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Attorneys for Defendants  
Matthew Katzer and Kamind Associates, Inc.

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

**DECLARATION OF R. SCOTT  
JERGER IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

1  
2 I, R. Scott Jerger, declare:

- 3 1. I, R. Scott Jerger, am over the age of 18 and am competent to testify and make  
4 these averments from my own knowledge and observations. I hereby state as  
5 follows.
- 6 2. I am the attorney for Matt Katzer and KAMIND Associates, Inc.
- 7 3. Attached as Exhibit 1 to this Declaration are true and accurate copies of emails  
8 between Jerry Britton and Bob Jacobsen regarding the transfer of the domain  
9 names decoderpro.com and computerdispatcherpro.com.
- 10 4. Attached as Exhibit 2 to this Declaration is a true and accurate copy of a portion  
11 of the deposition transcript of Fred Severson taken on September 14, 2009.
- 12 5. Attached as Exhibit 3 to this Declaration is a true and accurate copy of a letter  
13 from Bob Jacobsen to Mr. Fred Hamilton, the executive director of the Model  
14 Railroad Industry Association.
- 15 6. Attached as Exhibit 4 to this Declaration is a true and accurate copy of a page of  
16 the QSI Reference Manual Version 3.0.
- 17  
18

19 I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct.

21 Executed on November 13, 2009 at Portland, Oregon, U.S.A.

22  
23  
24 /s/ R. Scott Jerger  
R. Scott Jerger

# EXHIBIT 1

JERRY BRITTON  
August 24, 2009

JACOBSEN VS  
KATZER

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

ROBERT JACOBSEN, AN	:
INDIVIDUAL,	:
PLAINTIFF	:
	: NO. C06-1905-JSW
VS	:
	:
MATTHEW KATZER, AN	:
INDIVIDUAL, AND KAMIND	:
ASSOCIATES, INC., AN OREGON	:
CORPORATION D/B/S KAM	:
INDUSTRIES,	:
DEFENDANTS	:

VIDEO

DEPOSITION OF:	JERRY BRITTON
TAKEN BY:	PLAINTIFF
BEFORE:	HELENA L. BOWES, RPR NOTARY PUBLIC
	TORR PIZZILLO, LEGAL VIDEO OPERATOR
DATE:	AUGUST 24, 2009, 9:06 A.M.
PLACE:	GEIGER & LORIA REPORTING SERVICE 2408 PARK DRIVE HARRISBURG, PENNSYLVANIA

GEIGER & LORIA REPORTING SERVICE - 1-800-222-4577

Exhibit 1  
Page 1 of 5

ID: 22369  
DATE: 2004-10-26 09:11:09  
FROM: Jerry Britton <jerry@pennsyr.com>  
TO: Bob Jacobsen <Bob\_Jacobsen@lbl.gov>  
SUBJECT: Re: Checkmate...  
MAILBOX: Production3

On Tuesday, October 26, 2004, at 11:53 AM, Bob Jacobsen wrote:

> At 3:39 PM +0000 10/26/04, keystonecrossings wrote:  
>> OFF LIST

>>  
>> Guess who wants to trade domain names? ;-)  
>

> Interesting.  
>  
> I'm always of two minds about things like this. I'd have preferred to  
> have Matt understand people's concerns,

I agree. He had plenty of opportunity.

> rather than being out-maneuvered.

Aw, come on... It was all just coincidence!

> But I'm happy that he's at least willing to make a deal now.

>  
> There's another thing you should be aware of, though. Matt has also  
> registered "traincontroller.com" & "trainprogrammer.com", which are  
> the names of Juergen Feiwald's RR&Co programs.

>  
> Perhaps we could drive a stronger deal, that involves giving back  
> \_all\_ domains from other people's names?

Unfortunately, I was not aware of the other situation(s) and have  
already responded with a proposal to make the transfer.

If the transfer does indeed take place, I will either:

1) Transfer it to an entity within the JMRI project, if they have DNS  
capability; or

2) Continue to maintain it on my DNS with a redirect to the DecoderPro  
web site.

The domain is registered through 2007. If the domain continues to  
reside on my DNS I would likely just make its renewal a "gift in kind"  
to the JMRI group.

---

Jerry Britton, SPF Member, PRRT&HS  
Pennsylvania Railroad, Eastern Region, 1954 In N Scale.  
"Keystone Crossings" - Home of the "PRR-Talk" mailing list!  
<http://kc.pennsyr.com>  
"Merchandise Service" - Model railroad products...  
<http://merchandise.pennsyr.com>

ID: 46  
DATE: 2004-10-26 09:55:53  
FROM: Jerry Britton <jerry@pennsyrr.com>  
TO: Bob Jacobsen <Bob\_Jacobsen@lbl.gov>  
SUBJECT: Re: Checkmate...  
MAILBOX: RFP15 RFP16 Britton

On Tuesday, October 26, 2004, at 12:48 PM, Bob Jacobsen wrote:

> At 12:02 PM -0400 10/26/04, Jerry Britton wrote:  
>>  
>> Unfortunately, I was not aware of the other situation(s) and have  
>> already responded with a proposal to make the transfer.  
>  
> OK. It will be interesting to see if he actually takes you up on it.

Looking REAL GOOD so far. We've been back n forth three times on details. He wants me to sign a letter saying I won't sell the "decoderpro.com" domain for a profit. Imagine that, coming from him!  
>  
>> If the transfer does indeed take place, I will either:  
>>  
>> 1) Transfer it to an entity within the JMRI project, if they have DNS  
>> capability; or  
>>  
>> 2) Continue to maintain it on my DNS with a redirect to the  
>> DecoderPro web site.  
>>  
>> The domain is registered through 2007. If the domain continues to  
>> reside on my DNS I would likely just make its renewal a "gift in  
>> kind" to the JMRI group.  
>  
> SourceForge doesn't do DNS, but it can handle VHOSTing (which is a  
> little faster than redirects, though my understanding of all this is  
> quite minor):  
>  
> [http://sourceforge.net/docman/display\\_doc.php?docid=777&group\\_id=1](http://sourceforge.net/docman/display_doc.php?docid=777&group_id=1)

Piece of cake. I can work with that.

-----  
Jerry Britton, SPF Member, PRRT&HS  
Pennsylvania Railroad, Eastern Region, 1954 in N Scale.  
"Keystone Crossings" - Home of the "PRR-Talk" mailing list!  
<http://kc.pennsyrr.com>  
"Merchandise Service" - Model railroad products...  
<http://merchandise.pennsyrr.com>







## EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT  
FOR THE 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. )  
\_\_\_\_\_ )

No. C-06-1905-JSW

COPY

VIDEO DEPOSITION OF FRED SEVERSON  
Taken in behalf of the Plaintiff

September 14, 2009

Portland, Oregon

1 A. Yes. Right. I knew that. Of course.

2 Q. Okay. So the creation of these decoder  
3 definitions that support QSI decoders, that is authorized?

4 A. No. It's the information that is authorized. I  
5 mean, it's got to, like, put a name on it or whatever.  
6 But it's that, you know, CV13, default value is 10, you  
7 know, blah, blah, blah, blah, blah. That information is  
8 available through our manuals and through CV Manager and  
9 whatever.

10 If they want that information so that it's --  
11 you know, when they call up a QSI decoder for a particular  
12 model, they can download those CV values easily into that  
13 model without actually having to, you know, look at a crib  
14 sheet or go to the reference manual or something like  
15 that.

16 Q. Okay.

17 A. That was my understanding of how they were to  
18 use it.

19 Q. Okay. So if they used that information, the CV  
20 values, the descriptions --

21 A. Not the descriptions. I didn't say anything  
22 about descriptions. I just said send this information  
23 regarding the values to put into -- see, when you download  
24 a file for a new decoder, there's no descriptions in that  
25 file. It's just CV14 equals 10, or something like that.

1 So it's a big, long file. It's got a lot of data in it,  
2 like these big files here that you saw. It just gets  
3 loaded down into the locomotive.

4 Q. Let's take a quick look at one of these files  
5 here, because I'd like to just review this briefly with  
6 you.

7 A. Sure.

8 Q. Okay. Let's take a look at Penny Exhibit  
9 No. 30. It begins RGJ\_HP.00000088.

10 A. Okay. It's got to be in this big pile here  
11 someplace; right? 00 what?

12 Q. RGJ\_HP.000 --

13 A. Oh, HP. HP. Okay. Hold on. These are MMs  
14 here so --

15 Q. A little further. Here.

16 A. Oh. Okay. Go ahead. HP -- HP what?

17 Q. HP -- RGJ\_HP-00000088.

18 A. 88. Okay.

19 Q. All right. Let's go ahead and flip a couple  
20 pages.

21 A. Okay.

22 Q. Earlier today you told me that when Gerry sent  
23 this information to JMRI developers, that he had your  
24 authorization, knowing that JMRI developers were going to  
25 use this material in support of decoder definitions for

1 QSI decoders.

2 A. Okay.

3 Q. This has a list of terms; is that right?

4 A. Yes, it does.

5 Q. So that -- so the use of these terms, the use of  
6 this information, is permitted by QSI to JMRI developers  
7 for creating decoder definitions to support QSI decoders?

8 A. Well, like I was saying before, what I expected  
9 JMRI to do was to take the values of the CVs that were  
10 downloaded, you know, that applied to each one of these  
11 things, all these ID numbers for instance for the sounds,  
12 and put those into them in whatever way that they want to  
13 do it.

14 I envisioned -- see, I've never seen JMRI stuff.  
15 I don't really know what it looks like. So I envisioned  
16 that they had slider bars that they could -- you know,  
17 that the customer may be able to write whatever he wants  
18 to write in there for that particular feature. So it  
19 could apply to say any number of decoders that are out  
20 there.

21 In fact, we kind of thought about doing this  
22 with our CV Manager too, is just to have this big array of  
23 generalized ways of changing CVs. Sometimes they're  
24 slider bars. Sometimes you want to put the actual value  
25 in or whatever. And then a space beside it where a guy

1 could write in what that thing does. You know, so I  
2 didn't -- I didn't -- like I say, I've never seen the JMRI  
3 stuff, so I didn't know. And, you know, frankly, when  
4 they use specific things that, you know, belong to QSI and  
5 then claim ownership on it and then sue a business  
6 associate for it, that's pretty unacceptable.

7 Q. Who told you that Bob Jacobsen claimed ownership  
8 of these terms?

9 A. Matt.

10 Q. If that were not true, would JMRI -- would it be  
11 objectionable?

12 A. If it were not true, if JMRI wanted to arrange  
13 some kind of relationship with QSI to support certain  
14 terms or whatever, then I would need some kind of document  
15 in place so that I could maintain control of the technical  
16 information that went into that JMRI product. I don't  
17 think they want to do that.

18 All I'm sending them here -- I mean, you know,  
19 you've got to understand, Victoria, that when you create a  
20 product where you have to chase every manufacturer that's  
21 out there to find out how they're meandering through the  
22 market, making changes to their product any time that they  
23 want to without even telling you, they can do that, it's  
24 like a nightmare thing to do.

25 So we've never done, with our CV Manager,

1 THE WITNESS: Excuse me. Can I take this?

2 (Recess taken from 3:09 p.m.

3 until 3:12 p.m.)

4 THE VIDEOGRAPHER: We are back on. It's

5 3:12.

6 BY MR. RUSSELL:

7 Q. So you authorized Gerry to support and provide  
8 information to JMRI then?

9 A. That's correct.

10 Q. And in this support he provided technical  
11 information similar to a manner you would provide to other  
12 OEMs?

13 A. Or customers.

14 Q. Or customers.

15 A. Yeah.

16 Q. Does Gerry have the right to grant anybody a  
17 license?

18 A. No.

19 Q. Does Gerry have the right to grant anybody  
20 implied licenses?

21 A. No.

22 Q. So as Gerry being an employee, he wouldn't have  
23 the right to grant any licenses under any circumstances?

24 A. That's correct. Gerry will tell you that.

25 Q. Did you ever grant licenses or -- express or

1 implied licenses to use your materials?

2 MS. HALL: Objection as to implied license.  
3 That's not defined.

4 BY MR. RUSSELL:

5 Q. Go ahead and answer the question.

6 A. No. No license of any kind.

7 Q. In your opinion does the authorization to,  
8 quote/unquote, create files and other things include the  
9 authorization to incorporate your copyrighted text in  
10 their files?

11 A. No.

12 Q. So you'd be surprised to find other people  
13 having incorporated a lot of your text?

14 A. Yes.

15 Q. But you would expect them to use the information  
16 to figure out how to program a decoder?

17 A. Yes.

18 Q. So they can use your materials?

19 A. Yes.

20 Q. And you once talked about some of the rationale  
21 for your maintaining some control over your copyrighted  
22 materials. And is one of those reasons that the values,  
23 the CV values I think is what they're referred to as, are  
24 often hard to get correct when you enter them into the  
25 programmer?



1 applications for other people's products. And if I did,  
2 you can believe me that I would be talking to them about  
3 what I can and can't do, and it would be documented so  
4 that there would be absolutely no legal confusion  
5 whatsoever before I would take somebody else's term and  
6 put it into my software. I would not do that. It's just  
7 a dangerous thing to do.

8 They can change the term. You know, it's their  
9 product. They can make it anything that they want. That  
10 leaves me in a position of having the wrong term there.  
11 Then they call me up and say, Hey, you know, this thing  
12 isn't right, and this guy has no control over it. And I  
13 am sitting here off with my product doing this. You  
14 wouldn't want that.

15 If you wanted to do what JMRI is doing, now that  
16 I understand what they're doing, you would want real hard  
17 contractual relationships saying, this is what I'm going  
18 to do, this is what you provide, this is what I provide,  
19 it will be good for you, it will be good for me, blah,  
20 blah, blah, blah, blah. That's what I want to see, but I  
21 never saw JMRI stuff, so I didn't know.

22 Q. If that's a concern of yours, why didn't you  
23 contact Bob to make arrangements?

24 A. Because he sued a business associate over stuff  
25 that I wrote. For crying out loud, I mean, all the sudden

1 I hear about this thing out of the blue. All of the  
2 sudden I got -- I mean, Microsoft would drop me like a hot  
3 potato if they didn't think that I had ownership of my own  
4 copyrighted material. They won't talk to people that  
5 don't own their stuff, if there's any issues about it  
6 whatsoever. And this is an issue. This is a big issue.

7 Q. If it is not copyrightable material that appears  
8 in JMRI, do you have any problems with it?

9 MR. RUSSELL: I going to have to object.  
10 That calls for a legal conclusion on what is copyrightable  
11 according the Ninth Circuit case law this summer.

12 THE WITNESS: Yeah. I don't even know how to  
13 answer that. I mean, I don't -- yeah, that's a legal  
14 issue. I don't know how to answer that.

15 I mean, Bob should have come to me way back  
16 when. I mean, I understand now that he's saying we had  
17 some kind of implied license, blah, blah, blah, blah. You  
18 don't do business that way. I mean, do you think  
19 Microsoft would do business that way? Nobody would do  
20 business that way.

21 BY MS. HALL:

22 Q. Is Microsoft and JMRI comparable?

23 A. They're both businesses. They both live in the  
24 US. They both conform to US law. Yes, they are. You  
25 think QSI is on equal footing with Microsoft? Not in

1 I was busy. You know, we're developing our own products,  
2 so I'm not sitting here, you know, watching what everybody  
3 else out there is doing with our stuff, except for those  
4 people that I've got relationships with, like our OEMs.  
5 That I know of, because they tell me their locomotive is  
6 coming out, we have a schedule, I get a manual, I get a  
7 change in the manual, I look it over, I respond to it, so  
8 on and so forth. None of that stuff came to me.

9 THE COURT REPORTER: I need you to slow down.

10 THE WITNESS: Oh, I'm sorry. I'm talking too  
11 fast.

12 BY MS. HALL:

13 Q. You said you expected a contractual -- some sort  
14 of contractual negotiations to be started?

15 A. A phone call, an e-mail, something. I didn't  
16 get anything.

17 Q. You did.

18 A. I got something from you. I got something from  
19 him here towards the -- you know, towards the 11<sup>th</sup> hour  
20 after Matt got sued. Then I got something.

21 Q. And you didn't respond.

22 A. No. At that point, are you kidding me? Now I'm  
23 in situation where I've got to establish ownership of my  
24 copyrighted material. We're already in a lawsuit. Matt  
25 is already in a lawsuit. I'm not going to sue Bob

1 Jacobsen over this and spend a lot of money when I can  
2 establish this thing in court in another route.

3 Q. You haven't been able to identify what  
4 copyrighted material was copied from your manual to JMRI  
5 decoder definitions; isn't that right?

6 A. Matt gave me a piece of paper that had those  
7 terms in there that I recognized as ours. I told you I  
8 didn't download JMRI, so I've never used JMRI.

9 Q. So if it turned out that wasn't copyrightable,  
10 then you wouldn't have any problem with it, would you?

11 MR. RUSSELL: I'm going to have to object,  
12 because that calls for a legal conclusion as to what is  
13 copyrightable, which is a judicial decision, not one for a  
14 layperson or a non-judge.

15 BY MS. HALL:

16 Q. Answer the question.

17 A. I'm not a lawyer. I cannot tell.

18 Q. If in that vast 187-page manual 124 words appear  
19 in that manual and are common in a JMRI decoder  
20 definition, would you have a problem with that?

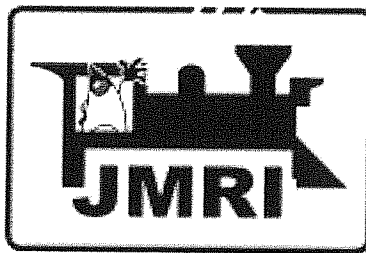
21 MR. RUSSELL: I'm going to have to object to  
22 the question, because it's calling for speculation, and  
23 there's no foundation for what is in a JMRI file and  
24 what's not in a JMRI file. There's no evidence here.

25 THE WITNESS: I'm not able to answer that

EXHIBIT 3

March 26, 2005

Mr. Fred Hamilton  
Executive Director  
MRIA  
P.O. Box 3269  
Renton, WA 98056-0009



**Bob Jacobsen**

**JMRI Project  
1927 Marin Avenue  
Berkeley, CA 94707-2407**

**jmri@pacbell.net**

Dear Mr Hamilton:

Thank you for your letter of March 1, 2005, which clearly explained the criteria for MRJA membership.

We do in fact sell both directly to modelers and to dealers for resale. Our primary product in this sense is a CD for installing the software. It is described on our web site at:

<http://jmri.sf.net/download/CD.html>

Further, we also sell custom software versions and associated configuration support directly to modelers.

The project members have not approved discussing exact gross or net sales numbers. I can tell you that last year's sales exceeded \$5,000. We expect significant growth this year, and the first two months were on track for that.

Although we are a small organization, I believe our sales qualify us for MRJA membership. I also think that both JMRI and MRJA would benefit from that membership. I apologize for not explaining this sufficiently on the original application.

Sincerely,

A black rectangular box containing a white, handwritten signature that reads "Bob Jacobsen".

Bob Jacobsen

EXHIBIT 4

			speed when activated. Cruise control works only in Regulated Speed Control and Speed Control, and not Standard Throttle Control. Cruise Control has no meaning or utility in Neutral.
178	Scale Miles Per Hour Report and Status Report	All	In FWD/REV, the engine's speed in scale MPH is announced. In Neutral, the engine announces its Primary Address (CV1) or Extended Address (CV17-18), its Consist Address (CV19) if it has one, and whether it is in Disconnect, Standby or Shutdown
211	Coupler Effect	All	Although this feature can be applied to all directional states, it has different effects depending on when it is used. If only assigned to FWD/REW it will produce a coupler crash sound. If also enabled in Neutral, it will arm and fire a coupler sound. If it is armed in Neutral, it can be also be fired in FWD/REV.
215	Squealing Brakes	FWD/REV	This feature can be re-triggered over and over again anywhere in the record to extend the brake squeal sound. Do not waste this feature in Neutral where squealing brakes have no meaning.
216	Squealing Brakes + Air Brakes	FWD/REV	Combination of features 215 and 176.
217	Pumps	NFF/NFR	This can be two or one compressor depending on the locomotive. Note that when two pumps are available, each one can be assigned different volumes in CV 52.

Note: Do not confuse the above table with the Individual Sound Identifiers Table shown in CV 52. The above table lists ID's of Features while CV 52 table lists ID's of Individual Sounds.