Exhibit A

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Attorney for Plaintiff
ROBERT JACOBSEN

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 **PLAINTIFF'S SECOND SURREPLY** Courtroom: 2, 17th Floor Judge: Hon. Jeffrey S. White

Plaintiff files this second surreply to Defendants' motion to dismiss the declaratory judgment causes of action. Plaintiff learned additional facts after the April 11, 2008 hearing. Further, the Federal Circuit issued relevant precedent that Plaintiff became aware of after the hearing. This new precedent requires a brief review of relevant facts from earlier in this litigation. Plaintiff files this surreply so that the Court may consider these facts and precedent in its ruling.

I. FACTS

Defendants Matthew Katzer and KAMIND Associates, and then-Defendant Kevin Russell, filed anti-SLAPP motions in mid-May 2006. Defendants Matthew Katzer and KAMIND Associates, Inc.'s Special Motion to Strike Plaintiff's Libel Claim Under Cal. Civ. Proc. Code § 425.16 [Docket #12]; Special Motion to Strike Plaintiff's Claims Against Kevin Russell Under Cal. Civ. Proc. Code § 425.16 [Docket #23]. In affidavits to these motions, Katzer and Russell asserted that Jacobsen and JMRI infringed multiple Katzer patents. Declaration of Matthew Katzer in Support of Special Motion to Strike [Docket # 13] [hereinafter Katzer anti-SLAPP Decl.]; Declaration of Kevin Russell in Support of Special Motion to Strike [Docket # 23] [hereinafter Russell anti-SLAPP Decl.]. Katzer and Russell also stated their FOIA request was sent in preparation for a lawsuit, contemplated in good faith, for infringement of the Katzer patents. Katzer anti-SLAPP Decl. at 3; Russell anti-SLAPP Decl. at 2.

Plaintiff strenuously objected to Katzer and Russell's statements that any lawsuit was contemplated in good faith. In his June 9, 2006 Opposition, Plaintiff sought to show that Katzer and Russell acted in bad faith, by providing evidence supporting the patent declaratory judgment causes of actions.[1] On July 20, 2006, he sent Rule 11 letters to Katzer's counsel, Scott Jerger, Ex. A, and Russell's counsel, David Zeff, Ex. B, charging them with knowingly procuring a fraud upon the court. Mr. Zeff responded. Ex. C. However, the earliest Plaintiff could file the Rule 11 motions was August 12, 2006.

At the August 11, 2006 hearing, the Court ruled in favor of Defendants and then-Defendant Russell. In its October 20, 2006 order, the Court looked to Katzer and Russell's declarations to

[1] Memorandum in Opposition to Defendants Matthew Katzer and KAMIND Associates, Inc.'s Special Motion to Strike Plaintiff's Libel Claim [Docket # 49] at 10-14; Memorandum in Opposition to Defendant Russell Motion to Strike Claims 5 and 7 [Docket # 45] at 9-12; Declaration of Robert Jacobsen in Support of Opposition to Defendants Matthew Katzer and KAMIND Associates, Inc.'s Special Motion to Strike Plaintiff's Libel Claim [Docket # 46], at 15-26, Exs. W-BB. Declaration of Robert Jacobsen in Support of Opposition to Defendant Russell Motion to Strike Claims 5 and 7 [Docket # 51] at 15-26, Exs. W-BB; Declaration of Hans Tanner in Support of Opposition to Defendants Matthew Katzer and KAMIND Associates, Inc.'s Special Motion to Strike Plaintiff's Libel Claim [Docket #] at 3-5, Exs. F-G; Declaration of Hans Tanner in Support of Opposition to Defendant Russell Motion to Strike Claims 5 and 7 [Docket #] at 3-5, Exs. F-G.
Kevin Russell, acting on Katzer's behalf, sent these references to patent examiners, who began issuing rejections of all pending patent claims, based in part on Jacobsen's anti-SLAPP evidence.

determine if they had made a prima facie case, but did not address the issues that Jacobsen raised. See Order Granting Defendants' Motions to Dismiss and Special Motions to Strike [Docket #111] at 11 n.3. Thus, Jacobsen was not permitted to challenge the veracity of statements in Katzer and Russell's anti-SLAPP affidavits. The Court saw these issues as relating to the merits of the causes of action challenged under anti-SLAPP, and deferred the issues as they related to declaratory judgment.

A year later, in preparation for settlement talks, Plaintiff sought the basis for Katzer and Russell's purported good faith basis for believing that Plaintiff infringed Katzer patents. See Order re: Settlement Conference [Docket #199], at 1. Judge Laporte agreed that Plaintiff should have this information, and in late October 2007, Katzer agreed to provide claim construction, infringement, validity, and enforceability of claim 1 of the '329 patent. See id. Three months passed while Plaintiff waited for the information, but Katzer did not disclose it. See id. Plaintiff sought Judge Laporte's assistance to get the information, and Judge Laporte again ordered to Katzer to disclose it. See id. Instead, Katzer first unilaterally granted a covenant not to sue, and then when Plaintiff objected, Katzer disclaimed the entire '329 patent. See Order [Docket # 202]; Defendants Matthew Katzer and KAMIND Associates, Inc.'s Motion to Dismiss Counts 1, 2, and 3 of the Second Amended Complaint [Docket # 203]. Still, as late as April 4, 2008, Katzer was charging Jacobsen with infringement of at least one enforceable patent. See Joint Case Management Statement [Docket # 216] at 2. At the April 11, 2008 hearing, Katzer asserted that he disclaimed the '329 patent solely for economic reasons, without providing an explanation what the "economic reasons" were.[2]

While these events unfolded, Hans Tanner, who Katzer had sued in 2002, shut down DigiToys because of the threats that the Katzer patents posed to his company. See Ex. D. Also, after withholding one examiner's rejections from other examiners, Russell submitted the rejections but buried them in 2000 pages of otherwise irrelevant material. See Ex. E (Information Disclosure Sheet for U.S. Patent Application No. 11/607,233). Nonetheless, examiners at the Patent Office

[2] Plaintiff objects to Defendants' general explanation of "economic reasons" without a statement from Defendants on the record detailing what all those reasons are.

continued to issue rejections that bar patentability of all pending claims in Katzer patent applications. The rejections resulted from Katzer and Russell submitting the evidence that Jacobsen put forward in his anti-SLAPP declaration. See, e.g. Ex. F (January 2007 Information Disclosure Sheet for U.S. Patent No. 11/592,784) at 11-13; Ex G (Office Action dated Apr. 3, 2008); Ex. H (June 2006 Information Disclosure Sheet for U.S. Patent No. 10/889,995) at 4-7; Ex. I (Office Action dated Aug. 7, 2006); Ex. J (Office Action dated Dec. 21, 2006). Katzer has failed to address these rejections, and apparently is abandoning all pending applications.

II. ARGUMENT

Although Defendants disclaimed the '329 patent, under recent Federal Circuit case law, Caraco Pharmaceutical Laboratories, Ltd. v. Forest Laboratories, Inc., 527 F.3d 1278 (Fed. Cir. 2008), this Court still retains jurisdiction over the declaratory judgment of non-infringement, invalidity, and unenforceability. When the Court ruled in favor of Defendants and their counsel on the anti-SLAPP motions, the Court relied on what it believed were good faith representations from Matthew Katzer and Kevin Russell that Bob Jacobsen was infringing the '329 patent. Plaintiff had argued that neither Katzer nor Russell could make those representations under Rule 11 because they had engaged in sham litigation and Walker Process fraud, which are unprotected by the First Amendment. The Court found that Plaintiff's arguments, which related to the declaratory judgment causes of action, addressed the merits of the causes of action challenged by the anti-SLAPP motion and deferred these issues when it ruled on Defendants' anti-SLAPP motions. Plaintiff can show that Defendants misled the Court and made false statements in their anti-SLAPP affidavits, and that if Defendants had told the truth, their actions would fall outside the protection of the anti-SLAPP statute, per Flatley v. Mauro, 39 Cal. 4th 299, 320 (2006). Bad faith conduct, which is unprotected under the First Amendment, can support jurisdiction for declaratory judgment causes of action for non-infringement, invalidity, and unenforceability. See, e.g., Hynix Semiconductor Inc. v. Rambus Inc., 527 F. Supp. 2d 1084 (N.D. Cal. 2007) (antitrust cause of action and declaratory judgment cause of action for unenforceability); TruePosition, Inc. v. Allen Telecom, Inc., No. C.A. 01-823 GMS, 2003 WL 151227 (D. Del. Jan. 21, 2003) at *5, *7; Intel Corp. v. Via Techs., Inc., No. C 99-03062 WHA, 2001 WL 777085, (N.D. Cal. Mar. 20, 2001) at *4 (describing

as "counterfeit logic" Intel's argument that Via's declaratory judgment for non-infringement negated Via's antitrust cause of action for sham litigation). Thus, because the Court deferred the declaratory judgment issues, the Court retains jurisdiction over the declaratory judgment causes of action for non-infringement, invalidity, and unenforceability of the '329 patent.

In addition to the new precedent, a new fact—Defendants' competitor DigiToys' closure—further supports that declaratory judgment jurisdiction exists over all Katzer patents, per Micron Technology, Inc. v. MOSAID Technologies, Inc., 518 F.3d 897 (Fed. Cir. 2008), as discussed in Jacobsen's Opposition to Defendants' Motion to Dismiss Claims 1, 2, and 3 from the Second Amended Complaint, and Jacobsen's first Surreply.

A. Jacobsen's Declaratory Judgment Causes of Action Remain Live Controversies

Defendants' disclaimer does not automatically moot the declaratory judgment causes of action for non-infringement, invalidity, and unenforceability of the '329 patent. The Federal Circuit held, in a similar situation, that a unilateral covenant not to sue did not moot declaratory judgment. Caraco Pharm. Labs., Ltd. v. Forest Labs, Inc., 527 F.3d 1278 (Fed. Cir. 2008). In Caraco Pharm., a generic manufacturer, Ivax, filed an abbreviated new drug application (ANDA) to manufacture a generic version of Lexapro®, a drug used to treat depression and anxiety disorders. Id. at 1286. In filing the ANDA, Ivax certified that Forest's two patents were invalid or would not be infringed. Id. at 1282-83, 1286. As the first to file the ANDA, Ivax would have a 180-day exclusivity period from either (1) the start of commercial marketing or (2) the date of a court judgment in its favor. During this period, no other generic pharmaceutical companies could manufacture the drug. See id. at 1283. However, once the exclusivity period ended, subsequent generic companies could file ANDAs and seek to manufacture the drug. Id. at 1284. Subsequent generic companies could begin manufacturing the drug only after obtaining a court judgment in their favor. Id. When Ivax filed its ANDA, the ANDA constituted a technical act of infringement, under the statute. Id. at 1286. Forest brought a patent infringement suit against Ivax on one of the two Forest patents and eventually prevailed. Id. Caraco then filed an ANDA to manufacture a generic Lexapro®. Id. at 1288. Forest brought suit against Caraco for infringement of one of the two patents. Id. Caraco sought declaratory judgment of non-infringement the second patent, but

Forest sought to dismiss, arguing no case or controversy existed. Id. If Caraco obtained a court judgment, then Caraco would trigger the beginning of the Ivax's 180-day exclusivity period. Id. at 1287-88. After the exclusivity period ended, then Caraco could begin its manufacture. See id. at 1287. Instead of litigating the validity of the second patent, Forest unilaterally granted Caraco a covenant not to sue, and the district court dismissed Caraco's declaratory judgment cause of action for lack of jurisdiction. Id. at 1289-90. The Federal Circuit reversed, holding that Forest's covenant not to sue did not cause the district court to lose jurisdiction over Caraco's declaratory judgment cause of action. See id. at 1291, 1297. Caraco had standing because it faced the inability to start its generic manufacture, the issues were ripe for judicial review, and the matter was not moot because a live controversy existed as to whether Caraco could be entitled to a court judgment to trigger its generic manufacture start date. Id. at 1291-97. The reasoning in Caraco applies here, and shows that Jacobsen has standing, the matter is ripe for judicial review, and is not moot.

1. Jacobsen Has Standing to Maintain the Declaratory Judgment Causes of Action

Jacobsen has standing for the declaratory judgment causes of action because he suffered injury-in-fact, caused by Defendants and their counsel Kevin Russell, which would be redressed if the Court retained jurisdiction over these causes of action.

> The Supreme Court has explained that the "irreducible constitutional minimum of standing" contains the following three requirements:
>
> First and foremost, there must be alleged (and ultimately proved) an "injury in fact"—a harm suffered by the plaintiff that is "concrete" and actual or imminent, not "conjectural" or "hypothetical." Second, there must be causation—a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. And third, there must be redressability—a likelihood that the requested relief will redress the alleged injury.
>
> Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 102-03 (1998) (internal citations omitted).

Caraco, 527 F.3d at 1291. Jacobsen suffered injury-in-fact when Defendants and Kevin Russell prevailed in their anti-SLAPP motions and affidavits, requiring Jacobsen to pay more than $30,000 to their attorneys.

Defendants and Kevin Russell caused the injury because they made false statements in their declarations that they acted on a good faith belief that Jacobsen was engaging in patent

infringement. Had they told the truth in their declarations, Defendants and Mr. Russell would have acknowledged that:

(a) they never knew of one instance of patent infringement, let alone 7,000 infringements that Jacobsen was purportedly responsible for. Their "voluntary" disclaimers, made the day after Judge Laporte's deadline to provide patent disclosures, and their continued inability to provide any claim construction position or infringement position, show that Katzer and Russell made allegations of infringement in bad faith. Furthermore, because Jacobsen challenged Katzer and Russell's attorneys with Rule 11 letters, Katzer and Russell's attorneys had a duty to confirm the basis for their client's purported good faith belief of Jacbosen's infringement.

(b) they had withheld material references with the intention to deceive patent examiners, and they had succeeded in their deception. Once patent examiners learned of the additional prior art, in part due to Jacobsen's evidence in his anti-SLAPP declaration, the examiners began issuing rejections barring all pending patent claims. Katzer and Russell have been unable to overcome these rejections, and are abandoning patent applications.

(c) they represented to patent examiners that Katzer's claims were an advance over prior art DigiToys, when they later implicitly admitted through the lawsuit against DigiToys that DigiToys anticipated or made obvious the Katzer claims. This is because DigiToys was published and sold prior to the filing date of Katzer's first patent application. That which infringes if later, anticipates in earlier. The patent examiners' recent rejections citing DigiToys also show that Katzer's claims were not advances over DigiToys.

(d) they knew that Jacobsen used his work email address for the occasional (1-2 emails/day) posts to JMRI listservs, just like Mr. Katzer used to use his Intel Corp. work email address to post to model train listservs. Katzer communicated multiple times with Jacobsen through Jacobsen's work email address, and knew Jacbosen was a professor at UC Berkeley.

(e) they knew from the time of JMRI's formation that JMRI consisted of a group of hobbyists, and was not sponsored or connected in any way to the U.S. Department of Energy. Katzer had known Jacobsen personally for several years through Katzer's involvement with the NMRA Digital Command Control Working Group. Katzer has no evidence that JMRI was ever

sponsored by DOE.

(f) contrary to his statements, Mr. Katzer never saw any banner indicating government sponsorship.

(g) the studies by Roger Webster were funded NOT by the U.S. Department of Energy but by the National Science Foundation as educational grants in 1993 and 1996, more than 1 year before Katzer filed his first patent application. Furthermore, Dr. Webster's work disclosed that undergraduate students were client-server networking for model train layouts, which Katzer in 1998 claimed as the first to invent. However, Katzer did not disclose Dr. Webster's work to patent examiners under after Jacobsen filed suit.

Thus, Jacobsen's harm was caused when Katzer and Russell made false statements in their anti-SLAPP affidavits.

Finally, the harm from Defendants' and Russell's false affidavits can be redressed by retaining jurisdiction on the declaratory judgment causes of action. Jacobsen will prevail in his declaratory judgments, and in the course of doing so, will confirm Defendants' and Russell's statements are false and that they practiced a fraud upon the Court. "…[If] the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." Flatley v. Mauro, 39 Cal. 4th 299, 320 (2006). If Defendants and Russell had told the truth, they would not be entitled to claim their activities were protected, because their activities amount to sham litigation or Walker Process fraud, neither of which is protected by the First Amendment. See Judkins v. HT Window Fashion Corp., 529 F.3d 1334, 1338-39 (Fed. Cir. 2008); GP Indus. v. Eran Indus., 500 F.3d 1369, 1374-75 (Fed. Cir. 2007). Thus, Jacobsen has standing.

2. Jacobsen's Declaratory Judgment Causes of Action Are Ripe for Judicial Determination

The declaratory judgment causes of action are ripe for decision because the issues are fit for judicial determination and because would Jacobsen suffer hardship if the court withheld consideration. See Caraco, 537 F.3d at 1294-95. Defendants and Russell charged Jacobsen with infringement, and relied on that charge of purported infringement as a basis for their anti-SLAPP

motions. When ordered to show proof of that infringement, Defendants and Russell could not even put forward one example of infringement, let alone 7,000 infringements, that Jacobsen was supposedly responsible for. Nor could they defend against Jacobsen's charges of invalidity and unenforceability. They could not even offer a claim construction, which the foundation for a good faith belief of infringement. Instead, Defendants, through Russell, disclaimed the '329 patent and then moved to dismiss the declaratory judgment causes of action. When discovery opens, Jacobsen expects to find further evidence in support of the declaratory judgment causes of action. Events that form the basis of these causes of action have occurred, and delay will not significantly advance the Court's ability to deal with the issues. Jacobsen will suffer hardship if the Court withholds consideration, because Jacobsen paid more than $30,000 in attorneys fees that, had Defendants and Russell told the truth, would never have been granted.

3. Dispute over Defendants' Anti-SLAPP Motions and Affidavits Keeps Controversy Alive

The declaratory judgment causes of action are not moot because Jacobsen has a personal stake in the outcome – he may seek the return of the attorneys fee award paid to Defendants and their counsel and obtain his own attorneys' fees and costs. A personal stake in the outcome is necessary at the outset and throughout the litigation. See Caraco, 527 F.3d at 1296. Jacobsen strongly disputed, and continues to dispute, that Defendants and Russell had a good faith belief that Jacobsen was engaging in infringement. The Court accepted Katzer and Russell's statements as true to determine if they had made a prima facie case, which left Jacobsen to wait until discovery and summary judgment on the declaratory judgment causes of action before he could move to vacate for fraud on the court. Because a controversy exists over whether Defendants' and Russell's activities were protected under the First Amendment, which can be resolved only through the declaratory judgment causes of action, these causes of action are not made moot by the patent disclaimer. The matter can become moot only when the Court resolves the matter, or when Katzer and Russell vacate the anti-SLAPP ruling, return the court award plus interest, and pay Jacobsen's fees and costs. Samsung Elecs. Co. v. Rambus, Inc., 523 F.3d 1374, 1379 (Fed. Cir. 2008).

Thus, the Court should retain jurisdiction over the declaratory judgment causes of action.[3]

[3] The second prong of the Federal Circuit's previous declaratory judgment test is now determined

B. DigiToys' Closure Makes Litigation Against Jacobsen More Likely

When DigiToys shut down in March 2008, Jacobsen and JMRI have become the major targets for Defendants' accusations of patent infringement. DigiToys was one of three significant players in the field of model train control system software: DigiToys, Railroad & Co., and JMRI. With DigiToys' demise, and Railroad & Co. based in Germany, JMRI is the only major U.S.-based provider of model train control system software, and thus, Defendants' likely next target for allegations of patent infringement. This new fact, with the facts described in Plaintiff's Surreply [Docket #215] and his Opposition [Docket #213], confirms that under MedImmune's all-the-circumstances test, declaratory judgment jurisdiction exists as to all Katzer patents.

III. CONCLUSION

The Court should retain jurisdiction over the declaratory judgment causes of action relating to the '329 patent, and should permit Jacobsen to amend his complaint to include declaratory judgment causes of action relating to the other Katzer patents.

Respectfully submitted,

DATED: August 20, 2008

By /s/
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ATTORNEY FOR PLAINTIFF

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by analyzing whether the dispute is real and immediate. For potentially infringing products, the Federal Circuit reviews whether the declaratory plaintiff is engaging in potentially infringing activities, or has taken concrete steps to do so. Prasco, LLC v. Medicis Pharm. Corp., __ F.3d __, Case No. 2007-1524 (Fed. Cir. Aug. 15, 2008); Cat Tech LLC v. Tubemaster, Inc., 528 F.3d 871 (Fed. Cir. 2008). However, when method patents are involved, as they are here, a product which may be, but is not necessarily, used for infringement can support declaratory judgment. This is especially true when bad faith scare tactics as those used by Katzer and Russell are employed. See Cat Tech, 528 F.3d at 878 (describing the purpose of the Declaratory Judgment Act as to allow declaratory plaintiffs, who were victimized by their competitors' scare tactics, to seek declaratory relief); Teva Pharms. USA, Inc. v. Novartis Pharms. Corp., 482 F.3d 1330, 1336 n.2 (Fed. Cir. 2007). As noted earlier, bad faith allegations or sham threats can support declaratory judgment when they demonstrate a real and immediate dispute.

Exhibit A

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July 21, 2006

Mr. R. Scott Jerger
Field & Jerger
610 SW Alder Street, Suite 910
Portland OR 97205

Dear Mr. Jerger,

This is a demand letter. On behalf of my client, I intend to file for Rule 11 sanctions against you:

- Filing a baseless anti-SLAPP motion to cause unnecessary delay and needless increase in the cost of litigation;
- Offering defenses and other legal contentions in connection with that anti-SLAPP motion that are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- Offering, as facts, contentions in connection with that anti-SLAPP motion which are clearly false and have no evidentiary support, nor are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- Offering denials of factual contentions in connection with that anti-SLAPP motion that are not warranted on the evidence.

Specifically, Mr. Jacobsen has pointed out to numerous lies in the declarations that you have offered. You have failed to correct them. Furthermore, Mr. Jacobsen produced the evidence which forecloses any reasonable argument that litigation privilege applies because of the overwhelming evidence of fraud on the Patent Office that Mr. Russell and Mr. Katzer committed. You continue to argue it. In addition, the argument that filing a FOIA request constitutes a statement before an official proceeding is baseless since only activities constituting petitioning the government for redress of harms are protected. The evidence clearly shows that Mr. Russell and Mr. Katzer had no intention of "warning" or complaining to the U.S. Department of Energy via that FOIA request.

Thus, we demand that you withdraw the anti-SLAPP motion. If you do not do so, we will file a motion for Rule 11 sanctions at the earliest possible time permitted by the Federal Rules of Civil Procedure.

Victoria K Hall

Exhibit B

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July 21, 2006

Mr. David M. Zeff
Law Offices of David M. Zeff
1388 Sutter Street, Suite 820
San Francisco, CA 94109

Dear Mr. Zeff,

This is a demand letter. On behalf of my client, I intend to file for Rule 11 sanctions against you for:

- Filing a baseless anti-SLAPP motion to cause unnecessary delay and needless increase in the cost of litigation;
- Offering defenses and other legal contentions in connection with that anti-SLAPP motion that are not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- Offering, as facts, contentions in connection with that anti-SLAPP motion which are clearly false and have no evidentiary support, nor are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- Offering denials of factual contentions in connection with that anti-SLAPP motion that are not warranted on the evidence.

Specifically, Mr. Jacobsen has pointed out to numerous lies in the declarations that you have offered. You have failed to correct them. Furthermore, Mr. Jacobsen produced the evidence which forecloses any reasonable argument that litigation privilege applies because of the overwhelming evidence of fraud on the Patent Office that your client and Mr. Katzer committed. You continue to argue it. In addition, the argument that filing a FOIA request constitutes a statement before an official proceeding is baseless since only activities constituting petitioning the government for redress of harms are protected. The evidence clearly shows that your client and Mr. Katzer had no intention of "warning" or complaining to the U.S. Department of Energy via that FOIA request.

Thus, we demand that you withdraw your anti-SLAPP motion. If you do not do so, we will file a motion for Rule 11 sanctions at the earliest possible time permitted by the Federal Rules of Civil Procedure.

Victoria K Hall

Exhibit C

Law Offices of David M. Zeff
1388 Sutter Street, Suite 820
San Francisco, CA 94109

To:	Victoria K. Hall
Fax number:	1240 536 9142
From:	David M. Zeff
Fax number:	415 923 1382
Business phone:	415 923 1380
Home phone:	
Date & Time:	7/21/2006 10:28:48 AM
Pages:	2
Re:	Jacobsen v. KAM, et al, our file 9364

Please see accompanying letter, also mailed to you today, in response to your letter received by fax. Please advise the Court, as part of your good faith disclosure, that I am on vacation starting tomorrow and that you were given notice of that fact in early June, 2006. Thank you.
David M. Zeff

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July 21, 2006

Victoria K. Hall
Law Office of Victoria K Hall
401 N Washington St #550
Rockville, MD 20850

Via fax to: (240) 536-9142
and first class mail

Re: Jacobsen v. Katzer, et al., U.S. Dist. Ct., ND Cal.No. 06-1905
Our file 9364

Dear Ms. Hall:

This is in response to your letter of today's date, received by fax, demanding that Mr. Russell withdraw his anti-SLAPP motion on threat of your motion for Rule 11 sanctions. I have to thank you for getting my juices flowing early today by reading that letter. I do not recall having experienced the emotions of disdain, anger and bemusement all at the same time.

After considering the full range of my possible responses, I am exercising maximum self restraint by responding as follows. Mr. Russell and I stand fully behind all of the facts and law we presented in that motion. Your threat reeks of panic, as well it should, since the motion has a overwhelming likelihood of being granted and your client being assessed our attorneys fees for the effort. The motion will not be withdrawn. Hopefully you will have the insight and self restraint to let the Court rule on the motion before you file any Rule 11 motion, but by the lights of your letter, insight and self restraint don't appear to play much of a role in your conduct of litigation.

I will be on vacation, as I advised you in writing in early June, from July 22 through July 31. As I stated in my email reply to yours this morning, if you do file anything with the Court in my absence, please make sure to provide the Court with copies of my email opposing your requests and also let the Court know that I am on vacation and unable to respond until my return.

Sincerely,

David M. Zeff

cc: Client, Mr. Jerger, via email
DMZ:hs

Exhibit D

DigiToys Systems

Home

WinLok 2.1

WinLok CT

Thank you.

For a variety of reasons, we have decided to terminate our activities. We would like to thank all our loyal customers for their continued support over the last 10+ years.

We will continue to provide our software products (i.e. WinLok and LocoNet Extender) free of charge. Please use the buttons to the left to open the download pages.

The software is provided as is. *There is no support available from us*.

However, the User Mailing List is still available and many users are more then willing to provide help in case of questions.

Last modified: March 08, 2008

Exhibit E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.	:	11/607,233	Confirmation No. 1542
Applicant	:	Matthew Katzer	
Filed	:	December 1, 2006	
TC/A.U.	:	3661	
Examiner	:	Beaulieu, Yonel	
Docket No.	:	7431.0094	
Customer No.	:	00152	
Title	:	MODEL TRAIN CONTROL	

INFORMATION DISCLOSURE STATEMENT
IN ACCORDANCE WITH 37 CFR §1.98

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits herewith two sheets of Form PTO-1449 (Modified) listing the patents and publications of which Applicant is aware and which Applicant desires to have considered by the Patent Office in accordance with 37 CFR §1.97. In accordance with 37 CFR §1.97(b)(3), this Information Disclosure Statement is being submitted before the mailing date of a first Office Action on the merits of the above-identified application.

In accordance with 37 CFR §1.97(h), the filing of this Information Disclosure Statement will not be regarded as an admission that any patent or publication or combination of patents or publications referred to herein is, or is considered to be, material to patentability under 37 CFR §1.56(b) unless specifically designated as such.

A list of the patents and publications enclosed herewith is set forth on the attached two pages of Form PTO-1449 (Modified).

The person making this statement is the attorney who signs below on the basis of the information supplied by the inventor and the information in his file.

Respectfully submitted,

CHERNOFF, VILHAUER, McCLUNG & STENZEL

By:_____

Kevin L. Russell, Reg. No. 38,292
Suite 1600
601 SW Second Avenue
Portland, OR 97204
Tel: 503-227-5631
Fax: 503-228-4373

Dated: November 2, 2007

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1415, Washington, D.C. 20231, on November 2, 2007.

Dated: November 2, 2007

_____

Kevin L. Russell

PTO/SB/08A (07-05)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet | | of |

Complete if Known	
Application Number	11/607,233
Filing Date	December 1, 2006
First Named Inventor	Katzer
Art Unit	3661
Examiner Name	Beaulieu, Yonel
Attorney Docket Number	7431.0094

U.S. PATENT DOCUMENTS

Examiner Initials *	Cite No.[1]	Document Number Number - Kind Code[2] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] - Number[4] - Kind Code[5] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T[2]
		FILE HISTORY for MATTHEW A. KATZER Application No. 11/375,794 Filed March 14, 2006 now U.S. Patent No. 7,209,812 Issued April 24, 2007.	
		FILE HISTORY for MATTHEW A. KATZER Application No. 10/340,522 Filed January 10, 2003 now U.S. Patent No. 6,827,023 Issued December 7, 2004.	
		FILE HISTORY for MATTHEW A. KATZER Application No. 10/713,476 Filed November 14, 2003 now U.S. Patent No. 6,909,945 Issued June 21, 2005	
		FILE HISTORY for MATTHEW A KATZER Application No. 11/593,770 Filed November 7, 2006..	
		FILE HISTORY for MATTHEW A. KATZER Application No.11/607,233 Filed December 1, 2006.	
		FILE HISTORY for MATTHEW A. KATZER Application No. 11/592,784 Filed November 3, 2006.	
		Second Amended Complaint for Declaratory Judgment, Violations of Copyright and Federal Trademark Laws, and State Law Breach of Contract, Robert Jacobsen v. Matthew Katzer, et al., United States District Court for the Northern District of California San Francisco Division, Dated October 19, 2007.	
		FILE HISTORY for MATTHEW A. KATZER Application No. 11/266,772 Filed November 2, 2005.	
		FILE HISTORY for MATTHEW A. KATZER Application No. 10/976,227 Filed October 26, 2004 now U.S. Patent No. 7,216,836 Issued May 15, 2007.	
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Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.
[1] Applicant's unique citation designation number (optional). [2] Applicant is to place a check mark here if English language Translation is attached.
This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Exhibit F

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1415, Washington, D.C. 20231, on January 31, 2007.

Dated: January 31, 2007

Kevin L. Russell

Atty. Docket No.
7431.0092

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Matthew A. Katzer	Group Art Unit: TBD
U.S. Pat. App. No.: 11/592,784	Examiner: TBD
Filed: November 3, 2006	Customer No.: 00152

Title: MODEL TRAIN CONTROL SYSTEM

INFORMATION DISCLOSURE STATEMENT
IN ACCORDANCE WITH 37 CFR §1.98

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits herewith eleven sheets of Form PTO-1449 (Modified) listing the patents and non-patent publications of which Applicant is aware and which Applicant desires to have considered by the Patent Office in accordance with 37 CFR §1.97. In accordance with 37 CFR §1.97(b)(3), this Information Disclosure Statement is being submitted before the mailing date of a first Office Action on the merits of the above-identified application.

In accordance with 37 CFR §1.97(h), the filing of this Information Disclosure Statement will not be regarded as an admission that any patent or publication or combination of patents

referred to herein is, or is considered to be, material to patentability under 37 CFR §1.56(b) unless specifically designated as such.

A list of the patents and publications enclosed herewith is set forth on the attached eleven pages of Form PTO-1449 (Modified).

The person making this statement is the attorney who signs below on the basis of the information supplied by the inventor and the information in his file.

Respectfully submitted,

CHERNOFF, VILHAUER, McCLUNG & STENZEL

By: _____

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Dated: January 31, 2007

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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet | | of |

Complete if Known	
Application Number	11/592,784
Filing Date	November 3, 2006
First Named Inventor	Katzer
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Examiner Name	TBD
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Examiner Initials *	Cite No.[1]	Document Number Number - Kind Code[2] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
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		US-			

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Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.
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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet | | of | |

Complete if Known	
Application Number	11/592,784
Filing Date	November 3, 2006
First Named Inventor	Katzer
Art Unit	TBD
Examiner Name	TBD
Attorney Docket Number	7431.0092

U.S. PATENT DOCUMENTS

Examiner Initials *	Cite No.[1]	Document Number Number - Kind Code[2] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 6,065,406	05-2000	Katzer	
		US- 6,441,570	08-2002	Grubba et al.	
		US- 6,320,346	11-2001	Graf	
		US- 6,270,040	08-2001	Katzer	
		US- 6,267,061	07-2001	Katzer	
		US- 5,463,552	10-1995	Wilson et al.	
		US- 7,142,954	11-2006	Neiser	
		US- 6,877,699	04-2005	Katzer	
		US- 6,827,023	12-2004	Katzer	
		US- 6,702,235	03-2004	Katzer	
		US- 6,676,089	01-2004	Katzer	
		US- 6,275,739	08-2001	Ireland	
		US-6,281,606	08-2001	Westlake	
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		US- 4,853,883	08-1989	Nickles et al.	
		US- 2004/0099770	05-2004	Katzer	
		US- 2006/0241825	10-2006	Katzer	

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] - Number[4] - Kind Code[5] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]
		WO 99/66999 (Abstract)	12-1999	Katzer		
		GB 2353228 (Abstract)	08-2003	Katzer		
		CA 2330931 (Abstract)	08-2004	Katzer		

NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T[2]

Examiner Signature		Date Considered	

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[1] Applicant's unique citation designation number (optional). [2] Applicant is to place a check mark here if English language Translation is attached.
This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Exhibit G

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/592,784	11/03/2006	Matthew A. Katzer	7431.0092	1490

152 7590 04/03/2008

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EXAMINER	
LE, MARK T	

ART UNIT	PAPER NUMBER
3617	

MAIL DATE	DELIVERY MODE
04/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	11/592,784	KATZER, MATTHEW A.	
	Examiner	Art Unit	
	MARK T. LE	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *12-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the amendments filed on January 25, 2008. Applicant's amendments and remarks have been carefully considered.

2. Claims 19, 27 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, "said validation" lacks antecedent basis. Note that claim 19 should depend from claim 17, which has the proper antecedent basis for the expression "said validation".

In claim 27, "all said generally purpose computers" lacks antecedent basis.

In claim 30, line 4, "said second command" lacks antecedent basis.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12, 14-16, 18, 20, 27-29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the digital command control system (DCC) and DigiToys Systems (DTS), described on pages 1-2 of the instant specification, in view of Digital Command Control of Stan Ames (DCCSA).

DTS described on page 2 of the instant specification is a model railroad control system similar to that recited in the instant claims, including a software and an interface designed for controlling a model railroad set from a remote location; wherein, the

software queues and sequentially sends control commands through the interface to a digital command station for execution of the commands. It is noted that the interface of DTS is external from the digital command station.

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to DTS so as to achieve the expected operating efficiency thereof.

Regarding the interface being a general purpose computer, note that it would have been obvious to one skilled in the art to use a general purpose computer instead of a dedicated computer for performing the same expected functions in DTS so as to achieve expected advantages thereof, such as lower cost, and greater flexibilities.

Regarding the instant claimed plurality of digital command stations, as recited in instant claim 14, it would have been obvious to one skilled in the art to provide additional command station(s) of the similar capabilities in DTS so as to allow the system to accommodate a larger track layout with more control features.

Regarding the instant claimed commands relating to speed of locomotives, note that control commands of a digital command control system being related to engine controls or the speed of locomotive are well known. Note for example, the last paragraph of page 1 of the instant specification, wherein, the commands controlling

train engines in a digital command control system are suggested, and obviously, the commands controlling train engines are considered as being related to the speed of locomotive as claimed.

Regarding instant claim 15, consider the DTS; wherein, the software issues a command to a communication interface and awaits confirmation that the command was executed by the digital command station, and when the software receives confirmation or response from the digital command station that the command executed, which is considered to represent the state of the digitally controlled railroad, the software program validates the response by sending the next command through the communication interface to the digital command station.

Regarding the instant claimed updating a database the state of the control, as recited in instant claim 18, note that such concept of compiling and updating a database of the state of controls of a computer controlled railroad system for current and future references is well known in the art of railroad control systems (Official Notice is taken); therefore, it would have been obvious to one skilled in the art to provide the same database compiling and updating capabilities in DTS so as to achieve expected advantages thereof.

Regarding the instant claimed interface and programs being operated on the same computer or different computers, as recited in instant claims 27-29, such a difference is not considered as being patentably significant because it would have been obvious to one skilled in the art to handle different operations on the same or different

computers having the same capabilities; wherein, the selection of the same or different computers may be made merely on the obvious basis of conveniences, the number of operators to take control of the railroad layout, and/or the availability of computers.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 12-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of the claims of U.S. Patents No. 6,494,408; 7,216,836; 6,702,235; 6,270,040; and 6,702,235. Although the conflicting claims are not identical, they are not patentably distinct from each other because they define essentially the same structure with minor differences in wordings.

7. Claims 12-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of claims of U.S.

Patent No. 7,209,812; 6,877,699; 6,827,023; 6,676,089; 6,530,329; 6,460,467; 6,267,061; and 6,065,406 in view of Digital Command Control of Stan Ames (DCCSA).

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to the patent claim structure so as to achieve the expected operating efficiency thereof.

8. Claims 12-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of the claims of copending Application No. 11/593,770 and 11/607,233 in view of in view of Digital Command Control of Stan Ames (DCCSA).

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to the copending application claim structure so as to achieve the expected operating efficiency thereof.

This is a provisional obviousness-type double patenting rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Le/
Primary Examiner
Art Unit 3617

mle
3/20/08

Exhibit H

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1415, Washington, D.C. 20231, on June 23, 2006.

Dated: June 23, 2006

Kevin L. Russell

Atty. Docket No.
7431.0071_

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Matthew Katzer	Group Art Unit: 2144
U.S. Pat. App. No.: 10/889,995	Examiner: TBD
Filed: July 13, 2004	Customer No.: 00152

Title: MODEL TRAIN CONTROL SYSTEM

INFORMATION DISCLOSURE STATEMENT
IN ACCORDANCE WITH 37 CFR §1.98

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits herewith four sheets of Form PTO-1449 (Modified) listing the patents and non-patent publications of which Applicant is aware and which Applicant desires to have considered by the Patent Office in accordance with 37 CFR §1.97. In accordance with 37 CFR §1.97(c)(2), this Information Disclosure Statement is being submitted after the mailing date of a first Office Action on the merits of the above-identified application. Accordingly, enclosed is the required fee of $180.

In accordance with 37 CFR §1.97(h), the filing of this Information Disclosure Statement will not be regarded as an admission that any patent or publication or combination of patents and

publications referred to herein is, or is considered to be, material to patentability under 37 CFR §1.56(b) unless specifically designated as such.

The Examiner is requested to initial Form PTO-1449 and return an acknowledgment copy to the Applicant to confirm that the listed references were received and considered.

The person making this statement is the attorney who signs below on the basis of the information supplied by the inventor and the information in his file.

Respectfully submitted,

CHERNOFF, VILHAUER, McCLUNG & STENZEL

By:_____

Kevin L. Russell, Reg. No. 38,292
1600 ODS Tower
601 SW Second Avenue
Portland, OR 97204
Tel: 503-227-5631
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Dated: June 23, 2006

PTO/SB/08A (07-05)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet | | of | |

Complete if Known	
Application Number	10/889,995
Filing Date	July 13, 2004
First Named Inventor	Katzer
Art Unit	2144
Examiner Name	TBD
Attorney Docket Number	7431.0071

U.S. PATENT DOCUMENTS

Examiner Initials *	Cite No.[1]	Document Number Number - Kind Code[2] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US- 6,530,329	03/11/2003	Katzer	
		US-			

FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] - Number[4] - Kind Code[5] (*if known*)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]

NON PATENT LITERATURE DOCUMENTS

Examiner Initials *	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T[2]
		JUERGEN FREIWALD, "Railroad & Co. + East DCC Join the Test Team!," 1 page, at least one year prior to filing date, Railroad & Co., Juergen Freiwald, Lerchenstrasse 63, 85635 Hoehenkirchen, Germany.	
		LARRY PUCKETT, "WinLok 1.5 Brings Your Computer Into the Train Room," March 1995 issue of Model Railroading, pp. 50-51.	
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		DR. HANS R. TANNER, "Letter to Mr. Kevin Russell regarding KAM Industries Patents, your communication of September 18, 2002," October 3, 2002, DigiToys Systems, 1645 Cheshire Ct. Lawrenceville, GA 30043,together with attached references.	
		JURGEN FREIWALD, "Letter to Mr. Kevin Russell regarding KAM Industries with respect to the Intellectual Property Matters US Patents: 6,065,406; 6,270,040; 6,267,061, your letter from September 18, 2002," October 15, 2002, Freiwald Software-Kreuzberg 16 B- 85658 Egmating, 3 pages.	
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		ROBERT JACOBSEN v. MATTHEW KATZER, et al, "Declaration of Robert Jacobsen in Opposition to Motion to Strike Claims 5 & 7 by defendant Kevin Russell," US District Court for the Northern District of California, San Francisco Division, Case No. C-06-1905-JSW, filed June 9, 2006.	
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		"Matthew A. Katzer v. Mireille S. Tanner, Complaint for Patent Infringement, Civil Case No. CV-02 1293,"	
		"Matthew A. Katzer v. Mireille S. Tanner, Plaintiffs' Notice of dismissal without Prejudice, Civil Case No. 02-CV-1293-ST," December 20, 2002.	
		"Matthew A. Katzer v. Friewald Software, Plaintiffs' Notice of Dismissal without Prejudice, Civil Case No. 02-CV-1292-HU," December 20, 2002.	
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		"TrainTools™ Interface Description, Building your own visual interface to a model railroad," KAM Industries, July 20, 1997, 53 pages.	
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Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.
[1] Applicant's unique citation designation number (optional). [2] Applicant is to place a check mark here if English language Translation is attached.
This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Exhibit I

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/889,995	07/13/2004	Matthew A. Katzer	7431.0071	6779

7590 08/07/2006

Kevin L. Russell
Chernoff, Vilhauer, McClung & Stenzel, LLP
Suite 1600
601 S.W. Second Avenue
Portland, OR 97204-3157

EXAMINER	
NGUYEN, CUONG H	

ART UNIT	PAPER NUMBER
3661	

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/889,995	KATZER, MATTHEW A.	
	Examiner	Art Unit	
	CUONG H. NGUYEN	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-16 and 18-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-16 and 18-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9/29/05*. & 5/25/06 & 6/26/06
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is the answer to the communications received on 2/27/06, and on 5/11/2006.

2. Claims 1, 3-9, 16-18, and 21-26 are pending in this application.

Information Disclosure Statement

3. Two set of IDSs, received on 5/25/2006, and 6/26/2006 are acknowledged (several documents of these IDS are not initialed because IDS requirement is "Include name of the author, title of the article, title of the item, date, page(s), volume-issue number(s), publisher, city and/or country where published" – if an author is not printed, write "UNKNOWN AUTHOR", if a published year is not printed, please writes a year that it may be published).

Response to Amendment

4. The current examiner respectfully submits that the answer, and amendments since 2/27/2006 until now) has not responded to the rejection of independent claims 1, and 16 (in an Office Action mailed on 9/22/2005 by Examiner Olga Hernandez), therefore, the submitted papers do not conform to the USPTO's requirement (further, the amended phrase on 2/27/06 for independent claim 1 contains a subject matter suggested by cited Lainema, i.e., the responses of related components when receiving a command. On 5/11/2006 paper, in the REMARKS/ARGUMENTS, the applicant expressed: "In some cases, the first program, the second program, and the resident external controlling interface may be operational on the same general purpose computer", i.e., every thing that claimed may be in within a computer – this is clearly unpatentable because they are

suggested by submitted IDS documents to control an electronic circuit (this is essentially what the applicant claims) - please make the corrections.

Conclusion

5. Pending claims are not patentable.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 571-272-6759. The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 571-272-6956. The Rightfax number for the organization where this application is assigned is 571-273-6759.

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Please provide support, with page and line numbers, for any amended or new claim in an effort to help advance prosecution; otherwise any new claim language that is introduced in an amended or new claim may be considered as new matter, especially if the Application is a Jumbo Application.

Cuonghnguyen

CUONG H. NGUYEN
Primary Examiner
Art Unit 3661

Exhibit J

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/889,995	07/13/2004	Matthew A. Katzer	7431.0071	6779

7590 12/21/2006

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EXAMINER	
NGUYEN, CUONG H	
ART UNIT	PAPER NUMBER
3661	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/889,995	KATZER, MATTHEW A.	
	Examiner	Art Unit	
	CUONG H. NGUYEN	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-9,16,18 and 21-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-9,16,18 and 21-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is the answer to the communications received on 10/05/2006.

2. Claims 1, 3-9, 16-18, and 21-32 are pending in this application.

Information Disclosure Statement

3. Two set of IDSs, received on 5/25/2006, and 6/26/2006 are acknowledged (several documents of these IDS are not initialed yet because IDS requirement is "Include name of the author, title of the article, title of the item, date, page(s), volume-issue number(s), publisher, city and/or country where published" – if an author is not printed, write "UNKNOWN AUTHOR", if a published year is not printed, please writes a year that it may be published).

Response to Amendment

4. The current examiner respectfully submits that the pending claims essentially comprising of receiving/acknowledging commands/signals that passively received by an object via a digital command station (i.e., a model railroad) this is a very obvious issue that is claimed by the applicant. – a digitally controlled model railroad as claimed is merely an object that receiving commands. Therefore, claiming a method of operating a digitally controlled model railroad by sending command signals and receiving back responses are obvious from DigiToys Systems as admitted by applicant.

As to the claimed physical location (i.e., in a digitally-controlled model railroad environment) being merely a field of use limitation (note that it is unclear for "digital control" in the claims here (is there any distinguished in the pending claims about sending an analog command, or a digital command?), again the Examiner's position about this claimed subject matter is obvious. The examiner respectfully submits that the

claimed "model railroad" does not differ structurally from the control taught by DigiToy Systems. He finds that they differ solely based on an intended use (if there is any).

Statements of intended use do not serve to distinguish structure over the prior art. See In re Pearson, 494 F.2d 1399, 1403, 181 USPQ 641, 644 (CCPA 1974); In re Yanush, 477 F.2d 958, 959, 177 USPQ 705, 706 (CCPA 1973); In re Casey, 370 F.2d 576, 580, 152 USPQ 235, 238 (CCPA 1967).

Claim Rejections - 35 USC § 103

5. Claims 1, 3-9, 16-18, and 21-32 are rejected under 35 U.S.C. 103(a) as being obvious over Applicant Admitted Prior Art (AAPA) in view of well-known signal interactions between a sender and a receiver via an interface.

AAPA (i.e., DigiToys Systems) teaches a method for controlling a model railroad set from a remote location via executing a software.

Since it's well known to sending command signals and receiving back responses, it would have been obvious to modify the process of AAPA by clearly disclosing claimed limitations because these steps have been "normal" for "shaking hands" between a sender and a receiver through a middle-man (a digital command station, a railroad, and a controlling interface).

In the specification, the applicant recognizes that this claimed subject matter already been taught: "[0004] DigiToys Systems of Lawrenceville, Ga. has developed a software program for controlling a model railroad set from a remote location. The software includes an interface which allows the operator to select desired changes to devices of the railroad set that include a digital decoder, such as increasing the speed of a train or switching a switch. The software issues a command locally or through a network,

such as the internet, to a digital command station at the railroad set which executes the command. The protocol used by the software is based on Cobra from Open Management Group where the software issues a command to a communication interface and awaits confirmation that the command was executed by the digital command station. When the software receives confirmation that the command executed, the software program sends the next command through the communication interface to the digital command station. In other words, the technique used by the software to control the model railroad is analogous to an inexpensive printer where commands are sequentially issued to the printer after the previous command has been executed. Unfortunately, it has been observed that the response of the model railroad to the operator appears slow, especially over a distributed network such as the internet. One technique to decrease the response time is to use high-speed network connections but unfortunately such connections are expensive."

The reasons from the applicant that DigiToy Systems' model is slow (how slow?) (i.e., "the response of the model railroad to the operator appears slow", or another technique is expensive (how expensive?) are not included in the pending claims to show a comparison between the pending model and the prior art's model.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize DigiToy Systems (as admitted by the applicant) to operate a digitally controlled model railroad because this prior art already created fundamental steps as claimed of exchanging electronic communications (directly or indirectly) between related components for controlling model railroads (see also attached PTO-892).

Conclusion

6. Pending claims are not patentable. The examiner invites a request for an interview to understand further what the applicant wants to claim.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 571-272-6759 (or email. Cuong.nguyen@uspto.gov). The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 571-272-6956. The Rightfax number for the organization where this application is assigned is 571-273-6759.

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Please provide support, with page and line numbers, for any amended or new claim in an effort to help advance prosecution; otherwise any new claim language that is introduced in an amended or new claim may be considered as new matter, especially if the Application is a Jumbo Application.

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