

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

199TH JUDICIAL DISTRICT

**EMERGENCY MOTION TO FOR LEAVE TO DESIGNATE
ADDITIONAL MEMBERS OF THE DSC DEVELOPMENT TEAM**

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this its Motion for Leave to Designate Additional Members of the DSC Development Team and would respectfully show the following:

I.

Background Facts

1. On May 2, 1997, the Court heard DSC's Application for Temporary Injunction. Following this hearing, the Court orally entered a Temporary Injunction in favor of DSC in which required, *inter alia*, that DSC designate a team of no more ten (10) persons to whom the Solution will be disclosed.

2. Thereafter, on May 12, 1997, counsel for DSC designated the following six (6) persons as members of the DSC Development Team, to whom the disclosure of the Solution would be made:

- a. Rick Billings
- b. Mike McCarty

- c. Jianbai Wang
- d. Dan McMurray
- e. Wayne Jones, Esq.
- f. Cheryl Sanders

The first four persons designated are technical employees of DSC; the last two people designated are an attorney from the office of DSC's General Counsel and his secretary. A true and correct copy of the May 12, 1997 letter through which this designation was made (the "DSC Letter") is attached hereto as Exhibit "A" to this Motion.

3. In addition to designating six (6) persons to be members of the DSC Development Team, DSC also reserved the right to add additional persons to this team, subject to the Court's restriction that no more than ten persons be allowed to hear the disclosure. Specifically, DSC stated as follows in the DSC Letter:

DSC reserves the right to designate additional persons to be members of the DSC Development Team, subject to the Court's limitation that the DSC Development Team not exceed ten (10) persons. Specifically, DSC anticipates designating outside patent counsel to be members of the DSC Development Team, once said counsel is identified and engaged for this purpose.

(Exhibit "A") (emphasis added).

4. The Court received a copy of the DSC Letter on May 13, 1997, as evidenced by the certified mail receipt, a true and correct copy of which is attached hereto as Exhibit "B." In addition, counsel for Brown received a copy of the DSC letter via facsimile on May 12, 1997, as evidenced by the facsimile confirmation sheet, a true and correct copy of which is attached hereto as Exhibit "C".

5. Following the mailing of the DSC Letter, the Court entered the written Temporary Injunction Order (the "Order"). The Order specifically provides as follows:

"DSC shall, by May 12, 1997, select a development team comprised of no more than ten (10) persons, whose members shall be selected by DSC in its sole discretion (the "DSC Development Team"). The members of the DSC Development Team shall be identified to the Court by May 13, 1997, and they shall be bound by the Confidentiality provisions set forth in this Order."

6. Thereafter, on May 15, 1997, DSC attempted to designate one (1) additional person -- Mr. Steve Levine, Esq. -- to be a member of the DSC Development Team. A true and correct copy of the letter attempting to designate an additional member of the DSC Development Team is attached hereto as Exhibit "D". At a telephone hearing with the Court on the afternoon of May 15, 1997, the Court directed DSC to file a Motion if it desired the DSC Development Team to include anyone other than the six (6) people designated in the DSC Letter.

7. DSC requests that the Court modify the Temporary Injunction Order to allow DSC to designate the following three (3) additional persons to be members of the DSC Development Team:

- a. Mr. Steve Levine. Mr. Levine is an attorney licensed to practice law in the State of Texas (State Bar No. 12258100), and is also a registered attorney with the United States Patent Office (No. 33-413);
- b. Ms. Tina Young. Ms. Young is a Certified Shorthand Reporter certified by the State of Texas (No. 2595); and
- c. Mr. Billy Gonzalez. Mr. Gonzalez is a Certified Legal Video Specialist, certified by the National Court Reporter's Association.

These persons would be bound by the confidentiality restrictions set forth in the Temporary Injunction Order, to the same extent as the existing members of this Team. Moreover, the inclusion

of these three (3) persons would make the total DSC Development Team nine (9) persons, within the Order's requirement that no more than ten (10) persons receive the disclosure.

II.

Discussion

DSC moves for leave to designate three (3) additional persons to be members of the DSC Development Team, subject to the same restrictions concerning confidentiality and use of the Solution that apply to the existing members of the DSC Development Team. Granting leave to allow DSC to designate these three (3) additional persons will assist DSC to protect the Solution in a manner consistent with the Order, and will *enhance* the existing protections already provided to Mr. Brown under the Order.

The first person DSC seeks to add to the DSC Development Team is Mr. Steve Levine, a patent attorney licensed with the State of Texas and registered with the United States Patent Office. The Order specifically provides that the "DSC Development Team shall evaluate the Solution and have the option as it deems necessary to take any appropriate efforts to protect the Solution, including the filing of patent applications in the United States and in foreign countries, if appropriate." *See* Order at p. 3. In order to be in a position to take efforts to protect the Solution, such as through the filing of a patent, DSC needs outside patent counsel to be able to have access to the Solutions as a member of the DSC Development Team.

DSC recognized the need to have patent counsel participate in the DSC Development Team at the time it made its initial designation, stating that it reserved the right to designate additional persons to be members of the DSC Development Team, and specifically stating that it anticipated designating outside patent counsel to be members of the DSC Development Team. *See* Exhibit "A".

The sole reason such patent counsel was not designated at the time of the Order is that DSC had been unable to retain such counsel at that time. Retaining counsel was problematic not only due to the highly specialized field involved (*i.e.*, a patent attorney with expertise in this area), and but also because DSC needed to find counsel with the ability to devote literally *all of his time* in the next few weeks to this matter.^{1/} See Brown's Motion for Stay of the Temporary Injunction Order, ¶ 9 ("It will take Brown approximately one month to fully document his algorithm.") (a true and correct copy of this motion, without exhibits, is attached as Exhibit "E").

The remaining two individuals DSC seeks to add to the DSC Development Team are Ms. Young (a Certified Shorthand Reporter) and Mr. Gonzales (a Certified Legal Video Specialist). The Order provides that "The DSC Development Team shall maintain accurate records of its technical work concerning the Solution." See Order. In an effort to comply with this requirement, DSC would like to use a Certified Court Reporter and Certified Legal Video Specialist to make an exact record of the Solution and its disclosure. Such an exact record of the Solution and its disclosure is a benefit to both parties in that it ensures that no statements are incorrectly remembered or attributed to the other party during the course of this lawsuit.

Moreover, because Brown's disclosure of the Solution has already begun, DSC respectfully requests that the Court hear this Motion on an expedited basis and on less than three (3) days notice to Defendant.

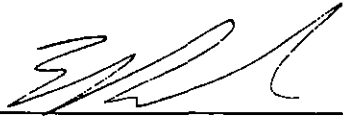
^{1/} Unlike many legal projects, where the senior attorney can assign portions of the case to other attorneys in his firm, the terms of the Temporary Injunction Order clearly make impossible such delegation.

WHEREFORE, PREMISES CONSIDERED, DSC moves the Court to modify the Temporary Injunction Order to allow DSC to designate Mr. Levine, Ms. Young and Mr. Gonzales as additional member of the DSC Development Team.

Respectfully submitted,

LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.

By: _____

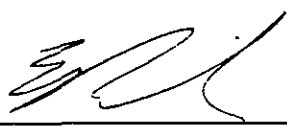

Michael P. Lynn, P.C.
Texas Bar No. 12738500
Eric W. Pinker
Texas Bar No. 16016550
John T. Cox III
Georgia Bar No. 192530

750 North St. Paul Street
Suite 1400
Dallas, Texas 75201
(214) 981-3800 - Telephone
(214) 981-3839 - Telecopy

**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he attempted to resolve the subject matter of Plaintiff's Emergency Motion for Leave to Designate Additional Members of the DSC Development Team with counsel for Defendant, but that no agreement could be reached. This Motion is therefore submitted to the Court for disposition.



Eric W. Pinker

FIAT

The above Emergency Motion for Leave to Designate Additional Members of the DSC Development Team is set for hearing in the 199th District Court on the 9 day of May, 1997 at 9am o'clock a.m.

_____/s/_____
JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served, via hand delivery or certified mail, return receipt requested, upon all counsel of record, as identified below, on this the 16th day of May, 1997:

Via Hand Delivery

Steven E. Aldous, Esq.
Eric D. Pearson, Esq.
Sayles & Lidji, P.C.
1201 Elm Street, Suite 4400
Dallas, Texas 75270

CM. RRR NO. P 125 920 288

Dale Drake, Esq.
110 East Davis, Suite 200
Post Office Box 1662
McKinney, Texas 75070-1662



Eric W. Pinker

LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.
ATTORNEYS AND COUNSELORS

DIRECT DIAL NUMBER:
(214) 981-3837

ERIC W. PINKER

750 NORTH ST. PAUL STREET
SUITE 1400
DALLAS, TEXAS 75201
(214) 981-3800

OF COUNSEL
ROBERT E. GOODFRIEND, P.C.

TELECOPIER: (214) 981-3839

May 12, 1997

CM. RRR NO. P 125 920 280

Hon. John R. Roach
Collin County Courthouse
210 South McDonald Street
McKinney, Texas 75069

Re: Cause No. 199-00596-97
DSC Communications Corporation v. Evan Brown

Dear Judge Roach:

Pursuant to the Court's ruling on Friday, May 2, 1997, DSC hereby designates the following persons as members of the DSC Development Team for the purpose of receiving a full and complete disclosure of the Solution, and subsequently evaluating and taking the necessary steps to preserve and protect the Solution:

1. Rick Billings
2. Mike McCarty
3. Jianbai Wang
4. Dan McMurray
5. Wayne Jones, Esq.
6. Cheryl Sanders

DSC reserves the right to designate additional persons to be members of the DSC Development Team, subject to the Court's limitation that the DSC Development Team not exceed ten (10) persons. Specifically, DSC anticipates designating outside patent counsel to be members of the DSC Development Team, once said counsel is identified and engaged for this purpose.



Hon. John R. Roach
May 12, 1997
Page 2

If I can be of any further assistance in this matter, or if the Court prefers that this designation be made in an alternate manner, please let me know.

Very truly yours,



Eric W. Pinker

EWP:rkp

cc: Via Telecopy: (214) 939-8787
Steven E. Aldous, Esq.
Eric D. Pearson, Esq.
Sayles & Lidji, P.C.
1201 Elm Street, Suite 4400
Dallas, Texas 75270

Via Telecopy: (972) 548-8046
Dale Drake, Esq.
110 East Davis Street, Suite 200
Post Office Box 1662
McKinney, Texas 75070-1662

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Brown*

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Receipt for Certified Mail
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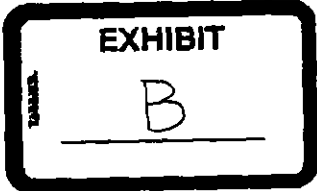
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<p>SENDER:</p> <ul style="list-style-type: none"> Complete items 1 and/or 2 for additional services. Complete items 3, 4a, and 4b. Print your name and address on the reverse of this form so that we can return this card to you. Attach this form to the front of the mailpiece, or on the back if space does not permit. Write "Return Receipt Requested" on the mailpiece below the article number. The Return Receipt will show to whom the article was delivered and the date delivered. 		<p>I also wish to receive the following services (for an extra fee):</p> <p>1. <input type="checkbox"/> Addressee's Address</p> <p>2. <input checked="" type="checkbox"/> Restricted Delivery</p> <p>Consult postmaster for fee.</p>	
<p>3. Article Addressed to:</p> <p>Hon. John R. Roach Collin County Courthouse 210 South McDonald Street McKinney, Texas 75069</p>		<p>4a. Article Number NO. P 125 920 280</p>	
<p>5. Received By: (Print Name)</p> <p><i>[Signature]</i></p>		<p>4b. Service Type</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Insured</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD</p>	
<p>6. Signatures: (Addressee or Agent)</p> <p><i>[Signature]</i></p>		<p>7. Date of Delivery <i>5/13/97</i></p>	
<p>PS Form 3811, December 1994</p>		<p>8. Addressee's Address (Only if requested and fee is paid)</p>	
<p>Domestic Return Receipt</p>			

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 E-4) NO FACSIMILE CONNECTION

**LYNN
 STODGHILL
 MELSHEIMER &
 TILLOTSON
 L.L.P.**

**ATTORNEYS AND COUNSELORS
 750 NORTH ST. PAUL STREET
 SUITE 1400
 DALLAS, TEXAS 75201
 TELEPHONE (214) 981-3800
 TELECOPY (214) 981-3839**

TELECOPIER TRANSMISSION SHEET

Date: May 12, 1997

To: Steven E. Aldous, Esq. (214) 939-8787
 Dale Drake, Esq. (972) 548-8046

From: Eric W. Pinker, Esq.

Client No.: 01256-703; *DSC v. Brown*

LYNN STODGHILL MELSHEIMER & TILLOTSON, L.L.P.
ATTORNEYS AND COUNSELORS

DIRECT DIAL NUMBER:
(214) 981-3837

750 NORTH ST. PAUL STREET
SUITE 1400
DALLAS, TEXAS 75201
(214) 981-3800

OF COUNSEL
ROBERT E. GOODFRIEND, P.C.

ERIC W. PINKER

TELECOPIER: (214) 981-3839

May 15, 1997

VIA HAND DELIVERY

Hon. John R. Roach
Collin County Courthouse
210 South McDonald Street
McKinney, Texas 75069

Re: Cause No. 199-00596-97
DSC Communications Corporation v. Evan Brown

Dear Judge Roach:

Pursuant to the Temporary Injunction Order, DSC hereby designates **Mr. Steve Levine** as an additional member of the DSC Development Team for the purpose of receiving a full and complete disclosure of the Solution, and subsequently evaluating and taking the necessary steps to preserve and protect the Solution.

As the addition of Mr. Levine brings the DSC Development Team to seven (7) people, DSC reserves the right to designate additional persons to be members of the DSC Development Team, subject to the Court's limitation that the DSC Development Team not exceed ten (10) persons.

If I can be of any further assistance in this matter, or if the Court prefers that this designation be made in an alternate manner, please let me know.

Very truly yours,



Eric W. Pinker

EWP:rkp

cc: Via Telecopy: (214) 939-8787
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Dallas, Texas 75270



Hon. John R. Roach
May 15, 1997
Page 2

Via Telecopy: (972) 548-8046
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110 East Davis Street, Suite 200
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McKinney, Texas 75070-1662

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**LYNN
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 TILLOTSON
 L.L.P.**

**ATTORNEYS AND COUNSELORS
 750 NORTH ST. PAUL STREET
 SUITE 1400
 DALLAS, TEXAS 75201
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Total Number of Pages, Including Cover Sheet: 3

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REASON FOR ERROR

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LYNN
STODGHILL
MELSHEIMER &
TILLOTSON
L.L.P.

ATTORNEYS AND COUNSELORS
750 NORTH ST. PAUL STREET
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DALLAS, TEXAS 75201
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TELECOPY (214) 981-3839

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Total Number of Pages, Including Cover Sheet: 3

NO. _____

IN THE COURT OF APPEALS
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AT DALLAS

EVAN BROWN,

Appellant,

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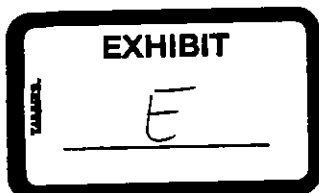
DSC COMMUNICATIONS CORPORATION, INC.,

Appellee.

**APPELLANT'S MOTION PURSUANT TO TEX. R. APP. P. 43(c) FOR STAY OF
TEMPORARY INJUNCTION ORDER PENDING APPEAL
(EMERGENCY RELIEF SOUGHT)**

Steven E. Aldous
State Bar No. 00982100
Eric D. Pearson
State Bar No. 15690472
Sayles & Lidji, P.C.
4400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
(214) 939-8700
Fax: (214) 939-8787

Attorneys for Appellant Evan Brown



NO. _____

IN THE COURT OF APPEALS
FOR THE FIFTH DISTRICT OF TEXAS
AT DALLAS

EVAN BROWN,

Appellant.

v.

DSC COMMUNICATIONS CORPORATION, INC.,

Appellee.

**APPELLANT'S MOTION PURSUANT TO TEX. R. APP. P. 43(c) FOR STAY OF
TEMPORARY INJUNCTION ORDER PENDING APPEAL
(EMERGENCY RELIEF SOUGHT)**

TO THE HONORABLE COURT OF APPEALS:

Evan Brown, Appellant in this Court and Defendant in the Trial Court, files this motion pursuant to Tex. R. App. P. 43(c), for an order staying the trial court's Temporary Injunction Order pending appeal of that order. This motion must be considered and ruled upon prior to 9:00 a.m. May 15, 1997.

PRELIMINARY STATEMENT

Brown was sued by his former employer, Appellee DSC Communications Corporation ("DSC"), on April 24, 1997. DSC claims that it is legally entitled to force Brown to disclose to DSC an idea or "solution" which is in Brown's mind. On May 2, 1997, the trial court orally granted

DSC's application for a preliminary injunction which the trial court reduced to writing on May 13, 1997 (a Certified Copy of the "Temporary Injunction Order" is attached to the Affidavit of Steven E. Aldous as Exhibit 1). In addition to restraining Brown from taking any action to develop or market the idea, the trial court's order requires Brown to "disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order." The order also permits DSC to "take any appropriate efforts to protect the Solution, including the filing of patent applications in the United States and in foreign countries, if appropriate." Brown must begin this disclosure on May 15, 1997. Brown has perfected his appeal of the trial court's order. (Certified copies of Brown's Notice of Filing Cash Deposit in Lieu of Cost Bond and Certificate of Clerk as to Cash Deposit in Lieu of Cost Bond are attached to the Affidavit of Steven E. Aldous as Exhibits 2 and 3, respectively). Brown filed a Motion for Supersedeas Bond with the trial court on May 9, 1997, which was denied on May 13, 1997. (Certified copies of the motion and order are attached to the Affidavit of Steven E. Aldous as Exhibits 4 and 5, respectively.)

This Court must stay the portion of the trial court's injunction which requires Brown to disclose the solution to DSC and permits DSC to take actions related to the "solution", including filing an application for a patent, or the subject matter of Brown's appeal will be removed from this Court's jurisdiction before the appeal can be considered. Rule 43(c) of the Texas Rules of Appellate Procedure gives this Court the power to enter temporary orders to preserve its jurisdiction over the subject matter of a pending appeal. Such action is required in this case.

FACTS

1. Brown was an employee of DSC until he was terminated on April 21, 1997. Brown began working for DSC ten years earlier on April 21, 1987. After one week of employment, DSC

told Brown to sign an Employee Patent, Copyright and Proprietary Information Agreement (the "Agreement"). Brown did as he was instructed and signed the agreement on April 27, 1987.

2. Prior to his employment at DSC, Brown began mentally developing an algorithm for a software program that would convert machine executable binary code into a high level source code using logic and data abstractions. His idea essentially amounts to a computer program which would reverse engineer a computer program from its machine language to a source code of any type. Prior to going to work at DSC, Brown had a mental image of 80% of the ultimate solution.

3. In March 1996, Brown mentally pictured the remaining 20% of the algorithm while he was in his car coming home from a long weekend. In April 1996, Brown sought a release from DSC to pursue a patent on his idea. After several months of no response from DSC to Brown's request, Brown inquired of several managers at DSC as to whether DSC would be interested in engaging him to develop the idea. DSC and Brown began negotiating an agreement whereby DSC would pay Brown a percentage of savings realized by the company if the idea were successful and a percentage of income from third party sales. In early 1997, DSC abruptly discontinued negotiations with Brown. When Brown refused to reveal his idea, DSC abruptly fired him and initiated this lawsuit.

4. On April 24, 1997, DSC sued Brown in the 199th Judicial District Court of Collin County, Texas. By its suit, DSC seeks preliminary and permanent injunctive relief prohibiting Brown from taking any action with respect to his idea and a mandatory injunction requiring him to "disclose the Solution, in its entirety, to DSC." DSC also seeks monetary damages and attorney's fees. The sole legal basis asserted by DSC in its petition is breach of contract relating to the

Agreement. (A certified copy of DSC's Original Petition is attached to the Affidavit of Steven E. Aldous as Exhibit 6.)

5. DSC obtained a temporary restraining order on April 24, 1997, on all of the prohibitory requirements, but the trial court refused to force Brown to disclose the idea to DSC. (Temporary Restraining Order attached to the Affidavit of Steven E. Aldous as Exhibit 7). On April 28, 1997, the trial court entered an amended temporary restraining order which purportedly required Brown to disclose his idea to DSC. (Amended Temporary Restraining Order attached to the Affidavit of Steven E. Aldous as Exhibit 8).

6. Brown was served with process and the temporary restraining orders by substituted service on April 29, 1997. The trial court held a hearing on Brown's oral motion for protective order on April 30, 1997. The trial court ruled that Brown's deposition could be taken on the following day, but he could not be asked at that time to reveal the idea to DSC. The trial court informed the parties that it would hold a hearing on DSC's request for a preliminary injunction on May 2, 1997, at which time it would determine if Brown would be forced to disclose the idea to DSC.

7. On May 2, 1997, the trial court held an evidentiary hearing on DSC's request for a preliminary injunction. During the hearing, counsel for Brown agreed to a preliminary injunction prohibiting Brown from disclosing or making any use of his idea, but refused to agree to a mandatory injunction requiring Brown to disclose the idea to DSC prior to final trial.

8. After hearing the evidence, the trial court entered its preliminary injunction in favor of DSC. The trial court's order requires Brown to "disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order." The order requires Brown to disclose his idea to a ten person team of DSC employees, beginning May 14, 1997, so that the team

can "evaluate the Solution and have the option as it deems necessary to take any appropriate efforts to protect the Solution, including the filing of patent applications in the United States and in foreign countries, if appropriate."

9. Brown has not revealed the substance of his idea to anyone. Brown's idea, the algorithm, has never been reduced to written or tangible form. In order for Brown to convey the idea, he will need to write out the algorithm that exists only in his mind. It will take Brown approximately one month to fully document his algorithm.

10. As previously related, Brown has perfected his appeal from the Temporary Injunction Order. Brown requested that the court reporter prepare the statement of facts and the clerk prepare the transcript. (Attached to the Affidavit of Steven E. Aldous as Exhibits 9 and 10, respectively). Brown intends to prosecute an appeal of the portion of the trial court's order requiring Brown to disclose his idea to DSC and permitting DSC to evaluate and attempt to "protect" the idea by filing patent applications.

ARGUMENT

This Court's future ruling on the merits of Brown's appeal will have no meaning unless the trial court's ruling forcing Brown to disclose his idea to DSC is stayed pending this appeal. This Court has broad discretion to enter any temporary orders it deems necessary to protect its jurisdiction. *See, e.g., Corpus Christi Caller-Times v. Mancias*, 794 S.W.2d 852, 855 (Tex. App.--Corpus Christi 1990, mand. motion overr.); *Lamar Builders, Inc. v. Guardian Savings & Loan Assoc.*, 786 S.W.2d 789, 790-91 (Tex. App.--Houston [1st Dist.] 1990; no writ); *Elizondo v. Williams*, 643 S.W.2d 765, 767 (Tex. App.--San Antonio 1982, no writ); *Reyes v. Atkins*, 619 S.W.2d 26, 27 (Tex. Civ. App.--Fort Worth 1981, no writ); *Irving Bank & Trust Co. v. Second Land*

Corp., 544 S.W.2d 684, 689 (Tex. Civ. App.--Dallas 1976, writ ref'd n.r.e.); *Padgett v. Mutual Building & Loan Association*, 504 S.W.2d 535, 538 (Tex. Civ. App.--Fort Worth 1971, no writ). The only means by which this Court can protect its jurisdiction is by enjoining the trial court's Temporary Injunction Order until such time as this Court has considered the merits of Brown's appeal and issued its ruling.

Further, if this Court refuses to stay the trial court's order, Brown will have lost a valuable right which can never be recovered. The trial court's order permits DSC to file patent applications relating to Brown's idea. Once the idea is submitted for patent, it will eventually revert to the public. *See United States v. Dubilier Condenser Corp.*, 289 U.S. 178, 186 (1933). However the choice to patent an idea, or protect it by some other method, is the choice of the inventor. As the Supreme Court put it: "He may keep his invention secret and reap its fruits indefinitely. In consideration of its disclosure and the consequent benefit to the community, the patent is granted. An exclusive enjoyment is guaranteed him . . . but, upon the expiration of that period, the knowledge of the invention inures to the people . . ." *Id.* at 186-187. The trial court's order deprives Brown of this choice. Even if he were to prevail on his appeal to this Court or at final hearing, Brown will have forever lost his right to protect his idea in the manner he deems appropriate.

CONCLUSION

The trial court's Temporary Injunction Order requiring Brown to disclose the idea or solution must be stayed by this Court pending appeal of the order or any relief in Brown's favor will be a nullity. Pursuant to Tex. R. App. P. 43(c), this Court can and should issue an order staying the implementation of that portion of the trial court's order requiring disclosure to protect its jurisdiction over the pending appeal.

Respectfully submitted.

SAYLES & LIDJI, P.C.

By: 

Steven E. Aldous

State Bar No. 00982100

Eric D. Pearson

State Bar no. 15690472

1201 Elm Street

4400 Renaissance Tower

Dallas, Texas 75270

(214) 939-8700

(214) 939-8787 (fax)

**ATTORNEYS FOR APPELLANT
EVAN BROWN**

STATE OF TEXAS

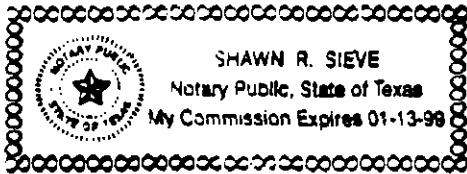
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COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Evan Garland Brown, who being duly sworn by me, upon his oath stated that the facts recited in paragraphs 2 through 9 in Appellant's Motion Pursuant to Tex. R. App. P. 43(c) for Stay of Temporary Injunction Order Pending Appeal are true and correct.

[Handwritten signature]

SUBSCRIBED AND SWORN TO BEFORE ME on this the 13th day of May, 1997, to certify which witness my hand and official seal of office.



Shawn R. Sieve
Notary Public in and for
the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon the persons listed below via certified mail, return receipt requested, on this 13 day of May, 1997:

Eric W. Pinker, Esq.
Lynn Stodghill Melsheimer & Tillotson, L.L.P.
750 N. St. Paul Street
Suite 1400
Dallas, Texas 75201

[Handwritten signature]
STEVEN E. ALDOUS