

SHERI J. VECERA CSR/RPR
Official Court Reporter
199th Judicial District Court
210 S. McDonald, Suite 434
McKinney, Texas 75069

214-424-1460

S.S. 480-90-4875

DATE: April 30, 1997

TO: MR. DALE DRAKE
ATTORNEY AT LAW
McKinney, Texas

RE: Cause No. 199-00596-97
DSC COMMUNICATIONS CORPORATION
VERSUS
EVAN BROWN

STATEMENT OF FACTS
April 30, 1997

ONE (1) COPY

PAYMENT DUE UPON RECEIPT

TOTAL: \$ 39.00

THANKS!

CAUSE NO. 199-00596-97

DSC COMMUNICATIONS CORPORATION (IN THE DISTRICT COURT
VERSUS (COLLIN COUNTY, T E X A S
EVAN BROWN (199TH JUDICIAL DISTRICT

STATEMENT OF FACTS

A P P E A R A N C E S:

MR. MICHAEL LYNN
MR. ERIC W. PINKER
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ATTORNEYS FOR PLAINTIFF

MR. DALE DRAKE
ATTORNEY AT LAW
McKinney, Texas

ATTORNEY FOR DEFENDANT

ALSO PRESENT:
MR. JOHN STOOKESBERRY
MR. WAYNE JONES

BE IT REMEMBERED that on the 30th day of April, 1997, the
above styled and numbered cause came on for hearing before
said HONORABLE JOHN R. ROACH, Judge presiding, and the
following proceedings were had; to wit:

COPY.

1 deletions out of the proposed orders.

2 THE COURT: And I granted an order without those
3 deletions, basically.

4 MR. DRAKE: Yes, sir. Yes, sir.

5 THE COURT: Okay.

6 MR. DRAKE: Your Honor, our position --
7 basically, what we're asking protection at this point is,
8 first of all, to give Mr. Brown time to obtain trial counsel
9 that has the expertise to deal with the types of issues that
10 are involved in this; specifically, with trade secrets,
11 intellectual property, those types of areas, that being much
12 more specific and much more esoteric than what I typically
13 deal with.

14 Secondly, because of the apparent very substantial amount
15 of value that's involved in this case, your Honor, we're
16 asking the Court's protection from Mr. Brown being compelled,
17 under the amended temporary order, or the order expediting
18 discovery, from basically giving up the ball game.

19 Our position, your Honor, is that the actions on behalf of
20 plaintiff are designed to enlist the Court's assistance in
21 getting the idea into their hands, and then they will already
22 have the value of the idea, and that's really the entire issue
23 of the case; who owns this idea. And by coming in and asking
24 the Court for a restraining order that compelled disclosure to
25 them immediately, and asking the Court to allow an immediate

1 deposition to compel him to produce any documentation or other
2 items that relate to and explain the idea, they're basically
3 trying to hit a home run when they step up here and don't even
4 have to come in and prove their ownership of it.

5 The idea, we believe, is the point of the case, your
6 Honor. And their position is that they're entitled to have
7 possession of it immediately before they've proven to the
8 Court that it belongs to them.

9 So, first of all, your Honor, we're asking that the Court
10 simply extend the date on the deposition to approximately two
11 weeks; at least give him two weeks to locate counsel and
12 prepare for the deposition and to respond in any sort of
13 procedural manner to properly object to, if he's entitled to
14 it, any obligation to produce documentation that would force
15 him to disclose this idea to the plaintiff before they've
16 shown ownership.

17 Secondly, we're representing to the Court that Mr. Brown
18 is willing to have the Court enter a temporary injunction
19 during the pendency of this case that prohibits him from
20 disclosing or disseminating his idea to any other person or
21 entity during the pendency of the case so that the Court can
22 make a determination as to who owns this idea before it
23 gets used by anyone other than its creator.

24 Your Honor, we believe that he's entitled to protection
25 under the trade secret rule of evidence and under the personal

1 property exemption or privilege that he seeks to ask the Court
2 to protect.

3 As the Court is well aware, the Court has discretion to
4 enter a protective order to protect those types of interests
5 by all manner of protective steps, and we're basically asking
6 the Court to do so to allow him an opportunity to properly
7 respond to this, and at the same time him being willing to be
8 bound not to disclose it.

9 It's our belief, your Honor, that the evidence here this
10 morning, if we have to do that, would demonstrate to the Court
11 that Mr. Brown has not disclosed or proposed this idea to
12 anyone else at this point. And that the order of the Court
13 prohibiting him from doing so would leave it status quo, leave
14 the information in his own head, and prevent him from
15 disclosing it, which would protect their interest.

16 We understand their position being that they need to get
17 started on the patent application, your Honor; but we believe
18 this idea has value not only to them, if they own it and can
19 market it to anyone else, but it has very immediate and very
20 high value to plaintiff through their own use.

21 THE COURT: Of course, I have the benefit of
22 knowing what they allege, because I've read the affidavits in
23 the case and considered them in granting the temporary
24 restraining order that's made in this case.

25 What if your client dies, say, this afternoon, and it

1 turns out that DSC owns this property?

2 Do you see my point? I'm just wondering what we do to
3 protect -- I mean, because we have a unique situation here.
4 We have someone, as you pointed out, that has something in
5 their head, and only they have it. And I don't know if it's
6 written down somewhere or not; I have no idea.

7 But it seems to me that there's some considerations there
8 if the right of ownership is in dispute.

9 Especially if it turns out that DSC is the party to whom
10 this information belongs.

11 MR. DRAKE: Well, your Honor, I certainly
12 understand that position, and I believe that Mr. Brown would
13 be willing to put his idea in writing for that protection if
14 it could be submitted sealed to the Court, to be held by the
15 Court pending the determination by the Court that it does or
16 does not belong to DSC. That way the Court would have it if
17 the circumstances the Court has identified were to occur.

18 And, of course, he'd be in a difficult position of trying
19 to prove that he was the owner and they were not, at that
20 point, your Honor; but the Court could make a determination at
21 that point whether he -- or that DSC would be entitled to it.

22 THE COURT: How extensive would this idea -- how
23 much paperwork, for example, would it take to produce this
24 idea in a way that if I were to -- if it turns out that
25 Mr. Brown for some reason could no longer convey it because --

1 but the Court had it, and it turned out that DSC owned the
2 property, how much -- how much are we talking about here? Are
3 we talking about that much paper, or are we talking about a
4 roomful of paper, or what? Do you know?

5 MR. DRAKE: No, your Honor. I'm not aware. But
6 the -- the same amount of time that it would take for him to
7 explain it or give it to them in a deposition would be the
8 same amount of time it would take for him to put it to the
9 Court.

10 I would have to let Mr. Brown speak to the Court himself
11 to say how long he thinks it would take for him to put this
12 idea out sufficiently to enable DSC to be able to use it if it
13 turns out that it does belong it them.

14 THE COURT: Well, there's one other quick
15 problem, and that is that Mr. Brown could give the Court what
16 he has and I would have no idea of knowing whether or not it
17 is what he says it is. I mean, I could look at it and I
18 wouldn't know a thing; A, B, or C.

19 But it would be a way to have some -- assuming we did it
20 the way you suggested -- have some expert person who would be
21 able to evaluate that or -- for us to be able to make sure we
22 have the real McCoy.

23 I'm not implying that Mr. Brown (inaudible); I don't mean
24 that. I'm just saying that there is --

25 MR. DRAKE: Right.

1 THE COURT: If you were giving me an apple, I
2 know an apple when I see one; but I don't know necessarily
3 what we're talking about.

4 MR. DRAKE: Yes, your Honor.

5 THE COURT: I think your client wants to say
6 something to you.

7 Do it quietly, please.

8 (Short break in the proceedings)

9 MR. DRAKE: Well, your Honor, my client was
10 suggesting the possibility that the plaintiffs could -- he
11 would agree that they could take out a life insurance policy
12 on him for the value of what they believe the idea is worth.
13 You know, if they establish it, and they obtain an insurance
14 policy, he's willing to allow them to have that, that would
15 guarantee them the value that they believe this is worth to
16 them. But it would not require Mr. Brown to have to undergo
17 the expense to protect his own idea.

18 And, your Honor, if -- if counsel wants to address the
19 issue, they certainly can. But I think they won't dispute
20 that the evidence is going to show that DSC has known about
21 this idea for a solid year. It was presented to them in the
22 most descriptive manner that Mr. Brown has come up with in
23 writing in April of '96, and there were negotiations carried
24 on in discussions.

25 And we believe, your Honor, that, undisputedly, the

1 evidence will also show that DSC told Mr. Brown in February
2 that it was no longer interested in negotiating with him about
3 this idea, and it was only after they terminated him that this
4 all came back up.

5 And our position, your Honor, is that, again, it's in an
6 effort to try to hit the home run before they prove their
7 ownership that they come in and represent to the Court that
8 this is a critical and time intensive and very concerning
9 matter to them, because they have known about it for a year.

10 THE COURT: When you say revealed, are you
11 talking about the very thing that would have been -- if you
12 were to give it to the Court today, that's what DSC already
13 knows?

14 MR. DRAKE: No, your Honor. He just told them,
15 basically, Here's what this does.

16 THE COURT: Oh.

17 MR. DRAKE: It doesn't tell them how it does it;
18 it tells them what it does.

19 THE COURT: I see.

20 Well, we do have kind of a unique situation here.

21 What's your response?

22 MR. LYNN: Your Honor, I think counsel's
23 absolutely right. The issue -- and once you talk about what
24 we agree on, and it's what we said the other day.

25 This is an issue about ownership. And what -- we have

1 everything that has been said can relate to title, Debock Acre
2 (phonetic) or Green Acre (phonetic) or whatever else, without
3 regard -- just forget it's a computer problem for right now.

4 What we're trying to do is get it into court so we can
5 address it, be fair to Mr. Brown, be fair to DSC, so your
6 Honor and a jury ultimately will make a decision as to title.

7 Now, he's going to have to disclose it at some point
8 during the course of the discovery.

9 If we patent it and we're wrong, at least it's patented,
10 and we can assign it over to him.

11 But right now what is -- what is out there -- and we have
12 reason to believe, I think he's told some of our folks, and
13 this is in the affidavit -- he went to Europe and he was
14 disclosing this to investors; the concept.

15 Lately we have received letters from a London based group
16 that wants to use -- wants some of our computer programs to
17 test a translation program.

18 This is maybe coincidental, maybe not, as a result of
19 Mr. Brown visiting Europe.

20 If this is out, and if it is of the value that we're
21 talking about -- and the values that have been discussed are
22 in the \$100 million range -- it is something the Court needs
23 to preserve.

24 Now, we have no interest in telling third-parties about
25 it; we're interested in protecting it. Once we -- once it's

1 protected -- and we're the only people who really have the
2 resources to protect it -- then we can dispute who owns it and
3 who should get money off of it.

4 But it makes sense -- it's not a home run for us, because
5 we're going to be subject to review by your Honor and by a
6 jury.

7 But -- but at the present time -- and if we take his
8 deposition, we're going to have to get it out; and if we come
9 to a hearing on Friday, we're going to have to get it out,
10 so -- in order to make our case.

11 So it is best that it come out, it is best that it is
12 preserved, and that's the argument that we presented to your
13 court, your Honor, with the appropriate affidavits.

14 There is no attempt to try to take it from Mr. Brown
15 without some sort of judicial review. There just isn't.
16 That's just a red herring.

17 This is -- we have come before the Court seeking a
18 declaratory judgment action on the very ownership issue that
19 was outlined by opposing counsel. And it couldn't be fairer.

20 Now, submitting it in camera -- I've done the a lot of
21 this now for DSC and others.

22 Your Honor is absolutely right. I'm not an engineer, but
23 I work with these folks a lot.

24 There's not a prayer that your Honor -- and I'm not saying
25 anything against the Court --

1 THE COURT: You can. I would not understand.

2 MR. LYNN: -- or even a Ph.D. that would go down
3 to, you know, and get and try to bring up to speed, would
4 understand this specific, narrow area because of the advances
5 that are made on a daily basis.

6 We've had this trouble in a variety of other cases where
7 we have to get experts in a technical area, and DSC is just --
8 is just light years ahead of where -- what they're teaching in
9 school.

10 So I -- if it is -- if it is presented to DSC in the
11 course of the deposition, we're going to preserve it and
12 protect it, and we'll agree to a confidentiality order.

13 If there is some use by DSC, we will disclose it in
14 discovery. If it is patented, we will disclose that in
15 discovery.

16 If at the end of the day the jury says, DSC, you don't own
17 it because the contract for some reason is not -- is invalid,
18 or it wasn't, you know, all the other sorts of things, then
19 it's Mr. Brown's, and we either have to pay him money for it
20 or we lose it.

21 Now, to me, that seems like a fair way of approaching it;
22 to get it before a tribunal.

23 And that's all we're asking. I mean, that's why we're
24 here.

25 THE COURT: Is there any question in anybody's

1 mind about where Mr. Brown was working when he came up with
2 this idea and compiled it?

3 Any question in your mind?

4 MR. DRAKE: No, your Honor.

5 THE COURT: DSC.

6 We all agree then -- can we basically take the position
7 that DSC is the place where Mr. Brown was working at the time
8 he developed this idea in its present form?

9 MR. DRAKE: Well, I realize it's semantics, your
10 Honor. He was employed by them at the time he came up with
11 the idea; he didn't come up with the idea at work for DSC.

12 THE COURT: I understand. Okay. I got you. I
13 understand the difference.

14 MR. DRAKE: Your Honor.

15 If I may, your Honor, I'd like to make a very important
16 distinction here.

17 We're operating under the assumption -- and were I
18 counsel, I would make the same position to the Court -- that
19 we're talking about an item that has value to third-parties.
20 And we're arguing about who has the right to have it and sell
21 it to third-parties.

22 That's not the case here, your Honor. The case here is --
23 it's as if -- the old alchemist deal.

24 I figured out how to take iron and turn it into gold. You
25 say you own that idea. And I say, Well, we'll litigate that.

1 But if I have to tell you, later when it's determined that I
2 own the idea, I will be the one who gets to sell this to other
3 people.

4 But, your Honor, you sit in your house with your iron and
5 my information, and you make gold for yourself.

6 Our position is, it's the red herring that they just want
7 it preserved, and then if they don't own it, they won't sell
8 it.

9 It's not a matter of sell. It has incredible value to
10 them, your Honor. He said hundreds of millions of dollars.

11 Mr. Brown's position -- and that remains to be proven to
12 the Court. Mr. Brown's position is that DSC itself stands to
13 save in the neighborhood of \$1 billion in labor that otherwise
14 it appears, unless someone else comes up with this same idea,
15 they are going to incur in order to keep their product
16 competitive with their competitors. And that is the value of
17 this to them, and it is the reason why we cannot give it to
18 them and say, You can't tell anyone else about this.

19 If they're told, You can't use this, can the Court go in
20 their house and see whether they're turning that iron into
21 gold? No.

22 THE COURT: That's done all the time in patent
23 infringement cases --

24 MR. LYNN: Yes, sir.

25 THE COURT: -- where people say, Well, you're

1 using my idea, and I'm going to sue you for it.

2 And if it were patented, wouldn't that protect it? I
3 mean, after all, Mr. Brown, sooner or later -- or whoever has
4 the information in the end, whether it's sold to them or
5 not -- is certainly going to make an effort to protect that
6 information, whether it's by a patent or some other legal
7 means.

8 MR. DRAKE: Well, I understand, but if they
9 are --

10 THE COURT: It's not worth anything in
11 Mr. Brown's head alone to anybody.

12 MR. DRAKE: Right.

13 But if they are able to obtain this tremendous savings in
14 their own company as a result of their ability to employ this
15 process, regardless of whether anyone else ever uses it, or
16 they ever have any right to sell it, they save the kind of
17 money that he's talking about, that is money that they would
18 otherwise have to compensate him for the use of that process.

19 And that's what he's saying; they're asking the Court to
20 allow them to get the value of this to them without having to
21 prove that they're entitled to it.

22 They're not entitled to have something of yours, just as
23 they're not entitled to have something of mine, unless they
24 prove right of entitlement.

25 MR. LYNN: May I respond, your Honor?

1 THE COURT: Yes, sir.

2 MR. LYNN: I think you were right on the mark,
3 your Honor.

4 If we do such a dastardly thing -- I mean, that's what
5 keeps me employed -- I mean, they will be permitted to get a
6 royalty interest off whatever we're using it for, or permit --
7 or prevent us from using it.

8 Our point is, is that we have to go before someone. You
9 are the tribunal; these are the fact-finders on this jury.

10 All we're trying to do is just protect it and get it out
11 in the open so we're -- as between the two of us we can make a
12 determination as to who owns it.

13 And the concept that he can hide it like the Wizard of Oz
14 behind some curtain until the end of time, or until the
15 litigation is over with, just isn't going to happen, I don't
16 think, and I don't think it's the most efficient use of the
17 Court's time.

18 And if I could, your Honor, Mr. Jones, who is a patent
19 lawyer and who works for DSC and who sort of employs me, would
20 like to say something.

21 THE COURT: All right.

22 MR. LYNN: So if it's permissible, I would like
23 him to speak to the Court.

24 THE COURT: Okay.

25 MR. JONES: I think there's a couple concepts

1 that are relevant here.

2 People spoke about preserving the idea; and that's, they
3 gave it to you, to the Court, and the Court held it.

4 The problem is, that will not preserve the idea.

5 We have another vendor who is trying to develop an idea
6 like this with some of our own code; an outfit that I believe
7 is in the United Kingdom.

8 There are other people doubtless trying to come up with
9 things like this.

10 There is a race to the patent office.

11 And, for example, in the United Kingdom -- outside the
12 United States, the first person to file a patent on this owns
13 the idea, whether or not Evan Brown invented it first.

14 So by simply presenting it to the Court, we're not going
15 to preserve the asset.

16 Now, if indeed the asset is DSC's, it's up to DSC to
17 choose whether they want to go forward and get a patent, or
18 try and preserve this as some special trade secret and never
19 get a patent on it. But that's really our choice to make,
20 once we understand the property here. We can decide which one
21 is best for the -- for whoever owns it.

22 And, additionally, the point that we have sat on it for a
23 year is -- is a little troubling, because we insisted when
24 this first happened last -- a year ago now -- that Evan go
25 ahead and disclose it to us, and pointed out his contract, and

1 asked him to go ahead and do that. He refused to do that.

2 It was only because we were trying to help Evan out and
3 not just terminate him right then and work something out that
4 we waited this long.

5 And now we just found out -- I found out within the last
6 ten days of this third-party who is developing a computer
7 program to try to do exactly what Evan is doing.

8 And it's my job, and it's certainly my company's interest,
9 to file a patent application as quickly as possible to get
10 complete disclosure, file a robust patent application, and
11 protect ourselves.

12 If we come into the patent office second, we have lost
13 significant rights. If we come to the patent office of a
14 foreign country second, we have lost a hundred percent of the
15 rights.

16 MR. LYNN: So has Mr. Brown.

17 MR. JONES: And so has Mr. Brown.

18 MR. DRAKE: And, your Honor, our position is
19 that Mr. Brown should not be compelled to disclose something
20 to the other side that is of considerable value to him and to
21 them until they have established to the Court that they have a
22 right to it, whether for use for third-parties or for use with
23 themselves.

24 And what you're -- we're asking the Court is to recognize
25 that as a result of the fact that they sat on it for a year,

1 they really weren't entitled to come in here and get this
2 court's immediate action to compel him to produce all of this
3 before he has an opportunity to hire counsel, respond
4 adequately, file the types of protective things, other than
5 the meager protective order I was able to get into the court
6 yesterday. It's -- it's jumping on him before he has an
7 opportunity to defend himself and establish that he has any
8 right to withhold it from them.

9 We're operating under a severe disadvantage, and we're
10 asking the Court not to make him divulge this, which they will
11 then have in their hands, before he has an opportunity to
12 properly respond.

13 If the Court wants to allow them to insure their interest
14 until such time as he's had what the Court believes is a
15 reasonable time to prepare for this discovery, I think that
16 adequately, you know, protects them; but at the same time it
17 allows him to come in and defend himself before he loses
18 something that has potentially great value to him.

19 MR. LYNN: May I respond to that? Because I
20 think I can -- I just asked Mr. Jones if I could make this
21 offer to your Honor.

22 We will agree not to use it in a commercial way; we will
23 agree -- and the only exception to that is to try to file a
24 patent on it, if it is patentable. And we have to have some
25 technical people look at it. But we will not use it in a

1 technical way until we come up back before the Court and give
2 Mr. Brown and his lawyer an opportunity to have some sort of
3 judicial intervention.

4 But as it stands now, I -- I honestly believe that
5 Mr. Brown is making a mistake here. He should want this thing
6 patented and then fight about it. He should not want to be in
7 a position where he can lose it as well.

8 And these -- in the telecommunications area, because of
9 the litigation I've done in it recently, your Honor, these
10 folks are fighting a worldwide battle, and they really need to
11 have this kind of protection. This is not something that is
12 made up.

13 THE COURT: All right. Here's what we're going
14 to do.

15 This case is set for Friday for the hearing? Is that
16 right?

17 MR. LYNN: That's correct, your Honor.

18 MR. DRAKE: Yes, your Honor.

19 THE COURT: I think, obviously, both sides have
20 merits to their argument. I think -- and so here's what I
21 plan to do about this.

22 I'm going to not require Mr. Brown to divulge the
23 information -- or the solution, really, that's been referred
24 to -- before the hearing on Friday.

25 But Friday I'm going to determine who owns this

1 information. And if I determine that DSC has some ownership
2 interest in it, I'm going to order it disclosed that
3 afternoon.

4 So I want y'all to be prepared to try that one -- that's
5 the issue I'm interested in; who owns this information.

6 Now, DSC takes the position they own it because it was
7 developed at a time and under a contract; that it was
8 developed at a time that Mr. Brown was under a contract with
9 DSC.

10 And, of course, I'm aware all that is contained in the
11 petition filed in this case.

12 I realize there is some risk involved here. But if we
13 were dealing with an automobile, an apple, anything tangible
14 that I could lay my hands on, there would be no question the
15 Court could take it into its possession or order it in the
16 possession of someone else.

17 And I really don't see a tremendous difference between the
18 two, just because it's an idea that hasn't been placed down
19 somewhere yet.

20 But I agree that the nexus of this whole case depends on
21 who it is that owns in information.

22 I may even order it to be disclosed if the evidence is --
23 if that is one of the conclusions that we can draw from the
24 evidence in the case on Friday, subject to whatever a jury may
25 say at some future time about it. I won't prejudice anybody's

1 right to a jury trial.

2 But I'm going to make that preliminary determination
3 Friday. And, preliminarily, if I determine that it's owned by
4 DSC, or they have an ownership interest, I'm going to order it
5 disclosed, as I said, that afternoon.

6 That will give you an opportunity to present or gather up
7 the defense you have to the contract or the claim of ownership
8 in this case.

9 MR. DRAKE: Well, your Honor, I'm already set
10 for trial in another court on Friday. I was only engaged by
11 Mr. Brown for the purpose of doing this, because he is still
12 attempting to locate trial counsel.

13 THE COURT: That's fine. But I'm going to try
14 this case on Friday no matter who represents Mr. Brown. Even
15 if he represents himself.

16 The evidence in this case -- that is, the evidence that
17 supports the granting of a temporary restraining order --
18 indicates some -- I think indicates some necessity for some
19 rapid movement. And the concerns I've expressed here about
20 Mr. Brown no longer being around -- you know, whatever could
21 happen -- those things are all important.

22 And this issue is not all that complex, I don't think.

23 So that's the way it is. Friday I'm going give Mr. Brown
24 the opportunity to have his day in court to decide whether or
25 not the Court should enter a mandatory temporary injunction in

1 this case pending the final hearing.

2 And I do believe and I agree that the Court can make the
3 appropriate orders to maintain the confidentiality. I'd go
4 much further than has been recommended, though. I wouldn't
5 allow DSC to make any use of the information whatsoever,
6 except to apply for a patent, and to have it evaluated for the
7 purposes of applying for a patent.

8 And I recognize that you could find out something and
9 reverse engineer it and all that sort of thing, and you
10 wouldn't allow that to happen or anything.

11 But the point is, if I determine that the evidence will
12 support the position that DSC owns this property, then I'm
13 going to order it to be disclosed, and I -- and then we can
14 fight out the rest of it with a jury later, if you want to.

15 That's what we're going to do.

16 Now, let's get back to another point that's very
17 important.

18 Did you disclose to the other side what I instructed you
19 to disclose?

20 MR. LYNN: We did.

21 THE COURT: Okay. Okay.

22 MR. LYNN: In writing by fax last night.

23 MR. DRAKE: It was not disclosed to the
24 defendant as a court order. It was after close of business
25 yesterday sent by fax to my office, after they'd already

1 received the protective order, your Honor.

2 But we have no objections to the Court hearing the case
3 anyway.

4 THE COURT: Okay. I just want to be sure that
5 we clearly understand here. It's not like it's a big deal to
6 me, but it might be to somebody.

7 MR. DRAKE: Well, we would ask the Court that if
8 the Court is the majority shareholder of DSC, that the Court
9 take itself out.

10 THE COURT: Not even close.

11 MR. DRAKE: Okay.

12 THE COURT: Not even close.

13 MR. DRAKE: Well, your Honor, for the pendency
14 between now and Friday, if the amended temporary order at this
15 point compels Mr. Brown to disclose that information, can we
16 ask the Court to make a ruling at this point in open court
17 that states --

18 THE COURT: Right. I'm not going to require him
19 to disclose it, in spite of the Court's amended order, until
20 after the hearing on Friday, if at all. And I will give --
21 I'll give -- I want to litigate, I want the record to be
22 plain, and I want Mr. Brown to have the opportunity to
23 demonstrate, if he can, or DSC, that way, who owns this
24 property.

25 MR. LYNN: May I ask the Court, we have a -- we

1 had a subpoena duces tecum.

2 Now, normally, you're asking for documents. When you're
3 dealing with these things, usually there's a computer involved
4 and a hard drive involved, and there are diskettes involved.

5 And if we are going to come to the courthouse with respect
6 to -- and there is an order that might occur with respect to
7 disclosure, we'd ask that the Court consider making those
8 things available that afternoon. Because it is -- none of
9 this -- most of the folks who work in this area really don't
10 work on paper.

11 THE COURT: Well, let me do this. What I'll do
12 is, I will just order that the order about expedited discovery
13 be complied with immediately after the hearing on Friday, if I
14 rule in favor of DSC. If I don't, of course, then it will
15 just be for nothing, and we won't have to worry about it.

16 MR. LYNN: Can the deposition, other than the
17 issue of disclosure, go forward as it was supposed to today,
18 your Honor? I mean, we have -- we have other issues we have
19 to deal with. For example, he's argued some --

20 THE COURT: Sure.

21 MR. LYNN: -- contractual defenses, which I
22 assume we can get into.

23 MR. DRAKE: Again, your Honor, my client is
24 attempting -- and we have an appointment to meet with an
25 attorney and a firm immediately after this hearing if the

1 Court allows us to go do that so he can attempt to engage them
2 to properly represent him in this matter.

3 I cannot represent to the Court that I have the expertise
4 necessary to properly represent him with respect to these
5 matters.

6 THE COURT: Well, as I understand, the proposed
7 scope of the deposition is contractual questions and the
8 employment matters that don't have anything to do with the
9 technical aspects that could be resolved at some other time.

10 Isn't that right?

11 MR. LYNN: That's correct, your Honor. I mean,
12 he --

13 THE COURT: -- contract dispute.

14 MR. LYNN: He's not going to say -- it is
15 pleaded not as a trade secret case, as your Honor may have
16 seen. It's pleaded as a breach of contract and a declaratory
17 judgment case.

18 THE COURT: That's right.

19 MR. DRAKE: Your Honor --

20 THE COURT: I don't see that that's technically
21 a big problem for you.

22 MR. DRAKE: Simply, one, that I don't have the
23 time to put into it any further this afternoon, your Honor.

24 Number two, Mr. Brown has not had an opportunity to try to
25 prepare for the deposition; particularly with, you know,

1 matters that are as significant as they are, and he's going to
2 be asked to answer questions that he's had absolutely no
3 preparation for, and we would ask that the Court at least wait
4 until we make this preliminary determination about whether
5 they're entitled to this, and give the man a chance to get
6 somebody hired that can prepare him for the deposition.

7 We're talking about very significant matters, and we're
8 not giving Mr. Brown any chance to get ready or have adequate
9 counsel.

10 THE COURT: Well --

11 MR. LYNN: You know, it's an injunction. I
12 mean, what can I say? I have -- comes up all the time. If we
13 were talking about an automobile, I --

14 THE COURT: Well, I tell you what. I wouldn't
15 have any problem, assuming we can do this, is postpone those
16 depositions until tomorrow.

17 But I agree. I think both sides would have a right to
18 seek whatever expedited discovery they could on this issue of
19 who owns this contract. Not only what the idea is or what the
20 solution is; that's not what we're talking about right here.
21 But just on that one deal, it seems to me it's quite -- quite
22 simple. In fact, I would be surprised if the facts are in
23 dispute with respect to --

24 MR. DRAKE: Your Honor, I think this --

25 THE COURT: -- and that sort of thing.

1 It might be what the legal effect is, but otherwise it
2 might not be.

3 MR. DRAKE: Basically the issue is going to
4 revolve around whether the agreement that was drafted by DSC
5 is narrow enough to cover this particular type thing.

6 THE COURT: Right. That's right.

7 MR. DRAKE: And the -- there would need to be,
8 at least in my estimation, there would need to be research
9 regarding that particular area to be able to present to the
10 Court whether it is or is not. And before --

11 THE COURT: -- ambiguous contract, the Court can
12 make that decision --

13 MR. DRAKE: Yes, sir. All we're asking the
14 Court for is time to prepare for it, your Honor. And, like I
15 say, I -- I just did this because he had no other choice. He
16 couldn't get anyone else to do it, but he does have an
17 appointment today as soon as we can call them and get out of
18 this room.

19 But before I forget, your Honor, Mr. Brown has requested
20 that he be allowed to say something to the Court, if the Court
21 would allow him.

22 THE COURT: Well, no, I won't allow it. But if
23 he wants to tell you something, then you may be his
24 mouthpiece, as we say. But it's -- I don't want to get caught
25 up and be whipsawed between two --

1 MR. DRAKE: May I have a second?

2 (Short break in the proceedings)

3 MR. DRAKE: Your Honor, Mr. Brown simply wanted
4 to let the Court know that it has not been disclosed to anyone
5 here or overseas, and there are no written agreements or
6 contracts with anyone else with respect to this idea.

7 THE COURT: Okay. I bet that's one of the
8 questions he gets asked in the deposition.

9 MR. LYNN: The European trip and what went on, I
10 suppose, would be another -- I wanted to bring that up so we
11 wouldn't be limiting it to just --

12 THE COURT: Well, I think there is a point here,
13 and I'm going to -- number one, as I've indicated, Mr. Brown's
14 not going to have to divulge anything, despite the temporary
15 restraining order, which I vacate to that extent, at least,
16 before the Court makes some ruling on Friday here.

17 Number two, in order to accommodate a bit of the problem
18 that he has, I'll order that the deposition schedule be
19 postponed to the same time and place tomorrow. Not today.

20 MR. DRAKE: Your Honor, could we ask that it be
21 at 1:00 or sometime --

22 THE COURT: Do you have a problem with 1:00 in
23 the afternoon?

24 MR. PINKER: That's acceptable.

25 THE COURT: 1:00 in the afternoon is fine.

1 Tomorrow.

2 And of course the deposition will be open in scope except
3 for the idea itself and the solution and that sort of thing.
4 Everything else that has to do with the peripheral matters --
5 the contract, employment, the trips, whatever it is y'all want
6 to get into, like you would an ordinary case -- you may. But
7 you may not inquire about the solution.

8 MR. LYNN: Your Honor, there will be -- there
9 is -- I can envision one area. I'll just bring it up now.

10 We're going to ask about his presentations he made to
11 investors in Europe, and the presentations he made to Alcatel,
12 if he made them to Alcatel.

13 Alcatel owns about 31 percent of the market worldwide, and
14 a lot of the telecommunications gear that DSC is involved in,
15 so --

16 And these -- oftentimes these folks do overheads and make
17 presentations in some sort of book. It seems like it's
18 inherent in everything DSC does, and a lot of these other
19 technical folks.

20 My guess is that there might be something like that that
21 we would sure like to get our hands on before the -- this.
22 And, obviously, they'd be entitled to I guess screen it for
23 the specific technical matters, but there are going to be
24 projections in there as to how much good this will be to
25 whoever the investors are, how much money it will make, those

1 kinds of things.

2 Again, I don't mind your Honor entering a verbal
3 protective order saying that just the attorneys -- and the
4 attorneys will be, hopefully, Wayne Jones, in-house counsel --
5 are the only ones who can look at it. But I don't want there
6 to be any dispute about the right to get that information when
7 we ask him for it -- about it tomorrow.

8 THE COURT: Well, as I've indicated, the
9 deposition will not include the information about what the
10 solution is. There are a lot of ways to get around to finding
11 out whether anybody else has been told about the solution or
12 some part of it without divulging what the solution is.

13 MR. LYNN: That's right.

14 THE COURT: And those kinds of questions -- and
15 it's a wide open deposition, like it would be in any other
16 case; but we will not inquire as to the solution.

17 I'm going to call it that. I guess everybody knows what I
18 I'm talking about when I say the solution.

19 Mr. Brown will have the idea in his head until I instruct
20 him to do otherwise. But he has not been instructed to reveal
21 it on a deposition, and I don't want you to inquire about it.

22 MR. LYNN: We won't.

23 THE COURT: And that ought to take care of that.

24 All right. We'll see y'all Friday.

25 MR. LYNN: Thank you, your Honor.

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MR. DRAKE: Is that at 9, your Honor?

THE COURT: Sir?

MR. DRAKE: Is that at 9.

THE COURT: Yes, sir, it is.

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1 STATE OF TEXAS :

2 COUNTY OF COLLIN :

3 I, SHERI J. VECERA CSR/RPR, Official Court Reporter for
4 the 199th Judicial District Court in and for Collin County,
5 Texas, do hereby certify that the above and foregoing contains
6 a true and correct transcription of all the proceedings in the
7 foregoing styled and numbered cause, all of which occurred in
8 open court or in chambers and were reported by me.

9 I further certify that this transcription of the
10 proceedings truly and correctly reflects the exhibits, if any,
11 offered by the respective parties.

12 Witness my hand this the 30th day of April, 1997.

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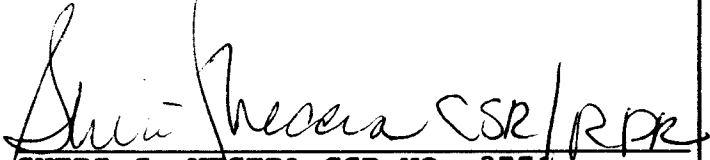
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