Hall Supplemental Declaration Exhibit A (Part 3 of 3)

Appendix D

US006065406A

United States Patent [19]

Katzer

[11] Patent Number: 6,065,406

[45] Date of Patent: May 23, 2000

[54] MODEL TRAIN CONTROL SYSTEM

[76] Inventor: Matthew A. Katzer, 1416 NW Benfield Dr., Portland, Oreg. 97229

[21] Appl. No.: 09/104,461

[22] Filed: Jun. 24, 1998

[51] Int. Cl.[7] A63H 19/00

[52] U.S. Cl. 105/1.5; 105/1.4, 105/29.2, 246/197; 246/62; 701/19; 701/20

[58] Field of Search 701/19, 20; 246/62, 246/197; 105/1.5, 1.4, 29.2

[56] References Cited

U.S. PATENT DOCUMENTS

4,853,883	8/1989	Nickles et al.	395/500.29
5,475,818	12/1995	Molyneaux et al.	709/208
5,682,015	10/1997	Kull	246/187 C
5,787,371	7/1998	Balukin et al.	701/19

OTHER PUBLICATIONS

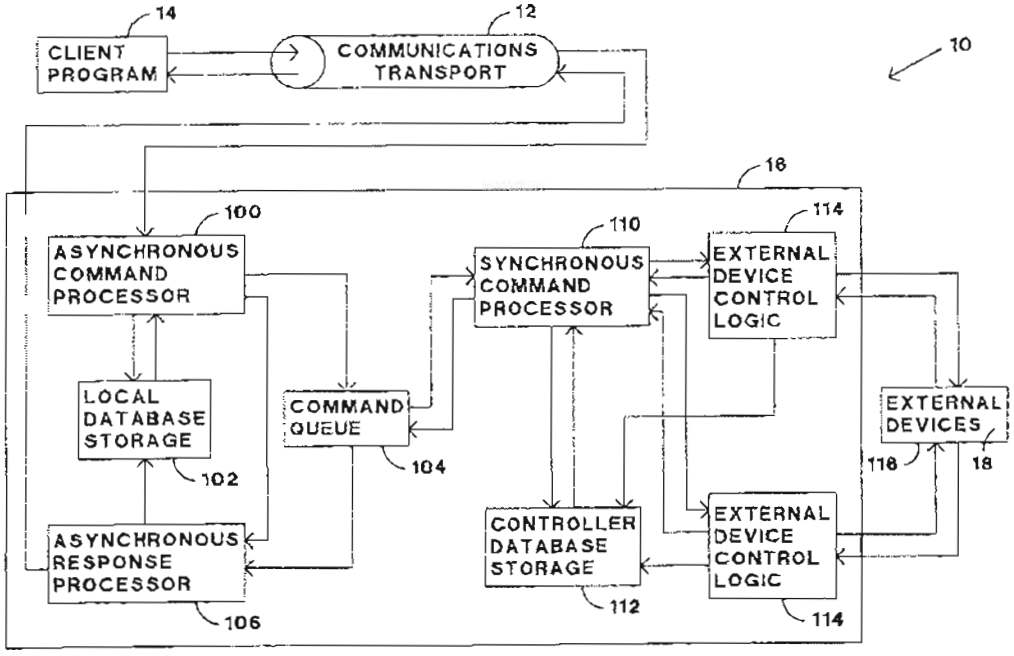
Understanding ActiveX™ and OLE copyright © 1996 by David Chapell, published in 1996 by Microsoft Press; 329 pages.

Primary Examiner—William A. Cuchlinski, Jr.
Assistant Examiner—Olga Hernandez
Attorney, Agent, or Firm—Kevin L. Russell; Chernoff Vilhauer McClung & Stenzel LLP

[57] ABSTRACT

A system which operates a digitally controlled model railroad transmitting a first command from a first client program to a resident external controlling interface through a first communications transport. A second command is transmitted from a second client program to the resident external controlling interface through a second communications transport. The first command and the second command are received by the resident external controlling interface which queues the first and second commands. The resident external controlling interface sends third and fourth commands representative of the first and second commands, respectively, to a digital command station for execution on the digitally controlled model railroad.

53 Claims, 3 Drawing Sheets



MODEL TRAIN CONTROL SYSTEM

BACKGROUND OF THE INVENTION

1. Field of the Invention

The present invention relates to a system for controlling a model railroad

2. Description of the Related Art

Model railroads have traditionally been constructed with of a set of interconnected sections of train track, electric switches between different sections of the train track, and other electrically operated devices, such as train engines and draw bridges. Train engines receive their power to travel on the train track by electricity provided by a controller through the track itself. The speed and direction of the train engine is controlled by the level and polarity, respectively, of the electrical power supplied to the train track. The operator manually pushes buttons or pulls levers to cause the switches or other electrically operated devices to function, as desired. Such model railroad sets are suitable for a single operator, but unfortunately they lack the capability of adequately controlling multiple trains independently. In addition, such model railroad sets are not suitable for being controlled by multiple operators, especially if the operators are located at different locations distant from the model railroad, such as different cities.

A digital command control (DCC) system has been developed to provide additional controllability of individual train engines and other electrical devices. Each device the operator desires to control, such as a train engine, includes an individually addressable digital decoder. A digital command station (DCS) is electrically connected to the train track to provide a command in the form of a set of encoded digital bits to a particular device that includes a digital decoder. The digital command station is typically controlled by a personal computer. A suitable standard for the digital command control system is the NMRA DCC Standards, issued March 1997, and is incorporated herein by reference. While providing the ability to individually control different devices of the railroad set, the DCC system still fails to provide the capability for multiple operators to control the railroad devices, especially if the operators are remotely located from the railroad set and each other.

Digi Toys Systems of Lawrenceville, Georgia has developed a software program for controlling a model railroad set from a remote location. The software includes an interface which allows the operator to select desired changes to devices of the railroad set that include a digital decoder, such as increasing the speed of a train or switching a switch. The software issues a command locally or through a network, such as the internet, to a digital command station at the railroad set which executes the command. The protocol used by the software is based on COBRA from OPEN MANAGEMENT GROUP where the software issues a command to a communication interface and awaits confirmation that the command was executed by the digital command station. When the software receives confirmation that the command executed, the software program sends the next command through the communication interface to the digital command station. In other words, the technique used by the software to control the model railroad is analogous to an inexpensive printer where commands are sequentially issued to the printer after the previous command has been executed. Unfortunately, it has been observed that the response of the model railroad to the operator appears slow, especially over a distributed network such as the internet. One technique to decrease the response time is to use high-speed network connections but unfortunately such connections are expensive.

What is desired, therefore, is a system for controlling a model railroad that effectively provides a high-speed connection without the additional expense associated therewith.

The foregoing and other objectives, features, and advantages of the invention will be more readily understood upon consideration of the following detailed description of the invention, taken in conjunction with the accompanying drawings.

SUMMARY OF THE PRESENT INVENTION

The present invention overcomes the aforementioned drawbacks of the prior art, in a first aspect, by providing a system for operating a digitally controlled model railroad that includes transmitting a first command from a first client program to a resident external controlling interface through a first communications transport. A second command is transmitted from a second client program to the resident external controlling interface through a second communications transport. The first command and the second command are received by the resident external controlling interface which queues the first and second commands. The resident external controlling interface sends third and fourth commands representative of the first and second commands, respectively, to a digital command station for execution on the digitally controlling model railroad.

Incorporating a communications transport between the multiple client programs and the resident external controlling interface permits multiple operators of the model railroad at locations distant from the physical model railroad and each other. In the environment of a model railroad club where the members want to simultaneously control devices of the same model railroad layout, which preferably includes multiple trains operating thereon, the operators each provide commands to the resistant external controlling interface, and hence the model railroad. In addition by queuing by commands at a single resident external controlling interface permits controlled execution of the commands by the digitally controlled model railroad, would may otherwise conflict with one another.

In another aspect of the present invention the first command is selectively processed and sent to one of a plurality of digital command stations for execution on the digitally controlled model railroad based upon information contained therein. Preferably, the second command is also selectively processed and sent to one of the plurality of digital command stations for execution on the digitally controlled model railroad based upon information contained therein. The resident external controlling interface also preferably includes a command queue to maintain the order of the commands.

The command queue also allows the sharing of multiple devices, multiple clients to communicate with the same device (locally or remote) in a controlled manner, and multiple clients to communicate with different devices. In other words, the command queue permits the proper execution in the cases of: (1) one client to many devices, (2) many clients to one device, and (3) many clients to many devices.

In yet another aspect of the present invention the first command is transmitted from a first client program to a first processor through a first communications transport. The first command is received at the first processor. The first processor provides an acknowledgement to the first client program through the first communications transport indicating that the first command has properly executed prior to execution of commands related to the first command by the digitally controlled model railroad. The communications transport is preferably a COM or DCOM interface.

Appendix E

'406	Comparison – strikethrough is text deleted from '406, added text is in brackets.	'329
1. A method of operating a digitally controlled model railroad comprising the steps of:	1. A method of operating a digitally controlled model railroad comprising the steps of:	1. A method of operating a digitally controlled model railroad comprising the steps of:
(a) transmitting a first command from a first client program to a resident external controlling interface through a first communications transport;	(a) transmitting a first command from a first ~~client~~ program to a[n] ~~resident external controlling~~ interface ~~through a first communications transport~~;	(a) transmitting a first command from a first program to an interface;
(b) transmitting a second command from a second client program to said resident external controlling interface through a second communications transport;	(b) transmitting a second command from a second ~~client~~ program to said ~~resident external controlling~~ interface ~~through a second communications transport~~; [and]	(b) transmitting a second command from a second program to said interface; and
(c) receiving said first command and said second command at said resident external controlling interface;	~~(c) receiving said first command and said second command at said resident external controlling interface;~~	N/A
(d) said resident external controlling interface queuing said first and second commands; and	~~(d) said resident external controlling interface queuing said first and second commands; and~~	N/A
(e) said resident external controlling interface sending third and fourth commands representative of said first and second commands, respectively, to a digital command station for execution on said digitally controlled model railroad.	~~(e)~~ [(c)]~~said resident external controlling interface~~ sending third and fourth commands [from said interface] representative of said first and second commands, respectively, to a digital command station ~~for execution on said digitally controlled model railroad~~.	(c) sending third and fourth commands from said interface representative of said first and second commands, respectively, to a digital command station.
27. A method of operating a digitally controlled model railroad comprising the steps of:	~~27.~~ [10.] A method of operating a digitally controlled model railroad comprising the steps of:	10. A method of operating a digitally controlled model railroad comprising the steps of:

'406	Comparison – strikethrough is text deleted from '406, added text is in brackets.	'329
(a) transmitting a first command from a first client program to a resident external controlling interface through a first communications transport;	(a) transmitting a first command from a first ~~client~~ program to a[n] ~~resident external controlling~~ interface ~~through a first communications transport~~; [and]	(a) transmitting a first command from a first program to an interface; and
(b) receiving said first command at said resident external controlling interface; and	~~(b) receiving said first command at said resident external controlling interface; and~~	N/A
(c) said resident external controlling interface selectively sending a second command representative of said first command to one of a plurality of digital command stations for execution on said digitally controlled model railroad based upon information contained within at least one of said first and second commands.	(c) said ~~resident external~~ controlling interface selectively sending a second command representative of said first command to one of a plurality of digital command stations ~~for execution on said digitally controlled model railroad~~ based upon information contained within at least one of said first and second commands.	(b) said interface selectively sending a second command representative of said first command to one of a plurality of digital command stations based upon information contained within at least one of said first and second commands.

Appendix F

Event	Date	Details
WinLok 1.5 released	1993	WinLok 1.5 is released. It is offered for sale and sold in the U.S. and reviewed in magazines. Its Help manual can be used to set up control systems.
WinLok 2.0 released	1995	WinLok 2.0 is released. It is also offered for sale and sold in the U.S. and reviewed in magazines. Its Help manual can be used to set up control systems.
WinLok 2.1 released	Dec. 14, 1997	WinLok 2.1 is available for download on the DigiToys website. Its Help manual can also be downloaded, and used to set up control systems.
09/104,461 application filed	June 24, 1998	Katzer, through Kevin L. Russell, files '461 application. No WinLok references produced. DigiToys referred to as prior art in Background of the Invention section.
'461 application issues as '406 patent	May 23, 2000	'461 application issues as U.S. Patent No. 6,065,406 patent
10/124,878 application filed	Apr. 17, 2002	Katzer, through Kevin L. Russell, files '878 application. This application is a great-grandchild application of the '461 application. No WinLok references produced. DigiToys referred to as prior art in Background of the Invention section.
Katzer v Tanner (DigiToys) lawsuit filed; C&D letter sent	Sept. 18, 2002	Katzer, through Kevin L. Russell, sends cease and desist letter to DigiToys and files a patent infringement suit against DigiToys. Katzer/Russell state that WinLok 2.1 infringes the '406 and other Katzer patents.
Tanner responds to C&D letter	Oct. 3, 2002	Dr. Tanner, owner of DigiToys, responds to Russell, stating that DigiToys reference in patent specification can only be WinLok. Tanner produces various evidence showing that WinLok is 102(b) art. Tanner files citation to art. Russell later responds to Tanner.
'878 application allowed	Nov. 3, 2002	Examiner Hernandez allows '878 application
Katzer v. Tanner lawsuit dismissed	Dec. 20, 2002	Russell dismisses lawsuit against Tanner
'329 patent issues	Mar. 11, 2003	'878 application issues as U.S. Patent No. 6,530,329

Appendix G

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 1291 ST COMPLAINT FOR PATENT INFRINGEMENT PATENT CASE Demand for Jury Trial

FILED 02 SEP 17 15:39USDC-ORP

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.

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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.

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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;

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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

O:\dss\KLR, Work for\Kam-Tanner Complaint.wpd

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Appendix H

LAW OFFICES
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* CHARLES D. McCLUNG
* DONALD B. HASLETT
* J. PETER STAPLES
* WILLIAM D. GENY
* NANCY J. MORIARTY
JUL ANNE R. DAVIS
* KEVIN L. RUSSELL

DANIEL P. CHERNOFF
(1936-1995)

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

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* TIM A. LONG
KURT ROHLFS
* BRENNA K. LEGAARD

* REGISTERED PATENT ATTORNEY

DAVID S. FINE
SENIOR LAW CLERK

September 18, 2002

Our File: 7431.054

Mireille S. Tanner
DigiToys Systems
1545 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.

LAW OFFICES
HERNOFF, VILHAUER, McCLUNG & STENZEL, LLP

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.

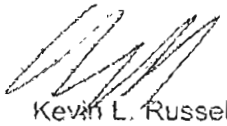
In addition, we are currently investigating whether the WinLok software infringes independent claims 10, 35, 57, 82, 104, 129, 151, 176, 198, 223 of the '040 patent related to a queue.

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

Q:\dsf\Kam\Tanner Infringement Ltr.wpd

Appendix I

WinLok 1.5 Brings Your Computer Into the Train Room

command-control system like the new NMRA DCC. At present I am only aware of two computer systems that interface with DCC systems — Engine Commander from Kamm and WinLok from TamerSoft.

First, let's take a look at WinLok's capabilities, then discuss its shortcomings and finally gaze for a moment into the crystal ball for a look at what enhancements the near future will bring. WinLok is designed to provide two basic functions: 1) layout control through Digital Command Control (DCC) stationary sensors and decoders, and 2) locomotive control through mobile decoders. First I want to talk about using WinLok to control locomotives, then I'll describe the layout-control functions and finally get to the crystal-ball gazing.

Setting WinLok up is really straightforward — it is self installing. Data entry follows the usual Windows drop-down menu and point-and-click mouse entry. Connecting the computer to the Digitrax DB100 booster LocoNet connector was equally easy. I made up my own connector cable following the instructions provided and materials purchased from Radio Shack. If you're reluctant to try out your electronic skills, pre-built cables are available for about what the parts would run you. I did run into trouble getting the decoder out of 14-speed-step mode, but finally I went through the setup steps EXACTLY like the manual says and darned if it didn't work — when all else fails read the manual! Speed control was just as smooth with WinLok as I have gotten with the Digitrax DT200. I did have one question concerning the pin assignments on the connector cable that was answered within one day by the owner of Digi RR via a CompuServe message.

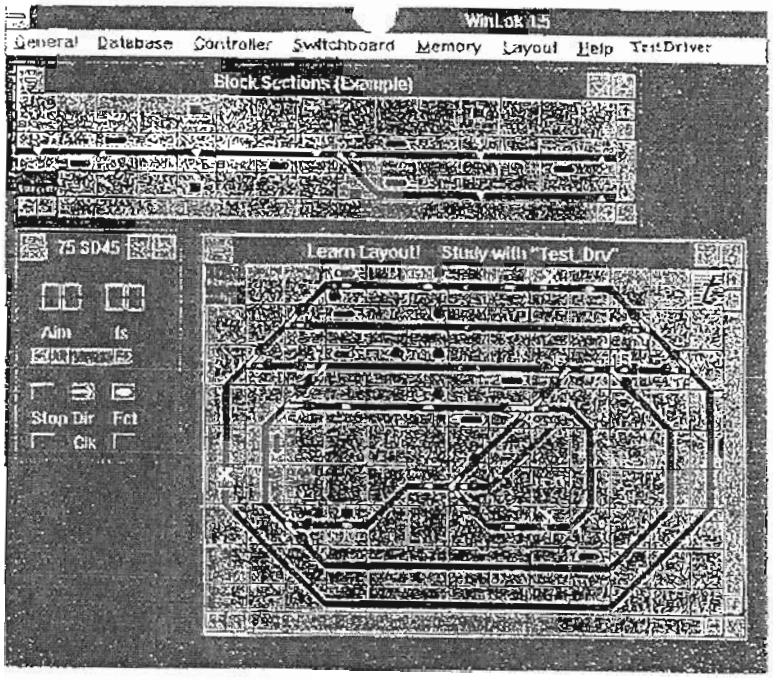
troller can be set up to control up to three decoder-equipped locomotives in MU lashups. Programming differs slightly depending on the type of decoders you use (Lenz, Märklin, Arnold, Tnx, ZIMO or Digitrax). In the case of the Digitrax decoders, you can select 14-, 28-, or 128 speed-step mode, acceleration and deceleration rates and the initial, midpoint and maximum voltage settings. Different drivers are provided for all the decoder types, along with a MultiDrive that can be used to simultaneously control all of the different types. Point-and-click mouse data entry makes programming a lot easier than the usual method of trying to hold down two buttons on the Digitrax DCT4 or DT200. Also, because all configurations are stored on your hard disk, you never have to re-enter locomotive assignments.

Layout control is accomplished using stationary decoders to throw turnouts from the computer and sensor modules that monitor block occupancy. All of the decoder (both stationary and mobile) addresses and information, along with locomotive information are entered into their respective databases. The information in the databases is used to set up switchboards that look sort of like the old gangs of Atlas turnout controls. The advantage of these is that up to 16 switches can be controlled by clicking on its number on the switchboard. The memory board allows you to combine control of several switch machines simultaneously into preset routes that can be set in a manner similar to using a diode-matrix-control system.

Another neat feature of WinLok is the ability to build a schematic of the layout or section of track to be controlled, along with switches, signals and routes. In use, the mouse cursor can be used to activate

is out. This is reflective of the European heritage of WinLok where everything is commonly run from a central control panel, much like was done in this country 20+ years ago. It also effectively limits you to a single operator since the mouse cursor or keyboard is used for control. Another holdover from the European version is the German language headings in the help file. I've been assured that these will be changed on the version 2.0 release. With respect to decoder functions, the 28-speed-step programmability is not supported. Otherwise, the program was easy to use, and although it could use some editing and grammatical tidying up, the manual was better than many I have seen. To make it easier to get an idea of how it all works, demo versions of all the functions are provided along with a tutorial explanation.

Now let's look into the future a bit. Version 2.0 of WinLok promises to alleviate the limitations I just mentioned. It will allow Digitrax users to communicate BI-directionally through the LocoNet system with their locomotive and stationary decoders. Most importantly, it will allow us to use the DT200 or BT2 "Buddy" throttles with the computer giving us a complete walk-around system. The computer will be able to sense the position of turnouts and control them, and a new level of programming will allow you to automate train routes. Once version 2.0 and the new Digitrax LocoNet driver and stationary decoders are available, I'll do a complete test of the combined system to automate a portion of a layout. In anticipation of receiving letters from fans and manufacturers of other types of DCC equipment: (Lenz, Märklin, Arnold, Tnx, ZIMO, System One) I would like to say at this point, I realize that we have



been giving Digitrax a lot of attention, not necessarily because it is the best or cheapest system available, but because they have been very cooperative in providing the materials necessary to do these tests. I would be more than willing to evaluate other manufacturers' systems and compatibility with programs like WinLok.

Several folks I have talked with about the capabilities of WinLok and DCC systems question the need or desirability of automating layout controls. My answer to that is, the flexibility of the system will allow us to automate as much or as little of our layout operations as we desire, while making it a lot easier and cheaper through standardization. For example, the simplest use of automation might be to control hidden staging yards, whereas it could get as complex as automating a display layout. For operations, the computer could run the passenger and through freights, while you and your operators could run the locals or any combination you desire. No matter what, you'll still be in control — having the turnouts connected to the computer need not eliminate local control from a fascia-mounted push-button switch, or automation could be limited just to mainline turnouts.

Basic system requirements are a 386 or better PC running Windows 3.0 or 3.1, mouse, 2.8 Mbytes of disk space, and 2 Mbytes RAM. WinLok retails for $139.95 and a demo disk is available for $30 which can be credited toward the purchase of the full version. A combination package including the full version of WinLok, a Digitrax DB100 booster, two decoders and instructions to build the Loconet-RS232 cable is priced at $329.90. For those of you on CompuServe the manual can be downloaded from the Trainnet library — look for the WINLOK.ZIP file. For a complete price list with the most up-to-date price information contact Digi RR Enterprises, 10395 Seminole Blvd. #B, Seminole, FL 34648 or you may call them at 813-397-5110.

Now for the rating (1-5, 5 is best):

Documentation	4
User Friendly	4.5
Technical	4.5
Application	4
Value	4
Level	2-5

That's all for this session. Until next time, stay on the right track and don't run out of steam. Send your comments, questions, and programs to: Larry Puckett, 9618 Dublin Dr., Manassas, VA 22110. For those of you on CompuServe my userid is 71064,22 — feel free to leave me a message. If you submit a public domain or shareware program for review in this column please indicate whether or not you are willing to provide copies for interested readers and the conditions for that exchange. I

Appendix J

DigiToys Systems
1645 Chesnire Ct.
Lawrenceville, GA 30043

Thursday, October 3, 2002

Mr. Kevin Russell
Chernoff, Vilhauer, McClung & Stenzel, LLP
1600 ODS Tower
601 S.W. Second Avenue
Portland, Oregon 97204-3157
USA

Re: KAM Industries Patents, your communication of September 18th, 2002

Dear Mr. Russell:

I have received your communication of September 18th, 2002 in regard to the matter of Intellectual Property of KAM Industries (Mr. Matt Katzer).

Your concern is stated as software programs that have "..the capability of sending commands to one of a plurality of digital command stations....".

The software programs WinLok 1.5, released in 1993, and WinLok 2.0, released in 1995, have both been capable of being configured for the TannerSoft feature of "MultiDrive", by selectively sending commands, to operate a simultaneous plurality of digital command stations connected by different communication links from a plurality of graphical user interfaces within the software. Both of these products have been widely reviewed in model railroad publications in both Germany and the US in at least 1994 and 1995, and subsequently.

I include in Annex I a copy of two reviews performed by Larry Puckett in the magazine "Model Railroading" in March, and December 1995. Note that The MultiDrive capability of WinLok 1.5 is clearly mentioned in the March 1995 review and again. Pucket notes that the WinLok 2.0 features remain "..essentially the same.." with the added capabilities he then enumerates. Also included in Annex I is an article by Tobias Frydman published in MIBA Special Nr. 33 from 1997 that reviews WinLok 2.0 and demonstrates multiple keyboards, track control diagrams and even an emulation of the Digitrax DT200 throttle that is implemented in a separate piece of software but is seamlessly integrated in the same graphical user interface.

For your convenience, in Annex II, I include a copy of relevant parts of the printed commercial WinLok 2.0 User Manual dated 1995, that provides explanation of this MultiDrive feature. Pages 95, 96 and 97 of the WinLok 2.0 User Manual provide unambiguous and definitive information that clearly estab-

lishes that the WinLok software has "..the capability of sending commands to one of a plurality of digital command stations.". Also enclosed is a copy of the box graphics used for international English language commercial sales of WinLok in the period 1995 onwards which clearly shows multiple user interfaces, which are all capable of sending commands via the MultiDrive technology to a plurality of digital command stations.

Annex III includes Sales Receipts and related VISA charge slips from DigiRR Enterprises, the US distributor of WinLok software prior to 1997, for sale of WinLok 2.0 to two US commercial customers, dated 1/4/96 and 8/22/96. There is a mass of similar evidentiary records to additionally establish the commercial sales of WinLok 1.5, 2.0 etc. Please take steps to guard the confidentiality of the Credit Card account numbers disclosed, since this information is being provided in good faith to establish evidence of US commercial sales of WinLok 2.0 software.

Note that the current 2002 sales version, WinLok 2.1 Rev. D, only differs from the 1995 WinLok 2.0 version by bug fixes, and employs no new technologies relating to the MultiDrive capability. In fact, the MultiDrive driver shipped with the current release still carries the original 1994 copyright message and all menus and dialogs are identical with the version shipped with WinLok 1.5.

It is believed that Katzer is in possession of a copy of WinLok 1.5 or 2.0 and a current evaluation copy of WinLok 2.1 can be conveniently downloaded from the Internet. If necessary, I can provide floppy disk distribution versions of the software so your technical expert, arbitrator or whomever, can definitively verify the claimed presence and ability of the MultiDrive capability in all the cited versions of WinLok software.

With the foregoing clear and convincing evidence, I believe, it is not possible or reasonable to claim infringement of the claims of Katzer as you allege, since the accused WinLok software clearly and distinctly predates in commercial use, by greater than 12 months, the earliest filing and priority date of June 24th 1998, for US 6,065,406, and the other quoted Katzer patents.

The entire contents, techniques, methods and capability of these WinLok products are definitively established as publicly used prior art by, at latest, 1995, and accordingly, this subject matter cannot be claimed under statue 35 U.S.C. 102 (A) (b) by any US Patent with a filing date later than 12 months from the initial commercial shipment of the TannerSoft "MultiDrive" technology and software processes. These demonstrated dates clearly prevail over the earliest possible June 24th 1997 Katzer US interference window, in all cases.

I retain records of the software distribution disks dated back to at least 1995, along with materials shown in Annex I, II and III and other corroborative and evidentiary materials that provide clear and convincing evidence that establishes the existence of the TannerSoft "MultiDrive" feature as prior art that predates your client's claims by over 1 year. For PCT and International patents the 1 year window does not apply, which further degrades Katzer's assertion of possible infringement by limiting his

earliest extant priority date to just June 24th 1998 anywhere else in the world except the Philippines. Documented prior art clearly prevails here and makes the claims unenforceable over this prior art.

Several other non-US software companies, for example Railroad & Co's "TrainController", have also introduced the capability to connect a plurality of digital command stations, that also were developed at least a year prior to June 24th 1998 and shipped commercially in Europe before this date. Some of these were spurred in part by the demonstrated capability of WinLok 1.5, and derivatives, and competitive pressures ensured these capabilities were emulated in a the marketplace very much earlier than June 24th 1998.

The Soft-Lok program by W. Schapals of Germany also demonstrated multiple digital command station capability in the early 1990's. In 1985 the MES software by Heinrich Maile of Spain, that also is capable of driving a plurality of digital command stations, was sold, and was also reviewed by the German railroad magazine MIBA. Annex IV includes a recent statement from Mr. Maile and a copy of promotional material.

This body of software products with these capabilities is additional prior art that also clearly supercedes the Katzer art, and is simply quoted here to establish the fact that there clearly exists, in addition to WinLok, a well known and large body of public usage and knowledge for using computer software to control a plurality of digital command stations and that this is clearly prior art over Katzer.

The Katzer specification for US Patent 6,065,406 clearly admits knowledge of a "software program" from DigiToys Systems of Lawrenceville, Georgia, [column 1/lines 42-50] which can only be "WinLok", since this is the only software that was sold by DigiToys at that time. In view of the well-defined and widely known features of the WinLok software, this raises concerns of defective disclosure under duties mandated by 37 C.F.R. 1.56. The failure of Katzer to fully disclose the widely known and extant body of prior art software methods and processes that permit a plurality of user interfaces to communicate by multiple methods to a plurality of digital command stations makes it problematic for him to point out and distinctly claim the subject matter which he considers his invention.

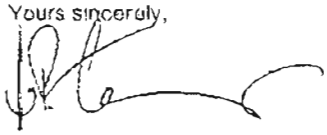
These facts, I believe, clearly establish non-infringement under 35 U.S.C. 273 (b) (1), and naturally follows directly from 35 U.S.C. 102 (A) (a) and (b) statutory concerns of the Katzer application(s). If you have any basis to contradict these facts, please contact me forthwith with the information.

Upon review of the "current investigations" of other possible infringements as stated in your letter, namely "claim 35 of US patent No. 6,267,061", "claim 39 of US patent No. 6,065,406" and "independent claims 10, 35, 57, 82, 104, 129, 151, 176, 198 and 223 of US patent No. 6,270,040", please note that it is almost certain that the Katzer art also is predated by demonstrated prior art from several software vendors in at least 1995, and earlier. The use of queues, synchronous and asynchronous communication mechanisms as well as message processing functions are standard programming

techniques within applications for the Windows operating system, therefore it is safe to assume that usage of these techniques was state of the art in Windows based Mode. Railroad software products prior to 1995, including WinLok 1.5.

It has been brought to my attention that a number of dealers who have sold my WinLok software as well as other Model Railroad software products claim to have been served with "cease and desist" letters by your firm as well. I therefore consider it as appropriate to present this factual and evidentiary information directly to affected parties, so they can make an informed decision on appropriate action. A decision about publishing this letter and supplementary documentation in part or entirely on our homepage and in selected, model railroad related Internet news groups is currently pending.

Yours sincerely,



DigiToys Systems
Dr. Hans R. Tanner, Developer of WinLok software

Cc: Model Railroad Software developers worldwide
American Model Railroad software dealers
File wrapper for US patents No. 6,065,046, No. 6,267,061, and No. 6,270,040

Annex I: Copies of 3 magazine reviews of WinLok 2.0

Annex II: WinLok 2.0 manual excerpts dated 1995, showing MultiDrive capability WinLok 2.0 cover showing multiple user interfaces

Annex III: Sales Receipts and Charge slips establishing US commercial sales

Annex IV: Statement of fact of origin of MES software (in German)

Appendix K

DigiToys Competence and	**TannerSoft WinLok™ Version 2.1**	Last Update: 14-Dec-97

- Digitrax Accessories
- Shopping
- Pics'n Sounds
- Contest
- about DigiToys
- Homepage

WinLok™ is a Windows 3.1 and Windows 95 based program to control digitally equipped Modelrailroad systems with the computer.

The following Digital Command Control systems can be controlled using WinLok:

- Arnold digital	- Trix Selectrix	- DCC ab RS232	- Lenz Digital plus
- ZIMO	- Märklin digital=	- Fleischmann FMZ	- DigitraxLocoNet
- Märklin digital	- DIGIT99	- Digitrain	

The driver library is constantly updated and drives for new Digital Command Control Systems will be available for download on this page!

Please download available software and documentation!

Appendix L

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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. 02-CV-1293-ST PLAINTIFFS' NOTICE OF DISMISSAL WITHOUT PREJUDICE PATENT CASE

NOTICE

Pursuant to Fed. R. Civ. P. 41(a)(1), plaintiffs hereby voluntarily dismiss the above captioned action without prejudice. This dismissal is being filed prior to service of the Complaint upon the defendant.

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CR 7.1 CERTIFICATION

Plaintiff has not served defendants with the Complaint, and defendant is therefore unaware of this action.

DATED this 20th day of December, 2002.

Respectfully submitted,

CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP

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

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