

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

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GAMES WORKSHOP LIMITED,)	
)	
Plaintiff,)	Docket No. 10 C 8103
)	
vs.)	
)	
CHAPTERHOUSE STUDIOS, LLC,)	Chicago, Illinois
et al.,)	June 7, 2013
)	9:00 a.m.
Defendants.)	

VOLUME 5
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY AND A JURY

APPEARANCES:

For the Plaintiff: FOLEY & LARDNER, LLP
BY: MR. JONATHAN E. MOSKIN
90 Park Avenue
New York, New York 10017

FOLEY & LARDNER, LLP
BY: MR. JASON J. KEENER
321 North Clark Street
Suite 2800
Chicago, Illinois 60610

For the Defendant: WINSTON & STRAWN, LLP
BY: MR. IMRON T. ALY
MR. BRYCE COOPER
MR. THOMAS KEARNEY
35 West Wacker Drive
Chicago, Illinois 60601

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

WINSTON & STRAWN, LLP
BY: MS. JENNIFER A. GOLINVEAUX
101 California Street
San Francisco, California 94111

MARSHALL, GERSTEIN & BORUN
BY: MS. JULIANNE M. HARTZELL
233 South Wacker Drive
Willis Tower #6300
Chicago, Illinois 60606

Also Present:

MR. NICHOLAS VILLACCI

MS. GILLIAN STEVENSON

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
(312) 435-5785

1 (The following proceedings were had in open court out of
2 the presence and hearing of the jury:

3 THE COURT: 10 C 8103, Games Workshop v.
4 Chapterhouse.

5 The same people that were here yesterday. Well, no,
6 we have got one missing, one less lawyer.

7 MR. ALY: It's the witness.

8 THE COURT: No, but the other lawyer. I'm blanking
9 on the name.

10 MS. HARTZELL: Sarah.

11 MR. ALY: Sarah Kalemeris, yes.

12 THE COURT: Well, why doesn't one person give the
13 lawyers' names for each side.

14 MR. MOSKIN: For plaintiff Games Workshop, my name is
15 Jonathan Moskin with Foley & Lardner. With me is Jason
16 Keener, also with Foley & Lardner; and Gillian Stevenson from
17 Games Workshop itself.

18 MS. HARTZELL: On behalf of Chapterhouse, Julianne
19 Hartzell of Marshall Gerstein & Borun, joined by Imron Aly and
20 Jennifer Golinveaux. And the witness, Mr. Villacci, is on the
21 stand.

22 THE COURT: All right. You can leave the law firm
23 names out. We have got that straight at this point.

24 Thank you for your work on the limiting instruction.
25 I plan to do that first thing, and then we'll just go right

1 into the testimony.

2 MR. KEENER: Is that with the other limiting
3 instruction, too, that you were going to do last night about
4 the attorney?

5 THE COURT: Oh, yes, I have that, right. Thank you.
6 Thanks for the reminder. That's the thing you sent me, Laura.
7 Right. Yes, here it is right here.

8 (The following proceedings were had in the presence and
9 hearing of the jury:)

10 THE COURT: Okay, everybody can have a seat.

11 Before we resume with Mr. Villacci's testimony, I've
12 got a couple of instructions I need to give you. I'm just
13 going to do them verbally, so I will wait until everybody is
14 all situated. You can obviously take notes on this, too.

15 The first instruction concerns an aspect of Mr.
16 Villacci's testimony yesterday. I apologize for looking at
17 the screen, but I've got it here electronically.

18 Any testimony that you have heard from Mr. Villacci
19 regarding consulting an attorney is stricken from the record.
20 You're directed to disregard it. You may not consider it.
21 There is no defense in this case and there won't be any
22 argument in this case that Chapterhouse, Mr. Villacci, or
23 anybody associated with them relied on the advice of an
24 attorney in any way, shape or form.

25 So that's not an issue in the case, and you should

1 disregard any of that testimony. So that's the first thing.

2 The second thing has to do with some questioning and
3 testimony that was given about eBay posts by Chapterhouse, and
4 so I want to -- I'm going to read this from a piece of paper I
5 have here.

6 You have heard testimony from Games Workshop's
7 witnesses about some eBay posts by Chapterhouse. It's
8 undisputed between the parties that Chapterhouse has been
9 selling some of its products on eBay from 2010 to the present.
10 It's also undisputed that Chapterhouse didn't preserve those
11 eBay postings.

12 You should disregard the testimony from Mr. Villacci
13 that he did preserve eBay postings. Chapterhouse's current
14 eBay postings are still online, but he did not preserve any of
15 the past eBay postings.

16 And you should infer that Chapterhouse used Games
17 Workshop's trademarks in the eBay postings that it didn't
18 preserve, in other words, the earlier ones, in the product
19 titles and the product descriptions in a manner similar to the
20 eBay postings that have been placed in evidence.

21 I'm going to read that last sentence again just so
22 it's clear. It's kind of a long sentence. I'm going to sort
23 of flip the sequence of it around.

24 You have seen eBay postings that are in evidence, and
25 you have heard the testimony about how the alleged trademarks

Villlacci - cross

1 in the case are used in those eBay postings. You should infer
2 that the older ones that weren't preserved used the alleged
3 trademarks in the same way, in a similar way, okay.

4 All right. So we're ready to resume with Mr.
5 Villlacci's testimony.

6 Do you understand you're still under oath?

7 THE WITNESS: Yes, I do.

8 THE COURT: All right, you can proceed, Ms. Hartzell.

9 NICHOLAS VILLACCI, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

10 CONTINUED CROSS EXAMINATION

11 BY MS. HARTZELL:

12 Q Good morning, Mr. Villlacci.

13 A Good morning.

14 Q We left off talking about your old website design, and I'm
15 going to ask you, since creating the website in 2008, have you
16 made any major changes to the website?

17 A Yes.

18 Q What did you do?

19 A Besides altering, you know, product descriptions and
20 photos to give more detail, adding new products, putting posts
21 up there, news posts, letting customers know about new stuff
22 we're working on, we also went through and completely
23 redesigned the website design that implemented third party
24 software to allow the system to be more automated so I didn't
25 have to go through and enter each order by hand into our

Villlacci - cross

1 system. It did it automatically.

2 And it also revamped the entire look of the company
3 logo and the company identity and everything.

4 Q Why did you redesign the website?

5 A Well, in part to make things a lot less tedious for me. I
6 was basically the one doing everything. It saved me a lot of
7 time every week when I was doing the order processing.

8 Also, I wanted the site the look more professional,
9 give it a cleaner look. Obviously, you guys saw the
10 difference between the two websites. You can tell one is very
11 -- I don't want to say amateurish, but cobbled together. That
12 was a very budget-conscious website.

13 The second one was when we had been in business for a
14 while, we had a little more money to work with, and actually
15 wanted to make the site more professional looking and give the
16 viewers and the browsers a little easier way of finding our
17 stuff and to streamline it a bit.

18 Q Let's look at PX-145. What is this page?

19 A This is the "about us" page. It's pretty simple, but it's
20 pretty common to most websites that are about companies. You
21 click on it, and it tells you a little bit about the company
22 itself.

23 Q And is this the redesigned website?

24 A Yes, it is.

25 Q What is the logo at the top?

Villlacci - cross

1 A That's the Chapterhouse Studios company logo.

2 Q And what does it show?

3 A It shows outstretched wings, a diamond in the middle and
4 the side profile of an eagle head.

5 Q And going back to the main page, can we zoom in on the
6 second paragraph?

7 What were you talking about there in the second
8 paragraph?

9 A Basically how Chapterhouse Studios came to be created,
10 what our goal was to provide to the customer, also letting the
11 customer know that one of the primary functions of our company
12 is to take ideas that they email us and work hand in hand with
13 the customer to make those ideas come to life physically on
14 the tabletop instead of just an idea in their head.

15 Also, a long-term objective is to provide and build a
16 catalog of parts for miniature war gaming and just a short
17 blurb on the end saying, you know, we started off with two
18 people and now we have got more people coming onto the team.

19 Q And going back to the main page, what is at the bottom of
20 the page?

21 A That is the disclaimer that is always on our pages.

22 Q And where did you get the language for that disclaimer?

23 A The Games Workshop IP policy website.

24 Q Let's turn to product slide 27. What are these two
25 products?

Villlacci - cross

1 A The one on the left is our Salamander or Dragon power
2 claw, and the one on the right is a Games Workshop power fist.

3 Q Who designed the Chapterhouse product?

4 A That was done by Tomas Fiertek.

5 Q And when did you begin selling the Chapterhouse product?

6 A That was one of our very first items even before we had a
7 website. We just had an Internet presence on the forums. I
8 want to say 2007 or 2008.

9 Q And do you know when Games Workshop began selling the
10 product on the right?

11 A I believe it was September 2010.

12 Q Did you see the Games Workshop product when the
13 Chapterhouse product was being designed?

14 A No. It hadn't been released yet.

15 Q So how would you explain the similarities that Mr. Merrett
16 discussed between those two products?

17 A It's just a big over-sized fist, forearm fist, that is
18 pretty common to sci-fi in general.

19 Q And do you consider this to be an add-on product to Games
20 Workshop's products?

21 A Yes. You can't build an army of a bunch of little fists
22 on a tabletop and play with those.

23 Q We have also discussed -- well, Mr. Merrett testified
24 about a combined Tervigon Tyrannofex product. Are you
25 familiar with that product?

Villlacci - cross

1 A Yes, I am.

2 Q And that's a Games Workshop product?

3 A Yes, it is.

4 Q Do you know when that product was first released?

5 A Right now it's 2013. I want to say it was 2011.

6 Q And when did you release your kit, conversion kit?

7 A The first quarter of 2010, I believe, or first half of
8 2010.

9 Q So did you copy any elements from the Games Workshop
10 product that was released in 2011 when you created your
11 product in 2010?

12 A That would have been impossible unless we had a time
13 machine.

14 Q Before that time, had you ever seen a Games Workshop model
15 sold under the name Tervigon?

16 A No.

17 Q Why did you consider your conversion kit to be an add-on
18 to Games Workshop's products?

19 A Because it's basically just some bony parts and some gross
20 looking sac things. You can't build an army or even use it as
21 a model in the game. I don't think anyone you're playing
22 against -- at least in my experience no player would say, oh,
23 yeah, that's a model.

24 You have to have a Games Workshop product in order to
25 utilize our product. It doesn't fit on any other product.

Villlacci - cross

1 Q Let's look at PX-1020 at page 38, at page 38. Thank you.

2 What product is shown here on the left-hand side?

3 A The Chapterhouse Studios Ymgarl model heads.

4 Q Who designed those?

5 A That was mostly done by one of our early concept artists
6 and sculptors, Pedro Navarro.

7 Q Did you have any input in the design of that product?

8 A Yes.

9 Q What inspired your contributions to the design of that
10 product?

11 A It's really -- I don't know if anyone is familiar with
12 Cthulhu, H.P. Lovecraft's Cthulhu mythos. Cthulhu is this
13 big, scary ugly god. He's huge, but his head looks just
14 like -- exactly like the Games Workshop tentacled head over
15 there.

16 We wanted to go a step further and wanted to --
17 instead of tentacles, we wanted to use pointed eeky things on
18 the end of ours, not so much squid-like. But I guess part of
19 my inspiration from that was the Starship Troopers movies when
20 the brain bug comes out and sticks its big, old piercing -- I
21 don't know what you would call it -- straw into the brain of
22 one of the characters and sucks his brains out.

23 But, yes, that's basically what my inspiration was.
24 I know Pedro had his own thoughts.

25 Q In what time frame were you guys designing that product?

Villlacci - cross

1 A That was mid-2009.

2 Q When did you first release that product?

3 A I want to say the first -- I don't know if it's on here.
4 I don't see it on here, but I want to say it was the first or
5 second month of 2010.

6 Q And looking at the right-hand side of the exhibit, do you
7 see the image at the bottom from the Tyranid, Warhammer
8 Tyranids book?

9 A Yes.

10 Q Was the image shown from that page published at the time
11 that you designed your product?

12 A No.

13 Q So did you copy any elements from that picture?

14 A No.

15 Q Why do you consider this product, the Ymgar1 heads, to be
16 an add-on to Games Workshop's products?

17 A Because the Games Workshop Genestealer kit comes with all
18 the components to make a Genestealer, what you see pictured
19 over on the right-hand side. They have a number of
20 components, and one of those separate components is the head.
21 Our head looks different and gives the players another option
22 to individualize their models apart from everyone else on the
23 tabletop.

24 So, again, you can't play with a bunch of little
25 heads on the army. You've got to have actual physical

Villlacci - cross

1 representations of these creatures.

2 And as far as I know, there is no character or
3 creature in the Games Workshop book that is just a head. You
4 can't play with a bunch of little heads. They actually
5 supplement the Games Workshop product.

6 Q Where did the ideas for your products come from?

7 A Myself, Tomas, our concept artist. A lot of them come
8 from customers.

9 Q Can you give me examples of ideas that you have referenced
10 outside of the Games Workshop universe in creating your
11 products?

12 A Sure. I'm pretty much a bookworm. I read lots of books.
13 So there's that; movies, Star Wars. Star Wars is another one
14 with a -- there's a character in Return of the Jedi called
15 Squid Head. I don't know if anyone played with Star Wars when
16 they were little kids, with toys, but there's an actual action
17 figure called Squid Head that looks like that, too.

18 So movies, pop fiction, I mean, just everything and
19 anything I have seen throughout my life.

20 Q If you have an idea for a product or if a customer brings
21 you an idea for a product, what factors do you consider in
22 determining whether to actually make it?

23 A Whether there will be an actual demand for it. We have
24 gotten some really crazy ideas from customers, and while they
25 can still order that product, that influences the price

Villlacci - cross

1 structure, what we charge them.

2 If it's something that I think other customers would
3 like, I don't charge them so much because I know we'll get the
4 capital back that we invest in creating that product with
5 them. But if it's something I know the customers will like
6 and we just really haven't touched upon it, we work on it,
7 flesh it out, make sure there's not a Games Workshop icon that
8 matches that or anything like that.

9 It's very important that we don't copy Games
10 Workshop's icons, and I've turned down a number of requests,
11 paid requests, to do stuff, but that's something I don't want
12 to do.

13 And basically also the forums. I read the forums,
14 the fan sites, the miniature companies sites. The general
15 miniature forums, they talk about ideas, and some of them have
16 real good ideas. And if I see one, you know, I will contact
17 the person and say, you know, I like your ideas, is it okay to
18 use this going forward. And I don't think I've ever had a
19 customer say, no, you can't use my idea.

20 I mean, we have the resources to make these ideas
21 come to life. They don't. So they're just glad someone can
22 do it. And usually I will say, you know, I will give you five
23 or ten copies of this, you know, just for letting us use your
24 idea, and they're happy about that.

25 But we do watch what Games Workshop comes out with,

Villlacci - cross

1 and if we see a way we can improve upon it and transform upon
2 it, make it look better, I don't see any reason not to. They
3 still have to buy Games Workshop product.

4 In fact, there was one product called a Storm Raven
5 conversion kit. You guys saw that up there. And it extends
6 out the body of the kit. There was a pretty large consensus
7 of online postings anyway that they did not like the way the
8 kit looked.

9 MR. MOSKIN: Objection.

10 THE COURT: Basis?

11 MR. MOSKIN: Hearsay.

12 THE COURT: It came a little late in that answer.

13 I'm not going to strike that answer. Get up quicker the next
14 time.

15 THE WITNESS: There was a general consensus --

16 THE COURT: I think the answer has been completed.

17 Ask another question.

18 BY MS. HARTZELL:

19 Q All right. You were asked about the third party designers
20 that you work with when Mr. Moskin was questioning you. How
21 do you find the designers that you work with?

22 A Mostly through the online forums and sometimes customers
23 refer us to them.

24 Q Are any of your designers affiliated with Games Workshop?

25 A They don't work for Games Workshop currently, if that's

Villlacci - cross

1 what you mean.

2 Q Have any of your designers at any time worked for Games
3 Workshop?

4 A Yes.

5 Q Who?

6 A I believe Sean Bullough worked for Games Workshop and also
7 Roberto Cirillo.

8 Q Why would you hire somebody that used to work at Games
9 Workshop?

10 A Well, I think it shows a little expertise and skill set
11 that since they worked for Games Workshop, they also have
12 something that would be useful for us. They know their job.
13 Obviously, Games Workshop hires some of the best sculptors in
14 the world and the concept artists, so I think that's an
15 absolute, you know, big checkmark on their resume, you can
16 think.

17 Also, you know, they're familiar with war gaming in
18 general. I can hire a concept artist, but he may not be
19 familiar with war gaming. He may be a concept artist for
20 architecture or vehicle design for like automobiles or he
21 might just draw fantasy, but that doesn't mean he understands
22 that --

23 When you're doing concept art for a miniature line,
24 you have to be conscious of the fact of how the miniature is
25 molded and produced, how many components it can be made into,

Villlacci - cross

1 and that's definitely a plus as well.

2 Q Are any of the designers that you work with specialists in
3 any particular area?

4 A Can you --

5 Q You mentioned concept art. I think we have discussed
6 sculpting, and you were asked about computer aided design. Do
7 the designers usually do all of those things or specialize in
8 some of them?

9 A Some of them are jacks of all trades, but for the most
10 part, they all specialize in one area, and they may have a
11 little skill in another area.

12 Q For sculpted products, what is the first step in the
13 design process?

14 A General idea, you know, an email from a customer. Can you
15 do this icon or can we do something to make this bigger or can
16 you do a hammer that does this.

17 Q And then what is the next step after the idea?

18 A Actually working with the customer to have something on
19 paper, conceptual art.

20 Q So sketching the concept?

21 A Yes, and that happens -- that's a pretty long process,
22 back and forth, back and forth.

23 Q And then what happens after the sketches are made?

24 A After the sketches are made, we either go to the sculpting
25 process by hand or the modelling process. We buy some

Villlacci - cross

1 plastic, flat plastic, in various shapes and start putting
2 them together. Or if it's a 3-D design process, we go to the
3 3-D designer, which I guess you could also consider a 3-D
4 computer sculptor.

5 Q And then once you have that created, what is the next step
6 in the manufacturing process?

7 A If it's something that is already represented in real life
8 and it's not on a computer screen or a hard drive, we send
9 that to the mold maker.

10 If it's something that is still, you know, not a real
11 live model yet, we send that to a 3-D printer which takes that
12 design that's in the computer, and they have little machines
13 that will actually print up what is on a computer strip by
14 strip by strip by strip until you get an actual physical
15 representation, and then we send that to be molded.

16 Q Can we pull up slide 11?

17 Is this representative of the process that you were
18 just discussing?

19 A Yes, I think this would be more representative of how we
20 actually design shoulder pad products.

21 Q Is the process different from concept to sketch to either
22 sculpting or cad to manufacturing for nonshoulder pad
23 products?

24 A Yes, depending on if the model we're working on is
25 completely computer designed, you skip that sculpt part and

Villlacci - cross

1 you kind of substitute that with a print part. And there can
2 even be hybrids that we do some on the computer.

3 And the shoulder pad could be considered a hybrid
4 because you see the computer aided design in the middle where
5 it was done on a computer. We printed up that shoulder pad.

6 Q So looking back --

7 Oh, yes. Sorry.

8 A We printed up the shoulder pad that was in computer aided
9 design, and that's what you see here. And then, like I said,
10 it's a hybrid. We sculpt by hand stuff onto that and then we
11 send that to the mold maker.

12 Q Thank you.

13 A You're welcome.

14 Q Looking back at the sketch phase of the process, let's
15 pull up PX-160 at page 5 and page 6.

16 Do you recognize these pictures?

17 A Yes, I do.

18 Q What are they?

19 A This is Pedro Navarro's concept art for our spore pod,
20 which is very good. He's a good artist, but he's also a
21 sculptor, so I would consider him an expert in both things.

22 And this is my very bad attempt to modify that with
23 my idea. I blanked that part out of the model, and these are
24 my bad drawings and stuff.

25 Q So what was your idea that was discussed here?

Villlacci - cross

1 A He wanted something that was more reminiscent of, I guess,
2 a tree pod, a seed pod, something that falls out of a tree.
3 And his idea was that this up here tapered up here, and when
4 it was falling through the atmosphere, that was a little more
5 aerodynamic.

6 My idea was to like to do a little -- the closest
7 thing I could think of is when you think of a microorganism or
8 even like, you know, organic sperm, they have got these little
9 flagella on the ends that would help steer what was falling
10 through the atmosphere, not so much, you know, propel it, but
11 they would do wind resistance if they went out like that.

12 Q Let's look back at the emails to which these sketches are
13 attached.

14 THE COURT: What was that number again? I'm sorry.

15 MS. HARTZELL: PX-160 and this is pages 5 and 6.

16 THE COURT: Thanks.

17 MS. HARTZELL: We're going to go back to page PX-160
18 at page 4.

19 THE COURT: All right.

20 BY MS. HARTZELL:

21 Q So looking at page 4, can you see that or should we zoom
22 in?

23 A Where do you want me to look? I'm sorry.

24 Q Do you know what this email conversation was about?

25 A Yes, the same product.

Villlacci - cross

1 Q And who is it between?

2 A Myself and Jeffrey Nagy.

3 Q And why were you consulting with Mr. Nagy?

4 A Jeffrey Nagy at the time was one of the sculptors that we
5 had working with us. I don't want to say we had a design team
6 because we --

7 The only people that are always working together
8 consistently through the history of the business are me and
9 Tomas. But during this time, he was working on other projects
10 for us, and I wanted to get his opinion on -- his thoughts on
11 how this model should be represented on the tabletop.

12 The more people you have, the more ideas you have,
13 and one person may have an idea that no one would have thought
14 of. And if you implement that with someone else's idea, you
15 know, it can make something much better than just two people
16 working together.

17 Q And turning back to page 2 of the same Exhibit PX-160 --

18 A JUROR: Your Honor, I'm just -- are we supposed --
19 is the jury supposed to be able to read these displays?

20 THE COURT: There you go. Blow them up if you want
21 them --

22 MS. HARTZELL: All right.

23 A JUROR: If it's possible, could we go back to the
24 one before and blow it up so we can read the text?

25 THE COURT: All right. Thank you, but get my

Villlacci - cross

1 attention next time. And I know you tried, but don't just
2 blurt something out, okay, because if you do, I may have to --

3 We may have to start this thing all over again with a
4 whole new jury, okay. People up on the top floor of the
5 building will tell me that I screwed up.

6 So I'm just going to say this to everybody. Okay.
7 Nobody can read that. I bet you can't read it from where you
8 are. I can't read it. I have a screen right here. They
9 don't. So nobody is allowed to put anything up on the screens
10 anymore without blowing up what they're reading. If you do,
11 I'm going to strike the exhibit. It won't be in evidence. I
12 don't care if you have all agreed to it.

13 Has everybody got that?

14 MS. HARTZELL: Yes, sir.

15 THE COURT: So it's the collective responsibility of
16 each person at the table, including the guy sitting at the
17 screens, to blow up the stuff that is being talked about so
18 that the jurors can actually see it.

19 Let's go back to what you had before.

20 BY MS. HARTZELL:

21 Q Let's go back to page 4 of Exhibit PX-160, and zoom in on
22 the bottom email.

23 And who was this email from?

24 A Jeffrey Nagy.

25 Q And what was the general topic of the email?

Villlacci - cross

1 A As you see up here, the spore pod. And the general topic
2 was talking about how we should shape the model, aerodynamics.
3 Yes, he put in some other terms, but, yes.

4 Q And let's go back to page 2 of the same exhibit, PX-160.
5 Zoom in on the email at the bottom of the page. The very last
6 one, yes.

7 Who is this -- who is involved in this email
8 communication?

9 A You see right there, it says Wyatt Traina. He's the one
10 that's involved in this communication.

11 Q Who is Wyatt Traina?

12 A He was another one of our sculptors and I guess
13 rudimentary concept artist working on other products.

14 Q And what was the reason for contacting him about this
15 product?

16 A I just wanted to get some ideas from the design team we
17 had at that time on how we should implement this model on the
18 tabletop and ideas that give Navarro -- brainstorming with
19 Navarro before he starts sculpting the final product.

20 Q And among the topics discussed here between you and Mr.
21 Traina, is this also focused on aerodynamics and aspects of
22 the design?

23 A Yes. I mean, it's a sci-fi game, and insofar that we know
24 it's fiction, you still want to have a sense of realism to it.

25 And in this we're talking about -- this is going to

Villlacci - cross

1 be a biological creature -- how would a biological creature
2 propel itself through space and land on a planet. We can see
3 there, we're talking about propulsion systems with biological
4 robots.

5 I mean, it's pretty much factual-based information,
6 almost like bioengineering information, pretty descriptive on
7 how something realistically would propel itself through space
8 if it was biological. And there's that word "flagella" that I
9 used during my description of my bad drawings, and there we go
10 there. But, basically, yes.

11 Q So you mentioned that Mr. Navarro was the designer for
12 this product. Why did you contact so many of the other
13 designers?

14 A Just because I wanted to see what they had to input, you
15 know.

16 Everyone's got different ideas on how something
17 should work in nature or appear in science fiction. It's been
18 described in Games Workshop's books how they think something
19 is going to look and feel, but we wanted to build upon our own
20 idea and something very new and I guess build up our original
21 idea and have a back story behind it as well.

22 Q Let's talk about the stage after sketching, the sculpting
23 stage. Can you describe the process of sculpting one of these
24 models?

25 A The sculpting stage. It's different for every model, but

Villlacci - cross

1 basically once you get your concept art, and depending if it's
2 going to be a humanoid model, a multi-piece model or just --
3 the spore pod was a very large model. It's about half the
4 size of one of these coffee containers.

5 You build a skeleton out of the cheapest material you
6 can find that is affordable, not like quality-wise but
7 affordability. The sculpting medium, which is called Green
8 Stuff, it's a putty. It's not cheap. I mean, it's not like
9 super expensive like gold, but it's expensive.

10 So if you're going to build something and use Green
11 Stuff, you would use something like foam, even wood,
12 cardboard, clothes wire, copper wire, something in there to
13 build an under-skeleton.

14 And then once you get that under-skeleton, the main
15 body going, that's when you start using Green Stuff on the
16 surface of it.

17 You saw the shoulder pad. We actually printed up
18 something so we didn't have to sculpt that shoulder pad every
19 single time. The sizes on our shoulder pads are consistent
20 throughout the range for the most part.

21 And the sculpting medium, green part, green putty,
22 Green Stuff, it's two pieces, two different materials that you
23 mix together, and you've got a very limited amount of time to
24 work with it before it sets. You do that in layers.

25 And that winged icon -- I don't know if we can pull

Villlacci - cross

1 that up again -- the process of sculpting that, you do like
2 the outline of the wing, get that done, and then you do some
3 feathers. You let the feathers set.

4 I think Tomas actually sculpts the skull separately
5 on something else, and when that sets, he glues it onto the
6 pad. So it's a very, very slow process. I think that thing
7 took him about 24 or 26 hours just to get that actual product.
8 And that's not counting time for the product to cure. That's
9 just actual sculpting time.

10 Q Have you personally ever done any sculpting?

11 A Yes.

12 Q Can you turn in your white notebook to Exhibit DX-536?

13 A Okay.

14 Q Do you recognize that document?

15 A Yes, I do.

16 Q What is it?

17 A I'm looking at the wrong one.

18 THE COURT: What's the number again?

19 MS. HARTZELL: DX-536.

20 THE COURT: Thanks.

21 BY THE WITNESS:

22 A Yes. These are photos that another one of our sculptors,
23 Jae Lee, sent us during his process of sculpting the Shrike
24 conversion kit for the Tyranid warrior model.

25 MS. HARTZELL: I would move Exhibit DX-536 into

Villlacci - cross

1 evidence.

2 THE COURT: Is there any objection?

3 MR. MOSKIN: No.

4 THE COURT: It's admitted. You can put it up.

5 MS. HARTZELL: Please show DX-536.

6 (Brief interruption.)

7 BY MS. HARTZELL:

8 Q So can you describe what is shown here to the jury?

9 A This is the head bit, and it looks like the basic very
10 start of doing the leg bits for that kit. We call it the
11 Shrike Tyranid warrior kit.

Q What is the green part on the head?

A The green part on the head is the Green Stuff I was
telling you about. Now, when that stuff dries, it stays
green.

The white stuff is another type of putty which is, I
want to say, harder. It's much harder. You can actually sand
it down once it dries. The Green Stuff is more rubbery in
consistency, but that's one of those components I was telling
you about that when you're building upon something, you start
with a more affordable product first, and that would be that
part.

Q And turning to the next exhibit in your binder, DX-536, do
you recognize that document?

A Yes, I do.

Villlacci - cross

Q What is that?

A That is --

Do you want me to wait until it comes up?

Q No. You have to explain it first.

A That is one of the final stages of this Shrike conversion kit for the Tyranid warrior.

MS. HARTZELL: I move into evidence DX-537.

THE COURT: 537, is there any objection to that one?

MR. MOSKIN: No objection.

THE COURT: It's admitted.

MS. HARTZELL: Let's show DX-537.

BY MS. HARTZELL:

Q You explained --

When this comes up, you explained that this is near the end of the design process. So once we have the picture up, I'd like you to tell us a little bit about how you can tell that that is near the end of the process.

A Okay.

Well, here we see pretty much -- from the last photos you saw, we only saw two sets of components. You saw the head component and the leg components. Here you also see the wing components.

Now, it's important to note that our kit only consists of this, the head, the wings and the legs. The kit in the middle is the Games Workshop component. So you have to

Villlacci - cross

buy the Games Workshop Tyranid warrior model to use this kit.

Q Let me zoom in on the middle photograph. And could you tell us a little bit more about the Chapterhouse parts and what went into that design?

A Well, Jae Lee and myself worked on the actual concept art for this first. We wanted something that would fit on a Games Workshop model but wasn't, you know, just mimicking what they showed in their books.

So we actually went through concept art and did this more streamlined head for the Tyranid warrior model. The wings, they don't have a set of wings that look like this in their model range that is compatible with the Tyranid warrior model. The legs are completely different.

The Tyranid warrior model, as depicted in their game, doesn't fly. It's just a walking creature. So there's no reason to have wings on that model.

And it's important to note that this model was designed to have two sets of arms in a basic Tyranid warrior model. And in our fiction, we wanted to replace one set of arms with wings. So you're not going to see two sets of arms and wings sprouting out the back. You're going to see one set of arms down here with whatever weapons the players want to use, and then our wings, and then these almost talon-like legs.

I don't think it would be very easy to walk on these

Villlacci - cross

legs just from the big old nails and claws. This is designed to depict a model that flies mostly and very rarely walks or lands.

Let's see.

Q And you mentioned that the head was streamlined. What about that appealed to your design?

A The basic Games Workshop Tyrannid warrior head they include in their kit is big. It's more broad. It would almost go like this.

To me it seemed to make sense and also to Navarro -- he's the one that did most of the concept art for this -- we wanted something that was more streamlined, avian-like, aerodynamic, lighter. Birds, in general, their bones are very light and hollow. We wanted to give that same appearance here. We didn't want this huge bulky thing. It didn't look like it was meant to fly. We went around that process.

And the face is totally different on our model as well. We got these jaws -- it's hard to tell on here, but there's actually a bisected jaw, like two parts. It's split in the middle, so it can spread open, if it wanted to, in a fiction.

Q Let's talk a little bit about the 3-D process. How does that work?

A The same process. Basically we start out with concept art. You have something doodled on paper, and then from that

Villlacci - cross

concept art, we build a model in a computer through computer-aided design.

Q And do you know how much time is involved in creating one of those models?

A I would say it's pretty much the same amount of time in hand sculpting. It's very delicate work. You have got to make sure everything fits, it's the right size, because once you take that design and print it up, you're stuck with that; otherwise you're going to have to go back to the original design again, work on it and then print up another piece, and the printing is expensive. It's not cheap.

Q What are the advantages and disadvantages to using the sculpting process versus the 3-D design process?

A The 3-D design process allows you to actually build upon that model later on.

Some of our kits and, in fact, the jetbike, as you saw, we have two iterations of the jetbike. The original jetbike is a light version. The heavier jetbike, we were able to reference the computer model and the computer and look at the dimensions and then build components to fit on that. It saved us a lot of time. That's almost like an add-on kit for our jetbike model.

Also, when we're designing pieces that fit on Games Workshop models, say, a tank door, that Games Workshop model's dimensions for where their tank door fits, we can measure that

Villlacci - cross

to make sure our door fits there correctly.

A big part of our business is to make things easier for the customers because not everyone has the patience or time to sculpt and cut stuff up and do that. So when we send them out a piece that says it fits on this model, we want to make sure it does fit on that model; otherwise they're not going to be very happy if they have to cut up that model once they -- cut up our model just to fit on that cavity to fit in that door.

Q And you mentioned the jetbike as an example. Who was the designer on the jetbike?

A That was -- the first jetbike was myself, Nagy. And I'm not sure if Nagy did that. Yes. Nagy and Tomas, I believe.

Q And what was the idea behind that jetbike?

A Just to have a vehicle because Space Marines don't have jetbikes in the Games Workshop fiction.

All their bikes are wheeled vehicles, and it is science fiction, and I'm sure some player out there would like to have a bunch of jetbikes on the field instead of wheeled bikes. And while they may use the same rules for that, we gave them the option to have flying bikes instead of the wheeled bikes.

Q Do you have Exhibit DX-493 in your binder?

I think it should be 473. Sorry.

A I see it here.

Villlacci - cross

MS. HARTZELL: Do you have that one, 473?

(Brief interruption.)

THE WITNESS: I don't see 473.

MS. HARTZELL: It actually is 493.

THE WITNESS: 493?

MS. HARTZELL: Yes.

(Brief interruption.)

THE WITNESS: I don't see it either.

MS. HARTZELL: We can pull it up on the screen.

DX-493, please.

BY MS. HARTZELL:

Q Do you recognize this document?

A Yes, I do.

Q Can we zoom in on the main body of it? What is this showing?

A This is the heavier version of our jetbike. It's called the pilum jetbike.

Q What was the difference between the light and the heavy version?

A The light and heavy version -- and this is just concept art.

The light and heavy version, the heavy version, there's some cowlings right here that go on the exhaust. These larger weapons on the side, this component, is also added, this whole thing.

Villlacci - cross

I believe this upper seat, back rest, whatever, is also added, and this fin is also added.

And in the kit we also include magnets to let people, I'm going to say, hot swap the weapons whenever they want to.

Q And what was the purpose of having both the light and heavy jetbike?

A Just in the game, Games Workshop talks about a heavier vehicle for the bike, and their heavier vehicle, it actually has two riders. And they're not like one behind the other.

The heavier vehicle actually has a sidecar and that sidecar has a big weapon on it, and it's got the second person over there just shooting a weapon.

We didn't want to go with that idea. We wanted to go with, let's make ours look like it's armored heavily. We want to differentiate the two. You know, we didn't want to use the same model and confuse people on the table between what's what in the game against their component. But we didn't want to do the sidecar. I thought a flying sidecar was kind of goofy.

So instead we put the heavier weapons on the side of the model. We also gave it more armor and wanted to make it look different. And it's got one pilot. We don't have people sitting behind each other. It looked kind of weird.

Villacci - cross

1 Q And turning to DX 479. And do you recognize this?

2 A Yes. This looks like the iteration. This is the actual
3 design. That one is actually the concept, the computer
4 concept art, and this looks like the actual model we printed
5 up for our regular light jetbike, lighter jetbike.

6 Q Who designed this?

7 A Again, this was designed between myself, I believe Jeffrey
8 Nagy and Tomas Fiertek.

9 Q And who did the computer design part?

10 A Jeffrey Nagy.

11 THE COURT: What's the number again?

12 MS. HARTZELL: DX 479.

13 THE COURT: Thanks.

14 BY MS. HARTZELL:

15 Q Are there any products that Chapterhouse sells that you
16 were not involved in creating, that you, someone working with
17 Chapterhouse were not involved in creating?

18 A Yes.

19 Q What's the process for those? How do you end up selling
20 them?

21 A We look at them, and generally someone points them out to
22 us, maybe something that someone did on a forum and posted
23 them on a forum and say, hey, look what I did, and it's cool.
24 And Jeffrey Nagy did some of those. And we look at that, and
25 judging from the forum response, you know, if people sit there

Villacci - cross

1 and they don't say anything, that's generally, you know, we
2 don't want -- we don't show much interest in that product.
3 But if you got someone who posts their homemade idea and they
4 got 20 pages of people going, oh, that's awesome, that's
5 awesome, it shows people are interested in that product and
6 they might purchase it. So that's actually, I think, how we
7 found Jeffrey Nagy, and he did that with one of his kits.

8 Q What products that you sell that you can think of right
9 now fall into this category of products that you've purchased
10 from someone who's already done the complete design?

11 A I wish I had a list of products so I could go down and
12 tell you.

13 The wheeled Chimera kit, conversion kit, is one of
14 those products. It's difficult without a list. There's a
15 number of kits we haven't released yet that are also like that
16 as well.

17 Q How did you end up selling the heavy walker?

18 A The heavy walker was one of these items that was brought
19 to our attention by people online, hey, this a really cool
20 kit. This guy did this by hand. I can't believe it. What do
21 you guys think? And we looked at the forum posts, and it was
22 -- I don't want to say it was like a flagship product for us
23 once we received the rights to produce it for him, but it was
24 huge. I mean, this model stands like this tall, and it's big.
25 It's three or four pounds of resin.

Villacci - cross

1 And we approached the guy who sculpted it, Zach
2 Sodin, and he had been reproducing these one or two kits a
3 month, you know, hisself with molds, and we asked him about
4 procuring the rights to make them for him, and he agreed.

5 Q Before we go into too much detail about any of the
6 particular products, let's go back to some of the things you
7 were asked about by Mr. Moskin.

8 Let's pull up PX 189. And we can zoom in on the top.
9 Actually let's zoom in on the second email, the one you're
10 looking at, yes, starting with "send some photos." That will
11 work.

12 So who's involved in this communication?

13 A This is Wyatt Traina and myself.

14 Q And you mentioned that Mr. Traina was a designer that you
15 were working with?

16 A Yes. He's one of the people who worked on sculpting stuff
17 for us.

18 Q In the bottom email where you talk about shoulder pads,
19 can you explain what you mean?

20 A This part?

21 Q Yep.

22 A Okay.

23 Okay. Basically when we started working as a
24 business, we didn't want to -- even though we didn't think the
25 Games Workshop shoulder pad was original, we didn't want to

Villacci - cross

1 take their pad out of their kit, a plain pad, sculpt on it and
2 reproduce it that way. It would have been very easy to do. I
3 mean, these pads, there's zillions of them that come in the
4 kits. But we wanted to do things correctly. So we took the
5 dimensions of the big outline shoulder of their actual Space
6 Marine arm, and we designed our own pad in 3D so it would fit
7 on that arm. And we can reproduce that. That's ours. And we
8 did that.

9 So, again, like I told you before when we were -- in
10 sculpting, especially our shoulder pads, we want to be
11 consistent between each model of shoulder pad, and this was a
12 good way to do that. So whenever we needed a shoulder pad, a
13 sculpt detail on for a customer or a new idea, we just took
14 one of our blank pads and used that. And that's what I'm
15 referring to as our standard plain pad.

16 Q And let's go back to the email. And zooming on the top
17 email.

18 You were asked about this one by Mr. Moskin, at least
19 the first paragraph.

20 A Yes.

21 Q Let's talk about the second paragraph. What were you
22 talking about there?

23 A The first part I'm talking about the resources we'd gone
24 through, which I told you -- the jury that we measured to make
25 sure our stuff fits on a Games Workshop product we're making

Villacci - cross

1 the conversion bits for, and that's what that's talking about.
2 Same dimensions. Fits in the same hole. It's a legal thing.
3 You know, we didn't want to infringe.

4 And the last part talks about the NDA agreement that
5 we tend to use with all of our sculptors that are not myself
6 and Tomas and artists and 3D designers.

7 Q Let's take a look at another email you were asked about
8 when you were questioned previously, PX 172 at page 7. And
9 can you zoom in on the second email that you're at the top of
10 right there. Yeah.

11 Can you remind us again who is Michio?

12 A Michio Okamura is one of our sculptors that worked on a
13 few of our products.

14 Q And Mr. Moskin asked you about the second paragraph of
15 this email starting with "personally" and discussing the
16 weapon options included with the mini. Can you explain what
17 that paragraph was about?

18 A We were talking about weapon options to include in the
19 scorpion priestess miniature.

20 Q And when you said we did this with the female Warseer,
21 what were you talking about?

22 A Jae Lee, whose email is Revless at something, something,
23 but we call him Revless as well, we were referring to the past
24 Doomseer product we had done, and we didn't just sculpt a
25 model with the arms attached in a static pose. Rather, we

Villacci - cross

1 wanted to give the hobbyists the option of using four
2 different arms with different weapons. And I think one of
3 those arms is someone holding -- he's like -- it's a wizard,
4 so they're holding a fireball like they're going to throw it.
5 I wanted to do the same thing with this. I wanted to give the
6 hobbyists all the options they could possibly use in this
7 product. And we were talking about we know what options the
8 Games Workshop rules legally allow you to use in the game.
9 How can we sculpt those without -- again, something similar
10 but not identical to the -- you know, the idea of that -- the
11 rules. And that's going into detail about that.

12 I think the main thing is talk about chain sword,
13 chain blades, chain sabers and how to implement that idea in a
14 new design.

15 Q So did you give any guidelines to Mr. Okamura regarding
16 how he should design the weapons?

17 A Yes.

18 Q What did you say?

19 A Let's see.

20 Q And specifically I'm wondering about in connection with
21 Games Workshop's designs.

22 A Basically, you know, we knew we were both Games Workshop
23 hobbyists. We knew what their sword looked like. I wanted to
24 do something different, add our own flair to it. And also I
25 believe the Games Workshop rules allowed a weapon that we'd

Villacci - cross

1 never -- I'd never seen before. I just knew about it from a
2 very general description and, you know, how they referred to
3 it in the literature. And I'd never seen that option before,
4 you know, in a model, so I wanted to give the players that
5 option with this model, and I went into detail on what I
6 thought it would look like.

7 Q And what was the point of the fourth paragraph starting
8 "let us not"?

9 A Just that, giving him guidelines, I don't want you copying
10 the Games Workshop weapon, sculpts, the models. But, I mean,
11 we know the idea behind that model. It's a sword with, you
12 know, a chainsaw on it. Let's do our own version of that.

13 Q And turning to PX 672, do you recognize this document?

14 THE COURT: 672?

15 MS. HARTZELL: 672.

16 Oh, sorry. 682.

17 BY MS. HARTZELL:

18 Q I'll ask you generally who is Sean MacKirdy?

19 A Sean MacKirdy is one of, I'd even say one of our latest 3D
20 designers/concept artists that came on board within the last
21 two years.

22 Q And how did he start working with Chapterhouse?

23 A He actually -- I believe he emailed me out of the blue one
24 day and offered up some product ideas and some products he'd
25 been working on on his own, and we just started working that

Villacci - cross

1 way.

2 THE COURT: Do you want somebody to read part of
3 this?

4 MS. HARTZELL: Well, there may be --

5 Well, I guess you guys marked this one, right?

6 Zoom in to -- at page 4 of document PX 682, zoom into
7 the second full paragraph at the top.

8 MR. MOSKIN: Maybe we should discuss this.

9 THE COURT: There's an objection to part of it?

10 MR. MOSKIN: Yes, there's an objection because of --

11 THE COURT: Okay. Bring the unredacted thing over.

12 (Side bar conference:)

13 MR. MOSKIN: This whole thing, as you know -- well,
14 the objection is, and I don't know what else they're going to
15 refer to --

16 MS. HARTZELL: We have no problem with redacting the
17 first paragraph.

18 THE COURT: One person at a time.

19 Tell you what, why don't you talk amongst
20 yourselves -- between yourselves for a second and see if you
21 can sort it out.

22 MS. HARTZELL: Sure.

23 (Discussion between counsel off the record.)

24 THE COURT: You resolved it. Okay.

25 MS. HARTZELL: Yes.

Villacci - cross

1 (The following proceedings were had in the presence
2 and hearing of the jury:)

3 THE COURT: I think the issue has been resolved, but
4 they just need to deal with the tech person.

5 BY MS. HARTZELL:

6 Q Mr. Villacci, could you explain the first paragraph of
7 this communication with Mr. MacKirdy?

8 A It's basically presenting the general, you know --

9 Q Without reference to this lawsuit.

10 A Okay.

11 THE COURT: Without reference to what's been
12 scratched out.

13 And I know that probably about half of you now are
14 trying to strain to see what got scratched out. Please do not
15 do that. It's been deleted for a reason, because that
16 particular sentence is inadmissible in evidence.

17 When you get this copy with the exhibits that you get
18 at the end of the case, it will be redacted or deleted out in
19 a way that you won't be able to read it, so don't strain to
20 read it right now.

21 THE WITNESS: It's basically the basic business
22 principles about what we do when it comes to Games Workshop
23 compatible products and ideas that customers give to us. We
24 do our best not to copy, et cetera, et cetera.

25 BY MR. HARTZELL:

Villacci - cross

1 Q And when you talked about "while this may mean we don't do
2 certain items and not gain those customers," what are you
3 talking about there?

4 A We get many, many customers asking us to do stuff they've
5 seen in Games Workshop books. Can you copy this icon? And
6 because Games Workshop, the plethora of books they print out,
7 and they got a lot of art in them, and when I see something, I
8 have to make a judgment call on whether it's something that
9 originated from history like medieval armor, Dark Age
10 heraldry, you know, lines, stuff like that. And if I can find
11 that same depiction just Google searching somewhere else or
12 something like that, it's something I feel safer emulating.
13 But if it's something I believe -- and I've been in the hobby
14 for 20 years, the Games Workshop hobby almost for 20 years,
15 God, I know stuff that some customers may not know pertaining
16 to originality and stuff like that pertaining to Games
17 Workshop icons and stuff like that.

18 But I've turned away many, many, many customers
19 asking, hey, can you do this? I saw this in a Space Wolf
20 codex. No, we can't. That's a Games Workshop icon. We can
21 build upon that idea and do something different, but we can't
22 do that exact icon.

23 Some customers are okay with that; some customers
24 aren't. We just turn around and say, sorry, we can't work
25 with you on that.

Villacci - cross

1 Q And why were you discussing this with Mr. MacKirdy at this
2 point in time?

3 A He had shown us a number of works that he had done on his
4 own time for his own personal armies, his own personal
5 projects, and whenever someone approaches us to do work,
6 especially computer-aided stuff, or even sculptors, sometimes
7 they have products that they've sculpted themselves, and we
8 might be interested in introducing those to the public in the
9 form of a Chapterhouse Studios product.

10 I couldn't tell you for sure because I don't remember
11 what he had, but just from this last sentence it sounds like
12 he had done stuff for himself personally on a computer that we
13 may not feel so good about, you know, pertaining to copyright
14 and all that.

15 Q And what is it that you said in the last sentence that
16 you're referring to?

17 A "We would need to be sure to steer clear of anything of
18 the same type in your works if we do work with each other."
19 And that's referencing we regularly turn away customers asking
20 for GW symbols, et cetera.

21 Q So is this a conversation that you've had with more than
22 the designers that we've talked about here?

23 A Yes.

24 Q And do you -- how frequently does that come up?

25 A That's pretty much one of the very first things that I

Villacci - cross

1 bring up in a conversation when I'm talking to someone who
2 sculpts or does concept art or, you know, does computer-aided
3 design.

4 Q As you mentioned, you offer custom products, right?

5 A Yes.

6 Q Is that a service that Games Workshop offers?

7 A In my 20 years of -- I keep saying 20. That's a rough
8 estimate. In my years of actually being a Games Workshop
9 customer and actually selling their products at a comic book
10 store, I've never seen them do that.

11 Q What's the process when you get a custom product request
12 from a potential customer?

13 A We look at the product, the feasibility of actually making
14 the product itself, the physical feasibility. Is it something
15 we can sculpt, or is it something that's just way beyond our
16 scope to do, whether Games Workshop has a product like that,
17 or another miniature company for that matter has a product
18 like that that I know of, whether the art's in the Games
19 Workshop book. And if what they want us to do is a direct,
20 you know, taking of that image from that book, we don't do
21 that at all.

22 And, you know, if they're willing to pay for it and
23 it's an original idea, we're willing to do it.

24 Q Let's walk through one example of a custom product.

25 What's this product?

Villacci - cross

1 A That is the winged skull shoulder pad.

2 Q And how did this product originate?

3 A I believe this was a customer custom request for a
4 shoulder pad for his army.

5 Q Let's look at DX 528. Do you have that one?

6 THE COURT: P?

7 MS. HARTZELL: DX.

8 THE COURT: Defendant's exhibit?

9 MS. HARTZELL: Yeah, defendant's exhibit.

10 THE COURT: When she says PX, plaintiff's exhibit;
11 DX, defendants, for a mental reference.

12 THE WITNESS: Yes, I do.

13 MS. HARTZELL: Okay.

14 BY MS. HARTZELL:

15 Q Do you recognize this document?

16 A Yes. This is an email between the customer that requested
17 that product and myself.

18 MS. HARTZELL: DX 528. It was in yesterday's binder.

19 MR. MOSKIN: No objection.

20 MS. HARTZELL: Then we can put up DX 528.

21 THE COURT: It's admitted without the objection.

22 MS. HARTZELL: And can we zoom in on the bottom
23 email.

24 BY MS. HARTZELL:

25 Q What was the request that the customer made?

Villacci - cross

1 A They -- he wanted a shoulder pad for what he referred to
2 as the Angels Sanguine shoulder pad for power armor and how
3 many he needed right then and he'd like, you know, 60 in all.

4 Q Let's go back to the email and zoom in on your response.

5 How did you answer his request?

6 A I let him know how much it is for each process, the
7 sculpting process, which varies on cost depending on the
8 complexity of the pad; the mold-making process, which is just
9 the actual getting ready for production; and then the
10 discounted price, since he would be a commissioning customer,
11 of how much each pad would be just for him.

12 And then the second part, and this is pretty much
13 always in my emails when people say this. And I didn't even
14 know, you know, what Angels Sanguine was. I didn't know if
15 that was his new idea for a chapter or something from a book.
16 But regardless, I always say something to this effect whenever
17 I get requests for customers. Please keep in mind we will not
18 copy a GW created symbol. If it's something that's generic or
19 if it's a design you have us create, we can do that. We will
20 need a drawing what you want done as well.

21 Q And is that something that you use whenever customers make
22 a request?

23 A Once we get into actually talking about the process, yes.

24 Q Let's pull up DX 436 at page 71. And if we can zoom in on
25 the second row, the second shoulder pad from the left. From

Villacci - cross

1 the left. That's the one.

2 It's a little blurry. Do you recognize that symbol?

3 A It looks like a bat winged skull.

4 Q What was the next step in the process after talking to
5 Mr. Stinson about his request?

6 A I believe he sent us art of what he wanted to do. Or I
7 hope he sent us art of what he wanted to do. And we worked on
8 that concept art together, flesh out the design. And once he
9 okayed the actual design of the concept art, we would go
10 towards the process of sculpting it.

11 Q Let's turn to -- turn back to DX 527.

12 Do you recognize that one?

13 A Yes.

14 Q And what is it?

15 A It looks like further conversation between myself and
16 Richard Stinson after that first email conversation that we
17 just referenced.

18 MS. HARTZELL: We would move DX 527 into evidence.

19 MR. MOSKIN: No objection.

20 THE COURT: It's admitted.

21 MS. HARTZELL: Let's zoom in on the middle email.

22 That's the one.

23 BY MS. HARTZELL:

24 Q How did Mr. Stinson respond to your warning about copying
25 symbols?

Villacci - cross

1 A He said, "So just to confirm, you can't create a winged
2 skull because it's a symbol of GW and represents the Angel
3 Sanguine?"

4 Q And let's zoom back out.

5 How did you respond in the second email?

6 A My response back to that was: "We cannot copy the image
7 that GW uses to represent a winged skull. If there is a
8 drawing or a different representation of a winged skull, we
9 can do that. By the way, do you have an image of the symbol
10 that GW uses? If it's lifted from another source that has
11 been used before, it may be free use IP."

12 Q Let's take a look at DX 529, which I think I need to bring
13 to you.

14 Do you recognize -- did you find it?

15 A Yes.

16 Q Do you recognize this document?

17 A It's an email between myself and Tomas pertaining to
18 Richard Stinson's custom job.

19 Q And if we turn to page 3 of the document, and looking at
20 the second to last email talking about the jaw, what's that
21 conversation about?

22 A Sorry. I'm trying to find it on here.

23 Oh, okay.

24 This is Richard Stinson's commentary on the work in
25 progress being done on this pad. It's talking about the

Villacci - cross

1 actual skull you guys saw in the middle of the wings.

2 Q So is it fair to say that there were some back and forth
3 communications between Mr. Fiertek and Mr. Stinson about the
4 details of the design?

5 A Yes.

6 Q And if we look at -- go back to the main email and zoom in
7 only on the first paragraph, what's Mr. Stinson talking about
8 here?

9 A He's talking about the difficulty of the pad pertaining
10 for Tomas sculpting it and what he wanted in that product as
11 well, that he was willing to alter his drawings further to get
12 the art for the product, and that's what he's talking about.

13 Q So was it important to him that the icon be exactly like
14 Games Workshop's?

15 A No.

16 Q Let's take a look at another email that Mr. Moskin
17 discussed with you, PX 183 at page 8. And that might be in
18 the binder that you used with Mr. Moskin.

19 THE COURT: Plaintiff's Exhibit 183, page 8.

20 BY MS. HARTZELL:

21 Q Do you have it?

22 A Yes, I have it.

23 What page?

24 Q Page 8.

25 And we can pull that one up on the screen. PX 183 at

Villacci - cross

1 page 6. And zoom.

2 A Page 6 or 8?

3 Q Sorry. Page 8.

4 And zooming in on the paragraph right where your
5 arrow is.

6 What was the customer's request here?

7 A This customer's name was Mike Early, and his request was
8 he was wanting to do something that he called Blood Raven
9 pads.

10 Q And what other details did he give about his requirements?

11 A They don't have to be the specific Blood Raven symbol,
12 just a predator bird-ish pad that doesn't look like an
13 eagle/hawk/falcon, but instead more like a raven.

14 Q And turning back to page 6 of this document and zooming in
15 on the largest paragraph, how did you respond to his request?

16 A At the time I responded that we could do that, make a pad
17 for him, and if he wanted to push forward with that, we would
18 need to get sketches of what he wanted to be done, but, you
19 know, as always, as you guys have seen, I made sure to caution
20 the customer that we don't want to copy GW icons.

21 Q And what happens generally when you tell customers that
22 you won't copy GW's symbols?

23 A I'd say it's 50/50. Some go further in with us and talk
24 about how we can make something that will conform to their
25 idea of, you know, what they want represented on their

Villacci - cross

1 miniature shoulders or whatever, and some of them are
2 disappointed, but they say, I understand, thanks.

3 Q All right. Let's turn to some of the individual products
4 that you sell. Let's look at PX 435 at page -- I think I only
5 have a Bates number for this one, so we may skip the visual,
6 but you've testified previously about the tactical shoulder
7 pad. Can you describe what that one looks like?

8 A It's, again, our shoulder pad with an arrow on it.

9 Q And you knew that Games Workshop used an arrow marking on
10 shoulder pads, right?

11 A Yes.

12 Q So why would you make this product?

13 A Personally because as a hobbyist, an arrow on something
14 simple, it's hard to do accurately because it's got so many
15 separate edges, and if you need a whole bunch of those, you
16 want them all to look the same, so it was more of a project
17 for myself and Tomas. And the ones that Games Workshop says
18 they sold at the time, they didn't look the same. They didn't
19 have the representation I wanted on my shoulder pad.

20 Q So what was different about the one you wanted?

21 A Ours is a solid arrow that's embossed. And you got the
22 surface of the pad. Ours is higher than the surface of the
23 pad, so it makes it very easy for us to paint. And theirs is,
24 just the outline is embossed, and the rest of the pad, the
25 rest of the arrow the inside is the same level as the shoulder

Villacci - cross

1 pad. So it gives it a totally different look.

2 Q Let's pull up PX 435 at page 1111.

3 What product is shown at the top of this page?

4 A That is Games Workshop's Storm Raven gunship model along
5 with our TRUE-Scale Storm Raven conversion kit added onto it.

6 Q What's the purpose of the Chapterhouse product?

7 A For -- our main reason for releasing this product was --
8 well, there's two reasons. The first one was there was many
9 comments online saying no one liked this model when it was
10 released by Games Workshop. I'm sorry. Not no one, but many
11 comments online saying they didn't like how it looked.

12 It may be hard to tell in a picture, but the Games
13 Workshop model is just the gray part, not this white stuff.
14 And it may be hard to envision. I don't know if we can pull
15 up another -- the Games Workshop model itself, by itself
16 assembled, but it's very short. And, I mean, people were
17 referring to it as -- I'm not going to say that, but instead
18 of a Storm Raven, they were calling it a chibby hawk, which is
19 a little small bird, a chicken hawk. So when it was released,
20 there was a general consensus that it didn't look good. And
21 it's supposed to carry like somewhere between 15 troops, and
22 you can maybe realistically put three in here. So people
23 wanted it to look bigger, bulkier like it was an actual
24 transport, not, you know, just a littler helicopter-looking
25 small jet thing.

Villacci - cross

1 So one of our guys we approached about this design,
2 he had done this himself. He had made these little panels
3 himself, and people were just loving it. They were saying,
4 oh, this is great. Now I'll actually buy this product from
5 Games Workshop because it doesn't look so goofy. And we saw
6 those, and we approached him, and he said, yeah, sure, you
7 know, I've already put mine together, but I can do another set
8 for you, and I can even make it more detailed and better. So
9 we paid him for that, and we released it. And when we
10 released it, I mean, this is one of the most talked about
11 products that we do on the Internet. And I don't know, I get
12 tons of emails from customers saying thank you, thank you,
13 thank you. I actually bought this model now from Games
14 Workshop because you guys made this kit. I would never have
15 bought it before.

16 And it's, like I said, the second reason was -- and I
17 sort of touched on this. We call it the TRU-Scale kit because
18 it looks true to scale, that it could actually carry 15 models
19 now instead of just the little three up here. That's why we
20 made the kit.

21 Q I do want to go back before we finish up with this product
22 and ask you when we talked about the design of the winged
23 skull product, is that one of the products that is accused
24 of -- the surface design is accused of infringement in this
25 case?

Villacci - cross

1 A I'm not sure.

2 Q Do you recall Mr. Merrett testifying that it was
3 sufficiently different from the Games Workshop product so it
4 was not -- the surface design was not accused?

5 A I remember that being one of the products in a subset that
6 he said wasn't being accused of something. I don't remember
7 what it was, though.

8 Q All right. We'll go back to the Storm Raven. Who was the
9 designer that you worked with for this product?

10 A Steven Smith.

11 Q And do you know what kind of design process he used? I
12 know you came in after the fact. But was this computer aided
13 or hand sculpted?

14 A This was all -- it wasn't sculpted, but it was all done by
15 hand.

16 Q Let's talk about the development of the Dark Elf
17 Torturess. Let's look at DX 478 at page 91. And can we zoom
18 on the product box.

19 What product is this?

20 A This is the Chapterhouse Studios Dark Elf Arch-Torturess.

21 Q And who was the designer of this project?

22 A I believe this was mainly done by Jae Lee, but also Tomas
23 and myself had input on it.

24 Q What was the first step in the design process for this
25 product?

Villacci - cross

1 A The concept art.

2 Q And without putting them on the screen, can you pull up DX
3 538 in your binder?

4 A Yes.

5 Q Do you recognize this document?

6 A Yes. This is some of the early concept art for this
7 product.

8 MS. HARTZELL: I would move Exhibit DX 538 into
9 evidence.

10 MR. MOSKIN: No objection, your Honor.

11 THE COURT: It's admitted.

12 MS. HARTZELL: We can pull up DX 538.

13 BY MR. HARTZELL:

14 Q So how did the idea for this project turn into this
15 concept art?

16 A Jae Lee, we gave him the basic parameters of what we
17 wanted this model to be like and very basic, you know, evil,
18 scary-looking, female model, and he took that from his head
19 and used, you know, whatever he did and made a concept art for
20 it.

21 Q And let's look at DX 539.

22 Again, do you recognize this document that you see in
23 your binder?

24 A Yes.

25 Q And what's that?

Villacci - cross

1 A Further concept art.

2 MS. HARTZELL: I would move that into evidence.

3 THE COURT: It's 539 you said?

4 MS. HARTZELL: Yes, your Honor.

5 MR. MOSKIN: No objection.

6 THE COURT: Both 538 and 539 are admitted.

7 BY MS. HARTZELL:

8 Q And can you tell us what this document is?

9 A This is more fleshed out concept art. The first one was
10 pretty -- you know, had details on it. You can actually look
11 on the right side of the screen. Those are very basic shapes
12 and stances of how the model is going to be represented once
13 they're sculpted. And the one on the left is even more detail
14 added onto the first picture we saw, sharper outlines, and,
15 you know, more and more of this model is coming to light, and
16 I guess he's giving birth to his idea in concrete form now.

17 Q And after the sketches were completed, the concept art,
18 what's the next step in the process?

19 A Then the hard part begins, the sculpting part.

20 Q And can you turn to DX 541 in your book?

21 A Yes.

22 Q What is that?

23 A That is the initial sculpting of the arch-torturess.

24 MS. HARTZELL: I would move that into evidence if
25 there's no objection.

Villacci - cross

1 THE COURT: What's the number again?

2 MS. HARTZELL: DX 541.

3 MR. MOSKIN: No objection.

4 THE COURT: It's admitted.

5 MS. HARTZELL: And we can pull that one up.

6 And can we zoom in on the figures?

7 BY MS. HARTZELL:

8 Q Can you describe for us what's shown here?

9 A This is the very basic start of that model. You see on
10 some parts of the brown, that's that cheaper material that's
11 stronger to work with. That's the underlying pieces. The
12 green is the actual detail starting to come to light, and you
13 actually do it almost in layers of clothing, or you do skin,
14 you do clothing, you do more detail on the clothing.

15 And you can even see the little -- the rod, which is
16 more like a skeleton for a miniature. That gives the model
17 strength again. And this is, like I said, at the very
18 beginnings of that model that he took from concept art to this
19 piece.

20 Q And let's turn to DX 542 in your binder.

21 A Okay.

22 Q What's that show?

23 A That is a further iteration of the sculpting process for
24 this model.

25 MS. HARTZELL: And I would move DX 542 into evidence.

Villacci - cross

1 MR. MOSKIN: Once again no objection.

2 THE COURT: It's admitted.

3 MS. HARTZELL: Please pull up DX 542.

4 BY MS. HARTZELL:

5 Q Can you tell us what's shown here?

6 And can we zoom in on the one on the top left.

7 A This is more and more detail slowly being added onto this
8 model, more layers of green stuff.

9 You can see the little weapon on the right hand.
10 That was just before we even had a hand there or even upper
11 arm. It's got a blade extending out with the fist.

12 And you can see the detail in the clothing coming to
13 light.

14 The face is starting to be built up a little more,
15 the hair.

16 I don't remember in the other picture -- yeah, these
17 little rods, they do several functions. They're not just
18 there to hold up the model. Those are other pieces that he's
19 going to build upon, and he'll cut those rods down as he needs
20 to. But, again, there's underlying skeletal structure of the
21 model itself beginning to take form.

22

23

24

25

1 Q. And then let's turn to DX 540. Do you recognize that
2 document?

3 A. Yes.

4 Q. What is it?

5 A. It's another step in the sculpting process taking form.

6 MS. HARTZELL: I would move DX 540 into evidence.

7 MR. MOSKIN: No objection.

8 THE COURT: It's admitted.

9 (Said document was received into evidence.)

10 BY MS. HARTZELL:

11 Q. All right. Let's pull up DX 540. And let's zoom in on
12 the bottom half.

13 Can you tell us what we see here?

14 A. Sure. This is the left arm that we hadn't seen on a
15 model yet. He left that separate. There's reasons for doing
16 that visa sculpting. I mean, there's lots of little
17 fiddley-long components here that they don't have very much
18 strength. These things are small. I mean, this is -- you
19 can tell by the scale, that's the palm of his hand; you can
20 see the lines. Same thing, that's the lower joint of a
21 finger -- or the joint of a finger. These things are so
22 small. That's a separate component for the left hand.

23 Q. And down on the bottom --

24 A. Do you want to talk about the --

25 Q. -- is the arm?

1 A. The bottom, you saw those -- in the last picture you saw
2 those rods going like this. This is the built upon idea for
3 what those were for.

4 This is like a little backpack harness with arms
5 that help the creature -- the Torturess into torturing
6 people, unfortunately, with little instruments on there.
7 There's going to be a blade and a syringe and a -- there -- I
8 don't think they look like human arms at all. They're more
9 mechanical, jointed, auxiliary, almost like, you know,
10 artificial arms.

11 Q. And when this product was completed it sold as a whole,
12 right?

13 A. Yes.

14 Q. So why do you consider this to be an add-on product to
15 Games Workshop's Warhammer 40K?

16 A. It's an add-on product in the sense that we don't sell
17 whole armies, whole factions where players use either in a
18 separate game or in 40K. It's something to complement their
19 experience when they're playing 40K.

20 It's -- I hope it was evident, and it may not have
21 been, but this model is a female. Games Workshop tends not
22 to, I guess, just -- it's a -- I don't know why, but they
23 don't really touch upon the female aspect of the hobby.

24 And there's a lot of female players out there, too,
25 who feel under-appreciated -- not under-appreciated but just

1 they feel it's not represented --

2 MR. MOSKIN: Objection.

3 THE COURT: The last part of the answer is
4 stricken. It's speculative, it lacks foundation.

5 BY THE WITNESS:

6 A. Okay. Um --

7 THE COURT: The jury is instructed to disregard
8 that part.

9 BY MS. HARTZELL:

10 Q. Do you focus in particular on the creation of female
11 products?

12 A. It's one of the things we like to focus on. It's not
13 our pure focus. It's just another option for the players to
14 use in their model collection.

15 Q. And let's talk about the Combi weapons products. Let's
16 turn to PX 435 at Page 260. And can we zoom in on the
17 picture of the product?

18 What's the purpose of this product?

19 A. This product is one of my personal favorites. It was
20 again something I like to use in my armies, and it's never
21 been evident in the Games Workshop line very much.

22 It's a gun that has an auxiliary weapon attached to
23 the top of it, kind of like when you see an underslung
24 grenade launcher in the military. In the Games Workshop
25 fiction they say -- they have the same idea with their

1 weapons. You can have a smaller weapon underneath the main
2 weapon to use when you're in trouble or, you know, in a
3 pinch. And that's what this product is.

4 But we wanted to do something to make life easier
5 for the customers. Again, Games Workshop, they say
6 converting stuff is part of the hobby, so pretty much the
7 base -- the only way to get a lot of these components was to
8 cut them off another Games Workshop weapon and glue them onto
9 the other weapon.

10 We made a kit that is magnetic in design. So you
11 can paint up this main barrel, glue it on your figure, and
12 you can paint up these little -- you know, there's a
13 flamethrower and a grenade launcher, some other components on
14 there, and you can swap it whenever you wanted to. And it
15 was magnetic so you could do it whenever.

16 So instead of a model holding a gun with a
17 flamethrower and the main gun on there, and having another
18 model with the flamethrower -- I'm sorry, grenade launcher
19 and the main gun, you could just have one model and swap
20 those components out.

21 And when you're playing this game -- I love to
22 paint, I like my stuff to look good. Games Workshop products
23 -- it's a niche hobby, they're expensive, and it takes a lot
24 of time to do a paint job for me. If I'm going to pay \$5 for
25 a miniature, I'm going to spend a good amount of time on it.

1 This saves me a lot of time painting five or four different
2 models doing the same thing but with a little part being
3 different.

4 So we -- I'm not going to say we pioneered the use
5 of magnets in the miniature game, but we definitely pioneered
6 the use of swapping out this and making it so this little
7 itty-bitty piece doesn't fall off this big gun in the middle
8 of a game.

9 Q. Who designed this product?

10 A. This -- I'm proud to say that the initial idea to do
11 this was myself, and Jeffrey Nagy is the one who actually did
12 the computer-aided design on it.

13 Q. Let's talk about the alternative heads for the battle
14 suits, the Tau battle suits. Let's look at PX 662 at
15 Page 10.

16 What was the purpose of the alternative heads?

17 A. The purpose of the alternative heads was to give players
18 options to further add their flavor and their customization
19 to the Games Workshop models they had bought.

20 Q. And who designed the -- or did the concept art for this
21 project?

22 A. I believe that was Roberto Cirillo.

23 Q. And let's look at the -- the first paragraph of
24 Mr. Cirillo's e-mail to you down in the second e-mail. Yes,
25 right there.

1 So how did he respond when you contacted him about
2 working for you?

3 A. Basically this is it: (Reading:)

4 I've had a chance to look briefly at Chapterhouse
5 Studios website, I have a pretty good idea of the direction
6 you're going -- pertaining to what I talked to him about
7 prior to this -- I'll be happy to supply you with fresh new
8 ideas for your kits.

9 Q. And let's look at PX 663.

10 THE COURT: Actually, if you're going to a new one,
11 let's stop here.

12 MS. HARTZELL: All right.

13 THE COURT: We're going to break for ten minutes,
14 then we'll go to 12:30.

15 (Brief recess was taken.)

16 THE COURT: All right. Everyone can have a seat.

17 Okay. Ms. Hartzell, you can resume.

18 BY MS. HARTZELL:

19 Q. We were just turning to the alternative heads for the
20 Tau Crisis battle suits, and we're pulling up PX 663. And
21 can we zoom in on the picture part?

22 What is this document?

23 A. This is the concept art that Roberto Cirillo -- you can
24 see his little signature down there in the right-hand
25 corner -- did for our alternative heads for the Tau Crisis

1 battle suit.

2 Q. And what happened after the sketches came in? What was
3 the next step in the process?

4 A. I believe there was actually a series of sketches that
5 came back and forth between me and him. I think these are
6 the final sketches.

7 But after that we sent the sketches -- because he's
8 a concept artist, he's not a sculptor. I believe I gave
9 these to be done to Sean Bullith (phonetic).

10 Q. And what did the sculptor do once he received the
11 sketches?

12 A. He went to work sculpting and using whatever tools he
13 used. He used some plastic with this kit since there's a lot
14 of flat areas.

15 And I also sent him one of my personal Tau battle
16 suit models so he can make sure it fit correctly on the model
17 and the scale to head was in proportion to the rest of the
18 model.

19 Q. Let's talk a little bit about Tru-scale. And I know you
20 used that phrase in connection with a couple of different
21 products.

22 What do you mean when you say Tru-scale?

23 A. Tru-scale means in proportion to 28-millimeter scale.
24 So when you say 28-millimeter -- I think this was explained
25 before by someone else -- that means if you have a regular

1 human character, he's going to be roughly 28-millimeters
2 tall.

3 So whenever we did a model, we wanted that to
4 reflect the scale involved; that our source for regular human
5 height was 28 millimeters and our models would be in
6 proportion to that 28-millimeter height.

7 So if we have a big walking super-bulking super
8 soldier, he -- we wanted him to be bigger than our regular
9 human, so he would be taller than 28 millimeters.

10 Q. And I think you used Tru-scale in connection with the
11 conversion kit for the Storm Raven that we talked about
12 earlier?

13 A. Yes.

14 Q. And what did you mean by Tru-scale there?

15 A. Again, true to the scale that a 28-millimeter model
16 would be representative of a regular human.

17 So if you have a Tru-scale vehicle that's supposed
18 to hold ten guys, you want it to look like it could hold ten
19 28-millimeter humans.

20 Q. And if we pull up Exhibit PX 650, and the next page.
21 What's the purpose of this product?

22 A. This product is, in a sense, to -- I mean, it's a
23 Tru-scale Knight Praetorius kit for our kits, but it's to
24 show -- illustrate in a miniature form what a big, bulky
25 superhuman and big, bulky armor would, you know, be entailed

1 as in -- in our fiction and if someone else wanted to do a
2 big, bulky super soldier Space Knight, Space Marine in
3 28-millimeter scale, to accurately reflect that scale, not --
4 there you go.

5 Q. And you've talked previously about the conversion kit,
6 the Tervigon conversion kit for the Carnifex model. Do you
7 remember talking about that?

8 A. Yes.

9 Q. What was the idea for that product?

10 A. The idea for that product was to make a representation,
11 again, something Games Workshop talked about but there was
12 nothing available for the customers to actually represent
13 that on the game, and to give players the option to do that
14 without having to sculpt the model by hand themselves
15 because, again, there was no product available for that.

16 And personally, I played Tyranids. That's one of
17 the very first armies I started playing with in 1996. And I
18 can sculpt but I can't sculpt something this big three times,
19 which in the rules you can have three times in the same army.
20 And even then we wanted them to be able to use that with a
21 Games Workshop component, a model.

22 So when we were talking about the idea to design
23 that, we wanted them to be able to buy a Games Workshop
24 Carnifex model -- I think that's \$58 -- and then add our
25 small component kit, which I think ran like 18 to \$20 when it

1 was released, to that model to represent our idea of the
2 Tyrannid Tervigon on the battlefield for that player.

3 Q. Who was the designer of that product for Chapterhouse?

4 A. I would say the primary designer was Sam Terry, but I
5 also had a lot of sculpting and design done as well.

6 Q. And at some point after you sold your product, Games
7 Workshop introduced one also, right?

8 A. Yes.

9 Q. And did that have an effect on your sales?

10 A. Yes.

11 Q. What happened?

12 A. They dropped dramatically. I would say almost
13 non-existent when they released their product.

14 Q. And you talked about -- or you've testified previously
15 about the shoulder pads for Blood Eagle and Blood Raven. And
16 I think we've looked at that one several times. Can we pull
17 up PX 435 -- actually, let's pull up the chart, PX 1020 at
18 Page 8.

19 And looking at this chart, what was the idea for
20 the product -- the Chapterhouse product on the left-hand
21 side?

22 A. I believe this originated from the customer we were
23 talking about. I can't remember his name, but he's the one
24 that initially contacted us about doing a shoulder pad that
25 he could use to represent his Blood Ravens on the table.

1 Q. Perhaps Mike Earley?

2 A. That would be correct.

3 Q. Okay. And what were the design decisions that went into
4 making this product?

5 A. I wanted to do something very fanciful instead of
6 simple. We wanted to do outstretched three-dimensional wings
7 that kind of embraced the shoulder pad. We also added
8 ornamentation to the actual shoulder pad. You can see this
9 gold gilding.

10 Also, we added this sharp point to the end of the
11 pad versus the standard pad we use also. And there's the
12 eagle, or raven head, and we added as the breast of that --
13 the body of the bird, we did a jeweled inverse drop.

14 Q. When did you introduce that product?

15 A. 2008, I would say.

16 Q. And if we zoom back out, do you know when the Blood
17 Raven transfer product was first introduced?

18 A. I want to say September 2010.

19 Q. So that wasn't something that you considered in creating
20 your design?

21 A. No.

22 Q. You mentioned a little bit earlier the jetbike design.
23 Can you talk about some of the design features of the jetbike
24 that you discussed with the designers of that project?

25 A. Sure.

1 We wanted to do a bike design, a hovered -- or --
2 yeah, I guess a hovered also has jet nozzles on the back to
3 propel it. Some of that was, you know, how did we want the
4 rider to be positioned. Did we want to lean him forward,
5 like you see in racing motorcycles, or lean him back, like
6 you would see in a Cruiser, Harley?

7 How did we want the weapons to be oriented? How
8 much armor did we want on the weapons? The -- you know, what
9 options did we want to give the customer? Did we want to put
10 any ornamentation on it or did we want the customer to be
11 able to customize it further?

12 One of the things you really got to think about
13 when you do miniature design is, do you want to add your own
14 flare to a model, make little fiddly bits. Games Workshop
15 loves to use -- Games Workshop uses lots of skulls and, you
16 know, whatever else is stylized for that army. So for Space
17 Marines they use skulls and eagles and all sorts of stuff.

18 Did we want to do something like that with ours,
19 where we added our own touches to it, or did we want to leave
20 lots of flat surfaces and just a very basic vehicle that
21 players could add their own detail on? They could buy Games
22 Workshop kits and take little components from there and glue
23 them on if they wanted to, add their own flare. That was
24 part of it.

25 Also, did we want to give the player the option of

1 making a lighter version of our jetbike in the same package,
2 or did we want to just give them one? And we decided in the
3 end to, yeah, let's give them the option of making this look
4 like a much slimmer, faster recon stealth jetbike. And to do
5 that we added another set of jet intakes that don't make it
6 look as bulky; they're much slimmer. It makes it look more
7 like a racing bike.

8 Also, we gave them different weapon options to put
9 on the front end. And one of the cool things with that is,
10 one of those weapon options allows them to use the components
11 from the Combi weapon kit you saw up there, the little
12 flamethrower or grenade launcher or whatever. And it
13 actually fits on there. So they can do that as well. They
14 can even magnetize it if they wanted to.

15 Q. And we talked earlier about the Shrike conversion kit,
16 the one with the wings. What kind of design decisions did
17 you discuss with the designer for that product?

18 A. Again, very biological aspects to that design. We are
19 talking sci-fi, but a lot of sci-fi has realistic
20 characteristics with it.

21 This is supposed to be a flying creature. Do you
22 want it to look like it's a bug, bulky dragon-looking flying
23 creature? Did you want it to look like a bug? Or did you
24 want it to look -- have like light frame -- a light frame
25 like a teradactyl? Remember, that head was kind of pointy.

1 Teradactyls have that crest that's pointy. You know, we drew
2 inspiration from that.

3 Did we want to do the stereotypical bat wings or
4 did we want to do beetle wings, you know, short little stubby
5 things, butterfly wings, you know. You could do anything.

6 The other part of that kit is the legs. Did we
7 want to make it look like this is a creature that flies and
8 walks on land, kind of like a dragon? Dragons, they walk but
9 they also fly. So the musculature is very significant in the
10 legs.

11 Or do you want to make this look like a bird that
12 mostly flies? Birds, you know, that's their main mode of
13 transportation. They got real spindly legs, they're light.
14 If you've ever messed with chicken legs, real chicken legs,
15 not just the bone, they're real light and breakable, fragile
16 looking even. And did we want to do that?

17 Did we want the legs to look like the feet, that
18 they're for walking or for grabbing something, kind of like
19 eagle claws?

20 Q. And when you worked with and discussed with the
21 designers for the mycetic spore, what kinds of inspirations
22 or design decisions did you take into account for that one?

23 A. We looked at basic real biology, again, seed pods,
24 talked about, you know, how something would propel itself
25 through space, flagella. That's another biological term,

1 when you talk about microorganisms, how they propel
2 themselves.

3 We also drew some inspiration from H.R. Giger.
4 He's a very -- I think he's a Swedish artist. He's
5 responsible for the Aliens movies, the Aliens franchise.
6 Very organic, almost gross, perverted -- I'm not going to get
7 into it, but it's a look that -- it's organic-looking and it
8 has to do with, you know, biology, and it's fleshy and --
9 yuk. But, yeah, that's also what we -- that's a lot of what
10 we looked at for that one.

11 Q. And now I would like to look back at some of the things
12 that you were asked before and things that we talked about
13 before. Let's start with PX 1021 at Page 53 -- actually,
14 Page 52. Sorry.

15 So when you look at Page 52 and the product listing
16 for the winged skull power armor pad, including the
17 right-hand side, what is your understanding of what's accused
18 based on the chart in here?

19 A. I'm looking at the red part here and it says the size
20 and shape of the pad is what is bringing Games Workshop to
21 bring this item up in the lawsuit, not the surface
22 decoration.

23 And it's -- you know, I can't tell if that's what
24 they meant or not below it, but it says the shoulder pad is
25 designed to fit on Games Workshop Space Marine figures, and

1 they also don't like that.

2 Q. Okay. And Mr. Moskin asked you about a statement in the
3 document PX 744. So this may take just a minute.

4 If we can rotate that to the right. I think --

5 MR. KEENER: Your Honor, this is supposed to be
6 redacted.

7 THE COURT: Take it off. First of all, take it
8 down.

9 MS. HARTZELL: Yeah, take it down.

10 THE COURT: Okay. Sort it out.

11 MS. HARTZELL: Okay. We can skip that one.

12 BY MS. HARTZELL:

13 Q. Mr. Moskin asked you about an e-mail marked PX 653. Can
14 we pull that one up?

15 And you were asked about a customer asking you for
16 a space marine. Let's zoom in on the top e-mail.

17 What was your response to that customer?

18 A. I quickly let him know what they referred to in our
19 catalog, the correct name for them.

20 Q. And what was the correct name?

21 A. The Knights Praetorius.

22 Q. Now, in your testimony you've mentioned, when we're
23 talking about shoulder pads, power pads and terminator pads.
24 What's the difference?

25 A. One pad is -- the terminator pad is larger in diameter,

1 so the inside concave part that fits on the shoulder has to
2 be larger.

3 Q. So how can a customer who wants to buy one or the other
4 tell which one they're buying?

5 A. By the name that we categorize them under on our
6 website, otherwise it would be very difficult for them to
7 figure out which one is which.

8 Q. When you're setting the prices for your products, what
9 factors do you take into account?

10 A. I would say the same factors any business takes: Cost
11 to produce, labor involved, what the market will be able to
12 sustain.

13 Q. What do you generally charge for shoulder pads?

14 A. \$1.

15 Q. And do you remember Mr. Merrett testifying that certain
16 Games Workshop shoulder pads cost \$8.25 for a pack of ten?

17 A. Yes.

18 Q. How does that compare to your pricing?

19 A. Our pricing is a little more expensive.

20 Q. How much does your Warrior Priestess product cost?

21 A. I want to say \$16.

22 Q. What was it?

23 A. I want to say 16 or 16.50, somewhere around there, or it
24 might be 13.50. I can't remember.

25 Q. Turning back to the shoulder pads just to clarify, we

1 talked about yours being \$1 for one shoulder pad, right?

2 A. Yes.

3 Q. And Games Workshop's being \$8.25 for ten shoulder pads?

4 A. Yes.

5 Q. So that was why you were saying that yours was more
6 expensive?

7 A. Yeah. If you wanted ten of those, you had to pay \$10
8 versus \$8 and change from the Games Workshop site.

9 Q. And then you said that your Warrior Priestess is \$16 --
10 or I forget what you said. How much?

11 A. I want to say it's 16.

12 Q. Okay. And Mr. Merrett testified that the Striking
13 Scorpion product that Games Workshop says is infringed by
14 that product costs \$41 for six figurines?

15 A. Okay.

16 Q. So how does that compare to your product?

17 A. 16 times six, if you want to compare apples to apples,
18 as he would want -- \$96, I guess? Is that correct? 16 times
19 six? Yeah.

20 Q. Is it more or less expensive?

21 A. More expensive.

22 Q. Okay. Now, we've heard a lot about trademark usage and
23 words that Games Workshop contends are trademarks.

24 Why do you have to use those words on your website?

25 A. To accurately describe what our products can be used for

1 in the players' armies or what parts they're compatible with.

2 Q. And have you ever used the double-headed eagle Aquila
3 trademark that Games Workshop has asserted?

4 A. No.

5 Q. And let's look at PX 316. And can we zoom in on the
6 symbol in the middle?

7 What's that symbol?

8 A. That's the Games Workshop's logo for Warhammer 40,000.

9 Q. Have you ever used that logo in connection with the
10 advertising of any product?

11 A. Never.

12 Q. Let's talk about some of the other words that Games
13 Workshop says are trademarks.

14 What does the phrase assault cannon mean to you?

15 A. A big cannon that shoots bullets.

16 Q. And are you familiar with the use of that term outside
17 of the Games Workshop universe?

18 A. Yes.

19 Q. Where?

20 A. I was in the army, so we referred to things as assault
21 cannons sometimes in the army.

22 Also, my very first miniature war gaming was Battle
23 Tech, FASA's Battle Tech. They have assault cannons in their
24 fiction. And that was 1985 I believe the first time I saw
25 that. Star Wars toys have assault cannons, Halo has assault

1 cannons.

2 So I definitely have seen the word assault cannon
3 in games, in modern life and warfare and stuff like that
4 beforehand.

5 Q. And have you seen it generally referring to a type of
6 weapon?

7 A. Yes.

8 Q. How about jump pack? Have you ever seen that -- or what
9 does that phrase mean to you?

10 A. A pack that let's you jump.

11 Q. And have you ever seen that used anywhere outside the
12 Games Workshop universe?

13 A. Yes.

14 Q. Where?

15 A. I believe I read about it in Starship Troopers by -- I
16 don't know how to pronounce his last name -- Heinlein, which
17 is a very old novel that predates Chapterhouse Studios and
18 Games Workshop.

19 And it's just a general description of a pack that
20 let's you jump around, especially in science fiction, jump
21 pack, jet pack.

22 Q. How about drop pod? Does that word have a meaning to
23 you?

24 A. Yes.

25 Q. What does it mean?

1 A. It's a pod that drops -- in a science fiction term it's
2 a pod that drops from orbit that usually contains something
3 inside. You know, it doesn't necessarily have to be people
4 or soldiers. It could be cargo, you know, it could be
5 produce. I don't know. But I have seen that before as well.

6 Q. And have you seen that outside the Games Workshop
7 universe?

8 A. Yes.

9 Q. Where?

10 A. Again, Battle Tech, my first miniature war game, the big
11 walking robots that are this tall in the game but they're
12 supposed to be like 20 -- I think they're 20, 30 feet tall.
13 They have drop ships, which are big spaceships to carry the
14 battle mix; that's what they're called. Inside the drop
15 ships they keep the battle mix in drop pods, which are then
16 ejected out of the drop ships into orbit and they land in
17 those drop pods.

18 Also, I believe they're talked about in Starship
19 Troopers, and they're also talked about -- I mean, Halo has
20 drop pods in their game. They drop their orbital drop shop
21 troops, ODST warriors, in drop pods. And they even have a
22 toy that's called a drop pod.

23 And I also think I saw it not too long ago in
24 Aliens versus Predator movie. When they dropped the predator
25 into the antarctic, he lands in a drop pod.

1 Q. How about the term high elf? Does that have a meaning
2 to you?

3 A. Yes.

4 Q. Have you seen it used outside of the Games Workshop
5 universe?

6 A. Yes.

7 Q. Where?

8 A. Just regular fantasy fiction. High elf is not a new
9 term. I believe it's been used in Dungeons & Dragons way
10 back. I mean, Dungeons & Dragons have been around much
11 longer than I've been around.

12 And I'm not sure if Tolkien in his "Lord of the
13 Rings" novels refers to the elves as High Elves or Eldar. I
14 know he uses Eldar for sure, but I'm not sure if he further
15 goes into detail and calls them High Elves.

16 Q. How about the term jetbike? Does that term have a
17 meaning to you?

18 A. Yes.

19 Q. What's the meaning?

20 A. Again, it's a jetbike. It's a bike that uses jets to
21 propel itself.

22 I don't think I was alive when the movie came out,
23 but Flash Gordon, he rides around on a jetbike. It's kind of
24 corny, but the only reason I remember that is because I saw
25 another movie called Ted that had it in it.

1 But jetbikes are in science fiction. They've
2 definitely been established in miniature lines. Other
3 companies' miniature lines use jetbikes as well. Star Wars,
4 the -- and Return of the Jedi, there's a very long scene
5 where there's bikes going through the forest and, there you
6 go, jetbikes.

7 Q. How about the term Imperial Guard? Is that one that
8 you've heard used outside the Games Workshop universe?

9 A. Yes.

10 Q. And does that have a meaning to you?

11 A. Yes.

12 Q. What's the meaning?

13 A. I guess in a very basic sense Imperial Guard means
14 someone who guards the emperor. But what stands out to me is
15 Imperial Guard -- again, Return of the Jedi, 1985, even
16 Empire Strikes Back in 1983, George Lucas introduces the
17 Imperial Guard, which are the big -- they're not big but
18 they're red-robed soldiers that guard the emperor. And he
19 even has a toy line and an action figure called Imperial --
20 Imperial Guard action figure from 1985, 1985.

21 Q. How about the term space marine? Does that have a
22 meaning to you?

23 A. Yes.

24 Q. And what does it mean to you?

25 A. To me it's a generic term for any futuristic marine,

1 although they may come out pretty soon here -- the Air Force
2 is talking about space marines in their literature. A marine
3 that fights in space. And do you want me to go where I've
4 seen that?

5 Q. I do. Thank you.

6 A. Okay. We've seen that book that was shown around
7 earlier -- and Games Workshop has never seen that before --
8 from 1980 that's called "Space Marine." It's science fiction
9 and it has a space soldier in the front with a helmet, armor.

10 It's a generic term in sci-fi that depicts a marine
11 that fights in space. Mostly it's got armor, big, bulky
12 armor for the most part.

13 Starship Troopers, and I think there's another book
14 that he wrote, Heinlein wrote, from the 1960s -- I think it's
15 1960s -- where he refers to big armored futuristic soldiers
16 and armor, power armor and space marines.

17 Space marines have also been in regular movies. I
18 mean, Aliens, they're called colonial space marines when
19 they're fighting the Aliens with the marines. They even have
20 a toy that's called Space Marine from 1985. I think they
21 released that in 1996.

22 I don't know if we have any PC gamers -- I think we
23 do have PC gamers. But Blizzard has StarCraft, and they have
24 space marine -- colonial space marines in StarCraft and
25 they're big, bulky armor, wear helmets.

1 I think space marine just describes someone who
2 fights in space, but it seems the trend is to describe
3 someone who fights in space in big, bulky armor lately.

4 Q. How about the term rhino in a military context? Does
5 that have any meaning to you outside the Games Workshop
6 universe?

7 A. I believe there's APC called rhino in regular military,
8 real vehicles.

9 Q. Now, let's turn to PX 436, and take a look at that
10 document. And can we turn it at all?

11 While it's sideways and we're working on zooming,
12 do you recognize this?

13 A. I can read at the top, yes, Chapterhouse Studios Sales
14 by Item Summary, and it's got a date range of 2007 to '11.

15 Q. Okay. And in the date -- the ending date range, is that
16 around the time that you redesigned your website?

17 A. I believe it is, yes.

18 Q. And if we could look at the top row of the chart?

19 Can you talk to us about what each of those columns
20 represents?

21 A. Quantity describes the amount of quantity sold of that
22 product.

23 Amount pertains to an amount of, I guess, sales for
24 that product, dollar amount.

25 Percentage of sales, I never really pay much

1 attention to that myself, but it's percentage of sales
2 pertaining to all the sales of all our products. I'm not
3 sure if that pertains to a dollar amount or to an actual
4 quantity for that specific product.

5 Average price. Say I sold something at a different
6 price to a different customer, that gives you the average
7 price when you figure it out.

8 Cost of goods sold -- cost of goods sold only
9 pertains in this sense, for this, to the actual, I believe,
10 materials cost for the product. It doesn't take into account
11 labor costs, costs for employees, any costs associated with
12 the business, shipping costs. Developing costs will only pay
13 the sculptors to actually design the product. That's just
14 the cost to -- for the materials for that one product.

15 Average cost of goods sold. It's average cost of
16 goods sold but I don't know why it would be different. I
17 guess if the price of the materials went up at some time,
18 that would affect the cost of goods sold, and that's the
19 average of that.

20 Gross margin -- I'm working on my accounting degree
21 but I don't have it yet. I'm sorry, guys. I believe that's
22 the total margin. I'm not sure.

23 And the gross margin percentage would be the same
24 thing, a separate percentage.

25 Q. And if we zoom back out to the full document, and then

1 zoom in a little bit on the left-hand column, just select --
2 all the way on the left, the words -- yes, perfect. That
3 will do.

4 Can you tell us what's listed here on the left-hand
5 side?

6 A. Basically every single item in the Chapterhouse Studios
7 inventory, even if it doesn't have to do with a specific
8 product. It's just -- you know, we have magnets on hand, so
9 I need to keep track of that as trying to run, you know, a
10 decent business. It keeps track of all the inventory and the
11 costs.

12 You see a \$100 gift certificate up there. You see
13 all the products there, armor predator kit center --
14 basically Intel's -- this list has our products listed in it.
15 Q. And then if we turn to the last page of this document --
16 and we'll take a minute to format it so that it's a little
17 more useable.

18 And if we zoom in on the second set of numbers,
19 what does that mean, assembly?

20 A. Assembly means -- we use QuickBooks, and assembly tells
21 you -- if you have an inventory item, say jump pack, and we
22 pay for each specific individual jump pack, and assembly is a
23 sub-item of jump packs, where assembly -- it's assembly of
24 five jump packs, and that's how we sell our jump packs for
25 the most part.

1 But I still need to keep track of how much an
2 individual jump pack costs us and how many we get in. And
3 then once I got that, I have to build assemblies to populate
4 our inventory with five jump packs. And this actually
5 entails the sales of those assemblies.

6 Q. And if we zoom back out and zoom in on the service
7 category, what's this one talking about?

8 A. Service is -- it talks about the services, like the mold
9 creation. In those e-mails we talked about how much it would
10 cost a customer to have a mold created or sculpting. We got
11 to charge you \$60 for sculpting. That keeps track of all
12 these items.

13 Pewter pack casting cost, I think that was a very
14 old item that we talked about when I wasn't sure if an item
15 was going to be in our catalog or not. So I just threw it
16 under pewter pads when a customer requested a pad.

17 EBay auctions. Whenever we do eBay auctions I
18 don't -- I create an inventory invoice for it, but rather
19 than break down the cost of the item in the invoice, the
20 specific item, I just put the cost of the item in the eBay
21 auction line. So that pertains to all the sales on the eBay
22 auctions.

23 There's no other costs -- there's no other sales
24 amount associated with something else. So eBay auction,
25 that's just it. That's a service.

1 Q. I think that's everything I wanted to know about that.

2 When you talked about margin, does that mean
3 profit?

4 A. No, because, really, that doesn't include the salary of
5 the two full-time employees of Chapterhouse Studios.

6 Q. And what are those salaries for those --

7 A. We got two employees, we got me and Tomas. I make
8 \$3,000 a month, he makes \$2,000 a month.

9 And pertaining to the question beforehand, that
10 doesn't include -- that margin doesn't include sculpting
11 costs to pay the sculptors, costs to print up the items,
12 costs to have the items mass produced, advertising fees.
13 EBay charges fees. We take payment through Paypal sometimes
14 and Paypal charges fees.

15 So -- no, but to concentrate on your answer, I make
16 \$3,000 a month, he makes \$2,000 a month.

17 Q. And, for example, for a shoulder pad product, what would
18 average labor costs for that be?

19 A. I think a shoulder pad product costs about -- once the
20 mold is made for shoulder pads, that production -- tooling
21 cost, I guess you could call it, for a rubber mold, a hard
22 rubber mold -- I think Mr. Merrett or Mr. Jones talked about
23 how you put two molds together, they vulcanize rubber. Those
24 molds last awhile, so that cost -- it decreases over time
25 because you pay your initial cost, and then the more you

1 make, the less -- so it's hard to quantify the tooling costs
2 for that. But the actual labor costs for a shoulder pad
3 probably runs -- I think we get charged \$0.25 -- 25 to \$0.30
4 per pad, something like that.

5 Q. And do you have any kind of facilities costs or is
6 Chapterhouse still at your home?

7 A. Now, I do all the mold -- not molding, but all the metal
8 models in my garage. So once I paid for that equipment -- I
9 mean, I got to pay for the natural gas that goes in there and
10 electricity. But we outsource the resin production and some
11 of the metal stuff, especially the newer stuff, to an outside
12 facility.

13 Q. Let's pull up PX 437. And let's just zoom in on the
14 title.

15 So would this spreadsheet be essentially the same
16 as the last one except for a different timeframe?

17 A. Yes.

18 Q. Okay. Turning to another topic, how did you learn about
19 this lawsuit?

20 A. The first time I ever heard about it was an e-mail that
21 Mr. Moskin sent me.

22 Q. And if we pull up the slide 13.

23 THE COURT: That looks like it's upside down.

24 BY MS. HARTZELL:

25 Q. Is this the communication --

1 THE COURT: Let's kind of take the commentary off
2 of the top. That's not an exhibit.

3 MS. HARTZELL: Okay.

4 THE COURT: That's something for closing argument.

5 MS. HARTZELL: Okay. We can pull that down and put
6 up DX 175.

7 BY MS. HARTZELL:

8 Q. I'll ask you a couple other questions while we're
9 working on that.

10 In all the time that you've been selling custom
11 products as Chapterhouse, have any customers returned
12 products to you because the customer was confused about who
13 they were buying from?

14 A. Never.

15 Q. And has any customer in that time returned any products
16 to you because the customer was confused about whether or not
17 you were licensed by Games Workshop?

18 A. No.

19 Q. And I think the last thing that we have then is the
20 exhibit, if it's available.

21 (Brief pause.)

22 BY MS. HARTZELL:

23 Q. And what is this document?

24 THE COURT: What's the number?

25 MS. HARTZELL: It is DX 175.

1 THE COURT: Thanks.

2 BY MS. HARTZELL:

3 Q. And if we could just zoom in on the first -- the address
4 and the first line.

5 What is this document? We can zoom back out.

6 A. This document is, I guess, the letter telling me that
7 Games Workshop was suing me and they -- the first time I ever
8 saw this letter was in an e-mail attachment that came in
9 December 21st or December 22nd, and that was from Mr. Moskin.

10 Q. And what year was that?

11 A. 2010.

12 MS. HARTZELL: I have nothing further for the
13 witness.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. MOSKIN:

17 Q. Mr. Villacci, moments ago you gave us some testimony
18 about your understanding of various claim trademarks in the
19 case, starting with Space Marine. I assume you recall the
20 testimony I'm referring to?

21 A. Yes.

22 Q. Now, you understand that a -- the meaning of a trademark
23 is something that's used in commerce, right?

24 A. Yes.

25 Q. Now, you've had -- you showed the date of my letter was

1 2010?

2 A. Yes.

3 Q. Excuse me?

4 A. Yes.

5 Q. So you've had it's now three years, roughly, to assemble
6 any evidence possible that anybody at any time ever in the
7 entire history of the world has ever sold a product called a
8 Space Marine, isn't that correct?

9 A. Yes.

10 Q. And where is that evidence?

11 A. I think we've seen it and I've talked about it.

12 Q. No. You talked about it, but have you identified any
13 single product ever sold under the name Space Marine?

14 A. Yes.

15 Q. A product, a physical product?

16 A. Yes.

17 Q. You referred to a book, right?

18 A. That's one of them, yes.

19 Q. Okay. And where is the evidence -- where is the sales
20 evidence that that book -- you have a copyright date on it of
21 1980. Do you have any -- you could have brought in the
22 designer of the thing if it still sold. You didn't do that,
23 did you?

24 A. No.

25

Villacci - redirect

1 Q. So, all you know is that at some point in time, you found a
2 reference to something that existed in a book and nothing more?

3 A. Pertaining to that product I talked about?

4 Q. Yes.

5 A. We got that book online, yes.

6 Q. All right. And you searched for three years, and you
7 couldn't find a single figure, figurine, for example, that was
8 ever sold called a Space Marine, right?

9 A. That's false.

10 Q. Well, where is that figurine?

11 A. I've talked about them

12 Q. Sorry?

13 A. I've let the jury know what products I've seen and ran into,
14 yes.

15 Q. You can say that all you want, but where can you show the
16 jury a single product that ever, ever in the entire history of
17 the world has ever been sold called a Space Marine?

18 A. I didn't bring that product with me.

19 Q. Thank you. There is no such evidence in this case, correct?

20 A. I don't know. I don't know all the evidence that's in the
21 case.

22 Q. And you recall you testified yesterday that the name drop
23 pod -- excuse me -- that the name jump pack, that you could have
24 called it a turbine lifter, but instead you called it a jump
25 pack because -- at least in part because that's what Games

Villacci - redirect

1 **Workshop calls its product. Do you remember that testimony?**

2 **A. Was that a question do I remember --**

3 **Q. Do you remember that you testified that just yesterday?**

4 **A. That we -- repeat your question, please.**

5 **Q. That instead of using the name, for example, turbine lifter**
6 **to describe what you instead call a jump pack, you picked the**
7 **name jump pack, at least in part, because that's what Games**
8 **Workshop calls its product, right?**

9 **A. I don't think I said that, no.**

10 **Q. Well, the record will reflect what you did say.**

11 **Let's call up -- well, before we call up any exhibit.**
12 **You also repeatedly testified that you're very scrupulous in**
13 **instructing your customers and potential customers that you**
14 **won't copy, right?**

15 **A. Yes.**

16 **Q. Okay. You won't copy a Games Workshop icon?**

17 **A. Yes.**

18 **Q. Can we call up Plaintiff's Exhibit 1010 at Page 19 and focus**
19 **in on just the Hammer of Dorn Games Workshop, just the bottom**
20 **image in particular, and side by side with the Chapterhouse?**

21 **And this is an example of your philosophy of what you**
22 **understand it means not to copy a Games Workshop icon; is that**
23 **right**

24 **A. No, it is not.**

25 **Q. So that you admit this is a copy?**

Villacci - redirect

1 **A. I admit that this was something I'm very concerned about**
2 **because I had repeated that stance to that customer and even to**
3 **my miniatures sculptor that we don't do that when I was**
4 **specifically talking about this item, and the first time I've**
5 **ever seen the image on the right-hand side was two or three**
6 **months ago. So, when I found out about this, I was very upset.**

7 **Q. Can we back up a little bit?**

8 **You haven't stopped selling it, though, have you?**

9 **A. I think we have.**

10 **Q. Now, let's call up -- we've also shown images, and I don't**
11 **need to show them all again, but, for example, the exorcist icon**
12 **and so forth. And just so again -- can we call up Plaintiff's**
13 **Exhibit 189?**

14 **When you say that we won't make an exact copy or we**
15 **won't copy, don't you really mean, precisely as you said at the**
16 **top of this e-mail to Mr. Traina, that Games Workshop pretty**
17 **much has no legal say about what people make to use with their**
18 **models as long as it isn't direct copies or recasts of the**
19 **models. Isn't that really what you mean when you say we won't**
20 **copy?**

21 **A. No.**

22 **Q. So, it is entirely coincidental that virtually every one of**
23 **your products has a direct reference in the Games Workshop line?**

24 **A. I don't want to say every product has a direct reference,**
25 **but we do draw inspiration from the rules and the literature**

Villacci - redirect

1 from the books that they talk about.

2 Q. And in your testimony this morning, you haven't cited a
3 single example, have you, of a product that Chapterhouse has
4 sold that does not have at least some form of direct reference
5 in the Games Workshop line?

6 A. Like I said, we draw reference to the rules, but I wouldn't
7 call that direct reference.

8 Q. But you haven't identified any such example of something
9 totally independently created by you in your testimony today?

10 A. Not my testimony today, no.

11 Q. Thank you.

12 Let's call up Plaintiff's Exhibit 1020, Page 38. In
13 your testimony today, you said that you were inspired by
14 something called a Cthulhu and a brain bug. Do you recall that?

15 A. Yes.

16 Q. In making your Yngarl model heads.

17 A. Yes.

18 Q. And can you show me anywhere on this page where you refer to
19 your Yngarl model heads as Cthulhu or brain bugs?

20 A. Right there, sir.

21 Q. You call the product an Yngarl, though, don't you?

22 A. Yes.

23 Q. And so, when you name the product an Yngarl head, this is in
24 the same way I think that you sell lots of products for use in
25 churches, right, and when you call your company name

Villacci - redirect

1 **Chapterhouse; is that right?**

2 **A. Can you repeat that question?**

3 **Q. When you say that this Yngarl head is really a Cthulhu,**
4 **that's in the same way that Chapterhouse really sells products**
5 **for churches; isn't that right?**

6 **A. I'm not sure what you're trying to infer in that question.**

7 **Q. And it's in the same way that Chapterhouse sells products**
8 **that are based on Chapterhouse Dune? The same way.**

9 **Q. No. I'm not sure what you're trying to say.**

10 **MR. MDSKIN: I have no further questions. Thank you.**

11 **THE COURT: Ms. Hartzell, anything else?**

12 **MS. HARTZELL: Nothing further, your Honor.**

13 **THE COURT: Questions from the jurors.**

14 **(The following proceedings were had at the sidebar, out of**
15 **the presence and hearing of the jury:)**

16 **THE COURT: The first question -- some of these are**
17 **easy. Does Chapterhouse make or sell miniatures that are not**
18 **for use with Warhammer or Games Wrkshop products? In other**
19 **words, for other things. Anybody have a problem with that?**

20 **MS. HARTZELL: No.**

21 **MR. MDSKIN: No.**

22 **THE COURT: Did Chapterhouse consider asking for a**
23 **license from Games Wrkshop?**

24 **MS. HARTZELL: No objection.**

25 **THE COURT: Why or why not. No problem Okay.**

Villacci -

1 **What percentage of Chapterhouse sales are custom**
2 **orders? What percentage of Chapterhouse products started from**
3 **custom orders? Any problem with either of those?**

4 **MR. MDSKIN: No.**

5 **MS. HARTZELL: No.**

6 **THE COURT: Does Chapterhouse make products for other**
7 **game systems that are based on 28 millimeter. That's similar to**
8 **the other question. So, I'll just put those together.**

9 **MS. HARTZELL: Yes.**

10 **MR. MDSKIN: Yes.**

11 **THE COURT: These all come from one juror. How did you**
12 **come up with the past and present Chapterhouse logos? I'm glad**
13 **she asked that because I had the same question. Anybody have a**
14 **problem with that?**

15 **MR. MDSKIN: No.**

16 **MS. HARTZELL: No.**

17 **THE COURT: Is Chapterhouse your only occupation or**
18 **source of income? In other words, does he have another job?**
19 **What's he going to say?**

20 **MS. HARTZELL: He does not have another job.**

21 **MR. MDSKIN: I don't think it's relevant, but I don't**
22 **care.**

23 **THE COURT: This question, I think, is too vague to**
24 **answer. What were your intentions when you opened the company?**
25 **What are they now? I think the problem is intentions about**

Villacci -

1 what. So, I'm not going to ask that one.

2 What's the average price mark-up on your products? Do
3 you have a specific percentage of cost of goods sold that you
4 use to mark up the prices of each of your products? Those are
5 related questions. Anybody have a problem with those?

6 MS. HARTZELL: No.

7 MR. MDSKIN: No.

8 THE COURT: Why do you charge more for your miniatures
9 than Games Workshop? He made a comment that theirs cost more.
10 Anybody have a problem with that?

11 MR. MDSKIN: I don't care.

12 THE COURT: Do the materials and process you use to
13 make all of your products meet -- do the materials and processes
14 used to make all your products meet or exceed appropriate EPA
15 and toxicity level requirements. In other words, is what you're
16 doing safe for you, your employers, your consumers, and the
17 environment as deemed by government agencies and other safety,
18 health, environmentally friendly standards that you're required
19 to follow.

20 Well, obviously, I'm not going to ask that question.
21 I'm going to say that some of the questions aren't relevant, and
22 I'm going to just give a little reminder that I'm going to give
23 them instructions on what the appropriate considerations are.

24 If you're the main owner -- okay. Let me just read
25 this to myself. Oh, okay. This has to do with the thing that

Villacci -

1 he said he didn't realize what was on the site until just a
2 couple months ago.

3 If you're the main owner of Chapterhouse, how could the
4 Hammer of Dorn shoulder pad possibly be on your site without
5 your knowledge of it? Who was responsible for designing the
6 product? Who was responsible for posting in on the website?
7 How long was it there before you found out about it? Any
8 problem with any of those?

9 MR. MDSKIN: No.

10 MS. HARTZELL: No.

11 THE COURT: That's all from that particular juror.

12 And we have another one. Did you produce a winged
13 skull shoulder pad prior to getting Mr. Stinson's request in
14 2011? Anybody have a problem with that?

15 MS. HARTZELL: No.

16 MR. MDSKIN: No.

17 THE COURT: Is the TRU-Scale conversion kit for Space
18 Marines intended to make the marines look bigger or just -- I
19 think that says taller. In other words, does the kit include
20 only longer legs and arms, or is the entire marine replaced,
21 e.g., bigger torso, head, shoulder pads, etc. Anybody have a
22 problem with that?

23 MS. HARTZELL: No.

24 MR. MDSKIN: No.

25 THE COURT: This is from the doctor, who's got really

Villacci -

1 **bad handwriting.**

2 **MS. HARTZELL: Surprise.**

3 **THE COURT: Why doesn't Chapterhouse label their**
4 **products? Do you understand what he means by that?**

5 **MR. MSKIN: I think he means -- there was some**
6 **testimony earlier --**

7 **THE COURT: There's no label on the products.**

8 **MR. MSKIN: -- there's no permanent marking on the**
9 **product.**

10 **THE COURT: Okay. Does anybody have a problem with me**
11 **asking that?**

12 **MS. HARTZELL: No.**

13 **THE COURT: That's actually the third question. The**
14 **first one is are there any problems, disagreements among 40K**
15 **players when using custom or original -- custom made or original**
16 **figures made by the players themselves or bought through CHS or**
17 **other sources.**

18 **I think that goes back to a question that was asked I**
19 **think when Mr. Merrett was on the witness stand. It's like how**
20 **do they handle this in the game when somebody brings their own**
21 **thing. So, I'm going to sort of rework that question a little**
22 **bit. Anybody have a problem with it?**

23 **MS. HARTZELL: No.**

24 **THE COURT: He's a player, too. So, he should know.**

25 **MS. HARTZELL: Yes.**

Villacci -

1 **THE COURT:** Are any of Chapterhouse's products
2 **trademarked or copyright. I think what probably is meant by**
3 **that, do you have any registered trademarks or copyrights. What**
4 **do people think about that? What's he going to say, do we know?**

5 **MS. HARTZELL:** I don't think he's registered anything.

6 **THE COURT:** Okay.

7 **MR. MDSKIN:** Well, it does suggest the juror's
8 **misunderstanding of the significance of registration.**

9 **THE COURT:** Well, and I'll say that there will be an
10 **instruction at the end of the case that explains the**
11 **significance of registration.**

12 **Why in your mind do you think it's okay to admittedly**
13 **use GW's ideas to create a product that is virtually the same**
14 **but not identical and not infringe on copyrights or trademarks?**
15 **What do people think about that?**

16 **MS. HARTZELL:** I think that one is more toward the
17 **instruction.**

18 **THE COURT:** Yeah, I kind of tend to agree. And there's
19 **been a lot of questioning about it, mostly by you.**

20 **MR. MDSKIN:** That's fine. You know, I don't know how
21 **that plays out.**

22 **THE COURT:** I'm going to --

23 **MR. MDSKIN:** I'm not going to make a point of this.

24 **THE COURT:** What are the names of other companies that
25 **your products are compatible with? Any problem with that?**

Villacci -

1 **MS. HARTZELL:** No.

2 **MR. MDSKIN:** No.

3 **THE COURT:** This is an argumentative question. If you
4 have such a vast knowledge -- and I want to get it out there so
5 that you know that a juror is asking it. If you have such a
6 vast knowledge of books, films, magazines, and ideas, then why
7 do you need to copy Games Wrkshop?

8 So, I'm going to use this as a little -- I'm not going
9 to repeat the question, but I'm just going to give a little
10 reminder to the jury to keep an open mind and phrase it in a
11 neutral way. I'm not going to ask the question.

12 Why did you not respond to Games Wrkshop when they
13 notified you that they thought you were infringing on a
14 trademark and copyright? Now, I don't know that we know -- he
15 didn't respond, did he?

16 **MR. MDSKIN:** There was some initial response, and I
17 have a fear that that's going to provoke -- I wasn't involved at
18 all at that time. I didn't get involved until about a month
19 before we sent that letter out. So, I don't know. I mean, it
20 may require him to cite to advice of counsel. I really don't
21 know.

22 **THE COURT:** Did he respond? I mean, I assume he did.

23 **MS. HARTZELL:** Well, for the letter in 2010, he
24 responded. They say there was a letter in 2009. He says he
25 never got it. There was the eBay thing. So, I'm not entirely

Villacci -

1 clear.

2 THE COURT: So, just in terms of legalities of it,
3 what's the significance of sending the cease and desist letter?

4 MR. MDSKIN: Which one? The one I sent?

5 THE COURT: The one you put up. Or the one that was
6 put up on the screen.

7 MS. HARTZELL: That was when the complaint was served.

8 THE COURT: Okay. Oh, that was when the complaint was
9 served.

10 MR. MDSKIN: But we didn't formally serve him We
11 filed a complaint. I mean, I can tell you --

12 THE COURT: Is there anything legally significant about
13 sending that letter other than this is when he realized that he
14 had been sued?

15 MS. HARTZELL: No. I think that's the one.

16 MR. MDSKIN: I mean, there was -- he and I had had a
17 couple of e-mails where I said take as a much time as you need
18 to get a lawyer, and I think there was some discussion of trying
19 to settle it in there.

20 THE COURT: I think what I would be inclined to say --
21 I may on this one sort of repeat the question. I'd sort of be
22 inclined to say that it's not -- whether he did or didn't
23 respond and why isn't really relevant to any of the issues the
24 jury has to consider. Would that be fair?

25 MS. HARTZELL: Yes.

Villacci -

1 **THE COURT:** Then I'll do that.

2 **MR. MSKIN:** I think it's also -- I mean, the reality
3 is why we sued him is what we did is we were rushing to get it
4 done. So, I think this whole timing issue is irrelevant. If I
5 had been able to finish it up a month sooner.

6 Before the next witness comes up, there are two issues
7 we need to resolve.

8 **THE COURT:** Let's talk about them Do we need any
9 lawyers over here? Is that Lippman?

10 **MR. MSKIN:** Robert Lippman.

11 **THE COURT:** So, get the Lippman person over here.

12 Okay. Mr. Aly is here and Ms. Kalemeris. What's the
13 issue?

14 **MR. MSKIN:** There are two issues. I think we can
15 resolve the question about some evidence that they want to show
16 to Mr. Lippman. There are two issues. One, he happens to be a
17 lawyer.

18 **THE COURT:** Okay.

19 **MR. MSKIN:** And we agree they're not going to bring
20 out any advice, and he actually -- he says he had an
21 attorney-client relationship with Villacci at the outset, but
22 they're not going to bring anything out about advice. We
23 think -- nor is he going to -- he may need to be instructed --
24 or has he been instructed that he's not allowed to testify about
25 his views about the law?

Villacci -

1 **MS. KALEMERIS:** Absolutely. He's been told, yes.

2 **THE COURT:** All right.

3 **MR. MDSKIN:** All right. The other question is simply
4 whether he can -- we don't think it's necessary for him to
5 identify himself even to state that he is a lawyer.

6 **THE COURT:** No, he can do that.

7 **MR. MDSKIN:** The second issue, when I took his
8 deposition several months ago, on the cross examination there
9 were a lot of questions about his knowledge of science fiction,
10 and he -- our concern is essentially they're using him as a
11 pseudo-expert. He also designed -- this was the one product
12 that falls under the heading of fantasy rather than science
13 fiction. So, I think his knowledge or lack thereof of science
14 fiction is not relevant.

15 **THE COURT:** So, the preliminary question, is that
16 something you're going into?

17 **MS. KALEMERIS:** Well, he did use some science fiction
18 references when he was creating the particular item

19 **THE COURT:** Is that what you're concerned about?

20 **MR. MDSKIN:** Well, you mean the Avatars of War?

21 **MS. KALEMERIS:** No.

22 **MR. MDSKIN:** I don't think he cited anything -- I mean,
23 I don't mind if he testifies --

24 **THE COURT:** So, in other words, if he says something
25 that he consulted and identified in creating a particular

Villacci -

1 product, that's relevant.

2 MR. MDSKIN: That's relevant.

3 THE COURT: And if he didn't mention it in his dep,
4 then you can impeach him

5 MR. MDSKIN: That's fine.

6 THE COURT: Okay. Beyond that, is there going to be
7 any reference to science fiction?

8 MS. KALEMERIS: No.

9 MR. ALY: Your Honor, there's a third issue that we
10 discussed with counsel, and that is Mr. Lippman will not be
11 referring to forum blog posts. He runs a blog -- Mr. Lippman
12 runs a blog. He will not be putting the blog posts up, but they
13 do regard his design process. So, the question that we have
14 raised is that if they go into his design process, then his blog
15 posts would be considered prior consistent statements.

16 THE COURT: So, what you'll do is if something happens
17 on the exam that you think brings that into play, ask for a
18 sidebar, and we'll deal with it that way.

19 MR. ALY: Thank you.

20 MS. KALEMERIS: Thank you.

21 (The following proceedings were had in open court, in the
22 presence and hearing of the jury:)

23 THE COURT: Okay. So, that was kind of a long sidebar
24 because we had a lot of questions, and they involve different
25 topics. Most of them I'm going to ask. There's a couple I'm

Villacci -

1 not going to, and on a couple of those I want to talk to the
2 jurors a little bit about them But let me start out with the
3 things I can ask.

4 The first question concerns the TRU-Scale conversion
5 kit for Space Marines. Is that intended to make the marine look
6 bigger or just taller? In other words, does it include only
7 longer legs and arms, or is the entire marine replaced? For
8 example, a bigger torso, head, shoulder pads, and so on.

9 THE WITNESS: The Knights Praetorius kit was designed
10 to -- well, the kit entails longer legs, bulky -- long, bulky
11 legs, the torso, collection of pads, and a backpack.

12 THE COURT: Okay. The next one concerns the winged
13 skull shoulder pad. Did Chapterhouse produce a winged skull
14 shoulder pad before getting Mr. Stinson's request in 2011?

15 THE WITNESS: No.

16 THE COURT: Does Chapterhouse make or sell miniatures
17 that are used with products other than Warhammer or other than
18 Games Workshop products?

19 THE WITNESS: It's I think important to note that the
20 war game hobby is very open-ended. So, you may have Games
21 Workshop 40K game, but you can actually go out and buy another
22 company's products. In fact, I've seen this with a company
23 called Reaper. And you'll buy their products and can still use
24 them in the same game. It's very interchangeable. So, I'm not
25 sure how to answer that question.

Villacci -

1 **THE COURT:** You're getting away from the question,
2 **though. The question is your products that Chapterhouse makes,**
3 **are all of them usable -- are all those things that can be used**
4 **or that would be used with Warhammer 40K or Games Workshop**
5 **products, are some of those used with other types of games, for**
6 **example?**

7 **THE WITNESS:** I'm not the customer. So, I'm not sure
8 **what they want to use them for.**

9 **THE COURT:** So, what you're saying is that they could
10 **be used with other games, but they could also all be used with**
11 **40K.**

12 **THE WITNESS:** Yes.

13 **THE COURT:** Okay. That's a fair answer.

14 **Did Chapterhouse ever consider asking Games Workshop**
15 **for a license?**

16 **THE WITNESS:** Yes.

17 **THE COURT:** Do the lawyers have any problem with me
18 **asking follow-up questions, or would you prefer I left it for**
19 **you?**

20 **MS. HARTZELL:** I have no objection.

21 **THE COURT:** I'd prefer to leave it for you. So, I'm
22 **going to leave it for you. So, somebody just make a note if you**
23 **want to ask about it to ask about it. So, hold that one.**

24 **Let's see. What percentage -- or proportion of**
25 **Chapterhouse's sales are custom order type products? If you**

Villacci -

1 can -- I know this is probably going to be an estimate, but your
2 best estimate.

3 THE WITNESS: I guess I'm trying to figure that out.
4 Does that mean the product --

5 THE COURT: Dollar wise.

6 THE WITNESS: Well, I guess I'm trying to figure out if
7 that means the product itself originated from a customer
8 request?

9 THE COURT: Let's assume that's what it means.

10 THE WITNESS: I could say percentagewise 30 to
11 40 percent.

12 THE COURT: All right. Now, when you gave the 30 to
13 40 percent, were you talking percentage of products or
14 percentage of sales volume, or was it both?

15 THE WITNESS: Products.

16 THE COURT: Okay. So, if you had to convert that then
17 to percentage of your dollar sales.

18 THE WITNESS: It would probably be nearly the same.

19 THE COURT: About the same. Okay. All right. Covered
20 that.

21 How did you come up with the past and the present
22 Chapterhouse logos? In other words, how were they developed?

23 THE WITNESS: The past logo was a raven, and we wanted
24 to do the Raven, a side profile of the raven, you know, like it
25 was coming in to brake. When they're diving, they put their

Villacci -

1 wings like that to catch the air flow, and we wanted to do a
2 side profile of that. That's where that idea came, actually. I
3 talked to my graphic arts friends who helped me designed that
4 logo.

5 The second iteration of the logo where our website's
6 all white, it's very light, when I approached the company to do
7 the new web design, they also specialized in -- I'm not sure
8 what -- the corporate style, the corporate presence identity,
9 the corporate identity. And I told them I wanted to stay with a
10 bird or bird of prey, and they gave me like four or five ideas
11 of what they thought would look good and their concepts, and I
12 chose that one.

13 THE COURT: Okay. Can you tell us what sort of the
14 average price mark-up is on your products? In other words, over
15 your costs.

16 THE WITNESS: Average? I would say 15 to 25 percent.

17 THE COURT: Do you work from a specific percentage, or
18 is it item by item different?

19 THE WITNESS: It goes item by item but that would be
20 the average.

21 THE COURT: You mentioned during your testimony earlier
22 that at least on a couple of your miniatures, your product was
23 more expensive than Games Workshop's.

24 THE WITNESS: Yes.

25 THE COURT: And the question is why.

Villacci -

1 **THE WITNESS:** Our costs -- we're a much smaller
2 company, and I think the larger company you have, you've got
3 economics of scale. So, they produce thousands upon thousands
4 upon thousands of kits, of the same kit. It's cheaper for them
5 They can go to China and, you know, have them mass produced.

6 Ourselves, whether I'm doing it by myself in my garage
7 or we outsource the production to the resin company in America,
8 we make our products in America. So, that might have something
9 to do with it, as well.

10 And we just don't order thousands upon thousands of
11 products. I think the most I ever have of any product at a time
12 is the shoulder pads, which I maybe have 200, and I can fit that
13 many in the palm of one hand (indicating). But for the resin
14 kits, the most I have at one time is maybe 40 or 50. So, it's
15 an economy of scale. That's how I figure out that cost.

16 **THE COURT:** Okay. The next question concerns the
17 discussion about the Hammer of Dorn shoulder pad.

18 **THE WITNESS:** Yes.

19 **THE COURT:** So, who was responsible for the design of
20 that particular product at Chapterhouse?

21 **THE WITNESS:** This was a customer request.

22 **THE COURT:** Okay. So, who at Chapterhouse then worked
23 on it?

24 **THE WITNESS:** Tomas Fiertek.

25 **THE COURT:** Mr. Fiertek. Okay. And do you know who

Villacci -

1 was responsible for posting it then on the website, on the
2 Chapterhouse website?

3 THE WITNESS: I'm responsible for all the products that
4 go on the Chapterhouse website.

5 THE COURT: So, I think you're -- and I'm paraphrasing
6 the testimony. I think you indicated that you weren't aware of
7 something about that product at the time, didn't become aware
8 about it until later. What was it that you weren't aware of?
9 Was it the similarity between it and the Games Workshop product?

10 THE WITNESS: I wasn't aware that Games Workshop had
11 that icon.

12 THE COURT: Okay. When exactly did you become aware of
13 it and how?

14 THE WITNESS: During the lawsuit my attorneys --

15 THE COURT: Okay. It was brought to your attention by
16 your lawyers.

17 THE WITNESS: Yes.

18 THE COURT: All right. And that was -- I think you
19 said this was just within the past few months; is that right?

20 THE WITNESS: Yes.

21 THE COURT: Okay. This is similar to a question, I
22 think, and I'm going to rework this one a little bit. It's
23 similar to a question that was brought up during Mr. Merrett's
24 testimony.

25 So, you're obviously a player of 40K. When people come

Villacci -

1 to a game and they have custom made or original figures either
2 they made or that they bought from Chapterhouse, are there ever
3 sort of conflicts or objections as to how these are going to be
4 used in the game among the players, and how do those things get
5 worked out?

6 THE WITNESS: Generally, no. Each army is formed out
7 of an army book of the codexes.

8 THE COURT: Right.

9 THE WITNESS: Mbst of us players are familiar with all
10 those books. So, if we do have a question, we'll just ask. And
11 the only conflict that really ever occurs is the scale of a
12 model because if you're playing -- it's a miniature game. So,
13 everything is to scale for a reason.

14 Like that building there, if you can't see the model
15 behind it, you can't shoot at it. Or if you can see it, how
16 much can you see, and that makes it harder to actually shoot.

17 So, if you're trying to, you know, take a piece from
18 the book that's a big tank and you want to use a model that's
19 this little itty bitty thing, you know, people are going to call
20 shenanigans on that and say no, you can't do that. That's
21 generally the only thing, though. It's got to be accurately
22 depicted scalewise.

23 THE COURT: What about something that's not in the
24 codex?

25 THE WITNESS: If it's in a competitive environment,

Villacci -

1 like a tournament, you're not allowed that, unless there's
2 special rules for it. But if it's a home game, people make
3 rules up all the time.

4 THE COURT: You just work it out.

5 THE WITNESS: Yeah.

6 THE COURT: Okay. Do you have -- on any of
7 Chapterhouse's products, do you have any registered trademarks
8 or registered copyrights?

9 THE WITNESS: No.

10 THE COURT: Okay. And I just want to say to the jury
11 at this point there will be some instructions at the end of the
12 case that will, I hope, explain the significance of registration
13 in this context.

14 Let's see. This goes back to an earlier question, and,
15 frankly, I should have asked this one right after I asked the
16 other one, but they were on different sheets of paper. So, this
17 goes back to the question about whether the things you make can
18 be used with other games other than 40K. Can you name any other
19 games like that they are sometimes used with or can be used
20 with?

21 THE WITNESS: There's games -- I mean, there's -- the
22 40K is dark grim, which is science fictional with a dark tone to
23 it. But it could also be called Steampunk.

24 THE COURT: Steampunk?

25 THE WITNESS: Steampunk.

Villacci -

1 **THE COURT:** I'm not even going to ask where that comes
2 from Let's just sort of move ahead.

3 **THE WITNESS:** But, yes, there are other games and --
4 I'm trying to think offhand. I know there's a War Machine that
5 is a Steampunk game, and there's guys running around in armor
6 using electricity, but at the same time using magic, and they
7 use hammers and stuff like that. So, you could use it in that.

8 **THE COURT:** All right. Let's see.

9 All right. There's a couple of things for the jury.
10 There was one question about whether processes complied with
11 other laws other than trademark and copyright. I'm just going
12 to say to you that's not really relevant to anything that you
13 have to deal with. So, that's why I'm not asking that question.

14 There was a question about whether there were or
15 weren't and why responses to any notification from Games
16 Workshop about claims of infringement, and I'm basically telling
17 you that whether there were or there weren't really isn't
18 relevant to any issues you have to consider. So, I'm not asking
19 that question.

20 There were a couple of questions that were arguably a
21 little argumentative. Like, you know, if you know so much about
22 this, why didn't you do that. I'm not asking those questions
23 really for that reason. I'm sort of sustaining my own objection
24 on the grounds that they're argumentative, much as I would to a
25 lawyer. And I just want to remind the jury that it's really

Villacci - recross

1 important to try to phrase the questions in a neutral way. And
2 on a more important note, it's important to make sure you keep
3 an open mind throughout the case.

4 Okay. So, I'm going to turn it over to the lawyers at
5 this point to ask follow-up questions, if you want to. And the
6 one that -- you know, there's that one that I didn't ask
7 follow-up questions about licensing. So, it's your client. So,
8 I'll let you go first, Ms. Hartzell.

9 **REXCROSS EXAMINATION**

10 **BY MS. HARTZELL:**

11 **Q. So, what happened with the license?**

12 **A. The licensing. Games Workshop, as I testified, isn't known**
13 **for giving licenses out to miniature companies in I guess this**
14 **current phase in the last ten years of their being in existence.**
15 **I knew from the past that they did give license to other**
16 **companies, but also knew from talking to the owners of those**
17 **companies that they were taken away and Games Workshop --**

18 **MR. MDSKIN: Objection.**

19 **THE COURT: Yeah. That's hearsay. So, that last part**
20 **is stricken, and the jury is instructed to disregard it. You**
21 **can just talk about your dealings with them**

22 **THE WITNESS: Okay.**

23 **BY THE WITNESS:**

24 **A. I believe when they contacted us about the eBay postings**
25 **from very early on when we started doing stuff, I might have**

Villacci - recross

1 referenced and said, you know, can we license, and I believe
2 they said, "We don't do that."

3 **BY MS. HARTZELL:**

4 **Q.** And you were asked a question about what happens in a game
5 when there is customization to the models. What about if the
6 customization is just decorative, like on the shoulder pads?
7 What's the effect on the game then?

8 **A.** Not really any effect to the game, but it makes the game a
9 lot more interesting visually.

10 **MS. HARTZELL:** I have nothing further.

11 **THE COURT:** Mr. Mbskin.

12 **MR. MDSKIN:** I have no questions for the witness.

13 **THE COURT:** All right. You can step down.

14 **(Witness excused.)**

15 **THE COURT:** And call the next witness.

16 **MR. MDSKIN:** Plaintiff calls Robert Lippman.

17 **(Brief pause.)**

18 **THE COURT:** I don't know if somebody wants to come up
19 and get the books that were being used with Mr. Villacci.

20 They're kind of big.

21 Come right up here. Raise your right hand, please.

22 **(Witness duly sworn.)**

23 **THE COURT:** Please have a seat.

24 **THE WITNESS:** Thank you.

25

Lippman - direct

1 **ROBERT LIPPMAN, PLAINTIFF' S WITNESS, SWORN**

2 **DIRECT EXAMINATION**

3 **BY MR. MDSKIN:**

4 **Q. Would you please state your full name for the record?**

5 **A. Yeah. Robert Allen Lippman. I go by Bob, though.**

6 **THE COURT: Spell the last name, if you would, please.**

7 **THE WITNESS: Yes. It's L-i-p-p-m-a-n.**

8 **THE COURT: Thanks.**

9 **BY MR. MDSKIN:**

10 **Q. Can we call up Plaintiff's Exhibit 1017, Page 2?**

11 **Mr. Lippman, are you the individual who designed the**
12 **Chapterhouse product shown on the left of this image?**

13 **A. Yes.**

14 **Q. And have you seen the Games Wrkshop Lizardmen images shown**
15 **on the upper right?**

16 **A. Yes.**

17 **Q. Now, you first acquired some samples of Games Wrkshop**
18 **Kroxigor figures in the mid to late 1990s; is that right?**

19 **A. I think it might have been the early nineties, yeah.**

20 **Q. Okay. Let's call up Plaintiff's Exhibit 616, and if we can**
21 **zoom in on the -- sort of towards the top. Well, actually,**
22 **sorry. Back up just a second.**

23 **Do you recognize -- what is the Warhammer Forum?**

24 **A. It's an Internet message group, I guess you'd call it, a**
25 **forum People post and communicate on that forum**

Lippman - direct

1 **THE COURT:** And, again, just so the jury knows, when
2 you see the big blacked out area, that's because we've deleted
3 something that really isn't relevant to the issues.

4 **BY MR. MDSKIN:**

5 **Q.** On the left is an avatar that looks kind of like a rat. I
6 don't know what it -- and it doesn't matter, but under the name
7 "altbob." And I just want to confirm that is a posting by you.
8 Your screen name or whatever you call it or avatar is altbob?

9 **A.** On the Warhammer Forum, that's correct.

10 **Q.** And this then is a statement that you posted on this
11 Warhammer forum?

12 **A.** Yes.

13 **Q.** And so, you wrote, "Thought I'd like to post this here and
14 get feedback from you folks. I'm basically making my own 'big
15 guys' to use with my Lizardmen army because I need something
16 that looks like a missing link between the old 5th edition Krox,
17 of which I have a few, and the newer ones, of which I have only
18 one." That's something you wrote?

19 **A.** Yes.

20 **Q.** And when you referred to Lizardmen army, Lizardmen is --
21 there's a line of characters or figures in the game Warhammer?

22 **A.** Yeah, I guess you'd call it a faction or something like
23 that.

24 **Q.** I don't pretend to know --

25 **A.** That's okay.

Lippman - direct

1 Q. And when you refer to Krox, is that a shorthand for
2 Kroxigor?

3 A. Yes.

4 Q. Okay. And let's back up so you can see. Is that something
5 you were designing, the image that's shown below?

6 A. Actually, I designed this with my son, who at the time was
7 eleven years old, and he was working on the one that appears on
8 the left, and I was working on the one that appears on the
9 right.

10 Q. But my question is simply these are the images of what you
11 were describing above in the text? Yes? Just yes or no.

12 A. Yeah.

13 Q. And if we can jump down to page -- the third page from the
14 back. And is this another post made by you?

15 A. Yes.

16 Q. And this was on December 22, 2011?

17 A. Appears to be, yeah.

18 Q. And what did you write on this post, if you could just read
19 what your posting was?

20 A. "I thought I'd toss out a few pictures of one of my
21 Kroxigors which has been cut apart so that it can be placed into
22 a mold for eventual casting. Here's where I'm at with the first
23 one and pretty happy with it so far."

24 Q. Just go back to the first page. And I just want to call
25 attention in the upper right part of your posting the date. So,

Lippman - direct

1 **this was September 8, 2011, is your first posting on this**
2 **Exhibit 616.**

3 **A. Yes.**

4 **Q. Let's call up Plaintiff's Exhibit 620. And if we can go to**
5 **Page 9. First of all, this is another posting by you on the**
6 **same Warhammer forum?**

7 **A. Yep.**

8 **Q. And can you read what you wrote?**

9 **A. "Hey, I just wanted to drop a line letting you guys know**
10 **that these minis are done now. I can post more photos showing**
11 **different views later in the week, but for now I have this one**
12 **to share."**

13 **Q. And if we turn the page, this is the state of the**
14 **development of your miniatures as of that time?**

15 **A. I'm not sure about the time because on this particular**
16 **forum, the photos were posted much later.**

17 **Q. All right.**

18 **A. So, the dates here don't correspond to the actual work on**
19 **this particular forum**

20 **Q. But the date -- if we could go back to the previous page.**
21 **The date of this post as listed here was March 12, 2012?**

22 **A. Yes, that's when I made the post. But I can't tell you when**
23 **that stage of the miniatures was achieved.**

24 **Q. Fair enough. And if we go to Page 11 of this exhibit, this**
25 **is another posting by you on the Warhammer forum dated March 13,**

Lippman - direct

1 **2012?**

2 **A. Yes.**

3 **Q. And can you read the last sentence of this post that you**
4 **made?**

5 **A. "Take a look at the faces on your skinks and saurus, for**
6 **instance. Pretty smooth. Now, I fully admit GW's sculpts were**
7 **my inspiration."**

8 **Q. You fully admit GW's sculpts were your inspiration. Thank**
9 **you.**

10 **And let's look at Exhibit 670. And would you agree**
11 **this is an e-mail exchange between you and Chapterhouse on or**
12 **about March 15, 2012?**

13 **A. Yeah. Appears to be, yes.**

14 **Q. Excuse me?**

15 **A. Yes, it appears to be.**

16 **Q. Okay. And can we turn to Page 2 and that first full**
17 **paragraph there? You wrote to Mr. Villacci -- that would be**
18 **Nick, "Just wanted to let you know that I have a couple of**
19 **fantasy minis ready for casting which a lot of people seem**
20 **interested in to use as substitutes for the GW Lizardman**
21 **Kroxigors." Do you see that?**

22 **A. Yes.**

23 **Q. And that's something you wrote in your e-mail to**
24 **Mr. Villacci?**

25 **A. Yes.**

Lippman - direct

1 **Q. Let's call up Plaintiff's Exhibit 624. And Lustria Online**
2 **is another forum where people interested in the game Warhammer**
3 **exchange comments and so forth?**

4 **A. Yes.**

5 **Q. Let's go to Pages 5 and 6. Starting at Page 5. This is**
6 **dark on the screen. Well, actually, back up just a little bit**
7 **more. That whole post under the "thinkerer," and then it has an**
8 **avatar of a Kroxigor.**

9 **A. No. It's pronounced t`hinker`er.**

10 **Q. Okay.**

11 **A. And it's an avatar of Godzilla.**

12 **Q. Godzilla. Okay. Just that it says Kroxigor. Thank you for**
13 **clarifying.**

14 **A. Yeah, the Kroxigor thing that appears there is not my**
15 **avatar, and it's not something I put there. That's my rank on**
16 **the forum based on how many posts I've made.**

17 **Q. That's -- I'm not interested in -- that's why I thanked you**
18 **for the clarification.**

19 **A. I'm just trying to be clear.**

20 **Q. I just want to -- and this was posted on March 27, 2012?**

21 **A. Yes, it looks that way.**

22 **Q. And in this post you -- and we're going to flip the page and**
23 **see. These are some pictures that you posted of some of your**
24 **figures; is that right? And we'll turn the page so you can see**
25 **what we're talking about.**

Lippman - direct

1 **Is that a picture that you posted of the figures you**
2 **created for Chapterhouse shown together with Games Workshop**
3 **Kroxigors?**

4 **A. Yes. Although at this time I wasn't specifically I don't**
5 **think creating them for Chapterhouse. I was making them for use**
6 **in games and trying to decide at some future point maybe I might**
7 **sell them to be produced.**

8 **Q. And just in this picture can you show us which -- first of**
9 **all, which of these figures shown is the Games Workshop**
10 **Kroxigor?**

11 **A. The gray one in the middle, the tall one.**

12 **Q. And are the two figures on either side of it the figures**
13 **that you have created that eventually Chapterhouse started to**
14 **sell?**

15 **A. Yes, I sculpted those.**

16 **Q. And let's go to Exhibit 626. And here again this is Lustria**
17 **Online, basically the same forum we were talking about before;**
18 **is that right?**

19 **A. Yeah.**

20 **Q. There's a posting towards the bottom of this page, and am I**
21 **correct this is a posting by somebody commenting on your figures**
22 **that you had shown online?**

23 **A. Yeah.**

24 **Q. And this figure -- this person with -- it looks like it**
25 **says -- Favored of the Old Ones is his or her screen name --**

Lippman - direct

1 stated, "Man! Those new Krox of yours look great! Amazing
2 paint job for an amazing sculpt. Well done, my friend!" Is
3 that correct?

4 A. That's what he said.

5 Q. And let's go to Page 3 of this exhibit. And am I correct
6 this is a post by you, t`hinker`er, made on November 14, 2012?

7 A. Yeah.

8 THE COURT: What's the exhibit number again? I'm
9 sorry.

10 MR. MDSKIN: This is Exhibit 626.

11 THE COURT: Still with 626. Okay.

12 MR. MDSKIN: Yes.

13 A JUROR: Sir?

14 THE COURT: They can't see it because it's dark. Here.
15 This might help a little. I think it's just partly the fact
16 that it's a black background, I think. That's about the best we
17 can do.

18 BY MR. MDSKIN:

19 Q. The text is less important on this one. But I think I
20 simply want to ask you if the picture shown on the next page is
21 another example that you posted of the figures you created
22 together with Ganes Wrkshop Kroxigor.

23 THE COURT: So, you want him to put up the next page
24 then.

25 MR. MDSKIN: The next page is really more of what's of

Lippman - direct

1 interest, not the text.

2 THE COURT: Okay.

3 BY MR. MDSKIN:

4 Q. Is that a fair summary of what that picture shows?

5 A. That's a unit of skinks and Kroxigor, and the one in the
6 middle is a Games Workshop figure, and it's flanked on either
7 side by the Croc-Ogres that I sculpted.

8 Q. You said that softly. The one in the middle is the Games
9 Workshop, and the one on either side, those are yours?

10 A. Right.

11 Q. Let's call up -- oh, would you agree, by the way, that the
12 sizes of these are pretty much the same? Yours and the Games
13 Workshop ones?

14 A. They're pretty close, yeah.

15 Q. And let's call up Plaintiff's Exhibit 628. And once again,
16 this is a another page from Lustria Online; is that correct?

17 A. Yeah.

18 Q. And can we go to the second page? Is this a posting made by
19 you on November 30, 2012?

20 A. Yes.

21 Q. And can you read what you wrote?

22 A. I'm not sure I can pronounce that name. Tezcatlipoca. "I'd
23 be interested in seeing what you come up with. I don't have any
24 of the 6th edition figures in the picture you linked. Mine are
25 all 5th and 7th edition. I note that the 6th edition figures

Lippman - direct

1 have smooth skin without scales on the faces, bellies, and below
2 the knee. So, it seems that my models will fit in quite nicely
3 with all the Krox models that GW has ever produced. "

4 Q. So, when you were referring to 5th and 7th edition figures,
5 those were 5th edition Kroxigors from Games Workshop and 7th
6 edition Kroxigors from Games Workshop?

7 A. Yeah. I was referring to the ones that I actually own.

8 Q. So, you own Games Workshop 5th and 7th edition Kroxigors?

9 A. A couple of them

10 Q. Let's go to Exhibit 629, Plaintiff's Exhibit 629. And is
11 WarSeer another forum where people with interest in the game
12 Warhammer can discuss the game and post comments and so forth?

13 A. Yes.

14 Q. Can we scroll down just a little bit just towards the bottom
15 of the page? First of all, do you see the subject heading for
16 these posts that says it's -- the subject heading is Kroxigor
17 proxy miniatures?

18 A. Yes.

19 Q. And can you read for us the comment of the person at the
20 bottom of the page under the name Master Splinter?

21 A. He types, "Humm, I guess these Proxigor minis are looking
22 great. Got it? Got it? Proxigor bwahahahaha. "

23 THE COURT: You may have left out one "ha. "

24 (Laughter.)

25 THE WITNESS: Oh, sorry.

Lippman - direct

1 **MR. MDSKIN: Well, the judge always gets the last**
2 **laugh, right?**

3 **THE WITNESS: It's his courtroom**
4 **BY MR. MDSKIN:**

5 **Q. Let's turn the page. And is it correct to say that the next**
6 **person commenting on the Kroxigor proxy miniatures said, "Yes, I**
7 **thin," or think, "they are a good alternative to the GW ones"?**

8 **A. Yeah, I think it's the same guy from before, Master**
9 **Splinter.**

10 **Q. Okay. And what does the next person have to say about**
11 **Kroxigor proxy miniatures?**

12 **A. "Hehe, proxigor. Looking great! Much better than the older**
13 **snake looking ones. None of this rhinoceros face business**
14 **either."**

15 **Q. And go to the next page at the very top. And this person**
16 **said about your Kroxigor proxy miniatures, "Very nice, but happy**
17 **with the way the GW Kroxigor look;" is that right?**

18 **A. Yeah.**

19 **Q. And if you turn the page, at the top Old Mussy said about**
20 **your Kroxigor proxy minorities, "I like 'em I'm not a fan of**
21 **the heads of the current GW ones, and I just don't get the**
22 **attraction to the old 5th edition ones. Personal taste and all**
23 **that, but I think the 5th edition ones look like anatomical**
24 **fail. And the price for these is right." Do you see that?**

25 **A. Yeah.**

Lippman - direct

1 Q. And then down two more to the next post. Can you read for
2 us what this individual wrote about your Kroxigor proxy
3 miniatures?

4 A. "They remind me of the 5th edition Krox, just more buff and
5 more humany. "

6 Q. Okay. I think one last comment here at the bottom of the
7 last page. This is by you, correct?

8 A. Yeah.

9 Q. And what did you write on -- it says 11-13. That's
10 November 13, 2012; is that right?

11 A. Yeah.

12 Q. And what did you write at this time about your Kroxigor
13 proxy miniatures?

14 A. "I sculpted these because I like more variation in my units
15 and wanted some figures that bridged the gap between all the
16 various Krox that GW have released over the years. "

17 MR. MSKIN: I have nothing further of this witness.

18 THE COURT: Thank you, Mr. Lippman.

19 All right. We're going to stop right there for lunch.
20 We'll resume at 1:30.

21 (Whereupon, the within trial was recessed to 1:30 o'clock
22 p.m of the same day.)

23

24

25

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

WINSTON & STRAWN, LLP
BY: MS. JENNIFER A. GOLINVEAUX
101 California Street
San Francisco, California 94111

MARSHALL, GERSTEIN & BORUN
BY: MS. JULIANNE M. HARTZELL
233 South Wacker Drive
Willis Tower #6300
Chicago, Illinois 60606

Also Present:

MR. NICHOLAS VILLACCI

MS. GILLIAN STEVENSON

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
(312) 435-5785

Lippman - cross

1 (The following proceedings were had in open court in the
2 presence and hearing of the jury:)

3 THE COURT: All right, you can all have a seat. We
4 can get Mr. Lippman back up here. Mr. Lippman, come on up.

5 Do you understand you are still under oath?

6 THE WITNESS: Yes, I do.

7 THE COURT: You can have a seat.

8 And, Ms. Kalemeris, you can proceed.

9 (Brief interruption.)

10 THE COURT: Go ahead.

11 ROBERT LIPPMAN, PLAINTIFF'S WITNESS, DULY SWORN

12 CROSS EXAMINATION

13 MS. KALEMERIS:

14 Q Good afternoon, Mr. Lippman.

15 Are you an employee of Games Workshop?

16 A No, I'm not.

17 Q Are you an employee of Chapterhouse Studios?

18 A No.

19 Q Do you have an understanding of why you're here today?

20 A Yes, because I sculpted the Croc-Ogres.

21 Q Before we get too involved in how you designed the
22 products, why don't we get to know you a little bit.

23 What do you do?

24 A I'm a lawyer.

25 Q And what do you do in your free time to the extent you

Lippman - cross

1 have any?

2 A Yes. I'm a gamer and a sculptor and a painter, and you
3 know.

4 Q Let's talk a little bit about gaming. What type of games
5 do you play?

6 A I play, at this point in my life, fantasy role-playing
7 games, fantasy strategy games and military history recreation
8 type games.

9 Q Which fantasy games do you play?

10 A At this moment, Warhammer fantasy battles is probably the
11 only one I play.

12 Q How long have you played Warhammer fantasy battles?

13 A I think I started in 1992 or 1993.

14 Q And have you played any other fantasy games?

15 A Yes. Sure. I played Dungeons and Dragons, Chain Mail,
16 Chivalry and Sorcery, just loads of them, as well as other
17 Games Workshop games like -- particularly Man O' War.

18 Q So how did you become familiar with the game Warhammer?

19 A Through the game Man O' War, which is a naval combat game.
20 I became familiar with the Warhammer fantasy setting and
21 became interested in some of the races in that setting.

22 And a friend of mine in my local gaming group bought
23 the Warhammer game, divvied up the pieces among us, and we
24 just sort of got involved in it.

25 Q Did you have a particular race that you played with when

Lippman - cross

1 you played Man O' War?

2 A Yes, Skaven.

3 Q And what are Skaven?

4 A They're rat people.

5 Q What drew you to the Skaven?

6 A I just like the tactics. They tended to be more of a
7 horde army, which meant that I got to collect more stuff and
8 put more stuff on the table.

9 And they're a hit or miss, kind of a gambler's army.
10 They either win big or they lose big, which is kind of fun.

11 Q Does Man O' War have game pieces?

12 A Yes. It has little ships primarily.

13 Q Compare them, if you would, to the Warhammer game pieces.

14 A The ships are generally an inch or two long at most. Some
15 of them are smaller than that. It's played on sort of an epic
16 scale, what you would call epic scale in the genre.

17 So individual like people wouldn't be represented on
18 a game board because they're just too small to see and they
19 have an impact on their own outside of the unit like the ship,
20 for example.

21 Q And how did you eventually develop an interest in
22 Warhammer?

23 A Well, what happened was I was playing Skaven for a while,
24 and I kind of became curious what they actually look like, and
25 I went to the gaming store and I found the Warhammer fantasy

Lippman - cross

1 figures, and I bought a couple of Skaven miniatures and just
2 started collecting.

3 And then when we began playing, I naturally
4 gravitated to that race because I already had a few of the
5 figures.

6 Q Do you own any other armies?

7 A Yes. Since that time, I've accumulated quite a large
8 Skaven army. I have gone back to it a couple of times over
9 the year, and it keeps growing.

10 I've also got a human army that's called the Empire
11 among the other human armies in the Warhammer world. And I
12 have a Lizardmen army which I started collecting but only
13 began putting together in 2010 or '11, I think '11.

14 And my son's gotten into the game now, and he's
15 collecting a Dwarf army.

16 So altogether I have probably just shy of a thousand
17 Games Workshop figures in my basement.

18 Q That was my next question. How many --

19 A Please don't tell my clients.

20 Q I'm sorry?

21 A Please don't tell my clients.

22 THE COURT: Too late. It's public record.

23 BY MS. KALEMERIS:

24 Q Can you tell us a little bit about your involvement in the
25 Warhammer community?

Lippman - cross

1 A Yes. When I got involved in '92, I think it was, the
2 Internet was really in its infancy, and I began to seek out on
3 the Internet places where I could go and enter into like chat
4 room type things to get information about tactics strategy,
5 and I discovered that there was a mailing list, which was a
6 very embryonic form of what we have today. Today we have
7 forums that are really very user graphic interfaced and very
8 slick.

9 Back then you would just subscribe to a mailing list,
10 and anytime anybody mailed something to the mailing list,
11 everyone would get a copy of it. And everybody existed on the
12 same mailing list, which is different than today.

13 So at the time there was this one mailing list run by
14 the majordomo server, and then shortly thereafter, it migrated
15 to the direwolf server. And on the direwolf server, there
16 were thousands of Warhammer players from across the world all
17 communicating in English, all playing the same game, sharing
18 tips on converting miniatures, sculpting miniatures, painting
19 miniatures, different tactics you could use with the different
20 armies, you know, what sound tracks do you listen to when you
21 play.

22 I mean, we all got to be quite good friends, and I
23 got involved in the tournament scene and over the years met a
24 lot of these folks in person and have gotten to be quite
25 friendly with some of them.

Lippman - cross

1 Q Did you have any official duties within the Warhammer
2 community?

3 A Yes. As it happened, I set up a website, which was one of
4 the first probably dozen Warhammer websites that was on the
5 web. It was called miniaturesbattles.com.

6 And through that I was showcasing some of my work and
7 getting to be better known, and I began to take on the role of
8 keeper of the FAQ, F-A-Q, frequently asked questions file.

9 And over the years, I sort of became the FAQ keeper,
10 and we formed a FAQ council represented by different factions
11 so that everyone would have a chance to opine on rules,
12 conflicts and how they should be resolved without favoring any
13 one race over any other race.

14 We had a lot of interaction actually with the Games
15 Workshop studio in Nottingham. And, in fact, some of the
16 people from the direwolf list went on to work for the studio
17 in Nottingham. So we kind of had an in, if we needed a
18 question answered or, you know, interacting with them, showing
19 us their work and us showing, you know, sharing things to the
20 extent that we could.

21 Q Well, let's talk a bit about how you began designing your
22 own miniatures. How did you become interested in sculpting?

23 A Well, I have always been interested in art. I've always
24 been dabbling in artistic pursuits. I was playing with clay
25 when I was a little kid. That was my favorite toy.

Lippman - cross

1 And when I got involved in the collecting of the
2 Warhammer armies, you know, some of these armies have hundreds
3 and hundreds of figures and you want to not make them all look
4 exactly like each other because that's boring and they
5 shouldn't look like the Rockettes all kicking in unison, and
6 so you want to make little changes.

7 And Games Workshop has always encouraged that. They
8 have published modelling guides explaining how you cut the
9 figures apart and put them back together and sometimes sculpt
10 your own limbs. So I was practicing that sort of thing and
11 getting better and better at it.

12 And at some point I actually started making figures
13 completely from scratch. And for a while, because I was young
14 and single and had no children, I was going to conventions,
15 and I was occasionally selling some of these to miniatures
16 companies to have them produced.

17 Q So other than as an artistic outlet, are there reasons why
18 a Games Workshop Warhammer player would sculpt their own
19 models?

20 A Other than artistic reasons? I mean, it's an aesthetic
21 choice. But, also, when you're playing in a tournament or if
22 you're going to games day, which is their big sort of trade
23 show convention that they hold, they give out awards for --
24 bless you -- for painting and for conversion work. And, you
25 know, your score at a tournament is based on your

Lippman - cross

1 sportsmanship, your game play and how your army looks.

2 And if you have a lot of really cool conversions, you
3 get a higher score for your army. So in that way, getting
4 good at conversions was a way for me to win tournaments.

5 Q So what are some of the fantasy figures that you have
6 sculpted personally?

7 A I've done a lot of stuff for the Empire army and for the
8 Skaven army that I have. I've done a lot of things for the
9 Lizardmen army that I have.

10 I've sculpted outside the realm of that. I did a
11 figure for Star Wars miniatures battles. That was picked up
12 by West End Games, the company that produced that game.

13 And I've also done a lot of historical. And I don't
14 want to give a false impression here. I've sculpted a lot
15 more historical figures and had them produced than fantasy
16 figures.

17 Q So why did you decide to sculpt the Croc-Ogre models?

18 A Well, what happened was my son and I were preparing for a
19 game on a Saturday night, and we were trying to decide which
20 strategy to use against, oh, I think the Elves, and we decided
21 that we wanted to use six Kroxigors in our army and I only
22 owned four.

23 And my son was like, well, I guess we have to do
24 something else. And I said, well, you know, we could actually
25 sculpt something. And he said, no, really.

Lippman - cross

1 And I said, yeah, sure.

2 Well, how do you go about doing that?

3 Okay. Well, I took out a piece of paper, and I
4 started sketching, here are the steps. We're going to get a
5 piece of wire, we're going to make a little armature. It's
6 going to form a skeleton. We're going to begin putting clay
7 on it. And we're going to build it up and we're going to make
8 it look like a reptilian guy that can stand in for the pieces
9 that we're missing. And the guys in the group will be great
10 with that. They won't mind. That will be fine.

11 Q So what is the process generally for sculpting a new
12 piece?

13 A Okay. Well, you have to start with a concept. It really
14 helps to know where you're going because otherwise you can get
15 in trouble and end up with something that is completely out of
16 proportion.

17 And once you have your concept more or less set in
18 your mind, you might commit it to paper and then take some
19 measurements from the paper to create an armature, which is,
20 as I said, it's a skeleton underneath because the clay, if it
21 doesn't have something to support it, it will just flop over.

22 And you build up on that wire armature step by step
23 beginning with large masses like the thighs and the calves and
24 the torso. And from the large, you move to the more and more
25 refined bits such as musculature. You will start working on

Lippman - cross

1 the skin, the hair, the fur, the scales, whatever the creature
2 might have.

3 And then from there, you might do the clothing over
4 that. And so you work in layers basically, going from the
5 general to the more specific.

6 Q How long does this process take?

7 A For me I can knock out a figure now in about 20 hours,
8 maybe 15 hours, because I have been doing it a long time.
9 When I first started, it took me forever.

10 I think I once actually kept track when I was first
11 starting out, and it took me like -- something like 80 hours
12 over the course of a couple of months to sculpt just one
13 figure. And after that I decided I wasn't going to keep track
14 anymore because it was taking the fun out of it.

15 Q Fair enough. How long did you take to sculpt the
16 Croc-Ogre model?

17 A Well, my son and I were working on that together. I
18 wanted it to be a father-son project, and I wanted to
19 encourage him to use his creativity and to explore, you know,
20 the medium of the sculpting. And so we actually really took
21 our time with it, and I think from start to finish, it was
22 well over a year.

23 Q Well, you mentioned when starting a new model, it's good
24 to start with inspiration. And earlier Mr. Moskin showed you
25 a few pages from the blog Lustria Online.

Lippman - cross

1 Do you remember that?

2 A Yes.

3 Q In particular, he showed you a post where you said:

4 "I fully admit GW sculpts were my inspiration."

5 Do you remember that?

6 A Yes.

7 Q And is this that blog post that he was referring to
8 earlier?

9 A Let me see. Maybe you can point it out to me. I'm sorry.

10 Q It's the very last sentence there.

11 A "Take a look at the faces" -- oh, yeah, yeah, okay.

12 Q Do you remember that?

13 A Sure.

14 Q Was that your only inspiration?

15 A Oh, no, not at all.

16 Q Well, maybe we could talk about some of your other sources
17 of inspiration.

18 A Well, I will draw from the natural world first and
19 foremost. I mean, I have a little sculpture studio in my
20 basement along with my thousands of Warhammer miniatures and
21 miniatures from other companies, and I have lots and lots of
22 books on bats and dinosaurs and lizards and all sorts of
23 creepy stuff.

24 I looked at crocodiles specifically for this project,
25 but I also looked at T.Rex and Velociraptor for the way that I

Lippman - cross

1 was going to form the mouth.

2 I looked at some other miniatures from other
3 manufacturers that have done Lizardmen just to see how they
4 had approached the topic. I looked at actually some Star Wars
5 miniatures for some ideas.

6 I thought about some things. A lot of the creative
7 process takes place, you know, between the ears. So I will
8 sort of fantasize about what elements I want to put into it.
9 And I thought about the Creature from the Black Lagoon, and I
10 thought about Godzilla, and, gosh, well, a whole range of
11 things.

12 Q Did you take any references from your personal life?

13 A Oh, yeah, sure. I used -- I draw from life and sculpt
14 from life in order to get proportion and pose figured out.

15 And in this particular case, I wanted to approach
16 these from a dynamic perspective, and I was trying to get that
17 aesthetic figured out, and I was having a lot of trouble
18 imagining how you could really effectively and skillfully
19 swing a weapon when you had a really long snout like a
20 crocodile or like a dinosaur would have, how you wouldn't
21 constantly be hitting yourself in the face.

22 So I took pictures of myself swinging a bat, and I
23 also took pictures of my son swinging a lightsaber and
24 trying to -- he has a little toy lightsaber -- trying to like
25 capture the moment of, you know, just about to strike.

Lippman - cross

1 Q So you mentioned some pictures. I'm going to show you
2 something right now. Is this one of these pictures that you
3 were mentioning?

4 A Yes, that's my son.

5 Q This is Exhibit Number DX-445. And can you explain to us
6 what is happening in this picture?

7 A Yes. He's standing down in my basement. You can see the
8 little studio table behind with all the paints on it.

9 And he's holding a little toy lightsaber. And I told
10 him -- his name is Ethan. I said, Ethan, swing like you
11 really want to knock somebody's head off, and when I yell,
12 stop, just freeze. And I had my camera in my hand, and so he
13 went like that, and I said, freeze. And I did. I went all
14 around him taking pictures and telling him, you know, don't
15 move, so that I could get the positioning of the shoulders,
16 the elbows, the wrists, you know, the twist in the torso, the
17 way he had placed his legs, the way he had put his weight on
18 his right foot and he was up on the toes on his left foot.
19 All of that stuff brings a dynamism, a movement, to the
20 sculpture.

21 Even though the sculpture doesn't move, when you look
22 at it, you think, oh, my God, this thing is about to strike.
23 It's got, you know, power wound up inside of it, potential
24 energy. So that's what that's all about.

25 Q And in this next slide, it shows the series of photos that

Lippman - cross

1 you took, correct?

2 A Yes.

3 Q And then it also shows DX-642, which is the photos of the
4 finished model of the Kroxigor.

5 And can you explain to us how these photos inspired
6 the model here?

7 A Yes. Again, I took the positioning of his elbow and
8 shoulder and the twisting of his torso and the way that he had
9 distributed his weight on his feet, and I tried to incorporate
10 that into the piece to give the piece a dynamic movement, make
11 it seem as if it was about to strike. And I think it was
12 captured pretty well.

13 Q So you mentioned earlier that you have -- strike that.
14 Sorry.

15 Did you take inspiration from any other real life
16 sources?

17 A Well, yes. I mean, you can see on this figure the way
18 that the scaling is done on the stomach is taken from an
19 alligator. The way it's done on the back is taken from a
20 crocodile. I can point out some other things.

21 The way that the eyes are sort of raised is how an
22 alligator or a crocodile would have raised eyes because
23 they're ambush predators and they float just under the water
24 with just the eyes showing, so the eyes are higher up on the
25 head.

Lippman - cross

1 And also the anatomy of it, which was brought up
2 before in one of the email blogs, is -- I think someone called
3 it more humany than the Games Workshop figure. I was going
4 for something that really respected anatomy because I felt
5 that the Games Workshop figures, at least the ones that I
6 owned, didn't really pay tribute to anatomy in a realistic
7 way, and I kind of pride myself. And if I have any kind of
8 reputation at all in the miniature sculpting area, it's in the
9 way I do anatomy. And I am very careful to, you know, do the
10 triceps with the proper tendons connecting and the biceps and
11 all that kind of stuff.

12 I'm painstaking about making sure that the triceps
13 have all three heads, and the deltoids, rather, have all three
14 heads, and the triceps are connected, and there's a tendon
15 down at the elbow and all that kind of stuff. To me that
16 makes it look much more realistic and like he's straining with
17 the weapon like that thing is really heavy and, you know, he's
18 about to do some serious damage with it.

19 Q What can you tell us about your inspiration sources for
20 the weapon?

21 A This particular weapon was based on -- in some ways it was
22 drawn from a historical source, an Aztec ax, but it really
23 went in a sort of different direction. I was trying to make
24 it look distinct and put my own flare on it.

25 And I actually at the end ended up putting some

Lippman - cross

1 Egyptian features on it such as the pommel and the -- if you
2 can see the third image on the bottom, the third from the
3 left, you can see there's sort of like a dolphin fin on it,
4 which is a Greco Roman kind of symbol.

5 And as I was mentioning before, I have a lot of
6 experience sculpting historical miniatures, and I have done
7 numerous Roman figures. So that was just a design that I had
8 in my head that I have done many times, and I thought it would
9 look really good there.

10 Q Did you research any real live sources for these weapons?

11 A Yes, I did. I wanted to be sure what a -- what is called
12 a Huitzauhqui and a Macuahuitl look like. They're Aztec words
13 for club and ax basically. And I wanted to make sure that
14 this was something that was in the public domain because, you
15 know, Games Workshop had also mined those waters.

16 Q I'm going to show you DX-444.

17 A Yes.

18 Q Can you tell me what this page is?

19 A Yes, okay. So on the Internet, there's this forum called
20 the swords.net, I think, and it's one of many places that I
21 often consult for sculpting reference materials when I am
22 doing historical pieces.

23 This particular website is peopled by folks that, as
24 a hobby, make swords of different types and recreate, you
25 know, replicas of historical weapons. So this is a

Lippman - cross

1 Macuahuitl, which is a Meso-American or Aztec club, and it
2 has -- it's made out of wood. It's got a crosshatch kind of
3 brickwork pattern on it, and it has no blade per se because I
4 guess their metallurgy skills back then were not really very
5 well-developed.

6 And so what they use instead here is bits of either
7 shale or obsidian which are sharpened and inserted into the
8 wood and creates like a serrated edge.

9 Q And so what is this photo?

10 A I think that might be the same or -- yes, I think that
11 might be the same Macuahuitl, which is shown in kind of a
12 close-up, and you can see that the edging on that and the
13 shape of it and the fact that it had these sort of pyramid-
14 shaped inserts on the sides were all things that I used in my
15 figure because I felt they were historical and part of human
16 culture and public domain.

17 Q And can you explain what's going on in this photo?

18 A Yes. I think this actually came from a different source.
19 This, if I'm remembering, was on Wikipedia, something about
20 Mayan axes and Mayan weaponry. And if you look at the top,
21 there's a little hut, and on either side of the hut, there's a
22 figure carrying, you know, what kind of looks like a
23 toothbrush maybe, but it's an ax.

24 It's a Huitzauhqui ax, and it has a jagged edge in
25 the front end, and it's essentially patterned differently on

Lippman - cross

1 the inside different ways, but it's toothbrush-shaped.

2 Q Sorry.

3 A Go ahead. It's okay.

4 Q Were you done describing that photo?

5 A Sure.

6 Q And have you ever seen this photo before?

7 A Yes. This is another one that I downloaded from the
8 sword.net user group, and that's -- I don't know this guy, but
9 he was on there.

10 And he had just made one of these Macuahuitl ax
11 weapons, and you can see he's inserted the obsidian or
12 slate -- I'm not sure what kind of blade that is, but it's
13 inserted into the edge there, and that's kind of what I was
14 shooting for is something that was drawn from history.

15 Q Well, we have heard a lot during the past week about how
16 fans of miniatures war gaming use blogs and forums to
17 communicate with each other. Have you ever posted on an
18 online forum about the Croc-ogres that you created?

19 A Yes.

20 Q What kind of things did you post on those forums?

21 A I was excited about it and I was trying to get feedback
22 from people and also just get encouragement to keep working on
23 it.

24 And I also post on other people's blogs to give them
25 encouragement and give them tips sometimes, and it's really --

Lippman - cross

1 it's nice that we all share with each other and help each
2 other out that way.

3 Q Do you recall the names of any of the blogs that you have
4 posted on?

5 A At this point I regularly frequent the Lustria Online
6 because I'm primarily playing the Lizardmen army.

7 From time to time I will go on Warhammer forum just
8 to sort of get general news and happenings in the industry.
9 Those are the two that I really frequent the most.

10 Q Did you ever post any pictures on these blogs or forums?

11 A Yes, I have a blog or a plog, which is a picture blog, on
12 the Lustria online user forum. And I have documented the
13 construction, if you will, putting together the painting, the
14 sculpting and converting and some of my battles and results
15 and tactics, and it's just documented the whole thing all the
16 way along.

17 Q Do you recognize this web page?

18 A Yes.

19 Q This is Plaintiff's 616.

20 A Yes, we saw this before. This is from the Warhammer
21 forum, and this is in the glass cabinet of the Warhammer
22 forum, which is a subdirectory of that forum where people post
23 photos of projects that they're working on.

24 Q And can you explain to me with reference to this photo
25 what's going on at this stage?

Lippman - cross

1 A Well, these photos were taken, I think, shortly after that
2 first Saturday night sculpting session with my son, and I
3 think this is what we brought to the table on that Sunday
4 battle. And at this point the figures are very, very rough.
5 They don't have arms, obviously. And their heads are really
6 just big blobs that are kind of there just as placeholders.

7 And this is -- I guess you'd consider this the first
8 step or -- you know, I guess this is the first step in the
9 creation of a miniature, I will say.

10 Q Okay.

11 A For me, anyway.

12 Q And then when we look at these photos, what is happening
13 here?

14 A Well, this is much later. And I don't know how much later
15 because, like I mentioned before, the dates on this particular
16 forum are not contemporaneous with when the work was done.
17 You have to look at the other one to figure that out, but this
18 is certainly several steps beyond what we saw before.

19 The torsos have been carved down in the areas where I
20 felt that they were too big, and some additional putty has
21 been put on in the places where I felt that the torsos were
22 too small.

23 And, more importantly, at this point, my son and I
24 had sat down together and figured out what we wanted the faces
25 to look like, and we had come up with a concept sketch

Lippman - cross

1 together that we drew out. And this was after he and I had
2 attempted to take that two-dimensional drawing and make it
3 into a three-dimensional creature as far as the face goes.

4 So this is showing both sides of each figure.

5 Q All right. And if we move to the next slide, can you
6 explain what is happening here?

7 A Yes. Now that the faces are more or less where they're
8 supposed to be, I can really get down to the business of
9 finishing the miniature. And so I'm putting the arms on. And
10 at this point the club type weapon has already been roughed
11 out, and so, you know, I got that element done as well.

12 So I drill little holes in the torso and insert wires
13 and put the rough position of the elbow and shoulder and
14 wrists and hands on those wires and use that as a guide to get
15 the pose correct.

16 And then in the next set of photos on the right, I'm
17 now locking that pose in by applying a very hard setting putty
18 which is made out of an epoxy clay, and it sets in about an
19 hour, and it's like rock hard.

20 So once that putty is on, those arms aren't moving
21 anymore and then I can start layering over that skin, muscle,
22 tendon, and all the other elements.

23 Q And on the next slide, can you explain this step in the
24 process?

25 A Yes. So now I'm doing that, what I just described. I'm

Lippman - cross

1 putting the skin and muscle and tendons and kind of adding
2 more detail to the fingers and the hands, making them look
3 more realistic.

4 So at this point we had already taken some
5 photographs of my son posing with his little toy lightsaber
6 and I had done a couple poses and taken some photos of myself
7 with a sort of an imaginary baseball bat. I didn't actually
8 swing one because I didn't want to break the mirror because I
9 was standing in front of a mirror with a camera.

10 And I think I had at this point figured out how they
11 could not hit themselves in the face and I was happy with
12 that. And more importantly, I was getting the deltoids done,
13 getting the striations and the muscles, getting the triceps in
14 where the arm is extended, making the tricep contracted where
15 the arm is extended or, rather, where the arm is bent, the
16 tricep is elongated. So I'm trying to get all that into the
17 figure.

18 Q All right. And on the next page?

19 A Go back a second.

20 Q Sure.

21 A Okay, yes. The next page, okay. This is --

22 Oh, okay, this is a later step. At this point I
23 think what I had done is put the tail on, and I was just
24 getting a sense of how the tail was balancing with the rest of
25 the figure. And I think these were taken for a blog post,

Lippman - cross

1 just letting people know where I was with the project.

2 The weapon's not completely finished here, and the
3 figure still doesn't have any texturing or detail work on it.

4 Q And I almost fear showing you this, but what happened at
5 this stage?

6 A Well, this is a lot further along because here what
7 we're --

8 I have already decided now that I want to potentially
9 sell this figure, sell the reproduction rights to the figure,
10 I should say. So in order to make that happen, the figure has
11 to be castable. And as it was originally sculpted in its
12 dynamic pose, it wouldn't work in a mold because it would get
13 stuck in the mold. There would be all sorts of undercuts, and
14 you have to have a two-dimensional plane running through all
15 surfaces and, you know, keep in mind where that seam line is
16 going to be.

17 So, unfortunately, you have to take a little
18 jeweler's hacksaw and you have to hack your piece apart, which
19 is hard to do but necessary. And so this is arms and tail
20 removed and some other work that goes along with that.

21 You can see on that one, though, the back detailing
22 which was missing before. So that was done in between the
23 picture before and this one where I added the scales onto the
24 back of the figure.

25 Q All right. And on the next page, what are we looking at

Lippman - cross

1 here?

2 A This is, I think, the finished figure. It has been taken
3 apart. It has been -- all the gaps -- or sorry -- all the
4 seams where I cut it in half have been repaired.

5 There's been some ornamental jewelry added, bicep
6 rings that will cover up the seams when you put it back
7 together. And there's a sort of a male-female pin and hole on
8 each appendage. You can see on the end of the tail there, so
9 that that fits in and so you will know exactly where to put
10 the tail, and the user can figure it all out and make it look
11 right when they're done.

12 Q And for the record, at this point, we're looking at PX-
13 620.

14 And then what is happening at this stage?

15 A This is long after they were shipped to Chapterhouse
16 Studios, and Chapterhouse Studios shipped them to the casting
17 mold making company. Master molds and production molds get
18 made, and then spin casting is done. In this case it was done
19 in resin.

20 And this is what they look like with all the pieces
21 on a sprue so that you get all the parts for each Lizard-Ogre.

22 Q Did you then decide -- strike that.

23 So once you had sculpted the Croc-Ogre model, what
24 did you do with it after that?

25 A I painted it. Once I got these resin bits back -- I

Lippman - cross

1 didn't paint my original green putty figures because I didn't
2 need to in this case. A lot of times I do that because it's a
3 one off.

4 But in this case, I had a box full of them, and these
5 are production samples actually which get sent to me so that I
6 can make sure that they have not messed up the production and
7 the quality control is there because, you know, my name is on
8 these or, we hope, you know. I usually like to be known for
9 the work I do, so I want it to be high quality.

10 So I'm checking to see that there are no casting
11 irregularities, and then I took one of each and I assembled
12 it, and I painted it, and I use them and I play with them with
13 my son and others.

14 Q And on the next page, this is PX-690. Are these -- did
15 you paint these models?

16 A Yes, I did.

17 Q Which is probably why it says "sculpted by Robert
18 Lippman"?

19 A Yes. It doesn't say "painted by Robert Lippman," but
20 that's okay. I did paint these, yes.

21 Q Why did you choose these colors?

22 A I have an interesting color scheme in my army, which is
23 not really regulation Games Workshop. They tend to --

24 Almost exclusively since sometime around the
25 beginning of the sixth edition, they have done their Lizardmen

Lippman - cross

1 in a blue scheme. I happen to do mine in an orange and green,
2 so that's why I put these in orange and green.

3 With regard to the -- well, actually more orange than
4 green, but there are green stripes on the back.

5 With regard to the weapons, I painted them in the
6 scheme that I painted the rest of my Games Workshop Lizardmen
7 army, which is sort of a gold metal and black obsidian.

8 Q And so on the next slide, I believe Mr. Moskin showed you
9 this earlier, it's PEX-1017 at page 2.

10 A Yes.

11 Q So how is your model different from the Games Workshop
12 model?

13 A Well, as I was alluding to before, I was attempting to
14 give mine a dynamic aesthetic that I felt was lacking from the
15 Games Workshop model, and this is kind of hard for me to see
16 because the pictures are so small.

17 But whereas I have, generally speaking, emphasized
18 the anatomy and especially the humanoid anatomy of the arms
19 and legs, Games Workshop figures tend to have very loose
20 fitting skin with folds and such.

21 In addition to that, the tail -- and I have to say
22 just real quickly, on the right-hand side here, there are
23 three figures painted blue. And the one on the far right and
24 the one in the middle are not figures that I own or have
25 access to. I've actually never seen those in life.

Lippman - cross

1 The one on the right that's holding that ball-shaped
2 mace over his head, I own that figure.

3 Q I believe you mean left, Mr. Lippman?

4 A This one, left. Yes, sorry.

5 Yes, the one on the far left that is holding the
6 ball-shaped mace over his head, I own that figure.

7 So with respect to that figure, I can speak with
8 authority on what it looks like from all sides. And here you
9 can only really see it from one side.

10 That figure has, like I said, a loose-fitting skin
11 with folds on it the way that you might find on some lizards.
12 On mine I try to go with human anatomy with very visible
13 muscles and tendons and striations in the muscles.

14 The scales that Games Workshop put on theirs are like
15 raised bumps, and mine are actually indented into the skin so
16 I can preserve that musculature and you can see the shape of
17 the leg and you can see the quadriceps in the leg without that
18 being distorted.

19 They have a lot more jewelry on theirs including
20 ankle bracelets, which I didn't do. And they have a necklace
21 with skulls hanging on it, and I don't have any kind of
22 necklace, and I avoided using any sort of skulls.

23 The jewelry that is on the Games Workshop figure on
24 the arms is very different than the jewelry that I did. The
25 jewelry that I did is actually a twisted band, and it's got

Lippman - cross

1 perpendicular -- perpendicular ringlets on it, which is
2 different than what they have done.

3 Theirs also has a gap in it. It's like a -- sort of
4 a half armlet that crimps onto the arm, and mine goes all the
5 way around.

6 Now, you can't see the back of the Games Workshop
7 figure, but the tail has a tremendous amount of those bumpy
8 scales on it, and I actually did a crocodile scale that goes
9 from the base of the neck all the way down to the tail and
10 follows through in that same pattern, which is a different
11 pattern than the Games Workshop pattern.

12 Additionally, the Games Workshop figure has a tail
13 weapon, which is either something that has been, I guess, put
14 on there, or maybe that's part of the lizard's natural
15 anatomy. My thinking was I wanted my guys to be more refined.
16 I wanted them to look like more maybe evolutionarily developed
17 and with less of these body weapons on them.

18 So I also omitted deliberately the spikes that go
19 down the back and all the horns that are on the head. The
20 Games Workshop figures actually have like little rhinoceros
21 horns on the top of the head, and I don't have those.

22 And, also, the eyes on mine stick up way higher, much
23 as I mentioned before the way a crocodile would have eyes that
24 stick up above the water.

25 The plasteron is the piece that is on the belly of a

Lippman - cross

1 Lizard, and the plaster on mine follows the contour of the
2 Lizard's pectoral muscles. Now, Lizards don't have pectoral
3 muscles the way humans do, but I made mine humanoid, and so
4 mine has very defined pectoral muscles.

5 And I sculpted the sort of abdominal plaster on to
6 follow that contour all the way down to the tail.

7 The way that Games Workshop has done theirs, it's
8 much more blocky. They're actually almost a series of two
9 rectangles that go down the front of the miniature. So I did
10 something different.

11 And what I did is actually something that is drawn
12 from nature. What they did, I think, is something that you
13 don't find in nature. At least I'm not aware of it being
14 found in nature.

15 Finally, for the weapon, you can see below the three
16 blue painted Games Workshop Lizardmen Kroxigors, this is a
17 reproduction from a page from the Warhammer Army's Lizardmen
18 rule book. And I actually looked at that picture while I was
19 sculpting to make sure that I wasn't copying Games Workshop's
20 designs.

21 I did, in fact, draw inspiration from the same Aztec
22 weaponry that they presumably looked at, too, but whereas on
23 their ax they have a curved handle, I used a straight handle.
24 Whereas on their ax they have a 90-degree right angle on the
25 upper edge, mine actually has a lip on the top, which you

Lippman - cross

1 can't see so well in this picture, but it's --

2 You know what, hang on a second. Is it all right if
3 I use this?

4 Q Go for it.

5 A Does that work? Oh, cool.

6 All right. So I will try to be --

7 Right over here there's a little protrusion on the
8 top, and as you can see here, this is a right angle. So
9 there's a difference there.

10 Also, their ax has these sort of teeth on it, which
11 is something that you actually find in Polynesian weaponry
12 where they didn't even have rocks. They actually had to rely
13 on using shark teeth and stuff in their weapons. So they have
14 got those teeth embedded in their weapons where I just simply
15 went with a carved stone.

16 They also use a U-angled curve here. It might be
17 hard for the jury to see because it's kind of far away. I
18 didn't put that on my weapon. Instead, what I did, as I
19 mentioned before, is I sculpted like a dolphin fin, which was
20 something that I just resorted to because I had done Greco
21 Roman sculpture, and that's a very common design in a lot of
22 their heraldry.

23 The bottom -- the pommel I actually used is an
24 Egyptian design because I had an idea in mind that these
25 figures might also be useful to players of War Gods of

Lippman - cross

1 Aegyptus, which is a game published by Crocodile Games, and
2 they also have Lizardmen characters in that, and that's a very
3 Egyptian sort of feel, and so I wanted to have something
4 Egyptian in mine as well.

5 What Games Workshop has done, as you can see here, is
6 they have put a point on the butt end of all of the weapons,
7 so these weapons are double-edged. My weapon is just
8 single-edged.

9 There's a few other things. I mean, they have got
10 these sort of lines, these designs that go across, and they
11 have put a feather down here, and I omitted any sort of
12 feathering.

13 So I was just trying to, you know, draw inspiration
14 from the same historical matter but use a completely different
15 expression for how I was going to design that and implement
16 that.

17 Again, on the club, sort of the same thing. Their
18 club, they have got two here that they're showing, and these
19 are sort of club/swords. This one has a pointed top that goes
20 off to the right, kind of like Gumby's head, if you guys are
21 old enough to know who Gumby is.

22 And then over here, you have got one with a rounded
23 top, but the point is sort of in the center. Mine is
24 completely flat on the top. And I put what is sort of an
25 inverted triangle there. It's actually -- it's actually

Lippman - cross

1 curved. You can't see it very well in this picture, sort of
2 again making an allusion to something that was Egyptian
3 because the capitals on the tops of Egyptian columns would
4 have something like that on it.

5 Again, the pommel is something that you find in a lot
6 of Egyptian weaponry.

7 And these pictures again show the Games Workshop
8 figures with the two -- with these spear ends, I guess you
9 would call them on the bottom. So I wanted to avoid a two-
10 edged weapon.

11 Beyond that, you know, they have got them ringed with
12 these very small teeth that are downward facing and serrated,
13 and there's many, many, many of them. And I avoided any sort
14 of teeth. I went with these little spikes that are sort of
15 pyramidal in shape and symmetrical and far fewer of them.

16 Again, the edging here is from that Macuahuitl that I
17 looked at on the sword.net, and that's just something that I
18 felt was historic.

19 I think that's probably it, but, I mean, that pretty
20 much is the whole figure. You know, if you look at each
21 element of it individually, there's a difference. If you look
22 at the whole thing together, I think to me it has a very
23 different aesthetic, and based on the comments that I have
24 gotten on the Internet, I think people get that. The Games
25 Workshop figures are brutish. They're described as being

Lippman - cross

1 brutish, and they're described as being somewhat dimwitted.

2 Mine have been described as cunning and evil looking
3 and, you know, more dynamic, more humany, more muscley. I get
4 a lot of comments like that, and so I feel like I've
5 accomplished my goal of going in a different direction with
6 the aesthetic and with how I expressed it.

7 Q Let's switch gears a little bit and ask, have you ever
8 heard of Chapterhouse Studios?

9 A Yes.

10 Q What is your understanding of what Chapterhouse Studios
11 does?

12 A They are a fantasy/science fiction miniatures
13 manufacturer.

14 Q Have you ever done any work with Chapterhouse Studios?

15 A Just this, these two figures.

16 Q But you didn't sculpt these miniatures specifically for
17 Chapterhouse?

18 A No. There came a time when, because of my postings on the
19 Internet and because of the local gaming group that I play
20 with, people began to ask me, are you going to produce these,
21 are you going to produce these.

22 And I was like, I don't know, I really don't know if
23 I want to take a hacksaw to them. I kind of like them. But
24 enough people were asking, and I thought about it and I
25 realized, well, you know what, I could probably -- I could

Lippman - cross

1 probably cut these up for casting and not really harm them
2 and, you know, come up with ways to hide the seams and so
3 forth.

4 And I thought it would be nice actually to focus my
5 son on that aspect of the industry as well so that he could
6 understand, you know, soup to nuts, how this thing goes from
7 concept to final product that can be, you know, purchased.
8 And I figured he would be really proud of himself to know that
9 he had done something, or at least contributed to something,
10 that was ultimately being sold and that other folks in our
11 little gaming group were buying and using and putting on the
12 table and playing with.

13 So I told him, if you stick with it, if you stick
14 with the project all the way through, I will give you a cut
15 from whatever we're able to sell these for as an allowance.
16 And 50 percent of that is going to go in your college fund,
17 and the other 50 percent of that, you can buy yourself like a
18 really cool toy. So that worked. And he stuck with it all
19 the way through to the end.

20 And so when it came time to, you know, finish them,
21 and I honestly felt like they were salable, that they were a
22 good representation, you know, of work and, you know, that
23 they weren't stepping on anybody else's rights -- quite
24 honestly, I thought about that. I wanted to make sure I was
25 doing something that was different than anything else anyone

Lippman - cross

1 else had ever done.

2 And when I felt satisfied with that, I began to call
3 some of my contacts in the miniatures industry. And I didn't
4 have that many, honestly, left because, in the course of
5 raising my son, I had really gotten out of the tournament
6 scene, and I don't know that many people anymore. But I
7 called a few people and eventually I got around to
8 Chapterhouse.

9 And Nick Villacci, I think is how you pronounce his
10 last name, he was very interested. And I had mentioned to him
11 that a lot of people were interested in this and were
12 interested in using it in their armies, and I think I even
13 said in the email that people had mentioned using them as
14 proxies or as additional figures in the Lizardmen army and
15 that maybe he might actually be able to sell a few of them.
16 And so we worked out a price and we went from there.

17 Q And are you proud of the work that you have done on the
18 Croc-Ogre?

19 A Yes, yes, I am actually, and I'm proud of my son, more
20 importantly. I think he did a really great job. You know,
21 obviously he had a lot of help, but for an 11-year-old to
22 commit to something like that for a year and see it through to
23 the end, I think is really laudable, and so I'm proud of him,
24 and I'm proud of the figures, yes.

25 MS. KALEMERIS: Thank you, Mr. Lippman. No further

Lippman - redirect

1 questions.

2 THE COURT: Redirect.

3 MR. MOSKIN: Can we put up an image from Plaintiff's
4 Exhibit 626 on page -- I think it's 4. There we go. And zoom
5 in.

6 REDIRECT EXAMINATION

7 BY MR. MOSKIN:

8 Q I just want to be clear.

9 Your testimony is that the genesis of how you created
10 your figures was that you had, I think you said four, is it?
11 I'm not sure. Is it the one in the middle? Is that the Games
12 Workshop one?

13 A In this picture, yes.

14 Q Okay. And you needed two more. You wanted two more for
15 your own Lizardmen army, right?

16 A Yes. To field this unit, you need to have three because
17 the bases are 40 millimeters long, and the guys that stand in
18 front, their bases are 20 millimeters long. So you have to
19 fill up all those ranks.

20 Q So just to be clear, that was the very first step, the
21 beginning, of everything that followed?

22 A Yes. I mean, we needed something to play with.

23 MR. MOSKIN: Thank you. I have nothing further.

24 THE COURT: Ms. Kalemeris, anything else?

25 MS. KALEMERIS: Nothing further, your Honor.

Lippman - redirect

1 THE COURT: Any questions from any jurors?

2 I don't see anyone writing. Oh, one, okay.

3 (Brief off-the-record discussion.)

4 THE COURT: Can whoever has got Plaintiff's
5 Exhibit 1017, whoever can get it up there, put that up, 1017?

6 The question is: Which generation of Kroxigor are
7 these, fifth, sixth, seventh or some other generation? Do you
8 know?

9 THE WITNESS: Is the question directed to the Games
10 Workshop figures?

11 THE COURT: Yes, the Games Workshop one.

12 THE WITNESS: Those are seventh generation.

13 THE COURT: Okay. You referred to some Games
14 Workshop miniatures. I think one was called Skinks and the
15 other was Saurus or something like that?

16 THE WITNESS: Did I? Yes, okay.

17 THE COURT: Okay, that you had referred to those.
18 Are they part of the Lizardmen or another group?

19 THE WITNESS: They're part of the Lizardmen.

20 THE COURT: Part of the Lizardmen.

21 THE WITNESS: They're a different species of Lizard,
22 which is why -- yes, I felt like you can have another species.

23 THE COURT: There are two other questions which for a
24 variety of reasons I'm not going to ask, and I will hold it
25 and I will explain it to the jury after the case is over. But

Lippman - redirect

1 you shouldn't try to speculate on what the answers might have
2 been.

3 Any follow-up on the two things that I asked?

4 MR. MOSKIN: No.

5 MS. KALEMERIS: No.

6 THE COURT: Okay, you're excused, Mr. Lippman.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: We're going to take a break because we
10 need to deal with some evidence issues before we have the next
11 testimony, which I think is going to be a deposition. So I
12 will take the jury out and then I will come back.

13 All rise.

14

15

16

17

18

19

20

21

22

23

24

25

1 (The following proceedings were had out of the
2 presence and hearing of the jury:)

3 THE COURT: Let me just put on the record the two
4 questions from a juror that I did not ask. Here's what they
5 are:

6 Is there any evidence regarding when Mr. Lipmann
7 viewed the referenced websites, for example, Exhibit 444, with
8 the sort of Aztec-type names? I'm not going to try to
9 pronounce them.

10 And the second one was: When were the sword.net
11 images viewed by Mr. Lippman?

12 And essentially the objection to those questions is,
13 weren't covered by the defendant -- this is not Mr. Moskin's
14 phrasing. It's mine. They weren't covered by the defendant;
15 I shouldn't let the jury fix the hole. And I think that's a
16 legitimate objection, so that's why I sustained them.

17 So there's an issue we had to take up before the next
18 witness?

19 MR. KEENER: There's two issues with the Fiertek
20 testimony. The first is that there's two Fiertek depositions.
21 The second deposition has the errata sheet issue that I think
22 the court's aware of where Mr. Fiertek --

23 THE COURT: I'm vaguely aware of it, but remind me.

24 MR. KEENER: -- changed his testimony three days
25 later from a no, I didn't -- I deleted all sorts of stuff to,

1 no, I didn't delete anything after the lawsuit started. It
2 was a very distinct difference.

3 THE COURT: Okay.

4 MR. KEENER: So the way the parties agreed to handle
5 it is we're requesting the court give a very brief instruction
6 on what an errata sheet is at the beginning.

7 THE COURT: Sure.

8 So how is the errata sheet going to get in?

9 MR. KEENER: The way we're going to do it in the
10 script when we're reading it, when we get to the question,
11 there's only about three or four of them, I'm going to ask the
12 question and then say, and what was your testimony at the
13 deposition? He's going to read it. And what was your sworn
14 clarification? And he's going to read it.

15 THE COURT: Okay.

16 MR. KEENER: And so the jury's not confused.

17 THE COURT: This is fine. So should I read this at
18 the beginning of the deposition; should I wait till you get to
19 one of these issues?

20 MR. KEENER: You could wait till I get to it if you
21 want.

22 THE COURT: So you'll just need to let me know when
23 you get there.

24 MR. KEENER: Yeah. The first one -- I can let you
25 know.

1 THE COURT: So this is not a video deposition?

2 MR. KEENER: No. We're going to have three
3 depositions we're reading. This will be the middle
4 deposition.

5 THE COURT: And you're doing this on a Friday
6 afternoon.

7 MR. KEENER: They made us call Lippman earlier. This
8 is the end of our case.

9 THE COURT: How long are these going to take?

10 MR. KEENER: They will probably take us most of the
11 afternoon.

12 THE COURT: Okay, then. So I should go back there
13 and tell them stoke up on the coffee.

14 MR. KEENER: We can do a dramatic reading if you'd
15 prefer.

16 THE COURT: Whatever. Okay. So take five minutes.

17 MR. KEENER: Then there's one more issue that they
18 want to raise.

19 MR. ALY: Your Honor, the second issue is this:
20 Based on today's testimony, I want to refer to products 149
21 and 150. This is the Hammers of Dorn testimony where the
22 picture was there and Mr. Villacci said, you know, I saw those
23 and now I'm concerned. Based on that testimony, Chapterhouse
24 is willing to accept judgment on those two products and sort
25 of remove them from the case and the jury and take a judgment

1 on damages. It turns out that the value is about 40 dollars
2 for all sales.

3 And then the impact of that would be, your Honor,
4 that there's some deposition testimony to be played that also
5 wouldn't need to be played but -- or, I'm sorry, read out
6 loud.

7 THE COURT: Have you discussed this?

8 MR. ALY: I have discussed it, and they've rejected
9 the offer.

10 MR. KEENER: We reject it for three reasons.

11 First, it goes to Villacci's truthfulness, which I
12 think is an issue at case here. He says he never knew about
13 this issue before. We've got evidence that his fifty percent
14 owner is going to testify, I was looking at that exact image
15 when I was making this product.

16 The second is they're suggesting that Chapterhouse's
17 policy is never to copy an icon. We've got the testimony on
18 this witness.

19 THE COURT: Let me kind of short circuit this. I
20 mean, I'm not sure, I'm not sure what basis there would be for
21 me to essentially require a party to accept a proposal to take
22 not a whole claim, but it's like a piece of a claim out of the
23 case. I mean, I'm not even sure, assuming that you've
24 followed the requirements of Rule 68, which I don't think has
25 happened here, I'm not sure you could even do it on something

1 like this because it's not a whole claim.

2 So the bottom line is, you know, you've made a
3 proposal. It may have some impact on something else later in
4 the case. I can't think of what that would be right now. But
5 I'm not going to say to the plaintiff that you have to accept
6 this, and this therefore makes irrelevant some of your
7 testimony. And so I don't even need to get to the other
8 reasons, although I think Mr. Keener is probably right that
9 there are other reasons why this would be admissible anyway.

10 All right. That's the Dorn? What's -- Dorn?

11 MR. ALY: Hammer of Dorn.

12 THE COURT: Hammer of Dorn.

13 MR. ALY: D-o-r-n.

14 THE COURT: And who is Dorn anyway, or what is Dorn?

15 MR. KEENER: He is the leader of the Imperial Fists
16 Space Marines.

17 THE COURT: I'm glad I asked.

18 MR. KEENER: Since we intend to close our case after
19 the depositions are done, we assume that all the exhibits have
20 been shown, that there'll be no objection to our --

21 THE COURT: Yeah, so what you'll do is you can just
22 say we rest subject to dealing with exhibits.

23 MR. KEENER: Okay.

24 THE COURT: And then we'll worry about --

25 MR. KEENER: You don't want us to formally move to

1 enter each one of --

2 THE COURT: No, we're not going to do that right now.

3 And while we're talking about exhibits, I don't know
4 whether you've given thought about how the jury should handle
5 these things after the fact. I have an idea. I think, given
6 the number of exhibits, I think we should give them a set or
7 two, but I think that you and your tech people should sort of
8 collectively come up with something where we could give them a
9 laptop that doesn't have other stuff on it where we can either
10 load all of the exhibits onto a laptop or give them a couple
11 of disks so that they can pop them in and out. And then I can
12 get a screen, hopefully I can get a screen into the jury room.
13 I got to work on that, but hopefully I can get a screen into
14 the jury room that we could just kind of plug the thing into.
15 So give that some thought over the weekend.

16 MR. KEENER: Will do.

17 MR. ALY: And, your Honor, when you say subject to
18 exhibits, would that also be subject to motions or should I --

19 THE COURT: Yeah. I mean, I think what I'm going to
20 want you to do is go ahead -- I don't know if you have a
21 written -- something in writing.

22 MR. ALY: It's in progress, but it's changed over the
23 testimony.

24 THE COURT: Okay. So we're going to plow ahead. I'm
25 probably going to take them under advisement. You do need to

1 get them on file because, you know, that has consequences
2 obviously, but, so, yeah, we're going to just sort of plow
3 ahead.

4 MR. ALY: Do I need to say anything, or will you
5 preserve that?

6 THE COURT: You've now done it.

7 MR. ALY: Thank you.

8 THE COURT: But that doesn't mean you have sort of
9 authority to sort of hold back on giving me the document until
10 some point later. I mean, I need to get it plenty close to
11 when they rest. So when do you think it's likely to be ready?

12 MR. KEENER: When we're done reading this
13 testimony we --

14 THE COURT: No, no. When do you think it's going to
15 be ready, the motion?

16 MR. ALY: Monday.

17 THE COURT: Yeah. Saturday. You're working Saturday
18 anyway, so get it on file on Saturday.

19 MR. ALY: I could orally summarize the points, too if
20 you'd like.

21 THE COURT: No. We're not going to spend time on
22 that unless you want to use up some of your time doing that.

23 MR. ALY: Well, no. But on that point, your Honor,
24 after their deposition reading is done, if there is time
25 remaining, it shifts to our case. We don't have a witness.

1 That will be our time.

2 THE COURT: Oh. Well, then you can argue it then.
3 We can use the time for that because it would get charged
4 against you anyway.

5 MR. KEENER: Do you want me to tell you the
6 allocation for the depositions right now?

7 THE COURT: Tell me now.

8 MR. KEENER: Okay. So the first deposition, the
9 Fiertek 2012, plaintiff 65 percent, defendant 35 percent.

10 THE COURT: Okay.

11 MR. KEENER: Second deposition, Fiertek 2013, again,
12 plaintiff 65, defendant 35.

13 Last one, Traina, plaintiff 87, defendant 13.

14 THE COURT: Okey doke. Thanks.

15 Take a break.

16 (Recess taken.)

17 (The following proceedings were had in the presence
18 and hearing of the jury:)

19 THE COURT: Next what you're going to hear is not
20 live witnesses. It's some additional depositions. Unlike the
21 video deposition that you saw the other day, these were sort
22 of more traditional kinds of depositions where the person
23 testified and the testimony was taken down by a court reporter
24 like the court reporters that you've seen here in the
25 courtroom. And so what there is, is a paper transcript.

1 Excerpts of these depositions are going to be read.
2 We don't have the witness here, and so the way it works is
3 that a lawyer is going to read the questions and then a person
4 who's like a stand-in for the witness is going to read the
5 answers. So any inflection or emphasis that the witness
6 gives, you can't put any weight in that because he's not the
7 witness. And for that same reason I'm not going to swear him
8 in. He's just reading testimony from a deposition.

9 But that aside, you should consider this testimony in
10 the same way as any other testimony that you consider.

11 And, Mr. Keener, when we get to the first of those
12 areas where you need me to read the instruction, just tell me
13 when you get there so I can read the instruction immediately
14 before whatever the question is. Okay?

15 Okay. So --

16 A JUROR: Judge, will we know --

17 THE COURT: You will not have these transcripts. I'm
18 sorry. You will not have these transcripts, so you should
19 take notes on this.

20 And we're going to identify who the witnesses are,
21 which I'm assuming was your question.

22 A JUROR: And the bearing.

23 THE COURT: Well, you'll get the bearing from the
24 testimony.

25 So the two people are, there's excerpts from two

Fiertek - deposition

1 depositions of Thomas Fiertek and a deposition of is it Wyatt
2 Traina, Wyatt Traina, which are names that you've heard in the
3 case already.

4 So, Mr. Keener, go ahead.

5 TOMAS FIERTEK, PLAINTIFF'S WITNESS, THROUGH DEPOSITION

6 EXAMINATION

7 Q Could you please state your name for the record?

8 A Tomas Fiertek.

9 Q Mr. Fiertek, could you please tell us your current
10 address?

11 A Lufttrychs gatan 41840, Gothenburg.

12 Q Are you a part owner of Chapterhouse Studios?

13 THE COURT: Just so you know, that's Sweden.

14 A Yes.

15 Q Who owns Chapterhouse Studios with you?

16 A Mr. Villacci.

17 Q How is the ownership divided?

18 A 50/50.

19 Q You told me that you consider yourself a 50 percent owner
20 of Chapterhouse Studios?

21 A Yes.

22 Q And you described for me other places that you've been
23 employed such as a security firm. I want to know whether you
24 consider yourself an employee of Chapterhouse Studios.

25 A No.

Fiertek - deposition

1 Q What roles and responsibilities do you have as a partial
2 owner of Chapterhouse?

3 A I create and sculpt some of the works.

4 Q Any other duties you perform for Chapterhouse?

5 A Yes.

6 Q What else?

7 A Occasionally I keep contact with other commission
8 freelance artists.

9 Q Do you play Warhammer 40K?

10 A Yes.

11 Q And when did that start?

12 A I don't remember correctly. I would guess six years ago,
13 give or take one, two.

14 Q Do you own any of the rule books for Warhammer 40K?

15 A Yes.

16 Q Do you own a copy of Rogue Trader?

17 A No.

18 Q Do you own the Realms of Chaos books?

19 A No.

20 Q Do you own the Warhammer Compendium?

21 A I don't even know what it is.

22 Q Do you own the Warhammer 40K Compilation?

23 A Again, I don't know what that is.

24 Q Do you own any codexes for Warhammer 40K?

25 A Yes.

Fiertek - deposition

1 Q What codexes do you own?

2 A I don't remember all of them. However, I own a lot.

3 Q Which ones can you name?

4 A From memory, I can name Space Marines, Orks, Necrons,
5 Tyranids, Chaos Demons, Dark Angels, Blood Angels. That's
6 what I remember right now.

7 Q What about Imperial Guard?

8 A Yes.

9 Q What about Eldar?

10 A Yes. And Dark Angel.

11 Q What about Dark Angel?

12 A Yes.

13 Q Any other codex that you own that you've not mentioned?

14 A No.

15 Q Do you own any of the Horus Heresy books?

16 A Yes.

17 Q What Horus Heresy books do you own?

18 A I own four books. I do not remember the names.

19 Q Do you own any Black Library books?

20 A Yes.

21 Q What Black Library books do you own?

22 A A lot.

23 Q About how many Black Library books would you say you own?

24 A About a hundred, I would guess.

25 Q For all these Games Workshop books that you own, do you

Fiertek - deposition

1 own them in hard copy, in actual physical books?

2 A Yes.

3 Q Do you have electronic copies of any of them?

4 A Yes.

5 Q Which ones do you have electronic copies of?

6 A I don't remember specifically which one. Generally
7 speaking, I do remember having some of the codexes in
8 electronic form.

9 Q And how did you obtain electronic copies of these Games
10 Workshop books?

11 A I don't remember.

12 Q Did you buy them?

13 A No.

14 Q Does Games Workshop sell electronic copies?

15 A I don't know.

16 Q Did you receive them from somebody?

17 A Some of them, yes.

18 Q I want to know: what does Chapterhouse do?

19 A We sell custom-made sculpted items.

20 Q What games are your sculptures used for?

21 A Could be used for 40K, amongst others.

22 Q Can you identify any that could not be used in Warhammer
23 40K?

24 A Since I don't know about every product, no.

25 Q Okay. For the products you are aware of, can you identify

Fiertek - deposition

1 any that cannot be used in 40K?

2 A Those that I'm aware of and right now remember, every can
3 be used in 40K.

4 Q Can you identify what Chapterhouse products you sculpted?

5 A Yes.

6 Q Which ones can you recall?

7 A Well, first of all, the wolf-themed pieces. What else did
8 I sculpt? Various shoulder pads. Most of them. Numerous
9 icons for vehicles. And I did the detail work and repair work
10 to improve sculpts made by other people. I also --

11 Q And the other people -- I'm sorry, are you finished?

12 A No. I just recalled also making at least two little
13 miniature hammers.

14 Q Anything else?

15 A Yes. I made a series of heads, loose heads, and I also
16 recall making a series of miniature shields. That is --

17 Q Anything else?

18 A That is what I recall right now.

19 Q All right. I want to hand you what's been marked
20 Plaintiff's Exhibit 196, which is Bates labeled TF4057 through
21 4058.

22 Mr. Fiertek, this appeared to be a email from you to
23 Mr. Villacci dated August 5th, 2008. Is that correct?

24 A Yes.

25 Q My question is: what does "pad" mean? What is that

Fiertek - deposition

1 referring to?

2 A Pad is the geometrical shaped object that goes onto a
3 shoulder of a miniature. That would be my definition of
4 "pad".

5 Q So it's a shoulder pad?

6 A Yes.

7 Q And for any particular miniatures?

8 A These are to fit on Space Marine miniatures.

9 Q On page 2 at the very top you say: "For dimensions, look
10 at existing pads and copy those."

11 A Yes.

12 Q What did you mean by that statement?

13 A To make sure that the dimensions are similar to existing
14 pads, hence enabling a fit.

15 Q And the existing pads, those are the shoulder pads made by
16 Games Workshop?

17 A Yes.

18 Q So you're stating that the Chapterhouse shoulder pad
19 should, for dimensions, copy those of the Games Workshop
20 shoulder pads?

21 A No.

22 Q What's wrong with that statement?

23 A There must be an adequate size similarity to enable a fit.
24 It doesn't nor is it a direct copy of the size. It would be
25 impossible, sculpting wise, to do it so.

Fiertek - deposition

1 Q Although it would be impossible to make an exact copy, the
2 instruction here was to copy the size from the Games Workshop
3 pads; is that right?

4 A No. The meaning was: do as close size as possible.

5 Q Okay. So the instruction was, for the shoulder pads
6 Chapterhouse was creating, to as closely as possible copy the
7 size of the Games Workshop shoulder pads?

8 A No, it was not an instruction. It was a bouncing back and
9 forth of items and talking about them.

10 Q Okay. So your idea was that Chapterhouse shoulder pads
11 should copy as closely as possible the size of the Games
12 Workshop shoulder pads?

13 A My idea was to resemble the size as accurate as possible.

14 Q And do you know if that was actually done?

15 A No.

16 Q What was done?

17 A The as-careful-as-possible approximation regarding size,
18 in this exhibit I hold, was not done.

19 Q In your work or sculpting for Chapterhouse, were there any
20 products that you worked on that you believed were completely
21 unique ideas not based on any Games Workshop materials?

22 A Yes.

23 Q What are those products?

24 A Again, I have examples from memory. Should you choose to
25 present all the items in front of me, I could easily -- more

Fiertek - deposition

1 easily pick them out, but out of memory I can mention the
2 things we -- everything based -- all of that has a dragon head
3 or dragon scales or snake scales in it. Things I sculpted
4 that were themed around snakes. The wolf-themed items I
5 sculpted. Certain themes and details in armory, for example,
6 like overlapping armor plates, studs that keep things
7 together, those Greek letters and numerals. That's what I can
8 recall right now off my head.

9 Q Now, the dragon head and scales, is that related to the
10 Salamander chapter?

11 A It's similar to, since both are based around a dragon
12 head.

13 Q Okay. We can now have you passed Plaintiff's Exhibit 198.
14 It's Bates labeled TF3881 through 3883. It's an email from
15 you to Mr. Villacci dated May 25th, 2009.

16 THE COURT: I'm just going to ask you both to slow
17 down just a little. There's a temptation to go faster if
18 you're reading than if you're just talking, and I want to be
19 sure stuff doesn't get by people too quickly.

20 Q Okay. Looking at the second paragraph, you write:
21 "Imagine how much more we could make if we went with a little
22 more than word of mouth, but then I take it we'd have to
23 remake all pads that clearly show they are GW underneath such
24 as the spiky PA dragon pads." Do you see that paragraph?

25 A Yes.

Fiertek - deposition

1 Q Did you write that?

2 A Yes.

3 Q Does "GW" stand for Games Workshop?

4 A Yes.

5 Q What does "PA" stand for?

6 A I think it stands for power armor.

7 Q What is power armor?

8 A I think it would be used to designate a certain size of a
9 sculpt.

10 Q What is power armor?

11 A Well, what is power armor? It's power armor. I mean,
12 it's in a lot of science fiction literature and movies. It is
13 what it is.

14 Q What is the specific meaning in the Games Workshop 40K
15 universe?

16 A A type of armor on a miniature.

17 Q Is it worn by a certain type of miniature?

18 A Mostly Space Marine miniatures.

19 Q Okay. So power armor is a type of armor worn by Space
20 Marines?

21 A Amongst others, yes.

22 Q What were the spiky power armor dragon pads you were
23 referring to in this email?

24 A These are two of them -- yeah. Two of them -- things that
25 I sculpted about approximately one or two -- one or -- one to

Fiertek - deposition

1 two years before I even met Mr. Villacci -- by "met" I say
2 talked or either wrote with. I did them for personal use to
3 use with my personal collection of miniatures. Yeah. That is
4 those.

5 Q And when you sculpted those for personal use, did you use
6 any Games Workshop materials?

7 A While sculpting them?

8 Q Yes.

9 A No. Unless Games Workshop owns the sculpting clay I used.

10 Q What is your reference: "all pads that clearly show they
11 are GW underneath..." What did that refer to?

12 A Because when I did them, I sculpted on a plain pad that
13 was a Games Workshop pad.

14 Q Okay. So the finished pad you made was a plain Games
15 Workshop power armor Space Marine pad that you then added some
16 modeling clay to the outside of?

17 A There was a Games Workshop pad, plain, underneath. I
18 added a shell of sculpting putty to give it detail and texture
19 and added bulk.

20 Q Was this product ever sold by Chapterhouse?

21 A Yes.

22 Q For these shoulder pads that Chapterhouse sold, were they
23 selling it with the Games Workshop shoulder pad underneath it?

24 A I don't know. I am not selling stuff.

25 Q Okay. Do you understand the basic process of how

Fiertek - deposition

1 something you sculpt becomes an actual product that's sold?

2 A Vaguely, yes. Define "basic".

3 Q Describe it at the level of your understanding.

4 A I sculpt something -- well, let's make it short as
5 possible. I sculpt something, send it to Nick --

6 Mr. Villacci -- and then it's taken out of my hands. What
7 happens if it gets sold, et cetera, is not my decision to
8 make.

9 Q So you don't have any understanding of how this master
10 sculpted product gets turned into many products that actually
11 physically sell?

12 A I have a somewhat limited understanding of the process
13 since I don't -- since I'm not involved nor handle it. That
14 is Mr. Villacci's department.

15 Q What's your understanding?

16 A I sculpt something, I ship it to Mr. Villacci, and then
17 someone makes a mold -- should Mr. Villacci accept the item
18 I've sculpted and okay it, then someone makes a mold out of
19 it, and this mold is then used by someone to do copies, to
20 cast using the mold in various materials.

21 Q Okay. So you don't sculpt tens or hundreds of the same
22 shoulder pad; you make a master, which is then used to make a
23 mold; you then use the mold to make copies? Is that basically
24 correct?

25 A That is basically, for the majority of the examples,

Fiertek - deposition

1 correct, yes.

2 Q And that's what happened with this power armor dragon
3 shoulder pad, correct?

4 A I don't know what happened with it. I know what happened
5 with it until the moment I shipped it to Mr. Villacci.

6 Q And from the pewter shoulder pad you received back, could
7 you tell that they showed the Games Workshop shoulder pad
8 underneath?

9 A Personally, yes, I could see.

10 Q Mr. Fiertek, do you have Plaintiff's Exhibit 199 in front
11 of you?

12 A Yes.

13 Q Third paragraph. I'm just going to focus your attention
14 on the very top email, which is from you. Do you see that?

15 A Yes.

16 Q About the third paragraph down, you state: "About the HH
17 art book and cover helmets I don't know, the copyright is not
18 ours it seems so we can't copy them but maybe redo them
19 somewhat." Do you see that?

20 A Yes.

21 Q What does "HH art book" refer to?

22 A Oh, that I don't need. HH stands for Horus Hearsay art
23 books.

24 THE COURT: I think that should say Heresy.

25 THE WITNESS: Heresy.

Fiertek - deposition

1 Q So the Horus Heresy art books, that's one of the books you
2 mentioned before as Games Workshop books that you own?

3 A Yes.

4 Q Okay. For whatever product it was, your suggestion is to
5 redo the artwork from the Games Workshop book somewhat?

6 A What I mean, I think, since I don't remember correctly,
7 is -- well, obviously we -- what I meant was we cannot just
8 take something slavishly and copy. That would not be okay,
9 according to me. But we could take something and alter it
10 significantly enough so it might be okay to do. I think
11 that's what I meant by that paragraph.

12 Q Okay. So you were suggesting taking the Games Workshop
13 icon or picture from the book as the starting point and then
14 altering it in some ways to make the product you want?

15 A I'm fairly certain this paragraph is not about an icon or
16 even a book cover, but seems to have to do with a head or a
17 helmet or its design.

18 Q Okay. And your suggestion was to take the design in the
19 Horus Heresy art book as a starting point and then make
20 changes to alter that slightly?

21 A Well, again the word "slightly" is also suffering from a
22 definition lack, but I think what I meant was: I love the
23 theme of something I've seen, let's make something, but
24 obviously we cannot do it the same because that would be a bad
25 thing to do, and -- hm, there seemed to be a beginning of a

Fiertek - deposition

1 discussion of altering or making something that shares a
2 common theme with something from the HH art book.

3 Q You can put Exhibit PEX 199 aside. I'm going to show you
4 what's been marked Plaintiff's Exhibit 200, a one-page
5 document labeled TF1611. Is this your sketching?

6 A Yes. This is my sketching.

7 Q The top left, when you said "don't make any pads with
8 these details," what details were you referring to?

9 A I was referring to the rectangular-shaped cavities along
10 the rim.

11 Q Do you know if Chapterhouse's shoulder pads contained
12 these notches on the back of the shoulder pads?

13 A Yes.

14 Q So, despite your stating here not to make any pads with
15 these notches, Chapterhouse did anyway?

16 A This, to my knowledge, is a later -- a later discussion
17 about making pads, and I was involved in ideas, design ideas,
18 hence these drawings, and I think -- I'm not certain, but I
19 think somebody else also was involved in the design, and the
20 idea of this all was to make a plain shoulder pad with or
21 without details or ornamentation on it, that we could have as
22 our own, cast up as our own, and use to sculpt that, because
23 until this moment -- or rather until we made these, I used to
24 sculpt shoulder pads from scratch, which is very
25 time-consuming instead of relying on Games Workshop pads, and

Fiertek - deposition

1 again, this is a necessity thing to save buck loads of time.
2 Doing in a geometric shape over and over again and having it
3 look identical in both shape, statute and size, it's an
4 inhuman task, so this is, as I recall, a discussion of making
5 our own template pad, and I was suggesting not using the same
6 type of rectangular hollowed ornamentation as used on the
7 Games Workshop pad. The reason for that is actually no reason
8 at all besides my own better-safe-than-sorry mentality.

9 Q Okay. And the template, was it actually ever made?

10 A Yes.

11 Q Did the template have notches ornamentation on the back of
12 it?

13 A I think so. It was a while ago. I actually held one in
14 my hands, but I am fairly certain that it does. However, we
15 made it in the significantly different size and also shape,
16 just to differentiate it even more from a Games Workshop plain
17 shoulder pad, and again the reason for that, as far as I know
18 back then, was simply better safe than sorry. Doesn't hurt
19 to.

20 Q Okay. Can you turn to Plaintiff's Exhibit 202. It's
21 labeled TF958 through 961, an email from Mr. Villacci to you
22 dated November 26, 2009.

23 A Yeah, I see it.

24 Q Page 3, first paragraph, my question, the first sentence
25 you write: "Hey, dude, was thinking about the FT pads being

Fiertek - deposition

1 illegal since they do 2D to 3D." Do you see that sentence?

2 A Yes.

3 Q "FT pads", what does that mean?

4 A I think it stands for a term called Flesh Tearers.

5 Q What are Flesh Tearers?

6 A That is a chapter created by Games Workshop.

7 Q A chapter for Space Marines again?

8 A Yes, a name and -- yeah, a name given a chapter by Games
9 Workshop.

10 Q What did you think was illegal about going 2D to 3D?

11 A Nothing. Again, was a discussion, a design discussion,
12 and as always, me being overly cautious, asking for feedback
13 and reminding Mr. Villacci about evidence stuff that he
14 apparently already knows about, but I was basically making
15 inquires about if we make a round shape -- which this is
16 about, a round shape -- is there any illegality, illegal
17 differences making the round shape etched into a surface or
18 raising it slightly as a thin pancake? Because this 2D versus
19 3D.

20 Q So a picture of an icon would be 2D, right?

21 A Yes.

22 Q And an actual sculpted three-dimensional of the same icon
23 would be 3D?

24 A Technically yes, but I mean you could sculpt so very thin
25 that it -- it's basically flat and 2D anyways, so very thin

Fiertek - deposition

1 that it -- it's basically flat and 2D anyway, so --

2 Q Let's move on to Plaintiff's Exhibit 203, which is TF1035
3 through 1037. It's an email from you to Mr. Villacci dated
4 January 30th, 2010.

5 First page, fifth paragraph. Sure, let's talk
6 specifically on five paragraphs down, it starts: "1 PH
7 segment pad with studs. Looks good like a proper old pad
8 should and not the 3 segmented thing we sell now." Do you see
9 that?

10 A Yes.

11 Q What does "PH" stand for?

12 A Pre -- think it stands for pre-Heresy.

13 Q What is pre-Heresy?

14 A Meanings its visual theme is made to look more old and
15 primitive rather than the today -- rather than what Games
16 Workshop sells.

17 Q Is there something in the Games Workshop universe called
18 the Heresy?

19 A Yes.

20 Q And is there Games Workshop materials that describe the
21 theme and look of things that are things pre-Heresy?

22 A Yes, I would say yes.

23 Q Okay. Is this a shoulder pad that's supposed to fit with
24 that theme and style in Games Workshop's pre-Heresy materials?

25 A I think so, yes. It's meant to be fitting in that theme

Fiertek - deposition

1 rather than newer other themes, yes.

2 Q The paragraph underneath starts, "didn't mean to." Is
3 that your words?

4 A I do not remember. I don't know.

5 Q "Good news is if the pad sells well, this -- will sell
6 better since it's a 'copy' of the HH art PH pad which the
7 current one isn't." Do you see that?

8 A Yeah.

9 Those are my words, yes.

10 Q "HH art", is that the Horus Heresy art book we talked
11 about earlier?

12 A Yes.

13 Q And the "PH pad", that's pre-Heresy?

14 A The meaning of this email is -- it's internal humor for
15 me. Mr. Villacci made himself, I think, or had someone make a
16 shoulder pad based on -- I would say that was to a degree
17 based on Heresy theme, and it was put up for sale, and I
18 thought it looked hideous, and I wanted to -- already made by
19 then I don't know, but I wanted to and eventually made a
20 better version of it, because Mr. Villacci's not a sculptor.
21 So by "'copy' of the HH art", by that I mean it's more
22 similar, it looks sharper, it looks actually like something
23 made by a sculptor than the current one, and it was meant as a
24 friendly insult on my part towards Mr. Villacci.

25 Q Okay. You can put that to the side. Let's skip to

Fiertek - deposition

1 Plaintiff's Exhibit 204. It's labeled T F5711 through 5714.
2 It's an email from you to Chapterhouse Studios sales dated
3 February 13th, 2010.

4 First page, second email, first paragraph, you state:
5 "Ask about the PH touch on the pads if he okay with it, reason
6 I suggested it is for legal purposes, dunno how else to
7 different the pad from GW's art. If you or he want me to do a
8 plain ex pad then let me know exactly what alteration I'm to
9 make in order to make them legal." Do you see that?

10 A Yes.

11 Q What product are you referring to in this email?

12 A Well, a shoulder pad that we called an Exorcist.

13 Q For what? What's an Exorcist?

14 A I'm not sure if I remember correctly, but I think it's a
15 word that Games Workshop used to describe one of the chapters
16 in the universe.

17 Q What were you trying to express with this email?

18 A Okay. My usual cautiousness and concern directed towards
19 Mr. Villacci. He or someone else, I don't remember who,
20 wanted me to sculpt a special shoulder pad that would fit with
21 a certain theme, and the theme was a human skull with horns
22 pointing downwards, as in like goat horns. And I was
23 concerned again, as in the cog example: hey, if I sculpt a
24 skull with horns and someone else has or uses or pictures a
25 skull with horns, which is very common, is it okay? And what

Fiertek - deposition

1 alterations, if necessary, need I make? Do I need to add
2 something or retract something? And this was also, I think,
3 bounced back and forth with legal counsel, so the result of it
4 I could not reveal, but it's -- the discussion here is just me
5 being better safe than sorry-ish as usual.

6 Q Okay. Let's go to Plaintiff's Exhibit 207, Bates labeled
7 TF3713 through 3715. It's an email from you to Mr. Villacci
8 dated February 19th, 2010.

9 In the Warhammer 40K universe, does a Carnifex have a
10 particular meaning?

11 A Within the 40K context, yes.

12 Q What is that meaning?

13 A It's a word used by Games Workshop to -- not invented,
14 used to describe or name a monster creature in their
15 background, in their universe.

16 Q And what is a Tervigon?

17 A The same. It's a Games Workshop name for a creature in
18 the universe of 40K.

19 Q And does Chapterhouse release a Tervigon conversion kit
20 for Carnifex Games Workshop model?

21 A Yes.

22 Q Okay. Is it correct that your idea was to basically do
23 the codex art?

24 A Hum. Well, not as the question is phrased, no.

25 Q Does the codex -- does the Tyranid codex have a picture of

Fiertek - deposition

1 a Tervigon?

2 A Yes.

3 Q And when you say "to do the codex art," is that the
4 picture you were referring to?

5 A Yes.

6 Q Okay. Let's go to Plaintiff's Exhibit 210, TF 1064
7 through 1070. And it's an email from Mr. Fiertek,
8 Mr. Villacci dated February 13th, 2010.

9 Page 1 on the top. Did you sculpt a jump pack for
10 Chapterhouse?

11 A Yes.

12 Q And for that jump pack, did you refer to the pictures of
13 jump packs in the Horus Heresy art books?

14 A Define "refer to".

15 Q Did you use them in developing the concept of what you
16 were going to sculpt?

17 A I used them as part of the inspiration for the sculpt.

18 Q Would you characterize the jump packs in the Games
19 Workshop Horus Heresy book as a "bulky barrel jump pack"?

20 A Yes, since that was part of the theme.

21 Q And did you then sculpt a bulky barrel jump pack?

22 A Yes.

23 Q Page 1, third and fourth paragraph.

24 And you state here: "I just made a slight alteration
25 at the back nozzle, making it look like a real jet engine

Fiertek - deposition

1 instead of loose jet plumes." Do you see that?

2 A First page?

3 Q It's the second to last sentence in your email on the
4 first page.

5 A Yeah, I see.

6 Q What did you mean when you said there was a slight
7 alteration? A slight alteration from what?

8 A In the art book you could see one end of an object, not
9 the back side of it, but one small part of the whole picture.
10 One detail just doesn't make sense. It's there, I guess,
11 because the artist who drew the picture just put something in
12 it with no logical use. So when I sculpted my version, my --
13 my version of my -- what I understood to be a bulky-looking
14 jump pack, I took that silly detail and sculpted it into
15 something making sense. I looked at real-life jet engines,
16 and they have air brakes, so that's what I refer to a "slight
17 alteration". That is a slight alteration from the point of
18 the whole thing, but detail-wise it's like day and night. I
19 took a tiny meaningless feature in the art and turned it into
20 something really like usable.

21 Q Sure. So the Horus Heresy art book had a bulky barrel
22 jump pack, and you are creating a sculpt for a bulky barrel
23 jump pack, and you refer to a "slight alteration" you made at
24 the back nozzle. My question is: a slight alteration with
25 respect to what? To the picture in the book or to something

Fiertek - deposition

1 else?

2 A To -- hm. Well, I -- as I kind of already said, I took a
3 picture showing something from the front side. I made a hole
4 out of it, made up the back side, I took a detail as seen in
5 the picture and from being completely pointless, I remade it
6 into -- by using as little change as possible, I remade it
7 using Google picture -- after Google picturing jet engines, I
8 remade it into something that resembles a logical object in
9 real life. I don't know how to answer it any other way.

10 Q Okay. Have you ever cast -- taken Games Workshop pieces
11 or bits and cast molds of them to create additional pieces?

12 A You mean multiplying one or several pieces into more of
13 the exact same?

14 Q Yeah, taking a Games Workshop product and making copies of
15 it?

16 A Yes, I have.

17 Q What products have you done that for?

18 A I don't remember. I know I did it for my personal use for
19 my personal collection years ago, something that is even
20 encouraged on Games Workshop's website, so I don't see the
21 relevance, but I have done so, yes.

22 Q Have you ever done so to sell to others?

23 A No. If you refer to the copies that I copied myself.

24 Q Okay. You stated that you didn't think people
25 knowledgeable about the hobby would confuse Chapterhouse

Fiertek - deposition

1 products with Games Workshop products. Why is that, do you
2 believe?

3 A Because I think that people having a certain thing as a
4 hobby are well versed with the said hobby. Take me, for
5 example. I don't know anything about cars. I see a Volvo on
6 the street and a Saab right next to it and I -- I don't know
7 anything. Whereas a mechanic or a race car fanatic, he will
8 tell you the brand and year and shape of anything just based
9 on a silhouette. It seems logical. I based it on my own
10 logic and my own assumptions, how I see my own hobby and other
11 hobbies I had through life. What interests people, people
12 know about and are good at.

13 Q Are there any distinguishing characteristics you could
14 point to that would help someone distinguish Games Workshop
15 products from Chapterhouse products? For example, size,
16 quality, material? Anything you could say -- or theme?

17 A This is based on my personal opinion. Quite a wide range
18 of items that differ in both size and quality and themes. I
19 would honestly say that would be hard to point out because the
20 fact that Chapterhouse items and Games Workshop items share
21 the same themes. I mean, dragon head one, dragon head two --
22 what are the -- there are differentiating things, as the
23 dragon head I made is in 3D. The dragon head Forge World
24 made, because I'm not aware of Games Workshop making one, is
25 made in 2D. People in the hobby ought to know, and I'm not

Fiertek - deposition

1 stating facts, I'm just guessing based on common sense and
2 logic.

3 MR. KEENER: That's the end of the first transcript.

4 THE COURT: Okay. So now we're going to go on to a
5 later deposition of Mr. Fiertek, same witness, in other words.

6 TOMAS FIERTEK, PLAINTIFF'S WITNESS, THROUGH DEPOSITION

7 Q Can you state your full name for the record?

8 A Tomas Fiertek.

9 Q And, Mr. Fiertek, you were deposed previous in this case,
10 correct?

11 A Correct.

12 Q Do you understand that Chapterhouse sells five different
13 Heresy-Era Shoulder Pads for Terminators?

14 A As I recall, they sell four or five. I -- I cannot recall
15 the exact number, though.

16 Q Do you know if you were involved with each of the -- the
17 design and development of each of those?

18 A Yes, I was.

19 Q When you were designing these Heresy-Era Shoulder Pads for
20 Terminators, what references, if any, did you use?

21 A I used Goggle searches. I used a series of art books that
22 I do not recall the names of, although they are lying on the
23 table right next to me -- but I'm sure if I'm allowed to take
24 a peek -- but I'm not sure if I'm allowed to take a peek --
25 which is kind of funny. But one of the reasons for my memory

Fiertek - deposition

1 of those products being started earlier than the dates stated
2 is that the process of idea gathering was pretty long and held
3 up the project for quite some time.

4 Q Beyond the Goggle Image searches and the art books, do you
5 recall any other references you used in creating any -- any of
6 the Heresy-Era Shoulder Pads for Terminators?

7 A Yes.

8 Q What else do you recall?

9 A There is this -- there is this thing, a certain hobby
10 of -- that many of my friends are doing. I think in English
11 it's called real-life reenactment. I don't do that myself.
12 However, since many of my friends do, it's inevitable that I
13 am dragged along and see. And they create their own equipment
14 for these reenactment games or whatever you call them. And
15 the Goggle searches were -- actually, part of the Google
16 picture searches actually were directed at such reenactment
17 groups, not -- not the ones my friends participate in. But in
18 real-life world, not -- not Google searches, I have taken
19 quite -- well, I have taken expression and seen what people
20 create in the -- in the form of armor and clothing and
21 equipment used for fantasy reenactment gaming. So now that
22 you mention it, I kind of came to think about that.

23 Q Any other sources you can think of?

24 A No, not now.

25 Q All right. The first one you mentioned were Google Image

Fiertek - deposition

1 searches?

2 A Yes.

3 Q Do you recall when you performed those searches?

4 A This is not a single-time event. This happens constantly
5 during the whole design process. I -- I couldn't even tell
6 you what Google results I was given since pictures disappear
7 over time and new -- new ones are added. Thus, the same
8 Google search performed by me today would probably not show
9 the same results as the one performed one or even more years
10 ago. This is an ongoing process. So that's -- that's all I
11 could say about the Google Image searches.

12 Q Do you know how many times you performed Google Image
13 searches in designing and developing this product?

14 A Oh, a lot. I couldn't even start to guess.

15 Q And do you have any memory of what terms you typed into
16 Google to perform these searches?

17 A No. This would be a question of assumption again. As in,
18 if you present me with a computer, I would -- I would
19 experiment -- experiment myself towards getting the best
20 results I -- I can think of. This is -- this is how I do --
21 how I do every time I Google search. Just because you type in
22 a certain word doesn't mean you're given the best images.

23 Q All right. But sitting here today, you can't remember the
24 exact phrases you used?

25 A Not all of them. I could -- I could take a qualified

Fiertek - deposition

1 guess at a -- at a few.

2 Q I don't want you to guess. Can you remember what searches
3 you used?

4 A No.

5 Q And I believe, as you said, even if you could remember the
6 searches, it's very likely what results we get today is
7 different than what results you would have gotten back when
8 you were designing these products, correct?

9 A Well, very likely? I -- I don't know if it's very likely.
10 It's, however, the logical assumption that a Google search
11 performed today during -- using the same phrase as one
12 performed one year ago would most probably not produce the
13 same results due to previously mentioned reasons.

14 Q Did you retain copies of any of the images that you found
15 on the Google search that you used as a reference in designing
16 these products?

17 A I do not remember that.

18 Q Have you looked to see if you retained any copies of any
19 of the Google images you found and used as a reference in
20 designing these works?

21 A I don't understand the question.

22 Q You said you don't recall whether you retained any of the
23 images you found on Google Image. My question is: Have you
24 looked for them to see if you retained them?

25 A Yes.

Fiertek - deposition

1 Q And did you find any?

2 A I don't remember that.

3 Q I just want to know what you physically -- what you
4 yourself did. So if you can answer what you did search for, I
5 think that would be appropriate?

6 A Well, I searched for everything related to these products
7 that I happened to save on my hard drive. I do not recall if
8 I found -- and if I found anything. What I was trying to say
9 previously is, if I did, those things were presented to my
10 counselor. And I don't remember what I found. It's -- it's
11 all -- it's all accounted for.

12 Q How did your search -- how did you search your computer
13 for images?

14 A I went through each and every folder containing pictures
15 on my drive, as well as my emails, to see if pictures were
16 sent to other people or received.

17 Q Do you have any recollection if you at any point deleted
18 any images of these Google search results that you had found?

19 A I know I did delete pictures on my hard drive. I cannot
20 recall to what items those pictures were related to, nor when
21 I did that.

22 Q What makes you believe that you deleted pictures from your
23 hard drive?

24 A In the beginning, before -- before this lawsuit, I had no
25 reason to save everything on my drive. I -- deletion of

Fiertek - deposition

1 unwanted -- unwanted pictures and everything was just a normal
2 part of how I handle my computer. Thus, it is also a logical
3 assumption that some of those things just had to be deleted.

4 Q And how about after this lawsuit started, have you deleted
5 any pictures from your computer?

6 A No.

7 Q Now, if you found an image on Google's Image search that
8 you used as a reference for creating the Heresy-Era Shoulder
9 Pads for Terminators, why didn't you save a copy of those
10 pictures?

11 A This is not the way I work. I rarely if -- I'm an artist.
12 I do not -- I do not have a picture of something in front of
13 me while I work. I look at many things, form an idea in my
14 head, and then I work based on that.

15 Q Do you have an understanding that Games Workshop has asked
16 Chapterhouse and its designers to identify specifically any
17 references they used in the design and development of the
18 products at issue?

19 A Yes.

20 Q Is it also your understanding that Games Workshop has
21 asked Chapterhouse for copies of any references they used in
22 the design and development of the products at issue?

23 A Yes. I -- I really don't know how to -- what to answer to
24 that. I did not delete -- after the legal cases started, I
25 did not delete pictures from my hard drive. So -- sorry. The

Fiertek - deposition

1 question again? I -- could you restate the question?

2 Q You stated you understood that Games Workshop was asking
3 for specific identification of any references used to create
4 these products and copies of those references?

5 A Yes.

6 Q Now -- my question now is: Did you make any attempt to
7 write down exactly what references you used as you were
8 designing these Heresy-Era Shoulder Pads for Terminators?

9 A Not as I recall, no.

10 Q Did you make any effort to save copies of the references
11 you found on Google Image searches that you used in the design
12 and development of the Heresy-Era Shoulder Pads for
13 Terminators?

14 A Not that I recall, no.

15 Q Were you ever under the impression that you had a duty to
16 write down and preserve this information?

17 A No.

18 Q Were you ever under the impression that you had a duty to
19 save copies of these images you used as resources in designing
20 and developing these products?

21 A No.

22 Q The next category you mentioned that you used as a
23 resource in design and developing the Heresy-Era Shoulder Pads
24 for Terminators was various art books?

25 A Yes.

Fiertek - deposition

1 Q Do you recall that? What art books are you referring to?

2 A I have four art books.

3 Q Did you bring those today?

4 A Yes. I bring -- I did.

5 Q And if you need to refer to them, please feel free. Could
6 you identify the titles of the art books you are referring to?

7 A Yes. They are called the Horus Heresy Vision -- Visions
8 books.

9 Q Beyond the four Horus Heresy Vision books you identified,
10 did you use any other art books as references in the design
11 and development of the Heresy-Era Shoulder Pads for
12 Terminators?

13 A Not physi -- not physical books, no.

14 Q What do you mean by that answer?

15 A Well, amongst Google picture searches are -- let's see the
16 English word for that -- pictures of pages taken from
17 historical armor books. It's like a page or several
18 electronically viewable online of -- of a -- of a physical
19 book. I do not have the physical book. But, thus -- thus the
20 question was a little tricky for me to answer.

21 Q And about how long do you think it would take you to flip
22 through these four books and identify the pictures you used as
23 references?

24 A I don't know. It depends. I might get lucky, or I might
25 look for a longer time.

Fiertek - deposition

1 Q Please do so.

2 A Found one example. Book 3, Visions of Treachery.

3 Q Plaintiff's Exhibit 605. And which page?

4 A 28.

5 Q And which picture on page 28 did you use as a reference?

6 A It's not the picture. It's the idea of having overlapping
7 pieces of armor covering the shoulders.

8 Q And is that depicted in one of the pictures on page 28?

9 A Yes.

10 Q If you could continue looking for any other pictures that
11 you used as a references in that book?

12 A Sure. There is one on page 18.

13 Q And which picture on page 18 did you use as a reference?

14 A The bottom picture.

15 Q And what does that picture depict?

16 A A similar -- a similar form of armor usage. But this --
17 again, it's not the picture. It's the idea of having two
18 instead of three overlapping pieces of armor.

19 Q Any other pictures in that book?

20 A Let me see. Page 52.

21 Q And which image on page 52 did you use as a reference in
22 creating the Heresy-Era Shoulder Pads for Terminators?

23 A Again, not the picture. The idea of a style of armor
24 consisting of two, not three, overlapping pieces of armor.

25 Q And is there more than one on page 52?

Fiertek - deposition

1 A There are two pictures. I'm referring to the bottom
2 picture.

3 Q Any other pictures in that book you used as a reference in
4 designing these products?

5 A I do not know. I would have to keep looking.

6 Q Please do so.

7 A Sure. Page 17.

8 Q And how many pictures on page 17?

9 A Four in total.

10 Q And which pictures on page 17 did you use as a reference
11 in designing the Heresy-Era Shoulder Pads for Terminators?

12 A The lower left picture is used as inspirator for, well,
13 Roman leather armor straps.

14 Q Of which book are you looking at now?

15 A First one. It's called Visions of War.

16 Q Plaintiff's Exhibit 603.

17 And which pictures, if any, on page 53 of that book
18 did you use as reference in creating any one of the Heresy-Era
19 Shoulder Pads for Terminators?

20 A The top left picture has, again, an idea of using two, not
21 three, overlapping armor plates.

22 Q Yes. Please look through book 2 of the Horus Heresy
23 Vision series, Plaintiff's Exhibit 604, and tell me if there's
24 any pictures in that book you used as a reference in designing
25 and developing any of the Heresy-Era Shoulder Pads for

Fiertek - deposition

1 Terminators.

2 A Sure. Page 34.

3 Q And how many pictures on page 34?

4 A Two.

5 Q And which picture on page 34 of book 2, if any, did you
6 use as a reference in design and development for the
7 shoulder -- Heresy-Era Shoulder Pads for Terminators?

8 A The bottom picture is used, the idea that two overlapping
9 armor plates don't have to be misaligned.

10 Q What do you mean they don't have to be misaligned?

11 A Well, from a certain angle, you don't have to see actually
12 that there are two overlapping. It's a concept I was toying
13 with.

14 Q Mr. Fiertek, we've gone through the various Horus Heresy
15 Vision books you have. And you have identified several
16 pictures that you say you've used as a reference somehow in
17 creating the Heresy-Era Shoulder Pads for Terminators; is that
18 right?

19 A I used them as one of several inspiration sources.

20 Q So it would be -- it would be more accurate to say the
21 four Horus Heresy Vision books you brought today are the ones
22 you referenced?

23 A Well, they -- they were -- they were used as one source of
24 inspiration, yes.

25 Q What about relative size, the size of the shoulder pads in

Fiertek - deposition

1 relation to the rest of the individual?

2 A I think you could use pictures to -- to point to
3 relevant -- relative size. This is nothing that I do, though.
4 As far as I remember, I don't use pictures for sizing, no.

5 Q For example, would you agree that the picture you
6 identified in Visions books show oversized shoulder pads?

7 A That is a matter of opinion. Oversized for what?

8 Q By "oversized", I mean larger than would typically be used
9 in real life.

10 A I cannot answer that one. We are speaking about fantasy
11 and sci-fi universe and settings. There is nothing real life.
12 If -- it's a theme thing. If everybody down the street are
13 wearing yellow pants, then isn't the guy wearing green pants
14 oversized or out of -- I don't know how to answer that one. I
15 would say "no."

16 Q Okay. So did you use any of the images you identified in
17 the Visions books to -- as a reference for the relative size
18 of the shoulder pad in relation to the rest of the model?

19 A Not that I remember now.

20 Q As you sit here today, are you able to identify which open
21 art communities you looked at?

22 A Yes.

23 Q Which ones did you look at?

24 A The only one I remember the name of is DeviantArt.com.

25 Q And do you know which specific pictures in Deviant Art you

Fiertek - deposition

1 looked at as references?

2 A No.

3 Q Did you make any attempt to write down which pictures you
4 looked at on Deviant Art?

5 A When it comes to -- when it comes to Deviant Art, I -- I
6 don't remember.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q. Did you make any attempt to save the pictures you looked
2 at -- at Deviant Art that you used as references?

3 A. I don't remember that either.

4 Q. Can we have that marked as Plaintiff's Exhibit 585?
5 It's an eight-page document. Page 4 -- and where do you
6 recognize the pictures on Page 4 from?

7 A. Well, it says on the paper they are from Deviant Art.
8 If that wasn't written on the paper, I don't think I would
9 remember them being Deviant Art findings. But I do recognize
10 the picture.

11 Q. Do you know if these pictures were created before or
12 after you created the product at issue, the Heresy Era
13 shoulder pads for terminators?

14 A. I don't remember.

15 Q. Other than recognizing the picture, that you've seen it
16 before, do you -- do you have knowledge one way or the other
17 whether or not you used these exact pictures in designing the
18 Heresy Era shoulder pads at issue?

19 A. No. I don't remember when I -- I don't remember when I
20 saw them. I just remember seeing them.

21 Q. But as you sit here today, you have no basis for
22 believing you used these in developing the Heresy Era
23 shoulder pads, do you?

24 A. Well, as I said, I don't remember. I don't remember
25 when I saw this -- or these two pictures. That's all I could

1 say. And now, when Deviant Art is mentioned on this very
2 page, I -- it rings a bell. I connect them with Deviant Art,
3 but that's -- that's all. So it could be either one, I
4 guess.

5 Q. Okay. Are you able right now to identify in any way the
6 pictures from Deviant Art that you used as references in
7 creating the Heresy Era shoulder pads for terminators?

8 A. I could maybe answer that question if I actually had a
9 computer and Googled Deviant Art. But right on top of my
10 memory I -- I treated Deviant Art the same way I treated
11 Google searches pretty much, and I don't -- I don't remember
12 specifics. It's just another search.

13 Q. Do you remember anything about the images you saw on
14 Deviant Art that would help you identify which ones you used
15 in designing the Heresy Era shoulder pads?

16 A. Well, if -- if -- if I'm shown the pictures, I might
17 have. I might remember if I used any of those. But if not,
18 then I don't remember.

19 Q. And let's mark this as Plaintiff's Exhibit 1021. And I
20 understand there aren't any page numbers on this document,
21 but the products do go numerical order on the left-hand side.

22 Going to Page 35, if you turn to about the middle,
23 there should be an entry for 137. If you could find that and
24 let me know when you're there.

25 A. Okay. And -- sorry.

1 Q. And do you see in the -- do you see that -- would you
2 characterize it as having bronze banding around the shoulder
3 pads?

4 A. Yes.

5 Q. And on the bottom right-hand corner of the banding, what
6 would you characterize that to be?

7 A. A little tip of an arrow or spike or --

8 Q. And looking back at Plaintiff's Exhibit 586, Page 6,
9 second to last paragraph, is this what you meant when you
10 said, in the corners they all have arrow points as
11 ornamentation?

12 A. I would say so. Yes.

13 Q. Plaintiff's Exhibit 1021 at Page 35.

14 And hanging down from the shoulder pads, are those
15 the leather straps we've been discussing?

16 A. Well, those are leather straps. I don't know if they
17 are those we were discussing, but they're obviously leather
18 straps.

19 Q. But they are leather straps?

20 A. Yes.

21 Q. If you would turn to the next page, on the right-hand
22 side there's a picture there.

23 A. Sure.

24 Q. Do you know if you used this picture in any way for the
25 design of the Heresy Era shoulder pads for Terminator Type E?

1 A. I don't recall. It was a long time ago.

2 Q. Would you agree that both the picture and your product
3 show shoulder pads with overlapping armor?

4 A. Yes.

5 Q. Would you agree that they both appear to have bronze
6 banding around the shoulder pads?

7 A. Yes.

8 Q. Would you agree that they both appear to have leather
9 straps hanging down?

10 A. Yes.

11 Q. Would you agree that the shape on the top piece of the
12 shoulder pad is a similar shape?

13 A. Well, define similar.

14 Q. Do you see how theirs, it appears to be a cut-out in the
15 bottom right of the piece of the shoulder pad, the top layer?

16 A. Well, the overall imagery is similar but the angles are
17 not. So, I mean --

18 Q. Would you agree they both have the same cut-out?

19 A. Yes. Oh, similar, yeah. It's not the same.

20 Q. Now Pages 35 and 36 on the screen.

21 If you turn to the next page, on the right-hand
22 side there's another picture from Page 274 of the Horus
23 Heresy Collected Visions. Do you see that picture?

24 A. Yes.

25 Q. And this is one of the pictures you identified earlier

1 today that you used as a reference in creating the product,
2 right?

3 A. I don't think so. Not that I identified today.

4 Q. Okay. Do you believe you used this picture at all in
5 any way in the design of the product?

6 MR. ALY: Your Honor -- we have an objection, your
7 Honor. We could have either a quick sidebar or I can just
8 speak from here.

9 THE COURT: Okay. Let's do a sidebar.

10 (Proceedings had at sidebar:)

11 THE COURT: I thought you guys had sorted out the
12 --

13 MR. ALY: We did, your Honor. We did the
14 transcript, but on the screen they flashed up the image that
15 was shown to the witness, which was a page from a book, but
16 also next to it a product from the claim chart. And that
17 product was not shown in front of the witness at the time of
18 the deposition. So that comparison that's being made now --

19 MR. KEENER: Yes, it was. The product --

20 MR. ALY: I know -- it is in the claim chart but
21 the witness did not have the claim chart.

22 MR. KEENER: The witness had the whole claim chart.

23 MR. ALY: Not when the question was asked.

24 THE COURT: Okay. Does somebody have the
25 deposition? Can you show me the deposition, how I know this?

1 MR. ALY: Yes, your Honor.

2 (Brief pause.)

3 THE COURT: So what page are we at at the moment in
4 the deposition?

5 MR. ALY: We are now at about 82.

6 MR. KEENER: They had the entire claim chart --

7 THE COURT: Okay. Here's the question -- because
8 this is supposed to be essentially a duplicate of the
9 deposition -- at the deposition, when he was asked this
10 question, did he have the claim chart in front of him right
11 then?

12 MR. KEENER: Yes and no. He had the entire claim
13 chart, but from that point to this point --

14 THE COURT: You don't know -- you can't say if he
15 had it in front of him at the moment, though, right?

16 MR. KEENER: Yes --

17 THE COURT: At the moment he was asked the
18 question? In other words, in the deposition, when he was
19 sitting at the deposition, does he --

20 MR. KEENER: When he was sitting at the deposition
21 --

22 THE COURT: When he was asked the question, does he
23 have what you've shown on the screen in front of him at that
24 moment?

25 MR. KEENER: At the deposition he had the full

1 claim chart in front of him. And we already have gone
2 through a number of pages where I said, okay, go to the next
3 page and what we're looking at here, and go to the next page,
4 we're looking at this picture.

5 THE COURT: Yes, I do see references like that.

6 So, look, I don't think that this is terribly
7 harmful, even if it didn't happen exactly this way, but I'm
8 persuaded it happened close enough to this way. The
9 objection is overruled.

10 MR. ALY: Thank you, your Honor.

11 (Further proceedings in open court:)

12 THE COURT: All right. The objection is overruled.

13 You can proceed ahead.

14 BY MR. KEENER:

15 Q. Okay. Do you believe you used this picture at all in
16 any way in the design of the product?

17 A. No.

18 Q. Now, is this one of the pictures you identified
19 previously today?

20 A. Yes.

21 Q. And that was -- as one of the pictures you used in
22 designing, developing the Heresy Era shoulder pads?

23 A. One of the pictures giving me ideas for the design, yes.

24 Q. And would you agree this picture again shows two
25 overlapping pieces of shoulder -- of armor on the shoulder

1 pads?

2 A. Yes.

3 Q. And it shows the leather straps hanging down?

4 A. Yes.

5 Q. And it shows the bronze banding around the armor?

6 A. Yes.

7 Q. And like your design, it has rivets along the bronze
8 banding?

9 A. It has rivets, yes.

10 Q. And again, it has a cut-out in the bottom outside corner
11 of the larger shoulder pad?

12 A. It has a rounded cut-out, yes.

13 Q. Page 37.

14 Now, looking at the next product. It starts 138,
15 the Type D of the Heresy Era shoulder pads. The actual
16 picture is on the next page. Do you see that picture at the
17 bottom?

18 A. Yes.

19 Q. And is that the product you designed?

20 A. Yes.

21 Q. Do you see the picture on the right-hand side that says
22 it's from Page 78 of the Horus Heresy Collected Visions?

23 A. Yes.

24 Q. And is that one of the pictures you identified earlier
25 today as one that you used in designing and developing the

1 products?

2 A. I don't think so.

3 Q. Do you believe you -- have you seen this picture before?

4 A. Yes.

5 Q. And you believe you saw it prior to creating the
6 Chapterhouse Heresy Era shoulder pads?

7 A. Yes.

8 Q. Would you agree that the picture again shows two
9 overlapping pieces of armor?

10 A. Yes.

11 Q. And it has bronze banding around the outside again?

12 A. Yes.

13 Q. And it has rivets in that banding?

14 A. Well, at least on one of the bands, not the other. But,
15 yes.

16 Q. And it has leather straps hanging down?

17 A. Yes.

18 Q. And it again has a cut-out in the lower outside portion
19 of the larger piece of the shoulder pad?

20 A. Yes.

21 Q. Okay. So you used either this picture or one very
22 similar to it in designing Heresy Era shoulder pads for Type
23 -- Terminators Type D?

24 A. As an inspiration and idea help, yes.

25 Q. And those ideas would be some of the ones we talked

1 about, such as two overlapping pieces of armor?

2 A. That would be one of the ideas, yes.

3 Q. And the bronze banding?

4 A. I don't know that.

5 Q. Did you use it for the idea of rivets in the bronze
6 banding?

7 MR. KEENER: Your Honor, here's where we have --

8 THE COURT: Okay. So you're going to reask that
9 question in a second. So I need to tell you something about
10 what you're about to hear so that it makes sense to you.

11 So you're going to hear the response that
12 Mr. Fiertek gave in a deposition, and then a later different
13 response that he gave in what's called an errata sheet, and
14 I'm going to explain what that is.

15 So after the deposition is completed a transcript
16 is prepared. Mr. Fiertek reviewed his testimony after the
17 conclusion of the deposition and, as permitted by law,
18 30 days after the deposition he provided a sworn statement --
19 that's what I referred to as an errata sheet -- correcting
20 and clarifying certain answers. But neither party had the
21 opportunity to question Mr. Fiertek on the record about the
22 clarifications and corrections that he made. So you're going
23 to hear question, answer, and then the corrected or changed
24 answer.

25 So, go ahead. Why don't you go back to the

1 question, Mr. Keener, so the jurors have it in mind.

2 BY MR. KEENER:

3 Q. Did you use it for the idea of rivets in the bronze
4 banding?

5 What was the answer at the deposition?

6 A. I actually don't remember where the idea for bronze
7 banding came from in the first place.

8 Q. What was the sworn clarification?

9 A. I first got the idea for banding from the AD2000 comic
10 book series called ABC Warriors.

11 Q. Did you use it for the idea of leather straps hanging
12 down from the shoulder pad?

13 A. I think so.

14 Q. Did you use it for the idea of the cut-out in the lower
15 outside portion of the bigger shoulder pad?

16 A. Yes.

17 Q. Did you use it for the overall shape of the two pieces
18 of the shoulder pad?

19 A. No.

20 Q. What other idea did you use it for?

21 A. To incorporate a style or theme that is, according to my
22 belief, at least back then, ancient Roman in -- in its
23 origins.

24 Q. And you haven't collected or identified any pictures of
25 ancient Roman or otherwise shoulder pads that you used in

1 developing this product, did you?

2 A. I don't remember if I ever saved or actively saved
3 pictures originating in internet searches. I don't remember
4 that.

5 Q. Do you believe that you saw any ancient Roman shoulder
6 pads that were two large overlapping pieces of armor with a
7 cut-out in the upper portion and the banding around the
8 sides?

9 What was the answer at the deposition?

10 A. No.

11 Q. What was the sworn clarification?

12 A. I saw ancient Roman shoulder pads that were two large
13 overlapping pieces of armor with a cut-out in the upper
14 portion and the banding around the sides from a Spartacus TV
15 show that I watched.

16 Q. What about the two large overlapping pieces with leather
17 straps hanging down?

18 A. That I don't remember.

19 Q. Page 38.

20 If you look at the next product, it's product 139,
21 the picture of the chopped off part is on the next page.

22 This is the Heresy Era shoulder pad for Terminators Type B.

23 Do you see it?

24 A. Yeah, 139.

25 Q. Is that a product you design -- is that a product you

1 designed?

2 A. Yes.

3 Q. And would this be another shoulder pad design you
4 created that are two large overlapping pieces of armor?

5 A. Yes.

6 Q. With bronze banding around them?

7 A. Yes.

8 Q. With rivets in the banding?

9 A. Unless half of the rivets are missing -- I just see it
10 now -- then yes.

11 Q. With leather straps hanging down?

12 A. Yes.

13 Q. With a curved cut-out in the bottom outside portion of
14 the larger piece of armor?

15 A. Yes.

16 Q. Now, on the right-hand side do you see two pictures
17 there that show they're from Page 103 and 268 of the Horus
18 Heresy Collected Visions?

19 A. Yes.

20 Q. And the picture on the left, is that one you identified
21 earlier today?

22 A. Not that I know of.

23 Q. Do you know if you have seen that picture before?

24 A. Yes.

25 Q. And did you see that picture prior to designating the

1 Heresy Era shoulder pads for terminators?

2 A. Yes.

3 Q. And the right-hand picture from Page 268 of the Horus
4 Heresy Collected Visions, was that one of the pictures you
5 identified earlier today?

6 A. No.

7 Q. Do you believe you used either of these two pictures in
8 any way in the design of the Heresy Era shoulder pads for
9 terminators?

10 A. No.

11 Q. On the picture to the -- on the right-hand side from
12 Page 268 do you see how there are large studs in the larger
13 piece of the shoulder pad?

14 A. Subject matter. I see small studs, but yes.

15 Q. Have you been able to identify specifically any pictures
16 that you used in developing these products other than the
17 Games Workshop pictures that have these studs on the -- on
18 the shoulder pad armor?

19 A. Yes, but not of that size.

20 Q. The question is, have you been able to identify any
21 specific images other than Games Workshop images that show
22 these types of large studs on the main portion of the
23 shoulder pad?

24 A. Not as I remember right now.

25 Q. So would the source of inspiration for that idea be from

1 the Games Workshop artwork?

2 A. Partly from the Games Workshop theme and genre.

3 Q. As depicted in the artwork?

4 What was the answer at the deposition?

5 A. Amongst other things, yes.

6 Q. What was the sworn clarification?

7 A. Amongst other things, including both fictional and
8 historical pictures that made use of studs on armor.

9 Q. Page 39.

10 On the right-hand page at the bottom, do you see a
11 picture of a miniature labeled Mark 1 Thunder Hammer -- I'm
12 sorry, Mark 1 Thunder Armor?

13 A. Yes.

14 Q. Have you seen a picture of that model before?

15 A. Yes.

16 Q. Have you seen that physical model before?

17 A. No.

18 Q. Have you seen the picture of that model prior to
19 designing the Heresy Era shoulder pads for terminators?

20 A. I don't know.

21 Q. Do you know if you used that picture in any way in
22 designing the Heresy Era shoulder pads for terminators?

23 A. Yes, I know. And I did not do that.

24 Q. Page 40.

25 If you turn to the next page, product 141,

1 identified as Heresy Era shoulder pad for Terminators Type A.

2 Do you see that?

3 A. Yes.

4 Q. Is that a product you designed for Chapterhouse?

5 A. Yes.

6 Q. And does this shoulder pad show a shoulder pad with
7 overlapping armor pieces?

8 A. Yes.

9 Q. With rivets in it?

10 A. Yes.

11 Q. With leather straps hanging down?

12 A. No.

13 Q. What's hanging down?

14 A. Well, my idea was interlocking metal straps for a
15 change.

16 Q. And you believe you have identified a specific image you
17 used in creating this product?

18 A. Yes, I have.

19 Q. Did you provide that image to counsel?

20 A. I provided everything asked of me by counsel. So it's
21 -- should be there somewhere.

22 Q. Can you explain what this image looks like?

23 A. Well, it's a piece of shoulder armor using three --
24 well, possibly four overlapping armor pieces and metal
25 strings hanging down and little rivets thrown in for -- for

1 atmosphere.

2 Q. I'm going to have marked Plaintiff's Exhibit 588. Are
3 these the images you were referring to?

4 A. Well, this particular image was not in my mind, but it's
5 one of them.

6 Q. Are any of the images depicted in Plaintiff's
7 Exhibit 588 the image you were referring to?

8 A. I think so. The first image, I think, is part of
9 several Roman armor images I was looking at. And again, that
10 was quite awhile ago. So I don't remember if this very image
11 is one of them or not. But I think so.

12 Q. And do you believe you were looking at this web page
13 when you were designing the Heresy Era shoulder pads for
14 terminators?

15 A. I have no idea. I -- Google image searches mostly. And
16 what -- what pages those refer to, I actually don't know.
17 But, yeah, that's -- that's all I could say right now.

18 Q. And it's your testimony that the pictures on this blog
19 post were not the ones you looked at, correct?

20 A. It was posted on a blog post afterwards. So, I mean, I
21 was asked to produce examples of Google images or the exact
22 Google images used as help in creating stuff.

23 And as I said before, if I Google something today
24 it's -- possibly it's not going to come up as -- in the same
25 way as if I Googled it a year ago or two years ago.

1 And I know I Googled pictures of Roman -- Roman
2 armor of various types and ages. And that is the only thing
3 I went after when I Googled pictures asked to be as similar
4 or same as possible for those used back then. It's nothing
5 else to it.

6 Q. Okay. So recently you attempted to redo Google image
7 searches -- searches and find images similar to the ones you
8 might have been looking at?

9 A. Correct, similar or the same.

10 Q. And you identified this picture in that process?

11 A. Yes.

12 Q. And you agree now that this picture is not one you
13 looked at because it was posted after your design was
14 finished.

15 Under Item 146, the Iron Hand Nut Power Armor Pad,
16 it says the date designed was April 22nd, 2010, through
17 May 3rd, 2010. Does that refresh your memory at all on the
18 timeframe when you created this product?

19 A. Well, it doesn't actually. All I have is a feeling of
20 long ago.

21 Q. Did you use any images as references in designing this
22 product?

23 A. Yes.

24 Q. What references?

25 A. I remember Googling for cog wheel patterns or pictures

1 of cogs. Well, not pictures, but like computer drawings,
2 because pictures are fuzzy. And I remember that because it
3 was hell on earth to finding something that I liked. That's
4 all I remember regarding this item.

5 Q. Right. And the question is, other than the Google
6 searching you did, can you -- did you use anything else in
7 designing this product?

8 A. Not as I remember.

9 Q. Let's have marked Plaintiff's Exhibit 589. It's Bates
10 labeled Chapterhouse 18562 through 63.

11 And at the top of this it appears to be an e-mail
12 from you to Mr. Villacci dated May 24th, 2011. Do you see
13 that?

14 A. Yes.

15 Q. And you start out, need to know how to proceed. Which
16 one looks better, A or B?

17 Do you see that?

18 A. Yeah.

19 Q. Were you referring to pictures labeled A and B on the
20 next page?

21 A. I think so. Not 100 on that one, but I think so.

22 Q. Page 2.

23 And the difference between A and B on the next page
24 appears to be that, on the bottom of the shoulder pad,
25 picture A is straight and picture B has an arch in it. Is

1 that correct?

2 A. Well, that seems to be correct. Yes.

3 Q. And that appears to be the only difference, correct?

4 A. Yes.

5 Q. And do you know whether Games Workshop's Space Marine
6 shoulder pads are straight on the bottom or do they have an
7 arch?

8 A. I -- about that arch thing, I don't know. I think that
9 there are some that are not straight at the bottom, but
10 that's just -- that's just what I think. I do not --

11 Q. Are you familiar --

12 A. I do not recall --

13 Q. Go ahead.

14 A. I do not recall seeing one with an arched bottom. I
15 can't remember seeing that.

16 Q. The ones you do recall have a straight bottom?

17 A. Yes. I'm, however, uncertain if I have ever seen one
18 that is not a straight bottom. Possibly. But right now I
19 only recall straight bottom.

20 Q. Do you know which design choice was chosen?

21 A. I think A.

22 Q. The straight bottom?

23 A. Yes.

24 Q. Back to Page 1, the bottom e-mail.

25 Looking back to the e-mail on the first page,

1 there's another e-mail on the bottom from you to Mr. Villacci
2 dated May 22nd, 2011.

3 Do you see that?

4 A. Yes.

5 Q. The second paragraph top says, here is the original pic
6 from the art book. Do you know what art book he's referring
7 to?

8 A. I think it's -- it's referring to the Heresy art books.

9 Q. One of the ones -- go ahead.

10 A. I think, yes, one of the ones I previously, well, looked
11 through. I'm not sure, but that's what I think.

12 Q. Yeah. Have you copied -- have you downloaded or
13 otherwise obtained electronic versions of any Games Workshop
14 books without paying for them?

15 A. Yes.

16 Q. Any of the codexes?

17 A. I -- I -- yes. I've downloaded lots of those. But I
18 also have them in physical form in my bookshelf. So you
19 asked me if I downloaded stuff without paying. No.

20 Q. Do you have an electronic copy of any of the Imperial
21 Armor books?

22 A. Yes, I have.

23 Q. What about Volume 9, the Badab War, B-A-D-A-B?

24 A. I think so.

25 Q. Do you know if you have a physical copy of that book?

1 A. I don't know. I have some of those physical but I don't
2 remember which ones.

3 Q. Do you have an electronic copy of the Warhammer Armies:
4 Lizardmen book?

5 A. If -- if you could allow me to go back to one of the
6 first questions --

7 Q. Yes.

8 What was the answer at the deposition?

9 A. About -- about deleting stuff after the law case
10 started. I know that I deleted some of the -- some of the
11 electronic copies. I think I even said that during my last
12 deposition.

13 This is nothing I keep track of or so. Well, I --
14 if asked to, I could recheck my hard drive to give specifics,
15 but --

16 Q. What was the sworn clarification?

17 A. I deleted copies of e-books that were duplicates of
18 files that I already had after the lawsuit started. I have
19 not otherwise deleted e-books or other files since the start
20 of the lawsuit.

21 Q. Do you know which books you deleted?

22 A. No. As I said, I don't keep track on the specifics. I
23 just deleted electronic copies of -- well, pretty much
24 everything I have.

25 Q. So you deleted the current copies of pretty much

1 everything you have after the lawsuit started?

2 What was the answer at the deposition?

3 A. Yes, not everything.

4 Q. What was the sworn clarification?

5 A. I deleted copies of e-books that were duplicates of
6 files that I already had after the lawsuit started. I have
7 not otherwise deleted e-books or other files since the start
8 of the lawsuit.

9 Q. I didn't hear your answer.

10 What was the answer at the deposition?

11 A. Not everything.

12 Q. What was the sworn clarification?

13 A. I deleted copies of e-books that were duplicates of
14 files that I already had after the lawsuit started. I have
15 not otherwise deleted e-books or other files since the start
16 of the lawsuit.

17 Q. But a large portion of electronic copies of Games
18 Workshop materials you deleted after the litigation started?

19 What was the answer at the deposition?

20 A. Yes.

21 Q. What was the sworn clarification?

22 A. I deleted copies of e-books that were duplicates of
23 files that I already had after the lawsuit started. I have
24 not otherwise deleted e-books or other files since the start
25 of the lawsuit.

1 Q. Sure. I listed various Games Workshop books in the
2 prior questions here. In the past month or two have you made
3 any attempt to identify if you have electronic copies of
4 those specific books or physical copies of those specific
5 books?

6 A. No.

7 Q. All right. Let's go to Plaintiff's Exhibit 590, Bates
8 labeled Chapterhouse 30991 through 31002. Page 7. Let's
9 turn back a page to 19, 30997.

10 At the bottom is another e-mail from you to Mr.
11 Villacci dated February 1st, 2010.

12 Do you see that?

13 A. Yes.

14 Q. And the second paragraph starts, regarding pre-Heresy
15 pad series. Stopping there, would that be the Heresy Era
16 shoulder pads for terminators that we discussed already?

17 A. Hmm. This is even older. I actually don't know exactly
18 what pads are referred to here. It might be them. It might
19 be some project that was talked about then that never --
20 never started.

21 Q. Okay. And if we skip a sentence, it goes on: They will
22 be segmented just like the ones in the HH art books with lots
23 of studs on them.

24 Do you see that?

25 A. Yes.

1 Q. And the HH art books, do you mean the Horus Heresy
2 Vision books that you brought with you today?

3 A. Yes.

4 Q. And the segmented ones with lots of studs on them, would
5 those be the shoulder pads with overlapping armor?

6 A. I don't know. This was -- this was a discussion way
7 before I even started that project and --

8 Q. Do you recall?

9 A. As -- as -- as the previous question, I don't know
10 exactly what was discussed there. I mean, we had been
11 brainstorming a bunch of things. And not -- not all things
12 are made. I mean, if you -- if you -- if you read the same
13 paragraph in the middle, that it says something about
14 wolfish. I mean, I never made anything wolfish. As far as
15 I'm concerned, there -- I don't see fur anywhere.

16 Q. Page 6, second paragraph.

17 And your response is: Too tired to draw and take
18 pics right now. Look in the HH art book series. On many
19 pages there are shoulder pads with five segments on them
20 inside the rims. Those are the ones I do in two versions and
21 I also add tiny rivets to the segments.

22 Do you see that?

23 A. Yes.

24 Q. And HH art book series, is that the Horus Heresy Visions
25 books?

1 A. Yes.

2 Q. Are you making reference to many instances in those
3 books where there are shoulder pads with five segments on
4 them?

5 A. Apparently, I'm too tired to draw and take pictures of
6 my drawings and send them to -- send them to him that -- that
7 -- at that time. So I refer to a quick look in the HH art
8 book series to satisfy his curiosity of what ideas I had.
9 And those ideas were apparently segmented armor pieces with
10 studs. So --

11 Q. Well, the idea was five segments?

12 A. We were talking about five segments. And I don't
13 remember how many I did on the pieces that have segments. I
14 do, however, know that numbers have nothing to do with it.
15 Everything is controlled by scale and skill in creating
16 stuff. If I can do five and it looks good, I will do so. If
17 I could do three and it looks good, I will do so. That's --
18 that's -- that part of the process is determined while
19 creating, in other words, the last second without any
20 reference source to it.

21 Q. Mr. Fierstek, the question is: In this response you're
22 telling him, I'm too tired to draw a picture, so instead look
23 at the Horus Heresy Vision pictures which show shoulder pads
24 with five segments inside of a rim with studs, correct?

25 A. Yes.

1 Q. And the idea of what you wanted to create?

2 A. That's -- I don't think that's the intent. That's the
3 idea and theme I wanted to create. If you want to -- if you
4 want to see what I -- what I had in my head, go ahead and
5 check up this and that. I think that's what -- that's what
6 is being meant here.

7 Q. Third paragraph.

8 And the next sentence says, the pads literally
9 scream pre-Heresy. Are those your words?

10 A. I think so.

11 Q. Page 4, fourth paragraph.

12 If you turn back a page to 30995, at the top it
13 looks like an e-mail from you to Mr. Villacci. But, again,
14 it looks like there's some interspersing comments from you
15 and Mr. Villacci in there.

16 What I want you to focus on is -- it looks like the
17 third paragraph down. It starts, I say do two or more IH
18 pads. They need hands in the right position, not reversed,
19 et cetera, and keep it close to the GW basic idea but
20 decorate it with more -- with detail.

21 Do you see that?

22 A. Yes.

23

24

25

Fiertek - deposition

1 Q. When it says IH pads, do you know what that refers to?

2 A. Iron Hands.

3 Q. And does GW refer to Games Wrkshop?

4 A. Yes.

5 Q. When it says the Iron Hand pads need to be in the right
6 position and not reversed, do you know what that means?

7 A. It refers to a -- Iron Hand refers to a theme used by Games
8 Workshop that I think we're discussing to do something using the
9 same theme. And using words like IH is simply quick speak to
10 convey the idea. Otherwise --

11 Q. My question is when you say in the right position, not
12 reversed, what's that referring to?

13 A. I'm not sure. Maybe -- maybe putting a symbol in the middle
14 of a pad. I -- I don't know.

15 Q. Do you think it means the right position being the same
16 position as in Games Wrkshop's logo for the Iron Hands?

17 A. It might be having the thumb in a certain -- I -- I mean,
18 either left or right or having the whole thing centered in the
19 middle of something.

20 Q. Right. But when it says it's the right position, you mean
21 at the same position as Games Wrkshop's?

22 A. I cannot answer that because I don't remember what Games
23 Workshop's position is. Well, I -- I don't --

24 Q. Do you know any -- do you have any idea what else this could
25 be referring to?

Fiertek - deposition

1 **A. Well, I -- I said -- either the position of the thumb or a**
2 **position of the overall whole thing within the frame or maybe --**
3 **I mean, miniatures come with two pads. It might be talking**
4 **about having it either on the left or on the right. And it's --**
5 **again, I don't even know who wrote that little piece.**

6 **Q. Okay. And -- and when it says, "Keep it close to the Games**
7 **Workshop basic idea but decorate it more with more detail," do**
8 **you know what that means?**

9 **A. I think it's about theme -- similar theme. But, apparently,**
10 **still make for variation, not making things too similar, if I**
11 **could use that word.**

12 **MR. KEENER: Page 4.**

13 **BY MR. KEENER:**

14 **Q. Okay. Let's turn back a page to Page 30994. And this**
15 **appears on the bottom half. Do you see an e-mail from**
16 **Mr. Villacci to you dated February 2nd, 2010?**

17 **A. Yes.**

18 **Q. And in there, the middle paragraph states, "The most**
19 **important thing with the Iron Hands is you use the same basic**
20 **shape and position of the icon, but you have to add detail to it**
21 **so it's not the same as GWs. If you deviate from the basic**
22 **shape and format, it won't sell to IH players." Do you see**
23 **that?**

24 **A. Yes.**

25 **Q. Is -- is he instructing you not to change the Iron Hand**

Fiertek - deposition

1 **shape you were making in basic shape and format or else it won't**
2 **sell to Iron Hands players?**

3 **A. I would say that is not the case.**

4 **Q. The last sentence says, "If you deviate from the same basic**
5 **shape and format, it won't sell to Iron Hands players." And**
6 **then on the top of the page, there's an e-mail from you to**
7 **Mr. Villacci on February 2nd, 2010. Do you see that?**

8 **A. Yes.**

9 **MR. KEENER: And the third paragraph.**

10 **BY MR. KEENER:**

11 **Q. At the end of the first paragraph you ask --**

12 **THE COURT: He's trying to figure out the right**
13 **paragraph.**

14 **MR. KEENER: It should be the third paragraph.**

15 **THE COURT: The one that starts sorry?**

16 **MR. KEENER: Yes. It says, "Will a segmented pad." No**
17 **go up one. Yes, that sentence.**

18 **BY MR. KEENER:**

19 **Q. At the end of the first paragraph you ask, "Will a segmented**
20 **pad underneath the IH symbol be enough deviation?" You were**
21 **asking whether putting a segmented pad under Games Workshop's**
22 **Iron Hand symbol would be enough deviation. Is that the**
23 **question you're asking?**

24 **A. Yes.**

25 **MR. KEENER: Page 3.**

Fiertek - deposition

1 BY MR. KEENER:

2 Q. Okay. Let's go back to Page 30993. And the bottom is an
3 e-mail from Mr. Fiertek -- from you to Mr. Villacci. Do you see
4 that?

5 A. Yes.

6 Q. And in the middle of that e-mail, it says, "As for the
7 segmented pads, look at the HH art books and compare for
8 yourself." Do you see that?

9 A. Yes.

10 Q. And, again, that would be you directing Mr. Villacci to the
11 Horus Heresy Visions book?

12 A. Yes.

13 Q. And the picture of segmented pads in those books?

14 A. Yes.

15 Q. In order to get an idea of what you were making?

16 A. Well, it says, "Here are my ideas." So, I guess it was in
17 order to convey a theme and ideas I have.

18 Q. Okay. Let's go back to the big chart, Plaintiff's
19 Exhibit 1021, Page 52, and turn to product 148, the Winged Skull
20 Power Armor Pad. It's about two-thirds of the way through. Are
21 you there?

22 A. Yep.

23 Q. Is this a product you designed?

24 A. Yes.

25 Q. Do you know what references, if any, you used in the

Fiertek - deposition

1 development of this product?

2 A. I recall Googling pictures for this one.

3 Q. Anything else?

4 A. Not that I can think of.

5 MR. KEENER: Page 54.

6 BY MR. KEENER:

7 Q. If you turn to the next product, product 149, identified --
8 there's -- there is not actually a name on this one, but it
9 looks like a shoulder pad with a fist holding a hammer.

10 A. Yes.

11 Q. Do you see that for product 149?

12 A. Yes.

13 Q. Did you design that product?

14 A. Yes.

15 Q. If you look back at Plaintiff's Exhibit 584, Page 16, the
16 one with the dates in it, on Page 16 for item 149, it lists
17 September 2nd, 2010, through October 26, 2010. Do you have any
18 reason to dispute those dates provided by Chapterhouse?

19 A. I -- instinctively, I would have said it occurred later.
20 But it's my memory. And by now, we're pretty much sure that my
21 memory of when I create stuff is not really where it should be.
22 I -- I take the -- the written dates are accurate. I mean, but
23 I -- I don't remember. I just don't.

24 Q. Plaintiff's Exhibit 1021, Page 53. What reference did you
25 use, if any, in the creation of this product?

Fiertek - deposition

1 A. Several number of references were used for the ideas. Yes.

2 Q. And when you say references, what do you mean?

3 A. Well, it's a -- it's a mailed fist, a hammer, and a laurel.
4 And the -- it was -- it was ordered by a customer who I think --
5 it was a long time ago. I think he provided an imagery used, I
6 think, in a book by Games Workshop. And he asked me to create
7 this item

8 Q. Beyond the Games Workshop artwork, did you refer to any
9 other materials in designing this product?

10 A. I -- I did Google armor -- armored, mailed knights' fists,
11 and stuff like that.

12 Q. Did you retain any of those pictures?

13 A. I don't remember.

14 Q. Looking at the right-hand column, there's a picture there
15 that's titled Imperial Fists Space Marine chapter. Have you
16 ever seen that picture before?

17 A. Yes.

18 Q. And that picture is from Page 53 of Insignium Astartes.
19 Does that refresh your memory whether or not you've ever had
20 Insignium Astartes?

21 A. No. When you said that --

22 Q. Where else did you --

23 A. When you said that picture, I didn't -- I didn't take it as
24 literally that picture. I mean, a yellow -- a yellow figure
25 with that insignia I've seen before, yes. That exact picture, I

Fiertek - deposition

1 **don' t know. Maybe.**

2 **Q. Okay. So, you've seen an Imperial Fist shoulder pad of a**
3 **yellow shoulder pad that's rimmed with a circle inside with a**
4 **mailed fist inside of it before, but maybe not this specific**
5 **picture; is that right?**

6 **A. Yes.**

7 **Q. Looking at that picture, do you see how the bottom of the**
8 **fist has three points?**

9 **A. Yes.**

10 **Q. Do you see the product you designed also having three points**
11 **on the bottom?**

12 **A. Sure.**

13 **Q. Okay. Do you see in the Games Workshop Imperial Fist logo**
14 **where there is a line separating the palm from the wrist?**

15 **A. Yes.**

16 **Q. And do you see in your product the same line being there?**

17 **A. Of course.**

18 **Q. Yes?**

19 **A. Yes.**

20 **Q. And do both of these depict the left hand?**

21 **A. Yes.**

22 **Q. And you see in the Games Workshop product that there is a**
23 **thumb bent over the fingers of the hand?**

24 **A. Yes.**

25 **Q. Does your product also have a thumb bent over the fingers of**

Fiertek - deposition

1 **the hand?**

2 **A. How else are you -- are you going to make a fist if not**
3 **bending the thumb over the fingers? Yes.**

4 **Q. Do you see in the Games Workshop logo where the thumb bent**
5 **over covers the first three fingers but not the pinky of the**
6 **hand?**

7 **A. Of course.**

8 **Q. And do you agree that your product also has a thumb covering**
9 **the first three fingers but not the pinky of the hand?**

10 **A. Yes.**

11 **MR. KEENER: Put the next page together with this one.**

12 **BY MR. KEENER:**

13 **Q. If you turn to the next page, there's a picture on the**
14 **right-hand side that says Hammers of Dorn Space Marine Chapter**
15 **from Page 57 of the Art of Clint Langley. Do you see that**
16 **picture?**

17 **A. Yes.**

18 **Q. Have you seen that picture before?**

19 **A. Yes.**

20 **Q. Did you see that picture prior to designing this product?**

21 **A. I think so. I'm not sure, but I think so.**

22 **Q. And does that product show a gloved hand holding a hammer?**

23 **A. Yes.**

24 **Q. And that hammer has a square overhead-sized head to it?**

25 **A. Yes.**

Fiertek - deposition

**1 Q. And the product you designed also has a hammer with a square
2 head to it?**

**3 A. I don't know that. I don't see the top of that pad, and I
4 don't remember how I created it. So, it might be a cut-off, as
5 in Soviet communists' iconography.**

**6 Q. Do you know from this picture whether or not your product
7 has a square head?**

**8 A. The bottom is square. I see that in the picture. What I'm
9 saying is I don't remember how the top looks. It was quite
10 awhile I sculpted this thing. And I don't handle them every
11 day. So, it might --**

**12 Q. Do you see in the Games Workshop picture where the glove
13 holding the hammer is over a laurel?**

14 A. Yes.

**15 Q. And in your product did also put the glove holding a hammer
16 over a laurel?**

17 A. No.

18 Q. Is there a laurel depicted in your product?

**19 A. The glove is above the laurel, not over it. But there is a
20 laurel depicted, yes.**

21 Q. And the hammer extends over the laurel, right?

22 A. I think so.

**23 Q. And the hammer in the Games Workshop picture extends over
24 the laurel?**

25 A. It most certainly does.

Fiertek - deposition

1 **Q. Do you believe you used this picture in any way in designing**
2 **your product, product 149?**

3 **A. Yes, I did.**

4 **Q. What did you use this picture for?**

5 **A. It's a glove. It's a hammer. It's a laurel. I don't know**
6 **how to answer that question. It's -- I used the same**
7 **configuration of hammer -- or almost the same configuration of**
8 **hammer, laurel, and fist. And I still don't know how the hammer**
9 **top looks as in that picture. Well, the -- the -- the glove is**
10 **not centered on the laurel. It's above the laurel. And I added**
11 **some sort of dual thing into the laurel. But, of course, I -- I**
12 **used that picture as inspiration for the pad. It was, I think,**
13 **even asked of me.**

14 **Q. Are you able to -- are you able to point to any other**
15 **non-Games Workshop images that depict a hand holding a hammer**
16 **inside a laurel?**

17 **A. No. However, I wouldn't be surprised if there are mailed**
18 **fists holding a various collection of weapons in ancient**
19 **heraldry and stuff. But I can't point it out because I didn't**
20 **search for -- for those.**

21 **Q. Right. You didn't use any of those pictures in designing**
22 **this product, right?**

23 **A. If you're referring to heraldry, I did not use heraldry in**
24 **the design of this product.**

25 **MR. KEENER: Page 56.**

Fiertek - deposition

1 **BY MR. KEENER:**

2 **Q. If you look at the next product, product 150, which is a**
3 **Hammer of Dorn shoulder pad for Terminators.**

4 **A. Yes.**

5 **Q. Do you see that? Is this a product you designed?**

6 **A. Yes.**

7 **Q. And did you use the same Games Workshop product you just**
8 **talked about in the same way to design this product?**

9 **A. I'm not sure. I don't remember if there was any different**
10 **procedure in creating this from the previous one.**

11 **MR. KEENER: Page 59.**

12 **THE COURT: Stop for a second. How close are you to**
13 **being done?**

14 **MR. KEENER: There is ten pages left.**

15 **THE COURT: Okay. You know what? The copy I gave you**
16 **is actually my copy. Can I get it back? Go ahead, Mr. Keener.**
17 **Just keep going. Once this is done, we'll take a short break**
18 **right after that.**

19 **MR. KEENER: Page 59.**

20 **BY MR. KEENER:**

21 **Q. All right. Let's turn to product 153 in Plaintiff's**
22 **Exhibit 1021, which is a Power Armor Shoulder Pad for Scythes of**
23 **the Emperor. S-c-y-t-h-e-s. Do you see that?**

24 **A. Yes.**

25 **Q. Is that a product you created?**

Fiertek - deposition

1 A. Yes.

2 Q. Do you see on the right-hand side there's a picture from
3 Page 88 of how to paint Space Marines?

4 A. Yes.

5 Q. Have you ever seen that picture before?

6 A. Not that I can recall.

7 Q. Have you ever seen that shoulder pad with that symbol on it,
8 if not from this book, from someone else before?

9 A. I think so. Although, I don't think I've seen this exact
10 symbol on one before. But I'm pretty sure I've seen a crossed
11 scythe before.

12 Q. In a Games Workshop book?

13 A. Yes, in -- I don't know if it was in a book or in a -- I
14 think I saw it somewhere online on some board, forum, but I'm
15 not sure.

16 Q. And my question is did you see that picture before designing
17 your product 153?

18 A. I think so.

19 Q. What references, if any, did you use in creating the scythes
20 shoulder pad?

21 A. I have a vague recollection of seeing a sketch or drawing of
22 a crossed scythe symbol. I might be entirely wrong about that.
23 It's pretty vague in my head. But I -- that's what I think.
24 And beyond that, if it's even true, if my memory didn't just
25 trick me, I actually don't think I used anything. It's --

Fiertek - deposition

1 **it's -- it's two scythes that are crossed. I mean, how much do**
2 **you use for -- I'm -- I'm -- I'm pretty sure I Googled pictures**
3 **of scythes because the handle is bent in some weird shape I**
4 **never remember. I obviously did not use that, anyway. But**
5 **that's what I can recall right now in -- in -- as -- as speaking**
6 **about -- of references.**

7 **Q. Okay. Do you know if two crossed scythes on a shoulder pad**
8 **has any significance in the Games Workshop 40K universe?**

9 **A. I believe there is some sort of significance.**

10 **Q. And do they represent the Scythes of the Emperor Space**
11 **Marine chapter?**

12 **A. That is my understanding.**

13 **Q. Now, looking at the product you designed, the picture in the**
14 **big chart, in comparison to the one -- the Games Workshop symbol**
15 **on the right-hand side.**

16 **A. Sure.**

17 **Q. Do you see how Games Workshop's handle has a pointed**
18 **protrusion pointing toward the inside of the shoulder pad on**
19 **each handle?**

20 **A. Yes.**

21 **Q. Do you also agree that your product that you designed also**
22 **has pointed protrusions pointing toward the inside of the**
23 **shoulder pad?**

24 **A. Well, now when you mention it, mine do have, well,**
25 **protrusions as in something clearly separate from -- from the**

Fiertek - deposition

1 handle. Whereas, the previous picture just has a shape turning
2 inwards. It could be a protrusion or -- I don't know. But to
3 answer your question, yes, my -- my thing has protrusion
4 thingies pointed inwards at the bottom

5 Q. And you see on the Games Workshop design where the blades of
6 the scythes near the handle has a cut-away?

7 A. Yes.

8 Q. Do you see that?

9 A. Yes.

10 Q. And you see in the product you designed while -- where
11 there's a -- where there's a -- an arch or a cut-away where the
12 handle meets the blade on your product?

13 A. It's not close to the handle. But there is a cut-away in
14 the general vicinity. Yes.

15 Q. Is it your belief that you used Games Workshop's logo for
16 Scythes of the Emperor in any way in designing your product?

17 A. Other than the idea of two crossed scythes, no.

18 Q. And do you believe that you've seen similar pictures of
19 scythes with these two pointed protrusions in the bottom of the
20 handle pointing inward?

21 A. I cannot answer that. Because even -- even if I am looking
22 at crossed scythe symbols I -- I don't even think about any
23 protrusions at the bottom So, it's -- it's -- you -- you see
24 them when you know what you're looking for. So the answer to
25 that question is no, but it's not that simple.

Fiertek - deposition

1 **Q. My question is are you able to identify for me any pictures**
2 **of crossed scythes with a similar pointed protrusion at the**
3 **bottom of the handle?**

4 **A. No.**

5 **Q. Are you able to point to me any specific pictures of crossed**
6 **scythes with that cut-away at the top of the blade where the**
7 **blade reaches the handle?**

8 **A. I don't know. Maybe that cut-away is normal. I don't**
9 **remember how a real-life scythe looks like. I think they come**
10 **with some sort of cut-away. But as pointing out a picture, no,**
11 **not from just memory.**

12 **MR. KEENER: Page 66.**

13 **BY MR. KEENER:**

14 **Q. Okay. Let's turn to product 159, which is near the end.**
15 **It's the Shrike Conversion Kit for Tyrannid Warrior Models.**

16 **A. Sure.**

17 **Q. Are you there?**

18 **A. Yes.**

19 **Q. And I believe you testified that Mr. Lee did the first part**
20 **of sculpting the wings, and then you made some improvements and**
21 **clean-up on it. Is that right?**

22 **A. Are we just talking about the wings or the whole thing?**

23 **Q. Just the wings.**

24 **A. Just the wings. My belief is -- well, I know that Mr. Lee**
25 **created the wings or rather basic wing shapes. And I improved,**

Fiertek - deposition

1 **took away, added and, well, finished the whole thing.**

2 **Q. In that work that you did on this product, did you refer to**
3 **any images or other products?**

4 **A. Well, part of the creation was finding a nice-looking**
5 **texture for the wing -- the -- the wings themselves. And I know**
6 **I was looking at ideas everywhere. Amongst others, I -- I took**
7 **a look at how Forge World, as they are known, how they made wing**
8 **textures. I looked at Google pictures of -- I think it was bat**
9 **wings and dragon wings and stuff. And finally I settled for**
10 **what I did.**

11 **Q. The Forge World texture, are you meaning the Forge World**
12 **model of a Shrike?**

13 **A. I don't remember how they call it. But there is some winged**
14 **monster being sold as a model there. So I -- it might be that.**

15 **Q. Would it be the model that you see on the right-hand of this**
16 **page --**

17 **A. That is --**

18 **Q. -- Exhibit 4?**

19 **A. That is one of them I was looking at, yes.**

20 **Q. And you were looking at that model for the texture on the**
21 **wings?**

22 **A. Well, I was looking at the inspiration and ideas for**
23 **good-looking textures. So that was what I was looking at.**

24 **Q. Did you look at this -- did you look at this model for any**
25 **other reason regarding this product?**

Fiertek - deposition

1 **A. Not that I can recall.**

2 **Q. Did you have a physical copy of a Games Workshop Forge World**
3 **Shrike product?**

4 **A. No.**

5 **THE COURT: We're going to pause right there. There's**
6 **a good 18 pages left. So, we're going to take a short break**
7 **here, and then we'll carry through 'til the end of the day.**

8 **(Brief recess.)**

9 **THE COURT: Okay. Everybody can have a seat.**

10 **MR. KEENER: Your Honor, there was one question and**
11 **answer we forgot to read. So, I'm just going to go back and do**
12 **that.**

13 **THE COURT: That's fine. Go ahead.**

14 **MR. KEENER: Back to the testimony about the Iron**
15 **Hands, on Plaintiff's Exhibit 590, Page 4.**

16 **BY MR. KEENER:**

17 **Q. So, he's telling you not to deviate from the same basic**
18 **shape and format of the Games Workshop design or else it won't**
19 **sell, right?**

20 **A. I do not agree to that. He is apparently --**

21 **Q. What is he telling you?**

22 **A. He's apparent -- well, I don't know. But my guess is that**
23 **he is apparently talking about a hand, and I mean, how much can**
24 **you deviate from a hand. A hand looks like a hand. Of course,**
25 **if -- if you deviate from a hand or remove two fingers, it's no**

Fiertek - deposition

1 longer appealing. I -- I mean, it's --

2 Q. Do you agree that he's telling you if it deviates from the
3 Games Workshop basic shape and format, it won't sell?

4 A. No.

5 MR. KEENER: If we could, let's have marked Plaintiff's
6 Exhibit 591. It's labeled Chapterhouse 30256 through 30266.
7 Page four, first paragraph.

8 BY MR. KEENER:

9 Q. Okay. And so Mr. Villacci asks, "How thick are Mr. Lee's
10 wings?" Do you understand that to be referring to the wings for
11 the Shrike Conversion Kit?

12 A. Yes.

13 Q. And he says that, "2.25 millimeter thickness should be okay,
14 that is about how thick GWs are." Do you see that?

15 A. Yes.

16 Q. Do you understand GW to be Games Workshop?

17 A. Yes.

18 Q. So, he's telling you that they should be a similar thickness
19 to Games Workshop's wings?

20 A. I'm fairly sure this conversation is about casting
21 technicalities. There was issue -- one of the things I had to
22 do on those models were to thicken the wings that Mr. Lee had
23 sculpted because they were too thin to be castable. And as I
24 understand it, we were bouncing questions of thickness back and
25 forth, me not -- me not wanting to do them too thick because

Fiertek - deposition

1 **it's ugly. But it needs to be balanced with a -- well, they**
2 **need to be castable. And I think he or someone is asking how**
3 **thick the wings Games Workshop, which I think was referring to**
4 **Forge World, are. Because they are obviously cast. And if they**
5 **are a certain thickness, then that thickness is obviously okay**
6 **for casting purposes. This is my take on this.**

7 **Q. So -- so your understanding of his discussion is that**
8 **Mr. Lee's wings were too thin. And Mr. Villacci was asking you**
9 **to thicken them up. And he referred to making them the same**
10 **size as the Games Workshop wings for their Shrike?**

11 **A. Well, not the same size, but thicker. I don't know**
12 **everybody's thoughts in this e-mail. But I do know for a fact**
13 **that the wings were too thin and I was supposed to thicken them**
14 **up, amongst other things. And I don't recall it ever having to**
15 **be made similar or equal or et cetera to -- to someone else's**
16 **wings, just thicker. I -- I recall this more clearly because**
17 **there was a degree of bickering between Mr. and Mr. Villacci.**
18 **We had like a -- a --**

19 **Q. Do you believe Mr. Villacci to be asking you to make them**
20 **2.25 millimeter thick because that's how thick Games Workshop's**
21 **wings are?**

22 **A. No. I believe he is making example to shut me up where I**
23 **was nagging about making them thinner than castable.**

24 **MR. KEENER: Page 3 in the middle.**

25

Fiertek - deposition

1 BY MR. KEENER:

2 Q. Let's turn back a page to Page 30258. In the middle of the
3 page, there's an e-mail from Mr. Villacci to you dated March 14,
4 2012. It states, "Look at GW wings and you can see what's
5 needed." Do you see that?

6 A. Yes.

7 Q. Is this, again, Mr. Villacci instructing you to look at
8 Games Workshop's for its Shrike to see what needs to be done?

9 A. This is -- I don't know what he means by that. But let me
10 take a look at the dates here. I understand that as being part
11 of the thickness bickering fight between us. I -- I mean,
12 there's no -- as far as I'm -- as far as I know, there's no
13 mention or usage of any texture someone else did. That was
14 never a question.

15 Q. Is it correct to say Mr. Villacci tells you, "Look at Games
16 Workshop's wings and you can see what's needed"?

17 A. I think he -- he was referring to the thickness.

18 MR. KEENER: Plaintiff's Exhibit 1021, Page 69.

19 BY MR. KEENER:

20 Q. Let's turn to product 160, which is Dark Elf Arch Torturess.

21 A. Yes.

22 Q. Is this a product you designed?

23 A. Amongst others.

24 Q. On the picture on page -- on product 160 of Plaintiff's
25 Exhibit 1021, it states, "Sculpted by Jae Lee and Tomas

Fiertek - deposition

1 Fiertek." Is that accurate?

2 A. That is accurate.

3 Q. What portion did you sculpt?

4 A. It's like with the previous one. Mr. Lee did everything. I
5 corrected mistakes, re-made some details, added the finishing
6 touches. So that's what I did.

7 Q. Now, in your work on the Dark Elf Torturess, did you refer
8 in any way to any images?

9 A. Not that I can remember now.

10 Q. Are you able to identify any non-Games Workshop images that
11 were used in any way in the creation of this product?

12 A. That -- that question is for Mr. Lee and/or Mr. Villacci.
13 I -- I don't know.

14 Q. Did they ever tell you of any images they used as
15 references?

16 A. Not that I can remember.

17 Q. The product -- the picture on the right on the exhibit is
18 labeled Urien Rakarth. Do you see that?

19 A. Yes.

20 Q. Have you seen a picture of that model before?

21 A. I don't know. I don't think so.

22 Q. Have you ever seen a physical copy of that model before?

23 A. No.

24 Q. Do you know what the character a Dark Eldar Haemonculous,
25 H-a-e-m-o-n-c-u-l-o-u-s, is?

Fiertek - deposition

1 A. It's some sort of super bad guy from that fantasy setting.

2 Q. In the Games Workshop 40K universe?

3 A. As far as I know, yes.

4 Q. And related to the army, the Dark Eldar?

5 A. I think so.

6 Q. And looking at the picture on the right-hand side of the
7 Games Workshop miniature, would you identify that as one of
8 those creatures?

9 A. I don't think so, actually.

10 Q. Why not?

11 A. I have little experience in that particular section of the
12 story or Games Workshop's products. If shown -- if just
13 randomly -- if this model was randomly shown to me, I would not
14 identify that as a -- any particular model or manufacturer,
15 actually.

16 Q. Do you believe you referred to this pictured in any way in
17 your work on Chapterhouse's Dark Elf Arch Torturess?

18 A. Not that I can remember, no.

19 MR. KEENER: Page 71.

20 BY MR. KEENER:

21 Q. If you turn the page, there's another picture of a model.
22 Have you seen the picture of that model before?

23 A. If it is in the codex that I have, then I have seen it.
24 Because I've -- I've read through the book from cover to cover,
25 but nothing that I could point out or particularly place.

Fiertek - deposition

1 **Q. Are you looking at a picture of a model?**

2 **A. Yes.**

3 **MR. KEENER: Page 72.**

4 **BY MR. KEENER:**

5 **Q. Okay. And turn one more page. There's another picture from**
6 **Page 37 of codex Dark Eldar. Have you ever seen that picture**
7 **before?**

8 **A. Maybe. It doesn't ring any bells. I don't remember seeing**
9 **it. But it's possible I have. I mean, I've seen a lot of**
10 **pictures, and I read through the codexes. So, if it's there, I**
11 **must have seen it.**

12 **Q. Is the Chapterhouse product supposed to represent a Dark**
13 **Eldar Haemonculous?**

14 **A. I don't know. That's a question Mr. Villacci should know**
15 **the answer to.**

16 **Q. And do you believe the product is supposed to represent a**
17 **Dark Eldar Haemonculous?**

18 **A. My personal belief is that it -- it could be used as such.**
19 **But not specifically. It's just a weird monster that happens to**
20 **fit with the -- with the theme of weird monsters. I --**

21 **Q. Do you understand that the Dark Eldar Haemonculous is a**
22 **specific type of monster, not just a category for any weird**
23 **monster? Right?**

24 **A. No, I don't do that.**

25 **Q. Would you ever call the Chapterhouse product a Dark Eldar**

Fiertek - deposition

1 Haemonculous?

2 A. I think I have done that, yes.

3 Q. So, you yourself have referred to the Chapterhouse product
4 as a Dark Eldar Haemonculous?

5 A. I'm pretty sure I did, yes.

6 Q. Does Chapterhouse sell any jetbikes?

7 A. I don't remember what they are called. But I would say
8 there are jetbikes on the website.

9 Q. And do those jetbikes have riders?

10 A. I think they are sold with a pair of legs that fit on the
11 chair. But that's what I remember. So a whole rider? I don't
12 know. But I seem to recall there were legs added to -- to the
13 bike.

14 Q. Plaintiff's Exhibit 592 is labeled Chapterhouse 30057
15 through 81. And this is quite a lengthy chain of e-mails here.
16 So, I would direct your attention to the one on Page 17 that
17 ends in 30073. Okay. Look at his response, bottom half of the
18 page.

19 If you turn to Page 14, there's an e-mail from William
20 back to you. And near the bottom, about two-thirds of the way
21 down, there's a line that starts, "To hedge my bets." Do you
22 see that?

23 A. Yes.

24 Q. And he tells you, "All that means is I'm legally obligated
25 to point out recreating a close facsimile of Games Workshop's

Fiertek - deposition

1 power armor legs may constitute a violation of U.S. intellectual
2 property law." Do you see that?

3 A. Yes.

4 Q. And so you were told by Mr. William in November of 2012 that
5 recreating a close copy of Games Workshop's power armor legs may
6 infringe Games Workshop rights?

7 A. No. I was told about his personal opinion. I mean, neither
8 him nor me are legally qualified to -- to have a yes or --
9 definitive yes or no say on those opinions. So, I mean, I -- I
10 don't know what he meant or thought by writing that. But that's
11 his personal opinion.

12 Q. Do you know if Chapterhouse sells any power armor legs?

13 A. I think -- I think Chapterhouse does that.

14 Q. And they do that sitting down on jetbikes that Chapterhouse
15 sells?

16 A. I think so.

17 Q. And they also sell them separately as part of their
18 TRU-Scale Knight Praetorius products?

19 A. I don't know that. I don't know that.

20 Q. You don't know if those look like power armor legs to you?

21 A. I don't know if they are sold separately.

22 Q. Okay. Whether or not they are sold separately or not,
23 Chapterhouse also sells power armor legs as part of its
24 TRU-Scale Knights Praetorius products?

25 A. All right.

Fiertek - deposition

1 **Q. Do you agree with that?**

2 **A. Well, I've seen power armor legs on the website. So, yes.**

3 **MR. KEENER: Okay. Let's get document 17 marked as**
4 **Plaintiff's Exhibit 595. Turning to Page 2, first paragraph.**

5 **BY MR. KEENER:**

6 **Q. All right. This is a document labeled Chapterhouse 31866**
7 **through 31872. And my question is on Page 2, labeled 31687, and**
8 **at the top of that page, which is an e-mail from you to**
9 **Mr. Fiertek (sic) dated October 18, 2011, do you see the top**
10 **there on Page 2?**

11 **A. Yes.**

12 **Q. And it starts out, "I take it that jetbikes are selling**
13 **well. Good job on those by the way." What jetbikes are you**
14 **referring to?**

15 **A. I think I am referring to the jetbikes that are sold by --**
16 **on the website.**

17 **Q. By Chapterhouse?**

18 **A. Yes.**

19 **Q. And then you go on. "You certain we can do exact replicas**
20 **of GWs bits like those rider legs, et cetera?" Do you see**
21 **that?**

22 **A. Yes.**

23 **Q. Is that a reference to the legs of the rider of the**
24 **Chapterhouse jetbike?**

25 **A. Yes.**

Fiertek - deposition

1 **Q. And are you commenting that those legs are, quote, exact**
2 **replicas of Games Workshop's bits?**

3 **A. No.**

4 **Q. And, Mr. Fierteck, to the extent that this was a request for**
5 **legal advice from counsel --**

6 **MR. KEENER: No. I'm sorry. "I will instruct you not**
7 **to answer."**

8 **BY MR. KEENER:**

9 **Q. But the sarcasm you were stating was that the power armor**
10 **legs on Chapterhouse's jetbike are very similar to the Games**
11 **Workshop power armor legs?**

12 **A. No.**

13 **Q. What were you trying to say in that sentence?**

14 **A. That -- well, that there are other companies out there,**
15 **including Games Workshop, that make replicas of -- or very**
16 **similar pieces of things from real-world settings.**

17 **Q. In the creation of any Chapterhouse products, have you**
18 **recast any Games Workshop products or portions thereof?**

19 **A. I -- no, not me.**

20 **Q. Do you know if Chapterhouse has?**

21 **A. Yes.**

22 **Q. And which products have involved a recasting of Games**
23 **Workshop products?**

24 **A. I remember the very first shoulder pad. And then there was**
25 **a so-called Chaplain miniature. Yeah.**

Fiertek - deposition

1 **Q. Any other products or portions thereof?**

2 **A. Yes. There were two pads in the very beginning.**

3 **Q. Which pads are those?**

4 **A. I'm pretty sure there were two pads. Both are -- I don't**
5 **know their names. They were -- I think I mentioned that during**
6 **the last deposition.**

7 **Q. Do you recall what the pads looked like?**

8 **A. Yeah. They had -- they had scaly patterns on them and a**
9 **little dragon head.**

10 **Q. In the creation of any Chapterhouse products, have you**
11 **recast any Games Workshop products or portions thereof?**

12 **A. I -- no, not me.**

13 **THE COURT: Is that it?**

14 **MR. KEENER: Counsel has a few questions real quick.**

15 **THE COURT: Okay.**

16 **MR. KEARNEY: Thomas Kearney for Chapterhouse Studios.**
17 **The last name is K-e-a-r-n-e-y.**

18 **BY MR. KEARNEY:**

19 **Q. You were also asked some questions about particular elements**
20 **to the Heresy Terminator armor. Do you recall being asked about**
21 **that?**

22 **A. I think so.**

23 **Q. Did you have -- were you aware of the idea of using**
24 **overlapping armor from any source other than Games Workshop?**

25 **A. Yes.**

Fiertek - deposition

1 **Q. And what sources were you aware of the idea of overlapping**
2 **armor from?**

3 **A. Live reenactment gaming and pictures of Roman era**
4 **legionnaire armor. I have seen that in fiction and computer**
5 **games, although I can't point out right now from memory.**

6 **Q. And you were asked some questions about the -- the use of a**
7 **cut-out in that armor. Were you aware of the idea of a cut-out**
8 **in armor from any source other than Games Workshop?**

9 **A. Depends on the cut-out, where it is and what piece. But it**
10 **would surprise me that there aren't cut-outs used anywhere else.**
11 **It's -- if not anything else, that's a purely ergonomical**
12 **feature or rather could be.**

13 **Q. You were also asked about the use of hanging straps from the**
14 **armor that you designed. Were you aware of the idea of using**
15 **hanging straps from any source other than Games Workshop?**

16 **A. Yes.**

17 **Q. What other sources?**

18 **A. Again, for most of the Roman -- the entire Roman soldier**
19 **theme.**

20 **Q. In the last month or two, did you review the claim chart**
21 **that's been marked as Fiertek Exhibit Number 4 to identify the**
22 **Games Workshop products on that chart that you possess?**

23 **A. Yes.**

24 **Q. And you provided an identification of those that you possess**
25 **after your review?**

1 A. I -- I hope you're referring to that -- that -- what was
2 asked of me over e-mail, then yes.

3 THE COURT: Is that it? Okay. Let me just see lead
4 counsel for both sides at sidebar, please. I just want to ask
5 about scheduling.

6 (Off-the-record discussion.)

7 THE COURT: Okay. There's one other deposition that
8 was going to be read, but I just was trying to make a judgment
9 on the pages. It can't get done by the end of the day. So, I
10 think it makes more sense to start that on Monday.

11 We're on schedule. So, I'm not concerned about
12 quitting a little bit early today. And, you know, when you're
13 sitting listening to depositions, it tends to be a little more
14 tedious, I understand, than listening to testimony. So, we're
15 going to stop now.

16 On Monday we're going to start -- hang on a second. It
17 will be nine -- I'm going to say 9:30. It may end up being five
18 minutes later than that, but let's be ready to go at 9:30.

19 Don't discuss the case with anyone. Continue to follow
20 all my instructions. Make sure you leave your notebooks in the
21 jury room And have a good weekend.

22 I'll be right back out. All rise.

23 (The following proceedings were had in open court, out of
24 the presence and hearing of the jury:)

25 THE COURT: Okay. So, since the plaintiff hasn't

1 rested yet, you don't need to file that motion, but it needs to
2 be ready for you to hand to me the second they rest on Monday.
3 Okay? And you know how long it's going to take to read the
4 deposition. I'm guessing probably about 20, 25 minutes.

5 So, on exhibits here's what I want you to do. I want
6 you to confer over the weekend. We're not going to take --
7 we're going to take as little court time on this as possible.
8 To make sure that you're all on the same page about what's in,
9 and to the extent you're not on the same page. So, what I need
10 you to do is I need you to have two lists. I need you to have a
11 list of all of the plaintiff's exhibits that everybody agrees
12 are in, and then I need you to have a list of the ones that are
13 disputed that we might have to talk about. Okay? And it's time
14 to start doing the same thing for the defense exhibits, even
15 though we're not all the way into the defense case yet.

16 And then just a reminder just to give some thought
17 about that question about how exhibits are going to be presented
18 to the jury. I will e-mail my person around here and find out
19 if we'll have a monitor, a big monitor, available. I'm not sure
20 we will, but I think it's possible.

21 So, I'll see you Monday morning. Just be ready to go
22 at 9:30. Take care.

23 (Whereupon, the within trial was adjourned to Monday,
24 June 10, 2013, at 9:30 o'clock a.m.)

25