

R. Scott Jerger (*pro hac vice*) (Oregon State Bar #02337)  
Field Jerger LLP  
610 SW Alder Street, Suite 910  
Portland, OR 97205  
Tel: (503) 228-9115  
Fax: (503) 225-0276  
Email: [scott@fieldjerger.com](mailto:scott@fieldjerger.com)

John C. Gorman (CA State Bar #91515)  
Gorman & Miller, P.C.  
210 N 4th Street, Suite 200  
San Jose, CA 95112  
Tel: (408) 297-2222  
Fax: (408) 297-2224  
Email: [jgorman@gormanmiller.com](mailto:jgorman@gormanmiller.com)

Attorneys for Defendants  
Matthew Katzer and Kamind Associates, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, an individual,

Plaintiff,

vs.

MATTHEW KATZER, an individual, and  
KAMIND ASSOCIATES, INC., an Oregon  
corporation dba KAM Industries,

Defendants.

Case Number C06-1905-JSW-JL

Place: Ct. F, 15<sup>th</sup> Floor

Hon. James Larson

Time: July 8, 2009 9:30am

**DEFENDANTS MATTHEW  
KATZER AND KAMIND  
ASSOCIATES, INC.'S RESPONSE  
TO PLAINTIFF'S MOTION FOR A  
DISCOVERY PLAN**

1 **STATEMENT OF THE ISSUES TO BE DECIDED**

- 2 1. Is Plaintiff entitled to significantly more depositions than allowed under Fed. R. Civ.  
3 P. 30(a)(2)?
- 4 2. Is Plaintiff entitled to propound more ten (10) more interrogatories than allowed  
5 under Fed. R. Civ. P. 33(a)?
- 6 3. Is Plaintiff entitled to expand the scope of discovery to irrelevant information?  
7

8 **STATEMENT OF THE RELEVANT FACTS**

9 This Court entered a discovery plan on May 14, 2009 [Dkt.# 302] after holding a third  
10 Case Management Conference. The parties commenced discovery on May 14, 2009. The close  
11 of non-expert discovery is October 5, 2009. At this time, no depositions have been taken and  
12 Plaintiff has propounded fourteen (14) interrogatories and twenty-eight (28) requests for  
13 production to Defendants. Contrary to Plaintiff’s contention, this case does not involve any  
14 patent issues, as all of Plaintiff’s patent claims were dismissed without leave to amend on  
15 January 5, 2009 by this Court [Dkt.# 284].

16 On May 26, 2009, Plaintiff filed a “Motion for Leave for Discovery Plan and Motion to  
17 Shorten Time” [Dkt.# 303]. One of the many motions in this document is a motion to shorten  
18 Defendants’ time to respond. Plaintiff did not confer with Defendants on this motion as required  
19 by Civ. L.R. 6-3 (a)(4)(i) nor did Plaintiff did submit a declaration outlining the reasons for the  
20 requested shortening or the prejudice that would occur if time was not changed. Civ. L.R. 6-  
21 3(a)(1)-(5). On May 29, 2009, Plaintiff filed a second “Motion for a Discovery Plan” [Dkt.#  
22 305]. The second Motion for a Discovery Plan purports to “replace” the first motion and the  
23 only substantive difference appears to be that Plaintiff has removed the motion to shorten time.  
24 Motion for a Discovery Plan at 2, fn. 1. Subsequent to the filing of this second motion, the  
25 parties stipulated to an expedited schedule for this motion. Plaintiff’s motion is presently noticed  
26 for July 8, 2009, however Defendants do not object to an expedited hearing on June 17, 2009 for

1 this motion. [Dkt.# 307]. Defendants will address only the motions contained in Plaintiff's  
2 Second Motion for a Discovery Plan (hereinafter "Motion for a Discovery Plan").

### 3 ARGUMENT

4 Plaintiff's Motion for a Discovery Plan is actually three motions: (1) a motion for leave  
5 to take over 100 additional depositions; (2) a motion for leave to propound ten (10) additional  
6 interrogatories; and (3) a motion to expand the scope of discovery beyond what is relevant to this  
7 lawsuit.

#### 8 1. Additional Depositions

9 At this time, Plaintiff has yet to conduct any depositions. Plaintiff seeks to replace the  
10 limit in Fed. R. Civ. P. 30 of ten (10) depositions limited to one day of seven (7) hours each with  
11 "100 hours of depositions."

12 Ostensibly this would allow Plaintiff to conduct over 100 mini-depositions of the legion  
13 of 60 developers and 50 manufacturers that Plaintiff feels he needs to depose. *See* Motion for  
14 Discovery Plan at 3 (stating that testimony may be needed from 60 developers and 50  
15 manufacturers and that these depositions will last less than 30 minutes each). Plaintiff's counsel  
16 has indicated to the undersigned that she intends to depose all of the approximately 60  
17 developers who assigned their rights to Plaintiff.

18 Plaintiff's motion is unaccompanied by a declaration and fails to make any showing why  
19 extra depositions are necessary as required by the Federal Rules. *See Archer Daniels Midland*  
20 *Co. v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. 578, 586 (D. Minn. 1999) (stating that parties  
21 must make a "particularized showing" why extra depositions are necessary and stating that "at a  
22 minimum, [Defendant] should appropriately exhaust its current quota of depositions, in order to  
23 make an informed request for an opportunity to depose more witnesses..."). *See also Robertson*  
24 *v. Bair*, 242 F.R.D. 130, 138 (D.D.C. 2007) (noting that the Court begins with the presumption  
25 that the limits on depositions in the Federal Rules were "carefully chosen and that extensions of  
26 that limit should be the exception, not the rule.").

1           Additionally, Plaintiff fails entirely to demonstrate why the benefit of taking over 100  
2 depositions outweighs the burden and expense of this undertaking given the needs of the case,  
3 the amount in controversy, the parties' resources, and the importance of the additional  
4 depositions in resolving the issues as required by the Federal Rules. Fed. R. Civ. P.  
5 26(b)(2)(C)(iii); *see also* Fed. R. Civ. P. 26(b)(1) noting that all discovery is subject to the  
6 limitations in Fed. R. Civ. P. 26(b)(2)(C), *accord*, Adv. Comm. Notes on 1993 Amendments to  
7 FRCP 30(a)(2) stating that more than 10 depositions per side should be allowed only when  
8 consistent with the "benefits vs. burdens" approach of Rule 26(b)(2).

9           The extreme number of depositions requested by Plaintiff would be tremendously  
10 burdensome on Defendants, are vastly disproportionate to the amount in controversy in this case  
11 and are of limited relevance. Defendants' gross sales of the software which is the subject of  
12 Plaintiff's copyright claim in this lawsuit are approximately \$1,200.00. Decl. of Matthew A.  
13 Katzer [Dkt.# 261] ¶ 23. Therefore, Defendants respectfully request that this Court not deviate  
14 from the deposition limitations in the Federal Rules.

## 15           2. Interrogatories

16           Plaintiff seeks ten (10) additional interrogatories. Plaintiff has yet to ask his allotted 25  
17 interrogatories to Defendants and has presently only propounded 14 interrogatories to  
18 Defendants. As with Plaintiff's request for additional depositions, Plaintiff must make a  
19 particularized showing of why these additional interrogatories are necessary when he seeks to  
20 serve more interrogatories than contemplated by the Federal Rules. *Archer Daniels Midland Co.*  
21 *v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. at 586. Again, Plaintiff has failed to make any  
22 showing why it is necessary to deviate from the Federal Rules.



1 Dated: June 4, 2009.

2 Respectfully submitted,

3           /s/          Scott Jerger          

4 R. Scott Jerger (*pro hac vice*)  
5 Field Jerger LLP  
6 610 SW Alder Street, Suite 910  
7 Portland, OR 97205  
8 Tel: (503) 228-9115  
9 Email: [scott@fieldjerger.com](mailto:scott@fieldjerger.com)

10 **CERTIFICATE OF SERVICE**

11 I certify that on June 4, 2009 I served Matthew Katzer's and KAM's Response to  
12 Plaintiff's Motion for Discovery Plan on the following parties through their attorneys via the  
13 Court's ECF filing system:

14 Victoria K. Hall  
15 Law Office of Victoria K. Hall  
16 Attorney for Robert Jacobsen  
17 3 Bethesda Metro Suite 700  
18 Bethesda, MD 20814

19 David McGowan  
20 Warren Hall  
21 5998 Alcala Park  
22 San Diego, CA 92110

23           /s Scott Jerger          

24 R. Scott Jerger (*pro hac vice*)  
25 Field Jerger LLP