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2 UNITED STATES PATENT AND TRADEMARK OFFICE

3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 ----------x

5 NESPRESSO USA, INC.

6 Petitioner,

7 -against-

8 K-FEE SYSTEM GMBH,

9 Patent Owner.

10 ----------x

11

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

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

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

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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,
7 (License No. 30XR00016800), California Certified
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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2 I N D E X

3 WITNESS EXAMINATION

4 MICHAEL J. JOBIN

5 BY ATTORNEY BROOKS 8

6

7 E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
Exhibit 1003	document entitled declaration of Michael Jobin, 199 pages	11
Exhibit 1001	'722 patent, 35 pages	13
Exhibit 1009	document entitled United States Patent application publication, Castellani, 16 pages	55
Exhibit 1047	document entitled WIPO, Document Made Available Under the Patent Cooperation Treaty, 61 pages	67

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2 E X H I B I T S (CONT'D.)

EXHIBIT NO.	DESCRIPTION	PAGE
Exhibit 1045	document entitled WIPO, Document Made Available Under the Patent Cooperation Treaty, 38 pages	84
Exhibit 1001	'829 patent, 29 pages	88
Exhibit 1001	'722 patent	92
Exhibit 1001	'830 patent, 30 pages	94
Exhibit 1001	'910 patent	106
Exhibit 1008	Rapparini reference	108
Exhibit 1041	Rossi reference	129
Exhibit 1006	Jarisch 929 reference	135
Exhibit 1005	Jarisch reference	152

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2 E X H I B I T S (CONT'D.)

3 EXHIBIT NO. DESCRIPTION PAGE

4

5 Exhibit 1004 Yoakim reference 160

6 **original exhibits retained by McDermott Will (exhibit index concluded)

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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.

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

- - -

(Clarification requested by the stenographer.)

- - -

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

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

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

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

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

Q. Provisur was the petitioner in that proceeding?

A. Provisur is the petitioner, yes.

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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

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

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

Q. Okay. And is that your signature there?

A. Yes, that's my signature.

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

A. Yes.

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

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

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

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

A. Yeah, all of those declarations

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

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

- - -

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

- - -

BY ATTORNEY BROOKS:

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

Do you have that there?

A. I've got the '722 declaration.

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

A. It is.

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

A. Yes, that is.

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

A. Right.

Q. If you pick up the '910 declaration.

Do you have that?

A. I do.

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

A. That's correct.

Q. And if we turn to Page 198.

A. Yep, that's my signature.

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

A. Correct.

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

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

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

A. Okay.

Q. That's your signature; correct?

A. It is.

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

A. Correct.

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

A. Yes, I am.

Q. Did you have assistance in preparing your declarations?

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

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

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

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

of them.

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

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

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

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

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

A. I'm trying to remember what would

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

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

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

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

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

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

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

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

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

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

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

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

A. No.

Q. Who were the counsel that you met with?

A. The three in this room.

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

ATTORNEY BROOKS: I'm sorry, Shantelle?

ATTORNEY LAFAYETTE: Ms. LaFayette.

Q. Ms. LaFayette?

A. Right.

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

A. No.

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

ATTORNEY BONNER: Object to the form.

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

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

ATTORNEY BONNER: Object to form.

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

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

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

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

ATTORNEY BONNER: Object to form.

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

Q. You have experience designing beverage machines; correct?

A. Correct.

Q. When did you first start designing beverage machines?

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

Beverage machine and beverage

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

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

A. I did.

Q. You no longer work for Altitude, Incorporated?

A. No, I do not.

Q. When did you leave Altitude, Incorporated?

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

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

medical industries?

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

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

A. There is just --

ATTORNEY BONNER: Objection. Form.

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

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

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

start in designing a single-serve beverage machine?

ATTORNEY BONNER: Object to the form.

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

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

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

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.

Form. Relevance.

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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?

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form. Relevancy.

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

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

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

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

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

Q. Yeah. Let me rephrase.

Is it the case that going from prototype to consumer product does not require any iteration to get a functioning final product?

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

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

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

(Clarification requested by the stenographer.)

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

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

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.

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

Q. Are you familiar with centrifugal espresso machines?

ATTORNEY BONNER: Objection. Form. Relevance.

A. In what time frame?

Q. 2011?

ATTORNEY BONNER: Objection. Relevance.

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

Q. Uh-huh.

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

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

A. Yes.

Q. What is a centrifugal brewing machine?

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

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

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

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

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

public domain around that time frame.

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection to form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

Q. Do you know whether there is a need

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

Q. Yeah.

So imagine the brewing chamber is spinning.

A. Okay.

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

ATTORNEY BONNER: Objection. Form.

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

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

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

to avoid that.

Q. Damage to what?

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

A. Could you define a traditional brewing machine?

Q. An espresso machine.

ATTORNEY BONNER: Objection. Form.

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

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

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

A. Yeah, Page 103. Oh.

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

A. The earlier one.

Q. Yeah.

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

A. Go ahead.

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

Do you see that?

A. I do.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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.

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

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

1 particular, the mechanical beverage systems is
2 important because it directly relates to a
3 beverage system that we're talking about here
4 and that's a coffee machine.
5 Q. Would the opinions that you
6 presented in your declarations change if the
7 board was to adopt a different level of
8 ordinary skill?
9 ATTORNEY BONNER: Objection. Form.
10 Relevance.
11 A. I haven't considered that question.
12 I don't really know. It would depend on what
13 they decide. I note that at least for the
14 '491, they adopted this definition, but they
15 added this experience with sensors for
16 recognizing an identifier. So that's a little
17 different.
18 As it turns out, I do have that
19 additional experience as well, which I've
20 outlined. So it would really depend on what
21 they adopted. If they changed the definition
22 dramatically, I would have to evaluate it.
23 Q. What is your experience with
24 sensors for recognizing an identifier?
25

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

Q. Okay.

ATTORNEY BROOKS: Good time to take a break.

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

- - -

(Whereupon, a short recess was taken.)

- - -

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

BY ATTORNEY BROOKS:

Q. Welcome back, Mr. Jobin.

A. Thank you.

- - -

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

- - -

BY ATTORNEY BROOKS:

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

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

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

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

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

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

Q. Is the capsule depicted in Figure 11?

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

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

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

- - -

1 MICHAEL J. JOBIN | 09.19.24
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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into and out of the brewing chamber.

Q. I see.

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

ATTORNEY BONNER: Objection. Form.

A. Well, it depends what time of the brewing process you're talking about. The holding arms or the fork holds the capsule when it's placed into it by the user. So it's supported by the outside portion of part of the rim of the capsule, and then it drops down and guides the capsule into the receptacle, the holder, and then it drops out of the way as the lid closes and pinches the rim of the capsule for sealing, and then after the burn process, you lift the head up and this -- the holding arms lift up at the same time and pull the capsule up out of the brewing chamber, and then it guides the capsule down to the wastebin. So at different times it's touching the capsule, and during the brewing process, it's actually not in contact with the capsule.

Q. Where are -- where is the fork element during the brewing process?

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

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

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

ATTORNEY BONNER: Objection to the form.

Q. In this depiction?

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

Q. Uh-huh.

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

Q. Uh-huh.

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

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

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

Q. Is the annular portion depicted in Figure 1?

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

Q. Uh-huh.

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

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

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

Q. Uh-huh.

And if we look at Figure 3, is the

fork element depicted there?

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

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

A. Well, that's what I --

ATTORNEY BONNER: Objection. Form.

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

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

Q. Uh-huh.

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

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

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

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

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

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

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

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

- - -

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

- - -

BY ATTORNEY BROOKS:

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

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

A. Yes. I also refer to it as the

September 2010 reference or application.

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

A. Yes.

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

A. Yes.

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

ATTORNEY BONNER: Objection. Form.

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

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

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

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

Q. And that barcode is on the flange there?

A. The --

ATTORNEY BONNER: Objection. Form.

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

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

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

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

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

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ATTORNEY BONNER: Objection. Form.

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

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

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

Do you see that?

A. I do. Yeah.

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

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

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Q. Uh-huh.

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

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

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection.

A. -- for Figure 16?

ATTORNEY BONNER: Objection. Form. Relevance.

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

Q. But as a person of ordinary skill

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

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

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

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

A. Paragraph 159.

Q. Yes. Page 80.

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

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

Do you see that?

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

of water inlet is not piercing the membrane. It's coming into flat contact with it and allowing water to flow through some channels. So in my understanding, the way this is depicted, it's depicting the rim of the capsule going behind in this view.

Q. Do you see what appears to be a curved line at the top of the capsule that the water inlet has passed through?

ATTORNEY BONNER: Objection. Form.

A. I wouldn't characterize it that way.

Q. Okay.

A. I see a water inlet in contact with a flat membrane. I do not interpret that curved line as a membrane. It doesn't make -- it's nonsensical. It doesn't make sense to me for the water inlet to be depicted inside the capsule because it's not piercing the membrane. So I see that as the rim of the capsule, not as -- not as a membrane.

Q. So is the rim of the capsule depicted there in two dimensions?

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

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

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

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

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

Q. Uh-huh.

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

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

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

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

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

Q. Any other curves?

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

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

A. Yeah.

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

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

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

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

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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1 MICHAEL J. JOBIN | 09.19.24

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

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

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

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

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

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

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

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

Q. Uh-huh.

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

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

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

it.

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

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

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

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

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

Do you see that?

A. I see that Limitation Number 5, yes.

Q. So do you understand that the

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

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

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

ATTORNEY BROOKS: Yeah.

What do we want to do as far as lunch?

Let's go off the record for this.

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

- - -

(Whereupon, a short recess was taken.)

- - -

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

- - -

(Whereupon, '722 patent, is

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received and marked as Exhibit 1001 for Identification.)

- - -

BY ATTORNEY BROOKS:

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

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

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

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

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

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

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

beverage; correct?

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

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

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

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

Do you see that?

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

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

A. In the context of the clause that I

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

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

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

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

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

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

Q. Okay.

- - -

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

- - -

BY ATTORNEY BROOKS:

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

Do you recognize this?

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

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

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

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

A. Okay.

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

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

comprising.

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

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

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

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

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

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

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

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

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

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

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

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

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

So that's at Paragraph 255 of my

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

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

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

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

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

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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correct?

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

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

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

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

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

Q. And then there is also an element

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

Do you see that?

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

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

ATTORNEY BONNER: Objection. Form.

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

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

Q. Without reference to Yoakim, can 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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center axis. That's how the feature is constructed. That's my understanding of that term.

ATTORNEY BROOKS: Should we break for lunch?

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

- - -

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

* * * * * * * * *

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1 MICHAEL J. JOBIN | 09.19.24
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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Q. I'd like to direct your attention to Claim 1, which begins at Column 12.

A. Okay. Claim 1.

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

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

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

Do you see that?

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

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

Do you understand from that claim

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

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

Q. Okay. You can set that aside.

- - -

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

- - -

BY ATTORNEY BROOKS:

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

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

Q. Rapparini is directed to a

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filtering impermeable container?

ATTORNEY BONNER: Objection. Form.

A. What it states in the title is: Filtering and Permeable Container for Substances Suitable for the Preparation of Beverages.

Q. A permeable container would be something like a tea bag?

ATTORNEY BONNER: Objection. Form.

A. They talk about capsule body forms here. Not something that is in the form of a bag, but rather is more of a capsule form. There is different embodiments, but I've cited to Figures 6 and 6 BIS. That's how it's depicted in the reference, and it talks about forming those sheet material and stiffening the material using ribs and grooves as described therein.

So when it says "permeable," where it's talking about containers through which fluid can pass during a brewing process, for example, but it also refers to other materials that could be used, including nonpermeable materials.

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Q. Where does Rapparini discuss nonpermeable containers?

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

For example, the containers can be adapted to be employed for domestic machines, such as moka pots or automatic espresso machines. Alternatively, the containers can be adapted to be employed for industrial machines.

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

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

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broadly than just permeable.

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

ATTORNEY BONNER: Objection. Form.

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

Q. And your opinion is based upon Paragraph 63?

ATTORNEY BONNER: Objection. Form.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

1 MICHAEL J. JOBIN | 09.19.24
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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1 understand.
2 Q. Rapparini doesn't teach placing
3 ribs on the capsule 10; does it?
4 ATTORNEY BONNER: Objection. Form.
5 A. Rapparini teaches in Figure 6, for
6 example -- it teaches how to improve upon
7 existing containers by including longitudinal
8 grooves and ribs of varying lengths along the
9 inner and outer surface of the capsule body,
10 which allow for the optimization of system
11 stability and rigidity.
12 So the body is formed from a flat
13 sheet using a thermoforming process with an
14 annular flange at the top and a generally
15 cupped shaped body.
16 So I'm citing the formation of
17 these capsules, which is the same as the
18 formation of the capsules in the Yoakim
19 reference. There is a lot of analogies here.
20 Same general size and shape. Similar material
21 thicknesses and stiffnesses. Lots of
22 similarities, and I've pointed them out in my
23 declaration that form my opinion that these
24 are comparable art and therefore relevant in
25

looking at in combination for making obviousness determinations.

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

ATTORNEY BONNER: Object to form.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Object to form.

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

Q. What are examples of thermoformable materials?

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

be a thin plastic material. It could be a thinner nonwoven material or permeable material. It could be nonpermeable plastic film or sheet.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

A. Okay. I've got Page 192.

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

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

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

Do you see that?

A. Yes.

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

A. Correct.

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

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

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

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

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

So where is that disclosure?

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

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

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

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

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

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

ATTORNEY BONNER: Object to the form.

A. I think what I'm seeing here is 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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Q. If you go to Page 152, here you start a discussion of Claims 1G and 8G, which has a similar limitation, the plurality of vertically oriented grooves covered 20 percent to 80 percent of the wall between the flange and the closed bottom.

Do you see that?

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

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

A. In what paragraph?

Q. 302.

A. Right. Similar logic, and again, I'm looking at K-Fee's infringement contention here to inform my understanding of how this term is used at least by K-Fee in this case to identify grooves on a sidewall and comparing 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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Q. So it's not your opinion that Rapparini teaches or that Figure 6 BIS shows 20 to 80 percent of the wall covered by grooves?

ATTORNEY BONNER: Objection. Form.

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

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

So all of these are observations

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

- - -

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

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1 MICHAEL J. JOBIN | 09.19.24

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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ATTORNEY BONNER: Objection. Form.

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

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

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

Q. Rossi includes only one figure; correct?

A. Correct. Figure 1.

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

ATTORNEY BONNER: Objection. Form.

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

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called out in Figure 1.

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

And so, for example, in Paragraph 191 of my declaration, I cite to 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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comprises recognizing means in the forms of an infrared barcode reader seven.

Q. Does that provide water?

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

Q. But no elements to provide water; correct?

A. Well --

ATTORNEY BONNER: Objection. Form. Relevance.

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

I mean, that's understood based on

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Objection. Form.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

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

ATTORNEY BONNER: Object to form.

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

Q. I thought you said it was light.

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

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

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

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

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

Q. You don't see what described here?

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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material?

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

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

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

Q. Uh-huh.

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

Q. Is 72 pointing to the support?

ATTORNEY BONNER: Object to form.

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

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rim.

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

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

ATTORNEY BONNER: Objection. Form.

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

- - -

(Clarification requested by the stenographer.)

- - -

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

Q. It rests on the cell?

ATTORNEY BONNER: Objection. Form.

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

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

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

ATTORNEY BONNER: Objection. Form.

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

- - -

(Clarification requested by the stenographer.)

- - -

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

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

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

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

ATTORNEY BONNER: Objection to the form.

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

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

ATTORNEY BONNER: Object to the form.

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

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

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

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

ATTORNEY BONNER: Objection. Form.

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

Q. 72. Paragraph 72, Jarisch.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

A. It states in Paragraph 49: The

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

Q. 69 you mean?

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

Q. And that body includes the rim?

ATTORNEY BONNER: Objection. Form.

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

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

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

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

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

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ATTORNEY BONNER: Objection. Form.

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

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

Do you recall that?

ATTORNEY BONNER: Objection. Form.

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

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

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

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1 MICHAEL J. JOBIN | 09.19.24
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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processing is happening. So the fluid injection or the fluid being -- moving out of the capsule. That would be my understanding.

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

A. It --

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

ATTORNEY BONNER: Objection. Form.

A. Which reference again, please?

Q. Jarisch, Exhibit 1005.

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

Q. Do you recall?

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

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declarations.

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

ATTORNEY BONNER: Objection. Form. Relevance.

A. I don't recall.

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

ATTORNEY BONNER: Objection. Form. Relevance.

A. I don't recall.

ATTORNEY BONNER: Let's take a break.

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

- - -

(Whereupon, a short recess was taken.)

- - -

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

- - -

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

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1 MICHAEL J. JOBIN | 09.19.24

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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Relevance.

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

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

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

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

ATTORNEY BONNER: Object to the form.

A. Jarisch like -- Jarisch describes a variety of different optical code positions, and it describes different specific means for reading the code. It's -- it's -- it's -- it talks about location. It talks about the type of code. It talks about the type of reader, different aspects of the optical code in specific.

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

ATTORNEY BONNER: Objection to the form.

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

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

Q. Is the code taught by Jarisch a new

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code or one that was known at the time?

ATTORNEY BONNER: Objection. Form. Foundation.

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

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

A. Right.

ATTORNEY BONNER: Objection to form. Foundation.

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

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

ATTORNEY BONNER: Objection. Form. Foundation. Relevance.

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

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

Q. Are you familiar with the name Alfred Yoakim?

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

Q. Have you ever met Mr. Yoakim?

A. No.

ATTORNEY BONNER: Objection. Form. Relevance.

Q. Are you familiar with the name Christian Jarisch?

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

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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point me directly to it.

Q. Have you ever met Mr. Panesar?

ATTORNEY BONNER: Objection. Relevance.

A. I've not met Mr. Panesar.

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

ATTORNEY BONNER: Objection. Relevance.

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

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

ATTORNEY BONNER: Objection. Relevance.

A. That name isn't familiar to me.

Q. Giampiero Rossi?

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

Q. Glucksman.

A. That name is familiar, but I don't remember exactly where. I think there is one of the background art references that was 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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Mr. Rapparini outside of this case.

- - -

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

- - -

BY ATTORNEY BROOKS:

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

Do you recognize this document?

A. Yes, I recognize Yoakim.

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

A. Yes.

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

A. Okay.

Q. What is Figure 8 of Yoakim?

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

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

A. Just states that it is connection means --

(Loud coughing.)

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

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

ATTORNEY BONNER: Objection. Form.

A. Yoakim doesn't describe it as such.

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It just says connection means.

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

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

ATTORNEY BONNER: Objection. Form. Relevance.

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

Q. If you go to Figure 23 of Yoakim.

A. Okay.

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Q. Figure 23 illustrates teeth around the capsule.

A. There are features that are depicted. Is there anything specific you're pointing to?

Q. The scalloped region around the top of the capsule, do you understand those to be teeth? Item 75 on Figure 23.

A. Okay. I'll look at the description of that to be sure that I understand how the inventor is describing those features.

In Paragraph 216 of the Yoakim reference, it states that: The capsule of Figure 23 comprises a toothed surface of complementary shape. Teeth 750 on the outer surface of the capsule.

So those are the words that are used to describe this particular embodiment in Yoakim by Yoakim.

Q. So do you understand those to be teeth?

A. In the context of how Yoakim is describing them, it says: Teeth 750. I have used Figure 23 and evaluated Figure 23 for

some of the embodiments in these declarations and have identified those features as using the claim language.

Q. Do you understand that the teeth 750 in Figure 23 are in the flange of the capsule?

ATTORNEY BONNER: Objection. Form.

A. I'm going to go to where I describe and discuss Figure 23 in my declaration. Is there a particular declaration that you'd like to discuss because there is a couple of them that reference this figure?

Q. I'd like to discuss the Yoakim reference, Exhibit 1004.

A. Okay.

Q. Figure 23.

So my question is: Are the teeth 750 in Figure 23 in the flange of the capsule?

ATTORNEY BONNER: Objection. Form.

A. What I cite in Yoakim is from Paragraph 215: Yoakim explains that the teeth can be positioned along the body of the capsule and extend into the border of the capsule body wall and capsule flange.

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The quote is: The toothed structure comprises a series of teeth which is positioned below the edge or rim 72 of the body of the capsule. The teeth are placed along the whole periphery of the body of the capsule.

Q. So is it your opinion that the teeth are not part of the flange of the capsule?

A. Well, I think that the words that I cited from Yoakim are clear, and what I also note is that Yoakim describes other embodiments of these elements. They call them -- they say the shape of the teeth could be slightly triangular, oval, rectangular, pyramidal. It should be noticed that the teeth could be replaced by other equivalent structures, such as a series of elements and relief and/or hollow.

So what this is saying is yes, you have this particular figure. It's describing that these teeth can have different shapes, take different forms, and I further cited here 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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in the general teachings. If there is a specific embodiment, I'd have to look.

Q. What impact, if any, would the teeth have on the beverage exiting of the sidewall in Figure 23?

A. Here you're getting into my opinions that are specific to one of the other declarations. So I'll have to find those.

Look for the declarations. The general answer is that the fluid flows up the sidewall, and if there is grooves in the sidewall, it flows into the grooves and is directed through the grooves and up the sidewall is how I would -- how I would characterize it.

Q. What impact, if any, do the teeth have on the ability of the -- when you're referring to grooves, you're talking about the teeth?

A. I have cited these particular -- this particular figure and some of the written description of this figure in my identification of claim limitations that involve the term "grooves."

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Q. What happens when the fluid flows into the grooves?

ATTORNEY BONNER: Objection. Form.

A. There is only one place in my declaration where I opine on that. I'd like to get to that before I answer because it's specific to that claim language, and I think it's important to use the claim language when discussing the answer.

It has to do with the claim term of turbulence.

All right. Well, I'm not finding that particular claim limitation here. I think it's one of the dependent claims. In short, when grooves are present, and I'm not talking specifically about this embodiment of teeth, but grooves in general, I have identified grooves and turbulence as being the result of fluid flowing into and being redirected by features inside the capsule wall. That's the general gist, and I would have to look at the specific language if you have any questions about it.

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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Yoakim, yes. It's piercing the center -- on the center axis of the capsule. In this case, it's piercing through the membrane.

Q. And when the central injection needle pierces through the membrane, how tight of a fit would that be?

ATTORNEY BONNER: Objection. Form.

A. That's not described in Yoakim. It's based on the characteristics of the needle and the membrane itself.

Q. And similarly on the periphery there is outlet perforators 221 that would also puncture the membrane?

A. Yeah, they call it perforators 221 that perform outlet perforations, and yeah, so 221, which is not called out in Figure 61, but it is called out in Figure 62, those are needles that are piercing the membrane.

Q. And the central injection needle and the perforators remain in the capsule while it is rotating?

ATTORNEY BONNER: Objection. Form.

A. The -- Yoakim describes consistently that the top part of the brewing

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chamber is fixed vertically relative to the bottom part and that it rotates. So the perforators remain in the capsule membrane during brewing.

Q. Do you see there in Figure 61 ID4?

A. Yes, I see that.

Q. That's the identification means that's on the capsule memory?

A. According to Paragraph 521, ID4 is an identification means.

Q. An example of that would be a barcode?

A. They've described a variety of identification means. I'd have to go specifically to see where I've cited that, but I recall different identification means being anticipated here.

Q. Is the identification means in Yoakim read while the capsule is stationary or rotating?

ATTORNEY BONNER: Objection to the form.

A. It's my recollection that Yoakim is silent as to when the reading occurs here.

The configuration shown is next to the perforating element, which remains in place during brewing. So that's what I've observed from this figure.

Q. Are you familiar with the term "prewetting"?

ATTORNEY BONNER: Objection. Form.

A. I am familiar with the term, yes.

Q. What is prewetting?

A. Well, I haven't defined it. I don't think it's a claim term here, but my understanding is that you're injecting water into the capsule prior to -- you know, for a time to let it soak and then you carry on with the rest of the procedure.

Q. Does Yoakim teach a prewetting step?

ATTORNEY BONNER: Objection. Form.

A. I don't recall citing to a prewetting step, no.

Q. Do you recall whether Yoakim teaches a prewetting step?

ATTORNEY BONNER: Objection. Form.

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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events. It talks about prewetting and then it talks about centrifugation. It doesn't mention when the scanning is taking place.

Q. Do you recall Yoakim teaches a control unit?

A. In Paragraph 522, it describes a control means. I mean, it's a necessary thing in my view. You've got a control means to be involved in the various steps of the -- of the process, but yeah, it's mentioned here.

Q. What is the purpose of the control means?

ATTORNEY BONNER: Objection to the form.

A. Well, for example, in that same Paragraph 522: Select the control of a volume of liquid injected into the capsules carried out by the control means selectively activating the pump. So that control means is interpreting the information that it reads from the identifier and activating the pump as a consequence of reading that. That's how I understand it to work.

Q. Does Yoakim say how the control

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means activates the pump?

ATTORNEY BONNER: Objection. Form.

A. I'm not sure I understand the question.

Q. Does Yoakim inform a person of ordinary skill in the art how the control means activates the pump?

A. Well, it's not getting into the detail of the software, if that's what you mean, but it's talking about having a control means. In this particular paragraph, it's teaching -- you know, it's teaching that there is identification means and how that information is interpreted and used.

I haven't cited in particular the how of control means because it's not central to my analysis.

Q. Do you agree that Yoakim teaches multiple device embodiments?

ATTORNEY BONNER: Objection. Form.

A. Yoakim is a lengthy reference with a variety of embodiments that are directed towards different aspects of the invention, 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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putting a capsule into the capsule holder and being pierced by needles according to what's described here.

Q. Does Figure 4 depict a capsule in the device?

ATTORNEY BONNER: Objection. Form.

A. Well, one understands when one is reading a figure it's read in light of the written description to understand what's being communicated.

Here for clarity, they're showing the capsule holder and needles without the capsule present, but it's mentioned right in the text that a capsule would be used in this device, which only makes sense given the configuration.

Q. Figure 4 does not depict a sensor for reading an identification means on a capsule; correct?

ATTORNEY BONNER: Objection. Form.

A. I've not cited to Figure 4 for that claim element.

Q. Do you agree that Figure 4 does not depict a sensor for reading an identification

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means on a capsule?

ATTORNEY BONNER: Objection. Form.

A. I don't see one depicted here, but I have cited it in other -- in another embodiment.

Q. Does Yoakim teach how to add a sensor for detecting an identification means to the embodiment of Figure 4?

ATTORNEY BONNER: Objection. Form.

A. Yoakim teaches a variety of things about identification means in sensors, and it is not the focus of this particular figure, but the overall teachings of Yoakim inform one of ordinary skill what the sensor is, what it's for, and how it's used.

Q. If you could turn to Figure 8 of Yoakim.

A. Okay.

Q. Is there a capsule depicted in Figure 8 of Yoakim?

ATTORNEY BONNER: Objection. Form.

A. Well, Figure 8 is described in a variety of paragraphs starting about 204 and through 208. So all of that written

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description talks about integrating capsules into this device described here or capsules described in figures just before Figure 8, such as Figure 7, and there is -- certainly a capsule would be used in this device based on the context of what is being discussed in Yoakim.

This particular illustration does not show the capsule because they're focusing on other aspects of this brewing device is my understanding.

Q. What do you understand Element 3 in Figure 8 to be?

A. Interesting, it says: Capsule -- capsule three. All right. So it appears I've misinterpreted this image. This image is showing a capsule which is mounted between a bottom plate and a top plate and brewed accordingly. That's because I haven't looked at this one in a bit.

Q. Do you understand the capsule in Figure 8 to be the same one that's illustrated in Figure 10?

A. In Figure 10?

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Q. Yes.

ATTORNEY BONNER: Objection. Form.

A. Well, I haven't cited to Figure 10. Looking at the drawing, it looks similar to at least the body of the capsule that's shown there. So I'd have to read more to be able to answer accurately, but that appears to be the case.

ATTORNEY BONNER: Ian, we've been going about an hour whenever is a good chance to take a break.

ATTORNEY BROOKS: Okay. Let me ask some more questions.

BY ATTORNEY BROOKS:

Q. Does the capsule in Figure 8 have a flange or a rim?

ATTORNEY BONNER: Objection. Form.

A. Well, the figure describes the outer edge of the body 87 that could be interpreted as a flange feature. It's projecting from the main body in a way that's similar, but I haven't analyzed it further than that.

Q. Figure 8 does not show an

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identification means on the capsule?

ATTORNEY BONNER: Objection. Form. Relevance.

A. Well, it talks about a shape of the gripping means, a central recess, and arched recesses, but I haven't analyzed that as to whether that's identification means, but there are complimentary shapes to which it fits when it goes into the machine.

Q. Figure 8 doesn't depict a sensor in the device for detecting the identification means?

ATTORNEY BONNER: Objection. Form. Relevance.

A. I don't -- I don't recall any mention of the sensor in this embodiment.

Q. Okay.

ATTORNEY BROOKS: We can take a break.

CERTIFIED STENOGRAPHER: Off the stenographic record at 3:17 p.m.

- - -

(Whereupon, a short recess was taken.)

- - -

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1 MICHAEL J. JOBIN | 09.19.24

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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regard, and as for Figure 8, I haven't considered that one in detail.

Q. If you'd turn your attention to Figure 34.

A. Figure 34. Okay.

Q. Figure 34 is an example of a device where water is injected into the center of the capsule and then beverage exits the capsule at the periphery where the piercing members are?

ATTORNEY BONNER: Object to form.

A. Like many of the other embodiments in Yoakim, that general architecture is the same, yes.

Q. Figure 34 does not depict the sensor in the device for detecting an identification means; correct?

ATTORNEY BONNER: Objection. Form.

A. I'd have to check the specifics to see if it references a center in that specific embodiment, but overall, Yoakim teaches sensors in the context of these devices.

Q. Do you see anywhere a sensor would be placed in the embodiment of Figure 34?

ATTORNEY BONNER: Objection. Form.

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A. Well, this is one section view. It could be that on the other section or another section there is plenty of room. I don't know. I haven't evaluated that in particular.

Q. If you'd turn to Figure 35.

A. Okay.

Q. Figure 35, again, depicts an embodiment where water is injected in the capsule in the center and beverage exits at the periphery where the piecing members are?

ATTORNEY BONNER: Objection. Form.

A. Generally, I understand this to follow the same general architecture that's described in other embodiments in Yoakim, that water is injected into the center axis of the capsule and exits pierced holes or some other means at the periphery of the capsule.

Q. If you'd turn to Figure 36.

A. Yes.

Q. This is another example of a device where water went into the center of the capsule and exit from a piercing means or where the piercing means are?

ATTORNEY BONNER: Objection. Form.

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A. Paragraph 434 of Yoakim talks about Figures 35 and 36 together. It comprises a centrally arranged water injector 145, which is fixed relative to longitudinal axis I of the device. It also talks about water outlet 147, and I'm looking for 154 as well. Outlet piercing members 151, 152, 153, and 154 is depicted in Figure 36. So those are -- it's the same basic features that are described in Figure 35, just from a different viewpoint.

Q. And in this viewpoint in Figure 36, there is no sensor illustrated in the device for detecting a detection in an identification means; is there?

ATTORNEY BONNER: Objection. Form.

A. This particular embodiment is focused on different issues, focused on sealing issues, for example, but not -- it's not focusing on that particular aspect, but the teachings overall of Yoakim are applicable, and one would understand that that feature could be incorporated.

Q. From what would one understand that that feature could be incorporated?

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A. I'm just saying that the capsule identification as a concept is taught throughout this document and it's applied in various examples to provide evidence of how it would be used, and I haven't considered exactly where or how one would embody that here, but I haven't constructed any particular embodiments in my analysis.

Q. What do you mean you haven't constructed any particular embodiments in your analysis?

A. Well, as one of ordinary skill in the art evaluating in the context of obviousness is a combination and look at the totality of what is taught by Yoakim so that I can come to my obviousness opinions. I don't look at a specific embodiment. That's what I'm trying to say.

Q. If you turn to Figure 37, Figure 37 does not have a water outlet like the one depicted in Figures 34 to 36; does it?

ATTORNEY BONNER: Objection. Form.

A. Well, Figure 37 is describing a slightly different embodiment. It's

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referencing a particular capsule type that doesn't need to be pierced. The same general overall architecture, the same sealing means, same water injection means, but they so-called -- yeah, the exit of the coffee through the capsule is just -- is different from the pierced embodiments shown in Figure 35.

Q. So the embodiment in Figure 37 doesn't require any piercing of the capsule?

ATTORNEY BONNER: Objection. Form.

A. Well, again, I'm noting the similarities, and what I'm pointing out is that the way that Figure 37 is described is just an alternate embodiment. It says here: A capsule with no puncture means a capsule is preopened before it's inserted in the device.

So there is just alternative capsules that one could use using the same overall method and it's just a slight variant here.

Q. Turn to Figure 44, please.

A. Okay.

Q. Does Figure 44 depict a different

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capsule embodiment from the ones that we previously looked at?

ATTORNEY BONNER: Objection. Form.

A. Well, it's a different figure and it's depicting a slightly different capsule, but I haven't evaluated that in detail recently.

Q. What about Figure 45?

ATTORNEY BONNER: Objection. Form.

Q. Is that a different embodiment?

A. I haven't cited to this embodiment so I haven't evaluated it.

Q. What about Figure 46, have you evaluated this embodiment?

ATTORNEY BONNER: Objection. Form.

A. I've not cited to Figure 46. I don't have any opinion about it.

Q. Figure 47?

ATTORNEY BONNER: Objection. Form.

A. I don't have any opinion about 47 either.

Q. Do you understand Figures 54 to 65 to illustrate embodiments designed for multiple capsule sizes?

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ATTORNEY BONNER: Objection. Form.

A. Generally speaking, these figures address multiple capsule sizes and these teachings can be applied and they give specific examples of how that is accomplished in these figures.

Q. Other than the different capsule sizes, does Yoakim specify anywhere the details within the capsules illustrated in Figures 54 through 65?

ATTORNEY BONNER: Objection to the form.

A. These illustrations generally are showing different capsule depths or volumes. The teachings in general are that they fit into the capsule holder because the diameter is the same. That's the letter D in these figures, is the same and they're designed to drop into these capsule holders and allow for a range of different sizes of capsules to be used.

Q. Does Yoakim specify the internals of the capsules described in Figures 54 through 65?

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1 MICHAEL J. JOBIN | 09.19.24
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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preferential flow paths in the coffee bed.

Q. Do you know why a preferential flow path would be undesirable?

ATTORNEY BONNER: Objection. Form.

A. Well, if water flows through one particular area of the capsule, it can affect the quality of the brewed coffee.

Q. For example, some coffee would -- strike that.

Some beverage material would experience more water than other beverage material within the capsule?

ATTORNEY BONNER: Objection. Form.

A. I don't know that I've articulated it anywhere in specific, but my understanding is that if you have a preferential flow path, the fluid flows through there and not other areas of the capsule, which would cause the results to be variable from capsule to capsule.

Q. Uh-huh.

A. So that's an undesirable characteristic.

Q. So you'd have areas that weren't

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properly wetted or extracted?

ATTORNEY BONNER: Objection to the form.

A. Again, that's -- that's -- that's not gone into any detail by Yoakim. So I don't know that I can answer that.

Q. Let's go to Paragraph 209 of Yoakim. In about the tenth line from the bottom, he says: As a result, there is less risk of preferential flow path through the substance which could lead to areas which are not properly wetted and so not properly extracted.

Do you see that?

A. I see that.

Q. And so Yoakim is teaching that if there is preferential flow paths through the substance, that could lead to areas which are not properly wetted and not properly extracted; correct?

ATTORNEY BONNER: Objection to the form.

A. I think what they're trying to state here is that their centrifugal brewing

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method states there was less risk of preferential flow path which could lead to areas which are not properly wetted and so not properly extracted. That's what it says here on 209.

Q. And that's -- it's providing less than if you were to use a pressure pump?

ATTORNEY BONNER: Objection. Form.

A. Could you clarify your question?

Q. Yes.

There is less risk of preferential flow path using centrifusion than there is in usual methods using a pressure pump to exert pressure?

ATTORNEY BONNER: Objection. Form.

A. I see what Yoakim states here. I'd have to consider it further to come to that opinion myself, but I see what they're stating there.

Q. Do you understand that Yoakim is saying the use of a pressure pump contributes to a risk of preferential flow path?

ATTORNEY BONNER: Objection to the form.

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A. No, I haven't formed that opinion.

Q. If you could turn to your 830 declaration. Page 134 specifically.

A. Okay.

Q. Here you offer your opinion on the claim limitation, a ledge formed at the inside surface of the wall and projecting towards the central longitudinal axis, alleged space below the end of the base element; correct?

A. Correct, claim element at 1G.

Q. And on Page 135, you refer to Figure 28 of Yoakim for that disclosure?

A. That's right.

Q. Is it your opinion that where that red line is shown, that is where Yoakim discloses such a ledge?

ATTORNEY BONNER: Objection. Form.

A. The ledge is definitely in that area, yes.

Q. Is what's labeled as AA the central longitudinal axis in Figure 28?

A. That's my understanding, that AA is the central longitudinal axis of the capsule.

Q. So looking at Figure 28, how do you

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1 know that the ledge is projecting towards the
2 line that is AA?
3 A. I'm looking at the language of this
4 particular claim limitation, and so it states:
5 A ledge formed at the inside surface of the
6 wall and projecting toward the central
7 longitudinal axis.
8 So this ledge feature would be
9 starting at the inside wall and then
10 projecting toward the access. So in this
11 section view on the left side, it's projecting
12 right towards the axis, and then as you
13 circulate around, it's always pointing towards
14 the axis. So that's attempting to describe
15 the feature that is formed starting at the
16 inside wall and projecting inward.
17 And then further, it's limited to
18 be spaced below the open end of the base
19 element. So basically everything that's below
20 the top of the capsule under the membrane is
21 what I interpret in that area is the ledge.
22 Q. How do you know that it's facing
23 away from the central longitudinal axis?
24 ATTORNEY BONNER: Object to form.
25

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A. It's not facing away from the central longitudinal axis.

Q. How do you know that it's facing toward the central longitudinal axis?

A. It's projected to read the central longitudinal axis because in this section view, one can see that it's on the same cutting plane as the longitudinal axis. Therefore, the feature that is both under and above the red line is projecting towards AA both on the left side and the right side inwardly. That's what I'm trying to depict.

So we're talking about features like basically if you see the 119, that section of material is -- is -- is depicted here, and then there is a horizontal portion of the wall that is projecting inward from that -- from the inner wall towards the central axis. That's what I'm trying to depict here in this figure.

Q. So you're not pointing to the red line --

ATTORNEY BONNER: Objection. Form.

Q. -- as the ledge?

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A. I'm trying to describe in words what I intend with this figure, and this limitation is very specific. It's not just a ledge. It's a ledge that's, quote, formed at the inside surface of the wall and projecting towards the central longitudinal axis. The ledge is spaced below the open end of the base element.

Q. Uh-huh.

A. So I'm identifying the horizontal wall feature that's covered by the red --

Q. Uh-huh.

A. -- and projecting inward, and also the element that's crosshatched as 119. I see that could also meet this limitation. Those two together are meeting that definition.

Q. Is 119 part of the lid?

ATTORNEY BONNER: Objection. Form.

A. Just looking at the words that are used here. So the collecting recess 116, it says: It further comprises an outer peripheral portion 119 forming an edge bearing onto seat portion 120 of the dish body.

So those two, what I'm focusing on

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here, 119, is a cross-sectional portion of that part that's called -- what is it? I don't think I cite it here. I'll have to go to the figure description. One minute.

Right, the lid 108 is that part that's inserted into that region underneath the membrane, and so 119 is part of that -- that -- that lid structure.

Q. Yoakim describes the sidewall as a widening sidewall?

A. I think that's generally true. You can see in this example the sidewall is widening and then it sort of goes -- it jogs out a bit and then it's also at a slight angle where that 119 is focused.

What I'm seeing is that the lid 108 and the body 102 delimit together an internal enclosure, so they're kind of being evaluated together in this figure.

Q. And so by widening, what it's referring to is the bottom of the capsule is narrower than the top and the sidewall goes outwardly as you're moving upwards?

A. I think that's a fair

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characterization. It's drafted generally so that it gets wider as it gets towards the membrane and that's true throughout this body as I see.

Q. What do you understand W1 to depict?

A. It's a dimension of a portion of the capsule just stating that it's got a greater dimension than W2, and that's to sort of describe what we were previously discussing, which is the capsule gets wider as it goes up.

Q. In Paragraph 244 of your 830 declaration you state: It would also have been obvious to a person of ordinary skill in the art to utilize the claimed ledge configuration as an obvious design choice as capsules utilizing a ledge were well-known to those skilled in the art and you cite three exhibits.

Do you see that?

A. I do see that.

Q. What was the reason for citing these three exhibits?

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ATTORNEY BONNER: Objection. Form.

A. These exhibits and the figures that are cited within them show capsules that have a feature that is similar in nature to what we're seeing and evaluating here in Figure 28.

ATTORNEY BROOKS: Take a break?

ATTORNEY BONNER: Sure.

CERTIFIED STENOGRAPHER: Off the stenographic record at 4:14 p.m.

- - -

(Whereupon, a short recess was taken.)

- - -

CERTIFIED STENOGRAPHER: Back on the stenographic record at 4:36 p.m.

ATTORNEY BROOKS: I'll pass the witness.

ATTORNEY BONNER: We have no questions.

ATTORNEY BROOKS: Thank you.

(Continued on next page for jurat.)

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1

2 CERTIFIED STENOGRAPHER: Off the

3 stenographic record at 4:36 p.m.

4 - - -

5 (Time noted: 4:36 p.m.)

6 - - -

7

8 _____
MICHAEL J. JOBIN

9 Subscribed and sworn to before me

10 this _____ day of _____ 2024.

11

12

13 _____
Notary Public
My Commission Expires:

14

15 /

16 /

17

18

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1

2 I wish to make the following changes, for the

3 following reasons:

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19 ____ ____ CHANGE: _____

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1

2 C E R T I F I C A T E

3 I, RICHARD GERMOSEN, Fellow of the

4 Academy of Professional Reporters, stenographic New

5 Jersey Certified Court Reporter, New Jersey Certified

6 Realtime Court Reporter, California Certified

7 Shorthand Reporter, California Certified Realtime

8 Reporter, NCRA Registered Diplomate Reporter, and

9 NCRA Certified Realtime Reporter, do hereby certify:

10 That MICHAEL J. JOBIN, the witness

11 whose deposition is hereinbefore set forth, having

12 been duly sworn, and that such deposition is a true

13 record of the testimony of said witness.

14 I further certify that I am not related

15 to any of the parties to this action by blood or

16 marriage, and that I am in no way interested in the

17 outcome of this matter.

18 IN WITNESS WHEREOF, I have hereunto set

19 my hand this 20th day of September 2024.

20

21 _____

22 RICHARD GERMOSEN,
FAPR, RDR, CRR, CCR-NJ, CRCR, CSR-CA, CCRR-CA,
23 NYACR, NYRCR
LICENSE NO. 30XI00184700
24 LICENSE NO. 30XR00016800
California CSR No. 14391
25 California CRR No. 198

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