

CAUSE NO. 199 596 97

<p>DSC COMMUNICATIONS CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>EVAN BROWN,</p> <p style="text-align: center;">Defendant.</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>COLLIN COUNTY, TEXAS</p> <p>219TH JUDICIAL DISTRICT</p>
--	--	---

DSC'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO MODIFY COURT'S JANUARY 19, 2000 ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

DSC Communications Corporation ("DSC") files this Response to Defendant's Motion to Modify Court's January 19, 2000 Order and would respectfully show the following:

I.

Introduction

This lawsuit was filed on April 24, 1997. Since that time, this Court has entered a Temporary Injunction Order requiring, *inter alia*, that Defendant Brown disclose the Solution to DSC. *See* Temporary Injunction Order (Exhibit 1). The Court has entered an order compelling Defendant Brown to disclose the Solution in response to a proper interrogatory. *See* First Compel Order (Exhibit 2). And, the Court has entered a second Order compelling Defendant Brown to disclose the Solution in response to that same interrogatory. *See* Second Compel Order (Exhibit 3). Defendant Brown violated each of these orders, refusing to disclose the Solution as ordered by the Court.

In his current Motion, Brown now seeks to receive compensation for his travel and lodging expenses in connection with disclosing the Solution, claiming that his financial condition will

otherwise prevent him from disclosing the Solution. Defendant's Motion is just one more in a long series of efforts by Defendant to avoid compliance with this Court's Orders concerning disclosure of the Solution. For the reasons set forth below, Brown's request to modify the Court's Order should be denied.

II.

Background Facts

On June 30, 1997, the Court entered a Temporary Injunction Order, in which the Court ordered Defendant as follows:

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

1. disclose the Solution to the DSC Development Team instanter;
2. appear in person at the offices of DSC, 1000 Coit Road, Plano, Texas,^{1/} each business day at 9:00 a.m. beginning July 1, 1997, and to 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."

See Temporary Injunction Order, p. 3 (Exhibit 1). The Court entered this Order because DSC needed to act quickly to protect its rights to the Solution. Specifically, the Court found 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." *Id.* at 2. The Order further provides that "DSC shall compensate Evan Brown for his time in making a *good faith, complete and*

^{1/} At the time this Order was entered, Brown's residence was in Plano, Texas. *See* Deposition of Evan Brown, p. 4 (residence of ten years was at 2705 Chadbourne in Plano, Texas) (Exhibit 4)

timely disclosure at the rate of \$45.00 an hour.” *Id.* at 4 (emphasis added). Defendant violated this Order by refusing to appear at DSC, and refusing to disclose the Solution.

Thereafter, on December 3, 1998, following a hearing on DSC’s First Motion to Compel, the Court entered its **second** order requiring Defendant to disclose the Solution. Specifically, the Court entered the following order:

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.

See First Compel Order (Exhibit 2). The Order further provided that “[a]fter 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.”

Id. Again, Defendant violated this Order by refusing to make a good faith, full or complete disclosure of the Solution.

Finally, on January 19, 2000, following several hearings and conference calls on DSC’s Second Motion to Compel, the Court entered its **third** order requiring Defendant to disclose the Solution. Specifically, the Court ordered that “Brown shall fully and completely describe the Solution and disclose it to DSC by 5:00 p.m. on Friday, April 28, 2000.” *See* Second Compel Order (Exhibit 3). Brown made *no* effort to disclose the Solution by this April 28, 2000 deadline.^{2/}

^{2/} Shortly after entry of this Order, Brown filed a Petition for Bankruptcy, and removed this case to federal court, in yet another effort to avoid compliance with this Order. The bankruptcy court entered an order modifying the bankruptcy stay to allow this matter to proceed, *see* Order (Exhibit 5), and the federal court to which Defendant removed this matter promptly remanded it to this Court. *See* Order (Exhibit 6). Nonetheless, this case was not remanded to this Court until after the April 28, 2000 deadline set forth in the Court’s Second Compel Order. In an effort to encourage compliance with the Court’s order, DSC voluntarily agreed to extend this disclosure deadline to September 27, 2000.

III.

Arguments and Authority

In his current Motion, Defendant claims that his financial condition is such that he will not be able to complete his disclosure of the Solution unless the Court orders DSC to pay Defendant's travel and lodging expenses. As the Court has previously observed, this is not the first time that Defendant has cried "wolf:"

Again, Brown willfully refused to fully and completely disclose the Solution of DSC as required by the Court's Order. Now, two and one-half (2 ½) years later, there has been no disclosure of the Solution. At each stage of these proceedings, the Court has entertained new justifications why compliance has not been forthcoming.

See Second Compel Order, p. 2 (emphasis added). *See also id.*, p. 3 ("Defendant's failure to fully and completely disclose the Solution in compliance with these orders is in willful violation of the Court's orders and constitutes bad faith and an abuse of the discovery process.").

In truth, Defendant's Motion is yet another attempt to set up grounds for avoiding compliance with the Court's Order(s), and to resist disclosing the Solution. Given Defendant's prior conduct in this case, there can be no reasonable expectation that this will be the last request for relief from the Court's disclosure order(s), or that an order granting Defendant compensation will lead to a good faith disclosure of the Solution.

Contrary to Defendant's Motion, the facts demonstrate that regular travel to Plano, Texas imposes no burden or hardship on Defendant. Indeed, in the months immediately preceding the filing of his Petition for Bankruptcy, Brown regularly traveled to Dallas, Texas to attend another trial in which DSC was a party. Defendant Brown was not involved in this action as either a party or a witness, and was in attendance purely as a spectator. *See* Affidavit of Eric W. Pinker, attached hereto as Exhibit 7. To assert that he cannot travel to Plano to comply with this Court's Order(s),

after he voluntarily traveled to Dallas to watch nine days of trial proceedings in a case in which he had *no* interest, evidences that this Motion is nothing more than another attempt to willfully violate the Court's Order.

Moreover, DSC submits that it would be unfair and inappropriate to require DSC to compensate Defendant at this time. Specifically:

1. Brown's three year delay in disclosing the Solution has harmed DSC in that it has prevented DSC from taking the necessary steps to protect its intellectual property. As this Court held in June 1997, "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." *Id.* at 2. By delaying the required disclosure for more than three years, Brown has likely damaged the very intellectual property at issue in this suit.
2. Brown's violations of this Court's previous disclosure orders, coupled with other efforts to avoid compliance with the Court's orders (*e.g.* the filing of his Petition for Bankruptcy), have already caused DSC to incur attorneys' fees and expenses well in excess of \$50,000. *See* Affidavit of Eric W. Pinker (Exhibit 7).
3. Brown has already made bad faith, incomplete disclosures of the Solution. *See* Second Compel Order. *See also* DSC's Second Motion to Compel Interrogatory Responses and attached affidavits (describing the numerous deficiencies in the short response). Given Defendant's history of bad faith "disclosures," an order requiring DSC to compensate Defendant before DSC is able to evaluate whether the disclosure has been made in good faith would be unfair, and would effectively penalize DSC for Defendant's misconduct.


4. Prior Court orders first provided Defendant with the opportunity *to be paid* for the disclosure, and then with the opportunity *to seek payment* for the disclosure. See Exhibits 1 and 2. Brown violated both of these Orders, and has been sanctioned twice by the Court. See Exhibits 2 and 3. To now reward Defendant's misconduct with an antecedent award of costs and expenses would be unfair to DSC, would unjustly reward Defendant, and would effectively countenance his many violations of the Court's Orders.

Defendant's Motion is simply another in a long list of excuses offered by Defendant. As this Court has previously recognized, Defendant has offered a variety of justifications and excuses in an effort to explain his repeated violation of this Court's orders. See Second Compel Order. For all these reasons, Defendant's Motion to Modify January 19, 200 Order should be denied.

WHEREFORE, PREMISES CONSIDERED, DSC respectfully requests that the Court enter an order denying Brown's Motion to Modify court's January 19, 2000 Order, and for such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

LYNN TILLOTSON & PINKER, L.L.P.

By: 
Eric W. Pinker, P.C.
Texas Bar No. 16016550

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

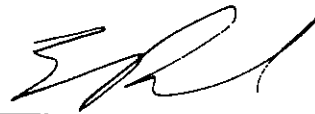
**ATTORNEYS FOR PLAINTIFF
DSC COMMUNICATIONS CORPORATION**

CERTIFICATE OF 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 19th day of July, 2000.

Via Hand Delivery

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

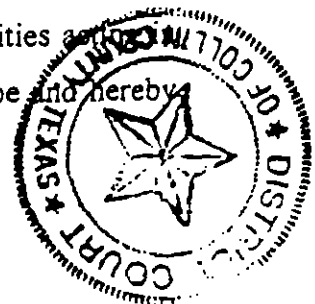
independent of DSC, including to develop it in foreign countries outside the protection of this and other courts in the United States; that if Brown carries out his intentions it will alter the status quo and make ineffectual a judgment in favor of DSC in that DSC will suffer immediate harm and will 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.

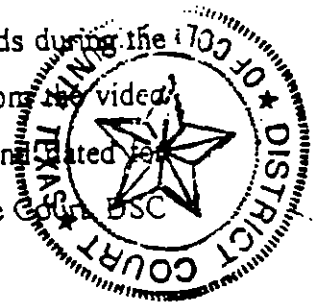
IT IS ORDERED, ADJUDGED, and DECREED that the following persons are designated by the Court to be the DSC Development Team (the "DSC Development Team"), to-wit: Tina Young, Court Reporter, Billy Gonzales, Videographer, Rick Billings, Mike McCarty, Jianbai Wang, Dan McMurray, Wayne Jones, Cheryl Sanders,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

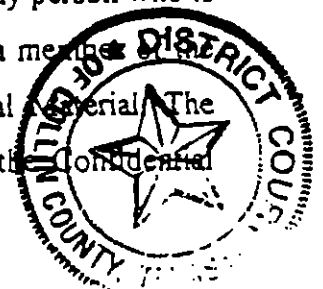


shall be permitted to transcribe portions of the disclosure as it deems appropriate with such transcriptions to be made from the videotape or live. The transcription will be subject to the confidentiality provisions of this order, and once completed shall be transported for safekeeping to a location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



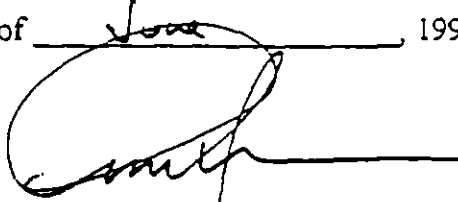
Material as are necessary to enable those team members to evaluate and protect the Solution as permitted by this Order, and all such notes and copies shall be preserved in a separate file maintained as confidential. The provisions of this paragraph do not preclude DSC from filing patent applications 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.

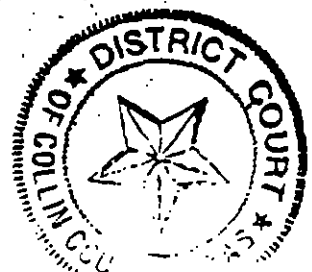
IT IS ORDERED, ADJUDGED, and DECREED that trial on the merits of this cause is set for the 3rd day of November, 1997, at 9:00 a.m.

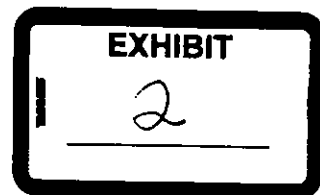
The Clerk shall forthwith on the filing by DSC of the bond hereinafter required and on approving the same according to the law, issue a temporary injunction in conformity with the law and the terms of this order.

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





CAUSE NO. 199-596-97

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

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.

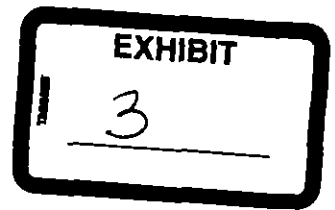
to whom the Solution may be disclosed, the Court will enter a further order providing for the disclosure of the Solution to DSC.

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



*In the 219th Judicial District Court
of the State of Texas
Curt B. Henderson, Judge Presiding*

No. 199-00596-97

DSC Communications Corporation

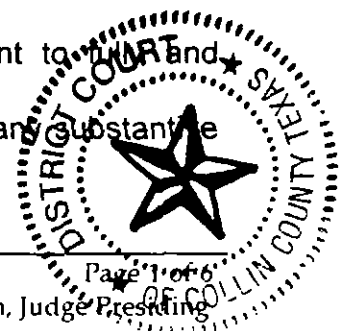
vs.

Evan Brown

ORDER

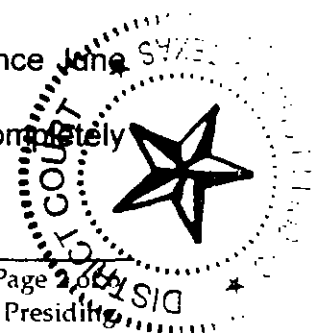
On June 10, 1999, the Court heard Plaintiff DSC's Second Motion to Compel Interrogatory Responses and For Sanctions (the "Motion"). The parties appeared through their attorneys of record and announced ready to proceed on the Motion. In the Second Motion, DSC demonstrated that the Court ordered that Defendant fully and completely disclose the Solution in its June 30, 1997 Temporary Injunction Order. In connection with entering the Temporary Injunction Order, the Court entered orders (1) requiring strict confidentiality of the Solution once it had been disclosed; and (2) requiring DSC to compensate Defendant for the time he spent making the disclosure. Defendant willfully refused to comply with the terms of the Temporary Injunction Order.

In this Second Motion now before the Court, DSC further demonstrated that DSC served interrogatory requests seeking for Defendant to and completely disclose the Solution. Defendant refused to provide any substantive



response to that Interrogatory, forcing DSC to file its First Motion to Compel and for Sanctions (the "First Motion"). After a hearing concerning DSC's First Motion, the Court granted that Motion and ordered (for the second time) that Defendant Brown fully and completely disclose the Solution to DSC. In connection with granting that First Motion, the Court entered orders (1) requiring strict confidentiality of the Solution once it had been disclosed; (2) allowing Defendant to apply to the Court for compensation in connection with the time spent making the disclosure; and (3) warning Defendant that any failure to fully and completely disclose the Solution might result in sanctions, including the striking of Defendant's pleadings and the entry of default judgment against Defendant. Again, Brown willfully refused to fully and completely disclose the Solution to DSC as required by the Court's Order. Now, two and one-half (2½) years later, there has been no disclosure of the Solution. At each stage of these proceedings, the Court has entertained new justifications why compliance has not been forthcoming. In good faith, the Court will again afford Defendant all benefit of the doubt and accommodate his latest explanation in hopes that Defendant will finally acquit himself of his failure to obey the directive of the Court. Such accommodation, however, comes with a price.

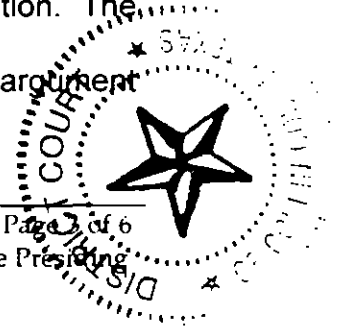
Based on the facts of this case, the Court concludes it has on two prior occasions ordered Defendant to provide to DSC a full and complete disclosure of the Solution. These two orders, one of which have been in place since June 30, 1997, provided Defendant with ample opportunity to fully and completely



disclose the Solution to DSC. Defendant's failure to fully and completely disclose the Solution in compliance with these orders is in willful violation of the Court's orders and constitutes bad faith and an abuse of the discovery process. Moreover, in connection with the Court's Order on DSC's First Motion, the Court sanctioned Defendant and advised Defendant that any further violation of the court's Order would result in additional sanctions, including the dismissal of his pleadings and the entry of a default judgement against him. Notwithstanding this order, Defendant failed and refused to fully and completely disclose the Solution. Defendant's conduct demonstrates a willful and continuing refusal to comply with the Court's orders and the discovery process in general.

Following oral argument on the Motion, the Court advised the parties that it intended to enter an order granting the Motion in part. The Court finds that the Defendant has failed to disclose the Solution. The Court engaged counsel in discussion and argument in an effort to give Defendant another opportunity to disclose the Solution. 's excuses and requiring Defendant to disclose the Solution in greater detail than he had previously disclosed the Solution. Accordingly, the Court solicited supplemental briefing and comments from the parties concerning the specific manner in which Defendant should be required to disclose the Solution.

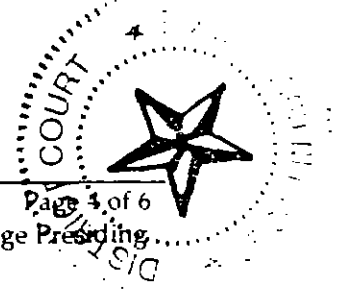
On July 12, 1999, the parties submitted to the Court letter briefs outlining the manner in which Defendant should be required to disclose the Solution. The Court evaluated those letter briefs and thereafter heard further argument



concerning the manner in which Defendant would be required to further disclose the Solution. Following that second oral argument, the Court solicited supplemental briefing from the parties concerning the differences between the two manners for disclose proposed by the parties. On September 14, 1999, the parties submitted a second letter brief outlining the differences between the proposed manners for disclosure of the Solution.

Based on the foregoing arguments and filings with the Court, as well as the Court's general familiarity with the case, the Court is thoroughly familiar with the parties' positions concerning Defendant's required disclosure of the Solution. On October 14, 1999, the Court entered a Memorandum providing that Plaintiff had the option of selecting one of two methods by which Defendant would be required to disclose the Solution. Plaintiff advised the Court and Defendant's counsel that it had selected the second option for the disclosure required by Defendant. The Court's file shall reflect the relevant follow-up correspondence between the Court and parties and the Court's efforts to structure a final resolution to this issue.

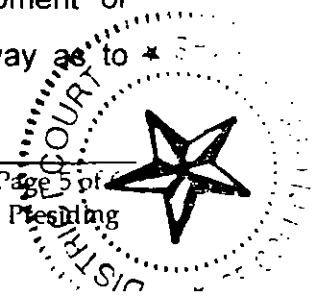
Based on these facts, as well as consideration of the pleadings on file in this case, the arguments of counsel at the June 10, 1999 hearing, the follow-up discussion with counsel, and the Court's long-standing and detailed familiarity with the factual and procedural background of this case, the Court is of the opinion that the DSC's Second Motion should be GRANTED, and that the Court



must impose some sanctions, as well as structure another opportunity for Defendant to comply with the disclosure.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff DSC's Motion shall be and is hereby GRANTED as follows:

1. To the extent and to the degree necessary to accomplish the following, the Court hereby strikes, in part, Defendant's Original Answer, which was filed on or about May 25, 1997; and the Court hereby enters judgment in favor of Plaintiff DSC Communications Corporation and against Defendant Evan Brown, ordering that DSC owns a 20% interest in the Solution (as defined in the Court's June 30, 1997 Temporary Injunction Order).
2. Brown shall fully and completely describe the Solution and disclose it to DSC by 5:00 p.m. on Friday, April 28, 2000.
3. Brown's disclosure shall be made using (1) Zilog Z8000 as the target language to be converted, (2) using the UNIX/BSDI-4.01 development platform, and (3) using the K&R "C" language as the language to be created as an end product of the conversion.
4. DSC shall provide Brown with the reasonable equipment and peripherals needs (but not services) required to fully and completely describe the Solution in the manner set forth in paragraph 3 hereof, provided that after DSC provides Brown with equipment and peripherals worth \$40,000, Brown shall be responsible for providing any additional equipment that he requires. DSC shall set up the equipment and peripherals in an office or conference room at Plaintiff's building known as PB-6, located at 3400 West Plano Parkway. Brown shall not damage or modify the equipment or peripherals, nor shall he utilize the equipment in such a way as to



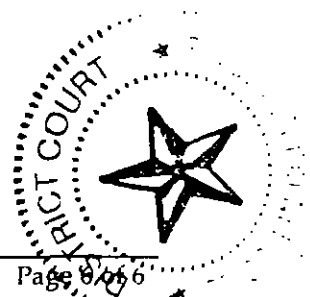
disrupt or interfere with the ordinary business operations or working hours of DSC.

5. Brown shall not be permitted any further discovery in this matter unless and until he has fully demonstrated his compliance with the disclosure, except upon order of the Court.

Signed on Wednesday, January 19, 2000.



Curt B. Henderson
Judge Presiding



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

NO. 199-596-97

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

VIDEOTAPED
ORAL DEPOSITION OF
EVAN BROWN

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

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

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

MR. ERIC W. PINKER
LYNN, STODGHILL, MELSHEIMER &
TILLOTSON, L.L.P.
750 N. St. Paul, Suite 1450
Dallas, Texas 75201
(214) 981-3800
COUNSEL FOR THE PLAINTIFF

MR. STEVE ALDOUS
SAYLES & LIDJI
1201 Elm Street, Suite 4400
Dallas, Texas 75270
(214) 939-8700
COUNSEL FOR THE DEFENDANT

ALSO PRESENT: MR. DAVID POLVADO, VIDEOGRAPHER
CERTIFIED LEGAL TEXAS VIDEO
P.O. Box 540365
Dallas, Texas 75354-0365
(214) 304-0291

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 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
22
23
24
25

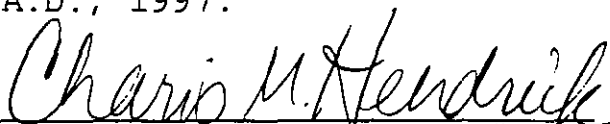

CHARIS M. HENDRICK, CSR # 3469
Certification Expires: 12-31-98
7015 Mumford
Dallas, Texas 75252

EXHIBIT
1 5

FILED

APR 5 2000

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

U.S. BANKRUPTCY COURT
BY [Signature] DEPUTY

IN RE:)
)
EVAN G BROWN,) CASE NO. 00-60177-LK
)
Debtor.) Chapter 13

**ORDER GRANTING
MOTION OF DSC COMMUNICATIONS CORPORATION
TO MODIFY AUTOMATIC STAY**

On April 3, 2000, came on to be heard the Motion to Modify Automatic Stay to (1) Enforce the Debtor's Compliance with Current State Court Orders and Injunctions, (2) Prosecute Any Additional Relief Against the Debtor, and (3) Permit the Prosecution of State Court Litigation Against the Debtor (the "Motion to Modify Stay") filed herein by DSC Communications Corporation n/k/a Alcatel USA, Inc. (the "Movant"). For the reasons stated orally by the court or the record at the conclusion of the hearing, the court finds that the Motion to Modify Stay should be granted in accordance with the following orders.

IT IS, THEREFORE, ORDERED that the Motion to Modify Stay shall be, and hereby is, GRANTED and the automatic stay imposed pursuant to 11 U.S.C. § 362(a) shall be, and hereby is, MODIFIED to permit the Movant to enforce the Debtor's compliance with the injunctions and orders issued in *DSC Communications Corporation v. Evan Brown*, Cause No. 199-596-97 in the 219th Judicial District Court of Collin County, Texas (the "State Court Lawsuit"), to seek any additional relief against the Debtor in the State Court Lawsuit, and to prosecute the State Court Lawsuit through final judgment, including any and all appeals; provided, however, that no execution of any judgment against the Debtor is permitted without further order of this court.

19
[Signature]

SIGNED this April 3, 2000.



Larry E. Kelly,
Chief U.S. Bankruptcy Judge

c:\wp\olou\en\larry\larry.gnt

EOD 5-5-00

EXHIBIT
6

FILED-CLERK
DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

MAY -4 PM 2: 32
TEXAS-EASTERN

DSC COMMUNICATIONS
CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 00-CV-95

JURY

By Jaya McEwen

ORDER ON MOTION TO REMAND

On the ___ day of _____, 2000 came on to be heard the Motion to Remand filed by Plaintiff DSC Communications Corporation. After considering the Motion and Defendant's Response thereto, the Court determines that the Motion should be granted in part and denied in part.

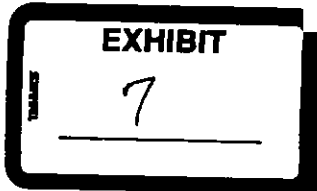
IT IS THEREFORE ORDERED that Cause No. 199-596-97, styled *DSC Communications Corporation v. Evan Brown* and removed from the 219th Judicial District court of Collin County, Texas, is hereby remanded to that court;

IT IS FURTHER ORDERED that DSC's request for costs and attorneys' fees under 28 U.S.C. § 1447(c) is hereby denied.

SIGNED the 4 day of may, 2000.

Paul Brown
The Honorable Paul Brown
United States District Judge

Submitted by:
Eric D. Pearson
SAYLES & LIDJI, P.C.
(214) 939-8700



CAUSE NO. 199 596 97

DSC COMMUNICATIONS CORPORATION,

Plaintiff,

v.

EVAN BROWN,

Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

199TH JUDICIAL DISTRICT

STATE OF TEXAS §
COUNTY OF DALLAS §

AFFIDAVIT OF ERIC W. PINKER

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

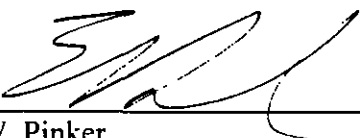
1. My name is Eric W. Pinker. I practice law through my professional corporation, Eric W. Pinker, P.C., which is a partner with the law firm of Lynn Tillotson & Pinker, L.L.P. I am an attorney licensed to practice law in the State of Texas and I am one of the attorneys of record for Plaintiff in the above-styled and numbered cause of action. I have personal knowledge of the facts recited in this affidavit. My personal knowledge is derived from my position as one of the lawyers representing Plaintiff.

2. I was one of the attorneys of record for DSC Communications Corp., n/k/a Alcatel USA, Inc., in connection with a case styled *Alcatel USA, Inc., et al v. Samsung Electronics Company, et al.*, Cause No. 96-08262-L, pending in the 193rd Judicial District, Dallas County, Texas. I personally witnessed Defendant Evan Brown attend certain of the pre-trial and trial activities in this case. Specifically, Defendant Evan Brown attended certain pre-trial proceedings in the *Samsung* case on at least four occasions during the months of October and November 1999. Defendant Evan

Brown also attended the trial proceedings in the *Samsung* case from December 6 through December 9, 1999, and on December 16, 1999. Evan Brown was not a party or witness in connection with that case, and his attendance was solely as a spectator.

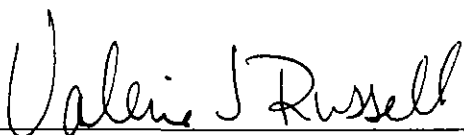
3. I am familiar with DSC's efforts to obtain Defendant's compliance with the various disclosure Orders entered by the Court in connection with this case. DSC has expended in excess of fifty thousand dollars (\$50,000) in an effort to obtain compliance with this Court's orders, including the filing of multiple motions with this Court, responding to an appeal of the Temporary Injunction Order, responding to Defendant's Petition for Bankruptcy and related suggestion of stay, and responding to Defendant's Removal of this case to the Federal Court for the Eastern District of Texas.

FURTHER AFFIANT SAITH NOT.


Eric W. Pinker

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of July, 2000 to certify which witness my hand and official seal.




Notary Public, State of Texas