

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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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",

Defendants

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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.

1
2 A P P E A R A N C E S:

3 LAW OFFICES OF PAUL A. CHIN
4 Attorneys for Plaintiffs
5 The Woolworth Building
6 233 Broadway
7 New York, New York 10007
8 BY: PAUL A. CHIN, ESQ.

9 KIRKLAND & ELLIS
10 Attorneys for Defendant Brian Transeau
11 153 East 53rd Street
12 New York, New York 10022
13 BY: JULIE AHRENS, ESQ.

14 -and-

15 DAVID S. OLSON, ESQ.
16 STANFORD LAW SCHOOL
17 Crown Quadrangle
18 559 Nathan Abbott Way
19 Stanford, California 94305-8610

20 ALSO PRESENT:

21 MATTHEW CHAVEZ, LegaLink Action Video
22
23
24
25

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 VIDEOGRAPHER: Here begins
3 videotape number 1 in the deposition of Ivan
4 A. Rodriguez in the matter of Ralph Vargas,
5 and Bland-Ricky Roberts versus Pfizer, Inc.,
6 et al. in the United States District Court,
7 Southern District of New York.

8 Today's date is August 9, 2006.
9 The time on the video monitor is 9:13 a.m. The
10 video operator today is Matthew Chavez, a
11 notary public contracted by LegaLink Video
12 Solutions, San Francisco, California. This
13 video deposition is taking place at Kirkland &
14 Ellis, 153 East 53rd Street, New York, New
15 York.

16 Counsel, please voice identify
17 yourselves and state whom you represent.

18 MR. OLSON: David Olson with
19 Stanford Law School Center for Internet and
20 Society attorney on behalf of defendant Brian
21 Transeau. With me is Julie Ahrens of Kirkland
22 & Ellis, attorney for defendant Transeau.

23 MR. CHIN: Paul Chin,
24 representing the plaintiffs Ralph Vargas and
25 Bland-Ricky Roberts.

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 VIDEOGRAPHER: The court
3 reporter Tammev Pastor of LegaLink please
4 swear in the witness.

5 IVAN A. RODRIGUEZ,
6 residing at 167 West 81 Street Apartment 5C,
7 New York City, New York 10024, having been
8 first duly sworn by the Notary Public (Tammev
9 M. Pastor), was examined and testified as
10 follows:

11 EXAMINATION CONDUCTED BY MR. OLSON:

12 Q. Good morning, Mr. Rodriguez.

13 A. Good morning.

14 Q. Before we get into the
15 substantive questions I am going to ask you
16 today, I just want to cover a little, ask you
17 a few questions and see what your familiarity
18 is with depositions and whatnot --

19 A. Okay.

20 Q. -- so we can make sure we are
21 all on the same page.

22 A. Okay.

23 Q. Have you been deposed before?

24 A. No.

25 Q. Have you ever served as an

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 sampling I don't know why they came up with
3 the word sampling, basically you're just
4 recording something you like and repeating it
5 over and over. That is what sampling means,
6 recording.

7 Q. What can you sample from?

8 A. Absolutely anything. Anything
9 that produces audio can be sampled.

10 Q. Do you have to have a copy of
11 the thing you want to sample from?

12 A. It can be a copy. It can be
13 live. I can sample your voice as we speak. I
14 can sample noises in the air. Whatever the
15 source is. You need the source in order to
16 sample it.

17 Q. Without the source you can't
18 sample?

19 A. You have nothing.

20 Q. Why was sampling used so much
21 in the hip-hop industry?

22 A. That is a great question. I
23 guess my opinion is it was just the easy way
24 out. I would think the first guy to really
25 suffer from that was James Brown. The guy had

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 no, we shouldn't sample, we shouldn't be
3 sampling?

4 MR. CHIN: Objection.

5 A. I couldn't do that because then
6 they would record somewhere else and the
7 studio would just go out of business.

8 Q. Did you work on the EPMD song
9 we were just discussing?

10 A. Yes, I did.

11 Q. What was your work you did on
12 that song?

13 A. I was engineer.

14 Q. Where were you at when you did
15 the EPMD song?

16 A. The EPMD song was recorded and
17 mixed in the C room of Power Play Studios.

18 Q. Around when was that?

19 A. I don't know the exact date.
20 Let me think.

21 Q. Was it in the time '87 '95 when
22 you were working at Power Play Studios?

23 A. Definitely, yes.

24 Q. When we talk about sampling, it
25 is even possible to cut and paste individual

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 notes from a sampled song and rearrange them;
3 isn't it?

4 A. Yes.

5 Q. Is it possible to cut and paste
6 individual strikes of a drum?

7 A. Yes.

8 Q. So if we talk about notes can
9 you cut and paste a whole note of a song?

10 MR. CHIN: Objection. You can
11 answer.

12 A. Yes, you can.

13 Q. I want to see how fine tuned it
14 can get, can you cut and paste a 1/2 note?

15 A. Yes.

16 Q. An 1/8th note?

17 A. Yes.

18 Q. How far down can you go?

19 A. It is infinite. To the very
20 last molecule of whatever sound is left.

21 Q. When you were sampling, for
22 instance, at Power Play Studios and Music
23 Palace, what parts of the new material that
24 was being created did you use sampling to
25 create?

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2 Q. So everyone is being very
3 stoic. I am sure someone must need a break by
4 now. Why don't we go off the record and take
5 five to 7 minute break then come back.

6 A. Fine.

7 VIDEOGRAPHER: Going off the
8 record. The time is 10:59. This is end of
9 tape number 1.

10 (Recess taken.)

11 VIDEOGRAPHER: We are back on
12 the record. The time is 11:07. This is
13 beginning of tape number 2.

14 Q. Mr. Vargas, is it correct you
15 had not met --

16 MR. CHIN: Rodriquez.

17 Q. Sorry. Let me start again.
18 Mr. Rodriquez, is it correct you had not met
19 Mr. Roberts before you met him in relation to
20 this case?

21 A. Not that I can remember.

22 Q. So, when did you first become
23 aware of -- let me backup.

24 Are you aware of what is at
25 controversy in this case that you're

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 testifying in relation to today?

3 A. Yes.

4 Q. What is it?

5 A. That your client sampled his
6 client's original composition and used it in
7 some sort of sale where it ended up in a
8 Celebrex commercial.

9 Q. When did you first become aware
10 of the facts at issue in this case?

11 A. I started to think back
12 yesterday. I think some time April 2004 I
13 think I heard some mention of it.

14 Q. Where did you hear a mention of
15 it?

16 A. If I can recall, I think
17 Mr. Vargas said I might have a case, I can't
18 remember the exact wording, but it pertained
19 to he might need my testimony on a case. He
20 wasn't sure the date. Something to that
21 nature. But he would bring me something at
22 some point and want me to do a test and
23 analysis. Might have spoken about it maybe
24 twice briefly within two months before he
25 actually called me and said here is the thing,

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2 this Cambridge Soundworks clock radio?

3 A. Next to my sofa.

4 Q. What did Mr. Vargas tell you
5 when he brought in the CD for you to listen
6 to?

7 A. He came in with the CDs, he
8 said, Doc, this is a Celebrex commercial. He
9 mentioned something about it. I said I think
10 I have seen that on TV.

11 Then he said I believe that
12 some of the material within this is mine. I
13 said really? Okay. Let me get the other CD.
14 I mean let me get the CD. I put it in. I
15 heard the Celebrex commercial straight
16 through. I went back to his track. I saw
17 resemblance but I needed to listen closer. I
18 might have gone back three times. By the
19 third time when I finished completely hearing
20 it, I said, yeah, that is your material.

21 Q. What made you sure that is
22 Mr. Vargas' material?

23 A. Because there is a certain feel
24 to live drumming. Certain tone to it. Though
25 I can tell it was somewhat manipulated I can

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2 snare, he will go "dzoo-dzoo," he starts to
3 make you swing around. That is called a
4 swing. That is what the drummer does with his
5 body. Soul drummers they tend to swing a
6 little. It is the rhythm coming from their
7 bodies into the instrument. Some rockers are
8 just like boom, straight power driving so the
9 guitar goes through.

10 With a drum machine you have to
11 really be tricky to get some sort of feel.
12 What I get from drumming from guys like Ralph
13 or guys of his caliber is that that soul, that
14 like that roll when you hear that roll. If
15 you listen to the CD I gave in as evidence you
16 just can't question the roll. It is so clear.
17 You can almost, it is almost as if he put his
18 hands on the thing and just went like that.
19 That's one of the things that distinguish it.
20 Another one the kicks and snares are like
21 identical. That is what really made me say,
22 yeah, this is your material.

23 MR. CHIN: Remember to go a
24 little slow.

25 A. That is what timing correction

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2 your own music?

3 A. Stuff that I personally done I
4 have done my own personal sampling. A lot of
5 my credit work is stuff the client might have
6 brought in with records. Though at times I do
7 create my own kicks and stuff for particular
8 project.

9 Q. You mentioned in your
10 declaration you use an MPC 300. I was
11 wondering, first off, if that is the correct
12 name for it. Is it 300 or 3,000?

13 A. It is 3,000.

14 Q. Okay. I thought that might be
15 the case. Would you consider that a drum
16 machine?

17 A. I like the classic name drum
18 machine. But that is what the letters MPC
19 stands for. It is MIDI production center.

20 Q. When Mr. Vargas came to you and
21 you played the CD, did you have any doubt as
22 to whether that was Mr. Vargas' music or drum
23 beat, rather, in the Celebrex commercial?

24 A. When I first heard it, I knew
25 at some -- one way or another there were some,

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2 if not all elements from his, but it was a
3 little difficult to tell it was a little
4 cloudy. That is why I played it a few times.

5 Then when I really got time to
6 listen to it, that is when I said I really
7 truly believe this is somehow associated to
8 you. This is when I had the time to put it in
9 Pro Tools to analyze it, take time to work
10 with it. That was a little review maybe 15
11 minutes.

12 Q. At that point you were sure; is
13 that right?

14 A. I was sure it was somehow
15 related, absolutely.

16 Q. When you say somehow related
17 what do you mean?

18 A. In that short period of time
19 you can't go here is what happened, here and
20 here. That takes time. You have to sit down
21 listen to it, break it down by bars, see where
22 the changes are. I knew the tone of the
23 snare, the tone of the kick were the same
24 which means at minimum the individual
25 instruments were sampled. The roll was the

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2 same. The feel in the high hat area and
3 overhead area was the same.

4 Q. So at this point when you
5 listened to it on your Cambridge Soundworks
6 clock radio you were sure Mr. Vargas' Bust Dat
7 Groove had been copied for the Celebrex
8 commercial; correct?

9 MR. CHIN: Objection. That
10 misstates his previous testimony. If you want
11 to repeat you can repeat what you just said.
12 That is not a proper question.

13 MR. OLSON: You can have your
14 objection, unless you are going to instruct
15 him not to answer.

16 MR. CHIN: I am not
17 instructing him not to answer. Just objection
18 to form.

19 MR. OLSON: Madam court
20 report, can you read back my question.

21 MR. CHIN: He is testifying,
22 not you, David. The question you just
23 solicited yes and no answers are improper.

24 MR. OLSON: No that is not
25 correct. You can make your objections.

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2 (The pending question was
3 read.)

4 A. Yes.

5 Q. Did you have any uncertainty at
6 all?

7 A. At that initial --

8 MR. CHIN: Sorry, objection.

9 A. At that initial points I had
10 yet to have figured out how it was done. But
11 I knew it was done. As a matter of fact I
12 remember turning around and saying that's your
13 stuff.

14 Q. At that point you were certain?

15 MR. CHIN: Objection. Wait
16 until I get an opportunity to object.
17 Objection. You can answer.

18 A. I was certain.

19 Q. You mentioned the drum roll was
20 one of the things that you found similar
21 between the two works; correct?

22 A. I actually found it exact.

23 Q. So when you listened at that
24 time were certain that the drum roll had been
25 copied; is that correct?

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2 MR. CHIN: Objection. You can
3 answer.

4 A. At minimum. At minimum the
5 drum roll.

6 Q. How did you know that drum
7 roll, if it was copied, was copied from
8 Mr. Vargas' track instead of numerous other
9 tracks out there that have drum rolls?

10 A. Are you asking on that day or
11 as I moved along?

12 Q. Let's start with that day then
13 we can go beyond that.

14 A. On that day I listened to it
15 over and over. I believe eventually I put on
16 headphones, very, very high definition
17 headphones. I have given them, I believe they
18 are AKG K240, they are very clean.

19 Q. When you say eventually, you
20 mean at a later time when you listened to it?

21 A. When I had myself a little
22 extra time I put my headphones on and listened
23 and I kept telling myself absolutely the same
24 song. It moved around a little bit. But in
25 my experience I personally moved around

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2 records, I know how it is done. The roll had
3 the same -- again, my wording might be
4 difficult because I am more into music, maybe
5 you're not. But there is a certain life to
6 the roll. It wasn't stiff. It wasn't tiny.

7 I have seen folks listen to a
8 record and go, wow, I really dig this guy's
9 style, but I don't want to sample it. So they
10 replay it. I gave it a chance, tested it for
11 replaying. I said maybe he replayed it. When
12 I listened carefully for tone and feel I said
13 no, it is the same exact drum.

14 Q. Is this as you were listening
15 to it on the Cambridge Soundworks clock radio?

16 A. When I listened to it on the
17 radio I knew it was the same enough to where I
18 told him, okay, it is the same. I previously
19 told him if it is not the same I am not
20 dealing with it. I don't have time and energy
21 to deal with something that is not the same.
22 When it was he turned around and said, I knew
23 it. I knew it. I said, yeah, it is your
24 song.

25 Q. Regarding the drum roll, are

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 you testifying that -- let me back up a
3 minute. Let me just ask, could you tell that
4 the snare roll was not from a drum machine
5 based on listening to it?

6 MR. CHIN: Objection.

7 A. Yes.

8 Q. Could you tell the snare roll
9 was not a sample from some other drumming when
10 you listened to it?

11 MR. CHIN: Objection.

12 A. Yes.

13 Q. Is it your testimony that the
14 snare roll on Celebrex could only come from
15 Bust Dat Groove?

16 MR. CHIN: Objection.

17 A. Yes.

18 MR. CHIN: You can answer.

19 Q. Is it your testimony that no
20 one else -- is it your testimony that the
21 snare roll on the Celebrex commercial could
22 not be someone trying to play the snare roll
23 from Bust Dat Groove independently?

24 A. No, they could not.

25 Q. It had to be the exact snare

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 roll copied from Bust Dat Groove; is that your
3 testimony?

4 A. Yes.

5 MR. CHIN: Objection.

6 Q. So no other drummer could come
7 along and play the Bust Dat Groove snare roll
8 and have it record and that be what ended up
9 on the Celebrex commercial?

10 MR. CHIN: Objection. You can
11 answer.

12 A. Not that particular roll. A
13 drummer could do that roll. But he would be
14 doing it on different drums with different
15 skins, different tuning, different
16 microphones, different environment, maybe in a
17 different state.

18 Q. So it wasn't just the way the
19 drum roll was played that made you certain; is
20 that correct?

21 MR. CHIN: Objection.

22 A. That is correct.

23 Q. Tell me all of the things that
24 made you certain it was the same snare drum
25 roll.

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 it, strikes?

3 MR. CHIN: Objection. This is
4 a sound engineer expert. Is there a
5 particular reason -- he doesn't write music,
6 he didn't write the notes on this song. Let's
7 narrow it down, David, please.

8 MR. OLSON: You can make your
9 objections. But I am going to ask my
10 questions.

11 MR. CHIN: Let's go off the
12 record for a second. Can we go off the record
13 for one second. I just want to make one thing
14 clear.

15 VIDEOGRAPHER: Going off the
16 record time is 12:04.

17 (Recess taken).

18 VIDEOGRAPHER: We are back on
19 the record. The time is 12:06.

20 Q. Mr. Rodriguez, let me ask you,
21 please state the opinions you intend to
22 testify to at trial.

23 A. I intend to testify and prove
24 that the composition Bust Dat Groove Without
25 Ride was sampled in its entirety, broken into

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 pieces and rearranged and put together to
3 create what I know as Aparthenonia, which was
4 then use in the production of the Celebrex
5 commercial.

6 Q. Do you intend to testify as to
7 any other opinions?

8 A. Just on the material and how it
9 was manipulated.

10 Q. Do you plan to offer any
11 opinion as to whether or not Bust Dat Groove
12 Without Ride is original?

13 A. My opinion is that it is, if
14 I'm asked, yes, it is original. I will say
15 that.

16 Q. Do you plan to offer testimony
17 as to an opinion as to whether or not the
18 Aparthenonia track could come from a source
19 other than Bust Dat Groove?

20 A. I will testify it could not.

21 Q. Do you plan to offer testimony
22 as to whether someone else could play the
23 snare roll in Bust Dat Groove Without Ride in
24 the Aparthenonia commercial?

25 A. I will testify that while

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 someone can try, it would not be exact.

3 Q. Do you read music?

4 A. I do not read music.

5 Q. Do you write music?

6 A. I do not write music.

7 Q. You testified about a musical
8 score earlier; correct?

9 A. Refresh my memory.

10 Q. Sorry, you mentioned earlier in
11 your testimony, you mentioned the term
12 "musical score," do you recall that?

13 A. I did.

14 Q. What do you mean when you say
15 musical score?

16 A. I don't remember the statement
17 I made.

18 Q. I just mean generally what does
19 that term mean to you?

20 A. Musical score, well a score is
21 more so you can write a score for a movie.
22 Scoring on paper, scoring in a program.
23 Creating music and having a way to read it.

24 Q. Have you ever seen drumming
25 parts of songs written out on a musical score?

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 Aparthenonia than the drummer that played it
3 on Celebrex -- I mean on Bust Dat Groove?

4 A. You confused me a little bit at
5 the end.

6 Q. Let me try to rephrase it more
7 clearly. Is it possible that some drummer,
8 other than the one playing on Bust Dat Groove
9 is drumming the snare roll in the Celebrex
10 commercial?

11 A. In my opinion, no.

12 Q. Not possible?

13 A. No.

14 Q. Is it possible the snare drum
15 roll in the Celebrex commercial was created
16 using software or drum machine or some sort of
17 equipment other than a sample of Bust Dat
18 Groove?

19 MR. CHIN: Objection.

20 A. Not in my opinion.

21 Q. Not possible?

22 A. I can't say impossible.

23 Nothing is impossible. But in my opinion, no
24 that's absolutely the record.

25 Q. Would you say it would be

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 and put several snare strikes together to make
3 a snare drum roll?

4 A. Yes, you could.

5 Q. Are you familiar with
6 Propellerhead Reason?

7 A. Yes I many a.

8 Q. How are you familiar with it?

9 A. It is part of every Pro Tool
10 setup everyone owns, it is one of the programs
11 thrown in with it.

12 Q. So Propellerhead Reason comes
13 along with Pro Tools?

14 A. Yes, it is like a freebee.
15 They throw it in. They throw an adapted
16 version in it that lets you go but so far.
17 Then you can pay the balance and get the rest
18 of it.

19 Q. Do you have a copy, do you own
20 a copy of Propellerhead Reason?

21 A. I do believe it is inside my
22 computer.

23 Q. Do you know if you have the
24 basic version or the version where you have to
25 pay for it?

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2 A. No. Mine would be basic. I
3 never updated because I don't use
4 Propellerhead.

5 Q. Do you have an understanding of
6 what Propellerhead Reason is used for?

7 A. It is a sequencer.

8 Q. What do you mean by sequencer?

9 A. It is a like a drum machine
10 MIDI production center inside a computer. It
11 is the evolution of getting rid of the
12 instruments and having the entire thing inside
13 like a Mac.

14 So I personally don't use it
15 because I find it boring. It becomes to a
16 point if you are not touching anything you are
17 really not producing music, you are just
18 looping stuff. It is a sequencing program.

19 What that does, just like when
20 we are talking about the drums with the time
21 correction that also has time correction. And
22 what that does is you connect the keyboard.
23 It is called the MIDI keyboard.

24 The MIDI keyboard lets you
25 control what's inside the computer. Within

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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 Aparthenonia then the sounds were sampled from
3 the record. Because, again, here is the
4 variables, Reason is the same as any other
5 sequencing program. It is just another
6 marketed product. I am sure if I turn it on
7 tomorrow I can play with it like anything
8 else. I just choose not to because it doesn't
9 impress me.

10 But it is not within itself, it
11 is not the only program. Everyone, Apple's
12 Logic does it. Everyone does sequencing. As
13 a matter of fact Pro Tools has its own, people
14 just choose to not turn Pro Tools on, turn on
15 Reasons, use what is in it which I don't like
16 because you are limited to what is in it.
17 Whatever they give you, whatever you buy.
18 Then you import.

19 So my lack of knowledge is by
20 choosing, it is not because I don't know how
21 to use it. I am sure if I turn it on it won't
22 be that difficult to use.

23 Q. Okay. Even with your lack of
24 familiarity with Reason, are you certain that
25 Aparthenonia could not have been created using

1 IVAN A. RODRIGUEZ - CONFIDENTIAL
2 Reason without sampling Bust Dat Groove?

3 A. I believe it was not used
4 without sampling.

5 Q. Are you certain?

6 A. As certain as I can be.

7 Q. I want to make sure I
8 understand what as certain as you can be means
9 if you had to assign a percentage to that what
10 would that be?

11 A. 98.

12 Q. Are you also certain that
13 Aparthenonia could not have been made using
14 some other software or tools without also
15 sampling Bust Dat Groove?

16 A. I believe it was used making
17 software, but it was not made without the use
18 of the record.

19 Q. Your testimony will be that to
20 create Aparthenonia Bust Dat Groove must have
21 been sampled and used?

22 A. That is my testimony.

23 Q. Have you ever been accused of
24 sampling without permission?

25 A. No.

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 letter?

3 A. I believe the lawyer, I had not
4 met this gentlemen Mr. Samuel. I only spoken
5 with Ralph. He needed some idea who I was,
6 what I do and what I felt about the case.
7 That is why I kind of speak to him a little
8 bit about myself. I gave him information on
9 my credentials. If I were to give you my full
10 credentials it would be like one of those
11 contracts, I literally did thousands of
12 records. It is boring to continue. I usually
13 give you top ten. I said, look, I give you
14 top ten, these are all legendary records, so
15 you know what I have done.

16 Then I explain to him what I
17 see, what I tested, what I believe to be true.
18 Then I told him what I could do with it.
19 After this letter was when I told Ralph if you
20 want I can even break it down and actually
21 show you how he did it. In front of a jury
22 live, no processing, no nothing just the
23 record and his. That's how you have the CD
24 you have.

25 MR. OLSON: Can we go off the

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2 believe I haven't gone back since.

3 Q. When you say you brought the
4 evidence and explained everything to him with
5 a radio and everything, what do you mean with
6 a radio?

7 A. This music stuff is not as
8 concrete as numbers or letters. I explained
9 to him as if he was a novice. I said you
10 don't have to think as a lawyer, just listen.
11 Here is what this person did, here is the
12 original one. I am going to show you how he
13 did it.

14 Then I played the CD. You have
15 an explanation within my declaration of how he
16 did it. That is why I said you hear this
17 kick, this is ours, this is his, this is his.
18 As it all came together he was able to see the
19 picture that I saw. So I broke the entire
20 process down to him so he could understand how
21 it was that the record was originally
22 manipulated.

23 Q. When you say how he did it, do
24 you mean how the defendant Brian Transeau did
25 it?

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2 infringement and that other person said there
3 wasn't infringement?

4 A. No. No.

5 Q. So when you went, you just
6 testified you went to Mr. Chin's office. At
7 that point had you done the more fulsome
8 analysis that is reflected in your declaration
9 in this case?

10 A. No. Initially it was, I
11 discussed with him what I felt about the
12 music. I explained to him there were a couple
13 of options on how to prove it. The first
14 option I asked for which at the time I
15 understood was unavailable, I asked for the
16 master recordings.

17 Q. Master recordings of what?

18 A. Of Aparthenonia and/or
19 Celebrex. Because that will isolate
20 everything. It will show how it was done.
21 Mr. Chin explained to me it was unavailable.
22 I said then I can also within the record and
23 reproduced commercial or whatever it may be, I
24 can show you how he did it with absolutely no
25 DSP so no one can claim it was manipulated

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2 other than the way it was done originally.

3 Then I also said as a matter of
4 fact, I can do what I do in the CD live in
5 front of a jury. Those were the discussions
6 we had. I went and did my part. Brought it
7 back to him. And he had it from there.

8 Q. Have you been paid for your
9 work in this case to date?

10 A. To date?

11 Q. Yes.

12 A. Yes, I have.

13 Q. Who has paid you?

14 A. I believe I got paid from
15 Mr. Vargas either Mr. Vargas or I got a check
16 in the mail. It has been so long I can't
17 remember.

18 Q. Have you drawn up invoices with
19 your time worked and submitted those?

20 A. Yes, I have.

21 Q. Do you have copies of those
22 invoices?

23 A. No, I do not.

24 Q. You didn't keep any copies?

25 A. They may still be in my

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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 will get right to a point where the two
3 frequencies start to cross. If something had
4 tone that went "woo-woo," it will go "woo-woo"
5 you will hear a little dance move in it. That
6 is called flange. That is such a great effect
7 they actually make that effect now you can buy
8 that in a rack and put it on a guitar or
9 something. That was initially caused by two
10 of the same objects taking up the same space.

11 So to be able to get Bust Dat
12 Groove in its edited form to flange with
13 Aparthenonia is absolutely incredible because
14 I didn't process Bust Dat Groove.
15 Aparthenonia has been edited and processed.
16 There is DSP on Bust Dat Groove -- I mean
17 there is DSP on Aparthenonia there is none on
18 Bust Dat Groove. Therefore you see the slight
19 differences in the graph.

20 Q. There is no DSP on original
21 Bust Dat Groove or on your version of it?

22 A. On the reedited version.
23 Because Bust Dat Groove was taken and
24 basically flipped around. In order to show
25 what the defendant did, I took the same exact

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2 record. Took a couple hours to see variations
3 to see what it did. Because if you do it the
4 wrong way it won't work. It was done a
5 specific way. Then the rhythm is true. It is
6 almost as if it is a live drummer on the
7 reedited Bust Dat Groove. It almost sounds
8 like he played it that way. That is how close
9 he edited the pieces. Then when I put them
10 together they actually started to flange.

11 Q. You said you didn't use digital
12 signal processing that is why there wasn't
13 perfect flange; is that right?

14 A. No. That's why if you look at
15 your graphs, the graphs your experts have
16 given you in the past, post my declaration, I
17 clearly state in my declaration that what
18 keeps the two pictures basically from being
19 the same picture is that when Aparthenonia was
20 put together, it was put together
21 professionally. It was put together. Then it
22 was equalized. Then you add the DSP. The
23 processing on the snare. A little bit on the
24 hat. Something to give it that little airy
25 feeling so it has a live feel. I didn't do

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2 nonidentical graphs --

3 MR. CHIN: Objection.

4 Q. -- your testimony is that you
5 could bring them to or very near identical by
6 adding digital signal processing?

7 A. Correct. That is my testimony.

8 Q. When you listen to your edited
9 version of Bust Dat Groove and Aparthenonia
10 you can hear some difference; correct?

11 A. There is some ambiance missing,
12 that is the difference you are hearing,
13 ambiance meaning roominess, air from DSP.

14 Q. But is it your testimony the
15 actual drum sounds are exactly the same?

16 A. Yes, that is my testimony.

17 Q. Would we be able to hear that
18 if we played both?

19 A. Absolutely you will. They are
20 on the CD we gave you.

21 Q. They should sound exactly the
22 same?

23 A. Not only do they sound the
24 same, you have them visually. I actually
25 tracked each kick and snare from both tracks

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2 so you can hear texture on both.

3 Q. Have you looked at the
4 declaration by Rhys Moody and waveform
5 analysis by him as part of preparing your
6 declaration; correct?

7 A. Yes, I did.

8 (Defendants' Exhibit 25
9 for identification, declaration of Rhys Moody,
10 no production numbers.)

11 Q. I am handing you a copy of what
12 has been marked Defendant's Exhibit 25. Do
13 you recognize this?

14 A. Yes, I do.

15 Q. What is this?

16 A. This is Mr. Moody's
17 declaration.

18 Q. Is this a true and accurate
19 copy of the declaration as you reviewed it
20 before, the best you can tell?

21 A. Yes, it is.

22 Q. At the back you will see there
23 is Exhibit A which is a waveform analysis. Is
24 that Mr. Moody's waveform analysis you
25 referred to in your declaration?

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2 is different, that is not reverb. If you say
3 that is too dry, reverb, that is another DSP.
4 If you want compression, if you want limiting,
5 gating, these are all different types of
6 process.

7 So it can't be stated one DSP,
8 it depends on what you're talking about, what
9 setting, that is where the master comes in.
10 All that is determined by the master.

11 Q. Do you know if it is possible
12 to create music using Propellerhead Reason and
13 have it just record without a master?

14 MR. CHIN: Objection.

15 A. Once you do a creation and you
16 end, that is a master because if not it
17 wouldn't playback. The only way it plays back
18 because it records all these events and
19 information into a sequencer. So, by not
20 recording would be like writing in the wind,
21 it would disappear.

22 Q. Whatever you record when you're
23 done making your music that is what you call a
24 master; right?

25 MR. CHIN: Objection.

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2 A. And that is what you store.
3 You click file, save as. Maybe Aparthenonia
4 draft 1. You store that. The master never
5 disappears, then you reopen it when you over
6 dub which is let me open up another track, let
7 me add this.

8 But were you not to hit that
9 record button, then you're just playing live.
10 Then there is no master. But for it to be
11 able to be played back, that is a master, that
12 is a session, a file.

13 Q. How many tracks would that kind
14 of master store?

15 A. Like Propellerhead?

16 Q. Yes.

17 A. Minimum 32 tracks, maybe more.
18 Depends on the CPU power. You are limited by
19 your equipment.

20 Q. Are you familiar with the
21 terms --

22 MR. CHIN: Sorry. Tracks, are
23 we talking about number of songs? Or are we
24 talking about the recording capability one
25 track for the drum, one track for the bass?

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2 Q. I am about to ask a question I
3 think will clarify that. Are you familiar
4 with the terms 8 track master, 16 track
5 master, etc.?

6 A. Yes, I am.

7 Q. What does that mean?

8 A. 8 track master means that you
9 have a maximum of 8 physical tracks. Were it
10 to be tape or were it to be hard drive
11 systems. You have two things in that. You
12 have virtual and you have physical. Physical
13 are things you use vocals, if a person is
14 playing a live instrument, a violin or
15 something it requires physical space to stand.

16 Virtual which is Propellerhead,
17 Propellerhead runs certain virtual
18 instruments, it records the information you're
19 playing but uses less CPU power. So an 8
20 track master means you have 8 tracks.

21 16 track master means you have
22 16. 16 slots, usually kick, snare, hi-hat
23 kick, bass, crash. Usually 16 instruments,
24 that is what a multitrack is.

25 Q. The term when you use "tracks"

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2 in that context, can you also use the term
3 "channels?"

4 A. You can. I tend as an engineer
5 to call the physical item a track. It is just
6 a chunk of memory. It is not a channel tool
7 you put your finger on a strip. That is a
8 channel strip.

9 Q. A channel is something coming
10 into the track; is that right?

11 A. A channel what actually
12 controls audio. If you were to look at an old
13 song they use 2 inch tape. That 2 inch tape
14 sustains 24 tracks. When you pull that tape
15 off it is still tracks. When you put it on
16 the machine say I want to hear it, you see 24
17 needles, when you push faders up now you're
18 talking about take me to channel, let me hear
19 channel 8, let me hear channel 3. You raise
20 the channel.

21 Otherwise engineers call the
22 multi, the master, we call it a multi because
23 it is multitrack. The multi is always
24 considered the master, the multimaster.

25 Q. When you go to production on

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2 say an album, that is done in a 2 track
3 format; is that right?

4 A. The multitrack is mixed down to
5 a 2 track format. 2 track format is usually
6 handed to the A&R.

7 Q. 2 track format when it is mixed
8 down to that what do you call it?

9 A. 2 track. Engineers give me 2
10 track, give me instrumental 2 track. Means
11 stereo. Only thing will be format, half inch,
12 quarter inch, DVD, whatever the record label
13 requests.

14 Q. Using 2 track in that context,
15 based on your professional experience and
16 knowledge, is it possible to use programs like
17 Propellerhead Reason and record your master as
18 a 2 track?

19 A. That a confusing question
20 because record your master to 2 track, when
21 you say master, do you mean multitrack master
22 already done?

23 Q. When you say you're making your
24 music then you record for the first time so it
25 not just going off in the wind, do you recall

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2 listening to the 2 tracks; is that right?

3 A. Yes.

4 Q. You don't have any personal
5 knowledge of who created Aparthenonia;
6 correct?

7 A. I do not, no.

8 Q. You don't have any personal
9 knowledge of what equipment was used to create
10 Aparthenonia?

11 A. No, I do not.

12 Q. You don't have any personal
13 knowledge of when Aparthenonia was created?

14 A. No, I do not.

15 Q. You don't have any knowledge of
16 the order of the steps that were taken to
17 create Aparthenonia?

18 A. No, I do not.

19 Q. You don't have any personal
20 knowledge of -- strike that.

21 Do you have any personal
22 knowledge that the person who created
23 Aparthenonia had access to Bust Dat Groove;
24 correct?

25 MR. CHIN: Objection.

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2 A. I assume he did. Because I
3 assume the song from my study shows it came
4 from a vinyl record. I couldn't say. I don't
5 know. Someone had that record inside that
6 house or studio or whatever.

7 Q. That assumption is based on
8 what?

9 A. On me knowing the two songs
10 come from the same source.

11 Q. That is based -- you know that
12 based on similarity?

13 A. Almost to exact. Similarities.

14 Q. Other than the listening and
15 analysis you describe in this declaration, is
16 there any other basis for your assumption
17 whoever created Aparthenonia had access to
18 Bust Dat Groove?

19 A. No, that's it.

20 Q. Do you assume the person must
21 have had access to the vinyl Bust Dat Groove?

22 A. It could have been a CD.
23 Someone could have burned it to CD and shared
24 it. But they had to have access to the
25 original source material which would be the

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2 sound, the audio.

3 Q. You don't know what if any
4 studio Aparthenonia was created in; correct?

5 A. I do not.

6 Q. You never went to any studio
7 where Aparthenonia was being created?

8 A. I did not.

9 Q. Have you ever met the defendant
10 Brian Transeau?

11 A. No.

12 Q. You never talked to him?

13 A. No.

14 Q. Do you know who he is?

15 A. Yes.

16 Q. How do you know who he is?

17 A. I have seen him in magazines.

18 Q. Do you understand him to be a
19 musician?

20 A. A musician, producer type.

21 Q. What have you seen him in
22 magazines for?

23 A. He was speaking about his
24 opinions on something on how to make records
25 or something in a publication called EQ

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2 definition, I am positive as far as I'm
3 concerned Aparthenonia and then Celebrex came
4 from the creation of this record.

5 Q. Would it change your opinion if
6 the facts showed that whoever created
7 Aparthenonia did not have access to, physical
8 access to Bust Dat Groove?

9 MR. CHIN: Objection.

10 A. It would only if whatever
11 source material he used was used by someone
12 that used this to create that source material.
13 I believe whatever the source material came
14 from, it came from this. Someone sampled this
15 and either the defendant either he used it or
16 he used it from collection where someone got
17 it from here. But this record was absolutely
18 used throughout that.

19 Q. So, you don't have direct
20 opinion as to whether Brian Transeau directly
21 sampled Bust Dat Groove; is that right?

22 MR. CHIN: Objection.

23 A. I cannot answer that because I
24 was not in the studio.

25 Q. Your opinion is just that

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2 someone sampled Bust Dat Groove and it ended
3 up being in Aparthenonia; is that right?

4 MR. CHIN: Objection.

5 A. That's my opinion, this record
6 is inside Aparthenonia. At some point
7 somebody did it.

8 Q. Could Propellerhead Reason
9 contain a sample or bits of samples from Bust
10 Dat Groove?

11 A. That would be highly unlikely.
12 That is the reason we asked for the master so
13 long ago before we went into this just to give
14 him the benefit of the doubt. Because it is
15 not common, a company as big as Propellerhead
16 don't make mistakes like that often, though
17 they have happened in the past. Not in a long
18 time.

19 So I couldn't say it unless I
20 was given the material and told this is the
21 section, these are the presets I used. When I
22 listen to them I can tell you. We would know
23 it was pulled prior to that. But none of that
24 material was made available to me. So I can
25 only make a conclusion from what I got here

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2 and what I got from the original recordings
3 without any other evidence, for me it is 100
4 percent it was this.

5 Q. When you say large companies
6 don't usually make mistakes like that, do you
7 mean mistakes like using samples without
8 clearing them?

9 A. Correct.

10 Q. But you have heard of occasions
11 where they did make those mistakes?

12 A. Just one, there was one where I
13 thought, and anyone else in the music business
14 thought it was absolutely ridiculous, it was
15 the Roland Music Company. They have been
16 around for God knows how many years, they make
17 fantastic equipment. In the last 15 years or
18 so they get their little endorsements from DJs
19 and hip-hop kids because hip-hop is a huge
20 market. So they sell all sort of
21 synthesizers, the synthesizers have stock sets
22 for options. You can buy a strings card, it
23 will be a string ensemble, you can buy an
24 orchestration card, they invented hip-hop
25 card. The hip-hop card was simply blatant

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2 pads, I kept it on the top 2 so I don't touch
3 it when I am working down here.

4 Any time I want to refer to it
5 I tap it and listen to the commercial. Mostly
6 initially I focused on Aparthenonia because I
7 knew that was the base track. I had already
8 known when I tested those two they were
9 absolutely exact. No question about it.
10 Aparthenonia was Celebrex. It was what was
11 used as the bottom track on Celebrex. Then I
12 said, okay, let me focus on this.

13 Q. Did you know that because you
14 had been told that as part of this litigation?

15 A. Because I listened to it.
16 Because I knew even when I had agreed to take
17 the case on, I knew there was some movement,
18 movement discrepancies, that is why I said I
19 have to decipher it, I have to break it down.

20 Q. What is a movement discrepancy?

21 A. There was a movement within the
22 loops. You can tell something that happened
23 here happened here, but they weren't in the
24 same spot. It was moved there was discrepancy
25 in the movement and movement of samples that's

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2 why I didn't just give them a CD with two
3 things. I said let me break it down. I will
4 figure out exactly what was necessary for the
5 defendant to do to make this work like this.
6 Because it wasn't that simple. It wasn't a
7 simple ABC.

8 Q. So you had to digitally edit
9 and move things around to make Bust Dat Groove
10 sound like Aparthenonia; is that right?

11 A. Essentially, but I had to edit
12 the pieces that were used to fit in properly.
13 You didn't just sample something, just tap it.
14 There is a certain rhythm to what Mr. Vargas
15 did. Most of it is kept in the reedited
16 version which is Aparthenonia. Most of that
17 feel is there. So if you don't edit it right
18 and check the sections it doesn't fall in
19 place. Which means it took time to edit it
20 properly.

21 So what I did was studied
22 Aparthenonia, I studied the changes, I can
23 hear the changes within the song myself by
24 listening. Then I said, okay, I know what he
25 did here. I would take that section. You

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2 basically hear the left speaker 5 seconds
3 playing here only 2, but when these two play
4 they flange, so you know that section was
5 there.

6 Then I took the drum roll which
7 is at the top of Mr. Vargas' song, toward the
8 top, the defendant used it at the tail rolling
9 into a 1 coming back down into 1. When I
10 played it again it flanged. All I had to do
11 was put the other pieces right from the same
12 record where he put them and it was almost the
13 exact other than the reverb.

14 Q. Is it ever the case that
15 different drumming tracks can be played
16 together and they will flange at some point?

17 A. Maybe if they are in the same
18 region, maybe if they are both 60 hertz kicks,
19 kicks in the 40 hertz, kicks that are really
20 deep. It would be, like, it would be so
21 small, it would be, oop, it wouldn't flange
22 running through it. You get that point where
23 maybe the kick just touches frequency. It
24 would go "wooo," then you would hear it keep
25 going versus the song continuing to flange as

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2 it keeps going which means more elements are
3 the same.

4 Q. Could it be the case of all the
5 snare drum rolls out there you could find two
6 snare drum rolls that if you adjusted the
7 timing and put them right together they would
8 flange?

9 A. You might be able to get
10 something, but it still wouldn't be definitive
11 only because they have to share something.
12 Have to share something, something within the
13 sound has to be the same for that flange to
14 really truly go along. Otherwise it would
15 "chuu," it would be something like you will
16 notice it, wow what was that, versus something
17 you just hear it. It sounds like an airplane
18 running through the record.

19 Q. If you took two similar drum
20 snares from different drum loops -- strike
21 that.

22 If you took two similar snare
23 drum rolls from different drum loops, could
24 you use digital signal processing to make them
25 flange, fully flange?

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2 asking you is what I want to do is understand
3 all the bases for your opinions. I want to
4 understand if it was shown to you to a level
5 of certainty that no one involved in creating
6 Aparthenonia or any materials from which
7 Aparthenonia was made ever had physical access
8 to Bust Dat Groove in any way, would that
9 change your opinion in this case?

10 MR. CHIN: Objection.

11 A. Okay. I have the perfect
12 answer. Now I completely understand you. If
13 we were sitting here today day one, that would
14 make a huge difference. Sitting here two
15 years later it would make little difference.
16 Because that's the exact evidence I requested.
17 I requested masters which would prove that the
18 defendant did not use the samples. The master
19 never showed up. We would have been done
20 within a week.

21 So we're here two years later.
22 So it is difficult for me to trust someone's
23 opinion or how do I know if it is not doctored
24 product later when we could have done what is
25 standard in all cases, you subpoena the

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2 master, it gets provided, we look at the work
3 we go you know what, maybe we're wrong, let's
4 see, but nothing ever came. No Pro Tools, no
5 Reasons, absolutely nothing.

6 Q. Because the master has never
7 been provided to you --

8 A. Correct.

9 Q. -- that helps make you certain
10 that Aparthenonia was created by sampling Bust
11 Dat Groove; is that right?

12 MR. CHIN: Objection.

13 A. It makes me mistrust the
14 defendant and what he is attempting to do. My
15 evidence comes strictly from my professional
16 career and what I hear and what I see. How it
17 got from here to here and who did it wasn't my
18 concern. It was from what I understand here
19 is this product. I can prove this product was
20 used to make this one. That's really the
21 extent of what I can do.

22 Q. Does it make a difference to
23 your analysis and the opinions you plan to
24 offer at trial that no "master" has been
25 produced by defendant Brian Transeau?

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2 A. It does affect, yes.

3 Q. How does that affect your
4 analysis?

5 A. It creates more suspicion about
6 the manipulation of the product because a
7 digital master will clearly show what you've
8 done. That was my purpose for giving you my
9 master to my graphs so that you can clearly
10 see there was no manipulation. It was
11 recorded that way.

12 So, making music for so long
13 and somewhat being involved with people that
14 have other cases the first thing people do is
15 give up the master. That shuts down the
16 plaintiff. Because it proves clearly I have
17 nothing to do with what you're saying. This
18 or this that you have claimed is not here.
19 But to not have a master, something you
20 basically burn on to a DVD, that's difficult
21 to work with.

22 Q. So, if it were proven to you to
23 a certainty that Aparthenonia was created and
24 then recorded directly to a 2 track format --

25 A. Right.

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2 of whether whoever created Aparthenonia made
3 any notes while creating it; correct?

4 A. What was that?

5 Q. You have no personal knowledge
6 whether whoever created Aparthenonia made any
7 notes during its creation; correct?

8 A. I do not.

9 Q. If a master existed and were
10 provided to you, say it was 2 track, what on
11 it would prove that it is or is not a sample,
12 that Aparthenonia was or was not created using
13 a sample of Bust Dat Groove?

14 A. A 2 track master would not help
15 because that is the final product. The
16 previous master which while may not have been
17 recorded to a multitrack master was sequenced
18 as multiple instruments. There wasn't just
19 one button played and everything just ran.
20 One played the kick, one played the snare, one
21 played the hi-hat. That information existed
22 in a computer. It doesn't disappear unless
23 you erase it.

24 Q. If defendant Transeau testified
25 that he created Aparthenonia in the format you

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2 seen it in without there ever being some
3 previous master, do you have any reason to
4 doubt that testimony?

5 A. Absolutely.

6 Q. What is that? What reason?

7 A. Because when you create music
8 you are creating a master. Again, so I can
9 make it easier to understand, whether you use
10 a record, a sampler, Pro Tools, the reason
11 they give you so many faders with so many
12 processors is because you want to be able to
13 tweak and control levels. If he was working
14 in a mono state of mind, everything is up the
15 middle and whatever the levels are, they are.
16 He was able to manipulate levels, hi-hat
17 levels, EQ the bass drum.

18 These are all separate settings
19 that while being done are initially virtual,
20 when you finish and take your hands off the
21 keyboard it is stored. That is the only way
22 you can play it back. Otherwise he would
23 literally be going, okay, go, I missed it, go,
24 he would be there for three days. He has to
25 sequence the product. He has to listen to it

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2 and go, I don't like this. Got it. I need a
3 little reverb, you can't do the reverb live
4 while your playing unless you are playing it
5 with your nose. I am trying to be very basic
6 about it.

7 So certain things you must, the
8 exact word "creation" within a computer which
9 I was positive was what he used, is stored in
10 RAM while you do it. When you finish and you
11 hit stop you can either save it or it
12 disappears, but in its form it is a
13 multitrack, it is not physical tracks, it is
14 MIDI comp, MIDI notes. You have 16 MIDI notes
15 in a cable. He can assign, unless he is using
16 USB, but you still have 16 MIDI notes, he can
17 assign MIDI note 1, 2, 3. When he is playing
18 these you will see these little rods go on the
19 screen. They represent the note. That's the
20 master.

21 If he would have provided us
22 with that master and simply the name of the
23 presets of what he used, I would have just
24 uploaded it into Reasons, hit play and heard
25 it. Call Mr. Chin and say, well, this is what

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2 this looks like. But as simple as that
3 sounds, that never happened.

4 Q. So what we've been referring to
5 here, the information stored in a computer of
6 someone using Reason, that doesn't necessarily
7 mean you also record that on to some sort of
8 master tape; correct?

9 A. Not physically. But the
10 virtual movement of his hands are recorded in
11 time until he decides save or turn off the
12 computer. But they don't go anywhere. That
13 is exactly what a sequencer does. That is
14 what MPC 3000 does, that is what Logic does,
15 that is what Reasons does. It is just a
16 platform that permits you to do a bunch of
17 stuff simply. And keep it all and even fix it
18 after. So if you hit one wrong note you can
19 actually just touch it from flat, it will go
20 sharp. Right in the computer.

21 So when you are clicking that
22 it is taking up physical space, it is taking
23 up memory. That is a master.

24 Q. In the scenario you have been
25 describing, could in this case BT, once he has

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2 the Aparthenonia track the way he wants it,
3 just record it to a, on to a CD?

4 A. True. That is what you do.

5 Q. Without creating any kind of
6 multitrack physical master tape or anything
7 outside of the computer; correct?

8 A. That is what he decided to do
9 or supposedly did. But there is no creation.
10 There is file, save. That's it. There is the
11 multi two clicks. You know, maybe it is the
12 way we work. I keep files for everything.
13 You normally do because this person that just
14 purchased this material from you may want you
15 to do an additional version of it. So why
16 would you reprogram it when all you do is
17 click and it is right back or even more so, if
18 it was that simple to reprogram we could have
19 had a reprogram master. Some master,
20 something that showed us same exact thing.
21 But it is just amazing how there is absolutely
22 no masters, no way to recall it. No trail.

23 Q. Could he burn it to a CD in 2
24 tracks after he is satisfied with the session
25 without ever having saved it?

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2 now, doesn't have the old computer anymore,
3 would there be any way to get that master
4 you'd been describing that was on the computer
5 he created Aparthenonia on?

6 MR. CHIN: Objection.

7 A. Absolutely, because what
8 crashed on my computer were documents I saved
9 within the computer. When I do Pro Tools I
10 have DVDs for absolutely every song. It is
11 common practice.

12 Usually the manufacturer not
13 only wants the 2 track mix, he wants the
14 master. So you give him the CD and give him a
15 DVD that shows the program Reasons with the
16 presets and the programming in case they have
17 litigation in the future they have the proof
18 in their hands.

19 So even if my computer crashed
20 I have absolutely everyone's material on
21 individual DVDs because clients always get the
22 master before they cut record deals. As far
23 as the studio is concerned or production.
24 Whoever hires me gets the master. If the A&R
25 calls me, he gets the master. If the

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2 Q. The fact you never been
3 provided a master has an influence on your
4 opinion as to whether Aparthenonia was created
5 by using a sample of Bust Dat Groove?

6 MR. CHIN: Objection.

7 A. Again, it is a bit tricky, in a
8 way, yes.

9 Q. You brought that up repeatedly;
10 haven't you?

11 A. Here is what I mean, here is
12 what I mean, here is what I mean. I have no
13 doubts whatsoever. If there was any period
14 where some doubts could have been formed, it
15 would have been in the beginning when the
16 master is provided to me and I test it. But I
17 am 100 percent sure that the record was used.
18 So him not bringing a master is not going to
19 make that opinion change. At this point I
20 would be skeptical. That is the word I would
21 be skeptical because if you can't produce a
22 master because maybe your computer crashed
23 over the last few years or whatever how can
24 you produce it now. It is skepticism.

25 Ideally if I was the defendant,

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2 you were my attorney I would say here is the
3 master, get him off my back. That is what I
4 would have done doing this music thing for 20
5 years and watching it done.

6 Q. Because that is the reasonable
7 thing to do; right?

8 A. Yes. Now Mr. BT might be a
9 very busy man, might be touring and doing all
10 this. Ideally all these lawyers and
11 everything makes absolutely no sense for
12 something so simple that might have been taken
13 off the record according to him or somebody
14 else. I always stood behind the same exact
15 testimony. My wording may be a little funny
16 because I am not a lawyer. I stand by what I
17 know I can prove, I can prove.

18 Q. Because if BT had the master it
19 wasn't a sample, it wouldn't make sense for
20 him not to produce it; right?

21 MR. CHIN: Objection.

22 A. No. It would make sense.

23 Q. It wouldn't make sense for him
24 not to produce it?

25 A. Correct. It would make sense

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2 Q. -- moved things around to try
3 to make it sounds like Aparthenonia?

4 A. My statement would be moved
5 things around to create what was done, to
6 create Aparthenonia. I am not trying to make
7 my record sound like theirs. I am trying to
8 show how they used our record to sound like
9 that. Because then it makes it sound like I
10 am trying to emulate their record. I'm not.

11 Q. You were trying to make it
12 sound like Aparthenonia; right?

13 A. Right because I knew
14 Aparthenonia was the defendant -- the
15 plaintiffs' record. I knew he didn't use it
16 in that form. I had to put it, I had to edit
17 it and move things around as was done to
18 initially to create Aparthenonia.

19 Q. As you think it was done?

20 A. Because if I tried to
21 manipulate it, it would sound nothing like
22 Aparthenonia. If the elements were different.
23 If we were absolutely different, no matter
24 what I did here it would clash, it would
25 absolutely not flange. My point being is that

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2 I guess the opinion is what I think. But in
3 my testimony what I believe in my heart,
4 Aparthenonia is not what I think, I know
5 Aparthenonia was made from this record in my
6 heart. That's what I believe.

7 Q. That's what you believe based
8 on analysis you described in this declaration?

9 A. Correct.

10 Q. Not based on any personal
11 knowledge you have of how Aparthenonia was
12 made?

13 A. No. By the way it sounds and
14 by the analysis.

15 Q. Let's try to hear the flanging,
16 I am not sure I heard that.

17 A. You have to point it to
18 yourself. It is hard in stereo.

19 Q. Can you hear it?

20 A. Yes.

21 MR. CHIN: Where are we on
22 time?

23 VIDEOGRAPHER: We are at 7
24 hours and 6 minutes.

25 A. It will be a bit difficult but

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2 Q. Then we hear Bust Dat Groove,
3 your digitally manipulated version on the
4 right speaker; correct?

5 A. Correct.

6 Q. Then we hear both at the same
7 time, Aparthenonia on the left speaker,
8 digitally edited version of Bust Dat Groove on
9 the right speaker; correct?

10 A. Correct.

11 Q. We will hear flanging again?

12 A. Again. If you can pick it up.

13 Q. I want you to listen to it then
14 we will see if you pick it up.

15 (Track Playing.)

16 Q. Right there did they just both
17 come in?

18 A. Yes, they did.

19 Q. Have you heard any flanging
20 yet?

21 A. Absolutely.

22 Q. Where do you hear it?

23 A. Around the snare area.

24 Q. Their roll or just snare?

25 A. No. Right when the snare hits

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2 a little bit of the hat and just in a brief
3 the reason I mentioned there was flanging was
4 it is almost impossible to get the flanging.
5 So to be able to get flanging even a bit
6 without the processing was an amazing thing.
7 That is why I mentioned it even, flanges.
8 Because I shouldn't be able to get flanging
9 that tight without the DSP. But the items are
10 so close to each other that's why that
11 happens.

12 Q. I will listen to a little bit
13 more.

14 (Track Playing.)

15 A. Right there. Right there. Let
16 me show you something, pause it a second.
17 When you're listening to the music just listen
18 to the snare, you will notice the snare has a
19 certain tone, all of a sudden the tone drops
20 out and that comes back, that drop out is a
21 flange. You will notice not all the snares
22 sound exactly the same, yet they are the same
23 snare. When they change that is the flange
24 going through.

25 Q. Let's listen to it.

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2 Q. Go ahead.

3 A. Sorry, where are we?

4 Q. Page 2 of your declaration,
5 paragraph 4, Materials Reviewed.

6 A. I did. There was one
7 additional thing.

8 Q. What was that?

9 A. The vinyl record.

10 Q. Is this list with the addition
11 of the vinyl record -- strike that.

12 Did you in fact review
13 everything on this list for A through I?

14 A. I did.

15 MR. OLSON: Okay. Thank you
16 very much, Mr. Rodriguez.

17 MR. CHIN: We are going to
18 read and sign.

19 VIDEOGRAPHER: The time is
20 6:17. This is the end of tape number 5.

21

22 (Time Noted: 6:17 p.m.)

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IVAN A. RODRIGUEZ

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Subscribed and sworn to before me
this _____ day of _____, 2006.

1 IVAN A. RODRIGUEZ - CONFIDENTIAL

2 STATE OF NEW YORK) Pg__of__Pgs

3 ss:

4 COUNTY OF NEW YORK)

5 I wish to make the following changes,
6 for the following reasons:

7 PAGE LINE

8 _____ CHANGE: _____

9 REASON: _____

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, TAMMEY M. PASTOR, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public within and for the State of New York, do hereby certify:

That ^^^WITNESS, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2006.

TAMMEY M. PASTOR, RPR, CLR

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WITNESS

PAGE

E X H I B I T S

PAGE

(Defendants' Exhibit 21 for
identification, Rodriguez Resume,
production numbers 000031 and 32.)

14

(Defendants' Exhibit 22 for
identification, Declaration of
Ivan A. Rodriguez, no production
numbers.)

35

(Defendants' Exhibit 23 for
identification, Letter dated
7/16/04, production numbers
00030.)

37

(Defendants' Exhibit 24 for
identification, Funky Drummer
Volume II, production numbers
00028 and 29.)

155

(Defendants' Exhibit 25 for
identification, declaration of
Rhys Moody, no production
numbers.)

248

1 (Defendants' Exhibit 26 for 314
2 identification, CD, production
3 numbers 00033.)

4 (Defendants' Exhibit 27 for 314
5 identification, CD, production
6 numbers 000025.)

7 (Defendants' Exhibit 28 for 315
8 identification, CD, production
9 numbers 000024.)

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