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

Defendants.

Case Number C06-1905-JSW

Hon. Jeffrey S. White

**DECLARATION OF MATTHEW  
KATZER IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

1 I, Matthew Katzer, declare:

- 2 1. I am the controlling shareholder and operator of the close corporation Kamind  
3 Associates, Inc. (“KAM”). KAM and I are the only two defendants in this  
4 lawsuit. If called as a witness, I would and could testify to the following as a  
5 matter of personal knowledge.  
6
- 7 2. I am authorized by KAM to make this declaration in support of Defendants’  
8 motion for partial summary judgment.  
9
- 10 3. KAM began developing software to control model trains in 1991.  
11
- 12 4. In June 2004, KAM began developing the software that would become  
13 Decoder Commander. This software is similar in functionality to JMRI’s  
14 Decoder Pro in that it also facilitates the programming of decoders by a user.  
15 KAM and JMRI are the only two primary entities that provide such software in  
16 the U.S. market and they are competitors with each other.  
17
- 18 5. To date, KAM has sold 29 copies of Decoder Commander and has given away  
19 36 copies of Decoder Commander.  
20
- 21 6. KAM’s gross revenue for sale of Decoder Commander is \$1335.82.  
22
- 23 7. KAM’s deductible expenses relating to sales of Decoder Commander are  
24 \$41,804.45.  
25
- 26 8. This number in ¶ 7 represents \$37,892 in engineering costs, \$3,839 in  
marketing costs, and \$73.95 in packaging costs.

1 9. In Aug 2008, during the pendency of this lawsuit, KAM ceased production of  
2 Decoder Commander. I chose to cease production and distribution of Decoder  
3 Commander based on Robert Jacobsen's continual accusations, court filings  
4 and motions stating that Decoder Commander infringes his product Decoder  
5 Pro, even though I disagree with these accusations.  
6

7 10. The act that gave rise to Plaintiff's copyright infringement claim was KAM's  
8 use of Plaintiff's Decoder Definition Text Files.  
9

10 11. KAM first downloaded the Decoder Definition Text Files from sourceforge.net  
11 on May 30, 2004.

12 12. These Decoder Definition Text Files referenced in ¶ 11 were contained in  
13 Version 1.4 of JMRI's Decoder Pro.  
14

15 13. In June 2004, I bought prototype software from Robert Bouwens of Bouwens  
16 Engineering in Switzerland. This software would become KAM's Decoder  
17 Commander.  
18

19 14. Mr. Bouwens assisted me, as an independent contractor, in the final  
20 development of the Decoder Commander software for approximately 18  
21 months.  
22

23 15. Sometime between April and June 2005, Mr. Bouwens downloaded literal  
24 versions of the JMRI Decoder Definition Text Files from the JMRI open  
25 source website, [www.sourceforge.net](http://www.sourceforge.net), where the files are, and always have  
26 been, available to the public, for free. Bouwens then created a tool, called the

1           template verifier, to convert selected manufacturer specifications data from the  
2           JMRI Decoder Definition text Files for use in KAM's xml text files.

3           16. Defendants downloaded subsequent versions of JMRI's Decoder Pro and its  
4           associated Decoder Definition Files.

5           17. Defendants first distributed elements of the Decoder Definition Text Files on  
6           July 2005 with Decoder Commander.

7           18. This version of Decoder Commander contained elements of version JMRI  
8           version 1.6.1 and 1.7.1 of the Decoder Definition Text Files.

9           19. Subsequently, Defendants distributed portions of JMRI Decoder Definition  
10           Text Files versions 1.6.1, 1.7.1, and 1.7.3, beginning on March 17, 2006.

11           20. Defendants did not modify and distribute any versions of JMRI software other  
12           than Versions 1.6.1, 1.7.1, and 1.7.3.

13           21. Defendants removed all elements of the Decoder Definition text Files with the  
14           release 307 of Decoder Commander on Oct 31, 2006.

15           22. Defendants stopped production and distribution of Decoder Commander  
16           entirely on Aug 15, 2008.

17           23. Both JMRI's Decoder Definition Text Files and KAM's comparable text files  
18           are merely text files that accompany the respective software products, which  
19           are written in different computer programming languages.

20           24. These text files do not contain any source code or executable code.  
21  
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- 1 25. The text files are comprised of syntax in xml format and the manufacturer  
2 information I discussed below.
- 3 26. The purpose of these xml text files is to help a user program a “decoder” in a  
4 model train.
- 5 27. A decoder is a piece of hardware contained in the engine of a model train that  
6 controls the functioning and operation of the train.
- 7 28. For example, decoders control the speed of the train, the sound of the train,  
8 which lights are on at a particular time, and other operational functions.
- 9 29. KAM’s xml text files use different tags and identifiers, for the most part, than  
10 JMRI’s xml text files.
- 11 30. The purpose of both JMRI and KAM’s text files is to organize manufacturer  
12 data associated with specific “Configuration Variables” for a decoder.
- 13 31. QS Industries, Inc. (QSI) is a manufacturer of decoders and QSI provides a  
14 detailed reference manual entitled “NMRA DCC Reference Manual for QSI  
15 Quantum HO Equipped Locomotives” (QSI Manual).
- 16 32. This QSI Manual assists hobbyists in programming QSI decoders.
- 17 33. Many of the Decoder Definition Text Files in this case involve QSI  
18 manufactured decoders as these decoders are relatively complex. For example,  
19 Plaintiff uses the “QSI Electric” decoder to analyze Defendants alleged  
20 infringement.
- 21  
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1 34. KAM owns all rights and interest to the QSI Manual and the copyrighted  
2 information therein via assignment from QSI in 2006.

3 35. Configuration Variables or “CVs” and their associated numbers are set by the  
4 National Model Railroad Association (NRMA) and are industry standard, and  
5 in some cases are mandatory.  
6

7 36. For example, the NMRA dictates that CV 1 is always the “primary address” of  
8 the Decoder.

9 37. Attached as Exhibit 1 to this Declaration is a true copy of the NMRA Table 1  
10 for Configuration Variables.  
11

12 38. “Default” in the xml text files refers to the default value for each CV.

13 39. A default value is supplied by the manufacturer in a decoder manual or by the  
14 NMRA.  
15

16 40. In the case of CV 1 in the QSI Electric decoder definition file, the default value  
17 of “3” comes from the NMRA configuration variable table as shown by  
18 Exhibit 1.  
19

20 41. Similarly, the default value for CV 53.10.0 of “64” comes from the QSI (a  
21 manufacturer) manual.

22 42. Attached as Exhibit 2 to this Declaration is a true copy of the portion of the  
23 QSI text files, derived from the QSI manual, which dictate the default value for  
24 CV 53.10.0 as “64.”  
25  
26

1 43. Attached as Exhibit 3 to this Declaration is a true copy of the deposition  
2 transcript for the deposition of Robert Jacobsen taken on September 17, 2009.

3 44. The feature choices for CV 53.10.0 also come from the QSI manual.

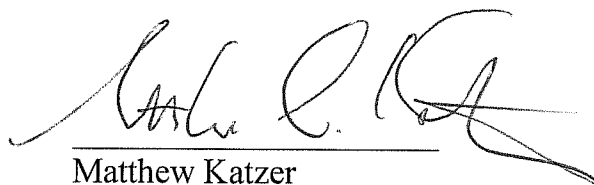
4 45. Attached as Exhibit 4 is a true copy of the relevant portion of the QSI manual  
5 that describes the feature choices for all CVs, including 53.10.0.  
6

7 46. Numerous manufacturers abbreviate acceleration rate and deceleration rate  
8 with the respective abbreviations "accel" and "decel."  
9

10 47. Attached as Exhibit 5 is a true copy of a screenshot from the Digitrax  
11 manufacturer's website using the abbreviations mentioned in ¶ 46.  
12

13 I declare under penalty of perjury under the laws of the United States of America  
14 that the foregoing is true and correct.  
15

16  
17 Executed on October 30, 2009 at Portland, Oregon.

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Matthew Katzer  
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