

2008-1001

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ROBERT JACOBSEN, an individual,

Plaintiff-Appellant,

vs.

MATTHEW KATZER, and KAMIND ASSOCIATES, INC., (doing business as KAM
Industries);

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA IN CASE NUMBER C06-1905-JSW,
JUDGE JEFFREY S. WHITE

RESPONSE TO MOTION FOR LEAVE FOR *AMICI CURIAE* CREATIVE COMMONS
CORPORATION, THE LINUX FOUNDATION, THE OPEN SOURCE INITIATIVE,
SOFTWARE FREEDOM CENTER, YET ANOTHER SOCIETY, DBA THE PERL
FOUNDATION, AND WIKIMEDIA FOUNDATION, INC. TO PARTICIPATE IN ORAL
ARGUMENT

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April 9, 2008

Attorneys for Defendants-Appellees
Matthew Katzer and Kamind Associates, Inc.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Jacobsen v. Katzer and Kamind Associates, Inc.

No. 2008-1001

CERTIFICATE OF INTEREST

Counsel for the (petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Appellee certifies the following (use "None" if applicable; use extra sheets if necessary):

1. The full name of every party or amicus represented by me is:

Matthew Katzer, Kamind Associates, Inc., dba KAM Industries

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:

None

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. There is no such corporation as listed in paragraph 3.

5. 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:

Field Jerger LLP; Gorman and Miller, P.C.

4/8/08
Date


Signature of counsel
R. Scott Jerger
Printed name of counsel

Reset Fields

**RESPONSE TO MOTION FOR LEAVE FOR AMICI CURIAE TO
PARTICIPATE IN ORAL ARGUMENT**

I. Argument

Defendants-Appellees Matthew Katzer and Kamind Associates, Inc. (Katzer) oppose *Amici Curiae*'s (Amici) motion for leave to participate in oral argument. Amici's position and arguments are duplicative of Plaintiff-Appellant Robert Jacobsen's (Jacobsen) position and arguments. *Cf.* Brief of Jacobsen with Brief of Amici. Thus, allowing Amici to participate at oral argument unfairly prejudices Katzer as this merely extends the length of Jacobsen's oral argument time.

The undersigned asked counsel for Amici if Amici were willing to share oral argument time with Jacobsen. Declaration of R. Scott Jerger, ¶ 4. Counsel for Amici indicated that they were not. Declaration of R. Scott Jerger, ¶ 5. It is not unusual for a court to permit amicus to participate in oral argument when a party is willing to share its argument time with the amicus. Federal Rules of App. Proc. 29(g) Advisory Committee Notes (1998 Amendments). However, in other circumstances, amicus will only be permitted to argue upon a showing of "extraordinary circumstances." *Id.* Here, Amici allege that they wish to participate in oral argument to provide "an important and helpful perspective regarding (a) the importance of public licensing in America, (b) the importance of

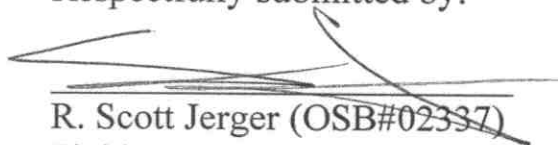
copyright infringement remedies to public licensors and the risk posed by the effective forfeiture of copyright that are implied in the District Court's decision, and (c) the well-established legal principle that someone who acts outside the scope of copyright license is liable for infringement, and why that principle applies to this case." Motion at 2-3. All of these arguments are presented in Amici's Brief and none of the above reasons are "extraordinary circumstances" why Amici should be allowed to participate in oral argument.

II. Conclusion

Since Amici have failed to allege any extraordinary circumstances why they should be allowed to participate in oral argument and since Amici refuse to share time with Jacobsen, Amici's motion to participate in oral argument should be denied as it is prejudicial to Katzer.

Dated: April 9, 2008

Respectfully submitted by:



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Of Attorneys for Defendants-

Appellees

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DECLARATION OF R. SCOTT JERGER IN SUPPORT OF DEFENDANT-APPELLEE'S
RESPONSE TO AMICI CURIAE'S MOTION FOR LEAVE TO PARTICIPATE IN ORAL
ARGUMENT

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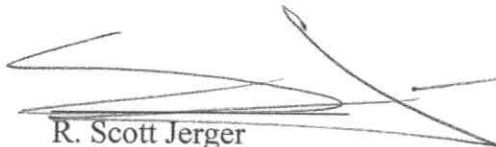
Attorneys for Defendants-Appellees
Matthew Katzer and Kamind Associates, Inc.

I, R. Scott Jerger, declare:

1. I, R. Scott Jerger, am over the age of 18 and am competent to testify and make these averments from my own knowledge and observations. I hereby state as follows:
2. I am the attorney for Matthew Katzer and KAMIND Associates, Inc.
3. I was contacted by Christopher Ridder, counsel for Amici Curiae, regarding Defendant-Appellee's position on Amici's motion to participate in oral argument.
4. I asked counsel for Amici whether they would be willing to share oral argument time with Plaintiff-Appellant Robert Jacobsen.
5. Counsel for Amici responded that Amici were not willing to share oral argument time with Jacobsen.

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

Executed on April 8, 2008 at Portland, Oregon, U.S.A.


R. Scott Jerger

PROOF OF SERVICE

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I hereby certify that on April 9, 2008 I filed the original and three copies of Defendants-Appellees **Response to Amici Curiae's Motion to Participate in Oral Argument** on the Clerk of the US Court of Appeals for the Federal Circuit at the following address via overnight mail:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

I further certify that on April 9, 2008, I served two true copies of Defendants-Appellees **Response to Amici Curiae's Motion to Participate in Oral Argument** on each of the following parties, through their attorneys, at the following address via first class mail, postage prepaid:

Victoria K. Hall
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Attorney for Plaintiff-Appellant Robert Jacobsen

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Attorneys for Amici Curiae

Dated: April 9, 2008



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Attorney for Defendant-Appellee