

18:00 1

P R O C E E D I N G S:

2

THE COURT: Go ahead, Ms. Harris, when you were
3 ready.

4

MS. HARRIS: Thank you, your Honor.

5

PAUL BLASDEL

6

DIRECT EXAMINATION

7

BY MS. HARRIS:

8

Q Good morning, Mr. Blasdel.

9

A Good morning.

10

Q When we left off yesterday, we were talking

11

about CETCO. If you could turn to PX 36 in the

12

Plaintiff's Exhibit binder, please.

13

A Okay. I'm sorry. PX 36.

14

Q And I also have it on the screen?

08:57 15

A I prefer this. Okay.

16

Q On the first page you see an e-mail from Matthew

17

Blasdel of Stego to Tom Stam of CETCO, correct?

18

A Yes.

19

Q And you were copied on this e-mail, correct?

20

A Yes.

21

Q And you received the e-mail, correct?

22

A I'm sure I did. I have not seen this document

23

before. I don't recall seeing it.

24

Q Your son writes at the top, "I understand our

25

booths are close to one another at WOC. I also understand

08:58 1 that you have pictures at your booth with clearly
2 displayed yellow that can be mistaken for Stego."

3 Do you see that?

4 A I do.

5 Q The clearly displayed yellow was the yellow
6 being displayed on CETCO's product?

7 A Yes.

8 Q And CETCO manufactures a waterproof membrane?

9 A Yes.

10 Q And that waterproofing membrane is yellow on one
11 side?

12 A Yes.

13 Q And can be used underneath a concrete slab?

14 A Yes.

08:59 15 Q And if it were used under a concrete slab, it
16 would be used as vapor barrier, correct?

17 A No.

18 Q Well, Stego has alleged that CETCO is infringing
19 Stego's trademark, correct?

20 A Where do you see that.

21 Q Matthew Blasdel says in the e-mail on which you
22 were copied, "Your of lack communication coupled with your
23 now willful" --

24 A I'm sorry. Where are you?

25 Q On the second paragraph on the e-mail we're

08:59 1 looking at, PX 36, second sentence, "Your son Matthew
2 Blasdel writes your lack of communication coupled with
3 your now willful infringement of our mark will no longer
4 be tolerated." Do you see that?

5 A I do.

6 Q Stego has contended to CETCO that it was
7 infringing Stego's trademark, correct?

8 A Yes, I believe that's what that sentence says.

9 Q And Stego's trademark applies to yellow on
10 plastic sheeting used in the construction industry as a
11 vapor retarder and barrier, correct?

12 A I have to look at the definition. Can you show
13 me our filings with the Trademark Office, please.

14 Q Please turn to Defendant's Exhibit 17 which is
09:00 15 in the same notebook under the Tab DX 17.

16 A Okay.

17 Q It will also be on your screen. The DX exhibits
18 follow the PX exhibits in numerical order.

19 A I'm sorry. The DX follows the PX?

20 Q Yes, sir.

21 A Okay.

22 Q This is Stego's trademark, correct?

23 A Yes.

24 Q And it says it's for plastic sheeting used in
25 the construction industry as a vapor barrier and as a

09:01 1 vapor retarder, correct?

2 A That's correct.

3 Q So for CETCO to be infringing on Stego's
4 trademark CETCO must be making and selling a plastic
5 sheeting used in the construction industry as a retarder
6 or vapor barrier, correct?

7 MR. FLORENCE: Objection. Calls for a legal
8 conclusion.

9 MS. HARRIS: I'll rephrase.

10 THE COURT: Okay.

11 BY MS. HARRIS:

12 Q Mr. Blasdel, is it consistent with your
13 understanding of Stego's trademark as Stego's founder that
14 for a company to be infringing Stego's trademark the
09:01 15 company must be selling a plastic sheeting used in the
16 construction industry as a vapor retarder and barrier?

17 MR. FLORENCE: Objection. Calls for a legal
18 conclusion. No evidence this witness has any expertise on
19 trademark matters.

20 THE COURT: I'll permit his understanding which
21 is what the question asks. Overruled.

22 A Say it again.

23 BY MS. HARRIS:

24 Q Is it your understanding as the founder of Stego
25 and Stego owning a trademark that for a company to

09:02 1 infringe Stego's trademark the company must sell a plastic
2 sheeting used in the construction industry as a vapor
3 barrier and a vapor retarder?

4 A Yes, I believe that's what this says.

5 Q Going back to Plaintiff's Exhibit 36, please.

6 A Okay.

7 Q By virtue of being copied on the January 17th,
8 2011 e-mail, you received all the earlier exchanges
9 between Mr. Stam and Mr. Blasdel that are part of the
10 e-mail thread marked as Plaintiff's Exhibit 36, correct?

11 A Yes.

12 Q Please turn to the fourth page of Plaintiff's
13 Exhibit 36 which is marked in the bottom right-hand corner
14 as Stego 478.

09:03 15 A Okay.

16 Q This is another e-mail from your son Matthew
17 Blasdel to Tom Stam of CETCO, correct?

18 A Yes, I believe so.

19 Q In the second paragraph Mr. Matthew Blasdel
20 rights "For starters and to respond to your comments, our
21 trademark doesn't lend itself only to thin gauge vapor
22 barriers for concrete slabs on grade. The mark is for any
23 yellow sheet regardless of opacity, translucence or
24 reflectivity, used as a vapor barrier or vapor retarder in
25 a construction application. Perhaps our trademark would

09:04 1 not cover yellow construction plastic used as caution
2 tape, but a large yellow sheet good that is used to
3 prevent moisture intrusion next to and below concrete is
4 so close to what we do that we are obligated to enforce it
5 or we run the risk of losing our trademark entirely."

6 Do you see what I read?

7 A I do.

8 Q CETCO's CoreFlex product is a yellow sheet good
9 that is used to prevent moisture intrusion next to and
10 below concrete, right?

11 A I'm not where you are seeing that.

12 Q I'm asking you if that's a true statement.

13 A I don't know. I haven't reviewed CETCO's
14 literature.

09:05 15 Q CETCO used to be Stego's customer, correct?

16 A Correct.

17 Q CETCO used to buy Stego's yellow barrier from
18 Stego, correct?

19 A They did.

20 Q So fair to say that CETCO would be familiar with
21 the benefits of Stego's yellow vapor barrier, correct?

22 A Yes.

23 Q At some point CETCO stopped buying yellow vapor
24 barrier from Stego, correct?

25 A Yes.

09:05 1 Q And in 2007 CETCO started selling a product
2 called CoreFlex, right?

3 A I don't know if that's the time frame.

4 Q Turn to the next page.

5 A Okay.

6 Q Please refer to the number in the bottom right
7 hand corner, APP18.

8 A Okay. I'm there. Thank you.

9 Q At the top it says "Trademark Service Mark
10 Statement Use." Do you see that?

11 A I do.

12 Q And then underneath to the left it says "Mark
13 CoreFlex." Do you see that?

14 A Yes.

09:06 15 Q And then drop down a third paragraph. It says
16 For International Class 17: Current Identification:
17 Waterproofing membranes consisting of PCC membranes and
18 retextile fabric membranes used in connection with
19 below-grade construction applications including slabs,
20 plaza decks and tunnels and green roofs."

21 Do you see that?

22 A Yes.

23 Q Stego's trademark on yellow is also for goods in
24 International Class 17, correct?

25 A I have no knowledge of that.

09:07 1 Q Turn to the amendment in response in Plaintiff's
2 Exhibit's 1. Plaintiff's Exhibit's 1 is the large exhibit
3 to your right, sir. And the amendment in response is to
4 your right.

5 A Okay. What am I looking for.

6 Q Amendment in response, very first tab.

7 A Okay.

8 Q And on the first page underneath the word
9 "Amendment" it says --

10 A I only had the first page. We had problems with
11 this yesterday as well.

12 Q Would you look at the screen, please?

13 A Okay.

14 Q Do you see where it says Amendment in Response
09:08 15 on the screen?

16 A Can you pull it down some. Okay, would you go
17 all the way down to the bottom so I can see if this is
18 Page 1? Okay.

19 Q It says in the middle there Amendment. Do you
20 see that?

21 A I do.

22 Q And it says "Please delete the current
23 definition of goods in the application and drawing and
24 substitute 'therefore plastic sheeting used in the
25 construction industry as a vapor barrier and vapor

09:09 1 retarder in International Class 17.'" "

2 Do you see that

3 A I do.

4 Q If you will go back to Plaintiff's Exhibit 44
5 and go back to the page marked in the lower right-hand
6 corner APP18. In the fifth full paragraph it starts the
7 mark was first used.

8 Do you see that

9 A Yes.

10 Q And it says "The mark was first used by the
11 applicant or the applicant's related company, licensee or
12 predecessor in interest at least as late as March 19,
13 2007."

14 Sir, you have no reason to doubt that CETCO used
09:10 15 the CoreFlex name on its product at least as late as March
16 19, 2007, correct?

17 MR. FLORENCE: Objection. No personal
18 knowledge.

19 THE COURT: Overruled. You may answer the
20 question.

21 A Can you ask it again, please?

22 BY MS. HARRIS:

23 Q You have no reason to doubt that CETCO used the
24 CoreFlex mark on its product at least as of March 19,
25 2007, correct?

09:11 1 A I have no knowledge of that.

2 Q Do you know why CETCO chose yellow for its
3 product?

4 A I don't.

5 Q Didn't CETCO tell you that it believed that
6 yellow had the benefits of lower heat absorption and
7 better contrast?

8 A No, they did not.

9 Q Stego discovered the fact that CETCO was using
10 yellow for its CoreFlex product at the latest in the fall
11 of 2010, correct?

12 A Yes again, please.

13 Q Stego discovered the fact that CETCO was using
14 yellow for its CoreFlex product at the latest in the fall
09:11 15 of 2010, correct?

16 A I'm not sure that's true. I would have to know
17 when we were selling our Stego Wrap vapor barrier, and I
18 don't have that information.

19 Q Let's take a look at Plaintiff's Exhibit 36
20 again. Turn to the page marked in the bottom right Stego
21 479. This e-mail is dated October 6, 2010 from Tom Stam
22 of CETCO to Mr. Matthew Blasdel at Stego, correct?

23 A Yes.

24 Q And Mr. Stam begins his e-mail, "Bob Trauger
25 passed along your inquiry regarding CETCO's manufacture

09:13 1 and sale of CoreFlex, one side yellow, the other black,
2 reinforced composite waterproofing membrane."

3 Do you see that

4 A Yes.

5 Q So as of October 6, 2010 Stego knew that CETCO
6 was using yellow for its CoreFlex product, correct?

7 A Yes.

8 Q And yet as of December 30th, 2010 you swore to
9 this Court that no company is currently selling plastic
10 sheeting vapor barrier except Stego, correct?

11 A Please restate that.

12 Q As of December 30th, 2010, you swore to this
13 Court that no company is currently selling plastic sheet
14 vapor retarder product with a yellow pigment in the United
09:13 15 States except Stego, right?

16 A Where did you see that.

17 Q Take a look at your motion for summary judgment,
18 your declaration in support and look at Paragraph 21.
19 It's on your screen and in your notebook. Third tab in
20 the back says Declaration of P. Blasdel in re
21 Motion/Dismiss. I'm sorry. In re MSJ. I apologize.
22 It's still the third tab from the back. But make sure you
23 are on the right one. Paul Blasdel Declaration, Motion in
24 Support of MSJ?

25 A Okay.

09:15 1 Q In Paragraph 21, you swore --

2 A Okay.

3 Q You swore under penalty of perjury "No company
4 is currently selling plastic sheet vapor barrier or
5 plastic sheet vapor retarder product in the United States
6 with a yellow vapor barrier except Stego." Correct?

7 A That's a correct statement.

8 Q You knew that Stego was discussing a license
9 with CETCO as of that time, didn't you?

10 A I knew we were having conversations with CETCO.

11 Q So you knew as of the time you made that
12 statement under oath that CETCO was selling products that
13 Stego believed infringed its mark, right?

14 A Yes, but there is a distinction between CETCO.
09:16 15 And this is a true statement. What I say here is that --
16 which line is it?

17 Q You talked with your son Mr. Matthew Blasdel?

18 A Hang on. What line were we just on? I need to
19 make a distinction so that you can understand. Which line
20 where we on?

21 Q Paragraph 21?

22 A No company is currently selling plastic sheet
23 vapor barrier or plastic sheet vapor retarder products
24 with a yellow pigment in the United States except Stego.
25 That's a correct statement. The difference is that

09:17 1 CoreFlex is a water vapor. There is a huge difference
2 between water vapor and waterproofing. CoreFlex is a
3 waterproofing company which we now know, but we did not
4 know at the time.

5 Q Your trademark, Stego's trademark, covers
6 plastic sheeting used in construction as a vapor barrier
7 and vapor retarder, correct?

8 A That's correct.

9 Q Stego was alleging that CETCO infringed its
10 trademark in March of 2010?

11 A That's correct. Because the pictures we saw
12 appeared to be water vapor retarder in our environment
13 that we believed infringed our trademark. We have found
14 out since then that they are in the waterproofing business
09:18 15 and that that's not true. There is a big difference
16 between waterproofing and vapor retarder.

17 Q Stego identified CETCO as a company it was in
18 licensing for its trademark just two weeks ago, correct?

19 A I don't believe that's true. You mean as far as
20 we reported that to the Court?

21 Q Stego --

22 A Rephrase your question.

23 Q Stego provided a verified response to an
24 interrogatory, a request for information, in which Stego
25 represented that it was in licensing discussions with

09:19 1 CETCO of Stego's trademark, correct?

2 A We were in licensing discussions, correct.

3 Q It would be odd to be in licensing discussions
4 with a company that does not make a product that could be
5 covered by your mark. Do you agree?

6 A Yes, that's true.

7 Q Please take a look at Plaintiff's Exhibit 48.
8 This is CETCO's CoreFlex brochure, correct.

9 A Yes.

10 Q Turn to the page marked APP 60 in the bottom
11 right-hand corner, please.

12 A Actually, I honestly don't know if this is their
13 brochure or not. I will take your word for it.

14 Q You have never seen it before?

09:20 15 A That's right.

16 Q You have never gone to CETCO's web site to check
17 out the product that your company alleges is infringing
18 their product?

19 A No.

20 Q In the bottom right it says "Typical
21 applications include foundations, walls, tunnels, plaza
22 decks, plaza deck restoration, greenroofs and property
23 line zero lot construction." Do you see that?

24 A I do.

25 MR. FLORENCE: Your Honor, on the basis of

09:21 1 optional completeness, I would like to read the next
2 sentence into the record, please.

3 THE COURT: All right.

4 MR. FLORENCE: "CoreFlex is ideal for demanding
5 hydrostatic applications as well as projects that may only
6 be subjected to intermittent water."

7 BY MS. HARRIS:

8 Q Let's take a look at Plaintiff's Exhibit 45.

9 A I might add the picture above where you had me
10 read looks exactly like a Stego application.

11 Q Please take a look at Plaintiff's Exhibit 45.

12 A Okay.

13 Q You verified these interrogatory responses
14 provided by Stego in this litigation, correct?

09:22 15 A I did.

16 Q Interrogatory Number 7 on Page 3 --

17 A Okay.

18 Q -- asks Stego to "Please identify the company,
19 companies, person and/or persons by name, title, address
20 and current or last known phone number the entities or
21 persons who were approached or discussed with Stego a
22 license of the mark." Do you see that?

23 A I do.

24 Q And in response Stego identified a company
25 called Sto, correct?

09:23 1 A That's correct.

2 Q And Sto is not in the business of selling
3 plastic sheeting that can be used as a vapor barrier or
4 retarder in the construction industry, correct?

5 A That's my understanding. But actually they
6 respected our trademark, even though that's true, and they
7 came to us and talked to us about getting an agreement
8 with us in respect to our trademark.

9 Q Please take a look at Plaintiff's Exhibit 47.
10 This is a consent and registration agreement between Sto
11 and Stego, correct?

12 A Yes.

13 Q This is not a license agreement, correct?

14 A Yes, it appears that way.

09:24 15 Q Sto did not agree to license Stego's mark,
16 right?

17 A Yes.

18 Q Sto and Stego agreed to acknowledge that each
19 owned their respective color trademark, correct?

20 A Does it say that there that I can read it?

21 Q You never read this consent and registration
22 agreement before?

23 A I don't recall the exact contents of it.

24 Q First paragraph -- I'm sorry. Second paragraph
25 first page. "Stego is the owner of the mark for the color

09:24 1 yellow applied to the goods of plastic sheeting used in
2 the construction industry as a vapor barrier and as a
3 vapor retarder."

4 A I'm not with you. I'm not sure I did read this
5 because Matthew Blasdel signed it. Okay. Go ahead.

6 Q I'm sorry. What did you just say, please?

7 A I'm not sure that I have ever read this because
8 Matthew Blasdel signed it.

9 Q So you, the founder of Stego, don't know about
10 the one consent and registration agreement that you
11 verified an interrogatory response for?

12 A Of course I know about it. I'm the one that
13 suggested we supply it to you as evidence in this trial.

14 Q You never read it?

09:25 15 A Not before now, no.

16 My son is also an owner of the company and has
17 the right to sign things of this nature, and I trust him
18 to do so.

19 Q But in this case you verified the interrogatory
20 responses, right?

21 A Yes, that's correct.

22 Q In the third full paragraph, it talks did Sto's
23 ownership of the color yellow mark as applied to
24 configuration of mesh used for installation of interior --

25 A No.

09:26 1 Q It says in the third paragraph. Whereas Sto is
2 the owner?

3 A Okay. I'm with you.

4 Q Turn to Page 2 in Paragraph 6. It says "The
5 parties agree that the parties' respective use,
6 registration and ownership of their respective marks
7 pursuant to this agreement is not likely to cause
8 confusion because each party's mark is distinct in its
9 overall commercial impression and is used for sufficiently
10 distinct and unrelated goods." Do you see that?

11 A I do.

12 Q And this consent was entered into on July 16,
13 2009, correct?

14 A I don't see a date.

09:27 15 Q Turn to the first page, Exhibit 47, at the very
16 top. This agreement is made as of the 16th day of July,
17 2009 by and between Sto?

18 A Yes.

19 Q So this consent was entered into July 16, 2009,
20 correct?

21 A Yes.

22 Q And that's about eight months before you
23 verified the interrogatory responses in Plaintiff's
24 Exhibits 45.

25 A I'll take your word for it.

09:27 1 Q And Stego identified Sto, correct?

2 A Yes.

3 Q But Stego does not disclose its licensing
4 discussions with CETCO, correct?

5 A Yes.

6 Q Turn to the last page of Plaintiff's Exhibit 45,
7 your verification.

8 A Okay.

9 Q You signed this statement that said "I certify
10 that on behalf of Stego Industries, LLC, I have read the
11 foregoing answers to Poly-America's, LP's, third set of
12 interrogatories and Stego's Industries, LLC, and believe
13 them to be true and correct." Do you see that?

14 A I do.

09:28 15 Q And you signed that statement, did you not?

16 A I did.

17 Q Even though we know now the answers are not
18 correct?

19 A We forgot to put CETCO in here, yes.

20 Q CETCO is not the only entity with whom Stego had
21 licensing discussions at the time you verified these
22 interrogatory answers, correct?

23 A Yes.

24 Q By this time Stego had been engaged in
25 discussions with CETCO for at least four months, correct?

09:29 1 A I'll take your word for it. I don't know about
2 the four months.

3 Q October, November, December, January, February.
4 That's five months. So it's at least four months,
5 correct?

6 A Yes.

7 Q And you knew about those licensing discussions,
8 correct?

9 A I knew that Matthew was having conversations
10 with CETCO.

11 Q You knew that he was in licensing discussions
12 with CETCO, correct?

13 A I knew that Matthew was having discussions with
14 CETCO.

09:29 15 Q Let's turn back to Plaintiff's Exhibit 36,
16 please.

17 A Okay.

18 Q In the January 17, 2011 e-mail on which you were
19 copied, your son, Mr. Matthew Blasdel, sets out four
20 options for CETCO to deal with the allegation of
21 infringement of Stego's mark. Do you see that?

22 A No, where are you?

23 Q In the middle where he says "I previously
24 outlined four options for CETCO to deal with Stego."

25 A Okay.

09:30 1 Q Option One is stop use of our yellow mark and
2 switch colors?
3 A Yes.
4 Q And Option Two is pay Stego a licensing fee to
5 continue to using the mark?
6 A Right.
7 Q And Option 3 is buy your yellow plastic from
8 Stego?
9 A Right.
10 Q And fourth is seek a legal remedy?
11 A Yes.
12 Q So as of January 17, 2011, you knew your son was
13 in licensing discussions with CETCO?
14 A I did not. I had not read this e-mail at that
09:31 15 point.
16 Q You and your son are the only two owners of
17 Stego, correct?
18 A Yes.
19 A Stego has never in its history licensed its
20 trademark, correct.
21 A That's correct.
22 Q Stego is in four or five months of discussions
23 with an infringer of its mark, correct?
24 A Yes.
25 Q You know about that at the time correct?

09:31 1 A I had discussions with Matthew, correct.

2 Q The lawyers who represented you when you signed
3 the verification of the interrogatories marked as
4 Plaintiff's Exhibit 45 are your current counsel from
5 Gardere Wynne Sewell, correct?

6 A Okay.

7 Q Plaintiff's Exhibit 45 are the interrogatory
8 responses that you verified in February 2011, correct?

9 A Hang on here. Yes.

10 Q And the lawyers for Stego at the time you
11 verified these interrogatories are the same lawyers that
12 you have today from Gardere Wynne Sewell, correct?

13 A Yes.

14 Q Stego substituted the lawyers for Gardere Wynne
09:33 15 Sewell replacing its prior counsel in this case in early
16 December 2010, right?

17 A I don't recall the time frame. Yes, we did
18 replace our lawyers.

19 Q Take a look at the very last tab in your
20 notebook. It's entitled Defendant's Motion for
21 Substitution of Counsel.

22 A Okay.

23 Q That document was filed December 2010, right?

24 A Yes.

25 Q Stego's counsel in this case prior to the

09:34 1 substitution used to be lawyers from Christiansen,
2 O'Connor, Johnson, Kindness and Sidley Sidley Austin,
3 correct?

4 A Yes.

5 Q Specifically Bob Carlson of Christiansen
6 O'Connor used to represent Stego in this matter, correct?

7 A That's correct.

8 Q You knew that Stego was changing counsel at the
9 time you filed this, correct?

10 A Yes.

11 Q And you can confirm for this Court, sir, that
12 you knew why Stego was changing counsel, correct?

13 A Correct.

14 Q And Mr. Carlson had been advising Stego on its
09:35 15 negotiations with CETCO in the fall of 2010, correct?

16 A I don't know that.

17 Q So if your son, Matthew Blasdel, the only other
18 owner of Stego Industries, was obtaining legal counsel
19 regarding its discussions with CETCO, you didn't know?

20 A Not specifically, no.

21 Q Did you know generally?

22 A Yes.

23 Q Please take a look at Plaintiff's Exhibit 3.
24 It's a letter dated February 28, 2007 from Mr. Scott
25 Rhodes of Akin Gump Strauss Haeur and Feld to Mr. Thomas

09:36 1 Tarnay. Do you see that?

2 A Yes.

3 Q Mr. Tarnay was a lawyer with Sidley Austin that
4 represented Stego in February of 2007, correct?

5 A Say that again.

6 Q Mr. Thomas Tarnay was a lawyer with Sidley
7 Austin that represented Stego in this litigation, correct?

8 A He was a secondary firm. Our primary firm was a
9 firm in Seattle, Christiansen O'Connor.

10 Q And he states "Please find enclosed a sample of
11 Poly-America's Yellow Guard product." Correct?

12 A Yes.

13 Q And could you remove the document from the
14 binder and hold it up so the Court can see the only
09:37 15 original we have of this document?

16 A You want me to remove the whole document?

17 Q Yes. The letter in the leaf, remove it and hold
18 it up to the Court. The Court will be able to see it
19 through the sleeve?

20 A (Witness indicates)

21 Q Thank you, sir?

22 A You are welcome.

23 Q The original of Plaintiff's Exhibit 3 includes a
24 sample of a yellow vapor barrier, correct?

25 A It's a sample of yellow plastic. I have no idea

09:38 1 really what it is.

2 Q The letter was produced by Stego in this
3 litigation, correct?

4 A No, it wasn't produced by Stego.

5 Q Look at the bottom right-hand corner. Do you
6 see the Bates Label Stego 386?

7 A On this letter I just showed the Judge?

8 Q Oh, fair enough. Does it have a copy of the
9 document behind it with the Bates label?

10 A No.

11 MS. HARRIS: Approach the witness, your Honor?

12 MR. FLORENCE: To expedite it, we're willing to
13 stipulate that there was a document produced by Stego
14 that's labeled as 386. I think that will move us forward.

09:38 15 MS. HARRIS: It does. Thank you. Your Honor,
16 Plaintiff moves the admission of Exhibit 37 with the
17 sample.

18 MR. FLORENCE: No objection.

19 THE COURT: Plaintiff's Exhibit 3 is admitted
20 for the limited purpose stated.

21 BY MS. HARRIS:

22 Q Mr. Blasdel, you received a sample of what ?
23 Mr. Rhodes purported to be Poly-America's yellow vapor
24 barrier in February of 2007, correct?

25 A Yes.

09:39 1 Q And the sample looks just like the sample of
2 Poly-America's yellow vapor barrier that Mr. Mallory held
3 up in court yesterday, correct?

4 A I would have to see what Mr. Mallory held up to
5 make that decision.

6 Q Well, in any event, in March of 2009 you claimed
7 under oath that Stego had never seen a sample of
8 Poly-America's yellow vapor barrier, correct?

9 A Say that again.

10 Q In March 2009, you claimed under oath Stego had
11 never seen a sample of Poly-America's yellow vapor
12 barrier, correct?

13 A Yes.

14 Q And you made that claim in another declaration
09:40 15 given to this Court, correct?

16 A I do not remember that, no.

17 Q Take a look at your declaration in support of
18 Stego's motion to dismiss.

19 A Is that the one that says MSJ on it?

20 Q No, it's the next declaration in the series.

21 A Okay.

22 Q In Paragraph 9 -- Actually, let me step back.
23 This is your declaration from March 30th, 2009 submitted
24 to this Court, correct?

25 A Yes, it is.

09:42 1 Q And in Paragraph 9 you swear under oath as
2 follows: "However, because we never viewed Poly-America's
3 product, we were unable to assess whether Poly-America's
4 activities and products were actually infringing. In
5 fact, from the end of 2006 through the time that
6 Poly-America filed its complaint on December 17, 2008 and
7 continuously to the present, we have had no firsthand
8 information or knowledge of the nature or appearance of
9 Poly-America's yellow vapor guard plan, no information
10 about what it plans to sell and no information about
11 Poly-America's activities pertaining to this product."

12 Do you see that

13 A I do.

14 Q We're done with that document, Mr. Blasdel.

09:43 15 A Let me state if I may that a little tiny piece
16 of plastic that our attorneys purport to be Poly-America
17 does nothing for us in the determination of really
18 anything. It's a yellow piece of plastic. There is no
19 ability to do any testing on it. You have to have a lot
20 larger pieces to do testing, to do puncture resistance, to
21 do tensile test, permeance tests. All of those things are
22 the functions of the vapor barrier, vapor retarder, and
23 the little tiny piece like that, we have no ability to do
24 any of that on it other than to see it's a very small
25 piece of yellow plastic.

09:43 1 Q And you didn't choose to disclose any of that to
2 this Court, correct?

3 A I don't recall ever seeing that letter or that
4 piece of plastic.

5 Q If you didn't make any attempt to make sure the
6 statements you were swearing under oath to this Court were
7 accurate, right?

8 A That's absolutely incorrect. I did not see
9 that. I just said I don't remember seeing that letter.
10 So if I didn't see the plastic, you are saying I'm lying
11 to the Court. I'm not lying to the Court. I have never
12 lied to the Court about anything. This is something I did
13 not see, and even if I did, I wouldn't have been able to
14 make this statement. But it's not a large enough piece of
09:44 15 plastic for us to make any determinations about anything.

16 Q Even if this Court didn't believe you didn't see
17 the letter --

18 A I'm sorry. "Even if this Court didn't believe,"
19 are you suggesting I'm not being truthful.

20 Q Sir, wouldn't you agree if you wanted to make
21 sure your statements to this Court were accurate you would
22 check with your counsel to see if you had received the
23 sample from Poly-America?

24 A Let's go back to the sample.

25 MS. HARRIS: Your Honor, could you instruct the

09:45 1 witness to answer the question.

2 THE COURT: Yes. Her role is to ask the
3 question, and your role is to answer, if you can. Ask the
4 question again.

5 BY MS. HARRIS:

6 Q Wouldn't you agree if you made any effort to
7 make sure that the statements you were swearing under oath
8 were accurate, you would have checked with counsel to see
9 if they had received a sample of Poly-America's vapor
10 barrier in response to Stego's request?

11 A It's entirely possible depending on the date
12 this was given to Stego that my partner Carroll Bryant may
13 have seen this because he was the one that was in charge
14 of working on this case. That's why I asked you if I
09:46 15 could go back and see the dates on this. I did tell you I
16 don't recall seeing this. So therefore, I didn't state it
17 in my declaration to the Court.

18 Q Wouldn't you agree that if you had made an
19 effort to make sure that your statements to this Court
20 under oath were accurate that you would have talked to
21 your partner who was managing litigation before you swore
22 to facts under oath?

23 A My partner was an attorney that was in charge of
24 all the fact finding. I did not ask him to see everything
25 that he was doing. In fact, when the original declaration

09:46 1 was filed for the trademark, I didn't see that at all. I
2 trusted him to do that because that was part of his
3 expertise. In addition, he trusted me to do what was my
4 expertise which was running the company.

5 Q Mr. Blasdel, you contend the vapor barrier
6 products at issue in this case can be made in an endless
7 category of colors.

8 A Yes.

9 Q And yet you did not trademark any shade of
10 yellow?

11 A We trademarked yellow.

12 Q But not a shade of yellow?

13 A I don't think it states that in the Trademark
14 Office. We asked for a trademark on the color of yellow.

09:47 15 Q Well, it's your understanding that competitors
16 are unable to use the color yellow in their vapor barrier
17 without infringing, right?

18 A That's correct.

19 Q And if some customer wanted yellow, then as you
20 understand it, yours would be the only vapor barrier they
21 could buy, correct?

22 A Restate it.

23 Q Sure. If some customers wanted yellow, as you
24 understand it Stego's would be the only vapor barrier they
25 could buy legally, correct?

09:48 1 A Yes.

2 Q Stego originally labeled its original vapor
3 barrier with the word "Stego," didn't it?

4 A Stego Wrap.

5 Q And you are aware that other competitors -- some
6 other competitors labeled their vapor barrier with words
7 identifying their product as well, correct?

8 A Yes.

9 Q So even without a trademark on yellow, Stego
10 could identify its vapor barrier by printing Stego or
11 Stego Wrap on its vapor barrier just as it did initially,
12 correct?

13 A Restate, please.

14 Q Even without a trademark on yellow, Stego could
09:48 15 identify its yellow vapor barrier by printing the words
16 "Stego Wrap" on a yellow vapor barrier just as the company
17 initially did, correct?

18 A Yes, we did print Stego Wrap on the vapor
19 barrier, and then do you understand since we were able to
20 get a trademark on yellow that we no longer needed to
21 print on the barrier since Stego in yellow distinguished
22 it from everything else in the industry which was our
23 intent from the very beginning.

24 Q About a year ago, a customer asked Stego to make
25 one of its vapor barrier products in dark green, correct?

09:49 1 A Yes.

2 Q And Stego was able to fulfill that customer's
3 request, correct?

4 A Correct.

5 Q Because no one had a trademark on green in vapor
6 barriers, correct?

7 A Yes.

8 Q And Stego started selling that in response to a
9 single request from one customer, correct?

10 A That's correct.

11 Q But you don't know if the green vapor barrier
12 was more or less expensive to manufacture than the yellow?

13 A I don't know that.

14 Q And there was another occasion when a customer
09:49 15 asked for a vapor barrier in another color, right?

16 A Yes.

17 Q And on that occasion they asked for a vapor
18 barrier in white?

19 A That was a job in Newport News, Virginia where
20 they could not use yellow because yellow signified
21 radiation to the Navy, and they were building on the base,
22 and so they asked us to make it in white. It's important
23 to note the function of the product was the same as the
24 yellow, even though it had a yellow coat.

25 Q The customer did not specify the particular

09:50 1 pantone yellow, right?

2 A They just said white is my understanding.

3 Q And Stego was able to make that and sell it to
4 the customer?

5 A We did.

6 Q And that's because there is no trademark on the
7 color white, right?

8 A Yes.

9 Q And Layfield, a competitor of Stego's, makes a
10 white vapor barrier, right?

11 A Yes.

12 Q And when Stego made white for this particular
13 customer, it was not trying to trade on Layfield's
14 reputation, right?

09:51 15 A Layfield did not exist at that point.

16 Q When Stego made white in response to a customer
17 demand -- Let me step back. When did Layfield first start
18 making a white vapor barrier?

19 A They began in this industry four years ago. So
20 that would be--

21 Q 2007.

22 A 2007 I believe. I'm certainly glad I didn't
23 testify to that so that you could go back and hold me to
24 that.

25 Q Stego made the vapor barrier in white for that

09:51 1 one large job for the Navy, correct?

2 A We did.

3 Q But you cannot recall whether it was more or
4 less expensive for Stego to make its vapor barrier in
5 yellow, no?

6 A No.

7 Q And years later another customer wanted white
8 vapor barrier as well, correct?

9 A I don't think it was years later, no.

10 Q Let's take a look at your deposition. It's the
11 March 2011 deposition.

12 A Okay.

13 A March 23rd, is that what you are looking at?

14 Q Yes.

09:52 15 A What page?

16 Q 129. Actually Mr. Blasdel, you can stop. We'll
17 get there a different way. Stego filled the order for the
18 other customer who wanted white, right?

19 A I think so. I don't actually remember if that
20 ever came to fruition. But perhaps it did. I don't
21 recall.

22 Q In any event, Mr. Blasdel, you allow for the
23 possibility that a customer might one day want yellow
24 vapor barrier because it contrasts well with a particular
25 black soil they are going to lay it over or it's being

09:53 1 used in Phoenix in August where it's a 120 degrees, and
2 they are concerned about the heat. That is possible?

3 A No, not in my experience.

4 Q Do you allow that a customer might want yellow
5 for some reason, something odd, just like the Navy is not
6 wanting yellow because it meant caution. Just some
7 different reasons. Whatever it is, do you allow for that
8 possibility?

9 A No, that's never happened in our history.

10 Q And the reason you don't allow for that
11 possibility is because if you did Stego would have a
12 substantial advantage over its competitors, right?

13 A No.

14 Q Let's talk about how the marketing of vapor
09:54 15 barrier has changed. You had called the products that you
16 laid down below concrete slabs when you were building
17 condos, high end homes, restaurants and racket ball clubs
18 in the 1980's low grade poly. Correct?

19 A Yes.

20 Q And when you called it low grade poly, you did
21 not seam up the area where the polyethylene met, right?

22 A There was no requirement.

23 Q And sometimes when the workers laid out the poly
24 it wouldn't be touching, let alone overlapping, correct?

25 A There were occasions, but most times it would be

09:55 1 touching.

2 Q Take a look at your March 23rd, 2011 deposition,
3 Page 134, Line 8. You were asked the question, "So
4 sometimes in the 1980's when they would layout the low
5 grade poly under the slab, it wouldn't be touching let
6 alone overlapping?"

7 Answer: "Correct."

8 Were you asked that question and did you give
9 that answer?

10 A I believe my answer prior to this was consistent
11 with that.

12 Q Were you asked that question and did you give
13 that answer under oath?

14 A I did.

09:56 15 Q The low grade poly was left untaped at the pipe
16 penetrations when it was cut, correct?

17 A Where are you reading that?

18 Q I'm asking you the question.

19 A Restate it please.

20 Q The low grade poly was left untaped at the pipe
21 penetrations when it was cut, correct?

22 A That's correct.

23 Q The use of policy below slabs was in the
24 building codes, right?

25 A Yes.

09:56 1 Q And when you put poly below slabs in the
2 1980's, did you not understand why the poly was there,
3 correct?

4 A Yes.

5 Q And in the 1980's to the best of your knowledge,
6 contractors did not know why they were putting low grade
7 poly under the slab other than it was required by the
8 building codes, right?

9 A Correct.

10 Q Even through the 1990's the plastic sheeting was
11 generally not seamed when it was laid out, correct?

12 A What do you mean by seamed?

13 Q Taped, tape at the seams.

14 A Well, ask the question again, please.

09:57 15 Q Even through the 1990's, as late as 1998, the
16 plastic sheeting was generally not seamed when it was laid
17 out, correct?

18 A It was not overlapped and taped, if that's what
19 you mean by seamed.

20 Q Most of the plastic that used in the 1970's,
21 1980's and 1990's as a vapor barrier was clear or black,
22 correct?

23 A Yes, I believe there were a couple of other
24 colors as well.

25 Q No one was making vapor barriers in bright

09:58 1 colors before Stego, correct?

2 A That's correct.

3 Q In fact, when you started Stego in 1998 none of
4 its competitors were selling vapor barriers products that
5 purported to meet ASTM E 1745?

6 A Restate the date, please.

7 Q When you started Stego in 1998, none of its
8 competitors were selling vapor barrier product that
9 purported to meet ASTM E 1745, correct?

10 A No.

11 Q Take a look at your March 23rd, 2011 deposition,
12 Page 138.

13 A Page 138?

14 Q Yes, sir. Question: "When you started Stego,
09:59 15 who did you think were your direct competitors, if
16 anyone?"

17 Answer: "Raven, Reef, W.R. Meadows, Fortifiber.

18 Question: "Were all of those companies selling
19 vapor barrier products that purported to meet ASTM E 1745
20 in 1998?"

21 Answer: "No."

22 Question: "Were some?"

23 Answer: "No."

24 Question: "Were any?"

25 Answer: "No."

09:59 1 Were you asked those questions and did you give
2 those answers under oath?

3 A Yes, I did.

4 Q So ASTM E 1745 existed at that time, but no one
5 really knew about it, right?

6 A I don't know if anyone knew about it or not. I
7 don't think they did. No.

8 A Okay.

9 Q 161 beginning at Line 18. "We're still in the
10 time frame when the industry practice was to just lay the
11 stuff down and not overlap or seam?"

12 Answer: "Well, 1745 existed, but no one really
13 knew about it at that time."

14 Were you asked that question and did you give
10:00 15 that answer under oath, sir?

16 A Yes, I believe that's consistent with what I
17 just said.

18 Q The first time you learned about an ASTM
19 standard for vapor barriers is when Stego began, correct?

20 A Yes.

21 Q Beginning in the late 1990's there came an
22 increased desire to prevent moisture and gases from moving
23 from the earth to the slab?

24 A Correct.

25 Q The industry began to move from using poly rolls

10:01 1 that were not overlapped or seamed to the standard today
2 of vapor barrier that is not only overlapped but also
3 seamed, correct?

4 A (Witness nod.)

5 Q Could you answer the question again for the
6 court reporter?

7 A Yes. Seamed is not a good word there. Taped is
8 what should be used there.

9 Q And part of that change in practice was driven
10 by an increasing concern over the effect of moisture
11 penetrating the concrete slab, correct?

12 A That's correct.

13 Q The toxic mold litigation of the 1990's raised
14 awareness about the dangers of mold, correct?

10:02 15 A Yes.

16 Q The toxic mold litigation in the 1990's raised
17 awareness about the dangers of moisture migrating into
18 buildings, correct?

19 A Yes.

20 Q And after Stego entered the market in late 1998
21 with a vapor barrier that met ASTM 1745, other competitors
22 started entering market as well?

23 A They did.

24 Q Stego's main competitors today are Raven
25 Industries, Barrier Vac and W.R. Meadows, correct?

10:03 1 A Yes.

2 Q Fortifiber did not start making a 10 mill or 15
3 mill vapor barrier that competed with Stego's vapor
4 barrier until 2001 or 2002, correct?

5 A I don't recall the actual dates.

6 Q Take a look at your deposition. Page 135,
7 beginning Line 18. Question: "Do you know when
8 Fortifiber started making a 10 mill or 15 mill vapor
9 barrier that competed with Stego's vapor barrier?"

10 Answer: "They were the company that
11 TransAmerica gave our formula to. So that would have been
12 2001, 2002."

13 Were you asked that question and did you give
14 that answer under oath, sir?

10:04 15 A Yes.

16 Q Raven did not even make a 10 mill or 15 mill
17 vapor product that completed with Stego until about 2003,
18 correct?

19 A I believe so. That's correct.

20 Q And Raven Industries did not start making a 10
21 mill or fifteen mill product that competed with Stego's
22 product until 2003 or 2004, correct?

23 A Yes.

24 Q W.R. Meadows started competing with Stego's
25 vapor barrier product in about 2005, correct?

10:05 1 A Well, in our current polyolefin line this is all
2 correct. But some of these companies were in existence
3 with vapor retarders long before Stego got into business.

4 Q You didn't make that distinction in your
5 deposition, did you?

6 A I don't think so.

7 Q So at least as of the time of your deposition
8 the truth you have believed and swore to under oath is
9 that W.R. Meadows began competing with Stego in about 2005
10 and 2007?

11 A I believe that's correct.

12 Q Barrier also sold a product that competes with
13 Stego's vapor barrier product in 2007, correct?

14 A Yes.

10:06 15 Q And of course now, we know that Layfield was
16 competing with the product in 2007?

17 A Okay.

18 Q Is that a yes?

19 A Yes.

20 Q Please take a look at DX 57 which is the very
21 small notebook behind you on this edge on your right. If
22 you will turn to your right and swivel around, you will
23 see a small thin notebook labeled DX 57.

24 A Okay.

25 Q I am going to ask you some questions about what

10:06 1 DX 57 is first, and then we'll look inside. This notebook
2 is a notebook of competitor samples, correct?

3 A Yes.

4 Q And this notebook was produced by Stego in this
5 litigation, correct?

6 A Yes.

7 Q A man by the name of Joe Marks who's employed by
8 Stego created it?

9 A Yes.

10 Q And Joe Marks is Stego's engineering director,
11 right?

12 A Correct.

13 Q And these samples of competitor products are
14 from rolls purchased by Stego, correct?

10:07 15 A That's correct.

16 Q And those rolls were purchased in the ordinary
17 course of business, correct?

18 A Yes.

19 Q And Stego purchased the rolls to know what its
20 competitors were doing, correct?

21 A Yes.

22 Q And the notebook contains three samples of vapor
23 barrier product in the color orange?

24 A I don't know.

25 Q You can flip through it and count the orange

10:07 1 samples there.

2 A Yes, that's correct.

3 Q Some competitors make their vapor barrier
4 products available in more than one color, right?

5 A They do.

6 Q So for example, Fortifiber is a company that
7 makes different gauge products in different colors, do
8 they not?

9 A Yes.

10 Q And Fortifiber makes a product they called for
11 soft ultra --

12 A That it calls MoistOp Ultra in seafoam green.

13 A Yes.

14 Q And Fortifiber makes a six mill barrier that it
10:08 15 calls MoistOp Ultra in gray, correct?

16 A Yes.

17 Q Sort of like the pipettes being color coded to
18 indicate milliliters?

19 A I'm not familiar with that terminology.

20 Q You were in the courtroom yesterday when we saw
21 an ASTM standard for how pipettes would be color coded to
22 indicate what amount of milliliter they held. Do you
23 remember that?

24 A No, I don't know.

25 Q You will agree though that some competitors make

10:09 1 their vapor barrier products in multiple colors for
2 identification purposes, right?

3 A Yes.

4 Q So the customer can tell whether it's buying a
5 ten mill or 15 mill or other gauge mill from a particular
6 manufacturer, correct?

7 A Yes.

8 Q Now, in that notebook, Defendant's Exhibit 57,
9 there is a sample of Raven's Vapor Lock vapor barrier in
10 blue, correct?

11 A I don't know. Which one?

12 Q Raven's vapor block vapor barrier.

13 A I have it.

14 Q Could you take that out of the notebook and show
10:10 15 the Court so that he can see the color blue, please?

16 A Sure.

17 Q And do you also see in Defendant's Exhibit 57 a
18 sample of Insulation Solutions vapor check in blue?

19 A No, I don't.

20 Q Okay. That's not it that you have your hand on?

21 A No, that is the Raven we just look at. You are
22 looking for vapor check in blue?

23 Q Yes.

24 A Okay.

25 Q And could you pull it out and show the Court,

10:11 1 please?

2 Mr. Blasdel, you have a lot of expertise about
3 what would be confusing to the public in selling vapor
4 barriers, right?

5 A I believe so.

6 Q And in your opinion if a customer received a
7 blue vapor barrier, the customer would absolutely know who
8 made the vapor barrier he was receiving, right?

9 A If there is two different colors of different
10 products, no, they wouldn't.

11 Q Let's take a look at your deposition March 23rd,
12 2011, please. If you could turn to Page 116.

13 A 115?

14 Q 116 actually. Beginning at Line 2.

10:13 15 A 115, Line 2.

16 Q Page 116, Line 2 of your March 23rd, 2011
17 deposition.

18 A Okay.

19 Q Question: "Well, I'll ask it a different way.
20 Do you have any expertise about what would be confusing to
21 the public in selling vapor barriers?"

22 Answer: "I have a lot of expertise, yes."

23 Question: "Okay. But despite that expertise,
24 you cannot offer me an opinion as to whether there would
25 be a likelihood of confusion if these two products were

10:13 1 sold the customer wouldn't know who made it."

2 Answer: "The customer would absolutely know who
3 made it."

4 Were you asked those questions and did you give
5 those answers?

6 A It appears so, yes.

7 Q You did so under oath?

8 A I believe all of this is under oath.

9 Q And the reason a customer would absolutely know
10 who made the vapor barrier he was receiving is because the
11 customer would have placed the order for a particular
12 vapor barrier, and the distributor hopefully gave them
13 what they ordered with purchase orders and delivery
14 receipts so that obviously the customer would know what
10:14 15 they bought?

16 A I did give that answer. But the way you phrased
17 that before is I believe if the two products were side by
18 side, could the customer determine what they were. With
19 the absence of a purchase order, no, they couldn't
20 distinguish them. I think it's in the way you phrased the
21 question.

22 Q Take a look at your deposition. Same deposition
23 this time, Page 115. Line 15 on Page 115.

24 Question: "Is it your expert opinion that you
25 can tell the difference between Insulation Solutions Vapor

10:15 1 Check 15 mill and Raven's Vapor Block samples that are
2 contained in this Exhibit 43?"

3 Answer: "Side by side it is."

4 Question: "Would a customer who bought the
5 product be able to tell the difference?"

6 Answer: "I have no idea."

7 Did you give those answers under oath?

8 A I did. And it's absolutely true.

9 Q You have answered my question, and you will get
10 a chance to explain with Mr. Florence.

11 You understand that your product is not the only
12 product that meets ASTM E 1745 that is on the market?

13 A I do.

14 Q Other companies sell other products that meet
10:16 15 that, right?

16 A Yes.

17 Q But you believe that even though they sell ASTM
18 E 1745 compliant products you believe your product is
19 superior?

20 A It is.

21 Q And you recognize that even if two products meet
22 ASTM E 1745 one product may have some features that make
23 it superior, right?

24 A The features are all --

25 Q Please answer the question.

10:16 1 A I am.

2 Q It's a yes or no question. You recognize that
3 even if two products meet ASTM E 1745, one product might
4 have some features that make it superior?

5 A The features that make it superior are all
6 called out in 1745. That's what makes them different. So
7 yes, there would be differences in products that qualify
8 for 1745.

9 Q And in this case Poly-America is contending the
10 superior feature of your product is the color yellow,
11 right?

12 A I believe so.

13 Q Stego has had hundreds of conversations with
14 distributors, contractors, architects and engineers,
10:17 15 right?

16 A Thousands.

17 Q And the nature of the conversations is people
18 call up and substantially ask "Do you sell that yellow
19 stuff," right?

20 A That has occurred, right.

21 Q And other conversations are where people call up
22 and ask is your product the yellow product?

23 A That's correct.

24 Q And a lot of times those people don't even know
25 the name of the product, correct?

10:17 1 A That's correct.
2 Q They just know they want yellow, right?
3 A That has happened.
4 Q And even today Stego gets calls from people
5 asking if Stego makes the yellow stuff, right?
6 A That's correct.
7 Q Stego has been a family endeavor, fair to say?
8 A That's very fair to say.
9 Q Your wife works for Stego, right?
10 A She still does.
11 Q And she has worked for Stego from the beginning?
12 A She has.
13 Q And your daughter used to work for the company
14 as well?
10:18 15 A She did for a short time.
16 Q And your son has worked for Stego ever since he
17 gave up a soccer career, correct?
18 A Yes.
19 Q And he works for Stego now?
20 A He does.
21 Q And you have built what you believe to be the
22 leading company in vapor barrier products?
23 A I don't think there is any doubt about that.
24 Q And Stego is the most successful of all the
25 business enterprises you have undertaken, right?

10:18 1 A That I have owned, that's correct.

2 Q And you are upset that Poly-America sued your
3 company, right?

4 A I am upset that Poly-America is trying to steal
5 our business.

6 Q You are upset that Poly-America sued your
7 company, right?

8 A I am. I'm upset that they tried to steal our
9 business as well.

10 Q You are upset that Poly-America is claiming that
11 Stego's trademark is invalid, right?

12 A That's a fair statement.

13 Q Because without the trademark, Stego cannot
14 exclude others from selling yellow vapor barrier, right?

10:19 15 MR. FLORENCE: Objection. Calls for a legal
16 conclusion.

17 MS. HARRIS: I'll rephrase.

18 BY MS. HARRIS:

19 Q Because as you understand it, Mr. Blasdel,
20 without the trademark Stego cannot exclude others from
21 selling yellow vapor barrier?

22 A We have a trademark, and it's my understanding
23 that are others cannot infringe upon our trademark,
24 correct.

25 Q And if you lost the trademark, you wouldn't be

10:19 1 able to exclude others from selling yellow vapor barrier,
2 right?

3 MR. FLORENCE: Objection. Calls for a legal
4 conclusion and incomplete hypothetical.

5 MS. HARRIS: I'll rephrase.

6 THE COURT: All right.

7 BY MS. HARRIS:

8 Q Mr. Blasdel, as the owner of Stego, as the
9 founder of Stego, as someone who has already testified
10 under oath today that others cannot sell a yellow vapor
11 barrier without infringing your mark, would you agree that
12 if Stego does not have a trademark it can no longer
13 threaten people with infringement of the trademark?

14 MR. FLORENCE: Same objections, your Honor.

10:20 15 THE COURT: Overruled. You may answer if you
16 can.

17 A Restate it please.

18 THE COURT: Ms. Harris, I'd like to take our
19 mid-morning recess at this time.

20 Ladies and Gentlemen, we'll be in recess until
21 10:40.

22 (Recess)

23 THE COURT: Be seated, please. Go ahead,
24 Ms. Harris, when you are ready.

25 BY MS. HARRIS:

10:30 1 Q Mr. Blasdel, I asked you before break whether
2 you would allow that a company might ask for the color
3 yellow for an arbitrary reason, even if not related to the
4 functionality of the color. Do you recall my asking you
5 that?

6 A No, I don't.

7 Q Do you allow for the possibility that a company
8 might ask for yellow for an arbitrary reason even if not
9 related to the functionality of the color?

10 A What do you mean by arbitrary reason?

11 Q Some other reason, whatever reason it might be?

12 A I guess that's possible.

13 Q And if that occurred, Stego would be the only
14 company that would be able to sell yellow vapor barrier to
10:30 15 that customer, right?

16 A Correct.

17 Q Wouldn't you agree that would be a substantial
18 competitive advantage?

19 A I'm not sure I agree with that.

20 Q In fact, that is exactly what occurred when a
21 customer asked -- In fact, when the customer requested
22 dark green from Stego, it was for a totally arbitrary
23 reason?

24 A No, it wasn't an arbitrary reason at all.

25 Q It was because the customer's signature color

10:30 1 was dark green?

2 A One of them was dark green.

3 Q And that's why they asked for the vapor barrier
4 in green?

5 A That's our understanding.

6 Q As the founder and owner of Stego, do you
7 understand that without the trademark Stego's business
8 will depend on how effectively Stego can compete with
9 others who sell yellow vapor barrier?

10 A Yes, and we wouldn't mind that at all.

11 Q And as a re-seller, rather than a manufacturer
12 of yellow vapor barrier, that would be difficult, wouldn't
13 it?

14 A No, not at all.

10:30 15 MS. HARRIS: Pass the witness.

16 CROSS EXAMINATION

17 BY MR. FLORENCE:

18 Q Mr. Blasdel, I want to first talk a little bit
19 about your background information. Where did you grow up?

20 A Lawrenceburg, Indiana.

21 Q And while you were growing up in high school,
22 did you have occasion to work?

23 A I did.

24 Q Work in the construction industry at all?

25 A I did.