

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

AFFIDAVIT OF DAN MCMURRAY

STATE OF TEXAS §
COUNTY OF DALLAS §

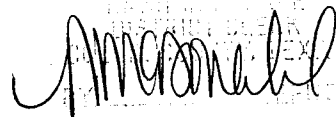
BEFORE ME, the undersigned authority, on this day personally appeared Dan McMurray, who, being by me duly sworn, on his oath stated as follows:

1. My name is Dan McMurray. I am over the age of 18 years, have never been convicted of a felony or a crime involving moral turpitude, and am competent to make this Affidavit. The matters and facts stated herein are within my personal knowledge and are true and correct.

2. Since August 1986, I have been employed as a computer programmer/engineer by Plaintiff in the above-referenced matter. Pursuant to the Court's Order, I am a member of the Disclosure Team in this matter and familiar with the background of this litigation, including Defendant's claim that he had devised the "Solution," a computer program that could translate executable machine language into a high-level programming language, such as "C" or "C++."

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3. On or about September 27, 2000, Defendant disclosed a set of documents which he claimed fully and completely described the "Solution." Defendant's disclosure consisted of several computer programs written in the "C" programming language, related header files and a large binary file. As a member of the Disclosure Team, I began reviewing, analyzing and testing Defendant's disclosure in an effort to evaluate and understand it.

4. My initial analysis of Defendant's disclosure revealed numerous problems. Specifically, I encountered four fundamental problems with Mr. Brown's disclosure: header files were missing from the September 27, 2000, disclosure; I was unable to run a build of the program without modifying it; the instructions on how to run the program were defective; and when I finally was able to run the program, its output was not a "C" program.

5. In an effort to resolve these problems, members of the Disclosure Team met with Defendant on February 2, 2001, in the conference room at Plaintiff's offices where Defendant had developed the "Solution." During this meeting, Defendant was able to build and run the programs contained in the disclosure. After Defendant built and ran this program, however, it became apparent that the "Solution" as disclosed was neither complete nor worked properly.

6. In response to questions from the Disclosure Team, Defendant admitted that the "Solution" was incomplete and did not work. Defendant admitted that the "Solution" as disclosed did not work because it cannot: (a) process multiple entry points; (b) identify high-level loops; (c) generate "if-then-else" control constructs; (d) handle unions; (e) resolve machine dependent sub-library routines, segmented addressing or data structures with gaps; (f) handle indirect function calls or any indirect references or "computed goto" commands; (g) resolve the semantics and context of a given routine or program; (h) handle high-level program structures,

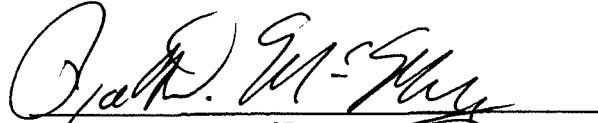
return values or functions identified via pointer; or (i) handled dynamic situations, as opposed to static structures, that arise in a given program or code. This is in contrast to the September 27, 2000, entry on his website, in which Defendant states that his "idea does work." (Reference <http://www.unixguru.com/whatsnew.html>)

7. Additionally, Defendant admitted that the "Solution" as disclosed was incomplete. Defendant admitted that his idea for handling "branch resolution" did not work and he did not have a resolution for the problem. This is a critical and threshold problem which prevented Defendant from successfully converting any code to the "C" programming language. Defendant further admitted that the "Solution" did not provide a fully automatic method of converting executable machine language to a high-level programming language using algorithms, but assumed a significant degree of human intervention to distinguish code from data. This is another critical and threshold problem.

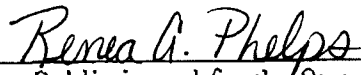
8. Defendant further admitted that he developed no novel or unique idea on how to create high-level language conversion. In particular, Defendant stated that he does not believe anything contained in the disclosure is unique, novel or protectable (other than as a trade secret); he did, however, state that he believes the way in which he approached solving the problem is protectable. In this regard, when we asked what his "flash of insight" was in 1996/1997, Defendant claimed that his only "original idea" was that computers have become so fast and powerful it is now feasible to do automated translation from executable machine language to high-level language.

9. I have personally spent 60-80 hours reviewing Mr. Brown's disclosure and conferring with counsel and Mike McCarty regarding that disclosure. Additionally, I believe Mr. McCarty has spent similar hours reviewing Mr. Brown's disclosure.

FURTHER, AFFIANT SAITH NOT.


Dan McMurray, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME by the said Dan McMurray, on this 7 day of March, 2001.


Notary Public in and for the State of Texas

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