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15 Attorneys for Defendants
16 Matthew Katzer and Kamind Associates, Inc.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERT JACOBSEN, an individual,)
21)
22 Plaintiff,)
23)
24 vs.)
25)
26 MATTHEW KATZER, an individual, KAMIND)
ASSOCIATES, INC., an Oregon corporation dba)
KAM Industries, and KEVIN RUSSELL, an)
individual,)
Defendants.)

Case Number C06-1905-JSW
Hearing Date: August 11, 2006
Hearing Time: 9:00am
Place: Ct. 2, Floor 17
Hon. Jeffrey S. White
DEFENDANTS MATTHEW
KATZER AND KAMIND
ASSOCIATES, INC.'S
EVIDENTIARY OBJECTIONS TO
DECLARATIONS OF ROBERT
JACOBSEN, DICK BRONSON,
HANS TANNER, AND JOHN
PLOCHER AND MOTION TO
STRIKE

Defendants Matthew Katzer and Kamind Associates, Inc. ("KAM") object to the following evidence submitted by plaintiff Robert Jacobsen ("Jacobsen") in the Declarations of Robert Jacobsen, Dick Bronson, Hans Tanner and John Michael Plocher in opposition to the

1 special motion to strike set for hearing on August 11, 2006 and move the court for an order
2 striking the evidence
3 from the record.

4 **A. Hearsay Objections.**

5 The following statements and exhibits in the declarations constitute inadmissible hearsay
6 under FRE 802 (“hearsay is not admissible except as provided by these rules or by other rules
7 prescribed by the Supreme Court pursuant to statutory authority or by Act of Congress”) and
8 should be stricken.

9 Jacobsen Declaration.

- 10 1. Exhibit A.
- 11 2. The following portion of Paragraph 23: “Attached hereto as Exhibit B is a true and correct
12 copy of this article. It refers to JMRI’s Decoder Pro (sic) program as “started by a grass roots
13 project by a couple of members of the Silicon Valley Lines in San Jose, California”. Silicon
14 Valley Lines is a well-known model-railroad club in San Joe California. Further, the article
15 says “One of the interesting aspects of this program is the project has been done by
16 volunteers,” and Exhibit B.
- 17 3. The following portion of Paragraph 24: “Attached hereto as Exhibit C is a true and correct
18 copy of this article. Referring to the JMRI software, the 2nd paragraph says “a group of
19 dedicated hobbyists have created computer software that makes the task of programming
20 decoder much simpler”. The 4th paragraph says “DecoderPro is one of several programs
21 available from a private group called JMRI (Java Model Railroad Interface),” and Exhibit C.
- 22 4. Paragraph 28.
- 23 5. Paragraph 29 and Exhibit F.
- 24 6. Paragraph 34.
- 25 7. The following portion of paragraph 35: “Specifically, Mr. Burke informed me that LBNL
26 had received a FOIA request from Russell wherein it was alleged that I had used LBNL

1 resources in the form of an email account during the course of engaging in patent
2 infringement.”

3 8. Exhibit I.

4 9. The following portion of paragraph 39: “He asked detailed questions about my activity. He
5 said he was concerned about the impact of allegations of patent infringement on both my
6 reputation and the reputation of LBNL.”

7 10. Paragraph 42.

8 11. Paragraph 43 and Exhibit K.

9 12. The following portion of Paragraph 47: “For example, the LBNL policy on Authorized Use
10 of Information Resources states: “Incidental personal use’ is allowed as long as it is
11 consistent with this policy and all implementing policies and procedures and does not:
12 Constitute an “unacceptable use,” as defined in Paragraph (C)(4)(c), below.”

13 13. Paragraph 48 and 49.

14 14. Paragraph 50 and Exhibit M.

15 15. The following portion of Paragraph 51: “One such rule of professional conduct relates to
16 “Scholarship”, and defines “Types of unacceptable conduct” as: Violation of canons of
17 intellectual honesty, such as research misconduct and/or intentional misappropriation of the
18 writings, research, and findings of others.”

19 16. Paragraph 52 and Exhibit N.

20 17. Paragraph 53. Testimony that something is common knowledge is hearsay. *Daly v. Far*
21 *Eastern Shipping Co. PLC*, 238 F. Supp. 2d 1231, 1234 (WD WA 2003) (“Testimony that a
22 fact is common knowledge is hearsay because such testimony summarizes the knowledge of
23 persons other than the declarant”).

24 18. Paragraph 54 and Exhibit O.

25 19. Paragraph 60 and Exhibit P.

1 20. The following portion of Paragraph 62: “Included in these files was a new README file,
2 which stated: The jmrix.loconet Java package defines loconet-specific implementations for
3 the JIMRI interfaces. The jmrix.loconet.locormipackage implements remote communication
4 between a “LocoNet server” and a “LocoNet client” process. The JMRI web page is located
5 at <http://jmri.sourceforge.net/> This package is the work of Alex Shepherd.

6 21. Paragraph 65 and Exhibit Q.

7 22. Paragraph 71.

8 23. Paragraph 73 and Exhibit S.

9 24. Paragraph 97 and Exhibit AB.

10 25. Paragraph 99 and Exhibit AC.

11 26. Paragraph 115 and Exhibit AJ.

12 27. Paragraph 136 and Exhibit AZ.

13 Tanner Declaration

14 1. The following portion of paragraph 7: “Attached hereto as Exhibit A is a true and correct
15 copy of the magazine article” and Exhibit A.

16 2. Paragraph 11 and Exhibit C.

17 3. Paragraph 22 and Exhibit F.

18 4. Paragraphs 23 to 32.

19 **B. Lack of Personal Knowledge.**

20 The following statements and exhibits in the declarations lack the foundation for the
21 declarant’s personal knowledge required by LR 7-5(b) and Fed. R. Civ. P. 56(e) and should be
22 stricken:

23 Jacobsen Declaration

24 1. The following portion of paragraph 25: “Katzner has been aware that JMRI is a non-
25 commercial activity by hobbyists.”

26 2. Paragraphs 88 to 90.

- 1 3. Paragraph 96
- 2 4. Paragraph 98.
- 3 5. Paragraph 104.
- 4 6. Paragraphs 138 and 139.

5 Bronson Declaration

- 6 1. The following portion of paragraph 4: “He knows about our project.”
- 7 2. Paragraph 6.

8 Plocher Declaration

- 9 1. The following portions of paragraph 4: “He knows about our project” and “While I have
10 never met him in person, our public and private email correspondence have never given him
11 the impression that the JMRI project was sponsored by any entity other than our group of
12 hobbyists and software developers.”
- 13 2. Paragraph 7.

14 **C. Inadmissible Legal Conclusions and Opinion Objections.**

15 The following statements in the declarations are the declarants’ legal conclusions and/or
16 lay opinion evidence, which are barred by LR 7-5(b) and Fed. R. Civ. P. 56(e) and should be
17 stricken:

18 Jacobsen Declaration

- 19 1. The following portion of paragraph 25: “Katzner has been aware that JMRI is a non-
20 commercial activity by hobbyists.”
- 21 2. The following portion of paragraph 42: “I pointed out that JMRI is itself prior art, as it was
22 available at the time that the patent was filed. I reminded him that he was aware of some of
23 this prior art during prosecution of the patent, but chose not to inform the Patent Examiner.”
- 24 3. The following portion of paragraph 43: “and incorrectly stating that the patent had been filed
25 before the JMRI code was available.”

- 1 4. The following portion of paragraph 47: “and I felt was done to try to force me into making a
2 monetary payment to them.”
- 3 5. The following portion of paragraph 51: “Furthermore, Russell and Katzer’s action threatened
4 my position with the University of California at Berkeley.”
- 5 6. Paragraph 57.
- 6 7. Paragraph 68.
- 7 8. The following portions of paragraph 87: “The LocoNet system produced by Digitrax, Inc. of
8 Norcross, Georgia performs the functions described by claim 1 and other claims in the ‘406
9 patent” and “This is the functionality described by claim 1 of the ‘406 patent.”
- 10 9. The following portion of paragraph 105: “They disclose features of the WinLok program that
11 were claimed by Katzer in this patent application.”
- 12 10. Paragraph 107.
- 13 11. Paragraph 112.
- 14 12. The following portions of paragraph 115: “Pages 7 through 13 describe various functionality
15 claimed by Katzer’s patents” and each of the three statements that “This is a capability
16 claimed by Katzer’s patents.”
- 17 13. Paragraph 127.
- 18 14. Paragraph 129.
- 19 15. Paragraph 132.
- 20 16. The following portion of paragraph 137: “This is the functionality claimed by Katzer’s
21 patents.”
- 22 17. Paragraph 139.
- 23 18. Paragraph 142.

24 Tanner Declaration

- 25 1. The following portion of Paragraph 35: “As with the Katzer patents, the language of the ‘329
26 Patent can only be referring to the various versions of WinLok including 1.5 and 2.0.”

1 **D. Relevance Objections.**

2 The following statements in the declarations do not have any tendency to make the
3 existence of any fact that is of consequence to the determination of the action more probable or
4 less probable than it would be without the evidence and should be stricken as irrelevant under
5 FRE 402.

6 Jacobsen Declaration

- 7 1. All statements listed under Section C, Inadmissible Legal Conclusions and Opinion
8 Objections, *supra*.
9 2. Paragraph 36.
10 3. Paragraph 38.
11 4. The following portion of paragraph 47: “and I felt was done to try to force me into making a
12 monetary payment to them.”
13 5. The following portion of paragraph 55: “This aggressive attitude concerned me greatly.”
14 6. Paragraph 57.

15 Tanner Declaration

- 16 1. All statements listed under Section C, Inadmissible Legal Conclusions and Opinion
17 Objections, *supra*.

18 Dated June 16, 2006.

19 _____
20 /s/
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1 I certify that on June 16, 2006, I served Matthew Katzer's and KAM's Evidentiary
2 Objections and Motion to Strike on the following parties through their attorneys via the Court's
ECF filing system:

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_____/s/_____
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