

# Hall Opposition Declaration Exhibit D

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

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ROBERT JACOBSEN,

Plaintiff,

v.

No. C-06-1905-JSW

MATTHEW KATZER, et al.,

Defendants.

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DEPOSITION OF  
HOWARD G. PENNY

FRIDAY, SEPTEMBER 11, 2009  
12:03 P.M.

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1           A     Not a very positive one, because I don't see  
2 any references in it.

3           Q     References to what?

4           A     To it being a modification of what I did.  
5 And looking through it -- granted, it's in a very  
6 different format, but -- not really that different. It's  
7 just twisted around. Not a very positive one for not  
8 having gotten any credit for it -- contributing to the --  
9 to its development.

10          Q     Is credit important to you?

11          A     Yes.

12          Q     Why?

13          A     It's -- I worked exceptionally hard on  
14 creating the functionality to be able to program my  
15 locomotive. And the fact that I could share it with  
16 others through the open source JMRI project made it that  
17 much more fun to do. I had tremendous support from other  
18 model railroaders and tremendous support from other  
19 developers in the JMRI project. And it -- you know, it's  
20 flattering when people give you credit and give you praise  
21 for what you did.

22          Q     Is that a reason that you joined the JMRI?

23          A     Yeah, as a matter of fact. When I first got  
24 interested in it, in programming, I looked around to see  
25 what software was available, and there was none that would

1 do anything for the QSI decoders, other than the basic CVs  
2 defined by the NMRA. And the fact that there were a group  
3 of people that were interested in developing this type of  
4 product in an open source -- I was quite excited to help  
5 contribute.

6 Q If Mr. Katzer had -- let me step back a  
7 second.

8 If you knew that Mr. Katzer had incorporated  
9 a modified version of your file in his products but that  
10 he did not file JMRI's license terms, would that affect  
11 whether you would continue to contribute files to JMRI?

12 A Yes.

13 Q Why?

14 A It -- for somebody else to use my creation,  
15 that I had not deliberately given them that -- I mean,  
16 granted, the JMRI project being open source, anybody can  
17 look at it and use it and modify it, but they're supposed  
18 to give credit to those people who -- who did it. And if  
19 I'm not going to get credit for what I did, then I would  
20 have to cease my contributions, because there really was a  
21 lot of effort in this.

22 Q Have you heard if Mr. Katzer was  
23 incorporating your work in his files?

24 MR. JERGER: Objection to the form.

25 THE WITNESS: I have heard rumors of such,

1 and I don't -- I mean -- yes. I mean, that -- that  
2 came to my attention, and it -- I think the first  
3 thing that I actually caught wind of it was that  
4 "someone" is doing it. Doesn't matter who it is, but  
5 someone that I didn't feel that I had authorized to  
6 use it.

7 BY MS. HALL:

8 Q And you said someone was doing what? What  
9 do you mean by that?

10 A Had -- was incorporating not only decoder  
11 files that I had designed, but actually the software to  
12 process that, and incorporated it so that other programs  
13 could do programming, as well, to the QSI -- the  
14 particular CV.PI.SI format.

15 Q Has that affected whether you are continuing  
16 to work for JMRI?

17 A Yes, it has definitely affected my  
18 contributions.

19 Q How so?

20 A I am still a member -- I have not made a  
21 code commit -- if you're familiar with SoundForge [sic],  
22 where -- is the repository for all of the software, all of  
23 the code that goes into making the JMRI project. And it  
24 also includes the DTD -- DTD files and the decoder XML  
25 files.

1 Q And what is it about those files, again?  
2 Have you -- have --

3 A I have not contributed anything in quite  
4 some time.

5 Q And why is that?

6 A Well, because it's very discouraging to find  
7 it being used by others that are not giving credit for it.

8 Q Mr. Katzer is a competitor with the JMRI, in  
9 that he produces model train software just like JMRI does.  
10 How does it feel to be an unpaid contributor to  
11 Mr. Katzer's software?

12 A It does not feel good. It's very  
13 disrespectful. And when somebody's using your stuff and  
14 doesn't even give you a pat on the back for having done  
15 it -- publicly, then it's -- you know, I can find other  
16 people that are more appreciative to my capabilities.

17 Q Okay. You said that you're familiar with  
18 Mr. Katzer. How do you know him?

19 A I know him only through the -- basically,  
20 this particular legal proceeding that we're involved in,  
21 and I am aware of his product. Quite honestly, I have  
22 never seen anything more than some screen shots of his  
23 product. I have never found anyone who uses it. And --

24 Q Have you ever heard of him outside of model  
25 railroading?