

2009-1221

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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ROBERT JACOBSEN,

Plaintiff-Appellant,

v.

MATTHEW KATZER and KAMIND ASSOCIATES, INC.  
(DOING BUSINESS AS KAM INDUSTRIES),

Defendants-Appellees.

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Appeal from the United States District Court for the  
Northern District of California in case No. 06-CV-1905,  
Judge Jeffrey S. White

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**MOTION OF AMICUS CURIAE SOFTWARE FREEDOM LAW CENTER  
FOR LEAVE TO FILE A BRIEF IN SUPPORT OF APPELLANT**

Daniel B. Ravicher, Esq.  
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Fax: (212) 580-0898  
Counsel for *Amicus Curiae*

June 15, 2009

## CERTIFICATE OF INTEREST

Counsel for *Amicus Curiae* certifies the following:

1. The full name of every party or amicus represented by me is: Software Freedom Law Center, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is: Not Applicable.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by me are: None.
4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Daniel B. Ravicher, Esq.  
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Dated: June 15, 2009



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*Attorney for Amicus Curiae*

The Software Freedom Law Center (“SFLC”) hereby moves for leave to file a brief as *amicus curiae* in support of Appellant.\* As described more fully below, SFLC represents a substantial interest in this case and can present the Court with a unique perspective on some of the relevant issues.

SFLC is a not-for-profit legal services organization that provides legal representation and other law-related services to protect and advance Free and Open Source Software (FOSS), defined as software distributed under terms that give recipients freedom to copy, modify and redistribute the software. SFLC provides pro bono legal services to non-profit and individual FOSS developers, all of whom distribute software under FOSS licenses. SFLC also helps the general public better understand the legal aspects of FOSS.

FOSS is a valuable public good, and copyright law should preserve the incentives, interest, and choices of FOSS developers. Because these incentives are primarily dependent upon mutual respect for and enforcement of the communal norms defined in FOSS licenses, damages are typically an insufficient remedy for infringement of FOSS copyrights. The availability of injunctive relief is necessary


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\* Requisite copies of the proposed brief are enclosed herewith. Plaintiff-Appellant Jacobsen gave consent to the submission of the brief. Consent of Defendants-Appellees was requested, but no response was received.

to enforce those norms as they are embodied in FOSS copyright licenses. The district court's reasoning in this case threatens to broadly foreclose injunctive relief to FOSS developers, stripping them of effective remedy and dampening their motivation to contribute to the common good. Thus, SFLC wishes to submit the proposed brief to express support of Plaintiff-Appellant's position and the reasoning of this Court in the prior appeal of this case.

For the reasons set forth above, SFLC respectfully requests that the Court grant leave to file the attached *amicus curiae* brief in support of Appellant.

Respectfully submitted,



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**ORDER**

The Motion of Software Freedom Law Center for Leave to File Brief as  
*Amicus Curiae* is hereby granted.

So Ordered, this \_\_\_\_ day of \_\_\_\_\_, 2009.

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[continued on next page]

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*Counsel for Defendants-Appellees*

## CERTIFICATE OF SERVICE

I, Daniel B. Ravicher hereby certify that I caused one original and 3 copies of the foregoing:

**Motion of *Amicus Curiae* Software Freedom Law Center for Leave to File A  
Brief in Support of Appellant**

to be sent by hand for filing on the 15th Day of June, 2009 to:

Mr. Jan Horbaly, Clerk  
U.S. Court of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439

I further certify that I caused two copies of the foregoing Motion of *Amicus Curiae* to be served on the 15th Day of June, 2009, by Federal Express on the following counsel of record:

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