UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NESPRESSO USA, INC.,

Petitioner ,

v.

K-FEE SYSTEM GMBH,

Patent Owner.

Case IPR2024-00254

U.S. Patent No. 11,465,829

Case IPR2024-00257

U.S. Patent No. 11,558,722

Case IPR2024-00299

U.S. Patent No. 11,554,910

Case IPR2024-00304

U.S. Patent No. 11,465,830

Deposition of DOV GLUCKSMAN

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Deposition of DOV GLUCKSMAN, conducted virtually.

Pursuant to notice, before Judith E. Bellinger, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public in and for the District of Columbia.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

B. CLAYTON MCCRAW, ESQUIRE
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020
212.506.2500

AMANDA S. BROWN, ESQUIRE
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
312.701.8645

ON BEHALF OF THE PATENT OWNER:

IAN B. BROOKS, ESQUIRE
KAVYA RALLABHANDI, ESQUIRE
MCDERMOTT WILL & EMERY LLP
500 North Capitol Street NW
Washington, DC 2001
202.756.8000

C O N T E N T S

EXAMINATION OF DOV GLUCKSMAN PAGE
By Mr. McCraw 6

E X H I B I T S

(Attached to the transcript)

Exhibits: PAGE
Exhibit 1067 United States Patent Application Publication Number US 2015/0289709 A1 34
Exhibit 1068 United States Patent Number US 11,565,930 B2 56

Previously Marked:
Exhibit:
Exhibit 1001 United States Patent Number US 11,554,910 B2 97
Exhibit 1004 United States Patent Application Publication Number Us 2010/0239734 A1 115
Exhibit 1006 United States Patent Application Publication Number US 2013/0064929 A1 124

E X H I B I T S C O N T I N U E D

Exhibit 2020	Declarations of Dov Glucksman in Support of Patent Owner's. Response, IPR2024-00257, U.S. Patent Number 11,548,722; IPR2024-00299, U.S. Patent Number 11,554,910; IPR2024-00254 U.S. Patent Number 11,465,829; and IPR2024-00304, U.S. Patent Number 11,465,830	68
Exhibit 2027	United States Patent Number US 9,277,837 B2	117
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Exhibit 2029	United States Patent Number US 9,668,604 B2	117

P R O C E E D I N G S

DOV GLUCKSMAN,

Being first duly sworn, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PETITIONER

BY MR. McCRAW:

Q Good morning. My name is Clayton McCraw, I'm an attorney for Petitioner Nespresso USA. I'm going to be taking your deposition today.

To begin, could you, please, state your name for the record.

A Dov Glucksman.

Q Mr. Glucksman, do you understand that you're under oath today?

A I do.

Q And is there anything that would prevent you from providing complete and truthful testimony today?

A No.

Q Have you been deposed before?
A Yes.
Q When?
A Last time, some 15 or over -- over 15 years ago.
Q Have you been deposed more than once or only one time?
A More than once.
Q Okay. How many times have you been deposed?
A Maybe around four, five, or six. I do not recall.
Q Could you describe to me the nature of the cases that you've been deposed in?
A The last time I was deposed was a patent issue between Salton, an American corporation, and Philips, NVA, global Dutch-space corporation.
Prior to that, I was deposed in a patent litigation between Conair, a U.S. corporation, and a small startup, I don't remember the name of the corporation, regarding a

coffeemaker.

Prior to that, I was deposed in my divorce proceedings, and I don't recall any point beyond that.

Q Okay. So there's three depositions that you recall, sitting here today?

A I -- yes.

Q Going to the deposition you just mentioned between Salton, an American corporation, and Philips.

A Yes.

Q Who did you represent?

A Salton.

Q And what was the nature of the technology in that case?

A It related to a single-serve, hub-based coffeemaker.

Q And was this a patent infringement case?

A It was a bit more complicated. It was many years ago, but the -- the -- Philips claimed that the manufacturer who produced the Salton

product was a Chinese company by the name of Electrical and Electronics [sic], or referred to as E&E, was using information that they had acquired during their prior manufacturing period where they produced a product for Philips and that they attempted to enjoin that E & E corporation from producing the product for Salton. And, in fact, I believe that Salton was the -- brought the suit against Philips in the U.S. court.

Q Okay. And on what issue did you provide -- strike that.

Were you an expert in that case?

A I was.

Q And on what issue did you provide expert testimony?

A I do not recall the details.

Q So -- and, roughly, when did this occur? Do you recall?

A Roughly, in around 2005.

Q Okay. And you don't recall the details of what you provided testimony on in the case; is that right?

A It was quite involved. It involved analyzing and understanding the Philips patent. It involved manufacturing technology. But I do not recall any more specifics.

Q Okay. So you don't recall the conclusions you reached in that matter?

A I -- I'm -- no.

Q So you mentioned another litigation that was a litigation between Conair and a small startup that you didn't remember the name; is that right?

A Correct.

Q Okay. And you were deposed in that case?

A I was deposed.

Q And were you an expert in that case?

A I was a witness for the defendant.

Q Were you a fact witness or an expert witness?

A I was a fact witness.

Q And who was the defendant in that case?

A The company -- the name of the company

was Coffee One, I now recall.

Q And what was your role in connection with Coffee One in that case?

A I was the designer of the coffeemaker in question, designer and developer, and I was also a minor shareholder in that corporation.

Q And what was the nature of the coffeemaker that you had designed in that matter?

A The coffeemaker I designed in that matter was a carafe-based coffeemaker, in other words, a coffeemaker that delivers the coffee into a carafe, which can, then, be used by the consumer to pour into individual cups. And it was what is also known as a drip-type coffeemaker.

Q And, approximately, when did that deposition occur?

A I believe sometime in the '90s, in the 1990s.

Q Okay. Do you recall the outcome of that patent litigation between Conair and Coffee One?

A Yes. The court ruled in favor of

Conair.

Q So Coffee One was infringing Conair's patents?

A It -- they were no -- it wasn't a patent. I'm sorry. If I said it was a patent litigation, it was not a patent litigation.

Q Okay. What was the -- do you -- strike that.

Do you recall the nature of the claim in that case?

A Yes.

Q Which was what?

A The claim was that the industrial designer, Mr. Harrison, who designed the coffeemaker for Coffee One, had previously designed a similar coffeemaker for Conair. And even though there were no design patents involved, Conair sued Coffee One for, um, the use of what, apparently, belonged to them. And they paid for.

Q Is that like a trade dress kind of claim?

A I'm not sure that I would understand

the term.

Q That's okay.

And the only other deposition that you recall was your divorce proceedings; is that right?

A That's correct.

Q I'm not going to ask you about that.

So, have you provided trial testimony before?

A I did.

Q In what cases have you provided trial testimony?

A I provided trial testimony in the case between SEB, a French corporation, and Jordab, a U.S. corporation.

Q And what was the nature of the claim in that case? Do you recall?

A Yes. SEB, who owned patents on -- that relate to a -- I'll use the term air fryer that they had developed, claimed that the air fryer that was marketed, sold by a division of Jordab, in the UK, infringed their patent.

Q Was this a UK patent infringement case?
A It was in -- the litigation took place in the UK, in London.
Q And were you a fact witness or an expert witness?
A An expert witness.
Q And on what issues did you provide expert testimony?
A On the -- my testimony was to demonstrate that the appliance, the air fryer that was being sold by the Jordab division, did not infringe on the claims of the S -- the SEB patent.
Q Do you recall the outcome of that case?
A The outcome -- the outcome of the case, the initial outcome of the case was ruled in favor of SEB. Upon appeal, the case was reversed and it was ruled in favor of Jordab.
Q And, approximately, when was that trial testimony?
A I believe it was February of 2014.
Q Okay. Are there any other cases where you've provided trial testimony?

A No.
Q Have there been any other cases where you've provided declarations?
A Yes.
Q What -- what are those cases?
A Well, the, um, the S -- SEB versus, um, Jordab case. The Philips, versus -- the Salton Philips case, were a couple of Salton cases against where the -- I do not recall. They were cases relating to a rotisserie oven, and I don't recall the name of the other side. But it is in my CV.
Q Have you been retained as an expert in any other matters that you haven't mentioned here?
A I was retained in a case between WIK and another Chinese corporation. And the case I -- I was, essentially, retained but did not provide much of evidence because the case was settled in Hong Kong.
Q Understood.
Mr. Glucksman, are you currently working?

A Slight -- somewhat. I am -- I ended my active work in December of 2022. I still provide consulting to some limited extent.

Q And to whom do you provide consulting to?

A To previous clients of my company.

Q And when you say your "company," what company are you referring to?

A Appliance Development Corporation.

Q Are you the CEO of Appliance Development Corporation?

A Yeah. I call myself president.

Q When did K-Fee first approach you to become an expert in this case?

A I believe I was first approached over a year ago. I was -- I heard from the law firm, or from an expert witness recruiter, I don't recall exactly, and I believe that in February of this year, I've had my initial conversation specifically regarding this case with the -- the law firm.

Q I see. And when you say "the law

1 firm," you're referring to McDermott Will & Emery?
2 A Right.
3 Q And who approached you from McDermott
4 Will & Emery?
5 A I believe it was Adam, attorney,
6 Burrowbridge.
7 Q And when were you retained by McDermott
8 Will & Emery, or by K-Fee, whichever it may be?
9 A In the spring of this year.
10 Q So in spring of 2024?
11 A I believe so.
12 Q And you understand that today's
13 deposition deals with four IPR proceedings where
14 you have issued declarations --
15 A Yes.
16 Q -- correct?
17 When did you begin preparing the
18 declarations in those four IPRs?
19 A I would say late spring of 2024.
20 Q And could you describe the process for
21 how your reports were prepared?
22 A I was provided with a number -- number

of exhibits, and I was asked to review them and to provide my opinion with regard to specifics -- specific items. And that's why I was -- period. Thank you.

Q Who prepared the first draft of the declaration of your report?

A To be -- to be specific, I provided written and verbal in -- information or opinion with regard to these subject. When I say "verbal" mainly on Zoom calls. And was -- which was -- were then put together jointly, by counsel and myself, as a final declaration.

Q And how much of the declaration was completed at the time counsel first gave it to you?

MR. BROOKS: Objection. Mischaracterizes prior testimony.

Q You can answer.

A Can you, please, repeat the question? I'm sorry.

MR. McCRAW: Can you read it back to me, please.

(The requested text was read by the reporter as follows: "And how much of the declaration was completed at the time counsel first gave it to you?")

A It was a draft form. It wasn't -- the declarations were in draft form and included, primarily -- or included the opinions I provided counsel.

Q And how complete were these drafts?

MR. BROOKS: Objection.

A They were drafts.

Q Do you recall, approximately, how many pages they were at the time.

A No, I do not.

Q Do you recall, approximately, what percentage of your final report was already drafted in the first draft?

A Can you repeat that question, I'm sorry, please?

MR. McCRAW: Sure. Can you read it back.

(The requested text was read by the

reporter as follows: "Do you recall, approximately, what percentage of your final report was already drafted in the first draft?")

A So when you say "percentage," as it relates to the final report?

Q Yes.

A Okay. It's difficult for me to give you a precise number because we have gone through many conversations and iterations between the first draft and the final report.

Q Were any nonlawyers involved in the preparation of your report?

A I'm not a lawyer and I --

Q Other than you, were there any nonlawyers involved in the preparation of your report.

A I do not know.

Q Was anyone at K-Fee Systems involved in the preparation of your declaration?

A Again, I assume, since I was provided the drafts by K -- by -- K -- I'm sorry. Did you ask K-Fee?

Q I'll ask the question --
A Could you repeat, I'm sorry? So sorry.
Q That's okay. Let me try again.
Was anyone at K-Fee System involved in the preparation of your declaration?
A No.
Q Was anyone at the Krüger Group involved in the preparation of your declaration?
A No.
Q Was Marc Krüger involved in the preparation of your declaration?
A No.
Q You mentioned that counsel provided you a series of exhibits; is that correct?
A That's correct.
Q Approximately, how long did you spend reviewing those materials for preparing your opinions in this case?
A How many hours?
Q (Nonverbal response.)
A Many. I do not recall the exact number.

Q More than ten?
A Yes.
Q More than 20?
A Yes.
Q More than 40?
A Hard for me to say, but -- I don't know where -- how to answer the question because I don't -- I'm -- I will be happy to look at my time sheets and give you a very precise answer.
Q That won't be necessary right now.
Do you know Dr. Howell?
A Dr. Howell? Could you, maybe, help me by elaborating?
Q I believe -- I believe his name is Dr. Lawrence Howell, the prior expert of K-Fee in prior IPRs?
A No, I do not.
Q Did you speak with him in connection with this declaration?
A No.
Q Did you review any of his prior reports?

A Not unless some were incorporated in the exhibit and I was not aware that they were such.

Q So I skipped over the general rules. I think you probably already know most of this because you've been deposed before. But before we go on, let me just throw in a couple of things.

We obviously don't want to talk over one another. You've already been doing a great job of that.

If you don't understand the question I'm asking, can you ask me for clarification? Which I think you've already been doing. But if you don't ask for clarification, I'm going to assume you understood the question.

Does that make sense?

A Thank you.

Q Okay. What did you do to prepare for today's deposition?

MR. BROOKS: Mr. Glucksman, I'll just caution you not to reveal any attorney-client communications.

A I studied my declaration, I reviewed the exhibits, and I met with counsel last Thursday and yesterday in this office.

Q Did you have any other meetings with counsel other than last Thursday and yesterday, such as over Zoom?

A In preparation for this deposition?

Q Correct.

A No.

Q How many hours would you say you spent reviewing materials in preparation for this deposition?

A Around 20 hours.

Q And in the last Thursday meeting and yesterday's meetings, who was present?

A Ms. Rallabhandi and Mr. Brooks.

Q Anyone else?

A Mr. Burrowbridge dropped in for lunch.

Q Did anyone join by phone or video?

A No.

Q Have you spoken to anyone else regarding this deposition?

A Other than my wife, no.
Q Have you ever spoken to Marc Krüger?
A No.
Q Have you ever spoken to Dr. Lawrence Howell?
A No.
Q Did you review the Yoakim reference in preparation for today's deposition?
A Can you be specific what you're -- reference you're referring to? Exhibit number?
Q 1004.
A Yes.
Q Did you review the Jarisch 929 reference, which I believe is Exhibit 1006?
A Yes.
Q Did you review the petition?
A Not in preparation for this -- for this deposition.
Q Did you review the four patents at issue in these IPRs?
A Yes.
Q And by "four patents," I'm referring to

the four K-Fee patents.

A I understand that.

Q Is there anything new that you've reviewed since signing your declarations that informs your opinions in these IPRs?

A Do you mind repeating the question?

MR. McCRAW: Would you read it back for me, please?

(The requested text was read by the reporter as follows: "Is there anything new that you've reviewed since signing your declarations that informs your opinions in these IPRs?")

A When you say "new," are you referring to any new exhibit?

Q Any information that you've reviewed that's not cited in your IPRs. Strike that.

I'm referring to any information you've reviewed that's not cited as an exhibit in your declarations.

A I don't believe so.

Q So I think, earlier, you testified that you've designed coffee machines in the past; is

that right?

A That's right.

Q And how many of those machines brewed espresso as opposed to drip coffee?

A May I ask for clarification?

Q Sure.

A When you say "espresso," are you referring to, particularly, an espresso drink or are you referring to a single-serve coffeemaker, broadly?

Q Let's start with an espresso drink.

So I'll re-ask the question.

A Please.

Q How many machines have you designed that brew an espresso beverage?

MR. BROOKS: Objection. Form.

A I'm having a hard time answering the question for the simple reason that the term "espresso" is a relatively broad term, unless you want to be very specific.

So, it would be easier for me to answer the question if I was asked regarding single-serve

rather than carafe, simply because I don't want to give you a wrong answer.

Q Right. So we'll get to single-serve. But for now, any other machine that is, you know, brewing an espresso beverage, could you tell me how many you've designed?

MR. BROOKS: Object to form.

A One or two.

Q And how did those machines operate? Could you describe that to me?

A There's one that comes to mind, use what -- what is known as hard pot. A hard pot is a pot that is very tightly packed. And as a result of it, it creates a high back pressure, which is what is required for producing an acceptable or a suitable espresso drink.

Q Are there different design considerations when making a machine that brews coffee versus one that brews espresso?

A In essence, yes.

Q And what -- strike that.

Could you describe the different design

1 considerations for me?
2 A Yes. Goes somewhat to the nature of
3 espresso. Espresso was -- is a type of a coffee
4 drink which is brewed at a very fast pace, hence,
5 the term espresso, at relatively low temperatures
6 and where high pressure, water pressure, is used
7 to extract certain oils or organic acids from the
8 coffee grounds. And the typical size of an
9 espresso drink is somewhere around an ounce and a
10 half, 45-millimeter. Whereas, a whole carafe
11 brewing system provides water at about a
12 temperature of 90, plus/minus 5 degrees,
13 centigrade at atmospheric pressure for a brewing
14 duration of somewhere up to, you know, 15 minutes
15 and with a volume, typical volume ranging from the
16 smallest being a four-cup system to the largest,
17 that I'm familiar with, going as high as 16 or
18 maybe even beyond that cups of brewed -- brewed
19 liquid.
20 Q Now, a moment ago, you mentioned that
21 espresso was brewed at relatively low
22 temperatures.

A Correct.
Q What temperature are you referring to when you say that?
A I have to consult the Nespresso -- Espresso Institute of Italy. But I believe that the typical brewing temperature of espresso would range somewhere around 75 to 85 degrees centigrade.
Q Okay. But that's still a hot temperature, right?
A What do you mean by "hot temperature"? Where is your reference point, if I may ask?
Q What a human would feel to the touch.
A Yeah, yeah. I mean, yeah.
Q Now, earlier you mentioned a high-quality espresso.
A Yes.
Q What are the qualities that you'd say make a high-quality espresso?
A First of all, the taste. Espresso being brewed very rapidly allows the extraction of a certain type of organic oils -- oils or organic

acid. And as a result of it, a good, high-quality espresso would almost taste sweet without any addition of sweetener or sugar. And because of the lower temperature is responsible for extracting these types of oils.

Typically, a -- an espresso would require a head of crema. Crema is formed by -- consist of very small bubbles of air where the outer layer of each bubble consist of liquid and inside of the bubbles are very small, somewhere in the range of less than a millimeter, probably in the range of .1 millimeter, which is kind of part of the espresso experience. And, again, the temperature of the brewed part -- product is somewhere in the range of 75 degrees, which allows you to immediately consume it upon being brewed.

Oh, I should also say the espresso has a very high TDS. TDS stands for total dissolved solids.

Q What does that mean, total dissolved solvent?

A Sorry, did I say solvent? I mean to

say total dissolved solids.

Q I may have misheard you.

What does total dissolved solids mean?

A Total dissolved solids is a term used in the art of making coffee that relates to what a person would call the strength of the coffee. So a typical carafe-type coffee would have total dissolved solids in the range, again, I'm using a number of 1 to 1 1/2. Espresso may have as high as 4, 5, or 6.

Q Does that relate, at all, to the amount of material left over after brewing -- strike that.

Does that relate at all to the amount of coffee material left over after brewing?

MR. BROOKS: Objection.

A Not really. It's a --

Q What causes the crema you mentioned a moment ago?

A Very hard question to answer. It's essentially -- it's -- it -- people have struggled to explain what causes the crema in a typical, in

a typical espresso.

There are ways of creating -- if you don't mind my elaborating here, there are ways of what's known as faux crema, F-A-U-X, crema, which involves taking a coffee, liquid coffee, and bouncing it at high velocity against a solid wall and, by doing so, creating those bubbles.

In a true espresso brewing process, that does not necessarily have to happen and the crema is formed as part of the -- the infusion process, as the water passes through the densely packed granules of coffee.

So my apology or not being able to be more specific.

Q That's okay.

Give me a moment while I find an exhibit for you.

MR. McCRAW: So I would like to introduce a new exhibit. I believe we'll be picking up at Exhibit 1067.

Could you, please, mark this as Exhibit 1067.

(Exhibit 1067 marked for identification and attached to the transcript.)

Q And what I'm handing you, Mr. Glucksman, is United States Patent Application Publication Number 2015/0289709, published on October 15th, 2015.

Do you see that?

A Yes.

Q And this is a patent where the applicant was Sunbeam Products.

Do you see that?

A Yes. I do.

Q And are you one of the named inventors on this patent?

A It says so. The answer, yes.

Q At a high level, can you explain to me how this system works, in this patent?

MR. BROOKS: Objection. Outside the scope.

You can answer.

THE WITNESS: Okay.

A Okay. High level, you said?

Q (Nonverbal response.)

A There has been a marketing need for a coffeemaker that is able to produce both a carafe of coffee, as we discussed before, a carafe-type coffee, as well as a single-serve of coffee so that the counter space, at the home, will not be occupied by more than one appliance.

This was a -- an objective that was relayed to me and my team, and we were asked to develop -- use some of our technology to develop such a coffeemaker for Sunbeam, which was, at the time, part of Jordab Corporation.

Q And if I understand this correctly, the way in which you achieve a carafe or a single-serve coffee is by having different sized brew baskets that fit in the machine; is that right?

A My recollection -- that's my recollection, but I'll be happy to go and review it one more time.

I'm just looking at the figures for -- at the moment, unless further clarification would

be required.

All right. Would you mind repeating your question, sir?

Q If I understand this reference correctly, the way you brew a carafe or single-serve coffee is by having different sized brew baskets that fit in the machine; is that right?

MR. BROOKS: Objection. Hypothetical.

A I seem to recall that that is the case.

Q So once brewing is completed, what does a user need to do to set up the system to brew it a second time?

A Essentially, refill the coffeemaker with another portion of ground coffee -- or, you know, and the fill -- and the filter, if a filter is being used. And then ensuring that there is enough water in the water container to brew a second carafe or a second single-serve coffee.

Q Well, what do you do with the coffee that's left over from the first brewing before putting in the new coffee?

A You remove the -- let's talk about the carafe brewing right now. For example, you take the old filter out --

Q -- uh-huh.

A -- and dispose of its content.

Q Uh-huh.

A And if it is a -- there may be a permanent filter, which is made out of mesh, or there may be a filter holder that includes, within it, a paper filter. You, essentially, dump the paper filter with its content. Or in the case you have a permanent filter, you go wash it, dry it, return the filter holder or the filter to the machine, pour in more coffee grounds, as required for the size of carafe that you are planning to brew. Close the lid and start the machine.

Q Understood.

So, in terms of removing the filter and cleaning it and putting it back, I didn't see that in this patent. Is that a concept that's just understood?

MR. BROOKS: Objection. Vague.

A (Nonverbal response.)

Q So I want to go back to the different types of coffee brewing systems that we were talking about and the key considerations. I think we were talking about what considerations you would look at when designing a coffee brewing system.

Is reliability of a single-serve system an important quality?

A Could you define the term "reliability," please?

Q Well, as a designer, what do you understand the term "reliability" to mean?

A Okay. Reliability, I could define reliability as the product meeting the user's expectations.

Q Is one quality of reliability, the machine being able to function without breaking?

A Yes.

Q And if you were to break a single-serve machine down into its components, what are the components you would say are important for

reliability?

MR. BROOKS: Object to form.

A When we use the term "break down," what do you -- are you -- it's a -- could you use a different term?

Q Let me be clear. What I mean is, if you were to evaluate a single-serve machine based on its components --

A Yes.

Q -- what are the components you would say are important for reliability?

A Maintaining an appropriate temperature of water at point of delivery. Maintaining an appropriate volume of water in -- you know, as a function of the quantity of grounds in the single-serve machine. Preventing bypassing, making sure that all the water passes through the coffee grounds. And I would say these are primary concerns of a designer.

Q Okay. And when designing a single-serve coffee system, would it be beneficial to have multiple ways of ensuring that the

system's reliable?

A Again, if you don't mind clarifying, what do you mean by "multiple ways to ensure that the machine is reliable"?

Q So when designing a single-serve coffee system, would it be beneficial to have more than one way of ensuring that the system operates reliably?

MR. BROOKS: Objection.

A I'm still -- I'm sorry. I don't mean to be difficult, but I still don't understand. What do you mean by "more than one way to ensuring"? Maybe you could be more specific.

Q I mean more than one way of ensuring that the system meets the user's expectations.

MR. BROOKS: Objection. Hypothetical.

A I'm unable, really, to answer that question because I don't understand what you mean by more than one way to ensure the reliability of can mean.

Q Is vibration a factor to consider when designing a single-serve coffee system?

MR. BROOKS: Objection. Hypothetical.
A Vibration of what?
Q Vibration in the system. It could be anything.
MR. BROOKS: Objection. Vague.
A I am not able to -- to really answer it in a -- in a -- in a meaningful way. So --
Q Let me ask it differently.
Can vibration of components impact the reliability of a single-serve coffee system?
A I think one has to be very specific. In other words, first of all, as a designer, you want to make sure that a machine produces the same result with -- repetitively. Therefore, you want to make sure you avoid any elements in that machine that may cause something to occur during the operation that would create an unusual circumstance.
Q And is vibration of components one thing that could create an unusual circumstance?
A So, the question is, is it a deliberate vibration or is it a vibration caused by some

unexpected element? You know, for example, water being stuck in the tube during the brewing and creating some kind of a vibration.

But I would say, generally speaking, it's not a big deal. And I'm referring to conventional equipment, not equipment that involves rotation or centrifugal brewing.

Q Okay. Let's back up. Let's talk about centrifugal brewing systems.

A Sure.

Q You would want a centrifugal brewing system to be reliable, right?

A Yes.

Q Of course.

You -- if I understand you correctly, and correct me if I'm wrong, you would want to avoid vibration in a centrifugal system?

A You would want to avoid vibration in a centrifugal -- in a centrifugal brewing system in case that vibration would interfere, say, for example, with clarity of identifying.

Q Okay. So someone designing a

centrifugal system would know they would want to avoid that type of vibration for the reasons you just said?

A Yes.

Q And just now, when you said "identifying," are you referring to identifying the capsule?

A Yes. Identifying the capsule and the content of the capsule.

Q Let's talk about safety for a second.

A Sure.

Q Is safety a consideration when designing a single-serve coffee system?

A Yes.

Q Is safety a consideration when designing a centrifugal-based, single-serve coffee system?

A So now we're talking about what do -- what is the definition of safety. In other words, if you -- there are safety to the user or there is a safety of the equipment not breaking down.

Q Let's talk about safety to the user.

A Okay.
Q Is safety to the user an important quality when designing a centrifugal brewing system?
A I would say yes. And, therefore, the designer has to make sure that there are no -- there's no opportunity for the user to be injured by the machine.
Q Such as by using the wrong capsule with the machine, for example?
MR. BROOKS: Objection. Hypothetical.
A It would -- yeah, that would generally not be considered a safety consideration.
Q What would be a safety consideration, then --
A Okay.
Q -- in a centrifugal-based, single-serve brewing system?
A Again, I could be a little more general and saying, for example, if you press a button to open the lid, you want to make sure that when the lid opens, it doesn't hit your hand because of

where you put your hand during the pressing the button. You want to make sure that when you are done with the brewing cycle, that -- and you open the lid, no water will spray the user. You want to make sure that the capsule does not explode during the, you know, operation.

Q Now, if you were using the wrong capsule, the wrong -- strike that.

If you were using the wrong shaped capsule in a machine, that didn't actually seal the system, hot water could spray out at the user, right?

MR. BROOKS: Objection. Hypothetical.

A If I were to design such a machine, I would design it so that only the right capsule could be, you know, placed in the machine and the machine be -- you know, can be closed to avoid that kind of an incident.

Q So you would want to -- you would want to design a system so that the system wouldn't even begin the brewing process if the wrong capsule was in the machine, is what you're saying?

A Are you asking from a safety consideration or from what other -- or from -- from a safety point of view, it doesn't really matter if it was the right or wrong capsule, as long as the machine is closed.

Q Okay. What about from a quality point of view.

A From a quality point of view, you would like to make sure that you control the, you know, volume of water and the temperature of water. And in a centrifugal brewing machine, the RPM of the -- the speed of turning to optimize the operation.

Q So, I want to go back to what you said a moment ago, where you were saying it doesn't really matter if you put the wrong capsule in the machine. Is that, effectively, what you're saying?

A From a safety point of view.

Q Okay. You've reviewed K-Fee's patents, the four patents that are challenged in this case, correct?

A I did.
Q What do you understand the purpose of those patents to be if it's not preventing the wrong capsule from being used in a machine?
MR. BROOKS: Objection. Mischaracterizes prior testimony.
A I wasn't asked to opine on the four K-Fee patents.
Q So you don't have an opinion on what the K-Fee patents are designed to accomplish; is that right?
MR. BROOKS: Objection. Mischaracterizes prior testimony.
MR. McCRAW: Let's stick with form.
Q Go ahead.
A I reviewed the claims and I was asked to opine on whether the claims were anticipated, were covered by the prior art.
Q What do you understand the benefit to be from the purported invention of K-Fee's patent?
MR. BROOKS: Object to form.
A I was -- I was not asked to opine on

it, so...

Q Well, you're a coffee system expert, right?

A Yes.

Q Okay. And you've read those patents?

A I did.

Q Having read them, what do you understand the benefit to be?

MR. BROOKS: Object to form.

A I really do not -- I'm -- I cannot answer the question as to the benefit. I can describe to you what has been claimed. But the word "benefit" is not one that I can respond to.

Q Well, what do you understand to be novel or nonobvious about the alleged invention?

MR. BROOKS: Object to form.

A Again, I was asked to look at the claims and was asked to review the prior art, which was what -- which was brought up by the petitioner, and to opine on whether the claims were anticipated or whether the prior art was -- it rendered the claims obvious. And I concluded

that it did not.

MR. McCRAW: Let's take a quick break.

THE WITNESS: Of course.

(Recess taken from 10:46 a.m. to 10:58 a.m.)

MR. McCRAW: Back on the record.

BY MR. McCRAW:

Q Welcome back, Mr. Glucksman.

A Thank you, sir.

Q Did you speak with counsel about the substance of your testimony over the break?

A No.

Q Have you ever designed a single-serve, capsule-based coffee system?

A Yes.

Q What was the time frame of that system?

A I believe I started the work around 2005, 2007.

Q Okay. And what kind of beverage did the capsule in that system brew?

A The capsule was primarily designed to brew coffee, and, specifically, in the range of

eight ounces, six to eight ounces cups. And it was, though, adaptable to infusing steeping tea and also dissolving cocoa powder into a chocolate drink.

Q And how did the system operate to brew a beverage, at a high level?

A System was designed to -- the system consisted of a brew chamber into which a capsule was being placed. The system had a water reservoir with an integral heater placed in the water reservoir. And the system was designed so that when the capsule was placed in the brew chamber and the lid of the machine was closed, it concurrently -- it punctured the capsule in the top of the cap -- and the bottom -- and created an opening in the bottom of the capsule and, yet, at the same time, also, sealed the boiling compartment of the -- of the coffee machine.

Q When you say "the boiling compartment," what are you referring to?

A The boiling compartment, it was the area where the water was placed and the heater,

when the unit was turned on, started heated up the water.

Q So the system sealed both the boiling compartment as well as the brewing chamber?

A Yes.

Q So you wanted multiple areas of safety for that aspect; is that right?

A Yes.

Q And did the system work with more than one type of capsule?

A No.

Q Could you describe the one type of capsule that worked with it?

A Yes. It is described in my patent application, which is an exhibit in this case, but I'd be happy to describe the capsule to you as we sit here.

The capsule consisted of a lower -- a body, a lid. The body was -- consisted of a filter, a flat filter that was on -- basically, on the lower part of the capsule. It also consisted of a water distribution plate that was placed

towards the top of the capsule, and the volume between the filter and the water distribution plate was filled with infusible material.

Q So --

A It was sealed to prevent oxygen from entering the capsule.

Q Understood.

So did that capsule have a filter inside its cavity?

A It did.

Q How were -- strike that.

What material were the capsules made of?

A They were made out of plastic material.

Q How were they manufactured at a high level?

A The capsule products were molded. The filter was thermally sealed against ribs in the capsule, and the -- there were seals made out of aluminum foil, adhesive aluminum film that was also applied by plastic parts. These parts were, then, shipped from the manufacturer in Malaysia to

our filling facility, where the capsule parts were filled in the filling machine by automation, and coffee was -- coffee ground -- coffee was ground in -- I should say it again. And ground coffee was, then, dispensed into the capsule and the capsule was evacuated and then provided with a -- in a gas, namely nitrogen, and the lid was, then, sealed -- sealed onto the base.

And, subsequently, a label was applied to the capsule to, essentially, identify the content of the capsule.

Q Thank you.

Have you ever designed a centrifuge-based coffee brewing system?

A No.

Q Have you ever designed any centrifuge-based products, such as medical centrifuges?

A No.

Q And you're familiar with optical codes, correct?

A With -- with codes that are read

optically?

Q Correct.

A Yes.

Q And what are different ways of reading a code optically?

A Well, essentially, a typical optically -- optical code, say, known as a barcode, consist of black-and-white areas. The black areas, I refer to them as strips or designs -- can be made in different width and they can, then, be spaced apart from each other at different distances and, thereby, forming a multitude of -- you know, forming a variety of differences in opacity or reflectivity, which can be discerned by a sensor.

Q And how would a code like that be discerned by a sensor?

A For example, a sensor may emit a ray of light or infrared light, and that light, when it hits an absorptive element, mainly a black line, will be absorbed and not reflected. On the other hand, when it is hitting a white or a reflective

area, it will be able to be -- it will reflect and be able to be absorbed or recognized by the sensor.

Q Have you ever designed a single-serve coffee system -- strike that.

Have you ever designed a single-serve beverage system that uses -- strike that.

Have you ever designed a single-serve beverage system that integrates a code reader into the device?

A I did design one that the code is actually being read by a smartphone rather than the device. But I'm well aware and was involved in development of devices that included a device-based sensor.

Q When you say "a device-based sensor," what are you referring to?

A Okay. What I'm saying is when you take -- allow me to elaborate, to explain what I'm meaning by that.

When you have a capsule, for example, that contains a -- an identifier, or a code, and

you place that capsule in a device, being the coffee brewer or the beverage brewer, that device has a sensor, one sort or the other, that is designed to read the identifier. That's what I'm referring to as a "device-based sensor."

Q I thought you testified that you had not designed a capsule system that included a device sensor integrated into it.

Am I incorrect?

A I think if you -- I believe that I stated that I did develop a beverage -- a drink maker that include -- it involved a -- the use of an identifier placed on the capsule.

MR. McCRAW: I'd like to mark a new exhibit, I believe it's Exhibit 1068.

Could you mark that, please.

(Exhibit 1068 marked for identification and attached to the transcript.)

Q This is United States Patent Number 11,565,930, issued on January 31, 2023, to Dov Glucksman.

Take a moment and review the exhibit,

sir.

A Thank you, sir.

I'm going through the figures only, to explain. I'm -- I'm familiar with this.

Q Actually, I know I just introduced this. But I actually want to quickly go back to a point we were just talking about.

You mentioned your description of what you thought a barcode was and how it was read using an infrared light. Do you remember that a minute ago?

A I said infrared light as a possibility.

Q As a possibility.

And you were explaining how that light would be directed to the black or white portions, the absorptive or reflective portions, and then be able to discern information from that; is that right?

A Correct.

Q Okay. Would increasing the surface area of that code increase the chances of it correctly being read by the sensor?

MR. BROOKS: Objection. Hypothetical.
A Okay. So I think I will have to ask you to rephrase your question. Because are you talking about as we -- as I stated before and as shown in this new exhibit, a barcode consists of a number of bars, okay, that are different -- that are differentiated from each other in width. And that are differentiated and the gap or the spacing between each consecutive bar is different, which allows the information -- a lot of information to be stored.
So the question that you asked was, by enlarging it, would that help? And the question is, are you adding more bars on --
Q No.
A -- or are you making the bars larger?
Q No. Simply just making the size of the image larger.
A Using the same number of bars?
Q Same number.
A That's a good question and it's one that's going to be difficult for me to answer

because it relates to the ability of the scanning beam to travel. The scanning beam doesn't really require a lot of -- I mean, the speed of light is so rapid that it -- enlarging it may not necessarily help.

Q What about enlarging the length? Would that increase the chances that the laser actually hits the bars?

MR. BROOKS: Object to form.

A It's a good question. In some cases, I would say yes, in the event that the bar cannot be precisely placed within the machine and, therefore, by enlarging it, you increase the likelihood that you can read it, even if it was, you know, not exactly placed in the exact location.

Q Okay. Let's move on to this '930 patent.

So, if I'm correct, you are a named inventor on this patent; is that correct?

A That's correct.

Q And this patent, the applicant is

Appliance Development Corporation, which is the -- your corporation that you mentioned earlier today; is that right?

A Yes.

Q Now, you're not the only named inventor, right.

A I believe there are two other inventors, but I would like to make sure. Andrew Joseph Rojee and Michael David Miller, and Joseph Grossi, who were employees of mine.

Q What was your contribution to this patent?

A Can you -- I'm sorry. Sorry for -- for asking to clarify.

When you mean "contribution" can you be more specific in directing your -- me to --

Q So what I'm referring to is the fact that there's four named inventors on this patent. And sometimes when there are multiple inventors on a patent, it means that different people contributed different aspects of the invention?

A Correct.

Q Which is why they're named as an inventor.

A Correct.

Q So what I'm trying to understand, what do you understand your contribution to this patent to be, as opposed to some of the other inventors?

A The original concept was mine. The choice of the different embodiments was my contribution. And many of the mechanical aspects were my contribution.

It would be easier for me to say that, for example, Michael Miller, who was my industrial designer, contributed to the appearance of the product. Joseph Grossi, who was my expert electronics guy, contributed to aspects of the electronic control. And Andrew, who was my senior development engineer, contributed to, you know, aspects of the product in general.

Q Who developed the capsule identification system?

A The capsule identification system was really not developed, per se.

Q What do you mean by that?
A What I meant to say is barcodes and sensors are known, and, therefore, the -- at the time that this patent was drafted and submitted, we did not focus on the specific development of the barcode or the sensor.
Q And that's because integrating that type of brewing control was known to a person of skill in the art?
A Yes. Strike that.
What I mean to say is that was not the only reason, but I admit that sensors and barcodes are known in the art and we were not compelled, at that point, to finalize that design.
Q Okay. So if I understand it correctly, you're saying that the system that's described in this patent and is patented, was not a final product; is that right?
A When you're saying "the system," what are you referring to? Are you referring to the structure.
Of the elements, or are you referring

to the controls as shown in Figures 11 through. Sorry when I say control, the flowchart that is in Figures 11 through 16, I believe.

Q I'm just asking if the product that's described in this '930 patent was a commercially viable product at the time?

MR. BROOKS: Objection. Relevance.

A I may -- I can answer it in a way that we did not prototype or manufacture the product in its entirety at the time of the application.

Q So, at the time of the application, this was not in a place that was ready for commercialization; is that right?

A That's -- that is correct.

Q Now, I believe this is the system you were referring to earlier, where a cell phone takes a picture of a code on a capsule.

Is that right?

A Yes.

Q But this system does not have any kind of optical sensor for reading a code integrated into the device; is that right?

A This system does not. I believe that it does not because the claimed aspect of it was that the sensor is remote.

Q How many patents have you been an inventor on; do you know?

A More than a hundred.

Q Have any of your patents been continuations?

A Yes.

Q Have any of your patents been continuations in part?

A Yes.

Q What do you understand a continuation in part to be used for, in patents?

A I understand that it -- you know, and I may be wrong about my understanding. That at the time that the patent is granted, the Patent Office allows the patentee to file a CIP to add a subject matter, if I may use that term, to the application -- to come up with a new application with additional subject matter.

Q And that application can add additional

content describing the invention; is that right?
MR. BROOKS: Object to form.
A I believe so. I'm not a patent lawyer, so...
Q Let's go back to the '930 patent. I have another question about it.
Do you understand this patent to be enabled?
MR. BROOKS: Objection. Relevance.
A Which are you talking about?
Q I'm referring to the '903 patent, Exhibit 1068.
A Oh, the '930?
Q I'm sorry, you're correct, and I was incorrect. The '930 patent.
A Right.
Q Do you understand this patent to be enabled?
MR. BROOKS: Objection.
A I don't understand the term "enable," I apologize.
Q You don't understand the term

enablement?

A No.

Q Another question. Have you ever heard the term embossed before, in the context of mechanical engineering?

A Embossed?

Q Embossed, E-M-B-O-S-S-E-D.

A Like something being embossed right here?

Q Well, I was going to ask you what it meant, actually. What do you understand embossed to mean?

A Embossed, I believe to be a process where a mechanic -- where a -- let's say a word or a term is being applied to something through the process of applying pressure by a dye that has the reverse image of that word or term to a, say, piece of leather or other material.

Q Like a stamp; is that right?

A If you wish to use that term.

Q And if you were embossing something made of metal, how do you understand that to work?

MR. BROOKS: Object to form.

A As I said, there is a dye that has a reverse image of what you are looking to create in that piece of metal, and the dye is applied under pressure to the piece of metal and it forms a variation in the height of the surface, which is readable.

Q I see.

So it changes the shape of the metal; is that correct?

A If you say so, yes.

Q I'm asking you. Does it change the shape of the metal?

A When you say "the shape of the metal," it locally -- it creates an image. It creates -- yeah, it changes the shape of the metal in that particular area.

Q But it doesn't add any material to the metal, does it?

A I don't believe so, but I may be wrong. I'm not -- I'm not qualified to answer whether the term "embossing" involves adding material.

MR. McCRAW: Okay. I'm going to hand you your four declarations from these four IPRs, which -- all of which, I believe, have previously been marked as Exhibit 2022, in the respective proceedings. And for the record, I will note that the proceeding in this question here is Nespresso USA, Inc. v. K-Fee System GMBH, for IPR numbers 2024-00254, IPR 2024-00304, IPR 2024-00299, and IPR 2024-00257.

MR. BROOKS: Just so the record is clear, I think they're Exhibit 2020.

MR. McCRAW: Yes.

A Do I need these any further or should I put them to the side?

Q Put them to the side is okay.

(Exhibit 2020 previously marked for identification and attached to the transcript.)

MR. McCRAW: And, also, for the record, the '257 proceeding relates to U.S. Patent Number 11,548,722, which I'll refer to as the '722 patent. The 299 IPR proceeding refers to U.S. Patent Number 11,554,910, which I will

1 refer to as the '910 patent. Proceeding 254
2 relates to IPR number [sic] 11,465,829, which I'll
3 refer to as the '829 patent. And proceeding 304
4 relates to U.S. Patent Number 11,465,830, which I
5 will refer to as the '830 patent.
6 I'm going to hand you these four
7 declarations right now.
8 A Thank you, sir.
9 Q Please take a second and just look at
10 them.
11 A It would be a long second. But,
12 please, proceed.
13 Q Okay. Let's start with the '910
14 declaration. This is Exhibit 2020 in IPR number
15 299, relating to the '910 patent.
16 Is that what you have in front of you?
17 It sure is.
18 Let's turn to page 110. I believe it's
19 your signature page.
20 And is that your signature,
21 Mr. Glucksman?
22 A Yes, sir.

Q And it's dated October 1st, 2024; is that correct?

A That's correct.

Q And you signed this under penalty of perjury; is that correct?

A Yes.

Q And have any of your opinions in this declaration changed since you've signed it?

A I don't believe so. There may be some additions that are -- you know, some additional aspects that came to my mind, but, in essence, no.

Q Well, that's what I'm trying to understand. Is there any of your opinions that have changed since you've signed? Because I would want to know that now.

A Yeah. Like I said, I don't -- I might -- I am comfortable with the -- with what I provided here as a -- as my declaration as of that date. More ideas might have come to my mind since then.

Q Is there anything inaccurate in this declaration, that you're aware of?

A I'm not aware of anything that's inaccurate.

Q And sitting here today, is there anything you'd like to correct in this declaration.

A Not in substance.

Q Does this declaration contain all of the opinions you intend to offer in the 299 IPR as of today?

A As it relates to the '910 patent?

Q Uh-huh.

A So can you repeat that question, please. Is that all?

MR. McCRAW: Could you read it back for me, please?

(The requested text was read by the reporter as follows: "Does this declaration contain all of the opinions you intend to offer in the 299 IPR as of today?")

A Unless something else comes up during conversation, yes.

Q Does this declaration include all of

1 the analysis that you believe is necessary to
2 support your opinions?
3 A Yes.
4 Q Okay. Let's move on, for a moment, to
5 the '722 declaration, which is for the
6 257 proceeding.
7 A Yes, sir.
8 Q And I just want to go through the same
9 series of questions, for the record.
10 If we could go to page 108.
11 A Okay.
12 Q Okay. Is that your signature on
13 page 108, Mr. Glucksman?
14 A Yes.
15 Q Okay. And you signed this under
16 penalty of perjury, correct?
17 A Yes.
18 Q Have any of your opinions in this
19 declaration changed since you've signed it?
20 A Not in substance.
21 Q Is there anything inaccurate, that
22 you're aware of, in this declaration?

A No.
Q Is there anything you'd like to correct in this declaration?
A Not in general terms.
Q What do you mean by that?
A In other words, if I'm point -- if something is pointed out to me and I find that I made an error in -- in the statement, I would like to have the opportunity to explain.
Q Okay. But at this moment, you're not aware of anything you'd like to correct in this declaration --
A No, sir.
Q -- is that right?
And does this declaration contain all the opinions that you intend to offer in the 257 IPR as of today?
A As it relates to the -- to this patent? Yes.
Q Does this declaration include all of the analysis that you believe is necessary to support your opinions?

A I believe so.
Q Okay. Let's move on to the '830 declaration for the 304 IPR proceeding.
A Yes.
Q Same series of questions. If we could go to page 109, please.
A Yes.
Q Is that your signature, Mr. Glucksman?
A It is.
Q And you signed this under penalty of perjury, correct?
A Yes.
Q And have any of your opinions in this declaration changed since you've signed it?
A No.
Q Is there anything inaccurate, that you're aware of, in this declaration?
A No.
Q Is there anything that you'd like to correct in this declaration?
A Not that I'm aware of.
Q Does this declaration contain all of

the opinions you intend to offer in these IPRs as of today?

A Yes.

Q And does this declaration include all of the analysis that you believe is necessary to support your opinions?

A Yes.

Q Okay. Let's move on to the final declaration, the '829 patent, for the 254 proceeding. And let's turn to page 102.

Is this your signature on page 102, Mr. Glucksman?

A Yes.

Q And you signed this under penalty of perjury, correct?

A Yes.

Q Have any of your opinions in this declaration changed since you've signed it?

A I don't believe so.

Q Is there anything inaccurate in this declaration, that you're aware of?

A No.

Q Are you aware of anything you'd like to correct in this declaration?

A Not as of this point -- moment.

Q Does this declaration contain all of the opinions that you intend to offer in this IPR as of today?

A Yes.

Q And does this declaration include all the analyses that you believe is necessary to support your opinions?

A Yes.

Q Okay. Let's go back to the '910 declaration.

And let's go to pages 11 and 12, and, actually, spanning through 18. It's a table.

Do you see it?

A Yes.

Q And starting on page 16, the exhibit numbers begin with the number 2000, do you see that, and it spans through 18?

A Correct.

Q Have you reviewed all of these

exhibits, Mr. Glucksman?
A I have.
Q And of these exhibits, specifically Exhibit 2001 through 2033, were these exhibits provided to you by counsel or did you identify any of these exhibits yourself?
A They were provided by counsel.
Q Okay. Are you aware that there's also a district court litigation pending in California between K-Fee and Nespresso?
A I am.
Q Have you been retained as an expert in that proceeding?
A I believe I have, but -- because I -- I -- I was told that --
MR. BROOKS: Don't reveal communications with counsel.
THE WITNESS: I'm sorry?
MR. BROOKS: Please do not reveal communications with counsel.
A I believe I have.
Q And on what issues have you been

retained to provide opinions in the District Court case?

A I have -- I'm -- I -- I wasn't -- to my recollection, I wasn't given any issues to opine on.

Q Have you formed any opinions regarding infringement in the district court case?

A No.

Q Going back to pages 11 through 18 in the '910 proceeding. In forming your opinions, did you review any materials other than those cited here in this declaration?

MR. BROOKS: Object to form.

A I cannot think of any exhibits other than these that I was -- that I reviewed.

Q Is that answer the same for the other three IPR proceedings, the 254, 304, and 257?

A Yes.

Q Going back to the district court litigation. Have you formed any opinions on claim construction in the district court?

MR. BROOKS: Objection. Relevance.

Scope.

A I have not.

Q So your declarations opine on the issue of obviousness; is that right?

A I believe so.

Q Okay. What do you understand is required to establish obviousness with a single reference?

A I prefer to read -- you know, use the advice -- the information I was provided by counsel with regard to obviousness so not to misspeak.

Q Sure. I believe that starts on paragraph 37 of your '910 declaration.

A Obviousness. Correct. Would you like me to read that to you or --

Q I would like you to explain to me what you understand is required to establish obviousness using a single reference.

A Then I have to take a few minutes to read it.

Q Please, go ahead.

A Okay. So -- in paragraph 37, states that counsel has informed me and I understand that a patent claim is invalid as obvious under US 35 -- under 35 103 in light of one or more prior art references if -- if it would have been obvious to a person of ordinary skill in the art at the time of the alleged invention, taking into account, one, the scope content of the prior art, two, the differences between the prior art and the claims. Three, the level of ordinary skill in the art. And four, any so-called secondary considerations of nonobviousness, which would -- which include long-felt need to the claim to -- to be -- to the claimed invention, commercial success attributable to the claimed invention, expected result of the claimed invention and skepticism of others, failure of others to achieve the claimed invention, and copying of the claimed inventions by others.

Q Okay. I want to ask you, for a minute, about the differences between single reference obviousness and multiple reference obviousness.

Specifically, what do you understand the difference to be in establishing single reference obviousness versus multiple reference obviousness?

A I guess I will have to, again, refer to what counsel advised me or taught me.

Do you -- can you help me in directing me to the right paragraph for the sake of...

Q You could try 38. I don't know if it necessarily answers the question, but go ahead and read it.

A Thank you.

So, I'm -- my paragraph 38 says that counsel has informed me and I understand that a claim may be obvious in light of a single prior art reference or multiple prior art references to be -- period. To be obvious, in light of a single prior art reference or multiple prior art references, there must be a reason that would have prompted a POSITA to modify the single prior art reference or combine two or more references in a manner that provides the element of the claimed

1 invention. The reason may come -- sorry. The
2 reason may come from teaching, suggestions, or
3 motivations to combine. The references,
4 themselves -- to combine the references
5 themselves. The knowledge of a common sense of a
6 POSITA or from the nature of the problem to be
7 solved. The reason that would have prompted a
8 POSITA to modify a single prior art -- art
9 reference, or combine two or more references, may
10 be explicit or implicit from the prior art as
11 owned.
12 I've been informed that, under the law,
13 the combination of familiar elements, according to
14 a known method, is likely to be obvious when it
15 does no more than give a predictable result. I
16 also understand it is improper to rely on
17 hindsight of making an obviousness determination.
18 Q Thank you for reading paragraph 38 of
19 your report. Let me ask another question.
20 When dealing with single reference
21 obviousness, do you need a motivation to combine
22 embodiments within the reference?

A I don't -- I don't know the answer to that. And if there is somewhere in the declaration that this is, um, elaborated or explained, please, point me out to it.

Q To establish obviousness with multiple references, does it require demonstrating a motivation to combine embodiments within a particular reference?

A You -- okay. Was your question -- your question was -- related to multiple references. And the motivation to combine aspects from those multiple references? Was that your question?

MR. McCRAW: Could you read back the question, please.

(The requested text was read by the reporter as follows: "To establish obviousness with multiple references, does it require demonstrating a motivation to combine embodiments within a particular reference?")

A Okay. So, the way I understand the question is I have two multiple -- I have two references. And you're asking, in order to --

to -- to -- to have the motivation to combine these two, I should -- am I combining references within a particular reference? Or did you say -- did you mean to say those two references?

Q Let me try to clarify for you.

A Thank you.

Q In a multi-reference obviousness combination, where one of the references teaches more than one embodiment --

A One reference teaches more than one embodiment, okay.

Q -- but there are other references involved in the obviousness combination as well.

Do you understand?

A All within one -- within one patent, one patent?

Q As well as an additional patent.

A Okay.

Q Do you need a motivation to combine the embodiments of the single patent when combining, also, with a second patent?

A And that's what my question to you was.

1 Back to the question as to whether there -- there
2 has to be a mot -- if there is a reference in my
3 declaration that pertains to the motivation of
4 combining references within a single patent. And
5 I didn't hear if you had an answer to that.
6 If you could point me to it, then I'd
7 be happy to read that.
8 Q I'm not aware -- I'm not aware of one.
9 That's why I'm asking you, is I'm trying to
10 understand, when forming your opinions of
11 obviousness in this case, were you -- were you
12 requiring a motivation within a particular
13 reference for the embodiments?
14 A I'm trying to visualize. So, having --
15 you know, involved in developing patent language,
16 it is my understanding that a patent should
17 disclose the embodiments that are relevant to
18 the -- to what -- what is being claimed. And --
19 so, if there are different references within a
20 particular patent that are very different from
21 each other I don't know if I -- a POSITA would be
22 motivated to combine these references. That's --

it is my understanding.

Q So in these IPRs, they involve combining a Yoakim reference with another Jarisch reference, as well as some other references?

A I understand that.

Q Do you understand that?

A Yes.

Q And my question for you is, in using Yoakim's teachings to combine with the other references to achieve the claimed invention, were you requiring a motivation to combine Yoakim's embodiments with one another?

MR. BROOKS: Object to form.

A I understand -- again, it's very hard for me -- I think I answered that question before.

You're talking about taking a Yoakim embodiment and combining it with a Jarisch or a -- Rapparini, or whatever other references, which I understand there has to be a motivation to combine them. But you're also asking whether in the context of combining references from two different sources, whether combining references from a

singular source, single patent, whether there's a motivation to do that.

And I'm saying, as a -- as a technical person, I would -- I would understand that different embodiments entail descriptions of concepts that being -- are being discussed in the -- in the -- in the application. But a POSITA would have to use its own judgment as to whether there is a motivation to combine these within a single reference. That's my understanding.

Q Okay. Let me -- let me try to clarify and make sure I understand what you've asked -- or what you've answered, rather.

A Yes, sir.

Q When evaluating the complete disclosure of Yoakim, in combination with Jarisch or another reference, are you saying there needs to be a motivation to combine Yoakim's embodiments with one another?

A I believe so. I believe that a person skilled in the art would have to be convinced that there is a motivation to combine different --

1 different embodiments and it would be the -- the
2 patent -- you know, the -- the -- the drafter of
3 the patent to explain why such have to be -- are
4 combinable.
5 Q Okay. Let's talk about claim
6 construction, for a minute, as forming these
7 opinions in your declarations.
8 Did you interpret the claim language of
9 the respective patents?
10 MR. BROOKS: Object to form.
11 A Okay. I was -- I looked at the claim
12 language, and I used that claim language and I --
13 in understanding why the petitioner sought to
14 combine references to label these claims as
15 obvious, in my replies, I found that I did not
16 think -- well, that the -- in my opinion, the --
17 the -- what the petitioner claimed was not in line
18 with my understanding.
19 Q Okay. And to evaluate whether the
20 prior art was -- strike that.
21 To evaluate whether the prior art
22 disclosed what was in the claims --

A Whether the prior art -- okay. Go ahead.

Q Strike that.

To evaluate whether the prior art disclosed what was in the claims, did you interpret the claims?

MR. BROOKS: Object to form.

A I read the claim language and that -- that's what I was -- you know, what I used as a guide for my opinion.

Q How did you determine the meaning of the words in the claim across the four patents?

A Well, the meaning was -- you know, the meaning was clear to me when I read -- when I read the claim language.

Q And what did you use to inform yourself as to whether those -- the meaning was clear?

A My understanding of the words.

Q Did you consider anything else to determine the meaning of the claims?

MR. BROOKS: Object to form.

A No. I didn't.

Q Do any of the terms of the four patents require a construction, in your opinion?
A I don't understand the term "construction."
Q Do any of the terms of the four patents require a specific definition, in your opinion?
MR. BROOKS: Object to form.
A I don't understand the term "specific definition."
Q Were you using the plain and ordinary meaning of the terms when you were evaluating the claims?
A Was I using the plain?
Q And ordinary meaning of the terms when you were evaluating the claims?
A Yes.
Q Okay. And what informed your understanding of the plain and ordinary meaning of the terms? Anything?
A No.
Q Okay.
A No.

MR. BROOKS: We've been going over an hour.

MR. McCRAW: Sure. We can take a break.

(Recess taken from 12:08 p.m. to 12:50 p.m.)

MR. McCRAW: Are we on the record?

BY MR. McCRAW:

Q Welcome back, Mr. Glucksman. During the lunch break, did you speak with your counsel about the substance of your testimony?

A No.

Q Now, you've used single-serve coffee systems before, right?

A Used, as a consumer?

Q Correct.

A Yes.

Q Have you ever owned one?

A Yes.

Q What model have you owned?

A I owned my own model, the one that we developed for Brew One. I owned a -- I currently

own a retro espresso machine. A owned a De'Longhi machine, I owned several Jura machines, a Philips machine, and --

Q Okay. So in any of these machines, after they've been used over time, have you ever seen leftover coffee sitting inside of the brewing chamber?

A What do you mean? Coffee -- you mean grounds of coffee, coffee grounds?

Q Either grounds or dried liquid coffee.

A I don't recall having seen coffee grounds in a machine. And, you know, there may be some film of liquid coffee.

Q Right. You need to clean the machines periodically, correct?

A Yes.

Q And if you don't clean the machines, like, a residue can build up inside the chamber; is that right?

A Stands to reason.

Q And what do you understand that residue to be made of?

A Essentially, dried organic acids or oils.

Q Let's go back to your '910 declaration. I want to go to paragraph 15.

A Okay.

Q Let me know when you're there.

A Okay.

Q And before I ask you, why don't you just take a moment and review paragraph 15.

A Okay. That is on page 5?

Q Correct.

A Okay. Yeah, I finished reading --

Q Okay.

A -- the paragraph.

Q So in this paragraph, you discuss your first exposure to pod-based, single-serve coffeemakers.

Do you see that?

A Yes.

Q What do you mean by "pod-based"?

A Okay. The term pod or pad is -- is used in German-speaking countries, is a

single-serve -- single-serve coffee or otherwise brewing material that is ground and packaged in a filter material that is sealed, essentially, consisting of an upper and lower disc of filter material that is filled automatically in filling equipment and then sealed on its periphery to prevent -- to, basically, create a pod or create this particular pouch that holds the coffee.

Q So do you always need a filter in a pod system?

MR. BROOKS: Object to form.

A No. For example, I just had a -- made myself a cup of coffee in the Nespresso machine out here, and that Nespresso machine uses a pod, again, cylindrically shaped pod that is made out of aluminum foil and is, therefore, not made out of a filter material.

Q Okay. Now, the second sentence of paragraph 15 states "I recognized then the commercial value of single-serve coffee making and started working in my lab on different options for such technology."

Do you see that?

A Yes. I saw that.

Q Can you describe your lab setup that you're referring to there?

A Oh, okay. The company that I founded and that managed for some close to 50 years, or around 50 years, was a product development firm. We focused and specialized in developing electric appliances. And in order to test the concepts, we had a lab, laboratory, where we built prototypes or tested complete appliances to learn or to improve the functionality of the -- of the appliance.

Q And how did the process of beginning a design start in your lab? How did you begin that process?

A It -- are you talking, for clarification sake, are you talking about the process of developing a product?

Q Sure. Go ahead.

A Okay. So, you either have an idea about any product that you think -- when I say

"you," myself or one of my team members came up with an idea of a product that we felt was worthwhile developing. We usually used the brainstorming session to -- for input for various people to provide their input to the concept. And if the concept appears to be valid and of value, we, then, proceeded to develop the product, which usually started with a very preliminary prototype that was designed to, um, test the concept.

It was not something that resembled, in any way, the end product. But it allowed us, the team of -- our technical team, to learn whether the concept was viable, whether the end product of the -- of the, um -- end product was produced, let's say, coffee was of the quality that deserved continuing to develop it.

Q I see. Is that what you would call laboratory model?

A Yes.

Q Okay. And did any of those designs, that started as laboratory models, ultimately become commercial products?

A Yes.
Q And did any of those designs, that started as laboratory models, ultimately become patented?
A Yes.
Q Okay. Let's go to a different part of your declaration. Actually, let's talk about the '910 patent claims themselves.
A Oh, okay.
Q Let me make it easier. Actually, I'll just give you a copy of the patent to make it easier.
A I rephrase this.
MR. McCRAW: So I'd like to introduce what has been previously marked as Exhibit 1001 in the IPR 299 proceeding. And this is a copy of the '910 patent to Krüger.
(Exhibit 1001 previously marked for identification and attached to the transcript.)
A Thank you.
Q And you can turn to the back and begin reviewing claim 1.

A I'm looking at column 12.
Q Uh-huh.
A Starting line 52. Is that...
Q Yes, correct.
A Good, thank you.
Q And I actually want to direct you to a specific claim limitation.
A Okay.
Q And it is located on column 13, lines 30 and 31.
A Okay.
Q And it recites "Wherein the portion capsule is free of a filter inside of the cavity."
Do you see that?
A Give me a minute, please.
Q Sure, sure.
A Did you say a line?
Q Lines 30 and 31 on column 13.
A 30 and 31. Wherein the portion capsule is free of a filter inside of the cavity and wherein -- sorry, the individualization -- oh, sorry. 30 and 31, correct.

Q So, my question for you is, does the '910 patent claim prohibit any filter, at all, being used in the entire brewing system?

MR. BROOKS: Object to form.

A I can -- to answer that question, I -- I will read aloud the claim language, where it says "wherein, the portion capsule is free of a filter inside of the cavity."

Q Right. I understand that language. And what I'm asking you is, in interpreting that language, do you understand the claim to prohibit any filter, at all, from being used in the entire system?

MR. BROOKS: Object to form.

A I mean, the claim language is -- is silent as to -- for there being anywhere in the system.

Q So the claim does not prohibit a filter being used generally in the system?

A Well, the claim language says it is free of a filter inside of the cavity.

Q So that's the only aspect -- that's the

only -- strike that.

So the only feature that this limitation prohibits is a filter inside of the cavity; is that correct?

A You say prohibits or covers? Prohibits, meaning if somebody has a filter inside a cavity, this claim would be infringed?

Q Well, this is a negative claim limitation, where the capsule is free of a filter inside of the cavity, such that the capsule does not have a filter inside of the cavity.

Is that how you understand it?

A The claim says that it is -- does not have a filter -- yeah, I can -- I can accept that, yes.

Q So what I'm asking is, does this require the machine to lack a filter?

MR. BROOKS: Object to form.

A Again, it is only directed to the capsule. So, therefore, I don't understand -- maybe -- maybe I don't understand the question.

It obviously addresses the lack of a

filter in a capsule. And that's all it says.

Q Right. So let me ask you another question.

We agree that the capsule -- strike that.

We agree that this limitation prohibits a filter inside of the cavity, correct?

A I -- I don't understand the term of the -- the -- your term "prohibits."

Q Let me ask it differently. We agree that this claim is directed to a capsule that does not have a filter inside of the cavity; is that right?

A Yes.

Q Okay. So my question for you is, what are some examples of where a filter could be in the system of the '910 claims, other than inside the cavity?

MR. BROOKS: Object to form.

A Okay. A good question. And if -- from my experience with single-serve coffee systems, capsules, et cetera, it is a filter should be part

of the disposable capsule in order that all of the grounds was in -- that are used for brewing would be disposed of when the capsule is being disposed.

Q Okay. But even with a capsule, the filter doesn't have to be inside of the cavity, correct?

A We -- we just said -- when you mean "the cavity," you mean the body of the -- what do you -- how do you define the word "cavity," if I may ask, so I can answer it precisely.

Q Well, sir, you actually are the expert here who's opined on these claims.

A Okay.

Q So I'm interested in how do you define the word "cavity."

A Okay. Cavity, in this reference, means a -- a part of the overall body of the cavity -- of the capsule, which has a -- basically, a concave shape, hence, the word cavity.

Q Okay. And the cavity in the '910 patent is directed to the area in which the coffee grounds reside; is that correct?

A I believe so.

Q Okay. Let's go back to, I believe it was Exhibit 1067 that I marked. It's your patent. You put it over here (indicating).

A Correct. Thank you.

Q Which is publication number 2015/0289709.

A The 709, right.

Q I just wanted to ask about this because you were saying that the capsule should have a filter. But you agree, in this machine, the machine has a filter that is reused, correct?

A Certainly, the machine has a filter when it produces a whole -- whole carafe of coffee. And I do not recall whether this machine is -- I sincerely don't recall whether this machine is designed to use a capsule or whether it is designed to use a secondary brew chamber with a filter for brewing a single-serve.

Q But you would agree, in this system, the filter is part of the machine that you remove and clean and put back? I believe you testified

to that earlier.

A It's not part of the machine. It's a very good distinction. The filter is actually housed in what is called a filter basket, which is removable.

Q Uh-huh.

A Therefore, once the filter basket containing the filter, which contains the coffee grounds, is removed, the machine remains clean, other than, you know, where coffee -- liquid coffee passed.

Q Let's go back to the '910 patent itself.

A Okay.

Q So, is it your opinion that the '910 patent discloses a coffee capsule that is free of a filter inside of the cavity?

A I was not asked to opine on that. I only -- I was shown the claim and the claim clearly requires that the capsule be free of a filter.

Q Have you read the specification?

A I have -- I read the specification.

Q Did you evaluate, in the specification, whether or not the coffee system disclosed in the '910 patent discloses a capsule that's free of a filter?

A I -- I can't -- I do not -- I do not recall whether it does or does not.

Q Do you understand how the coffee system disclosed in the '910 patent operates?

MR. BROOKS: Object to form.

A Okay. So, my understanding of the '910 patent is that it is particularly directed to a identifier on the capsule. You know, a capsule identifier.

Q Uh-huh. Okay.

So, what I want to understand is, in using the system disclosed in the '910 patent, how would it operate with a capsule that's free of a filter inside of the cavity?

MR. BROOKS: Object to form.

A I really didn't -- I did not form an opinion in that respect.

Q Okay. Let's move on.

Let's go back to the '910 patent claims. And let's go to column 12, lines 52 and 53.

A 52 and 53. Okay.

Q The claims recite a portion capsule for making a beverage having an individualization identifier.

Do you see that?

A I see that.

Q Okay. And if we move on to column 13, lines 3 through 5.

A Okay. I saw that. 3 to 5, okay.

Q Okay. The claims further specify that the individualization identifiers located on the bottom side of the flange.

Do you see that?

A I'm sorry. 13, 3 to 5. Is there a period before line -- line 3 starts with the word having a top side and then opposing bottom side.

Am I --

Q All right. Try 4 and 5.

A Oh, 4 and 5. Okay.
Q Says the individualization identifier is located on the bottom side.
A Individualization, yeah, okay. Now I see.
Q Now, if we jump down to 33 and 34.
A 33 and 34, okay.
Q Which starts with a little i. It says that the individualization identifier comprises at least two areas which differ in their optically detectable reflective properties.
Do you see that?
A Yes.
Q And move to 35 and 36, with little ii, says that it includes an optically detectable, machine readable, repeat pattern.
Do you see that?
A Yes.
Q Okay. And then if we go down to lines 49 and 50, which is little I -- vi?
A Yes.
Q Says that the identifier's further

provided on the outside surface of the wall of the base element.

Do you see that?

A Yes.

Q Okay. What do you understand the purpose in the '910 patent to be of having an identifier that is both on the bottom side of the flange and, also, on the outside surface of the capsule wall?

MR. BROOKS: Object to form.

A Okay. I'm sorry, but I'm going to have to -- so -- can you help me understand your question by repeating it, please?

MR. McCRAW: Could you read it back for me, please.

(The requested text was read by the reporter as follows: "Okay. What do you understand the purpose in the '910 patent to be of having an identifier that is both on the bottom side of the flange and, also, on the outside surface of the capsule wall?")

A Well, when you used the word "both," do

1 you mean that there is an identifier -- that a
2 particular -- a single capsule has an
3 identifier -- two identifiers, one on the rim and
4 one on the body?
5 Q Well, I'm asking you how you interpret
6 this claim feature. Because the claims require an
7 individualization identifier to be on the bottom
8 of the flange and, also, on the outside surface of
9 the wall, right? We went through those two
10 different limitations, right?
11 A Yes. And so --
12 Q So I'm asking you, what is the purpose
13 of having an identifier both on the bottom of the
14 flange and on the capsule body wall?
15 MR. BROOKS: Object to form.
16 A So, you -- you're saying that the
17 identifier, given a single capsule -- a particular
18 capsule, should have two identifiers, one on the
19 rim and one on the base -- one on the side wall?
20 Q Well, I'm asking you. What do you --
21 what do you understand these claim limitations --
22 bless you. What do you understand these claim

limitations to mean in this claim?

Do you understand there to be a identifier both on the bottom of the flange and on the capsule body side wall?

A This is the first -- this is the first time that I'm addressing this question, so I have to go back and see.

Where is the limitation? What limitation are you referring to that points out to the identifier being on the rim or on the --

Q So if we -- if we go back up to lines 4 and 5 of column 13.

A Okay. So lines 4 and 5. Okay. It says the individualization identifier is located on the bottom side of the flange.

Q Uh-huh.

A That is clear. It is.

Q Now, let's go down to lines 49 and 50. If you could read that aloud for me.

A Lines 49 and 50. "Is further provided on the outside surface of the wall of the base element."

When you say "is further," can you -- just make sure that I understand. Wherein the individualization -- okay, I'm going back to line 31 to help me understand.

It says, in line 31 -- line 32, I'm sorry. Wherein the individualization identifier comprises at least two areas, which differ in their optical, et cetera, et cetera, includes an optical detectable, encodes information used, encodes information used by the specific coffee machine.

Encodes information used in a specific coffee machine. Okay. Is further provided on the outside surface of the wall of the base element.

Q Right. And so I'm asking you, do you understand this claim to require an individualization identifier that is both on the bottom of the flange and, also, on the side wall of the capsule?

A As a, you know, for practical purposes, it's -- it's -- it's a possibility. It would require more than one sensor. But it is a

possibility.

Q Sorry. I'm -- I'm trying to ask a clearer question than that.

A Okay.

Q Which is, do the claims require a capsule that has an identifier both on the bottom of the flange and on the side wall? It's a yes-or-no question.

A And I truly understand it's a yes-or-no question. And it requires that I understand the -- it -- I'm -- I'm really -- I don't feel qualified to answer that question because I can see where these two things are mentioned in a claim, and I -- I'm not qualified -- I don't feel myself being qualified to answer this question in a yes-or-no manner. Sorry.

Q Okay. Let's move on.

What do you understand -- strike that.

If you were dealing with a capsule that had an identifier -- strike that.

If you were designing a capsule that had an identifier both on the bottom of the flange

and on the outside surface of the wall, is there any benefit you can see to having it in both places?

MR. BROOKS: Object to form.

A I would say there might be a benefit where, if for some unique reason, the identifier cannot be read in one of those two locations, then the opportunity for it to be read on the other location would enhance the -- you know, the experience.

Q Okay. And going back to the disclosure of the '910 patent. Are you aware of anywhere in the patent where it discloses an identify -- an individualization identifier that's optically read, that's both on the bottom of the flange and on the capsule side wall?

A I can look at the figures, if you allow me.

Q Sure.

A I am not able to see, in the figures that I just viewed, that there is an identifier located in both locations.

Q Okay. Let's go to your declaration again, in the '910.

A Okay.

Q Let's go to paragraph 75.

A Would that be found on page 37.

Q That's correct.

A I note that the institution of -- okay. Let me read it.

Q Sure.

A Okay. I read my paragraph 75.

Do you have any specific questions that you'd like me to answer?

Q Yes. I'd like to direct you to the bottom of page 37, where you say "petitioner here seeks to combine over five separate embodiments across numerous paragraphs."

Do you see that?

A I saw that in reading it. Let me come back to it.

Did you say it was -- where you say the bottom, throughout your -- could you just point out the number, the line, to help me quickly?

Q Sure. The line starts with "other capsules."

A Other capsules. I see that.

Q Yes. Then go to the end of the line. The sentence says "petitioner here seeks to combine over five separate embodiments."

Do you see that?

A Yes.

Q Okay. My question for you is, what, specifically, are the five separate embodiments that you contend are being combined in Yoakim?

And let me, if it's easier, let me get you a copy of Yoakim.

A Right.

MR. McCRAW: I would like to introduce what has been previously marked as Exhibit 1004. U.S. Publication 210/0239734 to Yoakim.

(Exhibit 1004 previously marked for identification and attached to the transcript.)

Q And my question from before is the same, which is, specifically, what are the five separate embodiments that you contend are being

combined by the petitioner in Yoakim?

A I'm having a little difficulty in equating my statement of five different embodiments with my -- you know, presently reviewing the figures at this point here.

So, I -- I would try to see if there is -- if I enumerated these embodiments. Do you -- have you -- can you help me in showing -- allowing me to revisit my declaration as to which were those specific five embodiments?

Q You're welcome to revisit your declaration. I don't know that I have a particular location to direct you to, though.

A Okay. I have to take a little bit of time to do so.

Q That's fine.

A So I reviewed my declaration all the way to paragraph -- to my paragraph 87. I don't find that I outline, specifically, what these five different embodiments were.

Q Okay. Let me introduce some new exhibits -- well, not new, but some additional

exhibits.

(Exhibit 2027 previously marked for identification and attached to the transcript.)

MR. McCRAW: I'd like to introduce what has been previously marked Exhibit 2027, U.S. Patent Number 9,227,837 to Yoakim.

A Okay. Thank you.

Q And what has been previously marked Exhibit 2028, U.S. Patent Number 9,271,598, also to Yoakim.

And what has been previously marked Exhibit 2029, U.S. Patent 9,668,604, also to Yoakim.

(Exhibits 2028 and 2029 previously marked for identification and attached to the transcript.)

A Okay.

Q Now what I'd like to do is I'd like to go to paragraph 75 of your '910 declaration?

A Okay. So let me just get organized here for a minute.

Q And in particular, I'm interesting in

1 going to --
2 A You said paragraph 75?
3 Q Yes, but page 38. It's the end of it,
4 right before 76.
5 A Okay.
6 Q And the last sentence in paragraph 35,
7 right before 76 states --
8 A 75.
9 Q Thank you.
10 The last paragraph in 75, right before
11 76, the last sentence states "Yoakim further
12 sought to separately patent embodiments from
13 Figures 1 through 25, 26 through 43, and 61/61,
14 which suggests to a POSITA that they are discrete
15 embodiments."
16 And then you cite Exhibits 2027, 2028,
17 and 2029.
18 Do you see that?
19 A I do.
20 Q And those citations to Exhibits 2027
21 through 29 are the three patents that I just
22 handed you, correct?

A Okay.

Q Okay. Are these documents, and, specifically, I mean Exhibits 2027 through 2029, your basis for why Yoakim teaches discrete embodiments?

A So going back to my declaration, if you don't mind, I said that -- so I said in the lines just before the end of paragraph 75, currently, Yoakim presents various capsule embodiments without ever presenting or suggesting a capsule having all of the features of patent owner's claims, and it does not suggest a reason to combine the features of the -- of all Yoakim's capsule into a single capsule.

So, that is my statement, correct?

Q You do state that. And then the following sentence states "Yoakim further sought to separately patent embodiments from Figures 1 through 25, 26 to 33, and 61/61, which suggests to a POSITA that they are discrete embodiments," and then your citation in support of that sentence is Exhibit 27 through 29.

Do you see that?

A Yes, I do.

Q Okay. And so, my question for you is, is it these patents, Exhibits 27 through 29, that are the reason you understand Yoakim to be describing separate patent embodiments?

A No. Not necessarily. It's that Yoakim -- my studying of the Yoakim Exhibit 1004, that also leads me, or a POSITA, to conclude that they cannot be combined because of them -- their being so different.

Q Let's go to Yoakim Exhibit 1004.

A Okay.

Q And I would like to go to Figure 35 for a moment.

A Sure. Yes, I have Figure 35 open.

Q Okay. Now, this embodiment describes the valve seal configuration; is that correct?

A Let me look at it in detail. Yeah, I can see the valve seal. I believe numeral 151.

Q No, I believe 151 is pointing to --

A Am I seeing it wrongly?

Q I think it's maybe 157 or 159.
A Oh, you are right. 157, you are right. I didn't see where the line ended. 157 would be the cylindrical downward -- downward pointing cylindrical portion, correct.
Q Okay. Now, the way this valve seal embodiment operates is that the seal remains closed until a certain pressure inside the chamber is reached; is that correct?
A Correct.
Q And until that pressure is reached, liquid is building up inside the chamber, correct?
And is the force of that chamber that exits the --
A Okay.
Q Exits the valve seal?
A Just for sake of definition, what do you define as "chamber"?
Q What do you define as the chamber?
A Well, it was your question, not mine.
Q Well, but you're interpreting -- I want you to interpret the reference here.

A Okay.

Q So if I understand this correctly, the valve seal remains closed until the liquid pressure inside pushes the valve seal open; is that correct?

A Okay. Correct.

So, my understanding is that the liquid were being induced by centrifugal force will rise through the openings that were created by the chamfered -- chamfered, what's it called? Spike, the word just doesn't --

Q Mandrel?

A Chamfered mandrel. Thank you very much. And would fill the gap that is shown between the bottom of the -- top of the housing and the foil 103. It's not shown here as 103, I seem to recall foil 103 that is the membrane on top of the capsule. And when that pressure, when that, the pressure generated there is sufficiently high, it will raise the top of the brew chamber, which is currently urged downwardly by the springs, as you can see, I believe, 158, so that a

gap will be formed between -- you know, between the top of the capsule and the valve 157.

Q But you would agree that the valve 157 sits outside of the capsule area below the membrane, correct? It sits on the rim?

A It sits on the rim, but, presumably, the membrane is attached to the rim.

Q Right.

A The rim.

Q But the valve is outside of the -- the valve is not underneath the membrane inside the capsule, right?

A No. The valve is -- the valve is positioned against the rim of the capsule.

Q Okay. So the liquid that would be pressing against the valve to open it must be outside of the membrane, right?

A Correct.

Q Okay.

A I agree.

Q Let's go to a different exhibit.

MR. McCRAW: I would like to introduce

what's been previously marked as Exhibit 1005 in the four IPR proceedings, and this is U.S. Publication Number 2013/0064937 to Jarisch.

A Okay.

(Exhibit 1006 previously marked for identification and attached to the transcript.)

Q Also known as the Jarisch -- oh, this is the wrong exhibit. Strike that.

I was looking to introduce this exhibit. What has been previously marked as Exhibit Number 1006 in the four IPR proceedings as Publication Number 2013/0064929 to Jarisch, also known as the Jarisch '929 patent.

A Yes, sir.

Q And I would like to direct you to paragraph 17, please.

A In mine?

Q No, paragraph 17 of the exhibit.

A Oh, publication. Okay. That's page 2?

Q Yes.

A Okay, sir.

Q So, in this paragraph, it explains that

the code location is less prone to damages caused by the processing module and, in particular, by the pyramidal plate and to ingredients projections.

Do you see that?

A I'm looking for this. Bear with me for a minute, please.

Could you point out the line that I should be looking for?

Q Sure. It's in the lower portion of the paragraph.

A Okay.

Q The line --

A I see the word pyramidal.

Q Yeah, go up a couple lines.

A Okay.

Q It states "less prone to damages caused by the processing module and, in particular, by the pyramidal plate and to ingredients projections."

Do you see that?

A Right. The processing model.

Q And in particular, the pyramidal plate?
A I'm trying to understand the term processing and what you're -- could you help me in clarifying what Jarisch refers to as the processing module?
Q Well, do you understand it to be the broader brewing chamber that would include the pyramid plate?
A That's what I don't know. Okay. Okay. So let me go and read it again. These locations are especially advantageous since they offer -- so when you say "these locations," is he referring to the location on the underneath of the rim?
Q Let's go to paragraph 14.
A Okay. That will be helpful.
Q It says "Another object" -- let me know when you get to paragraph 14.
A I have paragraph 14. Okay. Go ahead. You can read it.
Q It says "Another object is to provide a solution for reliably reading information related to capsule with a sensor disposed in the machine,

for example, in the processing module/brewing unit of the machine."

Do you see that?

A Yes.

Q Okay. Do you understand the processing module to be just another way to describe the brewing unit of the machine?

A No. I did not. But it looks -- slash, I would -- based on reading that, I would assume that it is a different definition of the brewing unit.

Q You don't think it would be the brewing unit?

A No, it's a different word.

Q Different phrase for the brewing unit?

A Correct.

Q We agree.

A Okay. So that clarifies which was processing module.

Q And another question on this. Going back to paragraph 17.

A Okay.

Q Which is the same sentence, says "less prone to damages caused by the processing module and, in particular, by the pyramidal plate," and then it says "and to ingredients projections."

What do you understand the term "ingredients projections" to mean?

A I don't know. I have to look at it.

That's in 17, correct?

Q Correct.

A Okay.

Q Do you understand it to be coffee ingredients that are projected during the brewing process?

A I have a very hard time equating why he -- understanding -- first of all, I have not seen the term pyramidal plate used in -- I don't recall seeing the term pyramidal plate used in Yoakim or previously in Jarisch. And I may be wrong, but this is -- it doesn't jump up as being something that has been either described by a figure or by a description in the -- in the spec.

Q Well, let's be clear. I'm not asking

you about the pyramidal plate. I'm asking you about the ingredients projections and what you understand that to mean in the concept of Jarisch's coffee system.

A I freely understand. But what I'm saying is he's -- he's talking about a -- he says, in particular, by the pyramidal plate and ingredient projections.

And if I read that, I would assume that pyramidal plate and ingredient projections are -- are -- are somewhat akin to each other because he's grouping them together.

Q Well, but let's look at grammar of that sentence because there's a comma between plate and ingredients projections. It's not saying pyramidal plate and ingredients projections. It's listing additional things, correct, as a matter of grammar?

A Right. I mean, grammar, comma and "and" really shouldn't be used in my understanding. But that comma is there to separate two subjects.

So I really do not -- I totally honestly don't understand the term "ingredients projection."

MR. McCRAW: Let's take a break.

THE WITNESS: Thank you.

(Recess taken from 1:58 p.m. to 2:15 p.m.)

MR. McCRAW: Back on the record.

We pass the witness.

MR. BROOKS: Okay. I have no questions.

MR. McCRAW: Then before we go off the record. I just want to note, for the record, that petitioner objects to the oral and written testimony of Mr. Glucksman based on today's deposition. Based on today's testimony Mr. Glucksman's declaration is inadmissible under Federal Rules of Evidence 402, 403, and 702. Mr. Glucksman applied legally incorrect standards and demonstrated a lack of understanding of core issues in the case.

That is all we have.

MR. BROOKS: We disagree with your characterization of Mr. Glucksman's testimony. Mr. Glucksman is sitting here. He is prepared to respond to Petitioner's questions. We believe to the extent that you believe there was any incorrect standards or lack of understanding of core issues, it's the result of the inadequate questioning and improper understanding of Mr. Glucksman's testimony and declarations.

MR. McCRAW: We, of course, disagree with that. And I think that concludes the deposition.

(Off the record at 2:16 p.m.)

CERTIFICATE OF REPORTER - NOTARY PUBLIC

I, JUDITH E. BELLINGER, RPR, CRR, CSR, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me and thereafter reduced to typewriting under my direction; that reading and signing was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of December, 2024.

My Commission Expires: January 1, 2027

Judith E. Bellinger

_____

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