

Jacobsen Declaration Exhibit AH

Handwritten signature

Kevin L. Russell, OSB No. 93485
 e-mail: kevin@chernofflaw.com
CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP
 1600 ODS Tower
 601 SW Second Avenue
 Portland, Oregon 97204-3157
 Telephone: (503) 227-5631
 FAX: (503) 228-4373

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON

MATTHEW A. KATZER, an individual, and
KAMIND ASSOCIATES, INC., d/b/a Kam
 Industries, an Oregon corporation,

Plaintiffs,

v.

FRIEWALD SOFTWARE, a German entity,
 d/b/a Railroad & Co.; **LOCAR, INC.**, an
 Alabama corporation, d/b/a Oak Mountain
 Hobbies; **ALEXANDER KALESNIKOV**, an
 individual, d/b/a DCC Train;
CHARLES DAVIS, an individual, d/b/a Oak
 Tree Systems LLC; and **ANTHONY PARISI**,
 an individual, d/b/a Tony's Train Xchange,

Defendants.

Civil No.

CV '02 1292 - 1HU

**COMPLAINT
 FOR PATENT INFRINGEMENT**

PATENT CASE

Demand for Jury Trial

FILED 02 SEP 17 15:26 LSK:CRP

For their complaint against defendants, plaintiffs allege:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Matthew A. Katzer is an individual resident of the State of Oregon.

Plaintiff Kamind Associates, Inc., d/b/a Kam Industries, is an Oregon corporation with its

principal place of business in Hillsboro, Oregon. Plaintiffs design, manufacture and distribute computer software for use with model railroads.

2. Upon information and belief, defendant Friewald Software, d/b/a Railroad & Co., is a German corporation, partnership or sole proprietorship. Upon information and belief, defendant Locar, Inc., d/b/a Oak Mountain Hobbies, is an Alabama corporation. Upon information and belief, defendant Alexander Kalesnikov, d/b/a DCC Train, is an individual resident of Ohio. Upon information and belief, defendant Charles Davis, d/b/a Oak Tree Systems LLC, is an individual resident of Michigan. Upon information and belief, defendant Anthony Parisi, d/b/a Tony's Train Xchange, is an individual resident of Vermont.

3. This case arises under the patent laws of the United States, 35 USC §§ 1-376. The Court has jurisdiction of the subject matter herein pursuant to 28 USC §§ 1331 and 1338(a). Venue is proper in this District pursuant to 28 USC § 1391(b).

PLAINTIFFS' FACTUAL ALLEGATIONS

4. Plaintiffs own three United States patents directed toward the control of a model railroad, namely U.S. Patent No. 6,065,406 ("the '406 patent"), U.S. Patent No. 6,270,040 ("the '040 patent"), and U.S. Patent No. 6,267,061 ("the '061 patent"). Copies of these patents are attached hereto as Exhibit A.

5. Upon information and belief, defendants are manufacturing and/or distributing in Oregon and elsewhere in the United States computer software known as "TrainControl" that infringes one or more claims of the '406, '040 and '061 patents.

6. Upon information and belief, the actions of defendants complained of herein have been willful, wanton and carried out with full knowledge and blatant disregard of plaintiffs' patent rights.

PAGE 2 - COMPLAINT FOR PATENT INFRINGEMENT

CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP
1600 ODS Tower
601 S.W. Second Avenue
Portland, Oregon 97204-3157
(503) 227-5631

CLAIM FOR RELIEF

(Patent Infringement)

7. This claim arises under 35 USC § 281. Plaintiffs reallege and incorporate by reference paragraphs 1-6.

8. By manufacturing, using, selling and/or offering to sell TrainControl software, defendants are infringing, contributing to infringement, and inducing infringement of the '406, '040 and '061 patents owned by plaintiffs.

9. Plaintiffs have suffered and are continuing to suffer irreparable damage due to the infringing acts of defendants, and because the infringing acts of defendants are continuing, plaintiffs will suffer additional irreparable damage unless defendants are enjoined by this Court from those acts which infringe, contribute to infringement, and induce infringement of the '406, '040, and '061 patents.

10. Plaintiffs have suffered damages as a result of defendants' infringement of the '406, '040 and '061 patents.

11. Defendants' acts of infringement have been willful, making this an exceptional case within the meaning of 35 USC § 285. Plaintiffs are therefore entitled to an award of their reasonable attorney fees pursuant to that statutory provision.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment in their favor and against defendants as follows:

A. For an Order that U.S. Patent Nos. 6,065,406, 6,270,040 and 6,267,061 are each valid and infringed by defendants;

B. For an Order permanently enjoining defendants, their agents, officers, assigns and all others acting in concert with them from infringing, inducing infringement and contributing to infringement of the '406, '040 and '061 patents.

C. For damages, and an accounting for damages, based on the value of infringing products sold, to compensate plaintiff for the aforesaid infringement of plaintiffs' patents;

D. For an Order trebling any damages awarded, pursuant to 35 USC § 284;

E. For pre-judgment interest and post-judgment interest on all damages awarded;

F. For an Order that this is an exceptional case and an award to plaintiffs of their reasonable attorney fees, pursuant to 35 USC § 285;

G. For plaintiffs' costs and disbursements incurred herein; and

H. For such other relief as the Court may deem just and equitable.

DATED this 17 day of September 2002.

Respectfully submitted,

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

By: 

Kevin L. Russell, OSB No. 93485
Of Attorneys for Plaintiffs

Plaintiffs hereby demand a jury trial of all issues so triable.


Kevin L. Russell, OSB No. 93485