

DSC COMMUNICATIONS	§	IN THE DISTRICT COURT
CORPORATION n/k/a ALCATEL	§	
MARKETING USA, INC.,	§	
Plaintiff	§	OF COLLIN COUNTY, TEXAS
	§	
V.	§	
	§	219TH JUDICIAL DISTRICT
Evan Brown,		
Defendant.		

DEFENDANT'S 2ND REQUEST
FOR PRODUCTION TO PLAINTIFF

To: Plaintiff, DSC Communications Corporation n/k/a Alcatel Marketing USA, Inc., by and through its attorney of record, Lynn Tillotson & Pinker, L.L.P., 750 North St. Paul Street, Suite 1400, Dallas, Texas, 75201.

Defendant, Evan Brown, serves this request for production on Plaintiff, as allowed by Texas Rule of Civil Procedure 196. Plaintiff must produce all requested documents (as they are kept in the ordinary course of business or organized and labeled to correspond with categories in each request) for inspection and copying, not more than 30 days after service, to the district clerk for the 219th District Court Room, Mc Kinney, Texas.

Instructions

1. Answer each request for documents separately by listing the documents and by describing them as defined below. If documents produced in response to this request are numbered for production, in each response provide both the information that identifies the document and the document's number.

2. For a document that no longer exists or that cannot be located, identify the document, state how and when it passed out of existence, or when it could no longer be located, and the reasons for the disappearance. Also, identify each person having knowledge about the disposition or loss of the document, and identify any other document evidencing the lost document's existence or any facts about the lost document.

Definitions

The following definitions shall have the following meanings, unless the context requires otherwise:

1. "Defendant" or "Plaintiff," as well as a party's full or abbreviated name or a pronoun

referring to a party, means the party, and where applicable, his agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with him or under his control, whether directly or indirectly, including any attorney.

2. "You" or "your" means Plaintiff, DSC Communications Corporation n/k/a Alcatel Marketing USA, Inc., its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on behalf of Plaintiff or its successors, predecessors, divisions, and subsidiaries.

3. "Document" means all written, typed, or printed matters, and all magnetic, electronic, or other records or documentation of any kind or description (including, without limitation: letters, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations, conferences, interoffice communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, tape recordings, computer printouts, and work sheets), including drafts and copies not identical to the originals, all photographs and graphic matter, however produced or reproduced, and all compilations of data from which information can be obtained, and any and all writings or recordings of any type or nature, in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action.

4. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession that is equal or superior to the person who has physical possession of the item.

5. "File" means any collection or group of documents maintained, held, stored, or used together, including, without limitation, all collections of documents maintained, held, or stored in folders, notebooks, or other devices for separating or organizing documents.

6. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

7. "Relating to" and "relates to" means, without limitation, embodying, mentioning, or concerning, directly or indirectly, the subject matter identified in the request.

8. "Concerning" means, in whole or in part, directly or indirectly, referring to, relating to, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, or constituting.

9. "Communication" means any oral or written communication of which Plaintiff has knowledge, information, or belief.

10. "Date" means the exact date, month, and year, if ascertainable, or, if not, the best available approximation.

11. "Identify" or "describe," when referring to a person, means you must state the following:

- a. The full name.
- b. The present or last known residential address and residential telephone number.
- c. The present or last known office address and office telephone numbers.
- d. The present occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular request.
- e. In the case of any entity, identify the officer, employee, or agent most closely connected with the subject matter of the request and identify the officer who is responsible for supervising that officer or employee.

12. "Identify" or "describe," when referring to a document, means you must state the following:

- a. The nature (*e.g.*, letter, handwritten note) of the document.
- b. The title or heading that appears on the document.
- c. The date of the document and the date of each addendum, supplement, or other addition or change.
- d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered.
- e. The present location of the document, and the name, address, position or title, and telephone number of the person or persons having custody of the document.

13. The word "and" means "and/or."

14. The word "or" means "or/and."

Request For Production

REQUEST 1: Produce computer files representing all the files contained in the home directory and sub-directories of defendant Evan Brown that existed at the time of Defendant's termination. At the time of his termination, the Defendant had home directories on the Switching Products Division network, the Motorola Cellular testbed network and the VAX development cluster network. Defendant requests that these computer files be copied to CD-ROM disk in such a way as to preserve the original time and date of all these computer files.

RESPONSE:

REQUEST 2: Identify the personnel assigned to guard Defendant during the Defendants three month disclosure at DSC's PB-6 facilities in Plano, Texas..

RESPONSE:

REQUEST 3: Produce any and all communications and documents sent to or received from, or exchanged by and between Alcatel personnel, Paris, France and Defendant as referred to by George Brunt, general counsel for Alcatel, USA in the June 2001 issue of D Magazine, pages 40 through 42. Specifically with regards to the last 2 paragraphs of page 41. Attached as Exhibit A.

RESPONSE:

REQUEST 4: Produce all organization charts and project plans pertaining to the development or investigation of machine executable binary code into high level source code from April 1987 through April 1997.

RESPONSE:

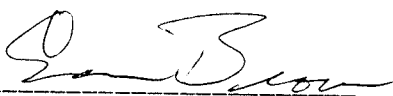
REQUEST 5: Produce all financial records pertaining to the development or investigation of machine executable binary code into high level source code from April 1987 through April 1997.

RESPONSE:

REQUEST 6: Identify all managers or supervisors of Defendant from April 1987 through April 1997.


RESPONSE:

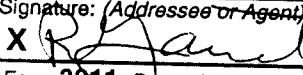
Respectfully submitted,

By: 
Evan Brown
PO Box 31
Cranfills Gap, Texas 76637-0031
Tel. (254) 796-2416

CERTIFICATE OF SERVICE

I certify that I personally delivered a copy of Defendants 2nd Request for Production by certified U.S. Mail, return receipt requested, to Lynn Tillotson & Pinker, L.L.P., counsel of record for DSC Communications a/k/a Alcatel USA, Inc., and whose address is 750 North St. Paul Street, Suite 1400, Dallas, Texas, 75201, (214) 981-3800, on August 17, 2001.


Evan Brown

SENDER: ■ Complete items 1 and/or 2 for additional services. ■ Complete items 3, 4a, and 4b. ■ Print your name and address on the reverse of this form so that we can return this card to you. ■ Attach this form to the front of the mailpiece, or on the back if space does not permit. ■ Write "Return Receipt Requested" on the mailpiece below the article number. ■ The Return Receipt will show to whom the article was delivered and the date delivered.		I also wish to receive the following services (for an extra fee): 1. <input type="checkbox"/> Addressee's Address 2. <input type="checkbox"/> Restricted Delivery Consult postmaster for fee.	
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5. Received By: (Print Name) X <u></u>		4b. Service Type <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD 7. Date of Delivery <u>AUG 21 2001</u>	
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EXHIBIT
A



Dan Michalski

Who Owns Your Brain?

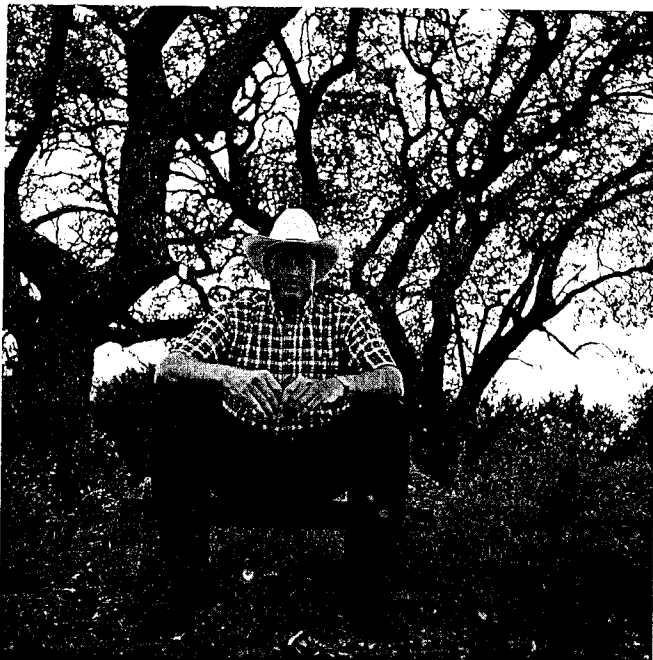
Tech giant Alcatel's legal crusade to safeguard intellectual property have made it the bully of the Telecom Corridor.

THE "EUREKA!" MOMENT that would change Evan Brown's life hit during a weekend drive in his Mercedes. He had finally solved a problem he had been contemplating for 20 years, a coding scheme to easily convert software run on old mainframes to more modern languages. If it worked, the idea was worth at least a billion dollars.

That was on a sunny day in April 1996, when Brown was a computer programmer earning \$96,000 a year. Today he lives in a steel barn in an unincorporated nook of central Texas—unemployed, bankrupt, and, he says, beaten down. He had to sell his Plano micromansion and the Mercedes, along with his prized Cessna airplane and his gun and stamp collections, to fight an ongoing legal battle against France-based Alcatel USA. The telecom giant insists that Brown's idea, which court documents call "The Solution," belongs to the company. And to prove it, Alcatel is moving forward with a lawsuit, even though the defendant has no material assets left to sue for.

"They've shackled me in the employment arena and removed me from the intellectual side of society," says Brown, who now spends his days chopping cedar, milking cows, and writing e-mail. "Plenty of [tech firms] want to talk to me, but not until my lawsuit with [Alcatel] is over."

Brown is hardly Alcatel's only defendant. The company has filed more than a dozen lawsuits—against everyone from individual



MIND GAMES: Thanks to a legal battle with Alcatel over an idea, Evan Brown is now unemployed and bankrupt.

engineers and startups to Cisco—all alleging stolen trade secrets and patent infringements. With Alcatel generating more headlines from courtrooms than from clean rooms, no wonder the *Wall Street Journal* labeled it "the most litigious company in... Telecom Corridor." In a series of cases set to go to trial in state and federal courts this year and next, Alcatel stands to win billions in damages.

"We're not after windfall," says George Brunt, Alcatel's senior vice president and general counsel. "We're just trying to protect our intellectual property."

Still, intellectual property is a high-stakes legal frontier, and Alcatel's critics charge that the company is using strong-arm legal tactics to stymie competition, shore up its bottom line, and intimidate employees who might contemplate jumping ship to build a better mousetrap. Brunt disagrees, pointing out that Alcatel sues less than one percent of employees who leave.

"We don't bring cases unless there's a

clear theft," he says. Though Alcatel's legal team has lost a few preliminary hearings, it has yet to lose at trial under Brunt's aegis and usually ends up with a large settlement before a case even gets that far.

But little is clear in Evan Brown's case. What he allegedly stole from his former employer was an intangible thought. He never wrote anything on paper, and court-approved searches of his house and hard drives turned up no scraps suggesting this brainchild was ever born. Yet Alcatel is demanding custody.

IN EUROPE, ALCATEL'S ORANGE triangle is as ubiquitous as a little bell in a circle here. Its business has become telecom infrastructure almost exclusively—building, running, and maintaining networks that transport

chunks of information through the Internet, phone lines, digital subscriber lines, fiber optics, and satellite beams. In 1996, Alcatel launched a concerted effort to expand its presence in the United States. Now, after \$17 billion worth of acquisitions, U.S. sales have increased from \$500 million five years ago to \$6.6 billion, and Alcatel's information pathways are spreading across America like St. Augustine in a cul de sac.

Alcatel is snapping together the latest additions to its U.S. headquarters along Plano Parkway, where super-sized slabs of concrete dangle from multiple cranes. On the surface, security is tight at the compound, but not much more so than any other corporation with cameras in its parking lots and door locks that read employees' plastic ID badges.

Of course, Alcatel's concern isn't really pilfered fiber and chipboards. The highest-dollar treasures are the plans for upcoming innovations. And that's why its employees must sign a contract acknowledging that all

inventions developed in the course of their duties belong to the company.

When Plano-based Chiaro Networks opened for business in November 2000, they were hit with an Alcatel suit that same day. Nearly a third of Chiaro's start-up staff came from Alcatel, including a senior vice president and the chief technology officer. Alcatel sought a federal court injunction to halt operations at Chiaro, which was developing a new optical router, and to prevent them from hiring any other Alcatel employees. But the judge denied Alcatel's request, in part because Alcatel couldn't define what Chiaro's executives allegedly stole.

Alcatel filed a similar suit against Monterey Networks in August 1999, just days after telecom giant Cisco, one of Alcatel's chief competitors, announced plans to buy Monterey for \$500 million. Monterey, like Chiaro, was trying to develop an optical router, which most tech firms believe is the future of high-speed data transfer, and several top brass were Alcatel alums. In fact, Brunt would argue that these companies have stolen Alcatel's entire optical routing team, and for that reason have cheated Alcatel out of potentially billions of dollars. "In many of these cases, [companies] have stolen whole teams from us. So even if we get a huge verdict, we're getting back only some of what was stolen," says Brunt, explaining that a half-billion-dollar ruling is a small, one-time token of what Alcatel would have been able to generate had the competitor not vaporized Alcatel's potential for an ongoing revenue stream from a certain product.

While Alcatel's lawsuits draw on elements of copyright, contract, and patent law, the primary issue the courts must decide is "inevitable disclosure," the notion that certain employees, if they go to work for a potential competitor in a similar department, will inevitably reveal trade secrets. Several legal experts expect this issue—weighing the rights of a company to protect its intellectual property against the rights of an employee to move freely from job to job in a right-to-work state—to ultimately be settled in the Texas Supreme Court.

After the federal motion against Chiaro failed, Brunt pushed for a second suit in January, this time in state court. The one-two punch was hardly surprising for those who say Alcatel hits new enterprises with costly

litigation as soon as they pop up. But what made the state court lawsuit different from other intellectual property cases was a new batch of defendants: venture capitalists.

Alcatel is claiming that Dallas-based Centerpoint Ventures not only financed a dirty deal, but also encouraged Alcatel employees to commit fraud. "We consider [the suit] frivolous," says Bob Paluck, Centerpoint's managing general partner. "Alcatel's focus is on litigation, not innovation. They'll sue anybody. We don't have this problem with anyone else."

ALCATEL, WHICH GOT ITS START PEDdling electricity more than 100 years ago, hasn't always been so litigious. It was only after setting up homestead on the Silicon Prairie that the French company began slinging its legal guns.

Evan Brown wasn't even working for Alcatel when he came up with The Solution. His employer was Plano-based DSC Communications. He asked DSC to release him from a contract so he could start his own venture. DSC refused and instead offered him up to \$2 million of any money he saved DSC customers, along with 50 percent of the profits from third-party sales. Brown

countered with a \$5 million, 50-percent offer. He believed he and DSC were nearing a deal when he took off to Paris for a week of vacation in April 1997. When he returned, he was fired and served with a lawsuit claiming DSC owned his idea.

DSC reminded Brown of a contract that he signed in 1987, promising to disclose any inventions related to his job as a software designer. Brown contended that he had begun work (in his head) on this 11 years before even joining DSC; that his job had nothing to do with software reverse engineering, which was the foundation of his idea; and that he never used DSC equipment or time to develop it. Furthermore, it was just an idea, not an invention.

But DSC's position was that he worked in the software-tools group, and this was a software tool. And they believed that while in France, he was breaching his employment contract by trying to sell the idea to a competitor: Paris-based Alcatel.

Brown vehemently denies the charge. But DSC claims otherwise because they had been engaged in buyout talks with Alcatel, which announced its plans to

"Alcatel's focus is on litigation, not innovation," says Centerpoint's Paluck. "They'll sue anybody."



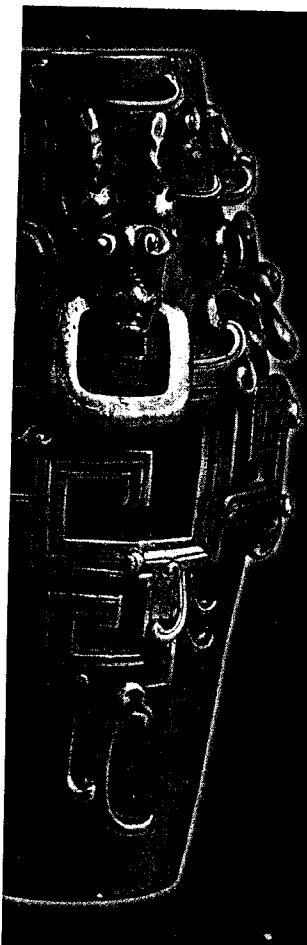
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absorb DSC just weeks after Brown's return to the United States.

DSC's general counsel at the time was none other than George Brunt, who would assume the same position at Alcatel after the acquisition was finalized in April 1998. At DSC Brunt developed his reputation for being hawkish about intellectual property and for turning a corporate legal department into a company profit center. Conservative estimates say Brunt generated at least \$2 billion during his DSC tenure. Total settlements in 1997, for example, were at least \$161.5 million—enough to bring the company back into the black after a loss in 1996. He won't reveal the numbers since joining Alcatel, and most of the trade-secret settlements have been sealed. But they are huge. Alcatel dropped a \$1.2 billion intellectual property suit against Samsung last year, for example, for a settlement that was likely nine figures.

EVAN BROWN DID EVENTUALLY REVEAL his idea, but only after the court refused to let the case proceed without the disclosure. "I was in a Catch-22," he says. "If I didn't do it, I'd get a default judgment against me and I would lose the ability to make a living off the only thing I had left: my idea."

So from June to September of last year, Brown drove 160 miles each workday to Alcatel's headquarters, where he churned out 400 pages of computer code without pay. Alcatel representatives, however, said they couldn't get the program to work, and Brown must be holding something back. Brown insists he gave up everything and has proved that his idea works. But for now the judge has sided with Alcatel, awarding the telecom firm 20 percent ownership of The Solution as a default judgment in December.

Both sides believe a settlement is unlikely, so the case will probably go to trial by the end of this year. If that happens, a jury will decide not only if Alcatel is entitled to any future revenues The Solution may generate, but also if a person's synapse firings constitute an employer's intellectual property. Brown says the notion is absurd: "They want to claim part of my brain!"

Whether or not that is true, or at least an acceptable business practice, will be left to the courts to decide. So far they have sided with Alcatel. "We're not going to let society erode," says Brunt. "We have to make sure some people respect intellectual property [or] we're going to see the total breakdown of our economy." □

Dan Michalski is a frequent contributor to D.