25:18 61:20 84:9,16 88:1,12 91:3 91:23 114:8 117:6 163:11 167:23 169:1,6 170:25 united 1:1 2:1 43:14 126:1 196:3 units 39:13 university 5:21 37:18 38:14 43:4 190:3 191:24 192:2 194:7 195:14 195:16	unlocking 175:10 176:13 unstable 35:15 unvalidated 175:11 176:14 updated 4:23 195:4 upper 146:20 151:7 178:10 197:25 usa 1:5 2:5 5:14 202:4 203:1 204:1 use 14:13 32:12 36:5 46:3 57:15,23 58:3 58:5,8,14,18 61:17 68:9 113:14 119:7 120:12,22 121:22 122:5,8 122:13 123:19 124:5,9,17,23 125:1,8,11,17 127:25 128:21 135:13 136:8 136:12 161:4 161:11 162:5 166:14,14 177:19 197:18 used 15:5 25:16 31:11,16 35:8 35:12 36:11,15 42:19 44:2 52:11 64:16 52:11 64:16
u			
u.s. 1:6 2:6 62:25 122:17 122:18 130:25 137:6 141:5 142:7 uh 19:16 29:11 160:3 190:15 ultimately 25:20 unable 76:2,7 96:6 97:9 unclear 139:2 under 6:22 22:8 38:3 86:4 126:12 129:1			

Nespresso USA, Inc. Ex. 1066

[used - way]

Page 55

62:3 68:8,24 69:1 70:12 71:19 90:18 97:14 98:17 104:7 112:14 112:21 114:2 115:1,9 117:8 124:18 132:11 136:3 144:10 144:12 158:1 158:11 161:18 161:22 164:7 165:14,15,18 165:20,23 166:1 167:2,5 167:10,15,24 168:4,20 169:3 169:8,11 172:10 202:20 uses 71:16 161:23 174:18 using 35:4,10 43:17 51:3 54:12,19 57:25 58:5,10 60:3 60:10 121:11 129:15,17,21 158:20 162:17 174:14 uspto 32:11 utilize 59:25 65:23 utilized 60:22 161:16	v v 1:7 2:7 10:17 10:21,22,23 12:6,8,10 13:5 13:10 114:24 202:4 203:1 204:1 vague 109:14 112:25 113:5 113:11 valid 181:14 validated 175:25 176:4 validation 175:4,8,11,13 175:13,14,15 175:25 176:1,4 176:15 vantage 3:11 vaporization 158:21 various 8:1 15:7 18:5,8 19:22 25:13 34:12,21 35:4 35:15 36:13,14 39:1 41:8 42:12,22 43:23 44:2,19 45:8 52:8 54:24 133:7 149:6 158:15 190:23 194:15 vary 57:24 58:9 66:21,22	verify 151:1 202:9 veritext 202:14 202:23 veritext.com 202:15 versus 80:21 144:24 vertically 169:25 vi 114:19 vice 34:5 vicinity 166:20 video 7:14 view 71:9 99:25 163:2,5 viewing 147:16 visiting 196:3 vitae 4:23 193:18 volume 123:5 vu 12:10 w w 68:6 walk 9:20 11:22 37:14 100:23 walkers 34:12 wall 178:10,11 198:1,2 wang 3:9 want 25:9 77:24 83:11 85:22 92:21 93:10,17,18	97:4 102:25 104:6 113:3 124:19 164:17 167:20 wanted 49:23 162:4 warfare 39:5 washington 3:17 water 52:13 60:1,22 103:3 103:22,22 104:16,17,21 104:25,25 105:12,13 106:8,8,21,22 107:9,10,19,19 108:12,12 110:8,8 123:11 123:15 152:14 152:15 158:8 158:15 159:3,9 159:11,15 161:14 162:4 171:11 172:8 172:11,12,14 172:24 173:12 177:15 182:6 186:6,6,15,15 186:22 187:2,2 197:14 way 26:24 54:11,17 133:9 142:25 162:9 IPR2023-00502 Nespresso USA, Inc. Ex. 1066
---	---	--	--

[ways - wo]

Page 56

ways 158:15	33:16 35:23	107:2,3,25	153:4,5 154:1
we've 45:23	41:4,10,22	108:18,19	154:2,5,6,20,21
49:9 81:7	42:7 45:3	109:6,16,17,22	155:9,22,23
86:24 106:3	47:20 48:21	109:23,24	156:13,21
108:21,22	50:12 52:24	111:22,23	157:23,24
110:17 117:2	53:4 56:13,20	112:5,7 113:21	159:18,22
135:25 137:21	58:2,12 60:12	114:1,14,17	160:11,20,24
185:12	60:19 62:15,24	115:16 116:2	160:25 161:1
weakening	63:2,3,4,18	116:18 118:6	161:13,21
69:19	64:18 65:3	120:13,15,16	162:24,25
website 134:21	67:16 72:16,22	121:5,9,10,15	163:24,25
wednesday	73:10 74:10	122:15,21,22	164:20 165:6,9
1:15 2:13 5:3	75:10 76:7,17	123:21 124:14	166:4,5,8,9,17
went 7:9 45:11	76:22 77:2,4,5	124:15 125:9	166:18 167:3,4
46:16 48:8,15	77:12,13,23,24	125:10 128:6,7	167:12,13
48:16 106:2	78:11,23 79:16	128:19,20	168:6,7,24
124:24 194:5	79:21,25 80:18	129:6,8,11,18	170:15 173:16
whalepower	80:24 81:5	129:21 130:13	173:17,25
42:17 43:1,2,6	84:7,8 85:19	130:19 131:2	176:7 178:18
43:9 196:5,7	85:22 86:8,9	132:2,3 133:16	179:14,18
widened 70:3	87:10,13,14,22	134:13,18	180:14,17,18
wind 18:5,6	87:23 88:12,21	135:23,24	181:6,8,9
19:1,14 41:9	89:8 90:6,7,15	137:14,18	183:8,9 184:15
42:23 196:12	90:16 91:11,12	138:17 139:21	184:16 188:22
wings 42:24	92:3,4,10,11,25	140:1,2,12,13	192:9,25 193:6
196:12	93:5,16 94:12	140:22 141:17	193:24 194:4
wipo 173:22	95:3,5,6 96:25	142:16 143:14	194:14 195:3
withstand	97:24 98:12	144:18 145:13	195:25 196:10
54:22,22 55:21	99:22,23 101:8	145:15,16	196:24 197:11
withstood	101:13,14	146:1,3,4	198:10 199:1,8
52:15	102:4,5,21	147:25 148:3,4	199:15 200:1
witness 9:9	103:1,2,5,6	148:6 149:1,2	201:11 202:8
10:7,8 11:10	104:11,12	149:4,5 151:22	202:10,12,19
11:12 18:14	105:5,19	151:23 152:7,9	wo 141:7
24:6,15,18,23	106:14,15	152:10,18,19	IPR2023-00502

Nespresso USA, Inc. Ex. 1066

[word - zoological]

Page 57

word 64:8 65:14 66:2 67:1,6,8,10,24 72:17 75:17 76:12 77:17 78:6 83:3 87:11,18 92:17 94:25 108:10 114:3 119:25 120:4 130:19 130:19 145:7 words 85:17 91:24 92:23,25 93:12 94:8,24 96:7,22 116:15 118:2,7,14,18 118:19 119:6 119:12,13 127:14 145:16 145:22 150:14 169:11 work 5:20,21 14:14,16 15:16 17:8,10,19 18:6,9 21:10 21:15,18,21 32:12 34:16,17 34:19 35:17,19 35:20 36:2,9 37:14 38:5,16 38:18,22 39:21 39:25 40:18 41:10,16,16,19 41:23 42:4,7 42:11 43:5,6,7	43:9,10 44:13 45:12 47:20,22 51:2,6 135:24 191:24 194:6 worked 9:9 11:1 15:13 25:22 29:7 35:18 39:9,16 43:1,2 45:10 47:24 working 41:2 works 19:13 33:17 write 127:1 175:9,12 writing 25:16 41:6 written 25:6,7 49:13 76:4 126:16 130:1 130:14 186:11 wrong 190:12 wrote 26:2 36:19,25 127:21 135:7 168:24 169:4 177:21 186:25 www.bialetti.... 134:21	193:2 year 9:6,7 16:3 16:4 195:5 years 15:23 45:23 61:8 yesterday 7:9 7:10 8:7 yesterday's 7:12 yoakim 120:11 120:20,25 121:2,21,25 122:4,12,15,19 123:17 124:4 124:11,16 141:6,7,10,14 141:21,23 143:4,5,10,17 143:17,25,25 157:12,16,19 157:21 158:1 158:18,19,19 159:2 160:16 161:4,11,23 162:3,22 163:12 164:11 166:25 167:7,8 176:23 177:13 177:23 178:8 178:16,25 179:10,24 180:7 181:3,24 182:4 183:5,13 183:13,25 184:6,11,17,22	185:2,7 197:12 198:7 199:15 yoakim's 122:25 york 3:5,5
			z
			zones 70:3 zoological 39:8

IPR2023-00502

Nespresso USA, Inc. Ex. 1066

North Carolina General Statutes
Article V. Depositions and Discovery
Rule 30

(e) Submission to deponent; changes; signing.
The sound-and-visual recording, or the transcript of it, if any, the transcript of the sound recording, or the transcript of a deposition taken by stenographic means, shall be submitted to the deponent for examination and shall be reviewed by the deponent, unless such examination and review are waived by the deponent and by the parties. If there are changes in form or substance, the deponent shall sign a statement reciting such changes and the reasons given by the deponent for making them. The person administering the oath shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent. The certificate shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign. If the certificate is not signed by the deponent within 30 days of its submission to him, the person before whom the

deposition was taken shall sign the certificate and state on the certificate the fact of the waiver or of the illness or absence of the deponent or the fact of the refusal or failure to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though the certificate were signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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IPR2023-00502

Nespresso USA, Inc. Ex. 1066

Page 264 of 265

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