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CAUSE NO. 199-00596-97

<p>DSC COMMUNICATIONS CORPORATION, <i>Plaintiff,</i></p> <p>v. EVAN BROWN, <i>Defendant,</i></p> <p>v. LANCE FLORES, <i>Intervenor-Plaintiff.</i></p>
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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199<sup>TH</sup> JUDICIAL DISTRICT

**INTERVENOR'S MOTION FOR PROTECTIVE ORDER,  
AND MOTION TO MODIFY CONFIDENTIALITY ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE INTERVENOR, LANCE FLORES (the "Intervenor") in the above-entitled and -numbered cause, complaining of EVAN BROWN, (the "Defendant") requesting that the Court grant him a Protective Order ordering that certain discovery as described below and requested by Defendant not be sought and in support thereof would respectfully show the Court the following:

**I.**

1. The Defendant has filed his request for discovery entitled *Defendant's Request for Production to Intervenor Lance Flores*, hereinafter Defendant's Discovery Request, favorable to the Defendant, a copy of which is labeled Exhibit "A" and attached and incorporated into this Motion for all purposes. Intervenor has served Defendant with his objections entitled *Objection's to Defendant's Discovery Request*, a copy of which is labeled Exhibit "B" and attached and incorporated into his Motion for all purposes. Intervenor has objected to Defendant's Discovery Request as set out in

Exhibit "B." Additionally the verified Petition in Intervention and Exhibit attached thereto are incorporated by reference from the records of the Court as if fully copied and set forth at length herein.

2. For each of the reasons set out in Intervenor's Objection to Production Request, Intervenor is entitled to a Protective Order preventing discovery of the matters being sought by the Defendant's Discovery Request.

3. Therefore, Intervenor requests a Protective Order as set forth in his objections sustaining Intervenor's objections and absolving him from a duty to provide Defendant with the information sought in the Motions. Intervenor further requests a Protective Order absolving him from his duty to supplement to the extent that such information is brought out in depositions or other discovery to which the Intervenor, as counsel, has access. Further, the Intervenor seeks 1) modification of the Confidentiality Order of 18 September, 1997, in such content and form to include the Intervenor as a party whose trade secrets are protected by the same said protective order, 2) that depositions be sealed and opened only by order of the Court, 3) that discovery identified as trade secrets by the Intervenor be conducted with no one present except persons designated by the Court, 4) that should Defendant decide to disclose what he believes to be trade secrets or information proprietary to him and which may be similar in nature to that which the Intervenor claims to be trade secrets belonging to the Intervenor, parties shall simultaneously file discovery responses, and 5) that the Court make any order which justice requires to protect the confidentiality of Intervenor's or each parties trade secrets.

### III.

4. In the alternative, Intervenor hereby offers to tender to the Court summaries, descriptions and

outlines of documents currently in his possession and additional supplements to his response which Defendant seeks to have produced. Further, Intervenor requests that the Court conduct an *in camera* hearing to determine whether the information requested by the Defendant is discoverable pursuant to the Texas Rules of Civil Procedure and the Texas Rules of Evidence. Additionally, that 1) modification of the Confidentiality Order of 18 September, 1997, in such content and form to include the Intervenor as a party whose trade secrets are protected by the same said protective order, 2) that depositions be sealed and opened only by order of the Court, 3) that discovery identified as trade secrets by the Intervenor be conducted with no one present except persons designated by the Court, 4) that should Defendant decide to disclose what he believes to be trade secrets or information proprietary to him and which may be similar in nature to that which the Intervenor claims to be trade secrets belonging to the Intervenor, parties shall simultaneously file discovery responses, and 5) that the Court make any order which justice requires to protect the confidentiality of Intervenor's or each parties trade secrets.

#### IV. ARGUMENT AND AUTHORITIES

5. **Trade Secret Privilege.** The Texas Rules of Civil Evidence provide that:

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require. (TRCE Rule 507)

6. The Intervenor is a person who, notwithstanding his intervention in this cause, has a justiciable interest *jus ad rem* and cause protecting a *jus in re* to his trade secrets and proprietary information

or knowledge of formula, pattern, device or compilation of information which is used in the course of his business which presents an opportunity to obtain an advantage over competitors who do not know or use it.<sup>1</sup> The Defendant who has not complied with the order of the Court to disclose the alleged Solution, Idea, or Technology to the Plaintiff now seeks unlimited access to the Intervenor's trade secrets and proprietary knowledge which are inquiries that exceed far beyond the scope of the original dispute between DSC and Mr. Brown.<sup>2</sup> American courts have sought to protect individuals from such unwarranted invasion of trade secret information that threatens to undermine the premises of our capitalism and free market. The courts have provided such protection to all parties, including non-parties, in an appropriate case, giving them permission to intervene for the limited purpose of supporting, opposing, or modifying a protective order.<sup>3</sup> In cases, as the instant cause of action, where the court has evidence that it can reasonably ascertain that certain documents containing trade secrets may be unduly compromised by unwarranted exposure in discovery processes, it may protect those trade secrets without first examining them *in camera*.<sup>4</sup>

7. Intervenor will nonetheless be forced to expose certain portions of his Language Conversion Technology to both the Defendant and Plaintiff through Intervenor's discovery in order to satisfy the evidence needed to determine if Defendant's Idea is or is not the Intervenor's Technology to which the Plaintiff is or is not entitled. In so doing, Intervenor's exposure and risk of compromise

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<sup>1</sup> | *Computer Assoc. Int'l v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996).

<sup>2</sup> | *See*, Defendant's First Request for Production to Intervenor Lance Flores, Request No. 22, 25 (Exhibit "A").

<sup>3</sup> | *See, e.g., Martindell v. International Telephone & Telegraph Corp.*, 594 F.2d 291, 294-295 (2d Cir. 1979)

<sup>4</sup> | When the Court had evidence in the form of witness testimony from which it could reasonably determine the claim of trade privilege, it was not an abuse of discretion to order documents protected without first conducting an *in camera* review. *Enron Oil & Gas Co. v. Flores*, 810 S.W.2d 408, 413 (CA – San Antonio 1991, orig proceeding [leave den.]).

of his trade secrets is far greater than either of the other parties in this cause. Further, Defendant in taking receipt of Intervenor's discovery request will have accomplished discovery of relevant evidence from the Intervenor. Moreover, the only technological evidence that will most likely ever be produced in this case will be that of the Intervenor as the Defendant will not disclose his Idea and the Plaintiff does not have or can even describe the Solution let alone produce the alleged Solution.

8. **Intervenor's need to protect trade secrets.** The Intervenor has not patented his technology because the continual research and development and the extensive use of trade secrets which may or not be patentable because some may be discoveries of natural phenomena. However, the Intervenor has initiated the patent process of his Technologies excluding those portions not patentable but are, nevertheless, trade secrets and proprietary to him. This is precisely why Intervenor urges the Court to issue a protective order and modify the existing confidentiality order to explicitly include the Intervenor in the order and for which the need is evident in the following:

9. Although the Supreme Court has substantially cleared the way for researchers and developers of computer programs for processing to patent their developments,<sup>5</sup> the court commented that an application of a mathematical formula "may well be deserving of patent protection." In the Court's view on whether patentable subject matter existed, it expressed that it should be determined by looking at the invention as a whole and not just at what was novel about it. All the same, it did not protect the formulae itself. Thus, even if the mathematical formulae might be only known to the

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<sup>5</sup> Compare: the Court's decisions of *Gottschalk v. Benson*, 409 US 63, 175 USPQ 673 (S Ct 1972) (holding that a computer program whose sole object is to generate numerical values according to an algorithm is unpatentable) and *Parker v. Flook*, 437 US 584, 198 (a computer program is unpatentable if all it does is generate numerical values even if the values bring about a physical result) to its findings two years later in *Diamond v. Diehr*, 450 US 175, 209 USPQ 97 (1981) where it held that a computer-related process to be patentable on the ground that the specific fact that the process used a computer to apply a mathematical formulae in the process did not mean that an attempt was being made to patent the mathematical formula itself.

Inventor some algorithms or formulae may be considered as natural phenomena or *law of nature* and the actual formulae, trade secrets, may be lost as a result of its exposure to other parties.

10. However, this is the very nature of the formulae resulting from extensive research and development of the Intervenor's Artificial Intelligence (AI) processes and "Brain Theory" algorithms. These technology discoveries, otherwise Intervenor's trade secrets, could be construed as laws of nature or a known structures or processes because of the technology's inherent nature of brain processes. This may be exemplified in the Supreme Court's reasoning of *In re Abele*<sup>6</sup> in 1982 where the court upheld patent claims which related to a program for carrying out calculations when applied to X-ray data from a CAT scanner, but rejected claims directed to the program for the calculation itself. Sense, the vast majority of R&D in the Intervenor's language conversion involves discovery of natural brain processes or brain theory based algorithms encapsulated in various ways, as pre-algebraic structures processed by specialized computer-based processors and in rule based AI processes such as *expert systems*, their exposure could be devastating to the proprietary nature of the language conversion process itself or the basic brain theory based technologies developed by the intervenor.

11. What is at issue is the jeopardy of the Intervenor's extensive intellectual labors, trade secrets, put at risk. Although many of the Intervenor's language conversion processes can be protected by federal and international patent law, notwithstanding, trade secrets are not given the exclusivity provided by patent protection. In fact, anyone is free to develop the subject matter of his Technologies, trade secrets, or reverse engineer the product itself and exposed trade secrets until

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<sup>6</sup> | 684 F.2d 902, 214 USPQ 682 (CCPA 1982) The CCPA has also upheld claims to, for example, computer programs for translating languages (e.g. Persian into English) 197 USPQ 852, and for preparing architectural specifications (203 USPQ 971).

the Intervenor's all or additional trade secrets are discovered. It is paramount that such secrets be protected and it incisively why TRCE Rule 507 is provided in the evidence rules. It enough that the Defendant and Plaintiff will have an opportunity to view some of the Intervenor's confidential design, engineering and process philosophy and processes resulting from R&D of the Intervenor's Technologies. Since the Intervenor's claims will only attach directly to what the other parties will be presented with at the time of Intervenor's discovery request there is no relevance of evidence of documents or fact that exceeds any reasonable expectation to be used at time of trial or which may be entered as evidence. It is, nonetheless, the Intervenor's paucital right to protect and have his trade secrets protected where discovery exceeds the relevant evidence required to prosecute or defend a position or fact.

**V.  
PRAYER**

12. WHEREFORE, PREMISES CONSIDERED, Intervenor prays that a hearing on this matter be set, that the Court sustain his objections to the Defendant's Discovery Motions, and grant a Protective Order absolving him from his duty to respond to the extent of his objections and absolving him from a duty to supplement to the extent that such information is brought out in depositions or other discovery to which the Defendant has access or, in the alternative, ordering an *in camera* hearing to be held to determine whether the information requested by the Intervenor is discoverable and should be produced and additionally modification of the Confidentiality Order of 18 September, 1997, in such content and form to include the Intervenor as a party whose trade secrets are protected by the same said protective order, 2) that depositions be sealed and opened only by order of the Court, 3) that discovery identified as trade secrets by the Intervenor be conducted

with no one present except persons designated by the Court, 4) that should Defendant decide to disclose what he believes to be trade secrets or information proprietary to him and which may be similar in nature to that which the Intervenor claims to be trade secrets belonging to the Intervenor, parties shall simultaneously file discovery responses, and 5) that the Court make any order which justice requires to protect the confidentiality of Intervenor's or each parties trade secrets. The Intervenor further prays that the Court grant such other and further relief to which Intervenor may be justly entitled in law or in equity.

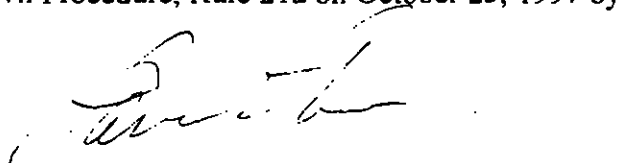
Respectfully submitted,



LANCE FLORES  
6514 Ridgcrest/204  
Dallas, Texas 75231  
Tele: (214) 361-0358  
FAX: (214)36107732  
Attorney for the Intervenor

**CERTIFICATE OF DISCOVERY ATTEMPT AND SERVICE OF OBJECTIONS**

I, LANCE FLORES, do hereby certify, pursuant to Texas Rules of Civil Procedure 166b(7), that the Intervenor has attempted to resolve the discovery dispute without the necessity of court intervention and the attempt awaits response from counsel for the Defendant. Further, I certify that a true and correct copy of the foregoing objections has been delivered to EVAN BROWN through his attorney of record Richard Sayles at Sayles & Lidji, 4400 Renaissance Tower, Dallas, Texas, 75270, in accordance with the Texas Rules of Civil Procedure, Rule 21a on October 23, 1997 by certified Mail (P 099 680 526).

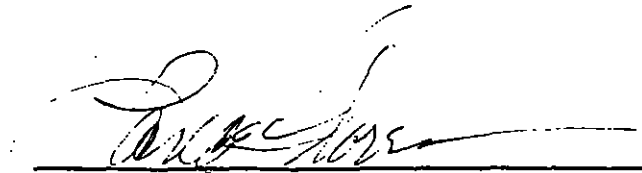


LANCE FLORES  
Attorney for the Intervenor

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the above instrument was served on:

DSC Communications Corporation, through its attorney of record Michael P. Lynn, at Lynn, Stodghill, Melsheimer & Tillotson, 750 N. St. Paul Street, Ste 1400, Dallas, Texas, 75201, in accordance with the Texas Rules of Civil Procedure, Rule 21a on October 23, 1997 by certified Mail (P 099 680 527).

  
\_\_\_\_\_  
LANCE FLORES  
Attorney for the Intervenor

**FIAT**

The above said Motion for Protective Order and Motion to Modify Confidentiality Order is set for hearing to show cause why the Court should not enter an order in favor of the Intervenor seeking protective order. The Court shall convene on the \_\_\_\_\_ day of \_\_\_\_\_, 1991, at \_\_\_\_\_ o'clock, \_\_\_M, in the courtroom of the 199<sup>th</sup> District Court of Texas, located in the Collin County Courthouse, 210 S. McDonald Street, McKinney, Texas where shall be heard the aforesaid motions of the Intervenor at that time or at a time shortly thereafter following other matters of the Court.

\_\_\_\_\_  
JUDGE PRESIDING

Exhibit "A"

DSC COMMUNICATIONS  
CORPORATION.

Plaintiff.

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

**DEFENDANT'S FIRST REQUEST FOR PRODUCTION  
TO INTERVENOR LANCE FLORES**

TO: Intervenor Lance Flores, 6514 Ridgecrest No. 222, Dallas, Texas 75231.

Pursuant to Rule 167 of the Texas Rules of Civil Procedure, you are hereby directed to produce for inspection and copying the documents and tangible things requested herein. You shall serve a written response to the document request within thirty (30) days after service of these requests unless such time is shortened by agreement or court order which shall state, with respect to each item or category of items requested, that inspection and copying will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, that part shall be specified. You shall produce the documents requested for inspection and copying at the offices of Sayler & Lidji, P.C., 4400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270, or at such other location as the parties shall mutually agree in writing, thirty (30) days after service hereof unless such time is shortened by agreement or court order.

## DEFINITIONS

1. The terms "you," "your," "Intervenor" or "Flores" shall mean Intervenor Lance Flores and any of his present or former employees, agents, representatives or attorneys and any other persons under his control or acting on his behalf.

2. The terms "Plaintiff" or "DSC" shall mean Plaintiff DSC Communications Corporation and any of its present or former employees, agents, representatives or attorneys and any other persons under its control or acting on its behalf.

3. The term "Defendant" or "Brown" shall mean Defendant Evan Brown and any of his agents, representatives or attorneys and any other persons under his control or acting on his behalf.

4. The term "Cyber" shall mean Cyber Automation Sciences, Inc. and any of its present or former employees, agents, representatives or attorneys and any other persons under its control or acting on its behalf.

5. The term "Idea" shall mean the method of converting machine executable binary code into high level source code form using logic and data abstractions which is described in Brown's April 19, 1996 memorandum to Larry Sewell attached hereto as Exhibit A.

6. The terms "document" and "documents" shall mean every writing of every type or description, and every other thing constituting any medium by which, through which, or on which any type of communication, information, or knowledge has been transmitted, recorded, or preserved. The term "document" or "documents" shall also mean every copy of a document where such copy is not an identical duplicate of the original. The term "document" and "documents" include, without limitation, papers; books; letters; correspondence; telegrams; cables; telex messages; memoranda;

notes; notations; work papers; transcripts; minutes; reports; recordings of telephone or other conversations or of interviews or conferences or meetings; affidavits; statements; summaries; opinions; studies; analyses; evaluations; contracts; agreements; journals; logs; statistical records; desk calendars; appointment books; diaries; tax returns; charts; lists; tabulations; sound recordings; computer printouts; data processing input and output; microfilms; photographs; checks; invoices; bills; bookkeeping and accounting records and financial reports and information. Any documents bearing on any part thereof any marks, including, by way of illustration only, initials, stamped indicia, comments, or notations of any character which are not part of the original document or any reproduction thereof is to be considered a separate document.

7. The terms "regard," "regarding," "refer," and "referring," shall mean consist of, pertain to, reflect, evidence, constitute or be in any way logically or factually connected with the matter discussed.

8. The term "person" shall mean any natural person, groups of natural persons acting as individuals, groups of natural persons acting in a collective capacity (e.g., as a committee, board of directors, etc.), corporations, partnerships, joint ventures, companies, associations, firms and any other incorporated or unincorporated business, professional, governmental or social entity.

9. The term "communication" shall mean every manner or means of statement, utterance, notation, disclaimer, transfer or exchange of information of any nature whatsoever, by or to whomever, whether oral or written, whether face-to-face, by telephone, fax, mail, personal delivery or otherwise, including, but not limited to, correspondence, conversations, dialogue, discussions, meetings, interviews, consultations, agreements and other understandings.

10. The term "date" shall mean the exact day, month and year, if ascertainable, or, if not, your best approximation thereof.

11. Terms in the singular include the plural; terms in the plural include the singular.

12. The term "or," as used herein, is inclusive, referring to any one or more of the disjoined words or phrases: "and," "any," "all," and "each and every."

### **INSTRUCTIONS**

1. This request shall be deemed to include any and all relevant documents in your possession, custody or control, including documents in the possession of your present or former employees, agents, representatives or attorneys and any other persons under your control or acting on your behalf.

2. If the attorney-client privilege or any other privilege is claimed as to any document called for by this request, your written response to this request shall state the date of such document, the names and addresses of the person or persons who prepared the document, the person or persons to whom the document was directed or circulated, and the person or persons now in possession of the document, a description of the subject matter of the document and an explanation of the privilege claimed with respect to the document.

### **REQUESTS FOR PRODUCTION**

**Request No. 1:** Please produce each and every document relating to DSC's efforts to develop a software reverse engineering program such as the Idea.

**Response:**

**Request No. 2:** Please produce each and every document relating to Cyber's efforts to develop a software reverse engineering program such as the Idea.

**Response:**

**Request No. 3:** Please produce all documents which identify any other corporations or individuals of which you are aware that are developing or attempting to develop a software reverse engineering program such as the Idea.

**Response:**

**Request No. 4:** Please produce all documents supporting your claim for reasonable and necessary attorney fee.

**Response:**

**Request No. 5:** Please produce all documents relating to any agreements, contracts, proposals or understandings between you and DSC for the conversion of any of DSC's computer code.

**Response:**

**Request No. 6:** Please produce all documents relating to any agreements, contracts, proposals or understandings between you and Motorola for the conversion of any of Motorola's computer code.

**Response:**

**Request No. 7:** Please produce all documents relating to any agreements, contracts, proposals or understandings between you and any third party for the conversion of computer code.

**Response:**

**Request No. 8:** Please produce all documents relating to any agreements, contracts, proposals or understandings between Cyber and DSC for the conversion of any of DSC's computer code.

**Response:**

**Request No. 9:** Please produce all documents relating to any agreements, contracts, proposals or understandings between Cyber and Motorola for the conversion of any of Motorola's computer code.

**Response:**

**Request No. 10:** Please produce all documents relating to any agreements, contracts, proposals or understandings between Cyber and any third party for the conversion of computer code.

**Response:**

**Request No. 11:** Please produce all documents which support your allegation that the Idea is your property.

**Response:** -

**Request No. 12:** Please produce all documents which support your allegation that the Idea is the property of Cyber.

**Response:**

**Request No. 13:** Please produce all documents relating to Evan Brown.

**Response:**

**Request No. 14:** Please produce all documents relating to DSC.

**Response:**

**Request No. 15:** Please produce all statements of Evan Brown as that term is defined by Rule 166b(2)(g) of the Texas Rules of Civil Procedure.

**Response:**

**Request No. 16:** Please produce all documents relating to any meetings between you and DSC's counsel which have occurred since January 1, 1997, including but not limited to all documents relating to the meeting between you and Eric Pinker which occurred on July 14 or 15, 1997.

**Response:**

**Request No. 17:** Please produce all resumes which you have used since 1987.

**Response:**

**Request No. 18:** Please produce all documents which identify the officers, directors or shareholders of Cyber.

**Response:**

**Request No. 19:** Please produce Cyber's articles of incorporation, corporate charter and bylaws.

**Response:**

**Request No. 20:** Please produce all documents relating to Cyber's failure to pay Texas franchise taxes and the resulting forfeiture of its corporate charter.

**Response:**

**Request No. 21:** Please produce all documents relating to the agreement by which you "transferred all technology rights of certain computer technology and additionally assigned limited intellectual property rights to Cyber of technology related to Artificial Intelligence, and code procedural techniques or mathematical algorithms." See Petition in Intervention at par. 1.

**Response:**

**Request No. 22:** Please produce all documents relating to the "computer technology" and "technology related to Artificial Intelligence, and code procedural techniques or mathematical algorithms" the rights to which you transferred to Cyber in whole or part.

**Response:**

**Request No. 23:** Please produce all documents relating to the "services of [your] company and associates which had experience in language conversion as well as proprietary techniques to solve similar problems." See Petition in Intervention at par. 2.

**Response:**

**Request No. 24:** Please produce all documents relating to any meeting between you or Cyber and Evan Brown, including but not limited to any meetings "at the combined offices of Cyber and Digitech located at 4314 Sunbelt Drive, Addison, Texas." See Petition in Intervention at par. 3.

**Response:**

**Request No. 25:** Please produce all documents relating to the "technologies, processes, procedures, and algorithms that would be proposed to DSC for the conversion of their binary/Assembly code." See Petition in Intervention at par. 3.

**Response:**

**Request No. 26:** Please produce all documents relating to any meeting between you or Cyber and DSC, including but not limited to any meetings "at 1000 Coit Road, Plano, Texas." See Petition in Intervention at pars. 4, 5.

**Response:** -

**Request No. 27:** Please produce all documents relating to the "slide presentation" or the "lengthy in-depth discourse" which allegedly occurred during your meeting with DSC during the first week of February 1992. See Petition in Intervention at par 5.

**Response:**

**Request No. 28:** Please produce all documents relating to any "printed proposals" submitted by you or Cyber to DSC. See Petition in Intervention at par 5.

**Response:**

**Request No. 29:** Please produce all documents relating to any "printed proposals" submitted by you or Cyber to Motorola. See Petition in Intervention at par 5.

**Response:**

**Request No. 30:** Please produce all confidentiality or non-disclosure agreements between you or Cyber and DSC.

**Response:**

**Request No. 31:** Please produce all confidentiality or non-disclosure agreements between you or Cyber and Motorola.

**Response:**

**Request No. 32:** Please produce all confidentiality or non-disclosure agreements between you or Cyber and Evan Brown.

**Response:**

**Request No. 33:** Please produce all correspondence between you or Cyber and DSC.

**Response:**

**Request No. 34:** Please produce all correspondence between you or Cyber and Motorola.

**Response:**

**Request No. 35:** Please produce all correspondence between you or Cyber and Evan Brown.

**Response:**

**Request No. 36:** Please produce all documents which identify the “information and intimate knowledge obtained from the Intervenor and/or the Cyber group” by Evan Brown. *See* Petition in Intervention at par. 7(b).

**Response:**

**Request No. 37:** Please produce all documents which relate to Evan Brown’s Idea or your understanding thereof.

**Response:**

**Request No. 38:** Please produce all documents which demonstrate your capacity to file suit to protect the alleged legal rights of Cyber.

**Response:**

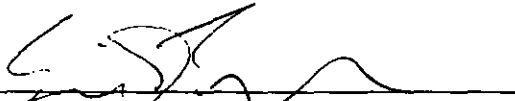
**Request No. 39:** Please produce all documents which demonstrate your standing to file suit to protect the alleged legal rights of Cyber.

**Response:**

**Request No. 40:** Please produce all documents relating to any harm caused to you or Cyber by the actions of Evan Brown.

**Response:**

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 Defendant

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing instrument was served upon all counsel of record in accordance with Rule 21a of the Texas Rules of Civil Procedure on the 5<sup>th</sup> day of September, 1997.



A handwritten signature in black ink, appearing to be "S. Flores", is written over a horizontal line.

**Exhibit "B"**

DSC COMMUNICATIONS  
CORPORATION,

*Plaintiff,*

v.

EVAN BROWN,

*Defendant,*

v.

LANCE FLORES,

*Intervenor-Plaintiff.*

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199<sup>TH</sup> JUDICIAL DISTRICT

**INTERVENOR'S OBJECTIONS TO DEFENDANT'S DISCOVERY REQUEST**  
***(in re: Defendant's Request for Production to Intervenor Lance Flores)***

TO: Evan Brown, by and through his attorney of record, Richard A. Sayles and Eric D. Pearson of Sayles & Lidji, P.C., 1201 Elm Street, Dallas, Texas 75270.

COMES NOW, LANCE FLORES, the Intervenor, in the above-styled and -numbered cause and submits his objections to Defendant Evan Brown's (hereinafter the "Defendant") request for discovery entitled *Defendant's Request for Production to Intervenor Lance Flores* in accordance with the Texas Rules of Civil Procedure and Texas Rules of Civil Evidence and would show the Court the following:

**L**  
**OBJECTIONS**

Intervenor makes the following objections where each and every response in Intervenor's Response to Defendant's Request for Production to Intervenor Lance Flores (hereinafter the "Defendant's Request for Production") incorporates and is subject to the following objections:

**Objection 1:** Intervenor objects to Defendant's Request for Production in that Defendant seeks

disclosure of documents containing trade secrets in the form of formula, pattern, devices, processes, algorithms, functions, and compilations of information, data and knowledge that belong to the Intervenor and are used in his business or profession which provide and present an opportunity to obtain an advantage over competitors. (TRCE 507) (TRCP 76a(2)(c)).

**Objection 2:** Intervenor objects to Defendant's Request for Production in that the documents Defendant requests were created or acquired as a (1) compilation of facts which shows the attorney's thought processes; (2) written statements by a party or a nonparty witness produced in anticipation of litigation (TRCP 166(3)(c)); (3) confidential communication not intended to be disclosed to third persons (TRCE 503(a)(5)); and (4) statements or communications made in connection with the prosecution, investigation, or defense of the suit or in connection with the investigation of the particular circumstances out of which this suit arose (TRCP 166(3)(c)) all of which are protected communication under the attorney work-product.

**Objection 3:** Intervenor objects to Defendant's Request for Production in that it seeks documents with information relating to matters that are not raised in the pleadings on the grounds that they are not relevant to this action and not reasonably calculated to lead to the discovery of admissible evidence.

**Objection 4:** Intervenor objects to Defendant's Request for Production in that it seeks documents containing information protected from disclosure under Texas or federal law.

**Objection 5:** Intervenor objects generally to Defendant's Request for Production in that Defendant seeks information and documentation that unduly burdens the Intervenor where documents sought are within the public domain and may be easily acquired by the Defendant.

**Objection 6:** Intervenor objects generally to Defendant's Request for Production in that Defendant seeks information and documentation that unduly burdens the Intervenor where documents sought are already in possession of the Defendant.

**Objection 7:** Intervenor objects generally to Defendant's Request for Production in that Defendant seeks information and documentation of Intervenor's trade secrets and confidential information of sensitive technological information, formula, pattern, devices, processes, algorithms, functions, and compilations of information, data and knowledge, and otherwise trade secrets belonging to Intervenor whilst refusing or failing to produce similar information sought by the Plaintiff or ordered by the Court.

## II.

Intervenor incorporates by reference each and every objection to each individual response to production pursuant to the terms therein. Intervenor reserves the right to timely supplement the production of documents upon access and discovery of requested production.

Respectfully submitted,



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LANCE FLORES  
6514 Ridgecrest 204  
Dallas, Texas 75231  
Tele: (214) 361-0358  
FAX: (214)36107732  
E-mail: liberty@anet-dfw.com

Attorney for the Intervenor

**CERTIFICATE OF DISCOVERY ATTEMPT AND SERVICE OF OBJECTIONS**

I, LANCE FLORES, do hereby certify, pursuant to Texas Rules of Civil Procedure 166b(7), that the Intervenor has attempted to resolve the discovery dispute without the necessity of court intervention and the attempt awaits response from counsel for the Defendant. Further, I certify that a true and correct copy of the foregoing objections has been delivered to EVAN BROWN through his attorney of record Richard Sayles at Sayles & Lidji, 4400 Renaissance Tower, Dallas, Texas, 75270, in accordance with the Texas Rules of Civil Procedure, Rule 21a on October 13, 1997 via electronic facsimile.



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LANCE FLORES

Attorney for the Intervenor

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above instrument was served on:

DSC Communications Corporation, through its attorney of record Michael P. Lynn, at Lynn, Stodghill, Melsheimer & Tillotson, 750 N. St. Paul Street, Ste 1400, Dallas, Texas, 75201, in accordance with the Texas Rules of Civil Procedure, Rule 21a on October 13, 1997 via electronic facsimile



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LANCE FLORES

Attorney for the Intervenor

C O V E R

FAX

S H E E T

**To:** Richard A. Sayles and Eric D. Pearson

**cc:** Eric W. Pinker

**Fax #:**

**Subject:** Case No. 199-596-97; *DSC Communications Corporation v. Evan Brown*; 199<sup>th</sup>  
District Court, Collin County, Texas

**Date:** October 13, 1997

**Pages:** 6, including this cover sheet.

COMMENTS:

ENCLOSED:

**INTERVENOR'S OBJECTIONS TO DEFENDANT'S DISCOVERY REQUEST**  
*(in re: Defendant's Request for Production to Intervenor Lance Flores)*

From the desk of...

**Lance Flores**  
6514 Ridgecrest 204  
Dallas, Texas 75231

Tel: (214) 369-2835  
Fax: (214) 369-7732

**Lance Flores**

6514 Ridgecrest 204 □ Dallas, Texas 75231 □ Tel: (214) 369-2835 □ Facsimile: (214) 369-7732 □ E-mail: liberty@anet-dfw.com

October 13, 1997

Richard A. Sayles  
Eric D. Pearson  
Sayles & Lidji, P.C.  
4400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

Via Facsimile

RE: Case No. 199-596-97; *DSC Communications Corporation v. Evan Brown*, 199<sup>th</sup> District Court, Collin County, Texas (Defendant's First Request for Production to Intervenor)

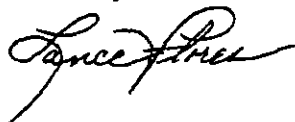
Dear Messrs. Sayles and Pearson,

I have compiled the first set of documents identified in your request for production. Not included are certain documents which contain trade secrets belonging to me or Cyber. These documents depending on their relevancy will be provided concurrently with Intervenor's first set of interrogatories to Mr. Brown upon the execution of a confidentiality order; a proposal for which you shall receive by week's end.

Delivery of the first set could not be delivered by mail today because of the holiday but will be delivered to your office tomorrow. I have a speaking engagement at one of the colleges in the morning and will deliver the first set of documents to you by late morning or lunch hour. A second set of documents including the notes of meetings at the Cyber/Digitech site have not been returned from the copy center, however, they should be returned by Wednesday, October 15, which upon receipt you shall have them within the day if delivered before 3:00 p.m. that day.

If you are not in agreement with the conditions of the first paragraph please consider this correspondence the initiation of a conference to reconcile the discovery dispute. Please accept my invitation for rapprochement of any issue which may arise.

Sincerely,



/LANCE FLORES/

Lance Flores  
Attorney for the Intervenor  
6514 Ridgecrest 222  
Dallas, Texas 75231  
(214) 631-0358

cc: Eric W. Pinker (via electronic facsimile)

C O V E R

FAX

S H E E T

**To:** Richard A. Sayles and Eric D. Pearson  
**cc:** Eric W. Pinker  
**Fax #:**  
**Subject:** Case No. 199-596-97; *DSC Communications Corporation v. Evan Brown*; 199<sup>th</sup>  
District Court, Collin County, Texas (Defendant's First Request for Production to  
Intervenor)  
**Date:** October 13, 1997  
**Pages:** 2, including this cover sheet.

COMMENTS:

From the desk of...

**Lance Flores**  
6514 Ridgecrest 204  
Dallas, Texas 75231

Tel: (214) 369-2835  
Fax: (214) 369-7732

October 23, 1997

Hannah Kunkle  
District Clerk  
Collin County

Collin County Courthouse  
McKinney, Texas 75069

RE: 1) CAUSE NO. 199-00596-97, *DSC Communications Corporation v. Evan Brown*  
2) INTERVENOR'S OBJECTIONS TO DEFENDANT'S DISCOVERY REQUEST  
3) INTERVENOR'S RESPONSE T DEFENDANT'S DISCOVERY REQUEST  
4) INTERVENOR'S MOTION FOR PROTECTIVE ORDER, AND MOTION TO  
MODIFY CONFIDENTIALITY ORDER

Dear Ms. Kunkle,

Enclosed within three instruments in the above cited cause of action. Enclosed is one original and one copy of each of the above said instruments. Please file the original and copy and have the Motion for Protective order and Motion to Modify Confidentiality Order set for hearing on the earliest possible day for filing in the FLAT on page 9, and return a file stamped copy of each in the enclosed self-addressed and stamped envelope

I have, by certified mail through the U.S. Postal Serviced, served all counsel of record with the foregoing instruments pursuant to the Texas Rules of Civil Procedure, witnesseth my certification and signature thereon.

Please call me for any further assistance. Thank you for your attention to this matter.



LANCE FLORES

Attorney for the Intervenor  
6514 Ridgcrest 222  
Dallas, Texas 75231  
(214) 639-0358  
(214) 639-8689  
(214) 639-7732 FAX

Enclosure