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

Case Number C06-1905-JSW

DECLARATION OF MATTHEW
KATZER IN SUPPORT OF
DEFENDANTS RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION

I, Matthew Katzer, declare:

1. I am Chief Executive Officer and Chairman of the Board of Directors of Kamind Associates, Inc. ("KAM"). I am a named defendant in this action. If called as a

1 witness, I would and could testify to the following as a matter of personal knowledge.

2 2. I am authorized by KAM to make this declaration in support of KAM's
3 response in opposition to plaintiff's motion for a preliminary injunction. I make this
4 declaration in my capacity as KAM's Chief Executive Officer and Chairman of the Board
5 of Directors.
6

7 3. KAM is an active, registered Oregon corporation. KAM is adequately
8 capitalized and has always followed corporate formalities.
9

10 4. All activities complained of in Plaintiff's motion for preliminary injunction (i.e.
11 creation and distribution of decoder template data files with Decoder Commander) were
12 performed, if at all, by KAM. To the extent that I performed any of the activities, it was
13 in the capacity as an employee and officer of KAM.
14

15 5. I have recently reviewed plaintiff's decoder definition files. The files consist of
16 manufacturer specifications data relating to the computer chips in model train engines
17 (these are called decoders) as well as program configuration information (i.e. code for the
18 operation of Plaintiff's Decoder Pro).
19

20 6. In June 2004, I bought prototype software from Robert Bouwens of Bouwens
21 Engineering in Switzerland. This software would become Decoder Commander.
22

23 7. Mr. Bouwens has been developing a decoder programmer to program complex
24 decoders like the QSI decoder since the early 90's under the Train Wizard product
25 family.
26

1 8. Mr Bouwens' decoder programmer was in production years before anyone
2 developed the JMRI decoder programmer or decoder definition files.

3 9. Mr Bouwens' decoder programmer stored decoder data templates in binary
4 data files years prior to the existence of plaintiff's software (i.e. Decoder Pro).

5
6 10. KAM has also used decoder binary data files since 1998, prior to the inception
7 of the JMRI project or Decoder Pro.

8 11. KAM software code is written in Microsoft Programming Languages (C#,
9 VB, .NET and C++). Decoder Pro uses JAVA as the programming language for its code.
10 JAVA code is not compatible with C#, VB, .NET and C++ code. KAM's Decoder
11 Commander does not use any JAVA code.
12

13 12. Mr. Bouwens assisted me, on an independent contractor basis, in the final
14 development of the Decoder Commander software for approximately one year.
15

16 13. Sometime between April and June 2005, Mr. Bouwens downloaded the JMRI
17 decoder definition files from the JMRI open source website. Bouwens then created a
18 tool, called the template verifier, to extract the manufacturer specifications data in the
19 decoder definition files. This raw data was then incorporated, along with other
20 manufacturers' specifications (NMRA specifications and others such as the QSI
21 specifications) into what became known as decoder template data files.
22

23 14. The decoder template files are raw data files which allow a personal computer
24 running a software program to program a computer microchip (decoder) in the model
25 train engine. These decoder template data files are comparable to a spreadsheet of data of
26

1 manufacturer information which is used by the different programs to aid in the
2 programming of decoders which are produced by a variety of different manufacturers.

3 The manufacturer specifications allow a particular software program to “see” the internal
4 data of a particular decoder.

5
6 15. In addition to including these decoder template data files, the KAM Decoder
7 Commander software suite includes multiple application programs. The Decoder
8 Commander and other application program code are unrelated to the decoder template
9 data files and do not contain any of the information that the plaintiff has copyrighted.

10
11 16. Neither plaintiff’s decoder definition files, nor the manufacturer specifications
12 data are required for KAM’s Decoder Commander to execute its program code.

13
14 17. Since the JMRI open source software is available to the public for free, I did
15 not believe that the plaintiff would become upset by my inclusion of portions of the
16 decoder definition data files (i.e. the manufacturer specifications) in my decoder template
17 data spreadsheet. I based this conclusion on the following facts:

- 18 A. Plaintiff’s decoder definition files are not themselves foundational
19 works, rather they build on an effort to construct a master, uniform
20 spreadsheet of manufacturer’s specifications data. The decoder
21 definition files themselves incorporate manufacturer’s specifications
22 data initially created by multiple different manufacturers, including
23 QSI, as well as manufacturer’s specifications data created by the
24
25 National Model Railroad Association (NMRA). This idea of creating a
26

1 national standard was supported by numerous members of the model
2 train community including myself. Exhibits J, K and O to the
3 Declaration of Robert Jacobsen in Support of Plaintiff's Motion for
4 Preliminary Injunction contain email correspondence between myself
5 and others (plaintiff included) discussing a national standard.
6
7 Incorporating the manufacturer specification data in the decoder
8 template files was an effort to promote the idea of a national standard.

9
10 18. The JMRI project was not given credit in my decoder template data files
11 because the JMRI credit information was contained in comment fields of the decoder
12 definition files. The template verifier tool that I discussed above was written only to
13 extract manufacturer data information, all other information was ignored, including the
14 comment fields.

15
16 19. As part of my software business, I regularly update the Decoder Commander
17 software for my clients. Since the inception of this lawsuit (March 13, 2006), I have
18 released four (4) updates to Decoder Commander-V304, V305, V306, and V307. Each
19 "build" i.e. "V307" is composed of at least 23 code/programs. Each software release
20 represents a complete release of all software code/programs and data files. Decoder
21 Commander is only one of these code/programs. Although I do not believe that the
22 template data files shipped with Decoder Commander infringe any existing, valid
23 copyright, in an abundance of caution, I have continually updated the template data files
24 shipped with Decoder Commander in response to plaintiff's allegations by removing the
25
26

1 allegedly infringing files described by plaintiff in this lawsuit. I have also voluntarily and
2 immediately recalled software versions that plaintiff alleges infringes his copyright and
3 sent my customers software upgrades. Following is a timeline of Decoder Commander
4 version releases and recalls subsequent to the filing of this lawsuit.
5

6 20. On March 14 and March 16, 2006, I released V304 and V304A of Decoder
7 Commander. This release was scheduled prior to the initiation of this lawsuit.

8 21. I removed this software (V304, V304A and the template verifier tool) and all
9 other model train software products from my website on May 18, 2006 and halted
10 customer shipments from KAM's web site for all products. All existing non-registered
11 copies of V304 and V304A became non-functional on October 10, 2006. The template
12 verifier tool has never been available on my website since May 18, 2006.
13

14 22. On August 7, 2006, I issued a product recall to all dealers for V304.
15

16 23. On August 18, 2006, I released V305. V305 removed all JMRI decoder
17 template data. The template verifier tool will not work with V305 or later.
18

19 24. On September 11, 2006, in response to the copyright infringement claim in
20 the amended complaint received that same day, I removed V305 for download from the
21 KAM website. Prior to this date, I was unaware that the plaintiff had obtained a copyright
22 on the decoder files.
23

24 25. On September 13, 2006, I issued a product recall to all dealers for V305.
25 Outstanding non-registered copies of V305 will become non-functional on January 21,
26 2006.

1 26. On September 18, 2006, I released V306. V306 was sent to all customers
2 who have V304/305. V306 will not read the QSI template data that Jacobsen identified
3 in his amended complaint.

4 27. On October 25, plaintiff filed his motion for a preliminary injunction.

5 28. On October 25, 2006, I removed the V306 download from the KAM website.
6 Outstanding non-registered copies of V306 will become non-functional on March 21,
7 2006.

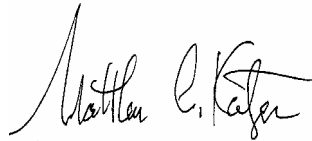
8 29. On October 30, 2006, I issued a dealer recall of V306.

9 30. On October 31, 2006, I released V307, beta version.

10 31. On November 2, 2006, I released V307 and began mailing replacement
11 product to all registered customers and dealers. V307 does not contain any of the
12 decoder definition file data (*i.e.* manufacturer specification data) complained of in either
13 the amended complaint or the notice of copyright infringement letter sent to me on
14 September 21, 2006 (attached as Exhibit A to Declaration of Victoria Hall in Support of
15 Motion for Preliminary Injunction). V307 cannot read or write any decoder template
16 files, including all of the JMRI decoder definition data. V307 will not run previous
17 applications of Decoder Commander. Decoder Commander V307 will now look to an
18 entirely new database for manufacturers' specification data. JMRI decoder definition data
19 was not used in any way to construct this database.
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1 I declare under penalty of perjury under the laws of the United States of America
2 that the foregoing is true and correct.

3 Executed on November 9th, 2006, at Hillsboro, Oregon.
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7 _____
8 Matthew Katzer
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