

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

DEFENDANT EVAN BROWN'S RESPONSE TO DSC'S MOTION TO COMPEL INTERROGATORY RESPONSES

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Evan Brown ("Brown") files this Response to DSC's Motion to Compel Interrogatory Responses and would respectfully show the Court as follows:

FACTUAL BACKGROUND.

On April 24, 1997, DSC sued Evan Brown, its former employee, in the 199th Judicial District Court of Collin County, Texas. DSC contends that it owns an idea in Evan Brown's mind (often referred to as the "Solution") which, if it works, will allow the user of a software program to convert machine executable binary code into a high-level source code using logic and data abstractions. In its lawsuit, DSC sought preliminary and permanent injunctive relief prohibiting Brown from taking any action with respect to his idea, a mandatory injunction requiring him to "disclose the Solution, in its entirety, to DSC" and an order permitting DSC to patent the idea. The Trial Court (Judge Roach) granted DSC its requested relief, entering a Temporary Injunction Order which required Brown to disclose his idea to DSC and allows DSC to patent the idea. On May 21,

FILED
MAY 21 1997
CLERK OF DISTRICT COURT
COLLIN COUNTY, TEXAS

FILED
MAY 21 1997
CLERK OF DISTRICT COURT
COLLIN COUNTY, TEXAS
[Handwritten Signature]

1997, the Court of Appeals denied DSC's motion to hold Brown in contempt for allegedly violating the mandatory disclosure portion of the injunction issued by Judge Roach.

On June 27, this Court entered a Temporary Restraining Order and set DSC's application for a temporary injunction for hearing on June 30, 1997. Following the hearing on June 30, the Court issued a new temporary injunction which again ordered Brown to disclose his idea to DSC. Brown promptly filed an appeal with the Court of Appeals. That appeal is still pending. Some 15 days after Brown refused to begin disclosure of the idea as called for by the June 30 injunction, DSC filed an Emergency Motion to Enforce Temporary Injunction and for Contempt. For the second time, the Court of Appeals refused to enforce the mandatory disclosure provisions of the injunction. Instead, it entered an order on July 18, 1997 denying DSC's motion for contempt.

In its instant Motion, DSC attempts to relitigate this issue by asking this Court to compel Brown to disclose his idea in response to an Interrogatory propounded by DSC. DSC's Motion is simply a transparent attempt to avoid the two previous rulings by the Court of Appeals refusing to require Brown to disclose his idea to DSC prior to a trial on the merits. Ordering Brown to disclose the idea while the injunction ordering disclosure is on appeal would violate Rule 43(d) of the Texas Rules of Appellate Procedure and would impair the effectiveness of any relief Brown could achieve through the appeal. This Court should deny DSC's Motion for this reason alone. In addition, the Court should deny DSC's Motion because non-disclosure is the law of the case given the previous rulings by the Court of Appeals. Finally, the Court should deny DSC's Motion because the Interrogatory at issue seeks disclosure of a privileged trade secret and is unduly burdensome.

ARGUMENT AND AUTHORITIES

I. **The Order sought by DSC would violate Texas Rule of Appellate Procedure 43(d).**

The June 30, 1997 injunction issued by this Court ordered Brown to disclose his idea to DSC. Brown respectfully refused to adhere to that portion of the injunction and immediately appealed the injunction to the Fifth District Court of Appeals. That appeal is still pending. The Interrogatory which DSC seeks to compel Brown to answer similarly asks for Brown to “identify and describe in detail the ‘method of converting machine executable binary code into high level source code form using logic and data abstractions’ (hereinafter ‘Solution’).” Any order by this Court compelling Brown to disclose his idea in response to DSC’s interrogatories would violate Rule 43(d) of the Texas Rules of Appellate Procedure. Rule 43(d) states as follows:

Pending an appeal from an interlocutory order, the trial court retains jurisdiction of the cause and may issue further orders, including dissolution of the order appealed from, but the court shall make no order granting substantially the same relief as that granted by the order appealed from, or any order contrary to the temporary orders of the appellate court, or any order that would interfere with or impair the effectiveness of any relief sought or granted on appeal. The trial court may proceed with a trial on the merits, except as provided in subdivision (a).

Tex. R. App. P. 43(d)(emphasis added).

The purpose of Rule 43(d) is to “delineate the trial court’s jurisdiction to issue further orders.” *Pierce Mortuary Colleges, Inc. v. Bjerke*, 841 S.W.2d 878, 881 (Tex. App.--Dallas 1992, no writ). The Rule prohibits the trial court from entering any order which grants substantially the same relief as that appealed from. *See, e.g., Hopper v. Safeguard Business Systems*, 787 S.W.2d 624, 627 (Tex. App.--San Antonio 1990, no writ)(amended temporary injunction order entered by trial court when original injunction was on appeal was invalid under TRAP 43(d) because it granted

substantially the same relief as the injunction appealed from); *Cobb v. Thurmond*, 899 S.W.2d 18, 19-20 (Tex. App.--San Antonio 1995, writ denied)(turnover order entered by trial court while original turnover order was on appeal violated TRAP 43(d)). Rule 43(d) also prohibits the trial court from entering any order which would interfere with or impair the effectiveness of any relief sought on appeal. *See, e.g., St. Louis Southwestern Railway Co. v. Voluntary Purchasing Groups, Inc.*, 929 S.W.2d 25, 33 (Tex. App.--Texarkana 1996, no writ)(order of trial court which approved a class action settlement was prohibited by TRAP 43(d) because it was entered while class certification order was on appeal); *Childers v. Pettengill*, 696 S.W.2d 206, 208 (Tex. App.--Dallas 1985, no writ)(trial court violated TRAP 43(d) by entering subsequent temporary injunction while original injunction was on appeal). Orders entered in violation of Rule 43(d) are invalid and unenforceable as a matter of law. *See, e.g., Cobb*, 899 S.W.2d at 19-20; *Hopper*, 787 S.W.2d at 627.

Any order entered by this Court which requires Brown to disclose his idea to DSC pending a trial on the merits will violate Rule 43(d). Such an order would clearly grant DSC substantially the same relief as the injunction from which Brown recently appealed. Moreover, an order mandating that Brown disclose the solution to DSC would interfere with or impair the effectiveness of the relief Brown seeks on appeal by rendering the subject matter of his appeal moot. Once disclosure is made, any order by the Court of Appeals which denies DSC the right to disclosure will be completely meaningless. This Court should deny DSC's motion and allow Brown to meaningfully exercise his right to appeal this Court's mandatory injunction. To do otherwise would deny Brown his right to appeal and would violate Rule 43(d).

II. Non-disclosure is the law of the case.

As set forth above, DSC has twice obtained injunctions ordering Brown to disclose his idea prior to a trial on the merits. Twice DSC has filed motions for contempt with the Court of Appeals. Twice the Court of Appeals has denied DSC's motions and refused to order Brown to disclose his idea, most recently by order dated July 18, 1997. The Court of Appeals' two orders holding that Brown is not required to disclose his idea to DSC at the present time effectively establish the law of the case on the issue of disclosure. DSC's Motion seeks to avoid the law of the case and require Brown to disclose his idea despite the fact that the Court of Appeals has twice refused to enter such an order. As set forth more fully below, because non-disclosure is the law of the case, this Court should deny DSC's Motion.

The law of the case doctrine provides that issues of law decided on appeal will govern the case throughout its subsequent stages. *See, e.g., Pitman v. Lightfoot*, 937 S.W.2d 496, 512-13 (Tex. App.--San Antonio 1996, writ denied); *LeBlanc v. State*, 826 S.W.2d 640, 644 (Tex. App.--Houston [14th Dist.] 1992, writ denied). The doctrine also prohibits the relitigation of issues decided on appeal. *See Austin Transportation Study Policy Advisory Committee v. Sierra Club*, 843 S.W.2d 683, 690 (Tex. App.--Austin 1992, writ denied). The purpose behind the doctrine is "to achieve uniformity of decision as well as judicial economy and efficiency" and to "prevent useless relitigation of issues already decided . . ." *Pitman*, 937 S.W.2d at 513; *LeBlanc*, 826 S.W.2d at 644. The law of the case doctrine specifically applies to decisions rendered by a court of appeals on the appeal of a temporary injunction. *See Methodist Hospitals of Dallas v. Texas Workers Compensation Comm'n*, 874 S.W. 2d 144, 147 (Tex. App.--Austin 1994, no writ)("our earlier

opinion, although a decision on appeal from the refusal of a temporary injunction, constitutes the law of this case as to the legal principles declared therein”).

The Court of Appeals has twice refused to order Brown to disclose his idea. These decisions have established non-disclosure as the law of the case. In seeking to compel disclosure of Brown’s idea, DSC asks this Court to depart from the law of the case as established by the Court of Appeals. Moreover, DSC’s attempt to relitigate this issue through its Motion to Compel runs counter to the purposes of the law of the case doctrine of achieving uniformity of decisions, preventing useless relitigation of issues already decided and promoting judicial economy. For these reasons, the Court should deny DSC’s Motion.

III. DSC’s Motion should be denied because the Interrogatory at issue seeks to compel disclosure of a privileged trade secret.

Brown objected to DSC’s Interrogatory seeking disclosure of his idea on the basis that the discovery request improperly sought disclosure of a confidential and proprietary trade secret. A trade secret has been defined as “any formula, device or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *Computer Associates International v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996). Rule 507 of the Texas Rules of Civil Evidence provides that a person has a privilege “to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him” Tex. R. Civ. Evid. 507. Disclosure of Brown’s idea to DSC would effectively thwart his right to maintain the secrecy of his trade secret and would violate the trade secrets privilege established by Rule 507.

DSC has conceded in open court that Brown’s idea may be protected as a trade secret. *See* Testimony of Wayne Jones at April 30, 1997 hearing on Brown’s Motion for Protective Order

attached hereto as Exhibit A to the Pearson Affidavit at p. 20. Moreover, Brown's idea meets the common law requirements for a trade secret. The idea is known only to Mr. Brown, who has zealously protected its secrecy by refusing to write the idea down on paper, input his idea into a computer or orally divulge his idea to anyone. *See* Testimony of Evan Brown at May 2, 1997 temporary injunction hearing attached as Exhibit B to the Pearson Affidavit at p. 126; Oral Deposition of Evan Brown attached to the Pearson Affidavit as Exhibit C at p. 78. The idea has significant value to Brown and others. *See* Exh. A at p. 13 (stating that Brown's idea has a value "in the \$100 million range"); Exh. C at p. 111 (stating that the idea could generate internal savings to DSC of one billion dollars). As for the amount of time Brown has invested in the idea, he has repeatedly testified that he has been working on the idea since 1975. Exh. C at pp. 73-74. Finally, as to the ease with which his idea could be duplicated by others, it should be noted that DSC states in its Motion to Compel that DSC "has investigated the acquisition of technology similar to the Solution for a number of years." Motion to Compel at p. 3. Moreover, Brown has testified that it would take him a month to simply write down the idea, that the idea would take 400 single spaced pages to document and that it would be 18 months before the idea could actually be put into practice. Exh. B at p. 127. Brown's idea clearly qualifies as a trade secret.

DSC contends that trade secrets are not automatically immune from discovery and cites the case of *Automatic Drilling Machines, Inc. v. Miller*, 515 S.W.2d 256 (Tex. 1974) for this proposition. In that case, the Texas Supreme Court merely held that a court which must rule on the discoverability of trade secrets should "weigh the need for discovery against the desirability of preserving the secrecy of the material in question." *Id.* at 259. More importantly, the Court noted that information necessary to allow an adversary to develop their case "conceivably could be

obtained by eliciting from the witness a description of the secret processes and devices in terms sufficiently general to protect [the holder of the trade secrets] and yet enable [his adversary] to make further investigation . . .” *Id.* at 260. Brown has done precisely that both before and after the initiation of this litigation by DSC, disclosing his idea in enough detail to allow DSC to litigate ownership of the idea without divulging every facet of his trade secret. To compel Brown to do more would eviscerate his right to preserve his trade secret.

Finally, DSC states in its Motion that the secrecy of Brown’s idea can be preserved through an appropriate protective order and states that it “consents to the entry of a reasonable protective order in connection with the disclosure of the Solution.” Motion to Compel at pp. 3-4. This statement misses the point. While a protective order may shield the idea from third parties, no protective order will protect Brown from the effects of DSC’s knowledge of the inner workings of his idea.¹ DSC has stated in its Motion that its employees are hard at work trying to come up with Brown’s solution on their own. *See* Motion to Compel at p. 3. Once DSC learns the details of Brown’s idea, DSC could claim at some later date that DSC’s engineers came up with the same idea through their own independent efforts. Brown would then be hard-pressed to prove that DSC did not develop the solution on its own rather than as a result of Brown’s disclosure. While DSC will undoubtedly agree to erect a “Chinese wall” to protect against disclosure of Brown’s idea to those DSC employees working to develop the solution, Brown’s idea is far too valuable to simply rely on DSC’s word that it will not take claim the idea as its own following disclosure. While not

¹ Brown’s disclosure would also presumably be shared with Intervenor Lance Flores, who has asserted baseless and unfounded claims to ownership of Brown’s idea. No such disclosure should be made to Flores until Brown can file and obtain a hearing on his Motion to Strike Petition in Intervention.

determinative of this dispute, it is interesting to note that DSC has previously been found by a jury to have misappropriated a trade secret from a supplier after signing a confidentiality agreement prohibiting DSC from making any use of the trade secret. *See Sokol Crystal Products, Inc. v. DSC Communications Corporation*, 15 F.3d 1427 (7th Cir. 1994). Given the value of Brown's idea, any need which DSC may have to discover the details of Brown's idea are outweighed by the risks inherent in such a disclosure. For this reason, the Court should deny DSC's Motion to Compel.

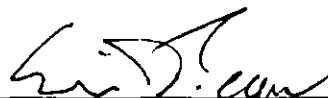
IV. The Interrogatory at issue is unduly burdensome.

As stated above, Mr. Brown has testified that it would take him a month to simply write down the idea. Exh. B at p. 127. He has also testified that it would take 400 single spaced pages for him to document the idea on paper. *Id.* It would be unduly burdensome to require Brown to respond to an Interrogatory which would impose on him such a burden and expense. In essence, Brown would become an indentured servant of DSC for the next month. During that time, he would be unable to pursue gainful employment and would be unable to meet with his counsel as required to prepare for the trial of this case. This Court clearly recognized the burdensome nature of such a disclosure by inserting provisions into the temporary injunction which required DSC to pay Brown for his time and required disclosure only during normal business hours. Because the Interrogatory at issue is unduly burdensome, this Court should deny DSC's Motion to Compel. *See, e.g., K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996)(holding that trial court abused its discretion in compelling K Mart to answer unduly burdensome interrogatory).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Evan Brown respectfully requests that after hearing, this Court deny DSC's Motion to Compel Interrogatory Responses in its entirety and grant Evan Brown such other and further relief to which he may be justly entitled.

Respectfully submitted,



RICHARD A. SAYLES

State Bar No. 17697500

ERIC D. PEARSON

State Bar No. 15690472

SAYLES & LIDJI, P.C.

A Professional Corporation

4400 Renaissance Tower

1201 Elm Street

Dallas, Texas 75270

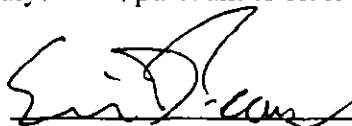
(214) 939-8700

(214) 939-8787 (fax)

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this 28th day of July, 1997, pursuant to Rule 21a of the Texas Rules of Civil Procedure.



DSC COMMUNICATIONS
CORPORATION,

Plaintiff.

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

AFFIDAVIT OF ERIC D. PEARSON

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this date personally appeared Eric D. Pearson who, being by me first duly sworn, upon his oath deposed and stated as follows:


1. My name is Eric D. Pearson. I am an attorney with the law firm of Sayles & Lidji and am one of the counsel of record for Defendant in the above-styled and numbered case. I have personal knowledge of the facts recited in this affidavit. My personal knowledge is derived from my position as one of the lawyers representing Defendant.

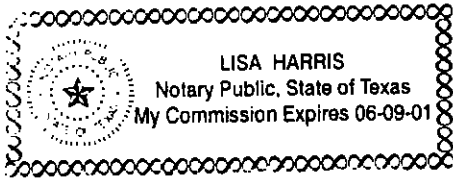
2. Attached as Exhibit A is a true and correct copy of excerpts from the Transcript of the April 30, 1997 hearing on Brown's Motion for Protective Order in this case. Attached hereto as Exhibit B is a true and correct copy of excerpts from the Transcript of the May 2, 1997 temporary injunction hearing in this case. Finally, attached hereto as Exhibit C is a true and correct copy of excerpts from the May 1, 1997 Oral Deposition of Evan Brown taken in this case

FURTHER AFFIANT SAITH NOT.


ERIC D. PEARSON

Sworn and subscribed before me on this 28th day of July, 1997, to certify which witness my hand and seal of office.


Notary Public in and for the State of Texas



CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION (IN THE DISTRICT COURT
VERSUS (COLLIN COUNTY, T E X A S
EVAN BROWN (199TH JUDICIAL DISTRICT

STATEMENT OF FACTS

A P P E A R A N C E S:

MR. MICHAEL LYNN
MR. ERIC W. PINKER
ATTORNEYS AT LAW
Lynn Stodghill Melsheimer & Tillotson, L.L.P.
750 N. St. Paul St., Suite 1400
Dallas, Texas 75201
214-981-3837

ATTORNEYS FOR PLAINTIFF

MR. DALE DRAKE
ATTORNEY AT LAW
McKinney, Texas

ATTORNEY FOR DEFENDANT

ALSO PRESENT:
MR. JOHN STOOKESBERRY
MR. WAYNE JONES

BE IT REMEMBERED that on the 30th day of April, 1997, the
above styled and numbered cause came on for hearing before
said HONORABLE JOHN R. ROACH, Judge presiding, and the
following proceedings were had; to wit:

COPY

EXHIBIT

A

1 everything that has been said can relate to title, Debock Acre
2 (phonetic) or Green Acre (phonetic) or whatever else, without
3 regard -- just forget it's a computer problem for right now.

4 What we're trying to do is get it into court so we can
5 address it, be fair to Mr. Brown, be fair to DSC, so your
6 Honor and a jury ultimately will make a decision as to title.

7 Now, he's going to have to disclose it at some point
8 during the course of the discovery.

9 If we patent it and we're wrong, at least it's patented,
10 and we can assign it over to him.

11 But right now what is -- what is out there -- and we have
12 reason to believe, I think he's told some of our folks, and
13 this is in the affidavit -- he went to Europe and he was
14 disclosing this to investors; the concept.

15 Lately we have received letters from a London based group
16 that wants to use -- wants some of our computer programs to
17 test a translation program.

18 This is maybe coincidental, maybe not, as a result of
19 Mr. Brown visiting Europe.

20 If this is out, and if it is of the value that we're
21 talking about -- and the values that have been discussed are
22 in the \$100 million range -- it is something the Court needs
23 to preserve.

24 Now, we have no interest in telling third-parties about
25 it; we're interested in protecting it. Once we -- once it's

1 that are relevant here.

2 People spoke about preserving the idea; and that's, they
3 gave it to you, to the Court, and the Court held it.

4 The problem is, that will not preserve the idea.

5 We have another vendor who is trying to develop an idea
6 like this with some of our own code; an outfit that I believe
7 is in the United Kingdom.

8 There are other people doubtless trying to come up with
9 things like this.

10 There is a race to the patent office.

11 And, for example, in the United Kingdom -- outside the
12 United States, the first person to file a patent on this owns
13 the idea, whether or not Evan Brown invented it first.

14 So by simply presenting it to the Court, we're not going
15 to preserve the asset.

16 Now, if indeed the asset is DSC's, it's up to DSC to
17 choose whether they want to go forward and get a patent, or
18 try and preserve this as some special trade secret and never
19 get a patent on it. But that's really our choice to make,
20 once we understand the property here. We can decide which one
21 is best for the -- for whoever owns it.

22 And, additionally, the point that we have sat on it for a
23 year is -- is a little troubling, because we insisted when
24 this first happened last -- a year ago now -- that Evan go
25 ahead and disclose it to us, and pointed out his contract, and

CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION (IN THE DISTRICT COURT
VERSUS (COLLIN COUNTY, T E X A S
EVAN BROWN (199TH JUDICIAL DISTRICT

STATEMENT OF FACTS

A P P E A R A N C E S:

MR. MICHAEL LYNN
MR. ERIC W. PINKER
ATTORNEYS AT LAW
Lynn Stodghill Melsheimer & Tillotson, L.L.P.
750 N. St. Paul St., Suite 1400
Dallas, Texas 75201
214-981-3837

ATTORNEYS FOR PLAINTIFF

MR. STEVEN E. ALDOUS
ATTORNEY AT LAW
Sayles & Lidji
4400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
214-939-8700

ATTORNEY FOR DEFENDANT

MR. DALE DRAKE
ATTORNEY AT LAW
McKinney, Texas 75069
972-548-0800

ATTORNEY FOR DEFENDANT

BE IT REMEMBERED that on the 2nd day of May, 1997, the
above styled and numbered cause came on for hearing before
said HONORABLE JOHN R. ROACH, Judge presiding, and the
following proceedings were had; to wit:

EXHIBIT

B

1 the ownership issue; let's just see if we can work out a deal?

2 A. I believe I'm the one that stated, says, if we can
3 come to a deal, then ownership isn't an issue to me.

4 Q. Did anybody at DSC ever say that to you?

5 A. Not that I recall.

6 Q. Now, I'd like to go to the idea itself.

7 You have nothing tangible -- nothing that reduces your
8 idea to any kind of tangible medium. Is that accurate?

9 A. It's just in my brain.

10 Q. So what I said is accurate?

11 A. Your -- it is -- it's true.

12 Q. You haven't written it down somewhere?

13 A. No.

14 Q. You haven't entered it into a computer?

15 A. No.

16 Q. You haven't dictated it into a dictaphone?

17 A. No.

18 Q. Now, the only place it exists is in your head. Is
19 that right?

20 A. Correct.

21 Q. If you were to divulge the idea, about what would it
22 entail?

23 A. The proposal that I had made would take me about
24 twelve to four months (sic) to write, and probably four months
25 to debug.

1 So just to sit down and write it down or document it such
2 that I could hand it to an experienced programmer to take
3 would probably, oh, take me a month; probably 400 pages or so.

4 Q. Let me ask you, is your -- the idea in your head so
5 clear to you that only ordinary skill would be necessary to
6 reduce it to a actual product that can be used in practice?

7 A. No. It would take a whole lot more than ordinary
8 skill.

9 Q. Do you have -- although you have confidence, let me
10 ask you in a different way.

11 Do you have any assurance that your idea will actually
12 work?

13 A. There's no assurance. I think that's why DSC came
14 back and wanted to do it on, you know, a review period to see
15 how the progress went.

16 Q. How long would it be before your idea -- and assuming
17 that everything works -- would become an actual tangible thing
18 that can be used in practice?

19 A. A minimum would be 18 months.

20 Q. Would that involve some additional research and
21 changes to your idea, potentially?

22 A. Oh, yeah. It's a development. I'm going to have to
23 debug it. There's always something is going to occur that you
24 have to fix.

25 Q. Now, when you say debug it, that means you have to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DSC COMMUNICATIONS) IN THE DISTRICT COURT
CORPORATION)
VS.) COLLIN COUNTY, TEXAS
EVAN BROWN) 199TH JUDICIAL DISTRICT

VIDEOTAPED
ORAL DEPOSITION OF
EVAN BROWN

ANSWERS AND DEPOSITION OF EVAN BROWN,
produced as a witness at the instance of the
Plaintiff taken in the above-styled and -numbered
cause on the 1st day of May, A.D., 1997, at 2:02
o'clock p.m., before CHARIS M. HENDRICK, a Certified
Shorthand Reporter in and for the State of Texas, in
the offices of Lynn, Stodghill, Melsheimer &
Tillotson, located at 750 N. St. Paul, Suite 1450,
in the City of Dallas, County of Dallas and State of
Texas, in accordance with the Texas Rules of Civil
Procedure.

EXHIBIT
C

1 had already been conceived by you as of March of
2 1986?

3 MR. ALDOUS: Objection. That assumes
4 facts not in evidence.

5 A I have been working on the problem since
6 1975. The final piece of the puzzle was solved
7 while employed at DSC.

8 Q (By Mr. Pinker) When?

9 A March of 1986.

10 MR. ALDOUS: 19 what?

11 A I am sorry. 1996.

12 Q (By Mr. Pinker) Is it your testimony,
13 then, that you had been working on the issue but as
14 of March 1986 had not basically developed a solution
15 to the problem?

16 MR. ALDOUS: Did you say '96 or '86?

17 MR. PINKER: I am sorry. Let me
18 rephrase it. I thought I said '86. Let me make
19 sure I get it right.

20 Q (By Mr. Pinker) Is it your testimony, sir,
21 that you had been working on what you have described
22 as the problem since 1975, but as of March 1986 you
23 had not yet come up with a solution or an answer to
24 the problem?

25 A I had not come up with a complete solution.

1 Q Would -- would your term "complete
2 solution" be the same as a workable solution?

3 A It was workable, but required a lot of
4 labor to finish the last part. And I found out how
5 to automate it. I figured out the last piece of the
6 puzzle.

7 Q How did you find out how to automate it?

8 A I continued to think and work on the
9 problems.

10 Q What is the problem that you were working
11 on since 1975? How would you phrase that?

12 A It was a -- the problem was introduced by a
13 friend of mine who was working for El Paso Natural
14 Gas. The problem they had was a piece of code for
15 hardware that no longer existed, so they had to run
16 an emulator to run this old application. I asked
17 him why they didn't rewrite it, they said the code
18 no longer exists in source form.

19 Q What do you mean by no longer exists in
20 source one?

21 A It no longer existed in source form.

22 Q What is source form?

23 A Man readable.

24 MR. ALDOUS: It sounded like you said
25 eatable.

1 Q This is storing off-site basically?

2 A Yes.

3 Q Any other electronic data storage other
4 than hard drive, floppy disk, tape drive and NSF?

5 A No.

6 Q In what formats is your solution written
7 down?

8 A It is not written down.

9 Q You have saved no parts of the solution to
10 any electronic data format?

11 A Correct. Other than what is stated here in
12 this paragraph.

13 Q Other than the various documents you
14 exchanged with DSC, have you written it down in any
15 format?

16 A No.

17 Q Ever?

18 A No.

19 Q Have you ever stored it on computer or in
20 any electronic format?

21 A No.

22 Q Why not?

23 A By choice.

24 Q Have you chosen not to write it down in any
25 format?

1 A Yes.

2 Q About how much value do you think it would
3 have?

4 A I believe it has got a value in excess of a
5 billion dollars to DSC.

6 Q Is that in terms of both sales abroad as
7 well as savings internally?

8 A That was based solely on internal savings.

9 Q Over one billion dollars?

10 A I believe it is in excess of 3200 man years
11 based off of the effort that Levi Tar -- so it is an
12 extrapolated number.

13 Q Based on what you and Mr. Levi Tar
14 discussed in the hallway?

15 A Yes.

16 Q You have never checked his numbers, have
17 you?

18 A No.

19 Q And independently you don't have any
20 knowledge of whether his numbers are right or wrong?

21 A No.

22 Q And this, of course, is the value not even
23 counting potential sales, correct?

24 A This was strictly labor.

25 Q Have you ever estimated the value in terms


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF TEXAS **
COUNTY OF DALLAS **

I, CHARIS M. HENDRICK, Certified
Shorthand Reporter in and for the State of Texas, do
hereby certify that the proceedings made before me
by EVAN BROWN on the 1st day of May, 1997, at 2:02
o'clock p.m., after said witness had been first duly
cautioned and sworn to testify the truth, the whole
truth and nothing but the truth, and were thereafter
reduced to typewriting by me and under my
supervision, same to be sworn to and subscribed by
said witness by any notary public.

I further certify the above and
foregoing deposition as set forth in typewriting is
a full, true, correct and complete transcript of the
proceedings had at the time of taking said
deposition.

Given under my hand and seal of office on
this 1st day of May, A.D., 1997.


CHARIS M. HENDRICK, CSR # 3469
Certification Expires: 12-31-98
7015 Mumford
Dallas, Texas 75252