Hall Declaration Exhibit D

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ROBERT JACOBSEN,   :   NO. C-06-1905-JSW
                                    :
     Plaintiff,   :
                                    :
   - vs -   :   COPY
                                    :
MATTHEW KATZER, et al.,   :
                                    :
     Defendants.   :

          Videotaped deposition of MICHAEL

MOSHER, taken at HOLIDAY INN EXPRESS, 398

Smith Street, Vineland, New Jersey, taken on

Thursday, September 10, 2009, beginning at

approximately 5:38 p.m., before Kim L. Montalvo,

Registered Professional Reporter, Certified Court

Reporter and Notary Public in and of the

Commonwealth of Pennsylvania.

MICHAEL MOSHER

1   Q.   What is the purpose of the QSI manual?

2   A.   To give the listing of each config --

3 configuration variable, and what the definition of

4 each bit or -- and bit -- if it's a bitmap or what

5 the value it does.

6   Q.   Okay. Is it a reference manual?

7   A.   Yes.

8   Q.   Or an instruction manual?

9   A.   Yes.

10   Q.   Okay. If someone were to open up that

11 manual to -- or why would someone want to use that

12 manual?

13   A.   To program a decoder.

14   Q.   Okay.

15   A.   Either by computer or if they did it with

16 their hand -- handheld throttle on their DCC

17 system.

18   Q.   So you can use the manual to program a --

19 a QSI decoder using a handheld device?

20   A.   Yes.

21   Q.   Now, what is the purpose of a decoder

22 definition file?

23   A.   Saves all the values so you can reprogram

24 if you have to in the future. Puts in easy-to-use

25 format instead of try and remember bits and bites

MICHAEL MOSHER

1   and different values. It puts it in a nice

2   drop-down list or sliders to be able to pick easily

3   and put it in nicer, easier-to-read format than

4   remembering CV numbers.

5   Q.   Okay. Now, is it -- is the QSI manual as

6   a reference manual interchangeable within decoder

7   definition file?

8   A.   No.

9   Q.   If you took a page from the QSI manual and

10   scanned and digitized it, could you put it in a

11   decoder definition file and have that decoder

12   definition file work?

13   A.   No.

14   Q.   About QSI decoders, do they have sound

15   recordings?

16   A.   Yes, or sound decoders. You can't add

17   your own recordings. You have to only get

18   recordings from QSI.

19   Q.   Okay. And are the sound recordings based

20   on recordings from actual trains?

21   A.   Yes, as far as I know.

22   Q.   Okay. And do you know if QSI creates any

23   of the sounds?

24   A.   No, I don't.

25   Q.   Okay. Now, I want to move to decoder

1   Q.   Uh-hum.

2   A.   And then you got to either --

3   MS. HALL: If I could interrupt for

4   just a second. Scott, we're getting a lot

5   of noise from your phone. Can you put it

6   on mute and speak when you have some

7   question or something?

8   MR. JERGER: Sure.

9   MS. HALL: Thank you.

10   BY MS. HALL:

11   Q.   Okay. Okay. Where you left off was

12   creating a decoder definition file. Go ahead and

13   continue.

14   A.   First, try to find if there -- if that

15   particular CV would fit into an existing pane,

16   which is where the CVs show up in when you're

17   actually using it. And if not, add it to a pane

18   that's specific to that particular decoder.

19   Q.   Okay. Are there -- what are the

20   constraints -- or let me ask you this: Are there

21   any constraints in creating decoder definition

22   files, such as, you know, it needs to work with

23   JMRI or NMRA standards or decoder chip constraints?

24   A.   Well, it has to be able to work with JMRI.

25   There's -- in the program, there's an -- in the

MICHAEL MOSHER

1   debug menu there's a validate file and a check file

2   they run through to make sure the syntax is

3   correct. And does not necessarily match NMRA

4   because the decoder has to match the decoder, the

5   CV decoders. And they may or may not match the

6   NMRA standards for every CV.

7   Q.   Okay. But the NMRA does put out a

8   standard for CVs; is that right?

9   A.   That's correct. Mainly CVs --

10   MR. JERGER: I object to the form of

11   that question.

12   BY MS. HALL:

13   Q.   Okay. Does the NMRA put -- put out a

14   standard?

15   A.   Yes.

16   Q.   And is that standard used by

17   manufacturers?

18   A.   Yes.

19   Q.   Would that -- would that standard

20   constrain what CV values are available to use?

21   A.   Yes.

22   Q.   Okay. Now, tell me about the choices that

23   you make in creating a decoder definition file.

24   A.   I'm not sure what you mean.

25   Q.   Okay. I'll tell you what, we're going to

MICHAEL MOSHER

1   A.   I didn't leave anything out, I don't

2 think.

3   Q.   Okay. You've worked on -- you've created

4 some other files, as well; is that right?

5   A.   Yes.

6   Q.   Did you make choices on -- on what decoder

7 inputs and what variables should display?

8   A.   Yes.

9   Q.   Did you make choices on how decoder inputs

10 would be arranged within the file?

11   A.   Yes.

12   Q.   Did you make choices on what to leave in

13 and what to leave out of those?

14   A.   Yes.

15   Q.   Okay. But not in this particular file

16 itself?

17   A.   I don't believe, not this file. It's a

18 pretty simple decoder.

19   Q.   Okay.

20   A.   Very early decoder.

21   Q.   Okay. When you -- for those other files

22 that you worked on, when you made these choices,

23 what drove your decisions?

24   MR. JERGER: Object to the form of

25   the question.

1 BY MS. HALL:

2   Q.   When -- let's see, you made decisions --

3 you -- you stated earlier that you made decisions

4 on variable selections, arrangements, and inputs?

5   A.   Yes.   How -- basically, how -- how I

6 thought it would look best, grouped with other

7 variables that were similar -- similar use or

8 whatever.

9   Q.   Did that involve creativity on your part?

10   MR. JERGER: Object to the form.

11   MS. HALL: Please answer.

12   THE WITNESS: I guess.

13 BY MS. HALL:

14   Q.   Did you -- did anything else govern your

15 decisions to create decoder definition files? Let

16 me rephrase the question. What considerations did

17 you take in when you created a decoder definition

18 file?

19   A.   I wanted to get every CV in the file, and

20 try to arrange them as best so that -- so that

21 things that were -- you -- a user would want -- a

22 configure would be grouped together so that each --

23 each function you grouped together.

24   Q.   Okay. Does that mean that you would

25 necessarily arrange it in num -- numerically,

1   section. This file is based on the most recent

2   firmware releases for each model. For those who

3   have earlier firmware releases, the previous file

4   'Version7CVSupport.txt' may be more applicable. I

5   renamed this file to CV -- 'Version7CV_1.txt.'"

6   Q.   Is Mr. Pruss's E-mail in response --

7   excuse me -- is Mr. Pruss' E-mail in response to

8   anything in particular?

9   A.   His response to an E-mail I sent on list

10 asking for an updated investigation of the file.

11   MS. HALL: Okay. And I'm going to

12   hand two other exhibits. These are

13   Exhibit Mosher Number 19 and Exhibit

14   Mosher Number 20. These are -- Exhibit

15   Mosher 19 is RGJ_mm.00000430. And it --

16   the Exhibit Mosher Number 20 is

17   2RGJ_mm.00000013. I'm handing that to the

18   court reporter to ex -- to mark as Exhibit

19   Mosher Number 20.

20   -   -   -

21   (Whereupon, Exhibits Mosher-19 and

22   -20 were marked for identification.)

23   -   -   -

24   MS. HALL: The court reporter has

25   handed these two exhibits to Mr. Mosher.

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 1    BY MS. HALL:

 2        Q.    Mr. Mosher, would you please read these

 3    exhibits.

 4        A.    E-mail from Mr. Pruss, "Michael I've added

 5    'Version7CVSupport_15Feb09.txt' to the group's

 6    Files section."

 7        Q.    And this is -- and let me step back a

 8    second.  Do you recognize these E-mails?

 9        A.    Yes.

10        Q.    And why do you recognize these?

11        A.    These are E-mails from Mr. Pruss

12    responding to a question for an updated file.

13        Q.    And who is the request from?

14        A.    Me.

15        Q.    And what did Mr. Pruss do?

16        A.    Created a new file and uploaded it to the

17    Yahoo Groups Files section.

18        Q.    Okay.  And what date was this?

19        A.    February 15th, '09.

20        Q.    Have there been subsequent E-mails between

21    you and Mr. Pruss?

22        A.    Yes.

23        Q.    And what -- what did these E-mails -- or

24    let me step back a second.  You've written Mr.

25    Pruss after February of 2009?
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MICHAEL MOSHER

1   A.   Yes.

2   Q.   And what did you -- what -- what was the

3 purpose of those E-mails?

4   A.   Asked for another updated support file.

5   Q.   How many other E-mails have you written to

6 Mr. Pruss?

7   A.   Just the one I know of.

8   Q.   Okay. And did Mr. Pruss respond?

9   A.   Yes, he did.

10   Q.   And what did he do?

11   A.   He put a new file on the Yahoo Group's

12 Files section.

13   Q.   Okay. So stepping back a second here. In

14 these exhibits, you've had contacts with Mr. Pruss

15 by way of QSI's Yahoo Groups from 2006 through

16 2009?

17   A.   Yes.

18   Q.   And you've had contacts with Mr. Pruss

19 after Mr. Katzer filed his counterclaim against Bob

20 Jacobsen for copyright infringement of the QSI

21 manual. That was in mid February 2009?

22   A.   Yes.

23   Q.   Did Mr. Pruss object in any way to what

24 you were doing with these files?

25   A.   No.

MICHAEL MOSHER

1   Q.   He knew what you were doing with these

2 files?

3   A.   Yes.

4   Q.   These -- this information was posted to

5 QSI LISTSERVS; is that right?

6   A.   Yes.

7   Q.   Do you know if others at QSI are getting

8 information from the LISTSERVS?

9   A.   Yes. I have had E-mails from other QSI

10 employees.

11   Q.   Who?

12   A.   The one I remember is Josh, and I don't

13 remember his last name. He's spoke several times

14 on -- about -- was that he did some custom installs

15 of adding QSI revolution decoders to sound. And he

16 was talking about it. And saying he was going to

17 do a write-up and post it on -- on the website, but

18 I haven't seen the write-ups yet.

19   Q.   And why would he -- did he E-mail you?

20   A.   It was on the list.

21   Q.   Was it intended for you?

22   A.   No.

23   Q.   Okay. All right. So in all the time that

24 you have requested files, and these files have been

25 provided, there's been no objection from Mr. Pruss

1   about your use of these files?

2   A.   No.

3   Q.   And there's been no objection from QSI on

4   your use of these files and decoder definition

5   files?

6   A.   No.

7   Q.   And there has been no removing you from

8   QSI's LISTSERV so as -- so as to remove your access

9   to these files; is that right?

10   A.   No.

11   Q.   If QSI had told that you it thought QSI

12   decoder definition files infringed its rights,

13   would you have continued to create QSI decoder

14   definition files?

15   A.   No.

16   Q.   Just to reiterate, QSI has never said to

17   you that QSI defini -- definition files infringe

18   its rights?

19   A.   No.

20   Q.   If you had the opportunity to say

21   something to Fred Severson about QSI's assignment

22   of the manual to Katzer and Katzer's $6 million

23   copyright infringement claim against Bob Jacobsen,

24   what would you say to Fred Severson?

25   A.   "Why?"

MICHAEL MOSHER

1   forward/reverse only; is that right?

2   A.   Yes.

3   Q.   Okay. So is there any -- other than --

4   let me rephrase that.

5   Are all of the decoder definition

6   files that you create organized in that particular

7   fashion?

8   A.   Yes. I try to make them all in numerical

9   order because on the JMRI CV tab it lists tell in

10   order of the file. And it's nice to be able to

11   sort -- search quickly and find them in numerical

12   order.

13   Q.   Okay. And so for this particular file,

14   looking at Exhibit 2, it looks like you spent about

15   11 hours on it. So this is -- this is one of the

16   -- I guess, well, the most complicated file; is

17   that fair to say?

18   A.   Yes. It was very complicated.

19   Q.   Okay. So let's -- let's look at this 104

20   in conjunction with 105. And what 105 is is the --

21   it's the KAM version of the same file as I

22   understand it. Does that makes sense to you?

23   A.   Yes.

24   Q.   Okay. And do you see -- you know what,

25   just simply speaking, what are the similarities --

1   those effects to happen.

2   Q.   Okay. And so these -- these features here

3   describe -- or these phrases here describe what's

4   available on a particular chip; is that my

5   understanding of what you just said?

6   MR. JERGER: Object to the form of

7   that question.

8   THE WITNESS: Yes.

9   BY MS. HALL:

10   Q.   You stated that the numbers are in numeric

11   order, if my understanding is correct, if I

12   understand your testimony; is that right?

13   A.   Yes. Other than the splitting up of the

14   non-index and index CVs.

15   Q.   Okay. So there are the non-index CVs

16   first and then the index CVs; is that right?

17   A.   Yes.

18   Q.   The -- let's take a look at that same page

19   again that we were just looking at, which has at

20   the top ienumChoice choice="Dim Reverse Light"

21   value="75"/, and then I guess that's a caret. And

22   it has similar phrases involving other features.

23   Does this information organized in this fashion

24   appear anywhere in any QSI manual?

25   A.   No. QSI sorts them by num -- or

MICHAEL MOSHER

1   alphabetic order of the name, where I have them in

2   order -- numerical order of the value.

3   Q.   Okay.   Moving back two pages to

4   KAM-00032823.   Towards the bottom of that page

5   there is another label; it says, "CV=53.1.0."   Do

6   you see that?

7   A.   Yes.

8   Q.   And do you know what that refers to,

9   without answering the question yet, yes or no?

10   A.   Yes.

11   Q.   Over the next few pages, do you see other

12   information related to a CV 53?

13   A.   Yes.

14   Q.   And for how many pages does it go on?

15   Actually, give me a Bates number when it stops?

16   A.   32853.

17   Q.   Okay.   Does this organization appear in

18   the QSI manual?

19   A.   No.

20   MR. JERGER: Object to the form.

21   BY MS. HALL:

22   Q.   Answer the question.

23   A.   No.

24   Q.   Looking back to -- from -- to

25   KAM-00032822, about midway through.   I want to draw

1   form of that question.

2   BY MS. HALL:

3   Q.   Let me take you back -- let's see here --

4   to the previous page that's KAM-00032821.   And that

5   is CV 51, about the middle of the page.   You have a

6   note in the middle of the page related to the

7   formatted items.   Can you read that for me.

8   A.   "QSI CV.PI.SI formatted items."

9   Q.   And what does that -- what does that mean?

10   A.   Means the CV numbers listed first, then

11   the primary index after a period, and then another

12   period, and a secondary index.

13   Q.   What is a primary index?

14   A.   CV 49.   It's the way QSI allowed more

15   values to be stored given the limited number of

16   manufactured unique CVs that NMRA originally

17   defined.

18   Q.   Okay.   Well, let me -- let me step back a

19   second.   For this page and the following page,

20   which is KAM-00032822, you've written some code

21   here.   Does this code appear in any QSI manual as

22   it's written here?

23   A.   No.

24   Q.   You've said that you are -- you are

25   familiar with this file, you wrote it?

MICHAEL MOSHER

1   A.   Yes.

2   Q.   Does any of this code in this file appear

3   in any QSI manual as it's written in this file?

4   A.   No.

5   Q.   Okay. You were asked some questions about

6   hours, and that -- you said that this file took you

7   11 hours.

8   A.   It's probably a conservative number, but

9   that's what I said.

10   Q.   It's a conservative number. Have you

11   worked with other JMRI developers on decoder

12   definition files?

13   A.   Yes.

14   Q.   How long on average -- or do you know how

15   long on average it takes them to create a decoder

16   definition file?

17   A.   No, I do not.

18   Q.   Is it conceivable that some will take

19   longer?

20   A.   Yes.

21   MR. JERGER: Objection.

22   BY MS. HALL:

23   Q.   Is there --

24   MR. JERGER: Form.

25   MS. HALL: I'm sorry. What was the