

Honorable James P. Donohue

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

EKO BRANDS, LLC,  
  
Plaintiff,

Civil Action No. 15-cv-522JPD  
*JPD*  
PROPOSED PRETRIAL ORDER

v.

ADRIAN RIVERA MAYNEZ  
ENTERPRISES, INC.; and ADRIAN  
RIVERA,  
  
Defendants.

Pursuant to Local Civil Rule (“LCR”) 16(h) and this Court’s scheduling order (Dkt. 185), Plaintiff Eko Brands, LLC (“Eko”) and Defendants Adrian Rivera Maynez Enterprises, Inc. and Adrian Rivera (collectively “ARM”) respectively submit their Joint Pretrial Statement.

**I. JURISDICTION**

This court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 (Federal Question), 1338(a) (Patent) and § 2201 (Declaratory Judgments). The Court also has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 as there is diversity of citizenship and the amount in controversy exceeds \$75,000, exclusive of costs.

## II. CLAIMS AND DEFENSES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1. Eko seeks a determination that a number of products sold by ARM directly infringe claim 8 of U.S. Patent No. 8,707,855 (“the 855 patent”) under 35 U.S.C. § 271(a), specifically the following ARM products: ECO-FILL DELUXE 2.0 (or ECO-FILL 2.0); ECO-FILL DELUXE (or ECO-FILL 2 PACK DELUXE), which was sold by ARM in packs of 2; and ECO-FLOW (Original) “v1” and ECO-FLOW (New) “v2” (“Accused Products”). As used herein, original claim 9 and amended claim 8 of the 855 patent are understood as being the same claim and are jointly referred to as “Amended claim 8.” For purposes of this trial, the parties have stipulated that ARM’s Accused Products directly infringe Amended claim 8. (See Dkt. 208 (Stipulation)).

2. This matter also includes a claim for declaratory judgment of patent invalidity arising under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* and under the Patent Laws of the United States, 35 U.S.C § 1 *et seq.* Eko seeks a declaratory judgment that claims 8 and 19 of ARM’s U.S. Patent No. 8,720,320 (“the 320 patent”) patent are invalid as obvious under 35 U.S.C. § 103.

3. Eko seeks an award of damages adequate to compensate it for the infringement that has occurred, but in no event less than a reasonable royalty for the use made of the invention by ARM, together with the prejudgment interest from the date infringement of the 855 patent issued.

4. Eko seeks increased damages as permitted under 35 U.S.C. § 284.

5. Eko seeks a finding that this case is exceptional and a further award of its attorney’s fees and costs as provided in 35 U.S.C. § 285.

6. Eko seeks a permanent injunction prohibiting ARM’s further infringement of the 855 patent as provided in 35 U.S.C. § 283.

7. Eko seeks a determination that ARM’s infringement of the 855 patent has been willful.

8. ~~As an affirmative defense, ARM seeks a determination that its Accused Products do not directly infringe Amended claim 8 of the 855 patent.~~ <sup>JPD</sup>

1 9. ARM disputes the reasonable royalty and the amount of damages including  
2 increased damages that Eko seeks under 35 U.S.C. § 284.

3 10. ARM denies that this case is exceptional and denies that Eko is entitled to attorney's  
4 fees and costs under 35 U.S.C. § 285.

5 11. ARM denies that Eko can establish that any direct infringement by ARM has been  
6 willful.

7 12. ARM denies that Eko can satisfy the requirements applicable to its request for  
8 injunctive relief.

9 13. ARM denies that Eko can satisfy the requirements for obtaining damages under  
10 35 U.S.C. § 287.

11 14. ARM denies that Eko can establish liability for direct infringement against

12 Mr. Rivera. *No individual liability is sought by Eko against Mr. Rivera in his individual capacity.*

13 **III. ADMITTED FACTS**

14 1. Provisional patent application U.S. App. No. 61/484,150 was filed on May 9, 2011. *JPD*

15 2. U.S. App. No. 13/467,792 was filed on May 9, 2012, claiming priority to U.S. App.  
16 No. 61/484,150. This application later issued as U.S. Patent No. 8,707,855 on April 29, 2014, and  
17 lists Mr. Ronald DeMiglio as the first-named inventor.

18 3. Eko is the owner of the 855 patent.

19 4. U.S. Patent Application No. 11/777,831, which led to the 320 patent was filed on  
20 July 13, 2007.

21 5. U.S. Patent No. 8,720,320 issued on May 13, 2014 and names Mr. Adrian Rivera  
22 as the inventor.

23 6. Mr. Rivera is the owner of the 320 patent.

24 7. The Accused Products are designed to be used in single-serve brewing machines  
25 such as Keurig machines.  
26

LOWE GRAHAM JONES LLC

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

1           8.       On April 19, 2016 ARM filed for *ex parte* reexamination of original claims 8, 9,  
2       12, and 13 of the 855 patent in an effort to invalidate those claims based on ARM's U.S. Patent  
3       No. 8,720,320 and U.S. Patent Application No. 2013/0017303.

4           9.       At the conclusion of the reexamination, claim 8 was amended to incorporate the  
5       content of claim 9 in order to be deemed patentable over ARM's 320 patent, as well as the  
6       303 application to Robert Vu.

7           10.       The Patent Office issued its reexamination certificate on February 21, 2017.

8           11.       In the reexamination certificate the Patent Office stated that "Claim 8 is determined  
9       to be patentable as amended," with the amendments made to claim 8 printed in italics.

10          12.       For purposes of this trial, the parties have stipulated that ARM's Accused Products  
11       directly infringe Amended claim 8. (See Dkt. 208 (Stipulation)). ARM reserves its rights and  
12       intends to appeal the issue of direct infringement to the Federal Circuit Court of Appeals.

13          13.       A person having an ordinary level of skill in the art with respect to the field of the  
14       invention in Application No. 11/777,831 would be a person having education and training in  
15       engineering and food science. This person would have a background in the design of mechanical  
16       and hydraulic systems/machines, understanding of materials from the perspective of food safety  
17       as well as mechanical properties and manufacturability, and understanding of the nuances of  
18       extraction of flavor, caffeine and color from brewable materials such as coffee or tea. One example  
19       of such a person would be someone trained as design engineer or engineering designer. The  
20       knowledge of brewable materials would typically be found in a person trained in beverage product  
21       development or food science. Industry experience of five years or more in the detailed design and  
22       development of beverage brewing and dispensing machines would be equivalent to the formal  
23       education described above.

24          14.       The scope and content of the prior art related to the 320 patent includes the  
25       following references:  
26

- a. U.S. Patent No. 3,878,772 to Nordskog (“Nordskog”)
- b. U.S. Patent No. 6,079,315 to Beaulieu et al. (“Beaulieu”)
- c. U.S. Patent No. 5,840,189 to Sylvan (“Sylvan”)
- d. U.S. Patent No. 6,658,989 to Sweeney et al. (“Sweeney”)
- e. U.S. Patent No. 6,606,938 to Taylor (“Taylor”)
- f. World Intellectual Property Organization Application WO 2005/092160  
Illy Caffè’s PCT (“Illy-Caffè’s”)

#### IV. ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. Whether claim 8 of ARM’s 320 patent is invalid as being obvious under 35 U.S.C. § 103. The parties dispute whether the Court or the jury will make the ultimate determination of obviousness. Eko submits that while the jury may be asked about questions of fact underlying the ultimate question of obviousness, it is not allowed to make the ultimate determination of obviousness, which is a question of law solely for the Court. ARM submits that it is well established that while obviousness is a question of law, the factual underpinnings of obviousness are questions of fact for the jury.

2. Whether claim 19 of ARM’s 320 patent is invalid as being obvious under 35 U.S.C. § 103. The parties dispute whether the Court or the jury will make the ultimate determination of obviousness. Eko submits that while the jury may be asked about questions of fact underlying the ultimate question of obviousness, it is not allowed to make the ultimate determination of obviousness, which is a question of law solely for the Court. ARM submits that it is well established that while obviousness is a question of law, the factual underpinnings of obviousness are questions of fact for the jury.

LOWE GRAHAM JONES LLP

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

## V. EXPERT WITNESSES

Each party shall be limited to one expert witness each on the issues of infringement and validity of the 855 patent (to the extent not foreclosed by the Court's summary judgment order (Dkt. 161)). Each party shall be limited to one expert witness each on the issue of damages.


Expert Witnesses	Contact Information	Content of Testimony	Will Testify	May Testify
Dr. Laurens Howle	BelleQuant Engineering, PLLC 7813 Dairy Ridge Rd. Mebane, NC 27302	In his capacity as an expert, Dr. Howle will testify as to all matters disclosed in his report, supplemental report, rebuttal report, matters raised on cross-examination not otherwise excluded by this Court.	X	
Mr. Drew Voth	Alvarez & Marshall, LLC 1201 3rd Ave #800 Seattle, WA 98101	In his capacity as an expert, Mr. Voth will testify as to all matters raised in his expert report, supplemental report, and matters raised on cross-examination not otherwise excluded by this Court.	X	
Mr. Paul Phillips	PJP Services, LLC 1845 Davison Way Marietta, GA 30064	In his capacity as an expert, Mr. Phillips will testify as to all relevant matters raised in his expert report, his rebuttal report, and matters raised on cross-examination not otherwise excluded by this Court.	X	
Dr. Barbara C. Luna	White, Zuckerman, Warsavsky, Luna & Hunt 15490 Ventura Blvd #300 Sherman Oaks, CA 91403	In her capacity as an expert, Dr. Luna will testify as to what damages Eko would be entitled to receive, if one or more claims of the 855 patent are infringed.	X	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**VI. OTHER WITNESSES**

Eko Witnesses	Contact Information	Content of Testimony	Will Testify	May Testify
Mr. Chris Legler	c/o Lowe Graham Jones 701 Fifth Ave., Suite 4400 Seattle, WA 98104 T: 206.381.3300	Mr. Legler will testify on his personal knowledge of Espresso Supply, Inc., Eko Brands, LLC, and the relationship between the two companies. Mr. Legler will also testify as to general business practices and sales practices of the company concerning Eko's products. Mr. Legler will also provide testimony surrounding the company's efforts in licensing the 855 patent. Further, Mr. Legler will testify concerning the development and alterations of Eko's product packaging and marketing efforts. He will also testify as to his understanding of Eko's first discovery of ARM and its products. He will discuss his awareness of Eko's history and Eko's early efforts to sell the Ekobrew device.	X	
Ms. Laura Sommers	c/o Lowe Graham Jones 701 Fifth Ave., Suite 4400 Seattle, WA 98104 T: 206.381.3300	Ms. Sommers is the president and founder of Espresso Supply, Inc. She will be called to provide testimony concerning Espresso Supply's history, the circumstances surrounding its acquisition of Eko, and information about the coffee industry in general. She will discuss her awareness of Eko's history and Eko's early efforts to sell the Ekobrew device.	X	

**LOWE GRAHAM JONES<sub>PLC</sub>**

  
 701 Fifth Avenue, Suite 4800  
 Seattle, Washington 98104  
 206.381.3300 • F: 206.381.3301

Eko Witnesses	Contact Information	Content of Testimony	Will Testify	May Testify
Mr. Adrian Rivera	c/o Kundu PLLC 1300 I Street NW, Suite 400E Washington, DC 20005 T: 202.749.8372	Eko intends to call Mr. Rivera to discuss his knowledge of the 855 patent.	X	
Mr. Dino Ditta	c/o Kundu PLLC 1300 I Street NW, Suite 400E Washington, DC 20005 T: 202.749.8372	Eko intends to call Mr. Ditta to discuss his knowledge of the 855 patent prior.		X

ARM Witnesses	Contact Information	Content of Testimony	Will Testify	May Testify
Mr. Adrian Rivera	c/o Kundu PLLC 1300 I Street NW, Suite 400E Washington, DC 20005 T: 202.749.8372	Mr. Rivera has knowledge on the ownership of the 320 patent, the development of the technology contained in the 320 patent, including technology that existed at the time the 320 patent application was filed. Mr. Rivera also has knowledge of the founding of his company ARM Enterprises, Inc., and the development of ARM's beverage brewing capsules, as well as knowledge of the market for these products. Mr. Rivera also has knowledge regarding costs, tooling and development of products that do not infringe amended claim 8.	X	
Mr. Dino Ditta	c/o Kundu PLLC 1300 I Street NW, Suite 400E Washington, DC 20005 T: 202.749.8372	Mr. Ditta has knowledge of the technology contained in the 320 patent, including technology that existed at the time the 320 patent application was filed. Mr. Ditta has knowledge of ARM Enterprises, including the development of ARM's products, as well as knowledge of the market for these products. Mr. Ditta also has knowledge regarding costs, tooling	X	

LOWE GRAHAM JONES LLP

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301



		and development of products that do not infringe amended claim 8		
1 2 3 4 5 6	Mr. Robert Bangerter 21605 NE 73rd Pl, Redmond, WA 98053	Mr. Bangerter has knowledge of development of Eko Brands' Keurig 2.0-compatible products. This testimony goes to the issue of whether Eko's damages theories properly apportion patented vs. non-patented aspects of the accused products.		X
7 8 9 10	Mrs. Jenny Brainard 9620 Sunland Place Sunland, CA 91040 T: 818.442.4486	Mrs. Brainard has knowledge of the Fabulously Functional license and the circumstances concerning Fabulously Functional entering into a license, as well as Fabulously Functional's payments to Eko and profitability of the company in view of the license.		
11 12 13	Christopher Legler c/o Lowe Graham Jones 701 Fifth Ave., Suite 4400 Seattle, WA 98104 T: 206.381.3300	Mr. Legler has information relating to licensing, including any royalties received by Eko	X	

## VII. EXHIBITS

Eko reserves all right to amend its exhibit list prior to trial. Eko identifies the following exhibits upon which it may rely to establish its case-in-chief at trial, some of which may be presented electronically:

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
1.	Physical exhibit – Ribbon copy of the '855 patent	NA	X	
2.	Copy of U.S. Patent No. 8,707,855	NA	X	
3.	Reexamination certificate of the 855 patent	NA	X	
4.	U.S. Patent No. 8,561,524	NA	X	
5.	U.S. Patent No. D688,095	NA		X
6.	U.S. Patent No. D677,120	NA		X
7.	US Pat App Pub 2016-0367064 A1 (filed 12-22-2016)	NA		X

LOWE GRAHAM JONES LLC

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
8.	US Pat App Pub 2017-0251861 A1 (filed 09-07-2017)	NA		X
9.	ARM US Patent No 8720320	NA	X	
10.	U.S. Patent Application No. 11/777,831	NA	X	
11.	File History of the 320 patent	NA	X	
12.	Physical exhibit – Ekobrew 2.0 device and cylindrical packaging	NA	X	
13.	Photos of Physical exhibit – Ekobrew 2.0 device and cylindrical packaging		X	
14.	Physical exhibit – Ekobrew 2.0 black device and packaging	NA	X	
15.	Physical exhibit – Ekobrew 2.0 purple device and packaging	NA	X	
16.	Physical exhibit – Ekobrew 2.0 orange device and packaging	NA	X	
17.	Physical exhibit – Ekobrew Elite device and packaging	NA	X	
18.	Photos of Physical exhibit – Ekobrew Elite device and packaging		X	
19.	Physical exhibit – ARM Eco-Fill Deluxe device, green and brown 2-pack with packaging	NA	X	
20.	Photos of ARM Eco-Fill Deluxe device, green and brown 2-pack with packaging		X	
21.	Physical exhibit – ARM Eco-Fill Deluxe “2.0” purple device and packaging (purchased by Eko)	NA	X	
22.	Photos of Physical exhibit – ARM Eco-Fill Deluxe “2.0” purple device and packaging (purchased by Eko)		X	
23.	Physical exhibit - ARM Eco-Flow v1 device and packaging (purchased by Eko)	NA	X	
24.	Photos of Physical exhibit - ARM Eco-Flow v1 device and packaging (purchased by Eko)		X	
25.	Physical exhibit - ARM Eco-Flow v2 device and packaging	NA	X	
26.	Photos of Physical exhibit - ARM Eco-Flow v2 device and packaging		X	

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
27.	Physical exhibit – ARM EZ-Cup device and packaging	NA	X	
28.	Physical exhibit – ARM EZ-Cup 2.0 device, with paper filters, and packaging	NA	X	
29.	Physical exhibit – ARM Eco-Fill product, green single, and packaging	NA	X	
30.	Physical exhibit – Package of Keurig Disposable K-cups	NA		
31.	Physical exhibit – Cut-away sample of Keurig Disposable K-Cup (Donut Shop)	NA		
32.	Photograph of Cut-away sample of Keurig Disposable K-Cup (Donut Shop)			
33.	Physical exhibit – Keurig Brewing device and instructions (Model K425 Plus)	NA	X	
34.	Physical exhibit – SoloFill K1 product and packaging	NA	X	
35.	<u>Espresso Eko Press Release PRNewswire available at <a href="http://www.prnewswire.com/news-releases/earth-friendly-wallet-friendly-ekobrew-joins-bonavita-and-rattleware-in-the-espresso-supply-inc-catalog-of-consumer-goods-300178982.html#">http://www.prnewswire.com/news-releases/earth-friendly-wallet-friendly-ekobrew-joins-bonavita-and-rattleware-in-the-espresso-supply-inc-catalog-of-consumer-goods-300178982.html#</a></u>	NA		
36.	Eko First Set of Interrogatories to ARM, 10-30-2015	NA		X
37.	Eko First Set RFPs to ARM, 10-30 -2015	NA		X
38.	ARM Responses to Eko's Interrogatories, 12-1-2015	NA		X
39.	ARM Responses to Eko's Requests for Production, 12-1-2015	NA		X
40.	ARM Retailer Summary Presentation	ARMLA-APR24-000039-ARMLA-APR24-000088		X
41.	Adrian Rivera Responses to Eko's First Set of Interrogatories, 04-12-2017 (Case No 2:16-cv-04676)	NA		X

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301


Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
42.	ARM WalMart Analysis	ARMLA- APR24- 000207- ARMLA- APR24- 000216		X
43.	2015-02-24 ARM Takedown Notice to Amazon re Ekobrew Elite	EKO000034 - EKO000052		X
44.	2015-02-24 ARM Takedown Notice to Amazon	EKO000053 - EKO000073		X
45.	20150401-Re_ARM ITC - Amazon Request for Indemnification to Ekobrand-1.pdf	EKO000001 - EKO000009		X
46.	Dr. Howle April 18, 2016 Expert Report and exhibits thereto. All Howle Exhibits will be sub-designated under the Exhibit Number corresponding to his report (e.g. "46-A")	NA		X
47.	Dr. Howle Presentation Slides (placeholder)	(To be produced at or near trial)		
48.	U.S. Patent No. 3878772 to Nordskog ("Nordskog")	NA	X	
49.	U.S. Patent No. 6,079,315 to Beaulieu et al. ("Beaulieu")	NA	X	
50.	U.S. Patent No. 6,658,989 to Sweeney et al. ("Sweeney")	NA	X	
51.	World Intellectual Property Organization Application WO 2005/092160 A1 ("WO 160" or "Illy-Caffe")	NA	X	
52.	"Web Forum" (SOLO929001503-1515)	NA		
53.	U.S. Patent No. 5,840,189 to Sylvan ("Sylvan")	NA	X	
54.	U.S. Patent No. 6,606,938 to Taylor ("Taylor")	NA	X	
55.	Dr. Laurens Howle's May 16, 2016 Rebuttal Expert Report and attendant exhibits thereto. All Howle Exhibits will be	NA		

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
	sub-designated under the Exhibit Number corresponding to his report (e.g. "60-A")			
56.	Dr. Howle Supplemental Infringement Report and attendant exhibits thereto. All Howle Exhibits will be sub-designated under the Exhibit Number corresponding to his report (e.g. "62-A")	NA		
57.	Drew Voth Presentation Slides (placeholder)	(To be produced at or near trial)		
58.	Drew Voth Supplemental Report, November 20, 2017 and attendant schedules thereto. All Voth Schedules will be sub-designated under the Exhibit Number corresponding to his report (e.g. "64-1", "64-2")	NA		
59.	Drew Voth Additional Summary Tables (placeholder)	(To be produced at or near trial)		
60.	Updated Sales Disclosures from ARM (placeholder)	(To be produced at or near trial)	X	
61.	Updated Cost Disclosures from ARM (placeholder)	(To be produced at or near trial)		
62.	Amazon.com Filip Coffee Products.pdf	NA		
63.	Amazon.com Pure Java Products.pdf	NA		
64.	ARM Perfect Pod Products on Amazon.com.pdf	NA		X
65.	ARM Product Compatibility - ARM Enterprises, Inc .pdf	NA	X	
66.	2014 Sales Document	ARMLA-APR24-000019-ARMLA-APR24-000022	X	
67.	License BPC Holdings	EKO000365 - EKO000374		

LOWE GRAHAM JONES...

  
 701 Fifth Avenue, Suite 4800  
 Seattle, Washington 98104  
 206.381.3300 • F: 206.381.3301

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
68.	License Evriholder Products LLC	EKO000375 - EKO000386		
69.	License R Ideas Limited	EKO000387 - EKO000409		
70.	License Coffee Filters Direct	EKO000410 - EKO000419		
71.	License Samsara Tech/Korsreel	EKO000420 - EKO000429		
72.	License Fabulously Functional	EKO000617 - EKO000656		
73.	License MyGowns LLC	EKO000449 - EKO000452		
74.	Settlement Fabulously Functional	EKO000441 - EKO000444	X	
75.	Settlement MyGowns LLC	EKO000449 - EKO000452	X	
76.	Settlement AWH-Sales	EKO000430 - EKO000433		
77.	Settlement Best-In-All/Brings Best Deals	EKO000434 - EKO000437		
78.	Settlement Gutens/Lucky Online	EKO000445 - EKO000448		
79.	Settlement Possiave Direct	EKO000453 - EKO000456		
80.	Screen captures of Ekobrew website <a href="http://www.ekobrew.com/">http://www.ekobrew.com/</a>	EKOB00010 4- EKOB00010 6		

LOWE GRAHAM JONES LLP

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
81.	Eco-Fill 2.0 Reviews on Amazon	ARM-D.Ct.- April18- 000016 to ARM-D.Ct.- April18- 000022		X
82.	Printout of <a href="https://www.walmart.com/ip/Solofill-K2-Stainless-Mesh-K2-STAINLESS-MESH/30579831">https://www.walmart.com/ip/Solofill-K2-Stainless-Mesh-K2-STAINLESS-MESH/30579831</a>	NA		
83.	Video Demonstrative of Eko Facility	EKOB00002 7		X
84.	June 14, 2011 Wayback Machine Screen Captures of Ekobrew.com	NA		
85.	September 26, 2011 Wayback Machine Screen Captures of Ekobrew.com	NA		
86.	AEO sales by customer by year as of 11-24-15 AEO	(Excel Produced Natively on 2015-12-01)		X
87.	AEO purchases by vendor by month as of 11-24-15 AEO	(Excel Produced Natively on 2015-12-01)		X
88.	Ekobrew Press Release PDF and native docx file	EKO000107 - EKO000108		
89.	Declaration of Mark Staudacher and attendant exhibits thereto	Dkt. 33-1 filed in Case No. 2:16-cv- 04676-JAK- SS		
90.	Declaration of Laura Sommers and attendant exhibits thereto	Dkt. 33-4 filed in Case No. 2:16-cv- 04676-JAK- SS		
91.	Declaration of Jim Amundsen and attendant exhibits thereto	Dkt. 33-2 filed in Case No. 2:16-cv-		

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
		04676-JAK-SS		
92.	Ekobrew prototype drawings	EKOB00014 8- EKOB00015 3		
93.	Evermuch quotes and purchase order	EKO000113 - EKO000115		
94.	U.S. Patent No. 5,325,765 to Sylvan	NA		X
95.	Complaint In the Matter of: Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same, August 4, 2014, Inv. 337-TA-929	NA		X
96.	Rivera v. ITC, 857 F.3d 1315 (Fed. Cir. 2017)	NA		X
97.	ARM current website webpages	NA		
98.	Eko current website webpages	NA		
99.				

ARM reserves all right to amend its exhibit list prior to trial. ARM identifies the following exhibits upon which it may rely to establish its case-in-chief at trial, some of which may be presented electronically. ARM notes that exhibits bearing an asterisk may be used if the need arises and the Court allows, but ARM does not presently intend to offer such exhibits into evidence:

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
500.	U.S. Patent and Trademark Office's Determination to Grant Reexamination of the '855 Patent*	NA	X	
501.	Patent Office non-final office action in '855 reexamination*	NA		X
502.	Patent Office final rejection in '855 reexamination*	NA		X
503.	Eko Response to final rejection in '855 reexamination*	NA		X



Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
504.	ARM's Disclosure of Asserted Claims and Non-Infringement and Invalidity Contentions Pursuant to Local Patent Rule 121*	NA		X
505.	U.S. Patent Application No. 61/399,382*	(LPR 121 Disclosure Exhibit B)	X	
506.	U.S. Patent Application No. 2013/0017303*	(LPR 121 Disclosure Exhibit C)	X	
507.	U.S. Patent Application No. 5,325,765*	(LPR 121 Disclosure Exhibit D)	X	
508.	U.S. Patent No. 9,232,871	NA		X
509.	U.S. Patent No. 9,232,872	NA		X
510.	Eko Brands' October 27, 2015 Response to ARM's First Set of Requests for Production	NA		X
511.	Eko Brands' October 27, 2015 Response to ARM's First Set of Interrogatories	NA		X
512.	Eko Brands' June 15, 2016 Supplemental Responses to ARM's First Set of Interrogatories	NA		X
513.	Eko Brands' Response to ARM's Second Set of Requests for Production	NA		X
514.	Eko Brands' Response to ARM's Second Set of Interrogatories	NA		X
515.	Eko Brands' June 15, 2016 Supplemental Responses to ARM's Second Set of Interrogatories	NA		X
516.	Eko Brands' May 7, 2015 First Amended Complaint for Declaratory Judgment of Patent Invalidity and for Patent Infringement	NA		X
517.	Eko Brands' July 21, 2015 Reply to ARM's Counterclaims	NA		X
518.	Physical exhibit – My K-Cup product, instructions, and packaging	NA		

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
 Seattle, Washington 98104  
 206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
519.	Physical exhibit – Solofill K2 product, instructions, and packaging	NA		
520.	Physical exhibit – Solofill K3 product, instructions, and packaging	NA		
521.	Physical exhibit – Brew & Save 2.0 product, instructions, and packaging	NA		
522.	Physical exhibit – Eco-Fill product, instructions, and packaging 4-pack	NA		
523.	Physical exhibit – Eco-Fill Deluxe 2.0 product, instructions, and packaging	NA		
524.	Physical exhibit – Keurig 2.0 machine, instructions, and packaging	NA		
525.	Photographs of My K-Cup	NA	X	
526.	Photographs of Solofill K2	NA	X	
527.	Photographs of Solofill K3	NA		X
528.	Photographs of Brew & Save 2.0	NA	X	
529.	Photographs of Eco-Fill MAX	NA		X
530.	Photographs of Eco-Fill	NA		X
531.	Photographs of EZ-Cup	NA	X	
532.	Photographs of EZ-Cup 2.0	NA	X	
533.	Photographs of Keurig	NA		
534.	Photographs of Keurig's disposable K-Cups	NA	X	
535.	Aimee J. Sixel's May 12, 2016 Deposition Transcript	NA		X
536.	Christopher D. Legler's May 12, 2016 Deposition Transcript	NA		X
537.	Robert A. Bangerter's May 12, 2016 Deposition Transcript	NA		X
538.	Ronald R. DeMiglio's May 12, 2016 Deposition Transcript	NA		X

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
539.	ARM's Notice of Deposition	(DeMiglio Deposition Transcript Exhibit 01)		X
540.	Ekobrew website printout	(DeMiglio Deposition Transcript Exhibit 07)	X	
541.	Ekobrew Capsules claims chart (Howle's Initial Expert Report Exhibit G)*	NA		X
542.	Eco-Fill Deluxe claims chart (Howle's Initial Expert Report Exhibit H)*	NA		X
543.	Eco-Fill 2.0 Deluxe claims chart (Howle's Initial Expert Report Exhibit I)*	NA		X
544.	Eco-Fill MAX claims chart (Howle's Initial Expert Report Exhibit J)*	NA		X
545.	Paul Phillips' Opening Expert Report	NA		X
546.	Paul Phillips' CV	(Phillips' Opening Expert Report Exhibit 1)		X
547.	February 2012 Federal Circuit Bar Association's Model Jury Instructions	(Phillips' Opening Expert Report Exhibit 2)		X
548.	Paul Phillips' Rebuttal Expert Report	NA		X
549.	Paul Phillips' Supplemental Expert Report	NA		X
550.	Drew E. Voth's Rebuttal Expert Report in Case No. 2:16-cv-04676-JAK-SS	NA		X
551.	Dr. Barbara C. Luna's Expert Report (and documents mentioned therein)	NA		
552.	ARM Sales By Product 2014 to February 2016 [ARM D. Ct. Mar. 22-000022] (Luna's Expert Report Exhibit A)	NA		


Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
553.	ARM Enterprises, Inc. Balance Sheet As of December 31, 2015 [No Bates Numbers] (Luna's Expert Report Exhibit A)	NA		
554.	ARM Enterprises, Inc. Profit & Loss Report For The Period of January Through December 2015 [No Bates Numbers] (Luna's Expert Report Exhibit A)	NA		
555.	EKO Sales By Item Summary 2014	EKO000181	X	
556.	EKO Sales By Item Summary 2015	EKO000182	X	
557.	EKO Sales by Item Summary 2016	EKO000183	X	
558.	United States International Trade Commission Order To Cease And Desist To EKO Brands, LLC, Dated March 17, 2016*	(Luna's Expert Report Exhibit A)		X
559.	United States International Trade Commission Limited Exclusion Order To EKO Brands, Evermuch Technology Co, And Ever Much Company, Ltd., Dated March 17, 2016*	(Luna's Expert Report Exhibit A)		X
560.	Luna's Biography	(Luna's Expert Report Appendix 1)		X
561.	Luna's Expert Witness Trial Testimony Work History from the Past Four Years	(Luna's Expert Report Appendix 2)		X
562.	Luna's articles and publications	(Luna's Expert Report Appendix 3)		
563.	Dr. Barbara C. Luna's Rebuttal Expert Report	NA		X
564.	Check Number 1533 from My Gowns, LLC to EKO Brands, LLC, Dated October 15, 2015	(Luna's Rebuttal Expert Report Exhibit A)	X	
565.	Amazon Seller Central Lifetime Automatic Advertising Campaign Spend Report for My Gowns, LLC, Dated April 26, 2016.	(Luna's Rebuttal Expert		

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
 Seattle, Washington 98104  
 206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
		Report Exhibit A)		
566.	Amazon Seller Central Lifetime Manual Advertising Campaign Spend Report for My Gowns, LLC, Dated April 26, 2016.	(Luna's Rebuttal Expert Report Exhibit A)		
567.	Amazon Seller Central Buyer-Seller Messages Between Andy A. Burger and The Demelle Group/ My Gowns, LLC, Messages 1-9, Dated April 28, 2015-July 27, 2015	(Luna's Rebuttal Expert Report Exhibit A)		
568.	Emails Between Timothy J. Billick and Gabriel Sasson Regarding Finalizing and Signing Licensing Agreement Between My Gowns, LLC and EKO Brands, LLC, Dated August 3, 2015-August 4, 2015.	(Luna's Rebuttal Expert Report Exhibit A)		
569.	EKO Brands Standard License Agreement (Blank) Word Document	(Luna's Rebuttal Expert Report Exhibit A)		
570.	EKO Brands Standard License Agreement (Demelle Group) Word Document.	(Luna's Rebuttal Expert Report Exhibit A)		
571.	ARM Subpoena Supporting Information-2 Excel File, Dated April 26, 2016. (Luna's Rebuttal Expert Report Exhibit A)	(Luna's Rebuttal Expert Report Exhibit A)		
572.	EKO Brands' Responsive Claim Construction Brief, Filed January 27, 2016.	(Luna's Rebuttal Expert Report Exhibit A)		X
573.	MyGowns.com 'About Us' Section of Website.	(Luna's Rebuttal Expert		

LOWE GRAHAM JONES LLP

  
 701 Fifth Avenue, Suite 4800  
 Seattle, Washington 98104  
 206.381.3300 • F: 206.381.3301

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
		Report Exhibit A)		
574.	FabulouslyFunctionalOnline.com 'About' Section of Website.	(Luna's Rebuttal Expert Report Exhibit A)		
575.	Declaration of Gabriel Sasson of My Gowns, LLC, Dated May 2, 2016. [No Bates Numbers]	(Luna's Rebuttal Expert Report Exhibit A)		X
576.	Declaration of Jenny Brainard of Fabulously Functional Corp., Dated May 6, 2016.	(Luna's Rebuttal Expert Report Exhibit A)		X
577.	Damage analysis and other calculations	(Luna's Rebuttal Expert Report Exhibit B)		
578.	ARM Prototype Sketches	ARM-D.Ct.- April 18-000035-37		
579.	Screen capture of Folgers Classic Roast K-Cup for Keurig Brewers, 72 Count on Amazon	ARM-D.Ct.- April 18-000001-8		X
580.	Screen capture of Folgers Coffee, Classic(Medium) Roast, 48 Ounce on Amazon	ARM-D.Ct.- April 18-000009-15		X
581.	Screen capture of Eco-Fill 2.0 Deluxe for Keurig 2.0, K200, K300, K400, K500 Series	ARM-D.Ct.- April 18-000016-22	X	
582.	Letter from Philip Mann to Stephen C. Lee of Target Corporation	ARM-D.Ct.- Dec.9-000005-18		
583.	Funk & Wagnalls Standard College Dictionary (definition of vertical)	ARM-D.Ct.- Jan.6-000010-12		X

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
584.	Webster's Seventh New Collegiate Dictionary (definition of cylindrical)	ARM-D.Ct.- Jan.6- 000013-16		X
585.	ISO 7507 Engineering Standards (as cited in Phillip's expert rebuttal report)	ARM- DistCt- June15- 000010-25		X
586.	Emails regarding product development	REV007702		
587.	Emails regarding product development	REV007829		
588.	Emails regarding product development	REV009448		
589.	Emails regarding product development	REV009458		
590.	Email from Target regarding Eco-Fill Deluxe 2.0	ARMSDTX- 000096		
591.	Email chain regarding Target and Eco-Fill Deluxe 2.0	ARMSDTX- 000093-95		
592.	Email regarding Target and Eco-Fill Deluxe 2.0	ARMSDTX- 000097		
593.	November 16, 2017 Deposition of C. Legler	NA		X
594.	7/6/2017 Non-Exclusive Patent License Agreement between Eko Brands and BPC Holdings.	EKO000365 -374, Legler Ex. 1		X
595.	4/27/2017 letter from David Lowe to Korsreel/Super Trade Studios, Re: U.S. Patent Nos. 8,707,855 and 8,561,524	EKO000457 -458, 497- 509, Legler Ex. 2		X
596.	Email chain, top email dated 6/21/2017 from Tim Billick to Chen; Young; Super Trade Studio; Landsport, Subject: FW: Your Amazon Enquiry.	EKO000510 -512, 527- 540, Legler Ex. 3		X
597.	10/10/2017 Patent License Agreement between Eko Brands and Evriholder Products.	EKO000375 -386 Legler Ex. 4		X
598.	1/1/2017-8/15/2017 TAS Client Trust Ledger.	EKO00094 2, Legler Ex. 5		X
599.	6/13/2017 Non-Exclusive Patent License Agreement between Eko Brands and R Ideas Limited.	EKO000387 -397, Legler Ex. 6		X

LOWE GRAHAM JONES...

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
600.	6/9/2017 Non-Exclusive Patent License Agreement between Eko Brands and R Ideas Limited	EKO000398 -409, Legler Ex. 7		X
601.	6/9/2017 Non-Exclusive Patent License Agreement between Eko Brands and Coffee & Filters Direct.	EKO000410 -419, Legler Ex. 8		X
602.	6/12/2017 Non-Exclusive Patent License Agreement between Eko Brands and Super Trade Studio aka Korsreel). HIGHLY	EKO000420 -429, Legler Ex. 9		X
603.	Email chain, top email dated 8/14/2017 from Jenny Brainard to Tim Billick, Subject: Re: Eko Brands Fabulously Functional U.S. Patent Nos. 8,707,855 and 8,561,524 License (Our Ref.ESUP-5-0003).	EKO000513 -526, Legler Ex. 10	X	
604.	Several documents, top document dated 8/14/2017 Transaction Entry Verification List.	EKO000617 -623, 645- 656	X	
605.	4/27/2017 letter from David Lowe to Gabriel Sasson Re: License to United States Patent Nos. 8,707,855 and 8,561,524, and enclosures.	EKO000657 -721, Legler Ex. 12		X
606.	4/27/2017 letter from David Lowe to Grace Ong-Burd, Level-Up Imports, Re: License to United States Patent No. 8,707,855, and enclosures.	EKO000101 5-1016, 1010-1014, Legler Ex. 13		X
607.	Email chain, top email dated 6/14/2017 from David Lowe to Tim Billick, Subject: FW: LaMi Products and several documents	EKO000103 8-1043, 1065-1071, 1101-1110, Legler Ex. 14		X
608.	11/7/2017 Non-Exclusive Patent License Agreement between Eko Brands to CocoPrice Outlet.	EKO000108 1-1090, Legler Ex. 15		X
609.	11/7/2017 Non-Exclusive Patent License Agreement between Eko Brands and Lucky Online (aka Gutens).	EKO000109 1-1100, Legler Ex. 16		X

LOWE GRAHAM JONES LLP

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301



Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
610.	11/7/2017 Non-Exclusive Patent License Agreement between Nature's Kitchen.	EKO000111 1-1120, Legler Ex. 17		X
611.	4/27/2017 letter from David Lowe to Mia Cain, MetaShop, Re: License to United States Patent No. 8,707,855, with enclosures	EKO000115 0-1151, 1173, 1141-1149, 1174-1178, Legler Ex. 18		X
612.	6/21/2017 letter from Angela Holt to Tim Billick, RE: Your Client: Eko Brands, Our client: My-Cap, with enclosures.	EKO000121 5-1226, 1248, Legler Ex. 19		X
613.	Sample Collection of Bed Bath & Beyond and Best Buy Reviews of Ekobrew Stainless Steel Elite Reusable Cup for Keurig® K-Cup® Brewing System ("Ekobrew Elite")	NA		
614.	November 1, 2017 letter from D. Lowe to J. Brainard including enclosures	EKO000620 -656		X
615.	Hearing Transcript from In the Matter of Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same, 337-TA-929 Enforcement	NA		X
616.	Email from T. Billick to G. Sasson dated Aug. 3, 2015	EKO000705		
617.	T. Billick Declaration	Dkt. 196		X
618.	Voth article entitled "Apportionment of Intellectual Property Value: Where Economic Theory Meets Legal Practice"	Dkt. 102-4		X
619.	Email exchanges between J. Brainard and Eko	EKO000355 -58		
620.	Email exchanges between J. Brainard and Eko	EKO000345 -54		
621.	Eko license with Fabulously Functional	EKO000118 -123		

LOWE GRAHAM JONES LLC

701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

Ex. No.	Description	Doc ID	Admissibility Stipulated	Authenticity Stipulated Only
622.	Eko license with My Gowns	EKO000159 -165		
623.	Eko email correspondence with My Gowns	NA		
624.	Eko email correspondence with My Gowns	EKO000362 -364		
625.	Dr. Luna Presentation Slides	(To be produced at or near trial)		
626.	Paul Phillips Presentation Slides	(To be produced at or near trial)		
627.	Dr. Luna Summary Tables	(To be produced at or near trial)		

### VIII. DEPOSITION TRANSCRIPT DESIGNATIONS

Eko will designate the following portions of deposition transcript recorded on May 12, 2016 of Eko's partial 30(b)(6) designee, Mr. Ronald DeMiglio, in the event Mr. DeMiglio does not testify at trial:

- Pages 1-3
- Page 4: lines 12-15
- Page 5:22 through page 12:13
- Page 12:23 through page 18:9
- Page 18:25 through page 20:11
- Page 20:23 through page 22:17
- Page 25:19 through page 30:8
- Page 33:10 through page 37:25
- Page 38:13 through 39:23
- Page 40:16 through 41:8

- 1 • Page 41:25 through page 44:20
- 2 • Page 45:7 through page 49:25
- 3 • Page 58:8-21
- 4 • Page 59:24 through page 60:4
- 5 • Page 62:16 through page 63:10
- 6 • Page 67:5-15.
- 7 • Page 69:14-23
- 8 • Page 71:1-19
- 9 • Page 72:8-11
- 10 • Page 73:20 through 76:5
- 11 • Page 77:1 through 78:4
- 12 • Page 80:19 through 83:19
- 13 • Page 84:21 through 85:22.

14 ARM designates the following portions from Mr. DeMiglio's transcript:

- 15 • Page 4:20-5:13
- 16 • Page 18:10-24
- 17 • Page 20:12-22
- 18 • Page 22:18-24:15
- 19 • Page 25:6-18
- 20 • Page 30:9-33:9
- 21 • Page 38:1-12
- 22 • Page 39:24-40:15
- 23 • Page 41:12-14
- 24 • Page 44:21-45:6
- 25 • Page 48:22 through 49:12

26

- Page 50:1-11
- Page 59:13-22
- Page 60:5-7
- Page 64:3-8
- Page 65:8-16
- Page 66:11-16
- Page 67:16-68:8
- Page 68:22-24
- Page 69:24-70:9
- Page 70:16-25
- Page 76:6-10
- Page 83:20-25

**IX. ACTION BY THE COURT**

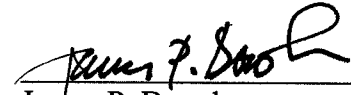
- (a) This case is scheduled for trial before a jury on June 4, 2018 at 9:00 AM.
- (b) Trial briefs shall be submitted to the court on or before May 14, 2018.
- (c) Jury instructions requested by either party shall be submitted to the court on or before May 14, 2018. Suggested questions of either party to be asked of the jury by the court on *voir dire* shall be submitted to the court on or before May 14, 2018.

This order has been approved by the parties as evidenced by the signatures of their counsel.

This order shall control the subsequent course of the action unless modified by a subsequent order.

This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

1 DATED this 30<sup>th</sup> day of MAY

2  
3   
4 James P. Donohue  
Chief United States Magistrate Judge

5 RESPECTIVELY SUBMITTED

6 s/ David A. Lowe WSBA No. 24,453  
7 Lowe@LoweGrahamJones.com  
8 Timothy Billick, WSBA No. 46,690  
9 Billick@LoweGrahamJones.com  
10 LOWE GRAHAM JONES<sup>PLLC</sup>  
701 Fifth Avenue, Suite 4800  
Seattle, WA 98104  
T: 206.381.3300

11 Attorneys for Plaintiff

12 /s/ Sudip Kundu (admitted pro hac vice)  
13 sudip.kundu@kundupllc.com  
14 Matthew Cunningham  
15 matthew.cunningham@kundupllc.com  
16 KUNDU<sup>PLLC</sup>  
17 1300 I Street NW, Suite 400E  
18 Washington, D.C. 20005  
19 T. 202.749.8372

20 Attorneys for Defendants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26