

1 **David M. Zeff (S.B. #63289)**
2 **Law Offices of David M. Zeff**
3 **1388 Sutter St., Suite 820**
4 **San Francisco, CA 94109**
5 **Telephone: (415) 923-1380**
6 **Facsimile: (415) 923-1382**
7 **ZeffLaw1@aol.com**

8 **Attorneys for Defendant**

9 **Kevin Russell**

10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **ROBERT JACOBSEN,**
14 **Plaintiff,**

15 **vs.**

16 **MATTHEW KATZER, KAMIND**
17 **ASSOCIATES, INC., and KEVIN**
18 **RUSSELL,**
19 **Defendants.**

20 **) Case No. C 06 1905 HRL**

21 **) Date: December 19, 2008**

22 **) Time: 9:00 a.m.**

23 **) Courtroom No. 2, 17th Floor**

24 **) Honorable Jeffrey S. White**

25 **) DECLARATION BY DEFENDANT**
26 **) KEVIN RUSSELL SUPPORTING REPLY**
27 **) TO PLAINTIFF'S OPPOSITION BRIEF**

28 I, Kevin Russell, declare:

1. I am a defendant in this action and an attorney licensed to practice before the United States Patent and Trademark Office ("Patent Office"). My business address is 601 SW 2d Avenue, Suite 1600, Portland, OR 97204. If called as a witness, I would and could testify to the following as a matter of personal knowledge.

2. At all times previous to the filing of Jacobsen's complaint in this matter, I believed that KAMIND Associates, Inc.'s Patent No. 6,530, 329 B2 was a valid patent, and that software sponsored and made available by JMRI infringed that patent. To this date, I still believe these things to be true.

3. I am, and at all relevant times was, retained as an attorney by KAMIND Associates, Inc., and as its attorney I communicated the position of KAMIND to Mr. Jacobsen. That is, I

1 told Jacobsen that in my opinion software sponsored and made available in the market by JMRI
2 infringed the '329 Patent, and that JMRI should either apply for a license or cease distributing
3 the infringing product. I made those statements for the purpose of averting a lawsuit between
4 KAMIND and JMRI. Unless Mr. Jacobsen either honored my requests or persuaded me that his
5 software did not infringe, I intended to file suit against JMRI to enforce the patent.

6 4. On October 7, 2005 I sent a FOIA request to the United States Department of Energy,
7 which became the basis of Jacobsen's claim against me for alleged defamation. A reason for the
8 request was to gather information for a possible lawsuit against JMRI for patent infringement.
9 At the time I sent the request I was informed that a DOE e-mail account was being used to
10 promote the JRMI product. I believed that such usage suggested that the Department was
11 knowingly or unknowingly involved in supporting the product, and it seemed important to alert
12 the DOE that we considered some of its activities questionable. A true copy of the request is
13 attached as Exhibit 1 to this declaration. The exhibits that were attached are omitted to avoid
14 unduly burdening the record.

15 5. Nothing Jacobsen said to me, and nothing his attorney has filed or otherwise presented
16 in this litigation has done anything to shake my belief that KAMIND Associates, Inc.'s Patent
17 No. 6,530, 329 is valid and the JMRI product directly infringes it.

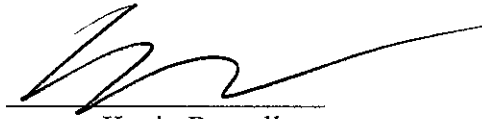
18 6. I recommended dismissal of the '329 patent not because of any doubt as to its validity,
19 but for practical reasons. Claim construction and other aspects of patent litigation are even in the
20 clearest of cases extremely expensive and time-consuming. In this litigation it appeared
21 particularly likely to be inordinately expensive and time consuming because of plaintiff's
22 tendency to muddy the record, engage in personal attacks, attempt to litigate issues in the patent
23 office, and file great masses of undigested hearsay, innuendo and opinion as "evidence." E.g.
24 Documents 46 through 57, inclusive, in the register of actions.

25 7. I have read the accompanying declaration of Matthew Katzer in opposition to
26 plaintiff's motion for reconsideration of order granting defendant's special motion to strike, and
27 the statements made in Paragraphs 5, 6, and 7 of that declaration are true to my personal
28 knowledge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2008.



Kevin Russell