

2008-1001

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ROBERT JACOBSEN, an individual,

Plaintiff-Appellant,

vs.

MATTHEW KATZER, and KAMIND ASSOCIATES, INC., (doing business as KAM
Industries);

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA IN CASE NUMBER C06-1905-JSW,
JUDGE JEFFREY S. WHITE

RESPONSE TO ROBERT JACOBSEN'S MOTION FOR COSTS

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September 3, 2008

Attorneys for Defendants-Appellees
Matthew Katzer and Kamind Associates, Inc.

RESPONSE TO ROBERT JACOBSEN'S MOTION FOR COSTS

I. Argument

Defendants-Appellees Matthew Katzer and Kamind Associates, Inc. (Katzer) oppose Robert Jacobsen's motion for costs.

The opinion of the Court vacated the lower court's ruling and is silent on the issue of costs. Pursuant to Federal Rule of Appellate Procedure 39(a)(4), costs are taxed "only as the court orders" when a lower court ruling is vacated. Here, the court did not order Defendants-Appellees pay any costs.

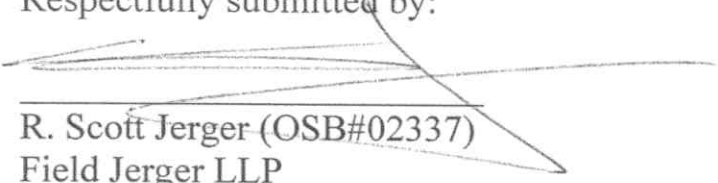
Additionally, the Notice of Entry of Judgment from the Clerk states that "No costs were taxed in this appeal." Pursuant to Federal Circuit Rule 39(a), "[w]hen the clerk provides notice of judgment or order disposing of an appeal, the clerk must advise which party or parties are entitled to costs." Here, the clerk did provide this advice, stating that Robert Jacobsen is not entitled to costs. Robert Jacobsen's motion is contrary to the express direction on costs in the Notice of Entry of Judgment.

II. Conclusion

Since this Court did not order Defendant-Appellees to pay costs and since the Notice of Entry of Judgment from the clerk states that "[n]o costs were taxed in this appeal," Jacobsen's motion for costs should be denied.

Dated: September 3, 2008

Respectfully submitted by:



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PROOF OF SERVICE

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I hereby certify that on September 3, 2008 I filed the original and two copies of Defendants-Appellees **Response to Jacobsen's Motion for Costs** on the Clerk of the US Court of Appeals for the Federal Circuit at the following address via overnight mail:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

I further certify that on September 3, 2008, I served two true copies of Defendants-Appellees **Response to Jacobsen's Motion for Costs** on each of the following parties, through their attorneys, at the following address via first class mail, postage prepaid:

Victoria K. Hall
Law Office of Victoria K. Hall
3 Bethesda Metro Suite 700
Bethesda MD 20814
Attorney for Plaintiff-Appellant Robert Jacobsen

Christopher Ridder
Anthony Falzone
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Center for Internet and Society
Crown Quadrangle
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Stanford, CA 94305-8610

Attorneys for Amici Curiae

Dated: September 3, 2008

A handwritten signature in black ink, appearing to read 'R. Scott Jerger', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

R. Scott Jerger (OR State Bar #02337)
Field Jerger LLP

Attorney for Defendant-Appellee

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Robert Jacobsen v. Matthew Katzer and KAMIND Associates

No. 2008-1001

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party) Katzer and KAMIND Assoc. certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Matthew Katzer and KAMIND Associates, Inc.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

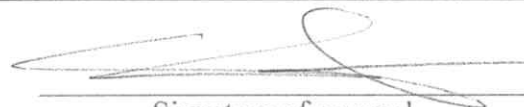
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Field Jerger LLP; Gorman & Miller, P.C.

9/3/08
Date


Signature of counsel
R. Scott Serger
Printed name of counsel

Please Note: All questions must be answered
cc: _____