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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 ROBERT JACOBSEN,) Case No. C 06 1905 JSW
13 Plaintiff,) Date: December 19, 2008
14 vs.) Time: 2008
15 MATTHEW KATZER, KAMIND) Courtroom, 17th Floor
ASSOCIATES, INC., and KEVIN) Honorable Jeffrey S. White
16 RUSSELL,) OPPOSITION BY DEFENDANT
17 Defendants.) KEVIN RUSSELL TO
) PLAINTIFF'S MOTION TO
) STRIKE PORTIONS OF
) DECLARATIONS

18
19 STATEMENT OF ISSUES TO BE DECIDED

20 1. Whether Jacobsen's motion to strike parts of the declarations submitted in reply
21 to his "opposition" to defendant's motion to dismiss certain claims in his complaint for
22 declaratory relief should be denied in all respects?

23 INTRODUCTION AND STATEMENT OF FACTS

24 This case is becoming impossibly convoluted and bizarre.
25 Jacobsen's case against defendant Kevin Russell was dismissed without leave to
26 amend for failure to state a claim and for lack of jurisdiction of the person. At the same
27 time, the Court also granted Kevin Russell's special motion to strike and awarded
28 attorney fees incurred in bringing it. Document 111. Defendant KAMIND later

1 disclaimed its '329 patent and moved to dismiss as moot Jacobsen's claims for
2 declaratory relief with regard to that disclaimed patent. In the course of opposing that
3 motion, Jacobsen filed first a "second sur-rebuttal" and then an "opposition," which is in
4 effect a second motion for reconsideration of the order granting Russell's motion to strike
5 and clearly intended to drag Russell back into this litigation. Document 243. That
6 motion for reconsideration urges, among other things, that the award of sanctions against
7 Jacobsen was made on the basis of "false" declarations by Russell and Katzer, which
8 declarations stated that both declarants believed in good faith that the '329 patent was
9 valid. Jacobsen now contends that said declarations were false and that KAMIND must
10 be required to prove the patent valid or be forced to return the attorney fees awarded
11 against Jacobsen.

12 Russell and KAMIND both filed replies to Jacobsen's motion for reconsideration,
13 supported by declarations of Kevin Russell and Matthew Katzer stating that they believed
14 in good faith that the '329 patent was valid and infringed, and that KAMIND disclaimed
15 the patent to avoid paying the very large amount in attorney fees that would be necessary
16 to establish its validity. Documents 253, 254, 256, 257.

17 Russell's reply also points out the legal errors and factual misrepresentations in
18 Jacobsen's motion for reconsideration. Document 253. One such legal *and* factual error
19 is Jacobsen's assertion that the Court's order awarding sanctions against him turned on
20 defendant's good-faith belief that the '329 patent was valid, rather than whether they
21 contemplated in good faith that litigation was likely—as it did. Document 253, 816-
22 :159:12; see Document 111.

23 Jacobsen's motion to strike the Katzer and Russell declarations is based on the
24 unspoken premise that before Katzer and Russell can claim they believed in the validity
25 of the '329 patent they must conclusively prove it is valid.

26 ARGUMENT

27 Jacobsen's motion to strike declarations illustrates the complete falsity of his
28 position.

