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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 v. ) **PLAINTIFF ROBERT JACOBSEN'S**  
16 ) **ANSWER TO DEFENDANTS**  
MATTHEW KATZER, an individual, and ) **MATTHEW KATZER AND KAMIND**  
17 KAMIND ASSOCIATES, INC., an Oregon ) **ASSOCIATES, INC.'S COUNTERCLAIM**  
corporation dba KAM Industries, ) **FOR COPYRIGHT INFRINGEMENT**  
18 )  
Defendants. )  
19 )  
20 )

Courtroom: 11, 19th Floor  
Judge: Hon. Jeffrey S. White

21 Plaintiff Robert Jacobsen ("Professor Jacobsen") respectfully answers Defendants Matthew  
22 Katzer and KAMIND Associates, Inc.'s ("Defendants") Counterclaim for copyright infringement,  
23 filed on February 11, 2009 [Docket #290], as follows.

24 **GENERAL DENIAL**

25 Unless specifically admitted below, Professor Jacobsen denies each and every factual  
26 averment contained in Defendants' Counterclaim and in each and every heading.  
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**RESPONSE TO SPECIFIC AVERMENTS**

**COUNTERCLAIM**

**(Copyright Infringement under the Copyright Act § 501(a))**

**BACKGROUND FACTS**

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5 1. Admit.

6 2. Admit.

7 3. This paragraph consists of legal assertions to which no response is required.

8 4. This paragraph consists of legal assertions to which no response is required.

9 5. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
10 allegation, and therefore denies the allegation.

11 6. Deny. On information and belief, Professor Jacobsen avers companies other than KAM  
12 sold software with client-server capabilities in other model train control systems before July 1997.

13 7. Professor Jacobsen admits that JMRI developers first began work on JMRI software in  
14 2001 but otherwise denies the allegations of this paragraph.

15 8. Professor Jacobsen admits the QSI Manual contains descriptions of decoder variables  
16 and features used to configure locomotive functions, and that one such variable controls the  
17 headlight function on model trains. Professor Jacobsen avers that this paragraph is otherwise too  
18 vague to answer precisely and, on that basis, denies the balance of the allegations in this paragraph.

19 9. Professor Jacobsen admits that QSI hardware is used in the model train world. Professor  
20 Jacobsen avers that “widely” is too vague a term to answer precisely and, on that basis, denies the  
21 remainder of the allegation.

22 10. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
23 allegation, and therefore denies the allegation.

24 11. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
25 allegation, and therefore denies the allegation.

26 12. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
27 allegation, and therefore denies the allegation.

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1 13. Professor Jacobsen admits that as of June 2005 some data appeared in JMRI software  
2 that also appeared in version 3.0 of the QSI Manual. Professor Jacobsen otherwise denies the  
3 allegations in this paragraph.

4 14. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
5 allegation, and therefore denies the allegation.

6 15. Denied.

7 **CAUSE OF ACTION**

8 16. The first sentence of this paragraph is a legal conclusion to which no response is  
9 required. Professor Jacobsen reincorporates his admissions, denials, and other statements made  
10 herein.

11 17. Professor Jacobsen lacks knowledge or information sufficient to form a belief about the  
12 allegation, and therefore denies the allegation.

13 18. This statement is a legal conclusion to which no response is required.

14 19. As to the factual allegations in this paragraph, Professor Jacobsen lacks knowledge or  
15 information sufficient to form a belief about the allegations, and therefore denies the allegations.  
16 The remainder of the allegations are legal conclusions to which no response is required.

17 20. To the extent this paragraph alleges facts, Professor Jacobsen lacks knowledge or  
18 information sufficient to form a belief about the allegations, and therefore denies the allegations.  
19 The remainder of the allegations are legal conclusions to which no response is required.

20 21. Professor Jacobsen denies copying or otherwise using the QSI Manual or Copyrighted  
21 Materials contrary to copyright laws. On information and belief, Professor Jacobsen denies that  
22 other JMRI developers have used the QSI Manual or Copyrighted Materials as the basis for JMRI  
23 files. Jacobsen denies the remainder of the allegation.

24 22. Professor Jacobsen denies copying or otherwise using the QSI Manual or Copyrighted  
25 Materials contrary to copyright laws. On information and belief, Professor Jacobsen denies that  
26 other JMRI developers have used the QSI Manual or Copyrighted Materials as the basis for JMRI  
27 files. Jacobsen denies the remainder of the allegation.

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1 23. Professor Jacobsen admits he does not own the copyright to the QSI Manual. He denies  
2 the remainder of the allegation.

3 24. Professor Jacobsen avers the term “conduct” in this allegation is vague, and  
4 incorporates by reference his responses to paragraphs 13-23. Professor Jacobsen lacks information  
5 sufficient to form a belief regarding the remaining allegations and, therefore, denies them.

6 25. Deny.

7 26. Professor Jacobsen avers the term “conduct” in this allegation is vague, and  
8 incorporates by reference his responses to paragraphs 13-23. He denies that his conduct was  
9 wrongful. He denies that Defendants are entitled to any of the relief stated in this paragraph, or any  
10 other relief.

11 **PRAYER**

12 Professor Jacobsen denies that he is not entitled to relief. He also denies Defendants are  
13 entitled to any relief whatsoever, either as prayed for in their Counterclaim or otherwise.

14 **AFFIRMATIVE DEFENSES**

15 Further responding to Defendants’ Counterclaim, Professor Jacobsen asserts the following  
16 affirmative defenses:

17 **FIRST AFFIRMATIVE DEFENSE**

18 Professor Jacobsen and/or JMRI developers have a license to reproduce, modify, and  
19 otherwise use data that also appears in the QSI Manual.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Defendants are estopped from asserting their Counterclaim.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Professor Jacobsen’s and/or JMRI developers’ alleged conduct constitutes fair use.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Defendants lack standing.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 Defendants have engaged in misuse of the copyright they assert.

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**SIXTH AFFIRMATIVE DEFENSE**

Defendants have failed to state a claim upon which relief can be granted.

**SEVENTH AFFIRMATIVE DEFENSE**

The Counterclaim is barred by laches.

**EIGHTH AFFIRMATIVE DEFENSE**

The Counterclaim is barred by the statute of limitations.

**NINTH AFFIRMATIVE DEFENSE**

Defendants waived their Counterclaim.

**TENTH AFFIRMATIVE DEFENSE**

Defendants' Copyrighted Materials have not been properly registered under U.S. Copyright law.

**PRAYER FOR RELIEF**

Professor Jacobsen, reserving the right to amend this pleading if warranted by discovery in this case, prays for the following:

A. That Defendants' claim be dismissed in its entirety and that Defendants take nothing thereby; and

B. That Professor Jacobsen be awarded his reasonable attorneys' fees and court costs for defending Defendants' Copyright Infringement Claim, per 17 U.S.C. Sec. 505.

Respectfully submitted,

DATED: March 2, 2009

By \_\_\_\_\_ /s/  
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