

EXHIBIT 12

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

-----x

August 10, 2006

9:10 a.m.

Videotaped Deposition of

MATTHEW RITTER, 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 APPEARANCES:
 3 LAW OFFICES OF PAUL A. CHIN
 Attorneys for Plaintiffs
 4 The Woolworth Building
 233 Broadway
 5 New York, New York 10007
 6 BY: PAUL A. CHIN, ESQ.
 7
 8 KIRKLAND & ELLIS
 Attorneys for Defendant Brian Transeau
 153 East 53rd Street
 9 New York, New York 10022
 10
 11 BY: JULIE AHRENS, ESQ.
 12
 -and-
 13 DAVID S. OLSON, ESQ.
 STANFORD LAW SCHOOL
 Crown Quadrangle
 559 Nathan Abbott Way
 14 Stanford, California 94305-8610
 15
 16
 17 ALSO PRESENT:
 18 MATTHEW CHAVEZ, LegaLink Action Video
 19
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 21
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1 MATTHEW RITTER
 2 VIDEOGRAPHER: Here begins
 3 videotape number 1 in the deposition of
 4 Matthew Ritter in the matter of Ralph Vargas,
 5 and Bland-Ricky Roberts versus Pfizer, Inc.,
 6 et al. United States District Court Southern
 7 District of New York. Today's date is August
 8 10, 2006. The time on the video monitor is
 9 9:06 a.m.
 10 The video operator today is
 11 Matthew Chavez, notary public contracted by
 12 LegaLink Video Solutions San Francisco,
 13 California.
 14 This video deposition is taking
 15 place at Kirkland & Ellis, 153 East 53rd
 16 Street, New York, New York.
 17 Counsel, please voice identify
 18 yourselves for the record.
 19 MS. AHRENS: Julie Ahrens with
 20 Kirkland & Ellis for the defendant Brian
 21 Transeau. With me is David Olson from
 22 Stanford Law School. Also counsel for
 23 defendant Brian Transeau.
 24 MR. CHIN: Paul Chin, the
 25 attorney for plaintiffs Ralph Vargas and

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1 MATTHEW RITTER
 2 Bland-Ricky Roberts.
 3 VIDEOGRAPHER: The court
 4 reporter today is Tammy Pastor of LegaLink.
 5 Please swear in the witness.
 6 MATTHEW RITTER,
 7 residing at 43-29 57th Street, apartment 2-R,
 8 Woodside, New York 11377, having been first
 9 duly sworn by the Notary Public (Tammy M.
 10 Pastor), was examined and testified as
 11 follows:
 12 EXAMINATION CONDUCTED BY MS. AHRENS:
 13 Q. Good morning, Mr. Ritter.
 14 A. Good morning.
 15 Q. I am not sure if you have been
 16 deposed before. I am just going to go over
 17 some general rules of the road for the
 18 deposition. First, can you just state your
 19 name for the record.
 20 A. Matthew Ritter.
 21 Q. Can you spell your last name,
 22 please.
 23 A. R-i-t-t-e-r.
 24 Q. Have you ever been deposed
 25 before?

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1 MATTHEW RITTER
 2 A. No, I have not.
 3 Q. So in the deposition it is
 4 important that you hear every question that I
 5 ask. If you don't hear me, let me know, I
 6 will repeat it or we can have the court
 7 reporter read it back to you.
 8 If you don't tell me you
 9 haven't heard it, I will assume you have heard
 10 the question entirely. So will you tell me if
 11 you do not hear a question?
 12 A. Yes.
 13 Q. It is also important you
 14 understand each question I ask. Same thing for
 15 any reason you don't understand, please let me
 16 know, I will try to rephrase or repeat the
 17 question so you understand it. Will you tell
 18 me if you do not understand a question?
 19 A. Yes.
 20 Q. Will you tell me if you need to
 21 look at a document in order to answer any of
 22 my questions?
 23 A. Yes.
 24 Q. Will you tell me if you do not
 25 recall the information necessary to answer a

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1 MATTHEW RITTER
 2 A. Yes. It is my understanding
 3 that that is an album of music that Bust Dat
 4 Groove is a song of.
 5 Q. Have you ever had a copy of
 6 Funky Drummer Volume II?
 7 A. No.
 8 Q. After you first listened to
 9 Bust Dat Groove and Aparthenonia, what did you
 10 do next?
 11 A. I contacted Paul Chin and told
 12 him that I did believe that it was absolutely
 13 the same piece of music.
 14 Q. Take a step back for a minute.
 15 A. Okay.
 16 Q. When you got the CD with the
 17 two tracks what did you do?
 18 A. I listened to them on a small
 19 CD Walkman with headphones. This original
 20 disc that I was given for some reason was not
 21 a great copy and did not actually play on my
 22 normal CD player. So I used a little small
 23 one and, you know, the second I heard them I
 24 knew they were one and the same. I mean I
 25 hear drum recordings all day long every week.

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1 MATTHEW RITTER
 2 I had to listen twice just to
 3 see that they, you know, they sounded like the
 4 same exact thing to me, just like two
 5 recordings of the same piece of music.
 6 Q. How many times did you listen
 7 to the tracks?
 8 A. I don't remember. Many times.
 9 Q. What do you mean when you say
 10 they were one and the same?
 11 A. Oh, first of all, one thing
 12 that a lot of people don't know about drums is
 13 that there is no standardized drum tuning, as
 14 there is with a guitar. You tune a certain
 15 string to G and certain string to an F,
 16 whatever. Drums are tuned, you know, entirely
 17 by the creative subjective choice of the
 18 drummer.
 19 So, it's extremely unusual and
 20 perhaps impossible to have two different drum
 21 sets sound exactly the same unless they were
 22 tuned by the same drummer, the drums were made
 23 of the same material, recorded in the same
 24 room and so forth. Because I can tune my
 25 tom-tom one way, you can tune your tom-tom

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1 MATTHEW RITTER
 2 another way and both are valid.
 3 So the first thing that struck
 4 me was that the sound, the actual sounds that
 5 I was hearing were exactly the same. So, I
 6 mean that in itself would usually tell me that
 7 this is the same drummer playing on the same
 8 drum set. So, that's what I meant.
 9 Then, you know, once I started
 10 listening repeatedly, I started to realize it
 11 was not only the same sounds, but, it was the
 12 same sounds playing the same rhythms. At
 13 which point I realized it would be a
 14 coincidence close to a miracle for this to not
 15 be the same piece of music.
 16 Q. You said that was second you
 17 heard them, right?
 18 A. Yes.
 19 Q. So you immediately recognized
 20 that they were the exact same sounds?
 21 MR. CHIN: Objection. You can
 22 answer.
 23 A. As soon as I heard them I was
 24 struck by the fact that both recordings
 25 featured the same drum sounds.

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1 MATTHEW RITTER
 2 Q. So it was your opinion that the
 3 two tracks contained the same recordings?
 4 A. Yes. The second one was a
 5 digitally enhanced version of the first one.
 6 I realized that because some of the rhythms
 7 contained in the first one had been, you know,
 8 reversed, the order had been reversed in the
 9 second one.
 10 Q. You said digitally enhanced,
 11 you meant that the order had been reversed --
 12 A. Yes.
 13 Q. -- in the second one? Any
 14 other way the second one was digitally
 15 enhanced?
 16 A. No. I don't believe so.
 17 Q. Other than the order, was it
 18 your opinion that the sounds were the same?
 19 A. The sounds were the same even
 20 regardless of the order. The sounds are the
 21 actual sounds created by the instruments.
 22 These sounds were the same.
 23 Q. Was it your opinion they were
 24 not digitally enhanced in any other way or did
 25 you know so?

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1 MATTHEW RITTER
 2 MR. CHIN: Objection.
 3 A. The only digital enhancing that
 4 I was able to hear was some of the rhythmic
 5 elements had been, the order of them had been
 6 shifted digitally.
 7 Q. Okay. You stated at that point
 8 you were listening to what we call Bust Dat
 9 Groove and Aparthenonia; right?
 10 A. Yes.
 11 Q. Do you think there could have
 12 been any other digital enhancement?
 13 A. I don't know.
 14 Q. And why not?
 15 MR. CHIN: Objection.
 16 A. I have no idea. I have no idea
 17 what other enhancements might have happened
 18 had the person who enhanced this decided he
 19 wanted to enhance it more.
 20 Q. But you didn't hear any other
 21 enhancements?
 22 A. Correct. I did not hear any
 23 other enhancements except for digital altering
 24 of the order of some of the rhythmic elements.
 25 Q. What did you do after you

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1 MATTHEW RITTER
 2 reached this conclusion?
 3 A. I contacted Paul Chin and told
 4 him that these were unquestionably the same
 5 piece of music. That even as a professional
 6 drummer I myself would not be able to sit down
 7 at my drum set and play this piece of music
 8 and have it sound exactly like Bust Dat
 9 Groove.
 10 The fact that Aparthenonia did
 11 sound exactly like Bust Dat Groove to me, it
 12 was clear to me they had to be created by the
 13 same drummer, on the same drum set, in the
 14 same recording studio, same size drum sticks,
 15 with the same nuance of touch. And that
 16 essentially they were the same piece of music.
 17 Q. Are you familiar with the term
 18 "sampling?" As it is used --
 19 A. Yes. Yes.
 20 Q. I am referring to sampling as
 21 it is used in regarding music. Do you have
 22 any understanding -- what is your
 23 understanding of the word "sampling?"
 24 A. My understanding of the word
 25 "sampling" is when a musician takes a

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1 MATTHEW RITTER
 2 recording made by another musician and inserts
 3 it into their own, inserts that music into
 4 their music. Something like that.
 5 Q. After listening to Bust Dat
 6 Groove and Aparthenonia, did you believe that
 7 Aparthenonia was a sample of the recording
 8 from Bust Dat Groove?
 9 A. No. I actually thought
 10 Aparthenonia was Bust Dat Groove, a digitally
 11 enhanced version of it.
 12 Q. But you believe it was a copy
 13 of it?
 14 A. I believed it was it.
 15 Q. Okay. Explain to me what the
 16 differences, why you wouldn't consider that a
 17 sample?
 18 A. Sure. Okay.
 19 MR. CHIN: Wait a second. I'm
 20 sorry. Objection. You can answer.
 21 A. My connotations of the word
 22 sampling comes from, basically mostly from rap
 23 field. I remember when I was ten years old
 24 and rap first hit and at that time a lot of
 25 artists would take a small clip of music from

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1 MATTHEW RITTER
 2 James Brown or something like that and they
 3 would somehow take it, you know, using editing
 4 technology and they would insert it into
 5 another piece of music that they were writing.
 6 In this case I don't believe
 7 that Bust Dat Groove or some part of Bust Dat
 8 Groove was taken and inserted into another
 9 piece of music. The other piece of music
 10 Aparthenonia is Bust Dat Groove. So in my
 11 understanding of the phrase sampling, that is
 12 not a sample. That is just I am listening to
 13 two recordings of the same thing.
 14 In other words, if I play you
 15 two CDs, both of them have James Brown, you
 16 know, Get on the Good Foot, I am listening to
 17 the same song. I am not going to say one is a
 18 sample of the other. I am listening to two
 19 recordings of the same thing. It may be a
 20 digitally enhanced version when artists do new
 21 releases of records they often clean-up the
 22 sound mix and everything else. It is still
 23 not sampling, it is a digitally enhanced
 24 version of the same song.
 25 Q. So is it your opinion that

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1 MATTHEW RITTER
 2 Aparthenonia is just a direct copy of Bust Dat
 3 Groove?
 4 A. Yes. That is my opinion.
 5 Q. Other than the order of the
 6 elements which you said you believed have been
 7 shifted, there is no difference between
 8 Aparthenonia and Bust Dat Groove; is that your
 9 opinion?
 10 A. My opinion other than the
 11 order -- my opinion is they are the same piece
 12 of music. In the second one, Aparthenonia,
 13 the order of some of the rhythmic figures have
 14 been digitally altered, the order has.
 15 Q. Have they been digitally
 16 altered in any other way?
 17 MR. CHIN: Objection. You can
 18 answer.
 19 A. I don't know.
 20 Q. What would you need to know to
 21 make that determination?
 22 MR. CHIN: Objection. You can
 23 answer.
 24 A. I guess I would need to see
 25 somebody do some other kind of digital

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1 MATTHEW RITTER
 2 altering on it to really know there was
 3 something else. I don't hear any other
 4 digital alterations.
 5 Q. So, after you contacted Paul
 6 and told him it was your opinion that these
 7 two pieces were unquestionably the same piece
 8 of music, what happened next?
 9 A. At that point Mr. Chin asked me
 10 if I would be interested in being retained as
 11 an expert witness. I said yes. And I wrote
 12 an original -- I wrote a report with basically
 13 a much less detailed version of these same
 14 opinions just stating why I thought they were
 15 the same. And my opinion was that they were
 16 the same because of the drum sounds, the
 17 rhythms and the nuances of touch exhibited by
 18 the drummer.
 19 Q. Okay. So you said you wrote a
 20 report that is not Defendants' Exhibit 5 or
 21 Defendants' Exhibit 29; is that right?
 22 A. That is true, yes.
 23 Q. What did you do with that
 24 report?
 25 A. I gave it to Paul so that he --

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1 MATTHEW RITTER
 2 could see what my opinions on this were. That
 3 was it. He decided that they did in fact want
 4 to use me as an expert witness.
 5 Q. Do you have a copy of that
 6 report?
 7 A. I do. I don't have it here,
 8 but I have a copy.
 9 MS. AHRENS: Paul, I don't
 10 think we've had that report produced to us
 11 either. Could you produce that report?
 12 MR. CHIN: Sure. If you just
 13 follow that up with a little note.
 14 MS. AHRENS: Sure.
 15 MR. CHIN: But I will put on
 16 the record, I will ask him to produce it.
 17 MS. AHRENS: You have a copy,
 18 too he says.
 19 MR. CHIN: I don't have a
 20 copy, myself.
 21 Q. Did you give Mr. Chin a copy of
 22 that report?
 23 A. Yeah. At some point.
 24 MR. CHIN: I don't have it. I
 25 produced what I have on me.

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1 MATTHEW RITTER
 2 MS. AHRENS: I don't remember
 3 saying you got rid of it.
 4 MR. CHIN: I just --
 5 MS. AHRENS: I mean can you
 6 look for it?
 7 MR. CHIN: Of course, I will
 8 look for it.
 9 MS. AHRENS: We need all
 10 copies of the report.
 11 MR. CHIN: What I am saying I
 12 looked in Mr. Ritter's file for everything
 13 that I have and I don't have a separate
 14 report. But if Mr. Ritter has a copy, I'd ask
 15 that he produce that.
 16 MS. AHRENS: Sure. If you can
 17 check any other files where it might be.
 18 MR. CHIN: Sure.
 19 Q. In that report you said you
 20 stated why they were the same?
 21 A. Yes.
 22 Q. What are those reasons?
 23 A. First of all, the drum sounds,
 24 again, it is extremely important to remember
 25 that drums are different than every other

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1 MATTHEW RITTER
 2 instrument because we don't yet have a
 3 standardized tuning system which means that
 4 every person will tune their drum set
 5 differently. So one snare drum is never going
 6 to sound like another snare drum.
 7 So, first of all, we have three
 8 different instruments here, we have a hi-hat,
 9 we have a bass drum, we have a snare drum.
 10 The snare drum and the bass drum are tuned
 11 exactly the same on Bust Dat Groove and
 12 Aparthenonia. The hi-hat sounds to be the
 13 same model hi-hat. So, I said the sound, the
 14 sound themselves.
 15 Secondly, the rhythms, when I
 16 looked at the various rhythmic elements which
 17 I have broken down in great detail in
 18 Exhibit 5 and 29, I saw there were actually
 19 no – that the rhythmic elements were exactly
 20 the same. In fact there are no rhythmic
 21 elements at all that appear in Aparthenonia.
 22 Which don't also appear in Bust Dat Groove.
 23 Given there are, you know,
 24 probably millions of different rhythmic
 25 possibilities, I thought that that in itself

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1 MATTHEW RITTER
 2 was an uncanny coincidence. Between that and
 3 the sound being identical, I was sure there
 4 was no possibility that this was not the same
 5 recording.
 6 Another thing I want to mention
 7 is the nuances of the way the drummer himself
 8 was striking the drum, we have a technique in
 9 drumming called ghost noting which is where a
 10 drummer plays extremely soft notes on the
 11 drum. It is kind of fill in the empty spaces
 12 between the more prominent more readily
 13 hearable notes. I was able to hear some ghost
 14 notes on Bust Dat Groove and Aparthenonia that
 15 were identical.
 16 Not only were they rhythmically
 17 the same, but more interestingly, the ghost
 18 notes themselves which are nearly always
 19 played on a snare drum, by the way, the ghost
 20 notes sounded almost like a tom. This is a
 21 phenomenon that happens exceedingly rarely,
 22 but basically, if I can go into a somewhat
 23 long-winded explanation, a snare drum is a
 24 drum that has metal wires underneath it.
 25 These metal wires rattle and buzz when you hit

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1 MATTHEW RITTER
 2 the snare drum.
 3 Q. Those are called snares; right?
 4 A. Those are called snares or
 5 snare wires. The existence or presence of
 6 those wires are what define a snare drum.
 7 A snare drum that has had the
 8 snare wires removed is a tom. The point is
 9 when this drummer was playing his ghost notes
 10 on the snare, his snare drum sounded almost
 11 more like a tom than it sounded like a snare
 12 drum. The only time that this happens or the
 13 only time this would happen would be if the
 14 drummer had done what we call choked the
 15 snares. Which means that he had tuned the
 16 snare wires exceedingly tightly, you know,
 17 very unusually tightly to the point where even
 18 hitting on the drum softly would not make the
 19 wires under the drum rattle.
 20 So between choking the snares
 21 and the drummer playing the drum extremely
 22 softy with the ghost notes we ended up having
 23 the snare drum sound like basically a cross
 24 between a tom and snare. That exact same
 25 phenomenon, in addition to the other

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1 MATTHEW RITTER
 2 phenomena, that exact same phenomenon was
 3 present on both recordings.
 4 Q. Okay. I want to just ask you a
 5 question about tuning the snare wires. When
 6 you tune – are you familiar with turning a
 7 snare off, that term?
 8 A. Sure.
 9 Q. What does that mean?
 10 A. Turning a snare off means that
 11 you push a lever which removes the wires from
 12 under it. Your snare drum would sound like a
 13 tom. The interesting thing about these two
 14 recordings is that we have actual snare
 15 sounding notes happening. Immediately
 16 preceded and succeeded by these sort of
 17 snare/tom, you know, cross between a snare and
 18 a tom.
 19 So, there is no way. It is
 20 just physically not possible for a drummer to
 21 be turning the snare on and off in that rapid
 22 succession, it just doesn't happen. So what
 23 we have, really, is a drummer striking the
 24 snare drum with enough force on some notes so
 25 that the snares, the snare wires are

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1 MATTHEW RITTER
 2 A. You probably could. I have
 3 heard of drummers recording certain elements
 4 separately. The reason I don't believe that
 5 could have happened in this case, the rhythmic
 6 placements of these tom ghost notes are what
 7 we call the off beats. They are on off beat
 8 16th notes. That would be extremely awkward
 9 to play without the rest your physical
 10 movement sort of keeping it aligned.
 11 Just sort of isolated in an
 12 isolated way to sit there and play these ghost
 13 notes without using your other physical
 14 movement as a reference point would be, again,
 15 be near impossible. And there would really be
 16 no reason to do it because, you know, a
 17 drummer -- drummers don't try to make their
 18 lives harder. They play the instrument the
 19 way we play the instrument. I know how ghost
 20 notes are played. I know what kind of, you
 21 know, unusual tuning results in the effect I
 22 heard on this record. I do believe it was
 23 recorded live.
 24 Q. When you're saying that it was
 25 recorded live, you mean the Bust Dat Groove

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1 MATTHEW RITTER
 2 recording; right?
 3 A. And Aparthenonia, since they
 4 are one and the same.
 5 Q. In your opinion Aparthenonia?
 6 A. In my opinion Aparthenonia is a
 7 digitally enhanced version of Bust Dat Groove.
 8 Q. Do you have any personal
 9 knowledge of how Aparthenonia was created?
 10 A. No, I don't. I don't know how
 11 it was created.
 12 Q. Do you know who created
 13 Aparthenonia?
 14 A. I believe it was Brian
 15 Transeau.
 16 Q. Did you ever met with Brian
 17 Transeau?
 18 A. No, I have not.
 19 Q. Have you ever seen
 20 Mr. Transeau's studio?
 21 A. No.
 22 Q. Have you ever spoken to
 23 Mr. Transeau?
 24 A. No.
 25 Q. Okay. So we were talking about

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1 MATTHEW RITTER
 2 what you heard in the two tracks that made you
 3 conclude that they are the same piece of
 4 music.
 5 A. Yes.
 6 Q. I will just go over one other
 7 thing that you said. You said that the hi-hat
 8 sounds, I believe you said they sounded like
 9 the same model?
 10 A. They sound like the same
 11 hi-hat. A hi-hat is different than a snare
 12 drum or bass drum because you can't tune a
 13 hi-hat. But every cymbal sounds a little
 14 differently, they sound the way they sound
 15 when you buy them. There are many different
 16 models of cymbals on the market.
 17 Sometimes you can even buy, you
 18 can even buy two of the same model and they
 19 will sound a little differently depending on
 20 how old it is, and so forth. It is a piece of
 21 metal. Every piece of metal sounds a little
 22 differently.
 23 And to my ear this pair of
 24 hi-hats on Aparthenonia sounded like the pair
 25 of hi-hats on Bust Dat Groove sounded like the

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1 MATTHEW RITTER
 2 same pair of hi-hats to me.
 3 Q. In your opinion the hi-hat on
 4 Aparthenonia was same hi-hat on Bust Dat
 5 Groove?
 6 A. In my opinion, yes, there is
 7 also an open hi-hat sound which makes that
 8 fact more obvious to me. When the hi-hat is
 9 opened and they sizzle together a little bit,
 10 you know there is basically more nuance in the
 11 sound. And when I heard that open sizzle
 12 hi-hat on both, it sounded like the same open
 13 sizzle hi-hat, I concluded that this must be
 14 the same pair of hi-hats. You know, of course
 15 also hit with the same amount of force and so
 16 forth.
 17 Q. Okay. So it was your opinion
 18 not only are they the same pair of hi-hats but
 19 they are hit in the same way?
 20 A. It is my opinion it is a
 21 recording of the same drummer using the same
 22 pair of drum sticks hitting the same pair of
 23 hi-hats in the same way.
 24 Q. Regarding the rhythms, you said
 25 you believe they are exactly the same;

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1 MATTHEW RITTER
 2 correct?
 3 A. I believe the various rhythmic
 4 elements are exactly the same, but the order
 5 of them has been shifted.
 6 Q. You are referring there, you
 7 are looking at your declaration, what
 8 Exhibit are you looking at?
 9 A. Yeah.
 10 Q. Is that Exhibit, Defendants'
 11 Exhibit 5?
 12 A. Yes. Defendants' Exhibit 5 or
 13 Defendants' Exhibit 29. They both feature the
 14 same list of music elements.
 15 Q. You stated there are no
 16 rhythmic elements present in Aparthenonia that
 17 do not also exist in Bust Dat Groove; is that
 18 your opinion?
 19 A. Yes, that's correct.
 20 Q. Are you absolutely sure that
 21 that is the case?
 22 A. From what I hear it is
 23 unquestionably my opinion there are no
 24 rhythmic elements in Aparthenonia that don't
 25 also exist in Bust Dat Groove. I went through

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1 MATTHEW RITTER
 2 and circled, I first of all broke down
 3 Aparthenonia and circled each and every
 4 musical element making up the piece of music.
 5 And was able to find an example of it
 6 somewhere in Bust Dat Groove.
 7 Q. In your opinion could any of
 8 the individual drum strikes in Aparthenonia
 9 come from anything other than Bust Dat Groove?
 10 A. Individual drum strikes? I am
 11 not sure. And the reason is because the sound
 12 are exactly the same. For all I know, you
 13 know, maybe there is a piece of equipment out
 14 there that can take that exact same sound and
 15 mimic it or something. But the sound that I
 16 hear in Aparthenonia are exactly the same
 17 sounds in Bust Dat Groove.
 18 So it is my opinion that the
 19 sound in Aparthenonia came from Bust Dat
 20 Groove because I have never known two drum
 21 sets to sound the same.
 22 Q. Sorry, I just want to try to
 23 understand your answer. You said for all you
 24 know maybe there is a piece of equipment out
 25 there that can take the exact same sound and

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1 MATTHEW RITTER
 2 mimic it or something; what do you mean?
 3 A. What I meant is I cannot say
 4 for sure where the creators of Aparthenonia
 5 got their music from except from what I hear
 6 the sounds that they are using are exactly the
 7 same as Bust Dat Groove. Which tells me that
 8 unless this was the same drummer playing on
 9 the same drum set, I have no idea how that
 10 phenomenon could happen.
 11 Q. Okay, so other than the same
 12 drummer playing on the same instrument, you
 13 did say there might be something out there
 14 that can mimic the exact sound?
 15 A. There might be something out
 16 there that can make us disappear right now.
 17 But I am listening to a recording of the same
 18 drummer, playing the same sounds, on the same
 19 drum set, presumably recorded in the same
 20 room, with the same size drum sticks.
 21 Q. So you don't know whether it is
 22 possible to create the exact same sounds --
 23 A. I don't know.
 24 MR. CHIN: Wait until she
 25 finishes.

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1 MATTHEW RITTER
 2 Q. So you don't know whether it is
 3 possible to create the exact same sounds as on
 4 Bust Dat Groove, create those electronically?
 5 MR. CHIN: Objection.
 6 A. I don't know enough about
 7 electronic music. I actually know very little
 8 about it. So, I don't know if there is
 9 technology that exists that could do that.
 10 Q. When we were talking about the
 11 ghost notes on the snare, you said you thought
 12 those were -- that was a rare sound because
 13 the snare wires were tuned exceedingly
 14 tightly; right?
 15 MR. CHIN: Objection.
 16 A. I believe that it is extremely
 17 unusual for a snare drum to at one moment
 18 sound like a snare drum and without turning it
 19 on or off, which would be physically
 20 impossible in this case, to have it
 21 momentarily later sound like a tom-tom.
 22 Q. Okay. But when you turn the
 23 snare off, it does sounds like a tom-tom;
 24 right?
 25 MR. CHIN: Objection. You're

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1 MATTHEW RITTER
 2 Q. In your opinion was this one
 3 measure -- was it just one measure that was
 4 played and recorded?
 5 MR. CHIN: Objection.
 6 A. What I heard on the CD was one
 7 measure of music that was, seemed to be played
 8 over and over and over the same piece of
 9 music.
 10 Q. So it was played, that measure
 11 was played more than once?
 12 A. Yeah. That measure occurs, you
 13 know, many, many times. It is repeated. It
 14 may in fact be repeated digitally. I don't
 15 know how many times it was repeated. I don't
 16 know how the repeating happened. I just know
 17 that one measure of music is played over and
 18 over.
 19 Q. So it may have been looped?
 20 MR. CHIN: Objection. You can
 21 answer.
 22 A. Yes, it may have been looped.
 23 In fact I would go as far as to say it was
 24 probably looped because again, the sound, you
 25 know, from measure to measure are identical.

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1 MATTHEW RITTER
 2 So I am willing to entertain the possibility
 3 since this is the same drummer on the same
 4 drum set, he might have been able to do that.
 5 Human beings are still less
 6 than robotically perfect. In all likelihood
 7 this was one measure played by a drummer, then
 8 it was looped.
 9 Q. When you listened to the drum
 10 sounds on the two tracks, Aparthenonia and
 11 Bust Dat Groove you analyzed the musical
 12 elements in both of those tracks; is that
 13 true?
 14 A. That is true.
 15 Q. It is your opinion the musical
 16 elements in the two tracks are identical; is
 17 that true?
 18 A. Yes, it is my opinion the
 19 musical elements are identical but the order
 20 has been juxtaposed digitally.
 21 Q. Were there any differences at
 22 all in the sounds on Bust Dat Groove and
 23 Aparthenonia?
 24 A. No.
 25 Q. What are the instruments that

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1 MATTHEW RITTER
 2 are played on Bust Dat Groove?
 3 A. Hi-hat, bass drum and snare
 4 drum.
 5 Q. When we talk about the elements
 6 in Bust Dat Groove are the elements just the
 7 hi-hat, the bass and the snare or something
 8 else?
 9 MR. CHIN: Objection. You can
 10 answer.
 11 A. The hi-hat, bass and snare are
 12 the instruments that are being played. That
 13 would be the equivalent of saying the song is
 14 played on a guitar, this song was played on a
 15 bass drum, snare drum and hi-hat. The musical
 16 elements are the rhythmic figures that have
 17 been combined to create this piece of music.
 18 Q. Okay. What are those rhythmic
 19 figures of Bust Dat Groove?
 20 A. Well, we have on the hi-hat we
 21 have four sets of two 1/8th notes each. The
 22 first one has a half open hi-hat sound on the
 23 second 1/8th note on the snare drum we have
 24 four elements. We have a ghost note which
 25 comes on the second 1/16th. Then the second

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1 MATTHEW RITTER
 2 figure we have a 1/16th note followed by an
 3 1/8th note and multiple bounce stroke. Both
 4 of those are ghost notes the 1/8th note and
 5 multiple bounce stroke.
 6 We have a rest, a silence and
 7 then we have two more notes on the snare.
 8 16th note followed by dotted 1/8th note. The
 9 dotted 1/8th note is ghost notes.
 10 The bass drum we have two notes
 11 next to each other, we have a rest which is
 12 silent, we have a 1/16th note followed by
 13 1/8th note and 1/16th note on the bass drum.
 14 We have a dotted 1/8th note-rest followed by a
 15 1/16th note on the bass drum.
 16 Q. In providing that answer were
 17 you referring to anything?
 18 A. Yes, I was. I was looking at
 19 the chart I made here of the various elements
 20 of Bust Dat Groove.
 21 Q. That is the first transcription
 22 attached to your declaration?
 23 A. Yes.
 24 Q. Defendant's Exhibit 5?
 25 A. Correct.

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1 MATTHEW RITTER
 2 Q. Does the snare sound identical
 3 on Bust Dat Groove and Aparthenonia?
 4 A. Yes, it does.
 5 Q. Does the snare roll sound on --
 6 strike that.
 7 Does the snare roll sound
 8 identical on Bust Dat Groove and Aparthenonia?
 9 A. Yes, it does. It sounds like a
 10 snare drum that has been tuned high with the
 11 snares choked, the tip of the stick -- first
 12 of all it is not a roll, it is a multiple
 13 bounce stroke played with one hand which is
 14 the only way somebody could play that because
 15 the hi-hat is continuing. So to take both
 16 hands and try to play that as an actual roll
 17 or four stroke ruff or something like that
 18 would be extremely physically challenging, if
 19 not impossible.
 20 Q. Sorry to interrupt. Just to
 21 describe what is the difference between a
 22 snare roll and what you're calling a multiple
 23 bounce stroke?
 24 A. Okay. A roll is when you use
 25 both hands when you use both sticks on the

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1 MATTHEW RITTER
 2 drum to create one note after the other very
 3 fast. To almost create the illusion of a
 4 sustained sound. A multiple bounce stroke is
 5 taking one single stick and letting it
 6 ricochet against the drum head two or more
 7 times sometimes an untold number of times if
 8 you get extra little buzzes and stuff in
 9 there.
 10 Q. You were saying that is not a
 11 snare roll but the multiple bounce stroke on
 12 the snare; right?
 13 A. Yes, correct.
 14 Q. Does the multiple bounce stroke
 15 on Bust Dat Groove sound identical to
 16 Aparthenonia?
 17 A. Yes, it sounds identical.
 18 Q. Does the hi-hat sound identical
 19 on Bust Dat Groove and Aparthenonia?
 20 A. Yes, it does.
 21 Q. Does the bass drum sound
 22 identical on Bust Dat Groove and Aparthenonia?
 23 A. Yes, it does. May I ask a
 24 question?
 25 Q. Sure.

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1 MATTHEW RITTER
 2 A. When you ask me if they sound
 3 identical, you're talking about the sound of
 4 the instrument, because obviously as I said
 5 the rhythmic elements have been juxtaposed.
 6 Q. Right. When you say identical
 7 you mean the sound of those elements?
 8 A. Yes.
 9 Q. Are identical; right?
 10 A. Yes.
 11 Q. Other than the change in the
 12 order of the elements there is no difference
 13 in sounds; right?
 14 A. Right.
 15 Q. Would a professional drummer
 16 ever refer to a multiple bounce stroke like
 17 the one found in Bust Dat Groove as a drum
 18 roll?
 19 A. I don't believe he would. No.
 20 Q. Is that because, like you said,
 21 to play a roll you have to use both hands
 22 whereas the multiple bounce stroke on Bust Dat
 23 Groove, it would be physically impossible to
 24 play that with both hands?
 25 A. It is not only that. It is

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1 MATTHEW RITTER
 2 that it sounds different. The reason we have
 3 different drum techniques is because each one
 4 produces a different sound. So a roll usually
 5 has much stronger sound than if you take one
 6 drum stick and just kind of drag it along the
 7 top of a drum. So a multiple bounce stroke
 8 does not sound anything like a drum roll.
 9 Q. Okay. I think is a good point
 10 for us to break. Can we go off the record.
 11 VIDEOGRAPHER: Going off the
 12 record the time is 12:03.
 13 (Luncheon Recess: 12:03 p.m.)
 14 AFTERNOON SESSION
 15 12:43 p.m.
 16
 17 MATTHEW RITTER,
 18 resumed, having been previously duly sworn,
 19 was examined and testified further as follows:
 20 VIDEOGRAPHER: Back on the
 21 record. The time is 12:43.
 22 CONTINUED EXAMINATION BY MS. AHRENS:
 23 Q. Welcome back, Mr. Ritter.
 24 A. Hi.
 25 Q. I want to talk to you now about

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1 MATTHEW RITTER
 2 bass drum. There is a phenomenon which
 3 honestly I don't remember the name of right
 4 now, but when people hear the same sound
 5 played in a series their mind looks for a way
 6 to organize it so they automatically start to
 7 hear it in groups of twos usually, sometimes
 8 threes.
 9 So when I first heard this bass
 10 drum track I start initially heard a tick-tock
 11 kind of back forth, back forth as if it were
 12 two slightly different sounds. At this point
 13 I remembered this phenomenon I am telling you
 14 about and tried to start to clear my mind
 15 after each bass drum hit and it started to
 16 sound to me like the exact same sounds
 17 repeated over and over.
 18 Q. Do you need to hear it again?
 19 A. No.
 20 Q. Now I am going to play track 1
 21 on Defendants' Exhibit 27.
 22 A. Okay.
 23 Q. This is the Rodriquez
 24 declaration Exhibit C1.
 25 (Track Playing.)

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1 MATTHEW RITTER
 2 Q. Can you tell me what those
 3 sounds were?
 4 MR. CHIN: Objection.
 5 A. May I hear that again, please.
 6 Q. Sure.
 7 (Track Playing.)
 8 A. It sounds like a multiple
 9 bounce stroke played at the same time as a
 10 hi-hat sound some kind of -- you know,
 11 honestly I am not going to say definitely a
 12 hi-hat. This recording sounds very staticy to
 13 me, so it sounds like multiple stroke bounce
 14 with some kind of white noise happening along
 15 with it.
 16 Q. So the white noise might be a
 17 hi-hat, is that what you said?
 18 MR. CHIN: Objection. Can you
 19 read back his answer, please.
 20 (The preceding answer was
 21 read.)
 22 MS. AHRENS: And my question.
 23 (The pending question was read
 24 as follows:
 25 "Question: So the white noise-

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1 MATTHEW RITTER
 2 might be a hi-hat, is that what you said?")
 3 MR. CHIN: Objection. You can
 4 answer.
 5 A. Yes, I will say it might be a
 6 hi-hat action the sound of a hi-hat sustained
 7 from a hit that had happened previously is
 8 probably what I would take that as.
 9 Q. Okay. You heard what you
 10 called a multiple bounce stroke; right?
 11 A. Yes.
 12 Q. You heard that more than once;
 13 right?
 14 MR. CHIN: Objection.
 15 A. Yes.
 16 Q. Sorry, the multiple bounce
 17 stroke was repeated?
 18 A. Yes.
 19 Q. Were the repetitions of that
 20 stroke, did they sound different to you?
 21 MR. CHIN: Objection.
 22 A. Every instance of it sounded
 23 like the same thing to me, but one of them
 24 sounds like a clearer recording of it to me.
 25 One of them sounded more muffled than the

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1 MATTHEW RITTER
 2 other.
 3 Q. So the sounds are different to
 4 you?
 5 MR. CHIN: Objection. Can you
 6 read the answer back, please.
 7 (The preceding answer was
 8 read.)
 9 MR. CHIN: Counsel, you have
 10 your answer.
 11 MS. AHRENS: No. I asked a
 12 question. It is still pending.
 13 MR. CHIN: What is the
 14 question?
 15 MS. AHRENS: Can you repeat
 16 the question, please.
 17 (The pending question was
 18 read.)
 19 A. The sounds are the same to me,
 20 one of them sounds like I can hear it more
 21 clearly on this particular recording.
 22 Q. So one sound is different than
 23 the other sound; right?
 24 A. No. It is the same --
 25 MR. CHIN: Objection.

202

1 MATTHEW RITTER
 2 Q. Have you, to use your drum
 3 machine -- when you used it in the past does
 4 that drum machine play samples of sounds?
 5 A. No. I don't think they are
 6 samples of sounds. I believe they're just
 7 computer generated sounds that are already
 8 stored in the box.
 9 Q. Okay. So they are like
 10 synthetic sounds?
 11 A. Yes. It is a synthesizer.
 12 Q. I want to talk about the
 13 various elements of Bust Dat Groove --
 14 A. Okay.
 15 Q. -- that we've identified sorry,
 16 that you identified in your declaration we've
 17 been talking about a little bit.
 18 What is it in your -- is it
 19 your opinion that Bust Dat Groove is original?
 20 A. Yes. It is original. I have
 21 listened to thousands of drum recordings and I
 22 have not heard anything before that sounds
 23 exactly like Bust Dat Groove, which is why
 24 when I heard Aparthenonia I said, oh, it is
 25 Bust Dat Groove.

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1 MATTHEW RITTER
 2 I also have not seen this exact
 3 combination of elements in any book or
 4 anything like that. Including the ones I
 5 looked through given to me by Anthony
 6 Ricigliano.
 7 Q. Let's take the elements
 8 individually. We touched on this earlier. If
 9 we can just discuss what are the elements of
 10 Bust Dat Groove that you, in your opinion,
 11 think are original?
 12 A. It is not the elements so much.
 13 That would be the equivalent of looking at a
 14 poem and saying, well, I seen every one of
 15 these words before. There is nothing original
 16 about this poem. I have seen 1/8th notes on a
 17 hi-hat before. I have seen multiple bounce
 18 strokes before. It is the exact combinations
 19 here that are original to me.
 20 Q. Okay. So it is the combination
 21 of elements make it original?
 22 A. Right.
 23 Q. Does anything else?
 24 A. Yes, the sound of the drums and
 25 the manner in which the rhythm itself was

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1 MATTHEW RITTER
 2 executed with a very interesting and nuanced
 3 touch on the snare that makes the snare drum
 4 sound like a cross between a snare and a tom.
 5 Q. So it is the combination of the
 6 elements?
 7 A. Yes.
 8 Q. The sound of the drums?
 9 A. Yes. Which, by the way, is a
 10 creative choice because, you know, the
 11 drummer, presumably Ralph Vargas in the case
 12 of Bust Dat Groove, actually decided how to
 13 tune those drums. Because as mentioned
 14 earlier, we have yet to come up with a
 15 standard drum tuning system. So everybody
 16 tunes their drums differently.
 17 So first the drummer has to
 18 decide which cymbals to buy so that he gets
 19 the sound he wants. And how exactly to tune
 20 each of the individual components of the drum
 21 set.
 22 So that's sort of creative
 23 choice number one. Then choosing these exact
 24 elements and combining them this way is number
 25 two. Like I said, I have not heard this exact

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1 MATTHEW RITTER
 2 combination of elements before in my
 3 recollection, ever. Again, I did look through
 4 and listen to all of the exhibits that
 5 Mr. Ricigliano presented. This combination
 6 appeared nowhere.
 7 Then the actual manner in which
 8 the drummer chose to strike the drums so as to
 9 elicit an unusual sound from his snare drum.
 10 Q. Do you know that it was Vargas
 11 who decided how to tune the drums for Bust Dat
 12 Groove?
 13 A. I don't know exactly. If
 14 nothing else, it was Vargas who decided to
 15 play on that particular drum set that was
 16 tuned that way. If he himself didn't tune it,
 17 I don't know. So, he chose what drum sound he
 18 wanted on his recording and either adjusted
 19 them to be so or had somebody adjust them
 20 until he was happy with them. I don't know
 21 who did the tuning.
 22 Q. The choosing of the elements in
 23 combining that would be, you were saying that
 24 the drummer's choice; is that true?
 25 A. Yes.

214	<p>1 MATTHEW RITTER</p> <p>2 Q. On that instructional video you</p> <p>3 played beats?</p> <p>4 A. Yes.</p> <p>5 Q. Drum beats?</p> <p>6 A. Yes.</p> <p>7 Q. Do you play a drum kit?</p> <p>8 A. Yes.</p> <p>9 Q. Did you get clearances for the</p> <p>10 beats that you play on your instructional</p> <p>11 video?</p> <p>12 A. No. Because the beats I played</p> <p>13 I was basically improvising, based on other</p> <p>14 things I'd heard. But, no, I did not do an</p> <p>15 exact, perform exact transcription of anyone</p> <p>16 else's drumming except for my own. There were</p> <p>17 no other instruments or anything involved.</p> <p>18 Q. Was every beat on your video</p> <p>19 original to you?</p> <p>20 MR. CHIN: Objection.</p> <p>21 A. You know, I probably in some</p> <p>22 senses, yeah, I think it probably, I would</p> <p>23 have to say -- you know, I know I am probably</p> <p>24 bias because I am the one that played it. I</p> <p>25 think so. I think if I heard something off of</p>	216	<p>1 MATTHEW RITTER</p> <p>2 compositions. And one of the most famous ones</p> <p>3 is called The Drum Also Waltzes. I would</p> <p>4 expect in every way if I were going to have a</p> <p>5 special feature on my DVD of me playing The</p> <p>6 Drum Also Waltzes I would absolutely expect to</p> <p>7 have to pay licensing fee for that.</p> <p>8 Q. What separates that example</p> <p>9 you're thinking of, you know, specifically</p> <p>10 from expecting to pay a license for other</p> <p>11 beats that you have heard before?</p> <p>12 MR. CHIN: Objection.</p> <p>13 A. It doesn't. As I said, I don't</p> <p>14 know whether to expect to pay a licensing fee.</p> <p>15 I know that --</p> <p>16 Q. But you did say you would</p> <p>17 absolutely expect to have to pay a licensing</p> <p>18 fee for Max Roche's playing that on your DVD.</p> <p>19 There is some difference?</p> <p>20 A. My point is that is somebody</p> <p>21 else's composition. I didn't do anything by</p> <p>22 Max Roche or Raiph Vargas for that matter, I</p> <p>23 did my own things which were largely</p> <p>24 improvised in the moment.</p> <p>25 What I was saying if I took</p>
215	<p>1 MATTHEW RITTER</p> <p>2 my DVD I would probably immediately recognize</p> <p>3 it as my particular timing, my way of striking</p> <p>4 the drum closer to the edge rather than the</p> <p>5 middle, the way I tune my drums and the little</p> <p>6 variations that have become sort of</p> <p>7 idiosyncracies for me.</p> <p>8 Q. Aside from thinking of it in</p> <p>9 the sense of if you heard a recording of your</p> <p>10 beat the same way it is recorded on your DVD</p> <p>11 video, but let's say one of these students who</p> <p>12 is purchasing your, you know, instructional</p> <p>13 video or something plays your beat, do you</p> <p>14 feel that beat, do you feel that is a</p> <p>15 composition --</p> <p>16 MR. CHIN: Objection.</p> <p>17 Q. -- those beats?</p> <p>18 MR. CHIN: Objection.</p> <p>19 A. Yes. The combination of</p> <p>20 elements that I would choose with my specific</p> <p>21 variations and so forth would be a drumming</p> <p>22 composition all my own. Max Roche, very</p> <p>23 famous drummer in the 60s used to do entire</p> <p>24 songs that were just drums. And these things</p> <p>25 would have names and so forth. They were</p>	217	<p>1 MATTHEW RITTER</p> <p>2 something composed by another drummer and</p> <p>3 actually took a transcription of it and</p> <p>4 replicated it, I would intend and expect to</p> <p>5 have to pay a licensing fee on it.</p> <p>6 Q. So other than the way you</p> <p>7 played or your touch, would a transcription of</p> <p>8 any beat that is on your video be one that,</p> <p>9 you know, has not been written down before?</p> <p>10 A. Probably yes, yes.</p> <p>11 Q. Probably yes? Sorry?</p> <p>12 A. Probably yes. I am sure that</p> <p>13 there are beats on my video that have not been</p> <p>14 written down before. There are millions of</p> <p>15 combinations of rhythms, so to, you know, if I</p> <p>16 sat here and just played one measure worth off</p> <p>17 the top of my head, you know, I would think it</p> <p>18 would take a very long time, if ever for</p> <p>19 someone to go through old drumming book and so</p> <p>20 forth and find that exact thing somewhere.</p> <p>21 Unless I were playing something like simply</p> <p>22 bass on 1, and 3 snare on 2 and 4.</p> <p>23 Something more complicated than</p> <p>24 that like Bust Dat Groove, I looked through</p> <p>25 Mr. Ricigliano's excerpts from books dating</p>

218	<p>1 MATTHEW RITTER</p> <p>2 back decades. There wasn't one single example</p> <p>3 of Bust Dat Groove in any of them.</p> <p>4 Q. If someone transcribed all the</p> <p>5 beats on your instructional video would any of</p> <p>6 those beats have been transcribed before any</p> <p>7 time in history?</p> <p>8 A. Well that is what I am</p> <p>9 saying --</p> <p>10 MR. CHIN: Objection, hold on</p> <p>11 sorry. Objection. You can answer.</p> <p>12 A. I believe it would be unlikely</p> <p>13 and a coincidence unless it were perhaps bass</p> <p>14 on 1 and 3 snare on 2 and 4 something</p> <p>15 extremely basic and common.</p> <p>16 Q. Do you show any simple beats</p> <p>17 for beginners on your individual?</p> <p>18 A. Yes, I show this beat and some</p> <p>19 slight variations of it.</p> <p>20 Q. So those slight variations are</p> <p>21 simple beats for beginners?</p> <p>22 A. Yes.</p> <p>23 Q. What are those slight</p> <p>24 variations -- we're talking about slight</p> <p>25 variations to the basic rock beat you</p>	220	<p>1 MATTHEW RITTER</p> <p>2 about doing a triplet is three notes grouped</p> <p>3 together.</p> <p>4 Q. Right.</p> <p>5 A. Talking about hitting one hand</p> <p>6 to do the first note and doing two notes with</p> <p>7 the foot after that.</p> <p>8 So when --</p> <p>9 Q. A split triplet kind of?</p> <p>10 A. Yes. So when Bonham would do</p> <p>11 this, he would have his one hand on the</p> <p>12 hi-hat, and he would do the bass drum with the</p> <p>13 foot. When I did it I actually used both</p> <p>14 hands in unison and moved them around to</p> <p>15 various sounds of the drums improvising my own</p> <p>16 creative impulse on an idea that John Bonham</p> <p>17 had I guess pioneered to some degree.</p> <p>18 Q. But you sell your video by</p> <p>19 saying that you show John Bonham triplets;</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. But you play them differently?</p> <p>23 A. Yes. Exactly.</p> <p>24 Q. And --</p> <p>25 A. It is understood in the</p>
219	<p>1 MATTHEW RITTER</p> <p>2 described earlier?</p> <p>3 A. Yes.</p> <p>4 Q. What are those variations?</p> <p>5 A. What are they? There is I</p> <p>6 believe in most cases I was still playing the</p> <p>7 bass on 1 and 3 and then maybe occasionally</p> <p>8 adding one more bass drum note somewhere</p> <p>9 showing different possibilities.</p> <p>10 Q. Of placing the bass note?</p> <p>11 A. Yes. Exactly. It is a DVD</p> <p>12 about bass drum playing. I was trying to show</p> <p>13 that you could theoretically place the bass</p> <p>14 drum in various spots of a measure.</p> <p>15 Q. Do you play the basic rock beat</p> <p>16 on your video?</p> <p>17 A. Yes.</p> <p>18 Q. And you play in fact John</p> <p>19 Bonham triplets on your instructional video;</p> <p>20 don't you?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Did you get clearance for that?</p> <p>23 A. I actually played them pretty</p> <p>24 differently than John Bonham. When we talk</p> <p>25 about John Bonham triplets we are talking</p>	221	<p>1 MATTHEW RITTER</p> <p>2 drumming community John Bonham triplets means</p> <p>3 you can play very fast triplets with your</p> <p>4 foot. Everybody wants to know how to play</p> <p>5 foot very fast. That is what I am talking</p> <p>6 about is the ability to play the foot at high</p> <p>7 speeds, not so much a specific rhythm. If</p> <p>8 that makes any sense.</p> <p>9 Q. It sort of doesn't make sense</p> <p>10 just because you said it is a John Bonham</p> <p>11 triplet. That is a specific, is it fair to</p> <p>12 say that is a specific rhythm?</p> <p>13 A. John Bonham was one of the</p> <p>14 first drummers to play two hits in a row on</p> <p>15 the bass drum very fast and repeatedly with</p> <p>16 one other note in between. He would do it</p> <p>17 with the one hand on the hi-hat. Then so it</p> <p>18 would be like hand, foot, foot, hand, foot,</p> <p>19 foot. He would do this extremely fast.</p> <p>20 People have always been trying to figure out</p> <p>21 how he played it fast.</p> <p>22 So I demonstrated a foot</p> <p>23 movement that can help drummers be able to</p> <p>24 learn to do this while I moved my hands around</p> <p>25 to various pitched drums, rather than staying</p>

56 (Pages 218 to 221)

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1 MATTHEW RITTER
 2 home just hitting their couch and their lap.
 3 Q. Right. Okay. So when they
 4 play, when you transcribe something they have
 5 heard, popular music and they play it on your
 6 drum, just for you and them in the lesson,
 7 you're saying you don't typically tune the
 8 drums in those cases. Is it then evident the
 9 drum, you know, doesn't sound really what they
 10 are trying to play?
 11 A. If I think I understood you
 12 correctly, yes, when a student of mine plays a
 13 rhythm we transcribed, on a drum set in my
 14 teaching studio, it does not usually sound
 15 anything like the recording that we
 16 transcribed because the way the drummer is
 17 hitting the drum is different, the way the
 18 drum set is tuned is different.
 19 Sometimes honestly it is
 20 unrecognizable as what we transcribed. Sort
 21 of the opposite of hearing Bust Dat Groove and
 22 Aparthenonia and realizing all those nuances
 23 are exactly the same.
 24 Q. So your Students -- sorry, you
 25 are talking about when your students play the

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1 MATTHEW RITTER
 2 transcription?
 3 A. Yes.
 4 Q. Do you sometimes play the
 5 transcription or just hear it and play it?
 6 A. Yeah, I will often take the
 7 transcription we figured out and play it for
 8 them as a demonstration.
 9 Q. Do they say, wow, Matt, that
 10 sounds like whatever song they are asking you
 11 to play?
 12 MR. CHIN: Objection.
 13 Q. Something to that extent?
 14 MR. CHIN: Objection.
 15 A. No, I mean usually the
 16 sentiment they express is cool, when am I
 17 going to learn to play that fast or whatever?
 18 Q. It is not, even without the
 19 tuning, not saying, yeah, that doesn't really
 20 sound like that beat; right?
 21 MR. CHIN: Objection.
 22 A. Sorry, I don't understand the
 23 question.
 24 Q. Just trying to understand that.
 25 Even if they are playing on a drum set that

228

1 MATTHEW RITTER
 2 hasn't been tuned, you know, to the way the
 3 original recording was tuned --
 4 A. Right.
 5 Q. -- whether the impression is
 6 that doesn't really get at what, that doesn't
 7 really sound like the song I've heard?
 8 MR. CHIN: Objection.
 9 A. Sometimes it does, I do get
 10 that reaction. In which case I may have them
 11 switch drum sets, we have two sets in the
 12 room. Like I said, one of them has the bass
 13 drum tuned very differently. Sometimes I'll
 14 ask the students to switch drum sets and play
 15 on the drum set with the bigger deeper bass
 16 drum. Maybe it will sound more like the
 17 recording.
 18 Q. You teach a lot of children;
 19 right?
 20 A. I teach a lot of adult
 21 beginners, but I have also taught children.
 22 Most of my students are adults.
 23 Q. Most of your students are not
 24 advanced; right?
 25 A. Right. Most, if I have 30

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1 MATTHEW RITTER
 2 students in a week, maybe 25 or 26 of them are
 3 beginner, intermediate and maybe two or three
 4 or four are somewhat advanced. I have only
 5 one or two extremely advanced drummers.
 6 Q. Do you currently teach at a
 7 school?
 8 A. No, I don't. I currently teach
 9 in my own drumming studio.
 10 Q. Have you taught at a school we
 11 talked about --sorry, have you taught at a
 12 school before?
 13 A. Yes. I taught for a few years
 14 at the Lycee Francais which is a private
 15 elementary school on the upper East side. I
 16 was part of the after school program. I would
 17 go there two days a week and give half hour
 18 drum lessons to kids that signed up.
 19 Q. Sorry, how long did you do
 20 that?
 21 A. Well, I began in fall of 2001 I
 22 believe I did it until last fall 2005. I have
 23 not done it for the past year. I believe I
 24 did it for four years straight.
 25 Q. So all of the students at that

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1 MATTHEW RITTER
 2 different drummer than the drummer on the
 3 first track?
 4 MR. CHIN: Objection. But you
 5 can answer.
 6 A. I am going to say right away
 7 since this is not a drummer that I'm familiar
 8 with, unless he is playing the exact same
 9 thing, I probably will have no way to know.
 10 Q. You testified and you stated in
 11 your declaration that each time a drummer
 12 makes a recording that drummer leaves a
 13 fingerprint; right?
 14 A. Yes. That's right.
 15 Q. And that you can tell based on
 16 listening whether the same drummer is playing?
 17 A. Playing the same thing. In
 18 other words, if you are about to play me
 19 something now that is a different rhythm, I
 20 haven't heard what this drummer's fingerprint
 21 sounds like playing this second rhythm. So I
 22 have nothing to compare it to from the first
 23 rhythm.
 24 On the other hand, if we took
 25 rhythm number 1 you just played to me and had

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1 MATTHEW RITTER
 2 two other drummers play that same rhythm, the
 3 way they space the various elements of that
 4 rhythm I would in all likelihood be able to
 5 tell which drummer played which or whether it
 6 was the same person doing the same thing.
 7 Q. On Bust Dat Groove part of what
 8 would be the fingerprint of that recording
 9 would be the ghost notes; right?
 10 A. Yes, that's part of it.
 11 Q. Part of it was the multiple
 12 bounce stroke; right?
 13 A. Right. Which is also a ghost
 14 note because it is played extremely softly.
 15 Q. Let's go through and identify
 16 the instruments on, we will do track number 2.
 17 A. Okay.
 18 Q. Just identify the instruments
 19 on each track.
 20 (Track Playing.)
 21 Q. That is track number 2. What
 22 are the instruments?
 23 A. Can I hear it again. I am
 24 getting some static through the speaker, I am
 25 not sure if it is snare rattle or the speaker

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1 MATTHEW RITTER
 2 or what.
 3 (Track Playing.)
 4 A. That sounds also like bass
 5 drum, snare drum and hi-hat to me.
 6 Q. If there is anything about --
 7 sorry, if you can tell me and you can tell
 8 that any of the tracks has a different drummer
 9 than another, go ahead and let me know. If
 10 you can't, fair enough.
 11 MR. CHIN: Objection. Is it
 12 possible to read back what his answer was
 13 before that just so can write it down in my
 14 notes.
 15 (The preceding answer was
 16 read.)
 17 MR. CHIN: My question is is
 18 that what you guys are going to do?
 19 MS. AHRENS: We are going to
 20 go -- I am going to go through each track and
 21 play it and identify the instruments and ask
 22 him if he can identify. I will make the
 23 question more specific to Mr. Vargas.
 24 Q. I am going to play track number
 25 1 again.

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1 MATTHEW RITTER
 2 (Track Playing.)
 3 Q. On track number 1 can you tell
 4 me whether that is Ralph Vargas playing the
 5 drums or not?
 6 MR. CHIN: Objection.
 7 A. I have no idea. I never heard
 8 Ralph play a rhythm like that. So I don't
 9 know if I am hearing Ralph play it now.
 10 Q. You have heard, of course Ralph
 11 play other drum tracks that you know are Ralph
 12 playing?
 13 MR. CHIN: Objection.
 14 A. I have heard Ralph play one
 15 other drum track as well as, as I mentioned to
 16 you on my second meeting with him he played a
 17 snippet of himself in a wedding band or
 18 something like that in his car. I don't
 19 really remember what it sounded like.
 20 Q. Okay. And on track number 1
 21 did you hear any ghost notes?
 22 A. Before I answer may I hear it
 23 again. That is really the thing I would
 24 probably want to wear headphones and listen
 25 very carefully more than I am able to do with

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1 MATTHEW RITTER
 2 these speakers.
 3 Q. Okay. Let me play it for you
 4 again?
 5 A. Since this is a sworn
 6 testimony. I will try and see if I hear any.
 7 (Track Playing.)
 8 A. Can I hear it once more,
 9 please.
 10 Q. Sure.
 11 (Track Playing.)
 12 A. I am not able to hear any on
 13 this but I have no way of knowing if there
 14 really is any because I would want to listen
 15 more closely with headphones.
 16 Q. When you made your original
 17 transcription of Bust Dat Groove, you were
 18 listening to that on your DiscMan; right?
 19 A. Right.
 20 Q. You heard ghost notes on that;
 21 right?
 22 A. I did, yeah. They are
 23 definitely more pronounced on that recording
 24 than on this one if there are any. I think
 25 there might not be any on this one.

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1 MATTHEW RITTER
 2 Q. That copy of Bust Dat Groove on
 3 your DiscMan, that was a copy that was, you
 4 said was a poor quality copy?
 5 A. It would only play on that
 6 machine. So, I mean it was not burned
 7 properly or something. Because it didn't play
 8 on most machines.
 9 Q. Okay. I am going to do -- on
 10 track number 1 we still just have bass drum,
 11 snare drum and hi-hat?
 12 A. Yes.
 13 Q. I am going to play -- and on
 14 track number 1 you said you can't say whether
 15 it is Mr. Vargas or not?
 16 MR. CHIN: Objection.
 17 A. I don't know if it is
 18 Mr. Vargas or not.
 19 Q. You don't know. I am going to
 20 play track number 2 from Defendants'
 21 Exhibit 30.
 22 (Track Playing.)
 23 Q. What instruments do you hear on
 24 track number 2?
 25 A. Bass drum, snare, hi-hat and a

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1 MATTHEW RITTER
 2 ghost note on the snare.
 3 Q. Is the ghost notes an
 4 instrument?
 5 A. No.
 6 Q. So three instruments you hear
 7 are a bass, a snare drum and a hi-hat right?
 8 A. Yes.
 9 Q. But you did hear a ghost note
 10 too?
 11 A. I did.
 12 Q. Can you say whether the drummer
 13 on track 2 is different than the drummer on
 14 track 1?
 15 MR. CHIN: Objection.
 16 A. I have no idea.
 17 Q. Can you tell if the drummer on
 18 track number 2 is Mr. Vargas?
 19 MR. CHIN: Objection.
 20 A. I have no idea.
 21 Q. Did you hear on track number 2
 22 any multiple bounce strokes?
 23 A. No, I did not. I heard one
 24 isolated ghost stroke.
 25 Q. Okay. I will play track number

245

1 MATTHEW RITTER
 2 3 from Defendants' Exhibit number 30.
 3 (Track Playing.)
 4 MR. CHIN: Let her ask the
 5 questions.
 6 Q. Can you identify what
 7 instruments are played on track number 3?
 8 A. Bass drum, snare drum and
 9 hi-hat.
 10 Q. Do you have an opinion as to
 11 whether the bass drum, snare drum and hi-hat
 12 are the same bass drum, snare drum and hi-hat
 13 that were played on track 2?
 14 MR. CHIN: Objection.
 15 A. I don't know. I will have to
 16 hear, you know, again it is like the drummer's
 17 fingerprint thing, I would want to hear the
 18 same drum set playing the same rhythm because,
 19 you know, how loud the person is playing the
 20 snare changes the tambour of the instrument
 21 and so forth.
 22 I would want to hear the same
 23 rhythm played twice on two different drum sets
 24 or the same to determine if it was the same
 25 drum set. How you strike a drum, you know,

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1 MATTHEW RITTER
 2 significantly can change the sound of the
 3 drum. I do hear some ghost notes, by the way.
 4 Q. Okay. Forgive me if I asked you
 5 this about track 3, can you say whether track
 6 3 is different, a different drummer than the
 7 drummer on the previous track?
 8 MR. CHIN: Objection.
 9 A. I don't know who is playing the
 10 drums.
 11 Q. Okay. Even though you don't
 12 know who is playing the drums can you
 13 determine whether it is a different drummer
 14 than the previous track?
 15 MR. CHIN: Objection.
 16 A. I don't know if it is the same
 17 or different drummer.
 18 Q. Can you -- so you can't whether
 19 it is Mr. Vargas or not; right?
 20 MR. CHIN: Objection.
 21 A. I cannot tell who is the
 22 drummer.
 23 Q. You said you heard ghost notes;
 24 is that right?
 25 A. Yes, I did.

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1 MATTHEW RITTER
 2 Q. How many ghost notes?
 3 A. Can I hear it again.
 4 Q. I can play it again sure.
 5 (Track Playing.)
 6 A. I hear at least three already.
 7 Q. Did you hear any multiple
 8 bounce strokes?
 9 A. No.
 10 Q. I just want to ask when you
 11 made your transcription of Funky Drummer?
 12 A. Yes.
 13 Q. You also made a transcription
 14 of Apathenonia, you made those, some of the
 15 original versions of those transcriptions you
 16 made from listening to the tracks on a
 17 DiscMan; right?
 18 A. This is true.
 19 Q. For both songs; right?
 20 A. Yes.
 21 Q. What kind of headphones were
 22 you listening to when you used your DiscMan?
 23 A. They are called Studio Kans,
 24 they are professional recording studio
 25 headphones.

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1 MATTHEW RITTER
 2 Q. Sorry, what was the name of the
 3 headphones again?
 4 A. Studio Kans K-A-N-S.
 5 Q. Is there any other kind of
 6 manufacturer name or anything?
 7 A. No.
 8 Q. The ghost notes that you said
 9 you heard on track number 3 --
 10 A. That is the one we just heard?
 11 Q. Yes.
 12 A. Yup.
 13 Q. Are those Mr. Vargas' ghost
 14 notes?
 15 MR. CHIN: Objection.
 16 A. I don't know whose ghost notes
 17 they are. I will say they do sound like tom
 18 hits to me. It sounds to me like it is either
 19 Mr. Vargas or it is somebody playing on a drum
 20 that was tuned by Mr. Vargas and trying to
 21 imitate Mr. Vargas' ghost notes technique.
 22 Q. Why would you say it would be
 23 like it sounds like a drum tuned by
 24 Mr. Vargas?
 25 A. Because, again, it is

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1 MATTHEW RITTER
 2 exceedingly rare for one drum to suddenly
 3 sound like a different drum just because it is
 4 being played at a very soft volume. I mean
 5 the sound of the drum can change a little, but
 6 to have it suddenly sound like a tom-tom, a
 7 moment ago it sounded like a snare is very
 8 unusual. I hear that same phenomenon on this
 9 record.
 10 So, I heard that on Bust Dat
 11 Groove. I know that Ralph at least on that
 12 song chose to choke the snares on his drum. I
 13 hear that same phenomenon here.
 14 Q. I will play track number 4 from
 15 Defendants' Exhibit 30.
 16 (Track Playing.)
 17 A. Okay.
 18 Q. What instruments do you hear on
 19 track number 4?
 20 A. Bass drum, snare drum and
 21 cymbal.
 22 Q. Is it a ride cymbal?
 23 A. The person is using it like a
 24 ride cymbal which means they are playing
 25 constant rhythm on it. It is very hard to

250	<p>1 MATTHEW RITTER</p> <p>2 tell what kind of cymbal it is. But, yes, it</p> <p>3 is being used as a ride cymbal. So some</p> <p>4 cymbal.</p> <p>5 Q. Do the instruments you hear on</p> <p>6 track number 4 in your opinion, are they the</p> <p>7 same instruments that you heard played on</p> <p>8 track number 3 -- do the instruments you hear</p> <p>9 on track number 4 are they the same</p> <p>10 instruments you heard played on track number</p> <p>11 3?</p> <p>12 MR. CHIN: Objection.</p> <p>13 A. I don't know.</p> <p>14 Q. Can you say whether the drummer</p> <p>15 is different on track number 4 than on the</p> <p>16 previous track?</p> <p>17 MR. CHIN: Objection.</p> <p>18 A. I don't know, but I will say</p> <p>19 that if asked to speculate I would assume</p> <p>20 that, it may be -- it may be the same drummer</p> <p>21 because I hear a ghost note immediately</p> <p>22 following a loud snare accent. Which is</p> <p>23 something I've heard on, you know, I also</p> <p>24 heard on previous tracks we play here.</p> <p>25 Q. Okay. On the previous tracks</p>	252	<p>1 MATTHEW RITTER</p> <p>2 is Mr. Vargas playing the drums?</p> <p>3 MR. CHIN: Objection.</p> <p>4 A. I don't know if it is</p> <p>5 Mr. Vargas.</p> <p>6 Q. Did you hear on that track any</p> <p>7 multiple bounce strokes?</p> <p>8 A. No, I did not.</p> <p>9 Q. Do you believe -- we have a</p> <p>10 pair of headphones, would you prefer to listen</p> <p>11 to the tracks through the headphones, would</p> <p>12 that help?</p> <p>13 A. It might help. I can try that.</p> <p>14 Q. Okay. I don't know if this is</p> <p>15 going to cut out the sound for all of us.</p> <p>16 A. There is a loud buzzing.</p> <p>17 MR. CHIN: There is now?</p> <p>18 THE WITNESS: Yes, there is.</p> <p>19 MR. CHIN: Does anybody know</p> <p>20 how to get rid of that?</p> <p>21 VIDEOGRAPHER: It might help if</p> <p>22 you take it right out of the computer instead</p> <p>23 of the headphones.</p> <p>24 A. That is going to cover up any</p> <p>25 nuance I am trying to find.</p>
251	<p>1 MATTHEW RITTER</p> <p>2 we played here, track number 3 you said had at</p> <p>3 least three ghost notes were those similar</p> <p>4 ghost notes followed by a loud snare?</p> <p>5 A. Can I hear number 3 again?</p> <p>6 Q. Sure.</p> <p>7 (Track Playing.)</p> <p>8 A. Yes. Yes. This is a drummer</p> <p>9 that likes to play a soft ghost note</p> <p>10 immediately after a loud snare, which is not</p> <p>11 very common. So it is may well be the same</p> <p>12 drummer but the rhythm sounds different. So I</p> <p>13 don't know if it is the same person.</p> <p>14 Q. Did you hear any other --</p> <p>15 sorry, how many ghost notes did you hear on</p> <p>16 that track?</p> <p>17 A. Track 4, right?</p> <p>18 Q. Yes.</p> <p>19 A. Can I hear it again, please.</p> <p>20 (Track Playing.)</p> <p>21 A. I only can clearly make out one</p> <p>22 there is a lot of white noise because of the</p> <p>23 cymbal. I can make out one immediately</p> <p>24 following a loud snare hit.</p> <p>25 Q. Can you tell if track number 4</p>	253	<p>1 MATTHEW RITTER</p> <p>2 MS. AHRENS: Can we go off the</p> <p>3 record.</p> <p>4 VIDEOGRAPHER: Going off the</p> <p>5 record the time is 4:03.</p> <p>6 (Recess taken.)</p> <p>7 VIDEOGRAPHER: We are back on</p> <p>8 the record. The time is 4:04.</p> <p>9 Q. Mr. Ritter, we are going to</p> <p>10 play track number 5 through the headphones</p> <p>11 that we have given you. This is track number</p> <p>12 5 on Defendants' Exhibit 30.</p> <p>13 (Track Playing.)</p> <p>14 A. I'm sorry, I have to go back to</p> <p>15 speakers, it sounds like it is underwater,</p> <p>16 maybe it varies from track to track. I think</p> <p>17 I would prefer the speakers.</p> <p>18 Q. Do you want to hear it again</p> <p>19 through the speakers?</p> <p>20 A. Yes. Just the speakers. Sorry</p> <p>21 about that.</p> <p>22 Q. That's okay. Here is track</p> <p>23 number 5 through the speakers, we might have</p> <p>24 to turn it up.</p> <p>25 (Track Playing.)</p>

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1 MATTHEW RITTER
 2 immediately following a snare drum, which
 3 means that a drummer may have time to move his
 4 hands to another drum all together.
 5 Q. I will play track number 6 on
 6 Defendants' number 30.
 7 (Track Playing.)
 8 A. Can I hear it again, please.
 9 Q. Sure.
 10 (Track Playing.)
 11 MR. CHIN: What is that, is
 12 that part of the record?
 13 THE WITNESS: I don't know
 14 what that is.
 15 (Track Playing.)
 16 A. Okay.
 17 Q. On track number 6 what
 18 instruments do you hear?
 19 A. Bass drum, hi-hat and snare
 20 drum.
 21 Q. Do you have an opinion as to
 22 whether those are the same bass drum, snare
 23 and hi-hat as on the previous track?
 24 A. I don't know.
 25 Q. Can you say whether the drummer

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1 MATTHEW RITTER
 2 on track 5 is different than the previous --
 3 sorry, whether the drummer on track 6 is
 4 different than on the previous track?
 5 MR. CHIN: Objection.
 6 A. I can't say. I don't know.
 7 Q. Can you tell if it is
 8 Mr. Vargas playing track number 6?
 9 MR. CHIN: Objection.
 10 A. I don't know.
 11 Q. Did you hear any ghost notes in
 12 track number 6?
 13 A. I did not hear any.
 14 Q. Did you hear any multiple
 15 bounce strokes in track 6?
 16 A. No. But I will say the
 17 quality, as you guys are probably hearing
 18 already is degenerating as we go track by
 19 track. There is a lot of static coming
 20 through this. I don't know if it is the
 21 machine or recording. I am being asked to
 22 identify notes that are extremely difficult to
 23 hear even if the drum was in the room with us.
 24 But that having been said, I
 25 will say no, I don't hear any ghost notes on

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1 MATTHEW RITTER
 2 that.
 3 Q. You are saying those drums and
 4 those sounds are extremely difficult to hear
 5 even in a room with a live drummer, but you
 6 formed your opinion listening to a recording
 7 on a DiscMan; is that right?
 8 MR. CHIN: Objection.
 9 A. That's correct because on that
 10 particular recording certain of the elements,
 11 including most of the ghost notes were
 12 prominent enough for me to hear them. Just as
 13 has been the case with a couple of the tracks
 14 I heard today.
 15 Q. Okay. Track number 7 from
 16 Defendants' Exhibit 30.
 17 (Track Playing.)
 18 Q. On track number 7 can you tell
 19 me what instruments are played?
 20 A. Bass drum, snare drum and
 21 hi-hat.
 22 Q. Do you have an opinion as to
 23 whether those are the same instruments that
 24 were on the previous track?
 25 MR. CHIN: Objection.

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1 MATTHEW RITTER
 2 A. I don't know if they are the
 3 same instruments. I do know that the sound is
 4 very unusual on this track. It sounds
 5 extremely boomy and muddy, I don't know if
 6 that is the way it was recorded or something
 7 enhanced digitally, but in either case I don't
 8 know if it is the same drums used on the
 9 previous track.
 10 Q. Can you say whether the drummer
 11 is different than the drummer for the previous
 12 track?
 13 MR. CHIN: Objection.
 14 A. I don't know.
 15 Q. Can you tell if it is
 16 Mr. Vargas playing the drums on track
 17 number 7?
 18 MR. CHIN: Objection.
 19 A. I don't know.
 20 Q. Did you hear any ghost notes on
 21 track 7?
 22 A. No. I did not.
 23 Q. Did you hear any multiple
 24 bounce strokes on track number 7?
 25 A. No.

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1 MATTHEW RITTER
 2 Q. I am going to play track number
 3 8 from Defendants' Exhibit 30.
 4 (Track Playing.)
 5 Q. Can you tell me what
 6 instruments are on track 8?
 7 A. Bass drum, snare drum and
 8 hi-hat.
 9 Q. Do you have an opinion as to
 10 whether these drums are the same as the
 11 previous, the drums used in any of the
 12 previous tracks?
 13 MR. CHIN: Objection.
 14 A. I don't know. But again this
 15 sound on this is very -- sounds very strange
 16 to me, like something that may have been
 17 altered electronically somehow. When the
 18 snares hit it seems to echo for almost the
 19 whole rest of the measure. So either it is in
 20 an echo chamber or there has been a certain
 21 kind of reverb put on or the mic is positioned
 22 in a way to get very unusual recorded sounds.
 23 Q. Would added effects make it
 24 more difficult to identify whether it is the
 25 same drummer playing?

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1 MATTHEW RITTER
 2 A. I don't know. Possibly. I
 3 mean the more a recording is tampered with in
 4 any way the more it becomes obscure of what
 5 was there originally.
 6 Q. On track number 8 -- I can't
 7 remember where I was -- did you hear any ghost
 8 notes?
 9 A. May I hear it one more time.
 10 Q. Sure.
 11 (Track Playing.)
 12 A. I don't believe there are any
 13 ghost notes on that recording.
 14 Q. Did you hear any multiple
 15 bounce strokes on track 8?
 16 A. No, I did not.
 17 Q. Do you know if any effects were
 18 used in the studio when Funky Drummer Volume
 19 II was being recorded?
 20 A. I don't know.
 21 Q. Do you know if any effects were
 22 added to Funky Drummer II when it was being
 23 mixed?
 24 A. I have no idea.
 25 Q. Track number 9 from Defendants'

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1 MATTHEW RITTER
 2 Exhibit number 30.
 3 (Track Playing.)
 4 Q. Do you know what instruments
 5 are on track number 9?
 6 A. Bass drum, snare drum, hi-hat
 7 and human voices.
 8 Q. Can you say whether the
 9 instruments you hear on track number 9 are the
 10 same as the instruments played on track
 11 number 8?
 12 MR. CHIN: Objection.
 13 A. I don't know.
 14 Q. Can you say whether the drummer
 15 on track 9 is different than the previous, the
 16 drummer on the previous track?
 17 MR. CHIN: Objection.
 18 A. I don't know.
 19 Q. Can you tell if track 9 is
 20 being played by Mr. Vargas?
 21 MR. CHIN: Objection.
 22 A. I cannot tell.
 23 Q. Did you hear any ghost notes on
 24 track number 9?
 25 A. I did not hear any, but I don't

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1 MATTHEW RITTER
 2 know if there are any because there were
 3 children laughing and there is a lot of static
 4 coming from the machine. Even if they were
 5 there, I don't trust that I would be able to
 6 hear them with that kind of recording.
 7 Q. Did you hear any multiple
 8 bounce stroke on track number 9?
 9 A. I did not hear any but again
 10 the nuances were pretty obscured as I was
 11 listening to that because of the children's
 12 voices and stuff they had put in.
 13 Q. I will play track number 10
 14 from Defendants' Exhibit 30.
 15 (Track Playing.)
 16 Q. What instruments -- do you want
 17 to hear track 10 again?
 18 A. Sure.
 19 (Track Playing.)
 20 A. Okay.
 21 Q. What instruments do you hear on
 22 track number 10?
 23 A. Bass drum, hi-hat, rim click
 24 which means hitting on the rim of the snare
 25 drum and a person humming.

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1 MATTHEW RITTER
 2 Q. Have you ever heard of Carlos
 3 Bess?
 4 A. No.
 5 Q. What level of drummer would you
 6 consider Ralph Vargas to be?
 7 A. Ralph is very advanced
 8 professional level drummer.
 9 Q. Do you know what is flanging?
 10 A. Flanging in drum terms?
 11 Q. Yes. Or music terms.
 12 MR. CHIN: Objection, compound.
 13 A. I saw in Doc Rodriguez's report
 14 he was saying something about flanging should
 15 occur. I don't know what that means in terms
 16 of audio world. But in drum world if we use
 17 our left foot to make the hi-hat splash once
 18 against each other sometimes we call that
 19 flanging the hi-hats. So they collide
 20 together, maybe that is what Mr. Rodriguez was
 21 saying, the two sounds would collide if they
 22 weren't lined up right.
 23 Q. What happens when you flange
 24 two hi-hat cymbal together?
 25 A. They kind of ring.

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1 MATTHEW RITTER
 2 Q. Are they louder?
 3 A. Louder than what?
 4 Q. Louder than when they are not
 5 flanged?
 6 A. You can flange loud, you can
 7 flange soft. It is a different sound. You
 8 are making the cymbal strike against each
 9 other and ringing.
 10 Q. Okay. Do the pitches you heard
 11 on Aparthenonia and Bust Dat Groove, do either
 12 of those sound different due to the sound
 13 recording quality?
 14
 15
 16
 17
 18 (Continued on following page.)
 19
 20
 21
 22
 23
 24
 25

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1
 2 A. They sounds the same to me.
 3 Q. Okay.
 4 MS. AHRENS: I have nothing
 5 further.
 6 MR. CHIN: Thank you.
 7 VIDEOGRAPHER: Going off the
 8 record. The time is 5:01. This is the end of
 9 tape number 4.
 10
 11 (Time Noted: 5:01 p.m.)
 12
 13
 14 MATTHEW RITTER
 15
 16
 17 Subscribed and sworn to before me
 18 this ____ day of _____, 2006.
 19
 20
 21
 22
 23
 24
 25

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1 MATTHEW RITTER
 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: _____
 10 CHANGE: _____
 11 REASON: _____
 12 CHANGE: _____
 13 REASON: _____
 14 CHANGE: _____
 15 REASON: _____
 16 CHANGE: _____
 17 REASON: _____
 18 CHANGE: _____
 19 REASON: _____
 20 CHANGE: _____
 21 REASON: _____
 22 CHANGE: _____
 23 REASON: _____
 24 CHANGE: _____
 25 REASON: _____

1
2 CERTIFICATE
3 STATE OF NEW YORK)
4 : ss.
5 COUNTY OF NEW YORK)
6 I, TAMMEY M. PASTOR, a Registered
7 Professional Reporter, Certified LiveNote
8 Reporter and Notary Public within and for the
9 State of New York, do hereby certify:
10 That MATTHEW RITTER the witness
11 whose deposition is hereinbefore set forth,
12 was duly sworn by me and that such deposition
13 is a true record of the testimony given by the
14 witness.
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage, and that I am in no way
18 interested in the outcome of this matter.
19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this ____ day of
21 _____, 2006.
22
23
24
25 TAMMEY M. PASTOR, RPR, CLR

1
2
3 E X H I B I T S
4 PAGE
5
6 (Defendants' Exhibit 29 for 16
7 identification, Ritter Draft
8 Declaration, production numbers
9 00034.)
10
11 (Defendants' Exhibit 30 for 169
12 identification, Musical Tracks
13 from Funky Drummer Volume II,
14 production numbers 00023.)
15
16
17
18
19
20
21
22
23
24
25

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1 MATTHEW RITTER
 2 A. It is so crackly.
 3 Q. I hear the crackling as well.
 4 To me it sounds like a needle on a record, on
 5 a vinyl. Does that sound --
 6 A. That sounds like that might be
 7 correct. Yes.
 8 Q. Can you identify what
 9 instruments are played on track number 5?
 10 A. Yes. May I hear it one more
 11 time.
 12 Q. Sure.
 13 (Track Playing.)
 14 A. Can I hear it once more,
 15 please.
 16 Q. Uh-huh.
 17 (Track Playing.)
 18 A. There is bass drum, snare drum,
 19 hi-hat.
 20 Q. Do you have an opinion whether
 21 those three instruments are the same as on the
 22 previous track?
 23 A. No, I don't have an opinion. I
 24 don't know.
 25 Q. Is the cymbal that we heard on

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1 MATTHEW RITTER
 2 track 5 different than the cymbal we heard on
 3 track 4?
 4 MR. CHIN: Objection.
 5 A. Is track 4 the one that I said
 6 they are playing it like a ride cymbal?
 7 Q. Yes. We can hear track 4.
 8 A. This sounds like a hi-hat to
 9 me. The other one sounded like a cymbal being
 10 used as a ride cymbal.
 11 Q. Could a hi-hat cymbal be used
 12 as a ride symbol?
 13 A. It is possible if it were
 14 opened all of the way so the two cymbals
 15 didn't hit each other.
 16 Q. I can play track 4 again. But
 17 I wanted to ask whether you thought on track
 18 number 4 the cymbal that was being played like
 19 a ride was a hi-hat symbol being played like a
 20 ride?
 21 A. I am going -- there are ride
 22 cymbals of every shape and size. Usually a
 23 hi-hat refers to two cymbals placed together
 24 so that they now bump up against one another.
 25 So I have no idea what kind of cymbal the

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1 MATTHEW RITTER
 2 person is playing on, but it wasn't two
 3 cymbals closed together.
 4 Q. Okay. Fair enough. Can you
 5 say on track number 5 whether the drummer is
 6 different than the previous track?
 7 A. No, I don't know.
 8 Q. Okay. Can you tell if track
 9 number 5 is being played by Mr. Vargas?
 10 MR. CHIN: Objection.
 11 A. I have no idea.
 12 Q. Did you hear any ghost notes on
 13 track number 5?
 14 A. I don't know. Can I hear it
 15 again.
 16 Q. Sure.
 17 (Track Playing.)
 18 A. It does sounds like there is
 19 one ghost notes. I'm not clear what
 20 instrument it's on. It may be on the snare.
 21 It may not. It sounds very tom-like to me
 22 again. I'm not sure. This recording is
 23 muddier than the others I heard.
 24 Q. Okay. When you say you're not
 25 sure what instrument it is played on, is it

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1 MATTHEW RITTER
 2 possible the ghost note is being played on the
 3 hi-hat?
 4 MR. CHIN: Objection.
 5 A. I don't believe it is possible
 6 it is being played on the hi-hat.
 7 Q. Is it possible the ghost note
 8 is being played on the bass drum?
 9 MR. CHIN: Objection.
 10 A. I believe it is being played on
 11 some instrument with a hand not the foot.
 12 Q. Okay. So the three instruments
 13 we hear there, what you hear there is the bass
 14 drum, the snare and hi-hat; right?
 15 A. Yes. Except like I said there
 16 is one ghost note that again sounds distinctly
 17 tom-like.
 18 Q. That ghost note, it could be a
 19 tom?
 20 MR. CHIN: Objection.
 21 A. I don't know. It could be or
 22 it could be the same phenomenon I heard in
 23 other tracks today which is a snare sounding
 24 like a tom. The reason I am not assure in
 25 this case is because the hit I heard is not

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1 MATTHEW RITTER
 2 Q. Is a rim click, would you
 3 consider that an instrument?
 4 A. When we notate it we usually
 5 put it as a separate thing. It has got its
 6 own symbol for a rim. I think that is the
 7 most specific way to say it. Snare rim.
 8 Q. Is a rim click different
 9 than -- forget it. Scratch that.
 10 Can you say whether the
 11 instruments that are used on track number 10
 12 are the same as on the previous track?
 13 MR. CHIN: Objection.
 14 A. I don't know.
 15 Q. Can you say whether the drummer
 16 on track number 10 is different than the
 17 previous track?
 18 MR. CHIN: Objection.
 19 A. I don't know.
 20 Q. Can you tell if it is
 21 Mr. Vargas playing the drums on track number
 22 10?
 23 MR. CHIN: Objection.
 24 A. I don't know.
 25 Q. Did you hear any ghost notes on

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1 MATTHEW RITTER
 2 track number 10?
 3 A. Yes, there are some ghost notes
 4 on the rim that are bordering on not ghost
 5 notes because sometimes the volume on them
 6 creeps up a little bit. Yes, there are some
 7 ghost notes on the rim of the drum.
 8 Q. Did you hear any multiple
 9 bounce stroke on track 10?
 10 A. No, I did not.
 11 Q. I am going to play track number
 12 11 from Defendants' Exhibit 30.
 13 (Track Playing.)
 14 Q. What instruments do you hear on
 15 track number 11?
 16 A. Let me hear it once more,
 17 please.
 18 Q. Sure.
 19 (Track Playing.)
 20 A. Okay.
 21 Q. What instruments do you hear on
 22 track number 11?
 23 A. I hear bass drum, hi-hat, snare
 24 drum and some other kind of sound that is like
 25 a high pitched metallic sound, maybe somebody

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1 MATTHEW RITTER
 2 hitting on the side of a cymbal stand or
 3 something and putting that in there or a drum
 4 that is made of metal and is tuned slightly
 5 incorrectly so that there is some overtones
 6 coming from the metal of the drum.
 7 Q. Could it be anything else?
 8 A. Sure. It could be anything.
 9 It is an unusual sound effect. I don't know
 10 where it originated from. But it has got sort
 11 of a high pitched metallic sound. Almost like
 12 taking a hammer and hitting it on a window
 13 frame or something. It is played in unison
 14 with the snare drum hits.
 15 Q. Right. Can you say whether the
 16 instruments you could identify on track number
 17 11, whether those are the same instruments
 18 that were played on the previous track?
 19 MR. CHIN: Objection.
 20 A. No, I can't say.
 21 Q. Can you tell if whether the
 22 drummer is different on track number 11 than
 23 on the previous track?
 24 MR. CHIN: Objection.
 25 A. I can't tell.

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1 MATTHEW RITTER
 2 Q. Can you tell if track number 11
 3 is Mr. Vargas?
 4 MR. CHIN: Objection.
 5 A. I don't know.
 6 Q. Did you hear any ghost notes on
 7 track 11?
 8 A. I did not hear any.
 9 Q. Did you hear any multiple
 10 bounce stroke on track 11?
 11 A. No.
 12 Q. I will play track number 12.
 13 (Track Playing.)
 14 Q. Can you identify the
 15 instruments played on track 12?
 16 A. May I hear it once more,
 17 please.
 18 Q. Sure.
 19 (Track Playing.)
 20 A. Okay.
 21 Q. Can you identify the
 22 instruments on track 12?
 23 A. Bass drum, snare drum and
 24 hi-hat.
 25 Q. Do you have an opinion as to

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1 MATTHEW RITTER
 2 whether those are the same bass drum, snare
 3 drum and hi-hat that were on the previous
 4 track?
 5 MR. CHIN: Objection.
 6 A. I don't.
 7 Q. Can you say whether the drummer
 8 on track number 12 is the same or different
 9 than the previous track's drummer?
 10 MR. CHIN: Objection.
 11 A. I don't know.
 12 Q. Can you tell if track number 12
 13 is played by Mr. Vargas?
 14 MR. CHIN: Objection.
 15 A. No.
 16 Q. Did you hear any ghost notes on
 17 track 12?
 18 A. Yes.
 19 Q. And did you hear multiple
 20 bounce strokes on track 12?
 21 A. May I hear it once more,
 22 please.
 23 Q. Sure.
 24 (Track Playing.)
 25 A. Once more.

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1 MATTHEW RITTER
 2 (Track Playing.)
 3 Q. What instruments -- sorry, did
 4 you hear any multiple bounce stroke on track
 5 12?
 6 A. I heard one, yes.
 7 Q. I will play track number 13
 8 from Defendants' number 30 -- actually we can
 9 go off the record. We need to switch the
 10 tape.
 11 VIDEOGRAPHER: Going off the
 12 record. The time is 4:26. This is the end of
 13 tape number 3.
 14 (Recess taken.)
 15 VIDEOGRAPHER: Back on the
 16 record. The time is 4:30. This is beginning
 17 of tape number 4.
 18 Q. Mr. Ritter, you said you wanted
 19 to finish your answer about the multiple
 20 bounce stroke?
 21 A. Right. I would like to hear it
 22 once more.
 23 Q. Talking about track number 12.
 24 (Track Playing.)
 25 A. I'm not able to say whether

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1 MATTHEW RITTER
 2 that multiple bounce stroke was executed with
 3 one or two hands. Whereas on Bust Dat Groove
 4 it was definitely executed with one hand.
 5 This one to me sounds a more aggressive and it
 6 also sounds like the hi-hat may stop
 7 momentarily there, in which case it is
 8 possible the drummer took both sticks and did
 9 sort of a simultaneous two handed multiple
 10 bounce stroke.
 11 Q. So if it was two hands it
 12 wouldn't be, you wouldn't perform one multiple
 13 bounce stroke with two hands?
 14 A. You might take both sticks and
 15 kind of go "zzzzzz" yeah.
 16 Q. I want to go into track number
 17 13 of Defendants' Exhibit 30.
 18 (Track Playing.)
 19 Q. On track 13 what instruments do
 20 we hear?
 21 A. Bass drum, snare drum and
 22 hi-hat.
 23 Q. Can you tell if that is
 24 Mr. Vargas playing track number 13?
 25 MR. CHIN: Objection. Go

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1 MATTHEW RITTER
 2 ahead.
 3 A. I don't know.
 4 Q. Do you hear ghost notes on
 5 track 13?
 6 A. No, I don't hear any.
 7 Q. Do you hear multiple bounce
 8 stroke on track 13?
 9 A. No.
 10 Q. We will play track 14.
 11 (Track Playing.)
 12 Q. I will start it over. That is
 13 track 14 of Defendants' Exhibit 30.
 14 (Track Playing.)
 15 A. Okay, all right. I know that.
 16 That must be Bust Dat Groove with Ride.
 17 Finally. Yes, that is Mr. Ralph Vargas
 18 playing Bust Dat Groove on his drum set with a
 19 ride cymbal added in.
 20 Q. What about, let's go through
 21 it. What instruments do you hear on track 14?
 22 A. Bass drum, snare drum, ride
 23 cymbal. Let me listen again and see if he
 24 pulled the hi-hat out or if the hi-hat is
 25 still in there, too.

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1 MATTHEW RITTER
 2 Q. Did you hear ghost notes on
 3 track 17?
 4 A. I didn't hear any, no.
 5 Q. Did you hear any multiple
 6 bounce stroke?
 7 A. No.
 8 Q. Would there be, if you had to
 9 determine for certain what instruments were
 10 played on track 17, how would you do that?
 11 A. I would ask the drummer who
 12 played it what he played if I had to be 100
 13 percent certain. But I believe it is snare
 14 drum, a bass drum, a hi-hat and some other
 15 kind of high pitched sound, possibly another
 16 snare drum or something.
 17 Q. I am done with these, I
 18 believe. You said you were listening
 19 repeatedly to Bust Dat Groove and Aparthenonia
 20 in doing your analysis to reach your
 21 conclusions; right?
 22 A. Yes.
 23 Q. Did you hear any difference in
 24 the sounds caused by recording quality between
 25 the two tracks?

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1 MATTHEW RITTER
 2 A. One of the tracks, I think it
 3 was Aparthenonia, on the whole sounded a
 4 little tinier to me or something.
 5 Q. Was there anything else?
 6 A. No.
 7 Q. When you said -- you said
 8 Aparthenonia sounded a little tinier; right?
 9 A. Yes.
 10 Q. I will just look at your
 11 declaration which is Defendants'
 12 Exhibit number 5. I want to turn to page 4
 13 paragraph 9. Paragraph 9 you say Bust Dat
 14 Groove and Aparthenonia are identical; is that
 15 true?
 16 A. Yes. I have here that they are
 17 identical in ways that would be impossible
 18 unless they drum tracks were in fact one and
 19 the same. The ways being the sound of the
 20 drums, the nuance of touch, the tuning of the
 21 instruments and the choice of rhythmic
 22 elements.
 23 Q. You don't note there that
 24 Aparthenonia sounds tinier; do you know?
 25 A. No. Because I attribute that

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1 MATTHEW RITTER
 2 to the sound quality of the recording itself.
 3 Just like these I am hearing here sound very
 4 scratchy and everything, too. But it still
 5 sounds like identical to Bust Dat Groove in
 6 ways that would be impossible unless that was
 7 Bust Dat Groove.
 8 Q. On page 5, paragraph 12, you
 9 say Aparthenonia and Bust Dat Groove sound
 10 identical; right?
 11 A. Yes.
 12 Q. On Defendants' Exhibit 29 which
 13 was --
 14 A. Correction, the way the music
 15 elements in Aparthenonia and Bust Dat Groove
 16 are played sound identical. In addition to
 17 the sounds themselves. But the recording
 18 quality sounds slightly different from one
 19 track to the other to me.
 20 Q. So when you say in your
 21 declaration that the drum sounds in Bust Dat
 22 Groove and Aparthenonia are identical, did you
 23 mean that there is no detectable difference to
 24 the human ear?
 25 A. I meant I was listening to a

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1 MATTHEW RITTER
 2 recording of the same snare drum. Sounds
 3 identical to me.
 4 Q. So, when you say identical in
 5 your declaration you don't mean the drum
 6 sounds of Bust Dat Groove and Aparthenonia
 7 cannot be distinguished; is that right?
 8 MR. CHIN: Objection.
 9 A. The quality of the recording
 10 can. It is like the Louis Armstrong analogy I
 11 made earlier, if I listen to two Louis
 12 Armstrong, one of them one on a vinyl record,
 13 one on a CD, the sound quality of the source
 14 is going to be a little different but, yes,
 15 Louis Armstrong's voice will sound identical
 16 to me.
 17 Q. And in your, what we called
 18 your draft declaration which was produced
 19 today --
 20 A. Yes.
 21 Q. -- for the first time,
 22 Defendants' Exhibit 29, page 4, you also say
 23 that the sound themselves are identical; is
 24 that right?
 25 A. Yes.

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1 MATTHEW RITTER
 2 MR. CHIN: Objection. You can
 3 answer.
 4 A. Yes, that's correct.
 5 Q. So if you take out that one hit
 6 of the drum it would no longer be a basic rock
 7 beat?
 8 A. Yeah. You have complicated
 9 things slightly, perhaps significantly
 10 depending on who the student is, by taking out
 11 something that is a sort of anchor for the
 12 rhythm.
 13 Q. The other things played there
 14 on the one beat would be the first 1/8th note
 15 on the hi-hat, right?
 16 A. That's true, yes. What happens
 17 many times, at times I have asked students to
 18 play that exact rhythm where they don't play
 19 the base on 1, they play the bass drum only on
 20 3, after one or two passes through, their
 21 brain flips it around on them and they think
 22 the 3 is the 1, then they are out of sync with
 23 the music.
 24 Q. About what level would a
 25 student have to be to play at the basic rock

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1 MATTHEW RITTER
 2 beat but no bass on the first beat?
 3 MR. CHIN: Objection.
 4 Q. In your experience.
 5 A. For a student to be able to
 6 play that consistently all the way through a
 7 song without losing their bearings they
 8 probably have to take lessons for a few
 9 months.
 10 Q. Would you consider that like
 11 intermediate level or how would you describe
 12 that level?
 13 A. I think after a few months they
 14 are sort of advanced beginner.
 15 Q. Is the multiple bounce stroke a
 16 common element used to embellished a rock
 17 beat?
 18 A. It is used on occasion, it is
 19 not what I consider very common, because since
 20 it is something subtle, it is a subtle nuance,
 21 it is the kind of thing, frankly that in rock
 22 music would be drowned out by the electric
 23 guitar and so forth. A lot of jazz drummers
 24 used to do a multiple stroke bounce with
 25 one -- multiple bounce stroke with one hand.

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1 MATTHEW RITTER
 2 It is not as common in rock.
 3 Q. Does James Brown's music use
 4 multiple bounce strokes?
 5 A. I can't say for sure, I don't
 6 know.
 7 Q. So you said that the beating of
 8 the snare drum on the 2 and 4 drum beat is
 9 basic, right?
 10 A. That is basic, yes. Hitting
 11 the snare drum on the 2 and the 4.
 12 Q. And Bust Dat Groove track is
 13 the snare hit on the 2 and the 4?
 14 A. Well, it is hit on the 2 and
 15 what we call the E of 2. Which is the note
 16 immediately preceding. It is hit on the 4
 17 then the E of 4. That actually is extremely
 18 complicated to do. Especially if you are
 19 going to have two different volume levels
 20 between the first note and next note because
 21 it means you have to make one very loud stroke
 22 and immediately follow on the same instrument
 23 with a soft stroke. This is the kind of thing
 24 that would take years for a drummer to be able
 25 to do.

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1 MATTHEW RITTER
 2 Q. Okay. Is the, I just want to
 3 look at your transcription just so I
 4 understand what you're saying when you say the
 5 E of the 1 --
 6 A. E of 2.
 7 Q. Sorry. We are looking at
 8 Defendants' Exhibit 5, we are looking at Bust
 9 Dat Groove transcription which is the first
 10 one attached to the declaration?
 11 A. Yes.
 12 Q. The snare line, we will look at
 13 that individually. That is the third one
 14 down.
 15 A. Okay.
 16 Q. You said the E was the note
 17 immediately preceding the 1?
 18 A. Immediately following. Not the
 19 1. We are talking about the 2 and 4.
 20 Q. Sorry. Right.
 21 A. So, yeah, we take each beat, by
 22 each beat I don't mean each -- I don't mean
 23 each hit on the drum. I mean each moment of
 24 music. It is usually divided into four parts,
 25 we have the number and we have what we call

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1 MATTHEW RITTER
 2 Q. Would it always have to be that
 3 way?
 4 MR. CHIN: Objection.
 5 A. I mean I'm sure that, you know,
 6 many drummers like myself have been in
 7 situations where, you know, some other
 8 creative member of the band, guitarist or
 9 something might suggest why don't you try this
 10 or that.
 11 Q. In fact if you played sheet
 12 music written by somebody else, the elements,
 13 choosing the elements and combining would be
 14 the choice of the person who wrote the music
 15 you're playing, right?
 16 A. That's true. Yes. So in that
 17 case the thing left would be the exact
 18 phrasing that the drummer used. The nuance of
 19 touch that he decided to use and the sound he
 20 decided to get from the instrument, either,
 21 you know, by tuning them or having someone
 22 else tune them to his liking.
 23 Q. So, putting aside the way the
 24 drums were tuned and played, can you just
 25 identify each thing that makes Bust Dat Groove

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1 MATTHEW RITTER
 2 original?
 3 MR. CHIN: Objection.
 4 A. So aside from --
 5 Q. If possible?
 6 A. In other words, aside from the
 7 words chosen and sentences construction what
 8 is original about the poem? Is that the
 9 question?
 10 Q. We were talking about the drums
 11 and recording of a drum beat so just, you
 12 know, if there is anything aside from the way
 13 they are tuned and how they are played is
 14 there anything that makes Bust Dat Groove
 15 original?
 16 A. The combination --
 17 MR. CHIN: Hold on. Sorry.
 18 Objection.
 19 A. This is an original combination
 20 of elements that I have not seen exactly in
 21 this way before, the combination of the
 22 rhythmic elements chosen. The way the drums
 23 are struck with the nuance of touch and the
 24 way the drums were tuned, including a choked
 25 snare drum.

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1 MATTHEW RITTER
 2 Q. What other elements -- you said
 3 the original combination of elements made it
 4 original. What other than the multiple bounce
 5 stroke makes Bust Dat Groove an original
 6 composition?
 7 MR. CHIN: Objection. You can
 8 answer.
 9 A. Everything I just said. In
 10 fact I don't even think I mentioned the
 11 multiple bounce stroke. I was talking about
 12 this exact combination of rhythmic elements,
 13 meaning what's happening on beat 1, what's
 14 happening on beat 2 and what's happening on
 15 beat 3.
 16 So the, this combination of
 17 rhythmic elements, the way these drums were
 18 struck, the decision to place the ghost notes,
 19 one of them being, yes, multiple bounce stroke
 20 in one specific spot, the way the drums were
 21 tuned and checked in the sense, in the case of
 22 the snare drum.
 23 And the way the drums were then
 24 hit so as to get a specific sound, for example
 25 hitting the snare extremely loudly on beat 2,

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1 MATTHEW RITTER
 2 immediately followed by a ghost note on the E
 3 of 2 struck so delicately that the snare drum
 4 sounds like a tom.
 5 Q. Is it your opinion if another
 6 drummer heard this rhythmic pattern and
 7 repeated it, that they would be copying
 8 Mr. Vargas' original creation?
 9 A. I do believe they would be
 10 copying his, yes, his original, you know,
 11 combining of these rhythmic elements. I doubt
 12 very much if this other drummer would also be
 13 able to imitate the exact nuance of touch that
 14 Ralph executed this rhythm with.
 15 That's why, you know, that is
 16 the very reason why people use sampling, we
 17 were talking before about James Brown. Led
 18 Zepplin is another one very famous that took a
 19 very famous rhythm from Led Zepplin's song
 20 called When the Levy Breaks, it was sampled
 21 and used in Beastie Boys' songs and so forth.
 22 The reason for this you can't just write down
 23 a rhythm on a piece of paper, have any drummer
 24 play it and make it sound the same.
 25 If you want to sound like James