

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

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5 MULTI-COLOR CORPORATION,)
6 Petitioner,)
7 vs.) Case No. PGR2025-00025
8 BROOK & WHITTLE LTD.,)
9 Patent Owner.)

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12 VIDEOTAPED DEPOSITION OF DR. MICHAEL DEIBLE
13 THURSDAY, JULY 16, 2026

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B + W EX2042
Multi-Color v. Brook + Whittle
PGR2025-00025

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<p>1 VIDEOTAPED DEPOSITION OF DR. MICHAEL DEIBLE, a</p> <p>2 witness called by the Patent Owner for examination,</p> <p>3 taken pursuant in accordance with the Patent and</p> <p>4 Trademark Office Procedure, taken by and before</p> <p>5 Dutcheen O. Cameron, a Registered Merit</p> <p>6 Reporter-Certified Realtime Reporter and a Notary</p> <p>7 Public in and for the Commonwealth of Pennsylvania,</p> <p>8 at the offices of RJ Lee Group, 800 Presque Isle</p> <p>9 Drive, Pittsburgh, PA 15239, taken on Thursday,</p> <p>10 July 16, 2026 at 10:07 a.m.</p> <p>11 -----</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X</p> <p>2 EXAMINATIONS PAGE</p> <p>3 DR. MICHAEL DEIBLE 6</p> <p>4 EXAMINATION 6</p> <p>5 BY MS. STONE</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 Deible Exhibit 1001 Multi-Color1001 10</p> <p>10 Deible Exhibit 1014 Multi-Color1014 10</p> <p>11 Deible Exhibit 1046 Multi-Color1046 10</p> <p>12 Deible Exhibit 1016 Multi-Color1016 68</p> <p>13 Deible Exhibit 1018 Multi-Color1018 68</p> <p>14 Deible Exhibit 1019 Multi-Color1019 68</p> <p>15 Deible Exhibit 1013 Multi-Color1013 73</p> <p>16 Deible Exhibit 1 Decision Granting 89</p> <p>17 Institution of</p> <p>18 Post-Grant Review</p> <p>19 Deible Exhibit 2012 B+W Exhibit 2012 99</p> <p>20 Deible Exhibit 1050 Multi-Color1050 123</p> <p>21 Deible Exhibit 1051 Multi-Color1051 126</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 COUNSEL PRESENT:</p> <p>2 For the Petitioner:</p> <p>3 WOOD, HERON & EVANS LLP</p> <p>4 LOUIS H. SITLER, ESQUIRE</p> <p>5 600 Vine Street</p> <p>6 Suite 2800</p> <p>7 Cincinnati, OH 45202</p> <p>8 513-241-2324</p> <p>9 lsitler@whe-law.com</p> <p>10</p> <p>11 For the Patent Owner:</p> <p>12 KIRKLAND & ELLIS LLP</p> <p>13 TERA JO STONE, ESQUIRE</p> <p>14 W. TODD BAKER, ESQUIRE</p> <p>15 1301 Pennsylvania Avenue, N.W.</p> <p>16 Washington, D.C. 20004</p> <p>17 202-389-5000</p> <p>18 tera.stone@kirkland.com</p> <p>19 w.baker@kirkland.com</p> <p>20</p> <p>21 Also Present: Ken Deavers, Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 COMMENCING -- 10:07 A.M.</p> <p>2 THE VIDEOGRAPHER: This is file No. 1 of</p> <p>3 the videotaped deposition of Dr. Michael Deible</p> <p>4 taken by Kirkland & Ellis -- Kirkland & Ellis LLP in</p> <p>5 the matter of Multi-Color Corporation versus Brook &</p> <p>6 Whittle Limited in the United States Patent and</p> <p>7 Trademark Office Before the Patent Trial and Appeal</p> <p>8 Board, Case No. PGR2025-00025. This deposition is</p> <p>9 being held at RJ Lee Group at address 800 Presque</p> <p>10 Isle Drive in Pittsburgh, Pennsylvania, 15239, on</p> <p>11 Thursday, July 16, 2026. The time on the video</p> <p>12 screen is 10:08 a.m. Eastern Standard Time. My name</p> <p>13 is Ken Deavers. I am the legal videographer from</p> <p>14 Digital Evidence Group. The court reporter is</p> <p>15 Dutcheen Cameron in association with Digital</p> <p>16 Evidence Group.</p> <p>17 Will counsel please introduce themselves</p> <p>18 for the record.</p> <p>19 MS. STONE: Tera Stone of Kirkland &</p> <p>20 Ellis on behalf of Brook & Whittle, and with me</p> <p>21 today is my colleague, Todd Baker.</p> <p>22 MR. SITLER: Louis Sitler with Wood</p> <p>23 Herron & Evans, counsel for petitioner Multi-Color.</p> <p>24 THE VIDEOGRAPHER: And will the court</p> <p>25 reporter please swear in the witness.</p>

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1 * * *

2 DR. MICHAEL DEIBLE,

3 having been first duly sworn,

4 was examined and testified as follows:

5 EXAMINATION

6 BY MS. STONE:

7 Q. All right. Good morning, Dr. Deible.

8 It's nice to see you again after your first

9 deposition. Do you recall the deposition that we

10 had in this case in December of 2025?

11 A. Parts of it.

12 Q. And so this is your second deposition in

13 this PGR matter related to your opinions in the

14 case, correct?

15 A. Yes.

16 Q. Have you reviewed the Mitchell reference?

17 A. Yes.

18 Q. When did you first review the Mitchell

19 reference?

20 A. Recently. I know it wasn't in my

21 documents cited from my first declaration. I had

22 reviewed the patent history and it was after the

23 first declaration then.

24 Q. Okay. Was your review of the Mitchell

25 reference before you submitted your second

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1 declaration?

2 A. Yes.

3 Q. Approximately how long before your second

4 declaration did you review the Mitchell reference?

5 A. I don't recall.

6 Q. Do you recall if it was a few days, a few

7 weeks?

8 A. I don't recall.

9 Q. Okay. Did you review Exhibit 1013, which

10 is Dr. Bushman's first declaration submitted in this

11 case?

12 A. If it's in the documents cited or in the

13 -- cited in the second declaration, then it would

14 have been reviewed for this matter. I know it was

15 in the citations from my first declaration.

16 Q. Okay. And you had not reviewed Dr.

17 Bushman's declaration prior to your first

18 deposition; isn't that right?

19 A. I know it was in the documents cited, and

20 I believe at the time that we discussed that I had

21 not reviewed it but had been informed of parts of it

22 through counsel.

23 Q. And so do you have a recollection of

24 reviewing Exhibit 1013 between your first deposition

25 in this case and today?

Page 8

1 A. I don't recall.

2 Q. Okay. Are you aware that Dr. Bushman

3 submitted a second declaration in this case in --

4 around the same time that you submitted your second

5 declaration?

6 A. I believe that he did.

7 Q. Okay. Do you recall reviewing Dr.

8 Bushman's second declaration that was submitted in

9 this PGR proceeding?

10 A. If it's cited in the second declaration,

11 then I reviewed it or, again, had parts of it

12 reviewed with counsel.

13 Q. Okay. But am I understanding correctly

14 that you don't have a specific recollection of

15 reviewing Dr. Bushman's second declaration?

16 A. I don't recall.

17 Q. Have you performed any additional testing

18 related to this case since submitting your first

19 declaration?

20 A. No.

21 Q. So you have submitted three declarations

22 in this case, right, a first declaration, a

23 supplemental declaration, and then a second

24 declaration; is that right?

25 A. I think so. I wasn't sure if the second

Page 9

1 supplemental was a declaration or not, but I'm not

2 sure. So if that's what we're calling it. . .

3 Q. Okay. Just to make sure you and I are on

4 the same page today, I want to make sure there's no

5 confusion about what document we are talking about

6 at any point. So I'm using the titles that were on

7 them, so can we call your declaration that was

8 submitted first your first declaration; are you good

9 with that?

10 A. Yes.

11 Q. The second declaration that you submitted

12 in this case that was mostly images, I think that's

13 titled a supplemental declaration, are you okay if

14 we refer to it as the supplemental declaration

15 today?

16 A. Yes.

17 Q. And then the declaration that you

18 submitted in June of 2026 I believe is titled your

19 second declaration, are you comfortable if we call

20 that your second declaration today?

21 A. Yes.

22 Q. Okay. So I'm going to go ahead and mark

23 a few documents because I want to make sure you have

24 everything in front of you. We're not going to look

25 at all of them right away. The first is

<p style="text-align: right;">Page 10</p> <p>1 Exhibit 1001, which is the '422 Patent that's at 2 issue in this case. 3 * * * 4 (Deible Deposition Exhibit 1001 was marked for 5 identification.) 6 * * * 7 MS. STONE: There's actually four copies 8 there. Sorry about that, counsel. 9 The second document that I'm going to be 10 marking is what we have agreed to call your first 11 declaration in this case. It's Exhibit 1014. 12 * * * 13 (Deible Deposition Exhibit 1014 was marked for 14 identification.) 15 * * * 16 MS. STONE: And the third document that 17 I'm going to hand you via the court reporter is your 18 second declaration, which is Exhibit No. 1046. 19 * * * 20 (Deible Deposition Exhibit 1046 was marked for 21 identification.) 22 * * * 23 BY MS. STONE: 24 Q. So Dr. Deible, I'm going to direct your 25 attention to each exhibit for my questions, but to</p>	<p style="text-align: right;">Page 12</p> <p>1 this PGR proceeding? 2 A. Over the entire history of the last two 3 years? 4 Q. Correct. 5 A. We discussed in my first deposition that 6 we had spoken early on in the process. 7 Q. Okay. Have you spoken with Dr. Bushman 8 since submitting your first declaration? 9 A. I don't recall. 10 Q. Is Exhibit 1046 a complete and accurate 11 copy of the second declaration that you submitted in 12 this case? 13 A. It appears to be. 14 Q. Okay. And are the contents of 15 Exhibit 1046 truthful and accurate to the best of 16 your knowledge? 17 A. To the best of my knowledge. 18 Q. Do you have any changes or revisions that 19 you're aware of that you need to correct in the 20 declaration that you want to draw our attention to? 21 MR. SITLER: Objection; form. 22 A. No. 23 Q. So for your purposes is Exhibit 1046 your 24 final second declaration? 25 A. Yes.</p>
<p style="text-align: right;">Page 11</p> <p>1 the extent you need to look at any of these 2 documents throughout the deposition or want to look 3 at any of these documents throughout the deposition 4 to answer a question, can you just please agree to 5 tell me exactly what document and what page you're 6 looking at so we can make sure everyone in the 7 room's on the same page? 8 A. Yes. 9 Q. All right. Can you please turn to 10 Exhibit 1046, your second declaration. 11 Can you please look at the last page of 12 the report. Exhibit 1046, your second declaration 13 is dated June 17, 2026, correct? 14 A. Yes. 15 Q. And is your signature on the last page of 16 Exhibit 1046? 17 A. Yes. 18 Q. In preparing your second declaration did 19 you have any conversations with anyone at MCC? 20 A. I don't recall. 21 Q. Okay. In preparing your declaration did 22 you have any discussions with Dr. Bushman? 23 A. I don't recall. 24 Q. Do you have any recollection of speaking 25 with Dr. Bushman at any point during the duration of</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Okay. Are all of your opinions in this 2 case contained in one of your three expert 3 declarations? 4 A. All of my opinions in this case are 5 contained entirely in the first declaration. 6 Q. So by that do you mean that there are no 7 new opinions in your second declaration? 8 A. The second declaration offers 9 clarifications on the opinions in the first 10 declaration. There are no new opinions in the 11 second declaration. 12 Q. Okay. Are there any new facts or things 13 that you rely on in support of those opinions? 14 MR. SITLER: Objection; form. 15 A. Can you explain, please? 16 Q. Sure. So you stated in your last answer 17 that the second declaration offers no new opinions 18 and I'm just trying to understand the contents of 19 that. 20 We can agree that there are new facts and 21 evidence being cited in your second declaration, 22 right? 23 MR. SITLER: Objection; form. 24 A. I would say that there are new references 25 and citations that are included in the second</p>

<p style="text-align: right;">Page 14</p> <p>1 declaration that help clarify points made in the 2 first declaration. 3 Q. Can we turn to paragraph 2 of 4 Exhibit 1046? 5 So I'm going to direct your attention to 6 approximately halfway to three quarters of the way 7 through paragraph 2 where you state, I have -- "I 8 provide additional information." 9 Do you see where I am? 10 A. Yes. 11 Q. So in paragraph 2 you state, "I provide 12 additional information regarding my background, 13 qualification, and the laboratory testing conducted 14 in connection with the disclosures of '422 Patent in 15 connection with this PGR." 16 Do you recall what additional information 17 about the laboratory testing conducted is provided 18 in your second declaration? 19 MR. SITLER: Objection; form. 20 A. I don't recall specifically. I think 21 it's more about clarifications of some of the tests 22 that were done and how the data was interpreted. 23 But I don't recall, let's see, additional 24 information about laboratory testing. I mean, we 25 can go through what's in here and say if that's</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Did any of the materials that you 2 reviewed -- actually, strike that question. 3 Have any of your opinions changed since 4 submitting your first declaration? 5 A. No. 6 Q. Can you please turn to paragraph 4. So 7 in paragraph 4 you state, "My analysis set forth in 8 this second declaration is based on," and you list a 9 few items, one of which is "prior art references 10 relied upon in this PGR proceeding." 11 Do you see that sentence, paragraph 4? 12 It's the first full sentence. So I'm 13 just directing your attention to the last part of 14 the last clause of that sentence. Do you see where 15 I'm at? 16 A. Yes. 17 Q. So I'm going to re-ask my question just 18 so that we've got it clear. In paragraph 4 you 19 state that your analysis set forth in this second 20 declaration, which is Exhibit 1046, is based on, and 21 then you list several items, one of which is "prior 22 art references relied upon in this PGR proceeding." 23 Do you see that? 24 A. Yes. 25 Q. What prior art references do you rely</p>
<p style="text-align: right;">Page 15</p> <p>1 additional information about laboratory testing. I 2 don't recall specifically. 3 Q. Okay. Really what I'm getting at is just 4 what you meant by that sentence. 5 A. Okay. 6 Q. And I think what I'm understanding you 7 say is that there wasn't additional testing but you 8 may have provided some additional analysis of the 9 testing you previously provided? 10 A. All the analysis was contained in the 11 first declaration with the opinions, so what's 12 contained here is just a further examination of that 13 or elucidation of that, clarification. 14 Q. Have you reviewed any new materials 15 related to this case since your last deposition 16 other than the Mitchell reference which we've 17 already discussed? 18 MR. SITLER: Objection; form. 19 A. So there are additional citations in here 20 that I don't believe were in the documents cited in 21 the first one; if that's what we're talking about. 22 Q. Have you reviewed any new materials 23 related to this case that are not cited in your 24 declaration? 25 A. Not that I recall.</p>	<p style="text-align: right;">Page 17</p> <p>1 upon in this PGR proceeding? 2 A. I don't recall specifically. We could go 3 through the document and find the citations embedded 4 in the declaration. I know that the Gatorade label 5 I believe is a prior art reference for claims -- 6 sorry -- for ground 1. But, you know, beyond that I 7 don't recall specifically. 8 Q. So I understand that your opinions rely 9 on three prior art references, which are the 10 Gatorade label, the Febreze label and the Mitchell 11 reference. 12 Am I missing any prior art references 13 that you rely on in your declaration? 14 A. Everything that I relied on is in the 15 declaration. If there's anything you're missing, 16 they would be contained within the declaration. 17 Q. Okay. So sitting here today you cannot 18 tell me whether you relied on any pieces of prior 19 art other than the Gatorade label, the Febreze 20 label, and the Mitchell reference? 21 A. Not that I recall. 22 Q. And sorry, I think the way that I asked 23 the question and you answered, I think it was a 24 little bit unclear if you don't recall if there are 25 any other prior art references or you don't recall</p>

<p style="text-align: right;">Page 18</p> <p>1 the answer to my question. So I just want 2 to clarify -- I think it's just a question and 3 answer thing, so I'm going to ask the question one 4 more time. 5 Sitting here today you cannot tell me 6 whether you relied on any prior art references other 7 than the Gatorade label, the Febreze label and the 8 Mitchell reference, right? 9 MR. SITLER: Objection; asked and 10 answered. 11 A. Correct. 12 Q. Can you please turn to -- oh, sorry, one 13 more question while we are looking at paragraph 4. 14 You mentioned earlier that if you had relied on Dr. 15 Bushman's references they would be cited. We're in 16 your materials considered section. I don't see 17 Exhibit 1013 or Exhibit 1047, the two Bushman 18 declarations listed in paragraph 4. Could you 19 confirm that for me? 20 A. You said they were what, 1013 and 1034? 21 Q. 1047. I apologize if I misspoke. 22 A. I do not see those listed. 23 Q. Could you please turn to paragraph 7. 24 So in paragraph 7 you state, "Although 25 this second declaration refers to selected portions</p>	<p style="text-align: right;">Page 20</p> <p>1 of the Gatorade label and Mitchell to offer the 2 opinion that claim 4 of the '422 Patent is obvious, 3 right? 4 A. Correct. 5 Q. You have not considered any other 6 references other than Mitchell for the knowledge of 7 a person of ordinary of skill in the art in ground 8 2, right? 9 MR. SITLER: Objection; form. 10 A. So any references considered for this 11 section are contained within the section. 12 Q. So we're going to go through this. But 13 at the beginning of the deposition you and I had 14 discussed that you were relying on three prior art 15 references in this case to the best of your 16 recollection, which was the Gatorade label, the 17 Febreze label and Mitchell, right? 18 MR. SITLER: Objection; form. 19 A. Yes. 20 Q. Okay. You're not relying on the Febreze 21 label for ground 2, right? 22 MR. SITLER: Objection; form. 23 A. Sorry. I'm just going to read through 24 this to see where the Febreze label comes in and 25 make sure. I think it's -- (witness reviewing.) So</p>
<p style="text-align: right;">Page 19</p> <p>1 of the cited references for the sake of brevity, it 2 should be understood that these are examples, and 3 that one of ordinary skill in the art would have 4 viewed the references cited herein in their entirety 5 and in combination with other references cited here 6 or cited within the references themselves," right? 7 A. That is what paragraph 7 of the second 8 declaration says. 9 Q. You go on to say, "The references used in 10 this second declaration should therefore be viewed 11 as being incorporate herein in their entirety." 12 And "I have reviewed the entirety of references 13 themselves," right? 14 A. That is what it states, yes. 15 Q. Is it your opinion that a person of 16 ordinary skill in the art would consider the 17 entirety of a prior art reference when considering 18 it for purposes of invalidity of a patent? 19 MR. SITLER: Objection; form. 20 A. Yes. 21 Q. Can we turn to paragraph 9 of your 22 report. 23 Actually, I'm just going to skip that. 24 Let's turn to ground 2, which starts on 25 page 65. So for ground 2 you rely on a combination</p>	<p style="text-align: right;">Page 21</p> <p>1 as stated on page 65 part B ground 2, Gatorade label 2 and Mitchell and knowledge of a POSITA are all 3 that's relied upon for that ground 2. 4 Q. Okay. And so what I am trying to 5 understand is the knowledge of a person of ordinary 6 skill in the art is based on the Mitchell reference, 7 right? 8 MR. SITLER: Objection; form. 9 A. I don't think I know how to answer that. 10 The knowledge of a person of ordinary skill in the 11 art would include the Mitchell reference, but also 12 includes experience, education and those things 13 outlined in the description of a POSITA. 14 Q. Okay. You did not specifically consider 15 or site in your opinions any other prior art 16 references to form the basis of the knowledge of a 17 person of ordinary skill in the art in ground 2; is 18 that fair? 19 A. Say that again? 20 Q. In ground 2 you do not rely on any other 21 prior art references other than Mitchell to form the 22 basis of the knowledge of a person of ordinary skill 23 in the art. 24 A. I'm sorry. Again, that's a confusing 25 question because a person of ordinary skill in the</p>

<p style="text-align: right;">Page 22</p> <p>1 art has a background knowledge based on education, 2 work experience, et cetera that was outlined in this 3 case. It would include Mitchell but it's not 4 entirely only Mitchell; if that makes sense. 5 Q. Yeah. And I'm asking just a slightly 6 different question which is, you're not relying on 7 any other prior art references that you've cited in 8 this section. 9 A. Correct. All of the relied-upon 10 references are contained in the declaration. 11 Q. For your opinions in ground 2 you rely on 12 statements from the prosecution history by both the 13 examiner and the applicant discussing Mitchell as 14 the basis of your opinions in ground 2, correct? 15 MR. SITLER: Objection; form. 16 A. Yes. 17 Q. I'm going to turn your attention to 18 paragraph 135. It's actually the last sentence in 19 that paragraph, which is on page 66. So the last 20 sentence in paragraph 135 you state, "In addition, 21 since then, I have reviewed Mitchell in its" -- 22 actually strike that. I need to read the sentence 23 ahead or that doesn't make sense. 24 The first sentence in paragraph 135 25 states, "As an initial matter, at my deposition, I</p>	<p style="text-align: right;">Page 24</p> <p>1 A. That would be Exhibit 1002? 2 Q. Yes. And actually, I'll direct your 3 attention to the second line at the top of page 67. 4 You state, "As the examiner found," and then there's 5 a quote from the prosecution's history. 6 Do you see that? 7 A. Yes. 8 Q. Okay. So in paragraph 137 you cite to 9 the prosecution history and quote what the examiner 10 found regarding the Mitchell reference, correct? 11 A. Yes. 12 Q. And in paragraph 138 you're discussing 13 what the patent or -- sorry -- what the applicant 14 during prosecution also argued during the 15 prosecution of the '422 Patent, correct? 16 MR. SITLER: Objection; form. 17 A. Yes. 18 Q. So the very last sentence of that section 19 in paragraph 138 you state, "The prosecution history 20 of the '422 Patent is consistent with my opinion," 21 right? 22 A. That is what it states. 23 Q. But your opinion about what the Mitchell 24 reference discloses as you have described in your 25 declaration is based on the prosecution history of</p>
<p style="text-align: right;">Page 23</p> <p>1 testified that I had not reviewed Mitchell." And 2 then in the last sentence of that paragraph you 3 state, "In addition, since then, I have reviewed 4 Mitchell (Exhibit 1020) in its entirety, together 5 with the prosecution history applying it. My 6 opinions are unchanged." 7 Do you see that? 8 A. I do see that. 9 Q. When you look at Section iii, The 10 Combination Discloses Each Element of claim 4; do 11 you see the section I'm talking about? 12 A. Yes. 13 Q. Okay. In the section of ground 2 the 14 combination discloses each element of claim 4. You 15 do not quote or cite to any passage of the Mitchell 16 reference itself in this section, correct? 17 MR. SITLER: Objection; form. 18 A. (Witness reviewing.) So you're asking me 19 if there's a citation for Mitchell, Exhibit 1020, in 20 section small three -- or small i -- iii's. Sorry. 21 Q. A citation or a quotation. 22 A. Doesn't look like it. 23 Q. Okay. In paragraph 137 you cite to the 24 prosecution history and quote what the examiner 25 found regarding the Mitchell reference, correct?</p>	<p style="text-align: right;">Page 25</p> <p>1 the '422 Patent, right? 2 MR. SITLER: Objection; form. 3 A. So all of the references here are to the 4 prosecution's history as opposed to the Mitchell 5 reference, but the Mitchell reference as stated has 6 been reviewed and does not change the opinions 7 originally put down in the first declaration. 8 Q. So I'm going to turn to your motivation 9 to combine section for claim 4, but I'd like to 10 briefly turn your attention to Exhibit 1001, which 11 is the '422 Patent. 12 Can you please take a look at claim 4, 13 which is toward the end of Exhibit 1001. 14 A. Is that column 28, starting on line 42? 15 Q. Yes. Claim 4 requires a shrink label of 16 claim 3 wherein the recyclable shrink label 17 comprises an indicia layer and wherein the high 18 opacity layer is disposed between the indicia layer 19 and the light-blocking layer, correct? 20 A. That is what it states. 21 Q. And claim 4 is a dependent claim that 22 depends from claim 3, correct? 23 A. Yes. 24 Q. And claim 3 is a dependent claim that 25 depends from claim 1, correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Yes.</p> <p>2 Q. Turning back to your declaration, which</p> <p>3 is exhibit -- your second declaration, which is</p> <p>4 Exhibit 1046 -- let me know when you're back to the</p> <p>5 motivation to combine section in that declaration.</p> <p>6 A. I'm ready.</p> <p>7 Q. You have not pointed to any language or</p> <p>8 disclosure in the Mitchell reference itself as</p> <p>9 providing a motivation to combine its teachings with</p> <p>10 the Gatorade label, right?</p> <p>11 MR. SITLER: Objection; form.</p> <p>12 A. So Section 4 goes from paragraph 139</p> <p>13 through paragraph 143, and you're asking me if</p> <p>14 there's a citation to Mitchell anywhere in there?</p> <p>15 Q. I'm -- yes, I'm asking if you've cited or</p> <p>16 quoted any language from Mitchell that would provide</p> <p>17 a motivation to combine the teachings of Mitchell</p> <p>18 with the Gatorade label?</p> <p>19 A. So looking through these paragraphs I'm</p> <p>20 looking for a citation to 1020, which is the</p> <p>21 Mitchell reference, Exhibit 1020, and I don't see a</p> <p>22 citation to any of those in those particular</p> <p>23 paragraphs that we're talking about.</p> <p>24 Q. Okay. In paragraph 139 you state, "The</p> <p>25 most fundamental motivation is functional," right?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes, that is how paragraph 139 is</p> <p>2 written.</p> <p>3 Q. And to clarify, you say that's how</p> <p>4 paragraph 139 is written, but paragraph 139 reflects</p> <p>5 your opinions in this case, correct?</p> <p>6 MR. SITLER: Objection; form.</p> <p>7 A. So my opinions are all in the first</p> <p>8 declaration, but this clarification in the second</p> <p>9 declaration is mine. So yes, I say that's how it's</p> <p>10 written, but that's how I use it, yeah.</p> <p>11 Q. Right. So I understand that your</p> <p>12 position is that all of your opinions were disclosed</p> <p>13 in your first declaration and this declaration is</p> <p>14 clarifying those opinions. I just want to make sure</p> <p>15 that we are on the same page.</p> <p>16 The entire contents of your second</p> <p>17 declaration, those are still your opinions, right?</p> <p>18 A. It's still my written product, yes, work</p> <p>19 product. It is still my clarifications of my</p> <p>20 opinions, yes.</p> <p>21 Q. Okay. And I'm really not trying to</p> <p>22 quibble over opinion versus clarification here. So</p> <p>23 if you want to use your own language, that's fine.</p> <p>24 I'm just trying to confirm that the paragraphs</p> <p>25 written in your second declaration in support of the</p>
<p style="text-align: right;">Page 27</p> <p>1 A. That is what it states.</p> <p>2 Q. Okay. And then in support of that</p> <p>3 statement you point to the '422 Patent itself as</p> <p>4 confirmation that this was the art-recognized</p> <p>5 function of exactly this arrangement, right?</p> <p>6 A. That is what it states there, yes.</p> <p>7 Q. Okay. And then you further rely on the</p> <p>8 '422 Patent in support of your motivation to combine</p> <p>9 to explain what a high opacity coating in that</p> <p>10 patent is, is supposed to do, correct?</p> <p>11 MR. SITLER: Objection; form.</p> <p>12 A. Where are you looking?</p> <p>13 Q. So I'm looking in paragraph 139, but at</p> <p>14 the top of page 68.</p> <p>15 A. Yeah.</p> <p>16 Q. So the paragraph there starts, "The '422</p> <p>17 Patent confirms" -- or the sentence.</p> <p>18 A. Yeah. Yes.</p> <p>19 Q. Okay. And so here I'm asking for</p> <p>20 support -- strike that. Sorry.</p> <p>21 In support of your ground 2 motivation to</p> <p>22 combine the Gatorade label with the teachings of</p> <p>23 Mitchell, you have pointed to language from the '422</p> <p>24 Patent to opine that claim 4 would be obvious,</p> <p>25 right?</p>	<p style="text-align: right;">Page 29</p> <p>1 opinions in your first declaration are all still</p> <p>2 your opinions and that you are, like -- these are</p> <p>3 supplementing maybe -- is that a better word --</p> <p>4 supplementing your opinions from the first</p> <p>5 declaration?</p> <p>6 MR. SITLER: Objection; form.</p> <p>7 A. Yeah.</p> <p>8 Q. Can you turn to paragraph 141, please.</p> <p>9 So in paragraph 141 in support of your</p> <p>10 ground 2 opinion that claim 4 is obvious, you cite</p> <p>11 to figures 1A through 1E of the '422 Patent to</p> <p>12 assert that the '422 Patent offers different layer</p> <p>13 orders as alternatives, right?</p> <p>14 MR. SITLER: Objection; form.</p> <p>15 A. Yes.</p> <p>16 Q. And then in paragraph 42 (sic), the</p> <p>17 second sentence you assert, "Layer sequence is not a</p> <p>18 fixed attribute of the product; it is a</p> <p>19 press-configuration choice made job by job," right?</p> <p>20 A. That is what it says, yes.</p> <p>21 Q. I want to just clarify one thing on that</p> <p>22 sentence. The prior art Gatorade label that you're</p> <p>23 relying on, that is a set configuration of the</p> <p>24 label, right?</p> <p>25 MR. SITLER: Objection; form.</p>

<p style="text-align: right;">Page 30</p> <p>1 A. I don't understand the question.</p> <p>2 Q. Sure. So here you say essentially that</p> <p>3 layer sequence is a configuration choice made job by</p> <p>4 job. I want to understand. Job by job you mean</p> <p>5 individual product by individual product. For</p> <p>6 example, we're not going to find Gatorade labels on</p> <p>7 the market that have a reconfigured design that</p> <p>8 you're relying on for prior art; is that fair?</p> <p>9 MR. SITLER: Objection; form.</p> <p>10 A. I mean, I don't know the universe of</p> <p>11 Gatorade labels that exist. The ones I relied on</p> <p>12 are the ones that were contained in the first</p> <p>13 declaration. But in -- the job by job means, like,</p> <p>14 label by label and product by product. So there</p> <p>15 could be a different Gatorade label that has a</p> <p>16 different ordering because it could be a different</p> <p>17 job, but that's not something that I relied on</p> <p>18 because it's not contained in the declarations.</p> <p>19 Q. Yeah, so we can agree that the prior art</p> <p>20 Gatorade label that you have relied on that you've</p> <p>21 asserted has a priority date of 2020, that Gatorade</p> <p>22 label has a fixed layer configuration, right?</p> <p>23 MR. SITLER: Objection; form.</p> <p>24 A. Yes. The Gatorade label that I relied on</p> <p>25 and tested for my first declaration has a set layer</p>	<p style="text-align: right;">Page 32</p> <p>1 each layer could be washed, right?</p> <p>2 MR. SITLER: Objection; form.</p> <p>3 A. I don't think I understand the question.</p> <p>4 Q. I'll rephrase. You tested a fully-formed</p> <p>5 Gatorade label including all layers when you</p> <p>6 performed a caustic wash test, correct?</p> <p>7 A. Correct.</p> <p>8 Q. So you did not individually demonstrate,</p> <p>9 for example, that the light-blocking layer was</p> <p>10 washable, correct?</p> <p>11 MR. SITLER: Objection; form.</p> <p>12 A. So for my first declaration I tested the</p> <p>13 complete Gatorade label, which contains all layers,</p> <p>14 and those layers were removed during the caustic</p> <p>15 wash testing. I did not test a Gatorade label that</p> <p>16 had only the --</p> <p>17 * * *</p> <p>18 (Court reporter interrupts for clarification.)</p> <p>19 * * *</p> <p>20 A. -- high opacity layer, for instance.</p> <p>21 Q. Did you do any analysis to consider</p> <p>22 whether a different order of layers would have any</p> <p>23 impact on the recyclability of that resulting label</p> <p>24 with respect to whether that label would be</p> <p>25 recyclable with a PET container?</p>
<p style="text-align: right;">Page 31</p> <p>1 configuration.</p> <p>2 Q. I'd like to turn to your opinions in</p> <p>3 paragraph 43 -- sorry, 143. So here you state that</p> <p>4 "The market was actively demanding recyclable,</p> <p>5 light-blocking shrink labels, including a 2019</p> <p>6 statement attributed to Nestle that no such solution</p> <p>7 then existed," right?</p> <p>8 A. That is what is stated in 143.</p> <p>9 Q. Okay. You then assert that the design</p> <p>10 need at that time was recognized and pressing.</p> <p>11 A. Yes, that is what it says.</p> <p>12 Q. In the last sentence of paragraph 143 you</p> <p>13 point to the '422 Patent background as conceding the</p> <p>14 same market forces and that markets aspire to</p> <p>15 utilize recyclable packaging and require</p> <p>16 light-protective packaging, right?</p> <p>17 A. That is the last sentence, yes.</p> <p>18 Q. Let's turn to your Reasonable Expectation</p> <p>19 of Success opinions for ground 2. In paragraph 144</p> <p>20 you state, "Every layer of the resulting</p> <p>21 construction is one the Gatorade label already</p> <p>22 demonstrates can be printed, shrunk, and washed."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. You did not individually confirm that</p>	<p style="text-align: right;">Page 33</p> <p>1 MR. SITLER: Objection; form.</p> <p>2 A. You're asking me if I did any analysis on</p> <p>3 the layer ordering. So the analysis that was</p> <p>4 contained in my first declaration had all the layers</p> <p>5 set in a particular order already. I did not have</p> <p>6 any labels or reordering of layers that would have</p> <p>7 tested if the different order impacted the</p> <p>8 recyclability.</p> <p>9 Q. So I understand your last answer to</p> <p>10 respond to a physical test. I understand you're</p> <p>11 confirming you didn't perform a physical test that</p> <p>12 demonstrated recyclability. My question is slightly</p> <p>13 different. I'm not asking if you performed a</p> <p>14 physical test. I'm asking did you do any analysis</p> <p>15 to consider whether having a different order of</p> <p>16 layers would have any impact on the recyclability of</p> <p>17 the resulting label with respect to whether that</p> <p>18 label would be recyclable with a PET container?</p> <p>19 MR. SITLER: Objection; form.</p> <p>20 A. So when you use the word analysis, I</p> <p>21 think of empirical testing, right? But I think what</p> <p>22 you're -- to clarify your question, I think you're</p> <p>23 referring to analysis in terms of history, right,</p> <p>24 knowledge of a POSITA, the prior art cited, all the</p> <p>25 citations contained here. If that's where you're</p>

<p style="text-align: right;">Page 34</p> <p>1 going with that, then all of that is contained here 2 in the second declaration. 3 Q. Okay. And so to be clear, what I -- yes, 4 we are now on the same page about what I mean by 5 consider. It's whether you evaluated not 6 including -- you could have performed a physical 7 analysis but not required. So are we now on the 8 same page with what I mean by consider? 9 A. Yes. 10 Q. Okay. I do not see any analysis in your 11 reasonable expectation opinions for ground 2 where 12 you have considered whether a label with the order 13 of layers required by claim 4 would have any impact 14 on the recyclability of that label. 15 MR. SITLER: Objection; form. 16 Q. Can you confirm or deny that? 17 A. So, aside from the references cited in 18 the second declaration in that section, all of 19 those -- there's no other supporting material. 20 Everything's contained within the document. 21 Q. Okay. Do you recall considering whether 22 a label with the layer order as required by claim 4 23 would meet the claim limitation in claim 1 wherein a 24 recyclable shrink label is recyclable with a PET 25 container?</p>	<p style="text-align: right;">Page 36</p> <p>1 as an expert retained in this PGR recall considering 2 the light-blocking limitation of claim 1 when 3 evaluating the order of layers as required by claim 4 4? 5 MR. SITLER: Objection; form. 6 A. I don't recall. 7 Q. If you look at paragraph 145, toward the 8 end, it's the clause starting with, "Second, the 9 '422 Patent itself." 10 Do you see that? 11 A. Yes. 12 Q. So in support of your opinion that claim 13 4 is obvious and that there would be a Reasonable 14 Expectation of Success, you rely on the disclosure 15 of the '422 Patent to state that "The '422 Patent 16 presents five layer orderings as undifferentiated 17 alternatives," right? 18 MR. SITLER: Objection; form. 19 A. Yes. 20 Q. You don't provide an opinion or a 21 citation to the '422 Patent stating that any order 22 of the label layers would result in the exact same 23 recyclability or light transmittance outcome; do 24 you? 25 MR. SITLER: Objection; form.</p>
<p style="text-align: right;">Page 35</p> <p>1 MR. SITLER: Objection; form. Objection; 2 calls for speculation. 3 A. I don't recall. 4 Q. Do you recall considering whether a label 5 with the layer order as required by claim 4 would 6 meet the claim limitation in claim 1 requiring that 7 the label be constructed for the recyclable shrink 8 label to block at least 80 percent of incident light 9 having wavelengths in a range of 200 nanometers to 10 900 nanometers? 11 MR. SITLER: Objection; form. 12 A. Yeah, sorry, you're going to have to do 13 that one again. 14 Q. I understand. I had a long pause. 15 Do you recall considering whether a label 16 with the layer order as required by claim 4 would 17 meet the claim limitation in claim 1 requiring that 18 the recyclable label block at least 80 percent of 19 incident light having wavelengths in a range of 200 20 nanometers to 900 nanometers? 21 A. So, again, all the references considered 22 are contained in the document but it sounds like 23 what you're asking is based more about knowledge of 24 a POSITA. 25 Q. My question is whether you, personally,</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Okay. Sorry, say that one more time. 2 Q. Sure. So you've asserted in the 3 Reasonable Expectation of Success portion of ground 4 2 in your second declaration that the '422 Patent 5 presents five layer orderings as undifferentiated 6 alternatives, right? 7 A. Yes. 8 Q. And so you then state "With no data or 9 statement suggesting the claim 4 ordering performs 10 differently," right? 11 A. Yes. 12 Q. And then you state, "If reordering 13 produced dramatic, unpredictable changes, the '422 14 Patent's own specification would be inexplicable." 15 Do you see that? 16 A. Yes. 17 Q. And so what I'm asking is you do not cite 18 or quote any portion of the '422 Patent that you are 19 asserting requires every label, regardless of 20 configuration, to perform exactly the same way with 21 regarding -- with regard to recyclability or light 22 transmittance. 23 MR. SITLER: Objection; form. 24 A. So, I don't see that citation in here. 25 Q. And then in paragraph 146 you state,</p>

<p style="text-align: right;">Page 38</p> <p>1 "Ground 2 relies on Mitchell solely for the ordering 2 of the printed layers; the films, inks, and 3 recyclability of the combination come from the 4 Gatorade label." 5 Do you see that? 6 A. I see that. 7 Q. So you are not -- strike that. 8 You are solely relying on Mitchell 9 exclusively for the order of the layers and nothing 10 else in that teaching, correct? 11 MR. SITLER: Objection; form. 12 A. Excuse me. The Mitchell in the 13 prosecution history, but here it just -- it states, 14 relies Mitchell -- on Mitchell solely for the 15 ordering. 16 Q. When you say Mitchell in the prosecution 17 history -- actually, never mind. I -- strike that. 18 Let's turn to ground 3. I think we may 19 have confirmed this earlier, but I just want to make 20 sure. You have not performed any additional testing 21 on the Febreze label since you submitted your first 22 declaration, correct? 23 A. Correct. 24 Q. Can you please turn to paragraph 151, the 25 second paragraph -- sorry, strike that.</p>	<p style="text-align: right;">Page 40</p> <p>1 The Febreze label that you rely on as 2 prior art is a fixed label with a specific order 3 configuration of layers, correct? 4 MR. SITLER: Objection; form. 5 A. Correct. 6 Q. Can you turn to paragraph 152, which is 7 in your Reasonable Expectation of Success section 8 for ground 3. So about halfway through that 9 paragraph you have a sentence that starts, "A POSITA 10 contemplating" -- 11 Do you see that sentence? 12 A. Yes. 13 Q. In paragraph 152 you state: A POSITA 14 contemplating the claim 4 ordering would not have 15 been predicting the outcome of an untried design; 16 the Febreze label demonstrated, in commercial 17 practice, that indicia, white and aluminum layers 18 printed and performed successfully in that sequence, 19 right? 20 A. That is what it says, yes. 21 Q. What do you mean by the Febreze label 22 performed successfully in that sequence? What are 23 you measuring success by? 24 MR. SITLER: Objection; form. 25 A. So, it performed successfully in</p>
<p style="text-align: right;">Page 39</p> <p>1 Paragraph 151 is in the Motivation to 2 Combine section of ground 3, right? 3 A. Yes. 4 Q. And for ground 3 you're relying on the 5 combination of the Gatorade label and the Febreze 6 label to opine that claim 4 is obvious, right? 7 A. Yes. 8 Q. Okay. In paragraph 151, the second 9 sentence you state, "The Gatorade and Febreze labels 10 are shrink sleeve labels manufactured and publicly 11 sold by the same entity," and that entity is MCC; 12 correct? 13 A. I believe so. 14 Q. Okay. And MCC is the party in this case 15 that you are offering opinions on behalf of, 16 correct? 17 A. Yes. 18 Q. Okay. And to confirm, the prior art 19 Febreze label that you are relying on in support of 20 your opinions for ground 3, that is an affixed label 21 with a specific order of layers, correct? 22 MR. SITLER: Objection; form. 23 A. Affixed label with a set order of layers? 24 Q. I can rephrase. I think -- I didn't mean 25 to use affixed. I think I meant to use fixed.</p>	<p style="text-align: right;">Page 41</p> <p>1 commercial practice. That refers back to the 2 earlier part of the sentence, "In commercial 3 practice." 4 Q. Okay. The Febreze label is not affixed 5 to a recyclable PET container, correct? 6 A. I only had the label. I don't know what 7 it was affixed to. 8 Q. The Febreze label itself is not 9 recyclable, correct? 10 MR. SITLER: Objection; form. 11 A. I don't think I agree with that. Maybe 12 I'm confused on how you're asking the question. 13 Q. Sure. MCC -- I'll back up. 14 The Febreze label doesn't -- is not a PET 15 label, correct? 16 A. Honestly, I don't recall what kind it is. 17 I know it was tested in the first declaration, I 18 believe, but I don't have it in front of me. 19 Q. Do you have any basis looking at 20 paragraph 152 to assert that the Febreze label is a 21 successful PET label that is recyclable? 22 MR. SITLER: Objection; form. 23 A. Well, I don't have a basis to talk about 24 a commercial success, necessarily, aside from it was 25 in commerce.</p>

<p style="text-align: right;">Page 42</p> <p>1 * * *</p> <p>2 (Court reporter interrupts for clarification.)</p> <p>3 * * *</p> <p>4 A. In commerce. Out in the world being</p> <p>5 sold, as far as I understand.</p> <p>6 And as far as recyclable goes -- excuse</p> <p>7 me. As far as recyclable goes if we're defining</p> <p>8 that, in the conditions and terms outlined in the</p> <p>9 first declaration with the caustic wash and the ink</p> <p>10 being removed, then it was tested in the first</p> <p>11 declaration.</p> <p>12 Q. Can we turn to your ground 4</p> <p>13 indefiniteness opinions in Exhibit 1046. And</p> <p>14 actually, I think now is a good time to take a</p> <p>15 break.</p> <p>16 THE VIDEOGRAPHER: Time is now 11:08.</p> <p>17 Off the record.</p> <p>18 * * *</p> <p>19 (Whereupon, a brief recess was taken.)</p> <p>20 * * *</p> <p>21 THE VIDEOGRAPHER: Time is 11:23. Back on the</p> <p>22 record.</p> <p>23 BY MS. STONE:</p> <p>24 Q. Just before the break we were turning to</p> <p>25 ground 4, which is the indefiniteness section of</p>	<p style="text-align: right;">Page 44</p> <p>1 second declaration in this case, correct, which is</p> <p>2 Exhibit 1047?</p> <p>3 A. I don't see 10477 in paragraphs 154 or</p> <p>4 155.</p> <p>5 Q. Do you know if Mr. Bushman offers any new</p> <p>6 opinions regarding whether or not the claims of the</p> <p>7 '422 Patent are indefinite in his second</p> <p>8 declaration?</p> <p>9 MR. SITLER: Objection; form. Objection;</p> <p>10 calls for speculation.</p> <p>11 A. I don't know.</p> <p>12 Q. And so I just want to make sure I</p> <p>13 understand specifically what you're saying in this</p> <p>14 sentence. When you say that Mr. Bushman agrees with</p> <p>15 your indefiniteness opinions as laid out in your</p> <p>16 first declaration, you are only relying on</p> <p>17 Mr. Bushman's first declaration, Exhibit 1013, in</p> <p>18 support of that statement, correct?</p> <p>19 A. Yes.</p> <p>20 MR. SITLER: Objection; form.</p> <p>21 A. Sorry.</p> <p>22 Q. Did you form your indefiniteness opinion</p> <p>23 regarding the claim limitation wherein the</p> <p>24 recyclable shrink label is recyclable with a PET</p> <p>25 container before or after you formed your ground 1</p>
<p style="text-align: right;">Page 43</p> <p>1 Exhibit 1046, your second declaration. Are you</p> <p>2 there?</p> <p>3 A. Yes.</p> <p>4 Q. In your second declaration the section</p> <p>5 for ground 4 is only two paragraphs, right?</p> <p>6 A. Yes.</p> <p>7 Q. And you're not offering any new opinions</p> <p>8 on indefiniteness of the '422 Patent, correct?</p> <p>9 A. All of my opinions are in the first</p> <p>10 declaration.</p> <p>11 Q. In paragraph 154 you state in the last</p> <p>12 sentence that Mr. Bushman agrees with your opinion</p> <p>13 that the claim limitation wherein the recyclable</p> <p>14 shrink label is recyclable with a PET container is</p> <p>15 indefinite, correct?</p> <p>16 MR. SITLER: Objection; form.</p> <p>17 A. That is what it states at the end of</p> <p>18 paragraph 154.</p> <p>19 Q. Okay. And in paragraph 154 where you</p> <p>20 state that Mr. Bushman agrees with your</p> <p>21 indefiniteness opinions, you cite to his</p> <p>22 declaration, Exhibit 1013, correct?</p> <p>23 A. Yes, that is the citation in that</p> <p>24 paragraph.</p> <p>25 Q. Okay. You do not cite to Mr. Bushman's</p>	<p style="text-align: right;">Page 45</p> <p>1 anticipation opinions in this case?</p> <p>2 MR. SITLER: Objection; form.</p> <p>3 A. I don't recall.</p> <p>4 Q. In paragraph 155 you state, "I understand</p> <p>5 patent owner argues that the claims cannot be</p> <p>6 indefinite because I was able to analyze the</p> <p>7 challenged claims in grounds 1 through 3," and you</p> <p>8 state that you disagree with that statement,</p> <p>9 correct?</p> <p>10 A. That is what it says, yes.</p> <p>11 Q. What is your basis for disagreeing with</p> <p>12 the fact that your ground 1 through 3 and ground 4</p> <p>13 opinions are contradictory?</p> <p>14 MR. SITLER: Objection; form.</p> <p>15 A. Sorry. This says ground 1 through 3.</p> <p>16 Q. Yes. So grounds 1 through 3 are your</p> <p>17 anticipation obviousness opinions, right?</p> <p>18 A. Yes.</p> <p>19 Q. And ground 4 is your indefiniteness</p> <p>20 opinion?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So just for ease, instead of going</p> <p>23 through them one by one I'm grouping grounds 1</p> <p>24 through 3 and comparing them to ground 4. Are we on</p> <p>25 the same page?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. Yes. Sorry.</p> <p>2 Q. So I'm going to re-ask my question.</p> <p>3 What is your basis for the statement here</p> <p>4 that your opinions in grounds 1 through 3 are not</p> <p>5 contradicted by ground 4?</p> <p>6 MR. SITLER: Objection; form.</p> <p>7 A. So we were able to test the labels that</p> <p>8 we had -- or I was able to test the labels that I</p> <p>9 had been given through various means; all outlined</p> <p>10 in the first declaration. Those tests are in</p> <p>11 support of the definition that we used at that time</p> <p>12 for recyclable, but recyclable is still not a well</p> <p>13 defined term that I understand.</p> <p>14 Q. Okay. You state you have been advised by</p> <p>15 counsel that the ability to assess whether the prior</p> <p>16 art satisfies a disputed claim term does not resolve</p> <p>17 the separate question of whether the patent informs</p> <p>18 a POSITA, with reasonable certainty, of the scope of</p> <p>19 that term, right?</p> <p>20 A. That is what it states.</p> <p>21 Q. Okay. What did counsel advise you --</p> <p>22 MR. SITLER: Objection.</p> <p>23 Q. -- that you're relying on for the basis</p> <p>24 of your opinions here?</p> <p>25 MR. SITLER: Objection; privilege.</p>	<p style="text-align: right;">Page 48</p> <p>1 claim term does not resolve the separate question of</p> <p>2 whether the patent informs a POSITA, with reasonable</p> <p>3 certainty, of the scope of that term."</p> <p>4 Q. In forming your opinions for ground 4 did</p> <p>5 you rely on any other information provided by</p> <p>6 counsel regarding whether or not there can be a</p> <p>7 simultaneous opinion regarding whether prior art</p> <p>8 satisfies a disputed limitation and that limitation</p> <p>9 is indefinite?</p> <p>10 MR. SITLER: Objection; form. Objection;</p> <p>11 calls for legal conclusions.</p> <p>12 A. All of the references are cited in the</p> <p>13 document.</p> <p>14 Q. So to clarify that statement, what you're</p> <p>15 saying is you did not rely on any information</p> <p>16 provided by counsel in forming your opinions that is</p> <p>17 not disclosed in paragraph 155?</p> <p>18 A. All of the information relied upon is</p> <p>19 disclosed in paragraph 155.</p> <p>20 Q. Earlier during this discussion about</p> <p>21 indefiniteness you said that you were able to</p> <p>22 evaluate the Gatorade label and offer the opinion</p> <p>23 that the Gatorade label meets the claim 1 limitation</p> <p>24 wherein the recyclable shrink label is recyclable</p> <p>25 with a PET container.</p>
<p style="text-align: right;">Page 47</p> <p>1 Objection; calls for a legal conclusions.</p> <p>2 MS. STONE: Counsel, for clarity are you</p> <p>3 instructing him not to answer?</p> <p>4 MR. SITLER: Just to the extent that it</p> <p>5 requires him revealing any materials or discussions</p> <p>6 that are privileged I will instruct him not to</p> <p>7 answer.</p> <p>8 MS. STONE: Okay. So counsel, I'm going</p> <p>9 to disagree with that objection on the basis that I</p> <p>10 am only asking for the information that he relied on</p> <p>11 as the basis for forming his opinions. And so with</p> <p>12 that I will re-ask my question to make that</p> <p>13 exceptionally clear.</p> <p>14 MR. SITLER: Okay.</p> <p>15 Q. What, if anything, did counsel advise you</p> <p>16 regarding the ability for you to assess whether</p> <p>17 prior art satisfies a disputed limitation compared</p> <p>18 to offering an opinion that that limitation is</p> <p>19 indefinite that you relied on as the basis for your</p> <p>20 opinions?</p> <p>21 MR. SITLER: I'm going to preserve my</p> <p>22 privilege objection, but I'll allow him to answer.</p> <p>23 A. So I would point to this sentence, "I</p> <p>24 have been advised by counsel that the ability to</p> <p>25 assess whether the prior art satisfies a disputed</p>	<p style="text-align: right;">Page 49</p> <p>1 Do you recall that statement?</p> <p>2 MR. SITLER: Objection; form.</p> <p>3 A. Yes.</p> <p>4 Q. What definition of recyclable did you</p> <p>5 apply to determine that the Gatorade label met the</p> <p>6 claim limitation wherein the recyclable shrink label</p> <p>7 is recyclable with a PET container?</p> <p>8 A. This was covered in my first declaration.</p> <p>9 It was very specific in that --</p> <p>10 * * *</p> <p>11 (Court reporter interrupts for clarification.)</p> <p>12 * * *</p> <p>13 A. It was very specific in that the term</p> <p>14 recyclable is not well defined, but we took it as</p> <p>15 having the inks removed during the caustic wash</p> <p>16 process.</p> <p>17 Q. When you say, "We took it as having the</p> <p>18 inks removed during the caustic wash process," what</p> <p>19 do you mean by removed?</p> <p>20 A. No longer on the PET film.</p> <p>21 Q. When you say inks -- strike that.</p> <p>22 Who is we?</p> <p>23 A. I say we quite frequently because we</p> <p>24 constantly work in teams. So we can sometimes refer</p> <p>25 to me and the technicians and the other laboratory</p>

<p style="text-align: right;">Page 50</p> <p>1 experts that work on projects, sometimes it works --</p> <p>2 it refers to other people that are involved in the</p> <p>3 projects here and there. It's a, a habit of mine to</p> <p>4 not always claim recognition or talk about myself</p> <p>5 that I probably shouldn't do.</p> <p>6 Q. So just to clarify, when you say "we,"</p> <p>7 you mean yourself and individuals that work at RJ</p> <p>8 Lee Group, correct?</p> <p>9 A. I mean myself and individuals that I</p> <p>10 would collaborate on with the testing and the</p> <p>11 writing and those things.</p> <p>12 Q. Who is included in "we" that is not</p> <p>13 employed at RJ Lee Group?</p> <p>14 A. Well, I have discussions with counsel,</p> <p>15 obviously, about some of the product -- the work,</p> <p>16 rather.</p> <p>17 Q. Okay. And when you say, "We took it as</p> <p>18 having the inks removed during the caustic wash</p> <p>19 process," the "we" in that sentence specifically,</p> <p>20 are you referring to you, individuals that work at</p> <p>21 RJ Lee Group group and counsel in this case?</p> <p>22 A. In that specific instance I was referring</p> <p>23 to actually me and you and what we talked about in</p> <p>24 my first deposition as best as I can recall, because</p> <p>25 we talked about this in the first deposition of what</p>	<p style="text-align: right;">Page 52</p> <p>1 the recyclable shrink label is recyclable with a PET</p> <p>2 container," and you're saying that that requires</p> <p>3 that the ink be removed from the PET label, is there</p> <p>4 an amount of ink that needs to be removed from the</p> <p>5 PET label for the Gatorade label to meet that</p> <p>6 limitation under your test?</p> <p>7 MR. SITLER: Objection; form.</p> <p>8 A. No.</p> <p>9 Q. So any amount of ink removal would have</p> <p>10 been acceptable in order for the Gatorade label to</p> <p>11 meet your application of "wherein the recyclable</p> <p>12 shrink label is recyclable with a PET container,"</p> <p>13 right?</p> <p>14 MR. SITLER: Objection; form.</p> <p>15 A. I can only speak to the test that I</p> <p>16 performed and given the conditions of the testing</p> <p>17 that I did and the amount of ink that was removed in</p> <p>18 the testing that I observed, then I can make that</p> <p>19 statement based on that testing.</p> <p>20 Q. You offered an opinion in your first</p> <p>21 declaration that the Gatorade label meets all of the</p> <p>22 elements of claim 1, correct?</p> <p>23 A. I believe so.</p> <p>24 Q. Okay. And in order to offer that opinion</p> <p>25 you had to apply some sort of test or measure of</p>
<p style="text-align: right;">Page 51</p> <p>1 that term means. And I believe at the time "we," as</p> <p>2 in those of us in the first deposition, agreed on</p> <p>3 using the term as, as how it had passed the caustic</p> <p>4 wash or how it had performed during the caustic</p> <p>5 wash.</p> <p>6 Q. Okay. So if I recall correctly, during</p> <p>7 your first deposition I think there was a bit of</p> <p>8 confusion regarding the term PET flake and whether</p> <p>9 we were discussing a PET container flake or a PET</p> <p>10 label flake. And so today when we're talking about</p> <p>11 caustic washing, can -- and I will try to do this as</p> <p>12 well, can we try to clarify if we're talking about a</p> <p>13 PET container flake or a PET label flake in that</p> <p>14 discussion?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So I want to go back to the tests</p> <p>17 that you said that you applied in connection with</p> <p>18 your caustic wash testing in the first declaration,</p> <p>19 which is, "We took it as having the inks removed</p> <p>20 during the caustic wash process." When you say,</p> <p>21 "Removed during the caustic wash process," you mean</p> <p>22 inks removed from the PET label flakes during the</p> <p>23 caustic wash process, right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. When you opined that the "wherein</p>	<p style="text-align: right;">Page 53</p> <p>1 whether or not the Gatorade label meets "wherein the</p> <p>2 recyclable shrink label is recyclable with a PET</p> <p>3 container," right?</p> <p>4 MR. SITLER: Objection; form.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. How much ink needs to be removed</p> <p>7 from the Gatorade label under your test for "wherein</p> <p>8 the recyclable shrink label is recyclable with a PET</p> <p>9 container" under claim 1?</p> <p>10 MR. SITLER: Objection; form.</p> <p>11 A. The test was more qualitative than</p> <p>12 quantitative.</p> <p>13 Q. Can you provide me with a qualitative</p> <p>14 amount of ink that needs to be removed in order for</p> <p>15 the Gatorade label to have met -- strike that.</p> <p>16 Can you please provide me with a</p> <p>17 qualitative amount of ink that needs to be removed</p> <p>18 in order for a label to meet the claim 1 limitation</p> <p>19 "wherein the recyclable shrink label is recyclable</p> <p>20 with a PET container" under your test?</p> <p>21 A. Significant.</p> <p>22 Q. What do you understand the word</p> <p>23 significant to mean?</p> <p>24 A. More than some.</p> <p>25 Q. What do you understand the word some to</p>

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1 mean?

2 A. A little.

3 Q. What do you understand the word a little

4 to mean?

5 A. A little would be more than zero.

6 Q. Would one percent of ink removed from the

7 label qualify as enough ink removal under your test

8 applied for the claim 1 limitation "wherein the

9 recyclable shrink label is recyclable with a PET

10 container"?

11 A. So our test was qualitative and not

12 quantitative. I think that under the conditions

13 that were done and the testing that was done and the

14 amount of ink removed that it qualifies as

15 recyclable.

16 Q. Okay. So in the last set of answers you

17 gave me you have testified that your application of

18 the claim limitation -- strike that question.

19 Can you pull up the Exhibit 1001, which

20 is the '422 Patent, and I'm going to direct your

21 attention to claim 1, which is toward the back of

22 the patent in column 28, I believe. Please let me

23 know when you're there.

24 A. I'm there.

25 Q. Okay. I've recited this a number of

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1 times, but could you please look at claim 1 and the

2 specific limitation that says, "wherein the

3 recyclable shrink label is recyclable with a PET

4 container."

5 A. Yes.

6 Q. Can we agree that based on that

7 limitation that claim 1 requires the recyclable

8 shrink label itself to be recyclable?

9 MR. SITLER: Objection; form.

10 A. That's not what it says.

11 Q. What is your issue with what I just said?

12 A. Maybe you could say it again.

13 Q. Sure. What I'm trying to distinguish

14 between is the PET container label -- sorry. Strike

15 that.

16 I'm trying to distinguish between the

17 recyclability of the PET container versus the PET

18 recyclable shrink label. So both are mentioned in

19 claim 1.

20 Do you understand the distinction that

21 I'm making between the container and the label?

22 A. Yes.

23 Q. Okay. Is it your understanding that

24 claim 1 requires the PET label itself to be

25 recyclable with a PET container?

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1 A. That is my interpretation of that

2 sentence, yes.

3 Q. Okay. Sitting here today can you

4 identify for me the boundary that your test applied

5 when you were evaluating the claim limitation

6 "wherein the recyclable shrink label is recyclable

7 with a PET container"?

8 MR. SITLER: Objection; form.

9 A. The boundary applied?

10 Q. Correct. What boundary did you apply in

11 your test when evaluating that claim limitation?

12 A. Well, again, recyclable is hard to

13 interpret, so we had to -- I had to set some bounds

14 on what that word means and how we were going to

15 test it.

16 Q. Yes. What were those bounds?

17 A. That was the caustic wash test and if the

18 inks removed would come off during the caustic wash

19 test.

20 Q. And when you say, if the inks would come

21 off during the caustic wash test, what is the

22 boundary of ink coming off of the PET label flakes

23 during the caustic wash?

24 A. Yeah, it's a qualitative test.

25 Q. You do not have any quantitative

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1 evaluation of how much ink must be removed from the

2 PET label flakes during a caustic wash in order for

3 the label to meet the claim limitation "wherein a

4 recyclable shrink label is recyclable with a PET

5 container," right?

6 MR. SITLER: Objection; form.

7 A. That is not contained in the patent.

8 There is no reference in the patent to how much ink

9 must be removed. The language in the patent -- I

10 don't have -- I didn't find it, but it's something

11 to the effect of it has to be removed during a

12 caustic wash cycle. There's no specific definition

13 of how much has to be removed to be a part -- as a

14 part of the patent, sorry.

15 Q. So I agree with you. The '422 Patent

16 does not require a quantitative evaluation of a PET

17 label flake to determine whether or not it meets

18 "wherein the recyclable shrink label is recyclable

19 with a PET container." However, in your second

20 declaration you criticized Dr. Reitman for not

21 providing a quantitative analysis, and so what I'm

22 trying to understand is whether you provided any

23 quantitative analysis of how much ink was removed

24 during your caustic wash procedure.

25 A. So, the description of the ink that was

<p style="text-align: right;">Page 58</p> <p>1 removed during the caustic wash procedure is all 2 contained in the first declaration. 3 Q. I understand that. Slightly different 4 question. I'm just trying to confirm what I think 5 we both agree to. You did not provide a 6 quantitative assessment of how much ink was removed 7 from the PET label flakes during your caustic wash 8 assessment, correct? 9 MR. SITLER: Objection; form. 10 A. Correct. 11 Q. Without performing a quantitative 12 measurement can you rule out that inks from the 13 Gatorade label following a caustic wash contaminated 14 the PET label flakes by visual observation? 15 A. Quantitatively? 16 Q. I'm saying without a quantitative 17 measure. Based on your qualitative assessment of 18 the PET label flakes following the caustic wash, can 19 you rule out that the inks from the Gatorade labels 20 contaminated the PET label flakes? 21 MR. SITLER: Objection; form. 22 A. That's a qualitative assessment. You 23 could look at the label flakes after the wash as was 24 documented in the first declaration to see the inks. 25 Q. So can we turn to -- it's the ground 1</p>	<p style="text-align: right;">Page 60</p> <p>1 claim limitation different than the standard applied 2 for when you evaluate the caustic wash of a Gatorade 3 label? 4 A. It's referring to the specific criticisms 5 that were -- sorry -- outlined in paragraph 43. 6 Q. Okay. In paragraph 44 you state, "The 7 '422 Patent does not require that every trace of ink 8 be removed from every label flake for a label to be 9 recyclable," right? 10 A. That is what it states, yes. 11 Q. And then you cite to -- strike that. 12 Sorry. In paragraph 44 you cite to the 13 '422 Patent which states, "According to an 14 embodiment, the labels are free or substantially 15 free of inks that cannot be washed off in a caustic 16 wash and that the '422 Patent expressly defines 17 substantially to mean nearly completely, modifying 18 that term following (sic) by at least about 90 19 percent, at least about 95 percent, or at least 20 about 98 percent." 21 Do you see that? 22 A. Yes. 23 Q. Did you apply this definition of 24 substantially in evaluating your test results 25 compared to the claim limitation wherein the</p>
<p style="text-align: right;">Page 59</p> <p>1 assessment of this limitation. I think it starts on 2 paragraph 44 or 45 in your declaration. 3 A. Second declaration, page 25, 4 paragraph 44. 5 Q. And just to confirm, this is in your 6 "wherein the recyclable shrink label is recyclable 7 with a PET container" section of ground 1 within 8 your second declaration, correct? 9 A. Yes. That starts at paragraph 43 on 10 page 24 and continues. 11 Q. Okay. In paragraph 44 in the first 12 sentence you state, "I note the standard against 13 which they must be measured." 14 In that sentence you're -- are you 15 offering a standard by which labels must be measured 16 in order to determine whether or not they meet the 17 claim limitation "wherein the recyclable shrink 18 label is recyclable with a PET container"? 19 A. So this sentence, that is a fragment, and 20 the first part is referring to patent owner's 21 specific criticisms, and we're talking here -- I'm 22 talking here about the standard against which the 23 patent owner must be measured. 24 Q. Okay. Is the standard at which the 25 patent owner must be measured for evaluating this</p>	<p style="text-align: right;">Page 61</p> <p>1 recyclable shrink label is recyclable with a PET 2 container? 3 A. Not quantitatively. 4 Q. So earlier today I think you told me that 5 the amount of ink that needs to be removed in order 6 to meet your test for "wherein a recyclable shrink 7 label is recyclable with a PET container," that a 8 significant amount of ink needs to be removed. 9 Do you recall saying that earlier today? 10 A. Yes. 11 Q. Okay. So if we look in Exhibit 1001 at 12 column 3, lines 34 through 37, which you cite in 13 paragraph 44 of your report -- let me know when you 14 get there. 15 A. 34 through 37. Okay. 16 Q. So the section of the '422 Patent, 17 Exhibit 1001 that you cite in paragraph 44 of your 18 declaration for the definition of substantially or 19 nearly completely is the first sentence in that 20 paragraph at column 3, line 34, correct? 21 A. Yes. 22 Q. If you look at the next sentence in that 23 paragraph of the '422 Patent at column 3, line 37, 24 it states, "The term not substantially as used here 25 has the same meaning as not significantly, and can</p>

<p style="text-align: right;">Page 62</p> <p>1 be understood to have the inverse meaning of</p> <p>2 substantially, i.e., modifying the term that follows</p> <p>3 by not more than 10 percent, not more than 5</p> <p>4 percent, or not more than 2 percent."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. When you said that you evaluated the</p> <p>8 limitation "wherein the recyclable shrink label is</p> <p>9 recyclable with a PET container" and that the amount</p> <p>10 that needed to be removed needed to be significant,</p> <p>11 were you applying the inverse definition of not</p> <p>12 significant from column 3 line 37 of the '422</p> <p>13 Patent?</p> <p>14 A. I don't recall.</p> <p>15 Q. So I believe you told me that when you</p> <p>16 were evaluating for a significant amount of ink</p> <p>17 removal that it could not be measured</p> <p>18 quantitatively, correct?</p> <p>19 A. I did not measure it quantitatively.</p> <p>20 Q. Okay. And so you did not, in fact, apply</p> <p>21 this definition because you did not apply</p> <p>22 quantitative assessment and these require a</p> <p>23 percentage measurement, right?</p> <p>24 MR. SITLER: Objection; form.</p> <p>25 A. I would say that qualitatively you could</p>	<p style="text-align: right;">Page 64</p> <p>1 declaration.</p> <p>2 Q. So I understand that you didn't perform a</p> <p>3 quantitative assessment. My question is a little</p> <p>4 bit different, which is, could you have provided a</p> <p>5 quantitative assessment if you chose to?</p> <p>6 A. If that was something that I chose to do,</p> <p>7 that would have to be considered and built into the</p> <p>8 experiment. There's ways that I could sit here and</p> <p>9 think about doing that, but without setting out to</p> <p>10 quantitatively define that with specific parameters,</p> <p>11 I can't say that, you know, sitting here today.</p> <p>12 Q. So turning back to paragraph 44 of your</p> <p>13 second declaration, Exhibit 1046 -- can you let me</p> <p>14 know when you're there?</p> <p>15 A. Paragraph 44?</p> <p>16 Q. Correct.</p> <p>17 A. Yes.</p> <p>18 Q. So approximately halfway through the</p> <p>19 paragraph 44 in ground 1, you state, "I understand</p> <p>20 that Dr. Reitman was unable or unwilling to qualify</p> <p>21 what amount of retained ink is significant." You</p> <p>22 also applied the term significant when you evaluated</p> <p>23 the caustic wash test results in order to determine</p> <p>24 if the Gatorade label had sufficient ink removed in</p> <p>25 order to establish the limitation "wherein the</p>
<p style="text-align: right;">Page 63</p> <p>1 estimate somewhere in the ranges that are outlined</p> <p>2 in this definition.</p> <p>3 Q. Did you do that?</p> <p>4 A. Sorry. Did I do what?</p> <p>5 Q. Did you qualitatively assess the Gatorade</p> <p>6 label test results following the caustic wash to see</p> <p>7 if they approximately matched the percentages</p> <p>8 outlined to be not significant in column 3 starting</p> <p>9 at line 37 of the '422 Patent?</p> <p>10 A. So, I don't remember -- I don't recall</p> <p>11 the specific phrases from the first declaration that</p> <p>12 were in there.</p> <p>13 Q. Okay. I'm just trying to understand the</p> <p>14 testimony that you offered a few minutes ago. So</p> <p>15 you've testified that you did not do a quantitative</p> <p>16 analysis of how much ink remained on the Gatorade</p> <p>17 label after a caustic wash, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Could you have performed a quantitative</p> <p>20 analysis to determine the percentage of ink that</p> <p>21 remained on the Gatorade label following a caustic</p> <p>22 wash?</p> <p>23 MR. SITLER: Objection; speculation.</p> <p>24 A. I would say that that was not the test</p> <p>25 that was performed that was in the first</p>	<p style="text-align: right;">Page 65</p> <p>1 recyclable shrink label is recyclable with a PET</p> <p>2 container," right?</p> <p>3 MR. SITLER: Objection; form.</p> <p>4 A. I believe that's what I said earlier.</p> <p>5 Q. Okay. Can you please turn to</p> <p>6 paragraph 45. The very last sentence in</p> <p>7 paragraph 45 states, "Accordingly, before I</p> <p>8 conducted any testing, the available evidence</p> <p>9 already indicated that the Gatorade label system had</p> <p>10 been recognized as recyclable."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. As an initial question, what do you mean</p> <p>14 by Gatorade label system?</p> <p>15 A. The Gatorade label system is the label,</p> <p>16 so the PET film and then the various ink layers.</p> <p>17 Q. Okay. What evidence had you reviewed</p> <p>18 prior to conducting any caustic wash testing that</p> <p>19 the Gatorade label was recyclable and had been</p> <p>20 recognized as recyclable?</p> <p>21 A. All of the references that I've reviewed</p> <p>22 are contained in the declaration. The specific time</p> <p>23 of when references was reviewed, I don't recall</p> <p>24 specifics.</p> <p>25 Q. Okay. So you have put in a statement in</p>

<p style="text-align: right;">Page 66</p> <p>1 your declaration that you signed that said, "Before 2 I conducted any testing, the available evidence 3 already indicated that the Gatorade label system had 4 been recognized as recyclable." 5 What evidence had you reviewed that you 6 have said "indicated the Gatorade label system had 7 been recognized as recyclable" before you conducted 8 any caustic wash testing? 9 A. So as my previous answer said, all the 10 references are contained in the document. So that 11 would be the ones that are cited here. Specifically 12 the -- let me read it -- sorry -- (witness 13 reviewing) -- "APR has recognized that label system 14 as meeting or exceeding APR's critical guidance 15 protocol for clear PET articles with labels and 16 closures requirements; and that the Watson Standard 17 silver ink used in connection with the Gatorade 18 label passes recyclability/bleed testing under the 19 APR protocol." 20 Q. We discussed this in your last deposition 21 so I don't want to rehash it if we don't have to, 22 but if we need to go through the documents we can, 23 but do you recall that Exhibit 1016, which is the 24 SKC Ecolabel slave -- strike that question. That 25 was a terrible question.</p>	<p style="text-align: right;">Page 68</p> <p>1 * * * 2 (Deible Deposition Exhibit 1016 was marked for 3 identification.) 4 (Deible Deposition Exhibit 1018 was marked for 5 identification.) 6 (Deible Deposition Exhibit 1019 was marked for 7 identification.) 8 * * * 9 THE WITNESS: Thank you. 10 BY MS. STONE: 11 Q. Can we please start with Exhibit 1016. 12 So Exhibit 1016 is a -- it contains a product 13 description of something called EL62. 14 Do you see that? 15 A. Yes. 16 Q. Can you please review Exhibit 1016 and 17 let me know if there is any reference to the 18 Gatorade label in this document? 19 A. (Witness reviewing.) After a quick 20 review I don't see the word Gatorade on here 21 anywhere. 22 Q. Actually, if you look down at the bottom 23 of Exhibit 1016 there's a revision date, which is 24 11/12/2019. 25 A. Yes.</p>
<p style="text-align: right;">Page 67</p> <p>1 Do you recall in your last deposition 2 that we discussed Exhibits 1016, 1018, and 1019? 3 A. No. 4 Q. Okay. Do you recall the contents of 5 Exhibit 1016, 1018 and 1019? 6 A. No. 7 Q. Okay. So I'm going to start with your 8 statement, "I understand from Mr. Bushman's 9 declaration that the Gatorade label is an SKC 10 Ecolabel sleeve label." 11 Do you see that? 12 A. Yes. 13 Q. And Mr. Bushman's declaration is 14 Exhibit 1013. I can represent that to you. But you 15 can see it if you would like. Are you okay with 16 that? 17 A. I believe you. 18 Q. Okay. The only evidence that you point 19 to in paragraph 45 that the Gatorade label itself 20 specifically was recognized as recyclable is based 21 on Mr. Bushman's declaration, correct? 22 MR. SITLER: Objection; form. 23 A. 1016, 1018 and 1019 are also cited there. 24 MS. STONE: Can we please mark for the 25 deposition Exhibits 1016, 1018, and 1019.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Do you see that? You were relying on a 2 2020 date for the production of the Gatorade label 3 as prior art in this case, correct? 4 A. I believe that's correct. 5 Q. And I'm happy to turn you to where that 6 is. Actually, I do not see it in your Exhibit 1014, 7 so we'll move on. 8 But this document looks like it was 9 published in 2019, correct? 10 A. It was revised in 2019 according to the 11 date. 12 Q. Okay. So the latest date of this 13 document that is Exhibit 1016 would be 2019, 14 correct? 15 A. You mean the latest revision date is, 16 yeah. 17 Q. Okay. My point is, Exhibit 1016 which 18 you rely on in support of the opinions in your 19 report, this document is dated from 2019, correct? 20 MR. SITLER: Objection; form. 21 A. Yeah, that's the last revision. That's 22 the most recent revision date. 23 Q. Can you please turn to Exhibit 1018. And 24 can you please -- let's start. Exhibit 1018 is 25 dated June 13, 2019, correct?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Yes.</p> <p>2 Q. And can you please review this document</p> <p>3 and let me know if you see any reference to the</p> <p>4 Gatorade label specifically that you are relying on</p> <p>5 as prior art in this document?</p> <p>6 A. (Witness reviewing.) This document does</p> <p>7 not say Gatorade label on it anywhere.</p> <p>8 Q. Okay. Can you please turn to</p> <p>9 Exhibit 1019. Exhibit 1019 appears to be a Watson</p> <p>10 Standard Technical Data Sheet for silver ink, right?</p> <p>11 A. Yes.</p> <p>12 Q. Can you please review Exhibit 1019 and</p> <p>13 let me know if there's any reference specifically to</p> <p>14 the Gatorade label that you are relying on as prior</p> <p>15 art in this case in Exhibit 1019?</p> <p>16 A. So Exhibit 1019 does not say Gatorade on</p> <p>17 it.</p> <p>18 Q. Okay. So let's turn back to</p> <p>19 paragraph 45. So in paragraph 45 the only four</p> <p>20 documents that you cite for the statement that "I</p> <p>21 understand from Dr. Bushman's declaration that the</p> <p>22 Gatorade label is an SKC Ecolabel" -- and then list</p> <p>23 a description of those documents -- is Exhibit 1013,</p> <p>24 Exhibit 1016, Exhibit 1018 and Exhibit 1019,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Okay. Again, what I'm trying to</p> <p>2 understand is, what is your basis for stating that</p> <p>3 those three exhibits, Exhibit 1016, Exhibit 1018 and</p> <p>4 Exhibit 1019, demonstrate that the Gatorade label</p> <p>5 had been recognized as recyclable?</p> <p>6 MR. SITLER: Objection; asked and</p> <p>7 answered.</p> <p>8 A. Exhibit 1013.</p> <p>9 Q. Okay. And your opinion in this case is</p> <p>10 that you -- strike that.</p> <p>11 Your second declaration states that</p> <p>12 "Before I conducted any testing, the available</p> <p>13 evidence already indicated that the Gatorade label</p> <p>14 system had been recognized as recyclable," correct?</p> <p>15 A. That is what it states.</p> <p>16 Q. Okay. And then at the top of</p> <p>17 paragraph 46 you state, "My testing was therefore</p> <p>18 not intended to establish recyclability in the first</p> <p>19 instance," right?</p> <p>20 A. That is what it states.</p> <p>21 Q. Okay. And then you go on to state,</p> <p>22 "Rather, my testing was performed to confirm that</p> <p>23 the Gatorade label behaved consistently with what</p> <p>24 would be expected of an APR-recognized recyclable</p> <p>25 label system," correct?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Those are the documents cited, yes.</p> <p>2 Q. We've established that Exhibit 1016, 1018</p> <p>3 and 1019 do not specifically discuss the Gatorade</p> <p>4 label, correct?</p> <p>5 A. Those documents do not have the words</p> <p>6 Gatorade label on them.</p> <p>7 Q. Okay. And so for you to offer the</p> <p>8 opinion that the evidence already indicated that the</p> <p>9 Gatorade label system had been recognized as</p> <p>10 recyclable, you had to have gotten that information</p> <p>11 from Dr. Bushman's declaration that the Gatorade</p> <p>12 label is an SKC Ecolabel, correct?</p> <p>13 MR. SITLER: Objection; form.</p> <p>14 A. So all four citations there work</p> <p>15 together. So those documents altogether are what</p> <p>16 I'm understanding is an SKC Ecolabel.</p> <p>17 Q. But you would agree with me that the only</p> <p>18 way that you can tie those three documents</p> <p>19 Exhibit 1016, 1018 and 1019 to the Gatorade label is</p> <p>20 through Dr. Bushman's declaration, right?</p> <p>21 A. All of those citations that were cited</p> <p>22 there work together. That's why all four of them</p> <p>23 are included. So they each offer individual</p> <p>24 information when taken together are the references</p> <p>25 for the previous statement.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. That is what it states.</p> <p>2 Q. Is that statement correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you recall during your first</p> <p>5 deposition that you had told me as of that date you</p> <p>6 had not reviewed Mr. Bushman's first declaration?</p> <p>7 MR. SITLER: Objection; scope.</p> <p>8 A. I believe we talked about that this</p> <p>9 morning, too.</p> <p>10 MS. STONE: Okay. I'm going to mark</p> <p>11 Exhibit 1013 as an exhibit.</p> <p>12 * * *</p> <p>13 (Deible Deposition Exhibit 1013 was marked for</p> <p>14 identification.)</p> <p>15 * * *</p> <p>16 BY MS. STONE:</p> <p>17 Q. Dr. Deible -- did I say that correctly?</p> <p>18 Okay. Now I'm in my own head about it.</p> <p>19 Dr. Deible, can you just confirm that the</p> <p>20 title of Exhibit 1013 is Declaration of Mr. Craig</p> <p>21 Bushman?</p> <p>22 A. Yes.</p> <p>23 Q. And this is today what we've been</p> <p>24 referring to or I have been referring to as Mr.</p> <p>25 Bushman's first declaration. You can see from the</p>

<p style="text-align: right;">Page 74</p> <p>1 second to last page that it's dated January 16, 2 2025?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And I believe if you look at 5 Exhibit 1014, which is also in front of you, that's 6 approximately around the same -- I think the same 7 date that you signed your first declaration. It's 8 on page 59 if that's helpful.</p> <p>9 A. My first declaration was signed on 10 January 16, 2025.</p> <p>11 Q. Okay. So that's the same date as the 12 first declaration of Mr. Craig Bushman, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now that you have Exhibit 1013 in 15 front of you, do you recall having ever reviewed 16 this document before?</p> <p>17 A. No.</p> <p>18 Q. So in paragraph 45 of your second 19 declaration, you cite to Exhibit 1013, paragraphs 47 20 and 48. Could you please turn to those paragraphs 21 of the Bushman declaration.</p> <p>22 Paragraphs -- sorry, are you there?</p> <p>23 A. Yes.</p> <p>24 Q. In paragraphs 47 and 48 of Exhibit 1013, 25 the first declaration of Mr. Craig Bushman, these</p>	<p style="text-align: right;">Page 76</p> <p>1 A. That does appear to be what it's talking 2 about. It's in section B which has a header of, 3 "The prosecution history of '422 Patent."</p> <p>4 Q. Other than the four documents cited in 5 paragraph 45, do you have any other basis to assert 6 that the Gatorade label is an SKC Ecolabel?</p> <p>7 A. All of the basis for that work is 8 contained in this document.</p> <p>9 Q. Okay. So I want to turn back to 10 Exhibit 1046, and specifically your statement in the 11 first sentence of paragraph 46.</p> <p>12 Let me know when you're there.</p> <p>13 A. First paragraph of 46 in my second 14 declaration?</p> <p>15 Q. Correct. So in paragraph 46, the first 16 sentence states, "My testing was therefore not 17 intended to establish recyclability in the first 18 instance."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. When you're talking about your testing in 22 paragraph 46, sentence one, you're referring to your 23 caustic wash testing there, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Can you please pull out Exhibit 1014,</p>
<p style="text-align: right;">Page 75</p> <p>1 two paragraphs discuss the Mitchell reference, 2 right? They don't have any discussion of whether or 3 not the Gatorade label has been recognized as APR 4 guidance or that it's an SKC Ecolabel, right?</p> <p>5 MR. SITLER: Objection; form.</p> <p>6 MS. STONE: Counsel, given your 7 objection, which I think I understand, I'm going to 8 re-ask those questions.</p> <p>9 MR. SITLER: Sure.</p> <p>10 Q. Dr. Deible, you cite to Exhibit 1013, 11 paragraphs 47 and 48 in your second declaration in 12 support of the statement, "I understand from Mr. 13 Bushman's declaration that the Gatorade label is an 14 SKC Ecolabel," correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Turning to Exhibit 1013, 17 paragraphs 47 and 48, there is no statement in 18 either of those paragraphs that the Gatorade label 19 is an SKC Ecolabel, correct?</p> <p>20 A. I do not see the term SKC Ecolabel in 21 paragraphs 47 or 48 of Exhibit 1013.</p> <p>22 Q. Okay. In fact, paragraphs 47 and 48 of 23 Exhibit 1013 are discussing the prosecution history 24 of the '422 Patent and specifically the Mitchell 25 reference, correct?</p>	<p style="text-align: right;">Page 77</p> <p>1 which is your first declaration.</p> <p>2 MS. STONE: And counsel and court 3 reporter, videographer, given that lunch is going to 4 be here around 12:30, I'm planning to go till 12:30. 5 Is everyone okay with that?</p> <p>6 MR. SITLER: Great.</p> <p>7 Q. So do you have Exhibit 1014 in front of 8 you?</p> <p>9 A. Yes.</p> <p>10 Q. Can you please turn to paragraph 71.</p> <p>11 A. Paragraph 71.</p> <p>12 Q. In paragraph 71, this is the section of 13 your first declaration where you are discussing 14 ground 1, claim 1, the claim limitation "wherein the 15 recyclable shrink label is recyclable with a PET 16 container," correct?</p> <p>17 A. Yes.</p> <p>18 Q. Paragraph 71 you state, "To determine if 19 a label is recyclable with a PET container, 20 laboratory tests were conducted in reference to the 21 disclosures in the '422 Patent," correct?</p> <p>22 A. That is what is stated in 71, yes.</p> <p>23 Q. The laboratory tests that you are 24 referring to in paragraph 71 that were conducted, 25 that's the caustic wash test, correct?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. So as stated at the end of paragraph 71, 2 "Lab scale testing was conducted as follows," which 3 then conduct -- which then describes the caustic 4 wash test. 5 Q. Okay. So in your first declaration you 6 are stating, "To determine if a label is recyclable 7 with a PET container, laboratory tests" -- which is 8 referring to the caustic wash tests -- "were 9 conducted in reference to the disclosures in the 10 '422 Patent," right? 11 MR. SITLER: Objection; form. 12 A. That is how it is stated in paragraph 71. 13 Q. Okay. You then site to the patent, the 14 '422 Patent and it says from "Column 6 line 61 that 15 a label is considered recyclable if no inks are 16 retained on the film after a caustic wash cycle 17 typically used in PET reclaiming processes," 18 correct? 19 A. That is what is written there, yeah. 20 Q. That is not the test that you applied 21 according to what you've said, right? You've said 22 that there must be ink -- that there's going to be 23 ink left on the label after the caustic wash? 24 I'll re-ask that question, so strike 25 that.</p>	<p style="text-align: right;">Page 80</p> <p>1 limitation. 2 Does that make sense? 3 A. So in the section under claim 1 that 4 starts with -- or just above paragraph 71 in the 5 first declaration, everything in reference to that 6 is, in the following paragraphs, is all describing 7 the caustic wash testing. 8 Q. Right. So just to clarify for the 9 record, the heading you were talking about says, 10 "Claim 1 continued, and wherein the recyclable 11 shrink label is recyclable with a PET container," 12 right? 13 A. Yes. 14 Q. Okay. And so all of the opinions and 15 testing that you performed related to determining 16 whether the Gatorade label meets the limitation 17 "wherein the recyclable shrink label is recyclable 18 with a PET container" is contained within this 19 section; am I understanding you correctly? 20 MR. SITLER: Objection; scope. 21 A. (Witness reviewing.) Okay. Sorry. I 22 had to reread it. Ask the question again, please. 23 Q. Yes. So what I'm trying to confirm is 24 that in paragraph 71 you refer to laboratory tests 25 that were conducted in order to determine if the</p>
<p style="text-align: right;">Page 79</p> <p>1 Let's go to the last sentence in 2 paragraph 71. You pointed to this earlier. "Lab 3 scale testing was conducted as follows." And you 4 said that referred to the caustic wash testing, 5 correct? 6 A. Yes. 7 Q. You did not perform any other laboratory 8 tests or lab scale testing in connection with the 9 claim 1 limitation "wherein the recyclable shrink 10 label is recyclable with a PET container," right? 11 MR. SITLER: Objection; form. 12 A. All of the testing that was done is 13 contained in the first declaration. 14 Q. I understand. But you and I can agree 15 that you performed a lot of tests on the Gatorade 16 label, right? Like, other than caustic wash, you 17 did FTIR and other things for other limitations, 18 right? 19 MR. SITLER: Objection; scope. 20 A. Yes. 21 Q. Okay. And so what I'm trying to 22 understand, in paragraph 71 we've established you're 23 referring to the caustic wash testing. What I'm 24 trying to understand is, you're not referring to any 25 other type of laboratory testing for this claim</p>	<p style="text-align: right;">Page 81</p> <p>1 Gatorade label meets the claim limitation "wherein 2 the recyclable shrink label is recyclable with a PET 3 container." You did not perform any other 4 laboratory testing other than caustic wash testing 5 in order to evaluate whether the Gatorade label 6 meets this limitation, correct? 7 MR. SITLER: Objection; form. Objection; 8 scope. 9 A. I would say that all the testing that was 10 conducted is contained here. 11 Q. And when you say here, you mean in this 12 section under the heading "With this claim 13 limitation wherein the recyclable shrink label is 14 recyclable with a PET container"? 15 A. By here I meant -- sorry -- my first 16 declaration which contains all of the testing, but 17 the caustic wash that's grouped under claim 1 is 18 applicable to that claim. 19 Q. You can set aside your first declaration, 20 we're going to go back to your second declaration. 21 So I think you're probably still at 22 paragraph 46, but let me know if you need to get 23 there. 24 A. Nope, still there. 25 Q. Great. So the last two sentences in</p>

<p style="text-align: right;">Page 82</p> <p>1 paragraph 46 are, "Specifically, my testing 2 evaluated whether the inks separated from the PET 3 film during caustic wash processing and whether PET 4 flake contamination or staining remained thereafter. 5 In my opinion, the results confirmed those 6 expectations: Ink separated from the PET film 7 during the caustic wash cycle, and the PET container 8 flakes exhibited no visible contamination or 9 staining following the processing," right? 10 A. No. Sorry, I was not on the same 11 paragraph. 12 Q. Nope, it's okay. It's okay. 13 A. Let's go back. 14 Q. So let's go back. Let me know when 15 you're at paragraph 46. I'm about four lines from 16 the bottom of the page on page 26. 17 A. 46 of Exhibit 1046. Okay. You are four 18 lines from the bottom. 19 Q. At the very end starting at 20 "Specifically." 21 A. Ah, there it is. 22 Q. Okay. So in paragraph 46 of your second 23 declaration you state, "My testing evaluated whether 24 the inks separated from the PET film during caustic 25 wash processing and whether PET flake contamination</p>	<p style="text-align: right;">Page 84</p> <p>1 A. That was a part of the analysis, yes. It 2 was contained in my first declaration. 3 Q. Right. And in order to evaluate whether 4 the PET container flakes exhibited no visible 5 contamination or staining following processing, you 6 visually evaluated the PET container flakes, 7 correct? 8 MR. SITLER: Objection; form. 9 A. Yes. 10 Q. Okay. Going back to your statement that 11 evaluating the wash water was part of your analysis 12 for determining whether ink separated from the PET 13 film during the caustic wash, what else did you 14 evaluate in order to make that determination? 15 A. Sorry. Say it one more time? 16 Q. Sure. When I asked you if you -- what 17 you evaluated regarding the ink being separated from 18 the PET film during the caustic wash, you said 19 evaluating the wash water was one of the things you 20 did. What else did you do? 21 A. Yes. Sorry. So there were also 22 photographs of the, the label after the washing to 23 see if there was still ink on them or not. 24 Q. Okay. Did you evaluate the PET label 25 flakes to determine whether they exhibited no</p>
<p style="text-align: right;">Page 83</p> <p>1 or staining remained thereafter." 2 Do you see that? 3 A. Yes. 4 Q. Okay. You then state, "In my opinion, 5 the results confirmed those expectations: Ink 6 separated from the PET film during the caustic wash 7 cycle, and the PET container flakes exhibited no 8 visible contamination or staining following the 9 processing," right? 10 A. That is what it states, yes. 11 Q. Okay. In evaluating whether the inks 12 separated from the PET film during caustic wash 13 processing, you evaluated the wash water to 14 determine if there was any ink that had been removed 15 that was in the wash water, correct? 16 A. I evaluated the wash water to see if 17 there was ink in the wash water? 18 Q. Yes. I can re-ask the question if that's 19 confusing. 20 So what I'm trying to understand is in 21 order to determine that ink separated from the PET 22 film during the caustic wash cycle, you evaluated 23 the wash water to determine if it contained ink that 24 had been removed from the PET label flakes, correct? 25 MR. SITLER: Objection; form.</p>	<p style="text-align: right;">Page 85</p> <p>1 visible contamination or staining following the 2 caustic wash process? 3 A. All of those photographs of that -- of 4 those examinations are contained in the first 5 declaration. 6 Q. Okay. My question's a little bit 7 different. I understand that you've got photos of 8 the labels. What I'm asking is your analysis and 9 evaluation of those labels and can be the photos as 10 well. Are you understanding what I'm using by 11 analysis? 12 A. Yes. 13 Q. Okay. So I'm going to ask that question 14 again. 15 Did you evaluate -- strike that. Did you 16 analyze the PET label flakes to determine whether 17 they exhibited no visible contamination or staining 18 following the caustic wash process? 19 A. Qualitatively through visual inspection. 20 Q. And did you determine that the label 21 flakes exhibited no visible contamination or 22 staining following the caustic wash process? 23 A. Again, that data is included in the first 24 deposition -- or sorry -- first declaration. So I 25 don't recall specifically the conclusions that were</p>

<p style="text-align: right;">Page 86</p> <p>1 drawn at the time of the first declaration, that was</p> <p>2 all considered then.</p> <p>3 Q. You're not offering an opinion in this</p> <p>4 expert report under ground 1 claim 1 regarding</p> <p>5 whether the Gatorade label meets the claim</p> <p>6 limitation "wherein the recyclable shrink label is</p> <p>7 recyclable with a PET container" that the PET label</p> <p>8 flakes exhibited no visible contamination or</p> <p>9 staining following the caustic wash process,</p> <p>10 correct?</p> <p>11 MR. SITLER: Objection; form.</p> <p>12 A. All of my opinions are contained in the</p> <p>13 first declaration. This is just a clarification of</p> <p>14 those opinions. So I'm not offering new opinions in</p> <p>15 the second declaration.</p> <p>16 Q. Okay. Not asking you if you're offering</p> <p>17 a new opinion. I'm looking at paragraph 46, which</p> <p>18 appears to summarize the results confirmed during</p> <p>19 the caustic wash test and what your testing</p> <p>20 evaluated.</p> <p>21 Do you agree that paragraph 46 of your</p> <p>22 declaration -- your second declaration identifies</p> <p>23 what your testing evaluated for the caustic wash</p> <p>24 test and what the results confirmed?</p> <p>25 MR. SITLER: Objection; form.</p>	<p style="text-align: right;">Page 88</p> <p>1 MS. STONE: Okay. And, counsel, it's</p> <p>2 12:34, if we want to take a break for lunch.</p> <p>3 MR. SITLER: Sure.</p> <p>4 MS. STONE: Great.</p> <p>5 THE VIDEOGRAPHER: The time is now 12:34.</p> <p>6 Off the record.</p> <p>7 * * *</p> <p>8 (Whereupon, a lunch recess was taken.)</p> <p>9 * * *</p> <p>10 THE VIDEOGRAPHER: Time is now 1:07.</p> <p>11 Back on the record.</p> <p>12 BY MS. STONE:</p> <p>13 Q. All right. Welcome back. I hope you</p> <p>14 enjoyed lunch.</p> <p>15 I'm going to turn your attention to</p> <p>16 paragraph 48 of your second declaration, which is</p> <p>17 Exhibit 1046. If you recall prior to the lunch</p> <p>18 break we were talking about the caustic wash</p> <p>19 procedure and how it relates to claim 1's limitation</p> <p>20 "wherein the recyclable shrink label is recyclable</p> <p>21 with a PET container," right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at paragraph 48,</p> <p>24 you state about halfway down, "The PET control</p> <p>25 flakes were included as a comparator for evaluating</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Yes.</p> <p>2 Q. You do not identify in paragraph 46 that</p> <p>3 your testing of the caustic wash -- strike that.</p> <p>4 You did not state in paragraph 46 that</p> <p>5 your caustic wash testing evaluated whether the PET</p> <p>6 label flakes exhibited contamination or staining</p> <p>7 following the caustic wash process, correct?</p> <p>8 MR. SITLER: Objection; form.</p> <p>9 A. So 46 states that "The inks separated</p> <p>10 from the PET film during caustic wash processing and</p> <p>11 whether PET flake contamination or staining remained</p> <p>12 thereafter." So in that sentence PET flake</p> <p>13 contamination is related to the PET flakes there was</p> <p>14 added with the label.</p> <p>15 Q. Okay. And so by that you mean the PET</p> <p>16 container flakes, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So -- and then in paragraph 46,</p> <p>19 the results of the caustic wash testing you</p> <p>20 performed does not include the statement that the</p> <p>21 PET label flakes exhibited no visible contamination</p> <p>22 or staining following the caustic wash process,</p> <p>23 correct?</p> <p>24 MR. SITLER: Objection; form.</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 89</p> <p>1 whether PET container flake contamination or</p> <p>2 staining was present following the caustic wash,"</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And then you in the next sentence state</p> <p>6 -- two sentences, talk about the precise harm under</p> <p>7 patent owner's own proposed construction and the</p> <p>8 Board's preliminary construction.</p> <p>9 Do you see where you're pointing to the</p> <p>10 Board's construction at the end of that paragraph?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So in that paragraph 48 of your</p> <p>13 second declaration you refer to Paper 14, page 11,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. I have had the court reporter hand you</p> <p>17 what's going to be marked as Exhibit 1. It's not an</p> <p>18 exhibit to the case but it is a paper that is issued</p> <p>19 in the PGR. Do you see that in the first page it</p> <p>20 says, Decision, Granting Institution of Post Grant</p> <p>21 Review?</p> <p>22 A. Yes.</p> <p>23 * * *</p> <p>24 (Deible Deposition Exhibit 1 was marked for</p> <p>25 identification.)</p>

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<p>1 * * *</p> <p>2 BY MS. STONE:</p> <p>3 Q. And this is Paper 14 in the top corner,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. Is this the paper that you cited in</p> <p>7 paragraph 48 of your second declaration?</p> <p>8 A. (Witness reviewing.) Yes.</p> <p>9 Q. Okay. And do you recall reviewing Paper</p> <p>10 14 before today?</p> <p>11 A. I don't recall the specifics of it, but</p> <p>12 if it's cited, then it was reviewed.</p> <p>13 Q. Okay. And do you understand that this is</p> <p>14 a decision from the Patent Trial and Appeal Board</p> <p>15 that is preliminary granting institution of the</p> <p>16 post-grant review proceeding?</p> <p>17 A. That is my understanding.</p> <p>18 Q. So in paragraph 48 of your second</p> <p>19 declaration you point to the Board's institution</p> <p>20 decision for the proposition that the question the</p> <p>21 control flake addresses is not whether ink left the</p> <p>22 label but whether ink that left the label stained or</p> <p>23 contaminated the clear PET, right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So let's look -- I'm going to</p>	<p>1 during the recycling process."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. So you are citing to, I believe, this</p> <p>5 language about not contaminating the polymer flake</p> <p>6 in your second declaration; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. In this sentence what do you understand</p> <p>9 the polymer flake to be referring to in the</p> <p>10 statement "Contaminate the polymer flake during the</p> <p>11 recycling process"?</p> <p>12 A. This would be the container flake.</p> <p>13 Q. Okay. So your understanding of that</p> <p>14 sentence is that it would not include the PET label</p> <p>15 flake, right?</p> <p>16 A. That's my understanding of the sentence.</p> <p>17 Q. Okay. And in the next paragraph, it's a</p> <p>18 little bit long and there's, like, two sub points.</p> <p>19 I want to direct your attention to sub point two in</p> <p>20 that paragraph on page 11. So I'm going to read the</p> <p>21 introduction and then skip to point two because</p> <p>22 otherwise point two doesn't make sense; just so you</p> <p>23 know where I'm going. So on page 11 of the</p> <p>24 institution decision -- sorry, do you understand</p> <p>25 what I'm pointing to?</p>
Page 91	Page 93
<p>1 actually start on page 10 of Paper 14, so we're</p> <p>2 going to go back a couple of lines. So in this</p> <p>3 section the Board is discussing the claim</p> <p>4 construction of the term "wherein the recyclable</p> <p>5 label is recyclable with a PET container," right?</p> <p>6 A. I believe that's the case, yes.</p> <p>7 Q. Okay. So I'm going to direct your</p> <p>8 attention to page 10. It's about five lines from</p> <p>9 the bottom of the page starting, "The applicant</p> <p>10 explained that." Let me know when you can see where</p> <p>11 I'm at.</p> <p>12 A. Yep, I see it.</p> <p>13 Q. Okay. So the Board in the institution</p> <p>14 decision states, "The applicant explains that, in</p> <p>15 contrast to Mitchell, that the application teaches</p> <p>16 that inks and pigments used in the shrink label may</p> <p>17 be removed by washing, leaving behind a label that</p> <p>18 can be recycled with the article."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. The Board then continued, "As such, a</p> <p>22 person of ordinary skill in the art reading the</p> <p>23 prosecution history would understand that a label is</p> <p>24 not recyclable with a PET container if the label has</p> <p>25 inks or pigments that contaminate the polymer flake</p>	<p>1 A. Yes.</p> <p>2 Q. Great. And you can see where the sub</p> <p>3 point two is on the page?</p> <p>4 A. Yes.</p> <p>5 Q. On page 11 of the institution decision</p> <p>6 the Board states: We construe the term "wherein the</p> <p>7 recyclable shrink label is recyclable with a PET</p> <p>8 label," in accordance with the above representations</p> <p>9 of the applicant who stated that a label is not</p> <p>10 recyclable with a PET container if -- and then sub</p> <p>11 point two -- the label contains inks or pigments</p> <p>12 that could not be removed during recycling process,</p> <p>13 such as by washing, so that inks or pigments would</p> <p>14 contaminate at PET polymer flake during the</p> <p>15 recycling process.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. So in this sub point two sentence, do you</p> <p>19 also understand the phrase "contaminate the PET</p> <p>20 polymer flake during the recycling process" to be</p> <p>21 referring to the PET container flake?</p> <p>22 A. Yes.</p> <p>23 Q. You can put the institution decision</p> <p>24 aside and we are going to turn back to your second</p> <p>25 declaration.</p>

<p style="text-align: right;">Page 94</p> <p>1 Can you please turn to the figure that is</p> <p>2 on page 30 of your second declaration, Exhibit 1046.</p> <p>3 Do you see your figure, figure 11D from your first</p> <p>4 declaration?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. In figure 11D you can see that</p> <p>7 there are both PET container flakes and PET label</p> <p>8 flakes in that image, correct?</p> <p>9 A. Correct.</p> <p>10 Q. If you recycled all of the PET flakes</p> <p>11 including the PET container flakes and the PET label</p> <p>12 flakes, would the remaining amount of ink on the PET</p> <p>13 label flakes contaminate the recycling process?</p> <p>14 A. In the testing that I did that's shown in</p> <p>15 figure 11D on page 30, the ink that was removed did</p> <p>16 not contaminate the polymer flake container flake</p> <p>17 that was added.</p> <p>18 Q. I understand that opinion. I'm asking a</p> <p>19 slightly different question. My question is, if you</p> <p>20 included both the PET container flakes and the PET</p> <p>21 label flakes that are represented and depicted in</p> <p>22 figure 11D of your expert declaration, whether the</p> <p>23 remaining amount of ink on the PET label flakes</p> <p>24 would contaminate the recycling process?</p> <p>25 MR. SITLER: Objection; form. Objection;</p>	<p style="text-align: right;">Page 96</p> <p>1 A. In the first declaration there are</p> <p>2 pictures of the wash water from the caustic wash</p> <p>3 step. If that's what you mean, then that</p> <p>4 information is contained in the first declaration.</p> <p>5 If you mean a different wash water test, then all</p> <p>6 the testing is contained in the first declaration</p> <p>7 and that is not contained there.</p> <p>8 Q. When PET goes through the recycling</p> <p>9 process, do you know how many times it is washed?</p> <p>10 MR. SITLER: Objection; speculation.</p> <p>11 A. No.</p> <p>12 Q. Do you know what clear PET is recycled</p> <p>13 into during the recycling process?</p> <p>14 MR. SITLER: Objection; scope.</p> <p>15 A. Specifically?</p> <p>16 Q. Yeah, the resulting resin essentially</p> <p>17 that results from the recycling process; are you</p> <p>18 familiar with that?</p> <p>19 MR. SITLER: Objection; form. Objection;</p> <p>20 scope.</p> <p>21 A. Am I familiar with PET resin?</p> <p>22 Q. The PET -- I'll strike the question.</p> <p>23 Are you familiar with the term reclaimed</p> <p>24 PET?</p> <p>25 A. I would say I've heard that colloquially,</p>
<p style="text-align: right;">Page 95</p> <p>1 calls for speculation.</p> <p>2 A. I would have to know how we're defining</p> <p>3 contaminating the recycling process.</p> <p>4 Q. You have offered opinions in this case</p> <p>5 that the PET container flakes would not contaminate</p> <p>6 the recycling process, correct?</p> <p>7 A. I've offered opinions in my first</p> <p>8 declaration that the PET container flakes are not</p> <p>9 stained or contaminated by the label flakes.</p> <p>10 Q. Such that they would contaminate the</p> <p>11 recycling process, correct?</p> <p>12 A. Again, we'd have to define how we're</p> <p>13 saying contaminate the recycling process or what</p> <p>14 that means.</p> <p>15 Q. Did you define contaminate the recycling</p> <p>16 process in forming your opinions in this case?</p> <p>17 A. No.</p> <p>18 Q. During your evaluation of the Gatorade</p> <p>19 label did you perform a plaque inspection?</p> <p>20 A. All of the testing that I performed was</p> <p>21 contained in the first declaration. There was no</p> <p>22 plaque inspection in the first declaration to the</p> <p>23 best of my knowledge.</p> <p>24 Q. During your evaluation of the Gatorade</p> <p>25 label did you perform a wash water evaluation?</p>	<p style="text-align: right;">Page 97</p> <p>1 but maybe you could define it for me.</p> <p>2 Q. To your knowledge have you ever worked</p> <p>3 with reclaimed PET in your labs?</p> <p>4 MR. SITLER: Objection; scope.</p> <p>5 A. I would say that we have worked with</p> <p>6 materials that have been reused. I'm not sure if</p> <p>7 that fits your definition of reclaimed. Again,</p> <p>8 maybe you could define that for me.</p> <p>9 Q. Do you know whether the clear PET</p> <p>10 recycling process requires the end result of the</p> <p>11 reclaimed PET to also be clear?</p> <p>12 A. I believe there are specifications and</p> <p>13 APR guidelines for that, but I'm not recalling the</p> <p>14 specifics at this time.</p> <p>15 Q. Are you aware that in the recycling PET</p> <p>16 process the washed PET flakes are melted down</p> <p>17 together?</p> <p>18 MR. SITLER: Objection; scope.</p> <p>19 A. As a general overview of the entire</p> <p>20 recycling process that could change anywhere in a</p> <p>21 given situation, I would think that it would make</p> <p>22 sense for them to be melted down. But again, that's</p> <p>23 very high-level and qualitative specifically in what</p> <p>24 happens in these particular plants at various</p> <p>25 places. I don't know the specifics.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. Do you have any opinions on whether or</p> <p>2 not the amount of ink that remained on the PET label</p> <p>3 flakes following the Gatorade label caustic wash</p> <p>4 would impact the ability for any reclaimed PET</p> <p>5 formed from that label to be usable?</p> <p>6 A. Again, I believe that there are standards</p> <p>7 for that, but I don't recall them specifically. I</p> <p>8 think that reuse criteria may change based on the</p> <p>9 industry. But again, that's a high-level comment</p> <p>10 and not pertaining to anything specific.</p> <p>11 Q. None of your opinions in this case that</p> <p>12 you formed in relation to the claim limitation</p> <p>13 "wherein the recyclable shrink label is recyclable</p> <p>14 with a PET container" depend on or rely on the --</p> <p>15 what I'll say, downstream commercial recycling</p> <p>16 process; is that fair?</p> <p>17 MR. SITLER: Objection; form.</p> <p>18 A. The opinions are supported by the testing</p> <p>19 in the first declaration. Downstream work was not</p> <p>20 considered in the first declaration, and so it's not</p> <p>21 a part of that declaration.</p> <p>22 Q. Can you turn to paragraph 55 of your</p> <p>23 second declaration, please. In paragraph 55 of your</p> <p>24 second declaration you have a couple of criticisms</p> <p>25 of Dr. Reitman's caustic wash testing, correct?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. And you also cite to Exhibit 1012 as the</p> <p>2 procedure, the MCC procedure that she discussed in</p> <p>3 her opinions; correct?</p> <p>4 A. Yes.</p> <p>5 Q. And feel free to refer back to your first</p> <p>6 declaration if you need to for this question, but</p> <p>7 during your caustic wash testing you did not use an</p> <p>8 impeller, correct?</p> <p>9 A. It was a stir bar.</p> <p>10 Q. Right. So you used a stir bar for the</p> <p>11 agitation in your caustic wash testing of the</p> <p>12 Gatorade label, correct?</p> <p>13 A. As I recall.</p> <p>14 Q. Okay. And Dr. Reitman also used a stir</p> <p>15 bar in her testing of the Gatorade label for caustic</p> <p>16 wash testing, too, correct?</p> <p>17 A. Sorry. I'm trying to find it. Yes.</p> <p>18 Q. Okay. And so my question for you is, is</p> <p>19 a stir bar an inappropriate way to agitate the</p> <p>20 mixture during a caustic wash test in order to</p> <p>21 evaluate "wherein the recyclable shrink label is</p> <p>22 recyclable with a PET container"?</p> <p>23 A. I would say that there's multiple ways to</p> <p>24 agitate it; an impeller and a stir bar. In a</p> <p>25 laboratory setup where you're setting up an</p>
<p style="text-align: right;">Page 99</p> <p>1 A. 55 is a long paragraph, but it does</p> <p>2 contain criticisms of her caustic wash testing.</p> <p>3 MS. STONE: I'm going to go ahead and</p> <p>4 mark Exhibit 2012, which is the declaration of Dr.</p> <p>5 Maureen Reitman and that will get to you in a</p> <p>6 moment.</p> <p>7 * * *</p> <p>8 (Deible Deposition Exhibit 2012 was marked for</p> <p>9 identification.)</p> <p>10 * * *</p> <p>11 THE WITNESS: Thank you.</p> <p>12 BY MS. STONE:</p> <p>13 Q. So we are going to look at both the</p> <p>14 Reitman declaration and your declaration at the same</p> <p>15 time if you don't mind. So let's start with</p> <p>16 paragraph 55 of your second declaration.</p> <p>17 So you state "That Dr. Reitman's testing</p> <p>18 did not employ an appropriately sized and shaped</p> <p>19 impeller, resulting in a different degree of</p> <p>20 agitation than the procedure she now invokes as a</p> <p>21 basis for criticizing my findings," correct?</p> <p>22 A. That is what's stated there, yes.</p> <p>23 Q. And then you site to Exhibit 2012, which</p> <p>24 is at Reitman declaration, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 experiment, a stir bar is not an inappropriate way</p> <p>2 to agitate them.</p> <p>3 Q. Okay. I'm going to direct your attention</p> <p>4 to what is kind of the last sentence on page 31 of</p> <p>5 paragraph 55 starting with "Dr. Reitman's report."</p> <p>6 Let me know when you're there.</p> <p>7 A. Yep.</p> <p>8 Q. So in paragraph 55 you state, "Dr.</p> <p>9 Reitman's report further documents a wash</p> <p>10 temperature of approximately 65 degrees Celsius, but</p> <p>11 fails to document whether the wash water was heated</p> <p>12 to" 60 -- "to 85 degrees Celsius as required," and</p> <p>13 then you cite to figure C14.</p> <p>14 A. Okay.</p> <p>15 Q. And before we move on, you can confirm</p> <p>16 that's in paragraph 55 of your report, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So looking at paragraph -- or</p> <p>19 sorry -- at Exhibit 2012, figure C14, I believe</p> <p>20 you're there? Yeah.</p> <p>21 A. Yes.</p> <p>22 Q. I understand you to be looking at the</p> <p>23 temperature on the bottom of the hotplate which</p> <p>24 reads 65.5 degrees Celsius?</p> <p>25 A. Yes.</p>

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1 Q. Okay. Can we look at the caption to that
2 figure, and specifically the second sentence.
3 Please let me know when you're there.

4 A. Okay.

5 Q. The second sentence of the caption of
6 figure C14 states, "The solution temperature was
7 controlled with an external waterbath equipped with
8 an immersion heater and monitored with a
9 thermocouple. Stirring was performed by the stir
10 bar as controlled magnetically by the hotplate.
11 Hotplate temperature control was not utilized."

12 Do you see that statement in the caption?

13 A. Yes.

14 Q. So you would agree with me that this
15 caption indicates that the 65 degrees Celsius
16 reading on the hotplate is not how temperature was
17 controlled in Dr. Reitman's testing, correct?

18 A. That's what it states in the caption.

19 Q. And just very briefly, if you actually
20 look at the top first two words in the caption, this
21 is actually about the Febreze label, right?

22 A. Yes.

23 Q. Can we turn to figure C4, please. Are
24 you there?

25 A. Yes.

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1 Q. So this is a very similar image with a
2 hotplate, but it's directed to the Gatorade label,
3 correct?

4 A. Yes.

5 Q. And you can see that the hotplate also
6 has in the second image about a 65-degree Celsius
7 temperature indicator?

8 A. Yes.

9 Q. Okay. And this caption includes the same
10 language from figure C14 stating the hotplate
11 temperature control was not utilized in controlling
12 the temperature, correct?

13 A. It does state that.

14 Q. Okay. Instead, it uses the same language
15 saying, "The solution temperature was controlled
16 with an external waterbath equipped with an immersion
17 heater and monitored with a thermocouple," correct?

18 A. That is what it says, yes.

19 Q. Can you please turn back to your second
20 declaration, Exhibit 1046.

21 A. Okay.

22 Q. And I would like for you to look at
23 paragraph 58, please. And I'm going to direct your
24 attention to the last sentence of paragraph 58,
25 which is actually on page 34. In the last sentence

1 you state, "By patent owner's own framework, the
2 record contains no plaque, color, haze or inclusion
3 data showing that the Gatorade label is not
4 recyclable," correct?

5 A. It does say that, yes.

6 Q. Are you aware of any plaque, color, haze
7 or inclusion data showing that the Gatorade label is
8 recyclable?

9 A. From my report or from Dr. Reitman's?

10 Q. Are you aware of any evidence in the
11 record?

12 A. So in my first declaration there are
13 pictures of the ink being, the ink being removed
14 from the Gatorade label, which is what we covered as
15 recyclable for that particular label.

16 Q. Okay. So am I understanding your answer
17 correctly that you are not aware of any evidence in
18 the record that demonstrates that the Gatorade label
19 -- sorry, strike that.

20 You are not aware of any evidence in the
21 record showing plaque, color, haze or inclusion data
22 showing that the Gatorade label is recyclable,
23 correct?

24 A. So aside from the data contained in my
25 first declaration I'm not aware of any other data

1 that shows that.

2 Q. So I'm going to now turn us back to the
3 beginning of ground 1, actually not quite the very
4 beginning, to the light-blocking section, which I
5 believe starts on paragraph 27. And just while
6 you're flipping the page, if you can just confirm on
7 the bottom of page 14 that the section we're talking
8 about is the light-blocking layer limitation of
9 claim 1?

10 A. Yes.

11 Q. So you might want to just turn back for
12 one more minute. Claim 1 requires that the
13 light-blocking layer be constructed for the
14 recyclable shrink label to block at least 80 percent
15 of incident light having wavelengths in a range of
16 200 nanometers to 900 nanometers, correct?

17 A. That is what it states.

18 Q. Okay. You do not dispute any of the
19 measurements that Dr. Reitman took of the Gatorade
20 label, correct?

21 MR. SITLER: Objection; form.

22 MS. STONE: I'll revise my question.

23 Q. You and Dr. Reitman don't have a dispute
24 on the math and the numbers regarding the
25 measurement of light transmittance through certain

<p style="text-align: right;">Page 106</p> <p>1 portions of the label, correct?</p> <p>2 You might want to look at paragraph 33 of</p> <p>3 your report.</p> <p>4 A. Mine?</p> <p>5 Q. Yeah. Might circumvent the answer.</p> <p>6 A. I'm not sure what that paragraph is --</p> <p>7 I'm not sure how that helps. What I was looking for</p> <p>8 was a figure from Dr. Reitman's report that contains</p> <p>9 the UV-vis analysis.</p> <p>10 * * *</p> <p>11 (Court reporter interrupts for clarification.)</p> <p>12 * * *</p> <p>13 A. UV-vis, V-I-S, short for visible.</p> <p>14 Q. And are you looking at figure C28?</p> <p>15 A. No, 29.</p> <p>16 Q. 29. Okay.</p> <p>17 A. C29. Integrated, spectrally-resolved</p> <p>18 transmission measurements -- transmittance</p> <p>19 measurements of different regions of the Gatorade</p> <p>20 label.</p> <p>21 Q. Okay. So I am going to turn your</p> <p>22 attention to the last sentence in paragraph 33 of</p> <p>23 your report. In paragraph 33 of Exhibit 1046, the</p> <p>24 last sentence reads, "The parties' measurements of</p> <p>25 the light-blocking regions are thus consistent; the</p>	<p style="text-align: right;">Page 108</p> <p>1 declaration, no.</p> <p>2 Q. Okay. Where the dispute is on this claim</p> <p>3 limitation is that you and Dr. Reitman appear to</p> <p>4 have a dispute regarding the understanding of the</p> <p>5 claim limitation requiring light blocking in claim</p> <p>6 1.</p> <p>7 A. Dr. Reitman and have a dispute on the</p> <p>8 area coverage.</p> <p>9 Q. The area coverage and how that relates to</p> <p>10 the light-blocking limitation of claim 1?</p> <p>11 A. I think the light-blocking limitation of</p> <p>12 claim 1 is well agreed upon by both of us in that</p> <p>13 the light-blocking material blocks greater than 90</p> <p>14 percent of the light as demonstrated on figure C29</p> <p>15 of her report.</p> <p>16 Q. Okay. Your understanding -- strike that.</p> <p>17 Your opinion is that the light-blocking</p> <p>18 requirement regarding blocking 80 percent of the</p> <p>19 incident light from 200 nanometers to 900 nanometers</p> <p>20 only applies to the light-blocking component of the</p> <p>21 label, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. In the Gatorade label you have</p> <p>24 identified aluminum as the light-blocking component;</p> <p>25 correct?</p>
<p style="text-align: right;">Page 107</p> <p>1 disagreement concerns only patent owner's</p> <p>2 area-weighting construction, which, for the reasons</p> <p>3 given above, is contrary to the claim language and</p> <p>4 the specification of the '422 Patent," correct?</p> <p>5 A. That is what it reads, yes.</p> <p>6 Q. So my understanding is that for this</p> <p>7 claim limitation you're not disputing the</p> <p>8 measurements or the math of Dr. Reitman's opinions,</p> <p>9 you're disputing the understanding of the claim</p> <p>10 language; is that fair?</p> <p>11 MR. SITLER: Objection; form.</p> <p>12 A. For the most part. The reason I'm being</p> <p>13 pedantic about that is that her measurements go down</p> <p>14 to 200 and our stop at 220. The specific instrument</p> <p>15 called in the patent only measures down to 220</p> <p>16 nanometers, requires a different integrating sphere</p> <p>17 to get down below that. So her instrumentation</p> <p>18 measured differently than ours did but -- so when</p> <p>19 you're talking about the math of these things, I</p> <p>20 think maybe that's a minor point, but it's a</p> <p>21 difference in how the measurements were conducted.</p> <p>22 Q. Okay. You're not saying that the</p> <p>23 measurements Dr. Reitman took are incorrect or</p> <p>24 scientifically wrong, correct?</p> <p>25 A. Based on the information presented in her</p>	<p style="text-align: right;">Page 109</p> <p>1 A. As I recall, that sounds right.</p> <p>2 Q. And if you want to refer to your first</p> <p>3 declaration for that, you're welcome to. If it</p> <p>4 would be helpful, I can direct your attention to</p> <p>5 Exhibit 1014 paragraph 65.</p> <p>6 A. 65 you said?</p> <p>7 Q. Yes.</p> <p>8 A. Okay.</p> <p>9 Q. So we can agree that the component that</p> <p>10 you have identified as the light-blocking component</p> <p>11 in the Gatorade label is aluminum, right?</p> <p>12 A. Yes.</p> <p>13 Q. Your opinion is that only the aluminum in</p> <p>14 the Gatorade label must block at least 80 percent of</p> <p>15 incident light from 200 to 900 nanometers, right?</p> <p>16 A. I don't know if I would phrase it that</p> <p>17 way.</p> <p>18 Q. How would you phrase it?</p> <p>19 A. Other layers may be possible to block</p> <p>20 light to some extent, but the main light-blocking</p> <p>21 component is the aluminum layer, which needs to</p> <p>22 block 90 percent of the incident light.</p> <p>23 Q. So you only took a section of the label</p> <p>24 from the Gatorade label to evaluate this claim</p> <p>25 limitation that contained silver ink, correct?</p>

<p style="text-align: right;">Page 110</p> <p>1 A. The portion of the Gatorade label would 2 have contained all of the layers represented in the 3 figures in my first declaration but would have 4 contained the aluminum layer. 5 Q. Okay. You did not take a measurement 6 where there was only white ink, correct? 7 A. As I understand it, that area would not 8 contain the light-blocking layer. 9 Q. You identified the white pigment in the 10 Gatorade label as the high opacity layer, correct? 11 A. I believe that's correct, yes, if I 12 recall. 13 Q. Okay. And that included the titanium 14 dioxide, right? 15 A. That was the titanium dioxide. 16 Q. Okay. Under your understanding of the 17 limitation that requires the label to block 80 18 percent of incident light from 200 to 900 19 nanometers, is it your opinion that the 20 light-blocking layer must block that or the label 21 must block that? 22 MR. SITLER: Objection; form. 23 A. It would be the light-blocking layer on 24 the label. 25 Q. If you had a label that had one square</p>	<p style="text-align: right;">Page 112</p> <p>1 that aluminum meets this limitation, right? You've 2 offered that opinion in this case? 3 A. Dr. Reitman and I have both stated that. 4 Demonstrated that, excuse me. 5 Q. If you covered a label, 80 percent of it, 6 with aluminum and 20 percent of the label was 7 completely clear, would it meet this limitation in 8 your opinion? 9 A. If the light-blocking layer, the aluminum 10 layer blocks up to 90 percent of incident light, 11 then that light blocking portion of the label would 12 meet the claim limitation. 13 Q. And that is regard- -- sorry, strike 14 that, I've asked that question. 15 If you wanted to evaluate the light 16 transmittance of the entire label, how would you do 17 that? 18 A. Using the equipment that I used for -- in 19 my first declaration, specifically the Shimadzu 20 2600i UV-Vis? 21 Q. And how would you get a calculation for 22 the entire label given the limitations of that 23 equipment? 24 A. No, that was what I was asking you. You 25 asked me if I wanted to measure the transmittance of</p>
<p style="text-align: right;">Page 111</p> <p>1 centimeter of aluminum and the rest of the label was 2 covered in white ink made of titanium dioxide, would 3 you only evaluate that one square centimeter of 4 aluminum in order to determine whether the label 5 blocked at least 80 percent of incident light having 6 wavelengths in a range from 200 nanometers to 900 7 nanometers? 8 A. I would test the portion of the label 9 that contained the stated light-blocking layer. 10 Q. Regardless of how big or small that 11 section of the label was. 12 A. Correct. 13 Q. You would agree with me that it would be 14 possible to have a label where the entire label was 15 not covered but the label as a whole blocked 80 16 percent of incident light from 200 to 900 17 nanometers, right? 18 MR. SITLER: Objection; form. 19 A. Is it possible to create a label in which 20 80 percent of it is covered by light-blocking 21 lighting component? 22 Q. Yes, that's essentially what I'm asking 23 you. 24 A. I would assume that's possible. 25 Q. Okay. If you covered -- you've stated</p>	<p style="text-align: right;">Page 113</p> <p>1 an entire label and I said using a specific 2 instrument. 3 Q. Sorry. I understood the last -- I 4 understood your answer to say I would do so using 5 this equipment; not asking me a question. 6 A. No. Sorry. That was a clarification 7 from you I was hoping for. 8 Q. Yes. Let me re-ask so that now we have 9 an understanding. 10 If you wanted to measure the light 11 transmittance of the entire label, how would you do 12 that? 13 A. So the instrument that was used only has 14 a space for a small portion of the label. So you 15 couldn't just take the entire label and load it into 16 the instrument to analyze transmittance. So you 17 would have to do representative sections. 18 Q. And then how would you account for the 19 representative sections in order to establish the 20 light transmittance of the entire label? 21 A. What do you mean how would I account for 22 it? 23 Q. How would you translate the measurements 24 of the representative samples in order to determine 25 the light transmittance of the entire label?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. So you would pick representative samples 2 and assume that the transmittance of that 3 representative sample was equal for all other 4 similar parts. 5 Q. And that's exactly what Dr. Reitman did, 6 correct? 7 A. I believe that's what she did with the 8 white, orange and clear portions, right. 9 Q. And also the silver portion, correct? 10 A. Yeah, there's a silver on there, too. 11 Q. So can you please turn to paragraph 29 of 12 your second declaration. About halfway through 13 paragraph 29 you have a citation to the 14 specification of the '422 Patent regarding the high 15 opacity layer. 16 Can you let me know when you see that? 17 A. "Thus, the '422 Patent" -- wait, where do 18 you want me to start? 19 Q. So I'm looking at the sentence that 20 starts, "The specification further explains that." 21 It's about six lines down. 22 A. There it is. 23 Q. So we're on the same page now, same line? 24 A. Yes. 25 Q. Okay. In paragraph 29 of your second</p>	<p style="text-align: right;">Page 116</p> <p>1 light-blocking component as well; am I understanding 2 that correctly? 3 MR. SITLER: Objection; form. 4 A. You're saying the purpose of this, "This 5 specification includes parallel statements for the 6 other printed layers" quote? 7 Q. So I'll re-ask my question without 8 pointing to this. 9 In your measurements of light 10 transmittance of the samples that you took, the high 11 opacity layer that was contained in that sample 12 would have also contributed to some of the 13 light-blocking effects that were evaluated; is that 14 fair? 15 MR. SITLER: Objection; form. 16 A. I can't as I sit here today say which 17 layer blocked which amount of light except to say 18 that both layers are present, both layers were 19 tested equally, and 90 percent of light was not 20 transmitted. 21 Q. I'm going to turn your attention to 22 Exhibit 1001, the '422 Patent again. 23 Let me know when you've got it. 24 A. Yep. 25 Q. So can you please turn to the claim 1</p>
<p style="text-align: right;">Page 115</p> <p>1 declaration you point to the specification of the 2 '422 Patent to state, "In some embodiments, the high 3 opacity layer forms a pattern of discrete dots of 4 light-blocking component." 5 You did not evaluate the high opacity 6 layer in connection with this claim limitation, 7 right? 8 A. The high opacity layer was a portion of 9 the label that was evaluated. 10 Q. When you say the high opacity layer was 11 part of the portion that was evaluated, are you 12 talking about the high opacity layer being with -- 13 like, stacked on top of or below the silver ink; is 14 that what you're referring to? 15 A. Yes. 16 Q. Okay. So your understanding of the 17 percent light transmittance that you took of the 18 silver portion is that there was both a 19 light-blocking layer containing aluminum and a high 20 opacity layer containing titanium dioxide; is that 21 correct? 22 A. Yes. 23 Q. And so the purpose of that sentence in 24 your declaration is that the high opacity layer 25 titanium dioxide could also be acting as a</p>	<p style="text-align: right;">Page 117</p> <p>1 claim language, which is on column 28. 2 A. Okay. 3 Q. So the limitation in claim 1 that we've 4 been talking about regarding light blocking requires 5 that "The light-blocking layer being constructed for 6 the recyclable shrink label to block at least 80 7 percent of incident light having wavelengths in the 8 range of 200 nanometers to 900 nanometers," correct? 9 A. Yes. 10 Q. Okay. And so this claim limitation 11 requires the label to block at least 80 percent of 12 incident light having wavelengths in the range of 13 200 nanometers to 900 nanometers, correct? 14 MR. SITLER: Objection; form. 15 A. That's how it's written. 16 Q. Can you turn to column 6, please. And 17 I'm going to turn your attention to column 6, lines 18 58 and 59. Let me know when you're there. 19 A. Okay. 20 Q. So the '422 specification states, "It is 21 desirable that the label blocks light (e.g., ambient 22 light and sun light, e.g., from 200 nanometers to 23 900 nanometers)," correct? 24 A. That is what it states. 25 Q. Can you please turn to column 13, line</p>

<p style="text-align: right;">Page 118</p> <p>1 24. 2 A. 24, you said? 3 Q. And actually I think that's incorrect. I 4 think I meant 48 -- 13, 48. Sorry. Actually, 24 is 5 correct. Let me know when you're there. 6 A. Okay. 7 Q. And this says: According to an 8 embodiment, the label containing the light-blocking 9 layer blocks at least 80 percent of incident light, 10 correct? And then there's several other higher 11 numbers that can be qualified -- 12 A. Yes. 13 Q. -- is that fair? And then if you look at 14 column 13 line 45 it states, "The amount of light 15 being blocked by the label may be measured using 16 UV-VIS" spectrometer -- "spectrophotometer, such as 17 the Shimadzu model UV-2600i," correct? 18 A. Yes. 19 Q. Each of the specification statements that 20 we just went through discuss the label itself 21 blocking 80 percent of incident light, correct? 22 A. Yes. 23 Q. All right. Can we turn back to your -- 24 actually, sorry, we're going to stay in the patent 25 for a second. Can you turn to column 2.</p>	<p style="text-align: right;">Page 120</p> <p>1 we looked at a few minutes ago, correct? 2 A. Yes. 3 Q. Can you tell me where in this sentence, 4 "It is desirable that the label blocks light (e.g., 5 ambient light and sun light, e.g., from 200 6 nanometers to 900 nanometers) such that the contents 7 of a container covered by the label can be protected 8 from light," that it specifically requires only 9 measurement of the light-blocking layer for that 10 evaluation? 11 MR. SITLER: Objection; form. 12 A. It doesn't specifically require the 13 light-blocking layer. 14 Q. Can we turn to column 2. In column 2 at 15 line 32 there's a discussion of the recyclable 16 shrink label including PET, and then it states, "In 17 some cases, the PET forms the outermost layer of the 18 recyclable shrink label," correct? 19 A. That is what it says, yes. 20 Q. Okay. So this is contemplating that not 21 all cases would require the PET to be on the 22 outermost portion of the label, correct? 23 MR. SITLER: Objection; form. 24 A. Okay. 25 Q. So we can agree that you could print ink</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Sorry. On your previous question, can 2 you read it back? 3 Q. The court reporter can do so. 4 * * * 5 (Whereupon, Reporter read pending question.) 6 * * * 7 A. So I said yes, but it occurred to me that 8 you said label itself, and the document, the '422 9 Patent does not say the label itself. It just says 10 the label. 11 Q. I understand. What is your distinction 12 between the label and the label itself that you're 13 making in that answer? 14 A. When you say the label itself, it makes 15 me think of the entire printed label containing all 16 the designs and everything else. Whereas, in the 17 patent it says the label which is non-specific to 18 the area. So that would be any portion of the label 19 that contains the light-blocking layer. But when 20 you throw "itself" in there, to me that encompasses 21 more than what the '422 Patent is covering. 22 Q. Can you turn back to column 6, please. 23 And specifically line 57 -- or sorry, 58 and 59. 24 A. Yes. 25 Q. So this is a section of the specification</p>	<p style="text-align: right;">Page 121</p> <p>1 on the outside of the PET film as compared to the 2 container, right? 3 A. I believe the layering order is discussed 4 in figures 1A through E. 5 Q. You're ahead of me. I was going there 6 next. If you could look at the figures, and if you 7 want to go to column 17 to confirm, I believe that 8 in the figures the item 120 is the film, is the PET 9 film. 10 A. Yes, 120 is the PET film. 11 Q. So you would agree with me that in 12 figures 1A through 1E that the film that is 13 designated as 120 is not the outermost layer of each 14 of these embodiments, correct? 15 A. Correct. 16 Q. These figures demonstrate that you can 17 print layers on the portion of the film that faces 18 the container as well as portions of the film that 19 face away from the container, correct? 20 A. Yes. 21 Q. All right. Let's -- you can put aside 22 the patent for now. MCC is the manufacturer of the 23 Gatorade label, correct? 24 A. As I understand it. 25 Q. And would you expect MCC to have</p>

<p style="text-align: right;">Page 122</p> <p>1 information regarding the inks that it uses in the</p> <p>2 Gatorade label?</p> <p>3 MR. SITLER: Objection; calls for</p> <p>4 speculation.</p> <p>5 A. Would I expect them to have information</p> <p>6 on the inks?</p> <p>7 Q. Yes.</p> <p>8 A. That are contained in the Gatorade label?</p> <p>9 Q. Yes.</p> <p>10 A. I suppose as a manufacturer they may, but</p> <p>11 I'm not privy to what the manufacturer does or</p> <p>12 doesn't know.</p> <p>13 Q. Did you ask MCC who is the entity that</p> <p>14 you're testifying on behalf of today for information</p> <p>15 regarding the particle size of the aluminum used in</p> <p>16 the Gatorade label?</p> <p>17 A. I don't recall.</p> <p>18 Q. Can you turn to paragraph 35 of your</p> <p>19 second declaration. So in this section of your</p> <p>20 declaration you're discussing the claim 1 limitation</p> <p>21 that requires "the light-blocking component</p> <p>22 comprises a particle having a particle size of 0.1</p> <p>23 microns to 100 microns," correct?</p> <p>24 A. That is what it states.</p> <p>25 Q. Okay. And in paragraph 38 you rely on --</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Can you go back to paragraph 38 of</p> <p>3 your report. So in paragraph 38, the last sentence</p> <p>4 is, "Thus, the flake is the particle and I measured</p> <p>5 the flake to determine its particle size," right?</p> <p>6 A. Yes.</p> <p>7 Q. You measured the layer of aluminum to</p> <p>8 establish particle size, correct?</p> <p>9 A. To establish particle thickness, yes.</p> <p>10 Q. Okay. And then you used particle</p> <p>11 thickness as a proxy for particle size, correct?</p> <p>12 A. So in the images that are in my first</p> <p>13 declaration from the testing, the specific dimension</p> <p>14 that is measured is the thickness. The other</p> <p>15 dimension that's visible would be the length, and</p> <p>16 that can be inferred from the scale bar in the</p> <p>17 image. So it's not a direct measurement, but the</p> <p>18 scale bar's still there for measurement.</p> <p>19 Q. You have an opinion in paragraph 40 where</p> <p>20 you say that the claims don't require an evaluation</p> <p>21 of the average particle size.</p> <p>22 Do you see that?</p> <p>23 A. Say it again?</p> <p>24 Q. In paragraph 40 of your second</p> <p>25 declaration you state that the claims don't include</p>
<p style="text-align: right;">Page 123</p> <p>1 or sorry.</p> <p>2 Turning to paragraph 38 in that section,</p> <p>3 you rely on Exhibit 1050, correct? Sorry. Yeah.</p> <p>4 A. 1050 is a citation in Exhibit (sic) 38.</p> <p>5 MS. STONE: I'm going to hand you</p> <p>6 Exhibit 1050.</p> <p>7 * * *</p> <p>8 (Deible Deposition Exhibit 1050 was marked for</p> <p>9 identification.)</p> <p>10 * * *</p> <p>11 THE WITNESS: Thank you.</p> <p>12 BY MS. STONE:</p> <p>13 Q. So there is a date on the top corner of</p> <p>14 this document that is June 17, 2026, correct?</p> <p>15 A. Yes.</p> <p>16 Q. That's the same day that your report was</p> <p>17 signed for your second declaration, correct?</p> <p>18 A. I believe so, yeah.</p> <p>19 Q. I didn't see another date on this</p> <p>20 document. Can you just confirm whether you know</p> <p>21 whether there is a date of this article?</p> <p>22 A. (Witness reviewing.) I don't see</p> <p>23 anything that looks like a date otherwise.</p> <p>24 Q. Okay. Did you review this document</p> <p>25 before your report was signed?</p>	<p style="text-align: right;">Page 125</p> <p>1 average particle size diameter, right?</p> <p>2 A. I see where you are in this, yes.</p> <p>3 Q. Is your opinion that a single aluminum</p> <p>4 flake that meets this claim limitation would be</p> <p>5 sufficient for this claim even if all other aluminum</p> <p>6 flakes in the claim fell outside of the claimed</p> <p>7 range?</p> <p>8 MR. SITLER: Objection; form.</p> <p>9 A. So, there are multiple flakes visible in</p> <p>10 the various images that were collected in my first</p> <p>11 declaration. Some were explicitly measured for</p> <p>12 thickness. But that is what I believe to be</p> <p>13 representative of the pigment particles that would</p> <p>14 be in this type of ink.</p> <p>15 Q. So I understand you to be talking about</p> <p>16 the Gatorade label. I'm talking generally about how</p> <p>17 you understand the claim limitation. So the claim</p> <p>18 limitation requires "the light-blocking component</p> <p>19 comprises a particulate having a particle size of</p> <p>20 0.1 microns 100 microns," and then you say that you</p> <p>21 don't need to take an average. So my question is,</p> <p>22 if one aluminum flake met this claim limitation but</p> <p>23 every other aluminum flake in a label -- a</p> <p>24 hypothetical label did not meet the claim</p> <p>25 limitation, would that be sufficient for this</p>

<p style="text-align: right;">Page 126</p> <p>1 limitation to be taught?</p> <p>2 MR. SITLER: Objection; form.</p> <p>3 A. So the claim limitation doesn't describe</p> <p>4 an average. So if you were to measure a label that</p> <p>5 had, for instance, multiple particle sizes that are</p> <p>6 larger than 100 and only one, we'll say slightly</p> <p>7 more than one because the image contains more than</p> <p>8 one particle of that particular size, then that</p> <p>9 would meet the claim limitation of particulate size.</p> <p>10 Q. So if we look at paragraph 41, I believe</p> <p>11 you cite to another exhibit, Exhibit 1051.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 MS. STONE: I'm going to hand you 1051.</p> <p>15 * * *</p> <p>16 (Deible Deposition Exhibit 1051 was marked for</p> <p>17 identification.)</p> <p>18 * * *</p> <p>19 THE WITNESS: Thank you.</p> <p>20 BY MS. STONE:</p> <p>21 Q. Do you recognize Exhibit 1051?</p> <p>22 A. Yes.</p> <p>23 Q. Did you review it before your declaration</p> <p>24 was signed?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 128</p> <p>1 but you understand that anticipation requires the</p> <p>2 teaching to be in a single prior art reference, and</p> <p>3 here you're relying on the Gatorade label, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Let's turn to paragraph 119.</p> <p>6 A. Okay.</p> <p>7 Q. So this section, you're talking about</p> <p>8 claim 14, right?</p> <p>9 A. Yes.</p> <p>10 Q. And claim 14 requires "An article</p> <p>11 comprising: A container comprising PET and defining</p> <p>12 an external surface; and the recyclable shrink label</p> <p>13 of claim 1 disposed on the container," correct?</p> <p>14 A. That is what it states, yes.</p> <p>15 Q. Okay. And then in paragraph 119 you</p> <p>16 state I understand from Mr. Bushman's declaration to</p> <p>17 which the Gatorade labels were affixed are</p> <p>18 recyclable PET bottles, correct?</p> <p>19 A. That is what's stated in 119.</p> <p>20 Q. And then you cite Exhibit 1013,</p> <p>21 paragraph 53, correct?</p> <p>22 A. Yes.</p> <p>23 Q. I think you still have Exhibit 1013</p> <p>24 somewhere in front of you; could you please grab</p> <p>25 that for me.</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. I don't see a date on Exhibit 1051</p> <p>2 either. Could you just please look through it and</p> <p>3 let me know if you've identified a date by which</p> <p>4 this document was published.</p> <p>5 A. (Witness reviewing.) It says, "Printed</p> <p>6 in Germany 03/11."</p> <p>7 Q. Are you on the last page?</p> <p>8 A. Yeah, right above the picture on the</p> <p>9 left.</p> <p>10 Q. Okay. And so do you understand that to</p> <p>11 be a date?</p> <p>12 A. I guess I don't really know. It just</p> <p>13 says, "Printed in Germany CS 03/11." It looks like</p> <p>14 a date, but it could be anything.</p> <p>15 Q. Okay. You can put that aside. We're</p> <p>16 going to turn now to paragraph 12 of your second</p> <p>17 declaration. Let me know when you're there.</p> <p>18 A. Yep.</p> <p>19 Q. So in paragraph 12 you state, "Ground 1</p> <p>20 demonstrates that claims 1 through 3 and 5 through</p> <p>21 19 of the '422 Patent are anticipated by the</p> <p>22 Gatorade label under" USC -- 35 USC Section 102,"</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And I think we discussed this last time,</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Okay.</p> <p>2 Q. And I'd like to direct your attention to</p> <p>3 paragraph 53, which is the paragraph you cite in</p> <p>4 your declaration paragraph 119.</p> <p>5 A. Okay.</p> <p>6 Q. And can you go ahead and just quickly</p> <p>7 read through paragraph 53 for me.</p> <p>8 A. "The Gatorade label is a shrink" --</p> <p>9 Q. Oh. Sorry. I meant to yourself, but you</p> <p>10 can read out loud if you want.</p> <p>11 A. (Witness reviewing.) Okay.</p> <p>12 Q. Okay. Do you see anywhere in</p> <p>13 paragraph 53 where Mr. Bushman states that the</p> <p>14 bottle to which the Gatorade labels were affixed are</p> <p>15 recyclable PET bottles?</p> <p>16 A. I do not see the word bottle in this</p> <p>17 sentence -- in this paragraph 53.</p> <p>18 Q. Okay. I'm going to turn your attention</p> <p>19 to the next page of the declaration. Do you see an</p> <p>20 image on the bottom of page 24 of Exhibit 1013?</p> <p>21 A. Yes.</p> <p>22 Q. And that image shows a Gatorade label</p> <p>23 with a bottle, correct?</p> <p>24 A. Yes.</p> <p>25 Q. If you look at the label, the flavor of</p>

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1 this Gatorade is indicated to be orange; correct?

2 A. Yes.

3 Q. Did you test any Gatorade labels at any

4 point during your work on this case that were

5 orange?

6 A. All of the testing that I did was

7 contained in my first declaration, and those flavors

8 are outlined in that declaration, which I don't

9 recall at this time the flavors. I guess we can

10 look. There should be a picture of as-received

11 photographs.

12 Q. And you're in exhibit -- we're on the

13 same page. You're in Exhibit 1014 Appendix B,

14 figure 1?

15 A. Yes.

16 Q. And these are a little tough to read, but

17 it does not appear that either of the Gatorade

18 flavors that you tested were orange, correct?

19 A. I can't really read it in this picture so

20 I don't know -- I don't remember specifically what

21 flavors they were.

22 Q. Okay. We'll keep moving. Exhibit 1013

23 is where I'm going next. You can go back to that,

24 and then if you could turn to paragraph 58. So in

25 paragraph 58 Mr. Bushman does say "The containers to

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1 which the Gatorade labels are attached are found in

2 the image above," correct?

3 A. Yes.

4 Q. He doesn't identify that those containers

5 were made of PET in that statement, correct?

6 A. That statement does not contain PET.

7 Q. And there's no way to tell from the image

8 on the bottom of page 24 if that container contains

9 PET?

10 A. There's no way to say if this contains

11 PET.

12 Q. Correct. And you never tested any

13 container in the context of this case to determine

14 whether it contained PET, correct?

15 A. All the testing data is included in the

16 first deposition -- the declaration which did not

17 contain testing of the bottle.

18 Q. How long did you prepare for today's

19 deposition?

20 A. Total?

21 Q. Yeah.

22 A. Maybe 10 or 15 hours, approximately.

23 Q. Did you meet with anyone to prepare for

24 today's deposition?

25 A. Counsel.

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1 Q. Did you meet with anyone other than

2 counsel?

3 A. Not that I recall.

4 Q. Did you discuss any of the testing with

5 any internal folks at RJ Lee Group?

6 A. Discuss any of the testing?

7 Q. Just in order to prepare, did you talk to

8 anyone internally about the testing or anything that

9 you performed in relation to this case?

10 A. Not that I recall.

11 Q. Okay. Did you review any documents in

12 preparation for your deposition today that we did

13 not discuss?

14 A. Not that I recall. All the documents

15 reviewed are contained in the declaration.

16 Q. Slightly different question that I asked,

17 so I want to make sure we're clear. When you say,

18 All the documents I reviewed are contained in the

19 declaration, you're including documents that were

20 cited in the declaration, correct?

21 A. Yeah, from my review for today's

22 deposition I would have reviewed the declaration and

23 potentially any of the documents cited within the

24 declaration. No other documents.

25 Q. My question's a little bit different. Do

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1 you recall reviewing any documents in preparation

2 for your deposition today that we have not discussed

3 today?

4 A. Not that I recall.

5 MS. STONE: Can we take a ten-minute

6 break?

7 MR. SITLER: Yep.

8 THE VIDEOGRAPHER: Time is now 2:16. Off

9 the record.

10 * * *

11 (Whereupon, a brief recess was taken.)

12 * * *

13 THE VIDEOGRAPHER: Time is now 2:29.

14 Back on the record.

15 MS. STONE: I have no further questions

16 for you today.

17 MR. SITLER: I have no redirect.

18 MS. STONE: Wonderful. Thank you so much

19 for your time.

20 VIDEOGRAPHER: This concludes the

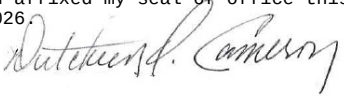
21 deposition. The time is 2:29. We are off the

22 record.

23 MR. SITLER: Read.

24 COURT REPORTER: A rough draft?

25 MS. STONE: Yes, please.

<p style="text-align: right;">Page 134</p> <p>1 COURT REPORTER: And two-day expedite?</p> <p>2 MS. STONE: Yes.</p> <p>3 COURT REPORTER: Same for you?</p> <p>4 MR. SITLER: Yes, please.</p> <p>5 * * *</p> <p>6 (Signature not waived.)</p> <p>7 (Whereupon, the above-entitled matter was</p> <p>8 concluded at 2:29 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</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 136</p> <p>1 Case: Multi Color Corporation vs Brook & Whittle Limited</p> <p>2 Witness Name: Dr. Michael Deible</p> <p>3 Deposition Date: 07/16/2026</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 2026 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>
<p style="text-align: right;">Page 135</p> <p>1 COMMONWEALTH OF PENNSYLVANIA)</p> <p>2 COUNTY OF WESTMORELAND)</p> <p>3 I, Dutcheen O. Cameron, Registered Merit</p> <p>4 Reporter-Certified Realtime Reporter and Notary</p> <p>5 Public in and for the Commonwealth of Pennsylvania,</p> <p>6 do hereby certify that the witness, DR. MICHAEL</p> <p>7 DEIBLE, was by me first duly sworn to testify the</p> <p>8 truth, the whole truth, and nothing but the truth;</p> <p>9 that the foregoing deposition was taken at the time</p> <p>10 and place stated herein; and that the said</p> <p>11 deposition was recorded stenographically by me and</p> <p>12 then reduced to typewriting under my direction, and</p> <p>13 constitutes a true record of the testimony given by</p> <p>14 said witness, all to the best of my skill and</p> <p>15 ability.</p> <p>16 I further certify that the inspection,</p> <p>17 reading and signing of said deposition were not</p> <p>18 waived by counsel for the respective parties and by</p> <p>19 the witness and if after 30 days the transcript has</p> <p>20 not been signed by said witness that the witness</p> <p>21 received notification and has failed to respond and</p> <p>22 the deposition may then be used as though signed.</p> <p>23 I further certify that I am not a relative,</p> <p>24 or employee of either counsel, and that I am in no</p> <p>25 way interested, directly or indirectly, in this</p> <p>action.</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand and affixed my seal of office this 19th day of</p> <p>July, 2026</p> <p></p> <p>_____ Dutcheen O. Cameron, RMR, CRR</p>	<p style="text-align: right;">Page 137</p> <p>1 Digital Evidence Group, L.L.C.</p> <p>2 1730 M Street, NW, Suite 812</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 SIGNATURE PAGE</p> <p>7 Case: Multi Color Corporation vs Brook & Whittle Limited</p> <p>8 Witness Name: Dr. Michael Deible</p> <p>9 Deposition Date: 07/16/2026</p> <p>10 I do hereby acknowledge that I have read</p> <p>11 and examined the foregoing pages</p> <p>12 of the transcript of my deposition and that:</p> <p>13 (Check appropriate box):</p> <p>14 () The same is a true, correct and</p> <p>15 complete transcription of the answers given by</p> <p>16 me to the questions therein recorded.</p> <p>17 () Except for the changes noted in the</p> <p>18 attached Errata Sheet, the same is a true,</p> <p>19 correct and complete transcription of the</p> <p>20 answers given by me to the questions therein</p> <p>21 recorded.</p> <p>22</p> <p>23 _____ DATE _____ WITNESS SIGNATURE</p> <p>24 _____</p> <p>25 _____ DATE _____ NOTARY</p>

1 Errata Sheet

2 NAME OF CASE: Multi Color Corporation vs Brook & Whittle Limited

3 DATE OF DEPOSITION: 07/16/2026

4 NAME OF WITNESS: Dr. Michael 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 ____

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23 From ____ to ____

24

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