

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD
CASE PGR2024-00035 (Patent No. 11,932,441)**

MPL BRANDS,
Petitioner,
VS.
BUZZBALLS, LLC,
Patent Owner.

**VIDEOCONFERENCE DEPOSITION OF
NATHAN J. DELSON, PH.D.
Conducted Remotely
Wednesday, July 9, 2025
10:00 a.m. PDT**

**Reported by: Elisabeth A. Lorenz: RMR, CRR
Job No. J13118157**

THE SULLIVAN GROUP OF COURT REPORTERS

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**VIDEOCONFERENCE DEPOSITION of NATHAN J.
DELSON, PH.D., conducted remotely via Zoom:**

**Pursuant to notice, before Elisabeth A.
Lorenz, Registered Merit Reporter and Certified
Realtime Reporter.**

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A P P E A R A N C E S

(All appearing remotely)

ON BEHALF OF THE PETITIONER:

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ALSO PRESENT:

Liz Kufour, Perkins Coie

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PREVIOUSLY MARKED EXHIBITS
PRESENTED TO WITNESS

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1 ***STENOGRAPHER'S NOTE: All quotations from exhibits**
2 **are reflected in the manner in which they were read**
3 **into the record and do not necessarily indicate an**
4 **exact quote from the document.**

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P R O C E E D I N G S

* * *

NATHAN J. DELSON, PH.D.

was called as a witness, and after having been first
duly sworn, testified as follows:

MR. ERICKSON: Let's make appearances
quickly. I'm Adam Erickson representing patent
owner BuzzBallz; joined by my colleague, Greg Webb,
as well.

MR. SHVODIAN: And this is Dan Shvodian
of Perkins Coie for Petitioner MPL; and with me is
one of our summer associates, Liz Kufour.

E X A M I N A T I O N

BY MR. ERICKSON:

Q Dr. Delson, thank you for being here today.
It's good to see you again. I just have a few brief
questions for you.

To start off, you understand that I'll be
asking you questions about the declarations you
provided in this PGR, correct?

A Correct.

Q And can you state your full name for the

1 record?

2 A Nathan Joseph Delson.

3 Q Thank you.

4 Is there any reason you would not be able to
5 answer questions fully, accurately, and honestly
6 today?

7 A No.

8 Q And if you don't understand a question,
9 please let me know.

10 If I ask a question and you answer it, is it
11 fair to assume that that means you understand the
12 question?

13 A Yes.

14 Q Your counsel may object to questions
15 throughout the deposition. Unless your counsel
16 instructs you not to answer a question, you're
17 required to answer the question.

18 Is that understood?

19 A Yes.

20 Q The court reporter will prepare a transcript
21 of this deposition. To ensure that we obtain a
22 clear record, please answer each question with a

1 full verbal response such as yes or no. And please
2 do not answer with uh-huh or head movements.

3 Is that understood?

4 A Yes, it is.

5 Q Also, the court reporter may have
6 difficulties accurately recording who is speaking if
7 there is crosstalk. So to ensure that there is a
8 clear record, I would ask that you let me finish my
9 questions before you start to answer. And I'll do
10 the same, I'll let you finish your answers before I
11 ask another question.

12 Is that understood?

13 A Yes.

14 Q During the portion of this deposition where
15 I'm asking you questions, you're not permitted to
16 speak with your counsel about the substance of your
17 testimony, including your declaration or your
18 deposition today.

19 Is that understood?

20 A Yes.

21 Q Thanks.

22 And then like last time, should we plan on

1 approximately one-hour segments and then 10- to
2 15-minute breaks in between? Does that work for
3 you?

4 A That works for me.

5 Q And hopefully -- I don't know how many of
6 those segments we'll end up needing. I don't think
7 this will take too long.

8 Where are you located today?

9 A In San Diego, California.

10 Q Are you at home or at the office?

11 A I'm at home. I'm in my home office.

12 Q Is there anyone there with you?

13 A Not in the office. The office -- home
14 office is inside the house. In other parts of the
15 house, my wife and son are here.

16 Q But no one is in the room with you?

17 A That is correct.

18 Q And do you have a phone with you?

19 A I have it, but it's turned off. I powered
20 it down.

21 Q Great.

22 And do you agree not to use your phone

1 during the questioning portion of the deposition?

2 A I agree.

3 Q What equipment are you using for your
4 deposition today?

5 A I have a Mac laptop connected to an LG
6 monitor connected to a webcam.

7 Q And what applications are running on your
8 computer at the moment?

9 A I restarted my computer, and I guess I had
10 my calendar, which had the links in it. And I can
11 quit my calendar. And I had WebEx because that was
12 the incorrect meeting I was going to. I'm just
13 quitting WebEx. And I have Chrome to launch the
14 Zoom meeting, but I can quit Chrome.

15 So now the only thing I have is Zoom.

16 Q Wonderful. Thank you.

17 I assume you have a PDF viewer ready?

18 A I do, the built-in Apple preview viewer.

19 Q Wonderful.

20 Do you have any papers or books with you?

21 A I have a yellow pad that is blank. That's
22 what I have.

1 Q Thank you.

2 No books or other references?

3 A No.

4 Q Thank you.

5 For some of the questions today, I'll be

6 asking about certain documents, primarily your reply

7 declaration that's Exhibit 1019, and I'll provide

8 you with those through the chat feature in Zoom.

9 Let's try that now to make sure there's no issues.

10 I'll put your reply declaration there, make

11 sure you can get it.

12 A The chat, I see something here.

13 Q I haven't put it up yet.

14 A Okay.

15 Q I have too many folders to sort through.

16 (Presented Exhibit 1019.)

17 BY MR. ERICKSON:

18 Q Okay. It should be there now.

19 A Let me click to download. I downloaded it.

20 It's in my downloads folder, which is the only thing

21 in my downloads folder. I have not opened it yet.

22 Q Thank you.

1 When you're ready, you can open that up.

2 A It's open.

3 Q Turn to, if you would, the last page of your
4 declaration. It's page 20.

5 A Uh-huh. Yes, I'm at page 20.

6 Q Thank you.

7 Is that your signature on page 20?

8 A Yes, it is.

9 Q And did you sign this declaration on May 29,
10 2025?

11 A Yes, I did.

12 Q And since you signed this declaration, have
13 you acquired any additional or supplemental
14 information that may change the positions set forth
15 in this declaration?

16 A No.

17 Q Thank you.

18 Can you read the paragraph on page 20 of
19 your declaration for us?

20 A I hereby declare that all the statements
21 made in this declaration are based on my true
22 knowledge, that all statements made on information

1 and belief are believed to be true, and that all
2 statements are made with the knowledge that willful
3 false statements and the like are punishable by fine
4 or imprisonment or both under 18 U.S.C. 101.

5 I declare under penalty of perjury under the
6 laws of the United States that all statements made
7 in this declaration are true and correct dated this
8 29th day of May, 2025, signed by Nathan J. Delson,
9 Ph.D.

10 Q Thank you.

11 Do you continue to stand behind all the
12 statements in your declaration in accordance with
13 the statement you just read?

14 A I do.

15 Q Thank you.

16 Do you understand that today your
17 deposition -- during your deposition, you are under
18 the same oath as set forth in this declaration?

19 A Yes.

20 Q Do you have -- let's see, excuse me. I
21 already asked you about documents and notes.

22 Did you meet with anyone to prepare for this

1 deposition?

2 A I did.

3 Q Who did you meet with?

4 A I met with Daniel Shvodian, who's on this

5 call with us.

6 Q Did you meet with anyone else?

7 A No.

8 Q Did you prepare your declaration --

9 A I did.

10 Q -- 1019?

11 A I'm sorry, can you repeat the -- I'm sorry

12 for answering before you --

13 Q No, no, no, that was my fault. I was just

14 clarifying specifically Exhibit 1019, your reply

15 declaration.

16 You prepared that?

17 A 1019? Yes, I prepared that declaration.

18 Q Did anyone besides counsel at Perkins Coie

19 help you in preparing that declaration?

20 A No.

21 Q Great. Thank you.

22 Let's turn then to the substance of your

1 declaration.

2 Can you tell us about your experience with
3 patent drawings?

4 MR. SHVODIAN: Objection, vague.

5 MR. ERICKSON: Sure. I can be more
6 specific.

7 BY MR. ERICKSON:

8 Q In what ways during your career have you
9 encountered patent drawings?

10 A I have created patent drawings; I have
11 worked with counsel who are drafting patents; I have
12 worked with counsel who, with their team, have
13 created new patent drawings, which I have reviewed;
14 and I have also reviewed patent drawings of patents
15 that I have not been the inventor on.

16 Q Got it.

17 So when you say you have created patent
18 drawings, what are the circumstances in which you
19 were creating patent drawings?

20 A I created patent drawings for patents for
21 which I am the inventor of or a coinventor of.

22 Q Got it.

1 How many patents have you created drawings
2 for?

3 A Off the top of my head, I don't know the
4 exact count.

5 Q Okay.

6 A At least five.

7 Q When you say that you have worked with
8 counsel who have created patent drawings, is that
9 for patents of which you are an inventor or
10 coinventor; or is that other patents?

11 A I was specifically referring to patents that
12 I'm an inventor or coinventor.

13 Q So these are patents separate from the at
14 least five that you created yourself, the drawings
15 that you created for those patents?

16 A Let me clarify. I am the inventor on a
17 number of patents, more than five. I remember at
18 least five where I created the patent drawings. I
19 remember also instances where the attorney who was
20 drafting the patent presented drawings that either
21 he or she prepared or they had someone prepare with
22 them.

1 I do not recollect if those patents included
2 patents where I also did the drawings. I could look
3 at my record of patents, and I would be able to
4 identify the drawings that I created as well as
5 drawings that counsel or their illustrator created.

6 Q Thank you.

7 Moving on, let's turn to page 6 of your
8 reply declaration. That's Exhibit 1019. Let me
9 know when you're there.

10 A I am on page 6.

11 Q So the top of page 6, we have four can lids
12 next to a side view of each can. Similarly, if you
13 scroll to page 7, we have four other can lids with
14 their side views next to them.

15 How did you become aware of the cans on
16 these pages?

17 A I became aware of these cans because they
18 were mailed to me by Perkins Coie. I opened the
19 box; I investigated and reviewed them.

20 Q And do you know the manufacturing date of
21 any of these cans?

22 A I do not recollect the manufacturing date of

1 these cans.

2 Q When you say you do not recollect, did you
3 know at some point and you have forgotten; or have
4 you ever known?

5 A I may have been aware of a date marked on
6 the can, which may have represented a sell-by date
7 or an expiration date. And that date may have given
8 a rough indication of the manufacturing date.

9 But I do not know if I explored any dates on
10 the cans. And even if I did and was aware, that
11 would have only given a rough indication of
12 manufacturing dates.

13 Q Thank you.

14 Are any of these cans to your knowledge --
15 well, let me rephrase.

16 To your knowledge, were any of these cans in
17 the circulation in 2010 or earlier?

18 A I have no knowledge that these specific cans
19 were in circulation in 2010 or earlier.

20 Q Then staying on page 6, let me just confirm
21 that I'm understanding your position in your reply
22 declaration here.

1 On page 6, you have four cans like we
2 mentioned. And these four cans, in your view, have
3 contour lines that do not connect.

4 Do you understand what I mean when I say
5 that, contour lines that do not connect?

6 A I do.

7 Q Would you agree that, in your view, these
8 cans have contour lines that do not connect?

9 A In my view, the four cans shown on page 6
10 have contour lines that do not connect.

11 Q Then turning to page 7, it's my
12 understanding that, in your view, these cans have
13 contour lines that do connect; is that right?

14 A On page 7, there are pictures of four cans,
15 and I believe that they have contour lines that do
16 connect.

17 Q Is it your opinion that all of these cans
18 fall into one of two categories, specifically lids
19 with contour lines that connect, and lids with
20 contour lines that do not connect?

21 MR. SHVODIAN: Objection, scope.

22 THE WITNESS: Can you repeat the

1 question, please?

2 BY MR. ERICKSON:

3 Q Sure.

4 Is it your opinion that all can lids fall
5 into one of these two categories?

6 MR. SHVODIAN: Same objection.

7 THE WITNESS: All can lids are a very
8 broad term, and I would not describe a way of -- an
9 effective way of categorizing all lids for all cans
10 as being categorized as having contour lines and not
11 having contour lines. That would not be the way
12 that I would categorize them.

13 BY MR. ERICKSON:

14 Q Okay.

15 A That being said, if any product in the world
16 has a contour line on it, then it has a contour line
17 on it. If any product in the world does not have a
18 contour line on it, then it does not.

19 So one may choose to categorize any object
20 in the world in terms of the presence or absence of
21 contour lines.

22 Q So if we were to then limit our scope a

1 little bit to say cans that have contour lines,
2 would you agree that can lids that have contour
3 lines would fall into one of these two categories?

4 MR. SHVODIAN: Objection, scope.

5 THE WITNESS: Can you repeat the whole
6 question as a single question, please?

7 BY MR. ERICKSON:

8 Q Yes, yes.

9 So would you agree that of cans that have
10 contour lines, would you agree that those cans would
11 fall into one of the two categories of contour lines
12 that connect versus contour lines that do not
13 connect?

14 MR. SHVODIAN: Objection, form and
15 scope.

16 THE WITNESS: That is a very broad
17 question. It can include cans that do not have
18 areas of opening, such as old cans that needed a
19 special device to open them.

20 I did not give an opinion on all
21 possible can lids that have existed in the world, so
22 I have not made an opinion of every type of can lids

1 in terms of their contour lines connecting or not
2 connecting.

3 BY MR. ERICKSON:

4 Q Thank you.

5 So let's turn then to page 7. Here these
6 are the can lids that, in your view, have contour
7 lines that connect. The top two can lids have --
8 the contour lines, in my view, seem to be an angled
9 ridge with the interior portion -- I guess what I
10 would call a bean-shaped portion being recessed
11 relative to the rest of the can lid.

12 Would you agree with that?

13 A I missed a word at the end of your sentence.

14 Q I'll restate.

15 A Please repeat.

16 Q Yeah, sure.

17 So in my view, the top two can lids here
18 show -- the contour lines are an angled ridge that
19 define a bean-shaped recession, I guess for lack of
20 a better term, and that that recession is recessed
21 compared to the rest of the can lid.

22 Is that what you're seeing as well in these

1 top two images?

2 A I see a recession. Whether it is exactly
3 bean-shaped, I would characterize it as very roughly
4 bean-shaped. But my interpretation of it is is that
5 on this can -- well, on the top two, it looks like
6 it is recessed.

7 I should comment that my opinion was based
8 on actually feeling these cans. I don't have the
9 cans -- I might have the cans. I recollect. So to
10 more definitively answer that, I might want to feel
11 them again.

12 But it seems like from these figures, it's
13 quite possible that they are recessed in an
14 approximate bean shape.

15 Q Great. Thank you.

16 Turning then to the lower two cans, are
17 there any differences in the contour lines of these
18 cans compared to the top two?

19 A There are many differences. The lines are
20 generally different between the two.

21 Q Would you say that in the bottom two that
22 it's also a recessed portion that's defined by the

1 contour lines?

2 MR. SHVODIAN: Objection, form.

3 THE WITNESS: There are different lines
4 on the lids. There are contour lines that are in
5 the portion of the lid that is pushed inwards into
6 the can when the tab is lifted.

7 The contour lines on the lower left
8 look to be raised to me.

9 BY MR. ERICKSON:

10 Q So in my view -- and I'll ask you to
11 confirm -- I would agree that the contour lines
12 within the, I guess, terrible portion, the portion
13 that is pushed inward, seem to be raised above the
14 rest of the can lid; is that right?

15 MR. SHVODIAN: Objection, form.

16 THE WITNESS: There are contour lines
17 on the portion of the lid that is pushed inwards.
18 Those are raised relative to the lid portion that is
19 directly adjacent to it but not necessarily raised
20 above all portions of the lid.

21 BY MR. ERICKSON:

22 Q So in contrast with the two lids on the top

1 row, are the contour lines within the terrible
2 portion of the lids on the bottom a raised portion;
3 whereas, the contour lines of the cans in the top
4 row are an angled ridge forming that depression? Is
5 that correct?

6 MR. SHVODIAN: Objection, form.

7 THE WITNESS: The contour lines on the
8 top two items where the contours are on the portion
9 of the lid that are pushed into the metal on the top
10 two have a contour that describes a recessed portion
11 of that piece of the metal; whereas, on the bottom
12 two cans, the contour lines that are on the portion
13 that are pushed into the lid represent a portion of
14 the lid that is raised.

15 BY MR. ERICKSON:

16 Q Thank you.

17 If you were to draft design patent drawings
18 for these can lids, how would you distinguish the
19 difference in structure between the contour lines of
20 the top row cans and the bottom row cans here on
21 page 7?

22 MR. ERICKSON: Dan, I think you're

1 muted.

2 MR. SHVODIAN: Thank you.

3 Objection, form and scope.

4 MR. ERICKSON: Sure.

5 THE WITNESS: There are a number of
6 ways in which drawings can be made in a patent.
7 When I draft a drawing, I take it upon myself to
8 clearly convey all important aspects of my
9 invention. And I would carefully consider how to do
10 that. Some tools I may include could be
11 cross-sections, could be side views, could be word
12 descriptions in the drawing.

13 So I would take some time to think
14 about it and make sure that I clearly convey all
15 important aspects, such as the geometry of the
16 contour lines.

17 BY MR. ERICKSON:

18 Q Thank you.

19 And we talked about the dates of these cans
20 on pages 6 and 7.

21 Were any of the cans -- are you aware of any
22 cans with the same designs that were available in

1 2010?

2 A Can you clarify what you mean by same
3 designs?

4 Q Sure.

5 Are you aware of any cans with the same or
6 similar contour lines that we've been discussing on
7 other cans that were available in 2010?

8 A I am aware of prior art that is prior to
9 2010 that includes contour lines on cans that have
10 lids with a cap that push in a portion of the lid to
11 allow liquid to come out, and the portion where the
12 liquid comes out, I'm aware of designs that have
13 contour lines.

14 Q Have you provided any evidence or exhibits
15 of those cans?

16 MR. SHVODIAN: Objection, form and
17 scope.

18 THE WITNESS: There are two documents
19 that I have provided for this case. One is this
20 reply declaration, and one is my original
21 declaration.

22 To answer your question about what I

1 have provided, would you like me to include my
2 original declaration? And if that's the case, could
3 you please provide it?

4 BY MR. ERICKSON:

5 Q Sure. I'll add your original declaration to
6 the chat now.

7 MR. ERICKSON: This is Exhibit 1002.

8 (Presented Exhibit 1002.)

9 MR. ERICKSON: It should be uploading
10 now.

11 THE WITNESS: I downloaded it, but it
12 doesn't say 2002 on it; it says 1002.

13 MR. ERICKSON: Excuse me, you're
14 correct. That is 1002.

15 BY MR. ERICKSON:

16 Q If you could open that and confirm that is
17 your original declaration.

18 A Yes, I see my signature, and that is my
19 declaration on which I signed on June 6, 2024.

20 Q Thank you.

21 So just to confirm, besides the cans
22 presented in your reply declaration, are you aware

1 of any other cans that had connecting contour lines
2 and disconnected contour lines before 2010?

3 MR. SHVODIAN: Objection, scope.

4 THE WITNESS: So your question is
5 different than the question you previously asked.
6 You just asked if I'm generally aware in this
7 question; where in the previous question you asked
8 if I have provided.

9 Have you changed the scope of what you
10 want me to consider for this question?

11 BY MR. ERICKSON:

12 Q This is a different question, yes.

13 A So can you re- -- let me make sure I get
14 that down.

15 Can you repeat the complete question,
16 please?

17 Q Sure.

18 So are you aware of any other cans, other
19 than those that you've provided in your reply
20 declaration, that had either connecting or not
21 connecting contour lines before 2010?

22 MR. SHVODIAN: Objection, scope.

1 THE WITNESS: I have prepared my reply
2 declaration. And now you are asking me a question
3 about my awareness outside of my reply declaration.
4 There was other material from my original
5 declaration, which is a year ago. And I can look
6 through that now to answer your question.

7 But to answer -- about -- that relates
8 to my original declaration. But your question is
9 broader than that and asks about my general
10 awareness of types of cans.

11 I don't have access right now to all
12 the information I have gathered in preparation for
13 this case that would cover all the types of cans
14 that I'm aware of.

15 So I could look through my original
16 declaration, but that would still not be able to
17 answer your question, because your question is so
18 broad that it would include all the research I have
19 done for this case and possibly even awareness
20 outside of this case.

21 BY MR. ERICKSON:

22 Q Let's just limit it to what you recollect

1 right now then. And to give some context, you said
2 that you do not know if the cans that you provided
3 in your reply declaration were available in 2010.

4 So I would like to know if you're aware of
5 any other cans that are similar to those that you
6 provided in your reply declaration that were
7 available in 2010.

8 Does that make more sense?

9 MR. SHVODIAN: Objection, form.

10 THE WITNESS: Well, you changed the
11 question. You asked if it made sense, and you used
12 the word similar.

13 In your earlier question, you referred
14 to whether contour lines connecting or not
15 connecting.

16 So your most recent question relates to
17 whether there are cans that are similar to the ones
18 in my reply declaration. And in general similarity,
19 I am aware of cans similar to the ones that are
20 shown in my reply declaration, cans that are made of
21 aluminum, cans that have alcohol in them. There are
22 many similarities for cans that existed before 2010.

1 BY MR. ERICKSON:

2 Q Thank you.

3 So would a POSITA have known in 2010 that
4 cans existed that had contour lines that connected
5 like the cans on page 7 of your reply declaration?

6 MR. SHVODIAN: Objection, form and
7 scope.

8 BY MR. ERICKSON:

9 Q Do you understand the question, Dr. Delson?

10 A Can you repeat it, please?

11 Q Sure.

12 Would a POSITA have been aware of cans that
13 have connecting contour lines like the cans on
14 page 7 of your reply declaration?

15 MR. SHVODIAN: Objection, form and
16 scope.

17 THE WITNESS: Yes, a POSITA would have
18 been aware of cans with connecting contour lines.
19 It was well known in 2010. In fact, there's --
20 that -- of the importance of the stiffness of the
21 portion of the lids that was being pushed into the
22 can to provide the opening for the liquid and that

1 contours on the surface of the lid were an important
2 part of that design.

3 And one example of that can be seen in
4 my original patent -- my original declaration,
5 Exhibit D, which is U.S. Patent 6,234,336-B1 by
6 Neiner, which describes the importance of contours
7 on the lid. So this patent was filed in 1996, and
8 it was granted in 2001. So both before 2010.

9 And the importance of the stiffness of
10 portions of the lid of cans with this type of
11 opening device was well known at that time, and the
12 role that contours played in that lid was also very
13 well known at that time.

14 This patent is just one example that I
15 happened to include it in my reply in my original
16 declaration. It's not an exhaustive study of all
17 knowledge about contour lines relating to lids, but
18 it's a good, detailed description of contour lines
19 in the function of this type of lid.

20 BY MR. ERICKSON:

21 Q Would a POSITA in 2010 have been aware of
22 cans that have contour lines that do not connect

1 like the cans on page 6 of your reply declaration?

2 MR. SHVODIAN: Objection, scope.

3 BY MR. ERICKSON:

4 Q Do you need me to repeat the question?

5 A No, I'm just taking my time to answer
6 precisely.

7 Can you repeat the question, please?

8 Q Sure.

9 Would a POSITA in 2010 have been aware of
10 cans that have contour lines that do not connect
11 like the cans on page 6 of your reply declaration?

12 A It is my position that a POSITA would have
13 been aware of contour lines that do not connect in
14 2010, with part of my reasoning being that we know
15 back to 2001, it is known that removal of contour
16 lines -- I mean, in 2001, the Neiner patent, '336,
17 describes the engineering benefit of sometimes
18 removing contour lines and sometimes including
19 contour lines.

20 So approximately ten years between 2010, it
21 was known that the presence, the level, the
22 magnitude of the contour lines, and indeed the

1 removal of contour lines can be very important in
2 the function of the lid. So a POSITA would
3 understand that the importance of defining the
4 appropriate level of stiffness of the lid material
5 that is pushed in is important.

6 The examples are given in the '336 patent of
7 what happens if the lid portion is too stiff and
8 what can happen if the lid portion is not stiff
9 enough.

10 And it further describes how adding contours
11 or removing contours can affect the stiffness of the
12 lid and that these contour lines can, therefore, be
13 designed as needed based on the specific can in
14 question.

15 Q Thank you.

16 Moving on, have you ever been an inventor of
17 a design patent?

18 A I was, yes.

19 Q How many design patents?

20 A I believe just one design patent.

21 Q Do you remember what the subject matter of
22 that design patent was?

1 A It included a graphical user interface to
2 encourage student learning.

3 Q Thank you.

4 And then finally before we take a quick
5 break, are any of the cans you show in your reply
6 declaration manufactured by BuzzBallz?

7 MR. SHVODIAN: Objection.

8 THE WITNESS: I do not know.

9 MR. SHVODIAN: Objection, scope.

10 BY MR. ERICKSON:

11 Q Hang on.

12 What was that answer, Dr. Delson?

13 A I do not know if the cans manufactured were
14 manufactured by BuzzBallz.

15 Q Thank you.

16 MR. ERICKSON: All right. We're about
17 50 minutes, and I'm about ready to switch to a
18 different topic.

19 Do we want to take a break now for ten
20 minutes and then come back on?

21 THE WITNESS: Sounds good.

22 MR. ERICKSON: Thank you.

1 (Recess: 10:48 a.m. to 10:59 a.m.)

2 BY MR. ERICKSON:

3 Q Dr. Delson, would you turn to page 9 of your
4 reply declaration, and just let me know when you're
5 there.

6 A I am at page 9.

7 Q Thanks.

8 So at the third line down from the top of
9 the page on page 9, this is in paragraph 17, you
10 say, The location and continuity of the contour
11 lines.

12 Do you see that sentence?

13 A Yes, I do.

14 Q So it says, The location and continuity of
15 the contour lines are critical design elements
16 necessary to achieve proper function for a specific
17 lid.

18 Did I read that correctly?

19 A Yes.

20 Q Can you explain why the location and
21 continuity of contour lines are critical design
22 elements?

1 A Well, the proper function of the type of
2 lids I describe in my reply document, a portion of
3 the lid is pushed inwards below the lid so that the
4 fluid can come out.

5 It is important to avoid failures. Some
6 descriptions of the type of failures that could
7 occur are described in the Neiner patent that I had
8 mentioned previously, which is Patent '336.

9 In order to properly function, as the tab is
10 lifted up, it pushes down on a portion of the lid.
11 The stiffness of the portion of the lid that tears
12 has to be appropriate. If it is not stiff enough,
13 then the whole intended tear area may not tear.

14 There is -- that type of failure could
15 create just a small opening that would not allow
16 sufficient flow of the beverage, not large enough as
17 desired.

18 Alternatively, if the lid portion is too
19 stiff, it may make it more difficult to pull up the
20 tab, because it may attempt to break the score line
21 across many parts of it simultaneously; whereas, the
22 score line is designed properly to start on one side

1 and then continue to the other side so that it
2 gradually opens up.

3 So it's a critical design element, because
4 the contour lines affect the stiffness of that lid.
5 And if that stiffness is too high or too low, the
6 opening will not be as desired.

7 Q Can you turn to page 8 of your reply
8 declaration? Let me know when you're there.

9 A I am at page 8.

10 Q At the top of the page, you have two
11 enlarged photographs. These are, let's see, the
12 North Coast Brewing Company can and the Tahoe IPA
13 can; is that correct? Do you need me to repeat the
14 question?

15 A No, I just -- I'm trying to be able to view
16 them at the same time, and my browser was a little
17 finnick. I resized the window so I could adjust
18 it. It just took a moment.

19 Q If it helps, the last sentence of
20 paragraph 15 of your reply declaration on page 7
21 describes the two images.

22 A So the Tahoe IPA can would be the lower one.

1 Q Okay.

2 A And the North Coast Brewing would be the
3 upper one.

4 Q Thank you.

5 Then if you would turn to page 9 of your
6 declaration and look at the last sentence of
7 paragraph 17, it starts with, The function. Let me
8 know when you see that.

9 A I see it.

10 Q It says, The function of these different
11 designs would most likely vary in terms of the
12 performance and reliability of the pull tab
13 operation.

14 Is that correct?

15 A That is my opinion. That is correct.

16 Q Can you describe a difference in the
17 performance of the contour lines on the top can as
18 opposed to the bottom can?

19 A As I mentioned previously, the contour
20 lines, the presence of the contour lines, the lack
21 of presence of the contour lines all affect the
22 stiffness of the portion of the lid that is being

1 pressed in towards the container.

2 And as the '336 patent describes, that they
3 are important to preventing failures and creating
4 the desirable -- desired opening of the lid.

5 There are numerous factors that affect the
6 performance of the opening of the can and includes
7 the overall size of the lid and includes the
8 thickness of the metal being used. It includes the
9 size of the score areas.

10 When one is designing a lid to function
11 properly, one has to take all of those into
12 consideration, and the contour lines are an
13 important element to that.

14 If there is lower-height contour lines or
15 lack of contour lines, that generally contributes to
16 lower stiffness of the portion of the lid being
17 pushed in, which is important for the function of
18 the opening of the can.

19 Q Can you identify any feature of the can in
20 the top image on page 8 that would lead a POSITA to
21 select the contour lines shown on that can?

22 MR. SHVODIAN: Objection, scope.

1 THE WITNESS: The selection of the
2 contour lines and the contour height involves a
3 relatively sophisticated analysis that includes the
4 thickness of the metal of the lid as described in
5 the '336 patent. The thickness of that lid is not
6 shown on that picture.

7 So all information about the
8 performance of that lid is not available just by
9 looking at it. Selecting the contour lines would
10 require a detailed analysis of factors, including
11 those that I can't see from this picture.

12 BY MR. ERICKSON:

13 Q So to confirm, you cannot identify a feature
14 of the top can that would lead a POSITA to select
15 these contour lines?

16 MR. SHVODIAN: Objection, form and
17 scope.

18 THE WITNESS: There is not sufficient
19 information in that picture alone that would
20 definitively identify for a POSITA which contour
21 lines to choose.

22 The POSITA would have to evaluate

1 factors that are not included in the photos, such as
2 the thickness of the lid.

3 So without including that information,
4 it would be an incomplete analysis.

5 BY MR. ERICKSON:

6 Q Okay.

7 A I would expect a POSITA to want to do a
8 complete analysis when selecting contour lines.

9 Q Is it your position that a POSITA would
10 understand how a lid functions based on the contour
11 lines illustrated in the design patent application?

12 MR. SHVODIAN: Objection, scope.

13 THE WITNESS: I would expect a POSITA
14 to understand that the contour lines are an
15 important part of how the lid functions.

16 BY MR. ERICKSON:

17 Q If the design patent application figures
18 only show an ornamental design of the lid, would a
19 POSITA still understand how the lid functions based
20 on that figure?

21 MR. SHVODIAN: Objection, form, scope.

22 THE WITNESS: Can you please repeat

1 that question?

2 BY MR. ERICKSON:

3 Q Sure.

4 If a design patent application figure only
5 shows an ornamental design of the lid, would a
6 POSITA still understand how the lid functions based
7 on that figure?

8 MR. SHVODIAN: Objection, form, scope,
9 and calls for a legal conclusion.

10 THE WITNESS: I understand there was a
11 difference between a design patent and a utility
12 patent, but I have not been advised by counsel in
13 terms of the requirements for interpretation of
14 different aspects of a design patent in terms of its
15 utility. So I do not have the legal background to
16 answer that question.

17 BY MR. ERICKSON:

18 Q Thanks.

19 Switching gears, would you turn to your
20 original declaration? It's Exhibit 1002. And I'd
21 refer you to page 6. Just let me know when you're
22 there.

1 A I'm at page 6.

2 Q At the bottom of page 6, there's a table
3 listing the list of materials in which you based
4 your opinion, and it extends from page 6 on to
5 page 7.

6 Would you review the contents of that table
7 and let me know when you're done.

8 A I have reviewed it.

9 Q Thanks.

10 Did you review any other materials in
11 addition to those listed here when you prepared your
12 reply declaration?

13 A When preparing the reply declaration, I was
14 involved and searched for prior art that was not
15 included in the reply declaration and was not relied
16 upon -- I mean, in this declaration. But I am aware
17 of that material, and I have reviewed material, but
18 I have not relied on it.

19 Q Are you familiar with the continuity data of
20 the '441 patent, the patent at issue here?

21 MR. SHVODIAN: Objection, form.

22 THE WITNESS: I have had discussion

1 with counsel about the legal --

2 MR. SHVODIAN: Let me caution you,
3 Dr. Delson. You can state what your knowledge is,
4 but don't state anything about communications
5 between you and I. Those are privileged.

6 But information you have or that you
7 may have obtained you can testify about, but don't
8 testify about the conversations between the two of
9 us.

10 Is that clear?

11 THE WITNESS: That is clear.

12 I have relied on counsel to address
13 issues such as continuity.

14 BY MR. ERICKSON:

15 Q So are you aware of the claimed priority
16 date of the '441 patent?

17 A Counsel has described --

18 MR. SHVODIAN: Again, Dr. Delson, you
19 can say, I am aware, I'm not aware, but don't say
20 what we discussed during our communications.

21 BY MR. ERICKSON:

22 Q Sorry, I'm not trying to get into --

1 MR. SHVODIAN: Yeah, understood.

2 BY MR. ERICKSON:

3 Q Go ahead.

4 To be clear, I'm not trying to ask a gotcha,
5 please tell me what the claimed priority date of the
6 patent is, Dr. Delson; I'm just trying to get a feel
7 for if you are aware of what the claim date is.

8 That sounds like a gotcha.

9 Let's put --

10 A Can I refer you to -- go ahead. Go ahead.

11 Q Sure.

12 (Presented Exhibit 1021.)

13 BY MR. ERICKSON:

14 Q So the '934 application was the original
15 application in this family tree. It was submitted
16 as Exhibit 1021 in this case.

17 Have you reviewed that application, the '934
18 application?

19 A Can you please show it to me so I can review
20 whether I have indeed reviewed it?

21 Q Sure. Let me pull that up. That's
22 uploading now.

1 Let me know when you have that open.

2 A I have a document which I just downloaded,
3 and it's open. It ends with the numbers 1021, was
4 prepared by William Daniel Swayze, Jr.

5 Is that the document you're referring to?

6 Q Yes. I think it's Wilson Daniel Swayze, is
7 that right, on page 1? Yes.

8 So did you review this document in
9 preparation for this reply declaration?

10 A This document seems similar to documents I
11 reviewed for my preparation.

12 Q So do you know if you reviewed this document
13 specifically?

14 A I do not recollect if this document I
15 reviewed specifically.

16 Q In that case, let's turn then to page 117 of
17 your original declaration. Just let me know when
18 you're there.

19 A I'm sorry, what page was that?

20 Q That's 117 of the original declaration,
21 Exhibit 1002.

22 A I'm on page 117.

1 Q And there you have Element 1.C listed, is
2 that right, of Subsection D? Are you seeing the
3 same thing, Dr. Delson?

4 A Yes.

5 Q Would you read Element 1.C for us?

6 A Wherein the container body is made out of a
7 resin.

8 Q Then if you would turn to your reply
9 declaration -- sorry to be bouncing around here --
10 but to page 18 of your reply declaration, and let me
11 know when you're there.

12 A I'm on page 18 of my reply declaration.

13 Q Would you read paragraph 31?

14 A Dr. Rojas states that not all plastics are
15 resin. Reference Exhibit 2028, paragraph 92. I
16 agree.

17 Q Do you stand by that statement? Do you
18 agree that not all plastics are resins?

19 A I stand by that statement, that all
20 interpretations of the word plastics and all
21 interpretations of the resin leave in certain
22 domains in certain people to indicate that not all

1 plastics are resins.

2 Q So in your opinion, does Metzger, that's
3 Exhibit 1010, describe a can made from a resin?

4 A Can you please provide the document?

5 Q Hang on.

6 MR. ERICKSON: Dan, do you want to get
7 your objection in?

8 MR. SHVODIAN: Are you done with the
9 question?

10 MR. ERICKSON: Yes, I am. Go ahead.

11 MR. SHVODIAN: I'm objecting to form
12 and scope. This was covered during the original
13 deposition. You're asking questions now about the
14 original declaration, not the reply declaration.

15 BY MR. ERICKSON:

16 Q Dr. Delson, does Metzger describe a can made
17 from a resin?

18 MR. SHVODIAN: Same objection.

19 THE WITNESS: Can you please provide --

20 BY MR. ERICKSON:

21 Q Yes, I'll provide it.

22 MR. ERICKSON: That's uploading.

1 (Presented Exhibit 1010.)

2 THE WITNESS: I have opened the
3 document.

4 BY MR. ERICKSON:

5 Q So, again, I'll ask, does Metzger describe a
6 can made from a resin?

7 MR. SHVODIAN: Same objections, form
8 and scope. This has already been covered in a prior
9 deposition. Asked and answered.

10 THE WITNESS: In Metzger, Column 3,
11 line 58, maybe starting from line 56, I'd like to
12 quote, It should be further understood that the
13 container may be formed from any material, including
14 metals, various plastics, and glass. This is in the
15 detailed description portion of the patent.

16 So Metzger does describe a container
17 which could be made of plastics. And a POSITA
18 interpreting this would consider plastics made from
19 resin because those are very commonly used to create
20 containers for liquids such as PET.

21 BY MR. ERICKSON:

22 Q But to be clear, although you agree in your

1 reply declaration that not all plastics are resins,
2 you believe that Metzger's disclosure of, quote,
3 various plastics describes a resin?

4 MR. SHVODIAN: Objection, form,
5 misstates testimony.

6 THE WITNESS: My opinion is that a
7 POSITA who is reading the Metzger patent and
8 understands that it's in the domain of containers,
9 containers that can have fluid in them, when they
10 read the term, a container made of various plastics,
11 would obviously consider looking at plastics made of
12 resin because those are the dominant types of
13 plastics for containing those used for liquids, such
14 as PET.

15 BY MR. ERICKSON:

16 Q Besides the PCAN or the PET can -- do you
17 know what I mean when I refer to the PET can,
18 Dr. Delson?

19 A Please, please elaborate.

20 Q So this would be the can that was the
21 subject of Ground 1 of your original declaration.
22 You can see pictures on page 22 of your original

1 declaration, Exhibit 1002.

2 So I'm going to refer to this as the PCAN.

3 Will you understand what I mean when I say
4 that?

5 A Can you spell out how you're referring to
6 it?

7 Q Sure. P-C-A-N.

8 A And can you repeat the page number, please?

9 Q Sure. That's page 22 of your original
10 declaration, Exhibit 1002.

11 A I understand what you're referring to when
12 you use the word PCAN.

13 Q Thank you.

14 So besides the PCAN, are you aware of any
15 cans that were made out of a resin?

16 MR. SHVODIAN: Objection, form, scope.

17 THE WITNESS: I am aware of other cans
18 made out of a resin.

19 BY MR. ERICKSON:

20 Q Have you presented any of those cans in this
21 case?

22 MR. SHVODIAN: Objection, form, scope.

1 THE WITNESS: To answer that question,
2 can you please provide access to all of the exhibits
3 that I refer to in my original declaration?

4 BY MR. ERICKSON:

5 Q I do not have all of those ready to provide.

6 I guess based on your knowledge now, do you
7 remember any can you presented in this case that was
8 made out of a resin?

9 MR. SHVODIAN: Objection.

10 THE WITNESS: This declaration was a
11 year ago. Asking me to recollect that is not, I
12 think, making appropriate use of my expertise. I
13 want to answer your question very carefully and
14 appropriately. So I request to have access to all
15 the material that I listed as exhibits, and I would
16 be happy to then answer your question.

17 MR. SHVODIAN: I want to interject an
18 objection to the form and scope.

19 BY MR. ERICKSON:

20 Q Sure.

21 And just to be clear, I am not aware of any
22 can other than the PCAN that has been presented that

1 is made out of a resin. I'm just trying to confirm
2 whether that's correct or if I might have missed
3 something.

4 So according to your recollection right now,
5 you don't recall any can, other than the PCAN, that
6 is made out of a resin; is that right?

7 MR. SHVODIAN: Objection, form and
8 scope.

9 THE WITNESS: Once again, to answer
10 that question, I'd like to request that I provide
11 access to all the exhibits I listed, which are on
12 page 6 and 7.

13 BY MR. ERICKSON:

14 Q Sure. Let me -- I can track them down if
15 you like. It just might take a minute.

16 A Okay.

17 Q So it looks like it's probably not going to
18 be a great use of our time to review every material
19 you've included in your declaration, so we'll move
20 on from that topic.

21 MR. ERICKSON: Then I think we are at a
22 point where we can take a break. We may not have

1 any more questions. Why don't we sign off for ten
2 minutes.

3 Is that all right? We'll get back on
4 and either have a few more or we can do redirect.
5 Does that sound okay?

6 THE WITNESS: That's fine with me.

7 I see it's 11:33, so 11:43?

8 MR. ERICKSON: Yep, that sounds good.

9 THE WITNESS: I'll be back.

10 (Recess: 11:33 a.m. to 11:42 a.m.)

11 MR. ERICKSON: So we don't have any
12 additional questions. We'll turn the time over for
13 redirect if needed.

14 MR. SHVODIAN: We don't have any
15 questions.

16 MR. ERICKSON: Thank you both for being
17 here. Thank you, Dr. Delson, for spending time with
18 us once again.

19 THE WITNESS: Thank you.

20 THE STENOGRAPHER: Mr. Erickson, I have
21 that you want a rough draft tonight and three-day on
22 the final.

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Mr. Shvodian, do you want the same?

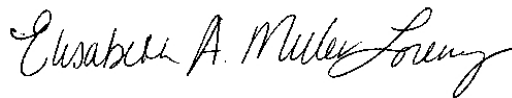
MR. SHVODIAN: We don't need anything
expedited, just the final when it's ready.

(Time noted: 11:43 a.m. PDT.)

CERTIFICATE OF SHORTHAND REPORTER

**I, ELISABETH A. LORENZ, Registered
Merit Reporter and Certified Realtime Reporter, the
officer before whom the foregoing deposition was
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testimony given; that said testimony was taken by me
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typewriting under my direction; that reading and
signing was requested; and that I am neither counsel
for, related to, nor employed by any of the parties
to this case and have no interest, financial or
otherwise, in its outcome.**

**IN WITNESS WHEREOF, I have hereunto set
my hand this 14th day of July, 2025.**



ELISABETH A. LORENZ

NCRA Registered Merit Reporter

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ACKNOWLEDGMENT OF DEPONENT

I, NATHAN J. DELSON, PH.D., do hereby
certify that I have read and examined the foregoing
testimony, and that the same is a true, correct, and
complete transcription of the testimony given by me,
and any corrections appear on the attached
Deposition Errata Sheet signed by me.

NATHAN J. DELSON, PH.D. DATE

Subscribed and sworn to on the ____ day of

_____, 2025, before me,

Notary Public, in and for the State of

_____.

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