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

13 ROBERT JACOBSEN, an individual,) No. C06-1905-JSW
14)
Plaintiff,)
15) **ADMINISTRATIVE MOTION TO SET**
v.) **DEADLINE FOR DEFENDANTS'**
16) **ANSWER**
MATTHEW KATZER, an individual, and)
17) Courtroom: 2, 17th Floor
KAMIND ASSOCIATES, INC., an Oregon)
18) Judge: Hon. Jeffrey S. White
corporation dba KAM Industries,)
19)
Defendants.)
20)
_____)

21 Plaintiff files this administrative motion to the set a deadline for Defendants to file their
22 Answer.
23

24 Relevant Facts

25 Setting Deadline for Defendants' Answer

26 The parties are scheduled to meet with Judge Laporte on Wednesday, Feb. 13, 2008 for a
27 settlement conference. Judge Laporte's general settlement conference order requires a Settlement
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1 Conference Statement, which must include:

- 2 2. A brief statement of the claims and defenses including, but not limited to,
3 statutory or other grounds upon which the claims are founded, a candid, forthright
4 evaluation of the parties' likelihood of prevailing on the claims and defenses and a
5 description of the major issues in dispute.
6 3. A list of the key facts in dispute and a brief statement of the specific evidence
7 relevant to those facts.

8 As of today's date, Defendants have not filed an Answer. The only responses Defendants have
9 given are motions and general denials in case management statements.

10 Plaintiff filed his original complaint March 13, 2006. Plaintiff filed his amended complaint
11 on Sept. 11, 2006. He provided a courtesy copy of the Second Amended Complaint to Defendants
12 on Oct. 19, 2007. On Dec. 11, 2007, this Court permitted Plaintiff to file his Second Amended
13 Complaint. It also ordered Defendants to file a responsive motion or Answer by Jan. 4, 2008.

14 Plaintiff filed his Second Amended Complaint on Dec. 12, 2007. Defendants filed a motion
15 to dismiss the DMCA and contract causes of action, and a motion to strike, on Dec. 21, 2007.

16 Other than motions and general denials in case management statements, Defendants have
17 still not responded to Plaintiff's allegations in the Second Amended Complaint.

18 Argument

19 The Court Should Order an Answer from Defendants

20 Plaintiff moves to set a deadline for Defendants to file an Answer to the Second Amended
21 Complaint. He makes this motion because it will make the Feb. 13 settlement conference more
22 effective, and because he seeks to move his case forward. He seeks a deadline of Friday, Jan. 18,
23 2008.

24 There is no reason to defer an Answer, and many good reasons to require it. Plaintiff has
25 waited nearly 3 years to resolve the matter over his alleged patent infringement. In May 2006,
26 Defendants filed anti-SLAPP motions stating that they had a good faith belief that Plaintiff was
27 engaging in infringing activities. Thus, by their own admission, they must have completed some
28 analysis of JMRI nearly three years earlier and thus, must be positioned to answer Plaintiff's
allegations related to non-infringement. For nearly 2 years, they have also known about Plaintiff's

1 allegations related to invalidity, unenforceability, and cybersquatting. They have known about
2 copyright infringement for more than 15 months. Defendants have had the Second Amended
3 Complaint nearly 10 weeks, and thus have had ample time to form a response to it. Thus, there is
4 no reason to delay. Furthermore, delay prejudices Plaintiff, who must continue to wait for this
5 matter to be resolved.

6 Because neither the motion to dismiss nor the motion to strike will affect discovery
7 planning, there is no reason to delay an Answer in order to hear the motions. Even if this Court
8 dismisses the DMCA cause of action and the contract cause of action, discovery will be the same
9 because discovery will still relate to Katzer and KAMIND's illegal use of JMRI files. So, a delay
10 in the Answer to address the motion to dismiss will not conserve resources in discovery.

11 Furthermore, delaying an Answer will make the settlement conference less effective. Judge
12 Laporte will have Plaintiff's Second Amended Complaint, but no detailed response to its
13 allegations. Without Defendants' Answer, Plaintiff will be unable to give complete responses to
14 Questions 2 and 3 in the Settlement Conference statement. Plaintiff is also concerned that
15 Defendants will offer nothing more than their most recent motion to dismiss, and the general
16 denials they have offered in the past in their case management statements. Without an Answer,
17 Judge Laporte will have nothing of substance from Defendants to consider in weighing the merits
18 of Plaintiff's case. This will result in a less productive settlement conference, and make settlement
19 less likely.

20 For these reasons, Plaintiff believes it is necessary for this Court to order Defendants to
21 answer the Second Amended Complaint. Plaintiff originally sought a deadline of Friday, Jan. 11,
22 2008. Plaintiff, through his counsel, discussed this with defense counsel on Dec. 13, 2007, but
23 defense counsel did not respond. Declaration of Victoria K. Hall [hereinafter Hall Decl.] ¶ 2, Ex.
24 A. Plaintiff again through his counsel contacted defense counsel regarding setting a deadline for an
25 Answer. Hall Decl. ¶ 3, Ex. B. Yesterday, defense counsel stated that Defendants would answer
26 after this Court rules on the pending defense motions. Hall Decl. Ex. B.

27 While Plaintiff originally sought a deadline of Friday, Jan. 11, 2008, because of the defense
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1 counsel's delays to responding to a position on this motion, Plaintiff seeks a deadline of Friday,
2 Jan. 18, 2008 for Defendants to file an Answer. This will have given Defendants nearly 3 months
3 to the day to review and develop an Answer. Plaintiff believes this is ample time for Defendants to
4 Answer the Second Amended Complaint. Further delay will impact the effectiveness of the
5 settlement conference, because Plaintiff will not have time to evaluate the Answer fully before the
6 conference, and Judge Laporte might not have enough time prior to the conference to review the
7 Answer. Thus, the Court should order Defendants to file an Answer by Friday, Jan. 18, 2008.

8 Summary

9 For the reasons stated above, Plaintiff respectfully asks the Court to set Jan. 18, 2008 as the
10 deadline for Defendants to answer the Second Amended Complaint.

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12 Respectfully submitted,

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14 DATED: January 3, 2008

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By _____ /s/
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