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Attorneys for Defendant

Kevin Russell

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JACOBSEN,

Plaintiff,

vs.

MATTHEW KATZER, KAMIND
ASSOCIATES, INC., and KEVIN
RUSSELL,

Defendants.

) Case No. C 06 1905 HRL

) Date: December 19, 2008

) Time: 9:00 a.m.

) Courtroom No. 2, 17th Floor

) Honorable Jeffrey S. White

) DECLARATION BY MATTHEW

) KATZER SUPPORTING THE REPLY OF

) DEFENDANT KEVIN RUSSELL TO

) PLAINTIFF'S OPPOSITION BRIEF

I, Matthew Katzer, declare:

1. I am controlling shareholder and operator of the close corporation Kamind Associates, Inc. ("KAM"), and am a defendant in this action. If called as a witness, I would and could testify to the following as a matter of personal knowledge.

2. I am authorized by KAM to make this declaration in support of Kevin Russell's reply to the opposition filed by plaintiff Jacobsen.

3. At all times prior to the disclaimer of the '329 patent, I believed that KAM's patent was valid and that the JMRI software infringed that patent. To this date, I still

1 believe that the '329 patent was valid.

2
3 4. I believe that KAM's '329 patent was valid prior to the disclaimer and that
4 JMRI's product infringed the '329 patent prior to the disclaimer. Nothing that Jacobsen
5 or his attorney has filed in this lawsuit has shaken this belief.

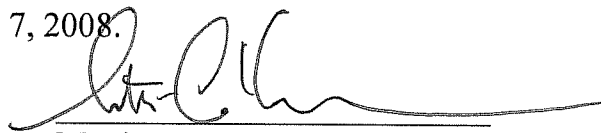
6
7 5. I disclaimed the '329 patent based on the advice of my attorney. My attorney
8 advised me that patent litigation is extremely expensive and time-consuming, especially
9 given the aggressive litigation tactics of Plaintiff and his attorney to date.

10
11 6. Based on this advice, I chose to disclaim the '329 patent to avoid the cost of
12 patent litigation. This was based upon purely economic considerations.

13 7. On October 7, 2005, I authorized my attorney to send a FOIA request to the
14 United States Department of Energy. This document became the basis for Jacobsen's
15 claim against me for alleged defamation. This request was to gather information in
16 support of a possible lawsuit against JMRI for patent infringement. Since a Department
17 of Energy email account was being used by Jacobsen in his capacity as a developer of
18 JMRI software, I believed that a FOIA request to the Department of Energy would
19 produce relevant information relating to JMRI's infringement of the '329 patent.
20
21

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

24
25 Executed on November 7, 2008.

26
27 
28 Matthew Katzer