

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

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RALPH VARGAS and
BLAND-RICKY ROBERTS,

Plaintiffs,

- against -

PFIZER, INC., PUBLICIS, INC., FLUID
MUSIC, EAST WEST COMMUNICATIONS,
INC. and BRIAN TRANSEAU p/k/a "BT",

Defendants.
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Case No. 04 CV 9772 (WHP)

DECLARATION OF RHYS MOODY

I, RHYS MOODY, declare as follows:

1. I am a sound engineer and product specialist for East West Communications, Inc. ("EastWest"), a defendant in the above-captioned lawsuit. I make this declaration based on personal knowledge of the facts set forth herein. I am over 18 years of age, and if called upon to testify, I could and would testify competently to the matters stated herein.

2. EastWest is a company that, among other things, produces and distributes digital sound libraries. I have worked for East West for fifteen years. In that time, I have been involved in the development, programming, and production of many soundware products.

3. In my work, I periodically rely on a tool known as waveform analysis, and I have prepared well over 50 such analyses in the course of my career. A waveform analysis is a tool used by sound engineers and others to obtain accurate and detailed visual images of the acoustic properties of recorded works.

4. I prepared a waveform analysis comparing the drum loop *Bust Dat Groove (Without Ride)*, from a sample LP known as *Funky Drummer, Volume II*, with the drum loop

Aparthenonia, from the sample CD *Breakz from the Nu Skool* (released by EastWest). The wave analysis also includes the music from a commercial for Celebrex. I prepared this waveform analysis using Digidesign's Pro Tools, a standard software product for performing digital sound wave analysis.

5. A true and correct printout of the waveform analysis, as it appeared when performed on my computer, is attached hereto as Exhibit A. The analysis of *Aparthenonia* is shown in the row labeled "BT" (which is the name of the artist who prepared the *Breakz from the Nu Skool* sound library). The analysis of *Bust Dat Groove (Without Ride)* appears in the row labeled "*Funky Drummer*."

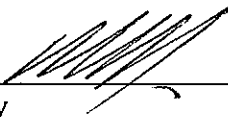
6. The analysis shows the waveforms of four beats of each audio clip, lined up together on the first beat. It depicts the sound amplitude (or loudness) of each component in the works over a time line of one measure of four beats in a 4/4 time signature.

7. Because *Aparthenonia* and *Bust Dat Groove (Without Ride)* contain no instruments other than percussion components, it is easy to see where each component is in the time line, and to visually identify the differences in the two drum loop recordings. As is readily discernible from Exhibit A, *Aparthenonia* and *Bust Dat Groove (Without Ride)* differ in amplitude from start to finish. In addition, there are waveforms in the first and second beats of *Aparthenonia* that are not found in *Bust Dat Groove*. These are bass drum waveforms and are indicated by the notions "Difference 1" and "Difference 2" in the row labeled "Comments" near the top of Exhibit A. Moreover, the waveforms show that the two drum loops are composed in different time, with *Aparthenonia* at a slightly different tempo than *Bust Dat Groove*. This difference is indicated by the notation "tempo variation" in the "Comments" row of Exhibit A.

8. The differences noted in the preceding paragraph rule out any possibility that *Aparthenonia* is a recording or sample of *Bust Dat Groove (Without Ride)*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California, this 27 day of June, 2005.



Rhys Moody