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11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 ROBERT JACOBSEN, ) No. C-06-1905-JSW  
15 )  
Plaintiff, )  
16 )  
v. )  
17 )  
MATTHEW KATZER, et al., )  
18 )  
Defendants. ) Date: Fri., December 4, 2009  
19 ) Time: 9:00 a.m.  
20 ) Courtroom: 11, 19th Floor  
21 ) Judge: Hon. Jeffrey S. White  
22 )  
\_\_\_\_\_ )

23

24 I, Robert Jacobsen, have personal knowledge to the facts stated herein and hereby declare  
25 as follows:

26

27 I am a party to this action. I am submitting this Declaration in Support of the Reply  
Memorandum in Support of the Motion for Summary Judgment.

28

- 1           1. Since its inception, the JMRI software has been available for download at no cost,  
2           subject only to license restrictions. Both JMRI's license and the practices of the  
3           SourceForge.net incubator site will ensure that it remains available for download at no  
4           cost, subject only to license restrictions, in the future.
- 5           2. Some model railroaders want to obtain the software on CDs rather than by download.  
6           They may not have an Internet connection, or the computer at their railroad might not  
7           be connected, or they may want a CD for some other reason. The JMRI license allows  
8           people to put copies onto CDs and to distribute them. Many people have done this.  
9           Some of them have charged a small price for doing so, to recover the cost of the disk,  
10          postage, etc. I have done this a few times.
- 11          3. In 2005, I received a letter from MRIA asking whether we "produce products that are  
12          commonly used in the hobby of model railroading and *offer those products for sale*"  
13          (emphasis in the original). I replied in my March 2005 letter with two points. First,  
14          "our primary product in this sense is a CD for installing the software", along with a  
15          pointer to a web page describing that. A copy of that web page as of that time, retrieved  
16          from the Internet Archive, is attached.
- 17          4. The second thing I mentioned in the MRIA letter is "custom software versions and  
18          associated configuration support". This refers to people who developed customized  
19          versions of JMRI, bundled those versions with hardware products, and then sold the  
20          bundle. These users have complied with the relevant JMRI licenses. In my letter to the  
21          MRIA I estimated that such sales amounted to approximately \$5,000. I personally have  
22          not sold such bundles.
- 23          5. I have reviewed Defendants' Decoder Commander version 304 CD. Every one of the  
24          102 template files on this CD corresponds to a specific decoder definition file in JMRI  
25          26  
27  
28

1 1.7.1, and every decoder definition file in JMRI 1.7.1 has been made into a template file  
2 on the KAM CD. The two lists of files match up completely. Attached as Exhibit A is  
3 a comparison between the files names from JMRI v. 1.7.1 and the decoder template file  
4 names from Decoder Commander v. 304.

5  
6 6. Each JMRI decoder definition defines the properties for a family of decoders, so there  
7 can be more than one decoder type defined in a JMRI decoder definition file. For each  
8 JMRI decoder definition, the corresponding decoder templates in Decoder Commander  
9 v. 304 defines properties for the same family of decoders. See Exhibit A which lists the  
10 family names as they appear in JMRI v. 1.7.1 and as they appear in Decoder  
11 Commander v. 304.

12  
13 7. Thus, version 304 of Decoder Commander programs the same decoders that JMRI v.  
14 1.7.1 does. It's the same selection of decoders.


15  
16 8. In May 2005, I decided that JMRI decoder definition files should contain copyright  
17 notices and references to the license. There were a large number of them that needed to  
18 be changed. Technical constraints due to the construction of the decoder definition files  
19 also meant that the notice had to be formatted in a specific way and inserted at a  
20 specific point. I therefore wrote a script that indexes over the decoder definitions and  
21 inserts the copyright information in the proper way. I used that script to ensure that the  
22 copyright notices and references to the license were properly present in the JMRI  
23 release 1.7.1 decoder definition files.

24  
25 9. I installed Defendants' Decoder Commander program from a KAM version 304 CD.  
26 The program prompted me for a registration key, which was necessary to unlock the full  
27 function of the program. Decoder Commander presents its own license and a KAMIND  
28 copyright notice, but makes no references to JMRI's license or JMRI's copyright notice.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.  
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4 Executed this 19th day of November, 2009, in Berkeley, California.

5  
6 By

  
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Robert Jacobsen

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