

EXHIBIT O

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

RALPH VARGAS and BLAND-RICKY ROBERTS,
Plaintiffs,

Civil Action

No.

-against- 04CV 9772 (JCF)

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

CERTIFIED COPY

Defendants

-----x

August 9, 2006

9:15 a.m.

Videotaped Deposition of

IVAN A. RODRIGUEZ, taken by Defendants,
pursuant to Notice, at the offices of Kirkland
& Ellis, 153 East 53rd Street, New York, New
York, before TAMMEY M. PASTOR, a Registered
Professional Reporter, Certified LiveNote
Reporter and Notary Public within and for the
State of New York.



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2 Reason you pull up different synthesizers.
3 You assign a certain channel to a synthesizer
4 and it will permit the keyboard to control
5 that synth. Once you are ready to record,
6 whatever you play gets recorded into a
7 sequence. So it is basically a big sequencing
8 program with different sound sources.

9 Q. Have you ever used the full
10 version of Propellerhead Reason, the pay
11 version?

12 A. No.

13 Q. Have you used the basic
14 version?

15 A. No.

16 Q. What's your familiarity --
17 strike that.

18 Where does your familiarity
19 with Propellerhead Reason come from?

20 A. Well, not only because it is
21 promoted along with the Pro Tools and it is in
22 every magazine in the world, but a lot of the
23 up and coming producers that are more computer
24 based, they like live by it.

25 Q. But it is not something you

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2 personally have used?

3 A. No, I have not used it.

4 Q. Are you aware of whether there
5 are sampled drum sounds available in
6 Propellerhead Reason?

7 A. I have to assume there are.
8 There has to be a full load of sounds, a basic
9 load of sounds for folks to start off with.

10 Q. When I say sample drum sounds,
11 do you understand me to mean a recording of a
12 live drum?

13 A. Well, I understand you to say
14 that. I don't know that is what they have. I
15 don't know if it is synthetic. I never
16 listened to it, so I couldn't say.

17 Q. I want to be clear when we're
18 talking about synthetic or live. Would those
19 two terms differentiate, if I say synthetic
20 drum sound what does that mean to you?

21 A. It means it is created from
22 different tones, different oscillators,
23 something actually manufactured digitally.

24 Q. And if I say a live drum sound
25 that is recorded, what does that mean to you?

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2 live. You would know it wasn't a drummer.

3 Q. Even if you used samples of
4 live drumming?

5 A. It is not just samples, it is
6 the processing, the way you program it. The
7 way it comes across that is what I mean by
8 saying there are so many variables it is not
9 like two cakes, it is each individual cake is
10 different. I can't reproduce that cake
11 without real ingredients.

12 Q. But your opinion is
13 Aparthenonia is a result of digitally moving
14 pieces of Bust Dat Groove around; correct?

15 A. It is my opinion the record was
16 taken, sampled, either as a whole or in
17 pieces, then broken down, created, rhythm
18 created then roll was moved to the tail versus
19 the top. Then you have yourself a record.
20 But to me, in my profession and totally honest
21 opinion, that record was, as we say, flipped
22 around.

23 Before I could commit to it
24 that is when I told Mr. Chin I will prove it
25 to you. Then I did it. When I gave him the

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2 CD he couldn't tell me which was the real one
3 which was Ralph's and which was the other
4 gentleman. The properties are so true nobody
5 can tell it flanged. Anybody will tell you
6 even little kids when they want two DJs live
7 they play the two records at the same time.
8 They play the same records at the same time.
9 It is called flanging. That can only happen
10 when the two items are totally identical.

11 I had that happening with
12 Aparthenonia and the edited Bust Dat Groove
13 you have one on left speaker, one on right. I
14 kind of broke it down pretty much as simply as
15 possible as opposed to try to muddy it up with
16 a bunch of graphs. Some stuff is very
17 difficult. This is so airy, so open. It is
18 crystal clear to me.

19 Q. You say flanging, what is it
20 that causes flanging when you play the same
21 song at the same time?

22 A. When you play the same sections
23 of the same song or same bass or same horns,
24 even two crash cymbals, if they are absolutely
25 identical and put adjacent to each other they

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2 that purposely so it couldn't be used against
3 the defendant to say I did something to the
4 record that wasn't natural. I took it exactly
5 as it was off the vinyl. Chopped it up and
6 put it in.

7 If you listen to it
8 independently you will notice a sort of
9 dryness to Ralph's, Mr. Vargas' because I
10 didn't purposely use reverb, even though with
11 that there is still like a mirror image.

12 Q. If you used digital signal
13 processing could you make them sound even more
14 alike?

15 A. I would say almost 100 percent.
16 Because, see, I don't know if I would have had
17 master's up front, I would have probably not
18 even had to do this because I can tell right
19 from the master's because multitrack master's
20 shows me what you done and how you done it.
21 If I had presets, if someone told me I did
22 reverb 23 from TC Electronic Corp. or
23 something I would have added that.

24 I told Mr. Chin I could
25 probably even eventually figure it out, but it

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2 would take some time. I don't know how long.
3 I would have to toy with literally thousands
4 of reverbs until I got the tone used before.
5 Even if I had like what we call a recall
6 sheet, sometimes folks use a recall sheet when
7 you work because you toy around with different
8 settings until the artist goes that's it. You
9 keep notes like that. He likes setting number
10 23 on this particular plug in. You keep that.
11 If I would have known that, I would have added
12 it to that. It would have been exact.

13 Q. You can use digital signal
14 processing to make one drum loop sounds more
15 like another?

16 A. No. What I am explaining if
17 you look at the last page of this graph, I
18 believe we gave you a color one or Mr. Chin
19 did, he initially gave in a color one.

20 Q. I never received a color one?

21 A. The color one was easier on the
22 eyes, easy to explain. It is basically the
23 same graphs.

24 Q. You're referring to graph
25 Exhibit B to your declaration Defendant's

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2 what you observed?

3 A. Yes.

4 Q. You observed that Aparthenonia
5 was slightly faster tempo?

6 A. It slightly.

7 Q. Maybe 104 beats per minute?

8 A. Maybe. Maybe a tad less. The
9 readout you get from a drum machine isn't
10 necessarily exact. It is actually the clock
11 within the device that determines the speed.

12 Q. Can you choose whatever sound
13 level you want to put into Pro Tools?

14 A. Yes, you can.

15 Q. So is it your testimony
16 Mr. Moody could have put Bust dat Groove in to
17 get the exact same amplifier that he had on
18 Aparthenonia in his analysis?

19 A. Yes, sir. That is my
20 testimony.

21 Q. Do you see Mr. Moody's graph
22 you said the second beat is the snare; is that
23 right?

24 A. Yes.

25 Q. Do you see how the amplitude on

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2 tones are the ones that initially told me they
3 were the same record. If they were just flat
4 snares I wouldn't have been able to tell.

5 Q. Drums have pitch; right?

6 A. Pitch, yes, tone when you pitch
7 it up the tone changes, it is brighter,
8 darker.

9 Q. And you can adjust pitch on the
10 MP3,000; right?

11 A. Yes, you can.

12 Q. You adjusted the pitch on Bust
13 Dat Groove to make it higher so it sounds more
14 like Aparthenonia in your edited version;
15 correct?

16 A. No. Incorrect. I adjusted it
17 for speed. Not so that it could sound the
18 same. It was moving a little bit slower
19 because of the tempo of the new record. When
20 you pitch it, it catches up in speed. If you
21 pitch it drastically then you're affected.

22 Q. Did that change the tone as
23 well?

24 A. Slightly.

25 Q. Do you mean something different

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2 when you say pitch than when you say tone?

3 A. No. For me pitch and tone are
4 pretty much the same.

5 Q. So I understand there is drums
6 can have pitch. That can be adjusted by
7 tuning the drums?

8 A. Correct. The skins.

9 Q. And you adjusted the pitch by
10 changing the timing on Bust Dat Groove snare
11 hit; right?

12 A. No. I adjusted the pitch not
13 the timing. The pitch corresponds to timing.
14 If you pitch something upward it moves a tad
15 bit faster. Timing would just be timing,
16 meaning you actually move the item.

17 Q. I might have misheard before.
18 I thought you said you made the snare hit a
19 little faster which adjusted the pitch; is
20 that correct?

21 A. No. Backwards. I adjusted the
22 pitch so it could be a bit faster.

23 Q. Okay. So you adjusted the
24 pitch of the snare from the original Bust Dat
25 Groove; correct?

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2 A. Correct.

3 Q. That made it a bit faster;
4 correct?

5 A. Slightly.

6 Q. You've testified that when you
7 say that you can use pitch or tone to mean the
8 same thing; is that right?

9 A. For me it can. I understand it
10 that way.

11 Q. When you been using it here
12 with us today, did you mean different things
13 when you said pitch than tone or do you mean
14 the same thing?

15 A. No, for me they mean the same.
16 For you tone may be base and treble on a
17 radio. For me it is not because I am working
18 within a studio.

19 Q. I want to understand how you
20 are using it.

21 A. Like someone says how do you
22 like my tone? To me it is their pitch.

23 Q. I understand about drums having
24 pitch. But then let me ask does Bust Dat
25 Groove have any melody?

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2 Q. They play equally on both
3 speakers straight up the middle?

4 A. Straight up the middle they
5 fill both speakers, yes.

6 (Track Playing.)

7 Q. Did you adjust the pitch at all
8 in making these two snare roll comparisons?

9 A. I do not recall. I only recall
10 the snare.

11 Q. So you might have or you might
12 not?

13 MR. CHIN: Objection.

14 A. I would probably say might not.

15 Q. But you don't recall for
16 certainty today?

17 A. I don't recall for certainty,
18 no, I do not.

19 Q. Let's listen to track 2.

20 (Track Playing.)

21 Q. Can you describe what we are
22 listening to on track 2?

23 A. You are listening to samples of
24 the closed hi-hat in Aparthenonia and closed
25 hi-hat from Bust Dat Groove.

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2 Q. Is the first sound from
3 Aparthenonia?

4 A. The first one is Aparthenonia.

5 Q. Second one is from Bust Dat
6 Groove?

7 A. Correct.

8 Q. Then do they repeat again A B,
9 A B?

10 A. Yes. That is the arrangements.

11 Q. Is this the closed hi-hat you
12 are referring to in 13 B of your declaration
13 on page 6?

14 A. Yes.

15 Q. I am going to play that again
16 from the beginning.

17 (Track Playing.)

18 Q. So those two don't sound
19 exactly the same to me. One sounds a little
20 flatter. Do you hear any difference?

21 MR. CHIN: Objection.

22 A. That is the DSP. That is what
23 the signal processing does.

24 Q. So you hear the difference,
25 too?

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2 A. Yes, I do.

3 Q. Is it your opinion that using
4 digital signal processing you could make those
5 two sounds sound exactly the same?

6 A. If I had the exact same
7 settings I believe I can. Whatever the
8 settings were that were used to brighten and
9 equalize and process that hi-hat.

10 Q. Could you do it on your own?

11 A. Yes. But I couldn't be sure of
12 the preset. There are literally thousands of
13 reverbs, depending on what the defendant has
14 in his collection. I would only be making a
15 guess.

16 Q. Given enough time can you make
17 them sound, do you think in your professional
18 opinion, the same through use of DSP?

19 A. I think my current opinion of
20 it being 98 percent the same I can bring it
21 probably up to 99. I couldn't be 100 because
22 I would have no knowledge what the reverb was
23 so that it would be unquestionable. You
24 couldn't tell the difference in the reverbs,
25 but I don't know what that setting is.

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2 he requested it, even if I remember correctly
3 Reasons wasn't even mentioned in the
4 beginning. It was just a master. Reasons
5 from what I understand came later.

6 Q. Let's listen to the rest of
7 these tracks quickly and get you on your way.
8 Track number 3.

9 (Track Playing.)

10 Q. Can you describe what we are
11 hearing there?

12 A. We are hearing the kick drum
13 that I mentioned was used as a filler kick
14 that was pulled out of Bust Dat Groove and
15 used in Aparthenonia. We hear, my opinion, a
16 slight difference because of processing. Bit
17 of a brighter edge but core of the kick is the
18 same.

19 Q. When you say filler kick, that
20 is referring to the alternate kick that is
21 described in 13 D of your declaration on
22 page 6; correct?

23 A. Correct.

24 Q. I heard a difference in the 2
25 tracks. Sorry, let's backup. What do we

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2 (Track Playing.)

3 Q. What is track 3, what are we
4 hearing?

5 A. Track 3 is the kick that was
6 sampled from the second beat going into the
7 third.

8 Q. Is that the kick splash?

9 A. Splash.

10 Q. Referred to at 13 C of your
11 declaration?

12 A. Correct. The differences
13 you're hearing are in brightness, but you have
14 the splash on the kick.

15 Q. In both?

16 A. In both. If you turn the
17 speakers toward you you can hear it. That
18 again was one of the reasons I was more and
19 more convinced as I went by, because how would
20 Reasons create a kick with Ralph's splash in
21 it with the same tone of kick. It is just
22 like twins almost. It is almost like twins.

23 So how can they come from two
24 different mothers if it is twins, it is from
25 the same guy in my opinion. It was somehow

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2 it the same, I don't believe him.

3 Q. First on track 3 do we have
4 Aparthenonia's kick; is that right?

5 A. Correct. It is the brighter
6 one.

7 Q. Then second is Bust Dat Groove
8 kick?

9 A. Correct.

10 Q. They repeat A B as before?

11 A. Correct.

12 Q. Let's listen one more time.

13 A. Sure.

14 (Track Playing.)

15 Q. Is there a splash on that first
16 one?

17 A. There is a splashy sort of what
18 we call gated sound. It is almost like a
19 cough. You hear reverb hangs, it is like a
20 "pa" but then a gate goes "chu, chu", it is a
21 reverb gated and cut off. That is not exactly
22 a gated reverb, but gated sounds. It is a
23 splashy sound, it is absolutely identical on
24 both other than brightness, the EQ. I believe
25 if I bring that one up with the treble and add

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2 whatever the reverb was on that it would be
3 absolutely identical.

4 Q. In your expert opinion what
5 instrument is used to create the sound we are
6 hearing on track 3?

7 A. The complete sound?

8 Q. Yeah.

9 A. It is a kick drum with a cymbal
10 hitting simultaneously on top of it.

11 Q. Let's listen to track 4.

12 (Track Playing.)

13 Q. What are we hearing on track 4?

14 A. You are hearing the filler kick
15 being used in Aparthenonia, then in Bust Dat
16 Groove.

17 Q. Is that what is called the
18 alternate kick in 13 D of your declaration?

19 A. Correct.

20 Q. Back to track 3 for a second.
21 Did track 3 contain the kick splash that is
22 referred to as 13 C in your declaration?

23 A. Correct.

24 Q. Which one do we hear first on
25 track 4?

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2 A. The first one you heard was
3 Aparthenonia. The second was Bust Dat Groove.

4 Q. Do they repeat A B?

5 A. Yes, they do.

6 (Track Playing.)

7 Q. I am going to play it again.

8 Wrong track. Okay.

9 (Track Playing.)

10 Q. Again I hear somewhat of a
11 difference, do you hear a difference in those
12 two?

13 A. Slight.

14 MR. CHIN: Objection.

15 Q. What was your answer?

16 A. My answer was I hear a slight
17 difference.

18 Q. What in your opinion creates
19 that difference?

20 A. EQ and DSP. Equalization,
21 brighter top, and a digital signal processing
22 to let it breath a little more.

23 Q. Now I want to take you to track
24 5. This is where we are going to hear
25 Aparthenonia and then Bust Dat Groove;

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2 correct?

3 A. Yes.

4 Q. Then it says in your
5 declaration, the third you hear both playing
6 at the same time and both hear the audio
7 flange; is that right?

8 A. Correct.

9 Q. Let's listen to that.

10 (Track Playing.)

11 Q. Right there. Did they just
12 start playing at the same time?

13 A. They are flanging, yes, they
14 are playing together.

15 Q. Before we get to them playing
16 together so the two sounds somewhat different
17 to me, do they sound somewhat different to
18 you?

19 MR. CHIN: Objection.

20 A. In my professional opinion
21 outside of the DSP they are absolutely exact.

22 Q. Right. But I am not asking
23 about outside the DSP. I am saying as we
24 listen to them?

25 A. Yes. The DSP is lacking the

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2 breath it seems to cut off short because of
3 breathing the reverb.

4 Q. I understand you think some
5 things could be done to make them sound the
6 same.

7 A. Correct.

8 Q. As we listen to them here do
9 they sound different to you?

10 MR. CHIN: Objection.

11 A. Slightly.

12 Q. I can hear difference. Can you
13 hear a difference?

14 A. Slight, very small.

15 Q. To me it sounds like
16 Aparthenonia sounds a little, I don't know,
17 would brighter be the term?

18 A. Right. It is brighter and
19 airier. Again, no disrespect, I don't
20 understand the law. My audio the way I
21 understand audio you don't understand it. Of
22 course it sounds different. That is why I
23 have to continue to say slight because if
24 someone of the same caliber of me would sit
25 there he would understand what I mean by

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2 slight. He would say you're missing reverb,
3 correct. Otherwise if I weren't to consider
4 reverb I am listening to the same exact record
5 in my world with musicians. Musicians would
6 pick that up instantly.

7 Q. They would pick up how it could
8 be similar. They can hear what I can hear
9 which is differences too; right?

10 A. True. But as a professional
11 they would know all it lacks is reverb,
12 someone that has that profession, someone like
13 yourself especially if your job is to defend
14 the product you are going to notice some
15 differences maybe sounds that way to you but
16 to me or maybe even someone sitting in that
17 desk out there, I think they would think it is
18 exactly the same thing.

19 Q. When we are talking about track
20 5 here and talking about Bust Dat Groove, this
21 is your edited version of Bust Dat Groove?

22 A. Correct.

23 Q. The one you took from a sample
24 of the original Bust Dat Groove --

25 A. Correct.

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

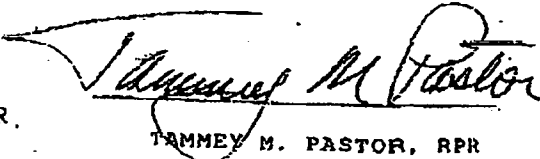
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