

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

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|---|----------------------------|---|----------------------|
| 4 | GAMES WORKSHOP LIMITED, |) | |
| 5 | Plaintiff, | | Docket No. 10 C 8103 |
| 6 | vs. | | |
| 7 | CHAPTERHOUSE STUDIOS, LLC, |) | Chicago, Illinois |
| 8 | et al., | | June 10, 2013 |
| 9 | Defendants. | | 9:40 a.m. |

VOLUME 6
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY AND A JURY

APPEARANCES:

| | | |
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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. Chapterhouse
4 Studios.

5 Can one person for each side give the names of the
6 lawyers?

7 MR. KEENER: Good morning, your Honor; Jason Keener
8 of Foley & Lardner; Jonathan Moskin of Foley & Lardner and
9 Gill Stevenson of Games Workshop for plaintiff.

10 MR. ALY: Good morning. Imron Aly here with Julianne
11 Hartzell, Jennifer Golinveaux, Tom Kearney, and Sarah
12 Kalemeris at Bryce Cooper.

13 THE COURT: Okay. Where did you get as far as
14 exhibits?

15 MR. KEENER: So I'm happy to report we have
16 completely agreed on all the exhibits that should be admitted
17 into evidence up to this point in time.

18 THE COURT: Okay.

19 MR. KEENER: So I have a list ready to hand to you,
20 or after we close our case with Traina later today, we can
21 submit our file with that agreed list.

22 THE COURT: Why don't you give me the list now and
23 we'll talk about it after you finish up.

24 (Brief interruption.)

25 THE COURT: Okay. My suggestion actually is going to

1 be that you just file this thing electronically. I think that
2 would be sort of the cleanest -- rather than me sitting here
3 or you sitting here and reading, you know, 150 numbers into
4 the record.

5 MR. MOSKIN: Right. The question was: Do you want
6 us to file it at this point or after we close our case because
7 there's a few exhibits to add to with Traina?

8 THE COURT: Wait until you close your case.

9 MR. KEENER: Okay.

10 THE COURT: Then if there's a couple of other things
11 to add, then you can have a comprehensive list at that point.

12 MR. KEENER: Yes.

13 THE COURT: Anything else to take up before the jury
14 comes in?

15 MR. KEENER: Yes. The second issue is a little later
16 today, they're calling their expert, Dr. Grindley, and we have
17 some objections to some of the exhibits they want to use. I
18 don't know if you want to cover that now.

19 THE COURT: How soon do we think we're going to get
20 to him?

21 MR. ALY: He's the second witness, so probably around
22 11:00 o'clock.

23 THE COURT: Oh, so it will this morning. Let's do
24 this.

25 MR. ALY: 11:30.

1 THE COURT: Let's finish the witness that we have
2 got. Let's finish the first witness, and then we'll take a
3 break.

4 MR. KEENER: He will actually be the third witness.
5 We're reading a short deposition.

6 THE COURT: We're finishing up the one.

7 MR. KEENER: Well, we're reading Traina. We have not
8 started Traina yet, but that's a short reading of a
9 deposition. Then they're calling a witness. That will
10 probably take two hours, two and a half hours, and then we'll
11 go on to the expert.

12 THE COURT: So we'll either do this at the mid-
13 morning break or at lunch, wherever is the most appropriate
14 place.

15 MR. KEENER: Okay. The third issue is we didn't --
16 we wanted to know how the judge wants -- how you want to
17 handle the verdict forms and the charting conference.

18 THE COURT: Give it to me.

19 MR. KEENER: We have exchanged verdict forms, and
20 there's significant differences, and we wanted to know how you
21 want to handle this.

22 THE COURT: So let me ask you this. What is your
23 sense on the defense side? I mean, besides the witnesses
24 being called this morning and Dr. Grindley, who else is there?

25 MR. ALY: Then we have three videos and then another

1 expert tomorrow morning, Bill Brewster.

2 THE COURT: The videos are long, short, in between?

3 MR. ALY: They're an hour and 15 minutes in total.

4 THE COURT: Collectively?

5 MR. ALY: Right.

6 THE COURT: And then one witness in the morning.

7 MR. ALY: That's right.

8 THE COURT: That's an expert?

9 MR. ALY: That's correct.

10 THE COURT: And is it likely there's going to be
11 rebuttal?

12 MR. KEENER: There will probably be two short
13 rebuttal witnesses. We don't expect that to take more than
14 30 minutes.

15 THE COURT: So my goal is to give you a draft of the
16 jury instructions tomorrow morning. If things go the way
17 you're talking about, I think probably the most sensible way
18 of doing it is going to be to have you argue on Wednesday
19 morning. We finish the evidence tomorrow, we spend whatever
20 time we have in the afternoon finishing up the jury
21 instructions. We have all those in place, you go home with
22 the jury instructions, and you come back Wednesday and argue.

23 I can imagine it coming out in a different way, but
24 that kind of sounds like the most sensible way to do rather
25 than having you start with arguments at like 2:00 in the

1 afternoon and then everybody is rushing to finish.

2 So what I am going -- so if you can give me your
3 competing drafts of the verdict form in hard copy and then
4 also email me an electronic version sometime today, that would
5 be great.

6 MS. HARTZELL: Okay.

7 THE COURT: Anything else?

8 MR. KEENER: That's the issues we have.

9 MR. ALY: We have two issues, your Honor.

10 Number one is one of the witnesses from Friday was
11 Lippman, and there was a jury question about a timing of
12 events for when he looked at certain things and if it was
13 before he was working or while he was working or after. And
14 your Honor said, well, we're not sure if that was in evidence
15 or not.

16 The only thing I would like to raise, your Honor, to
17 the extent the transcript says what he looked at while he was
18 working on something, I just wanted to argue that at closing,
19 and I didn't want to cause any concern with that, and I've
20 informed --

21 THE COURT: You guys are getting the transcript,
22 right?

23 MR. ALY: That's right.

24 THE COURT: So you have a way better sense of what's
25 -- specifically what is being said than I do.

1 MR. ALY: I just want to say it is what it is and not
2 have it be something conflicting with what your Honor had
3 ruled.

4 THE COURT: All right.

5 MR. ALY: And the final issue, your Honor, is the
6 exhibit list. This is those PEX-1020 and 1021, the
7 side-by-side comparisons which --

8 THE COURT: Referred to as the claim charts.

9 MR. ALY: As the claim charts, you're absolutely
10 right.

11 Those claim charts have highlighting for the
12 trademark terms, but it's no dispute at this point that a lot
13 of the trademark terms have been dropped from the case or
14 don't apply or weren't brought and shouldn't have been
15 highlighted to begin with. So we have asked plaintiff to
16 please remove the highlighting for those terms which are no
17 longer in issue because it would confuse the jury.

18 Their response has been that it would confuse the
19 jury to keep them in.

20 MR. KEENER: Our hesitation is Mr. Jones on the stand
21 already explained that as we got closer to trial, we moved
22 some of the trademarks from the case, and, therefore, there's
23 some extraneous highlighting of the chart. If we remove --

24 THE COURT: How much extraneous highlighting is
25 there?

1 MR. KEENER: Not a significant amount.

2 For example, for certain terms like "lasgun" that
3 we're not longer asserting as a trademark, that will be
4 highlighted throughout the chart as "lasgun."

5 MS. HARTZELL: For Games Workshop, which shows up a
6 lot.

7 MR. KEENER: So the concern is that if we remove that
8 highlighting now, when the jury sees the exhibit, they're
9 going to remember the testimony. There's some extraneous
10 highlighting for nonasserted terms in here, not seeing any and
11 thinks -- we're worried about --

12 THE COURT: You think they have been taking careful
13 notes on what's highlighted, eh?

14 MR. KEENER: I think the easiest is they're going to
15 get a list in both the verdict form, both competing verdict
16 forms, and the other exhibit lists exactly which trademarks
17 are still in the issue.

18 THE COURT: Let's take the highlighting out of the
19 terms that aren't currently part of the claim trademarks or
20 whatever. I don't think it's going to be a huge thing one way
21 or another, but I think it just makes more sense to do it that
22 way. I can't imagine the jury thinking, oh, my, this has
23 changed. I just have a hard time seeing that.

24 MR. KEENER: All right, so take the highlighting out
25 for the nonasserted terms?

1 THE COURT: Yes.

2 MR. KEENER: And that can be for tomorrow, I assume?
3 For witnesses today, we don't need to deal with that?

4 THE COURT: Right.

5 MR. KEENER: Okay.

6 THE COURT: You can bring the jury out.

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

9 THE COURT: You can all have a seat.

10 Good morning. I hope everybody had a good weekend.
11 Go Hawks.

12 All right. So we're now going to have another
13 deposition that is going to be read to you. This one is way
14 shorter than the other ones, at least from what I understand.
15 So we'll be using the same procedure. A person, not the
16 witness, is going to be reading the witness' part. The person
17 is going to be reading the questions. You shouldn't read
18 anything into any inflexion that the witness gives because
19 he's just reading from the paper. And aside from that, you
20 should take this just as if it was the witness testifying here
21 in court.

22 And the name of the witness is?

23 MR. KEENER: Wyatt Traina.

24 THE COURT: W-y-a-t-t T-r-a-i-n-a. W-y-a-t-t
25 T-r-a-i-n-a.

Traina - deposition

1 Okay, we can go ahead.

2 WYATT TRAINA, PLAINTIFF'S WITNESS, THROUGH DEPOSITION

3 DIRECT EXAMINATION

4 BY MR. KEENER:

5 "Q Can you please state your name and address for the
6 record?

7 A My name is Wyatt Traina, and I live at 775 Parker Street
8 in Boston, Massachusetts.

9 Q Just briefly, could you state your educational background
10 for me?

11 A I have a BS in cellular and molecular biology from the
12 University of Maine, and I'm currently enrolled in a four-year
13 DMD program at Boston University Dental School.

14 Q When did you first learn of Chapterhouse?

15 A I first learned of Chapterhouse when I was on
16 Heresy-Online, I think, and he had a post on there that he was
17 looking for freelance sculptors to do some work for him.

18 Q What did you do upon seeing this post?

19 A I think what I did is I emailed him a response with a
20 photo of some of the sculpting that I had done.

21 Q Did you ever enter into a business relationship with
22 Chapterhouse? Are you aware of any pieces he makes for other
23 products other than Warhammer 40K?

24 A I did -- I don't know.

25 Q You can't name any as we're sitting here today?

Traina - deposition

1 A No.

2 Q Did you ever enter into a business relationship with
3 Chapterhouse?

4 A I did some freelance work for Chapterhouse.

5 Q And how long did you have this freelance relationship with
6 Chapterhouse?

7 A Less than a year.

8 Q So did it end sometime in 2010?

9 A I believe so, yeah.

10 Q What were the terms of the freelance relationship with
11 Chapterhouse?

12 A Nick would tell me what he needed made and I would make it
13 basically. And then I would mail the sculpt to him and he
14 would pay me.

15 Q Can you describe all of the various things you did?

16 A Yup. I worked on a power armor shoulder pad, a terminator
17 shoulder pad, some vehicle icons. I also made another set of
18 vehicle icons that never made it into production because they
19 were lost in the mail.

20 Q What were the payment terms?

21 A We would just hammer that out beforehand and just agree on
22 how much I would get paid before I made whatever it was. It
23 was usually, I think, \$60 or less for each thing.

24 Q So since you listed four things in total, you received
25 something around or less than \$240 from Chapterhouse?

Traina - deposition

1 A Around or less than -- probably around \$100 actually. 60
2 was the top end.

3 Q What Warhammer 40K books or materials do you have,
4 excluding models?

5 A I own the rule book and several Codexes. The Ork Codex,
6 the Imperial Guard Codex. I think just the Codexes from the
7 army that I have.

8 Q Other than the one rule book and those five Codexes, do
9 you have any Games Workshop materials other than models?

10 A I have some Black Library books.

11 Q Do you know how Chapterhouse markets its products?

12 A I think they post on forums and word of mouth.

13 Q Do you know what forums they post on?

14 A Like I said, I have seen posts of theirs online on
15 Heresy-Online and dakkadakka.

16 Q Let's start with Plaintiff's Exhibit 189, which is a
17 five-page email chain beginning with WT30 and ending with
18 WT34. Let me know when you have that.

19 A Yes.

20 Q This is an email chain that ultimately you received from
21 sales at ChapterhouseStudios.com on or about October 30, 2009,
22 is that right?

23 A Yes. This looks familiar.

24 Q Was I right characterizing it as an email that you
25 ultimately received from ChapterhouseStudios.com on or about

Traina - deposition

1 October 30, 2009?

2 A Yes.

3 Q Do you recall this email chain?

4 A Yes.

5 Q Even though the email address says sales at
6 ChapterhouseStudios.com, do you know who personally it was
7 writing the messages?

8 A That was the email that Nick gave me to contact him.

9 Q And Nick, again, is Mr. Villacci?

10 A Correct.

11 Q Page 4, first paragraph. The first sentence says:

12 "I understand that you're looking to go forward with
13 some Space Wolves stuff."

14 Do you see that sentence?

15 A Yes.

16 Q What are Space Wolves? You mentioned that once before
17 already.

18 A That is a different chapter of Space Marines.

19 Q The term Space Wolves, is that a Games Workshop related
20 term?

21 A Yes. I think it could be.

22 Q Did you make any Space Wolves items for Chapterhouse?

23 A I did not.

24 Q Page 3, middle. Going up one more email, that's an email
25 from Chapterhouse to you beginning "Space Wolves." You see

Traina - deposition

1 that?

2 A Yes.

3 Q The first sentence is:

4 "I'm not too sure about making pads for them as they
5 are pretty well-accessorized in the new box sets, tons of
6 pads, weapons, et cetera."

7 Do you see that sentence?

8 A Yes.

9 Q What did you understand that sentence to mean?

10 A That Games Workshop has already got that area covered. I
11 guess -- I don't know.

12 Q The next sentence says:

13 "I do want to make a Land Raider set for them like
14 our Salamander one."

15 What's a Land Raider?

16 A A Land Raider is a large tank for Space Marines.

17 Q Is that a specific type of vehicle in the 40K universe?

18 A Yes.

19 Q What is a Salamander?

20 A Salamander is another chapter of Space Marines.

21 Q Bottom of page 2 to top of page 3.

22 If you go up one more email, this one begins on
23 page 31 but goes over to page 32. It's an email from
24 Chapterhouse to you. Do you see that?

25 A Yes.

Traina - deposition

1 Q It starts out:

2 "Do you have a Space Marines Codex?"

3 What is a Space Marines Codex?

4 A It's the army book for Space Marines.

5 Q What is included in an Army book for Space Marines?

6 A The rules for using them in the game as well as some
7 pictures of painted models.

8 Q Does it include illustrations for that army?

9 A Yes.

10 Q Does it include banners or symbols that that army might
11 use?

12 A Yes.

13 Q The next sentence is:

14 "We have a lot of requests for Flesh Tearers pads."

15 What is that?

16 A Again, Flesh Tearers is another chapter of Space Marines.

17 Q What is a pad?

18 A I believe he's describing a shoulder pad.

19 Q The next sentence says:

20 "We need it to be more ornate than the icon in the
21 Codex, basically a saw blade."

22 Do you see that?

23 A Um-hmm.

24 Q Sorry. Is that a yes?

25 A Yes.

Traina - deposition

1 Q When he's referring to the icon in the Codex, what is he
2 referring to?

3 A I assume he's referring to a picture in the Space Marine
4 Codex.

5 Q Do you know what the Flesh Tearers icon is in the 40K
6 universe?

7 A Yes, I do.

8 Q What is it?

9 A It's a saw blade with a blood drop on it.

10 Q Page 2, third from last paragraph. The second paragraph
11 starts out:

12 "Remember, it can't be too ornate that it won't be
13 recognizable as the FT icon."

14 Do you see that?

15 A Can you direct me to it again?

16 Q Sure. It's about in the middle of page 31, that same
17 email from Mr. Villacci to you. It's the second paragraph
18 right before he signs off Nick.

19 A Yes.

20 Q What did you understand FT icon to mean?

21 A Probably stands for Flesh Tearer.

22 Q So what did you understand this sentence to mean to you?

23 A He wants the icon to be recognizable but still
24 interesting.

25 Q Did you understand it was important for 40K players to be

Traina - deposition

1 able to recognize it as the Flesh Tearer icon?

2 A That could be.

3 Q Is this a piece that you sculpted?

4 A This is a piece that I sculpted, yes.

5 Q Did you, as a sculptor, take this as an instruction that
6 whatever you did, make sure it was still recognizable to 40K
7 players as a Flesh Tearer icon?

8 A Yes.

9 Q Did it have to be recognizable to 40K players as a Flesh
10 Tearer icon?

11 A So people could convert a Flesh Tearer or build a Flesh
12 Tearer army.

13 Q Page 1, second paragraph. The next paragraph says:

14 "Still we have gone through a lot of resources to
15 design our own stuff from scratch, while using the same
16 dimensions in 3D applications."

17 You see that?

18 A Yes.

19 Q What is your understanding of what he meant by using the
20 same measured dimensions in 3D applications?

21 A I'm guessing he was just making sure it would fit onto a
22 power armor model.

23 Q Let's look at Plaintiff's Exhibit 191. It's Bates labeled
24 CHS6504 through CHS6505.

25 Do you have that exhibit?

Traina - deposition

1 A Yes.

2 Q Page 2. Looking at the oldest email chain that's on the
3 last page of the document, it's an e-mail from you to Mr.
4 Villacci, correct?

5 A Um-hmm.

6 Q Is that a yes?

7 A Yes.

8 Q You state:

9 "I got the pads in the mail yesterday. I noticed
10 there are a few different ones. There is one with a raised
11 ridge and some normal ones, too. Do you have a preference on
12 the one I work on?"

13 What are you referring to?

14 A Before I started sculpting, he sent me a little packet of
15 pewter pads that he'd made, and they were a couple different
16 variations on the pads.

17 Q Page 1, bottom paragraph. He says:

18 "Unless you are doing anything different with the
19 whole pad face, scales, studs, et cetera, I would just use the
20 GW rimmed look alike instead of the flat one."

21 Do you see that?

22 A Um-hmm.

23 Q Is that a yes?

24 A Yes, yes.

25 Q Prior paragraph. And your response above that says:

Traina - deposition

1 "If I make a raised saw blade with a raised blood
2 drop on top, that's not going to violate any copyright or
3 anything, correct?"

4 You see that?

5 A Yes.

6 Q What was your concern?

7 A My concern was since I didn't know anything about
8 copyright law, I didn't want to step on any toes.

9 Q How did you resolve that concern?

10 A He responded to me and said that it would be fine.

11 Q Let's go to Plaintiff's Exhibit 192, which is labeled
12 CHS6443 through 45.

13 I want to start with the second email on the first
14 page, which is an email from Chapterhouse to you starting with
15 "great" and a smiley face.

16 You see that?

17 A Yes.

18 Q Middle paragraph. The next paragraph refers to a Blood
19 Angel pad. What is a Blood Angel?

20 A A Blood Angel is another chapter of Space Marines.

21 Q And it says, it, quote, would use a drop and wings, end
22 quote. You see that?

23 What is the icon of Blood Angels according to 40K
24 universe?

25 A I believe it's a blood drop with wings.

Traina - deposition

1 Q The next paragraph says:

2 "Blood Angels are coming out in a few months, so that
3 could be cool."

4 You see that?

5 A Yes.

6 Q Why was it important that the Blood Angels Codex and
7 miniatures were released by Games Workshop?

8 A I'm guessing he wanted to do Blood Angel stuff because
9 when they get re-released, people tend to buy a lot of angel
10 armies if they want to spice up some custom pieces.

11 Q What was your understanding as a sculpting of what you
12 could and could not do regarding sculpting?

13 A My understanding was that I wasn't allowed to make a copy
14 of Games Workshop bits or -- that's what I couldn't do.

15 Q When you mean you couldn't make a copy, do you mean
16 casting it off of a bit or copying the design or something
17 else?

18 A The former.

19 Q You couldn't physically cast a piece off of a Games
20 Workshop piece? Is that what you mean?

21 A Well, I didn't do any casting myself, but I wasn't to
22 submit to Nick for any casting any Games Workshop pieces.

23 Q As the sculptor of the case, what understanding did you
24 have of what you could use and couldn't use in relation to
25 Games Workshop pieces?

Traina - deposition

1 A My understanding was that I couldn't submit to Nick any
2 sculpting inspired by any Games Workshop models or art such
3 that it was recognizable in the universe, the background 9 of
4 40K.

5 Q What was your understanding of what you could do with
6 respect to Games Workshop icons and symbols?

7 A I could use them as inspiration and make an icon that was
8 recognizable to one of the chapters or the background of 40K.

9 Q Let's make it a concrete example. I think you said the
10 Flesh Tearers icon was a saw blade with a drop of blood in it.

11 A Right.

12 Q That's from the Games Workshop Codexes and materials?

13 A I recall that, yes.

14 Q Was it your understanding you could make a saw blade with
15 a drop of blood to represent the Flesh Tearers icon in your
16 sculpting?

17 A Yes. That was my understanding. However, there's
18 variations within that as to number of serrations on the saw
19 blade, size, relative size of the saw blade and blood drop to
20 each other.

21 Q When you were sculpting it, what was your understanding of
22 how different you had to make it?

23 A My understanding of how different I should make, it was
24 that I wasn't supposed to use -- I just had to make it myself,
25 and I couldn't use any other -- any Games Workshop bits for

Traina - deposition

1 it.

2 Q What did you do to make your saw blade with the drop of
3 blood on it different from the Games Workshop icon of a Flesh
4 Tearer?

5 A My saw blade had fewer serrations, larger individual
6 cutting teeth, and my blood drop was detachable.

7 Q Any other differences?

8 A Not that I can think of. I'd have to see them both
9 together.

10 Q What did you do to make sure it was recognizable as a
11 Flesh Tearer icon, in your words?

12 A I think anything that looked like a saw blade with a drop
13 of blood on it would be recognizable enough.

14 Q Why?

15 A Because a saw blade with a blood drop on it is the icon of
16 Flesh Tearers.

17 Q So anyone interested in building a Flesh Tearer would know
18 a saw blade with a drop of blood was a Flesh Tearer icon?

19 A Yes. They probably would know that.

20 Q The rules of how you could sculpt and what you could and
21 could not do, how did you gain that understanding?

22 A Emails from Nick and --

23 Q So Mr. Villacci --

24 A What he said I could and couldn't do with regard to
25 sculpting.

Traina - deposition

1 Q And the rules he related to you were things like, we can't
2 use Games Workshop bits while you're consulting?

3 A Correct.

4 Q One of the instructions from Mr. Villacci, I think what
5 you said, was that you could have slight variations as long as
6 it's still recognizable as the Games Workshop icon and be
7 okay?

8 A I'd say that's a pretty accurate paraphrase.

9 Q Mr. Traina, what's in front of you is Plaintiff's
10 Exhibit 193 bearing Bates labeled CHS3639 to 3640. Do you
11 have that?

12 A Yes.

13 Q Page 2, let's start on the second page 3640. I want to
14 ask you about the first email on that page. It's an email
15 from Mr. Villacci to you on November 25, 2009.

16 Do you see that?

17 A Yes.

18 Q First email, last paragraph. The last sentence Mr.
19 Villacci writes in that email is:

20 "I don't think the blade sticking out of the pad
21 would go too well for most players. Most players are very
22 hard-core players who don't like deviating too much from the
23 40K norm. Sorry."

24 Do you see that?

25 A Yes.

Traina - deposition

1 Q What was your understanding of this sentence?

2 A I think he was trying to say my idea about making the
3 blade come out of the pad wasn't a good one.

4 Q So your idea was instead of having the saw blade flat on
5 the pad, you would have it sticking out of the pad?

6 A Yes, basically.

7 Q Why did Mr. Villacci tell you that was a bad idea?

8 A Because he said they don't like deviating too much from
9 the norm, I guess. That's what it says.

10 Q What does that mean to you, deviate from the norm?

11 A I think he means it's more recognizable if it's not
12 sticking out.

13 Q So as the sculptor of this icon, what do you take this
14 instruction from Mr. Villacci to mean?

15 A Don't have the blade sticking out of the pad.

16 Q And instead do what?

17 A Do it the way that we ended up doing it.

18 Q Which was what?

19 A Lie it up flat against the pad.

20 Q And that's because it's more recognizable to 40K players
21 as the, quote, 40K norm?

22 A Yes.

23 Q Let's go to Plaintiff's Exhibit 194. This is a document
24 labeled CHS3597 to 3599. The subject of the email, "Eldar
25 Warlock jetbike rider concept art"?

Traina - deposition

1 A Yes.

2 Q What's Eldar?

3 A Eldar is another race in the Warhammer 40K universe.

4 Q What is an Eldar Warlock?

5 A It's a unit in the Eldar army.

6 Q So a 40K person would understand that to be a very
7 specific unit in this army?

8 A Yes.

9 Q What is a jetbike?

10 A It's a bike that floats.

11 Q So an Eldar Warlock jetbike, is that something specific in
12 the Games Workshop 40K universe?

13 A It's in the rules but not as a model.

14 Q What do you mean by that?

15 A I mean that GW never made -- to my knowledge, I don't
16 think they made a jetbike Warlock.

17 Q As an actual model, you mean?

18 A Correct.

19 Q Page 2. Looking at page 2, do you know what these
20 drawings are supposed to represent?

21 A They look like the head gear for an Eldar character.

22 Q What makes you say it looks like the head gear for an
23 Eldar character?

24 A They kind of have like a sleek look to them.

25 Q As a 40K hobbyist over the past 15 years, looking at this

Traina - deposition

1 makes you think it's an Eldar character or style?

2 A Yes.

3 Q When you first found out about the lawsuit, were you ever
4 asked by Mr. Villacci or anyone else to save any documents?

5 A No.

6 Q So did anyone ask you to save documents during that time
7 frame?

8 A No."

9 MR. KEENER: No more questions.

10 THE COURT: And you are going ask some others?

11 MR. KEENER: No.

12 THE COURT: That's it.

13 MR. KEENER: And, your Honor, plaintiffs rest their
14 case.

15 THE COURT: Okay. And we're going to deal with --
16 we'll finalize the issue on exhibits later.

17 I will just tell the jury something that I think I
18 said earlier, but if I didn't, you probably figured it out
19 anyway. You really shouldn't draw any conclusion from who
20 calls a particular witness. So you will notice that the
21 plaintiffs called as part of their case representatives of the
22 defendants. They're allowed to do that. That's normal.

23 And what I did, as the judge, was basically say that
24 once a witness was on the stand, that all the parties would
25 ask all of their questions so we wouldn't have witnesses kind

Nagy - direct

1 of coming back and forth. So you won't see those people in
2 all likelihood called back in the defendants' case. You
3 shouldn't hold that against them, obviously.

4 So call the next witness.

5 MR. ALY: Your Honor, we have the issue we discussed
6 Friday.

7 THE COURT: It's the motion we talked about. We'll
8 deal with that during the next break.

9 Call the next witness.

10 MR. ALY: Your Honor, we call Jeffrey Nagy to the
11 stand.

12 THE COURT: The breakdown was 87/13 on that one?

13 MR. ALY: Correct.

14 THE COURT: Okay.

15 (Witness sworn.)

16 MR. ALY: If it please the Court.

17 JEFFREY NAGY, DEFENDANTS' WITNESS, DULY SWORN

18 DIRECT EXAMINATION

19 BY MR. ALY:

20 Q What's your name?

21 A Jeffrey Nagy.

22 Q Can you please spell the last name?

23 A N-a-g-y.

24 Q And where do you live, Mr. Nagy?

25 A I presently live in Austin, Texas.

Nagy - direct

1 Q Are you being paid for your testimony today?

2 A No, I'm not being paid.

3 Q I'm handing you a binder of materials that we may go
4 through today.

5 A Thank you.

6 Q How long have you lived in Texas?

7 A I just moved there three weeks ago.

8 Q What did you do before that?

9 A Before then I lived in the Philadelphia area where I
10 worked as a mechanical engineer for a company producing
11 munitions for the government.

12 Q Do you work for Chapterhouse today?

13 A No, I do not.

14 Q Are you an employee of Chapterhouse?

15 A No, I'm not.

16 Q What is your connection then with Chapterhouse?

17 A At the time I was a designer for them where I produced
18 digital 3D models for them that they used in their production.

19 Q Was that a full-time job for you, sir?

20 A No. It was purely a hobby-time job.

21 Q What type of products did you make?

22 A Predominantly I made the blank shoulder pads and
23 substrates they used to -- as an intermediate step in
24 producing their products that they would take and then sculpt
25 upon to produce their unique works.

Nagy - direct

1 Q And did you make any characters, Mr. Nagy?

2 A No, I did not make any characters.

3 Q What is your educational background?

4 A I studied mechanical engineering at Villanova University.

5 After I graduated, I went on to work for a consumer
6 product company in the area where as a mechanical -- well,
7 design and manufacturing engineer would be the best
8 description, where I did both digital design work and
9 production of consumer products and subassemblies.

10 Q What is digital design work?

11 A It entails the creation of the 3D digital models as well
12 as all the supporting equipment used to then manufacture the
13 metal and plastic consumer products.

14 Q Was there a computer software that you used to do that
15 modeling?

16 A Yes.

17 Q What was it?

18 A Pro/E Wildfire.

19 Q Is there a special category that that program fits under?

20 A Yes. It's an engineering software specifically for
21 manufacturing. It's a parametric 3D modelling program that
22 allows specifically the creation of components and the
23 analysis to test their fit.

24 Q Did you learn any other software tools in your design
25 career?

Nagy - direct

1 A I also utilized auto-CAD, which is a more rudimentary
2 program that does a similar task.

3 Q What is CAD?

4 A Computer aided design. It's a --

5 All the software that falls under this umbrella will
6 allow you to digitally create a model and allow the creation
7 of a file format so that that model can then be reproduced
8 physically.

9 Q Let's see how that applies to the gaming aspect here. How
10 did you become involved in gaming, sir?

11 A Oh, I got into gaming at a young age. I was about seven.
12 At first, you know, when I was growing up, you know, my
13 brothers, my father and I on weekends would play Dungeons and
14 Dragons and other tabletop board games.

15 And through that we kind of incorporated miniatures
16 into that gaming, and over time I accumulated a collection,
17 some of which was Games Workshop's products. And I, you
18 know -- and that kind of led into building Games Workshop
19 armies and such, you know, from those collections.

20 Q Over the years how many Games Workshop products have you
21 amassed for your armies?

22 A Too many. In the thousands of pieces.

23 Q In the thousands?

24 A Yes.

25 Q Is there a particular army that you collect?

Nagy - direct

1 A I collect several different armies.

2 Q What are those?

3 A Space Marines, Chaos Space Marines, Little Dark Eldar,
4 Imperial Guard. For fantasy, I have Dark Elves and
5 Bretonnians.

6 Q And just looking at the Space Marines, how many individual
7 Space Marine characters do you have in your collection?

8 A Oh, Space Marine models, probably close to 600.

9 Q And those are ones that you bought from Games Workshop?

10 A Yes.

11 Q What drew you to tabletop war gaming in the first place?

12 A Well, it's a hobby. You know, I grew up in a little West
13 Texas town originally before I went off to school. And, you
14 know, you have a lot of spare time when you're in such a small
15 town, and the hobby was a good way to stay busy and out of
16 trouble.

17 You know, you pick up a miniature here, you work on
18 it, you clean it up, you do some sculpting, and at the end of
19 the day, you have this piece of art that you have put -- you
20 have painted up.

21 Q Did you do all those steps yourself?

22 A Yes.

23 Q And why did you become interested in Warhammer 40,000 in
24 particular?

25 A In particular, the store that would sell these in my home

Nagy - direct

1 town, you know, there were always people hanging around
2 playing the Warhammer 40K games. You know, you sit around on
3 a Saturday afternoon, you're all working together. You're all
4 talking. It's this community, and it kind of fosters this
5 game play, you know.

6 You know, it's self-feeding where, you know, you get
7 something, you paint it up. Your friends say, that's awesome,
8 you know, and so you want to do more. And they at the same
9 time see what you have done and they want to do more.

10 Q How did this interest in the hobby from Games Workshop
11 lead you to Chapterhouse?

12 A I guess it was in early '09 that I -- you know, on one of
13 the forums that I frequent that covers a lot of war gaming,
14 dakkadakka.com, I saw a thread posted by Nick Villacci
15 discussing some of these works that him and his partner had
16 produced and had -- and that they intended to sell.

17 Q Did you reach out to one of them?

18 A I reached out to Nick. Originally like at that time I had
19 created -- you know, through my own playing around with 3D
20 modelling, I created my own pieces that I was interested in
21 pursuing and having made up, and, you know, ran into some
22 hurdles and reached out to Nick for advice for help with that.

23 Q Why did you need advice if you already had drawn up the
24 models on your computer?

25 A There's a -- I mean, with this type of, you know, cottage

Nagy - direct

1 industry type, you know, hobby of like making small pieces,
2 it's hard to just go out and get a one off piece made without
3 an extreme cost.

4 You know, there's an economy of scale that you can
5 only accomplish, that you can only achieve, if you're willing
6 to produce six or seven hundred of a single piece. And so
7 reaching out to a company that seemingly was pursuing such a
8 venture seemed like it was -- they would be helpful.

9 Q And about when was this that you reached out to
10 Chapterhouse?

11 A It was towards the summer of 2009.

12 Q And in 2009, when you sent the request to Nick, why didn't
13 you just send the request to Games Workshop?

14 A Games Workshop at the time did not have any sort of means
15 of reaching out to them beyond their customer service email
16 and hot line.

17 Q Do they have a service today where you can submit ideas to
18 be made?

19 A No, not I'm aware of.

20 Q What service then did you want from Chapterhouse?

21 A In particular, I was looking to take advantage of any
22 casting services they may have had access to.

23 Q Why couldn't you do casting yourself?

24 A I attempted to do casting myself. It just requires a lot
25 of specialized equipment and time that didn't work out too

Nagy - direct

1 well. It didn't work out when I tried to make some of my own
2 pieces.

3 Q And since you had bought so many things from Games
4 Workshop, why wasn't that enough? It seems like you had a
5 pretty large collection.

6 A Well, I mean, both what I was doing and what Chapterhouse
7 was about is creating these personalized statements, these
8 customizable options, that just don't exist, you know.

9 You build this army of a hundred or more pieces. The
10 next guy builds an army of a hundred and more pieces. You buy
11 Space Marines, he buys Space Marines.

12 If you don't do more, if you don't make it your own,
13 if you don't find different ways of putting your own
14 personalized touch on it, you end up with two armies that look
15 very much the same except for the most minor, you know, the
16 most minute details, but on the tabletop, you set them next to
17 each other and there tends to be confusion.

18 Q What were you hoping then for Chapterhouse to provide to
19 you?

20 A I mean, an artistic outlet for the most part because I was
21 making these pieces on my own and, you know, I was having fun
22 doing it.

23 Q Do you have an understanding of whether Games Workshop
24 says it's okay to customize your products?

25 A They not only say it's okay, they generally endorse it.

Nagy - direct

1 You look back through the years of their White Dwarf
2 publication, they have articles on how to sculpt, how to
3 paint, how to do these different things.

4 I mean, that's how I learned to sculpt and paint and
5 do everything else, was reading their magazine, reading their
6 publication that taught me how to customize, how to do these
7 things.

8 Q When you started working with Chapterhouse, what was the
9 first type of product that you worked on?

10 A The first set of products I worked on were the blank
11 shoulder pads and the flat -- the blanks for some of the
12 vehicle kits.

13 Q What's a blank?

14 A It's like producing the canvas that Nick -- that Nick's
15 partner, Tomas, would then be able to sculpt upon, but
16 allowing him to both sculpt upon something easily and
17 guarantee that it would then interface properly and sit right
18 on the Games Workshop product it was meant to complement.

19 Q Now, for the blanks, I think you said it was a shoulder
20 pad blank, is that right?

21 A Well, it's a shoulder pad blank, but also the vehicle kits
22 components you could consider blanks as well.

23 Q Let's start with the shoulder pad blanks. For the
24 shoulder pad blanks, were they designed for a particular Games
25 Workshop unit?

Nagy - direct

1 A I mean, they were all designed with the idea that you
2 could switch them out between any of Games Workshop's large
3 array of Space Marine models.

4 Q And why did you want to design shoulder pads for Space
5 Marines?

6 A Largely because it's one of the armies that is most --
7 what's the word -- they're only --

8 Like in the game, in the background, you have --
9 there are in the war roughly a thousand chapters. Games
10 Workshop can't really -- it really hasn't shown any desire to
11 support all of them. You know, it's too much. No one can do
12 that much. But they also, in that same vein, endorse through
13 their written works people to come up with their own chapters,
14 their own subfactions of Space Marines that they can call
15 their own, that they can go on to write their own stories
16 about.

17 And through that, you know, you come up with icons
18 and your own heraldry that you put on your models. And
19 Chapterhouse was producing a larger array and option of those
20 types of symbols and heraldry so that people could come up
21 with their own and support their own armies.

22 Q Let's take a look at some of the work you did on those
23 shoulder pads, shall we?

24 A Okay.

25 Q Pulling up DX-704 -- I'm sorry. That's mislabeled. It's

Nagy - direct

1 PX, Plaintiff's Exhibit 704. That is this box kit that I'm
2 holding in my hand.

3 A Yes.

4 Q Have you seen this before?

5 A Yes.

6 Q What is it?

7 A It's a Space Marine tactical squad model kit.

8 Q And what comes inside?

9 A It comes with -- it comes with enough components to
10 produce a Space Marine tactical squad of about ten models.

11 Q Is this the thing that comes inside these plastic parts?

12 A Yes.

13 Q What are these plastic parts?

14 A They are sprues. They are the result of injection molding
15 of components. They are basically the --

16 In addition to the pieces, they are also the trees
17 left over when you create a mold and you have to -- you have
18 to make sure that the plastic is fed into that mold in such a
19 way that it fills all the cavities properly.

20 Q And can you just connect for us what it is that you do
21 with these in relation to the hobby aspect you were describing
22 earlier?

23 A Oh, yes.

24 Well, first, you take the sprues -- using an Exacto
25 knife or a pair of side cutters, you clip all the pieces off.

Nagy - direct

1 You clean off any mold lines or flash that might be on the
2 model. And then you assemble them based on the type -- the
3 nature of the unit you're putting together.

4 Q And does it come with shoulder pads?

5 A Yes. It comes with, I believe, more than enough shoulder
6 pads to actually assemble the unit. It comes with a couple
7 spares to allow for a little bit of variation.

8 Q Now, inside the box, does it come with instructions for
9 how to assemble the pieces?

10 A Yes. I believe that's what we're looking at here.

11 Q So on the screen PX-704, we're looking at an excerpt from
12 the assembly guide?

13 A Yes.

14 Q Now, on the assembly guide, can you describe where the
15 shoulder pad fits on the shoulder?

16 A Yes. It's this section of the shoulder. The shoulder pad
17 itself --

18 MR. KEENER: The document --

19 THE COURT: Pardon me?

20 MR. KEENER: That document is nowhere in the box.

21 It's a different document.

22 MR. ALY: This is it right here.

23 THE COURT: It's a package insert?

24 MR. KEENER: On the bottom, it's different.

25 MR. ALY: Can I just put this up on the Elmo?

Nagy - direct

1 MR. KEENER: I'm saying that's a different document.

2 MR. ALY: It's the same thing.

3 THE COURT: Fine. Put the package insert up. You
4 may have to switch the thing on. I think it's turned off
5 right now.

6 (Brief interruption.)

7 BY MR. ALY:

8 Q Mr. Nagy, can you continue to explain what the shoulder
9 pad is and how it fits with the shoulder?

10 A Yes. The shoulder pad is this piece, and that is the
11 shoulder. The shoulder pad has a cutaway on the inside that
12 allows it to then rest upon this surface and allow gluing.

13 Q What is the purpose of the shoulder pad in the game?

14 A The shoulder pad in the game is largely used to allow the
15 player to denote the unit, both its type and the -- and to
16 delineate them from each other.

17 That is, if you have multiple tactical squads or
18 multiple devastator squads, you tend to want some way of
19 representing them from each other, to distinguish them from
20 each other, because on the tabletop when you're playing, you
21 might have multiples of these and they might be clustered
22 relatively close to each other, but you have to retain -- you
23 have to know which ones go with which unit because over the
24 course of the game, units attack other units and you have to
25 remove pieces specifically from a particular unit.

Nagy - direct

1 Q Other than the identification of units, Mr. Nagy, does the
2 shoulder pad change the rules of the game at all?

3 A No.

4 Q Now, what's the shape of the shoulder pad?

5 A The Games Workshop shoulder pad?

6 Q Yes. Let me restate the question.

7 What is the shape of the Games Workshop shoulder pad?

8 A It's largely a cap that fits over the shape of the
9 shoulder.

10 Q Is the shoulder pad a solid object; in other words, it's
11 like a quarter of a sphere or something like that?

12 A No, no. It has a cutaway, specifically the negative of
13 the shoulder.

14 Q What do you mean by negative of the shoulder?

15 A Its interlocking surfaces. These two surfaces have to
16 connect, you know, have to sit on each other. If they don't
17 sit on each other, you would either have to do a lot more cut
18 to get the shoulder pad onto that shoulder, you know, cut one
19 piece or the other to get them to sit with each other.

20 Q Let's take a look at that, and we can go back to it.

21 Mr. Nagy, you were describing the fit. Can you show
22 us what is shown here? It's PEX-765, a few pages from that.

23 A Well, this is an example of a Space Marine arm. This is a
24 shoulder pad and this is the inside of that shoulder pad with
25 the cutaway to allow it to rest upon this piece.

Nagy - direct

1 Q And if these shoulder pads come with the game already,
2 what were you looking to do with Chapterhouse with this
3 shoulder pad project?

4 A To supplement Games Workshop's products.

5 Q Let's turn to some specific Chapterhouse products that you
6 worked on.

7 Did you work on the --

8 When you were working on the blank, what was it that
9 you were unhappy with in terms of the Games Workshop
10 alternatives?

11 A With the --

12 Q Let me ask you another question.

13 When you get the Games Workshop product in the box,
14 does it come with any labels to help identify which units are
15 which?

16 A It comes with a decal sheet, but the decals that are
17 provided are some of the most finicky part of the hobby that
18 most people end up getting too frustrated with to actually
19 bother. They end up just kind of throwing their hands up and
20 throwing the sheet away because it involves cutting out each
21 of these individual symbols with an Exacto knife, taking that
22 piece, dropping it in a small plate of water, letting it sit
23 for just the right amount of time, and then using a toothpick
24 and a fine brush, sliding it onto the Games Workshop shoulder
25 pad to then mark it. And you --

Nagy - direct

1 It's one of those things that too much water in the
2 thing, it's ruined, it's useless. You have to just cut
3 another one and try again. And too little and it doesn't come
4 off the paper and you end up kind of shredding the paper while
5 you're trying to do that.

6 So, yes.

7 Q Assuming everything worked out, Mr. Nagy, did you like the
8 look of the decal on the shoulder pad?

9 A They tend to be very flat. You know, they --

10 I mean, they conform to the surface of the shoulder
11 pad. So, really, unless you're standing at just the right
12 vantage, they don't -- you don't see too much of them, and
13 they don't really add too much.

14 Q And the next slide is from PEX-115 showing the decal
15 compared to DX-642 showing a picture of one of the products in
16 the case.

17 Do you recognize this product?

18 A Yes.

19 Q What is it?

20 A It is Tomas' -- the Raven shoulder pad.

21 Q What part of it is yours?

22 A The underlying -- the underlying surface, the shoulder pad
23 that he then sculpted upon.

24 Q When you were working on the shoulder pad, how did you
25 come up with the dimensions it should have?

Nagy - direct

1 A I started off by looking at the actual shoulder of the
2 Games Workshop Space Marine, and I created --

3 You know, from that I was able to create the general
4 arch, the two-dimensional arch, of that shoulder. And then I
5 simply created a shell, like a thickness was added to that
6 arch and then drawn out to make three-dimensional like you
7 would pulling bubbles through the air, that sort of motion to
8 flip it over along a common axis.

9 Q When you designed the shoulder pad, did you measure the
10 Games Workshop shoulder pad and then just copy those
11 dimensions?

12 A No. I looked at the --

13 I looked at the Space Marine shoulder and then simply
14 ensured that the material of the shoulder pad was adequate for
15 casting from my experience working with the resins and metals.

16 Q What did the shoulder tell you about how to design the
17 pad?

18 A I mean -- well, I mean, with the -- with the shoulder and
19 even the rest of the model, you know, it sets the parameters.
20 It sets the confinement. You can't exceed these dimensions or
21 else it just won't work with their model. It won't sit on
22 their model.

23 And then you have made something that is, you know,
24 useless to Tomas or Nick to sculpt upon.

25 Q What is your understanding then of how this pad, the

Nagy - direct

1 shoulder pad, with the Raven on it was created?

2 A Well, I mean, it's really a nice piece. It's very -- it's
3 a very involved sculpt. I mean, you can see how three-
4 dimensional it is compared to the normal shoulder pad, the way
5 it comes off that surface, which creates a lot of difficulties
6 in the casting process because these types of recesses and
7 edges there tend to shred the mold when you pull them out.

8 So getting it just right, you know, involves some,
9 you know, real sculpting know-how to get it, to get those
10 gentle angles that you need to then pull it out.

11 But, I mean, he sculpted on one of my -- on one of my
12 blank shoulder pads, and this is, you know, exactly what I
13 envisioned them being used for.

14 Q Did you make shoulder pads other than blank shoulder pads?

15 A I made a few other ones.

16 Q Let's look at another one. In terms of the project that
17 you had engaged, this is DX-596, page 1. What are we looking
18 at here, Mr. Nagy?

19 A This is a -- this is one of our earliest emails discussing
20 some of the various blanks I was working on for them.

21 I guess this would have been when I first completed
22 the digital models for the three earliest blanks.

23 Q Did you send pictures of those blanks, what they would
24 look like?

25 A Yes.

Nagy - direct

1 Q The next slide shows the attachment to that email. What
2 are we looking at here, Mr. Nagy?

3 A These are the three blanks that I initially created.

4 One -- the first one is just a solid shell. The
5 other one has these reliefs cut into it, and the third one is
6 a rimmed one.

7 Q And, Mr. Nagy, we have the next email talking about the
8 shoulder pad projects, DX-598. What was this email about?

9 A Well, one of the things they wanted me to experiment with
10 was putting on various insignias onto these shoulder pads so
11 that they would have these more eye-popping sort of symbols,
12 three-dimensional depth on these.

13 Q Can you describe for the jury the four images that are on
14 the bottom here?

15 A Yes. The first one is a -- is a kind of -- it's a
16 shoulder pad with the addition of a neck guard which was
17 common to medieval armor to block glancing blows to the neck.

18 The second is a shoulder pad with an upward pointing
19 arrow. The second is a shoulder pad with a chevron. And the
20 last one is a shoulder pad with crossed arrows.

21

22

23

24

25

Nagy - direct

1 Q Had you seen those images, the arrow, the chevron and the
2 crossed arrows, in the Games Workshop games you had played?

3 A Yes.

4 Q If you'd seen them there, why did you put them on the pads
5 you were working on?

6 A Because I had seen them elsewhere and believed them to be
7 generic.

8 Q Why do you believe them to be generic?

9 A Because many of those symbols are used in various military
10 designations and markings.

11 Q Have you seen the use of the combination of the chevron,
12 for example, with the Roman numeral anywhere outside of Games
13 Workshop?

14 A Yes. On various platoon banners and such.

15 Q Did you then design a shoulder pad that also had that
16 combination?

17 A Yes.

18 Q Were you familiar with the different categories of Space
19 Marines and what different designations they used within the
20 game?

21 A Yes.

22 Q The next slide shows an excerpt from email DX 584. Can
23 you describe what you were discussing there?

24 A Yes. These were the various blank shoulder pads I created
25 as of the date that this email was written.

Nagy - direct

1 Q And that's June 23rd, 2009?

2 A Yes.

3 Q What were you providing to Chapterhouse at this time?

4 A I was providing them with general makeup for how these
5 would -- these blanks could be used for additional -- for
6 their sculpting.

7 Q Is one of the ideas that you had to make a griffon-type
8 shoulder pad?

9 A The griffon was originally a customer request. They
10 had -- they wanted to paint up an army using a griffon as the
11 symbol on the shoulder pad and for their army.

12 Q How did you know it was a customer request to make a
13 griffon on a pad?

14 A They furnished a collection of medieval art.

15 Q Next slide shows on PEX 115. This is a finished product
16 from Chapterhouse. Had you seen this before?

17 A Yes.

18 Q What are these?

19 A These are the various squad shoulder pads that I worked on
20 for them.

21 Q Did you end up making a griffon pad as well?

22 A I did. It was a test to see how well the 3D modeling
23 would work for producing such a fine detailed sort of surface
24 feature as the shoulder pad icons and ultimately proved that
25 Tomas's hands were better, you know, the physical sculpting

Nagy - direct

1 was better than the digital sculpting.

2 MR. ALY: And for the record, this information, the
3 pictures are also on PEX 1020.

4 BY MR. ALY:

5 Q Next slide is DX 642 showing one of the Chapterhouse
6 shoulder pads. What is this pad?

7 A This is the griffon shoulder pad that Games Workshop
8 ultimately sold.

9 Q That who sold?

10 A I mean Chapterhouse.

11 Q Did you work on this project?

12 A Yes, both by producing the blank and some of the initial
13 sort of digital modeling involved for that griffon.

14 Q The next slide is DX 582. This is an email dated June
15 22nd, 2009.

16 Mr. Nagy, what were you writing about here?

17 A I was writing about how the griffon -- I was playing
18 around with was a freehand drawing that I had done on the
19 computer creating initially a two-dimensional image and then
20 extruding that into a three-dimensional one.

21 Q The drawing on the bottom left there, can you describe
22 what that is and how you made it?

23 A I mean, producing a two-dimensional image in probably
24 Wildfire basically involves connecting dots and from those
25 dots and points determining whether you want it to be a

Nagy - direct

1 straight line or an arc, and so I basically did that going
2 point to point to point along the outside, creating the
3 outline, the perimeter of that shape.

4 Q And is that one of the shoulder pads that you know was
5 sold by Chapterhouse?

6 A In a form.

7 Q What do you mean by that?

8 A Well, they took it, and it didn't -- I don't believe it
9 turned out too well in the 3D printing, and they ultimately
10 had Tomas go in and do some touch-up work.

11 Q And I'm holding -- I'm going to hand you DX 14.

12 A Um-hum.

13 Q What is DX 14?

14 A It is the final product of this shoulder pad effort.

15 Q Can you hold it up and show it to the jury?

16 Is that the shoulder pad, Mr. Nagy, that once you
17 assembled the Space Marine that piece would be added to it?

18 A Yes.

19 Q Mr. Nagy, did you work on other products besides shoulder
20 pads?

21 A Yes, I did.

22 Q Let's take a look at the next one. This is from PX 1020,
23 entry 109.

24 Did you work on something called the rapid response
25 wheeled kit for Chimera?

Nagy - direct

1 A Yes, I did.

2 Q What was that?

3 A It was a -- through discussion, the idea had come up to
4 produce a kit that would supplement Games Workshop's Chimera
5 armored personnel carrier model and transform it into
6 something that resembled more of a modern idea of a armored
7 personnel carrier. In this instance the characteristic
8 feature was the addition of wheels, which is in this type of
9 pattern indicative of urban combat vehicles.

10 Q What work did you do to assemble and come up with this kit
11 that you were talking about?

12 A Well, I mean, the starting point was looking at where it
13 would have to mesh and sit on the Games Workshop Chimera kit.

14 Q Then what did you do?

15 A Well, from that profile, I had to create a
16 three-dimensional shape of various angles and proportion the
17 location of the wheels such that it would tend to look like a
18 modern vehicle and something that could actually work.

19 Q Did you send emails about this idea to Nick at
20 Chapterhouse?

21 A Yes.

22 Q Next slide is DX 628 from page 4.

23 Mr. Nagy, is this an email that you sent?

24 A Yes.

25 Q And what are you describing to Nick?

Nagy - direct

1 A In this instance I'm going further on it, saying, you
2 know, that there are other ways we can adapt this particular
3 model, you know, do more to the Chapterhouse add-on kit that
4 would make it look suitable to other modern concepts of
5 warfare. In this case I'm talking about a half track vehicle,
6 which was something used quite commonly in World War II and
7 World War I.

8 Q Did you end up making a conversion kit?

9 A Yes.

10 Q Do you know if Chapterhouse sold the conversion kit?

11 A I do not believe in this case they sold it.

12 Q Did they sell the wheels to go with the Chimera for the
13 Games Workshop product?

14 A Yes, they sold that kit.

15 Q And for that kit do you have an understanding of whether
16 it's one of the items accused of copy infringement?

17 A It is not.

18 Q Did you work on products other than this wheeled
19 conversion kit?

20 A I also worked on a variety of add-on kit pieces for their
21 other vehicles such as the Rhino and the Land Raider.

22 Q What's a Rhino?

23 A In this setting it is the -- it is analogous to an M 113
24 armored personnel carrier. It's basically a armored box with
25 tracks that carry troops around the battlefield.

Nagy - direct

1 Q What's M 113? Is that something from Games Workshop?

2 A No. It's a real-life modern armored vehicle that we used
3 starting in the 50s through Vietnam, and the British had their
4 own versions of it. But it basically is analogous to the
5 general shape, function of this vehicle.

6 Q Putting up DX 642, and this image is also in PEX 1020.
7 Product 82 is the reference number for this product.

8 What is the product on the left?

9 A That is Games Workshop's Rhino model kit.

10 Q Is that the tank that you were describing a moment ago?

11 A Yes.

12 Q And what did you do in terms of making a product that goes
13 with that?

14 A Well, initially I produced pieces, blank door panels that
15 Chapterhouse went on to use here and here that fit in the
16 bezel of the Games Workshop model.

17 Q What's a bezel?

18 A A bezel is basically the pocket in which these components
19 sit in. There's an interfacing surface. You know, square
20 peg, square hole or, you know, a round hole is not -- you
21 know, a square peg doesn't fit in a round hole.

22 Q I'm showing you an email with an attachment, DX 588. What
23 is shown here?

24 A This is one of those components I made. It's a piece from
25 the retro Mark I Rhino kit, add-on kit that Chapterhouse

Nagy - direct

1 produced and sold.

2 Q Did the Rhino that Games Workshop sold, did that come with
3 doors?

4 A Yes.

5 Q So why were you making doors to go with it?

6 A It's just part of an individual player's personalized
7 statement about -- and theme that they want for their
8 particular army that you can't necessarily produce with just a
9 Games Workshop model.

10 Q When it comes to these doors, for the dimensions did you
11 take the doors that Games Workshop had and copy those?

12 A No. I mean, this is the front panel, but with the doors
13 and with these different panels, it was looking at where these
14 pieces had to sit on the model so that they would actually
15 mesh with it, you know, like a body kit for a Ford Mustang.
16 You know, that changes whether it looks more street racer or
17 more sports car, you know, they make kits. You switch out
18 pieces of the body panel. Same thing. Same idea.

19 Q Did you also work, Mr. Nagy, on the Chapterhouse jetbike
20 product?

21 A Yes, I did.

22 Q What work did you do on that product?

23 A I --

24 Q And I'm pulling up images from PEX 15, 113 and 1020.

25 A I produced the underlying digital -- the digital model for

Nagy - direct

1 the underlying jetbikes sans the rider and some of the
2 ornamentation and weapons.

3 Q So you're pointing to the image on the right. Is that the
4 Chapterhouse jetbike that you were working on?

5 A Yes.

6 Q What's on the bottom left of this image?

7 A The bottom left is an -- is a Eldar jetbike.

8 Q Did Games Workshop sell that jetbike at the time you were
9 working on a jetbike?

10 A Yes, they did.

11 Q So if Games Workshop was already selling a jetbike, why
12 did you need to make another one?

13 A I mean, this was something that a lot of players had shown
14 interest in. It's just -- it was just an idea that we had
15 come up with together and had thrown around. Hey, here's this
16 common sort of sci-fi theme.

17 Q What do you mean it's a common sci-fi theme?

18 A Everyone from Buck Rogers to Flash Gordon had a jetbike
19 and so on. You know, I mean, the concept of a jet powered
20 motorcycle ridden, you know, style ridden vehicle is common to
21 a lot of works.

22 Q When it comes to the word jetbike, do you associate that
23 word with Games Workshop in particular?

24 A No.

25 Q Why not?

Nagy - direct

1 A Besides being generic, it's existed and been used in other
2 places such -- you know, to describe the general concept of a
3 jet engine powered flying machine where the rider rides it
4 like they would a motorcycle.

5 Q Now, Mr. Nagy, is that something you're saying just for
6 this litigation, or is it something you knew before this case
7 even started?

8 A I knew before.

9 Q Now, Mr. Nagy, what's the image on the top left?

10 A That image is Emperor's Children jetbike from the Horus
11 Heresy card game and subsequently the Collected Visions art
12 book.

13 Q Had you seen that image at any time before you worked on
14 your jetbike?

15 A Yes. 2007 when that book first came out I purchased a
16 copy of it and had seen it then.

17 Q When you were designing your jetbike, were you trying to
18 copy that image?

19 A No.

20 Q What were you trying to do?

21 A I was trying to come up with our own sort of version of a
22 jetbike, of the general concept of a jetbike that would look
23 bulky enough to support both -- you know, to support someone
24 that's supposed to be like a thousand pound rider as well as
25 have the modularity to also be used to create an alternate

Nagy - direct

1 version of this bike that would allow for a lighter normal
2 sized rider.

3 Q Mr. Nagy, the bike that was sold on the lower left, the
4 Eldar jetbike you were referring to, could that be used with a
5 Space Marine unit sitting in it?

6 A No.

7 Q Why not?

8 A Different weapons, different rules, different faction. It
9 would look incredibly out of place.

10 Q What about the jetbike on the right? Is that one you had
11 made for Space Marines?

12 A In general, yes.

13 Q And it's been pointed out, Mr. Nagy, that the front of the
14 jetbike that you designed has these rims, or I don't know what
15 they are, you'll tell us, and then over here in the Games
16 Workshop image in the book that you were talking about also
17 has these rims. Can you explain why those look the same?

18 A Well, initially I'd created the prow of this jetbike to
19 resemble an ancient Greek ramming ship, and Nick had emailed
20 me and pretty much asked me to make it more like a Cadillac,
21 you know, bulkier. And so, you know, Cadillacs are known for
22 their vertical grilles on the front, and this is supposed to
23 be a big jet engine, and that's supposed to be the large air
24 intake for such a vehicle.

25 Q Let's look at that email. This is DX 623.

Nagy - direct

1 When you were referring to looking like a Cadillac,
2 is this the email you were talking about?

3 A Yes.

4 Q And what is this email?

5 A This is an email from Tomas discussing the jetbike as well
6 as a couple of other projects where he had talked about the
7 idea of streamlining it and making it more Cadillac-like.

8 Q Now, on the jetbike that you had designed, was it made for
9 a particular unit within the Space Marines?

10 A I mean, it's really made -- at the time it was really just
11 made notionally like for a player to have this model cause
12 there really weren't rules for a Space Marine jetbike at the
13 time.

14 Q And the jetbike, it has a character sitting in it. Did
15 you make that character?

16 A I did not make the character.

17 Q Do you know if Chapterhouse sells the jetbike with the
18 character or if this was for marketing purposes or anything
19 like that?

20 A This was for the website that they took this picture. I
21 believe Tomas, I'm not sure, but I believe it was Tomas who
22 sculpted just a set of legs and a set of arms to provide along
23 with it so that Games Workshop components could be used with
24 it and position those parts to fit on there such that, you
25 know, it would look correct for the rider.

Nagy - direct

1 Q Where would people get the rest of the body to work with
2 the jetbike?

3 A They would have to buy a Games Workshop kit.

4 Q Now, going back to these lines in the front, where do
5 those lines -- is there a function to those within the design
6 that you're aware of?

7 A Well, I mean, it goes with the notion of a jet engine.
8 You know, jet engines have a large air intake for their
9 compressor, you know, before the combustion, and to protect
10 the internal mechanisms of a jet engine, jet engines have to
11 have some form of protection to prevent things from striking
12 against the delicate ceramic blades inside.

13 Q Did you discuss -- from the artistic point of view did you
14 have discussions with the other people on the team about how
15 it should look, this jetbike?

16 A Oh, yes. It was -- I mean, this was a -- this started off
17 with a lot of open discussion about the very concept.
18 Everyone did a little bit of concept artwork, sketches and
19 such, and they were passed around, discussed, and, you know,
20 this was kind of the design that was settled on.

21 You know, there was some -- I did a rough -- you
22 know, it was a very iterative process that went from concept
23 sketches to a rough digital model, back to some more sketches
24 and then eventually this final product.

25 Q Showing an excerpt from PX 59, an email from you to Tomas

Nagy - direct

1 and then on the bottom from Tomas to you. Start on the
2 bottom.

3 A He sent that email first, and that was my response.

4 Q And this is -- the bottom email, let's start there, is
5 dated October 24th, 2010. This is from Tomas F. Do you know
6 who that is?

7 A Yes.

8 Q Who is he?

9 A Tomas, I can never say his last name. I don't know how to
10 pronounce it. But he was the physical sculptor of -- for
11 Chapterhouse.

12 Q And he's referring here to something called the A. Smiths
13 custodian jetbikes. Do you know what those are?

14 A I believe he is referring to an alternate piece of artwork
15 of that same particular image that we saw on the previous
16 page. It's just the same basic design from a different angle
17 with the different riders on it.

18 Q And were you then -- did you take this as an instruction
19 to go find that image and copy it?

20 A No.

21 Q Did you even look at that image while you were designing
22 your jetbike?

23 A Not while I was designing.

24 Q When did you look at it? Did you look at it again after
25 designing it?

Nagy - direct

1 A After the fact I looked at it.

2 Q Why did you do that?

3 A Out of caution, out of concern that there may have been an
4 inadvertent resemblance between our design and their design.

5 Q On the top you're saying to Tomas that you have the Horus
6 Heresy books and I've been looking at them. What does that
7 mean?

8 A Well, like I said, I own -- like I've said previously, I
9 own that particular art book, series of art books that he's
10 referring to when he asks about these different images. It's
11 one of -- it's one of a couple -- you know, 40 or 50 different
12 books I have of Games Workshop's.

13 Q But here were you telling Tomas, though, Mr. Nagy, that
14 you were looking at them so that you could copy from them?

15 A No.

16 Q What were you saying? Why did you refer to the Horus
17 Heresy book at all?

18 A I was being rather blunt with him because he doesn't --
19 English really isn't his first language, and he kind of
20 stumbles over things when -- if I got too verbose, for part of
21 it. But, I mean, really I was -- at this point it was a very
22 late stage in the design. He was still pushing for additional
23 changes and, you know, pointing at the book, and I was like,
24 you know, I've seen them, but I think the design is really
25 done at this point.

Nagy - direct

1 Q Did you like your design better than the one in the book?

2 A Yeah.

3 Q Why?

4 A I think the design in the book doesn't really -- I think
5 there are parts of the design that don't look proportionally
6 sound. You know, it's a compositional, it's a more artistic
7 sort of argument against the design, like the composition of
8 the balance of it seemed a bit off.

9 Q When you're referring to the proportion, what do you mean?

10 I'm showing you now page 623, page 1, another email
11 excerpt. And does this email address the question you raised
12 about proportionality?

13 A Yes.

14 Q How so?

15 A Well, I mean, you know, the notion of this jetbike is that
16 it's supposed to be carrying someone who, you know, weighs
17 several hundred pounds and is wearing, you know, several
18 hundred pounds more of armor. And so if you are to believe
19 that there is a machine capable of propelling such a person
20 through the air, you know, it has to look like it could
21 actually do it. It shouldn't -- it shouldn't be something
22 that is so far out of the realm of reality as to be
23 disbelieved.

24 Q Did you draw any inspiration or reference to other
25 vehicles besides the Games Workshop vehicles?

Nagy - direct

1 A Yes. I mean, we looked at a lot of larger sort of
2 motorcycles that have been made over the years by different
3 companies to see how they dealt with the whole notion of a
4 larger, more powerful engine.

5 Q Why were you looking at motorcycles?

6 A The concept's a jetbike, so it's a jet engine ridden like
7 a bike. There's a clear correlation between those two forms,
8 you know, that both fit in -- into what we were doing and the
9 collective consciousness of what a jetbike is.

10 Q Mr. Nagy, I hear you saying today that you looked at a
11 motorcycle, but did you talk about motorcycles during the
12 emails that you had?

13 A Yes, we did.

14 Q Let's look at, this is going to be DX 633, an email.
15 Let's first start with the top of that email, which is dated
16 November 9th, 2010.

17 Is this an email that you wrote, Mr. Nagy, to Nick?

18 A Yes.

19 Q And what are you telling him here?

20 A Well, I'm bringing up my concerns about the proportions on
21 this because we were trying to balance the use of this because
22 he had intended that we have two -- that we could make two
23 different variances of this, one in which it was intended for
24 a lighter rider and as well as a heavier rider, so I was
25 trying to say like, you know, we have to get these proportions

Nagy - direct

1 right or it's going to look lopsided compositionally. You'll
2 look at it and it will seem like something that should be
3 flying like this instead of like this.

4 MR. ALY: Let the record reflect there's some angles
5 from the hand.

6 BY MR. ALY:

7 Q And is it that email that you also then referred to
8 real-life motorcycles?

9 A Yes.

10 Q What are you describing here, Mr. Nagy, in the remainder
11 of that same email?

12 A Well, I was talking about different riding styles of
13 motorcycles in this particular instance, whether the bike
14 would be ridden like a chopper or a Harley Davidson in this
15 case or whether it would be ridden like more one of these
16 Japanese-style racing motorcycles, over the engine as opposed
17 to behind the engine.

18 Q What did you decide?

19 A Behind the engine.

20 Q And from these -- these are just links. We don't have
21 pictures. But what were these links to?

22 A Examples of those two different larger bikes with those
23 particular types of riding styles.

24 Q When it came to the designing of the jetbike, what steps
25 did you take to do the designing?

Nagy - direct

1 A Well, like I said, there was a lot of initial sketches
2 that everyone did that were passed back and forth with
3 critiques and comments, and then there was a rough digital
4 model created and shown to everyone involved, and additional
5 notes and work were done. Eventually that model was made into
6 something more closely resembling what was finally produced.
7 And additional requests to then, you know, balance the look of
8 it and some of those aesthetic changes that Tomas requested.

9 Q You were mentioning a digital model. I'm showing you DX
10 479. Is this an image of what that digital model would look
11 like?

12 A Yes.

13 Q What is shown here in the picture?

14 A This is an orthographic view of the -- of that jetbike
15 model from different vantages. You know, it's -- it was
16 really a neat sort of model playing with the sizes of things.
17 Like I particularly always like that vantage in the left-hand
18 corner. You know, it's easy from the different angles to lose
19 perspective on the way -- you know, it's supposed to be a
20 jetbike, so these air intakes have to have a clear flow of air
21 into them, and you lose it when you see it from an angle, but
22 when you look straight on it, you see how the sides come out.
23 They flare out, and they allow the air to scoop in, not just
24 on the front, but along the sides as well.

25 THE COURT: We're going to take our break right here.

Nagy - direct

1 We'll break for ten minutes. Then we'll go till 12:30.

2 All rise.

3 (Recess taken.)

4 (The following proceedings were had in the presence
5 and hearing of the jury:)

6 THE COURT: Mr. Aly, you can resume.

7 BY MR. ALY:

8 Q Mr. Nagy, did you also work on a combi weapon?

9 A Yes, I did.

10 Q I'm showing an excerpt from PX 1020. This is item 34,
11 combi weapon magnetic kit. Did you work on this product?

12 A Yes, I did.

13 Q What is this product?

14 A It is a multi-part kit for the assembling of a weapon that
15 has a number of variances to it.

16 Q Where did you come up with the idea to use a combi weapon?

17 A Well, I mean, the notion of an under-slung weapon, you
18 know, has existed for, you know, a good amount of time, so
19 it's not really new.

20 Q What do you mean by under-slung weapon?

21 A Well, I mean like, for example, most common in our
22 military, we have -- or army, the soldiers carry an M 16 or an
23 M 4 assault rifle that has a M 203 grenade launcher under
24 slung where the one weapon is mounted immediately below the
25 barrel of the other.

Nagy - direct

1 Q Did you use that idea to create the combi weapon magnetic
2 kit?

3 A The notion of one, yes.

4 Q These are obviously really small. Why are they the size
5 and shape that they are?

6 A Well, one of the goals we set out with was to create one
7 in which these upper assemblages could be switched out. You
8 can see they're separate pieces, and this lower section is a
9 fifth piece, and a magnet could be placed on the inside
10 allowing these parts to be switched out between different
11 gaming sessions.

12 Q Were these weapons designed to fit with a particular
13 product?

14 A With the Space Marines.

15 Q How did you know that they would fit with Space Marines?

16 A I had to look at the boxiness of the foregrip and the
17 distance from this portion of the -- for the pistol grip to
18 that foregrip to maintain compatibility with the Games
19 Workshop Space Marine. That is, Games Workshop's Space
20 Marines have arms that are fixed in this position, you know.
21 They have ten -- they may have ten, 20 variances of this
22 position, but it's effectively this position with those
23 dimensions being identical between all of their -- all of
24 their models so that their models can be cross compatible with
25 themselves.

Nagy - direct

1 Q Did Games Workshop sell weapons for use with their Space
2 Marines?

3 A They sold them as part of larger kits.

4 Q Why were you making this combi weapon magnetic kit, then?

5 A Well, it's a convenience factor. I mean, it's about
6 convenience because, you know, someone builds a model, this
7 guy may represent his general or just a sergeant in his
8 particular army, and they want to give him a combi weapon, but
9 they may want to switch this out between different gaming
10 sessions for a number of reasons, and this allows them to have
11 one model that they've really put a lot of the effort into
12 with this ability to switch it out as opposed to having, say,
13 five identical pieces with one change made to them.

14 Q How does your design help swapping out? I don't
15 understand that part.

16 A Well, we sized it such that a very small, half a
17 millimeter I believe is what it was, magnet could be fitted
18 into the back end of these upper assemblies and another magnet
19 could then be inserted into the top of this lower assembly so
20 that when you pull -- you could pull it off and drop in the
21 other magnetized piece and they would lock together and stay
22 together throughout the, you know, generally rough handling of
23 a gaming session.

24 Q Now, did Games Workshop have, at the time you were working
25 on this, did they have a magnetic interchangeable piece for

Nagy - direct

1 their weapons?

2 A No, they did not.

3 Q Why did you think that would be important to have?

4 A Well, I mean, it goes back to just allowing players to
5 personalize their pieces by giving them as many options as
6 possible.

7 Q Did you also work on another weapon, the SCAR lasgun?

8 A Yes, I did.

9 Q Showing you --

10 Before we go to that next weapon, let me first show
11 you an email about the combi weapons, PX 100, and the email is
12 dated January 20th, 2010.

13 Is this an email describing your work on the combi
14 weapon?

15 A Yes, it is.

16 Q What were you telling Nick here in this email?

17 A I was discussing the fact that the very notion of this
18 type of weapon has existed for some time, that there are
19 modern counterparts and modern -- this is a modern concept of
20 a single weapon with multiple capabilities.

21 Q And this notion that you were talking about of the
22 combination weapon, is that the same under-slung weapon you
23 were describing earlier, this idea of the M 16 with the
24 grenade launcher?

25 A Exactly. It's exactly the weapon I was describing

Nagy - direct

1 earlier.

2 Q Next showing you DX 627. And let's start with the bottom
3 email, October 6, 2009. And you're writing to Nick that when
4 it comes to making the combi-bolter interchangeable, that's a
5 lofty goal. Why did you think that was a lofty goal?

6 A Well, it's hard to see it without having the physical
7 piece in front of you, but the magnets -- you know, you can
8 only buy magnets that are so small, and to make a little
9 pocket in the back of these components that allow it to fit
10 together while still retaining these proportions that make it
11 necessary to fit on a model require a lot of fine tuning of
12 the details to hide the seams, to allow enough material to
13 allow that magnet to be hidden inside the model.

14 Q Were you able to come up with a design that eventually
15 turned into a product?

16 A Yes.

17 Q And did Chapterhouse sell that product?

18 A Yes, they did.

19 Q When you were talking about the dimensions of the magnet,
20 I'm showing you now DX 628, page 3 of that email from January
21 20th, 2010. Did you discuss these difficulties of the design
22 with the team?

23 A Yes, I did.

24 Q And what is this email describing?

25 A Well, in this particular instance I was raising concern

Nagy - direct

1 about, you know, the size of magnets that we were going to
2 use, because I was only aware of magnets that were so small,
3 and Nick eventually found magnets that were even smaller, you
4 know, so instead of dealing with whole millimeters or, you
5 know, an eighth of an inch like here, you know, we ultimately
6 found a magnet that was fractions of a millimeter, you know,
7 the tiniest magnets anyone makes of this sort of hobby magnet.

8 Q And when discussing this project, this is PX 67 from June
9 24th, 2009, you were -- this is an email from you?

10 A Yes.

11 This was earlier on when we were generally sort of
12 playing around with ideas of, you know, laying the groundwork
13 for this project, and I was in this instance discussing, you
14 know, the various heavy armaments that have been used over
15 time that have a particular bulk to them as a inspiration for
16 how to fill out, you know, the size of that grip, you know,
17 that the Space Marine has and the distances between them.

18 Q And when you're talking about the design, you wrote, "The
19 critical thing is, if we make anything a Marine holds, it
20 needs to fit the standard arms." What does that mean?

21 A Well, like I was saying before, this -- you know, the
22 Space Marine has a hand that's open this much, and the
23 distance from this hand to the other is a particular distance,
24 and if you're off by even a little bit, the model can't hold
25 it or it doesn't -- you know, or it looks kind of ridiculous

Nagy - direct

1 on there. You know, he's holding it and his hand's off, you
2 know, out here, not even touching it. You know, you have to
3 get it right there or it doesn't look right.

4 Q Other than fit, were you copying anything from Games
5 Workshop?

6 A No.

7 Q I'm going to show you and hand you DX 34. And, Mr. Nagy,
8 can you explain to the jury what that is?

9 A This is a instance of the combi weapon kit with the
10 magnets.

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1 Q. Can you hold it up so we can appreciate the size of it?

2 A. (Witness complies.)

3 Q. Did you also work, Mr. Nagy, on that SCAR lasgun we
4 talked about a moment ago?

5 A. Yes, I did.

6 Q. I'm showing you an excerpt from PX 1020, Item 117.

7 But before we do that, what were you just doing?
8 You were inserting a tiny piece, it looked like, into another
9 tiny piece. That's what I --

10 A. Yes. I was fitting the two components together. You
11 know, it's next to impossible to see from over there, sorry,
12 but, you know, it just shows these little pieces are so
13 small, you know, they can fit together seamlessly, really,
14 when the magnet is in there.

15 Q. Thank you.

16 Let's talk about this item -- this is, again, from
17 PX 1020, the claim chart. This is Item 117 called SCAR
18 lasgun's 28-millimeter. Did you work on this product?

19 A. Yes.

20 Q. What gave you the idea for this particular set?

21 A. Well, this was a part of a series of weapons we did upon
22 the request -- someone on-line had contacted me requesting we
23 do some -- a particular rendition of a modern military
24 assault rifle. It was a SCAR, which is one of the weapons in
25 competition to replace the M-16. And he asked for basically

1 a version of this that was proportioned and adjusted to fit
2 an Imperial Guard model's hands.

3 Q. When you were designing this particular unit, did you
4 say it was a customer idea to get --

5 A. It was a customer idea to produce a scaled
6 representation of that real life weapon.

7 Q. And is the SCAR a real life weapon?

8 A. It is a real life weapon. It comes in two different
9 variances, very modular, made by Fabrique Nationale, I
10 believe.

11 Q. So today, you know, we're in trial, but you're saying it
12 was based on a real life weapon. Was that something you
13 discussed with the team when you were designing it?

14 A. Yeah. It was why we felt like it was a perfectly
15 legitimate design to pursue.

16 Q. I'm showing you the next page, DX 627, excerpts from an
17 e-mail October 6th, 2009. Can you explain what's shown here?

18 A. This was a breakdown of different -- some of it were
19 different items that I produced digital models of for them,
20 No. 1 and 2. Some of them were things that I thought these
21 have either immediate counterparts or things that, you know,
22 I kind of imagined being similar to these different concepts
23 in proportions.

24 Q. And by real, are you referring to the SCAR M-14 and
25 MP-34?

1 A. Yeah. The SCAR, like I said, is a modern assault rifle.
2 The M-14 is a marine -- is a real life, you know, U.S. Marine
3 sniper rifle, and the MP-34 was, I believe, a German
4 submachine gun. And the M-249 SAW, the M-50 Barret, the
5 MP-60 and the Lewis gun are also references -- direct
6 references to real life firearms.

7 Q. And we're going back to the images of the products, Mr.
8 Nagy. There's an angled tip to these weapons that's been
9 brought to our attention, this angled tip here. Where did
10 you get the idea to use an angled tip?

11 A. Well, as a direct consequence of the 1994 Clinton era
12 assault weapons ban, imported assault weapons had to have
13 fewer than a certain number of features, one of which was a
14 flash suppressor. And so, weapons with a flash suppressor
15 that were being imported would have their barrels chopped at
16 an angle so as to render the flash suppressor non-functioning
17 and allow it to be then imported into the country.

18 Q. Had you seen that type of a slanted tip before you
19 designed your product?

20 A. Yes. One of the most common and most numerous firearms
21 in the world, the AK-47, which was imported even during that
22 era into the U.S., instances of that were very common with
23 that type of slanted barrel cut.

24 Q. Let's talk about some other issue. The next issue I
25 would like to talk about is your overall work with

1 Chapterhouse.

2 Over the course of your time with the company, how
3 many products did you personally work on?

4 A. I worked on about 70 different pieces that were, you
5 know, packaged into different kits, you know; some of them
6 were lumped together, some of them were separated.

7 Q. When you were working on the design, was it your
8 intention -- was it your goal to take something that Games
9 Workshop was selling?

10 A. No. It didn't make sense to me. It -- I saw no purpose
11 in trying to replicate something that had already been done.
12 This was about -- for me, this was -- or this was for fun.
13 This was me doing it for fun. I was trying to, you know,
14 come up with -- you know, I would have ideas. You know, I
15 would work on my own stuff, I would have ideas. You know,
16 this would be neat, wouldn't it be cool to see a model that
17 was like this, you know. And, you know, these were things
18 that Games Workshop just wasn't doing.

19 Q. If that's so, was there a time when you would have an
20 idea and then see that Games Workshop is doing it and then
21 stop?

22 A. We abandoned a number of ideas, you know, where it was
23 just like -- you know, we would have an idea, we would sit
24 there, we would discuss it and ultimately decide, no, this --
25 this doesn't sit right with us.

1 Q. I'm going to show you DX 633, an e-mail from
2 November 2010. On Page 2 there's an e-mail on the top here,
3 from November 8th, from Nick to you. It says: (Reading:)

4 Sounds like they are already done with the Venom.

5 What does that mean to you?

6 A. Well, the Dark Eldar Venom is basically a -- it's a --
7 they -- it's basically a varying of one of their larger Eldar
8 jetbikes that could have a -- it had a little platform on the
9 rear that could carry additional troops on it. And we were
10 looking at it as -- well, Games Workshop ultimately purchased
11 it as just one big kit, but we were looking at making a
12 little add-on platform to add to one of their pre-existing
13 kits because that's effectively what the design is.

14 And, you know, we threw around the idea -- we
15 didn't even do any concept drawings. We just talked about it
16 and then ultimately settled on the fact that this -- it
17 wasn't worth pursuing.

18 Q. Why not?

19 A. Well, creatively it just retread what had already been
20 done at that point.

21 Q. And this is the next part of that same e-mail from
22 November 9th, 2010. This is Nick Villacci writing to you:

23 (Reading:)

24 It's a bit redundant to compete directly with GW.

25 What did that mean to you?

1 A. Well, it means -- I mean, if Games Workshop sells it,
2 people will buy it. That's plain and simply what it is.

3 And to create something that Games Workshop sells,
4 most people would rather -- you know, no matter what
5 Chapterhouse does, people want the Games Workshop product.
6 And if Chapterhouse were to hypothetically create something
7 in -- that did compete directly, they would never sell
8 anything.

9 Q. On the products that you made, Mr. Nagy, the 70, 75
10 products, if Games Workshop had made those, would you have
11 bought them from them?

12 A. Most certainly.

13 Q. What happened instead?

14 A. Um --

15 Q. Sorry. Because Games Workshop did not have those
16 particular products you wanted, what did you do?

17 A. Well, I mean, I -- that's ultimately why I sought out
18 Chapterhouse and why a lot of people seek out companies like
19 Chapterhouse to produce these types of supplementary
20 products.

21 Q. When you were working on the products that you worked
22 on, at any time did you copy something Games Workshop did?

23 A. No.

24 Q. Did Nick ever instruct you to copy something?

25 A. No.

1 Q. Did he give you any instructions about copying or not
2 copying?

3 A. He gave plenty of instructions not to copy, you know.
4 It was a very strong message, you know, we were not going to
5 copy anything. We had to stay away from anything that could
6 be misconstrued as that.

7 Q. I'm showing you now an excerpt from PX 105, an e-mail
8 dated June 25th, 2009, from Nick to you. It says:

9 (Reading:)

10 I guess I want to see your 3-D creativity, so pick a
11 vehicle, Space Wolf project, and run with it, you know the
12 rules, no GW IP.

13 What does that mean to you?

14 A. Well, it was a very clear instruction not to produce
15 something that, you know, Games Workshop was -- had made a
16 model of or was actively producing a model of. You know, we
17 -- you know, he wanted me to be creative. He would
18 oftentimes seek out my ideas, you know, and most of those --
19 you know, most of those ideas were supplementary things.

20 And in this instance what was borne out of it was
21 the Mark I Retro Rhino add-on kit, which is not -- it's a
22 non-issue in this case as far as the design goes.

23 Q. What do you mean by it's a non-issue?

24 A. Games Workshop has withdrawn its contention on its
25 design.

1 Q. I want to talk to you about some other subjects, Mr.
2 Nagy.

3 One of the subjects in this case has to do with the
4 design of the shoulder pad and whether or not the idea has
5 been out there for the size and shape of the shoulder pad.

6 Before this case started, had you personally seen
7 characters, fictional characters, with large, blocky shoulder
8 pads?

9 A. Yes.

10 Q. What's an example?

11 A. Well --

12 MR. KEENER: Your Honor, I think it's the subject
13 of expert testimony now.

14 THE COURT: I can't hear you.

15 MR. KEENER: I think it's the subject of expert
16 testimony now.

17 THE COURT: I disagree. Overruled.

18 You can answer. Go ahead.

19 BY THE WITNESS:

20 A. Well, in particular, I'm personally a fan of the British
21 comic book series -- it's a whole franchise, 2000 AD, in
22 particular Judge Dredd.

23 BY MR. ALY:

24 Q. What's Judge Dredd?

25 A. You know, it's kind of -- you know, Dirty Harry in the

1 future is the best way to describe him. You know, he's the
2 cop who is out on the beat, you know, and he, you know -- he
3 is, you know, ornamented with various armor, you know, and
4 one of which is a large, bulky shoulder pad that comes down
5 his shoulder and is adorned with a giant golden eagle, you
6 know, as a -- you know, that resembles like an officer's
7 badge.

8 Q. Do you know of any connection between Games Workshop and
9 this 2000 AD or Judge Dredd?

10 A. Yes. Well, I mean -- yes, prior to Games Workshop
11 producing Warhammer 40K, they had the license to produce both
12 the miniatures and a game for this particular setting.

13 Q. And had you personally, Mr. Nagy, seen the pieces, the
14 miniature pieces?

15 A. Yes.

16 Q. Can you describe the shoulder pads and what they looked
17 like?

18 A. They were generally bulky and rounded.

19 Q. Let me talk to you about some of the trademarks that
20 have been discussed in this case.

21 The first one I would like to ask you about is the
22 words space marine. Outside of the context of Games
23 Workshop, had you heard of the phrase space marine?

24 A. Yes.

25 Q. Where?

1 A. In a number of places. I mean, I've been a big fan of
2 like classic sci-fi, you know, 1950s Heinlein. You know, he
3 wrote Starship Troopers, and space marines is one of the
4 terms that was borne out of that, to describe his concept of
5 this futuristic soldier that is dropped from space and, you
6 know, lands on the ground combat-ready, you know. You know,
7 it's the only work of science fiction that's required reading
8 in our military academies.

9 Q. Had you seen the term space marines used anywhere else?

10 A. Yes. Growing up I had a number of toys, you know, where
11 -- for the -- I guess it was for the movie Aliens, in which
12 the -- on the toys the protagonists were described as space
13 marines.

14 Q. Now, this space marines, even within the Games Workshop
15 world -- so I'm talking about people who play the game -- is
16 that space marines word used as a proper noun, as far as you
17 know?

18 A. I believe the more -- the more prominently used proper
19 noun is Adeptus Astartes, which is what they used in the
20 fiction to describe these space marines, you know, the
21 general notion of -- you know, who these people are. You
22 know, you have these space marines but, you know, it's
23 like -- you know, it's like you would say, you know, cop
24 instead of police officer, you know. It's more just a
25 general description than what you're going to, you know,

1 formally call someone.

2 Q. And what is Adeptus Astartes then?

3 A. That is the institutional name for the concept of the
4 space marines.

5 Q. Let's talk about some other of these trademark words in
6 the case. Jetbike, you've talked about that one, but just to
7 summarize it, what -- have you seen that word outside of the
8 Games Workshop context?

9 A. Yes.

10 Q. To mean what?

11 A. To mean a flying vehicle that is generally ridden by one
12 person in the fashion of a motorcycle.

13 Q. Another one is Eldar. Have you seen that word outside
14 of Games Workshop?

15 A. Yes. It's in modern English most commonly like
16 associated with Tolkien. He -- it was an older word that he
17 brought back to describe the notion of an elf, you know. He
18 used it synonymously with the word elf in "The Lord of the
19 Rings" and "The Hobbit".

20 Q. Now, these words that we've been discussing, is that
21 something you learned or researched during the litigation or
22 is this knowledge you already had before it started?

23 A. Before. I've read all those books.

24 Q. What about imperial guard? Is that a term you had come
25 across personally?

1 A. Historically the imperial -- you know, the term imperial
2 guard has been used in a number of different places, you
3 know, generally to refer to either the military or the
4 personal guard of any empire. You know, the -- the word is
5 used synonymously to describe the ancient Romans praetorian
6 guards, which were the emperor's bodyguards, for example.
7 The czars, their guards were called imperial guard.

8 Q. In your personal knowledge, Mr. Nagy, had you heard the
9 phrase land raider outside of the Games Workshop world
10 before?

11 A. Yes. In the Judge Dredd setting the -- they have a
12 large, heavy armored vehicle used for transporting personnel
13 that's covered in weapons and it's called a land raider.

14 Q. What about landspeeder, Mr. Nagy? Had you seen that
15 outside the context of Games Workshop?

16 A. Yes. It's in -- in the Star Wars setting it's the
17 phrase used to describe Luke's hover car that you see him
18 driving in the first -- in the original movie.

19 Q. The word list that we've gone through, Mr. Nagy, when
20 you see or hear those words is the first thing you think of
21 Games Workshop?

22 A. Not necessarily.

23 Q. All right. Why not?

24 A. Because they have common English usage outside of how
25 Games Workshop chooses to use them.

1 Q. Now, let's -- in conclusion, let's wrap up, Mr. Nagy.
2 Why is it that you worked with Chapterhouse?

3 A. I mean, for me it was an artistic outlet, you know.
4 It's -- you know, it was very fulfilling to go through this
5 design process to create something, you know, and develop my
6 professional modeling skills, you know, to -- you know, that
7 -- you know, through working with other people, create this
8 artistic piece, see it, you know, from the sketch phase, to
9 the rendering phase, to the 3-D printed phase, to being cast,
10 to being, you know -- to being eventually painted up, to
11 seeing it in the hands of friends and other people who would
12 buy them and, you know, combine them with Games Workshop's
13 products and use them. And, you know, it's a very fulfilling
14 sort of process.

15 Q. How did you feel when you saw, for example, these
16 products that you were showing to the jury actually in life,
17 in real life?

18 A. Oh, I -- I still think they're some of the coolest
19 things I've had a chance to work on, you know, and I've
20 worked with the bombs. I mean, that's -- I mean, it's just
21 kind of neat, you know.

22 Q. Thank you for your time.

23 MR. ALY: No further questions, your Honor.

24 THE COURT: Cross?

25 CROSS EXAMINATION

1 BY MR. KEENER:

2 Q. Good morning, Mr. Nagy.

3 I want to first follow up on a couple of things
4 counsel for Chapterhouse asked you.

5 Do you remember testifying that Games Workshop
6 encourages its customers to personalize and customize their
7 models?

8 A. Yes. They endorse using their pieces to supplement
9 Games Workshop's.

10 Q. Maybe I misspoke.

11 You testified that Games Workshop encourages its
12 customers to personalize their own models, correct?

13 A. That's correct.

14 Q. And by that you mean Games Workshop encourages its
15 customers to paint the models in one way?

16 A. That is one of many ways.

17 Q. Or to put together Games Workshop pieces in different
18 ways?

19 A. That is another way.

20 Q. Or even a person for their own personal army, Games
21 Workshop encourages and teaches how to sculpt and modify the
22 pieces to personalize them themselves?

23 A. They do.

24 Q. Now, you are aware that Games Workshop does not
25 encourage and expressly prohibits using their designs and

1 images and logos for commercial purposes? You understand
2 that, right?

3 A. Generally, yes.

4 Q. And it's actually even on their website: Do not --
5 you're allowed to make a fan forum and use our names and
6 copyrights in the fan forum or in your own personal design
7 but not for commercial purposes, right?

8 A. Could you --

9 Q. Sure.

10 You're not suggesting in any way that Games
11 Workshop encourages third party companies to use Games
12 Workshop's designs and logos and names to allow other people
13 to customize their Games Workshop products?

14 A. I am not aware of any prohibition or endorsement of
15 using third party products.

16 Q. But you are aware that Games Workshop does prohibit
17 third party companies from using Games Workshop designs and
18 logos and names?

19 A. Yes.

20 Q. Now, when we saw the quote from Mr. Villacci saying no
21 GW IP, I believe you testified that means that if Games
22 Workshop is already doing a model, we won't do it, but if
23 they don't have the model out yet, it's okay for us to make
24 that model? Is that generally what you testified to?

25 A. Generally.

1 Q. So, for example, while Games Workshop has depicted in
2 its artwork and books a Space Marine jetbike, Games Workshop
3 didn't sell a Space Marine jetbike, right?

4 A. Correct.

5 Q. So you and Chapterhouse thought it was okay to then make
6 the Space Marine jetbike --

7 A. Their --

8 Q. Correct?

9 A. I mean, the process of creating something like that, I
10 mean, involved a larger -- a much, much larger degree of, you
11 know, conceptual interpretation than just looking at an
12 image.

13 Q. And that wasn't my question. I appreciate that.

14 My question is: That is an example of where Games
15 Workshop had artwork for a Space Marine jetbike but no model,
16 and you and Chapterhouse thought, therefore, it was okay to
17 make a Chapterhouse Space Marine jetbike?

18 A. Because -- well, yes, because our design was original.

19 Q. You also testified about this wheeled chimera conversion
20 kit.

21 A. Yes.

22 Q. Do you remember that?

23 A. Yes, I do.

24 Q. It's where you design this -- this track system with
25 wheels that go on one of Games Workshop's tanks to make it --

1 instead of a treaded vehicle it had wheels?

2 A. Yes.

3 Q. And you didn't copy anything from Games Workshop to do
4 that design, right?

5 A. Only the interfacing surface.

6 Q. And Games Workshop doesn't sell or depict in its artwork
7 any wheeled chimera vehicle, right?

8 A. Does not depict any wheeled version of that.

9 Q. And Games Workshop is not alleging that Chapterhouse
10 infringes any copyrights with that wheeled chimera vehicle
11 that Chapterhouse is selling? You understand that, right?

12 A. Yes.

13 Q. You testified at the very end about Judge Dredd. Do you
14 remember that?

15 A. Yes.

16 Q. Now, Chapterhouse has been in this lawsuit for almost
17 five years now. You didn't show the jury any picture of any
18 Judge Dredd shoulder pads, did you?

19 A. No, I did not.

20 Q. Or any Judge Dredd weapons?

21 A. No, I did not.

22 Q. Or any Judge Dredd flying vehicles?

23 A. No, I did not.

24 Q. Or any Judge Dredd tanks?

25 A. No.

1 Q. So other than your representation that those things are
2 out there and that they look something like Games Workshop's
3 products, you didn't show them any picture they can use to
4 actually make that determination themselves, did you?

5 A. No.

6 Q. And you also mentioned that at one point Games Workshop
7 made some Judge Dredd miniatures?

8 A. Yes.

9 Q. Do you remember that?

10 A. They had the license to produce miniatures for that
11 comic book setting.

12 Q. And again, over this five years there's been no pictures
13 shown to the jury of any Judge Dredd miniature that looks
14 anything like any of the products in this case, right?

15 A. I don't believe Games Workshop submitted catalogs going
16 far enough back to show them, no.

17

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Nagy - cross

**1 Q. You have not shown any pictures to the jury of any Judge
2 Dredd miniatures, right?**

3 A. No, I have not.

**4 Q. You talked about an author named Robert Heinlein and a book
5 he called Starship Troopers?**

6 A. That's correct.

**7 Q. And this was in your discussion about the term Space Marine,
8 correct?**

9 A. Yes.

**10 Q. Now, you would agree with me that nowhere in the entire
11 Starship Troopers book does the term Space Marine appear.**

12 A. In the physical book, no.

13 Q. Okay. So --

14 A. In supplemental books to describe it, yes.

**15 Q. Nowhere in the book Starship Troopers does the term Space
16 Marine appear, correct?**

17 A. That's correct.

18 Q. Instead he uses a term Mobile Infantry?

19 A. That is used as the proper noun, yes.

**20 Q. And, again, you didn't show the jury any portion of any
21 Heinlein book that uses the term Space Marine, did you?**

22 A. No, I did not.

**23 Q. Similar with Tolkien. You said he uses Eldar
24 interchangeably throughout the book for elf?**

25 A. Yes.

Nagy - cross

1 **Q. Again, you didn't show the jury any page from any Tolkien**
2 **book where he used the word Eldar at all, did you?**

3 **A. No.**

4 **Q. Let's talk about how Chapterhouse decides what products to**
5 **create. Would you agree with me that Chapterhouse looks at**
6 **Games Workshop's line to find holes where there's things missing**
7 **to try and take advantage of those holes in Games Workshop's**
8 **product line?**

9 **A. I think we tended to look for places where the ideas fell**
10 **outside the scope of what Games Workshop produced.**

11 **Q. Let's take a look at Plaintiff's Exhibit 41. And this is a**
12 **string of e-mails between you and Mr. Villacci, right?**

13 **A. Um-hm**

14 **Q. Is that a yes?**

15 **A. That's correct, yes.**

16 **Q. Let's turn to Page 3, your first sentence. Did Mr. Villacci**
17 **tell you, quote, "I think if we can take advantage of any old**
18 **line GW has stopped doing." Do you see that?**

19 **A. He says that.**

20 **Q. So, Mr. Villacci was telling you let's look to see what**
21 **Games Workshop made before and they're not doing right now, and**
22 **let's take advantage of that market opportunity; is that right?**

23 **A. Contextually we were discussing specifically the Imperial**
24 **Guard, which are Games Workshop's analog to human -- generic**
25 **human soldiers. And in this instance we were going into the**

Nagy - cross

**1 idea that, you know, Games Workshop presents human soldiers of a
2 particular flavor. But, you know, in real life we have people
3 who fight in the jungle, we have people who fight in the snow,
4 we have people who fight in an urban setting.**

**5 And it was to say these are themes that Games Workshop
6 doesn't bother looking at anymore. Why can't we, you know,
7 produce something that is about an urban or snow covered theme.
8 And in this instance this discussion is what ultimately resulted
9 in the Wheeled Chimera that Games Workshop doesn't have an issue
10 with.**

**11 Q. So, for example, if Games Workshop was about to release a
12 new army book, a new codex, for a new Space Marine chapter,
13 Chapterhouse and you would rush to design products for that new
14 Space Marine chapter to take advantage of what Games Workshop
15 was about to release, right?**

**16 A. Well, it's no different than when I worked for the company
17 that I did right out of school which produced components and
18 subassemblies for consumer electronics. One of our big product
19 lines was cases for iPhones. Even -- you know, we produced them
20 for half the companies that ultimately released them And so,
21 obviously, leading up to the release of a new iPhone, you're
22 flooded with these supplemental products that are not produced
23 for Apple.**

24 Q. Again --

25 A. It's no different than that. It's just we would look at

Nagy - cross

**1 what Games Workshop was doing, and we said how can we supplement
2 Games Workshop. How can we further these kits that Games
3 Workshop is releasing. How can we do something to allow people
4 to have a different theme in mind when they look at these
5 models.**

**6 Q. So, I'm not sure if you answered my question yes or no. In
7 Chapterhouse's business of deciding which products to make, if
8 Games Workshop was about to release a new codex for Space Wolves
9 Space Marine, Chapterhouse would then be looking to make Space
10 Wolves products to sell?**

**11 A. Space Wolf supplemental products, generally. But I mean, in
12 that instance --**

**13 THE COURT: You've answered the question. You need to
14 confine your answers to the question that's asked.**

15 THE WITNESS: All right.

16 THE COURT: Go ahead.

17 BY MR. KEENER:

**18 Q. So, again, yes or no. In the example of Games Workshop
19 about to release a new army book, such as Space Wolves Army for
20 Space Marines, Chapterhouse would be looking to then release
21 before or at the same time various Space Wolf related products?**

22 A. Generally.

23 Q. Thank you.

**24 Now, I think during your direct testimony, you
25 discussed that you designed a number of shoulder pads for**

Nagy - cross

1 Chapterhouse; is that right?

2 A. That's correct.

3 Q. And, in fact, you designed a lot of master templates that
4 are used as the base of most of Chapterhouse's shoulder pads,
5 right?

6 A. Yes.

7 Q. Now, let's talk about the basic shoulder pad templates you
8 designed. You did those on a computer in some computer-aided
9 design program?

10 A. Yes, probably Wildfire.

11 Q. And in one of those designs, you had the shoulder pad with
12 that big large rim banding around the side of it as shown
13 typically in a Space Marine shoulder pad?

14 A. Generally.

15 Q. And do you recall Mr. Villacci complaining about one of your
16 earlier designs of the pad because the thickness of the rim you
17 made was too thick compared to the one Games Workshop uses?

18 A. I'm not sure if I can recall that particular message.

19 Q. Similarly, you designed the little squad symbol, the arrows
20 and crosses and chevrons, that go on the pad?

21 A. Yes.

22 Q. And do you remember Mr. Villacci complaining about your
23 earlier designs saying you need to make them larger to more
24 closely match what the icons look like in the Games Workshop
25 books?

Nagy - cross

1 **A. Well, I mean, as part of the collaborative effort, you know,**
2 **we ultimately didn't make that change. There was a conscious**
3 **effort to avoid that particular change.**

4 **Q. Do you remember him asking you to make them more looking**
5 **exactly like it does in the Space Marine army books?**

6 **A. Everyone has opinions on how something should be changed,**
7 **but that doesn't necessarily mean you follow through with them**

8 **Q. Again, that wasn't my question. My question is do you**
9 **recall Mr. Villacci asking you to make the squad symbols more**
10 **direct copies of what's in the Games Workshop Space Marine Army**
11 **books.**

12 **A. He said it. I ignored it.**

13 **Q. Let's look at Plaintiff's Exhibit 41. This is again the**
14 **e-mail we looked at earlier just a minute ago. Let's turn to**
15 **Pages 13 to 14.**

16 **On June 16th, 2009, does Mr. Villacci tell you, "The**
17 **only thing I can see doing different is reducing the trim height**
18 **on the shoulder pads, it seems larger than the GW dimensions."**
19 **Do you remember him saying that to you?**

20 **A. I'm vaguely recalling it, seeing this in front of me.**

21 **Q. And then he continues, "As well as increasing the size of**
22 **the squad type markings. I like how GW paints the ones they**
23 **show in the codexes. They seem to start at the bottom of the**
24 **pad and extend pretty far up. See photo." Do you see that?**

25 **A. Do you have the photo of those particular pieces?**

Nagy - cross

**1 Q. No, there was no photo attached to this e-mail that we
2 received. Do you see that?**

3 A. Um hm I see it.

4 THE COURT: Say yes.

5 BY THE WITNESS:

6 A. Yes.

7 BY MR. KEENER:

**8 Q. Now, let's look at some of these shoulder pad templates you
9 designed. Let's turn to Plaintiff's Exhibit 385. And is this
10 an e-mail you sent to Mr. Fiertek on June 19, 2009?**

11 A. Yes.

**12 Q. Now, in the middle of this e-mail, you discuss three
13 different types of shoulder pad templates you created?**

14 A. Yes.

**15 Q. So, let's look at the first one. If we can split it there
16 with the template. The first one you say, "I made three basic
17 blank shoulder pads. The first is the standard trimmed shoulder
18 pad." Do you see that?**

19 A. Um hm Yes.

**20 Q. And those pictures on the right are the pictures of the
21 standard trimmed shoulder pad you designed?**

22 A. That I modeled, yes.

**23 Q. And as the standard trim you're referring to the standard
24 Space Marine trim shoulder pad, right?**

25 A. I'm referring to its use to produce variances of that, yes.

Nagy - cross

**1 Q. But not some standard in something else. When you mean the
2 standard design, you mean the standard Games Workshop Space
3 Marine trimmed shoulder pad?**

4 A. The most ubiquitous.

5 Q. The most iconic?

6 A. Ubiquitous.

**7 Q. And you're the one who on the back put these series of
8 notches around the rim of the shoulder pad?**

9 A. Yes.

**10 Q. And you also put that little notch on the bottom back center
11 of the shoulder pad?**

12 A. Yes.

**13 Q. Now, let's look at the second shoulder pad you made. The
14 second shoulder pad is a completely blank shoulder pad. That's
15 what we see on the right?**

16 A. Yes.

**17 Q. And it's the same design shoulder pad, just without the
18 trim?**

19 A. Um hm

20 Q. Yes?

21 A. Yes.

**22 Q. And you describe that as "As was commonly seen on some older
23 power armor patterns;" is that right?**

24 A. Yes, that is how I describe it.

25 Q. And what you're referring to is in the artwork of older

Nagy - cross

**1 Space Marine designs, they have this exact same shoulder pads,
2 including having it blank with no trim?**

3 A. Yes.

**4 Q. And, again, you're the one who put all these notches and
5 ridges on the back of the design?**

6 A. Yes.

**7 Q. And let's look at the third design. It says, "The third
8 arched shoulder pad was something I made up." Do you see that?**

9 A. Yes.

**10 Q. And the pictures on the right-hand from that exhibit are the
11 arched shoulder pad?**

12 A. Um hm

13 Q. Yes?

14 A. Yes.

**15 Q. Now, that arch idea was something you came up with yourself,
16 right?**

**17 A. It was something that we had not previously discussed, and
18 so I was bringing it to their attention.**

**19 Q. And was that something you had seen on Games Workshop's
20 artwork or models?**

21 A. Generally, no.

**22 Q. So, this was a design that really was not a design that you
23 had seen previously from Games Workshop.**

24 A. Generally, no.

25 Q. Now, so, this third design that's not like the different

Nagy - cross

**1 Space Marine shoulder pads Games Workshop makes, do you know how
2 many Chapterhouse products you're selling now based on that
3 design?**

4 A. On this particular one?

5 Q. Yes.

**6 A. Well, I know -- I'm pretty certain that that ornate Raven is
7 based off of this one, for example.**

8 Q. Any others?

**9 A. I'm not sure. I have not kept up with Chapterhouse's
10 products.**

**11 Q. In fact, the basic templates Chapterhouse uses to make
12 virtually all of their shoulder pads were the first two designs
13 we looked at, right, not this third design?**

**14 A. Well, I mean, these aren't intended as the final product.
15 They are -- you know, they're a transitional step in the
16 product-making process.**

**17 Q. But we haven't seen any images of any shoulder pads from
18 Chapterhouse with these various arches underneath it. Would you
19 agree?**

**20 A. Well, like I said, I'm pretty sure that he utilized this to
21 produce that large Raven shoulder pad.**

**22 Q. Now, you testified during your direct testimony that you
23 thought it was okay to put these Games Workshop squad markings,
24 the crossed arrow and the upward facing big fat arrow and the
25 chevron on the shoulder pads, because you thought that these**

Nagy - cross

1 were commonly used in the military. Do you remember that
2 testimony?

3 A. In various militaries. Yes, I remember.

4 Q. Now, again, you didn't show this jury any picture of
5 anywhere in the military where a shoulder pad, an armored
6 shoulder pad, has any of those designs, did you?

7 A. Not an armored shoulder pad, no. No, we did not produce
8 pictures of that.

9 Q. And especially the armor shoulder pad of the iconic Space
10 Marine design, that combination with those squad markings, you
11 agree with me that that combination doesn't exist anywhere in
12 prior military history?

13 A. The combination of commonly used symbols, no.

14 Q. So, again, the answer to my question --

15 A. No.

16 Q. -- is you haven't seen anywhere the combination of Games
17 Workshop's iconic Space Marine shoulder pad with those various
18 squad markings on it as a combination. That's a unique
19 combination you have never seen in military history.

20 A. No.

21 Q. Let's go to Plaintiff's Exhibit 1010 at Page 4. Now, on the
22 left-hand side here, we see various Chapterhouse products,
23 shoulder pads. Do you see that?

24 A. Yes.

25 Q. And these are the tactical ones with the big, fat upward

Nagy - cross

1 facing arrow?

2 A. Yes.

3 Q. And you designed the ones that get these Roman numerals on
4 them, right?

5 A. Yes, I produced the models.

6 Q. And for the tactical ones, the Roman numerals you put on are
7 I through VI?

8 A. Yes.

9 Q. And can we turn the page? And again on the left-hand side
10 are the Chapterhouse assault shoulder pads?

11 A. Um hm

12 Q. Yes?

13 A. Yes.

14 Q. And Chapterhouse decided to put on here the Roman numerals
15 VII and VIII?

16 A. Yes.

17 Q. And let's turn one more page. And these are the Devastator
18 shoulder pads?

19 A. Yes.

20 Q. And Chapterhouse decided to put on here the Roman numerals
21 IX and X?

22 A. Yes.

23 Q. Now, when designing these shoulder pads, you weren't quite
24 sure which numbers to put on which shoulder pads, right?

25 A. The intent was to produce shoulder pads that would allow the

Nagy - cross

1 player to make the same types of denotions between squads that
2 GWs pictures reference.

3 Q. Again, that wasn't my question.

4 A. Okay.

5 Q. In designing the shoulder pads, you weren't sure which
6 numbers to put on which --

7 A. I was sure which numbers.

8 Q. -- right?

9 A. I was sure of which numbers to put on there from personal
10 experience.

11 Q. Let's go to Plaintiff's Exhibit 392. This is an e-mail
12 chain between you and Mr. Villacci; is that correct?

13 A. Yes.

14 Q. Let's turn to Page 2, the second e-mail, the first
15 paragraph. This is you writing to Mr. Villacci and you say,
16 "You had asked me to put Roman numerals on the shoulder pads
17 with the tactical/assault/Devastator markings. How many
18 different numbers do you want and on which pads?"

19 A. Um hm

20 Q. Do you remember asking him that question?

21 A. Yes.

22 Q. And Mr. Villacci responded to you and told you exactly which
23 numbers to put on which pads based on the exact same designs
24 from the Games Workshop universe, right?

25 A. Yes.

Nagy - cross

1 **Q. And he tells you, as we quote here, "Tacticals are**
2 **historically" -- and he means according to the Games Workshop**
3 **designs, right?**

4 **A. By the denotions that those units have on the tabletop, yes.**

5 **Q. In the Games Workshop universe. Not some other military**
6 **culture, right?**

7 **A. Yes.**

8 **Q. And in the Games Workshop created military culture that they**
9 **created, tacticals are I through VI, assaults are VII and VIII,**
10 **and Devastators are IX and X, correct?**

11 **A. Yes.**

12 **Q. And so, that's why you put those exact Roman numerals on**
13 **those pads?**

14 **A. Yes.**

15 **Q. And, again, you testified that the concept of a Roman**
16 **numeral is used in militaries around the world, right?**

17 **A. Yes. The Roman Legion denoted their legions with Roman**
18 **numerals.**

19 **Q. And you haven't shown the jury any pictures of using any of**
20 **these I through VI numbers with an arrow, did you?**

21 **A. No.**

22 **Q. Or Roman numerals VII and VIII with a crossed arrow, did**
23 **you?**

24 **A. No.**

25 **Q. Or the chevron with IX and X, did you?**

Nagy - cross

1 A. No.

**2 Q. And you agree with me that those combinations of those
3 specific Roman numerals with those specific designs is not
4 commonly used anywhere in military history, correct?**

5 A. Correct.

**6 Q. Because Games Workshop created that combination, they
7 thought that up, right?**

8 A. That particular combination and distinction, yes.

**9 Q. Now, back to this e-mail, Mr. Villacci further tells you
10 about these numbers, if you look on Page 1 in the middle, "If
11 you look at the codex for Marines on Pages 18 to 19, I like the
12 placements of those numbers." Do you remember him saying that
13 to you?**

14 A. Yes.

15 Q. Do you recall what your response was?

16 A. What?

17 Q. Do you recall what your response was?

18 A. Excuse me?

**19 Q. Do you recall your response to Mr. Villacci's comment to you
20 saying I really like how Games Workshop does it on Pages 18 to
21 19 of their Space Marine codex?**

**22 A. Yes. I pretty much am asking him if he can provide a
23 pictorial reference for me to examine.**

**24 Q. So, you actually asked him instead of coming up with your
25 own design, "Do you have a link to picture? I sadly can't bring**

Nagy - cross

1 my codecies to work." Is that what you write?

2 A. Yes.

3 Q. Do you recall Mr. Fiertek -- he's the other owner of
4 Chapterhouse, right?

5 A. Yes.

6 Q. Do you recall him with regards to the use of these various
7 numbers with these various markings, him ever telling you that
8 what Chapterhouse is doing is making direct copies of Games
9 Wrkshop's artwork?

10 A. I do not -- well, I think I recall what you're talking
11 about, the e-mail that you're addressing.

12 Q. Yes. Let's take a look at that e-mail. Let's go to
13 Plaintiff's Exhibit 68. So, what we're looking at is an e-mail
14 from Mr. Fiertek to you copying Mr. Villacci on the e-mail, as
15 well, right?

16 A. Yes.

17 Q. Now, if we look down a little bit, about in the middle,
18 Mr. Fiertek writes to you, "Any word from anybody on the
19 legality of the number, Devastator, assault and arrow pads?
20 They are direct copies of GW art, at least with the normal rim "
21 Do you see that?

22 A. He believed that.

23 Q. So, Mr. Fiertek, one of the co-owners of Chapterhouse, was
24 telling you and Mr. Villacci that the designs you were making
25 were direct copies of Games Wrkshop art, correct?

Nagy - cross

1 A. He believed that, and he did say that.

2 Q. Now, let's talk about some of the weapons you designed.

**3 Now, one of the weapons you designed was Chapterhouse's version
4 of the Lasgun, right?**

5 A. Yes, as a variant to the scar.

**6 Q. And there was various testimony from Games Workshop that
7 their Lasgun design, a characteristic feature, was a slanted tip
8 at the end of the Lasgun?**

9 A. Yes.

**10 Q. And your products also had that same characteristic slanted
11 tip, right?**

12 A. One of them, of many variances, yes.

**13 Q. And in your direct testimony you said but I seen that design
14 before. I've seen it in AK-47s or other things that were
15 imported into the U.S. due to the assault weapons ban.
16 Something like that was in your testimony, right?**

**17 A. Weapons modified to be brought into the country legally
18 under that legal restriction.**

**19 Q. And in order for this jury to do their job to see whether
20 that is actually a true statement that it actually looked the
21 same as Games Workshop's and Chapterhouse's design, did you show
22 them any pictures of any of those weapons that you're saying you
23 were looking at?**

24 A. No, I did not.

25 Q. Did you see any e-mail attaching a picture, my design is

Nagy - cross

1 based off of this I saw from the assault weapons ban?

2 A. No.

3 Q. Let's turn to Plaintiff's Exhibit 1011 at Page 6. Now, on
4 the left-hand side, you see the Chapterhouse Conbi weapons
5 product, right?

6 A. Yes.

7 Q. Now, the concept of these Conbi weapons in the Games
8 Workshop universe is that you've got a bolt gun, the standard
9 gun of a Space Marine, as part of it, right?

10 A. Could you repeat that?

11 Q. So, in the Games Workshop universe, they have weapons called
12 Conbi weapons for the Space Marine?

13 A. Right.

14 Q. And typically it could be a bolt gun combined with a melta
15 gun is one variation, right?

16 A. Yes.

17 Q. Or a bolt gun combined with a flamer? Yes?

18 A. Yes.

19 Q. Or a bolt gun combined with a plasma gun, right?

20 A. Yes.

21 Q. And Games Workshop depicts those types of combinations in
22 its artwork and miniatures, right?

23 A. Yes.

24 Q. And the concept of Chapterhouse was instead of having
25 someone actually buy each of these variations from Games

Nagy - cross

1 Workshop or make their own by cutting up Games Workshop's
2 various weapons and gluing them together as part of the hobby,
3 Chapterhouse would make it more convenient for them by making
4 one model with all the various plasma and melta and flamer
5 attachments that they can put on and off of the weapon to make
6 the various combinations. Is that the concept?

7 A. The interchangeability was a big aspect of the Chapterhouse
8 product.

9 Q. And part of the importance when you're playing the game is
10 that you want to make sure the person on the other side can look
11 at a model and see what weapon is on the model, right?

12 A. Yes.

13 Q. So, if it's supposed to have a bolt gun and a plasma gun,
14 you want to make sure it looks like a Games Workshop bolt gun
15 and plasma gun so when the other person looks at the model, they
16 can say, oh, I know exactly what weapon he's carrying.

17 A. That's the idea.

18 Q. Do you recall -- in relation to this product, do you recall
19 Mr. Villacci telling you in regard to the Conbi weapons to as
20 closely copy the Games Workshop Conbi weapons as possible?

21 A. I do not recall that particular communication.

22 Q. Let's look at again Plaintiff's Exhibit 41. This is a long
23 chain of e-mails we've looked at a couple times now, and let's
24 turn to Page 15 at the bottom This is an e-mail from
25 Mr. Villacci to you.

Nagy - cross

1 **And is it right that he writes to you, "We could also**
2 **closely copy the GW Conbi weapons as we would only be using the**
3 **very end of the weapons in our design." And he continues,**
4 **"These would sell like hotcakes if it works." Did Mr. Villacci**
5 **tell you that?**

6 **A. I believe he did tell me that.**

7 **Q. Let's talk about another product you made, the jetbike.**

8 **A. Yes.**

9 **Q. Could we turn to Plaintiff's Exhibit 1011 at Page 24? So,**
10 **the product on the left is the Chapterhouse jetbike that you**
11 **helped design, right?**

12 **A. Yes.**

13 **Q. Now, in the process of designing this product, Mr. Fiertek**
14 **of Chapterhouse sent you a drawing that he said was based on the**
15 **Horus Heresy book artwork, right?**

16 **A. I guess so.**

17 **Q. Well, let's confirm Let's go to Plaintiff's Exhibit 59. I**
18 **think you discussed this chain of e-mails during your direct?**

19 **A. Yes, okay.**

20 **Q. It's an e-mail between you and Mr. Fiertek about the**
21 **jetbike, right?**

22 **A. Yes.**

23 **Q. Let's turn to Page 2, the last paragraph. He says he drew,**
24 **among other design products he's talking about, "a jetbike**
25 **inspired by the PH art with engines stacked on top of each other**

Nagy - cross

1 and a longer, thinner Cadillac feel to it;" is that right?

2 A. Yes.

**3 Q. And you understand the PH art, that's the pre-Heresy art.
4 That's the pictures in the Horus Heresy books of Games Workshop,
5 right?**

6 A. Yes, that's what they're referring to.

**7 Q. And this is when we were talking in your direct testimony
8 about the Cadillac look?**

9 A. Um hm

10 Q. Yes?

11 A. Yes, the general idea of a Cadillac grille.

**12 Q. Now, in your direct testimony you said, well, we got from
13 Cadillac the idea of these big grilles on the front. Do you
14 remember that testimony?**

15 A. Yes.

**16 Q. I don't see anywhere in here a talk of any of the grilles of
17 a Cadillac, do you?**

18 A. Well, all grilles for the Cadillac are vertical grilles.

19 Q. Again, that wasn't my question.

20 A. Okay.

**21 Q. In this e-mail referring to Cadillac, the only Cadillac
22 e-mail we have, there's no discussion of grilles at all, right?**

23 A. Um hm

24 Q. Yes?

25 A. Yes.

Nagy - cross

1 **Q. Instead it's talking about the size, making it longer and**
2 **thinner, right?**

3 **A. Yes.**

4 **Q. Is that a yes?**

5 **A. Yes.**

6 **Q. And, actually, Cadillac grilles themselves aren't just big,**
7 **vertical straight lines. It's characterized by these long**
8 **horizontal lines going through it, as well, right?**

9 **A. I do not believe so.**

10 **Q. Now, your response to Mr. Fiertek was that you thought a**
11 **long, thin look would be too slim and wouldn't really fit in**
12 **with Games Workshop's Imperial style, right?**

13 **A. I mean, it was more notionally about the concept of it**
14 **carrying a larger person.**

15 **Q. Let's look at what you said. Let's go to Page 1, bottom**
16 **e-mail, the first sentence. Your response to Mr. Fiertek is "I**
17 **think it looks slim, maybe too slim relative to the beefy look**
18 **of Imperial tech."**

19 **A. Yes.**

20 **Q. That's talking about Imperial technology, right?**

21 **A. I believe so. If you put a Space Marine on it, it has to**
22 **look like it carries a Space Marine.**

23 **Q. And then Mr. Fiertek responds to you, "Think of a normal SM**
24 **bike with some added length to it." Do you see that?**

25 **A. Yes.**

Nagy - cross

1 Q. Yes.

2 A. Yes.

3 Q. And SM bike, what does that mean?

4 A. I guess an abbreviation for Space Marine.

**5 Q. So, now he's telling you not just look at the artwork, but
6 now look at the actual physical model of a Space Marine bike
7 that Games Workshop sells, right?**

8 A. Yes.

**9 Q. And if we turn back, if we can, to Plaintiff's Exhibit 1011
10 at Page 24. The bottom right there, that is the Space Marine
11 bike that Mr. Fiertek's now asking you to take a look at as part
12 of the design process, right?**

13 A. At that late stage, yes.

**14 Q. Now, turning back to the e-mail, Plaintiff's Exhibit 59,
15 Mr. Fiertek also asks you whether he should now send you various
16 pictures of what a Space Marine jetbike looks like in the Horus
17 Heresy books, right?**

18 A. Yes.

**19 Q. And your response back to him can you read it off to the
20 jury?**

**21 A. "I have the Horus Heresy books, and I've been looking at
22 them "**

23 Q. Thank you.

24 MR. KEENER: No more questions.

25 THE COURT: Redirect?

Nagy -

1 **MR. ALY: No. Thank you, your Honor.**

2 **THE COURT: Do any of the jurors have any questions for**
3 **the witness?**

4 **(Brief pause.)**

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

7 **THE COURT: The first question is where in Tolkien --**
8 **what's the right pronunciation of that, anyway?**

9 **MR. KEENER: Tolkien.**

10 **THE COURT: Tolkien. Does he refer to Eldar. In other**
11 **words, in what Tolkien work does Tolkien refer to Eldar as**
12 **elves.**

13 **MR. ALY: No objection.**

14 **THE COURT: Okay. When designing the shoulder pads,**
15 **whose idea was it to put the notches in the back of the shoulder**
16 **pads, and where did they get that idea from? She drew a little**
17 **picture.**

18 **MR. KEENER: No objection.**

19 **MR. ALY: I have a problem with that. That's kind of**
20 **an evidence issue whether it appears the same, but --**

21 **THE COURT: I can't hear you.**

22 **MR. ALY: No problem**

23 **THE COURT: All right. You stated you contacted**
24 **Chapterhouse because you wanted to make some models you had**
25 **designed. Then the first thing you designed were blank shoulder**

Nagy -

1 pads. Why wasn't your first thing one of your designs?

2 Anybody have a problem with that?

3 MR. KEENER: No.

4 MR. ALY: No.

5 THE COURT: How many products have you worked on that
6 Chapterhouse sells that are not part of the lawsuit? Is he
7 going to know the answer to that?

8 MR. KEENER: He's not going to know the answer to that.

9 MR. ALY: He might.

10 MR. KEENER: I mean, with the current list, the claim
11 charts.

12 MR. ALY: It changes.

13 MR. KEENER: I don't think he can answer that.

14 THE COURT: So, I'm not going to ask that.

15 (The following proceedings were had in open court, in the
16 presence and hearing of the jury:)

17 THE COURT: Where does Tolkien refer to -- use the term
18 Eldar that I think you said was some sort of elf or something?
19 In other words, which book, which story, which work.

20 THE WITNESS: I believe it's --

21 THE COURT: You're still talking to them, even
22 though --

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 THE WITNESS: I'm pretty sure -- it's been awhile since

Nagy -

1 I've read the book, but my recollection is that it occurs when
2 the party of adventurers first gets to Rivendell, and he's kind
3 of describing the life of these elves. He uses the word
4 interchangeably with the word elves, you know, partially to avoid
5 the repetition of saying elf, elf, elf, elf, elf over and over
6 again.

7 THE COURT: Okay. Switch of gears here. When
8 designing the shoulder pads, whose idea was it to put the
9 notches in the back of the shoulder pads? A little picture was
10 drawn here, just so that you know what's being discussed.

11 THE WITNESS: Thank you.

12 THE COURT: Whose idea was that? Let me take it back.

13 THE WITNESS: I did that. That was mine.

14 THE COURT: Where did you get the idea from?

15 THE WITNESS: I mean, it was partially the general
16 concept of layered armor and how that's manufactured.

17 THE COURT: You said that you contacted Chapterhouse
18 because you wanted to make some models that you had designed,
19 but then the first thing you designed were blank shoulder pads.
20 So, why wasn't the first thing one of your own designs?

21 THE WITNESS: Well --

22 THE COURT: If there's something wrong with the premise
23 of the question, it's okay to say that.

24 THE WITNESS: Okay. No. Nick really didn't have an
25 interest in some of my initial design.

1 **THE COURT:** And there's one other question that I'm not
2 going to ask because it would really be outside of the scope of
3 his knowledge.

4 **Okay.** Any follow-up questions, Mr. Aly?

5 **MR. ALY:** No, thank you.

6 **THE COURT:** Mr. Keener?

7 **MR. KEENER:** No.

8 **THE COURT:** You're excused.

9 **THE WITNESS:** Thank you.

10 **(Witness excused.)**

11 **THE COURT:** Is the next person a live witness? I'll
12 tell you. This is what we're going to do. Rather than starting
13 a witness at 12:25, we're going to stop here, and we'll start at
14 1:25 after lunch. So, we'll break still an hour, but we'll
15 start up at 1:25. The jurors can come with me.

16 **(The following proceedings were had in open court, out of**
17 **the presence and hearing of the jury:)**

18 **THE COURT:** Okay. Let's deal with the -- everybody can
19 have a seat. Let's deal with the Rule 50 motion. Do you have a
20 copy I can look at?

21 **MR. ALY:** Yes, your Honor. We have the Rule 50 motion,
22 and it comes with attachments. Would you like the exhibits, as
23 well, at this time, your Honor?

24 **THE COURT:** Let's just give me the motion to start off
25 with. Start there, and we'll work forward.

1 **MR. ALY:** I'm approaching with the motion, and I'll
2 hand a copy to counsel.

3 **THE COURT:** Just give me a couple minutes to look
4 through it here.

5 **(Brief pause.)**

6 **THE COURT:** You know, I think I'm going to want to read
7 this over the noon hour. So, I'm going to do that. I guess my
8 general inclination is to exercise my authority under Rule 50
9 and simply take it under advisement at this point, but let me
10 think about that. And I guess I would say to the plaintiff just
11 be prepared to respond, but I may say let's hold it until the
12 end. Okay?

13 **MR. MDSKIN:** Respond after lunch?

14 **THE COURT:** After lunch, yes. Right. So, come back at
15 1:25. And if I have you respond, I'll just tell the jury it's
16 going to be a few minutes, and we'll go from there.

17 Anything else anybody wants to take up before we --

18 **MR. KEENER:** We have those Grindley exhibits. He's the
19 next witness.

20 **THE COURT:** Oh, right, right, right, right, right. You
21 had mentioned that earlier. Okay. So, let's talk about that
22 now.

23 **MR. KEENER:** So, there's a number of prior images he's
24 going to show we don't have a problem with, but there's three
25 buckets that we have an issue with.

1 **THE COURT:** Okay.

2 **MR. KEENER:** So, the first bucket is he's got three
3 different website printouts of prior images that are fictional
4 websites with fictional, made-up dates of "This robot is made in
5 1980, and part of this Endolfin project." And they're just
6 fictional made-up pages of a robot.

7 **THE COURT:** When you say fictional made up, I don't
8 understand what you mean.

9 **MR. KEENER:** I can show you an example.

10 **THE COURT:** He made them up himself?

11 **MR. KEENER:** No, no. The website.

12 **THE COURT:** Oh, okay.

13 **MR. KEENER:** It's a picture of the website with a robot
14 and fictional information about the robot, including the date of
15 creation of the robot. But it's a fictional creation.

16 **THE COURT:** I see. Okay.

17 **MR. KEENER:** So, there's a series of exhibits like that
18 that we have an objection to.

19 **THE COURT:** Why don't I look at what you're talking
20 about here. Is there a copy I can borrow?

21 (Said document was tendered to the court.)

22 **THE COURT:** It's a little blurry.

23 **MR. KEENER:** It is blurry, but it says --

24 **THE COURT:** Where should I be looking here?

25 **MR. KEENER:** It says built 1980, kind of the left-hand

1 in the middle under the technical specifications section. But
2 it's all made-up technical specifications.

3 THE COURT: I see what you're saying. And so, your
4 concern is that the jury might think that's when this was
5 actually designed.

6 MR. KEENER: Right. I mean, Mr. Grindley just searched
7 for pictures on the Internet and found some and put those in his
8 report. Using this as an exhibit is prejudicial.

9 THE COURT: Actually, the entry says roll-out, and it
10 says -- it's hard to make out what this says. It looks like it
11 says 1990 to 1998 AD, and they all seem to say something
12 relatively similar to that.

13 So, is there going to be any foundational testimony
14 that that's the date on which they actually were designed or
15 appeared?

16 MR. ALY: Yes, your Honor. Apart from the fiction,
17 this is a witness who's the science fiction expert. So, he can
18 testify to that character in the movie appears in the movie in a
19 particular year. I believe it's either '89 or '90.

20 THE COURT: What movie are we talking about? Like
21 Transformers or something? No. I probably displayed my
22 complete ignorance of all this.

23 MR. ALY: I've never seen the movie. Patlabor. That's
24 the name on the document.

25 THE COURT: What's the movie?

1 **MR. ALY:** Patlabor. P-a-t --

2 **THE COURT:** It must have been straight to video.

3 **MR. ALY:** If that.

4 **THE COURT:** If that. Okay.

5 **MR. KEENER:** And, your Honor, I guess our concern with
6 this and some of the other exhibits is he's not testifying about
7 the dates being relevant because he's not testifying anyone
8 copied from these. It's just whether or not these pictures are
9 out there in general sci fi.

10 So, we wouldn't have an objection to the pictures
11 themselves coming in, just not the entire exhibit with dates or
12 any testimony about when these were actually out there.

13 **MR. ALY:** Judge, these dates have been -- I'm sorry to
14 speak without permission.

15 **THE COURT:** Go ahead. That's all right. Go ahead.

16 **MR. ALY:** Your Honor, in the report -- these dates are
17 all in the report, and Dr. Grindley has gone through 14 hours of
18 questioning on the dates or anything else --

19 **THE COURT:** I guess I'm just not persuaded that the
20 dates are unfairly prejudicial. I mean, it seems to me that
21 it's part of his testimony that this stuff is out here. It's
22 been out there for a long time. And it sounds like to me that
23 there's going to be foundational testimony from him that, you
24 know, those dates are about right. So, that particular
25 objection is overruled.

1 **MR. KEENER:** The second --

2 **THE COURT:** What's the next one?

3 **MR. KEENER:** The second group of exhibits is various
4 exhibits printed out from Wikipedia or various Wiki type web
5 pages.

6 **THE COURT:** There's nothing from WikiLeaks, I'm hoping.

7 **MR. KEENER:** No. But Wikipedia, Marvel Wikia,
8 different Wikias with pictures on it, and then in the Wikipedia
9 entries they have the dates that those were used, and those are
10 the dates they're relying upon. And so, we have a problem with
11 that.

12 **THE COURT:** What about that, Mr. Aly?

13 **MR. ALY:** Two things, your Honor. Either it will be
14 personal knowledge in those cases where he has personal
15 knowledge or Rule 703 where he can rely on the materials that
16 are available.

17 **THE COURT:** So, somebody's going to -- so, he's going
18 to get up here and say that people in his field can rely on the
19 accuracy of Wikipedia.

20 **MR. ALY:** In the science fiction genre, they're
21 apparently different.

22 **THE COURT:** You're going to need to -- you would need
23 to lay that foundation, and I'm not sure I --

24 **MR. ALY:** That's fine. To the extent we can do it
25 through personal knowledge or magazines --

1 **THE COURT:** Personal knowledge is a different story.
2 If he lays the foundation, he says, yeah, I know that this was
3 actually used in X, and X corresponds with what's on the
4 Wikipedia entry, I'm not sure why you'd need the Wikipedia entry
5 in that situation.

6 **MR. ALY:** I understand.

7 **THE COURT:** It just seems to me it's just buttressing.
8 But if he can't do that, then no.

9 **MR. ALY:** Understood.

10 **MR. KEENER:** Now, your Honor, the personal knowledge
11 would be him being around when that was released, not him saying
12 I've looked into this, and in Wikipedia it says 1994.

13 **THE COURT:** Well, yeah. You'd need to know what the
14 personal knowledge is from, right. It's not just that I
15 happened to read it in, you know, Weekly World News over the
16 weekend.

17 **MR. ALY:** Right. But, of course, it can be -- so, just
18 to be clear --

19 **THE COURT:** The article about Hillary and the space
20 aliens, by the way.

21 **MR. ALY:** And to be clear, if the question is something
22 like, "Did you do research to find out the date? Yes, I did. I
23 found out this was the date," would that be sufficient?

24 **THE COURT:** Well, but then it all kind of circles back
25 to Wikipedia, and I mean, I guess, you know -- I suppose I could

1 get somebody in here to sort of confirm for me that Wikipedia
2 has now become the equivalent of the Encyclopedia Britannica,
3 but I seriously doubt it.

4 MR. ALY: There's law both ways on it.

5 But at least that is -- how about this, your Honor?
6 There are citations also in the Wikipedia for things like those
7 dates. And so, the expert can say --

8 THE COURT: Give me a for instance.

9 MR. ALY: So, for instance, the Incredible Hulk is one
10 of the images.

11 THE COURT: That was around when I was a kid.

12 MR. ALY: So, there's a Wikipedia entry about it, and
13 that's the Marvel dot Wikia dot com

14 THE COURT: Actually, that depends on how you define
15 kid, just to be clear about it.

16 MR. ALY: No comment.

17 THE COURT: Yeah.

18 MR. ALY: In that particular instance, we've got a
19 magazine that's November 1974. And so, that's what the page
20 says. But there's also a picture of the magazine, the comic
21 book, and a citation to the comic book to confirm that, and
22 that's what the expert can add to his foundation.

23 THE COURT: So, you said -- was all this stuff in his
24 report?

25 MR. ALY: Yes, your Honor.

1 **THE COURT:** You wouldn't have had to have questioned
2 him about this at the deposition, but did you and what did you
3 derive from that?

4 **MR. KEENER:** Yes. If you recall, part of our motion in
5 limine was his methodology, and he testified that his
6 methodology was searching on the Internet of thousands of
7 images, and the first couple I found that had the image showing
8 the element I want I included in my report.

9 **THE COURT:** Right. And I think I concluded that any
10 issue there went to weight, not admissibility.

11 **MR. KEENER:** That's right, for the images. But now I'm
12 going to -- he can show the images. I don't want the exhibits
13 with the dates come in from Wikipedia.

14 **THE COURT:** Yeah. So, this is really a --

15 **MR. KEENER:** And even if it is 703, he might be able to
16 rely on it, but that doesn't get published to the jury.

17 **THE COURT:** No, no. That's what I was going to say.
18 It's a 703 question, and 703 basically says that an expert can
19 rely on material that's not otherwise admissible in evidence
20 assuming that there's a foundation laid that experts in the
21 field would reasonably rely on these kinds of fact and data.
22 But that doesn't make the underlying exhibits automatically
23 admissible. I have to conclude that their probative value in
24 helping the jury evaluate the opinion substantially outweighs
25 their prejudicial effect.

1 **So -- and I will tell you that my general view of that**
2 **is that -- I mean, first of all, just from the rule, it's the**
3 **proponent that has to show that the probative value of the**
4 **document, you know, in addition to the testimony, is something**
5 **that substantially outweighs the prejudicial effect. I guess**
6 **I'm just not persuaded of that here.**

7 **So, I don't have a problem with him testifying about**
8 **this stuff, but I guess I'm just not persuaded at this point**
9 **that the documents are admissible, the underlying Wikipedia**
10 **entries or whatever.**

11 **MR. KEENER: For the record, can I said which exhibits**
12 **those are?**

13 **THE COURT: Yes.**

14 **MR. KEENER: Defendant's 353, 356, 359, 361, 362, and**
15 **276.**

16 **THE COURT: Okay. What's the third issue then?**

17 **MR. ALY: Your Honor, may I make a request on that?**

18 **THE COURT: Sure.**

19 **MR. ALY: Just I want to be crystal clear on what we do**
20 **and make sure it's not wrong, your Honor.**

21 **THE COURT: Yes.**

22 **MR. ALY: If we don't show the document, but show the**
23 **date on there, is that the same issue in your view, or is that**
24 **different?**

25 **THE COURT: Yes, it's the same issue.**

1 **MR. ALY:** Just making sure because it's part of the
2 document. Thank you.

3 **MR. KEENER:** And then the next group of exhibits is a
4 various set of exhibits with just no date on them whatsoever
5 they can ascertain the date.

6 **THE COURT:** So, again, these are things that's sort of
7 his source material for saying this image was out there.

8 **MR. KEENER:** Images he picked off the Internet with no
9 date on them whatsoever, and now they want to put slides up
10 there with dates.

11 **THE COURT:** So, can you shed any light on this,
12 Mr. Aly?

13 **MR. ALY:** That would be kind of the same analysis where
14 there is research done to find out where the images are and then
15 where the dates are for those. That's also Internet-based
16 research primarily, but that's the kind of research he did to
17 get the date.

18 **THE COURT:** So, in other words, so that the image off
19 of the Internet, I take it, Mr. Keener, does not have a date on
20 it, but the exhibit has a date on it.

21 **MR. KEENER:** For this group of exhibits, there is no
22 date.

23 **THE COURT:** Okay.

24 **MR. KEENER:** For the demonstrative power point
25 presentation they want to show, they're showing these pictures

1 with dates on them

2 THE COURT: So, the date information is going to come
3 from testimony --

4 MR. ALY: That's correct.

5 THE COURT: -- I take it.

6 MR. ALY: And it was in his report.

7 THE COURT: The demonstrative that you're talking
8 about, I haven't obviously. The power point and demonstrative,
9 that's something that you're going to use to sort of work
10 through his testimony. You're not offering it as an exhibit.

11 MR. ALY: Correct.

12 MR. KEENER: But, again, it's not -- if it's 703, the
13 dates shouldn't be on there for the jury.

14 THE COURT: Well, but it's not something that's coming
15 into evidence, and, I mean, I can -- if you can flag for me when
16 these particular images come up, I mean, I can come up with some
17 sort of a thing to tell the jury that -- I mean, you can maybe
18 draft some sort an instruction, a sentence or two, that I could
19 read at that point in time.

20 I'm not going to make them tweak the power point
21 because it sounds like that the power point is going to have
22 some foundation if his testimony is that, you know, he believes
23 that this was available as of such and such a date.

24 MR. KEENER: Thank you, your Honor.

25 THE COURT: Okay. Does that cover everything?

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MR. ALY: That is.

THE COURT: All right.

**(Whereupon, the within trial was recessed to 1:25 o'clock
p. m of the same day.)**

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Also Present:

MR. NICHOLAS VILLACCI

MS. GILLIAN STEVENSON

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
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1 (The following proceedings were had in open court out of
2 the presence and hearing of the jury:)

3 THE COURT: All right, we're back on the record.

4 So on the Rule 50 motion, the first argument that is
5 made, I mean, I just -- the argument about evidence of
6 likelihood of confusion, I think it really confuses likelihood
7 of confusion and actual confusion. You know, there doesn't
8 have to be evidence of actual confusion. The fact that it
9 wasn't offered, it's a factor but it's not dispositive. So
10 I'm rejecting that one for that reason.

11 Let me hear -- well, I have a question about the
12 state law stuff, and we'll circle back around to that.

13 So talk to me about the amendments, Mr. Moskin, under
14 headings 2 and 3.

15 MR. MOSKIN: 2 and?

16 THE COURT: 2 and 3, and I may ask you about 4 as
17 well.

18 So 2 is about the one -- you didn't show any evidence
19 that these, you know, dozen or so terms were actually used as
20 trademarks.

21 MR. MOSKIN: Understood.

22 I mean, these are a series of marks that have been
23 briefed in the summary judgment motions, and I can only by
24 general description cite to you some of the cases we have
25 cited. There's a line of cases, including one -- they are

1 parallel cases in New York and in the Seventh Circuit. I
2 remember the name of the New York case, which was Time Warner
3 against Gay Toys. There was almost the exact same case in the
4 mid-1980s here in Illinois where the Seventh Circuit held that
5 there was -- that the character, there was a name -- in Dukes
6 of Hazzard, there was a car called the Dixie racer.

7 THE COURT: Oh, yes.

8 MR. MOSKIN: And because the defendant before Time
9 Warner had a chance to sell anything, put its product out
10 there, that was deemed a form of trademark infringement, akin
11 to a kind of unfair competition.

12 More recently defendant itself has cited a case, the
13 Johnny Blastoff case, where before the Los Angeles Rams
14 resettled in St. Louis and had no actual use of the mark St.
15 Louis Rams, the Court said, well, we knew they were going to
16 do it, or there was sufficient evidence, sufficient public
17 association of the name, that even though they hadn't begun
18 using the mark actually in commerce, that was an example where
19 because the mark was sufficiently associated with the claimed
20 trademark owner already, it would be unfair and confusing to
21 allow the defendant to appropriate it.

22 And the cases they have cited in response in their
23 motion I looked at are two trademark trial and appeal board
24 cases. And the jurisdiction of the trademark trial and appeal
25 board is very limited, and it does not include this sort of

1 unfair competition claim. They're limited very narrowly to
2 technical use of trademarks. And we have never contended --

3 THE COURT: Move on to the third --

4 MR. MOSKIN: Originality.

5 THE COURT: On the copyright claims.

6 MR. MOSKIN: They start in sort of chronologically
7 with the testimony of Mr. Naismith because he testified that
8 in 1985 how he created this Space Marine figure itself as well
9 as various vehicles, that there were no -- they had no
10 references in front of him. These things were all created out
11 of his imagination. They did pull little references to
12 Napoleonic blanket rolls and Roman helmet designs and so
13 forth, but there were no -- there were no references they had
14 before them.

15 In just the same way, Mr. Merrett said he was there
16 at the outset. He was working with the designers at the
17 beginning. He knew that there were no -- they didn't have a
18 reference library. They had nothing to look at other than
19 their own, you know, their own ingenuity to draw on.

20 And he also testified that over the course of time in
21 his role as head of IP, global head of IP, it's been his
22 responsibility to ensure that they don't copy.

23 Moreover, we have already heard testimony from Mr.
24 Villacci as part of our case and to some extent, I suppose, as
25 part of defendants' own case, that there is no evidence that

1 any one of these works, that there is a reference for any one
2 of these works. So I think you can take --

3 A jury can fairly infer from Mr. Merrett's testimony
4 that he oversees, even if he hasn't -- he actually has
5 designed a number of these. He said he wrote the Index
6 Astartes which has almost all the icons in it. So he is
7 actually the author of the icons. And so he knows from his
8 personal knowledge, from his role as head of IP, that they're
9 instructed not to copy. At the relevant time when most of
10 these things were created, he was -- there were no references
11 for them to look at.

12 And what I think defendants' argument mostly relates
13 to is that there have been some recent, you know, refinements
14 and improvements on these characters, but they're designed
15 largely, or almost all of them come from the original artwork.
16 I mean, if you go back to the --

17 THE COURT: Okay, you have told me enough about that.

18 Then the last point, and I kind of anticipated I was
19 going to see something about this, it refers to a couple of
20 spots in Mr. Merrett's testimony where he says, no, we're not
21 making a claim based on this, and I guess I figured maybe he
22 messed up on a couple of those. I don't know.

23 MR. MOSKIN: Well, he said --

24 I mean, I haven't -- I only quickly read this. I
25 know he said, for example, that he thought that the claim on

1 the mycetic spore was weak. Now, I frankly think it's quite a
2 strong claim for various reasons.

3 THE COURT: No, no. "Weak" I don't think they're
4 relying on here. That would be an easy one. I mean, I think
5 what they are relying on is that are you saying that this
6 infringes this, are you saying that you have a copyright claim
7 on this, and he said flat-out no.

8 MR. MOSKIN: Yes. If he said that, then I don't
9 remember.

10 THE COURT: Well, I guess what I am going to ask you
11 to do on that is go back and look at these references.
12 There's some from him. There's some from Mr. Jones. The
13 things that were dropped, you don't have to deal with,
14 obviously. We're going to deal with that in some way. So
15 let's just table that one.

16 Mr. Aly, let me hear from you on the other two points
17 that Mr. Moskin addressed.

18 MR. ALY: Yes, your Honor.

19 On issue number two, what Mr. Moskin talked about was
20 characters and books, and he's drawing from famous marks or
21 famous iconic figures like the Dixie and things along those
22 lines that are in the books. If there was a foundation for
23 that level of familiarity with the name as a character per
24 such that was commonly known, that would be one thing. But
25 the proof problem here, your Honor, is that these are just

1 words in a book as it is, and there is no record that the jury
2 could find that any of these had that kind of association with
3 them.

4 That is the basis of the motion, and the cases that
5 we found said when there is races of characters or even
6 character names that are inside, unless and until much more is
7 shown, that on its own is not enough, and we believe that the
8 proof so far is --

9 THE COURT: The fact that the Patent and Trademark
10 Office wouldn't allow trademark protection to the term
11 "Romulans," I mean, that is no more binding authority than a
12 decision by a district judge in another district, I take it,
13 right?

14 MR. ALY: That's correct, your Honor.

15 THE COURT: All right.

16 MR. ALY: We're using it to inform of that particular
17 rule.

18 THE COURT: What about the other point, the one about
19 the heading 3, the originality issue?

20 MR. ALY: Sure. Heading 3 on copyright and
21 originality, what I heard Mr. Moskin to say was that they did
22 not have a reference before them. So there is no evidence in
23 the reference point.

24 THE COURT: Right.

25 MR. ALY: But the test is not whether they were

1 slavishly copying one versus the other. It's about
2 originality.

3 THE COURT: But isn't it inferential, though? In
4 other words, if the evidence is that there wasn't any prior
5 reference, then a reasonable person could infer that it was,
6 in fact, original.

7 MR. ALY: Yes, your Honor, but the evidence was
8 otherwise.

9 Mr. Naismith, for example, there was a picture of a
10 tank. And he said when making the Land Raider, he looked at
11 this tank image, or he knew it in his head. He didn't put it
12 side by side to draw it out, but that's what he was thinking
13 of when he made that. And, therefore, when it comes to
14 original features, there was no evidence that said, here's
15 what I thought was different or original over that tank.
16 That's one example.

17 He also said he had seen military emblems, logos and
18 other just things in the world that he knew of at the time
19 that he was making the design.

20 THE COURT: Okay. I'm going to take these under
21 advisement. I don't know if I will rule on any of it before
22 the case goes to the jury.

23 So before I get the jury, is there anything we need
24 to take up?

25 MR. MOSKIN: Just two things. Would you like us to

1 make a more formal submission in response to these? I mean,
2 there are additional comments I could make in response.

3 THE COURT: I would say not at this point. If I
4 think I need more, I will let you know.

5 MR. MOSKIN: The only other thing I can --

6 Oh, on that point, I will try to get, obviously, get
7 this to you as soon as possible, dealing where Mr. Merrett or
8 Mr. Jones may have acknowledged.

9 THE COURT: Yes, and let's figure that we're going to
10 talk about that tomorrow. So just look back at those
11 references.

12 MR. MOSKIN: Okay. And the one other thing I would
13 say is we don't have the electronic copy, but if you would
14 like, I can hand up the one physical copy we have here in
15 court of plaintiff's proposed jury verdict form.

16 THE COURT: Oh, okay. Does somebody have a hard copy
17 on your side?

18 MR. MOSKIN: We will get one.

19 THE COURT: Just make sure I have it this afternoon.
20 Okay.

21 MR. MOSKIN: We'll, of course, deliver the electronic
22 copy as well as soon as we get back to the office.

23 THE COURT: All right, I'm going to go get the jury.

24 (The following proceedings were had in the presence and
25 hearing of the jury:)

Grindley - direct

1 THE COURT: Everyone can have a seat. And you can
2 call the next witness.

3 MR. COOPER: Chapterhouse calls Dr. Carl Grindley.

4 THE COURT: I think these are the exhibits from the
5 previous witness. Oh, my mistake. This one is from the
6 previous one.

7 (Witness sworn.)

8 THE COURT: Have a seat.

9 THE WITNESS: Thank you.

10 CARL J. GRINDLEY, DEFENDANTS' WITNESS, DULY SWORN

11 DIRECT EXAMINATION

12 BY MR. COOPER:

13 Q Good afternoon, Dr. Grindley. Could you please state your
14 full name?

15 A I'm Carl James Grindley.

16 THE COURT: Spell Grindley, if you would, please.

17 THE WITNESS: G-r-i-n-d-l-e-y.

18 THE COURT: Thanks.

19 BY MR. COOPER:

20 Q Are you here to testify as an expert witness today?

21 A I am.

22 Q Will you please tell us what you were asked to do as an
23 expert in this case?

24 A I was asked to examine claims made by Games Workshop for
25 some of their products and compare them to products made by

Grindley - direct

1 Chapterhouse Studios.

2 Q And what specifically were you looking for when you were
3 doing this comparison?

4 A I was looking for shared similarities between the two sets
5 of products, and where I found shared similarities, I was
6 attempting to determine whether or not these shared
7 similarities were due to them both having a sort of origin in
8 standards of science fiction fantasy or history.

9 Q And how did you go about determining that?

10 A Well, I did research on the field.

11 Q And did you rely on anything else besides research?

12 A I relied on the knowledge that I have built up over 20 or
13 so years in teaching and publishing and writing.

14 Q And about how long did you spend researching in this case?

15 A About 120 hours.

16 Q And have you reached any conclusions based on your
17 research and experience?

18 A Yes, I have.

19 Q Okay. And just an overview real quick, what are the main
20 conclusions you reached in this case?

21 A I have two main conclusions: One, that Chapterhouse
22 Studios and Games Workshop products do share superficial
23 similarities, that these similarities are due to their origins
24 or their sort of shared use of standard sci-fi imagery; and
25 that once you acknowledge those shared standards, what you're

Grindley - direct

1 left with is a lot of differences between the products that
2 really make them different expressions of the same standards.

3 Q Before we go on, I want to ask you some questions about
4 your background to serve as an expert in this case.

5 Where do you currently work?

6 A I work at the City University of New York.

7 Q Could you please tell us a little bit about the City
8 University of New York?

9 A The City University of New York is one of the United
10 States' largest research institutions. We have approximately
11 23 sort of smaller component parts spread across the five
12 boroughs and somewhere around 400,000 full-time, part-time and
13 continuing education students.

14 Q What is your position at the city?

15 A I'm a tenured associate professor of English.

16 Q How long have you been there?

17 A I began working there in August of 2004.

18 Q What did you do professionally before that?

19 A Before that immediately I was an assistant professor of
20 the English at the University of British Columbia in
21 Vancouver, Canada.

22 Before that I was a visiting member of the faculty at
23 Yale University, and before that I was a post-doctoral fellow
24 at the University of Victoria in British Columbia, Canada.

25 Q What is your educational background?

Grindley - direct

1 A I hold a Ph.D. in English language from the University of
2 Glasgow in Scotland. I hold a master's of arts in English
3 literature from the University of Victoria, and I hold a
4 bachelor's of fine arts in creative writing from the
5 University of Victoria.

6 Q Has your work throughout your career had any focus on any
7 specialties or areas of interest?

8 A I tend to divide my time between a number of different
9 specialties. So I do creative writing, I do work on medieval
10 studies, and I do work on popular culture.

11 Q Now, those three sound like very diverse things. How do
12 those interact with each other?

13 A Well, the way it works is that I noticed that very few
14 people were doing popular culture work when I was beginning my
15 career, and I was able to take my sort of, I guess, hobby love
16 of pop culture from when I was a little kid and sort of blend
17 that in with the formal study of the Middle Ages and the
18 Renaissance, and I was able to sort of make -- make my own
19 thing out of it.

20 Q Does your study of popular culture include works of
21 science fiction?

22 A Yes, it does. Science fiction and sort of other aspects
23 of popular culture, especially for me, medieval studies are
24 twinned together.

25 For example, if I'm going to be at a conference and

Grindley - direct

1 I'm going to be speaking about, say, a time travel movie to
2 the Middle Ages, then, obviously, it's not only medieval
3 studies; it's also science fiction, but it's also film and
4 it's also a host of other subdisciplines all at once.

5 Q Have you taught on the subject of popular culture and
6 science fiction?

7 A Yes, I have. I've taught a number of classes in science
8 fiction, but science fiction also appears in my other classes
9 as well.

10 For example, when I teach the Bible in literature,
11 which is something I teach, I will frequently teach some books
12 of the Bible, and then I will teach maybe a Kurt Vonnegut
13 sci-fi novel to show how even an atheist fiction writer will
14 rely upon images and standards taken from religion.

15 Q Can you describe any other classes that you have taught
16 that dealt with science fiction?

17 A The last time I taught science fiction, I did a themed
18 version of the class. So we looked at challenges faced by the
19 earth, and we read a number of books, but we also watched some
20 movies.

21 We watched Soylent Green, which is a wonderful film
22 from the seventies, with Charlton Heston facing global
23 warming. And, of course, you know, Soylent Green is people.

24 We also looked at Blade Runner by Ridley Scott, which
25 is a great film that focuses mostly on philosophy. And we

Grindley - direct

1 also watched Children of Men, which, again, it's science
2 fiction, but it's also the story of Mary and Joseph and baby
3 Jesus.

4 Q Have you spoken or lectured at any conferences on these
5 subjects?

6 A Yes, I have, a large number of them.

7 The last time I lectured on this was at Plymouth
8 State University's 39th -- 39th Conference on Medieval and
9 Renaissance -- sorry -- 39th Forum on Medieval and Renaissance
10 Studies. And that was in April. And I spoke about science
11 fiction time travel films, this time European sort of versions
12 of these films.

13 Q Are you a member of any organizations or societies focused
14 on popular culture?

15 A Yes. In 2004, I cofounded with Michael Torregrossa of
16 Rhode Island the Society For the Study of Popular Culture in
17 the Middle Ages.

18 Q Have you published any articles in the field?

19 A Yes, I have.

20 Q And do you have any other types of publications?

21 A Yes. I read a lot of poetry. I write traditional
22 scholarship. I write the scholarship of teaching and
23 learning. And I've even published three science fiction
24 novellas.

25 Q Dr. Grindley, have you ever worked for Chapterhouse

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1 Studies before this case?

2 A No, I have not.

3 Q Have you ever worked for Games Workshop?

4 A No, I have not.

5 Q Have you ever testified before as an expert witness in a
6 case?

7 A No. This is my first time.

8 Q And are you being compensated in any way for your work
9 that you're doing here today?

10 A No. I'm doing this pro bono.

11 Q Dr. Grindley, why would you offer your services pro bono
12 in this case?

13 A Well, one of the duties that you have as an academic is
14 you have to perform relevant community service. And at the
15 City University of New York, we don't define community
16 service as, say, me volunteering at an animal shelter. I have
17 to do something that relates to my scholarly area of
18 expertise.

19 And since I do, you know, popular culture work, this
20 is one of the few opportunities I think I will probably have
21 in my entire life to give something back to the community in
22 my actual area of expertise.

23 Q Okay. Now, Dr. Grindley, you mentioned that science
24 fiction works often have interplay between other things.

25 Could you describe a little bit more what you mean by

Grindley - direct

1 that?

2 A Well, science fiction will often --

3 The way it works is it builds up a kind of visual and
4 shared language of ideas and symbols, things in academia we
5 call tropes. So it will build up this vast number of these
6 tropes, and as time goes by, writers will bring them in from
7 other areas like religion or the arts or medieval studies or
8 even the Western.

9 They will bring these things into the world of
10 science fiction, and then other writers will borrow from them
11 and develop them, and you get this sort of standard language,
12 these standard ideas of science fiction that you find pretty
13 much over and over again.

14 Q Could you give an example where you have seen a feature
15 over and over again?

16 A Yes. I think the one that probably is most relevant right
17 now is this idea of a future soldier. And, you know, you
18 start to see this kind of character, you know, back right
19 before the golden age of science fiction, so back in the
20 thirties, maybe 1932 in Amazing Stories. '36 you get the
21 first mentions of Space Marines. You get all kind of future
22 soldiers developing from those models throughout the golden
23 era.

24 You know, you will get -- what are they called, in
25 James Cameron's movie Aliens, they're colonial marines. Even

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1 you get space rangers in Toy Story with Buzz Lightyear.

2 Q And where were futuristic space soldiers first described
3 in the arts?

4 A In the arts, I think, I would say, back in the 1930s, and
5 they really came into their own, I think -- and it's been
6 mentioned before. I think they really came into their own in
7 the works of Robert Heinlein.

8 Q Is that the Starship Troopers novel that we have heard
9 about?

10 A Yes. Starship Troopers, as it has been rightly pointed
11 out, you know, used the term "mobile infantry." Heinlein used
12 the term "Space Marines" in his other works, in at least three
13 other works in the 1940s.

14 But really Starship Troopers is the important one.
15 And it introduces this character of this, you know, advanced
16 fighting person who has to undergo a horribly brutal training
17 process which they may or may not survive, and then when they
18 go on their missions, they are wearing this 2,000 pound
19 armored space suit that allows him to make, you know, little
20 short hopping flights and they have got a backpack with cable
21 and laser weaponry or, you know, flamer weaponry or whatever
22 it was called in the book, and, you know, they fly around
23 wearing their armor.

24 Q Were there illustrations that went along with this
25 Starship Troopers?

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1 A Yes. The book has been in print continuously since the
2 1950s, and it's been translated into a lot of different
3 languages, so you get a lot of covers with it.

4 Q So did you bring any pictures today with you of art from
5 Starship Troopers?

6 A Yes, I did.

7 Q Do you recognize these pictures?

8 A Yes, I do.

9 Q For the record, these are from DX-300. Could you describe
10 them, please?

11 A Yes. The one on the left is a Polish translation of
12 Starship Troopers from 1979, and the one on the right is an
13 American edition of it from 1980.

14 Q What are some of the design elements you see in this
15 pictures?

16 A Well, some of the design elements --

17 Can I use a laser thing?

18 Q Please do.

19 A I've never used this one. I think it's just a button. A
20 button, there we are, okay.

21 In this particular slide, what you can see is you can
22 see the character is wearing a power pack, and that power pack
23 has these little nozzles that allow the character to make
24 short flights. In the book it's almost described like they
25 can hop almost like, you know, giant mechanical grasshopper

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1 kind of distances.

2 You can also see there's a cable here that attaches
3 the power pack to his energy weapon. You can see that he's
4 got armor on. You can see those armored legs and the armored
5 knees. His boots, you can see the little hinge there on the
6 boots. He's got a space helmet.

7 Again, on the American version of it, you can see the
8 space helmet. You can see the back of the power pack. You
9 can see that he's got his shoulder insignia on it, and his
10 elbow pads and the rest of his armor, even the chest details
11 where you can see the sort of hint of stomach muscles of the
12 kind of thing that you have seen in armor from Roman curasis,
13 you know, that are thousands of years old.

14 Q Do these design elements appear in science fiction works
15 after this?

16 A Yes, they do. These become pretty much standard images in
17 science fiction.

18 Q And have you brought any other pictures of futuristic
19 soldier armor?

20 A Yes, I have.

21 Q Can you please describe what this image is from DX-313?

22 A Yes. I am really hoping this is familiar to everyone
23 because it's such a fantastic film. And I hope everybody has
24 seen it. This is from Ridley Scott's movie Alien from 1979.

25 And I wanted to use Alien because it's a great film. Its

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1 importance can't be understated. It's, I think, the very
2 first film, in sci-fi at least, where there's a female hero,
3 and it pretty much made the career of Sigourney Weaver.

4 What you see here is you see one of the props from
5 the movie. This was worn by Captain Dallas, who unfortunately
6 meets his end rather early on. And what you have got is you
7 have got a suit of environmental armor, and you can see it's
8 outlined here. This is the chest piece.

9 There's, you know, these massive shoulder plates that
10 are on it. There's a belt with some utility equipment there,
11 and, you know, there is a big opening for the head to go
12 through.

13 Q Now, how does this phenomenon of design elements showing
14 up again and again, how does that help you form your opinion
15 in this case?

16 A Well, in this case, what a knowledge of these standards of
17 science fiction helps me to do is it helps me when I am
18 comparing and contrasting products by Chapterhouse and Games
19 Workshop to be able to identify the features of both that are
20 actually just science fiction standards.

21 Q Now, you said there are certain common design features in
22 science fiction works, but are there any elements that you
23 believe are mandatory for science fiction?

24 A I don't think there are any elements that would be
25 mandatory. There is sort of a number of common elements that

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1 you see over and over again.

2 Imagine you go to, you know, a buffet restaurant and
3 you have got your plate and you're walking down the aisle and
4 you have got the roast beef and you have got the -- you know,
5 the chicken and you have got the peas and the carrots and all
6 these other things. So you load your plate up, and, you know,
7 you have made your own individual choices, and the person next
8 to you has made their own individual choices, but you have
9 still been to the same buffet. You have still got basically
10 the same stuff there.

11 Q In your experience, can a certain combination of those
12 choices, can that create a somehow less standard science
13 fiction work?

14 A Theoretically, yes. Theoretically there can be great
15 originality, but interestingly enough, you usually end up
16 seeing people making more or less the same choices.

17 Q Now, in your work in this case, did you look for every
18 single specific combination of design elements in the Games
19 Workshop and Chapterhouse Studios works?

20 A No, I didn't think that was my role here.

21 Q Why is that?

22 A Well, what I thought would be most helpful for me to do is
23 just to be able to outline what the standards are and, you
24 know, what some of the similarities and differences between
25 the two sets of products.

Grindley - direct

1 Q Now, thank you for that background, and I'd like to turn
2 your attention to the specific claims that Games Workshop has
3 brought in this case.

4 What were you asked to do to form an expert opinion?

5 A Well, I was given a chart that I guess had been created by
6 Games Workshop in which they listed some of their products and
7 then some products by Chapterhouse Studios.

8 Q Is this similar to the claims chart that we have seen
9 throughout trial?

10 A I think it is.

11 Q And what did you do after receiving that chart?

12 A Well, after receiving that chart, I did some research.

13 Q What kind of research did you do?

14 A I relied on the knowledge that I built up over my years in
15 the field in teaching and doing research and doing
16 presentations. I relied on research that I had conducted for
17 my own publications.

18 I also did some visits to museums and art galleries
19 in New York, and I also conducted some Internet research.

20 Q What were you looking for in that research?

21 A I was looking for just decent, useful, expedient sort of
22 standards of science fiction that more or less lined up with
23 the kind of things that I saw from both Chapterhouse and Games
24 Workshop.

25 Q So did you identify any similarities between the Games

Grindley - direct

1 Workshop and Chapterhouse products?

2 A Similarities, only --

3 Q I'm sorry. Before doing your research.

4 A Before doing my research, I kind of relied on what I
5 already know just to see what I thought were common elements
6 between the two, what I considered to be important common
7 elements, and, you know, then using my background, tried to
8 determine whether or not those things were standards in
9 science fiction.

10 Q And once you found other science fiction works to support
11 your research and opinions, what did you do with those images?

12 A I created a third column for that claims chart, and I put
13 those images into the claims chart.

14 Q And what was your purpose of putting those images into the
15 claim chart?

16 A Just so that people could have a reference point so they
17 could see what, you know, another expression of that standard
18 is, just so that maybe the jury could have a little bit of
19 help with their work.

20 Q And were these examples that you found included generally
21 the first things you found in your research?

22 A Generally the first things that I found.

23 But the thing about the first thing that you find in
24 doing this sort of research is sometimes the first thing you
25 find is the thing that is very representative of that

Grindley - direct

1 standard.

2 Q Now, when were these other science fiction works that you
3 found created?

4 A Well, what I tried to do is that Games Workshop provided
5 in the claims chart a list of dates that went along with their
6 products.

7 So I tried to make sure that I found something that,
8 you know, was either documented or that I just knew through
9 common knowledge predated the dates that they provided.

10 Q And why did you do that?

11 A Just to show that it was a standard image out there. I'm
12 not suggesting that Games Workshop's designers had any
13 knowledge of the specific things that, you know, I'm producing
14 in this chart.

15 I just wanted to show that the standard was already
16 out there.

17 Q So you're not expressing an opinion about whether any of
18 the Games Workshop products are uniquely original, is that
19 right?

20 A No, I'm not.

21 Q And so you're not expressing an opinion about whether how
22 creative those works are, correct?

23 A No, I'm not.

24 Q Now, did you do any type of survey to determine exactly
25 how often each of these design elements you're talking about

Grindley - direct

1 occur in science fiction?

2 A No, I did not.

3 Q So you can't say design element X shows up in exactly Y
4 percent of all science fiction works, is that right?

5 A No, I don't think that was necessary.

6 And, again, just to use the example in front of us
7 here, if we look at this shoulder armor on, you know, the
8 Dallas' environmental space suit, if I were to try and go
9 through every single incarnation of shoulder armor just in
10 science fiction film, it would be a really daunting task, and
11 it wouldn't even be all that relevant because all, you know, I
12 am very -- really all I'm interested in is showing that that
13 standard is there. I don't need to catalog every single
14 instance of its appearance.

15 Q So without this sort of survey, what is your basis for
16 saying that a common design element is standard?

17 A My basis is just my knowledge of the field.

18 Q And just again, what was the purpose of creating this
19 third column to show to the jury here today?

20 A I created the third column so that the jury could have a
21 reference point so they could compare for standard features
22 between Chapterhouse Studios products and Games Workshop's
23 products so they could -- so the jury could see, you know, if
24 they're looking at a certain object, what components of that
25 object are standard features and which are not.

Grindley - direct

1 Q Did you include all of the images you found in your
2 presentation here today?

3 A All the images that I found during the entire course of my
4 research, no.

5 Q Why not?

6 A It would have -- I don't think it would have been
7 necessary. I think one is really good enough, or two or
8 sometimes three.

9 Q Did you bring an example of what you did in this chart you
10 created?

11 A Yes, I did.

12 Q Okay. Turning to slide 4, what do we see here?

13 A Okay. What we see here is we see on the left-hand column,
14 which is over here, you see little robot heads made by
15 Chapterhouse Studios.

16 And I guess what you're supposed to do with these
17 little robot heads is you're supposed to use them to customize
18 Games Workshop product that you have already purchased, and in
19 this case, it's one of these little robot guys here. So, you
20 know, if you want to make your experience of playing with
21 these toys a little more fun, I guess you don't use that head;
22 you put this head on.

23 Q Now, does this particular product have a name for
24 Chapterhouse Studios' product?

25 A Yes. Number 135, alternate heads for Tau crisis suits.

Grindley - direct

1 Q Do you have an understanding as to whether the
2 Chapterhouse products are sold or how they are sold?

3 A I believe that the Chapterhouse Studios products are sold
4 in an unpainted resin sort of state. They're just little
5 plastic bits, and, you know, you take your little model paints
6 and you paint them up the best you can, and then you use them
7 on the Games Workshop figure, which I guess you also assemble
8 and paint yourself.

9 Q When were the Games Workshop products that you see in this
10 slide released?

11 A According to the chart provided by Games Workshop, they
12 were released between 2001 and 2005.

13 Q So did you do a visual comparison of the Chapterhouse and
14 Games Workshop products at issue here?

15 A Yes, I did.

16 Q Did you find any similarities between them?

17 A Yes, I did.

18 Q Do you understand that Mr. Merrett testified last week
19 that these products have the same basic configuration?

20 A Yes, I do.

21 Q Do you agree with that level of assessment?

22 A Yes, I do.

23 Q What similarities do you see?

24 A They're both robot heads. I mean, that's obviously a
25 little bit flip, but they are robot heads.

Grindley - direct

1 If you want to go deeper into it, we can take a look
2 here. You can see right here and then right here and right
3 here and right here and again right here, you have some sort
4 of communications array, almost like an antenna. And this I
5 guess would be used for the robot to be controlled by whoever
6 is controlling it. You see it there, too.

7 The other thing that you would see on this robot head
8 is you would see the presence of what appears to be cameras
9 that the robot would use for eyes, and you can see them there
10 and you can see them here.

11 You can also tell that the robot head has -- it's got
12 some armor to protect, I guess, its delicate instrumentation
13 from whatever may happen to it.

14 You can also see that the robot head isn't quite a
15 human shape head; it's not like a C-3PO head. It's more like
16 an actual robot. So, yes, it does have those things in
17 common.

18 Q Did you believe that those were standard science fiction
19 elements?

20 A I have seen those before myself for a long time. So, yes,
21 everything from, you know, an old Farrah Fawcett movie called
22 Saturn 3 all the way to Wall-E, you see, you know, an armored
23 robot head with little camera eyes and some sort of antenna.

24 Q So what did you do to confirm your belief about those
25 design elements?

Grindley - direct

1 A I found a couple of images online, and I provided them in
2 that third column.

3 Q And did you bring examples of that?

4 A Yes, I did.

5 Q Let's look at now what is in column 3 coming from DX-325
6 and DX-349. Could you describe what is in the top image
7 there?

8 A The top image there is an image from Japanese anime from
9 sometime in either the late eighties or early nineties. There
10 were a number of these Patlabor movies made from I think from
11 '89 to '92, something like that. And what you have got there
12 is --

13 Q Sorry, Dr. Grindley. I just want to ask you real quick
14 before you go on, were you aware of those movies before you
15 started this case?

16 A Sadly, it is Japanese anime, so, yes.

17 Q Could you describe why you chose that image to put in your
18 chart?

19 A It's a really standard look for a robot. It's just a
20 robot.

21 Q And could you describe the second image in your chart?

22 A The second image is from Palladium Books, and Palladium
23 was known in the, I guess, late seventies to sometime in the
24 late eighties for making role-playing games. And, again, I
25 have to say that, sadly, when I was a little kid, I rolled my

Grindley - direct

1 fair share of multi-sided dice.

2 Q Now, in the design elements that you talked about earlier
3 that are shared between Chapterhouse and Games Workshop, did
4 you see those same design elements in the images you provided?

5 A Yes, I did. For example, it's pretty clear in this one,
6 you can see that there's a little camera eye. You can see the
7 robot's head is armored. It's not quite a human shape. And
8 it's got what looks to be some sort of antenna sticking off
9 the top.

10 The same thing from down here. You can see the kind
11 of camera eyes. You can see the odd shape. This one doesn't
12 have an antenna sort of in the kind of regular place. It's
13 got kind of like a little protrusion there.

14 Q So with that understanding about those design elements you
15 mentioned, what do you see when you compare the Chapterhouse
16 and Games Workshop products at issue in 135?

17 A Well, once we have recognized that there are standard
18 images for, you know, the design of a robot head in science
19 fiction, once we have kind of recognized that, then we can
20 start moving on to the differences in terms of expression of
21 this standard.

22 Q Did you see differences between these two products?

23 A Yes. I can go through some of these.

24 Q Please do.

25 A Okay. The most obvious one is the orientation of the

Grindley - direct

1 cameras that the robot uses for eyes for its stereo vision.

2 You can see in the Chapterhouse Studios, the eyes are
3 oriented vertically in an up and down sort of manner there.

4 Here the eyes are oriented side by side, horizontally.

5 You can also see that there's a difference in the
6 shape of the head. This is very much sort of an up-and-down
7 head. This is more squat and sort of sideways.

8 You can also see, if you look carefully enough, that
9 the armor plating for the robot head juts out further over the
10 sensory array here than it does over here.

11 You can see a similar sort of thing in this picture,
12 too. You can see the armor sticks out further.

13 You can also see that, you know, there are different
14 arrangements for these antennas or even different shapes to
15 them. So the antenna in the Games Workshop product, it's kind
16 of long and straight. The antenna in the Chapterhouse
17 Studios, it's shorter and in different shape.

18 Q Now, these details that you have described, do you
19 consider that that is nit-picking a little bit, Doctor?

20 A Well, once you acknowledge that there are certain
21 standards you're going to see when someone designs a robot
22 head, then all you're really left with are these sort of
23 details in how that concept of robot head is individually
24 expressed. These are both --

25 Q And --

Grindley - direct

1 A I'll just sort of --

2 I don't mean to ramble, but these are basically, you
3 know, two different expressions of the same kind of standard
4 concept of robot head.

5 Q Now, do you understand whether there are any other
6 Chapterhouse products compatible with Games Workshop Tau
7 heads that are accused in this case?

8 A Yes, I do.

9 Q During the course of your investigation, did you examine
10 product 136, the alternative heads for Tau crisis suits, set
11 number two?

12 A Yes, I did.

13 Q Is your opinion the same with respect to product 136 as it
14 is to 135?

15 A Yes, it is.

16 Q Did you undertake this analysis for more accused products
17 in this case?

18 A Yes, I did.

19 Q Okay. Take a look at the next image. What do you see in
20 the first two columns?

21 A Well, in the first two columns, in the left column I see a
22 little gun kit made by Chapterhouse Studios.

23 In the middle column, I see some drawings made by
24 Games Workshop. And both of these are of some sort of
25 futuristic energy weapon.

Grindley - direct

1 Q What is the name of product accused in this claim?

2 A Hot shot lasgun pack.

3 Q And that's product 128?

4 A That's product 128, yes.

5 Q Now, when you --

6 Do you have an understanding of what design elements
7 that Games Workshop believes are at issue here in the hot shot
8 lasgun pack?

9 A Yes. I believe it's the angled sort of muzzle tip there,
10 what we would, you know, best call like a muzzle brake.

11 Q Does the Chapterhouse product have an angled muzzle?

12 A It does. It's not really a muzzle; it's a muzzle brake.

13 Q Muzzle brake.

14 A Muzzle brake. It's got an angled muzzle brake right
15 there.

16 Q So would that be a similarity between the two?

17 A That would be a similarity between the two.

18 In real life what a muzzle brake is used for is to
19 deflect hot gases from projectile weapons.

20 Either of these I don't think are projectile weapons,
21 but it's still an example of one of these things where science
22 fiction picks up kind of influences from the real world. So,
23 you know, it borrows from actual, you know, real life weapons
24 even though that borrowing might not be appropriate because
25 you're firing, you know, blasts of energy rather than

Grindley - direct

1 projectiles powered by a gas explosion.

2 Q Based on your experience when you recognized that
3 similarity, did you believe that an angled muzzle brake was a
4 standard science fiction design element?

5 A Yes, I did.

6 Q Did you do research for other works to confirm that
7 belief?

8 A Yes, I did.

9 Q And what did your research reveal?

10 A I found some metal miniatures back from the 1980s.

11 Q And is that what is referenced in the third column from
12 DX-344?

13 A Yes. And you can see on these they have got the angled
14 tips. And again, you know, this is just an example of science
15 fiction borrowing from the real world.

16 Q Did you include any other examples of this design element?

17 A Yes, I did.

18 Q Can we take a look at the next slide?

19 Could you describe what is in your third column now
20 which come from DX-343 and DX 339?

21 A The top image is from Palladium Books, which I said before
22 was a role-playing game company. And this is an illustration
23 of one of the weapons for their system.

24 The bottom image, I think -- well, I hope everyone
25 recognizes, it's the Nintendo Zapper. You know, if you were

Grindley - direct

1 playing Duck Hunt back in the eighties, this was what you were
2 blasting away at with your t.v. set and your Nintendo
3 entertainment system.

4 Q And why did you include these images in your chart?

5 A Well, I included them to show that, yes, you know, there
6 is this slanted muzzle on these, but also just to, you know,
7 remind people of the 1980s and that, you know, this is
8 something that I think was fairly common. And I know I had
9 one.

10 Q Now, are you able to tell us exactly what percentage of
11 sci-fi guns have an angled muzzle brake in them?

12 A No, I'm not.

13 Q But what is your ultimate conclusion about that particular
14 design element?

15 A To me that particular design element is just one of those
16 standard features that, when someone is designing a sci-fi
17 weapon, they can include as part of the design.

18 Q Aside from the angled gun nozzle, were there any other
19 similarities that you identified between the Chapterhouse and
20 Games Workshop products?

21 A Oh, yes.

22 Q Could you tell us what that is?

23 A Absolutely. Let's go through these things.

24 Okay. First of all, both of these products have a
25 cable that provides energy to the weapon that goes from the

Grindley - direct

1 gun itself into the powered pack. And, of course, both of
2 these weapons, you know, have a power pack.

3 Q Is that a design element that you considered standard in
4 science fiction for guns?

5 A Yes, absolutely.

6 And in my opinion, you know, these all date back to
7 the design of maybe like the M2 Flamethrower from the Second
8 World War which had this backpack and the nozzle and, you
9 know, the cables.

10 And you can see that in all kind of films, including
11 The Thing they even used that.

12 Q Did you include any works that you found in your research
13 showing that similarity? Did you bring them with you today?

14 A No, I don't think I did.

15 Q Any pictures of a --

16 A Oh, yes, I did. I did bring more stuff.

17 Q Okay. Column number 3 now has an image from DX-299. Do
18 you recognize that?

19 A Yes, I do.

20 Q And could you describe why you included that image in your
21 chart?

22 A That's a cover from Analog Science Fiction magazine from
23 the 1970s. And in this particular magazine, what you can see
24 is you can see that there's a soldier here. He's got his
25 backpack. He's got his energy weapon. It's got a little

Grindley - direct

1 cable connecting it.

2 Q Did you include any other images?

3 A Yes, I did.

4 Q Now, looking at column 3, which has an image from DX-321,
5 can you explain why you included that one?

6 A Yes. That's our good old friend, GI Joe. And in this
7 particular GI Joe, which comes again from the 1970s -- I wish
8 I had one here because then we could all play our GI Joes with
9 all of our little other action figures.

10 But this one, he's got his energy weapon here. It's
11 connected by a cable to his backpack. So it just sort of
12 shows the common nature of that standard weapon arrangement.

13 Q With your understanding of those standard elements that
14 you described, what do you see when you look at the
15 Chapterhouse and Games Workshop products?

16 A Okay. Well, once I actually, you know, recognized the
17 sort of most -- the standard features of this sort of weapon,
18 then I can start to look at the differences between them.

19 And --

20 Q Could you explain what those difference are that you see?

21 A Sorry. I'm just really eager. This is fun.

22 Okay. So, for example, if you look at this, you can
23 see the cabling attaches to where sort of a removable magazine
24 would be if this was an actual, you know, real weapon whereas
25 on Games Workshop's product, you can see the cable attaches to

Grindley - direct

1 the pistol grip of the weapon.

2 If you look at, you know, the backpack, you can see
3 that it almost looks like a lunch box really, and it's got a
4 handle on the top.

5 If you look over at the Games Workshop version of the
6 backpack, it ends with this weird canister thing, which to me
7 looks almost like a German World War I or World War II gas
8 mask canister.

9 You can also see some important differences between
10 the two weapons themselves. For example, the Games Workshop
11 item has a scope on the top, you know, that sticks out like
12 this. I can't see a scope here.

13 The Games Workshop's stock to me really closely
14 resembles a German MG42 machine gun, as does the pistol grip
15 here, whereas the stock on the Chapterhouse Studios product
16 doesn't really resemble it, and the pistol grip certainly
17 doesn't.

18 Another small detail which is kind of a little bit
19 difficult to see at this distance -- it's fairly clear in
20 front of me -- would be that there's, oddly enough, there's a
21 magazine sticking out the right-hand side, although why it
22 would need a magazine if it's being powered externally, I
23 don't quite know.

24 And, also, there's a feed tube you can see underneath
25 this weapon. Now, this kind of feed tube is something you

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1 might see on like, you know, your trusty old Remington 780
2 Express shotgun. It's where in a shotgun the shells would be
3 before being loaded into the receiver, and that doesn't -- and
4 that's not sticking out there.

5 Even like the length of the barrels is different.

6 So to me there's a lot of differences between these
7 two products that clearly separate them once we know what the
8 standard features of both of them are.

9 Q Are there any other Chapterhouse power pack products that
10 are accused in this case that you examined?

11 A Yes, there are.

12 Q And are you referring to product 158?

13 A Yes, I am.

14 Q And is your opinion with regards to product 158 the same
15 as 128?

16 A Yes, it is.

17 Q Looking at the next product here, could you describe what
18 Chapterhouse product is accused?

19 A Okay. This will take a little bit of explaining to do.
20 What this is, is this is a conversion kit, and what a
21 conversion kit is, it's a number of extra little parts that
22 you have that you can use to customize a product that you have
23 already bought by Games Workshop.

24 So here is one of these little dudes here. And, you
25 know, say, you're not happy with the shape of his backpack,

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1 you can buy this kit with all these different parts in it and
2 you can put a different backpack on him, I guess, to customize
3 him and to make your experience a little bit happier.

4 Q And this is the product 126, TRU-Scale Knights Praetorius
5 conversion kit, is that right?

6 A That's what it's called, yes.

7 Q Now, did you analyze each --

8 There are multiple parts here, right?

9 A There are multiple parts.

10 Q So did you analyze each of them individually?

11 A Yes, I did.

12 Q Can we take a look at the backpack products first? Did
13 you identify any similarities between the two products?

14 A Yes, I did.

15 Q What were they?

16 A Well, they're both, you know, power packs that would
17 provide energy for, you know, energy weapons or whatever and
18 also to help the characters to make some kind of flight, I
19 guess.

20 Q Do you believe this was a standard element in science
21 fiction?

22 A Yes, I did.

23 Q Did you research other futuristic soldiers to confirm that
24 belief?

25 A Yes, I did.

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1 Q And did you bring examples with you?

2 A I did.

3 Q Thank you.

4 If we take a look now at what is in column 3 from
5 DX-300, could you describe this image and why you included it
6 in your chart?

7 A I included this image because, again, it's from Starship
8 Troopers which is this, you know, seminal work in science
9 fiction. And, you know, it's just a really good example in
10 that it shows the character wearing the power pack.

11 It shows the nozzles from the pack pointing downwards
12 so he can make short flights. It just shows that these things
13 are out there.

14 Q With your understanding of what is involved in a power
15 pack, what do you see when you compare the Chapterhouse and
16 Games Workshop pieces here?

17 A Well, once I've recognized that these are both power
18 packs, then I can start to look at the differences between
19 them.

20 Q And what do you see as differences?

21 A Okay. Well, we'll start off with a couple of the obvious
22 ones.

23 First of all, you can see that on the Games Workshop
24 product, the nozzles are pointing down, which actually makes a
25 great deal more sense than the Chapterhouse Studios product

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1 where the nozzles are pointing sideways. I guess this guy
2 could move left or right like really, really quickly whereas
3 this guy would be able to fly somewhat.

4 You can also see a difference in the shape of the
5 pack. This one's got kind of like a vee-shape to it whereas
6 the Chapterhouse Studios one is square.

7 You can also see that on the Games Workshop product,
8 there's a heat shroud right here, and it's got ventilation
9 holes. I guess this thing must get really hot, so it has to
10 have some sort of protection on it so you don't burn your
11 hands if you touch the thing.

12 You can also see that on the Games Workshop piece,
13 there's a little skull decoration, and this skull decoration
14 occurs on a lot of their products. I guess it's one of their
15 things for their little guys.

16 On the Chapterhouse Studios, there is no such
17 decoration. There is no heat shroud.

18 So, you know, when I -- when you recognize that
19 they're both power packs, what you're left with is the
20 differences between both of them.

21 Q Let's take a look at the leg pieces next. Did you see
22 similarities between these two pieces?

23 A Yes, I did.

24 Q And could you describe what those are?

25 A Well, they're both, you know, anatomically human-esque

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1 legs. You're only going to have so much freedom with legs.

2 Not only are they just legs, they're also armored legs.

3 And in order for an armored leg to function, it more
4 or less has to have the same component parts. You know, you
5 have to have -- you have to have a crotch where the legs join
6 into; otherwise you won't be able to walk.

7 You have to have articulated knee joints; otherwise
8 you won't be able to walk.

9 You will have to have some sort of gap between your
10 shin armor and your boots; otherwise, again, you won't be able
11 to walk.

12 You also have to have a toe cap or you won't be able
13 to bend your feet.

14 So there are certain things that kind of have to be
15 in, you know, armor, and they have to be in human anatomy for
16 just reality to work.

17 Q And did you believe that those design elements you just
18 mentioned were standard for armored legs?

19 A Oh, yes. No, I have seen them before. I mean, Buzz
20 Lightyear, that's what his legs look like. So these are
21 pretty common.

22 Q Did you bring any examples of other science fiction works
23 with those elements?

24 A Yes, I did.

25 Q Could you describe to us what is in column 3 from DX-351?

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1 A That's Iron Monger, and I'm hoping that we all saw the
2 Iron Man movie a couple of years ago, but this is actually
3 from the comic book back in the eighties, and it's one of the
4 Iron Man suits. It's not like a good guy suit; it's one of
5 the bad guy suits. It's like sort of Tony Stark's, you know,
6 sort of business mentor Obadiah. He's the one who wears this
7 and goes on a rampage.

8 Q Why did you include this in your chart?

9 A I included this because, you know, one, Iron Monger is
10 just one of those things that I would expect everybody to know
11 of.

12 And, two, it's a great example where you have got the
13 crotch armor, you have got the leg armor, you have got the,
14 you know, the articulated knees. You have got the heavy shin
15 armor and you have got the big metal boots. It basically
16 looks the same as these other two.

17 Q Is this the only expression of armored legs that you
18 found?

19 A No. No, I found more.

20 Q But you can't give us a precise percentage about how many
21 science fiction works have armored legs with the elements you
22 have described, is that right?

23 A No.

24 Q So with the understanding of the elements you have
25 described so far, what do you see now when you look at the

Grindley - direct

1 Chapterhouse and Games Workshop products?

2 A Well, once you have recognized that there's only so many
3 options you have for human anatomy and only so many options
4 you have for how armor fits on human anatomy, then you look
5 at -- then you're stuck with looking at these details, what I
6 think you called it nit-picking. So we're left at these
7 nit-picking details, and I guess it's time to pick some nits.

8 So if you look at the Games Workshop leg, you can see
9 there is lots of decoration on it. For example, on this
10 thigh, you can see that there's a little nubbin. There's a
11 seam that runs down the middle, I guess, where the plates
12 would fit together.

13 There's even decoration on the crotch of -- I don't
14 know what that decoration is for, but I imagine it serves some
15 sort of function.

16 You can also see down here, there is some sort of --
17 maybe it's a hydraulic thing that helps the character move his
18 legs around.

19 You can take a look at, say, for example, on the
20 Chapterhouse Studios product, it's got different decoration.
21 There's a little sort of rectangular protuberance there.
22 There's one on the inside there of the thigh.

23 You can look at the shape of the actual knee joints
24 in this one, and you can see in the Games Workshop, it's a
25 different profile. It's more of a teardrop shaped whereas in

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1 Chapterhouse Studios, it's more like, I don't know, volleyball
2 or skateboarding or hockey knee pads.

3 You can also look and see, for example, where the
4 shin armor ends, and you can see that it ends relatively far
5 down the foot in this particular one, and it ends a lot higher
6 up in this one, I guess, to give the feet a greater range of
7 motion.

8 You can even see differences, for example, in the
9 kneeling figure, in their stance. The Chapterhouse Studios is
10 kneeling in a position that I think makes better anatomical
11 sense than the Games Workshop one. I actually crawled around
12 in my apartment trying to replicate this pose, and I just
13 couldn't do it.

14 So I think this one, you can see that there is a
15 difference in which way the legs are bending in the two.

16 So it's not only in terms of these elements of design
17 as far as the detailing goes but also, you know, how they are
18 modeled.

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Grindley - direct

1 Q Okay. Let's take a look at torsos here in this product.

2 Did you compare these pieces?

3 A Yes, I did.

4 Q And what -- did you find any similarities between them?

5 A Oh, yes, I did.

6 Q Could you tell us what those were?

7 A Yeah. The similarities are the torso armor. So it's
8 designed to fit on the human anatomy. And, you know, you can
9 look at torso armor going back to Roman curasis from, you
10 know, the time of Christ. These things are just a standard of
11 arms and armor for, you know, a couple of thousand years and
12 then many thousands of years in the imagination.

13 And if you look at these particular ones, you can see
14 that there are a number of similarities. One, you've got a
15 basic anatomical shape where the chest is larger than the
16 waist. There's a belt or belt-like device. You can see
17 there's an opening for the head. And, you know, there's --
18 sometimes there's, I guess, the hint of some sort of abdominal
19 cutout.

20 Q Now, the design elements that you just mentioned, did you
21 research for other science fiction works that contain those
22 standard elements?

23 A Yes, I did.

24 Q Now, looking at number three in -- column three in your
25 chart with images from DX 361 and DX 313, could you first

Grindley - direct

1 identify what the top image is?

2 A Yeah. It's a metal miniature from back in the 80s.

3 Q And why did you include that in your chart?

4 A Just to show that even in the world of miniatures, you
5 know, even if you chose one pretty much at random from, you
6 know, jeez, I guess it's a long time ago now, 30 years ago,
7 you're still going to see, you know, these features even in
8 miniature building.

9 Q Could you describe, again I think we've seen the image,
10 the second part of the column?

11 A Yeah. I'm a huge Ridley Scott fan, so I'm going to be
12 relying on Alien as much as I can cause it's such a great
13 film, but, again, it's the environmental armor from the 1979
14 film Alien, and you can see that it follows this same general
15 human anatomy. It's got the same kind of in this case an
16 oversized utility belt. You know, it's got an opening for the
17 head. And it's got some decoration on the chest that actually
18 doesn't seem to really serve much of a purpose because I don't
19 think anybody's chest actually bends in these articulations.

20 Q Are those similarities in the third column that you've
21 also found in the Chapterhouse and Games Workshop products?

22 A Yes, it is.

23 Q So with that understanding of those similarities, when you
24 look at the Chapterhouse and Games Workshop products, what do
25 you see?

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1 A Well, one side acknowledged that there are standards that
2 you have to have because of human anatomy or standards that
3 have existed for the last couple of thousand years in terms of
4 actual armor. Then I'm left with the differences between the
5 two products.

6 Q And what differences do you see here?

7 A Well, let's go through a number of them.

8 First of all, if we look at the shape of that, it's
9 not really a cutout because these aren't actually stomach
10 muscles. This is just, you know, decorative features. And,
11 like I said earlier, you could see these decorative features
12 in the armor of Rome. But if you look at the shape of this,
13 you know, cutout, you can see that it's more oval in the
14 Chapterhouse Studios product. It's more circular in the Games
15 Workshop product.

16 You can see the Games Workshop product has
17 significantly more detailing on the chest. You can see this
18 almost like a bandolier with these little details. And you
19 can see that that detail is even reproduced in the belt.
20 There's these little horizontal notches.

21 The belt in one has that skull motif. You know, here
22 it has a sort of a -- kind of like an inset kind of motif. It
23 looks like it's excised.

24 Here you can see that on this abdominal cutout it
25 almost looks like the radiating fins from an old, you know, an

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1 old airplane motor, one of those exposed ones. Here it looks
2 more like the traditional stomach muscles that you'd see in
3 Roman armor.

4 You also see that there's more levels of detail on
5 this one. This one's got the skull motif here.

6 You can see that the hole for the neck is cut out
7 differently on the Games Workshop products than on the
8 Chapterhouse products. See this way this guard that would go
9 to protect your neck from being, you know, severed goes all
10 the way around. Whereas this one it's notched out on the
11 front in both of the products.

12 So you can see there's actually a number of detailed
13 differences between these two things, which, you know,
14 there -- obviously they're the same -- you know, using the
15 same standard of torso armor, but they are expressing that
16 standard in much different ways.

17 Q Thank you.

18 And now let's take a look at the final thing in this
19 product, which is the shoulder pads. Did you identify
20 similarities between the Chapterhouse and Games Workshop
21 shoulder pads?

22 A Yes, I did.

23 Q Could you describe what they are?

24 A Well, they're both examples of shoulder armor.

25 Q Do they have any particular size to them?

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1 A These ones are I guess what you'd call oversized, so
2 they -- you know, in the -- we can't tell right now because
3 they're not in the context of the model, but in the context of
4 the model they extend sort of further down the bicep than you
5 would typically see in other examples of shoulder armor.

6 Q Do you believe that the oversized shoulder pads were a
7 design element that was standard in science fiction?

8 A Yes. Not only science fiction but also fantasy.

9 Q And did you do research to confirm that belief?

10 A Yes, I did.

11 Q Did you compile some images that you found onto your
12 chart?

13 A Yes, I did.

14 Q Let's take a look at the next slide with images from DX
15 301, DX 313, DX 317, DX 300 and DX 320.

16 Now, Dr. Grindley, what was your point in compiling
17 the images in this chart?

18 A I just wanted to show the ubiquity of shoulder armor in
19 everything from real honest to goodness, you know, medieval
20 and Renaissance armor all the way up to, you know,
21 contemporary films like Star Wars and Alien, and also to, you
22 know, comic books and book covers, so crossing a really wide
23 spectrum of popular culture that, you know, this kind of
24 shoulder armor is just something you're going to see.

25 Q Do the shoulder armor that you included here from other

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1 works, do they have a particular general size that you would
2 describe?

3 A Some of them are oversized. You know, like obviously this
4 is oversized because it's actually resting on top of a smaller
5 plate. This is something that one would use in a jousting
6 context. You can see that one, you know, of my favorite ones
7 here from Alien, you can see that's oversized. You know, the
8 Michael Devlin character from Earth 88194, you can see that's
9 oversized.

10 But I just wanted to show that, you know, these
11 things were just a standard image that you might get.

12 There were more images I wanted to find, but I
13 just -- to tell you the truth, my DVD was scratched so I
14 couldn't get a bunch of them.

15 Q Now, do any of these science fiction shoulder pads from
16 other sources that you've shown, do they have the exact same
17 size and shape as the Games Workshop shoulder pad?

18 A No, they don't.

19 Q So with that understanding about oversized shoulder pads,
20 what is your opinion with respect to the differences between
21 the two products?

22 A Well, once we've, you know, acknowledged that these are
23 oversized elements of shoulder armor, then we can actually
24 examine the differences between the two of them. And for
25 example, we started at these two here. You can see there's a

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1 superficial resemblance. They've both got some kind of
2 nubbins on them, but you can see on the Games Workshop piece
3 they're rounded, there's not that many of them. Over on the
4 Chapterhouse Studios side you can see there's spikes, and
5 there's lots of them.

6 On the other one here you can see that there is kind
7 of a -- kind of like a rope banding around the bottom edge.
8 And I've actually seen this rope banding in real life on
9 medieval armor. It's something that typically you might see
10 if you go to one of these armories and see these real suits.

11 On the right, on Games Workshop you can see it's a
12 lot plainer, but it's got, I guess, a place here where they
13 can get, I don't know, maybe a unit number or something else
14 that you, you know, can affix a sticker to or you can paint to
15 decorate it.

16 So, you know, there's a lot of differences between
17 the two.

18 I have to say I don't know if these things are
19 exactly to scale to each other. And I would have liked to
20 have been able to compare exactly what the dimensions are.
21 The way these are presented, it does look like they have
22 different profiles, but I can't be sure because I didn't
23 physically examine these things because I was only working
24 from the claims chart.

25 Q You understand that there are a lot of shoulder pads at

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1 issue in this case, right?

2 A There are tons of shoulder pads at issue in this case.

3 Q And you understand that there's detailing on all of them?

4 A There is detailing on all of them. There's even detailing
5 in them and around them and a bunch of stuff, yes.

6 Q So and we're not going to go through every shoulder pad in
7 the case but --

8 A Please, no.

9 Q But is it your opinion that you should do this sort of
10 analysis for each shoulder pad in order to determine -- in
11 order to come to an opinion?

12 A Yeah. I think that, you know, a careful comparison of
13 every single one is probably necessary, but I think it would
14 probably also result in the same conclusion, that although
15 these things bear a superficial resemblance because they're
16 both oversized elements of shoulder armor, when you examine
17 them up close, you know, you're going to see differences
18 between them.

19 And right now what we're looking at too is we're
20 looking at ones that are cherry picked to be as similar as
21 possible. You know, we're actually going out of our way to
22 choose ones that are as close together as we can find.
23 Whereas, you know, if you were actually conducting a whole
24 scale comparison between the entire lines of both companies'
25 shoulder pads, you know, are we comparing this to this or are

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1 we comparing this to this or, you know, how are we doing our
2 comparison. So I think that if you went through it all, you
3 would reach the same conclusion that, yes, you know, they're
4 both shoulder pads, but I think they're different expressions
5 of that same standard.

6 Q Now, taking a look back, because there are many pieces in
7 this product, could you tell us what your ultimate conclusion
8 was for product 126?

9 A My ultimate conclusion for product 126 is that we have a
10 bunch of standards here. We have this leg standard. We have
11 the shoulder armor standard. We have the curasis, you know,
12 we have the torso arm standard. But we have the power pack
13 standard. And once we acknowledge that, you know, these are
14 science fiction standards, once we acknowledge that, then we
15 are left with a host of differences between those two
16 individual sets of products that really make them different
17 expressions.

18 Q Now, do you understand that there are other TRU-Scale
19 Knights Praetorius products at issue in this case, including
20 product 143?

21 A Yes, I do.

22 Q And do you have the same opinion for that product as
23 you've just described for 126?

24 A Yes, I do.

25 Q Now, we talked about how there are a number of shoulder

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1 pads, and would you agree that these are something of a
2 generally ovular or ovoid shape?

3 A Yes.

4 Q Okay. And you understand that there are some shoulder
5 pads at issue in this case that have a generally different
6 shape than ovular?

7 A Yes.

8 Q Okay. Did you look at those as well?

9 A Yes.

10 Q Let's take a look at a comparison from PX 1021, which is
11 the claims chart, and this is for product 140, Heresy-Era
12 shoulder pads for Terminator Type C. Did you do a comparison
13 of these two pieces or works here?

14 A Sorry. Excuse me for one second.

15 Q Of course.

16 A Okay. Yes, I did compare Heresy-Era shoulder pads for
17 Terminators Type C.

18 Q And could you describe what is on the slide right now?

19 A On the slide, in the left-hand column is a Chapterhouse
20 Studios product, which is, you know, one of these little --
21 little shoulder pads, and in the right-hand column is a
22 drawing, I guess, from one of Games Workshop's publications.

23 Q Did you identify any similarities between these two works?

24 A You know, to tell you -- you know, the only real
25 resemblance to me is that they're both sort of alluding to the

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1 armor of Rome.

2 Q And when you looked at them, do you see any differences?

3 A Pretty much all I see are differences.

4 Q Do you understand that Mr. Merrett testified that he
5 believed these products were similar because they have two big
6 armor plates and hanging leather straps?

7 A I don't even think that that's actually an accurate
8 characterization of what we're looking at.

9 Q Could you describe what you believe is different between
10 these two?

11 A Okay. On the left-hand side figure here, it's obviously
12 not two metal plates. We can see there are one, two, three
13 overlapping plates on the top portion of the armor and
14 presumably at least two, probably three or more overlapping
15 plates on the bottom part of the armor.

16 You can see in the Chapterhouse Studios product it
17 looks like it's been painted to be leather straps with little
18 iron rivets, you know, one at the top and one at the bottom of
19 each strap. Whereas you can see on the Games Workshop
20 drawing, to me, and it looks like these are cloth -- these are
21 fabric straps with maybe little buckle endings, you can see on
22 the Games Workshop drawing that it's got elaborate decoration
23 ranging from this sort of central motif in a rosette to, you
24 know, what might be, I don't know, sort of like a golden sort
25 of detailing on the side there. And that -- I mean, this is

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1 also colored gold, but it's just, you know, plain rivets in
2 a -- in sort of banding as if it's almost structural.

3 You can see on the Games Workshop product that it's
4 got a very, very circular profile and then a scalloped edge.
5 So it's like a rounded edge here. Whereas over on the
6 Chapterhouse Studios it's very angular. It's almost like the
7 letter L here.

8 You can also see that these two plates in the Games
9 Workshop drawing are stacked one on top of each other almost
10 like the tiles in like a Spanish roof. Whereas here you can
11 see that the two plates are -- or two collections of plates
12 are very different shapes. So this bottom one in the
13 Chapterhouse Studios sticks out quite far. You know, it's got
14 a different profile edge than the top plate. To me these two
15 things don't resemble each other even superficially.

16 Q Did you analyze any other products at issue in this case?

17 A Yes, I did.

18 Q Let's take a look at product 130, the magnetic turret kit
19 for Storm Raven. Could you describe what you see in this part
20 or the claims chart?

21 A Okay. What I see in this part of the claims chart is on
22 the left-hand column there's a Chapterhouse Studios I guess we
23 don't call it a conversion kit. I guess we call it like a
24 turret kit for a Games Workshop vehicle. And I guess the
25 thing's called a Storm Raven. And you can see part of the

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1 detail of the Storm Raven right here.

2 Now, when you build your Storm Raven, as I
3 understand, you've got this little piece here that's going to
4 be sort of fixed in position. And some people, I guess, when
5 they have this toy, they want to customize it so they can have
6 more fun with it, so what they do is they get this add-on
7 part, and what it is, is it's kind of -- I think it's kind of
8 clever now that I know how it works. It's got a little magnet
9 on the base here, so you can turn it and you can swap it in or
10 swap it off, and it's got a little turret. And that turret
11 itself actually has these guns, but these guns also have
12 magnets, so you can change the guns on the turret. So it's
13 kind of, I think, a lot -- I think -- if I played this stuff,
14 which I don't, but if I did, it would be the kind of thing I'd
15 be interested in getting.

16 Q And so there are several different weapons in this kit
17 that Chapterhouse sells; is that right?

18 A That's correct.

19 Q Did you look at them individually?

20 A Yes, I did.

21 Q Taking a look at this slide, did you see any similarities
22 between the Chapterhouse and Games Workshop pieces here?

23 A Yes, I did.

24 Q And what were they?

25 A The main similarity that I saw is they both contain

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1 multi-barrelled weapons.

2 Q And did you find that a common element?

3 A Yes, indeed it is.

4 Q Did you include any other works or images that would
5 express that?

6 A Yes, I did.

7 Q Taking a look at your third column now, which is from DX
8 298 and DX 346, could you describe what we're looking at here?

9 A What you're looking at is actually real-life weapons.
10 These are real-life mini-guns, which are, you know, projectile
11 weapons with rotating barrels. And you can see ones in
12 service up here, and you can see one down here from the movie
13 Predator that had Arnold Schwarzenegger and Billy D. Williams
14 in it and a bunch of cool people, and you can see the
15 character is using the mini-gun, you know, firing it from the
16 hip, like that would ever work. The barrels are spinning, and
17 the projectiles are coming out.

18 Q What is your purpose of including these images in your
19 chart?

20 A I wanted to show that, you know, not only are, you know,
21 the idea of multiple-barreled weapons kind of a standard in
22 science fiction, they're a standard in real life. And, again,
23 it's a case where science fiction borrows from the real world
24 in order to kind of populate its own standards.

25 And, indeed, you know, multi-barreled weapons have

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1 been around since, you know, the mid-1800 with the first
2 hand-cranked Gatling guns.

3 Q Now, did you include every instance that you could find in
4 history of a multi-barreled weapon in your chart?

5 A No. No. I didn't.

6 And, again, I'm -- you know, maybe it's the wrong
7 thing; maybe it's the right thing. I don't know. I'm
8 assuming that sort of like people would know of the existence
9 of Gatling guns and be able to once, you know, shown one
10 example or two examples, be able to say, yeah, you know,
11 they're Gatling guns. They've been around.

12 Q What is the basis of your understanding personally?

13 A My personal understanding is I that, you know, I saw
14 Predator at the theater when I was a kid because, you know, I
15 had a best friend whose parents were divorced, so every Friday
16 night we got to go out with divorced dad and see movies we
17 probably didn't need to see because we were too young to see
18 them, and those were some of the experiences that hooked me on
19 science fiction. So when I see these things now, I recognize
20 what they are, and I've grown up watching all these films, and
21 I keep watching them today and teaching them today.

22 Q So if you take a look now with that understanding at the
23 Chapterhouse and Games Workshop products, did you identify any
24 differences?

25 A Yes, I did.

Grindley - direct

1 Q What are they?

2 A Okay. There's a couple of really big ones that we'll get
3 to right off the bat.

4 Okay. Number one, this product here, it doesn't
5 turn. It's not an actual like -- I mean, it's a weapons
6 placement, but it's not like a spinning turret. This one
7 here, it's a turning turret.

8 This one here, you can see there's like a little
9 cockpit, so there's a little dude in there who operates these
10 guns. This one, it's, you know, robotically controlled, and
11 you can see there's some kind of sensor array there. It's not
12 sculpted like a camera, so I don't think it's a camera. I
13 think it's probably more like a sonar, you know, kind of
14 sensor array thing there for aiming.

15 You can also see that there's differences in the
16 armor around the weapons. You can see that in the Games
17 Workshop product the entire upper and lower receiver of the
18 weapon, you know, the part where, if it were a projectile
19 weapon, where the projectiles would feed into and be ejected
20 from, is covered by an armored shrouding. Whereas the armored
21 shrouding on the Chapterhouse Studios product, it's a lot
22 different, and it's got that scalloped sort of -- or not
23 scalloped. It's got like an L-shaped edge there, and it
24 exposes part of the weapon's receiver there.

25 Q Now, again I see that these images are taken from PX 1021.

Grindley - direct

1 And is that the claim chart that we're familiar with in this
2 case?

3 A Yes, it is.

4 Q And you personally reviewed all of the images in the claim
5 chart?

6 A Yes, I did.

7 Q Now, for -- we'll take this product, for instance. Were
8 there multiple images in the claim chart for that product?

9 A Yes, there were.

10 Q But you haven't shown every single image in the claim
11 chart in your analysis here, right?

12 A No. No, I have not.

13 Q But did you look at them yourself in your analysis?

14 A Yes, I did.

15 Q And do any of the other images in the claim chart change
16 your opinion in any way?

17 A No, they don't.

18 Q So what is your ultimate conclusion about this product
19 130, magnetic turret kit for Storm Raven, considering the
20 design elements you've discussed so far?

21 A Considering the design elements that I've discussed so
22 far, my ultimate conclusion is that, you know, they're both
23 weapons placements for some sort of armored vehicle. And
24 beyond that, they're just greatly different expressions of
25 that standard of, you know, a weapons placement.

Grindley - direct

1 And, you know, you think about like, you know, the
2 old World War II bombers with their little Plexiglass domes
3 with their guns or, you know, and the Millennium Falcon when
4 they're shooting down Thai Fighters, all their weapons
5 placements. You know, all of these kind of vehicles all the
6 way up to modern tanks will have these -- or ships will have
7 these weapons placements, and they just differ in terms of how
8 they're expressed.

9 Q Let's take a look at product No. 132, which is the open
10 fisted power claws. Could you describe what you see in this
11 part of the claim chart?

12 A Okay. What I see in the left-hand column is a character's
13 arm for, you know, one of the little dudes that Games Workshop
14 makes. And this arm, it's armored, and it's got a couple of
15 claws on it. In the right-hand column I see another armored
16 arm for Games Workshop. Only this one's made by Games
17 Workshop, and it too has sort of claws on it.

18 Q Did you identify any similarities between these two
19 pieces?

20 A Oh, yes, I did, a great number of them.

21 Q Could you describe what they are?

22 A Sure.

23 Okay. First of all, these are both armored arms.
24 This part is pretty obvious. They've both got cabling that
25 provides either hydraulic or electric or some kind of spacey

Grindley - direct

1 power to the claw apparatus. You can also see they've both
2 got claws. They've both got some sort of, you know, elbow
3 articulation. And they've both got some sort of piston
4 because I guess these claws are really, really heavy, so
5 you've got to have some sort of mechanical hydraulic help to
6 try and raise and lower your arm.

7 So they do have, you know, these shared elements.

8 Q And focusing first on power claws, did you find the
9 existence of power claws a standard element in science
10 fiction?

11 A Claws are pretty common whether it's science fiction or
12 fantasy or whatnot. There's a lot of things where you've got
13 claws.

14 Q Did you bring any other examples of that?

15 A Yes, I did.

16 Q If we look at your third column, it has DX 353. Could you
17 explain what that image is and why you included it in your
18 chart?

19 A I'm assuming actually a lot of people are going to
20 recognize this. This is our friend Wolverine from Marvel
21 Comics, and this is -- he's fighting The Hulk. This is back
22 in the days when The Hulk actually fought against other cool
23 superheroes. This is back in the 70s.

24 Q And do you personally know why this was -- how do you know
25 that was from back in the 70s?

Grindley - direct

1 A Because, unfortunately, I'm an old, old man, and at 47
2 years old, I actually was alive back in the 70s and reading,
3 sadly enough, comic books when I should have been reading, I
4 don't know, Shelley and Keats and, you know, Joyce and stuff
5 that would make me better as a human.

6 Q Why did you include this image in your chart, doctor?

7 A I just wanted to show that this idea of, you know, these
8 indestructible, adamantite claws, you know, was a staple in
9 this sort of literature.

10 Q Now, aside from that, you mentioned a few details that you
11 also saw were similar between these products, right?

12 A Yeah.

13 Q And do you understand that Mr. Merrett has testified that
14 he believes the details of these products are similar?

15 A Yes.

16 Q And do you agree with Mr. Merrett?

17 A I agree that some of the details may superficially appear
18 to be quite similar, and they're the ones that I outlined to
19 you. But I think there are an even greater number of
20 differences.

21 Q Could you describe what those are?

22 A Sure.

23 Let's start with the really obvious one. If we count
24 these claws, we can see that there are two. And if we count
25 these claws, we can see there're four.

Grindley - direct

1 We can see these claws are relatively short and they
2 extend out from the knuckles of the glove. We can see here
3 the claws are really long and they extend out from the rear of
4 the back of the hand.

5 You can see that the hydraulic line here extends from
6 the shoulder cap to the sort of the midpoint of the hand and
7 then feeds around into the claws themselves. On this one you
8 can see that the hydraulic or power or whatever it is line
9 goes from the elbow and feeds directly into the claw apparatus
10 in only one -- in one motion.

11 You can see also that here there's decoration again.
12 Games Workshop is really good with this level of detail that
13 they put on their products. And you don't see that level of
14 detail here. There's no little emblems or skulls or whatnot
15 that there are here.

16 You can see that there's a difference in elbow size.
17 I think this is a proportion problem with the Games Workshop
18 product. Either that or the hand is supposed to be
19 considerably more massive than the hand in the Chapterhouse
20 Studios product. Otherwise, I can't see any need for the
21 elbow sizes to be so disparate.

22 You can see there's minor differences in that
23 hydraulic piston, you know, that allow for the articulation of
24 the arm. You know, here it's -- I think it's a little bit
25 longer, and it seems to have two really clear parts, so you

Grindley - direct

1 can see the piston going in. Here it's a little bit more
2 rudimentary.

3 And you can see that the cutout is different. It's a
4 little longer of a cutout in that shoulder cap.

5 And the shoulder cap itself also appears to be on a
6 different scale between these two parts.

7 Q So with that understanding of the both similar and
8 different design elements you've mentioned, what is your
9 ultimate conclusion about product 132.

10 A My ultimate conclusion is that they're -- you know,
11 they're both clawed armored arms, and in that, you know,
12 they're like a standard of science fiction and fantasy. And
13 once you recognize they're a standard of science fiction and
14 fantasy, then you're left with all of these differences in
15 detail between the two. And I think that makes them, like
16 I've been saying, different expressions of the same standard.

17 Q Do you understand that there are -- there's another
18 accused product that is called closed fist power claws
19 compatible with Games Workshop Space Marine model?

20 A Yes, I do.

21 Q And that's product 133?

22 A Yes.

23 Q Do you have the same opinion for product 133 as you do for
24 132?

25 A Yes, I do.

Grindley - direct

1 Q If we take a look at product 159, the Shrike conversion
2 kit for Tyrannid Warrior model, I think the jury has heard a
3 little bit about what conversion kits are, but could you
4 explain one more time, please?

5 A Okay. One more time. Hopefully, this will be the last
6 time I get to explain conversion kits, but what you have here
7 on your left-hand column is you have the body of a Games
8 Workshop figure, and it's the same body as is right here. So
9 it's the same body, same tail, right there. And what the
10 conversion kit is, it's these two wings, these two legs and a
11 head that comes in two pieces that you assemble.

12 Q And --

13 A And in the right-hand column you see the Games Workshop
14 product that you would buy in order to even use this
15 Chapterhouse Studios product. This is the Games Workshop
16 product you'd buy in the form that you would assemble it if --
17 you know, right out of the box.

18 Q And did you do a comparison between these two -- the
19 pieces in these two products?

20 A Yes, I did.

21 Q Did you see any similarities between the wings and talons
22 and heads that you mentioned?

23 A Yes, I did.

24 Q Could you describe what they are?

25 A Yes. Okay. These are -- I mean, there's a number of ways

Grindley - direct

1 we can describe these things. We can say that they're bat
2 wings; we can say that they're early bird wings; we can say
3 that they're -- you know, this is where I have to be overly
4 specific. I want to say like flying dinosaur wings, but I
5 know that terradons aren't actually flying dinosaurs; they're
6 actually flying reptiles. Technically they're not dino -- I
7 hate to do that level of specificity, but it's -- you know,
8 it's like they -- we'll call them dinosaurs. So terradon
9 wings, anything with the sort of finger structure with a
10 membrane, you know, with little claws at the end. We can also
11 see that they both got legs that end in talons, and they've
12 both, you know, got weird shaped heads. This one it's kind of
13 like a squished in thing, and, you know, it's kind of like a
14 bonier kind of thing. I mean, these are weird, weird looking
15 creatures.

16 Q Did you consider any of those elements standard in science
17 fiction or other works?

18 A Yes, I did.

19 Q And did you do anything to confirm that belief?

20 A Yeah. I mean, I remember a lot of this stuff from a kid.
21 I remember when I was a little kid splurging a lot of money on
22 like a miniature dragon, you know, for my Dungeons and Dragon
23 days. But, you know, I also thought, well, you know, maybe
24 the thing we should focus on would be, you know, these wings,
25 so I did some research, and I found a couple of images.

Grindley - direct

1 Q And, now, taking a look at column number three, which is
2 DX 363, and that appears to be a miniature; is that correct?

3 A Yes.

4 Q But does that have any relation to the miniature you were
5 just discussing a second ago?

6 A No, no, no. I had like a long dragon, and I painted him
7 red, and he had like the folding wings. He looked like Smaug,
8 I guess. This one doesn't look like that. But they still
9 have the same dragon bat wing things that we all --

10 Q Why did you include this image in your chart?

11 A I just wanted to show the, you know, strangely shaped
12 head, you know, with the bony protuberances. I wanted to show
13 the bat wings, and I wanted to show, you know, legs with these
14 taloned claws on them.

15 Q And those design elements you just mentioned, do you see
16 those in each of the columns here?

17 A Yes, I do.

18 Q Did you bring any other works to put in column three here?

19 A Yes, I did.

20 Q Looking at what is taken from DX 276, could you describe
21 what that top image is?

22 A Yeah. It's a little on the rude side, but it's an
23 illustration by H.R. Giger, and it's one of the inspiration
24 drawings that Ridley Scott saw before embarking on his film
25 Alien. And you can see that although it's not, you know, a

Grindley - direct

1 sort of a flying dragon, it still shares some of the design
2 features and, you know, the strange shaped head that in this
3 case is both squashed and elongated. You can see like the
4 modeling that's -- and in the Games Workshop original it's got
5 this kind of skeletal structure to it. It's got this weird
6 other worldly kind of look that is common in all of these
7 figures.

8 Q Do you know when the Giger image that you've put there was
9 made -- created?

10 A Well, if Alien came out in 1979, it means Alien was made
11 prior to '79. I believe that this particular book came out in
12 '76, I'm thinking. I actually remember owning a copy of it,
13 but that was after '76, but I believe that it came out in
14 about '76.

15 Q But you've seen this image before?

16 A Oh, yeah. I used to own this book when I was much
17 younger.

18 Q And you see a cover of a book below that. Could you
19 explain where you got that from?

20 A That book was found in the reference library for Games
21 Workshop.

22 Q And, now, doctor, you're not saying that the Games
23 Workshop designer who created the middle column looked at that
24 book while designing it; is that right?

25 A I am absolutely not saying that.

Grindley - direct

1 Q Did you bring any other works with you?

2 A Yes, I did.

3 Q Could you describe what's in column three, DX 362?

4 A This is one of my favorites actually. And I taught it --
5 I'm actually teaching it right now as we speak, although I'm
6 not really because I'm in court and not in New York. But what
7 you see on the top there is you see Satan from John Milton's
8 book of Paradise Lost, and he's fallen from heaven, and he's
9 no longer Lucifer, the beautiful angel. He's lost his
10 feathers there, and now he's got these wretched bat wings. He
11 still looks kind of handsome and heroic. You know, he hasn't
12 sort, you know, sort of changed and transmuted into the
13 horrible creature he is towards the end of Paradise Lost.

14 And what this is, it's a steel engraving from the
15 19th century by this artist named Gustaf Dore, who's also
16 known for illustrating the Bible and for illustrating Don
17 Quixote and for my favorite, Dante's Divine Comedy.

18 Q Now, what is the design element that you were trying to
19 show an example of through the Dore image here?

20 A Cool, evil bat wings.

21 Q And could you explain why there is a cover of a book on
22 the bottom right column?

23 A Yeah. That's actually -- it's not an edition of Paradise
24 Lost. It's merely Dore's illustrations for it sort of
25 published separately.

Grindley - direct

1 Q Now, with your understanding of the design elements that
2 you've described so far, what do you see when you compare the
3 Games Workshop and Chapterhouse pieces at issue in this
4 product?

5 A Well, once I'd, you know, gotten over the talons and the
6 bat wings and the weird shaped heads -- and, of course, you
7 know, we have to remember these two bodies are exactly the
8 same because they're both Games Workshop products. Once we
9 get over the kind of standard shared features, then we can
10 look at the differences between -- between these two -- these
11 two designs.

12 Q What differences do you see?

13 A Okay. Well, let's do a couple of really obvious ones
14 first.

15 Okay. Can you see this sort of thing right here?
16 This sort of thing right here isn't a feature of the wing.
17 It's actually the rear claw of this creature's leg. All
18 right. So there's the thigh. There's the shin. And it's got
19 these -- this massive backwards facing claw and then a smaller
20 claw here. If you look at the Chapterhouse Studios part, you
21 can see, and this is kind of weird, the anatomy is
22 substantially different in that there's a thigh, there's a
23 shin, and then there's like another shin and then there's a
24 foot, and it ends in three equally sized claws.

25 You can also see a difference in the wing design.

Grindley - direct

1 You can see that in the Games Workshop wing there's a membrane
2 for that thumb finger. There's no membrane in the
3 Chapterhouse Studios one for that thumb finger. You can see
4 there's a different level of tautness and of scalloping of the
5 modeling for the actual membrane between the wing fingers.
6 You can see that. You can also see that that bottom membrane
7 stretches considerably further down than it does in the
8 Chapterhouse Studios product. You can also see, although it's
9 kind of difficult from this angle, you can see the head is
10 modeled a lot differently between the two.

11 Q Dr. Grindley, why do you think it's necessary to analyze
12 that in the kind of level of detail you just described there?

13 A I think it's necessary because once we rule out -- or not
14 rule out. Once we acknowledge that, you know, bat wings are
15 bat wings and clawed legs are clawed legs, I think once we
16 acknowledge that, then all we're really left with are these
17 differences.

18 And actually, you know, when I look at this, I think,
19 you know, it would be kind of cool to have -- you know, buy
20 two of the Games Workshop ones and then get the parts because
21 it looks like they're like totally separate animals.

22 Q Take a look at product 134, which is the Pylum Imperial
23 attack jetbike from the claims chart. Could you describe what
24 we're looking at in this slide?

25 A Yeah. What we looking at in the left-hand column is we're

Grindley - direct

1 looking at -- this is one of these combination parts where --
2 I think this was described earlier, that the legs and the arms
3 and the bike are made by Chapterhouse, and the little torso
4 and the head are made by Games Workshop, and this is -- you
5 know, so this is their jetbike. And then, you know, here's an
6 equivalent jetbike product from Games Workshop, and it's got a
7 little guy on it, and he's also on his bike.

8 Q Did you identify any similarities between these two
9 products when you analyzed them?

10 A Well, I mean, they're both jetbikes, and they both got --
11 they both have a single seat, and they both got a guy on them,
12 and they both have what appears to be built-in weaponry on
13 them.

14 Q Did you identify any differences between them?

15 A Yes, I did.

16 Q Could you describe those?

17 A Sure.

18 Let's start off with the obvious. This one has
19 wheels. This one there's no wheels. That's an obvious one.

20 Another obvious one is you can see the weapons in
21 this particular one. You can see them right here, and then
22 you can kind of see it right here. They're front mounted.
23 Whereas the weapons right here are rear mounted. You can see
24 them right there at the back of the bike.

25 You can also see that in the Games Workshop product

Grindley - direct

1 there's no stabilizing fin in the back. Whereas on the
2 Chapterhouse Studios one there is a fin right here.

3 You can see also that, you know, this particular one
4 has, you know, I can't remember how it was described earlier,
5 but, you know, that was the artist talking. To me, as someone
6 who looks at art, to me this looks more like a cow catcher
7 from a steam locomotive, you know, and this one has the front
8 wheel.

9 I was kind of reassured earlier to hear that, you
10 know, the Honda V-1000 was a possible inspiration because I
11 was going to say that in that you can see the gas tank here,
12 and then you can actually see that flat, you know, split six
13 that's on those big V-1000s made by Honda.

14 You can see that the stance of the rider is a little
15 bit different. This one it's kind of sitting up and begging
16 like an American highway cruiser. Whereas this one it's more
17 like a cafe kind of style where his legs are leaning backwards
18 and he's sort of grabbing flat bars.

19 I think there's a number of important differences
20 between these two things, and, you know, yeah, they're both
21 jetbikes, but I think they're completely different versions of
22 the jetbike.

23 Q Do you understand Games Workshop has listed another of its
24 works in the claims chart for this item?

25 A Yes, I do.

Grindley - direct

1 Q If we take a look at that, could you describe whether you
2 see any similarities between the two of these products?

3 A Yeah. Again, they're both jetbikes.

4 Q And is that about it?

5 A That's really about it. And I'll tell you why.

6 We've heard a lot about this grille thing. And to
7 me, I -- you know, it's just not visually -- to me this isn't
8 visually anything to do with any kind of Cadillac thing. To
9 me this is this cow catcher kind of device from a steam train
10 or maybe even what the artist said, maybe like an attack prow
11 from a Greek ship or something. To me it's a cow catcher.

12 Whereas if you look at the drawing made by Games
13 Workshop, it's got that sort of nose forward shape that we all
14 love from BMWs. So it's kind of like leaning forward. And,
15 you know, I think to me that's an iconic BMW appearance.

16 You can see on the drawing that there's a hood
17 ornament, and it's, you know, this, I guess this imperial
18 eagle or whatever. And here there isn't one.

19 You can also see that -- when you're thinking about
20 motorcycles, one of the terms you use is a nacelle. And a
21 nacelle is, nowadays it's either plastic or fiberglass, and
22 it's kind of aerodynamic shrouding that goes over a
23 motorcycle. Most frequently you'll see this in, you know,
24 Japanese motorcycles you'll see them or, you know, Italian
25 motorcycles with this nacelle covering the engine. And in

Grindley - direct

1 this one you do. You've got this nacelle covering the motor.

2 Here the motor and the gas tank are exposed.

3 Here you can also see that there's upward facing
4 almost I think like a manifold kind of thing, although I don't
5 think it's going towards the exhaust of the rear. It seems to
6 be some kind of decoration.

7 So to me even these two things that don't have
8 wheels -- you know, let's get that clear, this doesn't have
9 wheels. This doesn't have wheels either. They are both
10 floating jetbikes. But even then they are still these, you
11 know, different expressions of the jetbike.

12 Q And is that your ultimate conclusion on product 134?

13 A That is my ultimate conclusion. They're both jetbikes,
14 but they're different jetbikes.

15 Q If we could take a look at product 144, the Werecock,
16 could you describe what is in this slide?

17 A Okay. In the left-hand column we have an Angry Lizardman
18 holding a weapon, and he's made by Chapterhouse Studios. And
19 in the right-hand column we have another Angry Lizardman, and
20 he's holding a weapon, and he's made by Games Workshop.

21 Q Did you see any similarities between these two products?

22 A Yes, I did.

23 Q Could you describe those?

24 A Yeah. They're both Angry Lizardmen. And these are -- you
25 know, again, this is a standard that we know and love from

Grindley - direct

1 Star Trek when Captain Kirk fights the Gorn all the way to my
2 misspent youth rolling 20-sided dice fighting Lizardmen.

3 Q And did you identify other works that have that
4 similarity?

5 A Yes, I did.

6 Q And did you bring them with you?

7 A Yes, I did.

8 Q Taking a look at what's in your third column from DX 367
9 and DX 327, could you describe what these images are?

10 A Yes. These are images from Empire of the Petal Throne,
11 which is a game. It's a role-playing game from the 1970s.
12 And you can see that in their little world they also have
13 Lizardmen.

14 Q Why did you include this image in your chart?

15 A I just wanted to -- you know, if we don't remember Captain
16 Kirk or if we don't remember playing Dungeons and Dragons, you
17 know, we recognize that Lizardmen are out there.

18 Q And are these with Lizardmen also holding weapons?

19 A They're also holding weapons.

20 Q With that understanding of that element, what do you see
21 when you compare the Chapterhouse Studios and Games Workshop
22 products here?

23 A What I see are two really different expressions of the
24 Lizardmen ideal. And I think, you know, Lizardmen there's
25 room for all kinds of Lizardmen in the world, and I'd love to

Grindley - direct

1 go over the differences between these two.

2 Q Okay. Go ahead.

3 A Okay. So the Chapterhouse Studios Lizardman, if you look
4 at the shape of his head there, it's not really like a lizardy
5 kind of shape. It's more a snake kind of shape. And
6 actually -- you know, I've had some pet snakes, and one of the
7 kinds that I had is I had a boa -- not a boa. I had a -- I
8 only know the Latin name, python regius, a bald python. He's
9 a basal snake. He's a primitive snake. And he has a head
10 shape very much like that. Whereas if you look at the Games
11 Workshop product, it's not only more of a crocodilian head,
12 it's also got horns on the front. So you can see the horns
13 there.

14 And I say crocodilian because of the sort of length
15 of the snout, the design of the snout, and also the fact that
16 these teeth jut out of the jaw and kind of overlap each other.
17 You know, so if you've been to the zoo lately and you've seen
18 cayman or alligators or crocodiles, you know, you've seen this
19 kind of tooth arrangement.

20 When you look at these guys, they also have some
21 other differences too. If you look at their sort of belly
22 scales, these ones are much more elongated belly scales.
23 These ones are much more sort of like sort of rounded squares
24 on him.

25 This dude here, he's got like a really smooth tail,

Grindley - direct

1 kind of like a snake tail really. Whereas this guy here, he's
2 got a little sort of like bumps on his tail like an alligator
3 or a crocodile does and that also kind of run down his back.

4 So he's modeled in a different way almost like he's a
5 different kind of reptile man than this guy's origins, like
6 they evolve from -- you know, one guy evolved from snakes or
7 one guy evolved from crocodiles.

8 You can also see how the head attaches to the anatomy
9 of the shoulders. This guy's shoulders are way up here,
10 right, so his head is hanging down. Whereas this guy, his
11 head is more in like a human aspect.

12 You know, so once you acknowledge that, yeah, they're
13 both Lizardmen, I think there's a lot of differences between
14 the two.

15 Q And so what is your ultimate conclusion about product 144?

16 A My ultimate conclusion is that, you know, yeah, they're
17 Lizardmen, but they're different expressions of that Lizardman
18 ideal.

19 Q If we take a look at product 160, the Dark Elf Torturess,
20 could you describe what is on this slide?

21 A Okay. On the left-hand side you see a Chapterhouse
22 Studios figure of this Dark -- Dark -- Dark Elf Torturess.

23 I think they should try and make products that are
24 easier to say when you're trying to get words out.

25 Dark Elf Torturess here, this is what we've got right

Grindley - direct

1 here, and then in the right-hand column you've got a product
2 by Games Workshop.

3 Q Did you identify any similarities between these two
4 products?

5 A Yes, I did.

6 Q What did you see?

7 A Well, what I saw was I saw -- and, again, I'm going to
8 have to use some minor pop culture terms. Both characters
9 look kind of Gothic in their own weird way. I mean, this is
10 Chicago, right. This is the city of the Smashing Pumpkins.
11 So if you've seen Billy Corgan, you've kind of seen these
12 things with the long black cloaks. You can see, you know,
13 there's the pale aspect to the skin even though that's painted
14 and you could paint it, theoretically, any color. You can see
15 that it's floating and barefooted there. And it's got
16 multiple arms. This one's got multiple arms. This one's got
17 multiple arms.

18 Q Now, these Gothic design features that you mentioned, did
19 you find -- did you consider those common when you first did
20 your comparison?

21 A Oh, yeah.

22 Q And did you do anything to confirm that belief?

23 A Yes, I did.

24 Q And did you include any images in your chart to express
25 that?

Grindley - direct

1 A Yes, I did.

2 Q Could you tell us now what's in column three from DX 332?

3 A In column three we have an illustration of the goddess
4 Kali.

5 Q And why did you include this in your chart?

6 A I included Kali because, you know, she's kind of neat, and
7 she's got multiple arms, and she's, you know, this goddess of
8 death, and she's holding a severed human head, and she's
9 looking, although in a Hindu context, she's looking kind of
10 Gothy to me.

11 Q And did you include any other images in your chart?

12 A Yes, I did.

13 Q Could you describe what's now in column three from DX 330?

14 A This is an illustration by Gerald Brom. And this
15 particular one shows you a multi-arm figure. It's kind of
16 hard to tell from this distance, but it's a floating figure
17 with its feet together, although they're not bare. You can
18 see that it's got this pallid kind of Goth look to it. And
19 you can see the arms, although they're not holding weapons,
20 they're -- well, they're holding some weapons. There's knives
21 here. They're holding different objects.

22 Q And those design elements you just described in this
23 picture in column three, do you also see those in columns one
24 and two?

25 A Yes, I do.

Grindley - direct

1 Q Let's take a look at what's in your third column now from
2 DX 364. Could you describe this and why you put it in there?

3 A This is another illustration by Gerald Brom, and it shows,
4 you know, this kind of Gothic-looking character with the, you
5 know, pale-looking skin, you know, scantily clothed. Kind of
6 impractical if you're going to be doing any torturing, which I
7 assume she's going to be doing because she's got this syringe
8 apparatus on her glove there.

9 And we've seen these syringe hand things everywhere,
10 even in one of the Freddy Krueger movies. Instead of having
11 claws, Freddy had like syringes on his hand.

12 You can see the character's floating. She's got her
13 feet together although they're -- they're not bare.

14 Q And do each of the Chapterhouse and Games Workshop
15 products have the features you just described?

16 A Yeah. I mean, they've also both each got syringes, I
17 believe.

18 Q Now, looking at what's in column three now from DX 371,
19 what is that from?

20 A That's a book cover by Gerald Brom, and that was actually
21 in the reference library of Games Workshop.

22 Q Do you know if any Games Workshop designers looked at that
23 book before designing that product?

24 A I have no idea whether they looked at it or whether they
25 didn't look at it or whether anyone ever opened it in their

Grindley - direct

1 business.

2 Q Now, with an understanding of the design --

3 Well, first I'm going to ask are those products that
4 we just looked at in column three, are those all the images
5 you identified when you were doing your research?

6 A No. I mean, I know people who actually -- I mean, I've
7 actually owned a couple of pair of PVC pants myself when I was
8 younger and much, much thinner. And it's a horrible thing to
9 say, I've been to a Goth club or two. I haven't seen people
10 with multiple arms, but I've certainly seen people, you know,
11 dressed pretty much like this. And it is a standard in art.
12 I mean, the Hell Raiser movies and even Cabin in the Woods,
13 you know, had its own little Goth torture dude in there.

14 Q But you haven't offered a precise number as to what
15 percentage of works there are out there where you can find
16 those design elements; is that right?

17 A No, I haven't. And this is one of the situations where I
18 kind of expect it to be a familiar image to just about
19 everybody.

20 Q Now, when you look at the Chapterhouse and Games Workshop
21 products with that understanding of the elements you just
22 described, what do you see?

23 A What I see now, once I kind of separate those standard
24 images of Goth stuff, are a number of differences between
25 these two individual expressions of, you know, Goth torture

Grindley - direct

1 creatures.

2 Q And what do you see?

3 A Okay. Well, let's start off with the obvious one. Let's
4 count arms. Okay. One, two, three, four arms. One, two,
5 three, four, five arms. So we have a different number of arms
6 between these two creatures.

7 Another one, this one, female, this one not quite so
8 female.

9 This one kind of attractive in her own little kind of
10 -- kind of tortury way. This one not so much. A face only a
11 mother could love.

12 This one, she's wearing almost like a cloak and then
13 a bustier. Whereas this guy is wearing like a long jacket
14 that's just kind of open.

15 This one the arms are articulated in a slightly
16 different pattern, to me kind of reminiscent -- well, both of
17 them really reminiscent of, you know, John Carpenter's Thing
18 for some of the creatures when it sprouts multiple arms.

19 You know, they have slightly different items in each
20 of their hands.

21 You know, yes, they're both floating Goth creatures,
22 but I think there's, you know, a lot of differences between
23 the two. To me, you know, female versus male, number of arms.
24 I think there's enough substantial differences where we could
25 say, yeah, they're just different expressions of this Gothic

Grindley - direct

1 torture monster standard.

2 THE COURT: We're going to stop for a moment right
3 there, and then we'll resume in about ten minutes.

4 All rise. The jurors can come with me.

5 (Recess taken.)

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1 (Jury entered the courtroom.)

2 THE COURT: Okay. You can all have a seat.

3 And, Mr. Cooper, you can proceed.

4 MR. COOPER: Thank you.

5 BY MR. COOPER:

6 Q. Dr. Grindley, we've discussed a number of specific
7 Chapterhouse products that Games Workshop alleges are
8 infringing in this case and their corresponding Chapterhouse
9 accused products. But do you understand from the testimony
10 of Games Workshop employees whether Games Workshop has made
11 any other more general allegations in this case?

12 A. Yes, I understand they have.

13 Q. What do you consider?

14 A. I think they've claimed a kind of look and feel for
15 their whole universe.

16 Q. And did you address that claim?

17 A. Yes.

18 Q. What did you conclude?

19 A. I concluded what I concluded about each individual
20 claim, and that's that, you know, like I explained earlier,
21 you've got a smorgasbord of different choices you can make
22 for, you know, your science fiction or fantasy universe, and
23 different people are going to have different expressions of
24 it. And, for me, the Games Workshop one is a predictable
25 group of choices for creating a science fiction and fantasy

1 universe.

2 MR. COOPER: Thank you very much for your time
3 today, Dr. Grindley.

4 I have no further questions.

5 THE COURT: All right. Cross.

6 CROSS EXAMINATION

7 BY MR. KEENER:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. I want to first talk a little bit about your background,
11 okay?

12 A. Sure.

13 Q. Now, you're not an expert in miniature war gaming,
14 right?

15 A. No, I'm not.

16 Q. You're not an expert in miniatures in any way, right?

17 A. No.

18 Q. In fact, your only experience with miniatures before
19 this case was over 30 years ago, when you played Dungeons &
20 Dragons for a year or two when you were 12 years old?

21 A. Yeah. Now it's, I think, 34 years. And I also played
22 Traveller.

23 Q. So prior to this case you have had no experience with
24 Warhammer or Warhammer 40K whatsoever?

25 A. No, none whatsoever.

1 Q. All right. So you're not offering any opinions on what
2 would be standard or essential in designing miniatures,
3 right?

4 A. Correct.

5 Q. Standard or essential in designing a futuristic table
6 top war game?

7 A. Correct.

8 Q. You're talking about generally just the field of science
9 fiction, right?

10 A. Yes, I am.

11 Q. I want to see what else you're not expressing opinions
12 on.

13 Now, you only came into this case -- it's been
14 going on for five years -- relatively recently, in 2012,
15 right?

16 A. Yes. I believe it's December 2012.

17 Q. So you've only been experiencing this for six months or
18 so. And that was because Chapterhouse had released some new
19 products on its website since the case started, and you came
20 in only to address that subset of new products, right?

21 A. I actually have no idea.

22 Q. You have no idea? Okay.

23 You -- to perform your analysis you were given a
24 claim chart, right?

25 A. That's correct.

1 Q. And, if you recall, that claim chart started with
2 product 124 or so?

3 A. I get it. I remember. Because it says new claims
4 chart. And I guess it's what the "new" means.

5 Q. But the number -- it started with about 124, 125,
6 somewhere around that number?

7 A. Yeah. At the time I didn't understand it. I thought it
8 was just like some legal numbering thing.

9 Q. But -- I know you haven't been sitting in court all last
10 week, right?

11 A. No, I have not.

12 Q. But you have been receiving and reading the transcript
13 of everything that's been going on?

14 A. I read the first day transcript and I think I read -- I
15 mean, some of the transcript of Mr. Merrett.

16 Q. Okay. So from that you have an understanding that
17 there's two claim charts, one covering products 100 to 125
18 and the second covering products 126 to about 160?

19 A. I have to confess that I kind of skimmed it.

20 Q. Okay. But you understand -- why don't we pull up
21 Plaintiff's Exhibit 1020.

22 This is the claim chart for the first set of
23 products. This looks utterly foreign to you, right?

24 A. I have never seen this.

25 Q. So if we flip through slowly, every single product in

1 here you have never seen and have not analyzed?

2 A. Well, I don't know yet because we haven't flipped
3 through them all.

4 Q. But so far this chart looks utterly unfamiliar to you,
5 right?

6 A. So far, yes.

7 THE COURT: Before we get -- since we're on Item 5,
8 it's five out of how many?

9 MR. KEENER: This is out of 125.

10 THE COURT: Okay. So can there be a stipulation
11 that he hasn't evaluated the rest of the ones in this claim
12 chart?

13 MR. COOPER: Yes.

14 THE COURT: Okay.

15 MR. KEENER: Thank you, your Honor.

16 BY MR. KEENER:

17 Q. So let's turn to the second claim chart, Plaintiff's
18 Exhibit 1021. This one looks more familiar, right?

19 A. It does.

20 Q. So you've analyzed the products in this chart and this
21 chart alone?

22 A. Yes.

23 Q. Okay. And even in this chart there are products for
24 which you didn't express any opinion on during your direct
25 testimony today, right?

1 A. Yes.

2 Q. So, for example, turning to Page 3, product 129, the
3 Iconoclast conversion kit for Space Marine Landraider, you
4 did not express a single opinion on that product in your
5 direct testimony, correct?

6 A. Correct.

7 Q. Page 54, the Hammer of Dorn pad, again, product in the
8 second chart, you didn't express a single opinion on this in
9 your entire testimony, correct?

10 A. Correct.

11 Q. And again, on Page 59, product 153, the Scythes of the
12 Emperor pad, again, you didn't express a single opinion on
13 this product today, correct?

14 A. Correct.

15 Q. And since they're not in this chart, you're not
16 expressing any opinion on things like the Eldar? Do you even
17 know what that is?

18 A. I know what it is in Tolkien. It's the plural of Eldi.

19 Q. In the Warhammer 40K, the products called Eldar, you're
20 not expressing any opinion on those?

21 A. I don't think so, no.

22 Q. Or the products called Tyranids?

23 A. Wait. Didn't I express an opinion on the Tyranid
24 conversion --

25 Q. The Shrike. Well, let's be more specific --

1 A. That's a Tyranid thing, isn't it?

2 Q. The other Tyranid products in this case, the Tervigon or
3 the mycetic spore?

4 A. Yeah. Never heard of them.

5 Q. Okay. And then all of these shoulder pads they've heard
6 about all last week, with all these unusual designs and icons
7 on them, you haven't expressed any opinions on any of those,
8 right?

9 A. Correct.

10 Q. And you understand this case involves both copyright and
11 trademark issues, right?

12 A. No, I don't.

13 Q. You don't understand that from the portion of the
14 transcript you read on the first day or two of the case?

15 A. I'm not a legal expert and it's not my role here to have
16 legal opinions and -- to be frank, I still don't understand
17 what's meant between copyright or trademark. I just don't
18 understand it. I'm just here to just show things in sci-fi
19 and fantasy and history and try and be helpful.

20 Q. All right. But you're not making any opinion on Games
21 Workshop's or Chapterhouse's use of any various terms or
22 terminology, right?

23 A. Well, I can say things are -- you know, that I've heard
24 before, like Space Marines or, you know, Eldars and things
25 like that, but I'm not making like a legal opinion on it.

1 Q. You're not making any opinion about term -- various
2 terms or terminology used by either party, right?

3 A. I think so, yeah -- or no -- I don't know.

4 Q. Well, why don't I just ask you about --

5 A. Why don't you rephrase the question? Sorry.

6 Q. I've had a chance to talk to you before today, right,
7 when I deposed you once or twice?

8 A. That's why I'm confused, because we got into like cross
9 purposes over what was like copyright or what was creative or

10 --

11 Q. Sure.

12 A. -- and I think we just confused each other.

13 Q. In your binder there's a copy of your transcripts.

14 A. Sure.

15 Q. Now, the deposition, it was a formal situation, right,
16 where I was able to ask you questions?

17 A. Yeah. We did it twice, actually.

18 Q. And there was a court reporter there taking down all the
19 questions and answers?

20 A. That's right.

21 Q. And before you gave testimony they swore you in to tell
22 the truth and all that, just like here today?

23 A. Absolutely.

24 Q. Okay. Let's take a look at your first transcript.

25 A. Sure.

1 Q. If you would turn to Page 171. The bottom of 171,
2 starting at Line 122, I asked you: (Reading:)

3 So you're not making any opinion anywhere about the use
4 of various terms or terminology, correct?

5 A. I --

6 Q. Do you see where I asked you that?

7 A. You're making me do a horrible thing here and it's
8 putting on my glasses and revealing that I'm wearing
9 bifocals.

10 Bottom of Page 171, you say?

11 Q. Bottom of Page 171, starting at Line 22. Is it correct
12 that I asked you: (Reading:)

13 So you're not making any opinion anywhere about the use
14 of various terms or terminology, correct?

15 A. No, I'm not, nor do I know anything about trademark law.

16 Q. Okay. Now, in your direct testimony I was surprised
17 because you said that to me earlier, and now you start
18 talking about the term Space Marine and Heinlein.

19 Now, my question is: You agree that in Starship
20 Troopers the word space marine doesn't appear anywhere?

21 A. It does not, no.

22 Q. And you have not shown this jury any evidence, the
23 actual book or a quotation from a book, of it appearing in
24 any other Heinlein book, right?

25 A. I've just said it in passing. I thought it was just

1 common knowledge.

2 Q. Now, you're not offering any opinion on how Games
3 Workshop created any of its works, right?

4 A. Absolutely not. I cannot look into the creative minds
5 of other people.

6 Q. And you're not offering any opinion on whether any of
7 Games Workshop's works or any elements of those works were
8 derived from anything prior existing?

9 A. Correct, I'm not doing that.

10 Q. And you're not offering any opinion today on whether
11 Games Workshop's designs depart from or fail to depart from
12 any prior existing works?

13 A. Correct.

14 Wait. Was that a correct or incorrect answer or
15 yes or no answer?

16 Q. Correct is fine.

17 A. Okay. Correct is good.

18 Q. And you haven't offered any opinion on whether any of
19 the Chapterhouse designers copied the Games Workshop designs
20 in creating their works?

21 A. No, I have not.

22 Q. Now, you agree, using your buffet analogy, that the
23 Games Workshop designers made a number of design choices in
24 creating each of the products at issue in this case, right?

25 A. Correct.

1 Q. And you're not forming any expert opinion that the
2 combination of design elements that Games Workshop chose is
3 the same combination of design elements that you found in any
4 of these prior works, right?

5 A. Correct.

6 Q. And again, with all these prior images you saw, you're
7 not offering any opinion that even Chapterhouse looked at or
8 had knowledge of or used any of those works in creating their
9 products?

10 A. Correct.

11 Q. And you're not offering any opinion on whether any of
12 Games Workshop's designs are original, right?

13 A. Correct.

14 Q. You're not offering any opinion on whether any element
15 or any combination of elements in any of Games Workshop's
16 products is an original combination?

17 A. Correct.

18 Q. Let's talk about what is one of your opinions.

19 I believe it's your opinion that in all the Games
20 Workshop products you looked at, you didn't find a single
21 combination of features in any of the Games Workshop products
22 that you thought was not already a combination present
23 somewhere in science fiction?

24 A. I think that's not quite what I said. I can explain it
25 again if you want.

1 Q. Do you believe that Games Workshop's products contain
2 combinations of features that are not present in science
3 fiction?

4 A. Um, I hate to do this, but since they are in science
5 fiction, then, yes, they are in science fiction because
6 that's what they are. They're science fiction.

7 So they are present in science fiction. So, yeah.

8 Q. Excluding --

9 A. Excluding themselves --

10 Q. -- themselves --

11 A. Excluding themselves, I think the answer is no or is the
12 answer yes?

13 I'm trying to say that when I think that Games
14 Workshop has created, you know, one of the little dudes
15 that -- you know, they have created one of their little
16 dudes, they've made their own expression of that thing, you
17 know, they're doing something to themselves there.

18 Q. So they made their own unique combination of features?

19 A. Yes, they have.

20 Q. Now, let's talk about the methodology and how you came
21 to the opinions you gave today.

22 Now, you formed your opinions without ever looking
23 at the Chapterhouse website, right?

24 A. That's correct.

25 Q. You formed your opinions without ever looking at the

1 Games Workshop website?

2 A. Correct.

3 Q. And you formed your opinions without handling and
4 looking at any of the Chapterhouse products at issue in this
5 case?

6 A. Correct.

7 Q. You couldn't pick them up and look at them from
8 different angles and turn them around?

9 A. Correct.

10 Q. And you formed your opinions without looking at any of
11 the Games Workshop products, physical products at issue in
12 this case?

13 A. Correct.

14 Q. You couldn't pick them up and turn them around and look
15 at them?

16 A. Correct.

17 Q. The only thing you ever looked at was the chart?

18 A. The chart that Games Workshop provided, yes.

19 Q. Are you aware that Games Workshop also provided
20 Chapterhouse thousands and thousands of detailed pictures of
21 its models from all different angles and physical samples as
22 well?

23 A. No, I'm not.

24 Q. Are you aware that Chapterhouse likewise provided to
25 Games Workshop thousand of pictures of all of its products

1 and actual physical samples of every product at issue in this
2 case?

3 A. I actually saw the physical things for the first time in
4 my life the other day.

5 Q. And you didn't think you needed to look at any of that
6 to form your opinions today?

7 A. No. The pictures were self-evident.

8 Q. Now, let's talk about the various images you showed the
9 jury.

10 Now, you agree that the images you showed, except
11 for some error with your CD player, were the best images you
12 could find to support your opinion?

13 A. Not the best images, just the most expedient ones.

14 Q. But you tried to give the jury the best representative
15 pictures you could give?

16 A. Not necessarily the best representative pictures I could
17 get. The most expedient representative pictures I could get,
18 ones that were, you know, a good, stable expression of that
19 kind of standard. And some of them were favorites. You
20 know, like the Alien one, it's a favorite of mine. Maybe
21 there's better ones. I happen to like that one.

22 Q. So your methodology was you looked at seven, 800 images
23 from the science fiction Traveller books?

24 A. Yeah, yeah, I did. That took a long time.

25 Q. You looked at over 50 years of color illustrations from

1 50 different science fiction magazines containing thousands
2 of images?

3 A. Yep.

4 Q. You looked at over a hundred different book covers from
5 Robert Heinlein from the 1950s to the present across all the
6 translations?

7 A. Yep -- sorry. Yes. I don't mean to say "yep."

8 Q. You went to the Museum of Art and looked at hundreds of
9 different styles and shapes of armor on display?

10 A. Yes, I did.

11 Q. You looked at hundreds, if not thousands, of images on
12 the internet?

13 A. Yes.

14 Q. And then out of those thousands or tens of thousands of
15 images you looked at, you picked out a few images that you
16 think have -- bear some similarity to the Games Workshop
17 products, right?

18 A. I wouldn't say to the Games Workshop products. I would
19 say to both Chapterhouse Studios and the Games Workshop
20 products. It's kind of like a -- like I've been saying, that
21 standard.

22 Q. So -- and you didn't include in your -- in showing to
23 the jury, or on your report or otherwise, the other hundreds
24 or tens or thousands of images that looked nothing like the
25 Games Workshop's Space Marine, for instance, right?

1 A. No, I did not.

2 Q. Because there would be hundreds of thousands of future
3 soldiers that look nothing like a Space Marine?

4 A. Which Space Marine?

5 Q. Games Workshop's Space Marine.

6 A. Yeah, there probably would be hundreds of thousands of
7 images that do not look exactly like the Games Workshop's
8 Space Marine.

9 Q. Okay. So with your buffet analogy, there are almost a
10 limitless number of combinations on the buffet line, right?

11 A. Yes.

12 Q. And there is not only three or four or five pieces of
13 food to choose from; there's almost an unlimited number of
14 pieces of food to choose from to put on your plate, right?

15 A. Yeah, but who really wants that ambrosia salad that's
16 been sitting out for weeks?

17 Q. And your methodology was that as soon as you found two,
18 three or four images showing a feature, you assumed it was a
19 common feature in science fiction, right?

20 A. I didn't assume because most of the time I was looking
21 for things that I already knew existed out there.

22 Q. All right. Let's look at your second deposition. It's
23 also the second tab under your chart.

24 A. Sure.

25 Q. If you can turn in there to Page 167.

1 A. There's a lot of stuff --

2 Q. Are you there?

3 A. No. I'm only on 120. 167, you said?

4 Q. Yes.

5 A. There's like 700 pages of this stuff.

6 Okay, I'm at 167 now.

7 Q. Starting at Line 7, did I ask you: (Reading:)

8 So to the extent of your methodology -- I'm sorry. Let
9 me repeat.

10 So, to the extent of your methodology was if you could
11 find four or five examples, you assumed it was common?

12 A. Yes.

13 Q. What was your answer?

14 A. My answer was yes.

15 Q. Now, after making this assumption, or hypothesis, that
16 some element you found in a few pictures was common, you
17 didn't do anything to actually test that hypothesis, did you?

18 A. No, I did not.

19 Q. Because actually testing that hypothesis to see how
20 common it was in science fiction to have a certain element,
21 such as a certain style of legs or a certain backpack, that
22 would be an incredibly tough task to do, right?

23 A. It wouldn't be a tough task. It would just be a really
24 laborious one.

25 Q. Let's look again at your transcript, Page 304.

1 A. Which one, the first --

2 Q. The second one.

3 A. I thought it only went to 270.

4 Okay. 304, let me find it.

5 (Brief pause.)

6 BY THE WITNESS:

7 A. Sorry. I apologize. Okay, I found it.

8 BY MR. KEENER:

9 Q. Starting at Line 5 I asked you: (Reading:)

10 And did you do any of that methodology to test your
11 hypothesis?

12 What was your answer?

13 A. (Reading:) Lord, no! I mean, I'm sure you appreciate
14 how much work that would be.

15 Q. And then I asked you: (Reading:)

16 That would be the same for all of the elements that
17 you're saying are common to the genre? They're the elements
18 you thought are obvious to you based on your experience, but
19 you didn't go out and do anything to test that hypothesis?

20 What was your answer?

21 A. (Reading:) Yes, absolutely. Each one of these tasks
22 would almost be like -- sorry -- would almost like be between
23 a -- my language was falling apart at this part of the
24 afternoon. (Continuing:)

25 Each one of these tasks would be almost like

1 between an M.A. and a Ph.D. type of project. It would mostly
2 be unpublishable, really boring, really obvious. People
3 would say, oh, yeah, space helmets, good for you.

4 Q. Now I want to talk about the impact of your opinion.

5 A. Sure.

6 Q. Now, you -- I think you mentioned you read the first day
7 or two of the transcripts so far, right?

8 A. Like I said, I skimmed them.

9 Q. Did you pay any attention to the Court's instructions to
10 the jury, kind of telling what the case is about?

11 A. No. Actually, what I did was I just -- I wanted to see
12 --

13 THE COURT: Tell you what, just answer his
14 question. Don't volunteer.

15 THE WITNESS: Okay.

16 THE COURT: The answer is no. Next question.

17 BY THE WITNESS:

18 A. No.

19 BY MR. KEENER:

20 Q. So I'll represent to you that the Court told the jury on
21 the very first day that for copyright, protected expression
22 means any expression in Games Workshop's work that was
23 created independently, meaning it was not copied from some
24 other work and involved some creativity. Okay?

25 A. Yeah, sure.

1 Q. All right. So with that definition of protected
2 expression, you're not offering any opinion that Games
3 Workshop's works were not created independently?

4 A. I don't think that's my place to give that opinion. I
5 think that's the jury's place.

6 Q. I think you already said you're not offering any opinion
7 --

8 A. I'm not offering an opinion either affirmative or
9 negative. I'm not offering an opinion.

10 Q. And you're not offering any opinion on whether Games
11 Workshop's products involve some level of creativity?

12 A. No, I'm not.

13 Q. So then putting those together, you're not offering any
14 opinion on whether Games Workshop's models have protected
15 expression?

16 A. No, I don't think I am.

17 Q. Okay. Now --

18 A. I think you're losing me in the law here. I'm sorry.

19 Q. Well, I think you understand the language. The Court
20 instructed the jury that protected expression does not
21 include matter that is indispensable or standard in the
22 treatment of a particular subject.

23 Do you understand that?

24 A. Indispensable or standard in the treatment of the
25 subject?

1 Q. Yes.

2 A. Could you give me a quick example?

3 Q. Well, I'm trying to figure out if that's where your
4 opinions come in.

5 Are you trying to say that various things are
6 indispensable or standard in the treatment of table top
7 gaming, therefore, they are not protected expression?

8 A. I'm not making an opinion about table top gaming.

9 Q. Okay. Are you giving an opinion that certain elements
10 are standard or -- I'm sorry, indispensable or standard in
11 the treatment of science fiction and, therefore, not
12 protectable expression?

13 A. I'm making an opinion about standards, like tropes or
14 ideas. I'm not saying that any collection of individual
15 tropes is in itself a like -- like a standard, like the
16 metric system is a standard. I think maybe we're operating
17 on different definitions of standard.

18 Q. Okay. Let's start with indispensable. You're not
19 making any opinion that anything is indispensable in the
20 field of science fiction?

21 A. No, I'm not.

22 Q. Okay. And as far as standard, you are offering some
23 sort of opinion that certain elements are standard or very
24 common in science fiction?

25 A. Yes.

1 Q. So you agree that the only impact of all of those
2 various images that you showed has is if the jury agrees with
3 you that something in those images has been shown to be
4 standard in science fiction?

5 A. I think that's simplifying things too much.

6 Q. If they merely think something in one of those pictures
7 is similar to something in Games Workshop, that's not quite
8 relevant to any issue, right?

9 A. It's part of a larger issue, I think.

10 Q. They have to first find that that element is somehow
11 standard or indispensable in science fiction, right?

12 A. They -- well, I mean, they don't even have to do that
13 much because they can also just look that the two items are
14 completely dissimilar.

15 So it's kind of like two parts. You can say, yes,
16 these are standard elements, and you can say, hey, you know,
17 once these are standard elements, then we look at the
18 differences, or you can just omit the standard elements
19 altogether and say look at the differences between these two
20 products.

21 Q. Let me give you an example. I'm focusing on your
22 opinion about prior images, okay?

23 A. Okay.

24 Q. Let's assume a Games Workshop person created the iconic
25 Space Marine figure and image in 1985.

1 A. Okay.

2 Q. Imagine you were able to find an exact same drawing of
3 the exact same Space Marine that somebody else drew,
4 completely independently, it's completely random, in
5 California somewhere with no knowledge whatsoever. It just
6 happened to come out looking identical. Okay?

7 A. Okay.

8 Q. Now, you understand that those two both could be
9 independently created?

10 A. Yes, they could.

11 Q. And the fact that you're able to show later an image,
12 even if it's an identical image, doesn't take away the
13 protected expression that Games Workshop had unless something
14 in that image is so indispensable and standard that then it's
15 not entitled to protection?

16 A. I actually couldn't answer that because isn't that a
17 legal question?

18 Q. Okay. Let's talk about some of the specific products
19 you looked at.

20 Let's talk first about the Space Marine. Can we
21 get Plaintiff's Exhibit 1018 at Page 3.

22 This is one of the products you examined, right?

23 A. Not in this form, but I think so, yes.

24 Q. And the Games Workshop ones are on the right?

25 A. Yes.

1 Q. And the Chapterhouse products are on the left?

2 A. No -- yes -- yes and no, because the image at the top,
3 because this is one of these conversion kits -- the image at
4 the top appears to be a combination of Chapterhouse parts and
5 Games Workshop parts, sort of assembled and painted. So the
6 bottom half of the image, yeah, that's the Chapterhouse
7 Studios parts but not the top.

8 Q. And do you know if that picture on the top left
9 Chapterhouse uses to market and display its product on its
10 website?

11 A. I've never seen their website.

12 Q. Now, starting with the shoulder pads, you don't believe
13 that Games Workshop and Chapterhouse shoulder pads are
14 similar in any way, do you?

15 A. Yes, I do.

16 Q. Now, the jury has heard a lot of testimony -- I don't
17 know if you've read it -- about various features of these
18 shoulder pads; they have almost become experts on it. And
19 one thing they've heard a lot about is, if you turn them over
20 there's all these weird little notches and grooves and
21 indents in them. You've never turned one over, right?

22 A. No. The first time I saw the interior of one was today
23 actually watching testimony.

24 Q. So you're not offering any opinion at all on whether
25 such features are standard or indispensable in table top

1 gaming?

2 A. I'll say this much: I've only made my opinions about
3 these two-dimensional representations of three-dimensional
4 objects and only from the images provided to me in that
5 original claims chart.

6 Q. Now, looking at the Games Workshop Space Marine, I think
7 you agree that the Games Workshop designers made a number of
8 design choices in making that Space Marine, right?

9 A. Yes.

10 Q. They chose the style of the backpack?

11 A. Yes, they did.

12 Q. They chose the style of the shoulder pad?

13 A. Yep.

14 Q. They chose the style of the torsos?

15 A. Yes.

16 Q. And the belt?

17 A. Yes.

18 Q. And the legs?

19 A. Yes.

20 Q. And the shoes?

21 A. Yes.

22 Q. And if we're in a buffet, each of those could be a
23 completely different island of the restaurant. And you go to
24 the leg section and there's hundreds, if not an infinite
25 amount, of ways to do the legs, right?

1 A. Absolutely.

2 Q. And the same with the shoulder pad section?

3 A. Yes.

4 Q. And then I walk over to the backpack section; there's
5 lots of ways to do backpacks?

6 A. Yes.

7 Q. And then I walk over to the torso section and there's
8 lots of ways to do a torso, right?

9 A. Correct.

10 Q. And Games Workshop picked something from each of those
11 sections of the buffet?

12 A. Correct.

13 Q. And you have not found any image anywhere where someone
14 else has picked those same selections off the buffet line?

15 A. Not even in Chapterhouse Studios.

16 Q. Let's focus on the legs. Let's go to Grindley Page 14.

17 Now, I think you agree that there are a number of
18 similarities between the Chapterhouse and Games Workshop
19 legs, right?

20 A. Yes.

21 Q. They have low toe caps?

22 A. Yes.

23 Q. You see a sole on the bottom of the foot?

24 A. Yes.

25 Q. And you can see the shin armor flaring out over the

1 boot?

2 A. Yes.

3 Q. And you can see kind of a hemispherical circle on top of
4 the boot of the shin armor?

5 A. In the Games Workshop ones, yes.

6 Q. Looking at the top for Chapterhouse, you don't see a
7 curved ridge at the bottom of the shin?

8 A. Yes, but it's a different profile.

9 Q. And then you see a curve going the other way at the top
10 of the shin?

11 A. Yes, I do. But again, it's a slightly different
12 profile.

13 Q. And you see both have kind of separate, articulating
14 knee pads?

15 A. Yes.

16 Q. Now --

17 A. Well, except for the lower ones, because in the Games
18 Workshop ones the lower kneeling figure does not have
19 separate knee pads, whereas on the Chapterhouse Studios one,
20 the character does have knee pads.

21 Q. Now, Games Workshop's combination of those elements, of
22 the toe cap and the shoe and the sole and the flaring leg,
23 you didn't make any attempt to identify how common this
24 expression was anywhere in the thousands of images you looked
25 at, right?

1 A. No. I just mentioned a couple, like Buzz.

2 Q. Let's look at the chest pieces, Grindley 16.

3 Now, you agree they -- let's focus on the two
4 bottom ones. They both have this big, rounded, curved
5 stomach section, right?

6 A. Correct.

7 Q. And they both have this belt?

8 A. Correct.

9 Q. And the belt has almost an oval shaped buckle with a
10 circle in the middle?

11 A. Yes.

12 Q. And they both have kind of a high neck collar in the
13 back of the neck?

14 A. Yes.

15 Q. Now, looking through all of the hundreds of thousands of
16 images you looked at, you didn't make any attempt to identify
17 how common that representation of torso was in any of those
18 images?

19 A. No.

20 Q. Let's turn to the backpack, Grindley 12.

21 Now, you agree that both of the backpacks have kind
22 of a large vent or exhaust on the top sides, right?

23 A. Yes.

24 Q. And you agree that they both have kind of three
25 protrusions on each side of the backpack going down the

1 backpack?

2 A. Yes.

3 Q. And you agree they both have some sort of circular vent
4 kind of in the middle of the back of the backpack?

5 A. I thought you just said that. But, yes.

6 Q. No. I think we talked about the ones on the side, the
7 three going down each side, now there's one big central one
8 in the back, right?

9 A. Okay. I'm sorry. I misunderstood the first time -- I
10 thought you were talking about the middle one the first time.

11 Q. Okay. But you agree with all those similarities, right?

12 A. Oh, yeah, absolutely.

13 Q. And other the one Heinlein book you showed where you
14 can't even see the backpack except for one little vent on the
15 side, you haven't shown the jury anything from science
16 fiction with that same combination of elements?

17 A. Yeah, not even the Chapterhouse Studios one.

18 Q. Okay. We just agree that the backpack has two vents on
19 the top, both of them, a single backpack in the middle, both
20 of them, and then six vents around the sides, both of them,
21 right?

22 A. Right.

23 Q. And you haven't shown or found a single backpack
24 anywhere in science fiction with that same combination of
25 three features?

1 A. No.

2 Q. And you're not making any opinion on how common any of
3 those features are in science fiction either, right?

4 A. No.

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Grindley - cross

1 **Q. Now, let's turn back to the shoulder pad. Let's look at**
2 **Grindley 18. Now, we have a Games Workshop shoulder pad on the**
3 **top left, right?**

4 **A. Yes.**

5 **Q. Now, you would agree that in designing a shoulder pad, again**
6 **you have an almost limitless number of possibilities on how to**
7 **design it?**

8 **A. Well, not limitless because you're bounded by the realities**
9 **of human anatomy.**

10 **Q. You could have different shapes?**

11 **A. Yes, you could.**

12 **Q. Different sizes?**

13 **A. Absolutely.**

14 **Q. Different banding?**

15 **A. Yes.**

16 **Q. Different decorations?**

17 **A. Yes.**

18 **Q. You could have straight lines or curvy lines?**

19 **A. Yes.**

20 **Q. It could be articulated or kind of like the alien one on the**
21 **top right where it kind of folds and bends as you move, or it**
22 **could be fixed?**

23 **A. Yes, that's correct.**

24 **Q. It could extend into the chest area like you see in that**
25 **Michael Devlin one?**

Grindley - cross

1 A. Yes.

2 Q. Or it could just be on the shoulder pads?

3 A. Yes.

**4 Q. It could have additional neck protection like you see in
5 that medieval armor one on the bottom left, right?**

6 A. Yes. It's awesome, isn't it?

**7 Q. It could be integrated with the rest of your armor where
8 it's not a separate piece?**

9 A. Yes.

**10 Q. It could have separate pieces, like the Michael Devlin one,
11 that kind of have cutouts and separate plates that are part of
12 the shoulder pad?**

13 A. Yes.

14 Q. These are all different types of shoulder pads, right?

15 A. Absolutely.

**16 Q. And in your research in shoulder pads, you found thousands
17 of other types of shoulder pads with all different designs,
18 right?**

19 A. Yes.

**20 Q. Let's take a look at a few. Can we go to Defendant's
21 Exhibit 301? Start with Page 1.**

22 These are some of your pictures from the museum, right?

23 A. Yes.

24 Q. And this one is a shoulder pad, right?

25 A. Yes, it is.

Grindley - cross

1 Q. It's got neck protection?

2 A. Yes, it does.

3 Q. Kind of curvy chest area?

4 A. Yes.

5 Q. And some sort of articulating sleeve?

6 A. Yes.

**7 Q. That doesn't look anything like Chapterhouse's or Games
8 Workshop's shoulder pad, right?**

9 A. Correct.

**10 Q. Let's turn to Page 2. Here's another design. This is one
11 where it's completely integrated with the armor, not a separate
12 piece at all, right?**

**13 A. No. It is actually a separate piece. It's a piece of armor
14 that you'd wear over the top of your normal armor to sort of
15 stiffen up the entire thing for jousting. So, you can see on
16 the right-hand arm where the lance thing is, you can see it's
17 just a flat plate. So, it just goes over top of everything that
18 you're already wearing.**

19 Q. Okay. So, it's a grand guard for jousting?

20 A. Yes, it's a grand guard.

21 Q. So, there's actually no back to it?

22 A. There is no back to it.

**23 Q. So, again, very different than from the Space Marine and
24 Chapterhouse shoulder pads. It's only half a shoulder pad?**

25 A. Yes.

Grindley - cross

1 Q. Let's turn to Page 4. Another design, right?

2 A. Yes.

**3 Q. Kind of a curvy indent into the chest area and goes back
4 out?**

5 A. Yes.

**6 Q. Again, completely dissimilar to Chapterhouse and Games
7 Workshop?**

8 A. Yes.

**9 Q. Page 9. This is the one you used in your presentation
10 today, right?**

11 A. Yes.

12 Q. Again, with separate neck protection?

13 A. Yes.

**14 Q. Page 14. Yet another style of shoulder pad with kind of
15 sleeves on it?**

16 A. Yes.

17 Q. That kind of articulate as you move?

18 A. Yes.

19 Q. Page 16. Another shoulder pad?

20 A. Yes.

21 Q. And this has extra neck protection flaring up?

22 A. Yes, and nice decoration.

**23 Q. And some sort of arching and ribbing along the sides, a
24 curvy kind of motif?**

25 A. Yes.

Grindley - cross

1 **Q. Now, Chapterhouse could have used any of these designs with**
2 **the hundreds of thousands of other designs for shoulder pads you**
3 **saw in your research, right?**

4 **A. Well, I don't think so because they also were -- they were**
5 **trying to make a piece that would fit onto a little plastic**
6 **dude's shoulder, right? So, I think they were kind of limited**
7 **in some ways.**

8 **Q. Yes. So, it wouldn't be the same size of this. This is an**
9 **actual shoulder pad. But they could have made that smaller and**
10 **out of plastic and just made sure it fit on top, right?**

11 **A. Yeah, they could have built it out or put some special**
12 **mechanism in there for the thing to stick on. Yeah, they could**
13 **have done that.**

14 **Q. But they didn't do that, did they?**

15 **A. No.**

16 **Q. They copied the exact same style as Games Workshop?**

17 **A. Oh, I don't think they -- I couldn't say they copied it or**
18 **not.**

19 **Q. You were in here when Mr. Nagy was testifying this morning,**
20 **right? You were actually in the courtroom?**

21 **A. Yes, I was.**

22 **Q. And you heard him testify how they made the exact dimensions**
23 **and were basically making the blank exact shoulder pad of Games**
24 **Workshop, the same size, that they could then use as the**
25 **template for all their shoulder pads?**

Grindley - cross

1 **A. I don't think that's what he testified. I think what he**
2 **testified was that he didn't copy the actual shoulder pad.**
3 **Instead he measured and made sure that the blank would fit on**
4 **top of the shoulder, and I think that's a different thing. As a**
5 **matter of fact, I'm pretty sure he specifically said that they**
6 **did not copy the shoulder pad.**

7 **Q. In all the hundreds of thousands of images you looked at,**
8 **you didn't find a single shoulder pad design that made the same**
9 **design choices that Games Wrkshop did in designing its shoulder**
10 **pad, did you?**

11 **A. No, I did not.**

12 **Q. Now, if we just limit it to the design choices Games**
13 **Wrkshop made as the size of the shoulder pad, the shape of the**
14 **shoulder pad, and having this iconic banding around it, just**
15 **those three elements, you didn't find a single image anywhere of**
16 **a person wearing armor with a shoulder pad of that design, did**
17 **you?**

18 **A. No.**

19 **Q. And you're not making any expert opinion that this**
20 **combination of three elements, the size, the shape, and the**
21 **banding, is some sort of standard or common feature in science**
22 **fiction?**

23 **A. No, I'm not.**

24 **Q. You agree that there are no standard ways to make a shoulder**
25 **pad, correct?**

Grindley - cross

1 A. Sort of correct, but I'll say yes, if that will help.

2 Q. You agree with me that there's a virtually unlimited number
3 of ways you can design a shoulder pad, right?

4 A. Well, no, not really. You still got to pay attention to
5 human anatomy.

6 Q. Let's go back to your transcript, your first one, Page 266.

7 A. Okay. Yes.

8 Q. Starting at line 20, I ask you, "And there's no standard
9 ways that they would have to make it." What's your answer?

10 A. "No, there isn't."

11 Q. And I asked you again. "There's a virtual unlimited amount
12 of ways?" What's your answer?

13 A. "Yes."

14 Q. I asked you, "And you're not identifying any characteristics
15 that you believe are indispensable?" What's your answer?

16 A. No. I say no. I think we were assuming that it was
17 anatomy. But, I mean, even with anatomy, you could do it a
18 zillion different ways.

19 Q. So, a virtually limited number of ways, even with anatomy?

20 A. Yeah, but they'd be so minutely, you know.

21 Q. And, again, you didn't do any sort of analysis to attempt to
22 identify any elements you believe were common in any of the
23 shoulder pads you found, right?

24 A. Right.

25 Q. Now, we went through a number of different shoulder pads

Grindley - cross

**1 from medieval times and showing that there's lots of different
2 ways you could do it, right?**

3 A. Absolutely.

4 Q. But let's take a look in the world of science fiction.

5 A. Okay.

**6 Q. Could we have Defense Exhibit 229? Or let's go to 300,
7 Page 2. This is another cover of Starship Troopers, right?**

8 A. Yes.

9 Q. That's a potential design for a future soldier?

10 A. Yes.

11 Q. Of a Mobile Infantry?

12 A. Yes.

**13 Q. And you would agree that it's a completely different design
14 than what Games Workshop chose for its Space Marine, right?**

**15 A. Yes. I mean, there are some standard things, like he's got
16 the backpack, he's got the energy weapon with the hose
17 connecting it to that, he's got a helmet, he's got a space suit
18 on. So, I mean, there's some standard things there, but it's a
19 completely different expression, yes.**

20 Q. Page 4. This is the one we've seen before, right?

**21 A. Yes. It's a slightly different edition. It's a couple of
22 years later. They've cleaned up the image. They've turned it
23 from being more of a flamer weapon to more of like a laser
24 weapon.**

25 Q. Page 7. Another Starship Troopers cover?

Grindley - cross

1 A. Absolutely.

2 Q. And, again, the shoulder pads look nothing alike?

3 A. You're right.

**4 Q. You can't even see the chest or the belt or the legs in this
5 one, right?**

6 A. No, you can't.

**7 Q. Let's look at Defendant's Exhibit 299. These are covers you
8 found from the science fiction magazine Analog, right?**

9 A. That's correct.

10 Q. And this is another future warrior?

11 A. Yes, it is.

12 Q. Again, the armor, nothing like a Space Marine, right?

13 A. Nothing like a Space Marine.

**14 Q. Another potential future soldier that Chapterhouse could
15 have designed?**

16 A. Yes.

17 Q. Page 2. Another suit of armor a man can wear?

18 A. Yes.

19 Q. In science fiction?

20 A. Yes.

**21 Q. And, again, there's no resemblance whatsoever with the Space
22 Marine, right?**

**23 A. A superficial one, I'd say, but only because they're a
24 shared standard.**

25 Q. Other than there being a person inside a suit of armor,

Grindley - cross

1 there's nothing similar about the shoulder pads, right?

2 A. No.

3 Q. Or the torso?

4 A. I mean, yes.

5 Q. Or the belt?

**6 A. I think -- when you asked me, I think I said no, meaning
7 that yes, they're oversized, big, bulbous shoulder pads.**

8 Q. Different shape and design, though?

9 A. Yeah, but they share the -- you know, the scale.

10 Q. And the torso is different in the Space Marine torso?

11 A. Yes.

**12 Q. The legs are different to the extent that you can even see
13 them?**

**14 A. To the extent that you can see them, it's difficult to tell
15 because they're just legs.**

16 Q. Page 3. Another picture of a future soldier?

17 A. Yes.

18 Q. Again, nothing at all similar to a Space Marine, right?

19 A. Correct.

20 Q. Page 4. Another future infantry soldier?

21 A. Yes.

**22 Q. And focusing on his armor, you don't see any similarity
23 between him and a Space Marine, right?**

24 A. No.

25 Q. Let's go to Defense Exhibit 302. Another future science

Grindley - cross

1 fiction soldier?

2 A. Yes.

**3 Q. And, again, you don't think that looks anything like a Space
4 Marine, right?**

**5 A. Not really. I just think -- like I said, there are
6 different expressions of that same science fiction standard.**

**7 Q. And Chapterhouse could have done any of those images instead
8 of a Space Marine image, right?**

9 A. Yes.

**10 Q. Let's turn to the one that you focused on. Let's go to
11 Grindley 13. It's Iron Mnger, right?**

12 A. Yes.

**13 Q. And the only thing you commented on in your testimony was
14 the similarity of the legs, right?**

15 A. That's because I was discussing legs in this slide.

**16 Q. You didn't offer any opinion anywhere in your direct
17 testimony commenting on any other feature of Iron Mnger, right?**

18 A. No.

**19 Q. Would you agree with me that the knees, for instance, are
20 kind of rectangular knees?**

21 A. Yeah, I'd say rectangular.

22 Q. And there's kind of this ribbed banding around the ankle?

23 A. Um hm

24 Q. Is that a yes?

25 A. Yes. Sorry. I'm sorry.

Grindley - cross

1 **Q. And there's no really flaring of the leg armor to come over**
2 **across the boot?**

3 **A. I think there is in this, actually.**

4 **Q. In the same way you see in the Chapterhouse and Games**
5 **Workshop products, where the shin armor kind of flares outward**
6 **and kind of covers the boot? You think that's the same thing as**
7 **shown in Iron Mnger?**

8 **A. Close to it.**

9 **Q. You see in the Chapterhouse and Games Wrkshop where you**
10 **have this little toe cap cutout, kind of reversed toe cap?**

11 **A. Yes.**

12 **Q. We don't see that anywhere in Iron Mnger, do we?**

13 **A. No.**

14 **Q. Let's go to Grindley 8. A Hotshot Lasgun pack, right?**

15 **A. Yes.**

16 **Q. Again, we've got the Chapterhouse on the left and the Games**
17 **Workshop in the middle and one of your prior images on the**
18 **right?**

19 **A. Yes.**

20 **Q. And that's GI Joe on the right?**

21 **A. Yes, it is.**

22 **Q. And this is kind of another representation of a future**
23 **soldier?**

24 **A. Yes.**

25 **Q. And, again, this is another way you could make a future**

Grindley - cross

1 soldier that's completely different than Games Workshop's Space
2 Marine, right?

3 A. Yes.

4 Q. Now, let's just focus on the Hotshot Lasgun pack. Now, I
5 think you'd agree with me that the Games Workshop picture shows
6 a laser rifle, right?

7 A. You know, it's kind of difficult to tell because of that
8 extra magazine. Well, the two extra magazines on it. But I'm
9 assuming so, yes. Like I said, I haven't read the codexes, and
10 I haven't played the game. So, I'm going to take your word for
11 it.

12 Q. You didn't bother to take a look at the codex to see what
13 this weapon was. You just looked at the picture?

14 A. I just looked at the picture.

15 Q. You would at least agree that the tip is a sort of slanted
16 tip we've heard a lot about?

17 A. Yes.

18 Q. And it's got a cable going to the backpack?

19 A. Yes.

20 Q. And if you can zoom in on the cable in the Games Workshop
21 picture on the bottom And it's not just any cable. It's kind
22 of this dual cable connected side by side to each other. Do you
23 agree?

24 A. Yes, from the pistol grip.

25 Q. All right. Let's zoom back out. And then it's connected to

Grindley - cross

1 a backpack, right?

2 A. Yes.

3 Q. Now, you would agree on that level, those four features, the
4 Chapterhouse product has those same four features, right? Let's
5 go through them

6 A. Wait. I think I can -- the tip, the two cables. What else?

7 Q. The tip, a cable going to a backpack, a special designed
8 cable of two side-by-side cables, and having it connect to the
9 backpack. Let's just leave it at those four similarities. You
10 agree with those, right?

11 A. Yes.

12 Q. And you would agree with me that you didn't find any prior
13 works of any of the thousands of images you looked at showing
14 that same combination of four features, right?

15 A. No.

16 Q. You're agreeing with me?

17 A. I think so. It's just that the cables in the Chapterhouse
18 ones are of unequal size whereas the two cables in the Games
19 Workshop one are the same size.

20 Q. Let's turn to Grindley 22. This is another product you
21 commented on, right?

22 A. Yes.

23 Q. And the one on the right is the Games Workshop Storm Raven?

24 A. Yes.

25 Q. And you commented on one of your obvious differences was the

Grindley - cross

1 Games Wrkshop turret doesn't turn. How do you know that?

2 A. Well, it doesn't seem to have any mechanism by which it
3 could turn.

4 Q. You don't think that potentially could be a turret that you
5 can actually physically turn on the model?

6 A. I don't think so, no. Not by looking at it.

7 Q. You didn't look for any more pictures of it or actually take
8 a look at the actual physical product?

9 A. No, I did not.

10 Q. Now, again, Chapterhouse sells these turrets they can use to
11 replace that turret on the Storm Raven, right?

12 A. Yes.

13 Q. And they also sell very similar turrets that you can use to
14 replace on another Games Wrkshop vehicle called a Razorback?

15 A. Yes.

16 Q. Now, in your comparison of similarities and differences --
17 well, first let's start. Let's step back.

18 This is not a product where you showed any images of
19 prior art turrets, right?

20 A. No, I didn't.

21 Q. And then so your comparison of similarities and differences
22 were only between the turrets on the left and the Storm Raven on
23 the right, right?

24 A. Correct.

25 Q. Let's take a look at one of the products you didn't show the

Grindley - cross

1 **jury. Can we go to Plaintiff's Exhibit 1011 at Page 23? So,**
2 **now on the right, you see that to be the Razorback, right?**

3 **A. On the right, yes.**

4 **Q. Can we blow up the top right pictures there and compare that**
5 **to the Chapterhouse ones?**

6 **Okay. So, now instead of comparing the Storm Raven man**
7 **turret with the guns on the side, we see that Games Workshop**
8 **actually sells this turret for the Razorback that looks**
9 **strikingly similar to the one Chapterhouse is selling, right?**

10 **A. I disagree.**

11 **Q. Okay. Now, let's take a look at the Games Workshop one**
12 **compared to the Chapterhouse one. You would agree that they**
13 **both have two-barreled weapons that are just right next to each**
14 **other, right?**

15 **A. Actually, I would not.**

16 **Q. Okay.**

17 **A. Can I explain why?**

18 **Q. That's all right.**

19 **You would agree they both have armored cowling that**
20 **covers portions of the side and the top of the turret, right?**

21 **A. If I were to be going through this slide myself, I would**
22 **point out the differences in the cowling depth.**

23 **Q. And, again, I haven't asked that question.**

24 **A. I know you haven't.**

25 **THE COURT: Then don't answer it.**

Grindley - cross

1 **THE WITNESS: Okay. I won't answer it. Sorry.**

2 **BY MR. KEENER:**

3 **Q. You would agree that they both have armored shielding or**
4 **cowling that covers portions of the side and the top the turret,**
5 **right?**

6 **A. Correct.**

7 **Q. And they both have some sort of electronic equipment or**
8 **sensor array on the top of the turret?**

9 **A. Correct.**

10 **Q. And even the design of the cowling on the side, they both**
11 **have a kind of cutout in the side where the side doesn't extend**
12 **as far as the armor plating on the top?**

13 **A. Correct.**

14 **Q. Now, you see the various combinations that Chapterhouse**
15 **sells? The top left are two assault cannons. Do you understand**
16 **that?**

17 **A. Yes.**

18 **Q. The top right are two Lascannons?**

19 **A. Are you sure it's two? It looks like one.**

20 **Q. You think there's only one there?**

21 **A. It's hard to tell from the image. It's a little grainy.**

22 **Q. Now, you didn't offer any opinion anywhere in your testimony**
23 **about the Lascannon, did you?**

24 **A. No.**

25 **Q. And that Lascannon on the top right is a big giant laser**

Grindley - cross

1 cannon, right?

2 A. Yes.

**3 Q. And you haven't shown the jury any prior examples of giant
4 laser cannons?**

5 A. No. Right.

**6 Q. And, again, we've got this angled tip to the laser cannon,
7 right?**

8 A. Yes.

**9 Q. And so that at least shape design of the tip is the same
10 laser cannon we see in the bottom picture for Games Workshop,
11 right?**

12 A. Yes.

**13 Q. Now, you haven't testified that any of the features of the
14 turret itself are common or standard in the field of science
15 fiction, have you?**

16 A. No.

**17 Q. Now, you did make comments about the assault cannon, right?
18 The shape of the assault cannon?**

19 A. Yes.

20 Q. Let's take a look at that picture. That was Grindley 23.

**21 Okay. So, your opinion was Chapterhouse sells a
22 multi-barreled weapon, Games Workshop sells a multi-barreled
23 weapon, and look. I found in the military in the movie Predator
24 the use of multi-barreled weapons, right?**

25 A. Yes.

Grindley - cross

1 Q. Now, even the concept of a multi-barreled weapon can be
2 expressed in different ways, right?

3 A. Yes.

4 Q. Now, looking at the prior images you have, do you see the
5 front of the barrel? It's flat, right, on both images?

6 A. Yes.

7 Q. Now, you see the Games Workshop one? There's this strange
8 protrusion of the bottom barrel, kind of like that's where the
9 bullet will exit on the bottom of the gun?

10 A. Yes.

11 Q. And that's not really anything like the prior images you
12 have, right? You have flat fronts.

13 A. No.

14 Q. And lo and behold, the design Chapterhouse chooses, even for
15 its simple multi-barreled gun, is exactly the same shape and
16 design as Games Workshop's, right? It's got that same little
17 protrusion on the bottom to make sure everyone knows it's an
18 assault cannon?

19 A. No.

20 Q. Let's go to talk about the power claws, and that was
21 Grindley 27.

22 Now, the only prior image you have for the entire
23 opinion on the power claws is the picture of Wolverine?

24 A. Yes.

25 Q. And Wolverine is not even wearing any armor, right? His

Grindley - cross

1 armor's inside his bones or something?

2 A. No. His armor is affixed to his bones. He's a mutant with
3 the power to regenerate damage very quickly. So, what
4 scientists were able to do were they were able to cut him open
5 and actually affix this strange interior adamantine structure to
6 his actual skeleton.

7 Q. Okay. More than I wanted to know.

8 He's not wearing an armored glove, right? His armor is
9 his bones. He's not wearing anything over his skin.

10 A. Right. It's more like the armored glove is wearing him

11 Q. Okay. And then these claws coming out, those aren't things
12 attached to a glove he's wearing. They're actually his bones
13 coming out of his skin, right?

14 A. No. It's like I said. It's like the armor is on the
15 inside, and then his flesh is over top of it. So, they are kind
16 of like armored gloves. They're just on the inside of his
17 hands.

18 Q. So, other than finding a picture of Wolverine, you're not
19 making any opinion that any of the other design features in here
20 are similar to or common to anything else you were able to find
21 in the images, in all the thousands of images you looked at.

22 A. No. I think I mentioned in my report Predator.

23 Q. I'm trying to figure out what you talked about in your
24 testimony today.

25 A. In the testimony. In the testimony I don't think I

Grindley - cross

1 mentioned, you know.

2 Q. So, the only thing possibly the jury could exclude, if they
3 think it's standard in science fiction, is the concept of claws
4 on a hand. That's the only testimony you gave them, right?

5 A. That's the only testimony I gave them

6 Q. Okay. So, all the other similarities are not something you
7 testified are standard or common in science fiction?

8 A. No.

9 Q. Okay. So, let's look at those similarities, since we can't
10 exclude them out. Now, looking at the front here, you'd agree
11 they both have a dome-shaped shoulder?

12 A. Yes.

13 Q. With a little cutout, kind of rectangular cutout in the
14 bottom of the shoulder?

15 A. Yes.

16 Q. Where there's then a hydraulic piston?

17 A. Yes.

18 Q. Which then attaches to a little circular round elbow joint?

19 A. Yes.

20 Q. And that elbow joint has kind of a reinforced armor piece on
21 it?

22 A. Yes.

23 Q. And then there's some sort of cabling hanging down under the
24 arm?

25 A. No.

Grindley - cross

1 **Q. Okay. Underneath the arm, there's a cabling on the Games**
2 **Workshop one, right?**

3 **A. Connected to the shoulder in the Games Wrkshop.**

4 **Q. Again, that wasn't my question.**

5 **Underneath the arm, there's a cable on the Games**
6 **Workshop product, right?**

7 **A. I'm going to have to say no.**

8 **Q. Okay. Now, let's look -- you didn't talk about the other**
9 **side of these. Were you able to flip them over?**

10 **A. No, I did not have these pieces in front of me.**

11 **Q. But we actually did in the claim chart you looked at showed**
12 **you the other side of the image, as well, right?**

13 **A. That's right.**

14 **Q. So, let's take a look at that. Can we go to Plaintiff's**
15 **Exhibit 1021 at 14? And let's blow up the back of this hand and**
16 **the back of this hand.**

17 **All right. So, let's take a look at the back of these**
18 **products. Now, again, this is kind of an armor placed over the**
19 **palm, right, in both products?**

20 **A. Yes.**

21 **Q. On the bottom of the palm, you've got this circular**
22 **hemispherical cutout on Chapterhouse?**

23 **A. Yes.**

24 **Q. And Games Wrkshop has that same similar hemispherical**
25 **cutout?**

Grindley - cross

1 A. No.

2 Q. Okay. And you've got this kind of arched cutout on the top
3 of the palm on Chapterhouse's products?

4 A. Where are we looking?

5 Q. Up here. I've got a pointer.

6 A. Oh, I see. Oh, thank you.

7 Q. See the little arched cutout on the palm?

8 A. Yes.

9 Q. And you see that same arched cutout on the palm on Games
10 Workshop's product?

11 A. I see a similar one, yes.

12 Q. And then you kind of see the part of the palm that extends
13 out of the armor, there's a little line in between the two, I
14 guess, neat portions of the palm?

15 A. Yes.

16 Q. And you see that same line here in the Games Workshop
17 product?

18 A. Yes.

19 Q. And even the fingers. You see how it's articulated fingers
20 in the Chapterhouse product?

21 A. Yes.

22 Q. And articulated fingers in the Games Workshop product?

23 A. Yes.

24 Q. And if we count the articulations, there's three
25 articulations on each?

Grindley - cross

1 A. Yes.

2 Q. And, again, you haven't commented on any of those features
3 being something indispensable or standard in making models for
4 tabletop war gaming, right?

5 A. No.

6 Q. Or any of those features being standard or indispensable in
7 science fiction in general?

8 A. Anatomy.

9 Q. Let's go to Grindley 35. This is the jetbike, right?

10 A. Yes.

11 Q. And, again, this is not a product that you identified any
12 prior image in your testimony to support any opinion that
13 something is standard or indispensable in the field of science
14 fiction, right?

15 A. Correct.

16 Q. So, then any substantial similarities we see between the
17 products can't be ruled out because it's a standard feature in
18 science fiction, right?

19 A. It can't be ruled out through my testimony, no.

20 Q. Okay. Now, one of the differences you noted you said was,
21 well, on the Chapterhouse product it's got guns on the side,
22 while the Games Workshop product it's got guns on the front. Do
23 you remember that?

24 A. Yes, I do.

25 Q. Now, you would agree that the Chapterhouse product has two

Grindley - cross

1 guns on the front, as well, right?

2 A. No. And we argued about this in the deposition. I'm still
3 not entirely sure what that thing is, but I don't think it's a
4 gun.

5 Q. And you didn't go to the website to find out?

6 A. No.

7 Q. You didn't ask Chapterhouse?

8 A. No.

9 Q. Or look at the product?

10 A. No. I relied on the documentation given by Games Workshop.

11 Q. Now, did you read the testimony from Mr. Villacci about this
12 product, discussing its design?

13 A. No.

14 Q. How he made a light version of this with just the weapons on
15 the front and a heavy version that has those weapons, as well as
16 the side weapons?

17 A. No, I did not.

18 Q. Let's see if we can find a better picture. Let's turn to
19 Plaintiff's Exhibit 1020 at Page 113. Now, let's zoom in on
20 this picture down here.

21 Now, this is the light version, the same thing without
22 the extra heavy weapons on the side. Now, looking at the better
23 picture, don't you agree that this has two bolt guns on the
24 front of the jetbike, just like Games Workshop's?

25 A. I wouldn't say just like Games Workshop's, but I would say

Grindley - cross

1 **there are two weapons on the front.**

2 **Q. So, you now agree that they are both having bikes with two**
3 **weapons on the top front mounted of the bike?**

4 **A. But that wasn't the one I was comparing. This is a**
5 **different product.**

6 **Q. You understand this is the same product without the**
7 **extension of the wing and the heavy weapons, which is their**
8 **heavier jetbike?**

9 **A. Right. But wouldn't that be a different product?**

10 **Q. Let's go to Grindley 36. Kroxigor.**

11 **All right. So, first you found these two prior images,**
12 **right?**

13 **A. Yes.**

14 **Q. Now, the only thing you're suggesting from these prior**
15 **images is that the concept of a lizard warrior has been out**
16 **there, right?**

17 **A. Yes.**

18 **Q. And you haven't done any sort of analysis to say whether or**
19 **not even that concept is some standard or indispensable thing in**
20 **science fiction, right?**

21 **A. Yes.**

22 **Q. You have done some sort of study or analysis to say how**
23 **common lizard warriors are?**

24 **A. Oh, sorry. No. Sorry. I didn't get your wording. No.**

25 **Q. You've done nothing to determine how common even the concept**

Grindley - cross

1 of a lizard warrior is in science fiction?

2 A. Well, that I encountered it in Star Trek and in my childhood
3 kind of indicated to me that it was.

4 Q. Okay. So, you found it in Star Trek, which we don't have a
5 picture of, and you found these two images. But have you done
6 anything to say how common it is in science fiction?

7 A. No.

8 Q. Anything to support that it's indispensable in the field of
9 science fiction?

10 A. No.

11 Q. Now, other than the fact that these are potentially lizards,
12 you're not suggesting that there's anything else about these
13 that shows some sort of element of the lizardman that's
14 essential or standard in science fiction, are you?

15 A. No.

16 Q. Because these images are quite different than both the
17 Chapterhouse and Games Workshop products, right?

18 A. Yes.

19 Q. Just looking at them, it appears they have beaks almost,
20 wouldn't you agree?

21 A. Yes.

22 Q. And this one at the top has birdlike feet?

23 A. Yes.

24 Q. And they're both wearing clothes and armor?

25 A. Yes.

Grindley - cross

1 **Q. And their weapons are very different styles than the weapons**
2 **in the Games Workshop and Chapterhouse products?**

3 **A. Yes.**

4 **Q. So, even if the jury were to believe you that the concept of**
5 **a lizardman is somehow common or indispensable or standard in**
6 **science fiction, all that means is Chapterhouse can create some**
7 **sort of lizardman, as long as it's not substantially similar to**
8 **Games Workshop, right?**

9 **A. Yes.**

10 **Q. And it's your opinion that these two Kroxigors are not**
11 **substantially similar in any way?**

12 **A. Yes.**

13 **Q. Did you read the testimony of Mr. Lippman, who testified**
14 **last week, the person who designed Chapterhouse's Kroxigor?**

15 **A. No.**

16 **Q. Would it help you inform your opinion on whether these two**
17 **are substantially similar in any way if he were to tell you his**
18 **whole purpose was to design something to stand in and be a proxy**
19 **for Games Workshop's Kroxigor?**

20 **A. No.**

21 **Q. Or the whole concept started out when he only had four**
22 **Kroxigor miniatures. He wanted six. So, instead of buying two**
23 **more, he decided just to build his own, but to make sure that**
24 **they fit in and looked similar?**

25 **A. I don't think that would help, no.**

Grindley - cross

1 **Q. Now let's take a look at the Kroxigor a little more. Can we**
2 **go to Plaintiff's Exhibit 1017 at Page 2? Because Chapterhouse**
3 **sells two different Kroxigor models that they call the**
4 **Lizard-Ogre or Wereco, right?**

5 **A. Yes.**

6 **Q. One with an axe and one with a club?**

7 **A. Yes.**

8 **Q. And I think we disagree whether those are Polynesian weapons**
9 **or Meso-American weapons, but you understand there's some sort**
10 **of style there. What would you call it?**

11 **A. I would say that those would be -- I guess the best way to**
12 **say would be neolithic weapons.**

13 **Q. Neolithic weapons. And you would agree that Games**
14 **Workshop's Kroxigors likewise have neolithic weapons?**

15 **A. Yes.**

16 **Q. And an axe in a neolithic style similar to Chapterhouse's**
17 **axe in a neolithic style?**

18 **A. I wouldn't entirely say -- well, yeah, similar.**

19 **Q. And a spiked club in a neolithic style similar to the spiked**
20 **club that Games Workshop depicts in a neolithic style?**

21 **A. Which one on the right are you talking about?**

22 **Q. On this drawing. Let's look at the one second from the**
23 **left. That's similar to the spiked club, same neolithic style,**
24 **as the one in Chapterhouse's product, right?**

25 **A. No.**

Grindley - cross

1 **Q. Let's limit the concept to just Games Workshop's concept of**
2 **a lizardman warrior carrying neolithic weaponry, okay?**

3 **A. Okay.**

4 **Q. And say that's the only similarity we see between these two.**
5 **I think there's a lot more, but let's say that's the only**
6 **similarity.**

7 **A. Okay.**

8 **Q. Are you offering -- have you ever offered any opinion in**
9 **your direct testimony whether the combination of lizard warriors**
10 **and neolithic weaponry has ever been found in anything you found**
11 **in science fiction?**

12 **A. No, I'm not.**

13 **Q. So, you're not suggesting in any way that that combination**
14 **that Games Workshop came up with of giant lizardmen warriors**
15 **holding neolithic weapons is somehow standard or essential in**
16 **science fiction, right?**

17 **A. I have not testified to that, no.**

18 **Q. Let's turn to the Shrike, Grindley 29.**

19 **Now, I think I heard your testimony that this is a**
20 **product you buy complete assembled from Games Workshop, right?**

21 **A. Yes.**

22 **Q. How do you know that?**

23 **A. Because it's a conversion kit, and that's what conversion**
24 **kit means.**

25 **Q. Now, I understand you didn't listen to Mr. Villacci's**

Grindley - cross

1 **testimony or read it, but I think you testified that Games**
2 **Workshop sells a Tyranid warrior that's actually kind of a**
3 **walking creature, and that's where this body comes from, and**
4 **Games Wrkshop separately sells a conversion kit of wings to**
5 **convert that into the Shrike?**

6 **A. I was not aware of that.**

7 **Q. Okay. You have no idea.**

8 **A. No.**

9 **Q. And that Chapterhouse likewise sells a similar set of wings**
10 **to again convert the same Tyranid warrior body into another**
11 **Shrike?**

12 **A. Yes. Wait. Yes?**

13 **Q. You understand that to be what Chapterhouse is doing, right?**

14 **A. Yes.**

15 **Q. And, again, you don't see any substantial similarities**
16 **between these two products?**

17 **A. No, I don't.**

18 **Q. Now, you made a big point about the bottom legs on the Games**
19 **Workshop product ending in a giant talon weapon, right?**

20 **A. Yes.**

21 **Q. Now, on the Chapterhouse product, all they've done is move**
22 **that to the upper arm instead of the lower arms, right? It's**
23 **not missing.**

24 **A. But that makes it not the same.**

25 **Q. You don't see that's similar in any way?**

Grindley - cross

1 A. No, not as far as legs go or arms.

**2 Q. Let's turn to the Haemonculus, Plaintiff's Exhibit 1013 at
3 Page 2. You recall this product, right?**

4 A. Yes.

**5 Q. And Games Workshop has depicted the Haemonculus in a couple
6 different ways, right?**

7 A. Yes.

**8 Q. And these are some of the ways that you didn't show the jury
9 at all in your testimony, right?**

10 A. Correct.

11 Q. When you were pointing out the differences and similarities?

12 A. Correct.

**13 Q. Now, you would agree that a sculptor making even an evil
14 torturing model would have a number of design choices to make,
15 right?**

16 A. Yes.

17 Q. They could pick what pose to make, right?

18 A. Yes.

19 Q. And you could have the legs together, right?

20 A. Yes.

21 Q. Or legs apart?

22 A. Yes.

**23 Q. Or kneeling or standing or almost virtually unlimited number
24 of poses, right?**

25 A. Yes.

Grindley - cross

1 **Q. Now, are you trying to suggest the fact that you found a**
2 **couple images of people standing with a pose of their legs**
3 **together means that's a common, standard, indispensable feature**
4 **in science fiction?**

5 **A. Not an indispensable one, no.**

6 **Q. And both the Chapterhouse product and the various Games**
7 **Workshop products show a syringe, right?**

8 **A. Correct.**

9 **Q. And, again, a design choice for the sculptor to make this**
10 **model holding a syringe?**

11 **A. Yes.**

12 **Q. And the Chapterhouse product has two kind of nonhuman, weird**
13 **jointed arms coming up off the back of the shoulder, right?**

14 **A. Correct.**

15 **Q. And that's similar to Games Workshop's designs, right?**

16 **A. It's similar to some of their designs.**

17 **Q. And let's go back to the page you used for this comparison,**
18 **which is Grindley 42. And this is one you chose to compare it**
19 **to, right?**

20 **A. Correct.**

21 **Q. And comparing these two, they both have those two weird,**
22 **deformed arms coming off the back of their shoulders?**

23 **A. Correct.**

24 **Q. And Chapterhouse's is wearing this long cloak or open robe**
25 **that's splayed open?**

Grindley - cross

1 A. Yes.

2 Q. And Games Wrkshop's again is wearing this big similar cloak
3 that's splayed open?

4 A. I think I described it as a coat rather than a cloak because
5 it seems to have arms whereas the Chapterhouse Studios one has
6 bare arms.

7 Q. Besides it not having arms, the pose of the cloak and being
8 splayed open is still the same?

9 A. Yes.

10 Q. And they both have this almost butcher like type apron
11 covering the front of them?

12 A. Yes.

13 Q. And they both have sort of a dark elf look to them in their
14 face instead of some other humanoid or other creature?

15 A. I think I disagree with that.

16 Q. They both have bare feet?

17 A. Yes.

18 Q. Again, another design choice?

19 A. Yes, a design choice.

20 Q. Now, none of those design choices are the types that you
21 would characterize as common features that would have to be used
22 in creating a creature of this type, right?

23 A. Correct. Well, sorry. I'll take that back. The cloak
24 thing, you do see that a lot.

25 Q. It's a common feature you need to have in these creatures?

Grindley - cross

1 A. You don't need to have it. You just see it an awful lot.

2 Q. And what about the design of the cloak, of it being splayed
3 open like that? Is that an essential feature in making this
4 model?

5 A. It's not essential. It's just a common one.

6 Q. Let's take a very simple combination here. A floating
7 person with their feet together, a flowing cloak, and a syringe.
8 Ignore even the multiple arms. Were you able to find a single
9 picture anywhere in science fiction with that combination of
10 features?

11 A. Okay. What did -- you said flowing --

12 Q. You're floating with your feet together.

13 A. Yeah. And you've got a syringe?

14 Q. Yes, a syringe.

15 A. Then that would be that Brom illustration that I found.

16 Q. And you had this flowing cloak?

17 A. Oh, not with a flowing cloak, no.

18 Q. With those four features, you didn't find anything similar?

19 A. No.

20 Q. How about just someone with regular hands and then two
21 anatomically incorrect arms on them? Did you show any image
22 like that?

23 A. No.

24 Q. All your images had human type arms on them, regular arms?

25 A. Yes.

Grindley - cross

1 **Q. So, you're not suggesting at all that the presence of those**
2 **extra set of arms is in any way common or standard in science**
3 **fiction. You haven't made that testimony, have you?**

4 **A. I think I mentioned The Thing, in which case there are the**
5 **weird arms in that particular film**

6 **Q. You haven't shown the jury any pictures from The Thing, have**
7 **you?**

8 **A. No, but I think I testified to that.**

9 **Q. And you didn't include a picture of The Thing in any of the**
10 **materials and reports and charts you gave us in this case, have**
11 **you?**

12 **A. No.**

13 **Q. So, there's nothing for the jury to go back looking at to**
14 **see whether or not you're right that The Thing has such arms?**

15 **A. No.**

16 **Q. Or even if The Thing did have some weird arms on it, the**
17 **presence of one picture out there with weird arms on it wouldn't**
18 **make that feature some sort of common or standard feature in**
19 **science fiction, would it?**

20 **A. Well, the film itself has risen to the level of archetype**
21 **and cult classic since it was created in 1980.**

22 **Q. So, you would say the fact that you found one example in The**
23 **Thing by definition would make that a common or standard feature**
24 **in science fiction?**

25 **A. No. I said that it's become an archetype and a cult film**

Grindley - cross

1 **Q. Well, what if you just make it the simple combination Games**
2 **Workshop made of the concept of a Gothic multi-limbed floating**
3 **figure? Do you think you identified any of those?**

4 **A. Yes. Gothic multi-limbed floating figure, definitely that**
5 **first Brom illustration.**

6 **Q. So, we've got a picture of someone who's floating,**
7 **multi-limbed, and Gothic looking?**

8 **A. Yes.**

9 **Q. Did you make any attempt to determine how common or standard**
10 **that feature was in the field of science fiction?**

11 **A. No.**

12 **Q. Did you make any attempt to see how common or standard those**
13 **combinations of features were in model war gaming, tabletop war**
14 **gaming?**

15 **A. No.**

16 **Q. Now, the entire premise of your testimony on whether**
17 **features are standard or common is that if they're standard or**
18 **common features, then that similarity can be excluded when**
19 **looking at the Games Workshop and Chapterhouse products, right?**

20 **A. Yes.**

21 **Q. And so, you take the Games Workshop product and you look at**
22 **various features of it and say, "I've seen legs like that on**
23 **Iron Mnger, " right?**

24 **A. Yes.**

25 **Q. "And I've seen a chest like that on some miniature, " right?**

Grindley - cross

1 **A. Yes.**

2 **Q. "And I've seen a shoulder pad, an oversized shoulder pad,**
3 **somewhere else," and you exclude that, right?**

4 **A. Yes.**

5 **Q. And by this process of elimination, you're saying once we**
6 **take all that away, there's nothing left to the model that's**
7 **similar between Chapterhouse and Games Workshop, right?**

8 **A. Yes.**

9 **Q. Now, you didn't testify in your direct about any combination**
10 **of features, of those types of features that you found anywhere**
11 **in the thousands of images you looked at, right?**

12 **A. Correct.**

13 **Q. So, you're not making any testimony that any combination of**
14 **features is standard in science fiction?**

15 **A. No, I'm not.**

16 **Q. So, if the jury somehow finds that Games Workshop's creative**
17 **genius came up with a combination of features, even if they're**
18 **common features, but a unique combination of features, they get**
19 **to protect that, don't they?**

20 **A. Yes. This is the jury's sacred right under American law.**

21 **Q. And even if they wanted to pick apart each model on one**
22 **feature here and one feature there, if they disagree with you**
23 **and they feel that you haven't sufficiently shown that that**
24 **feature is indispensable or standard in science fiction, then**
25 **the image you show about it is irrelevant, right?**

Grindley - cross

1 **A. I think that the -- at the end of the day, what is relevant**
2 **that happens in this room is what the members of the jury decide**
3 **is their verdict and how they reach it. I'm just here to be**
4 **helpful to both sides, just to let you know what my experience**
5 **and expertise is, and if I can assist the jury, no matter how**
6 **they make up their minds --**

7 **THE COURT: I'll tell you what. You know what? It's**
8 **4:45 in the afternoon. We can do without the speech.**

9 **MR. KEENER: Thank you. No more questions.**

10 **THE COURT: Redirect.**

11 **MR. COOPER: I have no questions, your Honor.**

12 **THE COURT: Questions by the jurors. I don't see**
13 **anybody looking down and writing. So, you're excused.**

14 **(Witness excused.)**

15 **THE COURT: The next thing is a deposition. We're**
16 **going to start with it. We've got about 15 minutes. Is this is**
17 **a video or a reading of a deposition?**

18 **MS. HARTZELL: Video.**

19 **THE COURT: It's a video.**

20 **MS. HARTZELL: We call Mr. John Blanche.**

21 **THE COURT: Okay. Do we know about how long the**
22 **recording is?**

23 **MS. HARTZELL: 24 minutes.**

24 **THE COURT: So, we're not going to get the whole thing**
25 **done, but we'll get close.**

Blanche - deposition

1 **Spell the name of the witness. John is the first name.**
2 **What's the last name?**

3 **MS. HARTZELL: Blanche, B-l-a-n-c-h-e.**

4 **THE COURT: Thanks. And just remember on these, just**
5 **after court today or maybe you can first thing in the morning**
6 **just give me an allocation on the time as between plaintiff and**
7 **defendant.**

8 **LAURENCE JOHN BLANCHE, DEFENDANT'S WITNESS, SWORN**

9 **DEPOSITION**

10 **BY MR. OH:**

11 **Q. Could you please state and spell your full name for the**
12 **record?**

13 **A. It's Laurence John Blanche. L-a-u-r-e-n-c-e J-o-h-n**
14 **B-l-a-n-c-h-e.**

15 **Q. And what name do you commonly go by?**

16 **A. John.**

17 **Q. Can you please identify your current employer and position?**

18 **A. It is Games Workshop, and my position is art director.**

19 **Q. At some point did you become a Games Workshop employee?**

20 **A. Yes.**

21 **Q. When was that?**

22 **A. 1984 would be full time.**

23 **Q. What were some of the influences for this futuristic**
24 **universe for Warhammer 40K?**

25 **A. The fantasy game of Warhammer itself was the main driving**

Blanche - deposition

1 force behind that. Being an artist, the influences are constant
2 and many fold. I have points of reference or points of
3 references that constantly inspire me on an artistic and
4 creative basis.

5 Q. What were some, outside of the original Warhammer game, what
6 were some of the points of references for the Warhammer 40K
7 game?

8 A. Historical costume, the pageant of warfare, certainly
9 classical art, certain literature. It probably sounds
10 frivolous, but very important to me personally as an artist, the
11 weather, the environment, geology, so everything I am surrounded
12 with.

13 Q. Were there any futuristic points of references?

14 A. Some, but I would regard that as being very minimal in my
15 own personal case because I tend to view everything in a very
16 archaic dystopian way, so, for instance, a busy shopping center
17 will influence me in a 40K sense more than most things.

18 Q. Were there any futuristic themed literature that was a point
19 of reference?

20 A. I said certain literature. Tolkien had a massive influence.
21 Mervin Peake with Gormanghast trilogy books. I tend not to have
22 read many science fiction. Treasure Island.

23 Q. Do you remember when Mr. Goodwin made these figures?

24 A. I am sorry, no, I don't remember.

25 Q. Was it before the development of Warhammer 40K?

Blanche - deposition

1 **A. I couldn't say. I don't know.**

2 **Q. Are you familiar with any artwork related to Michael**
3 **Morcock outside of the figures that Mr. Goodwin made?**

4 **A. Could you repeat that question?**

5 **Q. Are you familiar with any artwork related to Michael**
6 **Morcock besides the figures that Mr. Goodwin made?**

7 **A. A few, vaguely, through an artist called Rodney Matthews.**
8 **Full stop.**

9 **Q. Can you describe what those figures by -- actually, strike**
10 **that.**

11 **Can you describe the works you were referring to by**
12 **Rodney Matthews?**

13 **A. Essential fantastical environment with creatures like**
14 **dragons and warriors with big swords and winged helmets.**

15 **Q. Any other symbols you recall?**

16 **A. Not at all, no.**

17 **Q. Do you remember the first time you saw something by**
18 **Mr. Matthews related to Michael Morcock?**

19 **A. No.**

20 **Q. Would it have predated the development of Warhammer 40K?**

21 **A. Possibly, but it probably would be happening all around**
22 **about the same time.**

23 **Q. Are you familiar with something called 2000 AD?**

24 **A. Yes.**

25 **Q. What is it?**

Blanche - deposition

1 **A. It was a comic.**

2 **Q. Can you describe what this comic was?**

3 **A. The comic was released about the same time as the punk music**
4 **explosion in the UK, and the comic overturned people's**
5 **perception of comic book heros, in as much as traditional comic**
6 **heros were clean-cut, the 2000 AD took on this punks esthetic,**
7 **and heros became more anti-heros, therefore it was a very**
8 **popular thing for youth cultures in England at that time.**

9 **Q. Approximately when was this time?**

10 **A. Late seventies.**

11 **Q. Were there any characters you recall related to 2000 AD?**

12 **A. Johnny Alpha. There was the big one, Judge Dredd. My**
13 **knowledge is very limited. I never bought the comic.**

14 **Q. Can you describe who Judge Dredd is? And is that D-r-e-d-d?**

15 **A. Yes, he is a law enforcement officer of near future America,**
16 **I believe, American cities, which had become vast and very**
17 **dystopian, and he is known for riding a motorbike.**

18 **Q. What did Judge Dredd look like?**

19 **A. He wore a black tight suit, big boots, and helmet, sort of**
20 **like a futuristic police uniform, I suppose.**

21 **Q. Do you recall if Judge Dredd had big shoulder pads as parts**
22 **of his uniform?**

23 **A. Yes, I suppose he did.**

24 **Q. And what was your role as part of the development of**
25 **Warhammer 40K?**

Blanche - deposition

1 **A. I was an artist or illustrator.**

2 **Q. Before the break you mentioned that Tolkien was a point of**
3 **reference for the Warhammer 40K works. Is that correct?**

4 **A. It was the base point for a whole generation becoming aware**
5 **of fantasy as a wider subject matter.**

6 **Q. And by Tolkien, you mean J. R. R. Tolkien?**

7 **A. I do, yes.**

8 **Q. Are you familiar with the term heraldry?**

9 **A. Yes.**

10 **Q. Can you describe what that is?**

11 **A. It is a system of symbols used in medieval society by the**
12 **aristocratic families to define that particular family's badges**
13 **or symbols.**

14 **Q. Before the break, you mentioned historical costumes and I**
15 **believe pageantry for warfare?**

16 **A. Yes.**

17 **Q. Is heraldry and livery related to the historical costume and**
18 **pageantry for warfare?**

19 **A. Yes.**

20 **Q. And so, is heraldry also a point of reference for the**
21 **Warhammer 40K work?**

22 **A. Yes.**

23 **Q. And can you describe how?**

24 **A. Particularly Space Marines and their color schemes and their**
25 **symbols on their shoulder pads, et cetera, that would be a**

Blanche - deposition

1 strong part of their specific chapter heraldry.

2 Q. Are you familiar with heraldry, classical symbols used in
3 heraldry?

4 A. Yes.

5 Q. Can you name examples of classical symbols used in heraldry?

6 A. Like rampant lions.

7 Q. What is a rampant lion?

8 A. It is a lion rearing up on its hind legs with its four limbs
9 sort of extended in an aggressive pose.

10 Q. Is that the same thing as a Griffin?

11 A. No.

12 Q. Is a Griffin a classic heraldry symbol?

13 A. It is derived from classical Greek mythology, being part
14 lion, part eagle.

15 Q. Are Griffin used in heraldry?

16 A. Yes.

17 Q. Can you name other classic heraldic symbols?

18 A. Unicorn, wyverns.

19 Q. What are wyverns?

20 A. They are dragons without forelimbs. They are a two-limbed
21 dragon.

22 Q. And are dragons used in heraldry, also?

23 A. Yep.

24 Q. Any other animals?

25 A. Gosh, there is lots of mythological animal shapes that are

Blanche - deposition

1 used in various forms. I am not familiar with all the names,
2 but --

3 Q. Can you describe some of these classical shapes used in
4 heraldry?

5 A. Sort of sea serpents with unicorn forefronts.

6 Q. Anything else?

7 A. You are only concerned with animals? There is lots of
8 abstract shapes used in heraldry like chevrons, flowers,
9 squares, diamonds and squares and ermine's tails, and crowns and
10 castles and chains and swans, ships, sea, just hundreds and
11 hundreds.

12 Q. Too many to name right now?

13 A. Too many.

14 THE COURT: And that's where we'll stop. 5:00 o'clock.
15 So, start time should be 9:45 tomorrow. Don't discuss the case
16 with anyone, and we'll -- oh, I was going to give you something
17 on the schedule. Hang on one second. Let me just see the
18 primary lawyers at sidebar.

19 (Off-the-record discussion.)

20 THE COURT: Okay. So, here's my sense of how this is
21 going to work. I think the odds are pretty strong that we will
22 finish the testimony, finish the evidence, tomorrow sometime,
23 probably before the end of the day, but not certainly, but
24 probably before the end of the day. If we do, we're not going
25 to go right into the closing arguments. The lawyers and I are

1 going to have to spend some additional time on the instructions
2 regarding the law. We've spent a lot of time offline on that,
3 but we're going to need to spend some in-court time, and so we'd
4 probably use the rest of the afternoon to do that, and then
5 you'll hear arguments on Wednesday morning.

6 So, that's my prediction at this point in time. You
7 know, everything's subject to change, but I think that's pretty
8 close to accurate. So, you'll have the case, in other words,
9 and your deliberations will start sometime on Wednesday.

10 So, tomorrow morning, 9:45, and we'll resume then.

11 (Whereupon, the within trial was adjourned to Tuesday,
12 June 11, 2013, at 9:45 o'clock a.m.)

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