

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC,
Petitioner,

v.

CAMELBAK PRODUCTS, LLC,
Patent Owner.

IPR2024-00858
Patent 8,905,252 B2

Record of Oral Hearing
Held: August 12, 2025

Before: HYUN J. JUNG, CARL M. DEFRANCO, and
JAMES A. WORTH, *Administrative Patent Judges*.

APPEARANCES:

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The above-entitled matter came on for hearing on August 12, 2025, commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE JUNG: Good afternoon. I'm Judge Jung, and with me is Judge Worth, and on the monitor is Judge DeFranco. This is the oral hearing for IPR2024-00858. In this proceeding, Petitioner Trove Brands challenges Claims 5 through 7 and 16 through 19 of U.S. Patent Number 8,905,252 owned by CamelBak Products.

Starting with counsel for Petitioner and followed by Patent Owner's counsel, please state your names for the record.

MR. RAZAI: Good afternoon, Your Honor. This is Ali Razai from Morgan Lewis on behalf of the Petitioner Trove Brands.

JUDGE JUNG: Thank you.

MR. MUDD: Good afternoon, Your Honor. Jason Mudd for Patent Owner CamelBak, and with me is Ryan Schletzbaum.

JUDGE JUNG: Thank you, Mr. Mudd.

A few reminders for this hearing. Please refer to demonstratives, papers, or exhibits by slide or page number, and please note that this proceeding is being streamed for the public. Petitioner and Patent Owner each have 60 minutes of total time to present their arguments, and each party may reserve time for rebuttal, which may not exceed more than half of your total

1 argument time.

2 So Mr. Razai, you may proceed when you're ready.

3 MR. RAZAI: Thank you, Your Honors.

4 MR. MUDD: Your Honor --

5 JUDGE JUNG: Yes.

6 MR. MUDD: This is Jason Mudd for Patent Owner.

7 The Board's oral argument order had indicated that any objections
8 for demonstratives should be stated for the record at the beginning
9 of the proceeding today.

10 JUDGE JUNG: Do you have an objection, Mr. Mudd?

11 MR. MUDD: Yes, Your Honor. The only objection we
12 want to lodge is with regard to Slides 10 to 15 and 34 to 36, and
13 this is with regard to what we believe Petitioner is arguing that the
14 structures identified in the prior art are structurally identical to the
15 closure retention mechanism, which the parties agree is a means-
16 plus-function limitation. And we've argued in the papers this was
17 a new argument advanced for the first time in reply, and we just
18 want to continue that objection by objecting to those slides.

19 JUDGE JUNG: Okay. Thank you, Mr. Mudd.

20 MR. MUDD: Thank you, Your Honor.

21 JUDGE JUNG: We'll keep that in mind.

22 MR. RAZAI: And Your Honor, I will note for the record
23 that Patent Owner did request to file a motion to strike but the
24 request which was denied. So I'm not sure what basis the
25 objection has to the demonstratives, but we can proceed.

1 JUDGE JUNG: Okay. Thank you, Mr. Razai. Would
2 you like to reserve time for rebuttal?

3 MR. RAZAI: Yes, Your Honor. I'd like to reserve 15
4 minutes for rebuttal, please.

5 JUDGE JUNG: All right.

6 MR. RAZAI: Moving on to Slide 2, Your Honors, this is
7 the '252 Patent, and the '252 Patent is an invention for the
8 unremarkable ability to remove a closure from a water bottle and
9 to stow it relative to a handle.

10 Going to Slide 3, there's two independent claims in the
11 '252 Patent, Claim 5 and Claim 19. The majority of the language
12 of the independent claims are not at issue. The main limitation at
13 issue --again, there are aspects at issue in various different
14 grounds, but the thrust of the arguments today will be focused on
15 the highlighted limitation here, which is the handle includes a
16 closure retention mechanism configured to selectively retain the
17 closure in a stowed position relative to the handle when the closure
18 is selectively removed from the drink spout and received by the
19 closure retention mechanism. It's a mouthful.

20 Moving on to Claim 19, that identical limitation appears
21 in Claim 19 as well. It's verbatim. Slide 5, the primary art at issue
22 in these proceedings are Samartgis, which is on the top left; the
23 bottom is Leoncavallo; and on the right is Miller. We also have
24 depicted a picture of the accused Owala water bottle, and there
25 were arguments in the papers that had to do with the scope of the

1 claims as defined by the infringement contentions that the Patent
2 Owner had served in District Court.

3 Moving on to Slide 7, this is the limitation that we had
4 previously highlighted, and Samartgis meets this limitation. As set
5 forth in the petition, Samartgis has a handle that extends from the
6 base. It has a closure 20 that includes an arm 22 that extends
7 towards the right side. The handle includes lug members 15 and
8 16. The lug members receive track 23 of the closure 20. When the
9 handle is moved to the right, the closure opens, and the lugs go
10 past the ramp that you see on the furthest right side toward the end
11 of the track 23, at which point the closure is stowed relative to the
12 handle.

13 Going to Slide 8, CamelBak disputes that Samartgis
14 includes a closure retention mechanism. Now, just to level set
15 where we are, when the petition was filed, there was no claim
16 construction at the District Court yet. At the District Court,
17 Petitioner proposed the same construction that was in the petition.
18 The Patent Owner said the structures are broader than what
19 Petitioner had identified in the petition and the District Court, and
20 at the urging of the Patent Owner, the District Court gave a
21 construction that's broader than what we were able to put into the
22 petition given that the petition was filed before the Court's claim
23 construction order. And there, the function is the same as what's
24 stated in the petition, but the structure was broader and included
25 closed perimeter, closed retention structure 55, tabs 56, and

1 cooperating engaging structure 58.

2 Now, at the end of the day, the point is to get the claim
3 construction right, but as argued in the petition, whether we go
4 under the narrower construction that the Petitioner proposed at the
5 petition phase or we go with the broader construction that was
6 offered by the Patent Owner and adopted by the District Court
7 under either construction, all the grounds would still render the
8 claims that are challenged unpatentable.

9 Let's go to Slide 9.

10 JUDGE DEFRANCO: Mr. Razai, before we leave that
11 -- this is Judge DeFranco. I think at the pre-hearing conference
12 last Friday, we warned the parties that there could possibly be a
13 third construction based on the claim construction given by the
14 District Court and that we would have to, you know, give
15 appropriate weight to -- or whether to give appropriate weight to
16 the District Court's construction.

17 I'm not sure that the District Court gave the construction
18 that you have indicated on slide 8. I think it includes all that
19 structure, but I think they described the tabs as snap-fit or friction-
20 fit tabs, and so I think there is a construction by the District Court
21 that does not necessarily encompass the ones that the parties
22 discussed in their papers.

23 MR. RAZAI: Your Honors, whether the Court's
24 construction includes that or not, what you're seeing on Slide 8,
25 Your Honor, is straight out of the Court's claim construction order,

1 where it's setting forth what the function and the structure is based
2 on what the Court's construction would be. And so what we see
3 here, from my perspective, is the definitive statement the Court has
4 provided on what the construction is. But with respect to friction-
5 fit or snap-fit, there's been no arguments made that I'm aware of in
6 front of this Board, nor do I really recall the arguments at the
7 District Court where it was describing those tabs in that manner.

8 JUDGE DEFRANCO: Yeah. I think I would beg to
9 differ only because when I read the District Court's construction,
10 and I think it's Exhibit 2010, it explicitly said snap-fit or friction-fit
11 in relation to the tabs 56. So you might want to take another
12 gander at that. But anyway, I think there is -- you highlighted the
13 fact that we do have to come to the right construction.

14 And so I just wanted, you know, to remind, at least for
15 the record, that we had addressed that during the pre-hearing
16 conference on Friday, and that the parties had a heads-up this
17 would be addressed, that we wanted that addressed during this
18 hearing. So to the extent you can address it during the hearing,
19 you know, please proceed.

20 MR. RAZAI: Your Honor, with respect to that
21 construction, what I was saying is in the Court's construction that
22 said that this is the construction we're providing, this is what was
23 taken. I'll go back and look at Exhibit 2010 and what was said, but
24 with regards to what's before this Board, there's nothing in the
25 record that I recall that talks about any party proposing a

1 construction that has snap-fit or friction-part as part of the tabs.

2 JUDGE WORTH: So just to follow up on Judge
3 DeFranco's question, what would be your position about whether
4 the claimed feature is snap-fit or friction-fit based on an
5 interpretation of the claim specification?

6 MR. RAZAI: Given that -- I think that I would be
7 looking at this from a different perspective, but if it was going to
8 be snap-fit or friction-fit, the way that we're looking at some
9 arguments, for example, fitting in, it is a snap-fit into this ramp
10 portion towards the end. As it gets towards that distal ramp and it
11 goes down, it does snap in. And with the respect to the way that it
12 snaps in, there's going to be friction that's also involved, so either a
13 friction-fit or a snap-fit would be the mechanism of action on the
14 Samartgis water bottle. Does that answer your question, Your
15 Honor?

16 JUDGE WORTH: I was just interested in your claim
17 construction position, so I appreciate you addressing that.

18 MR. RAZAI: Okay. Going on to Slide 10, Your Honor
19 -- actually, Slide 9, so in the papers, the Patent Owner says that
20 Samartgis fails to disclose an identical or equivalent corresponding
21 structure under 35 U.S.C. 112(f). We disagree. That argument
22 lacks any merit. Looking at Slide 10, let's look at it under the
23 narrow construction that the Patent Owner had provided, which is
24 spaced-apart tabs. Here, Samartgis discloses spaced-apart tabs,
25 which on Samartgis are present on the inside of the handle.

1 Going on, the majority of the argument that was provided
2 on the structure itself for Samartgis had to do with this way/result,
3 which when it comes to identical structures, is irrelevant. As we
4 discussed with the Board, when it comes to the Leoncavallo and
5 the Samartgis grounds, the Petitioner is arguing identity, not
6 equivalence. So the way and result that was all over the papers has
7 nothing to do when it comes to identical structures.

8 Moving on to Slide 13, now there's no dispute that a
9 112(f) limitation is met when the prior art has a structure that's
10 identical or equivalent, and under the case law, which is really not
11 a remarkable position, the way/result analysis only applies when
12 analyzing equivalency, which is the same analysis that you do
13 under a doctrine of equivalent analysis. So when it comes to the
14 way/result analysis, that's not the one that would be done for an
15 identical structure.

16 Looking at the Samartgis grounds --

17 JUDGE DEFRANCO: So Mr. Razai, let me just ask.
18 You know, I understand it's undisputed that the parties are
19 construing closure retention mechanism, that particular limitation
20 under 112(f), but I just wanted to ask, as far as the corresponding
21 structure, you, meaning Petitioner, are limiting your arguments to
22 structural identity under 112(f), and you're not arguing structural
23 equivalence under 112(f). Am I correct?

24 MR. RAZAI: For particular grounds, Your Honors.
25 When it comes to --

1 JUDGE DEFRANCO: Okay. And those --

2 MR. RAZAI: Right. For the --

3 JUDGE DEFRANCO: Go ahead. Identify those
4 grounds.

5 MR. RAZAI: Grounds 1 and 2, which are the Samartgis
6 grounds. And then Grounds 3 and 4, which are the Leoncavallo
7 grounds. The grounds that are based on Miller -- that's the design
8 patent -- all grounds based on Miller, the argument is equivalency,
9 Your Honors.

10 JUDGE DEFRANCO: Okay. Thank you for that
11 clarification.

12 MR. RAZAI: Going on to Slide 14, the recited function
13 of the means-plus-function clause is to, quote, "selectively retain
14 the closure in a stowed position relative to the handle when the
15 closure is selectively removed from the drink spout and received
16 by the closure retention mechanism." Now, that function is not in
17 dispute. What is in dispute, obviously, are various portions of that
18 function that we're going to have to talk about in Samartgis -- for
19 example, the when-received limitation or the stowed limitation
20 -- but outside those arguments that are expressed in the petition,
21 there really isn't any argument about the function itself.

22 Now, what we kind of get down to is the structure. The
23 structure is the spaced apart tabs, which, as you can in the '252
24 Patent, are also called ribs, projections, stops, fingers, and/or teeth.
25 And those are identical -- it's the same structure -- as the lugs 15

1 and 16 in Samartgis. Now, relying on these figures, the Patent
2 Owner argues that they're not identical. For example, at page 10 of
3 the sur-reply, they argue, quote, "as shown, lugs 15 and 16 are
4 elongated, making them longer or taller than they are wide,
5 whereas the spaced-apart tabs are wider than they are long."

6 Now, as an initial matter, there's no legal support that
7 anyone cites for the proposition that the dimensions of a structure
8 must be identical. For example, if there's a means-plus-function
9 limitation that talks about a means for fastening and the structure is
10 a screw, we're not going to be talking about whether the screw is
11 longer or shorter, whether it's a Phillips or a standard head, or
12 whether the screw is galvanized steel or whether it's gold. The
13 structure is identified and the structure is identical. But even
14 looking at these figures here, sure look a lot alike to me, if not
15 identical.

16 Now, at the end of the day, Samartgis includes spaced-
17 apart tabs, i.e., the lug members 15 and 16 that selectively retain
18 the closure in a stowed position relative to the handle when the
19 closure is selectively removed from the drink spout and received
20 by the closure retention mechanism, and for that reason --

21 JUDGE DEFRANCO: Mr. Razai.

22 MR. RAZAI: Yes, sir.

23 JUDGE DEFRANCO: So if we were to interpret the
24 corresponding structure as being snap-fit or friction-fit spaced-
25 apart tabs, how do the lug numbers in Samartgis -- how are those

1 snap-fit or friction-fit? How do they meet that construction?

2 MR. RAZAI: The reason why they meet that
3 construction is at the end of the day, the tabs have to somehow fit
4 into a particular structure to accomplish the role that they're
5 supposed to accomplish. At some point the lugs have to interact
6 with a portion that creates that particular configuration where it's
7 stowed.

8 And when you look at the -- let's go back to a slide
9 showing a better figure of this. Looking at, for example, Figure 9
10 or Figure 5, which was in the Patent Owner's papers, as you get to
11 that locking ramp and interface section 27 towards the far end, or
12 if you want it unlabeled on Figure 9, towards the far right end of
13 that, as you get in, those lug members go past the ramp, and they
14 snap into that particular part. It is a snap-fit. And with respect to
15 that snap-fit, the snap-fit is also a friction-fit. So under --

16 JUDGE DEFRANCO: Where does Samartgis say that?
17 Where does Samartgis describe those channels when they reach
18 Figures, what, 8 or 9, after they go through that ramp? Where does
19 it describe them as that being a snap-fit?

20 MR. RAZAI: You're right, Your Honor. Again, I wasn't
21 prepared to argue snap-fit or friction-fit. I understood that you
22 guys wanted to go through the construction, but in preparation for
23 the hearing, there was nothing about snap-fit that I looked up. I
24 can take a look when I'm sitting back down in a second, but the
25 one thing that I will say is that under the case law, the figures are

1 just as good as a written description. And when you look at the
2 figures here, as the tabs get towards the right-hand side, they snap
3 into that part right there, creating that stowed position. Therefore,
4 the snap-fit configuration is there in these slides, Your Honor.
5 And the figures --

6 JUDGE DEFRANCO: Yeah. I just want -- I do want to
7 repeat this, though. We did give you a heads-up at the hearing,
8 and I think you had a heads-up through the District Court's claim
9 construction, that snap-fit and friction-fit would be addressed.
10 And I think that's why, you know, we highlighted it during the pre-
11 hearing conference that it needed to be addressed. So I don't think
12 that this is the first time you're hearing about this, but that's what
13 we want addressed as part of this argument today.

14 MR. RAZAI: And again --

15 JUDGE DEFRANCO: So I understand you're saying
16 Samartgis, because once it goes past that initial ramp, that it's,
17 what, locked into position?

18 MR. RAZAI: Yes, sir.

19 JUDGE DEFRANCO: You're talking about the locking
20 position; am I correct?

21 MR. RAZAI: Yes, Your Honor.

22 JUDGE DEFRANCO: Okay. And then I just wondered
23 how locking position meets snap-fit or friction-fit.

24 MR. RAZAI: Again, when the Samartgis lugs go
25 towards the right-hand side and they go down that ramp, at that

1 point there is a snap-fit in that particular part. That's why the
2 locking occurs. Otherwise, there wouldn't be a locking position.
3 And we'll go through some of the disclosure in Samartgis in a
4 second through the specification.

5 JUDGE DEFRANCO: Okay, great. Perfect.

6 MR. RAZAI: That kind of talks about that, because I
7 know there's some confusion about the various structures of track
8 23, and we will get into that as well, Your Honor.

9 JUDGE DEFRANCO: Okay. Go ahead.

10 MR. RAZAI: Now, moving on to Slide 16, and again,
11 with respect to the conversation that we had on the pre-hearing
12 conference, again, it was my fault for misunderstanding that we're
13 going to be talking about snap-fit or friction-fit. My understanding
14 was that we were talking about the construction from the District
15 Court, which I understood only to be that construction that was in
16 the box, not some other part that the Board was pointing to. That
17 was my fault for misunderstanding, and I will kind of go back and
18 take a look at some of the language that we're talking about. But
19 when it comes to the stowed relative to the handle limitation, some
20 of the snap-fit/friction-fit portion of this would be -- I think might
21 be elucidated for the Board as we go through it.

22 So with Slide 16, the next portion of the limitation is the
23 stowed relative to the handle limitation. And that limitation is a
24 closure mechanism configured to selectively retain the closure in a
25 stowed position relative to the handle. As described in the

1 petition, as the handle is moved to the right, the closure opens and
2 the lug members travel down track 23, toward the right, and down
3 the ramp on the rightmost portion of track 23. As the lug members
4 reach the end of that section, the closure is retained in a stowed
5 position relative to the handle.

6 Now, first, we get PO attempting to re-write the claim to
7 insert an additional limitation, specifically, that the claim also
8 requires that the closure also be stowed in a position removed from
9 the drink spout. Now, during the reply phase, we said, look,
10 there's already a structure that's defined with respect to relative to
11 what it's stowed, and it's relative to the handle. On the sur-reply,
12 the Patent Owner clarified that, well, we're not asking that the
13 limitation somehow replace relative to the handle but simply be
14 added to the claim. And that's sur-reply at 4.

15 So the language below with the red illustrates what
16 Patent Owner is proposing, which is selectively retain the closure
17 in the stowed position relative to the handle in the position
18 removed from the drink spout. Now, again, as this Board has
19 probably heard more times than you care to remember, you can't
20 just import limitations. That's not what the case law says. You
21 can't just do it because you choose to.

22 JUDGE DEFRANCO: Mr. Razai, how does that matter?
23 Because it seems like in Figure 9, it is removed from the drink
24 spout.

25 MR. RAZAI: You read my mind, Your Honor, because

1 going into Slide 19, then what we get is that even under that
2 particular reading, it still anticipates, because if you look at Figure
3 9, it is removed from the drink spout. But then what happens is in
4 the context of the argument, Patent Owner then stretches their own
5 claim construction and says that it requires user drinkability so it
6 doesn't hit you in the face. It has to be more open, arguing that
7 Figure 9 fails to provide sufficient clearance to allow the user to
8 drink from the bottle comfortably without the cap hitting the user
9 in the face. That's in the POR 22. Now --

10 JUDGE DEFRANCO: Wait. Let me ask. In Figure 9,
11 you see that arrow on the right that keeps going down?

12 MR. RAZAI: Yes, Your Honor.

13 JUDGE DEFRANCO: It goes down. Does that indicate
14 that the handle can continue to rotate without necessarily the cap
15 rotating about the handle, but the cap rotates with the handle?

16 MR. RAZAI: That's a great question, Your Honor. I
17 think you're just predicting all the slides that are coming up, so
18 we'll get into that in a second as well.

19 JUDGE DEFRANCO: Okay.

20 MR. RAZAI: And I --

21 JUDGE DEFRANCO: Go ahead.

22 MR. RAZAI: And I think when you get into Slide 20,
23 and we can go to this part, the further rotation of Samartgis's
24 handle. Now, in the sur-reply, the Patent Owner argues that
25 somehow, we don't dispute that -- Petitioner doesn't dispute and

1 actually adopts the argument in evidence that it's highly likely that
2 the Samartgis cap and handle could continue to move to the right
3 more fully as the handle is rotated to the right from the position in
4 Figure 9.

5 What we actually said was even if the Samartgis handle
6 could be rotated further away, Samartgis would still meet the
7 limitation, because the annotations demonstrate that if the handle
8 were pivoted further away from the drink spout, the closure would
9 still remain stowed relative to the handle, but it also would move
10 along with it away from the drink spout. But during the
11 depositions, the Petitioner's expert actually testified that, well,
12 when you have these two different axes of rotation, you're going to
13 get a locking. And there's nothing in Samartgis that talks about
14 further rotation to the right.

15 So whether there could be further rotation, which isn't
16 disclosed, you still would have anticipation, but again, there's
17 nothing in Samartgis that talks about further rotation. Does that
18 answer your question, Your Honor?

19 JUDGE DEFRANCO: Yes. And that's the way I
20 understood your argument. I mean, I tend to agree with you that
21 it's in a stowed position when it's in Figure 9, but I also understand
22 Patent Owner's argument, too, that it seems like there's play in the
23 position -- I mean, within the channel between -- once it goes over
24 the ramp 23, I think that -- 23 is pointing to a ramp, and I think
25 that's the locking ramp; am I correct?

1 MR. RAZAI: It's actually -- 23 is the track. 27, I
2 believe, is the locking ramp, and there's various different things
3 that they point to.

4 JUDGE DEFRANCO: Yeah.

5 MR. RAZAI: But the locking ramp on the far right side,
6 and the disclosure that we have in the depositions that Patent
7 Owner took, was that the two different axes of rotation mixed with
8 that particular locking ramp does create a locking in that position
9 without further rotation. Now, again, it's not disclosed whether it
10 does or it doesn't, but it does call that a locking position, which, to
11 me, means that it is locked.

12 JUDGE DEFRANCO: So it's locked once it gets past
13 that locking ramp. What I'm wondering or the panel is wondering
14 is what happens in that straight part of the channel on the right
15 once it gets past the locking ramp, you know, can there be
16 movement within the channel?

17 MR. RAZAI: It doesn't look like there's any more
18 movement in the channel because that locking ramp is at the
19 furthest right point. So if you start moving that handle to the right,
20 there is no more movement in that track.

21 JUDGE DEFRANCO: Oh, I thought the locking ramp
22 was once it passed the ramp that's where 23 is pointing. I
23 understand 23 is the channel, but where that leader line 23
24 terminates, that's the locking ramp as shown in Figure 5

25 MR. RAZAI: Yeah. I think --

1 JUDGE DEFRANCO: Am I correct?

2 MR. RAZAI: No. I think the locking ramp is all the way
3 furthest on the right, Your Honor. And we'll go through that in a
4 second because there is some --

5 JUDGE DEFRANCO: Okay.

6 MR. RAZAI: -- confusion as to where that goes.

7 JUDGE DEFRANCO: Great. Thank you.

8 MR. RAZAI: Going back to Slide 20, and this is where
9 we're going to get into that locking ramp portion, the Patent Owner
10 argues that Petitioners failed to cite any evidence that the closure is
11 held or kept in the position depicted in Figure 9, but the petition at
12 33 to 35 states, and the reply at 7 to 12 confirms, that when the lug
13 members reach the locking ramp in interface section 27, the
14 closure is stowed relative to the handle.

15 Now, the reason why I'm saying there's some confusion
16 is there's other figures that have 27 going to other places, but when
17 we look at the specification, we'll see that this is the correct
18 configuration. This alone, the fact that there's that ramp alone,
19 establishes that the closure was retained in a stowed position
20 relative to the handle because you go past that ramp and you get
21 towards the far end of that ramp, and the lug members go into a
22 snap-fit in that particular part.

23 But the Patent Owner confirms with the figure on the
24 right -- this is from the POR page 20, the figure on the right-hand
25 side, Figure 5 -- and this figure shows the locking ramp at interface

1 section 27 at the far right track of 23. You see that green part,
2 Your Honors, where it says locking ramp and interface section 27.
3 That's where the locking ramp is, towards the very end. And when
4 it hits that, there's no more track to go down.

5 Now, the fact that closure is stowed relative to the handle
6 is further confirmed by Samartgis' specification at column 4, lines
7 25 through 34, which is described in the petition at page 34. And
8 if we look at that particular section -- and I can just kind of read it,
9 we don't have to pull it up -- and this is the same part that was
10 cited in the petition as somehow supporting the Patent Owner's
11 position, we don't think that it does. When the lever member 10 is,
12 for example, in the position shown in Figure 8, then the flap
13 member 20 can be pushed into its closed position.

14 Let me pull up the Patent Owner response just so that we
15 have that. I apologize. It's page 21 of the Patent Owner response.
16 So looking at page 21 of the response, when the lever member 10
17 is, for example, in the position shown in Figure 8, then the flap
18 member 20 can be pushed into its closed position. That's
19 unremarkable because that's right before Figure 9, thereby to seal
20 the spout or neck 4 of the main body member 1.

21 Now, this is the important part. As the lever member 10
22 is moved further to, for example, the position as shown in Figure
23 9, it can be returned to the locking position, and they're saying the
24 locking position is closed. That's not true. With the actuating pins
25 or lug members 15 and 16, engaging the anti-tamper wrap section

1 25, lifting the flap member 20, that's the closure. So if you're
2 moving towards the closed position, which is what they're saying
3 is the locking position, then you wouldn't be lifting the flap
4 member when you go from 8 towards the closed position. You
5 would be closing it. And lifting the flap member means opening it.

6 Now, let's keep going and look at other parts of the
7 Patent Owner response that they've cited. This is the part on page
8 34. On pages 19 to 20, the Patent Owner takes selective quotes
9 from the specification to describe the specific elements or sections
10 of track 23. And they cite column 3, line 58 to column 4, line 4.
11 Let's look at those sections real quick, and we can kind of see
12 what's happening, especially when you look at it juxtaposed
13 against the black figure that shows the orientation of these various
14 different structures on elements on track 23. As you can see, you
15 have 20, 25, 26, 27, in that order coming on this particular track
16 23.

17 And if you look at the specification, as shown in the
18 drawings, a track 23 of the arm 22 includes a number of specific
19 elements or sections. The first of these is a disengaging ramp
20 section 25, cited closest to the cap member 21. So let's go back to
21 this figure and look at that. So 25 is here. It's closest to the cap
22 member. Now it's going to start describing the various different
23 sections going towards the right, which ramp section 25 in use
24 allows the flap member 20 to lift in an upward direction so to
25 disengage the seal from the spout or neck 4 of the main body

1 member 1.

2 The next ramp section is a track or flap which allows the
3 flap member 20 to swing away from and return into engagement
4 with the spout or neck 4 of the main body. There is also included
5 an anti-tamper ramp section 26, which allows the lever to continue
6 and lock the flap member in place, that the flap member be
7 snapped closed by action. The fourth section is a locking ramp in
8 interface section 27. Going towards the right at 27, getting all the
9 way further to the right, it locks it in a position that's stowed
10 relative to this member. Regardless of whether --

11 JUDGE DEFRANCO: Mr. Razai, are you referring to
12 that blacked out figure on your exhibit?

13 MR. RAZAI: Yes, Your Honor.

14 JUDGE DEFRANCO: On your demonstrative?

15 MR. RAZAI: Yes, Your Honor.

16 JUDGE DEFRANCO: Because when I go to Figure 5 in
17 Samartgis itself --

18 MR. RAZAI: Yes, Your Honor.

19 JUDGE DEFRANCO: -- 27 is pointing to a ramp more
20 to the left. It's not pointing to the ramp to the right.

21 MR. RAZAI: You're absolutely right, Your Honor.
22 These figures look like they're all over the place.

23 JUDGE DEFRANCO: And there it's talking about that
24 as being a locking ramp or interface section.

25 MR. RAZAI: Yes, Your Honor. With respect to the

1 figures, they have in both different orientations, and they have
2 them labeled in various different ways. But even just looking at
3 the figures in Figure 9 and looking at the figure in Figure 5 without
4 the annotations, what you see is that on both sides, whether it's on
5 the left or on the right, you do have positions that actually do have
6 a ramp that indents. There is a locking position also on the left
7 side to keep the thing closed.

8 I'm not arguing against that, but what I am saying is that,
9 similarly, on the far right side, you have a ramp that keeps this
10 closure in the stowed position relative to the handle. And that
11 stowed position, according to the expert and according to the
12 figures, which don't show any more movement past Figure 9, is a
13 locking position. And even if there were movement further to the
14 right, which it's not disclosed, you don't have any further track
15 after what's shown in Figure 9 to have that closure be in any way
16 except stowed relative to the handle.

17 So one way or the other, regardless of what structures are
18 on what part, as you get to the further right of that track, there is no
19 more room. And that is the stowed position. And based on the
20 expert, because of the two different pivotal points on that cap, it's
21 not going to move anymore. But even if it were to move, it's still
22 stowed in that position.

23 JUDGE DEFRANCO: So Mr. Razai, I don't disagree
24 with you there. I think it does appear to be in a stowed position.
25 You know, even once it gets to the distal end of that channel or

1 track, meaning the right-hand-most side of the track, I think it's in
2 a stowed position once it passes the locking ramp 27 that's on the
3 left-mid-side of the channel 23. And, you know, what happens
4 between that locking ramp to the leftside of channel 23 and when it
5 gets to the distal end of the channel 23, I think that's a locking
6 position, that -- but my problem is even once it's in that locking
7 position, there's still play between the distal end of the channel
8 -- or the track on the right -- and the locking ramp that's to the left
9 of that distal end. This locking ramp in Figure 5 of Samartgis is
10 that ramp 27.

11 MR. RAZAI: Right. But as you see, Your Honor, what's
12 going on there is because of that additional ramp, there is a snap
13 there because it's not straight. It's not just the straight shot towards
14 the right-hand side. And what you're --

15 JUDGE DEFRANCO: It's just a curve. That's just a
16 curved channel, a curved track. I need to find something in
17 Samartgis that says that there's some sort of snap-fit or friction-fit
18 because it seems like it's free to just travel in that channel without
19 necessarily being locked in one place. It seems like it's locked
20 between the locking ramp 27 and the distal end of the channel or
21 track 23, but aside from that, I'm not seeing any friction-fit or
22 snap-fit.

23 MR. RAZAI: But it is snap-fitting, Your Honor, because
24 at the end of the day, Samartgis' goal is to create a lever that opens
25 without having to touch it by hand, and so it shows the further

1 right-hand point with the ramps as the point where you go and you
2 snap so that now you can pour the liquid without having to touch
3 the cap. So when it comes to that particular position, it is showing
4 a position that's stowed relative to the handle based on the lugs that
5 are going into the ramp.

6 And with respect to the case law, the figures are enough,
7 especially when interpreted by a person who has ordinary skill in
8 the art, to show what that particular structure is accomplishing to
9 accomplish the goal of the patent itself, which is to create an
10 opening without the need to touch the closure.

11 JUDGE DEFRANCO: How do we know that the handle
12 isn't freely moveable within the track between the locking ramp 27
13 and the distal end of the track? I mean, what tells us that?
14 Because it seems like unless the user is actually holding the handle
15 --

16 MR. RAZAI: With --

17 JUDGE DEFRANCO: I'm not aware of what in
18 Samartgis discloses that it's in a locked position in one place
19 within that track.

20 MR. RAZAI: Then there would be no need to have that
21 curved portion of the ramp, Your Honor. With respect to that
22 particular position, that ramp portion that comes in is where
23 Samartgis' lug members go to be able to get that to function the
24 way it's supposed to, which is to keep the closure open with
25 minimal interaction from the user to prevent contamination, which

1 is the main purpose of Samartgis' handle closure mechanism.

2 JUDGE DEFRANCO: Okay. I understand your
3 position.

4 MR. RAZAI: The next portion of the limitation --

5 JUDGE JUNG: Sorry. Let me ask you a question about
6 when you're arguing for identity. Does that mean that we don't
7 have to look at a function/way/result?

8 MR. RAZAI: That's correct, Your Honor. The
9 function/way/result only comes in with equivalency. There's no
10 case law that says that function/way/result comes in when it comes
11 to identity of structure. If the corresponding structure is a screw,
12 the corresponding side has a screw. Regardless of the dimension
13 of the screw, it's still going to be the corresponding structure.

14 The next portion of the limitation at issue is when the
15 closure is received by the closure retention mechanism. As set
16 forth in the petition and described in the institution decision,
17 Samartgis clearly describes and shows flap member 20, which
18 includes arm member 22 as a principal component being mounted
19 on, i.e., received by lug members 15 and 16 on handle 10. In the
20 POR, the Patent Owner argues that the Board erred by finding the
21 limitation was satisfied based solely on the track 22 receiving the
22 lug members 15 and 16, but CamelBak ignores that the Board
23 unambiguously found that the closure, the flap member 20, is
24 received by lug members 15 and 16 on the handle. And this
25 argument is set forth in more detail in the reply as well.

1 Moving on to Slide 23, moreover, the Patent Owner
2 admits that receive merely means to accept, to acquire, or to
3 engage. There's no dispute about that. So with respect to that
4 particular engagement, there is the engagement. Going to Slide
5 24, PO next argues -- they try to add another extraneous limitation
6 arguing that the Board should add the negative limitation here,
7 which is the closure is not always or permanently engaged or
8 retained by the closure retention mechanism, such as for
9 manufacture. Now, the manufacture part is because, obviously,
10 you have to engage it at some point. So don't really see any need
11 to add limitations. But in its POR, it can't point to anything in the
12 '252 Patent to support this extreme position.

13 Now, Slide 25 in the sur-reply, the Patent Owner shifts
14 its claim construction position and argues that the limitation must
15 have two states, a state when it's been received and a state when it
16 hasn't been received, but again, there's no support for PO's attempt
17 to rewrite the claim. There's no disavowal and there's nothing here
18 that requires that type of finding. Now, Patent Owner --

19 JUDGE DEFRANCO: Mr. Razai, I think that Patent
20 Owner's argument is that when it says "when it's received," that
21 that implies some sort of temporal limitation or a conditional
22 limitation, and so it's shown by the claim language itself, and that
23 that's why they want that phrase "when received" to be interpreted
24 to require some sort of temporal limitation as opposed to being
25 permanently, you know, in place. It has to happen sometime later.

1 MR. RAZAI: And I fully understand that position, Your
2 Honor. And with respect to that, it's still based on a claim
3 construction position about what the role of "when" is. And the
4 only case they point to for that, having the temporal meaning that
5 it requires two states, is the Info-Hold case, and in the Info-Hold
6 case, the Court -- or the Federal Circuit was basing it on various
7 different factors, including prosecution history, as you can see on
8 this slide. "During reexamination of the '374, Info-Hold amended
9 the claims by adding the limitation 'when a caller is placed on hold'
10 to avoid anticipation by the prior art." And as they go through, the
11 Federal Circuit held that this evidence shows that there is this
12 requirement that the music start at the point when it's placed on
13 hold.

14 Now, again, when it comes to these two states, that's not
15 what Info-Hold stands for because Info-Hold, if a call comes in,
16 and the call is picked up by hold, and the music starts, that still
17 infringes. You don't need a state where the call -- there's a live
18 operator talking and then it's placed on hold. And if that user
19 hangs up when the call is still on hold, it still infringes. There's no
20 two-state requirement in Info-Hold, and Info-Hold was limited to
21 the facts.

22 Now, when it comes to the ordinary meaning of when, to
23 get to your point, Your Honor, when has been construed by the
24 Federal Circuit to mean at or during a time that, the ordinary
25 meaning including at, during, or after the time that. And when it

1 comes to these limitations, the "when received" is at a time when
2 it's received, and it doesn't require a non-permanent engagement
3 according to the case law and what the ordinary meaning of
4 "when" is.

5 Does that kind of more answer the question, Your
6 Honor? I know that you were asking about my understanding of
7 the argument.

8 JUDGE DEFRANCO: Right. I understand what you're
9 arguing, yes.

10 MR. RAZAI: Going to Slide 32, now we're getting to
11 Leoncavallo. For Grounds 3 and 4, the Patent Owner argues that
12 Leoncavallo does not disclose a structure that corresponds to the
13 closure retention mechanism. Now, here we have the same
14 functional arguments, or the functional arguments that were
15 present in the last one are not present verbatim here, but again, the
16 recited function is the same, and the function is not in question.
17 And when you get into the structures, the structures are there. You
18 have the detents, which actually do create a friction-fit hold of the
19 closure when it is in the open position.

20 Going to Slide 33, the Patent Owner argues --

21 JUDGE DEFRANCO: Counsel, where does Leoncavallo
22 disclose spaced-apart detents?

23 MR. RAZAI: The detents are present on the two sides of
24 the arcuate tabs Your Honor, on the arc. So they're present on both
25 sides.

1 JUDGE DEFRANCO: Does it show that somewhere?

2 MR. RAZAI: I believe it recites it in the specification
3 that they're on both sides.

4 JUDGE DEFRANCO: Oh, I see. I see it on your Slide
5 32. I'm sorry.

6 MR. RAZAI: Now, looking at Slide 33, the Patent
7 Owner argues they're not identical and don't function identically.
8 Now, there's no dispute that 112(f) limitation is met when the prior
9 art has a structure that's identical or equivalent. I'm not going to
10 go into the same function/way/result or the way/result arguments
11 or the identity arguments. It's the same. Again, when you identify
12 a screw, the screw is there. It doesn't have to be the identical
13 screw.

14 Going to Slide 25 --

15 JUDGE WORTH: Sorry. Just to have this discussion
16 with you, so let's say that the specification recites a screw, and so
17 what you're saying is you're not looking for a nail or some other
18 kind of fastener. And I think, let's say, with respect to the
19 Samartgis ground, the question would be whether you can have a
20 screw that acts in a different way. So instead of the screw
21 engaging in one way, it would be a screw engaging, let's say,
22 through an intermediate structure. You understand my question?

23 MR. RAZAI: I do. That's a great question. And that's
24 where the function of the limitation comes in. And so if the
25 function of the limitation recited some particular function that's

1 specialized, then you would have to meet that function. You don't
2 bring in yet a new function after you construe the 112(f) limitation,
3 and the 112(f) limitation function is undisputed here. It's the same
4 thing we were talking about, about the closure being received and
5 being retained in the stowed position relative to the handle. That's
6 the function it must perform, and it performs that function, then
7 you meet it. It's not some other new function that you have to go
8 in and describe unless you're going into the equivalence part.

9 JUDGE WORTH: So in this hypothetical, you're saying
10 that the identity would still be met even if the screw is engaging
11 with an intervening structure?

12 MR. RAZAI: Correct, Your Honor. As long as that
13 particular intervening structure didn't affect the function that was
14 construed to be the function of that limitation. If the function of
15 the limitation is a screw for holding up a painting through the
16 middle portion of the painting that is equidistant from all sides, and
17 then the screw that you're identifying in the prior art or the accused
18 instrumentality is put at the very top, then that function is ruined.
19 The only function that is relevant is the function that's in the 112(f)
20 limitation.

21 JUDGE WORTH: Let me ask you one more question
22 about the claim language itself. The phrase "when the closure is
23 selectively removed," is that part of the same function, or is that a
24 separate limitation?

25 MR. RAZAI: That's part of the same function for the

1 112(f).

2 JUDGE WORTH: Okay.

3 JUDGE DEFRANCO: And Counsel, does Patent Owner
4 agree with that, that that's part of the same function?

5 MR. RAZAI: I will let them answer, Your Honor. I
6 have not noted any disagreement with respect to the 112(f)
7 function.

8 JUDGE DEFRANCO: Fair enough.

9 MR. RAZAI: Going into Claim 6, the detent is defining
10 at least a part of the closed perimeter. Now, here for Claim 6, the
11 drink container Claim 5, wherein the handle defines a closed
12 perimeter and when the closure retention mechanism defines at
13 least a portion of the closed perimeter. Here the argument is, well,
14 the detents are on the outside of the handle. How do they define a
15 part of the closed perimeter? The detents aren't supposed to be
16 within the closed perimeter. That is not the claim language. There
17 is no requirement the closure mechanism is located on the inner
18 surface or outer surface of the closed perimeter.

19 Going to Slide 39 -- I'm sorry I'm going a little bit quick
20 here since I'm running out of time -- Leoncavallo also teaches
21 -- but going back to Claim 38, to the extent the PO relies on
22 annotations of Leoncavallo's Figure 3, that's not evidence. We
23 were just highlighting things to draw the Board's attention to
24 where the structures are. But in that section of the petition at page
25 71, the petition states, "loop 54 defines a closed perimeter, as

1 highlighted below, in the above embodiment, the detents are on the
2 outside of the loop 54 and thus form part of the perimeter defined
3 by the loop." If you have a ring, for example, my ring, that defines
4 a perimeter. Whether you have something that's on the outside, the
5 outside part defines the closed perimeter, the inside part defines
6 the closed perimeter, it all defines the perimeter. That is the
7 perimeter. There's no particular location on the perimeter that's
8 required.

9 Nonetheless, going into Leoncavallo, Leoncavallo states
10 that that arcuate member of the cap could also be on the inside
11 portion of the perimeter, meaning that those detents would have to
12 be on the inside as well. The thing is that there's no other
13 mechanism that's disclosed in Leoncavallo for retaining that
14 closure besides the detents, and when you move that arcuate, you
15 have to move the friction-fit detents on the inside as well.

16 Going to Slide 40, to the extent the motivation to
17 combine is needed, Leoncavallo itself teaches that it's one of two
18 possible locations, whether it's on the inside or the outside. And
19 when it teaches the inside or the outside, how can Leoncavallo
20 itself teach away from something that it teaches? That is the
21 argument that's in the Patent Owner response, and to me, it doesn't
22 carry water.

23 Going to Slide 41, looking at the Johnson and Gorskey
24 grounds, Johnson and Gorskey, the motivation to combine Johnson
25 and Gorskey applies to each of the grounds, and that's what's stated

1 in the petition. And the petition states on page 45, there's three
2 ways to seal the opening of a spout: to seal a spout's outer surface,
3 to seal its upper lip, or to seal its inner surface. All three were well
4 known.

5 Now, doing any of these things would have been obvious
6 given the limited number of options. This is all from the petition.
7 For example, using a cork to seal a wine bottle or a stopper or a
8 plug to seal a test tube would have been known for centuries, and
9 two examples were provided here with Johnson and Gorskey. And
10 with respect to Johnson and Gorskey, they describe sealing a
11 bottle, sealing a container, and when it comes to the '252 Patent, it
12 talks about sealing a container, same field of endeavor, and the
13 problem that's going to be solved is the same problem to be solved,
14 which is to prevent leakage and spillage.

15 Going to 43, Patent Owner argues that there's no
16 motivation to combine. Again, we disagree. The motivation to
17 combine is set forth not only with what I just read, but also looking
18 at the declaration, "one skilled in the art would have understood
19 that various spout sealing mechanisms could be used, Leoncavallo,
20 including the plug/spout mechanism of Gorskey or Johnson. One
21 skilled in the art would have been motivated to make the
22 substitution for several reasons. Adopting the plug/spout
23 configuration of Gorskey and/or Johnson would result in a more
24 secure, more robust defense."

25 Now, again, CamelBak mischaracterizes the combination

1 arguments. Again, Petitioner for the first time in its reply cites to
2 expert testimony. That's not true. The expert testimony that was
3 relied on in the reply is the same cut and pasted motivations for
4 different parts of the combinations, whether it's Gorskey with
5 Samartgis or Gorskey with Leoncavallo or Gorskey with Miller. It
6 says the same thing. It's just the paragraph numbers were
7 transposed. The substance of what was cited was exactly the
8 same.

9 Next, we have an argument that the availability of
10 alternative embodiments is somehow going to negate it. Petitioner
11 has provided no evidence rebutting Patent Owner's expert
12 conclusion that there is no evidence that either Johnson or Gorskey
13 provided a stronger seal than Leoncavallo. Again, that's not
14 necessary for a motivation to combine analysis. Our case law does
15 not require that a particular combination must be the preferred or
16 the most desirable combination or described in the prior art in
17 order to provide motivation for the current invention. That's
18 Novartis 2019, citing to the 2004 In re: Fulton case.

19 Grounds 5 and 6, Miller and Leoncavallo. Looking at
20 Slide 48, for the Miller Leoncavallo grounds, as the Patent Owner
21 explained, the Miller design patent does not disclose a drink spout
22 extending from the base, a closure that's configured to be
23 removably coupled relative to the drink spout or the closure
24 retention mechanism. Now, looking at the sur-reply, it says, "It's
25 undisputed that Miller does not show what resides under the

1 closure." So what they're saying is like, well, we don't know
2 what's under there.

3 But Miller teaches the claimed drinking spout. The
4 shape of the closure would have communicated to one skilled in
5 the art that Miller includes a spout. This is the expert: "One
6 skilled in the art would have understood that any cap assembly
7 including a spout would necessarily need a closure that is
8 removably coupled relative to the spout in a closed position to
9 selectively restrict dispensing of drink inside the passage."

10 This is more evidence, going to the depositions. "Now, I
11 see a spout under the closure, and I would describe in the art looks
12 this is"

13 -- sorry. I should get my glasses. And I won't read these
14 slides, but this is from Exhibit 2011, 195:15 to 196:12 and Exhibit
15 2011, 199:8 to 20. Again, design patents can and do teach utility
16 features. "There is no question that a person of ordinary skill,
17 reviewing these figures, would understand them to show mounting
18 the lamp adjacent to the side window," and, "Our precedent has
19 held that drawings can be used as prior art without referring to the
20 surrounding description, only if the prior art features are clearly
21 disclosed by the drawing." The first one is Krippelz v. Ford
22 Motor, 667 F.3d 1261 at 1269. The second one is PlaSmart v.
23 Kappos, 482 Fed. Appx. 568 at 572 to 573. And again, more
24 disclosures saying that the design patent teaches what it teaches.

25 Looking at Slide 53, Leoncavallo teaches the claimed

1 spout, and there is a motivation to combine argument there.
2 Looking here, "including a drink spout described in Leoncavallo
3 would provide a convenient way for the user to drink the beverage
4 contained in the liquid container, and including a closure and a
5 plug disclosed in Leoncavallo would provide the user with a way
6 to securely close the spout to prevent leakage or spills."

7 So again, what we're talking about here is the
8 combination of the spout. In case you can't see that, there's a spout
9 under that closure that's extending up above. That's what a skilled
10 artisan would do to create that. Again, the availability of
11 alternative embodiments is irrelevant. Whether something else
12 would be better or worse has no place in a motivation to combine
13 analysis.

14 Now, there's also some citation about, well, there's no
15 description of how you would put these things together, but I'm
16 sure, again, a phrase that you guys have heard a lot is a POSA is
17 not an automaton. Looking at Intel Corp. v. PACT XXP Schweiz
18 AG, 61 F.4th 1373, "so, in many cases, a person of ordinary skill
19 in the art will be able to fit the teachings of multiple patents
20 together like pieces of a puzzle." And again, CamelBak's expert
21 says, "this technology is simple." When you talk about motivation
22 to combine, it's not hard to put a spout on Miller if you think
23 Miller doesn't have a spout. Again, it's unnecessary to describe
24 every detail.

25 Going to the closure retention mechanism, this is an

1 equivalency argument that was made, and when it came to the
2 Patent Owner response, the Patent Owner didn't argue that a
3 projection on a closure that mates with an indentation on a handle
4 does not meet the closure retention mechanism limitation. Instead,
5 it argues that Miller's projections and indentations are ornamental,
6 not functional. That's the sole argument that was made in the
7 Patent Owner response, and any other argument is waived.

8 For the first time in a sur-reply, the Patent Owner argues,
9 "moreover, the alleged projection cannot be literally the same as
10 the spaced-apart tabs 56 required for the closure retention
11 mechanism because unlike the '252, the projection is not on the
12 inner surface of the handle." As an initial matter, this argument
13 was never made in the Patent Owner response, only in the sur-
14 reply, and secondarily, we're arguing equivalency, which has never
15 been challenged.

16 Going to Slide 61, again, back to motivation to combine
17 with respect to Leoncavallo, the motivation to combine is listed at
18 the petition at 96 and the petition at 98. Going to Gorskey and
19 Johnson seals, again, the motivation to combine is listed all over. I
20 reserve the rest of my time for rebuttal.

21 JUDGE JUNG: Okay. You went seven minutes over.
22 You have about eight minutes left for rebuttal.

23 MR. RAZAI: Thank you for putting up with my very
24 fast talking at the end.

25 MR. MUDD: May I approach, Your Honor, with copies

1 of the slides?

2 JUDGE JUNG: Oh, yes.

3 MR. MUDD: Thank you.

4 MR. RAZAI: I have the slides as well if you guys want
5 them. I forgot, Your Honors.

6 JUDGE JUNG: Sure. Thank you. Thank you.

7 Mr. Mudd, the panel needs to take a five-minute break.

8 So let's see. I have right now 1:54, so if everyone could come
9 back at 2:00 and get started again, that'd be great.

10 MR. MUDD: Sounds good. Thank you, Your Honor.

11 (Whereupon, the above-entitled matter went off the
12 record at 1:54 p.m. and resumed at 2:00 p.m.)

13 JUDGE JUNG: All right. Thank you. Please take your
14 seats.

15 Mr. Mudd, how much time would you like to reserve for
16 rebuttal?

17 MR. MUDD: I'd like to reserve 10 minutes, please.

18 JUDGE JUNG: You may proceed when you're ready.
19 Please begin.

20 MR. MUDD: Thank you, Your Honor.

21 May it please the Board. Jason Mudd for Patent Owner
22 CamelBak Products. I think that this proceeding has been
23 significantly simplified by some concessions that Petitioner has
24 made, and we feel that reaching relatively few -- a few number of
25 issues, the claims can all be confirmed as patentable, and that

1 relates to the issue of the claimed closure retention mechanism,
2 which both sides agree is a means-plus-function limitation.

3 And there are two steps to showing that a means-plus-
4 function limitation is satisfied. Number one, the identical function
5 must be performed by some structure in the prior art. And then
6 number two, either an identical structure or an equivalent structure
7 must be present. That structure must be either identical or
8 equivalent to what's disclosed in the patent specification for that
9 means-plus-function element.

10 Importantly, as to Samartgis and Leoncavallo
11 -- Samartgis being Grounds 1 to 2, Leoncavallo, Grounds 3 to 4
12 -- Patent Owner has, or Petitioner has conceded that they are only
13 relying on a structural identity argument. Even though in their
14 petition they had made equivalence arguments, they're now relying
15 only on structural identity. They confirmed that in the pre-hearing
16 conference last week, and they confirmed it in argument here
17 today.

18 With regard to Miller, Grounds 5 through 6, we
19 understand that Petitioner is not relying on a structural identity
20 argument, is instead relying on an equivalence argument. Based
21 on this issue, simply comparing the spaced-apart tabs 56, the
22 corresponding structure of the '252 Patent, with each of the alleged
23 closure retention mechanisms in Samartgis, Leoncavallo, and
24 Miller, one can plainly see that for Samartgis and Leoncavallo,
25 there's nothing identical to spaced-apart tabs 56, and in Miller,

1 there's nothing equivalent.

2 And really, I prepared 33 slides, but there's really only
3 three slides necessary to show this. The first one would be with
4 regard to Samartgis, and this is Slide Number 15. And we'll go
5 right there. As shown here in Slide 15, on the left of Slide 15 are
6 lugs 15 and 16 of Samartgis, which is what Petitioner contends is
7 the identical or -- structure to the tabs 56 of the '252 Patent, which
8 is shown here on the right side of Slide 15. A simple side-by-side
9 comparison shows they are not identical.

10 Now, Petitioner suggests that there's no -- I believe he
11 said there was no legal support that the dimensions have to be the
12 same or that the structures have to be the same. We weren't aware
13 there was a dispute over what identical meant. Identical means the
14 same. If there's differences, they're not identical. And a Federal
15 Circuit case dealing with 112(6)/12(f) that's on point to this is
16 WMS Gaming, and that's 184 F.3rd 1339 at 1350 to 51.

17 And in that case, the court noted that the two structures
18 being compared were different, and they state the two disclosed
19 machines are different, i.e., not identical. So if there's any
20 difference between the structures, they're not identical.

21 A corollary to this would be literal infringement in the
22 patent infringement context. For literal infringement, the two have
23 to be exactly the same. The same holds for structure of a means-
24 plus-function limitation. Because the lugs 15 and 16 are not
25 identical to the spaced-apart tabs 56 -- because there are

1 differences, including in the fact that the lugs 15 and 16 are
2 elongated, they're longer than they are wide, the tabs 56 are wider
3 than they are long -- and that there are reasons for those
4 differences in the designs. The lugs are longer because they're
5 supposed to stay within the tracks and not come out of the tracks in
6 Samartgis. In the '252 Patent, the tabs 56, they're designed to
7 allow the cap to snap in and snap out. If they were too long, if
8 they were long like lugs 15 and 16, that would inhibit the ability to
9 pop it in and out of the tabs 56.

10 JUDGE WORTH: Sorry, Counsel. The case you cited,
11 is that in your briefing?

12 MR. MUDD: It is not because we were not aware that
13 there was an issue, one, with regard to structural identity. And I'm
14 going to get to this point in a moment that we think it's a new
15 argument that they argued structural identity because the petition
16 only relied on equivalence. But in any event, when we saw in their
17 slides that they were going all in on identity, we suspected that
18 they must be contending that identity doesn't require them to be
19 identical. And so we found that case in response to what we saw
20 on their slides and what they said in the pre-hearing conference
21 last week, so no, it's not in our briefing.

22 That's with regard to Samartgis. Plain as you can see --

23 JUDGE DEFRANCO: Mr. Mudd?

24 MR. MUDD: Yes.

25 JUDGE DEFRANCO: Before you leave Samartgis, my

1 understanding is for 112(f), when you read corresponding structure
2 -- you know, I understand you're looking to the appearance that's
3 in the figure, but corresponding structure relates to what's also
4 disclosed in the specification. And you have to look to the
5 specification. And I think Petitioner's argument is when you look
6 at the specification, it describes those lug members as being
7 projections, tabs -- I can't recall what other. But there was some
8 place in the specification of the patent itself, challenged patent,
9 that describes them as being projections. Aren't those projections
10 that are shown in the challenged patent?

11 MR. MUDD: They're not. I mean, they're not providing
12 a friction-fit or snap-fit arrangement. They're not consistent with
13 what's described or disclosed --

14 JUDGE DEFRANCO: I think, Petitioner's argument,
15 that goes to function. And I think what you are referring to is the
16 structure. You're saying the structures are not disclosed -- what is
17 it? Slide 15 you were on, I believe?

18 MR. MUDD: Yes.

19 JUDGE DEFRANCO: Yeah, Slide 15. You're just
20 pointing to the figures, but you're disregarding what the
21 specification disclosed, and I think there that talks about those
22 elements 56 in '252 Patent as being projections.

23 MR. MUDD: So those tabs 56 are what Petitioner has
24 identified as the corresponding structure. They are what the
25 District Court construed as being the corresponding structure, and

1 in our Patent Owner response we indicated that we understood
2 Petitioner to be relying on those tabs 56 as being the corresponding
3 structure and not some possible variable of the tabs 56, such as,
4 you know, a rib formulation of the tabs 56. That isn't what is
5 applied anywhere in the petition. The petition only relies on tabs
6 56.

7 And if I could go briefly to the reply brief, Petitioner's
8 reply, and I specifically am on page 2, the very last sentence at the
9 bottom. And in the reply, and I'll read it into the record, it says:
10 because Trove's understanding in the petition is narrower and
11 encompassed within CamelBak's broader construction adopted by
12 the District Court, there is no need for further exploration of
13 constructing this term because it's not necessary for final resolution
14 of patentability.

15 So, importantly, Petitioner said, through this sentence,
16 that they're not relying on anything beyond those tabs 56. And that
17 is because the District Court, they said that what they were relying
18 on was within the District Court's construction. And the District
19 Court's construction shown here on Exhibit 2010 at page 6, the
20 corresponding structure here includes some other structures that
21 Petitioner doesn't rely on, but it recites tabs 56.

22 So Petitioner made clear in their reply, they're relying on
23 tabs 56. They're not relying on some rib formulation or some
24 variation to tab 56. They're relying on tabs 56, which is what is
25 shown in the figures. And that's why in their slides, in the

1 briefing, I mean, they're pointing to the same tabs 56 that we are,
2 and it is the tabs 56 shown in the figures, not a variation thereof.

3 JUDGE DEFRANCO: Well, I think what they're doing
4 is they're referring to the tabs as shown in the figure as well as
5 column 10, lines 9 through 10, where it says: tabs 56 may be
6 referred to as ribs, projections, stops, fingers, and/or teeth.

7 So they're saying, okay, you know, even the specification
8 describes tabs 56 as shown in the figures as being projections.
9 And so they're saying because they're referred to as projections,
10 then they're the same as what's shown in Samartgis, which is also
11 referred to as projections.

12 MR. MUDD: So Your Honor, that sentence you referred
13 to, which I've just pulled up here in the room on the screen,
14 column 10, lines 9 and 10, it says: tabs 56 additionally or
15 alternatively may be referred to as ribs, projections, stops, figures,
16 and/or teeth.

17 To me, it says they may be called something else,
18 referred to as teeth, stops, fingers. It's not saying those tabs can be
19 something else and can have different forms. It's just saying you
20 can call them something besides tabs. And so --

21 JUDGE DEFRANCO: Oh, I don't disagree with you. I
22 agree that that's what that says, that it's referring to what they can
23 be labeled. And I think what Petitioner is saying is, okay, because
24 they could be labeled as projections, what's shown in Samartgis are
25 projections, therefore, they're identical structure. I think that's the

1 Petitioner's argument, and they're free to address that in their
2 rebuttal.

3 MR. MUDD: Yes. I would invite them to clarify that in
4 rebuttal, Your Honor, because it was not clear to me from their
5 opening argument whether they were intending to rely on tabs 56
6 or some other type of tab or stop or variation of tab 56, because if
7 they are, one, I think it would be a new argument, and two, I think
8 it would be unsupported in any event.

9 And because we were afraid they might go that route and
10 make that argument, we actually found a case on point to address
11 that issue to assist the Board. And sorry, I'm finding it right now.

12 JUDGE WORTH: Counsel, did you show these cases to
13 the other side before today?

14 MR. MUDD: No. It was purely responsive to what we,
15 you know, heard on the pre-hearing conference last week and what
16 we just heard in argument today. That is the -- it's the Medtronic
17 case. Where is it? Here it is. Medtronic Navigation v. BrainLAB,
18 222 F. Appendix 952 at 956. That's Federal Circuit 2007. And in
19 that case, the court was construing a means-plus-function term, a
20 reference means as being limited to an array of microphones
21 instead of encompassing an optical system, even though there was
22 a passing reference in the specification to possibly being able to
23 use an optical system instead of an acoustic system.

24 And the Court says, we agree, there's a passing reference
25 to this optical system, but, however, they said, a claim is to be

1 construed in light of the written description that supports it.

2 And it's true the minimal one-sentence reference here to
3 an optical system is a mention of an optical system; however, it
4 says, the remainder of the spec describes acoustic systems, and
5 there is no enabling description of how to make them use an
6 optical tracking system, and claims are best construed to preserve
7 their validity.

8 So in that case, the Federal Circuit said you rely on the
9 actual structure disclosed, and to the extent there's a hint, a passing
10 reference to variation in the disclosed structure, that's not to be
11 included in the construction because it would potentially, you
12 know, render the claim not enabled, potentially indefinite. And
13 here we have -- there's no indication of what this possible variation
14 of the spaced-apart tabs 56 might be.

15 And if Petitioner is allowed to say, well, you know,
16 anything on a handle that looks like a projection or a protrusion is
17 a spaced-apart tab 56 so long as it performs the function, you've
18 now just violated 112(f), right? The whole point of 112(f) is to
19 prevent functional claiming, where you've tried to claim any
20 structure under the sun that performs the function. So if they're
21 allowed to say, oh, it's not limited to tabs 56. It can be anything
22 that performs the function, you've just violated the entire premise
23 of 112(f).

24 JUDGE WORTH: Counsel --

25 JUDGE DEFRANCO: Let me ask, Mr. Mudd, would

1 you agree that elements 15 and 16 in Samartgis, they are
2 projections from the handle?

3 MR. MUDD: I think they do appear to be projections
4 from the handle, yes, Your Honor.

5 JUDGE DEFRANCO: Okay. Thank you. I do want to
6 address one thing before we leave Samartgis, too, this structural
7 identity and the fact that you believe it's a new argument by
8 Petitioner somehow. I'm wondering if you could look at the
9 petition page 33. And I think we addressed this during the pre-
10 hearing conference, but I just want to get your view on this right
11 now.

12 MR. MUDD: Yes.

13 JUDGE DEFRANCO: On page 33, it says: Samartgis
14 discloses that the handle, lever member 10, includes a closure
15 retention mechanism. And then Petitioner identifies lug members
16 15 and 16 as being a closure retention mechanism. Okay? Now,
17 I'm seeing that as that's structural identity.

18 MR. MUDD: It's not --

19 JUDGE DEFRANCO: That's where they're arguing that
20 the structure is identical to the closure -- the structure of lug
21 members 15 and 16 are the corresponding structure that are
22 identical to closure retention mechanism as disclosed in the
23 specification of the '252 Patent.

24 So I just want to get your take on -- if you continue to
25 scroll down to the bottom of page 34, then they say: furthermore,

1 interpreting the closure retention mechanism under Section 112(f),
2 the lug members are also at least equivalent to the structure
3 identified.

4 I'm kind of confused. All right. Why aren't you reading
5 those pages as first addressing structural identity and then, second,
6 in the furthermore clause, discussing structural equivalence? Why
7 do you believe they're limiting themselves strictly to structural
8 equivalence in the petition?

9 MR. MUDD: Yes. Thank you, Your Honor. That's a
10 very good question. And the answer is, on page 33 when
11 Petitioner says, Samartgis discloses that the handle includes a
12 closure retention mechanism, that is simply the overarching
13 conclusion. They're saying that the lugs 15 and 16 satisfy the
14 claim closure retention mechanism. You'll remember there's a
15 two-part test. Number one, does it perform the identical function?
16 Number two, does it include structure that is either identical or
17 equivalent to that disclosed in the specification?

18 So we start with page 33. They're stating the conclusion
19 they contend its satisfied. But then what do they do? The very
20 next thing they do on 34 is they go into the function. The very
21 next sentence at the top of page 34, which I've highlighted here in
22 the room, is they argue the lug members are a closure retention
23 mechanism because they're designed to and do perform the
24 claimed function, right? So this entire section on page 34 is all
25 about function. That's step one. Step two --

1 JUDGE DEFRANCO: No, no, no. What I'm seeing is
2 they are saying the lug members 15 and 16, that structure in
3 Samartgis is performing the claim function.

4 MR. MUDD: Yes. That's step one.

5 JUDGE DEFRANCO: So I understand they're talking
6 about function there, but they've already identified the structure
7 that performs that function.

8 MR. MUDD: So --

9 JUDGE DEFRANCO: You don't see that? Lug numbers
10 15 and 16 are a closure retention mechanism?

11 MR. MUDD: So you do have to identify the structure
12 that you contend performs the identical function for step one, but
13 step two is you compare that structure you've identified in the prior
14 art to the corresponding structure in the patent, right? And you
15 look at is it identical or is it equivalent? So they've not even
16 reached step two until they get to page 35. So when they say,
17 furthermore, the lugs are at least equivalent, they're saying,
18 furthermore, they are also at least equivalent, they're saying,
19 furthermore, step two is also satisfied. That is what they're doing
20 in the petition.

21 So on page 33, when they are saying that the lugs are a
22 closure retention mechanism, they're not saying anything about
23 structure, they're not saying whether it's identical or equivalent,
24 right? They're just saying, we contend it's met, and we contend it's
25 met because it does identical function. That's page 34. And we

1 contend it satisfies the structure because it discloses at least an
2 equivalent, and that's the bottom of page 34 into 35. Nowhere in
3 any of these pages is the statement, they are identical or include an
4 identical structure.

5 And importantly, to do the structural analysis, you have
6 to compare it to what you contend the corresponding structure is in
7 the patent, which is tabs 56. There's no mention of tabs 56
8 anywhere on page 33 or 34, right? So they're not doing any
9 comparison to tabs 56. All they're doing is step one, function, and
10 then when you get to step two, they say also the structure is
11 satisfied for step two. And how do they contend it's satisfied?
12 They contend it's satisfied because they believe it was an
13 equivalent. And we would --

14 JUDGE DEFRANCO: Let me take you through this.
15 Assuming what you just said is right, just look at page 35. And
16 there, page 35, they're talking about the lug members -- on the
17 third line of page 35 -- lug members 15 and 16 perform the
18 claimed function in substantially the same way to achieve the same
19 result.

20 Okay. So that's structural equivalence. But then they
21 say, like the opposed tabs, the lug members 15 and 16 are
22 projections that extend from the inner surface. And then they say,
23 also, like the opposed tabs, the lug members -- and then that's
24 when they get into this whole structural equivalence argument.

25 So I think it could also be read that the line begins, like

1 the opposed tabs, like lug members are projections, there they're
2 talking about structural identity, and then they do the "also" clause.
3 So I think there's kind of several places where I think a reasonable
4 person reading this petition would understand they're arguing both.

5 MR. MUDD: Your Honor, we continue to disagree,
6 respectfully. I mean, that sentence where they said, like the
7 opposed tabs, they're projections, I mean, again, you know, as we
8 emphasized a minute ago, it's not enough to be projections, right?
9 That would be functional -- I mean, it would be improper to -- the
10 District Court did not say any projection is encompassed within the
11 claim closure retention mechanism. No party has proposed that.
12 Petitioner has not proposed that any projection whatsoever should
13 be considered a closure retention mechanism. Instead, they relied
14 on tabs 56. The District Court construed it as tabs 56.

15 And so here in this sentence, they're making an
16 equivalence argument. They're saying, well, like the tabs, they're a
17 type of projection, right? So there's a similarity there. They're not
18 contending they're the same. They're not contending they're
19 identical in that sentence. They're saying, well, they share a
20 similar feature in that they both project from the inside of the
21 handle.

22 Well, okay. That's a potential similarity they've noted.
23 They've not contended they're identical.

24 JUDGE DEFRANCO: Okay. I understand your
25 argument. I don't want you have to spend a lot of time on this

1 issue.

2 MR. MUDD: Okay. Thank you, Your Honor.

3 JUDGE DEFRANCO: Okay. Please go on.

4 MR. MUDD: I'd like to return back to my lead point that
5 none of the references --

6 UNKNOWN SPEAKER: Judge Worth has a question.

7 MR. MUDD: Oh, sorry.

8 JUDGE WORTH: Sorry. A couple questions. So the
9 case you cited earlier about presumption of validity, would that
10 still apply if there's no presumption of validity in a certain type of
11 proceeding?

12 MR. MUDD: I believe, Your Honor, yes, that the Board
13 in applying the canons of claim construction would still endeavor
14 to construe claims in a way that, you know, as one of the canons of
15 claim construction available to the Board, that they would preserve
16 it or they would construe claims in a way to preserve validity.
17 Yes, Your Honor.

18 JUDGE WORTH: Okay. Also, could you address this
19 issue about snap-fit/friction-fit and whether that is required and
20 why?

21 MR. MUDD: Yes, Your Honor. Thank you for that
22 question. So we would not be opposed to a claim construction in
23 the event the Board construes the District Court construction as
24 requiring a snap-fit or friction-fit arrangement. We would not be
25 opposed to that, but from our perspective, spaced-apart tabs 56

1 already intrinsically require that. Spaced-apart tabs 56, they do
2 provide a snap-fit or friction-fit arrangement based on the written
3 description in the '252 Patent.

4 JUDGE WORTH: Right. And is that a matter of their
5 structure, or is that a matter of their function?

6 MR. MUDD: I believe it's both, Your Honor. So the
7 fact that they are wider than they are long provides for that snap-fit
8 where you can snap in and out, as distinct from, for example, the
9 lugs 15 and 16 in Samartgis that are not designed to engage and
10 disengage, but rather a design to permanently stay within the
11 tracks.

12 So with regard to Leoncavallo, so we looked at Slide 15,
13 Samartgis, the lugs 15 and 16 are clearly not structurally identical
14 to tabs 56. Now, if we look at Leoncavallo, and that is on Slide 20
15 --

16 JUDGE DEFRANCO: Mr. Mudd, before we leave
17 Samartgis again --

18 MR. MUDD: Yes, sir.

19 JUDGE DEFRANCO: -- what's your response to
20 Petitioner's argument that there is a snap-fit as to those
21 projections--

22 MR. MUDD: Yes, Your Honor. That's a good question.

23 JUDGE DEFRANCO: -- because lug members 15 and
24 16 travel through the track to the rightmost side?

25 MR. MUDD: Yes. That's a good question, Your Honor.

1 So there's absolutely zero support in the evidentiary record, either
2 in Samartgis itself or in any of the testimony of the experts, that
3 there's a snap-fit at the right far end or distal end of the tracks 23,
4 just nowhere in the record. In fact, as our expert noted, and I'm
5 showing here our Slide 10, where we have labeled in blue a kink.
6 There's a kink on the left side of the track, and Petitioner's counsel
7 made this point about a lifting motion and said, why would you be
8 lifting if you're going to the closed position?

9 Well, this is exactly why. The lugs are lifted up over the
10 kink that's described in Samartgis and shown in Figures 7 and 5.
11 And what it does is that it what creates the locking position of
12 Figure 5 in Samartgis is that kink, but the user has to force the lug
13 up and over, and that locks the cap closed in what Samartgis calls
14 its locking position, which is not Figure 9.

15 As Your Honors know, Petitioner had relied on Figure 9
16 as being the alleged locking position. And as our expert explained
17 in detail, dissecting the disclosure of Samartgis, that there is only
18 one locking position. And when you get to the discussion of
19 Figure 9, it refers to the locking position. And the antecedent basis
20 for that is the locking position described earlier with regard to
21 Figure 5. So Figure 9 is not described as a locking position, and
22 there is no kink described on the right-hand side of the track.
23 While there is a kink for the left-hand side, there is no kink
24 described in Samartgis on the right-hand side.

25 And as Your Honor, Judge DeFranco, noted, there is

1 going to still be play, as our expert explained, and this is shown on
2 Slide 12 in Samartgis, where, as our expert explained, there's
3 nothing preventing the user from continuing to pull the handle to
4 the right from Figure 9. And because the lugs are offset from the
5 hinge here highlighted in red that's formed by the protrusion 24
6 rotating in the aperture 7, the user can continue to open the lid
7 farther past Figure 9, and it makes no sense that Figure 9 would be
8 a position the cap would lock in. And this is shown on Slide 11.

9 As our expert noted, the lid is not even fully open in
10 Figure 9. What would be the purpose of locking the lid in Figure
11 9's position? It's certainly not a useful drinking position where the
12 cap is going to hit you in the face, which is the very problem the
13 '252 Patent says in its background it's designed to avoid. So our
14 expert explained that the logical reading is that the cap could
15 continue to open by the user continuing to rotate the handle past
16 Figure 9.

17 And Petitioner has taken the position in their reply that
18 they said -- they don't directly refute our expert. They don't put in
19 competing expert testimony saying it stops at Figure 9 and locks at
20 Figure 9. They said, well, even if it continues to move past Figure
21 9 to the right, that it's still somehow a stowed position.

22 And this makes no sense. And I think it turns on the
23 claim construction that we provided for the term "retained in a
24 stowed position." As we explained, "retained in a stowed position"
25 means held in place or held in position. And in their response on

1 that claim construction, they don't dispute that part of our
2 construction. They don't disagree that "retained in a stowed
3 position" is held in place or in position.

4 And as our expert noted, there's no disclosure in
5 Samartgis that the closure is held in place in the position shown in
6 Figure 9. And our expert explained, you would need to know the
7 relative weights of the handle versus the weight of the cap to know
8 which one would pull more. You would at least need to know that,
9 and there's certainly no disclosure of that in Samartgis. So there is
10 no disclosure in Samartgis of a closure being retained in a stowed
11 position.

12 And again, it's not enough that the lugs have reached the
13 distal end of the track as Petitioner argued because they don't map
14 the closure to only the distal end of the track. They color the entire
15 -- I don't know if I have a slide on it. Here it is, Slide 14. They
16 color the entire flap member 20, and they label it "closure." And
17 so it includes the part that actually covers the spout as well as the
18 tracks. And so it's not enough, right, that the lugs might be up
19 against the distal end of the track, because to hold the closure in
20 place means that the cap, that the part that actually covers the
21 spout, needs to be held in place. And so that theory that they
22 argued in their reply about the lugs moving no farther in the tracks,
23 it's simply irrelevant to their unpatentability theory.

24 JUDGE WORTH: Counselor, back to the claim
25 language. When it talks about when the closure is selectively

1 removed from the drink spout and received by the closure retention
2 mechanism, is that part of the claimed function as well?

3 MR. MUDD: Yes, we believe it is, Your Honor. And
4 there was no dispute between that amongst the parties, and the
5 District Court construction includes that within the function as
6 well. As you see here in Exhibit 2010 at page 6, it's all, as I've just
7 here highlighted in blue and now in yellow, all of that language is
8 included within the recited function, and the parties don't dispute
9 that function.

10 Since I'm on Samartgis, I'll hit one more point, and that is
11 the issue of being received. And as Judge DeFranco noted, our
12 position is that when it says, "when received," this is a temporal or
13 conditional requirement such that you can't say that something is
14 received if it's always engaged with, permanently engaged with,
15 like in Samartgis. The lugs are always in the tracks from the date
16 of the manufacture of the drink bottle assembly. So you cannot
17 say that there was ever any receipt occurring within that
18 arrangement.

19 You know, an analogy that popped into my mind the
20 other day

21 -- we're getting close to football season. You'd never say
22 that a receiver in football is capable of receiving a ball when they
23 already have the ball. And that's the point of our argument there
24 on Samartgis.

25 JUDGE DEFRANCO: So Mr. Mudd, just to follow up

1 on what Judge Worth said as far as the function goes, so now with
2 respect to that "when received," so you're arguing that there is no
3 functional identity in addition to there's no structural identity.

4 MR. MUDD: That is correct, Your Honor.

5 JUDGE DEFRANCO: Okay. Thank you.

6 MR. MUDD: I'll turn now to Leoncavallo. So Grounds
7 3 and 4 are based on Leoncavallo, and again, Petitioner said they're
8 relying only a structural identity position. They're no longer
9 relying on an equivalence argument. And again, going to Slide 20,
10 Slide 20 shows the detents 90 side by side with the spaced-apart
11 tabs 56, and they are plainly not identical. They are not the same.
12 There are differences, the most notable of which, detents 90 are on
13 the outside of the handle; tabs 56 are on the inside of the handle.

14 And in the petition when they proposed the construction
15 of the spaced-apart tabs being the corresponding structure, they
16 expressly said the spaced-apart tabs on the interior of the handle.
17 Because the detents 90 are on the outside of the handle, they are
18 not identical, they are not the same. Therefore, Leoncavallo under
19 Petitioner's sole theory fails to disclose the corresponding structure
20 and therefore fails to disclose the claimed closure retention
21 mechanism.

22 JUDGE DEFRANCO: Mr. Mudd, where does the claim
23 require that they be on the inside of the handle as opposed to the
24 outside of the handle? It seems like it just says, closure retention
25 mechanism configured relative to the handle, in a stowed position

1 relative to the handle.

2 MR. MUDD: Yes, Your Honor. You're correct. The
3 plain claim language does not say, "on the inside of the handle,"
4 but the claim construction of the term "closure retention
5 mechanism" requires it because it requires spaced-apart tabs 56 as
6 proposed by Petitioner, as included in the District Court
7 construction. And I'll go right here to the petition itself to the
8 claim construction section. And let me go specifically -- I believe
9 it's about page 20. Yeah, the very -- okay.

10 Sorry. It's the last sentence. Starts at the bottom of page
11 22, the petition that says: in sum, a POSITA would have
12 understood the corresponding structure for the claimed closure
13 retention mechanism is two or more spaced-apart tabs extending
14 from the inner surface of the handle.

15 So Petitioner, in their own construction, requires them to
16 extend from the inner surface of the handle. In addition, the
17 spaced-apart tabs 56, they extend from the inner surface of the
18 handle. That's the structure that's disclosed within the '252 Patent.
19 It's also the structure the District Court adopted as well.

20 And with regard to Your Honor's comment about the
21 snap-fit or friction-fit arrangement, they have to be on the inside of
22 the handle to provide that snap-fit or friction-fit arrangement
23 because if they were on the outside, the cap could not engage with
24 those tabs. Therefore, Leoncavallo's detents 90, they're not
25 structurally identical. Therefore, they cannot be the claimed

1 closure retention mechanism.

2 I'd like to go briefly to the Miller reference. Again, the
3 key term "closure retention mechanism." And looking at Miller,
4 so as we've noted, it's a design patent, and all we have are a set of
5 drawings and some speculation to go by as to whether or not it
6 contains a closure retention mechanism. Petitioner has identified
7 what they call an indentation in the handle and a projection on the
8 front of the cap. So obviously, an indentation on the handle is the
9 opposite of a projection, right, Your Honor? Even if as Your
10 Honor suggested, the spaced-apart tabs are a type of projection, an
11 indentation is not a projection. And thus, it's not identical.

12 Plus, there is only one indentation, and Petitioner's own
13 construction acknowledges there have to be two or more spaced-
14 apart tabs. That's in their construction in the petition. And in
15 addition, the District Court, when it included tabs 56, it's pointing
16 to, again, two tabs on the inside of the handle. To suggest that one
17 indentation in the handle is somehow equivalent to two tabs on the
18 inside, there's no support for it. There's no expert testimony
19 suggesting that those are equivalent, and because of that, Miller
20 fails to disclose a closure retention mechanism.

21 JUDGE DEFRANCO: So Mr. Mudd, you're saying their
22 argument is conclusory attorney argument on that equivalence
23 basis? I understand there's no structural identity, but as far as a
24 structural equivalence argument goes that the Petitioner is
25 advancing, you're saying they have no evidentiary support for that?

1 MR. MUDD: Not at the level of comparing the actual
2 structures. And let me double check, Your Honor. Yes. Your
3 Honor, the argument that Petitioner makes is related to the
4 function allegedly performed by this indentation. Again, we're
5 speculating, right? We're guessing that you could open this cap
6 and engage it with this indentation even though we have written
7 description to go by in Miller.

8 And the comparison here that's done on page 92 into 93
9 of the petition is talking about the function that those perform and
10 does not get to the level of comparing the structures. In other
11 words, how is an indentation like a projection? How is a single
12 indentation like two projections? There's no evidentiary support
13 for that idea of structural equivalence. Remember, it's a two-part
14 test. Number one, does it perform the identical function? They
15 make plenty of argument about the function right there. Again, it's
16 speculative, but nonetheless, they do argue function. But number
17 two, when we get to step two, does it include an identical or
18 equivalent structure, there is no structural analysis that they
19 provide, and it is conclusory and lacks evidentiary support.
20 Therefore, Miller lacks a closure retention mechanism.

21 They do make an argument about the Lane reference and
22 suggest that somehow this supports Miller's teaching. It's not
23 entirely clear how they're relying on Lane, but in any event, Lane
24 is quite different because here, you know, you have a handle that's
25 folding down to snap into place. And again, Lane has

1 indentations, not projections. And so, again, it's the opposite of
2 what's claimed, and, you know, it's kind of baffling as to how Lane
3 is indicative of what Miller discloses and whether Miller discloses
4 a closure retention mechanism.

5 We've pointed out a number of other issues with regard
6 to Miller given the fact that it is a design patent with no written
7 description. This is on Slide 27. The most obvious issue is that
8 the cap is closed on Miller, so we don't know what's underneath.
9 And the question is, does Miller a drink spout extending from a
10 base? Well, the Petitioner and their expert in the petition said,
11 well, there's got to be an opening under there to get water out.
12 Which there very may well be an opening, but is an opening a
13 drink spout extending from a base? No.

14 Our expert explained you need to have something that
15 extends from the base, right? It's got to be more than just an
16 opening, and our expert provided examples of a number of popular
17 drink bottle designs that use a mere opening with no spout that
18 rises up, extends from the base. And Petitioner's own declarant,
19 Dr. Vallee, conceded that this claim element, a spout extending
20 from the base, is not just a hole, right? And so because we don't
21 know whether Miller has just a hole or whether it has a spout, they
22 fail to prove that Miller has a drink spout extending from a base.

23 And then even beyond that, the other limitation is that the
24 closure needs to be removably coupled relative to the spout,
25 meaning you need to show that the cap comes into some kind of

1 contact with the spout. And again, you can't see it in Miller
2 because the cap is closed. So there are a number of failures in
3 their attempt to map Miller.

4 They also make some obviousness arguments with regard
5 to Miller. Oh, and I should note briefly, they did make
6 obviousness arguments with regard to Samartgis and Leoncavallo
7 with regard to the independent claims, but they were entirely
8 conclusory. We pointed out in our Patent Owner response that
9 their arguments went like this: To the extent there's any difference
10 between Leoncavallo and Samartgis and the claims, it would have
11 been obvious, without identifying any particular difference. And
12 we cited case law saying that's plainly insufficient. You have to
13 identify specific, you know, potential differences and why those
14 would have been obvious. They didn't respond in the reply, so we
15 assume that obviousness, you know, is off the table for Samartgis
16 and Leoncavallo as to the independent claims.

17 I'm on Slide 31 now, and this is with regard to their
18 combination of Miller with other references. And with regard to
19 Miller, they said that combining Leoncavallo's spout would
20 provide a convenient way for the user to drink. But the problem is
21 that, you know, Leoncavallo discloses both a spout and a mere
22 opening, and they offer no explanation, no motivation as to, you
23 know, why one might be more convenient than the other or why,
24 you know, a POSITA would choose Leoncavallo's spout.

25 And our expert provided a number of reasons why a

1 spout can be less desirable than an opening, because a spout
2 introduces additional components, they're usually elastomeric, you
3 usually have to clean them. They can wear out over time. So
4 there's a lot of good reasons to use an opening instead of a spout,
5 such that a person of skill would not necessarily be motivated to
6 use a spout like taught in Leoncavallo, especially when
7 Leoncavallo itself has an alternative embodiment of just an
8 opening.

9 In reply, Petitioner did not submit any expert testimony
10 rebutting Patent Owner's expert, did not offer any argumentation
11 rebutting that, but just simply said, you know, there doesn't have to
12 be proof that a person of skill would choose one or the other within
13 Leoncavallo. And regardless of that, there needs to be a
14 motivation why they would implement a spout in the first place,
15 right, when there are openings available that don't use a spout.
16 Why would a person of skill be motivated to make that selection?
17 Our expert explained why they would not be, and there was no
18 response.

19 Likewise, with regard to Leoncavallo, the combinations
20 with Johnson and Gorskey, Leoncavallo already has what it calls a
21 plug seal 94 that is says provides, essentially, a watertight seal.
22 There's no reason, as our expert explained, a person of skill in the
23 art would look to Gorskey or Johnson to supposedly provide a,
24 quote, more secure, robust seal, than Leoncavallo. Their expert
25 provided no explanation for why Johnson's or Gorskey's seal

1 would supposedly be more secure or robust that Leoncavallo's.
2 And I'm not saying that obviousness would necessarily always
3 require that, but if your motivation to do it would be that it's better
4 than the primary reference, then you'd better show why it's better
5 than the primary reference. Their expert failed to do that.

6 As our expert explained, Johnson and Gorskey are
7 single-use food packaging items. They don't even relate to drink
8 bottles. And there's no evidence they provide a better seal than
9 Leoncavallo's own watertight plug seal. So the Miller grounds fail
10 on a number of bases.

11 JUDGE DEFRANCO: Mr. Mudd, I just want you to
12 address one more thing that you addressed earlier, this Lane
13 reference. Petitioner discussed it on page 90 of the petition, where
14 they're talking about the level of skill in the art. They rely on Lane
15 for background knowledge and common sense. What is your
16 response again? You may have referred to it, but I think you said
17 that there was no evidence for the fact that they have two
18 projections. And they point to Lane -- I think it continues on page
19 91 -- as having two projections on the handle. What is your
20 response to that --

21 MR. MUDD: Right. So Lane shows a way to hold a
22 handle to the cap. It does not show any way to stow a cap in a
23 stowed position, right, when it has been removed from the spout,
24 right? It's a carrying handle that you can neatly fold into place in
25 Lane, but is it something that holds the cap open, that holds the cap

1 in a stowed position? It's not. And so from our perspective --

2 JUDGE DEFRANCO: What would be the purpose of
3 those indentations number 48 in Figure 3 of the Lane?

4 MR. MUDD: Yes, Your Honor. It would be to hold the
5 handle down in place so it doesn't flop around, so that --

6 JUDGE DEFRANCO: Oh, I see. Okay.

7 MR. MUDD: -- when you're not using the handle, you
8 can tuck it away.

9 JUDGE DEFRANCO: So it's not that blue part flips up;
10 it's that the handle flips down. I see.

11 MR. MUDD: That's correct, Your Honor.

12 JUDGE DEFRANCO: Thank you for that clarification.

13 MR. MUDD: And if Your Honors have no further
14 questions at this time, can I reserve my remaining two minutes as
15 part of my rebuttal?

16 JUDGE JUNG: Yes.

17 MR. MUDD: Thank you, Your Honor.

18 MR. RAZAI: Okay. I have to start backwards. Start
19 with Miller. We heard argument about Miller not having a closure
20 retention mechanism under an equivalence argument. It was not in
21 the POR. That argument is waived. The first time we've ever
22 heard it was today. Period.

23 Now going on to this issue of Lane and what Lane does.
24 As an initial matter, the fact that Lane's handle folds down is of no
25 moment according to Patent Owner's argument. If you look at

1 accused product on the right-hand side, the way the accused
2 product functions, the closure has a spring bias. It closes down.
3 When you push the button below it, it springs open, and it's just
4 held by the spring. What you see as the handle, that gets pushed
5 down onto the cap, onto the closure, so it blocks the button so it
6 doesn't inadvertently open. That's not for a closure retention.

7 Now, the reason Lane was put in was to show that one of
8 ordinary skill in the art and common sense would dictate that when
9 you have something like Miller, you have an indentation and you
10 have a projection that's meant to mate. You have a hinge, the
11 hinge opens, and again, these drawings are meant to convey
12 something. You're supposed to -- the skill in the art -- what would
13 a skilled artisan understand from this figure? As an unskilled
14 artisan, I understand that that's supposed to be a top that you open
15 and that indentation mates with that projection and goes in there.
16 That's what Miller shows.

17 And then with respect to the arguments that we made
18 about Leoncavallo, Mr. Mudd made up his own law. He stood
19 here and said that for some reason, to have a motivation to
20 combine, it has to be better. That's exactly opposite of what the
21 Federal Circuit has said. It doesn't have to be the best. It doesn't
22 even have to be better. There has to be a motivation to combine
23 shown. You have various different spouts. How many different
24 spouts are there in the universe? You have the spout that's shown in
25 Leoncavallo, and our expert says that there's a motivation to

1 combine it. There is no requirement to rebut the experts that
2 Patent Owner put on to say somehow it's better than what it used to
3 be. That's not the law, Your Honors.

4 Now, let's go to -- Judge DeFranco, you were talking
5 about the claim construction order. I had a chance to look at it.
6 The claim construction order does mention friction-fit and snap-fit,
7 and those mentions are limited to the arguments that the Patent
8 Owner made about the handle, the perimeter of the handle itself,
9 forming part of the closure retention mechanism. And in that
10 claim construction order, the projections, the tab 56 that were
11 referred to, the Court was not saying that those require a snap or a
12 friction-fit.

13 Now, going back into the Samartgis grounds, where
14 we're asking about Samartgis' track 23 and extending towards the
15 distal right-hand side, if you look at the abstract of the Samartgis
16 reference, it's talking about selective and controlled movement.
17 And when it comes to one of the arguments that was made by the
18 Patent Owner, we had an issue of something about, why would
19 Samartgis have this? It makes it not drinkable.

20 Now, if you look at Samartgis' reference, Samartgis is
21 not a water bottle to drink from the spout. It's a water bottle that
22 opens for pouring. It's pourability. And with respect to that
23 selective and controlled movement, it retains it in that position
24 towards the distal end of the track to allow the user to pour from
25 that water bottle. That's what the claims say. It's what the

1 reference says. It's not about having it open so that you can drink
2 it; therefore, Figure 9 has to somehow be nonsensical. That's not
3 true.

4 Going back to this issue of literal infringement, when it
5 says, tab 56 are projections teeth, that's what tabs 56 are. The law
6 on 112(f) doesn't mean that the structure that's identified in a
7 particular reference, if it's going to be a screw, you have to use that
8 same make, model, and serial number of the screw over here. The
9 tab 56 are teeth, they're projections, they're things that extend from
10 the handle. And that's what the '252 Patent says. That's what tab
11 56 is. And when it comes to a comparison of the structure, that's a
12 complete fair comparison.

13 Now, with respect to any law that I stated today, it was
14 all on the slides. I have not had a chance to look at anything that
15 Mr. Mudd presented that I hadn't seen before, nor do I have the
16 ability to pull up that case law and study it while I'm sitting there.
17 And if there's any question about that case law and the identity, I
18 would be happy to provide briefing, if that's an issue that the Board
19 would want further information on case law on. But sitting here
20 today, I can't rebut case law that I've never seen before.

21 JUDGE WORTH: Counsel, can we go back to the
22 argument about structural identity?

23 MR. RAZAI: Yes.

24 JUDGE WORTH: Does the structure still have to
25 perform the recited function?

1 MR. RAZAI: The structure has to perform the recited
2 function. And again, there has never been a single argument in
3 this case besides the one that we've seen about the recited
4 functions. And the recited functions that are there -- at first, Mr.
5 Mudd agreed that we all agree on what the recited functions are,
6 but then with Miller, there was some question about the recited
7 function not being there, which I didn't fully understand.

8 But to your question, Your Honor, yes, it has to perform
9 the recited function, and the only recited functions at issue for
10 Samartgis, for example, are whether it's stowed relative to the
11 handle and when it's received by the closure retention mechanism,
12 which we believe is shut. But it does have to meet that. Does that
13 answer your question, Your Honor?

14 Now, going back to this watertight seal and the fact that
15 Leoncavallo teaches a seal, again, it doesn't have to be better.
16 With respect to the Novartis and the In re: Fulton line of cases, it
17 needs to be an option. And with respect to Gorskey and Johnson,
18 there's only three ways to seal a cap, and the three ways are to put
19 it over it, to put it within the structure, or to surround it. And with
20 respect to Gorskey and Johnson, they just provide one of those
21 three, because obviously we could have found some more on corks
22 or test tubes, but we just felt that having a reference shows within
23 that particular neck is a better way of illustrating that motivation to
24 combine.

25 Again, I think that the literal infringement aspect was

1 very key. Now, if you're going to be looking at literal
2 infringement, which Mr. Mudd agrees is the way that you would
3 look at structural identity, and you have a claim limitation that
4 basically recites spaced-apart tabs, and you have Samartgis as what
5 would be the accused instrumentality, those are spaced-apart tabs.
6 There's no question about that. With respect to identity, we're not
7 just saying that, look, we have to take the tabs off of the '252
8 Patent and put them somewhere and find them there, that that's
9 how you're going to get there. That's not what it means. It's the
10 exact issue of literal infringement if you were comparing this for
11 an infringement perspective or if the claims here at issue recited
12 spaced-apart tabs, Samartgis would absolutely meet that limitation.

13 Now, going back to the Samartgis, the claim construction
14 issue and being on the handle, the claims already recited where the
15 closure retention mechanism is. Now, if the closure retention
16 mechanism were to be on the cap, for example, that would be
17 another claim. The fact that the closure retention mechanism has
18 to be construed by itself outside of the closure retention
19 mechanism on the handle, the closure retention mechanism doesn't
20 have a placement. It has a structural component, which is the
21 spaced-apart tabs. It doesn't have to be on the inside of the handle.

22 And again, Mr. Mudd pointed to a certain part of the
23 petition that we had submitted. Let's look at the petition.
24 Challenged Claims 5 and 19 -- and this is, again, in the claim
25 construction section -- are directed to the first embodiment,

1 wherein the handle includes a closure retention mechanism. In this
2 embodiment, the closure retention mechanism is a pair of spaced-
3 apart and optionally opposed tabs that engage and retain the
4 closure in the stowed position.

5 Again, for you to add the limitation in the handle or in
6 the inside of the handle to a structure is now adding another
7 limitation that's not required by the structural identify of that
8 particular limitation, especially in this claim, where it already has a
9 particular part as to where it appears. Because you could imagine
10 you could have another claim, and claims have to be construed
11 consistently, where the closure retention mechanism appears on
12 the closure, which could happen.

13 And in that particular scenario, making the closure
14 retention mechanism spaced-apart tabs that appear on the inside of
15 the handle that are on the closure would be nonsensical. So the
16 location of the structure is not essential. It's what the structure is,
17 which is spaced-apart tabs in that particular scenario.

18 So, with respect to each one of these grounds, they
19 render this claim unpatentable. Again, what we're looking at is
20 taking a closure and retaining it in a handle, stowing it relative to
21 that handle, which is what every single one of these references that
22 are in front of the Board do. And I think the one that's the most
23 compelling from my perspective is looking at Miller, which is
24 nearly identical to what the accused instrumentality does, except
25 that it actually retains it in the handle, not the other way around.

1 And looking at Miller, you can't just say, look, I'm going
2 to look at exactly what the reference says, ignore the obviousness
3 arguments, ignore what the person of ordinary skill in the art says
4 how he interprets those figures, and say, well, I don't see that it
5 opens. Well, it's a water bottle. That's what the claim is to. That's
6 what it's supposed to do. It's supposed to open and close. And
7 when it comes to adding a spout from Leoncavallo, the motivation
8 to combine is absolutely there.

9 Now, if there aren't any further questions --

10 JUDGE JUNG: All right, Mr. Razai. You're two
11 minutes over. Do you have anything else you want to --

12 MR. RAZAI: I do not, Your Honor.

13 JUDGE JUNG: Okay. Thank you.

14 MR. RAZAI: Thank you for the extra two minutes. I
15 appreciate it.

16 JUDGE JUNG: Please proceed.

17 MR. MUDD: Okay. Thank you, Your Honor. I'd like to
18 start with the issue of 112(f), and that is the fact that there's a two-
19 part test to satisfying a means-plus-function limitation as satisfied.
20 There is step one. It has to be an identical function. Step two, you
21 have to satisfy the corresponding structure through either structural
22 identity or structural equivalence.

23 As to both the Samartgis and Leoncavallo grounds,
24 Petitioner is relying solely on structural identity. Now, they
25 criticize us for citing case law. I believe it was the WMS Gaming

1 case with regard to structural identity. Petitioner has cited no case
2 in any of its papers suggesting that for the remarkable proposition
3 that structural identity can be met by something other than the
4 same structure, i.e., identical structures. If they are suggesting that
5 the structures can have some difference and still meet the structural
6 identity test, then they need -- the onus is on them to provide case
7 law establishing that's the case.

8 Otherwise, identity means what everyone knows it
9 means. It means identical, the same, no differences. There are
10 differences between the lugs of Samartgis and the tabs 56. There
11 are differences between the detents 90 of Leoncavallo and the tabs
12 56 of the '252 Patent. Therefore, Leoncavallo and Samartgis do
13 not disclose the claimed closure retention mechanism, and those
14 grounds fail. That issue is that simple as to the Samartgis and
15 Leoncavallo Grounds.

16 Now, with regard to -- I keep getting these hints from
17 Petitioner that their structure is somehow spaced-apart tabs, just
18 spaced-apart tabs, no numeral 56, just spaced-apart tabs. And it
19 seems like they're trying to use that to build in some deviation
20 from the tabs 56. They have not argued that anywhere in any of
21 the papers. That's a new position to the extent they're taking that
22 position. And to show that they're relying on tabs 56, we can go to
23 their reply. That's Paper 20. And I can step the Board through
24 very briefly their argument as to each of the references. And so
25 I'm going to go to page 16 of their reply, Paper 20.

1 And in this paper, and I'm at the, about the second full
2 sentence, it says, under any relevant construction, it's undisputed
3 that the structures in the '252 Patent corresponding to the 112(f)
4 term, closure retention mechanism, include the spaced-apart tabs
5 56. Fifty-six. Samartgis' lug members are structurally identical to
6 the spaced-apart tabs 56. So, it's very clear that they're relying on
7 tabs 56 and they're arguing that the tabs 56 are identical to the
8 lugs. They're simply not. All you have to do is look at the figures
9 side by side.

10 Same for Leoncavallo. This is on page 20. If we turn to
11 page 20 of the reply. That's Paper 20. And it says here in a
12 highlighted sentence. This is the second full sentence, but the
13 detents 90 are structurally identical to the spaced-apart tabs 56.
14 Again, they say, spaced-apart tabs 56. So, it's clear that they're not
15 relying on some potential variation of tabs 56. They are relying on
16 tabs 56 as being the corresponding structure.

17 And they also made this clear in the claim construction
18 section when they represented to the Board on page 2. This is
19 shown highlighted at the bottom of page 2. They told the Board
20 there was no need for further exploration of this term because they
21 contended their construction was within the District Court's
22 construction. And what does the District Court's construction
23 include? Again, it includes tabs 56, not some other variation of
24 tabs 56. So, because there's no structural identity in Leoncavallo
25 and Samartgis, those grounds fail on that basis alone.

1 Similarly, and with regard to Miller, as discussed in my
2 prior argument and as explained, the Lane reference provides no
3 support for their position given that it's simply a way to fold down
4 a handle. There's nothing in Lane with regard to holding a cap in a
5 stowed position when it's removed from the spout. Nothing like
6 that in Lane. And so it provides no support to their argument that
7 this was somehow a conventional feature that was known in the
8 prior art.

9 JUDGE DEFRANCO: My understanding, Mr. Mudd, is
10 they're using Lane to show that you can put the projections upon
11 the handle and that there can be multiple projections on the handle.
12 So, they're using it to modify.

13 MR. MUDD: So, that's an interesting point, Your
14 Honor, because they don't propose an obviousness combination of
15 Miller in view of Lane. Instead, like Your Honor noted
16 previously, it's simply being used to show background knowledge
17 in the art. They're not actually combining Lane as a secondary
18 reference. And so, you know, from our position, it's not showing
19 anything being conventional in the art in a way that's relevant to
20 the claim language. And again, they're not proposing to combine it
21 in an obviousness combination to say, well, you could modify
22 Miller to use, you know, two projections on the handle instead of
23 the single indentation on the handle as shown in the Miller
24 reference.

25 JUDGE DEFRANCO: Well, I guess my point was that

1 -- fair enough, that's a good point. That their argument's
2 conventional. That somebody looking -- any person skilled in the
3 art looking at Miller would understand that you could use multiple
4 projections on the handle.

5 MR. MUDD: Yeah. And I don't -- I'm looking here. I
6 don't know -- I don't see that they ever actually argued that, Your
7 Honor. On pages, I'm on pages -- yeah, I commend that portion of
8 the petition to you, again, Your Honor. I don't believe they make
9 that argument. You know, in any event, you know, they've not
10 provided any motivation for why you would make that alteration in
11 Miller to do that, because again, they weren't making an
12 obviousness combination of in view of Lane in that section.

13 JUDGE DEFRANCO: Okay.

14 MR. MUDD: And with regard to the other deficiencies
15 in Miller, you know, I didn't hear Petitioner really refuting the
16 failure to disclose the spout extending from the base since the cap
17 is closed in Miller. Similarly, I didn't hear Petitioner refuting that
18 there's no disclosure in Miller of the spout being removably
19 coupled with regard to the closure. We don't know whether there's
20 any contact between the closure and any spout because the cap is
21 closed.

22 And then with regard to the proposed combination with
23 Leoncavallo, they're arguing that -- I think Petitioner's Counsel
24 suggested I was arguing law that doesn't exist, that Leoncavallo
25 doesn't have to be better. The reason we were arguing is because

1 that was their proposed motivation. The reason they said you
2 would go to Leoncavallo was because it was allegedly better, and
3 then they didn't support that it was better. And our expert came
4 forward with reasons it wouldn't be better and why you might not
5 do that. And so there's a lack of evidence supporting their
6 proposed motivation to combine there because they said it would
7 be better. They failed to show how it would be better, and our
8 expert refuted that without any response from Petitioner or their
9 expert.

10 I also wanted to -- this goes back to the means-plus-
11 function issue and the corresponding structure, and Petitioner's
12 Counsel has repeatedly used a screw example. And so, if the
13 corresponding structure that's linked to a function is a very specific
14 type of screw, is a Phillips head screw, then under 112(f) and the
15 case law, you are limited. That is the corresponding structure that
16 the claim should be construed to encompass. It encompasses a
17 Phillips head screw. Now, and then you have to show that the
18 prior art or accused product has either an identical Phillips head
19 screw or an equivalent to a Phillips head screw. You might argue,
20 well, it's a flat head standard screw, and that's equivalent. And you
21 certainly would be, you know, able to possibly make that
22 argument.

23 But the key is that you are limited to what's disclosed in
24 the spec, and if it is a specific screw, you're limited to that screw
25 and not just any screw. Similarly, they are limited to spaced-apart

1 tabs 56 and not just any spaced-apart tabs generically. And so
2 because of that, because they're limited to spaced-apart tabs 56,
3 and because it's not identical or equivalent to any of the references
4 that are shown, Petitioner's grounds fail, and the claims should all
5 be confirmed as patentable. And with that --

6 JUDGE DEFRANCO: Mr. Mudd, yeah, just before you
7 leave --

8 MR. MUDD: Yes.

9 JUDGE DEFRANCO: Your screw example, what if the
10 specification just said, screw, even though the figures show a
11 Phillips, but the specification just says, screw, without referring to
12 whether it's Phillips head, flat head?

13 MR. MUDD: So, Your Honor, I believe under Patent
14 Office rules, you would have to say, screw 50, and align it with a,
15 you know, reference numeral in the figure. In other words, you
16 know, you have to assign reference numerals between elements in
17 the figures and what's in the specs. So, my position would be that,
18 yeah, the corresponding structure is the screw 50.

19 And even if there is some possibility that that could, you
20 know -- if it said, screw, without a reference numeral, would that
21 be broader? In certain scenarios, I don't know. Potentially. But
22 that's not the situation we have here. Here we have spaced-apart
23 tabs 56. We don't have generic spaced-apart tabs. And we
24 certainly don't have Petitioner relying on some generic spaced-
25 apart tabs other than tabs 56. Similarly, the District Court

1 construed it to be tabs 56 and not some other generic tabs. And so
2 that scenario, the hypothetical you provided, is not the situation we
3 have before us. So, if Your Honors have no further questions --

4 JUDGE DEFRANCO: You understand 112(f) just says,
5 corresponding structure as described in the specification? I believe
6 that's the way it's worded.

7 MR. MUDD: That's correct. But there's case law
8 explaining what that means, and it has to be specifically the
9 structure that is linked to performing that recited function, and it is
10 that structure and no other structure. The case law is clear on that,
11 that it's intended to be a narrow construction that limits you to the
12 structure that's actually disclosed in the specification.

13 JUDGE DEFRANCO: I understand. Okay. Thank you.

14 JUDGE JUNG: I have no questions.

15 MR. MUDD: No further questions? Okay. Thank you
16 for your time, Your Honors.

17 JUDGE JUNG: Thank you both for your presentation. It
18 was very useful. And your case is submitted, and we are
19 adjourned.

20 (Whereupon, the above-entitled matter went off the
21 record at 3:13 p.m.)

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Patent 8,905,252 B2

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