

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

MPL BRANDS,

Petitioner,

v.

BUZZBALLS, LLC,

Patent Owner.

Case PGR2024-00035 (Patent No. 11,932,441)

VIDEOCONFERENCE DEPOSITION OF

NATHAN J. DELSON, PhD.

INDIVIDUALLY AND ON BEHALF OF

MPL BRANDS NV, INC.

FEBRUARY 26, 2025

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2:05 p.m. - 6:16 p.m. CST

REPORTED BY:

Tamara L. Houston

CA CSR No. 7244, RPR, CCRR No. 140

Job Number J12451762

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VIDEOCONFERENCE DEPOSITION OF NATHAN J. DELSON,
PhD., taken on behalf of the Patent Owner, commencing
from 2:05 p.m. p.m. to 6:16 p.m. CSR, Wednesday,
February 26, 2025, before Tamara L. Houston, CSR No.
7244, CCRR, RPR.

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1 REMOTELY HELD AND REPORTED FROM THE STATE OF CALIFORNIA

2 WEDNESDAY, FEBRUARY 26, 2025, 2:05 P.M.

3 --000--

4 COURT REPORTER: My name is Tamara Houston,
5 California Certified Shorthand Reporter Number 7244.

6 --000--

7 NATHAN J. DELSON, PHD.,

8 having been called as a witness, who was
9 thereupon examined and testified as hereinafter set
10 forth.

11 --000--

12 MR. WEBB: Daniel, you want to notice your
13 appearance?

14 MR. SHVODIAN: Sure. Dan Shvodian of Perkins
15 Coie representing Petitioner MPL Brands as well as
16 Dr. Delson.

17 MR. WEBB: And this is Greg Webb on behalf
18 Patent Owner BuzzBallz, LLC.

19 EXAMINATION BY MR. WEBB:

20 Q. Dr. Delson, how are you doing today?

21 A. Good. Thank you.

22 Q. I represent the patent owners I just
23 mentioned, BuzzBallz, in this PGR2024-00035 which
24 involves U.S. Patent Number 11,932,441.

25 You understand that I'll be asking you

1 questions about the declaration you provided in this
2 PGR, correct?

3 A. Yes, I do.

4 Q. And can you state your full name for the
5 ssrecord?

6 A. My name is Nathan Joseph Delson, D-E-L-S-O-N.

7 Q. And have you been deposed before?

8 A. Yes, I have.

9 Q. And what were the contexts of those previous
10 depositions?

11 A. They -- a number of them were expert
12 witnesses.

13 Q. Okay. And District Court litigation or IPRs,
14 PGRs? Some of each?

15 A. IPRs.

16 Q. Okay. Have you ever done any District Court
17 litigation testimony?

18 A. I don't remember if the depositions I did
19 include -- included District Court.

20 Q. Okay. Is there any reason why you would not
21 be able to answer my questions today fully, accurately,
22 and honestly?

23 A. No.

24 Q. If you don't understand my question, please
25 let me know. If you answer my question, I will assume

1 that you understood my question.

2 Is that okay?

3 A. Yes.

4 Q. Your counsel may object to questions
5 throughout the deposition. Unless your counsel
6 instructs you not to answer a specific question, you are
7 required to answer my questions.

8 Is that understood?

9 A. Yes.

10 Q. The court reporter will prepare a
11 transcript -- transcript of this deposition to ensure
12 that we obtain a clear record. Please answer each
13 question with a full verbal response such as "yes" or
14 "no," and please do not answer with "uh-huhs" or head
15 movements.

16 Is that understood?

17 A. Yes.

18 Q. Also, the court reporter may have difficulties
19 accurately recording who is speaking if there's
20 cross-talk. So to ensure there's a clear record, I'll
21 ask that you let me finish my questions before you start
22 to answer; and, likewise, I will let you finish your
23 answers before I ask another question.

24 Is that okay?

25 A. Yes.

1 MR. SHVODIAN: I'd also add to pause before
2 you answer so that I can make an objection, if need be,
3 and we're not talking over each other.

4 BY MR. WEBB:

5 Q. Sounds good. And during the portion of this
6 deposition where I'm asking you questions, you are not
7 permitted to speak with your counsel about the substance
8 of your testimony, including your declaration or your
9 deposition today.

10 Is that understood?

11 A. Yes.

12 Q. And I plan to take -- ask questions of you in
13 approximately one-hour segments, and then we can take a
14 10- to 15-minute break after each segment.

15 Does that work for you?

16 A. Yes.

17 Q. And please let me know if you need a break at
18 an unscheduled time. Happy to accommodate that, but
19 before we take a break, I would ask you to finish
20 answering my last question before we take a break.

21 Is that okay?

22 A. Yes.

23 Q. Where are you located today?

24 A. In San Diego, California.

25 Q. Are you at home or in your office?

1 A. I am -- I am in my home office.

2 Q. Is there anyone there with you?

3 A. In my house, my son is upstairs; but he is far
4 enough away that he can't hear what's going on.

5 Q. Sure. So you're in the room alone?

6 A. That's correct.

7 Q. And do you have a phone with you?

8 A. I have unplugged my landline. I do have my
9 cell phone which I put on "Do Not Disturb" just in case
10 there is any internet problems so either the Perkins
11 Coie can break through my "Do Not Disturb."

12 Q. Okay. And do you agree not to use your phone
13 during the questioning portion of the deposition?

14 A. Yes.

15 Q. And what equipment are you using for your
16 deposition?

17 A. I have my laptop hooked up to a monitor which
18 is hooked up to a webcam, and I have a pad with papers
19 in it and a pen.

20 Q. What kind of papers -- blank pages, or is it
21 your testimony or --

22 A. Blank pages from the copy machine.

23 Q. Okay. For some of the questions today, I will
24 be asking about certain documents, primarily your
25 declaration, and I can provide those to you through the

1 chat feature in Zoom. So to make sure there's no issues
2 with that, let's go ahead and test it out now.

3 I'm going to drop your declaration into the
4 chat and then please open that. You may need to save it
5 both and open it. It should be coming through shortly.

6 A. I downloaded it successfully, and now I am
7 opening it.

8 Q. Yes. You're able to open it?

9 A. Yes.

10 Q. Perfect. We'll come back to that in a few
11 minutes. And I have a few more housekeeping questions
12 before we get started.

13 Do you have any other documents or notes in
14 front of you today about your testimony?

15 A. No.

16 Q. And I ask, as you already started the process
17 earlier, that you do not have any other documents open
18 or windows open during your deposition today; is that
19 okay?

20 A. I -- yes. I closed all my windows, and I only
21 have Zoom open and preview, which opens when I open the
22 document.

23 Q. Okay. So it sounds like you do not have any
24 chat windows or text message threads open where
25 communicating with counsel, correct?

1 A. No. And the "Do Not Disturb" will block that
2 if nobody does that.

3 (Court Reporter requested clarification.)

4 THE WITNESS: The "Do Not Disturb" will.
5 Block anybody attempting to contact me through a chat
6 window.

7 Q. Who did you meet with to prepare for your
8 deposition today?

9 A. I did not meet with anybody today to prepare
10 for this deposition.

11 Q. Okay. In the past week, who did you meet with
12 to prepare for your deposition?

13 A. I met with Daniel Shvodian and Babak -- his
14 last name starts with a T. I'd have to look up the full
15 spelling to get that correct.

16 Q. So it sounds like just counsel at Perkins Coie
17 you met with --

18 A. Correct.

19 Q. -- for your deposition. Okay. Approximately
20 how long did you spend preparing for your deposition?

21 A. I don't know off the top of my head. I'd have
22 to review my logs.

23 Q. Okay. Do you think more than eight hours?
24 Less than eight hours?

25 A. I can't tell.

1 Q. Okay. So you're not sure?

2 A. I'm not sure if it's more than eight hours or
3 less than eight hours.

4 Q. Okay. Prior to this case, have you ever
5 testified as a witness for MPL brands, Patco brands, or
6 Big Sipz?

7 A. No.

8 Q. And prior to your involvement in this case,
9 did you personally know anyone related to these
10 companies?

11 A. No.

12 Q. And prior to your involvement in this case,
13 did you personally know anyone at Perkins Coie?

14 A. Yes.

15 Q. And have you worked with Perkins Coie before?

16 A. Yes.

17 Q. And were those in the previous IPRs that you
18 mentioned earlier as an expert witness?

19 MR. SHVODIAN: Objection. Form.

20 THE WITNESS: I did work with Perkins Coie
21 previously on IPRs.

22 BY MR. WEBB:

23 Q. Okay. How did you get involved in this case?

24 A. Perkins Coie contacted me.

25 Q. Okay. And you provided testimony in

1 connection with PGR2024-00035 involving U.S. Patent
2 Number 11,932,441, correct?

3 A. I'd have to look that up on the declaration.
4 Would you like me to do that?

5 Q. Sure. Let's go ahead and open up the document
6 you downloaded before. Should be Exhibit 1002,
7 Declaration of Nathan J. Delson, Ph.D.

8 A. I have this open.

9 COURT REPORTER: Mr. Webb, would you like this
10 marked?

11 MR. WEBB: It's previously marked.

12 BY MR. WEBB:

13 Q. Is this Exhibit 1002 your declaration?

14 A. The title of it says "Exhibit 1002." Let
15 me -- so, yes, it is.

16 Q. Okay. So if I refer to Exhibit 1002 as your
17 declaration, you'll understand what I'm referring to
18 during this deposition?

19 A. Yes.

20 Q. Please turn to page 283 of your declaration.
21 Just let me know when you're there.

22 A. I'm there.

23 Q. Is that your signature on page 283?

24 A. Yes, it is.

25 Q. And did you sign your declaration on June 6,

1 2024?

2 A. Yes, I did.

3 Q. And since then have you acquired any
4 additional information or obtained any supplemental
5 insights that have changed the position set forth in
6 your declaration?

7 MR. SHVODIAN: Objection. Form.

8 THE WITNESS: I have not changed the positions
9 set forth in this declaration.

10 BY MR. WEBB:

11 Q. Okay. Can you read the paragraph on page 283
12 of your declaration? Feel free to read it to yourself
13 or out loud, either way.

14 A. "I hereby" -- let me start again. "I hereby
15 declare that all of the statements made in this
16 declaration are based on my true knowledge, that all
17 statements made on information and belief are believed
18 to be true, and that all statements are made with the
19 knowledge that willful false statements and the like are
20 punishable by fine or imprisonment or both under 18
21 U.S.C. 1001. I declare under the penalty of perjury
22 under the laws of the United States that all statements
23 made in this declaration are true and correct."

24 Q. Do you continue to stand behind all of the
25 statements in your declaration in accordance with the

1 statement you just read?

2 A. Yes, I do.

3 Q. And do you understand that today during your
4 deposition you are under the same oath as set forth in
5 your sworn declaration?

6 A. Yes, I do.

7 Q. And did you prepare your declaration?

8 A. I prepared this declaration together with
9 representatives of Perkins Coie. I reviewed all of the
10 declaration, and I agree with all of it.

11 Q. Did anyone else besides counsel at Perkins
12 Coie help prepare your declaration?

13 A. I am not certain of the job title of every
14 person at Perkins Coie who worked with me, so I do not
15 know if their job title will include counsel or not.

16 Q. Okay. Did you work with anyone outside of
17 Perkins Coie in preparing your declaration?

18 A. No, I did not.

19 Q. And approximately how long did you spend
20 preparing your declaration?

21 A. I do not remember.

22 Q. Do you have an estimate?

23 A. No, I do not.

24 Q. Okay. In preparing your declaration, did you
25 review the petition associated with PGR2024-00035?

1 A. Without looking at my records and documents, I
2 would not be certain if I reviewed that or not.

3 Q. You don't recall reviewing the petition or
4 PGR2024-00035?

5 A. I reviewed a fair amount of material. I do
6 not recollect if that was one of the documents I
7 reviewed. If you'd like, I can look that up. I have
8 all of the documents that I reviewed on my computer.

9 Q. Sure. If you want to take a minute and see
10 if -- open it and see if you reviewed it or not, the
11 petition.

12 A. Can you repeat again what specifically you're
13 asking me if I reviewed?

14 Q. The petition associated with PGR2024-00035.

15 A. Petition regarding PGR --

16 Q. 2024-00035.

17 A. I see now that I cleaned up my documents
18 before I -- in preparation for this deposition, and the
19 list of materials is either on my iPad, which is in
20 another room, or through my email. So it would take
21 me -- I could go and review that, but it would take me a
22 bit of time.

23 Q. I don't think we need to do that right now.
24 We can continue on. We may come back to that.

25 So I guess the question -- since you don't

1 recall whether you reviewed the petition or not, I
2 assume you don't recall whether the petition influenced
3 the testimony in your declaration or not?

4 MR. SHVODIAN: Objection to form.

5 THE WITNESS: My declaration was based on
6 materials I reviewed that were provided to me by Perkins
7 Coie. I don't recollect if that specific document with
8 that number was one of those documents that I reviewed.

9 BY MR. WEBB:

10 Q. Okay. Let's turn to paragraph 9 on the table
11 following paragraph 9, which I believe is on page 6 of
12 your declaration.

13 A. Yes.

14 Q. What is shown in that table?

15 A. Can you repeat the designation of that table
16 and paragraph and page?

17 Q. Sure. On page 6 of your declaration, there's
18 a paragraph 9, and following paragraph 9 there's a table
19 that in the left-hand column says, "Exhibit," and the
20 right-hand column says, "Description." And then there
21 are a list of what appear to be documents in that table.

22 Can you please tell me what is shown in that
23 table?

24 A. In this table are lists of exhibits that were
25 referenced in my declaration and/or used in the

1 declaration.

2 Q. Okay. Did you rely on any other documents or
3 evidence beyond what is referenced here in the table?

4 A. I also used documents that are part of the
5 appendix of this declaration.

6 Q. Okay. So beyond the documents that are
7 included in this table and the appendix to your
8 declaration, did you rely on any other documents?

9 A. For the purpose of my opinions of this
10 declaration, they relied on these documents, not on
11 other documents.

12 Q. Okay. And just to confirm, I don't see in the
13 table the petition associated with the PGR2024-00035; is
14 that correct? The petition is not in that list of
15 documents in the table?

16 A. The petition is not in the list of documents
17 in this table.

18 Q. And is the petition included as one of your
19 appendices to your declaration?

20 A. It is not in the appendix of the declaration.

21 Q. Okay. So the petition is not something you
22 relied upon for purposes of your declaration, correct?

23 MR. SHVODIAN: Objection. Asked and answered.

24 THE WITNESS: The declaration relied on the
25 material in the exhibits and not on other documents.

1 BY MR. WEBB:

2 Q. Okay. Let's turn to paragraphs 14 and 15 of
3 your declaration, please. This appears to be on page 8.

4 Are you there?

5 A. Okay.

6 Q. Please review your testimony, and then I'll
7 ask a couple of questions about it.

8 A. What paragraphs again, please?

9 Q. 14 and 15.

10 A. I have completed reviewing paragraphs 14 and
11 15.

12 Q. Okay. When you say in paragraph 14, "It was
13 two to three years of practical experience," what do you
14 mean by "practical experience"?

15 A. Practical experience would relate to
16 practicing design or working with design or
17 manufacturing of mechanical products.

18 Q. Okay. Does that include only hands-on work?

19 A. Can you define what you mean by "hands-on
20 work"?

21 Q. Sure. Does it include only things that result
22 in a physical product?

23 A. Can you --

24 Q. Sure. Go ahead.

25 A. Can you refine what you mean by "result in a

1 physical product"?

2 Q. Let's go about it a different way.

3 Can you provide some examples of the
4 practical -- practical experience of designing or
5 manufacturing mechanical products that you're describing
6 here in paragraph 14?

7 A. Sure. Designing or manufacturing physical
8 products could include coming up with the ideas and
9 designs of a product to meet certain needs. It can
10 include doing drawings of those products. It can
11 include analysis to support those products. It can
12 include working with manufacturing techniques to
13 determine how that product will be manufactured.

14 Q. And does that require real-world or commercial
15 experience? Or can that also be satisfied by academic
16 or class work?

17 MR. SHVODIAN: Objection to form.

18 THE WITNESS: In my opinion, to do this work,
19 the individual should have at least an associate or
20 bachelor's degree and would also have at least two or
21 three years of practical experience.

22 BY MR. WEBB:

23 Q. And does the practical experience require
24 something beyond education?

25 MR. SHVODIAN: Objection. Form.

1 THE WITNESS: Practical experience indicates
2 develop -- designing and manufacturing real mechanical
3 products. Some educational environments do not include
4 that practical experience, and those -- that type of
5 education would not be sufficient.

6 BY MR. WEBB:

7 Q. When you say "real mechanical products," you
8 mean physical, something you can hold in your hand?

9 A. A mechanical product is something you can
10 touch. Depending on its size, you may or may not be
11 able to hold it in your hand.

12 Q. Okay. In paragraph 15 you indicate that you
13 are and were, as of the priority date of the '441
14 patent, a POSITA; is that correct?

15 A. That is correct.

16 Q. Please tell me a little bit about your
17 experience related to beverage packaging.

18 A. My experience is described in my CV, which is
19 in the appendix of this document. I have experience
20 with designing of a wide range of mechanical products.
21 I've worked in aerospace. I've designed biomedical
22 devices. I've designed robotic products. But none of
23 those products were specifically beverage containers,
24 but I have designed other containers, and I have
25 designed products that relate to -- to -- to food.

1 Q. Okay. So just to confirm, you do not have
2 experience in designing or manufacturing beverage
3 packaging?

4 A. I have experience with how some of those
5 packagings have been designed. I've designed packaging
6 for food products, but I have not personally been the
7 one who designed a beverage package.

8 Q. Okay. Would you say that you have practical
9 experience with design and manufacturing beverage
10 packaging?

11 A. I have practical experience with designing
12 mechanical products that have many similarities to
13 beverage packaging, but I have not directly designed a
14 beverage package.

15 Q. Okay. Thank you. Let's turn to paragraph 20
16 of your declaration, please. And that is on page 10 of
17 your declaration.

18 A. I'm there.

19 Q. In this paragraph you indicate that, quote,
20 you "understand that the effective priority date may, in
21 fact, be no earlier than November 10th, 2023, due to the
22 introduction of previously undisclosed new matter."

23 Correct?

24 A. "I understand that the effective priority date
25 may be no earlier than November 10th, 2023, due to the

1 introduction of previously undisclosed new matter.
2 However, for the purposes of this declaration, the prior
3 art analyzed all predate the earliest priority date of
4 April 19, 2010."

5 Q. Okay. Can you explain your understanding of
6 why the effective priority date may be no earlier than
7 November 10th, 2023?

8 MR. SHVODIAN: Objection. Scope.

9 THE WITNESS: In regard to the priority date,
10 I have relied on advice from counsel.

11 BY MR. WEBB:

12 Q. Okay. So you're not aware what the previously
13 undisclosed new matter is that you reference here?

14 A. I don't remember if I reviewed that or not.

15 Q. Okay. Do you recall if you determined whether
16 a POSITA would understand that there was new matter
17 added?

18 MR. SHVODIAN: Objection. Scope.

19 THE WITNESS: I was not asked to give an
20 opinion on whether a POSITA would understand if there
21 was undisclosed new matter.

22 BY MR. WEBB:

23 Q. Okay. Thank you.

24 Let's go to paragraph 17 of your declaration.
25 So this is back up on page -- and, actually, I want to

1 talk about the table that follows paragraph 17, so this
2 comes up from the bottom of page 8 to the top of page 9.
3 Let me know when you're there.

4 A. I'm there.

5 Q. Can you explain what is shown in the table at
6 the top of page 9 following paragraph 17?

7 A. It is a table of the four grounds that I use
8 in my declaration relating to why I believe that the
9 '441 patent is invalid.

10 Q. Thank you.

11 Did you come up with these grounds?

12 A. This declaration and grounds came out of the
13 collaboration with me and the people at Perkins Coie
14 that I work with.

15 Q. Okay. Did you identify or find any of the
16 prior art references relied upon in your grounds?

17 A. I did identify prior art, but these did not
18 end up in these grounds.

19 Q. Okay. So then counsel provided all of the
20 prior art and the grounds that you used, correct?

21 A. That is correct.

22 Q. Okay. Grounds 1 and 2 rely upon the Coca-Cola
23 PET can or PCAN, correct?

24 A. That is -- ground 1 relies on the Coca-Cola
25 PET can; ground 2 relies on the Cola Cola [sic] PET can

1 in combination with Protais.

2 Q. Okay. And then were you familiar with the
3 Coca-Cola PET can prior to being involved in this
4 matter?

5 A. No, I was not.

6 Q. And as you mentioned, ground 1 relies upon the
7 Coca-Cola PET can alone, correct?

8 A. That is correct.

9 Q. Is ground 1 based on anticipation or
10 obviousness?

11 MR. SHVODIAN: Objection. Calls for a legal
12 conclusion.

13 THE WITNESS: I describe the grounds on --
14 that I use for patent validity or invalidity in
15 paragraph 35 on page 18. It describes there that --
16 "that a patent cannot be properly granted for subject
17 matter that would have been obvious to a person of
18 ordinary skill in the art at the time of the alleged
19 invention and that a patent claim directed to such
20 obvious subject matter is invalid under 35 U.S.C. 103."

21 BY MR. WEBB:

22 Q. So you're saying ground 1 is an obviousness
23 ground in your declaration?

24 MR. SHVODIAN: Same objection.

25 THE WITNESS: No, I will repeat what I just

1 said.

2 I understand that the patent cannot be
3 properly granted for subject matter that would have been
4 obvious to a person of ordinary skill in the art, and I
5 am directed to "obvious subject matter is invalid under
6 35 U.S.C. 103."

7 BY MR. WEBB:

8 Q. And later in that paragraph you say, "It is my
9 further understanding that the question of obviousness
10 is to be determined based on:" And then there is a list
11 bullet points, correct?

12 A. So I believe you're referring to paragraph 35;
13 is that correct?

14 Q. Yes.

15 A. And I do state there that, "It is my further
16 understanding that the question of obviousness is to be
17 determined based on:" And then there's a list of
18 bullets.

19 Q. Can you read the first two bullet points,
20 please?

21 A. Bullet 1: "The scope and content of the prior
22 art."

23 Bullet 2: "The difference or differences
24 between the subject matter of the claim and the prior
25 art (whereby in assessing the possibility of

1 obviousness --" that word, I believe, should be "one."
2 There's a missing "e" there "-- should consider the
3 manner in which a patentee and/or a court has construed
4 the scope of a claim.)"

5 Q. And did you take these factors into
6 consideration in your analysis?

7 A. Yes, I did.

8 Q. And what were the difference or differences
9 between the subject matter of the claims for the '441
10 patent and the Coca-Cola PET can that you reviewed?

11 MR. SHVODIAN: Objection to form.

12 THE WITNESS: The ground 1 where I discuss the
13 unpatentability of the '441 patent in relationship to
14 the Coke can is described starting on paragraph 36.

15 I carefully reviewed the Coca-Cola PET can. I
16 carefully reviewed the claims in the patent '441, and I
17 describe in detail the reasons why each of those claims
18 is invalid.

19 BY MR. WEBB:

20 Q. Okay. And before that, you said you performed
21 this analysis that includes identifying the difference
22 or differences between the subject matter of the claim
23 and the prior art.

24 So I'm asking for you to kind of point to me
25 in your declaration where you discuss this with respect

1 to subject matter '441 patent, particularly Claims 1
2 through 8 and the Coca-Cola PET can.

3 MR. SHVODIAN: Objection. Form. Assumes
4 facts.

5 THE WITNESS: You are mischaracterizing my
6 statements.

7 BY MR. WEBB:

8 Q. Okay. Can you please clarify?

9 A. Yes. I -- the standards of invalidity that I
10 used are described in paragraph 35 in the completeness
11 of that paragraph 35, and so my decisions were based on
12 all of the content in paragraph 35 that includes one,
13 two, three, four bullets. Those are the -- my
14 foundations for my decisions.

15 Q. Okay. So did you specifically identify any
16 differences between the claims of the '441 patent and
17 the Coca-Cola PET can?

18 MR. SHVODIAN: Objection. Form.

19 THE WITNESS: Can you repeat that again?

20 BY MR. WEBB:

21 Q. Sure. In your analysis or as set forth in
22 your declaration, did you identify any differences
23 between the claims of the '441 patent and the Coca-Cola
24 PET can?

25 MR. SHVODIAN: Objection. Form.

1 THE WITNESS: The Coca-Cola can is a physical
2 object. A claim is language that describes certain
3 restrictions on an object. So comparing a physical
4 object to a claim, yes, there are differences; and one
5 difference is that one is a physical object, and one is
6 a language.

7 BY MR. WEBB:

8 Q. Is that distinction between physical --
9 physical objects and language the only difference you
10 identify between the claims of the '441 patent and the
11 Coca-Cola PET can?

12 MR. SHVODIAN: Objection to form.

13 THE WITNESS: No.

14 BY MR. WEBB:

15 Q. What other differences did you note?

16 A. I --

17 MR. SHVODIAN: Objection.

18 THE WITNESS: I interpreted each claim in
19 terms of the meaning that a POSITA would have, and I
20 looked at the prior art, and I found that element in
21 each claim were present in prior art and obvious.

22 BY MR. WEBB:

23 Q. Okay. Are you saying you didn't identify any
24 differences between the claims of the '441 patent and
25 the Coca-Cola PET can?

1 MR. SHVODIAN: Objection to form. Misstates
2 testimony.

3 THE WITNESS: I did not state that. I already
4 stated that I did identify a difference between the Cola
5 Cola [sic] can -- it's a physical object -- and the
6 claims that are language.

7 BY MR. WEBB:

8 Q. Right. And then you also said you identified
9 other differences, and I'm trying to get a sense of what
10 those other differences are.

11 What other differences did you identify?

12 MR. SHVODIAN: Objection. Form.

13 THE WITNESS: That is not what I stated. I
14 stated that I reviewed each claim of the '441 patent,
15 and compared it to prior art and identified that each
16 claim was obvious based on that prior art.

17 BY MR. WEBB:

18 Q. To confirm, you didn't -- did not identify any
19 other differences other than the language versus
20 physical difference between the claims and the Coca-Cola
21 PET can?

22 MR. SHVODIAN: Objection. Form.

23 THE WITNESS: Your question to me is vague. I
24 gave you an answer that one was a physical product and
25 one was language, and I indicated that I interpreted the

1 language in terms of claim in prior art.

2 BY MR. WEBB:

3 Q. Sure. I'm trying to understand the analysis
4 you went through as described here. You said in
5 paragraph 35, these bullet points, the four bullet
6 points that are there are the factors you looked at as
7 part of your obviousness analysis; and one of them is
8 the difference -- this is bullet point 2 -- the
9 difference or differences between the subject matter
10 claim and the prior art.

11 And I'm trying to get an understanding of when
12 you performed your analysis, what were those differences
13 that you identified? So if you can explain kind of your
14 analysis or where I should look in your declaration to
15 identify or find those differences that were part of
16 your analysis, that's what I'm looking for.

17 MR. SHVODIAN: Objection. Form.
18 Argumentative.

19 THE WITNESS: All of my analyses relied on all
20 four bullets in this document; and as we go through the
21 details of that, I clearly state for each claim the
22 reasons why I believe they are obvious in light of prior
23 art.

24 BY MR. WEBB:

25 Q. Okay. So you didn't separately identify the

1 differences as part of your analysis?

2 MR. SHVODIAN: Objection. Form.

3 THE WITNESS: I considered all of the bullets
4 in this paragraph for each claim.

5 BY MR. WEBB:

6 Q. Okay. Let's move on with -- so ground 2
7 relies on a combination of the Coca-Cola PET can and
8 Protais, correct?

9 A. That is correct.

10 Q. And can you please explain your combination of
11 the Coca-Cola PET can and Protais?

12 MR. SHVODIAN: Objection. Form.

13 THE WITNESS: Can you repeat your question,
14 please?

15 BY MR. WEBB:

16 Q. Sure. Ground 2 relies on a combination of the
17 Coca-Cola PET can and Protais. You combine those two
18 references together as basis for your ground.

19 Can you please explain the combination of
20 Coca-Cola PET can and Protais in your ground 2?

21 MR. SHVODIAN: Objection. Form.

22 THE WITNESS: I describe this in paragraph 105
23 and 106, and my opinion is that -- and just to give a
24 background, the Coca-Cola PET can is a plastic
25 cylindrical container, and Protais described the base

1 for the plastic container.

2 A person of ordinary skill would be able to
3 add the Protais container bottom to any number of
4 plastic bottles and containers including the Coca-Cola
5 PET can that has a cylindrical body. So that describes
6 the combination.

7 BY MR. WEBB:

8 Q. Okay. Is it fair to characterize the
9 combination as putting Protais's bottom on the Coca-Cola
10 PET can?

11 MR. SHVODIAN: Objection. Form.

12 THE WITNESS: I would describe it as adding
13 the Protais container bottom to the Coca-Cola PET can.

14 BY MR. WEBB:

15 Q. Okay. In your ground 2, does the combination
16 use the container body and the lid of the Coca-Cola PET
17 can?

18 MR. SHVODIAN: Objection. Form.

19 THE WITNESS: Can you describe what you mean
20 by "the container body"?

21 BY MR. WEBB:

22 Q. Sure. Let's look at paragraph 104 of your
23 declaration briefly.

24 In paragraph 104 you say, "A POSITA would have
25 found it obvious to make a container that combined the

1 container body and lid of the Coca-Cola PET can with the
2 disclosed features of Protais' container bottom"; is
3 that correct?

4 A. That is my position, yes.

5 Q. And so do you agree that your combination in
6 ground 2 includes the container body and lid of a
7 Coca-Cola PET can?

8 A. So my ground 2 starts at Claim 9, which is a
9 dependent claim, and I consider the container of
10 Claim 1, and so indeed it does consider the container
11 body and lid of the Coca-Cola PET can.

12 Q. Okay. We've been going about an hour.
13 You want to take a break?

14 A. Yeah. Going an hour. When would you like to
15 return?

16 MR. WEBB: Why don't we, to make it even,
17 let's say 1:10 Pacific time. About 13 minutes from now.

18 THE WITNESS: I've got it. I will be back.

19 (Recess: 12:57 p.m. to 1:10 p.m.)

20 BY MR. WEBB:

21 Q. All right. Thanks, Dr. Delson.

22 Did you talk to counsel during the break?

23 A. No, I did not.

24 Q. Great. Thank you.

25 Let's talk about ground 3 briefly. If you'd

1 like, can you turn to -- looks like page 103 of your
2 declaration is where ground 3 starts.

3 What references are you relying on for ground
4 3?

5 A. I am relying on three prior art patents
6 referred to as Metzger, Protais, and Kaminski.

7 Q. And how are you combining those references in
8 ground 3?

9 MR. SHVODIAN: Objection. Form.

10 THE WITNESS: I described the combination that
11 I use in paragraph 176, and specifically it is to take
12 the body of Metzger's container and combine that with
13 the improved base design of Protais. And Metzger
14 described a few configurations for the lid attachment.
15 It does not require a specific type of lid, so I
16 incorporate the teachings of Kaminski which describes
17 more details of the lid.

18 BY MR. WEBB:

19 Q. Okay. Thank you. Just to confirm what you
20 just said based on paragraph 176, your ground 3
21 combination is using the body of Metzger's container,
22 the improved base design of Protais, and the lid of
23 Kaminski; is that correct?

24 MR. SHVODIAN: Objection. Form. Misstates
25 testimony.

1 THE WITNESS: Can you repeat that, please?

2 BY MR. WEBB:

3 Q. Sure. Just to confirm what you said, and also
4 based on your testimony in 176, your combination in
5 ground 3 is using the body of Metzger's container, the
6 improved base design of Protais, and the lid teachings
7 of Kaminski; is that correct?

8 MR. SHVODIAN: Same objections. Form.

9 THE WITNESS: I would say --

10 (Court Reporter requested clarification.)

11 MR. SHVODIAN: I said, "Same objections.
12 Form."

13 THE WITNESS: My grounds are that the
14 teachings of Metzger would have directed a POSITA to
15 enhance the body of Metzger's container using the
16 improved base design of Protais.

17 BY MR. WEBB:

18 Q. And is it Metzger's teaching that also teaches
19 enhancing the lid based on Kaminski?

20 MR. SHVODIAN: Objection. Form.

21 THE WITNESS: Can you restate that, please?

22 BY MR. WEBB:

23 Q. Sure. In your ground 3, are you also relying
24 on Metzger's teachings to enhance the lid based on
25 Kaminski?

1 MR. SHVODIAN: Objection. Form.

2 THE WITNESS: Metzger describes a few limited
3 configurations for the lid and does not require a
4 specific type of lid to use.

5 So, therefore, a POSITA would have been guided
6 to the teachings of Kaminski that describe a more
7 detailed description of a lid.

8 BY MR. WEBB:

9 Q. Okay. When you say a POSITA would have been
10 guided to the teaching of Kaminski, that's based on the
11 teaching of Metzger?

12 MR. SHVODIAN: Objection. Form.

13 THE WITNESS: A POSITA would have been guided
14 to the teachings of Kaminski because it's prior art and
15 because it's a well -- in a well-known field with lids
16 that have that type of feature in them to -- to open
17 them. So in this field, a POSITA would have known that
18 there are widely-used lids that can easily be opened,
19 and they are described in detail in Kaminski.

20 So a POSITA would have been guided based on
21 their knowledge of what's common in the field and would
22 have looked to the teaching of Kaminski to find details
23 on how to implement this widely-used feature of a lid.

24 BY MR. WEBB:

25 Q. Let's turn to paragraph 173 of your

1 declaration. This begins towards the bottom of page
2 103.

3 A. I'm there.

4 Q. Okay. You can read the first two sentences to
5 yourself, and then I'll have some questions for you.

6 A. I have read 173.

7 Q. Okay. In ground 3, are you relying on U.S.
8 patent number 8,141,741?

9 A. In ground -- what was the first word? In
10 ground what?

11 Q. In ground 3.

12 A. In ground 3 I utilize U.S. Patent Number
13 8,141,741 as prior art.

14 Q. Okay. So in ground 3 you're not utilizing
15 U.S. patent publication number 2009/0212004, correct?

16 MR. SHVODIAN: Objection. Form. Calls for a
17 legal conclusion.

18 THE WITNESS: In my declaration, I rely on the
19 exhibits, which are shown under paragraph -- in the
20 table under paragraph 9, and they refer to the Metzger
21 patent as Exhibit 110.

22 So that is the material that I relied on when
23 I refer to Metzger.

24 BY MR. WEBB:

25 Q. And just to confirm, that table references

1 U.S. Patent Number 8,141,741 for Metzger, correct?

2 A. That is correct.

3 Q. Still on paragraph 173 of your declaration, in

4 the fourth sentence, which is on page 104, indicate that

5 "Metzger's," quote/unquote, "'protective features'

6 improve the container by maintaining a vacuum when the

7 container is used for hot-fill including food

8 sterilization processes."

9 Correct?

10 A. Just have to get back to that page.

11 Can you repeat the page number?

12 Q. Sure. Yeah. So this is paragraph 173. It's

13 the fourth sentence --

14 A. On what page number?

15 Q. And it's on page 104.

16 A. Okay. I'm at that place.

17 Can you repeat your question, please?

18 Q. Absolutely. And this is starting at the --

19 the end of the first line, if you want to follow along,

20 but here you indicate that "Metzger's" quote/unquote,

21 "'protective features' improve the container by

22 maintaining a vacuum when the container is used for

23 hot-fill including food sterile foundation processes."

24 Correct?

25 A. Can I open up the Metzger patent or take a

1 look at it?

2 Q. Sure. Let me offer that into the chat for
3 you. Should be on the way.

4 A. In the background of Metzger, it describes
5 desired features of a container, and specifically it
6 states in the background that "Containers that maintain
7 a vacuum after the container is sealed are vulnerable to
8 impacts during processing, labeling, and transport.
9 Such impacts may break the hermetic vacuum seal of the
10 container which may cause leakage and may expose
11 contents of the container to spoilage."

12 Further in the background, it -- it states
13 that, "Therefore, it would be desirable to provide a
14 container capable of maintaining a vacuum having one or
15 more protective features. Furthermore, it would be
16 desirable to provide a vacuum container with protective
17 features that is suitable for use with hot-filled and/or
18 thermal processes." [As read.]

19 Q. The protective features that you just
20 described in the background of Metzger and that you also
21 reference in paragraph 173 of your declaration, what are
22 the protective features you are referencing to?

23 A. I would like to refer you to Column 5, line
24 53, where the patent states, "According to one exemplary
25 embodiment, as shown in Figures 1 through 3, body 10

1 includes two beads 70. Beads 70 are" --

2 (Court reporter requested clarification.)

3 THE WITNESS: "Body 10 includes two beads 70.
4 Beads 70 are generally located symmetrically along the
5 length of center portion 21. In an exemplary 26-ounce
6 embodiment, bead 70 at [as read] -- may be spaced about
7 1.02 inches apart. Applicants have found that this
8 embodiment sufficiently strengthens center portion 21 to
9 resist deformation caused by the pressure differential
10 between the internal vacuum and the [as read] -- and the
11 external atmospheric pressure.

12 "Applicants have found that this embodiment
13 resists deformation when subject to vacuum of at least
14 22 inches mercury [as read]." Mercury is spelled
15 capital H, lower case g.

16 So this describes a protective feature that
17 would resist the background -- the prior art described
18 in the background such as in Column 2, line 27, where it
19 says, "It will be desired to provide a container capable
20 of maintaining a vacuum having one or more protective
21 features."

22 Q. Thank you. Let's look up a little bit higher
23 in Column 2, line 19. Like four words in, it starts
24 discussing a thermal retort processes present
25 challenges...

1 Could you please review starting at that
2 sentence to the end of that paragraph.

3 A. I have reviewed that.

4 Q. Okay. What is Metzger describing here in
5 Column 2, lines 19 to 26?

6 MR. SHVODIAN: Objection. Form.

7 THE WITNESS: In lines 19 to 26, in Column
8 B of Metzger, in the background section, Metzger
9 describes challenges to the design and manufacture of
10 vacuum containers, vacuum containing containers, and the
11 challenges of pressure and temperature of the thermal
12 process and that that may, in the prior art of Metzger
13 in the background material, may compromise the seal, and
14 may ultimately cause an unsecured vacuum seal to
15 separate from the container body. That's described in
16 the background of Metzger.

17 Q. Are the protected features such as the bead 70
18 that you pointed me to in Column 5, are they designed to
19 address those issues you just described?

20 MR. SHVODIAN: Objection. Form.

21 BY MR. WEBB:

22 A. So it described challenges associating with
23 pressure, and if we go back to Column 5, it -- let's
24 see. What word -- I don't remember the lines that I had
25 referenced.

1 Can you remind me what they were?

2 Q. Sure. You pointed us to Column 5 starting at
3 line 53 and the few lines that follow that.

4 A. Yes, so this description of the -- an
5 embodiment in Metzger specifically is able to resist
6 vacuum pressures and they cite saying the specific
7 pressure level of 2 -- 22 inches Mercury.

8 Q. And this is an example of one of the protected
9 features that you reference in paragraph 173 of your
10 declaration, correct?

11 A. In paragraph 173 I indeed do describe
12 protective features to improve the maintainer -- improve
13 the container by maintaining a vacuum. And further all,
14 I describe that Metzger teaches that the container can
15 resist forces during the manufacture filling processing,
16 and so on, without deformation; and that, indeed, those
17 features that I described previously in Column 5 did
18 describe one of the methods that Metzger used and,
19 indeed, that they were able to achieve some of these
20 factors.

21 Q. Okay. And there in Figure 173 you also
22 indicate that Metzger 's container can be used for
23 hot-fill including food sterilization processes,
24 correct?

25 A. Correct.

1 Q. Let's quickly turn to Column 11, line 16, of
2 Metzger.

3 A. I'm there.

4 Q. So here Metzger is describing a thermal
5 process. "The container disclosed herein may be further
6 subjected to a thermal process."

7 What does Metzger mean by the thermal process
8 here?

9 A. Metzger described a thermal process in Column
10 11 starting on line 17 and describes "A thermal process
11 may generally be characterized as a process of
12 subjecting the filled and closed container to a cooking
13 or sterilization process within a closed or open vessel
14 containing a heating medium having different heat, time,
15 and pressure variables sufficient to substantially
16 sterilize the interior and contents of the food
17 container."

18 Q. And is the hot-filled food sterilization
19 process you talk about in paragraph 173 of your
20 declaration an example of this thermal process?

21 MR. SHVODIAN: Objection. Form.

22 THE WITNESS: So in 173 I write, "Metzger's
23 'protective features' improve the container by
24 maintaining a vacuum when the container is used for
25 hot-filled including food sterilization process." And

1 indeed that does include the food sterilization process
2 described in Column 11, starting on line 17.

3 BY MR. WEBB:

4 Q. What temperatures are these types of food
5 sterilization processes performed at?

6 MR. SHVODIAN: Objection. Form. Scope.

7 THE WITNESS: Metzger describes in Column 11,
8 line 21, that "heat, time, and pressure variables
9 sufficient to substantially sterilize the interior and
10 the contents of the food container."

11 So it indicates that those are variables, but
12 further on it describes in line 35, Column 11 -- it
13 gives some examples. "During a thermal resort [sic]
14 process, the container and food inside the container
15 will be brought to temperatures of about at least
16 200 degrees Fahrenheit." [As read.]

17 And it further indicates that "thermal resort
18 [sic] process may include bringing the container to a
19 temperature of between 220 degrees Fahrenheit and 275
20 degrees Fahrenheit." [As read.]

21 So these are representative examples of
22 temperatures.

23 BY MR. WEBB:

24 Q. Okay. So when Metzger says, "During the
25 thermal retort process, the container and the food

1 inside the container will be brought to a temperature of
2 about at least 200 degrees Fahrenheit." That's at
3 Column 11, lines 35 to 37.

4 Do you take that as a minimum of at least
5 200 degrees Fahrenheit or is this an example?

6 MR. SHVODIAN: Objection. Scope. Form.

7 THE WITNESS: It's an approximate minimum.

8 BY MR. WEBB:

9 Q. Turning back to paragraph 173 of your
10 declaration again.

11 A. I'm there.

12 Q. And this is on page 104 -- one, two, three,
13 four -- fifth line starting towards the end, sentence
14 begins, "The container."

15 And indicate that, "The container can be
16 manufactured using a wide array of materials (including
17 plastics)." And then you cite to Column 3, lines 57 to
18 58, of Metzger; is that correct?

19 A. Yes. Just to ensure that there's no
20 ambiguity, I state that, "The container may be
21 manufactured using a wide variety of materials."

22 That's what you're referring to?

23 Q. Yes.

24 A. That is correct.

25 Q. Let's turn to that Column 3, lines 57 to 58 of

1 Metzger that you cite to here.

2 A. Can you repeat that again?

3 Q. Sure. Column 3, lines 57 to 58 of Metzger.

4 A. I am there.

5 Q. Okay. Please read the portion of Metzger you
6 cite to into the record, please.

7 A. "It should be further understood that the
8 container may be formed from any material, including
9 metals, various plastics, and glass."

10 Q. Thank you.

11 What does a POSITA understand from this
12 statement in Metzger?

13 A. A POSITA would understand that the teachings
14 of Metzger could be used to generate an embodiment where
15 the container may be formed from different materials,
16 including metal, plastic, and glass.

17 Q. When Metzger says here "the container may be
18 formed from any material," are there any limits to that?

19 MR. SHVODIAN: Objection. Form. Scope.

20 THE WITNESS: A POSITA would understand "any
21 material" to be any material suitable for making a
22 container.

23 BY MR. WEBB:

24 Q. So when Metzger says "various plastics" in
25 this sentence, a POSITA would understand that to be

1 various plastics suitable for making a container,
2 correct?

3 A. Correct.

4 Q. Are the various plastics Metzger describes
5 here necessarily made out of resin?

6 MR. SHVODIAN: Objection. Form. Scope.

7 THE WITNESS: The teaching of Metzger does not
8 describe the various types of plastics. It would be up
9 to a POSITA to use their background and knowledge to
10 choose between the various plastics based on the
11 application that they are trying to address.

12 BY MR. WEBB:

13 Q. And for some applications, would a POSITA
14 choose a plastic that is not made of a resin?

15 MR. SHVODIAN: Objection. Form. And scope.

16 THE WITNESS: To answer that question, I'd
17 like to refer you to page 18 -- I'm sorry. I'd like to
18 refer you to paragraph 187 of my declaration where I'm
19 defining "resin" as any of numerous physical similar
20 polymerized synthetics to form plastics.

21 I have not given an opinion on every type
22 of -- of various plastics that are out there to
23 determine -- to evaluate Metzger's intent.

24 (Court Reporter requested clarification.)

25 THE WITNESS: I'll repeat it, and then I'll

1 spell it out. "Defining resin as," quote, "any of
2 numerous physically similar polymerized" -- that's
3 spelled P-O-L-Y-M-E-R-I-Z-E-D -- and then the following
4 word is "synthetics to form plastics."

5 BY MR. WEBB:

6 Q. Thank you. So then when Metzger says "various
7 plastics," do you understand that to include plastics
8 both formed from a resin and plastics not formed from a
9 resin?

10 A. I have not evaluated that. I have not
11 considered all of the various plastics that Metzger is
12 referring to.

13 Q. Let's turn to Column 11, line 64, of Metzger,
14 please.

15 A. I'm there.

16 Q. Thank you.

17 Here Metzger is describing that the container
18 may be used with a nonthermal process.

19 Can you please describe the difference between
20 the thermal process we discussed before and the
21 nonthermal process described here?

22 MR. SHVODIAN: Objection. Form and scope.

23 THE WITNESS: The nonthermal -- or the thermal
24 process described previously involves heating up the
25 container to a minimum that's approximately 250 degrees

1 Fahrenheit.

2 And the nonthermal process described in Column
3 11, line 65, the temperature of what's added to the
4 container is at an ambient temperature, such as
5 65 degrees Fahrenheit. And in this case also a vacuum
6 is -- is -- is -- the contents are subject to a vacuum.

7 BY MR. WEBB:

8 Q. And Kaminski describes this as a strong
9 vacuum, for example, 10 inches of mercury to 22 inches
10 of mercury; is that correct?

11 A. My document shows it 19 inches to mercury to
12 22 inches of mercury as an example. So it's "e.g." so
13 Metzger in Column 12, line 1, gives an example of what
14 they refer to as a strong mercury, and that example of
15 ranges from 19 to 22 inches in mercury.

16 Q. And you're correct. I think I misspoke and
17 said 10 instead of 19; but, yes, I see the same thing
18 there in Metzger.

19 What is applying a strong vacuum container --
20 what does that mean?

21 MR. SHVODIAN: Objection. Form. Scope.

22 THE WITNESS: It means that a vacuum of a
23 certain magnitude are applied to the container and the
24 contents, and that a closure is attached to the
25 container under this vacuum.

1 BY MR. WEBB:

2 Q. Thank you.

3 MR. WEBB: We've been going about an hour.
4 I'm about to start a different line of questioning.
5 Let's go ahead and take a break now. I want to pick
6 back up at 2:15 Pacific time.

7 THE WITNESS: That works for me.

8 (Recess: 2:02 p.m. to 2:15 p.m.)

9 BY MR. WEBB:

10 Q. Dr. Delson, did you talk to counsel during the
11 break?

12 A. No, I did not.

13 Q. All right. Turn to grounds 1 and 2 in your
14 declaration.

15 Is the PCAN container body formed by blow
16 molding?

17 A. So your question had two elements in it, and
18 I'm not sure of the connection between those two
19 elements of your question.

20 Can you please clarify your question?

21 Q. Sure.

22 MR. SHVODIAN: I just wanted to insert an
23 objection as to the form of the question. So just,
24 again, Dr. Delson, just give a slight pause so I can
25 object. Thank you.

1 THE WITNESS: Sure.

2 BY MR. WEBB:

3 Q. Is the PCAN, the body of the PCAN, formed by
4 blow molding?

5 MR. SHVODIAN: Objection. Form.

6 THE WITNESS: The body of what?

7 BY MR. WEBB:

8 Q. Can the body of the Coca-Cola PET be formed by
9 blow molding?

10 A. I was not asked to opine on the method of
11 manufacturing of the can of the Coca-Cola/Sprite can
12 that I evaluated.

13 And let me clarify that I was not asked to
14 opine on the manufacturing method for the plastic
15 component of the Coca-Cola can with Sprite labeling that
16 I evaluated.

17 Q. Okay. Thank you. Let's turn to page 22 of
18 your declaration, please.

19 A. I'm on page 22.

20 Q. And here there are several different pictures
21 of the Sprite can that you were just referencing,
22 correct?

23 A. That is correct.

24 Q. Where is the dividing line between the base
25 portion of the container sidewall and the middle portion

1 of the container sidewall in these images?

2 A. Just to clarify, you're asking the dividing
3 line between what and what? Can you repeat again?

4 Q. Sure. Happy to.

5 Yes, the dividing line between the base
6 portion of the can and the container sidewall of the
7 can.

8 A. The dividing line between the base portion and
9 the container sidewall is described in paragraph 45 of
10 my declaration and shown on a figure on page 27. On the
11 upper right-hand figure, the red line shows the
12 container sidewall, and there's a blue line -- a dashed
13 blue line that shows division with the base portion.

14 Q. Thank you.

15 How did you choose the location of that dashed
16 blue line and the end of red line?

17 A. To interpret that, I use the '411 patent to
18 interpret their language. Is it -- the four -- could I
19 have access to that patent?

20 Q. Sure.

21 MR. WEBB: I'll put Exhibit 1001, the '441
22 patent, in the chat. Should be on the way.

23 THE WITNESS: Got it. I'm downloading it.

24 A POSITA would understand the -- let me -- let
25 me restart that sentence. That's not what I -- what I

1 meant to say. When I was evaluating the '411 patent, I
2 looked to understand its teachings, and the teachings,
3 indeed, describe in Claim 1 where in the container body
4 comprises a container sidewall and a base portion
5 connected to the container sidewall.

6 So the '441 patent in that claim prescribes
7 that there is a container sidewall and a base portion,
8 and they are connected.

9 I would look further to understand what is
10 meant in the '441 claim, and it further states in the
11 claim wherein the base portion defines a diameter that
12 is less than the cross-sectional diameter of the middle
13 portion of the container sidewall.

14 It further states, "wherein a lower portion of
15 the container sidewall extends downwardly from the
16 middle portion of the container sidewall to the base
17 portion of the container sidewall, the lower portion
18 along its entirety being greater in diameter than the
19 base portion, including the bottom, thereby rendering
20 the container body stemless."

21 To understand what is meant by this, I have
22 looked at the description of the patent, and I looked at
23 the figures of the patent, and I understood this
24 description in terms of the embodiment showed in Figure
25 1 where they identify a base and bottom as close to --

1 in between the sidewall and the lowest portion of the
2 wall, but still coming up partway.

3 I use this understanding of the language in
4 '441 to see if indeed that element was present in the
5 Coca-Cola can, and I used that teaching to define where
6 the dividing line of the base portion was, and based on
7 the line Element 109 drawing in Figure 1.

8 BY MR. WEBB:

9 Q. Thank you.

10 So a followup question on that. Sounds like
11 where you just described the selection of the location
12 of that dashed blue line and the end of the red line in
13 that top right figure on page 27 of your declaration.
14 You determined those locations by looking at the claim
15 language of the '441 patent and the associated
16 description in the '441 patent including Figure 1; is
17 that correct?

18 MR. SHVODIAN: Objection. Form.

19 THE WITNESS: I chose the base portion
20 dividing line in interpretation of Element 1.E by
21 understanding Element 1.E in terms of what 1.E -- the
22 language in 1.E can be interpreted as. And I used the
23 full specification of the '441 patent including figures,
24 texts, description, and claims.

25

1 BY MR. WEBB:

2 Q. Were there any physical attributes of the
3 Sprite can that you relayed on to choose the location of
4 the blue dashed line indicating the base portion?

5 A. There was one word that I didn't hear in your
6 question.

7 MR. SHVODIAN: Objection. Form. Just --
8 again, reminder, pause before speaking so I can object.

9 Okay. Sounds like you needed the question
10 reasked?

11 THE WITNESS: I did not -- please repeat the
12 question. Just -- there was one word that I didn't
13 catch.

14 BY MR. WEBB:

15 Q. Sure. Were there any physical attributes of
16 the Sprite can that you relied upon to choose the
17 location of the blue dashed line indicating the base
18 portion?

19 MR. SHVODIAN: Objection. Form.

20 THE WITNESS: When looking at the physical
21 Sprite/Coca-Cola can, I identified a container sidewall,
22 which is shown in red on the top portion, upper right
23 portion of page 27 in my declaration.

24 And when interpreting the claim language, I
25 looked at Claim 1, and the portion said -- it said,

1 wherein -- "wherein the base portion defined the
2 diameter that is less than the cross-sectional diameter
3 of the middle portion of the container sidewall," I
4 interpreted that language, and I looked at the physical
5 can. I identified a sidewall. And I chose the base
6 portion accordingly.

7 BY MR. WEBB:

8 Q. Okay. So you identified the sidewall and you
9 chose the base portion based on the claim language,
10 correct?

11 A. The claim language and the interpretation of
12 the claim language in light of the full '441 patent.

13 Q. Okay. Thank you.

14 Continuing to look at page 27 -- or back to
15 22. It's still going to be referring to the Sprite can
16 that you analyzed.

17 What is the dividing line between the
18 container sidewall and the circular --

19 A. One second, please. Let me get to page 22.

20 Q. Sure.

21 A. Please repeat.

22 Q. What is the dividing line between the
23 container sidewall and the circular neck in these
24 pictures?

25 MR. SHVODIAN: Objection. Form.

1 THE WITNESS: A circular neck is shown on page
2 40 and 41 of my declaration.

3 BY MR. WEBB:

4 Q. Okay. Looking -- looking at those images on
5 pages 40 and 41 of your declaration, how did you choose
6 where the container sidewall ended and the circular neck
7 began?

8 A. My interpretation of the location of the neck
9 is based on the words in teaching in the '441 patent,
10 and I'd like to refer you to Column 4, line 50, where it
11 describes "Wherein the container body further comprises
12 a lip at an end of a circular neck opposite the upper
13 edge of a container sidewall."

14 And I'd also like to refer to you Figure 5
15 where one can see the container body 105 connected to
16 the vertical neck of the container 107 further connected
17 to the lip of the container 103.

18 So when I see these three elements and I look
19 at page 40 of my declaration, in the picture you can see
20 on the lower right the container body. There is a neck;
21 and if you look in further to the right, there's a
22 little lip portion.

23 So my interpretation on the language and the
24 figures of the '441 patent indicates that the neck is
25 connected to the sidewall and then further connected to

1 the lip. And that's how I drew the neck location.

2 Q. Okay. Looking further down on page 41, you
3 address Element 1.0, and in particular you address the
4 limitation wherein an upper edge of the container
5 sidewall is adjacent to the circular neck of the
6 container body.

7 In your analysis of this element, what did you
8 understand a POSITA would understand by the phrase, "an
9 upper edge"?

10 MR. SHVODIAN: Could I have just a second?
11 I'm trying to get to the right page. I could look at
12 the transcript. I'm sorry.

13 MR. WEBB: It's page 41. Element 1.0 -- or
14 1.0, sorry.

15 MR. SHVODIAN: Thank you.

16 BY MR. WEBB:

17 Q. And, Dr. Delson, to repeat my question, in
18 your analysis, what did you determine a POSITA would
19 understand by an upper edge as recited in this element
20 of the claim?

21 A. My interpretation is that the upper edge of
22 the container sidewall is the location shown on page 42,
23 and it is adjacent to the circular neck of the container
24 body.

25 Q. Are there any requirements of the upper edge

1 other than being adjacent to the circular neck of the
2 container body?

3 MR. SHVODIAN: Objection. Form.

4 THE WITNESS: Can you repeat the question
5 again?

6 BY MR. WEBB:

7 Q. Sure. In Element 1.0, are there any
8 requirements of the upper edge other than being adjacent
9 to the circular neck of the container body?

10 MR. SHVODIAN: Objection. Form.

11 THE WITNESS: Let me refer you to Column 4 of
12 the '441 patent, line 50. And it specifies "Wherein the
13 container body further comprises a lip at an end of the
14 circular neck opposite the upper edge of a container
15 sidewall."

16 So the interpretation is that the upper edge
17 of the container sidewall defines an end of the circular
18 neck.

19 BY MR. WEBB:

20 Q. Okay. Does the term "edge" require any
21 physical structure?

22 MR. SHVODIAN: Objection. Form.

23 THE WITNESS: The word "edge" has many
24 meanings in the English language. Some of those
25 meanings do not require a physical structure.

1 BY MR. WEBB:

2 Q. In the context of Element 1.0 of the '441
3 patent, did you understand the upper edge to require a
4 particular physical feature?

5 A. Can you define what you mean by "physical
6 feature"?

7 Q. Sure. I can give it a shot.

8 Is there a particular physical characteristic
9 or shape or type that would be indicative of an upper
10 edge as recited in Element 1.0 of the '441 patent?

11 MR. SHVODIAN: Objection. Form.

12 THE WITNESS: Can you repeat that again? I --
13 I'm sorry.

14 BY MR. WEBB:

15 Q. Sure.

16 MR. SHVODIAN: Or it could be read back.

17 THE WITNESS: Yeah.

18 BY MR. WEBB:

19 Q. Is there a particular physical characteristic,
20 shape, or type of structure that is indicative of an
21 upper edge as recited in Element 1.0 of the '441 patent?

22 MR. SHVODIAN: Objection. Form.

23 THE WITNESS: A physical characteristic of the
24 upper edge is that it is adjacent to the circular neck
25 of the container body. That's one example.

1 BY MR. WEBB:

2 Q. Just to clarify, so the example you just gave
3 of it being adjacent to the circular neck is a relative
4 positioning, correct?

5 MR. SHVODIAN: Objection. Form.

6 THE WITNESS: The word "adjacent" does relate
7 to position in this context, yes.

8 BY MR. WEBB:

9 Q. Let me ask another question here related to
10 the upper edge.

11 So we talked a little bit about whether it
12 requires a physical characteristic or relative location.

13 When you interpreted an upper edge here, did
14 it have a different meaning than an upper boundary of
15 the container sidewall?

16 MR. SHVODIAN: Objection. Form. Scope.

17 THE WITNESS: Can you define "boundary,"
18 please?

19 BY MR. WEBB:

20 Q. Sure. An example of a boundary would be an
21 end of something.

22 A. Is that the only definition of boundary that
23 you have that you are asking the question of?

24 Q. Sure. To make it easier, yeah, let's go with
25 that.

1 Did you interpret an upper edge to be the end
2 of the container sidewall?

3 MR. SHVODIAN: Objection. Form.

4 THE WITNESS: I can state that one
5 interpretation of a POSITA of the '441 patent, that an
6 upper edge would be the end of the container sidewall.
7 But that's one interpretation that a POSITA would have.
8 BY MR. WEBB:

9 Q. Is that the interpretation you applied in your
10 analysis?

11 A. Yes.

12 Q. Looking at Elements 1.0 and 1.P together, we
13 see that it recites, "Wherein an upper edge of the
14 container sidewall is adjacent to the circular neck of
15 the container body," and it continues, "Wherein the
16 container body further comprises a lip at an end of the
17 circular neck opposite the upper edge of the container
18 sidewall."

19 Do you see that?

20 A. Oh, I see it, I'm sorry. Yes, I see that.

21 Q. To meet the requirements of the upper edge in
22 these claim Elements 1.0 and 1.P of the '441 patent,
23 does the upper edge need to do anything other than be
24 adjacent to the circular neck of the container body and
25 opposite the upper edge of the container sidewall?

1 MR. SHVODIAN: Objection. Form. Calls for a
2 legal conclusion.

3 THE WITNESS: To answer this carefully, can
4 you repeat the question slowly, please?

5 BY MR. WEBB:

6 Q. Sure. To meet the requirements of the upper
7 edge that is in Claim 1.0 and 1.P of the '441 patent,
8 does the upper edge need to do anything other than be
9 adjacent to the circular neck of the container body and
10 opposite the upper edge of the container sidewall?

11 MR. SHVODIAN: Objection. Form. Calls for a
12 legal conclusion.

13 THE WITNESS: The two requirements that you
14 are citing is the upper edge being adjacent?

15 BY MR. WEBB:

16 Q. Yes. Let me repeat it. So that the two
17 requirements I'm asking about are that the upper edge is
18 adjacent to the circular neck of the container body --
19 I'll say it again for clarity -- adjacent to the
20 circular neck of the container body, and then the second
21 element is it is opposite a lip at the end of the
22 circular neck.

23 MR. SHVODIAN: Same objections.

24 THE WITNESS: Patent '441 describes a
25 container, and the claims relate to the complete

1 container. So when we're looking at the relative
2 positions of different elements, one has to look at the
3 complete claim and description of the container.

4 And so if one was looking at the position of
5 the neck or the edge of the neck or the neck and its
6 relationship to the lip, one has to review all of the
7 language that relates to the positioning of elements
8 within the description and within the claim.

9 And so I'd like to refer you to line 54 of
10 Column 4 where it says, "Wherein a first portion of the
11 lid is above the lip of the container body." The lip
12 position is further defined relative to the neck and the
13 neck is defined relative in the neck edge, and that is
14 relative to the sidewall.

15 So one needs to -- the requirements that one
16 position must have relative to other positions must be
17 interpreted in the context of all of the parts of this
18 container such as that the lid is above the lip of the
19 container body. So the features of the requirements of
20 the upper edge must be in an embodiment that meets all
21 those requirements.

22 BY MR. WEBB:

23 Q. Okay. Thank you.

24 So as you just explained, there's a bunch of
25 interrelated components that are described and claimed

1 in Claim 1 and requiring different relative
2 positionings, and you talked through the relative
3 position of each one affects the other; you consider all
4 those together.

5 Is that what you described?

6 MR. SHVODIAN: Objection. Form.

7 THE WITNESS: I looked at the elements of each
8 claim and interpreted them based on the reading of the
9 complete '441 patent, including the figures, the
10 description, and the claim language.

11 BY MR. WEBB:

12 Q. Other than the relative positioning that you
13 described, are there any characteristics required for a
14 part of container to be an upper edge?

15 MR. SHVODIAN: Objection. Form.

16 THE WITNESS: Can you repeat that again? I
17 apologize.

18 BY MR. WEBB:

19 Q. Sure. Other than the relative positioning
20 that you just described, are there any characteristics
21 required for a part of the container to be an upper
22 edge?

23 MR. SHVODIAN: Objection. Form.

24 THE WITNESS: Can you refer me to all
25 locations in the '441 patent where the term "upper edge"

1 is used?

2 BY MR. WEBB:

3 Q. I could. I don't know if that's a good use of
4 our time.

5 Did you review all of the '441 patent as part
6 of your analysis?

7 A. Yes.

8 Q. Did you find reference to the upper edge in
9 the '441 patent?

10 A. Yes.

11 Q. And did you use that in your interpretation of
12 "upper edge" as used in the claims of the '441 patent?

13 MR. SHVODIAN: Objection. Form.

14 THE WITNESS: I interpreted the claim language
15 of -- as part of the overall specification that includes
16 the description, the figures, and the claim language.
17 So when I said that I identified the upper edge, I am
18 looking at the upper edge -- term "upper edge" right now
19 in -- in the patent, and the page that I'm looking at
20 right now is the claim. I asked the question to best be
21 able to answer your question, "if you could refer me to
22 all locations of the term 'upper edge' in the '441
23 patent." And when I refer to that, I mean the whole
24 body of the description, the figures, and the claims.

25

1 BY MR. WEBB:

2 Q. In looking at the picture on 42 of your
3 declaration -- let me know when you're there.

4 A. I'm looking at it.

5 Q. You have an orange outline that identifies the
6 circular neck, correct?

7 A. Correct.

8 Q. And a red line that identifies the upper edge
9 of the container sidewall, correct?

10 A. Correct.

11 Q. Could that red line be moved up or down and
12 still remain an upper edge of the container sidewall?

13 MR. SHVODIAN: Objection. Form.

14 THE WITNESS: Based on my reading of the '441
15 patent in its entirety, I selected the location drawn in
16 red as what would constitute an upper edge.

17 BY MR. WEBB:

18 Q. Right. I'm asking if that red line was moved
19 up slightly, would that still constitute an upper edge
20 of the container sidewall?

21 MR. SHVODIAN: Objection. Form and scope.

22 THE WITNESS: The proper -- I would be happy
23 to answer your question, but to do that, I would have to
24 evaluate the complete scope of the '441 patent,
25 including the ability to identify locations of all

1 places that the term "upper edge" appears, look at other
2 language that is in that patent, and I'd be happy to do
3 that and get back to you on this question.

4 BY MR. WEBB:

5 Q. Okay. So you did not do that analysis as part
6 of your declaration, correct?

7 MR. SHVODIAN: Objection. Misstates
8 testimony. Form.

9 THE WITNESS: I analyzed the complete '441
10 patent; I analyzed the can that is shown on page 42; and
11 based on that complete analysis, I chose the red line as
12 the location of the upper edge of the container
13 sidewall.

14 MR. WEBB: Looks like we've been going about
15 another hour. You want to take a 10-minute break and
16 then we'll pick back up?

17 THE WITNESS: Good.

18 MR. WEBB: So 3:25 Pacific time?

19 THE WITNESS: That works for me.

20 (Recess: 3:15 p.m. to 3:25 p.m.)

21 BY MR. WEBB:

22 Q. Mr. Delson, did you talk to counsel during the
23 break?

24 A. I did not.

25 Q. Great. Let's turn to paragraph 47 on page 28

1 of your declaration, please.

2 A. Apologies. Was it paragraph 47 or page 47?

3 Q. Yeah, paragraph 47 on page 28. Element 1.G,
4 if that helps.

5 A. Okay. I'm there.

6 Q. For Element 1.G of the '441 patent, what
7 portion of the PCAN do you identify as the first
8 depression?

9 A. The first depression is described in paragraph
10 46 and showed through the purple arrows on the figure
11 below paragraph 46.

12 Q. And how does that purple area identified by
13 the purple arrows that say "first depression," how does
14 that first depression partially define a first outline
15 as required by 1.G?

16 A. As I state in my declaration, the term
17 "outline" is only recited in the claims and, therefore,
18 consistent with the dictionary definition, an outline is
19 a line describing a plain of vision of an outer boundary
20 of any object or figure.

21 The lower end of the Coca-Cola PET can has a
22 bottom surface on which the can rests when standing
23 outright -- so that's the bottom surface.

24 An inner edge of this bottom surface marks a
25 transition between the bottom surface and the curvature

1 of the depression. The inner edge represents a first
2 outline that is at least partially defined by the
3 depression.

4 Q. To confirm what you're seeing there in
5 paragraph 47, the blue outline shown in the image on
6 page 29 on the right-hand side, which has the arrow that
7 says "first outline," that is the outer boundary of the
8 first depression shown in purple on the left-hand figure
9 on page 29; is that correct?

10 A. A -- an outline is an outer boundary of an
11 object. That's how I interpreted it. And the
12 depression has an outer boundary, and that's how I
13 defined the first outline.

14 Q. Just to confirm your answer there, you defined
15 the first outline based on the outer boundary of first
16 depression, correct?

17 A. Yes.

18 Q. And based on that definition, that is how the
19 first depression partially defines a first outline,
20 correct?

21 A. The outline of the first depression defines a
22 first outline.

23 Q. And when you say "outline of the first
24 depression," do you mean the outer boundary of the first
25 depression?

1 A. It is based on a boundary of the first
2 depression and that can be considered an outer boundary.

3 Q. Is there a different boundary than the first
4 depression that you are relying on other than the outer
5 boundary?

6 A. For this -- on objects, such as the first
7 depression, may have a number of boundaries; but for the
8 purpose of identifying the first outline, that is the
9 boundary I'm defining from the lineup.

10 Q. And to confirm, the boundary you're relying on
11 is the outer boundary of the first depression, correct?

12 A. It is "a" outer boundary of the first
13 depression.

14 Q. So are you saying the first impression has
15 multiple outer boundaries?

16 A. Any object can have many -- a number of
17 boundaries, and the first depression could have
18 multiple -- may have multiple -- let me just start this
19 sentence again and refer you to Element 1.F, which is
20 in -- right above paragraph 46 where it says, "Wherein
21 the base portion comprises a bottom and a first
22 depression formed therein."

23 So I am interpreting the first depression as
24 part of the base portion, and that part of the base
25 portion could have multiple boundaries, correct.

1 Q. And can there be multiple outer boundaries; is
2 that correct?

3 MR. SHVODIAN: Objection. Form.

4 THE WITNESS: Considering that an object, when
5 it interfaces with the rest of the world, could have
6 multiple outer boundaries, then the first depression
7 could have multiple boundaries; but in my interpretation
8 of the claim language of the '441 patent, that outer
9 boundary that I show is described in the first outline
10 as shown on page 29. That is the one that is applicable
11 to the Coke can based on the reading of the '441 patent.
12 BY MR. WEBB:

13 Q. Okay. Let's turn to paragraph 328 on page
14 207. And, again, referencing Element 1.G of the '441
15 patent. It talks about "Wherein first depression at
16 least partially defines a first outline." And in
17 paragraph 328 you reference annotated Figures 2 and 5
18 that are shown on the following page, page 208.

19 A. I see those.

20 Q. For these Figures 2 and 5, are you using the
21 outer boundary of the purple first depression to define
22 the blue first outline?

23 MR. SHVODIAN: Objection to form.

24 THE WITNESS: Let me refer to you
25 paragraph 325 from my declaration where it states that,

1 "Pedmo also disclosed a first depression in two ways."
2 And those two ways -- and one of those two ways is shown
3 on page 204, and a second one is showed on 206.

4 BY MR. WEBB:

5 Q. Okay.

6 A. And the claim language 1.G states, "Wherein
7 the first depression at least partially defines a first
8 outline."

9 Q. Correct. And of the two ways, the two
10 alternative approaches you set forth in your declaration
11 here, I was asking about the first one addressed in
12 paragraph 328 in Figures 2 and 5 that are annotated and
13 shown on page 208.

14 And my question was: For this first approach
15 that you described that you referred me back to and is
16 shown on page 208, the first outline that is shown in
17 blue appears to be based on the outer boundary of the
18 first depression.

19 Is my understanding correct?

20 MR. SHVODIAN: Objection to the form.
21 Misstates the record.

22 THE WITNESS: The Element 1.G indicates
23 "wherein the first depression at least partially defines
24 a first outline." So when one considers the term
25 "partially defines," then the way I applied my opinion

1 was based on that claim language and my claim -- what is
2 shown on page 208 labeled as "First Outline" is indeed
3 where the first depression -- which I described the
4 first one of those on page 204 as that interpret -- that
5 first depression at least partially defines that first
6 outline on page 208.

7 BY MR. WEBB:

8 Q. And how does that first depression partially
9 define first outline on page 208?

10 A. Because it is a line indicating the outer
11 contours of boundaries of an object which is, in this
12 case, the first depression. So it is an -- or a line
13 indicating the contours of a boundary of the first
14 depression.

15 Q. Okay. And moving down to page 209 where we
16 discussed the second interpretation, in this case the
17 first depression points to a wedge 22 in the bottom of
18 the can; is that correct?

19 A. That is correct.

20 Q. And the first outline in blue is a circle
21 outline; is that correct?

22 A. That is correct.

23 Q. And the first depression that is the wedge 22
24 intersects with the first outline in blue, correct?

25 A. Can you repeat that, please?

1 Q. Sure. The first depression 22 that has the
2 wedge shape shown there in annotated Figure 2 on page
3 209 intersects with the blue first outline also shown
4 there in Figure 2 on page 209.

5 A. Can you define the term "intersects"?

6 Q. Sure. Maybe I'll ask it a different way.

7 The portion of the first outline shown in blue
8 that is directly adjacent to the first depression in 22,
9 in Figure 9, is that portion of the first outline
10 defined based on the first depression?

11 MR. SHVODIAN: Objection. Form.

12 THE WITNESS: In the figure shown on page 209,
13 an outer edge of the first depression, according to this
14 interpretation, forms part of the first outline.

15 BY MR. WEBB:

16 Q. Is that outer edge an outer boundary of the
17 first depression?

18 MR. SHVODIAN: Object to form.

19 THE WITNESS: The outer edge is an outer
20 boundary of the first depression.

21 BY MR. WEBB:

22 Q. And is the outer edge of the first depression
23 an outer boundary of the first depression that partially
24 defines the first outline?

25 A. The outer edge of the first depression -- an

1 outer edge of the first depression forms part of the
2 first outline; and by forming part of the first outline,
3 it defines part of the first outline.

4 Q. Are first outlines shown on page 208 different
5 than the first outlines shown on pages 209 and 210?

6 A. Can I have access to the Pedmo patent?

7 Q. Yes.

8 A. Because Element 1.H describes a first outline,
9 at least partially defined by "the first depression," if
10 I use the different interpretations of first depression,
11 which are showed on page 210 and -- and 208, the
12 outlines that I chose, based on those interpretations,
13 such as shown on page 210, is similar to the first
14 outline using the interpretation that was described on
15 page 208.

16 Q. When you say "similar," do you mean the same,
17 or is there a difference between the two?

18 A. They are close enough to each other to be
19 viable interpretations of the claim language on -- on
20 the descriptions in the Pedmo patent.

21 So based on the details of the Pedmo patent
22 and the figures and the relative information in the
23 Pedmo patent about the depressions and the shape of
24 those depressions, within that level of accuracy of the
25 information that I have about the Pedmo patent, that was

1 my description of the first outline.

2 So within -- the similarities between the two
3 are based on the level of detail that I have of those
4 depressions. And for that level of detail, they fall
5 within that similar space.

6 Q. Okay. So you're not sure if they're the same,
7 correct?

8 A. They're -- they're similar.

9 Q. Okay. Let me ask this then. So we talked
10 about in paragraph 329 the approach -- second approach
11 on pages 209, 210, that the outer edge of the first
12 depression defines part of the first outline, correct?

13 A. The outer edge of the first depression forms
14 part of the first outline.

15 Q. Does that same outer edge of that portion of
16 the depression under the first interpretation on page
17 208 also form part of the first outline in the first
18 approach on 208?

19 A. Can you repeat that, please?

20 Q. Sure. The wedge 22 shown on page 209 is the
21 first depression in your second interpretation looking
22 up on page 208, it looks like that same wedge is part of
23 the first depression that also includes other pieces in
24 your first interpretation.

25 So my question is, that same portion of wedge

1 22 that defines -- the outer edge of that first
2 depression 22 is the wedge in Figure 2 on page 209 that
3 defines part of the first outline, does it also define
4 part of the first outline on page 208?

5 A. If you look at Figure 5 of the Pedmo patent --
6 you can see that in part of that first depression the
7 lines -- there are two lines that describe some of those
8 depression areas. And there are two lines close to each
9 other, but it's possible that the outer boundary of one
10 of a single wedge could be slightly inwards from the
11 outer boundary of the full depression for a small -- for
12 a small amount.

13 Q. Make sure we're on the same page. I'm looking
14 at Figure 5 of Pedmo that you pointed to, and you said
15 there's two lines, and I believe there's a circular line
16 that defines the outer boundary of the full depression
17 as in your approach one, and then there's another line
18 that goes outside of that. Are those the two lines that
19 you are talking about?

20 A. So I have to interpret this drawing as a
21 POSITA would, and the lines are not continuous in all
22 portions of it. And in terms of the contours of the
23 depression, it's possible that the inner wedge
24 depression starts slightly inward than the depression of
25 the whole shape.

1 But there clearly is a depression, and when I
2 use the word "similar," it relates to the fact that the
3 lines -- that the clarity of that drawing may not
4 distinguish between the first -- where the edge of the
5 first interpretation is and the edge of the second
6 interpretation is, but the edges that are used for
7 defining the first outline are very close to each other
8 for either interpretation.

9 Q. Okay. Thank you.

10 MR. WEBB: Let us take just a five-minute
11 break. I think we are done, but let us look at our
12 notes and make sure.

13 THE WITNESS: Okay. So what time do you want
14 to set?

15 MR. WEBB: I guess let's go -- I guess it's
16 4:10 West Coast, to keep it in round numbers.

17 THE WITNESS: Okay. Got it.

18 (Recess: 4:03 p.m. to 4:10 p.m.)

19 MR. WEBB: Dr. Delson, thank you for your time
20 today. That's all the questions we have. We turn the
21 witness over for redirect if you want to.

22 MR. SHVODIAN: Okay. Can we take a short
23 break? I want to consult with the witness, which I
24 believe I am permitted to do at this time. I don't know
25 if I'm going to have any questions, but I just want to

1 consult with him before I do. So if we can take five
2 minutes.

3 MR. WEBB: Sure. 4:15?

4 MR. SHVODIAN: Yeah.

5 (Recess: 4:10 p.m. to 4:15 p.m.)

6 MR. SHVODIAN: And I have no questions. So we
7 can conclude the depo.

8 COURT REPORTER: Counsel, may I get transcript
9 requests on the record, please?

10 MR. WEBB: We'll take a rough.

11 MR. SHVODIAN: Yeah, we'll do the same. Thank
12 you.

13 (Whereupon the proceedings concluded at
14 6:16 p.m.)

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ERRATA SHEET

NAME OF CASE: MPL BRANDS NV, INC. V. BUZZBALLS, LLC
DATE OF DEPOSITION: FEBRUARY 26, 2025
NAME OF WITNESS: NATHAN J. DELSON, PhD.

Reason Codes:

1: To clarify the record.
2: To conform to the facts.
3: To correct transcription error.

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Deponent's Signature _____

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DECLARATION UNDER PENALTY OF PERJURY

I, NATHAN J. DELSON, PhD., do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on February 26, 2025; that I have made such corrections as appear noted on the Deposition Errata Page(s), attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

This Declaration is executed this _____ day of _____, 20____, at _____, California.

NATHAN J. DELSON, PhD.

STATE OF CALIFORNIA) ss.

**I, Tamara Houston, RPR, CCRR, CSR No. 7244, a
Certified Shorthand Reporter in the State of California,
duly empowered to administer oaths, do hereby certify:**

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting by computer-aided transcription under my direction;

That the dismantling, unsealing, or unbinding of the original transcript will render the reporter's certification null and void.

I further certify that I am not interested in the event of the action.

In witness whereof, I have hereunto subscribed my
name.

Dated: 7th of March, 2025.

Zamara L. Houston

TAMARA L. HOUSTON
CSR 7244, RPR, CCRR 140

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