

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TROVE BRANDS, LLC,
Petitioner,

v.

CAMELBAK PRODUCTS, LLC,
Patent Owner

IPR2024-01137
Patent 10,676,255 C1

Record of Oral Hearing
Held: November 14, 2025

BEFORE: LINDA E. HORNER, HYUN J. JUNG, and
CARL M. DEFRANCO, *Administrative Patent Judges*.

IPR2024-01137
Patent 10,676,255 C1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

JACOB L. PETERSON, ESQ.
Morgan, Lewis & Bockius LLP
600 Anton Blvd.
Suite 1800
Costa Mesa, CA 92626
(714) 830-0482
jacob.peterson@morganlewis.com

ON BEHALF OF THE PATENT OWNER:

JASON R. MUDD, ESQ.
RYAN J. SCHLETZBAUM, ESQ.
Shook Hardy & Bacon LLP
2555 Grand Blvd.
Kansas City, MO 64108
(314) 690-0200
jmudd@shb.com
rschletzbaum@shb.com

The above-entitled matter came on for hearing on
November 14, 2025, commencing at 1:05 p.m., at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S

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JUDGE HORNER: Okay. Good afternoon. We are convened for the oral argument in IPR2024-001137. It pertains to the patentability of claims of U.S. Patent Number 10,676,255. I'm Judge Horner. I'm joined by Judge Jung in the hearing room here with me, and appearing remotely is Judge DeFranco.

Can we begin with appearances? Petitioner?

MR. PETERSON: Yes. Jacob Peterson on behalf of Petitioner Trove Brands.

JUDGE HORNER: Okay. Patent Owner?

MR. MUDD: Yes, Your Honor. Jason Mudd and Ryan Schletzbaum on behalf of Patent Owner CamelBak.

JUDGE HORNER: Thank you. Thank you. We have a court reporter here today. She's going to provide a transcript of the hearing. It'll become part of our official record at a later date. And to ensure that the transcript is clear, I just ask you to speak directly into the microphone when you're at the podium and identify any slide numbers by number if you're referring to them, or any numbering and figures, for example. That will also help Judge DeFranco as well to follow along.

We do have copies of your demonstratives on our computers to follow along. This proceeding is being streamed. There's a public line, so just be aware of that. Per the hearing order, each party has 60 minutes of total time to argue their case, and you can reserve time for rebuttal, but it can't exceed more than half your time. And I'll use the timer here in our

1 hearing room to set the time, so once you tell me what your rebuttal will be,
2 I'll set it for the remaining time, and then we'll restart the timer in the
3 rebuttal period.

4 Petitioner, do you wish to reserve any time for rebuttal?

5 MR. PETERSON: Fifteen minutes, please.

6 JUDGE HORNER: Fifteen minutes? Okay. All right. I'm going
7 to go ahead and set the clock for 45 minutes. Okay. And you may approach
8 and begin your arguments.

9 MR. MUDD: Your Honor, Patent Owner does have one objection
10 to one slide in Petitioner's demonstratives. Per the oral argument order, we
11 understood we were to raise that at the beginning of the argument.

12 JUDGE HORNER: Okay.

13 MR. MUDD: And if I could just briefly connect to the system so I
14 can put the slide up to show what our objection is?

15 JUDGE HORNER: Sure.

16 MR. MUDD: Thank you, Your Honor.

17 JUDGE DEFRANCO: Mr. Mudd, this is Judge DeFranco. Did
18 you confer with Petitioner's counsel about your objection?

19 MR. MUDD: Yes. Yes, Your Honor, we did confer prior to the
20 hearing today.

21 JUDGE DEFRANCO: Okay.

22 MR. MUDD: Could we switch the screen? Thank you.

23 Yeah, so our objection is to Slide number 44. And in particular,
24 the only parts we object to are the title, which refers to Ribarits's claims
25 confirming coupling, and then the Claim 7 language in the top right of Slide
26 44, which I think I can use this pointer. Yeah. And in particular, the

1 argument from Petitioner that Claim 7's reference to snapping of the sealed
2 tubular element, that this shows the coupling required by the claim language.

3 As we stated in our surreply, we believe this is a new argument
4 that was not raised in the petition, and it relies on Claim 7 of Ribarits for
5 allegedly satisfying the claim coupling. Claim 7 was not relied upon by the
6 petition, so we've argued that it's a new argument. So we're just objecting to
7 the demonstrative for purposes of preserving that argument.

8 JUDGE HORNER: Okay. We'll make a note of that for the
9 record, and -

10 MR. MUDD: Thank you, Your Honor.

11 JUDGE HORNER: You're welcome.

12 MR. PETERSON: And your Honors, I believe both parties have
13 hard copies of demonstratives. Would that be of interest, or are you fine
14 with electronic copies?

15 JUDGE HORNER: Would you like a hard copy?

16 JUDGE JUNG: No, I'm fine with electronic.

17 JUDGE HORNER: I think we're good with electronic, but thank
18 you for offering. Proceed when you're ready.

19 MR. PETERSON: Beginning on Slide 2, the '255 Patent discloses
20 drink containers and lids, and the lids in the '255 Patent are referred to as cap
21 assemblies. The lids' main components include a base, a mouthpiece, and a
22 pivotal mount, and those are shown, for example, on the left-hand side of
23 Slide 2, mouthpiece in green, pivotal mount in pink, and then base in yellow.
24 And the figures on the right-hand side of Slide 2, they show the mouthpiece
25 and pivotal mount in a stowed position on the left, and then a dispensing
26 position on the right.

1 Turning to Slide 3, Independent Claim 1 of the '255 Patent. This
2 claim covers drink container components, including a fluid container and a
3 cap assembly, where the cap assembly comprises a base, pivotal mount, and
4 resilient mouthpiece, among other features. And the color codings on this
5 slide correspond to the color codings on the preceding slide, as well as some
6 of the color codings we'll see later. And only three limitations regarding the
7 resilient - three limitations regarding the resilient mouthpiece are at issue at
8 this state of the proceeding, and those three limitations are identified by the
9 red squares shown on this Slide 3.

10 Turning now to Slide 4, the only other independent claim at issue
11 in this proceeding is Claim 20, and that independent claim includes all
12 limitations of Claim 1, as well as a dust cover. CamelBak does not dispute
13 that the prior art discloses the claimed dust cover, so I do not plan to further
14 discuss this claim limitation today, unless the Board has any questions.

15 So turning now to Grounds 1 and 2. These grounds rely on a
16 Japanese patent reference to Nakajima as the primary reference. As shown
17 on Slide 6, Nakajima in view of a POSA's - let's see if the slides reload.
18 Nakajima, in view of a POSA's knowledge, renders obvious the drink
19 container of Claim 1. CamelBak does not dispute that Nakajima renders
20 Claim 1 unpatentable with respect to all limitations except those related to
21 the resilient mouthpiece. And specifically, CamelBak disputes whether
22 Nakajima discloses two limitations: first, that the resilient mouthpiece is
23 pivotal about an axis defined by the pair of lateral projections, and then
24 second, that the resilient mouthpiece is coupled for pivotal movement with
25 the pivotal mount.

26 And those two limitations are shown in underline on this left-hand

1 side of Slide 6, where the first issue refers to the lower red underline, and
2 then the second issue refers to the upper red underline. And then also shown
3 on this slide on the right-hand side is the petition's mapping of Nakajima's
4 components. And in particular is shown a mouthpiece in green, the pivotal
5 mount in pink, and the pivotal mount as it can be seen there is in two pieces,
6 and then the lid portion of the pivotal mount includes lateral projections 19
7 or hinge shafts 19 that go into sockets 17, defining a pivotal axis.

8 Turning now to Slide 7. The petition shows that Nakajima
9 discloses the resilient mouthpiece limitations. So first, as shown on the
10 bottom of this slide, Nakajima explicitly discloses that its mouthpiece moves
11 in conjunction with the opening and the closing of the lid, which is mapped
12 to the pivotal mount in the petition. At least from the stowed position to
13 early opening, Nakajima's mouthpiece pivots clockwise with the pivotal
14 mount about the same axis relative to the base. And from the stowed
15 position to early opening, that same axis governs the movement of both
16 Nakajima's mouthpiece and pivotal mount. And shown on this slide is the
17 stowed position on the left figure on the right-hand side of the slide.

18 JUDGE HORNER: And what's early opening?

19 MR. PETERSON: Early opening would be the moments
20 immediately following the opening from the stowed position. So the
21 dispensing position would be a fully open, and then stowed position would
22 be fully closed.

23 JUDGE HORNER: And did you say it rotates - the mouthpiece
24 rotates clockwise?

25 MR. PETERSON: Yes. So as the lid rotates clockwise during the
26 early opening, so moves the mouthpiece also clockwise with the lid. Any

1 other questions? I'd be happy to - all right, moving to Slide 8. The Board's
2 -

3 JUDGE DEFRANCO: I'm sorry, Counsel -

4 MR. PETERSON: Yeah?

5 JUDGE DEFRANCO: - I do have a question. Could you say that
6 again? I understand that the lid rotates clockwise, and you're saying that the
7 mouthpiece rotates clockwise as well?

8 MR. PETERSON: Yes. Yes. So at least during the stowed
9 position to early opening, yes, it does. The components are all coupled
10 through the pivotal mount, and during the early opening, at least, they all
11 rotate together around that hinge shaft, 19. And as we'll discuss more
12 throughout the presentation today, the claims do not foreclose additional
13 motion, additional rotation, such as about a local joint, like the local joint
14 where the two pieces of the pivotal mount connect, or combined rotational
15 translational movement that might happen. But there is a rotational
16 component, as the mouthpiece, as Nakajima explains here, moves in
17 conjunction with, pivots with, the opening and closing of the lid.

18 JUDGE HORNER: So would you agree --

19 JUDGE DEFRANCO: And my under --

20 JUDGE HORNER: Oh, sorry. Go ahead, Judge DeFranco.

21 JUDGE DEFRANCO: Go ahead, Judge Horner, please.

22 JUDGE HORNER: Okay. Would you agree that pivotal
23 movement is equivalent to rotational movement?

24 MR. PETERSON: We do not dispute that it encompasses
25 rotational movement, and I think for practical purposes, yeah, it
26 encompasses rotational movement.

1 JUDGE HORNER: Does it require rotational movement along
2 with other - I mean, I think your position is it can include rotational
3 movement along with other movement. Does it require a rotational
4 movement?

5 MR. PETERSON: We wouldn't say it necessarily requires it, no.

6 JUDGE HORNER: Judge DeFranco, I'm sorry I interrupted you.
7 Go ahead.

8 MR. PETERSON: But -

9 JUDGE DEFranco: No, that's good.

10 MR. PETERSON: Even if it were required, we would say it's
11 disclosed, but we would not say it's necessarily required.

12 All right. So turning to Slide 8, the Board agreed in its institution
13 decision that Nakajima discloses the claimed resilient mouthpiece
14 limitations, finding that Nakajima's mouthpiece appears to move based on a
15 clockwise rotation about the hinge shafts, 19, and that's what we just
16 discussed. And then the Board also preliminarily determined that additional
17 motion of the mouthpiece is not foreclosed by the plain language of the
18 claims. And the Board was correct on both of these points. At least from
19 that stowed position to early opening, Nakajima's mouthpiece pivots
20 clockwise with the pivotal mount about those hinge shafts, 19, relative to the
21 base. And even if later portions of the stroke involve rotation about a local
22 joint, the claims nowhere foreclosed additional motion, such as that
23 additional rotation about a local joint, or some combined rotational
24 translational movement.

25 All right, turning to Slide 9. The Board describes pivotal
26 movement using an analogy in a related matter. In a related IPR proceeding

1 involving a continuation child of the '255 Patent, the Board similarly
2 preliminarily found that Nakajima's mouthpiece pivots with the pivotal
3 mount. The Board there offered an analogy, likening Nakajima's motion to
4 the movement of the moon around the sun, posing the question whether the
5 moon pivots with the Earth relative to the sun, and we would submit the
6 answer here is clearly yes.

7 Turning now to Slide 10. CamelBak offers no rebuttal under
8 Petitioner's construction. In its Patent Owner response, CamelBak
9 acknowledges that Nakajima's lid rotates about the axis defined by the hinge
10 shafts, 19. Additionally, CamelBak acknowledges that the mouthpiece
11 moves with the lid as it opens and closes. This shows that the claim
12 limitation is satisfied.

13 JUDGE DEFRANCO: So, Counsel, the claim doesn't simply
14 require the mouthpiece move. Rather, it must be pivotal about the axis.
15 That's the claim language, pivotal about an axis, which I interpret to be, you
16 know, turn on the axis. And then the claim goes on to say that that axis has
17 to be defined by the lateral projections that are within the sockets of the
18 base, whereas it seems to me, Nakajima's mouthpiece is pivoting on a
19 different axis, one that's defined by the lateral projections not on the base,
20 but that are on the pivotal mount itself.

21 MR. PETERSON: Yes. Turning back to Slide 7, that figure on the
22 right -- so I think what Your Honor is referring to is the presence of two axis
23 here, and again, referring to that -

24 JUDGE DEFRANCO: That's correct.

25 MR. PETERSON: - local joint. So, as shown in the fully open
26 dispensing position, there has been some movement about that local axis,

1 that local joint. But if we focus our attention on just the stowed position and
2 consider that the mouthpiece together with the pivotal mount, because
3 they're all connected and tightened in there together as a bundle, during that
4 initial opening, they're all going to move together about that axis 19. And I
5 would say as the motion is closer to the dispensing position, there might be
6 more of a dominant impact of that local joint, in where the mouthpiece
7 resides at that moment. But throughout the motion, there's some impact of
8 that joint, 19, or the hinge shafts, 19, and it's particularly dominant right
9 from that stowed position to opening as all the pieces move together out of
10 that cavity.

11 JUDGE DEFRANCO: I think you continue to focus on the word
12 move, but that's not what the claim says. The claim says pivotal about an
13 axis, and so it has to turn on an axis. Where does the mouthpiece of
14 Nakajima turn on the axis that's labeled number 19?

15 MR. PETERSON: So during the early opening, the mouthpiece's
16 movement is going to be heavily constrained, and it's going to be
17 corresponding very directly to the movement of the lid, which has been
18 acknowledged to rotate and pivot.

19 JUDGE DEFRANCO: So you're saying the movement
20 corresponds to the lid, and I understand your argument as far as the
21 mouthpiece pivoting with the pivotal mount. But we're not talking about
22 that limitation, we're talking about the one that has to do with the pivotal
23 axis, meaning the mouthpiece must pivot about the axis. And I'm focusing
24 really on the axis defined by the hinge shafts, 19.

25 MR. PETERSON: Yeah. So -

26 JUDGE DEFRANCO: Because you admit that the axis of pivot

1 that the claim is talking about corresponds to 19, right?

2 MR. PETERSON: Yes, that's the axis that was mapped in the
3 petition.

4 JUDGE DEFRANCO: Right. So how does the mouthpiece
5 actually turn on that axis? It seems like it's turning on a different axis.
6 Because the mouthpiece has to turn on the axis that's part of the base. That's
7 what the claim requires.

8 MR. PETERSON: Yes.

9 JUDGE DEFRANCO: And I don't see that axis, that second axis, as
10 being part of the base. Instead, I see it as being a part of the pivotal mount
11 itself.

12 MR. PETERSON: So the parties are in agreement that the lid
13 pivots about that axis 19, so -

14 JUDGE DEFRANCO: I agree.

15 MR. PETERSON: - when in the stowed position, the mouthpiece
16 and the lid are in the cavity in such a way that they are moving together
17 away from that - moving together to rotate together around 19. So it's the
18 bundling together and the together movement during the early stages from
19 the stowed position that does have that rotational component.

20 JUDGE HORNER: But why is that the case if that local joint that
21 we're referring to there is able to allow that resilient piece to move? Is it
22 simply because the resilient piece has to travel a tiny distance to clear the
23 edge that they're somehow constrained together for that tiny little distance,
24 and then once it's free of that edge of the receptacle, then it can pivot - the
25 local axis can allow it to pivot in a different direction?

26 MR. PETERSON: Yeah, the local axis, once there is sufficient

1 clearing, has the ability to become a more dominant influence in the rotation
2 of the mouthpiece. I think regardless, there's still a component of the motion
3 of the lid because of the attachment mechanism. But yeah, once it's cleared
4 and fully exposed, the local joint, I would say, becomes a more dominant
5 impact on the direction of movement, and in particular, the direction of
6 rotation relative to both the lid and that axis of pivot that's shown on the
7 right-hand side of Slide 7. All right, turning to slide -

8 JUDGE DEFRANCO: Mr. Peterson, what -

9 MR. PETERSON: Yeah?

10 JUDGE DEFRANCO: Mr. Peterson, what's your understanding of
11 the definition of the term pivot?

12 MR. PETERSON: So move in conjunction with, to move in
13 coordination with. I think the - we do not dispute that encompassed within
14 that is rotation. Rotational motion.

15 JUDGE DEFRANCO: Because my understanding of pivot axis
16 would be the axis, or in this case, the shaft or projections on which
17 something rotates or turns. So there has to be an axis here, and the
18 mouthpiece has to turn on that axis. And I'm just not seeing that it's turning
19 on the axis that you have labeled as axis of pivot 19. It seems like it's
20 turning on a different set of lateral projections, meaning the ones that are
21 actually on the pivotal mount.

22 MR. PETERSON: So I think -

23 JUDGE DEFRANCO: Because the claim does state defined by. I
24 mean, what do you understand defined by a pair of lateral projections? Any
25 pair of lateral projections?

26 MR. PETERSON: No, it --

1 JUDGE DEFRANCO: It's got to be a pair of lateral projections
2 that are on the base.

3 MR. PETERSON: So I would say it's -- the axis governs the
4 movement of and the motion of, so in this case, it would be that axis of pivot
5 identified by red in Slide 7 on the right-hand side, that that red pivot axis
6 both governs the movement of the pivotal mount and the mouthpiece. And
7 at least from that early - from that stowed to early opening, there is a heavy
8 governing presence on the part of the lid and the pivot axis, but as it's closer
9 to the dispensing position, that local axis does become a more dominant
10 present in the - or dominant contributor in the movement and position of
11 that mouthpiece.

12 JUDGE DEFRANCO: And I don't disagree with you that it pivots
13 with the pivotal mount or with the lid that forms that local axis. But it's a
14 matter of the claim says pivotal about the axis, defined by those hinge shafts.

15 MR. PETERSON: Yeah. But if there is agreement that the -

16 JUDGE DEFRANCO: Yeah, I'm -

17 MR. PETERSON: I'm sorry, I didn't mean to interrupt, Your
18 Honor.

19 JUDGE DEFRANCO: Go ahead, please.

20 MR. PETERSON: But if there's agreement that the mouthpiece
21 pivots with the pivotal mount, it's the pivotal movement of the pivotal mount
22 that, at the same time, brings along the mouthpiece for that same movement,
23 that same rotational movement, particularly where there's not a dominant
24 contribution from that local axis, local joint later in the - near the dispensing
25 position.

26 JUDGE DEFRANCO: Under that interpretation, Patent Owner

1 could have just stopped at the word assembly base, and they didn't need to -
2 even need the limitation -- what is it? Wherein the mouthpiece is pivotal
3 about an axis to defined by, et cetera, et cetera. They could have just
4 stopped at, is coupled for pivotal movement - or pivotal movement with
5 pivotal mount. So that - it seems like you're trying to render the other part
6 of the claim, remaining part of the claim meaningless, whereas it definitely
7 has to have meaning.

8 MR. PETERSON: Yeah. So -

9 JUDGE DEFRANCO: You can't be saying the same thing as the
10 pivotal mount with pivotal - I mean pivotal movement with the pivotal
11 mount.

12 MR. PETERSON: Yeah, looking again at that latter limitation that
13 you just referenced, there is the introduction of the axis, and that added
14 context that it is about an axis defined by a pair of lateral projections, I
15 agree. And coming from the stowed position to the early opening, there is a
16 governing of the movement of the mouthpiece about and by that axis, given
17 the close coupling of the pivotal mount and the mouthpiece. But again, as
18 we discussed, that local joint does have a more dominant presence later.
19 And so I guess I would say -

20 JUDGE DEFRANCO: Let me ask this a different way. So would
21 you agree that the mouthpiece does pivot about that secondary axis? That's
22 on the pivotal mount itself?

23 MR. PETERSON: During a portion of the motion from the stowed
24 to dispensing position, yes.

25 JUDGE DEFRANCO: Okay.

26 MR. PETERSON: And I think going back to what the claim

1 language does not foreclose, and that is it does not foreclose a more complex
2 movement, and what we're seeing here is a more complex movement,
3 whereas the - as a result of the introduction of this local axis, there are more
4 complex movements happening where there can be components that appear
5 transitional or a rotational component that might rotate in another direction
6 for a portion of the motion. But at least for a part of the motion from stowed
7 to early opening, we can see a dominant presence of the pivoting of the lid
8 going along with the pivoting of the mouthpiece, and then there's a
9 component of that rotation that still resides throughout the rotation motion,
10 but the dominant component then tends to be more of the local axis later in
11 the opening process.

12 JUDGE DEFRANCO: What about the fact that we have to
13 construe that particular limitation in light of the specification? And the
14 specification is simply talking about pivoting or rotational movement. It's
15 not talking about anything - it doesn't say anything about translational
16 movement or some other movement in addition to rotation.

17 MR. PETERSON: Yeah, so the specification examples that you
18 referred to are a simpler case of this style of structure, and those
19 embodiments, those examples, do show a simpler type of motion. I think
20 looking to the claim language here, if Patent Owner sought to have a
21 narrower read, as we'll discuss later, they're looking to bring in the phrase
22 constant distance or radius. If they sought to put in constant distance or
23 radius in the claims, they could have done so, and then the claim would've
24 clearly precluded more complex structures than it does with its current
25 recitation of the limitations.

26 JUDGE DEFRANCO: I think their point is that rotation requires

1 constant distance or radius.

2 MR. PETERSON: Yes. Yeah.

3 JUDGE DEFRANCO: I'm not sure I agree, I'm not sure with that,
4 so I haven't taken - made a decision on that, nor I think has the panel, but I
5 think that's Patent Owner's argument.

6 MR. PETERSON: Yes. Yes, I agree. And we would say that if
7 they wanted that limitation in the claims, they had the opportunity. There
8 was an opportunity to file a motion to amend and they didn't do that. But
9 instead, the argument here is purely plain and ordinary meaning. No
10 lexicography, no disavowal. It's just that the plain and ordinary meaning
11 adds in constant distant radius, and then as we'll discuss also is it precludes
12 motion away from and all under the claim -

13 JUDGE DEFRANCO: My understanding of the case law is that -
14 let me stop you right there, because my understanding of the case law is it
15 doesn't require, you know, explicit disavowal or redefinition. And I think
16 that that approach was actually rejected by the Phillips case, and that's what
17 we're constrained by with claim construction, is Phillips. In Phillips, I
18 believe it says that, you know, the specification is the single best guide to
19 determining the meaning of a claim. And here, in the specification, as
20 Patent Owner repeatedly points to, is it's talking about rotation. Now,
21 whether it takes rotation to another more limited definition, I'm not sure yet,
22 but -

23 MR. PETERSON: Yes. But - in addition -

24 JUDGE DEFRANCO: So I just wanted to tell you that I don't
25 agree with your interpretation of the case law, that you focus solely on the
26 plain language of the claim, and then only if the patent is disavowed or will

1 be defined in the specification do you go to the specification. I think that
2 that's wholly been rejected.

3 MR. PETERSON: Yeah, and if that was the impression that was
4 given, that was not the impression that was intended.

5 JUDGE DEFRANCO: Okay.

6 MR. PETERSON: We're in agreement that -

7 JUDGE DEFRANCO: Sorry.

8 MR. PETERSON: - it's plain and ordinary meaning in light of the
9 intrinsic record.

10 JUDGE DEFRANCO: Right. Okay.

11 MR. PETERSON: I think our dispute would be that the extent to
12 which CamelBak is seeking to introduce additional limitations and
13 constraints into the claim language is well beyond what plain meaning
14 would allow and support. And Federal Circuit case law, for example, also
15 discusses how limitations and embodiments should not be let in. So despite
16 some embodiments describing instances where there is this simpler design,
17 where there's a simpler, potentially even constant radius, that that should not
18 constrain unless that's in the claims. But yeah, absolutely in agreement that
19 it's not just the plain language of the claims, and the prosecution history and
20 specification should be disregarded.

21 JUDGE HORNER: So if that's the case, if you're saying rotational
22 movement doesn't require a constant distance from the axis, then why isn't it
23 sufficient to say pivotal movement is equivalent to rotational movement?
24 Why does it have to include something more? In other words, is it your
25 position that the resilient member, the resilient mouthpiece rotates about axis
26 19?

1 MR. PETERSON: Yes. The resilient mouthpiece rotates about the
2 axis 19, yes. So it would be clearly shown during the early portion of
3 opening from stowed to - or sorry, stowed to early opening. But given that
4 this is a more complicated system with that additional joint, there are more
5 motions happening, and that those additional motions make the contribution,
6 the governing contribution of that access of pivot, not have the same
7 apparency that would be in the case of some of the simpler embodiments
8 that are disclosed in the '255 Patent.

9 All right. So, turning to Slide 11, CamelBak does not argue the
10 patentability of Claim 1 over Nakajima under the plain and ordinary
11 meaning applied by the petition. And instead, CamelBak's arguments are
12 based solely on its narrow claim constructions. And if the Board rejects
13 these narrow claim constructions, the petition's analysis and evidence
14 showing the claim limitations are satisfied remains unchallenged on the
15 merits.

16 JUDGE DEFRANCO: What about the opposite? We accept their
17 narrow construction. Does that mean you lose on that point?

18 MR. PETERSON: No. Going back to Slide 7. From that stowed
19 position to early opening, there is - I would say that's where it's most
20 apparent, the rotational clockwise movement of that mouthpiece with the
21 pivotal mount, with the lid. But - oh, I'm sorry. So you were saying under
22 their construction. So under - okay.

23 So their construction has a few different limitations involved in it.
24 Let me just turn to a slide that shows both those. All right. So what's a little
25 tricky - so this is on Slide 23, the claims as of the Patent Owner response,
26 but there's the addition of rotational motion about the - let's see. So it's,

1 maintains constant distance or radius between the mouthpiece and axis of
2 rotation. And then, rotational motion in the same direction about the same
3 axis of rotation.

4 And then further after surreply, there were additional limitations
5 that were brought in, including absence of deformation due to user during
6 rotation. There's the constant radius. And then there was also this idea of no
7 motion away from, but that was also coupled by CamelBak to the idea that
8 this is in the absence of a user doing such a motion away from.

9 So it's - as far as what precise relationship CamelBak is asking for
10 is a little tricky to speak to, but just speaking to the constant distance or
11 radius, for example, on Slide 7. During the - so stowed position to early
12 opening, during those first moments, we would say even, then there is a
13 maintained distance relative to that axis, which would satisfy. And the
14 requirement that there could be no movement away from is simply not in the
15 claim. And I think as part of the evidence for that is the requirements
16 around or the suggestion that the claim could be or should be understood.
17 That if a user were to deform the mouthpiece in an opposite direction, that
18 that would somehow be precluded from the scope of the claim.

19 And I think those kind - the same direction throughout the entire
20 motion is just not in the claim. But we do have same direction, same axis, at
21 least from the stowed position to early opening, and rotation.

22 JUDGE DEFRANCO: Let me ask, if we were to construe that
23 limitation, pivotal about an axis, to mean turning on the axis 19, how does
24 the mouthpiece turn on the axis 19?

25 MR. PETERSON: So because of its close coupling with the
26 pivotal mount, which both sides agree does turn on, it's going to move

1 together with, demonstrating the exact same coordination together or, as
2 shown on the bottom of Slide 7, move in conjunction with - it's going to
3 have that same conjunction with move that would be that turning that you're
4 asking about.

5 JUDGE DEFRANCO: So you're saying pivotal mount on axis can
6 more broadly mean just move together with?

7 MR. PETERSON: In a broad sense, yes. And then in the more -

8 JUDGE DEFRANCO: They move together with whatever is
9 already attached to the axis.

10 MR. PETERSON: And then, with the further limitation, as you
11 mentioned before, with the latter requirement, that that be governed by a
12 shared axis. So it's not just movement with, but it's movement governed by
13 that shared axis. So here, the mouthpiece coupled to the pivotal mount, their
14 movement is governed by that shared axis. And it's particularly noticeable
15 and pronounced, like I had mentioned, from that stowed position to early
16 opening.

17 JUDGE DEFRANCO: Okay. Yeah. I understand your argument.
18 I'm not sure I agree with it yet, but, you know, that's for a later
19 determination.

20 MR. PETERSON: All right. Just to spend a brief amount of time
21 on CamelBak's positions here. So CamelBak's position is that "pivotal" can
22 be replaced with "moves with rotational motion," as shown on Slide 15. So
23 we've shown that on the bottom of the slide here in the claim limitation.
24 And then in reply, we said that pivotal indeed - that Trove does not dispute
25 that pivotal can include movement with rotational motion.

26 And then CamelBak's expert talked about how pivotal is a rotation

1 about an axis. And then as a matter of physics, there's a suggestion. And at
2 the top of Slide 18, there's an argument from CamelBak about, as a matter of
3 physics, there must be maintaining a constant distance or radius between the
4 mouthpiece and an axis of rotation. We would say this requirement, this
5 embedding as a matter of physics, is not what the claim says and is
6 improper. And that the claims do not preclude additional motion around an
7 axis. And it's this "as a matter of physics" reliance that does not form a
8 proper basis for the limitation.

9 Just to move quickly here. "With." They then proposed that
10 "with" should mean the same direction of rotation. And in reply, Trove
11 responded that, to the extent that the phrase requires elaboration, Trove does
12 not disagree that same direction, same axis rotation.

13 On surreply, after Trove pushed back, CamelBak proposed
14 additional narrowing, including some remarks about absence of deformation
15 by user. And then clarify that same direction, same axis is not the sole
16 requirement; it must also be not away from.

17 So in total, Slide 25 summarizes the changes. And I think the ones
18 in bold are particularly the ones that we would say go well beyond what
19 plain meaning supports.

20 All right. And just keep moving here.

21 JUDGE DEFRANCO: So your argument there is though that -
22 although you admit that this – that width limitation encompasses rotation in
23 the same direction, you're saying that it's not necessarily limited to rotation
24 in the same direction, like Patent Owner asserts?

25 MR. PETERSON: Yes.

26 JUDGE DEFRANCO: But that it also may encompass rotation in

1 different directions, like Nakajima?

2 MR. PETERSON: Yes. In a more complicated system that has
3 more potential points of movement, other than just that axis.

4 JUDGE DEFRANCO: Okay.

5 MR. PETERSON: And here, on Slide 26, is the statement from
6 CamelBak that there's no lexicography or disavowal. But as we discussed
7 before, we're not saying that it should be rigid plain meaning of the claims
8 only; it is read in light of the intrinsic record.

9 And just real briefly on the intrinsic record. The intrinsic record
10 does not include or define the constant radius or "not away from"
11 terminology. And under Phillips, the Board does not import limitations.
12 And notably, the '255 Patent itself states that its embodiments are not
13 intended to be limiting. That's at Column 18, lines 46 to 49 of the '255
14 Patent, Exhibit 1001. And the prosecution history, likewise, provides no
15 support for the narrowing. And what we can see on this left-hand side of
16 Slide 27 is CamelBak repeats the claim language and then draws an
17 annotation, which is a curve shape. And it's based on this curve shape and
18 just a pure recitation of claim language that there's a suggestion that constant
19 radius or "not away from" is somehow the plain and ordinary meaning.

20 And, for example, also looking at extrinsic record, there's some
21 dictionary -

22 JUDGE HORNER: Can you answer a question on that, though?
23 I'm just looking at McDonough, and on the right-hand side, it's very similar
24 to - I know it doesn't have the local axis, it just has the single axis. But in
25 the stowed configuration, this resilient straw is similarly situated, where, at
26 least for a small distance, it's not clear of the lip of the stowed portion. So

1 how -

2 MR. PETERSON: So you -

3 JUDGE HORNER: - do you distinguish -

4 MR. PETERSON: Are you wondering about rotation of that end
5 of the straw -

6 JUDGE HORNER: Right.

7 MR. PETERSON: - relative to the claim language? So there were
8 multiple bases that they argued that McDonough differs. And one of them
9 was this added limitation about the mouthpiece being coupled to the outlet
10 of the pivotal mount. And as you can see here, that straw dangles out and is
11 not coupled in the same way as is the case in the Nakajima implementation,
12 where the pivotal mount, if we were to go back to Slide 7, has a much closer
13 connection to exactly where the mouthpiece goes and what its orientation
14 will be at any given moment. Whereas the straw here from McDonough
15 hangs more freely at its end point.

16 And regardless, there were multiple limitations at issue here. And
17 to the extent that, I would say, the end of the straw there, I would say
18 arguably, too, does demonstrate rotational motion about the axis, but the
19 connection and design there is a bit different and even looser. And I think
20 since that's not before us here, I think we don't need to, I guess, analyze
21 McDonough in more detail, but we would dispute to the extent that the
22 examiner held that that wasn't the case. That - that's not necessarily the
23 case. But at least, with respect to the coupling limitation, I think we could
24 see that the - coupled with the mount outlet is not demonstrated by
25 McDonough.

26 All right. And just a quick note about the extrinsic evidence,

1 dictionary definitions that CamelBak provided have many definitions of
2 these terms, and they do not mandate the additional limitations that
3 CamelBak seeks to add.

4 Quick note on L'Oreal. This is one instance, Judge DeFranco,
5 where the courts - and CamelBak cited to this case, where the courts have
6 found that disclaimer and lexicography would not be required. But among
7 the language in this case is about when the relevant language is not plain and
8 rather ambiguous, then they went and looked to the prosecution history to
9 inform and try to understand.

10 All right. And turning to Ground 3.

11 JUDGE DEFranco: And I do understand that, you know, that -
12 when it's ambiguous, you're fully within the right to go to the prosecution
13 history. My point was that you always have the specification, though.

14 MR. PETERSON: All right. And to move relatively quickly here,
15 since it looks like I've got about five minutes. On Slide 31, the argument
16 here from CamelBak is that a user - the configuration of this claim
17 limitation requires that a user bite down on the resilient mouthpiece. But on
18 a closer examination of this claim limitation, it shows that that's - actual
19 contact is not what's required. The one structural drink container element
20 recited here is the resilient mouthpiece. And then its associated verb phrase
21 is, is adapted to resiliently compress.

22 So, that's the component. It's the resilient mouthpiece with its verb
23 phrase, is adapted to resiliently compress. And then the remainder of the
24 limitation relates to describing the mouthpiece's resilience and degree of
25 compressibility, and specifically how it would respond when subjected to
26 compressive forces applied by a user's teeth.

1 Turning to Slide 32. An apparatus claims cover - apparatus
2 claims, such as Claim 1, cover what a device is and not what it does.
3 CamelBak could have recited a specific material, like silicone, but instead
4 chose to define, the mouthpiece's resiliency, through functional language.

5 JUDGE HORNER: So, without modifying the prior art, how
6 would a user apply compressive forces to the resilient mouthpiece -

7 MR. PETERSON: So -

8 JUDGE HORNER: - to flex onto?

9 MR. PETERSON: So, you're saying under CamelBak's proposed
10 construction, where teeth contact is required?

11 JUDGE HORNER: Yes.

12 MR. PETERSON: Okay.

13 JUDGE HORNER: Well, under your construction of, adapted to,
14 it has to be capable of, right?

15 MR. PETERSON: Yeah. So, capable of, it's -

16 JUDGE HORNER: So, you're saying, in a vacuum, it - this
17 flexible tube, in and of itself, is able to.

18 MR. PETERSON: Exactly. So it's functional language describing
19 structure, such as silicone, that would have, for example, a degree of
20 resiliency that, upon action with a tooth, would have a certain
21 responsiveness. So, for example, it wouldn't crush it such that it - or other
22 types of changes that would be inconsistent with it.

23 JUDGE HORNER: So, does your position turn on whether we
24 agree that adapted to means capable of, as opposed to, for example, designed
25 to?

26 MR. PETERSON: It does not. So, under our interpretation, and to

1 hit a couple bits of evidence, for example, the spec discloses self-sealing
2 and/or bite-actuated mouthpieces. We would say that that's an example of a
3 non-bite-actuated mouthpiece, and to interpret in that broader way would
4 exclude those. There's an optional squeeze embodiment, as well, that doesn't
5 require bite. And then compressive forces from teeth are just an example.

6 But to speak to your - and then - all right. Yes, right here. So
7 CamelBak says that, if you were to take out the mouthpiece and bite onto it,
8 they concede that it's compressible. So, I think that acknowledgement
9 coupled with the broader construction satisfies the claim limitation under
10 that broader capable requirement.

11 Now under the narrower construction, our position is that -
12 CamelBak's position is, first of all, premised on entirely surrounded. And
13 there's a couple quotes here from the Patent Owner response and expert
14 declaration. But as can be seen, the end from which a user drinks is actually
15 exposed and not surrounded by the pivotal mount. So, there is an avenue
16 through which teeth can reach.

17 And as shown on Slide 40, during the deposition, CamelBak's
18 expert spoke about how teeth are engaging the drink spout of Ribarits, and
19 that it's certainly conceivable that one will bite it.

20 JUDGE HORNER: How would one bite the end of that tube
21 within the spout? I understand you could put your teeth against it, but how
22 do you apply a compressive force to it with that - with a rigid spout around
23 it?

24 MR. PETERSON: Yeah. So turning to Slide 41, it - I agree it
25 would be through tooth placement into the hole. And then that entrance of a
26 tooth into the hole would exert a compressive force against the pivotal

1 mount as the other surface. So, it wouldn't be opposed bite regions.

2 But we would direct Your Honors to Claim 15, for example, where
3 CamelBak specifically required the resilient mouthpiece have opposed bite
4 surfaces, and that those urge the mouthpiece open. And that demonstrates
5 that CamelBak knew how to include such structural bite limitations and
6 didn't do so in this independent Claim 1, and that it shouldn't be brought in
7 for that reason.

8 JUDGE DEFRANCO: Mr. Peterson, could you go back to the
9 slide, 40 -

10 MR. PETERSON: Yes.

11 JUDGE DEFRANCO: - where you had that expert testimony?
12 I'm still confused by what you think that that expert testimony establishes.

13 MR. PETERSON: Yeah. Yeah.

14 JUDGE DEFRANCO: Seems like it's saying that a user would
15 need to bite drinking spout 3. That's the question posed to the expert. And
16 the drinking bite 3 (sic) is talking about the pink part of the spout.

17 MR. PETERSON: Yeah. So -

18 JUDGE DEFRANCO: It just says, so when you use this drink
19 spout - I mean, the expert is just saying, so when you use this drink spout
20 number 3, the pink part, it's certainly conceivable that one would bite it, but
21 nothing would happen.

22 So, he's not even talking about the green part. So, I don't really
23 understand how that expert testimony helps you with respect to the green
24 part.

25 MR. PETERSON: Yeah. Specifically that first underline, the
26 drinking spout is engaged by the teeth. And the point there is that, this

1 confirms a user's teeth are very much positioned in that region, in that area
2 right around the mouthpiece, and that the teeth would be expected to contact
3 the mouthpiece as a result during normal use. And that this contact -

4 JUDGE DEFRANCO: Well, what evidence do you have that says
5 that? That the teeth would be expected to contact the green part, even
6 though the expert here, Patent Owner's expert, is saying they contact the
7 pink part?

8 MR. PETERSON: Yeah. So, we agree he's speaking about the
9 pink part here. But given the limited area and the geometry here, and that it
10 would be in the user's mouth, it would be a reasonable inference that the
11 teeth would also be in this area and able to make that contact. And that
12 under KSR -

13 JUDGE DEFRANCO: And it seems like, to me, that, yeah, the
14 teeth are definitely in contact with the pink part, but your mouth is open to
15 get - and you open your mouth, put the drink spout 3 in your mouth, but the
16 green part is in your mouth. It's not part of your - it's not being touched by
17 your teeth. You want the green part to be open so that it's, you know, you
18 can get water. It seems like the only way that the teeth could actually touch
19 the green part is if the teeth gnawed through the pink part.

20 MR. PETERSON: So, if we look at the top left of Slide 40, that
21 figure, there's a black dot. For some reason, I think in the original patent,
22 there was that black dot. But that black dot shows the type of position that a
23 tooth could take that would make this contact that we're speaking of here.
24 And really, if we go back to - so, it's actually Slide 41. I have the claim
25 limitation again. I think the main point I would make here is that, this claim
26 limitation is very broad. It doesn't require continuous teeth contact or

1 repeated contact or anything like this. The star of this point is just
2 compressive force is applied. So, even if there was one contact from a user's
3 teeth, that would satisfy. And it's the breath and the low threshold of its
4 limitation.

5 JUDGE DEFRANCO: That's what I'm having trouble with here,
6 Counsel, because the compressive forces part of that claim says that
7 compressive forces are applied by the teeth. You know, I understand your
8 point. Okay, you know, maybe the teeth would contact that green part, but
9 how would the teeth apply any compressive force to that -

10 MR. PETERSON: So -

11 JUDGE DEFRANCO: - green part?

12 MR. PETERSON: I would say the contact of teeth to the
13 mouthpiece, the very nature of forces, is that that contact would be a force
14 onto the mouthpiece with the pivotal mount being the opposite surface in
15 that.

16 JUDGE DEFRANCO: What's the reason why a user would
17 contact the green part with their teeth in that case?

18 MR. PETERSON: You mean the green portion in the mouthpiece?

19 JUDGE DEFRANCO: Yes.

20 MR. PETERSON: So, I agree that during probably a lot of use a
21 user wouldn't have - there wouldn't be need for the sake of drinking, but
22 what's relevant here is, given the proximity to the teeth and how the teeth
23 would be all over this during use, that would there be some teeth contact at
24 some point in time, given the teeth are acknowledged to be in the area, and
25 one time the teeth going in and making that green contact and exerting a
26 compressive force, would be enough to satisfy the limitation as shown on

1 Slide 41.

2 If - going back to Claim 15, if they wanted opposed bite surfaces
3 that urged the lips, they have a claim that says that. But this claim really is,
4 resilient mouthpiece adapted to resiliently compress responsive to
5 compressive forces applied by teeth. And the added detail around opposed
6 sides and other things, we would say, come from embodiments and not
7 requirements of the claim language itself.

8 JUDGE HORNER: Counsel, you're five minutes into your -

9 JUDGE DEFRANCO: What evidence is in -

10 JUDGE HORNER: - rebuttal time.

11 JUDGE DEFRANCO: -- the record? What evidence do you have
12 of that position, as opposed - other than this expert testimony that's on the
13 slide?

14 MR. PETERSON: I think this is our key evidence on this point,
15 which is the statement from their expert that teeth are very much in the
16 region. And then given the structure and the closeness of where the pivotal
17 mount is to the mouthpiece, that it would be expected during normal use that
18 some teeth contact would be made, and that that contact is a compressive
19 force. And that, under a KSR, the Board is able to make reasonable
20 inferences from this testimony and common sense that teeth would make
21 that contact.

22 JUDGE DEFRANCO: Okay. I understand the position.

23 MR. PETERSON: Okay.

24 JUDGE DEFRANCO: Thank you.

25 JUDGE HORNER: Would you like to reserve the rest of your
26 time for rebuttal? You're about six minutes in.

1 MR. PETERSON: Okay. Let's keep going for a few minutes
2 longer -

3 JUDGE HORNER: Okay.

4 MR. PETERSON: - and see if there's anything else. So there's
5 also a discussion of removable coupling. And actually, why don't - I'd like
6 to just briefly touch on Slide 44. This is the slide that the objection was
7 raised earlier by CamelBak. And this Claim 7, further evidence is the
8 coupling between the mouthpiece and pivotal mount. What we would say is
9 - well, first of all, Trove's expert did not specifically discuss this, but Trove's
10 expert did, as can be seen in paragraph 91 in the bottom right corner of this
11 slide, discuss conventional means for removable coupling. And then
12 describe snap fits as those kinds of examples.

13 And we would say, Ribarits demonstrates the style of a snap fit, so
14 that provides some context. But importantly, regarding the objection and the
15 new argument, this point is properly responsive to CamelBak's challenge as
16 to whether Ribarits discloses coupling. And Trove is not identifying new
17 structures or offering new mappings. Trove is simply pointing to additional
18 description of the very same structures that were already mapped in the
19 petition to these components. And for that reason, it's responsive and we do
20 not think the objection should be upheld.

21 And unless Your Honors have any further questions, I'm happy to
22 answer, I'll reserve the remainder of my time for rebuttal.

23 JUDGE HORNER: Okay. Thank you.

24 Would you like to reserve any time for rebuttal?

25 MR. MUDD: Yes, Your Honor. I would like to reserve ten
26 minutes, please. Is everyone ready?

1 JUDGE HORNER: Proceed when you're ready.

2 MR. MUDD: Thank you. Good afternoon, Your Honors. May it
3 please the Board, Jason Mudd for Patent Owner CamelBak Products. I'll do
4 my best to remember to announce slide numbers, both for the court reporter
5 and for Judge DeFranco, who I know is remote.

6 Turning first to slide number 2. Slide 2 lists the grounds that are at
7 issue in this proceeding, with Grounds 1 and 2 based on Nakajima as the
8 primary reference, and Grounds 3 and 4 based on Ribarits as the primary
9 reference. We've focused in on two deficiencies with each of Nakajima and
10 Ribarits in our briefing in this matter.

11 Turning to Slide 3, there's really five basic issues in play. The first
12 one is the proper claim construction of three different claim terms. And then
13 issues two and three are the deficiencies with regard to Nakajima in whether
14 it discloses a mouthpiece that's pivotal about an axis, defined by the pair of
15 lateral projections. And whether the mouthpiece exhibits pivotal movement
16 with the pivotal mount. And then issues four and five relate to Ribarits.
17 Four relates to whether the mouthpiece is adapted to resiliently compress,
18 responsive to compressive forces from the user's teeth. And issue five is
19 whether Ribarits discloses a mouthpiece that is coupled to a pivotal mount.

20 Starting off with a very brief overview of the '255 Patent on Slide
21 5. It's generally directed to a drink bottle having a cap assembly that
22 includes a base, shown here in orange, a resilient mouthpiece shown in
23 green, that is coupled to a pivotal mount shown in pink. The mouthpiece
24 and pivotal mount rotate together between a stowed position, shown in
25 Figure 1, and a dispensing position, shown in Figure 2, that allows the user
26 to place their mouth on the mouthpiece to drink from the bottle.

1 As shown in Figure 25 on Slide 6, the pivotal mount has a pair of
2 lateral projections, 150, shown here in red, that rotate within a pair of
3 sockets, 152, also shown in red. These lateral projections define an axis of
4 rotation about which the pivotal mount and mouthpiece rotate together. As
5 shown in Figure 29 on the right of Slide 6, the cap assembly and its
6 mouthpiece have a fluid conduit that has what the claims call an on/off valve
7 that can either obstruct fluid flow when in the closed position, or allow fluid
8 flow to allow the user to drink when in the open position.

9 Turning to Slide 7, all of the figures of the '255 Patent depict the
10 mouthpiece and pivotal mount rotating in the same direction about a
11 common axis of rotation, specifically the axis of rotation defined by the
12 lateral projections. This provides a very simple, clean, circular movement
13 between the stowed position and the dispensing position. And one that does
14 not require an excessive number of components. But as we'll see in a
15 moment, this is distinct from the Nakajima prior art, which utilizes a
16 complex and convoluted non-circular path for its mouthpiece, which moves
17 translationally between the - its stowed position and dispensing positions,
18 using multiple mechanical components.

19 Turning to Slide 8. As the Board is aware, a key issue in this case
20 is the claimed requirement that the mouthpiece be pivotal about an axis
21 defined by the lateral projections. This requirement was added via
22 amendment during the original prosecution of the '255 Patent to overcome
23 the examiner's prior art rejections. And while it's clear from the claim's
24 written description and the figures that the term, pivotal about an axis,
25 requires rotational motion about an axis of rotation, we have the benefit, in
26 this case, of the fact that the patent office already took a second look at the

1 '255 Patent during a reexamination initiated by one of CamelBak's
2 competitors named Zak. Zak requested reexamination in January of 2023.
3 And following only a couple very minor amendments, the office issued a re-
4 exam certificate confirming the patentability of the amended claims later in
5 November of that same year.

6 Now, in that reexamination, CamelBak made it, what I would say,
7 painfully clear what is meant by the term, pivotal about an axis. During the
8 reexamination, CamelBak annotated Figure 7 from the patent, as shown here
9 on Slide 8, and we've recreated those annotations here in red on the right-
10 hand side to make them a little bit easier to see. They added the label,
11 pivotal about axis. They added the label, axis, at the - where the projections
12 are in the middle. They added a large circle tracing the path of the
13 mouthpiece that it takes, to show the mouthpiece moves in a circular path.
14 And they added lines showing that the distance from the mouthpiece to the
15 axis stays the same as the mouthpiece moves around that circular path,
16 maintaining a constant distance or radius from that axis.

17 CamelBak then used this annotated drawing to explain and
18 distinguish that McDonough was not pivotal about an axis, because it moves
19 translationally rather than rotationally. The three reexamination specialists
20 agreed and issued a re-exam certificate. Importantly, this distinction that
21 was made in the re-exam was the same distinction that was made in the
22 original prosecution of the '255 Patent. And as we'll discuss today, this is
23 the same difference that distinguishes the Nakajima prior art in this
24 proceeding. So, we ask the Patent Office for the third time to confirm the
25 '255 Patent is patentable over the prior art due to its requirement of being
26 pivotal about an axis of rotation.

1 If we go to Slides 9 and 10, we can see here the key claim
2 language that is at issue, and I'll skip past those. And I'll jump to the first
3 issue, which is claim construction, and the key term of pivotal about an axis
4 defined by the - a pair of lateral projections.

5 CamelBak has construed this term as requiring rotational motion
6 about an axis of rotation. And to avoid any doubt as to what rotational
7 motion is, CamelBak has included the definition of it from physics which
8 requires maintaining a constant radius to the axis of rotation. And as we all
9 know, a constant radius defines a circle. Thus, it is circular. It is a circular
10 path. That's what rotational motion is, and physics tells us that.

11 As our expert explained, a POSITA would've understood that the
12 plain and ordinary meaning of pivotal about an axis requires rotational
13 motion about an axis, which was a well - long, well understood concept
14 from physics that a POSITA would've been well aware of, having a
15 undergraduate education that includes physics, as the definition of level of
16 ordinary skill in the art includes in this case.

17 As our expert, Michael Jobin, explained, this meaning is evident
18 from the basic dictionary definition of the word pivot. The express use of
19 the word rotate in the claims, the written descriptions repeated references to
20 rotation expressly, all of the figures consistent depiction of rotation. And
21 then finally this plain meaning, it was unmistakably confirmed to a POSITA
22 from CamelBak's annotations it made during reexamination to distinguish
23 the McDonough prior art.

24 So, turning to Slide 13 -

25 JUDGE DEFRANCO: Hold on, Mr. Mudd, did you introduce a
26 dictionary definition of the term rotation?

1 MR. MUDD: Yeah, we did. Well, we introduced the technical
2 definition of it from physics. Yes. Our expert offered opinion. I have slides
3 on that. Our expert offered an opinion of what rotational motion requires
4 from physics, and cited a number of corroborating exhibits in support of
5 that, including various physics textbooks and other documents.

6 JUDGE DEFRANCO: Okay. Thank you.

7 MR. MUDD: And we also offered dictionary definitions of the
8 word pivot, as well. And I'll note for the Board that all of that evidence
9 stands unrefuted in the record. There's no contrary dictionary definitions,
10 physics texts or anything from Petitioner that, you know, pivotal about an
11 axis would have any different meaning than rotational motion about an axis
12 of rotation. And they've not offered any competing definition of what
13 rotational motion would be understood to require, as understood in physics
14 from the perspective of a POSITA.

15 So turning to Slide 13, in this proceeding, at institution, the Board
16 preliminarily found that Nakajima satisfied this limitation. But importantly,
17 the Board encouraged the parties, as shown here on Slide 13, to develop the
18 record regarding the meaning of pivotal about an axis. And that's exactly
19 what CamelBak has done in this proceeding, is develop an extensive record
20 of what that term means in the art to a person of ordinary skill.

21 And if we turn to Slide 14, in a related proceeding involving the
22 related '250 Patent, that's IPR 2025-00140, which Petitioner's counsel
23 referenced in his argument, in that institution decision where CamelBak put
24 forward an expert declaration, put forward exhibits, put forward a record on
25 what that term means, and we argued that it requires rotational motion. And
26 the Board preliminarily agreed with that in its institution decisions shown

1 here on Slide 14. Specifically, the Board -

2 JUDGE DEFRANCO: Counsel, I don't think Petitioner disagrees
3 with you on that. I think they agree that pivotal can encompass the term
4 rotation. I think what they disagree with is your definition of rotation.

5 MR. MUDD: So, Your Honor --

6 JUDGE DEFRANCO: - in that, your definition is importing
7 limitations.

8 MR. MUDD: Yeah. So Your Honor, I --

9 MR. MUDD: My apologies, Your Honor. So, I take issue with,
10 well, what they said in the briefing and what they said today, that it
11 encompasses rotational motion. Okay. That's fine. But we don't - what we
12 care about is what does it require? And they're contending that it does not
13 require rotational motion, which is just absolutely wrong.

14 There's almost no evidence in the record supporting that. All of
15 the intrinsic evidence and extrinsic evidence supports that it requires
16 rotational motion. And that's exactly what the Board found in the - this
17 related IPR proceeding when the Board construed the term pivotal axis for
18 pivotal movement in claims from a patent having an identical specification
19 to this one, the '255 Patent. And the Board construed it as requiring two
20 joints that define an axis of rotation for rotational motion of the pivotal
21 mount about the axis.

22 So, the Board found in very similar claim language from a patent
23 having the same spec that a pivotal axis is an axis of rotation for rotational
24 motion. Now, this requirement of rotational motion, it's replete in the
25 intrinsic evidence.

26 So, if we look at the plain claim language, after it recites being

1 pivotal about an axis defined by the projections, it recites that the projections
2 rotate within the pair of sockets. So, the plain claim language uses the word
3 rotate. So, I mean, the - starting there with the plain claim language, it tells
4 us that it, when it says pivotal, it means rotational. And then we turn to the
5 spec and it says, the projections are rotatable within the sockets and thereby
6 function as rotatable supports.

7 And then you go to Slide 16, there's - the specification is replete
8 with references to rotation. And again, you know, I - we thought that
9 perhaps, you know, Petitioner was not disputing that rotation was required.
10 But then we see in their reply, and we hear them say today, well, rotation is
11 encompassed, but not required. Well, the question that the Board has to
12 determine is what is required? And rotational motion is undoubtedly
13 required. It's all over the intrinsic evidence.

14 And then we go to Slide 17, when I took the deposition of the
15 Petitioner's Declarant, Dr. Vallee, he admitted repeatedly that rotation is
16 required in these claims. He said, the pivot axis is analogous with the axis of
17 rotation of the pivotal mount. He said, there's a spout that rotates from a
18 stowed position to an unstowed position. He referred to the rotation of the
19 mouthpiece between dispensing and stowed configuration. And I'll draw
20 your attention to the highlighted language, the question and answer.

21 Question: So, when the claims used the term pivotal about an axis,
22 do you understand that to mean rotational about an axis of rotation?

23 Answer: I think that's correct.

24 So, would you agree the lateral projections to define an axis of
25 rotation as the lateral projections rotate within the pair of sockets?

26 A - answer: Yes. It is an axis of rotation.

1 So, their own expert repeatedly, you know, under cross-
2 examination, agreed rotation is required. And then we go to the file history,
3 which I highlighted in my introductory remarks earlier, in the reexamination
4 as noted, the -- CamelBak annotated Figure 7 to clearly indicate what it
5 meant by pivotal about an axis, that it requires rotational motion. And as is
6 understood in physics, rotational motion requires maintaining a constant
7 radius which creates a circular path. And that's exactly what the annotations
8 shown here on Slide 18 depict.

9 JUDGE DEFRANCO: I don't think there's any dispute here that
10 Nakajima, that axis 19 is a rotational type axis.

11 MR. MUDD: So, Your Honor is correct --

12 MR. MUDD: -- that -- you're correct. We do not just - I'm sorry.

13 JUDGE DEFRANCO: But the dispute centers on what the
14 meaning of rotation is.

15 MR. MUDD: Okay. That's - and, you know, the intrinsic
16 evidence does, you know.

17 JUDGE DEFRANCO: Right.

18 MR. MUDD: This annotation here on Slide 18 shows when they
19 talk about pivotal about an axis, this is consistent with the understanding of
20 rotational motion in physics. And I'll get to that definition -

21 JUDGE DEFRANCO: Yeah, but I find it hard - I find it hard to
22 believe the Petitioner could even dispute that there's rotation. Because the
23 claim language itself says, defined by a pair of lateral projections that rotate
24 within the pair of sockets. So, those lateral projections are definitely
25 rotating within the sockets. They're on the base.

26 So, I think that's why Petitioner is not disputing the rotation

1 involved here. It's just what the definition of rotation is, and that they agree
2 with. And their interpretation of Nakajima's mouthpiece and whether that
3 rotates or not, which it does rotate. It's just the question of is it rotating
4 about that axis 19?

5 MR. MUDD: Then, Your Honor, if Petitioner's counsel now does
6 agree that rotational motion is required, contrary to what they said in their
7 argument and briefing, then I invite them to come up and say that that's no
8 longer an issue, and they agree it's required. I've just heard them trying to
9 dispute that, which is why I'm trying to, you know, lay out the record for the
10 - this being the correct construction, as the Board found in the related IPR.
11 So -

12 JUDGE DEFRANCO: I guess what my - I was understanding
13 your arguments to mean, even assuming there's -- the claim, requires
14 rotation, Nakajima, nonetheless, meets that rotation limitation.

15 MR. MUDD: Yeah. So, I do understand that to be another one of
16 their arguments, one that I think is a new one they've made today that I was
17 intending to address in the context of discussing Nakajima. Do you - would
18 you like me to go ahead and jump to that? I was going to briefly talk about
19 McDonough and how it was distinguished.

20 JUDGE DEFRANCO: Yeah. No, go ahead.

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

22 So, Slide 19 here shows during the reexamination, this is the
23 McDonough, Figure 2 from McDonough. We've pulled the original drawing
24 from McDonough to get a clear reproduction, but this shows how the
25 Examiner mapped, tried to map McDonough to the claims. They mapped
26 the end of the straw 16, to the mouthpiece. They mapped the straw

1 positioning mechanism 20 to the pivotal mount. And they mapped the axle
2 projections 30 as the pivotal axis.

3 And as shown here on Slide 20, CamelBak told the Patent Office
4 and the public that McDonough is not pivotal about an axis. And they
5 argued, as shown in the figures above, when the straw positioning number
6 20 is pivoted about a pivotal axis, the end portion 16 of straw 14 is pulled
7 downwards. And so, they say the end portion 16 of the straw is not pivotal
8 about an axis.

9 And as our expert explained, a person of ordinary skill of reading
10 this would be understanding them to be distinguishing downward
11 translational motion from rotational motion. And I have a better slide later,
12 but as shown here in Slide 20 in the middle, they actually annotated
13 McDonough to put - to take the same circle and the same radius that they
14 had overlaid on Figure 7 of the '255.

15 And they overlaid it on McDonough and they showed it in
16 McDonough's open and closed positions to show that the straw does not
17 maintain a constant distance or radius to the axis of rotation. It moves
18 downward such that its distance varies as it's moving. That is precisely how
19 Nakajima works. And I'll get to that in just a moment.

20 JUDGE DEFRANCO: Wait a minute. Wait a minute, Counsel.
21 What do you think that they're disavowing? What is the Patent Owner, or
22 the Applicant disavowing with McDonough?

23 MR. MUDD: Your Honor, that they're actually - as we stated in
24 the briefing, they're not disavowing anything. They're just confirming what
25 the well-understood plain and ordinary meaning of pivotal about an axis is,
26 and that is that it requires rotational motion. And that rotational motion is

1 well-understood in the art and from physics to require a constant radius.

2 And here, as they show, they overlay a circular path and a constant
3 radius to show that the distance of the straw to the alleged axis of rotation
4 varies. And they say it's pulled downwards. That's translational motion.
5 And our expert explained a person of skill reading that would understand
6 they're distinguishing upward and downward translational motion from
7 rotational motion, which is required to be pivotal about an axis.

8 And Slide 21 just depicts this upward and downward motion of the
9 straw in McDonough. And Slide 22 has the testimony from our expert
10 explaining how a person of skill would've understood this statement from
11 the file history.

12 Now Petitioner's Counsel argued, well, there were other arguments
13 made trying to distinguish McDonough. So, you can't just rely on the fact
14 that they argued it was not pivotal about an axis. But we addressed this in
15 the briefing. Page 5 of our surreply, Paper 23, we cited the Gentry Gallery
16 case 143 F.3d 1473 at 1477, a Federal Circuit case from 1998, where the
17 court said any one of multiple arguments made during prosecution can
18 inform the proper construction.

19 So, the fact that you make multiple arguments does not mean that
20 you can't consider any of them. They can each be considered as informative
21 of claim construction. And as Your Honor noted during Petitioner's
22 argument, it, the file history need not amount to a disavowal to be relevant,
23 and we're not taking the position there was any disavowal. They weren't
24 defining pivotal about an axis in some idiosyncratic way. They were
25 defining it as to its well-understood meaning of requiring rotational motion,
26 which is a well-understood concept in the art.

1 JUDGE DEFRANCO: So, they're simply distinguishing rotational
2 motion from translational motion?

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

4 JUDGE DEFRANCO: As far as McDonough goes?

5 MR. MUDD: That's correct.

6 JUDGE DEFRANCO: Which you agree, not to continue on it, it's
7 different than McDonough, right?

8 MR. MUDD: I mean, there's some differences, but it's moving
9 translationally just like McDonough is moving translationally, and it's not
10 moving rotationally in the manner required by the claims.

11 JUDGE DEFRANCO: Well, I think that's where Petitioner has a
12 dispute because they've been saying that because there's two pivotal axes in
13 Nakajima and there are not two pivot axes in McDonough, that that's the
14 difference.

15 MR. MUDD: Well - and I'll, again, you know, Nakajima, because
16 of the presence of that second axis is actually - and the fact that the
17 mouthpiece moves freely about that second axis and is not fixed in place, it,
18 that second axis causes it to never rotate about the first axis. It causes it to
19 never maintain a constant radius to that first axis.

20 JUDGE DEFRANCO: Okay.

21 MR. MUDD: And I want to turn to Slide 24. So - and I'll note
22 again, our expert's testimony stands unrebutted in this case. There was no
23 responsive expert declaration put in with Petitioner's reply to refute anything
24 that our expert said. So, everything we saw in the reply is just, you know,
25 attorney argument. They don't have expert testimony addressing our expert's
26 opinions.

1 Turning to Slide 24. When I took the deposition of Petitioner's
2 expert, Dr. Vallee, he testified that what he called pure rotational motion did
3 require a constant radius to an axis of rotation. That's from page 33 of our
4 Patent Owner Response. And that cites his deposition transcript, Exhibit
5 2025, pages 62 to 64 and page 114.

6 And he did agree that the recitation of pivotal about an axis did
7 require what he called a rotational component in the mouthpiece's motion.
8 And we cited this on page 31 of our Patent Owner Response. And that was
9 his transcript at page 60, when he stated that movement has to have a
10 rotational component -- that the movement in the mouthpiece has to have a,
11 quote, rotational component, because the claim says pivotal.

12 But he contended that only a component of the motion of an object
13 must have a fixed radius to be a rotational component to satisfy the pivotal
14 about an axis. And we anticipated that Petitioner was going to try to follow
15 this line of argument in its reply brief, but surprisingly it didn't.

16 But anyway, we were concerned they would so we had our expert
17 address it, and we addressed it in our Patent Owner Response. And he said,
18 motion can have both a translational component and a rotational component.
19 However, he said to have a rotational component, that rotational component
20 must have a fixed radius, otherwise it's not rotational and it's translational.

21 And again, this is what he called pure rotation. So, our expert
22 looked, read his testimony, and he provided opinions. And this is depicted
23 here on Slide 24. And this is talking about combined translational and
24 rotational motion, and there's two common examples. This is from a college
25 physics textbook, which is Exhibit 2026.

26 On the left is shown a wheel. It - with a rolling wheel, the center

1 of mass of the wheel, it moves translationally in a straight line as the wheel
2 rolls across a flat surface. But the outside of the wheel, right, it moves in a
3 rotational manner at - with a constant radius about the axis of rotation.

4 So, you have combined translational and rotational motion
5 occurring with the wheel. Same thing with a twirling baton that's tossed into
6 the air. It - the twirling baton is itself rotating about an axis of rotation with
7 a constant radius. But the parabolic arc, right, that's not rotational. That's
8 translational. So, that's the translational component.

9 And as our expert explained, to have any rotational component, it
10 still has to have a fixed radius to the axis of rotation to be considered a
11 rotational component. And that's something that when you apply that to
12 Nakajima, that there's no rotational component present for the mouthpiece
13 about the required axis defined by the lateral projections. And this is cited in
14 the briefing, but Dr. Vallee agreed, and I just provided some of those
15 citations. He agreed that to have a rotational component there has to be a
16 fixed radius to the axis of rotation.

17 So, I, you know, I think there can be no reasonable dispute in this
18 case that rotational motion, by definition, requires maintaining a fixed
19 radius. And that the term pivotal about an axis, because it has - because it
20 requires rotational motion, it therefore, as the Board found in a related IPR,
21 it therefore requires a constant radius in order to satisfy this pivotal about an
22 axis limitation.

23 This is a slide I was referencing earlier, where in - during the
24 reexamination of Slide 25, it was depicting how McDonough does not
25 maintain a constant radius from the straw to the alleged axis.

26 I'm going to -- I touched briefly on the concept of a rigid body on

1 Slide 26, because the Board had a slight hangup with this issue in the related
2 IPR institution decision, where the Board preliminarily said that it was not
3 sure if the constant radius was required because the definition from physics
4 requires a rigid body.

5 And so the - and in the briefing, Petitioner suggested that the
6 mouthpiece is not a rigid body. It is a rigid body, and there's no contrary
7 evidence in the record. So, as shown on Slide 26, the spec says that the
8 mouthpiece will maintain its shape. And if it's deformed, such as when the
9 user bites on it, it will return to its original shape.

10 Dr. Vallee, their declarant, said the purpose of using resilient
11 materials is to ensure the mouthpiece does not permanently deform. And as
12 our declarant explained, Mr. Jobin, at the bottom of Slide 26, the mouthpiece
13 is a rigid body because of that. And so, you know, Petitioner has tried to
14 raise this theoretical possibility that a user might somehow manipulate the
15 mouthpiece to cause it to deform and temporarily be non-rigid.

16 You know, it's pure attorney argument. There's - we cite case law
17 saying, you know, just like you can't show infringement by modifying an
18 accused device, you can't establish invalidity by, you know, modifying a
19 prior art reference. So, we think that the rigid body argument is really, it's a
20 red herring and it's irrelevant. And the only evidence in the record, which is
21 shown here on Slide 26, confirms that the rigid body assumption applies to
22 the '255 Patent and its mouthpiece.

23 In fact, the fact that the spec repeatedly talks about rotational
24 motion which requires a rigid body, that confirms that, you know, that the
25 inventors themselves viewed the mouthpiece as a rigid body because
26 otherwise, they wouldn't call it rotational. And in fact, that rigid body is

1 actually the problem, fundamental problem in Nakajima. Because the
2 mouthpiece moves freely about that second axis and is not rigidly attached
3 to the lid, that prevents it from rotating about the first axis.

4 JUDGE HORNER: What about Petitioner's position that at least in
5 that initial small movement, when the lid is first opening, that second pivot
6 axis is constrained so that it would potentially pivot?

7 MR. MUDD: Yes. I'm glad you asked that, Your Honor. I had
8 that in my notes. And my colleague and I were looking at each other
9 because we were somewhat surprised because this is brand new. We've not
10 seen this anywhere in the record previously. So I would contend that if you
11 inspect the record, there's zero support for this theory. There is - that there's
12 no support in the petition. There's no support in Nakajima. There's no
13 support in their expert's declaration or deposition testimony.

14 This - their - this notion that somehow during the, what they call
15 the early opening period, that the mouthpiece somehow maintains a fixed
16 relationship to the lid, there's no support for that anywhere in the record.
17 And it's brand new and should be disregarded.

18 But even if you consider it, I mean, if you look at - you look at
19 Nakajima, so I'm on Slide 35, when it's in the closed position and it starts to
20 open, I don't know where, you know - how they're viewing that Figure to
21 suggest that somehow during early opening, it's maintained in a fixed
22 relationship to the lid component such that the mouthpiece somehow rotates
23 about hinge shaft 19.

24 I mean, there - there's no description that - it maintains that fixed
25 relationship in Nakajima. They didn't argue it in the petition. They didn't
26 argue it in their reply. Their expert didn't opine that, so I think that that

1 argument can be safely disregarded.

2 And they made a kind of related point that they concede that this
3 local joint, which is the second axis, does have a "more dominant presence
4 later in the opening process." So it seems like they're kind of conceding
5 that, you know, when you - when it gets further in the opening process, now
6 it's rotating freely about the second axis. And that second axis takes over,
7 becomes more dominant, such that, you know, you're no longer rotating
8 about the hinge shafts 19.

9 And I mean Patent Owner's position from - as we've stated in all
10 the briefing. Is that that's always the case. That second axis is always
11 having an influence from the very beginning of the opening process, and
12 there's no evidence in the record to the contrary.

13 So I -

14 JUDGE DEFRANCO: So you're saying their expert never testified
15 as to that argument that they made earlier -

16 MR. MUDD: That's correct. In fact -

17 JUDGE DEFRANCO: - as far as it - as far as there being pivotal
18 movement, you know, just from the opening, right from the start?

19 MR. MUDD: Yeah. So -

20 JUDGE DEFRANCO: Is it Page 36?

21 MR. MUDD: Page 36 of the petition, they assert that the pivotal
22 movement occurs the entire time, from opening - from the closed position,
23 all the way to the open position. So they never distinguished this early -
24 supposed early opening period, which is undefined. I don't know how long,
25 temporally or distance wise, this early opening period is. Is it the first
26 millimeter, the first, you know, centimeter?

1 I - we don't know, because it's just non-existent in the record, and
2 it's unsupported bare attorney argument, which we submit cannot refute the
3 evidence and expert testimony that Patent Owner has submitted.

4 So turning to Slide 32, it's important to note that Nakajima, it calls
5 its mouthpiece mouthpiece 2, and it actually includes the arms 23 and
6 protrusions 24 as being the mouthpiece 2. But importantly, Petitioner does
7 not identify that entire mouthpiece 2 as being the claimed mouthpiece. They
8 only highlight green the part of the mouthpiece 2 they contend is the claim
9 mouthpiece. And that's important because when we go to Slide 33, we see
10 that they also identified the hinge shafts 19 as Your Honors know as being
11 the claimed axis.

12 But importantly, in - as shown in Slide 34, the mouthpiece only
13 ever rotates about the protrusions 24, not about the hinge shafts 19. So the
14 protrusions 24, while they might potentially - the center of those might
15 potentially be rotating about the first axis, those are not part of what the
16 Petitioner has identified as the claim mouthpiece.

17 Those - the protrusion is 24 and colored pink. And the - what
18 they contend is the mouthpiece is colored green, and that's consistent across
19 all of their Papers. And as we discussed previously, that there is nothing in
20 Nakajima that ever holds the green mouthpiece in place relative to lid 4.

21 Our expert offered opinion on this. Their expert did not refute it,
22 and that that's part of the reason why they should not be allowed to resort to
23 this brand new bare attorney argument to try to refute what our expert said,
24 when he testified that there's nothing holding it in place relative to the lid,
25 such that it would somehow be rotating with the lid about that first axis
26 defined by the protrusions.

1 And so this isn't a situation where you have additional rotation in
2 addition to the rotation required by the Claims, as I think the institution
3 decision preliminarily had noted. Instead, this is a situation where the free
4 rotation about that second axis prevents there from ever being rotation of the
5 mouthpiece about that - about the hinge shafts 19, the first axis.

6 I'd like to turn to Slide 37, which I think is a helpful illustration. It
7 takes the closed position and open position of Nakajima and overlays them
8 on top of each other. And it shows the - a point X1, Y1, which is the
9 original position of the mouthpiece. And then it shows a point X2, Y2,
10 which is the second position of the mouthpiece when it's in the fully open
11 position.

12 And I like this demonstrative, because it shows that you are -
13 you're moving translationally, and importantly, it shows that you have
14 angular displacement, right? That little - that the angle - that the angle
15 relative to that point 19, it changes. But importantly, just angular
16 displacement is not the same thing as rotational motion, right? Any
17 movement at all relative to a fixed point will have an angle, angular
18 displacement, any movement.

19 And, you know, as Your Honor - I think Your Honor asked
20 Petitioner's Counsel, are you contending that any movement relative to a
21 point is pivotal about an axis? And it was a good question to ask because it
22 - it's not. Simply translating from one point to another, and having an
23 angular displacement relative to a fixed point, that's not rotational motion.
24 And basic physics tells us that, as our expert explained and cited to physics
25 text to support that point. So the simple fact that, you know, it moves
26 through an angle, doesn't show rotational motion, as required by the Claims.

1 Turning to Slide 38, and this is a point I was noting earlier, and
2 that is that perhaps you could see the protrusions 24 maintain a constant
3 distance from the hinge shafts 19. But importantly, those aren't part of the
4 claimed mouthpiece. They're part of the pivotal mount, right? And so the
5 rotation of those protrusions 24 is irrelevant to whether there's rotation of the
6 mouthpiece.

7 I'd like to briefly address the sun, Earth, and moon analogy. So
8 this analogy actually originally came up during my deposition of their
9 declarant, Dr. Vallee, where he brought up this analogy. So we worked with
10 it. And the Board in a footnote, in its institution decision, in the related IPR
11 for the '250 patent, which Petitioner's Counsel showed, raised this analogy.

12 And the Board posed this question of whether the moon pivots
13 with the Earth relative to the sun. And assuming these orbits are circular
14 rather than elliptical, which was an assumption their expert said we had to
15 make, because orbit - the orbits are actually elliptical. But if we assume
16 they're circular, the moon arguably does maintain a constant radius from the
17 Earth, right, when it rotates about the Earth. And therefore, so the moon can
18 be said to rotate about the Earth.

19 Likewise, the Earth arguably maintains a constant radius with
20 regard to the sun. So you can say the Earth rotates about the sun. But
21 critically, as Slide 39 shows, the moon never maintains a constant radius
22 from the sun. And that's shown by the varying lengths of the red dash line
23 on Slide 39. So the moon's rotation about the Earth causes the moon to
24 never rotate about the sun.

25 The same holds true in Nakajima, where the rotation of the green
26 mouthpiece about the second axis causes the green mouthpiece to never

1 rotate about the first axis. And thus it does not satisfy the pivotal about an
2 axis limitation of the Claims. And this analogy is discussed at length in
3 Footnote 1 - a rather lengthy Footnote 1, on Page 64 of our Patent Owner
4 Response. And we cite to Dr. Vallee's testimony there, and we also cite to
5 our expert's responsive opinion explaining what I just laid out there with
6 regard to Slide 39.

7 I'll just touch very briefly on the next issue of Nakajima. And that
8 is that the mouthpiece fails to exhibit pivotal movement with the pivotal
9 mount. And this really just hinges on the plain meaning of "with." Is it -
10 does "with" mean together? Meaning, rotation with, in the same direction,
11 together? Or does "with" mean away from, opposite? Does it make any
12 sense to say rotating in an opposite direction is rotating with the pivotal
13 mount? And -

14 JUDGE DEFRANCO: What about with - Counsel, what about
15 "with" meaning at the same time?

16 MR. MUDD: Well, so the intrinsic evidence - everything in the
17 intrinsic evidence, all the Figures, the written description, they all depict
18 moving in the same direction. And so to suggest that "with" just means at
19 the same time would be contrary to the entirety of the intrinsic record.
20 There's no - nothing depicted anywhere or described anywhere of the two
21 components moving opposite from each other. In fact, they're claimed as
22 being coupled to each other.

23 And so it kind of - it - it's not described in the patent and it, kind
24 of - I - I'm not aware of - being attached. How do they rotate in opposite
25 directions? Maybe there's some mechanical linkage that could accomplish
26 that, but I'm not aware of one. There's no evidence in the record of one. So

1 the most reasonable construction of "with" here is that it means in the same
2 direction. And that's what's consistent with the intrinsic evidence. And I
3 don't think Petitioner disputes that if "with" means in the same direction that
4 Nakajima does not satisfy that. Because the mouthpiece is moving
5 counterclockwise, while the pivotal mount rotates clockwise.

6 And if there's no questions on Nakajima, I'll use my remaining
7 time for the - my opening argument on Ribarits. Okay, thank you. Turning
8 to Slide 43, and this is issue number 4, "Ribarits fails to disclose a resilient
9 mouthpiece that is adapted to resiliently compress, responsive to
10 compressive forces applied to the resilient mouthpiece by a user's teeth."

11 Now, we've proposed a construction of this that we think is helpful
12 to resolving this issue. That the term "adapted to," as the case law holds, it
13 normally means specifically configured or designed to perform that function
14 rather than being merely hypothetically capable of performing that function.
15 So we think that claim construction is appropriate and would help the Board
16 resolve this dispute. And there's ample evidence in the intrinsic record that
17 supports that. Because in the intrinsic record, all the Figures show a
18 mouthpiece that is exposed and is described as being exposed in the spec.
19 Such that a user can bite down on it to compress it.

20 That's not possible in Ribarits, as Your Honor has noted during
21 your questioning of Petitioner's Counsel. There's a rigid Drinking Spout 3
22 that surrounds that, the alleged mouthpiece, highlighted in green. And as
23 shown on Slide 44, the Board found in its institution decision, agreed that
24 this limitation - preliminarily agreed that this limitation, Petitioner doesn't
25 adequately explain how it's met, considering that Ribarits's mouthpiece is
26 surrounded by the pivotal mount.

1 JUDGE HORNER: Mr. Mudd.

2 MR. MUDD: Yes.

3 JUDGE HORNER: I understand Petitioner's argument to be
4 something along the lines of the Claim says, "adapted to resiliently
5 compress." Not adapted to be resiliently compressed. And that could be a
6 distinction that makes a difference. Because their position is "adapted to
7 resiliently compress" just means it has to be a material that's capable of
8 resiliently compressing. As opposed to adapted to be resiliently compressed
9 responsive to compressive forces would mean that it's mounted in the spout
10 in a way that allows the user to compress it. How do you respond to that?

11 MR. MUDD: Yes, Your Honor. So the position they took in the
12 petition, and continuing to take as kind of their lead position in reply, is that
13 because it's a resilient material made of rubber or latex, that is - you know,
14 that's - that material is inherently compressible. And somebody could bite it
15 and compress it.

16 And I suppose the Claim could have said, you know, merely a, you
17 know, resilient mouthpiece comprised of, you know, compressible material
18 or comprised of material that can be compressed by user's teeth. But it
19 doesn't. It actually recites a lengthy function. And I don't think that we -
20 we're not trying to insert the word adapted to be resiliently compressed.
21 And, you know, I don't - that probably would not be a typical way to recite
22 the claim language. Because you know, you usually wouldn't recite it, like,
23 in a past tense in that manner.

24 But importantly, the term "adapted to," it - it's a loaded phrase in
25 the case law, right? That the case law says, unless there's evidence to the
26 contrary in the intrinsic record, "adapted to" means specifically designed or

1 configured to perform the function. It can mean hypothetical capability in
2 the right case if the intrinsic evidence demonstrates that. But there's no
3 intrinsic evidence here and none that Petitioner cites to suggest that simply
4 being made of a compressible material is enough to satisfy this claim
5 language. Because in all the Figures and all the description, it's - it is - the
6 mouthpiece is exposed to the user's bite.

7 And I can - I jumped past that Slide earlier. I'll go to it really
8 quick. So this is on Slide - oh, too far. Here it is. So I'm on Slide 29. This
9 is the case law we cited in our briefing about the meaning of "adapted to."
10 That it's designed or configured to, you know, absent some, you know,
11 intrinsic evidence to the contrary. And then on Slide 30, right, we have the
12 - from the specification and we have from the Figures, everything showing a
13 mouthpiece, shown in blue here, that is - that's open and exposed to the
14 user's bite. And so there - there's nothing suggesting that simply using a
15 material that's capable of being compressed by a bite is itself enough to
16 satisfy this claim language.

17 And then I - I'd like to address, so the - we saw a new argument in
18 the Petitioner's reply. And they repeated it again here today. So we argued
19 in our surreply it should be disregarded, but even if the Board entertains it.
20 And that is that a user could position their teeth against the exposed portion
21 of the tubular element. And they mark it with - there - there's a black circle
22 that they identified. They said it's the area marked by the black circle. That
23 somehow a user could place their teeth against the front part of the
24 mouthpiece.

25 I just thought of this. I call this the chipmunk theory. Where you
26 can imagine someone taking their front teeth and trying to put them on the

1 front of that green mouthpiece. And it - it's a brand new argument. There's
2 no support in the record for it. There's no disclosure in Ribarits saying that a
3 user would be able to apply sufficient force in this awkward position to do
4 that. Their expert never testified this would be possible. It's bare attorney
5 argument in - and not terribly persuasive if you ask me.

6 The last issue is whether Ribarits disclosed the mouthpiece
7 removably coupled to a pivotal mount. This issue comes from the fact that
8 the tube in Ribarits simply is inserted. It slides in and out of the cap in
9 Ribarits. And the way it's held in place is through these sealing rings, 10,
10 which is highlighted here in red. And when you - on Figure 3, shown here
11 on the right, when the user screws the cap on, it squeezes or tightens as the
12 Claim says. It tightens that ceiling ring between the cap and the neck of the
13 bottle. And that is what holds the tube in place. There is no connection
14 between the green tip mouthpiece and the edge of the pink pivotal mount,
15 such that those two are coupled to each other or connected. The spec tells us
16 it means connected. That's the top left of Slide 47. There's nothing
17 establishing they're connected.

18 So we argued that in our Patent Owner Response. And then - oh,
19 this is also consistent with the reexamination where they - CamelBak
20 argued that the straw on McDonough simply passes through but is not
21 coupled to the positioning mechanism. It's the same issue with Ribarits. It
22 simply passes through without being connected.

23 And so this goes to the objection we raised at the beginning to their
24 Slide number 44. And that is where they - in response, they pivoted to a
25 new theory. And they said, oh, if you look at Claim 7 of Ribarits, it refers to
26 a snapping that occurs. And so it's a new argument that should be

1 disregarded as we made in our briefing. But again, if the Board entertains it,
2 we don't know what this snapping means. There's no other evidence in
3 Ribarits of what it means by snapping. Does it mean a friction fit or snap fit
4 arrangement? We don't know. Their expert didn't testify to it because again,
5 it wasn't in their original petition or expert declaration. So I'd submit to
6 Your Honors that the snapping argument should - not only should it be
7 disregarded, but it - it's also not persuasive. Thank you, Your Honors.

8 JUDGE HORNER: You've got eight minutes left.

9 MR. MUDD: Okay. Thank you.

10 MR. PETERSON: So it looks like eight minutes as well.

11 JUDGE HORNER: Yes.

12 MR. PETERSON: All right. I wanted to first touch on the remark
13 about the stowed position to early opening as being a new argument. So this
14 - the statement echoes, what was in the Board's institution decision right
15 here, on - shown on Slide 8. Nakajima's mouthpiece would appear to move
16 based on clockwise rotation about the hinge shaft. Patent Owner appears to
17 be correct, that at some point in the opening process, Nakajima's mouthpiece
18 additionally moves based on other rotation. But we do not preliminary
19 determine that such additional rotation is foreclosed.

20 I think the description I gave was an attempt to highlight the
21 illustrated portion that most clearly shows the rotation. But because
22 Nakajima is a more complicated movement and has that other motion around
23 the axis, the rotation is clearest during a portion of the process, much like
24 Patent Owner makes the point that during another portion of the process,
25 there might be rotation in another direction.

26 All right. And with respect to evidence about pivot, I think when

1 the Board looks closely at the evidence with respect to pivot, and the
2 dictionary definitions, and things, the Board will see quite a few definitions.
3 And I think really, what CamelBak relied on were selective choices of what
4 was this definition, but there was five definitions in each of these
5 dictionaries. And I think when taken as a whole, there's a lot of - a lot of
6 dictionary definitions around what the terms mean. And to pull from that,
7 the idea of constant radius is too far for the claim language.

8 And then there was some arguments about a new argument with
9 respect to Ribarits. And I think what - what's maybe consistent throughout
10 this proceeding, some of the arguments we made - so for example, the
11 arguments with respect to Ribarits and teeth contact are responsive to
12 CamelBak's claim constructions. So having applied a different
13 understanding of the Claims in the petition, we had one analysis of the
14 reference. And we're not mapping new structures within the prior, we're not
15 mapping new theories for the cases. We're pointing to the exact same
16 structures and explaining how even under CamelBak's narrower
17 interpretations, that these references still apply and meet the limitations of
18 the Claims.

19 And unless the Board has any further questions, I'll stop there.

20 JUDGE DEFRANCO: Actually, I do, Mr. Peterson. Just looking
21 at this Slide 7, what's your response to Patent Owner's argument that - you
22 see the dispensing position on the right side of the diagram?

23 MR. PETERSON: Yes.

24 JUDGE DEFRANCO: Patent Owner is saying that the only thing
25 that rotates within that arc - would be the pivotal mount, not necessarily the
26 mouthpiece. So you know, your argument was, okay, at the very beginning

1 of the dispensing when it's in the stowed position, that that mouthpiece
2 rotates with the lid about that axis.

3 But what's your response to Patent Owner's saying, no, the only
4 thing that rotates is the pivotal mount itself, not the mouthpiece? You're
5 saying the mouthpiece just goes up and down and the pivotal mount is what
6 rotates, and that's not what the Claim calls for.

7 MR. PETERSON: Yeah. So turning back one slide to see the - a
8 more exhaustive Figure component, showing here - illustration. The pivotal
9 mount includes the two pink components. And that second -

10 JUDGE DEFRANCO: Right.

11 MR. PETERSON: - pink component that holds the mouthpiece is
12 very much attached to, coupled with, and forced to move with the lid portion
13 of the pivotal mount as a result of the projections, 24, that go into those
14 holes, 22, of the pivotal mount. And it's that connection that forces this
15 movement together.

16 So under the idea that it's the axis that governs motion of the
17 mouthpiece and the pivotal mount, it's that connection through the pivotal
18 mount's lids, through the projections, 24, into the holes, 22, and into the
19 portion of the pivotal mount that holds the mouthpiece that keeps everything
20 together, and causes the same pivot axis to govern motion of that
21 mouthpiece throughout the entire motion. And it's most clearly shown
22 during that early opening, but there's still that influence of the axis
23 throughout the motion. And -

24 JUDGE DEFRANCO: Let me ask, what - does your expert testify
25 as to the - what happens in the early dispensing position?

26 MR. PETERSON: I don't recollect our expert discussing early

1 opening in detail. I think the -

2 JUDGE DEFRANCO: Of that -

3 MR. PETERSON: - the discussion he had, and for example, had
4 had with CamelBak's Counsel during his deposition was around Nakajima
5 demonstrating a compound motion - a more complex motion, where there
6 are different components besides just a pure rotation. There's other
7 components as a result of this other axis created by the projections, 22 - or
8 sorry, the projections, 24, and then those holes, 22. And it's that more
9 complex motion -

10 JUDGE DEFRANCO: And there's not - and there's nothing in
11 Nakajima that talks about movement in that early dispensing position?

12 MR. PETERSON: Yeah. That - my recollection is - it's mostly
13 with respect to these Figures here. And unfortunately, for the detailed
14 understanding of the entire flow of the movement here, what's simply
15 illustrated in Figures 2 and 3 is the fully-closed, stowed position and then the
16 fully-open, dispensing position. But it's the -

17 JUDGE DEFRANCO: It doesn't talk about what happens in
18 between those two positions?

19 MR. PETERSON: It discusses - how would I say? So the - it
20 discusses the opening process and how you would transition between
21 Figures 2 and 3. But it's not providing a level of precision around precisely
22 where the mouthpiece is going to be at various points between the stowed
23 and dispensing positions shown in 2 and 3.

24 But I think what's important here is the cavity in Nakajima is
25 defined. And that cavity is going to constrain the movement we would
26 expect. And given the coupling of that pivotal mount and it's two different

1 components, it's going to be a dominant governing force in the motion of the
2 mouthpiece, which is itself inserted into that second end portion of the
3 pivotal mount.

4 JUDGE DEFRANCO: And that's based on your interpretation of
5 that Figure? Your expert didn't make that interpretation?

6 MR. PETERSON: I - our expert in his declaration explained how
7 this transition from the stowed to dispensing position is pivoting about the
8 axis shown here. I think his - I - the - for example, when I talk in the
9 terminology of Slide 8, for example, that was adopting some of the
10 terminology that the Board had previously used to describe this. But the
11 way in which our expert articulates the mapping of these limitations is
12 consistent with what I'm saying, but is with some different terminology. But
13 it is explained in his declaration how this is pivoting about the axis and how
14 it is pivotal movement.

15 JUDGE HORNER: Anything further, Judge DeFranco?

16 JUDGE DEFRANCO: No.

17 JUDGE HORNER: Okay.

18 JUDGE DEFRANCO: Thank you.

19 JUDGE JUNG: No, thanks.

20 JUDGE HORNER: All right. Thank you.

21 MR. MUDD: Okay. So I would like to first address this early
22 opening theory, which it - again, it's the first time we've heard it in this
23 proceeding. And I have here, Petitioner Slide number 8, which he cited to as
24 being support for this theory existing previously in the case. And I believe
25 he - he's relying on - Petitioner is relying on the second sentence of Judge
26 Engle's institution decision, where it states, "Patent Owner appears correct

1 that at some point in the opening or closing process, Nakajima's mouthpiece
2 additionally moves based on rotation about Protrusions 25." So that
3 sentence is talking about rotating about the second axis. There is nothing in
4 that sentence suggesting that there is some early opening process during
5 which the mouthpiece maintains a fixed relationship to the lid, such that it
6 rotates about the hinge shafts 19, with the lid as the lid opens.

7 There was no preliminary finding from the Board in that regard.
8 And it's telling to me that the only support that Petitioner's Counsel could
9 come up with for the suggestion that this early opening theory had been
10 presented previously was, you know, a statement that doesn't say what I
11 think they hope it says in the institution decision. And had they thought it
12 said that and that, you know, there was some kind of early opening theory.
13 You would've thought that they would've raised it in the briefing previously,
14 but they failed to do so. So the - again, there - there's no -

15 JUDGE DEFRANCO: Actually, Mr. Mudd - Mr. Mudd, let me
16 interrupt -

17 MR. MUDD: Yes.

18 JUDGE DEFRANCO: - for a second. Just giving Petitioner the
19 benefit of the doubt here, I think they make some semblance of that
20 argument on Page 27 of the petition. And I think it goes to their Slide 7 -
21 Petitioner's Slide 7 that they raised at the - that they put out at the very end
22 of their rebuttal.

23 And I think they're referring to the fact that there's this dashed line
24 on the left side. I mean, I'm sorry, on the right side where it says Dispensing
25 Position. I think they're saying that, okay, that's the rotation by the
26 mouthpiece following that arc. That there is some sort of early pivoting.

1 Now, they cite to Exhibit 1003, Paragraph 84 of the Expert
2 Declaration. Whether or not it supports that early rotation of the early
3 pivoting of the mountain piece, that's another question for us to decide. But
4 if you have a position or some comment on that, we - we'd appreciate it.

5 MR. MUDD: Yes, Your Honor. So starting with Slide 7, that red
6 dash line has always befuddled us in this case, because the mouthpiece does
7 not follow that red dash line. The pink part - the pink part of the pivotal
8 mount, which is pink, that's what follows that red dash line. And
9 specifically, it - it's the lid - the piece of the lid, and it's the protrusions 24.
10 Which, again, it's part of mouthpiece 2 in Nakajima, but it's not what they
11 can - they say is the claimed mouthpiece. They color them pink. The
12 protrusions 24 are part of the pivotal mount.

13 So that red dash line is simply showing rotation of the pivotal
14 mount about the first axis. It is not showing rotation of the mouthpiece at
15 any point, whether early or late. And so, again, there's no support for this
16 early opening theory. So a - on -

17 JUDGE DEFRANCO: If it is - let me ask: Is that arc of rotation,
18 is it referring to the arc of rotation for that second axis?

19 MR. MUDD: I mean, I believe that's what it - so Petitioner
20 intended to try to show, you know, rotation of the mouthpiece. But our
21 contention is that it shows rotation of the pivotal mount, the pink part.

22 JUDGE DEFRANCO: Okay.

23 MR. MUDD: Yes. So turn in - on Page 36 of their petition, they
24 state, "As discussed above, Nakajima's mouthpiece pivots between a stowed
25 position and a dispensing position." So that - that's the sentence they gave
26 us, right? That it pivots between the stowed position and the dispensing

1 position. That's the entire - it's saying - they're saying it pivots the entire
2 time. They never said that it pivots at some early point.

3 And they cite to Paragraph 107 of their expert declaration, which is
4 Exhibit 1003. And that's - that - as support for this, and their expert says,
5 "The mouthpiece of Nakajima is mounted to the pivotal mount, i.e., lid 4,
6 such that it moves up and down in conjunction with the opening and closing
7 of the lid." That's all their expert gave us. It moves up and down in
8 conjunction with the opening and closing of the lid. There - there's nothing
9 about it rotating about the first axis or maintaining a constant radius to the
10 first axis at any point, whether early or late.

11 And this suggestion that there's some early point in time? I mean,
12 we could get on a microscope and try and zoom in on that Figure to try and
13 discern whether, you know, there is, you know, the shape of that wall, 11, in
14 the Figure somehow creates a fixed position. I mean, it - it's - it - it's crazy
15 to suggest that we would have to do that. You know, there - there's - there
16 - because there's simply no support anywhere in the record, you know, in the
17 reference itself, in anything they've argued, in the Papers, or in anything that
18 their expert has said.

19 So to answer to the question that Your Honor asked of Petitioner's
20 Counsel, did their expert ever testify that there was rotation during the early
21 opening process?

22 The answer is no. He did not.

23 And even now, I don't know what they mean by early opening.
24 What is - what's the definition of that term? Where does that come from?
25 It's frankly, you know, made up, pure attorney argument that's unsupported
26 in the record.

1 So unless Your Honors have any additional questions, I don't think
2 I have anything more.

3 JUDGE JUNG: No questions.

4 JUDGE HORNER: Judge DeFranco?

5 JUDGE DEFRANCO: I do not, no.

6 JUDGE HORNER: Okay.

7 MR. MUDD: Thank you, Your Honors.

8 JUDGE HORNER: Thank you.

9 JUDGE DEFRANCO: Thank you.

10 JUDGE HORNER: All right. So thank you both for appearing
11 today and answering all our questions. We had a lot of questions. You held
12 up well. We will take this case under advisement. We will issue our
13 decision in due course.

14 Before we adjourn, let's just go off the record for one minute and I
15 want to check with the court reporter to see if you need any spellings or any
16 clarification on anything.

17 (Whereupon, the above-entitled matter went off the record at 3:09
18 p.m. and resumed at 3:10 p.m.)

19 JUDGE HORNER: So like I said, we'll take this case under
20 advisement and we are adjourned.

21 MR. MUDD: Thank you.

22 (Whereupon, the above-entitled matter went off the record at 3:10
23 p.m.)

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PETITIONER:

Ali S. Razai
Dion M. Bregman
Alexander B. Stein
Jacob L. Peterson
MORGAN, LEWIS & BOCKIUS LLP
ali.razai@morganlewis.com
dion.bregman@morganlewis.com
alexander.stein@morganlewis.com
jacob.peterson@morganlewis.com
MLB-Trove-IPR-255@morganlewis.com

PATENT OWNER:

Ryan J. Schletzbaum
Jason R. Mudd
SHOOK HARDY & BACON LLP
rschletzbaum@shb.com
jmudd@shb.com