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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, an individual,

Plaintiff,

vs.

MATTHEW KATZER, an individual, and  
KAMIND ASSOCIATES, INC., an Oregon  
corporation dba KAM Industries,

Defendants.

Case Number C06-1905-JSW

Hearing Date: December 19, 2008  
Hearing Time: 9:00am  
Place: Ct. 2, Floor 17

Hon. Jeffrey S. White

**DEFENDANTS MATTHEW  
KATZER AND KAMIND  
ASSOCIATES, INC.'S RESPONSE  
TO PLAINTIFF'S MOTION TO  
STRIKE PORTIONS OF  
MATTHEW KATZER'S  
DECLARATION**

1 **STATEMENT OF ISSUED TO BE DECIDED**

- 2 1. Should this Court grant Plaintiff’s motion to strike portions of Matthew Katzer’s  
3 Declarations [Dkts.#256, 261]?

4  
5 **STATEMENT OF RELEVANT BACKGROUND FACTS**

6 Matthew Katzer recently filed two declarations, one in support of Defendant Kevin  
7 Russell’s Reply [Dkt.#256] and one in opposition to Plaintiff’s Motion for a Preliminary  
8 Injunction [Dkt.#261]. Both of these declarations contain similar statements of fact regarding  
9 Katzer’s state of mind and belief regarding the validity of the now-disclaimed’329 patent and his  
10 state of mind and belief regarding JMRI’s infringement of that patent. Plaintiff has filed a  
11 motion to strike these statements asserting that these statements contain improper legal  
12 conclusions and argument in violation of Civil Local Rule 7.5(b).

13 **ARGUMENT**

14 Plaintiff’s assertion that Katzer’s statements relating to the ‘329 patent are “legal  
15 conclusions” is erroneous. Plaintiff has continually asserted that Defendants never had a good  
16 faith belief in the validity of the ‘329 patent and therefore committed fraud on the United States  
17 Patent and Trademark Office and lied in their declarations in support of the special motion to  
18 strike the libel claim. *E.g.* Plaintiff’s Opposition to Defendants’ Motion to Dismiss for Mootness  
19 [Dkt.#243] at 3. This assertion is the basis for Plaintiff’s *de facto* motion to reconsider the anti-  
20 SLAPP fee award contained in Plaintiff’s Opposition papers [Dkt.#243] .

21 The declaration of Matthew Katzer responds to this allegation. Katzer’s declaration  
22 contains facts, not opinions or conclusions, about Katzer’s state of mind, *i.e.* that Katzer believed  
23 and still believes that the ‘329 patent was valid prior to disclaimer. Katzer never asserts a legal  
24 opinion on the validity of the ‘329 patent, rather Katzer asserts facts regarding his *belief* about  
25 the validity of the patent, and how this belief drove defendants’ actions. Indeed, since the ‘329  
26 patent has been disclaimed, the issue of whether this patent is legally valid is moot.

1 **CONCLUSION**

2 Based on the above, Plaintiff's motion to strike should be denied.

3  
4 Dated November 26, 2008.

5 Respectfully submitted,

6           /s/          Scott Jerger            
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14 **CERTIFICATE OF SERVICE**

15 I certify that on November 26, 2008, I served Matthew Katzer's and KAM's Response to  
16 Plaintiff's Motion to Strike on the following parties through their attorneys via the Court's ECF  
17 filing system:

18 Victoria K. Hall  
19 Attorney for Robert Jacobsen  
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23           /s/          Scott Jerger            
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