

MURDER ON A PLANO SOCCER FIELD: IS ASHLEY'S KILLER STILL AT LARGE?

JUNE 2001

D

DALLAS / FORT WORTH

Dallas Pet Lovers Guide

THE BEST IN DALLAS:

Neighborhood Vets

Trainers

Pet Sitters

Day Care

Dog Parks

Plus:

Celebs and Their Pets

*Dixie Chick Emily Robison
with Buddy*

www.dmagazine.com



JUNE 2001 \$3.95

EXHIBIT
A



Street Talk

Dan Michalski

Who Owns Your Brain?

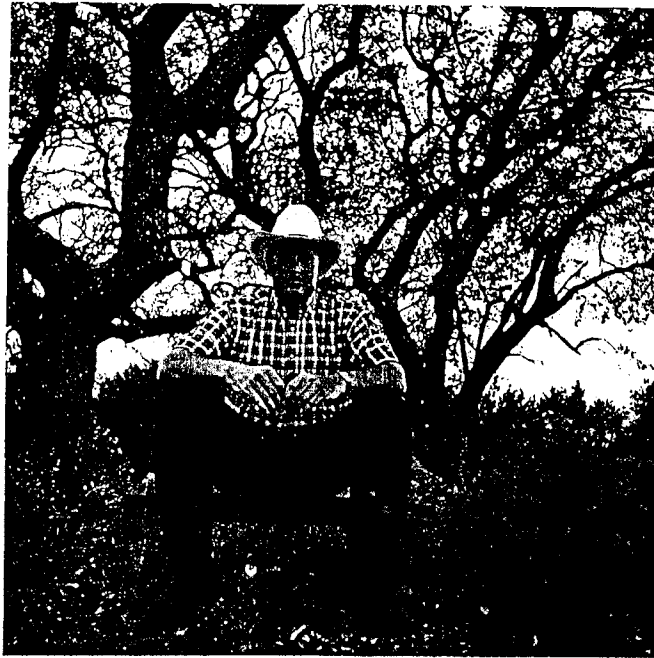
Tech giant Alcatel's legal crusade to safeguard intellectual property have made it the bully of the Telecom Corridor.

THE "EUREKA!" MOMENT that would change Evan Brown's life hit during a weekend drive in his Mercedes. He had finally solved a problem he had been contemplating for 20 years, a coding scheme to easily convert software run on old mainframes to more modern languages. If it worked, the idea was worth at least a billion dollars.

That was on a sunny day in April 1996, when Brown was a computer programmer earning \$96,000 a year. Today he lives in a steel barn in an unincorporated nook of central Texas—unemployed, bankrupt, and, he says, beaten down. He had to sell his Plano micromansion and the Mercedes, along with his prized Cessna airplane and his gun and stamp collections, to fight an ongoing legal battle against France-based Alcatel USA. The telecom giant insists that Brown's idea, which court documents call "The Solution," belongs to the company. And to prove it, Alcatel is moving forward with a lawsuit, even though the defendant has no material assets left to sue for.

"They've shackled me in the employment arena and removed me from the intellectual side of society," says Brown, who now spends his days chopping cedar, milking cows, and writing e-mail. "Plenty of [tech firms] want to talk to me, but not until my lawsuit with [Alcatel] is over."

Brown is hardly Alcatel's only defendant. The company has filed more than a dozen lawsuits—against everyone from individual



MIND GAMES: Thanks to a legal battle with Alcatel over an idea, Evan Brown is now unemployed and bankrupt.

engineers and startups to Cisco—all alleging stolen trade secrets and patent infringements. With Alcatel generating more headlines from courtrooms than from clean rooms, no wonder the *Wall Street Journal* labeled it "the most litigious company in... Telecom Corridor." In a series of cases set to go to trial in state and federal courts this year and next, Alcatel stands to win billions in damages.

"We're not after windfall," says George Brunt, Alcatel's senior vice president and general counsel. "We're just trying to protect our intellectual property."

Still, intellectual property is a high-stakes legal frontier, and Alcatel's critics charge that the company is using strong-arm legal tactics to stymie competition, shore up its bottom line, and intimidate employees who might contemplate jumping ship to build a better mousetrap. Brunt disagrees, pointing out that Alcatel sues less than one percent of employees who leave.

"We don't bring cases unless there's a

clear theft," he says. Though Alcatel's legal team has lost a few preliminary hearings, it has yet to lose at trial under Brunt's aegis and usually ends up with a large settlement before a case even gets that far.

But little is clear in Evan Brown's case. What he allegedly stole from his former employer was an intangible thought. He never wrote anything on paper, and court-approved searches of his house and hard drives turned up no scraps suggesting this brainchild was ever born. Yet Alcatel is demanding custody.

IN EUROPE, ALCATEL'S ORANGE triangle is as ubiquitous as a little bell in a circle here. Its business has become telecom infrastructure almost exclusively—building, running, and maintaining networks that transport

chunks of information through the Internet, phone lines, digital subscriber lines, fiber optics, and satellite beams. In 1996, Alcatel launched a concerted effort to expand its presence in the United States. Now, after \$17 billion worth of acquisitions, U.S. sales have increased from \$500 million five years ago to \$6.6 billion, and Alcatel's information pathways are spreading across America like St. Augustine in a cul de sac.

Alcatel is snapping together the latest additions to its U.S. headquarters along Plano Parkway, where super-sized slabs of concrete dangle from multiple cranes. On the surface, security is tight at the compound, but not much more so than any other corporation with cameras in its parking lots and door locks that read employees' plastic ID badges.

Of course, Alcatel's concern isn't really pilfered fiber and chipboards. The highest-dollar treasures are the plans for upcoming innovations. And that's why its employees must sign a contract acknowledging that all

inventions developed in the course of their duties belong to the company.

When Plano-based Chiaro Networks opened for business in November 2000, they were hit with an Alcatel suit that same day. Nearly a third of Chiaro's start-up staff came from Alcatel, including a senior vice president and the chief technology officer. Alcatel sought a federal court injunction to halt operations at Chiaro, which was developing a new optical router, and to prevent them from hiring any other Alcatel employees. But the judge denied Alcatel's request, in part because Alcatel couldn't define what Chiaro's executives allegedly stole.

Alcatel filed a similar suit against Monterey Networks in August 1999, just days after telecom giant Cisco, one of Alcatel's chief competitors, announced plans to buy Monterey for \$500 million. Monterey, like Chiaro, was trying to develop an optical router, which most tech firms believe is the future of high-speed data transfer, and several top brass were Alcatel alums. In fact, Brunt would argue that these companies have stolen Alcatel's entire optical routing team, and for that reason have cheated Alcatel out of potentially billions of dollars. "In many of these cases, [companies] have stolen whole teams from us. So even if we get a huge verdict, we're getting back only some of what was stolen," says Brunt, explaining that a half-billion-dollar ruling is a small, one-time token of what Alcatel would have been able to generate had the competitor not vaporized Alcatel's potential for an ongoing revenue stream from a certain product.

While Alcatel's lawsuits draw on elements of copyright, contract, and patent law, the primary issue the courts must decide is "inevitable disclosure," the notion that certain employees, if they go to work for a potential competitor in a similar department, will inevitably reveal trade secrets. Several legal experts expect this issue—weighing the rights of a company to protect its intellectual property against the rights of an employee to move freely from job to job in a right-to-work state—to ultimately be settled in the Texas Supreme Court.

After the federal motion against Chiaro failed, Brunt pushed for a second suit in January, this time in state court. The one-two punch was hardly surprising for those who say Alcatel hits new enterprises with costly

litigation as soon as they pop up. But what made the state court lawsuit different from other intellectual property cases was a new batch of defendants: venture capitalists.

Alcatel is claiming that Dallas-based Centerpoint Ventures not only financed a dirty deal, but also encouraged Alcatel employees to commit fraud. "We consider [the suit] frivolous," says Bob Paluck, Centerpoint's managing general partner. "Alcatel's focus is on litigation, not innovation. They'll sue anybody. We don't have this problem with anyone else."

ALCATEL, WHICH GOT ITS START PEDdling electricity more than 100 years ago, hasn't always been so litigious. It was only after setting up homestead on the Silicon Prairie that the French company began slinging its legal guns.

"Alcatel's focus is on litigation, not innovation," says Centerpoint's Paluck. "They'll sue anybody."

Evan Brown wasn't even working for Alcatel when he came up with The Solution. His employer was Plano-based DSC Communications. He asked DSC to release him from a contract so he could start his own venture. DSC refused and instead offered him up to \$2 million of any money he saved DSC customers, along with 50 percent of the profits from third-party sales. Brown countered with a \$5 million, 50-percent offer. He believed he and DSC were nearing a deal when he took off to Paris for a week of vacation in April 1997. When he returned, he was fired and served with a lawsuit claiming DSC owned his idea.

DSC reminded Brown of a contract that he signed in 1987, promising to disclose any inventions related to his job as a software designer. Brown contended that he had begun work (in his head) on this 11 years before even joining DSC; that his job had nothing to do with software reverse engineering, which was the foundation of his idea; and that he never used DSC equipment or time to develop it. Furthermore, it was just an idea, not an invention.

But DSC's position was that he worked in the software-tools group, and this was a software tool. And they believed that while in France, he was breaching his employment contract by trying to sell the idea to a competitor: Paris-based Alcatel.

Brown vehemently denies the charge. But DSC claims otherwise because they had been engaged in buyout talks with Alcatel, which announced its plans to

Who's helping you grow your business?



Cheshier & Fuller, L.L.P.

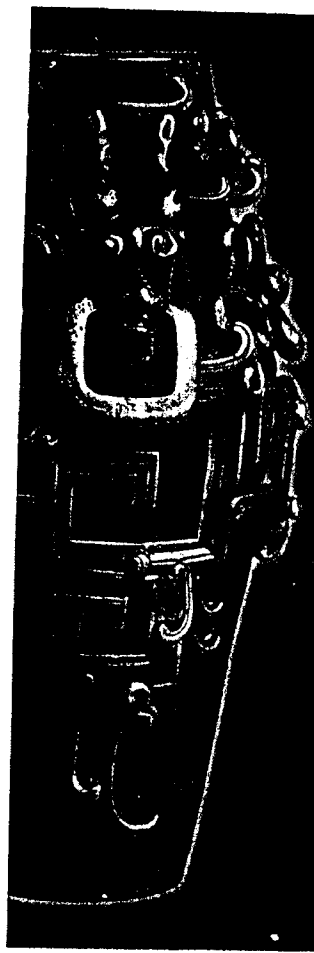
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

14175 Proton Rd.

Dallas, TX 75244-3044

(972)387-4300 Fax: (972)960-2810

E-mail: cflfp@cheshier-fuller.com



In the Shadow of Dragons

The Robert Kresko Collection of Later Chinese Bronzes

Exhibition Dates:
March 7th through September 9th, 2001

THE TRAMMELL & MARGARET
CROW COLLECTION
of
ASIAN ART

2010 Flora Street • Dallas, Texas • 75201
voice: 214.979.6430 • fax: 214.979.6439
www.crowcollection.com

Closed Mon. • Open Tues. - Sun. 11-6 • Thur. 11-9

Classical
101
www.101.com

MAKE YOUR PHONES A BUSINESS ADVANTAGE



Once you see everything this phone system offers small and midsize businesses, you'll start believing that the NBX[®] 100 Communications System from 3Com is the affordable way to get powerful, easy-to-use features that enhance communication and bring you closer to customers.

In doing so, the NBX 100 transforms your phone system from a business expense to a business advantage.

Talk to the pros at Cross/Talk and they'll show you how the NBX 100 can change the way you run your business.

3COM

ETHERNET PHONE SYSTEM
MULTI-SITE OVER WAN
IP ON THE FLY
UNIFIED MESSAGING
VOICE MAIL BUILT IN

Cross/Talk
communications

Anyone can sell you a phone system,
only Cross/Talk will design a solution.

214-528-4447
www.cross-talk.com

© 2001 Cross/Talk Communications. All rights reserved. 3Com and NBX are registered trademarks and the 3Com logo is a trademark of 3Com Corporation. All specifications subject to change without notice.

Street Talk

absorb DSC just weeks after Brown's return to the United States.

DSC's general counsel at the time was none other than George Brunt, who would assume the same position at Alcatel after the acquisition was finalized in April 1998. At DSC Brunt developed his reputation for being hawkish about intellectual property and for turning a corporate legal department into a company profit center. Conservative estimates say Brunt generated at least \$2 billion during his DSC tenure. Total settlements in 1997, for example, were at least \$161.5 million—enough to bring the company back into the black after a loss in 1996. He won't reveal the numbers since joining Alcatel, and most of the trade-secret settlements have been sealed. But they are huge. Alcatel dropped a \$1.2 billion intellectual property suit against Samsung last year, for example, for a settlement that was likely nine figures.

EVAN BROWN DID EVENTUALLY REVEAL his idea, but only after the court refused to let the case proceed without the disclosure. "I was in a Catch-22," he says. "If I didn't do it, I'd get a default judgment against me and I would lose the ability to make a living off the only thing I had left: my idea."

So from June to September of last year, Brown drove 160 miles each workday to Alcatel's headquarters, where he churned out 400 pages of computer code without pay. Alcatel representatives, however, said they couldn't get the program to work, and Brown must be holding something back. Brown insists he gave up everything and has proved that his idea works. But for now the judge has sided with Alcatel, awarding the telecom firm 20 percent ownership of The Solution as a default judgment in December.

Both sides believe a settlement is unlikely, so the case will probably go to trial by the end of this year. If that happens, a jury will decide not only if Alcatel is entitled to any future revenues The Solution may generate, but also if a person's synapse firings constitute an employer's intellectual property. Brown says the notion is absurd: "They want to claim part of my brain!"

Whether or not that is true, or at least an acceptable business practice, will be left to the courts to decide. So far they have sided with Alcatel. "We're not going to let society erode," says Brunt. "We have to make sure some people respect intellectual property [or] we're going to see the total breakdown of our economy." ■

Dan Michalski is a frequent contributor to D.