

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

R.J. REYNOLDS VAPOR COMPANY,

Petitioner,

vs.

HEALTHIER CHOICES MANAGEMENT
CORP.,

Patent Owner.

Via Videoconference
San Francisco, California
Friday, May 30, 2025
11:30 a.m. to 12:37 p.m.

DEPOSITION OF KELLY R. KODAMA

Taken before Marlene Gutierrez, Notary
Public, State of Florida at Large, pursuant to Notice of
Taking Deposition filed in the above cause.

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APPEARANCES:

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On behalf of the Petitioner.

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I N D E X

Witness

KELLY R. KODAMA

Direct Examination By Mr. Lottenberg 4

PATENT OWNER'S EXHIBITS

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1 Thereupon --

2 KELLY R. KODAMA

3 was called as a witness by the Patent Owner and, having
4 been first duly sworn, and responding, "I do," was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. LOTTENBERG:

8 Q Good morning, sir. Please state your full name
9 for the record.

10 A Kelly Kodama.

11 Q Thank you, Kelly.

12 My name is Jeff Lottenberg, I am here on behalf
13 of Healthier Choices in the U.S. PTO patent trial and
14 appeal board matter.

15 And you rendered an expert declaration in this
16 matter; is that right?

17 A Yes.

18 Q And how many times have you been deposed before?

19 A I believe six.

20 Q Okay. And were all of those in connection with
21 expert testimony?

22 A Yes.

23 Q And were all of those patent cases?

24 A Yes.

25 Q Okay. So you sort of know the deal with these,

1 but I'll lay out a couple of ground rules because, you
2 know, we're doing this remotely.

3 Have you done Zoom depositions before as well?

4 A Entirely Zoom depositions, yes.

5 Q Okay. So what I would typically ask is that you
6 don't have phones or other devices other than the Zoom
7 screen open, and that you don't have any other computer
8 windows open. What I'll do is I'll share some of the
9 exhibits. I don't know if you have paper copies of
10 your declaration or any of the exhibits available to
11 you that might be helpful. But what I'll do is when I
12 screen share, I will try to give you an opportunity to
13 read the documents. I will scroll through them.
14 That's the only awkward aspect of it. If I need to
15 send you a document, you know, maybe I can figure out a
16 way to do that, if it's more helpful, if we think
17 that's necessary. But if you have any issues with
18 reviewing the document, just let me know.

19 A Okay. I do have printed copies of my
20 declaration and some of the exhibits.

21 Q Some of the exhibits. Okay, great.

22 And, of course, don't guess at any answers. If
23 the question is unclear, please let me know and, you
24 know, please leave some time for the transcript
25 purposes between when I finish the question and when

1 you give an answer. Try not to anticipate what my
2 question might be or what it might end, and I'll try
3 not to cut you off as well. So does that all sound
4 good?

5 A Sounds good.

6 Q Okay. So what did you do to prepare for the
7 deposition today?

8 A So I reviewed my declaration. I reviewed the
9 patent in suit. I reviewed the prior art references.
10 I reviewed the patent history. And I also reviewed the
11 IPR board decision.

12 Q The IPR board decision being the decision to
13 institute proceedings?

14 A I am not sure. Let me see what it says. Yes,
15 granting institution of inter-parties review.

16 Q And which prior art specifically did you review?

17 A The four patents that I use as prior art
18 references.

19 Q Okay. Great. I am going to mark as Exhibit
20 A -- let's see if I can do this.

21 (Patent Owner's Exhibit A was marked for
22 identification.)

23 MR. LOTTENBERG: Can everyone see the Adobe
24 screen here?

25 THE WITNESS: Yes.

1 BY MR. LOTTENBERG:

2 Q Great. And what we'll do is following the
3 deposition, we'll send the exhibits to the court
4 reporter and get those part of the record for
5 everyone's reference.

6 So, Mr. Kodama, I am going to mark as Exhibit A,
7 this is the résumé which I believe was marked as -- I
8 think it was -- let me just check. This was marked as
9 Exhibit 1008 to R.J. Reynolds' petition.

10 Do you recognize this document?

11 A Yes.

12 Q Okay. And I would note here under key
13 accomplishments it references that you were a design,
14 branding and UX consultant for client Cutera over
15 24 years.

16 Is that Cutera the esthetics and dermatology
17 company?

18 A That's correct.

19 Q And the second bullet point, it says that you
20 were design and branding consultant for Digilock for
21 over 14 years. And so it's pretty clear from here, it
22 wasn't as clear for Cutera, that that is an electronic
23 lock and locker security firm?

24 A Correct.

25 Q And you were the director of -- the third bullet

1 point down, you were the director of product design at
2 Ploom. It says, "Managed and expanded engineering and
3 design team from 5 to 16 employees to develop
4 break-through products critical to the future of the
5 company." Ploom is the smoke, I'll call it the smoking
6 implement company, because I know they do a variety of
7 things, but also e-cigarettes?

8 A Correct.

9 Q And you're currently employed by and the CEO and
10 founder of Zoe Design?

11 A Correct.

12 Q And what are you primarily working on? What is
13 your primary nature of your work with Zoe Design right
14 now?

15 A So we're an industrial design and mechanical
16 engineering consulting firm. So we work on various
17 products, physical products in medical and in the
18 industrial and consumer space.

19 Q Currently working on any products in the
20 e-cigarette industry?

21 A No, not right now.

22 Q And you reference down here that you have some
23 utility patents. I suppose that these are utility
24 patents where you are a named inventor?

25 A That's correct.

1 Q And it says, portable electronic device, antenna
2 for miniature wireless device, character recognition
3 system. Are any of those three e-cigarette or
4 smoking-implement related?

5 A No.

6 Q Then I see a list of design patents here also at
7 the bottom. Are any of those e-cigarette or smoking-
8 implement related?

9 A No.

10 Q So as part of your declaration, you had
11 referenced a list of matters on which you consulted. I
12 believe that that document was served by counsel
13 pursuant to the supplementation. So I am going to mark
14 what we received from counsel, it wasn't necessarily
15 filed with the board, as list of matters.

16 I am going to mark this as Exhibit B.

17 (Patent Owner's Exhibit B was marked for
18 identification.)

19 BY MR. LOTTENBERG:

20 Q Do you recognize this document?

21 A Yes.

22 Q And can you explain to me what this is?

23 A Yes. It's a list of all of the cases I've
24 served as an expert witness.

25 Q And all of these matters related to the

1 e-cigarette industry?

2 A No. I believe one, the Noble. Scroll down.
3 Colgate Palmolive, that was a toothbrush-related
4 product.

5 And the Puff Corp. versus SH0, which is right
6 above that, it was a vaporizer, it wasn't an
7 e-cigarette product.

8 Q What kind of vaporizer was that product?

9 A Larger vaporizers for cannabis primarily and
10 cannabis oil.

11 Q So not e-cigarette in the sense of a product
12 intended to replace or simulate cigarette smoking?

13 A Right, not nicotine related, correct.

14 And below that, that's also cannabis oil, not a
15 tobacco or nicotine-related product.

16 Q And at the bottom here it references the R.J.
17 Reynolds versus Healthier Choices, and this is the
18 present case as far as I can tell, right?

19 A Correct.

20 Q And there are one, two, three, four cases here.
21 I guess the first four, let me just zoom out, maybe
22 it's a little bit easier for you to see them all at
23 once, that references R.J. Reynolds.

24 A Correct.

25 Q And you were the expert on behalf of R.J. in all

1 of these matters?

2 A Yes.

3 Q And in this Shenzhen Smoore Technology versus
4 Certain Oil Vaping Cartridges. You represented Smoore?

5 A Yes. Sorry, that also was not a nicotine
6 product. That was an oil-based product.

7 Q Okay. And have you provided expert testimony in
8 any other, let's call them, patent or technology cases
9 that did not involve e-cigarette vaping oil or any
10 smoking implement-related technology?

11 A Just the Noble. Colgate versus Noble case
12 that's listed down, if you scroll down.

13 Q So just the toothbrush case?

14 A Correct, yes.

15 Q And you rendered written expert opinions in each
16 of these cases on this list of matters?

17 A Yes. Wherever I put the actual report or expert
18 declaration, that's where I rendered a written report.

19 Q And are you aware that your testimony was
20 limited in one of these cases, limited by the court?

21 A I'm sorry, I'm not sure what "limited" means.

22 Q So let me ask it this way. Are you aware
23 whether your expert testimony has either been excluded
24 or limited by the court in any particular proceeding?

25 A No.

1 Q I am going to go ahead and mark as Exhibit C,
2 this is R.J. Reynolds petition for inter-parties review
3 of U.S. Patent 953788.

4 Mr. Kodama, are you familiar with this document?
5 And I'll pause it to you, this is the as-filed version
6 of the petition.

7 Are you familiar with this document?

8 A I am familiar with most of the parts of this
9 document, yeah.

10 Is this my declaration?

11 Q This is the petition. This is the actual
12 opening petition filed by R.J. Reynolds.

13 A Oh. I see. I am not sure if I reviewed that or
14 not.

15 (Patent Owner's Exhibit C was marked for
16 identification.)

17 BY MR. LOTTENBERG:

18 Q Okay. I'll come back to C.

19 I am going to mark as exhibit -- I believe we're
20 on D.

21 (Patent Owner's Exhibit D was marked for
22 identification.)

23 BY MR. LOTTENBERG:

24 Q This is Exhibit 1025 to the petition. I am
25 going to mark this as Exhibit D.

1 Mr. Kodama, have you seen this document before?

2 A I don't believe I've seen this document.

3 Q Take a look at it. This was an exhibit filed
4 with the petition which sets forth the challenged
5 claims that the petitioner is presenting to the board.

6 Take a look at this, and once you've done so,
7 I'll ask you a couple of questions.

8 A Okay. I reviewed this page.

9 Q So would you agree that this chart identifies
10 the prior art on which your opinion or your expert
11 declaration is based?

12 A My declaration includes similar claims and
13 bases, yes.

14 Q I am going to mark as Exhibit E. This is your
15 declaration, so we'll mark as Exhibit E the declaration
16 of Kelly Kodama.

17 (Patent Owner's Exhibit E was marked for
18 identification.)

19 BY MR. LOTTENBERG:

20 Q Are you familiar with this document?

21 A Yes.

22 Q And this is your declaration that you said you
23 had a copy of in front of you?

24 A Yes.

25 Q Now at paragraph 4 on page 1, it says, "In

1 preparing this declaration, I considered the following
2 exhibit materials submitted with the IPR petition."

3 It references the 788 patent, the file history.
4 Then it discusses US patent 3200818 to Gilbert. Korean
5 patent number 10-2012-0080287 to Lee.

6 Next one down is US patent 9,943,103 to
7 Weigensberg.

8 Next one down is US patent pub number 2011/
9 0036346 to Cohen.

10 Then US patent pub number 2013/0298905211, do
11 you see those five references there?

12 A Yes.

13 Q And going back to Exhibit D, are those the same
14 five references that are mentioned on this chart?

15 A Gilbert, Cohen, Weigensberg and Lee and Levine,
16 yes.

17 Q There are some other references here on this
18 chart of materials you reviewed as well as in Section 4
19 of your declaration, which starts on page 10,
20 references including Robinson, Huxter, Bauer, Cox,
21 Hale, Whittemore, Thorens, Terry, Katase, Monsees,
22 Rabin, Olglesby. And so if you could just take a
23 moment to look at what I am showing you on the screen
24 here and then your discussion starting on page 10 under
25 the scope and content of the prior art. And you would

1 agree that -- you can answer after you review it -- but
2 you'd agree that your declaration includes a discussion
3 of these references that I just listed off?

4 A Yes, as background for the industry.

5 Q Okay. And you would agree that those references
6 do not form the basis of the invalidity or obviousness
7 discussion that follows in your report?

8 MR. LUCHESI: Object to the form.

9 THE WITNESS: Sorry.

10 MR. LUCHESI: Go ahead, Kelly. I was just
11 objecting to form.

12 You can answer.

13 THE WITNESS: The five previous patents that we
14 discussed, the Weigensberg, Cohen, Lee, Levine and
15 Gilbert are the ones that I used in my analysis.

16 BY MR. LOTTENBERG:

17 Q And looking at paragraphs 20 and 21 of your
18 declaration on page 10, you would agree that your
19 opinion is based on the understanding that the priority
20 date of the 788 patent is March 15, 2013?

21 A In paragraph 20 I say that, yes, the 788 patent
22 claims priority to provisional application on that
23 date.

24 Q And paragraph 27 or, excuse me, 21, you would
25 agree that your declaration is based on the assumption

1 that March 15, 2013 is the invention date for the 788
2 patent?

3 A Yes, that's what I write in paragraph 21.

4 Q And turning to -- I'll scroll down to paragraph
5 118, I apologize if this is blurry. So in paragraph
6 118, there are three links to articles wherein you
7 state -- well, let's read it. You say, "While a formal
8 study wasn't conducted until 2017 by Rule, et al." And
9 then there's a link there. You say, "Users were
10 concerned with possible inhalation risks and metallic
11 taste issues with the use of metal wire heating
12 elements much earlier."

13 Then you reference two links. One is a Reddit
14 link and one is a link from vapingunderground.com.

15 Do you see that there?

16 A Yes.

17 Q And then you go on to say, "A glass covered
18 heating element would solve these issues as well."

19 Do you see that?

20 A Yes.

21 Q In preparing this report, did you personally
22 locate those links?

23 A I don't remember who specifically chose those
24 links.

25 Q Do you happen to have copies of the websites

1 from those links in front of you?

2 A I do not.

3 Q I am going to put them up. I am going to start
4 with the first link. So I am going to mark as, I
5 believe, it's Exhibit F.

6 (Patent Owner's Exhibit F was marked for
7 identification.)

8 BY MR. LOTTENBERG:

9 Q This is a copy -- well, this is a PDF printout
10 of the website located at this first link which you
11 reference as 2017 by Rule et al., which is a pub med --
12 well, excuse me, I guess it's NIH.gov, so it's National
13 Institutes of Health.

14 So Exhibit F is this document which is the
15 website from that link. Have you seen this before, Mr.
16 Kodama?

17 A Yes.

18 Q And the date of this -- would you agree the date
19 of this journal entry or the publication date is
20 January 2017 based on the header here?

21 A Based on the header, yes, on the left-hand side.
22 On the right-hand side it has a different date.

23 Q So let's drop down a little bit where it say
24 affiliations, it says DOI. I think it says -- it's in
25 French, but it says, my understanding is September 26,

1 2017, or excuse me, 2016. Do you see that?

2 A Yes.

3 Q Do you know what "DOI" stands for?

4 A I do not.

5 Q Any reason to believe based on reviewing this
6 document that this was published before the March 2023
7 invention date that you set forth in your declaration?

8 A Nothing based upon this exhibit shown.

9 Q Did you actually review the entire journal
10 article to which this abstract here relates?

11 A No.

12 Q And reviewing the body of this document, which
13 starts with "Abstract" and it says "background names,
14 methods, results, conclusions, key words." Please
15 review that and let me know when you're done.

16 A Okay.

17 Q And you would agree that nothing in that text
18 relates to or references a glass covered heating bulb
19 or any sort of covered heating element?

20 A There's nothing on this page that discusses the
21 construction of the e-cigarette.

22 Q And having not reviewed the entire journal
23 article, you don't have any reason to believe that
24 anything in the journal article relates to glass
25 heating bulbs or covered coils?

1 A No. I don't know one way or the other, no.

2 Q Okay. I'll go back briefly to Exhibit E, which
3 is a declaration back to 118, and we're going to take a
4 look at -- there's a link here I mentioned before from
5 Reddit. I am going to pull up the website that we
6 accessed. I am going to mark as Exhibit G this
7 document, which I will pause it. It's a printout
8 obtained from that link.

9 Mr. Kodama, do you recognize this?

10 A I don't recognize this exact post, no.

11 (Patent Owner's Exhibit G was marked for
12 identification.)

13 BY MR. LOTTENBERG:

14 Q So did you review a post from Reddit which you
15 cited at 118, paragraph 118 in your declaration?

16 A Yes.

17 Q You don't recall whether it looks like this or
18 not?

19 A I don't remember.

20 Q Do you know whether the date of the posting on
21 Reddit that you reviewed was before March 15th, 2013?

22 A I believe that's why I put it in my declaration
23 in paragraph 118.

24 Q Okay. So let's take a look at this document.
25 You'll see that the link at the bottom here says

1 www.reddit.com/r/electronic_cigarettes/comments/
2 2jasbdc/dangers_of_nichrome. Do you see that there?

3 A Yes.

4 Q And looking back at Exhibit 118, does that
5 appear to be the same hyperlink that's referenced in
6 118 of your declaration?

7 A Yes.

8 Q And looking at the headers of the posts on this
9 Reddit page, you see, for example, next to the first
10 post, which is at the top, it lists a date of 11 years
11 ago.

12 A Yes.

13 Q And you would agree that 11 years ago is not
14 before March 15th, 2023, right?

15 A If the screenshots were to be taken on the date
16 in the header, looks like May 30th, 2025, so 11 years
17 ago would be 2014 approximately.

18 Q I am going to mark this as H.

19 MR. COLLS: No, G.

20 BY MR. LOTTENBERG:

21 Q Was this one G? So the next one is H. I am
22 going to mark as Exhibit H the following, which is a
23 printout of the website located at the third hyperlink
24 in paragraph 118 of the declaration. It's a link to
25 vapingunderground.com.

1 (Patent Owner's Exhibit H was marked for
2 identification.)

3 BY MR. LOTTENBERG:

4 Q Mr. Kodama, do you recognize this document?

5 A I recognize the header for the website.

6 Q The header being "New builder: Kanthal versus
7 Nichrome. Help. I don't understand."

8 A I recognize the website vapeunderground.

9 Q Do you recall reviewing -- I'll call it a forum
10 thread -- do you recall reviewing this thread in
11 connection with preparing the declaration?

12 A Yes.

13 Q And looking at this document, you see the date
14 next to the first post?

15 A Yes.

16 Q And it says June 4th, 2024.

17 A Yes.

18 Q And you'd agree that that date is after the
19 March 15th, 2013, day of invention that you've stated
20 in your report?

21 A Yes.

22 Q I am going to scroll down slowly so you can see
23 the other posts. So there's basically a main post and
24 then there's a handful of responses to the thread.

25 Do you see the next one down it says June 25th,

1 2014, user name "Mids" says, "I love my Kanthal A1"?

2 A Yes.

3 Q So I am going to keep scrolling down and give
4 you a chance to read this. So here on page 5, and
5 forgive me, it's a long thread so I don't want to
6 belabor the point, but you see how this says June 30th,
7 2014?

8 A Yes.

9 Q So would you agree that from top to bottom it is
10 going from the oldest postdate to the newest postdate?

11 A It seems to be ascending in time, yes.

12 Q And here on page 8, it's now gone to June 25,
13 2015 and now to 2016 here at the bottom of page 8. I'm
14 not trying to belabor the point, but now we're into
15 2017. Any reason to believe that any of these posts
16 were made prior to March 15th, 2013?

17 A I don't see a date on this printout that is
18 before March 15, 2013.

19 Q Do you know what Kanthal is?

20 A It's a different type of metal, yes.

21 Q Is that like a brand name or is it an actual
22 type of metal?

23 A I'm not sure. I believe it's a different
24 concentration of metal or different mixture of metal
25 than nichrome.

1 Q What I'd like to do is send -- I think it would
2 be easier if I sent you these documents, maybe take a
3 five-minute break, give you a chance to actually read
4 the content of them and then I am going to ask one or
5 two questions about them. Does that sound reasonable?

6 A That's fine.

7 MR. LUCHESI: Other than asking him to read the
8 documents during a break, you know, he can do that
9 on the record, but a break is a break.

10 MR. LOTTENBERG: Okay. So I'd like him to
11 actually read the content. So I can scroll through
12 more slowly or maybe just send over and give him a
13 chance to read it on the record, not into the
14 record, but while we're on the record.

15 MR. LUCHESI: That's fine. I didn't want to
16 make him sacrifice a break in the depo by reading
17 the document.

18 MR. LOTTENBERG: Okay. So let's do this. I am
19 going to stop the share. I don't know if I have
20 Kelly's email, so Ken, I will forward these to you.

21 MR. LUCHESI: Fine. Can you not drop them in
22 the chat? I know I've done that in a lot of these
23 depos.

24 MR. LOTTENBERG: Let's try.

25 MR. LUCHESI: Usually if you just drag and drop

1 it into the chat, you'll just be able to pull it
2 right from there.

3 MR. LOTTENBERG: Marlene, let's go off the
4 record.

5 (A break was taken from 12:10 p.m. to
6 12:17 p.m.)

7 BY MR. LOTTENBERG:

8 Q So, Mr. Kodama, we've sent you via email copies
9 of the two websites that we just discussed; one being a
10 Reddit thread and the other being a thread from Vaping
11 Underground. Please take some time to read the
12 contents of those threads, each one. Both the Reddit
13 and the Vaping Underground, and when you're done, let
14 us know.

15 A Okay. I believe I read it. The Reddit one had
16 the same posts repeated at the end, or did I misread.

17 Q So with Reddit, on occasion when you click the
18 plus sign to read more replies, it opens up in a
19 separate window, so it has the same top post, but those
20 are additional replies to that post.

21 A Oh. I see. Okay. Okay, I reviewed these
22 documents.

23 Q Would you agree that -- let's start with the
24 Reddit thread. Would you agree that nothing in the
25 Reddit thread describes the use of a bulb or a covered

1 coil for an e-cigarette?

2 A I didn't see the words "bulb" in the Reddit
3 thread.

4 Q Would you agree there's nothing in the Reddit
5 post related to covering the coil or the heating wire?

6 A I don't believe there's a discussion about
7 covering the heating wire.

8 Q Okay. And looking at the Vaping Underground
9 thread, would you agree that there's nothing in that
10 thread discussing the use of a glass bulb or a covered
11 coil?

12 A There was mention of some being a glass blower,
13 but I don't think that was related to a glass bulb.

14 Q So the glass blower reference was on page 3 of
15 the Reddit document, matter of fact.

16 A Oh.

17 Q Let's just take a quick look at that. The
18 poster harder with multiple As says, "He claims he has
19 experience in this because we works with nichrome as a
20 glass blower. I don't know. Like you said, I don't
21 think we're hitting those temps."

22 And then the next post below by user, it says,
23 "Deleted." It says "Glass blowing also requires much
24 higher temps than we vape with. Also see DNA40.
25 Spoiler alert. Temperature control makes vaping even

1 safer with device regulation if science does prove that
2 offgassing occurs with our wicks and such."

3 You would agree that nothing there is referring
4 to a glass bulb heater for an e-cigarette, right?

5 A Correct.

6 Q Okay. Now you mentioned earlier that you
7 reviewed the patent trial and appeals board decision.

8 A Yes.

9 Q After having reviewed that, would you agree that
10 your opinion has not changed?

11 In other words, the opinion set forth in your
12 declaration has not changed after having reviewed the
13 board's decision?

14 A Correct.

15 Q Turning to page 39 of your declaration, you
16 would agree that your opinion that claims 1 and 11 are
17 unpatenable by Gilbert in view of Cohen has not
18 changed?

19 A I'm sorry, which paragraph?

20 Q So I am looking at page 39 just the header where
21 it goes into the section where -- well, let's look at
22 paragraph 79. You say, "Gilbert discloses or suggests
23 all the elements of claims 1 and 11, including the bulb
24 limitations to the extent patent owner may argue
25 however that any limitation is not explicitly disclosed

1 or suggested by Gilbert. In my opinion, any such
2 limitation was within the general knowledge of a person
3 of a P-O-S-I-T-A and/or would have been obvious in view
4 of Cohen."

5 And then you go on to give -- you know, you
6 expand on that.

7 Would you agree that your opinion as to claims 1
8 and 11 being unpatenable over Gilbert in view of Cohen
9 has not changed from the date you issued this
10 declaration till today?

11 A It has not changed.

12 Q And let's go to page 56. Middle of the page
13 heading Claims 1 and 11 in view of Gilbert and Levine.
14 And paragraph 108 says, "Lee discloses all of the
15 limitations of claims 1 and 11 except the limitation
16 requiring the heating assembly comprising a bulb
17 containing a heating wire and wherein the heating wire
18 heats the bulb and wherein the bulb heats fluid
19 introduced to and coming in contact with the bulb
20 through the fluid passageway. As I explained above,
21 Gilbert teaches these limitations."

22 Mr. Kodama, would you agree that your opinion
23 that claims 1 and 11 are unpatentable over Lee in view
24 of Gilbert and Levine has not changed from the date you
25 made this declaration till today?

1 A Correct.

2 MR. LOTTENBERG: I think we're done. Let's
3 take five minutes for me to just take a look at my
4 notes and then we'll come back and finish up.
5 So we'll come back at -- it's 12:28, let's say
6 12:35.

7 Thank you.

8 (A break was taken from 12:28 p.m. to
9 12:35 p.m.)

10 MR. LOTTENBERG: Thank you, Mr. Kodama. We're
11 all set. I don't have anything else.
12 Ken, did you have any questions?

13 MR. LUCHESI: No questions for me. Thanks.

14 MR. LOTTENBERG: All righty. We're done.
15 Marlene, I had rushed this for next week. I said
16 Wednesday, if possible.

17 THE COURT REPORTER: Copy?

18 MR. LUCHESI: Sure, but I don't need a rush
19 copy.

20 (The deposition was concluded at 12:37 p.m.)
21
22
23
24
25

CERTIFICATE OF OATH OF WITNESS

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, MARLENE GUTIERREZ, Notary Public in and for the
State of Florida at Large, certify that the witness,
KELLY R. KODAMA appeared before me via Zoom
videoconference on May 30, 2025 and was duly sworn by
me.

WITNESS my hand  , 2025.

MARLENE GUTIERREZ,
Notary Public, State of Florida
at Large

Personally known _____
OR Produced Identification _____
Type of Identification Produced: Driver's License

REPORTER'S DEPOSITION CERTIFICATE

I, MARLENE GUTIERREZ, certify that I was authorized to and did stenographically report the deposition of KELLY R. KODAMA, the witness herein on May 30, 2025 that a review of the transcript was requested; that the foregoing pages are a true and complete record of my stenographic notes of the deposition by said witness; and that this computer-assisted transcript was prepared under my supervision.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action.

DATED this May 31, 2025.



MARLENE GUTIERREZ

To Kelly R. Kodama c/o kluchesi@jonesday.com
May 31, 2025

RE: RJ Reynolds v. Healthier Choices

WITNESS: Kelly R. Kodama

TAKEN : May 30, 2025 ASSIGN.#:7388746

The above-referenced transcript is available for
review.

The witness should read the testimony to verify its
accuracy. If there are any changes, the witness should
note those with the reason on the attached Errata
Sheet.

The witness should date and sign the Errata Sheet and
email it to the deposing attorney as well as to
Veritext at Transcripts-fl@veritext.com and copies will
be emailed to all ordering parties.

It is suggested that the completed errata be returned
30 days from receipt of testimony, as considered
reasonable under Federal rules*, however, there is no
Florida statute to this regard.

If the witness fails to do so, the transcript may be
used as if signed.

Yours,
Veritext Legal Solutions

*Federal Civil Procedure Rule 30(e)/Florida Civil
Procedure 25 Rule 1.310(e).

1 RE: RJ Reynolds v. Healthier Choices

DEPO OF : Kelly R. Kodama

2 TAKEN: May 30, 2025 ASSIGN.#:7388746

3 E R R A T A S H E E T

4 Page ____| LINE ____| CHANGE _____

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6 REASON FOR ABOVE CHANGE: _____

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17 _____

18 REASON FOR ABOVE CHANGE: _____

19 Page ____| LINE ____| CHANGE _____

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21 REASON FOR ABOVE CHANGE: _____

22 _____

23 Under penalties of perjury, I declare that I have
read the foregoing document and that the facts stated
in it are true.

24 _____

25 Date _____

KELLY R. KODAMA

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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