

Exhibit A

of

Motion for Leave
to File Surreply

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

13 ROBERT JACOBSEN,) No. C-06-1905-JSW
14)
Plaintiff,) **PLAINTIFF’S SURREPLY TO**
15) **DEFENDANTS’ REPLY IN THEIR**
v.) **MOTION TO DISMISS FOR MOOTNESS**
16)
MATTHEW KATZER, et al.,)
17) Courtroom: 2, 17th Floor
Defendants.) Judge: Hon. Jeffrey S. White
18) Date: Fri., April 11, 2008
19) Time: 9:00 a.m.
20)
21)
22)
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22 Plaintiff respectfully files this Surreply to Defendants’ Reply Memorandum, in the briefing
23 of their Motion to Dismiss, which seeks to dismiss Plaintiff’s causes of action for declaratory
24 judgment relating to U.S. Patent No. 6,530,329 (“the ‘329 patent”).

25 **I. Introduction**

26 The same day that Plaintiff filed his Opposition, the Federal Circuit issued a decision that is
27 pertinent to Defendants’ Motion to Dismiss for Mootness. Plaintiff responds to Defendants’
28 arguments relating to “prevailing party”, raised for the first time in their Reply memorandum.

1 Finally, Plaintiff offers some remarks on Defendants' other newly added arguments.

2 **II. Argument**

3 **A. Recent Federal Circuit Case Law Shows This Court Has Jurisdiction**

4 While Defendants have disclaimed the '329 patent,¹ Ex. A, this Court, under new Federal
5 Circuit law, has jurisdiction over declaratory judgment causes of action against other Katzer
6 patents issued through August 11, 2006. Micron Tech., Inc. v. MOSAID Techs., Inc., ___ F.3d
7 ___, slip op. at 4-8 (Fed. Cir. Feb. 29, 2008). Thus, if this Court dismisses the declaratory
8 judgment causes of action relating to noninfringement and invalidity of the '329 patent, this Court
9 should do so with leave to amend so Plaintiff can amend his Complaint to include these other
10 Katzer patents.

11 According to a new interpretation of the declaratory judgment standard, stated in Micron,
12 this Court has jurisdiction over declaratory judgment causes of action relating to other Katzer
13 patents. In Micron, declaratory defendant MOSAID sent demand letters to declaratory plaintiff
14 Micron, one of its major competitors, in 2001 and 2002. MOSAID then began suing other major
15 competitors, Samsung Electronics Company Ltd., Hynix Semiconductor Inc., and Infineon
16 Technologies of North America. Id. at 1-3. In 2006, Micron filed a declaratory judgment action in
17 the Northern District of California, choosing 14 MOSAID patents as a part of the suit. Id. at 3. A
18 number of these patents had issued after MOSAID's last demand letter. The following day,
19 MOSAID filed a patent infringement lawsuit against Micron in Texas. Id. Using pre-MedImmune
20 law, the district court in the Northern District of California dismissed Micron's declaratory
21 judgment suit for lack of jurisdiction. Id. at 3-4, 7-8. The Federal Circuit reversed. Id. at 8. The
22 Federal Circuit said MOSAID's pattern of litigation against its competitors, and MOSAID's
23 statements that it intended to enforce its patents aggressively, were sufficient for the district court
24 to have jurisdiction over Micron's declaratory judgment complaint. Id. at 5-8.

25 A similar pattern exists here. Defendants obtained a number of patents related to model
26 train controls systems technology. Second Amended Complaint [hereinafter SAC] [Docket #191]

27 _____
28 ¹ Although not his burden to provide, Plaintiff obtained the disclaimer for the '329 patent from the
Patent Office in mid-March, and includes it here to move the case forward.

1 App. A. They boast that they own key patents in the model train control system software industry,
2 and that manufacturers and an open source group copied the technology in Defendants' patents.
3 See Ex. B at 2. JMRI is the only open source group offering model train control systems software.
4 Thus Defendants had directed their allegations of infringement toward JMRI. Like MOSAID in
5 Micron, Defendants have a history of suing their major competitors, DigiToys and Freiwald
6 Software, and Freiwald Software's distributors. Exs. E & F. They boast about these lawsuits on
7 their website. Ex. C at 4. The lawsuits against DigiToys and Freiwald Software asserted all 342
8 claims of all Katzer patents that had issued when the lawsuits were filed, Sept. 17, 2002, even
9 though Defendants in their Sept. 18, 2002 demand letter alleged infringement of only two claims
10 from two patents and stated possible infringement of selected claims of another patent. SAC App.
11 A; Exs. E, F, G, & H. Defendants menaced at least one other model railroader, Glenn Butcher,
12 through a threat of bringing a patent infringement lawsuit, SAC ¶ 374; Ex. D. Then Defendants
13 targeted Plaintiff. Defendants and their patent attorney, Kevin Russell, sent multiple demand
14 letters to Plaintiff's home and stated in their FOIA request to the U.S. Department of Energy that
15 Plaintiff infringed multiple patents. SAC ¶¶ 377-383; Jacobsen Decl. Exs. A, C, D, E at 1, & G,
16 Opp. to Def. Mot. to Dismiss for Mootness. As noted in Plaintiff's Opposition, Defendants have
17 represented the same to this Court. In their initial letters, Defendants focused on claim 1 of the
18 '329 patent, and offered a license for \$19/copy. Jacobsen Decl. Ex. A, Opp. to Def. Mot. to
19 Dismiss for Mootness. In later letters, Defendants stated they were investigating whether Plaintiff
20 infringed other patents. Id. Ex. C. They increased the license fee to \$29/copy. Id. This 50 percent
21 increase in license fee suggests that Defendants had found other patents that they were going to
22 assert Plaintiff infringed. Also, because all patents, except U.S. Patent No. 6,065,406, have
23 terminal disclaimers, infringing one claim of one patent could mean infringing one or more claims
24 of multiple patents. Furthermore, Defendants previously had identified only two claims from 2
25 patents that they asserted DigiToys and Freiwald infringed, but sued DigiToys and Freiwald for
26 infringement of 342 claims in 3 patents. Exs. E, F, G & H. Thus, Plaintiff would have reason to
27 believe that Defendants would assert a massive number of claims against him, although pre-
28 MedImmune law would not have permitted Plaintiff to seek declaratory judgment on them. A

1 court looks to the totality of the circumstances to determine if declaratory judgment jurisdiction
2 exists. Plumtree Software, Inc. v. Datamize, LLC, 473 F.3d 1152, 1159 (Fed. Cir. 2006). Given
3 the circumstances, declaratory judgment jurisdiction exists. Because the Micron district court had
4 jurisdiction over Micron's declaratory judgment complaint, the district court here in Jacobsen has
5 jurisdiction over declaratory judgment causes of action of non-infringement, invalidity, and
6 unenforceability of the Katzer patents issued up to August 11, 2006, which is when Defendants last
7 stated that Plaintiff infringed multiple patents.²

8 The Court also should retain jurisdiction to hear the declaratory judgment cause of action
9 for unenforceability relating to the '329 patent. Defendants disclaimed the '329 patent and seek to
10 dismiss this cause of action permanently so they can disclaim their way out of inequitable conduct.
11 But, as discussed in Plaintiff's Opposition, Defendants cannot disclaim their way out of a charge of
12 inequitable conduct. Inequitable conduct during the prosecution of the '329 patent may infect
13 other Katzer patents, making them unenforceable. Plaintiff should have the opportunity to make
14 the case as to inequitable conduct and fraud during the prosecution of the '329 patent and related
15 patents. Thus, this Court should deny Defendants' motion to dismiss the declaratory judgment
16 cause of action for unenforceability relating to the '329 patent, and should deny Defendants'
17 motion to strike parts C, D, E, F, and 35 U.S.C. Sec. 285 from part T.

18 **B. Court Should Retain Jurisdiction to Hear Motion for Attorneys Fees**
19 **Because Plaintiff is Prevailing Party**

20 Because Defendants' disclaimer was not a purely voluntary and private act done outside the
21 context of litigation, Plaintiff should be deemed prevailing party. Defendants ask the Court to
22 refrain from exercising jurisdiction over a motion for attorneys' fees, stating that Plaintiff has not
23 made any argument relating to an attorney fee award and that any such motion would lead to "full-
24 blown patent infringement litigation". Defendants could make matters easier for the Court by
25 consenting to have judgment entered against them. Nonetheless, their fears relating "full-blown
26 litigation" are unwarranted because determining whether the case is exceptional should be

27 ² Although this involves a number of patents, Plaintiff believes that, with proper case planning, the
28 declaratory judgment causes of action can be resolved efficiently and relatively quickly. Plaintiff
is developing a proposal which he will present in the Joint Case Management Statement.

1 straightforward. Furthermore, due to Defendants' anti-SLAPP motion, patent-related matters in
2 this case will not end even if the declaratory judgment causes of action are dismissed. Finally,
3 even if the Court declines jurisdiction over the other Katzer patents, Plaintiff may be able to obtain
4 attorneys fees later in the case if Defendants assert patent infringement causes of action against
5 Plaintiff.

6 Plaintiff is, or should be deemed, the prevailing party. To prevail, a party must achieve a
7 material alteration of the legal relationship between the parties, and that alteration must be
8 judicially sanctioned. Carbonell v. I.N.S., 429 F.3d 894, 898 (9th Cir. 2005). A judgment against
9 a party qualifies as a judicially sanctioned alteration, as does a consent decree, Buckhannon Board
10 & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598, 604
11 (2001), but a party may still prevail without achieving either a judgment or obtaining a consent
12 decree if the change has the necessary judicial imprimatur. Buckhannon, 532 U.S. at 605;
13 Highway Equipment Co. v. FECO, Ltd., 469 F.3d 1027, 1034-36 (Fed. Cir. 2006); Inland Steel Co.
14 v. LTV Steel Co., 364 F.3d 1318, 1320 (Fed. Cir. 2004); Samsung Elecs. Co. v. Rambus Inc., 440
15 F. Supp. 2d 495, 503-505 (E.D. Va. 2006). However, a party is not deemed as having prevailed if
16 the change in the parties' relationship is brought about by purely voluntary and private action. See
17 Buckhannon, 532 U.S. at 604 n.7, 605. Here, Defendants claim they voluntarily filed a statutory
18 disclaimer. Not true. Defendants were subject to a Jan. 23, 2008 order from Judge Laporte to
19 provide by Jan. 31, 2008 disclosures relating to their positions on infringement, validity, and
20 enforceability of the '329 patent. Order [Docket #199] at 1. They failed to provide those
21 disclosures. To avoid sanctions from having violating Judge Laporte's order, Defendants did not
22 merely covenant not to sue on the '329 patent, but took the draconian step of filing a statutory
23 disclaimer, destroying not only their rights in claim 1, but all 27 claims in the '329 patent. This
24 action, which changed the relationship between the parties, cannot be called voluntary, and it was
25 brought about by a court order. As the docket reflects, Judge Laporte did not impose sanctions for
26 Defendants' violation of her court order. She accepted this disclaimer in lieu of the disclosures.
27 These actions provide the necessary judicial imprimatur to make Plaintiff the prevailing party.
28 Also, Defendants conceded that Plaintiff has obtained all the relief that he sought relating to the

1 '329 patent. Opp. to Plaintiff's Mot. for Early Discovery at 4. Plaintiff is willing to stipulate to
2 this regarding noninfringement and invalidity of the '329 patent, and asks the Court to make this
3 stipulation a part of its order. This also gives the change in the relationship between the parties the
4 necessary judicial imprimatur to make Plaintiff the prevailing party. For these reasons, this Court
5 should deem Plaintiff the prevailing party, and permit Plaintiff to seek attorneys' fees under 35
6 U.S.C. Sec. 285.³

7 Defendants ask the Court to decline jurisdiction over the attorney fee award because, they
8 claim, determining whether the case is exceptional will spawn "full-blown patent infringement
9 litigation". Untrue. Defendants could make matters easier for the Court by consenting to have
10 judgment entered against them, but in lieu of that, Plaintiff has a strong case for inequitable
11 conduct. Plaintiff believes he would be entitled to summary judgment if he sought it after limited
12 discovery, and possibly even after no discovery. As for invalidity, much of the work has already
13 been done by the Patent Office. The Patent Office, in essence, already deemed claim 1 of the '329
14 patent as obvious. Defendants, through their patent attorney, submitted all claims from the '329
15 patent as proposed claims in U.S. Patent Application No. 10/889,995. A patent examiner rejected
16 all claims as obvious over the 5,000 to 6,000 pages of newly produced prior art—the references
17 that Defendants produced in May and June 2006 as a result of this litigation. The same patent
18 examiner later rejected all claims as obvious over DigiToys as described in the state of the prior art
19 section of the '329 patent's specification—the same DigiToys which Defendants had sued for
20 infringement in 2002. Defendants were never able to overcome the patent examiner's rejections,
21 and instead, abandoned the '995 application and its claims. Finally, showing noninfringement will
22 be simple. Infringement of a method patent requires that someone practice each step of the method.
23 Smith & Nephew, Inc. v. Ethicon, Inc., 276 F.3d 1304, 1310 (Fed. Cir. 2001). From Plaintiff's
24 claim construction, taken from technical dictionaries in the Federal Circuit law library and
25 described in the Second Amended Complaint, SAC ¶¶ 16-20, infringement would require three

26 _____
27 ³ Plaintiff may also be entitled to seek sanctions for Defendants' unreasonable 2-year delay in
28 filing this disclaimer. Plaintiff prefers, as a matter of practice, to avoid sanctions motions.
Addressing the attorney fee award issue under 35 U.S.C. Sec. 285 will likely make it unnecessary
for Plaintiff to seek sanctions.

1 computers—one for each program and another for the interface. Plaintiff cannot be liable for
2 infringement because Plaintiff has never used three computers to run JMRI’s client-server
3 software. He has not specifically encouraged anyone to use three computers to run JMRI
4 software—indeed, he knows of no one who, on or after the ‘329 patent issued, has practiced the
5 method using JMRI client-server software in the United States. Finally, JMRI has significant non-
6 infringing uses. Many indisputable facts relating to inequitable conduct, invalidity, and
7 noninfringement are in the record or publicly available. So, resolving that this case is exceptional
8 should be straightforward, and can be done after little or no discovery.

9 Defendants argue that dismissing the declaratory judgment causes of action and striking the
10 attorney fee award will remove all matters relating to patent aspects of the case. Not so—it is
11 becoming increasingly clear that, contrary to their earlier statements in their anti-SLAPP motions,
12 Defendants and their patent attorney never had a basis for their supposed good faith belief that
13 Plaintiff was engaging in patent infringement. Defendants and their patent counsel said Plaintiff
14 was liable for 7,000 infringements, but when the time came to produce the evidence, Defendants
15 couldn’t identify even one instance of infringement. They couldn’t even produce a claim
16 construction position. Their failure to produce any of the required disclosures, coupled with the
17 sudden destruction of their rights in the ‘329 patent, highlights this newly revealed fact—the lack
18 of a good faith belief of infringement. With these new facts, and changes in the case law, Plaintiff
19 expects to seek reconsideration of this Court’s anti-SLAPP rulings, which will require the Court to
20 re-visit patent-related issues, and possibly sanctions motions. If Defendants had not brought their
21 anti-SLAPP motions, this might not be the case. But their anti-SLAPP filings have brought this
22 about, and thus they cannot avoid further patent-related litigation by filing statutory disclaimers.

23 Lastly, even if this Court declines to retain jurisdiction over the declaratory judgment
24 causes of action, it should not strike the attorney fee award from the Prayer for Relief. Defendants
25 may assert patent infringement against Plaintiff. Plaintiff may be able to obtain an attorney fee
26 award under 35 U.S.C. Sec. 285. Thus, it is premature to strike this relief.

27 **C. Defendants’ Other Arguments Are Without Merit**

28 Defendants make a number of unsupportable new arguments in their Reply memorandum.

1 Plaintiff addresses them here.

2 Defendants state, without a basis, that they have dismissed the “vast majority” of Plaintiff’s
3 causes of action. This is untrue. There have been 12 causes of action: three declaratory judgments,
4 antitrust, 17200 action, cybersquatting, libel, copyright infringement, federal trademark dilution,
5 unjust enrichment, DMCA, and contract. Of the twelve, only antitrust, 17200, unjust enrichment,
6 and libel have been dismissed. Plaintiff voluntarily removed federal trademark dilution, not
7 because of Defendants’ arguments, but because of a change in federal law enacted after Plaintiff
8 asserted the dilution cause of action. If Defendants succeed in dismissing the three declaratory
9 judgment causes of action, they will have done so only because they destroyed their own patent
10 rights. This can hardly be called success for Defendants. It’s success for Plaintiff, for the reasons
11 stated above. This leaves cybersquatting, copyright infringement, DMCA, and contract. Plaintiff
12 will prevail on the majority of his claims.

13 Defendants claim they have been prejudiced by the delay and expense in this case. Plaintiff
14 again notes that nothing is preventing Defendants from filing an Answer. Thus, if they desire to
15 move the litigation forward, Defendants may do so at any time by filing an Answer. Indeed, recent
16 Federal Circuit case law states that a motion to dismiss does not necessarily toll the time to answer
17 an amended complaint. Gen. Mills, Inc. v. Kraft Foods Global, Inc., 487 F.3d 1368, later clarified,
18 495 F.3d 1378 (Fed. Cir. 2007). Rule 15(a) governs when an Answer to an Amended Complaint is
19 due—either 10 days after the amended complaint is filed, or within the time remaining to file an
20 Answer to the original complaint. 487 F.3d at 1376-77. Because Rule 15(a) does not have a
21 provision for tolling an Answer, id., Defendants’ Answer is long overdue. After obtaining a 60-
22 day extension from Plaintiff, Defendants filed their motion to dismiss June 1, 2006. Motion to
23 Dismiss [Docket #42]. They had until June 5, 2006 to file their Answer. Stipulation [Docket # 36,
24 37]. The motion to dismiss tolled the time to file the Answer, leaving 4 days left. When Plaintiff
25 filed his Amended Complaint on Sept. 11, 2006, the clock began to run again. The deadline to file
26 an Answer was the longer of the time remaining to file an Answer (4 days), or 10 days—so
27 Defendants had 10 days. Fed. R. Civ. P. 15(a). Ten days after Sept. 11, 2006 is, per Rule 6, Sept.
28 25, 2006, a deadline which Defendants missed 18 months ago. Instead, Defendants filed motions to

1 dismiss to further delay the case. It's time to move this case forward. If Plaintiff files a third
2 amended complaint, Plaintiff intends to ask the Court to order an Answer within 10 days. If
3 Defendants fail to file an Answer, Plaintiff will seek default judgment against Defendants. To
4 reduce this Court's case load, Plaintiff will ask to refer the matter to a magistrate for resolution.

5 Defendants claim that, two years after this suit was filed, it's still the beginning of the
6 lawsuit, thus it's not "unfair" to dismiss Plaintiff's claims at this stage. Reply Mem. at 5.
7 Defendants cannot deny the following fact—they could have filed the statutory disclaimer two
8 years ago, as Plaintiff suggested in his Jan. 31, 2006 letter to Defendants' patent attorney.
9 Jacobsen Decl. Ex. H, Opp. to Def. Mot. to Dismiss for Mootness. If they had filed the disclaimer
10 in March 2006, they could have included this motion with their first motion to dismiss, filed at the
11 real beginning of litigation, and this fourth motion to dismiss would have been unnecessary.
12 Instead, they have dragged out the patent portion of this case by insisting for two years that the
13 '329 patent was infringed, valid, and enforceable. It's only when Defendants were ordered to
14 produce disclosures on infringement, validity, and enforceability that Defendants gave up suddenly
15 and destroyed all their rights in the '329 patent. It's Plaintiff who has suffered the prejudice of
16 having to devote time, money, and resources to preparing preliminary patent disclosures on claim 1
17 of the '329 patent for the aggressive patent discovery schedule which Defendants repeatedly laid
18 out in their section of the case management statement.

19 Defendants urge this Court to use the "traditional" declaratory judgment standard overruled
20 by MedImmune, Inc. v. Genentech, Inc., ___ U.S. ___, 127 S. Ct. 764 (2007), Reply Mem. at 4, and
21 then put a short disclaimer acknowledging that the standard has been overruled. Defendants later
22 cite to Super Sack Manufacturing Corp. v. Chase Packaging Corp., 57 F.3d 1054 (Fed. Cir. 1995),
23 without mentioning that the standard there has been overruled by MedImmune. Defendants in the
24 past have misled this Court by presenting as good law, case law that has been overruled, and
25 otherwise misrepresenting or misstating case law. Defendants' use of overruled and irrelevant case
26 law puts the Court at risk of adopting it in error.

27 Defendants state that the Federal Circuit did not reconcile Highway Equipment Co. v.
28 FECO, Ltd., 469 F.3d 1027 (Fed. Cir. 2006) with Tunik v. Merit Systems Protection Board, 407

1 F.3d 1326 (Fed. Cir. 2005) and Lewis v. Continental Bank Corp., 494 U.S. 472 (1990).⁴ First off,
2 the same judge, Hon. Richard Linn, wrote the opinions in the Highway Equipment and Tunik
3 decisions. Since Judge Linn authored both opinions, Judge Linn would have been aware of any
4 discrepancies between the two opinions. Second, Lewis specifically reserved the question about
5 whether a party can be deemed to have prevailed if the judgment is later found to be moot. Lewis,
6 494 U.S. at 483. Finally, the differences between Highway Equipment and Tunik are stark.
7 Highway Equipment is a patent case, in which a party prevailed because the Court dismissed a
8 claim with prejudice after the patentee filed a covenant not to sue on the eve of trial. 469 F.3d at
9 1034-35. In Tunik, an administrative law judge named Tunik sued to prevent interference with his
10 decision-making, and then later retired. 407 F.3d at 1330. Unlike Plaintiff here, Tunik had not
11 sought attorneys fees. Id. at 1331. Because Tunik had retired, no one would interfere with his
12 decision-making, thus the case was moot. Id. Because no attorney fees had been sought, there was
13 no basis for jurisdiction. Id. Thus, Tunik is readily distinguishable from Highway Equipment.

14 **III. Conclusion**

15 For the reasons stated above, Plaintiff asks the Court to deny Defendants’ motion to dismiss
16 Plaintiff’s declaratory judgment cause of action relating to unenforceability of the ‘329 patent, and
17 various relief associated with that cause of action. Plaintiff asks the Courts for leave to amend so
18 that Plaintiff may include other Katzer patents in his declaratory judgments actions for
19 noninfringement and invalidity, per Micron. Finally, Plaintiff asks the Court to deem him the
20 prevailing party.

21 Respectfully submitted,
22 DATED: March 26, 2008

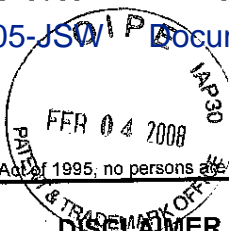
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27 ATTORNEY FOR PLAINTIFF

28 ⁴ Defendants inexplicably refer to Tunik, a Federal Circuit case, as affirming Lewis, a U.S. Supreme Court case. Def. Reply Mem. at 7.

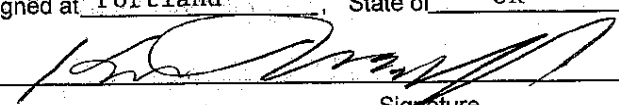
Exhibit A



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DISCLAIMER IN PATENT UNDER 37 CFR 1.321(a)

Name of Patentee Matthew A. Katzer	Docket Number (Optional) 7431.0056
Patent Number 6,530,329	Date Patent Issued March 11, 2003
Title of Invention MODEL TRAIN CONTROL SYSTEM	
I hereby disclaim the following complete claims in the above identified patent: <u>1-27</u> (all claims)	
The extent of my interest in said patent is (if assignee of record, state liber and page, or reel and frame, where assignment is recorded): <u>100%</u>	
The fee for this disclaimer is set forth in 37 CFR 1.20(d).	
<input type="checkbox"/> Patentee claims small entity status. See 37 CFR 1.27. <input checked="" type="checkbox"/> Small entity status has already been established in this case, and is still proper. <input type="checkbox"/> A check in the amount of the fee is enclosed. <input checked="" type="checkbox"/> Payment by credit card. Form PTO-2038 is attached. <input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. <u>03-1550</u> . I have enclosed a duplicate copy of this form.	
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Signed at <u>Portland</u> , State of <u>OR</u> , this <u>1st</u> day of <u>February</u> , 20 <u>08</u>	
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<u>Kevin L. Russell</u> Typed or printed name of patentee/ attorney or agent of record	<u>503-227-5631</u> Telephone Number
<u>Cherhoff, Vilhauer, McClung & Stenzel, 601 SW Second Ave., Suite 1600,</u> Address	
<u>Portland, OR 97204</u> City, State, Zip Code or Foreign Country as applicable	

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Exhibit B

manufacturer's command station hardware. The API an innovation at the time and addressed many issues that modelers had about operating systems interoperability. The proposed NMRA API could easily be ported to different processor architecture. The NMRA API's is still included in KAM's software products today

Train Server Overview

Train Server was established as the programming standard overnight. Later KAM established another first, by releasing the first model railroad CDROM. KAM software CDROM included the necessary software to install KAM's application as well as the video tutorials on how to use the product. The software CDROM was placed in Model railroading, as well as Nation Train show convention bags for the next couple of years. KAM's goal was to foster new development ideas to grow the hobby. KAM has always felt that to grow the hobby, a standard needs to be developed - hence the proposed NMRA API.

Since the Train Server introduction KAM has shipped over 100,000 CD-ROMs to end users and developers. Train Server is such an innovative and unique programming environment that numerous patents (see footnotes on this page) have been granted to KAM both in the United States, Germany, Great Britain, Canada and other countries. Over the years, we have added functionality and implemented are patent technology in Train Tools as the US and international Patent office has granted them. **New software and computer technology always appear in Train Tools products, before it is copied by other model railroad software manufacturers (either commercial or open sourced).**

KAM's software programs are categorized into three different types of applications. these are Manual control, Layout automation and Dispatcher operation. Each of these classes of applications are different, and require different types of capabilities to operate and control the model railroad. KAM's philosophy is foster the development of simple applications, that solve the modelers problem, instead of with a do everything solution, designed by committee, complex to operate, and designed on obsolete programming tools such like java or turbo pascal. KAM' software is open and extensible as compared to any other commercial or open source solution.

KAM's Software Overview

KAM Industries was incorporated in 1998 as KAMIND Associates, Inc. KAMIND has extended the Train Server architecture adding Microsoft networked COM/DCOM protocol support and the support of Commercial Dispatcher control application from Train Track. **Train Track** developed the Windows NT version of software called Track Driver Professional 32. KAM, along with Train Tracks extended the software application to support the NMRA DCC protocols using Train Server. These extensions were the first time Train Track's software was intergrated into Microsft DCOM architecture.

Later, KAM Industries expanded to Europe with inclusion of **Computer Dispatcher Lite** as part of the KAM's software product line. Computer Dispatcher Lite was designed for the automation conscious model railroad customers, and is a port Bouwens Engineering's Train Wizard. Computer Dispatcher Lite was later renamed to Layout Commander® software to reduce the confusion with Computer Dispatcher Pro. Computer Dispatcher pro is a professional dispatching program, while layout commander is a Layout Automation program. The difference between these applications is that Layout Commander has locomotive control. Computer Dispatcher Pro is a dispatching program.

Classic Panel® software was designed to fill in the missing software component for manual operation. The software was originally designed using Sun Java language, and was designed from a 1940's Great Western Dispatchers panel. This software product was never released. After Microsoft stop supporting the java language in all of its products, the java version of classic panel was canceled.

Classic Panel was rewritten from the ground up to support the .NET runtime to improve performance and to allow portability to the handheld devices. Classic Panel version 3 was released in Winter of 2004. (Classic Panel version 1 and version 2 were never production released). Classic Panel 3 incorporates GUI editor,

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[ModelTrains.MonsterMar](http://ModelTrains.MonsterMart.com)

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APB and ABS signals, 2 color aspects, and full interlock support. Classic Panel is the next generation 1940 dispatcher panel designed for the modeler. Classic Panel integrates new signal technology, distributed network support, location information and portability to the Windows CE PDA devices.

Classic Dispatcher Panel Overview

In 2003, Train Server reached another milestone: support for the first full duplex wireless hand held throttle using Microsoft Windows CE devices, called **Loco CE®**. Loco CE integrates commercial computer Windows CE - PDA products into the model railroad environment using off the shelf computer equipment. Loco CE is the OEM software product included in Lenz Set LI in the United States.

In late 2003 KAM introduced the **distributed XML communications protocol** designed to allow distributed model railroad clients to operate over a remote network using TCP/IP and the XML data/command protocol. The Train Server Architecture clearly extends the boundary on what can or cannot be done to support the end user and developers.

In 2004 KAM introduce The **RailDriver Commander®** remote software supporting the RailDriver computer based throttle and full scale simulators running model railroads. Rail driver interface is unique where the interface can be local to the user system, or remote across the internet using Train Server XML protocol. KAM's Train Server architecture supports the demands and performance of a user-to-hardware interface that is unique in the industry.

Our focus in 2005, was to migrate all of the client software to a new set of developer tools that are XML and .net based. Along with the 2.0 software, we released our new Train server sdk kits, with Visual studio 2003 templates. This new tools allow users greater flexibility in developing model railroad applications using Microsoft tools like Visual Basic .net Express.

As part of development effort in 2005, we Introduced Train Server release 3.0, and addressed the problems areas associated with the developer interface and the tools sets required to build Model railroad applications. In June 2005 at the Cincinnati convention we Introduced Decoder Commander. The first XML based distributed programmer. This application has been under development since 2001. After many user beta testing and UI changes we new we had a hit.

What will 2006 bring? we are looking at more software enhancements to our products. I have expanded our download site where users can now download the complete CDROMs online. We are planning a new release of CDPRO in late 2006 that will address compatibility problems with Windows Xp and Vista. With time permitting, I have some additional new products to announce.

But in all of this, my goal still remains the same - provide our users with excellent software to run your digital railroad and have fun. After all, that is goal for all of us.

KAM Product Overview

Site Statistics:

Vistors in 2006: 67,453
Hits in 2006: 1,311,653
Page Views in 2006: 162,962

Vistors in 2005: 118,582
Hits in 2005: 2,059,788
Page Views in 2005: 258,502

Vistors in 2004: 107,122
Hits in 2004: 1,825,750
Page Views in 2004: 1,402,272

This site has served 1,823,736 pages since August 2004

Exhibit C

The Conductor

KAM Industries Technology License Program

KAM Industries invests considerable resources in promoting and discovering new technologies and the applications of those technologies to model railroads. As a result of KAM's investment, KAM's novel software concepts are being expanded and enhanced to support the model railroad hobby. KAM products implement these novel concepts. KAM has been granted numerous patents on these novel technologies and processes.

KAM Industries software and technology is a licensed product. KAM Industries has significant Intellectual Property that is available for licensing to third party **software developers, dealers, distributors and manufacturers**. KAM Industries has a flexible technology license policy designed to promote the Model Railroad Industry, by sharing KAM Industries software and technology with other manufacturers and competitors. This document is a FAQ on KAM Industries licensing policy, basic licensee requirements, and basic financial requirements associated with such an agreement.

What countries does KAM Industries have patent protection in?

KAM Industries has patents that were issued in the United States, Canada, England, and Germany. In addition, KAM Industries has several pending patent applications for additional technology in the United States and other countries.

Who may license technology from KAM Industries?

KAM Industries has two types of licensees; (1) those that sign a license agreement directly with KAM Industries and (2) customers who purchase a licensed KAM Industries software product.

What patents and trademarks are available for cross license?

All of KAM Industries Intellectual property, including patents, trademarks, trade secrets, and copyrights are available for cross license. KAM Industries issued patents are identified on KAM Industries home page in the foot note section (www.kamind.com). Copies of KAM Industries patents are available at www.uspto.gov (enter the patent number in the search field) or select 'view patent option' at www.kamind.com.

How Can I tell if my product infringes?

The only manner to determine if any software product infringes any KAM Industry patents is to review the KAM Industry patents, normally by hiring an independent attorney.

What are the simple rules to tell if my software product infringes a KAM Industries patent?



KAM Industries patented technology was built on novel concepts that were not in use in the Model Railroad Industry when the technology was developed. This technology has wide ranging benefits and is just now becoming prevalent in the market. Manufacturers are realizing that they need to implement KAM Industries patented technology to address deficiencies in their software products and controlling processes. KAM Industries goal is to offer the technology to manufacturers at reasonable terms to help promote the Model Railroad Industry and to develop a wide range of software applications by licensing the technology to any and all interested parties.

The only manner to determine if any software product infringes any KAM Industry patents is to review the KAM Industry patents, normally by hiring an independent attorney. However, here are some simple questions as an initial guide; if the answer to any of these questions is yes, then your product will likely infringe one or more of KAM Industries patents and you should contact KAM Industries for a license.

- Does your product buffer command and control data to a command station in a non FIFO format?
- Does your product handle asynchronous commands between the user interface and the command station in a multi-threaded manner?
- Does your product process error feedback and modify the commands in the queue to control the command station?
- Does your product process out of sequence events from the command station in processing commands to the model railroad and modify the commands in the queue?
- Does your product not wait for a user interface command to be processed by the command station?
- Does your product distribute model railroad commands to an internal process that is asynchronous to the user interface?
- Does your product have a locking feature to ensure commands are written to a command station and are not shared between single and multi user processes?
- Does your product have a multicasting feature to ensure that commands that are written to a command station are shared between a single or multiple user processes?

If you have answered "Yes" to any of the above questions, you should consider contacting an independent attorney for evaluation and then contact KAM Industries for a license. **Note:** This list is merely intended to provide an overview of some of KAM Industries patents at this **point in time**. This list is not intended to limit or otherwise construe the claims of any of the patents. To ensure that your product does not infringe any KAM Industries patents, you should have your product evaluated against each patent by an independent attorney. KAM Industries files multiple patents in the patent office on a yearly basis for new technology. In addition, KAM Industries invests a significant amount of money on a yearly basis developing new technologies.

Do software manufacturers need a license if their product is compliant with KAM Industries programmatic interfaces? (NMRA proposed API, or KAM XML Interface)?

Any software manufacturer that distributes a software product that is compliant with the interface to KAM Industries Trains Server *and* incorporates the Train Server in their product does not need a license of any KAM Industries patents for that product. However, if that software product can operate in a standalone mode that does not require KAM Industries Train Server interface or Train Server, that software product requires a technology license if it infringes any patent of KAM Industries.

If I do not want to license KAM Industries technology, what should I do?

You will need to remove any feature from your software that infringes and cease distribution of any existing products that infringe on KAM Industries technology. You may not distribute infringing product in any form or manner.

What are the terms of KAM's license agreement?

KAM Industries license agreements are either a license agreement with a joint marketing agreement or a cross license agreement with a joint marketing agreement. Each agreement with KAM Industries is unique to the particular manufacturer and/or distributor.

What are the Royalties associated with KAM Industries license agreement?

KAM Industries technology license agreement fees start at \$19 per copy (quantity 1) and decrease with increased volume. The licensee fees are composed of two factors:

- What is the volume of the items being licensed?
- Has the end user already purchased a patented KAM Industries product?

As a KAM technology Licensee how can I tell if my end user has a licensed product?

KAM Industries Flexible License™ validation program is described below. This program is subject to modification and depends on the technology license agreement.

Briefly, manufacturers, dealers and developers have the option to establish a pre-paid royalty account with KAM Industries to validate end user licenses. The licensee submits the end user's email address to the KAM Industries website. KAM Industries contacts the end user and requests an acknowledgement from the end user on the product status and serial number. The licensee's account will be debited/credited when the end user responds to the request. KAM Industries goal is to supply the licensee credit if an end user has already purchased one of KAM Industries products.

I'm a small developer. Is there a simpler way to license KAM software?

KAM Industries allows developers to purchase distribution CDROMs from KAM Industries web site on an as-needed basis. The Licensee includes the KAM Industries serialized distribution CDROMs with the product being shipped by the Licensee. Each CDROM has a unique serial number, and requires the end user to activate the serial number within 45 days after installation. These CDROMS may be purchased in groups of 5 at \$19 per copy.

I'm a dealer shipping a freeware software product. Do I need a license?

Any product distributed that infringes any patent of KAM Industries requires a technology license. If you feel that the product you are distributing violates the KAM Industries technology license, you may purchase KAM Industries CDROMs from the developer site and supply a KAM Industries serialized licensed CDROM with each freeware product shipped.

Note: If you make, use, sell, offer for sale, or import a product that violates any patent of KAM Industries, you are legally responsible for such violations.

What companies and dealers does KAM Industries have legal action pending?

KAM Industries policy is to not comment on pending or contemplated legal actions. KAM Industries has previously filed two patent infringement lawsuits.

I'm an international company. Does the patent law apply to me?

KAM Industries patents are valid for all countries in which a patent exists. If you do business in any country where KAM Industries has a patent either through a local office, a dealer, distributors, OEMs, or through internet sales, you are required to license KAM Industries technology if your product is infringing.

What is KAM's policy on patent infringers?

KAM Industries desires to avoid legal action when possible and tries to resolve any issues through negotiation. In the case that negotiations are not successful, KAM Industries will institute legal action in an appropriate court to ensure compliance. KAM Industries will seek all appropriate injunctions to halt the distribution of product that violates KAM Industries intellectual property, both in the U.S. and internationally.

It is to be understood that this FAQ is provided merely for informational purposes, and that KAM Industries reserves the right to change any and all of its policies, licensing agreements, or royalty rates. In addition, if KAM Industries has to resort to any legal action and expense to enforce its rights against parties who do not respect its legal rights then the aforementioned rates may not necessarily apply.

For additional information on KAM product license program please contact:

Matthew A. Katzer
KAMIND Associates, Inc.
2373 NW 185th Ave, Ste 416
Hillsboro, OR 97124
USA

Send mail to webmaster@kamind.com with questions/comments about this web site.

Copyright © 1991 - 2005 KAM Industries. Engine Commander, Classic Panel, CDPRO, Computer Dispatcher, Computer Dispatcher Pro, Consist Commander, Decoder Commander, Enginterface, IFeedback, IEngComIfc, KAM Industries, Kamind, Layout Commander, Layout Manager, LocoCe, LocoWinCe, RailDriver Commander, Signal Commander, Smart Decoder, The Conductor, Train Basic, Train Controls, Train Move, Train Priority, Train Server, Train Tools, Why play with toys when you can use the prototype, Video Speed are registered trademarks of KAM Industries. Products covered under Patent 6065406, 6267061, 6270040, 6530329, 6460467, 6494408, 6676089, 6702235, 6827023, 6877699, Ger 29923834.2, GB 2353228, CDN 2330931 and other US and international patents pending. All rights reserved

KAM Industries is a division of KAMIND Associates, Inc.

Select this link for [KAMIND Associates, Inc. privacy policy](#).

Exhibit D

Date: Wed, 08 Sep 2004 09:04:55 -0600
From: Glenn Butcher <glenn_butcher@pcisys.net>
Subject: [loconet_info] I'm pulling out...
To: loconet_hackers@yahoogroups.com
Reply-to: loconet_hackers@yahoogroups.com
Delivered-to: mailing list loconet_hackers@yahoogroups.com
Mailing-List: list loconet_hackers@yahoogroups.com; contact
loconet_hackers-owner@yahoogroups.com
X-eGroups-Remote-IP: 216.229.32.240

Mr Kratzer and I have had a short exchange of emails on the topic of his patents. As a result, I have chosen to remove my loconetd and railroadd servers and client apps from my website. Mr Kratzer forwarded a FAQ on his technology licensing that contained a list of questions to aid in determining whether others' efforts could be infringing on his patents; some are specific but in my opinion others appear to be general enough to cover most of the software development activity discussed on this list. As I don't have the resources to consult a patent attorney in this matter, I've taken a conservative approach to protecting myself.

I find it disappointing to have to do this, especially to protect the rights to exclusively use what, in my opinion, appear to be simple extensions of what I used to teach in undergraduate computer science. However, I don't think it's worth fighting when that time could be spent building my layout, money could be spent on the brass D&RGW K-37 I so dearly covet... :D

Goodbye, and thanks for all the fish!
Glenn Butcher

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Now with Pop-Up Blocker. Get it for free!
<http://us.click.yahoo.com/L5YrjA/eSIIAA/yQLSAA/YSTo1B/TM>
----->

Yahoo! Groups Links

- <*> To visit your group on the web, go to:
http://groups.yahoo.com/group/loconet_hackers/
- <*> To unsubscribe from this group, send an email to:
loconet_hackers-unsubscribe@yahoogroups.com
- <*> Your use of Yahoo! Groups is subject to:
<http://docs.yahoo.com/info/terms/>

Exhibit E

Kevin L. Russell, OSB No. 93485
e-mail: kevin@chernofflaw.com
CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP
1600 ODS Tower
601 SW Second Avenue
Portland, Oregon 97204-3157
Telephone: (503) 227-5631
FAX: (503) 228-4373

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

MATTHEW A. KATZER, an individual, and)
KAMIND ASSOCIATES, INC., d/b/a Kam)
Industries, an Oregon corporation,)

Plaintiffs,)

v.)

MIREILLE S. TANNER,)
an individual, doing business as)
DigiToys Systems,)

Defendant.)

Civil No. **CV '02 1293**

**COMPLAINT
FOR PATENT INFRINGEMENT**

PATENT CASE

Demand for Jury Trial

FILED 02 SEP 17 15:05:30-08P

1ST

For their complaint against defendant, plaintiffs allege:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Matthew A. Katzer is an individual resident of the State of Oregon.

Plaintiff Kamind Associates, Inc., d/b/a Kam Industries, is an Oregon corporation with its principal place of business in Hillsboro, Oregon. Plaintiffs design, manufacture and distribute computer software for use with model railroads.

1

2. Upon information and belief, defendant Mireille S. Tanner, d/b/a DigiToys Systems, is a resident of the State of Georgia.

3. This case arises under the patent laws of the United States, 35 USC §§ 1-376. The Court has jurisdiction of the subject matter herein pursuant to 28 USC §§ 1331 and 1338(a). Venue is proper in this District pursuant to 28 USC § 1391(b).

PLAINTIFFS' FACTUAL ALLEGATIONS

4. Plaintiffs own three United States patents directed toward the control of a model railroad, namely U.S. Patent No. 6,065,406 ("the '406 patent"), U.S. Patent No. 6,270,040 ("the '040 patent"), and U.S. Patent No. 6,267,061 ("the '061 patent"). Copies of these patents are attached hereto as Exhibit A.

5. Upon information and belief, defendant is manufacturing and/or distributing in Oregon and elsewhere in the United States computer software known as "WinLok" that infringes one or more claims of the '406, '040 and '061 patents.

6. Upon information and belief, the actions of defendant complained of herein have been willful, wanton and carried out with full knowledge and blatant disregard of plaintiffs' patent rights.

CLAIM FOR RELIEF

(Patent Infringement)

7. This claim arises under 35 USC § 281. Plaintiffs reallege and incorporate by reference paragraphs 1-6.

8. By manufacturing, using, selling and/or offering to sell its WinLok software, defendant is infringing, contributing to infringement, and inducing infringement of the '406, '040 and '061 patents owned by plaintiffs.

9. Plaintiffs have suffered and are continuing to suffer irreparable damage due to the infringing acts of defendant, and because the infringing acts of defendant are continuing, plaintiffs will suffer additional irreparable damage unless defendant is enjoined by this Court from those acts which infringe, contribute to infringement, and induce infringement of the '406, '040, and '061 patents.

10. Plaintiffs have suffered damages as a result of defendant's infringement of the '406, '040 and '061 patents.

11. Defendant's acts of infringement have been willful, making this an exceptional case within the meaning of 35 USC § 285. Plaintiffs are therefore entitled to an award of their reasonable attorney fees pursuant to that statutory provision.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment in their favor and against defendant as follows:

A. For an Order that U.S. Patent Nos. 6,065,406, 6,270,040 and 6,267,061 are each valid and infringed by defendant;

B. For an Order permanently enjoining defendant, her agents, officers, assigns and all others acting in concert with them from infringing, inducing infringement and contributing to infringement of the '406, '040 and '061 patents.

C. For damages, and an accounting for damages, based on the value of infringing products sold, to compensate plaintiff for the aforesaid infringement of plaintiffs' patents;

D. For an Order trebling any damages awarded, pursuant to 35 USC § 284;

E. For pre-judgment interest and post-judgment interest on all damages

awarded;

PAGE 3 - COMPLAINT FOR PATENT INFRINGEMENT

CHERNOFF, VILGARDER, McCLUNG & STENZEL LLP
1600 OBS Tower
401 S.W. Second Avenue
Portland, Oregon 97204-3157
(503) 227-5631

F. For an Order that this is an exceptional case and an award to plaintiffs of their reasonable attorney fees, pursuant to 35 USC § 285;


G. For plaintiffs' costs and disbursements incurred herein; and

H. For such other relief as the Court may deem just and equitable.

DATED this 17 day of September 2002.

Respectfully submitted,

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

By: 
Kevin L. Russell, OSB No. 93485
Of Attorneys for Plaintiffs

Plaintiffs hereby demand a jury trial of all issues so triable.


Kevin L. Russell, OSB No. 93485

Q:\ds\KLR. Work for\Karr-Tanner Complaint.wpd

Exhibit F

Kevin L. Russell
Kevin L. Russell, OSB No. 93485
 e-mail: kevin@chernofflaw.com
CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP
 1600 ODS Tower
 601 SW Second Avenue
 Portland, Oregon 97204-3157
 Telephone: (503) 227-5631
 FAX: (503) 228-4373

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON

MATTHEW A. KATZER, an individual, and
KAMIND ASSOCIATES, INC., d/b/a Kam
 Industries, an Oregon corporation,

Plaintiffs,

v.

FRIEWALD SOFTWARE, a German entity,
 d/b/a Railroad & Co.; **LOCAR, INC.**, an
 Alabama corporation, d/b/a Oak Mountain
 Hobbies; **ALEXANDER KALESNIKOV**, an
 individual, d/b/a DCC Train;
CHARLES DAVIS, an individual, d/b/a Oak
 Tree Systems LLC; and **ANTHONY PARISI**,
 an individual, d/b/a Tony's Train Xchange,

Defendants.

Civil No.

CV '02 1292 - 1HU

**COMPLAINT
 FOR PATENT INFRINGEMENT**

PATENT CASE

Demand for Jury Trial

FILED 02 SEP 17 15:26 LSC:CRP

For their complaint against defendants, plaintiffs allege:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Matthew A. Katzer is an individual resident of the State of Oregon.

Plaintiff Kamind Associates, Inc., d/b/a Kam Industries, is an Oregon corporation with its

principal place of business in Hillsboro, Oregon. Plaintiffs design, manufacture and distribute computer software for use with model railroads.

2. Upon information and belief, defendant Friewald Software, d/b/a Railroad & Co., is a German corporation, partnership or sole proprietorship. Upon information and belief, defendant Locar, Inc., d/b/a Oak Mountain Hobbies, is an Alabama corporation. Upon information and belief, defendant Alexander Kalesnikov, d/b/a DCC Train, is an individual resident of Ohio. Upon information and belief, defendant Charles Davis, d/b/a Oak Tree Systems LLC, is an individual resident of Michigan. Upon information and belief, defendant Anthony Parisi, d/b/a Tony's Train Xchange, is an individual resident of Vermont.

3. This case arises under the patent laws of the United States, 35 USC §§ 1-376. The Court has jurisdiction of the subject matter herein pursuant to 28 USC §§ 1331 and 1338(a). Venue is proper in this District pursuant to 28 USC § 1391(b).

PLAINTIFFS' FACTUAL ALLEGATIONS

4. Plaintiffs own three United States patents directed toward the control of a model railroad, namely U.S. Patent No. 6,065,406 ("the '406 patent"), U.S. Patent No. 6,270,040 ("the '040 patent"), and U.S. Patent No. 6,267,061 ("the '061 patent"). Copies of these patents are attached hereto as Exhibit A.

5. Upon information and belief, defendants are manufacturing and/or distributing in Oregon and elsewhere in the United States computer software known as "TrainControl" that infringes one or more claims of the '406, '040 and '061 patents.

6. Upon information and belief, the actions of defendants complained of herein have been willful, wanton and carried out with full knowledge and blatant disregard of plaintiffs' patent rights.

PAGE 2 - COMPLAINT FOR PATENT INFRINGEMENT

CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP
1600 ODS Tower
601 S.W. Second Avenue
Portland, Oregon 97204-3157
(503) 227-5631

CLAIM FOR RELIEF**(Patent Infringement)**

7. This claim arises under 35 USC § 281. Plaintiffs reallege and incorporate by reference paragraphs 1-6.

8. By manufacturing, using, selling and/or offering to sell TrainControl software, defendants are infringing, contributing to infringement, and inducing infringement of the '406, '040 and '061 patents owned by plaintiffs.

9. Plaintiffs have suffered and are continuing to suffer irreparable damage due to the infringing acts of defendants, and because the infringing acts of defendants are continuing, plaintiffs will suffer additional irreparable damage unless defendants are enjoined by this Court from those acts which infringe, contribute to infringement, and induce infringement of the '406, '040, and '061 patents.

10. Plaintiffs have suffered damages as a result of defendants' infringement of the '406, '040 and '061 patents.

11. Defendants' acts of infringement have been willful, making this an exceptional case within the meaning of 35 USC § 285. Plaintiffs are therefore entitled to an award of their reasonable attorney fees pursuant to that statutory provision.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment in their favor and against defendants as follows:

A. For an Order that U.S. Patent Nos. 6,065,406, 6,270,040 and 6,267,061 are each valid and infringed by defendants;

B. For an Order permanently enjoining defendants, their agents, officers, assigns and all others acting in concert with them from infringing, inducing infringement and contributing to infringement of the '406, '040 and '061 patents.

C. For damages, and an accounting for damages, based on the value of infringing products sold, to compensate plaintiff for the aforesaid infringement of plaintiffs' patents;

D. For an Order trebling any damages awarded, pursuant to 35 USC § 284;

E. For pre-judgment interest and post-judgment interest on all damages awarded;

F. For an Order that this is an exceptional case and an award to plaintiffs of their reasonable attorney fees, pursuant to 35 USC § 285;

G. For plaintiffs' costs and disbursements incurred herein; and

H. For such other relief as the Court may deem just and equitable.

DATED this 17 day of September 2002.

Respectfully submitted,

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

By: 

Kevin L. Russell, OSB No. 93485
Of Attorneys for Plaintiffs

Plaintiffs hereby demand a jury trial of all issues so triable.


Kevin L. Russell, OSB No. 93485

Exhibit G

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

- * JACOB E. VILHAUER, JR.
- * DENNIS E. STENZEL
- * CHARLES D. MCCLUNG
- * DONALD B. HASLETT
- * J. PETER STAPLES
- * WILLIAM O. GENY
- * NANCY J. MORIARTY
- * JULIANNE R. DAVIS
- * KEVIN L. RUSSELL

INTELLECTUAL PROPERTY LAW
 INCLUDING PATENT, TRADEMARK,
 COPYRIGHT AND UNFAIR
 COMPETITION MATTERS

1600 ODS TOWER
 601 S.W. SECOND AVENUE
 PORTLAND, OREGON 97204-3157
 TELEPHONE: (503) 227-5631
 FAX: (503) 228-4373

- * TIM A. LONG
- KURT ROHLFS
- * BRENNAN K. LEGAARD

* REGISTERED PATENT ATTORNEY

DAVID S. FINE
SENIOR LAW CLERK

DANIEL P. CHERNOFF
 (1935-1995)

September 18, 2002

Our File: 7431.054

Mireille S. Tanner
 DigiToys Systems
 1645 Cheshire Ct.
 Lawrenceville, GA 30043

Re: Kam Industries With Respect To Their Intellectual Property Matters

Dear Ms. Tanner:

We represent Kam Industries with respect to their intellectual property matters. Kam Industries, as you are aware, is in the business of developing software for operating digitally controlled model railroads (www.kamind.com).

It has come to our attention that DigiToys Systems has developed and is currently selling computer software for operating a digitally controlled model railroad. In particular, the software offered by DigiToys Systems includes WinLok 2.1 Rev. D. Our initial investigation of the WinLok software indicates that the WinLok software is capable of providing commands to one of a plurality of digital command stations for operating a model railroad.

Kam Industries currently has three issued United States Patents directed toward the control of a model railroad, namely, U.S. Patent No. 6,065,406 (53 claims); U.S. Patent No. 6,270,040 (235 claims); and U.S. Patent No. 6,267,061 (54 claims). Other patents directed to the control of a model railroad are currently pending worldwide. Copies of the issued United States patents are enclosed herewith for your convenience.

The WinLok software infringes claim 10 of the '061 patent, namely, the capability of sending commands to one of a plurality of digital command stations.

The WinLok software infringes claim 27 of the '406 patent, namely the capability of sending commands to one of a plurality of digital command stations.

Mireille S. Tanner
September 18, 2002
Page 2

We are currently investigating whether the WinLok software infringes claim 35 of the '061 patent by providing an acknowledgment prior to proper execution by the digitally controlled model railroad.

We are also currently investigating whether the WinLok software infringes claim 39 of the '406 patent by providing an acknowledgment prior to proper execution by the digitally controlled model railroad.

In addition, we are currently investigating whether the WinLok software infringes independent claims 10, 35, 57, 82, 104, 129, 151, 176, 198, 223 of the '040 patent related to a queue.

You will note that there are an extensive set of claims in these patents directed to other desirable features of a digitally controlled model railroad which we are not currently aware whether the WinLok software infringes.

We demand that you immediately cease and desist from all future sales and distribution of infringing software in the United States. In addition, we demand an accounting for all infringing software sold in the United States since May 23, 2000 so that past damages may be determined. Further sales of infringing software will be considered willful infringement, subjecting you to treble damages and attorney fees.

Although our client does not intend to seek court action without first attempting to negotiate an acceptable solution, your infringement of our client's patents must cease. Please contact me within the next two weeks so that we may discuss these issues and potential licensing.

Sincerely,



Kevin L. Russell

KLR:lm
Enclosures

Exhibit H

LAW OFFICES

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

- * JACOB E. VILHAUER, JR.
- * DENNIS E. STENZEL
- * CHARLES D. MCCLUNG
- * DONALD B. HASLETT
- * J. PETER STAPLES
- * WILLIAM O. GENY
- * NANCY J. MORIARTY
- * JULIANNE R. DAVIS
- * KEVIN L. RUSSELL

INTELLECTUAL PROPERTY LAW
INCLUDING PATENT, TRADEMARK,
COPYRIGHT AND UNFAIR
COMPETITION MATTERS

- * TIM A. LONG
- KURT ROHLFS
- * BRENNNA K. LEGAARD

* REGISTERED PATENT ATTORNEY

1600 ODS TOWER
601 S.W. SECOND AVENUE
PORTLAND, OREGON 97204-3157
TELEPHONE: (503) 227-5631
FAX: (503) 228-4373

DAVID S. FINE
SENIOR LAW CLERK

DANIEL P. CHERNOFF
(1935-1995)

September 18, 2002

Our File: 7431.053

Via Federal Express 8218 2713 6182

Freiwald Software
Kreuzberg 16 B
85658 Egmatting
GERMANY

Re: Kam Industries With Respect To Their Intellectual Property Matters

Dear Sir:

We represent Kam Industries with respect to their intellectual property matters. Kam Industries, as you are aware, is in the business of developing software for operating digitally controlled model railroads (www.kamind.com).

It has come to our attention that Railroad and Co. has developed and is currently selling (directly and through distributors) computer software for operating a digitally controlled model railroad. In particular, the software offered by Railroad and Co. and its distributors includes TrainController. Our initial investigation of the TrainController software indicates that the TrainController software is capable of providing commands to one of a plurality of digital command stations for operating a model railroad.

Kam Industries currently has three issued United States Patents directed toward the control of a model railroad, namely, U.S. Patent No. 6,065,406 (53 claims); U.S. Patent No. 6,270,040 (235 claims); and U.S. Patent No. 6,267,061 (54 claims). Other patents directed to the control of a model railroad are currently pending worldwide. Copies of the issued United States patents are enclosed herewith for your convenience.

The TrainController software infringes claim 10 of the '061 patent, namely, the capability of sending commands to one of a plurality of digital command stations.

LAW OFFICES
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The TrainController software infringes claim 27 of the '406 patent, namely the capability of sending commands to one of a plurality of digital command stations.

We are currently investigating whether the TrainController software infringes claim 35 of the '061 patent by providing an acknowledgment prior to proper execution by the digitally controlled model railroad.

We are also currently investigating whether the TrainController software infringes claim 39 of the '406 patent by providing an acknowledgment prior to proper execution by the digitally controlled model railroad.

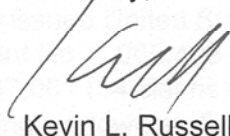
In addition, we are currently investigating whether the TrainController software infringes independent claims 10, 35, 57, 82, 104, 129, 151, 176, 198, 223 of the '040 patent related to a queue.

You will note that there are an extensive set of claims in these patents directed to other desirable features of a digitally controlled model railroad which we are not currently aware whether the TrainController software infringes.

We demand that you immediately cease and desist from all future sales and distribution of infringing software in the United States. In addition, we demand an accounting for all infringing software sold in the United States since May 23, 2000 so that past damages may be determined. Further sales of infringing software will be considered willful infringement, subjecting you to treble damages and attorney fees.

Although our client does not intend to seek court action without first attempting to negotiate an acceptable solution, your infringement of our client's patents must cease. Please contact me within the next two weeks so that we may discuss these issues and potential licensing.

Sincerely,



Kevin L. Russell

KLR:lm
Enclosures