UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BROOK + WHITTLE LTD, **Plaintiff,** **v.** **NESTLÉ USA, INC., ET AL.,** **Defendants.**	**Case No. 2:24-CV-00735-JRG-RSP**

DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT INVALIDITY CONTENTIONS UNDER P.R. 3-6(b)

Defendants Nestlé USA, Inc. and Fuji Seal International, Inc. (collectively, "Defendants") respectfully move for leave to supplement their Invalidity Contentions pursuant to P.R. 3-6(b) to add two prior art product labels that Defendants contend render claims 1–19 (the "Asserted Claims") of U.S. Patent No. 11,961,422 ("the '422 Patent" or "Asserted Patent") invalid under 35 U.S.C. §§ 102 and/or 103.

Specifically, Defendants seek to add new invalidity contentions, including new claim charts, based on Multi-Color Corporation's prior art Gatorade product label and its prior art Febreze product label (the "Prior Art Labels").[1] Defendants first learned about the existence and relevance of the Prior Art Labels after Multi-Color Corporation publicly filed expert declarations

[1] Attached as Exhibit A is a tracked changes version of the cover document to Defendants' Invalidity Contentions showing the proposed additions in redline form; attached as Exhibit B is a new invalidity claim chart based on Multi-Color Corporation's prior art Gatorade Label, and attached as Exhibit C is a new invalidity claim chart based on Multi-Color Corporation's prior art Febreze Label.

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and other documents describing the Prior Art Labels with the Patent Trial and Appeal Board on January 16, 2025 in support of its petition for post-grant review ("PGR") of the '422 Patent.

Good cause exists for the Court to permit Defendants to supplement their invalidity contentions at this early stage of the case. *First*, Defendants' proposed supplementation to their invalidity contentions to include the Prior Art Labels will not cause a delay or otherwise affect any upcoming litigation deadlines or judicial proceedings in this case. The parties have not yet started the claim construction process in this case. *Second*, it was impossible for Defendants to include the Prior Art Labels in their original Invalidity Contentions, which were served on January 2, 2025, because they did not learn of the existence or significance of these materials until on or about January 16, 2025, after seeing Multi-Color Corporation's publicly-filed petition for PGR. *Third*, counsel for Defendants did not delay in conferring with counsel for Plaintiff Brook+Whittle LTD ("B+W") regarding Defendants' proposed supplementation. Counsel for Defendants first contacted counsel for B+W on January 28, 2025, after completing a preliminary analysis of the Prior Art Labels and determining that it would be necessary to supplement Defendants' invalidity contentions. *Fourth*, Defendants' new invalidity contentions under 35 U.S.C. §§ 102 and/or 103 based on the Prior Art Labels are important to be considered because they are strong defenses, and they should be considered by both sides at this stage of the litigation before the claim construction process begins. *Fifth*, because Defendants' proposed supplementation will not delay or otherwise affect the proceedings, there is no danger that B+W will be unfairly prejudiced by the supplementation.

Therefore, because good cause exists to allow Defendants to supplement their invalidity contentions based on the Prior Art Labels, Defendants ask that this Motion be granted. B+W does not oppose this Motion.

Dated: February 19, 2025

Respectfully submitted,

/s/ Amy E. LaValle

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Attorneys for Defendants Nestlé USA, Inc. and Fuji Seal International, Inc.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Defendants, Amy E. LaValle, conferred with counsel for Plaintiff, Jeffrey M. Jacobsen, regarding the relief requested in this Motion. Additionally, on February 18, 2025, Ms. LaValle provided a draft copy of this Motion, including the attached Exhibits, to all counsel of record for Plaintiff, and, on February 19, 2025, Mr. Jacobsen confirmed that Plaintiff is not opposed to the relief requested in this Motion

Dated: February 19, 2025

/s/ Amy E. LaValle
Amy E. LaValle

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document, DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT INVALIDITY CONTENTIONS UNDER P.R. 3-6(b), via the Court's CM/ECF system per Local Rule CV-5(a)(3).

Dated: February 19, 2025

/s/ Amy E. LaValle
Amy E. LaValle

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Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BROOK + WHITTLE LTD,

Plaintiff,

v.

NESTLÉ USA, INC., ET AL.,

Defendants.

Case No. 2:24-CV-00735-JRG-RSP

DEFENDANTS' SUPPLEMENTAL P.R. 3-3 AND 3-4 INVALIDITY CONTENTIONS AND DISCLOSURES

I. PRELIMINARY STATEMENT

Pursuant to Rules 3-3 and 3-4 of the Patent Local Rules for the Eastern District of Texas, the Court's Standing Order Regarding Subject-Matter Eligibility Contentions ("Standing Order"), and the Court's Docket Control Order (Dkt. No. 16), Defendants Nestlé USA, Inc. ("NUSA") and Fuji Seal International, Inc. ("FSI") (collectively, "Defendants") submit the following Supplemental Invalidity Contentions in connection with the above-captioned case.

These Supplemental Invalidity Contentions address claims 1-19 ("Asserted Claims") of U.S. Patent No. 11,961,422 ("the '422 Patent" or "Asserted Patent"), which are alleged by Plaintiff Brook + Whittle, Ltd. ("B+W") to be infringed by Defendants in B+W's Disclosure of Asserted Claims and Infringement Contentions ("Infringement Contentions"). In the Infringement Contentions, B+W alleges that the labels used on NUSA's Nesquick and Coffee mate products ("Accused Products") infringe the Asserted Claims. B+W's Infringement Contentions are deemed to be its final contentions under P. R. 3-6. Should the Court permit B+W to later assert different or additional infringement theories with respect to the Asserted Claims, Defendants reserve the right to supplement these Supplemental Invalidity Contentions to assert invalidity under those different or additional infringement theories. Defendants also reserve the right to supplement these Supplemental Invalidity Contentions in response to information learned in fact or expert discovery, including the identification of additional prior art.

These Supplemental Invalidity Contentions are based in whole or in part on Defendants' present understanding of the Asserted Claims and B+W's application of the Asserted Claims to the Accused Products demonstrated in B+W's Infringement Contentions, including priority dates of the Asserted Patent and each of the Asserted Claims recited therein.

Moreover, these Supplemental Invalidity Contentions are responsive at least to the same level of specificity as B+W's Infringement Contentions. In preparing these Supplemental Invalidity Contentions, Defendants took into account B+W's apparent claim constructions, to the extent such constructions could be gleaned from B+W's Infringement Contentions. Such apparent claim constructions may be inconsistent with the constructions Defendants ultimately will propose in this case. By including prior art that would anticipate or render obvious the Asserted Claims based on B+W's disclosed or apparent claim constructions, or based on any other particular claim construction, it shall not be assumed or understood that Defendants are adopting said claim constructions, nor should it be assumed or understood that Defendants are admitting to the accuracy of any particular claim construction. The Court has established separate deadlines for the parties' proposed claim constructions, and Defendants will disclose their proposed constructions according to those deadlines. Solely for the purpose of these Supplemental Invalidity Contentions, Defendants may, if necessary, apply alternative, and even inconsistent, claim construction positions. Defendants reserve all rights to amend these Supplemental Invalidity Contentions after the Court issues its claim construction ruling, or if the Court permits B+W to amend its Infringement Contentions.

Defendants do not concede that B+W's Infringement Contentions meet the specificity required under P. R. 3-1, and Defendants provide these Supplemental Invalidity Contentions without waiving any right to receive from B+W more complete and specific Infringement Contentions as discovery proceeds in this case. Moreover, nothing in these Supplemental Invalidity Contentions and Disclosures shall in any way be construed as an admission that any of the Accused Products, or any of Defendants' other products, infringe any of the Asserted Claims.

Defendants also reserve the right to challenge the priority date of the Asserted Patent, or

any of the Asserted Claims. To date, B+W has failed to satisfy its burden to show that the Asserted Patent or any of the Asserted Claims are entitled to an earlier effective filing date than the June 30, 2023 filing date of the patent application that issued as the Asserted Patent. Defendants further reserve the right to assert invalidity under any provision of the Patent Act, 35 U.S.C. § 1, et seq., subject to further discovery and investigation including the identification of evidence that may be relevant to any invalidity defense that subsequently arises in this case.

Defendants' investigation in connection with this lawsuit is continuing. These Supplemental Invalidity Contentions are based on information obtained to date. Among other things, discovery is still underway, witnesses remain to be deposed, and the Court has yet to construe any terms of the Asserted Claims. Accordingly, Defendants' Supplemental Invalidity Contentions are subject to modification, amendment, or supplementation in accordance with the Court's Docket Control Order, the Local and Patent Rules of this Court, or the Federal Rules of Civil Procedure as this action progresses and additional information is obtained.

II. P. R. 3-3 DISCLOSURES

Defendants identify the following prior art to the Asserted Patent. Defendants contend that the prior art references disclosed below generally relate to the subject matter of the Asserted Patent and at least serve as background art for the claimed invention of the Asserted Patent. Defendants expressly reserve the right to at least use and rely on any of the prior art cited herein to establish or otherwise support Defendants' contentions as to what was known in the state of the art of the Asserted Patent.

A. Prior Art that Allegedly Anticipates or Renders Obvious the Asserted Claims

1. Patents and Published Patent Applications

The following prior art patents and published patent applications invalidate the Asserted Claims and/or provide background regarding the state of the art at the time of the alleged invention:

CHART	REFERENCE	ORIGIN	DATE OF ISSUE OR PUBLICATION
1	2017114041 ("Kitano")	JP	June 29, 2017
2	11,358,363 ("Schurr")	US	June 14, 2022
3	7,807,255 ("Tsuchida")	US	October 5, 2010
4	2019/0055043 ("Matsunaga")	US	February 21, 2019
5	2016/0361939 ("Keulders")	US	December 15, 2016
6	2007083518 ("Sugimori")	JP	April 5, 2007
7	2015/004314 ("Mitchell I")	WO	January 15, 2015
8	2004250040 ("Ota")	JP	September 9, 2004
9	9,102,191 ("Yamada")	US	August 11, 2015
10	2023/0287189 ("Takahashi")	US	September 14, 2023
11	2022/0389214 ("Lee")	US	December 8, 2022
12	4111874 ("Masato")	JP	December 16, 2004
13	2009/0233067 ("Doornheim")	US	September 17, 2009
14	7,182,997 ("Murschall")	US	February 27, 2007
15	2003200966 ("Kanamori")	JP	July 15, 2003
16	2015/058184 ("Nair")	WO	April 23, 2015
17	2006/0155007 ("Huber")	US	July 13, 2006
18	2016/0136934 ("Mitchell II")	US	May 19, 2016
19	2017/0223879 ("Mitchell III")	US	August 3, 2017
20	2009/214535 ("Sasaki")	JP	September 24, 2009
21	5,395,681 ("Hargarter")	US	March 7, 1995
22	2021/0394468 ("Peters")	US	December 23, 2021

2. Non-Patent Publications

The following prior art non-patent publications invalidate the Asserted Claims and/or provide background regarding the state of the art at the time of the alleged invention:

CHART	REFERENCE	ORIGIN	DATE OF ISSUE OR PUBLICATION
23	Nordic Pulp		2009

3. Items Offered for Sale or Publicly Used or Known

~~Discovery is ongoing, and Defendants will identify additional products and systems as they become available~~The following prior art products or devices invalidate the Asserted Claims and/or provide background regarding the state of the art at the time of the alleged invention.

CHART	REFERENCE	ORIGIN	DATE OF ISSUE OR PUBLICATION
25	Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")	US	2020
26	Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")	US	2018

B. Anticipation and Obvious Combinations

The following chart indicates whether each item of prior art identified above anticipates any Asserted Claim or renders it obvious.

CHART	REFERENCE	ANTICIPATES	RENDERS OBVIOUS
1	Kitano	1-7, 10, 11, 14-16, 19	8, 9, 12, 13, 17, 18
2	Schurr	1-7, 10, 11, 14-16, 19	8, 9, 12, 13, 17, 18
3	Tsuchida	1-7, 10, 11, 14-16, 18, 19	8, 9, 12, 13, 17
4	Matsunaga	1-8, 10, 11, 14-17, 19	9, 12, 13, 18
5	Keulders	1-11, 14-17, 19	12, 13, 18
6	Sugimori	1-3, 5, 6, 10-11, 16, 18, 19	4, 7-9, 12-15, 17
7	Mitchell I	19	1-18
8	Ota	19	1-18
9	Yamada	-	1-19
10	Takahashi	-	1-19
11	Lee	-	1-19
12	Masato	-	1-19
13	Doornheim	-	1-19
14	Murschall	-	1-19
15	Kanamori	-	1-19
16	Nair	-	1-19
17	Huber	-	1-19
18	Mitchell II	-	1-19
19	Mitchell III	-	1-19
20	Sasaki	-	1-19
21	Hargarter	-	1-19
22	Peters	-	1-19
25	Gatorade	1-3, 5-19	1-19
26	Febreze	-	4

The following chart identifies combinations of prior art that if combined or modified by a person of ordinary skill in the art ("POSITA") would make the Asserted Claims obvious:

COMBINED REFERENCES	ASSERTED CLAIMS
Kitano + POSITA	1-19
Schurr + POSITA	1-19
Tsuchida + POSITA	1-19
Matsunaga + POSITA	1-19
Keulders + POSITA	1-19
Sugimori + POSITA	1-19
Kitano + Matsunaga	1-8, 10, 11, 14-17, 19
Kitano + Keulders	1-11, 14-17, 19
Kitano + Mitchell I	1-7, 10, 11, 14-16, 17-19
Kitano + Ota	1-7, 10, 11, 14-16, 19
Kitano + Yamada	1-7, 10, 11, 14-16, 19
Kitano + Takahashi	1-7, 10, 11, 14-16, 18, 19
Kitano + Lee	1-7, 10, 11, 14-16, 18, 19
Kitano + Masato	1-11, 14-17, 19
Kitano + Doornheim	1-11, 14-16, 19
Kitano + Murschall	1-7, 10, 11, 14-16, 18, 19
Kitano + Nair	1-11, 14-19
Schurr + Matsunaga	1-8, 10, 11, 14-17, 19
Schurr + Keulders	1-11, 14-17, 19
Schurr + Mitchell I	1-7, 10, 11, 14-16, 17-19
Schurr + Ota	1-7, 10, 11, 14-16, 19
Schurr + Yamada	1-7, 10, 11, 14-16, 19
Schurr + Takahashi	1-7, 10, 11, 14-16, 18, 19
Schurr + Lee	1-7, 10, 11, 14-16, 18, 19
Schurr + Masato	1-11, 14-17, 19
Schurr + Doornheim	1-11, 14-16, 19
Schurr + Murschall	1-7, 10, 11, 14-16, 18, 19
Schurr + Nair	1-11, 14-19
Tsuchida + Matsunaga	1-8, 10, 11, 14-17, 19
Tsuchida + Keulders	1-11, 14-17, 19
Tsuchida + Mitchell I	1-7, 10, 11, 14-16, 17-19
Tsuchida + Ota	1-7, 10, 11, 14-16, 19
Tsuchida + Yamada	1-7, 10, 11, 14-16, 19
Tsuchida + Takahashi	1-7, 10, 11, 14-16, 18, 19
Tsuchida + Lee	1-7, 10, 11, 14-16, 18, 19

COMBINED REFERENCES	ASSERTED CLAIMS
Tsuchida + Masato	1-11, 14-17, 19
Tsuchida + Doornheim	1-11, 14-16, 19
Tsuchida + Murschall	1-7, 10, 11, 14-16, 18, 19
Tsuchida + Nair	1-11, 14-19
Matsunaga + Keulders	1-11, 14-17, 19
Matsunaga + Mitchell I	1-7, 10, 11, 14-16, 17-19
Matsunaga + Ota	1-7, 10, 11, 14-16, 19
Matsunaga + Yamada	1-7, 10, 11, 14-16, 19
Matsunaga + Takahashi	1-7, 10, 11, 14-16, 18, 19
Matsunaga + Lee	1-7, 10, 11, 14-16, 18, 19
Matsunaga + Masato	1-11, 14-17, 19
Matsunaga + Doornheim	1-11, 14-16, 19
Matsunaga + Murschall	1-7, 10, 11, 14-16, 18, 19
Matsunaga + Nair	1-11, 14-19
Keulders + Matsunaga	1-8, 10, 11, 14-17, 19
Keulders + Mitchell I	1-11, 14-19
Keulders + Ota	1-7, 10, 11, 14-16, 19
Keulders + Yamada	1-7, 10, 11, 14-16, 19
Keulders + Takahashi	1-7, 10, 11, 14-16, 18, 19
Keulders + Lee	1-7, 10, 11, 14-16, 18, 19
Keulders + Masato	1-11, 14-17, 19
Keulders + Doornheim	1-11, 14-16, 19
Keulders + Murschall	1-7, 10, 11, 14-16, 18, 19
Keulders + Nair	1-11, 14-19
Sugimori + Matsunaga	1-8, 10, 11, 14-17, 19
Sugimori + Keulders	1-11, 14-17, 19
Sugimori + Mitchell I	1-7, 10, 11, 14-16, 17-19
Sugimori + Ota	1-7, 10, 11, 14-16, 19
Sugimori + Yamada	1-7, 10, 11, 14-16, 19
Sugimori + Takahashi	1-7, 10, 11, 14-16, 18, 19
Sugimori + Lee	1-7, 10, 11, 14-16, 18, 19
Sugimori + Masato	1-11, 14-17, 19
Sugimori + Doornheim	1-11, 14-16, 19
Sugimori + Murschall	1-7, 10, 11, 14-16, 18, 19
Sugimori + Nair	1-11, 14-19
Yamada + Huber + Nair	1-19
Kitano + Matsunaga + POSITA	1-19
Kitano + Keulders + POSITA	1-19

COMBINED REFERENCES	ASSERTED CLAIMS
Kitano + Mitchell I + POSITA	1-19
Kitano + Ota + POSITA	1-19
Kitano + Yamada + POSITA	1-19
Kitano + Takahashi + POSITA	1-19
Kitano + Lee + POSITA	1-19
Kitano + Masato + POSITA	1-19
Kitano + Doornheim + POSITA	1-19
Kitano + Murschall + POSITA	1-19
Kitano + Nair + POSITA	1-19
Schurr + Matsunaga + POSITA	1-19
Schurr + Keulders + POSITA	1-19
Schurr + Mitchell I + POSITA	1-19
Schurr + Ota + POSITA	1-19
Schurr + Yamada + POSITA	1-19
Schurr + Takahashi + POSITA	1-19
Schurr + Lee + POSITA	1-19
Schurr + Masato + POSITA	1-19
Schurr + Doornheim + POSITA	1-19
Schurr + Murschall + POSITA	1-19
Schurr + Nair + POSITA	1-19
Tsuchida + Matsunaga + POSITA	1-19
Tsuchida + Keulders + POSITA	1-19
Tsuchida + Mitchell I + POSITA	1-19
Tsuchida + Ota + POSITA	1-19
Tsuchida + Yamada + POSITA	1-19
Tsuchida + Takahashi + POSITA	1-19
Tsuchida + Lee + POSITA	1-19
Tsuchida + Masato + POSITA	1-19
Tsuchida + Doornheim + POSITA	1-19
Tsuchida + Murschall + POSITA	1-19
Tsuchida + Nair + POSITA	1-19
Matsunaga + Keulders + POSITA	1-19
Matsunaga + Mitchell I + POSITA	1-19
Matsunaga + Ota + POSITA	1-19
Matsunaga + Yamada + POSITA	1-19
Matsunaga + Takahashi + POSITA	1-19
Matsunaga + Lee + POSITA	1-19
Matsunaga + Masato + POSITA	1-19

COMBINED REFERENCES	ASSERTED CLAIMS
Matsunaga + Doornheim + POSITA	1-19
Matsunaga + Murschall + POSITA	1-19
Matsunaga + Nair + POSITA	1-19
Keulders + Matsunaga + POSITA	1-19
Keulders + Mitchell I + POSITA	1-19
Keulders + Ota + POSITA	1-19
Keulders + Yamada + POSITA	1-19
Keulders + Takahashi + POSITA	1-19
Keulders + Lee + POSITA	1-19
Keulders + Masato + POSITA	1-19
Keulders + Doornheim + POSITA	1-19
Keulders + Murschall + POSITA	1-19
Keulders + Nair + POSITA	1-19
Sugimori + Matsunaga + POSITA	1-19
Sugimori + Keulders + POSITA	1-19
Sugimori + Mitchell I + POSITA	1-19
Sugimori + Ota + POSITA	1-19
Sugimori + Yamada + POSITA	1-19
Sugimori + Takahashi + POSITA	1-19
Sugimori + Lee + POSITA	1-19
Sugimori + Masato + POSITA	1-19
Sugimori + Doornheim + POSITA	1-19
Sugimori + Murschall + POSITA	1-19
Sugimori + Nair + POSITA	1-19
Kitano + Keulders + Mitchell I	1-11, 14-19
Kitano + Keulders + Nair	1-11, 14-19
Kitano + Masato + Mitchell I	1-11, 14-19
Kitano + Masato + Nair	1-11, 14-19
Kitano + Nair + Mitchell I	1-11, 14-19
Schurr + Keulders + Mitchell I	1-11, 14-19
Schurr + Keulders + Nair	1-11, 14-19
Schurr + Masato + Mitchell I	1-11, 14-19
Schurr + Masato + Nair	1-11, 14-19
Schurr + Nair + Mitchell I	1-11, 14-19
Tsuchida + Keulders + Mitchell I	1-11, 14-19
Tsuchida + Keulders + Nair	1-11, 14-19
Tsuchida + Masato + Mitchell I	1-11, 14-19
Tsuchida + Masato + Nair	1-11, 14-19

COMBINED REFERENCES	ASSERTED CLAIMS
Tsuchida + Nair + Mitchell I	1-11, 14-19
Matsunaga + Keulders + Mitchell I	1-11, 14-19
Matsunaga + Keulders + Nair	1-11, 14-19
Matsunaga + Masato + Mitchell I	1-11, 14-19
Matsunaga + Masato + Nair	1-11, 14-19
Matsunaga + Nair + Mitchell I	1-11, 14-19
Keulders + Yamada + Mitchell I	1-11, 14-19
Keulders + Yamada + Nair	1-11, 14-19
Keulders + Takahashi + Mitchell I	1-11, 14-19
Keulders + Takahashi + Nair	1-11, 14-19
Keulders + Lee + Mitchell I	1-11, 14-19
Keulders + Lee + Nair	1-11, 14-19
Sugimori + Keulders + Mitchell I	1-11, 14-19
Sugimori + Keulders + Nair	1-11, 14-19
Sugimori + Masato + Mitchell I	1-11, 14-19
Sugimori + Masato + Nair	1-11, 14-19
Sugimori + Nair + Mitchell I	1-11, 14-19
Yamada + Huber + Keulders + Mitchell I	1-19
Yamada + Huber + Keulders + Nair	1-19
Yamada + Huber + Masato + Mitchell I	1-19
Yamada + Huber + Masato + Nair	1-19
Yamada + Huber + Nair + POSITA	1-19
Keulders + Yamada + Mitchell I + POSITA	1-19
Keulders + Yamada + Nair + POSITA	1-19
Keulders + Takahashi + Mitchell I + POSITA	1-19
Keulders + Takahashi + Nair + POSITA	1-19
Keulders + Lee + Mitchell I + POSITA	1-19
Keulders + Lee + Nair + POSITA	1-19
Kitano + Yamada + Keulders + Mitchell I	1-11, 14-19
Kitano + Yamada + Keulders + Nair	1-11, 14-19
Kitano + Yamada + Masato + Mitchell I	1-11, 14-19
Kitano + Yamada + Masato + Nair	1-11, 14-19
Kitano + Yamada + Nair + Mitchell I	1-11, 14-19
Kitano + Takahashi + Keulders + Mitchell I	1-11, 14-19
Kitano + Takahashi + Keulders + Nair	1-11, 14-19
Kitano + Takahashi + Masato + Mitchell I	1-11, 14-19
Kitano + Takahashi + Masato + Nair	1-11, 14-19
Kitano + Takahashi + Nair + Mitchell I	1-11, 14-19

COMBINED REFERENCES	ASSERTED CLAIMS
Kitano + Lee + Keulders + Mitchell I	1-11, 14-19
Kitano + Lee + Keulders + Nair	1-11, 14-19
Kitano + Lee + Masato + Mitchell I	1-11, 14-19
Kitano + Lee + Masato + Nair	1-11, 14-19
Kitano + Lee + Nair + Mitchell I	1-11, 14-19
Schurr + Yamada + Keulders + Mitchell I	1-11, 14-19
Schurr + Yamada + Keulders + Nair	1-11, 14-19
Schurr + Yamada + Masato + Mitchell I	1-11, 14-19
Schurr + Yamada + Masato + Nair	1-11, 14-19
Schurr + Yamada + Nair + Mitchell I	1-11, 14-19
Schurr + Takahashi + Keulders + Mitchell I	1-11, 14-19
Schurr + Takahashi + Keulders + Nair	1-11, 14-19
Schurr + Takahashi + Masato + Mitchell I	1-11, 14-19
Schurr + Takahashi + Masato + Nair	1-11, 14-19
Schurr + Takahashi + Nair + Mitchell I	1-11, 14-19
Schurr + Lee + Keulders + Mitchell I	1-11, 14-19
Schurr + Lee + Keulders + Nair	1-11, 14-19
Schurr + Lee + Masato + Mitchell I	1-11, 14-19
Schurr + Lee + Masato + Nair	1-11, 14-19
Schurr + Lee + Nair + Mitchell I	1-11, 14-19
Tsuchida + Yamada + Keulders + Mitchell I	1-11, 14-19
Tsuchida + Yamada + Keulders + Nair	1-11, 14-19
Tsuchida + Yamada + Masato + Mitchell I	1-11, 14-19
Tsuchida + Yamada + Masato + Nair	1-11, 14-19
Tsuchida + Yamada + Nair + Mitchell I	1-11, 14-19
Tsuchida + Takahashi + Keulders + Mitchell I	1-11, 14-19
Tsuchida + Takahashi + Keulders + Nair	1-11, 14-19
Tsuchida + Takahashi + Masato + Mitchell I	1-11, 14-19
Tsuchida + Takahashi + Masato + Nair	1-11, 14-19
Tsuchida + Takahashi + Nair + Mitchell I	1-11, 14-19
Tsuchida + Lee + Keulders + Mitchell I	1-11, 14-19
Tsuchida + Lee + Keulders + Nair	1-11, 14-19
Tsuchida + Lee + Masato + Mitchell I	1-11, 14-19
Tsuchida + Lee + Masato + Nair	1-11, 14-19
Tsuchida + Lee + Nair + Mitchell I	1-11, 14-19
Matsunaga + Yamada + Keulders + Mitchell I	1-11, 14-19
Matsunaga + Yamada + Keulders + Nair	1-11, 14-19
Matsunaga + Yamada + Masato + Mitchell I	1-11, 14-19

COMBINED REFERENCES	ASSERTED CLAIMS
Matsunaga + Yamada + Masato + Nair	1-11, 14-19
Matsunaga + Yamada + Nair + Mitchell I	1-11, 14-19
Matsunaga + Takahashi + Keulders + Mitchell I	1-11, 14-19
Matsunaga + Takahashi + Keulders + Nair	1-11, 14-19
Matsunaga + Takahashi + Masato + Mitchell I	1-11, 14-19
Matsunaga + Takahashi + Masato + Nair	1-11, 14-19
Matsunaga + Takahashi + Nair + Mitchell I	1-11, 14-19
Matsunaga + Lee + Keulders + Mitchell I	1-11, 14-19
Matsunaga + Lee + Keulders + Nair	1-11, 14-19
Matsunaga + Lee + Masato + Mitchell I	1-11, 14-19
Matsunaga + Lee + Masato + Nair	1-11, 14-19
Matsunaga + Lee + Nair + Mitchell I	1-11, 14-19
Keulders + Yamada + Masato + Mitchell I	1-11, 14-19
Keulders + Yamada + Masato + Nair	1-11, 14-19
Keulders + Yamada + Nair + Mitchell I	1-11, 14-19
Keulders + Takahashi + Masato + Mitchell I	1-11, 14-19
Keulders + Takahashi + Masato + Nair	1-11, 14-19
Keulders + Takahashi + Nair + Mitchell I	1-11, 14-19
Keulders + Lee + Masato + Mitchell I	1-11, 14-19
Keulders + Lee + Masato + Nair	1-11, 14-19
Keulders + Lee + Nair + Mitchell I	1-11, 14-19
Sugimori + Yamada + Keulders + Mitchell I	1-11, 14-19
Sugimori + Yamada + Keulders + Nair	1-11, 14-19
Sugimori + Yamada + Masato + Mitchell I	1-11, 14-19
Sugimori + Yamada + Masato + Nair	1-11, 14-19
Sugimori + Yamada + Nair + Mitchell I	1-11, 14-19
Sugimori + Takahashi + Keulders + Mitchell I	1-11, 14-19
Sugimori + Takahashi + Keulders + Nair	1-11, 14-19
Sugimori + Takahashi + Masato + Mitchell I	1-11, 14-19
Sugimori + Takahashi + Masato + Nair	1-11, 14-19
Sugimori + Takahashi + Nair + Mitchell I	1-11, 14-19
Sugimori + Lee + Keulders + Mitchell I	1-11, 14-19
Sugimori + Lee + Keulders + Nair	1-11, 14-19
Sugimori + Lee + Masato + Mitchell I	1-11, 14-19
Sugimori + Lee + Masato + Nair	1-11, 14-19
Sugimori + Lee + Nair + Mitchell I	1-11, 14-19
Kitano + Yamada + Keulders + Mitchell I + POSITA	1-19
Kitano + Yamada + Keulders + Nair + POSITA	1-19

COMBINED REFERENCES	ASSERTED CLAIMS
Kitano + Yamada + Masato + Mitchell I + POSITA	1-19
Kitano + Yamada + Masato + Nair + POSITA	1-19
Kitano + Yamada + Nair + Mitchell I + POSITA	1-19
Kitano + Takahashi + Keulders + Mitchell I + POSITA	1-19
Kitano + Takahashi + Keulders + Nair + POSITA	1-19
Kitano + Takahashi + Masato + Mitchell I + POSITA	1-19
Kitano + Takahashi + Masato + Nair + POSITA	1-19
Kitano + Takahashi + Nair + Mitchell I + POSITA	1-19
Kitano + Lee + Keulders + Mitchell I + POSITA	1-19
Kitano + Lee + Keulders + Nair + POSITA	1-19
Kitano + Lee + Masato + Mitchell I + POSITA	1-19
Kitano + Lee + Masato + Nair + POSITA	1-19
Kitano + Lee + Nair + Mitchell I + POSITA	1-19
Schurr + Yamada + Keulders + Mitchell I + POSITA	1-19
Schurr + Yamada + Keulders + Nair + POSITA	1-19
Schurr + Yamada + Masato + Mitchell I + POSITA	1-19
Schurr + Yamada + Masato + Nair + POSITA	1-19
Schurr + Yamada + Nair + Mitchell I + POSITA	1-19
Schurr + Takahashi + Keulders + Mitchell I + POSITA	1-19
Schurr + Takahashi + Keulders + Nair + POSITA	1-19
Schurr + Takahashi + Masato + Mitchell I + POSITA	1-19
Schurr + Takahashi + Masato + Nair + POSITA	1-19
Schurr + Takahashi + Nair + Mitchell I + POSITA	1-19
Schurr + Lee + Keulders + Mitchell I + POSITA	1-19
Schurr + Lee + Keulders + Nair + POSITA	1-19
Schurr + Lee + Masato + Mitchell I + POSITA	1-19
Schurr + Lee + Masato + Nair + POSITA	1-19
Schurr + Lee + Nair + Mitchell I + POSITA	1-19
Tsuchida + Yamada + Keulders + Mitchell I + POSITA	1-19
Tsuchida + Yamada + Keulders + Nair + POSITA	1-19
Tsuchida + Yamada + Masato + Mitchell I + POSITA	1-19
Tsuchida + Yamada + Masato + Nair + POSITA	1-19
Tsuchida + Yamada + Nair + Mitchell I + POSITA	1-19
Tsuchida + Takahashi + Keulders + Mitchell I + POSITA	1-19
Tsuchida + Takahashi + Keulders + Nair + POSITA	1-19
Tsuchida + Takahashi + Masato + Mitchell I + POSITA	1-19
Tsuchida + Takahashi + Masato + Nair + POSITA	1-19
Tsuchida + Takahashi + Nair + Mitchell I + POSITA	1-19

COMBINED REFERENCES	ASSERTED CLAIMS
Tsuchida + Lee + Keulders + Mitchell I + POSITA	1-19
Tsuchida + Lee + Keulders + Nair + POSITA	1-19
Tsuchida + Lee + Masato + Mitchell I + POSITA	1-19
Tsuchida + Lee + Masato + Nair + POSITA	1-19
Tsuchida + Lee + Nair + Mitchell I + POSITA	1-19
Matsunaga + Yamada + Keulders + Mitchell I + POSITA	1-19
Matsunaga + Yamada + Keulders + Nair + POSITA	1-19
Matsunaga + Yamada + Masato + Mitchell I + POSITA	1-19
Matsunaga + Yamada + Masato + Nair + POSITA	1-19
Matsunaga + Yamada + Nair + Mitchell I + POSITA	1-19
Matsunaga + Takahashi + Keulders + Mitchell I + POSITA	1-19
Matsunaga + Takahashi + Keulders + Nair + POSITA	1-19
Matsunaga + Takahashi + Masato + Mitchell I + POSITA	1-19
Matsunaga + Takahashi + Masato + Nair + POSITA	1-19
Matsunaga + Takahashi + Nair + Mitchell I + POSITA	1-19
Matsunaga + Lee + Keulders + Mitchell I + POSITA	1-19
Matsunaga + Lee + Keulders + Nair + POSITA	1-19
Matsunaga + Lee + Masato + Mitchell I + POSITA	1-19
Matsunaga + Lee + Masato + Nair + POSITA	1-19
Matsunaga + Lee + Nair + Mitchell I + POSITA	1-19
Keulders + Yamada + Masato + Mitchell I + POSITA	1-19
Keulders + Yamada + Masato + Nair + POSITA	1-19
Keulders + Yamada + Nair + Mitchell I + POSITA	1-19
Keulders + Takahashi + Masato + Mitchell I + POSITA	1-19
Keulders + Takahashi + Masato + Nair + POSITA	1-19
Keulders + Takahashi + Nair + Mitchell I + POSITA	1-19
Keulders + Lee + Masato + Mitchell I + POSITA	1-19
Keulders + Lee + Masato + Nair + POSITA	1-19
Keulders + Lee + Nair + Mitchell I + POSITA	1-19
Gatorade + POSITA	1-19
Gatorade + POSITA (including Mitchell III)	4
Gatorade + Febreze	4

In addition to the motivations to combine or modify prior art references discussed in the attached charts, a POSITA would have been motivated to combine or modify the prior art references above with a reasonable expectation of success based on many considerations, sources, or reasons, including, but not limited to, the disclosure of the references themselves, including

interrelated teachings of multiple references; the knowledge, skill, or creativity of a POSITA, who is a person of ordinary creativity, not an automaton; the background or state of the art before the effective filing date of the purported invention claimed in the Asserted Patent, including demands known in the design community or pressures present in the marketplace; and the nature of the problems/objectives allegedly addressed by the Asserted Patent.

Moreover, under Supreme Court and Federal Circuit precedent, the following includes a non-exhaustive list of rationales for finding a claim obvious based on a purported combination or modifications of prior art: (1) combining prior art elements according to known methods to yield predictable results; (2) simple substitutions of one known element for another to obtain predictable results; (3) use of a known technique to improve similar devices (methods, or products) in the same way; (4) applying a known technique to a known device (method, or product) ready for improvement to yield predicable results; (5) obvious to try—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (6) known work in one field of endeavor may prompt variations of it for use in either the same field or a different field based on design incentives or other market forces if the variations would have been predicable to one of ordinary skill in the art; (7) some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art references teachings to arrive at the claimed invention.

One or more of these or other rationales apply in considering the obviousness of the Asserted Claims. As an initial matter, the scope and content of the prior art is extensive as heat shrink label technologies, including both light-blocking and recyclable features, existed well before the earliest possible effective filing date of the Asserted Claims. The prior art demonstrates two clear, established goals in the field: creating shrink labels that effectively block light to protect

package contents, and developing recyclable shrink label solutions that are compatible with PET container recycling streams.

For example, as demonstrated by JP2017114041A ("Kitano"), EP1616695A1 ("Tsuchida I"), JP2007083518A ("Sugimori"), and JP2003200966A ("Kanamori"), it would have been obvious to a POSITA to incorporate light-blocking features into shrink labels to address the known problem of protecting container contents from light-induced degradation. And, as demonstrated in US2023/0287189A1 ("Takahashi"), US2022/0389214A1 ("Lee"), and JP4111874A ("Mosato"), which disclose alternative implementations of recyclable heat shrink labels compatible with PET containers, it would have been obvious to a POSITA to look to these references for implementing recyclable configurations to achieve predictable results.

Further, before the earliest possible effective filing date of the Asserted Claims, manufacturers producing heat shrink labels faced design demands and market pressures, as well as related logistical challenge, of meeting both light-blocking and recyclability requirements while maintaining label functionality. Particularly, such motivations included the desire to recycle the heat shrink file along with the container to which it was attached as demonstrated at least by US2022/0389214 ("Lee"). Accordingly, a POSITA would have been motivated to combine the well-known light-blocking techniques with established recyclable materials and structures. As numerous prior art references demonstrate (see e.g., Kitano and U.S. Pat. No. 11,358363 ("Schurr"), both features were already being implemented in heat shrink label systems, and a POSITA would have been motivated to incorporate these known solutions to enhance shrink label functionality in predictable ways.

Accordingly, for claims directed to recyclable shrink labels comprising PET with light blocking and recyclable features, including that the label is recyclable with a PET container (e.g.,

Claims 1, 14, and 19), a POSITA would have been motivated to combine or modify the references set forth above with a reasonable expectation of success at least to satisfy demands of the design community and market pressures, combining prior art elements according to known methods yielding predictable results or implementing known techniques to known products or elements to effect desired improvements with predictable results. The combination or modification of prior art references above would also have been obvious to try to the extent that, in so doing, a POSITA would have been choosing from a finite number of identifiable, predictable solutions, with a reasonable expectation of success.

Further, claims reciting more particular compositions to be used for light blocking (e.g., Claims 10, 11), a POSITA would again have been motivated to combine known elements, using known techniques, to achieve a predictable result inasmuch as the more particularized compositions were known in the art, disclosed in prior art references, or within the knowledge and skill of a POSITA and would have at least been obvious to try to the extent that, in so doing, a POSITA would have been choosing from a finite number of identifiable, predictable solutions, with a reasonable expectation of success.

For claims that are further directed to employing additional layers for the recyclable shrink labels of Claims 1, 14, and 19 to include, or example, an indicia layer and/or a high opacity layer, and further recite the location thereof (e.g., Claims 2, 3, 4, 15, 16), in addition to these features being disclosed in several of the cited references, such additional features, limitations, or elements would at least be obvious design choices or product optimizations within the knowledge and skill of a POSITA, which could be implemented using known elements and known techniques to reach a predictable result with a reasonable expectation of success.

And for claims further reciting desired product characteristics such as shape, seams, shrink-

ability or the density of composition (e.g., Claims 5, 6, 7, 8, 9, 12, 13, 17, 18), in addition to these features being disclosed in several of the cited references, such additional features, limitation, or elements would, again, at least be obvious design choices or product optimizations within the knowledge and skill of a POSITA, which could be implemented using known elements and known techniques to reach a predictable result with a reasonable expectation of success.

C. Claim Charts

The enclosed charts identify where specifically in each alleged item of prior art each limitation of each of the Asserted Claims can be found. Although Defendants have identified at least one citation per limitation, where present, for the prior art references in the charts included herewith, each and every disclosure of the same limitation in the same reference is not necessarily identified. In other words, in the enclosed charts, Defendants have cited representative portions of the prior art references that show disclosure of the limitations of the Asserted Claims. Where a prior art reference contains additional, uncited portions disclosing the same claim limitation, Defendants may rely on any cited and uncited portions of the prior art references to challenge the validity of the Asserted Claims.

To the extent any limitation is not found to be disclosed or taught by a particular prior art reference, Defendants contend that any such omitted limitation or omitted combination of limitations is inherently or implicitly disclosed or taught by a particular prior art reference, would have been known or obvious to a person of ordinary skill in the art at the time of the invention, or that the omitted limitation is disclosed or taught by another prior art reference and in combination with the particular prior art reference would have rendered the Asserted Claim invalid.

The enclosed charts notwithstanding, Defendants reserve the right to rely on any prior art references disclosed in connection with P.R. 3-4 or previously disclosed by either party for any

purpose, including, but not limited to, describing the state of the art or knowledge of a skilled artisan at the time of the claimed invention or as an invalidating reference alone or in combination with other references. In other words, Defendants contend that a person of ordinary skill in the art would have been motivated to modify and/or combine the disclosures of any prior art reference identified in or produced in connection with these Invalidity Contentions or previously disclosed by either party, in view of and/or with any other prior art reference identified in or produced in connection with these Invalidity Contentions or previously disclosed by either party.

D. Invalidity Based on 35 U.S.C. § 112

The following chart indicates grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(b) or lack of enablement or lack of written description support under 35 U.S.C. § 112(a) for the Asserted Claims:

CHART	DESCRIPTION
24	Invalidity Based on 35 U.S.C. § 112

These Invalidity Contentions are based on information known to Defendants as of the date below with respect to the Asserted Claims. Because discovery is ongoing, Defendants anticipate that additional relevant prior art may become known during this litigation. Defendants have not yet completed their investigation of the claims and defenses in this case, including an analysis of matters relating to the validity or enforceability of the Asserted Claims. Also, at the time of this disclosure, the litigation is in its early stages with subsequent rulings from the Court, including claim construction rulings, as well as expert discovery yet to occur.

By providing these Invalidity Contentions, Defendants do not waive any objections to the disclosure of information or material protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity. Moreover, by providing these Invalidity Contentions, Defendants also do not waive or forfeit any objections they have raised or may raise

in the future regarding the sufficiency or propriety of any disclosure from B+W.

III. P. R. 3-4 DISCLOSURES

Provided in connection with these Invalidity Contentions are (a) source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of the Accused Products identified by B+W in its P. R. 3-1(c) chart that are in the possession, custody, or control of either Defendant and (b) a copy of each item of prior art identified pursuant to P. R. 3-3(a), including English translations of portions relied upon. By agreement of the parties, Defendants P.R. 3-4 production shall be served on or before January 9, 2025. Defendants reserve the right to supplement their production as Defendants obtain additional prior art references, documentation, products, or corroborating evidence concerning invalidity during the course of discovery.

Dated: ~~January 2~~February ___, 2025

/s/ Amy E. LaValle

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CERTIFICATE OF SERVICE

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Exhibit B

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

This chart pertains to U.S. Patent No. 11,961,422 ("the '422 Patent"). This chart is subject to all reservations, objections, and disclaimers in Defendants' invalidity contentions and any amendment, supplement, or modification thereof, which are incorporated herein by reference in their entirety. This chart refers to the prior art reference identified above, which, based on information and belief, was known, used, offered for sale, or sold in at least 2020, and therefore qualifies as prior art to the '422 Patent at least under AIA 35 U.S.C. § 102. To support the disclosure below, Defendants reference a Post Grant Review Petition filed January 16, 2025 by third party, Multi-Color Corporation ("MCC"), having a principal place of business at 6111 N. River Road, Rosemont, Illinois 60018. References are made throughout this disclosure to the Post Grant Review Petition and/or exhibits accompanying the Petition. Discovery is ongoing, and Defendants will update this chart as required under Federal Rule of Civil Procedure 26(e), the Local Rules, and the Orders of record in this matter subject to further investigation and discovery regarding the reference, the Court's construction of the claims at issue, and discovery generally, including third-party discovery.

Gatorade invalidates claims 1-19 of the '422 Patent ("Asserted Claims"), which include all claims Plaintiff alleges that Defendants infringe as set forth in Plaintiff's infringement contentions, served on November 7, 2024. To the extent it is found that this reference does not anticipate a particular Asserted Claim by expressly or inherently disclosing all limitations of that Asserted Claim, the reference renders obvious the Asserted Claim, either alone or in combination with other prior art identified in the cover pleading or herein, and/or in combination with the knowledge of a person having ordinary skill in the art ("POSITA"). In these contentions, Defendants have relied in part on Plaintiff's infringement contentions and the manner in which Plaintiff applies the Asserted Claims to the products Plaintiff alleges infringe the Asserted Claims in this case. Defendants' assertion that a particular limitation is disclosed by a prior art reference and/or is disclosed in a particular manner may be based in part on Plaintiff's application of the Asserted Claims to the accused products (including Plaintiff's underlying claim interpretations) as Defendants understand that application. Defendants do not admit that Plaintiff's apparent claim interpretations are supportable or proper or that the claim limitations in question are definite or otherwise amenable to construction.

Defendants have endeavored to cite to the most relevant portions of the identified prior art, but other portions of the identified prior art may additionally disclose, either expressly or inherently, and/or render obvious one or more limitations of the Asserted Claims. The inclusion of specific details in some areas is not a concession that such details are required or that the omission of similar details in other areas is a defect. These citations to portions of any reference in this chart are exemplary only. Thus, Defendants reserve the right to rely on: (1) uncited portions of the identified prior art; (2) other prior art not identified herein; (3) references that show the state of the art (irrespective of whether such references themselves qualify as prior art to the '422 Patent); (4) factual testimony from the inventors or authors of the prior art references, or purveyors of prior art devices; and/or (5) expert testimony, to provide context to or aid in understanding the prior art and the state of the art at the time of the alleged invention.

As used herein, reference is made to sample numbers and exhibits included with the January 16, 2025 Post Grant Review Petition filed by MCC. Sample numbers 3191157, 3191158, 3191167, 3191168, 3191171, and 3191176 refer to Gatorade labels, while sample number 3191115 refers to a Febreze label. Exhibits referenced herein include the Post Grant Review Petition ("Petition"), the Declaration of Craig Bushman ("Ex. 1013"), Vice President of MCC, and the Declaration of Dr. Michael Deible ("Ex. 1014"), an independent expert who tested the samples provided by MCC. The entirety of MCC's January 16, 2025 Post Grant Review Petition is incorporated by reference herein.

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[1.pre] A recyclable shrink label comprising:	To the extent the preamble of claim 1 is found to be limiting, Gatorade discloses a "recyclable shrink label." For example, Gatorade discloses: In connection with my analysis, I have considered that the Gatorade Label is an SKC Ecolabel™ sleeve label. Ex. 1013, at ¶47; Ex. 1016. And, **the APR, the Association of Plastic Recyclers, has recognized this label as meeting or exceeding APR's Critical Guidance Protocol for Clear PET Articles with Labels and Closures Document requirements.** Ex. 1013, at ¶47; Ex. 1018. The SKC EcolabelTM has received APR Critical Guidance recognition. *Id.* In particular, a Review Committee, appointed per the APR Recognition Operating Procedures, reviewed an April 26, 2019 data submission and concluded the data were correctly obtained by a qualified laboratory and were completely presented to show the labels submitted meet or exceed all critical guidance. This supports my analysis and my conclusions. Ex. 1014, para. 78 (NUSA_0001675).
[1.a] a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface,	Gatorade discloses "a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface." For example, Gatorade discloses: To confirm that each sample is composed of PET, clear portions of samples 3191157, 3191167, and 3191176 were sectioned and analyzed via Fourier Transform Infrared Spectroscopy (FTIR) using a Brucker Tensor 37 with a Hyperion microscope attachment. Samples were analyzed using the Attenuated Total Reflection (ATR) attachment on the Hyperion microscope, where a germanium tipped ATR lens is pressed into the film for analysis. **As can be seen in Figures 2 and 3, each film is consistent with an internal PET standard measured on the same instrument as well as a PET standard from the Wiley KnowItAll Library. As can be seen, all samples are consistent with PET.** Ex. 1014, paras. 60-61 (NUSA_0001667-68). *See also, e.g.,* Ex. 1014, Figures 2-3 (NUSA_0001709).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[1.b] the heat shrink film having a thickness from 15 μm to 100 μm; and	Gatorade discloses "the heat shrink film having a thickness from 15 μm to 100 μm." For example, Gatorade discloses: To show layer thickness, cross sections from samples 3191115, 3191157, 3191167, and 3191176 were prepared. Samples were taken from each label at a location as can be seen in Figure 4. To prepare cross sections, samples were mounted on carbon tape between two glass slides and cut with a fresh stainless steel knife. All cross sections were then carbon coated and imaged and analyzed via SEM using a Tescan Mira as can be seen in Figure 5a – 5d. (See APPENDIX B). All images are parallel to the line of the seam. **As can be seen, all samples have a heat shrink PET film thickness of approximately 40-60 microns.** Ex. 1014, paras. 62-64 (NUSA_0001669-71). *See also, e.g.,* Ex. 1014, Figures 4-5d (NUSA_0001710-15).
[1.c] a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm,	Gatorade discloses "a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm." For example, Gatorade discloses: The light blocking component was determined using SEM-EDS analysis. EDS analysis is conducted with a Bruker EDS attached to a Tescan Mira SEM. As can be seen in Figure 6, the light blocking component of each layer is consistent with aluminum. For sample 3191115, the light blocking layer is adjacent to the substrate consistent with Figure 1C of the '422 patent. For samples 3191157, 3191167, and 3191176, the aluminum light blocking layer is between the PET layer and the high opacity layer. (See APPENDIX B). To measure light blocking ability, samples were analyzed using a Shimadzu 2600i with an integrating sphere. The integrating sphere is coated with barium sulphate and the lowest wavelength that can be measured is 220 nm. This is the same instrument used in the description of light blocking in column 13 line 47 of the '422 patent.

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
	As noted in line 43 of column 13 and in the later examples, 220 nm was used as a minimum for the wavelength measurements with the Shimadzu 2600i. Ex. 1001, at 13:43. A portion of each sample 3191115, 3191158, 3191168, and 3191171 was placed in a sample holder between the radiation source and integrating sphere for analysis. Percent Transmittance results can be seen in Figure 7. Ex. 1014, paras. 65-69 (NUSA_0001671-72). *See also, e.g.,* Ex. 1014, Figure 7 (NUSA_0001724).
[1.d] wherein the light blocking component comprises a particulate having a particle size of 0.1 μm to 100 μm,	Gatorade discloses "wherein the light blocking component comprises a particulate having a particle size of 0.1 μm to 100 μm." For example, Gatorade discloses: The primary light blocking component of the light blocking layer is aluminum, as seen in Figure 6. **As can be seen in Figure 5, the aluminum flakes have a thickness larger than 0.1 μm and less than 100 μm.** (See APPENDIX B). Ex. 1014, para. 70 (NUSA_0001673). *See also, e.g.,* Ex. 1014, Figures 5b-6d (NUSA_0001713-23).
[1.e] wherein the particulate comprises metal, metal oxide, a reflective pigment, carbon black, mica, or a combination thereof, and	Gatorade discloses "wherein the particulate comprises metal, metal oxide, a reflective pigment, carbon black, mica, or a combination thereof." For example, Gatorade discloses: **The primary light blocking component of the light blocking layer is aluminum, as seen in Figure 6**. As can be seen in Figure 5, the aluminum flakes have a thickness larger than 0.1 μm and less than 100 μm. (See APPENDIX B). Ex. 1014, para. 70 (NUSA_0001673).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[1.f] wherein the recyclable shrink label is recyclable with a PET container.	Gatorade discloses "wherein the recyclable shrink label is recyclable with a PET container." For example, Gatorade discloses: To determine if a label is recyclable with a PET container, laboratory tests were conducted in reference to the disclosures in the '422 patent (Ex. 1001, at 6:61-64; 11:29-53) and RD-TM-210-4 (Ex. 1012). For example, the '422 patent states in column 6 line 61 that a label is "…considered recyclable if no inks are retained on the film after a caustic wash cycle typically used in PET reclaiming processes." Lab scale testing was conducted as follows. A portion of samples 3191115, 3191157, 3191167, and 3191176 were preshrunk as is represented in Figure 8. (See APPENDIX B). Each sample was then cut into approximately 1 cm^2 pieces using stainless steel scissors. PET flakes were created by cutting generic store bought single use water bottles into approximately 1 cm2 pieces using stainless steel scissors. Representative photos can be seen in Figure 9. (See APPENDIX B). Then, 500 mL of caustic wash solution was made by dissolving 5 grams of sodium hydroxide in 498.5 mL water. 1.5 mL of Triton X100 was added to the solution. 40mL of the caustic wash solution was heated in a beaker to approximately 85° C on a hot plate with a Teflon stir bar. 0.15 grams of preshrunk label flakes were mixed with 5 grams of PET flakes, as can be seen in Figure 9. The mixture was then placed in the beaker for approximately 15 minutes. After this time, the sample was removed from heat and allowed to stand for 5 minutes. It was then filtered using a 10 mesh (2 mm) stainless steel sieve and the caustic wash water was collected. 40 mL of water was then heated to approximately 45° C, and the flake mixture was added to this water for 5 minutes. After this time the sample was removed from heat and allowed to stand for 5 minutes. It was then filtered using a 10 mesh stainless steel sieve and the warm water wash was collected. The flake mixture was then added to 400 mL water in a large beaker, stirred by hand, and allowed to sit for 5 minutes. After this time, the sample was poured over the stainless steel mesh again and the water was discarded. The flakes were then dried in an oven at approximately 50° C until they were dry to touch and free flowing. Representative images of the final mixture can be seen in Figure 10.

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
	As can be seen in Figures 11 and 12, the ink is being removed during the caustic wash cycle. (See APPENDIX B). Further, the ink is readily separated from the flake mixture during the sieving process and is not staining or dying the PET flakes. All flakes sink in the mixture as is demonstrated in Figure 16. (See APPENDIX B). In connection with my analysis, I have considered that the Gatorade Label is an SKC EcolabelTM sleeve label. Ex. 1013, at ¶47; Ex. 1016. **And, the APR, the Association of Plastic Recyclers, has recognized this label as meeting or exceeding APR's Critical Guidance Protocol for Clear PET Articles with Labels and Closures Document requirements.** Ex. 1013, at ¶47; Ex. 1018. The SKC EcolabelTM has received APR Critical Guidance recognition. Id. In particular, a Review Committee, appointed per the APR Recognition Operating Procedures, reviewed an April 26, 2019 data submission and concluded the data were correctly obtained by a qualified laboratory and were completely presented to show the labels submitted meet or exceed all critical guidance. This supports my analysis and my conclusions. In connection with my analysis, I have also considered that the silver ink used in connection with the Gatorade Label is supplied by a company, Watson Standard, which confirms that the silver ink passes recyclability/bleed testing set forth in the protocol established by the Association of Postconsumer of Plastic Recyclers. Ex. 1013, at ¶48; Ex. 1019. This supports and confirms my analysis and my conclusions. Ex. 1014, paras. 71-79 (NUSA_0001673-75). Further, Gatorade also inherently discloses a shrink label that is "recyclable" and "recyclable with a PET container." For example, the shrink label disclosed in Gatorade includes the same materials as the label recited in claim 1 of the '422 Patent. Thus, because the '422 Patent claims a "shrink label" that has a composition in terms of a function, property, or characteristic (i.e., "recyclable" and "recyclable with a PET container") and because the composition of the shrink label of Gatorade is the same as that of the "shrink label" of claim 1 of the '422 Patent, Gatorade discloses each and every limitation of claim 1 of the '422 Patent, including the function, property, or characteristic (i.e., "recyclable" and "recyclable with a PET container") of the "shrink label" of claim 1 of the '422 Patent.

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 1	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
	Additionally, during prosecution of the '422 Patent, the Examiner made clear that a "shrink label" that is "recyclable with a PET container" is functional related to the intended use by repeatedly stating, "the limitation reciting 'wherein the recyclable shrink label is recyclable with a PET container' is considered functional language related to the intended use of the product and is accorded limited weight as the language does not further limit the structure or the process." *See* Office Action dated November 13, 2023, page 4, item 10; *see also, e.g.*, Office Action dated August 9, 2023, page 8, item 27 and page 12, item 42 and Office Action dated November 13, 2023, page 4, item 10.

CLAIM 2	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[2] The recyclable shrink label of claim 1 further comprising an indicia layer.	Gatorade discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "an indicia layer." For example: **Each label contains an indicia layer** as can be seen in Figure 1. (See APPENDIX B). Ex. 1014, para. 80 (NUSA_0001676). *See also, e.g.,* Ex. 1014, Figure 1 (NUSA_0001708).

CLAIM 3	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[3] The recyclable shrink label of claim 1 further comprising a high opacity layer comprising a white pigment.	Gatorade discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "a high opacity layer comprising a white pigment." For example: **The labels all contain a high opacity layer comprised of rutile titanium dioxide.** The composition of the high opacity layer was analyzed via SEM-EDS and Raman spectroscopy. Raman analysis is conducted with a Horiba LabRAM HR Raman microscope with a 637 nm laser and 600 grooves per millimeter grating. As can be seen in Figures 6 and 13, the high opacity component of each layer is consistent with rutile titanium dioxide. (See APPENDIX B). Ex. 1014, para. 81 (NUSA_0001676).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 4	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[4] The recyclable shrink label of claim 3, wherein the recyclable shrink label comprises an indicia layer and wherein the high opacity layer is disposed between the indicia layer and the light blocking layer.	Gatorade discloses the "recyclable shrink label of claim 3." *See* above, [1.pre]-[1.f], [3].

CLAIM 5	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[5] The recyclable shrink label of claim 1, wherein the heat shrink film consists of polyethylene terephthalate (PET).	Gatorade discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "the heat shrink film consists of polyethylene terephthalate (PET)." *See* above, [1.a].

CLAIM 6	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[6] The recyclable shrink label according to claim 1, wherein the recyclable shrink label is in a form of a sleeve or tube.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "the recyclable shrink label is in a form of a sleeve or tube." For example: **All samples received are in the form of a sleeve or tube**, with one seam, as is demonstrated in Figure 16. Ex. 1014, para. 83 (NUSA_0001677). *See also, e.g.,* Ex. 1014, Figure 16 (NUSA_0001740).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 7	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[7] The recyclable shrink label according to claim 6, wherein the heat shrink film comprises a seam.	Gatorade discloses the "recyclable shrink label according to claim 6." *See* above, [1.pre]-[1.f], [6]. Gatorade also discloses "the heat shrink film comprises a seam." For example: All samples received are in the form of a sleeve or tube, **with one seam**, as is demonstrated in Figure 16. Ex. 1014, para. 83 (NUSA_0001677). *See also, e.g.,* Ex. 1014, Figure 16 (NUSA_0001740).

CLAIM 8	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[8] The recyclable shrink label according to claim 1, wherein when heated to 100° C., the heat shrink film contracts or shrinks by about 1% to about 90%.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "when heated to 100° C., the heat shrink film contracts or shrinks by about 1% to about 90%." For example: Samples 3191115, 3191158, 3191168, and 3191171 were selected for heat shrink testing in general accordance with ASTM D2732. Ex. 1015. As can be seen in Figure 17 (below), approximately 100 mm by 100 mm square sections of each sample were cut using stainless steel scissors. **Each sample was then placed in a stainless mesh and submerged in a water bath at 100° C for ten seconds, followed by quenching in a room temperature water bath. Exemplar photographs of experimental setup can be seen in Figure 18. (See APPENDIX B).** As can be seen in Figure 19 (below), each sample shrunk perpendicular to the seam by approximately 70-80% when heated to 100 °C. Ex. 1014, para. 85-88 (NUSA_0001678-79). *See also, e.g.,* Ex. 1014, Figure 17 (NUSA_0001741).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

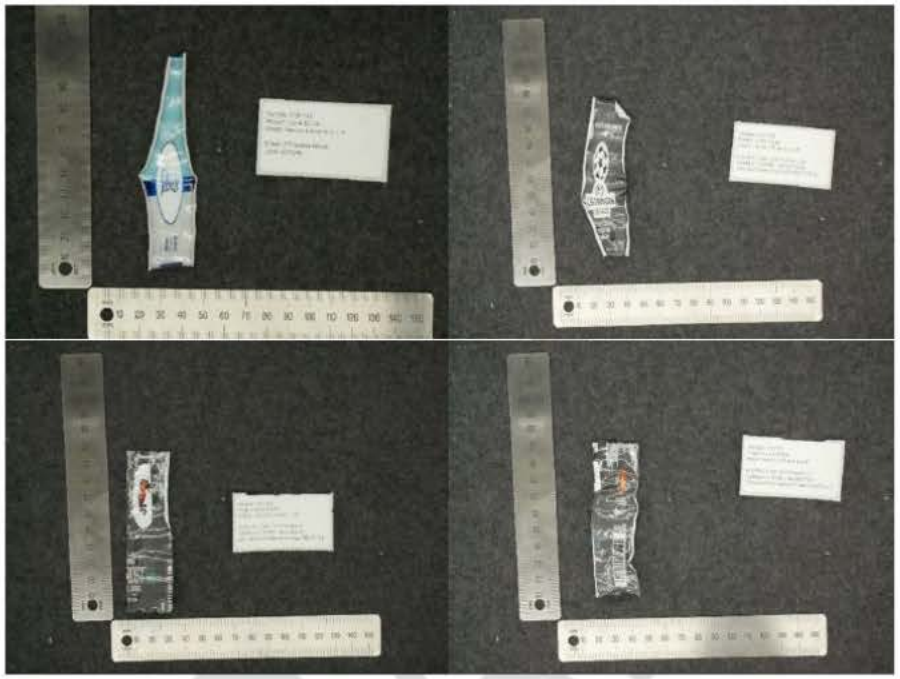
CLAIM 9	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[9] The recyclable shrink label according to claim 1, wherein when heated to 100° C., the entire recyclable shrink label contracts or shrinks by about 1% to about 90%.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "when heated to 100° C., the entire recyclable shrink label contracts or shrinks by about 1% to about 90%." For example: As can be seen in Figure 18 (See APPENDIX B), the label shrinks upon submersion in the boiling water.  **Figure 19**. Photographs of cut sections of 3191115, 3191158, 3191158, and 3191171 after shrink testing. Ex. 1014, para. 89 (NUSA_0001680). *See also, e.g.,* Ex. 1014, Figures 18-19 (NUSA_0001742-43).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 10	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[10] The recyclable shrink label according to claim 3, wherein the high opacity layer comprises a pigment selected from titanium dioxide (TiO_2), precipitated calcium carbonate (PCC), aluminum silicate, aluminum oxide (alumina), mica-based pigments coated with thin layer(s) of white pigment, or a combination thereof.	Gatorade discloses the "recyclable shrink label according to claim 3." *See* above, [1.pre]-[1.f], [3]. Gatorade also discloses "the high opacity layer comprises a pigment selected from titanium dioxide (TiO_2), precipitated calcium carbonate (PCC), aluminum silicate, aluminum oxide (alumina), mica-based pigments coated with thin layer(s) of white pigment, or a combination thereof." *See* above, [1.pre]-[1.f] and [3]. For example: **The labels all have a high opacity layer that contains titanium dioxide**, as can be seen in Figures 6 and 13. (See APPENDIX B). Ex. 1014, para. 90 (NUSA_0001680). *See also, e.g.,* Ex. 1014, Figures 6a-d, 13 (NUSA_0001716-23; NUSA_0001734).

CLAIM 11	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[11] The recyclable shrink label according to claim 1, wherein the light blocking component comprises zinc, aluminum, copper, silver, or an alloy thereof, titanium dioxide, carbon black, mica, a reflective pigment, a polymer capable of blocking light, a mineral capable of blocking light, or a combination thereof.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "the light blocking component comprises zinc, aluminum, copper, silver, or an alloy thereof, titanium dioxide, carbon black, mica, a reflective pigment, a polymer capable of blocking light, a mineral capable of blocking light, or a combination thereof." *See* above, [1.e].

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 12	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[12] The recyclable shrink label according to claim 1, wherein the light blocking layer is present in an amount of 0.5 ppr to 25 ppr relative to the recyclable shrink label.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "the light blocking layer is present in an amount of 0.5 ppr to 25 ppr relative to the recyclable shrink label." For example: As defined in the '422 patent, at column 5 line 44, "ppr" refers to pounds per ream. One ream is understood to mean 3000 square feet of substrate. The following calculations are based on the aluminum light blocking layer covering the entire ream. Inductively Coupled Plasma (ICP) was used to quantify the amount of aluminum in sample 3191115 and was found to be 1.56 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. For a 3000 square foot ream, this corresponds to 0.6 pounds of aluminum per ream. To calculate the ppr of the light blocking layer, the weight percent of aluminum in a label sample was measured via Inductively Coupled Plasma (ICP). The light blocking layer comprises other solid components along with the aluminum flakes. To compensate for the additional solids, an estimate of 10% of the mass of aluminum was included in the calculation of ppr for the light blocking layer. To calculate ppr, a 5 square centimeter portion of each label that was uniformly covered by the light blocking layer was weighed. For sample 3191115, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. For a 3000 square foot ream, this corresponds to 3.4 pounds of light blocking layer per ream. **For sample 3191158, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1558 grams. For a 3000 square foot ream, this corresponds to 0.5 pounds of light blocking layer per ream.** For sample 3191168, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1474 grams. For a 3000 square foot ream, this corresponds to **0.5 pounds of light blocking layer per ream**. For sample 3191171, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1598 grams. For a 3000 square foot ream, this corresponds to **0.5 pounds of light blocking layer per ream**. Ex. 1014, paras. 92-96 (NUSA_0001680-82).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 13	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[13] The recyclable shrink label according to claim 1, wherein the light blocking layer comprises from 0.1 ppr to 10 ppr of the light blocking component.	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade discloses "the light blocking layer comprises from 0.1 ppr to 10 ppr of the light blocking component." For example: Inductively Coupled Plasma (ICP) was used to quantify the amount of aluminum in sample 3191115 and was found to be 1.56 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. For a 3000 square foot ream, this corresponds to 3.1 pounds of aluminum per ream. ICP was used to quantify the amount of aluminum in sample 3191157 and was found to be 0.234 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1558 grams. **This corresponds to 0.4 pounds of aluminum per ream.** ICP was used to quantify the amount of aluminum in sample 3191167 and was found to be 0.270 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1474 grams. **This corresponds to 0.5 pounds of aluminum per ream.** ICP was used to quantify the amount of aluminum in sample 3191176 and was found to be 1.45 weight percent. This corresponds to 2.41 weight percent aluminum. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1598 grams. **This corresponds to 0.5 pounds of aluminum per ream.** These values all fall within the claimed range. Ex. 1014, para. 97 (NUSA_0001682).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 14	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[14.pre] An article comprising:	To the extent the preamble of claim 14 is found to be limiting, Gatorade discloses an "article." For example, Gatorade discloses: Attached to the Craig Bushman declaration is what I understand to be **the bottles** to which the tested labels are affixed, which are accordingly recyclable PET bottles. Ex. 1013, at ¶58 [sic. ¶49]. The internal surface of the sleeve or tube is the surface that would face the container, as is therefore disposed thereon. *Id.* Ex. 1014, para. 98 (NUSA_0001683).
[14.a] a container comprising polyethylene terephthalate (PET) and defining an external surface; and	Gatorade discloses "a container comprising polyethylene terephthalate (PET) and defining an external surface." For example, Gatorade discloses: Attached to the Craig Bushman declaration is what I understand to be **the bottles** to which the tested labels are affixed, **which are accordingly recyclable PET bottles**. Ex. 1013, at ¶58 [sic. ¶49]. The internal surface of the sleeve or tube is the surface that would face the container, as is therefore disposed thereon. *Id.* Ex. 1014, para. 98 (NUSA_0001683).
[14.b] the recyclable shrink label of claim 1 disposed on the container.	Gatorade discloses the "recyclable shrink label of claim 1 disposed on the container." *See* above, [1.pre]-[1.f]. See also, for example: Attached to the Craig Bushman declaration is what I understand to be the bottles to which the tested labels are affixed, which are accordingly recyclable PET bottles. Ex. 1013, at ¶58 [sic. ¶49]. **The internal surface of the sleeve or tube is the surface that would face the container, as is therefore disposed thereon.** *Id.* Ex. 1014, para. 98 (NUSA_0001683).

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 15	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[15] The article according to claim 14, wherein the first surface of the heat shrink film faces the external surface of the container.	Gatorade discloses the "article according to claim 14." *See* above, [1], [14.pre]-[14.b]. Gatorade also discloses "the first surface of the heat shrink film faces the external surface of the container." For example: As can be seen in Figures 5 and 6, sample 3191115 has the light blocking facing the external surface of the container, followed by the high opacity layer, followed by the PET film. **Samples 3191157, 3191167, and 3191176 have the high opacity label facing the external surface of the container**, followed by the light blocking layer, followed by the PET film. (See APPENDIX B). Ex. 1014, para. 99 (NUSA_0001683). *See also, e.g.,* Ex. 1014, Figures 5a-6d (NUSA_0001712-23).

CLAIM 16	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[16] The recyclable shrink label according to claim 2, wherein the indicia layer is disposed on the first surface.	Gatorade discloses the "recyclable shrink label according to claim 2." *See* above, [1.pre]-[1.f], [2]. Gatorade also discloses "the indicia layer is disposed on the first surface." For example: The labels analyzed here contain **an indicia layer located between the PET film and the high opacity layer**. (See APPENDIX B). Ex. 1014, para. 100 (NUSA_0001683).

CLAIM 17	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[17] The recyclable shrink label according to claim 8, wherein the heat shrink film contracts or shrinks by about 1% to 90% in a transverse direction.	Gatorade discloses the "recyclable shrink label according to claim 8." *See* above, [1.pre]-[1.f], [8]. Gatorade also discloses "the heat shrink film contracts or shrinks by about 1% to 90% in a transverse direction." *See* above, [9].

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 18	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[18] The recyclable shrink label according to claim 1, wherein the heat shrink film comprises crystallizable polyethylene terephthalate (PET).	Gatorade discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Gatorade also discloses "the heat shrink film comprises crystallizable polyethylene terephthalate (PET)." As can be seen in Figures 2 and 3 (See APPENDIX B), each film is consistent with an internal PET standard measured on the same instrument as well as a PET standard matched to the Wiley KnowItAll Library. As can be seen, all samples are consistent with PET. In addition, I am relying on the Declaration of Mr. Craig Bushman with regard to **PET that is crystallizable**. Ex. 1013, at ¶53 [sic. ¶44]; Ex. 1017. Ex. 1014, para. 102 (NUSA_0001684). The Gatorade Label is a shrink sleeve label that is recyclable with a PET container. It is a PET film and a washable ink system designed to meet the requirements of recyclability per the APR. It includes light blocking features (including ink layers of metal particulates, and including aluminum and titanium dioxide for the silver and white ink). Based on my experience with this label, and also by way of confirmation of those in this industry with whom I am familiar, including Patent Owner, the heat shrink film of **the Gatorade label** [sic. abel] **incorporates PET that is crystallizable**. Ex. 1017. Ex. 1013, para 53 (NUSA_0001629-30). *See* above, [1.a].

Chart 25 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Gatorade Heat Shrink Label ("Gatorade")

CLAIM 19	
'422 Patent Claim Limitation	**Gatorade Exemplary Disclosure**
[19.pre] A recyclable shrink label comprising:	To the extent the preamble of claim 19 is found to be limiting, Gatorade discloses a "recyclable shrink label." *See* above, [1.pre].
[19.a] a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface,	Gatorade discloses "a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface." *See* above, [1.a].
[19.b] the heat shrink film having a thickness from 15 μm to 100 μm;	Gatorade discloses "the heat shrink film having a thickness from 15 μm to 100 μm." *See* above, [1.b].
[19.c] a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm, and	Gatorade discloses "a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm." *See* above, [1.c].
[19.d] a high opacity layer comprising a white pigment,	Gatorade discloses "a high opacity layer comprising a white pigment." *See* above, [3].
[19.e] wherein the recyclable shrink label is recyclable with a PET container.	Gatorade discloses "the recyclable shrink label is recyclable with a PET container." *See* above, [1.f].

Exhibit C

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

This chart pertains to U.S. Patent No. 11,961,422 ("the '422 Patent"). This chart is subject to all reservations, objections, and disclaimers in Defendants' invalidity contentions and any amendment, supplement, or modification thereof, which are incorporated herein by reference in their entirety. This chart refers to the prior art reference identified above, which, based on information and belief, was known, used, offered for sale, or sold in at least 2018, and therefore qualifies as prior art to the '422 Patent under at least AIA 35 U.S.C. § 102. To support the disclosure below, Defendants reference a Post Grant Review Petition filed January 16, 2025 by a third party, Multi-Color Corporation ("MCC") having a principal place of business at 6111 N. River Road, Rosemont, Illinois 60018. References are made throughout this disclosure to the Post Grant Review Petition and/or exhibits accompanying the Petition. Discovery is ongoing, and Defendants will update this chart as required under Federal Rule of Civil Procedure 26(e), the Local Rules, and the Orders of record in this matter subject to further investigation and discovery regarding the reference, the Court's construction of the claims at issue, and discovery generally, including third-party discovery.

Febreze invalidates claims 1-19 of the '422 Patent ("Asserted Claims"), which include all claims Plaintiff alleges that Defendants infringe as set forth in Plaintiff's infringement contentions, served on November 7, 2024. To the extent it is found that this reference does not anticipate a particular Asserted Claim by expressly or inherently disclosing all limitations of that Asserted Claim, the reference renders obvious the Asserted Claim, either alone or in combination with other prior art identified in the cover pleading or herein, and/or in combination with the knowledge of a person having ordinary skill in the art ("POSITA"). In these contentions, Defendants have relied in part on Plaintiff's infringement contentions and the manner in which Plaintiff applies the Asserted Claims to the products Plaintiff alleges infringe the Asserted Claims in this case. Defendants' assertion that a particular limitation is disclosed by a prior art reference and/or is disclosed in a particular manner may be based in part on Plaintiff's application of the Asserted Claims to the accused products (including Plaintiff's underlying claim interpretations) as Defendants understand that application. Defendants do not admit that Plaintiff's apparent claim interpretations are supportable or proper or that the claim limitations in question are definite or otherwise amenable to construction.

Defendants have endeavored to cite to the most relevant portions of the identified prior art, but other portions of the identified prior art may additionally disclose, either expressly or inherently, and/or render obvious one or more limitations of the Asserted Claims. The inclusion of specific details in some areas is not a concession that such details are required or that the omission of similar details in other areas is a defect. These citations to portions of any reference in this chart are exemplary only. Thus, Defendants reserve the right to rely on: (1) uncited portions of the identified prior art; (2) other prior art not identified herein; (3) references that show the state of the art (irrespective of whether such references themselves qualify as prior art to the '422 Patent); (4) factual testimony from the inventors or authors of the prior art references, or purveyors of prior art devices; and/or (5) expert testimony, to provide context to or aid in understanding the prior art and the state of the art at the time of the alleged invention.

As used herein, reference is made to sample numbers and exhibits included accompanying the January 16, 2025 Post Grant Review Petition filed by MCC. Sample numbers 3191157, 3191158, 3191167, 3191168, 3191171, and 3191176 refer to Gatorade labels, while sample number 3191115 refers to a Febreze label. Exhibits referenced herein include the Post Grant Review Petition ("Petition"), the Declaration of Craig Bushman ("Ex. 1013"), Vice President of MCC, and the Declaration of Dr. Michael Deible ("Ex. 1014"), an independent expert who tested the samples provided by MCC. The entirety of MCC's January 16, 2025 Post Grant Review Petition is incorporated by reference herein.

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[1.pre] A recyclable shrink label comprising:	To the extent the preamble of claim 1 is found to be limiting, Febreze discloses a "recyclable shrink label." For example, Gatorade discloses: **As can be seen in Figures 11 and 12, the ink is being removed during the caustic wash cycle. (See APPENDIX B). Further, the ink is readily separated from the flake mixture during the sieving process and is not staining or dying the PET flakes.** Ex. 1014, para. 77 (NUSA_0001674-75).
[1.a] a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface,	Febreze discloses "a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface." For example, Febreze discloses: To confirm that each sample is composed of PET, clear portions of samples 3191157, 3191167, and 3191176 were sectioned and analyzed via Fourier Transform Infrared Spectroscopy (FTIR) using a Brucker Tensor 37 with a Hyperion microscope attachment. Samples were analyzed using the Attenuated Total Reflection (ATR) attachment on the Hyperion microscope, where a germanium tipped ATR lens is pressed into the film for analysis. **As can be seen in Figures 2 and 3, each film is consistent with an internal PET standard measured on the same instrument as well as a PET standard from the Wiley KnowItAll Library. As can be seen, all samples are consistent with PET.** Ex. 1014, paras. 60-61 (NUSA_0001667-68). *See also, e.g.,* Ex. 1014, Figures 2-3 (NUSA_0001709).

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[1.b] the heat shrink film having a thickness from 15 μm to 100 μm; and	Febreze discloses "the heat shrink film having a thickness from 15 μm to 100 μm." For example, Febreze discloses: To show layer thickness, cross sections from samples 3191115, 3191157, 3191167, and 3191176 were prepared. Samples were taken from each label at a location as can be seen in Figure 4. To prepare cross sections, samples were mounted on carbon tape between two glass slides and cut with a fresh stainless steel knife. All cross sections were then carbon coated and imaged and analyzed via SEM using a Tescan Mira as can be seen in Figure 5a – 5d. (See APPENDIX B). All images are parallel to the line of the seam. **As can be seen, all samples have a heat shrink PET film thickness of approximately 40-60 microns.** Ex. 1014, paras. 62-64 (NUSA_0001669-71). *See also, e.g.,* Ex. 1014, Figures. 4-5d (NUSA_0001710-15).
[1.c] a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm,	Febreze discloses "a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm." For example, Febreze discloses: The light blocking component was determined using SEM-EDS analysis. EDS analysis is conducted with a Bruker EDS attached to a Tescan Mira SEM. As can be seen in Figure 6, the light blocking component of each layer is consistent with aluminum. **For sample 3191115, the light blocking layer is adjacent to the substrate consistent with Figure 1C of the '422 patent.** For samples 3191157, 3191167, and 3191176, the aluminum light blocking layer is between the PET layer and the high opacity layer. (See APPENDIX B). To measure light blocking ability, samples were analyzed using a Shimadzu 2600i with an integrating sphere. The integrating sphere is coated with barium sulphate and the lowest wavelength that can be measured is 220 nm. This is the same instrument used in the description of light blocking in column 13 line 47 of the '422 patent.

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
	As noted in line 43 of column 13 and in the later examples, 220 nm was used as a minimum for the wavelength measurements with the Shimadzu 2600i. Ex. 1001, at 13:43. **A portion of each sample 3191115**, 3191158, 3191168, and 3191171 was placed in a sample holder between the radiation source and integrating sphere for analysis. Percent Transmittance results can be seen in Figure 7. **All samples block at least 80% of light in the 220 to 900 nm range.** Ex. 1014, paras. 65-69 (NUSA_0001671-72). *See also, e.g.,* Ex. 1014, Figure 7 (NUSA_0001724).
[1.d] wherein the light blocking component comprises a particulate having a particle size of 0.1 μm to 100 μm,	Febreze discloses "wherein the light blocking component comprises a particulate having a particle size of 0.1 μm to 100 μm." For example, Febreze discloses: The primary light blocking component of the light blocking layer is aluminum, as seen in Figure 6. **As can be seen in Figure 5, the aluminum flakes have a thickness larger than 0.1 μm and less than 100 μm.** (See APPENDIX B). Ex. 1014, para. 70 (NUSA_0001673). *See also, e.g.,* Ex. 1014, Figures 5a-6d (NUSA_0001712-23).
[1.e] wherein the particulate comprises metal, metal oxide, a reflective pigment, carbon black, mica, or a combination thereof, and	Febreze discloses "wherein the particulate comprises metal, metal oxide, a reflective pigment, carbon black, mica, or a combination thereof." For example, Febreze discloses: **The primary light blocking component of the light blocking layer is aluminum, as seen in Figure 6**. As can be seen in Figure 5, the aluminum flakes have a thickness larger than 0.1 μm and less than 100 μm. (See APPENDIX B). Ex. 1014, para. 70 (NUSA_0001673).

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[1.f] wherein the recyclable shrink label is recyclable with a PET container.	Febreze discloses "wherein the recyclable shrink label is recyclable with a PET container." For example, Febreze discloses: To determine if a label is recyclable with a PET container, laboratory tests were conducted in reference to the disclosures in the '422 patent (Ex. 1001, at 6:61-64; 11:29-53) and RD-TM-210-4 (Ex. 1012). For example, the '422 patent states in column 6 line 61 that a label is "…considered recyclable if no inks are retained on the film after a caustic wash cycle typically used in PET reclaiming processes." Lab scale testing was conducted as follows. **A portion of samples 3191115**, 3191157, 3191167, and 3191176 were preshrunk as is represented in Figure 8. (See APPENDIX B). Each sample was then cut into approximately 1 cm^2 pieces using stainless steel scissors. PET flakes were created by cutting generic store bought single use water bottles into approximately 1 cm2 pieces using stainless steel scissors. Representative photos can be seen in Figure 9. (See APPENDIX B). Then, 500 mL of caustic wash solution was made by dissolving 5 grams of sodium hydroxide in 498.5 mL water. 1.5 mL of Triton X100 was added to the solution. 40mL of the caustic wash solution was heated in a beaker to approximately 85° C on a hot plate with a Teflon stir bar. 0.15 grams of preshrunk label flakes were mixed with 5 grams of PET flakes, as can be seen in Figure 9. The mixture was then placed in the beaker for approximately 15 minutes. After this time, the sample was removed from heat and allowed to stand for 5 minutes. It was then filtered using a 10 mesh (2 mm) stainless steel sieve and the caustic wash water was collected. 40 mL of water was then heated to approximately 45° C, and the flake mixture was added to this water for 5 minutes. After this time the sample was removed from heat and allowed to stand for 5 minutes. It was then filtered using a 10 mesh stainless steel sieve and the warm water wash was collected. The flake mixture was then added to 400 mL water in a large beaker, stirred by hand, and allowed to sit for 5 minutes. After this time, the sample was poured over the stainless steel mesh again and the water was discarded. The flakes were then dried in an oven at approximately 50° C until they were dry to touch and free flowing. Representative images of the final mixture can be seen in Figure 10.

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
	As can be seen in Figures 11 and 12, the ink is being removed during the caustic wash cycle. (See APPENDIX B). Further, the ink is readily separated from the flake mixture during the sieving process and is not staining or dying the PET flakes. All flakes sink in the mixture as is demonstrated in Figure 16. (See APPENDIX B). In connection with my analysis, I have considered that the Gatorade Label is an SKC EcolabelTM sleeve label. Ex. 1013, at ¶47; Ex. 1016. And, the APR, the Association of Plastic Recyclers, has recognized this label as meeting or exceeding APR's Critical Guidance Protocol for Clear PET Articles with Labels and Closures Document requirements. Ex. 1013, at ¶47; Ex. 1018. The SKC EcolabelTM has received APR Critical Guidance recognition. Id. In particular, a Review Committee, appointed per the APR Recognition Operating Procedures, reviewed an April 26, 2019 data submission and concluded that the data were correctly obtained by a qualified laboratory and were completely presented to show the labels submitted meet or exceed all critical guidance. This supports my analysis and my conclusions. In connection with my analysis, I have also considered that the silver ink used in connection with the Gatorade Label is supplied by a company, Watson Standard, which confirms that the silver ink passes recyclability/bleed testing set forth in the protocol established by the Association of Postconsumer of Plastic Recyclers. Ex. 1013, at ¶48; Ex. 1019. This supports and confirms my analysis and my conclusions. Ex. 1014, paras. 71-79 (NUSA_0001673-75). Further, Febreze also inherently discloses a shrink label that is "recyclable" and "recyclable with a PET container." For example, the shrink label disclosed in Febreze includes the same materials as the label recited in claim 1 of the '422 Patent. Thus, because the '422 Patent claims a "shrink label" that has a composition in terms of a function, property, or characteristic (i.e., "recyclable" and "recyclable with a PET container") and because the composition of the shrink label of Febreze is the same as that of the "shrink label" of claim 1 of the '422 Patent, Febreze discloses each and every limitation of claim 1 of the '422 Patent, including the function, property, or characteristic (i.e., "recyclable" and "recyclable with a PET container") of the "shrink label" of claim 1 of the '422 Patent.

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
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CLAIM 1	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
	Additionally, during prosecution of the '422 Patent, the Examiner made clear that a "shrink label" that is "recyclable with a PET container" is functional related to the intended use by repeatedly stating, "the limitation reciting 'wherein the recyclable shrink label is recyclable with a PET container' is considered functional language related to the intended use of the product and is accorded limited weight as the language does not further limit the structure or the process." *See* Office Action dated November 13, 2023, page 4, item 10; *see also, e.g.*, Office Action dated August 9, 2023, page 8, item 27 and page 12, item 42 and Office Action dated November 13, 2023, page 4, item 10.

CLAIM 2	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[2] The recyclable shrink label of claim 1 further comprising an indicia layer.	Febreze discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "an indicia layer." For example: **Each label contains an indicia layer** as can be seen in Figure 1. (See APPENDIX B). Ex. 1014, para. 80 (NUSA_0001676). *See also, e.g.,* Ex. 1014, Figure 1 (NUSA_0001708).

CLAIM 3	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[3] The recyclable shrink label of claim 1 further comprising a high opacity layer comprising a white pigment.	Febreze discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "a high opacity layer comprising a white pigment." For example: **The labels all contain a high opacity layer comprised of rutile titanium dioxide.** The composition of the high opacity layer was analyzed via SEM-EDS and Raman spectroscopy. Raman analysis is conducted with a Horiba LabRAM HR Raman microscope with a 637 nm laser and 600 grooves per millimeter grating. As can be seen in Figures 6 and 13, the high opacity component of each layer is consistent with rutile titanium dioxide. (See APPENDIX B). Ex. 1014, para. 81 (NUSA_0001676).

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 4	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[4] The recyclable shrink label of claim 3, wherein the recyclable shrink label comprises an indicia layer and wherein the high opacity layer is disposed between the indicia layer and the light blocking layer.	Febreze discloses the "recyclable shrink label of claim 3." *See* above, [1.pre]-[1.f], [3]. In addition, Febreze discloses: The Febreze Label is structured such that **the high opacity layer is disposed between the indicia layer and the light blocking layer.** Ex. 1014, para. 126 (NUSA_0001692).

CLAIM 5	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[5] The recyclable shrink label of claim 1, wherein the heat shrink film consists of polyethylene terephthalate (PET).	Febreze discloses the "recyclable shrink label of claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "the heat shrink film consists of polyethylene terephthalate (PET)." *See* above, [1.a].

CLAIM 6	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[6] The recyclable shrink label according to claim 1, wherein the recyclable shrink label is in a form of a sleeve or tube.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "the recyclable shrink label is in a form of a sleeve or tube." For example: **All samples received are in the form of a sleeve or tube**, with one seam, as is demonstrated in Figure 16. Ex. 1014, para. 83 (NUSA_0001677). *See also, e.g.,* Ex. 1014, Figure 16 (NUSA_0001740).

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
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CLAIM 7	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[7] The recyclable shrink label according to claim 6, wherein the heat shrink film comprises a seam.	Febreze discloses the "recyclable shrink label according to claim 6." *See* above, [1.pre]-[1.f], [6]. Febreze also discloses "the heat shrink film comprises a seam." For example: All samples received are in the form of a sleeve or tube, **with one seam**, as is demonstrated in Figure 16. Ex. 1014, para. 83 (NUSA_0001677). *See also, e.g.,* Ex. 1014, Figure 16 (NUSA_0001740).

CLAIM 8	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[8] The recyclable shrink label according to claim 1, wherein when heated to 100° C., the heat shrink film contracts or shrinks by about 1% to about 90%.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "when heated to 100° C., the heat shrink film contracts or shrinks by about 1% to about 90%." For example: Samples 3191115, 3191158, 3191168, and 3191171 were selected for heat shrink testing in general accordance with ASTM D2732. Ex. 1015. As can be seen in Figure 17 (below), approximately 100 mm by 100 mm square sections of each sample were cut using stainless steel scissors. **Each sample was then placed in a stainless mesh and submerged in a water bath at 100° C for ten seconds, followed by quenching in a room temperature water bath. Exemplar photographs of experimental setup can be seen in Figure 18. (See APPENDIX B).** **As can be seen in Figure 19 (below), each sample shrunk perpendicular to the seam by approximately 70-80%when heated to 100 °C.**

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

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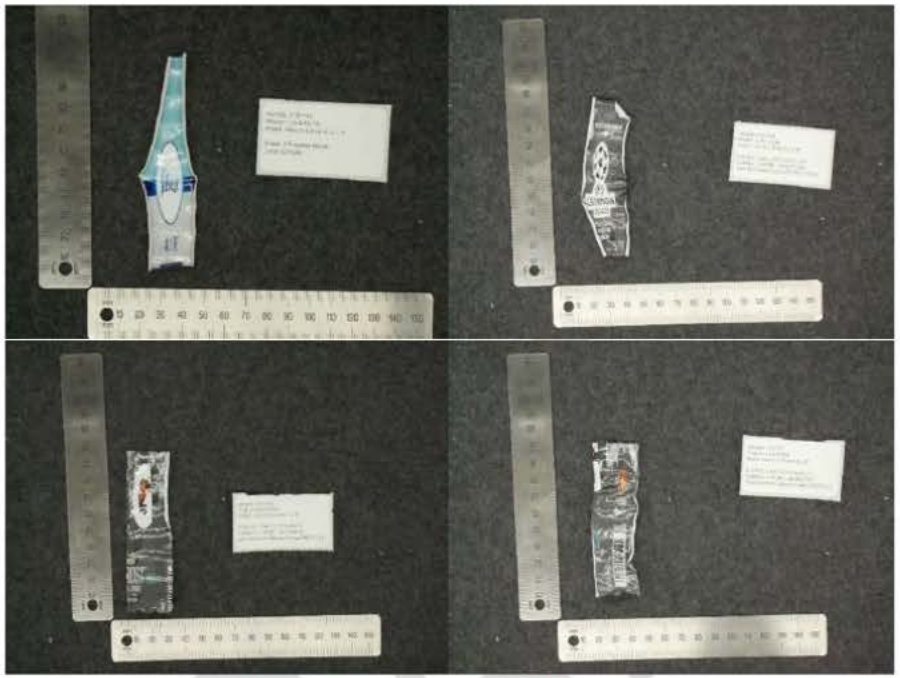
CLAIM 8	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
	 **Figure 19**. Photographs of cut sections of 3191115, 3191158, 3191158, and 3191171 after shrink testing. Ex. 1014, para. 85-88 (NUSA_0001678-79). *See also, e.g.,* Ex. 1014, Figure 19 (NUSA_0001743).

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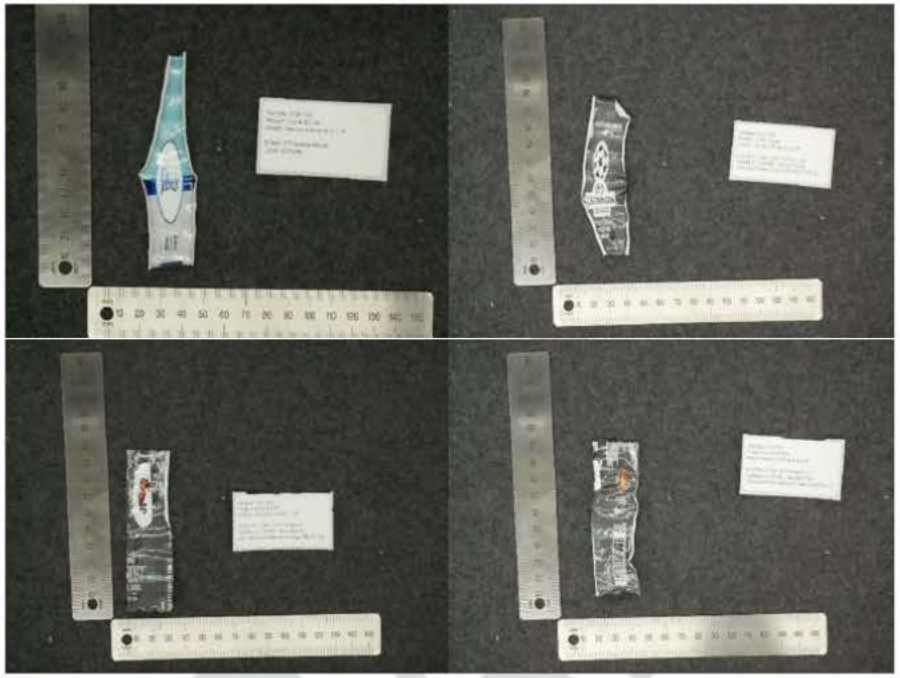
CLAIM 9	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[9] The recyclable shrink label according to claim 1, wherein when heated to 100° C., the entire recyclable shrink label contracts or shrinks by about 1% to about 90%.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "when heated to 100° C., the entire recyclable shrink label contracts or shrinks by about 1% to about 90%." For example: As can be seen in Figure 18 (See APPENDIX B), the label shrinks upon submersion in the boiling water.  **Figure 19**. Photographs of cut sections of 3191115, 3191158, 3191158, and 3191171 after shrink testing. Ex. 1014, para. 89 (NUSA_0001680). *See also, e.g.,* Ex. 1014, Figures 18-19 (NUSA_0001742-43).

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
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CLAIM 10	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[10] The recyclable shrink label according to claim 3, wherein the high opacity layer comprises a pigment selected from titanium dioxide (TiO_2), precipitated calcium carbonate (PCC), aluminum silicate, aluminum oxide (alumina), mica-based pigments coated with thin layer(s) of white pigment, or a combination thereof.	Febreze discloses the "recyclable shrink label according to claim 3." *See* above, [1.pre]-[1.f], [3]. Febreze also discloses "the high opacity layer comprises a pigment selected from titanium dioxide (TiO_2), precipitated calcium carbonate (PCC), aluminum silicate, aluminum oxide (alumina), mica-based pigments coated with thin layer(s) of white pigment, or a combination thereof." *See* above, [1.pre]-[1.f] and [3]. For example: **The labels all have a high opacity layer that contains titanium dioxide**, as can be seen in Figures 6 and 13. (See APPENDIX B). Ex. 1014, para. 90 (NUSA_0001680). *See also, e.g.,* Ex. 1014, Figures 6a-d, 13 (NUSA_0001716-23; NUSA_0001734).

CLAIM 11	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[11] The recyclable shrink label according to claim 1, wherein the light blocking component comprises zinc, aluminum, copper, silver, or an alloy thereof, titanium dioxide, carbon black, mica, a reflective pigment, a polymer capable of blocking light, a mineral capable of blocking light, or a combination thereof.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "the light blocking component comprises zinc, aluminum, copper, silver, or an alloy thereof, titanium dioxide, carbon black, mica, a reflective pigment, a polymer capable of blocking light, a mineral capable of blocking light, or a combination thereof." *See* above, [1.e].

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422
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CLAIM 12	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[12] The recyclable shrink label according to claim 1, wherein the light blocking layer is present in an amount of 0.5 ppr to 25 ppr relative to the recyclable shrink label.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "the light blocking layer is present in an amount of 0.5 ppr to 25 ppr relative to the recyclable shrink label." For example: As defined in the '422 patent, at column 5 line 44, "ppr" refers to pounds per ream. One ream is understood to mean 3000 square feet of substrate. The following calculations are based on the aluminum light blocking layer covering the entire ream. Inductively Coupled Plasma (ICP) was used to quantify the amount of aluminum in sample 3191115 and was found to be 1.56 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. For a 3000 square foot ream, this corresponds to 0.6 pounds of aluminum per ream. To calculate the ppr of the light blocking layer, the weight percent of aluminum in a label sample was measured via Inductively Coupled Plasma (ICP). The light blocking layer comprises other solid components along with the aluminum flakes. To compensate for the additional solids, an estimate of 10% of the mass of aluminum was included in the calculation of ppr for the light blocking layer. To calculate ppr, a 5 square centimeter portion of each label that was uniformly covered by the light blocking layer was weighed. **For sample 3191115, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. For a 3000 square foot ream, this corresponds to 3.4 pounds of light blocking layer per ream.** For sample 3191158, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1558 grams. For a 3000 square foot ream, this corresponds to 0.5 pounds of light blocking layer per ream. For sample 3191168, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1474 grams. For a 3000 square foot ream, this corresponds to 0.5 pounds of light blocking layer per ream. For sample 3191171, the mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1598 grams. For a 3000 square foot ream, this corresponds to 0.5 pounds of light blocking layer per ream. Ex. 1014, paras. 92-96 (NUSA_0001680-82).

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CLAIM 13	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[13] The recyclable shrink label according to claim 1, wherein the light blocking layer comprises from 0.1 ppr to 10 ppr of the light blocking component.	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze discloses "the light blocking layer comprises from 0.1 ppr to 10 ppr of the light blocking component." For example: Inductively Coupled Plasma (ICP) was used to quantify the amount of aluminum in sample 3191115 and was found to be 1.56 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1624 grams. **For a 3000 square foot ream, this corresponds to 3.1 pounds of aluminum per ream.** ICP was used to quantify the amount of aluminum in sample 3191157 and was found to be 0.234 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1558 grams. This corresponds to 0.4 pounds of aluminum per ream. ICP was used to quantify the amount of aluminum in sample 3191167 and was found to be 0.270 weight percent. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1474 grams. This corresponds to 0.5 pounds of aluminum per ream. ICP was used to quantify the amount of aluminum in sample 3191176 and was found to be 1.45 weight percent. This corresponds to 2.41 weight percent aluminum. The mass of a 5 square centimeter portion of the sample that was covered by light blocking material was 0.1598 grams. This corresponds to 0.5 pounds of aluminum per ream. These values all fall within the claimed range. Ex. 1014, para. 97 (NUSA_0001682).

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CLAIM 14	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[14.pre] An article comprising:	To the extent the preamble of claim 14 is found to be limiting, Febreze discloses an "article." For example, Febreze discloses: Attached to the Craig Bushman declaration is what I understand to be **the bottles** to which the tested labels are affixed, which are accordingly recyclable PET bottles. Ex. 1013, at ¶58 [sic. ¶49]. The internal surface of the sleeve or tube is the surface that would face the container, as is therefore disposed thereon. *Id.* Ex. 1014, para. 98 (NUSA_0001683).
[14.a] a container comprising polyethylene terephthalate (PET) and defining an external surface; and	Febreze discloses "a container comprising polyethylene terephthalate (PET) and defining an external surface." For example, Febreze discloses: The Febreze Label is a shrink label that comprises an indicia layer, a high opacity layer, and a light blocking layer, in close proximity to each other. **This particular label is applied to a clear plastic aerosol container** and one of the brand owner functional requirements for this label construction was that consumers should not see through the shrink sleeve to observe the level of product within the container. Ex. 1013, para. 65 (NUSA_0001634-35).
[14.b] the recyclable shrink label of claim 1 disposed on the container.	Febreze discloses the "recyclable shrink label of claim 1 disposed on the container." *See* above, [1.pre]-[1.f]. See also, for example: The Febreze Label is a shrink label that comprises an indicia layer, a high opacity layer, and a light blocking layer, in close proximity to each other. **This particular label is applied to a clear plastic aerosol container** and one of the brand owner functional requirements for this label construction was that consumers should not see through the shrink sleeve to observe the level of product within the container. Ex. 1013, para. 65 (NUSA_0001634-35).

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CLAIM 15	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[15] The article according to claim 14, wherein the first surface of the heat shrink film faces the external surface of the container.	Febreze discloses the "article according to claim 14." *See* above, [1], [14.pre]-[14.b]. Febreze also discloses "the first surface of the heat shrink film faces the external surface of the container." For example: As can be seen in Figures 5 and 6, **sample 3191115 has the light locking facing the external surface of the container, followed by the high opacity layer, followed by the PET film.** Samples 3191157, 3191167, and 3191176 have the high opacity label facing the external surface of the container, followed by the light blocking layer, followed by the PET film. (See APPENDIX B). Ex. 1014, para. 99 (NUSA_0001683). *See also, e.g.,* Ex. 1014, Figures 5a-6d (NUSA_0001712-23).

CLAIM 16	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[16] The recyclable shrink label according to claim 2, wherein the indicia layer is disposed on the first surface.	Febreze discloses the "recyclable shrink label according to claim 2." *See* above, [1.pre]-[1.f], [2]. Febreze also discloses "the indicia layer is disposed on the first surface." For example: The labels analyzed here contain **an indicia layer located between the PET film and the high opacity layer**. (See APPENDIX B). Ex. 1014, para. 100 (NUSA_0001683).

CLAIM 17	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[17] The recyclable shrink label according to claim 8, wherein the heat shrink film contracts or shrinks by about 1% to 90% in a transverse direction.	Febreze discloses the "recyclable shrink label according to claim 8." *See* above, [1.pre]-[1.f], [8]. Febreze also discloses "the heat shrink film contracts or shrinks by about 1% to 90% in a transverse direction." *See* above, [9].

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CLAIM 18	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[18] The recyclable shrink label according to claim 1, wherein the heat shrink film comprises crystallizable polyethylene terephthalate (PET).	Febreze discloses the "recyclable shrink label according to claim 1." *See* above, [1.pre]-[1.f]. Febreze also discloses "the heat shrink film comprises crystallizable polyethylene terephthalate (PET)." As can be seen in Figures 2 and 3 (See APPENDIX B), each film is consistent with an internal PET standard measured on the same instrument as well as a PET standard matched to the Wiley KnowItAll Library. As can be seen, all samples are consistent with PET. In addition, I am relying on the Declaration of Mr. Craig Bushman with regard to **PET that is crystallizable**. Ex. 1013, at ¶53 [sic. ¶44]; Ex. 1017. Ex. 1014, para. 102 (NUSA_0001684). *See* above, [1.a].

CLAIM 19	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[19.pre] A recyclable shrink label comprising:	To the extent the preamble of claim 19 is found to be limiting, Febreze discloses a "recyclable shrink label." *See* above, [1.pre].
[19.a] a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface,	Febreze discloses "a heat shrink film comprising polyethylene terephthalate (PET) and having a first surface and a second surface opposite of the first surface." *See* above, [1.a].
[19.b] the heat shrink film having a thickness from 15 μm to 100 μm;	Febreze discloses "the heat shrink film having a thickness from 15 μm to 100 μm." *See* above, [1.b].
[19.c] a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm, and	Febreze discloses "a light blocking layer disposed adjacent the first surface and comprising a light blocking component, the light blocking layer being constructed for the recyclable shrink label to block at least 80% of incident light having wavelengths in a range of 200 nm to 900 nm." *See* above, [1.c].

Chart 26 – Invalidity Claim Charts for U.S. Patent No. 11,961,422

Prior Art Reference: Multi-Color Corporation's Febreze Heat Shrink Label ("Febreze")

CLAIM 19	
'422 Patent Claim Limitation	**Febreze Exemplary Disclosure**
[19.d] a high opacity layer comprising a white pigment,	Febreze discloses "a high opacity layer comprising a white pigment." *See* above, [3].
[19.e] wherein the recyclable shrink label is recyclable with a PET container.	Febreze discloses "the recyclable shrink label is recyclable with a PET container." *See* above, [1.f].

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BROOK + WHITTLE LTD,

Plaintiff,

v.

NESTLÉ USA, INC., ET AL.,

Defendants.

Case No. 2:24-CV-00735-JRG-RSP

ORDER GRANTING DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT INVALIDITY CONTENTIONS UNDER P.R. 3-6(b)

Before the Court is Defendants Nestlé USA, Inc.'s and Fuji Seal International, Inc.'s Unopposed Motion for Leave to Supplement Invalidity Contentions Under P.R. 3-6(b). After consideration, and noting that the Motion is unopposed, the Motion is GRANTED.

It is ORDERED that Defendants Nestlé USA, Inc.'s and Fuji Seal International, Inc. are granted leave to supplement their invalidity contentions as set forth in their Motion.