

1 3. Attached as Exhibit A is a true and correct copy of an email exchange between R.
2 Scott Jerger and Victoria K. Hall, last email dated Aug. 4, 2006. This email offers a fuller glimpse
3 of the exchanges between counsel than that provided by Mr. Jerger in his declaration. I direct the
4 Court's attention to the timing of Mr. Jerger's statement that my draft was not in conformance with
5 the order in Docket 10. He apparently learned it days, possibly two weeks beforehand, but failed to
6 inform me of this fact until nearly the last minute. Taking advantage of opposing counsel's
7 misunderstanding is inconsistent with Mr. Jerger's assertion that he was working in good faith to
8 develop a joint statement.

9 4. Attached as Exhibit B is a true and correct copy of an email from Victoria Hall to
10 defense counsel, dated July 19, 2006, asking for their sections to include in her draft of the joint
11 case management statement.

12 5. Attached as Exhibit C is a true and correct copy of an email from Victoria Hall to
13 Mr. Zeff and Mr. Jerger, dated Aug. 3, 2006, responding to their statements that I did not have
14 permission to file the joint statement without their having seen the final draft.

15 6. Attached as Exhibit D is a true and correct copy of an email from Victoria Hall to
16 David M. Zeff, dated Aug. 4, 2006, responding to an email from Mr. Zeff in which he engages in
17 name-calling over the joint case management statement.

18 7. Attached as Exhibit E is a true and correct copy of an email from Victoria Hall to
19 Jonathan Smale, paralegal for R. Scott Jerger, dated Aug. 4, 2006, with copies to Mr. Zeff and Mr.
20 Jerger. Mr. Smale had sent a final draft of the joint case management statement 6 hours earlier to
21 an email address that defense counsel knew I check infrequently. Knowingly sending this draft to
22 an email address that I check infrequently is inconsistent with an assertion that defense counsel
23 were working in good faith with me to develop a joint statement. As a result, I had to stay late
24 through the evening to determine whether their draft would be acceptable to my client.

25 8. Attached as Exhibit F is a true and correct copy of a PDF version of the joint case
26 management statement attached to Ex. E, after all changes have been accepted. The statement lost
27 its line numbering formatting when I converted it to PDF. It did not have a proposed order, nor
28

1 any conformed signatures, nor any notation to my declaration that I was going to provide since Mr.
2 Jerger had not provided me with any signatures that permitted me to sign his name per General
3 Order 45.

4 9. Attached as Exhibit G is a true and correct of another email I sent to opposing
5 counsel after reviewing their draft. I explained why I could not use their draft.

6 10. As to Mr. Jerger's claim that I had made "vague assertions": I have learned that
7 when I receive such emails, they are sent not to engage in discussion (see Ex. D as an example) but
8 to get a reaction which they can then put in one of their administrative motions. Having learned
9 this lesson, I prefer not to commit myself or my client until I have formed an answer that I am
10 satisfied with. As for that day that I gave the response which Mr. Jerger complains of, I have
11 lingering health problems from the events of last month, and have been unwell. I prefer not to put
12 these matters in the record, but I will provide details, if needed, at the hearing on Friday, Aug. 11,
13 2006. On Aug. 1, 2006, I was treated for one problem and went home early that day because of
14 pain and nausea, and exacerbating effect of excessive heat in the region.

15 11. Due to the fire and storm on July 2, 2006, noted in Docket 77, I still do not have
16 Internet and phone service, so I am unable to check email. My phone and Internet service provider
17 has been unable or unwilling to fix the problem.

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 Executed this 7th day of August, 2006, in Rockville, Maryland.

21
22
23
24
25 By _____ /s/
Victoria Hall

Hall Declaration Exhibit A

[Print](#) | [Close Window](#)

Subject: RE: Joint Case Management Statement

From: victoria@vkhall-law.com

Date: Fri, Aug 04, 2006 12:55 pm

To: Scott Jerger <scott@fieldlawfirm.com>

Cc: ZeffLaw1@aol.com, Jonathan Smale <Jonathan@fieldlawfirm.com>

A small change.

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

Subject: RE: Joint Case Management Statement

From: "Scott Jerger" <scott@fieldlawfirm.com>

Date: Fri, August 04, 2006 10:38 am

To: <victoria@vkhall-law.com>

Cc: <ZeffLaw1@aol.com>, "Jonathan Smale" <Jonathan@fieldlawfirm.com>

Victoria:

Attached please find edits to your joint case management statement. I have not heard from Mr. Zeff this morning, he may have more edits.

As we have discussed, I will be largely unavailable the rest of the afternoon. Jonathan, in my office, can approve any final changes. He will be in the office until 3pm PST, so please send the final version over prior to 3pm.

Thank you,
Scott

Scott Jerger
Field Jerger LLP
610 SW Alder, Suite 910
Portland, Oregon 97205
503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

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

Sent: Thursday, August 03, 2006 4:00 PM

To: Scott Jerger

Cc: ZeffLaw1@aol.com; Jonathan Smale

Subject: RE: Joint Case Management Statement

I am out of the office during the day and evening today and tomorrow, so I do not have access to my files as I write this. Here are some comments. See attached. I need to consult with my client re other potential changes, and so I am not finished with this.

Victoria Hall

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

Subject: Joint Case Management Statement

From: "Scott Jerger" <scott@fieldlawfirm.com>
Date: Thu, August 03, 2006 11:44 am
To: <victoria@vkhall-law.com>
Cc: <ZeffLaw1@aol.com>, "Jonathan Smale" <Jonathan@fieldlawfirm.com>

Dear Victoria:

Attached please find the final version of KAM and Katzer's case management statement. [This version has been updated from the version I sent you on July 31, 2006.](#) I do not authorize you to submit the joint case management statement on KAM and Katzer's behalf without my first reviewing the final version and any proposed changes you may have in redline form and attempting to resolve any disagreements we may have regarding the statement prior to submitting it to the court. To date, you have not indicated any specific changes except for the vague assertion that you disagree with my assessment of the case. We cannot resolve any disputes if you are unwilling to disclose what parts of the joint case management statement you dispute.

I appreciate the fact that your client is currently out of the country and difficult to reach. Given that, I request that you return a redlined draft of the joint case management statement today that indicates your specific proposed changes and, where appropriate, indicates items where you need to consult with your client first. Hopefully, we can narrow the issues in dispute today leaving the items where you need to consult with your client.

I may or may not be in email contact tomorrow, Friday. Please copy my assistant, Jonathan Smale (copied on this email) with all drafts of the joint case management statement. Jonathan will be able to approve the final document on Friday in the event I am unavailable.

Regards,
Scott

Scott Jerger
Field Jerger LLP
610 SW Alder, Suite 910
Portland, Oregon 97205
503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]
Sent: Thursday, August 03, 2006 8:23 AM
To: Scott Jerger
Cc: ZeffLaw1@aol.com
Subject: RE: Joint Case Management Statement

Dear Mr. Jerger,

It is unfortunate that you didn't bring up the topic of this order until yesterday afternoon (evening in my time zone).

As it turns out, my client is out of the country and difficult to reach. I cannot include any further changes in the joint part of the statement without consulting with him first. If you had pointed this out sooner, we possibly could have submitted it today, Thursday. I realize that you were planning on taking Friday off, and you should have also told me about that sooner too, so I'm afraid the earliest that I can update the joint part of the statement will be on Friday. Therefore, I will be submitting the joint statement based on your draft, and where I disagree with your assessment of the case, I will put your section under a heading called "Defendants" and my section under one called "Plaintiff".

Victoria Hall

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

Subject: RE: Joint Case Management Statement
From: "Scott Jerger" <scott@fieldlawfirm.com>
Date: Wed, August 02, 2006 2:28 pm
To: <victoria@vkhall-law.com>
Cc: <ZeffLaw1@aol.com>

Victoria:

Please review the Judge's Order requiring the Joint Case Management Statement (Docket#10) and L.R. 16-9. Pursuant to LR 16-9, our joint case management statement should address the judge's specific instructions in his order as opposed to following the form Case Management Statement in Appendix A of the LR. Since your case management statement is based on Appendix A and mine is based on the Judge's Order, I believe that it is my statement that is in conformity with the LR.

Therefore, please incorporate your edits into the Joint Case Management statement that I sent to you on July 31, 2006.

Regards,
Scott

Scott Jerger
Field Jerger LLP
610 SW Alder, Suite 910
Portland, Oregon 97205
503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

From: victoria@vkhall-law.com [mailto:victoria@vkhall-law.com]
Sent: Wednesday, August 02, 2006 2:15 PM

To: Scott Jerger
Cc: ZeffLaw1@aol.com
Subject: RE: Joint Case Management Statement

Mr. Jerger,

In Joint Case Management statements, if the parties agree on a subject, they write that part together. If they have their own views, they write separate paragraph(s) for that particular section, under the headings of Plaintiff and Defendant.

The form of your statement is not in conformity with the Local Rules. I will incorporate your statement in my statement, which is in conformity with the Local Rules, and will send it to you this evening. I will not be in the office until around 10 p.m. Eastern time, so you will have to look for it tomorrow morning.

Regards,

Victoria Hall

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

Subject: RE: Joint Case Management Statement
From: "Scott Jerger" <scott@fieldlawfirm.com>
Date: Tue, August 01, 2006 10:51 am
To: <victoria@vkhall-law.com>
Cc: <ZeffLaw1@aol.com>

Victoria:

Please let me know what you disagree with in the statement.

If you have alternate dates for proposed activities, please present them to us so that we can come to some sort of agreement on scheduling matters.

If you refuse to engage in the drafting of the joint case management statement, then we need to each file our own separate documents, not one document with two entirely different sections.

Please let me know.

Scott

Scott Jerger
Field Jerger LLP
610 SW Alder, Suite 910
Portland, Oregon 97205

503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

www.fieldjerger.com

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

Sent: Tuesday, August 01, 2006 10:23 AM

To: Scott Jerger

Cc: ZeffLaw1@aol.com

Subject: Joint Case Management Statement

Scott,

It's a little late notice re Friday, but if your section is presented the way you want it presented, then that's all that matters. I disagree with it, and so I will have my own section. If you're ready to sign off on your section, then let me know. I'll file it as is.

Victoria Hall

P.S. I am away from the office, so I have limited Internet access.

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

Subject: RE: Jacobsen v. KAM, et al., our file 9364

From: "Scott Jerger" <scott@fieldlawfirm.com>

Date: Tue, August 01, 2006 9:20 am

To: <ZeffLaw1@aol.com>, <victoria@vkhall-law.com>

Thank you David,

Just an FYI, I will be out of the office on Friday, so I would like to wrap this up on Thursday if possible.

scott

Scott Jerger

Field Jerger LLP
610 SW Alder, Suite 910
Portland, Oregon 97205
503.542.2015 (phone)
503.225.0276 (fax)
503.516.7127 (mobile)

www.fieldjerger.com

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From: ZeffLaw1@aol.com [mailto:ZeffLaw1@aol.com]
Sent: Monday, July 31, 2006 5:12 PM
To: Scott Jerger; victoria@vkhall-law.com
Subject: Jacobsen v. KAM, et al., our file 9364

Dear Scott and Ms. Hall:

I have made small changes to Scott's draft CMC Statement, which are shown as turquoise in the "track changes" version attached hereto. I am in depositions the next three days but will respond to emails on the completion of this document in the evenings.

Sincerely, David M. Zeff

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Hall Declaration Exhibit B

[Print](#) | [Close Window](#)

Subject: Draft joint case management statement
From: victoria@vkhall-law.com
Date: Wed, Jul 19, 2006 10:55 pm
To: scott@fieldlawfirm.com, zefflaw1@aol.com

Gentlemen,

The draft case management statement is on your fax machines. Please give me the text, and the location it should be added, that you want included in the statement.

Mr. Zeff, I changed your suggested further CMC date. The judge isn't hearing motions in November, so I moved it up to Oct. 27, and also stated that would be a date we would have heard any new motions to dismiss, and other motions.

Regards,

Victoria Hall

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Hall Declaration Exhibit C

[Print](#) | [Close Window](#)

Subject: RE: Joint Case Management Statement, our file 9364
From: victoria@vkhall-law.com
Date: Thu, Aug 03, 2006 4:00 pm
To: ZeffLaw1@aol.com
Cc: Jonathan@fieldlawfirm.com, scott@fieldlawfirm.com

I would not think of submitting a Joint Case Management Statement without either of your approvals.

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

Subject: Re: Joint Case Management Statement, our file 9364
From: ZeffLaw1@aol.com
Date: Thu, August 03, 2006 12:47 pm
To: scott@fieldlawfirm.com, victoria@vkhall-law.com
Cc: Jonathan@fieldlawfirm.com

Dear Ms. Hall:

I agree with Mr. Jerger. You may not submit the Joint CMC statement on behalf of Mr. Russell without my first reviewing the final version and any proposed changes you may have in redline form and attempting to resolve any disagreements we may have regarding the statement prior to submitting it to the court.

Thank you. David M. Zeff

In a message dated 8/3/2006 11:49:33 A.M. Pacific Standard Time, scott@fieldlawfirm.com writes:

Dear Victoria:

Attached please find the final version of KAM and Katzer's case management statement. This version has been updated from the version I sent you on July 31, 2006. I do not authorize you to submit the joint case management statement on KAM and Katzer's behalf without my first reviewing the final version and any proposed changes you may have in redline form and attempting to resolve any disagreements we may have regarding the statement prior to submitting it to the court. To date, you have not indicated any specific changes except for the vague assertion that you disagree with my assessment of the case. We cannot resolve any disputes if you are unwilling to disclose what parts of the joint case management statement you dispute.

I appreciate the fact that your client is currently out of the country and difficult to reach. Given that, I request that you return a redlined draft of the joint case management statement today that indicates your specific proposed changes and, where appropriate, indicates items where you need to consult with your client first. Hopefully, we can narrow the issues in dispute today leaving the items where you need to consult with your client.

I may or may not be in email contact tomorrow, Friday. Please copy my assistant, Jonathan Smale (copied on this email) with all drafts of the joint case management statement. Jonathan will be able to approve the final document on Friday in the event I am unavailable.

Regards,

Scott

Scott Jerger

Field Jerger LLP

610 SW Alder, Suite 910

Portland, Oregon 97205

503.542.2015 (phone)

503.225.0276 (fax)

503.516.7127 (mobile)

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

Sent: Thursday, August 03, 2006 8:23 AM

To: Scott Jerger

Cc: ZeffLaw1@aol.com

Subject: RE: Joint Case Management Statement

Dear Mr. Jerger,

It is unfortunate that you didn't bring up the topic of this order until yesterday afternoon (evening in my time zone).

As it turns out, my client is out of the country and difficult to reach. I cannot include any further changes in the joint part of the statement

without consulting with him first. If you had pointed this out sooner, we possibly could have submitted it today, Thursday. I realize that you were planning on taking Friday off, and you should have also told me about that sooner too, so I'm afraid the earliest that I can update the joint part of the statement will be on Friday. Therefore, I will be submitting the joint statement based on your draft, and where I disagree with your assessment of the case, I will put your section under a heading called "Defendants" and my section under one called "Plaintiff".

Victoria Hall

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Hall Declaration Exhibit D

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Subject: RE: Joint Case Management Statement
From: victoria@vkhall-law.com
Date: Fri, Aug 04, 2006 2:21 pm
To: ZeffLaw1@aol.com
Cc: Jonathan@fieldlawfirm.com, scott@fieldlawfirm.com

Mr. Zeff,

It appears that Plaintiff cannot express his views without being on the receiving end of yet another insult from you. That shows the lack of respect you have for me and my client, despite our repeated attempts to work with you, such as granting a generous 60-day extension to respond to the Complaint.

If you feel that you must file your statement separately, then so be it. We have done all that we can to work with you, and we feel that we must draw a line in the sand somewhere. This is it.

Regards,

Victoria Hall

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

Subject: Re: Joint Case Management Statement
From: ZeffLaw1@aol.com
Date: Fri, August 04, 2006 1:04 pm
To: victoria@vkhall-law.com, scott@fieldlawfirm.com
Cc: Jonathan@fieldlawfirm.com, raggmop1@pacbell.net

Dear Ms. Hall:

I did not have to get far into your version 7.1 of the CMC Statement to find your edits unacceptable. Is there a way you might find to state your client's position in the document instead of arguing it? It is so childish and unprofessional. I certainly am not going to sign any document which contains your stated conclusions of fact and law. My sense is that Mr. Jerger and I will file our own CMC Statement if you cannot bring yours up to acceptable standards of practice.

DMZ

In a message dated 8/4/2006 12:36:39 P.M. Pacific Standard Time, victoria@vkhall-law.com writes:

My revisions. I may need to leave out your signature since you aren't here to sign or fax a signature, but I will include a short declaration to indicate that Mr. Smale has the authority to approve the statement on your behalf.

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Hall Declaration Exhibit E

From "Victoria K. Hall" <victoria@vkhall.com>
Subject Re: CMC Statement
Date Fri, August 4, 2006 10:06 pm
To "Jonathan Smale" <Jonathan@fieldlawfirm.com>
CC zefflaw1@aol.com,"Scott Jerger" <scott@fieldlawfirm.com>

Gentlemen,

At this late hour, as I was about to e-file Plaintiff's version of the Case Management Statement, I found this email. I am reviewing your draft, and if I find it acceptable, I will efile it.

Mr. Smale, I realize that you have had difficulty emailing my other email address (victoria@vkhall-law.com), but please try again. I was checking it throughout this evening and awaiting a response from either you or Mr. Zeff. I do not check this email address (victoria@vkhall.com) regularly. I am dismayed that I find myself reviewing this draft at this late hour to see whether it is acceptable to me and my client, in the hope that we may be able to file a joint statement acceptable to all of us.

Victoria Hall

> Dear Victoria:

>
>
>
>
> Attached is our final redlined draft CMC Statement. I have
> reviewed this with Scott over the phone and, given Scott's
> unavailability out of the office the rest of the day, this is the last
> redline version we will be able to review and comment on. If you do not
> agree with any changes, the defendants will file a separate statement.
> It does appear that the parties are close however, and if you accept all
> changes, Scott authorizes you to file this document with the declaration
> you suggested earlier re: Scott is out of the office today and can't
> provide a signature but authorizes the filing. Mr. Zeff has already
> accepted the changes and sent a copy of the signature page to me, so I
> will forward that to you if you accept all of the proposed changes.

>
>
> Please let me know as soon as possible whether you agree
> with this latest CMC Statement. Regards.

> Jonathan

> ++++++

> Jonathan C. Smale, Paralegal
>
> Field Jerger, LLP
>
> Oregon National Building
>
> 610 SW Alder Street, Suite 910
>
> Portland, OR 97205
>
> Tel: (503) 228-9115
>
> Fax: (503) 225-0276

>
> E mail: jon@fieldjerger.com <<mailto:jon@fieldjerger.com>>
>
>
>
> Visit us on the web at: www.fieldjerger.com <<http://www.fieldjerger.com>>
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> Revenue Code or applicable state or local tax law provisions.
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Hall Declaration Exhibit F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROBERT JACOBSEN, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 MATTHEW KATZER, an individual, KAMIND)
 ASSOCIATES, INC., an Oregon corporation dba)
 KAM Industries, and KEVIN RUSSELL, an)
 individual,)
)
 Defendants.)

Case Number C06-1905-JSW

Hon. Jeffrey S. White

JOINT CASE MANAGEMENT
STATEMENT

Plaintiff Robert Jacobsen, and Defendants Kevin Russell, Matthew Katzer and Kamind Associates, Inc. (“KAM”) (hereinafter collectively referred to as “defendants”) in the above titled action jointly submit this case management statement and request that the Court adopt this case management statement in its Case Management Order.

1. A brief description of jurisdictional issues

Plaintiff Jacobsen filed his Complaint on March 13, 2006. The complaint alleges that defendants fraudulently procured nearly a dozen patents and sought to enforce them through

various unlawful, unfair and fraudulent means. The complaint also contains claims alleging antitrust violations, unfair competition, cyber-squatting, and libel.

The request for declaratory judgment re one Katzer patent, and the Sherman Act and the Lanham Act (cyber-squatting) claims involve federal questions. 28 U.S.C. § 1331. The plaintiff has also brought a libel claim under California law and a California Unfair Competition Act claim (California Business & Professions Code § 17200 *et seq.*). Plaintiff asserts that jurisdiction is proper in this Court for these state law claims based on the supplemental jurisdiction of this Court. 28 U.S.C. § 1367. Plaintiff asserts that subject matter jurisdiction in the case against Mr. Russell is proper despite the fact that the claim is for less than the jurisdictional amount because Plaintiff seeks punitive damages.

Re the Sherman Act claim, defendants KAM and Katzer have filed a motion to dismiss the Sherman Act claim, *inter alia*, asserting that the plaintiff does not have standing to bring such a claim and therefore this Court does not have subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Plaintiff believes subject matter jurisdiction exists because there is no argument re constitutional standing.

Defendant Kevin Russell has filed a motion to dismiss for lack of personal jurisdiction 12(b)(2). Plaintiff believes that Mr. Russell is subject to specific personal jurisdiction.

No parties remain to be served in this lawsuit.

2. A brief description of the case and defenses

Plaintiff Jacobsen is a high energy physicist who does research at the Lawrence Berkeley National Laboratory of the University of California, and Stanford University and at CERN in Switzerland, and teaches physics at the University. As a hobby, Jacobsen develops, with others, open source software code called JMRI (Java Model Railroad Interface) that Jacobsen alleges is distributed free of charge, or at cost. KAM is an Oregon corporation and Katzer is its principal. Russell is the attorney for Katzer and KAM. Defendants allege that KAM has patents for software products, at least one of which is similar to and is infringed by the JMRI project

software. Jacobsen alleges that Katzer and Russell intentionally withheld prior art that they knew was material to patentability from the Patent Office in obtaining the patents and for these reasons, as well as others, Jacobsen alleges that said patents are thereby unenforceable.

Jacobsen's complaint seeks declaratory relief regarding noninfringement, invalidity, and unenforceability of the patent-in-suit, U.S. Pat. No. 6,520,329, held by KAM. The complaint alleges that the patent-in-suit is invalid because prior art anticipates or makes it obvious, that it failed to meet the requirements of 35 U.S.C. Sec. 112. The complaint also alleges the patent-in-suit, and related patents, were obtained through fraud on the patent office or inequitable conduct. The complaint also contains claims alleging antitrust violations, unfair competition, cyber-squatting, and libel.

Defendants believe that KAM's patents are valid. Defendants have filed motions to dismiss the libel claim based on California's anti-SLAPP law, Cal. Code Civ. Pro § 425.16(b)(1). Defendant Kevin Russell has filed a motion to dismiss Counts 5 and 7 of the complaint for failure to state a claim and lack of personal jurisdiction. Defendants Matthew Katzer and KAM have filed a motion to dismiss Counts 4 and 7 of the complaint and a motion to bifurcate and stay discovery on Count 5.

3. Brief Description of the legal issues genuinely in dispute

Plaintiff believes that defendants KAM and Katzer have invalid and/or unenforceable patents, have violated the Sherman Act, California Unfair Competition Act, and the Lanham Act by cybersquatting, and have libeled plaintiff by submitting a FOIA request to the U.S. Department of Energy. Plaintiff asserts that Russell has libeled him and violated California Bus. & Prof. Code 17,200. Defendants dispute all of these claims and have filed several dispositive motions at this time.

4. Procedural History

Plaintiff's complaint was filed on March 13, 2006. The following motions will be heard on August 11, 2006. The initial case management conference will also be held on August 11, 2006.

- (1) Anti-SLAPP motions to strike by Defendants KAM, Katzer and Russell.
- (2) Defendant Russell's motion to dismiss counts 5 and 7.
- (3) Defendants KAM and Katzer's motion to dismiss counts 4 and 7 and motion to bifurcate and stay count 5.

5. Brief Description of Discovery to date

No initial disclosures have been made. Per order of this Court, the date for initial Fed. R. Civ. P. 26 disclosures will be set by the Court at the initial case management conference on August 11, 2006 (Docket #41). The parties jointly suggest a date of Sept. 5, 2006.

6. Discovery Plan

The Proposed Litigation and Discovery Schedule is discussed in Section 11 below.

A. List of Potentially Key Witnesses

1. Matthew Katzer
2. Robert Jacobsen
3. Hans Tanner
4. John Plocher
5. A.J. Ireland
6. Strad Bushby
7. John E. Kabat
8. Juergen Freiwald
9. Dick Bronson
10. Jerry Britton
11. Developers of the JMRI software.
12. Developers and manufacturers of third party model train software

13. Contributors and users of the JMRI software
14. Unknown employees and supervisors at the Lawrence Berkeley National Laboratory
15. Dean of the UC Berkeley Physics Department
16. Unknown employees and supervisors at the US Department of Energy
17. Kevin Russell
18. Glenn Butcher
19. Unknown employees of KAMIND Associates, Inc.
20. Unknown employees of Chernoff, Vilhauer, McClung and Stenzel.
21. Examiners at the U.S. Patent & Trademark Office.
22. Unknown members of the NMRA.
23. Unknown employees of Marklin.
24. Stan Ames.
25. Rutger Friburg.
26. Ed Loizeaux.
27. Unknown employees of Train Track Computer Systems, Inc.
28. Roger Webster
29. John McCormick
30. John Littman
31. Dr. Bruce Chubb
32. Unknown members of the Tech Model Railroad Club of MIT

Plaintiff believes it is premature to engage in developing a detailed discovery plan given the posture of the case, that an amended complaint will be filed shortly with more claims, and that early summary judgment motions will be filed. Furthermore, Plaintiff has yet to receive Answers from defendants, and cannot determine what additional witnesses may be necessary to call in response to those Answers. Thus, Plaintiff reserves the right to name others who will be key witnesses in the case.

B. List of Key Information

1. All versions of the JMRI software.
2. All software development information for the JMRI software project.
3. All information relating to JMRI's market share.
4. All information relating to the "lost income" referenced in ¶ 7 of the complaint.
5. All versions of any relevant KAM software, including but not limited to alpha, beta and released versions.
6. All references in Katzer, KAM and Russell's possession that relate to patentability.
7. All plans relating to enforcing the Katzer patents.
8. All plans relating cybersquatting on others' trademarks.
9. All plans for filing intellectual property rights on behalf of Katzer, and KAM and its related entities.
10. All evidence that the patent(s)-in-suit meet, or do not meet, the requirements of 35 U.S.C. Sec. 112.
11. All financial information relating to KAM and its related entities.
12. File wrappers for the patent application, and related patent applications, that issued as the patent-in-suit.
13. Trademark applications for all KAM products.
14. All emails from Jacobsen to any JMRI user, NMRA member, or other hobbyist related to JMRI or model train software.

Plaintiff believes that significant evidence is in the Record that will permit Plaintiff to seek early summary judgment on several claims. Plaintiff also will add claims shortly in an amended complaint. Thus, Plaintiff believes that it is premature to offer a detailed discovery plan until the amended complaint is filed, early summary judgment motions have been heard, and the parties have gone through the ADR process. Furthermore, Plaintiff has yet to receive Answers from

defendants, and cannot determine what additional information he will seek in response to those Answers. Plaintiff thus reserves the right to seek further key information.

7. Motions before trial

Jacobsen, KAM and Katzer anticipate motions for summary judgment prior to trial on virtually all of plaintiff's claims. If Russell remains in the case, he too will move for summary judgment before trial as to all claims against him. KAM and Katzer anticipate that new parties will be added and further anticipate evidentiary and claim-construction hearings. Jacobsen may also add parties to the amended Complaint.

8. Description of Relief Sought

Plaintiff seeks declaratory and injunctive relief, as well as loss of income among other damages. Defendants assert Plaintiff has not described the calculation of damages in the complaint. Plaintiff seeks lost income, presumed damages, punitive damages, and injunctive relief, and will seek costs and attorney's fees. KAM's counterclaims will include claims for monetary damages, including reasonable royalty, and/or lost profits, and/or enhanced damages, and/or attorney fees.

9. ADR Efforts to Date

There have been no ADR efforts to date. The parties will meet and confer on August 22, 2006 and file the ADR certification. Plaintiff will select a Settlement Conference as his first choice, with Early Neutral Evaluation as a second choice. No settlement conference has been scheduled at this time. Defendant Russell, if he remains in the case, will opt for ENE.

10. Consent to a magistrate judge

The defendants do not consent to a magistrate judge. Plaintiff would have consented to a magistrate judge.

11. Proposed Litigation and Discovery Schedule

Defendants' proposal:

Date	Counting	Rule	Event
3/13/06			Complaint

			Answer, counterclaims, cross claims, and additional parties (initial deadline was extended to 6/5/06)
			Answers to counterclaims, cross claims, and by additional parties
8/11/06		FRCP 26 f	Initial case mgmt conference
8/21/06	10 days after initial case mgmt conf	Pat. L.R. 3-1, FRCP 26a, L.R. 16.8	Preliminary infringement contentions; Meet and Confer re initial disclosures and file joint ADR certification
8/25/06	14 days after initial case mgmt conf unless waived	FRCP 26 a	Initial disclosures
10/1/06	45 days after preliminary infringement contentions	Pat L.R. 3-3	Preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 10 days after answer is served	Pat L.R. 3-5	Preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 10 days after preliminary invalidity contentions are served	Pat L.R. 3-5	Meet & confer re preliminary invalidity contentions
	IF NO INFRINGEMENT ALLEGED, 50 days after preliminary invalidity contentions are served	Pat L.R. 3-5	File final invalidity contentions
10/10/06	10 days after preliminary invalidity contentions	Pat L.R. 4-1	Simultaneous exchange of terms to be construed
10/30/06	20 days after exchange of terms to be construed	Pat L.R. 4-1	Simultaneous exchange of preliminary claim constructions
1/2/07	60 days after exchange of preliminary claim constructions	Pat L.R. 4-1	Joint claim construction and Prehearing statement
2/1/07	30 days after service of joint claim construction	Pat L.R. 4-4	Close of all discovery relating to claim construction including fact and experts
2/16/07	45 days after service of joint claim construction AND 6 weeks prior to claim construction hearing	Pat L.R. 4-5 AND standing order ¶ 9	Opening Markman brief by party claiming infringement
3/2/07	14 days after service of opening Markman	Pat L.R. 4-5	Response Markman brief
3/9/07	7 days after service of responsive Markman	Pat L.R. 4-5	Reply Markman brief
3/23/07	7-14 days prior to claim construction hearing	Standing Order ¶ 7	Tutorial
3/30/07	14 days after service of reply Markman and at court's convenience	Pat L.R. 4-6	Claim construction hearing
4/30/07	Court's convenience		Claim construction ruling
5/30/07	30 days after claim construction ruling	Pat L.R. 3-6	File final infringement contentions

6/19/07	50 days after claim construction ruling	Pat L.R. 3-6	File final invalidity contentions
6/19/07	50 days after claim construction ruling	Pat L.R. 3-8	Service of opinion of counsel for willfulness defense
7/19/07			Close of discovery for infringement for all fact and expert witnesses
8/24/07			Dispositive motion and opening brief filing deadline
9/7/07			Response briefs
9/21/07			Reply briefs
10/5/07			Summary judgment hearing
11/2/07			Summary judgment ruling
11/16/07			Pretrial order
12/14/07			Pretrial conference
1/ -- /08	At court's convenience		Trial

The above schedule presupposes that all parties will proceed with discovery cooperatively and as provided by the Federal Rules of Civil Procedure, the orders of this court, and applicable law. Defendants specifically reserve their right to petition the court to modify and/or amend this schedule if the circumstances so warrant.

Should the case not be resolved on dispositive motions, defendants believe that the trial will last approximately 10 days. Plaintiff has requested a jury trial in his complaint. Defendants believe that all of the non-patent issues can and should be bifurcated and stayed pending resolution of the patent enforceability claims and have filed a motion to this effect.

Plaintiff's proposal:

Plaintiff believes that a number of claims may be resolved in his favor on early summary judgment motions, and that the ADR process may result in settling the case. Furthermore, without Answers from defendants, Plaintiff can make no estimate on the time needed in the schedule above, and thus declines to do so. Plaintiff also expects to file an amended Complaint shortly, with added claims, which should be considered prior to granting a motion for bifurcation. The amended Complaint may result in another series of motions to dismiss. Plaintiff

believes it would be most economical to the Court to set only those dates noted in Docket 41, a deadline for an amended Complaint, a deadline for new motions to dismiss and any early summary judgment and other motions, and the next case management conference. He suggests the next case management conference be held in late October, or mid-December.

12. Current Service List

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13. Other items not addressed by Civil L.R. 16-10

Not applicable

14. Disclosures

Defendants KAM and Katzer

As discussed in defendants Matthew Katzer and KAM's certificate of interested entities, Barbara Dawson has an interest that could be substantially affected by the outcome of this proceeding.

Plaintiff

This information is provided per the Recusal Order. Except for Mr. Jacobsen, none of the parties listed below has any interest in this case. Mr. Jacobsen does not seek recusal.

Mr. Jacobsen is a physics professor at UC Berkeley, associate dean for undergraduate advising, and has an appointment at the Lawrence Berkeley National Laboratory. He also does research at CERN in Switzerland, and the Stanford Linear Accelerator Center. He is chair of the faculty committee on undergraduate admissions, and as such, is acquainted with Dean Edley at Boalt Hall, and serves on two committees with Prof. Jesse Choper.

Dated August 4, 2006.

R. Scott Jerger
Attorney for Matthew Katzer and Kamind
Associates, Inc.

David M. Zeff
Attorney for Kevin Russell

Victoria K. Hall (SBN 240602)
Attorney for Robert Jacobsen

Hall Declaration Exhibit G

From "Victoria K. Hall" <victoria@vkhall.com>
 Subject Re: CMC Statement
 Date Fri, August 4, 2006 11:30 pm
 To "Jonathan Smale" <Jonathan@fieldlawfirm.com>
 CC zefflaw1@aol.com,"Scott Jerger" <scott@fieldlawfirm.com>

Gentlemen (again),

I have read through your draft, and am in agreement with most of it, although I would probably do further wordsmithing if I had the opportunity. However, there is one change which is necessary to make, and for that reason, I will be submitting the separate case management statement. The change is minor, and perhaps if we had a better relationship I would make the change as I do not think you would object to it. However, I do take literally that there will be no changes made to the draft that you both have approved, and so I find it necessary to submit the version I was working on prior to finding your email below. The change that I have to make to your version is that I must add an "/s/" to my name, and a notation to your names plus a reference to my declaration, explaining why I am not putting "/s/" next to your names.

I will make a change to my case management statement to remove part of one sentence near the beginning which Mr. Zeff apparently found objectionable. Mr. Zeff, in the future, I would recommend that instead of calling me "childish" and "unprofessional" that it would be more productive to tell me that you have a problem with a sentence in the draft, that you propose an alternative, and that you state what that alternative is.

You may efile your own statements or efile a statement that you agree with what I have filed. It is getting too late for me to negotiate changes at this hour.

Regards,

Victoria Hall

> Dear Victoria:

>
 >
 >
 >
 > Attached is our final redlined draft CMC Statement. I have
 > reviewed this with Scott over the phone and, given Scott's
 > unavailability out of the office the rest of the day, this is the last
 > redline version we will be able to review and comment on. If you do not
 > agree with any changes, the defendants will file a separate statement.
 > It does appear that the parties are close however, and if you accept all
 > changes, Scott authorizes you to file this document with the declaration
 > you suggested earlier re: Scott is out of the office today and can't
 > provide a signature but authorizes the filing. Mr. Zeff has already
 > accepted the changes and sent a copy of the signature page to me, so I
 > will forward that to you if you accept all of the proposed changes.

>
 >
 >
 > Please let me know as soon as possible whether you agree
 > with this latest CMC Statement. Regards.

> Jonathan

> ++++++

>
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