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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, an individual, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MATTHEW KATZER, an individual, KAMIND )  
ASSOCIATES, INC., an Oregon corporation dba )  
KAM Industries, and KEVIN RUSSELL, an )  
individual, )  
 )  
Defendants. )

Case Number C06-1905-JSW  
Hon. Jeffrey S. White

DEFENDANTS MATTHEW  
KATZER, AND KAMIND  
ASSOCIATES INC.'S CASE  
MANAGEMENT STATEMENT

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Defendants Matthew Katzer and Kamind Associates, Inc. (“KAM”) (hereinafter collectively referred to as “defendants”) in the above titled action submit this case management statement and request that the Court adopt this case management statement in its Case Management Order.

The defendants, despite reasonable efforts, were unable to obtain the cooperation of the plaintiff in the preparation of a joint case management statement. Pursuant to LR 16-9, defendants KAM and Katzer submit this separate case management statement.

1 The undersigned learned after 11:00pm on August 4, 2006 (the due date of the joint  
2 statement pursuant to Docket # 10) that the joint case management statement that all parties had  
3 endeavored to create was not agreed to by plaintiff's counsel. Given the late hour, the  
4 undersigned was unable to contact counsel for defendant Kevin Russell for his signature on this  
5 case management statement, but suspects that counsel for Russell will file a letter with the court  
6 concurring with this statement on Monday, August 7, 2006. Pursuant to L.R. 16-9, this separate  
7 case management statement is accompanied by the declaration of R. Scott Jerger describing the  
8 conduct of the plaintiff which prevented the preparation of a joint statement. Given the late hour  
9 and the unavailability of the undersigned's scanner, the undersigned will submit the exhibits  
10 referenced in this declaration on Monday morning, August 7, 2006.

11 **1. A brief description of jurisdictional issues**

12 Jacobsen's complaint is primarily a request for declaratory relief regarding the  
13 enforceability of certain patents held by KAM. The complaint alleges that the patents are invalid  
14 primarily because they were obtained through fraud on the patent office and inequitable conduct.  
15 The complaint also contains claims alleging antitrust violations, unfair competition, cyber-  
16 squatting, and libel.

17 The patent validity issues in this case and the Lanham Act (cyber-squatting) claim  
18 involve federal questions. 28 U.S.C. § 1331. The plaintiff has also brought a libel claim under  
19 California law and a California Unfair Competition Act claim (California Business &  
20 Professions Code § 17200 *et seq.*). Jurisdiction is proper in this Court for these state law claims  
21 based on the supplemental jurisdiction of this Court. 28 U.S.C. § 1367.

22 This Court also has jurisdiction to hear Sherman Act claims pursuant to federal question  
23 jurisdiction. In this case, however, defendants KAM and Katzer have filed a motion to dismiss  
24 the Sherman Act claim, *inter alia*, asserting that the plaintiff does not have standing to bring such  
25 a claim and therefore this Court does not have subject matter jurisdiction. Fed. R. Civ. P.  
26 12(b)(1).

1 Defendant Kevin Russell has filed a motion to dismiss for lack of personal jurisdiction  
2 (12(b)(2).

3 No parties remain to be served in this lawsuit.

4 **2. A brief description of the case and defenses**

5 Plaintiff Jacobsen works for the Lawrence Berkeley National Laboratory of the  
6 University of California and teaches physics at the University. Jacobsen is a model train  
7 hobbyist who helps develop open source software code called JMRI (Java Model Railroad  
8 Interface) that distributes the software free of charge. KAM is an Oregon corporation and Katzer  
9 is its principal. KAM has patents for software products similar to the JMRI product and, as to  
10 some of his patented products, KAM's software products' function is similar to the software  
11 products provided for free by JMRI. Jacobsen alleges that Katzer failed to disclose prior art to  
12 the Patent Office in obtaining some of the patents and that said patents are thereby  
13 unenforceable.

14 Jacobsen's complaint is primarily a request for declaratory relief regarding the  
15 enforceability of certain patents held by KAM. The complaint alleges that the patents are invalid  
16 primarily because they were obtained through fraud on the patent office and inequitable conduct.  
17 The complaint also contains claims alleging antitrust violations, unfair competition, cyber-  
18 squatting, and libel.

19 Defendants believe that KAM's patents are valid. Defendants have filed motions to  
20 dismiss the libel claim based on California's anti-SLAPP law, Cal. Code Civ. Pro § 425.16(b)(1).  
21 Defendant Kevin Russell has filed a motion to dismiss Counts 5 and 7 of the complaint for  
22 failure to state a claim and lack of personal jurisdiction. Defendants Matthew Katzer and KAM  
23 have filed a motion to dismiss Counts 4 and 7 of the complaint and a motion to bifurcate and stay  
24 discovery on Count 5.

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1           **3. Brief Description of the legal issues genuinely in dispute**

2           Plaintiff believes that defendants KAM and Katzer have invalid patents, have violated the  
3 Sherman Act, has violated the California Unfair Competition Act, have violated the Lanham Act  
4 by cybersquatting, and have libeled plaintiff by submitting a FOIA request to the U.S.  
5 Department of Energy. Plaintiff asserts that Russell has libeled him and violated California Bus.  
6 & Prof. Code 17,200. Defendants dispute all of these claims and have filed several dispositive  
7 motions at this time.

8           **4. Procedural History**

9           Plaintiff's complaint was filed on March 13, 2006. The following motions will be heard  
10 on August 11, 2006. The case management conference will also be held on August 11, 2006.

11           (1) Anti-SLAPP motions to strike by Defendants KAM, Katzer and Russell.

12           (2) Defendant Russell's motion to dismiss counts 5 and 7.

13           (3) Defendants KAM and Katzer's motion to dismiss counts 4 and 7 and motion to bifurcate  
14 and stay count 5.

15           **5. Brief Description of Discovery to date**

16           Per order of this Court, the date for initial Fed. R. Civ. P. 26 disclosures will be set by the  
17 Court at the case management conference on August 11, 2006 (Docket #41).

18           **6. Discovery Plan**

19           The Proposed Litigation and Discovery Schedule is discussed in Section 11 below.

20           A. List of Potentially Key Witnesses

- 21           1. Matthew Katzer  
22           2. Robert Jacobsen  
23           3. Hans Tanner  
24           4. John Plocher  
25           5. A.J. Ireland  
26           6. Strad Bushby

- 1 7. John E. Kabat
- 2 8. Juergen Freiwald
- 3 9. Dick Bronson
- 4 10. Jerry Briton
- 5 11. Developers of the JMRI software.
- 6 12. Developers and manufacturers of third party model train software
- 7 13. Contributors and users of the JMRI software
- 8 14. Unknown employees and supervisors at the Lawrence Berkeley National Laboratory
- 9 15. Dean of the UC Berkeley Physics Department
- 10 16. Unknown employees and supervisors at the US Department of Energy

11 B. List of Key Information

- 12 1. All versions of the JMRI software.
- 13 2. All software development information for the JMRI software project.
- 14 3. All information relating to JMRI's market share.
- 15 4. All information relating to the "lost income" referenced in ¶ 7 of the complaint.

16 **7. Motions before trial**

17 KAM and Katzer anticipate motions for summary judgment prior to trial on virtually all  
18 of plaintiff's claims. It is KAM and Katzer's understanding that if Russell remains in the case,  
19 he too will move for summary judgment before trial as to all claims against him. KAM and  
20 Katzer anticipate that new parties will be added and further anticipate evidentiary and claim-  
21 construction hearings.

22 **8. Description of Relief Sought**

23 This is primarily a case seeking declaratory relief. However, plaintiff alleges loss of  
24 income. Plaintiff has not described the calculation of damages in the complaint. KAM's  
25 counterclaims will include claims for monetary damages, including reasonable royalty, and/or  
26 lost profits, and/or enhanced damages, and/or attorney fees.

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2 **9. ADR Efforts to Date**

3 There have been no ADR efforts to date. The parties will meet and confer on August 21,  
 4 2006 and file the ADR certification. No settlement conference has been scheduled at this time.  
 5 It is KAM and Katzer's understanding that defendant Russell, if he remains in the case, will opt  
 6 for Early Neutral Evaluation.

7 **10. Consent to a magistrate judge**

8 The defendants do not consent to a magistrate judge.

9 **11. Proposed Litigation and Discovery Schedule**

Date	Counting	Rule	Event
			Complaint
			Answer, counterclaims, cross claims, and additional parties
			Answers to counterclaims, cross claims, and by additional parties
8/11/06		FRCP 26 f	Initial case mgmt conference
8/21/06	10 days after initial case mgmt conf	Pat. L.R. 3-1, FRCP 26a, L.R. 16.8	Preliminary infringement contentions; Meet and Confer re initial disclosures and file joint ADR certification
8/25/06	14 days after initial case mgmt conf unless waived	FRCP 26 a	Initial disclosures
10/1/06	45 days after preliminary infringement contentions	Pat L.R. 3-3	Preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 10 days after answer is served	Pat L.R. 3-5	Preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 10 days after preliminary invalidity contentions are served	Pat L.R. 3-5	Meet & confer re preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 50 days after preliminary invalidity contentions are served	Pat L.R. 3-5	File final invalidity contentions
10/10/06	10 days after preliminary invalidity contentions	Pat L.R. 4-1	Simultaneous exchange of terms to be construed
10/30/06	20 days after exchange of terms to be construed	Pat L.R. 4-1	Simultaneous exchange of preliminary claim constructions

1	1/2/07	60 days after exchange of preliminary claim constructions	Pat L.R. 4-1	Joint claim construction and Prehearing statement
2	2/1/07	30 days after service of joint claim construction	Pat L.R. 4-4	Close of all discovery relating to claim construction including fact and experts
3	2/16/07	45 days after service of joint claim construction AND 6 weeks prior to claim construction hearing	Pat L.R. 4-5 AND standing order ¶ 9	Opening Markman brief by party claiming infringement
4				
5	3/2/07	14 days after service of opening Markman	Pat L.R. 4-5	Response Markman brief
6	3/9/07	7 days after service of responsive Markman	Pat L.R. 4-5	Reply Markman brief
7	3/23/07	7-14 days prior to claim construction hearing	Standing Order ¶ 7	Tutorial
8	3/30/07	14 days after service of reply Markman and at court's convenience	Pat L.R. 4-6	Claim construction hearing
9	4/30/07	Court's convenience		Claim construction ruling
10	5/30/07	30 days after claim construction ruling	Pat L.R. 3-6	File final infringement contentions
11	6/19/07	50 days after claim construction ruling	Pat L.R. 3-6	File final invalidity contentions
12	6/19/07	50 days after claim construction ruling	Pat L.R. 3-8	Service of opinion of counsel for willfulness defense
13	7/19/07			Close of discovery for infringement for all fact and expert witnesses
14	8/24/07			Dispositive motion and opening brief filing deadline
15	9/7/07			Response briefs
16	9/21/07			Reply briefs
17	10/5/07			Summary judgment hearing
18	11/2/07			Summary judgment ruling
19	11/16/07			Pretrial order
20	12/14/07			Pretrial conference
21	1/ -- /08	At court's convenience		Trial

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The above schedule presupposes that all parties will proceed with discovery cooperatively and as provided by the Federal Rules of Civil Procedure, the orders of this court, and applicable law. Defendants specifically reserve their right to petition the court to modify and/or amend this schedule if the circumstances so warrant.

Should the case not be resolved on dispositive motions, defendants believe that the trial

1 will last approximately 10 days. Plaintiff has requested a jury trial in his complaint. Defendants  
2 believe that all of the non-patent issues can and should be bifurcated and stayed pending  
3 resolution of the patent enforceability claims and have filed a motion to this effect. Plaintiff  
4 opposes this motion.

5 **12. Current Service List**

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7 Field & Jerger, LLP  
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**13. Other items not addressed by Civil L.R. 16-10**

Not applicable



