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ROBERT JACOBSEN

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) **PLAINTIFF ROBERT JACOBSEN'S**
v.) **ANSWER TO DEFENDANTS**
16) **MATTHEW KATZER AND KAMIND**
MATTHEW KATZER, an individual, and) **ASSOCIATES, INC.'S FIRST**
17) **SUPPLEMENTAL COUNTERCLAIM**
KAMIND ASSOCIATES, INC., an Oregon) **FOR COPYRIGHT INFRINGEMENT**
18 corporation dba KAM Industries,)
19 Defendants.) Courtroom: 11, 19th Floor
Judge: Hon. Jeffrey S. White
20)

21 Plaintiff Robert Jacobsen ("Professor Jacobsen") respectfully answers Defendants Matthew
22 Katzer and KAMIND Associates, Inc.'s ("Defendants") First Supplemental Counterclaim for
23 copyright infringement, filed on September 9, 2009 [Docket #333], as follows.

24 **GENERAL DENIAL**

25 Unless specifically admitted below, Professor Jacobsen denies each and every factual
26 averment contained in Defendants' First Supplemental Counterclaim and in each and every
27 heading.

RESPONSE TO SPECIFIC AVERMENTS

FIRST SUPPLEMENTAL 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 relating to version 3.0. Professor Jacobsen lacks knowledge or
4 information sufficient to form a belief about the remainder of the allegation, and therefore denies
5 the allegation.

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

8 15. Denied.

9 **CAUSE OF ACTION**

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

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

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

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

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

22 21. Professor Jacobsen denies copying or otherwise using the QSI Manual or Copyrighted
23 Materials contrary to copyright laws. On information and belief, Professor Jacobsen denies that
24 other JMRI developers have infringed, or are infringing, the QSI Manual or Copyrighted Materials.
25 Jacobsen denies the remainder of the allegation.

26 22. Professor Jacobsen denies copying or otherwise using the QSI Manual or Copyrighted
27 Materials contrary to copyright laws. On information and belief, Professor Jacobsen denies that
28

1 other JMRI developers have infringed, or are infringing, the QSI Manual or Copyrighted Materials.
2 Jacobsen denies the remainder of the allegation.

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

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

8 25. Deny.

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

13 **PRAYER**

14 Professor Jacobsen denies Defendants are entitled to any relief whatsoever, either as prayed
15 for in their First Supplemental Counterclaim or otherwise.

16 **AFFIRMATIVE DEFENSES**

17 Further responding to Defendants’ First Supplemental Counterclaim, Professor Jacobsen
18 asserts the following affirmative defenses:

19 **FIRST AFFIRMATIVE DEFENSE**

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

22 **SECOND AFFIRMATIVE DEFENSE**

23 Defendants are estopped from asserting their First Supplemental Counterclaim.

24 **THIRD AFFIRMATIVE DEFENSE**

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

26 **FOURTH AFFIRMATIVE DEFENSE**

27 Defendants lack standing.
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FIFTH AFFIRMATIVE DEFENSE

Defendants have engaged in misuse of the copyright they assert.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

The First Supplemental Counterclaim is barred by laches.

EIGHTH AFFIRMATIVE DEFENSE

The First Supplemental Counterclaim is barred by the statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Defendants waived their First Supplemental 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' First Supplemental Copyright Infringement Claim, per 17 U.S.C. Sec. 505.

Respectfully submitted,

DATED: September 22, 2009

By _____ /s/
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