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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ROBERT JACOBSEN, Plaintiff, v. MATTHEW KATZER, et al., Defendants.	No. C-06-1905-JSW **REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR LIMITED EARLY DISCOVERY** Courtroom: 2, 17th Floor Judge: Hon. Jeffrey S. White

I. Introduction

Defendants file 10 pages opposing Plaintiff's Motion for Limited Early Discovery, but cannot attack one important fact: Defendants charged Plaintiff with infringing multiple patents, not just the '329 patent. Having abandoned the '329 patent through the disclaimer, Defendants now claim their earlier assertion that Plaintiff infringed multiple Katzer patents referred only to the single '329 patent. Ex. A (entire email exchange between counsel on Feb. 25, 2008). As noted in the motion, their FOIA request and their earlier filings with this Court state otherwise.

II. Argument

Defendants' Motion to Dismiss for Mootness seeks to permanently dismiss the three declaratory judgment causes of action of non-infringement, invalidity, and unenforceability. To avoid a dispute, like that over cybersquatting, to get these causes of action restored, Plaintiff seeks the identity of the other Katzer patents, so that he can seek leave to amend to include them, and keep unenforceability as to the '329 patent. The declaratory actions against the other patents are not dependent solely on whether Defendants assert the patents, as Defendants claim. The declaratory actions depend on whether there is a dispute between the parties. Defendants made the accusation, which caused problems for Plaintiff at work and coerced him to withhold updates to JMRI software that he believes he is entitled to add. Plaintiff seeks to have a declaration as to his rights without having to "bet the farm", MedImmune, Inc. v. Genentech, Inc., 127 S.Ct., 764, 772 (2007), SanDisk Corp. v. STMicroelectronics, Inc., 480 F.3d 1372, 1378 (Fed. Cir. 2007), by risking treble damages and attorneys fees. The Court should grant Plaintiff's motion.

Finally, Defendants' various allegations have no merit.[1] Plaintiff believes only discovery disputes were referred to Judge Larson. Plaintiff provides a proposed order referring the matter to Judge Larson, if the Court believes this matter belongs in Judge Larson's purview.

III. Conclusion

The Court should grant Plaintiff's motion and order Defendants to provide the identity of the Katzer patents which Defendants charged Plaintiff with infringing.

Respectfully submitted,

DATED: February 29, 2008

By /s/

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ATTORNEY FOR PLAINTIFF

[1] Plaintiff's policy has been to heed this Court's order Aug. 11, 2006 that the parties are to get along. For these reasons, Plaintiff has chosen not to bring Defendants' various violations to the Court's attention. As for Defendants' allegations of prejudice, Plaintiff asks the Court to compare the prejudice it and Plaintiff have suffered due to the 2 years of time spent on this case when Defendants could have filed the disclaimer from the start.