

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 SECOND MOTION TO COMPEL INTERROGATORY RESPONSES AND FOR SANCTIONS AND REQUEST FOR EXPEDITED CONSIDERATION

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Second Motion to Compel Interrogatory Responses and for Sanctions and would respectfully show the following:

I.

Introduction

Immediately after filing this lawsuit, DSC sought and obtained a Temporary Injunction Order requiring, among other things, that Defendant Brown disclose the Solution to DSC. *See* Order (Exhibit 1). Despite an unsuccessful appeal of that Order to the Dallas Court of Appeals, Brown has willfully refused to comply with this Order and has refused to disclose the Solution to DSC.

Following the entry of the Temporary Injunction Order, DSC sought disclosure of the Solution through interrogatories directed to Brown. Brown refused to provide any substantive response to this interrogatory, forcing DSC to file its Motion to Compel Interrogatory Responses and for Sanctions ("DSC's First Motion") on November 13, 1998. A true and correct copy of DSC's First Motion is attached hereto as Exhibit 2 and incorporated herein for all purposes.

On December 3, 1998, following a hearing on the merits, the Court granted DSC's First Motion. In particular, the Court held as follows:

2. Brown shall respond to DSC's Interrogatory No. 7 by fully and completely disclosing the Solution to DSC by 10:00 a.m. on Monday, January 25, 1999.^{1/}

See Order (Exhibit 3). While Defendant Brown filed a Supplemental Interrogatory Response on January 25, 1999 in which he *purported* to provide a response to Interrogatory No. 7, that response is wholly inadequate.^{2/} As demonstrated by the attached affidavits of James Michael McCarty and Robert D. McMurray (two senior software engineers), true and correct copies of which are attached hereto and incorporated herein as Exhibits 4 and 5, respectfully, the Supplemental Response fails to describe the Solution. By failing to fully and completely describe the Solution as required by the Court's December 8, 1998 Order, Brown has continued in his pattern of willfully violating this Court's orders and refusing to provide to DSC the disclosure to which it is lawfully entitled. Accordingly, DSC requests that this Court enter an Order striking Defendant's Answer and awarding DSC a default judgement. In the alternative, DSC requests that this Court enter an Order (1) compelling disclosure of the Solution (for a second time) and (2) sanctioning Brown for discovery abuse (for a second time).

^{1/} DSC anticipates that Brown will argue that DSC somehow acted improperly by failing to file this motion before now. Such an argument, if made, would be without merit. Pursuant to the Court's December 8, 1998 Order, and the Supplemental Order entered in February 1999, Eric W. Pinker is the only attorney of record who is permitted to view the Solution or discuss its content with other members of the DSC Disclosure Team. Mr. Pinker was in trial in Mississippi from January 5, 1999 through March 5, 1999, and was responsible for the preparation of voluminous findings of fact and conclusions of law that were filed on March 19, 1999. As such, any alleged "delay" is due solely Brown's insistence that Mr. Pinker be the *only* attorney of record able to review and discuss the Solution, and to Mr. Pinker's schedule.

^{2/} That Supplemental Response has been filed under seal. In order to guard against inadvertent disclosure of this document, DSC has not attached the Response to this Motion, but DSC hereby refers to and incorporates that Response for all purposes.

II.

Motion to Compel Interrogatory Responses

Allowing full discovery is favored by Texas courts. As the Supreme Court of Texas stated:

Affording parties full discovery promotes the fair resolution of disputes by the judiciary. This court has vigorously sought to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed.

State v. Lowry, 802 S.W.2d 669, 671 (Tex. 1991) (Citations omitted).

In Interrogatory No. 7, *DSC sought for Brown to provide a complete description of the Solution*. As demonstrated in DSC's First Motion, this description is critical in order to (1) respond to Brown's contention that the Solution is not within the scope of his Employment Agreement,^{3/} (2) evaluate and defend against claims by third parties who assert an ownership interest in the Solution, and (3) evaluate whether the Solution was obtained through other lawful means. While Brown asserted a number of objections to the disclosure sought by DSC, the Court overruled those objections in its December 8, 1998 Order, and required Brown to "fully and completely" disclose the Solution by January 25, 1999. *See* Exhibit 3.

As demonstrated in the Affidavits of Mike McCarty and Dan McMurray, Brown's Supplemental Response to Interrogatory Number 7 is wholly inadequate. It fails to disclose the Solution. Indeed, the majority of the answer is wholly non-responsive. The Interrogatory at issue called for Brown to "identify and describe in detail the [Solution]." *See* Exhibit 3, attachment 5 (DSC's Interrogatory no. 7). Brown's response consists of six and one-half pages (omitting the general objections and signature page). The first three pages are completely non-responsive.

^{3/} Brown now seeks to advance this issue through his Motion for Summary Judgment, which has been scheduled for hearing on May 19, 1999. Pursuant to the Court's October 10, 1997 Order, this Motion for Summary Judgment was not to be scheduled for hearing until Brown "provided DSC with a full and complete disclosure of the Solution."

addressing the purpose and/or usefulness of the Solution, and "background" facts relating to Brown's education, work during college and prior to DSC, and similar unrelated issues. Similarly, the next one and one-half pages address a handful of basic computer principles which would be relevant to virtually any discussion of how computer software works. *These matters are not relevant to a description of the Solution.*

The final two pages address Brown's purported realization that he had already "solved" the problem, coupled with what is, at best, an exceedingly high level overview of the Solution. The overview is exceedingly general, and does nothing more than describe the kinds of things that need to be done to convert computer code; it fails to describe fully, completely, or even partially what is actually done to convert the code, how those things are done, in what order they are done.

Perhaps the best evidence showing that Brown's Supplemental Response is completely deficient is to contrast it to his deposition testimony concerning the Solution. In his deposition, Brown testified under oath that it would take him *400 pages* to write down the Solution. See Brown Depo., p. 79 (Exhibit 6). Brown's two page response, appended to a four page narrative about his background and the usefulness of the Solution, is utterly incomplete, inadequate, and in violation of the court's Order requiring a full and complete description of the Solution.

V.

Motion for Sanctions

Brown should be sanctioned for failing to comply with the Court's December 8, 1998 Order, and for bad faith and abuse of the judicial process in needlessly and vexatiously increasing the cost and expense of this litigation. Pursuant to Rule 215 of the Texas Rules of Civil Procedure, the Court may sanction a party that fails to comply with proper discovery requests or fails to obey an order to provide discovery. Tex. R. Civ. P. 215(2). Additionally, the Court may sanction a party for abusing

the discovery process by resisting discovery. Tex. R. Civ. Pro. 215(3). In addition to Rule 215, the Court has the inherent power to sanction Brown's bad faith refusal to comply with the Order.^{4/} *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979). *See also, Kutch v. Del Mar College*, 831 S.W.2d 506, 509-10 (Tex.App.-- Corpus Christi 1992, no writ)(holding that a court has the inherent power to sanction for abuse of the judicial process which may not be covered by rule or statute). As set out above, Brown has violated Rule 215 by (1) failing to comply with the Temporary Injunction Order and (2) failing to comply with the Court's December 8, 1998 Order requiring that Brown "fully and completely" disclose the Solution, and his conduct amounts to an abuse of the discovery process.

Because Brown has already been sanctioned for refusing to disclose the Solution in response to a valid Court order requiring him to do so, DSC requests the Court to strike Brown's Answer and to enter a Default Judgment against Brown. Rule 215 reads, in pertinent part:

If a party . . . fails . . . to obey an order to provide or permit discovery . . . the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are just, and among others the following . . . (5) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party.

Tex.R.Civ.P. 215(2)(b)(5) (emphasis added). Indeed, the Court's December 8, 1998 Order explicitly warned Brown that any further violations of the Court's order would result in such a ruling. *See* Exhibit 3.

^{4/} A court's inherent power to sanction exists when necessary to deter, alleviate, and counteract bad faith abuse of the judicial process, such as any significant interference with a court's traditional core functions. *Kutch*, 831 S.W.2d at 510.

In the alternative, DSC requests that the Court again enter an Order (1) requiring Brown to "fully and completely" describe the Solution within thirty (30) days of the date of entry of a court order, and (2) sanctioning Brown in the amount of \$5,000 for violating the Court's Order and for abusing the discovery process. DSC further requests that the Court insert a provision in its order stating that if after 30 days Brown has failed to comply with the Court's Orders, it will strike Brown's pleadings and enter default judgment in favor of DSC. In addition, Brown should be precluded from further pursuing his Motion for Summary Judgment or initiating any discovery in this matter until he fully discloses the Solution to DSC pursuant to the Court's Order and Interrogatory No. 7.^{5/}


WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court enter an order striking Brown's Answer and entering Default Judgment against Brown and in favor of DSC. In the alternative, DSC request that the Court enter a second order (1) compelling Brown to fully answer Interrogatory No. 7 by identifying and describing the Solution in detail, (2) requiring Brown to pay DSC's reasonable discovery expenses, attorneys fees and taxable court costs incurred in compelling the answer to Interrogatory No. 7, (3) stating that, in the event that Brown continues to violate the Court's Order, the Court will strike Brown's pleadings and enter Default Judgment against him, and (4) granting DSC such other and further relief to which it may show itself to be justly entitled.

^{5/} Because Brown's Motion for Summary Judgment is scheduled for hearing on May 19, 1999, DSC respectfully requests that this Motion be considered on an expedited basis.

Respectfully submitted,

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

By: _____


Eric W. Pinker, P.C.
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John T. Cox III
Texas Bar No. 24003722

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

CERTIFICATE OF CONFERENCE

May 6, 1999

I hereby certify that I attempted on ~~numerous occasions~~ 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, P.C.

FIAT

The above Motion to Compel Interrogatory Responses is set for hearing in the 219th Judicial District Court on the ___ day of _____, 1998, 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 7th day of May, 1999.

Via Hand Delivery:

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



Eric W. Pinker, P.C.

Cause No. 199-00596-97

DSC COMMUNICATIONS
CORPORATION

IN THE DISTRICT COURT OF

v.

COLLIN COUNTY, TEXAS

EVAN BROWN

199TH JUDICIAL DISTRICTTEMPORARY INJUNCTION ORDER

On June 30, 1997, Plaintiff DSC Communications Corporation's ("DSC") Application for Temporary Injunction came on regularly for hearing, due notice having been given to Defendant Evan Brown ("Brown"). The parties appeared in person and by their attorneys. After considering the evidence received, the pleadings before the Court, and the argument of counsel, the Court finds and concludes that Plaintiff DSC will probably prevail on the merits at the trial of this cause, and further that Plaintiff DSC will probably prevail at trial in establishing each and all of the following: that Defendant Brown entered into an Employee Patent, Copyright and Proprietary Information Agreement with DSC (the "Employment Agreement"); that the Employment Agreement is a valid and enforceable contract between DSC and Brown; that Brown 1) developed a method of converting machine executable binary code into a high level source code using logic and data abstractions, 2) developed a method of taking existing executable programs and "reverse engineering" the intelligence from programs and "re-code" the intelligence into portable high level language, and 3) developed a method of converting executable Z8000 machine code into C language source (all collectively describing what shall hereinafter be referred to as the "Solution") during his employment by DSC; that the Solution is along the lines of DSC's business, work, and investigations, and that the Solution further resulted from or was suggested by Brown's work for DSC; that other companies are currently pursuing the Solution; that Brown has stated an intention not to disclose the Solution to DSC and has stated an intention not to assist DSC to obtain patents for the Solution; that Brown has stated an intention to develop the Solution

independent of DSC, including to develop it in foreign countries outside the protection of this and other courts in the United States; that if Brown carries out his intentions it will alter the status quo and make ineffectual a judgment in favor of DSC in that DSC will suffer immediate harm and will be irreparably injured because it will not be able to protect its rights to the Solution; that unless Brown is enjoined from carrying out his intentions, DSC will be without an adequate remedy at law; and that any delay to DSC's ability to exploit the Solution or to take action to protect its rights in the Solution, such as patent applications on the Solution, will irreparably harm DSC.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Evan Brown, his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to desist and refrain from the following until final judgment in this cause is entered by the Court:

- a. Disclosing, marketing, selling, assigning, or transferring the Solution to any person or entity other than DSC;
- b. Negotiating the disclosure, sale assignment, or transfer of the Solution to any person or entity other than DSC;
- c. Disclosing or negotiating the disclosure of any information or details concerning the Solution to anyone other than DSC;
- d. Further developing, refining, or implementing the Solution, except as required by the mandatory injunction below; and
- e. Destroying any material or records (including computer files or disks) that relate to or evidence the Solution or his effort to market the Solution.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Evan Brown, his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to:

- a. Preserve the Solution; and



b. Disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order.

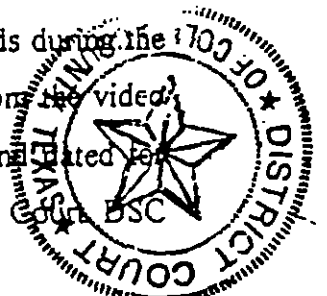
IT IS ORDERED, ADJUDGED, and DECREED that the following persons are designated by the Court to be the DSC Development Team (the "DSC Development Team"), to-wit: Tina Young, Court Reporter, Billy Gonzales, Videographer, Rick Billings, Mike McCarty, Jianbai Wang, Dan McMurray, Wayne Jones, Cheryl Sanders, and Steve Levine.

The members of the DSC Development Team shall be bound by the Confidentiality provisions set forth in this Order.

Defendant Evan Brown is hereby ORDERED, COMMANDED and DIRECTED to:

1. disclose the Solution to the DSC Development Team instantler,
2. appear in person at the offices of DSC, 1000 Coit Road, Plano, Texas, each business day at 9:00 a.m. beginning July 1, 1997, and remain in attendance at DSC until 5:00 p.m. each day, and to continue to appear each business day thereafter from 9:00 a.m. to 5:00 p.m. until the disclosure to the DSC Development Team is complete, and
3. make a full and complete disclosure of each aspect of the Solution to the DSC Development Team, both orally and in writing.

DSC shall provide a suitable room for Brown and the DSC Development Team. DSC shall also provide telephone access to Brown's counsel from the room set aside for the disclosure. The DSC Development Team shall maintain accurate records of the Solution as Brown dictates it to them, and a log tracking such records, which records and log shall be made available to the Court upon request. The DSC Development Team shall be permitted to videotape Defendant Evan Brown's efforts, actions and words during the disclosure of the Solution. Any video tape made shall, upon its removal from the video recording device, be placed into the custody of Billy Gonzales, marked and identified, and transported for safekeeping to a location designated by the Court.

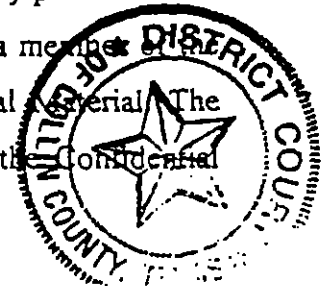


shall be permitted to transcribe portions of the disclosure as it deems appropriate with such transcriptions to be made from the videotape or live. The transcription will be subject to the confidentiality provisions of this order, and once completed shall be transported for safekeeping to a location designated by the Court.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that DSC shall compensate Evan Brown for his time in making a good faith, complete and timely disclosure at the rate of \$45.00 an hour. DSC shall, on or before July 1, 1997, make an initial deposit of \$1,000 into the registry of the Court for this purpose, and Brown, upon completion of the disclosure, may apply to the Court, and upon notice and hearing to DSC, demonstrate his good faith, complete and timely compliance with the Order, and his entitlement to his hourly fee for the time spent during the disclosure.

IT IS ORDERED, ADJUDGED, and DECREED that the DSC Development Team shall evaluate the Solution and have the option as it deems necessary to take any appropriate efforts to protect the Solution, including the filing of patent applications in the United States and in foreign countries, if appropriate. The DSC Development Team shall make no use of the Solution other than as set forth in the preceding sentence of this Order. The DSC Development Team shall maintain accurate records of its technical work and documentation concerning the Solution, including a log tracking such records and documents, which records, documents, and logs shall be made available to the Court upon request.

IT IS ORDERED, ADJUDGED, and DECREED that except as otherwise provided by the Court, the disclosure of the Solution by Brown, and any information or documents generated by the DSC Development Team in connection with evaluating or protecting the Solution (collectively referred to as the "Confidential Material"), shall be treated in the manner set forth in this paragraph of this Order. No member of the DSC Development Team shall discuss or show any Confidential Material to any person who is not a member of the DSC Development Team. No person who is not a member of the DSC Development Team shall have access to any of the Confidential Material. The members of the DSC Development Team shall only make copies of the Confidential



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 TO COMPEL INTERROGATORY
RESPONSES AND FOR SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Motion to Compel Interrogatory Responses and for Sanctions and would respectfully show the following:

I.

Introduction

Immediately after filing this lawsuit, DSC sought and obtained a Temporary Injunction Order requiring, among other things, that Defendant Brown disclose the Solution to DSC. On June 30, 1997, the Court entered a Temporary Injunction Order which provided, in part:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Even Brown, and his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to:

- a. Preserve the Solution; and
- b. Disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order.

Since the entry of that Order, Brown has willfully refused to disclose the Solution to DSC. The Dallas Court of Appeals affirmed this Court's Temporary Injunction Order on January 6, 1998, and denied Brown's Motion for Rehearing on February 11, 1998. On July 20, 1998, the Dallas Court of Appeals returned the mandate to this Court. In addition to the entry of the Order, DSC has also sought disclosure of the Solution through interrogatories directed to Brown. Brown has, however, refused to provide any substantive response to this interrogatory.

DSC is entitled to an immediate disclosure of the Solution. Brown has refused to disclose the Solution and continues to willfully violate this Court's Order. Accordingly, DSC requests that this Court enter an Order (1) compelling disclosure of the Solution and (2) sanctioning Brown for discovery abuse.

II.

Factual Background

1. DSC filed this lawsuit against Evan Brown ("Brown") on April 24, 1997, in which it sought to enforce an Employee Patent, Copyright, and Confidential Information Agreement (the "Employment Agreement") that it entered into with Brown at the onset of his employment relationship with DSC. Specifically, Brown advised DSC that he had "developed a method of converting machine executable binary code into a high level source code form using logic and data abstractions (the "Solution")," but in violation of the Employment Agreement, he refused to assign ownership of the Solution to DSC or assist DSC to protect the Solution. In its Amended Petition, DSC has also alleged claims for promissory estoppel, misappropriation of trade secrets, unfair competition, and breach of fiduciary duty, all with respect to Brown's refusal to disclose the Solution.

A. Temporary Injunction

1. On June 30, 1997, the Court entered the Temporary Injunction Order (the "Order") in this case, requiring Brown, *inter alia*, to disclose the Solution to the DSC Development Team.

Specifically, the Order provides as follows:

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Evan Brown, his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to:

- a. preserve the Solution; and
- b. disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order.

Order at p. 2-3. A true and correct copy of the Order is attached to this Motion as Exhibit 1.

2. Brown is fully aware of the entry of the Order. Both he and his counsel attended the hearing at which the Court orally entered the temporary injunction in favor of DSC. In addition, Brown appealed the Order, filed a Notice of Filing of Cash Bond on July 1, 1997, and filed his Appellant's Brief on August 4, 1997.

B. The Appeal of The Temporary Injunction

1. Following the entry of the Order, Brown noticed an appeal of that order. On January 6, 1998, the Court of Appeals denied Brown's appeal and affirmed this Court's Order. A true and correct copy of that Order is attached as Exhibit 2.

2. On January 12, 1998, Brown filed a Motion for Rehearing with the Court of Appeals.

3. On February 11, 1998, the Court of Appeals denied the Motion for Rehearing. A true and correct copy of that Order is attached as Exhibit 3.

4. On July 17, 1998, the Court of Appeals returned the mandate to this Court. A true and correct copy of correspondence from the Court of Appeals confirming the return of the mandate is attached hereto as Exhibit 4.

C. Interrogatories and Motion To Compel

1. On June 19, 1997, DSC served Defendant Brown with its First Set of Interrogatories to Defendant. In Interrogatory No. 7, DSC asked Brown to "identify and describe in detail" the Solution.

2. On or about July 15, 1997, Brown served his Responses to Plaintiff's First Set of Interrogatories. A true and correct copy of that Response is attached hereto as Exhibit 5. Brown refused to provide any substantive response to Interrogatory No. 7.

3. On July 23, 1997, DSC filed a Motion to Compel Interrogatory Responses. This Court denied that motion based solely on the conclusion that Brown's pending appeal and Texas Rule of Appellate Procedure 43 precluded any action regarding the disclosure of the Solution. Although the Court denied the motion, it did so without prejudice to refile after the appellate court had ruled on the pending appeal. A true and copy of that Order is attached hereto as Exhibit 6.

D. Since The Mandate Was Returned, Brown Has Done Nothing To Disclose The Solution

1. Since July 20, 1998, Brown has not supplemented his interrogatory responses, appeared at DSC to disclose the Solution, or taken any other actions to disclose the Solution. See Affidavit of Wayne Jones.

2. Based on Brown's failure to provide any description of the Solution, as required by the Court's Order, DSC files the instant Motion to Compel Interrogatory Responses and for Sanctions. In addition, based on Brown's continued refusal to provide a substantive response to

Interrogatory No. 7, DSC files the instant Motion to Compel Interrogatory Responses and for Sanctions.

III.

Motion to Compel Interrogatory Responses

Allowing full discovery is favored by Texas courts. As the Supreme Court of Texas stated:

Affording parties full discovery promotes the fair resolution of disputes by the judiciary. This court has vigorously sought to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed. Discovery is thus the linchpin of the search for truth, and it makes a trial less of a game of blind man's bluff and more a fair contest with the issues and facts disclosed to the fullest practicable extent. In recent years, we have sought to secure this objective through . . . our opinions discouraging gamesmanship and secrecy.

State v. Lowry, 802 S.W.2d 669, 671 (Tex. 1991) (Citations omitted).

In Interrogatory No. 7, DSC sought for Brown to provide a complete description of the Solution. This description is critical for several reasons. First, Brown has argued in this lawsuit that the Solution is not within the scope of his Employment Agreement. In order to properly litigate this case, and to fully respond to this contention, DSC needs a full and complete description of the Solution. Notwithstanding its need to obtain a full and complete description of the Solution in order to properly litigate this case, Brown has refused to disclose the Solution in response to the Court's June 30, 1997 Temporary Injunction Order; in response to deposition questions seeking this disclosure; and in response to Interrogatory No. 7.

Second, DSC needs a complete description of the Solution in order to evaluate and defend against claims by third parties who assert an ownership interest in the Solution. For example, on July 21, 1997, Mr. Lance Flores filed a Petition for Intervention in this matter claiming that he disclosed the Solution to Brown and that he is therefore the owner of the Solution. In order to

defend against this claim (and potentially others), DSC needs a complete description of the Solution so that it may compare the Solution to the technology purportedly owned by Mr. Flores.

Finally, DSC requires a complete disclosure of the Solution in order to evaluate whether the Solution was obtained through other lawful means. As DSC demonstrated at the Temporary Injunction hearing, it has investigated the acquisition of technology similar to the Solution for a number of years. In addition, DSC employees have undertaken independent research and development in an effort to develop this type of technology. In order to evaluate whether Brown's Solution is actually different than the technology that was the subject of these other investigations and independent developments, DSC needs a complete disclosure of the Solution.

In refusing to describe the Solution, Brown relies on a series of ill-founded objections. First, Brown argues that the information is confidential and proprietary. As a preliminary matter, trade secrets and confidential information are not necessarily "privileged" matters. *Automatic Drilling Machines, Inc. v. Miller*, 515 S.W.2d 256, 259 (Tex.1974). As such, when faced with a request for discovery of trade secrets and confidential information, courts will weigh the need for discovery against the desirability of preserving the secrecy of the material in question. *Id.* Typically, courts preserve the secrecy of the information through the issuance of an appropriate confidentiality order. A stand alone Confidentiality Order has been entered in this case,^{1/}

Second, Brown objects to Interrogatory No. 7 "as vague, ambiguous, over broad, unduly burdensome and harassing." These boilerplate objections are unfounded and should be overruled.

Finally, Brown objects to this Interrogatory on the grounds that "its inclusion within Plaintiff's First Set of Interrogatories cause such interrogatories to require more than 30 answers."

^{1/} In addition, the Court did include a number of confidentiality features within the June 30, 1997 Temporary Injunction Order, but these features are presumably limited to a disclosure of the Solution under that Order.

Contrary to this objection, DSC's First Set of Interrogatories included only fourteen (14) interrogatories, with few if any subparts. As such, this set of interrogatories was well within the permissible limit established by Texas Rule of Civil Procedure 168(5). This is perhaps best evidenced by the fact that Interrogatory No. 7 is the *only* interrogatory to which Brown made this objection, and he purported to provide a substantive answer to each of the *following* seven (7) interrogatories.

For the foregoing reasons, DSC requests that Brown be compelled to immediately answer Interrogatory No. 7.

V.

Motion for Sanctions

Brown should be sanctioned for failing to comply with the Court's Temporary Injunction Order, for failing to respond to DSC's Interrogatory No. 7, and for bad faith and abuse of the judicial process in needlessly and vexatiously increasing the cost and expense of this litigation. Pursuant to Rule 215 of the Texas Rules of Civil Procedure, the Court may sanction a party that fails to comply with proper discovery requests or fails to obey an order to provide discovery. Tex. R. Civ. P. 215(2). Additionally, the Court may sanction a party for abusing the discovery process by resisting discovery. Tex. R. Civ. Pro. 215(3). As set out above, Brown has violated Rule 215 by (1) failing to comply with the Temporary Injunction Order and (2) failing to respond to Interrogatory No. 7, and his conduct amounts to an abuse of the discovery process.

In addition to Rule 215, the Court has the inherent power to sanction Brown's bad faith refusal to comply with the Order. The Court's inherent power to sanction was first articulated in *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979), when the Texas Supreme Court recognized the inherent powers of a court, not derived from specific legislation or constitutional

provisions, but necessary for the exercise of the court's jurisdiction, administration of justice, and the preservation of the court's independence and integrity. *See also, Kutch v. Del Mar College*, 831 S.W.2d 506, 509-10 (Tex.App.-- Corpus Christi 1992, no writ)(holding that a court has the inherent power to sanction for abuse of the judicial process which may not be covered by rule or statute). Recently, the Texas Supreme Court reiterated that courts have "comprehensive" inherent power to sanction counsel for abusive conduct occurring during litigation. *Remington Arms Co., Inc. v. Hon. Benjamin Martinez*, 850 S.W.2d 167, 172 (Tex. 1993). *See also, Public Util. Com'n of Texas v. Cofer*, 754 S.W.2d 121, 124 (Tex.1988) ("We recognize that a court has inherent powers it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in preservation of its independence and integrity."); *Kutch v. Del Mar College*, 831 S.W.2d 506, 509 (Tex.App.--Corpus Christi 1992, no writ) (Texas courts have certain inherent powers, "including the power to sanction for bad faith abuse of the judicial process"). A court's inherent power to sanction exists when necessary to deter, alleviate, and counteract bad faith abuse of the judicial process, such as any significant interference with a court's traditional core functions. *Kutch*, 831 S.W.2d at 510.^{2/}

If, after all of the above remedies have been enforced against Brown for thirty days and he continues to violate the Order and/or an order to compel, DSC requests the Court to consider a motion from DSC for a "death penalty sanction." Tex. R. Civ. Pro. 215 endorses the "death penalty" sanctions for the specific type of abusive conduct in which Brown has and will likely continue to engage. Rule 215 reads, in pertinent part:

If a party . . . fails . . . to obey an order to provide or permit discovery . . . the court in which the action is pending may, after notice and hearing, make such orders in regard to the failure as are

^{2/} A trial court's imposition of sanctions will be reviewed subject to an abuse-of-discretion standard. *Kutch*, 831 S.W.2d at 512; *see also, Greiner v. Jameson*, 865 S.W.2d 493, 498, 500 (Tex.App.--Dallas 1993, writ denied).

just, and among others the following . . . (5) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or **rendering a judgment by default against the disobedient party.**

Tex.R.Civ.P. 215(2)(b)(5) (emphasis added). But, before a court can impose a death penalty sanction, it must consider lesser sanctions. Case law reveals that “an order to compel, standing alone, is not the type of lesser sanction that must precede the ultimate sanction. However, an order to compel joined with a statement that noncompliance would result in dismissal does constitute a lesser sanction.” *Andras v. Memorial Hospital System*, 888 S.W.2d 567, 572 (Tex. App. -- Houston [1st Dist.] 1994, writ denied). Thus, out of an abundance of caution, DSC requests that the Court insert a provision in its order stating that if after 30 days Brown has failed to comply with the Court’s Orders, it will entertain a motion to strike Brown’s pleadings and enter default judgment in favor of DSC.

For his actions set forth above, and pursuant to Rule 215(2) of the Texas Rules of Civil Procedure, Brown should be sanctioned and ordered to pay DSC’s discovery expenses, attorneys fees and taxable court costs incurred in its quest to compel Brown to answer Interrogatory No. 7. In addition, Brown should be precluded from initiating any discovery in this matter until he fully discloses the Solution to DSC pursuant to the Court’s Order and Interrogatory No. 7.

VI.

Conclusion

For all these reasons, Brown’s objections to Interrogatory No. 7 should be overruled, and Brown should be required to immediately provide a full substantive response to this Interrogatory. The Court should also order Brown to pay DSC’s reasonable discovery expenses, attorneys fees and taxable court costs incurred in compelling the answer to Interrogatory No. 7. Finally, if Brown

continues his refusal to respond to the Interrogatory, after being sanctioned for such refusal, the Court should strike Brown's pleadings in this matter pursuant to Rule 215 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court enter an order (1) compelling Brown to fully answer Interrogatory No. 7 by identifying and describing the Solution in detail, (2) requiring Brown to pay DSC's reasonable discovery expenses, attorneys fees and taxable court costs incurred in compelling the answer to Interrogatory No. 7, (3) stating that, in the event that Brown continues to violate the Court's Order for thirty (30) after being sanctioned for failing to comply with the Order, the Court will entertain a "death penalty" sanction such as striking Brown's pleadings, and (4) granting DSC such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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

By: 

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

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

**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF CONFERENCE

I hereby certify that I attempted on numerous occasions 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, P.C.

FIAT

The above Motion to Compel Interrogatory Responses is set for hearing in the 219th Judicial District Court on the ___ day of _____, 1998, 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 13 day of November, 1998:

Via Hand Delivery

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

Via Regular Mail

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



Eric W. Pinker, P.C.



Cause No. 199-00596-97

DSC COMMUNICATIONS CORPORATION

IN THE DISTRICT COURT OF

v.

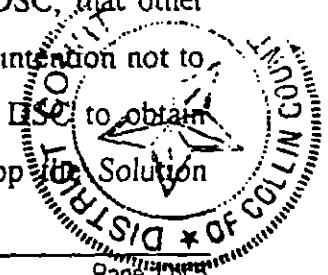
COLLIN COUNTY, TEXAS

EVAN BROWN

199TH JUDICIAL DISTRICT

TEMPORARY INJUNCTION ORDER

On June 30, 1997, Plaintiff DSC Communications Corporation's ("DSC") Application for Temporary Injunction came on regularly for hearing, due notice having been given to Defendant Evan Brown ("Brown"). The parties appeared in person and by their attorneys. After considering the evidence received, the pleadings before the Court, and the argument of counsel, the Court finds and concludes that Plaintiff DSC will probably prevail on the merits at the trial of this cause, and further that Plaintiff DSC will probably prevail at trial in establishing each and all of the following: that Defendant Brown entered into an Employee Patent, Copyright and Proprietary Information Agreement with DSC (the "Employment Agreement"); that the Employment Agreement is a valid and enforceable contract between DSC and Brown; that Brown 1) developed a method of converting machine executable binary code into a high level source code using logic and data abstractions, 2) developed a method of taking existing executable programs and "reverse engineering" the intelligence from programs and "re-code" the intelligence into portable high level language, and 3) developed a method of converting executable Z8000 machine code into C language source (all collectively describing what shall hereinafter be referred to as the "Solution") during his employment by DSC; that the Solution is along the lines of DSC's business, work, and investigations, and that the Solution further resulted from or was suggested by Brown's work for DSC; that other companies are currently pursuing the Solution; that Brown has stated an intention not to disclose the Solution to DSC and has stated an intention not to assist DSC to obtain patents for the Solution; that Brown has stated an intention to develop the Solution



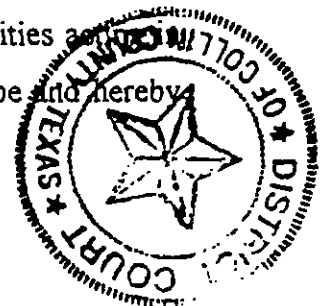
independent of DSC, including to develop it in foreign countries outside the protection of this and other courts in the United States; that if Brown carries out his intentions it will alter the status quo and make ineffectual a judgment in favor of DSC in that DSC will suffer immediate harm and will be irreparably injured because it will not be able to protect its rights to the Solution; that unless Brown is enjoined from carrying out his intentions, DSC will be without an adequate remedy at law; and that any delay to DSC's ability to exploit the Solution or to take action to protect its rights in the Solution, such as patent applications on the Solution, will irreparably harm DSC.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Evan Brown, his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to desist and refrain from the following until final judgment in this cause is entered by the Court:

- a. Disclosing, marketing, selling, assigning, or transferring the Solution to any person or entity other than DSC;
- b. Negotiating the disclosure, sale assignment, or transfer of the Solution to any person or entity other than DSC;
- c. Disclosing or negotiating the disclosure of any information or details concerning the Solution to anyone other than DSC;
- d. Further developing, refining, or implementing the Solution, except as required by the mandatory injunction below; and
- e. Destroying any material or records (including computer files or disks) that relate to or evidence the Solution or his effort to market the Solution.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Defendant Evan Brown, his employees, agents, assignees, or other persons and/or entities acting in concert with him who receive actual or constructive notice of this Order, be and hereby is, commanded forthwith to:

- a. Preserve the Solution; and



b. Disclose the Solution, in its entirety, to DSC in the manner set forth in the following paragraphs of this Order.

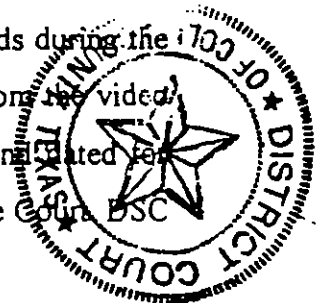
IT IS ORDERED, ADJUDGED, and DECREED that the following persons are designated by the Court to be the DSC Development Team (the "DSC Development Team"), to-wit: Tina Young, Court Reporter, Billy Gonzales, Videographer, Rick Billings, Mike McCarty, Jianbai Wang, Dan McMurray, Wayne Jones, Cheryl Sanders, and Steve Levine.

The members of the DSC Development Team shall be bound by the Confidentiality provisions set forth in this Order.

Defendant Evan Brown is hereby ORDERED, COMMANDED and DIRECTED to:

1. disclose the Solution to the DSC Development Team instantler,
2. appear in person at the offices of DSC, 1000 Coit Road, Plano, Texas, each business day at 9:00 a.m. beginning July 1, 1997, and remain in attendance at DSC until 5:00 p.m. each day, and to continue to appear each business day thereafter from 9:00 a.m. to 5:00 p.m. until the disclosure to the DSC Development Team is complete, and
3. make a full and complete disclosure of each aspect of the Solution to the DSC Development Team, both orally and in writing.

DSC shall provide a suitable room for Brown and the DSC Development Team. DSC shall also provide telephone access to Brown's counsel from the room set aside for the disclosure. The DSC Development Team shall maintain accurate records of the Solution as Brown dictates it to them, and a log tracking such records, which records and log shall be made available to the Court upon request. The DSC Development Team shall be permitted to videotape Defendant Evan Brown's efforts, actions and words during the disclosure of the Solution. Any video tape made shall, upon its removal from the video recording device, be placed into the custody of Billy Gonzales, marked and identified for identification, and transported for safekeeping to a location designated by the Court.

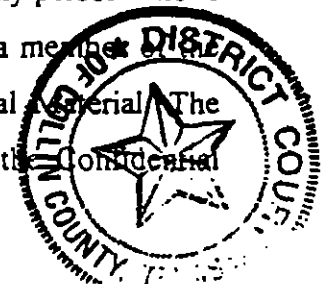


shall be permitted to transcribe portions of the disclosure as it deems appropriate with such transcriptions to be made from the videotape or live. The transcription will be subject to the confidentiality provisions of this order, and once completed shall be transported for safekeeping to a location designated by the Court.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that DSC shall compensate Evan Brown for his time in making a good faith, complete and timely disclosure at the rate of \$45.00 an hour. DSC shall, on or before July 1, 1997, make an initial deposit of \$1,000 into the registry of the Court for this purpose, and Brown, upon completion of the disclosure, may apply to the Court, and upon notice and hearing to DSC, demonstrate his good faith, complete and timely compliance with the Order, and his entitlement to his hourly fee for the time spent during the disclosure.

IT IS ORDERED, ADJUDGED, and DECREED that the DSC Development Team shall evaluate the Solution and have the option as it deems necessary to take any appropriate efforts to protect the Solution, including the filing of patent applications in the United States and in foreign countries, if appropriate. The DSC Development Team shall make no use of the Solution other than as set forth in the preceding sentence of this Order. The DSC Development Team shall maintain accurate records of its technical work and documentation concerning the Solution, including a log tracking such records and documents, which records, documents, and logs shall be made available to the Court upon request.

IT IS ORDERED, ADJUDGED, and DECREED that except as otherwise provided by the Court, the disclosure of the Solution by Brown, and any information or documents generated by the DSC Development Team in connection with evaluating or protecting the Solution (collectively referred to as the "Confidential Material"), shall be treated in the manner set forth in this paragraph of this Order. No member of the DSC Development Team shall discuss or show any Confidential Material to any person who is not a member of the DSC Development Team. No person who is not a member of the DSC Development Team shall have access to any of the Confidential Material. The members of the DSC Development Team shall only make copies of the Confidential



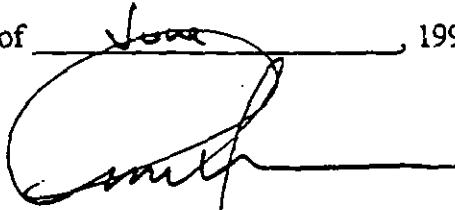
Material as are necessary to enable those team members to evaluate and protect the Solution as permitted by this Order, and all such notes and copies shall be preserved in a separate file maintained as confidential. The provisions of this paragraph do not preclude DSC from filing patent applications as otherwise provided in this Order, nor does it preclude the making of a video tape to be preserved by a Collin County Sheriff's Deputy or Constable as provide heretofore in this Order.

IT IS ORDERED, ADJUDGED, and DECREED that trial on the merits of this cause is set for the 3rd day of November, 1997, at 9:00 a.m.

The Clerk shall forthwith on the filing by DSC of the bond hereinafter required and on approving the same according to the law, issue a temporary injunction in conformity with the law and the terms of this order.

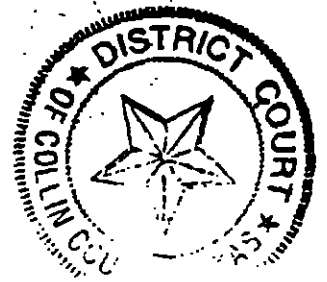
This Order shall not be effective unless and until DSC executes and files with the Clerk a surety bond, in conformity with the law, in the amount of five hundred thousand dollars (\$500,000) or a cash bond in the sum of fifty thousand dollars (\$50,000.00).

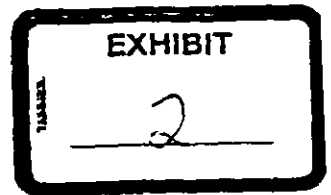
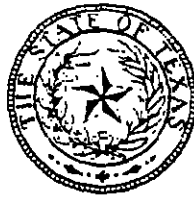
Signed this 30 of June, 1997.



Judge Curt B. Henderson, 219th Judicial District Court
sitting by assignment for the 199th Judicial District Court

CLERK OF DISTRICT COURT
COUNTY OF COLLIN TEXAS
1000 WEST RINGROCK ROAD
FARMERSVILLE, TEXAS 75402
TEL: 940-356-1234
FAX: 940-356-1235
AD. 18
JANUARY 1997
CLERK OF DISTRICT COURT
COUNTY OF COLLIN TEXAS





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.

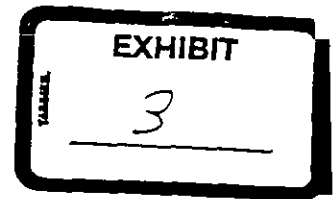
We affirm the trial court's judgment.



CHUCK MILLER
JUSTICE, ASSIGNED

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

Order issued February 11, 1998



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-97-01098-CV

EVAN BROWN, Appellant

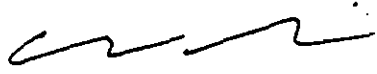
v.

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.

OFFICE OF THE CLERK
FIFTH COURT OF APPEALS
1000 Commerce Street, Second Floor
Dallas, Texas 75202-6658
STAYLOR & ASSOCIATES, P.C.
Styler, Brown, Ewald
PCN: bscd communication corporation

020
FEB 17 1998

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

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

Handwritten signature or stamp

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

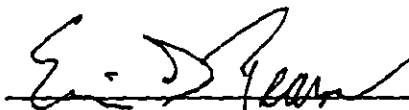
(214) 939-8700

(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 §

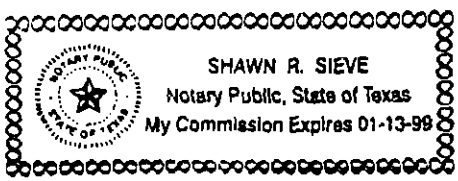
BEFORE ME, the undersigned authority, on this day personally appeared Evan Brown, who being duly sworn by me, upon his oath stated as follows:

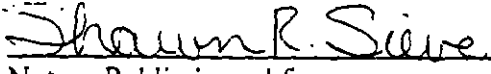
1. My name is Evan Brown. I am above the age of 21 and am competent to make this affidavit.
2. I have read the foregoing answers to interrogatories. The answers are true and correct to the best of my knowledge.



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

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

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

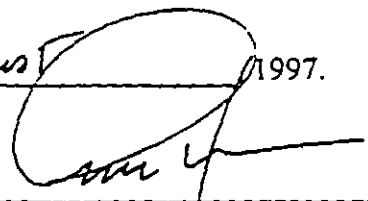
**ORDER DENYING DSC'S MOTION
TO COMPEL INTERROGATORY RESPONSES**

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

000012

0724 1692

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

On the 3rd day of December, 1998, came on for consideration before the Court, Plaintiff DSC's Motion to Compel Interrogatory Responses and For Sanctions (the "Motion"). The parties appeared through their attorneys of record and announced ready to proceed on the Motion.

After consideration of the arguments of counsel, the Motion and Defendant's Response,¹ the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff DSC's Motion shall be and is hereby GRANTED according to the following terms:

1. Brown's objections to Interrogatory No. 7 are not well founded. Accordingly, Brown's objections to Interrogatory No. 7 are overruled.
2. Brown shall respond to DSC's Interrogatory No. 7 by fully and completely disclosing the Solution to DSC by 10:00 a.m. on Monday, January 25, 1999.
3. The Solution, once disclosed by Brown, shall be forwarded to the Court under seal. DSC and Brown shall confer concerning the identity of the persons to whom the Solution may be disclosed, and shall advise the Court of any agreements that they reach. In the event the parties are unable to reach agreement concerning the persons

¹ Pursuant to Texas Rule of Civil Evidence 201, the Court took judicial notice of the material in its file concerning this case, including the evidence presented at the Temporary Injunction hearing on June 30, 1997.

to whom the Solution may be disclosed, the Court will enter a further order providing for the disclosure of the Solution to DSC.

4. After completely disclosing the Solution to DSC as required by this Order, and provided that Brown has otherwise complied with all of the provisions of this Order, Brown may apply to the Court to be compensated at the rate of no more than \$45 per hour for the time that Brown reasonably spent disclosing the Solution to DSC.
5. Brown shall not be permitted any further discovery in this matter unless and until he has fully complied with the disclosure required in paragraph 2 above, except upon order of the Court.
6. Brown shall pay DSC \$1,000.00 for its attorneys fees, costs and expenses expended in obtaining this order by Monday, January 25, 1999.
7. Should Brown fail to comply with the terms of this order, this Court will entertain a motion from DSC to strike Brown's pleadings pursuant to Texas Rule of Civil Procedure 215(2).

SIGNED this 8th day of December, 1998.



JUDGE PRESIDING

CAUSE NO. 199-596-97

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

219TH JUDICIAL DISTRICT

AFFIDAVIT OF JAMES MICHAEL McCARTY

STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, on this day personally appeared James Michael McCarty, who, being by me duly sworn, on his oath stated as follows:

1. My name is James Michael McCarty. I am over the age of 18 years, have never been convicted of a felony or a crime involving moral turpitude, and am competent to make this Affidavit. The matters and facts stated herein are within my personal knowledge and are true and correct.

2. I am currently employed as a Staff Software Development Engineer for Alcatel USA, formerly known as DSC Communications, Corp. In that position, I am familiar with the operation of computers and the way in which computer software is written and interpreted by computers. I am also familiar with the software tools that are currently available for converting high level computer code to assembly code and object or machine executable code. Such software tools are typically referred to as compilers, assemblers and linkers. I am also familiar with software tools known as

reverse compilers, which convert lower level computer code, such as object or machine executable code, to a specific higher level code, such as C++.

3. I am a member of the DSC Disclosure Team in connection with the above-referenced lawsuit. In that capacity, I have seen and reviewed the documents titled Defendant=s First Supplemental Responses to Plaintiff=s First Set of Interrogatories (the AInterrogatory Response@).

4. I am aware that Evan Brown claims to have invented a Amethod of converting machine executable binary code into high level source code form using logic and data abstractions.@ The Interrogatory Response does not fully and completely describe a method of converting machine executable binary code into high level source code form. Rather, the Interrogatory Response appears to provide a very basic overview of what the component parts of the conversion process are, without providing any description of the components themselves, what they do, how they work or the sequence in which things are accomplished. In other words, the Interrogatory Response identifies in generic terms the basic steps that would need to occur to complete a code conversion, but omits any description of what is done at each step, how that work is accomplished, or the order in which the steps occur.

5. The most relevant part of the Interrogatory Response is contained on pages 7 and 8 of that document, which presents a very high level overview of a software program used to convert executable object code into a source language. A similar description could be expected from almost any competent third year Computer Science student at a major University. No new or unique information, techniques, or approaches are presented in the Interrogatory Response is document, beyond those currently known and already in use in the software industry.

6. A full and complete disclosure must contain details and description that are not presented in the Interrogatory Response. Some of the details and description that need to be included are set forth below:

1. Items 1), 2), and 3) on page 6 and item 4) on page 7 reference techniques that are not described in the document. To describe the Solution, the Interrogatory Response must include a full and complete description of each of these techniques.
2. On page 7, in paragraph 2, the term "machine executable binary code" is used. To describe the Solution, the Interrogatory Response must describe what this term means, and whether the "memory image" or "link/loader control codes" are present in the "machine executable binary code."
3. On page 7, in paragraph 3, "an CPU/ALU instruction simulator" and a "dependent hardware" simulator are referenced. These kinds of programs are not new and are susceptible to various meanings, making it impossible to understand what is being described in this sentence. Specifically, while this portion of the Interrogatory Response implies that some program modifications must be made, which modifications depend on the particular machine being used, and the kinds of modifications which must be done are not specified. No detail or description is provided, and the Interrogatory Response must provide enough detail to ensure a complete understanding of the intended facilities. Detailed descriptions of the features, characteristics, and operation of the intended simulators are also

required in order to gain even a superficial understanding of the Solution claimed by Mr. Brown

4. On page 7, in paragraph 4, sentence 1, "a target dependent processor" is referenced. This kind of program is not new and is susceptible to various meanings. Enough detail must be provided to insure a complete understanding of the intended facility. Again, detailed descriptions of the features, characteristics, and operation of the processor are required in order to gain even a superficial understanding of the Solution claims by Mr. Brown.
5. On page 7, in paragraph 4, sentence 2, "A function/subroutine library Y to provide equivalent functionality for instruction sequences not supported by the specific target language" is referenced. These kinds of programs are not new and are susceptible to various meanings. No detail or description is provided, and the Interrogatory Response must provide enough detail to ensure a complete understanding of the intended facilities. Again, detailed descriptions of the features, characteristics, organization, and operation of the function/subroutine library are required in order to gain even a superficial understanding of the Solution claims by Mr. Brown
6. On Page 7, paragraph 5 provides an overview of the instruction simulator operation. However, several critical pieces of information have been omitted, including but not limited to: (1) whether the instruction simulator processes from the beginning to the end of the "machine executable binary code"

without interruption or does instruction simulator recognize and execute the control transfer when processing branch, jump, and call instructions; (2) how the instruction simulator discriminates between instructions, data, jump tables, etc.; (3) what happens when a branch, call, or jump instruction is recognized besides "saving system state information"; and (4) what is the "operation instruction sequence list table". As with the above described issues, a detailed description of the features, characteristics, organization, operation, and uses of the "operation instruction sequence list table" is required in order to understand the Solution claims by Mr. Brown.

7. On page 7, in paragraph 5, sentence 6, a "volatile table" is referenced. A detailed description of the features, characteristics, organization, operation, and uses of the "volatile table" is required in order to understand what is meant by this term
8. On page 7, in paragraph 5, sentence 7, reference is made to an instruction simulation process being repeated. The Interrogatory Response fails to describe how many passes the instruction simulator makes through the machine executable binary code, and what actions are performed on each pass, which information is necessary in order to understand how the Solution actually works.
9. On Page 8, paragraph 1, the Interrogatory Response provides that "identical instruction sequences and duplicates are removed." In order to understand

what is meant by this phrase, the following details are required: (1) how are identical instruction sequences recognized; (2) does this mean that duplicated instruction sequences are removed; and (3) are duplicated instruction sequences actually erased from the table at this time or simply identified as being duplicated.

10. On page 8, in paragraph 2, "machine dependent attributes" are referenced. In order to understand what is meant by this phrase, the Interrogatory Response needs to describe the following details: (1) when and how are "machine dependent attributes" defined; (2) where are "machine dependent attributes" saved; (3) how are "machine dependent attributes" used.
11. On page 8, in paragraph 3, the term "memory mapped I/O hardware dependencies" is used. In order to understand what is meant by this phrase, the Interrogatory Response needs to describe the following details: (1) when and how are memory mapped I/O hardware dependencies defined; (2) where are memory mapped I/O hardware dependencies saved; and (3) how are memory mapped I/O hardware dependencies defined.
12. On page 8, in paragraph 4, the term Alogical expression sequence[®] is used. A detailed description of the features, characteristics, organization, operation, means of generation, and uses of the Alogical expression sequence[®] is required in order to understand this feature.

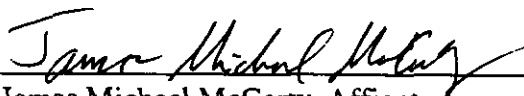
13. On page 8, in paragraph 4, the term Alogic flow structure@ is used. A detailed description of the features, characteristics, organization, operation, means of generation, and uses of the Alogical expression sequence@ is required.
14. On page 8, in paragraph 4, the term Adate reference@ is used. A detailed description of the features, characteristics, organization, operation, means of generation, and uses of the Alogical expression sequence@ is required.
15. On page 8, in paragraph 5, a "data table list" is referenced. A detailed description of the features, characteristics, organization, operation, and uses of the "data table list" is required.

7. Throughout the Interrogatory Response, Mr. Brown omits any description of the actual technique used to accomplish the task being described. For example, where the Interrogatory Response states that Aduplicate sequences are removed,@ there needs to be a definition describing what a duplicate sequence is, how it is recognized, and how it is removed. Similar descriptions are needed for virtually every verb/object pair contained in the Interrogatory Response; all such detail was omitted from the Interrogatory Response.

8. In addition, the Interrogatory Response fails to describe the order in which the various processing steps are accomplished, the number of times each step occurs, and how they are performed. Such information is necessary in order to understand the Solution claimed by Mr. Brown.


9. In conclusion, the Interrogatory Response does not provide a full or complete description of the Solution. The information contained within the Interrogatory Response is not sufficient to understand how the Solution works or whether it works.

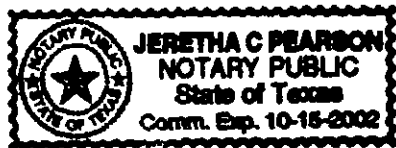
FURTHER, AFFIANT SAYETH NOT.


James Michael McCarty, Affiant

SWORN TO AND SUBSCRIBED BEFORE ME by the said James Michael McCarty, on this 7th day of May, 1999.

[Seal]


Notary Public in and for the State of Texas



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NO. 199-596-97

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

**VIDEOTAPED
ORAL DEPOSITION OF
EVAN BROWN**

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

A T T O R N E Y S O F R E C O R D

1
2 MR. ERIC W. PINKER
3 LYNN, STODGHILL, MELSHEIMER &
4 TILLOTSON, L.L.P.
5 750 N. St. Paul, Suite 1450
6 Dallas, Texas 75201
7 (214) 981-3800
8 COUNSEL FOR THE PLAINTIFF
9

10
11
12 MR. STEVE ALDOUS
13 SAYLES & LIDJI
14 1201 Elm Street, Suite 4400
15 Dallas, Texas 75270
16 (214) 939-8700
17 COUNSEL FOR THE DEFENDANT
18

19
20
21 ALSO PRESENT: MR. DAVID POLVADO, VIDEOGRAPHER
22 CERTIFIED LEGAL TEXAS VIDEO
23 P.O. Box 540365
24 Dallas, Texas 75354-0365
25 (214) 304-0291

1	I N D E X	Page
2	Examination by Mr. Pinker	5
3		
4	E X H I B I T S	Identified
5	Deposition Exhibit 1 -	56
6	Employee Patent, Copyright and Proprietary Information Agreement	
7	Deposition Exhibit 2 -	69
8	Memorandum to Larry Sewell from Evan Brown	
9	Deposition Exhibit 3 -	101
	Draft	
10	Deposition Exhibit 4 -	102
	Memorandum to Larry Sewell from Evan Brown	
11	Deposition Exhibit 5 -	120
12	Memorandum to Evan Brown from Dave Hinshaw	
13	Deposition Exhibit 6 -	121
14	Memorandum to Dave Hinshaw from Evan Brown	
15		
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1 P R O C E E D I N G S

2 EVAN BROWN

3 having been first duly cautioned and sworn to
4 testify the truth, the whole truth and nothing but
5 the truth, testified on his oath as follows:

6 EXAMINATION

7 BY MR. PINKER:

8 Q Please state your name, sir.

9 A It is Evan Garland Brown.

10 Q Where do you currently reside, sir?

11 A 2705 Chadbourne.

12 Q How long have you resided there?

13 A Nearly 10 years.

14 Q Is it a house?

15 A Yes.

16 Q Do you own it?

17 A Me and the bank.

18 Q Is anyone else on the note with you?

19 A No.

20 Q Mr. Brown, my name is Eric Pinker. We met
21 probably yesterday but shook hands this afternoon
22 just a few moments ago. I represent or am one of
23 the attorneys representing DSC Communications
24 Corporation in this lawsuit that they have brought
25 against you. Do you understand that?

1 A Personal preference.

2 Q I take it, then, the solution is not
3 something that's the size of a novel? We are
4 talking about a relatively short algorithm?

5 A No.

6 Q How many pieces of paper would you need to
7 write it down?

8 A Single space pages, single sided, 400
9 pages.

10 Q And 400 pages, single space of an algorithm
11 is currently in your head?

12 A Yes.

13 Q I take it, over the years you have made
14 revisions to it, is that fair, as you develop it?

15 A The core pieces I have had for a long time.

16 Q Portions of it you revise and alter, don't
17 you?

18 A No. Huh-uh.

19 Q How long has it been a finished product in
20 your mind?

21 A Well, it is not a product, it is still an
22 idea. And I solved the last piece of the puzzle, I
23 think it was early March of last year.

24 Q And before March, when was the last
25 addition or alteration you made to it?

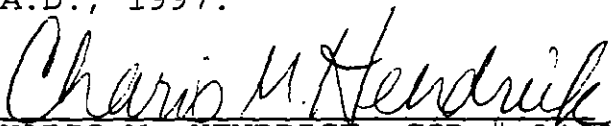
1 STATE OF TEXAS **

2 COUNTY OF DALLAS **

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

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

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

20 
21 CHARIS M. HENDRICK, CSR # 3469
22 Certification Expires: 12-31-98
23 7015 Mumford
24 Dallas, Texas 75252
25