

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 U.S. Patent No. 10,130,123

4 NJOY LLC ET AL.

5 Petitioners,

6 vs.

7 JUUL LABS, INC.,

8 Patent Owner.

9
10
11 Virtual Remote Deposition of
12 Joseph McAlexander
13 Friday, August 30, 2024
14 At 1:00 p.m.
15
16
17
18

19 Reported by LeShaunda Cass-Byrd, CSR, RPR
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2 On behalf of Altria, NJOY LLC, NJOY Holdings, Inc. And
3 Expert witness:

4 ANNE CAPPELLA, Esq.
5 MATT SIEGER, Esq.
6 Weil Gotshal Manges - Redwood City
201 Redwood Shores Parkway
Redwood City California 94065
650.802.3141

7 On behalf of Patent Owner Juul Labs, Inc.:

8 QUINCY LU, Esq.
9 Quinn Emanuel Urquhart & Sullivan, LLP
1109 First Avenue
Suite 210
10 Seattle Washington 98101
206.905.7100

EXAMINATION JOSEPH MCALEXANDER

By Mr. Lu

4

DEPOSITION EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
Exhibit 2052	Redacted Version of the Transcript Of the McAlexander Deposition from The ITC case	11

1 JOSEPH MCALEXANDER,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. LU:

6 Q. Mr. McAlexander, can you state your name
7 for the record?

8 A. Joseph Colby McAlexander, the third.

9 Q. And Mr. McAlexander, I am going to ask you
10 to, if you don't mind, to provide your answers -- try
11 to annunciate your words because I think the audio
12 from your side is a little, you know, not the super
13 highest quality. So Mr. McAlexander, have you ever
14 been deposed before?

15 A. Yes, I have.

16 Q. And for today's deposition, did you do
17 anything to prepare for it?

18 A. Yes.

19 Q. Did you meet with anybody to prepare for
20 your deposition today?

21 A. I met with counsel that is represented
22 here, and those are the only two I met with.

23 Q. So who did you meet with exactly?

24 A. Do you have the record? Has this been put
25 into the record?

1 MS. CAPPELLA: Yes. So with me is my
2 colleague Matt Seiger. I have already
3 given the name to the court reporter so it
4 should be ready to go.

5 THE WITNESS: Anne Cappella and Matt
6 Seiger are the only two that I had
7 discussions with.

8 BY MR. LU:

9 Q. So to clarify, you are -- where are you
10 currently located, Mr. McAlexander?

11 A. In my Richardson, Texas, office.

12 Q. And you're not alone in that room, correct?

13 A. That is correct. Both Matt and Anne, the
14 two counsel, are with me in the room.

15 Q. Is there anybody else with you in the room?

16 A. No.

17 Q. All right. So you said you met with both
18 Anne and Matt to prepare for this deposition?

19 A. That is correct.

20 Q. And when did you meet with them?

21 A. Over the past two days.

22 Q. And how long did you meet with them?

23 A. Five or six hours each day.

24 Q. Did you review any documents in preparation
25 for this deposition?

1 A. Yes.

2 Q. And what did you review?

3 A. I reviewed the patent 10,130,123, called
4 the '123 patent. I reviewed my declaration. I
5 reviewed the patents -- the documents that were
6 represent.

7 Q. I am sorry, your audio cut out. We still
8 can't hear you.

9 A. You still cannot hear me?

10 Q. Okay. We can hear you now.

11 A. I reviewed the patents, the documents that
12 were represented and referenced in my declaration,
13 specifically the Worm patent, the Levitz patent, the
14 patent of Thorens, the Wignenberg patent, the patent
15 to the Lamb, L-A-M-B. I also looked at the pink tab
16 decision granting institution. I looked at the patent
17 owners' preliminary response and the declaration of
18 Dr. John Collins in support of the patent owners'
19 preliminary response.

20 I also briefly looked at the petitioners'
21 rely and the patents owners' surreply. And sometimes
22 I had originally looked at the petition, originally
23 that is what I reviewed. And I have hard copies of
24 these documents here in front of me.

25 Q. I was just about to ask you that. Besides

1 those documents, do you have any other documents in
2 front of you?

3 A. No, sir. I do not.

4 Q. Do you have any notes in front of you?

5 A. No, I do not.

6 Q. Now, you previously mentioned you were
7 deposed before; is that correct?

8 A. Yes. That is correct.

9 Q. And how many times have you been deposed?

10 A. More than 200.

11 Q. And are those mostly patent cases?

12 A. I will say the majority are patent cases,
13 but a number have dealt with trade secrets, others
14 were contract disputes.

15 Q. And how many times have you worked with
16 Weil Gotshal the law firm?

17 A. I don't know the exact number. When you
18 say how many times, are you talking about the number
19 of cases I have worked with them on?

20 Q. Yes. How many matters have you worked with
21 Weil Gotshal?

22 A. I will say probably the past 20 something
23 years. It may have been 12 to 14 matters maybe.

24 Q. And so you were an expert in ITC litigation
25 between NJOY and JUUL, correct?

1 A. Yes, that is correct.

2 Q. The NJOY being the petitioner here, and the
3 JUUL being the patent owner, correct?

4 A. Correct.

5 Q. And you provided opinions regarding the
6 same '123 patent that is at issue in this case; is
7 that right?

8 A. I did. That is correct.

9 Q. And you were deposed in that case as well,
10 right?

11 A. Correct.

12 Q. And during your deposition, do you recall
13 being asked questions about the '123 patent?

14 A. Yes.

15 Q. And you were also asked questions about the
16 same prior art references used in the IPR here,
17 correct?

18 MS. CAPPELLA: Objection to form.

19 THE WITNESS: In part, correct.

20 BY MR. LU:

21 Q. And you were asked questions about Worm and
22 Levitz; is that right?

23 A. As I recall, the answer is yes.

24 Q. Okay. I am going to upload an exhibit to
25 the Zoom chat. So let me know when you have

1 downloaded that and opened it. And it currently does
2 not have an exhibit number in this case.

3 A. Just give me a moment. I prefer to go and
4 download it so I can look at it locally.

5 Q. Yes, of course. Go ahead and do that.

6 MS. CAPPELLA: I am sorry, you said
7 you are uploading it to the Zoom chat?

8 MR. LU: Yes. Yes, I am.

9 BY MR. LU:

10 Q. Mr. McAlexander, have you been able to
11 download the exhibit?

12 A. I'm making sure I got it in the right
13 place. Give me a second.

14 MR. LU: Counsel, do you have access
15 to it?

16 MS. CAPPELLA: I don't see it in the
17 chat.

18 MR. LU: Well, I will say for the
19 record, this is the transcript of the
20 McAlexander deposition from the ITC case
21 that you -- the redacted version that you
22 e-mailed.

23 MS. CAPPELLA: Okay. Well, let me go
24 get that.

25 MR. LU: So let me see the date you

1 sent that. That was on Tuesday, August
2 20th. So it's the exact same file that you
3 e-mailed us.

4 MS. CAPPELLA: It's going to take a
5 minute to get it. If you can e-mail it to
6 me, that might be faster.

7 MR. LU: Okay. I will forward the
8 e-mail that you sent me.

9 MS. CAPPELLA: I have it.

10 MR. LU: Okay. Give me one second.

11 BY MR. LU:

12 Q. For the record, this is a redacted version
13 of --

14 MS. CAPPELLA: I am sorry, counsel,
15 to interrupt you but I think
16 Mr. McAlexander is still downloading.

17 THE WITNESS: For some reason, it
18 wasn't coming down, so let me check and put
19 it in a different place. All right. I
20 have it in front of me now.

21 BY MR. LU:

22 Q. Okay. Great. Any other issues that we
23 need to wait on?

24 A. No.

25 Q. Okay. So let's say for the record, this is

1 going to be Exhibit 2052.

2 (Deposition Exhibit 2052 was marked for
3 identification.)

4 BY MR. LU:

5 Q. And for the record, this is a redacted
6 version of -- well, let me -- let me ask you: So,
7 Mr. McAlexander, do you recognize this document?

8 MS. CAPPELLA: Objection to form.

9 THE WITNESS: It appears to be at
10 least some parts of the transcript of my
11 deposition testimony, which looks like it's
12 dated March the 1st of 2024. It looks like
13 there are some parts of it that might be
14 redacted.

15 BY MR. LU:

16 Q. So this is an excerpted -- excerpts, as well
17 as redacted version of your deposition of the ITC
18 case, correct?

19 A. That appears to be the case, yes.

20 Q. Okay. We can put that away.

21 So the next exhibit I wanted to ask you
22 about is already marked as Exhibit 1010 in this case,
23 the Levitz application.

24 I understand you have a copy in front of
25 you, right, Mr. McAlexander?

1 A. Yes, I do.

2 Q. Okay.

3 MR. LU: So, Counsel, is it okay if
4 I -- I don't need to upload it to the Zoom
5 chat; is that right?

6 MS. CAPPELLA: I think unless -- do
7 you want to -- do you have an electronic
8 copy to look at?

9 (Court Reporter Clarification.)

10 MR. LU: Okay. Sure. I mean, you
11 don't necessarily need to include it with
12 the transcript, but I'll just upload it any
13 ways.

14 BY MR. LU:

15 Q. Mr. McAlexander, just let me know when you
16 have that exhibit in front of you, whether physically
17 or electronic.

18 A. All right. I have the exhibit in front of
19 me electronically, as well as physical.

20 Q. And you recognize this exhibit, correct?

21 MS. CAPPELLA: I'm sorry. This
22 exhibit, you said 1010?

23 MR. LU: Yes.

24 THE WITNESS: Exhibit 1010 appears to
25 be -- at least what was uploaded was Lamb,

1 if I'm -- no, it couldn't be.

2 BY MR. LU:

3 Q. Did I do the wrong -- no.

4 A. I don't think you did. It is Levitz. Let
5 me -- there we go.

6 All right. I have Exhibit 1010, Levitz.

7 Q. Okay. Great. Let me just make sure that's
8 the right exhibit number. Yeah, it says 1010.

9 Okay. Mr. McAlexander, do you recognize
10 this document?

11 A. Yes. It's identified as the WIPO
12 publication 2012/142293A2, and then there is -- the
13 inventor's name is Levitz, Robert Levitz, L-E-V-I-T-Z.

14 Q. And this is the Levitz reference that you
15 refer to in your declaration in this case, correct?

16 A. Yes, that is correct.

17 Q. And this is the Levitz reference that you
18 earlier testified that you were asked questions about
19 at your ITC deposition; is that correct?

20 A. It was certainly part of the ITC
21 deposition, yes.

22 Q. Okay. And you reviewed this document in
23 preparation for this deposition, correct?

24 A. Correct.

25 Q. So I wanted to turn to paragraph 10, which

1 is on page 3 of the application, the marked pages,
2 1010-04, and let me know when you're there.

3 A. All right. Paragraph 10, I'm there.

4 Q. So paragraph 10 says, "Heretofore, there
5 has been a specific problem with tip-intake Electronic
6 Cigarettes that the present invention aims to
7 eliminate. When the smoker exhales into a tip-intake
8 battery Electronic Cigarette (as smokers often do),
9 the vapors from the mouth follow the reverse of the
10 path described above - they flow inside the Battery
11 towards the sensor and often condense causing the
12 sensor to become clogged and fail. The exhalation
13 likewise cause excess liquid in the Cartomizer to
14 follow the same path into the Battery part towards the
15 sensor, clogging it to further and also causing it to
16 fail. This also cause major difficulties in
17 mass-production in terms of maintaining consistent
18 airflow and consistent sensitivity of the sensor from
19 one Electronic Cigarette to the next."

20 Did I read that right?

21 A. Yes, you read it correctly.

22 Q. Now, this paragraph refers to exhalation
23 that includes vapors from the smoker's mouth, as well
24 as excess liquid, correct?

25 A. Both are described, yes.

1 Q. And that's sometimes referred to as
2 backflow; is that right?

3 A. It's proper to call it that, yes.

4 Q. And so Levitz here, in paragraph 10,
5 describes that backflow follows the same path as
6 inhalation, but in the reverse, correct?

7 A. In this particular type of a format, yes.

8 Q. And this paragraph describes that backflow
9 is a problem because the vapors of liquid can enter
10 the sensor area and clog it and cause it to fail,
11 correct?

12 A. That is correct. And just to qualify my
13 previous statement, the reason I stated it the way it
14 was, is that paragraph comp gives both a draw up and
15 a -- a blow. And the blow, you're -- it's going to be
16 in the same direction as the airflow. So it's the
17 reason I qualified my previous answer the way I did.

18 Q. Okay. Understood. Now, I want to turn to
19 Figure 16, which is page 1010.035.

20 A. Okay.

21 Q. And let me know when you're there.

22 A. You said Figure 16?

23 Q. Yes, I did.

24 A. All right. I have that page in front of
25 me.

1 Q. So this figure, there are some arrows. Do
2 you see those?

3 A. Yes, I do.

4 Q. And I want to begin with the arrow at the
5 top, which is pointed to the side of this device.

6 Do you see that?

7 A. Yes, I do.

8 Q. And so that arrow is indicating where
9 airflow comes in; is that correct?

10 A. That is correct.

11 Q. And that's when the user inhales into the
12 device, right?

13 A. That's right. It's a -- it's an air
14 handler right at the juncture -- the juncture between
15 the battery part and the cartomizer.

16 Q. All right. And then so if you follow the
17 arrows, the path of this flow goes from the site to
18 the mouthpiece; is that right?

19 A. Yes, that's correct.

20 Q. And then you also have another path going
21 from the mouthpiece going back toward the center of
22 this device, and then it splits off. One of the
23 arrows goes into the battery part, and one of the
24 arrows leaves the device through the side at the
25 bottom of -- of this figure.

1 Do you see that?

2 MS. CAPPELLA: Objection to form.

3 THE WITNESS: I see that.

4 BY MR. LU:

5 Q. In that path, the reversion path, that is
6 the path that the backflow may take; is that correct?

7 MS. CAPPELLA: Objection to form.

8 THE WITNESS: It is a path that the
9 backflow may take, yes.

10 BY MR. LU:

11 Q. And the figure labels that path, both of
12 those paths as possible liquid flow paths, correct?

13 A. Yes, that's correct.

14 Q. And so one of these paths for the backflow
15 is that it reenters the battery part.

16 Do you see that, the path in the middle?

17 A. Yes, I see that.

18 Q. Okay. So I want to go to paragraph 44 of
19 this document, as it talks about this backflow. And
20 that's on 1010.014.

21 A. Right. I'm there.

22 Q. Okay. So paragraph 44 says, "The airflow
23 through the connector and battery post combination
24 shown in Figures 13 and 15, is illustrated in
25 Figure 16. As shown in Figure 16, one possible

1 drawback of this arrangement is that upon exhalation,
2 any excess" -- "any excess fluid, vapor, saliva,
3 et cetera, could be blown through orifice 35 into the
4 pressure differential channel and into the battery."

5 Did I read that right?

6 A. Yes.

7 Q. So it's talking about exhalation, which
8 includes vapor and saliva, and that's backflow,
9 correct?

10 A. As we talked before, it can be called that,
11 yes.

12 Q. And this paragraph says, one drawback of
13 the device in Figure 16 is that the backflow enters
14 the pressure differential channel and into the
15 battery, right?

16 MS. CAPPELLA: Objection form.

17 THE WITNESS: That is -- that is
18 stated as such, yes.

19 BY MR. LU:

20 Q. As stated earlier in paragraph 10, that's a
21 problem because it can cause clogging and cause the
22 pressure sensor to fail, right?

23 A. Correct, it could.

24 Q. Okay. And then so going back to
25 Figure 10 -- or Figure 16 -- sorry to keep jumping

1 around, but I just want to confirm this.

2 When it's referring to the backflow
3 entering the pressure sensor area and the battery
4 part, that's this arrow on the left in the middle
5 that's labelled "Possible Liquid Flow Path," correct?

6 A. That is correct.

7 Q. Okay. And jumping back again, back to
8 paragraph 44, I actually want to look at paragraph 45,
9 and let me know when you're there.

10 A. Okay. I'm there.

11 Q. So paragraph 45 says, "An alternative
12 embodiment for a battery post designed to minimize
13 this problem is shown in Figure 17. As shown in this
14 figure, there's no orifice drilled through
15 post-head 37. Rather, the air path to the pressure
16 differential channel is created by Channel 38, which
17 is drilled beneath Groove 36 on the side 39 and the
18 post-head 37. Channel 38 perpendicularly to be
19 intersected by the pressure differential channel not
20 shown, which is drilled longitudinally from battery
21 post end 40."

22 Did I read that right?

23 A. Yes, you did.

24 Q. And then going on to the next paragraph,
25 paragraph 46, it says, "The airflow through a

1 connector, such as shown in Figure 13, using the
2 battery post shown in Figures 17 is illustrated in
3 Figure 18."

4 Okay. And then on to the next page, it
5 says, "As shown in this figure, there is no direct
6 path for excess liquid to migrate into the battery
7 compartment."

8 Did I read that right?

9 A. Yes, you did.

10 Q. So these paragraphs 45 and 46, referring to
11 Figure 17 and 18, says that it's designed to minimize
12 the backflow problem described in paragraph 44,
13 correct?

14 A. That's what it is stated.

15 Q. So keeping these descriptions in mind, why
16 don't we go look at Figure 17 and 18, starting with
17 Figure 17. Let me know when you're there.

18 A. Okay. I'm there.

19 Q. So in Figure 17, there is a groove 36 at
20 the top, and you see this whole, which the patent
21 describes as a pressure differential channel or
22 channel 38.

23 Do you see that?

24 A. Channel 38 is what it's called, yes.

25 Q. Yeah. And so it says, "As shown in this

1 picture, there is no orifice drill to post-head 37,"
2 correct?

3 MS. CAPPELLA: Objection. Outside
4 the scope.

5 THE WITNESS: Say that once more,
6 please.

7 BY MR. LU:

8 Q. Let me withdraw that question. So let's
9 actually turn to Figure 18.

10 So in Figure 18, again, we have airflow
11 coming in from the side and going to the mouthpiece,
12 which the figure labels as inhale airflow path,
13 correct?

14 A. Yes, that's correct.

15 Q. But this time, in terms of the backflow
16 path going in the reverse direction, it no longer
17 shows the backflow path going into the battery part,
18 correct?

19 MS. CAPPELLA: Objection. Outside
20 the scope.

21 THE WITNESS: Well, as drawn, it does
22 not show that, yes.

23 BY MR. LU:

24 Q. Right. And so the only backflow path,
25 which this figures calls the excess liquid and exhale

1 vapor flow path, exhibits the bottom of the device, as
2 shown in this picture, right?

3 MS. CAPPELLA: Objection.

4 BY MR. LU:

5 Q. I shouldn't say bottom. The -- it's the
6 side of the device at the bottom of this picture,
7 correct?

8 MS. CAPPELLA: Objection. Outside
9 the scope.

10 BY MR. LU:

11 Q. I don't think I heard your answer.

12 A. I don't think I have given an answer yet.

13 Q. Apologies.

14 A. So what it shows is that on the exhale,
15 that through the mouthpiece, it shows an arrow still
16 going through that vapor flow path, which is through
17 that exit port, which is the bottom towards the
18 interface between the battery compartment and the car
19 module.

20 Q. Right. But it doesn't show the backflow
21 path entering the battery part, correct?

22 MS. CAPPELLA: Objection, outside the
23 scope.

24 THE WITNESS: If you look at figure
25 18, we see the pressure differential

1 channel in the middle, and you can see it
2 goes from left to right, and at the
3 rightmost portion, it did then has a
4 portion that goes up and down, that would
5 be the trough, and then the hole that is
6 shown for figure 17 sits just to the right
7 of that trough. So the exhale path goes
8 through that additional hole and does not
9 enter into the trough, as shown in figure
10 18.

11 BY MR. LU:

12 Q. You cut off there a little bit. Let me
13 make your answer was recorded. So I think it's pretty
14 clean, but let me clarify. So you are saying in
15 figure 16, there is a hole to the right of what you're
16 calling the trough, and that allows backflow to enter
17 the battery part, correct?

18 A. Just to make sure we are clear, on figure
19 16 that would be consistent with, for instance, the
20 figure 15 drawing, which shows that the hole, which is
21 the export area, is connected with the trough in
22 figure 15, and that shows figure 16. The difference
23 is in figure 17, the hole is not connected to the
24 trough, the hole 38 is not connected to trough 36.
25 And so therefore, the other type of implementation

1 that Levitz comprehends in figure 18 was that the exit
2 path is through that hole and not through the pressure
3 differential channel. That is his intent.

4 Q. As a result of the separation of the hole
5 and the trough, the backflow doesn't enter the battery
6 part or any pressure differential area, correct?

7 MS. CAPPELLA: Objection. Outside
8 the scope.

9 THE WITNESS: Well, that -- that --
10 that is correct. That was the intent. But
11 when you look at Levitz, Levitz shows both
12 the embodiment in figure 16 where there is
13 some backflow, he shows another embodiment
14 in figure 18 where it supposedly overcomes
15 the backflow. But when you use this in
16 combination of Worm, Worm already has its
17 separate port. So it -- the combination
18 here, figure 17 would even work with --
19 figure 16 would work with Worm. As well as
20 figure 18, either one will work.

21 MR. LU: Okay. I pass the witness.

22 MS. CAPPELLA: Can we take a 5 minute
23 break?

24 MR. LU: Sure.

25 MS. CAPPELLA: I have no questions.

1 MR. LU: Need final by September 3rd.
2 (Deposition adjourned at 1:41 p.m.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, LESHANDA CASS-BYRD, CSR No. B-2291, RPR,
Registered Professional Reporter, certify that the
foregoing proceedings were taken before me at the time
and place therein set forth, at which time the witness
was put under oath by me;

That the testimony of the witness, the questions
propounded, and all objections and statements made at
the time of the examination were recorded
stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes to taken.
I further certify that I am not a relative or employee
of any attorney or the parties, nor financially
interested in the action.

I declare under penalty of perjury under the laws
of North Carolina that the foregoing is true and
correct.

Dated this September 3, 2024.



LESHAUNDA CASS-BYRD, CCR-B-2291, RPR

DEPOSITION ERRATA SHEET

Our Assignment No. J11678615
Case Caption: NJOY LLC ET AL.
vs. JUUL LABS, INC.

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 _____ day of
_____, 2024.

Joseph McAlexander

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

Joseph McAlexander

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

Joseph McAlexander