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Transcript of Michael Jobin

Date: April 10, 2025

Case: Trove Brands, LLC -v- CamelBak Products, LLC (PTAB)

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**Trove Brands Ex. 1014
Trove Brands v. CamelBak
IPR2024-00858**

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4
5 TROVE BRANDS, LLC

6 Petitioner,

7 V.

8 CamelBak Products, LLC

9 Patent Owner,

10
11 IPR2024-00858

12 Patent 8,905,252

13
14 Videotaped Deposition of MICHAEL JOBIN

15 Conducted Virtually

16 Thursday, April 10, 2025

17 10:32 a.m. EST

18
19
20 Job No.: 578771

21 Pages: 1 - 188

22 Reported By: Karen Klerekoper, CSR-4250, RPR

1 Videotaped Deposition of MICHAEL JOBIN,
2 conducted virtually:
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9 Pursuant to Notice, before Karen Klerekoper,
10 Notary Public in and for the State of
11 Massachusetts.
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A P P E A R A N C E S

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1	P R O C E E D I N G S	09:44:02
2	THE VIDEOGRAPHER: Here begins Media 1 in	10:01:07
3	the videotaped deposition of Michael Jobin in the	10:31:32
4	matter of Trove Brands, LLC, versus CamelBak	10:31:35
5	Products, LLC, in the United States Patent and	10:31:42
6	Trademark Office for the Patent Trial Appeal	10:31:47
7	Board, Case Number IPR2024-00858. Today's date is	10:31:54
8	April 10th, 2025. The time on the video monitor	10:32:00
9	is 10:32 a.m. Eastern Time.	10:32:04
10	The remote videographer today is Isaiah	10:32:09
11	Sheridan, representing Planet Depos. All parties	10:32:14
12	of this video deposition are attending remotely.	10:32:16
13	Will counsel please voice-identify	10:32:19
14	themselves and state whom they represent.	10:32:22
15	MR. STEIN: Alexander Stein from the law	10:32:24
16	firm of Morgan, Lewis & Bockius, here on behalf of	10:32:26
17	the petitioner, Trove Brands. And with me is	10:32:28
18	Jacob Peterson, also on behalf of the petitioner	10:32:33
19	and from the same office.	10:32:36
20	MR. SCHLETZBAUM: Good morning, this is	10:32:38
21	Ryan Schletzbaum, counsel for CamelBak Products	10:32:40
22	with Shook Hardy & Bacon.	10:32:45

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1	THE VIDEOGRAPHER: The court reporter	10:32:49
2	today is Karen Klerekoper, representing Planet	10:32:51
3	Depos.	10:32:53
4	The witness will now be sworn.	10:32:53
5	(Oath stipulation read and agreed by counsel	10:32:56
6	and witness.)	10:32:56
7	MICHAEL JOBIN, having been duly sworn testified	
8	as follows:	10:34:00
9	EXAMINATION	10:34:00
10	BY MR. STEIN:	10:34:01
11	Q Good morning, Mr. Jobin. How are you?	10:34:01
12	A I'm good. How are you?	10:34:08
13	Q Good.	10:34:09
14	Could you -- just for my sake, could you	10:34:10
15	let me know what you would prefer me to call you	10:34:12
16	as we go through the deposition today. Do you --	10:34:17
17	is Mr. Jobin appropriate?	10:34:18
18	A That's fine.	10:34:20
19	Q Okay. And just so we're on the same page,	10:34:20
20	too, we are here to discuss your testimony in	10:34:25
21	IPR2024-00858. Is that your understanding?	10:34:31
22	A Yes.	10:34:33

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1	Q And I may, just to kind of make things	10:34:34
2	easy for myself, just refer to that by the	10:34:38
3	shorthand IPR. Is that okay with you?	10:34:41
4	A Yes.	10:34:43
5	Q Okay. And the patent that is at issue in	10:34:44
6	this case is U.S. Patent Number 8,905,252, which,	10:34:47
7	again, I might use a shorthand of just "the '252	10:34:53
8	patent." Is that -- is that okay with you?	10:34:57
9	A Yes.	10:34:58
10	Q Okay. And I'm -- I'm here today	10:34:59
11	representing the petitioner, Trove Brands, as we	10:35:03
12	said at the beginning. Do you understand that?	10:35:07
13	A Yes.	10:35:09
14	Q And even though you are testifying	10:35:09
15	virtually today, do you understand that the	10:35:12
16	testimony you give under oath here is subject to	10:35:14
17	the same penalty of perjury as though you were	10:35:16
18	testifying in a courtroom?	10:35:18
19	A I do.	10:35:20
20	Q And where -- where are you today?	10:35:20
21	A Located at my home in Naples, Florida.	10:35:23
22	Q Is there -- is there anyone in the house	10:35:27

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1	with you?	10:35:29
2	A My wife is in another room in the house,	10:35:30
3	like a separate bedroom. I'm in my own office	10:35:35
4	with a closed door.	10:35:38
5	Q And do you have any materials with you in	10:35:39
6	the room today?	10:35:41
7	A I've emptied the room of any materials	10:35:44
8	related to this case. I have no papers on my desk	10:35:48
9	here, no notes.	10:35:52
10	Q Okay. And you're -- you're attending this	10:35:53
11	video deposition. Are you -- are you on a laptop,	10:35:54
12	a desktop, what kind of computer are you using?	10:35:57
13	A Just a laptop computer.	10:35:59
14	Q Do you have anything open other than this	10:36:01
15	Zoom window?	10:36:04
16	A The Zoom window is on my desktop. The	10:36:06
17	only other folder I have here that I'm accessing	10:36:10
18	is deposition references. I put the prior art	10:36:13
19	references in PDF form in that folder, along with	10:36:17
20	a copy of my declaration.	10:36:21
21	Q And those -- those materials that you have	10:36:25
22	saved on your laptop, do they have any	10:36:27

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1	highlighting, notes, markings or anything else?	10:36:29
2	A These are as received with no marking or	10:36:33
3	any notes or annotations.	10:36:38
4	Q Okay. As we go through the questions	10:36:40
5	today, I'm going to assume that you understand the	10:36:46
6	question asked unless you tell me otherwise. Is	10:36:49
7	that -- is that okay?	10:36:52
8	A Understood.	10:36:53
9	Q Okay. And is there anything that would	10:36:54
10	prevent you from thinking clearly and testifying	10:36:57
11	truthfully today?	10:37:00
12	A No.	10:37:01
13	Q And in terms of sort of the cadence, too,	10:37:02
14	I will try to go for about an hour at a time and	10:37:09
15	then take breaks. But if you need an earlier	10:37:12
16	break or anything like that, just please let me	10:37:14
17	know and happy to accommodate.	10:37:16
18	A I appreciate that. Thank you.	10:37:19
19	Q And then the last little ground rule	10:37:21
20	piece, have you been informed that you are not to	10:37:25
21	discuss the content of your testimony with your	10:37:27
22	counsel during the breaks?	10:37:29

1	A Yes, that is my understanding.	10:37:31
2	Q And how many times have you been deposed	10:37:33
3	previously?	10:37:38
4	A I looked at that recently, the number is	10:37:40
5	14. This will be my 15th deposition.	10:37:42
6	Q Okay. How many of those were in patent	10:37:45
7	cases?	10:37:48
8	A I think at this point, about two-thirds of	10:37:48
9	them have been in patent -- well, maybe a little	10:37:55
10	more than two-thirds patent related.	10:37:58
11	Q Okay. And the other third, what type of	10:38:00
12	cases were those?	10:38:02
13	A One was a -- a trade -- a couple trade	10:38:03
14	dress cases, for example, that -- that come to	10:38:08
15	mind. I think that's the -- I think one other one	10:38:10
16	was -- was support for... but it was -- was it	10:38:16
17	patent related? I don't think it was. I would	10:38:25
18	say about three were not patent -- patent related,	10:38:28
19	now that I think about it.	10:38:31
20	Q Okay. And in terms of this proceeding,	10:38:32
21	you have submitted a declaration which has been	10:38:35
22	marked as Exhibit 2009. And as we go, I will	10:38:37

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1	probably just, again, use shorthand and call that	10:38:42
2	your declaration. Are you okay with that?	10:38:45
3	A Yes.	10:38:47
4	Q Okay.	10:38:47
5	(Marked for identification Exhibit 2009.)	10:38:49
6	Q And in terms to of your preparation for	10:38:51
7	the deposition today, what -- what did you do to	10:38:53
8	prepare?	10:38:55
9	A Well, I reviewed my declaration in detail.	10:38:55
10	I reread the prior art references, and met with	10:38:59
11	counsel yesterday for several hours via -- via	10:39:05
12	teleconference.	10:39:12
13	Q And when you -- when you say you reviewed	10:39:13
14	your declaration in detail, what do you -- what do	10:39:14
15	you mean by that?	10:39:16
16	A Well, I read it -- I reread it, basically,	10:39:17
17	to -- to refresh my memory from the -- you know,	10:39:20
18	from when it was originally submitted. It's been	10:39:24
19	a little while.	10:39:27
20	Q Okay.	10:39:28
21	A So, just read through it and made sure I	10:39:28
22	remembered all the points that I made.	10:39:31

1 Q Okay. Was -- was there anything you came 10:39:33
2 across that you no longer agree with or changed 10:39:35
3 your mind on? 10:39:38

4 A No, everything is still is as I -- my 10:39:38
5 opinions are the same. 10:39:42

6 Q And you also said that you reviewed prior 10:39:43
7 art references. When you referred to the prior 10:39:53
8 art references, what were you talking about? 10:39:56

9 A Those that are cited in the grounds, for 10:39:59
10 example, is what I have in mind. So, obviously, 10:40:02
11 there are some primary references, and then a 10:40:04
12 couple that are used in combination with -- with 10:40:07
13 some of the dependent claims. 10:40:08

14 So, just went through those again to 10:40:10
15 refresh my recollection of -- of what they say. 10:40:13

16 Q Okay. And that -- that would include the 10:40:15
17 Miller reference, the Leoncavallo reference and 10:40:18
18 the Smartgis reference? 10:40:22

19 A Those three are the -- what I would term 10:40:26
20 the primary reference grounds. And then read 10:40:28
21 Gorskey and Johnson, for example. And then, of 10:40:32
22 course, the '252, which is the patent-in-suit. 10:40:35

1	Q And I want to talk about the '252 patent	10:40:39
2	for a second. So, there is two inventors listed	10:40:44
3	on here, Matthew Latham and Derek Sullivan.	10:40:48
4	Do you know either of these individuals?	10:40:51
5	A No.	10:40:52
6	Q Other than your testifying on behalf of	10:40:53
7	CamelBak, have you done any work for CamelBak?	10:40:58
8	A I have not done any work for CamelBak.	10:41:00
9	Q And in your declaration, you talk about	10:41:03
10	having reviewed -- I'm looking at paragraph 7 of	10:41:21
11	your declaration. You say that you -- you may	10:41:25
12	rely upon materials, your knowledge and experience	10:41:28
13	and/or additional materials to rebut arguments	10:41:31
14	raised by the patent owner.	10:41:34
15	Are there any additional materials that	10:41:36
16	you have reviewed that are not mentioned in your	10:41:38
17	declaration?	10:41:41
18	A (No verbal response.)	10:41:48
19	Q It does look like you are looking at	10:41:49
20	something on your screen. So, just --	10:41:50
21	A Yeah, I'm just --	
22	(Indiscernible crosstalk.)	

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1 Q Just say for the record what you're 10:41:52
2 looking at. 10:41:53

3 A Well, I was about to say I'm pulling up a 10:41:54
4 paragraph you just referenced in my declaration, 10:41:56
5 to see what I said about that. It's -- the 10:42:00
6 documents that are listed as references are what I 10:42:04
7 have based my opinions on. I don't have any other 10:42:09
8 documents at this time that I've reviewed that I'm 10:42:14
9 relying on. But I'm reserving the right to -- to 10:42:18
10 evaluate any new information, consider documents 10:42:23
11 that may be necessary in future. 10:42:26

12 Q And you also -- in that same paragraph, 10:42:30
13 paragraph 7, you say: I may also consider 10:42:34
14 additional documents. 10:42:36

15 Is that -- is that the same answer, then? 10:42:37
16 You have not considered anything, but you're 10:42:39
17 reserving some sort of right here? 10:42:42

18 A What I say is that I may consider 10:42:47
19 additional documents and information informing any 10:42:49
20 necessary opinions. Those that may not have been 10:42:52
21 provided -- so, what I'm trying to say here is 10:42:56
22 that if additional information becomes available 10:42:58

1 that -- that is pertinent, I would review it. And 10:43:00
2 if I'm filing additional declaration, for example, 10:43:06
3 I would cite that as something that I have 10:43:09
4 reviewed. 10:43:12

5 But the documents that you see here listed 10:43:13
6 are those that I have reviewed for this case and 10:43:15
7 that I base my opinions upon. 10:43:17

8 Q And in terms of your educational 10:43:25
9 background, it looks like you have a degree in 10:43:25
10 mechanical engineering and you have an industrial 10:43:27
11 design degree. Is that accurate? 10:43:29

12 A I have -- I have two bachelor's degrees 10:43:31
13 from the University of Michigan. Yeah, one is 10:43:34
14 engineering, focused on mechanical engineering. 10:43:37
15 And the other is in industrial design, which is an 10:43:39
16 art degree, focused on product development. 10:43:42

17 Q Why did you decide to get those two 10:43:44
18 different degrees? 10:43:47

19 A Well, I'm very hands-on when it comes 10:43:48
20 to -- I like to apply my learnings. And 10:43:50
21 engineering school didn't quite provide that 10:43:53
22 opportunity. And I found that the product 10:43:55

1 development program at the University of Michigan 10:43:57
2 was a good outlet for my skills that I was 10:43:59
3 learning in engineering. 10:44:03

4 And they were very complementary. So, I 10:44:04
5 worked out a dual degree program with the 10:44:09
6 university, one of the first that they had done in 10:44:10
7 that regard. 10:44:14

8 Q And how are the skills that you gain as a 10:44:14
9 industrial designer different than the skills that 10:44:18
10 you gain as a mechanical engineer? 10:44:20

11 A Well, industrial design is very hands-on 10:44:22
12 in the sense that it's not -- it's not a paper 10:44:24
13 activity. Ultimately, it results in a 10:44:27
14 three-dimensional object or product or system. 10:44:31
15 And so, you are able to directly apply your 10:44:34
16 engineering knowledge to something that has -- 10:44:37
17 that it's in the marketplace that you can -- that 10:44:40
18 you can point to, that you can touch. 10:44:42

19 So, for me, that was a good fit and -- and 10:44:46
20 a good blend of my -- of my capabilities. 10:44:49

21 Q You said something about it's not a paper 10:44:53
22 activity. What do you -- what do you mean by 10:45:07

1	that?	10:45:09
2	A Well, when I -- when I talk about -- about	10:45:10
3	products being in three-dimensional realm, it's	10:45:14
4	not a -- it's not a design activity that's paper	10:45:18
5	based or that's electronic in nature or	10:45:21
6	theoretical in nature. It's applied engineering.	10:45:25
7	It's applied to product development or product	10:45:29
8	design. And so, it's -- it's a little more	10:45:31
9	hands-on, a little bit more aligned with my	10:45:33
10	interest at the time and throughout my career.	10:45:36
11	It's a combination of -- of the desire to create	10:45:39
12	new products and the technical background in order	10:45:44
13	to do so.	10:45:46
14	Q And you have -- you've designed a number	10:45:49
15	of various types of products. One of them that	10:45:52
16	you mention here looks like a novel disposable	10:45:58
17	fluid handling cartridge. Can you tell me about	10:46:02
18	that project?	10:46:05
19	A Which chapter are you looking at -- which	10:46:07
20	paragraph?	10:46:10
21	Q This looks like from your time at	10:46:11
22	MicroBiosciences.	10:46:16

1 A Yeah. MicroBiosciences is a startup that 10:46:17
2 I -- that I founded in 2001. Fluid handling 10:46:18
3 cartridges related to laboratory and 10:46:23
4 pharmaceutical research. So, taking samples from 10:46:29
5 small vials and dispensing them into trays or into 10:46:34
6 cartridges that analyze those samples. So, it's 10:46:40
7 fluidics at a small -- slightly smaller scale, 10:46:43
8 where you're, you know, doing analysis on, you 10:46:47
9 know, milliliter volumes or -- or in that -- in 10:46:52
10 that range of smaller volumes. 10:46:58

11 So, it's just fluid handling systems and 10:47:00
12 consumables and plastic bits and pieces that go 10:47:04
13 together to help you do that type of analysis. 10:47:09

14 Q And what was -- what was sort of the need 10:47:13
15 that you identified in the marketplace that led to 10:47:15
16 the startup? 10:47:18

17 A Well, so, my background -- one of the 10:47:20
18 patents that I -- I have is focused on a 10:47:24
19 elastomeric valve, which is adaptable to the small 10:47:30
20 scale fluidics for switching and pulling fluid 10:47:33
21 from a small vessel and dispensing it in a precise 10:47:37
22 way. So, I'm applying that technology to these 10:47:40

1 novel cartridges and selling them to 10:47:45
2 pharmaceutical tech companies. 10:47:48

3 And, again, the opportunity was in -- at 10:47:52
4 the time, the marketplace was going towards 10:47:55
5 smaller scale and higher throughput testing and 10:47:57
6 screening when doing drug discovery. And the idea 10:48:01
7 was that you -- you take these cartridges and 10:48:06
8 facilitate the throughput and of the -- this rapid 10:48:08
9 screening. So, it was very much a market trend at 10:48:11
10 that time. 10:48:15

11 Q Is that -- is that pretty common in sort 10:48:15
12 of new product development, that market trends 10:48:17
13 will drive design changes? 10:48:20

14 A Well, I mean, anytime you're starting a 10:48:23
15 company, you're trying to ride the wave of -- of 10:48:25
16 what the market is -- is interested in buying, of 10:48:27
17 course. In this case, there was a trend towards 10:48:30
18 high throughput screening and pharmaceutical 10:48:32
19 research. And having identified that trend, I was 10:48:34
20 developing technology and products that fit into 10:48:39
21 that particular segment of the market. 10:48:44

22 Q Would you say that for 2013 there was a 10:48:47

1	trend that beverage containers would have spouts?	10:48:52
2	MR. SCHLETZBAUM: Objection to form.	10:48:55
3	A I don't know that I could say that	10:48:57
4	specifically. I think that in 2013 time frame,	10:48:59
5	water bottles, in general, were a fairly mature	10:49:07
6	category. Had been a lot of different designs out	10:49:10
7	there, and there still are to this day. So,	10:49:13
8	thinking about that in the time frame of this	10:49:16
9	invention, I don't know that I could comment on --	10:49:19
10	on spouts particularly. Kind of an open-ended	10:49:25
11	question.	10:49:28
12	Q What about -- what about, you know, in	10:49:29
13	that pre-2013 time frame, was there a market trend	10:49:31
14	to remove spouts from beverage containers?	10:49:34
15	A I'm not aware of any particular market	10:49:39
16	trend at that time. That would be directed at	10:49:41
17	removing spouts. I don't have a specific example	10:49:44
18	to provide you.	10:49:47
19	Q And also looking at some of the projects	10:49:47
20	that you worked on, it looks you worked -- and I	10:49:51
21	might pronounce this word wrong, so correct me,	10:49:54
22	but a coffee carafe or carafe with a refined pour	10:49:56

1	spout to minimize drips.	10:50:02
2	Could you talk to me about that project?	10:50:03
3	A Sure. This is a coffee carafe project for	10:50:06
4	Sunbeam, which is a company that makes coffee	10:50:10
5	makers. And in developing that, one of the key	10:50:13
6	marketing objectives was to address customer	10:50:15
7	complaints around drips that came from their	10:50:18
8	coffee carafe as they were pouring it. They	10:50:22
9	identified that customers were -- the thing that	10:50:26
10	the customers got the most unhappy about was	10:50:28
11	getting coffee stains on their tablecloth or on	10:50:32
12	their shirt. And so this was an example of	10:50:35
13	applying my background in fluidics and	10:50:39
14	understanding what happens at that scale when	10:50:42
15	you're pouring, to -- to mitigate and improve	10:50:45
16	and -- and substantially eliminate the formation	10:50:48
17	of drips that form on the lip of the pour spout as	10:50:52
18	you're -- as you're using the carafe.	10:50:56
19	Q And what were some of the design changes	10:50:59
20	that you made to minimize that drip problem?	10:51:01
21	A Well, the -- well, the principles are not	10:51:05
22	confidential. Some of the details of the project	10:51:10

1 I can't discuss. But generally speaking, the 10:51:12
2 types of factors that one considers when you're 10:51:16
3 designing a pour spout to mitigate against drips 10:51:20
4 are materials based and especially geometry based. 10:51:23
5 There's -- there's a way to design the pour spout 10:51:27
6 and the -- and the lip of the pour spout to take 10:51:31
7 advantage of inherent property of water, and 10:51:36
8 especially water with some oil in it, which is 10:51:41
9 what coffee has some characteristics. It's a 10:51:44
10 different surface energy than water. And it helps 10:51:46
11 to divide the flow. And -- and the water would 10:51:49
12 bead up that surface if the surface energy is low 10:51:53
13 enough. And that's the key observation that 10:51:57
14 helped them move from more rolled lip geometries 10:51:59
15 to a sharper edge geometry. 10:52:06

16 Q And what -- what sort of led them to be 10:52:09
17 able to arrive at that key observation there? 10:52:10

18 A Well, I was able to apply my understanding 10:52:12
19 of how surface energy and fluid and surfaces 10:52:16
20 interact. Especially with my background in -- in 10:52:20
21 fluidics throughout this time frame preceding that 10:52:26
22 project, I was able to apply that knowledge to a 10:52:31

1 coffee project and get them a substantial 10:52:35
2 improvement the way that the spout performed by 10:52:37
3 just applying some of those principles. 10:52:40

4 Q So, it was -- it was a knowing property in 10:52:43
5 another discipline, or just a different product 10:52:46
6 category? Or where -- where were you taking that 10:52:48
7 principle from and then applying it to the coffee 10:52:50
8 carafe? 10:52:54

9 A Well, it's a generally applied principle 10:52:54
10 that I was -- that's known. The way that, for 10:52:57
11 example, water interacts with different surface 10:53:01
12 materials, how much it beads up on that surface, 10:53:03
13 for example. It's something that's intuitively 10:53:08
14 understood by the layperson. When you wax your 10:53:11
15 car, you see the water beads up on that surface. 10:53:14
16 That's surface energy. And understanding how to 10:53:19
17 select materials and surface finishes for that 10:53:20
18 characteristic, and then understanding how to form 10:53:23
19 geometry of the spout to -- to help prevent the 10:53:25
20 water wanting to wick over the edge and then 10:53:29
21 ultimately form a drip is -- is what I applied 10:53:31
22 there. 10:53:35

1 Q Okay. And it also looks like you've 10:53:35
2 worked on project for Margaritaville. Tell me 10:53:42
3 about that frozen drink apply. 10:53:47

4 A Yeah. That was a great project, a great 10:53:50
5 opportunity in developing really a whole new 10:53:52
6 category of premium blender-type products. Here 10:53:54
7 we have a blender that is combined with an ice 10:53:58
8 hopper and ice shaving system. 10:54:00

9 And figuring out how to commercialize that 10:54:03
10 in a consumer acceptable way was the key. So, 10:54:08
11 building prototypes and really sort of figuring 10:54:13
12 out how to shave the ice the proper way and 10:54:16
13 dispense the ice, and then ultimately blending in 10:54:19
14 the blender to create a frozen margarita drink or 10:54:21
15 margarita style drinks in a way that was 10:54:27
16 attractive to the end customers. 10:54:30

17 Q And it also looks like you worked on a 10:54:33
18 bottle water dispenser for Pure. What was the 10:54:37
19 time frame when you worked on that dispenser? 10:54:40

20 A The Pure project was in the mid-2000s time 10:54:42
21 frame when I worked at Altitude, Incorporated. 10:54:46
22 And this was a ground-up redevelopment, 10:54:51

1 re-evaluation, sort of rethinking of what an
2 office water cooler would be, what it would look
3 like.

4 And the key objective here was to get away
5 from the -- the water bottle delivery, which was
6 quite environmentally challenged, I would say, and
7 to use a water vessel, very much like a water
8 bottle but a little bigger, which had a removable
9 spout and a -- a dispensing valve, and a carry
10 handle, you know, those types of features to allow
11 a customer to fill the vessel, put the cap on and
12 then ultimately invert and it put it onto the --
13 onto the dispensing device.

14 Q And what were some of the -- the
15 challenges faced when you were working on that
16 dispenser?

17 A Well, I would say there is a lot. When
18 you are dealing with any food product,
19 cleanability is a big factor. Using FDA-graded
20 material that are suitable for food safety are
21 important.

22 Just being able to easily open and close

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1	and clean out the interior of it, and -- and the	10:56:06
2	usability aspects are -- are really important.	10:56:09
3	Because you're lifting a heavy vessel of water up	10:56:12
4	and onto a surface. So, you've really got size it	10:56:16
5	appropriately, and make sure that there is no	10:56:21
6	pinch points for your fingers. And lots of	10:56:23
7	factors go into designing a product like that.	10:56:26
8	Q And what leads you to understand those	10:56:30
9	constraints, you know, the pinching of finger --	10:56:32
10	fingers? Is it sort of usability studies? Or how	10:56:35
11	do you find those pain points?	10:56:39
12	A Those come from experience in product	10:56:41
13	design over years. And some of it's, frankly,	10:56:43
14	from education. In the industrial design program,	10:56:47
15	a lot of focus is put on human ergonomics, what	10:56:51
16	the average person can and can't lift, what --	10:56:55
17	what size range of hands you have.	10:56:58
18	So, you do a fair amount of prototyping	10:57:00
19	and testing with people of different abilities to	10:57:02
20	ensure that the product meets their needs and can	10:57:05
21	be used by a wide range of consumers.	10:57:08
22	Q What are some of the other sort of general	10:57:11

1	knowing constraints to allow, you know, products	10:57:14
2	to be used by a wide range of consumers like you	10:57:17
3	just mentioned?	10:57:21
4	A Well, I think I talked about usability	10:57:21
5	testing. That's not always done. Sometimes you	10:57:24
6	design a product that is similar enough to another	10:57:28
7	product that you feel confident that those	10:57:30
8	ergonomic constraints are met.	10:57:33
9	Thinking about a hand grip size, or	10:57:35
10	thinking about grip strength when you're opening	10:57:38
11	and closing something.	10:57:40
12	Thinking about actuating buttons and the	10:57:41
13	angle of the display screen. Or thinking about	10:57:46
14	user safety, for example, with heated water in a	10:57:49
15	dispensing device.	10:57:53
16	Following various safety documents and	10:57:54
17	requirements that are in place for those types of	10:58:02
18	products. To ensure that children don't called	10:58:04
19	themselves an important consideration.	10:58:08
20	You know, there is just a number of things	10:58:10
21	that go into. And so, experience with similar	10:58:14
22	products over a period of time helps you to become	10:58:16

1 more efficient at developing those types of
2 products.

3 Q And were those considerations you just
4 mentioned, were those known in the pre-2013 time
5 frame?

6 A Well, I mean, this particular project was
7 done in that time frame. Yes, ergonomic
8 constraints have been known and researched from
9 the beginning of -- of product design, at least
10 the modern era of product development. It's
11 something that -- that was certainly part of the
12 curriculum in the industrial design program.

13 Q And what are some more sort of examples of
14 ergonomic constraints that were known in pre-2013
15 time frame?

16 A I think I mentioned a number of them. We
17 talked about hand strength and grip and sizing of
18 handles, and knobs. We talk about actuation
19 buttons and the ability for humans to perceive and
20 manipulate small features.

21 We talk about safety issues, like pinch
22 points or lifting constraints, or tip tests, you

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1 know, things for -- for products like fans or 10:59:25
2 heaters, and things like that, it's important to 10:59:28
3 ensure that they are stable and don't knock over 10:59:30
4 very easily. Just a number of those types of 10:59:33
5 considerations are -- are part of every design 10:59:37
6 project, especially in the consumer product realm. 10:59:39

7 Q What -- what about the one you mentioned 10:59:42
8 about sizing of handles and knobs, talk to me more 10:59:44
9 about that ergonomic constraint. 10:59:48

10 A I mean, an industrial designer, someone of 10:59:54
11 ordinary skill in the art would be aware of 10:59:56
12 reference documents, for example, the Henry 10:59:58
13 Dreyfuss guidelines from the 1950s. 11:00:01

14 The U.S. military produced a wide range of 11:00:04
15 studies from the 1950s and '60s of what human 11:00:08
16 capabilities are in different situations, for how 11:00:14
17 much force can a finger, you know, press with, or 11:00:16
18 how much grip strength does the median jet -- jet 11:00:20
19 fighter pilot have. And you translate that 11:00:25
20 information to somebody with smaller hands and is 11:00:28
21 younger or older than that category. 11:00:31

22 So, there is just lots of data points that 11:00:33

1 are out there that are available and would have 11:00:36
2 been available in that time frame that you could 11:00:38
3 reference. 11:00:40

4 Q Yeah. And specifically on the grip 11:00:42
5 strength one, when you're designing a handle or a 11:00:43
6 knob, how does grip strength have relevance to 11:00:47
7 sort of the design constraint on that handle or 11:00:50
8 knob? 11:00:55

9 A Well, I think, for example, another 11:00:55
10 project that -- that illustrates that pretty well 11:00:57
11 that I mention in my declaration is a -- the 11:01:00
12 sample specimen container for exact sciences. 11:01:03

13 And that's a -- basically a vessel that's 11:01:07
14 about, I don't know, 8 or 10 inches high and 6 to 11:01:12
15 8 inches in diameter. And it's got a threaded 11:01:17
16 closure on the top. That's quite a bit bigger 11:01:21
17 than a water bottle, for example. So, some of the 11:01:23
18 challenges that you will run into is that it's 11:01:26
19 bigger than the hand in terms of being able to 11:01:28
20 screw it on. 11:01:30

21 So, you know, opening and closing this -- 11:01:31
22 this vessel or -- or container was quite a 11:01:33

1 challenge, designing features that allow you to 11:01:36
2 get your hand around something on both halves of 11:01:40
3 it to allow you to open and close it. It's just 11:01:44
4 an important design consideration in that case. 11:01:48

5 Q And what about after you open something in 11:01:51
6 terms of where -- where you put that thing that 11:01:57
7 you've opened, what would be some of the design 11:01:59
8 constraints that are relevant to that problem? 11:02:02

9 MR. SCHLETZBAUM: Object to form. 11:02:08

10 A I'm not sure -- I'm not sure I understand 11:02:10
11 exactly how that -- how that is relevant here. 11:02:13
12 But, I mean, I guess I could apply it to the cap, 11:02:15
13 for example, in the '252 reference. The desire to 11:02:18
14 put that somewhere rather than in your pocket or 11:02:22
15 on the tabletop, or on some other surface where it 11:02:25
16 could become contaminated would be a 11:02:28
17 consideration, I think. So, having somewhere to 11:02:32
18 stow a cap when you remove it is -- is -- is -- is 11:02:35
19 something that probably could motivate one to 11:02:40
20 design features like that. 11:02:42

21 Q Yeah. And you also had mentioned opening 11:02:44
22 and closing this vessel or container was quite a 11:02:46

1 challenge. 11:02:49

2 Then you said designing features that 11:02:49

3 allow me to get your hand around something on both 11:02:53

4 halves. So, that -- that was where I was going 11:02:55

5 with the question, too. Sort of what are -- what 11:02:59

6 are those issues, and why are they challenging? 11:03:00

7 A Well, again, it just comes down to the 11:03:03

8 size of the grip and what kind of strength is 11:03:05

9 needed to overcome the resistance of the gaskets 11:03:08

10 or the seals. 11:03:11

11 So, you know, just putting some type of 11:03:12

12 a -- of a shape on top of the -- of the lid, or 11:03:16

13 some type of other feature that, you know, could 11:03:23

14 be, like, ribs or grooves or some other feature 11:03:25

15 would allow you to -- to get a better grip on 11:03:28

16 something. I mean, that's pretty hypothetical and 11:03:31

17 very high level, but that's the general idea. 11:03:36

18 Q Yeah. Why -- why would ribs allow you to 11:03:39

19 get a better grip on something? 11:03:42

20 A Well, like, a smooth surface would be kind 11:03:43

21 of slippery and you might not be able to get as -- 11:03:46

22 and so, those types of features are added to, for 11:03:47

1 example, a -- a Mason jar lid, they have -- 11:03:50
2 sometimes have little grooves on them to help you 11:03:54
3 get a grip on them to open them more easily, that 11:03:56
4 type of thing. 11:04:00

5 Q Seems like some of that depends on 11:04:00
6 material choice, too. Aren't there materials that 11:04:02
7 would have sort of a higher coefficient of 11:04:04
8 friction and be easier to grab? Is there a 11:04:09
9 tradeoff there between the material choice versus 11:04:11
10 how you change and maybe add something like 11:04:13
11 grooves? 11:04:15

12 A It has some effect. I think size and 11:04:16
13 shape is probably more important than surface 11:04:24
14 friction, but, yeah, potentially. 11:04:27

15 Q And what -- why are size and shape more 11:04:30
16 important? 11:04:32

17 A Well, again, it just comes down to what -- 11:04:33
18 what a human can hold. If you can -- if you can't 11:04:35
19 get your hand around, you know, the -- the shape, 11:04:39
20 then you are going to need some assistance or some 11:04:42
21 other means of opening something. 11:04:44

22 And so, if it's been designed in a way 11:04:46

1 that doesn't give you that means, then it's not 11:04:49
2 necessarily well designed, is -- is how I would 11:04:53
3 view it. 11:04:58

4 Q Okay. And I also see -- I have to ask 11:04:58
5 about this one. You also designed a home keg 11:05:01
6 dispenser. So, let me -- let me hear about that 11:05:06
7 one, too. 11:05:08

8 A Yeah. I had involvement in that project 11:05:09
9 related to the vessel that holds the beer and 11:05:11
10 features on that to allow it to be oriented in a 11:05:15
11 particular way, and also related to its -- they 11:05:18
12 were concerned about counterfeit providers. And 11:05:24
13 so, figuring out ways to ensure that a genuine 11:05:28
14 vessel was being inserted into the device. 11:05:33

15 Q What does that mean? How would you have a 11:05:36
16 sort of counterfeit vessel be put into a keg? 11:05:41

17 A Well, it -- it was a -- it was a part of a 11:05:45
18 design project that -- that allowed -- part of a 11:05:47
19 design project here. Apparently, it's a -- it's a 11:05:51
20 problem in certain markets. So, just figuring out 11:05:54
21 ways to ensure that only genuine products are -- 11:05:59
22 are used to prevent any potential problems with 11:06:04

1 the device being used, just a kind of the focus of
2 that activity.

3 Q Okay. And now looking at paragraph 35 of
4 your declaration, you talk about having designed
5 customized caps.

6 What is a customized cap?

7 A So, devices, we have a variety of
8 different vessels for reagent kits and for other
9 liquids that are accessories to our detection
10 products. So, those require customized solutions
11 to ensure that they are well-sealed under shipping
12 conditions, in particular.

13 So, you're taking vials with a particular
14 net finish and thread and adapting the caps and
15 the gaskets for the characteristics of that fluid.
16 It's different depending on what the fluid is as
17 to how the gasket or seal is -- is optimized in
18 this case, is kind of what I'm getting at.

19 Q And when you were doing these projects for
20 908 Devices, what timeframe was that taking place
21 in?

22 A Well, I'm one of the cofounders of the

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1	company and have been with 908 for about 13 years.	11:07:43
2	So, throughout that time frame, from about 2011	11:07:48
3	through the present day, especially earlier in	11:07:49
4	the -- in the -- in the sort of 2012-'13 range, I	11:07:53
5	was designing these types of reagent vessels.	11:07:59
6	That's when I started, yeah.	11:08:03
7	Q You also mentioned that some of these caps	11:08:05
8	are different depending on the characteristics of	11:08:17
9	the fluid. What does that mean?	11:08:20
10	A Well, for example, there are standard	11:08:22
11	vinyls that are available on the market, but they	11:08:29
12	are not suitable for our particular reagents.	11:08:31
13	There are some chemical compatibility	11:08:34
14	issues related to the sensitivity of our tests,	11:08:38
15	which leaching and other extractables are a	11:08:41
16	problem. So, material selection is one.	11:08:44
17	And then augmenting and enhancing the seal	11:08:46
18	for shipping, especially shipping by air is quite	11:08:52
19	challenging.	11:09:00
20	We have all had a pen leak when going in	11:09:00
21	an airplane. That type of situation is quite	11:09:04
22	serious when it comes to flammable reagents,	11:09:09

1 right?

11:09:12

2 So, we -- we want to make sure that we
3 design the gaskets in a way that had been proven
4 to be sealed with L2 chamber testing and ship
5 tests, and -- and various other cycling
6 temperature ranges. All kinds of studies go into
7 making sure that these are robust.

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8 Q And then you mention in paragraph 37 of
9 your declaration that you -- you were retained by
10 the U.S. Patent and Trademark Office for a case at
11 some point.

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12 In what time frame was that case?

11:09:44

13 A It's a while ago now. It was probably one
14 of the earliest cases I was involved with. I'm
15 going to say it was probably going on 13, 14 years
16 ago, that time frame.

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11:10:01

17 Q And what -- what sort of an understanding
18 did you have at the time about the U.S. patent
19 laws?

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11:10:08

20 A Well, my focus was not on -- on the legal
21 aspects of the case or the patent law aspects. I
22 mean, I was hired as a technical expert in

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1 fluidics as they related to fluid flow through 11:10:19
2 these coffee capsules in this case. They were 11:10:24
3 talking about different claims that were related 11:10:29
4 to technical capabilities that the attorneys at 11:10:33
5 the patent office were having some difficulty 11:10:39
6 understanding. 11:10:42

7 And so, my job was to help to characterize 11:10:43
8 and help them understand the technical issues so 11:10:46
9 that they could prosecute the case. 11:10:50

10 Q In that particular case, what were some of 11:10:51
11 the technical issues that the patent office was 11:10:57
12 having difficulty understanding? 11:10:59

13 A The claims are directed towards features 11:11:01
14 of the filter basket and features of a -- of a 11:11:08
15 coffee capsule. And claims that were directed 11:11:14
16 towards what fluid would do under certain 11:11:18
17 conditions and whether these features, in -- in 11:11:21
18 reality, were performing -- the features that were 11:11:26
19 claimed. There may be some enablement questions 11:11:30
20 there, some questions surrounding other aspects of 11:11:32
21 the piercing the cartridge, and fluid distribution 11:11:37
22 within the cartridge and those types of issues. 11:11:41

1 Q You told me earlier that you have 11:11:44
2 testified in a few patent cases. It sounded like 11:11:56
3 maybe seven or eight. 11:11:59

4 Do you remember the number? I know you 11:12:01
5 told me 2/3 of 14 --

6 (Indiscernible crosstalk.) 11:12:04

7 A The number of cases is different from the 11:12:04
8 number of depositions, because many -- some of the 11:12:08
9 case had multiple depositions. So, I -- if I put 11:12:12
10 together a list of it, it's probably -- I think I 11:12:16
11 said it was -- this is my 15th depo, and the -- 11:12:20
12 the number of clients related to that is probably 11:12:27
13 more like ten, because, again, multiples in some 11:12:29
14 cases. 11:12:34

15 Q Yeah. And in your declaration, starting 11:12:37
16 at paragraph 39, you have a description of what 11:12:39
17 you title Relevant Legal Standards. 11:12:41

18 Are the legal standards that you express 11:12:43
19 here consistent with the legal standards you've 11:12:46
20 been informed of in your other cases, your other 11:12:50
21 patent cases? 11:12:54

22 A Well, the -- first, I should say that I'm 11:12:55

1 not an attorney. These relevant legal standards 11:12:59
2 are those that are provided to me by counsel and 11:13:03
3 are used as the basis of my analysis in this 11:13:05
4 particular case. As to an analysis of whether 11:13:08
5 these are consistent with those that have been 11:13:11
6 provided to me in the past, I haven't evaluated 11:13:13
7 that. 11:13:16

8 But this -- this process of evaluating 11:13:16
9 prior art and obviousness and anticipation 11:13:21
10 arguments is something that's very familiar and 11:13:24
11 something that I have done quite a bit. 11:13:26

12 Q You feel that you needed counsel to 11:13:29
13 explain the legal principles to you or you 11:13:35
14 otherwise would not have understood them? 11:13:37

15 A Well, I always like to include this 11:13:42
16 section in my declaration, because I think it's 11:13:44
17 important to provide the foundation and what 11:13:46
18 standards I'm relying on. As I'm not an attorney, 11:13:50
19 I can't comment on -- on whether they are relevant 11:13:55
20 or accurate or not. I'm just following what I 11:13:57
21 have been provided here and using that in my -- in 11:14:00
22 my analysis. 11:14:02

1 Q Is it possible that these legal standards 11:14:04
2 are inaccurate? 11:14:07

3 MR. SCHLETZBAUM: Object to form. 11:14:09

4 A Yeah, I'm not sure that I could comment. 11:14:10
5 I don't know that I have an answer for that. I'm 11:14:12
6 not a legal expert. 11:14:15

7 Q So, you don't know whether they are 11:14:17
8 accurate or inaccurate; is that right? 11:14:19

9 A Well, what I'm saying is that they have 11:14:23
10 been provided to me and they're -- they're 11:14:24
11 summarized here, and that these paragraphs 11:14:26
12 summarize my understanding of what's been 11:14:29
13 explained. 11:14:30

14 As to whether they are accurate or not is 11:14:32
15 not something that I can comment on. 11:14:35

16 Q And in this section, you describe 11:14:44
17 something -- you use a word "inherent." Is that a 11:14:48
18 term for which you've been given an understanding 11:14:52
19 for legal purposes? 11:14:56

20 A Is there a particular section of this that 11:14:58
21 you're referring to? 11:15:01

22 Q Paragraph 42 of your declaration, the part 11:15:02

1	that's on the top of page 12.	11:15:04
2	A I'm going to read that for a second.	11:15:08
3	Well, we'd have to go back to section 102	11:15:22
4	of 35 USC to know if that word is used there. But	11:15:26
5	it says here -- it's talking about anticipation	11:15:29
6	and whether the claim is disclosed, either	11:15:32
7	explicitly or inherently in a single prior art	11:15:34
8	reference.	11:15:38
9	That's -- that's -- that's what I see	11:15:38
10	here.	11:15:42
11	Q What's the difference between something	11:15:43
12	that's explicit versus something that's inherent?	11:15:46
13	MR. SCHLETZBAUM: Form.	11:15:53
14	(Indiscernible crosstalk.)	
15	(The court reporter asked for clarification.)	
16	MR. SCHLETZBAUM: Form. Thank you.	11:16:03
17	A And -- and what I'm focusing on here is if	11:16:04
18	something is explicitly disclosed, you're pointing	11:16:07
19	to it in the prior art reference. If something is	11:16:10
20	inherent, my understanding is that it necessarily	11:16:13
21	would be there, but it's not necessarily disclosed	11:16:14
22	explicitly.	11:16:18

1 But, again, I'm not a legal expert. I'm 11:16:22
2 following the process according to what I've been 11:16:25
3 provided here. 11:16:27

4 Q So, what does it mean for something to 11:16:27
5 necessarily be there, but it's not necessarily 11:16:29
6 disclosed explicitly? I don't -- I don't think I 11:16:31
7 understand that. 11:16:34

8 A Well, actually, there's -- there's -- 11:16:35
9 there's I'm not defining the word "inherently." 11:16:43
10 The word "inherently" means what it says here in 11:16:46
11 this. And, you know, you asked me to put other 11:16:50
12 words, and I'm not necessarily prepared to do 11:16:53
13 that. But what I said is, inherently, to me, I'm 11:16:56
14 understanding it to mean that something -- a 11:17:00
15 feature is necessary for the device to function as 11:17:04
16 claimed. 11:17:09

17 As opposed to something that would be 11:17:10
18 obvious to include. That's a different standard. 11:17:14

19 Q What about -- so, in the next sentence, 11:17:17
20 you talk about: I understand that the question of 11:17:19
21 anticipation is whether a POSITA would have 11:17:22
22 reasonably understood or inferred. 11:17:25

1 What is the difference between something 11:17:27
2 that is understood versus something that is 11:17:29
3 inferred? 11:17:31

4 A Well, it's -- it's saying -- it's 11:17:34
5 basically saying similar thing, that you're 11:17:46
6 reading the prior art reference in light of your 11:17:50
7 construed claim limitation in the claim. And 11:17:55
8 you're comparing the two. 11:17:58

9 And so, whether a POSITA would have 11:17:59
10 understood or inferred from the teachings that the 11:18:01
11 elements are disclosed is what -- it means what it 11:18:05
12 says. I mean, you are looking at those and -- and 11:18:09
13 comparing them. So, a POSITA understands or 11:18:12
14 infers from the reference it's teaching. Again, I 11:18:16
15 think the language is clear. 11:18:20

16 Q You know, I think it's not quite so clear 11:18:27
17 to me. So, what -- what does "infer" mean -- what 11:18:47
18 does the word "infer" mean to you? 11:18:49

19 A Well, I've already answered in the best 11:18:52
20 way that I know how. I'm not sure I could define 11:18:56
21 it in another way for you. 11:18:59

22 Q Is it -- is "infer" a word that you're 11:19:01

1 familiar with in the English language? 11:19:04

2 A Yes. It's a word that is -- is known and 11:19:08
3 has a -- it's in the dictionary. I mean, it's a 11:19:11
4 word that one would know in this context, yes. 11:19:14

5 Q Let me know what your definition of 11:19:18
6 "infer" is. 11:19:21

7 A Well, I haven't defined it here. And -- 11:19:23
8 and I've already given you what I think is my 11:19:28
9 understanding of -- of -- of "inferred" in this 11:19:30
10 context. I don't have anything further than that. 11:19:31

11 Q I'm asking you in a more general context 11:19:34
12 now, right? We said "infer" is a word that one 11:19:38
13 could look up in the English language, in a 11:19:42
14 dictionary or other like resources. So, tell me, 11:19:45
15 based on that, what your understanding of "infer" 11:19:48
16 is? 11:19:50

17 A Well, I haven't done that. I'm not 11:19:51
18 prepared to do that here today. I would have 11:19:53
19 to -- you know, I'd have to review it and discuss 11:19:56
20 it. 11:19:59

21 Again, you're asking me to define 11:20:00
22 something that's been provided to me. I 11:20:02

1 understand what the process is and I've -- I've 11:20:04
2 described what "reasonably understood" or 11:20:09
3 "inferred" means to me. And I'm not sure what 11:20:11
4 else I can say. 11:20:15

5 Q Well, in order to apply that term to the 11:20:16
6 prior art, you had to form an understanding of 11:20:19
7 what that means to you, right? 11:20:21

8 A Right. And I have applied the process, or 11:20:25
9 here we're talking about the anticipation 11:20:31
10 standard, section 102. I've read that section and 11:20:37
11 understand it. 11:20:41

12 I've summarized it here based on the 11:20:42
13 information that's been provided to me. And I'm 11:20:44
14 applying that in my analysis. 11:20:48

15 Q And in that last sentence of paragraph 42, 11:20:50
16 you mention "undue experimentation." 11:20:53

17 What is "undue experimentation"? 11:20:54

18 MR. SCHLETZBAUM: Object to form. 11:21:01

19 A Well, again, that's a legal standard. 11:21:02
20 That's something that ultimately the threshold is 11:21:07
21 not precise. It's something that one understands 11:21:13
22 that the description has to enable the POSITA to 11:21:16

1 practice the invention without undue

11:21:20

2 experimentation.

11:21:22

3 I don't have an exact number, because I
4 think it's -- it's dependent upon the technology.

11:21:22

11:21:25

5 But here, we're talking about simple technology.

11:21:31

6 Yeah, I don't have a precise answer for that.

11:21:39

7 Q Yeah. So, how does it change between
8 simple versus complicated technologies? Maybe if
9 there is some sort of sliding scale for undue
10 experimentation, how do you move along that scale
11 between simple or complex technologies?

11:21:41

11:21:43

11:21:47

11:21:50

11:21:54

12 A Well, I've been involved with stuff that's
13 pretty complex, and I've been involved with stuff
14 that's pretty simple.

11:21:56

11:21:58

11:22:00

15 You know, in this particular art, you are
16 talking about relative simple technology. It's
17 being described in a way that assumes that the
18 reader knows -- has basic sort of skill in the
19 art, and it may be that not every detail of how to
20 practice the invention is described, because it's
21 not necessary to do so.

11:22:01

11:22:06

11:22:13

11:22:16

11:22:20

11:22:27

11:22:31

22 Because what's been provided -- the -- the

11:22:32

1 practitioner would be able to practice the 11:22:37
2 invention without undue experimentation, because 11:22:39
3 it's been described adequately with specificity 11:22:42
4 and enough detail to be able to practice the 11:22:47
5 invention. That's the point. 11:22:50

6 Q And how -- but my question was more going 11:22:52
7 towards how does that change if it's a simple 11:22:55
8 technology versus a complex technology? How does 11:22:59
9 that sort of create some difference in the level 11:23:03
10 of experimentation that might rise to the level of 11:23:05
11 being undue experimentation? 11:23:11

12 A Well, once again, you're asking me to 11:23:12
13 comment on a legal standard that I don't have the 11:23:14
14 background to opine upon. 11:23:17

15 What I know is that, in a more complex 11:23:19
16 situation, more detail may need to be provided, 11:23:22
17 because one would have to do a lot of 11:23:28
18 experimentation potentially to practice the 11:23:33
19 invention, and that's not proper. You need to 11:23:34
20 provide more information in order for them to 11:23:37
21 build a practice in that type of situation. 11:23:40

22 That's my understanding, but, again, I'm 11:23:42

1	not a legal expert.	11:23:45
2	Q And for simple technologies, how does that	11:23:48
3	sort of impact how you look at a -- you know, a	11:23:51
4	descriptive text versus how you look at a	11:23:55
5	descriptive or illustrative figure? Is there any	11:23:58
6	difference between the two?	11:24:02
7	MR. SCHLETZBAUM: Object to form.	11:24:03
8	A That's a pretty broad question. What I	11:24:04
9	would say is that for a pretty simple technology	11:24:07
10	like I think we are evaluating here, it's --	11:24:09
11	it's -- one is able to read and understand the	11:24:12
12	figures and the specification and practice the	11:24:18
13	invention in this case without any issues as far	11:24:21
14	as I can see.	11:24:26
15	I'm speaking directly to the '252 spec	11:24:27
16	here.	11:24:31
17	I don't know that I could answer that more	11:24:31
18	generally.	11:24:34
19	Q And is there any middle ground between	11:24:39
20	simple or complex? Like what are -- what are some	11:24:41
21	other areas in the sliding scale of complexity of	11:24:44
22	technologies? Is there anything in the middle?	11:24:48

1 A Well, I haven't considered that. I don't 11:24:52
2 think I -- I don't think I can provide an opinion 11:24:55
3 on that. 11:24:57

4 Q Are you not able to tell me whether there 11:25:01
5 is something in the middle between simple and 11:25:09
6 complex technologies as a general proposition? 11:25:11

7 A Well, you, yourself, used the term 11:25:14
8 "sliding scale." I'm not sure what the derivation 11:25:16
9 of the source of that term would be. 11:25:20

10 All I'm saying is that I'm applying my 11:25:21
11 understanding in this case. I haven't opined upon 11:25:24
12 other cases, and I'm certainly going to opine on 11:25:27
13 the intricacies of section 102 from a legal 11:25:31
14 perspective. 11:25:37

15 Q Let's talk about your understanding of 11:25:38
16 obviousness, as well. 11:25:40

17 So you talk about something called a 11:25:41
18 motivation to combine, right? 11:25:43

19 A Yes. 11:25:46

20 Q And what is your understanding of a 11:25:46
21 motivation to combine? 11:25:48

22 A When one is evaluating prior art 11:25:50

1 references in the context of the obviousness

11:26:03

2 analysis, you have to guard against finding

11:26:06

3 motivation in the patent, because that would be

11:26:13

4 considered improper hindsight by us.

11:26:19

5 In this case, and in other cases where I'm

11:26:21

6 evaluating prior art, I'm looking at the art and

11:26:25

7 comparing it to the claim language. And if there

11:26:29

8 is a combination, motivation to combine is

11:26:34

9 something that would point the person of ordinary

11:26:37

10 skill to look at another reference or to consider

11:26:42

11 combining with another reference in order to

11:26:47

12 arrive at an invention that in this case would

11:26:57

13 meet those particular claims.

11:27:01

14 Motivation to combine is -- is and can be

11:27:03

15 found within the references themselves.

11:27:06

16 And it can also be found in the knowledge

11:27:09

17 of a person of ordinary skill of what one would

11:27:12

18 know at the time, given their particular

11:27:17

19 background, what they would know.

11:27:19

20 And, you know, if a particular product has

11:27:21

21 ways that it could be improved, then one would

11:27:27

22 look for ways to improve the product that would

11:27:31

1 solve those problems, for example. 11:27:34

2 Those are the types of issues that come to 11:27:35
3 mind when thinking about the motivation to combine 11:27:38
4 prior art references. 11:27:41

5 Q Can you give me an example from one of the 11:27:43
6 other cases you've worked on where you found 11:27:45
7 sufficient motivation to combine references? 11:27:48

8 A I think in all cases when I'm doing an 11:27:50
9 obviousness -- obviousness ground that has 11:27:54
10 multiple references, for example, we're just 11:27:58
11 talking about printed references here, but it's 11:28:01
12 more generally applicable, but keeping it to the 11:28:03
13 IPR scenario, whenever I have a combination of 11:28:06
14 references, I articulate a motivation to combine 11:28:14
15 those references, because that's a part of the 11:28:22
16 process. 11:28:24

17 Q I'm looking for a more -- the question was 11:28:27
18 a little more specific. 11:28:31

19 So I'm looking, for example, in one of 11:28:31
20 those past cases you were working on, when you 11:28:34
21 were articulating a motivation to combine, I want 11:28:36
22 to know what that motivation was. 11:28:40

1 A Well, it was a lot of cases. As I said, 11:28:43
2 they all have motivation to combine when there is 11:28:45
3 a combination being put forth in the ground, which 11:28:47
4 results in a determination of obviousness for a 11:28:53
5 particular claim. 11:28:56

6 I'm not prepared today to discuss other 11:28:57
7 cases. Those are subject to protection orders. 11:29:01
8 I'm not going to get into the details of my 11:29:05
9 analysis on any of those. 11:29:09

10 Q What about your prior representations in 11:29:11
11 any IPRs, which most of which should all be a 11:29:14
12 matter of public record, are you able to speak to 11:29:18
13 any of those? 11:29:20

14 A If there is particular one in mind you 11:29:20
15 would like to discuss you can point me to, I'm 11:29:23
16 happy to. But I'm not prepared to discuss any 11:29:25
17 generically. 11:29:27

18 Q What is the most recent other IPR case you 11:29:27
19 worked on where you would have articulated a 11:29:31
20 position on motivation to combine? 11:29:35

21 A I'm not sure if that information has 11:29:41
22 reached the public domain yet or not. I would be 11:29:44

1	very careful to discuss that in this context.	11:29:47
2	Q What's the last IPR you were deposed in?	11:29:50
3	A I was deposed a couple months or in the	11:29:56
4	last month or so, in a matter Danco V.	11:29:59
5	Fluidmaster, for example. That's the most recent	11:30:06
6	deposition.	11:30:09
7	Q In that case, do you -- do you represent	11:30:09
8	the patent owner or the petitioner?	11:30:12
9	A In that case, I represent the Danco.	11:30:15
10	Q Are they the owner of the patent, or are	11:30:23
11	they the party challenging the patent?	11:30:26
12	A Sorry, it's been -- it's been a month and	11:30:29
13	I have been doing a lot of other things. They are	11:30:31
14	the -- the patent owners.	11:30:35
15	Q Okay. So, what -- what would be the last	11:30:39
16	IPR in which you have been deposed where you were	11:30:41
17	representing the party challenging the validity of	11:30:44
18	the patent?	11:30:47
19	A I would have to go back and look at my	11:30:49
20	recent cases to answer that question at this	11:30:51
21	moment.	11:30:54
22	Q Have you ever testified from that	11:30:54

1	perspective?	11:30:57
2	A Yes, I have testified from both	11:30:57
3	perspectives.	11:31:00
4	Q Turning to paragraph 46 of your	11:31:00
5	declaration, still in the legal standards here,	11:31:19
6	I'll show you paragraph 50. So, on paragraph 50,	11:31:28
7	you talk about something called	11:31:32
8	means-plus-function elements.	11:31:36
9	Is that something you're -- you have been	11:31:37
10	informed about?	11:31:39
11	A Yes.	11:31:40
12	Q And I guess it's the fourth paragraph	11:31:42
13	in -- the fourth sentence in paragraph 50. It	11:31:47
14	starts with: The element is then construed to	11:31:50
15	cover the corresponding structure disclosed in the	11:31:53
16	specification for performing the recited function,	11:31:56
17	as well as any equivalent structures known at the	11:31:58
18	time of the invention.	11:32:02
19	What is an equivalent structure known at	11:32:03
20	the time of the invention?	11:32:06
21	MR. SCHLETZBAUM: Object to form.	11:32:08
22	A I mean, it depends on -- it's a	11:32:09

1 case-by-case. So, when you're evaluating 11:32:23
2 structures that would have been known to a POSA at 11:32:25
3 the time of the invention, it's really even 11:32:28
4 claim-by-claim. I can't give you a generalized 11:32:31
5 view. But it says here: The element is then 11:32:34
6 construed to cover the corresponding structure 11:32:42
7 disclosed in the specification from performing the 11:32:45
8 recited function. 11:32:48

9 So, you're looking at a particular 11:32:50
10 structure that's identified in the spec in a 11:32:52
11 figure -- we are in text describing the figure or 11:32:54
12 claim. 11:32:59

13 And then you are -- well, considering 11:33:01
14 whether there are any other equivalent structures 11:33:04
15 that would have been known at the time. So, 11:33:08
16 that's just looking at what a person of ordinary 11:33:10
17 skill knows or would have known then to determine 11:33:12
18 whether this particular element is present. I 11:33:16
19 mean, that's what it says. And that's, again, 11:33:23
20 always looking at these when evaluating them from 11:33:26
21 the lens of the person of ordinary skill at the 11:33:30
22 time. 11:33:34

1 Q Are -- are corresponding structures and 11:33:34
2 equivalent structures in terms -- in the context 11:33:36
3 of a means-plus-function analysis? 11:33:39

4 A That sentence is that: A prior art 11:33:47
5 structure is equivalent to the corresponding 11:33:50
6 structure in the specification if the prior art 11:33:53
7 structure performs the same function. 11:33:57

8 Here we are talking about the 11:33:59
9 means-plus-function analysis. You must first 11:34:02
10 identify the function and then the structures that 11:34:08
11 correspond to that function and evaluate if those 11:34:12
12 are substantially similar in order to make your -- 11:34:16
13 to evaluate the claim under the 11:34:20
14 means-plus-function tests. 11:34:22

15 Q Is the answer that the corresponding 11:34:27
16 structures and the equivalent structures are not 11:34:35
17 the same thing? 11:34:39

18 A What I said was is that you first identify 11:34:41
19 the function, and then you look at the prior art 11:34:44
20 structure and determine if it's -- you know, it's 11:34:51
21 talking about if it's equivalent to the 11:34:53
22 corresponding structure in the specification. 11:34:56

1 So, you're looking at a particular 11:34:58
2 structure from the spec, and evaluating the prior 11:35:01
3 art structure to determine the equivalence. 11:35:05

4 I mean, when you say corresponding 11:35:10
5 structure in the specification, that's what it -- 11:35:12
6 that's where -- that's what this says. Not just 11:35:14
7 corresponding structure, but you're comparing it 11:35:18
8 to the corresponding structure in the 11:35:20
9 specification. 11:35:22

10 Q And then turning back to paragraph 46, 11:35:38
11 again, talk -- returning to our conversation about 11:35:42
12 motivations the last sentence in paragraph 46, you 11:35:46
13 mention that a motivation to combine prior art 11:35:50
14 references can come from the understanding of a 11:35:53
15 POSITA. 11:35:59

16 How would a motivation come from the 11:35:59
17 understanding of a POSITA? 11:36:02

18 A This is -- this has always been part of 11:36:07
19 this analysis. It's not just what you see in the 11:36:10
20 references. Motivations can come from the 11:36:12
21 knowledge and understanding of what a person of 11:36:16
22 ordinary skill at the time would know. 11:36:18

1 This is -- you know, you're talking about
2 general knowledge about the -- the particular
3 field. We're talking about general engineering
4 knowledge. There -- you know, just things that a
5 person of ordinary skill would know at the time is
6 what that means.

7 Q What -- what are some of the things a
8 person of ordinary skill would know in the
9 pre-2013 time frame?

10 MR. SCHLETZBAUM: Object to form.

11 A ... question be more specific.

12 Q So, you were -- you were talking to me
13 earlier about ergonomic considerations. Do you
14 remember that?

15 A Generally.

16 Q Yes. So, specifically referring to
17 ergonomic considerations in the pre-2013 time
18 frame and, you know, marrying this up with the
19 question I was asking you about paragraph 46, what
20 are some of the ergonomic considerations that were
21 known to a POSITA in pre-2013 time frame?

22 MR. SCHLETZBAUM: Objection to form.

1 A It's still very open-ended question. I
2 mean, you're going to be evaluating this in the
3 context of a particular claim or claim limitation
4 when you are doing your analysis.

5 Q So, are you familiar with ergonomic
6 considerations in the pre-2013 time frame?

7 A Sure. But there are books on the topic,
8 and I'm not going to cite entire books to you. I
9 mean, it's -- what I'm saying is that this
10 understanding -- this particular motivation is
11 particular to the claim that you're evaluating.
12 It's not a generalized statement of knowledge.

13 Q Yeah. Let's -- let's talk specifically
14 about the subject matter of the '252 patent, water
15 bottles or beverage containers. So, what are some
16 the ergonomic considerations known to a POSITA for
17 that subject matter in the pre-2013 time frame?

18 A I think I have already mentioned some
19 general categories of -- of knowledge and
20 experience that one would know. Things like grip
21 diameters, things like grip strength and the
22 ability to open and close certain shapes. Just

1 general knowledge of how materials and -- and

11:38:43

2 manufacturing techniques come into mind. But I

11:38:46

3 would have to evaluate it in the context of a

11:38:50

4 particular claim to be more specific.

11:38:52

5 Q What -- what -- just tell me more about

11:38:56

6 the ability to open and close certain shapes.

11:38:58

7 What does that mean?

11:39:01

8 MR. SCHLETZBAUM: Object to form.

11:39:02

9 A Just what -- just what it means. I mean,

11:39:04

10 there are -- based on my experience and based on

11:39:10

11 what others ordinary skill at the time would know,

11:39:14

12 the larger size of a lid, for example, or a cap,

11:39:18

13 the more friction there is, the more pressure

11:39:24

14 differentials that are acting upon the gaskets,

11:39:31

15 the more difficult it is for a small hand, in

11:39:34

16 particular, to get a grip on it to open it.

11:39:39

17 You know, these are -- not hard and fast

11:39:42

18 rules, but they are things that you develop and

11:39:45

19 experience for and you look at other examples and

11:39:51

20 compare and then ultimately test and ensure that

11:39:53

21 what you are proposing is feasible.

11:39:58

22 Q What about touch points or grip

11:40:01

1	affordances, would that be something that a POSITA	11:40:04
2	in the pre-2013 time frame would have been	11:40:07
3	familiar with for water bottles?	11:40:09
4	A I'm not sure I understand the question.	11:40:12
5	Q Do you know what a touch point is?	11:40:13
6	A In -- in what context?	11:40:17
7	Q In the context of what you're familiar,	11:40:20
8	industrial design or mechanical engineering.	11:40:22
9	A Well, I think you understand -- I think I	11:40:25
10	understand you to mean a touch point to be	11:40:28
11	something that a person is interacting with. In	11:40:31
12	the context of a water bottle, it could be a	11:40:35
13	closure, for example, that's opened and closed.	11:40:38
14	It could be a grip detail on the side of	11:40:40
15	the bottle.	11:40:44
16	You know, things -- this type of product	11:40:45
17	is inherently -- I use that word, but it's	11:40:48
18	inherently touch sensitive in the sense that you	11:40:54
19	handle it because it's designed to be carried	11:40:57
20	around and used with your hands. So, it's a	11:41:00
21	particular -- a particular touch intensive	11:41:03
22	product.	11:41:12

1 Q And how does a good designer in the 11:41:12
2 pre-2013 time frame inform users where they should 11:41:15
3 touch or grip portions of a water bottle? 11:41:20

4 A What I have done for similar types of 11:41:24
5 challenges in the past is provide a grip area 11:41:35
6 that's -- that's differentiated from the overall 11:41:36
7 form somehow. It could be with rims. It could be 11:41:39
8 with texture, color. You know, the grip features 11:41:43
9 are something that you intuitively grab because 11:41:47
10 it's well-formed for the hand and helps you hold 11:41:52
11 on to something that could be wet and slippery 11:41:55
12 with condensation. So that's an example. 11:41:59

13 Q Creating something like a lip that extends 11:42:04
14 from, you know, something like a closure somewhere 11:42:08
15 else that the user can grab with their hands. 11:42:12

16 Would that be one way to tell a user what 11:42:15
17 they can grip on a water bottle in the pre-2013 11:42:18
18 time frame? 11:42:22

19 MR. SCHLETZBAUM: Object to form. 11:42:23

20 A I would have to look at a specific example 11:42:24
21 to -- to be able to answer that. 11:42:26

22 MR. STEIN: Why don't we pause. I think I 11:42:32

Transcript of Michael Jobin
Conducted on April 10, 2025

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1	may have run a little over an hour. But if -- if	11:42:34
2	you'd like, why don't we take a short break and go	11:42:37
3	off the record. How long do you think you would	11:42:40
4	like?	11:42:45
5	THE WITNESS: You want to reconvene in 10	11:42:46
6	minutes?	11:42:48
7	MR. STEIN: Sure. Yeah, that sounds good.	11:42:48
8	THE WITNESS: Great. See you then.	11:42:51
9	THE VIDEOGRAPHER: We are going off the	11:42:53
10	record. The time is 11:42 a.m.	11:42:55
11	(Off the record.)	11:42:57
12	THE VIDEOGRAPHER: We are back on the	11:52:29
13	record. The time is 11:52 a.m.	11:52:30
14	BY MR. STEIN:	11:52:34
15	Q Thanks, Mr. Jobin. So, we just finished	11:52:39
16	the short break. What did you do during the	11:52:40
17	break?	11:52:43
18	A I was looking out the window, landscapers	11:52:43
19	are preparing the soil for some new sod that's	11:52:48
20	going in, so...	11:52:52
21	Q Not putting some -- not installing some of	11:52:54
22	the keg systems?	11:52:56

1	A No.	11:52:58
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2	Q Okay. So, now I want to turn to the	11:52:59
3	patent for a minute, the '252 patent.	11:53:06

4	So, in the context of the '252 patent,	11:53:08
5	when one component is said to extend from another,	11:53:12
6	is that limited to extending in any particular	11:53:15
7	dimension?	11:53:18

8	A I don't think I fully understand the scope	11:53:24
9	of that question. Is it related to a particular	11:53:30
10	section of the '252?	11:53:32

11	Q Are you -- do you understand that the '252	11:53:35
12	patent uses the term "extending from"?	11:53:38

13	A Generally speaking, but I'm not sure I	11:53:44
14	understand what specific aspect of that you're	11:53:47
15	interested in talking about.	11:53:49

16	Q I'm interested in understanding what	11:53:51
17	"extending from" means.	11:53:55

18	What does that phrase mean to you?	11:53:57
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19	A Well, in the context of this patent, the	11:54:01
20	first thing I would do is ask whether that's a	11:54:03
21	term that is construed within the patent claims or	11:54:05
22	something that we've discussed.	11:54:08

1	I don't recall that it is. When you say	11:54:09
2	that it's a patent term, or is it something that's	11:54:16
3	found in the specification?	11:54:19
4	Q I'll rephrase the question.	11:54:32
5	So, let's start with the -- in the '252	11:54:35
6	patent, do you understand that it uses the phrase	11:54:38
7	"extending from"?	11:54:41
8	A I do.	11:54:44
9	Q And that phrase "extending from," does	11:54:44
10	that have a meaning to a person of skill in the	11:54:50
11	art in the pre-2013 time frame?	11:54:53
12	A Well, I would go to a specific example.	11:54:58
13	The term "extending from" is used in the	11:55:04
14	independent claim 5.	11:55:06
15	I'm reading here. It says that: One of	11:55:09
16	the claim limitations underneath the cap assembly	11:55:12
17	is a handle extending from the base, wherein the	11:55:17
18	handle includes a closure retention mechanism,	11:55:21
19	configured to selectively retain the closure in a	11:55:25
20	stowed position.	11:55:30
21	And so on.	11:55:31
22	So, here is an example of the phrase	11:55:32

1 "extending from" being used in the context of 11:55:33
2 independent -- independent claim 5. 11:55:37

3 Q Okay. So -- so, in that context that you 11:55:40
4 just provided, a handle extending from the base, 11:55:42
5 does that cover a handle that extends in a lateral 11:55:46
6 direction from the base? 11:55:51

7 A Well, this specific language is not -- is 11:55:54
8 not clarifying a particular direction. It's -- 11:56:00
9 it's specifying where it's extending from, which 11:56:04
10 is the base, which is the -- it's -- it's a 11:56:08
11 limitation that's under the heading "A cap 11:56:14
12 assembly," which is known from the figures within 11:56:17
13 the specification. 11:56:21

14 And furthermore, you can see and would 11:56:23
15 understand the scope of what they're claiming 11:56:26
16 based in part on the description of the invention, 11:56:31
17 based in part on the figures, although they are 11:56:37
18 not limiting that term. They at least help you 11:56:40
19 understand what the handle is in relationship to 11:56:43
20 the cap. 11:56:45

21 Those are some general things that come to 11:56:45
22 mind. 11:56:51

1 Q Sure. But I just want to make sure I have
2 an answer to the specific question asked. So,
3 I'll ask it one more time: In the context you
4 provided of claim 5 of the '252 patent, a handle
5 extending from the base, does that cover a handle
6 that extends in a lateral direction from the base?

7 A I don't see why it wouldn't.

8 Q What about a handle that extends
9 vertically from the base?

10 A Well, I haven't -- I haven't considered
11 this in -- in this particular context. But my
12 recollection is that it's not -- it's not
13 restricted in that particular way.

14 Q It could cover a handle that extends in
15 any direction; is that fair?

16 A Well, I'm taking -- I'm taking the claim
17 as I'm reading it and as one would understand to
18 it mean.

19 A handle extending from the base, they are
20 not limiting the direction within this claim that
21 I can see. Maybe there is further limitations in
22 a independent claim. But in this particular

1 instance, it appears that it just is extending
2 from the base.

3 So, it's a feature that's identifiable as
4 a handle according to the way it's been described
5 in the spec, but I don't see any particular
6 constraints regarding its orientation. That may
7 not be the case for other instances of extending
8 from. But in this case, I don't see that it's so
9 limited.

10 Q Okay. So let's have that same
11 conversation about an earlier recitation in
12 claim 5, a drink spout extending from the base.

13 Does that use of extending from also have
14 any limitations on the direction in which the
15 drink spout extends from the base?

16 A My recollection from the specifications,
17 they talk about different orientations in which
18 the spout may be extending from the base.

19 One in particular is parallel to the
20 central axis of the cap assembly.

21 But they also talk about other angles
22 leaning both towards the user and away from the

11:58:17

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11:58:46

11:58:52

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11:58:59

11:59:03

11:59:05

11:59:08

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11:59:17

11:59:21

11:59:25

1	user, in my recollection. I don't have a citation	11:59:28
2	for you. I would have to spend some time to find	11:59:31
3	it within the spec, but that's what I recall.	11:59:34
4	It's qualified that it's not just one direction.	11:59:36
5	It could be slightly different.	11:59:39
6	Q So, when claim 5 in the '252 patent says a	11:59:40
7	drink spout extending from the base, it covers	11:59:47
8	multiple different ways which a drink spout can	11:59:50
9	extend from the base, right?	11:59:52
10	A Well, I think it's true. There may be	11:59:53
11	functional constraints about some -- something	11:59:59
12	that -- that would prevent it from extending, for	12:00:01
13	example, into the bottle. I think that we're	12:00:04
14	talking about an understanding it to be extending	12:00:07
15	from the base upside of the bottle or the	12:00:10
16	enclosure.	12:00:16
17	Q And where -- where does the claim say	12:00:16
18	outside of the bottle or the enclosure for the	12:00:18
19	recitation a drink spout extending from the base?	12:00:21
20	A Well, it's -- it's -- it's the way that	12:00:23
21	it's illustrated. It's the way that it's	12:00:25
22	discussed. It's the way that I, a person of	12:00:28

1 ordinary skill, understands a drink spout. It's 12:00:31
2 something that is external to the -- the form of 12:00:33
3 the -- of the cap. 12:00:38

4 Q Let's talk about just the claim itself for 12:00:38
5 now. And then we can have a discussion about the 12:00:41
6 specification and the figures, as well. But just 12:00:44
7 looking at the claim language in claim 5, where 12:00:46
8 does it add those extra requirements of outside of 12:00:49
9 the bottle or the enclosure that you said earlier? 12:00:58

10 A Well, I think that you have to read it in 12:01:04
11 the context of the whole claim and, frankly, 12:01:06
12 within the context of the specification to 12:01:08
13 understand and to construe the term for spout 12:01:10
14 extending from the base. 12:01:15

15 One thing that I would note here is that a 12:01:16
16 closure is configured to be removably coupled 12:01:18
17 relative to the drink spout, and to restrict or 12:01:22
18 selectively restrict dispensing of liquid through 12:01:28
19 the passage. 12:01:32

20 And in addition, functions for the spout, 12:01:34
21 in terms of its interaction with the user's lips, 12:01:36
22 interaction with the closure, is described both in 12:01:40

1 the specification and in some cases here within 12:01:44
2 the claim limitations. 12:01:47

3 So, all of those things help to inform my 12:01:48
4 understanding of what a drink spout and how it 12:01:50
5 would extend. 12:01:53

6 Q Is it your understanding that the claim 12:01:54
7 should be limited by the examples in the 12:01:56
8 specification and figures? 12:01:59

9 A No. That's not what I said. I said that 12:02:00
10 your understanding and how you to construe a term 12:02:02
11 is -- is within the context of the specification. 12:02:06

12 The claim language means what it says. 12:02:08

13 But the spout has to mean something, 12:02:13
14 right? It has to interact with the closure, the 12:02:18
15 way it's claimed. 12:02:21

16 The same thing could be said for the 12:02:22
17 handle. It wouldn't make sense for a handle to 12:02:24
18 extend within the bottle because it wouldn't be a 12:02:26
19 handle. 12:02:29

20 So, logic has to come into play to -- 12:02:29
21 to -- for a claimed feature to have any meaning. 12:02:33

22 Q Are there examples in the -- in the '252 12:02:37

1 patent where the -- the drink container does not 12:02:40
2 have a handle? 12:02:45

3 A I don't recall if they -- if they talked 12:02:50
4 about not having a handle as option. Because all 12:02:52
5 of the examples that I remember are using a 12:02:57
6 handle, whether it's a complete -- handle or a 12:03:02
7 partial one, interacting with a -- a cap in some 12:03:07
8 way to -- to stow it. And so, there may be -- 12:03:14
9 there may be an alternate embodiment without a 12:03:20
10 handle, but I don't recall it at this moment. 12:03:23

11 Q Let's have a look at column 9, line 57. 12:03:26
12 And you will see a description that -- column 9, 12:03:30
13 starting at line 57, you will see a description 12:03:33
14 there of an embodiment in which the drink 12:03:37
15 container does not have a handle. 12:03:41

16 A Yeah. This is what I was remembering but 12:03:55
17 couldn't place. They -- they talk about an 12:03:58
18 alternate embodiment in which the cap assembly 12:04:00
19 is -- they talk about it being a closure retention 12:04:03
20 mechanism associated with the base. 12:04:06

21 And they're saying that there is a -- 12:04:07
22 within the scope of the present disclosures, a cap 12:04:10

1 assembly may not include a handle. 12:04:13

2 That's in line 61 of column 9. 12:04:19

3 Q And what does it mean in that column 9, 12:04:24

4 line 60 statement that you read within the scope 12:04:28

5 of the present disclosure that a cap assembly may 12:04:31

6 not include a handle? What does it mean when it 12:04:34

7 says it's within the scope of the present 12:04:38

8 disclosure? 12:04:40

9 A Well, that's the author of the document 12:04:41

10 just clarifying their intent. They are saying, 12:04:43

11 you know, we've described some very specific 12:04:46

12 embodiments, but we don't intent to limit the 12:04:48

13 invention to those embodiments. They talk about 12:04:51

14 these other example that they view as within the 12:04:54

15 scope of the invention. 12:04:58

16 But the claims are ultimately what -- what 12:04:59

17 matter, what one evaluates when -- when thinking 12:05:05

18 about -- about what the patent is about or what it 12:05:09

19 claims. 12:05:15

20 Q Could a -- could a drink container that 12:05:15

21 does not have a handle infringe claim 5? 12:05:18

22 A I have not done any infringement analysis, 12:05:22

1 and I would have to think about that before I was 12:05:24
2 able to answer that question. 12:05:26

3 Q So, you are incapable of telling me 12:05:28
4 whether a drink container that does not have a 12:05:30
5 handle could infringe claim 5 when it does recite 12:05:33
6 a handle? 12:05:37

7 MR. SCHLETZBAUM: Object to form. 12:05:38

8 A I think, again, it's not quite as simple as 12:05:39
9 that when you are doing the -- an analysis of 12:05:41
10 under obviousness or anticipation. 12:05:46

11 You know, if an -- if a handle is not 12:05:49
12 explicitly present, there may be another 12:05:51
13 structure, for example, that -- that fulfills that 12:05:57
14 patent claim through another means. 12:06:00

15 But I, again, have not evaluated this 12:06:03
16 claim under the context of infringement. 12:06:05

17 Q Okay. But you do fully understand the 12:06:09
18 entirety of the disclosure of the '252 patent; is 12:06:12
19 that accurate? 12:06:15

20 A Well, I've certainly read the '252 patent 12:06:18
21 in its entirety, and I have applied what -- what 12:06:21
22 I've gleaned from that in my analysis. And I'm 12:06:28

1 certainly construing the claims according to 12:06:30
2 what's been described in my declaration and 12:06:35
3 applying those when I'm doing my analysis. 12:06:38

4 Q So, in terms of the -- what you described 12:06:41
5 as the alternative embodiment at column 9, 12:06:43
6 starting around line 57, where there is a drink 12:06:47
7 container without a handle, is that within the 12:06:50
8 scope of the claim 5? 12:06:53

9 A Claim 5 requires a handle, according to 12:06:59
10 what it says in claim 5. 12:07:05

11 Q So what's your answer to the question? 12:07:09
12 So, is that within the scope, or it is not within 12:07:12
13 the scope, the example in the '252 patent at 12:07:15
14 column 9, starting at line 57? 12:07:17

15 (Indiscernible crosstalk.) 12:07:21

16 A -- not evaluated it particularly -- 12:07:21
17 (The court reporter asked for clarification.) 12:07:21

18 MR. SCHLETZBAUM: Just object to form. 12:07:32

19 A If you could repeat the question, that 12:07:36
20 would be great. 12:07:39

21 Q Is that within the scope of the patent or 12:07:42
22 not, the example that we see starting at column 9, 12:07:46

1	line 57, of the '252 patent in which the drink	12:07:50
2	container does not very handle?	12:07:55
3	A Well, that's --	
4	MR. SCHLETZBAUM: Object to form.	12:07:57
5	A That's different from what you asked me	12:07:57
6	before.	12:08:00
7	Q Let me -- sorry. I misspoke, yeah. I	12:08:02
8	meant to say is that within the scope of claim 5	12:08:05
9	or not, the example that we see that starts at	12:08:08
10	column 9, line 57 of the '252 patent in which with	12:08:11
11	the drink containers did not have a handle?	12:08:15
12	MR. SCHLETZBAUM: Object to form.	12:08:18
13	A My answer is that I have not evaluated	12:08:20
14	that particular embodiment in detail against this	12:08:22
15	limitation of claim 5, so I can't answer that	12:08:26
16	without further study.	12:08:29
17	Q So, in understanding the scope of claim --	12:08:30
18	claims 5 to 7 and 16 to 19, did you also take	12:08:33
19	account of the descriptions for column 9, line 57,	12:08:39
20	of a drink container that does not have a handle?	12:08:44
21	A Well, what I would say is that many	12:08:48
22	times -- I'm sorry, did someone speak?	12:08:52

1 What I'm saying is that the specification
2 describes a variety of embodiments. It is my
3 understanding that all of those embodiments are
4 not necessarily covered by the claims that are
5 ultimately claimed within this patent. It's a --
6 it's a generalized specification which -- which
7 discloses a variety of things.

8 The claim, especially in claim 5, has a
9 specific invention that it's -- that it's
10 described. It's understood within the context of
11 the specification, but it's not limited by other
12 elements of the specification. The words of the
13 claim are what I'm comparing to the prior art in
14 this case.

15 Q Yeah. So, and that's what I'm trying to
16 ask. You just said it's your understanding that
17 all of the embodiments are not necessarily covered
18 by the claims, and that's what I'm trying to ask
19 you about, whether the embodiment at column 9,
20 starting at line 57, is covered by the claims or
21 not.

22 MR. SCHLETZBAUM: Object to form.

1 A And I haven't evaluated that particular
2 embodiment against this claim, is what I'm saying.

3 What I am saying here, also, is this claim
4 says that a handle is extending from the base.
5 So, my understanding, something needs to meet
6 that -- that limitation in -- when you're
7 evaluating against this claim.

8 Q Okay. So, for the alternative embodiment
9 at column 9, line 57, in which there is no handle,
10 what would be the element that could still meet
11 the handle limitation?

12 A I -- I have not evaluated that. I don't
13 see a figure for that particular embodiment.
14 Couldn't say.

15 Q You are unable to determine whether a
16 drink container without a handle could meet
17 claim 5's recitation of a handle --

18 (Indiscernible crosstalk.)

19 A It's a hypothetical question that could
20 have any number of embodiments. I -- I'm not
21 prepared to discuss whether this limitation is met
22 by a hypothetical embodiment. It's just not

1	something that is part of my process. I'm	12:11:06
2	evaluating this claim against the prior art.	12:11:08
3	Whether or not a particular embodiment it's	12:11:11
4	included or is covered by that claim is not	12:11:13
5	something that I've evaluated in this declaration.	12:11:15
6	Q And let's also look at column 9, line 5.	12:11:25
7	A Column 9, what line again?	12:11:38
8	Q Sorry, I was just hearing some background	12:11:39
9	noise. I'm not sure what it was. Did you hear	12:11:41
10	that?	12:11:44
11	A Yeah, I heard. That's why I couldn't hear	12:11:44
12	what line number.	12:11:46
13	Q Okay. I'll just start over. So,	12:11:47
14	column 9, line 64, 65 in the '252 patent, it	12:12:03
15	mentions that a closure retention mechanism that	12:12:29
16	is associated with some other exterior portion of	12:12:14
17	the cap assembly other than a handle.	12:12:20
18	What does that mean to you?	12:12:22
19	A Just reading the rest of this paragraph	12:13:03
20	for a moment. They talk about an example in the	12:12:47
21	top of column 10. It states in line 1 through	12:12:59
22	about 5: The closure retention mechanism 54 also	12:13:06

1 is shown on, projecting from, and/or operatively 12:13:10
2 coupled to exterior upper surface 15. 12:13:14

3 So, they are giving some additional 12:13:18
4 information and referring to figures -- figure 3 12:13:28
5 in this particular case. 12:13:35

6 Q Let's turn now to column 13, line 49 of 12:13:37
7 the '252 patent, and just let me know when you get 12:13:50
8 there. 12:13:54

9 A I'm at column 13. And you said line 59? 12:13:54

10 Q 49. 12:13:59

11 A Okay. Go ahead. 12:14:06

12 Q So, there it says that the drink spout can 12:14:07
13 be angled -- or the outlet 40 can be angled 12:14:09
14 relative to the drink spout at an angle other than 12:14:12
15 a right angle. 12:14:16

16 What are some examples of an angle other 12:14:17
17 than a right angle? 12:14:20

18 A Well, I think it's referring to 11. And 12:14:23
19 so, if I go to figure 11, that should provide an 12:14:29
20 example. And there what you can see before me is 12:14:32
21 pointing to the top of the spout. And then just 12:14:38
22 above that there is a dashed line, which is 12:14:43

1 intended to represent the right angle. And that
2 right angle is measured relative to the axis of
3 the spout, which is also depicted in figure 11.

4 And so, here they're just showing it
5 doesn't have to be at a right angle. It could be
6 at some other angle as shown in figure 11.

7 Q Turning to also the '252 patent, column 7,
8 line 57 -- actually 60 to 62, column 7, 60 to 62.

9 So, in the '252 patent, column 7, line 60
10 to 62, it mentions that: An optional handle may
11 extend from any portion of the base and at any
12 angle relative to the base and/or relative to the
13 drink spout.

14 What does it mean that the optional handle
15 can extend at any angle relative to the drink
16 spout?

17 A Just reading this paragraph, they are
18 talking about figure 1, first of all, where they
19 schematically illustrate a handle is extending
20 generally laterally from the side of the base of
21 the cap assembly.

22 And I would say the back configuration

12:14:45

12:14:51

12:14:55

12:14:59

12:15:02

12:15:05

12:15:08

12:15:41

12:16:03

12:16:06

12:16:12

12:16:13

12:16:16

12:16:17

12:16:20

12:16:24

12:16:41

12:16:44

12:16:49

12:16:53

12:16:56

12:16:57

1 seems to align with the -- some of the more

12:17:00

2 detailed embodiments that are described in later

12:17:04

3 figures.

12:17:07

4 The point that they are making here is

12:17:08

5 that -- that the handle make extend from any

12:17:11

6 portion of the base at any angle relative to the

12:17:15

7 base or relative to the drink spout. It may

12:17:18

8 define a close perimeter or boundary which a

12:17:24

9 lanyard or other feature, like your fingers,

12:17:28

10 could -- could be engaged.

12:17:32

11 And then it goes on further to say that

12:17:35

12 the perimeter may be defined entirely by the

12:17:42

13 handle or in part by the base of the cap assembly.

12:17:45

14 So, there -- figure 1 is a schematic which

12:17:49

15 is at a pretty high level, which sort of says this

12:17:51

16 is handle feature in figure 1. This is how it's

12:17:54

17 illustrated schematically. But that it's not just

12:17:59

18 limited to that orientation.

12:18:04

19 It could be vertical. It could be on a

12:18:06

20 45-degree angle. It could be sticking out

12:18:09

21 sideways.

12:18:14

22 It's just -- just trying to give you a

12:18:14

1 general scope. I think figure 3 shows that in

12:18:18

2 part, as well, with the dashed line.

12:18:21

3 Q And the handle extended at an angle that's
4 a negative angle relative to a plane at the bottom
5 of the spout?

12:18:24

12:18:27

12:18:30

6 MR. SCHLETZBAUM: Object to form.

12:18:34

7 A Well, I think the answer to that is yes,
8 because I'm looking at figure 6, for example,
9 which is -- which is showing a handle which is
10 extending at an angle that is below horizontal.
11 It's still above the -- the bottom of the cap
12 assembly, but it's definitely at an angle that is
13 negative or below the angle of horizontal.

12:18:35

12:18:43

12:18:45

12:18:49

12:18:53

12:18:59

12:19:02

14 Q Does the '252 patent describe how you fill
15 the drink container with the -- with liquid?

12:19:40

12:19:43

16 A My recollection is that it does. It's --
17 there is -- the cap assembly is removable from the
18 liquid container. And so, you would remove the
19 cap assembly, and then it would be an open neck,
20 which would allow you to put water or some other
21 liquid, maybe ice, into it and then reclose by
22 threading the cap assembly back on to the -- the

12:19:45

12:19:53

12:19:56

12:20:02

12:20:09

12:20:12

12:20:17

1	liquid container.	12:20:20
2	Q Do you know where the '252 patent actually	12:20:22
3	says that?	12:20:25
4	A Yeah. I'm looking at column 3. They talk	12:20:25
5	about the liquid container here. They talked	12:20:32
6	about -- at line 10, column 3: The drink liquid	12:20:42
7	may be selectively dispensed from the internal	12:20:45
8	compartment when the cap assembly is not secured	12:20:49
9	to the neck, or when the drink spout is not sealed	12:20:52
10	or otherwise obstructed by the closure.	12:20:55
11	So, the point is, is that the cap assembly	12:20:58
12	is selectively removable from the drink container.	12:21:03
13	That's also stated at line 22.	12:21:13
14	And, you know, just throughout, I'm seeing	12:21:17
15	examples which -- which help you to appreciate	12:21:29
16	that the -- for example, column 4, line 15, cap	12:21:32
17	assemblies, according to the present disclosure,	12:21:38
18	may be adapted to be removably coupled to the	12:21:40
19	liquid container to cover or otherwise enclose the	12:21:44
20	neck 24 thereof.	12:21:48
21	Q Are there aspects of the '252 patent that	12:22:24
22	are left to a POSITA's general knowledge?	12:22:30

1 A Well, they provide, obviously, examples of
2 certain geometry and examples of features.

3 They talk about materials. They talk
4 about different sizes. So, a lot of that stuff is
5 dose closed.

6 I think probably the details of
7 manufacturing, injection molding part design is
8 not covered here, because that's something that a
9 person of ordinary skill in this context would
10 understand.

11 So, they don't get into the specifics of,
12 you know, how to design a thread form for plastics
13 or how to design a cap for efficient injection
14 molding, for example. That's not disclosed.

15 Q Do all mechanical engineers with just a
16 bachelor's degree know about efficient injection
17 molding?

18 MR. SCHLETZBAUM: Object to form.

19 A In the context of this category, a person
20 of ordinary skill in the art would be exposed on a
21 continual basis to the -- the benefits and
22 limitations of injection molded part design.

1 There is other materials disclosed, as 12:24:18
2 well. I mean, there's -- there's metal forming 12:24:20
3 and -- and others. 12:24:25

4 But there are -- there's -- there's a lot 12:24:25
5 of examples for them to be guided by. 12:24:31

6 And then there is just a lot of -- you 12:24:35
7 know, if you're making these parts in the factory, 12:24:39
8 you are working with mold designers, you are 12:24:42
9 working with injection molding specialists. And 12:24:45
10 as a designer or as a -- as an engineer, rather, 12:24:48
11 in this field, you -- you know, one would be 12:24:52
12 surrounded by and -- and would understand how to 12:24:58
13 make the parts that are ultimately manufactured 12:25:01
14 and make the product that you are designing. 12:25:04

15 It's a necessary part -- in order to 12:25:06
16 design these parts, you have to understand how to 12:25:08
17 mold these parts, for example, to be successful. 12:25:10

18 Q Let's look to column 6, line 15 to 17 of 12:25:16
19 the '252 patent. This refers to a longitudinal 12:25:27
20 access of the drink spout. 12:25:36

21 Do you understand that refers? 12:25:37

22 A I understand a longitudinal access to be 12:25:39

1 along the axis of the -- in a cylinder, for

12:25:42

2 example, it would be the center axis of rotation

12:25:46

3 of a cylinder.

12:25:48

4 The -- the -- as the cap -- rather, the

12:25:49

5 cap assembly is, generally speaking, a revolved

12:25:54

6 shape because it is a threaded on to a -- on to a

12:26:00

7 neck on a bottle or other vessel. And so, there

12:26:04

8 is a central axis to that rotation.

12:26:07

9 And so, when they're referring to that

12:26:09

10 longitudinal access, they are talking about the

12:26:11

11 axis of the drink spout being generally colinear

12:26:15

12 with the longitudinal axis of the cap assembly.

12:26:18

13 And then they talk about how that doesn't have to

12:26:22

14 be perfectly parallel. It could be different

12:26:25

15 angles.

12:26:27

16 Q And what -- is there any limit on the

12:26:27

17 different angles that the drink spout might have

12:26:30

18 relative to the front or the rear of the cap

12:26:33

19 assembly?

12:26:38

20 A The one that comes to mind, and I don't

12:26:39

21 remember if they talk about it here, but there are

12:26:43

22 some ergonomic constraints.

12:26:48

1	You want the spout to be convenient to use	12:26:49
2	for somebody that's taking the bottle and tipping	12:26:53
3	it up to drink from it, in this particular case.	12:26:55
4	And so, you adjust -- adjust the lip and the	12:26:59
5	position of the spout to make that -- to make that	12:27:07
6	work.	12:27:16
7	Q And is that the example that we see in --	12:27:16
8	which figure is it -- figure 11 of the '252	12:27:20
9	patent?	12:27:23
10	A Well, I mean, I suppose that that's an	12:27:26
11	example of -- you know, they've decided in this	12:27:29
12	case to change the angle of that. You know, what	12:27:31
13	the specific motivations are, I don't think I	12:27:36
14	revealed. But one that -- that I would see as a	12:27:39
15	potential is really more about, like, figure 13.	12:27:43
16	You know, here is an example of showing	12:27:47
17	the bottle with the angled spout in the context of	12:27:49
18	the lips and the nose, and the -- and the eyes and	12:27:53
19	what can see over the bottle.	12:27:58
20	You know, all of these things are -- you	12:28:00
21	know, I'm sure if we went to the description for	12:28:02
22	figure 13, it would describe some of those	12:28:04

1 considerations that are shown here. 12:28:07

2 Q Is the -- is the angle that we see for the 12:28:10

3 put spout in figure 13, is that the only angle 12:28:17

4 that the patent contemplates for the drink spout? 12:28:21

5 A I'll see what it says. 12:28:29

6 Q I'm still referring to column 6, line 15. 12:28:33

7 A Column 6, line 15. One moment. 12:28:36

8 There's a lot of discussion in that 12:29:03

9 paragraph about how it can be tilted forward 12:29:05

10 slightly, it can be tilted back relative to the 12:29:07

11 vertical angle, or even angled backwards relative 12:29:08

12 to the vertical. 12:29:13

13 So, it's -- it's just helping you to 12:29:15

14 understand that it's the -- the spout is not 12:29:16

15 limited to a simple revolved cylinder shape that's 12:29:19

16 in a vertical orientation. 12:29:24

17 That there's modifications that one would 12:29:26

18 make to that spout, and they are describing them 12:29:30

19 in words, and then they are showing in pictures an 12:29:32

20 example of some of the modifications that you 12:29:35

21 might make. 12:29:38

22 Q Now, look -- turning back to the claims 12:29:44

1	for a minute.	12:29:49
2	Do you have an understanding of the	12:29:49
3	relationship between the scope of a dependent	12:29:51
4	claim as compared to an independent claim?	12:29:54
5	A Yes.	12:29:58
6	Q What is -- what is your understanding?	12:29:59
7	A Well, an independent claim stands alone.	12:30:04
8	All of the elements within the independent claim	12:30:06
9	must be met.	12:30:09
10	The context of -- of infringement. And	12:30:09
11	when you're looking at prior art, you are	12:30:14
12	comparing those limitations within that claim to	12:30:18
13	the prior art to make your evaluation.	12:30:21
14	In the case of a dependent claim, you do	12:30:23
15	the same for the limitations within the dependent	12:30:26
16	claim, but you must also meet the -- the	12:30:30
17	limitations of the independent claim that's above	12:30:33
18	it.	12:30:36
19	So, it's a two-part thing. You -- you	12:30:37
20	need to meet both the independent and that	12:30:39
21	specific dependent claim in order to -- to	12:30:41
22	evaluate in the -- in the context of obviousness,	12:30:46

1	for example.	12:30:50
2	Q How -- what's your understanding of how a	12:30:57
3	dependent claim can influence the scope of an	12:30:59
4	independent claim?	12:31:02
5	MR. SCHLETZBAUM: Object to form.	12:31:06
6	A Well, again, I'm not a lawyer, but as an	12:31:10
7	engineer, and I'm one who's -- that evaluated	12:31:13
8	dependent claims and independent claims, it can be	12:31:17
9	that you have an independent claim that you're	12:31:20
10	trying to construe, and that dependent claims	12:31:23
11	below it sometimes show a more specific embodiment	12:31:31
12	and that -- and help to at least inform you as to	12:31:34
13	what the intent was.	12:31:38
14	But, ultimately, yeah, you're looking at	12:31:39
15	the words and construing the terms and the	12:31:42
16	limitations of the independent claim.	12:31:44
17	Q Is an independent claim broader than the	12:31:56
18	dependent claims that depend from it?	12:31:58
19	A In my understanding, a dependent claim is	12:32:04
20	adding a limitation. And so, that would mean that	12:32:08
21	it's narrower than the independent claim.	12:32:14
22	Q Let's look specifically at claim 17 with	12:32:19

1	that understanding in mind.	12:32:22
2	So, claim 17 of the '252 patent mentions	12:32:24
3	that the drink spout defines an upper lip.	12:32:27
4	Does that mean that the drink spout in	12:32:31
5	claim 5 must also define an upper lip?	12:32:35
6	MR. SCHLETZBAUM: Object to form.	12:32:41
7	A You're -- you're not reading all of the	12:32:48
8	dependent claim. I mean, it goes on to say in	12:32:51
9	claim 17: Wherein the upper lip does not engage	12:32:54
10	the closure when the closure is in the closed	12:32:57
11	position.	12:32:59
12	So, it's talking about a very specific	12:32:59
13	situation in 17.	12:33:03
14	The independent claim above it doesn't	12:33:07
15	describe the -- the upper lip of the spout that	12:33:14
16	specifically. It's more general.	12:33:21
17	Q Let's look at claim 5 and show me where it	12:33:22
18	mentions the upper lip of the drink spout.	12:33:37
19	A Claim 5 has a drink spout. A drink spout	12:33:46
20	is understood. It's not so limited as it is in	12:33:50
21	claim 17, where it defines an upper lip that does	12:33:57
22	not engage the closure when it's in the closed	12:34:02

1	position.	12:34:05
2	So 5 -- 17 is narrower than 5. 5	12:34:05
3	describes a spout, but it doesn't have anything	12:34:12
4	specific to say about the upper lip of the spout	12:34:17
5	in this claim.	12:34:20
6	Q And now I want to turn to column 16 of the	12:34:20
7	patent, line 39.	12:34:24
8	A Column 16, line 39.	12:34:37
9	Q Yeah.	12:34:41
10	A Got it. Go ahead.	12:34:44
11	Q One second.	12:34:45
12	Column 16, line 39, that states: As used	12:35:23
13	herein, the term "and/or"...	12:35:28
14	And then it goes on to explain what	12:35:31
15	"and/or" means.	12:35:34
16	And what -- what is the meaning that is	12:35:35
17	being expressed in the '252 patent for "and/or"?	12:35:37
18	A This is a -- this is an example of the	12:35:45
19	author acting as lexicographer, providing a	12:35:50
20	specific meaning for "and/or," as defined in this	12:35:56
21	paragraph, at least, ranging from line 39 down to	12:36:02
22	line 54.	12:36:10

1	I can read it to you, but, I mean, it --	12:36:13
2	it is defining how they understand "and/or" should	12:36:15
3	be construed. In short, it says, in line 43:	12:36:21
4	Multiple entities listed with and/or should be	12:36:28
5	construed in the same manner, for example, one or	12:36:31
6	more of the entities so conjoined.	12:36:38
7	Q You used the term "author acting as	12:36:47
8	lexicographer."	12:36:53
9	That -- is that a common phrase that	12:36:53
10	engineers understand?	12:36:56
11	A Well, it's something that I came to	12:36:57
12	understand in the context of this case and others,	12:36:59
13	where when you have a claimed term that is	12:37:01
14	specifically defined in the specification, that	12:37:05
15	should be respected and followed when you're	12:37:11
16	construing the term and using and evaluating under	12:37:15
17	a particular claim that uses that claim term.	12:37:19
18	It's, I guess, peculiar to patent law, is	12:37:21
19	my understanding, but that there are cases where a	12:37:26
20	word is used, maybe in a particular field, in a	12:37:29
21	way that differs from what one would normally	12:37:33
22	understand it to mean, perhaps. I don't know	12:37:37

1 exactly. 12:37:39

2 But my understanding is that when it's 12:37:39
3 defined by the author, one is meant to respect 12:37:41
4 that as -- as guidance towards how it should be 12:37:44
5 construed. 12:37:49

6 Q So, is that -- is that one of the legal 12:37:50
7 principles of which counsel in this case informed 12:37:52
8 you? 12:37:55

9 A Yes, I -- it's something that counsel has 12:37:56
10 discussed with me. And I don't recall if I have 12:38:00
11 it in my -- in my section of -- of -- of those 12:38:03
12 types of legal understandings, but that's what I 12:38:08
13 understand. 12:38:12

14 Q Okay. Well, let's look at that section. 12:38:12
15 So, your relevant legal standards are 12:38:14
16 paragraphs 39 to 50 of your declaration. 12:38:18

17 Could you show me where in those 12:38:21
18 articulations of your understanding of legal 12:38:24
19 standards you say anything about lexicography? 12:38:27

20 A Well, I remember using lexicography, that 12:38:32
21 word, elsewhere in my declaration, I think 12:38:33
22 specifically in the context of -- within one of 12:38:38

1	the limitations of claim 5. Let's see real quick	12:38:43
2	here.	12:38:47
3	Yeah. I think it was the term	12:38:59
4	"selectively," for example, is something that	12:39:00
5	would have been discussed.	12:39:02
6	So, I can go back in my declaration real	12:39:03
7	quick.	12:39:06
8	Q In that section, you are going to refer to	12:39:06
9	the term "lexicography," right?	12:39:10
10	A I think so. Let me look it up.	12:39:12
11	Let me see here. One moment.	12:39:28
12	I don't see it here in my -- in my	12:39:59
13	declaration, but I do recall that word. Maybe it	12:40:02
14	was in the '252 patent where they called it out	12:40:05
15	specifically. But it -- it certainly is something	12:40:07
16	that I understand is that a patent term -- a claim	12:40:09
17	term can be construed or defined by the author --	12:40:14
18	by the author of the patent, and that is what I	12:40:18
19	understand to be they are acting as a	12:40:21
20	lexicographer. That's -- that's what I understand	12:40:25
21	that to mean.	12:40:29
22	Q Do you have any other legal understandings	12:40:30

1 that you applied in this case, which you did not
2 provide in your declaration?

12:40:32

12:40:35

3 A Well, when it comes to this specific legal
4 understanding, the -- the -- construction of that
5 particular claim term selectively, has been
6 provided, and -- and I describe that.

12:40:36

12:40:41

12:40:46

12:40:50

7 As far as other that are not described
8 here, I mean, the ones that are most relevant here
9 to this analysis is certainly described in my
10 declaration.

12:40:54

12:40:57

12:41:01

12:41:03

11 Whether there are other -- is other
12 knowledge of -- you know, of patent law that I
13 have applied, I -- I don't think so. I have tried
14 to be as thorough as I can in describing what I
15 have been told.

12:41:03

12:41:06

12:41:12

12:41:16

12:41:18

16 Q And turning back to the description that
17 started this conversation, column 16, line 39,
18 what did you tell me was the definition supplied
19 by the inventors for "and/or" in the '252 patent?

12:41:21

12:41:25

12:41:33

12:41:36

20 A Let me go to the '252 patent and
21 column 16, line 39. What I recall stating is that
22 this term is discussed by the author in detail in

12:41:42

12:41:49

12:41:55

1 the paragraph encompassing the lines -- column 16, 12:42:02
2 lines 39 through 54. That's where I see examples 12:42:07
3 and description of how one should read the term 12:42:14
4 and construe the term "and/or." So, that's -- 12:42:21
5 that's what I see here. 12:42:25

6 Q Is it -- is it that definition that we see 12:42:31
7 column 16, line 43, i.e., one or more of the 12:42:34
8 entities so conjoined? 12:42:41

9 Or where is the definition? 12:42:43

10 A Well, that's one line in an entire 12:42:45
11 paragraph of description of how one should 12:42:50
12 construe. 12:42:52

13 They talk about -- they give examples to 12:42:53
14 help you understand. They -- they -- they provide 12:42:55
15 additional description, such as the last sentence 12:43:02
16 of this paragraph. What I'm saying is that "as 12:43:07
17 used herein" is how this paragraph is -- is 12:43:11
18 started. 12:43:17

19 That means that herein within this patent 12:43:18
20 specification, the term "and/or" is used, and then 12:43:22
21 they are describing to you how it should be 12:43:27
22 construed and how you should understand it. 12:43:30

Transcript of Michael Jobin
Conducted on April 10, 2025

100

1	It's very specific. I mean, it's not	12:43:32
2	often the -- the case that -- that I see something	12:43:35
3	this quite this specific with these examples, but	12:43:38
4	here is what I'm seeing for this particular term.	12:43:44
5	MR. STEIN: I think that's about	12:43:56
6	another hour. So, why don't we -- let's -- why	12:43:57
7	don't we take a break. I think -- we can go off	12:44:01
8	the record. But I know it's pretty close to	12:44:05
9	lunchtime for you.	12:44:07
10	THE WITNESS: Yeah.	12:44:09
11	MR. STEIN: Do you want kind of a little	12:44:10
12	bit longer break?	12:44:11
13	THE WITNESS: Yeah. I could use, you	12:44:12
14	know, at least 20 minutes. Could be half an hour	12:44:14
15	would be best, but...	12:44:18
16	MR. STEIN: Why don't we make it half an	12:44:20
17	hour. We don't want you to have to stuff a bunch	12:44:23
18	of food in your mouth. And we can be off the	12:44:27
19	record. We don't need to be on the record.	12:44:28
20	THE VIDEOGRAPHER: We are going off the	12:44:28
21	record. The time is 12:44 p.m.	12:44:30
22	(Luncheon recess.)	12:44:32

Transcript of Michael Jobin
Conducted on April 10, 2025

101

1	THE VIDEOGRAPHER: We are back on the	13:17:26
2	record. The time is 1:17 p.m.	13:17:27
3	BY MR. STEIN:	13:17:30
4	Q Okay. Mr. Jobin, so, we just returned	13:17:31
5	from a lunch break. Can you just say for the	13:17:34
6	record what you did during the lunch break?	13:17:36
7	A I ate lunch and I wandered around outside,	13:17:38
8	looking at all the dirt that they have made. So,	13:17:42
9	other than that, no -- no phone calls or messaging	13:17:46
10	with anybody. Just here by myself.	13:17:48
11	Q Okay. So, no -- no conversations with	13:17:51
12	counsel during the break?	13:17:53
13	A No.	13:17:54
14	Q So, are you familiar with something called	13:17:55
15	an information disclosure statement in patent	13:18:07
16	practice?	13:18:10
17	A Yes, I've heard that term.	13:18:12
18	Q What's your understanding of that term?	13:18:14
19	A Well, when you're filing a patent and you	13:18:17
20	come across a new piece of information that you'd	13:18:20
21	like to bring to the attention of the patent	13:18:23
22	office during prosecution, you file an IDS, along	13:18:25

1 with the reference or other art that you've
2 discovered.

3 Q Would it be common for, you know,
4 citations in a utility patent to include design
5 patents on information disclosure statements?

6 MR. SCHLETZBAUM: Object to form.

7 A I think that you can -- you could submit
8 whatever you thought was relevant. It doesn't
9 have to be patent related either. It could be
10 other art, other documents, articles, web links
11 I've seen.

12 Q Are you aware that the inventors of the
13 '252 patent submitted a number of design patents
14 on their information disclosure statements?

15 A I would have to look at their -- at the
16 record again in more detail, but that wouldn't
17 surprise me.

18 Q Why would that not surprise you?

19 A Well, when I say lists of prior art
20 references on the face of a patent, you will see
21 utility patents. Sometimes you will see a design
22 patent. It's less frequent, but you will

1 definitely see design patents and utility patents 13:19:38
2 listed. 13:19:40

3 Q And what's the relevance of a design 13:19:41
4 patent to the claims of a utility patent? 13:19:44

5 MR. SCHLETZBAUM: Form. 13:19:47

6 A I discuss this within my declaration to 13:19:48
7 some degree, but my understanding is that a design 13:19:52
8 patent is directed towards the ornamental features 13:19:56
9 of a product only. It's -- it's design, not 13:20:01
10 utility. 13:20:04

11 And that a utility patent is directed 13:20:04
12 towards functional elements. 13:20:08

13 Q So, why do you think the inventors of the 13:20:10
14 '252 patent thought it necessary to submit design 13:20:13
15 patents on their information disclosure 13:20:16
16 statements? 13:20:18

17 MR. SCHLETZBAUM: Object to form. 13:20:18

18 A I don't have any information as to 13:20:20
19 motivation of the inventors in this case. 13:20:22

20 Q Do you have any thoughts on why they might 13:20:26
21 have done that? 13:20:29

22 A I haven't evaluated that, no. 13:20:30

1 Q Do you have a copy of the -- actually, 13:20:31
2 strike that. 13:20:42

3 Are you familiar with the priority claims 13:20:44
4 in the context of patent applications? 13:20:46

5 A Yes. 13:20:52

6 Q And what -- what's your understanding of a 13:20:52
7 priority claim? 13:20:57

8 A Well, a patent, in my, experience claims 13:20:57
9 rights to a particular priority date, and said 13:21:03
10 date is typically related to the filing of a 13:21:07
11 patent application, for example, or a provisional 13:21:10
12 application, which the invention is disclosed. 13:21:14

13 Q So, the earlier application if, we called 13:21:21
14 it a priority application, that will have some 13:21:23
15 disclosure of the invention of the later 13:21:26
16 application; is that your understanding? 13:21:30

17 A Well, I'm not sure what specific aspect of 13:21:34
18 priority you're wishing to discuss, but my 13:21:41
19 understanding in this case is that I've been asked 13:21:43
20 to accept a particular priority date, which is 13:21:45
21 related to the filing of the one of the initial 13:21:47
22 applications that included this invention. 13:21:50

1	And -- and that's what I've done, but I	13:21:54
2	haven't analyzed it in any detail beyond that.	13:21:58
3	Q Are you familiar with something called a	13:22:03
4	continuation in part in U.S. patent practice?	13:22:08
5	A I've heard the term, yes.	13:22:12
6	Q What's your understanding of that term?	13:22:14
7	A You can have a -- a patent application	13:22:17
8	that can result in one patent but it could also	13:22:25
9	result in numerous patents, depending on whether	13:22:32
10	the inventors filed additional claims, continuing,	13:22:34
11	in part, or extending to additional claims which	13:22:39
12	were covered by the same specification.	13:22:45
13	Q And what would it mean when it is	13:22:48
14	continuing in part?	13:22:50
15	A I don't know that I appreciate the	13:22:53
16	specificity of what the "in part" means beyond the	13:22:56
17	normal English of the word. I'm, you know,	13:23:00
18	speaking as an engineer. And I know that a	13:23:05
19	continuation is something that happens in patent	13:23:08
20	prosecution in which additional patents can be	13:23:10
21	claimed or issued based on a single or multiple,	13:23:14
22	but generally an earlier specification. So it's	13:23:19

1	not just one-to-one sometimes.	13:23:23
2	Q Could one of the earlier specifications be	13:23:24
3	a design patent application and one of the later	13:23:28
4	ones be a utility patent application?	13:23:31
5	MR. SCHLETZBAUM: Form.	13:23:35
6	A I'm not sure I know the answer to that	13:23:36
7	one.	13:23:38
8	Q Would it surprise you to learn that some	13:23:38
9	of the references at issue in this case have	13:23:42
10	exactly that circumstance?	13:23:45
11	A I don't know. Angle.	13:23:46
12	Q Okay. Let's look at the -- do you have	13:23:52
13	the Leoncavallo reference in front of you?	13:23:53
14	A Let me pull that up.	13:23:58
15	Q Exhibit 1005.	13:23:59
16	(Marked for identification Exhibit 1005.)	13:24:02
17	A I'm looking at Exhibit 1005, Leoncavallo.	13:24:18
18	Q Okay. Does the Leoncavallo reference show	13:24:23
19	only ornamental features?	13:24:27
20	A Leoncavallo I'm looking at, which is	13:24:28
21	Exhibit 1005, is U.S. patent number 7,753,240.	13:24:31
22	This indicates to me that this is a utility	13:24:39

1	patent.	13:24:42
2	Q I'll ask the question again: Does -- does	13:24:44
3	the Leoncavallo reference, Exhibit 1005, show only	13:24:46
4	ornamental features?	13:24:51
5	MR. SCHLETZBAUM: Object to form.	13:24:53
6	A I answered that question. This is a	13:24:54
7	utility patent. It's claiming functions that are	13:24:57
8	utility in nature. It's not a design patent.	13:25:03
9	Q What about the title -- what's the title	13:25:05
10	of Leoncavallo?	13:25:15
11	A Leoncavallo is entitled: Closure for a	13:25:15
12	liquid container.	13:25:18
13	Q Does that tell you something about the	13:25:19
14	function of the utility patent?	13:25:22
15	A What it tells me is that the claims and	13:25:28
16	the disclosure within the specification are	13:25:30
17	directed towards a closure for a liquid container.	13:25:33
18	And then it goes into more detail as you	13:25:37
19	read the spec.	13:25:39
20	Q Can the title provide a functional	13:25:40
21	description of what's in the patent application?	13:25:43
22	MR. SCHLETZBAUM: Object to form.	13:25:47

1 A I'm not sure I understand exactly what 13:25:50
2 you're getting at. It is one of the pieces of 13:25:52
3 information that one can use to understand what 13:25:55
4 the patent is about. 13:25:57

5 Q And what if we go to column 2, line 55, to 13:25:59
6 column 3, line 2, of the Leoncavallo, 13:26:06
7 Exhibit 1005. There -- there you will see a brief 13:26:12
8 description of the drawings. 13:26:16

9 Does that tell you something functional 13:26:16
10 about what's described in the Leoncavallo 13:26:19
11 reference? 13:26:21

12 A Well, when one is reading a specification, 13:26:24
13 you look at the -- the body text. You look at the 13:26:27
14 figures. And you look at the descriptions of the 13:26:33
15 figures in order to understand what they are 13:26:36
16 trying to convey. 13:26:38

17 I would note that a utility patent, such 13:26:39
18 as this, has written description. A design patent 13:26:44
19 does not. 13:26:48

20 Q As we go to column 1, line 3 to line 6, of 13:26:48
21 Leoncavallo, Exhibit 1005, do you see where it 13:26:59
22 says that: This present application is a 13:27:04

1	continuation of part of U.S. design serial number	13:27:06
2	29224096?	13:27:10
3	A I see that in column 1, yes.	13:27:13
4	Q What does it mean for a utility	13:27:16
5	application to be a continuation of part of a	13:27:19
6	design application?	13:27:21
7	MR. SCHLETZBAUM: Object to form.	13:27:23
8	A I'm not sure I could answer that with any	13:27:25
9	specificity. It seems to me it's more of a legal	13:27:29
10	question.	13:27:33
11	Q You don't -- you don't have an	13:27:33
12	understanding of what that means, do you?	13:27:35
13	A Well, as I stated, I'm an engineer. I'm	13:27:37
14	not a lawyer. And the answer to your question is	13:27:40
15	that's not something I have given any thought to.	13:27:43
16	Q Your -- so none of your opinions have been	13:27:45
17	influenced by the fact that a utility application	13:27:47
18	can claim priority from a design application?	13:27:50
19	A I have not evaluated that particular	13:27:56
20	question.	13:27:59
21	Q Okay. Let's go back to the '252 patent.	13:28:00
22	Look at column 6, lines 53 to 56. This is	13:28:11

1	Exhibit 1001.	13:28:23
2	(Marked for identification Exhibit 1001.)	13:28:26
3	A Okay. I'm in column 6, lines 53 to 56.	13:28:26
4	Q Right.	13:28:35
5	A Go ahead.	
6	Q Here it says that: The closure restricts	13:28:39
7	and, in many embodiments, prevents dispensing of	13:28:43
8	drink liquid through the passage 36.	13:28:46
9	Do you see that?	13:28:48
10	A Yes.	13:28:50
11	Q What does it mean for the closure to	13:28:51
12	prevent dispensing of drink liquid?	13:28:54
13	A In the context of the closure, it -- it's	13:29:00
14	sealing, to some feature of the drink spout, to	13:29:09
15	prevent the water from leaking out. It's stated	13:29:13
16	in a couple of different ways in this paragraph	13:29:19
17	and elsewhere, but it's, I think, common sense, as	13:29:22
18	well.	13:29:25
19	Q And what does it mean for the closure to	13:29:26
20	restrict dispensing of drink liquid?	13:29:29
21	A Well, and my understanding of restrict is	13:29:32
22	that, for example, a straw, if you're drinking	13:29:36

1 liquid through a straw, it restricts the flow
2 because it's a narrow passageway. And so, the
3 fluid is going through a narrow passageway from
4 the enclosure of the vessel and into your mouth.
5 So, it's restricting the flow but not preventing
6 it.

7 Q In the context of the '252 patent,
8 something that's restricted is not sealed, right?

9 MR. SCHLETZBAUM: Object to form.

10 A I think that that depends on the
11 circumstance. A restriction could also prevent
12 flow if there is a minimal pressure differential,
13 for example. It depends on the size of the
14 orifice and surface energy of the materials and
15 the fluid within.

16 Q Well, in the context of the example you
17 gave me of the straw, and you said that the straw
18 restricts the flow, in that example, is the straw
19 sealed?

20 A Particular example, the straw can prevent
21 fluid from leaking out. If the -- if it's -- if
22 it's small enough, and if it's sealed at the

1 bottom and vessel tips over, as long as the 13:30:52
2 pressure differential is not too high. It depends 13:30:56
3 on the geometry, but it's possible that it could 13:30:59
4 seal or prevent flow from occurring in that 13:31:02
5 instance. 13:31:05

6 So, it's very specific, but I think what 13:31:05
7 they are trying to get at is that a restriction is 13:31:08
8 one thing. And prevents is the absence of flow. 13:31:11

9 Q And that's true throughout the '252 13:31:18
10 patent? 13:31:23

11 A Well, the -- I've read the '252 patent and 13:31:26
12 understand that it's generally directed towards a 13:31:33
13 closure that prevents flow. It's designed to seal 13:31:37
14 against some form -- some portion of the spout and 13:31:44
15 prevent flow from occurring. 13:31:49

16 That's the point of the closure is to -- 13:31:51
17 is to keep the water in the bottle when you're not 13:31:55
18 drinking out of it. 13:32:50

19 Q So, the closure is not designed to 13:31:59
20 restrict. It's designed to prevent the dispensing 13:32:02
21 of liquid; that's your understanding? 13:32:06

22 MR. SCHLETZBAUM: Object to form. 13:32:08

1 A What they have done here is that they 13:32:09
2 have, I guess, you could say expanded the 13:32:12
3 definition of closure to include closed position, 13:32:17
4 such as exhibited in figure 1, in which the 13:32:23
5 closure restricts. 13:32:28

6 And then it says: In many embodiments, 13:32:29
7 prevents. 13:32:32

8 So, here a closure is not normally 13:32:32
9 designed or intended for preventing fluid from 13:32:35
10 passing, but it's also, in some embodiments, 13:32:39
11 restricting fluid flow. 13:32:42

12 Q Let's look at what was claimed. So, if we 13:32:53
13 look at claim 5, then, in the context of the 13:33:13
14 discussion that we just had, which term is used 13:32:58
15 when -- when the closure is introduced? Is the 13:33:03
16 word "prevent" or is the word "restrict" used? 13:33:06

17 A It says here in claim 5 that: A closure 13:33:14
18 configured to be removably coupled relative to the 13:33:22
19 drink spout in a closed position to selectively 13:33:25
20 restrict dispensing of drink liquid through the 13:33:28
21 passage and to selectively permit dispensing of 13:33:33
22 drink liquid through the passage when removed.

1 So what I take from this claim limitation, 13:33:37
2 is that here they are saying that the -- and 13:33:41
3 actually, putting the closure on and off the 13:33:50
4 spout, quote, selectively permits dispensing of 13:33:55
5 drink liquid when removed. 13:34:02

6 And then when it's in the closed position, 13:34:04
7 it selectively restricts dispensing of drink 13:34:08
8 liquid through the passage. 13:34:11

9 So, again, it has to do with its position, 13:34:12
10 whether it's in the closed position or whether 13:34:17
11 it's in the removed state. 13:34:19

12 Q And you said the word "restricts." Does 13:34:24
13 that mean that the claim requires a sealing? 13:34:26

14 A Well, it could be that they are getting 13:34:31
15 at -- there's degrees of sealing. If you apply a 13:34:34
16 very large pressure differential across the seal, 13:34:38
17 it might leak a little bit. But that's still 13:34:41
18 considered closed in this case. 13:34:44

19 But they are saying it's a closure. It's 13:34:46
20 covering the spout, preventing water from coming 13:34:50
21 out in this case. 13:34:53

22 You can then selectively remove the 13:34:54

1 closure from the spout to permit dispensing or 13:34:57
2 drinking. 13:35:01

3 And then put it back on to restrict the 13:35:01
4 liquid from coming out. 13:35:04

5 So, it's -- it's -- you know, that's the 13:35:06
6 other aspect of restrict flow that they are trying 13:35:09
7 to be very, I think, particular in -- in what the 13:35:12
8 closure is able to do here. 13:35:14

9 Q Let's look at figure 9 of the patent, the 13:35:17
10 '252 patent. 13:35:41

11 A Figure 9, okay, got it. Of the '252. 13:35:48

12 Q Yeah. 13:35:50

13 A Yeah, okay. I'm there. 13:35:51

14 Q What is -- what is figure 9 showing in the 13:36:13
15 '252 patent? 13:36:15

16 A Whenever I look at a figure, I always go 13:36:19
17 to the description in the figure. So, I'm just 13:36:23
18 searching for that now. 13:36:26

19 It says here in column 12, line 29: With 13:37:04
20 particular reference to figure 9, however, the 13:37:09
21 tether body includes a pair of webs, 118, 13:37:12
22 interconnecting the closure collar, 110, and the 13:37:18

1 neck collar, 114. 13:37:21

2 So, what we are seeing here is what they 13:37:23

3 term a "tether body," and it is a way of 13:37:27

4 connecting the enclosure to the assembly of the 13:37:32

5 neck, which is between the cap and the -- and the 13:37:40

6 vessel. It's captured there when it's screwed 13:37:45

7 together. 13:37:49

8 Q Is the tether a part of the closure in the 13:37:52

9 '252 patent? 13:37:56

10 A Let's say that it's part of the cap 13:38:01

11 assembly. Let's look to see how they define that. 13:38:06

12 It says that -- no, actually, no. It says that -- 13:38:11

13 the tether, 104, is described in a separate 13:38:17

14 sentence from the cap assembly. It's a flexible 13:38:22

15 part that is connected to the cap. You know, 13:38:28

16 to -- you know, the purpose of something like this 13:38:39

17 would be to prevent you from losing the cap. 13:38:40

18 Q The tether -- the tether is not part of 13:39:19

19 the cap assembly in the '252 patent? 13:39:22

20 A Well, let's go look at the figures 13:39:25

21 surrounding this one, see what I see. 13:39:27

22 I look at the brief description of the 13:39:49

1	drawing section in column 2, line 45, figure 12	13:39:51
2	is: A top view of the cap assembly and the tether	13:39:54
3	of the drink container of figure 4 with the	13:39:57
4	closure in the stowed position.	13:40:01
5	So, this would indicate to me that the	13:40:03
6	tether is not considered part of the cap assembly.	13:40:05
7	Q I got distracted there for a second.	13:40:57
8	Now, let's have a look at figure 7, in the	13:41:01
9	'252 patent, please.	13:41:09
10	A I'm there.	13:41:19
11	Q In figure 7, what is the component labeled	13:41:20
12	50 -- with the reference numeral 56?	13:41:28
13	A It says features -- I'm just going to go	13:41:34
14	down to see the term that they use.	13:41:36
15	... and they're little features that	13:41:53
16	project from the inside of the handle as shown	13:41:54
17	there in that figure.	13:41:59
18	Q In figure 7, which component of the	13:42:01
19	overall drink container is in contact with 56 in	13:42:05
20	figure 7?	13:42:10
21	A Which component of the drink container is	13:42:14
22	in contact with 56, is that what you said?	13:42:17

1	Q Correct.	13:42:21
2	A 56 is a claimed feature, and I think that	13:42:22
3	helps to understand the scope of what is claimed.	13:42:31
4	And it's talking about enclosure retention	13:42:37
5	mechanism in independent claim 5.	13:42:45
6	It says: Wherein the handle includes a	13:42:49
7	closure retention mechanism configured to	13:42:53
8	selectively retain the closure in a stowed	13:42:56
9	position.	13:42:59
10	And it goes on. But this feature, 56, is	13:42:59
11	what Dr. Vallee pointed to in his declaration when	13:43:05
12	he was describing the structure that defines the	13:43:12
13	function of the claim limitation that's called a	13:43:18
14	closure retention mechanism.	13:43:25
15	Q Is that your answer to my question?	13:43:30
16	A Well, what -- yes. If there is something	13:43:34
17	that I didn't get to that you would like me to	13:43:39
18	clarify, I'm happy to.	13:43:43
19	Q Which component did you tell me is in	13:43:44
20	contact with 56 in figure 7? Because I don't	13:43:47
21	think you addressed that at all.	13:43:50
22	A Well, what -- what I'm -- what I'm meaning	13:43:52

1 to say when I'm talking about the closure 13:43:54
2 retention mechanism, I understand the element 56 13:43:57
3 to be one of the structures that is related to 13:44:01
4 that function, and that's what is identified by 13:44:09
5 Dr. Vallee. 13:44:11

6 Here in this claim limitation, it's -- it 13:44:12
7 says wherein the handle includes a closure 13:44:17
8 retention mechanism. 13:44:21

9 So that feature 56 is attached to the 13:44:22
10 handle of -- of the cap assembly, of the overall 13:44:25
11 structure. And you can see that looking at 13:44:35
12 figure 7, as well. 13:44:37

13 Q So, go back to figure 9 for a minute. We 13:44:41
14 were looking at the tether. Do you see a 13:44:47
15 reference numeral 118 in figure 9? 13:44:49

16 A I see 118. It says: A pair of -- tether 13:44:52
17 body includes a pair of webs, 118, interconnecting 13:45:02
18 the closure collar, 110, and the neck collar, 114. 13:45:06

19 So, yes, I see 118 as webs. 13:45:11

20 Q And in figure 7, do you see reference 13:45:14
21 numeral 118 there, as well? 13:45:18

22 A In figure 17 -- figure 7, I see 118 13:45:20

1 pointing to the corresponding webs from figure 9. 13:45:25

2 Q And in figure 7, are those webs, 118, 13:45:30

3 which are part of the tether, are they in contact 13:45:34

4 with the reference numeral 56? 13:45:37

5 MR. SCHLETZBAUM: Object to form. 13:45:40

6 A I don't believe that they are. I'm 13:45:42

7 looking at other figures. I'm looking at the -- 13:45:45

8 this view here. They appear to be traversing 13:45:49

9 underneath the -- the -- those tabs, 56. 13:45:54

10 Q And those wings, 118, are they within that 13:46:22

11 reference numeral 52 that we see in figure 7? 13:46:26

12 A In this embodiment, the web of the tether 13:46:33

13 passes through the perimeter of the handle. Let 13:46:37

14 me look to see what 52 is -- is described. It's 13:46:41

15 describe as the closed perimeter or boundary, 52. 13:46:46

16 And so, it appears to me, at least in this 13:46:53

17 embodiment, that a tether is passing through that 13:46:56

18 closed boundary. 13:46:58

19 Q If we go back to figure 9, what is 13:47:12

20 reference numeral 110? 13:47:15

21 A What I just read earlier, let me go back 13:47:24

22 to it to remind myself, is a closure ring or 13:47:30

1 collar, which is designed to extend around -- I'm 13:47:35
2 looking at column 10, line 55 through 56. It says 13:47:40
3 that: A closure ring collar, 110, that 13:47:49
4 operatively extends around and that is operatively 13:47:53
5 retained on the closure. 13:47:57

6 And so, what I see there is what's been 13:47:59
7 described as optional, this tether, to -- to 13:48:04
8 attach to the cap, but it's not considered part of 13:48:11
9 that cap. 13:48:13

10 It's connecting the cap to the -- to the 13:48:14
11 junction between the -- the -- connecting the 13:48:19
12 closure, rather, to the junction between the cap 13:48:22
13 assembly and the -- and the vessel. 13:48:28

14 Q And that collar, closure collar 110, that 13:48:33
15 we see in figure 9, does the patent describe that 13:48:45
16 as engaging with the tab 56 in the '252 patent? 13:48:48

17 A To my knowledge, I'm -- I'm understanding 13:48:56
18 that the tabs 56, the closure retention mechanism, 13:49:28
19 interacts with the closure itself, not with -- not 13:49:34
20 with the -- the tether. 13:49:37

21 Q Would it surprise you to learn that the 13:49:39
22 patent says the following: At least one 13:49:41

1 cross-section of the closure collar may have a
2 maximum width that is greater than the distance
3 between the tabs so that when the closure collar
4 is positioned between the tabs, the tabs engage
5 the closure collar across the maximum width.

13:49:45

13:49:48

13:50:26

13:49:53

13:49:56

6 Would that surprise you?

13:49:59

7 A I'm not familiar with that precise
8 reference. You would have to point me to it. But
9 my understanding of this embodiment that's being
10 claimed is that it's focused on the cap assembly.
11 The tether is claimed not in claim 5. It's
12 claimed up in claim 1, which is not at issue in
13 this patent dispute.

13:50:01

13:50:04

13:50:06

13:50:09

13:50:16

13:50:22

13:50:27

14 Q Okay. So, is the tether outside the scope
15 of claim 5?

13:50:29

13:50:31

16 A Well, what I've stated -- what I've stated
17 to you is what I observe here, is that the tether
18 that we've discussed is part of claim 1. And I do
19 not see the tether described as part of claim --
20 claim -- independent claim 5.

13:50:36

13:50:38

13:50:43

13:50:48

13:50:52

21 Q Is the tether within the scope of claim 5,
22 or not?

13:50:55

13:50:58

1	MR. SCHLETZBAUM: Object to form.	13:50:59
2	A I don't think that I evaluated tether	13:51:11
3	within the scope.	13:51:13
4	My focus is on the closure and the claim	13:51:14
5	terms within independent claim 5. I have not	13:51:17
6	evaluated claim 1 in any level of detail.	13:51:20
7	Q Okay. So, you have not evaluated whether	13:51:22
8	the tether is within the scope of claim 5 in the	13:51:24
9	'252 patent?	13:51:28
10	A There is nothing in my report that I can	13:51:31
11	recall that describes or discusses the tether.	13:51:34
12	Q So, do you recall our discussion earlier	13:51:40
13	about how dependent claims can influence the scope	13:51:42
14	of the independent claim for which they depend?	13:51:46
15	A I remember that discussion.	13:51:49
16	Q And what was our conclusion in that	13:51:50
17	discussion?	13:51:52
18	A Oh, well, I wouldn't try to characterize	13:51:53
19	it in a short sentence or two.	13:51:57
20	Q Okay. Well, let's just -- let's take a	13:52:00
21	look at claim 11, please.	13:52:03
22	A Okay.	13:52:05

1	Q And before we get too far, just -- it's	13:52:06
2	column 19, line 21. And do you see how this is a	13:52:09
3	dependent claim and it depends from claim 5?	13:52:14
4	A I see that claim 11, which is not at issue	13:52:18
5	in this case, is a dependent claim beneath	13:52:21
6	claim 5.	13:52:24
7	Q Okay. And does claim 11 recite a tether?	13:52:24
8	A I have not evaluated this claim and	13:52:28
9	discussed it. I see the word a "tether"	13:52:30
10	operatively coupling the structure and other	13:52:36
11	language within claim 11.	13:52:37
12	Q So -- so, is your analysis and your	13:52:38
13	opinions in your declaration, does not take into	13:52:40
14	account claim 11 or claim 12 since you have no	13:52:44
15	evaluated those?	13:52:47
16	MR. SCHLETZBAUM: Object to form.	13:52:48
17	A No. All of my opinions are outlined in my	13:52:50
18	report, and I have evaluated those claims at issue	13:52:53
19	in detail and described. But I have not evaluated	13:52:58
20	the other claims in detail.	13:53:01
21	Q So, in forming the opinions that you	13:53:02
22	express in your declaration, have you taken into	13:53:05

1	account claim 11 and claim 12?	13:53:08
2	A I have read and relied upon the	13:53:11
3	specification in the claims in -- in the '252	13:53:13
4	patent. That document is certainly referenced as	13:53:18
5	one of the things that I reviewed. When I'm doing	13:53:23
6	detailed claim analysis, my opinions are based on	13:53:26
7	properly construing those claims, and evaluating	13:53:29
8	the prior art based on the scope of the claim, as	13:53:34
9	required. So, that is what I've done.	13:53:38
10	Q In your declaration and expressing your	13:53:42
11	opinions on the scope of claim 5, did you account	13:53:45
12	for claim 11 and claim 12?	13:53:48
13	MR. SCHLETZBAUM: Object to form.	13:53:52
14	Q Keeping in mind that you just told me you	13:53:54
15	did not evaluate them.	13:53:56
16	A I did not evaluate them in detail, is what	13:53:57
17	I said. I did not evaluate the claims, but rather	13:54:00
18	the -- the scope of the claim 11 and 12 against	13:54:03
19	the prior art. That wasn't part of my analysis,	13:54:07
20	because I'm focused here on the claims at issue in	13:54:09
21	this case.	13:54:13
22	I do believe that I've provided all of the	13:54:13

1 information regarding construing this -- these 13:54:17
2 terms. And I have evaluated the prior art in the 13:54:21
3 context of proper claim construction for each of 13:54:26
4 the patent -- of the patent claims at issue. 13:54:30

5 Q Did you take in account claim 11 and claim 13:54:38
6 12 when forming your opinions about the scope of 13:54:42
7 claim 5? 13:54:44

8 A Once again, I read and understood all of 13:54:47
9 the '252 patent in forming my opinions and in 13:54:50
10 evaluating the scope of -- of the independent and 13:54:54
11 dependent claims at issue. I have taken the 13:54:59
12 disclosure and the spec and the other claims into 13:55:03
13 account, yes. 13:55:05

14 But the focus of my -- of my analysis is 13:55:06
15 I'm comparing the independent claim 5, for 13:55:12
16 example, against the prior art. And I'm not 13:55:17
17 evaluating claim 11 and 12 at that time against 13:55:22
18 the prior art, because that's not part of the 13:55:26
19 scope of what I've been asked to do. 13:55:28

20 Q Let's just see if we can get a direct 13:55:31
21 answer to the question. Did you or did you not 13:55:33
22 take claim 11 and claim 12 into account when you 13:55:36

1	were determining the scope of claim 5,	13:55:40
2	understanding that you applied the prior against	13:55:40
3	claim 5 and not against claim 11 and claim 12?	13:55:44
4	The question is, did you or did you not	13:55:44
5	account for claim 11 and claim 12 in forming your	13:55:46
6	opinions about the scope of claim 5?	13:55:50
7	MR. SCHLETZBAUM: Object to form, asked	13:55:52
8	and answered.	13:55:54
9	A What I've stated is that I -- I evaluate	13:55:54
10	the scope and construe the claims in the context	13:55:57
11	of the specification.	13:56:01
12	Said specification includes the patent	13:56:01
13	claims, including 11 and 12, but it also includes	13:56:06
14	the written bodied specification, as well.	13:56:10
15	I believe I have properly construed the	13:56:13
16	claims that are at issue here.	13:56:17
17	Q Okay. So, does claim 5 include a tether?	13:56:19
18	A The claim 5 does not describe a tether. A	13:56:24
19	tether is described in a separate dependent claim	13:56:28
20	that is not at issue in this case.	13:56:30
21	Q Okay. So, does claim 5 exclude a tether?	13:56:32
22	MR. SCHLETZBAUM: Object to form.	13:56:37

1 A What I'm saying is that it does not 13:56:37
2 include -- I have not made any statement about 13:56:39
3 whether excludes. 13:56:41

4 A tether in specific appears here in 13:56:43
5 claim 11 and appears in independent claim 1. 13:56:48

6 It's not a feature when one is evaluating 13:56:52
7 independent claim 5 that -- that I am looking for 13:56:57
8 because it's not a limitation within that claim. 13:57:01

9 Q Okay. And what -- we were talking about 13:57:06
10 column 11 -- or I haven't given you the citation 13:57:08
11 yet, but I read earlier when I said would you be 13:57:11
12 surprised if the closure collar engaged with the 13:57:14
13 tab. 13:57:17

14 Now I want to refer you to where I was 13:57:18
15 reading from. That was column 11, line 24 to line 13:57:21
16 28. 13:57:25

17 So, in -- in forming your opinions about 13:57:27
18 the scope of claim 5, did you take into account 13:57:29
19 the disclosures in the patent at column 11, 13:57:32
20 line 24 to line 28? 13:57:37

21 A Yeah, I definitely read through this and 13:58:00
22 understand this to be an alternate embodiment, 13:58:02

1 among many that are described in the spec. 13:58:06

2 Because the embodiment is described in the 13:58:08

3 spec does not necessarily mean that it's claimed. 13:58:10

4 Here I'm construing the claims and comparing them 13:58:15

5 to the language. It does not surprise me that 13:58:19

6 alternate embodiments of a closure retention 13:58:24

7 mechanism are described. It doesn't -- that is 13:58:29

8 true throughout this specification. 13:58:33

9 Q Is it your opinion that what you're 13:58:36

10 describing as an alternative embodiment at column 13:58:39

11 11 at line 24 to line 28 is outside the scope of 13:58:43

12 claim 5? 13:58:47

13 MR. SCHLETZBAUM: Object to form. 13:58:48

14 A Again, I haven't evaluated that. I have 13:58:50

15 evaluated the prior art as to whether it is within 13:58:53

16 the scope of claim 5, for example. 13:58:57

17 Claim 5 is claim 5. It's -- it's 13:58:59

18 construed in the context of the general disclosure 13:59:03

19 within the specification, but the language within 13:59:07

20 the claim is what matters here. And that's what 13:59:11

21 I'm -- that's what I'm using when I'm doing my 13:59:15

22 analysis. 13:59:17

1 Q So, are you able to determine, sitting 13:59:20
2 there today with me, whether column 11, line 24 to 13:59:22
3 line 28, of the '252 patent is within the scope of 13:59:25
4 claim 5? 13:59:27

5 MR. SCHLETZBAUM: Object to form. 13:59:29

6 A I have not evaluated that question in 13:59:48
7 detail, either in my report, and -- and I would 13:59:50
8 have to look at it more carefully to give you an 13:59:50
9 accurate answer.

10 All I'm saying is, is that the claim 13:59:55
11 language of claim 5 is very specific, and I have 13:59:56
12 used that when I'm evaluating the prior art. 13:59:59

13 Whether that specific embodiment is 14:00:01
14 covered under that claim, I don't have an answer 14:00:05
15 for you at this time. 14:00:07

16 Q What about column 11, line 36 to line 39, 14:00:37
17 did you consider whether that example is within 14:00:43
18 the scope of claim 5? 14:00:47

19 MR. SCHLETZBAUM: Object to form. 14:00:50

20 A Lines -- what were the lines again? 14:00:52

21 Q Lines 36 to 39. 14:00:59

22 A 36 to 39 states: Additionally or 14:01:06

1 alternatively, the closure/retention mechanism may 14:01:09
2 be configured to engage both of the tether and the 14:01:13
3 closure to operatively retain the closure in its 14:01:16
4 stowed configuration. 14:01:20

5 So, what I see here is another, I guess 14:01:21
6 you could call it alternative embodiment. I've 14:01:25
7 not evaluated whether that specific embodiment 14:01:28
8 would be covered by the claims. It's just not 14:01:31
9 something I was asked to do. I'm focusing on 14:01:34
10 comparing these claims that are at issue in this 14:01:39
11 case to the prior art. 14:01:42

12 Q Do you recall our discussion earlier about 14:01:43
13 the patent's use of "and/or"? 14:02:08

14 A Yes, I remember that discussion. 14:02:10

15 Q I would like to look at the patent, 14:02:11
16 Exhibit 1001, column 7, line 65. 14:02:17

17 Do you see where it says: Hold and/or 14:02:27
18 retain? 14:02:30

19 A The context here -- this is used in the 14:02:40
20 context of the handle 50 may but is not required 14:02:45
21 to do define a closed perimeter or boundary 14:02:51
22 through which a lanyard, carabiner, belt strap, 14:02:55

1 user's finger or fingers, or other structure may 14:02:58
2 extend to hold and/or retain the drink container 14:03:03
3 in a selected position or orientation. 14:03:08

4 So, that's the context of the "and/or" 14:03:13
5 from line 65. 14:03:15

6 Q Okay. And what -- what does "and/or" mean 14:03:19
7 in this context? 14:03:23

8 A Well, as I recall from being -- reviewing 14:03:26
9 it earlier, the "and/or" is meant to include the 14:03:32
10 handle -- it says: Or other structure may extend 14:03:40
11 to hold and/or retain the drink container in a 14:03:49
12 selected position or orientation. 14:03:52

13 So, here it's focused on -- either of 14:03:54
14 those options are discussed as what it could 14:04:01
15 define or do. 14:04:10

16 Q It could be one of those, it could be both 14:04:17
17 of those. Either of those are options? 14:04:19

18 A That's my understanding of the -- that's 14:04:23
19 my understanding of the "and/or" in this context, 14:04:26
20 in the context of this specification, yes. 14:04:28

21 Q I would like to look at the Miller patent 14:04:32
22 for a minute. This is Exhibit 1006 in the 14:04:59

1	proceeding.	14:05:03
2	(Marked for identification Exhibit 1006.)	14:05:03
3	Q And I haven't been asking, but when you're	14:05:06
4	opening up these materials, you're -- you're	14:05:08
5	opening them from a folder you have on your	14:05:12
6	laptop, Mr. Jobin?	14:05:16
7	A Yes. What I've done is I've placed the --	14:05:17
8	one, two, three, four, five prior after	14:05:20
9	references, the '252 patent and the copy of the --	14:05:24
10	my declaration into a folder called deposition	14:05:28
11	references on my desktop. So, those are the files	14:05:30
12	that I have here for reference, and those are the	14:05:35
13	only ones I'm looking at, at this time.	14:05:38
14	Q And who provided you with copies of those	14:05:40
15	exhibits that you stored in the folder on your	14:05:43
16	laptop?	14:05:45
17	A All of these exhibits were provided to me	14:05:46
18	by counsel.	14:05:48
19	Q And the exhibits that you have in that	14:05:50
20	folder, do they bear -- and we can look at	14:05:52
21	Exhibit 1006 as a sample, do they have a stamp in	14:05:55
22	the lower right corner of the exhibit page?	14:05:58

1 A Yes. These are official exhibits in the
2 sense that they give the exhibit number and the
3 title, and then they have a Trove Brands
4 Exhibit 1006, and the IPR petition number in the
5 lower right-hand corner of each page.

6 Q And just -- just to confirm, because we
7 didn't do this before, in your declaration,
8 Exhibit 2009, on page 91, does your signature
9 appear there, and is it dated February 7th, 2005?

10 A Yes. On page 91 of the declaration, my
11 signature appears, and the date is February 7th,
12 2025.

13 I should also note, I forgot to mention it
14 earlier in the day when we first started, because
15 we never got to the declaration, there are two
16 errors that I came across when I was reviewing my
17 declaration yesterday that I wanted to bring to
18 your attention.

19 Q Okay. Well, I did ask you at the
20 beginning if there was anything that had -- well,
21 I guess I didn't ask about errors, so okay.

22 A Right. And it didn't occur to me at that

1	time to mention this, but I'll just briefly	14:07:11
2	mention them to you now.	14:07:14
3	Q Sure.	14:07:15
4	A Paragraph 145.	14:07:16
5	Q Yeah.	14:07:23
6	A Just to myself...	14:07:24
7	Paragraph 145 -- I'm just looking for --	14:07:27
8	if you go down to almost the bottom of the page,	14:07:41
9	one, two, three, four, five lines up from the	14:07:46
10	bottom of the page, the sentence says: Similarly,	14:07:49
11	the flip cap, 68, would be retained in a stowed	14:07:52
12	position.	14:07:57
13	I'm just reading ahead a portion. It	14:07:57
14	should read: Similarly, the flip cap, 68, would	14:08:12
15	not be retained in a stowed position.	14:08:15
16	And then on paragraph 186, I'm just	14:08:27
17	scrolling to it now, at the bottom, the last line	14:08:41
18	on page 86, it says: I note the petitioner does	14:08:51
19	contend.	14:08:56
20	And that should read: I note the	14:08:57
21	petitioner does not contend.	14:09:00
22	So, those are two omissions that obviously	14:09:03

1 are important in understanding my opinions. 14:09:06

2 Q When did you become aware of the two 14:09:15
3 errors you just identified for me, what you're 14:09:19
4 calling errors? 14:09:22

5 A I did -- I did a thorough readthrough 14:09:23
6 yesterday of the report, and those two popped out 14:09:26
7 to me as -- as not internally consistent. And 14:09:29
8 what I understand and I what I mean wasn't 14:09:33
9 reflected in those sentences because of the typos 14:09:34
10 and the omission of the word "not." 14:09:37

11 So, those are two that I -- I identified 14:09:40
12 in my review. 14:09:43

13 Q Do you have an guess as to how those 14:09:49
14 errors were introduced? 14:09:52

15 A Well, I mean, lots of editing going on, 14:09:54
16 lot of pages and paragraphs, it just -- I have no 14:09:57
17 idea how -- how that occurred. 14:10:01

18 But it's not uncommon for a document of 14:10:02
19 this length for there to be certain -- a certain 14:10:06
20 small number of typos or errors. And that's what 14:10:09
21 I identified in my readthrough yesterday. 14:10:12

22 Q Okay. Let's turn to Miller, Exhibit 1007. 14:10:18

1 A Mine says 1006. 14:10:36

2 Q My apologies, you're right. 1006. 14:10:39

3 In your declaration, you say this only 14:10:47

4 shows ornamental features and has no other 14:10:49

5 description; is that correct? 14:10:54

6 A I'd have to look at my -- my declaration 14:10:56

7 to know specifically what I said. But what I 14:10:59

8 recall is that it shows ornamental features, 14:11:02

9 not -- not functional features. And that there is 14:11:08

10 no written description, but that I mean the body 14:11:11

11 text of describing that you would see in the 14:11:15

12 utility patent. 14:11:17

13 Q So, do you see on the first page of 14:11:18

14 Exhibit 1006, the Miller reference, there is a 14:11:21

15 whole section called description? 14:11:24

16 A Sure. These are high-level descriptions 14:11:28

17 of -- of, you know a perspective view of the 14:11:30

18 beverage container. So, it's -- it's telling you 14:11:35

19 in a very short number of words what the picture 14:11:38

20 is, and that's it. 14:11:41

21 Q Can a skilled mechanical engineer or an 14:11:44

22 industrial designer learn functional features from 14:11:46

1 different views of a drawing? 14:11:51

2 MR. SCHLETZBAUM: Object to form. 14:11:55

3 A Well, I'm looking at these in the context 14:11:59

4 of the grounds, and analyzing those grounds, and 14:12:02

5 what -- what I'm doing is, I'm comparing these 14:12:12

6 figures and the information provided in this 14:12:16

7 document, which is limited otherwise, to the 14:12:18

8 claims. 14:12:21

9 Your question was whether a skilled 14:12:27

10 designer could learn functional information from a 14:12:29

11 figure. Again, the figure is not intended to 14:12:32

12 impart functional information. It's only about 14:12:37

13 the appearance of the -- of the object. 14:12:39

14 Q But a skilled mechanical engineer and 14:12:43

15 designer when given with different views of a 14:12:46

16 structure, is it your position that they can 14:12:49

17 discern nothing about how that structure might 14:12:53

18 work? 14:12:56

19 A I think that they -- a lot of assumptions 14:12:59

20 have to be made for information that's not 14:13:01

21 depicted or described. 14:13:04

22 And there is limited information provided 14:13:05

1	here for some of the features that I'm evaluating.	14:13:12
2	I think your question was more general. I	14:13:15
3	don't know that I could answer that generally.	14:13:17
4	Q Let's look at figure 1 to start in Miller.	14:13:41
5	A Okay.	14:13:54
6	Q I was going to try and share my screen. I	14:13:55
7	just don't know if it's going to work. Let's	14:14:19
8	start with the question, so looking at figure 1,	14:14:25
9	do you see the top of the figure, there is	14:14:27
10	something that looks like a structure that sits on	14:14:30
11	top of this beverage container?	14:14:35
12	A You're saying in figure 1, is there a	14:14:40
13	structure that sits on top of the beverage	14:14:45
14	container?	14:14:50
15	Q Yeah.	14:14:51
16	A I -- I can't discern with any -- with any	14:14:58
17	rigor from this figure.	14:15:02
18	Q Are you able to figure out what the top of	14:15:10
19	the figure is versus the bottom of the figure?	14:15:13
20	A It says it's a perspective view of the	14:15:16
21	beverage container. Yes, I would say the bottom	14:15:20
22	is at the bottom of page near the figure 1 title,	14:15:23

1	and the top of the beverage container is at the	14:15:26
2	opposite end.	14:15:29
3	Q Miller also has a title, right, on page 1?	14:16:00
4	What is the title of Miller?	14:16:04
5	A It says: Beverage container.	14:16:06
6	Q Does that tell you anything about the	14:16:09
7	function of the depicted structure?	14:16:12
8	A It just tells me what the structure is.	14:16:15
9	It says it's a beverage container.	14:16:18
10	Q And does that tell you something	14:16:22
11	functional?	14:16:23
12	A It's showing me what the beverage	14:16:26
13	container looks like in figure 1, but it doesn't	14:16:28
14	tell me how it operates.	14:16:31
15	Q And do you see on page 1 of Exhibit 1006,	14:16:39
16	the Miller reference there is some codes, U.S.	14:16:44
17	classification codes, and a field of	14:16:47
18	classification search? Do you see those?	14:16:50
19	A Yes.	14:16:52
20	Q Did you evaluate any of those in forming	14:16:55
21	your opinions that the Miller reference shows you	14:16:57
22	nothing functional?	14:17:00

1	A I did not evaluate those classification	14:17:06
2	fields, so -- I evaluated this document.	14:17:09
3	Q I'm going to try to share my screen for a	14:17:15
4	minute. Bear with me for one minute.	14:17:36
5	Mr. Jobin, are you able to see my screen	14:18:35
6	that I'm trying to share?	14:18:38
7	A Yes.	14:18:39
8	Q Okay. And do you see a copy of the Miller	14:18:40
9	reference, Exhibit 1006?	14:18:44
10	A Yes.	14:18:46
11	Q Does this appear like the same Miller	14:18:47
12	reference you have in front of you on your laptop?	14:18:50
13	A Yes.	14:18:54
14	Q I'm going to try to annotate. So,	14:18:55
15	figure -- what do we see in figure 6 of the Miller	14:19:03
16	reference, which I'm sharing on my screen right	14:19:07
17	now?	14:19:21
18	A Let's see, it describes figure 6 as a top	14:19:21
19	plane view of the beverage container.	14:19:26
20	Q The screen sharing went off. Just to	14:19:47
21	confirm, it's back on for you, Mr. Jobin?	14:19:50
22	A Yes.	14:19:52

Transcript of Michael Jobin
Conducted on April 10, 2025

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1	Q Okay. And so, in this top plan view, I'm	14:19:52
2	going to try and draw an outline around a	14:19:56
3	component.	14:19:59
4	So, do you see this red outline that I'm	14:20:00
5	drawing on my screen here?	14:20:03
6	A I see -- yes, I see that.	14:20:07
7	Q What -- what is the component underneath	14:20:09
8	the red outline that I've drawn?	14:20:12
9	A I can't be certain. It could be a hinge	14:20:23
10	feature, but it's not described in any words,	14:20:29
11	other than what you are showing here and maybe	14:20:32
12	some of the other figures.	14:20:35
13	Q Why are there sort of different -- so,	14:20:37
14	there's a middle -- I'll try to annotate it in a	14:20:40
15	different color.	14:20:42
16	So, I've annotated -- I'm going to roughly	14:20:43
17	sketch this, and apologies for the roughness of	14:20:45
18	this.	14:20:48
19	These blue lines that I've drawn are	14:20:48
20	intended to fill in the middle of what might be a	14:20:52
21	hinge. Why does -- why does that middle portion	14:20:57
22	appear to be in a different shade as compared to	14:21:00

1	the two regions next to it?	14:21:06
2	MR. SCHLETZBAUM: Object to form.	14:21:09
3	A As to the intent of the artist who has	14:21:12
4	drawn this, I'm not sure what convention they are	14:21:17
5	using to depict shading. Often with parallel	14:21:19
6	lines drawn on structures such as that indicate a	14:21:25
7	cylindrical form, and that is verifiable looking	14:21:31
8	at the side view.	14:21:34
9	Q We can look at the sideview. Let me --	14:21:37
10	let me save this and I'll mark it as an exhibit.	14:21:40
11	I'll take a screenshot and I'll send it to	14:21:44
12	everyone. I need to check what our next exhibit	14:21:48
13	number, and we would just mark that as the next	14:21:55
14	exhibit in the proceeding on the petitioner's	14:21:57
15	side.	14:22:15
16	Well call that Exhibit 1020 to be safe	14:22:15
17	here.	14:22:19
18	(Marked for identification Exhibit 1020.)	14:22:20
19	Q So, I'll save it in just a second.	14:22:24
20	And then you were telling me we can also	14:22:58
21	look at the side view.	14:23:00
22	So, which -- which side view could we look	14:23:03

1	at?	14:23:06
2	A Figure 4, for example.	14:23:11
3	Q Okay. I'll do my rough screen share here	14:23:14
4	just to make sure we are looking at the same	14:23:19
5	thing. So, just confirm me, Mr. Jobin, that you	14:23:22
6	can see figures 4 and 5 of the Miller reference	14:23:28
7	Exhibit 1006.	14:23:32
8	A Yes.	14:23:35
9	Q So, these are the side views you were	14:23:35
10	referring to?	14:23:38
11	A Yes.	14:23:39
12	Q And I'll again annotate that same exhibit	14:23:42
13	we were talking about. So, this component here	14:23:45
14	that I'm drawing a rough red box around, we can	14:23:48
15	see side views.	14:23:56
16	Is this the same component we were looking	14:23:57
17	at in figure 6 of Miller?	14:23:59
18	A Well, you're seeing it from the left side	14:24:01
19	and the right side.	14:24:03
20	So, the two outer parts, not the part you	14:24:04
21	annotated, are shown here to have a cylindrical	14:24:07
22	cross-section or cylindrical side view.	14:24:13

1	Q And in this side view, it looks like there	14:24:14
2	is kind of a circle inside of a circle, do you see	14:24:18
3	that?	14:24:22
4	A I see that.	14:24:23
5	Q And what does that mean? I'll try to	14:24:24
6	color in the inner circle purple.	14:24:28
7	MR. SCHLETZBAUM: Object to form.	14:24:33
8	Q I'm referring to what this inner circle	14:24:35
9	might be.	14:24:39
10	MR. SCHLETZBAUM: Object to form.	14:24:39
11	A Well, again, we're not certain what it is	14:24:44
12	because it hasn't been described or annotate.	14:24:47
13	It's depicting an ornamental design.	14:24:50
14	So, I'm left to speculate that it could be	14:24:53
15	a hinge pin, or it could be just an ornamental	14:24:56
16	feature on the side of that cylindrical form.	14:25:01
17	Q If it's a hinge pin, what function would	14:25:05
18	it serve?	14:25:08
19	A A hinge pin would be the foundation for a	14:25:09
20	hinge, which would allow the part to rotate around	14:25:14
21	it.	14:25:17
22	Q And what -- what sort of access of	14:25:17

1	rotation would it have in this figure that we see	14:25:19
2	here in Miller?	14:25:23
3	MR. SCHLETZBAUM: Objection.	14:25:24
4	THE WITNESS: Go ahead.	
5	MR. SCHLETZBAUM: Object to form.	14:25:28
6	A A hinge pin would define an axis of	14:25:29
7	rotation, most commonly.	14:25:33
8	Q Would it sort of go longitudinally --	14:25:37
9	longitudinally through that hinge pin? Is that	14:25:43
10	where the access of rotation would lie?	14:25:44
11	A Well, in this figure 4, the axis of	14:25:46
12	rotation, if this were a hinge pin, would be into	14:25:48
13	and out of the page, perpendicular to this view.	14:25:52
14	Q So, would that mean you would see some	14:25:56
15	sort of rotation kind of like this, rotating back,	14:26:03
16	and I guess in this other view, it would go the	14:26:07
17	other direction, going this way?	14:26:11
18	MR. SCHLETZBAUM: Object to form.	14:26:12
19	Q Is that right?	14:26:15
20	A Assuming -- again, assuming that it's a	14:26:16
21	hinge. Some feature would rotate above that	14:26:18
22	hinge. It's not clear exactly what that is. But,	14:26:23

1	yes, those two arrows are consistent with what	14:26:26
2	could happen around that axis.	14:26:29
3	Q Okay. And then the other component I	14:26:32
4	would like to ask about, I'm going to try annotate	14:26:35
5	in orange here. Do you see what I'm annotating in	14:26:40
6	orange, roughly, as best I can? Do you see that?	14:26:44
7	A I do.	14:26:54
8	Q What's that element that I've annotated in	14:26:54
9	orange?	14:26:59
10	MR. SCHLETZBAUM: Object to form.	14:26:59
11	A Well, it's not given a name here. One	14:27:01
12	evaluating this image would see that in the	14:27:07
13	context of the -- the other figures, as some form	14:27:10
14	of -- of tab, or -- or projection from that area	14:27:14
15	in the -- on the beverage container.	14:27:20
16	Q And what's a tab or other projection	14:27:24
17	typically used for on a beverage container?	14:27:28
18	MR. SCHLETZBAUM: Object to form.	14:27:32
19	A I mean, generally speaking, it depends.	14:27:33
20	In this particular instance, it seems	14:27:37
21	likely that this tab is potentially used for	14:27:43
22	opening or closing some type of cover or some form	14:27:48

1	of -- whatever that form is, and -- and -- and it	14:27:53
2	gives you your finger somewhere to grab,	14:27:59
3	basically.	14:28:02
4	Q Another component I would like to ask	14:28:07
5	about is -- is here. Do you see this sort of	14:28:09
6	indentation structure here that I'm annotating in	14:28:15
7	green in the two figures?	14:28:20
8	A Yes, I see that.	14:28:22
9	Q What does that look like?	14:28:24
10	MR. SCHLETZBAUM: Object to form.	14:28:28
11	A I have no idea what that is.	14:28:31
12	Q Does it appear to be an indentation of	14:28:34
13	some kind?	14:28:37
14	A Well, from this view, it looks like some	14:28:38
15	type of a cut through the revolved shape from	14:28:41
16	the -- going back to figure 1, it's some -- it	14:28:45
17	appears to be some type of an oval-shaped	14:28:50
18	indentation.	14:28:53
19	Q What does it mean that the line curves	14:28:55
20	sort of within the green box that I've drawn in	14:28:59
21	this figure?	14:29:02
22	MR. SCHLETZBAUM: Object to form.	14:29:02

1	A	It just -- that's just what the product	14:29:04
2		looks like from the side view of this particular	14:29:08
3		feature.	14:29:11
4	Q	And I'm going to draw one more arrow here,	14:29:15
5		and I'm going to use pink now.	14:29:18
6		Do you see this gap here?	14:29:19
7	A	I see a -- what I would call some form of	14:29:27
8		reveal line or some type of indication that --	14:29:31
9		that the form has a little groove around the	14:29:37
10		perimeter.	14:29:41
11	Q	And what -- what might that groove be used	14:29:42
12		for?	14:29:44
13	MR. SCHLETZBAUM:	Object to form.	14:29:45
14	A	It could be an ornamental feature, just	14:29:49
15		something that looks nice.	14:29:55
16	Q	What else could it be?	14:29:56
17	MR. SCHLETZBAUM:	Object to form.	14:29:57
18	A	It -- it's hard to say from this view,	14:30:00
19		because it's -- it's not clear whether that's all	14:30:04
20		one part or whether it's two parts. It's -- it's	14:30:06
21		just not clear, and there is not enough	14:30:09
22		information.	14:30:11

1	Q Do you see how there is sort of a	14:30:11
2	darkening around the perimeter here? I'm drawing	14:30:13
3	with my cursor. I can also try to annotate this	14:30:17
4	one. Let me see if I can. I'm going to use	14:30:20
5	yellow now. Let me see if I can get a wider pen.	14:30:23
6	Do you see this?	14:30:36
7	A Yes.	14:30:36
8	Q What does that appear to be?	14:30:37
9	MR. SCHLETZBAUM: Object to form.	14:30:40
10	A You call them darkening. I mean, again,	14:30:45
11	not knowing the artist's intent, but a dark line	14:30:49
12	like that is sort of a shadow line. It's used to	14:30:51
13	indicate the -- the contours of the form, that	14:30:55
14	there is indentation or a groove there. That's	14:30:57
15	all I see there. That's would that would	14:30:59
16	indicate.	14:31:04
17	Q I'm going to pause for -- give me a second	14:31:05
18	while I haphazardly try to save this screen. So,	14:31:10
19	just give me one minute so I can mark this. We	14:31:15
20	called the last one Exhibit 1020. So, I'll call	14:31:47
21	this Exhibit 1021, and we'll send it to everyone.	14:31:53
22	(Marked for identification Exhibit 1021.)	14:31:59

Transcript of Michael Jobin
Conducted on April 10, 2025

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1	Q Okay. I think that's running on -- oh, am	14:32:03
2	I still sharing?	14:32:46
3	A No, you are not sharing at the moment.	14:32:48
4	Q Oh, my screen got some weird.	14:32:50
5	MR. STEIN: Anyways, I think it might make	14:32:53
6	sense to -- I have been a little slow here marking	14:32:54
7	these things, and we will send that around. Why	14:32:56
8	don't we take a short break.	14:32:58
9	How long would you like, Mr. Jobin.	14:33:01
10	THE WITNESS: Ten minutes is fine with me,	14:33:04
11	if that's okay with you.	14:33:06
12	MR. STEIN: Okay. Yeah, yeah. Let's	14:33:07
13	break for ten minutes. So, that will take us to	14:33:09
14	11:43 for me, and that's 2:43 for you.	14:33:13
15	THE WITNESS: Very good.	14:33:18
16	MR. STEIN: Okay. Thank you.	14:33:19
17	THE VIDEOGRAPHER: We are going off the	14:33:20
18	record. The time is 2:33 p.m.	14:33:22
19	(Off the record.)	14:33:25
20	THE VIDEOGRAPHER: We are back on the	14:47:01
21	record. The time is 2:46 p.m.	14:47:02
22	MR. STEIN: Thank you.	14:47:05

1	BY MR. STEIN:	14:47:06
2	Q Mr. Jobin, we took a short break. Can you	14:47:07
3	just confirm for me what you did during the break?	14:47:10
4	A Just walked around a bit. Went outside	14:47:13
5	for a moment, and then came back.	14:47:18
6	Q Okay. Thank you.	14:47:19
7	Let's look at the patent again, '252, and	14:47:31
8	specifically figure 7, please.	14:47:37
9	A '252, figure 7.	14:47:48
10	Q Yes. Do you see a reference in row 55 in	14:47:52
11	figure 7?	14:47:58
12	A Yes.	14:48:04
13	Q What is referenced in row 55?	14:48:04
14	A I'm going to double-check what it says	14:48:11
15	about it.	14:48:13
16	My recollection -- here it is. On	14:48:25
17	column 13, line 16, it states: The closure	14:48:29
18	retention mechanism 54 that includes closure	14:48:38
19	retention structure 55 in the form of spaced apart	14:48:42
20	tabs.	14:48:49
21	So, here we are talking about the closure	14:48:50
22	retention structure 55.	14:48:52

1	Q I just want to parse that sentence you	14:48:58
2	read a little bit.	14:49:00
3	So, you said column 13, line -- I guess it	14:49:00
4	was 14 to 17; is that right?	14:49:05
5	A That's correct.	14:49:08
6	Q So, you -- you said the cap assembly	14:49:09
7	includes a closure retention mechanism 54, that	14:49:14
8	was the first part?	14:49:18
9	A Yes.	14:49:19
10	Q And then that includes closure retention	14:49:19
11	structure 55.	14:49:22
12	So, closure retention mechanism 54	14:49:23
13	includes closure retention structure 55?	14:49:27
14	A That's what it says here, and that's my	14:49:30
15	understanding.	14:49:32
16	Q Okay. And then the last part was in the	14:49:32
17	form of spaced apart tabs, 56.	14:49:34
18	So, 56 is a, I guess, substantiation of	14:49:38
19	55?	14:49:45
20	How -- how do you parse that?	14:49:46
21	A Well, when -- when you're looking at the	14:49:48
22	function, the means-plus-function claim for the	14:49:53

1	closure retention mechanism, there is a structure	14:49:59
2	associated with that function. And in this case,	14:50:05
3	it's saying that the closure retention mechanism	14:50:09
4	generally is embodied in the form of spaced apart	14:50:14
5	tabs in this instance.	14:50:17
6	Q And if we go back to figure 7, do you see	14:50:25
7	how 54, the lead line -- do you know what a lead	14:50:28
8	line is?	14:50:31
9	A Yes.	14:50:31
10	Q Do you see there is a lead line off of	14:50:32
11	reference in row 54 in figure 7?	14:50:34
12	A Yes.	14:50:37
13	Q And do you see how that lead line off of	14:50:38
14	reference in row 54 has an arrow at the end?	14:50:41
15	A Yes, I see that.	14:50:45
16	Q But the reference numeral -- or the lead	14:50:47
17	line for reference numeral 56 does not have an	14:50:50
18	arrow?	14:50:55
19	A I see that.	14:50:56
20	Q So, why -- why does one lead line here for	14:50:57
21	54 have an arrow while the lead line for 56 does	14:51:00
22	not?	14:51:04

1	What does that donate?	14:51:04
2	A Well --	14:51:06
3	MR. SCHLETZBAUM: Form.	14:51:06
4	THE WITNESS: Go ahead.	14:51:10
5	MR. SCHLETZBAUM: Object to form.	14:51:11
6	A In the context of figure 7, we see, for	14:51:12
7	example, in the upper left-hand corner of	14:51:16
8	figure 7, a 102 with an arrow.	14:51:18
9	And that's pointing to -- because it's	14:51:21
10	completely outside the bounds of the figure, the	14:51:24
11	assembly generally.	14:51:31
12	The items here that are -- that are	14:51:33
13	pointed directly to the feature, such as 56, tabs,	14:51:36
14	are -- are connected to in this case, the -- the	14:51:41
15	element described.	14:51:46
16	I interpret 54 and 55 with arrows as	14:51:47
17	having a slightly broader meaning, which is to	14:51:53
18	say, generally speaking, in this area, that's the	14:51:56
19	closure retention structure.	14:52:00
20	And then 56 are the specific elements	14:52:01
21	along with perhaps the closed boundary that --	14:52:04
22	that -- the structure associated with that	14:52:12

1	function.	14:53:00
2	Q Let's also look at the patent,	14:53:00
3	Exhibit 1001, column 10, lines 4 to 8. Does that	14:53:05
4	have a similar description to what we were just	14:53:14
5	looking at in column 13?	14:53:18
6	A Lines 4 to 8 are describing figure 2.	14:53:21
7	I'll look at that real quick. Figure 2 is a	14:53:32
8	schematic view of the assembly -- just looking at	14:53:36
9	the numbers here.	14:53:50
10	Got it. Okay.	14:53:51
11	Go back to -- is it column 12 or 13?	14:53:52
12	Q Yeah, we started with 13, and then I took	14:53:58
13	you to 10. Yeah.	14:54:01
14	A 10. So, at the top of column 10, we go	14:54:03
15	back the bottom of column 9, it's talking about	14:54:07
16	figure 2 of -- looking to the proceeding	14:54:10
17	discussion present examples of closure retention	14:54:20
18	mechanisms 54 that are associated and/or	14:54:23
19	operatively connected with a handle of cap	14:54:27
20	assembly.	14:54:32
21	And then saying further, it says of the	14:54:32
22	top of column 10: As shown, cap assembly 14	14:54:36

1 includes an exterior surface 15 through which
2 passage 36 of the drink spout 18 extends.

3 And the sentence that you're asking about,
4 I think: A closure retention mechanism 54 also is
5 shown on projecting from and/or operatively
6 coupled to exterior upper surface 15. As
7 illustrated, closure retention mechanism 54
8 includes a closure retention structure 55 in the
9 form of three spaced apart tabs 56. Below any of
10 the closure retention structures under mechanisms
11 disclosed or illustrated herein -- and/or
12 illustrated here in and utilized.

13 So, it's -- it's generally trying to get
14 at what we understand in this means-plus-function
15 claim, a function in the closure retention
16 mechanism 54 and the corresponding structure for
17 that function in the form of, for example, 3 tabs
18 56 or other structures.

19 Q I want to talk about now the stowed
20 positions. Is that -- is that a term in the '252
21 patent that you're familiar with?

22 A Yes.

1 Q And which -- which figures in the '252 14:56:22
2 patent show the stowed position? 14:56:24

3 A Well, I've provide some examples in my 14:56:29
4 declaration, but they're easy to ascertain by 14:56:33
5 looking at the figures. 14:56:36

6 Just scanning through them real quick, 14:56:38
7 figure 3, figure 10, figure 11, figure 12 and 14:56:41
8 figure 13. 14:57:00

9 Q Let's look at column 8, lines 39 to 44. 14:57:22

10 A Column 8, lines 39 to 44. Okay. 14:57:37

11 Q Do you see how around line 41 of column 8, 14:57:40
12 it says: The operatively retain the closure in 14:57:47
13 the stowed position at least temporarily until 14:57:53
14 such time that a used collectively removes the 14:57:56
15 closure. 14:57:59

16 What does that "at least temporarily" mean 14:57:59
17 in this description? 14:58:03

18 A Well, it's not being stowed permanently. 14:58:05
19 Typically, it's being stowed while the user is 14:58:09
20 taking a drink, or multiple drinks. 14:58:12

21 And then they will remove it from the 14:58:15
22 stowed position and replace it on the spout and 14:58:19

1	close the spout.	14:58:22
2	Q Is there any sort of temporal limitation	14:58:34
3	on how long temporarily it has to be in the	14:58:38
4	context of the '252 patent?	14:58:42
5	A Well, I think it's understood that this	14:58:43
6	stow -- stowing feature for the closure is a	14:58:45
7	convenience. It allows you to stow the cap while	14:58:50
8	you are taking a drink or multiple drinks.	14:58:57
9	And then it describes why you would want	14:58:59
10	to then selectively return the closure to the	14:59:03
11	spout to -- to prevent contamination, to prevent	14:59:08
12	water or any liquid from spilling out.	14:59:14
13	So, it -- you know, I view the -- the	14:59:17
14	closure retention mechanism and the stowing	14:59:21
15	temporally in the -- in the process of actually	14:59:25
16	using the device and during use of the device.	14:59:27
17	Q So, could it -- could it be stowed for a	14:59:39
18	period of -- could it -- could the closure be in	14:59:42
19	the stowed position for a period of months?	14:59:44
20	A The chief inquiry here is that the -- the	14:59:51
21	user selectively removes or stows the -- the	14:59:57
22	closure.	15:00:02

1 "Selectively" is a term that's been 15:00:02
2 defined here to -- to mean that the user is moving 15:00:07
3 it from one position to another intentionally. If 15:00:13
4 they leave it in that position, you know, while 15:00:22
5 it's stored in their cupboard, for example, and 15:00:24
6 return it once they fill the vessel with water 15:00:27
7 again, I think it's okay. 15:00:30

8 Again, it's in the context of one's use of 15:00:31
9 the product and one's intent to so-called 15:00:36
10 selectively remove or stow the closure. 15:00:41

11 Q What -- what if the user keeps it in the 15:00:47
12 stowed position for a very short period of time, 15:00:50
13 say on the -- on the order of milliseconds, is 15:00:56
14 it -- is it still in the stowed position? 15:00:58

15 A Well, I think that the -- the patent 15:01:01
16 specification gives you information to determine 15:01:05
17 whether the cap is put in place into a stowed 15:01:10
18 position. 15:01:13

19 The cap is engaged with the closure 15:01:14
20 retention mechanism via tabs or other structures 15:01:18
21 in various embodiments. 15:01:23

22 And it's been put there by the user with 15:01:25

1	the intent of stowing it.	15:01:29
2	So, it's selectively placed there. It	15:01:31
3	doesn't -- it doesn't automatically go there.	15:01:34
4	Isn't -- isn't transported there. It's -- it's	15:01:37
5	moved by the user to that location and -- and then	15:01:40
6	removed from there put back onto the spout.	15:01:45
7	Q In the examples that you pointed me to in	15:01:48
8	the patent, of the stowed position, for instance,	15:01:51
9	you pointed me to figure 10, for example, how does	15:01:55
10	the closure go from the position we see in	15:02:00
11	figure 7 to the position we see in figure 10?	15:02:05
12	A As best described or as understood, the	15:02:11
13	closure is unscrewed or otherwise removed from.	15:02:17
14	They describe a cam lock. They describe threads.	15:02:23
15	You know, some way of ensuring that it's closed	15:02:28
16	and -- and sealed. But you -- you -- what the	15:02:31
17	user is selectively removed, which means they do	15:02:35
18	it with intention to remove it from the spout.	15:02:40
19	And then they physically, in this case, in	15:02:42
20	figure 7, click it into position. It's a snap fit	15:02:44
21	or friction fit arrangement with the tabs	15:02:48
22	interacting with the diameter of the closure and	15:02:50

1 interacting with the inner role of the handle in
2 this case. There is a spot for it to go that is
3 designed to retain the cap in that position once
4 you -- once you insert it.

5 Q And if -- when you're doing that movement
6 from the closed position to the stowed position,
7 if the user's hand stays in contact with the
8 closure and places it in the stowed position, is
9 there any requirement that they can't keep their
10 hand in contact with the closure while it's in the
11 stowed position in the context of this patent?

12 MR. SCHLETZBAUM: Objection.

13 A What I -- what I understand and -- and
14 perhaps it's important to -- to look at how
15 "selectively" is defined. Let's do that real
16 quick.

17 MR. SCHLETZBAUM: I apologize, my
18 internet...

19 (Technical difficulty.)

20 THE VIDEOGRAPHER: We are going off the
21 record. The time is 3:04 p.m.

22 (Off the record.)

1	THE VIDEOGRAPHER: We are back on the	15:08:20
2	record. The time is 3:08 p.m.	15:08:22
3	BY MR. STEIN:	15:08:26
4	Q Okay. So, I'll repeat my question,	15:08:27
5	Mr. Jobin, because I think we were kind of	15:08:28
6	interrupted there.	15:08:30
7	So, I was referring, again, to what we see	15:08:31
8	in figure 7, which you said is the closed	15:08:33
9	position, compared to what we see in figure 10,	15:08:37
10	which you said is the stowed position.	15:08:40
11	And my -- my question was, as the user	15:08:43
12	moves the closure from what we see in figure 7 to	15:08:45
13	what we see in figure 10, if their hand stays in	15:08:51
14	contact with the closure in the position that we	15:08:55
15	see in figure 10, is it still in the stowed	15:08:59
16	position?	15:09:03
17	A The stowed position is defined independent	15:09:04
18	of the user's hand.	15:09:09
19	I don't see any constraint there.	15:09:11
20	And it's retained by the closure retention	15:09:13
21	mechanism, the closure is.	15:09:16
22	So, I don't see that the -- whether your	15:09:19

1 finger lingers for a time on the closure, whether 15:09:23
2 that has any application at all. 15:09:27

3 Q Is the -- is the same thing true for what 15:09:29
4 we see in figure 11 and figure 12, as well? 15:09:32

5 A Let's look at the figures for a moment. 15:09:37
6 Figure 11 and figure 12 both show the closure and 15:09:43
7 a stowed position, by my understanding. 15:09:47

8 If while you're drinking, for example, 15:09:50
9 your hand remains on that closure, as long as it's 15:09:53
10 in the stowed position, according to the retention 15:09:58
11 mechanism, then it -- it -- the hand or the finger 15:10:05
12 doesn't have an impact on that, in my mind. 15:10:09

13 Q Now I want to take a look at figure 13 15:10:13
14 here. So, in figure 13, it almost looks like the 15:10:18
15 water bottle is just sort of floating there. 15:10:23
16 Which I assume this isn't a magic floating water 15:10:26
17 bottle. 15:10:32

18 So, where -- where might the user's hand 15:10:32
19 be in figure 13? 15:10:35

20 A Well, it's a partial figure. They didn't 15:10:37
21 draw the hand, maybe because hands are hard to 15:10:39
22 draw, I don't know. But they've just sort of -- 15:10:42

1 that little zigzag line across the vessel is an 15:10:45
2 indication that it's incomplete, and that it would 15:10:49
3 likely be held somewhere at the bottom of the 15:10:50
4 bottle. 15:10:53

5 Q Could it also be held further up here 15:10:53
6 where the closure is in that stowed -- what you 15:10:58
7 described as the stowed position? 15:11:03

8 A I'm not sure. 15:11:05

9 Q So, the user -- in what we see in figure 15:11:10
10 13, the user's hand could be positioned on top of 15:11:11
11 the closure and maybe even on top of the cap 15:11:14
12 assembly? 15:11:18

13 A Yeah. There is a couple of ways you could 15:11:18
14 hold it, but disclosure talks about the handle 15:11:21
15 being something that your finger or fingers could 15:11:25
16 use to grip or hold. 15:11:28

17 You've got some geometry there, which you 15:11:30
18 could sort of wedge your fingers under. That 15:11:34
19 might be convenient. 15:11:37

20 You know, the bottle is small enough you 15:11:38
21 put your hand around it and maybe your finger goes 15:11:41
22 over the top. Lots of different ways you could 15:11:43

1 held on to this particular vessel. 15:11:47

2 Q When you were saying there was something 15:11:48
3 they could wedge their fingers in, is that -- is 15:12:20
4 that what we see as 104 here in figure 13, that's 15:12:23
5 something the user might hold? 15:12:25

6 A No, that's not described that function. I 15:12:28
7 mean, I'm thinking more about the handle, which 15:12:33
8 sort of extends slightly horizontally or below 15:12:35
9 horizontally to the longitudinal axis of the -- of 15:12:40
10 the vessel. 15:12:43

11 It just overhangs a bit. So, it's 15:12:43
12 something that you would naturally grab to hold on 15:12:47
13 to it and prevent it from slipping out of your 15:12:50
14 hand, for example. 15:12:52

15 Q Okay. So, I suppose you could have sort 15:12:53
16 of the body of the water bottle in your hand and 15:12:55
17 your thumb could sort of grip the top of the 15:12:58
18 closure to kind of drink the water that way? 15:13:01

19 A I was thinking more of an index finger, 15:13:04
20 but -- 15:13:08

21 Q But some portion -- some portion of your 15:13:09
22 palm on the main body the water bottle, and then a 15:13:11

1 finger or thumb on the closure? 15:13:14

2 A Could be. If it's big enough, you'll 15:13:16

3 probably use two hands. The scale of it is not 15:13:18

4 entirely clear. That's an unreasonably large 15:13:22

5 diameter. They talk about a variety of different 15:13:25

6 sizes in the specs. So, I suppose that all of 15:13:27

7 these answers are qualified by "depends on the 15:13:31

8 size." 15:13:35

9 Q Okay. Let's turn to -- still the patent, 15:13:35

10 the '252 patent, if you could go to column 13, 15:14:37

11 line -- line 36. 15:14:40

12 In that portion of the '252 patent, it 15:14:53

13 mentions something about when the closure is 15:14:58

14 operatively and fully positioned in its stowed 15:15:00

15 position within the closed perimeter of the 15:15:04

16 handle. 15:15:06

17 Do you see that in column 13, lines 34 to 15:15:06

18 37, or so? 15:15:11

19 A I do. 15:15:12

20 Q What does it mean for the closure to be 15:15:13

21 operatively positioned in its stowed position 15:15:17

22 within the closed perimeter of the handle? 15:15:19

1 A Well, the context here is they're talking 15:15:31
2 about figures 10 through 13, and they are talking 15:15:34
3 about the spaced apart tabs embodiment, which are 15:15:38
4 depicted in those figures, and getting at some 15:15:42
5 specifics about how the cap is retained. 15:15:48

6 And that the tabs are large enough to 15:15:53
7 interfere with the diameter of the -- of the cap. 15:15:59
8 And so, it gets inserted in there. And it says 15:16:05
9 here in line 38: Further retaining the closure in 15:16:09
10 is -- I think we mentioned that means its -- 15:16:16
11 stowed position in a friction fit arrangement and 15:16:21
12 restricting removal of the closure until a user 15:16:23
13 selectively chooses to remove the closure from the 15:16:27
14 stowed position. 15:16:30

15 So, it's just giving you details about how 15:16:31
16 the closure retention mechanism in this embodiment 15:16:34
17 is work -- is -- how it functions. 15:16:38

18 Q And what does it mean -- so, in -- in that 15:16:40
19 portion of the patent, column 13, line 35, even 15:16:44
20 continuing to line, sort of, 42, it twice mentions 15:16:47
21 the phrase "fully positioned in its stowed 15:16:51
22 position," and then there is a typo, the second 15:16:55

1	time, lines 41 to 42, "stowed positioned," which	15:16:57
2	probably means "position."	15:17:02
3	But what does "fully positioned" mean	15:17:04
4	here?	15:17:06
5	A Well, I would say it's illustrated in its	15:17:08
6	fully -- fully -- what is the phrase again, the	15:17:11
7	fully -- fully positioned in its stowed position.	15:17:17
8	That's what's being illustrated in figures 10	15:17:24
9	through 13, according to this text.	15:17:27
10	It's -- in other words, it's -- it's	15:17:28
11	there -- you can put in it there and it's going to	15:17:29
12	stay there because it's positioned properly.	15:17:32
13	Q And what if it were partially positioned	15:17:35
14	within the stowed position, what would that mean?	15:17:37
15	A If it's not inserted correctly, it could	15:17:40
16	fall out easily. It wouldn't be stowed if it's	15:17:45
17	only partially inserted.	15:17:48
18	(Discussion off the record.)	15:17:49
19	Q Again, the '252 patent, column 17,	15:17:49
20	line 18.	15:19:04
21	A All right. Column 17, line 18 is -- looks	15:19:08
22	like it's specifying the definition of the terms	15:19:13

1	"adapted" and "configured."	15:19:18
2	Q And what -- what definition does it	15:19:20
3	provide?	15:19:22
4	A Well, it says here: As used herein, the	15:19:23
5	terms "adapted" and "configured" mean that the	15:19:26
6	element, component, or other subject matter is	15:19:30
7	designed and/or intended to perform a given	15:19:34
8	function.	15:19:39
9	It goes on with more detail. It says:	15:19:44
10	The use -- thus, the use of the terms "adapted"	15:19:47
11	and "configured" should not be construed to mean	15:19:51
12	that a given element, component, or other subject	15:19:54
13	matter is simply, quote, capable of, unquote,	15:19:57
14	performing a given function of the -- that the	15:20:01
15	element component and/or subject matter is	15:20:05
16	specifically selected, created, implemented,	15:20:08
17	utilized, pro-round, and/or designed for the	15:20:12
18	purpose of performing the function.	15:20:15
19	Q Let's take a look at claim 7 of the '252	15:20:23
20	patent. Do you see in claim 7 it says: The	15:20:28
21	handle defines a closed perimeter?	15:20:34
22	A I see that.	15:20:43

1	Q And then it says: Wherein the stowed	15:20:44
2	position, the closure is positioned at least	15:20:46
3	partially within the closed perimeter.	15:20:47
4	A Yes, I see that.	15:20:50
5	Q So, does claim 5 cover an -- an example in	15:20:51
6	which the closure retention mechanism includes the	15:20:59
7	closed perimeter?	15:21:03
8	MR. SCHLETZBAUM: Object to form.	15:21:07
9	A What I take from this is that claim 5,	15:21:08
10	which is the independent claim that this depends	15:21:11
11	from, defines a handle that is not necessarily a	15:21:14
12	closed perimeter. It could be on the handle that	15:21:18
13	is partially open. That's what's described in the	15:21:21
14	specification and informs my understanding of what	15:21:24
15	handle means in this regard.	15:21:27
16	It's typically illustrated in a closed	15:21:28
17	loop configuration, but it's saying that it	15:21:33
18	doesn't have to be closed.	15:21:37
19	Q Okay. I want to look at, again, the '252	15:21:38
20	patent, column 3, line 41, the sentence starting	15:22:21
21	with: It is within the scope of the present	15:22:29
22	disclosure...	15:22:31

1	A I see that sentence.	15:22:38
2	Q So, that's referring to the drink	15:22:39
3	container as a whole can be sort of big or small.	15:22:42
4	Is that what that means?	15:22:45
5	A I would say that it means what it says,	15:22:47
6	which is that: Liquid containers having different	15:22:57
7	sizes, including sizes that are smaller than,	15:23:00
8	larger than, or within the illustrative sizes	15:23:03
9	and/or ranges presented above may be used without	15:23:06
10	departing from the scope of the present	15:23:10
11	disclosure.	15:23:13
12	Q And what about column 4, line 56 that	15:23:14
13	talks about: Drink spout 18 may take any suitable	15:23:17
14	form.	15:23:20
15	What does it mean for that component to	15:23:22
16	take any suitable form?	15:23:24
17	A The context of -- of -- I think it's in	15:23:50
18	the general description area. It's trying to tell	15:23:54
19	you what it sees as a drink spout. It's --	15:23:58
20	it's -- it's defining a drink spout to take any	15:24:14
21	suitable form and may be described as, including	15:24:16
22	or defining a passage through which drink liquid	15:24:20

1 may be selectively dispensed from an inlet to an 15:24:25
2 outlet of the drink spout. 15:24:29

3 So, you've got to have an inlet, an outlet 15:24:31
4 and a passage. And whether it's cylindrical or 15:24:34
5 oval-shaped, or straw-shaped, all kind of 15:24:40
6 different aspect ratios and forms, as long as they 15:24:45
7 are suitable, it's okay, that they can act as a 15:24:50
8 spout. They are not limited to just the exact 15:24:55
9 shape that's shown in the figures, is what I think 15:24:58
10 it's trying to get at. 15:25:01

11 Q And I want to look at your declaration, 15:25:11
12 paragraph 78. This is your discussion of the term 15:25:14
13 "selectively." 15:25:16

14 A Yes. 15:25:17

15 Q So, what would be an example of something 15:25:18
16 that would not fall within this express -- what 15:25:21
17 you call an express definition of selectively? 15:25:25

18 A I haven't considered that particular view. 15:25:30
19 What I'm -- when I'm evaluating the claim language 15:25:40
20 that uses the term "selectively," I understand it 15:25:43
21 according to how it's defined here. 15:25:46

22 You're asking me to essentially define 15:25:48

1	what wouldn't be under this definition. Is that	15:25:51
2	what I heard?	15:25:57
3	Q Correct.	15:25:57
4	A It seems to me that the -- at least the --	15:25:59
5	the key or some of the key parlance for	15:26:15
6	selectively is that it is, as I've highlighted	15:26:19
7	here, means that the specified action, movement,	15:26:24
8	configuration, or other activity is a direct or	15:26:29
9	indirect result of user manipulation of an aspect	15:26:33
10	of one or more components of the drink container.	15:26:37
11	So, there is an element of user -- the	15:26:41
12	user inducing the action or movement or other	15:26:48
13	activity rather than -- than the inverse of that,	15:26:54
14	which is the user not doing those activities, if	15:26:59
15	that makes sense.	15:27:04
16	Q Yeah. Would an example of the user not	15:27:05
17	doing the activity where, I guess, one of these	15:27:07
18	water bottles is sitting on a table and there is	15:27:10
19	an earthquake and it falls off, that would be	15:27:13
20	something that isn't a user -- what did you say,	15:27:15
21	direct or indirect result of user manipulation,	15:27:19
22	the bottle falling off the table due to the	15:27:22

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1	earthquake?	15:27:25
2	A I think that's a good example of something	15:27:26
3	that happened to the bottle that wasn't the result	15:27:28
4	of user manipulation, either direct or indirect.	15:27:30
5	MR. STEIN: Okay. I think we're close to	
6	an hour again. So, I think a break would be good	15:27:42
7	here.	15:27:44
8	THE WITNESS: Okay.	15:27:46
9	MR. STEIN: Yeah. Five, ten minutes, what	15:27:48
10	do you think, Mr. Jobin?	15:27:49
11	THE WITNESS: Yeah, that's fine with me.	15:27:51
12	It's 3:27. Why don't we go for 3:35, that range?	15:27:54
13	MR. STEIN: Okay. You okay with that,	15:28:00
14	Ryan?	15:28:02
15	MR. SCHLETZBAUM: Works for me.	15:28:02
16	MR. STEIN: Thanks.	15:28:03
17	THE VIDEOGRAPHER: Okay. We are going off	15:28:05
18	the record at 3:28 p.m.	15:28:06
19	(Off the record.)	15:28:10
20	THE VIDEOGRAPHER: We are back on the	15:35:25
21	record. The time is 3:35 p.m.	15:35:27
22	BY MR. STEIN:	15:35:33

1	Q Mr. Jobin, we took a short break there.	15:35:37
2	Could you just let me know what you did during the	15:35:40
3	break, please?	15:35:43
4	A I just walked around a bit, stuck my head	15:35:44
5	out the window to see what's going on outside.	15:35:47
6	That's it.	15:35:50
7	Q Now I would like to look at the Samartgis	15:35:52
8	reference together. This is Exhibit 1004.	15:35:57
9	(Marked for identification Exhibit 1004.)	15:36:01
10	A I've got Exhibit 1004, Samartgis.	15:36:06
11	Q If we look at figure 3 of Samartgis, can	15:36:13
12	you let me know what reference in row 23 is?	15:36:26
13	A My understanding it's pointing to the --	15:36:51
14	the opposed tracks 23, which is -- they are sort	15:36:54
15	of embedded in the on-member 22.	15:37:00
16	Q And what we see in figure 3 is some sort	15:37:04
17	of component view, right? This isn't the	15:37:17
18	assembled structure?	15:37:20
19	A This is what I term, and one would	15:37:21
20	understand, as an exploded assembly view. So,	15:37:24
21	it's the parts that are not in their proper	15:37:27
22	position, but exploded so that you can see the	15:37:30

1	details better.	15:37:33
2	Q And do we see the assembled structure in	15:37:34
3	figure 5 of Samartgis?	15:37:37
4	A Yes, figure 5 is an example of the	15:37:42
5	assembled -- assembled -- cap assembly for this	15:37:46
6	embodiment.	15:37:50
7	Q I also want to go back to figure 3 for a	15:37:52
8	minute.	15:38:06
9	Can you -- can you describe for me what 15	15:38:06
10	and 16 are in figure 3?	15:38:08
11	A Well, it's -- they are described as -- I	15:38:20
12	think the word is "lugs," but I'm just looking it	15:38:24
13	up real quick. It says here: Lug members 15 and	15:38:27
14	16.	15:38:31
15	So, we are looking at what are -- what are	15:38:35
16	the lug members 15 and 16 in that figure.	15:38:36
17	Q And if we go back to figure 5, once the	15:38:43
18	structure is assembled, those lug members are sort	15:38:47
19	of engaged in -- in that track; is that what we	15:38:52
20	see in figure 5?	15:38:55
21	MR. SCHLETZBAUM: Object to form.	15:38:57
22	A No. What I see is that the -- the lug	15:38:58

1 members are positioned inside the track. You can
2 see in figure 5, through the handle in the area of
3 the track, there's a -- sort of a dashed circle,
4 and that is the hidden view depiction of the lug
5 that's closest to the user.

6 Q And what are -- what are the dashed lines
7 showing in figure 6?

8 A It's just called a hidden view. The lug
9 is located on the other side of the handle as
10 viewed from the side view in figure 5.

11 Q I see.

12 A Just on the other side of that wall is the
13 lug, and it's shown in that -- that closed
14 position that figure 5 is depicting.

15 Q Between the positions that we see in
16 figure 5, and then figure 6, do the lugs in
17 Samartgis stay in contact with the same portion of
18 the track, or do they move to a different portion
19 of the track?

20 A As the lever is rotated, which is
21 indicated here, showing the lever in motion with a
22 large arrow on the upper right-hand corner of

15:39:03

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15:40:06

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15:40:28

15:40:31

1 figure 6, the lug, of course being attached to the
2 lever, moves with the lever, and is sliding
3 through the various wall surfaces of the track
4 while it's in motion.

5 Q And as it moves from -- as the lever is
6 moved and then the lugs responsively move, the --
7 the lugs are moving to different positions along
8 the track; is that right?

9 A Yes, as you rotate, it slides along and
10 contacts different surfaces of the track, which
11 imparts a different motion to the closure,
12 depending on where you are in the track.

13 So, in figure 6, for example, as the
14 handle starts to rotate, the -- and gets beyond
15 the -- the locked position, for closure, you will
16 see that the -- the lid is starting to move up.

17 Q As we go from figure 5 to figure 6, and
18 then to figure 8 and figure 9, it looks like by
19 movement of the lever arm that you were describing
20 the lugs in each figure are in a -- in contact
21 with a different part of the track; is that right?

22 MR. SCHLETZBAUM: Object to form.

1 A Based -- based on the configuration, they 15:42:28
2 are sliding along different features, sometimes 15:42:31
3 contacting the bottom wall, sometimes contacting 15:42:35
4 the top wall, sometimes perhaps not contacting any 15:42:38
5 wall, I don't know. But it's -- it's -- it's -- 15:42:41
6 the track is shaped in a particular way to get the 15:42:46
7 desired motion of the -- of the cap with the 15:42:49
8 motion of the lever. 15:42:53

9 Q When you say sliding along different 15:43:20
10 features, and then touching different walls or -- 15:43:23
11 or no wall at all, does that mean the -- the lugs 15:43:28
12 are, you know, engaging these different features 15:43:31
13 at different points in time? 15:43:34

14 MR. SCHLETZBAUM: Form. 15:43:38

15 A What I see, as illustrated here in these 15:43:39
16 figures 5 through 9, is a sequence. It's showing 15:43:43
17 the different positions as the handle rotates. 15:43:47
18 And it's evident that the lugs are smaller in 15:43:51
19 diameter than the width of the track. 15:43:54

20 And it's also evident that depending on 15:43:56
21 which way the lever is moving, different aspects 15:43:59
22 of the track are in contact with the -- the side 15:44:02

1 wall the lug to -- to perform the movement of 15:44:06

2 the -- of the -- of the cap. 15:44:10

3 And so, for example, in figure 6, it's 15:44:11

4 shown that the handle is being moved to the right, 15:44:25

5 or clockwise in this view. 15:44:29

6 And the peg would be pushing against that 15:44:31

7 top wrapped surface to -- to cause the reaction to 15:44:35

8 move that in the up -- that cap in the upper 15:44:39

9 direction. 15:44:43

10 And then in figure 7, the opposite 15:44:43

11 direction handle movement, it's pushing and 15:44:46

12 actuating on that so-called ramp or the kink in 15:44:51

13 order to move towards the locked position, which 15:44:54

14 is shown in figure 5. 15:44:57

15 Q And, again, as it's -- as the lugs are 15:45:01

16 sliding along those different portions of the 15:45:11

17 track, as you described, does that mean they are 15:45:12

18 being accepted by different portions of the track 15:45:14

19 as it slides along? 15:45:17

20 MR. SCHLETZBAUM: Object to form. 15:45:18

21 A I wouldn't -- I wouldn't use that term, 15:45:20

22 no. It's -- it's in contact with different parts 15:45:22

1 of the track, depending on the position of the 15:45:29
2 lever, but the contact is not resulting in a fixed 15:45:32
3 or a stowed position of the -- of the (technical 15:45:40
4 difficulty), even in figure 9, which is described 15:45:46
5 as the stowed position by Dr. Vallee. I disagree 15:45:48
6 with his opinion that that's a stowed position. 15:45:53

7 Q I was more just asking about the -- so, as 15:46:10
8 the lugs -- let's just take, for example, you 15:46:12
9 know, figure 5 as compared to figure 8, the 15:46:16
10 position that we see of the lugs in figure 5 is 15:46:20
11 not the same as what we see in figure 8, right? 15:46:23

12 A The position of the lugs is moving along 15:46:34
13 different aspects of the track as you rotate the 15:46:36
14 handle. 15:46:40

15 Q And the position that we see in figure 9, 15:46:54
16 could a user hold their hand on that handle to 15:46:58
17 retain that position? 15:47:01

18 A No. It's not a stable position, by my 15:47:06
19 analysis. You've got -- you've got -- as I 15:47:09
20 illustrate in my declaration, the hinge of the cap 15:47:13
21 is not coincident with that lug axis. And so, 15:47:19
22 depending on the amount of force that's applied to 15:47:26

1 the lever or to the cap, it's going to move,
2 because it's not -- it's not in a position in
3 which it's prevented from moving by the mechanism
4 itself.

5 I don't see that the hand has anything to
6 do with the -- the construed term of stowed
7 position.

8 Q Yeah, but I wasn't asking -- I was just
9 say -- I wasn't asked about the stowed position.

10 I was just asking if you kept your hand on
11 that lever arm as we -- based on what we see in
12 figure 9, would it keep the -- that cap 21 off of
13 the -- the drinking area spout there, 4?

14 A Well, the --

15 MR. SCHLETZBAUM: Object to form.

16 A The hand is shown --

17 THE WITNESS: I'm sorry, Ryan. I can't
18 hear you very well.

19 MR. SCHLETZBAUM: Yeah, sorry. I object
20 to form.

21 Go ahead.

22 A The -- the point is -- like, if you look

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15:47:52

15:47:55

15:47:59

15:48:01

15:48:07

15:48:12

15:48:12

15:48:15

15:48:17

15:48:23

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15:48:24

15:48:25

15:48:26

1 at the description for figure 9 at the top of -- 15:48:29
2 of the patent -- so, if we go to column 2, for 15:48:31
3 example, column 2 under description of drawings, 15:48:40
4 it says: Figures 8 and 9 are views illustrating 15:48:43
5 movement of the lever. 15:48:49

6 That movement is indicated by the arrows. 15:48:50
7 So, your hand is on the lever, and it's moving the 15:48:53
8 lever in this -- in this figure. 15:48:56

9 You're asking, I think, a different 15:48:58
10 question, which is, can I hold it still? 15:49:00

11 Q Right. 15:49:01

12 A And I suppose that's a relative term. 15:49:02
13 It's not stable in that position. If you let go 15:49:06
14 of it, it could move in either direction. We 15:49:09
15 don't have enough information to know which way it 15:49:12
16 would move. 15:49:14

17 But could you hold it in position? I 15:49:15
18 suppose you could, but I don't know that that 15:49:18
19 matters. 15:49:20

20 Q Okay. But you could hold it in the 15:49:21
21 position that we see in figure 9, that's what you 15:49:24
22 said? 15:49:26

1 A I suppose one could hold it in that 15:49:27
2 position with your hand. I -- I don't know for 15:49:29
3 sure without evaluating that. But I -- I -- I see 15:49:31
4 like that seems like it's possible. 15:49:33

5 Q Okay. Go back to your declaration for a 15:49:43
6 minute, page 91. The signature that was applied 15:49:52
7 there, you applied that signature? 15:49:58

8 A Yes, I electronically signed this 15:50:01
9 document, but yes. 15:50:04

10 Q That's not an ink signature, that's 15:50:06
11 something you applied with a computer? 15:50:08

12 A In this space, it's an electronic 15:50:10
13 signature. But I did -- I did apply it. I did 15:50:13
14 enter the date, and -- and so, yeah, this is 15:50:15
15 definitely my signature and my doc. 15:50:19

16 Q On page 91, why is the typeface for the 15:50:21
17 date 2-7-20 25 different than the word "date" 15:50:24
18 right next to it? 15:50:28

19 A Because this is a signature page that 15:50:29
20 comes from a PDF document that I filled in a field 15:50:32
21 using a different typeface. 15:50:37

22 Q So, you used the PDF software to sign, but 15:50:39

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1	you used a different piece of software to write	15:50:44
2	the declaration?	15:50:47
3	A That's right.	15:50:48
4	Q What piece of software did you use to	15:50:48
5	write the declaration?	15:50:52
6	A It's just a Microsoft Word document.	15:50:59
7	MR. STEIN: Okay. If I could have just a	15:51:00
8	short two-minutes break just to review notes, I --	15:51:02
9	I'm probably done with questions, but I just need	15:51:06
10	two minutes to look at things.	15:51:08
11	MR. SCHLETZBAUM: Okay.	15:51:11
12	THE VIDEOGRAPHER: We are going off the	15:51:11
13	record. The time is 3:51 p.m.	15:51:12
14	(Off the record.)	15:51:16
15	THE VIDEOGRAPHER: We can go back on the	15:55:27
16	record. The time is 3:55 p.m.	15:55:29
17	MR. STEIN: Okay. Thank you, Mr. Jobin.	15:55:32
18	I appreciated your -- your time and answers today,	15:55:33
19	and I have -- I have no further questions.	15:55:36
20	MR. SCHLETZBAUM: This is Mr. Schletzbaum.	15:55:41
21	I also have no questions for Mr. Jobin today. We	15:55:43
22	will reserve the right to review and sign the	15:55:46

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1	final transcript.	15:55:48
2	THE VIDEOGRAPHER: All right. No more	15:55:57
3	questions? This marks the end of the deposition	15:55:59
4	of Michael Jobin. The time is 3:56 p.m.	15:56:02
5	(Deposition concluded at 3:56 p.m. EST.)	15:56:07
6	Signature of the witness was requested.)	
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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

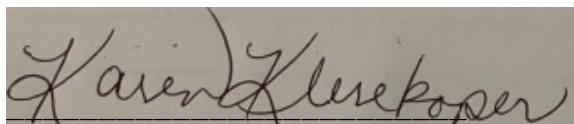
2 I, Karen Klerekoper, Certified
3 Reporter and Notary Public within and for the
4 State of Massachusetts do hereby certify: That
5 MICHAEL JOBIN, the witness whose deposition is
6 hereinbefore set forth, was duly sworn by me
before the commencement of such deposition and
that such deposition was taken before me and is a
true record of the testimony given by such
witness.

7 I further certify that the adverse party
8 CamelBak Products, LLC, was represented by counsel
at the deposition.

9 I further certify that the deposition of
MICHAEL JOBIN, occurred at the office of VIRTUALLY
on 4/10/25 commencing at 10:32 a.m. to 3:56 p.m.

10 I further certify the inspection, reading
11 and signing of said deposition was not waived on
the record. I further certify that I am not
12 related to any of the parties to this action by
blood or marriage, I am not employed by or an
attorney to any of the parties to this action, and
13 that I am in no way interested, financially or
otherwise, in the outcome of this matter.

14
15 IN WITNESS WHEREOF, I have hereunto set my
had this 18th day of April, 2025.

16 

17
18 My commission expires:

19 12/4/31

20 County of Suffolk

21 Notary public in and for the State of

22 Massachusetts

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