

CAUSE NO. 199 596 97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

DSC'S VERIFIED AND EXPEDITED MOTION TO ENFORCE CONTINUANCE OF DEFENDANT EVAN BROWN'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this its Motion To Enforce Continuance of Defendant Evan Brown's Motion For Summary Judgment and Brief in Support and would respectfully show the following:

I.

INTRODUCTION

Despite a Court Order instructing him to disclose the Solution and precluding any hearing on his Motion for Summary Judgment until the Solution was disclosed, Evan Brown refuses to provide a "full and complete" disclosure of the Solution and now has re-set his Motion for Summary Judgment. Brown has violated the Court's prior disclosure and continuance orders. Accordingly, DSC requests this Court to enforce it previous Continuance of Brown's Motion for Summary Judgment indefinitely or until Brown provides DSC with a full and complete disclosure of the Solution, as previously required by the Court.

II.

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ARGUMENT

DSC must have additional discovery from Brown before it can defend against Brown's Motion for Summary Judgment. On October 6, 1997, DSC filed its Motion to Continue Brown's Summary Judgment hearing until Brown provided a full and complete disclosure of the Solution. See Exhibit A. Essentially, DSC argued that (1) DSC had been diligent in seeking discovery of the Solution; (2) Brown had refused to provide a full and complete description of the Solution; (3) discovery of the Solution was essential to defend against Brown's Motion for Summary Judgment; and (4) Brown was the sole source of such discovery. *Id.* As a result, until DSC obtains a full and complete disclosure of the Solution from Brown, any hearing on his Motion For Summary Judgment should be continued. *Id.*

After briefing and argument from the parties, the Court agreed and entered an Order indefinitely continuing Brown's Motion for Summary Judgment until Brown provided DSC with a "full and complete" disclosure of the Solution:

DSC's Motion for Continuance is **GRANTED**. Further proceedings on Brown's Motion for Summary Judgment are continued until Brown has provided DSC with a full and complete disclosure of the Solution, or until order of the Court.

See Exhibit B.

On January 25, 1999, Brown provided what purports to be a "full and complete" disclosure of the Solution. Despite sworn representations to this Court and promises to the media that any *description of the Solution would consume at least four hundred (400) single-spaced typed pages* (See Brown Aff., ¶ 5). Brown's purported "full and complete" disclosure consisted of less than seven pages, most of which are irrelevant. In short, Brown's purported "full and complete" disclosure is

incomplete, inadequate and largely meaningless. As a result, DSC is in no better position to defend against Brown's Motion for Summary Judgment than it was before the Continuance Order.

Nothing has changed since this Court continued Brown's Motion for Summary Judgment. DSC is still entitled to the discovery in issue. DSC still cannot fully and fairly respond to Brown's Motion For Summary Judgment unless it obtains a full and complete disclosure of the Solution. Accordingly, DSC requests this Court to enforce its prior Continuance Order and continue indefinitely the hearing on Brown's Motion for Summary Judgment. ^{1/}

III.

CONCLUSION

For the foregoing reasons, DSC requests the Court to enforce its prior Continuance Order and continue Brown's Motion for Summary Judgment unless and until Brown provides a "full and complete" disclosure of the Solution, as required by the Court.

^{1/} DSC anticipates filing a Motion to Compel later this week identifying the specific delinquencies and inadequacies with the "disclosure" set forth in the Supplemental Response.

Respectfully submitted,

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

By: _____



Michael P. Lynn, P.C.
State Bar No. 12738500
Eric W. Pinker
State Bar No. 16016550
John T. Cox III
State Bar No. 24003722

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(214) 981-3800 - Telephone
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**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF CONFERENCE

I hereby certify that on May 6, 1999, I attempted to resolve the subject matter of this motion 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 Motion to Compel Interrogatory Responses is set for hearing in the 219 Judicial District Court on the ___ day of May, 1999 at _____ o'clock __.m.

JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served upon counsel for Defendant Evan Brown, as identified below, on this the 6th day of May, 1999:

Via Telecopy: (214) 939-8787

Richard A. Sayles, 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, Suite 200
Post Office Box 1662
McKinney, Texas 75070-1662



Eric W. Pinker

VERIFICATION

STATE OF TEXAS

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COUNTY OF DALLAS

BEFORE ME, the undersigned authority, personally appeared ERIC W. PINKER, who, being duly sworn, stated that he has read the above and foregoing Motion; and that every factual statement contained therein is within either his personal knowledge, information and belief to which he has had access by reason of his position as lead counsel and member of the DSC Disclosure Team, and is true and correct. In making this Verification, Mr. Pinker further stated that he had reviewed relevant documents. Moreover, Mr. Pinker stated that Exhibits 1 and 2 are true and correct copies and exact duplicates of the original.

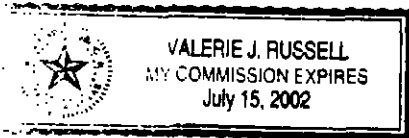


ERIC W. PINKER

Sworn to before me this _____ day of May, 1998, to certify which witness my hand and official seal.

NOTARY PUBLIC, STATE OF TEXAS

MY COMMISSION EXPIRES: _____



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WPDocs\012561701\DOCS\Second continuance motion wpd

EXHIBIT A

CAUSE NO. 199 596 97

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

**DSC'S MOTION FOR CONTINUANCE OF DEFENDANT EVAN BROWN'S
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

Pursuant to Texas Rule of Civil Procedure 166a(g), DSC Communications Corporation ("DSC") files this Motion For Continuance of Defendant Evan Brown's Motion For Summary Judgment and Brief in Support and would respectfully show the following:

I.

INTRODUCTION

Despite refusing to comply with the Court's mandatory disclosure Injunction and denying DSC meaningful discovery concerning the Solution, Evan Brown has filed a second Motion for Summary Judgment. The sole factual underpinning for his motion is his own self-serving affidavit. Brown should not be permitted to thwart DSC's discovery efforts and then file a Motion for Summary Judgment asserting that DSC has no evidence to support its position. Accordingly, DSC requests this Court continue Brown's Motion for Summary judgment until Brown provides DSC with a complete disclosure of the Solution, as previously required by the Court.

II.

ARGUMENT AND AUTHORITIES

A. The Hearing On Brown's Motion for Summary Judgment Should Be Continued.

DSC cannot fully and fairly respond to Brown's Motion for Summary Judgment without additional discovery. When a party is unable to respond to a motion for summary judgment because of a lack of discovery, the party must file an affidavit stating why it cannot present evidence in opposition to the motion for summary judgment. Tex.R.Civ.P. 166a(g). If the party seeking a continuance has been diligent in attempting to obtain discovery material to a cause of action, yet no discovery has been obtained, it is an abuse of discretion for the trial court to deny the motion for continuance. *See Levinthal v. Kelsey-Seybold Clinic, P.A.*, 902 S.W.2d 508, 512 (Tex.App-Houston [14th Dist] 1995, no writ) (holding that trial court had abused discretion by denying motion for continuance of summary judgment hearing when respondent to motion for summary judgment had obtained no discovery on issues material to "proving his cause of action").

B. DSC Has Not Obtained Material Discovery Necessary To Prove Its Cause of Action.

DSC has obtained no discovery related to the Solution. On June 30, 1997, this Court entered a Temporary Injunction Order ("Temporary Injunction") mandating, among other things, that Brown disclose the Solution to DSC. (*See* Affidavit of Eric W. Pinker ("Pinker Aff. at ¶ ___") at ¶3). Brown has refused to comply with the Temporary Injunction and, in every material respect, thwarted DSC's attempts to discover the Solution. (*Id.*). DSC has been diligent in its efforts to obtain discovery. (*Id.*). First, DSC sought and obtained a court order mandating disclosure of the Solution. (*Id.*). In addition, DSC has served two sets of discovery on Brown, but has not yet received a disclosure of

the Solution.^{1/} (*Id.*). In connection with his refusal to respond to this discovery, DSC filed a motion to compel disclosure of the Solution, which Motion was denied (without prejudice to DSC's right to reurge the Motion) on the grounds that the relief sought would grant substantially the same relief as that contained in the order from which Brown appeals. See T.R.A.P. 43(d). As a result of Brown's conduct, DSC has no information on the Solution other than the information Brown has disclosed to the press.

C. DSC Needs Discovery On Several Material Issues To Defend Brown's Motion for Summary Judgment.

Now, Brown attempts to use his refusal to comply with the Temporary Injunction or provide meaningful discovery as a sword to defeat DSC. Brown should not be permitted to deny DSC disclosure and discovery and then assert that he wins because DSC has no evidence concerning the Solution.

Brown argues two points in his Motion for Summary Judgment. First, Brown contends that the Solution is not an invention; therefore, the Solution is not covered by the Patent, Copyright, and Proprietary Information Agreement ("Agreement") he signed. Second, Brown contends that he has "conceived" nothing. In support of these two arguments, Brown has provided the Court with his own affidavit, asserting the following facts:

- In 1975, well before my employment with DSC, Brown began mentally developing an algorithm for [the Solution]. (*See* Affidavit of Evan Brown ("Brown Aff."), attached as Exhibit B to Defendant Evan Brown's Motion for Summary Judgment and Brief in Support at ¶2).
- The Solution does nothing that cannot be accomplished manually (*Id.*).
- Prior to going to work with DSC, Brown had a mental image of 80% of the ultimate idea (*Id.*).

^{1/} Responses to DSC's second set of discovery are not due until October 20, 1997.

- In March 1996, Brown mentally pictured the remaining 20% of the [Solution] (*Id.* at ¶ 4).
- In April 1996, Brown sought a release from DSC to pursue the [Solution] (*Id.*).
- The [Solution] is only in his mind (*Id.* at ¶ 5).
- There is no computer program, computer model or any other tangible representation of the Solution. Moreover, he has not written the idea down on paper. In fact it would take a month to simply write down the idea, which would take 400 single-spaced pages to document. (*Id.*).

The success or failure of Brown's motion (*i.e.*, whether the Solution is an "invention" and whether it has been "conceived," as those terms are used in Brown's Employee Agreement) depends on the truth and accuracy of these statements. For example, Brown argues that the Solution is not an invention because he has not written it down. Also, Brown argues that he has "conceived" nothing because "the [Solution] is nothing more than the seed of an idea in Evan Brown's mind." (*See* Brown's Motion For Summary Judgment and Brief in Support at p. 4). However, in sharp contrast, Brown is willing to make specific and firm calculations about the benefits the Solution will afford DSC, *see* "A Gray Matter," Dallas Morning News, May 2, 1997, attached as Exhibit 2 (Brown stating that the Solution would save DSC "\$1 billion in labor for rewriting" the code and "about 3,200 man years of labor"), and claims that it would take 400 single-spaced pages to memorialize the Solution as presently constituted. (*See* Brown Aff., ¶ 5).

Brown's summary judgment motion depends almost exclusively on his own credibility in characterizing the Solution as something that is not permanent, complete, or sufficiently developed. *See* Brown's Motion for Summary Judgment and Brief in Support at p. 15. However, Brown has refused to provide DSC with discovery sufficient to test the truth of Brown's assertions in his affidavit. DSC is entitled to discovery which will allow it to contest Brown's assertions and

demonstrate the numerous inconsistencies and factual disputes raised by Brown's motion for summary judgment. In short, DSC cannot fully and fairly respond to Brown's Motion For Summary Judgment unless it obtains discovery on the material factual issues identified above. (See Pinker Aff. at ¶ 7). Accordingly, DSC seeks a continuance of the hearing on Brown's Motion for Summary Judgment.

III.

CONCLUSION

For the foregoing reasons, DSC requests the Court continue Brown's Motion for Summary Judgment unless and until Brown provides a complete disclosure of the Solution, as required by the Court.

Respectfully submitted,

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

By: 

Michael P. Lynn, P.C.
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**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF CONFERENCE

I hereby certify that on October 6, 1997, I attempted to resolve the subject matter of this motion 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 Motion to Compel Interrogatory Responses is set for hearing in the 219 Judicial District Court on the 7 day of October, 1997 at 2:30 o'clock p.m.



JUDGE PRESIDING

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served upon counsel for Defendant Evan Brown and Intervenor Lance Flores, as identified below, on this the 6th day of October, 1997:

Via Telecopy: (214) 939-8787

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Mr. Lance Flores
6514 Ridgecrest 204
Dallas, Texas 75231



Eric W. Pinker

EXHIBIT “1”

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

AFFIDAVIT OF ERIC W. PINKER

BEFORE ME, the undersigned Notary Public, on this day personally appeared Eric W. Pinker, who, being by me duly sworn, on his oath stated as follows:

1. My name is Eric W. Pinker. I am a partner with the law firm of Lynn Stodghill Melsheimer & Tillotson, L.L.P. and I am one of the attorneys of record for Plaintiff in the above-styled and numbered cause of action. 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 Plaintiff.

2. DSC Communications Corp. ("DSC") cannot fully and fairly respond to Brown's Motion for Summary Judgment because Brown has failed to provide DSC with meaningful discovery on material issues raised in this case and, specifically, those issues raised in Brown's Motion for Summary Judgment.

3. On June 30, 1997, this Court entered a Temporary Injunction requiring Brown to disclose the Solution. Brown has refused to comply with the Temporary Injunction.

4. In addition to the Injunction, DSC has been diligent in its efforts to obtain a complete description of the Solution through discovery from Brown. On June 19, 1997, DSC served its first set of discovery requests on Brown. Included among this set of discovery were interrogatories requesting a complete disclosure of the Solution. Brown refused to respond to DSC's interrogatories about the Solution, forcing DSC to file a Motion to Compel. Although the Court denied this motion, it did so without prejudice to DSC's right to reurge this motion at a later date, and the Court specifically premised its denial of the motion on T.R.A.P. 43(d), which prevents a trial court from granting substantially the same relief as an order on appeal. Consequently, and despite its diligent efforts, DSC has yet to obtain from Brown any disclosure regarding the Solution.

5. Brown has now moved for summary judgment arguing that the Solution is not an "invention" and has not been "conceived" because the Solution has not been written down and is not fully developed.

6. Brown's argument relies on the following assertions found in Brown's Affidavit:

- In 1975, well before my employment with DSC, Brown began mentally developing an algorithm for [the Solution] (See Affidavit of Evan Brown, attached as Exhibit B to Defendant Evan Brown's Motion for Summary Judgment and Brief in Support, ("Brown Aff. at ¶ __") at ¶2).
- The Solution does nothing that cannot be accomplished manually (*Id.*).
- Prior to going to work with DSC, Brown had a mental image of 80% of the ultimate idea (*Id.*).
- In March 1996, Brown mentally pictured the remaining 20% of the [Solution] (*Id.* at ¶ 4).
- In April 1996, Brown sought a release from DSC to pursue the [Solution] (*Id.*).
- The [Solution] is only in his mind (*Id.* at ¶ 5).

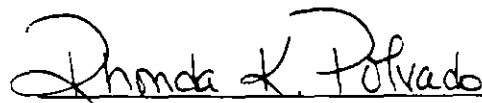
- There is no computer program, computer model, or any other tangible representation of his idea. Moreover, he has not written the idea down on paper. In fact it would take a month to simply write down the idea, which would take 400 single-spaced pages to document. (*Id.*).

7. These factual assertions by Brown are material to Brown's Motion for Summary Judgment. In short, Brown uses those factual assertions in an effort to characterize the Solution as something which is vague, incomplete, impermanent, and not sufficiently developed to be an "invention" that he "conceived." In order to rebut each of these premises, DSC needs (and, pursuant to an existing Court order, is entitled to) a full and complete disclosure of the Solution. At present, DSC has no evidence and is left to theorize and speculate based on newspaper articles and a single brief description of the Solution. Consequently, it is imperative that DSC have an opportunity to conduct full discovery concerning the Solution. Unless DSC obtains a disclosure of the Solution, its rights will be severely prejudiced in responding to and defending against Brown's Motion for Summary Judgment.

FURTHER AFFIANT SAITH NOT.


Eric W. Pinker

SUBSCRIBED AND SWORN TO BEFORE ME this 6th day of October, 1997 to certify which witness my hand and official seal.


Notary Public, State of Texas

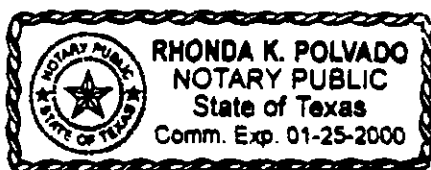


EXHIBIT “2”

The Dallas Morning News

Dallas, Texas, Friday, May 2, 1997

A gray matter

Company, fired worker
wage court battle over
rights to software idea

By Linda Stewart Ball
Metro North Bureau of The Dallas Morning News

PLANO — Evan Brown believes he's figured out how to convert old computer language into an easier-to-use computer code, a process that could be worth many millions of dollars.

His employer, DSC Communications, agrees, and fired him because he wouldn't give the company his idea. It then sued him because he refused to concede the company's ownership.

On Friday, the company is seeking to extend a temporary restraining order preventing Mr. Brown from sharing, selling or giving the "invaluable trade secret" to anyone other than DSC.

DSC is suing Mr. Brown for what's in his head, as opposed to claiming a tangible invention or application written on paper.

"For a layperson, it seems interesting to say, 'See those brain cells? We own them.' But in the area of trade secrets, that's not uncommon at all," said Robert Merges, co-director of the Center for Law and Technology at the University of California at Berkeley.

"We value intellectual property as a company," said Raymond T. Adams, vice president of corporate communications for DSC. "Our employees are charged with working for the benefit of our shareholders and their fellow employees. In this case, this gentleman had different opinions."

Mr. Brown, according to the suit, worked on software technology for DSC's telecommunications products and systems for 10 years. He said he provided technical support for DSC's customers.

An issue is a sought-after software. Please see COMPANY on Page 16A.

Company, fired worker battle over rights to software concept

Continued from Page 1A.

ware concept Mr. Brown says he thought up on his own time, stressing that it had nothing to do with his job.

"I think that they (DSC officials) tried to coerce information from me that does not belong to them," Mr. Brown said.

The 45-year-old Plano man believes he has found a way to automatically convert an old computer language or executable binary code, such as the one DSC and other companies depend on, into an easier-to-use and much more efficient, higher-level computer code.

"The (the idea) not related to DSC (it's not related to telecommunications," Mr. Brown said, adding that it would allow any company using antiquated computer equipment to take advantage of higher performance microprocessors.

If Mr. Brown's idea works, it could help companies preserve the existing investment they've made in computer equipment and still benefit from modern technological advances.

"By translating this code into a higher level language, now it has the opportunity to be run on a much broader set of equipment," said John Dinkel, associate provost for computing at Texas A&M University. "Certainly, in one sense, yes this is really good stuff. It kind of breaks the tie between the code and the machine. You can run it on a variety of machines. . . . The year 2000 puts pressure on these old codes. They're not going to work. Now is the time to get rid of old code."

In its suit, DSC contends that "such an automated translation program would be worth many millions of dollars, because numerous other telecommunications and technology companies are similarly struggling to translate or convert their old computer code."

Had he not been fired, Mr. Brown said he could have saved DSC "\$1 billion in labor for rewriting the code and about 3,200 man years of labor."

Mr. Brown said DSC last summer offered him a percentage of that savings up to \$2 million for his idea, but "I turned it down because it's worth substantially more than that."

"We value intellectual property as a company. Our employees are charged with working for the benefit of our shareholders . . . and their fellow employees."

— Raymond T. Adams,
DSC vice president
of corporate communications

DSC develops technology and markets products that connect phone calls and moves information from one place to another. It does that with complex telecommunications hardware and software. A key piece of DSC's hardware is a large digital switching computer that simultaneously reroutes thousands of telephone connections. The software used to operate the switch is comprised of millions of lines of computer code, much of which is becoming outdated.

"I offered to convert all of DSC's code at no charge," Mr. Brown said. "They wanted to include Motorola's source code also. I said no." Motorola is one of DSC's larger customers.

DSC officials say that under the terms of an employment agreement Mr. Brown signed when he was hired on April 21, 1987, he was required to give any invention, whether "made or conceived," to DSC. According to the employment agreement, that invention or idea remains the exclusive property of the company. While such agreements are pretty standard, legal experts in intellectual property say few people who sign them are aware of their potential impact.

The lawsuit states that instead of giving DSC his idea, Mr. Brown demanded that the company pay him additional money for the information.

Mr. Brown says that the computer software concept did not belong to DSC, because "DSC is not in the business of software reverse engineering which converts old computer code into easier to understand languages. It was not my job function," he said. "It was not my job title, and it was not my responsibility."

Although the suit claims that Mr. Brown conceived of the concept while working for DSC and that it was directly related to the company's business, Mr. Brown said the idea was something he's been working on since 1975, while still a student at Texas A&M.

"A friend of mine posed the problem and it was intriguing to me," he said. "I didn't think it was solvable."

But last year, while driving back from visiting his farm in Hamilton County, "I actually solved the last piece of the puzzle," he said. "I was excited. I just kept it in my mind. It is only in my mind. I have not written it down."

He did, however, send a memo to DSC's legal counsel April 19, 1996, requesting that DSC release him from the employment agreement. He said he wanted DSC to understand that since the idea came from his "own personal experience" he should be free to pursue a patent.

Without waiving its rights to the information, the suit said that DSC attempted to negotiate with Mr. Brown for disclosure of his idea, but he refused their proposals and threatened to market it in Europe. On April 21, the company fired him.

"I'm not going to go into the thought processes as to why we did what we did," said Mr. Adams, the DSC vice president. "We'll see how the litigation turns out."

Walter Dymek, senior manager for The Eastern Management group, a New Jersey company that specializes in industry research in the area of computers and communications, said that although like Mr. Brown's, sometimes called cross-compilers or cross-interpretors, are valuable, they're not unique.

However, "If one reverse engineers a company's product and chooses to take the information they've gathered as a result to construct a competing product... well, it may be difficult to prove but certainly, from a moral and ethical standpoint that's illegal," Mr. Dymek said, adding that DSC's lawsuit "sounds like a proper action."

But according to Mr. Merges, the Berkley professor, if Mr. Brown's circumstances are as he portrays them, and the idea had nothing to do with his job, it would probably

"I think that they tried to coerce information from me that does not belong to them."

— Evan Brown,
former DSC employee

belong to him without question if he lived in a so-called employee right-to-invent state.

While states such as California, North Carolina and Washington have freedom-to-invent laws, Texas does not, he said.

"There was a minor movement 15 to 20 years ago that swept through the country whereby certain states limited the ability of employers to force agreements like that under some circumstances," Mr. Merges said. "It typically provides that if you didn't use any of your employer's tools or facilities and if it's not related to the scope of your employment, in most cases you're going to get the rights.

"The thing that's always tricky in a case like this is both parties have a very strong sense of entitlement," Mr. Merges said.

If such employment agreements did not exist, attorneys said companies could be held hostage by employees who threaten to take key information to competitors across the street.

"To make it even worse, if people could get patents on their own work, the fear is that they'd spend nine-tenths of their time working on their own projects," Mr. Merges said.

Some lawyers would probably advise an employee in a situation similar to Mr. Brown's to just quit without ever mentioning their idea and wait out the agreement's time period, usually six months to a year, Mr. Merges said.

Because it appears that DSC doesn't really know if Mr. Brown's idea will work because it's never been tested, Dallas attorney Greg Carr, chairman of the intellectual property group at Winstead Sechrest and Minick, said this case demonstrates the "substantial increase in the perceived value of ideas to a business."

"You might not have seen a suit like this years ago," he said.

A quick computer search of intellectual property cases turned up only one in Massachusetts that's similar to Mr. Brown's in that the employee's idea had not been written down, Mr. Carr said.

In that case, an appellate court ruled in the individual's favor, stating that in claiming rights to all inventions the employment agreement was not specific enough.

But because DSC's agreement also covered inventions that are conceived, Mr. Carr said, that "could

make a difference, because conception doesn't necessarily mean that it's been written down someplace."

"There are few reported decisions on the subject," he added.

Wes Musselman, an attorney for Jenkins & Gilchrist, agreed. "There's going to be a lot of interesting proof problems.

"In order to explain what he knew [and] when he knew it, he's going to have to pretty much explain what it is, at which time the company knows what it is."

EXHIBIT B

FAX FILING COVER SHEET

DATE: October 8, 1997

FROM: Eric W. Pinker
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Number of Pages Sent: 4
(including cover sheet)

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(972) 548-4312
FAX: (972) 548-4697

PHONE: (214) 981-3800
FAX: (214) 981-3839 or 220-1045

Re: **DSC COMMUNICATIONS CORPORATION v. EVAN BROWN**

- Subscriber Non-Subscriber (\$5.00 per case fax fee added to court costs).
- New Suit or Cause No. 199-596-97 (if existing case).

PLEASE FILE THE FOLLOWING DOCUMENTS WHICH FOLLOW ... AND ...

- Issue _____ citation(s) and deliver to: _____
- Issue _____ and deliver to: _____
- Other: **Order Granting DSC's Motion for Continuance of Defendant Evan Brown's Motion for Summary Judgment.**
- Explicit instructions transmitted on separate sheet.

IF TRANSMISSION IS INCOMPLETE OR INSTRUCTIONS NOT CLEAR, PLEASE CALL:

Rhonda K. Polvado AT PHONE NUMBER LISTED ABOVE.

10/8/97 09:15
COLLIN COUNTY CLERK'S
DEPUTY

CHARGE AUTHORIZATION

Please charge the total amount due for this transmission to:

Escrow Account No. _____

Signature: _____

CAUSE NO. 199 596 97

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

**ORDER GRANTING DSC'S MOTION TO ENFORCE CONTINUANCE OF
DEFENDANT EVAN BROWN'S MOTION FOR SUMMARY JUDGMENT**

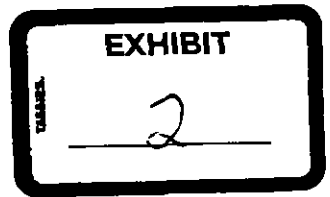
On May __, 1999, the Court heard DSC's Expedited and Verified Motion to Enforce Continuance of Defendant Evan Brown's Motion for Summary Judgment and Brief in Support, and after considering the arguments of counsel and the pleadings on file in this case, the Court makes the following order:

DSC's Motion is **GRANTED**. Further proceedings on Brown's Motion for Summary Judgment are continued until Brown has provided DSC with a full and complete disclosure of the Solution, or until further order of the Court.

Additionally, **IT IS ORDERED, ADJUDGED and DECREED** that should Brown refuse to comply with the terms of this Court's prior disclosure Order, this Court will entertain a motion from DSC to **strike** Brown's pleadings pursuant to Texas Rule of Civil Procedure 215(2)(b).

SIGNED, this the __ day of May, 1999.

Judge Curt Henderson



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

EVAN BROWN, Appellant

No. 05-97-01098-CV

V.

DSC COMMUNICATIONS
CORPORATION, INC., Appellee

Appeal from the 199th Judicial District
Court of Collin County, Texas. (Tr.Ct.No.
199-596-97).

Opinion delivered by Justice Miller,
Justices Lagarde and Maloney
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**. It is **ORDERED** that the parties pay their own costs of this appeal. After appellant's costs have been paid, the clerk of the district court is directed to release the balance, if any, of the cash deposit to Richard A. Sayles, attorney for appellant.

Judgment entered January 6, 1998



CHUCK MILLER
JUSTICE, ASSIGNED

AFFIRMED and Opinion Filed January 6, 1998



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-97-01098-CV

EVAN BROWN, Appellant

V.

DSC COMMUNICATIONS CORPORATION, INC., Appellee

On Appeal from the 199th Judicial District Court
Collin County, Texas
Trial Court Cause No. 199-596-97

OPINION

Before Justices Lagarde, Maloney, and Miller¹
Opinion By Justice Miller

Evan Brown appeals an order granting a temporary injunction. DSC Communications Corporation, Inc. sued appellant for allegedly breaching his employment agreement by failing to disclose a computer program appellant developed during his employment with appellee. In two points of error, appellant contends the trial court erred in granting the temporary injunction because: (1) the injunction disturbs the status quo and

¹ The Honorable Chuck Miller, Judge, Texas Court of Criminal Appeals, Retired, sitting by assignment.

awards appellee full and final relief; (2) appellee failed to demonstrate that it had no adequate remedy at law or would suffer an irreparable injury; and (3) the injunction enforces an agreement which is not supported by consideration. Because we conclude this interlocutory appeal was unnecessary, we affirm the trial court's order.

Factual and Procedural Background

Appellee develops, markets, and manufactures software and telecommunications equipment for the telecommunications industry. In 1987, appellee hired appellant, a software engineer. Appellant signed an employment agreement (the Agreement) which provided, in part:

I will communicate to an officer of the Company promptly and fully all inventions (including but not limited to all matters subject to patent, i.e., processes, machines, computer programs, etc.) made or conceived by me (whether made solely by me or jointly with others) from the time of entering the Company's employ until I leave, (1) which are along the lines of the business, work or investigations of the Company or of companies which it owns or controls at the time of such inventions, or (2) which result from or are suggested by any work which I may do for or on behalf of the Company.

Several years later, while still an employee of appellee, appellant thought of a computer solution (the Solution) that would automatically translate older software into a newer, more efficient computer language. According to appellant, he had been working on the problem since 1975, well before he came to work for appellee. He "saw the last piece of the puzzle" in 1997, while driving back from Hamilton County. Appellant has not reduced the solution to writing; it remains only an idea.

Appellant sent a memo to his supervisor stating that he had thought of the solution. Appellant requested appellee to release him from the Agreement and allow him, rather than appellee, to develop and patent the Solution. Appellant and appellee negotiated a method which would allow appellant to share the cost savings that the Solution would provide. After they were unable to reach an agreement, appellee sued appellant for breach of contract. Appellee also requested the trial court to enjoin appellant from developing and marketing the Solution and also to require appellant to disclose the Solution to appellee.

On May 2, 1997, the trial judge conducted a hearing on appellee's request for a temporary injunction. Following the hearing, the trial judge ordered, among other things, appellant to disclose the Solution to appellee. On June 27, 1997, the presiding administrative judge granted appellant's motion to disqualify the trial judge and a new trial judge was assigned. On June 30, 1997, the assigned judge conducted a second hearing on the temporary injunction. At the June hearing, the assigned judge took judicial notice of the May hearing before the disqualified judge. One additional witness, a patent attorney for appellee, testified. Following the June hearing, the assigned judge ordered appellant, among other things, to disclose the Solution to appellee. The June order set the trial on the merits for November 3, 1997. This interlocutory appeal followed.

Discussion

It is well-settled that our review of the granting of a temporary injunction is strictly limited to a determination of whether the trial court clearly abused its discretion in entering the interlocutory order. *See Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978); *Hiss v. Great North American Companies, Inc.*, 871 S.W.2d 218, 219 (Tex. App.--Dallas 1993, no writ); *Priest v. Texas Animal Health Commission*, 780 S.W.2d 874, 875 (Tex. App.--Dallas 1989, no writ). The trial court has broad discretion in determining whether the pleadings and evidence support a temporary injunction. *Recon Exploration, Inc. v. Hodges*, 798 S.W.2d 848, 851 (Tex. App.--Dallas 1990, no writ). Abuse of discretion does not exist if the trial court heard conflicting evidence and evidence appears in the record which reasonably supports the trial court's decision. *Id.* at 852. We may reverse a trial court for an abuse of discretion only if, after searching the record, it is clear that the trial court's decision was arbitrary and unreasonable. *Simon v. York Crane & Rigging Co.*, 739 S.W.2d 793, 795 (Tex. 1987).

The only issue to be determined in a temporary injunction hearing is whether the applicant may preserve the status quo of the suit's subject matter pending a trial on the merits. *Davis*, 571 S.W.2d at 862; *Hiss*, 871 S.W.2d at 219. Applicants may not use the appeal of a temporary injunction ruling to get an advance ruling on the merits of the case. *Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981); *Hiss*, 871 S.W.2d at 219.

Nor should the appeal of a temporary injunction be cause for trial delay. *Coalition*

of Cities for Affordable Util. Rates v. Third Ct. of Appeals, 787 S.W.2d 946, 947 (Tex. 1990) (per curiam); *Hiss*, 871 S.W.2d at 219; *Recon*, 798 S.W.2d at 853. Trial courts should proceed expeditiously from the grant or denial of temporary injunctive relief to full consideration of the merits to reduce the need for interlocutory appeals. *Hiss*, 871 S.W.2d at 219. The fastest way to cure the hardship of an unfavorable preliminary order is to try the case on the merits. *Id.*; *Recon*, 798 S.W.2d at 854. For the parties to seek and the trial court to grant an abatement, stay, or continuance in the trial court while the court of appeals considers an interlocutory appeal increases delay and expense. *See Coalition of Cities*, 787 S.W.2d at 947; *Hiss*, 871 S.W.2d at 219.

At oral argument, we questioned both counsel about the trial on the merits. Counsel informed this Court that at the November 3, 1997 trial setting, both parties agreed to continue the case to allow this Court time to rule on this interlocutory appeal. Counsel also agreed that resolution of point of error two, complaining that the temporary injunction enforces an agreement which is not supported by consideration, may be outcome determinative. Because this appeal seeks an advance ruling on the merits of the case, we conclude this interlocutory appeal is unnecessary. *See Hiss*, 871 S.W.2d at 220. We overrule points of error one and two. Because the parties agreed to continue the trial on the merits awaiting this Court's decision, we order the parties to pay their own costs of this appeal. TEX. R. APP. P. 89 (former rules).²

² The Texas Rules of Appellate Procedure were amended September 1, 1997. In the final approval order, the supreme court provided that the amended rules applied to appeals perfected on or after September 1, 1997. Because this appeal was perfected prior to September 1, 1997, we conclude the former appellate rules apply.

We affirm the trial court's judgment.



CHUCK MILLER
JUSTICE, ASSIGNED

Do Not Publish
TEX. R. APP. P. 47.3

Order issued February 11, 1998

15
EXHIBIT
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In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-97-01098-CV

EVAN BROWN, Appellant


v.

DSC COMMUNICATIONS CORPORATION, INC., Appellee

ORDER

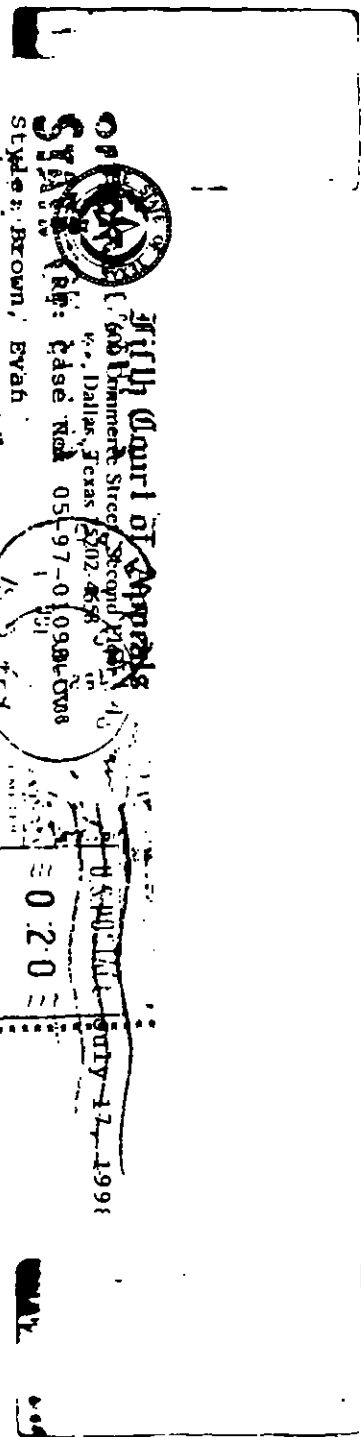
Before Justices Lagarde, Maloney and Miller¹

We DENY appellant's motion for rehearing.



CHUCK MILLER
JUSTICE, ASSIGNED

¹The Honorable Chuck Miller, Judge, Texas Court of Criminal Appeals, Retired, sitting by assignment.



Fifth Court of Appeals
600 North Commerce Street
Dallas, Texas 75202-6658
Case No. 05-97-01098-0008

Stacy Brown, Evah
FCM, bsd communication corporation

Pursuant to Rule 18 of the Texas Rules of Appellate Procedure, this Court has this day issued a Mandate in accordance with the judgment and delivered it to the clerk of the trial court.

T. C. Case # 199-596-97

Lisa Rombok, Clerk

P

ERIC W. PINKER
LYNN STODGHILL
MELSHWEIMER & TILLOTSON L
750 N ST PAUL STREET
SUITE 1400
DALLAS TX 75201

.....

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
EVAN BROWN,	§	
	§	
Defendant.	§	199TH JUDICIAL DISTRICT

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: Plaintiff DSC Communications Corporation, by and through its attorney of record, Michael P. Lynn, Lynn Stodghill Melsheimer & Tillotson, L.L.P., 750 North St. Paul Street, Suite 1400, Dallas, Texas 75201.

Pursuant to Rule 168 of the Texas Rules of Civil Procedure, Defendant Evan Brown submits the following answers to Plaintiff DSC Communication Corporation's First Set of Interrogatories.

GENERAL OBJECTIONS

Defendant objects to the instructions and definitions contained in Plaintiff DSC Communication Corporation's First Set of Interrogatories because, as applied to specific discovery requests, they cause the requests to be overly broad and global, vague and ambiguous, unduly burdensome, and to seek information, in part, protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Subject to and without waiving these general objections, Defendant responds to the specific interrogatories as follows:

RESPONSES

Interrogatory No. 1:

Please identify the individual(s) answering these interrogatories.

Answer:

Evan Brown

Interrogatory No. 2:

Please identify each person who has any knowledge of any facts relevant to the claims made in the Petition, as defined in the Texas Rules of Civil Procedure, describing the substance of each person's knowledge.

Answer:

Defendant objects to this Interrogatory insofar as it purports to require Defendant to describe the substance of each person's knowledge for the reason that such a requirement seeks to impose burdens on Defendant beyond those permitted by the Texas Rules of Civil Procedure, calls for Defendant to speculate, is overly broad and unduly burdensome and seeks information protected from disclosure by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Subject to and without waiving the foregoing objections, Defendant responds as follows:

Alan Adams
DSC Communications Corporation

Dan Allman
DSC Communications Corporation

Jack Barreneaux
DSC Communications Corporation

Wylie Basham
DSC Communications Corporation

Dick Belote
DSC Communications Corporation

Matt Bilbo
DSC Communications Corporation

Rick Billings
DSC Communications Corporation

Gary Brown
DSC Communications Corporation

George Brundt
DSC Communications Corporation

Chris Cole
DSC Communications Corporation

Gamini Desoyza
DSC Communications Corporation

Jim Donald
DSC Communications Corporation

Dan Finch
DSC Communications Corporation

Marvin Harbin
DSC Communications Corporation

Dave Hinshaw
DSC Communications Corporation

Wayne Jones
DSC Communications Corporation

Chuck Lane
DSC Communications Corporation

Mike McCarty
DSC Communications Corporation

Dan McMurray
DSC Communications Corporation

Claude Owen
DSC Communications Corporation

Raymond Percival
DSC Communications Corporation

Rick Ross
DSC Communications Corporation

Cheryl Sanders
DSC Communications Corporation

Brian Scudder
DSC Communications Corporation

Larry Sewell
DSC Communications Corporation

Jinx Smith
DSC Communications Corporation

Jianbai Wang
DSC Communications Corporation

Ron Ward
DSC Communications Corporation

Scott Yegal
DSC Communications Corporation

All members of DSC Communications Corporation's Tools Group

Evan Brown
2705 Chadborne Drive
Plano, Texas 75023

Steve Levine

Tina Young

Billy Gonzales

Jack Coates
College Station, Texas

Sam Horowitz
Palo Alto, California

Lance Flores
Dallas, Texas

Interrogatory No. 3:

Please identify any experts engaged by you or your attorney who may be called to testify at trial.

Answer:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 4:

Please identify any expert that you have consulted in this case, if such experts opinion, impressions or work product have been reviewed by any testifying witness, including any expert witness identified in Interrogatory No. 3 above, in this case.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 5:

For each expert named in your answer to Interrogatory No. 3 or No. 4 above, please state the date on which he/she was first consulted by you or your attorney(s), the subject matter on which he/she is expected to testify, the mental impressions and opinions held by each expert, and a summary of the grounds for each opinion.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege and because it seeks to impose burdens on Defendant beyond those permitted by the Texas Rules of Civil Procedure. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 6:

For each expert named in your answer to Interrogatory No. 3 or No. 4 above, please state the facts known to the expert which relate to or form the basis of the mental impressions and opinions held by the expert.

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the consulting expert privilege. Subject to and without waiving the foregoing objection, Defendant responds as follows:

Defendant has not yet engaged any expert witnesses.

Interrogatory No. 7:

Please 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"), that is described in your April 19, 1996 memorandum to Larry Sewell.

Answer:

Defendant objects to this Interrogatory because it seeks information which is confidential and proprietary. Defendant further objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome and harassing. Finally, Defendant objects to this Interrogatory because its inclusion within Plaintiff's First Set of Interrogatories causes such interrogatories to require more than 30 answers in violation of Rule 168(5) of the Texas Rules of Civil Procedure.

Interrogatory No. 8:

Please identify all documents related to the Solution.

Defendant's Responses to Plaintiff's First Set of Interrogatories: Page 6

Answer:

Defendant objects to this Interrogatory as vague, ambiguous, overbroad, unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Defendant states as follows:

Pursuant to Rule 168(2) of the Texas Rules of Civil Procedure, Defendant has produced documents from which the answer to this Interrogatory may be ascertained.

Interrogatory No. 9:

Please identify all efforts by you to protect or preserve the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has protected and preserved the Solution by maintaining its confidential status and by refusing to disclose the Solution to any third parties, including DSC.

Interrogatory No. 10:

Please identify each and every person to whom you have disclosed any part of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Wylie Basham
DSC Communications Corporation

Dick Belote
DSC Communications Corporation

Rick Billings
DSC Communications Corporation

Gary Brown
DSC Communications Corporation

Gamini Desoyza
DSC Communications Corporation

Jim Donald
DSC Communications Corporation

Dan Finch
DSC Communications Corporation

Dave Hinshaw
DSC Communications Corporation

Wayne Jones
DSC Communications Corporation

Chuck Lane
DSC Communications Corporation

Mike McCarty
DSC Communications Corporation

Dan McMurray
DSC Communications Corporation

Cheryl Sanders
DSC Communications Corporation

Larry Sewell
DSC Communications Corporation

Jianbai Wang
DSC Communications Corporation

Ron Ward
DSC Communications Corporation

Steve Levine

Tina Young

Billy Gonzales

Lance Flores
Dallas, Texas

Interrogatory No. 11:

Please identify each and every person with whom you have discussed the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant refers to his Answer to Interrogatory No. 10 set forth above.

Interrogatory No. 12:

Please identify each and every person to whom you have marketed any part of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has not marketed his Idea to anyone.

Interrogatory No. 13:

Please identify each and every person you have contacted in an effort to seek backing or financing for the development of the Solution.

Answer:

Defendant objects to this Interrogatory because it seeks information protected by the attorney-client, work product, party communications, investigative, and consulting expert privileges. Defendant further objects to this Interrogatory as overbroad and unduly burdensome. Finally, Defendant objects to this Interrogatory as seeking information which is confidential and proprietary. Subject to and without waiving the foregoing objections, Defendant states as follows:

Defendant has not contacted anyone in an effort to seek backing or financing for the development of the Idea.

Interrogatory No. 14:

Please identify the facts underlying your contention, in paragraph IV of Defendant's Original Answer, that "Defendant specifically denies that conditions precedent to recovery have been performed or have occurred."

Answer:

Defendant objects to this Interrogatory because it seeks information protected from disclosure by the attorney-client and work product privileges and because it seeks to compel Defendant to provide a legal opinion which he is unqualified to render.

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

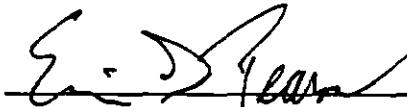
(214) 939-8700

(214) 939-8787 (fax)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this 16th day of July, 1997, pursuant to rule 21a of the Texas Rules of Civil Procedure.




STATE OF TEXAS §
 §
COUNTY OF DALLAS §

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

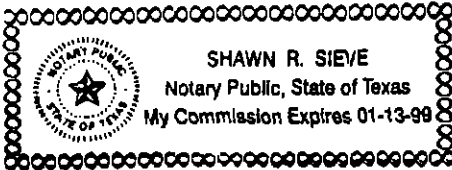
1. My name is Evan Brown. I am above the age of 21 and am competent to make this affidavit.

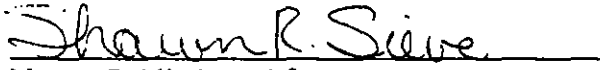
2. I have read the foregoing answers to interrogatories. The answers are true and correct to the best of my knowledge.



Evan Brown

SUBSCRIBED AND SWORN TO BEFORE ME on this the 15th day of July, 1997, to certify which witness my hand and official seal of office.





Notary Public in and for
the State of Texas

My Commission Expires:
1/13/99

EXHIBIT
6

CAUSE NO. 199-596-97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

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IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

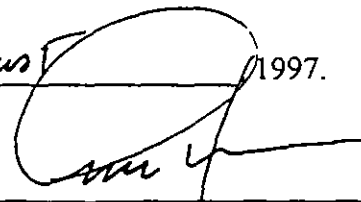
ORDER DENYING DSC'S MOTION TO COMPEL INTERROGATORY RESPONSES

On July 29, 1997, came on for consideration before the Court, Plaintiff DSC's Motion to Compel Interrogatory Responses. The parties appeared by telephone and announced ready to proceed on the Motion. After consideration of the arguments of counsel, the motion, and Defendant Evan Brown's Response to DSC's Motion, the Court is of the opinion that the Motion should be denied because the order sought by DSC would violate Texas Rule of Appellate Procedure 43(d).

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff DSC's Motion to Compel Brown to answer interrogatory No. 7, which asks Brown to "identify and describe in detail the 'method of converting machine executable binary code into high level source code from using logic and data extractions'" be and is hereby DENIED.

This Order is without prejudice to DSC's right to file an additional motion seeking to compel a response to Interrogatory No. 7 after Defendant's appeal of the June 30, 1997 Temporary Injunction Order is determined.

SIGNED this 11 day of August 1997.



JUDGE PRESIDING

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8/11/97