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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN, an individual,)
14)
Plaintiff,)
15 v.)
16)
MATTHEW KATZER, an individual, and)
17 KAMIND ASSOCIATES, INC., an Oregon)
corporation dba KAM Industries,)
18)
Defendants.)
19)
20 _____)

No. C-06-1905-JSW

**EVIDENTIARY OBJECTIONS TO
DECLARATION OF MATTHEW
KATZER IN SUPPORT OF RESPONSE
TO OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

21 Plaintiff Robert Jacobsen respectfully submits these objections to the Declaration of
22 Matthew Katzer in Support of Response to Opposition to Plaintiff's Motion for Preliminary
23 Injunction.

24 Paragraph 3: Plaintiff objects to this paragraph on the basis of FRE 402/403.

25 Paragraph 4: Plaintiff objects to this paragraph on the basis of FRE 402/403 because a
26 corporation must act through its executives, employees and agent, and because to the extent that it
27 has any relevancy, it confuses the issues. It is also objected to on the basis of FRE 602 and 802.
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1 Paragraph 5: Plaintiff objects to this paragraph because of lack of foundation. Also, Mr.
2 Katzer's knowledge of manufacturer specifications involves expert opinions and no foundation has
3 been laid for that.

4 Paragraph 7: Plaintiff objects to this paragraph on the basis of FRE 402/403, 602, and 802.

5 Paragraph 8: Plaintiff objects to this paragraph on the basis of FRE 402/403, 602, and 802.

6 Paragraph 9: Plaintiff objects to this paragraph on the basis of FRE 402/403, 602, and 802.

7 Paragraph 11: Plaintiff objects to this paragraph on the basis of FRE 402/403. It is not
8 relevant that KAM software is written in one programming language, JMRI is written in another,
9 and they are incompatible. What is at issue is that Defendants created a tool that took JMRI code
10 and transformed it into files that could be read by KAM software.

11 Paragraph 13: Plaintiff objects to this paragraph on the basis of FRE 402/403, 602, and 802,
12 and because Mr. Katzer's reference to information in decoder definition files as "data" draws a
13 legal conclusion.

14 Paragraph 14: Plaintiff objects to this paragraph because of Mr. Katzer's reference to
15 information in the decoder template files as "raw data" and "spreadsheet of data" draws a legal
16 conclusion. It is also objected to on the basis that no foundation has been laid for the expert
17 opinions given by Mr. Katzer.

18 Paragraph 15: Plaintiff objects to this paragraph on the basis of FRE 402/403, and lack of
19 foundation.

20 Paragraph 16: Plaintiff objects to this paragraph on the basis of FRE 402/403, and lack of
21 foundation. It is also objected to on the basis that no foundation has been laid for the expert
22 opinions given by Mr. Katzer.

23 Paragraph 17: Plaintiff objects to this paragraph on the basis of FRE 402 and 403, and
24 because it misstates the facts. JMRI's open source software is available free of charge, but not free
25 of restrictions. Mr. Katzer did not merely include "data" from the Decoder Definition Files, but the
26 selection, ordering and grouping in those files. Whether Plaintiff was "upset" has no bearing on
27 whether Defendants intentionally infringed JMRI's copyrighted files when they copied verbatim
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1 and modified them so that they could sell the unauthorized derivative works with their products.
2 To the extent that Katzer describes the information in the Decoder Definition Files as “data”, these
3 descriptions are objected to on the basis that they state a legal conclusion.

4 Subparagraph A: Plaintiff objects to this subparagraph because it misstates the facts, offers
5 a legal conclusion (i.e., “foundational works” and “data”), and lacks foundation. This discussion
6 regarding a standard, national or otherwise, is objected to on basis of FRE 402/403.

7 Paragraph 18: Plaintiff objects to this paragraph on the basis of FRE 402/403. He also
8 objects because it misstates the facts. Mr. Katzer did not merely include “data” from the Decoder
9 Definition Files, but the selection, ordering and grouping in those files. He also objects because it
10 offers a legal conclusion that the information in the Decoder Definition Files is “data”.

11 Paragraph 19: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
12 best evidence of what the files do is the files themselves. Also, the best evidence of what was
13 recalled is the recall letter that Katzer sent.

14 Paragraph 21: Plaintiff objects to this paragraph since it misstates the facts. Plaintiff bought
15 two copies of the version 304 CD summer 2006, and the tool remained available for download on
16 the website through August 2006. Plaintiff also objects to this paragraph on the basis of the best
17 evidence rule. The best evidence of what the files do is the files themselves. Plaintiff also believes
18 that under FRE 106, Defendants should provide whether the registered copies of versions 304 and
19 304A continue to permit infringement.

20 Paragraph 22: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
21 best evidence of what Mr. Katzer did is the letter Mr. Katzer sent to his dealers.

22 Paragraph 23: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
23 best evidence of what the files do is the files themselves. Plaintiff also objects because Katzer
24 misstates the facts as the tool was available through August 2006.

25 Paragraph 24: Plaintiff objects to this paragraph on the basis of 402/403 and because it
26 misstates the facts. Mr. Katzer was repeatedly directed to JMRI’s licensing and copyright terms, as
27 shown by Exhibits M and N in Mr. Jacobsen’s declaration which accompanied the Motion for
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1 Preliminary Injunction. A work is copyrighted once it is created. S.O.S., Inc. v. Payday, Inc., 886
2 F.2d 1081, 1085 (9th Cir. 1989). There is no need to “obtain a copyright.” Plaintiff objects to this
3 paragraph as it offers a legal conclusion regarding “obtaining a copyright”.

4 Paragraph 25: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
5 best evidence of what Mr. Katzer did is the letter Mr. Katzer sent to his dealers. Plaintiff also
6 believes that under FRE 106, Defendants should provide whether the registered copies of version
7 305 continue to permit infringement. He also objects to it on the basis of FRE 402/403, because
8 voluntary cessation of the offending activity is not a basis for denying an injunction. (Plaintiff
9 assumes that Mr. Katzer meant to state that version 305 will become non-functional on January 21,
10 2007, not 2006).

11 Paragraph 26: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
12 best evidence of what Mr. Katzer did is the letter Mr. Katzer sent to his customers. Plaintiff
13 objects to this paragraph on the basis that it lacks foundation.

14 Paragraph 28: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
15 best evidence of what the software does is the software itself. Plaintiff also believes that under
16 FRE 106, Defendants should provide whether the registered copies of version 306 to permit
17 infringement. He also objects to it on the basis of FRE 402/403, because voluntary cessation of the
18 offending activity is not a basis for denying an injunction. (Plaintiff assumes that Mr. Katzer
19 meant to state that version 305 will become non-functional on March 21, 2007, not 2006).

20 Paragraph 29: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
21 best evidence of what Mr. Katzer did is the letter Mr. Katzer sent to his dealers.

22 Paragraph 31: Plaintiff objects to this paragraph on the basis of the best evidence rule. The
23 best evidence of what the software does is the software itself, and what the “new” database
24 contains in the database itself. Plaintiff also believes that under FRE 106, Defendants should
25 provide whether the registered copies of version 307 continue to permit infringement. Plaintiff
26 objects to this paragraph because it misstates the facts. Defendants’ manual is still available on the
27 web, and it contains infringing derivative works created from the JMRI files. He also objects to it
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1 on the basis of FRE 402/403, because voluntary cessation of the offending activity is not a basis for
2 denying an injunction.

3 Respectfully submitted,

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5 DATED: November 17, 2006

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By _____/s/
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