

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

- - - -

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

VIDEOTAPED DEPOSITION OF:
DR. MICHEAL DEIBLE

DEPOSITION DATE:
December 2, 2025
Tuesday, 8:33 a.m.

PARTY TAKING DEPOSITION:
Patent Owner

COUNSEL OF RECORD FOR
THIS PARTY:
Tera Jo Stone, Esq.
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue,
N.W.
Washington, D.C. 20004

REPORTED BY:
Anna Cillo
Notary Public
Reference No. DEG00174338

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<p>1 VIDEOTAPED DEPOSITION OF DR. MICHEAL 2 DEIBLE, a witness, called by the Patent Owner for 3 examination, in accordance with the Patent and 4 Trademark Office Procedure, taken by and before Anna 5 Cillo, a Court Reporter and Notary Public in and for 6 the Commonwealth of Pennsylvania, at the offices of 7 RJ Lee Group, 800 Presque Isle Drive, Pittsburgh, 8 Pennsylvania, on Tuesday, December 2, 2025, 9 commencing at 8:33 a.m. 10 - - - - 11 12 APPEARANCES: 13 14 FOR THE PETITIONER: 15 Brett A. Schatz, Esq. 16 bschatz@whe-law.com 17 WOOD, HERRON & EVANS LLP 18 600 Vine Street 19 Suite 2800 20 Cincinnati, Ohio 45202 21 513-548-5310 22 23 FOR THE PATENT OWNER: 24 Tera Jo Stone, Esq. 25 tera.stone@kirkland.com KIRKLAND & ELLIS LLP 1301 Pennsylvania Avenue, N.W. Washington, D.C. 20004 202-389-5000 ALSO PRESENT: Matt Martin, Videographer Brad Copel, Videographer</p>	<p>1 EXHIBIT INDEX 2 3 MAR 4 Dr. Deible 5 1 Patent Owner's Preliminary Response, 28 Patent No. 11,961,422 6 7 2 Paper 1414 of PGR 2025-0025, Patent No. 49 11,961,422 8 3 Multi-Color 1018 56 9 4 Multi-Color 1016 59 10 5 Multi-Color 1019 61 11 6 Multi-Color 1014 77 12 7 Multi-Color 1032 78 13 8 Multi-Color 1005 81 14 9 Multi-Color 1027 93 15 10 PET-S-09 97 16 11 Multi-Color 1001 103 17 12 Multi-Color 1002 109 18 13 Multi-Color 1012 251 19 14 Multi-Color 1013 257 20 21 22 23 24 25</p>
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<p>1 EXAMINATION INDEX 2 3 DR. MICHEAL DEIBLE 4 BY MS. STONE 6 5 6 CERTIFICATE OF COURT REPORTER - - - - - 260 7 ERRATA SHEET - - - - - 261 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 - - - - 2 PROCEEDINGS 3 - - - - 4 VIDEOGRAPHER: We are now on the 5 record. My name Brad Copel, the videographer 6 for Digital Evidence Group. 7 Today is Tuesday, December 2nd, 8 2025, the time is 8:33 a.m. We're located at 9 800 Presque Isle Drive, Pittsburgh, 10 Pennsylvania 15239. 11 The deponent is Dr. Michael Deible. 12 This case is listed in the United States 13 Patent & Trademark Office, Case No. PGR 14 2025-00025. We have Multi-Color Corporation 15 versus Brook & Whittle, limited. 16 Counsel, please identify yourselves 17 for the record. 18 MS. STONE: Tera Stone, of Kirkland 19 & Ellis, on behalf of Brook & Whittle. 20 MR. SCHATZ: Brett Schatz, for 21 petitioner. 22 VIDEOGRAPHER: The court reporter 23 will now swear in the witness. 24 - - - - 25 (The witness was sworn.)</p>

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<p>1 - - - -</p> <p>2 VIDEOGRAPHER: Please proceed.</p> <p>3 - - - -</p> <p>4 DR. MICHEAL DEIBLE,</p> <p>5 having been duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7 - - - -</p> <p>8 EXAMINATION</p> <p>9 - - - -</p> <p>10 BY MS. STONE:</p> <p>11 Q. Good morning, could you please introduce</p> <p>12 yourself for the record?</p> <p>13 A. My name is Dr. Michael Deible.</p> <p>14 Q. And you understand you're here to gave</p> <p>15 deposition in a matter related to a post grant</p> <p>16 review pending in the Patent and Trademark</p> <p>17 Office, right?</p> <p>18 A. Yes.</p> <p>19 Q. And you are giving a deposition on behalf of</p> <p>20 Multi-Color Corporation, right?</p> <p>21 A. Yes.</p> <p>22 Q. If we refer to them as MCC today, or</p> <p>23 petitioner, will you know who I'm referring</p> <p>24 to?</p> <p>25 A. Yes.</p>	<p>1 Q. And do you understand that you're testifying</p> <p>2 under oath today?</p> <p>3 A. Yes.</p> <p>4 Q. Is there any reason you cannot provide</p> <p>5 truthful and accurate testimony today?</p> <p>6 A. No.</p> <p>7 Q. We're going to be discussing U.S. patent No.</p> <p>8 11,961,422 today, is it okay if we refer to</p> <p>9 that as the '422 patent?</p> <p>10 A. Yes.</p> <p>11 Q. And then the other party in this case is Brook</p> <p>12 & Whittle, will you understand if we refer to</p> <p>13 that as the patent owner today?</p> <p>14 A. Yes.</p> <p>15 Q. You're currently a principle investigator at</p> <p>16 RJ Lee Group, correct?</p> <p>17 A. Yes.</p> <p>18 Q. How long have you been in that position?</p> <p>19 A. I think it's been two years, I have to</p> <p>20 reference my CV which is a part of my</p> <p>21 declaration, but specifically I believe it's</p> <p>22 about two years.</p> <p>23 Q. And about how long have you been at RJ Lee</p> <p>24 Group generally?</p> <p>25 A. I started with RJ Lee Group September 11th,</p>
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<p>1 Q. And you understand that there's a court</p> <p>2 reporter in attendance that is going to be</p> <p>3 recording everything we both say?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And can we try our best today to not</p> <p>6 talk over each other for the sake of the court</p> <p>7 reporter?</p> <p>8 A. Yes.</p> <p>9 Q. There's a videographer that is going to be</p> <p>10 video recording everything happening today.</p> <p>11 A. Yes.</p> <p>12 Q. Will you let me know if you don't understand a</p> <p>13 question that I ask?</p> <p>14 A. Yeah.</p> <p>15 Q. And so to the extent that you answer a</p> <p>16 question I can assume that you've understood</p> <p>17 it?</p> <p>18 A. Yes.</p> <p>19 Q. Your counsel may object from time to time,</p> <p>20 which is a formality in these proceedings.</p> <p>21 Unless your counsel instructs you specifically</p> <p>22 not to answer a question, do you understand</p> <p>23 you need to answer the questions that I'm</p> <p>24 asking today?</p> <p>25 A. Yes.</p>	<p>1 2017.</p> <p>2 Q. What services does RJ Lee Group offer?</p> <p>3 A. Surfaces?</p> <p>4 Q. Yeah, just generally, what is the business of</p> <p>5 RJ Lee Group.</p> <p>6 A. Services would be -- yeah. We are a</p> <p>7 material's characterization and analytical</p> <p>8 laboratory and consulting firm.</p> <p>9 Q. Okay. And specifically what do you do, within</p> <p>10 your role?</p> <p>11 A. My role as a principle investigator is</p> <p>12 multi-faceted. I do several different things,</p> <p>13 primarily materials characterization and</p> <p>14 analysis, experimental design, things of that</p> <p>15 nature.</p> <p>16 Q. Do those services typically relate to</p> <p>17 litigation?</p> <p>18 A. From time to time, projects that I work on can</p> <p>19 be related to litigation, yes.</p> <p>20 Q. Okay. About what percentage of your work is</p> <p>21 related to litigation?</p> <p>22 A. In my current role as a principle</p> <p>23 investigator, I would say somewhere between 30</p> <p>24 to 50 percent of my time is spent on</p> <p>25 litigation related matters.</p>

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<p>1 Q. Okay. And are those predominantly patent 2 litigation matters or do they also relate to 3 other types of litigation? 4 A. They relate to various types of litigation. 5 Q. Can you give me some examples of the other 6 types of litigation that you have consulted 7 for? 8 A. Some of the other litigation I have consulted 9 for would be things like environmental 10 contamination. There is some patent work 11 obviously. There is some work related to 12 failure analysis. 13 Q. Okay. And so you said that your primarily 14 consulting related to materials 15 characterization, is that -- just so I make 16 sure I understand -- is that running some sort 17 of analytical test in order to determine what 18 type of material is in a particular project? 19 MR. SCHATZ: Object to form. 20 A. That can be a part of it, running analytical 21 characterization to understand the materials 22 at question. It can be everything from 23 running the tests to overseeing tests and 24 analyzing data. Understanding the situations 25 of the materials and the client needs a little</p>	<p>1 tasks if we ask them to, for instance, running 2 instrumentation at my discretion, assisting 3 with tasks in terms of setting up experiments, 4 again at my discretion. Some of those staff 5 may report to me, may report to others, umm, 6 we're a bit flexible. 7 Q. For this litigation, related to the testing 8 that you performed on the Gatorade label and 9 the Febreze label, were there any other 10 individuals that were involved in that 11 testing? 12 A. The only other individuals involved in the 13 testing would have been technicians that 14 worked at my discretion. 15 Q. Do you know those technicians names? 16 A. I'll be honest, I don't recall specifically. 17 We may be able to reference something, but 18 specifically, you know, like I said, we're a 19 bit flexible in who we can pull to run certain 20 things or help with certain things. So I 21 don't think I recall specifically who would 22 have done some of the other tasks. 23 Primarily I did most of the work on this, 24 or oversaw all of the work. So the specific 25 technicians or analysts that were involved, I</p>
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<p>1 bit better -- wide range of things. 2 - - - - 3 (Court reporter interruption.) 4 - - - - 5 MS. STONE: Yes? 6 - - - - 7 (Court reporter clarification, witness is very 8 quiet.) 9 - - - - 10 THE WITNESS: Oh, sorry. 11 BY MS. STONE: 12 Q. Do you have any employees? 13 A. I -- I don't understand the question. 14 Q. Do you have any employees that report 15 specifically to you? 16 MR. SCHATZ: Object to form. 17 A. There are employees who -- yes, I think do 18 report to me, yeah. 19 BY MS. STONE: 20 Q. So for example in this litigation, if you're 21 staffing a matter, do you have investigators 22 that would help you perform tests or set up 23 experiments, things like that, that would then 24 report up to you as a principle investigator? 25 A. There are staff that will perform various</p>	<p>1 don't recall. 2 Q. When you say that you did most of the work or 3 oversaw all of the work, were you physically 4 present for all of the testing that was 5 performed in relation to this matter? 6 A. Yes. 7 Q. Are you a named inventor on any patents? 8 A. No. 9 Q. When did you first -- or do you recall when 10 you first began offering opinions regarding 11 the validity of patents? 12 MR. SCHATZ: Object to form. 13 A. I don't know that I recall specifically. 14 BY MS. STONE: 15 Q. Have you offered any opinions in the past 16 regarding the validity of a patent? 17 A. Not that I can think of as I sit here today. 18 Q. I think you mention that you've done 19 consulting work related to other patent 20 litigation, do you recall, at a very high 21 level, what your opinions related to in those 22 cases? 23 A. Well, again, at a very high level, I would say 24 that -- that was generally related to things 25 similar to this case in terms of, there was</p>

<p style="text-align: right;">Page 14</p> <p>1 analytical testing that was done, and we, you 2 know, analyzed those results and offered 3 opinions consulting on those tests that were 4 run. 5 Q. Okay. So I just want to make sure I'm 6 understanding you correctly. So historically 7 when you've been involved in patent litigation 8 were you more in the role of a testing expert 9 that then your testing would then be relied on 10 maybe by a separate expert that had the 11 ultimate opinion on either infringement or 12 invalidity, is that fair? 13 MR. SCHATZ: Object to form. 14 A. I would say that -- that is an option, right, 15 so we've done testing related to these things. 16 We've also offered opinions on other people's 17 testing occasionally. And of course opinions 18 on our own testing. So there's kind of -- 19 kind of a range of things that can -- kind of 20 a range of ways that work can go. 21 BY MS. STONE: 22 Q. Approximately how many times have you been 23 retained as an expert witness in litigation? 24 A. I don't -- I don't think I know the exact 25 number.</p>	<p style="text-align: right;">Page 16</p> <p>1 matter. I was commenting on the testing that 2 was previously done by a different party. And 3 they were trying to say if two materials 4 matched, and we were offering opinions on 5 whether or not the data showed that the two 6 materials matched. It was a cementitious 7 material. 8 Q. And the nature of the material, you were not 9 offering any opinions on whether or not that 10 material was recyclable? 11 A. In that particular matter, no. 12 Q. Have you ever provided an opinion that any 13 material was recyclable? 14 A. Can you maybe elucidate that a little bit 15 more, what do you mean by recyclable? 16 Q. Sure. As an expert that has been retained in 17 litigation, have you ever provided an opinion 18 about the recyclability in whatever context 19 that material was? 20 MR. SCHATZ: Object to form. 21 A. No. 22 BY MS. STONE: 23 Q. In your other consulting work, or within your 24 career, have you ever provided an opinion 25 about the recyclability of a material?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. Do you have an estimate, you know, 10, 2 20, 50, somewhere in any of those ranges? 3 A. Sure. I would say between five and ten. 4 Q. And have you provided either an expert report 5 or an expert declaration in each of those 6 cases? 7 A. Not always, that's not always necessarily the 8 case. 9 Q. How many times have you testified in a 10 deposition? 11 A. Once before today. 12 Q. Have you ever testified at a trial? 13 A. No. 14 Q. Do you recall what the issue was in the case 15 where you were deposed? 16 A. There was some testing work that was done 17 previously that our client asked us to offer 18 opinions on someone else's data. 19 Q. At a very high level, do you recall what the 20 technology was in that case? 21 A. So there was S-E-M work, SEMEDS, there was 22 FTIR, and there was TGA analysis done? 23 Q. Do you recall what the -- either the product 24 or the material was that you were testing? 25 A. So I, again, didn't do the testing in that</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Say that again? 2 Q. Sure. So in my prior question I was asking 3 you about, as an expert, if you provided an 4 expert opinion -- I'm going broader with this 5 question -- so have you ever provided an 6 opinion about the recyclability of a material 7 within your consulting work? 8 A. When you say "opinion," what does that mean? 9 Q. Sure. So my assumption -- and maybe there is 10 an assumption built into my question -- is 11 that as a consultant you're hired by a client 12 to give them some sort of information, and 13 then you would either provide that information 14 in some sort of written product or email or 15 maybe a a phone call. I would consider that 16 report on your work, whatever form that may 17 take, as an opinion. 18 Does that make sense? 19 A. It makes sense how you're using the term. 20 Q. Okay. Do you prefer to use a different term, 21 what would you call your written work product 22 in your consulting work? 23 A. Well, it depends on the work product. In a 24 commercial consulting type role where someone 25 had a product that they had questions on, I</p>

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<p>1 wouldn't offer that as an opinion, maybe a</p> <p>2 data analysis, consulting, those types of</p> <p>3 things. Opinion I reserve for litigation</p> <p>4 matters.</p> <p>5 Q. Okay. I'll rephrase my question. Have you</p> <p>6 ever been hired by a client as part of your</p> <p>7 consulting work to provide an analysis of</p> <p>8 whether or not a particular material was</p> <p>9 recyclable?</p> <p>10 A. As a minor point I would say that I don't</p> <p>11 typically get hired by clients, the company</p> <p>12 does.</p> <p>13 Q. Okay.</p> <p>14 A. However, I would say that in my eight years of</p> <p>15 work at RJ Lee Group, we have done projects</p> <p>16 related to reuse of materials.</p> <p>17 Q. What do you mean by reuse of materials?</p> <p>18 A. So in particular, in the world of polymers,</p> <p>19 whether a type of polymer could be reused for</p> <p>20 -- as a separate application.</p> <p>21 Q. And in your prior answer you qualified that by</p> <p>22 saying that RJ Lee Group gets hired and that</p> <p>23 we have done projects, what was your personal</p> <p>24 involvement or role on any project related to</p> <p>25 the reuse of materials?</p>	<p>1 A. Again, same answer as before.</p> <p>2 Q. Okay.</p> <p>3 A. You know, analytical work, reviewing of data,</p> <p>4 assisting technical lead, et cetera.</p> <p>5 Q. Is there one specific case you're thinking of</p> <p>6 -- strike that.</p> <p>7 Is there one particular project that</p> <p>8 you're thinking of that you had that role</p> <p>9 related to the reuse of materials or was it</p> <p>10 multiple?</p> <p>11 A. There have been multiple projects like that.</p> <p>12 Q. Okay. In those cases related to the reuse of</p> <p>13 materials did you evaluate any sort of</p> <p>14 guidance regarding the reuse of that material?</p> <p>15 MR. SCHATZ: Object to form.</p> <p>16 A. Yeah, I'm afraid I don't understand the</p> <p>17 question --</p> <p>18 BY MS. STONE:</p> <p>19 Q. Sure. Maybe I can revise my question.</p> <p>20 Prior to this case, had you ever reviewed</p> <p>21 any APR guidance, like the ones that are cited</p> <p>22 in your declaration in this case?</p> <p>23 A. I don't recall having done that in the past.</p> <p>24 But industry standards are commonplace for us,</p> <p>25 so I don't recall APR specifically.</p>
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<p>1 A. Sure. So in projects of that nature there's</p> <p>2 typically a project lead or a technical lead.</p> <p>3 I could have been in that role, which would be</p> <p>4 everything from, you know, discussing the</p> <p>5 projects with the client to setting up the</p> <p>6 experiments and the testing, reviewing the</p> <p>7 data, reporting to the client.</p> <p>8 In projects like that where I haven't</p> <p>9 been the technical lead I've worked with</p> <p>10 colleagues to help them in those same tasks,</p> <p>11 so setting up testing, running some analysis,</p> <p>12 reviewing analytical work, interpreting that</p> <p>13 data, those kinds of things.</p> <p>14 Q. Okay. So I just want to clarify one thing in</p> <p>15 your prior answer, you said I could have been</p> <p>16 in the technical lead role. Do you recall any</p> <p>17 instance where you were the technical lead on</p> <p>18 a project related to the reuse of materials?</p> <p>19 A. No.</p> <p>20 Q. Okay. Do you recall any specific instances</p> <p>21 where you were involved in a project related</p> <p>22 to the reuse of materials?</p> <p>23 A. Yes.</p> <p>24 Q. What was your role and -- what was your role</p> <p>25 in that case?</p>	<p>1 Q. Do you recall if there was any sort of</p> <p>2 industry guidance or industry standard that</p> <p>3 you were applying in the prior cases that you</p> <p>4 recall that you personally worked on related</p> <p>5 to the reuse of materials?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 A. I don't recall.</p> <p>8 BY MS. STONE:</p> <p>9 Q. Have you ever consulted for MCC before?</p> <p>10 A. Personally?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Are you aware whether or not RJ Lee Group has</p> <p>14 consulted with MCC before?</p> <p>15 A. I believe that MCC has worked with RJ Lee</p> <p>16 Group in the past, possibly before my time but</p> <p>17 I'm -- I'm not really super sure.</p> <p>18 Q. Has any of your previous expert opinions --</p> <p>19 strike that.</p> <p>20 Have any of your previous expert opinions</p> <p>21 been excluded for any reason?</p> <p>22 A. No.</p> <p>23 Q. When were you first informed about this</p> <p>24 litigation?</p> <p>25 A. We were originally retained in the fall of</p>

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<p>1 2024.</p> <p>2 Q. Approximately how much time have you spent</p> <p>3 working on this litigation in the last --</p> <p>4 since you've been retained?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Okay. Do you have an estimate of</p> <p>7 approximately how many you've billed to MCC</p> <p>8 for this litigation?</p> <p>9 A. No, I know that that's handled by our project</p> <p>10 coordinator, so I don't typically get involved</p> <p>11 in that.</p> <p>12 Q. Prior to being retained in this case, had you</p> <p>13 ever heard of MCC the company?</p> <p>14 A. No.</p> <p>15 Q. And when you were retained, were you</p> <p>16 specifically retained or was RJ Lee Group</p> <p>17 retained to perform the work in this case?</p> <p>18 A. You know, I don't remember exactly what the</p> <p>19 retention letter says on it. Typically it's</p> <p>20 run through our company. I think that my name</p> <p>21 is in there, but I don't think I know exactly</p> <p>22 how that works.</p> <p>23 Q. Okay. Prior to being retained in this case,</p> <p>24 had you ever heard of Brook & Whittle?</p> <p>25 A. No.</p>	<p>1 BY MS. STONE:</p> <p>2 Q. Approximately how much of your time would you</p> <p>3 say you spend on recycling?</p> <p>4 A. Right. Umm, so that would be -- well, let me</p> <p>5 back that up and say that; we work on various</p> <p>6 projects, so that would be project dependant,</p> <p>7 if a project was related to recycling or not.</p> <p>8 Q. Prior to being retained in this case, for the</p> <p>9 five years before that, approximately what</p> <p>10 percentage of your time was related to</p> <p>11 recycling?</p> <p>12 A. I don't know.</p> <p>13 Q. Are you familiar generally with the recycling</p> <p>14 process that is used in the United States?</p> <p>15 MR. SCHATZ: Object to form.</p> <p>16 A. I would say that I'm generally familiar with</p> <p>17 some of the techniques that are used, but I</p> <p>18 would say that, again, as a materials</p> <p>19 characterization analysis expert, that is not</p> <p>20 where I spend a lot of my time, in that world.</p> <p>21 So I guess no.</p> <p>22 BY MS. STONE:</p> <p>23 Q. Are you familiar with the optical sorting</p> <p>24 procedure that is used in the United States in</p> <p>25 the recycling process?</p>
Page 23	Page 25
<p>1 Q. Prior to being retained in this case, had you</p> <p>2 ever performed any analysis of a Gatorade</p> <p>3 label?</p> <p>4 A. Of a Gatorade label, no.</p> <p>5 Q. Prior to your retention in this case had you</p> <p>6 ever performed any analysis on a Febreze</p> <p>7 label?</p> <p>8 A. A Febreze label? Not that I can think of.</p> <p>9 Q. You did not go to law school, correct?</p> <p>10 A. Correct.</p> <p>11 Q. You're not a lawyer?</p> <p>12 A. I am not a lawyer.</p> <p>13 Q. And would you hold yourself out as an expert</p> <p>14 in recycling?</p> <p>15 A. I hold myself out as an expert in materials</p> <p>16 characterization and analysis in chemistry.</p> <p>17 Q. Okay. And I understand that, but what I</p> <p>18 understand you to be saying in that is that</p> <p>19 you are not an expert in recycling, is that</p> <p>20 fair?</p> <p>21 MR. SCHATZ: Object to form.</p> <p>22 A. I would say that materials characterization</p> <p>23 analysis, chemistry, overlaps with probably a</p> <p>24 lot of things in recycling, but recycling is</p> <p>25 not where I spend all of my time.</p>	<p>1 A. So, I'm familiar with optical sorting</p> <p>2 procedures as a general process, and some of</p> <p>3 the general techniques that are used and</p> <p>4 applied for that, characteristics and</p> <p>5 limitations. However, specifically to the</p> <p>6 recycling process, no.</p> <p>7 Q. Are you familiar with the wash processes that</p> <p>8 take place at a Unites States recycling</p> <p>9 facility?</p> <p>10 MR. SCHATZ: Object to form.</p> <p>11 A. I would say that I've gained some experience</p> <p>12 with wash processes that are typical, but I</p> <p>13 would also say that that I would expect that</p> <p>14 wash processes across the United States to</p> <p>15 vary, per recycler.</p> <p>16 BY MS. STONE:</p> <p>17 Q. When you say that you've gained experiences</p> <p>18 with wash processes, do you mean during the</p> <p>19 course of this case?</p> <p>20 A. Specific to recycling?</p> <p>21 Q. Yes.</p> <p>22 A. I think that a wash process is something that</p> <p>23 we've used previously in various realms.</p> <p>24 Specific to recycling, I would say that I</p> <p>25 don't recall using anything -- sorry, doing</p>

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<p>1 wash processes specific to recycling before 2 this. 3 Q. Prior to this case, had you ever performed a 4 caustic wash? 5 A. Yeah. A caustic wash is, you know, a bath 6 with a certain PH, with a material submerged 7 in it. So that's something that we've done 8 plenty of times in the past, or that I've 9 done. 10 Q. You cite a number of Association of Plastic 11 Recyclers guidance documents in your expert 12 declaration, right, and I think I already used 13 this term earlier, but can we refer to that as 14 APR today? 15 A. Uh-huh, yes. 16 Q. Okay. Prior to being retained in this case, 17 were you familiar with APR guidance documents? 18 A. No. 19 Q. Have you reviewed the petition that was filed 20 in this case? 21 A. Was that cited in my declaration? 22 Q. No. So I don't believe it was cited in your 23 declaration, I think the petition is what's 24 filed with the patent office and your 25 declaration is cited in that document. So it</p>	<p>1 - - - - 2 (Exhibit No. 1 was marked for identification.) 3 - - - - 4 MR. SCHATZ: Thank you. 5 BY MS. STONE: 6 Q. So I've just handed you Exhibit No. 1, which 7 is titled patent owner's preliminary response, 8 that's dated June 23rd, 2025. Can you flip 9 through this and let me know if this is the 10 document that you had reviewed? 11 A. Yes. 12 MS. STONE: You can set that aside 13 for a moment. 14 BY MS. STONE: 15 Q. You're not offering any opinions with respect 16 to any products manufactured by Brook & 17 Whittle in this case, right? 18 A. I am not offering opinions on products 19 manufactured by Brook & Whittle. 20 Q. The only physical products that you're 21 offering opinions on are the MCC Gatorade 22 label and the MCC Febreze label, right? 23 A. Those are the labels contained in the 24 declaration, and those are the ones that I'm 25 offering opinions on.</p>
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<p>1 was not an your materials considered list, 2 which was why I was asking if you had reviewed 3 it. So I know it was a little bit of a 4 soliloquy, so I will ask my question again. 5 Do you recall reviewing the petition that 6 was filed by MCC in this case? 7 A. I don't recall. 8 Q. Have you reviewed any of the documents that 9 were filed by the patent owner with the patent 10 office that would have post-dated your expert 11 declaration in this case? 12 A. One. 13 Q. Which document was that? 14 A. It was -- I think it was just titled, "Paper." 15 And it was -- I don't want to call it a 16 rebuttal to a report, but it was a commentary 17 on my declaration. 18 Q. Does the term Patent Owner Response sound 19 right? 20 A. Could be. (Laughter.) If you want to show it 21 to me, I'll tell you if that's what I saw or 22 not. 23 MS. STONE: I'm going to mark 24 Exhibit No. 1 to your exhibit -- or to your 25 deposition.</p>	<p>1 Q. Okay. Are you planning to offer any opinions 2 related to any other physical products in 3 relation to this case? 4 MR. SCHATZ: Object to form. 5 A. No. My opinions are in my declaration. 6 BY MS. STONE: 7 Q. Do you know who Mr. Craig Bushman is? 8 A. Yes. 9 Q. When did you first communicate with 10 Mr. Bushman? 11 A. I don't -- I don't recall specifically. 12 Q. Would it have been in relation to this 13 litigation? 14 A. Yes. 15 Q. So does fall 2024 sound about right? 16 A. Approximately. 17 Q. Okay. How many times have you spoken with 18 Mr. Bushman either on a phone call, in person, 19 or on a Zoom or Teams call? 20 A. I don't know the specific number, I do know 21 that every time I've spoken with Mr. Bushman, 22 it's been with counsel. 23 Q. Why do you point out that counsel was in those 24 conversations? 25 A. That's standard practice for my industry,</p>

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<p>1 that's something that we always do, I don't</p> <p>2 talk to the client or anyone else without</p> <p>3 counsel present.</p> <p>4 Q. Do you have an estimate if you spoke to</p> <p>5 Mr. Bushman five times, ten times, 20 times?</p> <p>6 A. (Indicating), I don't -- I don't know if you</p> <p>7 want to -- I don't want to guess.</p> <p>8 Q. It's fine. I was trying to get an estimate if</p> <p>9 you had one. If you don't have an estimate a</p> <p>10 that's fine.</p> <p>11 A. Yeah.</p> <p>12 Q. Have you ever communicated with Mr. Bushman</p> <p>13 via email?</p> <p>14 A. Directly or as a CC to a different email chain</p> <p>15 -- let me rephrase that.</p> <p>16 I've only ever communicated with counsel,</p> <p>17 whether there were emails that Craig was cc'd</p> <p>18 on or as part of, you know, yeah.</p> <p>19 Q. Okay. I just want to make sure I understand.</p> <p>20 I understand that counsel may have been on</p> <p>21 emails, and that's fine I'm not trying to get</p> <p>22 into the contents of that right this second.</p> <p>23 Have you ever sent an email that, whether</p> <p>24 in the To line, the CC line, or the BCC line,</p> <p>25 Mr. Bushman was on that email?</p>	<p>1 A. No.</p> <p>2 Q. Your expert declaration cites to Mr. Bushman's</p> <p>3 declaration throughout your declaration,</p> <p>4 correct?</p> <p>5 A. Yes.</p> <p>6 Q. Did -- are you aware where Mr. Bushman</p> <p>7 reviewed your declaration in this case?</p> <p>8 A. I'm not aware.</p> <p>9 Q. Okay. Did you provide any drafts of your</p> <p>10 declaration to Mr. Bushman?</p> <p>11 A. No.</p> <p>12 Q. Prior to submitting your declaration in this</p> <p>13 case, did Mr. Bushman provide any information</p> <p>14 to you?</p> <p>15 A. To me directly?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. In your expert declaration you cite to an</p> <p>19 internal MCC testing method that I believe has</p> <p>20 the exhibit number, Exhibit 1012, do you</p> <p>21 recall that testing method?</p> <p>22 A. I recall -- yes, that exhibit that we're</p> <p>23 talking about, yeah.</p> <p>24 Q. How did an -- that internal MCC testing method</p> <p>25 come into your possession?</p>
Page 31	Page 33
<p>1 A. I don't recall.</p> <p>2 Q. Okay. Have you ever received an email from</p> <p>3 Mr. Bushman?</p> <p>4 A. I don't recall. Again, most of my emails</p> <p>5 always come from counsel.</p> <p>6 Q. Okay. Did you review Mr. Bushman's</p> <p>7 declaration that was submitted in this case?</p> <p>8 A. The specific document?</p> <p>9 Q. Yes. Let me back up, are you aware that</p> <p>10 Mr. Bushman submitted a declaration in this</p> <p>11 case that was given the exhibit number Exhibit</p> <p>12 1013?</p> <p>13 A. That's 1013 to my declaration.</p> <p>14 Q. It's Exhibit No. 1013 in the case in it's</p> <p>15 entirety, but also in -- cited in your</p> <p>16 declaration, right?</p> <p>17 A. Sure, yeah.</p> <p>18 Q. Okay. Did you review Mr. Bushman's</p> <p>19 declaration submitted in this case as Exhibit</p> <p>20 1013?</p> <p>21 A. No.</p> <p>22 Q. Did you have any input into that declaration?</p> <p>23 A. No.</p> <p>24 Q. Did you review any non-final drafts of that</p> <p>25 declaration?</p>	<p>1 A. Via counsel.</p> <p>2 Q. Did you ask for a caustic wash testing method?</p> <p>3 MR. SCHATZ: I'll just make a note</p> <p>4 for the record that petitioner is not waiving</p> <p>5 privilege in any respect, including attorney-</p> <p>6 client work product.</p> <p>7 I don't understand your question to</p> <p>8 invoke those issues, so I'll let the witness</p> <p>9 answer.</p> <p>10 MS. STONE: Okay.</p> <p>11 THE WITNESS: Say it again?</p> <p>12 BY MS. STONE:</p> <p>13 Q. Yeah --</p> <p>14 - - - -</p> <p>15 (Simultaneous speaking.)</p> <p>16 - - - -</p> <p>17 A. You can ask it.</p> <p>18 BY MS. STONE:</p> <p>19 Q. Did you -- let me back up, we were just</p> <p>20 speaking about Exhibit 1012, which is an</p> <p>21 internal MCC testing method.</p> <p>22 Did you ask for a caustic wash testing</p> <p>23 method to be provided to you?</p> <p>24 MR. SCHATZ: Same notation, we're</p> <p>25 not -- petitioner is not waiving any</p>

<p style="text-align: right;">Page 34</p> <p>1 privilege. I understand the question to not 2 request information that would delve into 3 privileged information. 4 A. So I would say that the patent is not specific 5 in it's terminology and usage for caustic 6 wash. There's not a specific procedure 7 outlined. When we talk about recyclability 8 and caustic washing, there is not 9 specifications there, except to say along 10 industry guidelines or following industry 11 guidelines. And so I would say that, you 12 know, as someone that's not involved in that 13 industry, I was looking for standard industry 14 practices and industry guidance. 15 BY MS. STONE: 16 Q. Okay. Do you recall when that testing method 17 was provided to you? 18 A. Specifically, no. 19 Q. Did Mr. Bushman provide any information to you 20 regarding the sample Gatorade label? 21 A. Did he provide information to me about the 22 Gatorade label? 23 Q. Yes. 24 A. Not that I recall. 25 Q. Did Mr. Bushman provide any information to you</p>	<p style="text-align: right;">Page 36</p> <p>1 understand your objection. 2 MR. SCHATZ: Yeah. And so just 3 because of the very particular rules of these 4 procedures -- 5 MS. STONE: I understand. 6 MR. SCHATZ: -- I'll make my 7 objection but I'll try to be succinct to very 8 much try not to interrupt the line of 9 questioning. I understand your point. 10 MS. STONE: I'm going to ask your 11 question again. 12 THE WITNESS: Sure. 13 BY MS. STONE: 14 Q. In your discussions with Mr. Bushman, do you 15 recall discussing the internal MCC caustic 16 wash testing method? 17 MR. SCHATZ: Petitioner notes it's 18 not waiving any privilege. 19 A. Not that I recall. 20 BY MS. STONE: 21 Q. Are all of the testing results of the 22 analytical tests that you performed on the 23 Gatorade label and the Febreze label included 24 in your declaration? 25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 regarding the sample Febreze label? 2 A. Not that I can recall. 3 Q. Other than the caustic wash test that we've 4 just discussed, were there any other 5 analytical tests that you performed on either 6 the Gatorade label or the Febreze label that 7 you requested an additional information either 8 from counsel or from MCC? 9 A. Not that I recall, no. 10 Q. In your discussions with Mr. Bushman, do you 11 recall discussing the internal MCC caustic 12 wash testing method? 13 MR. SCHATZ: Same notation, the 14 petitioner is not waiving privilege in any 15 respect, including work -- specifically work 16 product privilege -- my understanding is your 17 question does not delve into that issue and so 18 I'll allow the witness to answer. 19 THE WITNESS: Sorry, you have to say 20 it again. 21 MS. STONE: That's okay. And just, 22 Counsel, I understand your notation, maybe for 23 the witness, if -- I will totally respect if 24 you just want to say same objection or same 25 notation so that he can follow it. But I -- I</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. You did not provide -- strike that. 2 You did not perform any preliminary tests 3 on a Gatorade label where the results of that 4 testing is not included in your declaration, 5 is that fair? 6 A. What do you mean by preliminary tests? 7 Q. Sure. So, maybe I will -- I will ask my 8 question so it's not in the negative. 9 Did you perform any testing on the 10 Gatorade label that is not reported in your 11 declaration? 12 MR. SCHATZ: Objection, asked and 13 answered. 14 A. No. 15 BY MS. STONE: 16 Q. Did you perform any testing on the Febreze 17 label that is not reported in your 18 declaration? 19 MR. SCHATZ: Objection, asked and 20 answered. 21 A. No. 22 BY MS. STONE: 23 Q. Did you personally perform any caustic wash 24 tests using the MCC testing method on any 25 materials that are not reported in your expert</p>

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<p>1 report?</p> <p>2 A. No.</p> <p>3 Q. Did you provide your -- let's strike that.</p> <p>4 Starting with the caustic wash, did you</p> <p>5 provide the results of your caustic wash test</p> <p>6 to Mr. Bushman prior to submitting your</p> <p>7 declaration?</p> <p>8 A. No.</p> <p>9 Q. Did you have any discussions with Mr. Bushman</p> <p>10 regarding how to interpret the caustic wash</p> <p>11 test results?</p> <p>12 A. No.</p> <p>13 Q. Did you have any discussions with Mr. Bushman</p> <p>14 or anyone at MCC regarding how to interpret</p> <p>15 any of the results of any of your testing on</p> <p>16 either the Gatorade label or the Febreze</p> <p>17 label?</p> <p>18 A. I don't recall.</p> <p>19 Q. Have you reviewed Mr. Bushman's deposition</p> <p>20 transcript?</p> <p>21 A. No.</p> <p>22 Q. What did you do to prepare for your deposition</p> <p>23 today?</p> <p>24 A. I reviewed documents that are cited in my</p> <p>25 declaration, I reviewed my declaration, the</p>	<p>1 A. -- Lou, I think was another attorney at -- at</p> <p>2 Brett's firm, popped on at one point.</p> <p>3 BY MS. STONE:</p> <p>4 Q. Did you speak with anyone at MCC regarding</p> <p>5 your deposition?</p> <p>6 A. No.</p> <p>7 Q. Did you speak with Mr. Bushman about your</p> <p>8 deposition?</p> <p>9 A. No.</p> <p>10 Q. Was there anyone within RJ Lee Group that you</p> <p>11 spoke with in preparation for your deposition?</p> <p>12 A. Yes.</p> <p>13 Q. Who was that?</p> <p>14 A. Colleague of mine, Matt Perricone.</p> <p>15 Q. What were the contents of the those questions?</p> <p>16 MR. SCHATZ: Instruct the witness</p> <p>17 not to answer, work product privilege.</p> <p>18 BY MS. STONE:</p> <p>19 Q. In your meeting with your colleague,</p> <p>20 Mr. Coney, is that right?</p> <p>21 A. Dr. Perricone.</p> <p>22 Q. Dr. Perricone?</p> <p>23 A. Yes.</p> <p>24 Q. In your meeting with your colleague,</p> <p>25 Dr. Perricone, was counsel present for that</p>
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<p>1 patent obviously. I had some discussions with</p> <p>2 -- with counsel.</p> <p>3 Q. Approximately how many times did you meet with</p> <p>4 counsel to prepare for your deposition today?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Okay. Was it multiple meetings?</p> <p>7 A. Yes.</p> <p>8 Q. And did those take place in the last couple of</p> <p>9 weeks?</p> <p>10 A. Yes.</p> <p>11 Q. Did they predominantly take place in person or</p> <p>12 on Zoom or Teams, something like that?</p> <p>13 A. Both.</p> <p>14 Q. Who attended those prep sessions?</p> <p>15 A. That would have been me and counsel.</p> <p>16 Q. Which specific counsel?</p> <p>17 A. I've only ever worked with one, Mr. Schatz,</p> <p>18 Schatz, I'm sorry.</p> <p>19 Q. So you -- there were no other attendees at any</p> <p>20 of those meetings?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you speak with --</p> <p>23 - - -</p> <p>24 (Simultaneous speaking.)</p> <p>25 - - -</p>	<p>1 discussion?</p> <p>2 A. I was instructed by counsel to prep with a</p> <p>3 colleague, he was not present.</p> <p>4 Q. Okay. And what is Mr. Perricone's role within</p> <p>5 RJ Lee Group?</p> <p>6 A. Dr. Perricone is the technical consulting</p> <p>7 group leader.</p> <p>8 Q. And apologies, Dr. Perricone, is he your boss,</p> <p>9 do you report to him in some way?</p> <p>10 A. No.</p> <p>11 Q. Okay. What is a technical consulting group</p> <p>12 leader?</p> <p>13 A. That's just his job title.</p> <p>14 Q. I guess how is that role different than your</p> <p>15 role at RJ Lee Group?</p> <p>16 A. He is the group leader for our consulting</p> <p>17 group. So he has different responsibilities</p> <p>18 than I do.</p> <p>19 Q. Do you know what his responsibilities are?</p> <p>20 A. You know, he does project work too as well as</p> <p>21 I do, kind of similar in that regard. He does</p> <p>22 some budget stuff for the group and things of</p> <p>23 that nature but that's kind of his job, not</p> <p>24 mine. So I'm afraid I don't know. Sorry.</p> <p>25 Q. Did you request to speak with Dr. Perricone in</p>

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<p>1 preparation for your deposition?</p> <p>2 MR. SCHATZ: Object to form.</p> <p>3 A. I request to speak with him. I talk with</p> <p>4 Dr. Perricone, as a colleague, frequently</p> <p>5 throughout the workday and the workweek. So,</p> <p>6 in terms of preposition -- or preparation for</p> <p>7 the deposition, again was instructed by</p> <p>8 counsel to, you know, discuss with colleagues,</p> <p>9 so.</p> <p>10 BY MS. STONE:</p> <p>11 Q. Okay. Did Dr. Perricone have any role in any</p> <p>12 of the testing performed in connection with</p> <p>13 this case?</p> <p>14 A. Not that I recall.</p> <p>15 Q. How did you select the prior art that you</p> <p>16 relied on in forming your opinions in your</p> <p>17 expert declaration?</p> <p>18 A. Some of those prior art or -- do you have a</p> <p>19 copy of my declaration that I can look at?</p> <p>20 Q. So I don't think that the answer to this</p> <p>21 question is in your declaration, I'm happy to</p> <p>22 provide it to you in a few minutes. But I</p> <p>23 guess, do you need your declaration in order</p> <p>24 to answer that question?</p> <p>25 A. Well you asked me what I cited so I just kind</p>	<p>1 A. Yes.</p> <p>2 Q. And the Gatorade label you have asserted as</p> <p>3 prior art because it was available as of 2020,</p> <p>4 correct?</p> <p>5 MR. SCHATZ: Object to form.</p> <p>6 Objection, outside the scope of the witness's</p> <p>7 declaration.</p> <p>8 MS. STONE: Let me revise my</p> <p>9 question.</p> <p>10 BY MS. STONE:</p> <p>11 Q. Is it your opinion that the Gatorade label</p> <p>12 sample is prior art?</p> <p>13 A. Yes.</p> <p>14 Q. And your opinion that the Gatorade label is</p> <p>15 prior art is based on the fact that it was</p> <p>16 commercially available as of 2020, right?</p> <p>17 A. So I will back up and say that my</p> <p>18 understanding is that the Gatorade label is</p> <p>19 prior art, as was communicated to me through</p> <p>20 counsel.</p> <p>21 Q. Okay. So -- and I think you are hitting</p> <p>22 exactly what I'm trying to get at, do you have</p> <p>23 an independent opinion regarding whether or</p> <p>24 not the Gatorade label is prior art in this</p> <p>25 case to the '422 patent?</p>
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<p>1 of wanted to see what was there.</p> <p>2 Q. Oh, sorry, I did not -- I think there was a</p> <p>3 misunderstanding of my question. My question</p> <p>4 is, how did you select the prior art that you</p> <p>5 relied on in your expert declaration?</p> <p>6 A. Yeah, right. So I just wanted to look at the</p> <p>7 things that were cited in my declaration to be</p> <p>8 able to remember.</p> <p>9 Q. Oh, so I can go through this in a different</p> <p>10 way then. You rely on a 2020 Gatorade label</p> <p>11 sample that is not publicly available,</p> <p>12 correct?</p> <p>13 MR. SCHATZ: Object to form.</p> <p>14 A. Yeah, I don't -- I don't know if it was --</p> <p>15 I -- I received the samples from counsel for</p> <p>16 testing.</p> <p>17 BY MS. STONE:</p> <p>18 Q. Okay.</p> <p>19 A. I don't know if they were publicly available</p> <p>20 or not.</p> <p>21 Q. Okay. I'll back up, you rely on a physical</p> <p>22 piece of prior art which is a Gatorade label,</p> <p>23 correct?</p> <p>24 A. Yes, that's what's tested in the declaration.</p> <p>25 Q. Right.</p>	<p>1 MR. SCHATZ: Object to form.</p> <p>2 A. I would say that my opinions are stated in my</p> <p>3 declaration and if it was communicated to me</p> <p>4 via counsel as -- or formed based on testing,</p> <p>5 right, the opinions are stated in the</p> <p>6 declaration.</p> <p>7 BY MS. STONE:</p> <p>8 Q. Okay. Do you understand that prior art has to</p> <p>9 predate the priority date of a patent?</p> <p>10 A. That's my understanding.</p> <p>11 Q. Okay. And so do you have any opinions on</p> <p>12 whether or not the Gatorade label that was</p> <p>13 provided to you by counsel is prior art to the</p> <p>14 '422 patent?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What is that opinion?</p> <p>17 A. Again, as I understand, right, it predates the</p> <p>18 patent.</p> <p>19 Q. Okay. So what I'm understanding you to say is</p> <p>20 you don't have personal knowledge that the</p> <p>21 Gatorade label sample that you received was</p> <p>22 available in 2020, you're relying on that</p> <p>23 information from someone else, is that fair?</p> <p>24 A. Yes.</p> <p>25 Q. Assuming that Gatorade label was available in</p>

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<p>1 2020, is it your opinion that the Gatorade</p> <p>2 label is prior art?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. How did you determine to select the</p> <p>5 Gatorade label as prior art for your opinions</p> <p>6 in this case?</p> <p>7 A. So those labels were supplied to me for</p> <p>8 analysis.</p> <p>9 Q. By counsel?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And when you say "those labels" do you</p> <p>12 mean both the Gatorade label and the Febreze</p> <p>13 label?</p> <p>14 A. I mean all of the labels contained within my</p> <p>15 report -- my declaration.</p> <p>16 Q. Are -- I think earlier we agreed that your</p> <p>17 opinions were limited to the Gatorade label</p> <p>18 and the Febreze label as far as physical</p> <p>19 products, are there any other physical</p> <p>20 products that you were -- that you have</p> <p>21 opinions on in this case?</p> <p>22 A. No.</p> <p>23 Q. Okay. Were any other physical prior art</p> <p>24 labels provided to you by counsel?</p> <p>25 A. No.</p>	<p>1 other written prior art that would be relevant</p> <p>2 to your opinions?</p> <p>3 A. I don't recall.</p> <p>4 Q. We've discussed the APR guidance a little bit</p> <p>5 today, but there are several APR guidance</p> <p>6 documents that are cited within your report,</p> <p>7 right, did you also receive all of those</p> <p>8 guidance documents from Counsel?</p> <p>9 A. Yes.</p> <p>10 Q. Did you do any independent analysis to</p> <p>11 determine whether or not there were any other</p> <p>12 APR guidance documents that would inform your</p> <p>13 opinions in this case?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you have access to everything you felt you</p> <p>16 needed in order to form your opinions in this</p> <p>17 case?</p> <p>18 A. Yes.</p> <p>19 Q. Are there any materials that you asked for but</p> <p>20 did not receive?</p> <p>21 A. I don't recall.</p> <p>22 Q. Have you reviewed any documents in relation to</p> <p>23 this case after submitting your declaration</p> <p>24 other than the patent owner preliminary</p> <p>25 response that we discussed -- discussed</p>
Page 47	Page 49
<p>1 Q. Did you investigate any other commercially</p> <p>2 available labels to determine whether or not</p> <p>3 they would be prior art?</p> <p>4 A. All of the labels that I investigated are</p> <p>5 contained in the declaration.</p> <p>6 Q. So you did not independently search for</p> <p>7 potential prior art labels, is that fair?</p> <p>8 A. No, that would have been outside my scope.</p> <p>9 Q. How did you determine to include the Mitchel</p> <p>10 reference as prior art in your opinions?</p> <p>11 A. That was supplied to me by counsel.</p> <p>12 Q. You rely on the Mitchel reference as a basis</p> <p>13 for what a person of ordinary skill in the art</p> <p>14 would have known at the relevant time, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did you analyze any other written prior</p> <p>17 art references to determine whether they would</p> <p>18 have an impact what a person of ordinary skill</p> <p>19 in the art would have known as of the priority</p> <p>20 date of the '422 patent?</p> <p>21 A. All of the documents relied on are contained</p> <p>22 in the declaration.</p> <p>23 Q. Okay. My question is just a little bit</p> <p>24 different. Did you do any investigation to</p> <p>25 determine whether or not there would be any</p>	<p>1 earlier?</p> <p>2 A. There was one other document that I think</p> <p>3 might have come from, like, the board or</p> <p>4 whomever, it was kind of a summary of both my</p> <p>5 declaration and this response, does that sound</p> <p>6 right?</p> <p>7 MS. STONE: I'm going to mark</p> <p>8 Exhibit 2.</p> <p>9 MR. SCHATZ: She's going to show it</p> <p>10 to you, you can tell if it sounds right.</p> <p>11 - - - -</p> <p>12 (Exhibit No. 2 was marked for identification.)</p> <p>13 - - - -</p> <p>14 BY MS. STONE:</p> <p>15 Q. I'm handing -- or the court reporter is</p> <p>16 handing you Exhibit 2, which is the</p> <p>17 institution decision, which is Paper 1414 of</p> <p>18 PGR 2025-0025. You mentioned that you had</p> <p>19 reviewed a document from the board, is this</p> <p>20 the document you were referring to?</p> <p>21 A. Yeah, I think this is it -- this is it.</p> <p>22 Q. Do you recall when you reviewed this document?</p> <p>23 A. No.</p> <p>24 Q. Was it in connection with preparing for your</p> <p>25 deposition?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. I -- I did review this in preparation for the 2 deposition, yes. 3 Q. Okay. Does anything in the institution 4 decision from the board change any of your 5 opinions in this case? 6 A. No. 7 Q. Did you review the court's claim construction, 8 and I can turn you -- it's on Page 7. 9 A. No, no, I'm sure I read it back when I 10 originally read it. Do you want me to read it 11 now or? 12 Q. No, I just -- at a high level my question was, 13 did you review it? 14 A. I reviewed the document so I'm sure it was, 15 you know, a part of it. 16 Q. So I'm going to turn you to Page 11, and feel 17 free to review if you would like, but the 18 initial pages are just reviewing the parties' 19 arguments, and then it gets into the analysis. 20 So the first full paragraph on Page 11, 21 of the Board's Institution decision, which is 22 Exhibit 2, states; For purposes of addressing 23 the alleged anticipation and obviousness 24 grounds we construe the term, wherein the 25 recyclable shrink label is recyclable with the</p>	<p style="text-align: right;">Page 52</p> <p>1 construction of that term? 2 A. The term wherein the recyclable shrink label 3 is recyclable with the PET label? 4 Q. So just one clarification, I do think that 5 there is a typo in that language. I think 6 that the language in the patent claim -- and 7 we can take a look at it if you would like -- 8 is actually wherein the recyclable shrink 9 label is recyclable with the PET container, 10 but yes, with respect to that claim limitation 11 and the board's construction, do you agree 12 with the board's construction of that 13 limitation? 14 MR. SCHATZ: Objection, outside the 15 scope of the -- of Dr. Deible's declaration. 16 A. I don't think I understand the question. Can 17 you repeat it so I can? 18 BY MS. STONE: 19 Q. Sure. Do you understand the board's 20 construction of that claim limitation? 21 MR. SCHATZ: Object -- objection, 22 outside the scope of Dr. Deible's declaration. 23 A. I mean, that's -- that's just stating what's 24 in the patent, right? 25 BY MS. STONE:</p>
<p style="text-align: right;">Page 51</p> <p>1 PET label in accordance with the above 2 representations. 3 Do you see that paragraph? 4 A. Yes. 5 Q. And then the board goes on to state that a 6 label is not recyclable with a PET container 7 if the label must be removed from the PET 8 recycling stream, E.G. because the label is 9 made out of materials that are not recyclable 10 with a PET container such as polypropylene, 11 polyethylene, or paper, or two, the label 12 contains inks or pigments that cannot be 13 removed during the recycling process such as 14 by washing so that the inks or pigments would 15 contaminate the PET polymer flake during the 16 recycling process. 17 Do you see that? 18 A. Yes. 19 Q. Does that construction of the claim term, 20 regarding the recyclable shrink label, wherein 21 the label is recyclable with the PET 22 container, does that change any of your 23 opinions in this case? 24 A. No. 25 Q. Okay. Do you agree with the board's</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. So I agree with that, but my question is just 2 a little bit different which is, do you 3 understand it? 4 MR. SCHATZ: Objection, outside the 5 scope of Dr. Deible's declaration. 6 A. I -- I have some questions in terms of -- you 7 know, I think as a general overall I would say 8 I understand it, there's questions about what 9 recyclable means, I think. But otherwise, I 10 think that that term is poorly defined. 11 But in general, you know, I'm saying the 12 label and the container are recyclable 13 together. I understand that concept. 14 BY MS. STONE: 15 Q. Okay. Do you have an understanding of what 16 claim construction is within the context of a 17 patent proceeding? 18 A. Maybe not, maybe you can explain it to me. 19 Q. And that's okay, I -- the -- I'm just trying 20 to understand your knowledge and your 21 opinions. 22 So here, the board is construing, for 23 purposes of anticipation and obviousness this 24 term, and by construing it, it's providing an 25 explanation of when a label is not recyclable,</p>

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<p>1 do you see that?</p> <p>2 A. Yeah.</p> <p>3 Q. And there are two prongs to that, right --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- one of the prongs that the board included</p> <p>6 is that a label is not recyclable with a PET</p> <p>7 container if, and then jumping to the second</p> <p>8 prompt, the label contains inks or pigments</p> <p>9 that could not be removed during the recycling</p> <p>10 process such as by washing so that the inks or</p> <p>11 pigments would contaminate the PET polymer</p> <p>12 flakes during the recycling process, right?</p> <p>13 A. Yes, that's what it says there, yes.</p> <p>14 Q. Okay. And so do you recall the results of</p> <p>15 your caustic wash testing in this case?</p> <p>16 A. At a high level I recall the results but</p> <p>17 without the declaration in front of me I</p> <p>18 wouldn't want to speak to the specifics.</p> <p>19 Q. At a high level, do you recall if there was</p> <p>20 any inks or pigments that remained on the PET</p> <p>21 label following the caustic wash?</p> <p>22 A. This -- this question would be easier to</p> <p>23 answer with the data, again, in front of me.</p> <p>24 Q. Okay. We can come back to it. You can put</p> <p>25 the declaration -- or the institutional</p>	<p>1 answer was kind of a broadly speaking answer.</p> <p>2 The specifics are -- I don't -- I don't</p> <p>3 recall.</p> <p>4 MS. STONE: I'm going to mark</p> <p>5 Exhibit 3.</p> <p>6 - - - -</p> <p>7 (Exhibit No. 3 was marked for identification.)</p> <p>8 - - - -</p> <p>9 MR. SCHATZ: Thank you.</p> <p>10 BY MS. STONE:</p> <p>11 Q. So the court reporter has handed you Exhibit</p> <p>12 3, which is Exhibit 1018 to this proceeding,</p> <p>13 do you recall reviewing this document in</p> <p>14 connection with your opinions?</p> <p>15 A. Ah, is it -- it's cited in my declaration,</p> <p>16 correct?</p> <p>17 Q. Yes.</p> <p>18 A. Yes, I don't remember specifically when I saw</p> <p>19 it but.</p> <p>20 Q. Okay. So it's a one page letter and the first</p> <p>21 sentence states, APR, the Association of</p> <p>22 Plastic Recyclers, is pleased to recognize</p> <p>23 Fort Dearborn company's recycle friendly</p> <p>24 washable ink system printed on SKC equal label</p> <p>25 sleeve labels as meeting or exceeding APR's</p>
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<p>1 decision aside.</p> <p>2 Do you have any opinions on whether or</p> <p>3 not the Gatorade label is a commercially</p> <p>4 successful label?</p> <p>5 A. I -- no.</p> <p>6 Q. Okay. In your analysis of the Gatorade label,</p> <p>7 you talk about it being an SKC ECO label, do</p> <p>8 you recall that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Where did you get that information</p> <p>11 from?</p> <p>12 A. I believe -- I don't -- I don't recall, I --</p> <p>13 if I could see a picture of the label I might</p> <p>14 remember, but.</p> <p>15 Q. So I want to focus in right now on what a SKC</p> <p>16 ECO label is first and then we'll get into the</p> <p>17 Gatorade label specifically. What is an SKC</p> <p>18 ECO label?</p> <p>19 A. It's a label from an industry body I guess I</p> <p>20 would call it, a governing body that states</p> <p>21 that the label meets certain specifications.</p> <p>22 Q. And do you know if the SKC ECO label only</p> <p>23 refers to the clear PET label without any ink?</p> <p>24 A. I don't recall the specifics of the SKC label</p> <p>25 and what it does or doesn't say, my previous</p>	<p>1 critical guidance protocol, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then the second sentence refers to</p> <p>4 the SKC ECO label having received APR critical</p> <p>5 guidance recognition, right?</p> <p>6 A. Yes.</p> <p>7 Q. This document doesn't mention the Gatorade</p> <p>8 label at all, correct?</p> <p>9 A. I don't see a specific reference to the</p> <p>10 Gatorade label in this letter, is that what</p> <p>11 your question was?</p> <p>12 Q. Yes. And that makes sense, right, because if</p> <p>13 you just reviewed the second paragraph you</p> <p>14 said that the data was obtained in 2017 from</p> <p>15 -- regarding the SKC ECO label, right?</p> <p>16 A. That is what it says 2017, yes.</p> <p>17 Q. Okay. And as -- sorry, as far as you're</p> <p>18 aware, the Gatorade label that you were</p> <p>19 relying on was manufactured in 2020, right?</p> <p>20 A. I believe that's the case, I -- and again, was</p> <p>21 just given the labels to analyze, so I don't</p> <p>22 know the specifics of when they were</p> <p>23 manufactured. I think we did say it was 2020</p> <p>24 earlier.</p> <p>25 Q. Okay. And if you look at the first sentence</p>

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<p>1 of that second paragraph of Exhibit 3 to your 2 deposition, Exhibit 1018 to the proceedings. 3 It says, A review committee appointed per the 4 operating procedures reviewed your April 26th, 5 2019 data submission and concluded things 6 about the data, do you see that? 7 A. Yes. 8 Q. Did you review any of the data from the April 9 26th, 2019 data submission that is being 10 discussed in this letter? 11 A. Not that I recall. 12 Q. And if you look at the last paragraph it says, 13 our recognition applies only to the Fort 14 Dearborn recycle friendly washable inking 15 system and not necessarily to labeled bottles 16 as those packages would need to be tested 17 themselves to demonstrate the system of 18 resins, adjuvants, labels, and closures 19 conformed to the APR -- guidance document, 20 sorry, and APR design guide, right? 21 A. Yes, that's what it says. 22 Q. Okay. And so this letter is actually about 23 the washable inking system, not the SKC ECO 24 label, right? 25 A. Yeah, I mean, that would be my interpretation</p>	<p>1 document to show that the SKC ECO label meets 2 the requirements of APR's critical guidance, 3 does that sound right to you? 4 MR. SCHATZ: Object to form. 5 A. I -- I don't want to really, like, guess at 6 that answer -- 7 BY MS. STONE: 8 Q. Okay. 9 A. -- without the declaration in front of me and 10 where it was cited. 11 Q. Do you know if EL 62 is an SKC ECO label? 12 A. I don't know that answer, I don't know that 13 off the top of my head. 14 Q. There's no reference to the Gatorade label 15 anywhere on this document, right? 16 A. Looking at this document, to the best of my 17 knowledge, it doesn't say anything specific 18 about Gatorade on it. 19 Q. And if you look at the very bottom of Page 1 20 there's a revision date and the revision date 21 is November 12th, 2019, right? 22 A. Oh, yes, I see that. 23 Q. There are a number of like properties of 24 materials and different testing tables 25 reporting results in this document, correct?</p>
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<p>1 of that last paragraph. 2 Q. Right. And the Fort Dearborn recycle friendly 3 washable ink system that's being discussed in 4 this letter can be printed on an SKC ECO 5 label, but that's not actually the subject of 6 this approval letter, right? 7 A. Yes. 8 MS. STONE: You can set that aside 9 I'm going hand you Exhibit 4. 10 - - - 11 (Exhibit No. 4 was marked for identification.) 12 - - - 13 BY MS. STONE: 14 Q. Exhibit No. 4 to your deposition is Exhibit 15 1016 to the proceeding, and it's also cited in 16 your declaration. You can see at the top of 17 this in the right hand corner, there is an SKC 18 Inc., right? 19 A. Yes. 20 Q. And do you recall the purpose of you citing 21 this document in your declaration? 22 A. I don't recall specifically in the declaration 23 where or why it was cited, if we want to look 24 through the declaration and see the citation. 25 Q. So my recollection is that you relied on this</p>	<p>1 A. Yes. 2 Q. Did you do any analysis that you can recall to 3 compare the Gatorade label to the properties 4 in this document? 5 A. I don't think I understand that question. 6 Q. Sure. So this is outlining a set of 7 properties for the EL 62, is that fair? 8 A. Yes. 9 Q. Did you do any analysis to determine whether 10 or not the Gatorade label that you were 11 provided in this case meets these properties 12 of the EL 62 label? 13 A. So the analysis that was done on the Gatorade 14 label is contained in the declaration. 15 Q. Okay. 16 A. In the declaration, as I recall, there's not a 17 specific comparison to any on this label or 18 this table, but -- yeah, sorry. 19 MS. STONE: No, that's okay. That 20 was the answer to my question, I think. You 21 can set aside Exhibit 4. I'm going to hand 22 you Exhibit 5, which is Exhibit 1019 to your 23 declaration and the proceeding. 24 - - - 25 (Exhibit No. 5 was marked for identification.)</p>

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<p>1 - - - -</p> <p>2 THE WITNESS: Thank you.</p> <p>3 BY MS. STONE:</p> <p>4 Q. Do you recall reviewing Exhibit 5 to your</p> <p>5 deposition and Exhibit 1019 to your</p> <p>6 declaration?</p> <p>7 A. Yes.</p> <p>8 Q. This document is about the Watson standard</p> <p>9 silver ink, right?</p> <p>10 A. Yes.</p> <p>11 Q. Did you do any analysis to determine whether</p> <p>12 the Gatorade label uses the Watson standard</p> <p>13 silver ink?</p> <p>14 A. So again, the analysis of the Gatorade label</p> <p>15 is contained in the declaration, I -- my</p> <p>16 understanding is this is the ink that was</p> <p>17 used.</p> <p>18 Q. Where did you get that understanding?</p> <p>19 A. From counsel.</p> <p>20 Q. Okay. This document does not address the</p> <p>21 black ink that is on the Gatorade label,</p> <p>22 correct?</p> <p>23 MR. SCHATZ: Object to form, outside</p> <p>24 the scope of Dr. Deible's declaration.</p> <p>25 A. I don't -- I don't know how to answer that, I</p>	<p>1 label, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And again, this document, Exhibit 5 to</p> <p>4 your deposition, Exhibit 1019 to your</p> <p>5 declaration, doesn't discuss anything about a</p> <p>6 white ink, is that fair?</p> <p>7 A. Exhibit 5 is for silver ink, not white.</p> <p>8 Q. This document doesn't discuss the washability</p> <p>9 of the silver ink, right?</p> <p>10 A. This document does not say anything about</p> <p>11 washability.</p> <p>12 Q. Have you ever performed the bleed test that is</p> <p>13 discussed in Exhibit 5 to your deposition,</p> <p>14 Exhibit 1019 to your declaration?</p> <p>15 A. As I understand bleed testing, that is kind of</p> <p>16 a colloquial term that would refer to some</p> <p>17 portion of a material leeching or bleeding or</p> <p>18 releasing from another material. Those are</p> <p>19 types of tests that we perform pretty</p> <p>20 routinely.</p> <p>21 Q. And this document specifically states in the</p> <p>22 description, in the first full paragraph, the</p> <p>23 last sentence, this Chemshield product passes</p> <p>24 recyclability bleed testing set forth in the</p> <p>25 protocol established by the association of</p>
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<p>1 don't think. It says silver ink on here, so</p> <p>2 I'm assuming it is just the silver.</p> <p>3 BY MS. STONE:</p> <p>4 Q. There is black ink on the Gatorade label,</p> <p>5 right?</p> <p>6 A. I think there was some, yeah.</p> <p>7 Q. And to the best of your knowledge, that black</p> <p>8 ink is not discussed in this Exhibit 5 to your</p> <p>9 deposition in Exhibit 1019 to the proceeding,</p> <p>10 fair?</p> <p>11 A. This says silver ink.</p> <p>12 Q. And so, to the best of your knowledge, this</p> <p>13 document does not discuss anything about any</p> <p>14 black ink, is that fair?</p> <p>15 A. Yeah.</p> <p>16 Q. Do you recall whether there's orange ink on</p> <p>17 the Gatorade label?</p> <p>18 A. Yes.</p> <p>19 Q. And this document, Exhibit 5 to your</p> <p>20 deposition, Exhibit 1019 to your declaration,</p> <p>21 doesn't discuss anything about orange ink, is</p> <p>22 that fair?</p> <p>23 A. This document is for silver ink, so not</p> <p>24 orange.</p> <p>25 Q. Okay. There's also white ink on the Gatorade</p>	<p>1 post-consumer -- of plastic recyclers, right?</p> <p>2 A. That is what it says in the document, yes.</p> <p>3 Q. Okay. And so this document directs you to</p> <p>4 what protocol it used to determine whether</p> <p>5 that product passed the recyclability, slash,</p> <p>6 bleed testing, right?</p> <p>7 A. It says, as I interpret the document it's</p> <p>8 saying it passes the testing that -- from the</p> <p>9 protocol established by APR.</p> <p>10 MS. STONE: Let's just take a quick</p> <p>11 break.</p> <p>12 VIDEOGRAPHER: Off the record at</p> <p>13 10:01 a.m.</p> <p>14 - - - -</p> <p>15 (Pause in the record.)</p> <p>16 - - - -</p> <p>17 VIDEOGRAPHER: Back on record at</p> <p>18 10:15 a.m.</p> <p>19 BY MS. STONE:</p> <p>20 Q. So we spoke earlier about the fact that you</p> <p>21 did not receive any information directly from</p> <p>22 Mr. Bushman. But did you rely on any</p> <p>23 information from Mr. Bushman, whether received</p> <p>24 directly or indirectly, in order to form the</p> <p>25 basis for your opinions?</p>

<p style="text-align: right;">Page 66</p> <p>1 MR. SCHATZ: Object to form.</p> <p>2 A. All of the documents that I've relied on are</p> <p>3 listed in my declaration.</p> <p>4 BY MS. STONE:</p> <p>5 Q. Okay. My question's a little bit different,</p> <p>6 which is; did you rely on any information</p> <p>7 provided by Mr. Bushman to form the basis of</p> <p>8 your opinions?</p> <p>9 MR. SCHATZ: Object to form.</p> <p>10 A. I don't recall.</p> <p>11 BY MS. STONE:</p> <p>12 Q. Okay. In any of your discussions with</p> <p>13 Mr. Bushman, did he provide you any</p> <p>14 information on which you relied in forming</p> <p>15 your opinions?</p> <p>16 A. I don't recall. Again, all the documents I</p> <p>17 relied on are in the declaration.</p> <p>18 Q. Okay. So you can rely on things outside of</p> <p>19 documents in order to form your opinion, such</p> <p>20 as discussions with other people, is that</p> <p>21 fair?</p> <p>22 A. I suppose, yeah, that's fair.</p> <p>23 Q. Okay. So for example -- and again, I'm</p> <p>24 just -- I'm giving this as an example, I'm not</p> <p>25 saying this happened. But Mr. Bushman could</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay. So I'm going to ask my original</p> <p>2 question, now that I think we're on the same</p> <p>3 page.</p> <p>4 A. Sorry. Yeah.</p> <p>5 Q. Did you rely on any information that was</p> <p>6 provided to you by Mr. Bushman on any phone</p> <p>7 calls or any communications provided by email,</p> <p>8 in forming your opinions?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Okay. You've mentioned that counsel has been</p> <p>11 on a lot of communications and you just</p> <p>12 mentioned the word "work product," are you</p> <p>13 withholding from any answer that you've</p> <p>14 provided today information on the basis of</p> <p>15 privilege regarding your discussions with</p> <p>16 Mr. Bushman?</p> <p>17 A. Say that again?</p> <p>18 Q. Sure. So you've made reference in some</p> <p>19 answers to work product and -- and the fact</p> <p>20 that counsel was on communications, you recall</p> <p>21 that in a couple of your answers earlier</p> <p>22 today?</p> <p>23 A. Yes.</p> <p>24 Q. So my question is, are you withholding</p> <p>25 information from your answers that would be</p>
<p style="text-align: right;">Page 67</p> <p>1 have told you that the Gatorade label was an</p> <p>2 SKC ECO label, right, that's a type of</p> <p>3 information that he could have provided to you</p> <p>4 orally that maybe wouldn't be found in a</p> <p>5 document, does that make sense?</p> <p>6 A. I understand the question, but I'm going to</p> <p>7 back up just a step and say that all the basis</p> <p>8 for my opinions are contained in the</p> <p>9 declaration and its analytical data and</p> <p>10 documentation.</p> <p>11 So when you ask the question of, would I</p> <p>12 rely on something somebody else said to me as</p> <p>13 a part of my opinion, my opinions are formed</p> <p>14 based on the data and the documents in the</p> <p>15 declaration, and education, experience, et</p> <p>16 cetera. So my previous statement of saying, I</p> <p>17 suppose I could rely on that, that goes more</p> <p>18 to work product, collegial interactions,</p> <p>19 things of those nature.</p> <p>20 But more specifically I should state that</p> <p>21 all the opinions in the -- (cough) -- this</p> <p>22 matter are in the declaration based on the</p> <p>23 data that's presented in the declaration and</p> <p>24 the documents that are cited in the</p> <p>25 declaration.</p>	<p style="text-align: right;">Page 69</p> <p>1 responsive to my questions on the basis of</p> <p>2 either attorney-client or work product</p> <p>3 privilege?</p> <p>4 A. No.</p> <p>5 Q. Okay. Did you ever discuss your testing of</p> <p>6 anything related to this litigation with</p> <p>7 Mr. Bushman, whether that be live or via</p> <p>8 email?</p> <p>9 A. I don't recall.</p> <p>10 Q. Okay. Are you withholding anything from your</p> <p>11 last answer because counsel was involved in</p> <p>12 that discussion?</p> <p>13 A. No.</p> <p>14 Q. Okay. I'm just trying to get the -- I'm</p> <p>15 trying to understand the bounds of your</p> <p>16 earlier answers regarding work products and --</p> <p>17 that counsel was on the discussions, that's</p> <p>18 what I'm trying to understand, without diving</p> <p>19 into the privilege I'm trying to get the</p> <p>20 bounds, does that make sense?</p> <p>21 A. Maybe.</p> <p>22 Q. Okay. At any point did you have any</p> <p>23 discussions with Mr. Bushman regarding MCC's</p> <p>24 sample labels that you tested in this case?</p> <p>25 A. I don't -- I don't recall specific</p>

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<p>1 conversations that I've had that long ago with</p> <p>2 Brett and Craig.</p> <p>3 Q. Okay. But those discussions did occur, is</p> <p>4 that fair?</p> <p>5 MR. SCHATZ: Object to form.</p> <p>6 A. Can you?</p> <p>7 BY MS. STONE:</p> <p>8 Q. Sure. So you said you don't recall the</p> <p>9 specifics, but is it fair to say that you had</p> <p>10 discussions with Mr. Bushman, whether Counsel</p> <p>11 was present or not, that related to the sample</p> <p>12 labels that were tested in this case?</p> <p>13 A. Again, I -- I don't recall specifically what</p> <p>14 we talked about in those conversations.</p> <p>15 Q. And what I'm trying to parse out in my last</p> <p>16 question is, I understand you don't recall the</p> <p>17 specifics of those conversations, but at a</p> <p>18 high level do you have any recollection of any</p> <p>19 conversations involving Mr. Bushman that</p> <p>20 related to MCC's Gatorade or Febreze label?</p> <p>21 MR. SCHATZ: Object to form.</p> <p>22 A. I would say, at a high level, those</p> <p>23 conversations may have at times included, you</p> <p>24 know, an update that, you know, on the</p> <p>25 progress of testing that I was asked to do.</p>	<p>1 specific industry, you know, tests,</p> <p>2 generically, that would be industry standards</p> <p>3 or industry accepted in that industry.</p> <p>4 Q. Do you recall if you asked for that via email</p> <p>5 or if you ask for that live in a meeting?</p> <p>6 A. I don't recall.</p> <p>7 Q. Okay. So I'm going to clarify my prior</p> <p>8 question, because I do think it's a little bit</p> <p>9 different than what I asked you earlier, but I</p> <p>10 think it was unclear.</p> <p>11 After receiving the MCC test method</p> <p>12 regarding caustic washes, did you ask any</p> <p>13 questions on how to implement that caustic</p> <p>14 wash test method?</p> <p>15 A. No.</p> <p>16 Q. Did you rely on the MCC caustic wash test</p> <p>17 method which is cited in your declaration at</p> <p>18 Exhibit 1012 in forming your opinions in this</p> <p>19 case?</p> <p>20 A. So the caustic wash procedure that I used is</p> <p>21 outlined in my declaration.</p> <p>22 Q. And I understand that, and it's actually</p> <p>23 slightly different than Exhibit 1012 if you</p> <p>24 recall.</p> <p>25 And so my question is whether or not you</p>
Page 71	Page 73
<p>1 But I don't recall specifics of -- of the</p> <p>2 conversations, you know, and where those</p> <p>3 things were.</p> <p>4 BY MS. STONE:</p> <p>5 Q. Okay. Do you recall any conversation</p> <p>6 involving Mr. Bushman or anyone at MCC</p> <p>7 regarding the caustic wash test method that</p> <p>8 you were using?</p> <p>9 A. No.</p> <p>10 Q. Did you have any questions regarding how to</p> <p>11 implement that method for this case?</p> <p>12 A. Which method?</p> <p>13 Q. Sorry, let me back up. At any point in this</p> <p>14 case did you ask any questions regarding how</p> <p>15 to implement the caustic wash test method?</p> <p>16 A. So I think I answered this earlier when I said</p> <p>17 that the patent is not specific in its</p> <p>18 statements about caustic wash and is more</p> <p>19 generic in terms of industry accepted or, you</p> <p>20 know, used in the industry, the specific</p> <p>21 language escapes me but something of that</p> <p>22 nature is called out in the patent.</p> <p>23 And so I -- again, when we talked about</p> <p>24 the MCC document, I said that -- you know -- I</p> <p>25 had talked about finding and looking for a</p>	<p>1 relied on Exhibit 1012 the MCC caustic wash</p> <p>2 method in forming your opinions in this case?</p> <p>3 A. The MCC document is cited in my declaration as</p> <p>4 a document I have relied on.</p> <p>5 Q. Okay. We talked earlier about the samples of</p> <p>6 the Gatorade label and the Febreze label that</p> <p>7 were provided to you in this case, right. How</p> <p>8 many Gatorade label samples did you receive</p> <p>9 for testing?</p> <p>10 A. I don't recall. It's in my declaration I</p> <p>11 believe.</p> <p>12 Q. The number of samples that you received?</p> <p>13 A. The samples that were tested.</p> <p>14 Q. Okay. Do you recall if you received more</p> <p>15 Gatorade label samples than you tested?</p> <p>16 A. I don't recall.</p> <p>17 Q. There were two -- I guess flavors, for lack of</p> <p>18 a better word, of Gatorade that the labels</p> <p>19 were provided, do you recall that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you perform any analysis to determine</p> <p>22 whether there was a difference between those</p> <p>23 two labels in any way?</p> <p>24 A. All of the analyses of the Gatorade labels is</p> <p>25 contained in the declaration. I analyzed</p>

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<p>1 three Gatorade labels total. My understanding</p> <p>2 of the -- of those Gatorade labels was that</p> <p>3 they were the two different flavors, so one</p> <p>4 from each flavor so to speak and a duplicate</p> <p>5 of the flavor, does that make sense?</p> <p>6 Q. Did you identify any distinctions between the</p> <p>7 labels for the two different Gatorade flavors?</p> <p>8 A. No.</p> <p>9 Q. Do you have any Gatorade label samples left</p> <p>10 over?</p> <p>11 A. Of the samples that we tested there would be</p> <p>12 remnants, bits that were, you know, we section</p> <p>13 the samples to make further analysis, so there</p> <p>14 would be remnants from that process.</p> <p>15 Q. When you received the Gatorade label samples,</p> <p>16 did you just receive the labels themselves as</p> <p>17 a flat shrink sleeve label that was not</p> <p>18 shrunk, is that fair?</p> <p>19 A. There are as received documents in the</p> <p>20 declaration that show the images of the --</p> <p>21 labels that I received.</p> <p>22 Q. Okay. You did not receive any Gatorade</p> <p>23 bottles or containers for your testing in this</p> <p>24 case, is that fair?</p> <p>25 A. I did not receive Gatorade bottles.</p>	<p>1 Q. When you received the Febreze label samples</p> <p>2 were those labels provided as a flat shrink</p> <p>3 sleeve label that had not yet been shrunk?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you ever receive a Febreze</p> <p>6 container?</p> <p>7 A. That the label goes on the container bottle?</p> <p>8 Q. Correct.</p> <p>9 A. No.</p> <p>10 Q. Have you analyzed any samples of any Febreze</p> <p>11 bottles?</p> <p>12 A. No.</p> <p>13 Q. Did you perform any testing to determine</p> <p>14 whether a Febreze container comprises PET?</p> <p>15 A. No.</p> <p>16 Q. So I want to talk at a very high level about</p> <p>17 the different tests you ran. So I think we</p> <p>18 spoke earlier about the fact that you did not</p> <p>19 run any tests that are not reported in your</p> <p>20 declaration, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And so starting with the caustic wash,</p> <p>23 you pre-shrunk the label that you received,</p> <p>24 right?</p> <p>25 A. I believe that was what the procedure stated</p>
Page 75	Page 77
<p>1 Q. Have you analyzed any samples of any Gatorade</p> <p>2 bottles?</p> <p>3 A. No.</p> <p>4 Q. Did you perform any testing to determine</p> <p>5 whether a Gatorade bottle comprises PET?</p> <p>6 A. The bottle is outside the scope of the work.</p> <p>7 Q. So it's fair to say that you in fact did not</p> <p>8 do any testing to determine whether a Gatorade</p> <p>9 bottle comprises PET, is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall how many samples of the Febreze</p> <p>12 label you received?</p> <p>13 A. No, there's a -- I believe in my declaration</p> <p>14 there's a paragraph, but I'd have to reference</p> <p>15 the declaration specifically to see if that</p> <p>16 paragraph is in there.</p> <p>17 Q. Do you have any Febreze label samples left</p> <p>18 over?</p> <p>19 A. Again, as with the Gatorade label, there would</p> <p>20 be remnants from the samples that were</p> <p>21 processed or analyzed or cut for analysis.</p> <p>22 Q. Do you recall if you have any unused samples</p> <p>23 of either of the Gatorade label or the Febreze</p> <p>24 label left over?</p> <p>25 A. I don't recall.</p>	<p>1 to do, which I did. But again, that's</p> <p>2 outlined in the declaration which is what I</p> <p>3 would reference to answer that question a</p> <p>4 little more conclusively.</p> <p>5 Q. We'll jump back to that in a minute. You have</p> <p>6 not offered any opinions regarding any Brook &</p> <p>7 Whittle products, right?</p> <p>8 MR. SCHATZ: Objection, asked and</p> <p>9 answered.</p> <p>10 A. No.</p> <p>11 BY MS. STONE:</p> <p>12 Q. You're not offering any opinions regarding</p> <p>13 whether any Brook & Whittle product practices</p> <p>14 any claim of the '422 patent, right?</p> <p>15 A. All of the opinions in the analytical work is</p> <p>16 contained in the declaration. So Brook &</p> <p>17 Whittle is not in the declaration. Their</p> <p>18 materials are not in my declaration, so no.</p> <p>19 MS. STONE: I'm going to hand you</p> <p>20 what is going to be marked as Exhibit 6.</p> <p>21 - - - -</p> <p>22 (Exhibit No. 6 was marked for identification.)</p> <p>23 - - - -</p> <p>24 MS. STONE: And Exhibit 7.</p> <p>25 - - - -</p>

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<p>1 (Exhibit No. 7 was marked for identification.)</p> <p>2 - - - -</p> <p>3 BY MS. STONE:</p> <p>4 Q. So Exhibit 6 is titled, Declaration of</p> <p>5 Dr. Michael Deible, correct?</p> <p>6 A. Dr. Deible, yes.</p> <p>7 Q. Yeah, I knew I did it as soon as I said it.</p> <p>8 Can you please turn to Page 59 of that</p> <p>9 document. The date on this expert report is</p> <p>10 January -- or -- sorry, this expert</p> <p>11 declaration is January 16th, 2020, correct?</p> <p>12 A. 2025.</p> <p>13 Q. Thank you. The date of your first expert</p> <p>14 declaration is January 16th, 2025, right?</p> <p>15 A. Yes.</p> <p>16 Q. And this is your signature?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And this is Exhibit 1014, if you look</p> <p>19 at the first page, for the PGR proceeding, is</p> <p>20 that fair.</p> <p>21 A. Yes.</p> <p>22 Q. So I'm going to also have you turn to Exhibit</p> <p>23 7, this is title, the Supplemental Declaration</p> <p>24 of Dr. Michael Deible, right?</p> <p>25 A. Yes.</p>	<p>1 Q. So if we look at those materials considered on</p> <p>2 pages 4 and 5, you list a number of APR</p> <p>3 guidance documents, right?</p> <p>4 A. Yes.</p> <p>5 Q. To what extent did you rely on the APR</p> <p>6 guidance documents in forming your opinions in</p> <p>7 this case?</p> <p>8 A. I don't understand the question.</p> <p>9 Q. So I'll -- I'll rephrase. So you've got a</p> <p>10 number of APR guidance documents cited in your</p> <p>11 materials considered list, but I didn't see an</p> <p>12 analysis of those APR guidance documents in</p> <p>13 the actual analysis section of your report.</p> <p>14 So what I'm trying to understand is, kind</p> <p>15 of -- to what extent did those APR guidance</p> <p>16 documents form -- or inform your opinions?</p> <p>17 A. There are documents that are reviewed and</p> <p>18 considered, you know, cited periodically in</p> <p>19 the report. I -- I don't know how much more</p> <p>20 to say beyond they were reviewed and</p> <p>21 considered, you know, a lot or a little, I</p> <p>22 don't know.</p> <p>23 Q. Do you agree with me that you don't actually</p> <p>24 go through and provide an analysis of any of</p> <p>25 the APR guidance documents within your report,</p>
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<p>1 Q. Okay. And if we look at the fourth page of</p> <p>2 this document, the date of this supplemental</p> <p>3 declaration is October 14th, 2025, right?</p> <p>4 A. Yes.</p> <p>5 Q. And is that your signature on Page 4?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So I'm going to start with Exhibit 6,</p> <p>8 which is your original declaration in this</p> <p>9 case. In preparing this declaration you have</p> <p>10 referred a couple times today to the materials</p> <p>11 cited, are those the materials cited on pages</p> <p>12 4, 5, and 6 of your declaration?</p> <p>13 A. Pages 4 and 5.</p> <p>14 Q. And so, your testimony earlier today was that</p> <p>15 the entire contents of your opinions in this</p> <p>16 case have been disclosed in this -- in this</p> <p>17 declaration, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you have any changes that you need to make</p> <p>20 to your declaration, either Exhibit 6 or</p> <p>21 Exhibit 7?</p> <p>22 A. No.</p> <p>23 Q. And so, to the best of your knowledge, these</p> <p>24 declarations are final?</p> <p>25 A. To the best of my knowledge.</p>	<p>1 is that fair?</p> <p>2 MR. SCHATZ: Object to form.</p> <p>3 A. The declaration does not specifically have an</p> <p>4 analysis of APR documents that I recall, as</p> <p>5 I'm looking at it.</p> <p>6 MS. STONE: I'm going to hand you</p> <p>7 Exhibit No. 8.</p> <p>8 - - - -</p> <p>9 (Exhibit No. 8 was marked for identification.)</p> <p>10 - - - -</p> <p>11 BY MS. STONE:</p> <p>12 Q. So Exhibit 8 is Exhibit 1005 to the</p> <p>13 proceeding. Exhibit 1005 is listed in your</p> <p>14 materials considered on Page 4, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Have you seen this -- sorry, this APR</p> <p>17 guidance is called, Critical Guidance Protocol</p> <p>18 For Clear PET Articles With Labels and</p> <p>19 Closures, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it has a document number PET CG-02?</p> <p>22 A. Yes.</p> <p>23 Q. And the revision date of this document Exhibit</p> <p>24 1005 is August 30th, 2024, right?</p> <p>25 A. Yes.</p>

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<p>1 Q. Have you reviewed any earlier versions of this</p> <p>2 document in connection with your opinions?</p> <p>3 A. I don't recall.</p> <p>4 Q. Looking at the first paragraph of Page 1,</p> <p>5 there's kind of an introduction to this</p> <p>6 document, and it states that this is a</p> <p>7 comprehensive laboratory scale evaluation that</p> <p>8 can be used to assess the compatibility of PET</p> <p>9 packaging design -- design features, and</p> <p>10 includes a list of them, but one of those</p> <p>11 features is a label, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this protocol notes that it is only</p> <p>14 applicable to clear PET articles, right?</p> <p>15 A. Yes.</p> <p>16 Q. In the second paragraph of Page 1, there's a</p> <p>17 discussion of the evaluation that's conducted,</p> <p>18 but if you look at the very last two lines, it</p> <p>19 states that, This evaluation also applies to</p> <p>20 any article that would be sorted as clear PET</p> <p>21 in the collection and sorting system, right?</p> <p>22 MR. SCHATZ: I'm sorry, could you</p> <p>23 direct where you are? Sorry.</p> <p>24 MS. STONE: I am on Page 1, and in</p> <p>25 the second paragraph, at the -- the last two</p>	<p>1 Q. And if you look at the third section of</p> <p>2 bulleted lists, it states; for dark colors and</p> <p>3 label coverage, see definition and design</p> <p>4 guide. The second bullet in that list is</p> <p>5 sort, dash, S, dash, 01 NIR sortation</p> <p>6 protocol, right?</p> <p>7 A. That is the second bullet, yeah.</p> <p>8 Q. If we look at Page 5 of your declaration</p> <p>9 Exhibit 1014, you reviewed those documents in</p> <p>10 connection with your opinions, right, if you</p> <p>11 look at the I think fifth and sixth bullets of</p> <p>12 your -- of Page 5?</p> <p>13 A. Evaluation of -- potential -- sorry. I'll read</p> <p>14 out loud. Evaluation of near infrared sorting</p> <p>15 -- the whole plastic article, sort B-01.</p> <p>16 So that's what you're saying for the</p> <p>17 fifth bullet, one, two, three, four, five?</p> <p>18 Q. Yeah, so you've got -- in bullet five -- in</p> <p>19 bullet five you have cited sort B, dash, 01,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And do you know if that is the same or</p> <p>23 different from what we just talked about in</p> <p>24 Exhibit 1005, which is referred to as sort</p> <p>25 S-01?</p>
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<p>1 lines of the second paragraph.</p> <p>2 I'm going to re-ask my question now</p> <p>3 that we're all on the same page, I think.</p> <p>4 BY MS. STONE:</p> <p>5 Q. Okay. So this evaluation that is discussed in</p> <p>6 paragraph 2, in the last two lines it says,</p> <p>7 Also applies to any article that would be</p> <p>8 sorted as clear PET in the collection sorting</p> <p>9 system, right?</p> <p>10 A. That is what it says, yes.</p> <p>11 Q. Okay. And then if we look down at the last</p> <p>12 three sections, there's kind of some bullet</p> <p>13 pointed sections at the bottom of page one, do</p> <p>14 you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And so in this document PET/CG/02, it</p> <p>17 specifically cites some additional guidance or</p> <p>18 resource documents, is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Under the first bulleted list it states, for</p> <p>21 products or innovation that employ metal</p> <p>22 decoration or which contain metal components</p> <p>23 and lists as the second bullet, Sort, dash, S,</p> <p>24 dash, 03 metal sortation protocol, right?</p> <p>25 A. That is what's listed there.</p>	<p>1 A. I don't know.</p> <p>2 Q. Okay. Did you analyze those documents to</p> <p>3 determine whether or not they would be the</p> <p>4 same or maybe a different revision of the same</p> <p>5 document?</p> <p>6 A. I did not specifically compare sort B-01 to</p> <p>7 sort S-01.</p> <p>8 Q. Okay. And then for the sixth bullet point on</p> <p>9 Page 5 of your declaration in Exhibit 1014 you</p> <p>10 reference the sort B-03 APR guidance, do you</p> <p>11 see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you determine whether that is the same as</p> <p>14 different as the sort, dash, S, dash, 03 metal</p> <p>15 sortation protocol listed in Exhibit 1005?</p> <p>16 A. I did not compare sort B-03 to sort S-03.</p> <p>17 Q. Okay. So if you can turn to the last page,</p> <p>18 Page 11 of Exhibit 1005, do you see there's a</p> <p>19 document version history?</p> <p>20 A. Yes.</p> <p>21 Q. And in version 5, which is dated August 30th,</p> <p>22 2024, that's this version of the document if</p> <p>23 you want to confirm on the first page?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And so the revision notes state,</p>

<p style="text-align: right;">Page 86</p> <p>1 Changed naming convention for the sortation 2 protocol tests from sort B, dash, X-X to sort 3 S, dash, X-X, updated hyperlinks to match new 4 website. 5 Do you see that? 6 A. Yes. 7 Q. So do you understand this revision note to be 8 stating that the revision -- the sort B 9 protocols were simply changed to a naming 10 convention with sort S protocols? 11 A. Yes. 12 Q. Okay. And so does that give you any 13 information on whether or not the two 14 documents cited in your declaration on Page 5 15 for sort B-01 and sort B-03 would be the same 16 or different as the documents cited in Exhibit 17 1005? 18 A. (Indicating.) 19 Q. I can rephrase the question if that would be 20 helpful? 21 A. (Laughter.) 22 Q. So does the revision history explaining that 23 the sorting documents had the acronym for 24 their document number changed from sort B to 25 sort S give you any information about whether</p>	<p style="text-align: right;">Page 88</p> <p>1 immediately proceeds those bullet pointed -- 2 or bullet points, it says; In certain cases 3 before critical guidance protocol test results 4 can be tested to APR for consideration of 5 guidance recognition, all prerequisite tests 6 including sortation, potential protocols, and 7 degradable additives testing must be passed 8 and such evidence must be presented with any 9 guidance application, right? 10 A. Right what, that's what it says? 11 Q. That's what the document says? 12 A. That is what the document says. 13 Q. Okay. And then it states in the last sentence 14 of that paragraph, To determine when 15 prerequisite testing is needed please refer to 16 the APR PET design guide and the following 17 test protocols and resources, right? 18 A. That is what the document says, yes. 19 Q. Okay. And so the critical guidance protocol 20 that APR put together at PET CG 02 actually 21 internally references these prerequisite 22 testing including sort, dash, S-03 and sort, 23 dash, S, dash, 01, right? 24 A. Yes. 25 Q. Okay. Can you please turn to Page 2 --</p>
<p style="text-align: right;">Page 87</p> <p>1 or not the documents that you've cited in your 2 declaration as sort B, dash, 01 and sort B, 3 dash, 03 were referenced within Exhibit 1005? 4 A. Yes. 5 Q. So if you look at the paragraph -- actually 6 I'm going to back up. My last question I just 7 asked if that gave you any additional 8 information, would you agree with me that the 9 documents that you cite in your declaration -- 10 strike that. 11 Based on the revision history of Exhibit 12 1005, would you agree with me that the 13 document you cite in your direct -- 14 declaration sort B-01, would be just a prior 15 version of the sort S-01 cited in Exhibit 16 1005? 17 A. Yes. 18 Q. And would you agree with me that the document 19 cited in your declaration sort B-03 is just a 20 prior version of the document cited in 1005 as 21 sort S, dash, 03? 22 A. Yes. 23 Q. Okay. So can we go back to Exhibit 8 to your 24 deposition, Exhibit 1005 of the case, and on 25 Page 1 in the section of the guidance that</p>	<p style="text-align: right;">Page 89</p> <p>1 actually, I apologize, I'm going to have you 2 turn to Page 10 of Exhibit 1005, which is 3 Exhibit 8 to your deposition. 4 A. These aren't numbered. 5 Q. Oh, the page number is in blue at the bottom. 6 A. Oh sorry. There it is. Yes, thank you. 7 Q. Okay. Do you see a flow diagram on Page 10? 8 A. Yes. 9 Q. Okay. And this shows a -- Appendix 1 protocol 10 flow diagram for qualified PET articles with 11 labels and closures, right? 12 A. That is the title at the top of the page. 13 Q. And the flow diagram has a start and then has 14 two separate flows, correct? 15 A. Yes. 16 Q. And on the left hand side, it says; obtain 17 molded control article, right? 18 A. Yes. 19 Q. Did you perform any control testing in 20 connection with your analysis of the Gatorade 21 label or the Febreze label in this case? 22 A. I performed testing on the labels that were 23 supplied to me that are stated in the 24 declaration, I don't know what we are talking 25 about with a control.</p>

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<p>1 Q. Okay.</p> <p>2 A. What you mean by that? Sorry.</p> <p>3 Q. If you go through the flow, the -- on the left</p> <p>4 hand side, it says, obtain articles with</p> <p>5 innovation, do you see that?</p> <p>6 A. I would -- I would refer to that as the right</p> <p>7 hand side.</p> <p>8 Q. Oh my gosh, you're right. If you look at the</p> <p>9 right hand side flow, if you -- do you see</p> <p>10 where it says; obtain articles with</p> <p>11 innovation?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. So if you go to the third step where it</p> <p>14 says, wash, do you see that it cites a PET</p> <p>15 P-04 guidance?</p> <p>16 A. Yes.</p> <p>17 Q. And then if you continue down through the flow</p> <p>18 they join together again, and then in the last</p> <p>19 step, it says injection mold each blend</p> <p>20 PET-P-08, do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you look there is a green box on</p> <p>23 the left hand side that says, required</p> <p>24 evaluations plague color haze and inclusions,</p> <p>25 PET-S-09, do you see that?</p>	<p>1 diagram that we just discussed at the bottom</p> <p>2 of that page, is that right?</p> <p>3 A. Yeah, at the bottom of the page it says, flow</p> <p>4 diagram in appendix one illustrates the</p> <p>5 testing steps.</p> <p>6 Q. Do you recall the priority date that you</p> <p>7 assert in your expert declaration of the '422</p> <p>8 patent?</p> <p>9 A. Do you want to point me to that section where</p> <p>10 it's asserted in the declaration, or I will</p> <p>11 look for it.</p> <p>12 Q. I think you can turn to Paragraph 40 on Page</p> <p>13 18. So I think in Paragraph 40, you state</p> <p>14 that the priority date is May 13th, 2022,</p> <p>15 right?</p> <p>16 A. Ah, sorry, yes, May 13th 2022, Paragraph 40,</p> <p>17 yes.</p> <p>18 Q. And if you turn to Page 10, Paragraph 23, you</p> <p>19 also reiterate that the priority date is May</p> <p>20 13th, 2022, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. If you turn to the first page of</p> <p>23 Exhibit 1005, the revision date of this</p> <p>24 document postdates the priority date of the</p> <p>25 '422 patent, right?</p>
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<p>1 A. Yes.</p> <p>2 Q. To the best of your recollection, did you</p> <p>3 review PET-S-09 in connection with your</p> <p>4 opinions?</p> <p>5 A. That is not a document listed in -- document</p> <p>6 cited in the declaration, I don't recall</p> <p>7 looking at it.</p> <p>8 Q. We'll take a look at it in a few moments. I'd</p> <p>9 like to turn your attention back to some</p> <p>10 earlier paragraphs in this document.</p> <p>11 Can you please turn to Page 4 of Exhibit</p> <p>12 1005? And do you see that there is a section</p> <p>13 titled method summary and flow diagram?</p> <p>14 A. Yes.</p> <p>15 Q. Can you go to the fifth paragraph in -- on</p> <p>16 Page 4, starts with inks?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And so this paragraph states, Inks and</p> <p>19 adhesives can impact the costs of managing a</p> <p>20 wash system and waste disposal, therefore</p> <p>21 innovations involving printing inks or labels</p> <p>22 with adhesives it is recommended that the wash</p> <p>23 water evaluation be conducted, right?</p> <p>24 A. Yes.</p> <p>25 Q. And then it directs you to the appendix flow</p>	<p>1 A. So -- say that again?</p> <p>2 Q. The revision date of Exhibit 1005, which is</p> <p>3 August 30th, 2024, that postdates the date</p> <p>4 that you assert is the priority date of the</p> <p>5 2024 patent, right?</p> <p>6 A. Yes.</p> <p>7 MS. STONE: I think we've hit 11</p> <p>8 o'clock, why don't we take a quick break.</p> <p>9 VIDEOGRAPHER: Going off the record,</p> <p>10 at 11:01 a.m.</p> <p>11 - - - -</p> <p>12 (Pause in the record.)</p> <p>13 - - - -</p> <p>14 VIDEOGRAPHER: Back on record at</p> <p>15 11:08 a.m.</p> <p>16 MS. STONE: All right, I'm going to</p> <p>17 hand you Exhibit 9.</p> <p>18 - - - -</p> <p>19 (Exhibit No. 9 was marked for identification.)</p> <p>20 - - - -</p> <p>21 BY MS. STONE:</p> <p>22 Q. So Exhibit 9 is a document that is -- in this</p> <p>23 proceeding has been designated Exhibit 1027,</p> <p>24 and is titled, Critical Guidance Protocol For</p> <p>25 Clear PET Articles With Labels and Closures,</p>

<p style="text-align: right;">Page 94</p> <p>1 do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it has the same document number</p> <p>4 that we were just talking about with respect</p> <p>5 to Exhibit 1005, which is PET CG-02, right?</p> <p>6 A. Yes.</p> <p>7 Q. And the revision date of this document is</p> <p>8 April 11th, 2019, do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And so do you agree with me that this</p> <p>11 is just a previous revision of the document</p> <p>12 that we were just looking at, Exhibit 1005?</p> <p>13 A. This is a previous version of that document.</p> <p>14 Q. And the date of this document, April 11th,</p> <p>15 2019, predates what you have asserted as the</p> <p>16 priority date for the '422 patent, is that</p> <p>17 fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Have you seen this version of PET CG-02</p> <p>20 before today?</p> <p>21 A. I don't recall.</p> <p>22 Q. Okay. So I'm going to direct you to the</p> <p>23 fourth paragraph of Page 1.</p> <p>24 A. Sorry.</p> <p>25 Q. You're good.</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. SCHATZ: Object to form.</p> <p>2 A. I think that's what the last sentence means,</p> <p>3 is that the APR sorting guidance should be</p> <p>4 applied.</p> <p>5 BY MS. STONE:</p> <p>6 Q. And so would you agree with me that that</p> <p>7 sorting guidance kind of works together with</p> <p>8 the critical guidance protocol for PET</p> <p>9 articles with labels and closures?</p> <p>10 MR. SCHATZ: Object to form.</p> <p>11 A. What do you mean by works together?</p> <p>12 BY MS. STONE:</p> <p>13 Q. So they kind of -- read off each other, I</p> <p>14 guess, like, you would be able to go between</p> <p>15 them and kind of figure out how to utilize</p> <p>16 those document guidances consistently, is that</p> <p>17 fair?</p> <p>18 MR. SCHATZ: Object to form, outside</p> <p>19 the scope of Dr. Deible's declaration.</p> <p>20 A. I mean, it's a little bit more clear in</p> <p>21 Exhibit 08 than 1005, the more recent one,</p> <p>22 where it's folded, but I think that -- that's</p> <p>23 probably what this is trying to get at.</p> <p>24 BY MS. STONE:</p> <p>25 Q. Can you turn to Page 2 under the method</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Okay, yes.</p> <p>2 Q. This states -- this -- strike that.</p> <p>3 Exhibit 9 of your deposition, in the</p> <p>4 fourth paragraph on Page 1 states, The test is</p> <p>5 not appropriate for package constructions that</p> <p>6 will not pass through sorting steps at a</p> <p>7 materials recovery facility and be collected</p> <p>8 into PET bales for recycling, nor for packages</p> <p>9 that are not in alignment for the APR for</p> <p>10 plastic recycling text, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And if you look at the end of that</p> <p>13 Paragraph 4, it states, If it is questionable</p> <p>14 that the test article doesn't meet these</p> <p>15 criteria, the appropriate APR sorting</p> <p>16 potential protocol or degradability tests</p> <p>17 should be conducted prior to conducting this</p> <p>18 test, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And so the PET CG-02 guidance from April of</p> <p>21 2019 is instructing an individual reading this</p> <p>22 document that the sorting guidance that we</p> <p>23 discussed earlier should be used in connection</p> <p>24 with this guidance to determine whether the</p> <p>25 test should be performed at all, is that fair?</p>	<p style="text-align: right;">Page 97</p> <p>1 summary and flow diagram heading -- oh,</p> <p>2 actually, I apologize. It's Page 3, under</p> <p>3 sorting qualification.</p> <p>4 A. Sortation qualification?</p> <p>5 Q. Yes, thank you. In the section sortation</p> <p>6 qualification it states, The applicable APR</p> <p>7 sortation potential test must be conducted</p> <p>8 prior to proceeding with the critical guidance</p> <p>9 tests, right?</p> <p>10 A. That is what it states, yes.</p> <p>11 Q. Okay. And in the third sentence, starting</p> <p>12 with specific factors, it actually</p> <p>13 specifically references the NIR sortation,</p> <p>14 right?</p> <p>15 A. No, it doesn't reference the citation, it</p> <p>16 references the -- the technique and says,</p> <p>17 materials that could influence NIR sortation.</p> <p>18 MS. STONE: You can set that aside.</p> <p>19 - - - -</p> <p>20 (Exhibit No. 10 was marked for identification.)</p> <p>21 - - - -</p> <p>22 MS. STONE: I'm going to hand you</p> <p>23 what I'm going to mark as Exhibit 10.</p> <p>24 BY MS. STONE:</p> <p>25 Q. So Exhibit 10 to your deposition is titled,</p>

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<p>1 Evaluation of PET Plaques For Color, Haze, and</p> <p>2 Inclusion, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And the document code is PET-S-09, is that</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Could you please go back to Exhibit 7, which</p> <p>8 is Exhibit 1005 to your declaration, and go to</p> <p>9 that flow diagram that we were discussing</p> <p>10 earlier?</p> <p>11 A. You said Exhibit 7.</p> <p>12 Q. Sorry Exhibit 8, which is Exhibit 1005 to your</p> <p>13 declaration?</p> <p>14 A. Sorry.</p> <p>15 Q. Yep, and it's on Page 10, there is the flow</p> <p>16 diagram we discussed earlier?</p> <p>17 A. Sorry.</p> <p>18 Q. Okay. Do you recall earlier when we discussed</p> <p>19 the required evaluations in the green box at</p> <p>20 the bottom of that flow diagram?</p> <p>21 A. Plaque, color haze, and inclusions, PET-S-09.</p> <p>22 Q. And can you just confirm for me that the</p> <p>23 document code that is referenced in the flow</p> <p>24 diagram of Exhibit 1005 matches the document</p> <p>25 code for the APR guidance cited in Exhibit 10</p>	<p>1 and any other features employed, such as</p> <p>2 labeled or closures, have the least possible</p> <p>3 impact on the color and transparency of the</p> <p>4 resin, do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And the next sentence states, industry</p> <p>7 experience is that inks, adhesives, additives,</p> <p>8 layers, and coatings, for example, can be</p> <p>9 sources of color formation and specks in</p> <p>10 recycled PET, right?</p> <p>11 A. Yes.</p> <p>12 Q. And then in the next paragraph it states that</p> <p>13 this document, referring to PET-S-09, presents</p> <p>14 as standard method to evaluate any</p> <p>15 contribution to color, haze, or inclusion that</p> <p>16 might result from recycling PET articles, do</p> <p>17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And then the third paragraph in this second --</p> <p>20 sorry, strike that.</p> <p>21 The third sentence in this second</p> <p>22 paragraph states, This evaluation is an</p> <p>23 important part of many APR tests and is used</p> <p>24 to measure any impact of a design feature such</p> <p>25 as labels, inks, adhesives, or additives on</p>
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<p>1 to your deposition?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And if you look at the publication or</p> <p>4 revision date to Exhibit 10 it's November</p> <p>5 16th, 2018, right?</p> <p>6 A. Yes.</p> <p>7 Q. And November 16th, 2018 predates what you've</p> <p>8 asserted is the priority date for the '422</p> <p>9 patent, is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Have you seen this document before?</p> <p>12 A. Is this listed in the citations for the -- for</p> <p>13 my declaration?</p> <p>14 Q. I don't believe this document or any version</p> <p>15 of this document code has been cited in these</p> <p>16 proceedings before, but you're welcome to</p> <p>17 check.</p> <p>18 A. So it's not cited, so I don't recall having</p> <p>19 seen this before.</p> <p>20 Q. Okay. If you need to read any section of it,</p> <p>21 please let me know, but I'm going to direct</p> <p>22 your attention to the introduction on Page 1.</p> <p>23 And the second sentence of the first</p> <p>24 paragraph, it states when recycling clear PET,</p> <p>25 it is important that the PET resin additives</p>	<p>1 PET recycling, do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. At the conclusion of your caustic wash testing</p> <p>4 of the Gatorade labels, you did not implement</p> <p>5 this evaluation method, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And if you look under test method</p> <p>8 summary, also on Page 1, there are kind of two</p> <p>9 options for an evaluation. The first is color</p> <p>10 speck -- oh my gosh. Spectrophometer (sic),</p> <p>11 right? Brutal pronunciation.</p> <p>12 A. Close.</p> <p>13 Q. (Laughter.) Do you want to pronounce it for</p> <p>14 me?</p> <p>15 A. Spectrophotometer.</p> <p>16 Q. Photometer. Thank you. So I'm going to start</p> <p>17 my question over. The test -- test method</p> <p>18 summary of Page 1 in PET S-09 provides two</p> <p>19 options to evaluate the PET plaques for color,</p> <p>20 haze, and inclusion, one of those is a color</p> <p>21 spectrophotometer, right?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And the other is a visual evaluation, right?</p> <p>24 A. Right, as in that's what's stated in the test</p> <p>25 method summary, yes.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. Correct. Would you agree with me that this</p> <p>2 guidance suggests that if there are any inks</p> <p>3 left on the PET flakes after the caustic wash</p> <p>4 test, that the PET pellets would be rejected</p> <p>5 in the recycling stream?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 Objection, outside of the scope of</p> <p>8 Dr. Deible's declaration.</p> <p>9 A. Say that again?</p> <p>10 BY MS. STONE:</p> <p>11 Q. Sure. So looking at the introduction, of PET</p> <p>12 S-09, which is Exhibit 10, would you agree</p> <p>13 with me that this guidance suggests that if</p> <p>14 there are any inks left on the PET flakes</p> <p>15 after a caustic wash test, that that PET would</p> <p>16 be rejected in the recycling stream?</p> <p>17 MR. SCHATZ: Objection to form.</p> <p>18 Objection, outside the scope of Dr. Deible's</p> <p>19 declaration. Objection to scope.</p> <p>20 A. No.</p> <p>21 BY MS. STONE:</p> <p>22 Q. What is your basis for that?</p> <p>23 A. Well the test method summary says they are</p> <p>24 evaluated for black specs, it doesn't give any</p> <p>25 rejection criteria or not.</p>	<p style="text-align: right;">Page 104</p> <p>1 the priority date of the '422 patent, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. If you could turn to the next page</p> <p>4 under related U.S. application data, do you</p> <p>5 see where it states, Provisional application</p> <p>6 number 63-1880794 was filed on May 13th, 2021?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do any evaluation to determine if that</p> <p>9 was the appropriate priority date for the '422</p> <p>10 patent?</p> <p>11 A. No.</p> <p>12 Q. Would you agree with me that the claims of the</p> <p>13 '422 patent require the label itself to be</p> <p>14 recyclable?</p> <p>15 MR. SCHATZ: Object to form.</p> <p>16 A. Say that again, please?</p> <p>17 BY MS. STONE:</p> <p>18 Q. And you can turn to the claims in Column 28 if</p> <p>19 you'd like to answer my question.</p> <p>20 A. Yeah, that's what I was looking for.</p> <p>21 Q. Would you agree with me that the claims of the</p> <p>22 '422 patent require the label itself to be</p> <p>23 recyclable?</p> <p>24 MR. SCHATZ: Object to form. And</p> <p>25 objection, outside the scope of Dr. Deible's</p>
<p style="text-align: right;">Page 103</p> <p>1 MS. STONE: I'm going to hand you</p> <p>2 Exhibit 11.</p> <p>3 - - - -</p> <p>4 (Exhibit No. 11 was marked for identification.)</p> <p>5 - - - -</p> <p>6 MR. SCHATZ: Thank you.</p> <p>7 THE WITNESS: Thank you.</p> <p>8 BY MS. STONE:</p> <p>9 Q. Exhibit 11 is Exhibit 1001 to the PGR</p> <p>10 proceeding. Do you recognize this as the '422</p> <p>11 patent?</p> <p>12 A. Yes.</p> <p>13 Q. And I evaluated the '422 patent in connection</p> <p>14 with forming your opinions, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So I'd like to start by looking at the</p> <p>17 cover page where it says, related U.S.</p> <p>18 application data, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And so, under related U.S. application</p> <p>21 data it states that a continuation of the</p> <p>22 application was filed on May 13th, 2022,</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And that's the date that you assert as</p>	<p style="text-align: right;">Page 105</p> <p>1 declaration.</p> <p>2 A. So in claim 1 it says recyclable shrink label</p> <p>3 is recyclable with a PET container.</p> <p>4 BY MS. STONE:</p> <p>5 Q. Right. And so I'm distinguishing between the</p> <p>6 PET label itself and the -- the PET label of</p> <p>7 claim 1.</p> <p>8 A. Right.</p> <p>9 Q. Would you agree with me that the claimed label</p> <p>10 in claim 1 of the '422 patent is required to</p> <p>11 itself be recyclable?</p> <p>12 MR. SCHATZ: Objection to form.</p> <p>13 Objection, outside the scope of Dr. Deible's</p> <p>14 declaration.</p> <p>15 A. So it states that it's a recyclable shrink</p> <p>16 label comprising. So from that statement you</p> <p>17 would think that it would mean it should be</p> <p>18 recyclable.</p> <p>19 BY MS. STONE:</p> <p>20 Q. Can you turn to Column 20 of the patent</p> <p>21 please? And I'm looking at columns 1 through</p> <p>22 20, that first big paragraph on Column 20.</p> <p>23 Starting at line 1, this states according to</p> <p>24 an embodiment a method of recycling the</p> <p>25 article includes determining the type of</p>

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<p>1 material, EG, type of plastic that the</p> <p>2 container and recyclable shrink label are made</p> <p>3 of, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. It then goes on to state that directing the</p> <p>6 article into a corresponding recycling stream</p> <p>7 and washing the article to remove inks and</p> <p>8 pigments from the recyclable shrink label,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. So does that further confirm to you that the</p> <p>12 -- this patent is disclosing a label that is</p> <p>13 itself recyclable?</p> <p>14 MR. SCHATZ: Objection to form.</p> <p>15 Objection, outside the scope of Dr. Deible's</p> <p>16 declaration, outside the scope.</p> <p>17 A. So the only thing there that does, it says</p> <p>18 that -- at the end it says, recyclable shrink</p> <p>19 label, or it states that it's a recyclable</p> <p>20 shrink label. The rest of this is just saying</p> <p>21 that -- let's see -- the type of material --</p> <p>22 made of -- directing the article into a</p> <p>23 corresponding recycling stream and washing the</p> <p>24 article to remove anything. So.</p> <p>25 BY MS. STONE:</p>	<p>1 be recyclable?</p> <p>2 A. Well, maybe I'm misunderstanding your question</p> <p>3 then. I mean, I thought the question was</p> <p>4 asking me, does this say that the shrink label</p> <p>5 is recyclable -- or must be recyclable, and</p> <p>6 it's not saying that it should be recyclable,</p> <p>7 it says that it's a recyclable label.</p> <p>8 Q. What is the distinction you're making in that</p> <p>9 last answer?</p> <p>10 A. One of them is a statement and one of them is</p> <p>11 saying that it has to be qualified as</p> <p>12 recyclable.</p> <p>13 Q. I guess I'm -- I'm not understanding the</p> <p>14 distinction that you're making between one is</p> <p>15 a statement and one is qualifying as</p> <p>16 recyclable?</p> <p>17 A. So when I say, "qualified as recyclable,"</p> <p>18 there's some criteria that is met for it to be</p> <p>19 recyclable, this -- this isn't saying anything</p> <p>20 about that, it's just saying this is a</p> <p>21 recyclable shrink label.</p> <p>22 Q. Right. Okay. So I think we're on the same</p> <p>23 page then. And I think my question is, again,</p> <p>24 it's distinguishing between the container and</p> <p>25 the label. And so I think we're at -- we're</p>
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<p>1 Q. So in this section that we just reviewed</p> <p>2 together at Column 20, lines 1 through 6, the</p> <p>3 '422 patent distinguishes between the</p> <p>4 container and the recyclable shrink label, is</p> <p>5 that fair?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 Objection, outside the scope of Dr. Deible's</p> <p>8 declaration, calls for speculation.</p> <p>9 A. You're saying that the -- the label is</p> <p>10 separate from the container based on this?</p> <p>11 BY MS. STONE:</p> <p>12 Q. So what I'm asking is whether or not the label</p> <p>13 itself, apart from the container that the</p> <p>14 label will be affixed to, the label itself</p> <p>15 must be recyclable, right?</p> <p>16 MR. SCHATZ: Objection to form.</p> <p>17 Objection, outside the scope of Dr. Deible's</p> <p>18 declaration. Calls for speculation.</p> <p>19 A. Yeah, so it says recyclable. So you know,</p> <p>20 it's stating that it's recyclable there, it's</p> <p>21 not calling for it to be recyclable or</p> <p>22 anything of that nature, it just says it's a</p> <p>23 recyclable shrink wrap.</p> <p>24 BY MS. STONE:</p> <p>25 Q. What do you mean by it's not calling for it to</p>	<p>1 in agreement that the label itself, apart from</p> <p>2 the container on which it's affixed to that is</p> <p>3 disclosed in the '422 patent, is a recyclable</p> <p>4 label, right?</p> <p>5 MR. SCHATZ: Object to form.</p> <p>6 Objection, outside the scope of Dr. Deible's</p> <p>7 declaration.</p> <p>8 A. I think I would agree that this is talking</p> <p>9 about the label, regardless of the substrate</p> <p>10 that the label is applied to. Container.</p> <p>11 MS. STONE: You can set aside the</p> <p>12 patent for now. We might come back to it</p> <p>13 though, so keep it handy. I'm handing you</p> <p>14 what is going to be Exhibit 12.</p> <p>15 - - - -</p> <p>16 (Exhibit No. 12 was marked for identification.)</p> <p>17 - - - -</p> <p>18 BY MS. STONE:</p> <p>19 Q. Exhibit 12 is Exhibit 1002 to the PGR</p> <p>20 proceeding. Do you recognize this as the</p> <p>21 prosecution history of the '422 patent?</p> <p>22 A. Yes.</p> <p>23 Q. And I promise we're not going to go through</p> <p>24 the entire thing today. Just a few aspects,</p> <p>25 but I wanted to make sure you had the full</p>

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<p>1 thing in case you needed to reference any</p> <p>2 other aspects of the prosecution.</p> <p>3 However, I'd like to start by directing</p> <p>4 you back to your declaration, Exhibit 6 or</p> <p>5 Exhibit 1014, you have a section in your</p> <p>6 report where you discuss the prosecution</p> <p>7 history. And I'm specifically looking at</p> <p>8 pages 18 and 19 to start. Everybody there?</p> <p>9 - - - -</p> <p>10 (Indicating.)</p> <p>11 - - - -</p> <p>12 BY MS. STONE:</p> <p>13 Q. Okay. So in Paragraph 42, you refer to an</p> <p>14 office action in the prosecution of the</p> <p>15 application that resulted in the '422 patent.</p> <p>16 Do you see that paragraph?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you state that the examiner issued</p> <p>19 an office action citing the Mitchel reference,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. Is that the same Mitchel reference that you</p> <p>23 rely on in ground 2 of your opinion?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And you note that the examiner made</p>	<p>1 obviousness opinions regarding claim 4, is</p> <p>2 that right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Let's turn back to Exhibit 12, and you</p> <p>5 cite in your declaration that this language</p> <p>6 appears at Page 239 in that exhibit.</p> <p>7 Do you see where you are in the -- in the</p> <p>8 prosecution history?</p> <p>9 MS. STONE: So I think if you're on</p> <p>10 page 249 of Exhibit 12 --</p> <p>11 A. Yes.</p> <p>12 BY MS. STONE:</p> <p>13 Q. Are you there? If you look at paragraphs 67</p> <p>14 and 68, I think that's where you are pulling</p> <p>15 that language from?</p> <p>16 A. Okay.</p> <p>17 Q. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And so this is actually in connection</p> <p>20 with claim 4 in this office action, is that</p> <p>21 fair?</p> <p>22 A. Yeah, that says in 67 there regarding claim 4.</p> <p>23 Q. Okay. And so if you then turn back to the</p> <p>24 applicant response, which starts at Page 333 I</p> <p>25 believe of the document that you're currently</p>
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<p>1 some references to Mitchel including stating</p> <p>2 that the term recyclable is considered</p> <p>3 functional language and does not further limit</p> <p>4 the structure and that Mitchel teach that the</p> <p>5 shrinkable labels provide easy separate during</p> <p>6 recycling process, do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then if you flip over to the --</p> <p>9 Paragraph 43, which spans pages 18 and 19, you</p> <p>10 discuss that the examiner noted that Mitchel</p> <p>11 teaches that the metalization layer can be</p> <p>12 provided on either of the skin layers, right?</p> <p>13 A. Right, that's what it says, yes.</p> <p>14 Q. Okay. And then you point to the language from</p> <p>15 the prosecution history where the examiner</p> <p>16 said it would have been obvious to one of</p> <p>17 ordinary skill in the art before the effective</p> <p>18 filing date of the claimed invention to</p> <p>19 provide the metalization layer, high opacity</p> <p>20 layer, such that it is positioned between the</p> <p>21 printing indicia layer and the third layer,</p> <p>22 slash, skin, do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you rely on that language from the</p> <p>25 prosecution history in connection with your</p>	<p>1 in.</p> <p>2 A. Page 333, yes.</p> <p>3 Q. So, if you're looking at that page, you can</p> <p>4 see at the top that it is an amendment and</p> <p>5 response, do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it is starting with remarks, and this is a</p> <p>8 response to the non-final office action of</p> <p>9 August 9th, 2023, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And so if you scroll down to page</p> <p>12 335 -- or I guess I'm scrolling, you're going</p> <p>13 to be flipping.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see that there -- sorry, starting on</p> <p>16 Page 334 at the very bottom it talks about the</p> <p>17 office action asserting that Mitchel 879</p> <p>18 teaches aspects of the invention, do you see</p> <p>19 that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Okay. So now if you turn to Page 335, it</p> <p>22 references the different layers that the</p> <p>23 examiner referenced in the language that you</p> <p>24 quoted in your declaration, such as the</p> <p>25 metalization layer, and then the separate</p>

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<p>1 skins, do you see that discussion at the very</p> <p>2 top?</p> <p>3 A. Yes.</p> <p>4 Q. And then if you go to the full -- first full</p> <p>5 paragraph, that starts regarding</p> <p>6 recyclability, the patent owner addresses the</p> <p>7 examiner's statement that the term</p> <p>8 "recyclable" is considered functional</p> <p>9 language, right?</p> <p>10 A. Yes, that's what it says here.</p> <p>11 Q. And the patent owner states, Mitchel teaches</p> <p>12 all the structural features of claim -- sorry</p> <p>13 that's quoting the examiner, I -- strike that.</p> <p>14 The applicant disagrees with that</p> <p>15 interpretation of Mitchel, right, in the third</p> <p>16 paragraph down?</p> <p>17 A. Yes.</p> <p>18 Q. And then if you look at the next two</p> <p>19 paragraphs, it explains that Mitchel states in</p> <p>20 the background that it would be desirable that</p> <p>21 the labels are removable from the surface of</p> <p>22 the container, but also separable in the</p> <p>23 normal sink float washing process, thus</p> <p>24 promoting recycling of the container, right?</p> <p>25 A. Yes.</p>	<p>1 materials are capable of being recycled,</p> <p>2 right?</p> <p>3 A. Yes, that's what it states.</p> <p>4 Q. And then the following sentence states, it</p> <p>5 should also be noted that removing the label</p> <p>6 before or during the recycling process is not</p> <p>7 evidence of the recyclability of the label,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And then the conclusion in the last paragraph</p> <p>11 of the second sentence states, Mitchel fails</p> <p>12 to teach a recyclable label, right?</p> <p>13 A. Yes.</p> <p>14 Q. Can you please turn to Page 336 of Exhibit</p> <p>15 1002. In the second paragraph of that page</p> <p>16 the patent owner explains that claim 1 has</p> <p>17 been amended, right?</p> <p>18 A. Yes.</p> <p>19 Q. And in -- has been amended -- it's the bolded</p> <p>20 language at the end of that paragraph, wherein</p> <p>21 the recyclable shrink label is recyclable with</p> <p>22 a PET container, right?</p> <p>23 A. Yes.</p> <p>24 Q. That's the claim language that you are</p> <p>25 asserting is indefinite in your declaration,</p>
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<p>1 Q. And then patent owner continues in the next</p> <p>2 paragraph that the term recyclable does</p> <p>3 further limit the claim in that the claimed</p> <p>4 label must be capable of being recycled,</p> <p>5 right?</p> <p>6 A. You're talking about the next paragraph, the</p> <p>7 term recyclable does not --</p> <p>8 - - - -</p> <p>9 (Simultaneous speaking.)</p> <p>10 - - - -</p> <p>11 BY MS. STONE:</p> <p>12 Q. Yes.</p> <p>13 A. -- must be capable of being recycled. Okay.</p> <p>14 Q. Right. And we discussed this earlier when we</p> <p>15 were looking at the '422 patent, right,</p> <p>16 there's a distinction between the</p> <p>17 recyclability of the container versus the</p> <p>18 recyclability of the label, fair?</p> <p>19 MR. SCHATZ: Object to form.</p> <p>20 A. Yes.</p> <p>21 BY MS. STONE:</p> <p>22 Q. And the paragraph we were just looking at, the</p> <p>23 second paragraph from the bottom, the second</p> <p>24 sentence, the patent owner explains not all</p> <p>25 combinations of shrink film and light blocking</p>	<p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then the patent owner then explains</p> <p>4 that the shrink labels taught by Mitchel are</p> <p>5 not made of PET and would not be recyclable</p> <p>6 with a PET container, right?</p> <p>7 MR. SCHATZ: Object to form.</p> <p>8 A. Right, as in that's what it says here.</p> <p>9 BY MS. STONE:</p> <p>10 Q. Yes. And so the patent owner here is</p> <p>11 distinguishing Mitchel from what it is</p> <p>12 asserting its claimed invention is, is that</p> <p>13 fair?</p> <p>14 A. I don't know that I would quite phrase it that</p> <p>15 way, but yeah. He's distinguishing because</p> <p>16 the bolded language above says, the shrink</p> <p>17 label is recyclable with the PET container.</p> <p>18 And then the next line it says, the label</p> <p>19 taught by Mitchel are not made of PET and</p> <p>20 would not recyclable with the PET container.</p> <p>21 Q. Did you review the Mitchel reference?</p> <p>22 A. The one that was cited in the declaration?</p> <p>23 Q. So it's actually not a cited in your materials</p> <p>24 considered, which is why I'm asking.</p> <p>25 A. It's this?</p>

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<p>1 Q. So the Mitchel reference is being -- strike</p> <p>2 that.</p> <p>3 The Mitchel prior art reference is being</p> <p>4 cited in the patent prosecution history that</p> <p>5 we're reviewing right now. My question is,</p> <p>6 did you independently review the patent</p> <p>7 application, Mitchel, in connection with</p> <p>8 forming your opinion?</p> <p>9 A. No.</p> <p>10 Q. Do you have any reason to dispute that the</p> <p>11 shrink labels taught by Mitchel are not made</p> <p>12 of PET?</p> <p>13 A. No.</p> <p>14 Q. Do you have any reason to dispute that the</p> <p>15 shrink labels taught by Mitchel would not be</p> <p>16 recyclable with a PET container?</p> <p>17 A. No.</p> <p>18 Q. So at the end of this paragraph, umm, the</p> <p>19 patent owner states this is supported by a</p> <p>20 resource document by the association of</p> <p>21 plastic recyclers, APR, provided herewith and</p> <p>22 then provides some quotes from the APR</p> <p>23 document, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And so there are, essentially, two</p>	<p>1 caustic wash water used in the recycling</p> <p>2 process. If the ink separates from the label</p> <p>3 in the wash step, it is desirable that ink be</p> <p>4 readily filtered from the PET flake as well as</p> <p>5 the wash water. If the sleeve label floats,</p> <p>6 it is desirable that the ink remain adhered to</p> <p>7 the floating label and that the ink density</p> <p>8 not cause a floating label to sink.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. If you look at the third full paragraph</p> <p>12 starting in contrast on Page 337 of Exhibit</p> <p>13 1002, do you see that it says, In contrast the</p> <p>14 present application teaches that the inks and</p> <p>15 pigments used in the recyclable shrink label</p> <p>16 may be removed by washing, leaving behind a</p> <p>17 label that can be recycled with the article,</p> <p>18 right?</p> <p>19 MR. SCHATZ: Object to form.</p> <p>20 A. That is what it says, yeah.</p> <p>21 MS. STONE: Counsel, what was the</p> <p>22 basis of your last form objection?</p> <p>23 MR. SCHATZ: Well, your -- as I</p> <p>24 understood it, you're just asking him to</p> <p>25 confirm what is in the document. When you end</p>
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<p>1 recommendations from the APR. It says, APR</p> <p>2 recommends films that are compatible with PET</p> <p>3 recycling such as, one, films that float in</p> <p>4 water and can be separated from PET that sinks</p> <p>5 in water. Or two, PET based films that</p> <p>6 crystallize and can be recovered with the PET</p> <p>7 stream, right?</p> <p>8 A. Yes, that's what it says here.</p> <p>9 Q. Okay. And then in the last paragraph on Page</p> <p>10 336 the patent owner expressly states, Mitchel</p> <p>11 does not fall into the second category and is</p> <p>12 not recyclable with the PET stream. If the</p> <p>13 film floats despite its metal content it may</p> <p>14 fall into the first category because it can be</p> <p>15 separated from PET, right?</p> <p>16 MR. SCHATZ: Object to form.</p> <p>17 A. That is what it states.</p> <p>18 BY MS. STONE:</p> <p>19 Q. Okay. And then if we scroll down -- sorry, if</p> <p>20 we flip to Page 337 there is an additional</p> <p>21 quote from the APR document in the middle of</p> <p>22 the first paragraph and it states, An</p> <p>23 important consideration for inks on shrink</p> <p>24 sleeve label is that the ink not contaminate</p> <p>25 or discolor PET flake when mixed in hot</p>	<p>1 up with your question -- and oftentimes you've</p> <p>2 done this during the day -- that you'll say</p> <p>3 "fair," it's very unclear what you're actually</p> <p>4 trying to ask.</p> <p>5 MS. STONE: Okay. Thank you.</p> <p>6 BY MS. STONE:</p> <p>7 Q. So here we're talking -- we've got the patent</p> <p>8 owner explaining very explicitly what the</p> <p>9 present application teaches with regard to</p> <p>10 whether the label itself can be recycled with</p> <p>11 the article, right?</p> <p>12 MR. SCHATZ: Object to form.</p> <p>13 A. So you're saying that the patent owner is</p> <p>14 stating that the label can be recycled with</p> <p>15 the container if these criteria in this</p> <p>16 paragraph are met.</p> <p>17 BY MS. STONE:</p> <p>18 Q. Is that a fair reading of that paragraph in</p> <p>19 the prosecution history?</p> <p>20 MR. SCHATZ: Object to form.</p> <p>21 A. Yeah, so the -- where it ends, where it says,</p> <p>22 Leaving behind a label that can be recycled</p> <p>23 with the article, is -- is stating that,</p> <p>24 right, it's saying that it can be recycled</p> <p>25 with the article, that's what it's trying to</p>

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<p>1 state.</p> <p>2 BY MS. STONE:</p> <p>3 Q. And then in the next paragraph the patent</p> <p>4 owner distinguishes Mitchel by stating that</p> <p>5 Mitchel does not provide any guidance for how</p> <p>6 to make a recyclable label, rather than merely</p> <p>7 a label that can be removed so that the</p> <p>8 container can be recycled, right?</p> <p>9 MR. SCHATZ: Object to form.</p> <p>10 A. That's what the document says, yeah.</p> <p>11 BY MS. STONE:</p> <p>12 Q. And the patent owner then states, a person of</p> <p>13 ordinary skill in the art would not have had a</p> <p>14 reasonable expectation of success in preparing</p> <p>15 recyclable label based on the teaching of</p> <p>16 Mitchel, is that what the document says?</p> <p>17 A. Yes.</p> <p>18 Q. Can you turn back to Exhibit 1014 of your --</p> <p>19 the expert -- your expert declaration, Exhibit</p> <p>20 1014. So you kind of walked through some of</p> <p>21 the pages that we just discussed, between</p> <p>22 pages 333 and 337 on Page 20 of your</p> <p>23 declaration.</p> <p>24 And then if you turn to Page 21, you then</p> <p>25 transition to a new office action dated</p>	<p>1 Q. In Paragraph 52, you state that, ultimately a</p> <p>2 notice of allowance for the '422 patent was</p> <p>3 mailed on February 6th, 2024, right?</p> <p>4 A. Yes, that's what it says there.</p> <p>5 Q. You would agree with me that the language that</p> <p>6 you rely on from the prosecution history</p> <p>7 regarding whether or not it would be obvious</p> <p>8 to change the layers of Mitchel for claim 4,</p> <p>9 that discussion in the prosecution history was</p> <p>10 prior to a claim amendment to the claims,</p> <p>11 right?</p> <p>12 A. I don't know, do we have to work through this</p> <p>13 whole time on here?</p> <p>14 Q. No, it's okay. We can go back to the language</p> <p>15 on your declaration --</p> <p>16 A. Yeah.</p> <p>17 Q. -- can you turn back to Page 18, Paragraph</p> <p>18 44 -- 43 and 44?</p> <p>19 A. Yep.</p> <p>20 Q. Okay. So just looking at the time line, the</p> <p>21 language you rely on in your declaration, in</p> <p>22 support of your obviousness argument,</p> <p>23 regarding the layers of Mitchel, cited in</p> <p>24 Paragraph 43, that's from an August 9th, 2023</p> <p>25 office action, right?</p>
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<p>1 November 13th, 2023, do you see that?</p> <p>2 A. Paragraph 50, yes.</p> <p>3 Q. Did I say Page 50?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. So Paragraph 50 of your declaration,</p> <p>6 Exhibit 1014, discusses the next subsequent</p> <p>7 office action following the portion of the</p> <p>8 prosecution history that we were just</p> <p>9 discussing regarding Mitchel, is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And here, you refer to the office</p> <p>12 action wherein the examiner also cited Mitchel</p> <p>13 in connection with Sasaki, and the ultimate</p> <p>14 response to those office actions in</p> <p>15 paragraph -- in paragraph 51, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. To the best of your recollection was</p> <p>18 there any discussion regarding the order of</p> <p>19 the layers of Mitchel after the claim</p> <p>20 amendment was added, adding the language,</p> <p>21 wherein the recyclable shrink label is</p> <p>22 recyclable with a PET container?</p> <p>23 MR. SCHATZ: Object to form.</p> <p>24 A. I don't recall.</p> <p>25 BY MS. STONE:</p>	<p>1 A. Yes.</p> <p>2 Q. You would agree with me that looking at</p> <p>3 Paragraph 46 of your declaration that the</p> <p>4 applicant subsequently amended the claims of</p> <p>5 the '422 patent to add a claim limitation</p> <p>6 wherein the recyclable shrink label is</p> <p>7 recyclable with a PET container, right?</p> <p>8 A. Yes.</p> <p>9 Q. So you would agree with me that the statement</p> <p>10 by the examiner about the layers of Mitchel on</p> <p>11 August 9th, 2023, that statement was not made</p> <p>12 with respect to the final claims of the '422</p> <p>13 patent that ultimately issued, right?</p> <p>14 MR. SCHATZ: Object to form.</p> <p>15 A. I guess I don't know the answer to that,</p> <p>16 because the statement from August 9th, 2023,</p> <p>17 could be applicable to -- kind of a wide range</p> <p>18 of things, whereas the amendment where it says</p> <p>19 the shrink label is recyclable with a PET</p> <p>20 container is specific to that label.</p> <p>21 So from a time line perspective, right --</p> <p>22 yes, the Mitchel citation is before the</p> <p>23 amendment citation, so I would agree with</p> <p>24 that. But what that refers to in Mitchel,</p> <p>25 what he's talking about in terms of the</p>

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<p>1 layers, it's not clear to me that that doesn't</p> <p>2 still apply after the amendment was made, does</p> <p>3 that make sense?</p> <p>4 BY MS. STONE:</p> <p>5 Q. Yep. You would agree with me that the claim</p> <p>6 limitation that was added in October 16th,</p> <p>7 2023, wherein the recyclable shrink label is</p> <p>8 recyclable with a PET container, that</p> <p>9 limitation applies to every claim in the '422</p> <p>10 patent, right?</p> <p>11 A. Yeah, claim 1 and claim -- I think it's in 19,</p> <p>12 right, isn't it.</p> <p>13 Q. I told you to keep your '422 patent handy,</p> <p>14 let's take a quick look.</p> <p>15 A. Right.</p> <p>16 Q. Can you please look at columns 28 and 29, and</p> <p>17 I'll just re-ask my question when you get</p> <p>18 settled.</p> <p>19 A. Yes.</p> <p>20 Q. You would agree with me that the claim</p> <p>21 limitation added in October 16th -- strike</p> <p>22 that.</p> <p>23 You would agree with me that the claim</p> <p>24 limitation added on October 16th, 2023, where</p> <p>25 in the recyclable shrink label is recyclable</p>	<p>1 discussing the order of the layers, right?</p> <p>2 A. Right.</p> <p>3 Q. But in order for claim 4 -- strike that.</p> <p>4 Claim 4 also requires that the recyclable</p> <p>5 shrink label must also be a recyclable shrink</p> <p>6 label wherein the recyclable shrink label is a</p> <p>7 -- is recyclable with a PET container, because</p> <p>8 claim 4 depends on claim 1, right?</p> <p>9 MR. SCHATZ: Object to form.</p> <p>10 A. Yeah, yeah, that's my interpretation of</p> <p>11 that --</p> <p>12 BY MS. STONE:</p> <p>13 Q. Okay.</p> <p>14 A. -- I would agree with that.</p> <p>15 Q. So let's talk about -- let's go back to what I</p> <p>16 was talking about with the statement about</p> <p>17 Mitchel in the patent prosecution, that you</p> <p>18 rely on for your obviousness analysis, right,</p> <p>19 so -- and you can turn back to your</p> <p>20 declaration if you want at Paragraph 43 where</p> <p>21 that statement is found.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Did you do any analysis to determine whether</p> <p>24 the order of the layers of the label had any</p> <p>25 impact on whether or not that label was</p>
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<p>1 with a PET container, that limitation applies</p> <p>2 to every claim of the '422 patent, right?</p> <p>3 A. Yes.</p> <p>4 Q. Can you turn to claim 4 for a moment. Claim 4</p> <p>5 of the '422 patent depends from claim 3,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And so in order -- sorry, strike that.</p> <p>9 And claim 3 depends from claim 1, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And so in order for the claim</p> <p>12 limitation -- strike that.</p> <p>13 In order for claim 4 to be obvious, every</p> <p>14 limitation from claim 4, from claim 3, and</p> <p>15 claim 1 must be met, correct?</p> <p>16 MR. SCHATZ: Object to form.</p> <p>17 A. So you said for -- for claim 4 to be obvious,</p> <p>18 three and one also have to be met.</p> <p>19 BY MS. STONE:</p> <p>20 Q. Correct.</p> <p>21 A. I mean claim 4 is dependant on claim 3 and</p> <p>22 which is dependant on 1, so -- however, claim</p> <p>23 4 is mostly talking about the layering, the</p> <p>24 orders of the layers.</p> <p>25 Q. The dependant limitation of claim 4 is</p>	<p>1 recyclable with a PET container?</p> <p>2 A. What do you mean by recyclable?</p> <p>3 Q. So you offer an opinion in ground 1 of this</p> <p>4 case, that the Gatorade label is recyclable,</p> <p>5 right?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 BY MS. STONE:</p> <p>8 Q. And I can turn you to the right page if you</p> <p>9 would like?</p> <p>10 A. Yeah, thanks.</p> <p>11 Q. If you look at Page 32 of Exhibit 1014, the</p> <p>12 section starts on Page 30, so it's pages 30</p> <p>13 through 32 discuss that limitation.</p> <p>14 A. So the patent states that it's considered</p> <p>15 recyclable if no inks are retained on the film</p> <p>16 after a caustic wash cycle typically used in</p> <p>17 PET reclaim processes. So we did a caustic</p> <p>18 wash analysis of the labels that's shown in</p> <p>19 the declaration.</p> <p>20 If that is what we're using to define</p> <p>21 recyclability, or say that it's recyclable,</p> <p>22 then we did -- I did a caustic wash analysis</p> <p>23 of both the Febreze labels and the Gatorade</p> <p>24 labels, which is outlined in the declaration.</p> <p>25 Q. Uh-huh.</p>

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<p>1 A. And those labels have different orders.</p> <p>2 Q. Right. I have a slightly different question.</p> <p>3 You determined in the context of ground 1,</p> <p>4 that the Gatorade label meets the limitation</p> <p>5 wherein the recyclable shrink label is</p> <p>6 recyclable with a PET container, right?</p> <p>7 A. Based on the definition of a caustic wash, of</p> <p>8 the ink coming off during a caustic wash</p> <p>9 process.</p> <p>10 Q. Understood. So -- but you did make that</p> <p>11 determination, you did that analysis and you</p> <p>12 made a determination that the Gatorade label</p> <p>13 purportedly meets this limitation, right,</p> <p>14 that's your opinion?</p> <p>15 A. Yes.</p> <p>16 Q. Did you do an analysis to determine whether</p> <p>17 changing the order of the Gatorade label</p> <p>18 layers, either given the teachings of Mitchel</p> <p>19 or the teachings of the Febreze label, so</p> <p>20 grounds two and three, did you do any analysis</p> <p>21 to determine whether changing the order of the</p> <p>22 layers in the Gatorade label would have an</p> <p>23 impact on whether that resulting label would</p> <p>24 be recyclable with a PET container?</p> <p>25 MR. SCHATZ: Object to form.</p>	<p>1 Q. Okay. My question for you is, did you do any</p> <p>2 analysis or consider whether that different</p> <p>3 order of layers would have any impact on the</p> <p>4 recyclability of that resulting label with</p> <p>5 respect to whether that label could be</p> <p>6 recyclable with a PET container?</p> <p>7 MR. SCHATZ: Object to form.</p> <p>8 A. So outside of the analysis of the Gatorade</p> <p>9 label and the Febreze label that's in the</p> <p>10 declaration, no.</p> <p>11 BY MS. STONE:</p> <p>12 Q. Can we go back to your expert declaration?</p> <p>13 And I am going to turn your attention to Page</p> <p>14 7 of Exhibit 1014.</p> <p>15 A. Page 7 of the --</p> <p>16 Q. Which is Exhibit 6 to your deposition?</p> <p>17 A. Page 14?</p> <p>18 Q. Page -- sorry, Page 7, Paragraph 14.</p> <p>19 A. Okay.</p> <p>20 Q. So this section is titled, Legal Principles,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And the first sub heading under legal</p> <p>24 principles is Person of Ordinary Skill in the</p> <p>25 Art, right?</p>
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<p>1 A. So, the question as I understand it is, of the</p> <p>2 samples I received that are Gatorade labels,</p> <p>3 did I change the layer -- the layer order and</p> <p>4 then redo the caustic wash test to see if the</p> <p>5 later -- layer order affected the</p> <p>6 recyclability as defined by the caustic wash</p> <p>7 process?</p> <p>8 BY MS. STONE:</p> <p>9 Q. So that's a little different than my question,</p> <p>10 I'm not -- so I am -- you have testified</p> <p>11 earlier today that all of the testing you did</p> <p>12 is in your declaration, right?</p> <p>13 A. Exactly.</p> <p>14 Q. That is not in your declaration, right?</p> <p>15 A. Exactly.</p> <p>16 Q. Okay. So I know that you didn't do that test,</p> <p>17 I know you didn't make a new label and</p> <p>18 actually test it. What I'm asking as, a</p> <p>19 person of ordinary skill in the art as you</p> <p>20 have represented yourself to be, you have</p> <p>21 offered opinions that it would be obvious to</p> <p>22 meet the limitations of claim 4 by simply</p> <p>23 changing the order of the layers based on</p> <p>24 Mitchel or Febreze, right?</p> <p>25 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. And you outlined that you understand that the</p> <p>3 factors considered in determining the ordinary</p> <p>4 level of skill in a field of art and then you</p> <p>5 include a number of factors, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. The second factor that you have</p> <p>8 included that should be considered in</p> <p>9 determining the ordinary level of skill in a</p> <p>10 field is the types of problems encountered in</p> <p>11 the field, right?</p> <p>12 A. Yes.</p> <p>13 Q. Would you agree with me that the problem</p> <p>14 encountered in the field that discussed in the</p> <p>15 '422 patent is making a light blocking label</p> <p>16 recyclable?</p> <p>17 A. That's not typically how I think of problems.</p> <p>18 Q. Umm --</p> <p>19 A. I guess I don't understand the question.</p> <p>20 Q. So let's turn to the patent again. The '422</p> <p>21 patent.</p> <p>22 A. Sure.</p> <p>23 Q. Which is Exhibit 1001 to the proceeding, and</p> <p>24 Exhibit 11 to your deposition. Can you go to</p> <p>25 column 1 for me, please? So column 1 there's</p>

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<p>1 a section titled, Background, do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And in paragraph -- or -- sorry, in</p> <p>4 Column 1 at Line 14, in the background of the</p> <p>5 '422 patent, it states that the consumer</p> <p>6 packaged goods market globally aspire to</p> <p>7 utilize recyclable packaging for most</p> <p>8 products, right?</p> <p>9 A. Yes.</p> <p>10 Q. And then it goes on to explain, starting at</p> <p>11 Line 16, that there are certain markets that</p> <p>12 also require light protective packaging to</p> <p>13 block ingredient-harmful light waves from</p> <p>14 impacting the shelf life and performance of</p> <p>15 those products, right?</p> <p>16 A. Yes.</p> <p>17 Q. And then it provides the traditional way of</p> <p>18 doing light protective packaging, which is</p> <p>19 traditionally color impregnated bottles or</p> <p>20 containers and/or white shrink films printed</p> <p>21 with or sometimes without functional light</p> <p>22 blocking layers, right?</p> <p>23 A. That is what the patent says, yes.</p> <p>24 Q. Right. And so the patent explains that those</p> <p>25 color-impregnated bottles, umm, or the white</p>	<p>1 those factors is the types of problems</p> <p>2 encountered in the field, right?</p> <p>3 A. Yes.</p> <p>4 Q. And so the need or the problem that was being</p> <p>5 addressed in the field of the '422 patent was</p> <p>6 for recyclable light blocking packaging,</p> <p>7 right?</p> <p>8 A. The '422 patent addresses the need for light</p> <p>9 blocking materials, or light blocking labels.</p> <p>10 Q. What is the distinction you're making between</p> <p>11 need and problem?</p> <p>12 A. In the declaration, in Paragraph 15, for the</p> <p>13 purposes of this declaration, the field to</p> <p>14 which I'm referring to is the materials</p> <p>15 characterization analysis and identification</p> <p>16 as it relates to label construction, so</p> <p>17 Paragraph 15, the last sentence.</p> <p>18 Q. Right. And so, when we're talking about -- I</p> <p>19 understand what you have defined the field to</p> <p>20 be.</p> <p>21 A. Yeah, so, it's not a problem, because I'm</p> <p>22 making the distinction between a need and a</p> <p>23 problem, because a problem is -- you know, we</p> <p>24 try to do something and it didn't work, now we</p> <p>25 need to fix it. A need is; these labels don't</p>
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<p>1 shrink films have been traditionally used to</p> <p>2 block harmful light waves, right?</p> <p>3 A. Right, that's what it says, yes.</p> <p>4 Q. Right. And then it goes on to explain that</p> <p>5 the market for recycling color impregnated PET</p> <p>6 is very small and most of those bottles and</p> <p>7 containers are not recycled, right?</p> <p>8 A. That is what it says.</p> <p>9 Q. Okay. And then in the next paragraph starting</p> <p>10 at Column 1, Line 26, the '422 patent</p> <p>11 explains, there remains a need for recyclable</p> <p>12 light protective packaging options for many</p> <p>13 markets, and then it gives a couple of</p> <p>14 examples of markets, right?</p> <p>15 A. Yes.</p> <p>16 Q. And so would you agree with me that the</p> <p>17 problem or the need that the '422 patent is</p> <p>18 trying to solve is for recyclable light</p> <p>19 protective packaging options?</p> <p>20 A. I would say that this patent is addressing</p> <p>21 that need.</p> <p>22 Q. Okay. And so if we go back to your</p> <p>23 declaration under the person of ordinary skill</p> <p>24 in the art paragraph, you identified again the</p> <p>25 factors that should be considered. And one of</p>	<p>1 exist in the world and we have to create them.</p> <p>2 Q. Okay. So I understand. Okay. So the need</p> <p>3 that is described in the '422 patent is for</p> <p>4 recyclable light protective packaging options,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And the next factor that you have</p> <p>8 stated in your declaration that should be</p> <p>9 considered in determining the ordinary level</p> <p>10 of skill in a field is the teachings of the</p> <p>11 prior art regarding solutions to such</p> <p>12 problems, right?</p> <p>13 A. That's what it says there, yeah.</p> <p>14 Q. Okay. In your declaration, right?</p> <p>15 A. Yes.</p> <p>16 Q. The background of the '422 patent at column 1</p> <p>17 is describing what was known in the prior art</p> <p>18 regarding light blocking packaging, including</p> <p>19 color impregnated bottles and/or white shrink</p> <p>20 film, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So you have not included anything in</p> <p>23 your declaration regarding the field as it</p> <p>24 relates to recyclability of labels, right?</p> <p>25 A. Say that again?</p>

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<p>1 Q. So we talked about the need that is defined in</p> <p>2 the '422 patent, what I'm trying to understand</p> <p>3 is why you haven't include anything in your</p> <p>4 person of ordinary skill in the art definition</p> <p>5 or explanation related to recyclability?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 A. So in my definition of material -- of person</p> <p>8 of ordinary skill in the art, I define it as</p> <p>9 materials characterization analysis and</p> <p>10 identification. So materials</p> <p>11 characterization, identification, those things</p> <p>12 will overlap with recyclability. But you're</p> <p>13 right it doesn't say anything specific in this</p> <p>14 paragraph about recyclability.</p> <p>15 BY MS. STONE:</p> <p>16 Q. Okay. But based on your last answer, what I'm</p> <p>17 understanding is that recyclability is</p> <p>18 included in the field that you are saying is</p> <p>19 being addressed and would be known to a person</p> <p>20 of ordinary skill in the art, is that fair?</p> <p>21 MR. SCHATZ: Object to form.</p> <p>22 A. I'm saying that a person of ordinary skill in</p> <p>23 the art is -- has expertise in materials</p> <p>24 characterization, identification, and</p> <p>25 analysis, and those the techniques and</p>	<p>1 invention, commercial success attributable to</p> <p>2 the claimed invention, unexpected results of</p> <p>3 the claimed invention, and copying of the</p> <p>4 claimed invention by others, do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. You do not address any secondary</p> <p>7 considerations of non-obviousness in grounds 2</p> <p>8 and 3 related to obviousness in your analysis,</p> <p>9 correct?</p> <p>10 MR. SCHATZ: Object to form.</p> <p>11 A. You know, I don't really necessarily recall,</p> <p>12 I'd have to reread through that whole section</p> <p>13 just to be sure.</p> <p>14 BY MS. STONE:</p> <p>15 Q. I didn't see it, but if you wanted to quickly</p> <p>16 skim, starting at Page 43, grounds 2 and 3 to</p> <p>17 see if have you anything in there about</p> <p>18 secondary considerations, feel free.</p> <p>19 A. Secondary considerations, long felt need,</p> <p>20 commercial success, unexpected results of the</p> <p>21 claimed, copying --</p> <p>22 - - - -</p> <p>23 (Court reporter clarification, read fully outloud or</p> <p>24 silently.)</p> <p>25 - - - -</p>
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<p>1 educational background and experiences may</p> <p>2 overlap with what one would consider</p> <p>3 recyclability.</p> <p>4 I don't know what we're calling</p> <p>5 specifically recyclability -- and so, that's a</p> <p>6 pretty broad and colloquial term that is ill</p> <p>7 defined and it so is not included here. The</p> <p>8 more specific materials characterization</p> <p>9 analysis is included.</p> <p>10 BY MS. STONE:</p> <p>11 Q. Where did you get the information for the</p> <p>12 legal principles that are outlined in pages 7</p> <p>13 through 10 of your declaration?</p> <p>14 A. So it as it states in Paragraph 14 of my</p> <p>15 declaration, the last sentence, they were</p> <p>16 provided to me by counsel.</p> <p>17 Q. Can you turn to the obviousness section on</p> <p>18 Page 8 of Exhibit 1014?</p> <p>19 In paragraph 17, you walk through the</p> <p>20 factors related to obviousness, do you see</p> <p>21 that?</p> <p>22 A. Yes.</p> <p>23 Q. So factor 4 you explain, any so called</p> <p>24 secondary considerations of non-obviousness,</p> <p>25 which include long felt need for the claimed</p>	<p>1 THE WITNESS: Sorry, I thought that</p> <p>2 was out loud.</p> <p>3 - - - -</p> <p>4 (Court reporter clarification.)</p> <p>5 - - - -</p> <p>6 A. Okay. So for one and two, I don't see</p> <p>7 anything that would necessarily refers to</p> <p>8 secondary considerations it has outlined in</p> <p>9 Paragraph 17.</p> <p>10 BY MS. STONE:</p> <p>11 Q. When you say one and two, in your last answer,</p> <p>12 are you talking about under the sub-headings</p> <p>13 under ground 2?</p> <p>14 A. Yes, sorry.</p> <p>15 Q. Okay.</p> <p>16 A. So your question was, do I make any references</p> <p>17 to secondary considerations in the ground 2</p> <p>18 obviousness claim?</p> <p>19 Q. Yes.</p> <p>20 A. It doesn't look like it.</p> <p>21 Q. Okay. I didn't see any. I was just wondering</p> <p>22 if you had any opinions regarding secondary</p> <p>23 considerations in your obviousness analysis</p> <p>24 and just to confirm that you did not?</p> <p>25 A. Okay.</p>

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<p>1 MR. SCHATZ: Object to form.</p> <p>2 BY MS. STONE:</p> <p>3 Q. Okay. Can you please turn to Paragraph 18?</p> <p>4 And you state in the second sentence of</p> <p>5 Paragraph 18, To be obvious in light of a</p> <p>6 single prior art reference or multiple prior</p> <p>7 art references, there must be a reason to</p> <p>8 modify the single prior art reference or</p> <p>9 combine two or more references in order to</p> <p>10 achieve the claimed invention, right?</p> <p>11 A. That is what it says there.</p> <p>12 Q. Okay. And is that the -- I'm going to strike</p> <p>13 that.</p> <p>14 Can you turn to the indefiniteness</p> <p>15 section? Here in Paragraph 20 of your expert</p> <p>16 declaration, you state that, it is my</p> <p>17 understanding in a post-grant proceeding a</p> <p>18 claim is invalid during definiteness if, when</p> <p>19 read in the light of the specification</p> <p>20 delineating the patent and the prosecution</p> <p>21 history, it fails to inform with reasonable</p> <p>22 certainty those skilled in the art about the</p> <p>23 scope of the invention, right?</p> <p>24 A. That is what Paragraph 20 in the declaration</p> <p>25 says.</p>	<p>1 would not be impacted.</p> <p>2 What did you mean by that statement?</p> <p>3 A. So it just means that if the priority date</p> <p>4 were different, it would not impact my</p> <p>5 analysis. So my analysis of the labels is</p> <p>6 contained in the declaration and if the</p> <p>7 priority date didn't change -- changed by less</p> <p>8 than two years it wouldn't affect the analysis</p> <p>9 here in the declaration.</p> <p>10 Q. Why did you include that in your declaration?</p> <p>11 MR. SCHATZ: I will instruct the</p> <p>12 witness not to answer to the extent it</p> <p>13 requires disclosure of work product</p> <p>14 information.</p> <p>15 BY MS. STONE:</p> <p>16 Q. Are you going to -- are you able to answer the</p> <p>17 question in light of counsel's instruction?</p> <p>18 A. No.</p> <p>19 Q. I'm just going to re-ask my question to make</p> <p>20 sure that I understand the -- we understand</p> <p>21 the privilege objection and -- and your answer</p> <p>22 in that context.</p> <p>23 This is your declaration that you've</p> <p>24 submitted in connection with this PGR</p> <p>25 proceeding, correct?</p>
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<p>1 Q. Okay. And so you would agree with me that in</p> <p>2 context of an in -- indefiniteness analysis, a</p> <p>3 person of ordinary skill in the art should</p> <p>4 also look at the prosecution history to</p> <p>5 determine whether or not that claim limitation</p> <p>6 is indefinite, right?</p> <p>7 A. Again, that's what it says, specification, to</p> <p>8 delays in patent and prosecution history.</p> <p>9 Q. And I'm going to turn next to the claim</p> <p>10 construction standard. And in this section</p> <p>11 you talk a little bit about the claim</p> <p>12 construction, so I'm going to turn you to the</p> <p>13 last paragraph in that section, Page 23.</p> <p>14 A. Paragraph 23.</p> <p>15 Q. Paragraph 23, Page 10. In Paragraph 23,</p> <p>16 you're discussing the earliest priority date</p> <p>17 of the 422 patent, right?</p> <p>18 A. Yes.</p> <p>19 Q. And we've discussed the priority date earlier</p> <p>20 today, you said that -- it was your opinion</p> <p>21 that it was May 13th, 2022, right?</p> <p>22 A. That's what it says in Paragraph 23, yes.</p> <p>23 Q. Okay. The last sentence of Paragraph 23 says,</p> <p>24 Still I note that if priority date were</p> <p>25 different by less than two years my analysis</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And in your declaration there is a</p> <p>3 sentence that states, Still I note that if the</p> <p>4 priority date were different by less than two</p> <p>5 years my analysis would not be impacted,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And my question was, why did you</p> <p>9 include that sentence your declaration --</p> <p>10 A. Right.</p> <p>11 Q. -- that was submitted in this case, and I want</p> <p>12 to make sure I understand, you were unable to</p> <p>13 answer that question on the basis of work</p> <p>14 product, is that what I'm understanding your</p> <p>15 answer to be?</p> <p>16 MR. SCHATZ: I'm withdrawing my</p> <p>17 instruction.</p> <p>18 MS. STONE: Okay.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MS. STONE:</p> <p>21 Q. So I'm going to -- I'm going to back up, why</p> <p>22 did you include the sentence in paragraph 23,</p> <p>23 Still I note that if the priority date were</p> <p>24 different by less than two years my analysis</p> <p>25 would not be impacted?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. So the labels were manufactured on a specific 2 date. 3 Q. Okay. 4 A. And so there is a -- the -- sorry, so the 5 priority date of the patent is May 13th, 2022, 6 so if that priority date changed by two years 7 or less than two years, it wouldn't impact the 8 results of the analysis. 9 MS. STONE: Let's go ahead and go 10 off the record for lunch. 11 VIDEOGRAPHER: Going off the record 12 at 12:27 p.m. 13 - - - - 14 (Pause in the record.) 15 - - - - 16 VIDEOGRAPHER: We are back on the 17 record at 1:11. The new videographer is Matt 18 Martin. 19 BY MS. STONE: 20 Q. Welcome back. Have you had any discussions 21 with counsel during any of the breaks 22 regarding the substance of your testimony 23 today? 24 A. No. 25 Q. Can you please pull out the '422 patent again,</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. And the second one is the Sort-B-01 guidance 2 we discussed earlier this morning, correct? 3 A. Yes. 4 Q. And then finally it cites the SORT-B-03 APR 5 guidance that we discussed this morning, 6 correct? 7 A. Yes. 8 Q. Okay. Do you think a person of ordinary skill 9 in the art reviewing the '422 patent would 10 need knowledge of these guidances? 11 MR. SCHATZ: Object to form. 12 A. I think a person ordinarily skilled in the art 13 would refer to those documents. 14 BY MS. STONE: 15 Q. But they don't need to have an understanding 16 of what those documents mean and how they're 17 used in the industry, is that what you mean? 18 MR. SCHATZ: Object to form. 19 A. What I mean is that a person of ordinarily 20 skilled in the art would refer to the 21 documents, understand the documents, and how 22 they're used in the industry. 23 BY MS. STONE: 24 Q. And so would a person of ordinary skill in the 25 art need an understanding of the recycling</p>
<p style="text-align: right;">Page 147</p> <p>1 which is Exhibit 11 to the deposition and 2 Exhibit 1001 to the proceeding. I'm going to 3 have you turn to Column 11, please. So if you 4 look at Column 11, starting at Line 29, 5 there's a paragraph starting at Line 29. And 6 I'm going to turn your attention to Line 34 7 about where it states; According to an 8 embodiment the labels of the present 9 disclosure can meet certain industry 10 standards, do you see that? 11 A. Yes. 12 Q. The '422 patent cites three APR guidance 13 industry standards in this paragraph, correct? 14 A. Yes. 15 Q. And each of these three guidance we've 16 actually talked about already today, if you 17 recall -- do you recall those discussions? 18 A. Yes. 19 Q. Okay. So the first one states including for 20 example, the Association For Plastic 21 Recyclers, APR Critical Guidance Protocol For 22 Clear PET Articles With Labels and Closures, 23 PET CG-02, right? 24 A. Right, that's what it says, yeah. That's what 25 it says.</p>	<p style="text-align: right;">Page 149</p> <p>1 industry? 2 MR. SCHATZ: Object to form. 3 A. You mean in order to read analyze and 4 understand these documents, or just in 5 general. 6 BY MS. STONE: 7 Q. So you have provided the definition of a 8 person of ordinary skill in the art that 9 you've propose understood your declaration, 10 right? 11 A. (No response.) 12 Q. And so what I am trying to understand is that 13 the '422 patent references these APR 14 guidances, and you testified that a person of 15 ordinary skill in the art would refer to the 16 documents and understand how they are used in 17 the industry, so what I'm trying to understand 18 is whether or not a person of ordinary skill 19 in the art would need to understand how those 20 documents are used in the industry? 21 MR. SCHATZ: Object to form. 22 A. I would say a person of ordinary skill in the 23 art would be able to read those documents and 24 understand how they're used in the industry. 25 BY MS. STONE:</p>

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<p>1 Q. Okay. So it is your opinion that a person of 2 ordinary skill in the art does not need to 3 have background or experience in the recycling 4 industry in order to be able to understand how 5 these APR guidances are used in the context of 6 the '422 patent, is that fair?</p> <p>7 A. I would say that if you're a person of 8 ordinary skill the art of materials 9 identification and analysis and 10 characterization you would be able to read 11 these and understand how they apply to those 12 industries.</p> <p>13 Q. And by "those industries" you mean the 14 recycling industry?</p> <p>15 A. The recycling industry, sorry.</p> <p>16 Q. Can you turn back to your declaration, which 17 is Exhibit 1014, and I'm specifically looking 18 at Paragraph 24 on Page 11.</p> <p>19 So in Paragraph 24 you provide your 20 proposed definition of a person of ordinary 21 skill in the art, right? And your proposal is 22 that a person of ordinary skill in the art 23 would have at least a bachelor's degree in 24 chemistry or a related field with five years 25 of experience in material identification and</p>	<p>1 thought that some characteristics of materials 2 involved the recyclability of those materials, 3 do you remember that discussion this morning?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So my question is, is -- does your 6 person of ordinary skill in the art have to 7 have experience in the recycling industry?</p> <p>8 A. Going by the definition that's listed in the 9 declaration, no.</p> <p>10 Q. Okay. You do not personally have any 11 experience working in the recycling industry, 12 is that fair?</p> <p>13 MR. SCHATZ: Object to form, and 14 object to the extent it's been asked and 15 answered.</p> <p>16 A. I have experience in materials 17 characterization and reuse of materials, which 18 overlaps with a lot of things in the recycling 19 industry. I'm trying to think of specific 20 projects in the past that I've done that have 21 related to recyclability, but, you know, I 22 don't know we're going to dive into that 23 necessarily. I have some experience in 24 material characterization of polymers, these 25 types of materials, as well as those being</p>
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<p>1 characterization using multiple analytical 2 methods and field sampling or equivalent 3 research or professional experience, right?</p> <p>4 A. That is what's stated in Paragraph 24 of the 5 declaration, yes.</p> <p>6 Q. Is that your opinion?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And then you do have a qualifier that 9 additional graduate education could substitute 10 for some of the years of experience, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You do not have any requirements in 13 your definition of a person of ordinary skill 14 in the art for -- strike that.</p> <p>15 You have not included in your definition 16 of a person of ordinary skill in the art for 17 that person to have any experience in the 18 recycling industry, is that fair?</p> <p>19 A. It's true that it doesn't say anything about 20 the recycling industry in Paragraph 24 in the 21 definition of a person of ordinary skill in 22 the art.</p> <p>23 Q. Okay. So I understand what's written on the 24 page, my under -- my question is, earlier we 25 talked about -- you had mentioned that you</p>	<p>1 reused.</p> <p>2 BY MS. STONE:</p> <p>3 Q. Okay. Your experience related to the reuse of 4 materials is specifically on the consulting or 5 analytical testing side, right?</p> <p>6 A. Consulting, analytical testing, failure 7 analysis, yeah.</p> <p>8 Q. Okay. You have never worked for a company 9 that manufactured or produced a product that 10 was recyclable, right?</p> <p>11 A. I have -- yes, right -- no, I have not.</p> <p>12 Q. Thank you for clarifying. I will just re -- I 13 was just going to re-ask my question just to 14 remove the double negative.</p> <p>15 Have you ever worked at a company that 16 manufactured or produced a product that was 17 recyclable?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been involved in the manufacture 20 or production of a product with the goal for 21 that product to be recyclable?</p> <p>22 A. I have never worked for a company that has 23 made those types of materials.</p> <p>24 Q. So earlier today I had asked you about your 25 interactions and discussions with Mr. Bushman,</p>

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<p>1 I'm sure you recall those discussions, and you</p> <p>2 testified that you did not review</p> <p>3 Mr. Bushman's declaration that was submitted</p> <p>4 in this case, do you recall that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So I'm going to turn your attention to</p> <p>7 Paragraph 25 of your declaration where you</p> <p>8 state that you would qualify as a person of</p> <p>9 ordinary skill in the art based on your own</p> <p>10 definition in Paragraph 24, right?</p> <p>11 A. Yes, I would qualify, yes.</p> <p>12 Q. Okay. The last sentence in this paragraph</p> <p>13 states, In addition as indicated herein I have</p> <p>14 consider and rely upon the declaration of</p> <p>15 Mr. Craig Bushman who I understand has</p> <p>16 experience, in among other fields, labels and</p> <p>17 the design and manufacture of labels, right?</p> <p>18 A. That is what it says, yes.</p> <p>19 Q. Okay. So I just want to ask a clarifying</p> <p>20 question. Did you -- in light of this</p> <p>21 statement in your declaration, do you recall</p> <p>22 whether you reviewed Mr. Bushman's declaration</p> <p>23 that was submitted in this case?</p> <p>24 A. I did not review Mr. Bushman's declaration.</p> <p>25 Q. Okay. And I want to turn back to your</p>	<p>1 ordinary skill in the art would have knowledge</p> <p>2 of the known nature of recyclable packaging?</p> <p>3 A. Yeah, that's what it says.</p> <p>4 Q. Okay. So I'm going to -- we're going to turn</p> <p>5 to ground 1 of your expert report, which -- it</p> <p>6 starts on Page 24. So I want to ask you some</p> <p>7 high level questions about your testing that</p> <p>8 you performed. If you need to refer to your</p> <p>9 declaration at any point for answers to those</p> <p>10 questions please feel free.</p> <p>11 But I'm going to start with the, umm,</p> <p>12 first limitation, paragraphs 59 through 61.</p> <p>13 In order to determine whether the Gatorade</p> <p>14 label met the limitation, a recyclable shrink</p> <p>15 label comprising a heat shrink film,</p> <p>16 comprising PET, you used FTAR (sic), right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What depth does your FTIR machine</p> <p>19 measure to, do you know?</p> <p>20 A. So the instrument we use is an attenuated</p> <p>21 total reflection lens. So that means it has a</p> <p>22 Germanium tip -- Germanium tip that is pressed</p> <p>23 into the sample. So how far the tip</p> <p>24 penetrates is generally on -- on the order of</p> <p>25 several microns, but is not measured. It's</p>
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<p>1 materials considered list really quickly.</p> <p>2 Page 5.</p> <p>3 So in your materials considered list, on</p> <p>4 Page 5, it is the third bullet down, you have</p> <p>5 Mr. Craig bushman's declaration and that's</p> <p>6 Exhibit 1013, do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And so I just want to make sure that I</p> <p>9 understand, so throughout your declaration</p> <p>10 when the Exhibit 1013 is used do you</p> <p>11 understand that to be referring to</p> <p>12 Mr. Bushman's declaration?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Can you please turn to Page 13 of your</p> <p>15 expert report -- sorry, expert declaration --</p> <p>16 so in -- Paragraph 29 falls under the heading,</p> <p>17 the Known Nature of Recyclable Packaging, do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And this is within the section where you're</p> <p>21 discussing a person of ordinary skill in the</p> <p>22 art's background knowledge, right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Is it your opinion, as outlined in your</p> <p>25 declaration on Page 13, that a person of</p>	<p>1 not well stated or well characterized.</p> <p>2 ATR is a surface sensitive technique, and</p> <p>3 so the reflections are sent out through the</p> <p>4 sample and collected back through the lens, so</p> <p>5 the penetration volume of the beam essentially</p> <p>6 is very, very small.</p> <p>7 Q. Okay. Are you aware of whether or not the</p> <p>8 Gatorade label has an anti-static coating on</p> <p>9 that label?</p> <p>10 A. I am not.</p> <p>11 Q. Would an anti-static coating have any impact</p> <p>12 on the FTIR analysis that you performed?</p> <p>13 A. It would depend on which side of the label the</p> <p>14 anti-static coating was on and which side of</p> <p>15 the analysis was conducted on, because it's a</p> <p>16 relatively thick film. And it would depend on</p> <p>17 the thickness of the anti-static film coating.</p> <p>18 So if it was on the order of several</p> <p>19 microns, it's possible that it would either be</p> <p>20 detected along with the PET or the tip would</p> <p>21 penetrate past the anti-static film coating.</p> <p>22 It's also possible that if the anti-static</p> <p>23 coating on the PET layer was thick and IR</p> <p>24 active that it would block the FTIR signal</p> <p>25 from the substrate, which is obviously not</p>

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<p>1 what happened, given the data presented in the</p> <p>2 -- in the declaration.</p> <p>3 So those -- those are the possibilities</p> <p>4 that you would have when you're talking about</p> <p>5 an anti-static coating on top of the PET</p> <p>6 substrate.</p> <p>7 Q. Okay. So I want to dig in -- I think you said</p> <p>8 it -- that's obviously not what happened here,</p> <p>9 but how -- how can you say that -- that's</p> <p>10 obviously not what happened here when you</p> <p>11 don't even know if there was an anti-static</p> <p>12 coating on the label or not?</p> <p>13 A. So what I meant when I say said that was that</p> <p>14 we still got strong FTIR signal from PET</p> <p>15 substrate, as confirmed by both internal</p> <p>16 standards and references to external standards</p> <p>17 using a common FTIR library, which is</p> <p>18 presented in the declaration.</p> <p>19 So when I say; obviously the FTIR signal</p> <p>20 for the PET was detected, we confirmed that</p> <p>21 with both internal standards and external</p> <p>22 standards.</p> <p>23 Now what I'm not saying, I am not saying</p> <p>24 that there's obviously not an anti-static</p> <p>25 coating on there, because as you stated and I</p>	<p>1 declaration, which is the first paragraph in</p> <p>2 ground 1. Ground 1 of your declaration is</p> <p>3 offering the opinion that the Gatorade label</p> <p>4 anticipates certain claims of the '422 patent,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. You would agree with me that the Febreze label</p> <p>8 is irrelevant to whether the Gatorade label</p> <p>9 anticipates any claim of the '422 patent,</p> <p>10 right?</p> <p>11 A. Not any claim.</p> <p>12 Q. I'm going ask my question again.</p> <p>13 So my question is, specific to ground 1,</p> <p>14 I understand there's one claim that's missing,</p> <p>15 and that you opine in ground 2 and 3 about</p> <p>16 claim 4. My question is, with respect to</p> <p>17 ground 1 --</p> <p>18 A. Oh.</p> <p>19 Q. -- regarding whether or not the Gatorade label</p> <p>20 anticipates any claim of the '422 patent, you</p> <p>21 would agree with me that the Febreze label is</p> <p>22 irrelevant to that analysis, right?</p> <p>23 A. Yes, that's as it says in C -- section C,</p> <p>24 we're only talking about the Gatorade label.</p> <p>25 Q. So in Paragraph 57, the first sentence here</p>
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<p>1 stated I don't know if there was or not, but</p> <p>2 what we're not seeing is an FTIR signal</p> <p>3 consistent with what I would think of as an</p> <p>4 anti-static coating.</p> <p>5 Q. Okay. When you're using the term "internal</p> <p>6 standards," do you mean internal to the RJ Lee</p> <p>7 Group?</p> <p>8 A. Yes, it's a certified reference material that</p> <p>9 we measured on our instrument to be consistent</p> <p>10 with the measurements that are taken on our</p> <p>11 instrument of unknown samples.</p> <p>12 Q. Okay. What do you mean by external standards.</p> <p>13 A. That is what is referenced in the paragraph</p> <p>14 61, the Wylie KnowItAll library, it's a</p> <p>15 reference library of certified standards that</p> <p>16 you can pay for the library license and then</p> <p>17 we can match our collected spectra to</p> <p>18 reference standards in the library to -- and</p> <p>19 see how close they are, or see if they match</p> <p>20 or not?</p> <p>21 Q. Do you have access to a laser ablation FTIR</p> <p>22 system?</p> <p>23 A. No.</p> <p>24 Q. Okay. I'm going to take a step back quickly.</p> <p>25 If you look at Paragraph 56 of your</p>	<p>1 states, the Gatorade label is a shrink sleeve</p> <p>2 label that is recyclable with a PET container</p> <p>3 do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And the citation that you provide here is to</p> <p>6 Exhibit 1013, right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And that's the Bushman declaration, do</p> <p>9 you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any other basis other than the</p> <p>12 Bushman declaration that is cited here for</p> <p>13 your opinion that the Gatorade label is a</p> <p>14 shrink sleeve label that is recyclable with a</p> <p>15 PET container?</p> <p>16 A. All the data in the declaration points in that</p> <p>17 same direction as well.</p> <p>18 Q. But you did not have access to the Gatorade</p> <p>19 bottle that the shrink sleeve label would</p> <p>20 cover, correct?</p> <p>21 A. Correct.</p> <p>22 Q. For Paragraph 58, you also rely -- you also</p> <p>23 state, The Gatorade was produced and sold</p> <p>24 publicly in 2020 in substantial quantities,</p> <p>25 correct?</p>

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<p>1 A. That is what it says.</p> <p>2 Q. Okay. Where did you get that information?</p> <p>3 A. The citation, 1013, the Bushman declaration.</p> <p>4 Q. All right. You've testified twice today that</p> <p>5 you have not reviewed the Bushman declaration,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So where did this information come from</p> <p>9 that is currently cited in your declaration?</p> <p>10 A. It's in the declaration, the Bushman</p> <p>11 declaration.</p> <p>12 Q. Okay. So this is what I'm trying to</p> <p>13 understand, if you didn't review the Bushman</p> <p>14 declaration how are you able to cite the</p> <p>15 Bushman declaration to support this</p> <p>16 proposition in your declaration?</p> <p>17 A. Oh, that was relayed to me through counsel.</p> <p>18 Q. Okay. So to -- just so that we're on the same</p> <p>19 page so I don't have to ask this for a ton of</p> <p>20 paragraphs in your declaration, is it fair to</p> <p>21 say that for every citation to Exhibit 1013 in</p> <p>22 your expert report, that that information was</p> <p>23 relayed to you through Counsel?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And in order to opine that the Gatorade</p>	<p>1 Q. So I think there's a -- let's see if I can</p> <p>2 find an image of the Gatorade label. Can you</p> <p>3 turn to -- and this is in your appendix where</p> <p>4 it is the pages aren't numbered, but it's</p> <p>5 Figure 4 continued of your declaration in your</p> <p>6 appendix B. So looking at the Gatorade label</p> <p>7 which is labeled 3191157 and 3191168, is it --</p> <p>8 do you recall which portion of this -- these</p> <p>9 Gatorade labels the samples were taken from</p> <p>10 for the FTIR testing?</p> <p>11 A. The clear portion.</p> <p>12 Q. And is that the clear portion between the</p> <p>13 labels?</p> <p>14 A. I don't recall specifically if it was the one</p> <p>15 between the labels. There's also a clear</p> <p>16 portion at the top and the bottom of the</p> <p>17 labels.</p> <p>18 Q. Okay. Do you recall which side of the label</p> <p>19 you performed the FTIR analysis on, was it on</p> <p>20 the exterior side that would be facing us in</p> <p>21 Figure 4 or if it was the interior portion of</p> <p>22 the label?</p> <p>23 A. I don't recall.</p> <p>24 Q. In Paragraph 61 of your expert declaration you</p> <p>25 state, as can be seen in figures 2 and 3 each</p>
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<p>1 label is prior art to the '422 patent, you had</p> <p>2 to rely on that information provided by</p> <p>3 counsel that the Gatorade label was produced</p> <p>4 and sold publicly in 2020, is that fair?</p> <p>5 A. For that portion of it, yes. For the portion</p> <p>6 stated in 58, yes.</p> <p>7 Q. Okay. So can we turn to Paragraph 59? So in</p> <p>8 Paragraph 59 you state, based on discussions</p> <p>9 with Craig Bushman of Multi-Color, I</p> <p>10 understand that the Gatorade label and the</p> <p>11 Febreze label are heat shrink labels, right?</p> <p>12 A. Yes.</p> <p>13 Q. And it -- again, you cite to Exhibit 1013 in</p> <p>14 support of that. Do you recall this</p> <p>15 discussion that you had with Mr. Bushman</p> <p>16 regarding whether the Gatorade label was a</p> <p>17 heat shrink label?</p> <p>18 A. No.</p> <p>19 Q. In Paragraph 60, you state that, to confirm</p> <p>20 that each sample is composed PET clear</p> <p>21 portions of samples of what are Gatorade label</p> <p>22 samples were sectioned and analyzed. What --</p> <p>23 do you recall which portions of the Gatorade</p> <p>24 label you took samples from?</p> <p>25 A. The clear portions.</p>	<p>1 film is consistent with an internal PET</p> <p>2 standard, umm, measured on the same instrument</p> <p>3 as well as a PET standard from the Wylie know</p> <p>4 it all library, umm, did you use the word</p> <p>5 consistent with because FTIR does not</p> <p>6 guarantee that that's a PET sample?</p> <p>7 A. What do you mean by guarantee?</p> <p>8 Q. So for example, it could be PETG, right, or</p> <p>9 some other material that has a similar</p> <p>10 measurement or -- yeah, standard that is shown</p> <p>11 in a FTIR. For example in figures 2 and 3 of</p> <p>12 your report?</p> <p>13 MR. SCHATZ: Object to form.</p> <p>14 A. So without knowing what the FTIR spectra of</p> <p>15 FTIR -- or PETG specifically looks like, I</p> <p>16 can't really answer that question. If it</p> <p>17 looks similar to PET then FTIR might not be</p> <p>18 the best technique for differentiating between</p> <p>19 those, but if the FTIR for PETG is different,</p> <p>20 whether it's more peak -- peak heights --</p> <p>21 somehow different, then it could be the</p> <p>22 technique used for differentiating those.</p> <p>23 BY MS. STONE:</p> <p>24 Q. So what I'm trying to understand is -- so if</p> <p>25 we look at, for example, Figure 2 of your</p>

<p style="text-align: right;">Page 166</p> <p>1 report which is on the next page, so you have</p> <p>2 a PET reference that shows certain peaks,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so if there was a different</p> <p>6 reference that had a very similar peak --</p> <p>7 strike that.</p> <p>8 If there was a different material that</p> <p>9 had a similar peak signature as measured by</p> <p>10 FTIR, it would be possible that by using FTIR</p> <p>11 that those materials would look very similar</p> <p>12 and you wouldn't be able to distinguish them</p> <p>13 using FTIR alone, is that fair?</p> <p>14 MR. SCHATZ: Object to form.</p> <p>15 A. The FTIR spectra collected are unique to the</p> <p>16 material. So I can't sit here and say that</p> <p>17 two different materials would have the same</p> <p>18 FTIR spectra and thus confuse those two</p> <p>19 materials.</p> <p>20 FTIR, it's a vibrational spectroscopy</p> <p>21 specific to the chemical bonds in the</p> <p>22 material. If you had a very similar material</p> <p>23 but somehow different that somehow gave</p> <p>24 different vibration spectra or similar</p> <p>25 vibrational spectra, there's still a lot of</p>	<p style="text-align: right;">Page 168</p> <p>1 - - - -</p> <p>2 A. TGA, or DSC, or -- and I can go on with all</p> <p>3 the different letters of analytical chemistry</p> <p>4 techniques.</p> <p>5 BY MS. STONE:</p> <p>6 Q. You would -- sorry, I can circumvent that.</p> <p>7 You would agree with me that there are other</p> <p>8 tests you could perform if you were confronted</p> <p>9 with that problem to determine how to</p> <p>10 distinguish between those materials, right?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You did not perform an FTIR analysis of</p> <p>13 the Febreze label, right?</p> <p>14 A. I don't recall, is it in here?</p> <p>15 Q. So for reference, the sample number for the</p> <p>16 Febreze label I believe ends in 1115?</p> <p>17 A. Uh-huh.</p> <p>18 Q. I didn't see any FTIR analysis for Febreze but</p> <p>19 I just wanted to confirm.</p> <p>20 A. Sorry, I just want to check real quick in the</p> <p>21 appendix. Okay so, it's not in here.</p> <p>22 Q. Okay. So I'm going to turn back to -- it</p> <p>23 looks like we're on the same page, Page 26 of</p> <p>24 your declaration, where you address the claim</p> <p>25 limitation, having a first surface and a</p>
<p style="text-align: right;">Page 167</p> <p>1 information in that spectra, whether it's peak</p> <p>2 heights, peak height ratios, peak positions,</p> <p>3 whether it shifted by 10 or 20 or what have</p> <p>4 you, wave numbers. There's a lot of</p> <p>5 information contained in that spectra that is</p> <p>6 specific to the material.</p> <p>7 So kind of sitting here in situ talking</p> <p>8 about very different material that has the</p> <p>9 exact same spectra is not really -- an easy</p> <p>10 way to say those two things would be the same</p> <p>11 or different because those spectra may still</p> <p>12 have different characteristics.</p> <p>13 BY MS. STONE:</p> <p>14 Q. If you had two materials that had very similar</p> <p>15 reference spectras, what additional steps</p> <p>16 would you need to take in order to distinguish</p> <p>17 those two materials?</p> <p>18 A. There's a wide range of analytical techniques</p> <p>19 that you could use. One of them would be</p> <p>20 FTIR, with a different analysis of the</p> <p>21 spectra. There are other things you can use,</p> <p>22 GCMS, TGTA -- TGA or DSC, or (indecipherable)</p> <p>23 --</p> <p>24 - - - -</p> <p>25 (Court reporter clarification.)</p>	<p style="text-align: right;">Page 169</p> <p>1 second surface opposite of the first surface,</p> <p>2 the heat shrink film having a thickness from</p> <p>3 15 micrometers to 100 micrometers, right?</p> <p>4 A. Yes, that's what it says there.</p> <p>5 Q. Okay. In paragraphs 62 through 64, you do not</p> <p>6 identify which surface is the first surface,</p> <p>7 right?</p> <p>8 A. Where?</p> <p>9 Q. In paragraph 62 through 64 of your</p> <p>10 declaration, you don't identify a first</p> <p>11 surface of the Gatorade label, correct?</p> <p>12 A. No.</p> <p>13 Q. You also do not identify in paragraphs 62</p> <p>14 through 64 of your declaration a second</p> <p>15 surface of the Gatorade label, correct?</p> <p>16 A. No, I don't, yes, correct.</p> <p>17 Q. Okay. And in paragraph 63, you state that the</p> <p>18 samples were mounted on carbon tape between</p> <p>19 two glass slides and cut and then the cross</p> <p>20 sections were then carbon coated and imaged</p> <p>21 and analyzed via SEM, right?</p> <p>22 A. That is what it says in 63.</p> <p>23 Q. Right. So looking at Figure 4 and</p> <p>24 specifically the Gatorade label, you show in</p> <p>25 red boxes I believe the samples that you took</p>

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<p>1 from the Gatorade label, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. I -- their approximate locations of where the</p> <p>5 samples were cut from.</p> <p>6 Q. Okay. Do you recall if there are pure silver</p> <p>7 sections of the label?</p> <p>8 A. So, the red box in the pictures, in Figure 4,</p> <p>9 are in the silver sections.</p> <p>10 Q. So it appears to me from the red boxes that</p> <p>11 you have included in Figure 4 that when you</p> <p>12 did the SEM analysis that you performed that</p> <p>13 analysis on a portion of the label that was</p> <p>14 entirely silver, and I am just trying to</p> <p>15 confirm that that is your recollection as</p> <p>16 well?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Is there a reason that you didn't</p> <p>19 conduct that analysis on any other portions of</p> <p>20 the label?</p> <p>21 A. No.</p> <p>22 Q. So for example, you did not perform any SEM</p> <p>23 analysis of any portion of the label</p> <p>24 containing what we see in Figure 4 as white</p> <p>25 ink, is that fair?</p>	<p>1 A. Yes.</p> <p>2 MR. SCHATZ: Object to form.</p> <p>3 BY MS. STONE:</p> <p>4 Q. In Figure 5, you would agree with me that</p> <p>5 there is no identification of a high opacity</p> <p>6 layer or an indicia layer, correct?</p> <p>7 A. When you say identification, do you mean like</p> <p>8 a label?</p> <p>9 Q. So I -- my understanding is that you're</p> <p>10 identifying the top portion of this figure as</p> <p>11 the light-blocking layer, that's what we're</p> <p>12 looking at?</p> <p>13 MR. SCHATZ: Object to form.</p> <p>14 BY MS. STONE:</p> <p>15 Q. Is that correct or not correct?</p> <p>16 A. The top layer I believe is the titanium</p> <p>17 dioxide -- with the aluminum light-blocking</p> <p>18 layer underneath it.</p> <p>19 Q. I think -- let's look at, starting at</p> <p>20 Paragraph 65, your analysis of a light-</p> <p>21 blocking layer, disposed adjacent, the first</p> <p>22 surface, and comprising a light-blocking</p> <p>23 component. So here you state that you used</p> <p>24 SEM EDS analysis, and that the images can be</p> <p>25 found in Figure 6, right?</p>
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<p>1 A. I don't recall. I mean, like I said the ones</p> <p>2 that are contained in the declaration are from</p> <p>3 where the red box is in the image.</p> <p>4 Q. And we agreed earlier today that you didn't</p> <p>5 perform any testing that wasn't reported in</p> <p>6 your declaration, right?</p> <p>7 A. Correct.</p> <p>8 Q. So you did not perform any SEM analysis on any</p> <p>9 portion of the Gatorade label that would have</p> <p>10 contained what we visually see in Figure 4 as</p> <p>11 the white, orange, or black ink, is that</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. So in Paragraph 63 you cite to figures 5 A</p> <p>15 through 5 D in appendix B, can we turn to</p> <p>16 those figures, please? And this is in -- I'm</p> <p>17 going to look -- I'm looking right now at</p> <p>18 Figure 5B for the Gatorade label. In this</p> <p>19 image, which was an SEM image of a Gatorade</p> <p>20 label, you've indicated that the PET film is</p> <p>21 on the bottom, is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that the -- I guess the light-blocking</p> <p>24 layer or the silver ink is on the top portion</p> <p>25 of that label, correct?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. And then you state, the light-blocking</p> <p>3 component of each layer is consistent with</p> <p>4 aluminum, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So let's turn to Figure 6, and I'm</p> <p>7 specifically going to point you to Figure 6B</p> <p>8 so that we're looking at a Gatorade example.</p> <p>9 So in this image, you've got an SEM image, and</p> <p>10 we've got what you're identifying as a light-</p> <p>11 blocking layer and a high opacity layer, is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And if you turn to the next page which</p> <p>15 shows the EDS analysis, you state that the EDS</p> <p>16 analysis collected from the area of the green</p> <p>17 circle, which I think on the page before is</p> <p>18 the -- looks a little bit more blue to me, but</p> <p>19 I assume that that -- it's the one that's not</p> <p>20 red, is that fair?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you state that that EDS analysis</p> <p>23 shows that that is a titanium dioxide high</p> <p>24 opacity layer, correct?</p> <p>25 A. That is what it says, yes.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. Okay. And then, it states, bottom, EDS 2 analysis. And my understanding is you've 3 corrected the sample numbering in your revised 4 declaration, so I think this is referring to 5 the same Gatorade label sample, EDS analysis 6 collected from the area of the red circle, 7 showing aluminum light-blocking layer, is that 8 correct? 9 A. Yes. 10 Q. So if we turn back to Figure 6B, you've taken 11 two dots that are not necessarily directly on 12 top of one another, so what I'm trying to 13 understand is, is it your opinion that the 14 entirety of this top layer that looks a little 15 bit more speckled, with like white speckling, 16 is that the entirety of the high opacity 17 layer, is that your opinion? 18 A. Yes. 19 Q. Okay. And that is -- includes at least some 20 titanium dioxide? 21 A. Yes. 22 Q. Okay. And then you point to a -- the red dot 23 is on a smaller section and that -- your 24 opinion is that that's the light-blocking 25 layer, right?</p>	<p style="text-align: right;">Page 176</p> <p>1 to determine whether there was aluminum, is 2 that right? 3 A. Yes. 4 Q. And similar with the titanium dioxide, you did 5 a single EDS analysis per label to determine 6 that there was titanium dioxide in that label? 7 A. When we're discussing the EDS analysis of this 8 particular label and this particular image, 9 yes, that's what's shown here. 10 Q. Okay. Did you perform any other EDS analysis 11 other than what is laid out in figures -- in 12 Figure 6? 13 A. EDS? No. 14 Q. Would you expect that the results of the SEM 15 or EDS analysis would be different if you 16 evaluated a portion of the Gatorade label that 17 did not include the silver ink? 18 MR. SCHATZ: Object to form. 19 Objection, outside the scope of Dr. Deible's 20 declaration. 21 A. Well, if you were to look at the clear portion 22 of the label that was in between the printed 23 portions you would not expect to see light- 24 blocking material there. 25 BY MS. STONE:</p>
<p style="text-align: right;">Page 175</p> <p>1 A. The aluminum layer, yes. 2 Q. The aluminum layer, okay. And is it your 3 opinion that the aluminum is the light block 4 layer? 5 A. Yes. 6 Q. Okay. And so it's less clear whether or not 7 that aluminum layer covers the entirety of 8 this section that you've taken, did you do an 9 analysis on any other portions of the Gatorade 10 label to see if that aluminum layer was 11 throughout the label or throughout the silver 12 ink or anything like that? 13 MR. SCHATZ: Object to form. 14 A. All the testing that I did is here. 15 BY MS. STONE: 16 Q. Okay. So you only did one EDS analysis of the 17 Gatorade label to determine whether there was 18 aluminum in any part of label, is that fair? 19 A. For this particular sample, that's what's 20 shown here, yes. 21 Q. Okay. And I understand you did an analysis on 22 three separate Gatorade labels, so I just want 23 to make sure I understand, for the EDS 24 analysis of a single Gatorade label, you only 25 did one EDS analysis at one point in the label</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. Looking at Figure 4 at the top of Page 28 of 2 your report, do you see the G that is printed 3 in white ink? 4 A. Yes. 5 Q. If you took a SEM or EDS analysis of that 6 portion of the label, would you expect that 7 there would be aluminum in it? 8 A. I would expect there to be, the G -- well, 9 yes. 10 Q. By you didn't do any analysis to confirm 11 whether or not that is the case, is that fair? 12 A. That's fair. 13 Q. You would agree with me that the claims of the 14 '422 patent require layers, right? 15 A. Yes. 16 Q. One example from claim 1 for example, is a 17 light-blocking layer, right? 18 A. Yes. 19 Q. And then there are dependant claims that 20 require either an indicia or a high opacity 21 layer, right? We can take a look back at the 22 patent if you like, I think it's claims 2 and 23 3. 24 A. Yeah, sorry, the word "requires" kind of threw 25 me.</p>

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<p>1 Q. Yeah, the claims for -- just for -- as an</p> <p>2 example, claims 2, 3, and 4 have some</p> <p>3 alternative options where there are additional</p> <p>4 layers such as an indicia layer or high</p> <p>5 opacity layer, right?</p> <p>6 A. Yeah, additional options, yeah.</p> <p>7 Q. Okay. In order for something to be a layer,</p> <p>8 and for layers to be disposed between each</p> <p>9 other, would you agree that those layers have</p> <p>10 to overlap?</p> <p>11 MR. SCHATZ: Object to form.</p> <p>12 Objection, outside the scope of Dr. Deible's</p> <p>13 declaration.</p> <p>14 A. Would it be incorrect to say that you could</p> <p>15 have layers side by side?</p> <p>16 BY MS. STONE:</p> <p>17 Q. I'm asking you your opinion on that.</p> <p>18 A. Yeah. I guess at some point we would expect</p> <p>19 it to overlap with something else. But you</p> <p>20 could have one substrate with something else</p> <p>21 on top of it, and something else beside it</p> <p>22 potentially. So.</p> <p>23 Q. In Paragraph 66 of your expert declaration,</p> <p>24 you state that for the Gatorade label samples,</p> <p>25 the aluminum light-blocking layer is between</p>	<p>1 A. You mean like the red dot and the blue dot are</p> <p>2 offset from each other?</p> <p>3 Q. Correct.</p> <p>4 A. That's just where the beam was pointed for the</p> <p>5 point of the analysis. But the image clearly</p> <p>6 shows that they're on top of each other.</p> <p>7 Q. Okay. So it's -- it's your opinion that the</p> <p>8 high opacity layer is throughout this SEM</p> <p>9 image in Figure 6D, is that your opinion?</p> <p>10 A. So this is -- you see at the bottom of the</p> <p>11 figure where it says, DET:BSE?</p> <p>12 Q. I don't -- oh, yes.</p> <p>13 A. That's the detector, it's a back scatter</p> <p>14 electron detector. And what that means is, is</p> <p>15 that the brightness and contrast of the image</p> <p>16 is dictated by the atomic number of the</p> <p>17 elements in the material. So the brighter</p> <p>18 ones are heavier and the darker ones are</p> <p>19 lighter. So your carbonaceous materials are</p> <p>20 primarily black in your gray scale in this</p> <p>21 image, and your titanium bearing ones, which</p> <p>22 are higher in the elemental atomic number are</p> <p>23 brighter.</p> <p>24 So the EDS confirms -- the EDS taken at</p> <p>25 the point of the blue dot confirms that</p>
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<p>1 the PET layer and the high opacity layer,</p> <p>2 right?</p> <p>3 A. Yes, that's what's stated there.</p> <p>4 Q. Okay. And then you say generally to your</p> <p>5 appendix?</p> <p>6 A. Correct.</p> <p>7 Q. Looking at Figure 6 of your appendix -- now</p> <p>8 I'm going to point you to Figure 6D. Did you</p> <p>9 do any analysis to determine whether the</p> <p>10 aluminum identified in the red dot and the</p> <p>11 titanium dioxide identified in the blue or</p> <p>12 green dot actually overlapped?</p> <p>13 A. Aside from the overlapping layers in the</p> <p>14 picture?</p> <p>15 Q. You would agree with me that the sections that</p> <p>16 you analyzed would not be stacked on top of</p> <p>17 one another, is that fair?</p> <p>18 MR. SCHATZ: Object to form.</p> <p>19 A. I don't understand what you mean.</p> <p>20 BY MS. STONE:</p> <p>21 Q. So if we're look at Figure 6D, the sections</p> <p>22 where you took a sample or did an EDS analysis</p> <p>23 to determine there was aluminum is offset from</p> <p>24 the area on which you did an EDS analysis to</p> <p>25 determine there was titanium dioxide, right?</p>	<p>1 they're titanium dioxide, but the gray scale</p> <p>2 image shows you have a higher atomic weight</p> <p>3 material across that entire layer. And we</p> <p>4 confirmed that that layer is consistent with</p> <p>5 titanium or a titanium bearing material, with</p> <p>6 the EDS spectra taken in that the portion of</p> <p>7 that layer.</p> <p>8 Q. Okay.</p> <p>9 A. So my opinion is that the titanium dioxide</p> <p>10 layer goes across the image, based on the --</p> <p>11 - - - -</p> <p>12 (Court reporter clarification.)</p> <p>13 - - - -</p> <p>14 A. Analytical results of the figure.</p> <p>15 BY MS. STONE:</p> <p>16 Q. Let's go back to Ground 1. And specifically</p> <p>17 pages 28 and 29. In paragraphs 56 and --</p> <p>18 sorry. In paragraphs 65 and 66, you do not</p> <p>19 identify whether the light-blocking layer is</p> <p>20 disposed adjacent to a first surface, correct?</p> <p>21 MR. SCHATZ: Object to form.</p> <p>22 A. Yes, it is correct -- that I do not --</p> <p>23 - - - -</p> <p>24 (Simultaneous speaking.)</p> <p>25 - - - -</p>

<p style="text-align: right;">Page 182</p> <p>1 MS. STONE: Okay. I think we got</p> <p>2 the answer we needed.</p> <p>3 BY MS. STONE:</p> <p>4 Q. Okay. So I'm going to turn to the next claim</p> <p>5 limitation, which is the light-blocking layer.</p> <p>6 In Paragraph 68 you state, a portion of each</p> <p>7 sample was placed in a sample holder between</p> <p>8 the radiation source and in a grading sphere.</p> <p>9 Do you recall -- did you take a small portion</p> <p>10 of the Gatorade label in order to perform this</p> <p>11 analysis?</p> <p>12 A. It says a portion.</p> <p>13 Q. Right. Do you recall which portion of the</p> <p>14 label you tested?</p> <p>15 A. It was a -- arbitrarily selected silver</p> <p>16 portion, similar to how the S-E-M-E-D-S</p> <p>17 analysis was conducted on an arbitrarily</p> <p>18 silver portion of the label, the UV analysis</p> <p>19 was conducted on a portion of the label that</p> <p>20 was silver.</p> <p>21 Q. Okay. Why did you only analyze the silver</p> <p>22 portion of the label for the wavelength</p> <p>23 analysis?</p> <p>24 A. It's the most representative of the entire</p> <p>25 label.</p>	<p style="text-align: right;">Page 184</p> <p>1 aluminum layer, is present throughout the</p> <p>2 label?</p> <p>3 A. The entire label?</p> <p>4 Q. Yes.</p> <p>5 A. The entire printed portion of the label?</p> <p>6 Q. Yes.</p> <p>7 A. I would say that the opinions of the light-</p> <p>8 blocking layer in the declaration are based on</p> <p>9 the areas that were analyzed and the data</p> <p>10 presented in the declaration.</p> <p>11 Q. And you only took a small sample of the label</p> <p>12 that only contained silver for both the SEM</p> <p>13 analysis and the wave length analysis, right?</p> <p>14 A. Yes.</p> <p>15 Q. So is it fair to say that you do not have an</p> <p>16 opinion on whether the light-blocking layer is</p> <p>17 present in any other portion of the label?</p> <p>18 A. I would say that the opinions contained in</p> <p>19 here, in the declaration, are based on the</p> <p>20 analysis done in the declaration.</p> <p>21 Q. And you don't have any opinions outside of the</p> <p>22 declaration, correct?</p> <p>23 A. Correct.</p> <p>24 Q. Can you please turn to Paragraph 70? This</p> <p>25 claim requires that the light-blocking</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. You did not perform any testing to determine</p> <p>2 whether or not the white ink on the label, for</p> <p>3 example, would block at least 80 percent of</p> <p>4 incident light having wavelengths in a range</p> <p>5 of 200 nanometers to 900 nanometers, right?</p> <p>6 A. I do not do the white part, correct.</p> <p>7 Q. So you have no opinions on whether or not that</p> <p>8 portion of the label would meet this claim</p> <p>9 limitation, right?</p> <p>10 A. My opinions on the light-blocking nature of</p> <p>11 the label are based on the analysis of the</p> <p>12 silver portion.</p> <p>13 Q. And -- sorry, I'm going to turn you back to</p> <p>14 Figure 6 one more time. In the description of</p> <p>15 Figure 6B -- in Figure 6B, the description,</p> <p>16 you reference the substrate a couple of times.</p> <p>17 Can you -- I didn't see that really defined</p> <p>18 anywhere other than kind of how you were</p> <p>19 setting up, can you explain to me what you</p> <p>20 meant by the substrate in the description of</p> <p>21 Figure 6?</p> <p>22 A. That is in reference to whatever the label</p> <p>23 goes on.</p> <p>24 Q. Okay. Do you have an opinion on whether or</p> <p>25 not the light-blocking layer, which is the</p>	<p style="text-align: right;">Page 185</p> <p>1 component comprises a particulate of a</p> <p>2 particular particle size and a particular</p> <p>3 composition, right?</p> <p>4 A. That's what it says, yeah.</p> <p>5 Q. And you state in your analysis in Paragraph</p> <p>6 07 -- that the primary light block component</p> <p>7 is aluminum and that the aluminum flakes have</p> <p>8 a particular thickness, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you cite to figures 5 and 6 in your</p> <p>11 analysis for that, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Can we go back to figures 5 and 6?</p> <p>14 Starting with Figure 5? I'm looking</p> <p>15 specifically at Figure 5B. Here your</p> <p>16 measuring a number of diameters, but for the</p> <p>17 aluminum, in Figure 5B, are you pointing --</p> <p>18 what are you pointing to for the light-</p> <p>19 blocking layer for this claim, because it's</p> <p>20 not entirely clear?</p> <p>21 MR. SCHATZ: Object to form.</p> <p>22 A. So, I just want to clarify, this is not</p> <p>23 diameter measurement, it's a distance</p> <p>24 measurement.</p> <p>25 BY MS. STONE:</p>

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<p>1 Q. Let he rephrase my question, thank you for 2 clarifying. 3 What in Figure 5 are you pointing to, to 4 show that the aluminum flakes have a thickness 5 larger than 0.1 micro meters and less than 100 6 micrometers? 7 A. Measurement D-4. 8 Q. You would agree with me that that thickness 9 does not appear to be throughout this image, 10 is that fair? 11 A. I don't think I understand the question, the 12 thickness is not throughout the image? 13 Q. It appears that you've looked -- you've 14 indicated where the aluminum is thickest along 15 this line, is that fair? 16 MR. SCHATZ: Object to form. 17 A. I don't know if it's the thickest or not, I 18 mean, without measuring the entire aluminum 19 number layer. It's representative of the 20 aluminum layer is what I would say. 21 BY MS. STONE: 22 Q. Well, it's -- it's -- you didn't analyze any 23 other portion of the aluminum layer, other 24 than what's pictured in Figure 5B, is that 25 fair?</p>	<p>1 Q. In your report you have said that the aluminum 2 flakes have a thickness of a certain range. 3 But you did not measure individual aluminum 4 flakes, correct? 5 MR. SCHATZ: Object to form. 6 A. I measured individual aluminum flakes as they 7 were a part of the label. The aluminum flake 8 was not separated from the label to be 9 measured independent of the label, if that's 10 what you mean. 11 BY MS. STONE: 12 Q. I'm trying to understand the distinction 13 between measuring -- what I understand you to 14 have done, which is to measure the thickness 15 of the light-blocking layer, and whether or 16 not that is different from the thickness of a 17 particulate. 18 A. Is that a question -- 19 Q. Are those different? 20 A. The thickness of the light-blocking layer 21 different than the thickness of the 22 particulate? 23 Q. Yeah. 24 A. So the particulate flakes of the light- 25 blocking layer are laid down on the label and</p>
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<p>1 A. Yes. 2 Q. Okay. So, in this image, are you offering the 3 opinion that's its representative of what's 4 found in this image at Figure 5B? 5 A. Can you say that again? 6 Q. Sure. So you made a comment that what you 7 have selected to show the thickness of the 8 aluminum layer was representative of the 9 light-blocking layer? 10 A. Right. 11 Q. And so what I'm trying to understand is the 12 basis of that opinion, and so is your opinion 13 based solely on this figure and a visual 14 analysis of the light-blocking layer in Figure 15 5B? 16 A. Yes. 17 Q. Okay. You would have no basis to make that 18 opinion for any other portion of the Gatorade 19 label that is identified as 3191157, right? 20 A. There are no other measurements taken of that 21 label if that's what you mean. 22 Q. Is there a difference in your opinion between 23 a particulate and a flake? 24 A. A flake is a type of particulate with a 25 specific geometry.</p>	<p>1 measured as a portion -- as a cross section of 2 the label. So I measured a portion or a 3 representative part of the aluminum flake that 4 is the particulate that makes up the light- 5 blocking layer. 6 Q. Built into your analysis in Paragraph 70, are 7 you assuming that the light-blocking layer has 8 a thickness of a single aluminum flake? 9 A. Seven doesn't say anything about the thickness 10 of the light-blocking layer. It says, the 11 light-blocking component -- sorry, the 12 particulate comprising the light-blocking 13 layer. 14 Q. If I fully agree with you, and that the claim 15 limitation requires a particle size of a 16 particulate, but what you have pointed me to 17 in Figure 5 is the thickness of the entire 18 aluminum layer, right? 19 MR. SCHATZ: Object to form. 20 A. So, I think that what you're seeing in Figure 21 5 is the thickness of the particulate, the 22 flake. 23 BY MS. STONE: 24 Q. Does that require you to assume that the 25 light-blocking layer is the -- has the</p>

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<p>1 thickness of a single aluminum flake?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. You could --</p> <p>5 - - - -</p> <p>6 (Sneeze.)</p> <p>7 - - - -</p> <p>8 A. -- bless you -- you could have flakes pile on</p> <p>9 top of each other in the layer.</p> <p>10 MS. STONE: Do we want to take a</p> <p>11 quick break?</p> <p>12 VIDEOGRAPHER: We are off at 2:22.</p> <p>13 - - - -</p> <p>14 (Pause in the record.)</p> <p>15 - - - -</p> <p>16 VIDEOGRAPHER: We are back on the</p> <p>17 record at 2:33.</p> <p>18 BY MS. STONE:</p> <p>19 Q. Okay. So I'm going to turn now to the claim</p> <p>20 limitation starting on Page 30, Paragraph 71,</p> <p>21 which is the last claim limitation in claim 1</p> <p>22 that we've discussed a bit today wherein the</p> <p>23 recyclable shrink label is recyclable with a</p> <p>24 PET container, are you there in your</p> <p>25 declaration?</p>	<p>1 wash test that I don't think are included in</p> <p>2 your declaration, but please feel free to</p> <p>3 reference your declaration as needed for the</p> <p>4 next set of questions -- if you need.</p> <p>5 How did you preshrink the Gatorade label</p> <p>6 to perform the caustic wash test?</p> <p>7 A. So Figure 8 of the draft -- of the appendix B,</p> <p>8 sorry -- is an image of a representative</p> <p>9 shrinking of a particular label.</p> <p>10 And these labels were shrunk -- or</p> <p>11 pre-shrunk I should say, consistent with --</p> <p>12 sorry, how it was done here. Nope, that's not</p> <p>13 it. Sorry, there's another portion in here</p> <p>14 where it talks about -- anyway.</p> <p>15 The point is that it was heated with a</p> <p>16 hot air gun around a PVC pipe, so the sleeve</p> <p>17 was inserted over a PVC pipe -- heated with a</p> <p>18 hot air gun so it shrunk around that</p> <p>19 substrate.</p> <p>20 Q. What temperature did you use in order to</p> <p>21 shrink the label?</p> <p>22 A. For the caustic wash experiment?</p> <p>23 Q. Yes.</p> <p>24 A. I don't recall. It's a -- a hot air gun so it</p> <p>25 doesn't have a temperature gauge on it, so I</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. We discussed earlier that you used the</p> <p>3 definition of recyclable that is in the second</p> <p>4 sentence on -- in Paragraph 71 of your report,</p> <p>5 the '422 patent, Column 6, Line 61, where the</p> <p>6 label is considered recyclable if no inks are</p> <p>7 retained on the film after a caustic wash</p> <p>8 cycle typically used in PET reclaiming</p> <p>9 processes, right?</p> <p>10 A. That is what 71 says, yes.</p> <p>11 Q. And that's the definition that you applied in</p> <p>12 order to determine whether the Gatorade label</p> <p>13 met this limitation, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And we discussed earlier that you</p> <p>16 received a caustic wash test method from MCC,</p> <p>17 that is Exhibit 1012 to your report, correct?</p> <p>18 MR. SCHATZ: Object to form.</p> <p>19 A. Yes.</p> <p>20 BY MS. STONE:</p> <p>21 Q. Okay. But you outline the testing procedures</p> <p>22 that you used in your declaration starting at</p> <p>23 Paragraph 72, correct?</p> <p>24 A. Correct.</p> <p>25 Q. So I have some questions about your caustic</p>	<p>1 don't know.</p> <p>2 Q. For the hot air gun, did you use that process</p> <p>3 for both the Gatorade label and the Febreze</p> <p>4 label?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Figure 8 only shows the Febreze label,</p> <p>7 correct?</p> <p>8 A. It's representative, yeah.</p> <p>9 Q. You would agree with me that, looking at</p> <p>10 figure 8, it appears that the label in that</p> <p>11 image, the Febreze label, is shrunk more than</p> <p>12 it would be shrunk if it was put on a Febreze</p> <p>13 container, is that fair?</p> <p>14 MR. SCHATZ: Object to form.</p> <p>15 A. I didn't receive a Febreze container, so I</p> <p>16 don't know how large those containers were.</p> <p>17 So the amount of shrinkage would be dictated</p> <p>18 by, you know, the thing it's being shrunk</p> <p>19 around to some extent, right, it's going to</p> <p>20 have a -- a maximum shrinkage. To some extent</p> <p>21 it's going to be dictated by what it's shrunk</p> <p>22 around. So I didn't receive a Febreze</p> <p>23 container so I don't know the answer to that</p> <p>24 question.</p> <p>25 BY MS. STONE:</p>

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<p>1 Q. Have you ever seen a Febreze container at the</p> <p>2 grocery store?</p> <p>3 A. Honestly, I don't know.</p> <p>4 Q. Okay. Would you expect that, looking at</p> <p>5 Figure 8 where the label is extremely</p> <p>6 crinkled, that that would be the intended</p> <p>7 design of a label for a container on a</p> <p>8 commercial shelf?</p> <p>9 A. I don't design labels, so I don't really know</p> <p>10 if that's how it would be intended to appear.</p> <p>11 Q. Okay. Do you recall ever seeing a Gatorade</p> <p>12 label shrunk around a Gatorade bottle or an</p> <p>13 image of that?</p> <p>14 A. I've seen Gatorade bottles in the past, but</p> <p>15 I'm not sure if they've been ones with these</p> <p>16 particular types of labels on them or not.</p> <p>17 Q. Did you use the same one inch sized PVC pipe</p> <p>18 in order to shrink the Gatorade label?</p> <p>19 A. Yes.</p> <p>20 Q. Did it have the same general appearance of</p> <p>21 being crinkled when it was shrunk on a one</p> <p>22 inch PVC pipe?</p> <p>23 A. I don't really recall exactly what it looked</p> <p>24 like when being shrunk. I think that there</p> <p>25 are portions that are crinkled in this image</p>	<p>1 generic store bought single use water bottles</p> <p>2 into approximately one centimeter square</p> <p>3 pieces using stainless steel scissors and that</p> <p>4 representative photos can be seen in Figure 9,</p> <p>5 right?</p> <p>6 A. That is what that states.</p> <p>7 Q. Okay. And again, Figure 9 only references the</p> <p>8 sample Febreze label, correct?</p> <p>9 A. So, Figure 9 is a representative image of what</p> <p>10 all the analysis would look like using, but</p> <p>11 this image contains the Febreze label.</p> <p>12 Q. Did you independently determine that the water</p> <p>13 bottles were PET?</p> <p>14 A. Yes, we looked at the number on the bottom I</p> <p>15 believe.</p> <p>16 Q. How did you determine which sections of the</p> <p>17 Gatorade label to include in the caustic wash</p> <p>18 test?</p> <p>19 A. So that was arbitrary. And so, like I said it</p> <p>20 was 0.15 grams. So the label was shrunk, this</p> <p>21 label cut up and then sections -- portions of</p> <p>22 the -- of the label that was cut up were</p> <p>23 selected to weigh out a total of 0.15 grams.</p> <p>24 Q. Do you recall whether the pieces used for the</p> <p>25 caustic wash test were predominantly silver,</p>
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<p>1 and I think there are portions that are not</p> <p>2 quite as crinkled so I don't exactly recall</p> <p>3 what it looked like.</p> <p>4 Q. Looking at Figure 8 continued on the next page</p> <p>5 of the appendix, you have a small selection of</p> <p>6 one square centimeter flakes from the Febreze</p> <p>7 label after it's been shrunk, is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Is this the entirety of the amount of the</p> <p>10 Febreze label that you tested?</p> <p>11 A. This is representative of the Febreze label</p> <p>12 that was tested. It was -- it was -- picked</p> <p>13 by weight, so it was 0.15 grams. So I don't</p> <p>14 recall if this image that is representative of</p> <p>15 that pre-shrunk cut up label is all 0.15 grams</p> <p>16 or not.</p> <p>17 Q. You don't have any images of the approximately</p> <p>18 one square centimeter flakes for the Gatorade</p> <p>19 label, correct?</p> <p>20 A. I don't recall. Do you mean before washing?</p> <p>21 Q. Yes.</p> <p>22 A. I don't recall that. There's some in here for</p> <p>23 after the caustic wash.</p> <p>24 Q. Right. In Paragraph 72 of your report, you</p> <p>25 state, PET flakes were created by cutting</p>	<p>1 were they predominantly clear, were they</p> <p>2 predominantly white ink, do you have a</p> <p>3 recollection of what the distribution is since</p> <p>4 we don't have a photo of the pre-caustic wash</p> <p>5 Gatorade labels?</p> <p>6 A. I don't recall, but the majority of the label</p> <p>7 or a large portion of the label is silver. So</p> <p>8 if you were selecting arbitrarily pieces, just</p> <p>9 pulling pieces, one would presume that you</p> <p>10 would get predominantly silver, but I don't</p> <p>11 recall the specific distribution of which</p> <p>12 portions of the label were pulled.</p> <p>13 Q. It is possible that you could have also</p> <p>14 arbitrarily selected a sample of the Gatorade</p> <p>15 label in which there was no silver ink?</p> <p>16 A. I -- I think that you would have to do that</p> <p>17 purposely.</p> <p>18 Q. But we don't know because we don't have an</p> <p>19 image of it, correct?</p> <p>20 A. Not in the document there's not an image of</p> <p>21 that.</p> <p>22 Q. Do you recall what is size beaker you used in</p> <p>23 the caustic wash test?</p> <p>24 A. So it's 40 milliliters of caustic wash -- wash</p> <p>25 solution. So I would say approximately a 250</p>

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<p>1 milliliter beaker would be about the size, I</p> <p>2 think. But I'll be honest, I don't recall</p> <p>3 specifically if it was 150 milliliters or 250</p> <p>4 milliliters, somewhere in that range.</p> <p>5 Q. You also used a Teflon bar in order to stir</p> <p>6 the mixture, do you recall what size Teflon</p> <p>7 bar you used?</p> <p>8 A. Standard laboratory stir bar, I don't know the</p> <p>9 size.</p> <p>10 Q. Okay. But if I just Googled standard</p> <p>11 laboratory Teflon stir bar, is there are --</p> <p>12 there is one standard size, is that fair?</p> <p>13 A. No, I guess you can get them in kind of any</p> <p>14 size, but that's just the size we have in our</p> <p>15 lab. It's -- you know, an inch or so, or less</p> <p>16 than an inch. It's a -- it would be on the</p> <p>17 list of ones you would find if you would</p> <p>18 Google it.</p> <p>19 Q. And so you selected that size simply because</p> <p>20 that's what you have available in your lab,</p> <p>21 right?</p> <p>22 A. It's what we have available and it's what fit.</p> <p>23 Q. Got it. Do you know what the speed was that</p> <p>24 the Teflon bar was stirring at during the</p> <p>25 caustic wash test?</p>	<p>1 wash for that sample?</p> <p>2 MR. SCHATZ: Object to form.</p> <p>3 A. It was a single -- if I understand the</p> <p>4 question correctly, the set up that's</p> <p>5 described in the document, was a single</p> <p>6 caustic wash for the sample. So each sample</p> <p>7 had it's own caustic wash set up that's</p> <p>8 described in the document.</p> <p>9 BY MS. STONE:</p> <p>10 Q. Each sample -- strike that.</p> <p>11 You performed a single caustic wash for a</p> <p>12 representative sample of each sample Gatorade</p> <p>13 label, is that correct?</p> <p>14 A. I think you're saying that right. It was not</p> <p>15 one wash that was reused over and over again.</p> <p>16 Q. So you --</p> <p>17 - - - -</p> <p>18 (Simultaneous speaking.)</p> <p>19 - - - -</p> <p>20 BY MS. STONE:</p> <p>21 Q. -- stirred in the wash from the beginning and</p> <p>22 went all the way through for a single using</p> <p>23 all of the flakes from a single label, and</p> <p>24 then you started from the beginning for the</p> <p>25 next Gatorade label, is that fair?</p>
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<p>1 A. No.</p> <p>2 Q. Did you recall -- strike that.</p> <p>3 Did you control the temperature of the</p> <p>4 wash solution during the testing?</p> <p>5 A. Yes.</p> <p>6 Q. And was that done by leaving the beaker on the</p> <p>7 hot plate that is referenced in Paragraph 74</p> <p>8 throughout the testing?</p> <p>9 A. Yes.</p> <p>10 Q. When you performed the Gatorade label testing,</p> <p>11 did you replicate that testing for a single</p> <p>12 label at any point?</p> <p>13 MR. SCHATZ: Object to form.</p> <p>14 MS. STONE: I'm going to -- I'm</p> <p>15 going to re-ask my question.</p> <p>16 BY MS. STONE:</p> <p>17 Q. So for example, if we look at Figure 11B, this</p> <p>18 -- the description of this figure states,</p> <p>19 representative image of 3191157 after caustic</p> <p>20 wash, warm water wash, float test, and drying,</p> <p>21 right?</p> <p>22 A. Yeah, that's the caption for the figure, yes.</p> <p>23 Q. When you tested Gatorade sample ending in</p> <p>24 '1157, did you do a single caustic wash for</p> <p>25 that sample or did you replicate that caustic</p>	<p>1 A. Yes, except not all of the flakes. The method</p> <p>2 is controlled by mass, as we discussed.</p> <p>3 Q. When you concluded the caustic wash test, did</p> <p>4 you perform any evaluation of the PET label</p> <p>5 samples to determine or quantify how much of</p> <p>6 the ink had washed off?</p> <p>7 A. I don't recall quantifying that as you say.</p> <p>8 Q. Looking at Figure 9 of appendix D to your</p> <p>9 report. This is a mixture of the Febreze</p> <p>10 label with the PET water bottle, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And so the clear pieces in Figure 9 would be</p> <p>13 the water bottle PET, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you don't have an image of any of the</p> <p>16 sample Gatorade labels similarly showing the</p> <p>17 one inch flakes prior to the caustic wash of</p> <p>18 the Gatorade label mixed with the PET water</p> <p>19 bottle, correct?</p> <p>20 A. I don't recall, it's not in the declaration.</p> <p>21 Q. Did you likewise mix the Gatorade label PET --</p> <p>22 sorry, strike that.</p> <p>23 Did you also mix the Gatorade label</p> <p>24 samples with one inch flakes of the water</p> <p>25 bottle prior to the caustic wash?</p>

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<p>1 A. Yes.</p> <p>2 Q. Can you turn to Figure 10? Figure 10 is a</p> <p>3 representative image of the Febreze label</p> <p>4 after the caustic wash, warm water wash, flow</p> <p>5 test, and drying, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall if this is the entirety of the</p> <p>8 flakes that were run through the caustic wash,</p> <p>9 so would this include the label and the water</p> <p>10 bottle?</p> <p>11 A. I don't recall if it's the entirety of it, but</p> <p>12 I do think looking at the image it includes</p> <p>13 the label flakes as well as the water bottle</p> <p>14 flakes.</p> <p>15 Q. You would agree with me that Figure 10, which</p> <p>16 is the Febreze label, shows that there is</p> <p>17 still ink remaining on portions of the label</p> <p>18 that were run through the caustic wash test,</p> <p>19 right?</p> <p>20 A. Which ink?</p> <p>21 Q. So if you look at Figure 10, you can see that</p> <p>22 there are pieces in Figure 10 that still have</p> <p>23 blue ink on it, correct?</p> <p>24 A. Yes.</p> <p>25 Q. You do not have a representative image similar</p>	<p>1 In Figure 11A, this is the Febreze,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And for Figure 11A, showing the Febreze label,</p> <p>5 there are a few flakes shown post caustic</p> <p>6 wash, correct?</p> <p>7 A. There's a few flakes shown post --</p> <p>8 Q. In this image, in Figure 11A, you can see</p> <p>9 there's a few flakes that are shown?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any way to determine where the</p> <p>12 flakes on the bottom of Figure 11A are from</p> <p>13 the water bottle or from the label?</p> <p>14 A. Not that was done here, because the ink was</p> <p>15 removed during the wash, and they had just</p> <p>16 become clear PET flakes. In this image</p> <p>17 there's no way to determine the difference.</p> <p>18 Q. Okay. So it's possible that all of the flakes</p> <p>19 on the bottom of Figure 11A came from the</p> <p>20 water bottle, correct?</p> <p>21 A. There's no way to know where those flakes come</p> <p>22 from because the ink is removed from the label</p> <p>23 flakes and makes clear PET after the ink is</p> <p>24 removed. So those flakes on the bottom of the</p> <p>25 image could come from the water bottle or from</p>
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<p>1 to Figure 10 for the Gatorade label where</p> <p>2 you're showing a large portion of the samples</p> <p>3 that underwent caustic wash, correct?</p> <p>4 A. That's what 11B is, the Gatorade label.</p> <p>5 Q. You would agree with me that Figure 11B shows</p> <p>6 only a couple of flakes from the caustic wash,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you would agree with me that you do</p> <p>10 not have an image, similar to Figure 10 for</p> <p>11 the Gatorade label where you show the water</p> <p>12 bottle and label -- strike that.</p> <p>13 You do not have an equivalent of Figure</p> <p>14 10 showing the majority of the flakes that</p> <p>15 went through the caustic wash for the Gatorade</p> <p>16 label, correct?</p> <p>17 A. I think that the Gatorade label images are in</p> <p>18 Figure 11.</p> <p>19 Q. Okay. There is no data or images from the</p> <p>20 Gatorade label in Figure 10, correct?</p> <p>21 A. Did I say 10? Correct, not in Figure 10.</p> <p>22 Q. So let's turn to Figure 11. In Figure 11A,</p> <p>23 you are showing what appears to be one portion</p> <p>24 or one square inch -- excuse me -- strike</p> <p>25 that.</p>	<p>1 the label as shown here.</p> <p>2 Q. Okay. But you have no way to identify whether</p> <p>3 any of the flakes at the bottom of Figure A</p> <p>4 came from the label, correct?</p> <p>5 MR. SCHATZ: Object to form.</p> <p>6 A. So, given the data shown in Figure 11A there</p> <p>7 is no way to say if those are from water</p> <p>8 bottle or label, because the ink has been</p> <p>9 removed from the labels such that all that</p> <p>10 remains are clear PET flakes.</p> <p>11 MS. STONE: So I'm going to strike</p> <p>12 that last answer because I don't think it was</p> <p>13 responsive. And it is just -- I -- you're</p> <p>14 injecting a lot of things, so.</p> <p>15 MR. SCHATZ: Counsel, you don't have</p> <p>16 the right to strike an answer, just so you</p> <p>17 know. So don't do that.</p> <p>18 MS. STONE: You can strike an answer</p> <p>19 as non-responsive, that is allowed.</p> <p>20 MR. SCHATZ: You do not have the</p> <p>21 authority to do that.</p> <p>22 - - -</p> <p>23 (Laughter.)</p> <p>24 - - -</p> <p>25 MS. STONE: So -- sorry. I will</p>

<p style="text-align: right;">Page 206</p> <p>1 object to the last answer as non-responsive.</p> <p>2 BY MS. STONE:</p> <p>3 Q. In Figure 11A, it is possible that all of the</p> <p>4 flakes at the bottom of Figure 11A, that those</p> <p>5 are all from the water bottle, is that</p> <p>6 correct?</p> <p>7 MR. SCHATZ: Object to form, asked</p> <p>8 and answered.</p> <p>9 A. The -- the -- the flakes at the bottom of 11A</p> <p>10 are clear PET flakes. When the label has been</p> <p>11 removed -- or the ink has been removed from</p> <p>12 the label, all that remains is clear PET, so</p> <p>13 which flakes those are from originally, could</p> <p>14 be from the label or the water bottle.</p> <p>15 BY MS. STONE:</p> <p>16 Q. But you have no way to tell that from this</p> <p>17 image?</p> <p>18 MR. SCHATZ: Objection, asked and</p> <p>19 answered, multiple times now.</p> <p>20 A. So there's no way to tell if the flakes at the</p> <p>21 bottom of 11A are from the label or from the</p> <p>22 water bottle after the ink has been removed</p> <p>23 given the -- only the picture representative</p> <p>24 among.</p> <p>25 BY MS. STONE:</p>	<p style="text-align: right;">Page 208</p> <p>1 shown in the center of Figure 11A did not have</p> <p>2 all of the ink and pigment washed off of it</p> <p>3 during the caustic wash, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Looking at Figure 11B, this shows a</p> <p>6 representative image from a Gatorade label,</p> <p>7 the sample ending in 1157, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And this is a post-caustic wash image,</p> <p>10 correct?</p> <p>11 A. After caustic wash, warm water wash, float</p> <p>12 test, and drying.</p> <p>13 Q. The portion of the label that is in the center</p> <p>14 of this image, you would agree with me that</p> <p>15 not all inks and pigments are removed from</p> <p>16 that portion of the label, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Let's look at Figure 11C. Figure 11C is a</p> <p>19 representative image ending in 1167, which is</p> <p>20 one of the samples for the Gatorade label,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And you would agree with me that the</p> <p>24 portion of the label shown in Figure 11C shows</p> <p>25 that not all inks and pigments were removed</p>
<p style="text-align: right;">Page 207</p> <p>1 Q. Okay. Let's look at the PET -- sorry, strike</p> <p>2 that.</p> <p>3 Let's look at the portion of the label in</p> <p>4 the center of Figure 11A that has ink that</p> <p>5 still remains, okay? You would agree with me</p> <p>6 that the only portion of Figure 11A that we</p> <p>7 know came from the label shows that there is</p> <p>8 still ink retained on the label, post-caustic</p> <p>9 wash, right?</p> <p>10 A. It shows there's still printing on the label,</p> <p>11 the ink that -- let me rephrase that.</p> <p>12 There's several types of ink used in this</p> <p>13 product. So that one is still there, that</p> <p>14 type of ink is still in that product.</p> <p>15 Q. The -- we can agree that the portion of the</p> <p>16 label that is towards the center of Figure 11A</p> <p>17 retained some markings from the label post-</p> <p>18 caustic wash, correct?</p> <p>19 A. That's a good question, I don't actually --</p> <p>20 I'm not actually sure that that's from the</p> <p>21 label -- oh wait, let me back that up. That</p> <p>22 is a portion of the label, right. So there is</p> <p>23 some markings that differentiated as being</p> <p>24 part of the label -- I'm sorry, brain fart.</p> <p>25 Q. We can agree that the portion of the label</p>	<p style="text-align: right;">Page 209</p> <p>1 during the caustic wash, correct?</p> <p>2 A. Yeah, so this ones actually a little bit -- a</p> <p>3 little bit different in that you can see the</p> <p>4 edge of the flake has started to roll, and so</p> <p>5 whether or not it's removed is more of a</p> <p>6 question of the mechanical entrapment than</p> <p>7 adherence to the substrate.</p> <p>8 Q. Okay. You have no other images of the</p> <p>9 Gatorade label that is identified as the</p> <p>10 sample ending in 1167 after the caustic wash,</p> <p>11 warm water wash, float test, and drying,</p> <p>12 correct?</p> <p>13 A. I don't recall, these are the images in the</p> <p>14 declaration, I don't recall any other images.</p> <p>15 Q. Okay. You have not provided in your</p> <p>16 declaration, which is the scope of your</p> <p>17 opinions in this case, any other images of the</p> <p>18 Gatorade label sample ending in 1167 after</p> <p>19 caustic wash, warm water wash, flow test, and</p> <p>20 drying, correct?</p> <p>21 A. Anywhere else in this document, is that what</p> <p>22 you mean?</p> <p>23 Q. Correct.</p> <p>24 A. I don't think so. Fig 12, that's from --</p> <p>25 that's from 67. Figure 12.</p>

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<p>1 Q. Does Figure 12 show any portions of the label?</p> <p>2 A. It's the ink from the -- from the label.</p> <p>3 Q. Does it show any flakes and whether there was</p> <p>4 any ink retained on the flakes?</p> <p>5 A. No.</p> <p>6 Q. Looking at Figure 11D, Figure 11D is a</p> <p>7 representative image of the Gatorade label</p> <p>8 that ends in 1167 after caustic wash, warm</p> <p>9 water wash, float test, and drying, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And we can see from Figure 11D that there are</p> <p>12 at least a couple of flakes of the label where</p> <p>13 the inks and pigments were not removed during</p> <p>14 the caustic wash, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Can you turn to Paragraph 77 of your report?</p> <p>17 In -- you mentioned a couple of times that the</p> <p>18 ink from the labels would wash off during a</p> <p>19 caustic wash. You do not have any images in</p> <p>20 your declaration in figures 10, 11, 12, that</p> <p>21 show or compare a flake of the Gatorade label</p> <p>22 before and after the caustic wash, correct?</p> <p>23 A. I don't think so, no. Well, actually, that's</p> <p>24 not correct, sorry. The after are the ones</p> <p>25 that we just discussed in figures -- in Figure</p>	<p>1 wanted to -- to clarify that's not what is</p> <p>2 being shown in Figure 16, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. I want to talk briefly about claim 2,</p> <p>5 which is recited in Paragraph 80 of your</p> <p>6 expert declaration. Claim 2 requires an</p> <p>7 indicia layer in addition to all of the</p> <p>8 requirements of claim 1, correct? You state</p> <p>9 each label contains an indicia layer as can be</p> <p>10 seen in Figure 1, but you don't identify what</p> <p>11 parts of figure one comprise the indicia</p> <p>12 layer, correct?</p> <p>13 A. Correct.</p> <p>14 Q. So I'm going to turn to claims 8 and 9 where</p> <p>15 you performed the shrink test, do you recall</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. How did you determine the percentage that the</p> <p>19 labels shrank?</p> <p>20 A. It's a distance determination, so they all</p> <p>21 started out at 100 -- approximately 100</p> <p>22 centimeters, as you can see in Figure 17 below</p> <p>23 Paragraph 86, they're all approximately -- I'm</p> <p>24 sorry, 100 millimeters by millimeters, so 10</p> <p>25 centimeters by 10 centimeters. And they</p>
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<p>1 11, right?</p> <p>2 Q. Right.</p> <p>3 A. So the before would be, for at least 57, is</p> <p>4 what is included in Figure 1.</p> <p>5 Q. So my question is a little bit narrower. So</p> <p>6 we don't have the image of the flakes that</p> <p>7 were tested in the caustic wash to compare,</p> <p>8 correct?</p> <p>9 A. There's no images of the flakes before they</p> <p>10 were washed.</p> <p>11 Q. So there's no way to determine from the images</p> <p>12 you've provided in your declaration what</p> <p>13 quantity of ink washed off the Gatorade label</p> <p>14 in the flakes that were tested during the</p> <p>15 caustic wash, correct?</p> <p>16 MR. SCHATZ: Object to form.</p> <p>17 A. Quantity?</p> <p>18 BY MS. STONE:</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. In Paragraph 77, you state at the very end of</p> <p>22 that paragraph; all flakes sink in the mixture</p> <p>23 as is demonstrated in Figure 16. Looking at</p> <p>24 Figure 16, that doesn't appear to show that</p> <p>25 flakes are sinking in the mixture, so I just</p>	<p>1 shrank to approximately 20 or so, uh,</p> <p>2 millimeters from the starting 10 -- I guess</p> <p>3 I'm messing up my math -- 20 from the starting</p> <p>4 100 millimeters. So that distance is how you</p> <p>5 determine percentage.</p> <p>6 Q. I apologize, can we go back to claim 3 on Page</p> <p>7 33? Claim 3 requires that the high opacity</p> <p>8 layer comprise a white pigment, right?</p> <p>9 A. Yes, that's what it says.</p> <p>10 Q. You don't identify a white pigment in</p> <p>11 Paragraph 81, do you?</p> <p>12 A. I'm sorry, say that again?</p> <p>13 Q. In Paragraph 81 you don't identify a white</p> <p>14 pigment, correct?</p> <p>15 A. Titanium dioxide is a white pigment, so I</p> <p>16 don't say specifically the words I just said,</p> <p>17 titanium dioxide is white pigment, but I do</p> <p>18 say it contains titanium dioxide.</p> <p>19 Q. And are you distinguishing in your analysis of</p> <p>20 the Gatorade label from the high opacity</p> <p>21 layer, which you've indicated is underneath</p> <p>22 the aluminum, from the white pigment that is</p> <p>23 visible to a consumer on the label?</p> <p>24 A. Am I distinguishing the high opacity layer</p> <p>25 from the white pigment that's visible?</p>

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<p>1 Q. Yeah.</p> <p>2 A. I didn't do an analysis of the white pigment that was visible.</p> <p>3</p> <p>4 Q. Okay. Can you please turn to claim 12 of your report, which starts at Paragraph 92. So claim 12 as recited in your expert declaration requires all of the limitations of claim 1, and that the light-blocking layer is present in an amount of 0.5 PPR to 25 PPR, relative to the recyclable shrink label, correct?</p> <p>5 A. That is what it says, yes.</p> <p>6 Q. Okay. You then performed some calculations based on the aluminum light-blocking layer covering the entire ream, right?</p> <p>7 A. Yes.</p> <p>8 Q. What do you mean by, on the aluminum light-blocking layer covering the entire ream?</p> <p>9 A. Meaning that the aluminum light-blocking layer covers the entire ream, so the areas that are clear plastic in between the labels or clear polymer substrate between the labels was not considered as -- as a portion of this. So the 3,000 foot -- 3,000 square foot ream would be completely covered by the aluminum light-blocking layer.</p>	<p>1 of the mass of the light-blocking layer, 10 percent of the other solids in there is just a conservative estimate.</p> <p>2</p> <p>3</p> <p>4 Q. Why did you choose 10 percent?</p> <p>5 A. To try to be conservative.</p> <p>6 Q. Why is that a conservative estimate?</p> <p>7 A. Because the actual amount of solids in there aside from the aluminum could range from -- could range to higher numbers, could -- could be larger.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Q. Was the ICP performed on only on a silver portion of the label?</p> <p>12</p> <p>13 A. Yes.</p> <p>14 Q. Would a different estimate be appropriate for portions of the label that do not contain any silver ink?</p> <p>15</p> <p>16</p> <p>17 A. That would fall outside the scope of the problem, because the stipulation for the approximation here -- sorry, the stipulation for calculation done here is that it's over the entire portion of the ream is covered in silver ink, does that make sense?</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Q. Can you look at paragraph 96 for me? In Paragraph 96 you say, for a sample of the Gatorade label ending in 1167, that for a</p> <p>24</p> <p>25</p>
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<p>1 Q. Okay. And that's an assumption that you're making, correct, because that's -- I -- I'm trying to understand if there's any assumptions that go into that given that the aluminum layer does not in fact cover the entirety of the Gatorade label?</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 A. It's not an assumption, it's a stipulation of the problem, right? I'm saying that, given these circumstances, given the circumstance where the aluminum layer were to cover the entire ream, which you're correct is not the case, but we're making the stipulation that -- if it were -- to make the calculations more manageable.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Q. In Paragraph 93, you state that an ICP was used to quantify the amount of the aluminum in certain samples, right?</p> <p>16</p> <p>17</p> <p>18 A. Correct.</p> <p>19 Q. When calculating the mass of the light-blocking layer, you estimate the solids other than aluminum comprise 10 percent of the light-blocking layer. How did you come up with that estimate?</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24 A. It's 10 percent of the mass of the aluminum, meaning that the aluminum would be 90 percent</p> <p>25</p>	<p>1 3,000 square foot ream this corresponds to 0.5 pounds of light-blocking per ream, correct?</p> <p>2</p> <p>3 A. Sorry, did you say 96?</p> <p>4 Q. Paragraph 96. So I was pointing to the sample number at the beginning of the paragraph, but the section of the paragraph I'm reading is the second sentence.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 A. Yes, it's 68, states 68 at 96 for sample 3191168. And then it continues in the second sentence, for a 3,000 square root ream this corresponds to a half a pound of light-blocking layer per ream.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13 Q. You would agree with me that's on the outer bounds of the claim limitation, right?</p> <p>14</p> <p>15 A. The claim limitation is 0.5 PPR to 25.</p> <p>16 Q. Right. So 0.5 is on the outer bounds of that range?</p> <p>17</p> <p>18 A. I guess I'm not sure what you mean by outer bounds. The low end of the range --</p> <p>19</p> <p>20 Q. Yes --</p> <p>21 A. -- it's stated.</p> <p>22 Q. Yes.</p> <p>23 A. It's within the range -- it's in the lower bound of the range, let me put it that way.</p> <p>24</p> <p>25 Q. Okay. Does your estimate of 10 percent have</p>

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<p>1 any impact on whether or not this falls within</p> <p>2 or without of the range?</p> <p>3 A. That's how the calculation was performed, yes.</p> <p>4 Q. So if a different estimate was taken for the</p> <p>5 percent of the mass of aluminum, that could --</p> <p>6 that would impact each of your calculations</p> <p>7 here for each of the sample labels?</p> <p>8 A. So like I said, 10 percent is a conservative</p> <p>9 estimate, so if we were to say 20 percent then</p> <p>10 that number would be higher. So instead of</p> <p>11 being 0.5 -- we're not going to do that math</p> <p>12 in situ, right? But it would go up.</p> <p>13 Q. But if you use 5 percent that number would go</p> <p>14 down?</p> <p>15 A. Correct.</p> <p>16 Q. So I'd like to compare claim 12 and claim 13</p> <p>17 for a minute. Claim 12 requires an amount</p> <p>18 relative to the recyclable shrink label,</p> <p>19 correct?</p> <p>20 A. Claim 12 states that the light-blocking layer</p> <p>21 is present in an amount of 0.5, 25 PPR</p> <p>22 relative to the recyclable shrink layer --</p> <p>23 label, yes.</p> <p>24 Q. And then claim 13 is -- is different because</p> <p>25 it requires wherein the light block layer,</p>	<p>1 whether -- strike that.</p> <p>2 You did not personally evaluate any</p> <p>3 containers to determine whether they comprised</p> <p>4 PET?</p> <p>5 A. Correct.</p> <p>6 Q. And in Paragraph 98 you state, attached to the</p> <p>7 Craig Bushman declaration is what I understand</p> <p>8 to be the bottles to which the tested labels</p> <p>9 are affixed, which are accordingly recyclable</p> <p>10 PET bottles, right?</p> <p>11 A. That is what it states in the declaration,</p> <p>12 yes.</p> <p>13 Q. And because this citation is to Exhibit 1013,</p> <p>14 am I correct that this information came from</p> <p>15 counsel?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You have no opinions on whether or not</p> <p>18 -- actually strike that.</p> <p>19 You are not offering an opinion that</p> <p>20 there is a container comprising PET that would</p> <p>21 define an external surface where the</p> <p>22 recyclable shrink label of claim 1 would be</p> <p>23 disposed on that container, right?</p> <p>24 A. The opinions offered in the declaration are</p> <p>25 based on the analysis of the labels, there's</p>
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<p>1 comprises from 0.1 PPR too the 10 PPR of the</p> <p>2 component, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. How did you change your analysis in</p> <p>5 order to ensure that you were making that</p> <p>6 comparison to the correct requirement, whether</p> <p>7 that be the recyclable shrink label or the</p> <p>8 light-blocking component.</p> <p>9 A. So for claim 12 when we're talking about the</p> <p>10 recyclable shrink label, we consider the</p> <p>11 entire light-blocking layer, which is</p> <p>12 everything that goes down with the aluminum.</p> <p>13 For claim 13 we're considering the light-</p> <p>14 blocking component, which is the aluminum</p> <p>15 particulate or aluminum flake.</p> <p>16 Q. And so you did a different calculation for</p> <p>17 claim 13 as compared to claim 12?</p> <p>18 A. Yes.</p> <p>19 Q. Can you please turn to claim 14 and paragraph</p> <p>20 98 of your declaration? So claim 14 requires</p> <p>21 an article comprising a container, comprising</p> <p>22 PET, and defining an external surface, and the</p> <p>23 recyclable shrink label of claim 1, correct?</p> <p>24 A. That is what it says, yes.</p> <p>25 Q. Okay. And you did not personally determine</p>	<p>1 no opinions in the declaration based off of</p> <p>2 bottles.</p> <p>3 Q. And similarly, claim 15, depends from claim</p> <p>4 14, correct?</p> <p>5 A. That is what it states.</p> <p>6 Q. Okay. And so you agree with me that claim 15</p> <p>7 also requires a container comprising PET?</p> <p>8 A. Sorry, I was reviewing claim 15 and Paragraph</p> <p>9 99. Can you state the question again?</p> <p>10 Q. Sure, because claim 15 depends from claim 14,</p> <p>11 would you agree that claim 15 also requires a</p> <p>12 container comprising PET?</p> <p>13 A. Because of the dependency, I think yes.</p> <p>14 Q. And the -- claim 15 also requires a first</p> <p>15 surface of the heat shrink film, you don't</p> <p>16 identify a first surface in Paragraph 99,</p> <p>17 correct?</p> <p>18 A. Correct, I do not identify the first surface</p> <p>19 in Paragraph 99.</p> <p>20 Q. For claim 19 -- for claim 19, the last</p> <p>21 limitation of claim 19 on Page 42, the claim</p> <p>22 is a high opacity layer comprising a white</p> <p>23 pigment, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And again you only -- you point to the</p>

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<p>1 titanium dioxide as that white pigment?</p> <p>2 A. Yes.</p> <p>3 Q. You don't explain anywhere in your declaration</p> <p>4 -- sorry, I'm going to strike that.</p> <p>5 You don't explain anywhere in Paragraph</p> <p>6 106 that Titanium Dioxide is a white pigment,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. The entirety of your analysis for this</p> <p>10 limitation is that the high opacity layer in</p> <p>11 the analyzed samples is consistent</p> <p>12 with titanium dioxide as can be seen in</p> <p>13 figures 6 and 7, correct?</p> <p>14 A. Say that again?</p> <p>15 Q. So -- just looking at Paragraph 106, Paragraph</p> <p>16 106 is a single sentence and that's the</p> <p>17 entirety your analysis of this limitation of</p> <p>18 claim 19, correct?</p> <p>19 A. Yes.</p> <p>20 MS. STONE: So I'm going to turn to</p> <p>21 grounds two, I don't know if anyone wants to</p> <p>22 take a quick five minute break -- let's do</p> <p>23 that.</p> <p>24 VIDEOGRAPHER: We're off at 3:26.</p> <p>25 - - - -</p>	<p>1 Q. Sorry, I think I was talking about ground 3.</p> <p>2 So let me revise -- so let me ask the question</p> <p>3 again, so that I make sure you understood it.</p> <p>4 Grounds 2 and 3 of your declaration are</p> <p>5 your obviousness opinions, right?</p> <p>6 A. Correct.</p> <p>7 Q. And your opinions for obviousness in both</p> <p>8 ground 2 and 3 are based on the Gatorade label</p> <p>9 being modified, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And in grounds 2 and 3, you don't discuss any</p> <p>12 of the claim limitations of claim 1, correct?</p> <p>13 A. In grounds 2 and 3, claim 1 is not discussed.</p> <p>14 Q. Okay. And the limitations of claim 1 that are</p> <p>15 encompassed by claim 4, those are not</p> <p>16 discussed, right?</p> <p>17 A. Yes.</p> <p>18 Q. And the dependant claim limitation from claim</p> <p>19 3 is not specifically discussed, right?</p> <p>20 A. No, I don't think so.</p> <p>21 Q. So grounds 2 and 3 of your declaration are</p> <p>22 focused on the dependant limitation from claim</p> <p>23 4 and the specific order of those layers,</p> <p>24 correct?</p> <p>25 A. Say that again?</p>
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<p>1 (Pause in the record.)</p> <p>2 - - - -</p> <p>3 VIDEOGRAPHER: Back on the record at</p> <p>4 3:36.</p> <p>5 MS. STONE: Welcome back.</p> <p>6 BY MS. STONE:</p> <p>7 Q. Can I get you to back to the '422 patent,</p> <p>8 Exhibit 11 to your deposition, at Column 28,</p> <p>9 please? Claim 4 of the '422 patent requires</p> <p>10 that the recyclable shrink label have an</p> <p>11 indicia layer, in -- wherein the high opacity</p> <p>12 label is disposed between the indicia layer</p> <p>13 and the light-blocking layer, correct?</p> <p>14 A. That is what it says, yeah.</p> <p>15 Q. Okay. So claim 4 requires a particular</p> <p>16 configuration of the layers for the label,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you rely in grounds two and three</p> <p>20 on the Gatorade label being modified by either</p> <p>21 the knowledge of a person of ordinary skill in</p> <p>22 the art or the Febreze label, correct?</p> <p>23 A. For claim 3?</p> <p>24 Q. For claim 4.</p> <p>25 A. For claim 4, yes.</p>	<p>1 Q. Sure. So let's -- I'll take a step back.</p> <p>2 So the Gatorade label SEM images that you</p> <p>3 provided with respect to claim 1 show that</p> <p>4 there is a light-blocking layer of aluminum</p> <p>5 that is closer to the PET film than the high</p> <p>6 opacity layer which you've opined is made up</p> <p>7 of titanium dioxide, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And so that is not the configuration of</p> <p>10 the layers in claim 4, right?</p> <p>11 A. Correct.</p> <p>12 Q. And so, in grounds 2 and 3, you've offered</p> <p>13 opinions that a person of ordinary skill in</p> <p>14 the art would modify the Gatorade label</p> <p>15 according to the teachings of either the</p> <p>16 Febreze label or the knowledge of a person of</p> <p>17 ordinary skill in the art, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. In that analysis did you determine</p> <p>20 whether the layer configuration of the</p> <p>21 Gatorade label as-is had any benefits?</p> <p>22 A. Benefits?</p> <p>23 Q. Yep.</p> <p>24 A. What do you mean, benefits to what?</p> <p>25 Q. Any commercial benefits, benefits to</p>

<p style="text-align: right;">Page 226</p> <p>1 recyclability, did you do any analysis on</p> <p>2 whether there were any reasons why the</p> <p>3 Gatorade label was designed the way that it</p> <p>4 was?</p> <p>5 A. No.</p> <p>6 Q. We've discussed a little bit today that</p> <p>7 titanium dioxide has a white pigment, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Would it be true if you flipped the light-</p> <p>10 blocking layer and the high opacity layer of</p> <p>11 the Gatorade label, that the silver portions</p> <p>12 of the Gatorade label would appear white?</p> <p>13 A. I don't know if that's true.</p> <p>14 Q. Did you consider that in your analysis?</p> <p>15 A. No.</p> <p>16 Q. Did you do any analysis of whether the</p> <p>17 Gatorade label or the Febreze label are</p> <p>18 commercially successful products?</p> <p>19 A. No.</p> <p>20 Q. We discussed much earlier this morning, the</p> <p>21 silver ink that is identified in the -- as the</p> <p>22 Watson standard silver ink in Exhibit No.</p> <p>23 1019, do you recall that discussion?</p> <p>24 A. I recall discussing it. I think I forgot some</p> <p>25 of the specifics already but go on.</p>	<p style="text-align: right;">Page 228</p> <p>1 sense. So I understand for ground 1 you did a</p> <p>2 bunch of testing, and that's like analytical</p> <p>3 testing and you analyzed data.</p> <p>4 For your obviousness analysis, it's --</p> <p>5 your analysis isn't based on testing data,</p> <p>6 correct?</p> <p>7 A. No.</p> <p>8 Q. Okay. And so, when I'm using the word analyze</p> <p>9 in the context of grounds 2 and 3, I think I'm</p> <p>10 actually asking maybe a slightly different</p> <p>11 question than you're answering.</p> <p>12 My question I think maybe is more geared</p> <p>13 to whether you considered or evaluated</p> <p>14 something, is that language that I think,</p> <p>15 maybe -- do you understand the difference in</p> <p>16 those terms, should I use consider instead of</p> <p>17 analyze?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. I want to make sure we're not talking</p> <p>20 past each other. Did you consider whether</p> <p>21 modifying the order of the layers of the</p> <p>22 Gatorade label would impact the washability of</p> <p>23 the Watson standard silver ink?</p> <p>24 A. Are you asking me if that's something that's</p> <p>25 already in here, or are you trying -- do you</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Did you evaluate whether the recyclability of</p> <p>2 the silver ink as you pointed out had an</p> <p>3 impact on whether or not the particular label</p> <p>4 configuration of the Gatorade label was</p> <p>5 recyclable?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 A. Say it again? Sorry.</p> <p>8 BY MS. STONE:</p> <p>9 Q. Let me back up. So in the current</p> <p>10 configuration of the Gatorade label, right,</p> <p>11 the silver ink, the aluminum, you've opined</p> <p>12 that that's the Watson standard silver ink,</p> <p>13 correct?</p> <p>14 A. That's my understanding.</p> <p>15 Q. Okay. Did you do any analysis to determine</p> <p>16 whether changing the order of where that</p> <p>17 silver ink is in the label configuration would</p> <p>18 have an impact on whether or not the ink was</p> <p>19 washable?</p> <p>20 A. The analysis that I conducted was on the</p> <p>21 labels that I had that were already arranged</p> <p>22 in a certain order. So I did not analyze</p> <p>23 other labels in other configurations to see if</p> <p>24 it would impact recyclability.</p> <p>25 Q. I think we may be using analyze in a different</p>	<p style="text-align: right;">Page 229</p> <p>1 want me to answer that question kind of in</p> <p>2 situ here as we sit today?</p> <p>3 Q. My question is, do you have an opinion that</p> <p>4 you are offering in this case on that, and my</p> <p>5 understanding is that your opinions are</p> <p>6 limited to your declaration, so I think that's</p> <p>7 -- is it in your declaration?</p> <p>8 A. I -- that's not in the declaration, as near as</p> <p>9 I recall.</p> <p>10 Q. Did you determine whether changing the order</p> <p>11 -- let me rephrase.</p> <p>12 Did you consider whether changing the</p> <p>13 order of the light-blocking layer and the high</p> <p>14 opacity layer of the Gatorade label would have</p> <p>15 any impact on any other claim limitation</p> <p>16 required by claim 4?</p> <p>17 A. No.</p> <p>18 Q. So I want to look at specifically ground 2,</p> <p>19 and looking at paragraphs 108 and 109 to start</p> <p>20 of your declaration, are you there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So we talked a lot about the language</p> <p>23 that you cited from the examiner, referring to</p> <p>24 Mitchel, which is in Paragraph 108. Did you</p> <p>25 consider any other references in establishing</p>

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<p>1 what the knowledge of a person of ordinary 2 skill in the art would know in order to modify 3 the Gatorade label? 4 A. Did I consider other references of what a 5 person of ordinary skill in the art would need 6 to modify the label? 7 Q. Uh-huh. 8 A. Other than the one we're citing in the 9 document? 10 Q. Other than Mitchel? 11 A. Well, I think when we talked about the 12 definition of a person of ordinary skill in 13 the art that was defined previously in the 14 document. 15 Q. So in ground 2, the title, in the heading D, 16 you say, the Gatorade label, based on 17 knowledge of a person of ordinary skill in the 18 art including Mitchel renders claim 4 obvious, 19 right? 20 A. Uh-huh. 21 Q. So what I'm trying to understand is whether 22 your modification to the Gatorade label based 23 on the knowledge of person of ordinary skill 24 if the art, is that based just on Mitchel or 25 was there other information you were</p>	<p>1 just clarify. 2 You are not yourself offering an opinion 3 that it -- that it was known how to change the 4 order of the layers in the Gatorade label, 5 correct? 6 A. Say it again? 7 Q. Right. So here in Paragraph 109, you say you 8 understand that it would have been known to a 9 skilled artisan in the field of labels to 10 change the order of the layers? 11 A. Yeah. 12 Q. But you are not a skilled artisan in the field 13 of labels that would know how to change the 14 order of the layers, right? 15 A. I -- I am not a label manufacturer, correct. 16 Q. Right. So you in this declaration instead 17 cite to that Exhibit 1013 again, correct? 18 A. Yes. 19 Q. Okay. And so, your opinions that it would 20 have been known to a skilled artisan how to 21 change the order of the layers is based 22 representations from counsel, is that fair? 23 A. I would say that it's based on that and also 24 experience of mine, not in label making 25 specifically, but in a very general</p>
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<p>1 considering outside of Mitchel? 2 A. I think it's -- it's based on the knowledge of 3 person of ordinary skill in the art and on 4 Mitchel, but there's not a specific reference 5 to what a person of ordinary skill in the art 6 would know or point to, does that make sense? 7 Q. Yes -- 8 A. I'm not pointing to rather -- 9 Q. Yes, but you don't cite any other written 10 references in ground 2 for the basis of what 11 you are saying the knowledge of a person of 12 ordinary skill in the art is other than 13 Mitchel, right? 14 A. I think it's Mitchel and the person of 15 ordinary skill in the art as previously 16 defined. 17 Q. Okay. 18 A. So you are right that definition of person of 19 ordinary skill in the art is not in this 20 section but it's in this declaration. 21 Q. So look at Paragraph 109, you state that you 22 understand it would have been known to a 23 skilled artisan in the field of labels to 24 change the order of the layers. You used the 25 language, "I also understand," so I want to</p>	<p>1 manufacturing sense of how labels, layers are 2 created. Switching layers is, you know, 3 something that can be done, umm, yeah. 4 Q. You don't have any knowledge or opinions about 5 changing the order of the layers with regard 6 to the Gatorade label specifically, correct? 7 A. I don't manufacture the Gatorade label. 8 Q. Right. 9 A. So I would say that I would know that a person 10 that does know -- manufacture those would be 11 able to say that switching the layers is, you 12 know, something that can be done. 13 Q. Where did you get that information? 14 A. Get what information? 15 Q. Where did you get the information that a 16 person manufacturing the Gatorade label would 17 be able to switch the layers? 18 A. As cited as Exhibit 1013. 19 Q. Right. And so -- did you get that information 20 from counsel? 21 A. That's what we've previously said. 22 Q. Okay. Again, I'm just trying to distinguish 23 in Paragraph 109 whether you are affirmatively 24 offering any of these opinions or whether 25 you're incorporating that Exhibit 1013 into</p>

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<p>1 your opinions based on counsel's</p> <p>2 representation. That's what I was trying to</p> <p>3 distinguish.</p> <p>4 So with that context, do you have any</p> <p>5 opinions that it would be a simple change to</p> <p>6 the manufacturing process for the Gatorade</p> <p>7 label to change the layer configuration of the</p> <p>8 Gatorade label?</p> <p>9 A. I understand that a person that manufactures</p> <p>10 Gatorade labels would be able to change the</p> <p>11 layer order.</p> <p>12 Q. If you look at Paragraph 110, you state there</p> <p>13 is little difference between the prior art and</p> <p>14 the claims. Do you -- did you determine how</p> <p>15 to change the Gatorade label based on what the</p> <p>16 '422 patent claims required?</p> <p>17 MR. SCHATZ: Object to form.</p> <p>18 A. I don't understand that question.</p> <p>19 BY MS. STONE:</p> <p>20 Q. Sure. So you state in Paragraph 110, you see</p> <p>21 where it says, "there is little difference</p> <p>22 between the prior art and the claims."</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So, in order to get to the claimed</p> <p>25 invention with the layer configuration of</p>	<p>1 Q. You're offering an opinion that you could do</p> <p>2 this, right?</p> <p>3 A. Yeah.</p> <p>4 Q. And then there would be a resulting, like,</p> <p>5 combination or product, if you did it, what</p> <p>6 you're opining, that would result in the</p> <p>7 invention claimed in claim 4, right, that's</p> <p>8 the opinion that you're offering in this case,</p> <p>9 right -- so in this hypothetical label, that's</p> <p>10 what we're talking about, not a physical</p> <p>11 label, does that make sense?</p> <p>12 A. Okay.</p> <p>13 Q. So I'm going to ask my question, again, with a</p> <p>14 little bit of that context. Was the</p> <p>15 motivation behind modifying the Gatorade label</p> <p>16 with Mitchel, or the knowledge of a person of</p> <p>17 ordinary skill in the art based on Mitchel,</p> <p>18 based on trying to achieve the invention</p> <p>19 claimed in claim 4?</p> <p>20 MR. SCHATZ: Object to form.</p> <p>21 A. In this hypothetical label that I didn't</p> <p>22 analyze but we're saying was printed in a</p> <p>23 different way, would still meet the claims --</p> <p>24 the limitations of claim 4, because it would</p> <p>25 have the labels -- or I'm sorry, the layers --</p>
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<p>1 claim 4, did you look to claim 4 and then</p> <p>2 determine how you could change the Gatorade</p> <p>3 label to reach that claimed invention?</p> <p>4 MR. SCHATZ: Object to form.</p> <p>5 A. I think that looking at claim 4 and looking at</p> <p>6 the Gatorade label, it would be understood by</p> <p>7 label manufacturer that those layers --</p> <p>8 configurations could be changed.</p> <p>9 BY MS. STONE:</p> <p>10 Q. And what I want to understand is, what is the</p> <p>11 motivation, the reason to change the order of</p> <p>12 the Gatorade label, was it looking to claim 4</p> <p>13 and trying to replicate claim 4 with the</p> <p>14 Gatorade label?</p> <p>15 MR. SCHATZ: Objection -- object to</p> <p>16 form.</p> <p>17 A. I didn't change any labels -- layers. So when</p> <p>18 you say, how did you say it? Can --</p> <p>19 - - - -</p> <p>20 (Simultaneous speaking.)</p> <p>21 - - - -</p> <p>22 BY MS. STONE:</p> <p>23 Q. Again, I'm not saying you physically changed</p> <p>24 it.</p> <p>25 A. Yeah.</p>	<p>1 in the order specified by claim 4.</p> <p>2 BY MS. STONE:</p> <p>3 Q. So I want to turn to section 3 of ground 4,</p> <p>4 which is starting at Paragraph 114. So what</p> <p>5 I'm trying to understand is the motivation for</p> <p>6 why a person of ordinary skill in the art</p> <p>7 would change the Gatorade label at all, right?</p> <p>8 A. Okay.</p> <p>9 Q. It exists -- it's a commercially available</p> <p>10 label, correct?</p> <p>11 A. That's my understanding.</p> <p>12 Q. Okay. Do you know if it's still the Gatorade</p> <p>13 label that's used today?</p> <p>14 A. I don't know.</p> <p>15 Q. So the first reason that you give in Paragraph</p> <p>16 116 for modifying the label is at the very end</p> <p>17 of that sentence, that a person of ordinary</p> <p>18 skill in the art would know that they serve</p> <p>19 similar purposes, and that's talking about the</p> <p>20 Gatorade label and Mitchel, correct?</p> <p>21 A. Yes.</p> <p>22 Q. We discussed earlier when we were talking</p> <p>23 about the patent prosecution for the '422</p> <p>24 patent, that the label in Mitchel is not</p> <p>25 recyclable, right?</p>

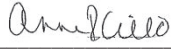
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<p>1 A. Yes.</p> <p>2 Q. Okay. And so, would you agree with me that</p> <p>3 the Mitchel label, which is a light-blocking</p> <p>4 label, does not serve the purpose of being a</p> <p>5 recyclable label?</p> <p>6 MR. SCHATZ: Object to form.</p> <p>7 A. I think there's more stipulations that go</p> <p>8 along with the word "recyclable," right? To</p> <p>9 just sit here and say that the Mitchel label</p> <p>10 that was polypropylene or what have you is not</p> <p>11 recyclable, I don't know if that's right.</p> <p>12 We're talking about PET labels and PET</p> <p>13 containers all being recycled together,</p> <p>14 specifically with a caustic wash is how we are</p> <p>15 defining recyclable. So.</p> <p>16 BY MS. STONE:</p> <p>17 Q. So we agreed earlier that you had not actually</p> <p>18 reviewed the Mitchel reference, correct?</p> <p>19 A. Yeah, I think so, (inaudible).</p> <p>20 Q. And then we also agreed that, based on the</p> <p>21 representation in the patent prosecution, that</p> <p>22 the Mitchel label was not made of PET,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. And so I think the last answer you</p>	<p>1 Gatorade label more visible, or how it would</p> <p>2 promote visibility?</p> <p>3 A. Where does it say that?</p> <p>4 Q. So you're saying in Paragraph 119, what I</p> <p>5 understand -- and please correct me if I'm</p> <p>6 wrong -- that the motivation and reason for</p> <p>7 changing the configuration of these labels</p> <p>8 would be to allow for visibility of the label?</p> <p>9 A. Yeah.</p> <p>10 Q. And so what I'm trying to understand is, is</p> <p>11 there a reason why the Gatorade label as-is</p> <p>12 isn't visible, comparatively?</p> <p>13 A. The label itself, the whole label?</p> <p>14 Q. Yes.</p> <p>15 A. They're still -- it's still visible, I think</p> <p>16 that you're asking a more specific question</p> <p>17 of, like, what you would see or not see when</p> <p>18 the labels were flipped relative to the</p> <p>19 indicia layer, relative to, you know, the</p> <p>20 metallic look or the white pigments and those</p> <p>21 types of things.</p> <p>22 Q. I'm simply trying to understand your opinion</p> <p>23 in Paragraph 119.</p> <p>24 A. So if you flip the layers, the label's still</p> <p>25 visible.</p>
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<p>1 gave, regarding whether a label is recyclable</p> <p>2 or not recyclable related to what the material</p> <p>3 is, I think my question is a little bit</p> <p>4 simpler than that.</p> <p>5 The reference you relied on which is the</p> <p>6 prosecution history of the '422 patent</p> <p>7 specifically says that the label of Mitchel is</p> <p>8 not recyclable, right?</p> <p>9 MR. SCHATZ: Object to form.</p> <p>10 A. I -- I think that's what it said, yeah.</p> <p>11 BY MS. STONE:</p> <p>12 Q. Can you turn to Paragraph 119. Can you</p> <p>13 explain to me why a person of ordinary skill</p> <p>14 in the art would have recognized that a</p> <p>15 construction of the Gatorade label flipping</p> <p>16 the lighter -- light-blocking layer and the</p> <p>17 high opacity layer, would allow visibility of</p> <p>18 the label?</p> <p>19 A. So here the label is the entire thing. The</p> <p>20 PET, the light-blocking layer, the high</p> <p>21 opacity layer. So when we say the visibility</p> <p>22 of the layer -- or of the label -- if you flip</p> <p>23 those two layers, you can still see the label.</p> <p>24 Q. So what I am trying to understand is why --</p> <p>25 why flipping those layers would make the</p>	<p>1 Q. Okay. It is not more visible?</p> <p>2 A. It doesn't say that.</p> <p>3 Q. Okay. Let's turn to ground 3 quickly. So</p> <p>4 ground 3 of your declaration offers the</p> <p>5 opinion that the Gatorade label in combination</p> <p>6 with the Febreze label renders claim 4</p> <p>7 obvious, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. You did not do an analysis -- I think</p> <p>10 we talked earlier about the fact that you did</p> <p>11 not do an analysis to whether the Febreze</p> <p>12 label is PET, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Do you have any understanding about</p> <p>15 whether the Febreze label is a recyclable</p> <p>16 label?</p> <p>17 A. As defined by -- in the document of the ink</p> <p>18 being removed during a caustic wash test, yes.</p> <p>19 Q. Okay. When you say the ink is being removed</p> <p>20 during a caustic wash test, we agreed that</p> <p>21 portions of the Febreze label did not have all</p> <p>22 of the ink or pigment removed, correct?</p> <p>23 MR. SCHATZ: Object to form.</p> <p>24 A. Yes.</p> <p>25 BY MS. STONE:</p>

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<p>1 Q. Okay. So in that context when you're saying</p> <p>2 that ink is being removed, are you -- do you</p> <p>3 mean that some portion of the ink is being</p> <p>4 removed?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have any understanding about whether</p> <p>7 the Febreze label is on a PET container when</p> <p>8 it's sold commercially?</p> <p>9 A. I don't know what kind of container Febreze</p> <p>10 label is on.</p> <p>11 Q. Why would a person of ordinary skill in the</p> <p>12 art look to the Febreze label to modify the</p> <p>13 Gatorade label?</p> <p>14 A. The Febreze label uses a similar label with</p> <p>15 the layers switched from the Gatorade label.</p> <p>16 The metallic light-blocking layer and the high</p> <p>17 opacity layer are switched in the Febreze</p> <p>18 label from the Gatorade label.</p> <p>19 Q. Okay. And so when you were considering how or</p> <p>20 why a person of ordinary skill in the art</p> <p>21 would modify the Gatorade label, you chose to</p> <p>22 look to the Febreze label because it had the</p> <p>23 layer configuration of claim 4, is that fair?</p> <p>24 A. Yes.</p> <p>25 Q. So I'm going to turn to ground 4 which starts</p>	<p>1 reclaiming process is not well defined. And</p> <p>2 designed to wash off the film during a</p> <p>3 reclaiming process is not well defined. So</p> <p>4 those two things are inconsistent with each</p> <p>5 other, because they're not saying the ink has</p> <p>6 to be removed in a bath of a certain time,</p> <p>7 temperature, PH concentration, et cetera.</p> <p>8 There's no details on what those two things</p> <p>9 mean.</p> <p>10 Q. Okay. So your reasoning for recyclable being</p> <p>11 indefinite is that the parameters of the</p> <p>12 caustic wash cycle are not particularly</p> <p>13 explained in the specification, is that your</p> <p>14 issue?</p> <p>15 A. It's not just that the parameters of the</p> <p>16 caustic wash cycle aren't well defined, all</p> <p>17 right, it's also the other line that says;</p> <p>18 during a reclaiming process, what is that?</p> <p>19 That -- that is a term that has, again, that</p> <p>20 is ill defined.</p> <p>21 Q. Looking at paragraphs 147 and 148, you point</p> <p>22 to the three APR guidance documents that we</p> <p>23 discussed earlier in the patent, which is PET</p> <p>24 CG-02, Sort-B-01 and Sort-B-03, correct?</p> <p>25 A. Those are the documents indicated in</p>
Page 243	Page 245
<p>1 on Page 54. So in ground 4, you offer the</p> <p>2 opinion that certain claims are indefinite,</p> <p>3 because the limitation wherein the recyclable</p> <p>4 shrink label is recyclable is indefinite,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And the reason for that is because you</p> <p>8 state that the '422 patent defines what is</p> <p>9 recyclable in several disparate ways, correct?</p> <p>10 A. That is what is stated in Paragraph 144 of the</p> <p>11 declaration.</p> <p>12 Q. And is that your opinion?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. For Paragraph 154 -- sorry, I flipped</p> <p>15 that -- I flipped that, it was 145.</p> <p>16 A. Oh, never mind.</p> <p>17 Q. In paragraphs 145 and 146, can you explain to</p> <p>18 me what is inconsistent about a label being</p> <p>19 recyclable if no inks are retained on the film</p> <p>20 after a caustic wash cycle, and inks that are</p> <p>21 designed to wash off the film during a</p> <p>22 reclaiming process, how are those</p> <p>23 inconsistent?</p> <p>24 A. Caustic wash -- excuse me -- yes, a caustic</p> <p>25 wash cycle typically used in the PET</p>	<p>1 paragraphs 147 and 148, correct.</p> <p>2 Q. Okay. You've not identified any other APR</p> <p>3 guidance that was cited in the '422 patent as</p> <p>4 being inconsistent or contributing to what you</p> <p>5 are saying is indefinite about the term</p> <p>6 recyclable, correct?</p> <p>7 A. No.</p> <p>8 Q. So you mentioned in response to an earlier</p> <p>9 question that I asked that the caustic wash</p> <p>10 parameters and the reclaiming process</p> <p>11 terminology are imprecise, are there any other</p> <p>12 inconsistencies that you have identified in</p> <p>13 the '422 patent as to why the claim limitation</p> <p>14 wherein the recyclable shrink label is</p> <p>15 recyclable is indefinite?</p> <p>16 A. So aside from the other -- other claims laid</p> <p>17 out in the declaration further on, aside from</p> <p>18 just 145 and 146, which refer to the caustic</p> <p>19 wash and the reclaiming process, the term</p> <p>20 recyclability -- recyclability is, again, ill</p> <p>21 defined in my mind. That is a term that can</p> <p>22 have multiple meanings. And so that is</p> <p>23 another portion of this that is, aside from</p> <p>24 everything laid out here, that I still</p> <p>25 consider to be indefinite.</p>

<p style="text-align: right;">Page 246</p> <p>1 Q. Are you talking about just the term recyclable</p> <p>2 or recyclability as is used day-to-day or is</p> <p>3 as used in the '422 patent?</p> <p>4 A. As is used in the patent.</p> <p>5 Q. Can we turn back to the end of ground 1? So</p> <p>6 it's at -- Page 32 is where I'm going to</p> <p>7 direct you, by you may want to take a look at</p> <p>8 the beginning of page -- Paragraph 77.</p> <p>9 In your declaration, you do not offer an</p> <p>10 opinion in claim 1, regarding whether or not</p> <p>11 the Gatorade label is recyclable based on your</p> <p>12 caustic wash test, correct?</p> <p>13 MR. SCHATZ: Object to form.</p> <p>14 A. Okay. Say it again?</p> <p>15 BY MS. STONE:</p> <p>16 Q. So in claim 1 you walk through the steps of a</p> <p>17 caustic wash test, from paragraph 72 to 77,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. You do not offer an opinion based on your</p> <p>21 caustic wash test that the Gatorade label</p> <p>22 meets the limitation wherein the recyclable</p> <p>23 shrink label is recyclable with a PET</p> <p>24 container, correct?</p> <p>25 MR. SCHATZ: Object to form, that's</p>	<p style="text-align: right;">Page 248</p> <p>1 recyclable with a PET container, that the</p> <p>2 Gatorade label meets that limitation?</p> <p>3 MR. SCHATZ: Objection, asked and</p> <p>4 answered.</p> <p>5 A. So in 71, the very first line is, to determine</p> <p>6 if a libel -- a label is recyclable with a PET</p> <p>7 container, laboratory tests were conducted,</p> <p>8 right? So there I'm setting out to determine</p> <p>9 if these are recyclable or not, by doing these</p> <p>10 tests.</p> <p>11 So in 77, as can be seen in figures 11</p> <p>12 and 12, the ink is being removed during the</p> <p>13 caustic wash cycle. Further -- readily</p> <p>14 separated from the -- mixture during the</p> <p>15 sieving process is not staining or dyeing the</p> <p>16 PET flakes.</p> <p>17 BY MS. STONE:</p> <p>18 Q. So earlier we discussed that you were applying</p> <p>19 the language from the '422 patent in Paragraph</p> <p>20 71, where a label is recyclable if no inks are</p> <p>21 retained on the film after a caustic wash</p> <p>22 cycle, correct?</p> <p>23 A. Correct.</p> <p>24 Q. You've not stated anywhere in this section of</p> <p>25 your expert declaration, nor have you pointed</p>
<p style="text-align: right;">Page 247</p> <p>1 a blatant mischaracterization.</p> <p>2 MS. STONE: Please answer the</p> <p>3 question.</p> <p>4 A. Yeah, sorry, I'm thinking. I actually think I</p> <p>5 do state that explicitly somewhere, but I'm</p> <p>6 just trying to find it. So, I mean -- I think</p> <p>7 that the caustic wash procedure that's</p> <p>8 outlined in the declaration shows that the ink</p> <p>9 is being removed from the PET label flakes,</p> <p>10 therefore it's recyclable -- defined as ink is</p> <p>11 removed during the caustic wash. That's what</p> <p>12 this section is outlining and that's what is</p> <p>13 being shown, both with the data and the</p> <p>14 statements.</p> <p>15 The statement that the specific words in</p> <p>16 my opinion that says, this label is recyclable</p> <p>17 because of the caustic wash analysis I</p> <p>18 conducted, you know, I'm not finding that</p> <p>19 exact sentence in here, but it's -- it's the</p> <p>20 flavor of what I'm trying to get at with the</p> <p>21 caustic wash analysis.</p> <p>22 BY MS. STONE:</p> <p>23 Q. Okay. You don't expressly state anywhere in</p> <p>24 paragraphs 71 through 77, under the heading,</p> <p>25 wherein the recyclable shrink label is</p>	<p style="text-align: right;">Page 249</p> <p>1 to any figures in your appendix that show a</p> <p>2 film where there is no inks retained on the</p> <p>3 film after a caustic wash, correct?</p> <p>4 A. No.</p> <p>5 Q. Can you please point me to where that is</p> <p>6 either stated or shown in a figure?</p> <p>7 A. Figure 11B in the appendix is a good example</p> <p>8 of this. So that flake is clearly from a</p> <p>9 label, but the link -- the ink is being</p> <p>10 removed.</p> <p>11 The completeness question is a process</p> <p>12 optimization question. So this is a</p> <p>13 laboratory bench scale process demonstrating</p> <p>14 that the inks can be removed. If this process</p> <p>15 was to go on longer or optimized for this</p> <p>16 particular sample, such as potentially longer</p> <p>17 time or temperature, then you would likely see</p> <p>18 all the ink being removed. But what's</p> <p>19 demonstrated here is that the caustic --</p> <p>20 caustic wash cycle is removing the ink from</p> <p>21 the flakes.</p> <p>22 Q. Okay. Can you turn to the last limitation of</p> <p>23 claim 19, which is on Page 42.</p> <p>24 A. Thank you.</p> <p>25 Q. Umm -- Paragraph 106 is where you addressed</p>

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<p>1 the limitation, a high opacity layer</p> <p>2 comprising a white pigment -- pigment, wherein</p> <p>3 the recyclable shrink label is recyclable with</p> <p>4 a PET container, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You do not address the limitation wherein the</p> <p>7 recyclable shrink label is recyclable with a</p> <p>8 PET container in this section of your</p> <p>9 declaration, correct?</p> <p>10 A. Correct. Paragraph 106 is talking about the</p> <p>11 high opacity layer.</p> <p>12 Q. Okay. You can set that aside. Have you</p> <p>13 performed any work in relation to this case</p> <p>14 other than -- or after you submitted your</p> <p>15 declaration other than preparing for your</p> <p>16 deposition.</p> <p>17 A. There was the supplemental report that we</p> <p>18 issued.</p> <p>19 Q. Other than supplemental report and preparing</p> <p>20 for your deposition have you done any other</p> <p>21 work on this case since submitting the</p> <p>22 declaration?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Have you performed any additional testing on</p> <p>25 any of the Gatorade or Febreze labels since</p>	<p>1 Q. Exhibit No. 13 is Multi-Color Exhibit 1012,</p> <p>2 we've discussed this document a few times</p> <p>3 today, correct?</p> <p>4 A. Correct.</p> <p>5 Q. If you look up at the top left hand corner</p> <p>6 there is a revision date, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the revision date is December 28th, 2024?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. And it says revised by C. Bushman, is</p> <p>11 that right?</p> <p>12 A. Yes.</p> <p>13 Q. Do you understand that to be Craig Bushman?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Your declaration in this case was</p> <p>16 submitted on January 16th, 2025, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Is it fair to say that you did not</p> <p>19 begin performing the caustic wash test that</p> <p>20 you performed on the Gatorade label and the</p> <p>21 Febreze label until after December 28th, 2024?</p> <p>22 A. I don't recall the date that I did that</p> <p>23 testing.</p> <p>24 Q. Okay. Did you rely on Exhibit 1012 in any way</p> <p>25 to inform your procedure that you implemented</p>
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<p>1 submitting your original declaration in</p> <p>2 January of 2025?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you have any plans at this stage to conduct</p> <p>5 any such additional testing?</p> <p>6 A. Not that I know of.</p> <p>7 MS. STONE: Can we take a quick</p> <p>8 break?</p> <p>9 VIDEOGRAPHER: We're off at 4:19.</p> <p>10 - - - -</p> <p>11 (Pause in the record.)</p> <p>12 - - - -</p> <p>13 VIDEOGRAPHER: We're back on the</p> <p>14 record at 4:29.</p> <p>15 MS. STONE: Welcome back.</p> <p>16 BY MS. STONE:</p> <p>17 Q. Did you discuss the substance of your</p> <p>18 testimony on any of your breaks today?</p> <p>19 A. No.</p> <p>20 MS. STONE: Okay. I'm going to hand</p> <p>21 you what is Exhibit 13.</p> <p>22 - - - -</p> <p>23 (Exhibit No. 13 was marked for identification.)</p> <p>24 - - - -</p> <p>25 BY MS. STONE:</p>	<p>1 for the caustic wash test?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So, given that this document has a date</p> <p>4 of December 28th, 2024, would you agree that</p> <p>5 it's reasonable that you probably didn't start</p> <p>6 that testing before December 28th, 2024?</p> <p>7 A. Probably. I mean, I don't know what a</p> <p>8 revision date means, like, if it changes</p> <p>9 anything. I got it from counsel, so I don't</p> <p>10 know when it was changed.</p> <p>11 Q. You can set that aside. I'm going to have you</p> <p>12 pull out the institution decision from the</p> <p>13 board which I believe was Exhibit 2 when we</p> <p>14 looked at early this morning.</p> <p>15 A. Okay.</p> <p>16 Q. Can you please turn to Page 11? So we talked</p> <p>17 about the construction that the board applied</p> <p>18 in the middle of Page 11 earlier this morning,</p> <p>19 do you recall that?</p> <p>20 A. Oh, the two prongs?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And the second prong indicates that a</p> <p>24 label is not recyclable with a PET container</p> <p>25 if the label contains inks or pigments that</p>

<p style="text-align: right;">Page 254</p> <p>1 could not be removed during recycling process</p> <p>2 such as by washing so that the inks or</p> <p>3 pigments would contaminate the PET polymer</p> <p>4 flake during the recycling process, right?</p> <p>5 A. That is what it says, yes.</p> <p>6 Q. Okay. Given this construction by the board,</p> <p>7 does this change any of the opinions in your</p> <p>8 report in ground 1 as to whether the Gatorade</p> <p>9 label is recyclable under this definition?</p> <p>10 MR. SCHATZ: Objection, asked and</p> <p>11 answered.</p> <p>12 A. No.</p> <p>13 BY MS. STONE:</p> <p>14 Q. Okay. Earlier when I asked you that question,</p> <p>15 you had said you wanted to take a look at your</p> <p>16 declaration. So now that you have a</p> <p>17 declaration in front of you, if you wanted to</p> <p>18 look back at it -- I know we've talked through</p> <p>19 it -- so I just wanted to see if that answer</p> <p>20 had changed given that you had asked me for</p> <p>21 your declaration earlier this morning.</p> <p>22 A. Okay.</p> <p>23 Q. Do you have any opinions on what amount of ink</p> <p>24 or pigment would contaminate the PET polymer</p> <p>25 flake during the recycling process?</p>	<p style="text-align: right;">Page 256</p> <p>1 by washing in this construction, would allow</p> <p>2 for multiple caustic washes to take place?</p> <p>3 A. I don't think that's well defined here. It</p> <p>4 says, "such as by washing," it doesn't say</p> <p>5 only one wash step or requires multiple wash</p> <p>6 steps. It just says "washing."</p> <p>7 Q. You would agree with me after one caustic</p> <p>8 wash, a wash water test, and drying, that the</p> <p>9 Gatorade label flakes shown in figures B, C</p> <p>10 and D of your declaration still contain some</p> <p>11 inks and pigments, right?</p> <p>12 MR. SCHATZ: Object to form, and</p> <p>13 object to the extent it's been asked and</p> <p>14 answered.</p> <p>15 A. No, actually. You said "a caustic wash," so</p> <p>16 if it was a different procedure than the one</p> <p>17 that I did, it's entirely possible that all of</p> <p>18 the ink would have been removed. If we're</p> <p>19 talking specifically about the caustic wash</p> <p>20 that I did, then yes, it's shown in the</p> <p>21 figures that there's still a portion of the</p> <p>22 ink remaining on the label.</p> <p>23 BY MS. STONE:</p> <p>24 Q. I'm going to revise my question slightly to</p> <p>25 make sure we're on the same page.</p>
<p style="text-align: right;">Page 255</p> <p>1 A. No.</p> <p>2 Q. Do you have any opinions about whether the</p> <p>3 Gatorade label flakes that you have shown in</p> <p>4 figures 11B, C, and D, would meet this</p> <p>5 definition?</p> <p>6 MR. SCHATZ: Objection to the extent</p> <p>7 it's been asked and answered.</p> <p>8 A. Can you rephrase the question?</p> <p>9 MS. STONE: Sure. So you show a</p> <p>10 flake of the Gatorade label, in figures 11B,</p> <p>11 C, and D, correct?</p> <p>12 A. Yes.</p> <p>13 BY MS. STONE:</p> <p>14 Q. And those figures show that there is still ink</p> <p>15 or pigment remaining on the PET flake,</p> <p>16 correct?</p> <p>17 A. Well, as explained earlier, that's just the</p> <p>18 process optimization. It -- it actually shows</p> <p>19 that it's being removed. There is still some</p> <p>20 that remains on there, because the process</p> <p>21 needs to be optimized, but it's also shown as</p> <p>22 being removed.</p> <p>23 Q. So I think you've -- you've predicted my next</p> <p>24 question, which is; do you have any</p> <p>25 understanding or opinions on whether, such as</p>	<p style="text-align: right;">Page 257</p> <p>1 Do you only performed one caustic wash</p> <p>2 for each of the Gatorade label samples that</p> <p>3 are shown in figures B, C, and D, correct?</p> <p>4 A. Correct.</p> <p>5 MS. STONE: I'm going to mark</p> <p>6 Exhibit No. 14.</p> <p>7 - - - -</p> <p>8 (Exhibit No. 14 was marked for identification.)</p> <p>9 - - - -</p> <p>10 BY MS. STONE:</p> <p>11 Q. Exhibit No. 14 is the declaration of Mr. Craig</p> <p>12 Bushman. I know that you haven't seen this</p> <p>13 before so I'm going to turn you to a specific</p> <p>14 paragraph, it's quite long.</p> <p>15 Can you please turn to Paragraph 81 in</p> <p>16 the Bushman declaration and Paragraph 154 in</p> <p>17 your declaration, Exhibit 1014.</p> <p>18 MR. SCHATZ: Counsel, what were the</p> <p>19 -- what were the two paragraph numbers?</p> <p>20 MS. STONE: Paragraph 81 in the</p> <p>21 Bushman declaration and paragraph 154 in the</p> <p>22 Deible declaration.</p> <p>23 THE WITNESS: Deible.</p> <p>24 MS. STONE: Deible. So sorry.</p> <p>25 THE WITNESS: So 81 and 154?</p>

<p style="text-align: right;">Page 258</p> <p>1 BY MS. STONE:</p> <p>2 Q. And can you confirm for me whether Paragraph</p> <p>3 81 of the Bushman declaration and Paragraph 54</p> <p>4 (sic) of your declaration are identical?</p> <p>5 A. Looks like it.</p> <p>6 Q. Okay. And can you also look at Paragraph 158</p> <p>7 of your declaration and Paragraph 85 of the</p> <p>8 Bushman declaration, I mean, can you please</p> <p>9 look at those and let me know if they're</p> <p>10 identical?</p> <p>11 A. They appear to be.</p> <p>12 Q. And also, can you look at Paragraph 86 of the</p> <p>13 Bushman declaration and compare it to</p> <p>14 Paragraph 159 of your declaration and let me</p> <p>15 know if they're identical?</p> <p>16 A. Yeah, they appear to be.</p> <p>17 MS. STONE: I have no further</p> <p>18 questions. However, I'm going to just make a</p> <p>19 quick statement on the record.</p> <p>20 We have an ongoing discovery dispute</p> <p>21 regarding certain issues that relate to your</p> <p>22 testing, your declaration, and your</p> <p>23 communications with Mr. Bushman. We are</p> <p>24 obviously going to hold the deposition open</p> <p>25 today, pending the resolution of that decision</p>	<p style="text-align: right;">Page 260</p> <p>1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE</p> <p>2)</p> <p>3 COUNTY OF ALLEGHENY) SS:</p> <p>4 I, Anna Cillo, a Court Reporter and Notary</p> <p>5 Public in and for the Commonwealth of Pennsylvania,</p> <p>6 do hereby certify that the witness, DR. MICHEAL</p> <p>7 DEIBLE, was by me first duly sworn to testify to the</p> <p>8 truth; that the foregoing deposition was taken at</p> <p>9 the time and place stated herein; and that the said</p> <p>10 deposition was recorded stenographically by me and</p> <p>11 then reduced to printing under my direction, and</p> <p>12 constitutes a true record of the testimony given by</p> <p>13 said witness.</p> <p>14 I further certify that the inspection, reading</p> <p>15 and signing of said deposition were NOT waived by</p> <p>16 counsel for the respective parties and by the</p> <p>17 witness.</p> <p>18 I further certify that I am not a relative or</p> <p>19 employee of any of the parties, or a relative or</p> <p>20 employee of either counsel, and that I am in no way</p> <p>21 interested directly or indirectly in this action.</p> <p>22 IN WITNESS WHEREOF, I have hereunto set my</p> <p>23 hand and affixed my seal of office this 4 day of</p> <p>24 December, 2025.</p> <p>25  Notary Public</p>
<p style="text-align: right;">Page 259</p> <p>1 with the board.</p> <p>2 We also are likely going to raise an</p> <p>3 additional issue with the board tomorrow, that</p> <p>4 I just want to make very clear on the record</p> <p>5 today, which is that the declaration and</p> <p>6 opinions formed by Mr. Deible have clearly</p> <p>7 been informed by information that was provided</p> <p>8 by counsel, which is referred to throughout</p> <p>9 his declaration as Exhibit 1013, and we</p> <p>10 reserve the right to raise that with the board</p> <p>11 as well tomorrow.</p> <p>12 MR. SCHATZ: No redirect. Thank</p> <p>13 you.</p> <p>14 MS. STONE: Wonderful. Thank you.</p> <p>15 VIDEOGRAPHER: We are off at 4:40.</p> <p>16 - - - -</p> <p>17 (Thereupon, the deposition was adjourned at</p> <p>18 4:40 p.m.)</p> <p>19 (Signature was not waived.)</p> <p>20 - - - -</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 261</p> <p>1 Case: Multi Color Corporation vs Brook & Whittle Limited</p> <p>2 Witness Name: Dr. Micheal Deible</p> <p>3 Deposition Date: 12/02/2025</p> <p>4</p> <p>5</p> <p>6 Please be advised that the transcript in the above</p> <p>7 referenced matter is now complete and ready for signature.</p> <p>8 The deponent may come to this office to sign the transcript,</p> <p>9 a copy may be purchased for the witness to review and sign,</p> <p>10 or the deponent and/or counsel may waive the option of</p> <p>11 signing. Please advise us of the option selected.</p> <p>12 Please forward the errata sheet and the original signed</p> <p>13 signature page to counsel noticing the deposition, noting the</p> <p>14 applicable time period allowed for such by the governing</p> <p>15 Rules of Procedure. If you have any questions, please do</p> <p>16 not hesitate to call our office at (202)-232-0646.</p> <p>17</p> <p>18 Sincerely,</p> <p>19 Digital Evidence Group</p> <p>20 Copyright 2025 Digital Evidence Group</p> <p>21 Copying is forbidden, including electronically, absent</p> <p>22 express written consent.</p> <p>23</p> <p>24</p> <p>25</p>

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1 Digital Evidence Group, L.L.C.
 2 1730 M Street, NW, Suite 812
 3 Washington, D.C. 20036
 4 (202) 232-0646
 5
 6 SIGNATURE PAGE
 7 Case: Multi Color Corporation vs Brook & Whittle Limited
 8 Witness Name: Dr. Micheal Deible
 9 Deposition Date: 12/02/2025
 10 I do hereby acknowledge that I have read
 11 and examined the foregoing pages
 12 of the transcript of my deposition and that:
 13 (Check appropriate box):
 14 () The same is a true, correct and
 15 complete transcription of the answers given by
 16 me to the questions therein recorded.
 17 () Except for the changes noted in the
 18 attached Errata Sheet, the same is a true,
 19 correct and complete transcription of the
 20 answers given by me to the questions therein
 21 recorded.
 22
 23 _____
 DATE WITNESS SIGNATURE
 24
 25 _____
 DATE NOTARY

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1 Errata Sheet
 2 NAME OF CASE: Multi Color Corporation vs Brook & Whittle Limited
 3 DATE OF DEPOSITION: 12/02/2025
 4 NAME OF WITNESS: Dr. Micheal Deible
 5 Reason Codes: 1. To clarify the record.
 6 2. To conform to the facts.
 7 3. To correct transcription errors.
 8 Page ____ Line ____ Reason ____
 9 From ____ to ____
 10 Page ____ Line ____ Reason ____
 11 From ____ to ____
 12 Page ____ Line ____ Reason ____
 13 From ____ to ____
 14 Page ____ Line ____ Reason ____
 15 From ____ to ____
 16 Page ____ Line ____ Reason ____
 17 From ____ to ____
 18 Page ____ Line ____ Reason ____
 19 From ____ to ____
 20 Page ____ Line ____ Reason ____
 21 From ____ to ____
 22 Page ____ Line ____ Reason ____
 23 From ____ to ____
 24 _____
 25 DR. MICHEAL DEIBLE

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