

EXHIBIT

1

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

GAMES WORKSHOP LIMITED,

Plaintiff,

v.

CHAPTERHOUSE STUDIOS LLC and JON
PAULSON d/b/a PAULSON GAMES,

Defendants.

Civil Action No. 1:10-cv-8103

Hon. Matthew F. Kennelly

Hon. Jeffrey T. Gilbert

DECLARATION OF ALAN MERRETT

I, Alan Roy Merrett, hereby declare:

1. I am Head of Intellectual Property, Games Workshop, Willow Road, Lenton, Nottingham NG7 2WS United Kingdom. I have been employed by Games Workshop since 1981 and was one of the original creators of Warhammer 40,000 in about 1987. I base this declaration on my personal knowledge and my complete access to the books and records of Games Workshop.

Warhammer 40,000 Background

2. Warhammer 40,000 (or Warhammer 40K) was first launched in 1987, in a book entitled Rogue Trader. The fictional universe and basic game were created by a small group of key employees, John Blanche, Jeremy “Jes” Goodwin, Rick Priestley, and myself.

3. Warhammer 40,000 quickly achieved great commercial success and currently represents a body of hundreds of books and magazines portraying the fictional world and setting forth information and rules about the related table-top wargame of the same name, a movie,

computer games, and thousands of collectible figurines sculpted and produced by Games Workshop; collected, painted and displayed by fans and used in the tabletop wargame. As many as seven of the Black Library novels about Warhammer 40,000 have been New York Times bestsellers. Warhammer 40,000 is also the hub of a wide social network, some of which can be experienced at the many on-line forums devoted exclusively or primarily to Warhammer 40,000 and its fans (including Bolterandchainsword.com, Dakkadakka.com, Warseer.com, belloflostsouls.net, heresy-online.net, and others). Fans also gather at Games Day events (including the July 28, 2012 Games Day in Chicago, Illinois that was attended by over 2500 people, and the independently organized Adepticon, also in Chicago, which occurred on April 19-21 and was similarly attended by thousands). There are many YouTube videos that people have posted online that help introduce a person who is unfamiliar with Warhammer 40K to some of the elements of the overall creative universe, such as (i) <http://www.youtube.com/watch?v=VGByey3BSjY> showing a trailer from the recent Warhammer 40,000 motion picture¹; (ii) <http://www.youtube.com/watch?v=A-E1RcRvny8> showing a trailer from a Dawn of War Warhammer 40,000 video game; and (iii) <http://www.youtube.com/watch?v=Tee9XodZou8&list=UUy0TN9NKJhyYGCavN-06c7Q&index=3&feature=plcp> an interview with the designers of a new line of “Dark Eldar” figures (including one of the original creators of Warhammer 40,000, Jes Goodwin, revealing some of the creative process and the interplay between the design and the underlying story and rules. Additionally, attached as Exhibit 104 is a short Games Workshop video that provides some context for the hobby, showing fans at a Games Day event where they are able to view

¹ A second trailer is at http://www.youtube.com/watch?v=6vF_VLZotWc

painted miniatures on display, paint their own miniatures, view artwork and play Warhammer 40,000.

4. The Warhammer 40,000 universe is depicted throughout Games Workshop's books, articles, and other materials and is not easily summarized. However a brief overview follows. The Warhammer 40K universe is set in a savage 41st Millennium where Mankind must battle for survival in a galaxy riven by bloodshed and destruction. Humanity teeters on the brink of extinction, assailed on all sides by aliens, traitors, and Daemons. Humanity is protected by elite genetically engineered super-soldiers (called Space Marines) and innumerable "Imperial Guard" (which is the largest fighting force defending humanity). The various races warring against Mankind include, but are not limited to:

- Eldar – An ancient alien race possessed with incredible skill, cutting edge technology, and preternatural swiftness;
- Tau – A fledgling race that is rapidly expanding its empire through the use of advanced technology to compensate for its members' meager physiques;
- Tyranids – A horrific alien bio-engineered race from beyond the galactic void that devours all in their path and incorporates the genetic materials of all they consume; and
- Chaos – Once loyal warriors who fought for Mankind who have forsaken their oaths of loyalty and turned against humanity, loyal only to the Dark Gods of Chaos.²

5. For each specific race, Games Workshop's books, magazines, and other products flesh out the specific history, legends, characters, weapons, vehicles, culture, and other details of that race. By way of example, during the 30th millennium, the Emperor of Mankind created twenty Primarchs, genetically engineered superhumans possessing immense physical and psychic power. Each Primarch's genome was used to serve as a template for a different legion of

² The Warhammer 40K universe includes a number of other races as well, such as Necrons, Orks, Daemons, Dark Eldar, etc.

Space Marines. During the 30th Millennium, the Emperor used the Space Marines to conquer human-inhabited worlds to create the Imperium of Man. Near the end of this campaign, nine of the twenty legions converted to worship Chaos Gods and rebelled against the Emperor (the “Horus Heresy”, named after one of the Primarchs who rebelled). The rebels were defeated and banished, but continue fighting on behalf of the Chaos Gods. The remaining legions were restructured into smaller units called “Chapters” to make future mass rebellion unlikely. Much of the Warhammer 40K universe focuses on Mankind’s continued struggle for survival with the assistance of these Space Marine Chapters. Since 1993, the strapline for each new edition of Warhammer 40,000 is “In the grim darkness of the far future there is only war.”

6. In addition to the numerous books and vast body of artwork depicting the Warhammer 40K universe, there is also an associated tabletop miniature war game played with 28 millimeter (approximately 1 inch/6 feet) scale miniatures that represent the futuristic soldiers, creatures, weapons and other tools of war Games Workshop has created. The background and playing rules of each army are specified in the rule books and supplemental army “codexes” published by Games Workshop, along with articles in Games Workshop’s monthly magazine, *White Dwarf*. The rules attempt to account for the various unique characteristics present for each race, character, or weapon that exists in the Warhammer 40K universe.

7. The miniatures and vehicles sold by Games Workshop require assembly and painting. Hobbyists (whether or not they play the game) assemble and paint the miniatures. These miniatures are displayed in private collections, at local hobby groups, at local hobby stores (including Games Workshop stores), at conventions (including conventions hosted by Games Workshop), online, and in Games Workshop’s various publications.

8. These miniatures can also be assembled into armies that can be pitted against those of other players. Unlike other battle-themed games such as Risk or Stratego, there is no board for play. Each player brings a roughly equal “value” of units to a tabletop “battlefield”, typically 4 ft by 6-8 ft, decorated with various terrain features (hills, trees, ruined buildings, etc.). The players then decide upon a scenario, ranging from simple skirmishes to complex campaigns surrounding “historical” events in the Warhammer 40K universe involving obtaining and defending various objectives. Subject to the game rules, players develop strategies and take turns advancing the model armies and firing their weapons on the tabletop battlefield, rolling dice to determine the results of various types of combat. It is Games Workshop’s understanding that the collection and painting of miniatures represents a larger portion of the use of the sculptural figurines than does game play.

The Origin and Ownership of Games Workshop’s Works

9. Games Workshop itself originated in London in 1975, and in 1983 developed Warhammer, set in a medieval fantasy time. By the time it developed the futuristic Warhammer 40K in 1987, Games Workshop had moved to Nottingham where the creative core of the company (Messrs Blanche, Goodwin, Priestley and myself) were devoted full-time as employees of the company. The creative core of the company remains here today.

10. Among the four original creators of Warhammer 40,000, Mr. Goodwin is a sculptor and artist and Mr. Blanche a painter, and they created most of the original artwork. None of the designs for the characters, races and armies has any known antecedents. To be sure, Warhammer 40K incorporates some symbols and graphic elements drawn from heraldry and other historical sources (e.g., wolves and Roman numerals and crosses) but as used in Warhammer 40K, those individual elements have been modified and thoroughly integrated with

other elements (graphic and sculptural) to form something unlike any known prior works. For instance, although something as simple as a Roman numeral is used as one of the identifying features of squads of Space Marines, it has a specific meaning within the underlying story such that only certain characters would wear the numeral on a specific location for a specific purpose and only in combination with other specific symbols (such as an arrow, a crossed X, or a chevron).

11. Although many of the miniatures Games Workshop produces are small, the plastic models are originally sculpted in three times the size of the final commercially sold versions. The creative process often takes several months whereby concept art is first sketched and/or painted in two dimensions and then sculpted in clay, also known as Green Stuff (a product Games Workshop produces and sells), and/or with other sculpting materials. Only then are the sculptural works readied for production. Additionally, some of the larger models are sold through Forge World, a part of Games Workshop. In almost all instances, the sculptor(s) are given credit for the product by having their name appear on the box of the mass produced versions or in the monthly *White Dwarf* magazine announcing the product release.

12. Games Workshop has identified numerous works on which it believes Chapterhouse Studios has relied in creating the accused products at issue in this litigation. In the ordinary course, Games Workshop relies solely on its own employees to create these and other works. Indeed, the works are all created based on the basic storylines and artwork I helped create together with John Blanche, Jes Goodwin and Rick Priestley in 1987 and earlier, and as the Warhammer 40,000 universe has grown more complex and detailed, the contours within which designers work is increasingly defined by what has come before. We also never engage freelance artists without providing extensive oversight and creative direction. However, we do

rarely employ the services of independent artists – many of whom have also at times been employees of Games Workshop. When we do, it is our customary practice to obtain confirmatory assignments from these individuals. Over the years, some of these have been misplaced; however, none of the individual authors has ever challenged Games Workshop’s ownership of the subject works and, during the course of this litigation, we have obtained replacement assignments from those of the individuals we have been able to locate.

13. Despite our efforts to locate all of the authors whose works are at issue in this litigation, there are six individuals who contributed to some of the works that we have not been able to contact. However, I am able to confirm that each of these seven authors was an employee at the relevant time.

a. Karl Kopinski. Mr. Kopinski was involved in creating the Crimson Fist Shoulder Pads depicted in the Index Astartes IV 2004, page 39. Mr Kopinski was an employee from 1 June 1999 to 8 February 2006

b. Adam Clarke. Together with Jes Goodwin, Mr Clarke helped design the sculptural works we refer to as “The Seer Council”, which is a unit in the Eldar army. The works were created in 2002 and Mr. Clarke was an employee from 11 May 2001 to 13 December 2003.

c. Tim Adcock. Together with Jes Goodwin, Mr. Adcock helped design the sculptural work we refer to as a “Predator Space Marine Rhino tank.” The work was created in 2001 and Mr. Adcock was an employee from 2 February 1994 to 20 July 2007. This was the second version of a Rhino. A prior Space Marine Rhino was created and sold in Games Workshop’s 1989 catalogue.

d. Bob Naismith. Mr. Naismith helped design the sculptural work we refer to as a “Rhino”, which is a vehicle used by the Space Marines. The work, as later decorated further

with Games Workshop's Space Wolf iconography (designed by Jes Goodwin and Mike McVey as noted below), was shown in the "Space Wolves Codex" published in 2000, and Mr. Naismith was an employee from May 1984 to December 1989.

e. Wayne England Mr. England helped develop the iconography for a chapter of the Space Marines known as the Blood Angels. The work was created in 1995, and Mr. England was an employee from the end of 1988 to early 2001.

f. Mike McVey. Mr. McVey helped design an Eldar miniature figure during the course of his employment with us from April 1987 through November 1999 and also worked with Jes Goodwin to create an icon for the Space Wolves Space Marines in 1989.

14. As noted, no Games Workshop employee or freelance artist has ever challenged Games Workshop's ownership of the subject works.

Space Marine Chapters

15. According to the Warhammer 40K universe, after the Horus Heresy Rebellion, the Space Marine Legions were broken up into a thousand smaller Space Marine Chapters. These Chapters include, but are not limited to Iron Snakes, Salamanders, Soul Drinkers, Blood Ravens, Iron Hands, Space Wolves, Blood Angels, Dark Angels, Flesh Tearers, Celestial Lions, and Exorcists. The Standard hand weapon of a Space Marine is a "bolter." More details about the Space Marines Chapters and imagery associated with those chapters are provided and shown below (¶¶ 30 et seq.)

Eldar Figures

16. One of the armies in the Warhammer 40K universe is the Eldar, which, as noted, is an ancient alien race having mythic skills, cutting edge technology, and preternatural swiftness. In the Warhammer 40,000 universe concerning the Eldar race, they are described and

defined as a type of elf. In Games Workshop's literature concerning the Eldar race, they are described and defined as a type of elf. In the Warhammer 40K mythology, "Spirit Stones" are used by Eldar as receptacles for spirits of their ancestors. Four of the many types of individuals in Games Workshop's Eldar society are the Striking Scorpions, the Howling Banshees, the Eldar Farseer, and the Eldar Warlock. An Exarch is a type of Eldar Warrior. Additionally, a common vehicle used by the Eldar is an Eldar Jetbike. Examples of each of these are depicted below:



Eldar Striking Scorpion
(Ex. 27 at 2)



Eldar Howling Banshee
(Ex. 28 at 31, GW011375; Ex. 29)



Eldar Farseer
(Ex. 28 at 26, GW011373; Ex. 30, GW002349)





Eldar Warlock
(Ex. 28 at 28, GW011374; Ex. 31)



Eldar Jet Bike
(Ex. 28 at 40, GW011377; Ex. 32)

17. These pictures are representative of numerous similar pictures that exist throughout Games Workshop's literature and related materials:

- The "Eldar Striking Scorpion" pictures are representative of the Eldar Striking Scorpions models created and sold by Games Workshop, a true and correct copy of which attached as Ex. 27;
- The "Eldar Howling Banshee" picture is representative of the Eldar Howling Banshees and can be found on page 31 of Codex:Eldar attached as Ex. 28. The model is a representative Eldar Howling Banshee model created and sold by Games Workshop, a true and correct copy of which attached as Ex. 29;
- The "Eldar Farseer" picture is representative of the Eldar Farseer and can be found on page 26 of Codex:Eldar attached as Ex. 28. The model is a representative Eldar Farseer model created and sold by Games Workshop, a true and correct copy of which attached as Ex. 30;
- The "Eldar Warlock" picture is representative of the Eldar Warlock and can be found on page 28 of Codex:Eldar attached as Ex. 28. The model is a representative Eldar Warlock model created and sold by Games Workshop, a true and correct copy of which attached as Ex. 31; and
- The "Eldar Jet Bike" picture is representative of the Eldar Jet Bike and can be found on page 40 of Codex:Eldar attached as Ex. 28. The model is a representative Eldar Jet Bike model created and sold by Games Workshop, a true and correct copy of which attached as Ex. 32.

18. Each Eldar class of individuals has their own unique characteristics:

- The Striking Scorpions class of Eldar known for being skilled in close combat. Games Workshop's models of Striking Scorpions are typically male. Their unique features include a Scorpion Chainsword (a vicious blade with diamond-toothed edges and a gemstone on the hilt), a Shuriken Pistol (which can be attached to its wrist), and Mandiblasters (two small guns attached to the side of the their helmet that fire needle-

thin shards that act as a conductor for a highly charged laser blast). They wear plate armour and have a thick lock of hair protruding from the back of their helmet;

- The Howling Banshees are a class of Eldar also known for deadly hand-to-hand combat. Games Workshop's models of Howling Banshees are usually female. Their unique features include a conical style helmet with hair flowing out of the back, segmented armour plates over a bodysuit, a grid-like mouth, and a long loin cloth held up by circular stones.;
- The Eldar Farseer is a class of Eldar who have the ability to predict the future. Their weapons include a Spear or Sword. However, Games Workshop does not sell a Farseer miniature with a sword. Instead of armour, they wear a set of robes. While they also have the iconic Eldar style conical helmet, they also have a one or two curved protrusions extending upward;
- The Eldar Warlock is a class of Eldar with psychic abilities. Their unique weapons either include a Witch Blade or a Singing Spear. Instead of armour, they wear a set of robes, but still maintain an iconic Eldar style conical helmet; and
- The Eldar Jet Bike has a similar function to the Space Marine Jet Bike discussed below but is stylized in the Eldar style, including an elongated, smooth, tapering shape.

Pre-Heresy Accessories

19. Games Workshop has produced numerous books, articles, and other products that detail the *Horus Heresy* rebellion against the Emperor in the 30th millennium (something of a prequel to the main body of the Warhammer 40,000 universe) by the nine Space Marine Legions that were corrupted by the Chaos Gods. A principal such book is "Horus Heresy: The Collected Visions" a true and correct copy of which attached as Exhibit 26.

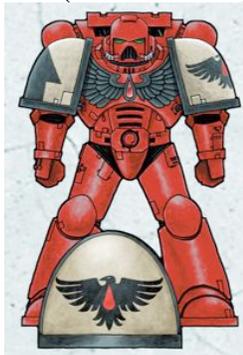
20. As the events of the *Horus Heresy*, occurred about 10,000 years prior to the main body of events in the Warhammer 40K universe, much of the Games Workshop artwork details "pre-heresy" armour and weapons that look different from the "post-heresy" armour and weapons that are the subject of the bulk of Games Workshop's miniatures. Examples of pre-heresy and post-heresy Space Marine armor are below:



Pre-Heresy Armor (Mk 1 Thunder Armor)
(Ex. 48 at 139)



Pre-Heresy Jump Pack
(Ex. 48 at 284)



Post-Heresy Armor
(Ex. 49 at 71, GW001727)



Post-Heresy Jump Pack
(Ex. 50, GW002324)

21. These pictures are representative of numerous similar pictures that exist throughout Games Workshop's literature and related materials:

- The "Pre-Heresy Armor" picture is a representative picture of a Space Marine wearing an early version of power armour (called Mark I or "Thunder Armour") and can be found on page 139 of The Horus Heresy: Collected Visions book, a true and correct copy of which attached as Exhibit 48;
- The "Pre-Heresy Jump Pack" picture is a representative picture of a Space Marine wearing an early version of a jump pack and can be found on page 284 of Horus Heresy: The Collected Visions book attached as Exhibit 48;
- The "Post Heresy Armour" picture is a representative picture of a Space Marine wearing current power armour (called Mark VIII) and can be found on page 71 of The Art of Warhammer 40,000 book, a true and correct copy of which attached as Ex. 49; and
- The "Post-Heresy Jump Pack" picture is a representative picture of a model created and sold by Games Workshop of a Space Marine wearing a current jump pack, a true and correct copy of which attached as Exhibit 50.

22. These pre-heresy artwork contain unique elements:

- The pre-heresy armour has unique shoulder pads consisting of overlapping plates with a series of rivets or studs. Additionally, the pre-heresy shoulder pad shown above has a unique shape to the various plates. Moreover, the overall shape of the shoulder pad (rounded top, flat bottom, beginning at top of shoulder and ending at elbow) is based off of Games Workshop's iconic shoulder pad design; and
- The pre-heresy jump packs have a unique design consisting of two large turbo-fan type barrel jets with fins protruding out the bottom.

Tyranid Products

23. In the Warhammer 40K universe, the Tyranids are a hive race of aliens whose weapons, technology, and vehicles are all organic in nature. While Games Workshop has made numerous miniatures representing various Tyranid creatures, Games Workshop's literature and other materials describe and provide artwork for additional Tyranid creatures. Until recently, two such Tyranid creatures without a Games Workshop miniature were a Tervigon monster and a Mycetic Spore (or "Drop Pod") shown below:



Games Workshop's Tervigon
(Ex. 60 at 52, GW001422)



Games Workshop's Mycetic Spore
(Ex. 60 at 54, GW001424)

24. These pictures are representative of numerous similar pictures that exist throughout Games Workshop's literature and related materials:

- The “Tervigon” picture is a representative picture of a large Tyranid monster called a Tervigon and can be found on page 52 of Codex:Tyranids, a true and correct copy of which attached as Exhibit 60; and
- The “Mycetic Spore” picture is a representative picture of an organic transport and landing vehicle for Tyranids from “Hive” ships (Tyranid transport ships) and can be found on page 54 of Codex:Tyranids attached as Exhibit 60.

25. These Tyranid Products contain many unique elements:

- The Tervigon has numerous unique characteristics that are more easily appreciated from its picture than they are described. However, notable characteristics include, two small hind legs, four large pointed legs that each have a small horn extending off the “elbow” of the leg, several bony protrusions that extend off the back of the creature, and the overall stance of the creature; and
- The Mycetic Spore is a large pod-like shape with various tendrils or protrusions extending from the top that allow the pod to fall from space while transporting inside various other Tyranid creatures.

26. Another large Tyranid creature created and sold by Games Workshop is a Carnifex. A representative picture of a Carnifex is below. A true and correct copy of Games Worksho’s webpage for the Carnifex is attached as Exhibit 61:



Games Workshop’s Carnifex
(Ex. 61, GW002335)

Javelin Class Jet Bike

27. One of the vehicles in the Warhammer 40K universe that may be used by Space Marines is a Jet Bike. The *Horus Heresy: The Collected Visions* book shows a picture of what

this Jet Bike looked like in the pre-heresy days. Additionally, Games Workshop produces and sells a Space Marine Bike, also shown below:



Games Workshop's Space Marine Jet Bike
(Ex. 48 at 15, GW001893)



Games Workshop's Space Marine Bike
(Ex. 71)

28. These pictures are representative of numerous similar pictures that exist throughout Games Workshop's literature and related materials:

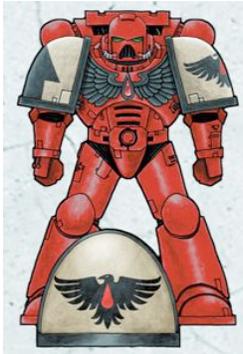
- The "Space Marine Jet Bike" picture is a representative picture of a Jet Bike used by Space Marines during the Horus Heresy and can be found in *The Horus Heresy: Collected Visions* at page 15, attached as Exhibit 48; and
- The "Space Marine Bike" is a picture of an assembled and painted Space Marine Bike created and sold by Games Workshop and is representative of the Space Marine Bikes as depicted in Games Workshop's literature and related materials, a true and correct copy of which and can be found at Exhibit 71.

29. Both Games Workshop's depiction of a Space Marine Jet Bike and its Space Marine Bike contain unique characteristics, including the overall shape, a grilled front, and two large exhaust pipes on each side of the rear of the bike.

Space Marine Shoulder Pads

30. Most Space Marines wear Power Armour, an advanced suit of strength enhancing combat armor consisting of thick ceramite containing a full suite of life-support functions to operate in hostile environments. Over the history of the Warhammer 40 universe there have

been various advancements to the Power Armour, starting with Mark I through to the current Mark VIII version. An example of the Mark VIII Power Armour is below:



Post-Heresy
Armor
(Ex. 49 at 71)



Space Marine Shoulder Pad
(Ex. 76 at 13; Ex. 77)



Back of Space Marine Shoulder
Pad
(Ex. 125, GW002698)

The representative example of Post-Heresy Armour is from *The Art of Warhammer*, attached as Exhibit 49. The representative examples of a Space Marine Shoulder Pad are from *Insignium Astartes*, a true and correct copy of which is attached as Exhibit 76, and from Games Workshop's website, a true and correct copy of which is attached as Exhibit 77. A true and correct copy of the back of a Space Marine Shoulder Pad is attached as Exhibit 125.

31. One of the numerous iconic aspects of Games Workshop's Power Armour is the shoulder pad. The shoulder pad is a convex shape with a curve at the top and a straight edge at the bottom. There is often a large band extending along the entire outer edge of the shoulder pad. As part of the Power Armour, the shoulder pad begins above the shoulder and ends right above the elbow. The pads are curved in a manner that it does not cover a large portion of either the chest or the back of the Space Marine. On the reverse side of the shoulder pad, there are typically a series of spaced indentations that serve no functional purpose but are used by Games Workshop to create a technical appearance.

32. According to the Warhammer 40K universe, the right shoulder pad of a Space Marine contains a symbol and a roman numeral identifying the squad number and squad type to

which that Space Marine belongs. Each Space Marine Chapter consists of roughly 1000 Space Marines, with 100 Space Marines in 10 Companies. Each company is in turn divided into 10 “squads” of 10 Space Marines. In general, a company has six Tactical Squads (equipped to fight in a broad range of conditions), two Assault Squads (equipped to fight at close quarters), and two Devastator Squads (equipped to provide heavy weapons support).

- Tactical Space Marines are represented by an upward pointing arrow and given roman numerals I through VI on their shoulder pads;



Shoulder Pads for Tactical Space Marines
(Ex. 76 at 13)

- Assault Space Marines are represented by a crossed X and given roman numerals VII and VIII on their shoulder pads; and



Shoulder Pads for Assault Marines
(Ex. 76 at 13; Ex. 80, GW002323)

The representative example on the right of a shoulder pad for Assault Space Marines is from Games Workshop’s website, a true and correct copy of which is attached as Exhibit 80.

- Devastator Space Marines are represented by a chevron (inverted V) and given roman numerals IX and X on their shoulder pads.



Shoulder Pads for Devastator Space Marines
(Ex. 76 at 13, Ex. 81 at 70, GW1288)

The representative example on the right of a shoulder pad for Devastator Space Marines is from Codex: Space Marines, a true and correct copy of which is attached as Exhibit 81.

33. According to the Warhammer 40K universe, the left shoulder pad of a Space Marine contains an icon indicating the specific Space Marine Chapter to which the Space Marine belongs. While there were originally only 20 Space Marine Legions, after the Horus Heresy rebellion, the legions were broken down into a much larger number of smaller Space Marine Chapters. Each Space Marine Legion and Chapter has in turn, its own detailed history, legends, characters, weapons, vehicles, culture, and their own unit icon. Some of the relevant unit icons created by Games Workshop are below:



Exorcist Chapter
(Ex. 86 at 33,
GW001503)



Flesh Tearer Chapter
(Ex. 49 at 71,
GW001727)



Iron Snakes Chapter
(Ex. 49 at 70,
GW001726)



Soul Drinkers
Chapter
(Ex. 87, GW002391)



Blood Raven Chapter
(Ex. 49)



Celestial Lions
Chapter
(Ex. 86 at 33,
GW001503)



Legion of the
Damned
(Ex. 88 at 21,
GW00803)

34. Each chapter icon has a unique design:

- Exorcist Chapter – Primary colors are black and red with an icon of a skull (missing the bottom jaw) with downturned curved horns, the representative example above is from issue 249 of *White Dwarf*, a true and correct copy of which is attached as Exhibit 86;
- Flesh Tearer Chapter – Primary colors are black and red with an icon of a flat, toothed saw-blade with a drop of blood in the center of the blade, the

representative example above is from *The Art of Warhammer 40,000*, attached as Ex. 49;

- Iron Snakes Chapter – Primary colors are blue and red with an icon of the profile view of a snake with several tight undulations, the representative example above is from *The Art of Warhammer 40,000*, attached as Ex. 49;
- Soul Drinkers Chapter – Primary colors are gold and purple with an icon of a chalice with light rays extending out of the top of the chalice, the representative example from above is from the cover of the book *Soul Drinkers*, a true and correct copy of which is attached as Ex. 87;
- Blood Raven Chapter – Primary colors are black and red with an icon of a set of wings with a drop of blood in the center, the representative example above is from *The Art of Warhammer 40,000*, attached as Ex. 49;
- Celestial Lions Chapter – Primary colors are blue and yellow with an icon of a lion, the representative example above is from issue 249 of *White Dwarf*, attached as Exhibit 86; and
- Legion of the Damned – Primary colors are red and black with an icon of a partial skull (missing the bottom jaw), a horizontal line across the forehead, and flames coming from the top of the skull the representative example above is from *Codex: Chaos Space Marines*, a true and correct copy of which is attached as Ex. 88.

Weapons

35. Games Workshop has created a wide range of fictional weapons for the Warhammer 40K universe. Some of those weapons are depicted below:



Bolter Halberds
(Ex. 48 at 152, GW002030)



Servo Arms
(Ex. 108 at 70, GW11383)



Conversion Beamer
(Ex. 109)



Combi-Weapon
Bolter/Melta
(Ex. 108 at 87, GW11386)



Combi-Weapon
Bolter/Plasma
(Ex. 110 at 49, GW00939)



Combi-Weapon
Bolter/Flamer
(Ex. 111)

36. These pictures are representative of numerous similar pictures that exist throughout Games Workshop's literature and related materials:

- The "Bolter Halberds" picture is representative of the Bolter Halberd and can be found on page 152 of the Horus Heresy: The Collected Visions book, attached as Ex. 48;
- The "Servo Arms" picture is representative of the Servo Arms and can be found on page 70 of Codex: Space Marines, a true and correct copy of which is attached as Ex. 108;

- The “Conversion Beamer” picture is representative of the a Space Marine “Valthex Astral Claws Master of the Forge” equipped with a Conversion Beamer created and sold by ForgeWorld, a part of Games Workshop, a true and correct copy of which is attached as Ex. 109; and
- The “Combi-Weapon” picture are representative of various Combi-Weapons described in the Warhammer 40K universe and can be found on page 87 of Codex: Space Marines, a true and correct copy of which is attached as Ex. 108; page 49 of Codex: Dark Angels, a true and correct copy of which is attached as Ex. 110; and on a model created and sold by Games Workshop, a true and correct copy of which is attached as Ex. 111

37. Each weapon created by Games Workshop has unique characteristics:

- Bolter Halberds – Games Workshop’s twist on a medieval halberd consisting of a curved blade at the end of a staff, with a Space Marine bolter gun incorporated into the head of the staff, and a pointed protrusion at the end of the staff sticking out the opposite edge of the blade.
- Servo Arms – One or more extra arms mounted to the Space Marine’s back pack. The arms are mechanical in nature and terminate in a two pronged “hand”.
- Conversion Beamer – A Space Marine weapon with great power, with ribbed rifling and ending in a pointed barrel.
- Combi-Weapons - A compact combination of two Space Marine weapons, one of which is typically the Bolter and the other one of a Melta gun, a Plasma gun, or a flamer.

Space Wolves Vehicle Conversion Kit

38. In addition to decorating the right shoulder pad with a Space Marine Chapter’s icon, Games Workshop often creates depictions of the Chapter’s vehicles that are likewise decorated with the Chapter’s icons. One example of this is with the Space Wolves Chapter. Below are two Space Wolves models created and sold by Games Workshop:



Space Wolves Rhino
(Ex. 116 at 19, GW002493)



Space Wolves Space Marine Terminator
(Ex. 117)

39. The Rhino is a troop transport vehicle for the Space Marines. The one shown above, a true and correct copy of which is attached as Exhibit 116, is decorated with the icons of the Space Wolf Chapter.

40. A Space Marine Terminator is a Space Marine wearing heavier terminator armour instead of the standard issued power armour. The above picture is a Space Marine Terminator decorated with the icons of the Space Wolf Chapter, a true and correct copy of which is attached as Exhibit 117.

41. Games Workshop's Space Wolves icons have unique characteristics. The Space Wolf icon is an unusually elongated and unique wolf skull with wide eye sockets, often set within a diamond.

I hereby declare under penalty of perjury this 14th day of August, 2012, under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Alan Roy Merrett', is written over a horizontal line. The signature is stylized and somewhat cursive.

Alan Roy Merrett

CERTIFICATE OF SERVICE

I, Jason J. Keener, an attorney, hereby certify that on August 14, 2012, I caused to be filed electronically the foregoing DECLARATION OF ALAN ROY MERRETT with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ Jason J. Keener _____

Jason J. Keener

EXHIBIT

2

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

GAMES WORKSHOP LIMITED,

Plaintiff,

v.

CHAPTERHOUSE STUDIOS LLC and JON
PAULSON d/b/a PAULSON GAMES,

Defendants.

Civil Action No. 1:10-cv-8103

Hon. Matthew F. Kennelly

Hon. Jeffrey T. Gilbert

DECLARATION OF ANDREW JONES

I, Andrew Meredith Jones, hereby declare:

1. I am Head of Legal, Licensing and Strategic Projects, Games Workshop, Willow Road, Lenton, Nottingham NG7 2WS United Kingdom. I have been employed by Games Workshop since 1986 and I base this declaration on my personal knowledge and my complete access to the books and records of the company.

2. Games Workshop markets its products in the United States through the 87 hobby stores we own (including 12 in the Chicago metro area), as well as through some 1396 independent hobby stores in the United States, of which 42 are located in the State of Illinois. We also market and sell product through our websites, gamesworkshop.com, forgeworld.co.uk and blacklibrary.com.

3. Games Workshop produces virtually all of its works in the United Kingdom with the exception of a small number of works made under license (such as the Warhammer 40,000 computer games under the name Dawn of War and a Warhammer 40,000 card game produced by

the company Sabertooth Games, which we once owned). Because copyright registration is not required in the United Kingdom, we do not register most of our works, but do have registrations (or pending applications) for the works at issue in this case. They are attached as Exhibits 11 and 12.

4. Games Workshop owns numerous registrations for its trademarks on the Principal Register in the United States Trademark Office, including the following registrations:

Trademark	Registration Date	Registration Number
WARHAMMER	2003	2,718,741
WARHAMMER 40,000 and Design 	2009	3,707,457
40K	2010	3,768,909
40,000	2010	3,751,267
GAMES WORKSHOP	2009	3,612,759
GW	2010	3,878,431
SPACE MARINE	1995	1,922,180
ELDAR	1996	1,944,847
DARK ANGELS	1995	1,913,474
TAU	2004	2,820,748
AQUILA Design 	2004	3,646,312

Copies of the registration certificates are attached as Exhibit 13.

5. There are very substantial annual sales of products from Games Workshop's Warhammer 40,000 intellectual property and bearing Games Workshop's WARHAMMER, WARHAMMER 40,000, 40K, DARK ANGELS, ELDAR, TYRANID, CHAOS, TAU, and SPACE MARINE brand names, with annual sales at retail value in the United States alone of all

such Warhammer 40K products (including our own core products such as rulebooks, miniatures, plus Black Library novels sold directly by Games Workshop and also by Simon & Schuster, plus licensed sales such as video games sold by our licensee, THQ) of approximately \$54 million for our fiscal year ending May 2011. Worldwide sales of those products totaled \$156 million for the same period (Sales for the immediate past year are higher partly because of the best selling Warhammer 40,000 Xbox 360 title 'Space Marine').

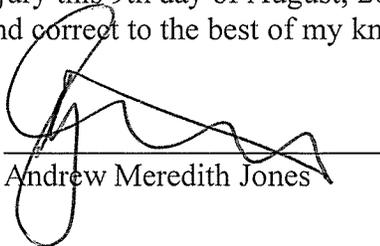
6. Games Workshop also has a large number of well-known unregistered trade marks (including names of armies, Chapters, and other products) including without limitation: Adeptus Mechanicus, Assault Space Marine, Alpha Legion, Black Templars, Blood Angels, Blood Ravens, Tyranid Bonesword, Cadian, Carnifex, Chaos Space Marines, Chaplain, Chimera, Crimson Fists, Dark Angel, Death Watch, Devastator Space Marine, Dreadnought, Drop Pod, Eldar, Elder Farseer, Eldar Jetbike, Eldar Warlock, Eldar Seer Council, Empire, Exorcist, Flesh Tearers, Gaunt, Genestealer, Heavy bolter, Heresy Armour, Hellhound, High Elf, Hive Tyrant, Horus Heresy, Howling Banshee, Howling Griffons, Imperial Fists, Imperial Guard, Inquisition, Iron Hands, Jetbike, Jump Pack, Land Raider, Land Speeder, Tyranid Lashwhip, Legion of the Damned, Librarian, Lightning Claw, Melta, Mk II Armour, Mk V Armour, Mycetic Spore, Plasma, Predator, Rhino, Salamander, Striking Scorpion, Soul Drinker, Space Wolves, Stormraven, Storm Shield, Tactical Space Marine, Techmarine, Termagants, Terminator, Tervigon, Thousand Sons, Thunder Hammer, Tyrant, Tyranid, Tyranid Warrior, Ymgarl. Attached hereto as Exhibit 3 are sales summaries (broken down by relevant product name) from 2004 to date.

7. Many of the symbols associated with the characters and armies of the WARHAMMER 40,000 universe, as well as the accessories for these characters and armies,

have also become well-known and immediately recognizable to the many fans of the game as used on and in connection with the respective characters, including without limitation: the Black Templars icon; the Blood Ravens icon; Blood Angels icon; Celestial Lions icon; Dark Angels winged sword icon; Exorcist skull icon; Flesh Tearers icon; Howling Griffon icon; Imperial Fists icon; Iron Snakes icon; Legion of the Damned icon; Chaos Space Marines eight-pointed star icon; Soul Drinkers icon; Salamanders icon; Tau Empire icon; Space Marine Tactical squad icon; Space Marine Assault squad icon; Space Marine Devastator squad icon; Ultramarine icon; Adeptus Mechanicus cog icon; Iron Hands icon; Space Wolves icon; Thousand Sons icon; Mantis Warrior icon.

8. Games Workshop first became aware of Chapterhouse when we discovered that it or its owner was selling products on eBay and a second auction site, Bartertown.com, in 2008. Attached hereto as Exhibits 14 and 15 are copies of the relevant web pages. We also then received emails from customers attached hereto as Exhibit 112 expressing confusion whether Chapterhouse was licensed by Games Workshop.

I hereby declare under penalty of perjury this 9th day of August, 2012, under the laws of the United States that the foregoing is true and correct to the best of my knowledge.



Andrew Meredith Jones

CERTIFICATE OF SERVICE

I, Jason J. Keener, an attorney, hereby certify that on August 14, 2012, I caused to be filed electronically the foregoing DECLARATION OF ANDREW with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ Jason J. Keener

Jason J. Keener

Exhibit

3

Highly Confidential - Filed Under Seal

EXHIBIT

4

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

GAMES WORKSHOP LIMITED,

Plaintiff,

v.

CHAPTERHOUSE STUDIOS LLC and JON
PAULSON d/b/a PAULSON GAMES,

Defendants.

Civil Action No. 1:10-cv-8103

Hon. Matthew F. Kennelly

Hon. Jeffrey T. Gilbert

DECLARATION OF JONATHAN MOSKIN

I, Jonathan Moskin, hereby declare:

1. I am attorney at law and member in good standing of the State Bar of New York and am admitted pro hac vice in this action. I am a partner at Foley & Lardner LP, counsel of record for Plaintiff Games Workshop, Limited (“Games Workshop”). I have personal knowledge of the facts set forth herein and, if called to testify, I could and would testify competently thereto.

2. Exhibit 7 is a true and correct copy of portions of the deposition of Mr. Goodwin, one of the original sculptors for Warhammer 40.

3. Exhibit 8 is a true and correct copy of portions of Games Workshop’s Supplemental Response to Interrogatory No. 22.

4. Exhibit 9 is a true and correct copy of portions of the deposition of Mr. Jones, the head of Legal, Licensing & Strategic Projects.

5. Exhibit 10 is a true and correct copy of portions of the Expert Report of Games Workshop's expert, Mr. Bloch.

6. Exhibit 16 is a true and correct copy of portions of Mr. Villacci's deposition, Volume II.

7. Exhibit 17 is a true and correct copy of portions of Chapterhouse's Supplemental Response to Games Workshop's Interrogatories No. 3, 8 and 10.

8. Exhibit 18 is a true and correct copy of Chapterhouse documents produced at CHS00028-30.

9. Exhibit 19 is a true and correct copy of the home page of Chapterhousestudios.com from August, 2012.

10. Exhibit 21 is a true and correct copy of portions of Mr. Villacci's deposition, Volume I.

11. Exhibit 22 is a true and correct copy of portions the deposition of Mr. Traina.

12. Exhibit 23 is a true and correct copy of portions of the online forum Heresy-Online.net dated October 24, 2009.

13. Exhibit 24 is a true and correct copy of documents produced by Wyatt Traina at WT00030.

14. Exhibit 25 is a true and correct copy of documents produced by J. Nagy at JN001310.

15. Exhibit 26 is a true and correct copy of documents produced by J. Nagy at JN000087-88.

16. Exhibit 33 is a true and correct copy of Chapterhouse's webpage selling its Armana'Serq Warrior Priestess model.

17. Exhibit 34 is a true and correct copy of documents produced by M. Okamura at MO00001-5.

18. Exhibit 35 is a true and correct copy of documents produced by M. Okamura at MO000022-29.

19. Exhibit 36 is a true and correct copy of documents produced by Chapterhouse at CHS001192.

20. Exhibit 37 is a true and correct copy of documents produced by M. Okamura at MO000294-95.

21. Exhibit 38 is a true and correct copy of documents produced by Chapterhouse at CHS000381.

22. Exhibit 39 is a true and correct copy of portions online forum Frother's Unite.

23. Exhibit 40 is a true and correct copy of Chapterhouse's webpages for selling its Eldar Warlock Jet Bike Conversion Kit and its Eldar Farseer Jet Bike Conversion Kit.

24. Exhibit 41 is a true and correct copy of documents produced by Chapterhouse at CHS003606.

25. Exhibit 42 is a true and correct copy of documents produced by Chapterhouse at CHS003624.

26. Exhibit 43 is a true and correct copy of documents produced by Chapterhouse at CHS003628.

27. Exhibit 44 is a true and correct copy of documents produced by Chapterhouse at CHS003629.

28. Exhibit 45 is a true and correct copy of documents produced by Chapterhouse at CHS005431-33.

29. Exhibit 46 is a true and correct copy of documents produced by Chapterhouse at CHS006351-52.

30. Exhibit 47 is a true and correct copy of documents produced by Chapterhouse at CHS006360.

31. Exhibit 51 is a true and correct copy of Chapterhouse's website page for the Banded Tech Shoulder.

32. Exhibit 52 is a true and correct copy of Chapterhouse's website page for its "Heresy Jump Pack."

33. Exhibit 53 is a true and correct copy of documents produced by Chapterhouse at CHS0003100.

34. Exhibit 54 is a true and correct copy of documents produced by Chapterhouse at CHS0003125-44.

35. Exhibit 55 is a true and correct copy of documents produced by Chapterhouse at CHS0003122-24.

36. Exhibit 56 is a true and correct copy of documents produced by J. Nagy at JN000067.

37. Exhibit 57 is a true and correct copy of documents produced by Chapterhouse at CHS00015682-93.

38. Exhibit 58 is a true and correct copy of documents produced by Chapterhouse at CHS0004679-95.

39. Exhibit 59 is a true and correct copy of documents produced by Chapterhouse at CHS0005431-32.

40. Exhibit 62 is a true and correct copy of Chapterhouse's webpage for its Tervigon conversion kit.

41. Exhibit 63 is a true and correct copy of a posting on the forum "Second Sphere" in which the designer of the Tervigon conversion kit, Sam Terry, describes the creation process, including on July 10, 2010 at 11:16.

42. Exhibit 64 is a true and correct copy of documents produced by Chapterhouse at CHS0005978-81.

43. Exhibit 65 is a true and correct copy of portions of the online forum Warseer.net.

44. Exhibit 66 is a true and correct copy of documents produced by Chapterhouse at CHS0004696-714.

45. Exhibit 67 is a true and correct copy of documents produced by Chapterhouse at CHS0001250.

46. Exhibit 68 is a true and correct copy of my letter to opposing counsel date May 29, 2012. As noted in the letter, Chapterhouse has declined to produce documents (other than simple banner ads) in response to the Court's Order dated December 23 2011 that it respond in full to Document Request 16 (which sought "Any and all documents or things in Chapterhouse's possession, custody or control, showing any advertising or promotion of any or all of the Accused Works"). Chapterhouse's own response to Interrogatory 10 confirmed that the places where it advertises and promotes its goods are the internet forums such as Heresy-online.net, Warseer.com, DakkaDakka.com and Frothersunite.com, yet it has produced no such documents. Moreover, in response to the Court's March 6, 2012 Order directing Chapterhouse to produce design documents from the 11 independent designers identified in its response to Interrogatory 3, it produced only 29 documents from these designers (other than Mr. Okamura; Mr. Nagy and

Mr. Villacci's partner, Mr. Fiertek), 17 of which were illegible photographs, and despite repeated requests has refused to share with Games Workshop its correspondence with these designers other than an initial email (but no responses or follow up) to demonstrate a good faith effort to comply.

47. Exhibit 69 is a true and correct copy of documents produced by Chapterhouse at CHS0003522-24.

48. Exhibit 70 is a true and correct copy of documents produced by Chapterhouse at CHS0003525-27.

49. Exhibit 72 is a true and correct copy of Chapterhouse's webpage selling its "Imperial Javelin Jet Bike."

50. Exhibit 73 is a true and correct copy of documents produced by J. Nagy at JN001698-99.

51. Exhibit 74 is a true and correct copy of documents produced by the designer M. Okamura at MO000402-05.

52. Exhibit 75 is a true and correct copy of documents produced by M. Okamura at MO00409-11.

53. Exhibit 78 is a true and correct copy of portions of the A. Merrett deposition.

54. Exhibit 79 is a true and correct copy of Chapterhouse's webpage selling its shoulder pads.

55. Exhibit 82 is a true and correct copy of documents produced by Chapterhouse at CHS0003109-12.

56. Exhibit 83 is a true and correct copy of documents produced by Chapterhouse at CHS0009903-04.

57. Exhibit 84 is a true and correct copy of documents produced by Chapterhouse at CHS0009924-26.

58. Exhibit 85 is a true and correct copy of documents produced by Chapterhouse at CHS00017286.

59. Exhibit 89 is a true and correct copy of Chapterhouse's website selling its Exorcist shoulder pads.

60. Exhibit 90 is a true and correct copy of Chapterhouse's website selling its Iron Snakes Shoulder Pads.

61. Exhibit 91 is a true and correct copy of Chapterhouse's website selling its Soul Drinker's Shoulder Pads.

62. Exhibit 92 is a true and correct copy of Chapterhouse's website selling its Blood Raven Shoulder Pad.

63. Exhibit 93 is a true and correct copy of Chapterhouse's website selling its Celestial Lions Shoulder Pads.

64. Exhibit 94 is a true and correct copy of Chapterhouse's website selling its Skull with Flames Shoulder Pad.

65. Exhibit 95 is a true and correct copy of Chapterhouse's Response to Interrogatory No. 2.

66. Exhibit 96 is a true and correct copy of documents produced by Chapterhouse at CHS0004636-42.

67. Exhibit 97 is a true and correct copy of documents produced by Chapterhouse at CHS00012719-20.

68. Exhibit 98 is a true and correct copy of documents produced by Chapterhouse at CHS0003503-04.

69. Exhibit 99 is a true and correct copy of documents produced by Chapterhouse at CHS0003639-43.

70. Exhibit 100 is a true and correct copy of documents produced by Chapterhouse at CHS0005420-23.

71. Exhibit 101 is a true and correct copy of documents produced by T. Fiertek at TF00958-61.

72. Exhibit 102 is a true and correct copy of documents produced by Chapterhouse at CHS00012596.

73. Exhibit 103 is a true and correct copy of documents produced by Chapterhouse at CHS00010429-30.

74. Exhibit 104 is a true and correct copy of documents produced by Chapterhouse at CHS0002413.

75. Exhibit 105 is a true and correct copy of documents produced by Chapterhouse at CHS0006098-700.

76. Exhibit 106 is a true and correct copy of documents produced by Chapterhouse at CHS00017255.

77. Exhibit 107 is a true and correct copy of documents produced by Chapterhouse at CHS00017307.

78. Exhibit 112 is a true and correct copy of Chapterhouse's webpage selling its "gun-halberd."

79. Exhibit 113 is a true and correct copy of Chapterhouse's webpage selling its servo arms with conversion beamer.

80. Exhibit 114 is a true and correct copy of Chapterhouse's webpage selling its combi-weapon.

81. Exhibit 115 is a true and correct copy of documents produced by Chapterhouse at CHS0003244-44.

82. Exhibit 118 is a true and correct copy of documents produced by Chapterhouse at CHS0001258.

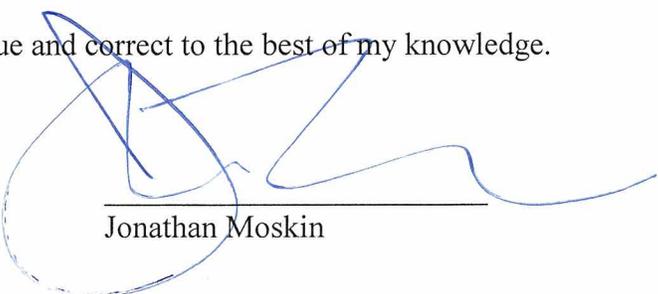
83. Exhibit 119 is a true and correct copy of documents produced by Chapterhouse at CHS0004464.

84. Exhibit 120 is a true and correct copy of documents produced by J. Nagy at JN000231.

85. Exhibit 121 is a true and correct copy of documents produced by T. Fiertek at TF001823.

86. Exhibit 126 is a true and correct copy of the back of Chapterhouse's Generic Power Armour Shoulder Pad for Space Marine.

I hereby declare under penalty of perjury this 14th day of August, 2012, under the laws of the United States that the foregoing is true and correct to the best of my knowledge.



Jonathan Moskin

CERTIFICATE OF SERVICE

I, Jason J. Keener, an attorney, hereby certify that on August 14, 2012, I caused to be filed electronically the foregoing DECLARATION OF JONATHAN MOSKIN with the Clerk of the Court using the CM/ECF system, which will send an electronic copy of the foregoing to counsel of record and constitutes service under Federal Rule of Civil Procedure 5(b)(2)(D) pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ Jason J. Keener

Jason J. Keener

Exhibit

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

GAMES WORKSHOP LIMITED,)
Plaintiff,)
vs.) Civil Action
CHAPTERHOUSE STUDIES LLC) No. 1:10-cv-08103
and JON PAULSON d/b/a)
PAULSON GAMES,)
Defendants.)

The deposition of WILLIAM F. BREWSTER,
taken pursuant to the Federal Rules of Civil
Procedure of the United States District Courts
pertaining to the taking of depositions, taken
before PAULINE M. VARGO, a Certified Shorthand
Reporter within and for the State of Illinois,
C.S.R. No. 84-1573, at Suite 2800, 321 North Clark
Street, Chicago, Illinois, on June 29, 2012, at
9:05 a.m.

1 PRESENT:

2

3

FOLEY & LARDNER, LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60654
312.832.4500

4

5

BY: JASON J. KEENER, ESQ.
jkeener@foley.com

6

appeared on behalf of the Plaintiff;

7

8

WINSTON & STRAWN, LLP
101 California Street
San Francisco, California 94111-5894
415.591.1564

9

10

BY: K. JOON OH, ESQ.
koh@winston.com

11

appeared on behalf of the Defendant.

12

13

ALSO PRESENT VIA TELEPHONE:

14

GILL STEVENSON, ESQ.
In-House Counsel, Games Workshop.

15

16

REPORTED BY:

17

PAULINE M. VARGO
C.S.R. No. 84-1573.

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1 particular Games Workshop products that contain an
2 element that you believe existed in prior military
3 material history?

4 A. With reference to the specific tabs, no.

5 Q. Again, my question is not --

6 A. Or no, no.

7 Q. Let me ask my question. She has got to
8 take it down.

9 My question is not with regard to
10 specific tabs. I'm saying in any way did you
11 specifically identify tabs, names, pictures,
12 anything else that would allow us to determine
13 which particular elements of which Games Workshop
14 products your opinion applies to that they are
15 found in prior military history?

16 MR. OH: Objection, compound, vague and
17 ambiguous.

18 BY THE WITNESS:

19 A. No.

20 BY MR. KEENER:

21 Q. Could you have done so if you had been
22 asked to?

23 A. Yes.

24 Q. That same sentence we looked at, it

1 states that you found these items keeping with
2 previously examples -- I'm sorry -- keeping with
3 previously existing examples known within actual
4 military material culture. Do you see that?

5 A. Yes.

6 Q. What do you mean by "keeping with"?

7 A. Consistent with existing pieces within
8 the known world.

9 Q. So not identical, correct?

10 MR. OH: Objection, vague and ambiguous.

11 BY THE WITNESS:

12 A. Some elements are identical.

13 BY MR. KEENER:

14 Q. So do you express an opinion anywhere in
15 your report that you found an element from a Games
16 Workshop product identical to something you found
17 in existing military material culture?

18 MR. OH: Objection, vague and ambiguous.

19 BY THE WITNESS:

20 A. No.

21 BY MR. KEENER:

22 Q. Could you have done so if you were
23 asked?

24 MR. OH: Objection, vague and ambiguous.

1 Q. Are you expressing any opinion that
2 prior military history you found existed prior to
3 the creation of Games Workshop materials?

4 MR. OH: Objection, vague and ambiguous.

5 BY THE WITNESS:

6 A. I only examined the Games Workshop
7 binder materials for similarities to material that
8 I know to exist within the world of military
9 material culture.

10 BY MR. KEENER:

11 Q. Right. That's what you did. I
12 understand that. I want to make sure what you did
13 not did and you are not expressing an opinion on
14 whether or not anything was created prior to the
15 creation of the similar Games Workshop product?

16 MR. OH: Objection, vague and ambiguous.

17 BY THE WITNESS:

18 A. Yes.

19 BY MR. KEENER:

20 Q. You agree you are not expressing an
21 opinion on that topic?

22 A. Yes.

23 Q. So in that sentence where you express
24 your opinion, previously existing examples known

1 within actual military material culture, you went
2 up to present day?

3 A. Yes.

4 Q. I think I understand now. Thank you.

5 Let's turn to Page 4. You see the
6 section title, your conclusion?

7 A. Yes.

8 Q. And this is a similar expression of your
9 opinion and it states, "That the insignia,
10 heraldry, equipment pattern and design used by
11 Games Workshop are compatible with and not markedly
12 dissimilar from those elements found to exist
13 previously within the world of military material
14 culture."

15 Do you see that?

16 A. Yes.

17 Q. Is that your opinion?

18 A. Yes.

19 Q. And again, similar to the one we just
20 spent time on, when you say "found to exist
21 previously within the world of military material
22 culture," you are saying found to exist anywhere up
23 to the present date?

24 A. Yes.

1 Q. And you are not expressing any opinion
2 on whether those works were created prior to the
3 creation of the Games Workshop works?

4 A. I believe that all the materials that
5 are reference in the analysis cites an earlier date
6 and a later date.

7 Q. I'm just confirming what we talked to
8 with the other sentence.

9 A. Yes.

10 Q. You are not expressing any opinion on
11 whether any pieces of military history were created
12 prior to the creation of any of the Games Workshop
13 products at issue?

14 A. Correct.

15 Q. And in this opinion where you identify
16 the insignia, heraldry, equipment pattern and
17 design used by Games Workshop --

18 A. Yes.

19 Q. -- you don't identify out of the
20 thousands in binder 103 of those elements which one
21 that opinion applies to?

22 A. No.

23 Q. And the next sentence reads, "That the
24 models Games Workshop creates incorporates patterns

1 copyright, are you?

2 MR. OH: Objection to the extent it is calling
3 for a legal opinion.

4 BY THE WITNESS:

5 A. No.

6 BY MR. KEENER:

7 Q. And as we looked at in Exhibit 103, the
8 binder, you are not expressing any opinion
9 regarding the originality of the entire product of
10 any Games Workshop product, are you?

11 MR. OH: Objection and to the extent it is
12 calling for a legal opinion.

13 BY THE WITNESS:

14 A. No.

15 BY MR. KEENER:

16 Q. And you are not expressing for any
17 element of any product whether or not that element
18 is original, are you?

19 MR. OH: Objection to the extent it is calling
20 for a legal opinion.

21 Can you repeat the question?

22 (WHEREUPON, the record was read by
23 the reporter as requested.)

24 MR. OH: Same objection.

1 BY THE WITNESS:

2 A. No.

3 BY MR. KEENER:

4 Q. Do you have any opinion on what the
5 general theme or category of Games Workshop's
6 products would be?

7 MR. OH: Objection, vague and ambiguous,
8 compound.

9 BY THE WITNESS:

10 A. Fantasy world military.

11 BY MR. KEENER:

12 Q. So fantasy military world?

13 A. Yes.

14 Q. Are you expressing any opinion in your
15 report what elements are necessary in a fantasy
16 military world?

17 A. No.

18 Q. Are you an expert on fantasy military
19 worlds?

20 A. No.

21 Q. So you are not expressing any opinions
22 on what elements might commonly been used in
23 fantasy military worlds, are you?

24 A. No.

1 Q. Let's take an example. Turn to page
2 Tab 35 to 36, both of those two, in Exhibit 103.
3 The first page of 35, we see an Eldar Farseer and
4 the first page of 36 we also see an Eldar Farseer;
5 and if you flip through the other pages in those
6 tabs you also see an Eldar Jetbike, an Eldar Seer
7 Council and an Eldar Warlock. Do you see those?

8 A. Yes.

9 Q. Now, there is nothing anywhere in your
10 report expressing any opinion on any of those Eldar
11 products, correct?

12 MR. OH: Objection, vague and ambiguous.

13 BY THE WITNESS:

14 A. Correct.

15 BY MR. KEENER:

16 Q. Similarly, if you flip through Exhibit
17 103 on Tabs 37 to 43, the next few tabs, you will
18 see they all relate to various alien-type products
19 called Tyranids, and there is all sorts of
20 different ones in there. You can take a quick
21 look. The same question will be asked, is there
22 anywhere in your expert report that you are
23 expressing any opinion on any of those products?

24 MR. OH: Objection, vague and ambiguous.

1 MR. KEENER: What's vague?

2 MR. OH: I think you are talking so fast I
3 can't even hear the question.

4 MR. KEENER: Do you need it repeated?

5 MR. OH: Sure. That would be great. Can you
6 repeat it.

7 (WHEREUPON, the record was read by
8 the reporter as requested.)

9 MR. OH: I will let my objection stand.

10 MR. KEENER: And what is the basis of your
11 objection?

12 MR. OH: Again, I don't think it's clear.

13 MR. KEENER: What is unclear?

14 MR. OH: Again, you are referencing same
15 questions. You are not referring to questions.
16 I'm not sure at this point you are even referring
17 to the same questions you were referring to before.
18 I think again if you just simplify it and just
19 state the question without referencing to the past
20 question which may or may not be properly
21 referenced.

22 BY MR. KEENER:

23 Q. Mr. Brewster, do you understand the
24 question you have been asked?

1 A. Yeah, I believe I do.

2 Q. Let me know when you are ready to
3 answer.

4 A. Through Tab 40- --

5 Q. 43.

6 A. As referenced in my report, no.

7 Q. And going to Tab 46, the Games Workshop
8 products related to Tau, T-a-u, are you expressing
9 an opinion anywhere in your expert report that
10 anything on that product is similar to anything in
11 prior military history?

12 A. No.

13 Q. There is also Games Workshop products
14 that relate to jump packs or jet packs that
15 somebody might wear. Did you see that when you
16 reviewed the materials?

17 A. I can't say that I did.

18 Q. Assume for me that it's one of the
19 products at issue in this case, okay. You are not
20 expressing any opinion anywhere in your report
21 about whether or not the jump packs or jetpacks
22 designed by Games Workshop exist anywhere in prior
23 military history, are you?

24 MR. OH: Objection, lacks foundation, assumes

1 facts not in evidence.

2 BY THE WITNESS:

3 A. No.

4 BY MR. KEENER:

5 Q. So let's talk about the examples in your
6 report, okay? Turning to Page 4, the first example
7 you discussed is shoulder pads, is that right?

8 A. Yes.

9 Q. What is your expert opinion regarding
10 shoulder pads?

11 A. That the use of shoulder pads started in
12 the historical periods, military historical periods
13 postdating BC. They appeared and were used through
14 the development of armor, body armor through the
15 Middle Ages. They fell out of favor following the
16 Middle Ages and were reintroduced in the 20th
17 century with the reimplementation or reintroduction
18 of personal body armor, personal protective armor
19 for individual soldiers, and that the use of
20 shoulder pads is something that is now part of
21 military material culture and part of a uniforming
22 -- equipment, not uniforming, of current military
23 personnel.

24 Q. So in short, it is your expert opinion

1 BY THE WITNESS:

2 A. It doesn't specifically -- none of the
3 examples that I show specifically function the same
4 way, but they function in that they protect the
5 shoulder with the various pieces of material.

6 BY MR. KEENER:

7 Q. I agree they function to protect the
8 shoulder. My question is, did you find any designs
9 of shoulder pads in the prior military history that
10 is the same or a very similar design to the Games
11 Workshop shoulder pad?

12 MR. OH: Objection, compound.

13 BY THE WITNESS:

14 A. I believe that the function is very
15 similar.

16 BY MR. KEENER:

17 Q. I'm not asking about the function. I'm
18 asking about the design. Design and function are
19 different, right?

20 A. Yes.

21 Q. So my question is only about the design.
22 The design Games Workshop made for their shoulder
23 pad, did you find any design of that shoulder pad
24 that's the same or similar to it in the prior

1 military history?

2 MR. OH: Objection, compound.

3 BY THE WITNESS:

4 A. I can't say that they did, no.

5 BY MR. KEENER:

6 Q. You are not expressing any opinion that
7 the design of Games Workshop shoulder pad is the
8 same or similar to any prior existing shoulder pads
9 in military history?

10 A. That is very consistent with those
11 designs.

12 Q. That's not my question. You are not
13 expressing any expert opinion that the design of
14 Games Workshop shoulder pads is the same or very
15 similar to any design you found in prior military
16 history?

17 MR. OH: Objection, compound; objection,
18 misstating prior testimony.

19 BY THE WITNESS:

20 A. None of the illustrations appear to, no.

21 BY MR. KEENER:

22 Q. And beyond the illustrations, there is
23 nothing else you can point to as you are sitting
24 here?

1 A. No.

2 Break?

3 Q. You want to take a break now before the
4 next one?

5 A. Yes.

6 MR. KEENER: Great.

7 (WHEREUPON, a recess was had at
8 12:00 noon until 1:05 p.m.)

9 BY MR. KEENER:

10 Q. Welcome back, Mr. Brewster.

11 Did you discuss any of your testimony
12 with counsel during the lunch break?

13 A. No, I did not.

14 Q. I want to turn back to Tab 1 of
15 Plaintiff's Exhibit 103 that we've looked at a
16 couple times now picturing some space marine
17 models. Are you there?

18 A. Yes.

19 Q. And do you recall when I asked you
20 earlier to point out the various elements of that
21 first model on the far left you had commented that
22 you didn't think the shoulder pad was a separate
23 element at least in this figure. You would
24 consider it only in the context of the entire suit

1 of armor?

2 A. Yes.

3 Q. I want you to now turn to Tab 12 in
4 Exhibit 103 again.

5 A. Okay.

6 Q. And here you see the shoulder pad
7 itself, right?

8 A. Yes.

9 Q. And this shoulder pad also is called a
10 flesh tearer shoulder pad. Do you see that?

11 A. Yes.

12 Q. And it's got a particular design on the
13 shoulder pad?

14 A. Yes.

15 Q. And would you likewise agree that in
16 considering this shoulder pad you would have to
17 consider the element as a whole, the design with
18 the shoulder pad?

19 MR. OH: Objection, vague and ambiguous.

20 BY THE WITNESS:

21 A. I would consider the design an
22 application to the shoulder pad in my --

23 BY MR. KEENER:

24 Q. Okay. I'm trying to understand, the

1 prior one you said when looking at elements to see
2 if I could find them in the prior military history,
3 I would have to look at the shoulder pad as part of
4 the armor and the whole suit of armor and not
5 separately as just the shoulder pad?

6 A. As an assemblage, yes.

7 Q. Right. And here would it likewise be
8 the point of your analysis was to determine whether
9 this entire shoulder pad, including the design on
10 it, was in the prior art versus separating this out
11 into different pieces and looking for each
12 individual one in the prior art?

13 MR. OH: Objection, compound.

14 BY THE WITNESS:

15 A. In this illustration I would look at it
16 similarly to the view of the shield in the previous
17 Tab 1 where there are elements that I can see and
18 then I would consider them separately.

19 BY MR. KEENER:

20 Q. So you would break it apart?

21 A. Yes.

22 Q. And all of the shoulder pads we looked
23 at that you identified from prior history, did you
24 see any of those shoulder pads with any insignia or

1 design on them?

2 A. Not to my recollection, no.

3 Q. Anywhere in your expert report do you
4 point to anywhere in military history where there
5 are emblems or designs on a shoulder pad?

6 A. No.

7 Q. So you are not expressing any expert
8 opinion whether it was known or used in prior
9 military history to put emblems or designs on
10 shoulder pads?

11 MR. OH: Objection, compound.

12 BY THE WITNESS:

13 A. To the best of my knowledge, there is no
14 evidence in history of application of design
15 insignia on shoulder pads.

16 BY MR. KEENER:

17 Q. Let's turn back to your expert report,
18 Exhibit 107, and look at your second example, which
19 I believe is shield on Page 5. What's your expert
20 opinion expressed in your report as to shields?

21 A. That there is a -- the design and
22 function of a shield is a protective device that
23 started with early military history and formation
24 of armies and that those designs of shields

1 last question.

2 (WHEREUPON, the record was read by
3 the reporter as requested.)

4 BY MR. KEENER:

5 Q. I also see one other statement about
6 shields here. You state, "The application of
7 decorative elements to the face of shields is
8 common"?

9 A. Yes.

10 Q. And so is it fair to say you are
11 expressing an opinion that the concept of putting
12 an image on a shield is a common concept?

13 A. Yes.

14 Q. Unlike shoulder pads, where it is your
15 opinion that you didn't find any examples of any
16 images on shoulder pads?

17 A. Yes.

18 Q. And am I correct that you are not
19 expressing any opinion about whether it was common
20 for any particular images to appear on shields?

21 A. I did not reference particular images on
22 shields.

23 Q. So you are not expressing any opinion on
24 whether there are any particular images that are

1 common to put on shields?

2 A. Correct.

3 Q. Okay. Let's go to your third example,
4 which is warhammers. Did you reach an opinion
5 regarding warhammers?

6 A. Other than the fact that they existed
7 and they were commonly used as a common, typical
8 weapon in medieval warfare, that was my opinion.

9 Q. And that was the extent of your opinion?

10 A. Yes.

11 Q. Because I note at the bottom of the last
12 two examples in your report, you comment on the use
13 or what you -- strike that.

14 In the other two examples you comment on
15 your review of the Games Workshop products and how
16 it may or may not go with what you researched on
17 that topic, and I note that that is lacking from
18 your discussion on the warhammer. Do you see that?

19 A. Yes.

20 Q. Was that intentional?

21 A. I don't know that that was intentional.
22 I don't believe it was intentional. It may be I
23 just got tired when I was writing the report.

24 Q. So do you believe that the actual

1 warhammers used in the Games Workshop products are
2 in keeping with the types of warhammers that were
3 used in prior military history?

4 A. In design, yes.

5 Q. Even though you note that the design
6 chosen in Games Workshop-type products is more of
7 an artistic fantasy creation?

8 MR. OH: Objection, misstating the exhibit.

9 BY THE WITNESS:

10 A. The lines are still very similar. It's
11 the proportions which are exaggerated in the game
12 pieces or the game elements, but the basic shape is
13 very similar and in keeping with existing examples.

14 BY MR. KEENER:

15 Q. Okay, but your opinion on the other ones
16 was basically that product, if there was an actual
17 product, is in line with what you could have used
18 in prior military history, and that's different
19 from your opinion for warhammer because it would be
20 unusable, correct?

21 MR. OH: Objection, compound, vague and
22 ambiguous.

23 BY THE WITNESS:

24 A. Without recreating the hammers, I can't

1 say that they would be not functional.

2 BY MR. KEENER:

3 Q. But they would not be in line if it was
4 recreated with the hammers you saw in prior
5 military history?

6 A. That I observed, I would say that in
7 proportion they would not be in line.

8 Q. Did you find any prior versions of
9 warhammers in military history that were even close
10 to the same proportions of the Games Workshop
11 warhammer?

12 MR. OH: Objection, compound and vague and
13 ambiguous.

14 BY THE WITNESS:

15 A. No, I don't believe I did. I don't
16 recall seeing any that would have been
17 proportionally similar.

18 BY MR. KEENER:

19 Q. So the concept of an oversized, headed
20 warhammer is not something found in prior military
21 history?

22 MR. OH: Objection, vague and ambiguous.

23 BY THE WITNESS:

24 A. Not that I was able to determine.

1 BY MR. KEENER:

2 Q. And the way you comment that this
3 overlarge warhammer design is, quote, "more the
4 stuff of artistic fantasy creations," close quote,
5 you are not expressing any opinion in the field of
6 artistic fantasy creations, are you?

7 A. No. Just an observation.

8 Q. And you are not an expert at all on
9 artistic fantasy creations?

10 A. Only through observation.

11 Q. Right. So you are not expressing any
12 expert opinion in that area?

13 A. No.

14 Q. Let's go to the fourth example,
15 firearms, which is on Page 6 of your report. What
16 opinion did you come to with regard to firearms?

17 A. That the basic design elements that are
18 presented and exhibited in the Games Workshop
19 designs reflect components, the design elements
20 that are found in actual military weaponry or
21 components of various military weapons.

22 Q. So certain portions of certain Games
23 Workshop weapons you found in prior military
24 weapons?

1 prior military weapons with the secondary weapon
2 other than a grenade launcher?

3 A. No.

4 Q. Do any of the weapons you referred to in
5 your report show a firearm with a secondary weapon
6 other than a grenade launcher?

7 A. A secondary weapon being a projector of
8 another round versus a stabbing instrument?

9 Q. I will exclude the bayonet, yes.

10 A. Okay. No, not to my knowledge.

11 Q. Would you agree with me that it would
12 not be a common design element in military history
13 to have a secondary weapon that is something other
14 than a grenade launcher?

15 A. Correct, yes, I would agree.

16 Q. So if there is a design of a firearm
17 that has two different weapons on it, neither of
18 which is a grenade launcher, that would not be a
19 common design for military history?

20 A. As far as actual function, no.

21 Q. Do you know which one of these exhibits
22 has a grenade launcher pictured in a firearm?

23 A. I could find it. Would you like me to
24 locate it?

1 Q. If you could do it relatively quickly,
2 yes.

3 A. It would be in "Small Arms of the
4 World."

5 Q. Exhibit 113?

6 A. 113, Chapterhouse Page 17780,
7 publication Page 831, and the illustration at the
8 bottom of the page.

9 Q. And this design of a rifle with a
10 grenade launcher, are there two separate handles,
11 one for each weapon?

12 A. As far as for the firing device?

13 Q. Yes.

14 A. Yes. In that presentation I believe
15 there is. In other iterations of that weapon there
16 are.

17 Q. Are you finished with your answer?

18 A. Yes. I'm sorry.

19 Q. Do you identify any other examples of
20 rifles with grenade launchers that have a different
21 firing mechanism?

22 A. No.

23 Q. So the only one you rely on in your
24 report is this one?

1 A. Correct.

2 Q. Let's turn to your fifth example in your
3 report on Page 6 labeled "Decorative Elements."
4 Are you there?

5 A. Yes.

6 Q. Have you reached an opinion regarding
7 decorative elements?

8 A. That the application of various elements
9 of design are common within military heraldry and
10 symbol insignia design, and the combination of
11 different types of developments is a common
12 practice and has become more common in the 20th
13 century with the expansion of military forces and
14 insignias associated with military forces.

15 Q. Is that the extent of your opinion
16 regarding decorative elements?

17 A. Yes.

18 Q. So it's my understanding it's your
19 expert opinion that the use of decorative elements
20 in military history is common --

21 A. Yes.

22 Q. -- and the combination of decorative
23 elements is common?

24 A. Yes.

1 Q. Are you expressing any opinion on a very
2 specific decorative element being common?

3 A. Beyond the range of elements that I
4 cite, no.

5 Q. Which decorative elements do you cite?

6 A. Birds of prey, eagles, griffins, lions,
7 crowns and wreaths and hands and arrows, spears,
8 scales, serpents. They are all cited in the first
9 section, and it goes on to geometric forms. Do you
10 want me to continue?

11 Q. I want you to identify which design
12 elements you believe are common in military
13 history.

14 A. Arrows, yes. Arrows and chevrons,
15 skulls and cruciform designs, various forms of
16 crosses, the use of gears and Roman numerals.

17 Q. And is that the extent of your opinion
18 on what design elements are common in military
19 history?

20 A. That's the extent of those elements that
21 I encountered while viewing the Workshop binder.

22 Q. So those are the only design elements
23 you are commenting on in your expert report?

24 A. Correct.

1 Q. Are you expressing -- strike that.
2 One of the examples you identified was a
3 hand.

4 A. Yes.

5 Q. Would you agree that there are various
6 ways you could depict the hand in a design?

7 A. Certainly.

8 Q. Are you expressing anywhere in your
9 expert report that certain designs of a hand are
10 common in military history?

11 A. No.

12 Q. And would the same be true for all the
13 design elements you listed that while that concept
14 might be common, you are not commenting on whether
15 any particular design or expression of that concept
16 is common in military history?

17 A. Correct.

18 Q. I think you testified to this already,
19 so I apologize if I'm asking it again. It is your
20 belief that various applications of these designs
21 to certain things like shoulder pads is not common
22 in military history?

23 A. In my experience, no.

24 Q. Are you expressing any opinion anywhere

1 in your report on where it would be common to place
2 any decorative elements?

3 A. Do I define where they are placed? No.

4 Q. So you are not expressing any opinion
5 anywhere in your report that it is common to put a
6 decorative element in any particular place?

7 A. No.

8 Q. You also comment on the fact that it may
9 be common to combine various decorative elements in
10 military history, is that right?

11 A. Yes.

12 Q. Are you expressing any expert opinion on
13 whether any certain combinations are common in
14 military history?

15 A. No.

16 Q. And you agree there could be lots of
17 different combinations --

18 A. Yes.

19 Q. -- almost an infinite amount?

20 A. An infinite amount.

21 Q. And so you are not expressing any
22 opinion that any certain ones of that infinite
23 amount are common in military history?

24 A. No.

1 Q. And I think you referenced the Games
2 Workshop products as falling into a futuristic
3 military theme. Do you remember that?

4 A. I don't, but I would imagine I do.

5 Q. It is not on your report. I think we
6 talked about it earlier. I asked you what theme
7 would you place it in. I think you said futuristic
8 military theme. Do you recall that?

9 A. Sure.

10 Q. Let's start over. What theme would you
11 place Game Workshop products in?

12 A. Fantasy military world. It could be a
13 future military --

14 Q. Fantasy military world?

15 A. Yes.

16 Q. Are you expressing any opinion anywhere
17 in your report about what decorative elements would
18 be common in a fantasy military world?

19 A. No.

20 Q. Are you expressing any opinion of what
21 decorative elements would be widely used in a
22 fantasy military world?

23 A. No.

24 Q. If one were to be designing a fantasy

1 A. Yes.

2 Q. My question is, it seems you are
3 expanding that example to say "I found one picture
4 of this design of an arrow; therefore, I am
5 concluding it is commonly used in U.S. military
6 history." I want to understand how you are making
7 that leap.

8 A. The use of arrows in the United States
9 military insignia and heraldry is a common
10 practice.

11 Q. Agree. You've represented that.

12 A. Yes, and there are many variations of
13 arrows.

14 Q. Agreed. My question was, of all those
15 different variations of arrows, are you making any
16 expert opinion that any particular variations of an
17 arrow are commonly used in U.S. military history of
18 the 20th century?

19 A. I'm only representing that arrows are
20 commonly used and not specific -- there may be
21 specific designs that are redundant, but in general
22 the use of arrows is a common practice.

23 Q. You are not today expressing any expert
24 opinion that any particular designs of arrows are

1 commonly used in U.S. military history of the 20th
2 century?

3 A. No.

4 Q. And likewise, you are not expressing any
5 expert opinion in your report or today that any
6 particular designs of an arrow are commonly used in
7 any military history?

8 MR. OH: Objection, vague and ambiguous.

9 BY THE WITNESS:

10 A. When referencing to a specific design,
11 no.

12 BY MR. KEENER:

13 Q. Simply the use of arrows is common?

14 A. The use of arrows is common.

15 Do you want me to continue citing
16 examples?

17 Q. Just other examples of arrows you found?

18 A. Yes.

19 Q. No.

20 A. Okay.

21 Q. Because you are not expressing an
22 opinion that any of those particular examples is
23 commonly used.

24 A. Correct.

1 Q. Let's move on to chevrons. What is a
2 chevron?

3 A. A chevron is two lines that terminate in
4 a "V," typically with regard to an insignia, a
5 shoulder insignia maybe pointing down, have the
6 point downward. They could also have the point
7 upward. So it is two lines that terminate in a
8 point, a central point.

9 Q. Is the letter "V" a chevron?

10 A. The letter "V" can be depicted as a
11 chevron.

12 Q. Is it your expert opinion that the
13 letter "V" is a chevron?

14 A. The letter "V," to my knowledge, is not
15 a chevron.

16 Q. If someone were to draw the lines of a
17 "V" on something of military use, would you
18 consider it a chevron?

19 A. It is typically considered a chevron.

20 Q. Not mattering which way it faces?

21 A. Not mattering which way it faces.

22 Q. Has that always been your opinion?

23 A. Yes. In the course of my work, we
24 describe forms in records, and so any time that

1 form would appear in the context of developing a
2 record, we would describe that as a chevron, that
3 form as a chevron, unless it were specifically a
4 letter "V" or a Roman numeral V.

5 Q. Understood. So there are many different
6 orientations a chevron could make?

7 A. Yes.

8 Q. And would you agree there is also, if
9 you decided on a particular orientation, many
10 different ways you could still express that
11 chevron?

12 MR. OH: Objection, vague and ambiguous and
13 objection to the extent it is calling for a legal
14 opinion.

15 BY THE WITNESS:

16 A. Well, it would still have to be two
17 lines that terminate and create that chevron form
18 or "V" form.

19 BY MR. KEENER:

20 Q. Does it have to have any particular
21 degree to the angle?

22 A. Probably, yeah, there is a degree in
23 there, but off the top of my head, I don't know
24 what that degree is.

1 Q. You are not going to express any expert
2 opinion about whether a particular degree is common
3 or not?

4 A. No.

5 Q. Are you going to express any expert
6 opinion on whether any particular thicknesses of
7 the chevron are common or not?

8 A. The width of the lines?

9 Q. Yes.

10 A. No.

11 Q. Are you going to express any expert
12 opinion on the termination of lines and what they
13 are shaped like and whether that is common or not?

14 A. No.

15 Q. So your expert opinion is limited solely
16 to the use of a chevron but not any particular
17 design of a chevron?

18 MR. OH: Objection, misstates -- I will
19 rephrase. Objection, misstates past testimony and
20 misstates the exhibit that's the expert report.

21 BY THE WITNESS:

22 A. Correct.

23 BY MR. KEENER:

24 Q. So your opinion is similar to arrows in

1 that it may be common to use chevrons in 20th
2 century military history, but you are not
3 expressing any expert opinion on any particular
4 designs of a chevron being common in military
5 history?

6 A. Correct.

7 Q. You mentioned a few minutes ago chevrons
8 being a shoulder insignia.

9 MR. OH: Objection.

10 BY MR. KEENER:

11 Q. I refer you back to that testimony. Do
12 you remember that?

13 MR. OH: Objection, misstating his prior
14 testimony.

15 BY THE WITNESS:

16 A. Yes, I referred to chevrons being a
17 shoulder insignia.

18 BY MR. KEENER:

19 Q. I want to make it clear you did not find
20 any examples of chevrons being on any shoulder
21 pads, did you?

22 A. I'm sorry?

23 Q. You did not find any evidence of it
24 being common for a chevron to be on a shoulder pad,

1 did you?

2 A. Within the real world, no.

3 Q. You are not expressing any opinion on
4 whether in a future military universe it would be
5 common to use chevrons or arrows as design
6 elements, are you?

7 A. No.

8 Q. Let's go back to your report on Page 7,
9 the section on skulls.

10 THE WITNESS: Can we take the break?

11 MR. KEENER: Now would be perfect.

12 (WHEREUPON, a recess was had at
13 2:06 p.m. until 2:13 p.m.)

14 BY MR. KEENER:

15 Q. Are you ready to continue?

16 A. Yes.

17 Q. Did you discuss your testimony with
18 counsel during the break?

19 A. No.

20 Q. Let's turn to the next item in your
21 report on Page 7, the paragraph on skulls.

22 A. Yes.

23 Q. And have you reached an opinion
24 regarding skulls?

1 A. That skulls are common or become common
2 in 20th century military insignia designs and
3 emblems for military insignia starting with the
4 German Imperial Army in World War I, the German
5 armies of World War II and then for United States
6 Special Forces during the Vietnam conflict.

7 Q. Is that the extent of your opinion?

8 A. Yes.

9 Q. And would you agree that you could
10 depict a skull in many different ways?

11 A. Yes.

12 Q. A large number of ways?

13 A. As restrained or constrained by skull
14 shape.

15 Q. Of whatever creature's skull you are
16 trying to depict?

17 A. Of whatever creature's skull you are
18 trying to depict, correct.

19 Q. So there are actually a large number of
20 ways you could depict a skull?

21 A. Yes.

22 Q. Are you making any opinion on whether
23 any particular designs of a skull are commonly used
24 in military history?

1 A. No.

2 Q. So it is merely the fact of the use of a
3 skull you think is common?

4 A. Yes.

5 Q. In your review of U.S. -- strike that.

6 In your review of military history, what
7 creatures' skulls did you find being used in a
8 depiction of a skull?

9 A. Human skulls.

10 Q. Did you find any other creatures' skulls
11 being used?

12 A. Not in -- no, not in the examination I
13 did.

14 Q. So would you agree with me that it is
15 not common in military history to use a skull other
16 than a human skull?

17 MR. OH: Objection, vague and ambiguous.

18 BY THE WITNESS:

19 A. My examination focused on human skulls,
20 so I can't comment on any other skull use.

21 BY MR. KEENER:

22 Q. Based on your years of experience you
23 are unable to tell me whether or not it is common
24 to use a skull other than a human skull as a

1 decorative element within military history?

2 A. Within my experience, no, it not common
3 practice.

4 Q. The skulls that you point to as they are
5 human skulls, do you know whether any of them have
6 horns?

7 A. No, not to my knowledge.

8 Q. Would you agree that it is uncommon in
9 military history to depict a skull with horns?

10 MR. OH: Objection, vague and ambiguous.

11 BY THE WITNESS:

12 A. Yes.

13 BY MR. KEENER:

14 Q. How about the number of skulls on a
15 decoration? Do you have any opinion on whether it
16 is common to use more than one skull as decoration?

17 A. I would say it is uncommon to use more
18 than one skull in decoration.

19 Q. In fact, every skull you reference in
20 your report is a depiction of design utilizing only
21 one skull?

22 A. Yes, to the best of my knowledge.

23 Q. Let's go to the next, which is a
24 cruciform, which is on Page 7 of your report.

1 A. Yes.

2 Q. What's a cruciform?

3 A. It is an "X" pattern cross typically or
4 what's referred to as a St. Andrew's cross also
5 that terminates in this particular case with arrows
6 on the end, with arrows at the termination of each
7 of the four branches of "X" or cross.

8 Q. And what is your expert opinion
9 regarding cruciforms?

10 A. It was used specifically within the
11 context of political usage. There is some evidence
12 of usage in the United States military insignia,
13 heraldic insignia, and that there were earlier uses
14 of it, ancient uses of it in China, but the primary
15 focus is on the 20th century use of it.

16 And I should state that in my last line
17 there I note that it postdates World War II where
18 I'm citing that, and that's actually an incorrect
19 statement. It should be it ends with World War II,
20 to my historical knowledge. It shouldn't say
21 postdates.

22 Q. It should say predating?

23 A. It should be through World War II.

24 Q. So is it your opinion that the use of

1 cruciforms is no longer common in military history
2 after World War II?

3 A. Other than as it might appear in U.S.
4 heraldic insignia, and I would have to research
5 whether those units are still active that use that
6 insignia.

7 Q. Is your opinion regarding cruciforms
8 similar to other opinions we have gone through,
9 that the idea of a cruciform you believe is
10 commonly used but not any particular design of a
11 cruciform?

12 A. Correct, yes.

13 Q. So you are not expressing any opinion on
14 whether any particular designs of cruciforms are
15 common in military history?

16 A. No.

17 Q. Let's go to the next topic, which is
18 gear --

19 A. Yes.

20 Q. -- also on Page 7 of your report.
21 What is a gear?

22 A. A gear is a round device or a round form
23 that has teeth applied to the exterior of the form,
24 the circle, or teeth that may be flat on the top or

1 sharp, come to points.

2 Q. I think your opinion on this one might
3 be different than your opinion on the other
4 decorative elements we discussed. So do you agree
5 with me that the use of a gear is not common in
6 military history?

7 A. Not common in military history, I would
8 agree with that, yes.

9 Q. Your report does note that you did find
10 the use of a gear in a civilian context in a
11 particular period of time in Germany?

12 A. Yes, during World War II in relation to
13 civilian war activities the gear was common; German
14 civilian activities, the gear was common.

15 Q. So as it regards this nonmilitary use,
16 is it your expert opinion that a gear is a common
17 design elements in nonmilitary use or that you
18 found it once in a German context in one era?

19 MR. OH: Objection, compound.

20 BY THE WITNESS:

21 A. Within the context of German civil
22 activities during World War II, a gear was a common
23 element.

24

1 Q. Let's go to the next one here, which is
2 Roman numerals. Did you form an opinion regarding
3 Roman numerals?

4 A. That Roman numerals appear in insignia
5 in use by the United States military.

6 Q. And have you expressed any expert
7 opinion that they are commonly used in military
8 history anywhere other than 20th century U.S.
9 history?

10 A. No.

11 Q. And would you agree that Roman numerals
12 can be expressed in multiple ways?

13 A. Yes.

14 Q. Are you expressing any expert opinion on
15 whether any particular design of the Roman numeral
16 is common in military history?

17 A. No.

18 Q. Are you expressing any opinion on
19 whether it is common where to place Roman numerals
20 in military history?

21 A. No.

22 Q. Similar to the rest of the items we have
23 gone through, decorative elements, you are not
24 making any opinion on whether it is common to put

1 those in certain places in military history?

2 A. No.

3 Q. Let's go to your summation paragraph.

4 You state, "It is quite apparent that the range of
5 equipment, weaponry and decorative elements claimed
6 by Games Workshop in this litigation has long
7 existed in the real world of international
8 militaries." Do you see that?

9 A. Yes.

10 Q. You don't attempt to identify which
11 range of equipment or weaponry or decorative
12 elements that this opinion refers to, correct?

13 A. Correct.

14 Q. And in fact, you don't know out of this
15 binder of thousands of different pictures which
16 ones are actually in this litigation?

17 A. Other than the ones that I observed and
18 then made reference to in general within the text
19 of this work, yes.

20 Q. But if I point to a particular page, you
21 don't know whether that is actually at issue in
22 this litigation?

23 A. No.

24 Q. So how do you know what's claimed by

1 A. Yes.

2 Q. But you are not expressing any opinion
3 one way or the other whether any particular
4 decorative element is new or innovative?

5 A. No. Simply that the combination of
6 decorative elements is a common practice.

7 Q. And you are not expressing any opinion
8 whether any particular combination is new or
9 innovative?

10 A. No.

11 Q. The next sentence states, "And this is
12 not including an examination of graphic and design
13 materials presented over the four decades in the
14 world of fantasy gaming."

15 Do you see that?

16 A. Yes.

17 Q. You are not an expert in the world of
18 fantasy gaming, is that correct?

19 A. That is correct.

20 Q. So you are not expressing any opinion in
21 the world of fantasy gaming?

22 A. Correct.

23 Q. Your last sentence says, "In my opinion,
24 I find there are no remarkable or original

1 me, yes, it was an element that I could
2 incorporate.

3 Q. So with your wealth of experience, while
4 you first initially saw blood drops, they did not
5 occur to you as something that would be common in
6 military history?

7 A. They didn't initially strike me that
8 way, no.

9 Q. Now, is your opinion with blood drops
10 similar to your opinion on all these other design
11 elements that we discussed in the fact that your
12 comment is the extent of your opinion is the use of
13 blood drops but not any particular design of blood
14 drops?

15 MR. OH: Objection, vague and ambiguous and
16 compound.

17 BY THE WITNESS:

18 A. Other than the basic shape of a drop,
19 yes, the basic shape of the drop and its usage, but
20 not in its specific combination.

21 BY MR. KEENER:

22 Q. Okay. So maybe it is different, because
23 the other ones, you were not commenting on any
24 particular shape; just the use of a skull or the

Exhibit

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

GAMES WORKSHOP LIMITED,)
Plaintiff,)
vs.) Civil Action
CHAPTERHOUSE STUDIES LLC) No. 1:10-cv-08103
and JON PAULSON d/b/a)
PAULSON GAMES,)
Defendants.)

The deposition of GARY WOLFE, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before PAULINE M. VARGO, a Certified Shorthand Reporter within and for the State of Illinois, C.S.R. No. 84-1573, at Suite 2800, 321 North Clark Street, Chicago, Illinois, on June 28, 2012, at 8:56 a.m.

1 PRESENT:

2

3

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4

5

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12

13

ALSO PRESENT VIA TELEPHONE:

14

GILL STEVENSON, ESQ.
In-House Counsel, Games Workshop

15

16

REPORTED BY:

17

PAULINE M. VARGO
C.S.R. No. 84-1573.

18

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1 other portions of Games Workshop's products that
2 may be found in prior works?

3 A. That's correct.

4 Q. You are not expressing any opinion on
5 whether Games Workshop's products are entitled to a
6 copyright, are you?

7 A. No.

8 Q. You are not expressing any opinion on
9 whether any of Games Workshop's products in the
10 entire design is original, are you?

11 MR. OH: Objection, vague and ambiguous.

12 BY THE WITNESS:

13 A. Could you restate?

14 BY MR. KEENER:

15 Q. Sure. We talked about where the product
16 itself may not be found in the prior works, but you
17 may believe certain elements of that product are
18 found in the prior artworks. My question is, are
19 you expressing an opinion that for any Games
20 Workshop works the entire work, the entire product
21 was found in the prior works?

22 MR. OH: Objection, misstating prior
23 testimony, lacks foundation and assumes facts not
24 in evidence.

1 BY THE WITNESS:

2 A. Are you talking about specific figures,
3 not concepts?

4 BY MR. KEENER:

5 Q. I'm talking about any of the products
6 you analyzed. Did you say "I found this product in
7 the prior works" versus "I found elements of this
8 product in the prior works"?

9 MR. OH: Objection, compound.

10 BY MR. KEENER:

11 Q. Do you understand the distinction I am
12 trying to make?

13 A. I understand the distinction.

14 Q. Did any fit that first bucket, where you
15 found that product in its entirety in the prior
16 works?

17 A. No.

18 Q. So your report is limited to saying "I
19 found elements of the products in the prior works"?

20 MR. OH: Objection, vague and ambiguous.

21 BY THE WITNESS:

22 A. My report is not limited to that.

23 BY MR. KEENER:

24 Q. What else is there?

1 A. My report is not focusing on design
2 elements but on the construction of the universe in
3 which these design elements occur; and my argument
4 is that that universe freely draws on earlier
5 traditions, as I said in my report.

6 Q. So you are saying the history draws on
7 the prior works?

8 MR. OH: Objection, vague. Objection,
9 misstates prior testimony.

10 BY MR. KEENER:

11 Q. Is that your testimony? I'm trying to
12 figure it out.

13 A. The terminology, the history, elements
14 of the designs refer to prior works.

15 Q. So you found your report is limited to
16 finding portions of the history in prior works,
17 portions of the terminology in prior works, and
18 certain elements of products in prior works?

19 A. That is correct.

20 Q. But you did not find an entire product
21 in prior work --

22 A. No.

23 Q. -- or an entire set of terminology in
24 the prior work?

1 A. What do you mean by "an entire set of
2 terminology"?

3 Q. Games Workshop has all sorts of
4 terminology in its universe, correct?

5 A. Um-hmm.

6 Q. Yes?

7 A. Yes.

8 Q. You did not find that set of terminology
9 in the prior works versus finding individual
10 elements?

11 A. No.

12 Q. And you did not find the entire history
13 of Games Workshop in any prior works?

14 A. No.

15 Q. Are you expressing an opinion anywhere
16 in your report that any of the particular products
17 you looked at is similar to something in the prior
18 works?

19 MR. OH: Objection, vague and ambiguous.

20 BY THE WITNESS:

21 A. "Similar" is a pretty vague term.

22 BY MR. KEENER:

23 Q. I'm trying to figure out, are you
24 expressing -- if you are not because it's too

1 vague, that's fine. Are you expressing any opinion
2 in your expert report that any of the products that
3 you looked at is similar to something you found in
4 the prior works?

5 A. Similar, probably, yes.

6 Q. Do you identify in your report those
7 products that you believe are similar to prior
8 works?

9 A. By "prior works," are you referring to
10 other models, physical models?

11 Q. I'm referring to anything you are going
12 to say is similar to a Games Workshop product.

13 A. Certainly some of the terminology is
14 similar.

15 Q. I'm not focusing on terminology right
16 now. I'm looking at the products.

17 A. You are looking at the models
18 themselves?

19 Q. It could be models. It could be
20 drawings. It could be pictorial representations.
21 It could be from their video games. It could be
22 covers from their books. Any of the imagery
23 associated with a Games Workshop product, are you
24 expressing an opinion in your report that that

1 imagery, however it's conveyed, is similar to some
2 prior work you found?

3 A. Similar, yes.

4 Q. Do you identify in your report those
5 Games Workshop products that you are alleging are
6 similar to a prior work?

7 A. In terms of design, no.

8 Q. In terms of anything?

9 A. In terms of terminology, we have already
10 established that.

11 Q. Except for terminology?

12 A. Except for terminology.

13 Q. Do you identify anywhere in your report
14 the Games Workshop products that you think are
15 similar to something in prior works?

16 A. I do not.

17 Q. So there is no way for me to test that
18 conclusion?

19 A. No.

20 Q. Have you come to an opinion that you
21 express in your report on a general theme or
22 category you place Games Workshop products into?

23 A. Yes.

24 Q. And what would that be?

1 Q. So you would agree that there is a
2 common idea of a halberd as a weapon?

3 A. Yes.

4 Q. But there are many different ways to
5 design that halberd?

6 A. Yes.

7 Q. And the ones you point to in your report
8 are not the same design as the Games Workshop's
9 design?

10 A. No.

11 Q. So just as there might be a number of
12 ways to design a vampire, a designer could still
13 make a vampire that's unique, correct?

14 MR. OH: Objection, vague and ambiguous.

15 BY MR. KEENER:

16 Q. So is there anything I could find in
17 your report that leads me to believe that these
18 halberd designs from Games Workshop are not unique
19 designs?

20 A. No.

21 Q. So you are not making any opinion that
22 these are not unique designs?

23 A. No.

24 Q. Turning back to Page 5 of your report.

1 A. Page 5.

2 Q. Are you there?

3 A. I am.

4 Q. At the bottom of the first full
5 paragraph it states, "Rarely, if ever, has an
6 individual artist, publication or corporation
7 attempted to claim sole ownership of a broad
8 category of such images."

9 Do you see that?

10 A. Yes.

11 Q. Is that your opinion?

12 A. Yes.

13 Q. And do you believe that that statement
14 applies to Games Workshop?

15 A. If Games Workshop is claiming sole
16 ownership of a broad category of images involving
17 future war, then this statement would apply to
18 Games Workshop.

19 Q. What is your understanding of what Games
20 Workshop is claiming ownership to?

21 MR. OH: Objection. To the extent he can
22 answer the question without -- again, I am raising
23 the objection just in case you are trying to
24 inquire about communications with attorneys.

1 MR. OH: Objection, same set. I'm going to
2 add vague and ambiguous at this point.

3 BY THE WITNESS:

4 A. I don't know.

5 BY MR. KEENER:

6 Q. My question is, can you point to
7 anything in your report that would assist in that
8 determination?

9 MR. OH: Same objections.

10 BY THE WITNESS:

11 A. Yes.

12 BY MR. KEENER:

13 Q. Please identify the portions of your
14 report that would help someone identify whether a
15 weapon that's not a halberd is either a part of the
16 future war scenario iconography or original to
17 Games Workshop?

18 A. I would point to the second full
19 paragraph on Page 5, which refers to space marines.

20 Q. That's not a weapon.

21 A. No.

22 Q. Okay. My question was a weapon.

23 A. Oh, okay. Excuse me.

24 Q. Assume they are looking at a Games

1 Workshop weapon and they are tasked with trying to
2 figure out is this part of the common war scenario
3 iconography or something Games Workshop originally
4 developed. Can you point to anything in your
5 report that would assist them in that
6 determination?

7 A. Regarding a weapon, no.

8 Q. How about any figure other than a space
9 marine or a terminator?

10 A. A land raider.

11 Q. Vehicles are separate. Apart from
12 vehicles.

13 A. Oh, okay. All right.

14 Q. We are going to individuals, whether
15 it's humanoid or other. Okay. Is there anything
16 in your report that would help them determine
17 whether something is in the prior works or a Games
18 Workshop original if it's not a space marine or a
19 terminator?

20 A. I don't believe so.

21 Q. Looking at any vehicle other than a land
22 raider, is there anything in your report that would
23 help them determine if that vehicle is part of the
24 prior works or a Games Workshop original?

1 A. No.

2 Q. Besides those ones we just talked about,
3 is there some other product we are looking at from
4 Games Workshop, is there anything in your report
5 that would assist them in determining whether
6 that's part of the future war scenario iconography,
7 in prior works or something Games Workshop
8 original?

9 A. Probably not.

10 Q. So it's fair to say that your report can
11 only assist the jury in those specific Games
12 Workshop products you identify?

13 MR. OH: Objection, again calling for a legal
14 opinion.

15 BY THE WITNESS:

16 A. And I don't know the answer to that in
17 terms of what would assist a jury.

18 BY MR. KEENER:

19 Q. But sitting here, you can't identify any
20 other portions of your report that would assist a
21 jury in any other products other than the ones you
22 specifically identify?

23 MR. OH: Again, same objection.

24 BY THE WITNESS:

1 A. I don't know. I can't speculate on what
2 would or would not assist a jury.

3 BY MR. KEENER:

4 Q. I'm asking can you point to anything you
5 think would assist a jury in determining whether
6 something is from the prior works or a Games
7 Workshop original?

8 MR. OH: Objection, same.

9 BY THE WITNESS:

10 A. In terms of referring to specific images
11 in this folder, the only ones that are referred to
12 in my document would be relevant to your question.

13 BY MR. KEENER:

14 Q. That's not my question.

15 A. What is your question again?

16 Q. The question was, is there anything you
17 can point to in your report that would assist a
18 jury in determining whether something is part of
19 prior works or a Games Workshop original other than
20 the specific products you identified in your
21 report?

22 A. Probably not.

23 Q. Let's assume for the sake of the
24 question that you are right and that one of the

1 products that you looked at does have certain
2 elements that are part of the prior works; you
3 found it somewhere else.

4 What's your understanding of the impact
5 to the case?

6 MR. OH: Objection to the extent again that is
7 calling for communications with counsel. I'm
8 instructing him not to answer the question.

9 BY THE WITNESS:

10 A. I will not answer.

11 BY MR. KEENER:

12 Q. Do you have an understanding what the
13 impact would be?

14 MR. OH: Same instructions.

15 MR. KEENER: That's a yes-or-no question. I
16 didn't ask where he got it from.

17 BY MR. KEENER:

18 Q. Do you have any understanding of the
19 impact of your opinion you found something in the
20 prior works?

21 A. Impact on who or what?

22 Q. On the case.

23 MR. OH: Again, same instructions.

24 BY THE WITNESS:

1 A. No, I'm not going to answer that.

2 BY MR. KEENER:

3 Q. You are refusing to answer "yes" or "no"
4 whether or not you have an opinion?

5 A. Yes, I am refusing to answer.

6 Q. You are refusing to answer "yes" or "no"
7 whether or not you have any understanding of the
8 impact of your opinion?

9 A. That's correct.

10 MR. OH: Again, same instructions. And
11 counsel, you know it is outside the realm for you
12 to talk about communications with counsel.

13 MR. KEENER: I didn't ask. I asked his
14 understanding.

15 BY MR. KEENER:

16 Q. When going through the various Games
17 Workshop works, do you find a set of them related
18 to the Games Workshop race called Eldar?

19 A. I came across that term.

20 Q. And there were various personalities and
21 weapons and vehicles related to that?

22 A. Yes.

23 Q. Anywhere in your report do you express
24 any opinion on that race?

1 A. About the Eldar, no.

2 Q. How the Tau, T-a-u?

3 A. I did not mention that in the report.

4 Q. Let's go to Page 5 and talk about one
5 that you did mention. The first one, Tab 29, and
6 you refer to space marine terminator squad. Do you
7 see that?

8 A. Yes.

9 Q. Now, was it your opinion that the term
10 "space marine terminator squad," we have it in
11 quotes, is a common term?

12 A. "Space marine" is a common term.
13 "Terminator" is a common term. "Squad" is a common
14 term.

15 Q. That's not what I asked.

16 A. That combination of common terms?

17 Q. Yeah. What you put in quotes, do you
18 believe that phrase is a common term?

19 A. The phrase in quotations is not by
20 itself a common term.

21 Q. So that phrase is unique to Games
22 Workshop?

23 MR. OH: Objection, lack of foundation.

24 BY THE WITNESS:

1 compare that to?

2 A. Really, yes.

3 Q. And you said there was some similarity
4 you saw in the helmet?

5 A. The helmet, I was again referring to
6 No. 9. There is a figure inside this mechanized
7 thing, apparently, and no, it does not appear in
8 the photograph of Robot Jox.

9 Q. And the Robot Jox, the whole figure is
10 up in the helmet, correct, a whole person?

11 A. I believe so.

12 Q. And that's not the case in the space
13 marine, right? It has a head?

14 A. That's correct.

15 Q. So the heads are different?

16 A. Yes.

17 Q. And it's still your expert opinion that
18 because of the Robot Jox, the pictures of the space
19 marine you saw are not original?

20 MR. OH: Objection, misstates.

21 BY THE WITNESS:

22 A. I did not claim that they were not
23 original.

24 BY MR. KEENER:

1 Q. Is it your opinion that they are not
2 original?

3 A. I don't have an opinion.

4 Q. So you have not expressed an opinion
5 either way on whether the design of the image of a
6 space marine is original?

7 A. Is completely original, I will not
8 express an opinion on that.

9 Q. And this Robot Jox was one of the three
10 closest similarities you could find in the prior
11 works?

12 MR. OH: Objection, vague and ambiguous.

13 BY THE WITNESS:

14 A. I wouldn't say that.

15 BY MR. KEENER:

16 Q. You included the best evidence to
17 support your opinion in your report, right?

18 MR. OH: Objection, vague and ambiguous, calls
19 for a legal opinion.

20 BY THE WITNESS:

21 A. I don't know what best evidence means.

22 BY MR. KEENER:

23 Q. What you thought was the best evidence
24 to support your opinion that space marines are

1 in designing its Hive Tyrant?

2 A. No.

3 Q. In light of this picture of a Shrike,
4 would you express any opinion that the Hive Tyrant
5 is not original?

6 A. Original in terms of what?

7 Q. An original creation.

8 MR. OH: Objection to the extent it calls for
9 a legal opinion.

10 BY THE WITNESS:

11 A. Substantively original or entirely
12 original?

13 BY MR. KEENER:

14 Q. Substantively original.

15 A. Substantively but not entirely.

16 Q. It is mostly original?

17 A. Mostly original.

18 Q. Do you know if Games Workshop has
19 accused Chapterhouse of copying the Hive Tyrants?

20 A. No.

21 Q. Did you do anything to determine if they
22 did?

23 A. No.

24 Q. Do you know if you could look at the

1 Q. And the fact that an alien might be a
2 common iconography in this field doesn't really
3 assist with whether or not the particular alien
4 Games Workshop created existed in the prior work or
5 is an original creation, correct?

6 MR. OH: Objection.

7 BY THE WITNESS:

8 A. Correct.

9 BY MR. KEENER:

10 Q. And the same goes for all the rest of
11 the iconography you identified?

12 MR. OH: Objection, vague and ambiguous.

13 BY THE WITNESS:

14 A. You referred to the specific iconography
15 and then you said it refers to the rest of the
16 iconography. Which is it?

17 BY MR. KEENER:

18 Q. I referred to -- you had a list of I
19 believe it was eight or so.

20 A. Yes.

21 Q. And I asked a question with regard to
22 one, and I want to see if it applied to the other
23 seven as well.

24 A. Could you rephrase the question?

1 Q. The question was, just because an alien
2 is part of the iconography of science fiction does
3 not really have a bearing on whether a particular
4 alien designed by a Games Workshop designer is part
5 of the prior works or is an original creation of
6 that designer?

7 MR. OH: Objection, vague and ambiguous and
8 compound.

9 BY THE WITNESS:

10 A. Could you rephrase it again? I think I
11 know what you are getting at.

12 BY MR. KEENER:

13 Q. What's unclear?

14 A. Okay. Let's take the alien as an
15 example. There are, as you mentioned, many
16 hundreds of designs of aliens in science fiction,
17 art, literature or film.

18 "Freely borrowing" in my report means
19 that this is an exchange of ideas that you will see
20 frequently. It does not mean that any particular
21 Games Workshop designer looked at any particular
22 prior model and copied that model any more than any
23 current science fiction illustrator or film
24 designer will necessarily copy a specific earlier

1 one.

2 Q. And it would also mean, for example, a
3 specific alien such as a Hive Tyrant might be
4 substantively original --

5 MR. OH: Objection, vague and ambiguous.

6 BY MR. KEENER:

7 Q. -- using the terms you used earlier?

8 MR. OH: Same objections and misstates prior
9 testimony.

10 BY THE WITNESS:

11 A. I think it would be fair to say that
12 substantial design elements would be original.

13 BY MR. KEENER:

14 Q. I think you testified, using again
15 aliens as an example, that there are hundreds, if
16 not thousands, of aliens in the science fiction
17 universe?

18 A. Correct.

19 Q. Almost a limitless combination?

20 A. Not limitless.

21 Q. A very, very large number?

22 A. A large number.

23 Q. And by taking various parts and
24 combining them, it's a very, very large number of

1 the number of aliens out there?

2 A. Yes, I agree.

3 Q. So almost unlimited when you make
4 combinations?

5 A. Hypothetically, yes.

6 Q. Now, assuming this large number of
7 potential aliens for a designer to choose from, do
8 you see any originality in the designer's choice of
9 which elements to combine together?

10 MR. OH: Objection, vague and ambiguous.

11 BY THE WITNESS:

12 A. Yeah, I don't know which designer you
13 are talking about.

14 BY MR. KEENER:

15 Q. A hypothetical designer. I'm going to
16 design an alien. There is almost limitless
17 possibilities on the number of arms and face and
18 tail and size and so on, even though there are lots
19 of aliens out there.

20 Do you see originality in the designer's
21 choice of which features from the hundreds of
22 thousands of aliens it chooses to put together to
23 make its own alien?

24 A. Yes. There is always room for

1 originality in combining elements from prior
2 aliens.

3 Q. So even if every feature of a Games
4 Workshop product could be traced back to different
5 elements in the prior works, you would still agree
6 Games Workshop has expressed an original product by
7 combining those elements all together in the way
8 that it has?

9 MR. OH: Objection, lacks foundation and
10 object to the extent it is calling for a legal
11 opinion.

12 BY THE WITNESS:

13 A. You are asking if re-combining familiar
14 elements could create an original design?

15 BY MR. KEENER:

16 Q. Yes.

17 A. That's correct.

18 Q. And you are not expressing an opinion
19 either way on whether any of Games Workshop's
20 products are an original design because they are an
21 original creation of different elements?

22 A. I'm not expressing an opinion on any
23 individual figure, if that's what your question is.

24 Q. Or even in total?

1 A. In total it becomes a different
2 question.

3 Q. In total, now they have got what choice
4 of races to include, what variety to include; the
5 choices are even greater, right?

6 A. Correct.

7 Q. So the total combination of what they
8 chose to include in their universe again you would
9 agree would be an original decision of that
10 combination of elements even if every single one of
11 those elements was known somewhere else?

12 MR. OH: Objection, vague and ambiguous, and
13 could the court reporter repeat the question.

14 (WHEREUPON, the record was read by
15 the reporter as requested.)

16 MR. OH: Same objection, and I will add
17 objection to the extent it calls for a legal
18 opinion and assuming facts not in evidence.

19 BY THE WITNESS:

20 A. As I understood the question as it was
21 read back to me, the choice of combinations of
22 prior elements obviously can be an original choice
23 of combinations.

24

1 BY MR. KEENER:

2 Q. And you are not expressing an opinion
3 either way, on either an individual product or in
4 totality whether or not Games Workshop's
5 combination of elements is an original combination?

6 MR. OH: Same objections.

7 BY THE WITNESS:

8 A. I am not sure of the legal meaning of
9 original in this case. I would say that there is a
10 difference between unique and original.

11 BY MR. KEENER:

12 Q. We have been using "original" a lot
13 today.

14 A. You have been using "original."

15 Q. And you did too, substantively original
16 and so on. What's your understanding of original
17 in the way you have been using it today?

18 A. Well, an original design is one
19 substantively invented by the designer. I should
20 say, a unique design would be different from any
21 prior design in a similar area.

22 Q. So using your definition of original,
23 back to the same question. Are you making any
24 opinion on whether a single product for the entire

1 universe of Games Workshop is a combination of
2 elements even if every element is known is an
3 original combination?

4 A. No, I'm not making an opinion on that.

5 Q. I think, if I recall your testimony
6 correctly, you stated that the category you would
7 put Games Workshop's products into is the future
8 war story. Is that accurate?

9 A. That was referring to my understanding
10 of the scenario, not to all sources of possible
11 design elements.

12 Q. Would you similarly put Chapterhouse
13 products in that same category?

14 A. I believe so.

15 Q. Now, in the paragraph we were looking at
16 on Page 6 you have a list of traditions, is that
17 right?

18 A. Correct.

19 Q. And the first tradition is the
20 neo-medieval future?

21 A. Correct.

22 Q. And you cite to Gene Wolfe's "The Book
23 of the New Sun" and its various cover
24 illustrations, correct?

1 A. Correct.

2 Q. Did you include or attach any of the
3 cover illustrations?

4 A. No.

5 Q. Did you include or attach any of the
6 portions of the book that you thought supported
7 your opinion here?

8 A. No.

9 Q. Did you include any information that
10 would allow one to identify what portions of that
11 book you believe support your opinion?

12 A. Not specific portions.

13 Q. Would you agree that not all future war
14 stories include elements from the neo-medieval
15 future?

16 A. I would agree.

17 Q. So it would be a choice for a designer
18 in the future war story environment whether or not
19 to include features from the neo-medieval future?

20 MR. OH: Objection, lacks foundation, assumes
21 facts not in evidence.

22 BY THE WITNESS:

23 A. Correct.

24

1 BY MR. KEENER:

2 Q. It is not something that the genre of
3 the future war story would require to include?

4 MR. OH: Objection, vague and ambiguous.

5 BY THE WITNESS:

6 A. I don't believe I define the future war
7 story as a genre.

8 BY MR. KEENER:

9 Q. What would you define it as?

10 A. It is a common theme in science fiction.

11 Q. What genre would you put Games
12 Workshop's products into?

13 A. The products related, the products I
14 looked at, would belong in the broad genre of far
15 future science fiction.

16 Q. With that understanding, would it be
17 required to include aspects of the neo-medieval
18 future in the -- what did you call it -- far future
19 fiction?

20 A. Far future. My understanding is 40,000
21 years.

22 Q. Yes.

23 A. That's far future.

24 Q. So my question is, is it your opinion

Exhibit

7.

000001

01 IN THE UNITED STATES DISTRICT COURT
01 FOR THE NORTHERN DISTRICT OF ILLINOIS
02 EASTERN DIVISION
03
04 GAMES WORKSHOP LIMITED,)
04)
05 Plaintiff,)
05)
06 -vs-) No. 1:10-CV-08103
06)
07 CHAPTERHOUSE STUDIOS LLC and JON)
07 PAULSON d/b/a PAULSON GAMES,)
08)
08 Defendants.)

09
10 CONFIDENTIAL - ATTORNEYS' EYES ONLY
11 Videotaped deposition of JEREMY GOODWIN
12 individually and as a Rule (30)(b)(6) corporate designee
13 of GAMES WORKSHOP LIMITED, taken before TRACY L.
14 BLASZAK, CSR, CRR, and Notary Public, pursuant to the
15 Federal Rules of Civil Procedure for the United States
16 District Courts pertaining to the taking of depositions,
17 at Suite 3500, 35 West Wacker Drive, in the City of
18 Chicago, Cook County, Illinois at 9:16 a.m. on the 7th
19 day of March, A.D., 2012.
20
21
22
23
24
25 (2005-441521)

000002

01 There were present at the taking of this
02 deposition the following counsel:
03
04 FOLEY & LARDNER LLP by
05 MR. JONATHAN E. MOSKIN
06 90 Park Avenue
07 New York, New York 10016-1314
08 jmoskin@foley.com
09 (212) 682-7474
10 on behalf of the Plaintiff;

01
02 WINSTON & STRAWN LLP by
03 MR. THOMAS KEARNEY
04 101 California Street
05 San Francisco, California 94111-5802

17 have looked at all of those, so they must be relevant to

18 the case.

19 I don't get what you mean.

20 If I was to look for stuff to do with this
21 case, then I deliberately look at things to do with this
22 case. So, really, that answers the question, does it
23 not?

24 Q I'll reread the question.

25 A Okay.

000056

01 Q When you searched -- when you searched your
02 concepts or mockups of your sculptural works, did you
03 find any that were relevant to this case?

04 A Yes.

05 Q What were those?

06 A The same list as I gave you before.

07 The list is not going to change according to
08 what format of things I look at, whether it's a drawing
09 or a piece of sculpture.

10 Q Does Games Workshop enter into contracts with
11 freelance artists or sculptors?

12 A I don't know. I'm assuming that they do.

13 We don't have any freelance sculptors. Sorry,
14 I'm going to back up. We don't have any freelance
15 sculptors.

16 Q Has Games Workshop ever had freelance sculptors?

17 A May have done, but certainly not for as long as
18 I can remember.

19 Q Does Games Workshop have freelance artists?

20 A I think we have occasionally used them, yes.

21 Q What do you use them for?

22 A I would think that was obvious.

23 Q Can you elaborate?

24 A Illustration, painting, drawing. That's what an
25 artist does, isn't it? It seems an odd question to me.

000057

01 You employ artists. What do you employ them for?

02 Q Does Games Workshop employ freelance artists to
03 do the cover of its codexes?

04 A Yes, I think we've got a couple that have been
05 done. It's not general policy.

06 Q Does Games Workshop employ freelance artists to
07 do art for inclusion in its codexes?

08 A You'd have to show me some examples. Really,
09 you'd have to show me some examples for me to be able to
10 say yes or no.

11 I would say at least 95 to 99 percent of all of

12 our work is done in-house. And because I'm not in that
13 department, it's very difficult for me without seeing
14 the thing to be able to say to you that is or that
15 isn't.

16 Q Sorry, when you say at least 95 to 99 percent of
17 all of our work is done in-house, does that mean that
18 some of your work is done by freelancers?

19 A It might do. As I said, this is to do with the
20 art department. You're asking me questions not with my
21 own department.

22 Q Again, you understand that you're here to
23 testify about policies, procedures, or practices
24 concerning any natural person involved in the
25 development, design, and creation --

000058

01 A Sure.

02 Q -- of Games Workshop's works?

03 A Sure. Yes, that's the third time you've asked
04 me that now.

05 I'm trying to answer your questions as best as
06 I ask.

07 MR. MOSKIN: As is Alan Merrett so designated.

08 THE WITNESS: That's two names on that.

09 MR. MOSKIN: As noted, we have objected to the
10 format of the question, the scope of the inquiry.

11 MR. KEARNEY: Just a moment. Let's take a break.
12 Go off the record.

13 THE VIDEOGRAPHER: Ending tape No. 1 of the
14 deposition of Jeremy Goodwin. We're off the record at
15 10:59 a.m.

16 (a brief recess was taken)

17 THE VIDEOGRAPHER: Beginning tape No. 2 of the
18 deposition of Jeremy Goodwin. We're back on the record
19 at 11:16 a.m.

20 MR. MOSKIN: Let me just note on the record what I
21 stated to counsel off the record five minutes ago, that
22 because a lot of, just to speed this along, that to the
23 extent that we understood what was encompassed by
24 category 9, the area for which this witness was prepared
25 to testify concerned the practices or procedures

000059

01 concerning natural persons when they are involved in the
02 development of works, the design and creation of works.

03 MR. KEARNEY: Q Mr. Goodwin, I think you said that
04 Games Workshop -- Strike that.

05 You said you were not aware whether Games
06 Workshop entered into contracts with freelance artists