

In the Matter of:

Omega Liner Company, Inc. Buergofol GmbH

Patrick Brant

August 07, 2024

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMEGA LINER COMPANY, INC.,

Petitioner,

V.

BUERGOFOL GmbH,

Patent Owner.

IPR2023-01372

Patent 9,657,882 B2

EXPERT DEPOSITION OF
DR. PATRICK BRANT

Wednesday, August 7, 2024

8:41 AM EASTERN TIME

Stenographically Reported by:

Denise Dobner Vickery, RMR, CRR

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wednesday, August 7, 2024

8:41 AM EASTERN TIME

Deposition of DR. PATRICK BRANT, held at
the offices of:

PILLSBURY WINTHROP SHAW PITTMAN LLP
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McLean, VA 22102

Pursuant to notice, before Denise Dobner
Vickery, Certified Realtime Reporter, Registered
Merit Reporter, and Notary Public in and for the
Commonwealth of Virginia.

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(Exhibits attached to transcript.)

P R O C E E D I N G S

- - -

DR. PATRICK BRANT

called for examination, and, after having been duly sworn, was examined and testified as follows:

- - -

CROSS-EXAMINATION

- - -

BY MR. BOND:

Q. Good morning, sir. Could you please state your name for the record?

A. Patrick Brant, B-r-a-n-t.

Q. Where do you live, sir?

A. Houston, Texas.

Q. And what do you do?

A. A variety of things. I'm retired from Exxon. I consult. I have some research activities at the University of Houston. I also am working on a project to secure funding for how to plug oil wells.

Q. What does your consulting business consist of?

1 A. It's pretty miscellaneous. whoever
2 contacts me and wants me to consult.

3 Q. Consult about what?

4 A. Polymers.

5 Q. Anything --

6 A. Catalysts.

7 Q. Anything having to do with polymers?

8 A. Polyolefins largely because I worked at
9 Exxon.

10 Q. How long did you work at Exxon?

11 A. 37 years all told.

12 Q. What did you do at Exxon?

13 A. I joined in 1981. Conducted research
14 for all sorts of catalysts, constructions for making
15 polymers from the catalysts. I worked on solving
16 problems for the company. Ended up working on
17 metalsine polymers. This is a new kind of polymer
18 that kind of revolutionized the industry.

19 Q. And when did you -- excuse me.

20 when did you stop working for Exxon?

21 A. 2018.

22 Q. And you've been consulting since then?

1 A. Off and on. Sure.

2 Q. Have you consulted on lawsuits before?

3 A. Within Exxon, I was involved in
4 lawsuits.

5 Q. How about since then?

6 A. No.

7 Q. Ever been deposed before?

8 A. Yes.

9 Q. In what context?

10 A. As an Exxon expert witness.

11 Q. Have you been deposed as an individual
12 fact witness?

13 A. No.

14 Q. Have you been deposed as an expert
15 since your time at Exxon?

16 A. No.

17 Q. Do you have a copy of your declaration
18 you submitted in this case, or do you need a copy?

19 A. I will need one.

20 Q. Okay. I'm going to hand you what is
21 marked as Buergofol Exhibit 2001 and ask if you can
22 recognize that.

1 A. okay.

2 MR. BOND: Copies here for you,
3 counsel.

4 THE WITNESS: (Reviews document.)
5 Yeah, uh-huh.

6 BY MR. BOND:

7 Q. Do you recognize that, sir?

8 A. Uh-huh. Yes.

9 Q. Is that your signature on the last
10 page?

11 A. Yes.

12 Q. And this is the declaration you filed
13 on behalf of Buergofol in the IPR proceeding that's
14 titled on that front page; correct?

15 A. Correct.

16 Q. So you've been deposed before as an
17 expert.

18 So you understand the mechanics of a
19 deposition; correct, sir?

20 A. More or less. My last deposition was,
21 gee, 20 years ago.

22 Q. Oh, that's a long time.

1 A. Yeah.

2 Q. So let's go through a couple of the
3 procedures then.

4 So part of this process is that we're
5 going to ask you questions really to cross-examine
6 you on your declaration.

7 You understand that today?

8 A. Right. Uh-huh.

9 Q. And I'm going to be asking you
10 questions, and you answer my questions, I'm going to
11 assume you understand it. If at any time you don't
12 understand my question, will you let me know and
13 tell me, I don't understand it --

14 A. Uh-huh. Sure.

15 Q. -- and, therefore, ask me to clarify or
16 re-ask it? I'll be happy to do so.

17 A. Yeah.

18 Q. Good.

19 So let's start with your report
20 or -- excuse me -- your expert report. The last
21 page. Would you look at the signature page with me,
22 sir?

1 It's in different font and a different
2 style than the rest of the declaration?

3 Do you see that?

4 A. My signature page?

5 Q. Yes. Page 52.

6 A. Hmm. No, I don't. Where?

7 Q. You see page 52?

8 A. I'm on 52, yes.

9 Q. Do you look at the font there and the
10 style of it?

11 A. I see my signature. This looks like
12 Times Roman 12 point or something.

13 Q. Right, but you'll see that it's a
14 little bit heavier type and a little bit different
15 from the font on the previous pages.

16 Do you see that?

17 A. I wouldn't have noticed it at all, but
18 it seems a little darker.

19 Q. Okay. My question is: Did you write
20 the report, sir?

21 A. Yes.

22 Q. All of it?

1 A. All of it.

2 Q. Yes?

3 A. Uh-huh. Yes.

4 Q. Did anybody else write any sections for
5 you?

6 A. I worked with law to review the report,
7 and then I signed it.

8 Q. Well, I didn't ask you if you reviewed
9 it. I asked you if you drafted every single part of
10 it or not.

11 A. I drafted this report and put my name
12 to it.

13 Q. So every single thing in here you wrote
14 yourself?

15 A. Every single thing was not written by
16 myself in every single detail. So we went through
17 maybe word changes and this sort of thing, and then
18 I signed it. I read it, I approved it, and I signed
19 it.

20 Q. So you didn't write every single word.
21 You wrote half of it? Third of it? Two-thirds of
22 it?

1 A. I couldn't -- I couldn't tell you a
2 fraction or a percentage. But what is there, I
3 wrote, I read, I signed.

4 Q. And who are the attorneys that helped
5 you write it?

6 A. Basically, I reviewed this with Patrick
7 Doody.

8 Q. Okay. Do you know if Mr. Doody helped
9 you -- helped write the report or other attorneys
10 wrote it?

11 A. The only person I ever talked to on the
12 declaration was just Patrick Doody.

13 Q. Nobody else?

14 A. No.

15 Q. You never spoke with any of the people
16 who also filed declarations, like Dr. Boutrid, in
17 preparing your declaration?

18 A. No. In fact, with Dr. Boutrid, I've
19 never met him. I've never talked to him. Nobody at
20 Buergofol I never talked to. I've seen their
21 declarations, which I refer to in my declaration.
22 That's all.

1 Q. Have you ever done any work for
2 Buergofol before --

3 A. No.

4 Q. -- being hired as a consultant?

5 A. No.

6 Q. Have you ever worked with any of their
7 attorneys before being hired as a consultant on this
8 case?

9 A. No.

10 Q. Dr. Brant, I'm going to hand you what's
11 been identified as Buergofol Exhibit 2010 and ask if
12 you can recognize this.

13 A. This spec sheet for Durethan. I
14 wouldn't say with 100 percent confidence that I
15 recognize it, but I remember this Durethan CI 31F
16 sounds quite familiar. I think if I looked in here,
17 I'd find it, yes.

18 Q. Is this -- this is one of the exhibits
19 attached to your declaration; correct?

20 A. Uh-huh. I think so.

21 Q. And this is one of the pieces of
22 information you relied on in preparing your

1 declaration; correct?

2 A. I think so.

3 I wouldn't mind looking to make sure
4 this is the same as what's in there.

5 Q. If you need to confirm that by looking
6 at your declaration --

7 A. Yeah.

8 Q. -- please feel free to do so.

9 MR. WALLACE: Do you have a copy
10 for us?

11 MR. BOND: Actually, I have.

12 THE WITNESS: I'm not sure that I
13 have or we have the full spec sheet in the
14 declaration, but maybe I do.

15 Do you happen to recall what page
16 it's on or? See, I have the tables with the
17 Durethan C 38F and 31F --

18 BY MR. BOND:

19 Q. Right.

20 A. -- and these sorts of things. I'm not
21 sure this is in here.

22 Q. I think that if you look on page 27

1 paragraph 40.

2 A. 27? Okay.

3 27. No. I see referring to it --

4 Q. Right.

5 A. -- but not this sheet. (Indicates).

6 Q. That's not the exhibit attached to your
7 declaration?

8 A. The sheet isn't in the declaration that
9 I find. We -- we've reviewed the sheet but -- and
10 we refer to this material, as I recall, but I don't
11 recall the sheet being part of the, you know, formal
12 declaration. So.

13 Q. Well, is this not something that you
14 relied on in your declaration, sir?

15 A. It is. If I look here, it's the C 31F.
16 I did look at those spec sheets. I know what the
17 definition is here. For instance, I think F is
18 referring to it being additive-free but --

19 Q. Well, I'm just confused.

20 A. -- I think our point of discussion here
21 is whether this is in my declaration. This spec
22 sheet.

1 Q. No. I'm asking if it's an exhibit you
2 relied on in preparing your declaration.

3 A. Oh, sorry. Okay. Yes, I did rely on
4 it. Yes.

5 Q. Okay. Is this -- I'm not asking if
6 it's actually reproduced in your declaration.

7 A. Oh.

8 Q. Just it's something you looked at and
9 relied on.

10 A. Okay.

11 Q. Is this something a person of ordinary
12 skill in the art would look to and rely on with
13 regard to determining information about the Durethan
14 C31 product?

15 A. If you are using it, everybody wants to
16 look at the spec sheet to -- to know what the
17 properties are before it's put into use, but you
18 wouldn't necessarily rely only on that.

19 You might also talk to the sales
20 representative and refer over what other possible
21 options there might be in terms of grades and so
22 forth, and so -- so this is one piece of information

1 you would rely on.

2 Q. And this was taken off the MatWeb; is
3 that correct?

4 A. I was provided this. So I think -- and
5 I did go look at it electronically, but -- but the
6 actual provision of a copy, I think, was -- was not
7 a copy that I produced. I just looked at it on the
8 web.

9 Q. Was that on the website called MatWeb?

10 A. You know, I don't think it was MatWeb.
11 I think it was perhaps this company's site. I don't
12 remember. Envalior. But regardless I did look at
13 this sheet.

14 Q. Well, I'm trying to find out where it
15 came from so I can identify the source and whether
16 or not it's reliable.

17 Did you not do that?

18 A. Where I looked for it, I found it and I
19 did look at it, but I don't recall using
20 mat -- MatWeb is a very reliable source for looking
21 at these things, but I -- when I looked at it, I
22 don't recall that I actually used MatWeb to look at

1 it. I might have gotten to it through the actual
2 company that provides this resin.

3 Q. well, we didn't know where it came
4 from. So we looked it up on Matweb, and this is
5 what popped up.

6 So if you don't know where it came
7 from, how do you know it's reliable?

8 A. well, the source that I looked at, I
9 felt quite confident it was reliable. Not only
10 that, I looked at, you know, comparing this grade
11 number to what's in -- in my declaration and what's
12 also in the various patent applications in that.

13 Q. Let's approach it this way.

14 If it came off of Matweb, would you
15 consider it reliable?

16 A. I think most everybody does. That's
17 why people go to Matweb. On the other hand, Matweb
18 is not infallible. I have personally dealt with
19 cases where material that was posted on the web
20 is -- you can find errors in it. So.

21 Q. So this could be -- have errors in it?

22 A. I suppose it could, but as I said, 99.9

1 percent you find that these are quite useful.

2 Q. well, useful or accurate? That's two
3 different things, sir.

4 A. Again, if you're looking for accuracy,
5 that's, again, in my business I'm talking to the
6 person who's supplying the resin. And then if I'm
7 actually going to use that resin, I'm going to go
8 over this spec sheet with them, and I'm going to
9 make sure that what -- what's being provided is
10 indeed what's reflected on the spec sheet. So.

11 Q. well, sir, I'm trying to determine
12 whether or not what you have relied on in your
13 report can be relied on by anybody else.

14 And from what I'm hearing from you is:
15 I don't know the source. I don't know if it's
16 reliable. Therefore, nobody else --

17 A. No, that's not it. That's not what I'm
18 saying.

19 Q. Nobody else even considered that.

20 A. That's not what I'm saying.

21 MR. DOODY: Hold on. Objection.
22 Mischaracterizes testimony.

1 THE WITNESS: I didn't say that.

2 BY MR. BOND:

3 Q. Okay. So you don't know the source,
4 but if it's from MatWeb, you believe it to be
5 reliable and can be relied on by you, a person of
6 skill in the art and, more importantly, the PTO; is
7 that correct?

8 A. I'd put it this way. When you get it
9 from MatWeb, you take it as more likely reliable,
10 but it's sort of a trust and verify type of
11 situation.

12 Q. Okay. What --

13 A. So in my experience, if I get a sheet
14 like this, a spec sheet, and I'm actually working on
15 a product, I'll be talking to the supplier of that
16 product and I'll make sure that the spec sheet does,
17 in fact, accurately reflect what we're talking about
18 purchasing.

19 Q. What did you do to verify the
20 information contained in this document?

21 A. Up to this time, I don't think I've
22 checked anything particular because this relates

1 back to specifically what's in the patents.

2 Q. Well, how can anybody rely on it if you
3 say it needs to be verified?

4 A. The verification typically is conducted
5 by the person who's actually buying the resin. So,
6 in other words, if there's -- there could be a typo
7 on the sheet or something.

8 So somebody is getting the resin or
9 they're -- they're going to plan on buying the
10 resin. So if you have the spec sheet and you're
11 thinking of ordering resin -- again, I've said this
12 already three times -- you're going to talk to the
13 person supplying the resin, and you're going to
14 review this spec sheet and make sure that there
15 isn't a typo and that it is indeed because they
16 are -- you're their customer. They want you to have
17 a successful use of the resin.

18 So you're going to review all of this
19 with them, and then you're going to make sure that
20 there isn't a typo, or that there might be a better
21 grade to use than this particular grade.

22 Q. But absent doing that, you can't verify

1 or rely on what's in there?

2 A. well, I think everybody does as a
3 first -- in other words, it's a trust and verify
4 situation. So -- so people -- if you're looking for
5 information on any material, if I'm looking for
6 information on ExxonMobil resins, the first thing I
7 look at is a spec sheet.

8 Now, do I think the spec sheet is
9 absolutely infallible or doesn't have some kind of
10 typo in it? I do not, but I -- that's my first
11 source of information. And largely those spec
12 sheets have been vetted in most companies such that
13 they've been proofed and checked. And if they've
14 been on the internet for quite a while, then I think
15 you can count those as -- as useful piece of
16 information.

17 Q. But you've listed it in your report,
18 but you have done none of the verifications to
19 ensure that it's trustworthy and can be relied on by
20 others that are reading your report; is that
21 correct?

22 A. This I take as trustworthy and reliable

1 because it's already in the patents that I'm
2 reviewing that have used this material. So if this,
3 let's say, provenance or trail of truthfulness, if
4 this is what's relied on in the patents, then this
5 is what I'm relying on for my statements.

6 Q. But this isn't set forth in the
7 patents, the information contained in this spec
8 sheet; is it?

9 A. Well, what is provided is the grade
10 number. So that's what you use.

11 Q. What do you mean the grade number?

12 A. Durethan C1 or CI 31 F 000000
13 copolyamide. If this is one of the grades that was
14 used in one of the patents, and I'd actually need to
15 go back and see if it's actually the CI 31F. Is it
16 CI 31F or is it one of the other?

17 Q. So as long as it's listed in the
18 patent, you can rely on what comes off MatWeb?

19 A. Well, I start from the patent and then
20 I look at those grades and look at the spec sheets,
21 and normally that's about all you need to know for
22 doing an expert report.

1 If I had suspicions about some fallacy
2 in the resin or the spec sheet or something to do
3 with some error, then I would, you know, explore
4 that further.

5 Q. Understood.

6 So a person of skill in the art would
7 do so the same thing. They could rely on this
8 information that comes off Matweb, especially if the
9 grade or the product is listed in the patent.

10 Is that a fair assessment?

11 A. That's -- again, it's a trust and
12 verify situation. So you, you know, we live in the
13 real world. So you can't just, you know, work on
14 first principles. I got to go back and see
15 how -- how this was actually made in 1965 and then
16 work it forward and see whether there's specs huge
17 change and all that sort of thing.

18 So there's a -- there's a case where
19 you get into a working mode where you understand how
20 to conduct your research or your business, and this
21 is a reasonable way to -- to work toward making your
22 new products. So.

1 Q. But your declaration doesn't say: I'm
2 submitting this. You should trust and verify before
3 you rely on it.

4 Does it?

5 A. No, because I think these are things
6 that are embedded in the -- in the thoughts of what
7 people put forward.

8 In other words, it's a trust and
9 verify. If you really have any kind of suspicion
10 about it, then you would go check on it, again, with
11 the supplier of the resin.

12 Q. And you didn't have any suspicion of
13 this information coming off Matweb, do you?

14 A. Not particularly, no.

15 Q. Okay. I'm going to hand you what's
16 been marked as Buergofol Exhibit 2016, which are
17 some excerpts from a handbook.

18 This is also identified in your
19 declaration as support for some of your conclusions.

20 A. Yeah, uh-huh.

21 Q. Do you recognize that document?

22 A. I recognize the book. The book page.

1 Q. And you relied on this for some of the
2 conclusions -- to support some conclusions in your
3 declaration; correct?

4 A. Not only this. My own personal
5 experience working with additives and polyolefins
6 and working with building structures for films.

7 Q. Well, I understand that, Doctor. I
8 know you haven't been deposed in a long time, but
9 we're going to be here a very long time --

10 A. Great.

11 Q. -- If you don't answer the questions I
12 ask instead of interjecting stuff.

13 A. Uh-huh.

14 Q. So please I would ask you to try to
15 answer the question I asked, and then if you can't
16 answer it --

17 A. To the best of my ability.

18 Q. Then we'll -- then we'll go with that.
19 okay?

20 A. Yeah.

21 Q. Is this the type of information a
22 person of skill in the art would rely on?

1 A. As a start, yeah.

2 Q. What do you mean? I mean, either they
3 can rely on it or they can't. What do you mean "as
4 a start"?

5 A. It's like anything else. We just
6 talked about, can you rely on this spec sheet.
7 There's a lot of material in here that is -- I would
8 call it educational for one who maybe hasn't worked
9 in the field. If you've worked in the field, you
10 may have many other resources besides this, plus
11 your own experience.

12 So when you look through this, it can
13 be a useful guide and it can provide you --
14 especially if you know nothing about the field, it's
15 providing you with a lot of rich information to go
16 back and learn about the field.

17 But it's -- for me, it's just sort of a
18 starting point and nothing more than that.

19 Q. What about a person of skill in the
20 art? Can they rely on the information contained in
21 here to inform them about the matter set forth in
22 this book or not?

1 A. That's a very broad statement. The
2 whole book is -- is something that I'm not reading.

3 Q. I didn't ask about the book. I asked
4 about this exhibit.

5 A. Well, you just said the book.

6 Q. Let's go to your report at page -- at
7 paragraph 19.

8 I think that's what it is. Let me see
9 here. No, sorry. Yeah. Paragraph 19.

10 Are you there, sir?

11 A. I am, yes.

12 Q. You look at the bottom, the last
13 sentence begins with -- this paragraph begins with
14 "This knowledge of a POSITA"?

15 A. Yes.

16 Q. Do you see that last sentence carried
17 on to the next page?

18 A. Yes, I do.

19 Q. Is that a true statement?

20 A. This knowledge is reflected, yeah.
21 Just -- yes.

22 Q. It is.

1 So that's something that a -- this
2 information in this book -- this excerpt from this
3 book is something that a person of skill in the art
4 could rely on for information; is that correct?

5 A. As a -- as a starting point, as I said.

6 Q. Your declaration doesn't say "as a
7 starting point," does it? It doesn't qualify it in
8 any way, does it?

9 A. No.

10 Q. Let's talk a bit about some of the
11 examples described in your declaration, sir.

12 I'm talking about the section from
13 paragraph 12 through, I think, 25.

14 A. Paragraph 12?

15 Q. No. I'm just trying to get you -- I
16 want to discuss the section that's --

17 A. Oh.

18 Q. -- about Durethan in paragraphs 12
19 through 25.

20 A. Okay.

21 Q. I'm just drawing your attention to that
22 area.

1 A. Okay.

2 Q. I haven't asked you any questions yet.

3 A. Okay.

4 Q. At the bottom of page -- excuse
5 me -- of paragraph 13 page 8, the last sentence of
6 that sentence begins with "A small amount of
7 material."

8 Do you see that sentence?

9 A. Not yet.

10 Q. Page 8.

11 A. Paragraph 13 page 8.

12 Q. Yeah.

13 A. And the sentence is?

14 Q. It's the last sentence of that
15 paragraph that starts with "A small amount."

16 Are you there?

17 A. I see it, yes.

18 Q. So the sentence reads:

19 "A small amount of material on the
20 external surface of the inner tubular film, of which
21 there are likely a number of various distinct
22 substances, that does not perform the purpose and

1 function of improved mechanical properties and
2 improved release characteristics, would not be
3 considered by a POSITA to be a coating or covering
4 in the context of the '882 patent."

5 Do you see that sentence, sir?

6 A. A small amount of material on the
7 external of which there are likely a number of
8 distinct substances.

9 Yes.

10 Q. Is it your position that the migrating
11 compound that produces a small amount of material on
12 the external side of the inner film must perform the
13 purpose and function of improved mechanical
14 properties and improved release characteristics to
15 be a coating or covering in the context of the '882
16 patent?

17 A. Whatever is migrating as in the context
18 of the '882 patent, it's -- to me, it's a clinical
19 or operational definition. Did it solve the problem
20 or did it not solve the problem, regardless of what
21 the concentration is.

22 So if there's a concentration there

1 that does the job, then that's sufficient for
2 covering what the patent requires.

3 Q. So the amount of material on the
4 surface of the inner tubular film would have to be
5 sufficient to do the job; is that correct?

6 A. Based upon the description in the
7 patent.

8 Q. Let's look at paragraph 14, the next
9 paragraph. It says that:

10 "The term coating and the expression
11 'coating or covering' also would include a
12 significant amount of material on the external
13 surface of the inner tubular film, even if it did
14 not perform the purpose and function."

15 Do you see that, sir?

16 A. Yes.

17 Q. So according to paragraph 14, you could
18 have a significant amount of material that could
19 still be a coating or covering as set forth in the
20 patent but not perform the purpose or function; is
21 that correct?

22 A. That's true, yes.

1 Q. How do you square that with the
2 previous statement?

3 A. I just said the material has to do the
4 job that you've required it to do. If the material
5 didn't do the job that it required it to do, that's
6 why the two different paragraphs are there, 13 and
7 14.

8 Q. I'm having trouble understanding it.
9 In one paragraph, you say you would
10 have to have at least an amount that would perform
11 the functions in order to be a coating or covering.
12 In the next sentence, you say it's a coating or
13 covering even if it doesn't perform the purpose and
14 function.

15 A. Well, let's be clear. When I say
16 "coating or covering," that's defined in the patent.
17 It has to do with the coating or covering defined to
18 give the release requirements for the -- for the
19 suitable purpose.

20 Q. Correct.
21 But I asked you previously if it's
22 required in order to be a covering or coating as

1 defined in the patent that it must do the job, and
2 you said yes.

3 A. well, we're getting into semantics
4 because you can have things migrate and they can be
5 amongst a blizzard of materials that one could
6 select for that will migrate, or you could coat
7 them, but they're not doing the job and they haven't
8 been, let's say, discovered as to how to do that
9 job.

10 So there's a basketful of materials
11 like that that could potentially, but then within
12 that basketful of materials, there are certain
13 materials that are doing the job at the right
14 concentration and included at the right fabrication
15 conditions and so forth, and that's what gets you
16 the coating or covering that is described in the
17 patent.

18 Q. well, that wouldn't be -- if it is not
19 doing the job, right, would it be a coating or
20 covering in the patent?

21 A. That's a semantic description that
22 I -- as a scientist, one -- if you use the broadest

1 term of how the coating and covering is described, a
2 coating is something that's applied from the
3 external onto the surface like painting it and/or
4 coating it off of some kind of a knife edge dye.
5 And those coatings, you could have any coating on
6 the face of the planet, but maybe not all of those
7 coatings work. Maybe only two of those coatings
8 work. So that's a broad description of coating.

9 And then covering, a broad description
10 of covering is things that migrate out. Well, there
11 are all kinds of things that migrate out, and I
12 could show you lots of examples. But only those
13 that migrate out that actually are fit for purpose
14 is what I'm referring to.

15 So those are the ones that are selected
16 from the patent that actually show that they enable
17 the easy removal of the inner film.

18 Q. So that would be an effective amount of
19 the migrating compound that would affect the goal or
20 the purpose?

21 A. An effective amount is defined by the
22 patent and that -- and that is fit for purpose based

1 upon measurements that have been defined in the
2 patent that I've read.

3 Q. But here in 14, you say that the term
4 "coating" and the expression "coating or covering"
5 would also include material on the external surface,
6 even if it did not perform a purpose and function.

7 Do you see that, sir?

8 MR. DOODY: Objection. Form.

9 BY MR. BOND:

10 Q. Do you see that?

11 A. I see it, but I also hear objection.

12 Q. Well, he's not telling you not to
13 answer, sir.

14 I'm saying: Do you see that in your
15 statement?

16 A. I see it in my statement.

17 Q. Okay. So you could have a coating or
18 covering as that term is used in the patent --

19 A. Coating or covering --

20 Q. -- that would -- let me finish.

21 A. Yeah.

22 Q. -- that would include a significant

1 material on the external surface, but did not
2 perform the purpose and function set forth in the
3 patent?

4 A. There are many, many materials that
5 could be applied as a coating or covering.

6 Q. Well, I'm not asking you that, sir.
7 I'm asking you about the coating or
8 covering that you put in your declaration.

9 A. Uh-huh.

10 Q. That's the coating or covering in the
11 patent; correct? In paragraph 14.

12 A. There are many coatings.

13 Q. I'm not asking you that, sir.
14 I'm asking you if what's referred to in
15 paragraph 14 is the coating or covering in the
16 patent. It's in quotation marks "coating or
17 covering."

18 A. If it's the coating or covering that's
19 referred to in the claims?

20 Q. Yes.

21 A. Then the claims define what that
22 coating or covering --

1 Q. I'm not asking that, sir.

2 I'm saying what's --

3 A. Well, that's all I can tell you.

4 Q. No.

5 MR. DOODY: Can he finish his
6 answer, please?

7 THE WITNESS: That's all I can
8 tell you.

9 MR. BOND: He's not being
10 responsive, sir.

11 THE WITNESS: That's all I can
12 tell you.

13 BY MR. BOND:

14 Q. I'm not asking you --

15 A. The coating or covering that's in the
16 --

17 Q. I'm not asking you that, sir.

18 MR. DOODY: Objection.

19 BY MR. BOND:

20 Q. Move to strike. You're not being
21 responsive, sir.

22 A. Strike that.

1 MR. DOODY: Objection.

2 BY MR. BOND:

3 Q. Now, the term -- is the term "coating
4 or covering" set forth in paragraph 14 of your
5 declaration -- are you referring to the coating or
6 covering set forth in claim 1 of the patent?

7 A. Term "coating or covering."

8 (Reviews document).

9 As I say later in that statement:

10 "It is my opinion that a person having
11 ordinary skill in the art would look to the purpose
12 of the coating or covering."

13 Q. I'm not asking you that, sir.

14 A. Well, that's what I'm telling you.

15 Q. I'm asking you whether or not in your
16 declaration the term "coating or covering" is the
17 coating or covering that you're -- are you referring
18 that from claim 1 of the patent? Or are you -- or
19 are you saying that it's a coating or covering in
20 general?

21 A. Claim 1 defines the coating and
22 covering.

1 Q. I'm not asking you that, sir.

2 A. They're the elements of the claim.

3 That's what I've read.

4 Q. I'm not asking you that.

5 A. I'm sorry. I can't help you.

6 Q. You don't understand my question?

7 A. I don't.

8 Q. You told me earlier if you didn't
9 understand my question, you would let me know.

10 A. Well, I'm telling you now. I don't
11 understand your question.

12 Q. Okay. Well, let's start over.

13 A. Okay.

14 Q. Let's go back to paragraph 13.

15 A. Okay.

16 Q. Okay?

17 You're talking about the coating or
18 covering in the context of the '882 patent.

19 A. Yeah.

20 Q. You see that?

21 A. Yes.

22 Q. This is the last sentence.

1 You understand that question?

2 A. well, let's read all of 13 in the
3 context.

4 Q. Let's just read the last sentence.

5 A. Can I read all of 13?

6 Q. You can read whatever you'd like, sir.

7 A. Okay.

8 (Reviews document.)

9 okay. I understand the context.

10 Q. well, I haven't asked my question yet.
11 So let's go over it again.

12 The last sentence you're talking about
13 a coating or covering in the context of the '882
14 patent; correct?

15 A. Right.

16 Q. And you understand my question;
17 correct?

18 A. Actually, I don't understand your
19 question, but I understand how I would respond if
20 you're asking me --

21 Q. What don't you understand about my
22 question?

1 A. what -- what you're referring to in my
2 world is, there are materials that can migrate out
3 that have nothing to do --

4 Q. Sir, I don't want to be in your world.
5 I'm in your declaration.

6 A. I'm sorry. That's all I can tell you.

7 Q. This is your declaration.

8 A. Yeah.

9 Q. I'm asking you about what's quoted in
10 your declaration.

11 A. And my declaration comes from my world
12 (indicates). So I'm telling you what -- what's the
13 context.

14 Q. So you don't -- the context is what you
15 said. You said that:

16 "A small amount of material on the
17 external surface of the inner tubular film, of which
18 there are likely a number of various distinct
19 substances, that does not perform the purpose and
20 function of improved mechanical properties and
21 improved release characteristics, would not be
22 considered by a POSITA to be a coating or covering

1 in the context of the '882 patent."

2 A. Yeah. There are materials --

3 Q. Is that your statement?

4 A. Yes. There are materials that can come
5 to it.

6 Q. I didn't ask you that, sir. I just
7 asked you if that was your statement.

8 A. Okay. That's my statement.

9 Q. That is your statement.

10 A. Yes.

11 Q. Now, then, you said "in the context of
12 the '882 patent."

13 what does that mean?

14 A. It means claim 1 where we have -- we
15 have the various definitions of the elements of the
16 claim that derive from the performance of the film
17 that leads to an invention.

18 Q. So when you mention the "coating or
19 covering" in paragraph 13 here in the last
20 sentence --

21 A. Right.

22 Q. -- you mean from claim 1?

1 A. Claim 1 is the foundational claim, yes.

2 Q. Okay. Now, then, let's go to claim or
3 paragraph 14, the next sentence.

4 A. Yeah.

5 Q. It also mentions the term "coating or
6 covering."

7 A. Uh-huh.

8 Q. Is that stated in the context of the
9 '882 patent like the previous paragraph?

10 A. (Reviews document.)

11 I think that's basically covering
12 what's in the '882 patent, yes.

13 Q. Is that in the claims?

14 A. Is it in the claims?

15 Q. Yes.

16 A. Well, there are the elements of the
17 claims. We want to go through the elements of the
18 claims --

19 Q. No, I'm not asking you that, sir.

20 I'm asking you if that term, the
21 expression -- you said the term "coating and
22 covering" and the expression --

1 A. Coating or covering.

2 Q. -- "coating or covering."

3 Do you see that?

4 A. Yes.

5 Q. Is that, just like in the previous
6 paragraph, made in the context of the '882 patent,
7 namely, claim 1?

8 A. Since it's in quotes, I take that to be
9 the '882 patent.

10 Q. Okay. So then if that "coating or
11 covering" as used in claim 1 -- excuse me. Strike
12 that.

13 So the "covering or coating" in
14 paragraph 14 as used in claim 1 would include a
15 significant amount of material on the external
16 surface of the inner tubular film, even if it does
17 not perform the purpose and function.

18 Is that a correct statement?

19 MR. DOODY: Objection.

20 THE WITNESS: You know, the
21 surface can be a mixture of all sorts of materials.

22 BY MR. BOND:

1 Q. I didn't ask you that, sir.

2 I've asked you whether or not the
3 statement contained in your paragraph -- first
4 paragraph 14 --

5 A. It's --

6 Q. -- in the context of claim 1 is true or
7 not. Is it true?

8 A. The coating and covering -- I'm dealing
9 with this in a functional definition.

10 Q. well, before we even get to that, sir,
11 I'm asking you a very simple question and it's a
12 very simple one.

13 A. Coating or covering (indicates) is --

14 Q. Is the first sentence of paragraph 14
15 of your declaration true?

16 A. The term "coating and covering" and the
17 expression "coating or covering" in quotes, which I
18 think comes from the patent.

19 Q. Claim 1 of the patent, as you said,
20 right?

21 A. Yes. well, and it's other places, but
22 also would include a significant amount of material

1 on the external surface, even if it did not perform
2 the purpose and function. This is correct.

3 Q. Is that a true statement?

4 A. That can be correct. Yes, it can be.

5 Q. And as we talked about earlier, when
6 you say "a significant amount," you mean something
7 along the lines of an effective amount that would
8 accomplish the goals or the purposes of?

9 MR. DOODY: Objection. Sorry.

10 THE WITNESS: The significant
11 amount in my operational definition based on the
12 patent is that it's fit for purpose. So it means
13 based on the definition of the patent, it's the
14 proper amount fabricated in the proper way that
15 gives the proper release that leads to the removal
16 of the inner film.

17 BY MR. BOND:

18 Q. So it would be effective enough to
19 cause a release?

20 A. To allow the release and to allow the
21 removal.

22 Q. Would that be an effective amount?

1 A. If there is -- based on the definition
2 in the patent, yes.

3 Q. What definition in the patent?

4 A. The patent operationally defines it in
5 terms of the lack of tearing, the lack of the
6 so-called (indicates) splicing, the lack -- the
7 strength of the film, this elasticity measure, as
8 well as the ability to cure the resin and not have
9 resin failure such as having so much release that it
10 falls on the hot lights or having a construction
11 that won't melt due to the hot lights and so on.

12 Q. So in paragraph 13 you talk about a
13 small amount.

14 A. Uh-huh.

15 Q. How much is a small amount?

16 A. I can't say.

17 Q. In paragraph 14, you talk about a
18 significant amount.

19 How much is a significant amount?

20 A. I can't say. It's an operational
21 definition.

22 Q. Well, what's the definition of

1 significant then in your declaration?

2 A. It's the -- it's material that is there
3 that you can find, and I use a number of tools that
4 look for materials on surfaces. So that's the way I
5 would define it is you can find it. And if it's --
6 you know, in the normal phraseology, significant
7 would be something that I could find on a surface,
8 and typically these surfaces can be a lot more
9 complicated than a cartoon might appear. So.

10 Q. So if I can find it on the surface,
11 that's a significant amount?

12 A. In certain contexts it might be, and
13 then in others somebody might say it's not relevant.
14 It doesn't really do anything to the -- to the
15 result.

16 Q. So --

17 A. But you like to know the full
18 composition of the surface. So.

19 Q. So if you can find it on the surface
20 and it was effective, would that be significant?

21 MR. DOODY: Object to --
22 objection.

1 THE WITNESS: If it's effective.
2 If it's effective. First of all, I don't know that
3 there's been any need to look for it on the surface
4 there.

5 The operational definition is that
6 it has worked and by putting it in, you got the
7 result that you desired, and you were able to find
8 an inventive window that solved the major problem
9 that customers had informed you about. So that's --
10 that's what I would look at it as.

11 BY MR. BOND:

12 Q. well, would that be effective or not
13 effective?

14 MR. DOODY: Objection.

15 THE WITNESS: Effective to me is
16 you've satisfied a customer's need, and you have
17 given the result to the customer that they required
18 in order to buy your product.

19 BY MR. BOND:

20 Q. well, I'm trying to understand what you
21 mean by "significant amount."

22 A. Yeah.

1 Q. You said you couldn't give me an actual
2 amount.

3 A. No.

4 Q. But you designed it in sort of -- did
5 you say functional terms?

6 A. Functional terms in the context of this
7 patent.

8 Q. So -- so if you had an effective
9 amount, meaning that you achieved those functions,
10 would that be a significant amount?

11 MR. DOODY: Objection.

12 THE WITNESS: The semantics are
13 getting to be a little puzzling to me but --

14 BY MR. BOND:

15 Q. Well, I'm just -- I'm trying to figure
16 out what's in your declaration, sir.

17 A. Yeah.

18 Q. And I'm trying to find out what
19 significant means and --

20 A. Well --

21 Q. -- you're the one who wrote it.
22 So you're the one --

1 A. -- there's 52 pages here and we're
2 talking --

3 Q. Let me finish. Let me finish.

4 A. Yeah.

5 Q. So we're focused on this and I need to
6 know what you mean by this. So does the Board. So
7 I'm trying to figure out what you mean by
8 "significant," and we've talked a little bit about
9 an effective amount that accomplishes the function.

10 So I'm trying to determine whether or
11 not if you have an effective amount.

12 A. Okay. So operationally, a significant
13 amount is something that could have been there. It
14 might be even adventitious. It could have been
15 something that just happened to be there as an
16 additive. It wasn't even necessarily known to be
17 there or even paid attention to be there. And it
18 didn't actually do anything for you, or even if it
19 could have, you weren't looking for that so you
20 didn't notice it.

21 And then if you go to the effective
22 amount, that to me means you have directed your

1 focus on solving something and you have looked for
2 that and you found it. Oh, I actually proactively
3 created this situation and I -- and I saw the effect
4 and it resulted in an effective amount. So.

5 Q. Let's look at paragraph 15.

6 A. Okay.

7 Q. So you talk about "a small amount" in
8 that paragraph.

9 A. Let's see.

10 (Reviews document.)

11 Correct.

12 Q. And you said that:

13 "A small amount to the polymer forming
14 the external layer would not be considered a coating
15 or covering, even if some of that wax migrated to
16 the surface, as it likely could."

17 Do you see that, sir?

18 A. Uh-huh. Sure.

19 Q. Is that what you're talking about when
20 you say an effective amount or noneffective amount?

21 A. That's --

22 MR. DOODY: Objection.

1 THE WITNESS: That's a context
2 for it.

3 BY MR. BOND:

4 Q. Yes.

5 A. There are lots of additives in
6 polymers, and we're excluding what the possible
7 other additives are that might be migrating, not
8 just the wax, and there is a context to fabrication
9 conditions and so on.

10 So I go -- I go back again to an
11 operational definition. Did the wax do a job that
12 was fit for purpose in this particular application
13 that was novel.

14 Q. So if it wasn't fit for purpose and did
15 not perform those purposes or functions, it would
16 not be a coating or covering?

17 MR. DOODY: Objection.

18 THE WITNESS: If you look at the
19 definition of a coating, something that's applied,
20 and that's the broadest definition, something
21 externally applied, then --

22 BY MR. BOND:

1 Q. Well, I'm not limiting it to that, sir.

2 A. What are you -- what are you limiting
3 to? Anything?

4 Q. What's in the patent.

5 A. Yeah. So I --

6 Q. The patent is not limited to applied,
7 is it?

8 A. It's -- so that's the coating. That's
9 the external coating.

10 Q. Well I'm talking about coating or
11 covering, right?

12 A. Or it could be -- or covering.

13 Q. Okay.

14 A. So then we're talking about migration
15 of things. And in the covering, again,
16 there -- there are a litany of materials that can be
17 migrating compounds or coverings which won't
18 necessarily do the job at all.

19 So in the patent, it was incumbent upon
20 the inventors, as I see it, to explain, you know,
21 what it is that you needed to add and how much and
22 under what fabricating conditions and so on in order

1 to get the desired result, and that's what I've --

2 Q. well, that's what I'm trying to get to,
3 sir.

4 A. Yeah.

5 Q. In paragraph 15, you talk about "a
6 small amount."

7 A. Uh-huh.

8 Q. And you said that would not be
9 considered a coating or covering, even if some of it
10 migrated to the surface, as it likely did.

11 And that's because it wouldn't be
12 effective amount; is that correct?

13 A. It wouldn't -- it wouldn't have been --

14 MR. DOODY: Objection.

15 THE WITNESS: It wouldn't have
16 done the job that the Buergofol folks were trying to
17 accomplish.

18 BY MR. BOND:

19 Q. Then it wouldn't be effective?

20 MR. DOODY: Objection.

21 THE WITNESS: There are things
22 that will migrate to the surface that aren't doing

1 much.

2 BY MR. BOND:

3 Q. Is there some reason you don't like the
4 word "effective," sir? You've used it yourself.

5 A. I'm just trying to trying to define it
6 for you.

7 Q. well, I don't want you to define it
8 because we know what it is. You've already
9 explained to me what it is.

10 So I'm trying to understand what claim
11 or your paragraph 15 means.

12 So it says that even if you add wax in
13 a small amount and some of it migrates to the
14 surface, that still wouldn't be considered a coating
15 or covering, and I'm trying to understand why you
16 said that.

17 So I'm assuming because --

18 A. Because --

19 Q. -- it's not an effective amount.

20 MR. DOODY: Objection.

21 BY MR. BOND:

22 Q. Is that correct?

1 A. Because there are so many things you
2 could add. In fact, this wax isn't even identified.

3 Q. Not identified where?

4 A. In this, in 15. It's a generic
5 statement about wax. There are all kinds of waxes,
6 and so wax is a very generic term covering many,
7 many, many materials. And so out of all of that
8 basket of materials, there are plenty of waxes that
9 aren't going to be fit for purpose.

10 Q. Well, we're not talking about all those
11 baskets of things. We're talking about what's in
12 paragraph 15, sir.

13 It says:

14 "The examples in the '882 patent would
15 have informed a POSITA that an amount of wax present
16 that is added in a small amount to the polymer
17 forming the external layer would not be considered a
18 coating or covering, even if some of that wax
19 migrated to surface, as it likely could."

20 Do you see that sentence, sir?

21 A. I do see it.

22 Q. That's -- in your mind, that's a true

1 statement; correct?

2 A. We're going to get into semantics
3 again.

4 Q. Whether or not it's true or not is up
5 to you, sir. You're the one who swore an oath that
6 this is a true statement.

7 A. Well, I'm trying to define for you what
8 it means --

9 Q. I'm not asking you that.

10 A. -- in terms of truth for me.

11 Q. I'm not asking -- oh, truth to you.
12 Oh, you have a different meaning of
13 truth?

14 MR. DOODY: Objection.

15 THE WITNESS: Well, what's your
16 meaning of truth?

17 BY MR. BOND:

18 Q. My meaning of truth is the oath you
19 took at the back of this declaration --

20 A. Yeah.

21 Q. -- sir.

22 A. Uh-huh.

1 Q. Is there some different truth that
2 you're talking about?

3 MR. DOODY: Objection.

4 THE WITNESS: No.

5 BY MR. BOND:

6 Q. That's what I'm talking about.
7 You see this?

8 A. Well, let's --

9 Q. Let's take a look -- let's take a look
10 at your last page.

11 A. Let's talk about the truth.

12 Q. Let's talk about your last page.

13 MR. DOODY: Let him answer the
14 question, please.

15 BY MR. BOND:

16 Q. Let me finish my question.

17 A. Let's talk about the truth.

18 MR. DOODY: No. Let him answer.

19 BY MR. BOND:

20 Q. No. Let's talk about the last page.

21 MR. DOODY: Stop interrupting.

22 MR. BOND: There's nothing --

1 there's nothing to answer.

2 BY MR. BOND:

3 Q. Go to the last page.

4 A. Yeah, I signed it.

5 Q. Go to the last page of your
6 declaration, sir.

7 A. Yes.

8 Q. You signed it, but you also swore an
9 oath --

10 A. Uh-huh.

11 Q. -- did you not?

12 A. Right.

13 Q. And what does the first sentence of
14 that oath say?

15 A. "I declare that all statements made
16 herein are of my own knowledge and true -- are true
17 and that all statements made on information and
18 belief are believed to be true, and further these
19 statements were made with the knowledge that willful
20 false statements and like so made are punishable by
21 fine or imprisonment" blah blah blah. So.

22 Q. So you swore that the statements

1 contained in your declaration are true?

2 A. Yes, to the best of my knowledge.

3 Q. So will you answer my question then?

4 A. Yes.

5 Q. In paragraph 15, the first sentence, is
6 that a true statement?

7 A. Have informed a POSITA an amount of wax
8 that a small amount.

9 (Reviews document.)

10 They would not have necessarily. It's
11 an operational --

12 Q. Isn't it true?

13 A. -- definition.

14 Q. It's a yes or no question, sir.

15 A. They would not have --

16 Q. Is it true or not?

17 A. They would not have necessarily.

18 Q. Is it true or not?

19 A. The statement as written is what I
20 wrote. I'm telling you what the context is.

21 Q. Is it true or not?

22 I'm not asking you for the context,

1 sir.

2 I'm asking you --

3 A. well, I'm sorry.

4 Q. -- a very simple question.

5 Either it's true or it's not or you're
6 refusing to answer because it's not true.

7 A. I live in a world of science where
8 maybe there's a degree of sophistication that isn't
9 involved in this discussion.

10 But the fact is that you can add small
11 amounts of things that migrate that are coming to
12 the surface that don't do what you intend it to do.

13 Q. I'm not asking you that, sir.

14 I'm asking if the statement that you
15 said in paragraph 15 is true.

16 A. well, that's the context --

17 MR. DOODY: Objection.

18 THE WITNESS: That's the context
19 of the statement.

20 BY MR. BOND:

21 Q. I'm not asking you for the context,
22 sir.

1 Either it's a true statement or it's
2 not.

3 MR. DOODY: Objection.

4 BY MR. BOND:

5 Q. will you answer my question?

6 A. I've given you my answer.

7 Q. So that you're not going to answer my
8 question.

9 You're not going to state whether it's
10 true or not?

11 A. I've given you my answer.

12 Q. Okay.

13 A. And I think what I've told you is how
14 truth is defined in that statement.

15 Q. I'm not asking how truth is defined,
16 sir.

17 It's defined in your declaration, is it
18 not?

19 A. We're not going to make any more
20 progress on this question.

21 Q. Oh, we are going to make a whole lot of
22 progress on it, sir.

1 A. Go ahead.

2 Q. Okay. Let's go back to your
3 declaration.

4 MR. DOODY: Let the record reflect
5 that counsel for Omega is referring to one sentence,
6 one sentence in a paragraph that refers to the
7 patent and many other things, and has not permitted
8 the witness to address that.

9 MR. BOND: You can only object.
10 You cannot make speaking objections, counsel.

11 MR. DOODY: Thank you.

12 BY MR. BOND:

13 Q. Page 52, sir.

14 A. Yes.

15 Q. This statement, is this a true
16 verification by you? Did you make this sworn
17 testimony? Is this a sworn declaration --

18 A. Yes.

19 Q. -- by you?

20 A. Yes.

21 Q. Is there anything in this declaration,
22 this last paragraph where you're saying that these

1 statements in your paragraph are true and correct,
2 do you want to make any changes to that?

3 A. No. It says these statements were made
4 with the knowledge that willful false statements and
5 like so made are punishable by fine or imprisonment
6 or both under Section 101 of Title 18 of the U.S.
7 Code.

8 Q. But your first sentence of that, the
9 first clause says that these statements in here are
10 true and correct.

11 A. Yes.

12 Q. Is that your sworn -- did you swear to
13 that?

14 A. Obviously I did.

15 Q. So you will not answer the question on
16 paragraph 15 whether the first paragraph -- first
17 sentence in that statement is true.

18 A. So I'm looking at it in the context of
19 all of 15.

20 Q. Sure. You can look at it in whatever
21 context you want.

22 A. Right.

1 Q. But it is either true or it's not.

2 A. So I've told you my answer. And if
3 we're going to get stuck on this, then we'll be
4 stuck on it.

5 Q. We may be because --

6 A. Okay.

7 Q. -- unless you tell me it's true, I
8 really can't move on, sir. If you're telling me
9 it's not true, that's another matter.

10 So I need to know whether it's true or
11 not.

12 A. I guess we're stuck.

13 Q. So you can't answer whether or not
14 what's set forth in paragraph 15 is true or not?

15 A. I've told -- I've told --

16 MR. DOODY: Objection.

17 THE WITNESS: I've told you my
18 answer.

19 BY MR. BOND:

20 Q. You haven't answered it, sir.

21 A. Yes, I have.

22 Q. It's a yes or no question.

1 A. And I just gave it to you.

2 Q. You didn't say yes or no.

3 A. I said I gave you the context for
4 what --

5 Q. So anybody reading -- anybody reading
6 this transcript?

7 A. So yes, I did write this statement, and
8 this is the context under which I wrote this
9 statement.

10 Q. And it's true as set forth in your
11 declaration?

12 A. In that context on the record it's true
13 if everything that I've said is recorded.

14 Q. I don't understand that.

15 A. I do. She's recording it.

16 Q. Everything is true if it's recorded.

17 A. If -- I don't want any excerpts taken
18 from my statement.

19 Q. Excerpts taken from your statement.

20 A. Yeah.

21 Q. What do you mean?

22 A. Well, you could cut something out and

1 put it up on a projector and say the witness said
2 such and such. And if you look at the entire
3 context --

4 Q. She's recording everything being said
5 here today, sir.

6 A. Okay. Fine.

7 Q. So I think we finally got to it.
8 what's set forth in paragraph 15 is
9 true, according to you?

10 A. According to the way I have explained
11 it to you.

12 Q. According to the way you understand it?

13 A. Yes.

14 Q. Okay. So, then, let's get back to, you
15 say that a small amount to the polymer forming the
16 external layer would not be considered a coating or
17 covering, even if some of it migrated to the
18 surface; is that correct?

19 A. That's correct.

20 Q. And that's because it would not perform
21 the function or the purpose of what's set forth to
22 be a coating or covering in the patent; is that

1 right?

2 A. Correct.

3 Q. So in order to be a coating or covering
4 as set forth in the patent, you must perform the
5 purpose and function as set forth in the patent; is
6 that correct?

7 A. That's my understanding.

8 MR. DOODY: Objection.

9 BY MR. BOND:

10 Q. That's your understanding?

11 A. Yes.

12 Q. Okay.

13 (Document marked for
14 identification as Omega Exhibit 1043.)

15 MR. BOND: Did you guys want to
16 take a break before we go on to something else, or
17 it's been about an hour? You want to just keep
18 going?

19 MR. DOODY: Yeah. No. I'm good
20 with taking a break.

21 THE WITNESS: I'm okay for now,
22 but if you want to take a break, that's fine.

1 BY MR. BOND:

2 Q. We were kind of doing that about every
3 hour or so at the last deposition, Dr. Brant.

4 A. Okay.

5 Q. Kind of let's everybody stay fresh.

6 A. Okay.

7 Q. If that's okay with you?

8 A. Sure.

9 (Recess: 9:39 a.m. - 9:49 a.m.)

10 MR. BOND: Back on the record?

11 Great.

12 BY MR. BOND:

13 Q. Dr. Brant, I'm going to hand you what
14 we've marked as Exhibit 1043, Petitioner's Exhibit.

15 A. Okay.

16 Q. And ask if you can recognize that.

17 A. Certainly. It's one of my patents.

18 Q. And for the record, this is U.S. Patent
19 Number 5,114,763 --

20 A. Yes.

21 Q. -- titled "Tackified Polyethylene
22 Layers in Stretch/Cling Films"; is that correct,

1 sir?

2 A. Yes.

3 Q. If you look over at column 4 of this
4 patent, the top of that column it says the
5 additionally -- excuse me.

6 "Additionally, the non-cling side may
7 include one or more well-known anticling (slip
8 and/or -- slip and/or antiblock) additives, but the
9 non-cling layer is preferably essentially free of
10 such anticling additives."

11 You see that, sir?

12 A. I do, yeah.

13 Q. In 1992, were slip agents well known?

14 A. Certainly erucamide and behenamide,
15 these kinds, yes, they were well known.

16 Q. If you look over at column 7.

17 A. Okay.

18 Q. The first full paragraph starts with
19 "Additionally."

20 A. Uh-huh.

21 Q. It says that:

22 "The non-cling layer may include one or

1 more anticling (slip and/or antiblock) additives
2 which may be added during the production of the
3 polyolefin or subsequently blended in to improve the
4 slip properties of this layer."

5 Correct?

6 A. Yes.

7 Q. So slip agents were known and they were
8 known to improve the slip properties of the layer
9 they were added to; is that correct?

10 A. For this purpose.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. Then we go on to a sentence
14 beginning at line 13. It says:

15 "These additives are preferably
16 utilized in amounts ranging from about 100 parts per
17 million to about 20,000 parts per million, more
18 preferably between about 500 parts per million to
19 about 10,000 parts per million by weight based upon
20 the weight of the slip layer."

21 A. Uh-huh.

22 Q. Do you see that, sir?

1 A. I do, yeah.

2 Q. Was that well known to a person of
3 skill in the art at the time?

4 A. This is a long time ago, but I think it
5 was generally well known, yes.

6 (Document marked for
7 identification as Omega Exhibit 1044.)

8 BY MR. BOND:

9 Q. I'm going to hand you what I'm marking
10 as Petitioner's Exhibit 1054.

11 MR. DOODY: 1044?

12 BY MR. BOND:

13 Q. I'm sorry. 1044 not 54.

14 And ask if you can recognize that.

15 A. I do, yes.

16 Q. What is that?

17 A. It's a patent for in-line blending for
18 making new products that are propylene-based based
19 on a new process.

20 Q. And that's U.S. patent or -- excuse
21 me -- Application Publication Number US 2012/0225998
22 A1; correct?

1 A. That's correct.

2 Q. Turn with me over to page 38. We're
3 looking at paragraph 0314.

4 Are you there, sir?

5 A. I am, yes.

6 Q. So the first sentence of that paragraph
7 says:

8 "In another form, the polymer blends
9 produced by the processes disclosed herein, and/or
10 blends thereof, further comprise typical additives
11 known in the art such as fillers, cavitating agents,
12 antioxidants, surfactants, adjuvants, plasticizers,
13 block, antiblock, color masterbatches, pigments,
14 dyes, processing aids, UV stabilizers, neutralizers,
15 lubricants, waxes, nucleating agents and/or
16 clarifying agents."

17 Do you see that sentence, sir?

18 A. I do, yes.

19 Q. Were those typical additives that were
20 well known by persons skilled in the art at this
21 time?

22 A. Let me reread the sentence.

1 Q. Sure.

2 A. It's very long.

3 (Reviews document.)

4 I think that's basically true, yes.

5 Q. Okay. Then the next sentence says:

6 "These additives may be present in the
7 typically effective amounts well known in the art,
8 such as 0.001 weight % to 10 weight %."

9 Is that a correct reading of that
10 sentence?

11 A. Yes, that's verbatim.

12 Q. So effective amounts of these additives
13 was well known in the art and those -- the range of
14 those additives was .001 by weight percent to 10
15 weight percent; is that correct?

16 MR. DOODY: Objection.

17 THE WITNESS: May I explain the
18 context?

19 BY MR. BOND:

20 Q. well, I'm trying to figure out whether
21 or not this is correct or not, and then I'll let you
22 explain the context.

1 So let's start with whether or not this
2 is a correct statement that these are --

3 A. Well, I won't answer unless I can
4 explain the context. So.

5 Q. Okay. Well, let's start with whether
6 or not this statement is true or not.

7 Is that --

8 A. Well, this statement is what I wrote in
9 the patent with an attorney, and I can tell you the
10 context for that statement.

11 Q. I understand.

12 But this is a true statement? You only
13 submitted correct, true statements to the Patent
14 office; correct?

15 MR. DOODY: Objection. Scope.

16 THE WITNESS: I submitted what I
17 know to be here is correct based on the context of
18 how you use these additives. So.

19 BY MR. BOND:

20 Q. Good.

21 A. May I provide the context?

22 Q. No. The context is set forth in the

1 patent. I just need to know about the -- what's
2 known by those skilled in the art at the time, and
3 you've answered those questions.

4 A. Uh-huh. Okay.

5 (Document marked for
6 identification as Omega Exhibit 1045.)

7 BY MR. BOND:

8 Q. Here you go, Dr. Brant. I'm going to
9 hand you what is marked as Exhibit -- Petitioner's
10 Exhibit 1045.

11 Is that one copy or two? I think I
12 gave you two copies.

13 A. Two.

14 Q. Keep the one that's marked, but I'll
15 take the one that's not marked.

16 A. Okay. Have counsel gotten these?

17 MR. DOODY: Yeah.

18 THE WITNESS: You've gotten them?
19 Okay.

20 BY MR. BOND:

21 Q. Do you recognize this document?

22 A. Yes, certainly.

1 Q. This is another one of your patents;
2 right?

3 A. Yes.

4 Q. And it's entitled "Polymer Production
5 At Superficial Conditions" and it's Publication
6 Number 2006/0293474 A1; correct?

7 A. Correct.

8 Q. If you look over on page 35 -- well,
9 36. It's part of paragraph 558 on the previous page
10 35 I want to talk about.

11 A. Paragraph 558?

12 Q. 558.

13 A. Okay.

14 Q. But that carries over to paragraph
15 36 -- excuse me -- page 36.

16 Towards the end of that paragraph, it
17 talks about something called a "corona treatment"?

18 A. Let's see.

19 Q. It's about -- it's down towards the
20 middle, to the middle end on page 36 to the end
21 of -- before you get to paragraph 559.

22 A. Okay. "In some embodiments, one or

1 both of the surface layers is modified by." Is that
2 what you're referring to?

3 Q. Yes.

4 what's a corona treatment?

5 A. Corona --

6 MR. DOODY: Objection. Scope.

7 THE WITNESS: Okay. Corona
8 treatment is a case where you generate a voltage --
9 high enough voltage, and the discharge near the film
10 generates a reactive species, one of which is ozone.
11 And this then will react with a surface, among other
12 things, and the surface then gets functionalized or
13 oxidized.

14 BY MR. BOND:

15 Q. what do you mean "functionalized"?

16 MR. DOODY: Objection. Scope.

17 THE WITNESS: Functionalized is
18 quite simple. You end up with groups that are on
19 the surface that weren't there to begin with.

20 BY MR. BOND:

21 Q. I don't know if it was in this patent
22 or the previous one, but it also mentions something

1 called a "masterbatch."

2 Do you know what a masterbatch is?

3 A. A masterbatch in the industry, as I
4 practiced it, is you have resin coming out of a
5 plant and the resin is going to be basically
6 converted into various grades, potentially different
7 grades for different customers.

8 And the way you differentiate those is
9 typically by placing additives of various amounts
10 and various proportions, ratios of those additives
11 to that barefoot (indicates) resin. So that
12 masterbatch will allow you to do that.

13 In addition, a customer may be using
14 the masterbatch for their own purposes to
15 tailor-make their products. So.

16 Q. Let's go down to paragraph 59, 559 of
17 this.

18 A. 559. Yes, I got it.

19 Q. About halfway down or a little above
20 halfway it talks strikes --

21 A. (Ring tone.)

22 Sorry. Let me turn this off.

1 Q. Sure.

2 A. Okay. Sorry. It's 559.

3 Q. 559. A little not quite halfway down
4 it starts with a sentence called "Stretch/clings."

5 You see that sentence?

6 A. Not yet, but I'll find it other.

7 Oh, here it is. "Stretch/clings."

8 Q. It says -- I just want to make sure
9 you're there. You see it?

10 A. Yeah, there's a typo, of course.

11 Q. It says:

12 "Stretch/clings films --

13 A. Yeah.

14 Q. -- may comprise a slip layer comprising
15 any suitable polyolefin or combination of
16 polyolefins such as polyethylene, polypropylene,
17 copolymers of ethylene and propylene, and polymers
18 obtained from ethylene and/or propylene
19 copolymerized with minor amounts of other olefins,
20 particularly C4/C12 olefins."

21 Do you see that sentence?

22 A. Yes, I do.

1 Q. Was that well known at the time?

2 MR. DOODY: Objection. Scope.

3 THE WITNESS: Was it well known
4 at the time?

5 BY MR. BOND:

6 Q. Yeah, of this application in 2006.

7 A. Polyethylene, polypropylene. Those
8 were well known copolymers. It's a long compound
9 sentence. So ethylene propylene. Minor amounts of
10 other olefins. We did that.

11 Yes, that's correct.

12 Q. It was well known at the time?

13 A. Certainly well known to me because I
14 worked at Exxon, and these are products we made.

15 Q. Well, is it well known to a person of
16 skill in the art?

17 MR. DOODY: Objection. Scope.

18 THE WITNESS: I -- that's
19 -- that's a little bit more hypothetical.

20 I would assume that most people if
21 they're coming in the world of polyolefins, they
22 would know it. If they're coming from the world of

1 PT, polyethylene terephthalate, something like that,
2 they might not know any of that.

3 BY MR. BOND:

4 Q. So if we go a little further down,
5 there is a sentence that starts with "Additionally."

6 A. Okay.

7 (Reviews document.)

8 I haven't found it yet.

9 Q. It's just two -- I think one sentence
10 down.

11 A. One sentence down?

12 Q. Yeah, it says. "Additionally."

13 A. Okay. Particularly.

14 Q. It says "Additionally, the slip layer."

15 A. Ah. There you go. "Additionally,"
16 yes.

17 Q. Do you see it?

18 A. "May include one or more anti-cling
19 additives, which may be added during the
20 production." So yes.

21 Q. So let's -- I'm going to go ahead and
22 read it --

1 A. Yes. Okay.

2 Q. -- so we make sure we're dealing with
3 the same thing.

4 A. Right.

5 Q. "Additionally, the slip layer may
6 include one or more anti-cling (slip and/or
7 antiblock) additives, which may be added during the
8 production of the polyolefin or subsequently blended
9 in to improve the slip properties of this layer."

10 Is that a correct reading of that
11 sentence?

12 A. Yes, you read it correctly.

13 Q. Okay. I'm going to read the next
14 sentence to you.

15 A. Uh-huh.

16 Q. "Such additives are well known in the
17 art and include, for example, silicas, silicates,
18 diatomaceous earths, talcs and various lubricants."

19 Did I read that sentence correctly?

20 A. You did.

21 Q. And is that a fair statement that the
22 slip and antiblock additives that improve the slip

1 properties of this layer were well known at the
2 time?

3 MR. DOODY: Objection. Scope.

4 THE WITNESS: These are generic
5 statements. So there's all these different grades
6 and so on. There's a great deal of granularity in
7 those statements when you look at how many things
8 are available.

9 In general, that's a true
10 statement, yes.

11 BY MR. BOND:

12 Q. Okay. What are lubricants?

13 A. A lubricant could be something that is,
14 as it says, it could change the coefficient of
15 friction. It could enable when the -- when the
16 rolls are wound, it will enable the rolls to unwind
17 because there's such a thing as roll blocking.

18 Q. What rolls are you talking about?

19 A. A film roll. So film is typically
20 made. If it's a blown film, it's put on a roll.
21 And one of the issues with commercial use is that
22 you need to unwind those rolls or you need to slide

1 them over machinery in an appropriate way in order
2 to increase widgets per unit time or whatever. So
3 yes.

4 Q. Can these slip additives and antiblock
5 additives and lubricant additives operate as
6 migrating compounds?

7 A. They can operate as a migrator or they
8 could just be there to roughen a surface.

9 Q. Okay. So would it be fair to say that
10 slip additives, antiblock additives, and lubricants
11 can act as migrating compounds but not all of them
12 are migrating compounds?

13 A. Well, interesting semantics.

14 Q. Let's start with this.

15 A. To the degree that I understand your
16 statement, yes.

17 Q. Yeah, let's start with the first part.

18 A. Okay.

19 Q. And I just want to be clear. I'm not
20 trying to trick you or anything.

21 I'm just saying that slip additives and
22 antiblock additives and lubricants can act as

1 migrating compounds.

2 And I guess that would depend on what
3 the lubricant or the antiblock or the slip agent is;
4 correct?

5 A. Actually, silicas, silicates
6 diatomaceous earths, talcs are not migrating
7 compounds in the classic --

8 Q. Okay.

9 A. -- sense of how they're used in the
10 industry. So.

11 Q. Okay. But there are lubricants that
12 can act as migrating compounds; correct?

13 A. Yes, they can.

14 Q. But not every lubricant is a migrating
15 compound?

16 A. Not necessarily. There are reasons why
17 they might not migrate, yes.

18 Q. Okay. Same for slip agents. They can
19 act as migrating compounds, but not all of them are
20 migrating compounds; correct?

21 A. Or certainly not to the point that
22 they're effective for the purpose.

1 Q. Correct.

2 A. Yes.

3 Q. Correct.

4 Same with antiblock additives. They
5 could act as a migrating compound, but not every
6 antiblock agent is a migrating compound; correct?

7 A. I would never put antiblocks in the
8 class of migrating compounds, actually.

9 Q. Okay. But they could have an effect on
10 coefficient of friction?

11 A. Oh. Well, they have an effect on
12 surface properties because they -- typically what
13 they do is roughen a surface.

14 Q. So that would have an effect on the
15 properties of the film?

16 A. Yes, and that's why you're adding it.

17 Q. Same with slip additives. They would
18 also have an effect on the properties of the film?

19 A. At the appropriate concentrations,
20 yeah.

21 Q. And the lubricants could also have an
22 effect on the properties of the film?

1 A. Yes.

2 Q. Let's go down further. Another
3 sentence that talks -- says "These additives."
4 Do you see that, sir?

5 A. Yes.

6 Q. It says:

7 "These additives are preferably
8 utilized in amounts ranging from about 100 parts per
9 million to about 20,000 parts per million, more
10 preferably between about 500 parts per million to
11 about 10,000 parts per million, by weight based on
12 the weight of the slip layer."

13 Did I read that correctly?

14 A. You did.

15 Q. Was this well known at the time?

16 MR. DOODY: Objection. Scope.

17 THE WITNESS: Again, I think it
18 depends on what industry you're coming from when you
19 say well known.

20 This would be well known to a
21 fabricator who's working with polyolefins. Might
22 not be well known at all to somebody who's not

1 working with polyolefins. So, in fact, they might
2 not even care about this work and so.

3 BY MR. BOND:

4 Q. But this was out of the public and
5 those skilled in the art would have access to it and
6 know of it?

7 A. To the extent that they cared about it,
8 they might look at it, but otherwise no.

9 Q. Understood.

10 (Document marked for
11 identification as Omega Exhibit 1046.)

12 BY MR. BOND:

13 Q. I'm going to hand you what I'm marking
14 as Petitioner's Exhibit 1046.

15 A. Okay.

16 Q. And ask if you can identify that for
17 me, sir.

18 A. Let's see.

19 (Reviews document.)

20 Yes.

21 Q. Is this another one of your patents?

22 A. It's one I coauthored on, yes.

1 Q. And it's entitled "In-Line Process For
2 Producing Plasticized Polymers and Plasticized
3 Polymer Blends"; correct?

4 A. Correct.

5 Q. It's Publication Number US 2009/076216;
6 correct?

7 A. Correct.

8 Q. When was the last time you looked at
9 this patent?

10 A. Oh, gee. I couldn't tell you,
11 honestly. Do you want me to guess? (Laugh).

12 Q. No, I don't want you to guess.

13 A. Okay. I couldn't -- I couldn't tell
14 you.

15 Q. In the last year?

16 A. No, certainly not in the last year.

17 Q. All right. Let's look at paragraph 90
18 on page 10, sir.

19 A. Paragraph 90. Okay. I'm with you.

20 Q. So paragraph 90 says:

21 "Base polymers, base polymer components
22 or base resins are polyolefins the properties of

1 which are modified by blending them with one or more
2 plasticizers and optionally other additives, such as
3 waxes, antioxidants, nucleating and clarifying
4 agents, slip agents, flame retardants, heat and UV
5 stabilizers, antiblocking agents, fillers,
6 reinforcing fibers, antistatic agents, lubricating
7 agents, coloring agents, foaming agents, etc."

8 Did I read that correctly?

9 A. You did.

10 Q. Was that well known at the time?

11 MR. DOODY: Objection. Scope.

12 BY MR. BOND:

13 Q. This patent application. I think
14 publication date of 2009.

15 A. (Reviews document.)

16 MR. DOODY: Did you get my
17 objection? Thanks.

18 THE WITNESS: Retardants.

19 Again, these are pretty generic
20 statements. Somebody who's working in the field of
21 polyolefins would perhaps not know one or more of
22 these but, in general, I think one skilled in the

1 art would, you know, generally know at least most of
2 these.

3 BY MR. BOND:

4 Q. Turn over to page 59. It's paragraph
5 94.

6 A. 59.

7 Q. Paragraph 494.

8 A. 494.

9 Q. Yeah. There's a sentence about halfway
10 down that paragraph that starts with "These
11 additives."

12 Do you see that, sir?

13 A. I do, yes.

14 Q. It says:

15 "These additives may be present in the
16 typically effective amounts well known in the art,
17 such as 0.001 weight % to 10 weight %."

18 Did I read that correctly?

19 A. You did.

20 Q. Was that well known at the time?

21 MR. DOODY: Objection. Scope.

22 THE WITNESS: what's well known

1 is you add additives and you add them in the amounts
2 that are effective for your application and your
3 desired outcome. So that's a very wide range, and
4 I'd say pretty much covers the gamut of what you
5 might add.

6 BY MR. BOND:

7 Q. Okay. So it says these are typically
8 effective amounts well known in the art, such as
9 0.01 -- excuse me, let me reread that -- such as
10 0.001 weight percent to 10 weight percent.

11 Those are the ranges of the effective
12 amounts; correct?

13 MR. DOODY: Objection.

14 THE WITNESS: Depending on what
15 you were adding and why you wanted it and so on,
16 yes.

17 BY MR. BOND:

18 Q. So you'd have to know specifically what
19 additive you were adding and what you were adding it
20 to; correct?

21 A. The goal. What goal you have and then
22 that would depend on the application, the market,

1 that sort of thing.

2 Q. So in the case of a slip agent, you'd
3 have to know what the slip agent is, what you were
4 adding it to, and what you were trying to
5 accomplish -- slip I would imagine -- and whether or
6 not where within --

7 A. Oh, these were for all kinds of things,
8 not slip.

9 Q. Yeah. Oh, I understand. I'm just
10 saying take that as an example.

11 A. Okay.

12 Q. So a person of skill in the art would
13 know, I need to add between this range some amount
14 of slip to obtain, you know, to get to in an
15 effective amount that would let me achieve slip, the
16 desired slip that I want; correct?

17 MR. DOODY: Objection.

18 THE WITNESS: Or desired UV
19 protection or what have you.

20 BY MR. BOND:

21 Q. or lubrication or blocking or whatever
22 would be?

1 A. You find the right additive, and this
2 was basically a generic statement to cover blending
3 of additives.

4 Q. Understood.

5 Before we going on any further, we took
6 a break earlier, Dr. Brant.

7 Did you speak with your attorneys about
8 your testimony today --

9 A. No.

10 Q. -- during the break?

11 A. We watched the Olympics.

12 Q. Who's winning?

13 A. Oh, it's --

14 MR. DOODY: The team with the most
15 medals. (Laugh).

16 THE WITNESS: It's France versus
17 Germany in some kind of dodgeball or throw ball
18 thing.

19 MR. BOND: Oh.

20 MR. DOODY: Handball.

21 THE WITNESS: No, it wasn't
22 handball.

1 MR. DOODY: Oh, it wasn't? Well,
2 they call --

3 THE WITNESS: They have a net.
4 Maybe -- okay. Maybe it is handball.

5 MR. DOODY: They call it handball,
6 yeah. It's not our traditional handball, but
7 it's -- it's pretty cool. I was like, I wish we had
8 that when I was in school because I probably would
9 have played that.

10 THE WITNESS: It's good. It
11 looks like a fun sport.

12 MR. DOODY: Yeah. Kind of like
13 lacrosse and soccer, but you hold the ball with your
14 hand and throw it.

15 BY MR. BOND:

16 Q. Let's go back to your declaration, if
17 we could --

18 A. Okay.

19 Q. -- Dr. Brant.

20 A. Hold on. Move things.

21 Q. Yeah. You may want to -- we can stack
22 those up here. We're going to be done with those

1 for a while.

2 A. Okay. Thanks.

3 Q. If I could turn your attention to
4 paragraph 15 and 16. We talked a little bit about
5 paragraph 15, but paragraph 15 also discloses a
6 comparative example v1.

7 Do you see that on page 10?

8 A. I do.

9 Q. I assume this was taken from the
10 patent?

11 A. Yes. I think for sure it's from the
12 patent. Yeah.

13 Q. Okay. Let's talk about Durethan C38 F.
14 Do you see that? It's the first --

15 A. Yeah.

16 Q. -- ingredient of the composition?

17 A. Right.

18 Q. What is Durethan C38?

19 A. It's a polyamide.

20 Q. Do you know anything else about
21 Durethan C38?

22 A. I'd have to go back and look at the

1 specs. I don't remember if it's the PA6 or the 6/6
2 or a blend of 6 and 6/6. I'd need to look.

3 Q. Well, the only spec sheet that I saw
4 attached to your declaration were these two --

5 A. Yeah.

6 Q. -- relating to C31. That's one of
7 them.

8 Did you ever see a spec sheet for C38?

9 A. I looked it up myself. It was under
10 the website for the company that made this, and I
11 went and looked at it. It was Gurothan or
12 something. It had two names.

13 Anyway, I looked at the spec sheet.

14 Q. Was it a spec sheet off of MatWeb like
15 the other one?

16 A. I don't recall that it was off of
17 MatWeb. I think I went to this site for -- I typed
18 in something like this Durethan C38 F, and it took
19 me to the seller of the material. I guess they're
20 also the fabricator.

21 Q. I'm going to hand you what I've
22 marked --

1 A. Yeah.

2 Q. -- Petitioner's Exhibit 1047.

3 A. Yeah.

4 (Document marked for
5 identification as Omega Exhibit 1047.)

6 BY MR. BOND:

7 Q. And ask you if you've ever seen that
8 spec sheet for Durethan C38.

9 A. I'm not sure that I've seen it, you
10 know, exactly as you're presenting it, but I think
11 when I looked at it, I believe it was just
12 electronic and I looked at it on a screen.

13 Q. Well, I'll represent to you that I
14 downloaded this off of Matweb.

15 A. Okay.

16 Q. That's where I thought you got the C31.

17 A. Yeah.

18 Q. So I thought that was a good source to
19 get it.

20 A. Well, Matweb is a good source.

21 Q. Okay.

22 A. But just to give you some context, I

1 often do go to the manufacturer's websites, and if
2 they offer it -- some of them have walls up, but if
3 they offer it, I go look at the website from the
4 manufacturer. So.

5 Q. Did you rely on the information you
6 obtained from the manufacturer's website as opposed
7 to MatWeb?

8 A. You know, I can't even tell you an
9 answer on that.

10 I looked at the spec sheet, whatever
11 one I saw. It was the one from the company that
12 makes it or it could have been MatWeb, but I think
13 it was the company that made it. So.

14 Q. But you didn't get a copy of that spec
15 sheet from their manufacturer's website; correct?

16 A. I didn't -- I didn't print it out. I
17 didn't keep a copy. I may have downloaded an
18 electronic file that could possibly be somewhere. I
19 don't know.

20 Q. Did you rely on that in any way in your
21 declaration?

22 A. Well, to the extent that I've listed it

1 here is the way that --

2 Q. It's not listed as something you
3 reviewed. It's not listed as something that you
4 relied on.

5 MR. DOODY: Objection.

6 BY MR. BOND:

7 Q. So I'm just wondering if you relied on
8 it.

9 A. Well, I'm relying on it as the sense
10 that this is layer number 1, and this lists the
11 composition of layer number 1. And I know these are
12 polyamides. As I recall one is PA6 and one is 6/6,
13 I believe. That's what my recollection is.

14 Q. Did you look at this information to
15 determine the composition of Durethan C38?

16 A. And determine the composition?

17 Q. Right.

18 what's in C -- what's in Durethan C38,
19 and feel free to refer to that spec sheet --

20 A. Yeah.

21 Q. -- I got off Matweb.

22 A. So my understanding is that F means

1 that it is barefoot and FAM I think may be it's
2 got --

3 Q. well, we're not -- I'm just talking
4 about C38.

5 A. Okay.

6 Q. So you said the F means barefoot?

7 A. I believe it means that it's
8 additive-free to the knowledge that people know.

9 Q. Okay. And where did you get that
10 information?

11 Do you have -- let me ask it this way.

12 Do you have any personal knowledge of
13 Durethan C38?

14 A. No, because, again, I'm the polyolefin
15 manufacturer. I was with Exxon doing polyolefins.

16 So we made lots of films that also
17 included nylon, and we had lots of customers who
18 made films that included nylon, but I wasn't a
19 manufacturer of nylon and I wasn't a chooser of
20 nylon. So I wasn't really paying, you know,
21 intimately close attention to spec sheets for -- for
22 nylon.

1 Q. Right.

2 So you had to look to either the
3 manufacturer's specifications or specifications from
4 MatWeb in order to understand what Durethan C38 is;
5 correct?

6 A. As well as the context within the
7 patent, '882 patent, and what I was told.

8 Q. Okay.

9 A. So.

10 Q. So you did rely on this information you
11 obtained either from MatWeb or from the
12 manufacturer; is that correct?

13 A. I looked at it to establish what it was
14 to be sure that if it was Durethan C38 F that that
15 was polyamide, and that's consistent with the
16 invention.

17 Q. Prior to that time, you didn't know
18 what the F meant in C38, did you?

19 A. Oh, I didn't even know what C38 was. I
20 didn't know any of that stuff.

21 Q. Okay. But you haven't identified
22 anything from the manufacturer's website or from

1 MatWeb regarding C38 that you relied on?

2 A. No. That's what I was trying to
3 explain.

4 I believe when I looked at the spec
5 sheet for C38 F, and maybe the other one, I typed it
6 into Google and the list of opportunities to -- to
7 interrogate, find out what it is, I believe one of
8 the very first ones was actually the manufacturer's
9 website, and I believe that's the one that I looked
10 at.

11 Q. Okay. Take a look at what we marked as
12 Exhibit 1047. Right in front of you there, sir.

13 A. This one? Okay.

14 Q. This is the spec sheet downloaded from
15 MatWeb.

16 A. Okay.

17 Q. Corresponds to the one attached to
18 your -- as part -- reference your declaration for
19 C31, this is the one that's for C38.

20 A. Yes.

21 Q. Did that -- did the information
22 contained on that spec sheet -- is that consistent

1 with what you reviewed or remember -- excuse
2 me -- recall reviewing regarding C38?

3 A. You know, that's -- that's a level of
4 detail that I don't think I can confidently answer
5 yes or no to, but I believe so.

6 Q. Well, do you have -- let's look at the
7 Material Notes. Do you see that?

8 A. Material Notes? Is it this or is it --

9 Q. The Material Notes on the Exhibit 1047.

10 A. Yeah. Okay. Yeah.

11 Q. Well, first let's look at the
12 Categories. It tells you that it's a polyamide.
13 Do you see that?

14 A. Yes. A copolyamide. So it's a mixture
15 of 6 and 6/6 or something of that nature.

16 Q. Okay.

17 A. And I see the F here which says that
18 it's -- well, the F doesn't actually correlate, but
19 it says that it's no additives.

20 Q. Where does it say that?

21 A. Material Notes. "PA 6-Copolymer,
22 non-reinforced, extrusion, medium viscosity, no

1 additives, high transparency."

2 Q. And that's the type of information you
3 obtained looking at either the Matweb site or the
4 manufacturer site to determine C38 is a polyamide
5 with no additives; correct?

6 A. I think that's generally true, yes.

7 Q. Okay. So in your -- do you have
8 personal knowledge that the F stands for no
9 additives, or is that just an educated guess on your
10 point -- part?

11 MR. DOODY: Objection.

12 THE WITNESS: I don't think it's
13 so low as educated guess. I think it's written on
14 the sheet or what I saw on the internet.

15 So, again, there's a trust but
16 verify kind of approach to it, and then the
17 inventors did use it. And so I think they have some
18 understanding and probably used it for -- I don't
19 know how long they used it, but -- but they're going
20 to have investigated or understood what -- what, in
21 fact, the resin is before they're using it in, you
22 know, multi-ton quantities.

1 BY MR. BOND:

2 Q. Understood.

3 Let's look at the next component of the
4 composition. Durethan B40 FAM?

5 A. Durethan B40 FAM, yes.

6 Q. Did you have any personal knowledge of
7 what Durethan B40 FAM was?

8 A. No. No. Again, I am aware of nylon
9 and, generally speaking, how it's manufactured, but
10 to get into the grades and who's making them and all
11 the competitors, that's not my game.

12 Q. Okay. So if we look at your
13 declaration, paragraph 16.

14 A. Uh-huh.

15 Q. It's the second sentence says:

16 "The designation 'FAM' informs a person
17 having ordinary skill in the art that this material
18 includes an additive."

19 There's a comma there, but I just want
20 to talk about the first part of that sentence.

21 A. Yeah.

22 Q. Do you have any personal information or

1 knowledge that FAM stands for an additive?

2 A. No. That's taken from that it's no
3 longer F, where F means no additives.

4 Q. Okay.

5 A. So FAM must mean some combination of
6 additives that -- that are present, and if it was F,
7 I think they would have been using F. So.

8 Q. But you don't have any personal
9 knowledge of that?

10 A. I don't know what the additives are. I
11 don't -- I don't know anything about exactly what
12 the context of -- of additives put into it based on
13 the FAM nomenclature is.

14 Q. So you don't know what the F or the A
15 or the M in FAM means?

16 A. Well, I think the F is what I
17 understood is. Okay. If that's an F, it's
18 barefoot.

19 Q. Okay.

20 A. FAM, I'm not sure how that deviates
21 from F, but it's got additives at that point is my
22 understanding.

1 Q. what is your understanding based on?

2 A. Just that it's no longer an F because
3 F -- it's sort of like, in our world, if we use a
4 certain nomenclature to describe a resin and then we
5 use a different nomenclature, and the one is that
6 it's barefoot and the other is -- is not using that
7 nomenclature, then it's no longer barefoot.

8 Q. So you said that this material includes
9 an additive.

10 Do you mean one additive? Multiple
11 additives? How many additives does it include?

12 A. well, in this case, what I learned is
13 that it had this small amount of the wax in it, but
14 it's a -- I don't know what other additives it might
15 contain.

16 Q. Did you look for the spec sheet either
17 on Matweb or on the --

18 A. Not on this.

19 Q. -- manufacturer's?

20 A. Not on this one.

21 Q. why not?

22 A. I just didn't. I looked at this one,

1 the C38 F. I did not look specifically at the one
2 for the B40 FAM.

3 Q. All right. So you've never seen a spec
4 sheet for B40 FAM?

5 A. I'm not sure that that's true, but I
6 didn't go looking for one.

7 Q. Oh. When would you have seen a spec
8 sheet for B40 FAM?

9 A. It might be in the declaration from
10 Boutrid or from the other fellow, or they may have
11 described something about the composition of the
12 material. I don't know.

13 Q. No, I'm asking about a spec sheet.

14 A. I just don't recall seeing a spec sheet
15 at all.

16 Q. Okay.

17 A. By the way, can I take a quick break?

18 Q. Sure.

19 A. I've got --

20 Q. Sure. Absolutely.

21 (Recess: 10:31 a.m. - 10:34 a.m.)

22 BY MR. BOND:

1 Q. Dr. Brant, we were talking about
2 specification sheets for Durethan B40 FAM.

3 A. Uh-huh.

4 Q. As I understand it, you never went out
5 and sought one; correct?

6 A. Not on that one.

7 Q. And you cannot recall whether or not
8 you've actually seen a spec sheet -- a spec sheet
9 for B40 FAM?

10 A. I don't recall on that one.

11 Q. Do you -- but you think it may have
12 been attached to one of the other declarations,
13 either from Dr. Boutrid or --

14 A. Or some --

15 Q. -- some other?

16 A. -- some discussion. I don't know.

17 Q. Okay. The next part of that sentence
18 that we're talking about in paragraph 16 --

19 A. Uh-huh.

20 Q. -- says:

21 "And I have been informed and
22 understand that it contains less than .1% of EBS

1 wax."

2 Do you see that?

3 A. Yes.

4 Q. Where did that information come from?

5 A. From one of the discussions. I can't
6 even remember exactly where it came from, but it is
7 what I remember.

8 Q. Discussions with who?

9 A. Gee. It could have come up in
10 discussion with or looking through Boutrid's
11 declaration or one of the other declarations. I'm
12 not sure.

13 Q. Did you discuss it with anybody or you
14 read it somewhere?

15 A. I did not -- did I read it somewhere?

16 Q. That's why I'm trying to find the
17 source.

18 A. Yeah.

19 Q. I'm trying to figure out the source of
20 the information.

21 A. And I'm not sure I can answer you with
22 total clarity exactly why I know the number, but I

1 do know that it has a small amount of the wax, and
2 that was consistent with this FAM type of
3 nomenclature where it's no longer barefoot. So.

4 Q. Were you asked to assume that as a fact
5 and base your opinion on that?

6 A. No. No.

7 (Document marked for
8 identification as Omega Exhibit 1048.)

9 BY MR. BOND:

10 Q. I'm going to hand you what I'm marking
11 as Exhibit --

12 A. Yeah.

13 Q. -- Petitioner's Exhibit 1048.

14 A. Okay. 1048.

15 Q. Have you ever seen this document
16 before?

17 A. No.

18 Q. Take a look at it. Do you know what it
19 is?

20 A. It's a sort of sheet that people put
21 out to help customers with providing decisions on
22 selection of resins and that sort of thing. Giving

1 them ranges of performances, the melt, the schematic
2 characteristics. I think it's giving essentially
3 stuff you would find on the spec sheet and so forth.
4 How to make materials. Recommendations for the
5 grades.

6 Q. Is this one of those spec sheets that
7 we've been talking about in general this morning?

8 A. It goes beyond the spec sheet because
9 it's giving guidance on, you know, how to use resin.
10 So.

11 Q. Understood.

12 And this spec sheet -- or let's just
13 call it what it is at the title.

14 This technical information sheet --

15 A. Yes.

16 Q. -- is for Durethan C 38 F at the top of
17 the page.

18 A. I see this and I see this here.

19 Q. When you say "this," you're looking at
20 1047 and that's for --

21 A. 1047 and 1048, yes.

22 Q. Yes. I just want to make sure that you

1 understand that 1048 is what we're talking about
2 now.

3 A. Yes.

4 Q. Okay. And it's for the Durethan C 38 F
5 series.

6 Do you see that?

7 A. Yes.

8 Q. Do you know who Lanxess is?

9 A. Yes, I know the company.

10 Q. Aren't they --

11 A. I think they're the spinoff.

12 Q. Right.

13 At one point in time, weren't they the
14 manufacturers of Durethan?

15 A. Actually, I don't know that. Because
16 again, when I went to look at the spec sheet, I
17 don't think it's Lanxess the site that I went to. I
18 think it was some -- so it could have been a
19 reseller.

20 Q. Does Envalior sound familiar?

21 A. That sounds closer to the mark, yes.

22 Q. Right.

1 A. Yeah.

2 Q. Did you know that they purchased the
3 brand and product and now are now the manufacturer
4 of Durethan?

5 A. I didn't know all of that, but
6 that's -- that's -- this is now coming crystal clear
7 that Envalior is the name that popped up when I went
8 through the search on this for the -- on the web.

9 Q. So this would have been where you
10 searched or Envalior is where you searched for
11 information regarding Durethan C38?

12 A. I looked at the sheet for D38 on
13 the -- on that company's website.

14 Q. If you look at Section 2.2 with me.
15 It's on the front page.

16 A. Yes, I see it.

17 Q. It talks about "Durethan C 38 FA --

18 A. Uh-huh.

19 Q. -- is a lubricated Durethan C 38 F with
20 particularly good adhesion and sliding friction
21 properties (A = lubricant)."

22 Do you see that?

1 A. Yes.

2 Q. Does that inform you what the A in FAM
3 means?

4 A. If I go by this, it says "Moreover the
5 processing aid (A)." So that would say that it's
6 some kind of processing aid, which could be a
7 fluorinated.

8 Q. Doesn't the document say the A is a
9 lubricant?

10 A. A lubricant of some kind. I mean, in
11 my world, lubricant could be a processing aid, like
12 the ones you buy from 3M that are fluorinated
13 polymers that lubricate dyes and stuff. So it
14 enables you to process better.

15 Q. It just says it's a lubricant and that
16 could be one of many things; correct?

17 A. It could be one of many things. It
18 hasn't been identified.

19 Q. Right.
20 Look over on Section 2.3.

21 A. Okay.

22 Q. It actually discusses Durethan C 38

1 FAM.

2 Do you see that?

3 A. I do.

4 Q. It says:

5 "In addition to lubricant 'A', Durethan
6 C 38 FAM also contains the particularly effective
7 additive 'M', which gives the polyamide especially
8 high flexibility."

9 You see that?

10 A. I do.

11 Q. Does that inform you what the M in FAM
12 stands for?

13 A. Not yet.

14 Q. You don't know if it's something in
15 addition to lubricant A?

16 A. Well, since it's a different letter, I
17 assume it's got nothing to do with A.

18 Q. Right.

19 A. So that's all I know.

20 Q. But it's another additive; correct?

21 A. So it's another additive. It appears
22 to be so.

1 Q. And it gives the polyamide especially
2 high flexibility.

3 Do you see that?

4 A. Yes, that's what's written.

5 Q. Do you have any reason to believe that
6 that's not the case?

7 A. No. It's what I'm reading. So.

8 Q. So FAM means that it is at least a
9 lubricant and an other additive which gives the
10 polyamide especially high flexibility.

11 Is that a fair reading of this
12 document?

13 A. That's what they're saying.

14 Q. This document doesn't identify A as
15 meaning -- identifying A as a slip agent or M as a
16 slip agent, does it?

17 A. I haven't read the whole document. So
18 I'm not sure. So.

19 Q. Well, I'm focusing on paragraphs 2.2
20 and 2.3, but please feel free to read any part of
21 the document you wish to read.

22 A. Okay.

1 (Reviews document.)

2 okay. I don't see it anywhere else.

3 Q. okay. so slip agent is not mentioned
4 in this document?

5 A. well, I couldn't say that. I didn't
6 find it.

7 Q. Oh. Let's just -- well, could we say
8 that about sections paragraphs 2.2 and 2.3; correct?

9 A. Let's see.

10 Q. Those paragraphs do not refer to a slip
11 agent; correct?

12 A. I don't find it, no.

13 Q. Or a wax; correct?

14 A. No.

15 Q. All right. Let's go back to your
16 declaration, sir, paragraph 16.

17 A. Right.

18 Q. And let's tackle this second part of
19 this sentence.

20 A. Right.

21 Q. "I have been informed and understand
22 that it contains less than 0.1% of EBS wax."

1 Do you see that?

2 A. Yes.

3 Q. And you don't know where you got that
4 information?

5 A. I couldn't pinpoint where I got the
6 information. We've had so many rounds of discussion
7 prior to even preparing the expert witness
8 statement. So my declaration. I just -- I can't
9 tell you exactly.

10 Q. Was it provided by one of the inventors
11 who submitted -- also submitted declarations?

12 A. If it came from their declarations,
13 that's where I would have seen it.

14 Q. Right.

15 A. But I haven't spoken directly to the
16 inventors at this point.

17 Q. That's fine.

18 A. So.

19 Q. But that amount -- 0.1 percent of EBS
20 wax -- is not disclosed in the patent; correct?

21 A. In the '882? I'd have to go back and
22 read it again but...

1 Q. well, that's what we're trying to find
2 out.

3 A. Yeah.

4 Q. we'll come back to that.

5 A. However this came about, I would say
6 certainly the inventors must have known something.
7 This is not --

8 Q. Yeah.

9 A. -- something that --

10 Q. I'm just trying to find out where it
11 came from, Doctor, so I know --

12 A. Yeah.

13 Q. -- what I'm dealing with.

14 A. I'm probably not going to be the person
15 to restore that for you but I --

16 Q. well, we can identify some things
17 here --

18 A. Yeah.

19 Q. -- perhaps.

20 A. Okay.

21 Q. Because one of the things you
22 identified in your declaration is that you reviewed

1 and relied on Dr. Boutrid's declaration; correct?

2 MR. BOND: Oh, the patent.

3 Let me mark this as --

4 MR. NEUSTEL: It's already marked.

5 MR. BOND: Oh, it's already
6 marked?

7 BY MR. BOND:

8 Q. So this is Omega's Exhibit 1001.

9 A. Yeah.

10 Q. It's just a copy of the patent.

11 A. Right.

12 Q. And I'm going to direct your attention
13 over to discuss about V1.

14 A. This is column 15?

15 Q. Column 15.

16 A. Yeah.

17 Q. Section III. It's about line 18.
18 "Manufacturing of the Siliconized Tubularized
19 Films."

20 A. Yes.

21 Q. Is there anything in this section that
22 discloses the amount of EBS wax that's contained in

1 Durethan B40 FAM as set forth in your declaration?

2 A. In this section, I don't see anything
3 about EBS wax --

4 Q. Anyplace else?

5 A. -- in the B40 FAM.

6 Q. Yeah. Anyplace else? Feel free to
7 look at any part of the patent.

8 A. Yeah, yeah. I'm looking.

9 Q. Because you don't cite it in your
10 declaration. You don't cite anything from the
11 patent. In fact, you don't cite anything.

12 A. (Reviews document.)
13 The source of the information almost
14 certainly comes from an inventor --

15 Q. Okay.

16 A. -- or from -- I don't recall exactly
17 the context of that. I don't -- I just don't
18 recall.

19 Q. All right. I'm going to hand you what
20 has already been marked as Buergofol Exhibit 2004.

21 A. Uh-huh.

22 Q. The declaration of Dr. Boutrid.

1 He's one of the inventors as you
2 recall; correct?

3 A. Yes, correct.

4 Q. I want to turn your attention to page
5 14 and paragraph 37.

6 A. Okay.

7 Q. Could you please read that paragraph to
8 yourself. I just want to ask you some questions
9 about it.

10 A. Yeah.

11 (Reviews document.)

12 So it refers to the "slip agent
13 (migrating compound)."

14 Q. Right.

15 A. So that obviously this corresponds to
16 what's here. So I think that means --

17 Q. So this reflects your recollection of
18 where this statement about .1 percent of EBS wax in
19 your declaration came from; namely, paragraph 37 of
20 Dr. Boutrid's declaration?

21 A. There may be other contexts for which I
22 heard about the concentration of EBS wax, but this

1 is -- this is a fair representation.

2 Q. Well, that's what I need to know,
3 Doctor. You're an expert. I need to know the basis
4 of your opinions.

5 A. Yeah.

6 Q. And is this all there is, or is there
7 something else that you're not telling us?

8 A. I'm not telling you --

9 Q. I'm not -- I'm not trying to be tricky.

10 A. No, no.

11 Q. I need to know the basis --

12 A. Yeah.

13 Q. -- of what this is.

14 A. Right.

15 Q. And if there's something else besides
16 what's in Dr. Boutrid's declaration, I need to know
17 what that is.

18 I can't -- I can't accept, well, I may
19 have gotten it from somewhere else. I need to know
20 what it is so I can look at the sources --

21 A. If I can --

22 Q. -- and determine whether or not what

1 they're saying is true or not.

2 A. Yeah.

3 Q. I'm entitled to know what the basis for
4 this is.

5 A. Right.

6 Q. So I'm just trying to find that out.

7 A. I agree.

8 Q. Okay.

9 A. If my memory were perfect, I would tell
10 you, you know, all of the different ways. Because
11 I'm pretty sure I've heard this in different
12 contexts discussing Boutrid's declaration and just
13 in the context of how that would be -- how I would
14 explain that, and so I've explained it.

15 And I guess to the best of my
16 recollection, I would say I just simply have relied
17 substantially on Boutrid's comments more than
18 anything.

19 Q. Okay. where in his declaration does he
20 say that the B FAM 40 contains EBS wax?

21 A. And it doesn't say that in this
22 paragraph. I don't know if it says it anywhere else

1 in the document.

2 But in terms of the exact specific
3 component, I'm not sure the context in which I
4 gleaned that or inferred it or was given it or any
5 of that. So.

6 Q. If you take a look at Dr. Boutrid's
7 declaration --

8 A. Yes.

9 Q. -- he doesn't cite to anything either.
10 No source.

11 Please feel free to read --

12 A. Yes.

13 Q. -- paragraph 37. He doesn't he doesn't
14 point to and say, hey, here's a spec sheet I relied
15 on --

16 A. Uh-huh.

17 Q. -- or something from a website or
18 anything else, does he?

19 A. Well, again, if you are a customer of
20 this company and you're receiving this, you may have
21 a discussion with the customer supplier, who's --
22 and you say, well, what -- what is this, and this

1 would have been disclosed.

2 Or in our case, when we get materials,
3 we analyze them. We don't just take what's on a
4 spec sheet necessarily. So -- so we analyze them
5 and we find, oh, gee, it's got this particular EBS
6 wax in it, not just any old slip agent or additive.
7 So.

8 Q. Well, Dr. Boutrid doesn't mention any
9 EBS wax, but you do.

10 Did you test it?

11 A. No, I didn't do any testing of anything
12 at this point.

13 Q. Did you -- as we already discussed, you
14 didn't look up any spec sheets for B40 FAM; correct?

15 A. I didn't look for that one. Only the F
16 because I then wanted to see F means barefoot, and
17 then so the other means it has additives and this is
18 the additive.

19 Q. And you didn't know what those were
20 until maybe we spoke about the spec sheet for C38
21 FAM; correct?

22 A. It's possible that I knew something.

1 It's not -- it's not obvious that I knew everything
2 about it. So.

3 Q. So there's no source of support for
4 Dr. Boutrid's declaration, that's set forth in his
5 declaration; is that correct?

6 MR. DOODY: Objection. Scope.

7 THE WITNESS: I'm not sure about
8 that.

9 BY MR. BOND:

10 Q. Okay. Well, where is the support for
11 the proposition that Durethan B40 FAM was less than
12 or -- excuse me -- the slip agent contained in
13 Durethan B40 FAM was less than .1 percent?

14 A. I can't --

15 MR. DOODY: Objection.

16 THE WITNESS: I can't speak for
17 him. I don't know.

18 BY MR. BOND:

19 Q. Well, you --

20 A. Again --

21 Q. That's what I'm saying here.

22 A. Well --

1 Q. There's nothing in here that you saw
2 that would --

3 A. On the other hand, what he learns from
4 talking to the supplier, they may go ahead and just
5 tell him --

6 Q. Well --

7 A. -- if he says, what is it?

8 Q. -- did he speak with somebody?

9 A. Uh?

10 MR. DOODY: Objection.

11 BY MR. BOND:

12 Q. Did he speak with somebody?

13 A. He could have spoken to the supplier of
14 the resin.

15 Q. He could have.

16 So you don't know that he spoke to
17 anybody?

18 A. Well, there's all kinds of ways. As I
19 said, you can do it that way. You can analyze it
20 yourself. You do -- you do an extraction and you
21 find out what the additive is.

22 Q. But you have -- you have no idea

1 whether or not he spoke with the manufacturer or
2 somebody at the manufacturer?

3 A. Not me. Personally I do not, no.

4 Q. You do not.

5 A. No.

6 Q. So you have no way of knowing whether
7 or not what's contained in Dr. Boutrid's statement
8 is true or not?

9 MR. DOODY: Objection.

10 THE WITNESS: Well, again, he
11 signed it as true. So.

12 BY MR. BOND:

13 Q. Other than that, you have no other
14 objective evidence demonstrating that the slip agent
15 contained in Durethan B40 FAM, if any, was less than
16 .1 percent?

17 A. I just have no reason to doubt that at
18 this point.

19 Q. But you have no other evidence that
20 that's what's in there?

21 A. Not personally, no.

22 Q. No.

1 And you have no personal knowledge of
2 what's in Durethan B40 FAM; correct?

3 A. I have no personal knowledge.

4 (Document marked for
5 identification as Omega Exhibit 1049.)

6 BY MR. BOND:

7 Q. Hand you, Doctor -- I'm going to try
8 not to block anything out here -- what we're marking
9 as Petitioner's Exhibit 1049.

10 Oh, I may have given you more than one.
11 No, just a carryover page.

12 A. Okay.

13 Q. And ask if you've ever seen that
14 before.

15 A. Well, it says "conditioned" and I just
16 noticed in their flyer they mention about
17 conditioning. So.

18 Q. Right.

19 I'm asking you if you've ever seen this
20 document --

21 A. Yeah.

22 Q. -- before.

1 A. I don't recall seeing this particular
2 one.

3 Q. Okay. Does it look like the other
4 exhibits we've looked at for C31 and C38?

5 Because what I'm going to represent to
6 you is that, like those, we downloaded it off
7 MatWeb.

8 A. Yeah, and I just noticed this says
9 "Envalior." So.

10 Q. Envalior is the current --

11 A. Current, yes.

12 Q. -- manufacturer of them?

13 A. Right.

14 Q. Take a look at the Categories section.
15 Do you see that?

16 A. Categories section.

17 Q. It's at the top of the page.

18 A. Oh, that. Okay. Yes.

19 Q. So what is -- what is Durethan B40 FAM?

20 A. Based on the categories listed, it's a
21 polymer. It's thermoplastic. It's nylon polyamide.
22 It says it's the nylon 6 or PA6 conditioned. It's a

1 nylon 6 unreinforced.

2 So if I read that correctly, these are
3 just drilling down to be more and more specific as
4 we go from left to right.

5 Q. Right.

6 Do you have any reason to doubt the
7 information contained in this document?

8 A. No.

9 Q. All right.

10 A. No more so than any other spec sheet
11 that I --

12 Q. Understood.

13 Look at the Material Notes. It says
14 "PA 6 film grade of high viscosity with high slip
15 agent and lubricant content, not nucleated."

16 Do you see that?

17 A. Uh-huh.

18 Q. Do you understand what's being conveyed
19 there?

20 A. In my world I do, yes.

21 Q. Okay. Let's talk about high viscosity.
22 what does that mean?

1 A. It means high molecular weight. So
2 it's got molecular weight goes as 3.4 power of
3 the -- viscosity goes 3.4 power of molecular weight.
4 So it's high viscosity. So it's high molecular
5 weight.

6 But if you add a slip agent, this can
7 enable it to be processed easier, and you get higher
8 throughput per unit time. So even though it's high
9 viscosity, high molecular weight may deliver very
10 good properties in solid-state. You can process it
11 fast.

12 Q. Okay. So what does "high slip agent"
13 mean in that sentence?

14 MR. DOODY: Objection. Scope.

15 THE WITNESS: Well, one context
16 could be it's got polyamide or the polyvinylidene
17 fluoride or polyvinyl fluoride or poly -- or the
18 Teflon agents that are additives as essentially slip
19 or lubricating agents for the dye. Or it could be
20 another agent that they're adding that is useful
21 with nylon.

22 BY MR. BOND:

1 Q. Could it be the EBS wax mentioned by
2 Dr. -- mentioned by you in your declaration?

3 A. It could be. Sure.

4 Q. Okay. And what does high lubricant
5 content mean?

6 MR. DOODY: Objection. Scope.

7 THE WITNESS: Again, it's
8 effective in use in the sense that it can usually
9 with this person skilled in the art would say is
10 it's for lubricating the dye and for extruding the
11 material at a reasonable rate.

12 BY MR. BOND:

13 Q. Let's go back to your declaration.

14 A. Okay.

15 Q. It talks in here about .1 percent of
16 EBS wax.

17 You don't know where that
18 identification of EBS wax came from; is that a fair
19 assessment?

20 A. Not as we're sitting here today, but
21 I'm assuming it is tied in to Boutrid's declaration
22 and somehow we -- that's what I know.

1 Q. And you can't point to any other source
2 of that information besides Dr. Boutrid's
3 declaration?

4 A. Not as we're sitting here right now. I
5 just -- I don't recall all of the ins and outs of --
6 of that, but that's what I learned. And so I talked
7 about it in the context of, okay, what does that
8 mean in terms of parts per million and just looking
9 at the units.

10 Q. Nothing else is identified in your
11 declaration that would provide that information; is
12 that correct?

13 A. No.

14 Q. Okay. Then it goes on to say:
15 "The amount of wax present in the
16 external polymer layer is less than .012% by
17 weight."

18 Is that correct?

19 A. It does say that, yes.

20 Q. "Or about 120 parts per million."
21 Correct?

22 A. Yes, correct.

1 Q. But that's not the only additive that's
2 contained in Durethan B40 FAM; correct?

3 A. Well, according to that nomenclature
4 there, there's two additives. There's an A and an
5 M. So I forget which one goes where, but so there
6 should be two additives.

7 Q. We know there's a lubricant; correct?

8 A. Yeah.

9 Q. We know that there is an additive M
10 that increases -- let's go through that down here --
11 that increases flexibility; correct? At least
12 that's what this spec sheet says.

13 A. Yeah. Okay. Good. Yes.

14 Q. Then according to Dr. Boutrid and your
15 declaration, we also have a slip agent; is that
16 correct?

17 A. We have this agent, the EBS wax or
18 some -- some --

19 Q. In addition to the lubricant and the
20 additive M; is that correct?

21 MR. DOODY: Objection.

22 THE WITNESS: I don't know that

1 it's in addition to. I think there -- if they're
2 listing A and M, I think that suggests to me there
3 are two additives and not -- not three or four or
4 five.

5 BY MR. BOND:

6 Q. Well, I'm just trying to figure out.
7 Are you saying that the EBS wax is the
8 M additive or the A or the lubricant, or what are
9 you saying?

10 A. I don't know, but it's possible that
11 it's one of those.

12 Q. Well, the EBS wax or slip agent is not
13 identified in any of the spec sheets that I've
14 provided to you today; is that correct?

15 A. Spec sheets?

16 Q. For B -- C38 FAM or B40 FAM; is that
17 correct?

18 A. Was it mentioned in that Lanxess thing,
19 or no?

20 Q. Oh, that's right here, sir.

21 A. Yeah. I don't -- I don't know if it
22 was mentioned --

1 Q. That's what I asked you earlier.

2 A. -- in Lanxess.

3 Yeah, yeah.

4 Q. Yeah.

5 A. But I think it wasn't but -- and you
6 did direct me to it. So.

7 Q. Right.

8 A. Talks about smooth fast passage stick
9 slip. This is typically some kind of process --
10 what we call processing, and it could be also called
11 lubricant. So. I don't see it explicitly
12 mentioned.

13 Q. So from the information that we have in
14 that Lanxess document, the A stands for lubricant, M
15 stands for another additive that increases
16 flexibility.

17 And then we have your declaration and
18 Dr. Boutrid's declaration which introduces a slip
19 agent, namely, EBS wax; is that correct?

20 A. The EBS wax that's there could
21 potentially be performing the role of a slip agent
22 in a particular context for a particular article,

1 not necessarily for the --

2 Q. I'm just going by what Dr. Boutrid
3 said.

4 A. Uh-huh.

5 Q. He said "The amount of slip agent
6 (migrating compound) contained in the Durethan B40
7 FAM was less than .1%."

8 That's in his declaration.

9 A. Yeah.

10 Q. There is no source provided for that.
11 You don't have a source for that other
12 than Dr. Boutrid's declaration, but we do have the
13 spec sheets for --

14 A. Uh-huh.

15 Q. -- B FAM, B40 FAM; correct?

16 A. Yes, you've showed them to me.

17 Q. Right.

18 And we know what FAM means. We know
19 that the A stands for lubricant and M stands for an
20 additional additive that increases flexibility;
21 correct?

22 A. Yes.

1 Q. Okay. And you and now Dr. Boutrid are
2 now claiming that there is a slip agent, namely EBS
3 wax, also contained in B40 FAM; is that correct?

4 MR. DOODY: Objection.

5 THE WITNESS: I don't call those
6 slip agent that I recall.

7 BY MR. BOND:

8 Q. Dr. Boutrid calls it a slip agent.

9 A. Okay, but I did not.

10 Q. You did not. Okay.

11 You called it EBS wax?

12 A. Yes.

13 Q. So it's not necessarily a slip agent?

14 A. It's potentially true that it wouldn't
15 necessarily be a slip agent. So.

16 Q. Okay. How did you go from Dr. Boutrid
17 calling it a slip agent and you calling it an EBS
18 wax? What information do you have that supports
19 your position that it's not a slip agent or it's
20 just EBS wax?

21 A. Because --

22 MR. DOODY: Objection.

1 THE WITNESS: Because it's quite
2 common that things could be called a slip agent but
3 not actually perform as a slip agent. So I'm just
4 being very cautious.

5 BY MR. BOND:

6 Q. Well, how do you know that it's EBS
7 wax?

8 MR. DOODY: Objection.

9 THE WITNESS: It just came
10 through with all these discussions involving
11 Boutrid's declaration and --

12 BY MR. BOND:

13 Q. Discussions with whom?

14 A. Well, I got that information from his
15 declaration.

16 Q. He doesn't say --

17 A. I can't --

18 Q. He doesn't say it's EBS wax, sir.

19 A. Again --

20 Q. I'm trying to find out where you got
21 EBS wax from.

22 A. I -- that's kind of a wormhole for me.

1 I can't -- I can't tell you.

2 But given that information, I made this
3 statement, and it basically is just running through
4 what the concentration would be based on different
5 units. So weight percent and dilution based upon
6 blending and then parts per million and that sort of
7 thing. So it's just setting the metrics. So.

8 Q. But there's no basis for to you to
9 claim it's EBS wax. You can't identify --

10 MR. DOODY: Objection.

11 BY MR. BOND:

12 Q. -- any basis?

13 MR. DOODY: Sorry. Objection.

14 THE WITNESS: I can't tell you.
15 It's -- there's so many discussions and so much that
16 went on. This is what I ended up understanding that
17 the composition means.

18 BY MR. BOND:

19 Q. Discussions with whom?

20 A. Well, of course it's the lawyers who
21 I'm talking to primarily.

22 Q. Okay. And you didn't have --

1 A. But also looking --

2 Q. You didn't have any discussions with
3 Dr. Boutrid?

4 A. I only looked at his declaration.

5 Q. You didn't have any discussions with
6 the other inventor, Mr. Schleicher, correct?

7 A. I've never met him.

8 Q. But you didn't have any discussions
9 with him; correct?

10 A. No.

11 Q. And the only other people you discussed
12 what's contained in your declaration are your
13 attorneys; is that correct?

14 A. That's the only people I've been
15 involved with aside from Boutrid and the
16 declarations that I've seen.

17 Q. So it must have been that one of the
18 attorneys provided -- told you that the slip agent
19 identified by Dr. Boutrid is EBS wax; is that
20 correct?

21 A. I can't tell you how I got to that
22 point, but that would be the simple inference that

1 you would take, yes.

2 Q. well, we're trying to find out, sir --

3 A. Yeah.

4 Q. -- because we need to know what the
5 basis is for saying that. There's no support.

6 So if you don't have any support for
7 it, should we simply inform the Board that you can't
8 support that with any evidence, therefore, they
9 shouldn't consider it?

10 MR. DOODY: Objection.

11 THE WITNESS: I mean, for me, if
12 I were not sitting here for a declaration, I would
13 simply analyze the resin and see if that's, in fact,
14 the wax that's there, and it would be a
15 straightforward matter.

16 BY MR. BOND:

17 Q. I know. But you didn't do that?

18 A. No.

19 Q. And then you didn't look for the
20 specification sheets either, did you?

21 A. I didn't look for that one, but I did
22 look at the nomenclature, which told me that it's

1 not barefoot. It's got other additives in it.

2 Q. Right. It has other additives.

3 A. So it's consistent with this.

4 Q. But it doesn't identify what the
5 specific lubricant is and it doesn't identify what
6 the specific lubricant M is, and it never mentions
7 EBS wax or a slip agent, does it?

8 A. I'd have to go back and read everything
9 again but --

10 Q. They're right here, sir.

11 A. Okay.

12 Q. Feel free.

13 A. (Reviews document.)

14 So that's F.

15 It explains that the -- this is
16 something that I would understand.

17 "Processing aid improves the flow
18 properties of the granules and their processing
19 overall."

20 That's a common usage of this A term,
21 processing.

22 Q. A lubricant? A lubricant?

1 A. Yeah, it's lubricating the melt
2 state --

3 Q. Right.

4 A. -- not the solid-state.

5 Q. Right.

6 A. It's also lubricating the pellets as
7 they're flowing so they don't stick together.

8 Q. So that document mentions lubricant is
9 what A means; right?

10 A. A lubricant for that purpose.

11 Q. Right.

12 A. Yes.

13 Q. So there's nothing in there about EBS
14 wax? Excuse me.

15 There's nothing in there that
16 identifies EBS wax as one of the additives; correct?

17 A. No, at least through these sections 2.2
18 and 2.3 that you directed me to.

19 Q. Okay. Feel free to read the rest of it
20 very closely.

21 A. (Reviews document.)

22 M is for flexibility. It's through

1 design. That's the F series.

2 okay. I've looked. I can't find it.

3 So.

4 Q. Is there anything in that document,
5 Petitioner's Exhibit 1048, that refers to a slip
6 agent?

7 A. Well, we talked about lubricant. I'd
8 have to look through for slip agent.

9 Q. And we talked about additive M?

10 A. Yeah.

11 Q. Is there anything in there that would
12 indicate that there's another additive in the form
13 of a slip agent?

14 A. (Reviews document.)
15 Lubricant. M says it gives it high
16 flexibility.

17 Q. Right.

18 A. I don't see the slip stuff.

19 Q. Right.

20 I'm asking: Is there anything else
21 mentioned in there that would indicate or identify
22 another additive as a slip agent?

1 A. I don't find anything.

2 Q. All right.

3 A. So.

4 Q. Same for Petitioner's Exhibit 1049,
5 which is the Matweb spec sheet --

6 A. Yeah.

7 Q. -- for B40 FAM.

8 Does it mention a slip agent?

9 A. (Reviews document.)

10 It says grade with high viscosity with
11 high slip agent.

12 Q. Right.

13 A. So this has been mentioned.

14 Q. Right.

15 A. Okay.

16 Q. Does it mention EB -- excuse me -- EBS
17 wax?

18 A. I would hazard a guess that it does
19 not. So, I mean, people don't describe the --

20 Q. Well, it's only one page.

21 A. Yeah.

22 Q. So I'm asking you if there's anything

1 on that page that identifies the slip agent as EBS
2 wax.

3 A. No. No. Nor should they.

4 Q. It also mentions a lubricant, doesn't
5 it?

6 A. Let's see. Lubricant, yes.

7 Q. Right.

8 A. Not nucleated, right.

9 Q. Not nucleated.

10 what does that mean "not nucleated"?

11 A. Nucleators are added to encourage the
12 rate of crystallization and typically it also helps
13 to improve optics and so on. So.

14 Q. Let's go back to your declaration.

15 Do you know whether or not the
16 lubricant used in B FAM 40 could operate as a
17 migrating compound?

18 A. No.

19 Q. Do you know if what's identified as
20 additive M that increases flexibility could operate
21 as a migrating compound?

22 A. No.

1 Q. Do you know the slip agent that's
2 identified in Petitioner's Exhibit 1049 operates as
3 a migrating compound?

4 A. It could in the sense that it may have
5 already migrated to the dye lip and so --

6 Q. I'm just asking if you know. If you
7 actually have knowledge.

8 A. No.

9 Q. You do not.

10 And you do not know based on any
11 objective evidence whether the slip agent mentioned
12 by Dr. Boutrid in his declaration is actually EBS
13 wax; correct?

14 MR. DOODY: Objection.

15 THE WITNESS: I wouldn't
16 personally know that, but that's what I've learned
17 from his deposition and kind of discussing the
18 context of what that material is. So.

19 BY MR. BOND:

20 Q. It's not a deposition. You mean his
21 declaration?

22 A. I mean his declaration.

1 Q. His declaration never mentions --

2 A. It doesn't mention it explicitly, but
3 in discussions it's come out that that's what it
4 probably is.

5 Q. Okay. Let's look at paragraph 17 of
6 your declaration.

7 A. Okay.

8 Q. The first sentence says:

9 "The examples show, however, that this
10 amount."

11 Is the amount they're referring to the
12 .012 percent by weight --

13 A. Yeah.

14 Q. -- parts per million?

15 "which likely would be very small, is
16 not sufficient to provide improved mechanical
17 properties and improved release characteristics."

18 Do you see that?

19 A. Yes.

20 Q. That's only talking about what you're
21 claiming is EBS wax; correct?

22 A. Yes, this is -- 17 is written in the

1 context of 16.

2 Q. We've already discussed earlier that a
3 lubricant could have effect on the mechanical
4 properties and the release characteristics of a
5 material; correct?

6 MR. DOODY: Objection.

7 THE WITNESS: Not on the
8 mechanical properties so much. I mean, you could
9 have so much that you ruin mechanical properties
10 but...

11 BY MR. BOND:

12 Q. Well, we discussed earlier that you
13 said it could change the properties.

14 A. It changes properties --

15 Q. All right.

16 A. -- generally speaking.

17 Q. All right.

18 A. And depending on how much and what it
19 is, the properties that change could be a mechanical
20 property and maybe not so good, or it could be a
21 surface property. It could be interfacial property.

22 Q. But you wouldn't know that unless you

1 knew what the lubricant is; right?

2 A. well, and you knew the context for
3 which it was being applied.

4 Q. Right.

5 A. The thickness of film, extrusion. Can
6 be all kinds of stuff. So.

7 Q. So here we know that there is also in
8 addition to the alleged EBS wax contained in B FAM?

9 A. Uh-huh.

10 Q. B40 FAM?

11 A. Right.

12 Q. There's a lubricant and there's an
13 additive M; correct?

14 MR. DOODY: Objection.

15 THE WITNESS: Additive M based
16 upon the spec sheet. It lists --

17 BY MR. BOND:

18 Q. Correct.

19 A. -- three additives apparently based on
20 lettering.

21 Q. Your statements in paragraph 17 doesn't
22 address the effect those could have on the film;

1 correct?

2 A. They don't explicitly address it. It's
3 an operational question. Do they solve the problem
4 or do they not solve the problem. And so.

5 Q. well, you don't know because you don't
6 know what the lubricant is; correct?

7 A. well, I know based upon the patent
8 application in '882 that -- that they didn't find a
9 solution to that problem for what they discovered.
10 So.

11 Q. I don't understand your response.
12 Paragraph 17 doesn't mention the
13 lubricant or it doesn't mention the additive M that
14 are also contained in B40 FAM; correct?

15 A. Right.

16 Q. So your statement is limited to only
17 the slip agent or what you have now termed as EBS
18 wax in the -- in your declaration.

19 It does not include analysis regarding
20 what's contained in the lubricant or what is
21 contained in the M additive; is that correct?

22 MR. DOODY: Objection.

1 THE WITNESS: It doesn't and,
2 honestly, it doesn't matter to me. I'm looking at
3 does it pass their test or not, and it didn't pass
4 their test.

5 BY MR. BOND:

6 Q. What test?

7 A. This air inflation test and the
8 splicing test and the -- the test --

9 Q. What test did you conduct with EBS wax,
10 with lubricant?

11 A. I didn't do any of the tests. I'm
12 relying upon what's in the patent.

13 Q. Only what's in the patent?

14 A. Correct.

15 Q. Let's continue on, Doctor. Are you
16 ready?

17 A. Yes.

18 Q. Sure thing.

19 Just go to page 11 and the rest of
20 paragraph 17.

21 A. (Reviews document.)

22 Q. The last sentence of that paragraph

1 talks about what would and would not have been
2 considered a coating or covering.

3 A. Starting with "It is my opinion" or?

4 Q. Yes.

5 A. Okay.

6 Q. I think that's a lengthy sentence.

7 A. It is.

8 Q. Go ahead and read it. I'll ask you
9 questions about it.

10 A. Yeah. "That a person having ordinary
11 skill in the art would not have considered a
12 comparative example to be covered by a patent claim,
13 and consequently, would not -- would have known and
14 understood that small amounts of migrating compounds
15 (either externally applied as a coating or after
16 film formation" -- I added as a coating -- "or
17 applied during manufacture of the film and migrating
18 to the surface), even if those compounds migrated to
19 the surface of the film, would not have been
20 considered a coating or covering in the context of
21 the '882 patent."

22 Q. That's because, in your opinion, those

1 compounds would not have improved the mechanical
2 properties and the release effects; is that correct?

3 A. Well, they wouldn't have passed the
4 total ensemble of effects. Typically you look at
5 these things as a radar chart. So you're not
6 deteriorating some other properties while you
7 enhance another property.

8 So in this context, they were able to
9 get the enhanced mechanical properties and get the
10 nice pullout without tear, and -- and so that's the
11 context.

12 Q. Do you have the patent in front of you
13 still, sir?

14 A. No. I think I handed it back to you.
15 Or did I?

16 Q. It's right there.

17 A. Oh, here it is. Okay.

18 Q. Let's look at column 16, sir.

19 A. 16. Yes.

20 Q. Yeah. Do you see the examples B4, B5,
21 B6?

22 A. Let's see. Example B4. Release wax.

1 B5 and B6. Yes, I do.

2 Q. You see that?

3 So now there's a new ingredient in the
4 polyamide layer, correct, in those examples?

5 A. The Constab. Is that what you're
6 referring to?

7 Q. Correct.

8 You see that?

9 A. Yes.

10 Q. It's Constab PE-SA 270; correct?

11 A. Correct.

12 Q. Do you have any personal knowledge of
13 what Constab PE SA-270 is?

14 A. Only in the context of how it's stated
15 here as to be made from the ethylene bis
16 stearamide --

17 Q. Right.

18 A. -- in the polyamide external layer. So
19 I assume it, based on the way it's stated, that
20 there might be some exchange, but I can only
21 speculate. So I can't tell you what Constab is.

22 Q. You don't know.

1 So you don't have any personal
2 knowledge of what it is?

3 A. I don't have any personal knowledge of
4 Constab.

5 Q. Or what it's made of?

6 A. I could speculate, but I don't know.
7 So.

8 Q. Do you know what the PE stands for in
9 Constab?

10 A. Well, in my world, it would mean
11 polyethylene.

12 Q. Okay. Is that some -- your world
13 somewhat different than the patent?

14 A. Well, different fields of polymer can
15 use acronyms quite differently. So that's why when
16 you go to some papers, you get long lists of what
17 the acronyms mean because they mean different things
18 to different people. So.

19 Q. But as far as you understand it, it
20 means polyethylene?

21 A. No, that would just be a guess. If I
22 were just sitting here talking with somebody, I

1 would say, oh, well, PE, that oftentimes people use
2 that to say it's polyethylene, but I don't know.

3 Q. All right.

4 A. I don't know what it is.

5 Q. Do you know what the SA stands for?

6 A. Again, I have a speculation as to what
7 it is, but I don't know for sure.

8 Q. What do you think it is?

9 A. Succinic anhydride. So it's a
10 functionalized polyethylene would be my guess.

11 Q. Do you know what the 270 stands for?

12 A. Ooh. That gets far more speculative.
13 I don't know what that is, no.

14 Q. Did you see any spec sheets or product
15 sheets for Constab PA -- PE-SA 270?

16 A. If I did, I don't recall it.

17 Q. Did you look for them?

18 A. Not explicitly, no.

19 Q. Did you go to Matweb and look for them?

20 A. No.

21 Q. Did you go to the manufacturer and look
22 for them?

1 A. No.

2 Q. Were you told not to look for them?

3 A. No.

4 Q. Why didn't you go look for them?

5 A. It isn't something that I really even
6 considered in the context of my report. It isn't
7 something that I thought had an impact or a bearing.
8 But if it's there, operationally one has the
9 results, and so I just look at those results.

10 Q. Let's go to your declaration.

11 A. Yeah, sure.

12 Q. Now at paragraph 72.

13 Do you have your declaration in front
14 of you?

15 A. Yeah. Paragraph 72. Okay.

16 Q. Right.

17 A. Okay.

18 Q. And you see there it says "See Exhibit
19 2004 at paragraphs 40 to 43"?

20 A. Yes.

21 Q. Is that your support for the previous
22 paragraphs that set out these formulas?

1 A. Well, this is getting a little bit deep
2 here. Can I look at 2004? I don't even remember
3 which 2004 is.

4 Q. That's the Boutrid declaration.

5 A. Okay.

6 Q. I think you still have it in front you.
7 Is that it right there?

8 A. Is it this one?

9 Q. I think that's there.

10 A. Let's see.

11 Q. Is that it?

12 A. This is Boutrid, yes.

13 Q. Yeah.

14 A. Okay. So we're looking at 40 to 43.

15 Q. To 43. Correct.

16 A. Okay. So 40. Whoops. Oh, here we go.
17 (Reviews document.)

18 Okay. These are from the patent.

19 okay. So he lists the Constab.

20 Q. I'm just asking if that's the support,
21 what you would say is Exhibit 2004.

22 Is that the support you're identifying

1 for your previous statements in
2 paragraphs -- paragraph 68, 69, 70, and 71?

3 A. 68, 69.

4 Q. Uh-huh.

5 A. (Reviews document.)

6 So the silicone is something that I
7 remember. Polysiloxane for an example. Coating.
8 Coating.

9 Q. My question is even more basic than
10 that.

11 A. Yeah.

12 Q. I'm just wondering if that's the
13 support for those previous paragraphs is all. I'm
14 just going to go through paragraph 72.

15 A. Is 41 the support or is it?

16 Q. It is paragraphs 40 through 43 is what
17 you cite.

18 A. 40 to 43. Okay.

19 Q. Is what you cite.

20 And I'm wondering if that is what
21 you're using as support for statements contained in
22 68, 69, 70, and 71.

1 A. (Reviews document.)

2 39 to 42 was that?

3 Q. 40 to 43 you cite to.

4 A. 40 to 43. Okay.

5 5 structure inner tube. Okay.

6 So going back to my statements. This
7 is for 60?

8 Q. 68, 69, 70 and 71. That's the only
9 support I could identify for your statements.

10 A. Silicone. That makes sense, yes. B2
11 example. 6 plus polysiloxane. That was a type or
12 control for these. Medium release effect B2.

13 (Reviews document.)

14 okay. So these are Evonik materials,
15 though. 6 plus polysiloxane.

16 One issue here is this is -- this --
17 this table is relating to Evonik materials, Evonik
18 polyamides.

19 Q. Uh-huh.

20 A. And no longer the -- these materials.
21 So, as far as I know.

22 Q. It's not my citation, sir.

1 I'm asking you what you've cited is --

2 A. Yeah. B3 is comparative --

3 Q. -- support for those previous
4 paragraphs or not.

5 A. -- example 6 plus poly B3.

6 Use different types of polysiloxane
7 materials, these three, in varying proportions and
8 thus would be considered a coating of polysiloxane.
9 I agree that's what I said. Different
10 polysiloxanes.

11 (Reviews document.)

12 Okay. Through 70 or through 68 was it?

13 Q. Through 71.

14 A. 71. Okay. I need to continue.

15 Q. There's nothing supporting those except
16 we get to this paragraph 72 and all of a sudden it
17 says "See Exhibit 2004." Prior to that, those are
18 the paragraphs that cite seems to support.

19 A. Okay. Through there. Then we talk
20 about -- (reviews document.) B6.

21 (Reviews document.)

22 okay. I've read through 71.

1 Q. Uh-huh.

2 A. You want me to continue?

3 Q. No.

4 A. Okay.

5 Q. Because 72 is where it says "See
6 Exhibits 2004 at paragraphs 40 or 43."

7 That's the only support I could find
8 for what you're saying in those previous three
9 paragraphs; is that correct?

10 A. Oh, let me look.

11 Q. The only support you cited is all I'm
12 asking.

13 A. Okay. 40 and 43.

14 Q. 42, 43.

15 A. 42 and 40 -- okay. 40 to 43 and 42.
16 okay.

17 (Reviews document.)

18 I think that's true. I'm recollecting
19 and reconstructing as I go. So.

20 Q. Okay.

21 A. I believe that's the case.

22 Q. All right. Back to your declaration.

1 A. All right.

2 Q. We're going to talk the rest about
3 what's in paragraph 72.

4 A. Yes.

5 Q. Got it in front of you?

6 A. Yes.

7 Q. Okay. And with reference to Constab.
8 So the second sentence says:

9 "A person having ordinary skill in the
10 art would have no reason to expect that different
11 migrating compounds, known in the art to provide a
12 similar effect as EBS wax used in examples B4-B6."

13 Do you see that?

14 A. Uh-huh.

15 Q. Okay. Is that referring to Constab?

16 A. Well, now that I've read through again
17 Bertram -- Boutrid's declaration, I'm looking at the
18 phraseology. It says that the Constab is -- is
19 either of or from the bis stearamide, the EBS.

20 Q. Uh-huh.

21 A. And so it's nothing that I was, you
22 know, espousing like PE, polyethylene.

1 Q. Uh-huh.

2 A. It doesn't appear to be any of that.
3 It just is some package that contains this ethylene
4 bis stearamide that is used as a -- as an additive.

5 Q. Okay. Is that the only migrating
6 compound contained in the --

7 A. In the Constab.

8 Q. -- Examples B4 to B6?

9 A. Let's see.

10 (Reviews document.)

11 It seems to be the only one that I
12 would point a finger at --

13 Q. All right.

14 A. -- that it's, okay, this could migrate.

15 Q. Then with the next sentence of -- back
16 to your declaration.

17 A. Yeah.

18 Q. 72. It talks about 1 percent of the
19 EBS wax used in B4 and 1 percent or -- excuse
20 me -- 6 percent used in B6.

21 And then it goes on to say:

22 "In addition, a person having ordinary

1 skill in the art would understand that smaller
2 amounts of migrating compound would result in less
3 migrating compound migrating to the surface, and
4 thus, at 1% by weight of migrating compound, the
5 covering so formed likely would not be present on
6 entire circumferential area of the outer facing
7 external side facing the UV-curable resin, but
8 rather only on a section thereof."

9 Is Constab PE-SA 270 100 percent EBS
10 wax?

11 A. That declaration suggests it's not 100
12 percent because it says it's comprised of, or
13 whatever the wording was. So it's not entirely EBS
14 wax is my interpretation.

15 Q. How much of it is EBS wax?

16 A. I'm not sure.

17 Q. How much of it is migrating compound?

18 A. I don't know.

19 Q. So your statements that these examples
20 contain 1 percent or 6 percent of migrating compound
21 are incorrect?

22 MR. DOODY: Objection.

1 THE WITNESS: whatever is
2 migrating, it's either higher or lower. That's all
3 I can tell you.

4 BY MR. BOND:

5 Q. But you don't know that Constab is 100
6 percent migrating compound; correct?

7 A. Correct.

8 Q. You don't know that it's 100 percent
9 EBS wax; correct?

10 A. I could -- I could speculate that it
11 is, but I'm not sure.

12 Q. You don't know; correct? Don't want
13 you to speculate. You don't know?

14 A. I don't know for sure.

15 Q. You don't know what other materials are
16 contained in Constab; correct?

17 A. No.

18 Q. So you can't claim based on knowledge
19 that Constab is 1 percent by weight of migrating
20 compound; correct?

21 A. I don't know that for a fact.

22 Q. Well, you say that in your declaration,

1 don't you?

2 Declaration --

3 A. You're talking about 70?

4 Q. Paragraph 72.

5 A. 72?

6 Q. Correct.

7 A. If I'm reflecting back on how I was
8 phrasing this in writing this, it has to do with the
9 fact that if you are preparing it from the EBS wax
10 and the EBS wax has some function, oftentimes what
11 people will do is blend waxes. So you end up with
12 it's got two different waxes in it.

13 The proportions are not known to me,
14 but that's how I would envision this possibly being
15 deployed in the marketplace.

16 Q. But you don't know what's in Constab?

17 A. I don't know what's in it.

18 Q. You don't know if it even contains EBS
19 wax?

20 A. I'm pretty sure based on the wording
21 from the declaration and from the patent that it's
22 got EBS wax in it.

1 Q. But you don't know how much?

2 A. No.

3 Q. You don't know if there's any other wax
4 in it?

5 A. Again, my -- based on my experience,
6 people blend waxes and so Constab could be a
7 possible.

8 Q. That's -- that's speculation on your
9 part, though?

10 A. That's speculation on my part.

11 Q. Right.

12 A. But that's -- that's I would call it --

13 Q. A guess?

14 A. -- an informed speculation based on my
15 experience in the industry.

16 Q. Is there anything in the patent that
17 would suggest to you that there is another wax
18 contained in Constab?

19 A. Nothing, no.

20 Q. Nothing.

21 So the amount of migrating compound
22 actually contained in Constab could be much less

1 than the 1 percent or the 4 percent or the 6 percent
2 contained -- set forth in Examples B3 -- excuse
3 me -- B4, 5, and 6; correct?

4 A. In principle, that's correct. Yeah.

5 MR. BOND: Before I go on to
6 something else guys, good time to break for lunch?

7 MR. DOODY: Sure.

8 MR. BOND: All right.

9 (Whereupon, at 11:43 a.m., a
10 luncheon recess was taken.)
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AFTERNOON SESSION

(12:51 p.m.)

DR. PATRICK BRANT

called for continued examination and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (CONTINUED).

BY MR. BOND:

Q. Dr. Brant, before we broke for lunch, we were discussing Constab.

A. Uh-huh.

Q. And we had established that you hadn't seen any product brochures or tech specifications or anything of that nature regarding what's in Constab or what Constab does; is that correct?

A. We did. Although I find it in here. So.

Q. Oh, I'm not asking about what's in the patent, sir. I'm asking about what you found out about it.

A. Well, I've read the patent. So that's how I found out about it.

1 Q. Found out about Constab?

2 A. Yeah.

3 Q. Yeah, it's in the formulas; right?
4 It's in B1, B3?

5 A. And it consistently says it's the EBS,
6 the ethylene bis stearamide.

7 Q. Right.

8 Did you have discussions with your
9 attorneys about your testimony this morning at
10 lunch?

11 A. No. No.

12 Q. Did they send you anything to read or
13 consider?

14 A. No.

15 Q. Okay. But regardless of what the
16 patent says, you don't know what's in it?

17 A. I don't know what's in it, no.

18 Q. We talked a little bit this morning
19 about what the PE and the SA and the 270 in the
20 Constab listed in the patent mean.

21 A. Uh-huh.

22 Q. Do you recall that?

1 A. Yes.

2 Q. I'm going to hand you what I'm going to
3 mark as Petitioner's Exhibit 1050.

4 (Document marked for
5 identification as Omega Exhibit 1050.)

6 BY MR. BOND:

7 Q. And ask you have you ever seen that
8 before.

9 A. Yeah, I have a copy in my office.

10 Q. You do?

11 A. Yeah.

12 Q. So this is a copy of a handbook
13 entitled "Handbook of Plastic and Rubber Additives
14 Second Edition Volume 1-2 Compiled by Michael and
15 Irene Ash"; correct?

16 A. Uh-huh.

17 Q. So you've seen this book before?

18 A. Well, I use it as a reference.

19 Q. Okay. If you can turn with me to page
20 687.

21 A. 687.

22 Q. Yes.

1 A. Okay. I'm on it.

2 Q. Okay. This is a part of the index of,
3 I guess, products, components, chemicals, whatever
4 you want to call them.

5 A. Yes. Right.

6 Q. Yeah. Beginning with the letter P.

7 Do you see on the left-hand column down
8 towards the bottom some additive -- Constab
9 additives designated as PE-SA 21, PE-SA 24, 40, 49,
10 60. I read through several numbers.

11 Do you see that?

12 A. Yes.

13 Q. Let's start with PE-SA 21.

14 Do you see that?

15 A. Yes.

16 Q. This morning you said that you thought
17 maybe that the PE could stand for polyethylene.

18 Does this description of that product
19 inform you of what the PE in Constab PE-SA set forth
20 in the patent means?

21 A. Well, it's starting to. This isn't
22 PE-SA 72 so, but I'm getting the gist of how they're

1 labeling. So.

2 Q. Right.

3 Do you see the LLDPE-based masterbatch
4 in that?

5 A. Polyethylene, yes.

6 Q. Is that LLDPE a polyethylene?

7 A. Yes.

8 Q. Yes, and it says it's an LLDPE-based
9 masterbatch.

10 what does that mean?

11 A. It's what we talked about earlier where
12 people can compound things to make them easy to
13 deliver and disperse in a product, if you're making
14 a product that requires some of the additives that
15 are in there, but they're hard to deliver without
16 putting them in a masterbatch form.

17 Q. Okay. It also says that PE-SA 21 is 5
18 percent -- is it erucamide?

19 A. Erucamide, yes.

20 Q. I'll give you the spelling later.
21 And 10 percent silica.

22 Do you see that?

1 A. Natural silica, yes.

2 Q. Do you know what the erucamide is being
3 used for?

4 A. Again, it's by weight percent. It
5 would be a way to deliver erucamide and let it down
6 into some parts per million of whatever people
7 desire in a given layer that they desire, with the
8 idea of using it to control a coefficient of
9 friction usually.

10 Q. Do you see within that description of
11 PE-SA 21 uses? It says "slip/antiblock agent for
12 plastics."

13 A. Yes.

14 Q. Does that indicate to you that the
15 LLDPE-based masterbatch known as PE-SA 21 contains a
16 slip or antiblock -- slip and/or antiblock agent for
17 plastics?

18 A. It does.

19 Q. Okay. Is the erucamide acting as a
20 slip agent?

21 A. It is commonly referred to as a slip
22 agent.

1 Q. And what about the 10 percent natural
2 silica?

3 A. That's what is commonly referred to as
4 an antiblock.

5 Q. And what does an antiblock do?

6 A. Antiblock is -- both of them play a
7 role. It can be synergistic, but the point is that
8 the antiblock and the combination of these things
9 enable you when you roll a film up in large part
10 that you'll actually be able to unroll it later. So
11 it delivers a certain degree of surface roughness to
12 the film.

13 Q. So the SA stands for slip agent and
14 antiblock.

15 would that be fair to say?

16 A. That seems reasonable. Sure.

17 Q. All right. Take a look over on the
18 next column. It talks about Constab, for instance,
19 PE-SL 04.

20 Do you see that?

21 A. Yes, I do.

22 Q. So we understand that PE stands for

1 polyethylene; correct?

2 A. Right.

3 Q. And the SL here stands for slip agent;
4 correct?

5 A. I can -- you could infer that. Sure.
6 Yeah.

7 Q. well, more than infer.
8 It says it contains "3% Erucamide in
9 LLDPE-based masterbatch"; correct?

10 A. Uh-huh. Yes.

11 Q. There's no reference to antiblock, is
12 there?

13 A. No, not here.

14 Q. It says "Uses: slip agent for
15 plastics"; correct?

16 A. Yes.

17 Q. So when you see PE-SL for Constab, is
18 it safe to assume that you can infer that means that
19 it is a polyethylene-based masterbatch containing a
20 slip agent?

21 A. Yes.

22 Q. And the same for the PE-SA. Is it fair

1 to say that when you see PE-SA for Constab or used
2 as a part of the Constab name that that means that
3 it is a -- contains a slip agent and an antiblock?

4 A. Yes. Following your logic, yes. Sure.

5 Q. So if we go back to the patent again.
6 You have that -- still have that in
7 front of you?

8 A. Yes, I do.

9 Q. Let's look at column 16, Example B4.
10 You see Constab PE-SA 270?

11 A. Correct.

12 Q. Do you understand that now to mean
13 Constab made from with a polyethylene masterbatch
14 that contains a slip agent and antiblock?

15 MR. DOODY: Objection.

16 THE WITNESS: Based upon your
17 logic and going from here to here, I will say yes.

18 BY MR. BOND:

19 Q. Well, you said that you've seen this
20 handbook before --

21 A. I use it.

22 Q. -- and use it as a reference?

1 A. Yes.

2 Q. Is there any indication that's what's
3 set forth in this reference is incorrect?

4 A. Well, it is a handbook.

5 Q. Right.

6 A. So the handbooks have errors in them.
7 They're compilations made by a variety of people
8 putting all kinds of things in there. But in
9 general because it's a handbook, people start there
10 for sure.

11 Q. Are you aware of any errors with regard
12 to the descriptions or definitions of the Constab
13 formulations contained on page 687?

14 A. No.

15 Q. Do you have any reason to believe that
16 the Constab -- that the SA to describe the Constab
17 in the patent has any other meaning than slip agent
18 and antiblock?

19 A. Not based upon your logic, no.

20 Q. Not my logic. The book. I'm asking
21 you for yours.

22 A. I'm just following what you've led me

1 down. So it's -- it's based upon that. I'd say SA
2 is what you've said it is.

3 Q. Well, do you agree that it is that?

4 A. I agree that that's what it looks to
5 be.

6 Q. Do you have any reason to believe that
7 it's not?

8 A. Not particularly, no.

9 Q. Would you like to see some other
10 information to make sure that it's -- that SA stands
11 for slip agent and antiblock with regard to the
12 specific Constab PE-SA 270 set forth in the patent?

13 A. It wouldn't hurt. Sure.

14 Q. Would a product information or spec
15 sheet for Constab PE-SA 74 be of interest to you?

16 A. Yes.

17 Q. I'm going to hand you what I'm going to
18 mark as Exhibit 1051.

19 (Document marked for
20 identification as Exhibit 1051.)

21 MR. BOND: Before I do guys, I
22 want to make sure you don't have any issues with me

1 showing this to Dr. Brant. It was produced in the
2 underlying litigation.

3 MR. DOODY: Oh, it was?

4 MR. BOND: Yep.

5 MR. DOODY: Was it produced as
6 confidential?

7 MR. BOND: It is.

8 MR. DOODY: That's up to you.

9 MR. WALLACE: Well, yeah, that's
10 fine.

11 MR. DOODY: All right.

12 BY MR. BOND:

13 Q. Here you go, Doctor.

14 MR. DOODY: Because it's not
15 anything confidential anymore.

16 MR. WALLACE: No.

17 MR. DOODY: It doesn't look like
18 it's a confidential document.

19 MR. NEUSTEL: I don't think it's
20 confidential. Yeah. Published in a newspaper.

21 BY MR. BOND:

22 Q. Do you see that, sir?

1 A. Yes, I do.

2 Q. Do you have any idea what this is?

3 A. Well, it certainly looks like the spec
4 sheet for PE-SA 270 Constab and it says
5 "Antiblock-Slip Masterbatch."

6 Q. Right.

7 And if you look at the top right, it
8 says "Constab." It says "Member of Kafrit Group."
9 Do you see that?

10 A. Yes.

11 Q. And Kafrit is the manufacturer or maker
12 of Constab?

13 A. Of -- somewhere in there it's being
14 made.

15 Q. Is this a type of product sheet that we
16 discussed this morning that a person of skill in the
17 art would have access to and would look up and try
18 to understand what's in a product and maybe its
19 mechanical properties?

20 A. As part of the overall picture of
21 what's -- what to do and how to do it, yes.

22 Q. All right. Let's look at the first

1 section. Section 1 called "Product Description."

2 It says that:

3 "Constab PE 270 is used for the
4 production of general purpose plain PE-films for
5 packaging."

6 Do you understand PE to mean
7 polyethylene?

8 A. I do.

9 Q. It says:

10 "It creates a micro roughness as well
11 as an antiblock additive layer on the film surface
12 to avoid blocking during winding/unwinding of reels
13 and during packaging operations."

14 Do you see that?

15 A. Yes.

16 Q. In the next -- there's two bullet
17 points following that; correct? One says it
18 contains -- that it contains CaCO₃.

19 what is that?

20 A. Calcium carbonate, limestone.

21 Q. And what does calcium carbonate do?

22 A. It also can behave as a stiffening

1 agent or it can act as an antiblock. It can do a
2 number of things. So.

3 Q. Could it also be a migrating compound?

4 A. Calcium carbonate is inorganic. So it
5 can migrate while the film is melted. So it could
6 move around under those conditions, but once
7 solidified, it's not migrating.

8 Q. Okay. What about do we know -- do you
9 know what the slow migration antiblock additive in
10 PE is?

11 A. "Slow migration antiblock additive."
12 It sounds a little bit like a contradiction in
13 terms, but I'm assuming it's the -- the slip agent.
14 So that would be -- going back to your point before
15 I guess, that would be the stearamide.

16 Q. So Constab contains not only an
17 antiblock but, according to you, contains a slip
18 agent?

19 A. Well, this is what it says right here.
20 It says a "slow migration antiblock additive" and
21 where is the -- it said earlier something about the
22 slip agent, the SA.

1 Q. That's what I'm trying to figure out.

2 A. So the S -- if that's a slip agent and
3 it's slow migrating, one of the hallmarks of this
4 stearamide is that it tends to migrate much more
5 slowly than, say, the stearamide. So.

6 Q. So are the slow migration antiblock and
7 the slip agent the same thing, or do you know?

8 A. To me, I would almost put a dash
9 between the two and say slow migration dash
10 antiblock additive or plus antiblock, something of
11 that nature, as two separate kind of phenomena.

12 Q. Two different things. So it's two
13 different things?

14 A. To me, in the broad context, it's two
15 different things.

16 Q. So Constab, according to this and your
17 reading of it, contains calcium carbonate,
18 antiblock, and a slip agent.

19 Is that a fair --

20 MR. DOODY: Objection.

21 BY MR. BOND:

22 Q. -- description of your testimony?

1 A. It seems to be the case. There was
2 somewhere in there mentioning about synthetic silica
3 or not synthetic silica, but plain silica or some
4 language like that.

5 Q. Right.

6 A. Yeah.

7 Q. And those three things are contained in
8 a polyethylene masterbatch; is that correct?

9 A. That's correct.

10 Q. Do you know how much polyethylene is
11 contained in Constab PE-SA 270?

12 A. Well, let's see if we can deduce it.
13 Let down ratio. Constab. Migrating. Seems like we
14 went over that at some point. Was it here?

15 It says 2 percent erucamide, 10 percent
16 natural silica in a base.

17 Q. What are you looking at, sir?

18 A. I'm looking at this handbook of
19 plastics additives.

20 MR. DOODY: 1050.

21 BY MR. BOND:

22 Q. And which Constab product are you

1 looking at?

2 A. SA-72 which is in 270.

3 Q. Right.

4 A. So I don't know if that's again a typo
5 or if there's a 270. It runs out. So there's
6 no -- no 270 per se here. But one, again, could
7 wonder if they didn't just drop the 0 at some point,
8 and this is a different time than this and so forth.

9 Q. So that's just speculation on your
10 part; right?

11 A. It is. Yeah. Sure.

12 Q. So let's just talk about what we can
13 discern regarding Constab PE-SA 270, not the ones
14 that are contained in the reference manual we talked
15 about earlier.

16 Does this disclose or do you otherwise
17 know the percentage of polyethylene masterbatch
18 that's contained in Constab PE-SA 270?

19 A. Not from this. From this.

20 Q. From anything else?

21 A. From here, I would infer that it's
22 about 88 percent polyethylene based upon the weight

1 difference that the listing has.

2 Q. where is that?

3 A. well, it says it's 2 percent.

4 Q. what are you -- what are you referring
5 to?

6 A. It's the 72. So I'm bridging a gap
7 here and thinking that that's somehow related to
8 270. And if that were the case, then you've got 2
9 percent erucamide and 10 percent natural silica.
10 That's 12 percent. So now you're at 88 percent
11 remainder. And if there is a third component, which
12 it's not saying anything about, then I count that as
13 not -- not in the equation at this point.

14 So LLDPE would be 88 percent.

15 Q. All right.

16 A. And that would be normal for a
17 masterbatch.

18 Q. Okay. Do you know for Constab PE-SA
19 270 how much calcium carbonate is contained in it?

20 A. Let's see. Let down ratio. You could
21 just take a guess because of the letdown ratio of 1
22 to 4 percent and you could estimate from that, but

1 no, I don't know.

2 Q. But you think it was between 1 and 4
3 percent?

4 A. well, no. It says the let down ratio
5 is 1 to 4 percent. So that means ideally you're
6 ending up at something that's in this range, again,
7 of antiblock values that people typically aspire to,
8 depending on the application.

9 Q. what are those --

10 A. And so --

11 Q. -- typical values?

12 A. The typical value for antiblock?

13 Q. Yes, sir.

14 A. Could be anywhere from 500 to some
15 applications use 2,000, 2500.

16 Q. Parts per million?

17 A. Parts per million.

18 Q. All right. what about how much slip
19 agent is in Constab PE-SA 270? Any idea?

20 A. No. It's not speaking so much about
21 ratios, obviously. So, again, you would be just
22 guessing based upon this let down ratio. So.

1 Q. So there's no way to tell from the
2 information we have for certain what Constab is made
3 up of; correct?

4 A. Not for certain. No, not at all.

5 Q. Okay. But a typical amount of
6 masterbatch would be somewhere in the 80 percent
7 range, 80 to 90 percent range?

8 A. Oh, you mean for the polyethylene
9 carrier?

10 Q. I'm sorry. For the polyethylene.

11 A. Polyethylene carrier?

12 Q. Yes.

13 A. That's not uncommon at all.

14 Q. Do you know of a typical range for
15 polyethylene carrier?

16 A. You know, I've been away long enough
17 now that there's possibilities that things have
18 changed in a way that I'm not aware of. So I
19 wouldn't want to speculate. I'll pass on that.

20 Q. A little bit earlier, Doctor, we talked
21 about EBS wax. If you want to go back, let's go
22 ahead and go back to your declaration --

1 A. Sure.

2 Q. -- so we can give you some context
3 here.

4 In paragraph 16 of your declaration.

5 A. Okay.

6 Q. And I just want to clarify a couple of
7 things.

8 First, you're not sure where that
9 information that it's an EBS wax came from, but
10 believe that it came from conversations you had
11 regarding the preparation of your declaration;
12 correct?

13 A. Correct.

14 Q. And those conversations occur between
15 you and your attorneys; correct?

16 A. They've pretty much exclusively, yes.

17 Q. Did that include Mr. Doody?

18 A. He has. We've spoken, yes.

19 Q. Okay. What about Darien Wallace?

20 A. We've spoken.

21 Q. What about Lester Wallace?

22 A. Have not spoken.

1 Q. Okay. So we know that or you testified
2 that you didn't speak with any of the inventors;
3 correct?

4 A. Other than the declarations.

5 Q. You reviewed their declarations?

6 A. Right.

7 Q. So to the extent that the EBS wax is
8 not contained in those declarations, that
9 information must have come from one of the attorneys
10 you spoke with; correct?

11 A. It would have come from them most
12 likely.

13 Q. All right. Could you think of any
14 other source it could come from?

15 A. You know, I've read so much stuff,
16 excluding the handbook, that I can't tell you if it
17 might have come up in some other context, and I've
18 explored so many different other context of
19 the -- of the application and the issues. So it's
20 conceivable I saw it somewhere, but I just don't
21 remember.

22 Q. And that possible other source is not

1 identified in your declaration; correct?

2 A. No, it's not.

3 Q. Let's talk a little bit about the
4 sentence in your paragraph 16 that talks about .012
5 percent by weight or about 120 parts per million.

6 A. Right.

7 Q. You see that?

8 A. Yes.

9 Q. Your opinion is that amount of EBS wax
10 would not result in a coating or covering as set
11 forth in claim 1 of the '882 patent; correct?

12 A. Based on the data, yes.

13 Q. Do you know how much EBS wax by weight
14 would need to be in the film in order to create a
15 coating or covering?

16 MR. DOODY: Objection. Form.

17 THE WITNESS: I can look through
18 the patent.

19 (Reviews document.)

20 So the inventive examples.

21 (Reviews document.)

22 I'm not finding it. I'll have to

1 pass. I don't find it.

2 BY MR. BOND:

3 Q. All right. Let me ask you this.
4 Your paragraph 16 talks about EBS waxes
5 only.

6 A. Yes.

7 Q. It doesn't address other possible slip
8 agents; correct? Or migrating compounds; correct?

9 A. In paragraph 16?

10 Q. Right.

11 A. Yes, correct.

12 Q. Are there or could there be slip agents
13 acting as migrating compounds that could come in at
14 0.12 percent and form a coating or a covering as
15 claimed in the patent?

16 MR. DOODY: Objection. Form.

17 THE WITNESS: We're getting into
18 sort of form and function argument. So it's the
19 function for this sleeve to make the insert to
20 repair -- trenchless repair the pipe, and I'd have
21 to look at it in the context only of how does it do
22 in that application.

1 BY MR. BOND:

2 Q. well, I ask that question because we
3 spoke earlier about several of your patents --

4 A. Uh-huh.

5 Q. -- that contained a typically effective
6 range --

7 A. Right.

8 Q. -- from 100 parts per million to I
9 think it was 20,000 parts per million.

10 A. Uh-huh.

11 Q. Do you recall that?

12 A. Right.

13 Q. Is it fair to say that there could be
14 slip agents or migrating compounds out there that
15 could come in at that lower end of 100 parts per
16 million and still form a coating or covering as
17 claimed in the patent?

18 MR. DOODY: Objection. Form.

19 THE WITNESS: Could it happen?

20 BY MR. BOND:

21 Q. Yes. Could there be?

22 A. I'm going to have to say it's remote.

1 Q. But could it?

2 A. It's remote.

3 Q. That's a yes then. There could be?

4 A. Remotely, yes.

5 Q. How would you determine it?

6 A. Well, I'm an experimentalist. So I
7 would do the experiments that are described in the
8 '882 patent to find out if that actually passed or
9 not.

10 Q. So you and a person of skill in the art
11 would have to perform testing to determine whether
12 or not it met some functional limitation that you're
13 describing; is that correct?

14 A. The one that's described in the patent,
15 the ability to pull it out without tearing and the
16 circumferential toughness, and that sort of thing.

17 Q. Right. So any of those requirements
18 requiring tearing or other functionality, are any of
19 those limitations found in claim 1?

20 A. Well, we can look through claim 1. I
21 think they're in claim -- a different claim but...

22 Q. Let's start with claim 1.

1 A. Yeah, okay.

2 So it's got the opaque external layer
3 of the inner tubular film with the carrier. It
4 provides multiple layers. Coating of at least one.
5 Migrating compound.

6 okay. So what -- what would you like
7 to discuss on 1?

8 Q. I'm just wondering if any of the
9 functional limitations -- you've talked about
10 tearing, being able to pull it out -- if any of
11 those limitations are found in claim 1 of the
12 patent.

13 A. They're not in claim 1.

14 Q. Okay. You mentioned opaque.
15 what does opaque mean?

16 A. Opaque is -- again, can be an
17 operational definition as it relates to this
18 invention, and we know what the intent of the
19 opacity is. It's to keep this from curing before it
20 gets used in the trenchless pipe application.

21 So it means that the opacity of that
22 outer layer is such that it blocks light, typically

1 UV and visible light, from passing into the -- the
2 resin that's going to cure. So as long as it does
3 that job, that's what opaque is.

4 Q. Now, then, you've mentioned that some
5 of your functional limitations might be found in
6 some of the dependent claims or other claims of the
7 patent.

8 Could you identify any of those claims
9 for me?

10 A. Functional limitations?

11 Q. Yeah. Like the tearing or whatever
12 other functional limitations you were talking about
13 with regard to the performance of the claimed
14 invention.

15 A. Let's see. I thought the tearing
16 was -- where was it? 15.

17 (Reviews document.)

18 So it's my error. It is not in the
19 claims that I can find. It is in the tables and the
20 discussion of the surprising results that the
21 material ends up being tougher.

22 Q. Let's talk about the surprising

1 results.

2 If you look to page 18 -- page 19.

3 A. Page 19. Okay.

4 Q. The top of that lists the surprising
5 discovery of the '882 patent as these three
6 paragraphs; correct?

7 A. These three paragraphs, yes.

8 Q. Right.

9 And you cite to the patent for those
10 surprising discoveries; correct?

11 A. In the tables and text.

12 Q. Right.

13 A. But not in the claim, right.

14 Q. Correct. Yeah.

15 So let's take a look at the first
16 paragraph.

17 A. Okay.

18 Q. It says:

19 "It came as a surprise to discover that
20 a good release effect against adhesive resins is
21 also accompanied by a reduction of the coefficients
22 of friction of film against film. Such a result was

1 unexpected."

2 Do you see that?

3 A. Yes.

4 Q. Are any of those functions or
5 discoveries set forth in the patent claims?

6 A. 63 to 67. Okay.

7 (Reviews document.) Okay.

8 (Reviews document.)

9 It's not in the claims per se.

10 Q. All right. Let's go to the next
11 paragraph on page 19 of your declaration.

12 A. Yes.

13 Q. It talks about you found -- "it was
14 surprisingly found out that the tubular film
15 according to the invention is characterized by very
16 good mechanical properties."

17 You see that?

18 A. Yes.

19 Q. It provides two examples. It says:

20 "For example, siliconization of the
21 tubular film leads surprisingly to a clear,
22 improvement of the mechanical values with regard to

1 splice formation and elongation at break."

2 Do you see that?

3 A. Yes.

4 Q. What is splice formation?

5 A. Well, the way I understand it, and the
6 way I have come to accept it, is I think of it in
7 terms of toughness or the ability to expand the
8 bubble and to see how far it expands before it
9 breaks.

10 Q. Expand the bubble. You mean the
11 tubular film?

12 A. You make a tubular film and you apply
13 pressure, air, and see how long it takes before
14 you -- and you can measure that, and it's a rather
15 large test.

16 My understanding is that there's some
17 issue with translation about what splice was in
18 German or the meaning of that in German versus
19 English. So.

20 Q. Let's talk about, you mentioned
21 toughness and elongation; correct?

22 A. Uh-huh.

1 Q. Is there anything -- any limitations in
2 the claim regarding toughness or elongation?

3 A. The claims per se don't speak to that
4 topic.

5 Q. So there's no limitation in the claims
6 that would require you to meet a certain level of
7 toughness or elongation; is that correct?

8 A. Not in the claims.

9 Q. Okay. Let's go to the third paragraph.
10 It says that:

11 "A surprising finding was that the
12 elasticity until break increased significantly with
13 coating with polysiloxane and wax additivation
14 compared to the non-siliconized references that was
15 not additivated with wax from comparative example
16 v1."

17 You see that?

18 A. Yes.

19 Q. That elasticity, is that also speaking
20 to the toughness that you mentioned and elongation?

21 A. To this ability to blow this up and
22 stretch it, yes.

1 Q. okay. so they're related?

2 A. I think they're closely related, yes.

3 Q. All right. Is there anything in the
4 patent claims -- oh, excuse me.

5 Are there any limitations in the patent
6 claims regarding elasticity?

7 A. Not that I read.

8 Q. Okay. If we go to a couple pages ahead
9 in your declaration.

10 A. Okay. 21?

11 Q. Page 20.

12 A. Okay.

13 Q. And maybe a little bit from 21.

14 A. Okay.

15 Q. You're talking there about the problems
16 that the '882 was addressing, and you mention that
17 you're informed and understand that those problems
18 did not exist prior to the '882 patent filing date.

19 Do you see that?

20 MR. DOODY: Objection.

21 THE WITNESS: Well, let's look at
22 that filing date.

1 I don't think that would be
2 correct. I think they were -- they did not exist
3 before, as I understand it --

4 BY MR. BOND:

5 Q. That's what I was saying.

6 A. -- 2012.

7 Q. I didn't mean to misstate what you
8 said. I was just reading what was in your
9 declaration.

10 A. Okay.

11 Q. I wasn't -- maybe you misheard me.

12 A. Maybe. Okay.

13 Q. I'm referring to paragraph 31.

14 A. 31.

15 Q. Excuse me. 29. I'm sorry. And it
16 carries over on to page 20.

17 A. Okay.

18 Q. This wasn't a trick question.

19 I was just trying to say that was your
20 statement.

21 A. Yeah, yeah. I understand.

22 Q. Yeah.

1 A. Okay. Yeah, I think that was the case,
2 as I understood it, from reading the declarations
3 from Boutrid and the other fellow.

4 Q. You don't have any personal knowledge
5 of what was happening at that time frame and the
6 problems being encountered in the CIPP liner
7 industry at that time, do you?

8 A. No, it was not an industry I was in.
9 So.

10 Q. All right. So you're basing this
11 statement based on what you read in Dr. Boutrid's
12 declaration; correct?

13 A. That's correct.

14 Q. Anything else?

15 A. As far as that particular problem?
16 I don't recall if it's in both
17 declarations, but I think it is.

18 Q. I'm just looking at what you cited
19 here.

20 A. Yeah.

21 Q. You cited Dr. Boutrid.

22 A. Well --

1 Q. If you look at paragraph 30 --

2 A. So -- so --

3 Q. -- you cited the declaration for both
4 inventors.

5 A. Okay. So he's the technical expert in
6 their business. So I -- that's the person I look to
7 here.

8 Q. Right.

9 And to the declaration of the other
10 inventor, Mr. Gregor Schleicher; correct?

11 A. Yes, that's correct.

12 Q. Any other information that you relied
13 on with regard to concluding that problems addressed
14 by the '882 patent were not known by the '882 patent
15 filing date?

16 A. No. No.

17 MR. BOND: Okay. Guys, do you
18 mind if we take a break and we'll see if we can talk
19 a few things out.

20 MR. DOODY: Yeah.

21 (Recess: 1:31 p.m. - 1:40 p.m.).

22 MR. BOND: We'll pass the witness

1 at this time.

2 MR. DOODY: Okay. So we're going
3 to have to take a little bit of a break.
4 Probably -- I didn't know that's what you were going
5 to do. Otherwise I would have been already talking
6 to him. So we'll just go step out for a few minutes
7 and then come back and see whether there's anything
8 for redirect.

9 MR. BOND: All right.

10 (Recess: 1:41 p.m. - 1:57 p.m.)

11 MR. DOODY: Yeah. We have no
12 redirect.

13 THE COURT REPORTER: Do you wish a
14 copy of the transcript?

15 MR. DOODY: Yes, but he's going to
16 have to review it and sign it.

17
18 (Signature not waived, the deposition
19 concluded at 1:57 p.m.)
20

21 * * *

ERRATA SHEET

Page No. 9 Line No. 17 Change to: metallocene
polymers. This is a new kind of polymer

Page No. 27 Line No. 16 Change to: work it forward
and see whether there's changes in the specs, huge

Page No. 34 line No. 7 Change to: external suface of
which there are likely a number of

Page No. 52 Line No. 5 Change to: would define it
if you can find it. And if it's --

Page No. 87 Line No. 1 Change to: PET, polyethylene
terephthalate, something like that,

Page No. 119 Line No. 1 Change to: them ranges of
performances, the melt, the rheological

Page No. _____ Line No. _____ Change to: _____

Page No. _____ Line No. _____ Change to: _____

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the 3rd day of
OCTOBER, 2024.

Patrick Brant

DR. PATRICK BRANT

1 CERTIFICATE OF REPORTER

2 DISTRICT OF COLUMBIA)

3 I, Denise Dobner Vickery, a Registered
4 Court Reporter and Notary Public of the District of
5 Columbia, do hereby certify that the witness was
6 first duly sworn by me.

7 I do further certify that the
8 foregoing is a verbatim transcript of the testimony
9 as taken stenographically by me at the time, place
10 and on the date herein set forth, to the best of my
11 ability.

12 I do further certify that I am neither
13 a relative nor employee nor counsel of any of the
14 parties to this action, and that I am neither a
15 relative nor employee of such counsel, and that I am
16 not financially interested in the outcome of this
17 action.

18 *Denise Dobner Vickery*

19 DENISE DOBNER VICKERY, CRR, RMR
20 Notary Public in and for the
21 District of Columbia

22 My Commission expires: March 14, 2028

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