

Hall
Declaration
Exhibit B

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Subject: RE: Second amended complaint -- follow up
From: "Scott Jerger" <scott@fieldjerger.com>
Date: Wed, Oct 31, 2007 6:58 pm
To: <victoria@vkhall-law.com>

Victoria:

I wish you had conferred with me on the date of the motion hearing. I am not available on January 4th to travel to San Francisco. I am available on January 11 or January 18th (we will be in SF anyway for the case management conference).

Please let me know your availability,
Scott

-----Original Message-----

From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]
Sent: Wed 10/31/2007 11:09 AM
To: Scott Jerger
Subject: RE: Second amended complaint -- follow up

Scott,

As you can probably tell by now, we have filed a motion for leave to file the second amended complaint.

I've read your letter and agree that we have a misunderstanding. You seem to have thought I was filing two second amended complaints, when I am in fact asking permission from the Court to restore the cybersquatting cause of action and presenting a second amended complaint with that cause of action should the court grant our request. If the Court does not permit us to include this cause of action, then a version of the second amended complaint is available for the Court to accept. I cannot see anything worthy of Rule 11 in seeking the permission of the Court. As to your objection that two proposed second amended complaints are filed, you had stated, in an earlier filing [Docket 100], that Defendants are eager to answer the complaint. If I did not submit a version of the second amended complaint without cybersquatting, then it would delay the litigation further if the court rejected the version with cybersquatting and had no alternate version to accept. Objecting to the filing of two proposed second amended complaints is inconsistent with your earlier statements, so I am puzzled by your objections.

As to the other matters in your letter, as you know, in order for us to raise a matter on appeal, we must have presented that matter to the district court. I am not going to leave my client in a position where he is unable on appeal to raise the issue of statutory damages as to other versions of the JMRI software. Hence, we believe that we are correct in pleading in the manner that we have.

I hope this clarifies these points. If you still do want to pursue Rule 11 sanctions against us, please follow the procedure in Rule 11 prior to filing a motion.

Regards,

Victoria

----- Original Message -----

Subject: RE: Second amended complaint -- some small changes for your review
From: "Scott Jerger" <scott@fieldjerger.com>
Date: Tue, October 30, 2007 12:29 pm
To: <victoria@vkhall-law.com>

Victoria:

My position has not changed from my previous email and attached letter dated October 26, 2007. I have, for your

convenience, attached this letter consenting to the filing of a second amended complaint for your review. I want to be abundantly clear here since it seems as if you misunderstand my position and I do not want you to misrepresent my position. I do not object to the filing of a second amended complaint under Rule 15. This does not mean that I do not object to the claims or any of the substance of your second amended complaint. I do object to certain portions of your second amended complaint and I will be filing the appropriate motions in due time. Also, as I stated in my previous email and attached letter, since I am aware of no authority that would allow you to file two amended complaints and have the judge "pick the one he likes best," I do object to the filing of two versions of your second amended complaint.

Regards,
Scott

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From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]

Sent: Tuesday, October 30, 2007 10:24 AM

To: Scott Jerger

Subject: Second amended complaint -- some small changes for your review

Scott,

As I was reviewing the proposed complaints one final time before filing, I noted a number of typos, grammatical, and other minor errors that I decided to correct. I also noted some errors in the factual allegations that were a little more substantial, and I corrected them as well. They are discussed first, followed by the other minor changes.

Since this is not the version that you reviewed and consented to, I have decided to send the proposed complaints to you again, with a listing of the changes that were made. The changes were truly insubstantial, but if I'm going to tell the court that you consented, I want to tell the court that it is looking at the versions that you consented to. Let me know if you will be able to review and consent to these version by close of business tomorrow, If you cannot, then I will plan on filing a motion for leave to file these complaints later today. (I need to do it anyway because of cybersquatting.)

We have made corrections to allegations in paragraphs 49 (reflects the priority claim as stated in the '329 patent), 358 (added trademark registration number), 366 (minor updates and corrections to reflect information from Katzer v. Tanner lawsuit), 474 (added "for infringement of copyright registrations for which this Court, at a later date, finds statutory damages are not available"), 475 (added "Where available," at beginning), and 498 (added "and attorney's fees" after "\$20,000"); Appendix I has a correction attached.

We also made some minor grammatical, typographical, or other corrections in the following paragraphs:

- 3 (3rd line, changed "includes" to "include")
- 4 (2nd line, changed "or" to "of")
- 5 (1st line, capitalized "I" in "Internet")
- 8 (4th line, added "second" in between "this" and "amended")
- 17 (1st line, added a comma between "signal" and "or set of signals")
- 21 (removed space at beginning of paragraph)
- 24 (5th line, changed "it" to "the client")
- 28 (8th line, removed extra space in "real-time")
- 29 (5th line, added "Dr." before "McCormick")
- 32 (last and second to last lines, added "Dr." before "Froitzheim")

39 (10th line, added "1.5" after "WinLok", also switched order of last two sentences)
45 (1st line, changed "to" to "for")
53 (3rd line, moved "only" to later in the sentence)
65 (chart – added strikethrough that was not present earlier, and added a "[b]") in middle column)
67 (last line, added "(D. Or.)"
85 (1st line, changed "was" to "were")
86 (1st line, added "WinLok" between "these" and "references")
90 (2nd line, added "Sec." before "102(a)")
100 (second to last line and last line, added "because of" between "and" and "the")
102 (second to last line, added "On July 6, 2007," to the beginning of the last sentence)
104 (second to last line, changed "refer" to "refers", and added "Until June 2006," to the beginning of the last sentence.
Last line, changed "disclosed this prior art" to "gave this presentation".)
106 (2nd line, added "bar" between "public use" and "to the examiner")
107 (last line, added "bar" between "public use" and "to the examiner")
130 (3rd line, added "\$" marks before "102(a)" and "102(b)")
138 (3rd line, changed "he" to "they")
142 (last three words changed to "U.S. Patent No. 6,676,089")
147 (last line, added "double patenting" between "§101" and "rejection")
154 (1st line, added "double patenting" between "Sec. 101" and "rejection")
Header between 169 and 170, added ", which issued from the '416 application,"
171 (1st line, changed "double patent" to "double patenting")
176 (1st line, changed "double patent" to "double patenting")
189 (1st line, changed "his" to "their")
Header between 190 and 191, added ", which issued from the '227 application,"
192 (1st line, changed "double patent" to "double patenting"),
Header between 195 and 196, added ", which issued from the '794 application,"
197 (1st line, changed "double patent" to "double patenting")
202 (1st line, changed "double patent" to "double patenting")
207 (1st line, changed "double patent" to "double patenting")
212(1st line, changed "double patent" to "double patenting")
222 (7th line, changed "The" to "the")
224 (4th line, changed "The" to "the")
250 (4th line, changed "uses" to "users")
285 (2nd line, changed "instruction" to "instructions")
298 (2nd line, changed "their" to "Defendants")
300 (2nd line, changed "they" to "it")
305 (1st line, removed "a", second line, added "s" to "variation")
310 (1st line, added "copied and" "between "Defendants" and "distributed")
312 (1st line, changed "announces" to "announced")
316 (2nd line, added "web site" after "KAMIND Associates", and changed "a tool" to "the infringing tool")
322 (2nd line, changed "downloads" to "downloaded" and "template verifier" to "infringing")
327 (1st line, added "copy them" between "JMRI files" and "distribute")
329 (1st line, added "copy and" before "continued to")
333 (end of second sentence changed from "and stripped copyright and author names" to "with the copyright notice and author names stripped." Last sentence "The tool" changed to "The infringing tool")
350 (changed "not to use" to "not to use, copy, modify, or distribute")
357 (removed "[www.](http://www.decoderpro.com)" from www.decoderpro.com)
359 (removed "[www.](http://www.decoderpro.com)" from www.decoderpro.com)
362 (2nd line, changed "an approximately monthly" to "a regular")
367 (1st line, changed "Tanner" to "Dr. Hans Tanner"; 2nd line, changed "Tanner" to "Mireille Tanner")
370 (1st line, changed "lawsuit" to "lawsuits" and changed "Dr." to "Mireille")
371 (2nd line, changed "which" to "whom")
374 (second to last sentence, changed "one or both defendants" to "Defendants and Mr. Russell")
376 (1st line, added "and Mr. Russell" after "Defendants"; last sentence, removed last 4 words, and added "using various harassing tactics" after "plan".)
381 (1st line, changed "has" to "had")
384 (2nd line, changed "had" to "has"; 3rd line, changed "patents are invalid..." to "patents are not infringed, and are invalid...")
385 (2nd to last line, added in two places "and Mr. Russell" after "Defendants")
429 (1st line, changed "what" to "which")
468 (2nd line, changed "has" to "have" – also note that in one version, which may have been sent to you, that the last two lines of this paragraph were missing. They are present now.)
469 (added an "s" to the last word)
471 (1st line, changed "has" to "have")
476 (1st line, changed "Katzner is" to "Defendants are", changed "its" to "their"; 4th line, added "s" to "copyright"; last line,

capitalized "plaintiff")

481 (removed extra "." in last line)

496 (removed "[www.](http://www.decoderpro.com)" from www.decoderpro.com <<http://www.decoderpro.com/>>)

Appendix A has a patent number changed, a filing date changed, and a sentence added at the bottom.

Let me know if you have any questions.

Regards,

Victoria

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