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15 Attorneys for Defendants
16 Matthew Katzer and Kamind Associates, Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERT JACOBSEN, an individual,)
21 Plaintiff,)
22 vs.)
23 MATTHEW KATZER, an individual, KAMIND)
24 ASSOCIATES, INC., an Oregon corporation dba)
25 KAM Industries, and KEVIN RUSSELL, an)
26 individual,)
27 Defendants.)

Case Number C06-1905-JSW

DECLARATION OF MATTHEW
KATZER IN SUPPORT OF SPECIAL
MOTION TO STRIKE

I, Matthew Katzer, declare:

1. I am Chief Executive Officer and Chairman of the Board of Directors of

Kamind Associates, Inc. ("KAM"). I am a named defendant in this action. If called as a

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Declaration of Matthew Katzer in support of Motion to Strike

1 witness, I would and could testify to the following as a matter of personal knowledge.

2 2. I am authorized by KAM to make this declaration in support of the motion by
3 KAM and myself to strike the plaintiff's libel claim and I make this declaration in my
4 capacity as KAM's Chief Executive Office and Chairman of the Board of Directors.

5 3. KAM authorized Kevin Russell, as KAM's attorney, to send a Freedom of
6 Information Act (FOIA) request to the United States Department of Energy ("DOE") on
7 behalf of KAM with regard to the DOE's apparent sponsorship of the java model railroad
8 interface ("JMRI") project, which distributes model railroad software that KAM believe
9 infringes on patents owned by KAM. The FOIA Request is attached as Exhibit 1.
10

11 4. My belief that the DOE sponsored the JMRI project was based on the following
12 facts, among others:
13

14 a. I was aware of other instances in which governmental agencies sponsored types
15 of open source software. For example, the United States Navy, through the Office of
16 Naval Research and the Naval Surface Warfare Center, sponsored a conference and paper
17 on real-time software controllers for digital model railroad systems in 1993.
18

19 Additionally, the National Science Foundation funded research for a paper entitled "A
20 Laboratory Platform to Control a Digital Model Railroad over the Web using Java"
21 (undated). Copies of both papers are attached to this declaration as group Exhibit 2.
22

23 b. I believe that I saw notice of the formation of JMRI on DOE or other official
24 letterhead on a JMRI users support website (<http://groups.yahoo.com/group/JMRIusers>)
25 in about January or February of 2004.
26

c. I have found and downloaded not fewer than 2,320 documents promoting JMRI

1 from an e-mail account at lbl.gov, including requests for funding. Copies of
2 representative documents are attached as group Exhibit 3.

3 d. By performing a search on the internet, I determined that the lbl.gov email
4 address was associated with the DOE.

5 5. The purpose of the FOIA request was to obtain any publicly available
6 information subject to disclosure under the FOIA about activities apparently sponsored
7 by DOE that appeared hostile to KAM and its interests. It was also intended to caution
8 DOE that KAM regarded some of the JMRI software as infringing KAM's patents.
9

10 6. It was not the purpose of the FOIA request to embarrass Jacobsen with his
11 employer, as alleged in the complaint. At the time of sending the FOIA request, I had no
12 knowledge of Jacobsen's employment status, either with the DOE or any other employer.
13 At the time of sending the FOIA request, I assumed that Jacobsen worked for the
14 University of California at Berkeley based on a representation Jacobsen made in an email
15 posting to a model train internet newsgroup in 2001. A copy of this email is attached as
16 Exhibit 4.
17

18 7. A purpose of the FOIA request was to gather information about the JMRI
19 activity, which appeared to be conducted with the sponsorship of the Department of
20 Energy, in the preparation of a lawsuit, contemplated in good faith, against JMRI
21 participants for infringement of KAM's patents.
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I declare under penalty of perjury under the laws of the United State of America
that the foregoing is true and correct.

Executed on May 10, 2006, at Hillsboro, Oregon.


Matthew Katzer