

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---oOo---

RALPH VARGAS and BLAND-RICKY)
ROBERTS,)
)
Plaintiffs,)
) No. 04CV 9772
vs.) (JCF)
)
)
PFIZER, INC.; PUBLICIS, INC.;)
FLUID MUSIC; EAST WEST)
COMMUNICATIONS, INC. and)
BRIAN TRANSEAU, p/k/a "BT",)
Defendants.)

**CERTIFIED
COPY**

Deposition of

BRIAN TRANSEAU

NON-CONFIDENTIAL SECTIONS, PAGES 1-94; 112-182

CONFIDENTIAL SECTION, PAGES 95-111

Wednesday, August 16, 2006

Reported by:

GEORGE SCHUMER, CSR

(01-385207)



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I N D E X

DEPOSITION OF BRIAN TRANSEAU
Wednesday, August 16, 2006

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1 BE IT REMEMBERED that, pursuant to Notice of
2 Taking Deposition, and on Wednesday, August 16, 2006,
3 commencing at the hour of 10:15 a.m. thereof, at the
4 Law Offices of Kirkland and Ellis, 555 California
5 Street, 27th Floor, San Francisco, California, before
6 me, George Schumer, a Certified Shorthand Reporter in
7 and for the State of California, personally appeared

8 BRIAN TRANSEAU,

9 called as a witness by plaintiffs, who,
10 being by me first duly sworn, was thereupon
11 examined and testified as hereinafter set forth.

12 - - -

13 KIRKLAND AND ELLIS, 555 California Street,
14 27th Floor, San Francisco, CA 94104, represented by
15 CHRISTOPHER W. KEEGAN, Attorney at Law, appeared as
16 counsel on behalf of defendant Transeau.

17 415-439-1400

18 LAW OFFICES OF PAUL A. CHIN, 233 Broadway,
19 5th Floor, New York, NY 10279, represented by PAUL
20 A. CHIN, Attorney at Law, appeared as counsel on
21 behalf of plaintiffs. 212-964-8030

22 {lawyerchin@aol.com}

23 STANFORD LAW SCHOOL, 559 Nathan Abbot Way,
24 Stanford, California 94305, represented by DAVID S.
25 OLSON, Attorney at Law, appeared as counsel on

1 behalf of defendant Transeau. 650-724-0517

2 {dolson@law.stanford.edu}

3 Also Present: Video by Ted Hoppe

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1 AUGUST 16, 2006

10:15 A.M.

2 THE VIDEOGRAPHER: Here begins Volume 1,
3 Videotape 1, in the deposition of Brian Transeau, in
4 the matter of Ralph Vargas and Bland-Ricky Roberts vs.
5 Pfizer, Inc., et al., in the United States District
6 Court, Southern District of New York, Case No.
7 04-CV-9772.

8 Today's date is August 16, 2006. The time on
9 the video monitor is 10:19.

10 The video operator today is Ted Hoppe, a
11 Notary Public contracted by LegaLink-Video Solutions,
12 San Francisco, California. This video deposition is
13 taking place at 555 California Street, San Francisco.

14 Counsel, could you please voice-identify
15 yourselves, and state whom you represent?

16 MR. CHIN: Paul Chin, the attorney for the
17 plaintiffs in this case, Ralph Vargas and Bland-Ricky
18 Roberts.

19 MR. KEEGAN: Chris Keegan of Kirkland and
20 Ellis, for Brian Transeau.

21 MR. OLSON: David Olson of Center for Internet
22 and Society, from Stanford Law School, for defendant
23 Brian Transeau.

24 THE VIDEOGRAPHER: The court reporter today is
25 George Schumer of LegaLink-San Francisco. Please

1 swear the witness in.

2 (Whereupon, BRIAN TRANSEAU was duly sworn)

3 EXAMINATION BY MR. CHIN

4 MR. CHIN: Q. Good morning, Mr. Transeau.

5 A. Good morning.

6 Q. As I indicated earlier, my name is Paul Chin;
7 I'm the attorney for the plaintiffs in this case.

8 Today we are going to be taking your deposition.

9 Have you ever had your deposition taken
10 before?

11 A. Yes, I have.

12 Q. So probably some of the rules that applied in
13 your previous depositions are going to apply here, and
14 I'll just go over some of the ground rules and we'll
15 get started.

16 I'm going to be asking you questions related
17 to this case. I'm going to be asking your personal
18 knowledge. If I ask you a question that you don't
19 understand, please let me know that you don't
20 understand, and I'll try to rephrase it as best I can.

21 I don't want you to guess at any of your
22 answers. I don't want you to speculate, but I am
23 entitled to your best estimates. And provided that
24 your best estimates can be given without guessing or
25 speculating, I would like to have those.

1 MR. KEEGAN: Objection. Ambiguous as to what
2 sound engineering is.

3 MR. CHIN: Q. What is sound engineering?

4 A. Sound engineering would be -- what I think you
5 are referring to is mixing records.

6 Q. Is there another definition of sound
7 engineering that you know of?

8 A. I have never heard it referred to in that --

9 Q. How would you usually hear it?

10 A. Mixing.

11 Q. And so let's use the word "mixing," since that
12 is probably more appropriate.

13 When did you first learn the art of mixing?

14 A. I started mixing my own music out of necessity
15 when I was -- I think I was 13 years old, about.

16 Q. How did you go about learning how to mix?

17 A. I moonlighted at a studio called Omega Studios
18 in Rockville, Maryland, and I learned to mix on a
19 Neve; SSL consoles; splicing on half-inch and
20 quarter-inch tape; recording to, you know, two-track,
21 24 -- sorry, to 24-track, 2-inch tape. All those kind
22 of now-antiquated and defunct art forms.

23 Q. When you were at the Omega Studios in
24 Rockville, Maryland, did they have a mixing board that
25 they used there?

1 A. They had both a Neva and SSL console. I
2 learned to mix on both of them.

3 Q. How would you describe the Neva console?

4 A. As warm.

5 Q. Physically touching as warm?

6 A. No.

7 Q. What do you mean?

8 A. It sounds warm. It is a warm-sounding board.

9 That's how I answered your question. I didn't
10 understand what you were specifically asking, so...

11 Q. I'll make it a little clearer.

12 Was it a 24-track channel console?

13 A. No.

14 Q. How many channels would a Neva console have on
15 it?

16 A. It depends.

17 Q. The one that you worked on.

18 A. I would say that it was probably an 80-input
19 Neva console.

20 Q. What about the SSL?

21 A. Roughly the same.

22 Q. What does equipment like the Neva console and
23 SSL console -- what do they do, with respect to mixing
24 music?

25 A. I'm not sure I understand your question.

1 Q. What is the function of the console?

2 A. The function of a recording console in
3 general? Is that your question?

4 Q. Yes, sure.

5 A. The function of a recording console is as an
6 input device to -- like I said, antiquated recording
7 systems, which is analog tape. Analog tape is not
8 even manufactured anymore.

9 But now a recording console functions as a
10 glorified input box to a computer, where one would do
11 subtle EQ'ing; compression; a variety of other
12 engineering techniques to sculpt sound, and to mix --
13 although I don't know anybody that mixes on large
14 mixing boards anymore. I mix with a mouse.

15 Q. What about to create dynamics? Would you use
16 the console for that as well?

17 MR. KEEGAN: Objection; vague.

18 MR. CHIN: Q. You can answer it.

19 A. What do you mean by "dynamics"?

20 Q. Do you have an understanding what the term
21 "dynamics" means with respect to mixing music?

22 A. I don't understand the question.

23 Q. Do you know what the word "dynamics" means, in
24 terms of recording music?

25 A. I really don't understand that question,

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A. No.

Q. What do you mean by "frequency"?

A. The frequency information inherent in a sound is -- depending on if the sound is stochastic or periodic in nature, it can be a plethora of different wave forms occurring simultaneously, or it can be one periodic wave form with overtones, which is a guitar strike or a mallet strike on a marimba, for example.

Q. Anything else that comes to mind?

A. No.

Q. Do you know what sampling is? Sampling a sound.

A. I understand, I think, the colloquial way you are using the term "sampling," yes.

Q. Is there a more professional way of using it, rather than colloquial?

A. I would say there is, actually.

Q. Great. So one at a time.

The colloquial form of sampling: What do you understand that to mean?

A. The usage of the word "sampling" in the way that I think that you are referring to it as -- would be the process of someone taking the Technics SP-1200 turntable, and the Akai MPC-3000, and grabbing a loop off a Bob James record. That's how I think you are

1 referring to it.

2 Q. That would be sort of the colloquial form?

3 A. That's correct.

4 Q. Now give me the more professional definition
5 of what sampling is.

6 A. It is actually -- sampling, as it were -- you
7 can define any kind of digital recording technique as
8 sampling. So if you record a guitar into a computer,
9 you could technically call that sampling.

10 Q. So would it be fair to say that either in the
11 colloquial form or the professional form, sampling is
12 the process of taking something -- whether it be music
13 or sound -- and putting it someplace else?

14 A. No.

15 Q. Is there some process that is -- that can be
16 used in order to sample something, whether you are
17 talking about it in the colloquial form or in the
18 professional form?

19 A. I don't understand the question. Sorry.

20 Q. When you said "taking a guitar string, copying
21 it," and then you said "using it someplace else";
22 right?

23 A. No.

24 Q. Could you say that description again?

25 A. I said a guitar strike being recorded into a

1 the Akai MPC-3000 and SB-12, no.

2 Q. And have you had experience in the
3 professional form of sampling?

4 A. I wouldn't characterize digital audio
5 recording as sampling, so I would say no.

6 Q. So sampling doesn't apply to that?

7 A. Sampling doesn't apply at all to my work.

8 Q. Sampling doesn't apply at all to your work?

9 A. That's correct.

10 Q. Are you familiar with something called a
11 "stutter edit"?

12 A. Yes, it is a technique I have developed --
13 proprietary sound design technique I have developed
14 over the last ten years.

15 Q. What is a stutter edit?

16 A. It is a very complicated question. Do you
17 want the long answer, or the longer answer?

18 Q. We both probably would prefer getting the
19 shorter answer.

20 A. A stutter edit, the technique that I've
21 invented, is basically the repetition of microevents
22 of an audio file, and something I have coined as
23 calling "unreal note values" -- which are over
24 notatable note values, which would be 64th notes,
25 extending up to 128th, 256th, 512th; 1024th; 2048th

1 notes. An extension of my stutter technique I have
2 developed over the last couple of years is applying
3 math curves, exponential and logarithmic curves, to
4 micronote values, and splicing from pitch into rhythm
5 -- so the area between 12 Hertz and 20 Hertz.

6 That's the short definition. And it sounds
7 really, really cool.

8 MR. KEEGAN: The definition?

9 THE WITNESS: The technique.

10 MR. CHIN: Q. I know that was the short
11 version you provided me, but would it be fair to say
12 that a stutter edit is the technique of taking a small
13 sample of a sound, and then repeating it in a musical
14 as well as a mathematical way?

15 A. Yes.

16 Q. And when you talk about a "sample of a sound,"
17 in that definition, we're not talking about the
18 colloquial form of sampling that we just discussed?

19 A. I actually didn't catch that you said
20 "sample." So I disagree with my last statement.

21 Q. Let me state the definition again, kind of a
22 narrowed-down definition -- that the stutter edit is a
23 technique which consists of taking a small sample of a
24 sound --

25 A. I would disagree with that.

1 Q. Let me finish, and then you can disagree --
2 taking a small sample of a sound, and then repeating
3 it in a musical, as well as a mathematical way.

4 A. I would disagree with that.

5 Q. What part of that would you disagree with?

6 A. I would define my stutter edit technique very
7 simply as the rhythmic repetition of audio material.

8 Q. The rhythmic repetition of audio material?

9 A. Yes. The way that you stated it implies
10 sampling in the vernacular sense, which I said before
11 is not a part of my work, and it is not. And it is
12 important for me to stress that, especially with what
13 we're talking about here.

14 Q. Sure, I understand.

15 A. So it could be something, for example, where I
16 have done a digital audio recording of a 110-piece
17 orchestra, as, where we're using as an example Fast
18 and the Furious, and a bar before a big down beat,
19 taken and done really cool sort of microslicing and
20 dicing job, to recorded audio material in a rhythmic
21 fashion, that yields these sort of exotic and
22 interesting rhythmic results.

23 Q. So when you are doing this slicing and dicing,
24 you are slicing and dicing a sound; is that correct?

25 A. That's correct.

1 Q. And where does that sound come from?

2 A. The sounds are all sounds I create.

3 Q. So you have never -- your music doesn't
4 involve taking a copy of a recording, whether it be
5 the recording of a 10-piece orchestra or your own
6 recording -- and then putting it into a computer, and
7 then doing this slicing and dicing, and then having
8 some portion of that sliced sound be repeated over and
9 over in a musical and/or mathematical way?

10 MR. KEEGAN: Objection. Compound.

11 THE WITNESS: I don't understand the question.

12 MR. CHIN: Q. Have you ever recorded music --
13 not your own -- into a computer, and then sliced and
14 diced that music, and taken a portion of it, and
15 created a stutter edit of that sliced and diced sound?

16 A. No, I have not.

17 MR. KEEGAN: Objection. Compound.

18 MR. CHIN: Q. Do you know what granular
19 synthesis is?

20 A. Very well.

21 Q. Here again, if you have a short, layman's
22 definition?

23 A. Those are big ones.

24 MR. KEEGAN: Go ahead and give the
25 definitions. You need to give a full definition of

1 what it is. But to the extent that it is not 10
2 minutes.

3 THE WITNESS: I apologize for being so
4 loquacious.

5 MR. CHIN: Q. That's all right. If that's
6 what the answer calls for, that's fine.

7 A. Granular synthesis is the process of taking a
8 sound file and splitting it into very small
9 components, and having the ability in some sound
10 design platforms to literally shred a sound file into
11 thousands of particles, and to recongeal them at will.

12 It is kind of akin to being able to scatter a
13 cloud and recongeal it at will. It is a very modern
14 synthesis technique.

15 Q. If I said that granular synthesis is the
16 equivalent of taking a deck of cards, spreading them
17 out, and then bringing them back together, would that
18 be the same thing?

19 A. Yes, I think so.

20 Q. And during this process, can you take, say,
21 the jack of hearts, and put it someplace else when you
22 bring it back together?

23 A. I don't understand the question. But just to
24 restate what granular synthesis is, granular synthesis
25 involves very, very small sound fragments. We're

1 talking about things 10-to-the-15th samples, which
2 would be in the range of 1/10,000th of a second.

3 Q. When you say "samples," what do you mean by
4 that?

5 A. Samples is a technical definition of
6 in-recorded audio material.

7 Q. In-recorded audio material?

8 A. In-recorded audio material -- this is the way
9 I use the word "samples." If I say I need to cut 15
10 samples into something, that means you cut sample --
11 used in this more popularized, or actually musically
12 correct usage of the word -- is -- a sample is one bit
13 of audio information.

14 Q. Okay.

15 A. It is the smallest not-subdividable division
16 of audio material.

17 Q. So in my example of the deck of cards -- and
18 the deck of cards at the top is the jack of hearts --
19 granular synthesis is the spreading out of that whole
20 deck of cards, and could you put the jack of hearts,
21 when you bring it back together, at the bottom of the
22 deck?

23 A. Actually, you would have the jack of hearts
24 subdivided into 10,000 micro pieces. So you could
25 exchange 1/10,000th of it with 1/10,000th of another

1 card.

2 Q. So basically granular synthesis allows you to
3 sort of mix and match sounds?

4 A. No.

5 Q. You can't mix and match sounds?

6 A. No.

7 Q. Can you mix and match a sound?

8 A. It depends on what you are referring to.

9 Q. The deck-of-cards example: I'm just using
10 that as one sound; maybe the strike of a drum.

11 A. You are completely mischaracterizing what
12 granular synthesis is, and what it sounds like.

13 Q. Okay.

14 A. Granular synthesis sounds like a massive
15 textural cloud. You don't make rhythmic things with a
16 granular synthesis, ever.

17 Q. What do you use it for?

18 A. Use it for textures and ambiences; sound
19 design. You would never use granular synthesis for
20 designing anything rhythmic, ever.

21 Q. Would you say that granular synthesis involves
22 sound manipulation?

23 A. Define "sound manipulation."

24 Q. I'm not sure. The ability to manipulate
25 sound.

1 see.

2 Four or five.

3 Q. Okay, so there were more vocals on ESCM?

4 A. I could afford a microphone at that point.

5 Q. Now --

6 A. That's true, too. I couldn't afford a
7 microphone for my first record.

8 Q. I represent recording artists, and they go
9 through -- many recording artists go through that pain
10 still.

11 A. Yes.

12 Q. ESCM: Did you say that it fell under a
13 particular genre of music? Or you couldn't define it?

14 A. It is more eclectic, ESCM, than my first
15 album.

16 Q. Eclectic?

17 A. Stylistically eclectic.

18 Q. What styles?

19 A. Stylistic break beat; trance; progressive
20 house. There is a track that's fairly industrial
21 sounding. And all of it is kind of interspersed with
22 this big, washy Eno-esk ambience, so it is not really
23 definable, honestly.

24 Q. That was 1997. What was your third album?
25 Strike that. Did you record a third album?

1 A. Yes.

2 Q. What was your third album?

3 A. My third album is called "Movement In Still
4 Life."

5 Q. Do you know what year that was released?

6 A. 1999, I believe, or 2000. Depending on the
7 territory.

8 Q. Was ESCM and Movement In Still Life also
9 distributed by Warner Brothers?

10 A. ESCM was distributed by Warner Brothers -- by
11 Kinetic Records in America; by Perfecto/East West --
12 Warner Brothers in England. In different territories
13 it was distributed by different companies.

14 Q. But Warner Brothers was the main distributor;
15 the main label?

16 A. For England.

17 Q. Not for the US?

18 A. No.

19 Q. It was East West for the US?

20 A. No, it was Kinetic -- which is also a
21 subsidiary of East West. But it is also related to
22 Reprise Records.

23 Q. Reprise is not related to Warner Brothers?

24 A. Reprise is defunct now.

25 Q. In 1997?

1 A. No, Reprise and Warner Brothers were two
2 companies that operated in the same space. So I don't
3 know, honestly. I wouldn't be able to tell you that.

4 Q. And "Movement In Still Life": How would you
5 define the genre of music on that album?

6 A. Again, that was even more eclectic than the
7 last.

8 Q. Did it have any break beats?

9 A. It had a track called -- let's see. There was
10 a track called "Ride" that -- when I say "break beat,"
11 I mean break beat in a different way than I think you
12 mean break beat.

13 There is a style of music popularized by
14 artists such as Adam Freeland; Meat Katie
15 Dylan-Rhymes, that functions in the BPM range of
16 128-135 beats per minute. It is influenced by drum
17 and bass and jungle bass lines, and does not follow a
18 four-on-the-floor pattern, as other styles of house
19 music or electronic music typically follow.

20 So there were what would be classified as Nu
21 Skool Break beat tracks on there, and two or three of
22 them.

23 Q. And are you saying that the Nu Skool Break
24 beats were different than break beats that we would
25 consider in, say, the genre of music of hip-hop?

1 A. They are not even related.

2 Q. Not related at all?

3 A. Not even remotely related.

4 Q. So the break beats in Movement In Still Life
5 are not related to break beats in, say, hip-hop?

6 A. No, there is actually a track on Movement In
7 Still Life that's a hip-hop track. There is a
8 down-tempo track on Movement In Still Life that's
9 actually very much a hip-hop track. But the Nu Skool
10 Break beat tracks on the record aren't even kind of
11 stylistically related to hip-hop.

12 Q. What is the hip-hop break beat that's on
13 Movement In Still Life? What is the name of it?

14 MR. KEEGAN: Objection. Mischaracterization.

15 MR. CHIN: Q. You said there was a hip-hop
16 beat on Movement In Still Life.

17 A. No, I said there was a hip-hop track on
18 Movement In Still Life. It is called "Love on Haight
19 Street."

20 Q. Did that have vocals?

21 A. Yes, it does.

22 Q. Who sang the vocals?

23 A. It is rhyming; it is not singing.

24 Q. Who rhymed the vocals?

25 A. Rasco, and a guy called 50 Grand.

1 A. No, on the song "Movement In Still Life,"
2 which is a song on the album "Movement In Still Life."

3 Q. I thought that you said you didn't use any
4 samples on Movement In Still Life.

5 A. No, I said "on ESCM."

6 Q. You are right.

7 How did you go about getting that sample from
8 Sugar Hill Gang, to get on the song of Movement In
9 Still Life? Can you tell me -- take me through the
10 process of how it is done.

11 A. Sure, I would be happy to.

12 I had my friend Rasco, that's a Bay Area
13 rapper, rhyme over the top of a track that I put
14 together, which was the track Movement In Still Life,
15 which was unnamed at the time. And he did a vocal.

16 And in it he said that line, and I thought
17 that line was really cool, and I didn't actually like
18 the rest of his vocal, but we were talking, and he
19 goes "that vocal" -- "that line" -- "is from a Sugar
20 Hill Gang song."

21 So I had the box set of the Sugar Hill Gang
22 collection, and I thought it would be really cool --
23 because I hadn't ever sampled before, because --
24 anybody that follows my work, or knows my work, knows
25 that so much of the focus of what I do is creating

1 sounds literally from scratch, even at times from
2 command line, that it was actually a very cool thing
3 to my fan base that I was going to -- you know, I
4 thought it would be a cool thing that I was going to
5 do that.

6 So I decided, instead of using Rasco's vocal,
7 to -- I took the vocal from off a CD. There was an a
8 Capella version of the song on that CD, and I asked my
9 manager to call Sugar Hill Records, and they have a
10 sample clearance department. And so we cleared the
11 sample and put it on the album.

12 Q. Now the actual process of sampling that a
13 Capella vocal: How did you do that? Did you use a
14 sampling machine?

15 A. No.

16 Q. Could you tell me that process? On how you
17 sampled the vocals.

18 A. A sample in the colloquial term?

19 Q. As you are using it in this, yes.

20 A. I put a CD in my CD-ROM drive of my computer,
21 and I pulled the audio track off the CD. And I found
22 that line, and cut it out, and used it in my
23 recording.

24 Q. How did you cut it out?

25 A. Using audio recording software.

1 Q. Which was?
2 A. Logic Audio.
3 Q. Now Logic Audio is a software; correct?
4 A. It is software, that's right.
5 Q. And when you sampled that vocal, do you recall
6 what the sample rate was?
7 A. Yes, I do, actually.
8 Q. What was it?
9 A. 44-1.
10 Q. 44-1 hertz; right?
11 A. Kilohertz.
12 Q. When you sampled, did you have to use
13 plug-ins?
14 A. No.
15 Q. That Logic Audio -- does it have a native
16 sample rate?
17 A. No, it has multiple sample rates.
18 Q. When you come up, does it start off at a
19 native sample rate?
20 A. No.
21 Q. So --
22 A. It is user-defined.
23 Q. So it doesn't have one that it loads up with?
24 A. It may. But it is -- no, it is
25 user-definable.

1 complaint. I'll show you a copy of the second
2 complaint. I'll show you what the defendants have
3 previously marked as Defendant Exhibit 11.

4 A. (Examining document)

5 I have never seen this.

6 Q. Can you summarize plaintiffs' allegations
7 against you in this case?

8 MR. KEEGAN: I'll object, to the extent it is
9 calling for legal analysis or legal conclusion.

10 MR. CHIN: Just his personal knowledge.

11 THE WITNESS: Can you ask the question again?

12 MR. CHIN: Q. Can you summarize for me, in
13 your own words, what you believe plaintiffs' claims
14 are against you?

15 A. I think the plaintiff believes that I sampled
16 his drum loop.

17 Q. To your understanding, is it the plaintiffs'
18 position that you sampled a drum loop in the creation
19 of Aparthenonia?

20 A. My belief is that the plaintiff has obviously
21 not an understanding of what I do, and has said that I
22 sampled something off some record I have never, ever
23 seen in my life; never had access to; don't know
24 anything about.

25 None of my friends, even from the hip-hop

1 Q. What drum machines did you use?

2 A. Roland TR-808; TR-909. A Roland CR-78.
3 TR-606. That's it.

4 Q. And you said "a computer." What computer did
5 you use?

6 MR. KEEGAN: Just to clarify, Paragraph 5 is
7 about Aparthenonia. Are you talking about Breakz, the
8 whole album, or Aparthenonia?

9 MR. CHIN: Aparthenonia.

10 THE WITNESS: That's not what Paragraph 5 is
11 talking about. I have been answering for the whole
12 record.

13 MR. CHIN: Q. Since you have started talking
14 about the whole record, then I'll ask you about
15 Aparthenonia.

16 A. Okay.

17 Q. What computer did you use?

18 A. A blue and white G-3. And -- sorry. And a
19 Dell PC, too. There is an application called Stomper
20 on the Dell PC, that's used for synthesis of snare
21 drums and kick drums, that I used to use a lot during
22 that time period.

23 Q. Anything else?

24 A. In the way of computers?

25 Q. Yes.

1 A. No.

2 Q. Now, for Aparthenonia, what software
3 application did you use?

4 A. Reason and Logic. Reason 1.0, and Logic,
5 roughly version 4.7.

6 Q. What drum machines did you use?

7 A. None. I used the soft drum machine, Red Drum.
8 It is not a plug-in. It is a function of Reason. It
9 is how you make beats in Reason. The Rex player in
10 Red Drum. So if you want to classify that as a drum
11 machine, I did use that.

12 Q. But it wasn't a separate plug-in?

13 A. No, it wasn't.

14 Q. Which computer did you use?

15 A. The G-3. So I used Reason 1.0 with the Reason
16 factory sound library. And Logic. And then in
17 mixing, I used the plug-ins I stated.

18 Q. You indicate in Paragraph 5 that Aparthenonia
19 is "programmed." What do you mean by that?

20 A. I mean, when I say "programmed," that it is a
21 beat created in a computer.

22 Q. Then you say, "The percussion elements
23 originated in an off-the-shelf music generator
24 computer program, Propellerhead Reason."

25 A. That's correct.

1 Q. What percussion elements are you referring to?

2 A. Kick drum, snare drum, high hat, and
3 low-velocity snare notes, which I have heard referred
4 to as ghost notes.

5 Q. Any tom-toms?

6 A. No.

7 Q. The other snare drum -- you said a low
8 velocity?

9 A. That's right.

10 Q. Is there any particular reason why you chose
11 to use a low-velocity snare drum?

12 A. If you will see any of my interviews, I will
13 talk about programming beats. And one of the
14 characteristics of a live drummer, that makes a live
15 drummer sound like a live drummer, is the syncopation
16 between the back beat hits of a snare drum. And it is
17 sort of one of my specialties in back beats, to make
18 beats that sound live.

19 Q. The low-velocity snare drum, you indicated
20 that it had been referred to by the plaintiff as
21 "ghost notes"?

22 A. Yes.

23 Q. Do you know what a ghost note is?

24 A. I understood the term. Yes, I know what it
25 is.

1 working in Reason for years, I probably have saved 200
2 patches total, and I have done tens of thousands of
3 sounds in reason.

4 Q. So when you say you "rendered it down," what
5 does that mean?

6 A. Again, it is easier to show than to speak
7 about.

8 There is a function called "render song" or
9 "render loop" as an audio file. So it is bouncing out
10 the beat you are working on, or the pad you are
11 working on, or the bass line you are talking about or
12 whatever.

13 Q. Did you bounce it internally to a disk, or did
14 you bounce it mixed to a DAT?

15 A. At that time I would have bounced it out to an
16 external hard drive. DAT players are a thing of the
17 90's.

18 Q. So you bounced it out to an external hard
19 drive?

20 A. To an external skuzzy drive. FireWire didn't
21 exist at that time.

22 Q. Did you use Midi?

23 A. No.

24 Q. And where were you, when you created
25 Aparthenonia?

1 A. On the back of my tour bus.

2 Q. How long did it take for you to create
3 Aparthenonia on the back of your tour bus?

4 A. I would be speculating, because there's 403
5 beats on the record.

6 Q. 403 versions of Aparthenonia?

7 A. No, there's 403 beats on my record.

8 Q. I'm talking about Aparthenonia. Just that
9 one.

10 A. I would be speculating. Five minutes or less.

11 Q. That would kind of coincide with the time that
12 you mentioned in Plaintiff Exhibit 6.

13 A. That's right, yes. Again, which I'm happy to
14 demonstrate at any time.

15 Q. And in Paragraph 6, you say that Aparthenonia
16 is not a recording of any work, and it contains no
17 sampling of any other sound recording. Is that
18 correct?

19 A. That's correct.

20 Q. And that's true?

21 A. Yes, it is true.

22 MR. CHIN: Let's get this marked as 10.

23 (Document referred to herein marked
24 for identification Exhibit 10)

25 MR. CHIN: We're just going to go off the

1 record, so he can change the tape.

2 THE VIDEOGRAPHER: The time now is 3:03. We
3 are going off videotape record. This also is the
4 conclusion of Tape 2 in the deposition of Brian
5 Transeau.

6 (Recess taken, 3:03-3:08 p.m.)

7 THE VIDEOGRAPHER: The time now is 3:08.
8 We're back on the videotape record. This also marks
9 the beginning of Tape 3 in the deposition of Brian
10 Transeau.

11 Please continue.

12 MR. CHIN: Q. Mr. Transeau, what drum sounds
13 were you able to extract out of Reason, in order to
14 create Aparthenonia?

15 MR. KEEGAN: Objection. Mischaracterizes the
16 testimony.

17 THE WITNESS: Reason has a factory sound
18 library in it, that is filled with both loops,
19 one-shots, synthesis patches, and the like. So I
20 typically, in making beats in Reason -- what I would
21 be demonstrating to you -- it would be taking samples
22 out of the Reason one-shot library, combining them and
23 programming a beat.

24 MR. CHIN: Q. Do you know which ones you
25 selected?

1 A. I actually found the bulk of them, yes.

2 Q. Are they named?

3 A. Yes, they are named.

4 Q. Can you tell me their names?

5 A. I don't remember their names.

6 Q. Do you have something written down, which has
7 the name?

8 A. No, I know where to look for them in the
9 library. They are in the hip-hop section of the
10 one-shot library. So I have to flip through them and
11 listen to them to find them.

12 But actually, the drums that I use for
13 Aparthenonia are actually a combination of drums. So
14 there's not just the one kick drum or one snare drum
15 or one high hat. They are a conglomerate of multiple
16 sound sources.

17 MR. CHIN: Let me go off the record. It is my
18 hotel with my travel information.

19 THE VIDEOGRAPHER: The time now is 3:10, and
20 we're going off videotape record.

21 (Discussion off the record)

22 THE VIDEOGRAPHER: The time now is 3:10.
23 We're back on the videotape record.

24 MR. CHIN: Q. If you were to look back into
25 that hip-hop section in the sound library of Reason,

1 would you be able to identify which ones you used in
2 order to -- which one of the drum sounds you used to
3 create Aparthenonia?

4 A. By sound, yes.

5 Q. If we were to ask you -- the plaintiffs would
6 ask you to do that, not now, but at a later time, and
7 to provide that information to us, could you do that?

8 A. By sound file? Or by sound?

9 Q. After listening to it and identifying which
10 ones you used, write it down and provide that
11 information to us. Could you do that?

12 A. It is possible that I could do that, yes.

13 MR. CHIN: We would like to ask that he do
14 that.

15 MR. KEEGAN: Sure, we can talk about it at a
16 break, and we'll need you to sort of put it formally
17 in a letter, obviously.

18 MR. CHIN: No problem.

19 Q. With respect to ghost notes that we just
20 talked about, were the ghost note sounds also created
21 from drum sounds in Reason?

22 A. Yes.

23 Q. And if you had the time and could listen
24 through the section of the sound library in Reason in
25 which you got the ghost notes, could you provide that

1 information to us?

2 A. Yes, but I couldn't provide what I did to
3 them.

4 Q. That's fine.

5 A. So it is not going to sound anything like a
6 ghost note, unless you watch me do it.

7 Q. It will help to at least know what you started
8 off with.

9 A. It won't.

10 Q. To me it will.

11 Can you do that?

12 A. I can give you sound file names that will
13 sound nothing like a ghost note. I can make them for
14 you in real time. I know you really want to give a
15 performance right now; we can't do it right now.

16 We may be able to do it; I doubt it, but we
17 just can't. So I would like to go just straight
18 through, and if you can, give me the names of the drum
19 sounds that you used in order to create the ghost
20 notes, and if you can do that, that will be fine.

21 Can you do that?

22 A. It is possible.

23 Q. Now I want to show you a document that we have
24 got marked as Plaintiff Exhibit 10. It is a CD with a
25 Bates stamp number BT 00021. I want you to take a

1 So once you finished creating Aparthenonia,
2 and it was rendered, that process -- how long did it
3 take you?

4 A. Again, I would be speculating. There were 403
5 beats on my sample CD.

6 Q. So you don't really remember?

7 A. Can you make your question more specific?

8 Q. Yes, how long did it take you to bring
9 Aparthenonia to where it is on that CD, Plaintiff
10 Exhibit 10?

11 A. It took about five minutes or less to program
12 the beat. And then to mix I would be speculating,
13 because I spent different amounts of time on different
14 beats.

15 MR. KEEGAN: You can give an estimate or
16 range, if you recall.

17 THE WITNESS: At the most, 10 more minutes.
18 So 15 minutes tops to mix a one-bar beat.

19 MR. CHIN: Q. Mr. Transeau, do you recall
20 receiving interrogatories from the plaintiffs -- and
21 interrogatories being questions in written form that
22 the plaintiffs wanted you to answer.

23 A. No, I don't.

24 MR. CHIN: Let's get this marked as Plaintiff
25 Exhibit 11.

1 (Document referred to herein marked
2 for identification Exhibit 11)

3 THE WITNESS: (Examining document)

4 MR. CHIN: Q. Mr. Transeau, I have produced
5 to you a copy of what we have marked as Plaintiff
6 Exhibit 11. It is a document entitled "Plaintiffs'
7 First Set of Interrogatories to Defendant Brian
8 Transeau, and Responses Thereto."

9 I would like you to look through this
10 document, and once you have done it, let me know, and
11 I'll ask you some questions.

12 A. I remember this document.

13 Q. Can you tell me what that document is?

14 A. It is responses to questions that were asked.

15 Q. By plaintiffs?

16 A. That's right.

17 Q. And the responses contained in Plaintiff
18 Exhibit 11, in your interrogatories -- are they true
19 and accurate?

20 A. I actually noticed something inaccurate in
21 here. It says I used a laptop. That's not accurate.

22 Q. That's incorrect?

23 A. Yes.

24 MR. KEEGAN: Which paragraph?

25 MR. CHIN: Q. Yes, which one is that?

1 the G-3 here, up and running, for inspection. It has
2 got Reason in the state that it is in right now. We
3 turned it on yesterday; didn't really play around with
4 anything. There seems to be sort of a file mismatch
5 right now, but all of the software is there, just so
6 you know. But we'll make that available for mutual
7 inspection at a mutually convenient time, if that
8 works.

9 MR. CHIN: Right, because I don't have the
10 sophistication or the knowledge to look at it, sort of
11 like Mr. Transeau looking at the affirmative defenses.

12 MR. KEEGAN: And with that, we actually have
13 no questions for redirect.

14 MR. CHIN: Thank you.

15 THE VIDEOGRAPHER: Let's go off the record.
16 Here marks the end of Videotape 3 in the deposition of
17 Brian Transeau. The original videotapes will be
18 retained by LegaLink-Video Solutions, located at 50
19 First Street, San Francisco, California. Going off
20 the record, the time now is 3:59.

21 (Deposition concluded, 3:59 p.m.)
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DECLARATION OF WITNESS

I declare under penalty of perjury that
the foregoing is true and correct. Subscribed at
_____, California, this
_____ day of _____, 2006.

Signature of witness