UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MULTI-COLOR CORPORATION, Petitioner, vs. BROOK & WHITTLE LTD, Patent Owner.	)	Case No. PGR2025-0025

Videotaped Deposition of: A. CRAIG BUSHMAN

Pursuant to: Notice

Date and Time: Tuesday, November 18, 2025 8:43 a.m.

Place: Wood, Herron & Evans LLP
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Cincinnati, Ohio 45202

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THE VIDEOGRAPHER: This is file number 1 of the videotaped deposition of Craig Bushman taken by the patent owner, Brook + Whittle, in the matter of Multi-Color Corporation versus Brook + Whittle LTD, in the United States Patent and Trademark Office before the Patent Trial and Appeal Board, case number PGR2025-00025.

This deposition is being held at Wood Herron & Evans, 600 Vine Street, Cincinnati, Ohio, on November 18, 2025.

The time on the video screen is 8:43 a.m.

My name is Bruce Sandy. I am the legal videographer from Digital Evidence Group.

The court reporter is Kathy Simpson, also in association with Digital Evidence Group.

At this time, if all counsel present would introduce themselves for the record, then the witness can be sworn.

MR. DIRKS: Steven Dirks from Kirkland & Ellis on behalf of patent

owner, Brook + Whittle.

MR. SCHATZ: Brett Schatz for the petitioner.

A. CRAIG BUSHMAN

a witness herein, having been duly sworn, was examined and testified as follows:

MR. SCHATZ: Steven, before you begin, I'm going to lodge an objection to the use of videography, based on the improper and untimely and not filed notice of deposition.

MR. DIRKS: Okay. We can look into that, but -- yes, okay, we can look into that. So noted.

CROSS-EXAMINATION

BY MR. DIRKS:

Q. Good morning, Mr. Bushman.

A. Good morning.

Q. Please state your full name for the record.

A. Alexander Craig Bushman.

Q. You understand you're here today to give a deposition?

A. Yes.

Q. Specifically, you're here to give a

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deposition in the matter involving Multi-Color Corporation and Brook + Whittle, right?
A. Yes.
Q. And do you understand there's a court reporter here in attendance here today?
A. Yes.
Q. And a videographer?
A. Yes.
Q. Okay. And do you understand that their purpose is to transcribe a record of your testimony?
A. Yes.
Q. Will you let me know if you don't hear or understand a question that I ask?
A. Yes.
Q. Okay. Is it fair if you answer a question that I ask, that I can assume that you understood it?
A. Yes.
Q. Okay. Can we agree not to speak over each other, as much as possible, so the court reporter can transcribe everything that is being said?
A. Yes.
Q. Okay. And your counsel may object

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from time to time. It's normal in these proceedings. But unless your counsel instructs you not to answer a question, you have to answer the question. Do you understand that?
A. Yes.
Q. And you understand that you're under oath for your testimony today?
A. Yes.
Q. Is there any reason you can't provide truthful and accurate testimony today?
A. No.
Q. We're going to be referring to patent -- U.S. patent number 11,961,422. If I refer to that as the '422 patent, do you understand what I'm referring to?
A. Yes, certainly.
Q. Similarly, we're going to be referring to Multi-Color Corporation. If I refer to it as MCC, are you going to understand what that is referring to?
A. Yeah, sure.
Q. And you're employed by MCC, right?
A. That's a great question. I am no longer employed by Multi-Color Corporation.
Q. Okay. Who are you employed by now?

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A. I'm a consultant. I'm not employed.
Q. And when did that transition to consultancy occur?
A. October 2.
Q. Are you -- is it your consulting company that you own?
A. No.
Q. Which consulting company is it?
A. It's -- I'm sorry. It's just me by myself. It's -- I'm not employed by a consultant firm. It's just myself, personally.
Q. Okay. So your own company -- you're a solo consultant, if you will?
A. Yes, excellent.
Q. Prior to October 2, though, you were employed by MCC?
A. Yes.
Q. Specifically, as the vice president of global R&D?
A. Yes.
Q. And what were your duties and responsibilities as the VP of global R&D at MCC?
A. I was focused on product development and innovation globally.

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Q. Okay. Did you have any managerial responsibilities over individuals?
A. Yes.
Q. Were you involved in the engineering of products as vice president of global R&D?
A. Yes.
Q. You said on October 2, you became a solo consultant, no longer employed by MCC. Why is that?
A. They had a restructuring and elected to end my term of employment.
Q. Are you consulting with MCC currently?
A. Yes. I --
Q. Do -- please.
A. I've elected to support them in providing consultant services to them as needed, but specifically for this case.
Q. Okay. Let me break that down a little bit.
So when you say specifically for this case, what do you mean?
A. The -- they had made a decision to restructure and end my employment, and I let them know that there was a likelihood there

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would be a deposition, and that it might be appropriate for me to continue as a consultant until the completion of the deposition in -- and the minor details related to kind of finishing this specific case.

Q. Is that the only consulting work that you are currently doing with MCC, is related to this case?

A. It's -- I suppose it's related to this case and some other ongoing intellectual property patents and other intellectual property work, but that's effectively it.

Q. When you say other intellectual property patents and other intellectual property work, what are you referring to?

A. I was the inventor on some other patents that Multi-Color is continuing as the application. And so, as a result, I can provide insight for that application as it continues. And so I was helping them with some other patent cases.

Q. And have you assigned your rights to that invention to MCC?

A. Yes.

Q. What is the scope of those patents?

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A. It's other packaging-related inventions.

Q. Do they involve shrink labels?

A. I'm thinking. It could involve shrink labels, but it was not based -- specifically for shrink labels. It was another technology.

Q. Okay. So another -- it's intended to be another technology but could be extended to shrink labels; is that fair?

MR. SCHATZ: Objection to form.

A. Could you ask the question again?

BY MR. DIRKS:

Q. Sure, maybe rephrase it a bit.

So the patents that you are currently providing consulting on to MCC, they are related to other labeling technologies but could potentially be extended to shrink labels?

MR. SCHATZ: Objection to form.

A. So I -- maybe I'll say this. Could you ask the question again?

BY MR. DIRKS:

Q. Sure. The patents that you're currently providing consulting services to MCC in relations to are intended to be other

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labeling technologies but could be the -- the scope could be extended to cover shrink labels?

MR. SCHATZ: Objection to form.

A. So maybe I'll say the -- I don't know where you're going in terms of what your specific question is. I think it's clear I've been asked to provide consulting primarily for the Brook + Whittle filing. And so that was the primary basis of my consultant role, but because I had prior experience with other patent filings, I'm supporting those other patent filings. I don't know how much more -- or how I can help you with your question.

BY MR. DIRKS:

Q. I appreciate that. My -- what I'm asking you -- I'm trying to figure out whether those patents are related to this matter or have any relation to this matter; that is why I'm asking these questions.

So do the patents you are providing consulting for, could they potentially cover shrink labels?

A. I guess I'm going to say my answer is I don't know, based on your question.

Q. What about my question leads you to

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answer I don't know?

A. You are asking me to define from a broad scope of what I'm being asked to consult for, and I don't know what I might be asked to respond to beyond today.

Q. Okay. But you -- your answer earlier was that you are providing consulting services on patent applications that were pending while you're with MCC; is that fair?

A. Correct.

Q. And I asked if those patents could potentially cover shrink labels, and you said they could potentially cover shrink labels, right?

A. From the perspective that those patents are still ongoing and I can't determine what the outcome of the filings might be, yes.

Q. Okay. Do they potentially cover light-blocking materials?

A. I think it would be speculative for me to say whether or not they cover light blocking materials because it's lots of things there.

Q. Okay. So you mentioned that you're consulting on these patents and consulting on

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this matter, this matter being the PGR2025-00025, right? Is there anything else you're consulting with MCC on currently?
A. I think the scope of work of the consulting includes, I'll say, closure of management issues as -- after my departure, so minor things related to how the group was being managed and how I can support the person that's there managing the group now.
Q. So sort of a transition?
A. Yeah, I'll say transitional things, sure.
Q. MCC is paying you hourly now; is that fair?
A. Yes.
Q. What is your hourly rate?
A. $295 an hour.
Q. And that includes an hourly rate for consulting services related to those patents that you were just referring to?
A. Yes.
Q. Okay. That includes your hourly rate for consulting on this matter?
A. Yes.
Q. So sitting here today, you are being

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paid $295 an hour for your testimony?
A. Correct.
Q. Prior to October 2, were you retained as an expert in this matter?
A. I don't know what that means.
Q. Did you have an agreement with MCC to provide expert testimony in this matter?
A. Is that a legal term that you are saying?
Q. I'm trying to understand your understanding of your role in this matter prior to October 2.
A. Oh, yeah. I would say my role as a member of Multi-Color was to be the packaging authority, recycling expert, understanding all of the technologies I was supporting, so in that respect, yes.
Q. Were you being payed hourly for your opinions or your expertises in this matter prior to October 2?
A. No, I was a salaried employee.
Q. But after October 2, do you understand your role to be that of an expert in this matter?
A. Yes.

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Q. And you're offering opinions in this matter, right?
MR. SCHATZ: Objection to form.
BY MR. DIRKS:
Q. Actually, let me rephrase the question.
Are you offering opinions in this matter?
MR. SCHATZ: Object to form.
A. I don't know what you mean by opinions.
BY MR. DIRKS:
Q. You submitted a declaration in this matter, right?
A. I submitted a declaration well before October 2, yes.
Q. Right. As part of this matter, correct?
A. Yes.
Q. And in that declaration, you provided certain opinions, fair?
A. I submitted a declaration, yes.
Q. What do you understand the declaration that you submitted to encompass?
MR. SCHATZ: Object to form.

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A. Again, I'm trying to understand your questions and where you're going. I think the opinion is clear.
BY MR. DIRKS:
Q. Okay. So you are offering opinions --
A. I guess I call it an opinion. I mean, I -- the language is -- I meant the declaration.
Q. Okay. But in the declaration, you offer an opinion related to the validity of the '422 patent; is that fair?
MR. SCHATZ: Object to form.
A. Can you rephrase that question, then? So you say validity of the --
BY MR. DIRKS:
Q. I can repeat the question, if that is helpful.
The declaration you offer in this matter, you offer an opinion related to the validity of the '422 patent; is that fair?
MR. SCHATZ: Object to form.
A. I'm trying to parse out what this question is about, so forgive me.
BY MR. DIRKS:

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Q. Maybe I can short circuit it -- I don't mean to interrupt you, but maybe I can short circuit this a bit.
A. Sure.
Q. If you have an answer, please --
A. If you try, yeah.
Q. Okay.
A. You are asking what feels like a legal question, and I'm trying to understand how I --
Q. So let me ask it this way: Have you formed any opinions -- in your view, have you formed any opinions as to the validity of the '422 patent?
MR. SCHATZ: I'm going to instruct the witness not to answer to the extent it requires you to reveal communications with counsel. If it doesn't require you to reveal communications with counsel, you can answer.
A. Yes. Then I -- have I formed an opinion? If you want to repeat the question, and I'll answer it.
BY MR. DIRKS:
Q. Sure.

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In your view, have you formed any opinions as to the validity of the '422 patent?
A. Yes.
Q. And are those opinions documented in your declaration?
A. I believe that the patent is invalid.
Q. That is not what I asked. My question was, are your opinions as to the validity of the '422 patent documented in your declaration that you submitted?
A. Could you ask that question again?
Q. Sure. Your opinions that you formed relating to the validity of the '422 patent, those are documented in your declaration that you submitted; is that correct?
A. Yes.
Q. Okay. Have you formed any opinions as to the validity of the '422 patent that are not documented in your declaration?
MR. SCHATZ: Objection. Outside the scope of Mr. Bushman's declaration -- Dr. Bushman's declaration.
A. I don't know.
BY MR. DIRKS:

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Q. Why do you say you don't know?
A. Maybe I need you to repeat the question, so that I can --
Q. Okay. Outside of the declaration that you submitted that you said includes opinion -- your opinions as to the validity of the '422 patent, have you formed any other opinions as to the validity of the '422 patent?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I'm going through the declaration in my head. And so I'm --
BY MR. DIRKS:
Q. Sitting here today, are you unable to answer the question whether you have any opinions about the validity of the '422 patent that are not reflected in your declaration?
A. I'm still parsing this out, so forgive me if I'm not sure where you're going. And I'm trying to answer your question, so forgive me. So could you ask your question again, and then I can --
Q. Maybe I can ask it this way. We are on the clock today.
Are you having difficulty

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understanding whether you have an opinion about the '422 patent validity that is not reflected in your declaration?
A. No. I have an opinion about whether the patent is valid, and I believe it is -- my declaration makes comments to it, but you asked the follow-up question, which is, is everything within the declaration. And I think -- I think I can say yes, but, at the same time, I -- I don't want to suggest yes if I'm unsure. So maybe that's -- knowing I'm giving testimony that's -- I'm -- I'm trying to be as complete as possible.
Q. I appreciate that.
Are you intending to offer any other opinions about the validity of the '422 patent that you have not expressed in your declaration in this matter?
MR. SCHATZ: I'll instruct the witness not to answer to the extent it involves consultation with counsel.
A. I think -- I think I -- I expect that over the course of these proceedings, there will be some open dialogue that we will -- in the course of these proceedings,

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I'll express opinion or comments.
BY MR. DIRKS:
Q. Specifically in your declaration, you offer an opinion that the claims of the '422 patent are indefinite. Do you understand that?
A. Yes.
Q. You do not offer an opinion in your declaration as to anticipation of the '422 patent. Do you understand that?
MR. SCHATZ: Object to form.
A. Can you ask it in a positive way? You say I do not offer an opinion.
BY MR. DIRKS:
Q. Sure. Do you offer an opinion in your declaration as to the '422 patent -- anticipation of the '422 patent?
A. I'd have to look at it.
Q. Okay. So sitting here today, without looking at your declaration, you can't answer the question of whether you have an opinion as to the anticipation of the '422 patent?
MR. SCHATZ: Object to form.
Objection to the extent it's outside the

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scope of Dr. Bushman's declaration.
A. I was -- so, again, I don't recall if the declaration includes commentary related to anticipation specifically.
BY MR. DIRKS:
Q. Okay. What did you do to prepare for today's deposition?
A. I reviewed the --
MR. SCHATZ: I'll instruct the witness not to answer to the extent it reveals details about your actual preparation.
THE WITNESS: Thank you.
MR. SCHATZ: Let me clarify that. I'll instruct the witness not to answer to the extent it requires revealing any actual materials reviewed or discussions had as based on privilege.
A. So I reread my declaration and had -- I looked at the patent, and I looked at and had discussion with counsel.
BY MR. DIRKS:
Q. And when did this meeting with counsel occur?
A. Yesterday.

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Q. Did you have any other meetings relating to your deposition preparation, other than yesterday?
A. Last week.
Q. When last week?
A. Wednesday of last -- phone calls last week.
Q. Any other meetings -- not limited to meetings with counsel, meetings generally relating to your deposition preparation, other than yesterday and last Wednesday?
A. I don't recall.
Q. How long did you meet with counsel yesterday?
A. In the morning and the afternoon. Yes.
Q. So eight hours?
A. Yeah, something less than that, I'm sure.
Q. Seven hours?
A. Six to seven hours.
Q. And what about the Wednesday -- last week's phone call? How long was that?
A. It was -- I'm thinking. It was just a short call, mostly about preparing --

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logistics, I will say, for this deposition.
Q. Who was involved in yesterday's preparation meeting? Let me rephrase the question. Strike that.
Other than Mr. Schatz, who else was in the meeting -- in your declaration preparation -- deposition preparation yesterday?
A. No one.
Q. All right. Have you had any discussions with anybody else relating to your deposition preparation, other than your counsel?
A. No.
Q. You mentioned earlier, though, that you discussed this deposition with individuals at MCC, fair?
A. In terms of knowledge that there would be a deposition, yes.
Q. But did you discuss the information provided in your declaration with anybody at MCC at that time?
A. No.
Q. Okay. So you mentioned that, in this preparation for this deposition today, you

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reviewed your declaration yesterday, correct?
A. Yes.
Q. So in the six to seven hours that you prepared yesterday, reviewing your declaration, you're unable to answer the question whether you have any other opinions about the validity of the '422 patent that are not included in your deposition; is that fair?
MR. SCHATZ: Object to form.
A. I think I can say that I have opinions that are related to the validity of the patent. And I think the one -- so I'm open to the discussions about will we have -- will I form an opinion during this proceeding, I think is kind of where you are headed?
BY MR. DIRKS:
Q. No. You're speculating. My question is, in the six to seven hours that you prepared for your deposition, including reviewing your declaration yesterday, sitting here today, you can't tell me whether you have any opinions about the validity of the '422 patent that are not reflected in that declaration?
A. I have opinions about the validity

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of the '422 patent. I believe that it's invalid. And again, I'm -- I don't want to speculate about do I have new opinions that are in the declaration.
Q. Respectfully, sir -- I apologize, but we are on the clock here. I need you to listen to the question very carefully. You are changing what I asked, so please listen to the question very carefully.
Withdrawn.
In the six to seven hours that you prepared for your deposition yesterday, including reviewing your declaration that you submitted, you cannot answer -- sitting here today, you cannot tell me whether you have any opinions about the validity of the '422 patent that are not reflected in that declaration?
A. Do I have any opinions that are not reflected in the declaration? Yes, I have opinions that are not reflected in the declaration, primarily the thought that the way in which -- again, I'm trying to parse out what my opinions would be and if they're reflected or not, so I apologize if I'm not answering your question in a timely manner.

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And I'm trying to decide are they opinions or not, so maybe that would be the basis of my struggle. So I guess I will say this. Yes, I have opinions about the patent and the validity of the patent that may not be expressed within my declaration.
Q. Okay. Thank you. It took a long time to get there. So I do appreciate that you're trying to be careful, but I do need you to answer questions when I ask them in a timely manner because we are on the clock today.
Okay. Have you been retained as an expert in this matter to provide those opinions that you say are not reflected in your declaration?
MR. SCHATZ: Object to form. Outside the scope of Dr. Bushman's declaration.
A. I am an expert in packaging and specifics of the technology that Multi-Color is practicing and the state of the market, in terms of packaging and recycling. So, yes, I would say I have some expertise related to the market and the ability to respond to what is out there, I guess.

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BY MR. DIRKS:
Q. Okay. And have you been asked to form an opinion about the '422 patent that is not reflected in your declaration?
A. Have I been asked to form an opinion about the '422 patent that is not in my declaration? I think my declaration says that I believe the patent is invalid for a variety of reasons, I don't know that I've been asked -- I haven't been asked to form an opinion -- I have an opinion, but -- I don't understand your question.
Q. That's what I've been trying to ask this whole time is -- you have a declaration. Included in that declaration are opinions as to the validity of the '422 patent, correct?
A. Yes.
Q. Okay. And I'm trying to figure out, do you have any opinions outside of your declaration regarding the validity of the '422 patent?
MR. SCHATZ: Objection. Asked and answered. Objection. Outside the scope of Dr. Bushman's declaration.
THE WITNESS: So asked and answered?

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BY MR. DIRKS:
Q. Your counsel can object, but I do need an answer. And respectfully, your answer has just changed because you said you did have opinions about the validity of the '422 patent outside of the scope of your declaration. And then, just now, you testified that you have a variety of opinions as to the validity of the '422 patent that are in your declaration, so I'm trying to figure out which it is.
A. I'm sorry. Could you repeat that?
Q. Okay. I will hand you a copy of your declaration in this matter. It is exhibit -- premarked as Exhibit 1.
(Bushman Exhibit 1 was marked for identification.)
THE WITNESS: Can I take this?
BY MR. DIRKS:
Q. So this is Exhibit 1013 from the PGR. And this is your declaration that you submitted in the PGR, correct?
A. Yes.
Q. Okay. Can you turn to page 34 of your declaration?
A. My signature.

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Q. This is your signature, right?
A. Yes.
Q. And signed on January 16, 2025, right?
A. Yes.
Q. Okay. So as of January 16, 2025, this declaration, does it include all of your opinions relating to the '422 patent that you formed as of January 16, 2025? And please feel free to flip through it briefly, even though I will note you reviewed this declaration yesterday for six to seven hours.
A. Yeah, but I'm --
MR. SCHATZ: Objection. Counsel, there is -- the commentary is not necessary.
A. So --
BY MR. DIRKS:
Q. Having reviewed -- let me ask the question.
A. Yeah.
Q. Having just now reviewed the declaration again, does your declaration include your opinions as to '422 patent that you formed as of January 16, 2025?

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A. No.
Q. Okay. What opinions are not reflected in your declaration that you have -- that you formed as of January 16, 2025?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration, and I will instruct the witness not to answer to the extent those opinions were formed in connection with counsel's involvement.
A. So my declaration is only one part of the entirety of the case. So there's other elements that are consistent with my opinions, as well, in terms of my -- if you think of the case. So I think it's not fair to say it would all be in my declaration alone.
BY MR. DIRKS:
Q. But the declaration you submitted includes all of the opinions about the '422 patent that you intend to offer in this case; is that fair?
A. I think I will continue to offer opinions about this case beyond the scope of this declaration as a part of this deposition.
Q. Okay. Let me try the question again in a different way.

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As of January 16, 2025, when you signed this declaration, the declaration included all of the opinions as to the '422 patent that you intended to offer at that time?
A. I will say that the declaration is quite clear in the sense that it says it was a -- the last sentence of the declaration states, My analysis may continue, and I may acquire additional information and obtain additional insights that may result in added observations.
So I think I was clear that there was certainly an expectation that there would be additional thoughts about this.
Q. Okay. Have you formed any opinions as to the '422 patent that were formed in connection with counsel's involvement?
A. No.
Q. Okay.
A. You mean has counsel told me my opinion? Is that your question?
Q. That is not my question. My question is, have you formed any opinions as to the '422 patent in connection with involvement of counsel?

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A. Can you ask that question again? My challenge to you is the way you asked that question, it suggests that a dialogue would lead to an opinion, then, that -- and again, it is a question of is it my opinion or not; is that the question?
Q. No. I think you -- strike that.
Have you had any discussions with counsel that led you to form an opinion as to the '422 patent?
A. Yes. In the respect that counsel was providing interpretation of the legal terms and what things mean and such, yes.
Q. And are those opinions ones that you intend to offer -- strike that.
Are any of those opinions reflected in your declaration you submitted on January 16, 2025?
MR. SCHATZ: Object to form.
A. I don't know.
BY MR. DIRKS:
Q. Are any of those opinions ones you intend to offer in this matter?
A. I think if you ask questions, I'm intending to answer your questions. That's

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what I'm intending to do.
Q. That was not my question, sorry. My question is, are any of the opinions that you formed in connection with discussions with counsel ones that you intend to offer in this matter?
A. I don't know.
Q. Okay.
MR. SCHATZ: All right. We've been going for about an hour. Is now a good time for a break? I mean --
THE WITNESS: Sure.
MR. SCHATZ: -- if you are able to continue, we can do that, unless the court reporter would like a break?
THE WITNESS: No, I'm good to continue. I don't know -- this is -- I've not done this very much, so I'm a novice.
MR. SCHATZ: Why don't we go for another half an hour or so and then take a break?
MR. DIRKS: That's great.
BY MR. DIRKS:
Q. Okay. So you mentioned you haven't

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done this very much. Have you been deposed before?
A. Once.
Q. And what was the matter that you were deposed in?
A. It was a -- infringement proceedings.
Q. Patent infringement proceedings?
A. Correct.
Q. Involving MCC?
A. Correct.
Q. And were you -- when was this deposition?
A. Oh, gracious. I believe it was roughly 2013. I don't remember the specific --
Q. So you were employed by MCC at the time?
A. Yes.
Q. Have you ever provided testimony in a trial?
A. No.
Q. How much time have you spent working on the present matter, the PGR matter?
A. It's been an on-and-off process since at least a year, since we identified the

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patent was granted -- the Brook + Whittle patent, the '422 patent, was granted.
Q. Do you have an approximate amount of time that you spent working on this litigation?
A. I would say 5 percent of the time last year was preparation for understanding the '422 patent and deciding to proceed to how to respond to that patent, and then developing a response.
Q. So 5 percent of your time working at MCC was spent in connection with this litigation?
A. Sure. That's a good estimate.
Q. And since October 2, when you became a consultant to MCC, how long have you spent in connection with this litigation?
A. Oh. 15 hours, 20 hours of work, perhaps.
Q. And when you were employed at MCC, you were getting a salary, right?
A. Yes.
Q. And what was that salary?
A. Oh, good -- that's a good one, 2- -- we'll say $250,000 per year, as a base salary.
Q. Is MCC publicly traded?

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A. No.
Q. Do you have any ownership stake in the company?
A. There is no -- I do not have ownership stake in the company; however, I was offered the opportunity to participate in the equity -- I was given an option to invest in equity in the company.
Q. Did you exercise that option?
A. I did.
Q. So you -- do have some ownership stake in the company?
A. I don't know if it's ownership stake. I think the way it was phrased -- I don't know if it's specifically ownership of the company, if that makes sense.
Q. Let me just rephrase it to maybe help this.
You do have some equity in MCC currently?
A. I'm not sure how it's termed. It was a -- there was an opportunity to make an investment in the -- in Multi-Color during the acquisition process of Fort Dearborn and CD&R, which is our private equity ownership. I don't

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know that -- I don't know if that is equity in Multi-Color. Do you understand my meaning?
Q. I think so, and I appreciate that. Sometimes those private equity things can be a little challenging to understand exactly what they are.
What did you understand to be the benefit of investing in -- at the time that you were offered those rights?
A. My understanding was that at the time when the private equity, CD&R, makes a transaction, that there would be an opportunity for a return.
Q. Okay. Did you receive a bonus while you were employed at MCC?
A. Not every year. It was inconsistent.
Q. Okay. What was that based on?
A. It was based on the performance of the company, typically, for performance against last year's performance.
Q. By performance, you mean financial performance?
A. Yeah. Yes.
Q. And specifically, if there was, say,

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better earnings, you would receive a higher bonus; is that fair?
A. Yes. I don't know that -- know that it was only earnings, but, yes, let's say earnings as a catch-all for financial performance, yes.
Q. You mentioned a minute ago Fort Dearborn. Were you ever employed by Fort Dearborn?
A. No.
Q. What is Fort Dearborn?
A. Fort Dearborn is one of the label companies that was -- I'll use the word acquired, but is it acquired or merge or this kind of thing, I don't know. It was a combination of the Fort Dearborn company, which existed as a competitor to Multi-Color in the label space -- was -- maybe the better term is that it was acquired by CD&R at the same time Multi-Color was acquired, and then they combined us together into one entity, which has the name Multi-Color.
Q. Okay. And when was that combining of companies? When did that occur?
A. Late 2021.

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Q. Okay. Can you turn -- you provided a CV in this case, right?
A. Yes.
Q. And that is the last page of your declaration. Can you turn to that for me?
A. I'm there.
Q. Okay. And at least as of January of 2025, when you submitted this declaration, this was a true and accurate copy of your CV?
A. Yes.
Q. But it's since changed, right?
A. Correct.
Q. And the change specifically is that you are no longer employed by Multi-Color Corporation, but you are consulting with Multi-Color Corporation, fair?
A. Yes.
Q. Are there any other changes to your CV after January of 2025?
A. In terms of employment, no.
Q. Just in general, is there anything else you would change?
A. I think I might have another patent granted, and I am a board member of an organization called RadTech.

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Q. What is RadTech?
A. RadTech is the UV and EB -- I'll call it professional organization, industry organization.
Q. Okay.
A. So that was as of January that I became a board member. It's a nonpaid professional organization.
Q. Okay. And they're not a label manufacturer, fair?
A. Yeah, correct. No, they are not a label manufacturer.
Q. Prior to your role at MCC, starting in 2008, you were employed by a company, International Paper Company, and Evergreen Packaging Incorporated; is that correct?
A. Correct.
Q. Is that one company or two companies?
A. It's kind of strange -- or was strange to me at the time. I began my employment in 1995 with International Paper. They sold the portion of that business that was their beverage packaging business, and that beverage packaging business became Evergreen

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Packaging, as part of -- they essentially, I will say, divested that portion. So to keep the CV clean, it reads as International Paper, and then Evergreen Packaging when it became Evergreen packaging, which was 2005, roughly.
Q. I just had a question. So next to International Paper Company and Evergreen Packaging Incorporated, you have 1995 to 2008 listed there, right?
A. Yes.
Q. Yeah, right underneath that --
A. Oh, it says present. Yeah, that's clearly a mistake.
Q. Okay. Yeah.
A. I apologize for that. It was --
Q. No, I just wanted to clarify that you are not currently employed by them.
A. Oh, that's a good one. Yeah. No, I'm not employed there. It should say 2004 to 2008.
Q. Okay. So in 2008, you left International Paper Company and Evergreen Packaging Incorporated to work for MCC?
A. Correct.
Q. Okay. The last role you had at

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International Paper Company and Evergreen Packaging Incorporated was product development manager and manager of intellectual property. Do you see that?
A. Yes.
Q. Okay. Was that a legal role?
A. No.
Q. What was your role with respect to intellectual property?
A. Supporting the filings of primarily patent applications.
Q. Okay. So you're generally familiar with proceedings -- patent proceeding at the pat office; is that fair?
A. Yes.
Q. Okay. And you actually have eight patents, six pending as of January 2025, right?
A. Correct.
Q. You said one of them might have been granted since then?
A. Yeah, yeah.
Q. Okay. Are you familiar with Brook + Whittle?
A. Yes.
Q. How so?

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A. They're a competitor to Multi-Color. They provide labels into the market. They provide a variety of label types -- pressure sensitive, shrink sleeve, maybe other label types. But I will say that's what I know them for is primarily pressure-sensitive and shrink sleeve labels into the label market, which could include the beverage market, the personal care market. They may have supply to other markets as well. I'm not sure.
Q. Have you ever worked with Brook + Whittle on anything?
A. I've met folks from Brook + Whittle. When you say work with them --
Q. I just mean generally.
A. There was a request from Brook + Whittle about licensing this technology to Multi-Color in the fall of last year.
Q. When you say licensing this technology, what technology are you referring to?
A. Forgive me. Thank you. They offered to license the technology that is enclosed in the '422 patent to Multi-Color.
Q. You said that was in the fall of

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last year?
A. Yes.
Q. Were you involved in the discussions about licensing that technology in the fall of 2024?
A. Yes.
Q. And I assume you didn't exercise that license; is that fair?
A. That was someone else's decision.
Q. MCC does not exercise that license?
A. Correct.
Q. Were you involved in that discussion of whether or not to license the technology involved in 2024?
A. Yes.
Q. And did you offer an opinion about whether to license that technology in the fall of 2024?
A. The discussion with me was related to did I believe that the patent was -- had any merit to it, and that should we -- should we pay for the license if the patent is -- is from -- if the patent is not valid, should you actually pay for a license or not. And that was a -- at some point, it became a business

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decision of did they believe it was going to be -- is it valid or not.
Q. Did you provide that opinion that it would be not worth licensing the technology because it's an invalid patent? Is that an opinion that you provided?
MR. SCHATZ: Instruct the witness not to answer, privilege.
BY MR. DIRKS:
Q. Let me rephrase the question this way. Did you provide an opinion to any attorneys at MCC related to the decision whether to license the '422 patent technology in the fall of 2024?
MR. SCHATZ: Instruct the witness not to answer, privilege.
MR. DIRKS: Counsel, that is a yes-or-no question.
MR. SCHATZ: That is fine. You can answer the question.
Ask the question as a yes-or-no question.
MR. DIRKS: It was a yes-or-no question, but let me reask the question to have a clean record.

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BY MR. DIRKS:
Q. Did you provide an opinion to any attorneys at MCC related to the decision whether to license the '422 patent technology in the fall of 2024?
A. Yes.
Q. Outside of the discussion with attorneys, did you have discussions with anyone else about the decision whether to license the '422 patent technology in the fall of 2024?
MR. DIRKS: Instruct the witness not to answer, privilege.
Again, answer yes-or-no question here.
MR. SCHATZ: Instruct the witness not to answer, privilege.
MR. DIRKS: What's the basis? I don't understand.
MR. SCHATZ: Privilege, work product, attorney-client privilege.
MR. DIRKS: Okay. But I'm -- I don't understand how this is a -- how this is a privilege objection here.
BY MR. DIRKS:
Q. Let me reask the question.

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Outside of the discussion of attorneys, did you have discussions with anyone else about the decision whether to license the '422 patent technology in the fall of 2024?
MR. SCHATZ: Instruct the witness not to answer, privilege.
MR. DIRKS: I don't understand the basis for your objection, Counsel.
MR. SCHATZ: It's not my job to advise you about my opinions and why I'm instructing the witness not to answer, but it is work product and attorney-client privilege.
MR. DIRKS: Okay. I disagree with you. I think it is a yes-or-no question. I --
MR. SCHATZ: Thank you for your commentary.
BY MR. DIRKS:
Q. Let me ask it this way. Outside of discussions with counsel, and outside of any discussions instructed by counsel, did you have any discussions with anyone at MCC about whether to license the '422 patent technology in the fall of 2024?

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MR. SCHATZ: Object to form, outside the scope of Dr. Bushman's declaration.
A. Yes.
BY MR. DIRKS:
Q. Okay. And what were those discussions?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration. I'll instruct the witness not to answer to the extent those discussions were borne out of interaction with counsel.
A. Thank you for that. I'm reflecting whether or not I had any discussions outside of counsel. Maybe I'll say this: We were approached as Multi-Color regarding an opportunity to license the technology within the '422 patent. And I had discussions with my boss about whether or not I was -- about whether or not we believed the patent had any merit.
BY MR. DIRKS:
Q. And what was your recommendation to your boss?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration. And

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also, I will instruct the witness not to answer to the extent any discussions were borne out of interactions with counsel.
A. Yeah. My recollection is that -- that I did not believe the '422 patent had any merit. And so I didn't know that they should actually pay for a license or not, but it was a business decision to them.
BY MR. DIRKS:
Q. Did the technology at issue in the '422 patent -- strike that.
Did the license offer to the technology at issue in the '422 patent, would that have provided a benefit to MCC?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration. And I also object -- I'll instruct the witness not to answer to the extent answering the question requires revealing interactions with counsel.
A. I don't know.
BY MR. DIRKS:
Q. What about my question is confusing to you?
MR. SCHATZ: Objection to form.

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A. If you want to ask your question again.
BY MR. DIRKS:
Q. Sure. I can reask the whole question.
Did the license to -- license offer to the technology at issue in the '422 patent, would that have provided a benefit to MCC?
MR. SCHATZ: Objection. Asked and answered. And also, objection. Outside the scope of Dr. Bushman's declaration.
A. Again, my part of that discussion was related to the technical component, not the business component. So there may have been benefits outside of the technical aspects. I can't speak to the other benefits. I don't know.
BY MR. DIRKS:
Q. And are you familiar with Brook + Whittle's products?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I'm -- within the scope of seeing them in the market, yes.
BY MR. DIRKS:

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Q. Are you familiar with the GreenLabel BlockOut product?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I'm aware they have a product that is advertised as a GreenLabel product. They've presented that to the market. I don't know if it's commercial.
BY MR. DIRKS:
Q. Okay. Is your understanding that the GreenLabel BlockOut product is a recyclable label?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I know that it has been presented to the APR.
BY MR. DIRKS:
Q. And is it your understanding that the GreenLabel BlockOut product is a shrink sleeve label?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. Yes.
BY MR. DIRKS:
Q. And is it your understanding that

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the GreenLabel BlockOut is a light-blocking label?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. Yes.
BY MR. DIRKS:
Q. What was your impression of the GreenLabel BlockOut product when you first learned of it -- actually, strike that.
When did you first learn of the GreenLabel BlockOut product?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. This year is 2025, so early 2024. I think they had a webinar with the APR.
BY MR. DIRKS:
Q. And in early 2024, when you first learned of the GreenLabel BlockOut product, what was your impression of it?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. It was a label that they were offering to the market for light blocking, primarily for dairy products, was my understanding.

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BY MR. DIRKS:
Q. Is that the only impression you had about the GreenLabel product, that they were just offering it to the market?
MR. SCHATZ: Objection. It's outside the scope of Dr. Bushman's declaration.
A. I didn't know much about it at that time. You're asking what my opinion was at that time. And so I heard about it and was learning about it based on their webinar.
BY MR. DIRKS:
Q. Okay. But based on that webinar, what you heard in that webinar, did you have any other impression about the GreenLabel BlockOut product, other than it was one that they were going to offer to the market?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. Only that it was -- that it was being offered to the market. And I didn't know anything -- I had seen a sample of it, as far as you knew. It wasn't commercial, so I didn't have an opinion about the specifics.
BY MR. DIRKS:

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Q. Did you have an opinion about whether it would work?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I don't know.
BY MR. DIRKS:
Q. You don't know whether you had an opinion as to whether the product would work as described?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. Again, I was -- could only base my opinion on what I was being told in the webinar. So in the webinar they -- they stated that they had a product that was designed for light blocking. It --
BY MR. DIRKS:
Q. They also explain that it was recyclable.
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I don't recall.
BY MR. DIRKS:
Q. Okay. But, at some point, you learned that the GreenLabel BlockOut product

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was marketed as a recyclable light-blocking shrink sleeve product.
MR. SCHATZ: Objection. It's outside the scope of Dr. Bushman's declaration.
A. That's how it was marketed, yes.
BY MR. DIRKS:
Q. And at the time that you learned that information, that GreenLabel BlockOut was marketed as a recyclable, light-blocking shrink sleeve label, what was your impression of it at that time?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I didn't know anything about how they would achieve a light-blocking label. I didn't have any knowledge of what they were doing.
BY MR. DIRKS:
Q. Did you question that they would be able to do so?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
BY MR. DIRKS:
Q. Strike that, just so I have a clean

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record.
Did you question whether Brook + Whittle would be able to provide a product that has a recyclable shrink sleeve, light-blocking label?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I'm sorry, could you ask that question again?
BY MR. DIRKS:
Q. Sure. Did you question whether Brook + Whittle would be able to provide a product that has a shrink sleeve, light-blocking label that is recyclable?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I don't know if I -- so you are combining some things did I question whether or not -- could you repeat it again?
BY MR. DIRKS:
Q. Sure. At the time that you learned that Brook + Whittle was marketing a product that offers a recyclable shrink sleeve light-blocking label, did you have questions about how Brook + Whittle would achieve such a

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product?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I was curious how they -- about the product, I guess, but I hadn't seen -- excuse me -- I hadn't seen any specifics about it.
BY MR. DIRKS:
Q. That's not my question. My question is, at the time that you learned that Brook + Whittle was offering a product that offers a recyclable, light-blocking shrink sleeve label, did you question how Brook + Whittle would be able to achieve such a product?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I don't know what you mean by did I question.
BY MR. DIRKS:
Q. Okay. You have 16 years of experience in the label industry, correct?
A. Sure.
Q. And 16 years of experience in determining recyclability of products, fair?
A. Some time, yeah, not 16 years. I think recycling was not a priority in the early

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stage of my career, but yes.
Q. And your role at MCC, when you were employed at MCC, was VP of R&D, fair?
A. Yes.
Q. As VP of R&D at MCC, and with 16 years of experience in the label industry, when you learned of Brook + Whittle's product as marketed as a recyclable, light-blocking shrink sleeve label, did you have questions about whether or not they would actually be able to achieve such a product?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. Light blocking was well known in the market, and recycling is well known in the market. So I had thoughts about how they might achieve that, specifically given my background.
BY MR. DIRKS:
Q. Can you say more about that? What thoughts did you have?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. So my primary thought is, at that time, they promoted their product as being a light-blocking product in a traditional market

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solution would be to use a white film. And so I could conceive of lots of ways in which you could do light-blocking solutions in market. We had -- Multi-Color had a variety of options where we were working on light-blocking for our labels.
And so that was well-understood, I would say. And I had a lot of experience with recycling, specifically for shrink sleeve and other products. And so I was interested to understand if their product was fully recyclable or recyclable per the APR.
BY MR. DIRKS:
Q. And that's because traditional light-blocking labels are not fully recyclable under APR guidance, fair?
MR. SCHATZ: Objection. Outside scope of Dr. Bushman's declaration. Objection. Calls for speculation.
A. I would say that we had experience with light-blocking and recycling of solutions -- or labels that include light blocking. And so the -- well, I think it was well known that light-blocking labels are a topic of interest, but I can't answer

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specifically if -- if there wasn't a solution in the market. I can't say.
BY MR. DIRKS:
Q. I'm sorry. What do you mean by if there wasn't a solution in the market, you can't say?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. I'm not sure what I mean. Could you read back the -- my answer?
BY MR. DIRKS:
Q. Let me just strike that.
It's your understanding that prior to Brook + Whittle's GreenLabel BlockOut product, there was not a light-blocking label -- shrink sleeve label that was fully recyclable under the APR guidance, fair?
A. No, I wouldn't say that.
Q. Are you aware of any products that were fully recyclable, light-blocking, heat shrink labels prior to Brook + Whittle light-blocking product?
A. The Gatorade label.
Q. So when you testified earlier that you were curious how far Brook + Whittle would

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achieve a light-blocking shrink sleeve recyclable label, why were you curious about how they would achieve that if it was already done?
MR. SCHATZ: Objection. Outside the scope of Dr. Bushman's declaration.
A. It's -- I suppose it's natural as an R&D person to be curious how people are solving problems.
BY MR. DIRKS:
Q. Which problems are they solving?
MR. SCHATZ: Object to form.
A. I don't know what you mean. The -- when you say -- maybe we should pause for a minute. When you say the Brook + Whittle light -- GreenLabel light-blocking label, at that time, I don't know that I knew if there was a patent, or -- so I don't know if it was related to -- so I'm trying to parse out was it a product being offered to market. So under the aspects of they're offering something to market, which is light blocking, of course that was of interest to me.
BY MR. DIRKS:
Q. But I'm trying to figure out why it

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was of interest to you?
A. Because it was an open topic for the market for light blocking, in general. It was an open concern.
Q. What was the open concern? That's what I'm trying to figure out.
A. Customers are always looking for light blocking, and it was well known that customers in the market were using light-blocking shrink sleeves.
Q. Okay. But what is the open concern? Your testimony is just that customers were looking for this. What was the open concern that customers had with respect to light-blocking labels?
MR. SCHATZ: Objection. Asked and answered. And objection. Outside the scope of Dr. Bushman's declaration.
A. Customers are always looking for solutions in the market. And -- like I don't understand --
BY MR. DIRKS:
Q. I'm just -- I'm just --
A. So when you say an open concern, the open concern is that Multi-Color is supplying

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labels to the market so that market interest and light blocking is worth understanding.
Q. Okay. But your testimony was that it was -- it's an open concern in the market for a light-blocking label -- strike that.
Is it fair to say there was an open concern in the market as to how to achieve a light-blocking, recyclable label?
A. I don't know.
Q. What do you mean you don't know?
A. At that time, I don't know.
Q. At the time that you learned of the GreenLabel BlockOut product?
A. I don't know. I think -- so I think they brought to market what they claimed to be recyclable light-blocking label. Was the market -- the market had other solutions in the market that were well-known products in the market. So I think -- does that answer your question?
Q. Not exactly. So it's your testimony that there were other products in the market that achieved light blocking and recyclability? Is that your testimony?
A. Correct. The Gatorade example is a

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good example.
Q. Okay.
A. It was commercial and in market.
Q. Okay. So then, if that's the case, why was Brook + Whittle's offering of a recyclable, light-blocking shrink sleeve label of interest to you?
A. As a producer and a competitor in the market, of course they would be of interest to me -- what others are doing, sure.
Q. Did the Brook + Whittle GreenLabel BlockOut product offer the market an unmet need?
A. I don't know.
Q. As vice president of R&D at MCC for -- with 16 years of experience in the market, you don't know whether the GreenLabel BlockOut product from Brook + Whittle met an unmet need?
A. At that time, I didn't.
MR. SCHATZ: Objection. Asked and answered.
BY MR. DIRKS:
Q. Okay. Are you familiar with -- strike that.

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When did you first become aware of the '422 patent?
A. I know that -- I know that I saw a copy of it after it was granted, but I don't know if I saw it before -- before it was granted. I don't know.
Q. Okay. Were you monitoring Brook + Whittle's patent applications at the time?
MR. SCHATZ: I'll instruct the witness not to answer to the extent it requires disclosure of involvement of counsel.
A. Not regularly, I'll say that.
MR. DIRKS: All right. Why don't we take a break.
THE VIDEOGRAPHER: The time is 10:24 a.m. We are going off the record.
(Off the record.)
THE VIDEOGRAPHER: The time is 10:39 a.m. We're back on the record.
BY MR. DIRKS:
Q. Welcome back, Mr. Bushman. You have in front of you Exhibit 1. This is a -- your report, correct -- or your declaration in this case?

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A. Yes.
Q. Okay. And in preparing your declaration, you reviewed certain materials, correct?
A. Yes.
Q. Okay. Did you have access to everything you felt you needed to form your opinions in this case?
A. Yes.
Q. Okay. Is there any material that you would have liked to have had but didn't have access to?
A. Oh, I don't recall.
Q. Okay. Are there any materials that you asked for but didn't receive with respect to your declaration?
A. No.
Q. If you look at paragraph 10 of your report, please.
A. Okay. I'm going to take this guy off. Okay. I'm there.
Q. This is a copy of the materials considered in -- in forming your declaration, correct?
A. Yes.

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Q. Okay. And so this is a complete and accurate list of everything you considered when forming your -- the opinions in your declaration, fair?
A. Yes.
Q. Okay. And did you select this set of materials, or were they provided to you?
MR. SCHATZ: I'll instruct the witness not to answer, privilege.
A. I can't answer that question.
BY MR. DIRKS:
Q. This list of materials considered -- strike that.
One of the materials you considered in forming your opinions in this declaration is the '422 patent itself, fair?
A. Yes.
Q. As well as the prosecution history of the '422 patent, right?
A. Yes.
Q. Okay. Are you familiar with the prosecution history of the '422 patent?
A. I've seen it. I don't recall reading it in great detail, but yes.
Q. So you didn't read the entire

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prosecution history, fair?
A. I read and skimmed the prosecution history.
Q. The entirety of it?
A. Yes, it's quite lengthy.
Q. Were you asked to review certain sections?
A. I don't recall.
Q. In your experience at MCC, you've had opportunity to review APR guidance documents, right?
A. Yes.
Q. Okay. And interpret them, fair?
A. Yes.
Q. And you cite a few of them here, right, Exhibits 1005 through 1011, in your materials considered? Those are all APR guidance documents, fair?
A. Yes.
Q. And you're familiar with these documents -- these guidance documents?
A. Yes.
Q. So you considered them, put them in your materials and considered them, but you don't cite to them at all in your declaration;

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is that fair?
A. I would to have to check the specifics here. I suppose that is correct. I don't know that I cite -- as you say cite to them. I'm looking.
Q. Let me ask a separate question. You don't discuss the contents of these APR guidance documents in your declaration; is that right?
MR. SCHATZ: Object to form.
A. Can you ask the question again?
BY MR. DIRKS:
Q. Sure. You don't discuss the contents of these APR guidance documents in your declaration; is that fair?
MR. SCHATZ: Object to form.
A. I don't know. I suppose we don't cite them. I don't cite them.
BY MR. DIRKS:
Q. Sorry, let me ask the question again. That wasn't my question. My question is, you don't discuss the contents of the APR guidance in your declaration, right?
A. I don't know what you mean by the contents of the --

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Q. Well, let me -- okay. These APR guidance documents are documents, fair?
A. Yes.
Q. They have contents, fair?
A. Yes.
Q. You don't discuss those contents in your declaration, fair?
MR. SCHATZ: Object to form.
A. I'll say it's not specifically in the declaration, but there are references within the '422 patent. So in that respect, they are cited, I suppose, if that answers your question.
BY MR. DIRKS:
Q. My question is a little bit different, though. I'm asking about the contents of the APR guidance documents. You don't discuss the actual contents of those APR guidance documents in your declaration?
MR. SCHATZ: Object to form.
A. I'm going to say, no. I don't discuss the specifics of them in my declaration, but I clearly had reviewed them and have reviewed them in the past.
BY MR. DIRKS:

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Q. But you don't provide any analysis of how to interpret those APR guidance documents, fair?
A. Correct.
Q. Okay. Did you think that was not relevant to your analysis in your declaration?
A. So just as a pause, can you ask the question again? That's all.
Q. Did you think it was not relevant to your analysis to provide -- strike that. Did you think it was not relevant to your analysis in your declaration as to your opinions about the '422 patent to provide a analysis of the APR guidance documents?
A. So the APR documents are relevant to the '422 patent, most assuredly, but I didn't speak to the specifics within the documents because they are listed and provided.
Q. You said that the APR guidance documents are clearly relevant to the '422 patent. What do you mean by that?
A. Well, the '422 patent refers to, I think, every one of these documents within the patent.
Q. Okay. You're aware that you are

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providing an opinion in this case that the claims of the '422 patent are indefinite, fair?
A. Yes.
Q. What is your understanding of what indefiniteness means within the patent context?
A. Indefinite means that the term of the claim is not clear to a person of ordinary skill in the art.
Q. Okay. And the claim -- specific claim term that you are providing an opinion on as to indefiniteness is wherein the recyclable shrink label is recyclable, fair?
A. Yes.
Q. So in forming your opinion as to whether that claim term is indefiniteness, you didn't think it was relevant to provide analysis of APR guidance documents?
MR. SCHATZ: Object to form.
A. Yeah, I don't know that -- I don't know that it was necessary in this declaration to -- I'll say this. The term recyclable -- so maybe -- maybe I'll say this. The term recyclable is -- so I think the question is, is the term recyclable well defined within the patent? And part of the definition of what

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that term recyclable is, in part, related to the APR documents.
BY MR. DIRKS:
Q. Okay. So then the -- you would agree with me, then, the APR guidance documents impart and form a person of ordinary skill in the art what the term recyclable means within the context of '422 patent?
MR. SCHATZ: Object to form.
A. The APR documents provide guidance about what is recyclable.
BY MR. DIRKS:
Q. And that would inform a person of ordinary skill in the art what the term recyclable means within the context of '422 patent, fair?
A. The guidance documents provide best practices and guidance around what the market is looking for in terms of a product in recycling stream to meet the requirements of recycling stream.
Q. My question is a little bit different than that. My question is, the APR guidance documents that you cite in material is considered, at least in part, inform a person

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of ordinary skill in the art as to what recyclable means in the context of '422 patent, fair?
MR. SCHATZ: Object to the form.
A. Can you ask the question?
BY MR. DIRKS:
Q. Okay. The APR guidance documents that you cite in your materials-considered list, at least in part, inform a person of ordinary skill in the art as to what recyclable means within the context of '422 patent; is that fair?
MR. SCHATZ: Object to form.
A. Yes.
BY MR. DIRKS:
Q. Okay. You would agree with me that the prosecution history of the '422 patent is also -- would also, in part, inform a person of ordinary skill in the art as to what recyclable means in the context of '422 patent, fair?
MR. SCHATZ: Object to form.
A. I don't know. I mean -- I don't know.
BY MR. DIRKS:
Q. You don't have any understanding

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that the prosecution history is in -- is relevant to the analysis of whether a person of ordinary skill in the art would understand the scope of the claims in the '422 patent?
A. So, yes, I suppose -- now I understand your question. Yes, the prosecution history would offer some insight as to the claim terms.
Q. Okay. You would agree with me that -- strike that.
You provided -- can you turn to paragraph 51 of your report?
A. Yes.
Q. Okay. So here, you list the ground upon which the '422 patent is being challenged in this case, correct?
A. Yes.
Q. Okay. And grounds 1, 2, and 3 are -- is it your understanding those are claims about the obviousness or anticipation of the '422 patent claims?
A. Yes.
Q. But you're not providing any opinions as to the anticipation of the '422 claims, fair?

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MR. SCHATZ: Object to form.
A. I don't know what that means.
BY MR. DIRKS:
Q. Okay. You were not asked to provide an opinion as to whether -- strike that.
Ground 1, the basis is the Gatorade label, right?
A. Yes.
Q. You were not asked to provide an opinion as to whether the Gatorade label meets all of the claim limitations within the '422 patent; is that fair?
A. I was not asked to -- say that again.
Q. You were not asked to provide an opinion as to whether the Gatorade label meets all of the claim limitations within the '422 patent, fair?
I'm sorry, Mr. Bushman. We are against the clock here a little bit. Do you not have --
A. You --
Q. Do you not understand whether you were asked to opine on whether the Gatorade label meets all the claim limitations of the

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'422 patent, yes or no?
A. You said something before about anticipation. So I was understanding -- is that question related to anticipation, so that's what I was --
Q. Okay. Yes. My question -- I'm trying to -- you -- you said you didn't understand what anticipation was, so I rephrased my question.
My question is, do you not understand -- strike that.
Do you understand whether or not you are offering an opinion as to whether the Gatorade label meets all the claim limitations of the '422 patent? Yes or no?
A. Yes.
Q. Yes, you understand that you are, or yes, you understand that you are not? Strike that.
Are you offering opinions as to whether the Gatorade label meets all of the claim limitations of the '422 patent?
A. I'm offering specifics about the Gatorade label that we -- Multi-Color -- I said we -- Multi-Color, produced, and that the

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Gatorade label that was produced is in the prior art and well-understood prior to the patent. Does that answer the question?
Q. Let me ask it a different way. You're not providing a mapping of the claim elements of the '422 patent to the Gatorade label on a claim-by-claim basis, fair?
A. No. Correct.
Q. Okay. You are also not offering any opinions as to whether it would have been obvious to a person of ordinary skill in the art to modify the Gatorade label to meet certain claims of the limit -- of the '422 patent, fair?
A. I don't know. In some instances, I say a minor modification of the Gatorade label would be required, so --
Q. But were you asked to provide an opinion as to whether or not it would be obvious to make modifications to the Gatorade label to meet certain claims of the '422 patent?
MR. SCHATZ: Objection. Asked and answered.
A. So could you repeat that? Sorry.

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BY MR. DIRKS:
Q. Strike that. Let's -- let's move on.
Turn to paragraph 53 of your declaration, please. Are you there?
A. Yes.
Q. Okay. Here, you're providing an overview of the Gatorade label, right?
A. Yes.
Q. Okay. You also provide a overview of the Febreze label --
A. Yes.
Q. -- fair? Okay.
How were these labels selected?
MR. SCHATZ: I'll instruct the witness not to answer, privilege.
A. I can't answer that.
BY MR. DIRKS:
Q. Were you asked to look for prior art in relation to this matter?
MR. SCHATZ: Instruct the witness not to answer, privilege.
BY MR. DIRKS:
Q. Were you provided the Gatorade label and Febreze labels as the prior art to analyze

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in this manner?
MR. SCHATZ: Object to form.
A. No.
BY MR. DIRKS:
Q. So who selected the Gatorade and Febreze labels as the prior art in this matter?
MR. SCHATZ: Instruct the witness not to answer on privilege.
BY MR. DIRKS:
Q. So when you were asked to provide information for your declaration, fair to say the Gatorade label and Febreze label were already selected as the prior art?
A. I don't understand that question. Could you ask that again?
Q. When you were asked to provide information for this declaration, is it fair to say that the Gatorade and Febreze labels were already selected as the prior art?
MR. SCHATZ: Instruct the witness not to answer on privilege.
BY MR. DIRKS:
Q. The Gatorade label -- strike that.
Look at paragraph 54 of your declaration, please.

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A. Okay.
Q. You say, The Gatorade label was produced and sold publicly by my company in 2020 in substantial quantities; is that right?
A. Yes.
Q. When you say by my company, do you mean MCC?
A. At the time, in 2020, it would have been Fort Dearborn.
Q. Okay.
A. It would have badged as Fort Dearborn. Multi-Color didn't own Fort Dearborn in 2020.
Q. Okay. So in 2020, the Gatorade label was produced and sold publicly by a company other than your company, MCC?
A. Multi-Color and Fort Dearborn became the same company, so that --
Q. Right. But your -- but you declaration says that, It was produced and sold by my company in 2020.
That's not actually the case, right? It was --
A. It was Multi-Color.
Q. -- Fort Dearborn?

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A. In broad terms, but specifically, the Fort Dearborn side of Multi-Color.
Q. But that merger did not happen until 2021 --
A. Correct.
Q. -- right?
Okay. So it wasn't MCC. It was Fort Dearborn that was --
A. Correct.
Q. -- producing and selling the Gatorade labels in 2020, fair?
A. Correct.
Q. Okay. When Fort Dearborn and MCC merged, let's say, in 2021, was MCC still selling these Gatorade labels?
A. The combined entity of MCC, yes.
Q. Okay. Are they still providing these labels to the market today?
A. Yes.
Q. Have there been any changes to the formulation of the label since 2020?
A. Yes.
Q. What changes have been made to the formulation?
A. The Fort Dearborn facility, or the

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facility that was a Fort Dearborn facility, was closed, and the labels are now being produced in a Multi-Color facility.
Q. Okay. But has the design of the -- of the label changed? I don't mean the graphical design. I mean the design of the components of the label; have that -- has that changed since 2020?
A. Yes. There has been changes to the substrate vendors and ink suppliers as part of that transition -- I mean different ink vendors in the Multi-Color facilities.
Q. Okay. You were not involved in the design initially -- the initial design of the Gatorade label, correct?
A. Correct.
Q. Okay. You did not test the initial designs of the Gatorade label, fair?
A. Correct.
Q. In paragraph 53 of your report, you say that, The Gatorade label is a shrink sleeve label that is recyclable with a PET container.
Do you see that?
A. Yes -- yes.
Q. What is the basis for your statement

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that the Gatorade label is a shrink sleeve label that is recyclable with a PET container?
A. The APR recognition that was provided to the Fort Dearborn company, which eventually became Multi-Color in 2019, was recognition for the label construction.
Q. Okay. Are you --
A. That is the same as the Gatorade label. That is the construction of the Gatorade label.
Q. Okay. Are you referring to Exhibit 1017 in your -- that's cited in your declaration?
A. I don't recall what 1017 is.
Q. Sure. Before --
A. Oh, I -- I do recall what 1017 is.
Q. Okay.
A. So did you want to ask that question again, just so I'm --
Q. When you say that the basis for your statement that the Gatorade is a -- label is a shrink sleeve label that is recyclable with a PET container, and you cited the APR guidance, are you referring to --
A. The APR recognition letter, which I

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think was example 1018. And related to that, this exhibit -- I say example -- Exhibit 1017.
Q. Okay. Are there any other bases for your statement that the Gatorade label is a shrink sleeve label that is recyclable with a PET container?
A. Well, I might have my -- my exhibits wrong. Could we check what Exhibit 1017 is, just to confirm?
Q. Here's -- handing you what will be Exhibit 2.
(Bushman Exhibit 2 was marked for identification.)
THE WITNESS: Is this 1017?
BY MR. DIRKS:
Q. This is 1017.
A. Ah, okay. Then I was confused.
Q. Okay.
A. My apologies.
Q. Okay. So 1017 --
A. 1017 is not the APR recognition for the Fort Dearborn, so I -- I made a mistake for what that response was.
Q. Okay. You -- before we get to that, you -- are there any other bases for saying

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that the Gatorade label is a shrink sleeve label that is recyclable with a PET container?
A. I -- I would say that the Gatorade label, the -- the APR recognition letter that I -- maybe I have the exhibit wrong -- is -- is a strong part of that statement. There -- there may be other aspects related to either the other documents, but that was the specific -- I would say that's the specific basis for stating that it's recyclable, because it passed the APR recognition.
Q. Okay.
A. Does that make sense?
MR. DIRKS: Hand you what will be Exhibit 3.
THE WITNESS: Thank you.
MR. DIRKS: This is Exhibit 1018 to the PGR.
THE WITNESS: Got it. Thank you.
(Bushman Exhibit 3 was marked for identification.)
BY MR. DIRKS:
Q. Is this the APR recognition letter that you're referring to?
A. Yes.

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Q. Okay. So what about this -- strike that.
What is your understanding of what this letter conveys?
A. So the -- this letter is a recognition that the product presented to the APR under their recognition program was -- met the requirements for the Critical Guidance Protocol.
Q. Okay. Is there any mention of the Gatorade label on this recognition letter?
A. No.
Q. Okay. So the label that was submitted -- strike that.
The APR guidance document -- sorry, strike that.
The APR recognition letter in Exhibit 3 is not specific to the Gatorade label, fair?
A. This letter, when -- when you complete a Critical Guidance test, the label construction for the Gatorade label matches the label construction that's defined within this letter. But when you complete a Critical Guidance test, you may test a generic

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construction. And that covers a variety of different labels that include different graphics, different -- different graphics, let's say. But the label construction is the same. Does that make sense?

Q. So would the -- a commercial label product may differ from the label that was provided to the APR for testing --

A. Yes.

Q. -- to receive a letter like this?

A. Yes.

Q. Okay. And specifically, if you look at the last paragraph of ten -- of Exhibit 3, it says, Our recognition applies only to the Fort Dearborn recycle-friendly, washable ink system, not necessary to -- not necessarily to label bottles, as those packages would need to be tested themselves to demonstrate the system of resin, adjuvants, labels, and closures conformed to the APR Critical Guidance document.

Do you see that?

A. Yes.

Q. Okay. So this APR recognition guidance would not necessarily apply to every

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single label made by Fort Dearborn Company using the recycle-friendly, washable ink system, fair?

A. It would apply to labels that are tested under the guidelines of the Critical Guidance Protocol. And the Critical Guidance Protocol is based around -- it could include variation in graphics. It could include variation in -- in, let's say, printed design. The -- the protocol provides for a determination of whether something is -- the Critical Guidance, anyways, this recognition provides for whether something is recycling compatible.

Q. And when you say something, it's the label that was tested and -- and the test results provided to APR, right?

A. Yes.

Q. Okay. But the finished label that might have some changes based off of the brand requirements, that would also have to be tested?

A. I don't understand what you mean.

Q. Okay. Well, you said that the recognition letter would apply to labels tested

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under the guidelines of the Critical Guidance Protocol, fair?

A. Correct -- oh, okay. I understand your point. The recognition is not just the singular label that was part of this. It's the broader classification of materials that meet the requirements that were tested. Does that make sense?

Q. Fair. But the -- a finished label may have changes to that design, correct?

A. Sure. Brand owners change graphics all the time.

Q. Okay. And that specific implementation the APR says would need to be tested, right?

A. I would say this. The APR seeks to provide recognition for whether or not something meets -- there is -- meets Critical Guidance, doesn't speak to the graphics design, necessarily.

Q. Right. And so the graphics design can be different than what was tested and provided to APR, correct?

A. Certainly. Because -- because the APR Critical Guidance Protocol, in -- in many

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cases, suggests the use of a generic design that's not brand-specific.

Q. Okay. But the specific design of a -- of any given label may have changes, and those changes may affect the recyclability of a label; is that fair?

A. When you say -- in this case, you're saying design. You mean the graphic design?

Q. Well, any -- any changes from -- sure. Let's start with graphic design, yes.

A. So I -- generally, the purpose of this Critical Guidance test is to identify whether or not the label can be -- or meet recyclability. And -- and so they don't speak to the graphic design in terms of the specifics of the Critical Guidance because they test a generic graphic design and -- and use that as a basis for -- for all graphic designs.

Q. Okay. But my question is, is a -- is there a specific implementation of a design that could have -- strike that.

It's fair to say that in the final design of a commercial label, there may be changes that could affect whether or not that label is recyclable?

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MR. SCHATZ: Object to form.
A. I'll say that -- when you say designed in this term -- the word -- that word design, you mean the graphics?
BY MR. DIRKS:
Q. Let's start with graphics.
A. Well, that's what we did before, but then -- now we're coming back to it, so --
Q. Well, but you didn't -- oh, sorry. Okay. Strike that.
A. No, I -- I think I answered about graphics, so I'm -- I'm trying to understand when you say design, do you mean -- what specifically do you mean?
Q. Okay. What do you understand this last paragraph to mean?
A. Yeah. I think what my understanding of this last paragraph is that the washable ink system and the label construction is what's covered under this as being recyclable. And the -- the APR Critical Guidance Protocol, wherein you do testing with a -- a controlled container, is the basis for their recognition.
Q. Okay. But the specific labeled bottles would need to be tested themselves to

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demonstrate the system of resin, adjuvants, labels, and closures conform to the APR guidance document, right?
A. Not entirely true. The recognition is an indication that the label is recyclable in the -- in the recycle streams. And I would say it's -- it's a term to demonstrate that the products that meet this label construction are recyclable within the guidelines of the APR.
Q. Okay. But is it your testimony that you can't make any changes to the label that wouldn't affect recyclability?
A. I'm sorry, say that again. I misunderstood that.
Q. Is it your testimony that if the label is a recyclable-friendly, washable ink system printed on an SKC Ecolabel sleeve, is there any changes that could be made to that label that would make it -- that would affect recyclability?
MR. SCHATZ: Object to form.
A. I don't know how to answer that question.
BY MR. DIRKS:
Q. Okay. So I think maybe -- is the

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answer no, there are -- strike that.
Is the answer that there are changes that you could make to a label that would fall under a recycle-friendly, washable ink system printed on an SKC Ecolabel that would have an effect on the recyclability of that label?
MR. SCHATZ: Object to form.
A. So I'm going to say no with a caveat, which is that the testing that was completed demonstrated recyclability. And the testing allows for an understanding of kind of the test -- because you tested, let's say, a generic design, it's -- it includes a variety of different -- you can formulate the inks and make changes to the inks. It's not just the graphics, so if that makes sense. And that's still covered under this recognition.
BY MR. DIRKS:
Q. Okay. But are there any changes that you could make to the inks, for example, that would make -- that would affect the recyclability of these labels?
A. I -- I don't know.
Q. Okay. And that's exactly what's covered here in this last paragraph, right?

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You'd have to test that to make sure that it doesn't -- if you do make a change to the ink system, that it wouldn't affect the recyclability of the label, correct?
MR. SCHATZ: Object to form.
A. I -- I can't speak to that.
BY MR. DIRKS:
Q. You can't speak to what this last paragraph means to you, as a person -- as a person of skill in this art, 16 years of experience in label design?
A. Not at this time, no.
Q. Okay. You mentioned --
A. No.
Q. All right. You mentioned that this APR recognition letter is based off of data that was submitted in 2019, fair?
A. Yes.
Q. You didn't provide that in your -- in your declaration, correct?
A. Correct.
Q. Okay. Did you not think that was relevant to this?
A. The letter was sufficient.
Q. Okay. But the letter doesn't have

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any mention of the Gatorade label at all, correct?
A. It speaks to a label construction that is the same as the label construction as the Gatorade label.
Q. But you don't point to any evidence of that. You have no basis to say that, fair, in your declaration?
A. In the declaration, no.
Q. Okay. What is the recycle-friendly, washable ink system from Fort Dearborn?
A. Thank you. That is the ink system that is the Watson Standard ink system.
Q. Is that one of the other exhibits that you considered in your --
A. Among -- among this, and it mentions in paragraph 57, the Watson Standard silver ink, in particular.
Q. Okay. So that's Exhibit 1019 --
A. 1019.
Q. -- correct?
A. Yeah.
(Bushman Exhibit 4 was marked for identification.)
BY MR. DIRKS:

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Q. Okay. So I'm handing you Exhibit 4, which is Exhibit 1019 to the PGR, right?
A. Yes.
Q. And that's the Watson -- well, I'll let you explain it. What is -- what is the -- what is explained in Exhibit 4 here?
A. It is the Watson Standard silver ink. It's a Technical Data Sheet for the Watson Standard silver ink.
Q. Okay. And in paragraph 457 of your declaration, you state that the silver ink used in connection with the Gatorade label is supplied by Watson Standard, correct?
A. Correct.
Q. Okay. So the material in Exhibit 4 is a specification of the silver ink used in connection with the Gatorade label, fair?
A. Correct.
Q. Okay. Are there other inks?
A. Certainly.
Q. Involved in the Gatorade label?
A. Certainly.
Q. Okay. So this is just the silver ink?
A. Certainly.

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Q. Okay. And you don't provide any technical specifications of any of the other inks involved in the Gatorade label, fair?
A. I don't provide any other specifications, correct.
Q. Okay. Is it your testimony that the silver ink described in Exhibit 4 is the entirety of the Fort Dearborn washable ink system?
A. No.
Q. There are other components to it, correct?
A. Certainly.
Q. Okay. And you point to the statement in the description of the silver ink described in Exhibit 4, and you point to specifically the sentence, This CHEMshield product passes recyclability/bleed testing set forth in the protocol established by the Association of Postconsumer Plastic Recyclers, right?
A. Yes.
Q. Okay. What is the protocol established -- well, strike that.
You don't provide any documentation

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of the protocol established by the Association of Postconsumer Plastic Recyclers, fair?
A. It's their statement.
Q. Okay. So you're just relying on the statement of Watson Standard for -- for this, that it needs the recyclability/bleed testing set forth in the protocol established by the Association of Postconsumer of Plastic Recyclers, fair?
A. So when you say fair at the end of your sentence, then that's confusing me, because your -- your fair is a yes-no kind of statement, but then -- so I --
Q. Well --
A. I don't know if I should answer the word fair, or if I should answer what you said.
Q. My -- my question --
A. So if you would ask the question without saying fair, that will help.
Q. Sorry, not speak -- not trying to speak over you. My question was a yes-or-no question.
You are relying on the statement made by Watson Standard that it passes -- strike that.

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You are relying on the statement made by Watson Standard that the silver ink described in Exhibit 4 passes recyclability/bleed testing set forth in the protocol established by the Association of Postconsumers of Plastic Recyclers, right?

A. Yes.

Q. Okay. You did not independently test whether Watson Standard silver ink passes the recyclability/bleed testing set forth in the protocol established by the Association of Postconsumer of Plastic Recyclers, correct?

A. We may have done testing.

Q. Okay. But you don't provide any of that testing, correct?

A. Correct.

Q. Okay. And you don't provide the protocol under which Watson Standard says that it passed the recyclability/bleed testing standards, correct?

A. Correct.

Q. Okay. Do you have any understanding what the recyclability/bleed testing test is?

A. It's -- it may be one of the exhibits that is the APR -- I have to look, if

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you don't mind. It maybe within -- on my -- I don't know if it's included in these references or not.

Q. Okay. So sitting here today, you don't know what the basis for Watson Standard claiming that its silver ink passes recyclability/bleed testing, correct?

A. They state that it has passed.

Q. That was not my question.

A. But I don't know what their specific protocol they used was.

Q. Let me ask my question again. Sitting here today, you don't know what the basis is for Watson Standard claiming that it met the recyclability/bleed testing standards, correct?

A. Correct.

Q. Or what that even means, correct?

A. I don't know what you mean by -- how is what you just asked --

Q. Let me ask --

A. -- different than what I just said?

Q. -- again.

You also don't -- sitting here today, you also don't know what the

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recyclability/bleed testing test is, correct?

A. I -- there are tests within the APR guidelines that may be specific to what the bleed testing is, but I don't know if they did their own or if it was just based on their work with the APR. So --

Q. Okay.

A. This -- this goes back to a question of their statement may be related to whether or not they have also got a Critical Guidance recognition for their ink system. Does that make sense? So the -- the Critical Guidance recognition letter, Exhibit 3, that was provided to Fort Dearborn, was a process that was in place for the APR for demonstrating recyclability. So they may have had a recognition letter, which is why they're making this statement.

Q. But you don't know that?

A. I don't know that.

Q. Yeah. And you didn't provide that, correct?

A. Correct.

Q. Okay. Let me just ask this in a broader sense.

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What is your understanding of how the Gatorade label is recyclable?

A. It includes -- the Gatorade label includes a substrate, the SKC substrate, which is a PET film that is compatible with PET bottles. And it includes a wash-off ink system that is designed to separate in the caustic bath from that film, so that the inks wash off and are removed in the caustic bath. And the film -- the remaining film may be incorporated into the PET flake as a part of that recycling process.

It isn't required that it goes into the PET flake, but it -- it may be reincorporated into the PET flake, if that makes sense.

Q. What is the basis for you saying that the ink is designed to wash off -- strike that.

Is the basis for you saying that the -- the ink is designed to wash off based on Exhibit 4, the Watson Standard silver ink specification?

A. I would say not entirely to just the Watson Standard. I think that the requirements

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for the ink system to wash off are that it separate from the film and that it not contaminate the PET flake. And so it's not only this Technical Data Sheet that states that.

Q. Okay. But what is the basis for your -- for your saying -- for you saying that -- for your understanding that the ink washes off the label? You only point to Exhibit 4, right? So what is your basis for saying that the inks wash off the label?

A. The testing that was done as a part of the Exhibit 3 is part of it, where the testing was to go through the APR Critical Guidance, where the samples with printed ink wash off.

Q. Okay. But you don't point to those -- those data results, right?

MR. SCHATZ: Object to the form.

A. This document, around the recognition letter, is what I'm pointing to.

BY MR. DIRKS:

Q. Where in this document does it say that the inks wash off the label?

A. I'm sorry, say that again.

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Q. Where in Exhibit 3 does it say that the inks wash off of the label?

A. It's certainly implied in Exhibit 3, that it's the recyclable-friendly, washable ink system.

Q. It's implied that -- that it washes off the label, but it doesn't say that, right?

A. I -- I don't understand your question.

Q. What do you mean by that it's implied?

A. Well, it's the -- it's the recycle-friendly, washable ink system, so it's a statement that the ink is washable.

Q. Okay. And what's your basis for saying that washable means that it washes off the label?

A. At that time in the market, it was well known for shrink sleeves to be -- there were examples in market of labels that used washable ink systems, specifically the Watson Standard washable ink system. They may not have called it a washable ink system, but it -- that's what it was, designed to wash off the -- the PET film.

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Q. Okay. But that doesn't -- that's not said in this document, correct, in Exhibit 3?

A. But it meets the APR Critical Guidance Protocol.

Q. My question is, nowhere in Exhibit 3 does it say that the inks are washed off the labels, correct?

MR. SCHATZ: Objection. Asked and answered.

A. I -- I don't understand how to -- is it required for you that it do so?

BY MR. DIRKS:

Q. I'm asking you for your basis. That's all I'm -- I'm just trying to figure out what your basis is for saying that it -- it's washed off the label -- the ink is washed off the labels. Exhibit 3 does not say that the ink is washed off the labels.

A. My -- I think we're getting into semantics here, but the -- the recognition letter demonstrates that labels that were printed were tested to meet the -- the Critical Guidance. And part of that includes wash-off ink. It was well known in the market to use

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washable inks as one solution to make a recyclable label, because then the label could be incorporated into the PET flake.

Q. Okay.

A. So I -- I don't know how to answer any differently.

Q. Okay. So the basis for you saying that Exhibit 3 -- the letter in Exhibit 3 demonstrates that the inks wash off the label is related to the data that was submitted in 2019, fair?

A. Yes.

Q. Okay.

MR. DIRKS: All right. Why don't we take a break.

THE VIDEOGRAPHER: The time is 11:45 a.m. We're going off the record.

(Off the record.)

THE VIDEOGRAPHER: The time is 12:01 p.m. We are back on the record.

BY MR. DIRKS:

Q. Welcome back, Mr. Bushman.

A. Thank you.

Q. In addition to the Gatorade label, you also discuss the Febreze label, right?

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A. Yes.
Q. And you can turn to paragraph 61 of your report. You provide an overview of the Febreze label here, correct?
A. Yes.
Q. And you say, The Febreze label is a shrink sleeve label, correct?
A. Correct.
Q. You don't mention recyclable here, right?
A. No.
Q. The Febreze label is not recyclable, correct?
A. It wasn't tested for recyclability. It was on a container that was an aerosol can that doesn't get recycled, so it wasn't required.
Q. Okay. The -- so it was not meant to be recycled with a -- with a PET container, correct?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Yeah. Actually, let me strike that question.
The Febreze label was not meant to

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be recycled with a PET container, correct?
A. I -- it -- the Febreze label was designed for an aerosol container, which happens to, in this case, be a PET aerosol container, but it's not recycled in this country, so --
Q. And the label itself was not meant to be washed off in a recycling process, correct?
A. The aerosol container does not go through the recycling stream.
Q. Turning back to the Gatorade label, you also -- we can look to paragraph 56 of your report.
A. Yes.
Q. You say that the Gatorade label is an SKC Ecolabel sleeve label, correct?
A. Yes.
Q. And you cite a document there, Exhibit 1016, right?
A. Yes.
(Bushman Exhibit 5 was marked for identification.)
BY MR. DIRKS:
Q. So you've been handed what is

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Exhibit 5, which is Exhibit 1016 to the PGR, right?
A. Yes.
Q. And that is a description of EL62, a product by SKC, right?
A. Yes.
Q. Okay. And you cite this document as saying it's an SKC -- that the Gatorade label is an SKC Ecolabel, right?
A. Yes.
Q. What is your basis for -- for saying that?
A. The material provided as part of the Gatorade label -- I'll say this, the Gatorade label uses EL62 as the substrate.
Q. Okay. And specifically EL62, as -- as described in Exhibit 5, is a clear recyclable shrink PET film, right?
A. Yes.
Q. Okay. So Exhibit 5, the specifications for EL62, are not related to the ink system that's printed on top of the label; is that fair?
A. Yes.
Q. Okay. So in the paragraph below,

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it's under Sustainability, it says, EL62 met requirements of APR's Critical Guidance. Therefore, it's certified fully recyclable, right?
A. Yes.
Q. What does that mean to you?
A. Yes. Exactly what it says.
Q. Well, can you explain? What does that mean?
A. It means that they have completed testing under the APR Critical Guidance method -- or -- and that they have APR recognition.
Q. And so what does it mean that it's certified fully recyclable?
A. They are using the APR guidance as a statement of recyclability.
Q. Okay. And reading this, you understand what -- what this is referring to, correct?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Let me strike that question.
The document in -- in ten -- in Exhibit 5 is not a statement that the Gatorade

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label itself is recyclable, correct?
A. Correct.
Q. It's just the underlying film underneath, correct?
A. Correct.
Q. Okay. Set that aside. Can you turn to paragraph 28 of your report?
A. Twenty-eight --
Q. Actually, I apologize. Can you go back to 27 of your report?
A. Yes.
Q. Okay. So here -- this is under the section, The Known Nature of Recyclable Packaging, right?
A. Yes.
Q. Okay. And you state that based on your many experience -- many years of experience with Multi-Color, I am aware that recyclable packaging has been known for decades, right?
A. Yes.
Q. Okay. When you say many years of experience, what are you referring to?
A. I've been with Multi-Color for just over 17 years. And Multi-Color -- well, not

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any longer, but Multi-Color was supplying recyclable packaging to the market since at least 2014, maybe sooner.
Q. So are you saying that you have 17 years of experience with the recyclable -- recycling industry?
A. I don't know about 17 years with the recycling industry. I think -- yes, Multi-Color supplying labels into the market that required to be recyclable. But I think a -- a big part of the effort around recycling really started in the early teens, so -- I don't know, about 17 years, but a substantial portion of the time that I was with Multi-Color.
Q. Okay. And the next sentence, you state that, The '422 patent specification acknowledges, as background to the purported invention, that the consumer packaged good mark -- markets globally aspire to utilize recyclable packaging for most products.
Do you see that?
A. Yes.
Q. Do you agree with that statement?
A. Yes.

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Q. And then you -- and then the next sentence, you say, The '422 patent provides an example of that known recycling packaging as PET packaging, which provides a cost-effective, recyclable option, right?
A. Yes.
Q. All right. And you agree with that statement?
A. Yes.
Q. Okay. If you'd turn to paragraph 28. Are you there?
A. Yes.
Q. And this section, it's under the heading, The Known Nature of Light-Protective Packaging, right?
A. Yes.
Q. Okay. And you state that based on your many years of experience with Multi-Color, you're aware that light-packaging material has been known for decades, correct?
A. Yes.
Q. And then in the next paragraph, 29, this is under the heading, The Known Use of Shrink Films To Provide Light Blocking, right?
A. Yes.

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Q. And here you say that shrink films that provide light blocking have been known for decades, right?
A. Yes.
Q. Okay. But you don't say that recyclable shrink films have been known for decades, right?
A. Okay.
Q. Okay. But you do say, in the next sentence down that the '422 patent specification says, The shrink films printed with light-blocking layers have been traditionally used in order to block light waves that are harmful to ingredients, right?
A. Yes.
Q. Okay. And you cite Exhibit 1001, which is the patent, the '422 patent, correct?
A. Yes.
(Bushman Exhibit 6 was marked for identification.)
A. Thank you.
BY MR. DIRKS:
Q. You've just been handed Exhibit 7 -- excuse me, 6, which is the '422 patent, correct?

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A. Yes.
Q. Okay. Now, if you look at column 1, line 14 of the '422 patent.
A. Yes.
Q. And this is under the Background section of the patent, right?
A. Understood.
Q. Okay. And line 14 says what we already read, The consumer-packaged goods market globally aspire to utilize recycling packaging for most products, right?
A. Yes.
Q. Okay. And just if you look down a little bit further, at line 20.
A. I'm there.
Q. Okay. This is the line that you're quoting in paragraph 29 of your report, right?
A. Yes.
Q. Okay. But if you look at line 20 of Exhibit 6, the '422 patent, it says, Traditionally, color-impregnated bottles or containers and/or white shrink films printed with, or sometimes without, functional light-blocking layers are used to block the harmful light waves.

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Do you see that?
A. Yes.
Q. Okay. And that's not what you quoted in -- in your -- in paragraph 29, right?
A. Yes. It's -- it's part of it. I -- it may be from a different -- oh, it's listed here as a citation.
Q. Right. But my -- my question is, what you pointed to in paragraph 29 is not actually what it specifically says in line 20 of -- column 1, line 20 of the patent, right?
A. Okay.
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Okay. In particular, you left out some important words here, right? Color-impregnated bottles or containers and white shrink films imprinted with light-blocking lay -- layers, right?
MR. SCHATZ: Object to form.
A. I think it's highlighting that light-blocking layers are traditionally used.
BY MR. DIRKS:
Q. Okay. But it -- what the patent is referring to is light-blocking layers on

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color-impregnated bottles or white shrink films printed with --
A. I think, more broadly, certainly, the -- it's well known in the -- that light-blocking layers are used for shrink sleeves.
Q. That wasn't my question.
A. Not necessarily only for color-impregnated bottles.
Q. That wasn't my question, sir. My question is, in paragraph 29, you quote the patent, correct?
A. Yes.
Q. But your quote contains an ellipsis, right?
A. Sure.
Q. And it's broken up in multiple pieces, right?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Fair?
A. And your point?
Q. I don't appreciate -- strike that.
A. Okay.
Q. Line 20 of -- strike that.

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You're not saying in paragraph 29 that light-blocking layers have been known -- strike that.
Column 1, line 20 of the -- of the '422 patent, that what is written here is specifically related to color-impregnated bottles and/or white shrink films that are traditionally used?
MR. SCHATZ: Object to form.
A. Was there a question?
BY MR. DIRKS:
Q. My question is, is that -- do you agree that line 20, column 1 -- line 20 of the '422 patent -- says, Traditionally, color-impregnated bottles or containers and/or white shrink films, right?
A. Yes.
Q. Okay. So what this sentence in the -- in the '422 is referring to, color-impregnated bottles and/or containers and/or white shrink films, correct?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Correct?
A. Yes.

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Q. And then the next sentence is, The market for color-impregnated PET is very small, and most of these bottles and containers are not recycled, correct?
A. Okay. It says that.
Q. Okay. So this paragraph, in -- in section -- sorry, in column 1 of the '422 patent, is referring to traditionally light-blocking layers are included on materials that are not recycled, correct?
MR. SCHATZ: Object to form.
A. I don't know that.
BY MR. DIRKS:
Q. Okay. In paragraph 29, you are not trying to imply that the patent provides a statement that light-blocking layers are traditionally recyclable, for example, right?
A. I don't know what the question was there.
Q. Okay. My question is, in paragraph 29 --
A. Yeah.
Q. -- you are not trying to imply that the citation to the patent, the '422 patent, at column 1, line 14 through 23, states that,

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Light-blocking materials are traditionally recyclable? That's not what you are trying to imply, right?
A. I'm sorry, could you say that again? I don't -- I don't think there was any discussion about recyclability in paragraph 29 that's related to light-blocking, so I don't understand your question.
Q. That's -- okay. That's exactly what I'm asking you.
So at paragraph 29 --
A. Yeah.
Q. -- you are not trying to imply that light-blocking layers are traditionally recyclable, right?
A. I'm still trying to parse out what you meant, that I'm not trying to imply that -- say it again. I'm -- I'm hearing you, but I'm just -- I'm trying to work through what you said -- processing.
Q. Okay. Paragraph 29.
A. Yeah.
Q. You are not trying to imply that light-blocking layers are traditionally recyclable, right?

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A. I don't know that there is any discussion about recyclability.
Q. Okay. But, in fact, the patent specifically says that light-blocking materials traditionally are not recyclable, correct?
A. Okay. Well --
MR. SCHATZ: Object to form.
A. I guess my comment is this is about light blocking on a shrink sleeve.
BY MR. DIRKS:
Q. Okay. But you wouldn't use paragraph -- column 1, line 20 to imply that light-blocking materials are known to be recyclable, right?
A. I -- I don't understand your question.
Q. Okay. My question is, you would not try to use column 1, line 20 of the '422 patent to try to imply that light-blocking material is known to be recyclable; is that a fair statement?
A. I'm still trying to understand what you mean. The '422 patent is discussing light blocking, as well as recycling. And in this case, I'm talking about light-blocking films

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that have been well known.
Q. And I --
A. What's -- what's -- you're trying to connect it to recycling. Okay. But I don't know that that's --
Q. No. I'm asking you --
A. You --
Q. -- if you are trying to -- if you are trying to connect it to recycling.
Let's set aside 29 for now, paragraph --
A. Okay.
Q. -- 29 of your report. You would not read column 1, line 20 of the '422 patent to mean that light-blocking layers are traditionally recyclable, correct?
A. I would not read that -- column 1, line 20, that light-blocking layers are traditionally recyclable -- I -- I don't know.
Q. That's not how you're -- that's not how you're reading it, right?
A. I -- I'm still confused by what you are asking. This is specific to light blocking -- the line specifically, that sentence, doesn't mention recycling at all, are

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used to block the harmful light waves. There's no -- in that sentence, there's no discussion about recycling. So I don't understand your question.

Q. And in the next sentence, it says that, The market for recycling color-impregnated PET is very small, and most of those bottles and containers are not recycled, right?

A. Okay.

Q. Okay. So column 1, line 20 through 25 of the '422 patent, you agree with me is not saying that the -- traditionally, light-blocking layers are known to be recyclable, right?

A. That's the opinion in this --

Q. Okay.

A. It's -- it's the statement in the patent.

Q. Okay. Turn to page -- paragraph 35 through 36 of your report, please.

A. Thirty-six -- yeah.

Q. Okay. You state, The fact that petitioner's Gatorade label, a recyclable shrink label with a light-blocking layer, was

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offered for sale and sold before the priority date of the '422 patent --

A. Okay.

Q. -- should not be any surprise, right? And then you -- a couple sentences down, you say, In addition, the market has required light-blocking -- light-protective packaging so as to block light waves that are harmful to ingredients, and that shrink films printed with light-blocking layers have traditionally been used in order to block light waves that are harmful to ingredients, right? You see that?

A. Yes.

Q. Okay. And that's the same quote that we were just looking at, right?

A. Yes.

Q. For paragraph 29 of your report? Okay. So you agree with me that in paragraph 36, you were not trying to imply that the patent -- '422 patent at column 1, lines 14 through 23 -- suggest that light-blocking layers are traditionally recyclable, correct?

A. I'm trying to unpack what you mean. So I'm not trying to imply that -- say it

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again.

Q. Okay.

A. You -- you've got it, so I just -- I just need to hear it again.

Q. Sure. In paragraph 36, you are not trying to imply that the patent -- the '422 patent at column 1, lines 14 through 23 would suggest that light-blocking layers are traditionally recyclable?

A. I'm -- I'm sorry. I'm still trying to unpack all that. I'm not trying to imply -- I -- I don't understand the question, but -- so if you'd -- you're confusing me with an implication statement.

Q. Okay. Well, the first sentence of your -- of this paragraph 36 says that the fact that petitioner's Gatorade label, a recyclable shrink label with light-blocking layer --

A. Correct.

Q. -- was offered and sold should -- should be no surprise, right?

And as evidence of that, you point to the patent, '422 patent, at column 1, lines 14 through 23.

MR. SCHATZ: Object to form.

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A. Yeah, I -- I don't know that the Gatorade label was specifically related to --

BY MR. DIRKS:

Q. Okay. Let me short-circuit this a bit because I'm just -- I'm just trying to figure out why you cite that section of -- of the patent under your sentence that says that a recyclable shrink label with a light-blocking material offered for sale should not be a surprise.

MR. SCHATZ: Object to form.

A. Can you ask the question again?

BY MR. DIRKS:

Q. I'm just trying to figure out why you cite this section of the patent in this particular way, under the statement that a recyclable shrink label with light-blocking layer was offered for sale, and that's not surprising to you.

MR. SCHATZ: Object to form.

A. I'm -- I'm sorry, could you just ask it again?

BY MR. DIRKS:

Q. I think my question is pretty simple --

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A. Well, it sounds simple, but --
Q. -- so I don't understand why we're getting a little bit mixed up here, but I think it's a pretty simple question.
You were not implying that column 1, lines 14 through 23 of the '422 patent suggest that light-blocking layers have been traditionally known to be recyclable in the industry, right?
A. I am not implying that light-blocking layers have traditionally been known to be recyclable -- I -- I don't know. I wanted to kind of avoid that for a moment and just focus on what the positive statement is, which is that the -- the Gatorade label was recyclable and included a light-blocking layer.
Q. But that's not the sentence. The sentence is, That's not surprising.
A. That's -- it is not surprising --
Q. Okay.
A. -- because it was well known to have -- it's not surprising that -- yeah, it's no surprise that the Gatorade label was offered for sale given that there is a market for labels that include light blocking.

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Q. Okay. But you're not trying to imply that the citation to the '422 patent suggests that light-blocking material was known to be recyclable? That's not your -- what you're trying to do in this paragraph, correct?
A. I -- I don't know. I'm confused, so --
Q. Okay. So I think the answer is no because if you were trying to imply it, you would say yes, right?
A. I think I'm getting --
MR. SCHATZ: Object -- object to form.
MR. DIRKS: All right. I'm going to move on to another section. Why don't we take our lunch break now, if that works for everybody?
THE WITNESS: Sure.
THE VIDEOGRAPHER: The time is 12:31 p.m. We're going off the record.
(Off the record.)
THE VIDEOGRAPHER: The time is 1:16 p.m. We're back on the record.
BY MR. DIRKS:
Q. Welcome back, Mr. Bushman. Can you

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turn to paragraph 53 of your report?
A. Fifty-three. Yes.
Q. And this is talking about the Gatorade label, right?
A. Correct.
Q. If you look on the top of page 23, the last sentence of paragraph 53 says, Based on my experience with this label, and also by way of confirmation of those in the industry with whom I am familiar, including patent owner, the heat shrink film of the Gatorade label incorporates PET that is crystallizable.
Do you see that?
A. Yes.
Q. Okay. Who are you referring to when you say those in this industry with whom I'm familiar?
A. The individuals within Multi-Color and others.
Q. You said and others.
A. I'm parsing that, just a minute. What is Exhibit 1017?
Q. I think that is Exhibit 2 or 3 that I gave you earlier. It's Exhibit 2.
A. Oh, it could be. My apologies.

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That is the -- okay.
Okay. Now, I'm sorry, go ahead and ask your question.
Q. Well, my question is, who -- who are the those in this industry with whom I am familiar that you refer to in paragraph 53? You mentioned MCC individuals and others. I'm trying to figure out who these others are.
A. Yeah, I guess in this case what I meant was Multi-Color -- my experience with Multi-Color as well as -- the PET that is crystallizable is a SKC film, commonly. So, for example, that would include individuals at SKC that I've met with in the past.
Q. Okay. Anything other than -- anyone other than individuals at SKC and MCC?
A. My experience in terms of PET that was crystallizable would have included the individuals at APR.
Q. Okay. In what way?
A. Actually, I don't know. I said that, but I'm -- I'm reflecting that -- I'm not sure -- I'm not sure that I can say that. I was thinking of is there -- are there individuals at the APR that would have

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understood what a PET film was that was crystallizable. And I think I -- I don't know that I meant that.

Q. Okay. So is it fair to say that sitting here today you are not sure exactly who you are referring to when you said, By way of confirmation of those in this industry with whom I am familiar?

MR. SCHATZ: Object to form.

A. I mean, certainly the folks within Multi-Color.

BY MR. DIRKS:

Q. Okay. But beyond that, you're not sure of anybody else that you are referring to in this sentence?

A. Not specifically.

Q. Okay. You also say that the heat shrink film of the Gatorade label incorporates PET that's crystallizable, right?

A. Yes.

Q. What do you mean by, incorporates PET that's crystallizable?

A. That the film layer is composed of a crystallizable PET.

Q. Okay. And when you say composed of,

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are there other materials?

A. I don't know. It may include other components in the SKC film -- in this case it's the SKC film. I think it goes to the term crystallizable.

Q. What do you mean it goes to the term crystallizable?

A. That Gatorade uses a PET film and the -- that is from SKC. And although the SKC, Exhibit 5, doesn't describe that film as crystallizable, it is described as crystallizable in Exhibit 1017.

Q. Okay. What is your understanding of what crystallizable PET is?

A. Crystallizable PET is a material that is compatible with bottle resin, in particular, among others. And the crystallizable -- using the term crystallizable is a description of -- that the PET is -- isn't amorphous. And so it's -- it's -- it's -- in the industry, for a long time, that term, crystallizable PET, was being used to describe films, so how to say this.

The term crystallizable in this case, crystallizable PET, is -- is a broad term

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to speak to what could be compatible with a bottle resin.

Q. And what are you referring to when you say compatible with a bottle resin?

A. That it could be recycled with a bottle resin consistent with APR recognition, for example.

Q. Can you turn to paragraph 59 in your report, please? Are you with me?

A. Yep.

Q. Here in paragraph 59, you refer to the layers on the Gatorade label, right?

A. Yes.

Q. And you say for this particular label, Each printed layer is applied in sequence on the printing press as needed to meet the graphical design intent for the brand, right?

A. Yes.

Q. So the order of the layers is dictated by the brand needs, fair?

A. Yes.

Q. And then down below that, a couple sentences, you say, Depending on the design intent of the brand owner, it is common

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practice to change the printing sequence to meet certain graphical and functional requirements.

Do you see that?

A. Yes.

Q. So again, it's depending on what the intent of the brand is, right?

A. Yes.

Q. Okay. Can you turn to paragraph 21 of your report, please?

A. I'm there.

Q. Okay. And this is under the Legal Principle section of your declaration, right?

A. Uh-huh.

Q. And this is specifically with respect to Claim Construction Standard, right?

Do you have an understanding of what claim construction is?

A. Within the terms of the meaning of the claim, I mean understanding the meaning of the claim.

Q. Okay. And you write, It's my understanding that the claim construction standard includes construing the claim in accordance with the ordinary and customary

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meaning of such a claim as understood by a person of ordinary skill in the art, right?
A. Yes.
Q. And you agree that it's your -- it's your opinion that you are a person of ordinary skill in the art? You meet the requirements of a person of ordinary skill in the art?
A. At least. In some ways, I'm more than an ordinary skill in the art; I'm an expert in the field.
Q. Okay. And you're not aware of any alternative meanings that MCC is applying to the claims in this case, correct?
MR. SCHATZ: Object to form.
A. I don't know what you mean by that.
BY MR. DIRKS:
Q. You haven't seen any documentation to suggest that MCC is interpreting the claims in a way that is different than what you have here in accordance with the ordinary and customary meaning of the claim?
MR. SCHATZ: Object to form.
A. I don't agree.
BY MR. DIRKS:
Q. What don't -- what don't you agree

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with?
A. I think that there is at least a question around what is -- maybe I'll say it this way. I'm -- when you talk about the specifics of the terms of the claims, do you have a specific term that you are talking about?
Q. I'm just asking generally, do you have any understanding of any terms that have been construed in a different way by MCC, than what's in accordance with the plain, ordinary, and customary meaning of the claims?
A. Certainly there is the term recyclable within the claim.
Q. Okay. In what way do you understand that a different construction has been applied to that term?
A. I don't know what construction means there.
Q. Okay. That's fair. So maybe I can short-circuit this a bit. In its petition for -- for this -- that is at issue in this case, MCC is not proposing any other formal construction for any term. Okay?
A. Okay.

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Q. So with that in mind, you would agree then with the statement in 21 -- paragraph 21 of your report that the claims should be construed in accordance with the ordinary and customary meaning of the claims?
MR. SCHATZ: Object to form.
A. I don't know what that means.
BY MR. DIRKS:
Q. Okay.
A. If you can help me understand the question again.
Q. It's -- I'm not trying to make it a complicated thing. I'm just -- I'm just trying to get your understanding of whether -- excuse me, whether you are applying a specific construction interpretation of any of the claims in the '422 patent.
MR. SCHATZ: Object to form.
A. I'm -- I'm reading them as a person of ordinary skill in the art.
BY MR. DIRKS:
Q. Okay. That's all I was asking.
A. Okay.
Q. Can you turn to paragraph 67 of your report, please?

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A. I'm there.
Q. Okay. So in paragraph 67, and the paragraphs that follow, this is your opinion -- strike that.
This section on Ground 4 includes your opinions related to whether the claims in the '422 patent are indefinite, right?
A. Yes.
Q. And does this section include all of your opinions with respect to whether the claims in the '422 patent are indefinite?
A. Yes.
Q. Okay. And all of the bases for that as well?
A. I don't know what you mean.
Q. Like all of the bases for you -- for your opinion that the '422 claims are indefinite?
A. At least, yes, within the scope of what I understood at the time and including the final sentence where there's additional information, yes.
Q. But at the time that you were -- you signed this declaration in January of 2025, this report included all of the bases for your

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opinions as to whether the '422 patent claims are indefinite, correct?
A. Yes.
Q. Okay. And so you say in paragraph 67, That a claim is indefinite if it might have several meanings, and a person of ordinary skill in the art would not be able to make a confident choice as to which meaning is appropriate.
Do you see that?
A. Yes.
Q. Where does that sentence come from?
A. I don't understand your question.
Q. Where did you get that understanding?
A. I don't know. Are you asking for me to -- I don't understand how to answer your question.
Q. I'm just -- I'm just asking you -- you write a sentence here. How do you -- what is -- strike that.
How did you arrive at this understanding of what the term indefiniteness means?
A. I don't know.

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Q. Okay. So you just wrote this and you don't have any idea what it means?
A. I don't know what you mean.
Q. Okay. So what -- what is -- strike that.
You have opinions about whether the claims are indefinite, correct?
A. Based on -- yes.
Q. Okay. Is your understanding of how to apply indefiniteness to a claim, does that come from paragraph 67?
A. My understanding of how to apply indefiniteness -- my understanding of indefiniteness is whether or not the claim is -- has the potential for multiple meanings. And so I don't know what else you want from me.
Q. Okay. And then you go on to say in paragraph 70 that the claim language has multiple possible meanings, making it impossible for a person of ordinary skill in the art to determine a definite meaning.
Do you see that?
A. Yes.
Q. I'm just trying to figure out, that is a different sentence than what you put in

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paragraph 67, correct?
A. Okay.
Q. So which is your understanding?
MR. SCHATZ: Object to form.
A. I don't understand your question.
BY MR. DIRKS:
Q. Are you applying a standard of indefiniteness that is -- it is impossible for a person of ordinary skill in the art to determine a definitive meaning, as you wrote in paragraph 70?
MR. SCHATZ: Object to form.
A. What I said quite clearly is that the claim language has multiple meanings, which makes it impossible for a person of ordinary skill to be definitive because the claims -- that term recyclable has and can be interpreted -- it's ambiguous. I'll say it that way.
BY MR. DIRKS:
Q. But that is not what you are saying there in paragraph 70. You are saying it is impossible for a person of ordinary skill in the art to determine a definitive meaning.
So I'm asking you is that the

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standard you are applying?
A. It's impossible to determine a definitive meaning because the term is ambiguous.
Q. Okay. So that is a yes? You are applying a standard that it is impossible for a person of ordinary skill in the art to determine the meaning?
MR. SCHATZ: Object to form.
A. Yeah.
BY MR. DIRKS:
Q. Okay. And then in paragraph 71, you state that, The '422 patent defines what renders a shrink label recyclable, but does so in several disparate ways, right?
A. Yes.
Q. So are you -- what are you saying here? Are you saying that the '422 patent defines what renders a shrink label recyclable inconsistently?
A. Yes. That there are many definitions, even within the '422 patent, for the term recyclable.
Q. Okay. In paragraph 70, you are saying a '422 patent defines what renders the

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shrink label recyclable, right? That is -- that is the term you are using, recyclable?
MR. SCHATZ: Object to form.
A. In paragraph 70 -- sorry. Repeat your question.
BY MR. DIRKS:
Q. Sure. In paragraph 70, the claim term you are referring to is recyclable, right?
A. Wherein the recyclable shrink label is recyclable.
Q. But that's not what -- that is not what is in paragraph 71. Paragraph 71 says recyclable, right?
A. Okay. I understand.
Q. You are with me though?
A. You sent me back to paragraph 70, so I apologize.
Q. If I did, I apologize. I was talking about 71. The claim -- the term that you are including in paragraph 71 is recyclable, right?
MR. SCHATZ: Object to form.
A. So your question is?
BY MR. DIRKS:
Q. The term that you are including in

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paragraph 71 is recyclable, right?
A. Yes.
Q. Okay. In paragraph 72, you refer to the claim term, wherein the recyclable shrink label is recyclable.
Okay? Do you see that?
A. Yes.
Q. Is there a difference in your mind between the claim term recyclable and the claim term wherein the recyclable shrink label is recyclable?
A. I'm not sure I understand your question. In paragraph 71, we're talking about what renders a shrink sleeve recyclable. And in paragraph 72, it's part of the claim, so --
Q. Okay. But it's not the entirety of the claim either, the claim term, right?
A. True.
Q. Okay. The entirety of the claim term is wherein the recyclable shrink label is recyclable with a PET container, correct?
A. Okay. Yes.
Q. Does that make a difference in your mind with respect to the indefiniteness of the claims?

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A. I think the claim term of interest is specifically the word recyclable and the meaning of the word recyclable.
Q. Does the rest of that phrase that you left off in paragraph 72, specifically, with a PET container, does that change the scope in your mind of what the claims require?
A. Yes. The claims require that the label is recyclable with a PET container.
Q. Okay. But you're not saying that in paragraph 72, right?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. That is not the claim term that you're -- that you're including here in paragraph 72, right?
A. Okay.
Q. So I'm asking you, does the fact that you left off part of the claim term that impacts the scope of the claim, as you've testified, does that change your opinion with respect to indefiniteness?
A. So I think recyclable, the -- maybe as I understand -- have had this conversation a bit with you, I'm beginning to understand where

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you are coming from.
So the question is -- I don't understand what the term recyclable means. So if you add the additional term of, where it's recyclable with a container, that doesn't help the definition, if that answers your question.
Q. Okay. But you are interpreting these claims as a person of ordinary skill in the art, right?
A. Yes.
Q. Okay. And as a person of ordinary skill in the art, you testified that the rest of the claim term, with a PET container, modifies the scope of the claim, correct?
A. Yes, in the sense that the term recyclable is related to what is the label being recycled with.
Q. Okay. Does that in your mind narrow the claim scope or broaden the claim scope, adding the with a PET container?
A. I don't know. I would say it narrows the scope in the sense that it's a label that is with a PET container, so I would say it narrows the scope.
Q. Okay. You say you don't know what

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recyclable means. Is it your testimony that as a person of ordinary skill in the art with 17 years of experience working at a label company, and with years of experience in recycling, you don't know what the term -- what the plain and ordinary meaning of the term recyclable is?

A. I'm saying --

MR. SCHATZ: Object to form.

A. -- recyclable, within the APR guideline, is a guideline for recyclability, but it's not a standard for recyclability.

BY MR. DIRKS:

Q. What do you mean it's not a standard for recyclability?

A. The APR guidelines provide best practices for recycling, but they don't provide a standard for what must be required in order to achieve recyclability.

Q. Okay. But they instruct a person of ordinary skill in the art as to whether an article is recyclable, correct?

MR. SCHATZ: Object to form.

A. They provide guidance for recyclability.

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BY MR. DIRKS:

Q. And that guidance is relied upon in the industry, right?

A. But it's not a standard.

Q. What do you mean by it's not a standard?

A. So a standard would be like an ASTM document, that would be something that would be very clear, a mandate for each element. And that's not true in the case of the APR guidelines because there's so many different requirements within the APR guidelines.

Q. Okay. But it does instruct a person of ordinary skill in the art whether or not a particular article is recyclable?

MR. SCHATZ: Object to form.

A. It offers guidance, but it's not sufficient.

BY MR. DIRKS:

Q. Okay. So when MCC markets a product as recyclable, are you saying that they don't have sufficient evidence to say that it is recyclable?

A. We completed the -- in the case of the Gatorade label, for example, we had an APR

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recognition that confirms that the Gatorade label is recyclable.

Q. Okay. It confirms that it's recyclable?

A. Yes.

Q. Okay. So it's not true then when you say that the APR guidance is not --

A. The APR recognition is a statement about the Gatorade label.

Q. Okay. And you obtain APR recognition when you follow the APR guidances -- guidance documents, correct?

A. Correct. And when we did the APR recognition, that guidance protocol goes through a review process and there is -- as a part of that review process, we're presenting data about how that label performed in terms of the test methods.

Q. Okay. And when you get the recognition from APR, to a person of ordinary skill in the art, that is confirmation that that is -- that the article is recyclable, correct?

MR. SCHATZ: Object to form.

A. It's -- it says that the label has

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been recycled with -- within the test methods.

BY MR. DIRKS:

Q. And a person of ordinary skill in the art then would understand that that article is recyclable, correct?

MR. SCHATZ: Object to form.

A. I think it goes back to that APR recognition is a process to determine if the APR has seen the Gatorade label as being recyclable. I don't know that the APR documents are specific enough to determine that something is recyclable.

There is a lot in those documents that's -- that's -- there is still questions about how do you interpret each element of the -- of those documents.

BY MR. DIRKS:

Q. Okay. So when MCC markets its products as recyclable, you're saying that -- it's your testimony today that MCC does not have enough information to make the claim that it is recyclable based on APR guidance, APR recognition?

A. The Gatorade label is -- falls under the scope of APR recognition.

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Q. That wasn't my question. My question is, when MCC markets its products as recyclable, are you saying that MCC doesn't have enough information to make the claim that it is recyclable based on the APR recognition?
A. I will say -- I'm sorry. Say that again.
Q. Okay. When MCC markets its products as recyclable, based on APR recognition, are you saying that MCC does not have enough data to support that statement?
A. When MCC markets its -- I'll say we have -- yes, we have data based on the APR recognition. And the APR recognition is -- is part of what helps us demonstrate recyclability.
Q. Okay. But a person of ordinary skill in the art would understand that APR recognition is a recognition that a particular article is recyclable?
MR. SCHATZ: Object to form.
A. Again, it goes back to the APR recognition is a recognition that the generic label construction that was tested for that recognition is recyclable.

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BY MR. DIRKS:
Q. Is there a difference between that and the specific article -- strike that.
You said the APR recognition is a recognition that the generic label construction that was tested for that recognition is recyclable.
A. So I think we're going back to something that was earlier, which is that the APR recognition is a -- a test using the Critical Guidance Protocol for a general graphic construction.
But the APR recognition that MCC has for the Fort Dearborn wash-off ink with -- with -- is that the Gatorade label meets that APR recognition.
Q. Okay.
A. Do I -- I'm sorry to talk around it --
Q. Okay.
A. -- because we're talking about claim construction here, so I think.
Q. So it is your testimony that if a label -- strike that.
I'm trying to understand why you're

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differentiating between APR guidance -- I'm sorry. Strike that.
I'm trying to understand why you're differentiating between APR recognition of a generic label and APR recognition of a specific label, I guess.
A. APR recognition provides a statement that the label has passed the Critical Guidance test protocol and meets the requirements of that test protocol.
Q. For recyclability, correct?
A. Yes.
Q. Okay. And a person of ordinary skill in the art relies on APR recognition as a way to show that a particular article is recyclable, correct?
MR. SCHATZ: Object to form.
A. The APR recognition provides an indication of recyclability, yes.
BY MR. DIRKS:
Q. That wasn't quite my question. My question is, a person of ordinary skill in the art relies on APR recognition as a way to show that a particular article is recyclable?
MR. SCHATZ: Object to form. Asked

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and answered.
A. APR recognition provides a measure of recycling, yes.
BY MR. DIRKS:
Q. Again, not my question. I need you to listen very specifically to my question. Okay?
A person of ordinary skill in the art relies on APR recognition as a way to show that a particular article is recyclable, fair?
MR. SCHATZ: Object to form.
A. I would say it's part of the -- it's part of the determination of recycling, yes.
BY MR. DIRKS:
Q. Okay. And then in this section C of your declaration, you walk through the different statements within the patent regarding what a -- whether a particular label is recyclable, fair?
A. Yes.
Q. Okay. It was your testimony earlier that these statements that are in the '422 patent are inconsistent with one another?
A. Yes.
Q. Okay. What inconsistencies are

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there between these statements?
A. There are several. And you can read for yourself the declaration, I guess. What specifically are you asking?
Q. I want to understand what your understanding is of the inconsistencies. As a person of ordinary skill in the art, what is your understanding of the inconsistencies between the statements made in the '422 patent that you said here?
A. So the '422 patent, for example, makes statements that in order for the label to be recyclable, it needs to meet the requirements of, in one case, this SORT-B-01 test or SORT-B-02 or both, as one example for a definition of what is required of a label.
Q. Okay. And why is that inconsistent -- actually, strike that.
Are you saying that those are inconsistent with each other?
A. I'm saying that the determination of is it SORT-B-01 is sufficient or is it SORT-B-03 is sufficient or am I required to be passing both to be recyclable in terms of the claim term; that's not clear.

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Q. Okay. Are there any other inconsistencies -- strike that.
I think you are looking at paragraph 75 of your report; is that fair?
A. Yes, that is the example that we're talking about.
Q. Okay. Within paragraph 75, are there any other inconsistencies that you feel are expressed within the '422 patent as it relates to recyclability?
A. Yes, there's three pages of --
Q. Sorry. Strike that.
My question is within paragraph 75, are there any other inconsistencies?
A. I don't know how to answer that question.
Q. Is the answer no?
A. Well, the question is effectively directly from the patent, so I don't know what you mean.
Q. I'm asking you in paragraph 75 that you wrote, you've identified these two sort tests. Are there any other inconsistencies that you are describing in paragraph 75, other than between those two sort guidances?

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A. I'm sure there are other inconsistencies, but I don't know if I mentioned anything else in paragraph 75.
Q. Okay. Outside of paragraph 75, what other inconsistencies are there between the statements in the '422 patent?
A. The -- in terms of the term recyclable?
Q. Correct.
A. So I think it goes back to the -- each of the entirety of section C --
Q. Okay.
A. -- mentions --
Q. Maybe I can short-circuit this a little bit. Your opinions in paragraph -- in section C of your declaration, that is the entirety of your opinions as to the inconsistencies that you feel are presented in the statements in the '422 patent with respect to recyclability, correct?
A. I think it's true that from my experience, the APR, when it does attempt to define whether or not a product is recyclable -- so, yes, I'm going to stop there.
If you want to ask that question

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again, I don't know that I --
Q. Yeah, that was not my -- that was not my question. My question is, in paragraph -- section C of your report contains all of your opinions as to whether there are inconsistent statements in the '422 patent for recyclability, correct?
A. Yes.
Q. Okay. You mentioned the APR -- APR guidance, Critical Guidance.
(Bushman Exhibit 7 was marked for identification.)
THE WITNESS: Thank you.
BY MR. DIRKS:
Q. I'm just -- you've just been handed Exhibit 7. This is Exhibit 1005 of the PGR proceeding, right?
A. Correct.
Q. Okay. And this is the Critical Guidance Protocol from the APR, correct?
A. Yes.
Q. And this is the Critical Guidance Protocol we've been discussing as to -- that provides guidance to the label industry as to whether a label is recyclable or not, correct?

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A. Correct.
Q. Specifically earlier you mentioned that -- you mentioned the sorting protocols, correct?
A. Yes.
Q. What is your understanding of what those sorting protocols, how they are used within the industry?
A. The sortation step is the first element of the recycling process to determine whether or not a container is PET or high density. And in that sortation process, maybe the objective of that sortation process is to put PET containers with PET and high density with high density.
Q. Okay. As part of that sortation process, you would agree that articles that are sorted out of the recycling stream -- that can happen, right?
A. Yes.
Q. Okay. And if an article is sorted out of the recycling stream altogether, it is not recyclable, correct?
MR. SCHATZ: Object to form.
A. I would say it's -- that doesn't

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define whether or not it's recyclable. It is not recycled, I will say it that way.
BY MR. DIRKS:
Q. But if an article is sorted out of the recycling stream, how can it be recyclable?
A. So sortation is part of the guidelines in terms of determining whether or not a package makes it into the recycle stream.
Q. Okay. So sortation guidelines are part of the overall flow for the APR to determine whether a document -- whether an article is recyclable, correct?
A. Yes.
Q. Okay. And the reason for that is because if an article is sorted out of the recycling stream, it won't be recycled, correct?
A. Correct.
Q. Okay. If you look at page 1 of the Critical Guidance Protocol here, down at the bottom it says, For products or innovations that employ metal decoration or which contain metal components.
Do you see that?
A. Yes.

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Q. And then it lists a couple sorting protocols there, correct?
A. Yes.
Q. Okay. And below that there are two other sections that also refer to sorting protocols, right?
A. Yes.
Q. And that's all part of the Critical Guidance Protocol for APR to determine whether an article is recyclable, right?
A. To determine sortation, yes.
Q. I'm sorry, I --
A. Sortation is a step to --
Q. Okay. Now turn to page 10 of Exhibit --
A. In this exhibit?
Q. Correct, in Exhibit 6.
A. Exhibit 6 now?
Q. Are we on 6? I'm so sorry. Exhibit 7.
A. I'm there.
Q. Okay. And here is -- APR has provided a flow chart for industry players to understand how to perform these tests, correct?
A. Yes.

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Q. And these individual boxes within the flow chart represent various tests that a label manufacturer is recommended to perform under the guidance, correct?
A. Yes.
Q. Okay. And the purpose of this flow chart is to show a label manufacturer how to perform testing, which at the end will provide data that the APR can assess whether the article is recyclable, correct?
A. Yes.
Q. One aspect of this flow chart is the wash test. Do you see that?
A. Yes.
Q. That is labeled PET-P-04.
Do you see that?
A. (Nodding head.)
Q. Is that a standard protocol that is used within the industry?
A. Yes.
Q. Okay.
A. I'll say it's a test method, yes.
Q. Okay. A test -- a test method that is standard for the industry to use?
A. Within the guidelines, yes.

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Q. Are you familiar with that guidance?
A. Yes.
Q. Have you performed testing using that guidance?
A. Yes.
Q. Have you provided that testing data to APR as part of a determination of whether an article is recyclable or not?
A. We've provided testing as part of the Critical Guidance test that would have included a wash test, yes.
Q. What is your understanding of what a wash test does?
A. The wash test is a determination of whether or not the label, in broad strokes, sinks or floats in the wash bath. It may float for a label that is floatable. And it may sink if it's -- as an example, the shrink sleeve labels that would include a PET film.
Q. Okay. If a label floats in this wash test, that label is removed from the recycling stream, correct?
A. Correct.
Q. Okay. And if the label sinks, it's intended to continue on in the recycling

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stream; is that fair?
A. Yes. In some cases, a sinking label might be an opportunity for something to be a contaminant in that recycle stream. But in the case of a label that has a wash-offing system, it may be designed to continue in the stream.
Q. Okay. So you mentioned it could be an opportunity for -- to become a contaminant in the recycle stream. Can you explain what you mean by that?
A. There are a lot of materials that could sink in that wash test that would be a potential contaminant. Something that is denser than water that is not necessarily the film or the ink or anything else, it could just be other things that are sinking that are a contaminant.
Q. But it could include a label that has ink on it, correct?
A. Yes. In -- in the preferred approach, that ink would separate at the wash stage and would not stay on the label.
But if the label was -- let's take a material that would sink that would have ink still on it, then, yes, I suppose ink could

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stay on it in that case.
Q. And that would become a contaminant in the recycling stream, fair?
A. Yes.
Q. All right. If you look down at the bottom sort of left-hand side there is a green box that says, Required evaluations, right?
A. Yes.
Q. And this happens after the -- after the wash step, right?
Correct?
A. Yes.
Q. So the article, the label is -- goes through the wash analysis and it sinks or floats, right? So if it floats, it's removed from the recycling stream. And if it sinks, it continues on in the recycling stream, fair?
A. Yes.
Q. So then you have additional steps, but at the end of this flow chart, you would have material that has made it all the way through the recycling stream, correct?
A. In terms of this test method, yes.
Q. Okay. And that is then melted -- I might be simplifying it a bit. But it's melted

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and then --
A. Pelletized.
Q. -- pelletized. Thank you.
Okay. So at the end of these step, this injection mold step, you have pellets of recycled PET, correct?
A. You have a molded plaque that is a PET plaque.
Q. Okay. And the guidance document requires an evaluation of that?
A. Yes.
Q. Right? And part of that is -- strike that.
If the evaluation of the PET plaque, as you referred to it, if you -- if a manufacturer fails at this step, APR will not certify this as a recyclable material, fair?
A. Within reason, yes. The APR has some required elements of what they would like to see at a specific level of less than a certain value for haze, less than a certain number of inclusions.
It's a bit ambiguous about whether or not it would be considered recyclable completely, but yes.

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Q. But there is a standard that APR applies to determining the values that you just referred to, haze, inclusions, et cetera?
MR. SCHATZ: Object to form.
A. There is a guideline, yes.
BY MR. DIRKS:
Q. Correct. And a label manufacturer collects the data knowing that that -- knowing what that standard is, correct?
MR. SCHATZ: Object to form.
A. Yes.
BY MR. DIRKS:
Q. All right. Let's turn back to your report.
Now, I asked you earlier if the phrase, with the PET container, provides some construction to a person of ordinary skill in the art as to the scope of the claims, correct?
MR. SCHATZ: Object to form.
A. You did ask me.
BY MR. DIRKS:
Q. Okay. And your answer was yes, right?
MR. SCHATZ: Object to form.
A. Yes.

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BY MR. DIRKS:
Q. Okay. So you would agree with me that the '422 patent envisions a label that is designed to enter a recycling stream with the container it's attached to -- strike that.
You would agree with me that the '422 patent envisions a label that is designed to enter a recycling stream with a container, correct?
A. Yes.
Q. And it envisions that label continuing through the recycling stream?
MR. SCHATZ: Object to form.
A. I don't know about that.
BY MR. DIRKS:
Q. What is -- what don't you agree with?
A. I'm reflecting on the patent again. You asked the question about is the label going through the recycle stream as part of this and so -- I'm sorry. Ask that question again.
Q. The '422 patent envisions the label continuing through the recycling stream, correct?
MR. SCHATZ: Object to form.

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A. I don't know how to answer that question.
BY MR. DIRKS:
Q. Why don't you know how to answer that question? What more information do you need?
A. Yes, it envisions a label that is recycled with -- with a container.
Q. Okay. And you understand there is a prosecution history in this case, correct?
A. Yes.
Q. And have you reviewed that prosecution history?
A. Yes.
Q. Okay.
(Bushman Exhibit 8 was marked for identification.)
BY MR. DIRKS:
Q. You've just been handed Exhibit 8.
Do you recognize this as part of the prosecution history of the '422 patent?
A. Yes.
Q. Specifically, this is the October 16th, 2023, amendment in response.
Do you see that?

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A. You said 2023?
Q. Yeah, if you look at the back page.
A. Ah, yes.
Q. Can you turn to the page 335 at the bottom right-hand corner?
A. 335, yes.
Q. Okay. And in the sort of middle of the page, kind of towards the bottom, the term recyclable does not -- does further limit -- strike that.
The term recyclable does further limit the claim. Do you see that?
A. Yes.
Q. In that the claim label must be capable of being recycled. Do you see that?
A. (Nodding head.)
Q. And it says, Not all combinations of shrink films and light-blocking materials are capable of being recycled. Do you see that?
A. Uh-huh.
Q. Do you agree with that statement?
A. Yes.
Q. Okay. It should also be noted that removing the label before or during the process -- recycling process is not evidence of

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recyclability.
Do you see that?
A. Uh-huh.
Q. So that confirms what we were just talking about, that the '422 patent envisions a label that is -- that continues through the recycling stream, correct?
MR. SCHATZ: Object to form.
A. I think it envisions lots of label constructions, but yes.
BY MR. DIRKS:
Q. Okay. But you didn't quote that portion of the prosecution history in your declaration, correct?
A. I don't believe so.
Q. Does that change your opinion as to the scope of the claims, whether or not a person of ordinary skill in the art would understand the scope of the claims?
A. I go back to the term -- the term recyclable is not well defined, the term recyclable.
Q. Okay. That wasn't my question. My question is -- actually strike that.
You didn't consider that specific

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language in forming your opinions as to whether or not the claims of the '422 patent are indefinite, correct?
A. I don't know.
Q. Okay. Sitting here right now, you don't know whether -- strike that.
Let's go back to Exhibit 1005, please. If you can turn to the flow chart at the end again. This is on page 10, right?
We refer to the wash test, PET-P-04, in the middle of the flow chart, right?
A. Yes.
Q. And we discussed that the results of that wash test indicate whether a material -- if the label floats and is removed from the recycling stream, right?
A. Yes.
Q. Okay. That would not fall within the scope of the claims?
A. I don't know.
Q. If it's removed from the recycling stream, do you have any understanding of whether or not that falls within the claims?
A. I don't know.
Q. Okay. Having just read the

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prosecution history statement that says recyclable means -- the language right here. That recycling the label before or during the recycling process is not evidence of recyclability.
Having just read that, you have no opinion as to whether or not a label that is removed from the recycling stream through the wash process is recyclable?
A. I would say that a label that is removed during the wash process is recyclable and a label that continues on, that is -- that allows the subsequent plaque to meet the requirements would also be recyclable.
Q. Okay. So it's recyclable under either of those forks in the path, if you will. If it floats, it's recyclable. And if it sinks and continues on, it's recyclable?
A. It goes back to the question of is the label recyclable, yes.
Q. Okay. And your answer is regardless if it floats or if it sinks, it's recyclable?
MR. SCHATZ: Object to form.
A. It goes back to again the term recyclable, so --

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BY MR. DIRKS:
Q. Okay. When you say it goes back to the term recyclable, what do you mean?
A. I don't know. Ask your -- ask your question again. I'm sorry if I'm frustrating you.
Q. I'm trying to understand your opinion as to how to interpret the APR guidance, Critical Guidance document, flow chart on page 10, compared to the claims of the '422 patent.
Okay. So we just looked at the prosecution history of the '422 patent where the applicant said that removing the label before or during the recycling process is not evidence of recyclability.
MR. SCHATZ: Object to form.
A. Say that again. Removing the label --
BY MR. DIRKS:
Q. Okay. The prosecution history at page 335, the applicant said, Removing the label before or during the recycling process is not evidence of the recyclability of the label.
A. Where are you? Where are you?

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Q. This is what we were just looking at on page 335.
A. Ah, okay, bottom of that paragraph.
Q. Bottom middle of the page. Removing the label before or during the recycling process is not evidence of the recyclability of the label.
Do you see that?
A. Is not equivalent.
Q. You are looking at a different -- I don't know what you are looking at, but no.
It should be noted that removing the label before or during recycling process is not evidence of the recyclability of the label.
A. Okay. I'm reading that.
Q. Okay. You didn't consider that when you were forming your opinions as to the indefiniteness of the '422 patent claims, correct?
A. Is not evidence -- or during the recycling process. I'm sorry. Ask your question again.
Q. Well --
A. Did I consider --
Q. You already answered that you didn't

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consider that statement in the prosecution history when you were forming your opinions.
My question now is going back to the flow chart in Exhibit 1005 on page 10, you agree with me that according to the patent owner, the claims of the '422 patent, a label would not be recyclable under the claims of the '422 patent if they were removed from the recycling stream at the wash stage of this flow chart?
MR. SCHATZ: Object to form.
A. They would not be recyclable if the label was removed at the wash stage.
BY MR. DIRKS:
Q. Okay. Great. So if it's not removed from the wash stage, then it is a label that sinks, correct?
A. Yes.
Q. Okay. And a label that sinks, we already talked about this, that goes through the rest of this flow chart, rest of the recycling stream, must have an ink that washes off of the label?
A. Is preferred to have the ink removed, yes.

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Q. Why do you say preferred?
A. That's part of the APR guidance.
Q. Okay. But if it doesn't remove the ink, that's a contaminant in the recycling stream, right?
A. If it doesn't remove the ink, it's likely to be a contaminant. I think it would be a function of the testing.
Q. Okay. And if it's a contaminant and it -- strike that.
And if it's a contaminant, it could cause the APR to not certify the label as recyclable, fair?
A. I don't know. I mean, I can envision inks that don't remove that are recyclable, but I don't know.
Q. How would that work if it was an ink --
A. I don't know.
Q. So you just don't have an opinion as to whether or not a label that continues to have ink after the recycling process would be recyclable or not?
A. It's preferred that the label ink comes off in the wash step for a shrink sleeve

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label.
Q. And there are standards as to whether or not the ink -- if there is any ink left on the label, whether that would be a contaminant in the recycling stream, correct?
MR. SCHATZ: Object to form.
A. It's preferred that the ink washes off, yes. I don't know about a standard, it's guidance.
BY MR. DIRKS:
Q. You mentioned earlier that there are -- there's a standard for the plaque, the PET plaque at the end of the recycling process right?
A. Correct.
Q. Okay. And part of that standard would include whether the plaque contains contaminants, right?
A. Correct. Where those contaminants comes from, I don't know if it's ink or not.
Q. Okay. But if it contains contaminants to a certain level, which is a standard within the APR, then it may not receive APR certification, fair?
MR. SCHATZ: Object to form.

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A. The requirement would be that, yes, it would -- there are some specifications for how that plaque -- haze, color.
BY MR. DIRKS:
Q. It's also possible that a label may have -- strike that. It's also possible that a label has ink that will discolor the PET flake; is that fair?
A. Yes.
Q. And if that occurs, that also -- excuse me. That also is a contaminant within the recycling stream, correct?
A. Yes.
Q. It's also the case that, sort of similar to that point, certain materials, like white plastic, are not recyclable, correct?
MR. SCHATZ: Object to form.
Objection, outside the scope of Mr. Bushman's declaration.
A. I don't know.
BY MR. DIRKS:
Q. You don't have an opinion on that?
A. No.
Q. Okay. Is it your understanding that there is a difference between a material that

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is recyclable versus one that is fully recyclable?
A. I don't know what that term fully recyclable means.
Q. You have no --
A. Versus the term recyclable, at least in terms of the claim.
Q. So you have no --
A. In terms of the patent, I'll say that.
Q. Sorry. I don't mean to speak over you. In terms of -- strike that.
You have no opinion as to whether there is a difference between recyclable versus fully recyclable?
MR. SCHATZ: Objection. Asked and answered.
A. I don't understand the term fully recyclable --
BY MR. DIRKS:
Q. So sitting --
A. -- when it's used in the patent versus recyclable.
Q. Apologize. So sitting here today, you can't identify any inconsistencies between

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the term fully recyclable and the term recyclable?
MR. SCHATZ: Object to form.
A. I don't know what that term fully recyclable means versus the term recyclable alone.
BY MR. DIRKS:
Q. Okay. Is it your testimony you've never seen the word fully recyclable before?
A. I've seen it in the patent.
Q. That is the only place you've ever seen it?
A. I think it's been used generally, but it's an ambiguous term because it's not clear what fully recyclable means versus recyclable.
Q. But you, as a person of ordinary skill in the art, if you see a document that says something is fully recyclable, would you have an understanding of what that means?
A. I think I -- I don't know. It's -- it's not clear what fully recyclable means. Do you mean that it's recycled itself within the stream or not?
Q. What do you mean by that?

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A. Well, fully recyclable is -- implies something that is more than just recyclable.
Q. Okay. But my question to you was, as a person of ordinary skill in the art, many years of experience in the recycling industry, if you see the phrase fully recyclable, would you have an understanding of what that means?
A. No, because it's not clear what fully recyclable means.
Q. So if you were to -- strike that.
Is it your opinion then that it would be improper to rely on a document that says it's fully recyclable to show that it's recyclable?
MR. SCHATZ: Objection. Asked -- I'm sorry. Objection, outside the scope of Dr. Bushman's declaration, and object to form.
A. No, I think that -- no. Say that again. Say the question again. I just want --
BY MR. DIRKS:
Q. Is it your opinion that it would be improper to rely on a statement that something is fully recyclable to show that the article is recyclable?

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A. No.
Q. Why? Sorry. Strike that.
It's not improper to rely on a statement that something is fully recyclable to show that it's fully -- to show that it is recyclable because you understand what fully recyclable means as a person of ordinary skill in the art, right?
MR. SCHATZ: Objection. Asked and answered.
A. Yeah, we're going around because the term in the patent include -- the patent includes the term fully recyclable. And it also includes the term recyclable. And it's not clear what the difference is between those two for the patent.
BY MR. DIRKS:
Q. Okay. But I'm asking you what your opinion is, as a person of ordinary skill in the art, if you are looking at a document or an advertisement that says fully recyclable. Are you saying that there is no basis to make that claim?
MR. SCHATZ: Objection. Asked and answered, multiple times.

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A. I don't know how to answer.
BY MR. DIRKS:
Q. So if MCC were to make a claim that something is fully recyclable, is it your opinion that that would be completely unsupported -- strike that.
If MCC were to make a claim that something is fully recyclable, is it your opinion that that would be unsupported?
MR. SCHATZ: Objection, outside the scope of Dr. Bushman's declaration.
A. I think you are asking me to interpret the term fully recyclable with respect to something that we would do; is that right?
BY MR. DIRKS:
Q. I'm asking you for your opinion as a person of ordinary skill in the art, what your understanding is -- let me just strike that.
You understand that for the purposes of your analysis, you are looking at the claims in light of what a person of ordinary skill in the art would understand, correct?
A. Yes.
Q. So you, as a person of ordinary

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skill in the art, or as you put it earlier, someone with above ordinary skill in the art, if you are looking at a label that says fully recyclable, is it your opinion that you have no idea what that means?
MR. SCHATZ: Objection. Asked and answered.
A. I would look to the Critical Guidance recognition test results that we completed as part of, let's say, the Gatorade label, as a demonstration of whether or not it was recyclable.
BY MR. DIRKS:
Q. Okay.
A. I don't know if the term fully -- I don't know what that term fully recyclable means, so --
Q. So in your understanding as a person of ordinary skill in the art, you would look -- if you were looking at a document that says something is fully recyclable, you would look at APR guidance to see if it's recyclable?
MR. SCHATZ: Object to form. Asked and answered.
A. APR recognition.

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BY MR. DIRKS:
Q. To see if it was recyclable?
MR. SCHATZ: Object to form. Asked and answered.
A. APR recognition.
BY MR. DIRKS:
Q. That wasn't my question. My question was to see -- you would look at the APR recognition to see if it was recyclable, correct?
MR. SCHATZ: Objection. Asked and answered.
A. I don't know where we're going here.
BY MR. DIRKS:
Q. You haven't answered my question, that's why I'm asking it again.
So you said you would look to the APR recognition. And I'm asking you, you would look to the APR recognition to see that the article was recyclable?
A. Yes.
Q. Okay. In paragraph 84 of your report, if you could turn to that please.
Are you with me?
A. Yes.

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Q. You say, as another example, as to -- strike that.
You say, as another example, it could be that to fall within the scope of this claim term the labels are free of inks, substantially free of inks, or if no ink is retained on the film.
Do you see that?
A. Yes.
Q. You include substantially free of inks, right?
A. Yes.
Q. Where does that come from, that phrase?
A. The APR -- well, I'll say this. The label's substantially free of inks, the APR does not define in the recognition guidance, Critical Guidance test method. There's questions about how clean the film has to be in order to meet the requirements because it leads to a question about is that -- does it pass the plaque test, if that makes sense.
So you could be substantially free of ink and still pass the plaque test.
Q. But this phrase -- you're -- in

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paragraph 84, you are listing phrases that you say come from the patent.
In fact, let me just point you to --
A. Yes.
Q. -- instead, paragraph 78.
A. Yes.
Q. You say, The '422 patent provides, According to an embodiment, the labels are free or substantially free of inks that cannot be washed off, correct?
A. Yes.
Q. So that is actually what the patent says, fair?
A. Yes.
Q. Okay. So the patent actually says, According to an embodiment, the labels are free or substantially free of inks that cannot be washed off in a caustic wash, right?
A. Yes.
Q. Let's go back --
A. That's correct.
Q. Let's go back to paragraph 84, please.
A. Yes.
Q. Here you are saying, As another

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example, it could be to fall within the scope of the claim the labels are free of inks, substantially free of inks, or if no inks are retained on the film. That is not correct, right?
MR. SCHATZ: Object to form.
A. Yeah, it's -- it's correct that -- it's correct that this claim is not clear about whether or not the labels are free of inks, substantially free of inks, or if no inks are retained.
BY MR. DIRKS:
Q. That wasn't my question, sir, respectfully. My question is, when you write, As another example, it could be that to fall within the scope of this claim term, the labels are free of inks, substantially free of inks, or if no inks are retained on the film.
You wrote that, right?
A. Yes.
Q. But when you say, It could be to fall within the scope of this claim term, the labels are substantially free of inks; that is not what the patent says, fair?
MR. SCHATZ: Object to form. That's

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his opinion.
MR. DIRKS: Sir, Counsel, I do not need your commentary.
BY MR. DIRKS:
Q. That is not what the patent says, correct? Let's look back at paragraph 78, right?
A. I see 78, yes.
Q. And there -- this is an actual quote from the patent now. And it says, According to an embodiment, the labels are free or substantially free of inks that cannot be washed off, right?
A. Yes.
Q. That is what the patents say, right?
Right?
A. Yes.
Q. In paragraph 84 --
A. But the claim is --
Q. In paragraph 84 you are leaving off part of that term, part of that phrase within the patent, fair?
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. Do I have that right?

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A. I don't know.
Q. So you can't tell me whether --
A. That is one phrase from within the patent. I don't know if that phrase, by itself, is sufficient for the claim. So I think that the point is within the scope of the claim, the labels could be free of ink, substantially free of ink, or no ink retained; that's what I meant.
Q. That's not what the patent says though. The patent says, if you look at paragraph --
A. In that citation, yes.
Q. Okay. I don't know what you mean by in that citation. Okay. I think -- I think we can move on from this point.
Is there an inconsistency in your mind -- or strike that.
Is it unclear to you what substantial free refers to as a person of ordinary skill in the art?
A. Free of inks versus substantially free of inks, is there a difference?
Q. No, that wasn't my question. My question is, as a person of ordinary skill in

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the art, are you unaware of -- strike that.
As a person of ordinary skill in the art, are you unable to understand what substantially free refers to in this --
A. Not specifically. Not specifically. Substantially is an ambiguous terms.
Q. Is that -- is that your opinion as to why that phrase within the '422 patent is -- renders the patent claim indefinite? Because substantially is an ambiguous term?
A. Yes.
Q. So if it was defined, would that change your opinion as to whether that renders the claim terms indefinite?
A. I don't know about all of the claim terms, but certainly it would be good to have a definition of what does substantially mean.
Q. But if there is a definition, that would change your -- that would change your opinion as to whether or not that particular sentence renders the claims indefinite; is that fair?
A. Yes, I think that this -- that would help with understanding what recyclable means, but it wouldn't define the completeness of the

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term recyclable.
Q. That wasn't my question. My question was, would it change your opinion if there was a definition for substantially?
A. Would it change my opinion of recyclable?
Q. No. My question is, if there is a definition of substantially, would that change your opinion as to whether this term, substantially free of inks that cannot be washed off, renders the claim terms indefinite?
A. It would help, but I don't know if it's clear to me as -- I don't know.
Q. Okay. You don't know if that would change your opinion; is that your testimony?
A. I don't know, yeah.
Q. Okay.
MR. SCHATZ: Steven, would it be okay to take a short bathroom break?
MR. DIRKS: Yeah.
THE VIDEOGRAPHER: The time is 2:55 p.m. We are going off the record.
(Off the record.)
THE VIDEOGRAPHER: The time is 3:14 p.m. We are back on the record.

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BY MR. DIRKS:
Q. Welcome back, Mr. Bushman. At any point during the day today have you had any discussions with your counsel about the substance of your testimony?
A. No.
Q. Have you had discussions with Dr. Deible?
A. Yes.
Q. So you're familiar with who Dr. Deible is?
A. Yes.
Q. He's an expert retained by MCC in this matter; is that right?
A. Yes.
Q. Were you involved in the selection of Dr. Deible --
A. No.
Q. -- as an expert?
A. Only from the perspective of, I was provided his resume during the selection process.
Q. Did you have any input into whether he was going to be selected as -- as an expert?
MR. SCHATZ: I'm going to instruct

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the witness not to answer on privilege.
BY MR. DIRKS:
Q. As part of this matter, have you had discussions with Dr. Deible about his opinions?
A. I can't answer that.
Q. Why can't you answer that question?
A. Attorney-client privilege.
Q. Oh, sorry. That doesn't apply here because Dr. Deible is an expert in this matter. So the bases of his opinions, those are not covered by privilege.
MR. SCHATZ: Eh. Do you have a question? Sorry.
BY MR. DIRKS:
Q. My pending question was, have you had discussions with Dr. Deible about his opinions regarding this matter?
A. I've seen his declaration.
Q. That was not my question. My question was, have you had discussions with Dr. Deible about his opinions in this matter?
A. I would say that I've seen his opinion and reviewed it and --
Q. Again, not my question. We are running a little bit out of time here. I would

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appreciate a straight answer to this question. Yes or no, have you had discussions with Dr. Deible about his opinions in this matter?
A. I've reviewed his -- his declaration.
Q. Again, sir, that is not my question. I would really appreciate a straight answer to this question.
Have you had discussions with Dr. Deible about his opinions?
A. I don't know what he's going to present as his opinions.
Q. Sir, that is not my question. And I would really, really appreciate a straight answer to this question.
Have you had discussions with Dr. Deible about his opinions in this matter?
It's a yes-or-no question.
A. I apologize. I will quiet this.
Q. Please quiet that.
A. I don't know what this is.
MR. DIRKS: Let's go off the record.
THE VIDEOGRAPHER: The time is 3:18 p.m. We are going off the record.
(Off the record.)

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THE VIDEOGRAPHER: The time is 3:19 p.m. We are back on the record.
BY MR. DIRKS:
Q. Mr. Bushman, before we had to take a quick break I had a question for you that is a yes-or-no question that I'd really appreciate an answer to.
Have you had discussions with Dr. Deible about his opinions in this matter?
A. Yes.
Q. Okay. When did you have these discussions with Dr. Deible?
A. It would have been before the filing of the PGR.
Q. Okay. Have you had any discussions with Dr. Deible after the filing of the PGR?
A. No. I don't recall, no.
Q. Okay. Before filing the PGR, how many discussions with Dr. Deible did you have?
A. I don't know.
Q. Can you give me a ballpark?
A. At least several, less than three.
Q. So two?
A. Two or three, sure.
Q. Two or three. In those discussions

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with Dr. Deible, did you provide input into his opinions?
A. No.
Q. In these discussions with Dr. Deible, did he ask you questions about the prior art that you are -- that MCC is asserting in this matter?
A. You mean the labels that we supplied to him?
Q. That's correct.
A. We supplied labels and so, certainly, I shared with him that they were labels we were producing and the details -- I will say the details, that we printed them. So is that your question?
Q. Well, my question is broader than that. Did you have -- did you provide Dr. Deible with any information? You mentioned details about printing the labels. Did you provide any other information about the prior art labels that are being asserted in this matter?
A. Yes. The specifics of the fact that the labels were printed by us. The -- I don't know what you mean by --

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Q. I'm just asking generally, what information did you provide to Dr. Deible?
A. Yes. So general commentary related to how we produced the labels in market and that we supply them to the market.
Q. Okay. Did you -- you're aware that Dr. Deible performed testing on these labels, correct?
A. Yes.
Q. Did you provide input as to how to run the tests?
A. No.
Q. Did you -- sorry. Go ahead.
A. Not specifically how he did the tests.
Q. What do you mean by that? What are you carving out of that?
A. Like I wouldn't have told him how to do exactly the analytical testing that he was doing, if that was your question.
Q. Well, my question now is what are you carving out of that answer? There is something you had in mind you did provide input on with regard to the testing.
A. Only in terms of how the -- I

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believe we supplied him a test method that we -- Multi-Color has within our portfolio of test methods.
Q. Okay. So you provided Dr. Deible with a test method for him to perform; is that right?
A. Yes.
Q. Okay. And after Dr. Deible performed this test -- strike that.
While Dr. Deible was performing this test, according to the methods supplied by MCC, did he have questions about performing the tests? Let's start there.
A. Yes.
Q. What kind of questions did he have about performing the tests?
A. Specifics around the method. And we provided to him the Multi-Color method for testing wash-off for ink.
Q. Okay. But my question is, what specific questions did Dr. Deible have as to how to perform that test?
A. I can't recall. I can't recall the specific questions.
Q. Had Dr. Deible ever performed one of

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these tests before?
A. No, not that I know of.
Q. Was Dr. Deible unaware of -- strike that.
Did Dr. Deible have any knowledge of using the test method that you had provided to him?
A. I think he was -- this was a test method, specifically the wash-off test method is something that was not something that he has done in the past, and so --
Q. And when he performed this test, he had results at the end, correct?
A. He did.
Q. Okay. Did he provide those results to you?
A. Yes.
Q. Okay. And did you provide feedback on those results?
A. Yes.
Q. What feedback did you have on the results?
A. I don't recall.
Q. Sir --
A. I understand you're -- the question

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is -- maybe it's related to was I satisfied or unsatisfied with those results. That's where I was answering that question.
Q. My question wasn't -- that wasn't my question. My question was, did you provide feedback on those results; yes or no?
A. No.
Q. You provided no feedback at all?
A. Not that I can recall.
Q. I understand you might be concerned about answering these questions, but --
MR. SCHATZ: Whoa, whoa, that's inappropriate. That's completely inappropriate.
MR. DIRKS: Counsel, we can have this discussion off the record.
MR. SCHATZ: We can, that's fine with me if you want to go off the record.
MR. DIRKS: I'm going to continue my questioning now.
BY MR. DIRKS:
Q. Sir, did Dr. Deible ask you how to interpret the results?
A. I don't recall.
Q. You have no recollection of whether

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or not Dr. Deible asked you how you to analyze the results of a test he never performed before?
A. He -- he may have, yes.
Q. Okay. What questions -- strike that.
What questions did Dr. Deible have about how to analyze the test that he performed?
A. I don't recall.
Q. Did you provide answers to those questions that he had about the test results?
A. I don't recall.
Q. Did Dr. Deible -- strike that.
How many tests did Dr. Deible perform with respect to the prior art?
A. Many tests. I don't understand your question. Several.
Q. Okay. Did he send all of them to you? Strike that.
Did he send all the results of all those tests to you?
A. Not to me.
Q. Fair enough. Have you seen the results of all of Dr. Deible's tests?

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A. I can't say.
Q. How many results have you seen from Dr. Deible -- strike that.
How many results that Dr. Deible obtained from his testing have you seen?
MR. SCHATZ: Object to form.
A. I don't know how to answer that. You want a number? I don't know what you mean.
BY MR. DIRKS:
Q. Let's start with a number. How many tests are you personally aware of that Dr. Deible performed regarding the prior art?
A. He evaluated the prior art, the Gatorade labels and the Febreze labels with a variety of test methods. I don't have a number for you.
Q. When you say a variety of test methods, what are you referring to?
A. Analytically and the assessment of what were the specific composition of those prior art labels.
Q. Oh, so you're not referring to the caustic wash, you're referring to other types of testing?
A. Yes, as much testing as he was

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doing. He also did other testing.
Q. With respect to the caustic wash testing that he performed -- strike that.
With respect to the caustic wash testing that he performed on the Gatorade labels, how many results -- how many tests are you personally aware of that he performed?
A. I -- I don't know a number, but he tested multiple different samples from the Gatorade labels that we supplied to him.
Q. Did he provide results -- strike that.
Have you seen results from all of the testing that he performed on the Gatorade label for the caustic wash?
MR. SCHATZ: Object to form.
A. I've seen -- I believe that I've seen his results, but I don't know that I've seen every test that he conducted.
BY MR. DIRKS:
Q. Were there any tests that Dr. Deible performed on the Gatorade label, with respect to caustic wash, after you had a discussion with him about the results?
A. Say that again. Were there --

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Q. Sure. Strike that.
Did Dr. Deible perform the caustic wash test on the Gatorade label after you provided feedback on his results?
A. Perhaps, I don't recall.
Q. Okay. It's a yes-or-no question.
A. I understand but --
Q. So he did provide or he did perform another caustic wash test?
A. I don't know.
Q. Okay. Are you -- do you not know because you don't remember or because you don't have any knowledge of it?
A. I don't recall. You're asking about did he consider any counsel from me then retest given the results?
Q. Let's start with that.
A. So I believe that he had input from me in terms of -- of the wash-off test and conducted testing.
I believe the interpretation -- I don't know. I don't know if he did additional testing after.
Q. It might have been -- it might have been my -- I need to ask again.

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You provided feedback to Dr. Deible on the results of his caustic wash test of the Gatorade label, correct?

MR. SCHATZ: Objection. Asked and answered.

A. I don't recall.

BY MR. DIRKS:

Q. That --

A. Did I say --

Q. Your testimony a few minutes ago was -- I asked you did you provide feedback on those results and your answer was yes. All right?

A. In that case I would say which results?

Q. Do you have a distinction in your mind of which results you were providing an analysis of?

A. Only from the standpoint of there was lots of testing that he did.

Q. Okay. But you have in mind feedback that you provided to Dr. Deible on his testing, correct?

A. Yes.

Q. Okay. And do you have a distinction

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in your mind of which tests you were providing feedback on?

A. I don't know. Feedback from me would have been him providing information to me. So I don't know if I gave him specific feedback for the wash results or not. I don't know.

Q. Did you tell Dr. Deible that you didn't think his testing was sufficient?

A. I don't know.

Q. You don't remember or you don't know?

A. I don't know. Or remember.

Q. Those are two different things. I want to make sure the record is clear. Do you not know if you provided -- strike that.

Do you not know if you told Dr. Deible that his testing was insufficient or do you not remember if you told Dr. Deible --

A. I don't remember.

Q. Did you believe that his testing was insufficient at any point?

A. No.

Q. Okay. So if you didn't believe his testing was insufficient at any point, why

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would you have told him -- strike that.

Did Dr. Deible ask you if his testing was insufficient at any point?

A. I don't know. I don't recall.

Q. Again, those are two different things. Do you not know or do you not recall?

MR. SCHATZ: Objection. Asked and answered.

A. I don't recall.

BY MR. DIRKS:

Q. Do you know if counsel for MCC instructed Dr. Deible to perform additional testing on the Gatorade label after you had seen the results?

MR. SCHATZ: I'll instruct the witness not to answer, privilege.

MR. DIRKS: That I object to. This is a question about the basis of Dr. Deible's opinions in this matter. It's not covered by privilege.

MR. SCHATZ: If you're asking me to change my commentary, I'm not going to.

MR. DIRKS: Okay.

Are you going to follow your Counsel's instruction?

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THE WITNESS: Yes.

MR. DIRKS: Okay. I'm lodging my objection to that now.

BY MR. DIRKS:

Q. Did you -- when did you first see the results of Dr. Deible's testing?

A. I don't recall a specific date, but it was December of last year.

Q. Okay. So a month or so before the PGR was filed, correct?

A. Realistically, yes.

Q. And then after you saw Dr. Deible's test results -- strike that.

After you saw Dr. Deible's test results, did you provide information that the methodology should be changed?

A. Not that I recall.

Q. You don't recall?

A. No.

Q. Sitting here today, you have no recollection of whether you instructed anybody to change the test results -- sorry, the test protocol that Dr. Deible was performing on the prior art in this matter?

Is that your testimony?

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MR. SCHATZ: Objection. Asked and answered.
A. Yeah, I don't recall.
BY MR. DIRKS:
Q. Did you see these results from Dr. Deible -- let me start with that.
Did you see results from Dr. Deible visually?
A. Yes.
Q. Okay. Was that through an email?
A. Yes.
Q. Okay. And did you provide an email response to that?
A. I can't recall.
Q. Okay. But certainly if you did, there would be a record of that, correct?
A. Perhaps. I don't know. I'm not a member of Multi-Color anymore, so I don't know if there is a record of -- an email record or not. I don't know.
Q. Did you -- prior to the filing of this PGR, did you speak with Dr. Deible on the phone?
A. Yes.
Q. How many times?

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A. Like I say, two to three.
Q. So all the discussions with Dr. Deible were over the phone?
A. Or through Teams or Zoom or something, yeah. I haven't met Dr. Deible.
Q. The test results that you provided to Dr. Deible to perform, did you provide them in this matter -- strike that.
The test results that you provided to -- sorry again. Strike that.
The test protocol that you provided to Dr. Deible to perform, is that cited in your declaration?
A. No, it's not in my declaration.
Q. It's not cited in your declaration, is that what you are saying?
A. The test protocol --
Q. Yes.
A. -- that I asked him to perform? It wasn't my request. It was counsel's request for how he would do testing.
Q. What do you mean by that?
A. Deible was hired as a part of counsel.
Q. I'm sorry. I'm a little confused by what you are saying. What are you referring to when you say that, it wasn't my request, it was counsel's request. What are you referring to?

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A. Maybe I'm going to ask you again, to -- the tests -- the testing that he conducted was to assess specifically whether or not Gatorade labels would meet this limits of the claim, among other things.
Q. Okay. That wasn't my question though. My question was, is the protocol that you provided to Dr. Deible for his testing, is that cited in your declaration?
A. The Multi-Color recycling protocol is.
Q. Okay. Is that different than what you provided to Dr. Deible?
A. So the protocol that -- the Multi-Color protocol would have included the Exhibit 1012. The other protocols could have included other -- other things cited here, but how he did FTIR, GCMS, I would not have provided a protocol for those things.
Q. Fair enough. I'm asking you about this caustic wash protocol that you did provide. Did you provide a different protocol to Dr. Deible to perform than MCC's protocol; yes or no?

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A. I would have provided Multi-Color's protocol and he would have also been directed to the APR protocol, but the Multi-Color protocol would have been the one for him to look to.
Q. When you say would have been, I'm asking you specifically is that the one you provided to him?
A. I believe, yes.
Q. You're not sure?
A. I'm not sure.
Q. But you believe, yes. Okay.
(Bushman Exhibit 9 was marked for identification.)
THE WITNESS: Sure.
BY MR. DIRKS:
Q. You've just been handed Exhibit 9. This is Exhibit 1012 from the PGR, right?
A. Yes.
Q. And this is the document that you were just referring to as MCC's test protocol for the caustic wash, correct?
A. Yes.

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Q. Okay. And is this protocol the standard protocol that MCC would perform when performing a caustic wash test --
A. Yes.
Q. -- on a label?
A. Yes.
Q. So if there are any differences between this document and Dr. Deible's test protocol that he performed, you would agree with me that he was performing a test that is not consistent with the MCC protocol?
MR. SCHATZ: Objection to form. Objection, calls for speculation.
A. This is the method that we would have been providing to him. I don't know if he -- I don't know.
BY MR. DIRKS:
Q. You don't know -- let me ask my question again.
My question is, if Dr. Deible performed a test using a protocol that is different than this test protocol in Exhibit 1012, that would be a different test than MCC performs in the regular course of business, fair?

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MR. SCHATZ: Objection, calls for speculation.
A. He would have -- I don't know.
BY MR. DIRKS:
Q. What are you -- what is -- what information do you need to answer that question?
A. I don't know. I'm --
Q. I think it's -- I'm trying to make it a simple question. I really am. I don't mean it to be -- I don't mean this as a challenge question. This is a simple question.
If Dr. Deible performed a test using a protocol that differs from the test protocol described in Exhibit 1012 to the PGR, that would be a different test than MCC performs during the --
MR. SCHATZ: Object to form.
A. Again, my understanding, at least from the conversations that I've had with Dr. Deible, is he had not conducted a test like this in the past. And so he was looking to the guidance of our test protocol in terms of how to do a wash-off test, as well as the other methods that would be available in terms of the

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APR wash water test.
BY MR. DIRKS:
Q. Okay. And if he performed a test that does not follow this, you would agree with me that he was not following a test protocol that MCC would perform in the normal course of business?
MR. SCHATZ: Object to form, speculation.
A. This is the test protocol that we would normally use.
BY MR. DIRKS:
Q. And this is the test protocol you would normally use to provide data to the APR for guidance on whether a doc -- whether a label is recyclable?
A. No, we -- this is an internal test for how we would evaluate a label for caustic wash. It takes direction from the APR guidelines.
Q. Okay, but -- sorry. Go ahead.
A. But the specific testing we would supply to the APR would usually be a third-party test conducted by an external laboratory.

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Q. Okay. But using this protocol or using a different protocol?
A. The external laboratory wouldn't use our internal laboratory, they would -- they would use their own method.
Q. Okay. And would that method be consistent with this or differing from this method?
A. I would say it would generally be consistent with this method.
Q. Because you are citing the APR guidance in here, so you are trying to make this protocol match what the APR protocol would be?
A. We, as an internal process, wanted to have a method that we could follow consistently. So that was the reason for our own documentation of an internal method. And the APR was a reference for that, but not the only approach to build this specification, build a method.
Q. Okay. But the idea is if you can run this test internally and get results, then ideally you can provide the label to a third party, they could perform essentially the same

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protocol and have the same results to provide to the APR; is that fair?
MR. SCHATZ: Object to form.
A. It is a test method for us to determine whether or not our label would be likely to be recycling compatible.
BY MR. DIRKS:
Q. Okay.
A. But I'll say that that compatibility isn't only based on this single method.
Q. Meaning there are --
A. This is a wash-off test and there are other tests.
Q. Okay. There are other tests you perform. But with respect to the caustic wash test described here, it is used to determine whether or not the label would be likely to be recycling compatible, correct?
MR. SCHATZ: Object to form.
A. Yes.
BY MR. DIRKS:
Q. Okay. Now, at the top of page 1 on the right-hand side it says, Effective date 12/21/2018. Do you see that?
A. Yes.

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Q. Is that saying that this document was originally drafted on December 21st, 2018?
A. Yes.
Q. Okay. And then on the same little table at the top there but down at the bottom left, do you see a revision date, 12/28/24?
A. Correct.
Q. And revised by and it has your name, correct?
A. Correct.
Q. So you provided a revision to this document in December of 2024, correct?
A. Yes.
Q. And, specifically, December 28, 2024, right?
A. Correct.
Q. If you look at the back page, the last page in this, there is a revision notes table. Do you see that?
A. Yes.
Q. Okay. And here's a note, revision number two, dated December 28, 2024, right?
A. Correct.
Q. Again, name of editor is you, Craig Bushman, right?

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A. Yes.
Q. Okay. And the changes made says, Revised method to focus only on SSL and removed mention of other label technologies.
Do you see that?
A. Correct.
Q. Change title and method number. Do you see that?
A. Correct.
Q. What is this referring to?
A. I think we provided another additional document that dates back to the original 2018 filing. But that 2018 filing included other label technologies that I -- pressure sensitive, heat transfer. It would have been a generic guideline for all different label types.
So I wanted to focus the test method specific to the shrink sleeve, SSL meaning shrink sleeve.
Q. Okay. The date of revision 12/28/2024, let's start with -- that's three days after Christmas, right?
A. Uh-huh.
Q. Okay. Three days before New Year's,

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yeah?
A. Sure.
Q. Okay. It's also just before the PGR was filed, correct?
A. Yes.
Q. Okay. It's also at the time you say you were receiving data from Dr. Deible, right?
MR. SCHATZ: Object to form.
A. I don't know.
BY MR. DIRKS:
Q. You told -- you said that you first saw Dr. Deible's test results in December of 2024, correct?
MR. SCHATZ: Object to form.
A. I don't know about specific to wash results. You asked me generally.
BY MR. DIRKS:
Q. Okay. Fair enough. But you saw test results from Dr. Deible --
A. I don't recall.
Q. -- at some time?
A. Oh, I did.
Q. In December of 2024, right?
A. I don't recall if it was December.
Q. You testified earlier that it was

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December of 2024.
A. I think I testified that we had seen test results from Dr. Deible among all of the testing. I don't know if there was wash test results at that time.
Q. I'm not asking that. I'm asking --
A. But you are. You asked if I saw his data in December and I don't recall.
Q. Sir, I'd appreciate -- your testimony earlier was that you received test results generally in December of 2024 from Dr. Deible --
MR. SCHATZ: Object to form.
BY MR. DIRKS:
Q. -- correct?
A. Yes.
Q. Okay. So that is at the time that you're making this revision to the test protocol that he followed, correct? Strike that.
That is at the time that you were making this revision to the test protocol that you sent Dr. Deible, correct?
MR. SCHATZ: Object to form.
A. Again, I don't know if I had test

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results for -- from him for wash results --
BY MR. DIRKS:
Q. And my question wasn't --
A. -- prior to providing this data, I don't know.
Q. Again, that was not my question. My question was -- and you testified earlier in December of 2024 you received test results from Dr. Deible. And that is at the time you were making the revisions to the test protocol for the caustic wash that you sent to Dr. Deible, correct?
Do I have that right?
MR. SCHATZ: Object to form.
A. Again, I don't know if I had test results from him for when I supplied this to him or not. I don't recall. I don't know if I'm --
BY MR. DIRKS:
Q. Did you perform -- personally, did you perform this test protocol on the Gatorade label?
MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.
A. I did not personally perform this

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test method for the Gatorade label, me personally.
BY MR. DIRKS:
Q. Have you ever performed this test protocol on the Gatorade label?
A. I've directed individuals to perform this test method. I can't recall if it was performed for the Gatorade label or not.
Q. Okay. So you have directed individuals to perform this test method on labels?
A. Yes.
Q. Okay. But you don't know if you tested it -- strike that.
Have you instructed anybody to perform this test protocol on the Gatorade label?
MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.
A. Not that I can recall.
BY MR. DIRKS:
Q. Are you familiar with the term secondary considerations or objective indicia?
A. No, I don't know what secondary considerations mean.

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Q. Fair enough. It's in your report with respect to the legal principles of obviousness, that's why I was asking if you were familiar with them. You say you've -- let me just direct you to that section real quick.
Let's look at your report. This is in paragraph 17 of your report.
A. Okay.
Q. Underneath the Obviousness heading here it says, I have been informed that a patent claim is invalid as obvious under 35 USC, section 103, in light of one or more prior art references if it would have been obvious to a person of ordinary skill in the art taking into account, one, the scope and content of the prior art; two, the differences between the prior art and the claims; three, the level of ordinary skill in the art; and, four, any so-called secondary considerations of nonobviousness.
Do you see that?
A. Uh-huh.
Q. You list out which include, one, long-felt need for the claimed invention; two, commercial success attributable to the claimed

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invention; three, unexpected results of the claimed invention; and, four, copying of the claimed invention by others.

Do you see that?

A. Yes.

Q. Okay. So you agree that the obviousness of the claim takes into account the secondary considerations, correct?

A. Among other things, yes.

Q. Are you familiar with the Sustainability Awards?

A. Yes.

Q. What are the Sustainability Awards?

A. There is an award given for sustainability at the -- I believe it's the TLMI where they make a statement about somebody who has provided something to the -- to the market.

Q. Okay. And are these usually innovative technologies in the market?

MR. SCHATZ: Object to form.

A. I don't know, it could be. It could be a lot of things. It could be an award for lowering energy usage and these kinds of things.

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BY MR. DIRKS:

Q. Providing something --

A. Among other things. There's lots of -- if you're referring to what I think you are, which is the TLMI awards for sustainability.

Q. Okay. Have you ever been involved in the selection of like who wins the awards?

A. No.

Q. Are you aware generally how they are selected?

MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.

A. No.

BY MR. DIRKS:

Q. Is there value in winning the awards?

MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.

A. I don't know, it depends.

BY MR. DIRKS:

Q. As a vice president of a label manufacturer, do you not have an opinion on whether it would be valuable to the company to have an award?

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MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.

A. I don't know.

BY MR. DIRKS:

Q. Does MCC advertise that it has won awards?

A. Yes.

(Bushman Exhibit 10 was marked for identification.)

BY MR. DIRKS:

Q. You've just been handed Exhibit 10. Do you recognize this document?

A. I don't.

Q. Okay. It refers to the winners of the Sustainability Awards 2024.

Do you see that?

A. Yes.

Q. All right. If you look down just below the picture of it, it says, It's that time of year again. At last night's sold-out awards dinner full of industry leaders, the winners of the Sustainability Awards 2024 -- the Nobel prize for sustainability packaging innovations -- were announced.

Do you see that?

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A. Yes.

Q. If you flip a few pages ahead. This is on page 6, if you look down at the bottom.

A. Yeah.

Q. Do you see down at the bottom half of the page it says, Brook + Whittle took home the trophy in the Recyclable Packaging category for GreenLabel BlockOut.

Do you see that?

A. Yes.

Q. Its APR-recognized recyclable, light-blocking shrink sleeve.

A. Yes.

Q. Okay. Were you aware that Brook + Whittle had won this award?

A. I don't recall.

Q. Were you aware generally that Brook + Whittle had won awards for its GreenLabel BlockOut technology?

A. I don't recall.

Q. And just below that it says, Since coloured PET is considered a low-value resin, GreenLabel BlockOut is designed to enable manufacturers to transition into clear PET without compromising on light-blocking

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performance, right?
A. Yes.
Q. It says, This solution is able to block up to 99 percent of light from 200 nanometers to 900 nanometers, right?
A. Yes.
Q. Just below that it says, At the same time, it achieves a hundred percent sorting rate through the NIR sortation equipment.
Do you see that?
A. Yes.
Q. That's a reference to what we were looking at earlier, the sorting for the Critical Guidance documents, correct?
MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.
A. I don't know.
BY MR. DIRKS:
Q. Would you recognize that? If you were reading this, is that how you would interpret that?
A. I don't know.
Q. You would agree with me that this document, the Sustainability Awards are awarding Brook + Whittle for a product that is

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a recyclable light-blocking shrink sleeve, fair?
MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.
A. It's marketing speak to me, so it's -- broadly.
BY MR. DIRKS:
Q. Okay. But you agreed with me earlier that MCC advertises its awards, correct?
A. Yes.
Q. The market is awarding Brook + Whittle with an award for sustainability for its recyclable light-blocking shrink sleeve technology, fair?
MR. SCHATZ: Objection, beyond the scope of Dr. Bushman's declaration.
A. Okay.
BY MR. DIRKS:
Q. Do you disagree with that award?
A. I don't know what the -- whether or not it deserves the award or not. I wasn't part of this discussion. Is that your question, does it merit an award?
Q. I'm asking you if that is your

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opinion.
A. Somebody thought so.
Q. The Nobel prize for sustainable packaging innovations thought so.
A. Okay.
Q. Okay.
MR. DIRKS: Why don't we take a short break? I think I need to look over my notes.
THE VIDEOGRAPHER: The time is 4:12 p.m. We are going off the record.
(Off the record.)
THE VIDEOGRAPHER: Time is 4:22 p.m. We are back on the record.
BY MR. DIRKS:
Q. Welcome back, Mr. Bushman. During the break, did you have any discussions with counsel about the substance of your testimony?
A. No.
Q. We were -- before the break, we were looking at Exhibit 10, the winners of Sustainability Awards. Did MCC win an award in that 2024 announcement?
A. It looks like we did.
Oh, I misspoke a bit. In the

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Flora -- I recognize the Flora label as being a label that is supplied by the MCC Verstraete.
Q. But that is not a shrink label, correct?
A. Oh, correct.
Q. And that is not the -- MCC was not the winner of that award, correct?
A. Of the -- I don't know what you mean. Of the award that was given to Upfield?
Q. Upfield won the award, correct?
A. Fair, yes.
MR. DIRKS: I have no further questions. And I would just like to lodge an objection to counsel's privilege objections with respect to information provided to Mr. Bushman to form his opinions in this case.
It's unclear if Mr. Bushman is acting as an expert or not, especially now given his role as a consultant to MCC. So to the extent that Counsel's discussions with Mr. Bushman form the basis of his opinions, those are not covered by privilege and we'd lodge an objection.

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MR. SCHATZ: I have some redirect.

REDIRECT EXAMINATION

BY MR. SCHATZ:

Q. Mr. Bushman, I have some questions I want to ask you based upon some of your testimony from Mr. Dirks. Do you recall a discussion with Mr. Dirks about the APR documents? I think the term, informing the meaning of the claim terms was used.

Do you recall that discussion?

A. Yes.

Q. Okay. And do the APR documents that are referred to in the '422 patent, do they provide clarity as to the meaning of the claim term, quote, wherein the recyclable shrink label is recyclable with a PET container, closed quote?

MR. DIRKS: Objection, leading.

A. No.

BY MR. SCHATZ:

Q. Why not?

A. Because the APR documents are among a variety of determination of whether or not something is recyclable. And the APR guidance, specifically, is broad and subjective in terms

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of the meaning of the Critical Guidance recognition.

Q. When you say the APR documents are subjective, can you explain that?

A. So the APR, when it completes a Critical Guidance recognition, it is a determination in front of a board of three people who review the data that is supplied. And those individuals make a decision based on whether or not they are satisfied with the data. And those three people could be coming from a lot of different backgrounds.

I've sat on the board before for making a determination of whether or not something was recyclable. And I had the experience where individuals on the board may not agree completely with the data. So there is a back and forth of whether or not it should be recognized.

Q. I'm sorry. So you have actually had personal experience as a member of the panel that determines whether recognition of APR guidelines has been satisfied?

A. Correct.

MR. DIRKS: Objection, leading.

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BY MR. SCHATZ:

Q. Okay. Tell me about that experience.

A. In the 2015 to 2019 time frame, I was a liaison to APR for Multi-Color, so I was attending APR meetings and one of the things that I was asked to do as a part of the APR meetings was to sit on a panel specifically for an APR recognition process.

Q. And would you consider that APR recognition process subjective as to the individual panel members?

MR. DIRKS: Objection, leading.

A. Oh, sure.

BY MR. SCHATZ:

Q. And why is it subjective?

A. Because they would choose three individuals from -- that would be part of the APR membership in order to sit on the panel. So the choice of who those members could be -- it could be somebody who is -- it -- you don't know who they are. They could be a reclaimer or they could be a label producer like ourselves. It could be any member of the APR.

Q. Do the panel members change?

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A. Yes. Every recognition process, as I understood it, they would choose a new panel to review the data to make a decision.

Q. Okay, I'm going to ask you a few questions about data they review later. But in terms of the data that is reviewed by the three-panel member to consider whether APR guidance recognition is to be provided, is there a set criteria by which the three panel members can determine yes or no to give APR recognition?

MR. DIRKS: Objection, leading.

A. I would say that they -- they would make that decision based on the data. But they would also have their own opinions of whether or not it was recyclable. The example I would use would be a reclaimer who is recycling the products. That reclaimer may follow a different process for reclamation than their competitor from a standpoint of a recycler. So they would come with their own perspective in terms of how they are doing recycling within their own facility. And that's not necessarily how the whole market does it.

BY MR. SCHATZ:

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Q. Given that explanation, let's say you have a panel member who is a given reclaimer evaluating a set of data, and then a different panel, you have a different reclaimer. Depending on their experiences, they may evaluate the data received differently; is that right?
MR. DIRKS: Objection, leading.
A. Absolutely.
BY MR. SCHATZ:
Q. And could that lead to a panel of one group of three granting APR recognition and a different panel not granting APR recognition as to the same data?
MR. DIRKS: Objection, leading.
A. I believe so.
BY MR. SCHATZ:
Q. There was some discussion on cross-examination about a label construction being evaluated for APR recognition. But then in the same discussion there was commentary about a different specific label.
Do you recall that discussion?
A. I'm sorry. Repeat --repeat the --
Q. Well, sure --

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A. I have to find in my head.
Q. Find Exhibit 3.
A. Sure.
Q. So there was a discussion on cross-examination about how in this particular example that is the subject of Multi-Color 1018, that a -- I'll call it -- generic ink system and film was evaluated; is that fair?
A. Yes.
Q. And then there was a discussion about how that might apply to the Gatorade label, which is the subject of your declaration?
A. Sure.
Q. Could you just explain how Exhibit 3 applies to the Gatorade label, even though the Gatorade label, the specific design, was not evaluated?
MR. DIRKS: Objection, leading.
A. Sure. I appreciate your question.
So the generic design used for the recognition that's part of Exhibit 3, 1018, was a general design used to demonstrate the performance for recyclability of the Gatorade label was -- although it was a different

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graphic design, it was completely consistent with the label construction that was part of this recognition, which is what I think I said during my testimony. And so the Gatorade label is completely contained within the merits of this Critical Guidance recognition.
BY MR. SCHATZ:
Q. Would a person of skill in the art understand that the Gatorade label, through Multi-Color 1018, has been granted recognition as meeting the APR guidelines?
MR. DIRKS: Objection as to form.
A. Yes.
BY MR. SCHATZ:
Q. And I note that the date of Multi-Color 1018 is June 13, 2019.
A. Sure.
Q. The Gatorade label that is the subject of your declaration was sold in at least as early as 2020, correct?
A. Of course.
Q. Okay. And you provide in your declaration evidence of substantial quantities of sales of that label in 2020?
MR. DIRKS: Objection as to form.

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A. Correct.
BY MR. SCHATZ:
Q. And explain how the date of Multi-Color 1018, which is June of 2019, is -- applies to the Gatorade label, even though the Gatorade label was sold in substantial quantities in 2020?
MR. DIRKS: Objection to form.
A. Sure. At the time that we began to sell the Gatorade label commercially, we were working with the customer to supply that label. And part of the expectation on their side would be that we would have Critical Guidance to demonstrate that it was recyclable.
So we had to get the recognition completed first. In this case, from this 2019 date. And then the commercialization of a product could take several months or years after you go through the process of that and development. It takes time to commercially put the product in the market.
BY MR. SCHATZ:
Q. So does it make sense to you as a person of skill in the art or a person having at least the skill of a person of skill in the

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art that the Gatorade label was sold after the June 13, 2019, APR recognition?
A. Certainly.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. The APR recognition that is the subject of Multi-Color 1018, that's not a recognition that the label that is the subject of that APR recognition meets the limitation of the '422 patent of wherein a recyclable shrink label is recyclable with a PET container; is that right?
MR. DIRKS: Objection to form, leading.
A. Correct.
BY MR. SCHATZ:
Q. So in other words, by passing or receiving an API -- or APR guidance recognition, your opinion is that doesn't mean it falls within the scope of claim 1 of the '422 patent?
MR. DIRKS: Objection to form.
A. Correct. It means it was recyclable per the APR Critical Guidance test and received recognition.

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BY MR. SCHATZ:
Q. And is that fact true because your opinion is that the claim term wherein the recyclable shrink label is recyclable with a PET container indefinite?
A. Correct.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Turning to your declaration, Multi-Color 1013, as an example you discuss the Gatorade label between paragraphs 53 and 60.
Do you see that?
A. I'm sorry. I'm finding this in this document --
Q. Sure.
A. -- pile here. Fifty-three.
Q. I'm sorry. My question was, you discuss the Gatorade label in paragraphs 53 through 60, correct?
A. Yes.
Q. And this is the Gatorade label that was sold publicly in 2020?
A. Correct.
MR. DIRKS: Objection to form.
A. Correct. In fact, it's an example

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of a label that was put into the market -- this label was one of the quality retains that would have been part of the collection of samples during the time that we were supplying labels into the market.
BY MR. SCHATZ:
Q. And I didn't understand the term quality retains. Does that mean those were examples of the label that the company retained for historical purposes?
A. Correct, correct. During a printing production process, they would collect samples of -- samples during production and in this case you can see from the picture that's in 54, that it would have been from a particular job number. And in this case the press roll would generate what is a WIP, work in progress roll. And from that press roll, it would be split into smaller rolls that would become a set that would be sold to customers. So then traditionally what would happen is you would collect quality retains either at press or at the end of the seamer and those samples would go into a job jacket.
Q. So the Gatorade label that is part

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of your discussion of paragraphs 53 through 60, were the examples of the exact Gatorade label that was sold at least as early 2020?
A. Correct.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Were those same Gatorade labels sent to Dr. Deible for analysis?
A. Yes.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Did you confirm that the Gatorade labels that Dr. Deible analyzed were the Gatorade labels that were sold in 2020?
A. Yes.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Then the Febreze labels are the subject of your declaration, paragraph 61 through 66, correct?
A. Yes.
Q. Okay. And similar questions, the Febreze label, based on your personal knowledge, were sold at least as early as 2018?
A. Correct.

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Q. In substantial quantities?
A. Correct.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. And the labels that are disclosed in your declaration, Febreze labels, are those also retains?
A. Yes.
Q. So the labels that are actually in your declaration are the actual labels that were sold in 2018?
MR. DIRKS: Objection to form.
A. Correct. This was one job number of what would have been sold during 2018.
BY MR. SCHATZ:
Q. Okay. It's an example?
A. An example. And this specific job number is the sample that was provided to Dr. Deible.
Q. Okay. And -- oh, I'm sorry. And you provided these Febreze labels that were sold at least in 2018 to Dr. Deible?
A. Correct.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:

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Q. Did you confirm that Dr. Deible in fact analyzed the Febreze labels that were publicly sold in 2018?
MR. DIRKS: Objection to form.
A. Yes.
BY MR. SCHATZ:
Q. Back to Exhibit Multi-Color 1018, which is Exhibit 3 to your deposition, you're familiar with the APR guidelines, correct?
A. Yes.
Q. Okay. Do the APR guidelines provide any commentary about analyzing a generic label?
A. Yes. They require that you -- they prefer that you would use a generic label as part of your testing for the Critical Guidance. I don't know if it's in the specific document that was provided, but buried in one of the many documents, there would have been a design recommendation for use cyan, magenta, yellow, black, generic grid pattern, as part of the test map.
Q. Okay. So would it have been typical or atypical for a company like Multi-Color to submit for APR recognition an actual commercially sold label like the Gatorade

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label?
MR. DIRKS: Objection to form.
A. It would be not typical because the -- if you use the specific Gatorade label, for example, then it may not meet the requirements of having a variety of different inks, substantially the same amount of yellow and magenta and cyan and that could be impactful to some of the test methods.
As an example, the red inks are quite common to be coming off in the wash bath as -- into the -- disperse into the water. And so the reason for a generic print design is so that you make sure you test all the potential for inks that might be on there, without requiring that you test every ink, if that makes sense. It's within reason.
BY MR. SCHATZ:
Q. Next I want to turn to paragraph 53 of your declaration. There was some discussion during cross-examination about the last sentence of paragraph 53, specifically which I'll read, quote, Based on my experience with this label -- that is referring to the Gatorade label.

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A. Yes.
Q. -- 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 incorporates PET that is crystallizable, closed quote.
Do you recall that discussion on cross-examination?
A. Yes.
Q. Okay. And then there was a reference to Multi-Color Exhibit 1017, which is Exhibit 2 to your deposition.
A. Yes.
Q. So your reference to patent owner, is that a reference to Brook + Whittle?
A. It actually is in this case.
Q. In connection with Exhibit Multi-Color 1017, why do you state that there has been confirmation of those in this industry, including patent owner, that the heat shrink film of the Gatorade label incorporates PET that is crystallizable?
MR. DIRKS: Objection to form.
A. It goes to the comment that crystallizable PET is maybe a distinct term.

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And so I wanted to make sure that it was clear that the patent owner understands that the SKC film is a crystallizable PET film, and that that was -- choice of a crystallizable PET film was specific.
BY MR. SCHATZ:
Q. Okay. The -- there is a reference in Exhibit Multi-Color 1017 -- first of all, is Exhibit Multi-Color 1017 a Brook + Whittle document?
A. Yes, it's actually a website page from the Brook + Whittle website.
Q. Okay. And there is a reference in Multi-Color 1017 to the SKC Ecolabel.
A. Correct.
Q. Okay. Is that the same SKC Ecolabel used in connection with the Gatorade label that was sold at least as early as 2020?
A. Yes.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Okay. So is it your belief that Brook + Whittle is kind of admitting that the SKC Ecolabel is a crystallizable PET shrink film?

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MR. DIRKS: Objection to form.
A. I would say they declare it in their website.
BY MR. SCHATZ:
Q. There was also discussion on cross-examination about Multi-Color marketing its labels as recyclable.
Do you recall that?
A. Yes.
Q. And are you familiar with Multi-Color's labels?
A. Yes.
Q. Personal experience from more than 17 years, I think you said?
MR. DIRKS: Objection to form.
A. Yeah.
BY MR. SCHATZ:
Q. And is the -- well, does Multi-Color market some of its labels as recyclable?
A. Yes.
Q. Is that a recognition by Multi-Color is that the subject label that's being marketed as recyclable has received APR recognition?
MR. DIRKS: Objection to form.
A. No. I don't understand your question.
BY MR. SCHATZ:
Q. Sure. No problem. Multi-Color has made a choice to market some of its labels as recyclable; is that fair?
A. Yes, yes.
Q. Is that because -- is the term recyclable by Multi-Color in that context done because APR recognition has been obtained?
MR. DIRKS: Objection to form.
A. In some cases, yes.
BY MR. SCHATZ:
Q. But is Multi-Color in your experience suggesting that recyclable is a definite term?
MR. DIRKS: Objection to form.
A. No.
BY MR. SCHATZ:
Q. And why not?
A. Because the APR Critical Guidance test is a good reference for determining whether or not it's recyclable within the -- within the -- whether or not it's recyclable, but the APR itself doesn't have clear -- it's not a clear standard for how the method is written.

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Q. On cross-examination there was also some discussion about Exhibit 7, which is Multi-Color Exhibit 1005. If you could pull that out, please.
A. Yes, I have it.
Q. I first want to direct your attention to page 5.
A. Yes.
Q. There's a statement after the safety statement --
A. Uh-huh.
Q. -- that says, quote, The process steps below can be conducted with reference to the PET-P-00: PET Standard Laboratory Practices, PET-P-01 through PET-P-08, and the flow diagram in Appendix I.
Do you see that?
A. Yes.
Q. That statement is found in the version of this document dated April 11, 2019, correct?
A. Yes.
Q. And as a person -- as a person of skill in the art, does this inform you -- or

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the comment that the process steps below can be conducted, does that inform a person of skill in the art whether the process steps listed below must be conducted to obtain APR recognition?

A. No, it's one of the issues of the APR test method. It's not a standard. It's a guideline for how to conduct the test. And there is -- there is potential for interpretation of how to conduct these tests.

MR. DIRKS: Objection to form.

BY MR. SCHATZ:

Q. Does a person of skill in the art understand then definitively whether these process steps have to be conducted to obtain APR recognition?

MR. DIRKS: Objection to form.

A. I would say, no, they -- they would expect that this is guidance for how to conduct the test, but not a mandate for each specific step.

BY MR. SCHATZ:

Q. Could some persons of skill in the art understand the -- that this comment that the process steps below can be conducted

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would --

A. They may not be conducted.

Q. -- could -- okay. Could a person of skill in the art interpret that to mean they need to be conducted to obtain APR recognition?

MR. DIRKS: Objection to form.

A. Could a person -- could you repeat that? I apologize.

BY MR. SCHATZ:

Q. Sure. I'm trying to understand if there is a potential disagreement with persons of skill in the art about how to interpret this document.

MR. DIRKS: Objection to form.

A. Yeah.

BY MR. SCHATZ:

Q. Okay. So I think you said some persons of skill in the art may read this and understand that the process steps are not required to be undertaken to get APR recognition; is that fair?

A. Correct.

Q. Okay.

MR. DIRKS: Objection to form.

BY MR. SCHATZ:

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Q. As a person of skill in the art or someone exceeding the level of skill in the art, could a POSITA interpret this to mean that in fact these process steps must be complied with in order to get APR recognition?

MR. DIRKS: Objection to form.

A. No.

BY MR. SCHATZ:

Q. Okay. Could a person of skill in the art understand that performing these steps might improve ones chances to get APR recognition?

MR. DIRKS: Objection to form.

A. Yes.

BY MR. SCHATZ:

Q. Why so?

A. Because they would anticipate that they're likely to have an outcome that would be beneficial in terms of providing data to the panel, but that's it.

Q. Next page 7 of the same document. There is a table regarding wash and elutriation evaluations. Do you see that?

A. Yes.

Q. You're familiar with this document,

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correct?

A. Yes.

Q. You are familiar with the table regarding wash and elutriation evaluations?

A. Yes.

Q. And there is a section of the table that indicates optional values.

Do you see that?

A. Yes.

Q. Is that confusing to a person of skill in the art?

A. It absolutely is.

MR. DIRKS: Objection to form.

BY MR. SCHATZ:

Q. How so?

A. Because they are not mandated but they are requested as part of the test method. So you don't know if they -- the example I would use would be there is a preference to do this test. And based on those results you could get a -- let's say I'll call it a good answer on something in an optional test, but it wouldn't necessarily be part of what the final outcome was in terms of recyclability. And so how much weight do you give to the optional

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test?
Q. Is that known, how much weight to give to the optional tests?
MR. DIRKS: Objection to form.
A. No.
BY MR. SCHATZ:
Q. So a particular three-member panel might give substantial weight to the optional values listed on page 7?
MR. DIRKS: Objection to form.
A. Correct.
BY MR. SCHATZ:
Q. And that might lead them to give APR recognition?
MR. DIRKS: Objection to form.
A. Correct.
BY MR. SCHATZ:
Q. Would a panel consisting of different members come to a different conclusion based on the same data?
MR. DIRKS: Objection to form, speculation.
A. Possibly.
BY MR. SCHATZ:
Q. Why is that?

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A. Because they -- especially if it includes a panel member that is a reclaimer, they may be conducting -- in their reclamation process, it may be more important to have the values that are optional in this case that are important to them.
And so in the specific instance, Byron Geiger, who is a reclaimer, may not have as much concern about flake color because of his specific recycling process. And that may not be true for another reclaimer.
Q. Let's talk about flake color then. The retention of color from inks on flakes, that is a consideration by the APR, right?
MR. DIRKS: Objection to form.
A. Yeah.
BY MR. SCHATZ:
Q. Is there an amount -- I'm sorry. Did you use the word coloration?
A. Discoloration.
Q. Discoloration. I'm sorry.
Is there a specific amount of discoloration that is the subject of the APR guidelines?
MR. DIRKS: Objection to form.

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A. It's unclear because the amount of discoloration that they accept is -- in the case of flake color, for example, they -- they know that there is the potential for some discoloration, so much is too much is kind of the fine line that you walk when you go through the reclamation process because there's lots of features -- factors that could impact that flake color.
So discoloration in particular could be a concern. I think a more interesting example would be there are parts of the guidelines where they talk specifically about wash water discoloration. That is to say the ink is coming off of a label in the example of a shrink sleeve where the ink is designed to come off in some cases. And the concern is that the wash water discolors as a result of that ink. And then that leads to concerns about is it going to discolor the PET. And it's an open question about how much is too much discoloration of the wash water.
BY MR. SCHATZ:
Q. So is there a set standard of water discoloration that will definitively allow for

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APR recognition?
MR. DIRKS: Objection to form.
A. No. And it's been an open topic for many years because the wash water itself is only one factor, but it -- the perception by some of the reclaimers is that wash water is a bigger concern for them because they don't like to have to deal with that discoloration of the wash water.
So as a result for certain reclaimers that have wash water that may get more discoloration, that could be a problem for them. But if the reclaimer has water treatment capability, then it's less of a problem. So that makes a big difference in terms of how they might interpret the data.
BY MR. SCHATZ:
Q. And like whether to offer APR recognition?
MR. DIRKS: Objection to form.
A. Correct.
BY MR. SCHATZ:
Q. On cross-examination there was a discussion about the flow chart on page 10. Specifically, there was discussion about the

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wash PET-P-04 category. Do you see that?
A. Yes.
Q. Or step I should say.
Just explain what is happening at this stage of the process.
A. In the case for a PET article with, let's say, a label that was attached to it, the PET at this point granulated flake would go into a caustic bath. And there is really two outcomes for labels that might go into that caustic bath. One outcome could be that the label separates and floats. And in the case of a floating label, the preference would be that the ink stay on that label.
In the case of a sinking label, there is some preference that the ink would separate from that sinking label.
Q. Okay. So in the first option you discussed, the label may be removed from the container, correct?
A. Correct. This is especially true for pressure-sensitive labels where the label has an adhesive that bonds the label to the container.
Q. Okay.

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A. It could be true for wraparound labels where the label has a small amount of adhesive to hold the label to the container and that adhesive also separates. So in the caustic bath, that label, if it's a floatable label, it may float to the surface if it separates from the PET.
Q. Okay. So that label that is removed from the container, that label could still get APR recognition?
A. Oh, absolutely.
MR. DIRKS: Objection to form.
A. The example would be in the Multi-Color world pressure-sensitive labels that are designed to separate in the wash bath and float. Those are recyclable.
BY MR. SCHATZ:
Q. So Exhibit Multi-Color 1005, does have application to labels that are removed from the container during the recyclability process?
A. Yes, absolutely.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. There was a discussion again on

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page 10 in lower left-hand corner about the required evaluations. You see the plaque color, haze, and inclusions?
Do you see that?
A. Yes.
Q. You're familiar with that?
A. Yes.
Q. And is there a definitive amount of plaque color that is required to obtain APR recognition?
MR. DIRKS: Objection to form.
A. There are recommendations for preferred to stay below, yes.
BY MR. SCHATZ:
Q. Okay. But there are some plaque colors that are interpreted subjectively by the panel?
A. Yes.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. And tell me about that process, how that is a subjective evaluation?
A. So it's a visual test where plaques -- usually in the way that a test like this would be conducted, they would mold

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plaques and there is a sample of -- usually you would see a control sample next to the -- we'll call it the innovation in this case. That is the word that they would use. But it could be the test condition, which includes a label, let's say. And the side by side would be, here is the control, here is the test.
Do you accept that this is not too much discoloration so then accept -- accept that it's recyclable. A visual -- it's a visual check. So that's where it's subjective.
Q. So it's literally in the eye of the beholder?
MR. DIRKS: Objection to form.
A. Yes.
BY MR. SCHATZ:
Q. Similar comments about pellet discoloration on the right hand of the flow chart. Is the evaluation for pellet discoloration undertaken by the three-panel member just by visual inspection?
A. Visual, that's correct.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. And is that objective or subjective?

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A. It's subjective.
Q. There was some discussion on cross-examination about the manner in which the APR obtains data to be evaluated.
Do you recall that?
A. Specifically how they obtain the APR, you mean from the standpoint of a third party?
Q. Yes.
A. Yes.
Q. It's not the label manufacturer that is providing the data?
A. Most commonly, no.
MR. DIRKS: Objection.
A. It's usually a third-party laboratory that is conducting the testing.
MR. DIRKS: Objection to form.
BY MR. SCHATZ:
Q. Okay. Is there -- does APR guidelines instruct that only a single third-party tester can be used?
MR. DIRKS: Objection to form.
A. No, they would accept a third-party tester. In the United States there are two, at least, that are quite commonly used. One is

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Plastics Forming Enterprises, and the other is PCI, which I don't remember what that letter combination means. But it's a third-party tester.
BY MR. SCHATZ:
Q. Do those two third-party testers undertake the exact same processes to obtain data for submission to the APR?
MR. DIRKS: Objection to form.
A. I'm sure they take direction from the APR Critical Guidance or the test method. But I don't have experience with all of them. I traditionally am speaking to the one which is Plastics Forming Enterprises.
BY MR. SCHATZ:
Q. You can't say the two have the exact same testing protocols?
MR. DIRKS: Objection to form.
A. No.
MR. SCHATZ: That ends my redirect.
RECROSS-EXAMINATION
BY MR. DIRKS:
Q. Just a couple questions here. Can you turn to Exhibit 1017?
A. Yeah.

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Q. No mention of Gatorade in this article, correct?
A. Correct.
Q. Turn to Exhibit 1018, please. Similarly, no mention of Gatorade in this article, correct?
A. Correct.
Q. With respect to 1018, your counsel asked you a few questions about the generic testing that was performed or that is generally performed with APR certification, correct?
A. Yes.
Q. You testified that the label -- generic label testing for the purposes of getting APR recognition involves using a variety of inks on the label that might be used, correct?
A. Sure.
Q. You said magenta, cyan, blue?
A. Black. Yeah, magenta, cyan, yellow, and black.
Q. Those --
A. White.
Q. And those are the colors that are usually used to show --

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A. Typically, yes.
MR. DIRKS: Nothing further from me.
MR. SCHATZ: Great.
THE VIDEOGRAPHER: Time is 5:16 p.m. This concludes the deposition.

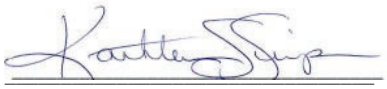
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- - -

C E R T I F I C A T E

STATE OF OHIO :
: SS
COUNTY OF CLERMONT :

I, Kathy S. Simpson, RPR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do certify that before the giving of his deposition, A. CRAIG BUSHMAN, was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by A. CRAIG BUSHMAN; that I am neither a relative of nor employee of any of the parties or their counsel, and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this 20th day of November, 2025.



Kathy S. Simpson, RPR
Notary Public - State of Ohio
My commission expires March 21, 2027

Case: Multi Color Corporation vs Brook & Whittle Limited
Witness Name: A. Craig Bushman
Deposition Date: 11/18/2025

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Deposition Date: 11/18/2025
I do hereby acknowledge that I have read and examined the foregoing pages of the transcript of my deposition and that:
(Check appropriate box):
( ) The same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.
( ) Except for the changes noted in the attached Errata Sheet, the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

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Errata Sheet

NAME OF CASE: Multi Color Corporation vs Brook & Whittle Limited
DATE OF DEPOSITION: 11/18/2025
NAME OF WITNESS: A. Craig Bushman
Reason Codes: 1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____
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A. CRAIG BUSHMAN

Exhibits

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