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

4 -----
5 MEDLINE INDUSTRIES, INC.,

6 Petitioner

7 v.

8 PAUL HARTMANN AG

9 Patent Owner

10
11
12 Case IPR2013-00173

13 Patent U.S. 8,152,788
14 -----

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16
17 VIDEOTAPED DEPOSITION OF

18 ARRIGO D. JEZZI

19 Thursday, August 15, 2013

20 9:30 a.m.
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23
24

25 Reported by: Adrienne M. Mignano, RPR
Job Number: 336516

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Paul Hartmann AG
Exhibit 2005, Page 1
Medline v. Hartmann
Case IPR2013-00173

August 15, 2013

9:30 a.m.

New York, New York

Videotaped Deposition of ARRIGO D.

JEZZI, held at the offices of PROSKAUER

ROSE, Eleven Times Square, New York, New

York, pursuant to Notice, before Adrienne M.

Mignano, a Notary Public of the State of New

York.

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A P P E A R A N C E S:

LAUBSCHER & LAUBSCHER, P.C.

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New York, New York 10036

BY: ANTHONY C. COLES, ESQ.

ALSO PRESENT:

KRISTEN ZARNETSKE
Legal Video Specialist

DAVID NOSKOWICZ
Medline Industries, Inc.

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1
2 THE VIDEOGRAPHER: This is tape
3 number one of the videotaped
4 deposition of Mr. Arrigo D. Jezzi,
5 taken by patent owner, in the matter
6 of Medline Industries, Inc.,
7 petitioner, versus Paul Hartmann, AG,
8 patent owner, in the United States
9 Patent and Trademark Office, Before
10 the Patent Trial and Appeal Board,
11 Case Number IPR2013-00173.

12 This deposition is being held on
13 August 15, 2013 at approximately 10:05
14 a.m.

15 My name is Kristin Zarnetske.
16 I'm a legal videographer representing
17 Esquire Deposition Solutions. The
18 court reporter also in association
19 with Esquire is Adrienne Mignano.

20 This deposition is being held at
21 the firm Proskauer Rose, at 11 Times
22 Square, New York, New York.

23 Will counsel present please
24 introduce themselves for the record.

25 MR. COLES: Anthony Coles for

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Paul Hartmann AG, the patent owner.

MR. SPENDLOVE: Robert Spendlove
of Laubscher & Laubscher on behalf of
Medline, the petitioner.

THE VIDEOGRAPHER: Thank you.

Would the court reporter please
swear in the witness.

A-R-R-I-G-O D. J-E-Z-Z-I, called as a
witness, having been duly sworn
by a Notary Public, was examined and
testified as follows:

EXAMINATION BY

MR. COLES:

Q Good morning, Mr. Jezzi.

A Good morning.

Q Would you please state your name
for the record.

A Arrigo D. Jezzi.

Q Thank you.

And your home address?

A 169 Upland Terrace, Bala Cynwyd,
PA 19004.

Q And you were retained by Medline
to appear today?

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1 Jezzi
2 A Correct.
3 MR. COLES: I'd like to enter
4 document number 25. It is a revised
5 deposition notice of petitioner's
6 declarant.
7 BY MR. COLES:
8 Q Mr. Jezzi, have you seen this
9 document before?
10 A Yes, I have.
11 Q Okay.
12 And do you understand that you
13 are appearing today pursuant to this
14 notice?
15 A Correct.
16 Q Okay.
17 Do you understand that you're
18 testifying under oath today and it is no
19 different than if you were testifying in
20 Court?
21 A Yes.
22 Q If you don't understand a
23 question, please ask for clarification; is
24 that okay?
25 A Yes.

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1	Jezzi
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2	Q	Okay.
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3 Otherwise, I'll assume you have
4 heard and understood my question.

5 You must give audible responses
6 to the questions so the reporter can
7 record what you say. Nodding your head or
8 shrugging your shoulders is not sufficient
9 for the court reporter.

10 Because the court reporter is
11 taking down everything we say, I'll try
12 not to speak over you, and please wait
13 till I finish my questions before you
14 speak.

15 Is there any reason you might
16 not be able to testify fully and honestly
17 today?

18	A	No.
----	---	-----

19	Q	Okay.
----	---	-------

20 No alcohol this morning?

21 A No, I'm fine.

22 Q No medications that would affect
23 your testimony?

24 A No, I'm fine.

25	Q	Okay.
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1 Jezzi

2 Did you do anything to prepare
3 for today's deposition?

4 A Yes.

5 Q What did you do?

6 A Basically I reviewed the patents
7 that we had on the declaration. I reread
8 the declaration, and I had the opportunity
9 to read the decision that the board
10 provided.

11 Q Did you meet with anyone?

12 A I met with Robert Spendlove
13 about two weeks ago just to discuss the
14 documents that we just discussed, that we
15 just mentioned.

16 Q Did you speak with anyone at
17 Medline?

18 A Actually, no. I mean, we spoke
19 with David occasionally to coordinate the
20 meeting, but he was not involved in any
21 one-on-one discussions.

22 Q Okay.

23 And which patents did you
24 review?

25 A Which patents? Basically I

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1 Jezzi
2 reviewed -- there were 15 patents in the
3 declaration, if I recall the number. I
4 didn't review in a lot of detail the ones
5 that were viewed as cumulative, which were
6 mostly the folding patents, but I reviewed
7 Belau, Goates, Karami '722, Karami '129,
8 Bruemmer, Shingu. Most of the ones that
9 were relevant and that were in the
10 declaration.

11 Q Did you review --

12 A Excuse me, Benning and the
13 Beckert as well.

14 Q Have you ever been deposed
15 before?

16 A Once, but not in a patent case.
17 It was a bankruptcy case.

18 Q Were you a fact or expert
19 witness?

20 A I was a fact witness deposed by
21 the equity committee on a bankruptcy case
22 for Paragon Trade Brands.

23 Q Have you ever testified at
24 trial?

25 A No.

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1 Jezzi

2 Q Have you ever been considered to
3 be retained as an expert for other cases
4 but not retained?

5 A Repeat the question again.

6 Q Have you ever been considered to
7 be retained as an expert for other cases
8 but not retained?

9 A Yes.

10 Q Okay.
11 How many times?

12 A Once.

13 Q Do you know why you were not
14 retained?

15 A Relationship with the client was
16 considered as a potential problem, so they
17 dismissed me.

18 Q You mean a conflict of interest?

19 A Yeah, I guess it would be that.

20 Q Okay.
21 Have you ever provided any other
22 opinions in connection with a litigation?

23 A I was involved as expert witness
24 in other cases that went to trial.

25 Actually that were in effect. They did ^{800.211.DEPO (3376)}
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1 Jezzi
2 not go to trial, but I was an expert
3 witness in at least three other cases.
4 Q Can you tell me what those three
5 cases are?
6 A They're history. There was a
7 case Tredegar against Applix on elastic
8 ears. There was another case Tredegar
9 against 3M on elastic ears. And there was
10 another one Valor Brands against Kimberly
11 Clark.
12 Q All right.
13 So the first case you discussed
14 was -- what was the name of that company?
15 A Tredegar and Applix.
16 Q Tredegar.
17 And you were retained by which
18 company?
19 A By Applix.
20 Q And Applix was the plaintiff or
21 defendant?
22 A Defendant.
23 Q And this was a patent
24 infringement case?
25 A Correct.

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1 Jezzi

2 A Tredegar against 3M -- or 3M
3 against Tredegar. Tredegar was the
4 defendant.

5 Q And you represented -- and you
6 were --

7 A I was retained by Tredegar this
8 time.

9 Q Okay.

10 And Tredegar was accused of
11 infringing a 3M patent?

12 A Several 3M patents.

13 Q And what did those patents
14 pertain to?

15 A It was the material that went
16 into an elastic ear. They were material
17 and process patents.

18 Q And what was the result of that
19 case?

20 A It went through a Markman
21 Hearing on claim construction. Tredegar
22 prevailed on the definition of the claims,
23 which made them not infringe. 3M has
24 appealed that. I don't know the status of
25 it today.

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1 Jezzi

2 Q And you did not provide any
3 testimony in this case?

4 A No.

5 Q Did you provide an expert
6 report?

7 A Yes.

8 Q And was the expert report
9 relating to infringement?

10 A The -- I don't remember whether
11 the expert report was submitted or not.
12 We prepared an invalidity opinion for the
13 attorneys for Tredegar.

14 Q Did you provide any testimony or
15 reports regarding the claim
16 interpretation?

17 A No. It was all support work to
18 the attorneys.

19 Q Did you prepare a report that
20 was submitted to the court?

21 A We did prepare a report. I
22 don't know whether it was submitted to
23 court or not.

24 Q Do you still have a copy of that
25 report?

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1 Jezzi

2 A I don't think so. I deleted
3 most of my files at the request of the
4 attorneys when the case was terminated.

5 Q And the third case you mentioned
6 was what?

7 A That was a diaper ear design
8 case. Valor Brands, which is a diaper
9 converter, against Kimberly Clark, Keiper
10 Patent '298.

11 Q What is a diaper converter?

12 A Someone who makes a diaper.

13 Q And you represented -- I'm
14 sorry, you were retained by which --

15 A Valor Brands.

16 Q And Valor Brands was the
17 plaintiff or defendant?

18 A They were a defendant.

19 Q And they were accused of
20 infringing a Kimberly Clark patent?

21 A Correct.

22 Q And was it just one patent?

23 A One patent.

24 Q And did you provide a report?

25 A Noninfringement report.

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1 Jezzi

2 Q And was that given to the court?

3 A I believe it was. This case was
4 settled out of court.

5 Q When did you first learn about
6 Hartmann's U.S. Patent 8152788?

7 A The Beckert patent?

8 Q Correct.

9 A David Noskowicz called me and
10 asked me to look at the patent. So I
11 don't remember when that was. Two, three
12 years ago. Two years ago maybe,
13 year-and-a-half. I don't remember the
14 time.

15 Q Okay.

16 If I refer to that patent as the
17 '788 patent, you'll understand which
18 patent I'm talking about?

19 A Beckert '788, yes.

20 Q Okay.

21 So when Mr. Noskovicz contacted
22 you two or three years ago about this
23 patent, what was -- let me say that again.

24 When Mr. Noskowicz contacted you
25 two or three years ago, what did he ask?
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Jezzi

you to do?

MR. SPENDLOVE: Objection.

Mischaracterizes the testimony.

Q You may answer the question.

A Repeat that.

Q You can answer the question.

A Okay.

I actually don't remember. I mean, the latest contact on that patent was done I believe early this year, which was basically mentioned that Hartmann had written them a letter and was basically trying to assert the patent. I do recall that.

The reason I say that I don't remember the earlier conversations is because I have done prior art searches for Medline on occasion and this patent could have come up on some of those prior art searches. I don't remember because they included several -- I mean dozens of patents in some of the areas that I was asked to search.

But I do recall the

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1 Jezzi
2 conversations we had earlier this year on
3 the subject, which is basically working
4 with Robert Spendlove on trying to figure
5 out what do we do with the patent and
6 whether the patent was valid or not.

7 Q So when you first learned --
8 MR. COLES: Strike that.

9 Q So you first learned about this
10 patent when Mr. Noskowicz brought it to
11 your attention?

12 A That's correct.

13 And let me be specific. As part
14 of my consulting practice, I do a lot of
15 prior art searches, so it may be possible
16 that I have come -- came across this
17 patent before that, but it was not an
18 isolated issue with the patent. It was
19 part of a broader survey. So I don't
20 remember what we discussed at the earlier
21 time. I do remember the conversations we
22 had within the last, let's say, five to
23 six months.

24 MR. SPENDLOVE: As we're getting
25 kind of into this area, I'll just 800.211.DEPO (3376)
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1 Jezzi
2 caution the witness not to reveal any
3 of the content of any discussions that
4 you have had with counsel.

5 Q Prior to your involvement in
6 this inter partes review, did you prepare
7 any report or written material regarding
8 the '788 Patent?

9 A No.

10 Q Did you perform a patent search
11 regarding this --

12 MR. COLES: Let me strike that
13 again.

14 Q Prior to your involvement in
15 this IPR, did you perform a patent
16 validity search on the '788 Patent?

17 A No, not a patent validity
18 search.

19 Q Did you do another type of
20 search?

21 MR. SPENDLOVE: Again, any work
22 that was done, even if it wasn't
23 directly related to this IPR, may be
24 covered by the attorney-client
25 privilege, and I would just caution

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1 Jezzi
2 you not to reveal the content of any
3 discussions or materials you may have
4 provided.

5 MR. COLES: Are you saying the
6 fact that he did a search is
7 privileged?

8 MR. SPENDLOVE: Yes, it may be.

9 MR. COLES: So you're
10 instructing him not to answer that
11 question?

12 MR. SPENDLOVE: Yes.

13 Don't answer that question.

14 Q When were you first contacted
15 with respect to this review?

16 A I'm going to say earlier this
17 year. I don't remember the exact month.
18 I believe -- we submitted the declaration
19 I believe in February, so it probably was,
20 let's say, end of December or January.
21 I'm guessing at these dates. Exactly I
22 don't remember.

23 Q And who contacted you about the
24 IPR?

25 A The first contact was through **800.211.DEPO (3376)**
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1 Jezzi

2 David.

3 Q And were you asked to provide
4 any opinion?

5 A Pardon me?

6 Q Did Mr. Noskowicz ask you to
7 provide any opinion?

8 A I don't provide opinions. I'm
9 not a patent attorney. So I just -- when
0 I do a prior art search or something like
1 that, I just provide patents.

2 Q And you were ultimately retained
3 to work on the IPR?

4 A Correct.

5 Q And who retained you?

6 A Medline.

7 Q And what were you retained to
8 do?

9 A Basically provide support to
0 Robert on the inter partes review.

1 Q Okay.

2 And how do you view your role in
3 this IPR?

4 A Meaning?

5 Q What do you think is your job?

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1 Jezzi

2 A Primarily provide technical
3 support or technical interpretation to the
4 information that is provided in the
5 patents that we did. I also did a prior
6 art search to try to find out prior art
7 that would invalidate Beckert '788, which
8 was part of the declaration.

9 Q So it was your role to find that
10 the '788 Patent is invalid?

11 A Correct.

12 MR. SPENDLOVE: Object again.

13 I'll caution the witness to not
14 divulge any details of any of the
15 conversations or the information
16 that's been communicated.

17 Q Mr. Jezzi, are you being
18 compensated for your participation in the
19 IPR?

20 A Yes.

21 Q Okay.

22 Do you submit invoices?

23 A I submit invoices.

24 Q And to whom do you submit the
25 invoices?

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1 Jezzi

2 A On this one, I have not
3 submitted it yet, so -- I guess that's to
4 be determined. Yeah, to be determined; I
5 have not submitted the invoice for the
6 work.

7 Q And to date, do you know about
8 how many hours you've spent working on the
9 IPR?

10 A Yes, I do. I keep an activity
11 log. And don't ask me what the hours is
12 because I don't remember.

13 Q Is it more than 50 hours?

14 A Probably. I can't throw out a
15 number because I don't -- but I do have a
16 log that I keep. I just haven't tallied
17 it.

18 Q Is it more than 20 hours, do you
19 think?

20 A It's probably in the 20 to 50
21 hour range, I'm guessing.

22 Q Okay.

23 A Probably more. I don't have a
24 number to give you.

25 Q Okay.

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1 Jezzi

2 Are you being compensated for
3 your testimony here today?

4 A Yes.

5 Q Did anyone place any
6 restrictions on what you ought to do in
7 regard to this IPR?

8 A No.

9 Q Have you had any restrictions on
10 what information you could review?

11 A No.

12 Q How did you determine what to
13 review?

14 A Basically I figured that the
15 line of questioning would be specific to
16 the patents that we submitted in the
17 declaration and their interpretation. So
18 I focused on that and the documents that
19 basically discussed those.

20 Q When you prepared your
21 declaration, how did you determine what
22 documents you would use in your
23 declaration?

24 MR. SPENDLOVE: Objection.

25 Again, we're getting into information. **800.211.DEPO (3376)**
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Jezzi

that's implicated by the
attorney-client privilege.

So don't answer that.

Q Were there any restrictions on
how much time you could spend preparing
the declaration?

A No.

Q Are there any caps on the cost
for your work in connection with the IPR?

A No.

Q When you were retained for this
IPR, did you perform a prior art search?

MR. SPENDLOVE: Objection.

Again, we're getting into information
that has to do with attorney work
product and attorney-client privilege.

So I would ask you not to answer
that.

MR. COLES: I'm just trying to
find out where he obtained his -- the
prior art references that are in his
report and how he prepared his report.

MR. SPENDLOVE: I understand the
point of the question. I'm saying **800.211.DEPO (3376)**
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1 Jezzi
2 that the process that went into
3 deciding what was in the report and
4 what wasn't and what was included and
5 how the approach was done is certainly
6 within the scope of the attorney work
7 product and certainly covered by the
8 restrictions on drafts and other
9 things that cover expert reports under
10 the PTAB, so I'm instructing him to
11 not answer that.

12 Q Mr. Jezzi, did you prepare the
13 report --

14 A Yes, I did.

15 Q -- your declaration?

16 In preparing the report, did you
17 type it?

18 A I sent -- I did the draft, yes,
19 on the word processor basically.

20 Q Did you write the first draft of
21 the report?

22 A Yes, I did.

23 Q In preparing your report, did
24 you review any products?

25 A Yes, I did.

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Jezzi

Q Did you review any Medline products?

A Yes, I did.

Q Did you review any Hartmann products?

A No, I did not.

Q Which Medline product did you review?

A It's one called -- it is a brief design that basically had side parts and mechanical fasteners.

Q Do you recall if it was called the FitRight?

A I do not recall the name.

Q Did you review any other products?

A No, I did not.

Q Have you done other work for Medline prior to this IPR?

A Yes, I have.

Q Have you provided any testimony?

A No.

Q Do you have any acquaintances at Medline?

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1 Jezzi

2 A No.

3 Professional acquaintances, yes,

4 obviously.

5 Q Any prior colleagues from your

6 career?

7 A None that I worked with

8 beforehand.

9 Q Okay.

10 Any relatives work at Medline?

11 A Any what?

12 Q Relatives.

13 A No.

14 Q Are any of your innovations or

15 work product incorporated into any Medline

16 product?

17 A No.

18 MR. COLES: Can we go off the

19 record for one second?

20 THE VIDEOGRAPHER: The time is

21 10:28 a.m. We're going off the

22 record.

23 (Thereupon, a recess was taken,

24 and then the proceedings continued as

25 follows:)

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1 Jezzi

2 THE VIDEOGRAPHER: The time is

3 10:28 a.m. We're back on the record.

4 MR. COLES: I'd like to enter a

5 document previously marked as Exhibit

6 1018.

7 BY MR. COLES:

8 Q Which is -- I'll give you the

9 long name: "Declaration under 35 USC

10 Section 311-319 and 37 CFR Section 42 of

11 Arrigo D. Jezzi Supporting the Invalidity

12 of U.S. Patent Number 8152788".

13 A Okay.

14 Q You have seen this document

15 before?

16 A Yes.

17 Q If I refer to this as your

18 declaration, you'll understand that's the

19 document I'm talking about?

20 I'd like to jump to Appendix A

21 at the back of your declaration.

22 A Okay.

23 Q Let me know when you're there.

24 And Appendix A is your

25 curriculum vitae; is that correct?

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1 Jezzi

2 A Correct.

3 Q You received a Bachelor of
4 Science in chemical engineering at Drexel;
5 is that correct?

6 A Correct.

7 Q What kind of classes did you
8 take in your chemical engineering?

9 A All the basic requirements for
10 chemical engineering, which included
11 almost a math minor, a chemistry minor,
12 plus all the prerequisite chemical
13 engineering courses starting with
14 stoichiometry, mass balances, all the way
15 through, you know, plant design.

16 Q Did you take physics?

17 A Many courses in physics.

18 Q Calculus?

19 A Many courses in calculus. Four
20 separate courses, probably 16 to 20
21 credits.

22 Q Okay.

23 And from 1970 to 1976, you were
24 a manager of process services at Scott

25 Paper Company; is that correct?

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Jezzi

A That is correct.

Q Your CV says that you were responsible for mill technical services, process control, and development of new paper making process for the production of Squad kitchen towels.

 Do you see that?

A Repeat that.

Q It says you --

 MR. COLES: Strike that.

Q Your CV says that you were responsible for mill technical services, process control, and development of new paper making process for the production of Squad kitchen towels.

A Correct.

Q Were you an inventor of that paper making process?

A No.

Q Your CV also says that you worked in wet laid consumer tissue manufacturing.

 Do you see that?

A There are two different

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1 Jezzi
2 processes to make paper.

3 One is using water, which is
4 sometimes referred to as wet laid, which
5 is the process that's made to use existing
6 toilet tissue like Cottonelle and Charmin.

7 And there is a aidlaid paper
8 making process, which was used -- it is a
9 relatively different process that was used
10 in this particular case to make Job Squad
11 and the Baby Fresh baby wipes.

12 Q It says you worked as a process
13 engineer; is that correct?

14 A That is correct.

15 Q What is a process engineer?

16 A The responsibility for that
17 particular role was to develop and
18 commercialize the process, which basically
19 was taking it from a start-up mode to
20 commercial operating levels.

21 Q And what is involved in that?

22 A Basically you try to optimize
23 the process. You try to make it run
24 faster with reduced waste and meeting the
25 quality specifications.

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1 Jezzi

2 Q And what do you mean by "reduced
3 waste"?

4 A Basically when you start up a
5 new process like this one, your waste
6 levels sometimes are in very high levels,
7 like in the 20 percent, which are not
8 commercial, so you try to reduce them to
9 down to 10, under 10, to five, four.

10 Q And by "waste", do you mean
11 material?

12 A Material that is outside of the
13 quality specifications and does not meet
14 specs, so that you cannot sell it.

15 Q And your CV says in 1976 you
16 left Scott Paper Company and you joined
17 American Can Company; is that correct?

18 A Correct.

19 Q Why did you leave Scott Paper
20 Company?

21 A Say it again.

22 Q Why did you leave Scott Paper
23 Company?

24 A At that time, I was in Sandusky,
25 Ohio, and we did not like the city. It **800.211.DEPO (3376)**
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1 Jezzi
2 was a small city, population 30,000, that
3 doubled in the summer to 60,000. So we
4 left because of the geography primarily.

5 Q Your CV says that you
6 "coordinated the multi-functional efforts
7 of the commercialization of 100MM" -- that
8 means a hundred million?

9 A A hundred million, yes.

10 Q -- "commercialization of 100MM
11 project in new aidlaid nonwoven
12 technology."

13 Do you see that?

14 A Yes.

15 Q Were you an inventor of that
16 aidlaid nonwoven technology?

17 A No, I was not.

18 Q And what was this new aidlaid
19 nonwoven technology?

20 A It was a variant of the one
21 below it. It was an aidlaid again using
22 air as the medium to disperse the
23 cellulose fibers to make a paper
24 substrate. So it was a different
25 technology from Denmark. It was licensed

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1 Jezzi
2 to a Danish inventor, and our job again
3 was basically to commercialize that
4 technology, which we did.

5 Q Your CV also says you had line
6 responsibilities for manufacturing a
7 process development --

8 A I had production
9 responsibilities. That's what that means.

10 Q And what are production
11 responsibilities?

12 A Basically in an operation there
13 are people who support the operation, such
14 as process engineers, people who run the
15 operations, which basically have the
16 accountability for the budget, for the raw
17 material budgets and the production
18 schedules and volumes, et cetera, and I
19 had both of those responsibilities in this
20 assignment.

21 Q Okay.

22 And your CV says that you left
23 American Can Company and joined Burlington
24 Industries in 1981; is that correct?

25 A Correct.

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1	Jezzi
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4 A American Can Company was a
5 company that was like a mini-conglomerate,
6 and they basically had put the paper
7 division up for sale, and various buyers
8 were looking at the assets of the paper
9 division separately, and I thought they
10 were going to split up the company, so I
11 thought it was a good opportunity to leave
12 Green Bay for sunnier pastures such as
13 Greensboro, North Carolina, in the
14 wintertime.

20 Q Would you explain this new
21 nonwoven technology?

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1 Jezzi
2 the fabric to compete with a duPont
3 material called Sontara for medical
4 purposes and home furnishing applications.

5 Q What is a carded technology?

6 A Carded is when you take a staple
7 fiber, a polymeric fiber, that is cut to a
8 certain length, typically around two
9 inches, and it is combed or opened in a
10 carding device, which is a roller machine
11 that has serrated appurtenances sticking
12 out, okay, like a saw, and basically it
13 combs the fibers and forms them into a
14 uniform web.

15 It's the same technology used to
16 make yarn, just instead of a filament,
17 they make a web out of it.

18 Q Your CV says in 1983, you left
19 Burlington Industries and you joined
20 Kimberly Clark; is that correct?

21 A Correct.

22 Q And why did you leave
23 Burlington?

24 A Basically the project that we
25 had was defunded by Burlington senior 800.211.DEPO (3376)
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1 Jezzi
2 management. They felt that the capital
3 costs for that technology were too high
4 and it really did not fit the technology
5 portfolio of a conventional textile
6 company. So I had an opportunity present
7 itself with Kimberly Clark and I took it.

8 Q Your CV says that you
9 "commercialized and developed two thin
10 maxi products, precursors to the ultra
11 thin design".

12 Do you see that?

13 A For Fem Care, yes.

14 Q Are you the inventor of that?

15 A No, I was not.

16 If you notice the resume, there
17 are several -- commercialized means you
18 took to commercialization. Co-invented
19 means exactly that. And developed means
20 that you were involved from, you know, the
21 invention typically from someone in your
22 group towards the commercialization phase.

23 So there are different facets of
24 the work that I have done that basically
25 fit those three categories.

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1 Jezzi

2 Q Okay.

3 And in 1985, you changed your
4 position?

5 A I was promoted to director of
6 nonwoven material development at Kimberly
7 Clark in Roswell, Georgia.

8 Q It says that you "supported
9 international companies in development and
10 startup of bonded carded web processes and
11 materials".

12 Do you see that?

13 A That's correct, yes.

14 Q What does it mean to support
15 international companies?

16 A Basically that department had
17 responsibilities internationally as well,
18 and we were the technical core group doing
19 R&D and technical support for the
20 international nonwoven operations that the
21 company had. In this particular case,
22 those were in Korea, South Korea.

23 Q It also says --

24 MR. COLES: Strike that.

25 Q Your CV also says that you

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1 Jezzi
2 "developed and commercialized a new fiber
3 geometry spunbond diaper liner".

4 Do you see that?

5 A That's correct, yes.

6 Q And what is involved in
7 developing and commercializing a --

8 A Basically this group had over 80
9 people, and one of the groups that we were
10 managing had the responsibility to
11 commercialize spunbond, which is one of
12 the materials that we will probably talk
13 about more. It is a nonwoven, it is a
14 continuous polypropylene filament, and
15 this effort was basically to use a
16 different geometry hole to create a
17 different geometry fiber that gave
18 different properties for the applications
19 of that nonwoven.

20 Q Is cost effectiveness important
21 in developing and commercializing a new
22 product?

23 A Yes.

24 Q And why is that?

25 A Well, if you -- it is easy to

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1 Jezzi
2 commercialize something and spend as much
3 money as you can doing it and you can't
4 sell it because you can't make money. So
5 in every one of these programs in the
6 industry, we tend to balance cost
7 effectiveness so that we have a profit at
8 the end of the day when we sell the
9 material. So it is a balancing act of
10 trying to do both basically, new materials
11 at an effective cost.

12 Q Okay.

13 And in 1987, your position
14 changed; is that true?

15 A That's correct. I was
16 transferred back up to Nina, Wisconsin as
17 director of infant care business support,
18 which was basically the Huggies short-term
19 group, meaning that it was basically doing
20 technical support and product development
21 for the existing product that was being
22 sold.

23 Q Okay.

24 And your CV says you "developed
25 and implemented the him/her Huggies

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1 Jezzi

2 product"?

3 A Yes.

4 Q What is a him/her Huggies
5 product?

6 A Gender specific boy/girl, and
7 basically we were given a charge to come
8 up within less than six months a product
9 to compete with the gender specific
10 Pampers that was out there, and that was
11 that project.

12 Q Your CV says you "commercialized
13 tape landing zone nontransfer layer
14 improved nonwoven waist elastic and new
15 improved leg gathers diapers".

16 A Correct.

17 Q Do you see that?

18 A Yes.

19 Q What is a tape landing zone?

20 A A tape landing zone was a second
21 generation closure system attachment.

22 What it basically was in order to reduce
23 the cost of the film back sheet to reduce
24 the basis weight of the film to make it
25 thinner, you were limited because the

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1 Jezzi
2 would rupture the back sheet if it went
3 too thin. So the concept, the idea was to
4 put a patch of another film on top of it
5 only in the target zone where you were
6 attaching the tape, so that you could
7 refasten it without tearing the back
8 sheet.

9 Q And what is tape in this
10 context?

11 A Tape is a piece of film.
12 Usually it was polypropylene film. It was
13 probably around one-and-a-half mils thick
14 and it had adhesive and it was attached to
15 the back sheet.

16 Q And what is that tape used for?

17 A Basically that's a reinforcing
18 patch for the adhesive tape to go on it,
19 and that's called the tape landing zone.

20 Q And the tape is used to close
21 the diaper on?

22 A Correct. The tape would be
23 attached to that tape landing zone to
24 provide the closure.

25 Q Okay.

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1 Jezzi
2 Previously you said you want the
3 film back sheet to --

4 MR. COLES: Strike that.

5 Q Previously you testified that
6 you want the basis weight of the film to
7 be reduced to make the film thinner?

8 A For cost reduction.

9 Q And how does making the film
10 thinner reduce cost?

11 A You have less materials so it is
12 almost proportional.

13 Q According to your CV, in 1989,
14 your responsibilities at Kimberly Clark
15 changed; is that correct?

16 A That's correct. I was
17 transferred to a different group. That
18 was adult care incontinence.

19 Q According to your resume, you
20 "conceived, developed and commercialized
21 Poise bladder control pads that are
22 currently 180MM business for the company";
23 is that correct?

24 A That's correct.

25 Q What is conceived, developed and commercialized
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1 Jezzi

2 commercialized?

3 A Basically I had the idea for the
4 product and basically took it through
5 fruition and commercialized it.

6 Q Are you an inventor of this?

7 A We couldn't patent that. I
8 conceived the idea basically. I was the
9 one who originated the project, but we
10 felt that there was a lot of prior art and
11 could not get patents on that design.

12 Q According to your CV, you also
13 became director, infant care advanced
14 product development.

15 Do you see that?

16 A Correct.

17 Q Can you tell me what years you
18 were at that position?

19 A Basically at that time the
20 Huggies franchise had three R&D groups,
21 and it was basically a business support,
22 which was short-term existing product
23 which I described earlier. The second
24 group was the product development, which
25 was in a two-year mode. And then the

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1 Jezzi
2 advanced was the five-year mode products.
3 So we were looking at long-term diaper
4 designs for the Huggies franchise.

5 Q And you were in this position of
6 director of infant care advanced product
7 development for how long?

8 A Oh, about six months. I left
9 after that.

10 Q Okay.

11 According to your CV, in 1993,
12 you left Kimberly Clark and you joined
13 Confab, Incorporated?

14 A That was a private label company
15 in King of Prussia, PA, yes.

16 Q And why did you leave Kimberly
17 Clark to go to Confab?

18 A I was zigzagging up the career
19 advancement line, and I had an offer for a
20 vice-presidency at a smaller company, and
21 King of Prussia is next to my hometown of
22 Philadelphia, so we took the opportunity
23 at that time.

24 Q Okay.

25 According to your CV, in 1994

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1 Jezzi

2 you left Confab; is that correct?

3 A Correct.

4 Q And where did you go from there?

5 A Basically I started consulting.

6 If you look, it follows up on the
7 consulting side. The key client at that
8 time was Paragon Trade Brands, and after
9 some period consulting, I joined them full
10 time. And, again, it was just a bigger,
11 better job.

12 Q Between August 1994 and October
13 of 1995, what was your role at Paragon
14 Trade Brands?

15 A In October of '95, I basically
16 started out at -- I have to look at the
17 schedule. I started out in R&D product
18 development. I had purchasing as well.
19 And so that was the original position that
20 I had in corporate materials and
21 technology it was called.

22 And then I picked up
23 international and then I picked up the
24 operations and engineering groups later as
25 I went through career advancement at

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1 Jezzi

2 Paragon.

3 Q Your CV says that "it controls
4 about 70 percent of the baby diaper
5 private label/store brands".

6 Do you see that?

7 A Yes.

8 Q Is that still the case today?

9 A Paragon Trade Brands employed it
10 as a result of a patent infringement
11 lawsuit that occurred at the end of 1998,
12 I believe. And as a result of that, a
13 venture capital firm purchased them and
14 then they were resold to Tyco.

15 So at this time, Paragon does
16 not exist. It was bought out ultimately
17 as part of First Quality, and I do not
18 know First Quality's baby diaper share,
19 but it is probably a little bit less than
20 that, maybe 50 percent. The market has
21 grown though from those numbers in
22 absolute volume.

23 Q Okay.

24 And when you left Paragon Trade
25 Brands in April 1999, what did you do? *800.211.DEPO (3376)*
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1 Jezzi

2 A Basically at that time the
3 company was under bankruptcy, and I joined
4 Clipay Plastic Products as vice-president
5 of global technology, and I also had
6 international responsibilities with them.

7 Q According to your CV, you "led
8 development effort for a new elastomeric
9 film and laminate"?

10 A Yes.

11 Q Were you an inventor on that?

12 A No, I was not. I have some
13 patents in some materials on the elastic
14 side, not the laminate side. So no, that
15 material was already patented and we were
16 in the throes of commercializing it.

17 Q And one --

18 MR. COLES: Strike that.

19 Q Your CV says you are skilled in
20 intellectual property management?

21 A Yes. I think since -- basically
22 after starting with Kimberly Clark, I
23 would probably say that 20 to 25 percent
24 of my responsibility or my time was spent
25 on IP management of one sort of another

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1 Jezzi
2 So it is a very active as part of the role
3 as product developer at Kimberly Clark,
4 and subsequently even in private label, to
5 be engaged with intellectual property
6 matters.

7 Q Okay.

8 And what experience do you have
9 in intellectual property management?

10 A Well, basically starting with
11 Kimberly Clark, we were very sensitive to
12 IP matters there. So we had four lawsuits
13 with Proctor & Gamble, which Kimberly
14 Clark prevailed on all four counts.

15 We were involved in one of them
16 very actively supporting that particular
17 litigation from a technical standpoint,
18 which basically provides the data to the
19 lawyers so they can use to verify their
20 position against the IP that was there.

21 Chairing IP steering committees
22 in particular areas of diaper
23 construction. We had broken the diaper
24 into various areas, and director or
25 manager basically presided over those

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1 Jezzi
2 committees, and we looked, for instance,
3 at tape closure systems or looked at
4 absorbent core or what have you, and then
5 we looked at the disclosures that were
6 submitted by the scientific body of the
7 company and determined which to patent,
8 which not to patent, et cetera.

9 So those are some of the
10 responsibilities. As I grew into chief
11 technical officer, which were the VPs of
12 R&D positions, we determined strategies of
13 where to patent, what countries, getting
14 disclosures out. We looked at issues of
15 infringement and invalidity. We did write
16 to practice support work for the attorneys
17 when we launch new products.

18 Q And you said you looked at tape
19 closure systems?

20 A That was part of the diaper, so
21 yes.

22 Q And what were you looking at
23 tape closure systems with respect to
24 intellectual property management?

25 A At Kimberly Clark, actually

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1 Jezzi
2 happened to be the area that I was
3 managing, that I was supporting for a
4 period of time, maybe a year, and we
5 basically looked at the disclosures that
6 were being submitted by the scientists,
7 product developers, and then we basically
8 looked at it and prioritized them, and
9 then determined which ones to patent or
10 not to patent. Basically also looking at
11 the technology behind these concepts and
12 the potential for commercialization and
13 consumer benefit.

14 Q What is the consumer benefit of
15 a tape closure system?

16 A Well, there are two. One, it
17 basically holds the diaper in place so it
18 doesn't fall off the baby. That is a
19 primary function. The other benefits that
20 we looked at were trying to fix the
21 negatives that these systems had, such as
22 lotion contamination as an example, where
23 when applying the tape, adhesive tape to
24 the baby, the mother contaminated the tape
25 and it wouldn't stick, and that was a

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1 Jezzi
2 high consumer complaint, so we were
3 addressing those technical and performance
4 issues.

5 At that time, we were actively
6 involved in mechanical fasteners and
7 mechanical closure systems, and we were
8 looking at the benefits and looking at
9 cost effectiveness of those systems
10 vis-a-vis adhesive tapes. Those were the
11 issues we were kind of looking at.

12 Q What is a mechanical fastener?

13 A Mechanical fastener is another
14 way to describe what people generically
15 call Velcro, which is a trademark. And
16 rather than use the word "Velcro", which
17 everybody relates to, we tend to define
18 them as mechanical fasteners.

19 Q Are mechanical fasteners
20 different than a tape?

21 A A mechanical fastener in the
22 industry would be differentiated over a
23 tape. A tape would be one typically with
24 adhesive as the closing mechanism. A
25 mechanical fastener would be using hook

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1 Jezzi
2 or some form of hook engagement as the
3 closure system.

4 Q And the purpose of the
5 mechanical fastener would be to hold the
6 diaper on to where?

7 A The real advantage that we saw
8 was the elimination of contamination
9 because you could not contaminate a
10 mechanical fastener with lotion or
11 anything else. If you did, it would still
12 function.

13 And the other advantage was that
14 it had very good retention forces to hold
15 the closure in place as opposed to a tape
16 that sometimes, because of the chemistry
17 of the polymer, would age or it would have
18 some chemical interaction that would not
19 provide that closure continuously.

20 Q What did you mean by "it would
21 still function"?

22 A Meaning that it would still
23 remain closed when you wanted it closed,
24 and you could refasten it several times
25 and it would still close upon multiple

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1 Jezzi
2 refastenings, which adhesive tape would
3 have some limitations to that.
4 Q And what did you mean "it had
5 very good retention forces"?
6 A Depending on what you want to
7 do, you can vary the retention forces and
8 then you could -- basically what you want
9 to do is to have the hook close and have
10 good closure forces upon three to five
11 refastenings. Having good retention
12 forces means it stays closed when you want
13 it to stay closed.

14 Q What does that mean, "stay
15 closed when you want it to stay closed"?

16 A Basically stay fastened, adhere
17 to the surface that you're engaging it to.

18 Q And that's to retain the diaper
19 on the user?

20 A Correct.

21 Q Let's look at your declaration.
22 Do you have it in front of you?

23 Is this your signature on page
24 60?

25 A I would hope so.

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1 Jezzi

2 Yes.

3 Q And who wrote this declaration?

4 A I wrote the primary draft and
5 then continued to embellish it upon
6 subsequent discussions with Mr. Spendlove.

7 Q Did anyone other than
8 Mr. Spendlove assist you in writing this
9 declaration?

10 A No.

11 Q Which portions of the
12 declaration did Mr. Spendlove write?

13 A Basically I wrote the primary
14 draft, and where Mr. Spendlove helped me
15 was in the formatting of the declaration.
16 I had experience writing invalidity and
17 noninfringement declarations before. And
18 on an inter partes review, using the term
19 grounds and things of that sort were the
20 areas that he guided me and structuring
21 how to present it.

22 Q I'm sorry, did you say you
23 prepared a report for inter partes review
24 previously?

25 A No, for invalidity and

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1 Jezzi
2 noninfringement opinions.
3 MR. COLES: Let's take a break.
4 We have to change the tape.
5 THE VIDEOGRAPHER: The time is
6 10:59 a.m. on August 15, 2013. It's
7 the end of tape number one.
8 (Thereupon, a recess was taken,
9 and then the proceedings continued as
10 follows:)
11 THE VIDEOGRAPHER: The time is
12 11:07 a.m. on August 15, 2013. This
13 is tape number two.
14 BY MR. COLES:
15 Q Mr. Jezzi, how much time did you
16 spend preparing the declaration?
17 A Again, I don't remember the
18 number, the total number of hours, but
19 probably in and out over a week.
20 Q Okay.
21 Let's turn to paragraph 6 of
22 your declaration.
23 A Which paragraph?
24 Q 6.
25 A Okay.

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1 Jezzi

2 Q Paragraph 6 lists three patent
3 publications.

4 Do you see those?

5 A Yes.

6 Q And as opposed to issued
7 patents, do you understand the difference?

8 A Yes, it's an application.

9 Q Do you know the status of these
10 patents?

11 A No -- well, let me see. I
12 abandoned the mitt-like glove for the
13 collection and disposal of pet excrement.
14 So that one is in limbo someplace because
15 I'm not acting on it.

16 Surface treatment of elastomeric
17 films with coatings to prevent -- the
18 mitt-like glove for the collection and
19 disposal of pet excrement, I have
20 abandoned pursuing it. So I don't know
21 the status. It is probably dead.

22 The methods of manufacturing
23 multilayer elastomeric laminates was under
24 Clopay, and I do not know the status. As
25 well as the second one, surface treatment

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1 Jezzi
2 elastomeric films with coatings. Those
3 were both Clopay patents and I don't know
4 the status.

5 Q Why did you abandon the
6 mitt-like glove application?

7 A There was quite a bit of prior
8 art. I wrote that patent myself. I
9 submitted it on my own, and the examiner
10 had asked a significant number of
11 questions with a lot of prior art that I
12 had not found. And I thought that the
13 cost would be very high to hire an
14 attorney to finish it.

15 And another key point was that
16 the commercialization process that I was
17 trying to use disappeared on me. The
18 contract manufacturer decided not to
19 pursue it as well. So for those two
20 reasons, I abandoned it rather than spend
21 more money.

22 Q Let's look at paragraph 3 of
23 your declaration.

24 A Okay.

25 Q Paragraph 3 lists several

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1 Jezzi
2 patents and patent publications.
3 Do you see that
4 A Yes.
5 Q Did you conduct a prior art
6 search to find these documents?
7 A I believe I did most of them,
8 yes.
9 Q Do you know if any were given to
10 you by counsel?
11 A I provided counsel with a list
12 that was longer than this actually, and as
13 a result of reviewing, we narrowed it to
14 the most -- to basically these. I do not
15 recall which were provided by counsel,
16 however.
17 Q But some may have been?
18 A Pardon me?
19 Q But some references may have
20 been?
21 A I think so, but I'm not sure
22 which ones.
23 Q Did you review everything on
24 this list?
25 A Yes.

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1 Jezzi

2 Q Did you consider anything that
3 is not listed here?

4 A We considered others that are
5 not listed here.

6 Q Did you read the entirety of the
7 documents that you list here?

8 A Repeat that. Did I read the
9 entire patent?

10 Q Correct.

11 A Yes.

12 Q Are you familiar with the terms
13 intrinsic and extrinsic evidence as they
14 relate to patent law?

15 A Briefly.

16 Q Okay.
17 What do you understand

18 "intrinsic evidence" to be?

19 A I think by definition it's my
20 understanding that it probably means what
21 is included within the specifications of
22 these patents would be intrinsic.

23 Extrinsic would be information
24 that would be outside of what would be
25 possibly included in the specification

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1 Jezzi

2 the patent.

3 Q And did you review any extrinsic
4 evidence in reaching your conclusions in
5 this declaration?

6 A No, we did not.

7 Q Okay.

8 Why not?

9 MR. SPENDLOVE: Again, we're
10 starting to get here again into
11 questions that relate to the decisions
12 and strategy, and I'll ask you not to
13 answer that.

14 Q In respect to this IPR, have you
15 considered any other information other
16 than the information in your declaration?

17 A Meaning were there other patents
18 besides these?

19 Q Any other documents or things
20 that you may have looked at subsequent
21 to --

22 A No, we only looked at patents
23 that were published and applications.

24 Q After you signed your

25 declaration, have you looked at any other

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1 Jezzi

2 documents relating to this IPR?

3 A No, I have not.

4 Correction, I have looked at two
5 other patents that were cited as
6 references in some of these just for
7 clarification in trying to understand what
8 they were discussing in the specification.

9 Q Do you know what a prosecution
10 history is?

11 A Yes, the file history. What we
12 call file history?

13 Q Correct.

14 A Yes.

15 Q Have you looked at the
16 prosecution history of the '788 Patent?

17 A Briefly.

18 Q Do you know what a continuation
19 application is?

20 A Yes.

21 Q And what do you think that is?

22 A It is basically a process that
23 is used that you can augment what is
24 claimed on a existing patent that you have
25 applied for subsequently and still

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1 Jezzi
2 maintain the date of inventorship.
3 Q Do you know if the '788 Patent
4 has any continuation applications?
5 A It is my understanding that
6 there is one, but I have not looked at it.
7 Q And have you reviewed the file
8 history of any continuation of the '788
9 Patent?
10 A No, I have not.
11 Q Have you read any documents
12 related to this IPR other than your
13 declaration and the documents cited in it?
14 A I did read the review from the
15 board on the decision that they rendered.
16 Q Since you wrote this decision,
17 have you formed any additional opinions
18 regarding the '788 Patent?
19 A Not really.
20 Q Have you received any new
21 information about the '788 patent since
22 you signed the declaration?
23 A No.
24 MR. COLES: I'm going to enter
25 what's previously been indicated as ^{800.211.DEPO (3376)}~~Esquire~~^{Solutions.com}



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Jezzi

Exhibit 1001. It is U.S. Patent
8152788 to Beckert, B-E-C-K-E-R-T, et
al.

MR. SPENDLOVE: What was the
exhibit number on this one?

MR. COLES: 1001.

BY MR. COLES:

Q Mr. Jezzi, do you have an
opinion about how the claims of this
patent should be construed?

A To answer your question, no, I
don't have an opinion. I mean, I have an
opinion on what I think of the patent or
claims, but not how they should be
construed.

Q Can we look at paragraph 18 of
your declaration?

A Okay.
Oh, we did have it. Okay. Just
trying to remember your question. Okay.
Go ahead.

Q Okay.
Have you read paragraph 18 of
your declaration?

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Jezzi

A Oh, paragraph 18?

Q Paragraph 18.

A Okay, I'm sorry. The one about Claim 14?

Q No.
(Witness reviewing document)

A Okay.

Q So is it my understanding that you have applied --

MR. COLES: Let me withdraw that.

Q Is it my understanding that paragraph 18 describes how you have interpreted the claims of the '788 Patent?

A We tried to look at the claims in the broadest understanding of what they were going after.

And to answer your previous question, on Claim 14, we felt that was confusing and we did make a comment on that. But when you asked the question originally, I didn't remember that quickly enough.

Q Okay.

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1 Jezzi
2 Can you look at Claim 1 of the
3 '788 Patent? Let me know when you have
4 read it.

5 (Witness reviewing document)

6 A Okay.

7 Q How many side parts does the
8 claim require?

9 A It basically requires two or
10 four, I believe, because they talk about
11 front side parts and rear side parts.

12 Q Does the claim require two or
13 four?

14 A They basically talk -- I mean,
15 they talk about the rear area. I'm just
16 trying to see if they bring in the front
17 area.

18 They talk about side parts and
19 the back, so I would say four.

20 Q What is a first and second side
21 edge in this claim?

22 A Basically the side of the
23 substrates, the top or the bottom of it.

24 Q What is a substrate?

25 A The substrate is the web or

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1 Jezzi
2 material that these side parts are made of
3 or the back sheet is made of or the liner
4 is made of. Most materials are X, Y
5 structured with very little Z direction,
6 and the X, Y, the top and bottom of that
7 structure is considered the outer face or
8 the faces.

9 Q In this claim, what does
10 "joined" mean?

11 A Repeat that.

12 Q What does the word "joined"
13 mean?

14 A Where are you reading?

15 Q "Side parts joined to said first
16 and second side edges."

17 A Basically attached.

18 Q Let's look at paragraph 28 of
19 your declaration.

20 A Paragraph 28. Okay.

21 Q In paragraph 28, you have a
22 sentence that reads as follows.

23 "Accordingly, one of ordinary skill in the
24 art would understand that the recited side

25 parts need not be discrete or separate *800.211.DEPO (3376)*
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1 Jezzi
2 from the main part of the chasis, but may
3 instead comprise a lateral extension of
4 one or more layers of the main part."

5 Do you see that?

6 A Yes.

7 Q Okay.

8 Is that type of lateral
9 extension of one or more layers of the
10 main part described in the '788 Patent?

11 A I don't remember. I would have
12 to look through it. I would have to go
13 through it to see if it is actually
14 specified.

15 Q Go ahead.

16 A Okay.

17 (Witness reviewing document)

18 Okay.

19 (Record read)

20 A I did not find a specific
21 reference to that when I looked at it
22 quickly.

23 Q Okay. Thank you.

24 Also in paragraph 28 of your

25 declaration, you include a quotation. *800.211.DEPO (3376)*

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Jezzi

Do you see that?

A In paragraph 28, I say what?

Q You include a quotation.

Do you see that?

A Okay.

Q Why did you include this quote in your declaration?

A Again, going back to someone who is skilled in the art and looking at a diaper construction and looking at the evolution of the diaper construction, the separate parts that are attached to the main chasis are basically a continuation of the original hourglass design of a diaper, which has lateral extensions from the main body.

Whether they are attached or part of the main body, in my opinion, it falls under doctrine of equivalence, it is constituting the same performance requirements. It is just a different way of basically demonstrating that embodiment. But to me, they accomplish the same function and that's why that

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1 Jezzi

2 included.

3 Q And what is that function that
4 they are accomplishing?

5 A Basically the side parts or the
6 lateral extensions from the main body are
7 there to cross fold and provide the leg
8 cutout openings as well as the coverage of
9 the torso so that you can provide the
10 attachment to them, to the main body to
11 fold over the chassis upon closure.

12 Q Do different materials have
13 different properties?

14 A Yes.

15 Q And could side parts of
16 different materials have different
17 properties than the back sheet?

18 A Yes.

19 Q So could they be performing a
20 different function?

21 A Typically the side parts design
22 something that was generated at Kimberly
23 Clark. The primary function of designing
24 side parts was to introduce elasticity to
25 the diaper closure system, and a way to

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1 Jezzi

2 reduce the cost of the diaper by not

3 having to have the leg cut out portion

4 result in waste.

5 Q Is reducing cost an important

6 consideration in diaper design?

7 A Absolutely.

8 Q And in your career, did you

9 always try and reduce the cost or price of

0 the products you were making?

1 A It depends where on the life of

2 the product it finds itself in. Usually

3 on a new introductory product that is not

4 the primary mission, but over time, cost

5 reduction options are always considered.

6 Q And you think that is an

7 important consideration?

8 A Yes.

9 Q This quote in paragraph 28, this

0 is not from the '788 Patent, is it?

1 A The quote is basically data.

2 Q When you say "data", you mean a

3 patent?

4 A Cited in the declaration.

5 Q Okay.

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1 Jezzi
2 And would you consider this
3 quote to be extrinsic evidence of the '788
4 Patent?

5 A I don't know how to answer that.
6 It could be; it could not.

7 Again, when you look at the
8 evolution of side parts in diaper design,
9 being, you know, the side part being a
10 normal extension of the diaper ears that
11 were formed by cutouts, I think you can
12 say intrinsic. If you take the opposite
13 argument, you can say extrinsic. So it
14 depends on how you want to position it.

15 Q In your career, have you come
16 across the word "breathability"?

17 A Absolutely, yes.

18 Q What does that mean?

19 A It means that it has moisture
20 vapor transmission or air transmission
21 through the membrane, through the
22 substrate.

23 Q What is the substrate?

24 A Typically breathability is
25 always for the most part included in

*800.211.DEPO (3376)
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1 Jezzi
2 nonwoven because it is a fiber structure
3 which is open. Breathability in back
4 sheet, most of the part tends to relate to
5 film that has micropores that allows vapor
6 to transmit through it.

7 Q In diapers, are the back sheets
8 typically breathable?

9 A Today they are. That evolution
10 occurred in the late 90s by Kimberly
11 Clark, and then followed by P&G, then
12 followed by everybody else. Mostly with a
13 breathable microporous film. And then the
14 secondary evolution of that is the
15 nonwoven film laminate that is discussed
16 in some of these patents.

17 Q Would a nonwoven film laminate
18 be more breathable?

19 A No, not necessarily.
20 Breathability is a variable and it can be
21 varied whether it is single film or as a
22 laminate. So it depends. But typically
23 lamination tends to reduce breathability
24 unless you do some other steps to it to
25 make it more breathable.

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1 Jezzi

2 A Retaining forces to me by this
3 definition means the force that the
4 mechanical fastener has on the receiving
5 material. That's viewed as a retaining
6 force, and it could be several types of
7 retaining forces measured.

8 Q And the retaining force is to
9 retain the diaper on the user?

10 A Correct.

11 Q Let's look at Claim 6 of the
12 '788 Patent.

13 A Okay.

14 Q Let me know when you have read
15 it.

16 (Witness reviewing document)

17 A Okay.

18 Q What does the word "discrete"
19 mean in the term "discrete not directly
20 connected side parts"?

21 A Discrete means separate,
22 individualized.

23 Q And what does the term "not
24 directly connected" mean?

25 A That means they are not

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1 Jezzi

2 coextensive. They are not part of the
3 chassis.

4 Q You think not directly connected
5 means not directly connected to the
6 chassis?

7 A That is -- basically that it is
8 not directly connected side parts. To me
9 that means that they are not an original
10 part of it, of the chassis.

11 Q Do you understand that the side
12 parts can be connected to each other in
13 this claim?

14 A Okay. Let me read it again.
15 (Witness reviewing document)
16 To me it means they are
17 separate, that they are four individual
18 side parts.

19 Q So when you see the words "not
20 directly connected", you mean they are not
21 directly connected to each other?

22 A That's correct.

23 Q And in Claim 6, what does the
24 word "attached" mean?

25 A What is the definition of what **800.211.DEPO (3376)**
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Jezzi

Q The word "attached".

A Joined, glued, bonded to each of
the two side edges.

Q Take a look at Claim 7 and let
me know when you have read it.

(Witness reviewing document)

A Okay.

Q What does "discrete not directly
connected side parts" mean to you in this
claim?

A The same.

Q And does the word "discrete"
have the same meaning as in Claim 6?

A Yes.

Q And does the term "not directly
connected" have the same meaning as in the
Claim 6?

A Yes.

Q And does the word "attached"
have the same meaning as in Claim 6?

A Yes.

MR. COLES: I'm going to
introduce 1007, U.S. Patent number
6936129 to Karami.

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Jezzi

BY MR. COLES:

Q Mr. Jezzi, did you read the Karami '129 Patent in its entirety?

A Yes.

Q Did you read its file wrapper?

A Pardon me?

Q Did you read its file wrapper?

A No.

Q Let's turn to paragraph 46 of your declaration.

A Okay.

Q In paragraph 46 of your declaration, you write, "However, one skilled in the art would understand that the conventional nonwoven material that are used in the laminates such as that described in Karami '129 for cloth-like outer covers are of the carded or spunbond type of nonwoven, and that these nonwoven materials offer marginal engagement/retention properties to hook mechanical fasteners when compared with landing zone material of the type positioned on the wings."

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1 Jezzi

2 Do you see that?

3 A Yes.

4 Q What is a "landing zone" that
5 you refer to?

6 A The landing zone is an
7 attachment that is added to the diaper
8 that has better affinity for attachment
9 whether it is for a tape or for a
10 mechanical fastener.

11 Q So is there a difference between
12 the tape landing zone and the landing zone
13 material described in Karami?

14 A Yes.

15 Q And what are those differences?

16 A Different material, different
17 chemistry, different composition and
18 process.

19 Q So a diaper can either have a
20 mechanical fastener or an adhesive
21 fastener to fasten the diaper around the
22 user's waist?

23 A To answer that simply, yes.

24 There are diaper designs that combine both
25 adhesive fasteners and mechanical

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1 Jezzi
2 fasteners and there are those that use
3 those systems separately.
4 Q Okay.
5 So let's go to paragraph 31 of
6 your declaration. Why don't you read that
7 and let me know when you have read it.
8 (Witness reviewing document)

9 A Okay.
10 Q In that paragraph, there is a
11 sentence that reads as follows: "Any
12 diaper that is fastened around a user's
13 waist (as opposed to being pulled up over
14 a user's legs in the manner of a training
15 pant) must have the means to mechanically
16 fasten the sides together."

17 Do you see that?

18 A Yes.

19 Q That is not a hundred percent
20 correct because it could be either
21 mechanical or adhesive?

22 A Correct.

23 Q Would you want to correct that
24 statement?

25 MR. SPENDLOVE: Objection. *800.211.DEPO (3376)*
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Jezzi

Mischaracterizes his testimony.

Q You can answer that question.

MR. SPENDLOVE: You can answer.

A I can answer?

Q Sure.

A I mean, to me we use the word "mechanically", but it could imply adhesive. I mean, this basically says any diaper that is fastened around a user's waist as opposed to being pulled over as a pull-on must have a means to fasten the side edges together. It does not have to be exclusively mechanically. It could be one of the three -- one of the two other options we discussed.

Q Okay.

Let's return to paragraph 46 of your declaration right now. And we were discussing the last sentence of your declaration, if you recall. Let me know when you're there.

MR. SPENDLOVE: I'm sorry, do you mean the last sentence of that paragraph?

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1 Jezzi
2 landing zone or the loop material for a
3 mechanical fastener, you can assume that
4 it is going to have a higher retention
5 force than a material that is not
6 specifically designed for that function.
7 That's what I mean by that.

8 So when Karami '129 uses a
9 targeted zone for mechanical fastening,
10 that zone that they are attaching to will
11 have a higher retentive force than the
12 zones that are not designed to provide
13 that benefit, even though the other ones
14 will have some form of retentive forces as
15 well.

16 Q What do you mean by "some form
17 of retentive forces"?

18 A Most nonwoven materials will
19 have some retentive forces and they vary
20 by the type of hook you use and the
21 material. And so the difference between
22 these is that Karami is adding a targeted
23 specifically designed loop material for
24 engagement as opposed to the standard
25 material that that target material is

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1 Jezzi

2 going on.

3 Q Is the carded or spunbond type
4 of nonwoven used as landing zone material?

5 A Yes. Most -- well, yes, they
6 are.

7 Q Will they offer sufficient
8 retention properties to hold the diaper
9 onto the user?

10 A I believe they do. You're
11 looking at a system approach in
12 combination with the hook that specify, so
13 it would have to be considered as a
14 combined system, but the answer would be
15 yes.

16 MR. COLES: I'm going to
17 introduce what has previously been
18 indicated as Exhibit 1006. It is a
19 U.S. Patent Publication, U.S.
20 2005/0256496 to Benning, et al.

21 BY MR. COLES:

22 Q Did you read the Benning
23 reference in its entirety?

24 A Yes.

25 Q Did you read its file wrapper **800.211.DEPO (3376)**
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1 Jezzi

2 A No, I did not.

3 Q What limitations in the '788
4 Patent, Claim 1 --

5 MR. COLES: Let me rephrase
6 that.

7 Q What limitations in Claim 1 of
8 the '788 Patent do you use Benning for in
9 your invalidity analysis?

10 A Basically the area that -- the
11 statement that said that "were in said
12 side parts and said front and/or said rear
13 area are folded upon themselves at least
14 about one folding line extending in a
15 longitudinal direction".

16 Q And any other portions?

17 A That was the primary one,
18 although there were probably other
19 descriptions in here that went against the
20 dependent claims.

21 Q Are there any elements of Claim
22 2 for which you use Benning in your
23 invalidity analysis?

24 A I don't think we used -- let me
25 look.

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Jezzi

(Witness reviewing document)

Yes, we use Benning in areas for
Claim 2 in combination with other
fasteners for obviousness.

Q In Benning, what element or
elements of the patent do you say
correspond to the claimed "closure means"?

A Repeat that again.

Q In Benning, what element or
elements of the patent do you say
correspond to the claimed "closure means"?

A I mean, paragraph 0030, page 3
of Benning covers some form of closure
means in the last three sentences.

(Witness reviewing document)

Paragraph 0055 refers to, you
know, closure systems or closing tapes.
And the tapes "interact in a releasably
adherent manner with an outside or the
front region of the main body portion".
And they do make several descriptions of a
closure system. All diapers have closure
systems.

Q And in Benning, what element

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1 Jezzi
2 elements of the patent do you say
3 corresponds to the outer face of said side
4 part?

5 A Okay. Let me understand your
6 question.

7 Which elements of Benning
8 correspond to --

9 Q Yes, to the outer face of said
10 side part of Claim 1 of the '788 Patent.

11 A I think one of them that I just
12 discussed -- let me look at it -- talked
13 about that if I recall.

14 (Witness reviewing document)

15 "The tapes (44) interact in a
16 releasably adherent manner with an outside
17 or the front region of the main body
18 portion."

19 Q So you're saying the outside of
20 the -- I'm sorry. "The outside of the
21 front region (22) of the main body portion
22 (20)" --

23 A Yeah, I think that's what that
24 means.

25 Q -- is the outer face of said ^{800.211.DEPO (3376)}
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1 Jezzi

2 side part?

3 A Uh-huh.

4 You're talking side parts.

5 Okay. Wait. Hold on.

6 And your question was

7 specifically to side parts?

8 Q Correct.

9 A Even though I can't find a
10 specific citation to side parts, when you
11 look at the drawings, it's conceivable
12 that they could attach to themselves or to
13 the other one depending on the size of the
14 side part.

15 Q I'm sorry, what is a side part?

16 A I'm just saying that, you know,
17 they didn't cite anything specifically to
18 side parts or attachment target zones that
19 they've referred, at least the ones that I
20 could find quickly here through this
21 notification, were on the main body. But
22 if you look at the drawings, if these side
23 parts are long enough, which they appear
24 to be, they could overlap and reattach to
25 each other.

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1 Jezzi
2 Q Are you saying that the Benning
3 reference does not explicitly disclose the
4 closure systems attaching to the side
5 parts?

6 A On this quick review, I did not
7 see a reference to attachment to side
8 parts.

9 Q Does Benning disclose using an
10 adhesive tape as a closure?

11 A Yes, they do.

12 Q Does Benning disclose a nonwoven
13 side part?

14 A I would think they do, but let
15 me go find it.

16 Q Take a look at paragraph 32.

17 A On what, on the declaration
18 or --

19 Q 32 of the Benning.

20 A Okay.

21 (Witness reviewing document)

22 Yes, they describe a nonwoven.

23 Q Can adhesive tape detachably
24 fasten to a nonwoven side part?

25 A Yes.

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1 Jezzi

2 Q Would it retain the diaper on
3 the user?

4 A Perhaps. Again, without -- you
5 could possibly modify the adhesive to be
6 very attachable to a nonwoven surface,
7 depending on the nonwoven surface.

8 Q Let's look at paragraph 35 of
9 your declaration.

10 In paragraph 35 of your
11 declaration, you write: "Benning
12 discloses that the side parts [material
13 sections] in the front region and rear
14 region 'extend beyond lateral longitudinal
15 edges of the main body portion and connect
16 the front region and the back region when
17 the article is worn'."

18 Do you see that?

19 A Uh-huh.

20 Q What is being connected in this?

21 A The way this is described, to me
22 it could mean it could be either connected
23 to the main body or to the side parts. It
24 depends on the girth of the individual and
25 the overlap of the ears front and back

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1 Jezzi

2 Q And does Benning describe
3 connecting to the side parts?

4 A It was not cited specifically, I
5 don't think, but they could. I mean,
6 looking at the design of the diaper, they
7 could connect to the side parts.

8 Q And why do you say that?

9 A Because it depends on the
10 consumer. You know, the reason these side
11 parts are designed the way they are and
12 sized the way they are is to provide
13 flexibility in the waist dimension that
14 these diapers can fit a certain body. So
15 if the individual is somewhat obese, you
16 will probably see side part to side part
17 connection. If the individual is thinner,
18 then it would probably fold over into
19 the -- you know, the two side parts would
20 connect to each other or connect to the
21 outer cover or to the main part of the
22 body. So it is a variable again.

23 Q When diapers are designed --

24 MR. COLES: Strike that.

25 Let's take a break.

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Jezzi

THE VIDEOGRAPHER: The time is 12:03 p.m. on August 15, 2013. This is the end of tape number two.

(Thereupon, a recess was taken, and then the proceedings continued as follows:)

THE VIDEOGRAPHER: The time is 12:10 p.m. on August 15, 2013. This is tape number three.

BY MR. COLES:

Q Mr. Jezzi, do materials with different retention properties have different costs?

A Yes.

Q And are materials with higher retention properties more expensive than materials with lesser retention properties?

A Not necessarily.

Q Why would you say "not necessarily"?

A It depends on what you're trying to do and how you're trying to apply them.

Typically materials that are specific

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1 Jezzi
2 designed for loop target zones probably
3 have a value add because they have been
4 treated or modified. So they would
5 probably be more expensive than a
6 conventional material that is not intended
7 to be used for that particular function.

8 Q Let's return to paragraph 35 of
9 your declaration.

10 And in paragraph 35, you write:
11 "In addition, Benning discloses that the
12 side parts [material sections] in the
13 front region and rear region 'extend
14 beyond lateral longitudinal edges of the
15 main body portion and connect the front
16 region and the back region when the
17 article is worn', e.g., Benning Exhibit
18 1006, Claim 26. This could only be done
19 if the closure means [tapes 44] are
20 dimensioned for detachable fastenings to
21 the outer face of the main part and to the
22 outer face of the side parts in the front
23 area."

24 Do you see that?

25 A Yes.

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1 Jezzi

2 Q Would you please explain why
3 this is so?

4 A Well, this is consistent with
5 what I had mentioned before, that
6 depending on the consumer, the side parts
7 can go either on the outer face of the
8 main part of the chasis or the body of the
9 diaper, or it can overlap and attach to
10 the other side part or to the back side
11 parts depending on the girth of the
12 individual.

13 Q And what do you mean in the
14 sentence by "detachable fastening"?

15 A All systems in diapers are --
16 provide detachable fastening, and that is
17 the ability for the diaper closure system
18 to be opened and closed multiple times for
19 repositioning of the garment on the
20 wearer.

21 Q And can a fastening system
22 detach --

23 MR. COLES: Strike that.

24 Q Can a mechanical fastening
25 system fasten to any type of material? *800.211.DEPO (3376)*
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1 Jezzi

2 A A mechanical fastening system
3 can attach to a variety of materials. It
4 is a combination performance of the design
5 of the hook as well as the design of the
6 materials to be attached, and it is a
7 pretty broad range.

8 Q What do the hooks attach to?

9 A What do the hooks attach to?
10 The original Velcro invention on this
11 mechanical fastener basically took the
12 hook material and attached itself to a
13 fibrous structure and engaged that way.

14 Q Was that fiber structure a loop?

15 A Not necessarily. It could have
16 been straight fibers. It could have been
17 a loop. It could have been a knit. Quite
18 a broad range of materials that are used
19 for this attachable surface. It could
20 have been a film with a specific
21 topography as well that in some cases have
22 been designed, but not for diapers
23 necessarily.

24 Q So in diapers, the material to
25 which the hooks engage must be a fiber

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1 Jezzi

2 A Typically they are fibrous in
3 nature. But there could be many
4 processes, several processes to make that
5 fabric or fiber structure.

6 Q And what are those processes?

7 A The original commercial loop
8 materials used in the industry were a knit
9 material. I reference Guilford Mills. 3M
10 developed a carded material that was
11 treated to provide more accentuated loops
12 which they still sell. Applix uses a knit
13 material. Kimberly Clark uses a treated
14 spunbond. You can use spunlace that is
15 apertured or treated à la Karami as well.
16 So there are quite a variety.

17 Q The hooks connect --

18 MR. COLES: Strike that.

19 Q But there are materials that
20 hooks cannot connect to; is that correct?

21 A Yes, I think there are materials
22 that hooks cannot connect to like wood and
23 concrete, yes.

24 Q Are there materials that are
25 used in a diaper to which hooks cannot

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1 Jezzi

2 connect?

3 A I would think that thick films
4 probably would fall in that category.

5 Q What is a thick film?

6 A The film that a diaper tape is
7 made of.

8 Q And a diaper tape is like an
9 adhesive tape?

10 A It is an adhesive tape. It is
11 basically a coated film that is relatively
12 thick.

13 Q And most all the materials used
14 in a diaper --

15 MR. COLES: Let me rephrase
16 that.

17 Q And hooks can connect to all
18 other materials that are used in a diaper?

19 A Basically certainly the liner,
20 the acquisition zone, the leg cuffs, the
21 outer cover if it is a nonwoven. If you
22 use a very thin film, you could probably
23 puncture it and then it would have
24 retentive forces, but that's probably
25 something you wouldn't want to do. Most

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1 Jezzi
2 films right now are nonwoven laminated.
3 So I would say that for the most
4 part, the hooks will engage to most of the
5 materials in a diaper. The absorbent
6 core, the individual unbonded cellulose
7 fibers obviously is not an engagement
8 material. It wouldn't work there as well.

9 Q And all of these materials would
10 have sufficient retention forces to hold
11 the diaper on the user?

12 A The liner, the outer cover, the
13 leg cuff, the ear material more than
14 likely. The thin film, you probably would
15 not and the diaper tape would not. But
16 most of the other ones would.

17 Q Okay.
18 You say the liner cover --

19 MR. COLES: Strike that.

20 Q The liner, the outer cover, the
21 leg cuff and the ear material more than
22 likely would retain?

23 A Would retain the diaper in
24 place, yes.

25 Q And the thin film?

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1 Jezzi

2 A Probably would not.

3 Q And the diaper tape would not
4 retain the hooks.

5 MR. COLES: I'd like to
6 introduce Exhibit 1005. It is U.S.
7 Patent Publication U.S. 2003/0119404
8 to Belau, B-E-L-A-U, et al.

9 BY MR. COLES:

10 Q Mr. Jezzi, did you read Belau in
11 its entirety?

12 A Yes.

13 Q Did you read its file wrapper?

14 A No.

15 Q Okay.

16 And what limitations in the '788
17 Patent, Claim 1, do you use Belau for
18 invalidity analysis?

19 A Hold on.

20 (Witness reviewing document)

21 Basically Belau talks about
22 different retentive forces across the
23 surface of an attachment zone.

24 Q Which elements of Claim 1 of the
25 '788 Patent does that relate to?

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1 Jezzi
2 A Basically it is the different --
3 I'll just say that it is the "Said
4 mechanical closure means and said outer
5 face of said main part are lower than
6 retaining forces between said mechanical
7 closure means and said outer face of said
8 side parts and said front areas wherein
9 the side parts in said front and/or said
10 rear area are foldable on themselves."
11 Basically the differential retaining force
12 between the side parts and the main body
13 of the diaper.

14 Q And any other elements of Claim
15 1 found in Belau?

16 A That was the primary one. And
17 also -- on Claim 1, that's correct. There
18 are other dependent claims that I think
19 Belau would cover as well in combination.

20 Q And which claims are those?

21 A Well, they do discuss the side
22 parts as two and four. They have side
23 parts on Belau as well.

24 Q In Belau, which claim element --

25 MR. COLES: Strike that.

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1 Jezzi

2 Q In Belau, which element or
3 elements of Belau do you say correspond to
4 the claim closure means?

5 A To the what?

6 Q Closure means.

7 (Witness reviewing document)

8 A I mean, you start with paragraph
9 003 of Belau talking about mechanical
10 fastening systems typically employing two
11 components, a male hook and a female loop.
12 Basically they talk about different
13 treatments of that loop material to
14 provide different characteristics, and
15 they also talk about using these different
16 characteristics. They talk about the
17 engagement of the hook in these different
18 areas.

19 Q Have you finished your answer?

20 A Yes.

21 Q Okay.

22 And in Belau, what element or
23 elements of the patent do you say
24 correspond to the outer face of said side
25 parts?

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Jezzi

MR. SPENDLOVE: Objection.

Mischaracterizing prior testimony and foundation.

6 A Well, there is paragraph 0078
7 that discusses the attachment of the
8 mechanical fastener to the side part of
9 the diaper.

11	A	Yes.
----	---	------

13	A	Shown in Figure 6A and 6B.
----	---	----------------------------

15 looking at the loop material extends
16 beyond the chasis, okay? So and they
17 discuss that "the fastening means that the
18 hook and loop fastening system including a
19 pair of outside panels with one attached
20 to each side of the diaper. Each side
21 panel includes a stretch strip panel and
22 connected to the chasis".

25 hook and you've got a tape landing zone



1 Jezzi
2 a hook landing zone that have different
3 engagement characteristics, will allow
4 that to attach to the side part.

5 Q And in Figure 6B, what are the
6 side parts?

7 A The side parts are described at
8 76B. It's those two edges that extend
9 beyond the chasis.

10 Q And where does Belau show
11 connecting the side panels to the 76B side
12 parts?

13 A If you read 0018, again
14 depending on the girth of the baby, that
15 could be a possibility and it could attach
16 to that.

17 Q But you're saying it is not
18 explicitly disclosed?

19 MR. SPENDLOVE: Objection.

20 A On brief review, I've not found
21 it yet, but I'm on page 10 only.

22 Q Would you like to continue your
23 review?

24 A Well, I'd like to.

25 (Witness reviewing document) *800.211.DEPO (3376)*
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Jezzi

I can continue reading this thing, but I have not found any specific reference to attachment 76B. I'm not saying that it is not there, but --

Q So in paragraph 39 of your declaration -- let me know when you're there.

You haven't completed your answer?

A No, I'm fine. Go ahead.

Q I thought you had completed your answer.

In paragraph 39 of your declaration, you write that "Belau discloses 'that the retaining forces between the mechanical closure means and the outer face of the main part are lower than the retaining forces between the mechanical closure means and the outer face of the side parts in the front area'."

Do you see that?

A Paragraph 39?

Q Correct. Of your declaration

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1 Jezzi
2 (Witness reviewing document)
3 A Okay.
4 Q Where was that disclosed in the
5 Belau patent?

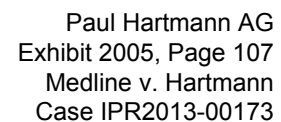
13 (Witness reviewing document)
14 A Well, the Belau patent talks
15 about a loop material that is designed to
16 have different characteristics. And by
17 the description of the drawings and
18 another prior art patent that they
19 discuss, it would be obvious to someone
20 skilled in the art that it would generate
21 different retentive forces across its
22 surface.

25 A I call it the Dunkerley Patent.



24 Q Does the Belau Patent describe
25 having "the retaining forces between the ⁸⁰⁰Es

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1 Jezzi
2 mechanical closure means and the outer
3 face of the main part being lower than the
4 retaining forces between the mechanical
5 closure means and the outer face of the
6 side parts"?

7 A Specifically I don't recall that
8 passage the way you just read it, but they
9 do talk about -- their design in their
10 patent basically describes the material
11 that would generate different retentive
12 forces across its surface.

13 Q Let's look at paragraph 43 of
14 your declaration. Let me know when you're
15 there.

16 (Witness reviewing document)

17 A That's basically what I was
18 referring to, the different embossing that
19 is shown in Figure 1.

20 Q So paragraph 43 of your
21 declaration, you write: "Specifically,
22 Belau discloses a diaper where the center
23 region [main part] has different
24 characteristics than the outer regions
25 [side parts]. (Belau Exhibit 2005, Figure 1)

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1 Jezzi
2 1, Paragraph 0034.) Pattern - unbonded
3 nonwoven material (4) is divided into a
4 plurality of regions or zones (4A, 4B),
5 which have different bond patterns in a
6 direction. The different bond patterns
7 provide different, specific functionality
8 or characteristics to the regions 4A and
9 4B. The outer region (4B) of the material
10 (4) provide different characteristics in
11 the center region (4A)."

12 Do you see that?

13 A Yes. And that's correct.

14 Q Does Belau describe what those
15 different characteristics of region 4B
16 might be?

17 A They describe several different
18 characteristics and they briefly touch on
19 retentive forces. To me though, you know,
20 being knowledgeable on what I'm seeing
21 here, there would be obviously different
22 retentive forces between those surfaces 4B
23 and 4A.

24 Q And where in the patent does it
25 describe those different retentive for

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1 Jezzi
2 MR. SPENDLOVE: Objection.
3 Foundation.
4 You can answer.
5 A I mean, I don't think that they
6 mention retentive forces specifically in
7 the patent though, but it is implied to
8 me. As someone skilled in the art, I
9 looked at this and that's what it is
10 telling me.
11 Q Okay.
12 Let's look at the Belau Patent,
13 paragraph 0080. And in that paragraph,
14 around the middle, there is a sentence
15 that says, "Outer region (76B) provide
16 characteristics other than an affixing
17 region for the hook elements."
18 Do you see that?
19 A I don't find it. Where is it
20 again?
21 Q It is paragraph --
22 A 008, right?
23 Q 0080.
24 A Oh, 8-0.
25 Q 8-0.

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1 Jezzi

2 A Okay.

3 Q And do you recall previously you

4 said 76B was the side parts?

5 MR. SPENDLOVE: Objection.

6 Q Is that correct?

7 A Say it again, please.

8 MR. COLES: Can you read that.

9 (Record read)

10 A That's correct, yes.

11 Q And do you see the sentence in

12 0080 that says, "Outer region (76B)

13 provide characteristics other than an

14 affixing region for the hook elements"?

15 A Okay.

16 Q And did you recall reading that

17 sentence when you prepared your

18 declaration?

19 A I wrote it several months ago so

20 probably not. I don't remember.

21 Q Okay.

22 And what do you understand that

23 sentence to mean?

24 A Basically this is -- they say

25 that one of hooks that is provided by **Esquire**

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Jezzi

outer region is greater -- let's see -- "provides characteristics other than an affixing region for the hook element". So they basically are saying that they are not intending it to have a fixation for the hook element.



1 Jezzi
2 using it as a pull tab rather than a loop
3 area. That does not mean that it would
4 not function as a loop area.

5 Q What does that mean --

6 A Again, remember the commentary
7 that I have made repeatedly about the
8 girth of the wearer, and that's going to
9 determine the intent of the use of some of
10 these materials and applications. So if
11 you have a very large baby, that would be
12 the target zone for where the hook is
13 going to be attached. Whether it would
14 attach it well or not, it depends, but --

15 Q What do you mean "they are using
16 it as a pull tab rather than a loop area"?

17 A Basically it is a finger tab,
18 just to position the diaper maybe.

19 Q Turn to paragraph 78 of your
20 declaration.

21 A Which paragraph?

22 Q 78.

23 A Of?

24 Q Your declaration. Of your

25 declaration. Let me know when you're

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25 paragraph 73. Let me know when you're **EsquireSolutions.com**

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1 Jezzi
2 there.
3 What is pattern unbonded
4 material (4)?
5 A Material (4) is this target zone
6 that they are attaching to the diaper.
7 Q And is 76B and 76A part of
8 material (4)?
9 A Yes.
10 Q So would you say they are a
11 single piece of material?
12 A It looks like that way, yes.
13 Q And they are connected?
14 A Yes.
15 Q So would you say that 76B is in
16 part -- are directly connected?
17 A 76B and 76A are directly
18 connected and make item 4.
19 Q Okay.
20 Would you say 76B is connected
21 to 76B?
22 A 76B is connected to 76A.
23 Q And 76B -- 76A and 76B are one
24 piece of material?
25 A It looks like that way from

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1 Jezzi
2 design, although it doesn't have to be.
3 Q What is disclosed in Belau
4 regarding material (4); is it one piece?
5 A It looks to be one piece.
6 MR. COLES: I'm going to
7 introduce what's been identified as
8 Exhibit 1008. It is U.S. Patent
9 8162913 to Goates, et al.
10 BY MR. COLES:
11 Q Mr. Jezzi, did you read Goates
12 in its entirety?
13 A Yes.
14 Q And did you read its file
15 wrapper?
16 A No.
17 Q Okay.
18 Can we look at Goates, Column 4,
19 lines 25 to 26. Let me know when you're
20 there.
21 A Okay.
22 Q The patent says "joined" and its
23 derivatives refer to the "adhering,
24 bonding, sewing together or the like of
25 two separate elements".
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1 Jezzi
2 Do you see that?
3 A Uh-huh.
4 Q Is that consistent with your
5 understanding of the word "joined" in
6 Claim 1 of the '788 Patent?
7 MR. SPENDLOVE: Objection.
8 A Joined means attached. Yes, I
9 would say so.
10 Q Okay.
11 Did you consider this when you
12 interpreted the claim?
13 A Yes.
14 Q You considered this sentence
15 from this patent?
16 A I don't remember.
17 Q Okay.
18 Does Goates show side parts in
19 said front area as required in Claim 1 of
20 the '788 Patent?
21 A Yes, they do, because if you
22 look at Figure 4, the extension of the
23 front panel constitutes, you know, side
24 parts even though they are not detached or
25 separately attached. So we define that

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1 Jezzi
2 the side parts basically could be an
3 extension of the chasis.
4 Q Okay.
5 And this extension of the front
6 panel that constitutes the side parts, are
7 they joined to a side edge?
8 A They would be a homogeneous part
9 of the chasis, so they would be an
10 integral part of the main body, but would
11 form extensions.

12 Q Okay.
13 So is there a side edge to which
14 the side part is joined?

15 A In that Figure 4, no.

16 Q Okay.
17 In the Goates patent, what
18 element or elements of the patent do you
19 say correspond to the closure means of
20 Claim 1 of the '788 Patent?

21 MR. SPENDLOVE: Objection.
22 Mischaracterization, foundation.

23 A If you look at paragraph 8, line
24 56, they discuss a diaper ears which are
25 equivalent to side parts, and they also

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1 Jezzi
2 quote absorbent article having front and
3 back ears, Van Dyke, which basically
4 discusses four side parts.

5 Q I'm sorry, where is this?

6 A Look at Column 8, lines 56
7 through 67, discussing ears which are
8 equivalent to side parts, and they also
9 reference Van Dyke, which is basically
10 discussing four side parts.

11 Q And what is the closure means
12 that corresponds --

13 MR. COLES: Strike that.

14 Q What is the element in Goates
15 that corresponds to the claim closure
16 means?

17 MR. SPENDLOVE: Objection.

18 Foundation, characterization.

19 A "Alternatively the fastening
20 members" -- Column 10, lines 3 --
21 "Alternatively, the fastening members are
22 attached to the ears (34, 134), and can be
23 configured to engage the inner surface of
24 the diaper. In such configuration, the
25 fastening members can be attached to the

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1 Jezzi
2 ears on the outer surface of the diaper."
3 That's closure means.

4 Q Okay.

5 And what element --

6 A Basically they also talk about
7 having these engage the outer cover or the
8 liner or the attachment panel.

9 Q And in which -- is there an
10 element or elements of the patent that you
11 say correspond to the outer face of the
12 side part in Claim 1?

13 A There is a commentary here as to
14 the attachment to the -- to the outer
15 surface -- can be attached to the ears on
16 the inner surface -- I'm just rambling --
17 can be attached to the ears on the outer
18 surface of the diaper which means the
19 outer face of the main body. And they are
20 also talking about attaching it to the
21 liner, which is the material that is next
22 to the body of the diaper. And the loop,
23 a target zone located on the outer cover
24 of the diaper.

25 Again, depending on the size **800.211.DEPO (3376)**
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1 Jezzi
2 the baby, you could attach one ear against
3 the other ear if they overlapped.

4 Q And is that disclosed in --

5 A No, but it is just something
6 that happens with these designs.

7 Q You have to let me finish my
8 question and I'll try not to speak over
9 you when you're answering.

10 A I'm sorry.

11 Q Okay.

12 So Goates does not disclose
13 attaching the hooks to the ear, the ear in
14 the front; is that correct?

15 MR. SPENDLOVE: Objection.

16 Asked and answered.

17 A They don't make a specific
18 reference to the attachment to the ear to
19 the best of my knowledge reviewing it the
20 last five minutes.

21 Q Okay.

22 Let's look at paragraph 37 of
23 your declaration. Let me know when you're
24 there.

25 A Okay.

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1 Jezzi

2 Q In paragraph 37, the last

3 sentence, you write: "The suitable

4 location of the attachment panel may be

5 the side parts of the front waist region."

6 Do you see that?

7 A Uh-huh.

8 Q Is that described in the Goates

9 patent?

10 A Specifically no, but it could.

11 Q Okay.

12 Let's look at paragraph 39 of

13 your declaration. Let me know when you're

14 there.

15 A Okay.

16 Q So in paragraph 39 of your

17 declaration, you write that Goates

18 discloses "that the retaining forces

19 between the mechanical closure means and

20 the outer face of the main part are lower

21 than the retaining forces between the

22 mechanical closure means and the outer

23 face of the side parts in the front area."

24 Is that correct?

25 A That's correct.

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1 Jezzi

2 Q Does the Goates reference
3 disclose this?

4 A I think you're picking one
5 patent out of one, two, three, four, five,
6 six patents that we claimed here, and I
7 can tell you that Karami '129 would fall
8 under that definition, and we're looking
9 at these in conjunction for obviousness in
10 combination, so isolating one may not
11 include all the specifics that you're
12 looking at here.

13 So I don't know. I would have
14 to go through that. I don't think there
15 was a specific reference in Goates talking
16 about the outer face of the side parts,
17 but in combination with the other patents,
18 it is pretty obvious that it would be.

19 Q Sorry, so when you say each
20 disclose it, you really mean in
21 combination --

22 A In combination.

23 Q -- they all disclose it?

24 A These were combined.

25 Karami '129 certainly has the **800.211.DEPO (3376)**
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1 Jezzi
2 forces on the outer face of the side parts
3 being much higher than the outer cover
4 because they are putting a targeted loop
5 material.

6 Q Okay.

7 So --

8 A And the same thing with '772.

9 So there is, you know --

10 Q So Goates, you're not so sure if
11 it shows that?

12 A Pardon me?

13 Q Are you saying you're not sure
14 if Goates shows this?

15 A I'm not sure. I would have to
16 review it again.

17 Q Do you want to take some time to
18 review it?

19 A Okay.

20 (Witness reviewing document)

21 I can't find the wording, but
22 there is a key word here in which they
23 describe the side parts, and that is
24 elastomeric ears, and to someone like
25 myself skilled in the art, an elastomer

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Jezzi

ear has much higher -- because of the construction which is a laminate and its corrugation and the cross direction and elasticity, it will provide a higher retentive force than the main body of the diaper. So I guess that's basically what I read into the patent.

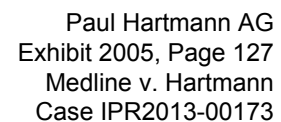


1 Jezzi
2 MR. COLES: Strike that.
3 Q The elastomeric ears, 34 and
4 134, correspond to the said side parts in
5 said front area of Claim 1 of the '788
6 Patent?
7 A They would make the side parts
8 in the back area, but they could overlap
9 and they would attach to each other.
10 Q Like a T-shaped diaper?
11 A Huh?
12 Q Like a T-shaped diaper?
13 A Yes, this is -- yeah, correct.
14 Q Let's go to paragraph 44 of your
15 declaration.
16 Are you there?
17 A Yes.
18 Q In paragraph 44 of your
19 declaration, you write: "Goates Exhibit
20 1008 discloses attaching directly to the
21 outer cover or attaching to active
22 fastening portions which may be located on
23 the face of side parts in the front area."
24 Do you see that?
25 A Yes.

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Jezzi

1 Q Does the next sentence --

2 A On that paragraph?

3 Q Yes.

4 A "For example, an attachment

5 panel can be located on the outer cover

6 (40)." Correct.

7 Q Did it show any other location

8 for the attachment panel?

9 A If you look at Karami '129, they

0 are putting that attachment on the side

1 part. If you look at Shingu, they are

2 splitting that attachment zone into two

3 creating a void area in the middle where

4 it is just the outer cover. So various

5 patents described this attachment area

6 differently depending on what they are

7 trying to do. Typically it's in the outer

8 cover though.

9 Q And in this patent, it shows the

0 outer cover?

1 A Pardon me?

2 Q And in this patent, it shows the

3 outer cover; is that correct?

4 A Just mentions it on the outer

800.21
Esquire



1 Jezzi

2 cover, correct.

3 MR. COLES: Let's take a short
4 break to switch the tape.

5 THE VIDEOGRAPHER: The time is
6 1:06 p.m. on August 16, 2013. This is
7 the end of tape number three.

8 (Thereupon, a recess was taken,
9 and then the proceedings continued as
10 follows:)

11 THE VIDEOGRAPHER: The time is
12 1:11 p.m. on August 15, 2013. This is
13 tape number four.

14 BY MR. COLES:

15 Q Mr. Jezzi, let's return to
16 paragraph 44 of your declaration. Let me
17 know when you're there.

18 A Okay.

19 Q And paragraph 44 of your
20 declaration has a sentence that reads,
21 "One of ordinary skill in the art would
22 recognize that the retaining force between
23 the closure means and purpose specific
24 attachment panel would be greater than the
25 retaining force between the closure means

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1 Jezzi

2 and the outer cover."

3 Do you see that?

4 A Yes.

5 Q Why is that so?

6 A Because the attachment panel is
7 specifically designed, treated, what have
8 you, to provide the highest retaining
9 forces possible. The outer cover was not
10 designed with that in mind necessarily and
11 that's the difference.

12 Q And would the retaining force
13 between the closure means and the outer
14 cover hold the diaper on a user?

15 A Repeat that.

16 The mechanical closure means
17 against the outer cover, would they hold
18 the diaper against -- it depends on the
19 diaper, on the hook design that is used.
20 Again, there has been evolution of
21 technology in recent five, six years ago
22 or so. There are very, very aggressive
23 hooks that allow the mechanical fastener
24 to attach directly to a standard spunbond
25 laminate outer cover. Originally that

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1 Jezzi
2 not the case. And that is why we have a
3 carry over of attachment panels.
4 The other criteria that is
5 important as to why attachment panels are
6 still used is that they provide a target
7 zone as to where the tape, the mechanical
8 system should go for better fit. And so
9 that's the evolution that is happening,
10 although we are seeing diapers changing on
11 that note for cost savings.

12 Q Okay.

13 And what's provided in the cost
14 savings?

15 A The elimination of the
16 attachment zone and attaching directly to
17 the outer cover.

18 Q Okay.

19 And Goates doesn't disclose
20 whether or not --

21 MR. COLES: Strike that.

22 Q Am I correct in saying that
23 Goates does not disclose whether or not
24 the closure means would -- and the outer
25 cover would have sufficient retaining

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1 Jezzi

2 A Yes.

3 Q Did you read its file history?

4 A No.

5 Q And what limitations in the '788
6 Patent do you use Karami '772 for in the
7 invalidity analysis?

8 MR. SPENDLOVE: Objection.

9 Foundation, mischaracterization.

10 (Witness reviewing document)

11 A Basically we use that on Claims
12 2 and 3, 8 and 9 -- 1 through 10, 14, 16
13 through 20. It was used quite a bit. 11,
14 13, 15. Including Benning. 21.

15 Q Okay.

16 What elements of Claim 1 of the
17 '788 Patent do you say are found in Karami
18 '772?

19 MR. SPENDLOVE: Objection.

20 Foundation.

21 A Basically Karami '772 teaches
22 differential retention forces, and they
23 also teach basically an embodiment that
24 would invalidate Claim 1 because of the
25 higher retentive forces on the wing ver

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1 Jezzi

2 the outer cover.

3 Q Take a look at Karami '772,

4 Figure 6.

5 A Okay.

6 Q Do you see the wings 130L and

7 130R?

8 A Yes.

9 Q Would you agree that they extend

10 laterally from the diaper chasis?

11 A Yes.

12 Q Would they agree that they are

13 integrally formed with the back sheet

14 (130)?

15 A Yes, and they also constitute

16 side parts.

17 Q So are these wings, 130L and

18 130R, the side parts joined to the first

19 and second side edges of Claim 1 of the

20 '788 Patent?

21 A Repeat that question. 130L and

22 130R are what?

23 (Record read)

24 A They could be interpreted as

25 that.

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Esquiv



1 Jezzi

2 Q In Figure 6, where is the side
3 edge to which the first and second side
4 parts are joined?

5 MR. SPENDLOVE: Objection.
6 Foundation.

7 A Before I answer that, I need to
8 start with a preamble.

9 This is what we define as an
10 hourglass diaper, and it is the precursor
11 to diapers that have side parts. And the
12 reason diapers have side parts is to
13 duplicate this design with extended
14 lateral portions, 131, 133 or 132, and
15 134.

16 These happen to be represented
17 in this figure as an integral part of the
18 back sheet rather than attach individual
19 side parts. But in essence, to someone
20 like myself, they are pretty equivalent.

21 Q What do you mean by "they are
22 equivalent"?

23 A They basically perform the same
24 function. They have extensions in the
25 front and the back to allow folding over

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1 Jezzi
2 the patient or the user for attachment
3 means.

4 Q Do you have an opinion as to
5 whether it would be more or less expensive
6 to use separate side parts as opposed to
7 integral side parts?

8 A It would vary depending on the
9 materials that are used in the side parts.
10 Typically, and it depends on the diaper
11 design, the materials that make these
12 extensions 131 and 133 for the most part
13 are similar to the constituents of side
14 parts.

15 The advantage of doing it this
16 way is you have two materials so each
17 material is lower basis weight. When you
18 do an individual side part, you probably
19 would have a heavier material because you
20 need the strength. So they may be
21 equivalent in total cost. You would have
22 to look at it on a one-by-one basis.

23 Q "The advantage of doing it this
24 way is you have two materials."

25 Which way is this way?

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1 Jezzi

2 A This way is Figure 6, which
3 basically the side parts of this diagram
4 are made of the back sheet and the liner.

5 Q This is different than
6 individual side parts; is that correct?

7 A It can be, but not necessarily.
8 Side parts are usually made of single
9 materials, bilaminates and trilaminates.

10 Q And is that true if it is an
11 integral side part?

12 A If it is an integral side part,
13 it is possible that it would certainly
14 not -- well, it could be -- all three
15 components could possibly be done as a
16 side part depending on the design of the
17 diaper. You could have a single material
18 for the extensions or you could have a
19 bilaminate or a trilaminate. They could
20 be similar.

21 Q Is there a side edge to which
22 the side parts in Karami are joined?

23 A In Figure 6, the answer is no.
24 Through the body, I would have to review
25 that.

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1 Jezzi

2 If you look at Figure 5 of
3 Karami, it appears that those side parts
4 are separate. So I would think that
5 Karami in the body would discuss that.

6 Q Figure 5 of Karami, is that a
7 T-shaped diaper?

8 A It could be called that. Not
9 necessarily. I mean, some T-shaped
10 diapers are completely rectangular, some
11 have partial leg cutouts, so it depends.

12 Q In Figure 5 of Karami, does the
13 connection means connect to --

14 MR. COLES: Strike that.

15 Q What is the difference between a
16 T-shaped diaper and an hourglass-shaped
17 diaper?

18 A A T-shaped diaper was made where
19 the chassis was typically rectangular, and
20 from the rectangular chassis, the side
21 parts would generate a T-shape like
22 somewhat demonstrated like Figure 5. An
23 hourglass basically was the legs were cut
24 out into an hourglass design as shown in
25 Figure 6.

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1 Jezzi

2 Q And in the T-shaped diaper, do
3 the back side parts connect to each other?

4 A They can, they cannot be; it is
5 just a variable.

6 Q And let's take a look at Karami
7 Figure 7.

8 A Okay.

9 Q Do you see the wings 230L and
10 230R?

11 A Okay.

12 Q Would you agree that these
13 extend laterally from the diaper chasis?

14 A Yes.

15 Q Now, are these the wings --
16 MR. COLES: Strike that.

17 Q And are the wings 230L and 230R
18 what you say correspond to the side parts
19 joined to the first and second side parts
20 of Claim 1?

21 A They could be equivalent to
22 that, yes.

23 Q And is there a side edge to
24 which these side parts are joined?

25 A These appear to be, again, a *800.211.DEPO (3376)*
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1 Jezzi
2 piece of the back sheet and liner design,
3 so they are an integral part of the
4 chasis.

5 Q Does the Karami '772 reference
6 show side parts in said front area as
7 required by Claim 1 of the '788 Patent?

8 A I think that if you look at
9 Figure 5, it basically shows that, yes.

10 Q And where are these side parts?

11 A Pardon me?

12 Q Where are these side parts?

13 A Basically if you look at 40,
14 there is a side part that is detached and
15 attached to the main chasis (20). And 46
16 and 48 are also side parts by my
17 definition and interpretation as someone
18 who has been looking at these for some
19 time.

20 Q And 46 and --

21 MR. COLES: Strike that.

22 Q How are 46 and 48 side parts?

23 A Basically they are rectangular
24 components that are attached to the main
25 chasis, and depending on the size, the

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1 Jezzi
2 basically would be -- they could
3 constitute side parts. Size is one of the
4 variables to side parts.
5 Q And in Figure 5, would the
6 connecting means on the --
7 MR. COLES: Let me strike that.
8 Q In Figure 5, what are the
9 mechanical closure means that cooperate
10 with said side parts at said rear area?
11 MR. SPENDLOVE: Objection.
12 Foundation. Mischaracterized prior
13 testimony.
14 MR. COLES: Let me rephrase the
15 question.
16 Q Claim 1 requires "mechanical
17 closure means having mechanical closure
18 aids. Said closure means cooperating with
19 the side parts at said rear area".
20 Do you see that in Claim 1 of
21 the '788 Patent?
22 A Where are you reading?
23 Q '788, Claim 1.
24 A Okay.
25 (Witness reviewing document) *800.211.DEPO (3376)*
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1 Jezzi
2 Okay. Basically if you look at
3 Figure 5.
4 MR. SPENDLOVE: What's the
5 question that's pending before we --
6 Q My question was: Do you see
7 that?
8 A Yes, I do.
9 Q Okay.
10 Now, referring to Figure 5 of
11 Karami, do you see such a mechanical
12 closure means?
13 A Yes.
14 Q What is it?
15 A The closure means are described
16 as 41, 48, and 46.
17 Q Okay.
18 So mechanical closure means --
19 MR. COLES: Strike that.
20 Q Which closure means are
21 cooperating with said side parts at said
22 rear area?
23 MR. SPENDLOVE: Objection.
24 Foundation. Mischaracterizes prior
25 testimony.

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1 Jezzi

2 MR. COLES: Let me rephrase it.

3 Q In Figure 5 of Karami, do you

4 see an element that corresponds to said

5 closure means cooperating with said side

6 parts at said rear area of Claim 1 of the

7 '788 Patent?

8 A Yes.

9 Q And what is that?

10 A Basically the side part (40) and

11 their opposite one have a mechanical

12 fastener (41) and those appear to be on

13 the back side of the diaper.

14 Q And does that mechanical closure

15 means --

16 MR. COLES: Let me strike that.

17 Q Does that mechanical closure

18 means, parts 40 and 41 --

19 MR. COLES: Strike that again.

20 Q Is the mechanical closure means,

21 40 and 41, dimentioned for detachable

22 fastening to said outer face of said side

23 parts in said front area?

24 A Yes.

25 Q And where is that shown?

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1 Jezzi

2 A 41, mechanical fastener will be
3 attaching to the attachment zone 52 when
4 it is closed. Also because the back ears
5 of this particular embodiment have an
6 attachment loop area, item 52, the
7 retentive forces are going to be much
8 higher with the wing than it would be with
9 the outer cover, 20.

10 Q Does attachments 40 and 41
11 attach to what you call side parts 46 and
12 48?

13 A No, they could. Basically 40
14 goes against its counterpart, which is
15 only designated by a 52. They didn't put
16 a number on the opposite side part to
17 correspond with item 40.

18 Q Is that disclosed in Karami
19 '772?

20 A I believe it would be, but I
21 have to review it.

22 Q Please do.

23 (Witness reviewing document)

24 A Basically Column 4, paragraph
25 0039, describes the fastening process

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1 Jezzi
2 that particular design in Figure 5.
3 Q And in paragraph 0039 of Karami
4 '772, does it disclose that the hook type
5 fasteners, 41, attach to the front portion
6 22?

7 A To what portion?

8 Q Front portion 22.

9 A I'd have to find it.

10 (Witness reviewing document)

11 MR. SPENDLOVE: What paragraph
12 is that?

13 MR. COLES: 0039.

14 A Paragraph 0048 basically makes
15 reference that -- so that the hook water
16 jet treater and the -- "so that the hook
17 type fasteners can securely engage with
18 any portion of the wings when the diaper
19 is placed on the wearer. Thus, the
20 fastening of the hook type fasteners to
21 the front portion of the diaper is not
22 restricted to specific landing zone."

23 So they are mentioning the
24 possibility that it could be attached to
25 the front end of the diaper or the out

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1 Jezzi
2 cover. Again, going back to some previous
3 commentary, depending on the waist of the
4 wearer, that could attach to side part to
5 side part or side part to center zone.

6 Q Is paragraph 0048 referring to
7 Figure 5?

8 A Say again.

9 Q Is paragraph 0048, the paragraph
10 which you were just reading from --

11 A I don't know if it referenced
12 Figure 5 directly. I don't think they are
13 mentioning a figure reference here.

14 Q So you don't know?

15 A I don't know. It doesn't look
16 like they are referring to any specific
17 figure.

18 Q In Figure 5, is there any
19 element 131?

20 A No.

21 Q Is there an element 133?

22 A No.

23 Q Is there an element 150A?

24 A No, not on that picture.

25 Q 150D?

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1 Jezzi

2 A No, they only have five numbers
3 and they are all less than a hundred,
4 so --

5 Q Okay.

6 In Karami '772, which element or
7 elements of the patents do you say
8 correspond to the claim closure means?

9 MR. SPENDLOVE: Objection.

10 Foundation. Mischaracterization of
11 testimony.

12 Q Let me take a step back.

13 In your report, in your
14 declaration, do you identify any element
15 of the Karami reference as being a closure
16 means?

17 A As being what?

18 Q A closure means as claimed in
19 Claim 1 of the '788 Patent.

20 A More than likely we do.

21 Q Can you tell me what it is?

22 A I don't understand your
23 question. I mean items 41, 48, 46 -- I
24 can't read the numbers, they are not
25 clear -- but the ones on Figure 6 and

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1 Jezzi

2 Figure 8 are all closure means.

3 Q And in your report, do you
4 identify any element or elements of the
5 Karami '772 reference as corresponding to
6 the outer face of said side parts as
7 required by Claim 1 of the '788 Patent?

8 A I don't remember. I would have
9 to review it.

10 Q Go ahead.

11 (Witness reviewing document)

12 A Now repeat the question again,
13 please.

14 (Record read)

15 A Okay.

16 In the declaration, we did
17 disclose from Karami '772 that the outer
18 cover was two sided and had an outside
19 face. However, someone skilled in the
20 art, we would have to assume that the side
21 parts would also have that because as I
22 mentioned earlier, they are two-sided
23 materials, and, therefore, they would have
24 an outside face and an inside face.

25 Q And in your report, do you

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1 Jezzi
2 identify any element or elements of the
3 Karami '772 references corresponding to
4 the side parts?
5 A I have to go through it again.
6 (Witness reviewing document)
7 We did disclose that in
8 paragraph 39.
9 Q And what elements?
10 A Basically that the Karami '772
11 disclosed that "the retaining forces
12 between mechanical closure means and the
13 outer face of the main part are lower than
14 the retaining forces between the
15 mechanical closure means and the outer
16 face of the side parts in the front area".
17 Q Okay.
18 And in Karami '772, which
19 portion, which element --
20 MR. COLES: Let me rephrase it.
21 Q And in Karami '772, which
22 element is the side parts in the front
23 area?
24 A Karami '772, if you look at
25 Figure 5 and Figure 6 and Figure 7, the

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1 Jezzi
2 front area of the diaper would be
3 designated by items 48 and 42. And in
4 Figure 6, it would be 130L and 130R. And
5 in Figure 7, it would be 230L and 230R
6 would be the front side parts.

7 Q And in your declaration, have
8 you identified any element or elements in
9 the Karami '772 references that correspond
10 to the main part?

11 A I think yes. Karami '772
12 teaches a stay away zone and that is
13 located in the main part of the outer
14 cover. Paragraph 40.

15 Q What is a stay away zone?

16 A A stay away zone is a zone that
17 has diminished affinity to hook retentive
18 forces or hook fasteners as by the
19 definition by Karami.

20 Q Let's look at paragraph 40 of
21 your declaration.

22 A Yes, I have it.

23 Q In paragraph 40 of your
24 declaration, you write: "This stay away
25 portion has reduced affinity to hook t

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1 Jezzi
2 fasteners, and, therefore, a lower
3 retaining force on the main part versus
4 the side parts."

5 Do you see that?

6 A Right.

7 Q What is a "retaining force" in
8 your sentence?

9 A A retaining force -- what was
10 your question again?

11 Okay. Lower retaining force on
12 the main part versus the side parts.

13 A retaining force can be either
14 measured in sheer or peel forces, and
15 those are the retaining forces, retentive
16 forces, that are used and described in the
17 patents that we're talking about.

18 Q What does "stay away" mean to
19 you?

20 A Pardon me?

21 Q What does the term "stay away"
22 mean to you?

23 A Stay away means a -- well, by
24 the definition within Karami '772, it is
25 an area that has diminished affinity to

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1 Jezzi
2 hook type fasteners or a lower retentive
3 force. I think that is a definition we're
4 going to have to go by.

5 Q And do you think a stay away
6 zone is intended to receive the hook type
7 fasteners?

8 A It could. The concept of stay
9 away zone is not a new concept, so it's
10 been around the industry even with tape
11 landing zones and adhesive tapes.

12 Q And in the industry, does stay
13 away zone have a different meaning?

14 A No, not really. I mean, it
15 depends who you talk to. But basically I
16 would have to go on -- actually, that is
17 the first time I have heard of the stay
18 away zone in the diaper design was within
19 this patent, so it is not a term that is
20 used commonly.

21 Q Have you seen it used in
22 other --

23 MR. COLES: Strike that.

24 Q Have you ever seen it used
25 elsewhere?

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Jezzi

2 A Yes.

3 Q Where?

4 A In a diaper.

5 Q Can you tell me which diaper it

6 is?

7 A Well, there is a previous patent

8 on tape adhesive systems that have zones

9 with diminished affinity for fastening.

10 Now, this is an adhesive system and that

11 was done by modify the siliconization of a

12 certain strip in the middle of a tape

13 landing zone, for instance, which would

14 basically direct the user to position the

15 diaper a certain way.

16 Q Would it position the diaper so

17 that the tapes would not be in the stay

18 away zone?

19 A The reason that patent was

20 issued was to get around another patent,

21 but that could be the result. It is a

22 very narrow stay away zone.

23 Q And the intention was -- and was

24 the purpose of the stay away zone to not

25 attach the adhesive there?

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1 Jezzi

2 A The reason that was developed
3 was so that -- to parallel a split tape
4 landing zone.

5 Q What does that mean?

6 A Basically have two pieces, two
7 separate pieces of tape.

8 Q Two separate pieces of tape
9 where?

10 A On the outsides, none in the
11 middle, so that basically you would attach
12 the tape to the tape landing zone. So it
13 was used as a way to get around that
14 particular execution embodiment.

15 Q To get around what particular
16 execution embodiment?

17 MR. SPENDLOVE: Objection.
18 Outside the scope of the direct
19 testimony.

20 Q You can answer.

21 THE WITNESS: Do I have to
22 answer?

23 MR. SPENDLOVE: Yes.

24 A Basically splitting the landing
25 zone in two, that was the design around **800.211.DEPO (3376)**
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1 Jezzi

2 that embodiment.

3 Q Let's take a look at Karami
4 reference, paragraph 53, 0053.

5 A Of the patent?

6 Q Of the patent. Let me know when
7 you're there.

8 A Okay.

9 Q In paragraph 53 of the Karami
10 '772 reference, there is a sentence that
11 says, "The stay away zone (160) can be
12 formed by, for example, an inner backing
13 film or backing film laminated to a
14 spunbond meltblown spunbond nonwoven
15 exposed to an opening in the back sheet
16 (130)."

17 Do you see that?

18 A Yes.

19 Q In this embodiment, would hook
20 fasteners attach to the stay away zone?

21 A Yes. The way I read that is
22 they have a fenestration in the outer
23 body, in the outer cover of the diaper,
24 and there is spunbond meltblown spunbond
25 nonwoven is exposed to through this

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1 Jezzi
2 opening in the back sheet. My experience,
3 depending on the hook selection that is
4 used on SMS, which is what that material
5 is, would engage a mechanical fastener so
6 it could engage there.

7 Q And would it be sufficient to
8 hold the diaper on to the wearer?

9 A Say it again please?

10 Q Would the retention forces be
11 sufficient to hold the diaper on the
12 wearer?

13 A It depends on the hook type,
14 yes.

15 Q And in this -- and in the Karami
16 '772, would you know whether or not the
17 hooks would hold on to the SMS?

18 A I don't know.

19 Let me add that this material
20 that is defined as SMS could be used and
21 is described within Beckert '788 as part
22 of side part components, it could be made
23 of that same material. And these
24 materials could be varied to provide
25 different characteristics of engagement

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1 Jezzi
2 well. So without knowing specifics on the
3 material, it's hard to say.

4 Q Let's turn to your declaration.

5 A Yes.

6 Q Let's look at paragraph 40 of
7 your declaration.

8 A Okay.

9 Q And at paragraph 40, you write:
10 "Figure 8 of Karami '772 clearly shows
11 that the stay away zone (160) can cover
12 the main part of the diaper so that the
13 retaining force of the main part of the
14 diaper would be lower than the retaining
15 force on the side parts."

16 Do you see that?

17 A Yes.

18 Q And what is the "retaining
19 force" in that sentence?

20 A The retaining force is the
21 engagement force of the mechanical
22 fastener on to the substrate.

23 Q And would the retaining force
24 between the closure means and the main
25 part of the diaper hold the diaper on

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Jezzi

user?

A Yes, depending on the actual numbers, but they could be varied to do that.

Q And in Karami '772, can you tell whether the forces are sufficient?

A No, I cannot. There is no magic number on retentive forces working or not working especially when most companies have proprietary tests that measure and vary from one to the other. So making a correlation yes or no on numbers even that are published would be very hard to do.

Q Turn to paragraph 59 of your declaration. In 59 --

MR. COLES: Strike that.

Q In paragraph 59 of your declaration, you write: "It would have been obvious to one of ordinary skill in the art that the materials could be selected to achieve the retaining forces recited in Claim 2".

Do you see that?

A Yes.

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1 Jezzi

2 Q Can you tell from Karami '772
3 whether or not the retaining forces in
4 Claim 2 are disclosed there?

5 A The test methodology is
6 different between that done by Karami as
7 well as Hartmann or Beckert. And so it is
8 difficult to make that correlation and I
9 cannot make that comparison.

10 My guess is that they probably
11 are, but without, you know, running the
12 same materials and the same test
13 procedure, it would not be accurate to say
14 that they were or were not.

15 Q Let's move to paragraph 63 of
16 your declaration. Let me know when you're
17 there.

18 Paragraph 63 of your
19 declaration, you refer to the Belau
20 reference as "not teaching specific
21 claimed retaining forces".

22 Do you see that?

23 A Yes.

24 Q So can you tell me whether or
25 not the retaining forces in Claim 2 are **800.211.DEPO (3376)**
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1 Jezzi

2 disclosed in Belau?

3 A I do not think the specific
4 forces described in Beckert were disclosed
5 in Belau.

6 Q Okay.

7 Does your declaration cite to
8 any other reference as disclosed in the
9 claimed retaining forces of Claim 2?

10 A No. Except for Karami '772,
11 they probably wouldn't bracket that, but
12 because of the difference in testing, it
13 is not possible to confirm that.

14 Q Let's refer to Claim 62 --

15 MR. COLES: Strike that.

16 Q Refer to paragraph 62 of your
17 declaration. Let me know when you're
18 there.

19 A Yes.

20 Q So in paragraph 62 of your
21 declaration, you write: "This range in
22 retentive fastening forces could be
23 further expanded by the use of known
24 plastic film and spunbond nonwoven
25 laminates found in many back sheet

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1 Jezzi
2 applications for baby diaper and adult
3 care briefs prior to the priority date of
4 the '788 Patent. Given the broad range of
5 retention forces for the limited samples
6 shown in Karami '772 and other well-known
7 materials, one of ordinary skill in the
8 art would have found it obvious to choose
9 readily available materials having the
10 retention forces recited in Claim 2."

11 Do you see that?

12 A Yes.

13 Q In this paragraph of your
14 declaration, you don't cite to any
15 reference as disclosing a further
16 expansion; is that correct?

17 A Repeat that again. I don't
18 disclose what?

19 (Record read)

20 A I guess, yes.

21 Q Why not?

22 A I wrote this document a long
23 time ago so I don't remember exactly why
24 we did not include that. All I can say is
25 that for someone skilled in the art, the

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1 Jezzi
2 are existing materials that would have
3 extremely high probability will encompass
4 the ranges published in Beckert.

5 Q Do you know the cost of such a
6 material or materials?

7 A Say it again, please.

8 Q Do you know what the cost of
9 such a material or materials would be?

10 A I know most of the costs, yes.

11 Q Would they be expensive for --
12 MR. COLES: Strike that.

13 Q Would they be more or less
14 expensive than the materials disclosed in
15 Beckert?

16 A Slightly more expensive I would
17 say; there is an extra treatment. But
18 they are all mostly readily available.
19 The technology that's used in Karami '772
20 is known as hydraulic entangling or
21 hydraulic water jet entangling, and that's
22 known technology and those materials are
23 available.

24 Q And in creating a diaper, is it
25 better to have a less expensive material? **800.211.DEPO (3376)**
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1 Jezzi

2 than more expensive material?

3 A It depends, okay? The answer is
4 if you get similar performance and
5 consumer responses or acceptance, of
6 course, but typically it is a balancing
7 act. So the exercise is where you spend
8 more money, you take money from others, so
9 it is continuously evolving and all the
10 materials play a role in that.

11 MR. COLES: I would like to
12 enter what has previously been
13 identified as Exhibit 1011, U.S.
14 Patent 6626881 to Shingu, et al.

15 BY MR. COLES:

16 Q Mr. Jezzi, did you read Shingu
17 in its entirety?

18 A Yes.

19 Q And did you read the file
20 jacket?

21 A No.

22 Q And what elements of the '788
23 Patent do you use Shingu for in your
24 invalidity analysis?

25 MR. SPENDLOVE: Objection.

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1 Jezzi

2 Foundation. Mischaracterization of
3 prior testimony.

4 MR. COLES: Let me rephrase it.

5 Q Mr. Jezzi, do you use the Shingu
6 reference in your invalidity analysis of
7 the '788 Patent?

8 A Yes.

9 Q And can you identify which
10 claims you used Shingu for in your
11 invalidity analysis?

12 A Well, without having to review
13 the 60-page declaration, we used Shingu
14 for a couple of reasons.

15 One is that it does cover the
16 folding of the side parts or the ears, and
17 the Z folding.

18 Secondly, Shingu also describes
19 a separated attachment zone, item 23 in
20 Figure 2, which basically provide
21 different retentive forces across the face
22 of the diaper and the side parts of the
23 diaper.

24 Q In the Shingu reference, is

25 there an element that you have identified

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1 Jezzi
2 as corresponding to the closure means of
3 Claim 1 of the '788 Patent?

4 A Yes, they have mechanical
5 closure means.

6 Q And which element is that?

7 A Well, we can look at Figure 1,
8 items 22, 21.

9 Q Have you completed your answer?

10 A I was just going to get
11 something out of the specification, which
12 I'm sure they describe mechanical
13 fasteners, but I think the picture shows
14 it.

15 Column 3, lines 43 to 45,
16 "mechanical fasteners bonded thereto by
17 means of adhesive or heat sealing
18 techniques".

19 Q And in your declaration, is
20 there --

21 MR. COLES: Let me strike that.

22 Q In your declaration, do you
23 identify an element of the Shingu
24 reference as corresponding to the outer
25 face of said side parts?

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1 Jezzi

2 A I don't know if we discussed it
3 in the declaration per se and I have to
4 review that. If you want me to, I can do
5 that, or I can go into the patent and find
6 it for you.

7 Q Look in your declaration.

8 (Witness reviewing document)

9 A We used Shingu in various
10 combinations for several of the claims.
11 We did not cite specifically words on the
12 outer face material.

13 Q Do you know if Shingu does
14 disclose an element that corresponds to
15 the outer face of said side parts?

16 A I believe it does.

17 Q Can you tell me what it is?

18 A It is pretty standard so I would
19 be surprised if it didn't include it.

20 Column 3, somewhere around line
21 40, they talk about the outer cover
22 construction, and, you know, they refer to
23 nonwoven fabric layers. They also talk
24 about liquid impervious back sheet in the
25 claims. And we used Shingu as one of

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1 Jezzi
2 folding patterns on the side parts.
3 Q And in your declaration, do you
4 identify in any element of the Shingu
5 Patent as corresponding to the outer faces
6 of the main part?

7 A I think I may have done that.
8 Shingu disclosed a diaper when the side
9 parts in the front and/or the rear area
10 have reinforcing means. So we did discuss
11 the side parts with the reinforcement
12 member, and then it was mentioned in
13 various of the claims, but we did not pull
14 specific language out of Shingu in those
15 claims, but considered it as a whole.

16 Q Does the Shingu Patent describe
17 an element that you say corresponds to the
18 outer face of the main part?

19 MR. SPENDLOVE: Objection.
20 Foundation. Mischaracterizes the
21 prior testimony.

22 MR. COLES: Can you read back
23 the question.

24 (Record read)

25 MR. COLES: Let me rephrase **800.211.DEPO (3376)**
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1 Jezzi

2 Q Does the Shingu Patent describe
3 an element that corresponds to the outer
4 face of said main part?

5 A The only reference they make to
6 an outer cover or back sheet is in Column
7 3, and they describe some of the materials
8 that are used such as nonwoven fabric
9 layers, and they use that as part of the
10 side parts as well.

11 Q Let's go to paragraph 39 of your
12 declaration. Let me know when you're
13 there.

14 A Okay.

15 Q So in paragraph 39 of your
16 declaration, you write that Shingu
17 discloses "that the retaining forces
18 between mechanical closure means and the
19 outer face of the main part are lower than
20 the retaining forces between the
21 mechanical closure means and the outer
22 face of said side parts in the front
23 area."

24 Do you see that?

25 A Uh-huh.

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1 Jezzi

2 Q Where does the Shingu reference
3 show this?

4 A It probably doesn't mention it
5 specifically, but for someone skilled in
6 the art like myself, looking at this, I
7 can basically tell you that when you have
8 targeted attachment zones, 23, as opposed
9 to a nonwoven back sheet, number 3, those
10 forces will exist.

11 Q Okay.

12 And can we --

13 MR. COLES: Let's stop. We have
14 to switch tapes. Let's take a break.

15 THE VIDEOGRAPHER: The time is
16 2:49 p.m. on August 15, 2013. This is
17 the end of tape number four.

18 (Thereupon, a recess was taken,
19 and then the proceedings continued as
20 follows:)

21 THE VIDEOGRAPHER: The time is
22 2:54 p.m. on August 15, 2013. This is
23 tape number five.

24 BY MR. COLES:

25 Q Mr. Jezzi, let's look at

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1 Jezzi

2 paragraph 39 of your declaration.

3 A Okay.

4 Q Let me know when you're there.

5 A Okay.

6 Q Paragraph 39 of your

7 declaration, you write that Shingu

8 discloses that "the retaining forces

9 between the mechanical closure means and

0 the outer face of the main part are lower

1 than the retaining forces between the said

2 mechanical closure means on the said outer

3 face of the side parts in the front area."

21 A Again, you know, there are six
22 patents, seven patents there. When you
23 look at them as an aggregate, when you
24 look at them, someone skilled in the art
25 knowing the material construction,

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Es



1 Jezzi
2 basically those patents and the
3 embodiments that are described would
4 basically have those characteristics.

5 As I mentioned, Shingu was the
6 last example of that.

7 Q Okay.

8 So does Shingu show the
9 retaining forces between the mechanical
10 closure means and the outer face of the
11 main part are lower than the retaining
12 forces?

13 A They don't describe that, but
14 when you look at the pictures and knowing
15 the material types that have been
16 described and used, they would generate
17 that.

18 Q Okay.

19 And which picture are you
20 referring to?

21 A I think if you look at Shingu
22 and you look at the Figure 2 where you
23 have two separate zoned attachments,
24 targeted attachments, those two spots and
25 basically they cover the side parts, w

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1 Jezzi
2 have a much higher retentive force than
3 the center portion, which is the outer
4 cover material.

5 Q Okay.

6 And do we know --

7 MR. COLES: Strike that.

8 Q And can the hooks connect to the
9 center portion that you're talking about?

10 A It depends again on the girth of
11 the wearer. And in this particular
12 construction, the probability is that it
13 could, that it would.

14 So they are using that
15 separation probably for two reasons. One
16 is to target the loop material or the hook
17 material to these areas, as well as to
18 perhaps save material by eliminating some
19 portion in the middle.

20 Q Safe material?

21 A Say it again.

22 Q You said "safe material"?

23 A No, what I'm saying is -- there
24 is a space right here in between 23, and

25 basically that's the outer cover that

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1 Jezzi
2 there, and not knowing their intention,
3 but one of the possibilities is rather
4 than having a continuous piece, they saved
5 some material making it less expensive by
6 taking out a portion of it.

7 Q And can we tell from the Shingu
8 reference whether or not the hooks would
9 be retained by the space between the two
10 elements 23?

11 A It all depends on the material
12 and the type of nonwoven that is used, and
13 also on the type of hook that is used.
14 Right now there are some hooks that are
15 extremely aggressive and attach themselves
16 to most types of unwovens in these type of
17 applications.

18 Q But from this reference, you
19 can't tell?

20 A I can't tell.

21 MR. COLES: I want to take a
22 quick break. I want to check my
23 notes. I think I may have a few more
24 questions, but I need to spend a few
25 minutes looking at my notes.

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Jezzi

MR. SPENDLOVE: Yeah, no
problem.

THE VIDEOGRAPHER: The time is
2:58 p.m. We're going off the record.
(Thereupon, a recess was taken,
and then the proceedings continued as
follows:)

THE VIDEOGRAPHER: The time is
3:15 p.m. We're back on the record.

BY MR. COLES:

Q Mr. Jezzi, does the Benning
reference disclose the claim element of
Claim 1 that "the retaining forces between
said mechanical closure means as an outer
face is the mean part of lower than
retaining forces between said mechanical
closure means and said outer face of said
side parts in the front area"?

A May I ask you to repeat the
question? It was pretty lengthy.

Q Does the Benning reference
disclose the claim element of '788 Claim 1
that recites that "the retaining forces
between said mechanical closure means

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1 Jezzi
2 said outer face of said main part are
3 lower than retaining forces between said
4 mechanical closure means and said outer
5 face of said side parts in said front
6 area"?

7 A Okay.

8 We basically use Benning 6496
9 for the folded ear. They do mention, you
10 know, side parts in their application. I
11 do not recall that they have retentive
12 forces mentioned in their application
13 though. However, the diaper design is not
14 that different from Beckert '788, so I
15 would think that it would be probably
16 similar.

17 Q In the Benning reference --
18 MR. COLES: Let me strike that.

19 Q Does the Benning reference
20 disclose connecting the connecting means
21 to the front of the diaper?

22 A If you look at Figure 4, and,
23 again, this is based on experience in the
24 industry in the category, when you look at
25 Figure 4, you look at the diaper having

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1 Jezzi
2 been constructed with four side parts. In
3 its application, this diaper design that's
4 shown in Figure 4 could have the
5 capability of having the side attachment
6 means, 42, 44, either hit the back
7 counterpart, side part or the outer cover,
8 or even the front side parts, depending on
9 the girth of the individual wearing the
10 product.

11 So it basically, in my opinion,
12 covers a diaper design which has side
13 parts and attachment means to it.

14 Q Is there any way to know from
15 the Benning reference what the retaining
16 forces are for the -- between the
17 connection means and the side parts?

18 A As someone skilled in the art
19 looking at the description of the
20 materials that they use for the side
21 parts, for the outer cover, and then for
22 the selection of these materials, and
23 knowing the performance of the various
24 hooks against these materials, I would
25 venture to say that it would probably

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1 Jezzi
2 very similar to what they are claiming in
3 Beckert.

4 Q And why do you say that?

5 A Because basically the side
6 panels, 34, I believe they describe the
7 material sections attached to the main
8 body portion are preferably a nonwoven
9 material, specifically a spunbond or an
10 SMS or SM material. Then I wouldn't be
11 surprised whether they are describing the
12 outer cover as either being a film
13 laminate, again, which would be, again,
14 described in Beckert.

15 So knowing that those materials
16 are similar with a mechanical fastener
17 type, you should be able to get similar
18 results of what they have been claiming
19 before -- or afterwards I should say.

20 Q Is there any way to tell what
21 the retaining forces are for the outer
22 cover?

23 A I think this is a variable, and
24 the reason I say that is a nonwoven by
25 itself will generate a certain retentive

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1 Jezzi
2 force. A laminate of a nonwoven and a
3 film would probably generate a slightly
4 reduced force.
5 If you have a back sheet that
6 has a -- we call it fenestration adhesive
7 pattern, which means you only glue the
8 outside, which has been done in the
9 industry, and you have a loose nonwoven,
10 that even though it is a laminate with a
11 film back sheet, you still would have
12 higher retaining forces.

13 So without really seeing the
14 specific embodiment, it's hard to say
15 which way it would go. More than likely
16 it would generate retentive forces at
17 those levels.

18 Q But from reading the Benning
19 records, you can't tell?

20 A Specifically from the
21 specification, they do not mention
22 numbers, but, again, from someone
23 experienced in the art, knowing these
24 materials and their performances, you
25 would probably say pretty good assurance

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1 Jezzi
2 that they more than likely would fall
3 within those ranges. But, again, it is my
4 opinion based on my experience.

5 Q But you would say that reading
6 Benning that is not disclosed there?

7 MR. SPENDLOVE: Objection.
8 Asked and answered.

9 Q You can answer.

10 A I don't believe they mentioned
11 retentive forces in Benning.

12 Q Okay.

13 In the Belau reference --

14 MR. COLES: Let me strike that.

15 Q In your opinion, does Belau
16 disclose "the retaining forces between
17 said mechanical closure means and said
18 outer face of said main part are lower
19 than retaining forces between said
20 mechanical closure means and said outer
21 face of said side parts in said front
22 area" as required by Claim 1 of '788
23 Patent?

24 A Again, I think we discussed that
25 before, I don't think that specific

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1 Jezzi
2 language is included in the specification
3 of Belau.

4 Specifically, however, it
5 certainly is implied by the design of the
6 construction of the -- we'll call it
7 targeted acquisition, targeted engagement
8 material that they describe, and the
9 implication that by varying the embossed
10 patterns, they can vary the properties of
11 that material.

12 Q And from reading the Belau
13 reference, can you tell whether or not the
14 connection means will connect to the side
15 parts and retain the diaper on the wearer?

16 A Without knowing specifically the
17 embossed patterns that are used for these
18 side parts, the ones that are extended,
19 76B and -- 76B, it is hard to determine
20 exactly what those retentive forces are.
21 However, when you read the patent as a
22 whole, what it is telling someone that's
23 skilled in the art is by varying the
24 embossed definition of this material, you
25 can vary that force.

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1 Jezzi
2 So whether this particular
3 embodiment meets that or not, their
4 teaching basically says that you can
5 modify that and get those retentive forces
6 to be different.

7 Q In your opinion, does the Goates
8 reference disclose "the retaining forces
9 between said mechanical closure means and
10 said outer face of said main part are
11 lower than the retaining forces between
12 said mechanical closure means and said
13 outer face of said side parts in the front
14 area" as required by '788 Patent, Claim 1?

15 A In the declaration, we use
16 Goates to anticipate Beckert '788. And as
17 I learned, it did not include all the
18 types of descriptions of that particular
19 patent.

20 However, when you look at Goates
21 in combination with the other patents we
22 cited, it becomes obvious that those
23 combinations of patents would basically
24 predict the claims that are made in
25 Beckert '788.

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1 Jezzi

2 Q Are you saying that Goates in
3 and of itself does not show that claim
4 element of '788 Patent, Claim 1?

5 A I mentioned Goates does not
6 include specific retention forces, but I
7 think covers most every other
8 characteristic that was described in
9 Beckert.

10 Q Is there anything about your
11 testimony you want to change, correct or
12 amplify?

13 A No, not really.

14 MR. COLES: Okay. I have no
15 more questions. Thank you.

16 THE WITNESS: Thank you.

17 MR. SPENDLOVE: I have just a
18 couple of follow-up questions,
19 Mr. Jezzi.

20 EXAMINATION BY

21 MR. SPENDLOVE:

22 Q First of all, we appreciate your
23 being here. I know that Mr. Coles has
24 asked you a wide range of very specific
25 questions that has tested your memory

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1 Jezzi
2 your ability to hunt and find in the
3 patents, and we appreciate the work that
4 you have done on those. I would like to
5 follow up on a couple of things.

6 First of all, I would like to
7 look at the Goates patent, if we could.

8 and We talked about --
9 previously here today, we talked about
10 your declaration in paragraph 44. If you
11 could pull that open as well, please.

12 A Okay.

13 Q One of the things you talk about
14 in paragraph 44 that Goates discusses is
15 the active fastening portions.

16 Do you recall discussing those?

17 A Okay.

18 Q Would one of skill, in your
19 opinion, would one of ordinary skill in
20 the art understand that those active
21 fastening portions could be placed on the
22 side parts of the diaper?

23 A Yes. And I think I have said
24 that repeatedly through the deposition,

25 that the degree of overlap that occurs *800.211.DEPO (3376)*
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1 Jezzi
2 from the side parts or the ears or side
3 panels on a diaper is completely dependent
4 on the child or the patient or the wearer.
5 And so depending on the correct size or
6 fit, it is very possible that these may
7 overlap and go against themselves, and in
8 many cases people do that.

9 Q So if we look at Column 10 of
10 the Goates patent, if you would, please.
11 If you look at -- we're looking about line
12 15. The last sentence in the paragraph
13 there on line 15, it says, "For example,
14 an attachment panel can be located on the
15 outer cover."

16 Do you see that?

17 A Excuse me, Column 10, line 15?

18 Q Yes, line 15.

19 A "Alternatively at least one
20 attachment panel not shown."

21 Is that the line?

22 Q 913.

23 A 913.

24 Q Right. Column 10, line 15. It
25 should say, "For example, an attachment
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1 Jezzi
2 can be located on the outer cover."
3 A This one here?
4 Q Yes.
5 Did you find the sentence I'm
6 talking about there?
7 A Okay. "Alternatively at least
8 one attachment panel not shown. May
9 suitably be located on the diaper, 20, to
10 which the active fastening portions, 62
11 and 64, of the fastening members, 60 or
12 61, on the ears, 34, 134, are confirmed to
13 engage. For example, an attachment panel
14 can be located on the outer cover."

15 See that?
16 Q Your understanding of that
17 sentence that says, "For example, an
18 attachment panel can be located on the
19 outer cover", as one of ordinary skill in
20 the art, would they take that to mean that
21 an attachment panel can only be located on
22 the outer cover?

23 MR. COLES: Objection. Form.

24 A No, not really. Based on other
25 publications, the attachment panel can be located on the outer cover.
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1 Jezzi
2 located either on the outer cover or even
3 on the side parts.

4 Q We can turn to the Karami --

5 A Specifically, you know, Karami
6 demonstrates that as well as Shingu.

7 Q Okay.

8 If we can turn to the Karami
9 '772 application, this is the one that was
10 marked as Exhibit 1015. If we could turn
11 to using, for example, Figure 7.

12 A Okay.

13 Q And we discussed this previously
14 if you remember today, and there are
15 several parts here. There is a 230L.

16 Do you see that?

17 A Yes.

18 Q And what is that? What is that
19 in this figure?

20 MR. COLES: Objection to form.

21 Q Go ahead and answer.

22 A I can answer?

23 Q Yes.

24 A Basically that is an equivalent
25 of a side part that is made to stick

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1 Jezzi

2 beyond the main core area of the chasis.

3 Q And would one of ordinary skill
4 in the art understand that that could be a
5 separate side part?

6 A Yes.

7 Q And if you look, there is a
8 number 220 there at the top there.

9 What is that part of the
10 drawing?

11 A That is basically considered the
12 central portion of the chasis, which would
13 contain the absorbent core.

14 Q And in this drawing, there is a
15 line between that 220 and 230.

16 Do you know who that line
17 represents?

18 A Well, it is in the chart. It
19 could mean a couple of things.

20 One, there could be another
21 material that is the whole length of the
22 central absorbent core that forms that
23 line; it could be the leg cuffs; or it
24 could be the fact that the side parts, 231
25 and 232, are adhered to that main chasis.

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1 Jezzi

2 central core.

3 Q So given what one of ordinary
4 skill in the art would understand, would
5 one of ordinary skill in the art
6 understand that it would be possible to
7 have a side part that was attached to the
8 main body, for example, along that line?

9 MR. COLES: Objection to form.

10 A It is possible, yes.

11 Q If we could turn to the Belau
12 patent. That's Belau '404, it is an
13 application, and it is marked as Exhibit
14 1005.

15 We've discussed this patent at
16 length today also. If I could get you to
17 turn to Figure 6B, which I believe we
18 discussed earlier; is that correct?

19 A Yes.

20 Q In Figure 6B, looking at that
21 with the understanding of one of ordinary
22 skill in the art, if the rear side part or
23 ear, whatever is number 74 there --

24 A Yeah.

25 Q -- if that were pressed against

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1 Jezzi
2 the portion 76, the side part, would that
3 attach to portion 76?

4 MR. COLES: Objection to form.

5 A Basically the mechanical hook
6 component of the side part, 74, more than
7 likely, depending on the hook design
8 that's used, could attached to 76B.

9 Q Would one of ordinary skill in
10 the art understand how to choose materials
11 so that it would attach?

12 A Basically there is a variety of
13 hook geometries and compositions with
14 varied performance characteristics that
15 you could choose from, as well as you
16 could modify 76A and 76B with the various
17 embossed definitions that were discussed
18 in the patent to vary that property as
19 well.

20 Q There were a couple of times
21 throughout the day where Mr. Coles asked
22 you a question about what you had used a
23 reference for in your declaration. And in
24 response to a number of those, you replied
25 that the primary use was and then expanded

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1 Jezzi

2 that primary use.

3 Do you remember those questions
4 and answers?

5 A Yes.

6 Q When you said that the primary
7 use was for, and then the explanation you
8 gave, did you mean that that was
9 exclusively what that patent taught or
10 could there --

11 A No. Basically --

12 MR. COLES: Wait. Objection to
13 form. You have to give me a second to
14 object.

15 THE WITNESS: I'm sorry.

16 MR. COLES: You can answer the
17 question.

18 A Basically many of these patents
19 covered a lot of the separate grounds and
20 separate claims that were covered in
21 Beckert '788. And we tried to combine
22 them where they made more sense for
23 obviousness. So they covered various
24 parts of the Beckert '788, and all the
25 different independent as well as the 2

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1 Jezzi

2 dependent claims.

3 Q And so for some of those other
4 parts, are those opinions set forth in
5 your declaration?

6 A Repeat the question again so I
7 can understand it.

8 Q For the additional elements that
9 you just talked about that may be shown in
10 these references, are those additional
11 elements set forth in your declaration?

12 A Are they additional?

13 MR. SPENDLOVE: Just strike
14 that. That's fine.

15 Q One of the things that we
16 discussed today is the various cost of
17 materials.

18 What are the factors that go
19 into deciding which materials to use in a
20 diaper?

21 A Basically you have to look at
22 the overall cost of the product and how
23 you want to market it, and target price
24 the product, and what can the market bear,
25 consumer acceptance and performance.

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1 Jezzi
2 typically it is a juggling act as to where
3 you decide to emphasize taking cost out or
4 putting cost in. And that's why when Mr.
5 Coles asked me the question, it basically
6 varies and it basically varies by product
7 developers as well as company.

8 In some cases, you put more on
9 with the side parts by making them, for
10 instance, elastic, and take out cost by
11 reducing the width of the main chasis or
12 reducing the absorbent core.

13 Other companies believe that
14 absorbency is the most important property
15 and they basically down gauge, reduce
16 basis weights, therefore costs, on some of
17 the other side components.

18 So it really varies, and it is
19 looked at on a case-by-case basis.

20 MR. SPENDLOVE: I think that's
21 all I have.

22 MR. COLES: I want to follow up
23 with a few questions.

24 EXAMINATION BY

25 MR. COLES:

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Jezzi

Q Talking about the Karami '772 reference.

Are you there?

A Yes.

Q Mr. Spendlove referred you to Figure 7.

A Okay.

Q And he asked if the side parts, 230L and 230R, could be adhered to the chasis.

Do you remember that?

A Yes.

Q Okay.

Does the Karami reference show the side parts being adhered to the chasis?

A I would have to review it. I don't recall whether it does specifically talk about potentially attaching those side parts.

Again, from someone skilled in the art, and this is -- I don't know if it is the right word to use -- extrinsic evidence, but there are patents that

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1 Jezzi
2 describe attaching configurations like
3 this to the central core. And the
4 rationale, if I recall those patents, is
5 that they basically interleave the right
6 and the left so that when they do the
7 cutout, you basically do not generate any
8 waste material at all. And then you
9 attach actually the side panels not too
10 differently than is shown here after that
11 process of separating from a single web to
12 reduce waste.

13 So to someone like myself when I
14 look at that and I'm asked whether it is
15 possible, the answer is yes, I think it is
16 possible, and that's how I answered the
17 question.

18 Whether Karami specifically
19 describes that, I would have to review it
20 carefully again, but I don't recall that
21 it did.

22 Q Okay.

23 And Mr. Spendlove asked you a
24 question about the Belau patent.

25 A Uh-huh.

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1 Jezzi

2 Q I believe he asked you if the
3 closure means were pressed against the
4 element 76B, would it stick; is that
5 correct?

6 A Correct.

7 Q Is there anything in Belau that
8 would let you know whether or not the
9 retaining forces would be sufficient to
10 hold the hooks?

11 A I don't think they discuss that
12 in Belau, which was specifically retentive
13 forces. All I can say is, again, you
14 know, someone skilled in the art, looking
15 at this and what it teaches, I could
16 basically from obviousness make some
17 changes to what they are teaching and have
18 the hooks definitely engaged to those
19 portions.

20 MR. COLES: I have no further
21 questions. Thank you very much, Mr.
22 Jezzi.

23 THE VIDEOGRAPHER: The time is
24 3:40 p.m. on August 15, 2013. This is
25 the end of tape number five and the
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Jezzi
concludes the videotaped deposition of
Mr. Arrigo Jezzi.

ARRIGO D. JEZZI

Subscribed and sworn to
before me this day
of , 2013.

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Jezzi		
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C E R T I F I C A T E

STATE OF NEW YORK)

: SS

COUNTY OF NEW YORK)

I, Adrienne M. Mignano, the
reporter before whom the foregoing
deposition was taken, do hereby certify that
the witness whose testimony appears in the
foregoing deposition was sworn by me; that
the testimony of said witness was taken by
me in machine shorthand and thereafter
transcribed by computer-aided transcription;
that said deposition is a true record of the
testimony given by said witness; that I am
neither counsel for, related to, nor
employed by any of the parties in the action
in which this deposition was taken; and
further that I am not a relative or employee
of any counsel employed by the parties
hereto, or financially or otherwise
interested in the outcome of this action.

Adrienne M. Mignano

ADRIENNE M. MIGNANO

Notary Public, State of New York, County of
Suffolk. My Commission expires June 25,
2017. ID Number: 01M14968440

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DEPOSITION ERRATA SHEET

Our Assignment No. 336516

Case Caption: MEDLINE v HARTMANN
Case IPR2013-00173
Patent U.S. 8,152,788

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript
of my deposition taken in the captioned
matter or the same has been read to me,
and the same is true and accurate, save
and except for changes and/or corrections,
if any, as indicated by me on the
DEPOSITION ERRATA SHEET hereof, with the
understanding that I offer these changes
as if still under oath.

SIGNATURE _____ DATE: _____
ARRIGO D. JEZZI

Subscribed and sworn to on the ____ day of
_____, 20__ before me,

Notary Public,
in and for the State of _____

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DEPOSITION ERRATA SHEET

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SIGNATURE: _____ DATE: _____
ARRIGO D. JEZZI

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understanding that I offer these changes
as if still under oath.

SIGNATURE Arrigo D. JeZZi DATE: 09-11-2013
ARRIGO D. JEZZI

Subscribed and sworn to on the 11th day of
SEPTEMBER, 2013 before me,
KIMBERLY A. SHEEVERS
Notary Public,
in and for the State of PA

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Kimberly A. Sheevers, Notary Public
Lower Merion Twp., Montgomery County
My Commission Expires Aug. 13, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES



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Paul Hartmann AG
Exhibit 2005, Page 202
Medline v. Hartmann
Case IPR2013-00173

DEPOSITION ERRATA SHEET

Page No. 15 Line No. 9 Change
to: "converter, against Kimberly Clark, Kuepper"
Reason for
change: correct misspelling of name

Page No. 32 Line No. 7 Change
to: "And there is an airlaid paper"
Reason for
change: correct misspelling

Page No. 34 Line No. 11 Change
to: "project in new airlaid nonwoven"
Reason for
change: correct misspelling

Page No. 34 Line No. 16 Change
to: "airlaid nonwoven technology?"
Reason for
change: correct misspelling

Page No. 34 Line No. 18 Change
to: "And what was this new airlaid"
Reason for
change: correct misspelling

Page No. 34 Line No. 21 Change
to: "below it. It was an airlaid again using"
Reason for
change: correct misspelling

Page No. 40 Line No. 16 Change
to: "different geometry holes to create a"
Reason for
change: correct mistranscription/misstatement

SIGNATURE: Arrigo D. Jezzi DATE: 09-11-2013
ARRIGO D. JEZZI



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Paul Hartmann AG
Exhibit 2005, Page 203
Medline v. Hartmann
Case IPR2013-00173

DEPOSITION ERRATA SHEET

Page No. 41 Line No. 16 Change
to: "transferred back up to Neenah, Wisconsin as"
Reason for
change: correct place name

Page No. 42 Line No. 13 Change
to: "tape landing zone non-woven transfer layer"
Reason for
change: correct mistranscription/misstatement

Page No. 48 Line No. 9 Change
to: "A Paragon Trade Brands imploded"
Reason for
change: correct mistranscription/misstatement

Page No. 50 Line No. 13 Change
to: "with Procter & Gamble, which Kimberly"
Reason for
change: correct name spelling

Page No. 51 Line No. 15 Change
to: "infringement and invalidity. We did write freedom"
Reason for
change: correct mistranscription/misstatement

Page No. 68 Line No. 7 Change
to: "and the sides of the web that bracket the Z"
Reason for direction of the web, the top and bottom of that
change: clarification

Page No. 72 Line No. 21 Change
to: "A The quote is basically Datta."
Reason for
change: correct mistranscription

SIGNATURE: Arrigo D. JeZZi DATE: 09-11-2013
ARRIGO D. JEZZI



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Paul Hartmann AG
Exhibit 2005, Page 204
Medline v. Hartmann
Case IPR2013-00173

DEPOSITION ERRATA SHEET

Page No. 72 Line No. 22 Change
to: "Q When you say "Datta", you mean a
Reason for
change: correct mistranscription

Page No. 85 Line No. 12 Change
to: "combination with the hook that is specified, so
Reason for
change: correct mistranscription/misstatement

Page No. 89 Line No. 21 Change
to: "specification, were on the main body. But
Reason for
change: correct mistranscription

Page No. 107 Line No. 6 Change
to: "pattern on spunbond to make it the loop
Reason for
change: correct mistranscription

Page No. 107 Line No. 21 Change
to: "number 5858515, paragraph 009."
Reason for
change: correct mistranscription/misstatement

Page No. 132 Line No. 4 Change
to: "mentioned."
Reason for
change: correct mistranscription

Page No. 139 Line No. 4 Change
to: "A They can, they cannot; it is
Reason for
change: correct mistranscription/misstatement

SIGNATURE: Arrigo D. Jezzi DATE: 09-11-2013
ARRIGO D. JEZZI



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Paul Hartmann AG
Exhibit 2005, Page 205
Medline v. Hartmann
Case IPR2013-00173

DEPOSITION ERRATA SHEET

Page No. 144 Line No. 13 Change
to: "A No, but they could. Basically 40"
Reason for
change: clarification/correct mistranscription

Page No. 153 Line No. 11 Change
to: "was done by modifying the siliconization of a"
Reason for
change: correct mistranscription/misstatement

Page No. 160 Line No. 11 Change
to: "they probably would bracket that, but"
Reason for
change: clarification/correct mistranscription

Page No. 162 Line No. 2 Change
to: "are existing materials that will have"
Reason for
change: clarification/correct misstatement

Page No. 162 Line No. 3 Change
to: "extreme probability to encompass"
Reason for
change: clarification/correct misstatement

Page No. 163 Line No. 8 Change
to: "more money, you take money from other materials
Reason for or places in the product, so"
change: clarification

Page No. 166 Line No. 11 Change
to: "We did not cite specific words on the"
Reason for
change: correct mistranscription/misstatement

SIGNATURE: Arrigo D. JeZZi

ARRIGO D. JEZZI

DATE: 9/11/2013



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Paul Hartmann AG
Exhibit 2005, Page 206
Medline v. Hartmann
Case IPR2013-00173

Page No. 167 Line No. 8 Change
to: "Shingu disclosed a diaper where the side"
Reason for
change: correct mistranscription

Page No. 189 Line No. 8 Change
to: "that's used, could attach to 76B."
Reason for
change: correct mistranscription

Page No. _____ Line No. _____ Change
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SIGNATURE: Arrigo D. Jazzi DATE: 09-11-2013
ARRIGO D. JAZZI



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Paul Hartmann AG
Exhibit 2005, Page 207
Medline v. Hartmann
Case IPR2013-00173