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

-----x
NESPRESSO USA, INC.

Petitioner,

-against-

K-FEE SYSTEM GMBH,

Patent Owner.
-----x

IPR2024-00254 (U.S. Patent No. 11,465,829)
IPR2024-00257 (U.S. Patent No. 11,548,722)
IPR2024-00299 (U.S. Patent No. 11,554,910)
IPR2024-00304 (U.S. Patent No. 11,465,830)

STENOGRAPHIC DEPOSITION OF:
MICHAEL J. JOBIN
Thursday, September 19, 2024
9:32 a.m. - 4:36 p.m.

Reported stenographically by:
Richard Germosen, FAPR, CA CSR No. 14391
RDR, CRR, CCR, CRCL, CSR-CA, NYACR, NYRCR
NCRA/NJ/NY/CA Certified Realtime Reporter
NCRA Realtime Systems Administrator
Job No. SY009659

1
2 STENOGRAPHIC DEPOSITION of MICHAEL J. JOBIN,
3 taken in the above-entitled matter before RICHARD
4 GERMOSEN, Fellow of the Academy of Professional
5 Reporters, Certified Court Reporter, (License No.
6 30XI00184700), Certified Realtime Court Reporter-NJ,
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8 Shorthand Reporter, (License No. 14391), NCRA/NY/CA
9 Certified Realtime Reporter, NCRA Registered Diplomate
10 Reporter, New York Association Certified Reporter, NCRA
11 Realtime Systems Administrator, taken at the offices of
12 MAYER BROWN, LLP, 14th Floor, 1221 6th Avenue, New York,
13 New York 10019, commencing at 9:32 a.m.
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2 A P P E A R A N C E S: (CONT'D.)

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WITNESS

EXAMINATION

4

MICHAEL J. JOBIN

5

BY ATTORNEY BROOKS

8

6

7

E X H I B I T S

8

EXHIBIT NO.

DESCRIPTION

PAGE

9

Exhibit 1003

document entitled declaration

11

10

of Michael Jobin, 199 pages

11

12

Exhibit 1001

'722 patent, 35 pages

13

13

14

Exhibit 1009

document entitled United

55

15

States Patent application

16

publication, Castellani, 16

17

pages

18

19

Exhibit 1047

document entitled WIPO,

67

20

Document Made Available Under

21

the Patent Cooperation

22

Treaty, 61 pages

23

24

25

1			
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4	Exhibit 1045	document entitled WIPO,	84
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6		the Patent Cooperation	
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9	Exhibit 1001	'829 patent, 29 pages	88
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11	Exhibit 1001	'722 patent	92
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15	Exhibit 1001	'910 patent	106
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21	Exhibit 1006	Jarisch 929 reference	135
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E X H I B I T S (CONT'D.)

EXHIBIT NO.	DESCRIPTION	PAGE
Exhibit 1004	Yoakim reference	160
**original exhibits retained by McDermott Will (exhibit index concluded)		

1 MICHAEL J. JOBIN | 09.19.24

2 -----

3 P R O C E E D I N G S

4 9:32 p.m.

5 New York, New York

6 -----

7 CERTIFIED STENOGRAPHER: On the
8 stenographic record at 9:32 a.m.

9 Good morning. My name is Rich
10 Germosen. I am a certified stenographic
11 reporter. My license is available for
12 inspection.

13 - - -

14 (Whereupon, the Certified
15 Stenographic Reporter administered the oath to
16 the witness.)

17 - - -

18 M I C H A E L J. J O B I N ,
19 (witness produced at Florida driver's license),
20 having been first duly sworn or affirmed, was
21 examined and testified as follows:

22 EXAMINATION BY ATTORNEY BROOKS:

23 BY ATTORNEY BROOKS:

24 Q. Good morning, Mr. Jobin.

25 A. Good morning.

1 MICHAEL J. JOBIN | 09.19.24

2 Q. This is, I think, the third
3 proceeding in which we've been together for
4 IPR deposition?

5 A. Yes.

6 Q. And so you understand that you're
7 under oath?

8 A. Yes.

9 Q. Is there anything that would
10 prevent you from providing complete and
11 truthful testimony today?

12 A. No.

13 Q. I think the last time we met was in
14 November of 2003? Sorry, November of 2023?

15 A. Yes, it was in November of '23,
16 correct.

17 Q. And since that time, has your
18 employment changed?

19 A. Still employed at 908 Devices.

20 Q. Okay. Since that time, have you
21 been deposed in any other proceedings?

22 A. Yes.

23 Q. What other proceedings have you
24 been deposed in?

25 A. In August of this year, I was

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2 deposed in the matter of Provisur v. Weber,
3 W-E-B-E-R.

4 - - -

5 (Clarification requested by the
6 stenographer.)

7 - - -

8 THE WITNESS: Provisur,
9 P-R-O-V-I-S-U-R.

10 Q. What was your role in the matter of
11 Provisur v. Weber?

12 A. I was hired as an expert witness to
13 opine on issues for Provisur related to
14 several patents. The patents were involved
15 with the meat slicing equipment, so food
16 processing industry, meat processing equipment
17 in particular.

18 Q. Where was this -- where was this
19 matter? Was it at the PTAB? Was it in
20 District Court?

21 A. It was an IPR matter in the PTAB.
22 The deposition took place in Chicago.

23 Q. Provisur was the petitioner in that
24 proceeding?

25 A. Provisur is the petitioner, yes.

1 MICHAEL J. JOBIN | 09.19.24

2 Q. Any other depositions since
3 November of 2023?

4 A. I think that's it. There was one
5 that was just before -- yeah, since November,
6 that's what I recall, just the one that I had
7 recently in August.

8 Q. Have you testified in court since
9 your deposition?

10 A. No, sir.

11 - - -

12 (Whereupon, document entitled
13 declaration of Michael Jobin, 199 pages, is
14 received and marked as Exhibit 1003 for
15 Identification.)

16 - - -

17 BY ATTORNEY BROOKS:

18 Q. Mr. Jobin, you've been handed
19 what's been marked as Exhibit 1003 in the '254
20 IPR proceeding.

21 Do you recognize this document?

22 A. I recognize this document and refer
23 to it generally as the '829 declaration for
24 the '829 patent, but yes, I recognize it.

25 Q. Okay. And if you'd turn to what is

1 MICHAEL J. JOBIN | 09.19.24

2 Page 185, if you're looking at the pages in
3 the center bottom.

4 A. Yeah, so Page 185 of the '829
5 declaration, that's my signature page.

6 Q. Okay. And is that your signature
7 there?

8 A. Yes, that's my signature.

9 Q. And you signed this document on
10 December 5, 2023?

11 A. Yes.

12 Q. Do you recall when you started
13 working on your report?

14 A. This was being prepared -- along
15 with three other IPR matters, this declaration
16 was happening in the -- I remember working on
17 it for several weeks prior.

18 Let me just look at the date again.
19 I remember working on it mainly after the
20 deposition for the most part. So it would
21 have been in that several weeks leading up to
22 this date.

23 Q. Is that the same for the other
24 three declarations that you prepared?

25 A. Yeah, all of those declarations

1 MICHAEL J. JOBIN | 09.19.24

2 were being -- all of my declarations were
3 being prepared, I was preparing those in the
4 several weeks leading up to that date. So it
5 would have been in November of '23 for the
6 most part.

7 Q. I'm just going to give you the
8 remaining three so you have them.

9 - - -

10 (Whereupon, '722 patent, 35 pages,
11 is received and marked as Exhibit 1001 for
12 Identification.)

13 - - -

14 BY ATTORNEY BROOKS:

15 Q. So let's just pick one up. I'm
16 going to start with the '722.

17 Do you have that there?

18 A. I've got the '722 declaration.

19 Q. Okay. So you've been handed what's
20 been marked as Exhibit 1003 in the '257
21 proceeding. This is the '722 declaration that
22 you prepared?

23 A. It is.

24 Q. And similar question on Page 196 at
25 the back. This is your signature?

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2 A. Yes, that is.

3 Q. And this declaration you signed on
4 December 12, 2023; correct?

5 A. Right.

6 Q. If you pick up the '910
7 declaration.

8 Do you have that?

9 A. I do.

10 Q. So this declaration is Exhibit 1003
11 in the '299 proceeding. It's for the '910
12 patent; correct?

13 A. That's correct.

14 Q. And if we turn to Page 198.

15 A. Yep, that's my signature.

16 Q. And this one you signed on
17 December 14, 2023?

18 A. Correct.

19 Q. And the final one is Exhibit 1003
20 in the '304 proceeding for the '830 patent;
21 correct?

22 A. This is the '304 proceeding, '830
23 patent declaration, Exhibit 1003.

24 Q. Okay. And if you'd turn to 189.

25 A. Okay.

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2 Q. That's your signature; correct?

3 A. It is.

4 Q. And this declaration was signed on
5 December 13, 2023?

6 A. Correct.

7 Q. You're prepared to speak to each of
8 these declarations today?

9 A. Yes, I am.

10 Q. Did you have assistance in
11 preparing your declarations?

12 A. Similar to previous cases, a lot of
13 this material is background material that was
14 prepared -- that I prepared for further
15 declarations.

16 So some of that is transferred into
17 these documents because the background
18 material is the same. I was the initial
19 author, primary contributor to these
20 documents, and then documents were subject to
21 collaborative review with counsel.

22 Q. And at the back of each, you have
23 an Appendix B; correct?

24 A. Appendix B, right. There is a list
25 of the references for each of them in the back

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2 of them.

3 Q. Beyond what's identified in
4 Appendix B, did you refer to any other
5 materials in preparing your declaration?

6 A. Well, when preparing these, my
7 opinions are based on the materials that are
8 referenced here. If I reviewed other
9 materials and didn't record them, it would be
10 because I wasn't -- it wasn't something I
11 relied upon for my opinions.

12 Q. Have you formed any additional
13 opinions since submitting your declaration
14 with respect to these patents?

15 A. Well, certainly nothing that I've
16 written. I -- nothing comes to mind right
17 this moment, but if we discuss details of any
18 of the issues, it may be that that's the case,
19 but I don't recall anything specific right
20 now.

21 Q. Have you been asked to review any
22 additional materials relating to these
23 proceedings since your declarations were
24 signed?

25 A. I'm trying to remember what would

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2 have been reviewed. I think I reviewed the --
3 I reviewed the final written decisions for the
4 '923 and the other patent that were just
5 released a couple of weeks ago or last week or
6 some time in the recent past, and I think I
7 recall reviewing a patent owner preliminary
8 response document earlier in the year. That
9 would have been after these declarations, but
10 that's all that comes to mind.

11 Q. Okay. Did you form any opinions
12 from reviewing the patent owner preliminary
13 response?

14 A. Well, I certainly reviewed the
15 document and I haven't formed any formal
16 opinions on them, but I have certainly
17 reviewed my opinions in these documents and
18 prepared to discuss them today.

19 Q. In review of the final written
20 decisions a couple of weeks ago, have you
21 formed any new opinions?

22 A. Well, it seemed to me that in
23 general, that the topics that are covered, of
24 course, are similar, but they're focused on
25 different patents, but in general, it appeared

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2 that many of the opinions that the board
3 issued were in alignment with my opinions. I
4 don't recall disagreeing or forming any
5 specific opinions related to those documents.

6 Q. What did you do to prepare for your
7 deposition today?

8 A. Well, I've certainly read through
9 my declarations in detail. There is a lot of
10 material here, but I reviewed them in detail.
11 I reviewed the patents at issue. I reviewed
12 the references, the primary references in
13 detail that are referred to in my grounds. I
14 reviewed some other materials, but most of my
15 focus was on those references just to be
16 familiar with them again because it's been
17 some time since I wrote these documents.

18 Beyond that, I had several
19 conference calls with counsel over the last
20 couple of weeks and then met with counsel over
21 the last two days here in New York. That's
22 about it.

23 Q. Approximately how much time do you
24 think you spent preparing for the deposition
25 today?

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2 A. I haven't added it up, but I'd say
3 it's about a week. 40 hours. Some time in
4 that -- something like that. Maybe a little
5 bit more. Maybe 50.

6 Q. You said you met with counsel. Did
7 you meet with anyone else other than counsel?

8 A. No.

9 Q. Who were the counsel that you met
10 with?

11 A. The three in this room.

12 Q. So that would be Mr. McGraw,
13 Ms. Bonner, and --

14 ATTORNEY BROOKS: I'm sorry, Shantelle?

15 ATTORNEY LAFAYETTE: Ms. LaFayette.

16 Q. Ms. LaFayette?

17 A. Right.

18 Q. Okay. Sitting here today, are you
19 aware of any errors or mistakes in any of your
20 declarations?

21 A. No.

22 Q. And none of your opinions have
23 changed since you've submitted your
24 declarations; correct?

25 ATTORNEY BONNER: Object to the form.

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2 A. I don't know that I'd say that I've
3 changed my opinions. I've got an
4 understanding of what I'm talking about
5 that -- I may be responding to particular
6 questions that are -- that I disagree with. I
7 disagree with certain characterizations in
8 documents that I've read, and so maybe I would
9 discuss those in comparison to those, but I
10 don't know that I've formed specific opinions
11 about them. I'd have to see as we talk about
12 them. I don't know that I could say that I
13 haven't formed new opinions. I haven't
14 articulated them in writing is how I guess I
15 would put it.

16 Q. What do you recall disagreeing with
17 that you haven't put in writing?

18 ATTORNEY BONNER: Object to form.

19 A. I think I was focusing on some of
20 the arguments made in relation to the patent
21 owner response that didn't align with my
22 understanding or my opinions in these
23 documents.

24 So I don't know that that's
25 necessarily a change in my opinion, because

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2 it's just that I disagree with it, but I
3 hadn't had an opportunity to discuss those
4 issues before, so that's the only thing that
5 really comes to mind is that type of -- that
6 type of -- those types of issues, because
7 those are the only new issues raised since
8 these documents were prepared.

9 Q. Do you recall any of the specific
10 issues of which you disagreed?

11 ATTORNEY BONNER: Object to form.

12 A. Well, I'd have to look at the
13 documents in specific, but I seem to recall it
14 being mostly focused around motivation to
15 combine questions.

16 Q. You have experience designing
17 beverage machines; correct?

18 A. Correct.

19 Q. When did you first start designing
20 beverage machines?

21 A. Well, I've previously testified to
22 my background and discussed various examples.
23 Those examples are also discussed in my
24 declarations in my background section.

25 Beverage machine and beverage

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2 related, you know, like dispensing, like
3 thinking about filtration, thinking about
4 dispensing, thinking about all of those
5 different beverage consumer-oriented products
6 that I developed were mostly in the --
7 starting in the sort of mid, early 2000s time
8 frame, and then through much of my experience
9 in Altitude, Incorporated that I discussed is
10 the core of the beverage experience, and that
11 was all in that sort of -- sort of early to
12 mid-2000s time frame, over the course of about
13 seven, eight years in particular that were
14 beverage focused, and then some of my other
15 experience that was previously discussed.

16 Q. You once worked at a company called
17 Altitude, Incorporated?

18 A. I did.

19 Q. You no longer work for Altitude,
20 Incorporated?

21 A. No, I do not.

22 Q. When did you leave Altitude,
23 Incorporated?

24 A. It's been a long time ago. I have
25 to check my résumé.

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2 Q. Sure.

3 A. It's -- yeah, 2001 to 2008 is what
4 I have here, and that's what I recall. It was
5 the early 2000s when I was at Altitude and --

6 Q. During that time, did you work
7 exclusively with beverage machines?

8 ATTORNEY BONNER: Objection. Form.

9 A. Extensively. I would say
10 exclusively. A lot of -- a lot of projects
11 that are articulated here that were
12 accomplished over the course, many of them
13 were overlapping, but throughout that time
14 frame, those types of projects were -- were at
15 the core of the type of work being done.

16 You know, I also had worked on a
17 water pitcher filtration device back in the
18 late '90s time frame at Proteus that I recall,
19 but yeah, I mean, that 2001 to 2008 time frame
20 was when I was heavily involved in that type
21 of activity.

22 Q. On your résumé under the Altitude
23 experience, you note: Managed clients in
24 medical, consumer, and commercial industries.

25 What did you do with respect to

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2 medical industries?

3 A. It was pretty limited. You see
4 Boston Scientific mentioned there, did a small
5 project for Boston Scientific, and then did
6 another project related to a little fluid
7 cartridge dispenser device for a small medical
8 company that spanned a short period of time in
9 that time frame. My primary work at Altitude
10 was for companies in the consumer electric
11 space, mostly home appliances that related to
12 these beverage machine-type experience that I
13 previously discussed.

14 Q. Do you recall why you listed
15 medical first on your résumé?

16 A. There is just --

17 ATTORNEY BONNER: Objection. Form.

18 A. There is just three different types
19 of work that I've -- that I was involved with
20 while at Altitude. Those are the three
21 industries, but the primary experience is in
22 the home appliance sector, the consumer
23 electric-type products that I described
24 earlier.

25 Q. In your experience, does work on

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2 medical appliances transfer to capabilities in
3 developing beverage machines?

4 ATTORNEY BONNER: Objection. Form.
5 Relevance.

6 A. Well, I'm a product designer and I
7 work in different fields and I apply a lot of
8 the same principles, but the specific
9 requirements of consumer products are very
10 different for medical devices.

11 There is a lot of cost pressure.
12 There is a lot of safety and regulatory
13 pressure of course, but there is -- but things
14 have to be done very cost efficiently in the
15 consumer products space, and that's a whole
16 different type of skill set from medical
17 device development in my experience.

18 - - -

19 (Clarification requested by the
20 stenographer.)

21 - - -

22 A. From medical device experience in
23 my opinion.

24 Q. What are considerations that you
25 made in order to develop cost-efficient

1 MICHAEL J. JOBIN | 09.19.24

2 consumer products?

3 ATTORNEY BONNER: Objection. Form.

4 Relevance.

5 A. It's -- it's very much about
6 material selection, component selection,
7 manufacturing considerations in terms of how
8 easy and efficient a product is to assemble
9 and to manufacture; working with vendors;
10 working with component suppliers; working with
11 the safety and regulatory agencies to put all
12 of these parts together in a way that can meet
13 a very aggressive price point is -- was always
14 foremost in the goals for the project. If you
15 didn't meet the price point, the product
16 couldn't succeed.

17 So that is -- those are the types
18 of conversations and design activities that
19 would happen. Cost reduction exercises
20 centered around maintaining performance,
21 creating a product that has appeal to the
22 company and meets certain functional needs,
23 but also meets the price point is an exercise
24 that I'm very experienced in conducting.

25 Q. In your experience, how would you

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2 start in designing a single-serve beverage
3 machine?

4 ATTORNEY BONNER: Object to the form.

5 A. It's a pretty broad question. The
6 product development process -- it kind of
7 depends on whether you're inventing a product
8 in a new application or category or whether
9 you're developing something that is an
10 iteration of an existing product.

11 For a new product, it's very much
12 about prototyping and mechanical architecture,
13 ideation processes to come up with new means
14 or methods for doing something, thinking back
15 to my experience with the Margaritaville
16 machine where we're talking about sort of a
17 new category that was created in ice shaving
18 and blending in the same device in creation of
19 margarita drinks.

20 So lots of breadboards and
21 prototypes and consultation with marketing and
22 consumer research to figure out the right
23 product orientation, the right size, the right
24 price point, and then iterating through that
25 development process until you have a prototype

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2 that functions the way you want it to, and
3 then designing around that function to create
4 the end product is the final step.

5 Q. And so if you're building a new
6 product, approximately how many prototype
7 designs would you go through?

8 ATTORNEY BONNER: Objection. Form.
9 Relevance.

10 A. It's unique to every client and
11 every process in every project. It really
12 depends on how innovative or how cutting edge
13 the technology might be. It depends on the --
14 sort of the nature of the client as to their
15 appetite for higher risk products -- projects.
16 Sometimes these technology development efforts
17 are not successful initially. They take some
18 time.

19 So the R and D process in consumer
20 products is sometimes something that happens
21 over a long period of time until you have
22 something that you could actually bring to
23 market, and other times you're leveraging
24 existing knowledge or skills and packaging
25 those in a way that's sufficient so that you

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2 can meet a particular price point and create a
3 product that would be successful.

4 So it's really a wide range of
5 prototyping efforts depending on the
6 technology that's involved.

7 Q. Do you have any recollection as to
8 the number of prototypes that you've developed
9 in working from bringing a product from design
10 to market?

11 ATTORNEY BONNER: Objection. Form.
12 Relevance.

13 A. There is no firm number. It could
14 be anywhere from zero to 10 and lots of
15 different iterations, and, you know, thinking
16 about these projects over the years, there's
17 been so many different -- so many different
18 prototypes that it's really hard to say how
19 many are necessary. It really depends on the
20 project.

21 Q. In what situation would you have
22 zero prototypes --

23 ATTORNEY BONNER: Objection.

24 Q. -- to bring a product to market?

25 ATTORNEY BONNER: Sorry. Objection.

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2 Form. Relevance.

3 A. If you had a product that was being
4 maybe just updated from a styling perspective,
5 you know, you've got a coffeemaker that's got
6 a particular design and it's time to refresh
7 the design, sometimes you'll just create a new
8 panel or a new enclosure or a new graphic
9 element or label, those types of really small
10 design iterations are an example of where
11 prototyping is not typically required, but
12 even a label sometimes is prototyped just to
13 see how it looks and approve it before it goes
14 to production.

15 So I guess you could say that if
16 you're just changing a color or something,
17 sometimes you'll go straight to a production
18 design and release it quickly, but fewer
19 prototypes are required for simple changes.

20 Q. If you were asked to design a
21 beverage machine around a new capsule,
22 approximately how many prototypes would you
23 expect to have to make?

24 ATTORNEY BONNER: Objection. Form.
25 Relevance.

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2 A. It's a pretty broad hypothetical
3 question. I really couldn't answer it because
4 the technology just -- it really depends on
5 how related to existing technology it is and
6 how risky or how unproven that approach might
7 be. I've been involved in, you know, early
8 stage R and D, napkin sketch-type concepts,
9 and I've been involved in re-skins, I've been
10 involved in that full range of product
11 development.

12 Most of the value and work that I
13 do as a dual degree mechanical engineer
14 industrial designer is involved in those
15 earlier stage, higher risk, higher
16 complexity-type developments. That's why
17 customers come to me, because that's the type
18 of value that I add, is that combination of
19 design and engineering expertise.

20 Q. And so if you're starting from an
21 unproven approach with a beverage capsule
22 that's been handed to you and you're asked to
23 develop a machine to work with it, how much
24 effort do you expect would have to go into
25 getting that to a consumer product?

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2 ATTORNEY BONNER: Objection. Form.
3 Relevance.

4 A. It can be years. It can be years.

5 Q. Do you have any idea how many
6 prototypes you might expect to have to make?

7 ATTORNEY BONNER: Objection. Form.
8 Relevance.

9 A. For a major product launch with
10 brand-new technology, it could be dozens of
11 iterations.

12 Q. What if you had -- what if you were
13 given a machine and asked to develop a capsule
14 for it?

15 ATTORNEY BONNER: Objection. Form.
16 Relevancy.

17 A. Well, that's a different exercise
18 than equipment. Designing consumable capsules
19 like that involves manufacturing technology.
20 It involves form fill seal technology. It
21 involves packaging experts, and it just takes
22 a higher level of capital investment to
23 develop a new coffee capsule, for example.
24 It's just an expensive exercise to conduct,
25 but I've certainly been involved in those

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2 types of -- that type of work. It's just
3 different from designing the product itself.

4 Q. So what has been your involvement
5 in the development of a new coffee capsule?

6 A. Well, I've certainly been involved
7 in evaluating performance of and understanding
8 the performance characteristics of capsules.
9 I've previously testified to that background.

10 I've been involved in various
11 aspects of designing the consumable portion of
12 the dispensing system, thinking about the beer
13 dispensing system, thinking about the water
14 dispensing system, thinking about the water
15 filter cartridge system, thinking about other
16 consumable or reusable portions of a product.
17 It's part of the overall process, because the
18 consumable has to be integrated with the
19 hardware, and often they're developed together
20 to make sure that they fit correctly and that
21 they function the way that's intended, and so
22 it's -- it's -- it's quite a comprehensive
23 exercise sometimes.

24 Q. Have you ever encountered a
25 situation where a design functioned the way

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2 it's intended in a prototype form, but not in
3 a consumerable product, consumer product?

4 ATTORNEY BONNER: Objection. Form.
5 Relevance.

6 A. I'm not sure. Is there something
7 specific that you're interested in? I'm not
8 sure if I understand the question.

9 Q. Yeah. Let me rephrase.
10 Is it the case that going from
11 prototype to consumer product does not require
12 any iteration to get a functioning final
13 product?

14 ATTORNEY BONNER: Objection. Form.
15 Relevance.

16 A. That final step in getting actual
17 production parts that fit together and
18 function the way that you intend them to is
19 sometimes the most difficult step.

20 When you're prototyping things,
21 you're making frames that are rigid and bolted
22 together and easily adjustable so that you
23 can -- and cost is less of a factor in the
24 prototype stage, but as you iterate towards
25 production, you're generally using lower cost

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2 injection molded parts. You've got tolerance
3 issues, fitment issues, and manufacturing
4 issues. So there is a wider number of
5 disciplines involved in the final iteration of
6 the product before it goes to market, and so
7 there can be quite a few steps in making sure
8 that everything is manufactured according to
9 the specification, testing it, and then
10 adjusting, making adjustments to tooling,
11 making adjustments to assembly procedures to
12 make sure that everything functions in a way
13 that's kosher, that -- in a way that is
14 desirable.

15 So that transition to manufacture,
16 T2M phase of the product development --

17 (Clarification requested by the
18 stenographer.)

19 A. T2M, transition to manufacturing,
20 it's the T, Number 2, and M, is -- can be
21 quite a lengthy phase depending on how tightly
22 integrated your manufacturing team is to the
23 design team.

24 Q. Is one of the reasons to prepare a
25 prototype in order to isolate certain

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2 variables?

3 ATTORNEY BONNER: Objection. Form.

4 Relevance.

5 A. Every project is different.

6 Prototypes are typically built in order to

7 prove something, to demonstrate something

8 prior to investing larger amounts of capital

9 into tooling. So you want to be able to

10 demonstrate that the ideas that are on paper

11 function in reality. That's why prototyping

12 is typically done.

13 Q. And in trying to prove a certain

14 idea, you would want to isolate as many

15 variables as possible in order to ensure that

16 that idea would function properly if you were

17 to make that investment; correct?

18 ATTORNEY BONNER: Objection. Form.

19 Relevance.

20 A. I don't know that I -- I don't know

21 that I have an opinion about isolating

22 variables. I mean, there is a certain

23 scientific aspect to what you're doing in

24 terms of breaking down the various performance

25 issues and optimizing what you're doing.

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2 So to that extent I think, yes,
3 you're isolating variables, but really you're
4 testing your design and developing your design
5 based on the results of that testing.

6 Q. Are you familiar with centrifugal
7 espresso machines?

8 ATTORNEY BONNER: Objection. Form.
9 Relevance.

10 A. In what time frame?

11 Q. 2011?

12 ATTORNEY BONNER: Objection.
13 Relevance.

14 A. I mean, I'm certainly aware of them
15 now in the context of this case.

16 Q. Uh-huh.

17 A. Centrifugal brewing machines were
18 being developed at that time according to what
19 we know today, but that type of information
20 was -- those types of products to my
21 recollection were not broadly available in the
22 market. So I don't know that I have an answer
23 to that.

24 Q. Okay. Do you know what a
25 centrifugal brewing machine is?

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2 A. Yes.

3 Q. What is a centrifugal brewing
4 machine?

5 A. A centrifugal brewing machine is
6 one in which the coffee in this instance is
7 extracted using a spinning method. The
8 spinning method induces centrifugal forces.
9 Centrifugal forces that forces fluid through
10 the coffee bed and it generates a pressure
11 gradient when you're spinning the capsule and
12 that allows the -- while it's spinning, that
13 allows the fluid to transit through the coffee
14 bed and into the cup. It's a different
15 technique than forcing it through under high
16 pressure. The pressure is generated by a
17 centrifugal force rather than high pressure
18 pumps typically.

19 Q. A high pressure pump would be what
20 was traditionally used in espresso machines?

21 ATTORNEY BONNER: Objection. Form.

22 A. Well, a high pressure pump is -- my
23 understanding of one of the ways that high
24 pressure would be generated in an espresso
25 machine, yes.

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2 Q. How else would high pressure be
3 generated in an espresso machine other than
4 use of a high pressure pump?

5 A. Well, in my technology background
6 section in my declarations, I go through the
7 history of espresso machines, and so dating
8 back over 100 years, steam was a primary
9 generator of generating pressure and forcing
10 steam and water through the coffee bed. So
11 that would be a technique that comes to mind.

12 Q. You mentioned that centrifugal
13 brewing machines were being developed around
14 the 2011 time frame; is that right?

15 A. Yes. There are documents in the
16 public domain at that time that would have
17 detailed the type of information related to
18 centrifugal brewing, yes.

19 Q. Do you know who was working on
20 centrifugal brewing at the 2011 time frame?

21 A. Well, certainly some of the
22 inventors in the cited prior art would be an
23 example. I've cited to Yoakim and to Jarisch
24 and the various co-inventors. That would be
25 an example of documents that were in the

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2 public domain around that time frame.

3 Q. And those are organizations -- or,
4 excuse me, those are individuals affiliated
5 with Nespresso or Nestlé; correct?

6 ATTORNEY BONNER: Objection. Form.
7 Relevance.

8 A. It's my understanding that the
9 patents were assigned to Nestec, N-E-S-T-E-C,
10 which is affiliated with Nespresso. I'm not
11 sure of the exact relationship.

12 Q. Outside of Nestec or Nespresso, do
13 you know whether anyone else was working on
14 centrifugal brewing machines around the 2011
15 time frame?

16 ATTORNEY BONNER: Objection to form.
17 Relevance.

18 A. I don't have any names in front of
19 me today.

20 Q. Does the centrifugal brewing
21 machine require a high pressure pump in order
22 to extract beverage?

23 ATTORNEY BONNER: Objection. Form.

24 A. Well, if we look at the teachings
25 of Yoakim, Yoakim indicates that a high

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2 pressure pump is an option, so it's one option
3 that could be used according to Yoakim at
4 least.

5 Q. The centrifusion requires the
6 spinning of the beverage material?

7 ATTORNEY BONNER: Objection. Form.

8 A. The capsule, the portion capsule is
9 rotated at various speeds according to the
10 need to distribute the coffee grounds into a
11 donut shape around the outside of the capsule.
12 The fluid is injected and it's also driven
13 towards the outside of the capsule by the
14 pressure gradient according to the distance
15 from the centerline and the speed of rotation,
16 and it's forced through the coffee grounds and
17 up and out of the capsule. That's -- that's
18 my understanding of how that works.

19 Q. And that speed of rotation could be
20 as high as 12,000RPMs?

21 ATTORNEY BONNER: Objection. Form.

22 A. Yoakim teaches a range of speeds
23 from -- I think they mentioned 500 to
24 12,000RPM.

25 Q. Do you know whether there is a need

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2 to reduce friction in the rotation in order to
3 enable proper operation of a centrifugal
4 brewing machine?

5 ATTORNEY BONNER: Objection. Form.

6 A. Could you be more specific? I'm
7 not sure what you mean.

8 Q. So would it be beneficial, wouldn't
9 matter, or be a hinderance to introduce
10 friction in the mechanism for rotating the
11 capsule?

12 ATTORNEY BONNER: Objection. Form.
13 Relevance.

14 A. Well, according to the teachings of
15 Yoakim, for example, the capsule is held in a
16 capsule holder and is enclosed by a top to
17 form a brewing chamber. There is a variety of
18 disclosure in Yoakim which speaks to holding
19 the capsule so that when you spin the brewing
20 chamber, the capsule spins with it. They
21 describe different embodiments for doing that.

22 Obviously, if you're using a seal
23 arrangement, there is a certain amount of
24 clamping force that's occurring on the rim,
25 which would provide that friction. They

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2 describe other embodiments, such as grooves or
3 teeth features, which would engage the capsule
4 physically with the brewing chamber to prevent
5 rotation, but they also describe devices that
6 are fully rotationally symmetric and are just
7 held when they're -- in place when the top
8 clamps down on them.

9 So there is a variety of different
10 ways that they talk about it, but generally,
11 you want the capsule to spin with the brewing
12 chamber is the idea.

13 Q. Okay. So the brewing chamber spins
14 during brewing in a centrifugal brewing
15 machine; correct?

16 ATTORNEY BONNER: Objection. Form.

17 A. That's the point, is that the fluid
18 is injected while -- and it's spinning to --
19 and the fluid is forced through that while
20 it's spinning, and then the coffee is ejected
21 off the rim of the capsule impacting the
22 sidewall. That's the process that's described
23 in Yoakim, for example.

24 Q. Would you want to place or would it
25 be appropriate to place a stationary device or

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2 element in contact with the brewing chamber
3 while the brewing chamber is rotating?

4 ATTORNEY BONNER: Objection. Form.

5 A. I'm not sure what you're referring
6 to. Can you be more specific?

7 Q. Yeah.

8 So imagine the brewing chamber is
9 spinning.

10 A. Okay.

11 Q. Would it be beneficial if I took a
12 stick and held it against the brewing chamber
13 while it was rotating?

14 ATTORNEY BONNER: Objection. Form.

15 A. Well, I'm not sure that that would
16 make sense, no. Holding a stick for anything
17 against the spinning capsule or the spinning
18 brewing chamber, I mean, you'd want to have a
19 little bit of clearance of this so that it
20 could spin freely.

21 Q. Why would you want clearance so
22 that it could spin freely?

23 A. Otherwise, if you have a lot of
24 friction in high rotation speeds, you could --
25 there could be damage. So you just design it

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2 to avoid that.

3 Q. Damage to what?

4 A. Well, you're talking about plastic
5 parts in this case that are rotating at high
6 speed. The disclosure in Yoakim shows
7 different types of bearings and other shaft
8 elements on the central axis that allowed that
9 brewing chamber to spin freely. So you
10 wouldn't want to impede that rotation. That's
11 simple. Easy to design.

12 Q. In a traditional espresso machine
13 is the brewing chamber rotating?

14 ATTORNEY BONNER: Objection. Form.
15 Relevance.

16 A. Could you define a traditional
17 brewing machine?

18 Q. An espresso machine.

19 ATTORNEY BONNER: Objection. Form.

20 A. There is dozens of different
21 machines on the market, different
22 architectures and specifics. I couldn't speak
23 to them generally.

24 Q. Okay. If you look at your '910
25 patent declaration, Exhibit 1003, let's see

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2 here, somewhere here, and you know better than
3 me, you offer the opinion regarding the person
4 of ordinary skill in the art; correct?

5 A. Yeah, Page 103. Oh.

6 Q. Well, sorry, I want to be more
7 general. So I think Page 10.

8 A. The earlier one.

9 Q. Yeah.

10 I'm interested in the level of
11 skill that you opined on. And I think it's
12 Paragraph 40. Let me know when you're there.

13 A. Go ahead.

14 Q. So you say here: It's my opinion
15 that a person of ordinary skill in the art
16 relevant to the '910 patent would be a person
17 with at least a bachelor's degree in
18 engineering, plus five years of experience in
19 design of mechanical beverage systems or
20 similar products.

21 Do you see that?

22 A. I do.

23 Q. And that opinion regarding a person
24 of ordinary skill, you apply that same opinion
25 for all four patents; correct?

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2 A. I've used this same definition for
3 all of my declarations to date, yes.

4 Q. How did you arrive at the level of
5 skill that is presented that you offered?

6 ATTORNEY BONNER: Objection. Form.

7 A. Going back to the '491 in the
8 original declaration, just thinking about the
9 complexity of consumer product and beverage
10 system development, this definition seemed
11 reasonable to me and it was reasonably aligned
12 with -- as I recall with the opposing expert's
13 view in terms of the definition.

14 Q. Do you believe that someone with a
15 master's degree with less years of experience
16 could satisfy the definition of person of
17 ordinary skill in the art?

18 ATTORNEY BONNER: Objection. Form.
19 Relevance.

20 A. My experience with higher degrees
21 in the product development world in the
22 mechanical engineering of these types of
23 system is that it doesn't provide much value
24 at all.

25 Master's degrees can sometimes

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2 offer additional technical expertise in a
3 narrow area, Ph.D. even more narrow sometimes.
4 And it's rarely specifically relevant to the
5 broader practical experience that you gain in
6 the field of actually developing products as a
7 product designer.

8 Q. When you say you're a product
9 designer, are you referring to anywhere within
10 the design process?

11 ATTORNEY BONNER: Objection. Form.

12 A. Someone like myself who is involved
13 in the product design/product development
14 industry is experienced in that range of early
15 stage concept development, prototyping,
16 reduction to production design and release to
17 a final designed product. That experience is
18 what matters in that practical experience of
19 developing products that not only reach market
20 in the consumer space, but that are successful
21 in the consumer space, that is not something
22 that is gained in school. That's something
23 that really requires some years of experience
24 in the field designing systems. That's my
25 view.

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2 Q. When you refer to five years of
3 experience in design of mechanical beverage
4 systems or similar products, do you believe
5 that requires five years of continuous
6 experience?

7 ATTORNEY BONNER: Objection. Form.

8 A. Well, I exceed this definition by
9 any definition. I've been designing these
10 types of products for much more than five
11 years. I've got other experience that's
12 related, but over that time frame, especially
13 as outlined in my background, I mean, it's
14 five years of experience is something that --
15 you know, these projects are overlapping.
16 These things -- involved continuously in the
17 product design process related to both
18 mechanical beverage systems and similar
19 products that have been described over that
20 sort of 2001 to 2008 time frame that we
21 previously talked about for sure.

22 Q. Okay. But setting aside your
23 personal experiences, in your definition of
24 requiring five years of experience, do you
25 believe that requires five years of continuous

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2 experience?

3 ATTORNEY BONNER: Objection. Form.

4 Relevance.

5 A. I think if one is reading this, it
6 says five years of experience in design of
7 mechanical beverage systems. I don't know
8 that that experience has to be continuous. It
9 could be in pieces over a course of a larger
10 number of years, but it needs to add up to
11 something like five years, because that's the
12 amount of time it takes to develop that sort
13 of knowledge and experience that would be, I
14 would say, ordinary, a person of ordinary
15 skill in this art would have that level of
16 experience.

17 We're not talking about someone
18 fresh out of school and we're not necessarily
19 talking about an expert in coffee system
20 design. That's too narrow of a definition.
21 This is more generalized to mechanical
22 beverage system or similar products, and it's
23 five years of experience over a course of
24 however many years that takes.

25 Q. Do you think someone without a

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2 bachelor's degree in engineering could possess
3 ordinary skill with respect to these systems
4 in 2011?

5 ATTORNEY BONNER: Objection. Form.
6 Relevance.

7 A. I haven't considered that. I
8 frankly haven't run across anybody in my
9 experience in this field that doesn't have at
10 least that level of degree. There is people
11 that are involved in certain aspects,
12 documentation or sometimes manufacturing, but
13 the actual design of systems is typically a
14 bachelor's degree. That's been my experience.

15 Q. Do you know whether Marc Krüger,
16 the named inventor on the patents, had at
17 least a bachelor's degree in engineering when
18 he came up with these ideas?

19 ATTORNEY BONNER: Objection. Form.
20 Relevance.

21 A. I don't know anything about
22 Mr. Krüger's background.

23 Q. You didn't consider Mr. Krüger's
24 background in forming your opinion here?

25 ATTORNEY BONNER: Objection. Form.

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2 Relevance.

3 A. Once again, I'm looking at and
4 defining a person of ordinary skill in the
5 art. Mr. Krüger may or may not meet that
6 definition. I'm looking at this from the
7 point of view of someone that's evaluating the
8 claims and comparing them against the prior
9 art to determine what -- you know, whether
10 those claims would have been obvious. So this
11 is my definition of person of ordinary skill
12 through which lens one would look.

13 Q. But you considered the various
14 factors for determining whether someone would
15 be a person of ordinary skill in the art;
16 correct?

17 A. Which factors do you mean?

18 Q. Well, in Paragraph 38 of your
19 declaration, you identify five factors. Did
20 you consider those factors?

21 A. Yes. This particular art, it's not
22 rocket science. It's not biology. It's a
23 particular type of mechanical design and
24 development. It's in an industry in which
25 things evolve at a reasonable pace, but it's

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2 not the most sophisticated technology. It's
3 fairly straightforward mechanical art.

4 So these types of problems are all
5 the types of problems I deal with on a regular
6 basis, I have done throughout my career. So
7 yes, these factors are certainly -- sort of
8 weigh into who I would consider to be someone
9 of ordinary skill.

10 Q. When you state here "similar
11 products," what are you referring to?

12 ATTORNEY BONNER: Objection. Form.

13 A. Well, we've talked a lot today
14 about consumer product development and my
15 background in particular, consumer products in
16 products that are similar in complexity to
17 mechanical beverage systems, but to me that
18 really means they're -- you know, that they're
19 something that's used by a consumer in the
20 home, either countertop or somewhere else, but
21 they've got their electrical, they use fluids,
22 they have various systems and safety
23 requirements.

24 So all of my experience with those
25 types of consumer products is relevant, but in

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2 particular, the mechanical beverage systems is
3 important because it directly relates to a
4 beverage system that we're talking about here
5 and that's a coffee machine.

6 Q. Would the opinions that you
7 presented in your declarations change if the
8 board was to adopt a different level of
9 ordinary skill?

10 ATTORNEY BONNER: Objection. Form.
11 Relevance.

12 A. I haven't considered that question.
13 I don't really know. It would depend on what
14 they decide. I note that at least for the
15 '491, they adopted this definition, but they
16 added this experience with sensors for
17 recognizing an identifier. So that's a little
18 different.

19 As it turns out, I do have that
20 additional experience as well, which I've
21 outlined. So it would really depend on what
22 they adopted. If they changed the definition
23 dramatically, I would have to evaluate it.

24 Q. What is your experience with
25 sensors for recognizing an identifier?

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2 A. Well, I've previously testified in
3 deposition to a range of that, and I've listed
4 some of that experience in my declarations.

5 Q. Okay.

6 ATTORNEY BROOKS: Good time to take a
7 break.

8 CERTIFIED STENOGRAPHER: Off the
9 stenographic record at 10:31 a.m.

10 - - -

11 (Whereupon, a short recess was
12 taken.)

13 - - -

14 CERTIFIED STENOGRAPHER: Back on the
15 stenographic record at 10:47 a.m.

16 BY ATTORNEY BROOKS:

17 Q. Welcome back, Mr. Jobin.

18 A. Thank you.

19 - - -

20 (Whereupon, document entitled
21 United States Patent application publication,
22 Castellani, 16 pages, is received and marked
23 as Exhibit 1009 for Identification.)

24 - - -

25

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2 BY ATTORNEY BROOKS:

3 Q. I've handed you what's been marked
4 as Exhibit 1009 in each of the proceedings.

5 This is the copy from the '254
6 proceeding, but I believe they're all the
7 same. Is that your understanding?

8 A. This says "the Castellani
9 reference," which is used in the '829 and the
10 '722 declarations to my recollection.

11 Q. Okay. And this is a reference that
12 you relied upon?

13 A. This is a reference that I relied
14 upon in some of the grounds in those two
15 declarations, yes.

16 Q. Castellani is directed to a
17 delivery head for espresso coffee machines?

18 A. The title of this patent
19 application or publication is: Delivery Head
20 for Espresso Coffee Machines.

21 Q. Does this relate to any kind of
22 espresso coffee machines?

23 ATTORNEY BONNER: Objection. Form.

24 A. The disclosure is relatively broad.
25 It just says "espresso coffee machines" in the

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2 title and mentions them again in the summary
3 of the invention.

4 Q. There is no mention of centrifugal
5 brewing machines in Castellani; correct?

6 ATTORNEY BONNER: Objection. Form.

7 A. No, I don't recall anything related
8 to a centrifugal brewing machine here.

9 Q. Do you know whether in 2007, when
10 this application was filed, centrifugal
11 brewing machines were publicly known?

12 ATTORNEY BONNER: Objection. Form.
13 Relevance.

14 A. That consideration wasn't something
15 that informed my opinion in viewing this
16 particular publication for combination with
17 Yoakim, for example.

18 Q. Castellani teaches a fork element
19 for injecting a capsule from the espresso
20 machine; correct?

21 ATTORNEY BONNER: Objection. Form.

22 A. One of the features that is
23 mentioned and really kind of the main focus of
24 the invention here in my view in Castellani is
25 a feature that guides the capsule in and out

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2 of the brewing chamber and then moves the
3 capsule to the waste receptacle.

4 Q. And that feature is referred to as
5 a fork element in Castellani?

6 A. Well, I'm thinking about, for
7 example, Figure 11, you can see this fork
8 element, and it's Number 21, and it's showed
9 on both sides of the brewing device. There is
10 one on the bottom or one on the left and one
11 on the right side of the brewing chamber or
12 capsule.

13 Q. Is the capsule depicted in
14 Figure 11?

15 A. Figure 11 is depicting -- not
16 depicting the capsule looking at it from the
17 bottom view, but you can also see this in
18 section view, for example, in Figure 10. You
19 can see it in most of the other figures, the
20 holding arms, or I think that's called a fork
21 element in Castellani.

22 Q. Does the fork element go around the
23 entire capsule?

24 A. Well, I see their description of it
25 in -- of this in Figure 2, for example, and

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2 the description for Figure 2 -- I'll be there
3 in a second.

4 So Paragraph 54 of Castellani, for
5 example, there is an annular portion 22, and
6 that's the portion that surrounds the front
7 sort of U-shaped portion of the rim of the
8 capsule, and then there is a fork element on
9 either side or opposing sides of the capsule
10 which connect to this Item 22. So it's this
11 whole -- it's described in elements 21 and 22
12 is how I understand it.

13 Q. And so Castellani teaches elements
14 21 and 22 as a mechanism for ejecting the
15 capsule from the brewing chamber?

16 ATTORNEY BONNER: Objection. Form.

17 A. What I've cited in my motivation to
18 combine section, for example, in my '829
19 declaration, Paragraph 328. So Castellani is
20 meant to resolve drawbacks in jammings of
21 loading and the difficulty of loading the
22 capsule. It states: Additionally, the
23 injection forks facilitate ejection of the
24 capsule vessel --

25 - - -

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2 (Clarification requested by the
3 stenographer.)

4 - - -

5 A. The injection forks facilitate
6 ejection of the capsule into a collecting
7 vessel after extraction, which assists the
8 user of the system so that they don't have to
9 touch the hot wet capsule.

10 So Castellani describes multiple
11 steps in guiding the capsule. There is a load
12 position in which you drop the fresh capsule
13 and you close the lever in the lid, and the
14 holding arms or fork elements drop the capsule
15 down into the brewing capsule holder, and then
16 postbrewing, the arms rise up and contact the
17 capsule and bring it up out of the brewing
18 chamber to an inclination that's sufficient
19 for the capsule to slide down the -- those
20 arms, supported under the lip of the rim of
21 the capsule, slides down and then -- such as
22 you see in Figure 2, is deposited into the
23 wastebasket.

24 So it's really describing a whole
25 process for guiding the portion capsule both

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2 into and out of the brewing chamber.

3 Q. I see.

4 So the capsule in Castellani sits
5 on top of this fork element?

6 ATTORNEY BONNER: Objection. Form.

7 A. Well, it depends what time of the
8 brewing process you're talking about. The
9 holding arms or the fork holds the capsule
10 when it's placed into it by the user. So it's
11 supported by the outside portion of part of
12 the rim of the capsule, and then it drops down
13 and guides the capsule into the receptacle,
14 the holder, and then it drops out of the way
15 as the lid closes and pinches the rim of the
16 capsule for sealing, and then after the burn
17 process, you lift the head up and this -- the
18 holding arms lift up at the same time and pull
19 the capsule up out of the brewing chamber, and
20 then it guides the capsule down to the
21 wastebin. So at different times it's touching
22 the capsule, and during the brewing process,
23 it's actually not in contact with the capsule.
24 Q. Where are -- where is the fork
25 element during the brewing process?

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2 A. Well, this is visible in part
3 during -- in Figure 1. So what I see from
4 Figure 1 is it's a section view through the
5 center axis of the capsule, and it's a
6 longitudinal cutting plane through the brewing
7 head.

8 And what you see here is the
9 brewing position, and so we have a capsule,
10 which is very similar to the capsule in
11 Yoakim. It's got a cup-shaped body. It's got
12 a flange. It's got a membrane sealing the
13 top, and it's being pierced in the top in a
14 very similar manner, and what you see is is
15 that the brewing chamber is pinching the
16 flange on the top and the bottom in order to
17 seal the capsule and hold it into position
18 during brewing, and you can see the little
19 crosshatched holding arm element, and in
20 dashed lines, which is indicating behind the
21 capsule, the holding arm is depicted below the
22 rim of the capsule. So it's clearing it
23 during the brewing process, and then it's
24 coming back up and lifting it out after the
25 brewing process.

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2 Q. The holding arm would also be in
3 front of the capsule?

4 ATTORNEY BONNER: Objection to the
5 form.

6 Q. In this depiction?

7 A. Well, that's described in
8 Castellani --

9 Q. Uh-huh.

10 A. -- as a different element. I'm
11 just going to go back to Paragraph 54.
12 They're talking about the annular portion 22.

13 Q. Uh-huh.

14 A. So that connects the two holding
15 arms in my view. You've got these two arms
16 that are lifting up and down and they're on
17 opposing sides of the capsule, and they
18 contact the outer portion of the rim, and then
19 you've got this U-shaped portion in this case
20 that's connecting them, which provides the
21 support just at the front.

22 So you can see that portion in
23 section view, but my understanding based on
24 other views and my understanding of how this
25 works is that the capsule is supported on the

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2 rim as it slides down the holding arm sort of
3 little ledge, slides down that and then dumps
4 into the wastebasket.

5 Q. Is the annular portion depicted in
6 Figure 1?

7 A. Figure 1 does not call out element
8 22, but it's visible in section view. You'll
9 see the Number 5.

10 Q. Uh-huh.

11 A. And it's got a little line
12 associated with five. If you carry that line
13 forward, you'll see a little tighter
14 cross-section element that's next -- just
15 below the flange of the capsule, there is a
16 little gap, and that's element 22 is my
17 understanding.

18 Q. Figure 1 depicts a cross-section of
19 the espresso machine?

20 A. The Figure 1 as described earlier
21 is my view a longitudinal cross-section of the
22 brewing head of the machine through the
23 centerline of the capsule.

24 Q. Uh-huh.

25 And if we look at Figure 3, is the

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2 fork element depicted there?

3 A. Well, it's not called out. It's --
4 it's not shown in crosshatched view either.
5 It appears perhaps they've either omitted it
6 for clarity here or that it's intended to fit
7 within that space that is under the rim of the
8 capsule and to the outside of the brewing
9 chamber, there is a gap there. It's probably
10 that gap through which that element would be
11 found.

12 Q. So if I understand your opinions
13 correctly, when the lid is closed on the
14 machine, the annular portion and fork elements
15 are under the rim of the capsule, but not
16 touching it?

17 A. Well, that's what I --

18 ATTORNEY BONNER: Objection. Form.

19 A. That's -- what I see in Figure 1 is
20 that you've got a section view that calls out
21 21, which is the -- I'm identifying in this
22 analysis as a -- as one of the holding arms.
23 The other one, of course, would be on the
24 other side of the cutting plane from the
25 viewer's perspective.

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2 You can see that horizontal line of
3 the holding arm transitioning to dashed lines
4 when it goes behind the brewing chamber, and
5 that dashed line is distinct and separate.
6 It's below the rim of the capsule. So it's
7 touching the capsule as it's dropping in, and
8 then when it comes to its rest position, the
9 capsule is supported by the receptacle and
10 pinched on top for sealing.

11 Q. Uh-huh.

12 A. There is also a gap between the
13 arms and the sidewall of the capsule that's
14 visible on the annular portion.

15 Q. And what is illustrated in Figure 8
16 as far as where the capsule is relative to the
17 fork element and annular portion?

18 A. Just looking for the description
19 for Figure 8 and I'm not finding it initially.

20 What it says here in the brief
21 description of the drawing in Paragraph 22:
22 Figure 8 shows a rest position of the ejecting
23 fork element, and that is I think consistent
24 with Figure 9 where it shows the fork element
25 in the slightly raised position. I view that

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2 as being -- I guess I would view that as being
3 the low position. Looking at Figure 8 it's
4 shown in the lowered position.

5 We don't have the capsule here for
6 reference. So we don't know exactly where it
7 is in relation to the holding arm or ejection
8 fork.

9 Q. So is it your understanding that
10 Figure 8 and Figure 9 do not depict a capsule
11 in the machine?

12 A. I don't see a capsule on either of
13 these figures.

14 - - -

15 (Whereupon, document entitled WIPO,
16 Document Made Available Under the Patent
17 Cooperation Treaty, 61 pages, is received and
18 marked as Exhibit 1047 for Identification.)

19 - - -

20 BY ATTORNEY BROOKS:

21 Q. Mr. Jobin, I've handed you what's
22 been previously mark as Exhibit 1047.

23 This is what has been referred to
24 as the second German application; correct?

25 A. Yes. I also refer to it as the

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2 September 2010 reference or application.

3 Q. If you'd turn to Page 51 of 61?

4 Are you there?

5 A. Yes.

6 Q. Do you see what's shown here as
7 Figure 2, and on the bottom of this figure,
8 there is a depiction of a capsule?

9 A. Yes.

10 Q. Do you understand that this figure
11 represents a barcode on the flange of the
12 capsule?

13 ATTORNEY BONNER: Objection. Form.

14 A. Let me go to my -- where I've
15 evaluated this figure so I can be consistent.

16 I don't see it in this particular
17 declaration, but I do have the description
18 again in the application, so I'll go there.

19 So what I remember reading here is
20 that there is a quote from -- this is Page 9
21 or 38 of 61 of the September 2010 application.
22 In the description for Figure 2 on Line 14 it
23 states: This barcode -- this capsule has a
24 barcode in the region of the upper side of the
25 membrane, and that is what is being depicted

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2 in the view at the bottom of Page 51 of 61.

3 Q. And that barcode is on the flange
4 there?

5 A. The --

6 ATTORNEY BONNER: Objection. Form.

7 A. They don't call the barcode out
8 here, but there is a table which indicates
9 what those numbers mean, and there is an
10 element 17, which is referred to as barcode in
11 the list of designations on Page 44 of 61 of
12 this September 2010 application.

13 Q. So element 17 indicates where the
14 barcode is on the capsule?

15 A. Here it says on Page 38: In the
16 present case -- describing Figure 2 it says:
17 In the present case, this capsule has a
18 barcode in the region of the upper side of the
19 membrane.

20 So, yes, that's the barcode 17.
21 It's only shown as a black line here in this
22 illustration, but that's what it's intended to
23 represent is what's described.

24 Q. And where arrow 15 is is intended
25 to indicate a barcode on the other side?

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2 ATTORNEY BONNER: Objection. Form.

3 A. What it states in the description
4 for Figure 2, it says on Line 21, Page 38: As
5 an alternative, it is possible, as symbolized
6 by the arrow 15, for the barcode to be
7 provided on that side of the peripheral region
8 of the basic element, which is directed away
9 from the membrane.

10 So I understand that there's been
11 some dispute as to what exactly that means.
12 I've in the past interpreted that to mean that
13 it's talking about the other side of the
14 flange, and some have interpreted it to be
15 further out on the flange. So that's what I
16 read here and that's what I've stated in the
17 past.

18 Q. The figure above or the depiction
19 above where the detector 13.

20 Do you see that?

21 A. I do. Yeah.

22 Q. Of Figure 2? 13 is the sensor or
23 detector?

24 A. According to the list of
25 designations, 13 is detection means --

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2 Q. Uh-huh.

3 A. -- comma, scanner, comma, sensor.

4 It's clarified to be detector 13 in
5 the description for Figure 2.

6 Q. Okay. If we're interested in
7 reading the barcode that is placed in the
8 region identified by 15, would it have been
9 obvious at the time of this application to put
10 detector 13 on the opposite side of where it's
11 depicted in Figure 2?

12 ATTORNEY BONNER: Objection. Form.
13 Relevance.

14 A. Well, what I'm discussing here is a
15 priority document and not a prior art
16 reference. So I'm evaluating it under the
17 standard of whether that feature is disclosed,
18 and I don't see that disclosed. I haven't
19 considered whether it would be on this.

20 Q. You don't have an opinion as to
21 whether it would be obvious to place the
22 detector on the opposite side of where it's
23 currently depicted?

24 ATTORNEY BONNER: Objection. Form.
25 Relevance.

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2 A. I haven't formed an opinion on this
3 priority document regarding any obviousness
4 questions.

5 Q. Would it have been obvious to place
6 the detector to read the barcode in the area
7 labeled 15?

8 ATTORNEY BONNER: Objection. Form.
9 Relevance. Asked and answered.

10 A. I've not formed any obvious
11 opinions for this priority document.

12 Q. What would you need in order to
13 form an opinion?

14 ATTORNEY BONNER: Objection. Form.
15 Relevance.

16 A. Well, when I come to my obviousness
17 opinions in the context of my declarations,
18 looking at my prior art references and the
19 combinations that I've proposed, I use a very
20 specific process here. I'm looking at a
21 priority document. I just haven't considered
22 any obviousness questions, but it's not --
23 it's not what I'm asked to do when evaluating
24 this document.

25 Q. If you'd turn to Figure 16.

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2 A. Okay. Figure 16.

3 Q. Figure 16 depicts a capsule in a
4 brewing chamber?

5 A. Well, Figure 16 is incomplete in
6 terms of its depiction of a brewing chamber.
7 It calls out and illustrates a top. It shows
8 a capsule relative to that top, but I don't
9 see any detail below the capsule.

10 Q. The capsule shown in Figure 16 has
11 a flange?

12 ATTORNEY BONNER: Objection. Form.

13 A. The way that it's described in this
14 reference is a peripheral region. I interpret
15 that and have stated in the past that it is a
16 flange feature on the capsule. That's 2.4
17 according to what I understand.

18 Q. Do you have any opinion as to
19 whether or not a barcode could be placed on
20 the peripheral region of the capsule in
21 Figure 6?

22 ATTORNEY BONNER: Objection. Form.

23 A. Well, Figure 16 was described in
24 great detail in this specification as a
25 mechanical identifier with some form of gear

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2 tooth that calls out 2.4.2, which is cut into
3 the outer peripheral region of the flange. So
4 this is the identifier that's described here,
5 and it is not mentioned whether a barcode
6 would be placed there in this embodiment.

7 Q. Do you have any reason to believe a
8 barcode could not be placed in this embodiment
9 on the flange or peripheral region?

10 ATTORNEY BONNER: Objection. Form.

11 A. That's not something that I've
12 considered, but it's certainly not what's
13 described here.

14 Q. Would it have been obvious to place
15 a barcode in the peripheral region --

16 ATTORNEY BONNER: Objection.

17 A. -- for Figure 16?

18 ATTORNEY BONNER: Objection. Form.
19 Relevance.

20 A. I've evaluated this priority
21 document in the context of the priority
22 questions. I've not evaluated whether any
23 feature would be obvious. It's not something
24 that is described in this embodiment though.

25 Q. But as a person of ordinary skill

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2 in the art, would you understand it to be
3 obvious to place a barcode on the underside of
4 the flange of the capsule depicted in
5 Figure 16?

6 ATTORNEY BONNER: Objection. Form.
7 Relevance. Asked and answered.

8 A. Again, I don't -- I haven't formed
9 an opinion, and I don't have information here.
10 I'd like to consider that question, but that's
11 not what I was asked to do when evaluating
12 this priority document.

13 Q. If you'd turn to your '829
14 declaration, Paragraph 159.

15 A. Paragraph 159.

16 Q. Yes. Page 80.

17 A. Okay. I'm at Paragraph 159 of the
18 '829 declaration.

19 Q. The second sentence there you say:
20 Taken in the context of the September 2010
21 application as a whole, Figure 16 appears to
22 disclose a flat membrane capsule, further
23 showing the depth and inner circumference of
24 the capsule body and rim.

25 Do you see that?

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2 A. Yes, I see that sentence.

3 Q. What do you mean by "showing the
4 depth and inner circumference of the capsule
5 body and rim"?

6 A. Well, what I've described in
7 previous testimony and what I see here today
8 is the same thing. We have a -- what appears
9 to be a sectional view of a capsule, though
10 it's not depicted with crosshatching, it's
11 understood that we're cutting through the
12 capsule. We see a water inlet 28, a piercing
13 element 29, and we see a capsule with a
14 flange, and in the context of other
15 description of similar capsules, I understand
16 that a membrane here is flat.

17 It's poorly drawn, but there is a
18 curved line there that goes behind the cutting
19 29, just looking for the description of that.
20 It's called a piercing spike, and then it goes
21 behind the water inlet.

22 The water inlet comes down to the
23 flat plane where the membrane is, and in my
24 understanding of how this would work in
25 combination with a brewing chamber, this type

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2 of water inlet is not piercing the membrane.

3 It's coming into flat contact with it and

4 allowing water to flow through some channels.

5 So in my understanding, the way this is

6 depicted, it's depicting the rim of the

7 capsule going behind in this view.

8 Q. Do you see what appears to be a

9 curved line at the top of the capsule that the

10 water inlet has passed through?

11 ATTORNEY BONNER: Objection. Form.

12 A. I wouldn't characterize it that

13 way.

14 Q. Okay.

15 A. I see a water inlet in contact with

16 a flat membrane. I do not interpret that

17 curved line as a membrane. It doesn't make --

18 it's nonsensical. It doesn't make sense to me

19 for the water inlet to be depicted inside the

20 capsule because it's not piercing the

21 membrane. So I see that as the rim of the

22 capsule, not as -- not as a membrane.

23 Q. So is the rim of the capsule

24 depicted there in two dimensions?

25 A. Well, it's not entirely a

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2 two-dimensional view. There is a little bit
3 of perspective to it is what I think I'm
4 understanding here.

5 It's evident to me in the way that
6 this sort of internal lip feature below the
7 flange is depicted, it's kind of a curve as
8 well. So it's being viewed just slightly,
9 slightly above the horizontal view is how I
10 interpret this image.

11 It's -- it's -- it's definitely
12 being shown in a three-dimensional
13 representation, because we have this shading
14 that's element -- that's evident that I've
15 previously discussed, and that depicts the
16 inner wall of the capsule, kind of proceeding
17 into the page and forming a cylindrical or a
18 frustoconical shape --

19 - - -

20 (Clarification requested by the
21 stenographer.)

22 - - -

23 THE WITNESS: Frustoconical,
24 F-R-U-S-T-O.

25 A. And that's the same sort of curve

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2 of the rim of the capsule, sort of the edge
3 that's being depicted, that's how I interpret
4 it.

5 Q. You said what's being viewed as
6 slightly above the horizontal view. Do you
7 mean what we're seeing here is the capsule is
8 tilted in one direction or another?

9 A. It's depicted that way because
10 lines that would be straight in a full section
11 are curved in some instances. I would say
12 it's pretty poorly drawn. It's not consistent
13 in this depiction. So it's not a traditional
14 sectional view because it's not crosshatched
15 here, and so what I'm seeing, all of the
16 information I'm taking in is that we're
17 looking at a flat membrane here. That's how I
18 interpret this image.

19 Q. What lines do you see in Figure 16
20 that are curved?

21 A. Well, certainly the curved one at
22 the top that we previously discussed that's
23 going behind the water inlet and the piercing
24 element.

25 Q. Uh-huh.

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2 A. That's the primary, and then just
3 below the tip of the piercing element, again,
4 I think they're calling it a spike, but that
5 little -- the change in direction of the
6 sidewall forms a little lip or a little
7 offset, a little jog, that -- that curved line
8 is similar in its depiction to that other
9 curve. It's following around the curved
10 surface of the inside of the capsule.

11 Again, it's very roughly drawn and
12 reproduced, so it's not the clearest image,
13 but this is what I'm seeing, and it's further
14 understood just by understanding the context
15 of how the capsules are discussed in the text.

16 Q. So it's your view that there is a
17 second curved line, the line there beneath the
18 spike, the horizontal line beneath the spike?

19 A. That's what I've previously seen,
20 and if you take a piece of paper and hold it
21 up to it, you can see that it's not straight.
22 It's definitely got some little arch to it.
23 So that tells me that we're looking at a
24 three-dimensional shape, that we're not
25 looking at it straight on, we're looking at it

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2 just slightly above horizontal, and that's how
3 I interpret what those curves are telling me.

4 Q. Any other curves?

5 A. Well, again, towards the bottom,
6 we're seeing portions of the inside of the
7 bottom of the capsule, kind of in the
8 background, which could be depicted and
9 understood that way, but other than that, the
10 drawing is pretty minimal in its presentation.
11 It's not a lot of information beyond what I've
12 described.

13 Q. If you go to Page 81 of your
14 report, '829 patent declaration.

15 A. Yeah.

16 Q. You have at the top right there a
17 depiction of Figure 16A from the '829 patent?

18 A. Right. I view this as sort of a
19 cleaned-up version of what we're viewing in
20 the priority document. It's, I would say,
21 consistent with my interpretation as
22 previously discussed.

23 Q. So you see the same curves in that
24 figure as you saw in the September 2010
25 application?

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2 A. Well, again, I'm evaluating the
3 priority document. It may have been changed
4 in the interim, but it's really hard to see at
5 this scale. I'd have to look at it in more
6 detail, but my opinion of what I observed in
7 the September 2010 application did not change
8 upon viewing similar information presented in
9 the '829 patent spec.

10 Q. If you go back to the Exhibit 1047
11 and look at Figure 1.

12 A. I've got Figure 1.

13 Q. Do you see the image of the capsule
14 there and there is detector 13?

15 A. I see -- let me see the
16 description. The text goes on to say
17 Figure 1. I don't see 13 called out in the
18 description for Figure 1, but based on our
19 previous discussion for Figure 2 and based on
20 the table that's provided in the priority
21 document, 13 is depicted as detection means,
22 comma, scanner, comma, sensor.

23 Q. So that element 13 there, whether
24 it's a detection means, scanner, or sensor, it
25 is sending a signal through the brewing

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2 chamber wall?

3 ATTORNEY BONNER: Objection. Form.

4 A. The description for the figure does
5 not specify. There are some clues. It says
6 that: Convexities 8, as illustrated by the
7 arrows, I think that's the detail view in the
8 left-hand side of that figure, are guided past
9 a detection means, in this case an optical
10 detection means which detects the raised
11 regions and/or different optical properties.

12 So it's some type of optical sensor
13 and it's viewing these bumps as they go by.
14 It doesn't specify how that's accomplished.
15 The brewing chamber is shown as a barrier
16 between 13 and the bumps. So it's not clear
17 how it's achieved, and the priority document
18 is silent as for how that's accomplished.

19 Q. What's your understanding of how
20 that is accomplished?

21 ATTORNEY BONNER: Objection. Form.

22 A. I don't know. I look at the spec
23 and I look at the figure when it's not clear
24 to me how they're doing it.

25 - - -

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2 (Whereupon, document entitled WIPO,
3 Document Made Available Under the Patent
4 Cooperation Treaty, 38 pages, is received and
5 marked as Exhibit 1045 for Identification.)

6 - - -

7 BY ATTORNEY BROOKS:

8 Q. Mr. Jobin, I've handed you what's
9 been marked as Exhibit 1045.

10 It's the third German application
11 or February 7, 2011 application; correct?

12 A. It is the -- yes, it's the
13 application that was filed February of 2011,
14 and I refer to this as the February 2011
15 specification.

16 Q. And if you look at Figure 1 of
17 Exhibit 1045.

18 A. Okay. I've got Figure 1 of the
19 Exhibit 1045 in front of me.

20 Q. What is Figure 1 of Exhibit 1045?

21 A. I'm going to go where I discussed
22 it in my declaration and then I'll review it.

23 All right.

24 So Figure 1 is described as: Views
25 of one embodiment of a portion capsule

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2 according to the present invention, and
3 Figure 1 is shown in side view as a portion
4 capsule with various sort of grooved features
5 along the outside wall of the capsule, and
6 it's depicting a membrane on the top of it.
7 So, yeah, it's a portion capsule with some
8 details discussed.

9 Q. Is the portion capsule of Figure 1
10 in Exhibit 1045 different from the portion
11 capsule in 1047 that is Figure 16?

12 ATTORNEY BONNER: Objection. Form.

13 A. Well, it's different because it's
14 describing new features. I'm looking at, for
15 example, 15, and 15 is: In particular, it is
16 provided according to the invention. This is
17 reading from Page 30 of the priority document,
18 Line 7.

19 The channels 15 extend vertically
20 along the wall region 12 rectilinearly from
21 the flange 17 to the base region 11, although
22 it's not imperative for the channels to extend
23 over the entire length. The channels 15 are
24 designed according to the invention such that
25 the wall region 12 is reinforced or stiffened

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2 by the plurality of channels 15.

3 So basically, we're talking about
4 the gist of this February 2011 application is
5 improved capsules with stiffening features.

6 Q. And you see in Figure 1 of
7 Exhibit 1045, one of the elements is 17, which
8 is a flange; correct?

9 A. That feature 17 is referred to as
10 flange 17 in the spec for Figure 1.

11 Q. The flange that's depicted in
12 Figure 1 of Exhibit 1045 provides sufficient
13 surface area for placing a barcode; correct?

14 ATTORNEY BONNER: Objection. Form.

15 A. I have not rendered an opinion on
16 that or evaluated this reference in that
17 context.

18 Q. So you don't have an opinion one
19 way or the other?

20 ATTORNEY BONNER: Objection. Form.

21 A. I don't know the size or scale of
22 this particular capsule. I haven't evaluated
23 the dimensions, so I couldn't say at this
24 time.

25 Q. What size flange would be

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2 sufficient for supporting a barcode?

3 ATTORNEY BONNER: Objection. Form.

4 Relevance.

5 A. It would just depend on the reader
6 and the positioning of the reader, the
7 resolution, the type of code that's used.
8 Just there is a lot of variables. It's not
9 possible to answer that question with a
10 precise number.

11 Q. What would you need to know about
12 the reader in order to answer that question?

13 ATTORNEY BONNER: Objection. Form.

14 A. Well, the planning position
15 relative to the reader; the type of technology
16 that's used to read it. It's the type of
17 thing that you really have to get into the
18 nitty-gritty to answer specifically. I
19 couldn't -- I wouldn't -- I wouldn't want to
20 speculate without enough information here.

21 Q. What do you mean by type of code?

22 A. You could -- you could reproduce a
23 code at different scales meant to be read from
24 different distances. So there is just a lot
25 of factors that go into readability that would

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2 have to be known before you could begin to
3 determine a suitable area for the code or the
4 barcode to be reproduced.

5 - - -

6 (Whereupon, '829 patent, 29 pages,
7 is received and marked as Exhibit 1001 for
8 Identification.)

9 - - -

10 BY ATTORNEY BROOKS:

11 Q. Mr. Jobin, I've handed you what's
12 been marked as Exhibit 1001 in the '254
13 proceeding which relates to the '829 patent.

14 This is a copy of the '829 patent;
15 correct?

16 A. Yes, this appears to be a copy of
17 the '829 patent, which is referenced by my
18 '829 declaration amongst others, but in
19 specific.

20 Q. In forming your opinions in the
21 '254 proceeding, you considered the claims of
22 the '829 patent; correct?

23 A. When I'm evaluating my -- when I'm
24 evaluating the prior art references for
25 obviousness, I'm using the plain language in

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2 the '829 patent as the basis for that
3 comparison, yes.

4 Q. If I could direct your attention to
5 Claim 1 of the '829 patent.

6 A. Okay. I've got Claim 1 of the '829
7 patent in front of me.

8 Q. Claim 1 is directed to a beverage
9 system for making a beverage; correct?

10 A. This is what I understand to be the
11 preamble.

12 Q. Uh-huh.

13 A. This is described in Paragraph 210
14 of my declaration, but yes, I have identified
15 this as a -- and understand it to be a
16 beverage system for making a beverage, yeah,
17 that's what it says.

18 Q. And that beverage system comprises
19 a portion capsule and a beverage machine?

20 A. Broadly speaking, the way that
21 Claim 1 is organized is it's split into two
22 main groups, A and B, and A is a portion
23 capsule comprising and a number of elements
24 under that, and then B is a beverage machine
25 comprising, with a number of limitations under

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2 it.

3 Q. One of the elements of the portion
4 capsule is an identifier provided on the
5 bottom side of the rim; correct?

6 A. Yes. It states -- one of the
7 limitations states an identifier provided on
8 the bottom side of the rim.

9 Q. One of the elements of the beverage
10 machine is a sensor/detector?

11 A. One of the elements under a
12 beverage machine section of Claim 1 is a
13 sensor/detector.

14 Q. And then another element of the
15 beverage machine, which has Roman Numeral V in
16 front of it: A pump control to supply hot
17 water into the portion capsule only upon
18 detection of the identifier by the
19 sensor/detector and a determination by the
20 beverage machine that the portion capsule is
21 suitable for use with the beverage machine.

22 Do you see that?

23 A. I see that Limitation Number 5,
24 yes.

25 Q. So do you understand that the

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2 identifier must be detected by the
3 sensor/detector in order to meet this claim
4 language?

5 A. It's my understanding here that the
6 sensor/detector is reading the identifier
7 that's provided on the bottom side of the rim
8 in this -- amongst other limitations, but yes,
9 that is what is occurring.

10 ATTORNEY MCGRAW: We've been going
11 about an hour. Can we take a break at some
12 point?

13 ATTORNEY BROOKS: Yeah.

14 What do we want to do as far as lunch?

15 Let's go off the record for this.

16 CERTIFIED STENOGRAPHER: Off the
17 stenographic record at 11:45 a.m.

18 - - -

19 (Whereupon, a short recess was
20 taken.)

21 - - -

22 CERTIFIED STENOGRAPHER: Back on the
23 stenographic record at 11:46 a.m.

24 - - -

25 (Whereupon, '722 patent, is

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2 received and marked as Exhibit 1001 for
3 Identification.)

4 - - -

5 BY ATTORNEY BROOKS:

6 Q. Mr. Jobin, you've been handed
7 what's been marked as Exhibit 1001 in the '257
8 proceeding. It's a copy of the '722 patent;
9 correct?

10 A. This appears to be a copy of the
11 '722 patent, yes.

12 Q. Have you considered the claims of
13 the '722 patent in forming your opinions in
14 the '257 proceeding?

15 A. The '257 proceeding relates to
16 patent '722, the '722 patent, and so when I'm
17 evaluating and forming my opinions in this
18 declaration, I'm using the specification and
19 claims as described in the '722 patent.

20 Q. Okay. I'd like to direct you to
21 Claim 1 of the '722 patent.

22 A. All right. I am at Claim 1 of the
23 '722 patent.

24 Q. The Claim 1 of the '722 patent is
25 directed to a beverage system for producing a

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2 beverage; correct?

3 A. As I've described in my
4 declaration, I'm seeing the preamble as a
5 beverage system for producing a beverage.

6 Q. One element of that beverage system
7 is a portion capsule; correct?

8 A. Correct. Directly under that there
9 is a section of the claim that starts "a
10 portion capsule comprising," and then there is
11 a list of limitations under that.

12 Q. At about Line 42, there it says: A
13 bottom side with a printed optically
14 detectable identifier located on the bottom
15 side.

16 Do you see that?

17 A. At Line 42, I read -- well, going
18 up to Line 41: A circumferential flange
19 having a top side to which the lid is attached
20 and a bottom side with a printed optically
21 detectable identifier located on the bottom
22 side. Yes, I see that.

23 Q. And so the bottom side here refers
24 to the circumferential flange?

25 A. In the context of the clause that I

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2 just cited, it's talking about a
3 circumferential flange having a top side to
4 which the lid is attached and a bottom side
5 with a printed optically detectable
6 identifier.

7 So, yes, I associate this
8 identifier with the bottom side of the
9 circumferential flange.

10 Q. And this identifier in the claim is
11 required to be optically detectable, correct?

12 A. The next limitation states: The
13 optically detectable identifier. So I would
14 agree with that, yes.

15 Q. Okay. And also above there where
16 it refers to a bottom side with a printed
17 optically detectable identifier?

18 A. It also states "optically
19 detectable" in that limitation, yes.

20 Q. Okay.

21 - - -

22 (Whereupon, '830 patent, 30 pages,
23 is received and marked as Exhibit 1001 for
24 Identification.)

25 - - -

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2 BY ATTORNEY BROOKS:

3 Q. Mr. Jobin, you've been handed
4 what's been previously marked as Exhibit 1001
5 in the '304 proceeding. It's a copy of the
6 '830 patent.

7 Do you recognize this?

8 A. Yes, this appears to be a copy of
9 the '830 patent, which I used in forming my
10 opinions in the '830 declaration.

11 Q. You considered the claims of the
12 '830 patent in forming your opinions in the
13 '304 proceeding?

14 A. As documented in my declaration,
15 there is a thorough list of claim elements
16 which are evaluated and I've definitely
17 considered the claims that are present in the
18 '830 patent.

19 Q. I'd like to direct your attention
20 to Claim 1 of the '830 patent.

21 A. Okay.

22 Q. Claim 1 is directed to a portion
23 capsule for making a beverage; correct?

24 A. Claim 1 in the preamble states: A
25 portion capsule for making a beverage

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2 comprising.

3 Q. One of the elements of the portion
4 capsule is an optically detectable
5 individualization identifier, which is carried
6 by the bottom surface of the rim at Line 44;
7 correct?

8 A. I see at Line 44 it states: An
9 optically detectable individualization
10 identifier, which is carried by the bottom
11 surface of the rim.

12 Q. So do you understand this claim to
13 require the identifier to be carried by the
14 bottom surface of the rim?

15 A. Well, you've paraphrased the phrase
16 slightly, but I understand it according to
17 what's written and according to the -- what
18 I've stated in my declaration, and so to be
19 consistent with that, I'm going to go there
20 for a moment.

21 And what I state on Page 138 of my
22 declaration for the '830 is in Paragraph 250 I
23 state: To the extent this term can be
24 understood, Yoakim, in combination with
25 Jarisch, discloses an optically detectable

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2 individualization identifier, which is carried
3 by the bottom surface of the rim according to
4 K-Fee's apparent interpretation.

5 So I acknowledge the words that are
6 here in this limitation, and I have noted that
7 the interpretation of those -- that limitation
8 by K-Fee is informed -- my understanding of
9 their interpretation is informed by their
10 discussion in the infringement allegations.
11 So I've used that in my analysis here in
12 evaluating this claim against prior art.

13 Q. In performing your analysis, did
14 you understand the claim to require that the
15 identifier is carried by the bottom surface of
16 the rim?

17 A. Well, if we go for a moment to what
18 K-Fee has alleged, I think that will be
19 helpful in understanding how this term is
20 understood by K-Fee and how it's being used.

21 So what we want to see here is the
22 claim construction section of my declaration
23 on Page 70, and what I see on Page 71, I
24 state -- and it is also Page 72: Patent owner
25 alleges that an optically detectable

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2 individualization identifier, which is carried
3 by the bottom surface of the rim, can be met
4 by the following optical code.

5 They cite to Exhibit 1049 at
6 Pages 149 to 50, and they show a picture of
7 the bottom view of an espresso capsule, a
8 virtual capsule I guess, which is showing the
9 bottom surface of the rim, and they're
10 pointing with a red arrow to what they have
11 identified as the optically detectable
12 individualization identifier on that bottom
13 surface.

14 So I use that interpretation to
15 inform my analysis, and then I say further
16 that: To the extent that the identifier is
17 construed as a feature that individualizes the
18 portion capsule, an individualization is
19 construed to determine whether the portion
20 capsule is suitable for use with the beverage
21 machine such that the use of unsuitable
22 capsules is prevented, Rossi explicitly
23 discloses using -- utilizing an identifier for
24 this purpose.

25 So that's at Paragraph 255 of my

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2 declaration where I analyze the claims under a
3 slightly different construction, and this is
4 according to a construction that's been
5 proposed by Nespresso in this case.

6 Q. Is it your understanding that the
7 claim requires the identifier to be optically
8 detectable?

9 A. Well, looking at the infringement
10 allegations, the identifier, as I understand
11 it, is optically detected. So it appears that
12 K-Fee considers that to be the case. It
13 states here in the language clearly "an
14 optically detectable individualization
15 identifier" on Line 44 of Column 13 of the
16 '830 patent. So optically detectable is
17 something that's I think easily understood by
18 I think one of ordinary skill.

19 Q. So you understand the claim
20 requires that the identifier be optically
21 detectable; correct?

22 A. The word "optically detectable
23 individualization identifier" is used at least
24 three times in this limitation, Line 44,
25 Line 47, Line 48. I see this and understand

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2 that the limitation says: Optically
3 detectable individualization identifier. So I
4 understand and acknowledge what optically
5 detectable means here.

6 Q. Okay. In your understanding, is
7 optically detectable individualization
8 identifier a limitation of the claim?

9 A. Well, it's a word and a phrase
10 that's used in different limitations. I've
11 broken them out in a particular manner
12 according to the way that they're organized.
13 So let me just see for a second.

14 I'm looking at what I term, for
15 example, in my declaration as Claim Elements
16 1I, 1J, and 1K, and also 8I, J, and K. The
17 word or the phrase "optically detectable
18 individualization identifier" is present in
19 all three of those limitations, but it's
20 further modified by something different in
21 each of the three.

22 In Claim 1I it states: Which is
23 carried by the bottom surface of the rim. In
24 1J it talks about having surface areas of
25 different optically detectable reflective

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2 properties.

3 So the term is understood, but it's
4 modified and narrowed by the specific
5 limitations in this claim.

6 Q. In the case of 1K, that optically
7 detectable individualization identifier is
8 configured to be read by a detector of a
9 beverage machine; correct?

10 A. It says: The optically detectable
11 individualization identifier is configured to
12 be read by a sensor/detector of a beverage
13 machine to individualize the portion capsule.

14 So this claim is directed to the
15 configuration of the identifier, which enables
16 it to be read by an outside machine or by an
17 outside sensor that's part of the machine.

18 Q. In element 1E, the wall has an
19 outside surface and an inside surface which
20 faces the beverage material.

21 A. Claim Element 1E and 8E states:
22 The wall has an outside surface and an inside
23 surface which faces the beverage material. I
24 see that.

25 Q. That's a wall of the capsule;

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2 correct?

3 A. Well, that would be informed by how
4 it's described in the '830 patent. When
5 they're talking about a wall, they're talking
6 about the wall of the portion capsule.

7 I note also when evaluating this
8 claim, that Yoakim discloses a portion capsule
9 having a wall that has an outside surface and
10 an inside surface that faces the beverage
11 material.

12 So I understand wall here to be a
13 part of the portion capsule.

14 Q. Do you understand that the inside
15 surface must face the beverage material?

16 A. Well, that's what it says here.
17 Any time you have a wall in the context of an
18 enclosure, you've got an inside and an outside
19 surface of that wall. Here what it's doing
20 is, in my understanding, specifying that the
21 inside is the portion of the capsule wall that
22 is touching the beverage material, just for
23 clarification so that we can identify which
24 side we're talking about.

25 Q. And then there is also an element

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2 in the claim: A ledge formed at the inside
3 surface of the wall and projecting towards the
4 central longitudinal axis.

5 Do you see that?

6 A. I see that at Line 39 of the
7 Column 13 of the '830 patent, yes.

8 Q. What do you understand projecting
9 towards the central longitudinal axis to mean?

10 ATTORNEY BONNER: Objection. Form.

11 A. Well, here I think it would be
12 helpful to go to my declaration where I
13 describe my understanding of this claim
14 limitation and apply that understanding to
15 features that I have identified in
16 specification of Yoakim.

17 I identify a ledge formed at the
18 inside surface of the wall projecting towards
19 the central longitudinal axis and spaced below
20 the open end of the base element. So that
21 limitation is something that I've identified
22 in Yoakim and attempted to describe here in
23 Figure 28 and in the words describing.

24 Q. Without reference to Yoakim, can
25 you explain what it means to project towards

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2 the central longitudinal axis?

3 ATTORNEY BONNER: Objection. Form.

4 A. What they're doing is providing a
5 frame of reference when they say "projecting
6 towards the central axis." These capsules are
7 generally described as rotational symmetric
8 forms. They're revolved shapes, and so you
9 have an outside wall and an inside wall, and
10 that wall is revolved around the central axis
11 in many of these embodiments that are
12 described in K-Fee in the '830 patent, and so
13 if we look at the spec for a feature to try to
14 help to inform your understanding of that --
15 how that's used, in K-Fee, you begin to
16 understand perhaps what they're referring to.

17 So I think that we've
18 previously -- well, it's tough because the
19 word doesn't appear to be used in the spec.
20 There is figures. There is a feature that --
21 in Figure 16 that could be that feature, but
22 towards and projecting towards the central
23 axis just means that if you're positioned at
24 the inside wall, you're pointing and the form
25 is being grown from that wall towards the

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2 center axis. That's how the feature is
3 constructed. That's my understanding of that
4 term.

5 ATTORNEY BROOKS: Should we break for
6 lunch?

7 CERTIFIED STENOGRAPHER: Off the
8 stenographic record at 12:05 p.m.

9 - - -

10 (Whereupon, a luncheon recess is
11 taken at 12:05 p.m.)

12 * * * * * * * *

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2 A F T E R N O O N S E S S I O N

3 (12:49 p.m.)

4 CERTIFIED STENOGRAPHER: Back on the
5 stenographic record at 12:49 p.m.

6 - - -

7 (Whereupon, '910 patent, is
8 received and marked as Exhibit 1001 for
9 Identification.)

10 - - -

11 BY ATTORNEY BROOKS:

12 Q. Welcome back, Mr. Jobin.

13 A. Thank you.

14 Q. I'm handing you what's been marked
15 as Exhibit 1001 in the '299 proceeding which
16 relates to the '910 patent.

17 This is a copy of the '910 patent;
18 correct?

19 A. Correct.

20 Q. You considered the '910 patent in
21 forming your opinions in the '299 proceeding?

22 A. In forming my opinions, as I've
23 shown in my '299 proceeding, which is the '910
24 declaration, I used this '910 patent and the
25 claims within for that analysis.

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2 Q. I'd like to direct your attention
3 to Claim 1, which begins at Column 12.

4 A. Okay. Claim 1.

5 Q. Claim 1 is directed to a portion
6 capsule for making a beverage?

7 A. Yes, in part, the preamble goes on
8 with additional words, but the very first
9 portion of it states: A portion capsule for
10 making a beverage.

11 Q. And the claim continues on to
12 Column 13 to where we eventually get to what
13 you've identified as 1P? That requires that
14 the individualization identifier includes an
15 optically detectable machine readable repeat
16 pattern.

17 Do you see that?

18 A. I see around Line 35 of Column 13
19 wherein the individualization identifier,
20 quote: Includes an optically detectable
21 machine readable repeat pattern, yes.

22 Q. Do you understand from that claim
23 language that the individualization identifier
24 includes -- strike that.

25 Do you understand from that claim

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2 language that the individualization identifier
3 requires some optically detectable machine
4 readable repeat pattern?

5 A. Well, I think you paraphrased it,
6 but used the same words. What I read here is
7 "includes an optically detectable machine
8 readable repeat pattern." So those are the
9 words that are used here that I understand.

10 Q. Okay. You can set that aside.

11 - - -

12 (Whereupon, Rapparini reference, is
13 received and marked as Exhibit 1008 for
14 Identification.)

15 - - -

16 BY ATTORNEY BROOKS:

17 Q. Mr. Jobin, you've been handed
18 what's been previously marked as Exhibit 1008
19 in the various proceedings. It's a copy of
20 the Rapparini reference.

21 A. Yes, I see -- I see a Rapparini
22 reference in the Exhibit 1008. This is the --
23 let's check. Yeah, I recognize this prior art
24 reference.

25 Q. Rapparini is directed to a

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2 filtering impermeable container?

3 ATTORNEY BONNER: Objection. Form.

4 A. What it states in the title is:

5 Filtering and Permeable Container for

6 Substances Suitable for the Preparation of

7 Beverages.

8 Q. A permeable container would be

9 something like a tea bag?

10 ATTORNEY BONNER: Objection. Form.

11 A. They talk about capsule body forms

12 here. Not something that is in the form of a

13 bag, but rather is more of a capsule form.

14 There is different embodiments, but I've cited

15 to Figures 6 and 6 BIS. That's how it's

16 depicted in the reference, and it talks about

17 forming those sheet material and stiffening

18 the material using ribs and grooves as

19 described therein.

20 So when it says "permeable," where

21 it's talking about containers through which

22 fluid can pass during a brewing process, for

23 example, but it also refers to other materials

24 that could be used, including nonpermeable

25 materials.

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2 Q. Where does Rapparini discuss
3 nonpermeable containers?

4 A. So what I cite, I cite to
5 Paragraph 67 of Rapparini in my Paragraph 200
6 of the '830 declaration. I'll go there:
7 Several kinds of materials can be employed for
8 realizing the containers according to the
9 present invention. Moreover, the containers
10 according to the present invention can have
11 several dimensions.

12 For example, the containers can be
13 adapted to be employed for domestic machines,
14 such as moka pots or automatic espresso
15 machines. Alternatively, the containers can
16 be adapted to be employed for industrial
17 machines.

18 I further reference and recall
19 Paragraph 63 in which the container is
20 hermetically contained into hermetic and
21 impermeable capsule so as to guaranty the
22 preservation of organoleptic properties of the
23 substances contained in the container.

24 So that tells me that they're
25 thinking about these types of materials more

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2 broadly than just permeable.

3 Q. You don't rely on the embodiment of
4 Figure 14 in your declaration; do you?

5 ATTORNEY BONNER: Objection. Form.

6 A. Well, I've considered this entire
7 reference and -- in forming my opinions. I've
8 cited to specific features and specific
9 figures in illustrating some of the opinions
10 that I've made, but I do know and understand
11 that this particular document doesn't just
12 refer to or anticipate only permeable
13 materials. It's got others in mind.

14 Q. And your opinion is based upon
15 Paragraph 63?

16 ATTORNEY BONNER: Objection. Form.

17 A. Well, I've cited elsewhere to
18 Page 3. It says Exhibit 1040 -- oh, sorry,
19 that's Rossi.

20 Go to Rapparini. I cite to --
21 yeah, I cite to a variety of earlier
22 paragraphs which talk about the shape and
23 which talk about the forming of the capsule
24 and the thermoforming means and the types of
25 uses, such as preparation of beverages, home

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2 and industrial beverage systems, espresso
3 machines, and then I cite to Paragraph 67,
4 which talks about different kinds of materials
5 in varying shapes, and then I previously also
6 mentioned 63, which conforms -- you know, as
7 part of my understanding of this reference,
8 helps to form my understanding that it can
9 also refer to nonpermeable materials.

10 Q. Right, but does Rapparini teach a
11 container that is nonpermeable?

12 ATTORNEY BONNER: Objection. Form.

13 A. One of ordinary skill understands
14 this reference to -- to -- to cover both types
15 of containers. It talks about sealing a
16 container. It talks about piercing it. I'm
17 just looking at different figures here, and
18 it's pretty clear, it says: Hermetic and
19 impermeable capsule 10. That's disclosed in
20 this reference and certainly something that I
21 would have formed my understanding of how this
22 works.

23 Q. Do you understand that the
24 container according to Rapparini's invention
25 is what is contained in the capsule 10?

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2 ATTORNEY BONNER: Objection. Form.

3 A. I don't think I understand the
4 question. Could you repeat it?

5 Q. Sure.

6 So if you look at Paragraph 63 of
7 Rapparini --

8 A. Yes.

9 Q. -- it tells you that Figure 4
10 schematically displays a 3D view of a hermetic
11 and impermeable capsule 10 containing the
12 container according to an embodiment of the
13 present invention.

14 So Rapparini is teaching that the
15 container that he's describing, the permeable
16 container, is contained within a capsule
17 that's hermetically sealed; correct?

18 ATTORNEY BONNER: Objection. Form.

19 A. Right. The same teachings though
20 apply. The same teachings about the container
21 formation, the way that it's thermoformed, the
22 way that it's shaped, all of those types of
23 teachings apply to these materials to
24 permeable and impermeable materials. That's
25 what one of ordinary skill here would

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2 understand.

3 Q. Rapparini doesn't teach placing
4 ribs on the capsule 10; does it?

5 ATTORNEY BONNER: Objection. Form.

6 A. Rapparini teaches in Figure 6, for
7 example -- it teaches how to improve upon
8 existing containers by including longitudinal
9 grooves and ribs of varying lengths along the
10 inner and outer surface of the capsule body,
11 which allow for the optimization of system
12 stability and rigidity.

13 So the body is formed from a flat
14 sheet using a thermoforming process with an
15 annular flange at the top and a generally
16 cupped shaped body.

17 So I'm citing the formation of
18 these capsules, which is the same as the
19 formation of the capsules in the Yoakim
20 reference. There is a lot of analogies here.
21 Same general size and shape. Similar material
22 thicknesses and stiffnesses. Lots of
23 similarities, and I've pointed them out in my
24 declaration that form my opinion that these
25 are comparable art and therefore relevant in

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2 looking at in combination for making
3 obviousness determinations.

4 Q. Okay. What you pointed to
5 discusses the container of Rapparini's
6 invention, but I'm asking you about the
7 capsule 10. Does the capsule 10 depicted
8 anywhere in Rapparini as having grooved ribs?

9 ATTORNEY BONNER: Object to form.

10 A. And what I'm observing in Rapparini
11 is that there are different portion capsules,
12 which are shown. They have structures that
13 are the same as the portion capsule itself.
14 Here there is a filter inside a capsule.

15 Here there is a capsule structure
16 with its own seal on the top, and I've pointed
17 to 6 and 6 BIS figures in particular and noted
18 the similarities between those shapes and the
19 shapes of the capsules that are used in Yoakim
20 and Jarisch, for example, in terms of their
21 rotational symmetry, their general forms,
22 their fabrication processes, and their
23 materials. They're all very comparable from
24 that regard to one of ordinary skill in the
25 art.

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2 Q. Figure 6 and Figure 6 BIS depict a
3 container; right?

4 ATTORNEY BONNER: Objection. Form.

5 A. What 6 BIS and 6 are described as
6 in this document is 3D views of the container
7 according to an embodiment of the present
8 invention, the containers provided with
9 longitudinal stiffening ribs 4 and the length
10 L of the stiffening ribs is variable along the
11 surface of the body of the container. Those
12 teachings are important to understand how and
13 why to stiffen a container of this type.

14 Q. Rapparini describes stiffening the
15 containers for packaging and everything;
16 correct?

17 ATTORNEY BONNER: Objection. Form.

18 A. It talks about the stiffening ribs
19 guaranty the rigidity of the body of the
20 container so that it can be easily and quickly
21 handled, even at very high automated filling
22 in their production speeds. So there the
23 capsule or container structure is important
24 for filling, but those same teachings -- the
25 same capsule is -- is also stiffened for

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2 handling by the user and the end user when
3 they're picking up the container, putting it
4 into the machine, and ultimately removing it
5 from the machine. Those same stiffening
6 features are useful.

7 Q. Rapparini teaches that the
8 containers are thermoformed; correct?

9 ATTORNEY BONNER: Object to form.

10 A. I cite to Paragraph 10, which
11 states that: The capsule body is formed from
12 a flat sheet using a thermoforming process
13 with the annular flange at the top and a
14 generally cupped shaped body. I further cite
15 to and understand that they use a matched die
16 set. It's used during the thermoforming. It
17 creates longitudinal stiffening ribs that
18 extend from the flange toward the bottom
19 region of the capsule. So that's Figures 1
20 through 5 that are informing that
21 understanding.

22 Q. What are examples of thermoformable
23 materials?

24 A. Well, in this case, a
25 thermoformable material is a thin -- it could

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2 be a thin plastic material. It could be a
3 thinner nonwoven material or permeable
4 material. It could be nonpermeable plastic
5 film or sheet.

6 Generally something that can be
7 heated and formed into a die to create this
8 cup shape is what is generally understood, and
9 what I have done is also observed the
10 thermoforming and deep drawing have
11 similarities in that they both use a matched
12 die and that they both punch or push the
13 material into that die to form the shape. One
14 is thermally assisted and the other is not.

15 Q. You would not use metal in a
16 thermoforming process; would you?

17 A. If the metal contains a plastic
18 component to it, if it's a multilaminate,
19 thermoforming can assist. It's still a deep
20 draw process for metals typically, but again,
21 there is a lot of overlap between those
22 manufacturing processes.

23 Q. Does Rapparini teach to use
24 containers in a centrifugal brewing machine?

25 ATTORNEY BONNER: Objection. Form.

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2 A. My recollection is that Rapparini
3 is silent as to using in a particular style of
4 espresso machine, but it does describe its use
5 in espresso machines.

6 Q. Would a person of ordinary skill in
7 the art in 2011 use a permeable container in a
8 centrifugal brewing machine?

9 ATTORNEY BONNER: Objection. Form.

10 A. I don't know if I can answer that.
11 I could say that there are instances where
12 permeable containers are used in espresso
13 machines, but whether they're used in a
14 centrifugal machine, I don't have that
15 information at hand.

16 Q. If you'd turn to your '910
17 declaration, Page 192.

18 A. Okay. I've got Page 192.

19 Q. Here you're offering opinions with
20 respect to Claim 4 of the '910 patent which
21 requires a portion capsule according to
22 Claim 3 wherein vertically oriented grooves
23 cover 40 percent to 60 percent of the wall
24 between the flange and the closed bottom;
25 correct?

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2 A. Yes, I see that and that's what I'm
3 evaluating here.

4 Q. And on Page 193, you provide an
5 annotated figure of Figure 6 BIS.

6 Do you see that?

7 A. Yes.

8 Q. There is green color added to the
9 figure; correct?

10 A. Correct.

11 Q. Is the area that you're identifying
12 as the grooves that cover 40 to 60 percent of
13 the wall between the flange and the closed
14 bottom the white or the green?

15 A. Well, what we're showing here is a
16 prior art reference that discloses the capsule
17 with grooves that are vertically oriented, and
18 according to Claim 3, they impart rigidity to
19 the wall of the base settlement, for example.

20 They are grooves on the outside
21 surface of the wall, which is illustrated
22 there in green, and so the white portion of
23 this figure are the grooves, and what I'm
24 stating here in Paragraph 386, that it would
25 be obvious to a POSITA to provide grooves on a

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2 capsule covering 40 to 60 percent of the wall
3 between the flange and the closed bottom in
4 order to increase structural stability of the
5 capsule wall.

6 Q. Okay. But in Paragraph 385, you
7 say: Rapparini discloses grooves covering
8 40 percent to 60 percent of the wall between
9 the flange and the closed bottom.

10 So where is that disclosure?

11 A. Well, it's -- it's -- it's
12 disclosed because it's obvious upon reviewing
13 this reference, and you don't have to measure
14 them to see that some portion of the wall is
15 covered by grooves. The disclosure in the
16 description describes that the grooves can be
17 of varying lengths.

18 One can make them shorter. One can
19 make them longer according to teachings of
20 Rapparini, so that tells me that it would be
21 obvious, and that it's disclosed because it's
22 disclosed in the writing and in the words in
23 Rapparini.

24 Q. What percentage of covering by
25 grooves is disclosed in Rapparini?

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2 A. I think what I would say is that a
3 wide range of different groove configurations
4 are disclosed. They talk about: That the
5 grooves in part rigidity by stiffening the
6 wall. They talk about, for example, in
7 Paragraph 9, I cite that: The length of the
8 grooves can be variable along the surface of
9 the body, and they further disclose that: The
10 length of the grooves are alternated along the
11 surface of the body, i.e., between long and
12 short, to increase the stability of the
13 portion capsule, and that's Paragraph 11.

14 So that disclosure tells me that
15 one of ordinary skill in the art sees those
16 lengths being long and short, depending on
17 what you need, that easily covers the range of
18 40 to 60 percent in my opinion.

19 Q. Okay. But you haven't identified
20 any statement or figure in Rapparini that
21 discloses a percentage of covering between 40
22 and 60 percent?

23 ATTORNEY BONNER: Object to the form.

24 A. I think what I'm seeing here is
25 that the grooves are varying in length. They

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2 can be short. They can be long. They can be
3 just on the sidewall short. They can wrap
4 around to the bottom portion according to the
5 teachings of Rapparini and what I've cited in
6 these paragraphs.

7 That teaching discloses grooves
8 that cover between 40 and 60 percent of the
9 wall, but in addition, it's obvious to someone
10 of ordinary skill that that range of groove
11 length is -- that particular limitation would
12 be obvious in light of this disclosure.

13 Q. Have you made a calculation as to
14 exact percentage that the grooves cover the
15 walls between the flange and the closed bottom
16 in Rapparini?

17 ATTORNEY BONNER: Object to the form.

18 A. No, because the particular groove
19 configuration can be varied between long and
20 short. It all depends on what you need when
21 you're designing this capsule. Whether you
22 want it to be very short or longer is up to
23 the person that's designing the capsule. It's
24 trivial to change the length of lengths. It's
25 not -- it's just obvious to do so.

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2 Q. If you go to Page 152, here you
3 start a discussion of Claims 1G and 8G, which
4 has a similar limitation, the plurality of
5 vertically oriented grooves covered 20 percent
6 to 80 percent of the wall between the flange
7 and the closed bottom.

8 Do you see that?

9 A. I see here that one of the claims
10 is 1G and it states: The plurality vertically
11 oriented -- well, it should be: The plurality
12 of vertically oriented grooves cover 20 to
13 80 percent of the wall between the flange and
14 the closed bottom. Yes, I see that.

15 Q. And you offer at Paragraph 302 your
16 opinion that Rapparini shows 20 to 80 percent
17 of the wall covered by grooves; correct?

18 A. In what paragraph?

19 Q. 302.

20 A. Right. Similar logic, and again,
21 I'm looking at K-Fee's infringement contention
22 here to inform my understanding of how this
23 term is used at least by K-Fee in this case to
24 identify grooves on a sidewall and comparing
25 that construction to the disclosure in

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2 Rapparini in Figure 6 BIS, for example.

3 So what we have here is grooves of
4 varying lengths and we have a range disclosed
5 of 20 to 80 percent. I see under that
6 construction that feature in this prior art
7 reference clearly.

8 Q. And you're focusing on the white
9 ribs in that image?

10 A. Understanding that this is an
11 exemplary embodiment, there is a lot of
12 disclosure in Rapparini that informs my
13 understanding of how these features are formed
14 and what they are intended to do. In this
15 case, this is an illustration to show grooves
16 vertically oriented on the sidewall, extending
17 at least partially in the bottom region,
18 having different lengths, all of these
19 different features of this particular Claim 20
20 to -- plurality of vertically oriented grooves
21 cover 20 to 80 percent of the wall between the
22 flange and the closed bottom. That's
23 Claim 1G, and I am stating that I see and
24 determine it would be obvious in light of this
25 disclosure.

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2 Q. So it's not your opinion that
3 Rapparini teaches or that Figure 6 BIS shows
4 20 to 80 percent of the wall covered by
5 grooves?

6 ATTORNEY BONNER: Objection. Form.

7 A. What I state here is specific to
8 these particular claims, but it's identifying
9 what I'm identifying in Rapparini. I'm seeing
10 here: According to the construction,
11 Rapparini's grooves are vertically oriented
12 and arranged around the outside surface of the
13 capsule wall as shown in Figure 6 BIS. I
14 state that: Rapparini describes a portion
15 capsule with a plurality of vertically
16 oriented grooves arranged on the outside
17 surface of the capsule wall.

18 I have other cites in here to:
19 Rapparini further disclosing in Paragraph 298
20 the plurality of vertically oriented grooves
21 each have a radius top end and a radius bottom
22 end and are spaced at a distance between the
23 flange and the closed bottom according to
24 K-Fee's apparent interpretation.

25 So all of these are observations

1 MICHAEL J. JOBIN | 09.19.24
2 that I've cited, and based on all of these
3 inputs, I state in 302 that: A person of
4 ordinary skill in the art viewing Figure 6 BIS
5 of Rapparini would understand Rapparini's
6 grooves also cover 20 to 80 percent of the
7 wall between the flange and closed bottom,
8 citing Paragraphs 9 to 11 of the Exhibit 1008.

9 So I then state in 303 that: It
10 would have been obvious to a POSITA to utilize
11 vertical grooves that are spaced between a
12 flange and a bottom that cover between 20 to
13 80 percent of the wall in order to increase
14 structural stability of the capsule wall. So
15 all of that, those opinions are summarized in
16 detail in my declaration.

17 Q. You don't provide a calculation of
18 the exact percentage of Figure 6 BIS of the
19 wall covered by grooves; do you?

20 ATTORNEY BONNER: Objection. Form.

21 A. Well, what I've stated and what
22 I'll repeat here is summarized in
23 Paragraph 304. A person of ordinary skill in
24 viewing Rapparini would understand that
25 grooves of varying lengths are disclosed along

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2 the sidewall of the container. The lengths
3 would be selected according to a simple design
4 choice from a limited range of lengths
5 available, which would easily include the
6 range from 20 to 80 percent.

7 So that informs my opinion of --
8 of -- of this feature and also my obvious
9 opinion which I've previously stated.

10 Q. What's the length of range --
11 what's the range of length available?

12 ATTORNEY BONNER: Objection. Form.

13 A. Here it states that: There are
14 grooves of various lengths disclosed along the
15 sidewall, and they illustrate them short to
16 long. It's -- it's very easy for short to
17 long to be included within the range of 20 to
18 80 percent of 100 percent. So it's again a
19 trivial matter that we're talking about in
20 terms of ribs that are of varying lengths can
21 fit into this range. That's what I'm seeing.

22 - - -

23 (Whereupon, Rossi reference, is
24 received and marked as Exhibit 1041 for
25 Identification.)

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2 - - -

3 BY ATTORNEY BROOKS:

4 Q. Mr. Jobin, I've handed you what's
5 been previously marked as Exhibit 1041. It's
6 a copy of the Rossi reference.

7 Do you recognize it?

8 A. Yes.

9 Q. Do you understand that Rossi
10 teaches an edible product making machine?

11 ATTORNEY BONNER: Objection. Form.

12 A. What I see in the title is, it
13 says: System of Edible Product Making Machine
14 and Load Element and Process for Control of
15 Machine.

16 Q. The edible product making machine
17 would be, for example, a coffee making
18 machine?

19 A. Yes, I've cited to coffee machines
20 in particular and -- and that's described in
21 some of the cites within -- or some of the
22 texts within, yes.

23 Q. And a load element would be like a
24 single-use capsule?

25 A. My --

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2 ATTORNEY BONNER: Objection. Form.

3 A. My understanding of their use of
4 load element in this context is for a
5 single-use portion capsule. That's how I
6 understand it.

7 Q. And part of Rossi's teachings are a
8 method of preventing a single-use capsule from
9 being reused; correct?

10 A. I recall that one of the objectives
11 and capabilities enabled by this method is to
12 prevent reuse of the capsule.

13 Q. Rossi includes only one figure;
14 correct?

15 A. Correct. Figure 1.

16 Q. Figure 1 does not include a
17 depiction of a brewing chamber; correct?

18 ATTORNEY BONNER: Objection. Form.

19 A. Figure 1 is described. I do see a
20 reference to Figure 1 here, but Figure 1, as I
21 understand it to be, has a capsule and then it
22 has some type of identifier element on the
23 capsule, and then it has a device which
24 processes that information, and various parts
25 of that system are illustrated, at least

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2 called out in Figure 1.

3 Q. Figure 1 does not call out a
4 brewing chamber; correct?

5 ATTORNEY BONNER: Objection. Form.

6 A. Well, the text of Rossi talks about
7 the system of the present invention. It's
8 talking about using the single-use load
9 element to be fed into the machine for
10 preparation of an edible product. So it's
11 going into the machine and being held somehow.
12 It doesn't get into the specifics of that
13 because these teachings are broadly applicable
14 to various types of machines is what I
15 understand.

16 Q. Rossi doesn't get into the
17 specifics of how water is supplied to the
18 capsule either; does it?

19 ATTORNEY BONNER: Objection. Form.

20 A. Well, I mean, I remember a lot of
21 citations within Rossi that inform one as to
22 how the load element is used.

23 And so, for example, in
24 Paragraph 191 of my declaration, I cite to
25 Page 3 of this reference, which states: The

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2 capsule is sealed and inserted into the
3 machine, and the capsule is then pierced,
4 allowing water to pass through for the brewing
5 process.

6 The capsule contents then empty
7 into a different container, such as a cup.
8 Once the final product or beverage has been
9 brewed, Rossi's system varies operating
10 conditions, such as the amount of water,
11 temperature, and pressure of the water, and
12 the time required based on the desired
13 product.

14 So it's describing a brewing
15 process that is quite known to one of ordinary
16 skill in the art. It's controlling
17 conditions, like pressure and amount of water.
18 So it's referring to an espresso machine, in
19 my opinion, which pumps water through this
20 capsule.

21 Q. Rossi doesn't provide specifics as
22 to how the water is supplied to the capsule;
23 correct?

24 ATTORNEY BONNER: Objection. Form.

25 A. Well, it provides specifics as to

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2 the types of operating conditions that it can
3 control. It talks about mitigating safety
4 risks.

5 For example, on Page 4, it talks
6 about: The machine involves the use of high
7 pressure, high temperature water, which poses
8 a health hazard. Also on Page 3: High
9 pressure water is created by a pump. That's
10 my understanding of how Rossi understands the
11 machine which it's using.

12 Q. Rossi doesn't mention a pump;
13 correct?

14 ATTORNEY BONNER: Objection. Form.

15 A. As I've previously testified, the
16 word "pump" is not present here, but I
17 understand that a pump is present in Rossi in
18 the way that it describes the system.

19 Q. In Figure 1 of Rossi, there is not
20 an element for providing water; correct?

21 ATTORNEY BONNER: Objection. Form.
22 Relevance.

23 A. Figure 1 of Rossi is focused on
24 other elements I believe. Let's call some of
25 them out. It says that: The machine

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2 comprises recognizing means in the forms of an
3 infrared barcode reader seven.

4 Q. Does that provide water?

5 A. That's a barcode reader. Not a
6 water pump. It talks about eight, which is a
7 checking means stored in a control unit nine
8 of the machine. It talks about 10, activation
9 means. So these are -- this is teaching a
10 method, and these are the components that read
11 the code on the load element or portion
12 capsule and process that information to make a
13 determination about suitability for use, such
14 as I've cited, and also to control operating
15 parameters.

16 Q. But no elements to provide water;
17 correct?

18 A. Well --

19 ATTORNEY BONNER: Objection. Form.
20 Relevance.

21 A. It very specifically states that:
22 Through the control unit nine automatically
23 activate a cycle of production of the edible
24 product.

25 I mean, that's understood based on

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2 the context of the art that it's pumping water
3 into the capsule. That's my understanding.

4 - - -

5 (Whereupon, Jarisch 929 reference,
6 is received and marked as Exhibit 1006 for
7 Identification.)

8 - - -

9 BY ATTORNEY BROOKS:

10 Q. Mr. Jobin, you've been handed
11 what's been previously marked as Exhibit 1006.
12 It's been commonly referred to as the Jarisch
13 929 reference.

14 Do you recognize it?

15 A. Yes, I recognize Jarisch 929.

16 Q. If you look at Figures 3 and
17 Figures 5 of Jarisch --

18 A. Figures 3?

19 Q. Yes.

20 A. And?

21 Q. And 5.

22 A. Okay. I see Figure 3 and I see
23 Figure 5.

24 Q. You understand that each of these
25 figures depicts in part a capsule?

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2 A. It states in Paragraph 43 that:
3 Figure 3 illustrates a reading method of a
4 symbol on the lid surface of the capsule, so a
5 capsule is depicted in three, and it describes
6 Figure 5 in Paragraph 44 of Jarisch 929.

7 Figure 5 illustrates an alternate
8 position of the sequence on the capsule, in
9 particular when placed on the underside of the
10 rim of the capsule and the capsule fitted into
11 a capsule holder of the extraction device. So
12 a capsule is present in Figure 5 as well.

13 Q. Do you understand the capsule in
14 Figure 3 to be the same capsule that's
15 depicted in Figure 5?

16 ATTORNEY BONNER: Objection. Form.

17 A. I understand this reference to
18 disclose different embodiments of how a
19 capsule -- they call it a support or a code
20 can be utilized in the context of the capsule.
21 These are two different embodiments as I
22 understand it.

23 Q. Right, but is the only difference
24 between the capsule the placement of the
25 support or code?

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2 ATTORNEY BONNER: Objection. Form.

3 A. I have not -- I've not considered
4 the capsule in Figure 3. I don't have enough
5 information to answer that question.

6 Q. Do you understand that Figure 1
7 illustrates how a capsule would be implemented
8 in a brewing device of Figure 3 and Figure 5?

9 ATTORNEY BONNER: Objection. Form.

10 A. What Figure 1 shows to me is an
11 example of a beverage preparation system in
12 which this method can be used. It's a high
13 level sort of representation showing a capsule
14 that would be inserted into a brewing chamber.
15 It goes on to describe various details of that
16 system, centrifugal brewing system. It's --
17 you know, it's got a pump. It delivers heated
18 water to the capsule, those types of features
19 are illustrated there.

20 Q. In Figure 3, what's your
21 understanding of the portions that represent
22 the capsule?

23 ATTORNEY BONNER: Objection. Form.

24 A. So Figure 3 is calling out a couple
25 of features. I'm looking for the description

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2 of the -- capsule foil 60 and then it talks
3 about sequences 61, and then 65 is symbols 65.
4 There is a reflective beam 64. And a light
5 beam 63. And a sensor is 62.

6 So the capsule that is -- portions
7 of the capsule visible in Figure 3 are limited
8 to really the membrane 60, which is called
9 foil membrane or foil 60, and the symbols that
10 are upon that surface. That's what I can see
11 in that figure.

12 Q. What is the purpose of the gap
13 above the foil where it's surrounded by a lip?

14 ATTORNEY BONNER: Objection. Form.

15 A. I haven't relied on this figure, so
16 I haven't really looked at it in that level of
17 detail to know what that feature is. I see
18 that the capsule is placed within that
19 feature, but I don't -- I don't have -- it's
20 not called out here. So I don't have an
21 opinion on that.

22 Q. Do you understand for Figure 3 that
23 the sensor has a direct line of sight to the
24 symbols?

25 ATTORNEY BONNER: Object to form.

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2 A. Well, this embodiment is not one
3 that I've relied on for my obviousness
4 analysis, but what it's illustrating is a
5 63 -- what is 63?

6 Q. I thought you said it was light.

7 A. Yeah. Let's see. 63, light beam.
8 So you can see a light beam going from the
9 sensor to the symbol in Figure 3, but that's
10 all I can see here.

11 Q. And there is nothing between the
12 light beam and the symbols?

13 A. I don't know what would be the case
14 in use. It's illustrating it here to give an
15 idea of where the symbols are located, and
16 that's what I understand from this, but that
17 further information I don't know.

18 Q. You don't know whether there is
19 anything other than air that the light beam
20 passes through?

21 A. Again, I haven't cited this
22 particular embodiment. I don't -- yeah, I
23 don't see that described here, but I have to
24 study it further.

25 Q. You don't see what described here?

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2 A. Further description of the light
3 beam or the method of use for this particular
4 embodiment. My focus has been on Figure 5 in
5 this particular reference.

6 Q. Okay. So let's turn to Figure 5.
7 62 is the sensor?

8 A. 62 is the sensor, yes.

9 Q. Light travels from the sensor to a
10 mirror?

11 A. Yes.

12 Q. That light then travels through the
13 cell three?

14 A. Correct.

15 Q. It goes to what's labeled as 72;
16 correct?

17 A. Correct.

18 Q. And the light returns through the
19 cell three to the mirror and back to the
20 sensor?

21 A. That's my understanding as I've
22 illustrated in Page 106 of my '722
23 declaration. I've annotated that here to help
24 to clarify the light beam path.

25 Q. Cell three is a transparent

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2 material?

3 A. I see the word that's used by
4 Jarisch. It says that: The capsule support
5 chamber is transparent or otherwise light
6 conductive to allow the light beam to reach
7 the bottom side of the capsule rim and then
8 reflect back to an optical sensor, and that's
9 Page 106 of this reference or Paragraph 106 of
10 this reference.

11 Q. What do you understand 72 to be in
12 Figure 5?

13 A. Well, what it states here is that
14 the capsule of 72 --

15 Q. Uh-huh.

16 A. -- it says: The bottom side 72 --
17 this is in Paragraph 90 of the Jarisch 929
18 reference, the bottom side of 72 of the rim 73
19 of the capsule.

20 Q. Is 72 pointing to the support?

21 ATTORNEY BONNER: Object to form.

22 A. It says here: Capsule seven may
23 comprise a support mounted on -- I'm sorry, a
24 support mounted having at least one sequence
25 70 and mounted on the bottom side 72 of the

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2 rim.

3 So 72 is pointing generally to the
4 support, which is what I've understood to mean
5 the code, the optical code on the bottom side
6 of the rim.

7 Q. Does the cell three go all the way
8 up to 72 or is there a gap from where the cell
9 stops?

10 ATTORNEY BONNER: Objection. Form.

11 A. My understanding is that the
12 capsule is placed on the capsule support and
13 it's supported by the rim as it's in the
14 capsule support. So it's not a gap that I can
15 understand to be there.

16 - - -

17 (Clarification requested by the
18 stenographer.)

19 - - -

20 A. I don't understand it to be a gap.
21 I understand that the rim is on the support.

22 Q. It rests on the cell?

23 ATTORNEY BONNER: Objection. Form.

24 A. That -- just checking here. They
25 call it the capsule support chamber

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2 centrifugal cell three. So yes, it's resting
3 on that centrifugal cell three in this figure.

4 Q. Do you understand that the support
5 in Jarisch 929 is read sequentially as the
6 cell rotates?

7 ATTORNEY BONNER: Objection. Form.

8 A. What I've cited in Paragraph 199 of
9 my '722 declaration, for example, is that
10 Jarisch 929 also discloses repeating the
11 optical code around the circumference of the
12 bottom of the flange.

13 - - -

14 (Clarification requested by the
15 stenographer.)

16 - - -

17 A. Repeating this information allows
18 for greater reliability of reading during the
19 rotation that occurs during centrifugal
20 brewing.

21 So what that means to me is that
22 it's rotating the capsule and rotating the
23 capsule support so that the code is read as
24 it's being rotated.

25 Q. Does Jarisch 929 teach the type of

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2 sensor that's necessary to read the support?

3 ATTORNEY BONNER: Object to the form.

4 A. Well, it teaches different
5 embodiments.

6 What I understand here is that,
7 yeah, this particular code is an optical
8 sensor, is what I understand. I'm just
9 looking for the exact words that it uses, but
10 it's reading an optical code using that
11 sensor. Let me see the callout again. It
12 says here: Sent by the light source of the
13 sensor 62, and then it's received by the
14 sensor. So it's a light sensor.

15 A variety of different types of
16 them are described above in examples. So I
17 think that it's meant to be relatively open
18 here in this particular embodiment, so I
19 understand it to be a light sensor.

20 Q. It would be the type of light
21 sensor known at the time?

22 A. Certainly.

23 Q. He's not teaching a new light
24 sensor?

25 ATTORNEY BONNER: Objection. Form.

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2 A. He's describing a variety of
3 different light sensors that could be used.
4 Those would be known to one of ordinary skill
5 at the time.

6 Q. Is Jarisch 929 teaching a new type
7 of coding system?

8 ATTORNEY BONNER: Objection to the
9 form.

10 A. Jarisch 929 is not particularly
11 specific about exact details of the code
12 system other than describing the types of
13 different codes or the types of information
14 that could be encoded. It's describing --
15 this is Jarisch 929 describing various
16 features that I've outlined in detail in my
17 declarations.

18 Q. Other than specifying the sensor,
19 does Jarisch 929 describe in any detail how it
20 reads the code sequentially?

21 ATTORNEY BONNER: Object to the form.

22 A. I'm just looking at Jarisch, and on
23 Page 5 there is a variety of disclosure, which
24 is directed towards how the code is
25 constructed, how it's read, and in the case of

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2 Paragraph 68, how it's repeated along the
3 circumference in order to ensure a reliable
4 reading.

5 So it goes into various details
6 about the code and how it is positioned, how
7 it is read, how it is formed. Those are
8 all -- those are all present here in this
9 disclosure.

10 Q. Do you understand that Jarisch
11 teaches placing the support on a flat surface?

12 ATTORNEY BONNER: Objection. Form.

13 A. I don't recall anything specific to
14 a flat surface. Do you have something to
15 point me to?

16 Q. 72. Paragraph 72, Jarisch.

17 A. Well, it talks about certain
18 preferences, but it doesn't seem to limit it
19 in any way.

20 Q. In Figure 5, you understand that 69
21 is what is identified as the body for Jarisch
22 929?

23 ATTORNEY BONNER: Objection. Form.
24 Relevance.

25 A. It states in Paragraph 49: The

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2 capsule comprises a cup-shaped body 69,
3 extended by a flange-like rim 73. So Item 65
4 is called a cupped shaped body.

5 Q. 69 you mean?

6 A. 69 is called a cup-shaped body here
7 in Jarisch 929.

8 Q. And that body includes the rim?

9 ATTORNEY BONNER: Objection. Form.

10 A. It says here: Extended by a
11 flange-like rim 73. It identifies a rim as a
12 separate feature of the capsule.

13 Q. Well, it says that the body is
14 extending by a flange-like rim 73?

15 A. Well, I understand that the flange
16 is formed from the same material as the body,
17 but that is a feature which is identified
18 separately in the figure.

19 Q. If you go to Paragraph 50, in the
20 middle there it says: This circumference can
21 be on the lid, e.g., membrane or on the body
22 part, such as on the flange-like rim.

23 Do you understand that to teach
24 that the flange-like rim is a part of the
25 body?

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2 ATTORNEY BONNER: Objection. Form.

3 A. Well, again, I'm evaluating it here
4 according to how Jarisch was describing it.
5 To the extent that these terms are claim
6 terms, I would want to visit those in the
7 context of how they are used, but here, it's
8 calling out a separate flange-like rim to
9 identify it as a feature of the capsule and
10 perhaps of the capsule body, but that's what I
11 understand it to be. It's a separate called
12 out feature for helping the user -- the reader
13 understand the figure.

14 Q. You offered opinions regarding
15 pyramidal plate in Jarisch 929.

16 Do you recall that?

17 ATTORNEY BONNER: Objection. Form.

18 A. I have to see where it's talking
19 about that. I don't recall specifically where
20 it would be in my declaration.

21 ATTORNEY MCGRAW: Also, we've been
22 going a little over an hour. If we can take a
23 break when you get a chance?

24 ATTORNEY BROOKS: Yeah, let me finish
25 this line of questioning.

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2 BY ATTORNEY BROOKS:

3 Q. If you go to Paragraph 17 of
4 Jarisch 929, the second-to-last sentence, it
5 refers there to a pyramidal plate.

6 Do you see that?

7 A. I see that, yes.

8 Q. What is your understanding of a
9 pyramidal plate?

10 ATTORNEY BONNER: Objection. Form.
11 Relevance.

12 A. Well, what I see Paragraph 17
13 discussing is that: Locating the support
14 close to the peripheral edge of the capsule is
15 advantageous because it offers a large area
16 for the symbols and is less prone to damages
17 caused by the processing module and in
18 particular by the pyramidal plate and to
19 ingredients projections.

20 So here they're talking about
21 moving the support away from the area where
22 the liquid would be present during the brewing
23 process, and it says that: The reliability of
24 the readings are improved. So, you know, it's
25 talking about staying away from where the

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2 processing is happening. So the fluid
3 injection or the fluid being -- moving out of
4 the capsule. That would be my understanding.

5 Q. Does Jarisch 929 depict the
6 pyramidal plate in any of the figures?

7 A. It --

8 ATTORNEY BONNER: Objection. Form.
9 Relevance.

10 A. It's not something that I see
11 illustrated here, and my understanding and the
12 teachings of this are just that it's telling
13 you advantages to moving the code to the
14 proposed locations.

15 Q. Do you know whether the Jarisch
16 reference, 1005, discloses pyramidal plate?

17 ATTORNEY BONNER: Objection. Form.

18 A. Which reference again, please?

19 Q. Jarisch, Exhibit 1005.

20 A. I don't have that in front of me.

21 Q. Do you recall?

22 A. I don't recall that, no. I'd have
23 to look at either the reference or my
24 declarations to see if I referred to it, but I
25 don't recall discussing it in the

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2 declarations.

3 Q. Do you recall in Rossi disclosing a
4 pyramidal plate?

5 ATTORNEY BONNER: Objection. Form.
6 Relevance.

7 A. I don't recall.

8 Q. Do you recall whether Yoakim
9 discloses a pyramidal plate?

10 ATTORNEY BONNER: Objection. Form.
11 Relevance.

12 A. I don't recall.

13 ATTORNEY BONNER: Let's take a break.

14 CERTIFIED STENOGRAPHER: Off the
15 stenographic record at 2:04 p.m.

16 - - -

17 (Whereupon, a short recess was
18 taken.)

19 - - -

20 CERTIFIED STENOGRAPHER: Back on the
21 stenographic record at 2:22 p.m.

22 - - -

23 (Whereupon, Jarisch reference, is
24 received and marked as Exhibit 1005 for
25 Identification.)

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2 - - -

3 BY ATTORNEY BROOKS:

4 Q. Welcome back, Mr. Jobin.

5 A. Thank you.

6 Q. I've handed you what's been
7 previously marked as Exhibit 1005.

8 It is the Jarisch reference.

9 Do you recognize this document?

10 A. Yes, this is Exhibit 1005,
11 so-called Jarisch reference. This is
12 distinguished from the one previously
13 described, which was Jarisch 929.

14 Q. Is it your understanding that
15 Figure 4 of Jarisch depicts the same image as
16 in Figure 5 of Jarisch 929?

17 A. I have not previously compared the
18 figures between Jarisch and Jarisch 929, but
19 it is the same illustration that I can tell,
20 and I describe the light path in the same way.
21 So it's -- it's essentially the same as far as
22 I can tell.

23 Q. Does Jarisch teach a new type of
24 coding system?

25 ATTORNEY BONNER: Objection. Form.

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2 Relevance.

3 A. I haven't opined on many details of
4 that. I'm focused on the location of the code
5 under the rim and combining that with Yoakim
6 in my obviousness determinations. Jarisch, as
7 I've stated in my declaration for the '830
8 patent, says -- generally discloses an
9 approved way to position an optical identifier
10 in a capsule used in the centrifugal-style
11 brewing system in order to improve the ability
12 to read and retrieve information about the
13 capsule and adjust working parameters of the
14 machine.

15 So it discloses that optical codes
16 may be identified by the brewing device, and
17 it then talks about how that identification
18 may include the ability to recognize useful
19 information beyond brewing parameters, such as
20 type of capsule inserted into the beverage
21 machine.

22 So Jarisch is directed generally
23 towards identification on the capsule and it
24 describes some very specific and improved ways
25 of doing so.

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2 Q. Does Jarisch describe the use of
3 any specific optical code?

4 ATTORNEY BONNER: Object to the form.

5 A. Jarisch like -- Jarisch describes a
6 variety of different optical code positions,
7 and it describes different specific means for
8 reading the code. It's -- it's -- it's -- it
9 talks about location. It talks about the type
10 of code. It talks about the type of reader,
11 different aspects of the optical code in
12 specific.

13 Q. What do you understand the type of
14 code that Jarisch is describing?

15 ATTORNEY BONNER: Objection to the
16 form.

17 A. Well, again, it describes a variety
18 of -- it calls -- it calls for a code. That's
19 sort of the generic term used, and it calls
20 for and highlights different types of code
21 embodiments that are described.

22 I have discussed other aspects of
23 this in combination, but I'm not as focused on
24 specific type of code in my analysis.

25 Q. Is the code taught by Jarisch a new

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2 code or one that was known at the time?

3 ATTORNEY BONNER: Objection. Form.
4 Foundation.

5 A. I'd have to say I don't know which
6 code you're referring to.

7 Q. The code that Jarisch teaches to
8 place on the rim of a capsule?

9 A. Right.

10 ATTORNEY BONNER: Objection to form.
11 Foundation.

12 A. Right, but there is a lot of
13 different embodiments and it's talk about
14 different means of doing it. I don't think
15 it's so limited.

16 Q. Is it your understanding that
17 Jarisch is not limited to the type of code
18 that's placed on the capsule?

19 ATTORNEY BONNER: Objection. Form.
20 Foundation. Relevance.

21 A. All of my discussion in my
22 declaration, for example, in the '830
23 declaration, it talks about the Jarisch code
24 and the locations, and it's defined as an
25 optical code, but I don't cite to specific

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2 embodiments of the code. So I haven't really
3 formed an opinion on to be able to answer that
4 question.

5 Q. Are you familiar with the name
6 Alfred Yoakim?

7 A. Well, Yoakim is the inventor on one
8 of the patents that I have referenced in this
9 case.

10 Q. Had you heard of Mr. Yoakim prior
11 to your work on this case?

12 ATTORNEY BONNER: Objection. Form.
13 Relevance.

14 A. The name is not familiar to me
15 outside of the reference from this case.

16 Q. Have you ever met Mr. Yoakim?

17 A. No.

18 ATTORNEY BONNER: Objection. Form.
19 Relevance.

20 Q. Are you familiar with the name
21 Christian Jarisch?

22 A. Christian Jarisch is the name that
23 appears on this Jarisch reference and on the
24 Jarisch 929 reference.

25 Q. Had you heard of Mr. Jarisch prior

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2 to your work on this case?

3 ATTORNEY BONNER: Objection. Form.

4 Relevance.

5 A. I'm not familiar with Mr. Jarisch

6 outside of this case.

7 Q. Have you ever spoken to

8 Mr. Jarisch?

9 A. No.

10 Q. How about Arnaud Gerbaulet?

11 ATTORNEY BONNER: Objection.

12 Relevance.

13 Q. Are you familiar with him?

14 A. Again, only in the sense that his

15 name is present on the Jarisch and Jarisch 929

16 references, but I've never met him.

17 Q. Okay. How about Singh Panesar, are

18 you familiar with him?

19 ATTORNEY BONNER: Objection.

20 Relevance.

21 A. The name Panesar is familiar to me

22 in this case in terms of the name, but I don't

23 recall exactly. There was a reference for

24 Panesar. Maybe an inventor related to one of

25 the references in this case, but you'd have to

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2 point me directly to it.

3 Q. Have you ever met Mr. Panesar?

4 ATTORNEY BONNER: Objection.

5 Relevance.

6 A. I've not met Mr. Panesar.

7 Q. Are you familiar with Mr. Panesar
8 outside of this proceeding?

9 ATTORNEY BONNER: Objection.

10 Relevance.

11 A. No, I've never met or nor do I
12 recall the name Panesar prior to this case.

13 Q. What about Dov Glucksman? Do you
14 know him?

15 ATTORNEY BONNER: Objection.

16 Relevance.

17 A. That name isn't familiar to me.

18 Q. Giampiero Rossi?

19 A. I'm sorry, did you say Glucksman or
20 Glucksman?

21 Q. Glucksman.

22 A. That name is familiar, but I don't
23 remember exactly where. I think there is one
24 of the background art references that was
25 Glucksman, but I can't recall specifically.

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2 Q. Outside of this proceeding, had you
3 ever encountered Mr. or Dov Glucksman?

4 ATTORNEY BONNER: Objection.
5 Relevance.

6 A. No, I've not encountered any
7 Glucksman.

8 Q. How about Giampiero Rossi?

9 ATTORNEY BONNER: Objection.
10 Relevance.

11 A. Rossi is one of the references, and
12 so presumably I'd have to look at the
13 reference, but presumably that's the author or
14 the inventor for the Rossi patent.

15 Q. Have you ever met Mr. Rossi?

16 ATTORNEY BONNER: Objection.
17 Relevance.

18 A. I've never met Mr. Rossi.

19 Q. And Gino Rapparini?

20 ATTORNEY BONNER: Objection.
21 Relevance.

22 Q. Do you know him?

23 A. Gino Rapparini is the named
24 inventor for the Rapparini reference in this
25 case. I have not met, nor am I familiar with

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2 Mr. Rapparini outside of this case.

3 - - -

4 (Whereupon, Yoakim reference, is
5 received and marked as Exhibit 1004 for
6 Identification.)

7 - - -

8 BY ATTORNEY BROOKS:

9 Q. Mr. Jobin, I've handed you what's
10 been marked as Exhibit 1004. It's the Yoakim
11 reference.

12 Do you recognize this document?

13 A. Yes, I recognize Yoakim.

14 Q. This is the Yoakim reference that
15 we've been talking about that you relied upon
16 in forming your opinions?

17 A. Yes.

18 Q. I'd like to direct your attention
19 to Figure 8.

20 A. Okay.

21 Q. What is Figure 8 of Yoakim?

22 A. Yoakim at Paragraph 37 describes
23 Figure 8 as a detailed cross-sectional view of
24 the system of the invention in a second
25 embodiment.

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2 Q. Do you understand Figure 8 to
3 depict a prototype?

4 ATTORNEY BONNER: Objection. Form.
5 Relevance.

6 A. Figure 8 is described in detail
7 within Yoakim, details about the brewing
8 operation of the system. It's not described
9 as a prototype. I haven't formed any opinion
10 on whether this particular illustration
11 depicts a prototype or not.

12 Q. What do you understand 523 --
13 element 523 in Figure 28 -- Figure 8 of Yoakim
14 to depict?

15 A. Just states that it is connection
16 means --

17 (Loud coughing.)

18 A. Connection means 523 can be
19 provided. So it's described as a connection
20 means that connects the capsule machine
21 together.

22 Q. Do you understand that to be a wing
23 nut?

24 ATTORNEY BONNER: Objection. Form.

25 A. Yoakim doesn't describe it as such.

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2 It just says connection means.

3 Generally speaking, I think that
4 it's trying to be more inclusive in the way
5 that it's describing Figure 8. Connection
6 means is broader than wing nut. So while it's
7 drawn a particular way, the words that are
8 used are broader than the concept of wing
9 nuts. So I read it in the light of the
10 specification as broader than wing nut.

11 Q. Do you think that Figure 8 depicts
12 a final product?

13 ATTORNEY BONNER: Objection. Form.
14 Relevance.

15 A. Generally speaking, the figures are
16 focused on specific aspects of the invention.
17 They're not depicting a full brewing device
18 with all of the parts necessary. It's silent
19 as to the other components because those are
20 something that's understood. They're focusing
21 on specific elements and, therefore, the
22 illustration is narrower in scope than a
23 larger device.

24 Q. If you go to Figure 23 of Yoakim.

25 A. Okay.

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2 Q. Figure 23 illustrates teeth around
3 the capsule.

4 A. There are features that are
5 depicted. Is there anything specific you're
6 pointing to?

7 Q. The scalloped region around the top
8 of the capsule, do you understand those to be
9 teeth? Item 75 on Figure 23.

10 A. Okay. I'll look at the description
11 of that to be sure that I understand how the
12 inventor is describing those features.

13 In Paragraph 216 of the Yoakim
14 reference, it states that: The capsule of
15 Figure 23 comprises a toothed surface of
16 complementary shape. Teeth 750 on the outer
17 surface of the capsule.

18 So those are the words that are
19 used to describe this particular embodiment in
20 Yoakim by Yoakim.

21 Q. So do you understand those to be
22 teeth?

23 A. In the context of how Yoakim is
24 describing them, it says: Teeth 750. I have
25 used Figure 23 and evaluated Figure 23 for

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2 some of the embodiments in these declarations
3 and have identified those features as using
4 the claim language.

5 Q. Do you understand that the teeth
6 750 in Figure 23 are in the flange of the
7 capsule?

8 ATTORNEY BONNER: Objection. Form.

9 A. I'm going to go to where I describe
10 and discuss Figure 23 in my declaration. Is
11 there a particular declaration that you'd like
12 to discuss because there is a couple of them
13 that reference this figure?

14 Q. I'd like to discuss the Yoakim
15 reference, Exhibit 1004.

16 A. Okay.

17 Q. Figure 23.

18 So my question is: Are the teeth
19 750 in Figure 23 in the flange of the capsule?

20 ATTORNEY BONNER: Objection. Form.

21 A. What I cite in Yoakim is from
22 Paragraph 215: Yoakim explains that the teeth
23 can be positioned along the body of the
24 capsule and extend into the border of the
25 capsule body wall and capsule flange.

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2 The quote is: The toothed
3 structure comprises a series of teeth which is
4 positioned below the edge or rim 72 of the
5 body of the capsule. The teeth are placed
6 along the whole periphery of the body of the
7 capsule.

8 Q. So is it your opinion that the
9 teeth are not part of the flange of the
10 capsule?

11 A. Well, I think that the words that I
12 cited from Yoakim are clear, and what I also
13 note is that Yoakim describes other
14 embodiments of these elements. They call
15 them -- they say the shape of the teeth could
16 be slightly triangular, oval, rectangular,
17 pyramidal. It should be noticed that the
18 teeth could be replaced by other equivalent
19 structures, such as a series of elements and
20 relief and/or hollow.

21 So what this is saying is yes, you
22 have this particular figure. It's describing
23 that these teeth can have different shapes,
24 take different forms, and I further cited here
25 in 215 that they are positioned below the edge

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2 or rim 72 of the body of the capsule.

3 Q. The teeth 750 are located in the
4 sidewall of the capsule?

5 A. It says here in Paragraph 215: The
6 teeth are placed along the whole periphery of
7 the body of the capsule.

8 Q. So does that mean the teeth are a
9 part of the flange or are part of the
10 sidewall?

11 ATTORNEY BONNER: Object to form.

12 A. What 215 states is that: The
13 series of teeth positioned below the edge or
14 rim 72 of the body of the capsule. The teeth
15 are placed along the whole periphery of the
16 body of the capsule. That's what it states.
17 That's what I understand.

18 Q. Does Yoakim teach what the flow
19 path of the beverage would be in the Figure 23
20 embodiment?

21 ATTORNEY BONNER: Objection. Form.

22 A. The general teachings in Yoakim
23 that I recall talk about fluid being injected
24 near the centerline traversing the body and
25 going up the sidewall. That's what I recall

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2 in the general teachings. If there is a
3 specific embodiment, I'd have to look.

4 Q. What impact, if any, would the
5 teeth have on the beverage exiting of the
6 sidewall in Figure 23?

7 A. Here you're getting into my
8 opinions that are specific to one of the other
9 declarations. So I'll have to find those.

10 Look for the declarations. The
11 general answer is that the fluid flows up the
12 sidewall, and if there is grooves in the
13 sidewall, it flows into the grooves and is
14 directed through the grooves and up the
15 sidewall is how I would -- how I would
16 characterize it.

17 Q. What impact, if any, do the teeth
18 have on the ability of the -- when you're
19 referring to grooves, you're talking about the
20 teeth?

21 A. I have cited these particular --
22 this particular figure and some of the written
23 description of this figure in my
24 identification of claim limitations that
25 involve the term "grooves."

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2 Q. What happens when the fluid flows
3 into the grooves?

4 ATTORNEY BONNER: Objection. Form.

5 A. There is only one place in my
6 declaration where I opine on that. I'd like
7 to get to that before I answer because it's
8 specific to that claim language, and I think
9 it's important to use the claim language when
10 discussing the answer.

11 It has to do with the claim term of
12 turbulence.

13 All right. Well, I'm not finding
14 that particular claim limitation here. I
15 think it's one of the dependent claims. In
16 short, when grooves are present, and I'm not
17 talking specifically about this embodiment of
18 teeth, but grooves in general, I have
19 identified grooves and turbulence as being the
20 result of fluid flowing into and being
21 redirected by features inside the capsule
22 wall. That's the general gist, and I would
23 have to look at the specific language if you
24 have any questions about it.

25 Q. I'd like to direct your attention

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2 to Figure 61 of Yoakim.

3 A. Okay.

4 Q. Yoakim doesn't say whether

5 Figure 61 is drawn to scale; correct?

6 ATTORNEY BONNER: Objection. Form.

7 A. My understanding is that this is a
8 figure to describe the elements that are being
9 described in words to help to understand these
10 elements. I don't know that it's describing
11 it as a scaled drawing.

12 Q. Figure 61 depicts a central
13 injection needle that injects water into the
14 capsule; correct?

15 A. This particular feature in
16 Figure 61 is not called out specifically. It
17 is in Figure 62, which is a similar
18 illustration, and there we're pointing at
19 feature 200. Just looking for the term that's
20 used here. 200 is a central injection needle
21 capable of being introduced precisely along
22 the axis of rotation I of the capsule.

23 Q. So the central injection needle
24 enters the center of the capsule?

25 A. According to the teachings of

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2 Yoakim, yes. It's piercing the center -- on
3 the center axis of the capsule. In this case,
4 it's piercing through the membrane.

5 Q. And when the central injection
6 needle pierces through the membrane, how tight
7 of a fit would that be?

8 ATTORNEY BONNER: Objection. Form.

9 A. That's not described in Yoakim.
10 It's based on the characteristics of the
11 needle and the membrane itself.

12 Q. And similarly on the periphery
13 there is outlet perforators 221 that would
14 also puncture the membrane?

15 A. Yeah, they call it perforators 221
16 that perform outlet perforations, and yeah, so
17 221, which is not called out in Figure 61, but
18 it is called out in Figure 62, those are
19 needles that are piercing the membrane.

20 Q. And the central injection needle
21 and the perforators remain in the capsule
22 while it is rotating?

23 ATTORNEY BONNER: Objection. Form.

24 A. The -- Yoakim describes
25 consistently that the top part of the brewing

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2 chamber is fixed vertically relative to the
3 bottom part and that it rotates. So the
4 perforators remain in the capsule membrane
5 during brewing.

6 Q. Do you see there in Figure 61 ID4?

7 A. Yes, I see that.

8 Q. That's the identification means
9 that's on the capsule memory?

10 A. According to Paragraph 521, ID4 is
11 an identification means.

12 Q. An example of that would be a
13 barcode?

14 A. They've described a variety of
15 identification means. I'd have to go
16 specifically to see where I've cited that, but
17 I recall different identification means being
18 anticipated here.

19 Q. Is the identification means in
20 Yoakim read while the capsule is stationary or
21 rotating?

22 ATTORNEY BONNER: Objection to the
23 form.

24 A. It's my recollection that Yoakim is
25 silent as to when the reading occurs here.

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2 The configuration shown is next to the
3 perforating element, which remains in place
4 during brewing. So that's what I've observed
5 from this figure.

6 Q. Are you familiar with the term
7 "prewetting"?

8 ATTORNEY BONNER: Objection. Form.

9 A. I am familiar with the term, yes.

10 Q. What is prewetting?

11 A. Well, I haven't defined it. I
12 don't think it's a claim term here, but my
13 understanding is that you're injecting water
14 into the capsule prior to -- you know, for a
15 time to let it soak and then you carry on with
16 the rest of the procedure.

17 Q. Does Yoakim teach a prewetting
18 step?

19 ATTORNEY BONNER: Objection. Form.

20 A. I don't recall citing to a
21 prewetting step, no.

22 Q. Do you recall whether Yoakim
23 teaches a prewetting step?

24 ATTORNEY BONNER: Objection. Form.

25 A. That's what I just stated. I don't

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2 recall that it's teaching a prewetting step.

3 Q. If you look at Yoakim

4 Paragraph 530, the third sentence there says:

5 A prewetting of the capsule was carried out

6 for a few seconds.

7 Do you see that?

8 A. I see that.

9 Q. Does that refresh your recollection
10 as to whether or not Yoakim teaches a
11 prewetting step?

12 ATTORNEY BONNER: Objection. Form.

13 A. Well, I see it mentioned here in
14 this example, which I'll state is in the last
15 paragraph of the specification before the
16 claims, so it's showing an example and it
17 mentions prewetting carried out for a few
18 seconds.

19 Q. Do you have an understanding from
20 Paragraph 530 when in Yoakim's brewing process
21 prewetting occurs?

22 ATTORNEY BONNER: Objection. Form.
23 Foundation.

24 A. I'm just reading through this.
25 This example gives a particular order of

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2 events. It talks about prewetting and then it
3 talks about centrifugation. It doesn't
4 mention when the scanning is taking place.

5 Q. Do you recall Yoakim teaches a
6 control unit?

7 A. In Paragraph 522, it describes a
8 control means. I mean, it's a necessary thing
9 in my view. You've got a control means to be
10 involved in the various steps of the -- of the
11 process, but yeah, it's mentioned here.

12 Q. What is the purpose of the control
13 means?

14 ATTORNEY BONNER: Objection to the
15 form.

16 A. Well, for example, in that same
17 Paragraph 522: Select the control of a volume
18 of liquid injected into the capsules carried
19 out by the control means selectively
20 activating the pump. So that control means is
21 interpreting the information that it reads
22 from the identifier and activating the pump as
23 a consequence of reading that. That's how I
24 understand it to work.

25 Q. Does Yoakim say how the control

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2 means activates the pump?

3 ATTORNEY BONNER: Objection. Form.

4 A. I'm not sure I understand the
5 question.

6 Q. Does Yoakim inform a person of
7 ordinary skill in the art how the control
8 means activates the pump?

9 A. Well, it's not getting into the
10 detail of the software, if that's what you
11 mean, but it's talking about having a control
12 means. In this particular paragraph, it's
13 teaching -- you know, it's teaching that there
14 is identification means and how that
15 information is interpreted and used.

16 I haven't cited in particular the
17 how of control means because it's not central
18 to my analysis.

19 Q. Do you agree that Yoakim teaches
20 multiple device embodiments?

21 ATTORNEY BONNER: Objection. Form.

22 A. Yoakim is a lengthy reference with
23 a variety of embodiments that are directed
24 towards different aspects of the invention,
25 and I've cited those that are relevant to

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2 particular claims.

3 The thing that I've noticed is that
4 there is a lot of referencing of other
5 aspects, especially the different types of
6 capsules and how they're used and how
7 different volumes are accommodated in
8 different embodiments. So I see that as kind
9 of a narrative that it's describing to teach
10 one of ordinary skill how to build a device
11 according to the invention.

12 Q. If you'd turn your attention to
13 Figure 4 of Yoakim.

14 A. Okay.

15 Q. Is there a capsule depicted here?

16 A. Well, Figure 4 is directed to a
17 more sophisticated system of the invention
18 according to Paragraph 187. It's talking
19 about the brewing device and the various
20 features. It's talking about later in that
21 paragraph when the needles 51 are engaged in
22 the capsule, the lid is driven in rotation by
23 the capsule, which is also driven by the
24 rotor.

25 So it's anticipating obviously

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2 putting a capsule into the capsule holder and
3 being pierced by needles according to what's
4 described here.

5 Q. Does Figure 4 depict a capsule in
6 the device?

7 ATTORNEY BONNER: Objection. Form.

8 A. Well, one understands when one is
9 reading a figure it's read in light of the
10 written description to understand what's being
11 communicated.

12 Here for clarity, they're showing
13 the capsule holder and needles without the
14 capsule present, but it's mentioned right in
15 the text that a capsule would be used in this
16 device, which only makes sense given the
17 configuration.

18 Q. Figure 4 does not depict a sensor
19 for reading an identification means on a
20 capsule; correct?

21 ATTORNEY BONNER: Objection. Form.

22 A. I've not cited to Figure 4 for that
23 claim element.

24 Q. Do you agree that Figure 4 does not
25 depict a sensor for reading an identification

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2 means on a capsule?

3 ATTORNEY BONNER: Objection. Form.

4 A. I don't see one depicted here, but
5 I have cited it in other -- in another
6 embodiment.

7 Q. Does Yoakim teach how to add a
8 sensor for detecting an identification means
9 to the embodiment of Figure 4?

10 ATTORNEY BONNER: Objection. Form.

11 A. Yoakim teaches a variety of things
12 about identification means in sensors, and it
13 is not the focus of this particular figure,
14 but the overall teachings of Yoakim inform one
15 of ordinary skill what the sensor is, what
16 it's for, and how it's used.

17 Q. If you could turn to Figure 8 of
18 Yoakim.

19 A. Okay.

20 Q. Is there a capsule depicted in
21 Figure 8 of Yoakim?

22 ATTORNEY BONNER: Objection. Form.

23 A. Well, Figure 8 is described in a
24 variety of paragraphs starting about 204 and
25 through 208. So all of that written

1 MICHAEL J. JOBIN | 09.19.24
2 description talks about integrating capsules
3 into this device described here or capsules
4 described in figures just before Figure 8,
5 such as Figure 7, and there is -- certainly a
6 capsule would be used in this device based on
7 the context of what is being discussed in
8 Yoakim.

9 This particular illustration does
10 not show the capsule because they're focusing
11 on other aspects of this brewing device is my
12 understanding.

13 Q. What do you understand Element 3 in
14 Figure 8 to be?

15 A. Interesting, it says: Capsule --
16 capsule three. All right. So it appears I've
17 misinterpreted this image. This image is
18 showing a capsule which is mounted between a
19 bottom plate and a top plate and brewed
20 accordingly. That's because I haven't looked
21 at this one in a bit.

22 Q. Do you understand the capsule in
23 Figure 8 to be the same one that's illustrated
24 in Figure 10?

25 A. In Figure 10?

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2 Q. Yes.

3 ATTORNEY BONNER: Objection. Form.

4 A. Well, I haven't cited to Figure 10.
5 Looking at the drawing, it looks similar to at
6 least the body of the capsule that's shown
7 there. So I'd have to read more to be able to
8 answer accurately, but that appears to be the
9 case.

10 ATTORNEY BONNER: Ian, we've been going
11 about an hour whenever is a good chance to
12 take a break.

13 ATTORNEY BROOKS: Okay. Let me ask
14 some more questions.

15 BY ATTORNEY BROOKS:

16 Q. Does the capsule in Figure 8 have a
17 flange or a rim?

18 ATTORNEY BONNER: Objection. Form.

19 A. Well, the figure describes the
20 outer edge of the body 87 that could be
21 interpreted as a flange feature. It's
22 projecting from the main body in a way that's
23 similar, but I haven't analyzed it further
24 than that.

25 Q. Figure 8 does not show an

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2 identification means on the capsule?

3 ATTORNEY BONNER: Objection. Form.
4 Relevance.

5 A. Well, it talks about a shape of the
6 gripping means, a central recess, and arched
7 recesses, but I haven't analyzed that as to
8 whether that's identification means, but there
9 are complimentary shapes to which it fits when
10 it goes into the machine.

11 Q. Figure 8 doesn't depict a sensor in
12 the device for detecting the identification
13 means?

14 ATTORNEY BONNER: Objection. Form.
15 Relevance.

16 A. I don't -- I don't recall any
17 mention of the sensor in this embodiment.

18 Q. Okay.

19 ATTORNEY BROOKS: We can take a break.

20 CERTIFIED STENOGRAPHER: Off the
21 stenographic record at 3:17 p.m.

22 - - -

23 (Whereupon, a short recess was
24 taken.)

25 - - -

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2 CERTIFIED STENOGRAPHER: Back on the
3 stenographic record at 3:43 p.m.

4 BY ATTORNEY BROOKS:

5 Q. Welcome back, Mr. Jobin.

6 A. Thank you.

7 Q. Before our break, we were in the
8 Yoakim reference.

9 I'd like to direct your attention
10 to Figure 28 of Yoakim.

11 A. Okay.

12 Q. Would you agree that the capsule
13 depicted in Figure 28 is different from the
14 one that would be used with the devices in
15 Figures 4 and 8?

16 ATTORNEY BONNER: Objection. Form.

17 A. I haven't considered that
18 particular combination of that figure with 4
19 and 8. It's still a rotationally symmetric
20 capsule. It's roughly the size and shape of
21 the capsule holder in Figure 4. It's pierced
22 in the center. It's anticipating to be
23 pierced around the periphery like Figure 4.

24 I think that Figures 39 and
25 Figure 4 are recently compatible in that

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2 regard, and as for Figure 8, I haven't
3 considered that one in detail.

4 Q. If you'd turn your attention to
5 Figure 34.

6 A. Figure 34. Okay.

7 Q. Figure 34 is an example of a device
8 where water is injected into the center of the
9 capsule and then beverage exits the capsule at
10 the periphery where the piercing members are?

11 ATTORNEY BONNER: Object to form.

12 A. Like many of the other embodiments
13 in Yoakim, that general architecture is the
14 same, yes.

15 Q. Figure 34 does not depict the
16 sensor in the device for detecting an
17 identification means; correct?

18 ATTORNEY BONNER: Objection. Form.

19 A. I'd have to check the specifics to
20 see if it references a center in that specific
21 embodiment, but overall, Yoakim teaches
22 sensors in the context of these devices.

23 Q. Do you see anywhere a sensor would
24 be placed in the embodiment of Figure 34?

25 ATTORNEY BONNER: Objection. Form.

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2 A. Well, this is one section view. It
3 could be that on the other section or another
4 section there is plenty of room. I don't
5 know. I haven't evaluated that in particular.

6 Q. If you'd turn to Figure 35.

7 A. Okay.

8 Q. Figure 35, again, depicts an
9 embodiment where water is injected in the
10 capsule in the center and beverage exits at
11 the periphery where the piercing members are?

12 ATTORNEY BONNER: Objection. Form.

13 A. Generally, I understand this to
14 follow the same general architecture that's
15 described in other embodiments in Yoakim, that
16 water is injected into the center axis of the
17 capsule and exits pierced holes or some other
18 means at the periphery of the capsule.

19 Q. If you'd turn to Figure 36.

20 A. Yes.

21 Q. This is another example of a device
22 where water went into the center of the
23 capsule and exit from a piercing means or
24 where the piercing means are?

25 ATTORNEY BONNER: Objection. Form.

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2 A. Paragraph 434 of Yoakim talks about
3 Figures 35 and 36 together. It comprises a
4 centrally arranged water injector 145, which
5 is fixed relative to longitudinal axis I of
6 the device. It also talks about water outlet
7 147, and I'm looking for 154 as well. Outlet
8 piercing members 151, 152, 153, and 154 is
9 depicted in Figure 36. So those are -- it's
10 the same basic features that are described in
11 Figure 35, just from a different viewpoint.

12 Q. And in this viewpoint in Figure 36,
13 there is no sensor illustrated in the device
14 for detecting a detection in an identification
15 means; is there?

16 ATTORNEY BONNER: Objection. Form.

17 A. This particular embodiment is
18 focused on different issues, focused on
19 sealing issues, for example, but not -- it's
20 not focusing on that particular aspect, but
21 the teachings overall of Yoakim are
22 applicable, and one would understand that that
23 feature could be incorporated.

24 Q. From what would one understand that
25 that feature could be incorporated?

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2 A. I'm just saying that the capsule
3 identification as a concept is taught
4 throughout this document and it's applied in
5 various examples to provide evidence of how it
6 would be used, and I haven't considered
7 exactly where or how one would embody that
8 here, but I haven't constructed any particular
9 embodiments in my analysis.

10 Q. What do you mean you haven't
11 constructed any particular embodiments in your
12 analysis?

13 A. Well, as one of ordinary skill in
14 the art evaluating in the context of
15 obviousness is a combination and look at the
16 totality of what is taught by Yoakim so that I
17 can come to my obviousness opinions. I don't
18 look at a specific embodiment. That's what
19 I'm trying to say.

20 Q. If you turn to Figure 37, Figure 37
21 does not have a water outlet like the one
22 depicted in Figures 34 to 36; does it?

23 ATTORNEY BONNER: Objection. Form.

24 A. Well, Figure 37 is describing a
25 slightly different embodiment. It's

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2 referencing a particular capsule type that
3 doesn't need to be pierced. The same general
4 overall architecture, the same sealing means,
5 same water injection means, but they
6 so-called -- yeah, the exit of the coffee
7 through the capsule is just -- is different
8 from the pierced embodiments shown in
9 Figure 35.

10 Q. So the embodiment in Figure 37
11 doesn't require any piercing of the capsule?

12 ATTORNEY BONNER: Objection. Form.

13 A. Well, again, I'm noting the
14 similarities, and what I'm pointing out is
15 that the way that Figure 37 is described is
16 just an alternate embodiment. It says here:
17 A capsule with no puncture means a capsule is
18 preopened before it's inserted in the device.

19 So there is just alternative
20 capsules that one could use using the same
21 overall method and it's just a slight variant
22 here.

23 Q. Turn to Figure 44, please.

24 A. Okay.

25 Q. Does Figure 44 depict a different

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2 capsule embodiment from the ones that we
3 previously looked at?

4 ATTORNEY BONNER: Objection. Form.

5 A. Well, it's a different figure and
6 it's depicting a slightly different capsule,
7 but I haven't evaluated that in detail
8 recently.

9 Q. What about Figure 45?

10 ATTORNEY BONNER: Objection. Form.

11 Q. Is that a different embodiment?

12 A. I haven't cited to this embodiment
13 so I haven't evaluated it.

14 Q. What about Figure 46, have you
15 evaluated this embodiment?

16 ATTORNEY BONNER: Objection. Form.

17 A. I've not cited to Figure 46. I
18 don't have any opinion about it.

19 Q. Figure 47?

20 ATTORNEY BONNER: Objection. Form.

21 A. I don't have any opinion about 47
22 either.

23 Q. Do you understand Figures 54 to 65
24 to illustrate embodiments designed for
25 multiple capsule sizes?

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2 ATTORNEY BONNER: Objection. Form.

3 A. Generally speaking, these figures
4 address multiple capsule sizes and these
5 teachings can be applied and they give
6 specific examples of how that is accomplished
7 in these figures.

8 Q. Other than the different capsule
9 sizes, does Yoakim specify anywhere the
10 details within the capsules illustrated in
11 Figures 54 through 65?

12 ATTORNEY BONNER: Objection to the
13 form.

14 A. These illustrations generally are
15 showing different capsule depths or volumes.
16 The teachings in general are that they fit
17 into the capsule holder because the diameter
18 is the same. That's the letter D in these
19 figures, is the same and they're designed to
20 drop into these capsule holders and allow for
21 a range of different sizes of capsules to be
22 used.

23 Q. Does Yoakim specify the internals
24 of the capsules described in Figures 54
25 through 65?

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2 ATTORNEY BONNER: Objection. Form.

3 A. I don't recall opining on that
4 question in my declaration. So I don't have
5 an opinion.

6 Q. Do you recall Yoakim's teachings of
7 preferential flow paths?

8 ATTORNEY BONNER: Objection to the
9 form.

10 A. Could you direct me to a specific
11 reference?

12 Q. Paragraph 124 of Yoakim.

13 A. Okay. I see Paragraph 144. What
14 was your question again?

15 Q. Sorry, 124.

16 A. 124.

17 Q. First, I wanted to know whether you
18 are familiar with Yoakim's teachings of
19 preferential flow paths?

20 A. What I understand that they're
21 teaching that the centrifugal brewing method
22 improves the situation by causing the coffee
23 to be compacted. It doesn't go into the
24 details of the why, but it mentions that it is
25 better because it creates less or no

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2 preferential flow paths in the coffee bed.

3 Q. Do you know why a preferential flow
4 path would be undesirable?

5 ATTORNEY BONNER: Objection. Form.

6 A. Well, if water flows through one
7 particular area of the capsule, it can affect
8 the quality of the brewed coffee.

9 Q. For example, some coffee
10 would -- strike that.

11 Some beverage material would
12 experience more water than other beverage
13 material within the capsule?

14 ATTORNEY BONNER: Objection. Form.

15 A. I don't know that I've articulated
16 it anywhere in specific, but my understanding
17 is that if you have a preferential flow path,
18 the fluid flows through there and not other
19 areas of the capsule, which would cause the
20 results to be variable from capsule to
21 capsule.

22 Q. Uh-huh.

23 A. So that's an undesirable
24 characteristic.

25 Q. So you'd have areas that weren't

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2 properly wetted or extracted?

3 ATTORNEY BONNER: Objection to the
4 form.

5 A. Again, that's -- that's -- that's
6 not gone into any detail by Yoakim. So I
7 don't know that I can answer that.

8 Q. Let's go to Paragraph 209 of
9 Yoakim. In about the tenth line from the
10 bottom, he says: As a result, there is less
11 risk of preferential flow path through the
12 substance which could lead to areas which are
13 not properly wetted and so not properly
14 extracted.

15 Do you see that?

16 A. I see that.

17 Q. And so Yoakim is teaching that if
18 there is preferential flow paths through the
19 substance, that could lead to areas which are
20 not properly wetted and not properly
21 extracted; correct?

22 ATTORNEY BONNER: Objection to the
23 form.

24 A. I think what they're trying to
25 state here is that their centrifugal brewing

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2 method states there was less risk of
3 preferential flow path which could lead to
4 areas which are not properly wetted and so not
5 properly extracted. That's what it says here
6 on 209.

7 Q. And that's -- it's providing less
8 than if you were to use a pressure pump?

9 ATTORNEY BONNER: Objection. Form.

10 A. Could you clarify your question?

11 Q. Yes.

12 There is less risk of preferential
13 flow path using centrifusion than there is in
14 usual methods using a pressure pump to exert
15 pressure?

16 ATTORNEY BONNER: Objection. Form.

17 A. I see what Yoakim states here. I'd
18 have to consider it further to come to that
19 opinion myself, but I see what they're stating
20 there.

21 Q. Do you understand that Yoakim is
22 saying the use of a pressure pump contributes
23 to a risk of preferential flow path?

24 ATTORNEY BONNER: Objection to the
25 form.

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2 A. No, I haven't formed that opinion.

3 Q. If you could turn to your 830
4 declaration. Page 134 specifically.

5 A. Okay.

6 Q. Here you offer your opinion on the
7 claim limitation, a ledge formed at the inside
8 surface of the wall and projecting towards the
9 central longitudinal axis, alleged space below
10 the end of the base element; correct?

11 A. Correct, claim element at 1G.

12 Q. And on Page 135, you refer to
13 Figure 28 of Yoakim for that disclosure?

14 A. That's right.

15 Q. Is it your opinion that where that
16 red line is shown, that is where Yoakim
17 discloses such a ledge?

18 ATTORNEY BONNER: Objection. Form.

19 A. The ledge is definitely in that
20 area, yes.

21 Q. Is what's labeled as AA the central
22 longitudinal axis in Figure 28?

23 A. That's my understanding, that AA is
24 the central longitudinal axis of the capsule.

25 Q. So looking at Figure 28, how do you

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2 know that the ledge is projecting towards the
3 line that is AA?

4 A. I'm looking at the language of this
5 particular claim limitation, and so it states:
6 A ledge formed at the inside surface of the
7 wall and projecting toward the central
8 longitudinal axis.

9 So this ledge feature would be
10 starting at the inside wall and then
11 projecting toward the access. So in this
12 section view on the left side, it's projecting
13 right towards the axis, and then as you
14 circulate around, it's always pointing towards
15 the axis. So that's attempting to describe
16 the feature that is formed starting at the
17 inside wall and projecting inward.

18 And then further, it's limited to
19 be spaced below the open end of the base
20 element. So basically everything that's below
21 the top of the capsule under the membrane is
22 what I interpret in that area is the ledge.

23 Q. How do you know that it's facing
24 away from the central longitudinal axis?

25 ATTORNEY BONNER: Object to form.

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2 A. It's not facing away from the
3 central longitudinal axis.

4 Q. How do you know that it's facing
5 toward the central longitudinal axis?

6 A. It's projected to read the central
7 longitudinal axis because in this section
8 view, one can see that it's on the same
9 cutting plane as the longitudinal axis.
10 Therefore, the feature that is both under and
11 above the red line is projecting towards AA
12 both on the left side and the right side
13 inwardly. That's what I'm trying to depict.

14 So we're talking about features
15 like basically if you see the 119, that
16 section of material is -- is -- is depicted
17 here, and then there is a horizontal portion
18 of the wall that is projecting inward from
19 that -- from the inner wall towards the
20 central axis. That's what I'm trying to
21 depict here in this figure.

22 Q. So you're not pointing to the red
23 line --

24 ATTORNEY BONNER: Objection. Form.

25 Q. -- as the ledge?

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2 A. I'm trying to describe in words
3 what I intend with this figure, and this
4 limitation is very specific. It's not just a
5 ledge. It's a ledge that's, quote, formed at
6 the inside surface of the wall and projecting
7 towards the central longitudinal axis. The
8 ledge is spaced below the open end of the base
9 element.

10 Q. Uh-huh.

11 A. So I'm identifying the horizontal
12 wall feature that's covered by the red --

13 Q. Uh-huh.

14 A. -- and projecting inward, and also
15 the element that's crosshatched as 119. I see
16 that could also meet this limitation. Those
17 two together are meeting that definition.

18 Q. Is 119 part of the lid?

19 ATTORNEY BONNER: Objection. Form.

20 A. Just looking at the words that are
21 used here. So the collecting recess 116, it
22 says: It further comprises an outer
23 peripheral portion 119 forming an edge bearing
24 onto seat portion 120 of the dish body.

25 So those two, what I'm focusing on

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2 here, 119, is a cross-sectional portion of
3 that part that's called -- what is it? I
4 don't think I cite it here. I'll have to go
5 to the figure description. One minute.

6 Right, the lid 108 is that part
7 that's inserted into that region underneath
8 the membrane, and so 119 is part of that --
9 that -- that lid structure.

10 Q. Yoakim describes the sidewall as a
11 widening sidewall?

12 A. I think that's generally true. You
13 can see in this example the sidewall is
14 widening and then it sort of goes -- it jogs
15 out a bit and then it's also at a slight angle
16 where that 119 is focused.

17 What I'm seeing is that the lid 108
18 and the body 102 delimit together an internal
19 enclosure, so they're kind of being evaluated
20 together in this figure.

21 Q. And so by widening, what it's
22 referring to is the bottom of the capsule is
23 narrower than the top and the sidewall goes
24 outwardly as you're moving upwards?

25 A. I think that's a fair

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2 characterization. It's drafted generally so
3 that it gets wider as it gets towards the
4 membrane and that's true throughout this body
5 as I see.

6 Q. What do you understand W1 to
7 depict?

8 A. It's a dimension of a portion of
9 the capsule just stating that it's got a
10 greater dimension than W2, and that's to sort
11 of describe what we were previously
12 discussing, which is the capsule gets wider as
13 it goes up.

14 Q. In Paragraph 244 of your 830
15 declaration you state: It would also have
16 been obvious to a person of ordinary skill in
17 the art to utilize the claimed ledge
18 configuration as an obvious design choice as
19 capsules utilizing a ledge were well-known to
20 those skilled in the art and you cite three
21 exhibits.

22 Do you see that?

23 A. I do see that.

24 Q. What was the reason for citing
25 these three exhibits?

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2 ATTORNEY BONNER: Objection. Form.

3 A. These exhibits and the figures that
4 are cited within them show capsules that have
5 a feature that is similar in nature to what
6 we're seeing and evaluating here in Figure 28.

7 ATTORNEY BROOKS: Take a break?

8 ATTORNEY BONNER: Sure.

9 CERTIFIED STENOGRAPHER: Off the
10 stenographic record at 4:14 p.m.

11 - - -

12 (Whereupon, a short recess was
13 taken.)

14 - - -

15 CERTIFIED STENOGRAPHER: Back on the
16 stenographic record at 4:36 p.m.

17 ATTORNEY BROOKS: I'll pass the
18 witness.

19 ATTORNEY BONNER: We have no questions.

20 ATTORNEY BROOKS: Thank you.

21 (Continued on next page for jurat.)
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CERTIFIED STENOGRAPHER: Off the
stenographic record at 4:36 p.m.

- - -

(Time noted: 4:36 p.m.)

- - -

MICHAEL J. JOBIN

Subscribed and sworn to before me
this _____ day of _____ 2024.

Notary Public
My Commission Expires:

/

/

1

2 I wish to make the following changes, for the

3 following reasons:

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C E R T I F I C A T E

I, RICHARD GERMOSEN, Fellow of the
Academy of Professional Reporters, stenographic New
Jersey Certified Court Reporter, New Jersey Certified
Realtime Court Reporter, California Certified
Shorthand Reporter, California Certified Realtime
Reporter, NCRA Registered Diplomate Reporter, and
NCRA Certified Realtime Reporter, do hereby certify:

That MICHAEL J. JOBIN, the witness
whose deposition is hereinbefore set forth, having
been duly sworn, and that such deposition is a true
record of the testimony of said witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 20th day of September 2024.

RICHARD GERMOSEN,
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