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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GEL BLASTER, INC.,) AU:22-CV-00828-LY
)
Plaintiff,)
)
v.) AUSTIN, TEXAS
)
HASBRO, INC.,)
)
Defendant.) JANUARY 24, 2023

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEE YEAKEL

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09:33:06 1 (Open court)

09:33:06 2 THE COURT: I can tell that I did not properly
09:33:08 3 analyze this case, because there's way too many people here for
09:33:12 4 a preliminary hearing such as the ones I have in front of me.
09:33:20 5 But we're here on the motions in Cause Number 22-CV-828,
09:33:24 6 *Gel Blaster, Incorporated v. Hasbro, Inc.*

09:33:28 7 Let me start with the plaintiff, and tell me who is
09:33:32 8 here, please.

09:33:33 9 MR. BROADAWAY: Yes, Your Honor. This is Andrew
09:33:35 10 Broadway of Cornell Smith on behalf of Plaintiff Gel Blaster.
09:33:38 11 I also bring with me my colleagues from the law firm of Kelley
09:33:42 12 Drye, Scott Doyle, Will Petit, Lana Rowenko, and Ivan Morales.

09:33:51 13 THE COURT: All right. Thank you. And for the
09:33:53 14 defendant?

09:34:00 15 MR. HOFFMAN: Good morning, Your Honor.
09:34:00 16 David Hoffman from Fish Richardson on behalf of Hasbro. I
09:34:05 17 bring with my colleagues, also from Fish, Mr. Ethan Rubin,
09:34:06 18 Mr. David Barkan, Mr. Jeff Schneidman, as well as
09:34:11 19 Mr. Adam Kleinman from Hasbro and Mr. Nicholas Tino from
09:34:16 20 Hasbro.

09:34:16 21 THE COURT: All right. Thank you-all.

09:34:18 22 I have initially in front of me here a couple of
09:34:27 23 motions to appear pro hac in this case from Mr. Schneidman and
09:34:31 24 Mr. Gold. They appear to be in order, so I'm signing these
09:34:36 25 orders at this point and the pot will be right on anybody who

09:34:41 1 gets up to speak.

09:34:45 2 Our order of business today will be we're going to go
09:34:48 3 straight through this morning until 11:30. We -- won't take a
09:34:53 4 break unless something comes up between now and then. And then
09:35:00 5 recess until 1:30 and then come back and finish up.

09:35:05 6 Again, I know that I didn't give you as much time as
09:35:10 7 you had requested, but I gave you more time than I could
09:35:16 8 conveniently give you. For those of you from out of town, you
09:35:23 9 could not have a case in a worse court docket-wise to try to
09:35:31 10 have anything done on a hurry up basis. We are underwater here
09:35:35 11 in Austin. We haven't had a new judicial position in Austin
09:35:38 12 since 1991. And unless you've been living in a cave somewhere,
09:35:46 13 you know that Austin's population and the Austin Division
09:35:49 14 population has more than doubled during that period.

09:35:52 15 Your Congress has no sympathy or even any interest in
09:35:57 16 the business of the courts. And neither party has any stomach
09:36:04 17 to create new judicial positions, so we are -- if you accept
09:36:08 18 the proposition, and I assure you you should, that the legal
09:36:14 19 activity in an area is pretty much in direct relation to the
09:36:17 20 population in an area, you put more people in an area, more
09:36:22 21 people sue one another, more crimes get committed, our dockets
09:36:28 22 have doubled in those 32 years from 1991, and we're still
09:36:35 23 dealing with them with the same number of people and the same
09:36:38 24 number of judges.

09:36:38 25 So you will not be counted down if you proceed

09:36:42 1 expeditiously and don't take the two and a half hours apiece
09:36:48 2 that I've allotted to you. So, with that having been said,
09:36:53 3 have you had any discussions about how you want to proceed or
09:36:58 4 the method we should follow, because I'm open-minded on it.

09:37:02 5 MR. BROADAWAY: Yes, Your Honor. I believe both
09:37:04 6 parties are in agreement that because the motion for
09:37:06 7 preliminary injunction is the one that we'll both be presenting
09:37:09 8 witnesses on, that we want to proceed straightaway with that
09:37:12 9 and then take up any other ancillary matters after the close of
09:37:18 10 that.

09:37:18 11 MR. HOFFMAN: We agree, Your Honor.

09:37:19 12 THE COURT: That's fine. So let me encourage
09:37:27 13 you-all, because some of you are not normally in this court and
09:37:30 14 are not immediately recognizable to me, each time any lawyer
09:37:33 15 gets up to present, state your name just so the court reporter
09:37:37 16 can have you down. Now, you don't have to do that after the
09:37:41 17 first time you start examining a witness; you can go back and
09:37:44 18 forth on that. But we want to make sure we have the record
09:37:47 19 straight on this.

09:37:48 20 So at this time the movant may proceed with evidence
09:37:56 21 on the request for preliminary injunction.

09:38:00 22 MR. BROADAWAY: Very good, Your Honor. We've
09:38:01 23 prepared -- Mr. Doyle has prepared a brief opening to frame the
09:38:04 24 issues. And I understand that --

09:38:06 25 MR. HOFFMAN: We do as well. We have a brief opening

09:38:08 1 as well.

09:38:09 2 THE COURT: All right. That will be fine.

09:38:10 3 And, Ms. Oakes, for clock purposes, the openings and
09:38:14 4 closings as well as the evidence will be on the clock for the
09:38:16 5 parties.

09:38:16 6 MR. BROADAWAY: Okay. Thank you, Your Honor.

09:38:18 7 THE COURT: Thank you.

09:38:20 8 MR. DOYLE: Good morning, Your Honor.

09:38:33 9 THE COURT: Good morning.

09:38:34 10 MR. DOYLE: My name is Scott Doyle, and I'm
09:38:40 11 representing the plaintiff in this action, Gel Blaster.

09:38:46 12 Your Honor, Gel Blaster is seeking extraordinary
09:38:48 13 relief, but it's commensurate with an extraordinary set of
09:38:52 14 facts. This story is as old as time. This is a story of a
09:38:59 15 behemoth company, while cloaking itself as a benevolent giant
09:39:04 16 wanting to help a startup, gave the trust of that startup and
09:39:09 17 friendship. That startup began right here in Austin, Texas,
09:39:14 18 Your Honor, named Gel Blaster.

09:39:17 19 After gaining that trust, Hasbro induced Gel Blaster
09:39:22 20 to share its most valuable trade secrets, literally anything
09:39:27 21 and everything involving Gel Blaster's business, to Hasbro.

09:39:33 22 Now, this was done under a mutual confidentiality
09:39:39 23 agreement. And so this was all confidential information, and
09:39:41 24 it literally contains Gel Blaster's top trade secrets.

09:39:48 25 When learning the size of the prize and how large

09:39:53 1 this Gel Blaster toy gun market actually is and how explosive
09:39:59 2 the growth is, they took the trade secrets from Gel Blaster,
09:40:05 3 incorporated them into their own gun called a Mythic, and
09:40:12 4 rushed to the market after kicking Gel Blaster to the side,
09:40:17 5 causing unquantifiable loss to its goodwill and reputation in
09:40:24 6 this extremely fast-growing market.

09:40:29 7 But they made a mistake. One of the key trade
09:40:32 8 secrets called the physical firing mechanism, which we'll go
09:40:36 9 through today, and both Mr. Colin Guinn and Vincent Cline will
09:40:41 10 testify about, was stolen. They put it in the Mythic so they
09:40:48 11 could get to market quickly. But this physical firing
09:40:51 12 mechanism has not even been used in a Gel Blaster gun yet. In
09:40:57 13 fact, it's not in the marketplace at all. And it's easy to see
09:41:02 14 as we go through these slides.

09:41:06 15 This is a depiction of the Gel Blaster Surge.
09:41:12 16 Gel Blaster was founded by Colin Guinn in Austin, launching its
09:41:18 17 first product at the end of 2020. Gel Blaster was disruptive.
09:41:26 18 They had a grassroots effort, drove around in a van from park
09:41:30 19 to park, store to store in Austin, trying to get headway and
09:41:36 20 get these stores to sell the Gel Blaster.

09:41:40 21 Well, in these two years they've become extremely
09:41:44 22 successful. They are now the market leader, and they sell
09:41:47 23 their products in some of the largest outlets in the
09:41:51 24 United States, including Walmart, Target, Costco, and online on
09:41:58 25 amazon.com and on its own website.

09:42:01 1 So what are those blasters? What do they do? Well,
09:42:05 2 they shoot water beads. These water beads can be shot with a
09:42:10 3 high velocity, but they're safe. They dissolve instantly on
09:42:16 4 impact and they can go multiple rounds per second. Gel
09:42:21 5 Blaster's products are a market improvement on paint ball or
09:42:24 6 foam dart products because the water-based ammunition
09:42:29 7 disintegrates on contact, it doesn't leave any stain, and
09:42:33 8 there's no cleanup.

09:42:34 9 The blaster we're looking at here is called the
09:42:38 10 Surge, but Gel Blaster also offers other toy guns, including
09:42:46 11 the Gel Blaster StarFire.

09:42:50 12 Well, Hasbro took notice. Hasbro, the maker of NERF,
09:42:55 13 one of the largest toy companies in the world, reached out to
09:43:00 14 Gel Blaster in April 2021. They wanted to license the NERF
09:43:07 15 brand to Gel Blaster and get into this business.

09:43:10 16 Almost immediately the parties began discussing a
09:43:14 17 joint go-to-market strategy with a jointly developed product
09:43:19 18 and moved very quickly to bring this product to market in the
09:43:23 19 spring of 2022. As part of that effort, Hasbro brought its
09:43:35 20 very senior executive, including now-president Eric Nyman and
09:43:39 21 its head of licensing, Casey Collins and they flew to Texas.
09:43:41 22 Over a two-day period over at the Factory at the Omni, they
09:43:46 23 reached principle deal terms. Hasbro would pay \$12 million to
09:43:51 24 Gel Blaster. In exchange, Hasbro would receive a 25 percent
09:43:56 25 equity stake in Gel Blaster.

09:44:00 1 After they reached the deal, they had a good ol'
09:44:06 2 time. They went on a boat, did wake skiing. They also here
09:44:11 3 had a lot of fun with the Gel Blasters in the backyard of a
09:44:15 4 Gel Blaster investor, at the invitation of Colin Guinn, the CEO
09:44:19 5 and founder of Gel Blaster.

09:44:21 6 You can see Mr. Collins on the left in his light blue
09:44:25 7 shirt, and you can see Mr. Nyman, who is now the president of
09:44:29 8 Hasbro, in the black shirt enjoying, having a great time. It
09:44:33 9 was a fabulous weekend, and it really cemented a tight, close
09:44:38 10 relationship between the parties.

09:44:39 11 In fact, two days later, Eric Listenberger, head of
09:44:43 12 product development for Hasbro, sent out this e-mail. He said,
09:44:48 13 This is shaping up to be a killer partnership. He agreed that
09:44:52 14 we are one team now working together to get this product to
09:44:57 15 market as quickly as possible.

09:45:00 16 Two of the Hasbro core members that were working with
09:45:04 17 Gel Blaster, Adam Kleinman, an executive, and Nick Tino, one of
09:45:10 18 the engineers, with Gel Blaster through this entire process,
09:45:16 19 they're here in the courtroom today, and Hasbro is putting them
09:45:20 20 as witnesses.

09:45:21 21 Now, one thing that Hasbro did -- I'm sorry -- that
09:45:29 22 Gel Blaster did, they had a meeting set up with Walmart to get
09:45:33 23 guns -- toy guns into the markets across the United States.
09:45:39 24 Gel Blaster was kind enough to bring Hasbro along and to go
09:45:43 25 through the outline and the strategy for bringing this jointly

09:45:48 1 developed product to market. Here's a rendering that was made
09:45:52 2 at the time, showing this Gel Blaster and Hasbro NERF Pro
09:45:59 3 Gel Blaster and this was provided to the Walmart buyer.

09:46:04 4 I think Hasbro really woke up during this meeting
09:46:08 5 because the -- the Walmart buyer said, You-all, I'm not sure
09:46:14 6 you, Hasbro, can make enough of these to fill our shelves. In
09:46:19 7 2023 she wanted over 2 1/2 million Blaster products to be put
09:46:25 8 on the Walmart shelves. Hasbro at this time finally got the
09:46:30 9 size of the prize.

09:46:36 10 At this point in time Hasbro started really asking
09:46:39 11 for anything and everything, and Gel Blaster was fine with that
09:46:46 12 because they now were a partnership working together, good
09:46:49 13 friends. But they still wanted a mutual confidentiality
09:46:55 14 agreement, and they got it. And this is a very strong
09:46:58 15 agreement, Your Honor.

09:46:59 16 This says essentially that any confidential
09:47:02 17 information that was provided by one party to a recipient
09:47:07 18 remain confidential. And any notes, evaluation, analysis, or
09:47:13 19 any derivative information would also be confidential.

09:47:16 20 Not only that, but it had very strong nonuse clauses.
09:47:23 21 It said the purpose of this material is for evaluation only for
09:47:26 22 a transaction. You may not use it in your own gun and compete
09:47:33 23 with the other company with the confidential information of the
09:47:36 24 other party.

09:47:37 25 Both parties understood this language, and this is

09:47:40 1 the strong language in the confidentiality agreement on the
09:47:43 2 screen now.

09:47:45 3 As a result of that, Hasbro requested Gel Blaster
09:47:53 4 comply by providing its deepest secrets on everything. CAD
09:47:58 5 drawings, computer-aided design, I liken these to the
09:48:02 6 architectural plans for a house. They're two inches thick that
09:48:08 7 show all the designs, all the measurements, how all the
09:48:13 8 components operate, the functional flow, everything you need to
09:48:19 9 build a Gel Blaster on your own.

09:48:20 10 And over and over there's e-mails asking for testing
09:48:26 11 results, Gel Blaster's market strategies. Gel Blaster
09:48:30 12 introduced Hasbro to its contacts in China who could actually
09:48:35 13 make Gel Blasters. Pricing information and clients. All of
09:48:40 14 this was provided by Gel Blaster under the terms of the
09:48:45 15 agreement.

09:48:49 16 Well, after providing all this information and having
09:48:53 17 this partnership, Hasbro came back and tried to re-trade the
09:48:59 18 deal. They provided much more onerous client terms,
09:49:05 19 essentially, half of what they had originally promised in the
09:49:08 20 term sheet. Gel Blaster could do nothing but say no.

09:49:13 21 But I will say this: Colin Guinn will testify today
09:49:20 22 about saying that he was amicable. The breakup was amicable.
09:49:25 23 Gel Blaster was fine competing with Hasbro in the marketplace
09:49:32 24 fairly. And that's unfortunately where this story starts to
09:49:39 25 take a dark and ominous turn.

09:49:43 1 And I guess, perhaps Gel Blaster should have had
09:49:47 2 notice of this when Eric Nyman, the president of Hasbro, sent a
09:49:53 3 nice little snippet over to Colin and said: Life's a journey.
09:50:00 4 Great pleasure meeting you. Hope we cross paths again. And
09:50:04 5 then, strangely enough, as you invent new things, think of
09:50:10 6 Hasbro. Very strange at the termination of a relationship.
09:50:16 7 Hasbro is essentially still asking for Gel Blaster's
09:50:20 8 inventions.

09:50:21 9 Now, I will say the mutual confidentiality agreement
09:50:24 10 remains in place until 2024. So those terms are still in
09:50:29 11 effect, Your Honor. Well, what happened?

09:50:33 12 Well, taking a step back, and it's not a subject yet
09:50:38 13 of this lawsuit, but there's patents. You might have seen that
09:50:43 14 Hasbro asserted two patents against Gel Blaster. Now, these
09:50:49 15 patents, it's interesting, because Hasbro during this tight
09:50:53 16 relationship with Gel Blaster said, You know what? We found
09:50:59 17 these two patents from some company called Spin Master. Could
09:51:03 18 we work with you-all and see if we can defend against these
09:51:07 19 patents before we enter this market?

09:51:10 20 Gel Blaster said sure. And they spent hours and
09:51:15 21 hours working with an attorneys, looking for noninfringement
09:51:21 22 positions, speaking with chemical experts, and also looking for
09:51:24 23 prior art to invalidate the patents. Hasbro was impressed.
09:51:33 24 They said, We agree with you. These patents are defensible,
09:51:37 25 and they're not that strong. In fact, Hasbro signed a common

09:51:40 1 interest agreement with Gel Blaster to come up with joint
09:51:46 2 defenses and work together and share privileged information to
09:51:51 3 defend against these patents.

09:51:55 4 So imagine the shock and betrayal when, all of a
09:52:00 5 sudden, they may wake up in July, well, Hasbro went behind the
09:52:06 6 chicken coop and secretly purchased these patents from Spin
09:52:12 7 Master. They took an exclusive license, and they sued
09:52:16 8 Gel Blaster on the very same patents that they're in a common
09:52:22 9 interest agreement, which still exists today because they never
09:52:24 10 got out of it, to defend against the patents. Peyton Healy the
09:52:31 11 COO of Gel Blaster, thought it was a joke. And I must say, in
09:52:36 12 my 30 years of practice, I have never heard of anything like
09:52:39 13 this. To add insult to injury, Your Honor, not only that, but
09:52:45 14 they introduced -- they got to the market quickly, and this is
09:52:49 15 actually on all the shelves and stuff in September of this
09:52:52 16 year, with something called the NERF Gelfire Mythic.

09:52:59 17 Well, when this came out, Gel Blaster went and
09:53:04 18 ordered a copy, four copies to be exact, looked at it, and
09:53:09 19 said, Wow. When they took it apart, they said this looks just
09:53:15 20 like ours. In fact, the physical firing mechanism we're going
09:53:19 21 to speak about in a minute, what is a Gel Blaster innovation,
09:53:22 22 which still hasn't made it to the market and nobody else has
09:53:26 23 ever done this before, is right there in the Mythic. And
09:53:31 24 that's how this baby works.

09:53:38 25 I will be brief in my discussion of what this is,

09:53:41 1 Your Honor. Looking at this, we actually have an animation on
09:53:49 2 the next slide, but I wanted to point out just a couple of
09:53:52 3 things, Your Honor. You might see a blue kind of tube-looking
09:53:56 4 device. That's called a plunger. And up above that plunger,
09:54:03 5 there's an arm protruding. It's blue. It comes straight up
09:54:08 6 from the plunger, and then it does a 90-degree turn to the rear
09:54:10 7 of the gun.

09:54:12 8 Now if you look over to the left, there's a green
09:54:15 9 box. That's a switch, an electronic switch. So what happens,
09:54:20 10 Your Honor, this controls the firing of the gun. So that if
09:54:25 11 you look down, there's a white trigger. Now, again, this is --
09:54:29 12 this is a CAD drawing rendering that Gel Blaster did of its
09:54:35 13 future gun that was provided to Hasbro.

09:54:39 14 So you'll see that when you pull the trigger, that
09:54:42 15 trigger will hit that orange switch. When it does that, it
09:54:46 16 sends a signal to a motor. The motor gets those gears turning.
09:54:51 17 And when those gears start turning, that plunger assembly,
09:54:57 18 which is the tube-looking structure, starts moving backwards.

09:55:00 19 Now, the arm that's above the plunger, we're calling
09:55:06 20 that the plunger-integrated switch contact arm, it will hit
09:55:09 21 that switch over to the left. When it hits that switch, a
09:55:15 22 signal is sent, the shot is recorded, and a signal is sent to
09:55:19 23 the motor to shut off. And a fire is -- and a gellet is
09:55:24 24 released from the gun. That's how it works. It's simple,
09:55:29 25 inexpensive, and works wonderfully. And it's very accurate.

09:55:38 1 The switch is blown up. That's called a PISCA
09:55:42 2 switch. When that little door gets hit by the arm, that's what
09:55:46 3 sends the signal. And on the other side is the
09:55:51 4 plunger-integrated switch contact arm. I'm going to show you
09:55:58 5 an animation here if I can figure out how to work this. There
09:56:01 6 it goes.

09:56:02 7 Trigger gets pulled, switch, gears rotate, plunger
09:56:08 8 goes backwards. You see the plunger-integrated arm hits it,
09:56:12 9 signal is sent, turn off the motor. That's it. It's a very
09:56:18 10 straightforward operation. It's economical, it's reliable, and
09:56:25 11 guess what? It's not on the market, and it wasn't on the
09:56:30 12 market until Mythic and Hasbro, on its Mythic, put it on the
09:56:35 13 market. It's a valuable trade secret, Your Honor.

09:56:40 14 In fact, on the basis of that.

09:56:43 15 THE COURT: Stop just a minute. Tell me what PISCA
09:56:46 16 stands for again.

09:56:49 17 MR. DOYLE: Plunger-integrated switch contact, and I
09:56:57 18 always remember it as the arm. Arm is the last -- it's an arm.
09:57:01 19 It protrudes from the top, goes to the left. It's an arm that
09:57:05 20 goes and strikes the switch.

09:57:06 21 THE COURT: No. I understand what it is. It's just,
09:57:09 22 in technical cases we get involved with the initialisms and the
09:57:12 23 acronyms way too much.

09:57:14 24 MR. DOYLE: And I apologize, Your Honor.

09:57:16 25 THE COURT: That's all right.

09:57:18 1 MR. DOYLE: When I first got out of college, I was an
09:57:20 2 employee engineer working for the government. And the acronyms
09:57:23 3 would drive me crazy.

09:57:25 4 But, anyway, Gel Blaster kept this secret. It was
09:57:30 5 maintained on Gel Blaster's secure servers. Access was limited
09:57:35 6 to four or five engineers and a couple of executives like Colin
09:57:40 7 Guinn. Passwords required. You weren't allowed to talk about
09:57:45 8 the PFM outside of that small group. It was treated as highly
09:57:52 9 confidential.

09:57:52 10 When it had to be shared with a contractor, for
09:57:55 11 example, the Chinese, who was actually going to make it, there
09:57:58 12 is a nondisclosure agreement. And, of course, the mutual
09:58:02 13 confidentiality agreement signed between Hasbro and
09:58:07 14 Gel Blaster.

09:58:09 15 Well, lo and behold, look at what we've got here. On
09:58:16 16 the left side is exactly the Gel Blaster drawings I mentioned
09:58:20 17 before. Gel Blaster has not put this on the market yet. They
09:58:24 18 wanted to keep it secret so they could put it in the Surge Pro,
09:58:28 19 which will be released in 2023. And, Your Honor, when you look
09:58:31 20 to the right, that's the Mythic. That is the Hasbro gun on the
09:58:38 21 right.

09:58:39 22 Now, let's just take a quick look at that, because
09:58:42 23 this isn't too difficult to understand. Now that thing we were
09:58:47 24 calling the PISCA, but I'm just going to call it "the arm,"
09:58:52 25 okay? There's a white arm that comes up from the plunger, and

09:58:59 1 you might see it extends to the left. There's a 90-degree
09:59:04 2 extension. That's indicated by the red circle. And if you
09:59:08 3 look over at Gel Blaster's plans, there's a red circle there.

09:59:14 4 Now, we talked about a switch, how that arm hits the
09:59:20 5 switch. And in Gel Blaster it's shown with the green circle.
09:59:26 6 Over here there's a green circle around an identical switch.
09:59:31 7 All they did was, instead of having the switch go north, south
09:59:36 8 or up down, they just put it on the side. But it works the
09:59:40 9 same way. When the -- when that plunger starts going to the
09:59:48 10 left, that arm hits the switch. When that switch is hit, a
09:59:52 11 signal is sent to the motor which turns off the motor,
09:59:56 12 indicating the end of the firing cycle.

09:59:58 13 This operation is identical to what I just described.
10:00:08 14 This is the Mythic's firing operation. User pulls trigger.
10:00:12 15 Down there at the bottom, the trigger contacts a switch, sends
10:00:15 16 a signal to the electronic board, which then sends a signal to
10:00:21 17 get those gears turning, that plunger moves backward, the arm,
10:00:25 18 or the PISCA, contacts the PISCA switch near the back of the
10:00:31 19 blaster, which signals the electronic board that a shot has
10:00:36 20 occurred, and the motor is shut off. This is identical to the
10:00:41 21 operation of Gel Blaster's trade secret physical firing
10:00:46 22 mechanism.

10:00:49 23 Now you're going to here today Hasbro has worked
10:00:58 24 mightily to go look all over to find something similar. And
10:01:01 25 they're going to say, you know, we've been doing this for a

10:01:05 1 long time and we looked back at 2014. And we had some NERF gun
10:01:10 2 called the NERF Stampede. And that NERF Stampede has
10:01:15 3 something, you know, that's really a plunger-based mechanism.
10:01:21 4 Well, you can just take a look at it, Your Honor. There's no
10:01:22 5 PISCA. There's no arm on top of -- there's no arm on top of
10:01:26 6 the plunger. There's no switch up there. This is a completely
10:01:31 7 different contraption with all these other components. Does it
10:01:36 8 work? Yeah, it works. But it's not the same. It's not the
10:01:40 9 trade secret.

10:01:41 10 Then I guess realizing that's not the case, because
10:01:45 11 they also needed to show that the gun could fire single mode,
10:01:51 12 one shot, or automatic, what they did -- and this is
10:01:57 13 incredible -- Hasbro said, Well, you know what? We actually
10:02:00 14 saw on the Internet somebody named "Darthskids," one of these
10:02:05 15 Internet folks that does stuff. And I guess this guy or
10:02:09 16 lady -- don't know who they are; they don't work for Hasbro --
10:02:13 17 they put something up on the Internet how they did some stuff
10:02:19 18 and rearranged some switches, and now they can do automatic
10:02:24 19 mode. That's not the same either. And I'm shocked that Hasbro
10:02:27 20 says they actually develop guns based on people that put stuff
10:02:29 21 up on the Internet.

10:02:30 22 Your Honor, Gel Blaster has been and is continuing to
10:02:36 23 be harmed. The parties agree to this. In the mutual
10:02:40 24 confidentiality agreement, they agree that money damages
10:02:44 25 wouldn't be sufficient to remedy this breach, and that either

10:02:47 1 party could seek injunctive relief. And that's what we're
10:02:51 2 doing here, Your Honor.

10:02:52 3 Hasbro and Gel Blasters are 100 percent direct
10:02:57 4 competitors in this market. There's not really that many
10:03:02 5 companies, maybe four or five, that have market share. You'll
10:03:05 6 hear from Colin Guinn today, who will tell you that Hasbro is
10:03:09 7 Gel Blaster's number one competitor.

10:03:16 8 Now, how does this hurt? Well, Your Honor, this
10:03:19 9 hurts like crazy because Gel Blaster became the market leader
10:03:25 10 based on -- based on its innovation and its reputation for
10:03:30 11 innovation and getting these guns to the market. In fact, it
10:03:33 12 founded the gel bead market in the United States.

10:03:40 13 As the Walmart buyer said, this market is growing by
10:03:45 14 leaps and bounds. It's impossible to quantify lost sales.
10:03:51 15 It's impossible to quantify damages. Gel Blaster needs this
10:04:01 16 injunction to stop the bleeding.

10:04:04 17 Now, this is a really busy slide. I hate it. But it
10:04:10 18 really depicts something. I have to admit I'm not really of
10:04:13 19 this cool Internet age. My daughter is. She's 15. She loves
10:04:19 20 a fellow named Mr. Beast. He's what's called an Internet
10:04:23 21 influencer. Well, Hasbro has paid him a bunch of money to do
10:04:29 22 these little videos with the Hasbro Mythic, and then the Mythic
10:04:33 23 is going to be updated, and they're going to have a gun called
10:04:38 24 Mr. Beast. Both of these include Gel Blaster's firing
10:04:42 25 mechanism.

10:04:43 1 Your Honor, if you look down right underneath the
10:04:45 2 picture of Mr. Beast, this is shocking to me and it floored me,
10:04:51 3 101,563,353 views. Over 101 views of this guy's ad. This
10:05:09 4 guy's an influencer. He's stealing, and Hasbro is stealing,
10:05:14 5 customers from Gel Blaster. One month before this number of
10:05:19 6 101 million views, it was 70 million. In one month it went up
10:05:24 7 by 30, also showing the direct competition.

10:05:28 8 Look over to the left. That's -- on the very
10:05:31 9 left-hand side, that's the Target signal, Target meaning the
10:05:34 10 store. If you look at the very top, you see the Gel Blaster.
10:05:38 11 That's Gel Blaster's Surge. Right underneath it is Gel
10:05:44 12 Blaster's StarFire. But guess what? Right underneath that is
10:05:48 13 the Hasbro Mythic containing all of our innovations that we
10:05:53 14 haven't even been able to put on the marketplace yet. There it
10:05:56 15 is.

10:05:57 16 And on the right-hand side you'll see accessories,
10:06:01 17 Your Honor. They haven't put up any argument about this. But
10:06:06 18 they're able to now reach in and slow our market with respect
10:06:10 19 to the gelllets, the tubs for holding gelllets, and everything
10:06:15 20 else.

10:06:19 21 Balance of harm, there's no doubt here. This Mythic
10:06:22 22 Gelfire product for Hasbro is a drop in a bucket. Hasbro, as
10:06:28 23 you know, has hundreds and hundreds of products. It's a huge
10:06:32 24 company, multi-billion dollar company, whereas Gel Blaster's
10:06:37 25 entire business, its reputation is gel-based blasters. That's

10:06:42 1 it. They don't sell anything else.

10:06:46 2 Finally, with the bond, Hasbro says, oh, we need a
10:06:51 3 huge bond. This is going to kill us, \$20 million. Well
10:06:57 4 Gel Blaster's net income for 2022 was only 2 1/2 million. It
10:07:04 5 can't afford a bond. And given the egregious nature of the
10:07:08 6 stealing that's gone on here, there should be no bond that
10:07:10 7 large.

10:07:11 8 Your Honor, I now submit my time. Thank you very
10:07:14 9 much. I hope that was clear and understandable. Thank you.

10:07:18 10 THE COURT: Thank you.

10:07:32 11 MR. HOFFMAN: Your Honor, I have a paper copy of my
10:07:35 12 slides. May I approach?

10:07:36 13 THE COURT: Yes. Good. I was going to ask for a
10:07:44 14 copy of the other slides also. Thank you.

10:08:02 15 You may proceed, Mr. Hoffman.

10:08:04 16 MR. HOFFMAN: Thank you, Your Honor. I appreciate
10:08:06 17 it. I'll just be relatively brief, Your Honor.

10:08:09 18 I just want to start off by saying that Hasbro
10:08:12 19 disagrees with almost everything that Gel Blaster just said
10:08:19 20 about the dynamics between the parties. The discussions
10:08:22 21 between Gel Blaster and Hasbro regarding an investment were
10:08:24 22 proceeding well until the parties reached one issue. And while
10:08:28 23 Gel Blaster asserts that it is an innovator here, as it
10:08:33 24 mentioned, during the diligence, multiple patents were
10:08:36 25 uncovered that were owned by a company called Spin Master.

10:08:38 1 Those patents cover the core aspects of Gel Blaster's products.
10:08:45 2 When Hasbro inquired of Gel Blaster, what its
10:08:48 3 response was or if it had a license to these patents,
10:08:51 4 Gel Blaster told Hasbro: Don't worry about it. Let's just go
10:08:55 5 to market.

10:08:57 6 Well, Hasbro -- you know, Hasbro does worry about it.
10:09:01 7 Hasbro worries about willfully infringing the patents of
10:09:06 8 others.. So the deal broke down. And as the parties agreed,
10:09:10 9 they went their separate ways, and Hasbro proceeded to develop
10:09:13 10 its own blaster.

10:09:16 11 Now, unlike Gel Blaster, before selling that blaster
10:09:20 12 to the market, Hasbro proceeded to get a license from Spin
10:09:25 13 Master. To be clear, we -- Hasbro doesn't own these patents.
10:09:30 14 It has a license to the patents. Unlike -- excuse me -- then,
10:09:35 15 in corporation with the patent owner, Hasbro filed suit in the
10:09:41 16 ITC against not just Gel Blaster, but ten different companies
10:09:48 17 that were infringing the patent, seven Chinese manufacturers
10:09:51 18 and three domestic companies.

10:09:55 19 The entire case -- this entire case, Your Honor, is a
10:09:59 20 response to Spin Master and Hasbro calling out Gel Blaster's
10:10:05 21 infringement. But that's not the issue that we're here to
10:10:09 22 worry about today. The issue today is whether or not
10:10:14 23 Gel Blaster has met the stringent requirements to receive the
10:10:17 24 most extraordinary relief possible: having its products removed
10:10:22 25 from store shelves before having a day in court before a jury.

10:10:27 1 And the answer to that is clearly no.

10:10:30 2 Gel Blaster's arguments are high on rhetoric, they're
10:10:34 3 high on accusations, but they don't focus and they don't make a
10:10:38 4 sufficient showing under any of the factors for establishing a
10:10:43 5 preliminary injunction.

10:10:50 6 Your Honor, I imagine you've heard of Hasbro. I
10:10:52 7 think most people have. But just for a little baseline, Hasbro
10:10:56 8 was founded in 1923. They're a global play and entertainment
10:11:02 9 company. They have many historic brands we've all heard of: My
10:11:05 10 Little Pony, Transformers, Play-Doh, Monopoly. They are a
10:11:10 11 leader in the active toy market under the NERF brand.

10:11:15 12 So what are you going to hear today, Your Honor?
10:11:16 13 Well, you're going to hear focus from Hasbro on the four
10:11:20 14 factors that matter in determination of whether or not there
10:11:23 15 should be a preliminary injunction, and the evidence is going
10:11:25 16 to show, and the briefing showed, that Gel Blaster can't
10:11:30 17 establish its case on any of those factors.

10:11:33 18 Next slide, please.

10:11:35 19 So, Your Honor, we're here today, I'm sure about the
10:11:40 20 purported trade secret. Originally in the complaint there was
10:11:44 21 nothing provided for the trade secret. In the motion for
10:11:47 22 preliminary injunction, it was identified as a PFN, which is a
10:11:53 23 physical switch. And then in the reply a new term, "PISCA,"
10:11:57 24 started showing up. To be clear, this PISCA term was nowhere
10:12:01 25 in the complaint, it's nowhere in the original motion. It only

10:12:05 1 shows up in the reply. But it doesn't make a difference
10:12:08 2 whether or not it's a PFM or it's a PISCA, Hasbro did not use
10:12:15 3 Gel Blaster's confidential information. There is no trade
10:12:19 4 secret here.

10:12:20 5 What they purport to be a trade secret has no value,
10:12:23 6 and they haven't quantified any damage at all to Gel Blaster.
10:12:28 7 The alleged PFM, the PISCA, they're not secret. They are
10:12:33 8 well-known features in the industry.

10:12:40 9 Next slide, please.

10:12:41 10 And as I said, there's no -- there's no irreparable
10:12:46 11 harm here. There's no way to meet the irreparable harm
10:12:48 12 standard. As Mr. Doyle admitted, they don't use this purported
10:12:53 13 secret in any of their products. They claim it's valuable, and
10:12:59 14 yet since the discussions 16 months ago, Gel Blaster has
10:13:02 15 released six different products. None of them have the
10:13:07 16 physical switch.

10:13:08 17 They told Hasbro during the diligence that timing was
10:13:12 18 a far better way than using a physical switch. They haven't
10:13:17 19 still identified a target date to release a product. And,
10:13:20 20 indeed, again, until the reply brief, they hadn't even
10:13:24 21 identified a name for a product. Their potential purported use
10:13:33 22 is just speculative.

10:13:39 23 And then if you look at this purported harm, their
10:13:42 24 actions, Your Honor, speak louder than words. Mr. Doyle
10:13:44 25 admitted that they got ahold of a -- of a Mythic early on, and

10:13:48 1 we'll find out in the evidence how early on. And he says they
10:13:52 2 opened it up immediately, and they say they saw the physical
10:13:55 3 switch in there.

10:13:56 4 All right. This product was released -- announced by
10:13:58 5 Hasbro in July. They waited three months from when they filed
10:14:06 6 their complaint before they approached the court for injunctive
10:14:09 7 relief. Mr. Doyle says that they saw it immediately, and yet
10:14:12 8 they did nothing for almost 13 weeks. And now they claim its
10:14:15 9 presence is irreparable.

10:14:17 10 But beyond that you'll here Gel Blaster has pled no
10:14:22 11 actual irreparable harm. Their main argument is that the
10:14:29 12 confidentiality agreement somehow waives the requirement for
10:14:31 13 irreparable harm. You'll see it simply doesn't, Your Honor.
10:14:34 14 What it does is it says they have a right to pursue injunctive
10:14:39 15 relief. Obviously, they do. We're all here. No one disputes
10:14:42 16 that. It doesn't relieve them of the need for them to show
10:14:46 17 irreparable harm, and they don't.

10:14:49 18 Beyond that, beyond this reliance on the -- on the
10:14:52 19 contract, the only harm they claim is that Hasbro and
10:15:02 20 Gel Blaster will be competing against one another during the
10:15:04 21 holiday season. They focus on the holidays in the brief. Even
10:15:08 22 putting aside that we're now in January, they filed their
10:15:10 23 motion November 14th under the default deadlines. They weren't
10:15:14 24 going to get any relief until after Black Friday -- I mean,
10:15:17 25 even have a hearing until after Black Friday.

10:15:21 1 And as to Hasbro being a competitor, there's no basis
10:15:24 2 in the law to say that merely being a competitor is irreparable
10:15:30 3 harm. And, indeed, while Gel Blaster asserts that Hasbro is, I
10:15:35 4 guess they say, their number one competitor, Hasbro is one of
10:15:38 5 many competitors in this space. There is no evidence on the
10:15:44 6 record, none, that Gel Blaster has suffered any particular
10:15:48 7 harm, even a single lost sale.

10:15:52 8 Mr. Doyle says that it's incalculable. Well, they
10:15:56 9 haven't tried to calculate it all. You're not going to hear
10:15:59 10 evidence of any calculated -- any losses for sales. And those
10:16:04 11 aren't even irreparable. They don't identify a single lost
10:16:07 12 sale, and you'll hear that.

10:16:08 13 As to the balance of the harms factor, it's not even
10:16:11 14 close here, Your Honor. Gel Blaster's only argument is that
10:16:15 15 they're a small company and Hasbro is a big company.

10:16:19 16 But that's far from the end of this story. As you
10:16:22 17 heard them say, Your Honor, Gel Blaster sells more gel ball
10:16:27 18 blasters than Hasbro does. In this space they are the bigger
10:16:30 19 company. Gel Blaster has identified in their briefing no
10:16:35 20 specific financial harm that they've -- well, that they'll
10:16:42 21 suffer in the market, any lost sales in the market.

10:16:46 22 Hasbro, on the other hand, has presented and will
10:16:49 23 present quantifiable and considerable evidence that, if the
10:16:54 24 Mythic is -- about what happens if the Mythic is enjoined.
10:16:58 25 You'll hear about losses in prepurchased parts and inventory;

10:17:03 1 that even if Hasbro ultimately wins, will not be resalable.
10:17:06 2 You'll hear about losses in prepurchased advertising. You'll
10:17:10 3 hear about losses of goodwill for an entire company if major
10:17:16 4 retailers are forced to pull products off the shelves. You'll
10:17:19 5 hear about irreparable harm to reputation of the entire Hasbro
10:17:23 6 line if products are pulled off the shelves.

10:17:26 7 The economy is trending down again, and Gel Blaster
10:17:31 8 seeks to inflict tremendous financial loss on Hasbro. All of
10:17:34 9 this is balanced against the generic assertion by Gel Blaster
10:17:39 10 that they're a small company. And, as the Court will see, this
10:17:43 11 factor is just not even a close call.

10:17:46 12 With regard to the public interest, Your Honor,
10:17:49 13 again, not a close call. The factor tilts towards Hasbro.
10:17:53 14 Removing Hasbro from the market would harm third-party
10:17:56 15 retailers, would harm consumers. Planograms, which you'll hear
10:18:00 16 about, which are the way store shelves are set up to sell
10:18:05 17 products. Those planograms are set months in advance.
10:18:09 18 Purchasing decisions have already been made for these
10:18:11 19 retailers. If products are pulled off the shelves, there will
10:18:15 20 be potentially gaps in the shelves, it will hurt -- it will
10:18:18 21 hurt the retail market, it will hurt the consumer.

10:18:21 22 So across the board, Your Honor, you're going to
10:18:24 23 hear, and you can see from the briefing, that every factor here
10:18:28 24 tilts toward denying this motion. There is no likelihood of
10:18:32 25 success on the merits you'll hear. There's no secret here.

10:18:36 1 There's no trade secret. There's no confidential information.
10:18:39 2 Even if there was, it's not being used by Gel Blaster -- I
10:18:42 3 mean, by Hasbro. There's irreparable harm to Gel Blaster.
10:18:46 4 They can't show anything. Balance of the harms, you're going
10:18:50 5 to see it tilts towards Hasbro and the public interest.

10:18:54 6 Thank you, Your Honor.

10:18:54 7 THE COURT: Thank you.

10:19:01 8 Is Gel Blaster ready to present evidence?

10:19:04 9 MR. BROADAWAY: Yes, Your Honor.

10:19:04 10 THE COURT: All right. You may proceed.

10:19:18 11 MR. PETIT: Your Honor. My name is Will Petit for
10:19:21 12 Gel Blaster. We're going to call Colin Guinn to the stand.

10:19:24 13 While we're doing that, Mr. Guinn is coming up, I've
10:19:25 14 got a little stopwatch here. I hope the Court doesn't mind it
10:19:28 15 may make a small beep.

10:19:31 16 THE COURT: It's not going to bother me. You'll be
10:20:08 17 lucky at my age if I hear it.

10:20:08 18 (Witness sworn)

10:20:08 19 THE COURT: You may proceed.

10:20:10 20 **COLIN GUINN,**

10:20:10 21 having been first duly sworn, testified as follows:

10:20:10 22 **DIRECT EXAMINATION**

10:20:10 23 **BY MR. PETIT:**

10:20:10 24 Q. Mr. Guinn, will you please introduce yourself to the
10:20:13 25 Court.

10:20:13 1 A. Yes, sir. My name is Colin Guinn.

10:20:16 2 Q. Mr. Guinn, do you hold a position at Gel Blaster?

10:20:20 3 A. Yes, I do. CEO.

10:20:22 4 Q. And can you generally describe your responsibilities as
10:20:25 5 CEO?

10:20:26 6 A. I oversee all operations of the company but with a
10:20:29 7 specific focus on innovation, product, and the sales and
10:20:33 8 marketing efforts.

10:20:33 9 Q. Are there any aspects of the business with which you are
10:20:37 10 not involved?

10:20:38 11 A. There's certain aspects that I'm much more involved in,
10:20:42 12 but I do oversee all aspects of the business.

10:20:45 13 Q. Okay. What does Gel Blaster do, briefly?

10:20:48 14 A. Well, we try to get kids off their video games and outside
10:20:54 15 in the yard playing. That's our mission. And so we developed
10:20:58 16 a fun, safe eco-friendly way to go out in the yard and blast
10:21:04 17 with your -- with your parents or your siblings. And so we
10:21:09 18 create these toy blasters that are pretty innovative and
10:21:15 19 battery powered and fully automatic and shoots a really
10:21:19 20 low-cost ammo. And the company has been growing really well
10:21:23 21 over the last couple of years.

10:21:24 22 Q. So those blasters you're talking about, are they referred
10:21:27 23 to as the Gel Blaster Surge and StarFire?

10:21:30 24 A. Yes, they are.

10:21:31 25 Q. Very briefly, what distinguishes the Surge and the

10:21:32 1 StarFire from other blasters in the market, for example, foam
10:21:36 2 darts or water guns or things like that?

10:21:39 3 A. Sure. So we basically wanted to create a blaster that was
10:21:42 4 really easy and fun to use, that was safe, that was still
10:21:46 5 exciting. So what differentiates them is that we shoot this
10:21:51 6 hydrogel, kind of water-based ammo, that's low cost and, you
10:21:55 7 know, eco friendly. And, you know, we were the first company
10:21:58 8 to kind of bring that into the United States market.

10:22:03 9 Q. And does Gel Blaster sell any products other than these
10:22:06 10 gel-based blasters and their accessories?

10:22:09 11 A. No, we don't.

10:22:10 12 Q. And when I refer to accessories, I may refer to them as
10:22:13 13 tag-along products. Do you understand what I'll mean?

10:22:16 14 A. Yes, sir.

10:22:16 15 Q. What kind of tag-along products does Gel Blaster sell?

10:22:20 16 A. Well, obviously, replacement ammo or what we call gellets,
10:22:24 17 which is kind of like a gel-based pellet or a gellet. We have
10:22:27 18 different colors. And as you'll see on the Surge, there's
10:22:30 19 these fins and the barrel tip on the front that are green in
10:22:34 20 the box, but you can switch them with blue or pink or yellow or
10:22:37 21 red. The goal there is to have different teams and have it be
10:22:42 22 very colorful and family friendly. So we have different
10:22:45 23 colored packs that you can use.

10:22:47 24 We also created what we call a gellet depot, which is
10:22:51 25 a bucket that allows you to hydrate the ammo, to strain out the

10:22:55 1 excess water, to speed load into your hopper. So kind of just
10:22:59 2 accessories that make the whole experience easier.

10:23:02 3 Q. Okay. How would you describe Gel Blaster's reputation in
10:23:05 4 the market?

10:23:06 5 A. Well, first and foremost, I would say that we're the
10:23:09 6 company that has a reputation for being really family friendly.
10:23:13 7 You know, the -- the initial competitors that came out on the
10:23:16 8 market are BB gun companies like Daisy, where they sell a
10:23:20 9 little bit more of realistic-looking, you know, rifle,
10:23:25 10 gun-looking product. It's very important to us that ours look
10:23:28 11 very, you know, toy-like, "toyetic," almost like something you
10:23:34 12 would see in *Star Wars*.

10:23:36 13 So we're known as a family-friendly blaster, but
10:23:38 14 we're also known as the most innovative company in the space,
10:23:42 15 because I believe we're actually the only company in this kind
10:23:44 16 of gel ball category that is actually engineering our own
10:23:49 17 product. We're not going to a factory and saying, hey, we'll
10:23:51 18 take one of those. Put this -- put this name on it. You know,
10:23:55 19 we have -- we take our engineering very, very seriously. We're
10:23:58 20 actually born from an engineering company that started by
10:24:01 21 building drones and robots, and we're using that engineering
10:24:05 22 know-how to create a better experience for our product.

10:24:08 23 Q. Okay. And you were jumping ahead to my next question, but
10:24:12 24 I really do want you to explain to the Court a little bit about
10:24:16 25 how Gel Blaster earned that reputation for innovation.

10:24:19 1 A. Sure. Well, I think primarily we just really, really
10:24:23 2 focused on the user experience of the product. And so there
10:24:26 3 was a lot of -- you know, some of the competing products have
10:24:31 4 these external batteries and these cables you have to use and
10:24:35 5 take the batteries out. And, you know, we wanted everything to
10:24:38 6 be built in and have a smoother user experience.

10:24:40 7 So we have a build-in lithium-ion battery. We've got
10:24:44 8 a USB-C charging port. We actually run power out to the barrel
10:24:48 9 tip so we can have different flashlights and laser designators
10:24:54 10 that draw power from the blaster. We were the first hand
10:24:57 11 blaster to figure out a way to do semiautomatic firing mode as
10:25:01 12 well as fully automatic.

10:25:03 13 So there's several different ways that we also
10:25:05 14 created a way of doing glow-in-the-dark, where we have
10:25:10 15 phosphorous-infused ammo. And then we've got these UV LED
10:25:15 16 lights that add UV light into the phosphorous ammo, so you have
10:25:18 17 this incredible nighttime experience, where you're seeing 10
10:25:22 18 shots per second of those brightly glowing balls. Kids
10:25:25 19 absolutely love it.

10:25:28 20 Q. You mention Daisy as a competitor in the marketplace, and
10:25:31 21 I want to kind of differentiate between pre and post Hasbro
10:25:35 22 entering the market. So before Hasbro, who were Gel Blaster's
10:25:39 23 primary competitors?

10:25:40 24 A. I guess I would say Daisy with their brand SplatRBall.
10:25:45 25 But we were very, very different, and I think they were going

10:25:45 1 for a little bit of an older audience. You know, we were kind
10:25:48 2 of more the family-friendly one. So, you know, we are
10:25:50 3 competitors, technically, but Hasbro's directly competing for
10:25:54 4 our customer for sure.

10:25:55 5 Q. And so now that Hasbro has entered the market with the
10:25:59 6 Mythic, would you characterize Hasbro as Gel Blaster's primary
10:26:03 7 competitor?

10:26:04 8 A. Oh, of course, yeah. There's no question.

10:26:06 9 Q. Now, does Gel Blaster continue to work on improving the
10:26:09 10 design and function of its products?

10:26:11 11 A. Absolutely. It's probably the area that we spend the most
10:26:15 12 amount of our money.

10:26:16 13 Q. Okay. And there are new iterations of Gel Blaster's
10:26:19 14 products that are coming to the market, even this year?

10:26:20 15 A. Yes.

10:26:21 16 Q. And what are those?

10:26:22 17 A. So what we're ultimately trying to do is kind of marry the
10:26:27 18 best of video games and paintball. So, you know, I know that
10:26:31 19 for my kids, to get them off of their devices and outside
10:26:34 20 playing, you know, shooting each other with these gel balls is
10:26:38 21 cool. But if you could have a video game-like experience,
10:26:41 22 where there's a digital referee, you can do hit detection
10:26:44 23 wearing these vests, you can do hit attribution with these
10:26:48 24 smart blasters, and you can kind of create this digital referee
10:26:53 25 so there's no he said, she said about did I hit them or did

10:26:55 1 they hit me, it's all just digitally scored.

10:26:57 2 We want that -- we want that application to be able
10:27:00 3 to control the blaster and to be able to control whether or not
10:27:04 4 it can fire. So, if you've been hit, your blaster just stops
10:27:07 5 working until you go back to your space and you respawn with a
10:27:10 6 new life or something like that. So that's the products that
10:27:12 7 we're working on that are coming out this year.

10:27:14 8 Q. And we're going to talk about this in a little bit more
10:27:16 9 detail later. But when we're talking about the physical firing
10:27:20 10 mechanism, is that mechanism important to those iterations that
10:27:23 11 you're talking about.

10:27:25 12 A. It's paramount to that product line. Yes, sir.

10:27:27 13 Q. Okay. I'm going to switch gears here and move to the
10:27:30 14 relationship with Hasbro. When did Hasbro first approach
10:27:34 15 Gel Blaster about a partnership?

10:27:35 16 A. It was in April of 2021.

10:27:38 17 Q. Okay. So not that long ago?

10:27:40 18 A. No, sir.

10:27:40 19 Q. Okay. Did those discussions move quickly?

10:27:43 20 A. Well, initially they didn't move that fast because they
10:27:46 21 had originally reached out to us about licensing us their NERF
10:27:51 22 name, for us to put their name on our blaster and pay them a
10:27:55 23 license fee for their name. And those discussions were -- you
10:27:59 24 know, kind of went on for a couple of months, pretty slowly.

10:28:03 25 And then it was in July that they kind of flipped

10:28:06 1 that on its head and said, hey, actually, maybe we should go
10:28:09 2 ahead and license the Gel Blaster name and we'll do the
10:28:12 3 manufacturing, we'll do the selling, we'll do the logistics,
10:28:16 4 and you guys can keep focusing on innovating. You've got these
10:28:21 5 teams of engineers that have built drones and flying cars. You
10:28:25 6 guys do all the engineering and innovation, and we'll make the
10:28:28 7 product and sell it and do all the kind of, you know, boring
10:28:32 8 stuff. So that was in July. And once that happened, the
10:28:35 9 conversation started progressing much more quickly.

10:28:38 10 Q. Do you know whether Hasbro was in a hurry in these
10:28:41 11 conversations?

10:28:42 12 A. Yeah. There was definitely a sense of urgency the entire
10:28:45 13 time. And I think that was two-part. One, we already had a
10:28:49 14 meeting set up with the Walmart buyer, and -- and this new
10:28:52 15 category of product is actually in the sporting goods section
10:28:56 16 at Walmart. So Hasbro, being a toy company, has great
10:29:00 17 relationships with the toy buyers but maybe not such a good
10:29:03 18 relationship with the sporting good buyers.

10:29:06 19 And so we had worked very hard to get this meeting
10:29:10 20 with the sporting good buyer that was selling the Daisy product
10:29:14 21 at the time. And so they wanted to have an agreement in place
10:29:16 22 with all the agreed-upon terms in place so that we could meet
10:29:21 23 with -- with Walmart and meet with the buyer as a team that was
10:29:25 24 technically in -- in contract with each other. So it was very
10:29:28 25 important for us to quickly come to an agreement around the

10:29:32 1 terms of the partnership so that we could have that meeting
10:29:35 2 with Walmart as a team.

10:29:37 3 Q. Okay. Do you know why Hasbro chose Gel Blaster?

10:29:41 4 A. What they stated to us is that they had tried out the
10:29:44 5 different products on the market. They felt like we had the
10:29:48 6 best product; that we were innovating; that we were engineering
10:29:51 7 our own stuff; and that it kind of, quote/unquote, fit their
10:29:54 8 mold, I think because it was family friendly, it was safe, it
10:29:57 9 was kind of designed for kids.

10:29:59 10 Q. Were you personally involved in discussions with Hasbro?

10:30:02 11 A. Absolutely. Very closely.

10:30:05 12 Q. How would you describe those discussions? Where did they
10:30:14 13 occur?

10:30:14 14 A. Well, so initially they made an offer of a certain license
10:30:16 15 fee percentage, a certain investment amount. And the offer
10:30:20 16 wasn't good enough for us to entertain, because we felt like we
10:30:23 17 had a pretty big opportunity in front of us. So we said no.
10:30:27 18 We said no to those terms. And then they said, well, we really
10:30:30 19 want to find terms that work for everybody, and we really want
10:30:34 20 to do this deal.

10:30:34 21 So they put several of their executives, including
10:30:37 22 now-president Eric Nyman on their private jet, flew down to
10:30:42 23 Austin, Texas. We met right down the street at the Omni at
10:30:45 24 Capital Factory. We spent a couple of days, you know, hashing
10:30:50 25 out these terms that would work for us and that would work for

10:30:52 1 them.

10:30:53 2 And, actually, it was -- it was before they even flew
10:30:57 3 down to Austin that they brought up these patents. This was
10:31:00 4 not something that was discovered during diligence later in the
10:31:04 5 deal. And, while we sat at the Omni down the street and we
10:31:07 6 talked through the terms of the deal, one of the terms is that
10:31:10 7 we would agree to pay for a third of the legal fees in fighting
10:31:15 8 these patents, and they would pay for two-thirds of the legal
10:31:19 9 fees. And that we would even take a portion of the investment
10:31:21 10 they were making in Gel Blaster and put it into an escrow
10:31:24 11 account to fight these legal fees that would arise from these
10:31:27 12 patents. So these were very well known.

10:31:30 13 Q. But the patents were not some aha moment?

10:31:33 14 A. No. Absolutely not. They knew that before they ever even
10:31:37 15 came to Austin.

10:31:38 16 Q. So when they flew down to meet with you guys, you
10:31:40 17 negotiated the deal across the street, did they go to your
10:31:43 18 house?

10:31:44 19 A. They came to my house. We broke bread together. I have a
10:31:47 20 friend that has a sushi restaurant in town called Uchiko. They
10:31:52 21 set aside a private room for us. They printed up menus with
10:31:56 22 their logo and our logo, and we were kind of celebrating this
10:31:59 23 new partnership. I had them over to another close friend of
10:32:03 24 mine's house who was an early investor in Gel Blaster, where we
10:32:06 25 all played in the yard and had a good time. I actually took

10:32:09 1 their team out on my boat on Lake Austin and taught them how to
10:32:13 2 wake surf, kind of show them, you know, what Austin has to
10:32:18 3 offer.

10:32:18 4 It was a very close time, and I think we built, you
10:32:20 5 know, a very close relationship very quickly. And I think one
10:32:23 6 of the things that was important for us is that once we agreed
10:32:27 7 on the terms of the deal, it was not -- the deal terms were
10:32:32 8 never in question. It was either -- it was a binary. We were
10:32:35 9 either going to go forward with the deal if we all felt
10:32:39 10 comfortable working around these patents, or we were not going
10:32:42 11 to go forward with the deal. But we weren't going to change
10:32:45 12 the terms of the deal. And that's -- that's why we opened up
10:32:48 13 the kimono, so to say, and allowed them access to all of our
10:32:53 14 information during the diligence period.

10:32:55 15 Q. So after the two parties agreed to the terms of the deal,
10:32:58 16 and after they left Austin and flew back to Rhode Island, did
10:33:02 17 the parties then begin to work together? And what I'm asking
10:33:05 18 is: To do what? To bring what to market?

10:33:08 19 A. Yes. So there was actually two joint efforts going on.
10:33:12 20 Our development teams immediately began working together on a
10:33:16 21 daily basis on the design of this joint product that was going
10:33:20 22 to be called the NERF Pro Gel Blaster.

10:33:23 23 Q. And let me stop you there.

10:33:24 24 MR. PETIT: If we could please bring up Exhibit
10:33:26 25 Number 22, please.

10:33:28 1 THE WITNESS: Yep.

10:33:46 2 MR. PETIT: And we're going to show that exhibit on
10:33:48 3 the screen. Your Honor, I've got a paper copy. Actually, you
10:33:50 4 have a paper copy in a binder in front of you.

10:33:52 5 Q. But on the screen, is this a rendering of the NERF Pro Gel
10:33:56 6 Blaster?

10:33:57 7 A. Yeah. These are some of the concepts that they came up
10:34:00 8 with the -- the marriage of the two logos, the NERF Pro and
10:34:03 9 Gel Blaster logo and kind of what the packaging might look
10:34:07 10 like.

10:34:07 11 THE COURT: Pardon me. This is Exhibit Number what
10:34:10 12 again?

10:34:10 13 MR. PETIT: Twenty-two.

10:34:11 14 THE COURT: All right.

10:34:14 15 MR. PETIT: And the reason we're starting at 22,
10:34:16 16 Your Honor, is because attached to our briefing we have
10:34:18 17 exhibits, I believe, 1 through 18. And these may not go
10:34:22 18 necessarily in order, but that's how we've premarked them.

10:34:26 19 THE COURT: No. You did that because that's what
10:34:28 20 lawyers do.

10:34:32 21 MR. PETIT: I was trying to make somebody's job
10:34:34 22 easier. We'll see if that worked.

10:34:38 23 Q. In other words, this wasn't an abstract idea?

10:34:40 24 A. No, no. So there was two efforts going on. The product
10:34:43 25 teams were working very, very closely together as if the deal

10:34:47 1 was already done, because we needed to get molds cut as quickly
10:34:51 2 as possible. And coming out of the call with Walmart where she
10:34:55 3 said, My biggest concern is that you, Hasbro, are not going to
10:34:59 4 be able to make enough inventory for me. And after that call,
10:35:03 5 the Hasbro team said, wow, in all of our years selling to
10:35:07 6 Walmart, we've never had a call go like that. And I think
10:35:10 7 instead of making four sets of stainless steel molds, I think
10:35:14 8 we're going to need to make eight sets of stainless steel
10:35:17 9 molds. We've got to get on top of this quick.

10:35:19 10 And so there's diligence happening in the background.
10:35:23 11 But meanwhile, as you saw, you know, Eric on their team said,
10:35:24 12 We are operating as one. We are one team. And so we were
10:35:27 13 freely sharing information between our engineering department
10:35:29 14 and our product development department, our manufacturing team.
10:35:33 15 We were giving them samples and having them visit our factories
10:35:37 16 in China.

10:35:37 17 So that was happening on the product side. On the
10:35:41 18 other side --

10:35:42 19 Q. Let me stop you there, because we're getting a little
10:35:44 20 ahead of ourselves. What I'd like to go ahead and show is
10:35:45 21 Exhibit Number 2, which is the mutual confidentiality
10:35:49 22 agreement. This is Exhibit Number 2 that's already attached to
10:35:52 23 our briefing.

10:35:53 24 All of this information sharing that you're talking
10:35:55 25 about right now, did this confidentiality agreement precede

10:35:59 1 that?

10:35:59 2 A. Yes. Absolutely.

10:36:00 3 Q. I that was entered on August 21st of 2021; is that right?

10:36:07 4 A. Yes.

10:36:18 5 MR. PETIT: And, Your Honor, I'd like to go ahead and
10:36:20 6 offer Exhibit 22 into the record. And Exhibit 2, I believe, is
10:36:24 7 already in the record.

10:36:28 8 THE COURT: Well, it's not in the record in this
10:36:29 9 hearing.

10:36:30 10 MR. PETIT: Okay. I'm going to go ahead and offer
10:36:32 11 into the record this Exhibit 2, which is the mutual
10:36:34 12 confidentiality agreement.

10:36:36 13 MR. HOFFMAN: No objection, Your Honor.

10:36:37 14 THE COURT: Gel Blaster's Exhibits 22 and 2 are
10:36:40 15 admitted.

10:36:44 16 Q. (BY MR. PETIT) Okay. Mr. Guinn, was obtaining a
10:36:47 17 confidentiality agreement important for Gel Blaster?

10:36:50 18 A. Of course. Very important.

10:36:52 19 Q. Would you have shared any of this information with Hasbro
10:36:54 20 without a confidentiality agreement?

10:36:56 21 A. Absolutely not. In fact, we had several of our advisors
10:36:59 22 and early investors were quite concerned, because apparently
10:37:02 23 Hasbro has had some reputation of coming in and working with
10:37:05 24 those young startups and, you know, kind of taking their
10:37:09 25 innovations. And so we were a little bit apprehensive about

10:37:12 1 that, so we wanted to have a confidentially agreement in place.

10:37:15 2 MR. PETIT: Okay. I want to move to I think it's
10:37:21 3 page 4 of the PDF, but page 3 of the exhibit, of the document.

10:37:27 4 Q. And if you look in the third paragraph from the bottom,
10:37:32 5 there's a provision there, and I'll just point it out, that it
10:37:36 6 is further understood and agreed that money damages would not
10:37:39 7 be a sufficient remedy for any breach of this letter agreement
10:37:42 8 by either party.

10:37:43 9 Do you see that?

10:37:45 10 A. Yes, sir, I do.

10:37:48 11 Q. And that both parties should be entitled to seek the
10:37:51 12 equitable relief that we're seeking today; is that right?

10:37:55 13 A. Yes.

10:37:55 14 Q. Okay. Is that provision important to Gel Blaster?

10:37:58 15 A. Yes. That provision was very important to us.

10:38:01 16 Q. What makes you believe that money damages would not be a
10:38:04 17 sufficient remedy for a breach of the confidentiality
10:38:07 18 agreement?

10:38:07 19 A. Because this new segment of the blaster category is so new
10:38:12 20 and is growing so fast, it's not -- it's not an ongoing, you
10:38:19 21 know, foam dart category or your segment of the blaster
10:38:22 22 category that's kind of doing a similar amount of revenue every
10:38:25 23 year. Because this new category, this new segment, is growing
10:38:29 24 so fast, getting early market share, you know, in this next
10:38:38 25 kind of 18- to 24-month window, could lead to billions of

10:38:41 1 dollars of market capitalization or company value.

10:38:44 2 And so I think it would be very difficult to even
10:38:47 3 determine what those monetary damages would be if our, you
10:38:54 4 know, innovations were taken from us and made to, you know,
10:38:57 5 look like they were Hasbro's.

10:38:58 6 Q. Mr. Guinn, are we asking for anything today that Hasbro
10:39:03 7 hasn't already agreed to?

10:39:04 8 A. No. Absolutely not.

10:39:06 9 Q. Now, under this confidentiality agreement, you were
10:39:10 10 beginning to talk about the kinds of information that
10:39:12 11 Gel Blaster shared with Hasbro. Can you briefly describe the
10:39:14 12 extent of that information.

10:39:17 13 A. I mean, the only thing I can say is, especially because
10:39:21 14 they were purchasing 25 percent of the company, so it was
10:39:26 15 anything and everything, even including my own personal
10:39:29 16 finances and my own personal financial statements. They wanted
10:39:33 17 to see everything, and we shared it all with them. So that
10:39:35 18 included all of engineering information, sales data,
10:39:38 19 strategies, market strategies, client lists, buyers, who are
10:39:43 20 influencers were that we're working with, how we should launch
10:39:46 21 the product. I mean, literally everything.

10:39:49 22 Q. And, to be clear, that included CAD files and CAD models
10:39:53 23 for products then under development, correct?

10:39:56 24 A. That's exactly right.

10:39:57 25 Q. Okay. You mentioned the patents earlier. What kind of

10:40:00 1 information did the parties share with another, and what kind
10:40:03 2 of information did Gel Blaster share with Hasbro with respect
10:40:05 3 to the Spin Master patents that Mr. Hoffman referred to in his
10:40:09 4 opening statement?

10:40:10 5 A. Yes. So that was kind of the second thing that was
10:40:13 6 ongoing. We had our engineers and our product team working
10:40:16 7 together on the product, and then there was another group of us
10:40:19 8 that were working very closely together to figure out how we
10:40:24 9 could navigate these patent that were -- that were -- you know,
10:40:28 10 had been filed back in 2012.

10:40:30 11 And so, actually, Adam Kleinman and I were working
10:40:33 12 very closely together on whether, you know, these patents were
10:40:36 13 enforceable, what they really meant. Hasbro hired I think a
10:40:41 14 couple of different law firms. We hired a law firm. We found
10:40:45 15 chemical engineering experts. We were openly sharing
10:40:48 16 everything that we found, they were sharing with us some of the
10:40:51 17 things they found, and we were collaborating to figure out
10:40:54 18 if -- if this was a case of willfully infringing.

10:40:59 19 Even during this discussion, Eric Nyman mentioned to
10:41:02 20 me a couple of different times on the phone that it's not a
10:41:05 21 matter of changing the terms of the deal, it's just we're
10:41:08 22 either going to do it if we feel comfortable or we're not going
10:41:11 23 to do it if we don't feel comfortable.

10:41:14 24 And said, you know, look, even if we think -- even if
10:41:17 25 we determine that these patents are strong, then I can always

10:41:20 1 just call up the guys at Spin Master, I know them, and we can
10:41:23 2 negotiate a license deal. And I said, Okay. Well, if that's
10:41:28 3 what needs to happen, then that's what we'll do. I have no
10:41:30 4 problem with that.

10:41:31 5 But we determined during that time that the patents
10:41:34 6 were defensible, that there was lots of prior art, that they
10:41:37 7 were totally indefinite, and that, ultimately, they were kind
10:41:40 8 of rubber-stamped patent that didn't have any back-and-forth
10:41:45 9 with the patent office, and that they were weak patents. And
10:41:46 10 so they came back to us and said in late October, Okay. We
10:41:49 11 feel comfortable.

10:41:50 12 They even said that they were waiting for a big
10:41:53 13 report from the law firm that they hired to do this search, to
10:41:58 14 search for prior art, to look for the strength of the patent.
10:42:03 15 And after they received that in late October, they came back
10:42:04 16 and said, Okay. We're good to go. We want to go forward with
10:42:07 17 this deal. But now that we're going to go forward with the
10:42:11 18 deal, we want to adjust the deal terms a little bit.

10:42:14 19 Q. Okay. So I'm going to come back to that. But real quick,
10:42:16 20 what we were talking about, all of the information that you
10:42:18 21 shared from Gel Blaster to Hasbro, in what form did that
10:42:23 22 information take? How was that information shared.

10:42:25 23 A. I mean, in almost every way that you can share
10:42:27 24 information, maybe other than fax. But we shared information
10:42:35 25 via electronic cloud-based document storage solutions. We

10:42:37 1 shared information via e-mail. There was a Microsoft Teams
10:42:40 2 group chat set up that information was shared in. And Hasbro
10:42:43 3 even has their own file document upload program called Blast,
10:42:49 4 and they requested that we upload a lot of our CAD documents
10:42:53 5 and files into their Blast file sharing system.

10:42:57 6 Q. And so that's important. Does Gel Blaster currently have
10:43:00 7 access to the files that it transferred to Hasbro?

10:43:03 8 A. We have access to those files, but we don't have access to
10:43:07 9 their Blast system anymore. So we can't see exactly which
10:43:09 10 engineers uploaded what documents on what days. But they
10:43:13 11 would, of course, be able to see that.

10:43:15 12 Q. Okay. And do you have access to their Microsoft Teams
10:43:19 13 channel any longer?

10:43:20 14 A. No. No, we don't.

10:43:21 15 Q. Okay. If you take all of this information that
10:43:24 16 Gel Blaster shared with Hasbro, you take it all and wrap it up
10:43:27 17 and bundle it up, how much work did your team put in to develop
10:43:33 18 that package of information that was transferred to Hasbro?

10:43:39 19 A. Well, I mean, from the inception of Gel Blaster as a
10:43:41 20 company, all of the work that we had done for years was all
10:43:47 21 shared with them. But, really, the team that developed the
10:43:49 22 Gel Blaster product has been engineering things for 10 years
10:43:53 23 and has been working together for 10 years. So it was actually
10:43:56 24 the culmination of many, many, many years of engineering
10:43:58 25 know-how and user experience design that went into the product

10:44:04 1 that we now had that were sharing with them.

10:44:09 2 Q. So that information that you shared, do you generally know
10:44:12 3 what they were doing with that information?

10:44:15 4 A. My understanding is that they were using it to evaluate to
10:44:18 5 make sure that we met their safety standards and that, you
10:44:21 6 know, the product design was sound, and that they were using it
10:44:24 7 to, you know, create this new NERF Pro Gel Blaster in
10:44:30 8 conjunction with our team.

10:44:32 9 Q. Is Gel Blaster privy to all of the Hasbro communications
10:44:36 10 in terms of their actual use of it?

10:44:38 11 A. No. Absolutely not.

10:44:40 12 Q. Okay. So you were beginning to talk about going your
10:44:44 13 separate ways, and, ultimately, that happened. Was that in
10:44:48 14 early November of 2021?

10:44:50 15 A. That was at the very beginning of November 2021.

10:44:52 16 Q. Okay. What happened? You heard from Mr. Hoffman. He
10:44:57 17 said it was because of the patents. Why do you think it
10:44:59 18 happened?

10:45:00 19 A. Well, they came back -- Adam came back to me in late
10:45:03 20 October and said, Hey, we want to get this deal done. We want
10:45:06 21 to move forward as partners here and go build a great business
10:45:09 22 together, and, you know, we feel comfortable moving forward.
10:45:12 23 But we want to adjust the terms of the deal to just kind of
10:45:17 24 make it fair for everyone. And this was the first time there
10:45:21 25 was any notion of re-trading the deal and having different deal

10:45:25 1 terms than we had decided on six weeks earlier.

10:45:28 2 And, essentially, they basically cut the deal in
10:45:31 3 half. And I don't know if that was because they thought the
10:45:33 4 market was double the size that they originally thought and
10:45:35 5 that, you know, based on their calculus, that was enough money
10:45:39 6 to get me to agree to do the deal. But there was no real
10:45:43 7 strong reasons given. The reasons that were given were things
10:45:47 8 like we only had supplemental registry trademark for
10:45:52 9 Gel Blaster and not the principal registry, which obviously we
10:45:56 10 do now have principal and we knew we were going to, and that we
10:46:00 11 might lose first-mover advantage because we had to slightly
10:46:04 12 adjust the design of the blaster.

10:46:05 13 And so there was kind of, it felt like, no real
10:46:07 14 reason to cut this deal in half. And so I just said, you know,
10:46:12 15 this is the same deal terms that I said no to six weeks ago.
10:46:18 16 We're going to still say no to them today.

10:46:20 17 Q. To be clear, Mr. Kleinman or nobody at Hasbro ever told
10:46:24 18 you that it was because of the patents?

10:46:25 19 A. No. Absolutely not. We were past the patents.

10:46:29 20 Q. Okay. I'd like to move this along a little bit. I'm
10:46:32 21 going to talk about the physical firing mechanism.

10:46:34 22 Your declaration states that Hasbro had access to
10:46:35 23 Gel Blaster's physical firing mechanism and contact with the
10:46:42 24 engineers that worked on its development. That's the
10:46:44 25 declaration attached to our briefing. Can you confirm that

10:46:46 1 the physical firing mechanism was in fact disclosed and
10:46:49 2 discussed with Hasbro?

10:46:51 3 A. Yes, it was.

10:46:51 4 Q. Okay. Your declaration also talks about that Gel Blaster
10:46:56 5 developed the physical firing mechanism to control the firing
10:47:00 6 of the blaster's gelllets. As CEO, are you familiar with
10:47:05 7 development of that PFM or physical firing mechanism?

10:47:09 8 A. Yes, I am.

10:47:09 9 Q. Okay. Mr. Doyle gave a brief overview of that in his
10:47:12 10 opening statement. We're also going to hear from your VP, vice
10:47:14 11 president of engineering, and that's Vincent Cline. He's going
10:47:16 12 to talk about it in more detail.

10:47:18 13 For now, though, can you tell us why the PFM or
10:47:25 14 physical firing mechanism, how it operates and why it's
10:47:27 15 important to your future blasters.

10:47:35 16 A. Sure. And I think what would be good is to just set the
10:47:37 17 context of what we were trying to solve for with this
10:47:39 18 innovation. And before that you could apply a current to a
10:47:43 19 motor and have the motor spin, and while you're holding the
10:47:44 20 trigger, the motor is spinning and you're shooting 10 shots per
10:47:48 21 second, right? And we knew for the future of our blasters, we
10:47:51 22 wanted to be able to control how fast it shot, whether it shot
10:47:57 23 one shot every time you pulled the trigger, or if it shot five
10:48:00 24 shots per second, or 10 shots per second. If somebody hit you
10:48:07 25 and your blaster shouldn't be working anymore, we wanted to be

10:48:09 1 able to turn that down and stop your blaster from working. So
10:48:12 2 for all these things, we were going to need to know exactly how
10:48:14 3 many gellets were shot for this new digital version of our
10:48:19 4 blasting game.

10:48:23 5 And so while other products on the market dating back
10:48:25 6 to 2014 or other -- other competitors on the market had the
10:48:29 7 ability to shoot semiautomatic mode or fully automatic mode,
10:48:34 8 most of those are done by actually using a different gear in
10:48:37 9 the gearbox. We didn't have the time to redesign our gearbox.
10:48:42 10 We also don't have the space in our gearbox, because we have a
10:48:46 11 much smaller blaster, to do it in that methodology. So we
10:48:49 12 needed to find a clever solution to be able to know every time
10:48:54 13 a gellet had left the barrel.

10:48:56 14 And it was in -- we have weekly brainstorming
10:49:01 15 sessions with our engineers, our product developers, our
10:49:03 16 manufacturing partners. And it was through these brainstorming
10:49:07 17 sessions that there was kind of a eureka moment that, oh, wow,
10:49:11 18 we could actually use the same type of switch that we use for
10:49:14 19 the trigger and we could put it up inside the chamber, inside
10:49:17 20 the top of the blaster. And then every time the button was
10:49:21 21 pushed, we would know that a gellet was fired.

10:49:24 22 And that would allow us to be -- to be able to count
10:49:26 23 the number of gellets and to be able to decide, when you pull
10:49:31 24 the trigger, we want one gellet to fire or five gellets to
10:49:35 25 fire. And we would have that ability to do that.

10:49:37 1 Q. So was this a cost-efficient way of doing it?

10:49:39 2 A. Yeah. It was very cost-efficient.

10:49:41 3 Q. Space-efficient?

10:49:41 4 A. Very space-efficient.

10:49:43 5 Q. Reliable?

10:49:43 6 A. Very reliable.

10:49:44 7 Q. Does it take a lot of bandwidth from your circuit board?

10:49:52 8 A. And that's a key point. And there's some talk about,
10:49:55 9 well, why aren't you using this now? You're not even using
10:49:58 10 this in your current blaster. Our current blaster is a much
10:50:02 11 more simple design, and, you know, there's not a lot of
10:50:05 12 computation happening on the printed circuit board. And so
10:50:08 13 we're able to use some of that computational power to just do a
10:50:12 14 timing solution to accomplish the same goal of a semiautomatic
10:50:18 15 firing mode for now.

10:50:20 16 Now, as we move forward into our future generation of
10:50:23 17 blasters that are coming out this year, we need all of the
10:50:28 18 processing power and all the bandwidth possible available to us
10:50:31 19 to run the game mechanics. And so using the physical firing
10:50:35 20 mechanism actually does two things for us: One, it gives us a
10:50:39 21 much more accurate account of exactly how many gellets are
10:50:43 22 being fired. So if you want to show a statistic of a player to
10:50:46 23 say how accurate were you during this round, how many times did
10:50:50 24 you fire a gellet and how many times did you hit one of your
10:50:54 25 opponents, we can give those types of statistics. But also it

10:50:56 1 takes that processing power that's used right now to do the
10:51:00 2 timing algorithm off of the processor so that the processor can
10:51:04 3 now be doing the job of a digital referee and saying you
10:51:08 4 captured other team's flag and you're now holding it, or you
10:51:11 5 have three lives remaining and you have to go back to the base.

10:51:15 6 And so that's why this physical firing mechanism and
10:51:18 7 the way we've developed it is so critical to the future of our
10:51:22 8 product.

10:51:24 9 Q. Did you maintain it a secret?

10:51:26 10 A. Yes. Absolutely.

10:51:29 11 Q. Okay. Very briefly, who within Gel Blaster knew about
10:51:31 12 this information.

10:51:32 13 A. Only the people that needed to know: the engineers, the
10:51:34 14 product developers, myself, just a couple others.

10:51:39 15 Q. Okay. And then are there any physical files associated
10:51:42 16 with this physical firing mechanism?

10:51:44 17 A. There are digital files.

10:51:46 18 Q. And how are they kept?

10:51:47 19 A. They're kept in a secured online document storage solution
10:51:51 20 behind -- you know, each individual person that had access to
10:51:55 21 those files had their own log-in, their own password. So
10:51:58 22 they're kept secured.

10:51:59 23 Q. Did your marketing team, sales team --

10:52:00 24 A. No.

10:52:01 25 Q. -- other teams have access to this information?

10:52:02 1 A. The marketing team doesn't have access, sales doesn't have
10:52:04 2 access, finance doesn't have access. It's just the people
10:52:08 3 engineering the product.

10:52:13 4 Q. Okay. Now, you've just discussed the advantages of the
10:52:16 5 PFM. In addition to those advantages and what Gel Blaster
10:52:20 6 intends to do with that physical firing mechanism in its
10:52:23 7 upcoming generation of Gel Blasters, are there additional
10:52:26 8 reasons why the PFM is valuable to Gel Blaster?

10:52:30 9 A. Sure.

10:52:32 10 Q. In time? innovation? your reputation?

10:52:39 11 A. Yeah. I mean, that's, you know, one of the key elements
10:52:42 12 and, you know, really what we have built our reputation on and
10:52:46 13 build our brand on, is the fact that we're actually engineering
10:52:49 14 our own stuff and we're innovating our own product, that we're
10:52:54 15 an innovative tech startup in Austin, Texas.

10:52:57 16 And, you know, we're proud to be the first blaster
10:52:59 17 that had a hand blaster that allowed you to do semiautomatic
10:53:03 18 and full automatic mode in this space. And, you know,
10:53:08 19 obviously that's all taken away as soon as Hasbro uses our
10:53:11 20 innovation and claims it as their own and says, Hey, look at
10:53:15 21 this awesome innovation from Hasbro when they're really just
10:53:18 22 using the stuff that we shared with them. Now we don't get to
10:53:21 23 be able to say that we're the innovative company in the space.

10:53:24 24 Or at least when we do, customers are going to say,
10:53:27 25 oh, I was one of the 100 million people that saw Mr. Beast

10:53:31 1 showing off that same -- that same feature in his video months
10:53:35 2 ago.

10:53:40 3 Q. Can you value the impact that Hasbro's use of the physical
10:53:41 4 firing mechanism will have on the sale or success of
10:53:43 5 Gel Blaster's future blasters.

10:53:45 6 A. I think that would be too difficult to do because of how
10:53:48 7 fast this market is growing.

10:53:49 8 Q. Okay. Tell us about that. What -- where is the market
10:53:53 9 today, and where do you expect it to be?

10:53:56 10 A. Well, I can tell you the market two years ago was zero.
10:53:59 11 And according to our discussions with Hasbro here at the Omni,
10:54:05 12 they believed that the gel category could be as big as a
10:54:08 13 \$2 billion annual market within just a few years.

10:54:11 14 So between, you know -- I think this in 2022 is
10:54:16 15 probably about a \$200 million market, so there's still room for
10:54:20 16 it to grow by another 10 times over the next couple of few
10:54:24 17 years. And so by using our information, by using our designs,
10:54:29 18 and by getting our product in the market sooner, they get to
10:54:33 19 start sharing in that upside as the market goes up.

10:54:39 20 And so even if they were to take only 10 percent of
10:54:41 21 that market share away from us, that could equal \$200 million
10:54:44 22 in annual revenue two or three years from now. So because it's
10:54:48 23 such a new category, for them to be able to come out and say,
10:54:52 24 Look how innovative we are, we created this new space, that --
10:54:56 25 there's no way to put a number on that.

10:55:00 1 Q. How does Hasbro and NERF's introduction of the Mythic, how
10:55:04 2 does that affect your sale of the accessory products we talked
10:55:08 3 about earlier, the tag-along products.

10:55:10 4 A. Sure. Well, obviously, if somebody makes a purchase
10:55:15 5 decision to buy a NERF-branded product, they're more likely to
10:55:18 6 buy their refill ammo, they're more likely to buy their face
10:55:21 7 masks, they're more likely to buy their accessories.

10:55:24 8 In addition, I personally have spent probably over a
10:55:27 9 \$1,000 on NERF products myself as my kids grew up. They make
10:55:32 10 great foam blasters. And because I started buying NERF foam
10:55:38 11 dart blasters, I never once have bought an Adventure Force
10:55:43 12 blaster, I never have once bought a Zuru blaster. Even though
10:55:45 13 they make foam dart blasters, too, I'm loyal to the NERF brand
10:55:50 14 foam dart blaster.

10:55:51 15 So as this new category is getting created and these
10:55:54 16 100 million people are seeing Mr. Beast's cool, new, gel-fire
10:55:58 17 blaster and that becomes the first blaster that they buy in
10:56:01 18 this category, those parents are more likely to continue buying
10:56:04 19 gel-fire blasters as they -- as they keep, you know, growing
10:56:08 20 and this category keeps going.

10:56:13 21 Q. Mr. Guinn, does Gel Blaster -- I'm going to switch gears
10:56:17 22 here and talk about issues relevant to the bond.

10:56:19 23 Does Gel Blaster have any revenue stream other than
10:56:22 24 from the sale of gel-based products?

10:56:25 25 A. No, we don't.

10:56:25 1 Q. Okay. And you have visibility in Gel Blaster's financial
10:56:30 2 position, right?

10:56:31 3 A. Yes, sir.

10:56:31 4 Q. Okay. Can you tell the Court what Gel Blaster's net
10:56:34 5 income was in 2022?

10:56:35 6 A. Our net income was about 2 1/2 million.

10:56:38 7 MR. PETIT: Okay. And, Your Honor, that's based on
10:56:40 8 an unaudited financial statement that I've got and I can
10:56:43 9 introduce it as an exhibit. I'd rather not do that right now
10:56:46 10 because I'd like to make a motion and introduce that under
10:56:49 11 seal. If the Court would like any more information about
10:56:53 12 Gel Blaster's financial position, we would ask that that be
10:56:55 13 done either in camera or at another opportunity under seal.

10:56:59 14 THE COURT: Well, we'll see about that. I am not
10:57:02 15 favorably disposed to exhibits under seal. That doesn't mean
10:57:05 16 you can't talk me into it. But I think that's part of what you
10:57:09 17 get in an open and transparent legal system. And so I
10:57:14 18 generally on documents that are just filed, on things that I'm
10:57:17 19 going to rule on in chambers, on exhibits I'm a little more
10:57:22 20 open to under seal.

10:57:25 21 MR. PETIT: Well, for that reason, that's why I just
10:57:27 22 wanted to elicit that information right now in testimony.

10:57:29 23 THE COURT: That's fine.

10:57:31 24 Q. (BY MR. PETIT) And then let me ask one final question,
10:57:33 25 Mr. Guinn. If the injunction is granted, Hasbro is asking this

10:57:37 1 Court to impose a bond on Gel Blaster north of \$20 million.

10:57:42 2 Could Gel Blaster post such a bond?

10:57:44 3 A. No. Of course not. We don't -- we're like almost just a

10:57:49 4 two-year-old company. We could never pay that amount of money.

10:57:52 5 Q. Hasbro know that?

10:57:53 6 A. Yeah. Of course they know that. They've looked at all

10:57:56 7 our financials.

10:57:58 8 MR. PETIT: I'll pass the witness.

10:57:59 9 THE COURT: Let me ask one question before you pass

10:58:01 10 the witness. We've heard about the negotiations between

10:58:05 11 Gel Blaster and Hasbro and that they had reached an agreement

10:58:10 12 and then the agreement was sought to be altered.

10:58:13 13 Is there any written verification of what that

10:58:16 14 original agreement was?

10:58:18 15 MR. PETIT: Yes, Your Honor. Do you want the witness

10:58:21 16 to testify?

10:58:21 17 THE COURT: Well, were you going to testify about it,

10:58:23 18 or were you going to present it as an exhibit, the written

10:58:26 19 confirmation that they had an agreement?

10:58:29 20 MR. PETIT: I don't believe, if memory serves, that

10:58:33 21 that is an exhibit to our briefing. But the fact that they

10:58:36 22 reached a deal, it was memorialized in a term sheet, and the

10:58:42 23 term sheet was subject to a diligence period. But we're not

10:58:46 24 here today suing under that term sheet. We're not saying that

10:58:49 25 they breached a deal. It was --

10:58:51 1 THE COURT: All right.

10:58:53 2 MR. PETIT: Does that answer your question?

10:58:55 3 THE COURT: Yes.

10:58:58 4 MR. PETIT: I'll pass the witness.

10:59:18 5 MR. HOFFMAN: And we have some witness binders that
10:59:23 6 we'd like to pass out to assist with the examination.

10:59:54 7 **CROSS-EXAMINATION**

10:59:54 8 **BY MR. HOFFMAN:**

10:59:54 9 Q. Good morning, Mr. Guinn.

10:59:56 10 A. Good morning.

10:59:56 11 Q. I wanted to start by clarifying some of the assertions
10:59:59 12 you've made in your direct testimony.

11:00:02 13 Gel Blaster did not invent the idea of using a
11:00:04 14 hydrogel-based ammunition in a toy gun; is that right?

11:00:08 15 A. That's correct.

11:00:10 16 Q. And prior to Gel Blaster's even existence, these toy guns
11:00:16 17 that shoot hydrogels were popular in Asia and Australia, right?

11:00:23 18 A. Actually, only Australia. And they were modified Airsoft
11:00:27 19 guns.

11:00:27 20 Q. That used hydrogel-based ammunition, right.

11:00:31 21 A. That's correct.

11:00:32 22 Q. And gel Blaster introduced its first gun in 2020, correct?

11:00:35 23 A. Correct.

11:00:36 24 Q. That first gun wasn't a homegrown design, right? That was
11:00:38 25 something you got from a vendor?

11:00:39 1 A. That's correct.

11:00:40 2 Q. Okay. And that same year that Gel Blaster introduced its
11:00:44 3 first gun, a company called SplatRBall introduced a gun into
11:00:48 4 the U.S. that used hydrogel-based ammunition, correct?

11:00:51 5 A. That's correct. At the very end of that year.

11:00:57 6 Q. Okay. Now, you also talked about the engineering
11:00:59 7 experience of your company, and you said there are 10 years of
11:01:01 8 experience. You're not asserting that your engineers had 10
11:01:04 9 years of experience related to firing mechanisms in toy guns or
11:01:08 10 even real guns for that matter, correct?

11:01:11 11 A. No. I'm not making that assertion, although some of our
11:01:15 12 engineers do have that experience in real guns.

11:01:18 13 Q. Now, you talked about Gel Blaster having automatic and
11:01:25 14 semiautomatic firing in its products. Do you recall that a few
11:01:28 15 minutes ago?

11:01:29 16 A. Yes.

11:01:29 17 Q. And Gel Blaster and Hasbro are not the only hydrogel-based
11:01:34 18 products on the market today with those features, correct?

11:01:34 19 A. Yeah. I just said that, yeah.

11:01:35 20 Q. And, in fact, the Gel Blaster product that today does
11:01:38 21 automatic and semiautomatic implements those features without
11:01:43 22 use the PFM, the alleged trade secret?

11:01:46 23 A. Yeah. We talked about that as well. Yes, sir.

11:01:49 24 Q. Okay. Now, Mr. Guinn, you're here in court today because
11:02:00 25 you believe that the PFM is an innovative solution that's

11:02:04 1 significantly better than other approaches to a firing control
11:02:07 2 mechanism in a gel-based blaster, right?

11:02:11 3 A. I'm actually here in court today because Hasbro took all
11:02:15 4 of our company information and is using it against us to try to
11:02:17 5 compete against us.

11:02:19 6 Q. But the one we're talking about today, the specific
11:02:21 7 information we're talking about today, is related to this PFM,
11:02:24 8 right?

11:02:24 9 A. Yes, sir.

11:02:25 10 Q. As we sit here today, you're not talking about any other
11:02:27 11 technical feature in the Hasbro Mythic that you believe is a
11:02:32 12 trade secret taken by Hasbro, right?

11:02:34 13 A. I actually think the entire internals of it were taken
11:02:38 14 from us and that the PFM, and the PISCA specifically, is the
11:02:41 15 proof that they used our CAD files, because we didn't actually
11:02:44 16 ship that in our product.

11:02:46 17 Q. Let's talk for a minute about what a trade secret is,
11:02:49 18 Mr. Guinn. You understand that whatever was in the gel blaster
11:02:55 19 product that was out in the market in December of 2021, when
11:02:57 20 you're having those discussions, that was public, right?

11:02:59 21 A. Yes. Absolutely.

11:03:00 22 Q. And anybody could take that gun and open it up, unscrew
11:03:03 23 the case, and look inside. And whatever they learned, that's
11:03:07 24 available to the public. That's not a trade secret, right?

11:03:09 25 A. That's my whole point.

11:03:11 1 Q. So all we're talking about is what was in the CAD file
11:03:13 2 that was not in the product that was out in the market, right?

11:03:16 3 A. Well, also our CAD files are also trade secrets. So while
11:03:20 4 somebody could buy our product and open it up and then use 3-D
11:03:24 5 scanners to try to scan all the gears and try to redesign the
11:03:28 6 entire thing, it would be like walking into a house and saying
11:03:30 7 go build that exact house and you have no plans versus here is
11:03:33 8 all the architectural drawings, now go build the house. So our
11:03:39 9 architectural drawings of our product are our trade secrets.

11:03:42 10 Q. Mr. Guinn, you're not a mechanical engineer, are you?

11:03:45 11 A. No, I'm not. But I did go to mechanical engineering at
11:03:48 12 University of Texas, but I graduated with a business degree. I
11:03:50 13 switched majors.

11:03:51 14 Q. And you're not an expert in laser scanning techniques,
11:03:54 15 correct?

11:03:54 16 A. That could be argued. I've been in the drone space for 15
11:03:58 17 years doing lidar scanning all over the world. So yeah.

11:04:01 18 Q. Okay. So you're presenting yourself as an expert with
11:04:03 19 your business degree on whether people that know how to do
11:04:06 20 laser scanning could reproduce a physical device from what they
11:04:11 21 open up when they buy a toy blaster?

11:04:13 22 A. Yeah. I'm saying that they could do that.

11:04:15 23 Q. They could do that?

11:04:16 24 A. They could that, yeah. That's right. But it would take a
11:04:18 25 lot of work.

11:04:18 1 Q. Okay. Now, you told the Court that you believed the PFM
11:04:27 2 and the PISCA is a more cost-efficient, more space-efficient,
11:04:31 3 and more reliable approach to a firing mechanism. That was
11:04:35 4 your testimony, right?

11:04:36 5 A. As an approach to be able to know how many shots are
11:04:39 6 fired, yes.

11:04:40 7 Q. Okay. What was the alternative approach that was used in
11:04:44 8 Gel Blaster's products both in September 2021 and today?

11:04:47 9 A. So what we ended up using in our interim products was a
11:04:51 10 timing solution that ran on a -- on a small chip, an IC, on the
11:04:56 11 printed circuit board.

11:04:57 12 Q. And timing solutions were well known in the industry in
11:05:00 13 2021?

11:05:00 14 A. I mean, actually, I don't know how well known they were.

11:05:05 15 Q. And you're not claiming the timing solution is a trade
11:05:09 16 secret, correct?

11:05:10 17 A. No.

11:05:10 18 Q. Okay. Now the CAD files Gel Blaster sent Hasbro, that was
11:05:17 19 not a timing mechanism or a timing-based solution that was used
11:05:21 20 in those CAD files, correct?

11:05:23 21 A. That's right.

11:05:23 22 Q. That was the PFM approach?

11:05:26 23 A. Yes.

11:05:26 24 Q. And shortly after those CAD files were sent to Hasbro, you
11:05:31 25 told Hasbro not to implement the PFM part of the CAD drawings;

11:05:36 1 isn't that right?

11:05:37 2 A. Yeah. We said that, for this line of blasters, it made
11:05:40 3 more sense to use a timing solution.

11:05:42 4 Q. You didn't just say it made more sense. You said that
11:05:47 5 timing in the code was actually better than using the sensor,
11:05:52 6 the PFM, for semiautomatic shooting, correct?

11:05:56 7 A. It was less expensive.

11:05:58 8 Q. That's not what you told Hasbro, though. You didn't talk
11:06:02 9 about expense, did you?

11:06:03 10 A. I mean, I guess we can read the e-mail. I'm sure it's in
11:06:07 11 there.

11:06:07 12 Q. In fact, what you told Hasbro was you had actually tried
11:06:10 13 and tested the PFM approach and found that timing was better to
11:06:14 14 prevent double shots, right?

11:06:17 15 A. Is that e-mail in here?

11:06:21 16 Q. Sure. We can look at it.

11:06:22 17 A. I think there was more double shots with timing than there
11:06:25 18 is with PFM.

11:06:27 19 Q. See, that's not what you told Hasbro.

11:06:29 20 Please turn to tab 12 in your binder.

11:06:33 21 MR. HOFFMAN: Your Honor, this is Exhibit 36.

11:06:42 22 Q. And as you turn to tab 12. This is a full e-mail string,
11:06:45 23 and we'll be focusing on an e-mail at the bottom of the second
11:06:49 24 page of the exhibit.

11:06:50 25 THE COURT: Just a minute. I don't have anything

11:06:52 1 that has a 36 in it.

11:06:53 2 MR. HOFFMAN: It's tab 12 in the tab numbers,

11:06:56 3 Your Honor. The tab numbers unfortunately do not correspond to

11:06:59 4 the exhibit numbers.

11:07:01 5 THE COURT: I've got it. Thank you.

11:07:03 6 Q. (BY MR. HOFFMAN) And if you would turn to the bottom of

11:07:05 7 the second page of the exhibit, Mr. Guinn, there's an e-mail at

11:07:12 8 the bottom of the page that starts From Colin Guinn, sent

11:07:16 9 September 22nd, 2021, Nick Tino, and then copies a number of

11:07:21 10 other people do. You see that?

11:07:28 11 A. Yes. I'm seeing it now.

11:07:30 12 Q. And you agree this is an e-mail you sent Mr. Tino and

11:07:33 13 others on September 22nd, 2021, correct?

11:07:36 14 A. Yes. And I'm happy to walk you through this e-mail.

11:07:39 15 Q. Okay. Why don't we start here. If you would look,

11:07:44 16 please, sir, at the third sentence that starts, "We had one of

11:07:48 17 Wallace's engineers ..." Do you see that?

11:07:49 18 A. Uh-huh.

11:07:50 19 Q. Who is Wallace?

11:07:51 20 A. Wallace is one of our consultants in China, one of our

11:07:55 21 engineering consultants, that I worked with at DJI.

11:07:59 22 Q. And referring to Wallace and his team, in the next

11:08:02 23 sentence you say, "Essentially, they found a better way to

11:08:04 24 accomplish the semiauto firing mode (one trigger pull equals

11:08:08 25 one gellet fired) through timing in the code instead of using

11:08:11 1 the sensor." Do you see that sentence?

11:08:13 2 A. Yes, I do.

11:08:14 3 Q. Your reference to the sensor there is the PFM that was in

11:08:18 4 the CAD file?

11:08:19 5 A. To the switch itself.

11:08:20 6 Q. To the switch that's part of the PFM, right?

11:08:22 7 A. Uh-huh.

11:08:23 8 Q. And then you say, "We initially spec'd" --

11:08:26 9 That means put into a specification?

11:08:28 10 A. Yes.

11:08:29 11 Q. -- "the sensor" --

11:08:31 12 That's the PFM, right?

11:08:32 13 A. Yes.

11:08:33 14 Q. -- "thinking that it would be the most consistent, but in

11:08:36 15 testing it was found that the timing approach was superior to

11:08:40 16 prevent double shots." Those were your words, right?

11:08:43 17 A. Yes, they were.

11:08:44 18 Q. Okay.

11:08:44 19 A. And the reason that those are my words is because I was

11:08:47 20 relaying the information that was just shared to me by Wallace

11:08:50 21 and his team.

11:08:51 22 Q. Sure. That was the evaluation of your manufacturing

11:08:54 23 partner, right?

11:08:55 24 A. They're not a manufacturing partner.

11:08:57 25 Q. Or vendor or consultant you used in China?

11:09:00 1 A. A consultant that's right.

11:09:01 2 Q. And then you go on to say, "Also, this way" --

11:09:04 3 You mean the timing mechanism, right?

11:09:06 4 A. Yep.

11:09:06 5 Q. -- "there is no chance of the sensor wearing out and
11:09:09 6 failing," right?

11:09:10 7 A. That's right.

11:09:10 8 Q. Okay.

11:09:11 9 A. So while this makes more sense for the current product,
11:09:16 10 because there is no physical wear on the sensor, that has
11:09:19 11 nothing to do with the ability to be able to count gellet shots
11:09:22 12 for our future products.

11:09:24 13 Q. Okay. And you had that PFM approach and the supposed
11:09:31 14 ability to count gellet shots in September of 2021, right?

11:09:35 15 A. Yes.

11:09:35 16 Q. And even with your great engineering team and their 10
11:09:38 17 years of experience, you didn't bring it to market in 2021,
11:09:41 18 right?

11:09:41 19 A. We haven't launched our digital blasters yet.

11:09:44 20 Q. And you didn't bring it to market in 2022, right?

11:09:46 21 A. Oh. Sorry. In 2021, yeah, that's correct. We did not
11:09:49 22 bring it to market in 2022.

11:09:50 23 Q. And not 2021 and not 2022, and you still don't have a firm
11:09:55 24 date that you've told the Court that this feature is going to
11:09:57 25 be brought to market, right?

11:09:58 1 A. I did not -- I was not aware of that. Our plan is to
11:10:01 2 bring it to market this year by Q4.

11:10:05 3 Q. By the end of 2023?

11:10:06 4 A. Yes, sir. The PFM and the PISCA allows us to count gellet
11:10:11 5 shots. The product that we're developing takes a tremendous
11:10:15 6 amount of software engineering and electrical engineering to
11:10:21 7 create the Wi-Fi mesh network, the mobile app, the hit
11:10:24 8 detection, the hit attribution. All of that is a significant
11:10:25 9 amount of engineering effort that, just because we didn't
11:10:28 10 release the PISCA in 2021 or 2022 doesn't mean that it doesn't
11:10:32 11 become a core functionality of the future of our product.

11:10:35 12 Q. Let me ask you about those, because those features that
11:10:38 13 you just mentioned, and you rattled them off very quickly,
11:10:43 14 those features of the app-enabled blaster and the mobile and
11:10:46 15 the Wi-Fi mesh, Hasbro isn't offering a product with those
11:10:49 16 features, correct?

11:10:50 17 A. They said they were working on one.

11:10:52 18 Q. There isn't one in the market now, right?

11:10:54 19 A. I don't know.

11:10:54 20 Q. Well, does the Mythic do those features?

11:10:58 21 A. I don't believe so.

11:10:59 22 Q. That's right. So when Gel Blaster puts a product into the
11:11:01 23 market at the very end of the market of this year with those
11:11:04 24 features, it still won't be competing with the Mythic that
11:11:08 25 doesn't have any of those features, right?

11:11:10 1 A. Well, I guess we'll still be competing with the Mythic.
11:11:13 2 We'll just hope that our experience is better and people choose
11:11:16 3 our product over the Mythic.
11:11:18 4 Q. That's right. The features that you say are enabled by
11:11:20 5 your trade secret aren't going to be used -- aren't used by the
11:11:23 6 Mythic today, and so those features, those supposed advantages,
11:11:27 7 aren't something that Hasbro is using, right?
11:11:29 8 A. Well, actually, they are using it. And by using all of
11:11:33 9 our engineering files, they're able to launch their product
11:11:37 10 months, if not a year, earlier than had they designed it
11:11:41 11 themselves. So they are absolutely using our feature to gain
11:11:45 12 market share and buy -- you know, win our customers ahead of
11:11:49 13 when we can release our product that uses that same technology.
11:11:52 14 Q. Mr. Guinn, it's important that you be very accurate in
11:11:56 15 your testimony. The features you just mentioned, the Wi-Fi
11:11:59 16 mesh, the mobile app, those things, that's not in any Hasbro
11:12:02 17 product today, right?
11:12:04 18 A. I don't know what Hasbro has in their products today.
11:12:07 19 Q. Have you used a Mythic?
11:12:09 20 A. I have shot a Mythic maybe one time.
11:12:12 21 Q. With the features that you just talked about, the Wi-Fi
11:12:15 22 mesh, the --
11:12:15 23 A. No. They're not in the gel-fire products.
11:12:17 24 Q. That's the Mythic?
11:12:18 25 A. Yeah.

11:12:19 1 Q. Okay.

11:12:24 2 MR. HOFFMAN: Your Honor, just so I don't forget, you
11:12:25 3 would like --

11:12:25 4 A. So is that to say that they're not working on those
11:12:28 5 features and that they're not going to release them by the end
11:12:29 6 of this year?

11:12:31 7 Q. Mr. Guinn.

11:12:32 8 A. I know that it's not in their blasters today.

11:12:34 9 Q. Mr. Guinn, I ask questions, you answer them. This is not
11:12:36 10 the forum for you to ask questions.

11:12:38 11 MR. HOFFMAN: Your Honor, as a housekeeping matter,
11:12:42 12 Defendants offer Exhibit 36 at tab 12 into evidence.

11:12:48 13 MR. PETIT: No objection.

11:12:52 14 THE COURT: Exhibit Number 36 by Hasbro is admitted.

11:12:56 15 Q. (BY MR. HOFFMAN) Okay. Mr. Guinn, I'd like to turn to the
11:13:00 16 confidentiality agreement that you discussed with Mr. Petit in
11:13:03 17 your testimony. Do you have that in mind?

11:13:05 18 A. Where is that?

11:13:06 19 Q. That's in your binder also. That was admitted, I believe,
11:13:11 20 as Exhibit Number 2. But it's in the binder you have in front
11:13:14 21 of you at tab number 4.

11:13:34 22 Now, Mr. Guinn, you've been part of confidentiality
11:13:37 23 agreements in your business dealings over time. I assume this
11:13:39 24 isn't the first one you ever dealt with?

11:13:41 25 A. My lawyers usually deal with this stuff. I'm not a

11:13:44 1 lawyer.

11:13:44 2 Q. Okay. But you understand that, under a confidentiality
11:13:47 3 agreement, in addition to describing what's confidential, they
11:13:52 4 typically include exclusions, information parties agree is not
11:13:55 5 confidential, right?

11:13:57 6 A. If you say so.

11:13:58 7 Q. Well, it's common sense. Parties are going to agree that
11:14:02 8 things that are publicly known are not covered by the
11:14:05 9 confidentiality agreement, right?

11:14:08 10 A. I guess I didn't know that that was common sense, no.
11:14:10 11 Again, I'm not an attorney. I just knew that they were saying
11:14:14 12 that any of the information that we shared with them wouldn't
11:14:16 13 be used for their own benefit.

11:14:19 14 Q. Okay. Well, let me draw you to the first page of
11:14:21 15 Exhibit Number 2, which is at tab 4 in your binder. And in the
11:14:26 16 second paragraph -- and if we go down to the second full
11:14:35 17 sentence, it says: "The term of *evaluation material* does not
11:14:37 18 include information which ..." Do you see that?

11:14:39 19 A. Yes, sir.

11:14:39 20 Q. And there are four categories of information that are not
11:14:42 21 considered confidential and not protected by the agreement.
11:14:47 22 We'll go through them one by one now.

11:14:48 23 The first under (i) is information that is or becomes
11:14:52 24 generally available to the public other than as a result of
11:14:55 25 disclosure by the recipient. Do you see that?

11:14:57 1 A. Yes.

11:14:58 2 Q. So things that are out there that are generally known,
11:15:00 3 that's all fair game, right?

11:15:02 4 A. I mean, is that what you're saying that means?

11:15:05 5 Q. Do you understand -- did you have that understanding in
11:15:08 6 being part of this confidentiality agreement?

11:15:11 7 A. Yeah. It says generally available public information,
11:15:14 8 yes.

11:15:14 9 Q. The second category is information that was within the
11:15:18 10 recipient's possession prior to being furnished to the
11:15:23 11 recipient. Stuff each party already knew before they entered
11:15:27 12 into this agreement, right?

11:15:28 13 A. Okay.

11:15:29 14 Q. The third category is information that becomes available
11:15:32 15 to the recipient on a nonconfidential basis from a source other
11:15:36 16 the disclosing party. So information they get
11:15:40 17 nonconfidentially from a third party, right? That's also fair
11:15:43 18 game?

11:15:43 19 A. I mean, I'm just trying to follow along with you. Again,
11:15:48 20 I don't do any of these agreements for us. My president of
11:15:51 21 Gel Blaster is an attorney and does all these agreements, so,
11:15:53 22 you know, I'm trying to follow along with you as best I can.

11:15:56 23 Q. Let me ask it this way: Would you have any problem as a
11:15:59 24 business person if Hasbro used information that a third party
11:16:03 25 made available to it on a nonconfidential basis?

11:16:07 1 A. I guess I would have to know the circumstances.

11:16:09 2 Q. Okay. Fair enough. And the last category is information
11:16:12 3 that is independently developed by the recipient without any
11:16:15 4 use of the evaluation material provided by the disclosing
11:16:18 5 party.

11:16:19 6 A. Yeah. I understand that one. Yep.

11:16:21 7 Q. Now, Mr. Guinn, you talked a lot in your testimony about
11:16:57 8 Gel Blaster's reputation. Do you recall that?

11:17:00 9 A. Yes, sir.

11:17:00 10 Q. Okay. Do you believe that Gel Blaster has a reputation
11:17:05 11 for making products that are safe to use?

11:17:08 12 A. Yes. I do believe we have a reputation for making safe
11:17:12 13 products.

11:17:12 14 Q. In fact, Gel Blaster had to issue a recall on 62,000 units
11:17:18 15 of its Gel Blaster Surge products, right --

11:17:21 16 A. Yes, we did.

11:17:22 17 Q. And that's because there was a risk that the products
11:17:25 18 would overheat and catch on fire, correct?

11:17:27 19 A. Yes.

11:17:27 20 Q. And the Consumer Product and Safety Commission required
11:17:30 21 Gel Blaster to make that recall, right?

11:17:32 22 A. Yes, sir.

11:17:33 23 Q. And, to date, isn't Gel Blaster the only company in the
11:17:36 24 industry that has done a safety recall?

11:17:39 25 A. I have no idea.

11:17:40 1 Q. Okay. Thank you, Mr. Guinn.

11:17:47 2 MR. HOFFMAN: Your Honor, I have no further
11:17:49 3 questions.

11:18:02 4 THE COURT: Mr. Petit, redirect?

11:18:05 5 **REDIRECT EXAMINATION**

11:18:05 6 **BY MR. PETIT:**

11:18:05 7 Q. Mr. Guinn, counsel asked you about their Exhibit 36, which
11:18:22 8 was the e-mail describing the use of the different timing
11:18:29 9 mechanism in the current product, right?

11:18:31 10 A. Yes, sir.

11:18:32 11 Q. Did that conversation come about because Hasbro noticed a
11:18:37 12 difference between the CAD file they received and the actual
11:18:43 13 prototype of the product that was available?

11:18:45 14 A. I believe so, yes.

11:18:47 15 Q. So does that show that they actually received the CAD
11:18:49 16 files of your, you know, under-development products?

11:18:54 17 A. Of course.

11:18:54 18 Q. Okay. So they actually did receive it.

11:18:57 19 Now, those CAD files that we're talking about, under
11:19:00 20 the confidentiality agreement, are those publicly available
11:19:04 21 anywhere?

11:19:04 22 A. No. Absolutely not.

11:19:06 23 MR. PETIT: Okay. I pass the witness.

11:19:11 24 MR. HOFFMAN: No further questions, Your Honor.

11:19:13 25 THE COURT: All right. You may step down.

11:19:14 1 THE WITNESS: Thank you, Your Honor. Should I leave
11:19:15 2 this up here?

11:19:32 3 THE COURT: As he was leaving the stand, he was
11:19:33 4 asking a question about what to do with the binders he had in
11:19:35 5 front of him. What do the lawyers want done with the binders.

11:19:37 6 MR. BARKAN: I think return to counsel, Your Honor.

11:19:40 7 THE COURT: Well, come get it. Ms. Oakes, you don't
11:19:43 8 have to do that.

11:20:08 9 MR. DOYLE: Hello again, Your Honor. Scott Doyle
11:20:11 10 again on a behalf of Gel Blaster. And I'd like to call
11:20:13 11 Mr. Vincent Cline to the stand.

11:20:51 12 (Witness sworn)

11:20:51 13 **VINCENT CLINE,**
11:20:51 14 having been first duly sworn, testified as follows:

11:20:51 15 **DIRECT EXAMINATION**

11:20:51 16 **BY MR. DOYLE:**

11:20:51 17 Q. Could you please state your name for the record?

11:20:53 18 A. My name is Vincent Cline.

11:20:55 19 Q. And Mr. Cline, what's your current occupation?

11:20:59 20 A. I am the vice president of engineering at Gel Blaster.

11:21:03 21 Q. And how long have you been in that role?

11:21:06 22 A. I joined the organization in March of '22.

11:21:15 23 Q. How long have you worked in the field of engineering?

11:21:17 24 A. I have professionally been in the field of engineering
11:21:20 25 since about the middle of 2010.

11:21:22 1 Q. Do you have -- do you have an engineering degrees?

11:21:26 2 A. I have two engineering degrees, one in engineering

11:21:29 3 technology from Texas A&M University and then a master's in

11:21:33 4 mechanical engineering from Texas A&M University.

11:21:36 5 Q. Thank you. What are your general duties your role as vice

11:21:41 6 president of engineering at Gel Blaster?

11:21:43 7 A. My primary role is to oversee the product department. So

11:21:50 8 product development, the things involving compliance,

11:21:56 9 documenting, IP, testing, things along that nature.

11:22:02 10 Q. Okay. Now, you mentioned that you started at Gel Blaster

11:22:06 11 in March of 2022, right?

11:22:07 12 A. That's correct.

11:22:08 13 Q. So you were not around when the discussions and

11:22:12 14 negotiations were going on between Hasbro and Gel Blaster, were

11:22:17 15 you?

11:22:17 16 A. I was not.

11:22:17 17 Q. Okay. Have you heard of a -- today in the courtroom and

11:22:20 18 before, have you heard of the firing mechanism being referred

11:22:24 19 to as the physical firing mechanism?

11:22:26 20 A. Yes, sir.

11:22:26 21 Q. What did you do to familiarize yourself with that physical

11:22:32 22 firing mechanism?

11:22:33 23 A. Yeah. So a big part of my role is understanding where

11:22:37 24 we've been with our product development, where we currently

11:22:40 25 are, and then also mapping out our future and the development

11:22:45 1 thereof.

11:22:45 2 So I spent at lot of time looking at our historical
11:22:51 3 documentation, talking with the people that were in the
11:22:53 4 organization at the time working on it to get a good
11:22:57 5 understanding of what that physical firing mechanism was, and
11:23:02 6 at what time that was developed and when the product changed.

11:23:06 7 Q. Okay. Great. Generally, could you please tell the Court
11:23:12 8 what a firing mechanism is.

11:23:14 9 A. So for a blaster, a firing mechanism is going to be the
11:23:17 10 summation of all of the components that would be put together
11:23:21 11 in order to allow the blaster to fire.

11:23:23 12 Q. Okay. And, as part of your role at Gel Blaster, are you
11:23:27 13 familiar with firing mechanisms for blasters?

11:23:32 14 A. Yes, I am.

11:23:33 15 Q. And are you familiar with all the different ways of doing
11:23:37 16 firing mechanisms which are on the market?

11:23:39 17 A. I'm familiar with a variety of them. I don't know that I
11:23:43 18 can say I'm familiar with all of them.

11:23:45 19 Q. Okay. Does Gel Blaster have any firing mechanisms that it
11:23:49 20 has not yet released in a release product?

11:23:53 21 A. That is correct.

11:23:53 22 Q. And what is that?

11:23:55 23 A. So that would be the physical firing mechanism that
11:23:58 24 includes the PISCA and the PISCA switch.

11:24:00 25 Q. And can you tell us what "PISCA" means.

11:24:08 1 A. PISCA is a plunger-integrated switch contact arm. So it's
11:24:12 2 the -- it's the protrusion that was pointed out earlier that is
11:24:17 3 in the plunger of the firing mechanism.

11:24:20 4 Q. And so how does Gel Blaster memorialize firing mechanisms
11:24:29 5 that it has yet not used in a released product?

11:24:32 6 A. We have a few different ways that we'll document
11:24:35 7 development efforts and designs. One of the primary ways is
11:24:39 8 through computer-aided design software or CAD software. That
11:24:44 9 would be where the solid models would exist.

11:24:49 10 Q. Anything else?

11:24:50 11 A. We'll have documentation if we've have done testing.
11:24:54 12 Sometimes there can be 2-D sketches or designs that can be
11:24:58 13 stored as well.

11:24:59 14 Q. Okay. Are you familiar with the firing mechanism that was
11:25:02 15 shown in the confidential CAD drawings what were provided to
11:25:08 16 Hasbro?

11:25:09 17 A. I am.

11:25:09 18 Q. Okay. And did those CAD drawings describe a firing
11:25:13 19 mechanism that has been referred to as the "physical firing
11:25:16 20 mechanism" in this case?

11:25:19 21 A. Yes.

11:25:20 22 MR. DOYLE: All right. What I'd like to do,
11:25:23 23 Your Honor, is request admission of Exhibit Number 24. I
11:25:26 24 believe you already have it in front of you.

11:25:32 25 Can we provide counsel with that?

11:25:33 1 MR. HOFFMAN: Your Honor, I don't have a copy. I'm
11:25:35 2 not necessarily going to object, but I don't have a copy.

11:25:38 3 MR. DOYLE: He's going to get you one.

11:25:43 4 MR. HOFFMAN: No objection, Your Honor.

11:25:44 5 THE COURT: All right. Gel Blaster Exhibit 24 is
11:25:47 6 admitted.

11:25:50 7 MR. DOYLE: Thank you, Your Honor.

11:25:51 8 Q. What is this?

11:25:54 9 A. This is a cross-section of the model of the Surge blaster
11:26:00 10 at the time it existed when Gel Blaster was communicating with
11:26:04 11 Hasbro.

11:26:05 12 Q. Okay. And what are the components of this Gel Blaster
11:26:10 13 firing mechanism?

11:26:11 14 A. There's several components in this view. And the best way
11:26:16 15 to -- to explain it, I'll try to hold it up and show, this is
11:26:20 16 showing a cross-section of the blaster and the gearbox.
11:26:23 17 There's a plunger system in this region here. This orange
11:26:28 18 shell would be the gearbox. There's a trigger, a trigger
11:26:31 19 switch. There's a motor. These are the gears inside the
11:26:34 20 gearbox. There's a T-Piece. There's a PISCA on the plunger.
11:26:41 21 There's the PISCA switch. There's a mode selector switch and a
11:26:44 22 power switch.

11:26:45 23 Q. Okay. Thank you. What does single-fire mode mean?

11:26:50 24 A. Single-fire mode would be, when you pull the trigger, the
11:26:54 25 blaster would fire one round.

11:26:56 1 Q. Okay. And are you familiar with how the PISCA and the
11:26:59 2 PISCA switch operate and interact together?

11:27:04 3 A. Yes.

11:27:04 4 Q. Using the exhibit again, and maybe going a little bit
11:27:07 5 slower for the Court, would you mind explaining how the PISCA
11:27:10 6 and the PISCA switch interact?

11:27:13 7 A. Yes. So the user would pull the trigger. This trigger
11:27:17 8 would then hit this microswitch. That would send a signal to
11:27:22 9 the electronics board, which is not shown in the lower portion
11:27:25 10 of this. That would then tell -- the board would then send
11:27:28 11 current to the motor which would cause the motor to start
11:27:31 12 turning. That would in turn cause the gears to turn. That
11:27:35 13 would then pull back the plunger system.

11:27:38 14 When the -- when this central plunger piece would
11:27:43 15 reach the rear of its stroke, the PISCA on top of it would
11:27:46 16 contact this microswitch, the PISCA switch, and then send a
11:27:51 17 signal back to the electronics board to indicate that a firing
11:27:54 18 action had taken place.

11:27:56 19 Q. Okay. Is that the methodology for the single-fire mode
11:28:00 20 that you just described?

11:28:02 21 A. Yes.

11:28:03 22 Q. Okay. At what part of the firing cycle does the PISCA
11:28:10 23 activate the PISCA switch?

11:28:12 24 A. So in the firing cycle, when the plunger system reaches
11:28:15 25 the rear of its stroke, that's when it would activate the

11:28:18 1 switch.

11:28:18 2 Q. Okay. And once the switch is activated, what happens
11:28:22 3 then?

11:28:22 4 A. It will send a signal to the electronics board.

11:28:26 5 Q. Okay. Switch gears momentarily.

11:28:29 6 Are you aware of how the PISCA and the PISCA switch
11:28:35 7 compare with other firing mechanisms in the market?

11:28:39 8 A. Yes.

11:28:40 9 Q. Are there advantages to using the PISCA and the PISCA
11:28:44 10 switch?

11:28:44 11 A. Yes, there are. There are advantages to using it.

11:28:48 12 Q. What are they?

11:28:49 13 A. It's a simple method of being able to count individual
11:28:52 14 shots or be able to have a signal for each shot. It uses a
11:28:57 15 single sensor that's very cost-effective, and it doesn't
11:29:01 16 require any extra components that are engaging with the plunger
11:29:05 17 system.

11:29:05 18 Q. Okay. Is the PISCA cost-effective?

11:29:09 19 A. Yes.

11:29:09 20 Q. Why is that?

11:29:10 21 A. It's just built into the mold that -- for the plunger
11:29:14 22 component. So very minimal additional costs of plastic and the
11:29:20 23 additional machining on the mold one time to put that feature
11:29:23 24 in.

11:29:23 25 Q. Okay. And what other advantages exist?

11:29:30 1 A. For the PISCA and the PISCA switch?

11:29:32 2 Q. Yes.

11:29:32 3 A. It's a cost-effective, reliable way to -- oh. So okay.

11:29:41 4 There's -- there's some other things you can do with the

11:29:45 5 information of individual shots. When we talked about

11:29:50 6 single-fire mode, that was one of the functionalities that

11:29:54 7 existed in the Surge and still does. But, as far as our

11:29:58 8 future -- some of our future development, we have several other

11:30:02 9 functions that are valuable to us from that.

11:30:07 10 Q. And what additional functionality are you referring to

11:30:11 11 that will come in future products for Gel Blaster?

11:30:13 12 A. Sure. So we're really looking at trying to make the game

11:30:17 13 play as engaging as possible. And one of the ways we're doing

11:30:21 14 that is to try to make it more interactive, replicate more of

11:30:25 15 some of the things that would happen inside of a video game.

11:30:29 16 So a couple of game play examples that I could walk

11:30:32 17 through would be to have a round count limit. So you could

11:30:35 18 have a game where everybody's only allowed to shoot 100 rounds

11:30:39 19 before their blaster shuts off. That makes the game play a

11:30:41 20 different and more dynamic scenario.

11:30:44 21 There's -- you could do something where you could

11:30:49 22 mimic magazine capacities, and there could be different levels

11:30:52 23 of blasters depending on the players or the upgrades they have.

11:30:56 24 So one player may have something that represents a 15-round

11:30:59 25 magazine. After 15 rounds, there would be a period of time, a

11:31:03 1 pause, that would represent, like, a reload time, say three
11:31:06 2 seconds. Another player may get an upgrade, and then they
11:31:10 3 would have a 30-round magazine before their blaster would pause
11:31:14 4 for three seconds to mimic that reload.

11:31:17 5 Another thing that we can do with this is have a
11:31:20 6 handicap for -- for leveling the playing field. So if we have
11:31:25 7 some younger children or some, just depending on the skill
11:31:28 8 level of the player, that player may have -- let's say they
11:31:33 9 could fire 10 rounds a second. And then you may have a more
11:31:35 10 experience player, an older kid or something, and they could be
11:31:39 11 limited to something like four rounds a second.

11:31:41 12 So now you can have a play where you have different
11:31:44 13 skill levels of -- of people interacting and making it more fun
11:31:48 14 and fair for a group.

11:31:51 15 THE COURT: Thank you. At this time we'll take our
11:31:52 16 recess. We'll be in recess until 1:30.

11:31:56 17 (Recess)

13:31:30 18 (Open court)

13:31:30 19 THE COURT: Anything we need to take up before we
13:31:33 20 proceed?

13:31:35 21 MR. BROADAWAY: I don't think so, Your Honor.

13:31:36 22 MR. HOFFMAN: No, Your Honor.

13:31:37 23 THE COURT: All right. Mr. Doyle, you may continue
13:31:39 24 your direct examination of Mr. Cline.

13:31:48 25 MR. DOYLE: Thank you, Your Honor.

13:31:49 1 The first thing I'd like to do, Your Honor, just a
13:31:51 2 little housekeeping -- these are really loud -- is to -- you
13:31:58 3 already have Exhibits 25 through 30, which I plan to use, but
13:32:08 4 I'd like to introduce them into the record if I may.

13:32:11 5 Ivan, do you mind providing a copy to opposing
13:32:14 6 counsel?

13:32:15 7 MR. MORALES: It's 25 through 31.

13:32:15 8 MR. DOYLE: Oh. Excuse me. Twenty-five through 31.

13:32:32 9 MR. HOFFMAN: Your Honor, are these marked? Are they
13:32:34 10 sequential? Which is which exhibit?

13:32:34 11 THE COURT: Well, they need to be marked because
13:32:37 12 we've got to know which exhibit is what. Whatever you're going
13:32:40 13 to put in evidence needs to be marked as an exhibit.

13:32:43 14 MR. DOYLE: They're marked as Exhibit Numbers 25, 26,
13:32:46 15 27, 28, 29, 30, 31.

13:32:50 16 MR. HICKS: My copy isn't marked.

13:32:53 17 MR. DOYLE: You can just let me know which is --

13:32:56 18 MR. MORALES: They are sequential, yes.

13:32:56 19 MR. HOFFMAN: So each one -- may I, Your Honor?

13:32:58 20 THE COURT: Yeah.

13:32:58 21 MR. HOFFMAN: Each one is a single page?

13:33:00 22 MR. MORALES: That's correct.

13:33:00 23 MR. HOFFMAN: And they start from 25 and go through
13:33:04 24 31?

13:33:04 25 THE COURT: And where are they found in the things I

13:33:06 1 have?

13:33:08 2 MR. BROADAWAY: Behind tabs 25 through 36.

13:33:11 3 THE COURT: Well, I know, but they're tabbed
13:33:13 4 different from the exhibit numbers. What tab do I look under
13:33:17 5 to --

13:33:17 6 MR. BROADAWAY: Not in ours.

13:33:18 7 THE COURT: Oh, no. That's right.

13:33:19 8 MR. BROADAWAY: In Plaintiff's binder they should be
13:33:22 9 behind --

13:33:22 10 THE COURT: All right. I've got you. Twenty-five
13:33:23 11 through 31. Never mind.

13:33:38 12 MR. HOFFMAN: No objection, Your Honor.

13:33:40 13 THE COURT: Then Plaintiff's Exhibits 25 through 31,
13:33:43 14 inclusive, are admitted.

13:33:54 15 MR. DOYLE: Thank you, Your Honor.

13:33:55 16 Q. Good afternoon, Mr. Cline. We're going to start a new
13:34:01 17 topic after lunch, and I'm going to ask you whether you're
13:34:08 18 familiar with firing mechanisms that use what is called an IR
13:34:13 19 gate system?

13:34:17 20 A. I am familiar of some blasters that use that type of
13:34:20 21 firing mechanism?

13:34:21 22 Q. Just briefly, how does the IR gate system operate?

13:34:25 23 A. So, from what I've seen, it will use an LED that will
13:34:32 24 transmit a light. There will be a sensor -- sorry. There will
13:34:35 25 be an IR sensor. And when something passes between those, it

13:34:40 1 will signal -- it will trigger a signal. So that will be the
13:34:44 2 IR gate function of the overall firing mechanism.

13:34:50 3 Q. Okay. And are firing mechanisms with an IR gate system
13:34:55 4 different than the PISCA and the PISCA switch of the physical
13:35:00 5 firing mechanism?

13:35:01 6 A. Yes. They use different components in order to get that
13:35:04 7 signal.

13:35:05 8 Q. And of the firing mechanisms using an IR gate system that
13:35:09 9 you're familiar with, can any shots be recorded?

13:35:13 10 A. Yes.

13:35:14 11 Q. Are there any disadvantages to using an IR gate system to
13:35:19 12 record shots fired?

13:35:20 13 A. Yes. The disadvantage would be it requires two separate
13:35:28 14 electrical components. At least the ones I've seen, they're a
13:35:30 15 more complex system and more costs associated with it.

13:35:36 16 Q. And why are there more cost associated with it?

13:35:39 17 A. It's a more expensive set of electronics that would be
13:35:42 18 needed instead of just a single microswitch.

13:35:47 19 Q. Now, have you ever seen an IR gate system that used a
13:35:51 20 PISCA and a physical switch?

13:35:52 21 A. I have not.

13:35:54 22 Q. Okay. Now we're going to turn to timing systems. And I'd
13:36:00 23 would like to know whether you're familiar with firing
13:36:03 24 mechanisms that use a timing system.

13:36:08 25 A. Yes, I am.

13:36:09 1 Q. And what is a timing system?

13:36:10 2 A. The timing system estimates the amount of time for a
13:36:13 3 firing action for the blaster to fire, and that's what's used
13:36:19 4 to drive different firing modes.

13:36:21 5 Q. Okay. And are firing systems that use a timing system,
13:36:26 6 are they different from the PISCA and the physical switch?

13:36:30 7 A. They are different. They do not have an additional
13:36:33 8 sensor.

13:36:37 9 Q. How does the timing system work? What does it do?

13:36:40 10 A. So it's estimating the time for -- or the time for a
13:36:47 11 firing action is recorded or estimated so that it can, based on
13:36:52 12 a -- that amount of time, can change the functionality so you
13:36:57 13 can do single fire or a multiround burst based on that time.

13:37:02 14 Q. Okay. And of these firing mechanisms and the timing
13:37:06 15 systems that you're familiar with, can you -- can any record of
13:37:11 16 shots that have fired be taken?

13:37:13 17 A. No. You would not be getting the feedback of actual shots
13:37:17 18 fired. It would just be a guess based on time. As the blaster
13:37:22 19 wears out or as the amount of power left in the battery
13:37:26 20 changes, there's variability that is involved in the overall
13:37:30 21 firing system. So it can deviate from that time that's
13:37:36 22 programmed.

13:37:37 23 Q. Okay. And have you ever seen a timing system that used a
13:37:41 24 PISCA and PISCA switch?

13:37:47 25 A. No.

13:37:48 1 Q. Okay. What I'd like to do is change topics now to a
13:37:52 2 Hasbro product called the Stampede. Are you familiar with the
13:37:56 3 Hasbro Stampede?
13:37:58 4 A. I am.
13:37:58 5 Q. And how did you develop your familiarity with the Hasbro
13:38:04 6 Stampede?
13:38:04 7 A. I learned about it in the brief.
13:38:09 8 Q. Can you be more specific? What brief?
13:38:10 9 A. The one for this injunction.
13:38:12 10 Q. Okay. Do you recall whether it was Gel Blaster's brief?
13:38:16 11 A. Oh. It was a response from Hasbro. It was mentioned.
13:38:20 12 Q. Okay. Thank you. Now, does the Stampede have a PISCA?
13:38:24 13 A. No, it does not.
13:38:25 14 Q. And PISCA, again, stands for the physical integrated
13:38:31 15 switch control arm; is that right?
13:38:33 16 A. Yes. The plunger-integrated switch contact arm.
13:38:36 17 Q. Great. Does the Stampede have a PISCA switch to measure
13:38:40 18 how many shots are fired?
13:38:42 19 A. It does not.
13:38:43 20 Q. And does the stampede have a dedicated single-fire mode?
13:38:48 21 A. It does not.
13:38:49 22 Q. How would you compare the firing mechanism in the Stampede
13:38:55 23 with that which would use the physical firing mechanism
13:38:59 24 comprising the PISCA and the physical switch?
13:39:02 25 A. They're pretty different in a variety of ways.

13:39:05 1 Q. Can you name some of those ways?

13:39:08 2 A. Yeah. I mean, I could -- it might be easier to show, but

13:39:11 3 it's going to have a different set of components. So the

13:39:13 4 plunger system would not have a PISCA or a PISCA switch. That

13:39:19 5 Stampede has an additional component that is -- I would refer

13:39:25 6 to it as a trigger lever that contacts the piston system. So

13:39:32 7 it's -- and also the trigger. So it's mechanically a different

13:39:37 8 set of components.

13:39:39 9 Q. Okay. Maybe it would help if I actually show you the

13:39:43 10 diagram for it.

13:39:44 11 A. Sure.

13:39:44 12 Q. Can you go to exhibit -- what's been marked as Exhibit 29,

13:39:48 13 please.

13:39:57 14 A. Okay.

13:39:57 15 Q. And what is this exhibit?

13:39:59 16 A. A Stampede -- a photo of a Stampede that's been partially

13:40:05 17 disassembled.

13:40:05 18 Q. Okay. Now, looking at this photo and pointing out in

13:40:09 19 here, how would you compare the firing mechanism of the

13:40:12 20 Stampede with that of a physical firing mechanism using the

13:40:16 21 PISCA and the physical switch?

13:40:18 22 A. Yes. So on this -- in this particular blaster, the

13:40:23 23 plunger is of a different construction and also operates in a

13:40:26 24 different manner. So the piston system here moves forward when

13:40:30 25 operating. This white piece of plastic, or this thing that I

13:40:35 1 had referred to as a trigger lever contacts the plunger system
13:40:41 2 and also the trigger. And in this case there's a switch that
13:40:46 3 would contact this trigger lever.

13:40:50 4 Q. Okay. And how is that different from the physical firing
13:40:54 5 mechanism?

13:40:54 6 A. There's no -- there's no PISCA, there's no detail
13:40:58 7 integrated with the plunger system, and there's no PISCA
13:41:00 8 switch.

13:41:02 9 Q. Okay.

13:41:02 10 A. There's also no dedicated trigger switch, either.

13:41:08 11 Q. Okay. Is that system more complex than the physical
13:41:12 12 firing mechanism of Gel Blaster?

13:41:14 13 A. It has additional components in order to operate, so yes.

13:41:19 14 Q. Okay. Have you ever reviewed the Hasbro Stampede that was
13:41:28 15 modified by some user on the Internet called "Darthskids"?

13:41:35 16 A. Yes. I'm familiar with that.

13:41:36 17 Q. Okay. And does that modify -- do you mind if I call it
13:41:39 18 the modified Stampede?

13:41:41 19 A. That works.

13:41:42 20 Q. Does the modified Stampede have a PISCA?

13:41:45 21 A. It does not.

13:41:46 22 Q. Okay. I'd like you to please direct your attention to
13:41:53 23 what's been marked as Exhibit Number 30, please.

13:41:55 24 A. Okay.

13:41:56 25 Q. Okay. How do you know there's no PISCA in that? Could

13:41:59 1 you show the Court, please?

13:42:01 2 A. So there's the same plunger system that was -- that is
13:42:06 3 normally there. There is no additional PISCA that was added to
13:42:10 4 the plunger system.

13:42:12 5 Q. Okay. And what did Mr. Darthskids -- or, you know,
13:42:19 6 whether it's a he or she, Darthskids, what did they do to
13:42:23 7 modify this Stampede?

13:42:26 8 A. So the point of the modification was to provide different
13:42:28 9 firing modes, so a single-fire and a three-round burst.

13:42:32 10 In order to do that, they had to add a variety of
13:42:35 11 electrical components. They had to add an electronics board --
13:42:39 12 in this case it was an Arduino -- and rewire the blaster. They
13:42:44 13 had to relocate one of the switches, basically disable it and
13:42:48 14 put it in another place to act as a trigger switch.

13:42:51 15 Q. Okay. During what part of the firing cycle is the switch
13:42:55 16 in the modified Stampede activated?

13:42:58 17 A. The switch would be activated when the plunger is moving
13:43:02 18 in a forward position. While it's moving the entire stroke, it
13:43:05 19 would be activated.

13:43:06 20 Q. And is that different from how the activation works in the
13:43:10 21 physical firing mechanism of Gel Blaster?

13:43:12 22 A. Yes, it is.

13:43:13 23 Q. How so?

13:43:14 24 A. On the firing mechanism, the physical firing mechanism
13:43:19 25 with the PISCA and the PISCA switch, the switch is contacted

13:43:23 1 when the plunger is in the rearward position.

13:43:29 2 Q. Thank you. All right. I'm going to switch directions

13:43:31 3 again. And are you familiar with the Hasbro Mythic?

13:43:36 4 A. Yes.

13:43:36 5 Q. Okay. If you would -- would you please look at what's

13:43:50 6 been marked as slides 26 -- I mean, not only slides, but

13:43:53 7 Exhibits 26, 27, and 28.

13:43:58 8 A. Okay.

13:43:59 9 Q. Have you analyzed the Hasbro Mythic?

13:44:02 10 A. Yes, I have.

13:44:03 11 Q. How did you go about doing that.

13:44:11 12 A. We'll go through a process where we'll test out the

13:44:11 13 blasters, see how it functions, see what kind of features it

13:44:13 14 has, look at the industrial design, just overall fit, finish,

13:44:17 15 how it operates. We'll look at the velocity of the rounds that

13:44:22 16 come out of it. And then we'll disassemble it and see what --

13:44:27 17 what makes it work, what's included inside.

13:44:34 18 Q. Okay. When did you receive a commercial version of the

13:44:37 19 Hasbro Mythic?

13:44:38 20 A. I preordered the Mythic at the end of July, and I received

13:44:42 21 the ones I ordered, it was at the end of September -- the very

13:44:46 22 end of September.

13:44:47 23 Q. Okay. And once you received that, could you just explain

13:44:51 24 the process by which you did the analysis of the Hasbro Mythic.

13:44:57 25 A. Yeah. Sure. So, again, when we're doing an evaluation of

13:45:01 1 a blaster product, we'll open it up, we'll see what was
13:45:04 2 included with it, we'll test out its functionality, see the
13:45:09 3 features, see how it operates, how the hopper system works,
13:45:15 4 just all of the different things that a user would interface
13:45:18 5 with. And then we'll go through the process of opening it up
13:45:21 6 and looking at the mechanisms used for operating the blaster.

13:45:25 7 Q. You keep referring to "we." Who else did you work on this
13:45:29 8 analysis with of the Hasbro Mythic?

13:45:32 9 A. So, per the engineering team, we -- we do this on a
13:45:36 10 variety of different products and blasters. Specifically on
13:45:40 11 this one, I was -- I did this myself. But, generally, we're
13:45:44 12 doing this as a team, so that's why I refer to "we."

13:45:48 13 Q. Okay. And when you were looking at the Hasbro Mythic,
13:45:52 14 what struck you?

13:45:57 15 A. Yeah. After opening it up, one of the things I did notice
13:46:01 16 relatively early was something that looked identical to a PISCA
13:46:05 17 and a PISCA switch. And so that was something that I knew of
13:46:08 18 our relationship with Hasbro and how we had shared a wide
13:46:14 19 variety of documentation and information. So it was a pretty
13:46:17 20 surprising to me to see something that was pretty specific to
13:46:21 21 the Surge, specifically the configuration that we were sharing
13:46:26 22 with Hasbro at that time, to show up in this production
13:46:29 23 blaster.

13:46:30 24 Q. Did you go talk about this finding with anybody else in
13:46:33 25 the company?

13:46:34 1 A. I shared it with Colin and Peyton. Those were my primary
13:46:39 2 contacts for that.

13:46:40 3 Q. Okay. And did you look at other features of the Mythic?

13:46:43 4 A. Yeah. There's a lot of different things to look at
13:46:46 5 when -- when evaluating. So, you know, you open it up, and
13:46:49 6 there's a certain level of complexity there. Then there's the
13:46:51 7 gearbox that can be opened up. It's kind of this whole other
13:46:54 8 animal there with different components.

13:46:57 9 But, yeah, we went through -- it took a little bit of
13:47:00 10 time to evaluate all of the features, and then going back and
13:47:03 11 looking at what information we shared and, you know,
13:47:08 12 understanding also what else is -- is in the marketplace as
13:47:11 13 part of the overall evaluation.

13:47:12 14 Q. And as part of your evaluation, did you look at the secret
13:47:17 15 CAD drawings of Gel Blaster which showed the physical firing
13:47:22 16 mechanism of Gel Blaster?

13:47:23 17 A. I did.

13:47:24 18 Q. And did you make a comparison between that and what you're
13:47:27 19 looking at in terms of the actual Hasbro Mythic?

13:47:36 20 A. I did.

13:47:36 21 Q. Okay. Do you recall how long this whole processing took?

13:47:39 22 A. It would have been at least a few weeks. You know,
13:47:44 23 there's some back-and-forth. You know, after we look at
13:47:47 24 something, we may decide, in general, to go back and spend some
13:47:53 25 more effort looking into some more details of certain aspects

13:47:57 1 of it. Some of it we may document some of, and then we'll
13:48:00 2 realize later we need to document more of. So then with the
13:48:04 3 back-and-forth with Colin and Peyton, it takes a few weeks.
13:48:08 4 Q. Okay. Thank you. Now let's go ahead and look at the
13:48:13 5 PISCA. And if we could refer to what's marked as Exhibit 26.
13:48:19 6 A. Okay.
13:48:19 7 Q. Okay. When you look at that, does the Mythic have a
13:48:25 8 PISCA?
13:48:26 9 A. Yes, it does.
13:48:27 10 Q. And would you show the Court and maybe circle what that
13:48:31 11 is.
13:48:33 12 A. So it's this protrusion on the rear of the piston. It
13:48:38 13 comes up, comes out at a 90-degree angle, and points towards
13:48:42 14 the rear of the blaster. Let me just circle it here.
13:48:44 15 Hopefully my pen shows up. It's right here.
13:48:46 16 Q. Okay. Thank you. And how does that compare to the PISCA
13:48:50 17 in the Gel Blaster trade secret design?
13:48:53 18 A. It's quite similar. It's very similar. Almost identical.
13:48:57 19 Q. Okay. And does the Mythic have a switch activated by the
13:49:01 20 PISCA?
13:49:02 21 A. Yes, it does.
13:49:03 22 Q. Could you explain that operation, please.
13:49:06 23 A. Yes. So using this image, again, I'm going to point.
13:49:10 24 This is the PISCA at the rear of the piston. As the blaster is
13:49:14 25 cycling, the piston is going to move rearward. Right here --

13:49:18 1 and I'll make another circle here; they kind of overlap -- is
13:49:21 2 the PISCA switch that is contacted by the switch when it is in
13:49:25 3 the rearward position.

13:49:26 4 Q. Is that the same switch --

13:49:27 5 A. Sorry. Contacted by the PISCA in the rearward position.

13:49:30 6 Q. I'm sorry. Is that the same switch that's used in the
13:49:33 7 physical firing mechanism of the Gel Blaster design?

13:49:38 8 A. It is, yes.

13:49:39 9 Q. And why do you say that?

13:49:41 10 A. It's the same type of microswitch. It's in a slightly
13:49:45 11 different orientation, but it's the same rear position. It's
13:49:48 12 contacted in the same manner, when the piston is in the
13:49:51 13 rearward -- moving in the rearward position.

13:49:54 14 Q. Okay. And when the -- when that arm -- we'll call it the
13:49:59 15 "protruding arm" here.

13:50:00 16 A. Okay.

13:50:01 17 Q. When it's moving backwards and it contacts the switch,
13:50:05 18 what happens?

13:50:06 19 A. It's going to send a signal to the electronics board.

13:50:10 20 Q. Okay.

13:50:11 21 A. And that would be -- that would be the signal used to
13:50:15 22 drive single-fire mode in this case.

13:50:17 23 Q. Okay. What I'd like you just very briefly to do, if you
13:50:20 24 could, describe the process using the Mythic of how a shot is
13:50:25 25 recorded in the firing mechanism.

13:50:27 1 A. Sure. So a user would pull the trigger. The trigger
13:50:33 2 would contact the trigger switch. And I see a different image
13:50:36 3 here. Can I point to that to explain it better, because this
13:50:38 4 one is cut off.

13:50:38 5 Q. Sure. You may.

13:50:41 6 A. So this is Exhibit 27.

13:50:49 7 Q. Thank you.

13:50:49 8 A. So this is -- this is a partially disassembled Mythic. It
13:50:54 9 just shows more of the overall blaster. So the user would pull
13:50:57 10 back the trigger. It would contact this trigger switch right
13:51:00 11 here. That's going to send a signal to the electronics board
13:51:04 12 that's going to send current to the motor. The motor is going
13:51:08 13 to turn the gears in the gearbox, which is going to pull the
13:51:13 14 plunger system into the rearward position and cause the gun to
13:51:16 15 fire.

13:51:16 16 While that's happening, when this piston reaches the
13:51:19 17 rearward position, the PISCA contacts -- or the protrusion on
13:51:24 18 the plunger contacts the PISCA switch. And that would send a
13:51:27 19 signal back to the electronics board to drive a single-fire
13:51:32 20 mode.

13:51:35 21 Q. How does the operation of the Mythic using those
13:51:40 22 components compare to the operation of the Gel Blaster trade
13:51:46 23 secret physical firing mechanism?

13:51:47 24 A. They're the same.

13:51:48 25 Q. Okay. Thank you. Changing course for a minute Mr. Cline,

13:51:58 1 you testified about certain advantages of the physical firing
13:52:00 2 mechanism earlier; is that correct?

13:52:02 3 A. That's correct.

13:52:03 4 Q. And were you in the courtroom when Mr. Colin Guinn also
13:52:06 5 testified about the advantages of using a physical firing
13:52:09 6 mechanism?

13:52:10 7 A. I was.

13:52:10 8 Q. And some of those advantages, did they -- are they
13:52:14 9 currently implemented in any of the Gel Blaster products which
13:52:18 10 are sold in the market?

13:52:19 11 A. No. There's -- there's a lot of work going on within the
13:52:23 12 organization to build out that whole functionality, and that's
13:52:29 13 something we're actively working on.

13:52:31 14 Q. Okay. And I believe Mr. Colin Guinn testified earlier
13:52:35 15 about, when that iteration of the Gel Blaster gun would come on
13:52:41 16 the market. Do you recall that?

13:52:42 17 A. Yeah. There's a target for Q4 of this year.

13:52:46 18 Q. Okay. And with respect to that introduction, you believe
13:52:50 19 some of these advantages will be associated with the physical
13:52:54 20 firing mechanism in that particular gun?

13:52:56 21 A. Absolutely. That's one of the -- the kind of foundational
13:53:00 22 starting points for driving these additional game play
13:53:05 23 functionality aspects within the product.

13:53:08 24 Q. Okay. And do you believe that Gel Blaster shared under
13:53:14 25 the confidentiality agreement any of those advantages of new

13:53:19 1 functionality associated with the physical firing mechanism to
13:53:23 2 Hasbro?

13:53:24 3 A. Yeah. That's my understanding. We had a provisional
13:53:27 4 patent that was submitted and shared with Hasbro that laid out
13:53:32 5 some of these game play advantages that would come from this
13:53:36 6 additional sensor.

13:53:37 7 Q. Okay. Thank you very much.

13:53:41 8 MR. DOYLE: No further questions.

13:53:42 9 THE COURT: Cross-examination?

13:53:45 10 MR. HOFFMAN: Yes, Your Honor. May I have a moment
13:53:47 11 to set up?

13:53:47 12 THE COURT: You may.

13:53:48 13 MR. HOFFMAN: Thank you, Your Honor.

13:53:58 14 Your Honor, I have binders. May I have them passed
13:54:01 15 out?

13:54:01 16 THE COURT: You may.

13:54:02 17 MR. HOFFMAN: Thank you.

13:55:36 18 Thanks, Your Honor. I'm ready to proceed.

13:55:39 19 THE COURT: You may proceed.

13:55:40 20 **CROSS-EXAMINATION**

13:55:40 21 **BY MR. HOFFMAN:**

13:55:40 22 Q. So, sir, I believe I heard you testify to the Court that
13:55:44 23 the PISCA had not yet been released; is that right?

13:55:48 24 A. I testified that the PISCA and PISCA switch had not been
13:55:51 25 released.

13:55:52 1 Q. Okay. Well, that's an important difference, you would
13:55:55 2 say, right?

13:55:56 3 A. Sure. I mean, that's the -- both those things are
13:55:59 4 required for the functionality of this to work.

13:56:02 5 Q. I understand. But, sir, I've been listening to the
13:56:06 6 testimony, and I've heard the PISCA mentioned probably dozens
13:56:10 7 of times. The PISCA, the arm that we've heard so much about,
13:56:15 8 that's publicly known, right?

13:56:21 9 A. Maybe. I mean ...

13:56:21 10 Q. You don't know?

13:56:22 11 A. Well, I mean, I --

13:56:25 12 Q. Is the PISCA that we've heard so much about --

13:56:29 13 A. Yeah, okay.

13:56:30 14 Q. -- is that publicly known or not, sir?

13:56:32 15 A. Yes.

13:56:33 16 Q. Okay. Why is it publicly known?

13:56:35 17 A. So in some of the early molds for the Surge product, that
13:56:42 18 feature was still present.

13:56:45 19 Q. Okay. When you say early molds, are you familiar with
13:56:49 20 what Gel Blaster calls the Surge Gen2?

13:56:53 21 A. Yes.

13:56:54 22 Q. And when you started at Gel Blaster in March of 2022, was
13:57:00 23 the Surge Gen2 on sale publicly?

13:57:03 24 A. That's a great question. I believe so. I mean, we had
13:57:10 25 the 1.5. There was a transition there. Yeah. I believe it

13:57:14 1 was available.

13:57:15 2 Q. Okay. And that March 2022 was months before Hasbro ever
13:57:20 3 sold a single Mythic, right?

13:57:22 4 A. Yes.

13:57:23 5 Q. Okay. I have a Surge Gen2. I'm going to open it up, a
13:57:32 6 few screws, and place it on the screen, if I can.

13:57:55 7 Right there, sir?

13:57:57 8 A. I'm not --

13:57:57 9 Q. That's a PISCA, right?

13:57:58 10 A. I'm not really able to see this very well. Is it okay
13:58:01 11 that I could actually see the physical one? I'm having a hard
13:58:02 12 time seeing it on the screen.

13:58:03 13 MR. HOFFMAN: Certainly. Your Honor, may I?

13:58:05 14 THE COURT: You may.

13:58:05 15 THE WITNESS: Okay. I appreciate it.

13:58:11 16 Q. (BY MR. HOFFMAN) Take a look.

13:58:13 17 A. Okay. Thank you.

13:58:16 18 Q. I thought you might need longer.

13:58:19 19 A. No. I appreciate it. Thank you.

13:58:28 20 Q. So the PISCA we've heard so much about, you'd agree it was
13:58:32 21 public at least by March of 2022?

13:58:36 22 A. Yes.

13:58:37 23 Q. Okay. Now, you mentioned the Surge 1.5. That one came
13:58:41 24 out in October of 2021; is that right?

13:58:44 25 A. I'd have to double-check to be perfectly honest, but that

13:58:49 1 sounds roughly correct.

13:58:50 2 Q. Okay. Or at least by November?

13:58:52 3 A. Sure. That sounds correct.

13:58:54 4 Q. Okay. Did it have a PISCA?

13:58:57 5 A. Yes.

13:58:58 6 Q. Okay. So a year before the motion for preliminary
13:59:04 7 injunction was filed, the PISCA was publicly known to anybody
13:59:08 8 with a screwdriver who wanted to open up the Gel Blaster?

13:59:12 9 A. Yeah. The PISCA, though, doesn't do anything by itself.

13:59:17 10 Q. I understand?

13:59:17 11 A. We've been talking about a PISCA and a PISCA switch.

13:59:20 12 Q. We'll get there.

13:59:21 13 A. Okay.

13:59:21 14 Q. I want to make sure it's clear. This arm, more than a
13:59:24 15 year before the motion in this case was filed, this PISCA arm
13:59:28 16 was known to anybody with a screwdriver who wanted to open up a
13:59:32 17 Gel Blaster, right?

13:59:33 18 A. Yes.

13:59:33 19 Q. Okay. And you would agree that in the Surge 1.5 and the
13:59:45 20 Surge 2.0, the PISCA didn't have a function, right?

13:59:51 21 A. I would agree.

13:59:52 22 Q. Okay. And so someone knowledgeable opened it up, would
13:59:59 23 look at it, and it didn't do anything, right?

14:00:01 24 A. Yeah. I think it would be pretty hard to determine its
14:00:05 25 purpose.

14:00:05 1 Q. There we go. You think that a person who understands
14:00:10 2 blasters would open up a Surge, see the PISCA, and you think
14:00:15 3 they wouldn't know what it did. Is that your testimony?
14:00:18 4 A. There's no switch that it's contacting.
14:00:20 5 Q. Okay. I understand. Sir, I'd like to direct you -- with
14:00:26 6 the Court's permission, I'd like to watch a little small part
14:00:29 7 of the video from -- from YouTube. It's DX-72. If we could
14:00:38 8 queue that up and let me shut this.
14:00:40 9 (Video played)
14:01:11 10 (Video paused)
14:01:13 11 Q. (BY MR. HOFFMAN) Okay, sir. This is a YouTube video.
14:01:15 12 It's DX-72. It's by a man that goes by the of "Engineerable"
14:01:21 13 on YouTube. Are you familiar with him?
14:01:24 14 A. I am.
14:01:24 15 Q. And he has something of a hobby of opening up Gel Blaster,
14:01:28 16 in particular, blasters and looking inside?
14:01:30 17 A. Yes.
14:01:31 18 Q. You would agree?
14:01:32 19 A. Uh-huh.
14:01:32 20 Q. To my knowledge, he doesn't work in the industry, unless
14:01:35 21 do you know any different?
14:01:36 22 A. I don't know that he does.
14:01:37 23 Q. I think he's got 9,000 followers. Probably, I'm guessing,
14:01:40 24 basement. Maybe I'm wrong. And he examined the Surge 2.0.
14:01:46 25 All right. And his analysis of the PISCA begins at time mark

14:01:51 1 3:17. So I'm going to play it for you.

14:01:54 2 (Video played)

14:01:54 3 (Video paused)

14:02:32 4 Q. (BY MR. HOFFMAN) Okay. So that's the gentleman not in the
14:02:35 5 industry. He looked at your publicly on sale blaster with a
14:02:39 6 PISCA, and he seemed to have gotten it immediately. You would
14:02:44 7 agree?

14:02:44 8 A. Yeah. And this video is actually one I have seen before.
14:02:47 9 I believe it was released in the neighborhood of about three
14:02:50 10 weeks ago. And this was a video that was done after he had
14:02:56 11 also done some analysis of a Gelfire Mythic, which shows the
14:03:01 12 functionality of a PISCA and a PISCA switch with its entirety.

14:03:06 13 So somebody who has this kind of expertise, takes
14:03:10 14 apart a lot of blasters, reviews them, shows them how they
14:03:13 15 function. My understanding is he has an engineering background
14:03:15 16 to some degree. I didn't validate that or anything. After
14:03:19 17 seeing that, this would be an easier step to make for sure.

14:03:22 18 Q. That's your suspicion, sir?

14:03:24 19 A. Yes.

14:03:25 20 Q. But there are lots of people in the industry who you would
14:03:28 21 agree likely have a lot more experience with blasters and are
14:03:32 22 able to understand a lot more about them than Mr. Engineerable
14:03:36 23 here?

14:03:36 24 A. Yeah. It's kind of a vague statement, but yeah.

14:03:39 25 Q. Okay.

14:03:46 1 MR. HOFFMAN: You can take that off. Thank you.

14:03:48 2 Q. And, sir, you joined Gel Blaster in March of 2022?

14:03:52 3 A. That's correct.

14:03:53 4 Q. And prior to that, you worked in a variety of industries

14:03:57 5 but not toys?

14:03:58 6 A. That is correct, yes.

14:04:01 7 Q. Okay. In fact, in September of 2021, when Hasbro and

14:04:06 8 Gel Blaster were talking, you worked for a turbine company; is

14:04:11 9 that right?

14:04:11 10 A. That's correct.

14:04:12 11 Q. So right now you have less than a year of experience in

14:04:15 12 the toy business?

14:04:15 13 A. Yeah. Professionally.

14:04:17 14 Q. Okay. I imagine you played with them as a kid. I'm not

14:04:21 15 doubting that.

14:04:22 16 A. I've been disassembling my toys since I can remember. So

14:04:26 17 I'm familiar with a lot of different types of toys and

14:04:29 18 functionality.

14:04:30 19 Q. But you testified that you had spoken to other people at

14:04:33 20 Gel Blaster, and you had learned about the products that came

14:04:35 21 before your time; is that right?

14:04:37 22 A. That's correct.

14:04:37 23 Q. Okay. So I'd like to talk about when you first saw the

14:04:46 24 Mythic. You just testified that you saw -- you got your first

14:04:51 25 Mythic in September -- end of September; is that right?

14:04:54 1 A. Yeah. That was -- that was when I ordered and got a
14:04:56 2 production Mythic, was end of September.

14:04:59 3 Q. I want to make sure I'm clear. When was first time that
14:05:02 4 you examined the Mythic?

14:05:03 5 A. So I saw a potentially preproduction version. This would
14:05:14 6 have been August, I believe.

14:05:15 7 Q. Okay. So you -- you ordered one in September on your own
14:05:18 8 credit card, but you saw -- you examined a Mythic in August?

14:05:23 9 A. Yeah. To be clear, I ordered it in July. It showed up in
14:05:26 10 September.

14:05:27 11 Q. Okay.

14:05:27 12 A. But, yes, I did examine a potential version of a Mythic.
14:05:34 13 I don't know how to classify it exactly.

14:05:36 14 Q. Okay. But it was -- it was -- did it match what you
14:05:39 15 eventually saw?

14:05:40 16 A. It was pretty close, yeah.

14:05:42 17 Q. And it was advertised, you understand, to be a Mythic -- a
14:05:46 18 NERF Mythic?

14:05:47 19 A. Yes.

14:05:47 20 Q. Okay. And, again, you started in March, but you were here
14:05:51 21 when the ITC case -- hopefully you weren't here in the
14:05:54 22 courtroom. You were at Gel Blaster when the ITC case was
14:05:57 23 filed, right?

14:05:58 24 A. Yeah. But, in all honestly, that's not something I'm very
14:06:02 25 privy to or have any information.

14:06:03 1 Q. I understand. If you could just listen to my questions.

14:06:05 2 A. Yeah. Sure. I'm just trying to provide information.

14:06:08 3 Q. I appreciate it. So you were also at Gel Blaster when

14:06:11 4 this suit was filed, right?

14:06:13 5 A. Yes.

14:06:13 6 Q. Okay. Did you examine that Mythic before or after the

14:06:20 7 suit was filed in this court?

14:06:23 8 A. I honestly don't know. I don't know the exact date when

14:06:26 9 this was filed, and I don't remember the exact date when I

14:06:29 10 examined. So I honestly can't tell you.

14:06:32 11 Q. Okay. Do you know if anybody at Gel Blaster had examined

14:06:35 12 a Mythic when this suit was filed?

14:06:37 13 A. I don't know the answer to that.

14:06:39 14 Q. Okay. So it seems as if, if you're so obviously concerned

14:06:46 15 about the Mythic, that you would remember whether or not you

14:06:49 16 saw it before or after the suit was filed, but you don't.

14:06:52 17 A. I don't know when the suit was filed.

14:06:54 18 Q. Okay.

14:06:59 19 A. That's not my function at all. I'm not involved in most

14:07:03 20 of the legal stuff.

14:07:03 21 Q. Let's drill down on the date. Do you believe you saw the

14:07:06 22 Mythic at the beginning of August or the second half of August?

14:07:08 23 A. I honestly don't know. I would have to go back and look.

14:07:11 24 I -- I don't know.

14:07:12 25 Q. But you know it's sometime in August?

14:07:14 1 A. It was sometime in August.

14:07:16 2 Q. So your original analysis was in August?

14:07:19 3 A. Yes.

14:07:19 4 Q. And you saw the physical switch being used in the Mythic
14:07:23 5 in August?

14:07:26 6 A. Yes. Yeah. I guess --

14:07:33 7 Q. My question --

14:07:34 8 A. Okay.

14:07:34 9 Q. Do you need to clarify? I wasn't -- didn't have a pending
14:07:37 10 question.

14:07:37 11 A. Well, I mean, you're referring to the original one as --
14:07:41 12 as a Mythic, kind of one and the same as what we reviewed in
14:07:45 13 September. But all that was was something that was the
14:07:49 14 potential to be a Mythic. We had no idea what was actually
14:07:53 15 going to be on the market or how close or different it would
14:07:58 16 be. So the real analysis couldn't take place until September
14:08:00 17 when we got a production of Mythic.

14:08:02 18 Q. I'm just curious. How did you get a preproduction copy of
14:08:06 19 the Mythic?

14:08:06 20 A. It showed up at our office. I don't know exactly where it
14:08:10 21 came from.

14:08:10 22 Q. You think Hasbro sent you a preproduction version of the
14:08:15 23 Mythic?

14:08:16 24 A. I honestly don't know where it came from.

14:08:18 25 Q. You didn't ask?

14:08:19 1 A. I didn't, no. We get a lot of different blasters that
14:08:22 2 come in for evaluating. And so that's not a completely
14:08:30 3 non-normal thing for a different company's blaster to show up
14:08:32 4 that we'll take a look at.

14:08:35 5 Q. And I guess how do you know it was a preproduction version
14:08:36 6 of the Mythic and not just a Mythic?

14:08:39 7 A. Because the production Mythics hadn't -- I mean, I had
14:08:46 8 preordered it around the day that they were released, and those
14:08:50 9 hadn't shipped yet, to my knowledge.

14:08:52 10 Q. Okay. So we've just seen that obviously the PISCA --
14:08:59 11 while you didn't use it, the PISCA, the structure, all of that
14:09:02 12 was actually in the -- in your blasters starting at least in
14:09:07 13 November of 2021. But, to be clear, the physical switch part
14:09:16 14 of this hasn't integrated in any of your blasters to date,
14:09:21 15 right?

14:09:21 16 A. Yeah. The physical switch that would contact the PISCA
14:09:24 17 has not.

14:09:24 18 Q. Okay. You've released, I believe, six different variants
14:09:28 19 of blasters in that intervening 16 months --

14:09:31 20 A. I'm --

14:09:32 21 Q. -- and none of them have a switch?

14:09:34 22 A. We -- so you're asking me about six different blasters.
14:09:39 23 It depends where we differentiating when there's a change. So
14:09:43 24 I don't want to get too tangled up in that detail, but what was
14:09:48 25 the rest of your question?

14:09:49 1 Q. Well, how many blasters has Gel Blaster released since,
14:09:53 2 let's say, November of 2021?

14:09:57 3 A. If you're talking about Surge variants, that would be a
14:10:00 4 little bit more difficult to pin down. But we have the Surge,
14:10:06 5 the StarFire, the Surge XL, and the StarFire XL. So those four
14:10:12 6 different blasters. And then there's been a couple of
14:10:15 7 variations of the Surge.

14:10:15 8 Q. And then the Surge 1.5, Surge 2.0, and Surge 3.0?

14:10:22 9 A. Yeah. There's some external nomenclature, and there's
14:10:27 10 some internal nomenclature. And where that overlap is
14:10:30 11 sometimes gets a little bit confusing. But that's roughly
14:10:35 12 correct.

14:10:35 13 Q. Okay. So six variants in the last 16 months, none of
14:10:38 14 which include the valuable switch; is that right?

14:10:40 15 A. Yeah. The blasters we're providing now have a limited
14:10:44 16 functionality to kind of introduce the type of blaster and game
14:10:50 17 play to the marketplace. And that's what we're using to help
14:10:55 18 build upon what we're working on internally, to take this kind
14:10:58 19 of to another level, very similar to what Mr. Colin Guinn was
14:11:03 20 talking about, with trying to make the blaster play for video
14:11:07 21 game-esque.

14:11:09 22 Q. Okay. In your declaration for the first time, and as
14:11:18 23 mentioned earlier, you mentioned the Surge Pro, right, sir?

14:11:19 24 A. Yeah. That's an internal working name for kind of our
14:11:23 25 next-generation blaster that would be utilizing more of a

14:11:25 1 digital interface.

14:11:28 2 Q. And when did Gel Blaster come up with the name Surge Pro?

14:11:31 3 A. Oh, man. I don't know for sure. It's been tossed around
14:11:34 4 a few different times. It's a working name, so we've had a few
14:11:37 5 different ones internally. So I don't know exactly when that
14:11:40 6 was coined.

14:11:42 7 Q. You reviewed the declaration of another employee of
14:11:45 8 Gel Blaster, Mr. Davis?

14:11:46 9 A. Yeah. I believe I read that. I don't have it memorized
14:11:50 10 or remember it very closely, but yes.

14:11:52 11 Q. Okay. Mr. Davis never mentions the Surge Pro. He simply
14:11:56 12 says there's some product, I believe he said, was expected?

14:12:00 13 A. Uh-huh.

14:12:01 14 Q. Is there a reason why a company, in the motion itself,
14:12:04 15 that Gel Blaster wouldn't mention this Surge Pro?

14:12:08 16 A. Yeah, sure. It was a -- it was a loose working name in
14:12:12 17 the earlier stages of this. So it was -- we've been talking
14:12:17 18 about it, but we didn't have a formal product. You know, Surge
14:12:21 19 Pro is still our working name. I wouldn't say it's going to be
14:12:24 20 the formal name on the box when it's released.

14:12:26 21 Q. Okay. And right now you're targeting Q4 of 2023 for the
14:12:31 22 Surge Pro?

14:12:32 23 A. Yes.

14:12:32 24 Q. So roughly a little over two years since you came up with
14:12:35 25 the -- the PISCA and the switch?

14:12:37 1 A. Yeah. I mean, the overall ecosystem that's required to --
14:12:44 2 to have this kind of functionality, so much of it hasn't
14:12:50 3 existed yet. So it requires a ton of development: software
14:12:54 4 development, electronics development. We've spent a ton of
14:12:58 5 effort and energy and money in developing the first stages of
14:13:02 6 this with this future product line that we're working on. It
14:13:07 7 is a not a simple task.

14:13:09 8 MR. HOFFMAN: Okay. Before I forget, Your Honor, I'd
14:13:16 9 like to move to admit Defendant's Physical 6, but it's also
14:13:17 10 photographed at Exhibit 65.

14:13:50 11 MR. BROADAWAY: Which photograph? You said 65?

14:13:53 12 MR. HOFFMAN: It's photographed as Exhibit 65. The
14:13:56 13 photographs aren't in the binder.

14:14:11 14 They've been uploaded, but I didn't -- I don't have a
14:14:14 15 printed picture of the --

14:14:18 16 MR. BROADAWAY: Can you bring up the picture on the
14:14:20 17 screen.

14:14:21 18 MR. HOFFMAN: We should be able to, yeah. I'm happy
14:14:24 19 to.

14:14:49 20 MR. BROADAWAY: Just those three photos? So I didn't
14:14:52 21 see any pictures of the breakdown.

14:14:54 22 MR. HOFFMAN: There is one. Keep going.

14:15:02 23 THE COURT: Now, are all of those pictures
14:15:04 24 Exhibit 65?

14:15:05 25 MR. HOFFMAN: Yes, they are, Your Honor.

14:15:14 1 MR. DOYLE: No objection.

14:15:16 2 THE COURT: Exhibits -- Hasbro's Exhibits Number 6
14:15:20 3 and Exhibit Number 65 are admitted.

14:15:30 4 MR. HOFFMAN: Your Honor, it's physical 6?

14:15:32 5 THE COURT: Yeah. I admitted that so the record will
14:15:34 6 be clear that we saw that and it was an exhibit when we saw it,
14:15:38 7 even though the photographs are what are going to go to the
14:15:41 8 Circuit.

14:15:41 9 MR. HOFFMAN: Yes, Your Honor.

14:15:42 10 THE COURT: If it goes to the Circuit. But this way
14:15:46 11 the record is clear as it can be as to what we were doing in
14:15:49 12 the courtroom.

14:15:49 13 MR. HOFFMAN: I understand. Thank you, Your Honor.

14:15:50 14 THE COURT: I'm not a big fan of the efficiency of
14:15:54 15 electronically submitting all exhibits to the Circuit.
14:15:57 16 Unfortunately, when I served on the appellate court, we
14:16:01 17 actually got original exhibits and it was quite helpful to be
14:16:04 18 able to touch them and look at them.

14:16:06 19 MR. HOFFMAN: Thank you, Your Honor.

14:16:07 20 THE COURT: The world has passed me by.

14:16:10 21 MR. HOFFMAN: May I proceed, Your Honor?

14:16:12 22 THE COURT: You may.

14:16:12 23 MR. HOFFMAN: Thank you.

14:16:13 24 Q. Sir, you would agree that there are many blasters -- gel
14:16:19 25 ball blasters on the market that offer both semi and auto fire?

14:16:24 1 A. Yes. There are some.

14:16:25 2 Q. I think we heard earlier that Gel Blaster, the company --
14:16:33 3 and maybe I can clarify this.

14:16:33 4 You would agree that "gel blaster" is also used as a
14:16:33 5 generic term in the industry to refer to blasters that fire
14:16:39 6 these gel balls, right?

14:16:42 7 A. I have heard people refer to it that way.

14:16:45 8 Q. You -- you know that the term "gel blaster" was used
14:16:49 9 before the company Gel Blaster existed, right?

14:16:51 10 A. I don't know that for a fact, but that's probably logical.

14:16:54 11 Q. Okay. And there are many other gel ball blasters, like I
14:16:59 12 said, on the market that do semi fire and auto fire, right?

14:17:03 13 A. Uh-huh.

14:17:04 14 Q. PTT, Prime Time Toys, they make one, right?

14:17:07 15 A. Okay.

14:17:07 16 Q. Do you know that?

14:17:08 17 A. I'm -- yeah. I've heard of Prime Time Toys. I'm more
14:17:13 18 familiar with blasters themselves than maybe the companies that
14:17:16 19 make them, but yeah. Okay.

14:17:18 20 Q. Okay. And a company called SplatRBall we have heard a
14:17:21 21 little bit about, they make them?

14:17:23 22 A. I am familiar with SplatRBall, yes.

14:17:25 23 Q. And if you turn to Exhibit 17 in your binder, that's
14:17:39 24 Defendant's Exhibit 52. Do you see that?

14:17:41 25 A. Yes. I see that.

14:17:42 1 Q. It's screenshot -- I mean, a printout from the SplatRBall
14:17:48 2 web page of the SRB400 kit. Do you see that?

14:17:55 3 A. I do see it.

14:17:56 4 Q. And they offer the ability to pick semi or auto?

14:18:00 5 MR. DOYLE: Your Honor, I'd like to object for lack
14:18:03 6 of foundation.

14:18:04 7 THE COURT: Well, tell me the relevance of this,
14:18:06 8 Mr. Hoffman.

14:18:07 9 MR. HOFFMAN: Your Honor, the assertion's been made
14:18:10 10 by both witnesses that somehow the functionality we're
14:18:13 11 addressing, about providing semi and auto, was a unique feature
14:18:16 12 in the industry. And it simply isn't. And this is to
14:18:19 13 establish that there are many different companies out there
14:18:22 14 that all offer this same functionality. It is a well-known
14:18:26 15 functionality to provide semi and auto fire.

14:18:28 16 THE COURT: The objection is overruled. You may
14:18:29 17 proceed.

14:18:30 18 MR. HOFFMAN: Thank you, Your Honor.

14:18:32 19 Q. Mr. Cline, are you familiar with the SRB400?

14:18:36 20 A. I am.

14:18:36 21 Q. Okay. And the SRB400 also on the market competes against
14:18:41 22 Gel Blaster?

14:18:42 23 A. So, yeah, it's a broader term. So competes against --
14:18:48 24 SplatRBall and Gel Blaster aren't competing with each other.
14:18:51 25 This product is a rifle-size product. It has a particular

14:18:54 1 size -- a larger size gearbox. Our first product was the
14:18:58 2 Surge. That was a pistol or hand blaster. It had a smaller
14:19:02 3 gearbox. And the -- one of the unique things about the Surge
14:19:07 4 is there were not options for single-fire mode blasters that
14:19:13 5 were of that size.

14:19:14 6 So, yes, there's other rifle-size blasters that have
14:19:17 7 that functionality.

14:19:18 8 Q. Okay. The -- to be clear, the SplatRBall blaster has the
14:19:23 9 functionality?

14:19:23 10 A. Yes. This rifle-size blaster has that functionality.

14:19:27 11 Q. And they use timing. Are you aware of that?

14:19:30 12 A. I -- man. I don't remember this one specifically --

14:19:35 13 Q. Okay.

14:19:36 14 A. -- internally.

14:19:37 15 Q. So you've made a big deal about the size.

14:19:40 16 A. Uh-huh.

14:19:41 17 Q. All right. The timing functionality is performed with
14:19:45 18 circuitry, right?

14:19:46 19 A. Uh-huh.

14:19:47 20 Q. Does -- does the circuitry in these blasters, is it
14:19:52 21 extremely large?

14:19:53 22 A. I mean, no. I don't know why it's relevant.

14:19:56 23 Q. So if a blaster uses timing, all it needs is a -- is
14:20:01 24 essentially a timing chip, right?

14:20:04 25 A. Uh-huh.

14:20:04 1 Q. And the timing chip can go in a large blaster, and it can
14:20:07 2 go in a small blaster, right?

14:20:08 3 A. Yeah. But nobody had really been doing it on the hand
14:20:11 4 blasters.

14:20:11 5 Q. So you're saying nobody's made a smaller piece of plastic,
14:20:15 6 is that what you're saying, for the case?

14:20:18 7 A. The structure is different on the pistol-size blasters.
14:20:23 8 So, you know, before the Surge, I'm not aware of any of the
14:20:27 9 handheld, pistol-size blasters that had that functionality.

14:20:33 10 Q. Let's talk about the technology, though.

14:20:35 11 A. Okay.

14:20:36 12 Q. The technology for doing semi and auto, that's well known
14:20:40 13 in the industry?

14:20:41 14 A. Yeah.

14:20:41 15 Q. Okay. You have no objection -- you had no issue if Hasbro
14:20:45 16 had used timing to provide the semi and auto functionality?

14:20:50 17 A. Yeah. I don't think I'd be sitting here right now if that
14:20:52 18 was the case.

14:20:53 19 Q. Okay. A consumer that buys a blaster, do you write on the
14:20:56 20 box the type of system it uses for doing semi or auto?

14:20:59 21 A. I'm -- it's possible that it's done. Yeah. That's
14:21:04 22 probably not typical.

14:21:05 23 Q. You examined the Mythic box, right?

14:21:07 24 A. Uh-huh.

14:21:08 25 Q. It doesn't say on there we're doing semi and auto fire

14:21:12 1 using a physical switch, does it?

14:21:14 2 A. It does not.

14:21:15 3 Q. So a consumer, the only way they would know is if they
14:21:18 4 open it up?

14:21:19 5 A. Yeah. Well, the consumer knows that the Mythic, which is
14:21:21 6 more of a handheld size blaster, has that functionality.
14:21:25 7 That's on the box.

14:21:26 8 Q. Is it your opinion that Hasbro would be unable to use,
14:21:32 9 say, timing to provide semi and auto fire if they wanted to?

14:21:35 10 A. No. I believe Hasbro has a lot of tools in their toolbox
14:21:40 11 that could have allowed them to provide that, but they didn't.
14:21:42 12 They ended up using the PISCA and PISCA switch oriented in a
14:21:45 13 manner in identical fashion that we had in our design.

14:21:49 14 Q. Well, we'll get there.

14:21:50 15 A. Okay.

14:21:50 16 Q. But, again, the ability to provide this functionality,
14:21:53 17 Hasbro could have chosen a number of ways to provide it, you'd
14:21:57 18 agree, and all would have the same look to the customer, right?

14:22:00 19 A. Yeah. They would have the same look to the customer.
14:22:04 20 There might be nuances on functionality that could be
14:22:06 21 different.

14:22:07 22 Q. So let's talk about the Gel Blaster --

14:22:11 23 MR. HOFFMAN: You can take that down, please.

14:22:14 24 Q. -- the Gel Blaster development story.

14:22:16 25 You said something I think was interesting, sir. You

14:22:18 1 said the Surge was Gel Blaster's first blaster, right?

14:22:21 2 A. Yeah. I believe I said that, yes.

14:22:26 3 Q. Are you sure that's true, sir?

14:22:28 4 A. No. That's probably not entirely accurate. That was kind

14:22:32 5 of our first flagship product that we released.

14:22:34 6 Q. Surge wasn't Gel Blaster's first blaster, right, sir?

14:22:39 7 A. Okay.

14:22:40 8 Q. I'm not the one testifying, sir. Would you agree with

14:22:43 9 that?

14:22:43 10 A. Sure. Yes.

14:22:44 11 Q. Okay. And we heard Mr. Guinn say earlier that Gel Blaster

14:22:49 12 doesn't do just reproductions of actual firearms, right?

14:22:54 13 A. Yeah. That's the -- part of the foundation of the

14:22:59 14 development we're doing, the direction we're going, is not

14:23:03 15 doing that.

14:23:03 16 Q. Okay. But you used to do that, right?

14:23:06 17 A. So yeah. We're getting into there's a period of time when

14:23:12 18 Gel Blaster was doing Kick Starter, when Gel Blaster maybe

14:23:19 19 before was -- I don't know if the right term even was a

14:23:22 20 registered company or something. And some of these dates and

14:23:25 21 timelines are going to be something that I don't have memorized

14:23:28 22 or would be able to speak to in a meaningful manner.

14:23:32 23 Q. Well, look at tab 8 in your binder, if you will. That is

14:23:36 24 Defendant's Exhibit 43.

14:23:45 25 A. Yes. Okay.

14:23:45 1 Q. Do you see that?

14:23:47 2 A. Yes.

14:23:47 3 Q. I'll represent to you this is a printout from the Wayback
14:23:50 4 Machine. Are you familiar with the Wayback Machine?

14:23:52 5 A. I believe that's a way to see web pages after they -- I
14:23:56 6 guess this stores them in a database, and you can see them
14:23:59 7 after they've been changed or sometime in the future; is that
14:24:02 8 correct.

14:24:02 9 Q. Yes. You can look back.

14:24:04 10 A. Yeah. Okay.

14:24:04 11 Q. And I'll represent to you that this is a printout from
14:24:07 12 August 14th, 2020, a little over two years ago, from
14:24:11 13 gelblaster.com. You can see that in the top of the printout,
14:24:16 14 sir.

14:24:16 15 A. Okay.

14:24:17 16 Q. And just for the record, if you click on "Gel Blaster
14:24:20 17 Surge," it says "coming soon." But that's not the part I want
14:24:24 18 to ask you about. If you could turn to the fourth page of
14:24:28 19 Exhibit 43.

14:24:32 20 And there are three blasters that you see there.

14:24:35 21 It's under the topic of featured products. Do you see that?

14:24:39 22 A. Yes.

14:24:40 23 Q. And those were actually Gel Blaster's first blasters that
14:24:46 24 it sold?

14:24:46 25 A. These are SKD's blasters.

14:24:49 1 Q. We'll get there.

14:24:50 2 A. Okay.

14:24:51 3 Q. They're on Gel Blaster's website. They're being
14:24:53 4 advertised and sold by Gel Blaster, right?

14:24:57 5 MR. DOYLE: Objection: lack of foundation.

14:24:58 6 Q. (BY MR. HOFFMAN) I'm asking the question, sir. Do you
14:24:59 7 know if these -- you see they're on Gel Blaster's website,
14:25:02 8 right?

14:25:05 9 MR. HOFFMAN: I withdrew the question. I didn't
14:25:07 10 realize the objection was pending, Your Honor.

14:25:09 11 MR. DOYLE: And, again, objection: lack of
14:25:10 12 foundation.

14:25:11 13 Q. (BY MR. HOFFMAN) May I ask you, sir, are you familiar
14:25:13 14 with --

14:25:13 15 THE COURT: The objection is overruled.

14:25:15 16 Q. (BY MR. HOFFMAN) -- Gel Blaster's website?

14:25:17 17 A. I'm sorry? I just got a little confused.

14:25:19 18 Q. Are you familiar with Gel Blaster's website from August of
14:25:22 19 2020?

14:25:22 20 THE COURT: Now, stop just a minute. Are we talking
14:25:25 21 about -- because I'm confused now -- a website called Gel
14:25:29 22 Blasters or a website that is sponsored by the party to this
14:25:34 23 lawsuit?

14:25:35 24 MR. HOFFMAN: Yes, Your Honor. This is exhibit --

14:25:36 25 THE COURT: No. I asked in the disjunctive, so you

14:25:41 1 can't say yes. You've got to tell me what you know.

14:25:43 2 MR. HOFFMAN: It is a printout of an archive of the
14:25:47 3 party's website, Your Honor.

14:25:49 4 THE COURT: All right. That's all I needed to know.
14:25:51 5 Go ahead.

14:25:52 6 MR. HOFFMAN: Okay. Thank you.

14:25:53 7 Q. You said earlier that you had spoken to other people at
14:25:55 8 Gel Blaster about former Gel Blaster products, right?

14:25:58 9 A. Uh-huh.

14:25:59 10 Q. All right. Did you speak to them about any of the
14:26:01 11 products we see on -- you know, listed on page 4 of Exhibit 43?

14:26:12 12 A. Yeah. I'm very vaguely aware of these. I know that we
14:26:15 13 dealt some SKD products at one point. But I don't think
14:26:18 14 internally we've ever referred to these as Gel Blaster products
14:26:21 15 or as our own. Internally, the Surge was our first product.

14:26:28 16 Q. Okay. But would it be correct to say that Gel Blaster,
14:26:31 17 the company, was reselling those SKD blasters?

14:26:36 18 A. That's what this appears like, yes.

14:26:38 19 Q. Okay. Have you looked at one of these SKD blasters
14:26:42 20 before?

14:26:42 21 A. I did. I did look at one of those briefly, yes.

14:26:46 22 Q. Okay. They're still available on Amazon from SKD,
14:26:50 23 presumably, and I have one.

14:26:52 24 A. Okay.

14:27:03 25 Q. This is, for the record, Defendant's Physical Exhibit 4

14:27:10 1 and Exhibit 63. It's not in your binder.

14:27:12 2 A. Okay.

14:27:13 3 Q. It's a physical.

14:27:45 4 MR. DOYLE: Your Honor, I'm going to object if you're
14:27:48 5 trying to say that this comes from Gel Blaster or it's a
14:27:50 6 Gel Blaster product. There's a lack of foundation here.

14:27:55 7 MR. HOFFMAN: Your Honor, I'm not --

14:27:56 8 THE COURT: Number one, these are not proper lack of
14:27:59 9 foundation objections. So your objections that you've
14:28:02 10 repeatedly made to lack of foundation continue to be overruled.

14:28:05 11 But I don't think you've asked a question about this
14:28:10 12 yet.

14:28:11 13 MR. HOFFMAN: I haven't, Your Honor.

14:28:12 14 THE COURT: And I think it needs to be identified.

14:28:15 15 MR. HOFFMAN: Yes, Your Honor.

14:28:16 16 THE COURT: So the objection is overruled without
14:28:20 17 prejudice to you making it again.

14:28:22 18 MR. DOYLE: Okay. Thank you, Your Honor.

14:28:25 19 MR. HOFFMAN: May I have it back, please?

14:28:34 20 Your Honor, may I approach the witness and provide
14:28:36 21 this?

14:28:36 22 THE COURT: You may. And you don't ever have to ask
14:28:39 23 to approach a witness in my court. If I think you're badgering
14:28:42 24 the witness, I will not hesitate to say something about it.

14:28:49 25 Q. (BY MR. HOFFMAN) Now, sir, you've examined an SKD CS-007

14:28:56 1 blaster?

14:28:56 2 A. I did not say that. I have evaluated some SKD products.

14:29:00 3 I don't know that I've evaluated this specific one.

14:29:02 4 Q. In looking at what we see in Exhibit 43, the picture of

14:29:06 5 the blaster on the Gel Blaster website, you would agree that

14:29:14 6 the markings of that blaster and the blaster you have in front

14:29:16 7 of you are the same?

14:29:18 8 A. Yeah. The text on it is the same.

14:29:20 9 Q. Okay. And SKD is a company that you said you understood

14:29:23 10 that Gel Blaster bought blasters from?

14:29:27 11 A. Yes.

14:29:28 12 Q. Okay. If you could open up the blaster and take a look

14:29:36 13 inside.

14:29:36 14 A. Uh-huh.

14:29:37 15 Q. And then if you could turn in your binder to tab 15.

14:30:09 16 Would you agree that you see in Defendant's Exhibit 50 at

14:30:12 17 tab 15, it looks like the internals SKD CS-007 blaster?

14:30:18 18 A. Yes.

14:30:19 19 Q. Okay. So I'd like to ask you a few questions in

14:30:28 20 comparison, if I could, sir.

14:30:30 21 A. Okay.

14:30:30 22 Q. You're familiar with the Gel Blaster Surge that we had?

14:31:01 23 A. I am.

14:31:02 24 Q. Okay. We've heard a lot today about Gel Blaster's ideas,

14:31:50 25 the innovation. You agree that what you see in the SKD blaster

14:31:54 1 from China, that's nothing that Gel Blaster put together,
14:31:58 2 right?
14:31:58 3 A. Yeah. This one here?
14:31:59 4 Q. Right.
14:32:00 5 A. It's separate from Gel Blaster, correct.
14:32:02 6 Q. Okay. I have in front of you on the screen now the
14:32:05 7 Gel Blaster Surge, all right? And there is an internal part
14:32:11 8 all surrounded in plastic. You'd agree, right?
14:32:13 9 A. Yes.
14:32:14 10 Q. What do you call that?
14:32:15 11 A. The gearbox.
14:32:16 12 Q. The gearbox. All right. Can we go --
14:32:18 13 A. The gearbox assembly.
14:32:19 14 Q. It's surrounded -- and flip back. There's equally a
14:32:23 15 gearbox assembly in the one made in China, right?
14:32:26 16 A. Yes.
14:32:27 17 Q. Now, looking at the one made in China -- actually, they're
14:32:30 18 both in made in China. Your Surge is also made in China; is
14:32:33 19 that right?
14:32:34 20 A. Yeah. I don't know if that's a relevant question.
14:32:36 21 Q. Maybe I should be more specific.
14:32:38 22 A. Sure. I get it. SKD versus Gel Blaster.
14:32:41 23 Q. That works great.
14:32:43 24 THE COURT: If you-all would just talk one at a time.
14:32:45 25 The court reporter can't get what you're saying. Let him

14:32:48 1 finish his question, and then you let him finish whatever
14:32:51 2 statement he's making, Mr. Hoffman.

14:32:53 3 MR. HOFFMAN: Okay.

14:32:54 4 Q. The SKD blaster, we see there is a silver motor in the
14:32:57 5 bottom in the handle portion. Do you see that?

14:33:00 6 A. Yes.

14:33:00 7 MR. HOFFMAN: If we'll go back to the Surge? Thank
14:33:10 8 you, ma'am.

14:33:11 9 Q. There's also a silver motor of the same shape in the
14:33:14 10 handle portion --

14:33:15 11 A. Yes.

14:33:15 12 Q. -- is that right?

14:33:17 13 All right. If we look again at the Surge, there is
14:33:20 14 a -- that's fine -- if we look at the SKD, there is a switch
14:33:23 15 behind the trigger. Do you see that?

14:33:26 16 A. Yes.

14:33:26 17 Q. There is the same switch in the Surge, right?

14:33:30 18 A. Yes.

14:33:31 19 Q. Okay. You talked earlier about there being a feed tube at
14:33:34 20 the top where the balls come in?

14:33:37 21 A. Uh-huh.

14:33:37 22 Q. If we look at the SKD, that's at the top of the plastic,
14:33:41 23 right? You can see that feed tube, right?

14:33:43 24 A. Yes.

14:33:44 25 Q. If we go back to the Surge, there's also a feed tube?

14:33:48 1 A. Uh-huh.

14:33:48 2 Q. Right. We'll talk about the internals of the Surge. All
14:33:52 3 right. There's a gearbox, there's a spring, there's a plunger.

14:33:57 4 A. Yes.

14:33:58 5 Q. There also a gearbox and spring and a plunger in the SKD,
14:34:04 6 right?

14:34:04 7 A. Yep. And every component you've mentioned is also in the
14:34:06 8 Gelfire Mythic.

14:34:07 9 Q. Okay. But the SKD, it came before all of these, right?

14:34:10 10 A. Yes.

14:34:11 11 Q. And it was public --

14:34:12 12 A. Yes.

14:34:12 13 Q. -- right?

14:34:13 14 Okay. But let's look beyond even those components.
14:34:16 15 Let's look for example?

14:34:18 16 MR. HOFFMAN: Going back to the SKD, if we could,
14:34:20 17 ma'am? Thank you.

14:34:23 18 Q. Let's look at the screw holes. Do you see the pattern of
14:34:27 19 the screws.

14:34:27 20 A. Okay.

14:34:28 21 Q. There's three screws on the top -- two screws on the top,
14:34:31 22 the little bumps, and then there's one screw on the right-hand
14:34:35 23 side in a circle.

14:34:36 24 A. Okay.

14:34:36 25 MR. HOFFMAN: Let's go back to the Gel Blaster, if we

14:34:38 1 could.

14:34:40 2 Q. All right. Bump, bump, and then a circle, right?

14:34:47 3 A. Yeah. This one also has a PISCA and it has a T-Piece with
14:34:51 4 a threaded barrel. And this blaster also has a PTB in it that
14:34:56 5 the SKD does not.

14:34:57 6 Q. I understand, sir. I'm trying to identify exactly what
14:35:01 7 Gel Blaster developed versus -- or says they developed versus
14:35:05 8 what was already in existence and provided well before
14:35:09 9 Gel Blaster sold the first Surge. Do you understand?

14:35:11 10 A. Okay.

14:35:12 11 Q. All right. If you look at the -- the Gel Blaster, all
14:35:17 12 right, on the bottom there's a circle loop on the bottom. And
14:35:21 13 then there's a -- see that below the motor?

14:35:26 14 A. Oh, okay. On the -- on the gearbox housing in the
14:35:30 15 plastic. Okay.

14:35:31 16 MR. HOFFMAN: And if we go back to the SKD, if we
14:35:34 17 could, ma'am. Thank you.

14:35:36 18 Q. Same shape, same pattern, right, sir?

14:35:40 19 A. Okay.

14:35:40 20 Q. Do you agree?

14:35:41 21 A. Yes. They're similar looking.

14:35:43 22 Q. In fact, all the screw holes and the pattern of the
14:35:46 23 gearbox, the plastic, it's all the same between what was prior
14:35:52 24 developed and what Gel Blaster uses?

14:35:55 25 A. It's not all the same, but there's similarities.

14:35:58 1 MR. HOFFMAN: Okay. You can take that off. Thank
14:36:07 2 you. Your Honor, I'd like to move to admit Exhibit 43,
14:36:14 3 Exhibit 50, and physical -- may I get that? Exhibit 43 and
14:36:25 4 Exhibit 50, Your Honor, to start?

14:36:28 5 THE COURT: What are we going to do about Exhibit 4?

14:36:31 6 MR. HOFFMAN: I'm going to move to admit that as
14:36:33 7 well, Your Honor.

14:36:34 8 THE COURT: Now, was the photograph of the SKD, was
14:36:40 9 it 43 or was it 63? I had written it down first as 63.

14:36:45 10 MR. HOFFMAN: The photograph of the SKD was 50, sir.

14:36:48 11 THE COURT: That's the internal.

14:36:50 12 MR. HOFFMAN: The internals. Oh. The outside
14:36:53 13 photograph of the SKD is Exhibit 43, Your Honor.

14:36:59 14 THE COURT: All right. Objections?

14:37:04 15 MR. DOYLE: Your Honor, we object on authentication.

14:37:07 16 THE COURT: Overruled. Exhibits 4, 43, and 50 are
14:37:10 17 admitted.

14:37:16 18 MR. HOFFMAN: I'm being corrected and told it is --
14:37:18 19 no. It's 43. Sorry, Your Honor.

14:37:37 20 THE COURT: 43? You want to vote? No. There's not
14:37:37 21 a 63 that has been offered or admitted according to them.

14:37:42 22 Is it 43 or 63? Because I had written down when you
14:37:46 23 first started talking about the exterior photograph of the SKD
14:37:52 24 blaster, that you said 63.

14:37:54 25 MR. HOFFMAN: We're good. It's 43, Your Honor.

14:37:56 1 THE COURT: All right. Then 4, 43 and 50 are
14:37:59 2 admitted over objection. Sixty-three is not in the record
14:38:02 3 anywhere. I'm getting an argument out of my clerk.
14:38:22 4 (Sotto voce discussion between the Court and clerk)
14:38:22 5 Q. (BY MR. HOFFMAN) During Mr. Guinns' testimony, we heard
14:38:28 6 that the things that made Gel Blaster successful are that
14:38:35 7 they're battery-powered, sold in the U.S., fully automatic,
14:38:39 8 shooting a relatively inexpensive ammunition? Do you remember
14:38:44 9 that?
14:38:44 10 A. Yeah. He was talking about the gel ball category and some
14:38:47 11 of the benefits those blasters have over what's been out in the
14:38:51 12 market.
14:38:51 13 Q. But, Gel Blaster wasn't the first company to sell a
14:38:56 14 battery-powered, gel ball-firing, fully automatic blaster in
14:39:04 15 the U.S., right, sir?
14:39:06 16 A. I don't know that for sure.
14:39:08 17 Q. Are you familiar with a company called the Maya Group?
14:39:12 18 A. I've heard of the Maya Group, yes.
14:39:14 19 Q. And did the Maya Group have a blaster, the BlasterPro in
14:39:21 20 2011, 2012?
14:39:23 21 A. I am not familiar.
14:39:25 22 Q. Okay. So you wouldn't know if that blaster also was
14:39:30 23 battery-powered, fully automatic, and firing gel balls?
14:39:33 24 A. I'm not familiar with that blaster.
14:39:36 25 Q. Okay. If you -- if you could turn in your binder, sir, to

14:39:51 1 tab 3. Sir, tab 3 is marked as Defendant's Exhibit 41. Do you
14:40:11 2 see, that sir?
14:40:12 3 A. Yes, I do.
14:40:12 4 Q. And that has a picture of the Gel Blaster's line on the
14:40:15 5 top and the picture of the Mythic on the bottom. Do you see
14:40:19 6 that, sir?
14:40:21 7 A. Yes.
14:40:21 8 Q. Okay.
14:40:26 9 THE COURT: Pardon me. What exhibit are we looking
14:40:28 10 at?
14:40:29 11 MR. HOFFMAN: Exhibit 41, Your Honor, tab 3.
14:40:42 12 Q. You would agree, sir, that the Mythic and the Surge don't
14:40:45 13 look much alike, right?
14:40:46 14 A. Externally, they look very different.
14:40:49 15 Q. We've heard a lot about pistol, one-handed. The Mythic is
14:40:54 16 a two-handed design?
14:40:56 17 A. Based on pistol architecture, that could be argued. I
14:41:00 18 understand where you're coming from, yes.
14:41:02 19 Q. It has a post in the front for a second hand, you would
14:41:04 20 agree? It's not a pistol?
14:41:06 21 A. Okay.
14:41:07 22 Q. Would you agree with that?
14:41:08 23 A. It has a collapsible stock and can be used in a pistol
14:41:12 24 orientation. That's one of the things that's said on the box.
14:41:15 25 Q. And the Gel Blaster Surge doesn't have an extendable

14:41:20 1 stock, does it?

14:41:20 2 A. No, it does not.

14:41:21 3 Q. Oh. And the Mythic has a removable battery, and the Surge

14:41:26 4 doesn't; is that right?

14:41:26 5 A. That's correct.

14:41:27 6 Q. Okay. Now let's look at the inside. You mentioned that.

14:41:31 7 A. Okay.

14:41:31 8 Q. So let's compare the inside to the outside.

14:41:34 9 The motor for the Surge is in the handle, right?

14:41:39 10 A. Yes. That's correct.

14:41:41 11 Q. Okay. The motor for the Mythic is not in the handle,

14:41:45 12 right?

14:41:45 13 A. Yeah. The gearbox is oriented differently.

14:41:47 14 Q. Okay. So the -- Hasbro put the gearbox in a different

14:41:51 15 location than in the Surge?

14:41:53 16 A. Yeah. They oriented the gears differently.

14:41:55 17 Q. Have you seen anybody else in the industry that has

14:41:58 18 created a gearbox like Hasbro has and put the motor up into the

14:42:02 19 blaster like that?

14:42:03 20 A. I have, and I'm not exactly sure who manufactured it. But

14:42:09 21 DJI had a Rover type product that had a gel ball blaster, and

14:42:16 22 they oriented the gears in a linear fashion.

14:42:18 23 Q. Okay. But that's not Gel Blaster?

14:42:20 24 A. It's not Gel Blaster.

14:42:22 25 Q. Okay. Different than Gel Blaster?

14:42:24 1 A. Uh-huh.

14:42:24 2 Q. Okay. Let's talk about the switch.

14:42:26 3 A. Okay.

14:42:30 4 Q. You would agree that, in the Mythic, the switch is above

14:42:33 5 the gearbox, right?

14:42:34 6 A. Yes. It's above and the rear of the gearbox.

14:42:39 7 Q. Okay. And in the Surge where you were proposing to put

14:42:42 8 the switch, that's behind the gearbox?

14:42:44 9 A. Yeah. It's above and at the rear of the gearbox.

14:42:47 10 Q. There's a plane that goes between the gearbox and the

14:42:51 11 switch in the Surge, right?

14:42:53 12 A. Okay.

14:42:53 13 Q. Is that true?

14:42:55 14 A. Well, I don't know. Maybe you can describe the plane

14:42:58 15 you're talking about.

14:42:59 16 Q. Okay. That's all right, sir.

14:43:00 17 A. Okay.

14:43:01 18 Q. You'd also agree that in the Mythic the switch is

14:43:07 19 horizontal, right, sir?

14:43:10 20 A. Yes.

14:43:10 21 Q. And in the Surge the switch is, again, behind and

14:43:13 22 vertical?

14:43:14 23 A. Correct.

14:43:14 24 Q. And that's a difference, right, sir?

14:43:16 25 A. It's a different orientation of the switch.

14:43:18 1 Q. Okay. And, again, what you -- the PISCA, what you call
14:43:23 2 the PISCA, it's tubular, right, sir?

14:43:26 3 A. Part of it is.

14:43:29 4 Q. Okay.

14:43:29 5 A. On the Surge part of it is tubular, yep.

14:43:32 6 Q. Okay. And it makes contact with the switch perpendicular
14:43:37 7 is that right, sir?

14:43:38 8 A. Yes.

14:43:38 9 Q. In the Mythic you would agree that the interface portion,
14:43:44 10 that's not tubular, right?

14:43:47 11 A. Yeah. So the PISCA on the Mythic has a little different
14:43:52 12 shape.

14:43:52 13 Q. And it doesn't make contact perpendicularly. It comes in
14:43:57 14 parallel?

14:43:57 15 A. Yes.

14:43:57 16 Q. Because the switch orientation has been changed.

14:44:03 17 A. Okay.

14:44:03 18 Q. Almost done, sir. Thank you for your patience. I
14:44:08 19 appreciate it.

14:44:09 20 MR. HOFFMAN: Could we move to admit Exhibit 41,
14:44:11 21 Your Honor?

14:44:12 22 THE COURT: I don't know. Can you?

14:44:13 23 MR. HOFFMAN: I'd like to move to admit Exhibit 41,
14:44:15 24 Your Honor.

14:44:15 25 THE COURT: All right. Objection?

14:44:17 1 MR. DOYLE: No objection, Your Honor.

14:44:18 2 THE COURT: Exhibit Number 41 is admitted.

14:44:24 3 Q. (BY MR. HOFFMAN) I'd like to go, if I could, one of the
14:44:28 4 exhibits you've looked at on your direct examination.

14:44:47 5 MR. HOFFMAN: Your Honor, may I ask them if the
14:44:49 6 plaintiffs can put it up on the screen, it might be better if
14:44:52 7 they use their version, and it would probably be a little
14:44:54 8 cleaner.

14:44:54 9 THE COURT: You can talk to the plaintiffs anytime
14:44:57 10 you want to talk to them.

14:44:57 11 MR. HOFFMAN: Could you put up Exhibit 30 on the
14:44:59 12 screen, please? Thank you.

14:45:03 13 THE COURT: We're fairly cordial here. You don't
14:45:06 14 have to ask permission to talk to your opposition.

14:45:09 15 MR. HOFFMAN: Thank you, Your Honor.

14:45:23 16 Q. You talked about, you would agree, sir, the NerfHaven
14:45:27 17 version of the Stampede, right?

14:45:28 18 A. Yes. So we were talking about this as the Darthskids
14:45:32 19 modification.

14:45:32 20 Q. You mind if I call it the NerfHaven Stampede?

14:45:37 21 A. That's fine.

14:45:38 22 Q. And the NerfHaven Stampede, it was publicly available on a
14:45:42 23 website, right?

14:45:43 24 A. Yes.

14:45:43 25 Q. Well before Hasbro began the design of the Mythic, right?

14:45:47 1 A. Yes.

14:45:47 2 Q. And you were discussing with your counsel the differences
14:45:51 3 between the -- the NerfHaven Stampede and the Surge design; is
14:45:57 4 that right?

14:45:57 5 A. Yes.

14:45:58 6 Q. And you said it didn't have a PISCA right?

14:46:00 7 A. That's correct.

14:46:01 8 Q. To be clear, that's a term you made up, right? Gel
14:46:06 9 Blaster invented the term PISCA, right?

14:46:08 10 MR. DOYLE: Objection. Sorry, Your Honor.

14:46:12 11 Objection.

14:46:13 12 THE COURT: And the objection is?

14:46:15 13 MR. DOYLE: And the objection is assumes facts not in
14:46:21 14 evidence and authentication.

14:46:27 15 THE COURT: Mr. Hoffman, just restate your question.
14:46:30 16 Let me hear it again.

14:46:32 17 Q. (BY MR. HOFFMAN) The word -- the term PISCA, P-I-S-C, that
14:46:35 18 abbreviation, that was made up by Gel Blaster, right.

14:46:38 19 MR. DOYLE: Objection, Your Honor, and I object to
14:46:41 20 the form of the question. He said PISCA and then he just said
14:46:45 21 P-I-S-C. So maybe he can restate the question.

14:46:48 22 THE COURT: I understand what he's talking about, but
14:46:50 23 try again, Mr. Hoffman.

14:46:51 24 Q. (BY MR. HOFFMAN) Mr. Cline, the PISCA, P-I-S-C-A, that is
14:46:58 25 a term that was made up by Gel Blaster, right?

14:47:02 1 A. It is an acronym for the descriptive clause of what that
14:47:07 2 is.
14:47:07 3 Q. Okay. But you -- Gel Blaster made up that term. It
14:47:14 4 wasn't one known in the industry before you?
14:47:18 5 A. Again, it's an acronym for a descriptive clause, so I
14:47:21 6 don't know that it's any kind of a formal term.
14:47:24 7 Q. So a 2014 drawing is not going to use the word PISCA,
14:47:30 8 right?
14:47:31 9 A. It might not. Again, it's a descriptive term. So if
14:47:35 10 there is a plunger-integrated switch contact arm on this
14:47:38 11 plunger system, then it could have been described as such.
14:47:43 12 Q. So let's talk about the technology in this blaster.
14:47:45 13 A. Okay.
14:47:45 14 Q. You would agree that every cycle of the plunger in the
14:47:52 15 NerfHaven Stampede, the switch is pressed and released once,
14:47:56 16 right.
14:48:00 17 A. So there's a -- that is potentially correct. The element
14:48:04 18 of this wasn't clear to me based on what was provided on the
14:48:08 19 website, and that is that the stroke of the trigger is limited.
14:48:12 20 If the stroke of the trigger is not limited, then you would not
14:48:16 21 be able to say that.
14:48:20 22 Q. Okay. You analyzed the code for the NerfHaven Stampede?
14:48:25 23 A. I looked over it. I'm not a coder or an electrical
14:48:29 24 engineer, so that's not my background.
14:48:32 25 Q. But I believe you refer to something in your declaration

14:48:35 1 as something called the bolt skid switch?

14:48:37 2 A. Yeah. In the photos --

14:48:38 3 Q. Okay.

14:48:39 4 A. -- the trigger switch gets renamed after the modification.

14:48:42 5 Q. And the bolt skid switch?

14:48:44 6 A. Bolt sled.

14:48:46 7 Q. Bolt sled -- excuse me. Bolt sled switch is pressed once

14:48:50 8 per firing cycle, correct?

14:48:52 9 A. It would be held down during the firing cycle if the

14:48:57 10 trigger is not contacting the trigger lever.

14:49:01 11 Q. And it would be pressed and released once per cycle,

14:49:06 12 correct.

14:49:07 13 A. Pressed -- if the trigger is not contacting the trigger

14:49:10 14 lever, then yes.

14:49:11 15 Q. Okay. And when the NerfHaven Stampede is in

14:49:16 16 semiautomatic, it will use that signal from the bolt sled

14:49:23 17 switch to only fire one shot, right?

14:49:24 18 A. Yeah. That's my understanding.

14:49:26 19 Q. And when it's in automatic mode, it will ignore that --

14:49:29 20 the signal from the bolt sled switch and fire until the trigger

14:49:34 21 is released?

14:49:35 22 A. That's my understanding, yes.

14:49:37 23 Q. So, functionally, it performs semi and auto?

14:49:40 24 A. Yeah. Functionally. We also were talking about there are

14:49:43 25 other blasters that function similarly. But it's a completely

14:49:47 1 different mechanism at play here. When you compare the Mythic
14:49:51 2 internals and functionally what's happening with the interface
14:49:55 3 of the switch to the Surge, they're very much the same. The
14:49:58 4 inside of the Stampede is very different, extra component, this
14:50:02 5 trigger lever arm contacts the trigger, and the piston system.
14:50:06 6 It's a very different layout.

14:50:07 7 Q. But the NerfHaven Stampede has a switch that's used to
14:50:11 8 provide semi and auto, right?

14:50:14 9 A. Yes.

14:50:14 10 Q. Okay. And the PISCA, it's been public for a year, right?

14:50:21 11 A. The PISCA has been. But without the PISCA switch and the
14:50:26 12 combination of them, it has no function.

14:50:28 13 Q. But the PISCA has been public for a year, and a switch
14:50:31 14 that does semi and auto and gets pressed, that's been public
14:50:35 15 for at least five years, right?

14:50:40 16 A. The only time they've been used together in the public
14:50:43 17 space is in the Gelfire Mythic.

14:50:46 18 MR. HOFFMAN: No further questions, Your Honor. Pass
14:50:48 19 the witness.

14:50:50 20 THE COURT: Redirect?

14:50:51 21 MR. DOYLE: Thank you, Your Honor.

14:51:22 22 **REDIRECT EXAMINATION**

14:51:22 23 **BY MR. DOYLE:**

14:51:23 24 Q. Mr. Cline, Mr. Hoffman asked you some questions in regard
14:51:26 25 to the Gel Blaster Surge; is that right, which has been marked

14:51:29 1 as Defendant's Exhibit 65?

14:51:31 2 A. Yes.

14:51:32 3 Q. Okay. What I would like to do is bring this Surge up to
14:51:35 4 you and take it apart as it was and bring this one part up to
14:51:43 5 you.

14:51:43 6 Okay. Do you see that?

14:51:51 7 A. Yes. I see it.

14:51:53 8 Q. Okay. Do you see where there's what he was calling the
14:52:01 9 PISCA that is coming out of the innards of that particular gun?

14:52:08 10 A. Yeah.

14:52:09 11 Q. Okay.

14:52:10 12 A. Yes. I see it.

14:52:11 13 Q. If you didn't know about the trade secret, if you didn't
14:52:14 14 know about the physical firing mechanism that Gel Blaster came
14:52:17 15 up with and how it worked and you would have received that gun,
14:52:22 16 would you think that the trade secret has been disclosed
14:52:25 17 publicly, just looking at that?

14:52:28 18 A. No.

14:52:29 19 Q. And why not?

14:52:30 20 A. It doesn't -- it doesn't have any function. It doesn't --
14:52:37 21 it doesn't indicate what the function would be.

14:52:40 22 Q. What does it look like to you?

14:52:41 23 A. It's a protrusion out of the gearbox.

14:52:44 24 Q. Does it look like a hood ornament?

14:52:47 25 A. Kind of.

14:52:48 1 Q. Okay. Looking at that in isolation, would you have any
14:52:53 2 idea what it may be used for?

14:52:55 3 A. Not immediately. I would have to think about how it could
14:52:59 4 have been used. No, I don't. Yeah.

14:53:02 5 Q. So do you believe that the trade secret -- in order to
14:53:08 6 identify the trade secret, you would need not only that
14:53:14 7 particular protrusion, but also a switch and a switch that
14:53:18 8 would be connected to some other aspect of the gun; is that
14:53:22 9 right?

14:53:22 10 A. Yeah. It would need a switch, and those components would
14:53:27 11 need to drive a particular functionality.

14:53:31 12 Q. Okay. So let's say you had that gun and you wanted to
14:53:34 13 operate it and you want to determine what the firing mechanism
14:53:37 14 was, okay?

14:53:38 15 A. Uh-huh.

14:53:38 16 Q. If you pull the trigger, would that tell you that, wow,
14:53:45 17 this could be a physical firing mechanism using that PISCA on
14:53:48 18 top?

14:53:48 19 A. It does not.

14:53:49 20 Q. Why not?

14:53:50 21 A. There's no indication that there's a physical switch that
14:53:54 22 would be contacted in the cycling of the blaster.

14:53:58 23 Q. So when you look at that and if you did pull the trigger,
14:54:00 24 what do you see?

14:54:01 25 A. I would just see it cycling. I would see the plunger

14:54:05 1 moving back and forth or the piece on top moving back and
14:54:09 2 forth.
14:54:09 3 Q. Is it using a physical firing mechanism?
14:54:11 4 A. No.
14:54:11 5 Q. What's it using?
14:54:12 6 A. It's using a timing method.
14:54:14 7 Q. Oh. Thank you very much.
14:54:18 8 Earlier counsel put up a video. I believe it was
14:54:24 9 Mr. -- what was the name of that guy? Mr. Everyone?
14:54:28 10 A. Engineerable.
14:54:29 11 Q. Mr. Engineerable. That's right. Have you ever seen that
14:54:35 12 video before?
14:54:36 13 A. I have, yes.
14:54:37 14 Q. And what's your understanding of when it came out?
14:54:41 15 A. My understanding is that it came out roughly three weeks
14:54:44 16 ago. I don't know the exact date.
14:54:46 17 Q. Okay. And is that after the Mythic was released --
14:54:50 18 A. Yes.
14:54:50 19 Q. -- publicly?
14:54:51 20 A. Yes.
14:54:51 21 Q. And when was the Mythic released publicly?
14:54:54 22 A. The one I got was the end of September, so I assume that's
14:54:58 23 when it was publicly available.
14:55:00 24 Q. And do you believe that when the Mythic was released
14:55:03 25 publicly that that disclosed Gel Blaster's trade secret?

14:55:08 1 A. Yes.

14:55:08 2 Q. Okay. Do you know if this Mr. --

14:55:13 3 Say it again.

14:55:13 4 A. Engineerable.

14:55:14 5 Q. -- Engineerable. Do you know if Mr. Engineerable has ever

14:55:19 6 looked at or analyzed Hasbro's Mythic gun?

14:55:23 7 A. He has, yes.

14:55:23 8 Q. Okay. And if he had looked at Hasbro's Mythic gun, would

14:55:27 9 he have seen a PISCA-looking arm and also a PISCA switch?

14:55:37 10 A. He has. And there is a video that shows him identifying

14:55:41 11 those.

14:55:41 12 Q. Okay. So if he had that basic knowledge, do you think

14:55:44 13 that might -- that given that basic knowledge, would he then

14:55:49 14 know how the Surge was operating?

14:55:53 15 A. Yeah.

14:55:53 16 Q. Or perhaps could operate?

14:55:55 17 A. Yes. If -- if I had seen a Mythic and how it functions

14:56:00 18 with the PISCA and the switch and then saw the Gel Blaster, you

14:56:04 19 could then start making that connection because it's such a

14:56:07 20 similar feature, in the same location, and operating in the

14:56:12 21 same manner.

14:56:12 22 Q. Is it your belief that he was able to make the comments he

14:56:15 23 did based on the Surge that doesn't even have a switch because

14:56:18 24 he had already looked at the Mythic and figured out the

14:56:22 25 physical firing mechanism that they ripped off in the Mythic?

14:56:26 1 A. That would be my guess, yes.

14:56:27 2 Q. All right. Thank you very much.

14:56:32 3 MR. BROADAWAY: No further questions, Your Honor.

14:56:35 4 THE COURT: Recross, Mr. Hoffman?

14:56:36 5 MR. HOFFMAN: Very briefly, Your Honor.

14:56:42 6 If we could bring up DX-72 again. And, now,
14:57:10 7 Your Honor, we're at time stamp 8 minutes and 6 seconds.

14:57:17 8 **RECROSS-EXAMINATION**

14:57:17 9 **BY MR. HOFFMAN:**

14:57:17 10 Q. And see on the screen there's a physical switch that
14:57:18 11 controls the trigger. Do you see that, sir?

14:57:21 12 A. I do.

14:57:21 13 Q. And there's two holes in that physical switch, you would
14:57:25 14 agree?

14:57:25 15 A. Uh-huh.

14:57:26 16 Q. There's two plastic posts, white plastic posts, that go up
14:57:29 17 through that switch. We would agree, right?

14:57:33 18 A. I see that.

14:57:33 19 Q. All right. And so a switch has two holes in it, and
14:57:38 20 plastic posts go through those holes in the Surge, correct?

14:57:42 21 A. Yes.

14:57:42 22 Q. Okay. Now let's look at up the upper right-hand side of
14:57:46 23 the screen. That's where you say the PISCA switch would go in
14:57:49 24 your design, correct?

14:57:53 25 A. Yes.

14:57:54 1 Q. There's a little part there with two plastic posts that to
14:57:57 2 me look the same spacing as the plastic posts used for the
14:58:06 3 switch in the trigger. You would agree, right?

14:58:07 4 A. The posts look similar, yes.

14:58:10 5 Q. If I took a switch like you use in your blasters, would it
14:58:14 6 fit on those two posts in the upper corner?

14:58:16 7 A. Uh, likely.

14:58:19 8 MR. HOFFMAN: No further questions, Your Honor. I
14:58:21 9 would like to admit -- I would like to move to admit DX-72,
14:58:25 10 which is this video, Your Honor.

14:58:39 11 MR. BROADAWAY: No objection.

14:58:40 12 THE COURT: Hasbro Exhibit 72 is admitted.

14:58:49 13 Further evidence from Gel Blaster?

14:58:53 14 MR. BROADAWAY: Your Honor, we reserve our time for
14:58:55 15 cross, so no further evidence.

14:58:57 16 THE COURT: All right. Does Hasbro have witnesses?

14:59:00 17 MR. HOFFMAN: Yes, Your Honor.

14:59:01 18 THE COURT: All right. You may call your first
14:59:04 19 witness.

14:59:04 20 MR. HOFFMAN: Your Honor, Hasbro calls
14:59:07 21 Mr. Nicholas Tino.

14:59:46 22 (Witness sworn)

14:59:46 23 MR. HOFFMAN: Your Honor, we have a binder to hand
14:59:48 24 out.

15:00:25 25 Your Honor, I'm ready to proceed.

15:00:26 1 THE COURT: You may.

15:00:27 2 **NICHOLAS TINO,**

15:00:27 3 having been first duly sworn, testified as follows:

15:00:27 4 **DIRECT EXAMINATION**

15:00:27 5 **BY MR. HOFFMAN:**

15:00:27 6 Q. Good afternoon, sir.

15:00:29 7 A. Good afternoon.

15:00:30 8 Q. Could you introduce yourself to the court.

15:00:32 9 A. Yes. My name is Nicholas Tino.

15:00:34 10 Q. And, sir, could you spell your name for the record.

15:00:36 11 A. Yes. It's N-i-c-h-o-l-a-s, space, T-i-n-o.

15:00:47 12 Q. And what do you do for Hasbro, sir?

15:00:49 13 A. I'm an engineering manager on the NERF business.

15:00:52 14 Q. And can you tell us a little bit about your education.

15:00:55 15 A. Yes. I have a bachelor's of science in mechanical

15:00:57 16 engineering from the University of Massachusetts Amherst.

15:01:01 17 Q. And when did you start working for Hasbro, sir?

15:01:04 18 A. In 2014.

15:01:07 19 Q. We're on the clock and time is ticking, so let me just ask

15:01:11 20 you, Mr. Tino: Does the Mythic incorporate anything learned

15:01:15 21 from Gel Blaster during the due diligence?

15:01:19 22 A. No.

15:01:19 23 Q. And how do you know that?

15:01:21 24 A. Because I was the product lead on developing the Gelfire

15:01:25 25 Mythic.

15:01:25 1 Q. And, as the product lead, what was the process used to
15:01:29 2 develop the Mythic?

15:01:31 3 A. It was a standard process that we typically use for
15:01:35 4 developing a blaster, although on an expedited timeline, but
15:01:39 5 not uncommon. We start by utilizing -- looking at the existing
15:01:42 6 marketplace in the space.

15:01:44 7 Q. Okay. And we'll get back to that in a minute.

15:01:48 8 Before we start, sir, if you could turn in your
15:01:51 9 binder to tab 2, which is Exhibit 2.

15:02:00 10 A. Yes.

15:02:02 11 Q. Do you recognize Exhibit 2, sir?

15:02:05 12 A. Yes, I do.

15:02:06 13 Q. And do we see several NERF blasters in Exhibit 2?

15:02:11 14 A. Yes.

15:02:11 15 Q. And starting in the upper right-hand corner, there's the
15:02:15 16 Stampede. Are you familiar with the Stampede?

15:02:18 17 A. I see it in the upper left-hand corner, yes, the NERF
15:02:21 18 Stampede.

15:02:21 19 Q. And when was the Stampede blaster released?

15:02:24 20 A. I believe around approximately 2009.

15:02:26 21 Q. And could you tell the Court a little bit about the
15:02:28 22 Stampede blaster.

15:02:29 23 A. Yes. It was a motorized plunger-based blaster that shot
15:02:33 24 foam darts.

15:02:34 25 Q. And below that there's a Modulus. Do you see that?

15:02:37 1 A. Yes.

15:02:38 2 Q. Are you familiar with the Modulus blaster?

15:02:40 3 A. I am.

15:02:41 4 Q. And how did the Modulus blaster work?

15:02:44 5 A. It was a motorized blaster that shot foam darts.

15:02:48 6 Q. Did the Modulus blaster have any particularly noteworthy

15:02:58 7 features?

15:02:59 8 A. Yes. It had the feature to select fire.

15:03:01 9 Q. Okay. I have a Modulus blaster. I'd like to hand it to

15:03:04 10 you.

15:03:10 11 A. Thank you.

15:03:10 12 Q. And you said that the Modulus blaster had select fire.

15:03:15 13 What do you mean by "select fire," sir?

15:03:17 14 A. I mean there's a switch that allows the user to select

15:03:21 15 multiple modes of fire, clearly marked by this visual icon

15:03:25 16 here: single shot, burst fire, and fully automatic.

15:03:29 17 Q. And on single shot, it may seem obvious, but how many

15:03:32 18 rounds are fired?

15:03:33 19 A. When the user pulls the trigger once, one round is fired.

15:03:37 20 Q. And in burst how many shots are fired?

15:03:39 21 A. Trigger pulled once, three shots are fired.

15:03:42 22 Q. And then on full auto?

15:03:44 23 A. As long as you're holding down the trigger, it continues

15:03:47 24 to fire.

15:03:48 25 Q. And when did Hasbro release the Modulus?

15:03:50 1 A. I believe it was around approximately 2012.

15:03:53 2 Q. Okay.

15:03:54 3 MR. HOFFMAN: Your Honor, if you want to look at the
15:03:56 4 Modulus?

15:03:57 5 THE COURT: I can see it fine.

15:03:58 6 MR. HOFFMAN: Thank you, Your Honor.

15:03:59 7 Q. And then moving down there's the Elite 2.0 Carbine?

15:04:06 8 A. 2.0 Turbine, yes.

15:04:09 9 Q. Turbine, yes. Sorry. Are you familiar with that?

15:04:11 10 A. Yes. Very.

15:04:12 11 Q. You helped work on the Turbine blaster?

15:04:14 12 A. Yes, I did.

15:04:15 13 Q. Okay. So we have on the left-hand side, it looks like,
15:04:19 14 blasters that fire darts; is that correct?

15:04:21 15 A. Yes.

15:04:21 16 Q. What do we see on the right-hand side of Exhibit 3?

15:04:24 17 A. Multiple platforms that NERF makes that shoots balls.

15:04:29 18 Q. Okay. And can you describe the NERF blasters we see that
15:04:35 19 shoot balls.

15:04:35 20 A. Yes. Starting in the top right, it's the Rival platform,
15:04:39 21 and that shoots foam balls. Moving down you see the Hyper
15:04:43 22 platform, and that shoots smaller rubber balls. And then
15:04:47 23 moving down still, you see the Gelfire Mythic that shoots small
15:04:51 24 SAP balls.

15:04:53 25 MR. HOFFMAN: Okay. Now, I'd like to move to admit

15:04:56 1 Exhibit 2, Your Honor.

15:04:58 2 MR. DOYLE: No objection.

15:05:00 3 THE COURT: Hasbro Exhibit Number 2 is admitted.

15:05:06 4 Q. (BY MR. HOFFMAN) You can set that aside, sir.

15:05:08 5 I'd like to talk a little bit about the development
15:05:10 6 process for blasters at Hasbro.

15:05:11 7 A. Yes.

15:05:11 8 Q. In your declaration in this case, you lay out the design
15:05:15 9 process for new blasters at Hasbro, right?

15:05:19 10 A. Correct.

15:05:19 11 Q. Did Hasbro follow its normal design process for the
15:05:24 12 Mythic?

15:05:24 13 A. Yes, it did. As I mentioned, maybe a little faster than
15:05:28 14 typical, but not out of the ordinary.

15:05:30 15 Q. When did you start development of the Mythic?

15:05:33 16 A. In November of 2021.

15:05:34 17 Q. Why did you start development of the Mythic blaster?

15:05:38 18 A. It was my understanding that discussions with Gel Blaster,
15:05:41 19 the company, were no longer moving forward, and my leadership
15:05:45 20 instructed me to create a brand new blaster.

15:05:48 21 Q. And what did you think of that instruction?

15:05:50 22 A. I was excited by it. Always starting with a blank slate
15:05:54 23 and completely new blaster is the preferred route for any
15:05:58 24 product development team.

15:06:00 25 Q. Okay. I think you mentioned it earlier, but what was the

15:06:04 1 first thing you did when you decided -- when you started
15:06:07 2 developing the Mythic?

15:06:11 3 A. We surveyed the landscape of what existed in the
15:06:13 4 marketplace to date and get an understanding where the Gelfire
15:06:16 5 Mythic can fit in and where we can improve upon it.

15:06:20 6 Q. And why did you do that?

15:06:21 7 A. Typically to make sure that we can understand what feature
15:06:25 8 sets and what performance levels would be the baseline for us
15:06:30 9 to move forward from.

15:06:31 10 Q. And is there any particular blaster from the marketplace
15:06:34 11 that you looked at?

15:06:35 12 A. Yes. The Anstoy AKM-47.

15:06:38 13 Q. I'd like to hand you a blaster. It's marked as
15:06:58 14 Defendant's Physical Exhibit 1, and it has photos at
15:07:03 15 Exhibit 60.

15:07:08 16 Do you recognize the -- do you recognize the
15:07:10 17 Exhibit 1 blaster?

15:07:12 18 A. Yes, I do.

15:07:12 19 Q. And what kind of blaster is Exhibit 1?

15:07:18 20 A. This is an Anstoy AKM-47.

15:07:21 21 Q. And was the Anstoy AKM-47 available on the market publicly
15:07:22 22 when you started the design of the Mythic?

15:07:24 23 A. Yes, it was.

15:07:25 24 Q. Okay. Can you open up the Anstoy blaster.

15:07:35 25 A. Yes, I can.

15:07:35 1 Q. Okay. Are you familiar with the internals of the Anstoy
15:07:44 2 blaster?

15:07:44 3 A. Yes, I am.

15:07:45 4 Q. Okay. Can you describe how the Anstoy blaster works.

15:07:52 5 A. Yes. Much like many of the mechanisms we've discussed
15:07:56 6 today so far, upon pull of this trigger, a switch is activated
15:08:01 7 that then notifies the motor to draw current and spin. That
15:08:05 8 then spins a gear train, which then enacts upon a piston and
15:08:10 9 breech system that they pull back simultaneously and release in
15:08:13 10 sequence. That allows a round to fall into place and then be
15:08:17 11 shot out the barrel as a projectile.

15:08:22 12 MR. PETIT: Excuse me, David. What tab is this?

15:08:26 13 MR. HOFFMAN: Again, the picture of the physical
15:08:28 14 doesn't have a tab. I haven't moved to admit it yet,
15:08:30 15 Your Honor. We can show the pictures that are the picture
15:08:33 16 before we move to admit, if that I works for the Court.

15:08:37 17 THE COURT: Well, we don't have a jury in the box.
15:08:39 18 I'll look at it, and if I sustain an objection, I won't
15:08:42 19 consider it.

15:08:42 20 MR. HOFFMAN: Okay. What's on the screen is
15:08:45 21 Defendant's Exhibit 60. We can look through each of the
15:08:49 22 images.

15:09:12 23 Your Honor, I move to admit Defendant's Physical
15:09:14 24 Exhibit Number 1 and Exhibit 60.

15:09:24 25 MR. DOYLE: Your Honor, we haven't seen this

15:09:26 1 particular exhibit. We still don't see it in anything we've
15:09:29 2 been provided. So we're going to object on the grounds of
15:09:34 3 authentication.

15:09:36 4 MR. HOFFMAN: Your Honor, the physical exhibit is
15:09:38 5 with the witness, and the photographs have just -- that our
15:09:41 6 Exhibit 60 have just been shown to the entire courtroom.

15:09:44 7 THE COURT: Well, let me ask, Mr. Doyle, do you want
15:09:48 8 additional time to look at the photographs or the exhibit?

15:09:52 9 MR. DOYLE: Yes, Your Honor. We'd like to look at
15:09:54 10 it.

15:09:54 11 THE COURT: All right. Then at this time we'll take
15:09:56 12 our afternoon recess. We'll be in recess for 15 minutes.

15:10:00 13 (Recess)

15:10:01 14 (Open court)

15:26:54 15 THE COURT: All right. Mr. Hoffman, you may continue
15:26:56 16 your examination.

15:26:58 17 MR. HOFFMAN: So physical Exhibit 4, which is shown
15:27:00 18 in Exhibit 63 and physical exhibit -- already got that one,
15:27:08 19 Your Honor. Sorry.

15:27:09 20 I move to admit physical Exhibit 1, which is shown in
15:27:12 21 Exhibit 60 and physical Exhibit 3, which is shown in
15:27:16 22 Exhibit 62.

15:27:23 23 THE COURT: All right. So we've got 1, which is
15:27:25 24 shown in 50, and 3, which is shown where?

15:27:29 25 MR. HOFFMAN: Physical 1 is shown in 60, Your Honor.

15:27:33 1 THE COURT: Now, what number are you saying: 50 or
15:27:36 2 60?
15:27:36 3 MR. HOFFMAN: Sixty, six-zero.
15:27:37 4 THE COURT: All right. Let me do one -- that one
15:27:42 5 first.
15:27:42 6 Mr. Doyle?
15:27:43 7 MR. DOYLE: No objection, Your Honor.
15:27:44 8 THE COURT: All right. Hasbro Exhibits 1 and 60 are
15:27:50 9 admitted.
15:27:51 10 MR. HOFFMAN: Yes, Your Honor.
15:27:52 11 THE COURT: Now, what do we have next?
15:27:53 12 MR. HOFFMAN: Physical 3 shown in Exhibit 62.
15:28:06 13 THE COURT: Mr. Doyle?
15:28:07 14 MR. DOYLE: No objection, Your Honor.
15:28:08 15 THE COURT: All right. Now you may proceed. Well,
15:28:12 16 Hasbro's 3 and 62 are admitted. Now you may proceed.
15:28:16 17 MR. HOFFMAN: And also, Your Honor, Exhibit 63, which
15:28:19 18 is a picture of physical 4, we move to admit.
15:28:29 19 THE COURT: All right. Now you've got me confused,
15:28:32 20 because I have that I admitted Exhibit 4 and Exhibit 43, which
15:28:38 21 was a picture of that after I had originally written down what
15:28:43 22 you were trying to admit was 63.
15:28:46 23 MR. HOFFMAN: Exhibit 43 is a photo of the same
15:28:49 24 device, but it is not the -- it's a collection of photos of
15:28:56 25 physical 4.

15:28:56 1 THE COURT: Well, Exhibit Number 4 is already in
15:28:58 2 evidence. So you're moving to offer Exhibit 63; is that
15:29:04 3 correct?

15:29:05 4 MR. HOFFMAN: Yes, Your Honor.

15:29:09 5 THE COURT: Mr. Doyle?

15:29:10 6 MR. DOYLE: No objection, Your Honor.

15:29:11 7 THE COURT: All right. Exhibit 63 for Hasbro is
15:29:14 8 admitted.

15:29:16 9 Now you may continue your direct examination.

15:29:20 10 Q. (BY MR. HOFFMAN) Before we took the break, we were looking
15:29:22 11 at the Anstoy blaster, sir.

15:29:27 12 A. Yes.

15:29:27 13 Q. Okay. And what was the Anstoy blaster used for during
15:29:30 14 Hasbro's design process?

15:29:32 15 A. It served as a baseline reference for the mechanism.

15:29:36 16 Q. And could you turn in your binder to tab 3, sir.

15:29:42 17 A. Yes.

15:29:44 18 Q. Do you recognize what we see in tab 3?

15:29:47 19 A. Yes, I do.

15:29:48 20 Q. All right. Tab 3 is marked as Defendant's Exhibit 3.
15:29:51 21 What is Exhibit 3?

15:29:53 22 A. This is the initial CAD drawing, a cross section, of the
15:29:58 23 Mythic blaster.

15:29:59 24 Q. Okay. Where did the external design, the -- the look of
15:30:06 25 the Mythic, where did that come from?

15:30:08 1 A. It came from Hasbro's design team.

15:30:11 2 Q. Okay. So I'm going to hand you physical Exhibit 3.

15:30:21 3 And you have physical Exhibit 3, sir?

15:30:28 4 A. Yes.

15:30:28 5 Q. And is what we're looking at in Exhibit 3, is that in one
15:30:32 6 of the CAD drawings that was used to develop the Mythic?

15:30:38 7 A. Yes. These CAD drawings were the initial CAD drawings for
15:30:42 8 this blaster.

15:30:42 9 MR. HOFFMAN: Move to admit Exhibit 3, Your Honor.

15:30:44 10 THE COURT: I thought I'd already admitted Exhibit 3.
15:30:48 11 I thought you offered Exhibit 3 and Exhibit 62.

15:30:52 12 MR. HOFFMAN: That was physical Exhibit 3.

15:30:55 13 THE COURT: Well, I hope nobody appeals this, because
15:30:59 14 if this record goes to the Circuit, they're not going to have a
15:31:02 15 single idea anywhere of what we did. We can't have two
15:31:06 16 Exhibit 3s.

15:31:09 17 MR. HOFFMAN: Yes, Your Honor.

15:31:09 18 THE COURT: We can't have a physical Exhibit 3 and
15:31:12 19 another Exhibit 3. Everything has got -- the reason we have
15:31:16 20 exhibit numbers is somebody who looks at a record later will
15:31:22 21 know what we did. So what are you offering?

15:31:26 22 MR. HOFFMAN: Under the rules, can I -- with the
15:31:28 23 Circuit, can I change the number of the exhibit, Your Honor?

15:31:30 24 THE COURT: Yes. But you've got to make sure I
15:31:33 25 understand what -- which of the exhibits you're changing

15:31:36 1 numbers on.

15:31:37 2 MR. HOFFMAN: All right. I'd like to change the --
15:31:44 3 what is on the screen right now to exhibit -- defendant's
15:31:49 4 Exhibit 300.

15:31:53 5 THE COURT: All right. Exhibit Number 300 is what I
15:31:56 6 believe the witness has described as a CAD drawing of the
15:32:03 7 Mythic; is this correct?

15:32:04 8 THE WITNESS: Yes. Correct, sir.

15:32:05 9 THE COURT: All right. Is there an objection to
15:32:10 10 Exhibit 300?

15:32:12 11 MR. DOYLE: Your Honor, because we didn't object to
15:32:16 12 Exhibit 3, we won't object to renaming it Exhibit 300.

15:32:22 13 THE COURT: All right. Exhibit 300 is admitted.

15:32:28 14 MR. HOFFMAN: This is now 300.

15:32:28 15 MR. DOYLE: Right. And I just said we didn't object
15:32:31 16 to that. We won't object to it being renamed Exhibit 300.

15:32:34 17 THE COURT: All right. It's in.

15:32:39 18 Q. (BY MR. HOFFMAN) Mr. Tino, how did you create what we see
15:32:43 19 in the CAD drawing in Exhibit 300.

15:32:45 20 A. We took a reference item that we discussed earlier, the
15:32:48 21 Anstoy AKM-47 mechanism, to understand the general sizing of
15:32:52 22 the components and the number of components and meshed it with
15:32:55 23 our initial design input from our NERF design team.

15:32:59 24 Q. Okay. Can you explain in Exhibit 300 what comes from the
15:33:06 25 initial Anstoy design, and what was designed by NERF, Hasbro?

15:33:09 1 A. So looking at the top image here, you can see starting
15:33:13 2 from the top and moving downward, there's an area for a gel
15:33:18 3 round to enter the breech area. There's a breech, a piston,
15:33:23 4 and a spring assembly. Those all match very closely to the
15:33:32 5 Anstoy item.

15:33:33 6 Then below that you can see we made some changes and
15:33:33 7 modification to location of these components to better fit our
15:33:35 8 form factor. So the gear train was laid out horizontally and
15:33:39 9 elongated, and the motor was moved from the handle back behind
15:33:43 10 the rest of the assembly.

15:33:47 11 Q. Is anything that's in this drawing, did any of it come
15:33:49 12 from Gel Blaster?

15:33:50 13 A. No.

15:33:51 14 Q. Is there any part of this CAD drawing that shows what
15:33:55 15 you've now heard today referred to as a PISCA?

15:34:02 16 A. As a PISCA?

15:34:04 17 Q. Correct?

15:34:04 18 A. No.

15:34:04 19 Q. Okay. At this point in the design process, did Hasbro yet
15:34:08 20 have a method for providing semi and automatic fire?

15:34:13 21 A. No.

15:34:13 22 Q. After you had merged the starting point of the Anstoy with
15:34:20 23 Hasbro's external design, what did you do next?

15:34:24 24 A. We looked at a select fire feature.

15:34:28 25 Q. Okay. And select fire features are the semi and the auto

15:34:31 1 that we talked about?

15:34:32 2 A. Correct.

15:34:40 3 Q. Can you explain at a general level in the industry, how
15:34:40 4 does select fire work?

15:34:42 5 A. So as we discussed previously and mentioned with the
15:34:44 6 Modulus blaster, there's usually some input by the user to
15:34:47 7 select multiple modes. Those modes typically include a single
15:34:51 8 shot, perhaps a burst, and then a full auto.

15:34:56 9 Q. And how is the single shot and the full auto accomplished?

15:35:02 10 A. There's various ways to accomplish it, three common
15:35:06 11 mechanisms known in the industry, I would say.

15:35:08 12 Q. What are three common mechanisms?

15:35:10 13 A. One would be a physical switch. Another would be a
15:35:13 14 noncontact or IR switch, and a third would be a timing method.

15:35:18 15 Q. Okay. When you originally designed the Mythic, did you
15:35:21 16 have a preference for which method to use?

15:35:25 17 A. Not necessarily. I knew they all could function very
15:35:29 18 similarly.

15:35:29 19 Q. And when you were considering pricing, did you have a
15:35:32 20 recommendation about which system to use?

15:35:33 21 A. Yes. From a cost standpoint, the timing method is the
15:35:36 22 lowest cost.

15:35:37 23 Q. So did you originally propose using a timing method?

15:35:40 24 A. Yes. That was my proposal to the team.

15:35:43 25 Q. Did the Mythic ultimately use timing?

15:35:46 1 A. No, it did not.

15:35:47 2 Q. And why not?

15:35:48 3 A. Upon discussion with the rest of my development team, our
15:35:52 4 electronics engineer was more familiar with the physical switch
15:35:54 5 and using that to detect the location of a component. So
15:35:57 6 taking his expertise in that area, I aligned with that decision
15:36:01 7 to move forward.

15:36:02 8 Q. In your mind, how important is it whether you use timing
15:36:06 9 or a physical switch to provide the ability to fire single shot
15:36:08 10 or auto?

15:36:09 11 A. Not important.

15:36:10 12 Q. And at that point, did Hasbro have experience using
15:36:15 13 physical switches?

15:36:16 14 A. Yes.

15:36:17 15 Q. Okay. If you could turn in your binder to tab 6.

15:36:33 16 A. Yes.

15:36:38 17 MR. HOFFMAN: And that is an exhibit that is marked
15:36:41 18 as Defendant's Exhibit 6, but I'm going to change it to
15:36:47 19 Exhibit 5, Your Honor, to prevent a conflict.

15:36:54 20 Q. Do you recognize Exhibit 5?

15:36:56 21 A. Yes, I do.

15:36:57 22 Q. And what is Exhibit 5?

15:36:58 23 A. This is a cross section of a CAD drawing of the NERF
15:37:02 24 Stampede.

15:37:02 25 Q. And can you explain how the NERF Stampede worked.

15:37:06 1 A. Yes. Very similar to a lot of the devices we've discussed
15:37:09 2 today. There is a trigger which indicates a signal to a
15:37:12 3 switch. That switch then tells the motor to run. That motor
15:37:16 4 drives a gear train, which then drives a piston and breech
15:37:20 5 assembly, to then be released at the end of the stroke,
15:37:24 6 blasting a projectile.

15:37:24 7 Q. Okay. And how does that -- how does the Piston operation
15:37:31 8 compare with what's used in the Mythic?

15:37:33 9 A. Very similar functionally.

15:37:35 10 Q. Okay.

15:37:37 11 MR. HOFFMAN: Your Honor, I move to admit Exhibit 5.

15:37:44 12 MR. DOYLE: I'm sorry. Now I'm confused. You move
15:37:47 13 to admit Exhibit 5, which is listed as Exhibit 6?

15:37:52 14 MR. HOFFMAN: Yes. I've changed the designator so we
15:37:55 15 don't reuse a number.

15:37:58 16 THE COURT: He's moving to admit what you're looking
15:38:01 17 at. It's just now called 6.

15:38:05 18 MR. DOYLE: Five.

15:38:06 19 MR. HOFFMAN: Five.

15:38:07 20 THE COURT: Five, yes.

15:38:08 21 MR. DOYLE: I do not object to Defendant's Exhibit 5.

15:38:16 22 THE COURT: Exhibit Number 5 is admitted.

15:38:19 23 Q. (BY MR. HOFFMAN) Mr. Tino, there are two highlighted
15:38:21 24 pieces in here. There's a green component and a red component.
15:38:24 25 Do you recognize those?

15:38:25 1 A. Yes, I do.

15:38:26 2 Q. What are those?

15:38:27 3 A. I would call the red component a physical switch and the
15:38:32 4 green component a rocker.

15:38:33 5 Q. And during the firing cycle, can you explain how the
15:38:38 6 rocker and the physical switch are used in the Stampede
15:38:41 7 blaster.

15:38:42 8 A. Yes. When the trigger is pulled, that rocker indicates
15:38:46 9 the movement downwards and towards the switch, depressing that
15:38:51 10 switch, then telling the motor to run and the firing cycle to
15:38:55 11 continue as I explained before. Upon the completion of a
15:38:58 12 cycle, whether the user is holding that trigger or not, that
15:39:03 13 piston will continue until it ends its cycle and releases that
15:39:08 14 switch.

15:39:09 15 Q. So is it correct that once per cycle, the Stampede presses
15:39:12 16 the physical switch?

15:39:13 17 A. Correct.

15:39:13 18 Q. Okay. Now, did the Stampede offer the ability to select
15:39:17 19 between single fire and auto?

15:39:19 20 A. No, it did not.

15:39:20 21 Q. Okay. And why didn't it?

15:39:22 22 A. At the time it was a different landscape of product, but
15:39:26 23 there are a couple of other functional reasons why it wasn't
15:39:29 24 necessary. This blaster has a very low rate of fire, so it was
15:39:33 25 very simple for the consumer to press the trigger once at a

15:39:37 1 relatively simple speed and it would only fire once, as well as
15:39:43 2 all the other necessary other equipment, physical components
15:39:49 3 and electronic components, needed were not worth the cost
15:39:53 4 tradeoff here.

15:39:54 5 Q. If you could turn to tab 7 in your binder. It's
15:39:57 6 Defendant's Exhibit 7. Do you recognize Defendant's Exhibit 7?

15:40:04 7 A. Yes, I do.

15:40:05 8 Q. What is Exhibit 7?

15:40:06 9 A. It's a post from a NERF enthusiast website called
15:40:10 10 NerfHaven.

15:40:11 11 MR. HOFFMAN: Your Honor, I move to admit Exhibit 7.

15:40:45 12 MR. DOYLE: And may I just ask one question,
15:40:47 13 Your Honor? This NerfHaven, this is coming from a website?

15:40:50 14 MR. HOFFMAN: It's the -- coming from a website, it's
15:40:52 15 the same exhibit that was with the briefing.

15:40:55 16 MR. DOYLE: Okay. Is this the Darthskids?

15:40:58 17 MR. HOFFMAN: It is by an individual naming
15:41:00 18 themselves Darthskids, yes.

15:41:03 19 MR. DOYLE: Okay. And you're actually calling this
15:41:06 20 Defendant's Exhibit 7, right?

15:41:07 21 MR. HOFFMAN: Yes.

15:41:08 22 MR. DOYLE: Okay. No objection.

15:41:09 23 THE COURT: All right. Defendant's Exhibit Number 7
15:41:11 24 is admitted.

15:41:16 25 Q. (BY MR. HOFFMAN) What is the NerfHaven website, Mr. Tino.

15:41:18 1 A. It's an enthusiast website for fans of the NERF brand,
15:41:24 2 where they discuss and share modifications and upgrades and
15:41:26 3 things they've performed on NERF blasters.

15:41:29 4 Q. And have you reviewed the modifications that were
15:41:32 5 published to the NerfHaven website by Darthskids in Exhibit 7?

15:41:37 6 A. Yes, I have.

15:41:38 7 Q. And have you -- have you reviewed the code that was
15:41:40 8 provided?

15:41:41 9 A. Yes, I have.

15:41:42 10 Q. Okay. Can you explain how the NerfHaven Stampede, how
15:41:51 11 that blaster operated?

15:41:53 12 A. Yes. They took the existing NERF Stampede, added some
15:41:57 13 additional electronic components, and updated some code to
15:42:02 14 allow it to have a select fire option. It did so by adding an
15:42:07 15 external switch for a user to select a mode, but then utilized
15:42:12 16 that same switch we discussed earlier, highlighted in red, to
15:42:16 17 determine the number of cycles completed. So when in a single
15:42:22 18 fire mode, it looked for only one depression of that switch and
15:42:26 19 then finished. And in a burst fire mode, it looked for
15:42:31 20 multiple depressions of that switch before terminating the
15:42:35 21 current to the motor.

15:42:37 22 Q. And how does the operation of the NerfHaven Darthskids
15:42:42 23 Stampede compare to what you did and designed into the Mythic?

15:42:45 24 A. Functionally the same.

15:42:47 25 Q. Can you explain that?

15:42:48 1 A. Yes. It's using a physical switch to determine the number
15:42:51 2 of completed cycles to then dictate when the motor is powered
15:43:00 3 or not.

15:43:00 4 Q. So, with a single shot, can you compare the operation of
15:43:04 5 the NerfHaven Stampede to the operation of the Mythic?

15:43:13 6 A. Yes. In the NerfHaven Stampede you would pull the trigger
15:43:17 7 once, and it would run a complete cycle, therefore, depressing
15:43:17 8 the switch only one time, and then cutting off power to the
15:43:21 9 motor. The same is true in the Mythic. You would pull the
15:43:23 10 trigger once, it would run a cycle one time, indicated by the
15:43:27 11 depression of the switch one time.

15:43:32 12 Q. Can you turn in your binder to tab 8. Do you recognize
15:43:36 13 Defendant's Exhibit 8?

15:43:39 14 A. Yes, I do.

15:43:40 15 Q. Is Defendant's Exhibit 8 a chart showing the operation of
15:43:44 16 the NerfHaven Stampede that you provided with your declaration?

15:43:49 17 A. Yes, it is.

15:43:49 18 MR. HOFFMAN: Your Honor, I move to admit Defendant's
15:43:51 19 Exhibit 8.

15:44:09 20 MR. DOYLE: No objection, Your Honor.

15:44:10 21 THE COURT: Defendant's Exhibit 8 is admitted.

15:44:15 22 Q. (BY MR. HOFFMAN) If you could turn in your binder, sir, to
15:44:17 23 tab 10, Defendant's Exhibit 10. Do you recognize what's in
15:44:25 24 Exhibit 10?

15:44:25 25 A. Yes, I do.

15:44:26 1 Q. And what is exhibit 10?

15:44:28 2 A. This is a screenshot of a YouTube video explaining the
15:44:31 3 modification to a NERF Stampede. It's by somebody named
15:44:35 4 Captain Xavier, who is well known among the enthusiast
15:44:40 5 community. I can see that has over 140,000 subscribers to a
15:44:43 6 YouTube channel that just talks about NERF modifications.

15:44:47 7 Q. So 140,000 subscribers about NERF blasters?

15:44:53 8 A. Correct.

15:44:53 9 Q. Have you watched the entire video?

15:44:55 10 A. Yes, I have.

15:44:56 11 Q. And what do we see in the image that is in Defendant's
15:45:00 12 Exhibit 10?

15:45:01 13 A. So in the particular image, you can see a switch that's
15:45:05 14 being used to indicate a complete fire cycle in this particular
15:45:08 15 modification. So that black piece right in the center of the
15:45:12 16 screen and right in the center of the yellow housing of the
15:45:15 17 blaster is a physical switch that is engaged by this orange
15:45:22 18 horizontal bar that you see.

15:45:23 19 Every time the piston assembly, which is not present
15:45:27 20 in this image, on the right moves forward to complete a cycle,
15:45:30 21 that horizontal bar also moves forward, depressing the physical
15:45:34 22 switch one time and then is returned back to its home state
15:45:38 23 when the piston returns, so it's able to determine when a cycle
15:45:42 24 is complete.

15:45:42 25 Q. And how does the physical switch shown in the Captain

15:45:48 1 Xavier video in Exhibit 10 from 2016, how does that compare to
15:45:53 2 the operation of the Mythic?
15:45:55 3 A. Functionally the same.
15:45:56 4 Q. Okay. Now, in the Stampede the physical switch is located
15:46:01 5 near the front of the firing mechanism; is that right?
15:46:04 6 A. Correct.
15:46:04 7 Q. Why is it there?
15:46:06 8 A. Design constraints. It's where there's space in the
15:46:08 9 blaster.
15:46:10 10 MR. HOFFMAN: Your Honor, I'll move to admit
15:46:12 11 Exhibit 10.
15:46:20 12 MR. DOYLE: No objection.
15:46:20 13 THE COURT: Exhibit 10 is admitted.
15:46:24 14 Q. (BY MR. HOFFMAN) Could you turn in your binder to
15:46:26 15 Exhibit 9, sir, tab 9.
15:46:32 16 A. Yes.
15:46:32 17 Q. Do you recognize Exhibit 9?
15:46:34 18 A. Yes, I do.
15:46:35 19 Q. And what is Exhibit 9?
15:46:36 20 A. That is a cross section of the CAD drawing for the NERF
15:46:39 21 Elite 2.0 Turbine.
15:46:41 22 Q. And when was the 2.0 Turbine released?
15:46:45 23 A. Approximately 2020.
15:46:47 24 Q. Before you started the design of the Mythic?
15:46:49 25 A. Yes.

15:46:49 1 Q. And did the Elite 2.0 Turbine have a physical switch?

15:46:53 2 A. It did.

15:46:54 3 Q. Okay. And where in the Exhibit 9 is the physical switch?

15:47:00 4 A. The red highlighted piece in this exhibit is the physical

15:47:03 5 switch.

15:47:04 6 Q. Is the physical switch in the Turbine, where is it

15:47:11 7 located?

15:47:12 8 A. Above the mechanism that pushes the dart forward.

15:47:16 9 Q. So in the Elite 2.0 Turbine, the switch is above?

15:47:20 10 A. Correct.

15:47:20 11 Q. How does the location of the physical switch in the Elite

15:47:24 12 2.0 Turbine compare to where you placed the switch in the

15:47:27 13 Mythic?

15:47:28 14 A. Similar location.

15:47:29 15 Q. Okay. Talk about the design of the Mythic itself.

15:47:40 16 MR. HOFFMAN: Excuse me. Before I do that,

15:47:41 17 Your Honor, I move to admit Defendant's Exhibit 9.

15:47:47 18 MR. DOYLE: No objection, Your Honor.

15:47:48 19 THE COURT: Hasbro Exhibit 9 is admitted.

15:47:52 20 Q. (BY MR. HOFFMAN) And let's talk briefly, sir, about the

15:47:54 21 Mythic design itself. If you could turn to tab 12 in your

15:48:15 22 binder. Defendant's Exhibit 12, do you recognize that?

15:48:16 23 A. Yes, I do.

15:48:16 24 Q. Is that an image of the Mythic?

15:48:18 25 A. Yes. The internals of the Mythic blaster.

15:48:21 1 MR. HOFFMAN: Move to admit Exhibit 12, Your Honor.

15:48:26 2 MR. DOYLE: No objection, Your Honor.

15:48:29 3 THE COURT: Exhibit 12 is admitted.

15:48:29 4 Q. (BY MR. HOFFMAN) All right. Where is the physical switch
15:48:30 5 in the Mythic located?

15:48:31 6 A. Above the piston assembly.

15:48:33 7 Q. And that's similar to the Elite 2.0 Turbine?

15:48:37 8 A. Yes.

15:48:37 9 Q. Okay. And why did you choose to put the physical switch
15:48:40 10 on top of the plunger mechanism?

15:48:43 11 A. Again, design constraints of the rest of the externals of
15:48:46 12 the blaster. That's where there was space to do so.

15:48:49 13 Q. And how is the switch in the Mythic oriented?

15:48:52 14 A. Horizontally.

15:48:53 15 Q. And is there a reason it's horizontal?

15:48:56 16 A. Yes. Durability concerns.

15:48:57 17 Q. Can you explain why that horizontal orientation addresses
15:49:03 18 durability concerns?

15:49:04 19 A. Yes. As we discussed earlier, there's designs where you
15:49:08 20 can perpendicularly impact that switch. That's very
15:49:12 21 detrimental to the switch's life span, as it's a direct impact.
15:49:16 22 By moving the switch horizontally, it interacts in a more
15:49:21 23 progressive manner along that switch's lever, extending the
15:49:25 24 life of the part.

15:49:33 25 Q. Sir, in 2021 Hasbro was in discussions with Gel Blaster.

15:49:37 1 Do you remember that?

15:49:37 2 A. Yes.

15:49:38 3 Q. What was your involvement in those discussions?

15:49:39 4 A. To provide due diligence from an engineering perspective.

15:49:42 5 Q. And did Gel Blaster send you physical prototype samples
15:49:46 6 for its blasters?

15:49:46 7 A. Yes, it did.

15:49:47 8 Q. And looking back or thinking back on that, did anything in
15:49:50 9 particular catch your attention?

15:49:54 10 A. Yes. One thing in particular was that the samples
15:49:57 11 provided did not match other documentation provided with that
15:50:00 12 sample.

15:50:01 13 Q. And what do you mean that the samples didn't match the
15:50:04 14 documentation?

15:50:05 15 A. Particularly looking at the electronics schematic, there's
15:50:08 16 a switch present in that schematic that was not in the physical
15:50:12 17 sample.

15:50:12 18 Q. And did you raise that difference with Gel Blaster?

15:50:18 19 A. Yes, we did.

15:50:18 20 Q. And what did they tell you?

15:50:20 21 A. They informed us that their manufacturing partners had
15:50:23 22 found a different solution that was more effective and a better
15:50:26 23 solution, so they weren't going to move forward with the
15:50:29 24 switch.

15:50:29 25 Q. Did you understand that Gel Blaster would be using the

15:50:35 1 physical switch in their implementations?

15:50:38 2 A. No.

15:50:38 3 Q. All right. How -- how does Gel Blaster currently provide
15:50:46 4 the semi and auto feature in their blasters?

15:50:51 5 A. Via timing method.

15:50:52 6 MR. HOFFMAN: Okay. Pass the witness, Your Honor.

15:51:04 7 **CROSS-EXAMINATION**

15:51:04 8 **BY MR. DOYLE:**

15:51:46 9 Q. Your name is Mr. Tino? Tino or Tito?

15:51:50 10 A. Tino, T-i-n-o.

15:51:52 11 Q. Okay. Thank you. Apologies.

15:51:57 12 So, Mr. Tino, you were part of the Hasbro team that
15:52:01 13 had been working with Gel Blaster in 2021?

15:52:05 14 A. Yes. I was the engineer in charge of due diligence.

15:52:08 15 Q. Okay. And did you receive any Gel Blaster confidential
15:52:15 16 information?

15:52:15 17 A. We treated all information provided as confidential,
15:52:19 18 though it was never expressly said so to us on the development
15:52:23 19 team or market --

15:52:26 20 Q. What information did you look at?

15:52:28 21 A. Physical samples, digital files ranging from CAD and
15:52:32 22 schematics.

15:52:33 23 Q. So you did look at CAD --

15:52:34 24 A. Yes. We looked at CAD.

15:52:37 25 Q. -- schematics?

15:52:38 1 A. Yep.

15:52:38 2 Q. And did you look at CAD schematics of the physical firing
15:52:41 3 mechanism?

15:52:42 4 A. I'm sure I did, yes.

15:52:43 5 Q. Okay. And that physical firing mechanism, did you see
15:52:50 6 what we're calling the PISCA, the plunger-integrated switch
15:52:54 7 contact arm?

15:52:55 8 A. Likely. It was over two years now.

15:52:57 9 Q. Sure. And did you see a PISCA switch?

15:53:02 10 A. Similarly likely, and we did notice a switch was missing,
15:53:07 11 so ...

15:53:07 12 Q. But in the CAD drawing, was there a switch there?

15:53:11 13 A. May have been, yes.

15:53:12 14 Q. May have been or?

15:53:13 15 A. Again, many years ago. I can't say exactly. It's been a
15:53:17 16 year-plus since I've seen any sort of CAD drawing.

15:53:20 17 Q. But you did see CAD drawings showing the physical firing
15:53:24 18 mechanism of Gel Blaster, right?

15:53:27 19 A. Yes.

15:53:27 20 Q. Okay. And is it your understanding that that physical
15:53:35 21 firing mechanism has not been implemented in any Gel Blaster
15:53:40 22 guns that have been released to the market?

15:53:42 23 A. That's my understanding.

15:53:43 24 Q. Okay. And -- okay. Strike that.

15:53:48 25 Now, you provided testimony about the modification of

15:53:57 1 NERF Stampede; is that right?

15:53:59 2 A. Yes.

15:53:59 3 Q. And did Hasbro modify the NERF Stampede?

15:54:02 4 A. No.

15:54:03 5 Q. Who did that?

15:54:05 6 A. Numerous people. We discussed two different variations,

15:54:11 7 one by Darthskids and one by Captain Xavier.

15:54:13 8 Q. Do you know who Darthskids is?

15:54:15 9 A. No, I do not.

15:54:16 10 Q. Do you have any idea who he is?

15:54:19 11 A. Nope.

15:54:19 12 Q. Is he an engineer?

15:54:21 13 A. I do not know.

15:54:22 14 Q. Is it typical for Hasbro to go look on the Internet and

15:54:27 15 look for people like Mr. Darthskids who might have modified

15:54:31 16 your devices?

15:54:32 17 A. Yes. We do monitor the Internet for modifications.

15:54:36 18 Q. And do you use that in your design efforts to design new

15:54:40 19 products?

15:54:41 20 A. Sometimes it's inspiration, yes.

15:54:43 21 Q. Is it ever more than inspiration? Do you actually use

15:54:47 22 that particular design modification you find on the Internet?

15:54:50 23 A. Usually the modifications are very crude and rudimentary.

15:54:53 24 But, conceptually, we do look at what's available and what

15:54:55 25 people are doing.

15:54:56 1 Q. Did you try to reach Mr. Darthskids?

15:54:58 2 A. No.

15:54:58 3 Q. You didn't have any questions for Mr. Darthskids?

15:55:01 4 A. No.

15:55:02 5 Q. When did you become aware of the Mr. Darthskids
15:55:06 6 modifications?

15:55:07 7 A. During preparation for this -- this testimony.

15:55:10 8 Q. During -- so for the first time you became aware of
15:55:15 9 Mr. Darthskids' modification to the Stampede was in preparation
15:55:19 10 for this testimony?

15:55:20 11 A. Yes. I hadn't seen it previously.

15:55:23 12 Q. So is it fair to say that Mr. Darthskids' modification was
15:55:27 13 not used as part of your design process to develop a physical
15:55:32 14 firing mechanism for the Mythic?

15:55:35 15 A. That would be correct.

15:55:35 16 Q. Okay. Wasn't used at all?

15:55:38 17 A. Correct.

15:55:38 18 Q. In fact, you had no access to it at the time?

15:55:40 19 A. We had access, but didn't know about it.

15:55:43 20 Q. Okay. Good. How about the Stampede? Did you look at the
15:55:47 21 Stampede as part of your design effort for the Hasbro Mythic?

15:55:51 22 A. Not particularly. But we very much have 30 years of
15:55:56 23 experience in blasters, and that's one of those blasters that
15:56:00 24 we look upon.

15:56:01 25 Q. Yeah. But did you use the Stampede to design your mythic

15:56:05 1 physical firing mechanism?

15:56:07 2 A. No.

15:56:07 3 Q. Okay. So I think you've testified you didn't know who

15:56:19 4 Mr. or Mrs. -- or Ms. Darthskids was, right?

15:56:23 5 A. Correct.

15:56:24 6 Q. So Mr. Darthskids or Mrs. Darthskids didn't provide you

15:56:29 7 any CAD drawings for a physical firing mechanism, right?

15:56:32 8 A. No.

15:56:33 9 Q. Okay.

15:56:36 10 A. They also didn't need to. There was no physical changes

15:56:40 11 to the mechanism.

15:56:41 12 Q. Sure. You're familiar, obviously, with the Hasbro Mythic?

15:56:48 13 A. Yes. Very.

15:56:49 14 Q. And were you heavily designed -- strike that.

15:56:52 15 Were you heavily involved in the design of the Hasbro

15:56:55 16 Mythic?

15:56:55 17 A. Yes.

15:56:56 18 Q. And when did that effort start?

15:56:57 19 A. November of 2021.

15:56:59 20 Q. November of 2021?

15:57:01 21 A. Correct.

15:57:01 22 Q. And when did you stop looking at the information -- all

15:57:06 23 that information you received from Gel Blaster?

15:57:09 24 A. By the end of October of 2021.

15:57:12 25 Q. And how did you remove all that from your mind?

15:57:17 1 A. I can't physically remove it from my mind.

15:57:20 2 Q. Right. What I'd like to do is provide to you -- I'm
15:57:32 3 trying to get these exhibits correct before we do this. We had
15:57:35 4 marked this as Plaintiff's Exhibit Number 26.

15:57:42 5 MR. DOYLE: Can we bring this up on the screen?

15:57:51 6 There it is.

15:57:52 7 Q. Are you familiar with that diagram, sir?

15:57:54 8 A. Yes.

15:57:54 9 Q. What is it?

15:57:55 10 A. It's the internals of a section of the mythic.

15:57:59 11 Q. The Hasbro Mythic?

15:58:01 12 A. Correct. The Hasbro NERF Gelfire Mythic.

15:58:04 13 Q. Right. Designed and developed by Hasbro; is that right?

15:58:07 14 A. Correct.

15:58:08 15 Q. Do you see at the very top there's an arm protruding from
15:58:14 16 the plunger? Do you see that?

15:58:16 17 A. Yes.

15:58:16 18 Q. And it goes straight up from the plunger and then it moves
15:58:20 19 to the left, does it not, at a 90-degree angle?

15:58:23 20 A. Yes.

15:58:27 21 Q. Okay. And then, as it moves from right to left, it
15:58:33 22 contacts a switch. That is a switch there that we're looking
15:58:36 23 at; is that correct?

15:58:38 24 A. It is.

15:58:38 25 Q. And is the switch the part that's almost right next to the

15:58:47 1 arm -- the protruding arm --

15:58:50 2 A. Yes.

15:58:50 3 Q. -- in that diagram?

15:58:52 4 It's black, and I think it has a -- what is that
15:58:54 5 silver part?

15:58:56 6 A. It's a metallic lever arm.

15:58:59 7 Q. Lever arm. And so what happens when the protruding arm,
15:59:04 8 which is on the plunger, contacts that --

15:59:08 9 What did you call it again?

15:59:09 10 A. Lever arm.

15:59:11 11 Q. -- lever arm? What happens?

15:59:12 12 A. It then pushes on a physical switch progressively as it
15:59:18 13 moves past.

15:59:19 14 Q. Okay. And what happens when that switch is contacted?

15:59:24 15 A. Once it's then released, it sends a signal to the motor to
15:59:29 16 stop functioning if it's in single shot mode. If it's in
15:59:33 17 semiautomatic mode or -- and if it's in fully automatic mode,
15:59:37 18 it ignores the input from that switch.

15:59:40 19 Q. Okay. Do you agree that there's a switch that the arm
15:59:50 20 contacts as the plunger system moves towards the back or the
15:59:56 21 rear of the plunger -- of the gun; is that right?

15:59:59 22 A. Correct.

15:59:59 23 Q. So now I'd just like to ask you some questions on how the
16:00:05 24 Mythic operates.

16:00:06 25 Let's assume that the Mythic is in single shot mode.

16:00:10 1 Can we do that? Thank you.

16:00:11 2 What's first step in the whole firing process?

16:00:19 3 A. The trigger is pulled, the firing trigger.

16:00:21 4 Q. Okay. And what happens after the trigger is pulled?

16:00:27 5 A. Assuming we're in single shot mode, once the trigger is
16:00:31 6 pulled, it sends a signal to the circuitry to then provide
16:00:35 7 power to the motor. The motor then spins up, powering the gear
16:00:39 8 train you see here. That gear train --

16:00:41 9 Q. Let's just slow down. Why don't we go one step at a time.

16:00:44 10 A. Sure.

16:00:45 11 Q. You mind that? My brain doesn't move that quickly
16:00:48 12 anymore?

16:00:48 13 So you said you pull the trigger back. Does it
16:00:53 14 contact any element?

16:00:55 15 A. Yes. And -- and activates a switch.

16:00:58 16 Q. So it contacts an electronic switch?

16:01:00 17 A. Correct.

16:01:00 18 Q. Great. And what happens then?

16:01:04 19 A. As mentioned, it then sends a signal to the electronics.

16:01:09 20 Q. Sends a signal to the electronics?

16:01:12 21 A. Yes.

16:01:14 22 Q. And what do you call the electronics?

16:01:17 23 A. A PCB.

16:01:17 24 Q. Is that an electronic board?

16:01:19 25 A. Yes.

16:01:20 1 Q. Okay. Thank you. And once the board gets that signal,
16:01:24 2 what does it do?
16:01:25 3 A. It informs the motor to draw current.
16:01:28 4 Q. To draw current. And what does that mean, to draw
16:01:33 5 current?
16:01:33 6 A. To power up to be able to spin.
16:01:35 7 Q. Is that the same as starting the motor?
16:01:38 8 A. Yes.
16:01:38 9 Q. Okay. And then what happens then? What does the motor do
16:01:42 10 as it relates to the gearbox?
16:01:44 11 A. It drives the gear train.
16:01:46 12 Q. Does it turn the gears?
16:01:48 13 A. Yes.
16:01:48 14 Q. Okay. So if we're looking here at the gears, can you
16:01:54 15 identify the gears in this particular drawing?
16:01:56 16 A. Just where they specifically are?
16:01:58 17 Q. Yeah.
16:01:58 18 A. Just across from metallic cylinder you see here, which is
16:02:03 19 the motor, to the right of that is a series of gears.
16:02:05 20 Q. Okay. The round things with the edges on it?
16:02:07 21 A. Yes. With teeth.
16:02:08 22 Q. With teeth. And once they start moving, what happens
16:02:14 23 then?
16:02:17 24 A. So they move progressively, and then once you get to the
16:02:20 25 final gear, that gear engages what's called a rack, the piston,

16:02:26 1 and breech.

16:02:28 2 Q. Do the gears act to move the plunger assembly towards the

16:02:33 3 rear of the Mythic?

16:02:35 4 A. Yes.

16:02:35 5 Q. Okay. So those gears are moving, the plunger starts going

16:02:40 6 backwards, right --

16:02:41 7 A. Yes.

16:02:42 8 Q. -- or towards the rear?

16:02:43 9 A. Along with the breech.

16:02:44 10 Q. And as the plunger moves back, that protruding arm on top

16:02:51 11 of the plunger will contact that switch, right?

16:02:55 12 A. Yes. It begins to make contact.

16:02:58 13 Q. Okay. And once that switch gets contacted, does the

16:03:05 14 switch signal or communicate with the electronic board that one

16:03:09 15 shot has occurred?

16:03:10 16 A. Not at that point in time.

16:03:12 17 Q. Okay. When -- at what point in time?

16:03:15 18 A. Once the -- the gear train has driven the plunger all the

16:03:19 19 way back and released it, once it's fully released and returned

16:03:24 20 back to its home position, it then sends a signal that that

16:03:28 21 switch has been depressed.

16:03:30 22 Q. Okay. Good. Will the motor shut off at that point in

16:03:36 23 time?

16:03:36 24 A. In single fire mode, it will, yes.

16:03:38 25 Q. Yeah. And that means another fire is not coming out --

16:03:41 1 A. Correct.

16:03:41 2 Q. -- another gellet is not going to come out; is that right?

16:03:45 3 A. Yes.

16:03:45 4 Q. And so you just described the operation of the Mythic

16:03:48 5 firing mechanism, right?

16:03:49 6 A. Yes.

16:03:50 7 Q. And do you understand that's identical to the operation of

16:03:55 8 the physical firing mechanism of the Gel -- as shown in the

16:03:59 9 Gel Blaster CAD drawings?

16:04:01 10 A. It could be considered identical.

16:04:04 11 Q. Okay.

16:04:06 12 A. It's also identical to the --

16:04:07 13 Q. Identical, right?

16:04:09 14 A. The process is identical? Is that what you're asking.

16:04:12 15 Q. Yeah.

16:04:12 16 A. Yes. The flow of events is the same.

16:04:15 17 Q. Okay. And you would agree that the physical firing

16:04:20 18 mechanism of the Gel Blaster included that protruding -- a

16:04:25 19 protruding arm coming off the plunger, right?

16:04:28 20 A. To my knowledge, that's never been sold by Gel Blaster.

16:04:32 21 Q. You've never been what?

16:04:32 22 A. That's never been sold by Gel Blaster.

16:04:35 23 Q. That's not what I'm asking.

16:04:35 24 A. You said the Gel Blaster -- you said the Gel Blaster

16:04:38 25 product.

16:04:38 1 Q. Thank you. I stand corrected. I apologize.

16:04:45 2 In the CAD drawings, are you familiar with a
16:04:48 3 protrusion that comes up from the plunger and points backwards
16:04:55 4 toward the rear of the -- of the gun?

16:04:58 5 A. I'm familiar that there is publicly available Gel Blasters
16:05:02 6 that do that.

16:05:03 7 Q. Sure. But have you seen CAD drawings that show that?

16:05:07 8 A. Again, I may have. It was over two years ago now.

16:05:10 9 Q. Okay. And are you familiar with the fact that when that
16:05:15 10 travels backwards after a shot, that's going to touch a switch?

16:05:22 11 A. Can you clarify? What is touching a switch in what
16:05:25 12 blaster?

16:05:25 13 Q. The protruding arm touches a switch.

16:05:29 14 A. In which blaster are we referring?

16:05:31 15 Q. We're referring again to the computer-aided design
16:05:35 16 drawings that we've been discussing today.

16:05:38 17 A. Yeah. I can't specifically say. I haven't seen those CAD
16:05:41 18 drawings for a Gel Blaster.

16:05:42 19 Q. You haven't seen them before?

16:05:43 20 A. I haven't seen them today.

16:05:45 21 Q. Oh. I'm sorry. I'm sorry.

16:05:49 22 I'd like to please provide Mr. Tino with what's been
16:05:57 23 marked as Plaintiff's Exhibit 24. Can you take a look at that,
16:06:09 24 sir.

16:06:09 25 A. Yes. I see this.

16:06:11 1 MR. DOYLE: Can we get that up on the screen.

16:06:13 2 Q. Okay. Do you see that arm at the very top of the plunger?

16:06:17 3 A. Yes, I do.

16:06:18 4 Q. Okay. And it protrudes backwards, right?

16:06:22 5 A. Yes.

16:06:22 6 Q. And so would you agree that when the trigger is pulled,

16:06:26 7 that a signal is sent to the motor and the motor starts the

16:06:31 8 gears?

16:06:32 9 A. Yes.

16:06:32 10 Q. Okay. And when the gears start, the whole plunger

16:06:36 11 assembly is going to go towards the back or the rear of the

16:06:40 12 Gel Blaster. Do you see that?

16:06:42 13 A. Yes.

16:06:42 14 Q. Okay. And when that happens, you see that this arm that

16:06:46 15 we've been calling the PISCA on top of the plunger, right?

16:06:50 16 A. Yes.

16:06:50 17 Q. And when that moves back, do you see a switch?

16:06:54 18 A. I do.

16:06:54 19 Q. And we've been calling that the PISCA switch, right?

16:06:58 20 A. Yes.

16:06:58 21 Q. And when that hits that switch, it's going to indicate

16:07:04 22 there's a signal then sent from the switch to the motor. Do

16:07:07 23 you understand that?

16:07:08 24 A. I can assume that's what would happen.

16:07:11 25 Q. Okay. And the motor shuts off?

16:07:13 1 A. Yes. Without knowing -- without seeing the code, I can't
16:07:16 2 say. But that could be an assumption.

16:07:18 3 Q. Right. And as you sit here today, you don't recall if
16:07:24 4 you've seen this CAD drawing?

16:07:26 5 A. This drawing is a rendering, I believe, not a CAD drawing.

16:07:30 6 Q. Have you seen a CAD drawing that looks like this?

16:07:33 7 A. I may have over two years ago.

16:07:35 8 Q. Over two years ago. Well, was it in the summer of 2021?

16:07:42 9 A. Yes. Approximately two years ago.

16:07:44 10 Q. Well, aren't we January of 2022?

16:07:47 11 A. I apologize for my timeline. Not quite. Sometime in mid
16:07:50 12 to late 2021.

16:07:52 13 Q. Okay. Fantastic. So Mr. Hoffman went through all these
16:08:03 14 different versions of guns, and I'm going to try to use the
16:08:10 15 correct exhibit numbers.

16:08:14 16 So we're going to start with Exhibit 300, which is
16:08:20 17 under Tab 3 in your book.

16:08:35 18 So what was this again?

16:08:36 19 A. This is the initial CAD drawing of our Gelfire Mythic.

16:08:40 20 Q. Sure. Is this the -- the CAD drawing that ended up being
16:08:45 21 used to develop the Gelfire Mythic?

16:08:48 22 A. Yes. This was the first CAD drawing, so it was used to
16:08:52 23 develop the Mythic, yes.

16:08:53 24 Q. But it's not the final?

16:08:54 25 A. Correct. Not the final, yes.

16:08:56 1 Q. Okay. And when you look at this, do you see that
16:09:00 2 protruding arm in this particular diagram?

16:09:03 3 A. There is no protruding arm in that diagram.

16:09:06 4 Q. Yeah. But the actual final Mythic that sold has a
16:09:09 5 protruding arm, right?

16:09:10 6 A. Correct.

16:09:11 7 Q. Okay. And do you see a switch that gets contacted by a
16:09:18 8 protruding arm?

16:09:18 9 A. No, I do not.

16:09:19 10 Q. It's not in here, is it?

16:09:20 11 A. Correct.

16:09:21 12 Q. Okay. So that was added later?

16:09:23 13 A. Yes.

16:09:23 14 Q. Okay. So it's not in this drawing.

16:09:27 15 All right. Let's move over to Defendant's Exhibit 5
16:09:32 16 if we could. I'm sorry. Tab 6. It's Defendant's Exhibit 5.

16:09:48 17 Do you got it?

16:09:48 18 A. Yes, I do.

16:09:49 19 Q. And what was this again?

16:09:53 20 A. This is a CAD drawing with some highlighted pieces of the
16:09:56 21 NERF Stampede.

16:09:57 22 Q. Okay. And I think you already testified that the Hasbro
16:10:01 23 Mythic is not based on -- or was not designed and developed
16:10:05 24 based on this?

16:10:06 25 A. Correct.

16:10:06 1 Q. Okay. Does this particular -- is this Darthskids', or is
16:10:16 2 this Hasbro Stampede?
16:10:17 3 A. This is the Hasbro Stampede.
16:10:18 4 Q. This is the old Hasbro Stampede. Is there a plunger arm
16:10:23 5 or an arm that protrudes from the plunger going backwards in
16:10:27 6 this particular?
16:10:28 7 A. No.
16:10:28 8 Q. Not there at all, right?
16:10:30 9 A. No.
16:10:31 10 Q. Is this a switch that a plunger arms contacts in this
16:10:35 11 particular design?
16:10:37 12 A. Not directly.
16:10:38 13 Q. Not there, right?
16:10:40 14 A. There is a switch to the plunger.
16:10:42 15 Q. There are switches in there, but there's no switch that a
16:10:46 16 plunger coming off of the -- I mean, the arm coming off of the
16:10:51 17 plunger is going to go back and hit, right?
16:10:52 18 A. Correct.
16:10:54 19 Q. So this is not your final design either, is it?
16:10:57 20 A. It is not.
16:10:58 21 Q. But it's Mr. Darthskids' -- strike that.
16:11:00 22 It's the Stampede, correct?
16:11:04 23 A. Right.
16:11:04 24 Q. Lets run -- let's run on over to Defendant's Exhibit 7.
16:11:13 25 What was this again?

16:11:14 1 A. The post on NerfHaven to modify a Stampede to add select
16:11:19 2 fire.
16:11:19 3 Q. And this is what this Darthskids did, right?
16:11:22 4 A. Correct.
16:11:23 5 Q. Right. And you've already testified that you didn't use
16:11:25 6 this in the development of the Hasbro Mythic; is that correct?
16:11:31 7 A. We do not, no.
16:11:32 8 Q. Now, looking at this, can you just point to me where there
16:11:34 9 is an arm on top of the plunger?
16:11:40 10 A. There is no arm on top.
16:11:41 11 Q. There is no arm?
16:11:42 12 A. Yeah.
16:11:43 13 Q. And there's no arm going backwards that ever contacts a
16:11:46 14 switch, right?
16:11:47 15 A. Correct.
16:11:47 16 Q. Okay. Let's move off of that, too.
16:11:51 17 Finally, I believe -- and this was new to us --
16:12:00 18 Defendant's Exhibit 9. I believe it's called the NERF Elite
16:12:06 19 Turbine. And in this drawing I believe you testified that this
16:12:13 20 thing in red is a physical switch, right?
16:12:15 21 A. Yes, it is.
16:12:15 22 Q. Okay. Is that physical switch contacted by an arm that
16:12:21 23 rests on top of a plunger looking backwards?
16:12:25 24 A. No.
16:12:26 25 Q. Why is that?

16:12:27 1 A. This blaster utilizes a pusher and flywheel system.

16:12:32 2 Q. So there's no plunger arm, right?

16:12:35 3 A. Correct.

16:12:36 4 Q. There's no PISCA.

16:12:41 5 THE COURT: Just pull one of those away from the
16:12:43 6 other one -- pull one of them away. Now just talk into one.

16:12:50 7 I think the feedback occurs when the two mics are put
16:12:53 8 together.

16:12:54 9 MR. DOYLE: No more questions. Thank you.

16:13:02 10 THE COURT: Redirect?

16:13:03 11 MR. HOFFMAN: Quickly, Your Honor.

16:13:08 12 **REDIRECT EXAMINATION**

16:13:08 13 **BY MR. HOFFMAN:**

16:13:08 14 Q. Mr. Tino, you testified about the flow of events in the
16:13:11 15 Mythic. Do you recall that?

16:13:12 16 A. Yes.

16:13:13 17 Q. How did the flow of events in the Mythic compare to the
16:13:18 18 NerfHaven Stampede?

16:13:19 19 A. Should be very similarly.

16:13:21 20 Q. And how did the flow of events in the Mythic compare to
16:13:25 21 the Captain Xavier Stampede with additional switch?

16:13:30 22 A. Very similar, if not identical.

16:13:33 23 Q. Thank you.

16:13:38 24 THE COURT: Anything additional, Mr. Doyle?

16:13:40 25 MR. DOYLE: I do. I do. That was the Xavier. What

16:13:44 1 defendant's -- what exhibit are you referring to?

16:13:48 2 MR. HOFFMAN: Captain Xavier is Exhibit 10.

16:14:02 3 **RECROSS-EXAMINATION**

16:14:02 4 **BY MR. DOYLE:**

16:14:02 5 Q. Who is Captain Xavier?

16:14:05 6 A. A well-known modder, as we would call them, in the
16:14:10 7 enthusiast community for NERF.

16:14:12 8 Q. Work for Hasbro?

16:14:13 9 A. No.

16:14:13 10 Q. You guys ever taken anything from him and used it to
16:14:17 11 design your blasters?

16:14:18 12 A. Not that I'm aware of.

16:14:20 13 Q. Okay. Looking at this, is there a physical arm on top of
16:14:27 14 the plunger?

16:14:29 15 A. No.

16:14:30 16 Q. Is there any type of arm on top of the plunger that goes
16:14:35 17 back and contacts a switch to show that a fire has been shot
16:14:39 18 from the blaster?

16:14:40 19 A. No.

16:14:41 20 Q. All right. Thank you.

16:14:50 21 THE COURT: Mr. Hoffman?

16:14:53 22 MR. HOFFMAN: Your Honor, Hasbro calls
16:14:55 23 Mr. Adam Kleinman.

16:15:02 24 THE COURT: You may step down.

16:15:03 25 (Witness sworn)

16:15:27 1 MR. BARKAN: Good afternoon, Your Honor.

16:15:27 2 David Barkan again.

16:15:30 3 **ADAM KLEINMAN,**

16:15:30 4 having been first duly sworn, testified as follows:

16:15:30 5 **DIRECT EXAMINATION**

16:15:30 6 **BY MR. BARKAN:**

16:15:30 7 Q. Good afternoon Mr. Kleinman?

16:15:32 8 A. Good afternoon.

16:15:32 9 Q. Please introduce yourself to the court.

16:15:34 10 A. My name is Adam Kleinman. I'm the senior vice president
16:15:37 11 and general manager of NERF.

16:15:39 12 THE COURT: And how do you spell your last name?

16:15:41 13 THE WITNESS: It's K-l-e-i-n-m-a-n.

16:15:49 14 THE COURT: Thank you.

16:15:50 15 Q. (BY MR. BARKAN) How long have you been with Hasbro?

16:15:52 16 A. This would be my 14th year.

16:15:54 17 Q. And how long have you been involved with blaster products?

16:15:57 18 A. I started on the NERF business at the end of 2019.

16:16:00 19 Q. Has the Mythic product been successful?

16:16:03 20 A. Yes.

16:16:03 21 Q. Have customers' reviews been positive?

16:16:07 22 A. Yes. It has over a four-star rating.

16:16:10 23 Q. Now, in those customer reviews, have customers talked
16:16:14 24 about the performance of the Mythic with respect to its
16:16:18 25 multiple firing modes?

16:16:20 1 A. Not particularly to the firing modes. They talk about
16:16:22 2 the -- we're I think the only ones that have the ability to
16:16:27 3 swap out batteries, we have an extendable stock. They talk
16:16:30 4 about our hopper. But our firing mode is no different than any
16:16:33 5 other blaster on the market.

16:16:35 6 Q. Okay. In terms of performance?

16:16:37 7 A. We're lower on performance. We fire at a lower speed than
16:16:42 8 other blasters at a similar rate of fire.

16:16:45 9 Q. Have any of those reviews compared Mythic's firing control
16:16:49 10 to other competitor products' firing control?

16:16:51 11 A. I mean, we have comparisons between the Mythic and the
16:16:56 12 Surge, for example. In many cases, they prefer the Surge. No
16:17:00 13 one particularly calls out anything internally. They just talk
16:17:04 14 about whether it's semiauto or full auto.

16:17:07 15 Q. Is it fair to say, Mr. Kleinman, that to whatever extent
16:17:12 16 the Mythic is using a switch mechanism and firing control, that
16:17:15 17 has not led to customers particularly being impressed with the
16:17:19 18 firing performance of the Mythic?

16:17:21 19 A. Yeah. That's a fair statement. We don't market it. We
16:17:27 20 don't show the internals of our Blaster. We don't break it
16:17:29 21 apart into our marketing campaigns. So it would be very hard
16:17:34 22 for consumers to know that there were any differences.

16:17:35 23 Q. Okay. In your job do you regularly review market share
16:17:38 24 data?

16:17:38 25 A. Yes, I do. Of course.

16:17:40 1 Q. Where do you get that data from?

16:17:42 2 A. We work with a third party that Hasbro subscribes to
16:17:46 3 called NPD.

16:17:47 4 Q. Does NPD track market share in the gel ball blaster
16:17:51 5 market?

16:17:51 6 A. Yes.

16:17:51 7 Q. And what were the relative market shares of the top
16:17:54 8 players in the gel ball blaster market in the fourth quarter of
16:17:58 9 2022?

16:17:59 10 A. Gel Blaster, the brand, was number one at about 47
16:18:06 11 percent, I believe. There are some slight nuances on market
16:18:08 12 share data based on items that are suppressed or not
16:18:14 13 suppressed, which are exclusives. SplatRBall I believe was
16:18:16 14 somewhere around 25 percent, NERF was around 15, and Prime Time
16:18:20 15 was around 11 1/2 percent.

16:18:23 16 Q. When you say NERF, you mean Hasbro?

16:18:25 17 A. Hasbro's, yes. But NERF is the brand.

16:18:28 18 Q. Okay. So in the market share data that you reviewed for
16:18:31 19 the fourth quarter of 2022, Gel Blaster was number one?

16:18:35 20 A. That is correct.

16:18:35 21 Q. With about the three times the market share of Hasbro?

16:18:38 22 A. That is correct.

16:18:39 23 Q. Okay. Now, if Hasbro left the gel ball market tomorrow,
16:18:48 24 would Gel Blaster, the company, still have competition for gel
16:18:51 25 ball blasters?

16:18:52 1 A. Yes, of course. SplatRBall, Prime Time Toys, which has
16:18:56 2 recently expanded their distribution, as well as a plethora of
16:19:00 3 brands that are on Amazon and coming into the market.

16:19:02 4 Q. All right. I'd like to turn now to the negotiations with
16:19:05 5 Gel Blaster in 2021. Were you involved in those?

16:19:12 6 A. Yes, I was.

16:19:12 7 Q. What were your goals in those discussions?

16:19:15 8 A. Overall, we found a partner that we, you know, wanted to
16:19:19 9 move forward with, and our goal was to do a deal.

16:19:21 10 Q. Were you optimistic initially?

16:19:23 11 A. Yes. Very.

16:19:24 12 Q. What changed?

16:19:26 13 A. Number one change was the patents. You know, we
16:19:29 14 reviewed -- found that the products that the Gel Blaster team
16:19:34 15 that the team believed was infringing current patents in the
16:19:38 16 market, and that led us to the reason that we couldn't move
16:19:40 17 forward -- we couldn't go forward with the product line that
16:19:44 18 would infringe patents.

16:19:45 19 Q. Did Hasbro make a revised or second offer to Gel Blaster
16:19:48 20 after the patent issue arose?

16:19:50 21 A. Yes, we did.

16:19:51 22 Q. Why?

16:19:52 23 A. Well, I think it's really important when you're
16:19:54 24 negotiating to be transparent. And as we went through the due
16:19:57 25 diligence process, as we got further into an understanding of

16:20:00 1 the patents, which takes quite some time -- as mentioned
16:20:03 2 earlier, we hired outside counsel to review -- we could no
16:20:06 3 longer -- you know, as we are going through it, we couldn't
16:20:11 4 take a market share position -- we couldn't take an equity
16:20:14 5 stake in a company that we couldn't sell. There wouldn't be
16:20:17 6 any value in that.

16:20:18 7 So as we re-looked at it, we made the offer
16:20:20 8 contingent that we actually were still going through due
16:20:23 9 diligence and an understanding that, you know, that was an
16:20:25 10 offer, but once we complete due diligence, then we would move
16:20:28 11 to a binding term sheet. At that point it was still a
16:20:30 12 nonbinding offer.

16:20:32 13 Q. Okay. Even at the reduced valuation, why did Hasbro not
16:20:35 14 proceed?

16:20:36 15 A. It all came down to the patents. We couldn't move
16:20:38 16 forward. At the end of the day, at the advice of our counsel,
16:20:42 17 our internal legal time, there was just too much risk based on
16:20:46 18 the strength of the patents.

16:20:47 19 Q. Were you here this morning when Mr. Guinn testified?

16:20:50 20 A. Yes, I was.

16:20:51 21 Q. Do you recall him describing a discussion in which he said
16:20:54 22 that Gel Blaster and Hasbro discussed the possibility of
16:20:58 23 approaching the patent owner Spin Master to get a license?

16:21:01 24 A. Yes. I -- we had discussion, I believe -- actually, I
16:21:06 25 know for a fact Steve Starobinsky was in that room for that

16:21:11 1 discussion. Steve brought up the fact that he had already had
16:21:14 2 discussions with Spin Master, that they were entering the
16:21:16 3 market. So while we would have loved to have talked to Spin
16:21:19 4 Master, you know, toy companies -- toy companies talk, we
16:21:23 5 couldn't approach a company that we were told was entering the
16:21:26 6 market, telling them effectively that we're bringing a
16:21:28 7 competitive product to the market against what Steve had told
16:21:31 8 us they were bringing to market.

16:21:33 9 Q. Okay. You speak very fast, and there was a lot in there.

16:21:35 10 A. I'm sorry. I'll slow it down.

16:21:36 11 Q. So let me break it down.

16:21:37 12 Who is Mr. Starobinsky?

16:21:38 13 A. I believe he is the chief revenue officer for Gel Blaster.

16:21:42 14 Q. What did he tell Hasbro about the possibility of
16:21:45 15 approaching Spin Master?

16:21:47 16 A. He said that he had spoken to Spin Master; that they were
16:21:52 17 entering the market that; that they prefer to work with us.
16:21:56 18 But that was a clear indication that a competitor was entering
16:22:00 19 the market, so Hasbro could not approach that competitor.

16:22:03 20 Q. And did what Mr. Starobinsky tell Hasbro impact Hasbro's
16:22:07 21 decision whether to speak to Spin Master at that time?

16:22:11 22 A. 100 percent.

16:22:13 23 Q. Now, at a later point in time, Hasbro did approach Spin
16:22:16 24 Master, correct?

16:22:17 25 A. That is correct.

16:22:17 1 Q. How had the situation changed so that some number of
16:22:20 2 months later, Hasbro could approach spin master for a license?
16:22:23 3 A. Yeah. So as part of my job, I continuously manage --
16:22:26 4 monitor the industry. And one of the things that I was doing
16:22:31 5 was searching Gel Blaster. Because we thought Spin Master was
16:22:33 6 coming to market, we knew that the outdoor and sports buyer
16:22:38 7 would be setting in April. So anyone coming to market, you
16:22:41 8 would usually start to see leaks in that February, March time
16:22:44 9 frame, just because somehow the people, the influencers that
16:22:49 10 cover NERF and our products, tend to find leaks.

16:22:53 11 Through my search I came across a news article that
16:22:56 12 talked about an issue with the Orbeez challenge with
16:22:59 13 SplatRBall, in that a spokesperson from Spin Master mentioned
16:23:03 14 that they were not manufacturing -- did not plan to manufacture
16:23:07 15 and were not manufacturing gel-based blasters at that time. It
16:23:12 16 would be very odd for anyone who was entering the market two
16:23:16 17 months later to have a spokesperson say that they were not
16:23:20 18 manufacturing at a time they'd have to be. They would have to
16:23:23 19 have product on the water.

16:23:24 20 So at that time we made the decision to approach Spin
16:23:27 21 Master, because we believed that they -- you know, different
16:23:30 22 from what we originally heard, we at that point believed that
16:23:33 23 they probably were not entering the market.

16:23:35 24 Q. Now, do you also recall Mr. Guinn talking about a meeting
16:23:39 25 with Hasbro, Gel Blaster, and Walmart?

16:23:41 1 A. Yes. That was correct.

16:23:42 2 Q. Are you familiar with that meeting?

16:23:44 3 A. Yes. I prepared a lot of the documents for that meeting.

16:23:47 4 Q. Are you familiar with Hasbro's relationship with Walmart,
16:23:51 5 generally?

16:23:52 6 A. Yes. We have phenomenal relationships with Walmart. We
16:23:56 7 have a team that's down there all the time that lives down
16:23:59 8 there. We have top-to-top meetings with their executives. So
16:24:02 9 we have very strong relationships with Walmart. They're one of
16:24:06 10 our biggest customers.

16:24:07 11 Q. Did the meeting Mr. Guinn described with Walmart play any
16:24:10 12 role whatsoever in Hasbro at a later time securing Mythic
16:24:17 13 business with Walmart?

16:24:18 14 A. It did not. We actually distribute our product through a
16:24:22 15 different buyer. The buyer that buys the Mythic is the same
16:24:25 16 buyer that buys the rest of the NERF products. We're not
16:24:29 17 actually in the same aisle as Gel Blaster, so we don't actually
16:24:31 18 work with that buyer. We could have had we wanted to, but we
16:24:35 19 made the recommendation to go into the NERF aisle with the rest
16:24:38 20 of our NERF planogram.

16:24:40 21 Q. When you say "buyer," what do you mean by "buyer" in this
16:24:44 22 context?

16:24:44 23 A. This is the person that works for Walmart that actually
16:24:47 24 makes the decisions of which products they're going to put on
16:24:50 25 planogram.

16:24:51 1 Q. All right. Let me turn to a different topic,
16:24:53 2 Mr. Kleinman. If Hasbro were to be required to stop selling
16:24:57 3 the Mythic tomorrow, would there be a financial impact?
16:25:00 4 A. Yes, there would.
16:25:01 5 Q. Did you detail the projected financial impact of that in
16:25:05 6 your confidential declaration that was filed under seal?
16:25:08 7 A. Yes, I did.
16:25:09 8 Q. And Hasbro considers the specific financial amounts to be
16:25:13 9 highly confidential?
16:25:14 10 A. Yes. We don't disclose -- as a public company, we don't
16:25:18 11 disclose private information on products or brands.
16:25:21 12 Q. Okay. In addition to the financial loss detailed in your
16:25:24 13 declaration, would an order requiring Mythic to -- or requiring
16:25:30 14 Hasbro to stop selling Mythic impact Hasbro's inventory
16:25:35 15 management?
16:25:35 16 A. Yes. Obviously, there's both inventory that's owned by
16:25:39 17 the retailers, and then we have a significant amount of
16:25:41 18 domestic inventory. So all of that -- we'd have to pay to
16:25:44 19 destroy all of that. So we'd lose both what we paid for to
16:25:47 20 bring it in as well as the cost to destroy it.
16:25:51 21 Q. Would there be nonfinancial impact on Hasbro from an order
16:25:54 22 requiring Hasbro to stop selling the Mythic?
16:25:55 23 A. Yes. You know, one of the things that we place a lot of
16:25:59 24 value on is our quality. It's one of the things that we're
16:26:01 25 most known for. And when you ask consumers and ask parents,

16:26:04 1 quality is one of reasons that they pick NERF over other
16:26:08 2 brands.

16:26:09 3 Unfortunately, there have been recalls in this
16:26:11 4 category from Gel Blaster. So us removing a product from the
16:26:15 5 shelf, to the consumer it would look like a recall and would
16:26:18 6 have recourse against the rest of our business and would
16:26:21 7 tarnish the NERF brand.

16:26:22 8 Q. Okay.

16:26:24 9 MR. PETIT: I'm going to object to that as
16:26:26 10 speculation, Your Honor.

16:26:29 11 THE COURT: Well, the court will disregard the part
16:26:31 12 of the answer that was speculative.

16:26:34 13 MR. BARKAN: Okay.

16:26:35 14 THE COURT: So the objection is sustained.

16:26:36 15 Q. (BY MR. BARKAN) Mr. Kleinman, has Hasbro had any safety
16:26:40 16 issues with the Mythic?

16:26:41 17 A. No, we have not.

16:26:42 18 Q. Okay. All right. Now, Mr. Kleinman, what's a planogram?

16:26:50 19 A. That is the physical retail space for our products.

16:26:52 20 Q. And what does it refer to, the planogram itself?

16:26:56 21 A. It's the shelves. I mean, the shelves at Walmart, they're
16:27:00 22 called planograms. Or any big box or any retailer.

16:27:03 23 Q. Okay. How far in advance are the planograms locked down
16:27:07 24 and set in place?

16:27:08 25 A. Pretty -- pretty far in advance. Fall is already locked.

16:27:13 1 Spring of 2024 is already in discussion and will lock pretty
16:27:19 2 shortly. And we start to do those previews quite soon. So
16:27:23 3 it's around 12 months or so in advance.

16:27:28 4 Q. What would happen to that shelf space if Hasbro was not
16:27:32 5 able to sell the Mythic?

16:27:33 6 MR. PETIT: Objection: speculation based on what a
16:27:35 7 retailer is going to do if Hasbro is forced to pull product off
16:27:38 8 the shelf.

16:27:39 9 MR. BARKAN: Your Honor, I can lay the foundation
16:27:39 10 that this witness has.

16:27:39 11 THE COURT: The objection is sustained. Lay the
16:27:41 12 foundation.

16:27:43 13 Q. (BY MR. BARKAN) Mr. Kleinman, in your role, how often do
16:27:45 14 you deal with retailers?

16:27:49 15 A. All the time.

16:27:50 16 Q. And what's your experience in dealing with the management
16:27:52 17 of shelf space for toy products with retailers?

16:27:55 18 A. Can you just give me a breakdown?

16:27:57 19 Q. Sure. Have you had experience with situations in which a
16:28:01 20 retailer had to replace shelf space from one product with
16:28:04 21 another product?

16:28:06 22 A. Yes. You know, it's pretty standard practice. When you
16:28:11 23 do it further out -- it's relatively infrequent when you have
16:28:15 24 to do it on short notice. When you do that, the retailer has
16:28:18 25 to scramble. They either have to find something that's the

16:28:22 1 exact same size, because the planogram space is finite, which
16:28:26 2 is very difficult. They have to -- you know, there's a lot of
16:28:30 3 things that actually have to happen. They have to get that
16:28:33 4 item into their system. So it puts a lot of strain on the
16:28:37 5 retailer.

16:28:37 6 Q. Okay. Based on your experience working closely with
16:28:40 7 retailers and with buyers at retailers, if Hasbro had to
16:28:43 8 suddenly remove its products from the retailer shelves, would
16:28:47 9 that make it more difficult for Hasbro to convince retailers to
16:28:51 10 take its products?

16:28:53 11 MR. PETIT: I renew my objection as to speculation,
16:28:54 12 Your Honor.

16:28:55 13 MR. BARKAN: It's well within his expertise.

16:28:57 14 THE COURT: I will allow him to answer based on his
16:29:00 15 personal knowledge and based on his experience.

16:29:05 16 A. Can you repeat the question? Sorry.

16:29:07 17 Q. Sure. Based on your personal experience, if Hasbro were
16:29:11 18 required to remove the product from the shelf, would that make
16:29:13 19 it more difficult for you to convince a retailer to take your
16:29:17 20 product in the future?

16:29:19 21 A. Yes. You know, there would certainly be significantly
16:29:23 22 more questions around the product. We'd have to prove that we
16:29:26 23 wouldn't have any of these issues in the future. So it would
16:29:30 24 certainly make it much more difficult.

16:29:32 25 Q. Okay. Has Hasbro incurred any sunk costs related to the

16:29:36 1 Mythic?

16:29:36 2 A. Yes. Material costs. We buy -- we bought batteries and
16:29:41 3 ICs in advance. Tooling costs. We tooled -- spent a
16:29:47 4 significant amount on tooling for the Mythic. So, yes, there
16:29:50 5 were significant sunk costs.

16:29:51 6 Q. And if Hasbro were not able to sell the Mythic, would it
16:29:55 7 be able to repurpose that material to use in another product?

16:29:58 8 A. It depends what it is. Most of it likely not. There's a
16:30:02 9 potential that the ICs could be, but it depends on the
16:30:04 10 operation of the other item. Obviously, tooling would not be
16:30:07 11 able to be used.

16:30:08 12 Q. Thank you, Mr. Kleinman.

16:30:09 13 MR. BARKAN: I have no further questions, Your Honor.
16:30:11 14 I pass the witness.

16:30:12 15 THE COURT: Cross-examination, Mr. Doyle?

16:30:15 16 MR. PETIT: It's going to be me, Your Honor,
16:30:16 17 Will Petit. I'm mindful of the time. Is there any way I can
16:30:19 18 get from the Court the time remaining for both sides?

16:30:22 19 THE COURT: I didn't hear you. You're going to have
16:30:25 20 to speak into a microphone.

16:30:25 21 MR. PETIT: I'm sorry. If we could get the time
16:30:27 22 remaining from both sides. I want to be mindful of the time
16:30:30 23 and the Court's time.

16:30:30 24 THE COURT: Yes. You 15 minutes left, and Hasbro has
16:30:33 25 10 minutes left.

16:30:37 1 MR. PETIT: May I have a few minute to get set up?

16:30:39 2 THE COURT: A very few minutes.

16:30:41 3 MR. PETIT: Yes, Your Honor.

16:30:42 4 THE COURT: Because at five o'clock I'm going to get

16:30:44 5 up and walk out.

16:30:45 6 MR. PETIT: I don't blame you.

16:31:23 7 And, Your Honor, again for the court reporter, this

16:31:24 8 is Will Petit.

16:31:25 9 **CROSS-EXAMINATION**

16:31:25 10 **BY MR. PETIT:**

16:31:25 11 Q. Mr. Kleinman, you were personally involved in discussions

16:31:31 12 with Gel Blaster back in August, September, October, November

16:31:34 13 2021, correct?

16:31:36 14 A. Yes. That is correct.

16:31:38 15 Q. Okay. And you're aware that Hasbro and Gel Blaster

16:31:45 16 entered into a mutual confidentiality agreement in August of

16:31:47 17 2021, correct?

16:31:47 18 A. I don't know the exact timing, but I'm aware that we

16:31:51 19 entered into that agreement.

16:31:51 20 Q. Okay. And you've reviewed that agreement before today,

16:31:54 21 right?

16:31:54 22 A. Have I -- I haven't reviewed it, you know, in detail, but

16:31:58 23 I have seen it before today.

16:31:59 24 Q. You're aware that, pursuant to that agreement, Hasbro

16:32:02 25 could only use information that Gel Blaster supplied to Hasbro

16:32:06 1 for the purpose of evaluating a transaction between the two
16:32:09 2 parties and no other purpose, right?

16:32:11 3 A. I believe we walked through the confidential piece of it.
16:32:15 4 Obviously, information outside of that was fair game, as we
16:32:18 5 kind of talked about earlier.

16:32:19 6 Q. Okay. Are you suggesting in any way to the Court that Gel
16:32:25 7 Blaster's design files for unreleased products were not treated
16:32:30 8 as confidential by Hasbro?

16:32:32 9 A. I am not suggesting that.

16:32:33 10 Q. Okay. Did you treat them as confidential?

16:32:35 11 A. Yes. But I personally can't open those files.

16:32:38 12 Q. Okay. Do you know whether others at Hasbro treated those
16:32:42 13 as confidential?

16:32:43 14 A. It is my understanding that they did, yes.

16:32:53 15 MR. PETIT: I'd like to bring up what is marked as
16:32:54 16 Plaintiff's Exhibit 19.

16:33:08 17 And, Your Honor, may I approach the witness as well?

16:33:09 18 THE COURT: Do you remember what I said earlier.

16:33:10 19 MR. PETIT: Just making sure it applied to me, too.

16:33:12 20 THE COURT: I haven't changed my mind.

16:33:14 21 MR. PETIT: Thank you.

16:33:14 22 THE WITNESS: Just make sure he doesn't get hostile
16:33:17 23 with me, Your Honor.

16:33:25 24 Q. (BY MR. PETIT) Mr. Kleinman, this is an e-mail from
16:33:29 25 Mr. Listenberger, who works with you, correct?

16:33:31 1 A. That is correct.

16:33:35 2 Q. Do you recognize this e-mail?

16:33:36 3 A. I mean, I don't have, like, a memory of it. I mean, yes,
16:33:41 4 but I don't, like, recall this e-mail off the top of my head.

16:33:44 5 Q. You were here for Mr. Doyle's opening statement in which
16:33:49 6 he displayed a section or excerpt of this e-mail where

16:33:52 7 Mr. Listenberger agrees with Mr. Guinn that, hey, we're working
16:33:55 8 as one team now, right?

16:33:57 9 A. Yes. I was here for that.

16:33:59 10 Q. And in this e-mail there's a bunch of information that's
16:34:02 11 being requested by Mr. Listenberger of Gel Blaster. Do you see
16:34:07 12 that?

16:34:07 13 A. Yes, I do.

16:34:08 14 Q. Okay. And also in here, Mr. Listenberger identifies the
16:34:12 15 core Hasbro team members. Do you see that?

16:34:14 16 A. Yes, I do.

16:34:15 17 Q. Is there anybody listed there that are core Hasbro team
16:34:21 18 members for purposes of a transaction between the two companies
16:34:24 19 that were not involved in the development, manufacture, or sale
16:34:26 20 of the Mythic?

16:34:28 21 A. Are you asking if there's anyone else?

16:34:31 22 Q. If there's anybody in that list that were core Hasbro team
16:34:35 23 members, as between discussions between the two parties, that
16:34:39 24 are not involved with the manufacture, development, or sale of
16:34:41 25 the Mythic?

16:34:43 1 A. Well, at some point Maggie left the company, so I'm not
16:34:50 2 sure what her involvement was and what the timing was. I don't
16:34:54 3 think Kristin was involved. I'm not quite sure.

16:35:00 4 Q. So sitting here today, you don't know of anybody for sure
16:35:03 5 that wasn't involved with the -- also involved with the
16:35:05 6 development, manufacture, or sale of the Mythic?

16:35:08 7 A. There was an extensive list beyond what you have here.

16:35:14 8 Q. But all of these people were involved in both the
16:35:16 9 conversations between the two parties and also the manufacture,
16:35:20 10 development, and sale of the Mythic?

16:35:21 11 A. As I said, I'm unsure if they all were.

16:35:27 12 Q. Okay. Was Mr. Tino?

16:35:29 13 A. I think from today's discussion, I believe Nick Tino would
16:35:32 14 have been involved in both.

16:35:34 15 Q. Mr. Listenberger?

16:35:35 16 A. Mr. Listenberger is an executive, so he would have
16:35:40 17 overseen elements of it, but he probably wouldn't be involved
16:35:45 18 at a detailed level.

16:35:45 19 Q. Mr. Borowiec?

16:35:47 20 A. I don't remember if Jacob stayed on as the QA lead. We
16:35:51 21 have multiple QA leads. It is likely that he did, but I can't
16:35:55 22 confirm that.

16:35:56 23 Q. Okay. Now, earlier in your direct examination, and as
16:36:05 24 Hasbro has been saying throughout, the reason why Hasbro, you
16:36:10 25 claim, did not go forward with the deal with Gel Blaster was

16:36:13 1 because of the patents; is that right?

16:36:14 2 A. That is a critical element, yes.

16:36:16 3 Q. Well, that is the one thing that you testified that
16:36:21 4 changed, was your understanding of the patents; is that right?

16:36:26 5 A. Yes. But that element also changed the financial picture,
16:36:30 6 which Colin stated earlier, that they wouldn't accept those
16:36:33 7 finances. So it's sort of snowball effect from the lead issue,
16:36:37 8 which is the patent.

16:36:38 9 MR. PETIT: And before I go forward, Your Honor, I
16:36:40 10 would like to offer Exhibit 19 as evidence.

16:36:47 11 MR. HOFFMAN: No objection, Your Honor.

16:36:48 12 MR. PETIT: Now I'm going to show --

16:36:48 13 THE COURT: Gel Blaster 19 is admitted.

16:36:52 14 MR. PETIT: My apologies, Your Honor.

16:36:54 15 I've marked as Plaintiff's Exhibit 34 a new document.
16:36:57 16 This has now been uploaded to the system, but the Court does
16:37:01 17 not have that in the Court's binder. And I'll represent to the
16:37:10 18 Court this is what was called by the parties the no-shop
16:37:15 19 agreement that also includes the deal terms.

16:37:22 20 Q. Are you familiar with this agreement, Mr. Kleinman?

16:37:26 21 A. I'll need a second to review it.

16:37:29 22 Q. I only have one?

16:37:31 23 A. Well, you gave me a big document that I hadn't seen until
16:37:34 24 right now.

16:37:35 25 Q. While you're looking at that, Mr. Kleinman, you negotiated

16:37:43 1 the deal terms with Gel Blaster, correct?

16:37:46 2 A. That's actually not correct.

16:37:48 3 Q. You weren't part of those negotiations?

16:37:51 4 A. I was not here. I was part of the original negotiations.

16:37:54 5 A team came to Austin for further negotiations. I was not a

16:37:57 6 part of that team.

16:37:59 7 Q. Okay. Did you hear Mr. Guinn's testimony about the

16:38:03 8 reservation or the escrow of money to be put aside out of the

16:38:10 9 money that Hasbro was going to pay Gel Blaster for purposes of

16:38:13 10 legal proceedings related to patent claims?

16:38:15 11 A. Yes. I did hear that.

16:38:16 12 Q. Okay. Do you see on page -- the last page of this exhibit

16:38:20 13 under paragraph E, are those the escrowed legal proceedings --

16:38:28 14 escrowed money for legal proceedings?

16:38:30 15 A. Yes.

16:38:31 16 Q. And according to this no-shop letter and those deal terms,

16:38:37 17 that was contemplated by the parties on August 30th, 2021,

16:38:41 18 correct?

16:38:41 19 A. That is correct.

16:39:09 20 Q. Hasbro and Gel Blaster walked away from one another at

16:39:12 21 either the end of October of 2021 according to Hasbro and

16:39:17 22 beginning of November of 2021 according to Gel Blaster. Is

16:39:20 23 that fair?

16:39:21 24 A. I can speak to the Hasbro piece. Yes, I think that was

16:39:24 25 the testimony, so it sounds correct.

16:39:26 1 Q. Now, you claim the reason was because of the Spin Master
16:39:31 2 patent. So is it your testimony before the Court that, at the
16:39:33 3 end of October 2021, Hasbro intended to get a license to the
16:39:38 4 Spin Master patents?

16:39:39 5 A. No. That is not my testimony.

16:39:41 6 Q. Okay. In fact, because you didn't get a license to the
16:39:44 7 Spin Master patents until May 2022, correct?

16:39:48 8 A. I don't know when the timing was. I think we'd started
16:39:51 9 discussions around March or April when we actually signed an
16:39:55 10 agreement. I can't be sure of.

16:39:56 11 Q. And so if -- if Hasbro didn't intend to get a license to
16:40:00 12 the Spin Master patents, but they walked away from the deal
16:40:03 13 with Gel Blaster because of the Spin Master patents, what did
16:40:07 14 Hasbro intend to do at that time?

16:40:09 15 A. What do you mean?

16:40:10 16 Q. With respect to developing its own noninfringing,
16:40:13 17 gel-based blaster?

16:40:15 18 A. Well, we did two things. One is we took the risk that we
16:40:20 19 could come up with a noninfringing gel round by the time we
16:40:25 20 launched. So we basically took on the financial risk. And at
16:40:29 21 that same time, we codeveloped a noninfringing gel round that
16:40:33 22 we could bring to market.

16:40:35 23 Q. Okay.

16:40:35 24 A. That was the -- that was the intent. We didn't actually
16:40:39 25 end up getting there because, as I stated, in February the

16:40:42 1 conversation for us changed and we were able to start a
16:40:45 2 negotiation with Spin Master.

16:40:46 3 Q. And did Hasbro hire a consultant to develop that
16:40:50 4 nongel-based round, Materic?

16:40:56 5 A. We partnered with Materic. We haven't actually brought a
16:40:59 6 nongel -- it's still a gel-based round. I think you're talking
16:41:04 7 about the definition of super-absorbent polymers. But it would
16:41:09 8 still be a gel-based round?

16:41:10 9 Q. Okay. And who introduced Hasbro to Materic?

16:41:14 10 A. At the time Colin and I were both introducing each other
16:41:17 11 to different companies. I introduced them to Covia Renewables,
16:41:21 12 and Colin introduced us to Materic.

16:41:24 13 Q. In your declaration you state that if the Mythic or other
16:41:33 14 gel-based blaster was removed from the market, then Hasbro
16:41:37 15 would not have another gel-based blaster in the market.

16:41:40 16 A. That's not what I said.

16:41:42 17 Q. In your declaration you didn't?

16:41:44 18 A. I didn't say if we didn't have the Mythic, we wouldn't
16:41:46 19 have anything. I said that that item wouldn't be in market.

16:41:49 20 Q. Because the fact is you still have another gel-based
16:41:52 21 blaster, the Legion, that has been introduced to the market; is
16:41:55 22 that correct?

16:41:56 23 A. That is correct.

16:41:56 24 Q. And that gel-based blaster does not use the physical
16:42:00 25 firing mechanism; is that true?

16:42:01 1 A. Well, it's a completely different blaster. It's also not
16:42:04 2 a battery-operated blaster. It's a piston spring blaster.

16:42:08 3 Q. Okay.

16:42:14 4 MR. PETIT: I'm going to pass the witness.

16:42:16 5 MR. HOFFMAN: I have no further examination,
16:42:17 6 Your Honor.

16:42:18 7 THE COURT: You may step down.

16:42:19 8 THE WITNESS: Thank you, Your Honor.

16:42:29 9 THE COURT: Any further witnesses from Hasbro?

16:42:32 10 MR. HOFFMAN: No, Your Honor.

16:42:33 11 THE COURT: All right. Gel Blaster has five minutes
16:42:39 12 for argument, and Hasbro has 10. I'll ask a question. It
16:42:43 13 doesn't go against your time. Mr. Petit, did you intend to
16:42:47 14 offer Exhibit 34?

16:42:53 15 MR. PETIT: Yes, Your Honor, we did.

16:42:54 16 THE COURT: Is there objection to it?

16:42:56 17 MR. HOFFMAN: No, Your Honor.

16:42:56 18 THE COURT: Exhibit Number 34 is admitted.

16:43:05 19 MR. PETIT: Thank you, Your Honor.

16:43:11 20 THE COURT: You may proceed.

16:43:13 21 MR. DOYLE: Sorry, Your Honor?

16:43:14 22 THE COURT: I'll give you a bit of advice. I don't
16:43:16 23 think you need to hold back for rebuttal any of your five
16:43:20 24 minutes. I think you'd be more effective if you just use your
16:43:24 25 five minutes.

16:43:26 1 MR. DOYLE: I will.

16:43:26 2 THE COURT: And let me tell you both what I'm most
16:43:29 3 interested in. What we've heard evidence on today, obviously,
16:43:32 4 is the request for preliminary injunction.

16:43:36 5 The way I see it, the request for preliminary
16:43:39 6 injunction involves whether the confidentiality agreement was
16:43:43 7 violated and whether Hasbro used materials from the CAD
16:43:50 8 documents or perhaps other things that were provided under the
16:43:55 9 confidentiality agreement to design and sell the Mythic. And
16:44:00 10 taken down to an even more granular point is the PISCA.

16:44:05 11 So what I would be most interested in from both of
16:44:11 12 you is what proof has been presented to me that that occurred
16:44:15 13 today and what proof lacks proving that up from the other side.

16:44:21 14 MR. DOYLE: Thank you, Your Honor.

16:44:22 15 THE COURT: So that's where I'm focused at this time.

16:44:25 16 MR. DOYLE: That's where I'm focused, then.

16:44:27 17 THE COURT: All right. Then we're on the same page.

16:44:28 18 MR. DOYLE: But I am waiting for my slides. They're
16:44:31 19 not on the screen now. Okay. I'll go up here. I've only got
16:44:36 20 five minutes.

16:44:38 21 THE COURT: I wont turn your time on until you get
16:44:40 22 your slides up.

16:44:40 23 MR. DOYLE: All right.

16:44:44 24 Okay, Your Honor. Let's go through this. The first
16:44:50 25 slide, likelihood of success on the merits, breach of

16:44:53 1 confidentiality agreement, a broad confidentiality agreement.
16:44:56 2 It covered all of this information that we provided to them was
16:45:00 3 confidential. We've already discussed the fact that the trade
16:45:03 4 secret PFM was kept under lock and key, and those CAD drawings
16:45:08 5 which show the whole outline of the house, we provided to them.

16:45:12 6 This is simple. There's that PISCA arm and there's a
16:45:16 7 switch, and they interoperate to do an extremely effective job
16:45:21 8 to allow the firing mechanism to shoot and also to record those
16:45:25 9 shots. They stole it. Theirs is identical.

16:45:28 10 Okay. Forgive me. Not identical, because they took
16:45:31 11 the switch and they turned it on its side instead of going up
16:45:34 12 and down. That's it. You know, that's a *de minimis* change.
16:45:39 13 They have it. They got it under the NDA. They then used it.
16:45:43 14 And that is the foundation for everything we're going to do for
16:45:47 15 the next two or three years with respect to the blaster.

16:45:49 16 Irreparable harm. Can we move to the next slide?
16:45:56 17 This isn't working.

16:45:59 18 So it's undisputed that there was a mutual
16:46:00 19 confidentiality agreement that was duly executed. We showed
16:46:04 20 you the terms that said they could not use it outside of just
16:46:08 21 looking at a transaction with Gel Blaster. They did. They
16:46:13 22 took it and they used it in their Mythic, and that's why they
16:46:16 23 got to market so fast.

16:46:17 24 It's undisputed that Hasbro received Gel Blaster's
16:46:22 25 entire playbook, which took Gel Blaster 10 years to generate,

16:46:25 1 including CAD files with the PFM. They got that, they received
16:46:30 2 it. That's undisputed. They took those CAD files -- they took
16:46:36 3 those CAD files, and they incorporated it into their Mythic.
16:46:40 4 We have shown that. It was easy to see. It's there.

16:46:43 5 Today they put all these other guns up there. I
16:46:46 6 mean, we couldn't even track the exhibit numbers. But I know
16:46:49 7 one thing: There was no arm on the top of the plunger, and
16:46:53 8 there was no switch that that arm hits. So all of that stuff
16:46:57 9 was just a bunch of red herrings to cover. It's not there. We
16:47:03 10 win on this.

16:47:04 11 Going next to the -- it's a trade secret. It's not
16:47:10 12 in the public debate. They've shown nothing that this was in
16:47:13 13 the public domain. The only thing they refer to is an old
16:47:17 14 Surge that had the arm sticking out of it all by itself looking
16:47:22 15 like a hood ornament. Our own engineer testified he wouldn't
16:47:27 16 know what the heck you did with that. Their only evidence of
16:47:28 17 that was going to the Internet and showing some guy who thought
16:47:30 18 that you could put a switch there and use it. But that same
16:47:33 19 guy had already seen the Hasbro Mythic. He knew how to do it
16:47:37 20 because they disclosed our trade secret, and this gentleman on
16:47:42 21 the Internet saw it. That's how he figured out what we were
16:47:47 22 going to do.

16:47:47 23 He now, like everybody else, thinks they're the
16:47:50 24 innovator. They're not. We are. This is valuable. You heard
16:47:53 25 a lot of testimony on the advantages of this, and all that

16:47:57 1 future testimony [sic] we're going to do, we gave them in a
16:48:00 2 provisional patent application that they've got in their arms
16:48:03 3 and I'm sure they're introducing it in their new guns.

16:48:06 4 Their entire defense, as I just discussed, is an
16:48:09 5 entire game of misdirection. I got up here, and we think a
16:48:13 6 matter of five minutes, was able to cross-examine their
16:48:16 7 engineer who admitted not one -- not one of those prior uses
16:48:21 8 they're looking at, first of all, they weren't used in the
16:48:23 9 design of the Hasbro Mythic to create a physical firing
16:48:27 10 mechanism. He admitted that. Some guy on the Internet named
16:48:32 11 Darthskids? Who the heck is that? What they did do is they
16:48:35 12 took the identical design, and they to put it in their gun to
16:48:38 13 get to market quick.

16:48:39 14 The capability. PISCA on its own has no
16:48:42 15 functionality. It's the hood ornament. We already discussed
16:48:45 16 that.

16:48:46 17 Can you go to the next slide?

16:48:47 18 So the breach of the -- there's trade secret
16:48:50 19 misappropriation. Your Honor, you did -- did you want to hear
16:48:54 20 on irreparable harm?

16:48:55 21 THE COURT: No. I think the -- the thrust of this is
16:48:57 22 likelihood of success on the merits.

16:49:00 23 MR. DOYLE: Yeah. And we succeed. We have this, and
16:49:04 24 they took this and they came up and tried to say they took it
16:49:08 25 out of the public uses. It's not there. And that is the

16:49:11 1 foundation, because it accurately records shots and it's going
16:49:15 2 to allow us to do everything we want to do over the next two
16:49:18 3 years.

16:49:19 4 We need relief. We need it now, Your Honor. I know
16:49:21 5 your court is very backed up, but this can't wait for a year or
16:49:26 6 we're going to be down to 2 percent market share.

16:49:29 7 Your Honor, thanks for the indulgence of the Court.
16:49:32 8 It was a pleasure to be here today.

16:49:33 9 THE COURT: And I don't think we're backed up. I
16:49:36 10 just don't think we can go forward.

16:49:41 11 MR. DOYLE: I understand, Your Honor.

16:49:42 12 THE COURT: All right. Thank you.

16:49:44 13 All right. Let me hear the close for the defendant.

16:49:58 14 MR. HOFFMAN: Your Honor, to go to your question,
16:50:04 15 there is no evidence here that Hasbro used the Gel Blaster CAD
16:50:09 16 file to design its blasters. The evidence is quite the
16:50:14 17 opposite. If the Gel Blaster CAD file had been used, then when
16:50:19 18 you look at Hasbro's design documents, the ones Mr. Tino
16:50:22 19 testified about, we would see that in the CAD file.

16:50:25 20 But what we see is the Anstoy blaster. The design
16:50:28 21 process that Mr. Tino testified to was that the Anstoy blaster
16:50:33 22 was incorporated into a completely different outer shell that
16:50:37 23 Hasbro designed. And then, as you heard, he wanted to use a
16:50:40 24 timing feature, but an engineer on the design team, actually, a
16:50:44 25 gentleman in the Far East, recommend using a switch because

16:50:47 1 that is something that Hasbro has done time and time before.

16:50:50 2 Contrary to what my colleague would assert, it does
16:50:55 3 matter what's known in the art. That goes to whether or not
16:51:01 4 anything in here is a trade secret. And what we've seen today
16:51:04 5 is lots of energy and being upset and saying that we showed
16:51:08 6 them everything. But when you watch as the case developed, in
16:51:11 7 the morning it was everything, and then a little later in the
16:51:15 8 morning, it was the PISCA and the switch, which is a small,
16:51:18 9 small part.

16:51:19 10 And then when it came out that the switch -- the
16:51:21 11 PISCA, excuse me -- was on sale and known for a year, then it
16:51:25 12 changes to the switch. And then when it becomes undisputable
16:51:31 13 through Mr. Cline's testimony that switches were used to
16:51:34 14 provide this exact same function in blasters for years, then it
16:51:38 15 becomes right back to, okay, it's the switch.

16:51:46 16 Well -- excuse me. When the PISCA is known, then it
16:51:49 17 becomes the switch. And when you know the switch is known,
16:51:51 18 then it swings back around to the PISCA. It's just a constant
16:51:54 19 cycle. Nothing here is a trade secret.

16:51:57 20 And the assertion that now all of a sudden this
16:52:02 21 switch is the most vitally important thing, it's completely
16:52:07 22 belied by the record. It's not a vitally important thing.
16:52:10 23 It's something that's known in the art. Their own internal
16:52:12 24 documents show they had no interest in pursuing this. They've
16:52:16 25 shown no independent evidence that this PISCA and switch are

16:52:20 1 important in the slightest in their discussions. And that's
16:52:26 2 because they were publicly known blasters -- blaster designs.

16:52:29 3 I think it's critically important to look at what was
16:52:36 4 in their public blaster. That PISCA, which, again, all morning
16:52:43 5 was identified as being a critically important feature, is
16:52:47 6 public. It's not a trade secret. It can't be a trade secret.
16:52:50 7 It can't be confidential. It was well known to anybody who
16:52:54 8 opened up a blaster.

16:52:57 9 THE COURT: Well, what do you define as the PISCA?

16:53:01 10 MR. HOFFMAN: The PISCA --

16:53:02 11 THE COURT: The little arm at the right angle?

16:53:04 12 MR. HOFFMAN: That's the arm with the right angle,
16:53:06 13 Your Honor.

16:53:06 14 THE COURT: Well, an awful lot of what was shown in
16:53:09 15 evidence didn't have that in there. So how -- what did I see
16:53:14 16 over the course of the day that shows that was something that
16:53:18 17 was well known in the art?

16:53:19 18 MR. HOFFMAN: What did you see, Your Honor? The --
16:53:21 19 what you saw was their own public product that had that exact
16:53:27 20 arm. They put that product on sale, you heard Mr. Cline
16:53:32 21 testify, before Hasbro even began designing its product. So
16:53:37 22 there's nothing unique about that arm shape. It's simply an
16:53:41 23 arbitrary design choice. It's just a way to push the switch.

16:53:44 24 But even if that arbitrary shape made a difference,
16:53:49 25 that arbitrary shape is not -- it can't be a trade secret. It

16:53:54 1 was admitted to be made public to anyone who wants to look at
16:54:00 2 it. And, again, we can debate about that video, and I guess
16:54:04 3 they speculate that Engineerables was somehow informed. But
16:54:10 4 it's clear that they were putting out a blaster that someone in
16:54:14 5 the art can look at and come to a conclusion that it works the
16:54:18 6 same way.

16:54:19 7 It's all there from the PISCA. It was a known
16:54:25 8 feature a year before -- a year ago.

16:54:34 9 Do you have any further questions?

16:54:36 10 THE COURT: I have no further questions, Your Honor.

16:54:38 11 MR. DOYLE: Your Honor can I have 15 seconds of
16:54:39 12 rebuttal? Ten? Five?

16:54:41 13 MR. HOFFMAN: And I know you -- do I have any more
16:54:44 14 time remaining?

16:54:44 15 THE COURT: Yeah. You have a little more.

16:54:46 16 MR. HOFFMAN: I know you're not as interested in --

16:54:48 17 THE COURT: Mr. Doyle, if you hadn't said anything,
16:54:50 18 he was going to waive the rest of his time.

16:54:53 19 MR. DOYLE: Well, I'm going to ask him if he'll give
16:54:54 20 me just a little bit of his time, because he's a nice attorney.

16:54:58 21 MR. HOFFMAN: Your Honor, I know you are not as
16:55:00 22 interested as much in the secondary factors, but I do think
16:55:03 23 they're important. And I'll just simply note that, again, we
16:55:06 24 see in the e-mail that this not a feature that they're using,
16:55:12 25 it's not a feature they're planning on using in any document

16:55:15 1 that we see until this case happened and they found this
16:55:18 2 essentially as a reason to file this motion. It's -- there's
16:55:23 3 no record of this being significant or them suffering any
16:55:27 4 irreparable harm.

16:55:28 5 We have provided quantifiable evidence of the harm.
16:55:32 6 They have not. And so I do think the remaining factors should
16:55:37 7 be considered and also tilts in our favor.

16:55:41 8 THE COURT: All right.

16:55:43 9 MR. HOFFMAN: And I will -- I won't cede my time,
16:55:46 10 your Honor. I'd like to go home.

16:55:48 11 MR. DOYLE: You will not cede your time, Counsel?

16:55:52 12 MR. HOFFMAN: How much time do I have left?

16:55:54 13 THE COURT: Three minutes.

16:55:55 14 MR. DOYLE: I'll only take 20 seconds.

16:55:58 15 MR. HOFFMAN: The question for you, Your Honor, it's
16:55:59 16 your court. Do you want me to provide my time?

16:56:04 17 THE COURT: I'm not going to tell you-all how to
16:56:07 18 demean yourselves as the professionals you are. If you would
16:56:08 19 like to cede some time, you may cede some time.

16:56:10 20 MR. HOFFMAN: I will provide the 20 seconds.

16:56:12 21 MR. DOYLE: Thank you so much, counsel. I owe you.

16:56:16 22 THE COURT: Cherish the moment, Mr. Hoffman.

16:56:19 23 MR. DOYLE: Cherish the moment. That was good. I
16:56:21 24 will do something good, too.

16:56:22 25 Your Honor, I just want to say, right from the very

16:56:26 1 beginning, we call it the PISCA arm or the PISCA switch. It
16:56:31 2 ain't this. That's a hood ornament. This works with this.
16:56:36 3 Bang, bang, it runs. You pull the trigger. We went through
16:56:39 4 the whole process. You pull the trigger switch, gears turn,
16:56:43 5 the plunger goes backwards. You've got that arm, and then that
16:56:47 6 arm hits the switch. And that records the shot very
16:56:50 7 accurately.

16:56:51 8 THE COURT: Well, I will tell you I have perceived
16:56:54 9 this argument to be the action, not the two unrelated things.
16:57:01 10 That the arm is what triggers the switch, and it's the process
16:57:06 11 is what I'm looking at.

16:57:07 12 MR. DOYLE: Thank you, Your Honor. I'm sitting.

16:57:10 13 MR. HOFFMAN: Your Honor, no more argument. But
16:57:12 14 could I have -- given that we have a considerable amount of
16:57:15 15 additional evidence, Hasbro would propose that we provide
16:57:18 16 post-hearing briefing. Can we take the evidence and apply it
16:57:21 17 to the facts for the Court?

16:57:23 18 THE COURT: Well, I'll do that semi. Let me say a
16:57:26 19 little something here. One, I want us to make sure we know
16:57:30 20 what I'm going to consider in reaching my decision. I'm not
16:57:34 21 going to rule from the bench. I know that Gel Blaster is in a
16:57:37 22 hurry. We're not going to take a year to rule on this. We're
16:57:40 23 going to rule on it quickly, but I'm not going to rule from the
16:57:43 24 bench.

16:57:43 25 All right. What I'm considering today is everything

16:57:46 1 I've heard for purposes of the preliminary injunction. I'm
16:57:50 2 considering all the exhibits that have been introduced, and I'm
16:57:55 3 considering the declarations that were attached to the
16:57:59 4 pleadings because the declarations have been talked about.

16:58:01 5 Now, does anybody want to bring up anything else
16:58:05 6 that's already been filed or put in the record that I've left
16:58:09 7 out that you want us to consider in reaching our decision,
16:58:14 8 because I want you to know and I want this record to be clear
16:58:18 9 what the court has in front of it when it considers whether I'm
16:58:22 10 going to grant a a preliminary injunction or not.

16:58:25 11 MR. PETIT: We would ask, Your Honor, that the
16:58:27 12 exhibits attached to our motion and our reply brief also be
16:58:31 13 considered. And they are electronically part of the record.

16:58:34 14 THE COURT: And how about you, Mr. Hoffman?

16:58:35 15 MR. HOFFMAN: Your Honor, we'd also like all of the
16:58:37 16 exhibits attached to be provided -- I mean, considered. I
16:58:41 17 would ask, Your Honor, that there was a reply which added
16:58:44 18 conditional additional information, so I think it could be
16:58:47 19 helpful to the Court for us to provide a briefing that
16:58:50 20 addresses the evidence provided here but also provide Hasbro a
16:58:54 21 chance to provide some briefing on that.

16:58:56 22 THE COURT: All right. I'm going to consider all of
16:58:58 23 the exhibits that are attached to all of the pleadings that
16:59:01 24 have been filed by both parties.

16:59:03 25 Now, I don't want additional briefing. You've

16:59:06 1 briefed it well. What I will entertain, because I think it
16:59:11 2 would be helpful, is in outline form, no argument, because I
16:59:16 3 know what your argument is. You don't have to paint the
16:59:20 4 picture of where we are. Just each of you, if you want to,
16:59:24 5 file in outline form what you think supports the strongest
16:59:36 6 documents you have or evidence that you have that you want us
16:59:38 7 to look at that supports your position. Bear in mind, I'm also
16:59:41 8 considering all of the slides that you've gotten in, so -- that
16:59:46 9 you've shown me that I have copies of.

16:59:48 10 But take no more than three pages. You can do it in
16:59:54 11 letter form or you can do it in pleading form. You can file it
16:59:58 12 or you can just send it to us, however you want it, about where
17:00:01 13 you want us to concentrate in this body of evidence. I think
17:00:05 14 you -- if you just play by my rules and just give me an
17:00:09 15 outline, you can do it in three pages.

17:00:11 16 MR. DOYLE: Yes, Your Honor.

17:00:11 17 THE COURT: And you can even sign it within those
17:00:14 18 three pages.

17:00:14 19 MR. PETIT: May I ask a clarifying question?

17:00:16 20 THE COURT: Yes.

17:00:16 21 MR. PETIT: Are you just referring to documentary
17:00:17 22 evidence, or are you referring also to testimony?

17:00:19 23 THE COURT: No. Testimony is fine. You know, I just
17:00:24 24 want you to know, because we've heard a lot today, this is a
17:00:28 25 fascinating area, I can tell you, from my point of view. I've

17:00:32 1 thought for the entire 50-plus years I've practiced law, one of
17:00:35 2 the really best things about practicing law is you get to learn
17:00:39 3 about things you would never just take a rainy Saturday and go
17:00:42 4 to the library and learn about. I didn't know anything about
17:00:45 5 this whole industry out there until we went through it today.

17:00:50 6 But, no, just take -- just direct us and copy one
17:00:54 7 another with it, to where you want us to go. And how long do
17:00:58 8 you think it will take you to get that in?

17:01:01 9 MR. DOYLE: We can do that -- it's up to you,
17:01:03 10 Your Honor.

17:01:03 11 THE COURT: No. How fast -- you have to write it for
17:01:06 12 me. I'm not going to tell you how fast you should write it.
17:01:10 13 When do you want to file those outlines?

17:01:11 14 MR. HOFFMAN: Your Honor, we do need a transcript to
17:01:12 15 do this, ideally.

17:01:34 16 THE COURT: All right. Ms. Rodriguez?

17:01:35 17 (Discussion between counsel and court reporter)

17:01:35 18 THE COURT: All right. And so can you file something
17:01:39 19 by Tuesday or Wednesday? You know, if you get the record
17:01:43 20 Friday, when can you have your position paper?

17:01:46 21 MR. DOYLE: Tuesday. We can get it to you on
17:01:48 22 Tuesday.

17:01:48 23 MR. HOFFMAN: The parties are also litigating heavily
17:01:51 24 in the ITC, Your Honor. There are depositions scheduled pretty
17:01:53 25 much every day coming up. Would it be possible to get it to

17:01:56 1 you the following Friday, you know, a week to provide the
17:02:00 2 chart?

17:02:02 3 THE COURT: All right. I'll give you a week. I know
17:02:05 4 you-all are eager, but three days is not going to bring down
17:02:09 5 the empire.

17:02:09 6 MR. DOYLE: I think that's fair.

17:02:10 7 THE COURT: So get me your outlines by Friday, a
17:02:13 8 week.

17:02:15 9 MR. DOYLE: Yes, Your Honor.

17:02:15 10 THE COURT: And Ms. Rodriguez can charge you anything
17:02:18 11 she wants to for the record.

17:02:26 12 (Laughter)

17:02:26 13 MR. DOYLE: I hope we gave you enough time.

17:02:26 14 THE COURT: She's good.

17:02:29 15 Anything else while we're all here?

17:02:31 16 MR. BROADAWAY: Your Honor, do you want to hear on
17:02:33 17 the other -- you know, the motion to stay.

17:02:35 18 THE COURT: No. I believe, based on everything I've
17:02:43 19 read and what I've heard today, I can rule on those things.

17:02:47 20 Expedited discovery is obviously moot. We don't need
17:02:49 21 to worry about that. I've got a decision to make. I'm
17:02:58 22 definitely going to stay the patent part of this case until you
17:03:01 23 get through in Washington. I just haven't decided whether I'm
17:03:03 24 going to stay the rest of it. I have that in front of me, and
17:03:04 25 I can rule on that without argument because I pretty much know

17:03:09 1 where you-all stand on that. And the question about bringing
17:03:10 2 in the third party, I don't need argument on that.

17:03:14 3 I can tell you I'm leaning toward not allowing the
17:03:21 4 third party until we see what happens on your parallel patent
17:03:25 5 proceeding, and then we'll see what's still alive after the
17:03:30 6 international office gets its stuff out. Then I'll decide
17:03:35 7 where I'm going with the patent stuff.

17:03:37 8 MR. BROADAWAY: So one question, Your Honor. Can
17:03:39 9 discovery open in this case? One of the things that's been an
17:03:41 10 issue is that the plaintiff has attempted to have a 26(f)
17:03:45 11 conference so we can start the discovery process. And
17:03:48 12 Defendants have taken the position that, because of their
17:03:50 13 motion to stay, they don't have to participate in discovery
17:03:53 14 yet.

17:03:53 15 So can discovery open in this case?

17:03:56 16 THE COURT: I will make a ruling on that in the order
17:04:00 17 where I rule on those ancillary motions.

17:04:05 18 MR. BROADAWAY: Okay.

17:04:05 19 MR. DOYLE: Thank you, Your Honor.

17:04:06 20 THE COURT: Because you-all have just sat here and
17:04:07 21 told me you've got enough to do between now and a week from
17:04:10 22 Friday. And then when I start thinking about it again, then
17:04:17 23 I'll decide about discovery.

17:04:19 24 MR. DOYLE: Just so the record is clear --

17:04:20 25 THE COURT: I'm getting an impression that you-all,

17:04:22 1 for all the lawyers in this room, both sides only has one case.
17:04:29 2 And, you know, a lot of times when I get lawyers here, I find
17:04:29 3 you have more than one case you want to work on. But this
17:04:34 4 sounds like it's consuming all of your time.

17:04:36 5 MR. DOYLE: No, Your Honor. We think this thing is
17:04:37 6 ripe for resolution.

17:04:43 7 THE COURT: It is ripe for resolution.

17:04:43 8 MR. DOYLE: Thank you.

17:04:43 9 THE COURT: But go talk to your Congress about
17:04:47 10 getting me three more judges.

17:04:47 11 MR. DOYLE: You know what? I will?

17:04:47 12 THE COURT: All right. We need them.

17:04:48 13 MR. HOFFMAN: I'll just note, Your Honor, on the
17:04:50 14 26(f) conference, that wasn't exactly accurate. We were
17:04:53 15 waiting for you to issue an order for the initial conference.

17:04:55 16 THE COURT: I understand. Don't -- you know, I was
17:04:59 17 on your side of the bench for a long damn time. I understand
17:05:02 18 what comes up in discussions and things.

17:05:04 19 It's really important to you, and it just kind of
17:05:06 20 goes right over my head because I was -- or right by my head.
17:05:11 21 You know, lawyers have a hard job, contrary to what the media
17:05:15 22 thinks. You're under a lot of pressure. You carry not only
17:05:20 23 your own pressures around, you carry around the pressures of
17:05:22 24 your clients. I understand how people can get crossways over
17:05:26 25 Rule 26 conferences and things like that. Don't worry about

17:05:29 1 it. I point no fingers at anyone on that.

17:05:32 2 So let's proceed on what we just discussed. You-all
17:05:36 3 did a good job today. We got a lot in in a day. I appreciate
17:05:40 4 your efforts on this.

17:05:41 5 Everybody have a happy New Year and a good remainder
17:05:44 6 of your day.

17:05:46 7 (End of transcript)

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1 UNITED STATES DISTRICT COURT)

2 WESTERN DISTRICT OF TEXAS)

3 I, Arlinda Rodriguez, Official Court Reporter, United
4 States District Court, Western District of Texas, do certify
5 that the foregoing is a correct transcript from the record of
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7 I certify that the transcript fees and format comply with
8 those prescribed by the Court and Judicial Conference of the
9 United States.

10 WITNESS MY OFFICIAL HAND this the 27th day of
11 January 2023.

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