

1 THERE IS NO REQUIREMENT FOR RETURN OF DECODERPRO.COM, WE CAN
2 SIMPLY SAY WE DON'T NECESSARILY WANT TO HAVE THAT BACK.

3 **THE COURT:** AND RESPONSE TO THE SECOND PART OF
4 QUESTION TWO, I TAKE IT, MR. -- IS IT BRETAN?

5 **MS. HALL:** MR. BRITTON.

6 **THE COURT:** DOES HE CONSENT TO THIS COURT'S
7 JURISDICTION?

8 **MS. HALL:** WE HAVEN'T ASKED HIM YET. IF YOU DID
9 REQUIRE -- IF -- IF -- I MEAN, IF WE SAY WE DON'T WANT TO HAVE
10 DECODOPRO.COM RETURN IN THIS LITIGATION, TO US I THINK THAT
11 MOOTS THAT QUESTION BECAUSE HE'S -- WE'RE NOT LOOKING AT
12 ATTACKING THE SETTLEMENT AGREEMENT ANY LONGER.

13 **THE COURT:** IS THAT YOUR POSITION?

14 **MS. HALL:** IF YOU ORDER ME TO JOIN MR. BRITTON IT IS
15 PROBABLY, BUT I NEED TO GO CHECK WITH MR. BRITTON SEE IF HE'S
16 WILLING TO SUBJECT HIM TO THE JURISDICTION OF THE COURT.

17 **THE COURT:** ANYTHING YOU GOT TO SAY ON THAT POINT?

18 **MR. JERGER:** I'M NOT SURE I UNDERSTAND THE PLAINTIFF'S
19 RESPONSE. I'M NOT SURE HOW TO RESPOND TO THAT, OTHER THAN TO
20 SAY, CITE WHAT -- THE ARGUMENT WE BROUGHT UP IN OUR REPLY
21 PAPERS.

22 THAT UNDER THE CLAYTON BABBITT CASE THIS COURT DOESN'T
23 HAVE JURISDICTION TO ATTACK A NEGOTIATED SETTLEMENT AGREEMENT
24 IN OREGON DISTRICT COURT.

25 **THE COURT:** I THINK, WE HAVE AN AGREEMENT ON THAT.

1 **MR. JERGER:** I DIDN'T QUITE FOLLOW WHAT HER ARGUMENT
2 WAS.

3 **MS. HALL:** MY ARGUMENT IS, THAT WE DON'T WANT TO --

4 **THE COURT:** COUNSEL, WAIT. THE COURT ASKS THE
5 QUESTIONS. IF COUNSEL DOESN'T UNDERSTAND AN ANSWER, HE DOESN'T
6 GET TO GET AN ANSWER FROM YOU UNLESS I ASK FOR IT.

7 I UNDERSTOOD YOUR ANSWER. AS FRIGHTENING AS THAT
8 MIGHT BE, I DID UNDERSTAND YOUR ANSWER.

9 QUESTION NUMBER THREE. THIS GOES TO PARAGRAPHS H AND
10 T, WHICH I READ A COUPLE OF TIMES AND I'M JUST AT A LOSS, I
11 HAVEN'T BEEN ABLE TO FIND ANY AUTHORITY THAT GIVES YOU THE
12 RELIEF. ONE IS, I THINK, T IS REFERRING THIS MATTER TO THE
13 U.S. ATTORNEY FOR SOME KIND OF PERJURY PROSECUTION, WHAT IS --
14 DO YOU HAVE ANY AUTHORITY?

15 **MS. HALL:** I RELIED UPON THE COURT'S INHERENT
16 AUTHORITY TO INVESTIGATE WRONGDOING BY THE PARTIES AND I'M
17 CITING CHAMBERS STANDARD ELECTRIC AND TIMES HERALD PRINTING
18 COMPANY.

19 TIMES HERALD PRINTING COMPANY INVOLVED A MOTION FROM
20 ONE OF THE PARTIES TO REFER A PERJURY MATTER FOR PROSECUTION TO
21 THE U.S. ATTORNEY'S OFFICE AND THE COURT IN THAT INSTANCE
22 DECIDED NOT TO DO IT, BUT IT DIDN'T SAY, SORRY, I DON'T HAVE
23 THAT POWER.

24 THE CONSOLATION PROCEEDINGS SOMETHING THE U.S.
25 ATTORNEY CAN DO, IT'S VERY RARE, BUT IT IS A POSSIBILITY, AND I

1 WANTED TO LEAVE THAT POSSIBILITY OPEN BECAUSE WE BELIEVE THAT
2 THE THEFT THAT HAS GONE ON BY DEFENDANTS IN THIS CASE THAT WE
3 HAVE SEEN IN COPYRIGHT AND SEEN ALSO IN THE CYBER SQUATTING
4 EXTENDS ALSO TO THE PATENTS, AND WHEN THE FULL FACTS ARE KNOWN
5 WE WANT TO PRESENT THAT AS A POSSIBILITY THAT THE COURT WILL
6 CONSIDER.

7 **THE COURT:** OKAY. CHAMBERS VERSUS NASCO HAS TO DO
8 WITH THE COURT'S INHERENT AUTHORITY TO SANCTION COUNSEL WHO
9 BASICALLY CONDUCT THEMSELVES IN BAD FAITH IN A PROCEEDING
10 BEFORE THE COURT.

11 **MS. HALL:** IT DISCUSSES THAT THERE ARE STATUTES, DO
12 NOT LIMIT THE COURT'S AUTHORITY TO BE ABLE TO PUNISH,
13 INVESTIGATE WRONGDOING OF PARTIES. AND SO I CITED THAT CASE
14 FOR THAT PROPOSITION THAT IT'S NOT MERELY LIMITED TO, SAY, RULE
15 11 OR 28 USC SECTION 1927. 28 USC 1927.

16 **THE COURT:** ANYTHING YOU WANT TO SAY?

17 **MR. JERGER:** WE'VE FOUND NO AUTHORITY EITHER TO
18 AUTHORIZE UNDER ANY FEDERAL OR STATE STATUTE THE RELIEF
19 REQUESTED IN PARAGRAPHS H AND T.

20 **THE COURT:** ALL RIGHT. LET'S MOVE ONTO PLAINTIFF'S
21 MOTION FOR PRELIMINARY INJUNCTION. AND FIRST QUESTION I'LL PUT
22 TO PLAINTIFF IN THE FIRST INSTANCE.

23 **MS. HALL:** PLAINTIFF IS ENTITLED TO A PRESUMPTION OF
24 IRREPARABLE HARM BECAUSE OF THE INFRINGEMENT, THAT'S ONE THINGS
25 THAT WE'RE RELYING UPON.

1 AND THE OTHER THING IS THAT WE DON'T HAVE ANY PROOF
2 WHATSOEVER THAT THEY HAVE COMPLIED WITH THE TERMS AND THAT
3 THERE IS -- THEY'VE OFFERED NO PROOF THAT -- THERE'S NO WAY
4 THAT THEY COULD RETURN TO THEIR OLD WAYS.

5 WE HAVE CD -- WE HAVE 307 RIGHT HERE, APPARENTLY A NEW
6 ONE CALLED 308, WHICH HAS NOT BEEN RECEIVED BY MY CLIENT, MY
7 CLIENT ENTITLED TO UPDATES, HE'S NOT SENT MY CLIENT THESE YET.

8 MY CLIENT HAS TRIED TO OPEN UP THE DATABASE TO FIND
9 OUT WHETHER OR NOT THE SAME SELECTION COMPILATION ORDERING
10 GROUPING THAT IS IMPORTANT IN THE DECODER DEFINITIONAL FILES IN
11 THAT STILL PRESENT, THAT WOULD INDICATE THAT OUR FILES WERE THE
12 SOURCE OF THOSE AND THERE'S A REASON TO THINK THAT IT MIGHT
13 VERY WELL BE.

14 HOW LONG DID IT TAKE FOR PLAINTIFF TO DEVELOP THESE
15 FILES? SAY, FIVE YEARS, HUNDREDS, THOUSANDS OF HOURS, DOZENS
16 OF THOUSANDS?

17 DEFENDANT SEEMS TO COME UP WITH OVERNIGHT A DATABASE
18 THAT HAS ALL THESE SAME THINGS, ALL THESE SAME THING THAT
19 PLAINTIFF NOW OFFERS, HOW COULD HE HAVE DONE THAT OVERNIGHT?

20 **THE COURT:** WHAT EVIDENCE IS BEFORE THE COURT THAT THE
21 DEFENDANTS HAVE NOT VOLUNTARILY COMPLIED WITH THE TERMS OF
22 THE -- YOUR DEMAND AND TO PROVE THAT THIS ALLEGED WRONGFUL
23 ACTIVITY CANNOT REASONABLY BE EXPECTED TO RECUR. YOU HAVE THE
24 BURDEN.

25 **MS. HALL:** ACTUALLY, WE PROVE THEY COMMITTED

1 INFRINGEMENT, IT'S THEIR JOB, THE BURDEN ACTUALLY SHIFTS TO
2 THEM TO SHOW THAT THEY ARE NO LONGER INFRINGING.

3 ALL WE HAVE A CONCLUSORY STATEMENT. WE HAVE NOTHING
4 FROM THIS CD, I GAVE THIS CD TO MR. JERGER AND SAY OPEN THIS UP
5 AND SHOW US WHAT IS ON THE CD AND IN THE DATABASE, AND THE
6 BURDEN IS ON THEM ONCE WE HAVE SHOWN THAT THEY HAVE INFRINGED
7 FOR THEM TO SHOW, NO, THEY DON'T AND, NO, THEY WILL NOT
8 CONTINUE.

9 **THE COURT:** ALL RIGHT.

10 **MR. JERGER:** JUST TO INITIALLY ADDRESS THAT. WE
11 DISAGREE THAT THE BURDEN IS ON US. PRELIMINARY INJUNCTION
12 EXTRAORDINARY REMEDY MEANT TO PRESERVE THE STATUS QUO.

13 WE SUBMITTED A DECLARATION THAT SHOWS WE ARE NOT DOING
14 ANYTHING AT ALL WHATSOEVER, AND THAT IN -- OUT OF ABUNDANCE OF
15 CAUTION WE HAVE RETOOLED EVERY POSSIBLE ALLEGEDLY INFRINGING
16 PIECE OF SOFTWARE AND THEY COME FORWARD WITH NO EVIDENCE THAT
17 WE ARE NOT, IN FACT, DOING THAT.

18 THEY ARE RESTING ON THIS PRESUMPTION OF IRREPARABLE
19 HARM, WHICH AS I STATED BEFORE, I DON'T THINK APPLIES. BUT
20 EVEN IF IT DOES APPLY, I THINK, DEFENDANTS HAVE EFFECTIVELY
21 REBUTTED THAT PRESUMPTION, A, BECAUSE THEY HAVEN'T ALLEGED ANY
22 HARM THEY HAVE, B, THEY HAVEN'T SHOWN THAT WE HAVE NOT COMPLIED
23 WITH THESE REQUESTS, C, THEIR CONDUCT WHICH I GO THROUGH IN MY
24 REPLY PAPERS WITH THE DELAY, THESE SORTS OF THINGS, AND SO
25 THAT'S MY RESPONSE TO HER IDEAS THERE.

1 NOW, I WANT TO JUMP BACK TO QUESTION NUMBER ONE. WHAT
2 HARM DOES PLAINTIFF SEEK TO PREVENT BY AN INJUNCTION THAT'S
3 ADDRESSED TO THE PLAINTIFF?

4 IS IT ABSOLUTELY CLEAR DEFENDANT'S ALLEGEDLY WRONGFUL
5 ACTIVITY CANNOT REASONABLY BE EXPECTED TO OCCUR, AND I WOULD
6 SAY, YES, IT IS ABSOLUTELY CLEAR WHAT WE'RE TALKING ABOUT HERE
7 IS A SPREAD SHEET OF DATA.

8 WHAT MY CLIENT HAS DONE IS COMPLETELY REPLACED THAT
9 WITH NEW DATA 100 PERCENT. IT SERVES THE SAME FUNCTIONALITY AS
10 THE DECODER DEFINITION FILES, THE PREVIOUS ALLEGED DECODER
11 DEFINITION FILES THAT WERE IN MY CLIENT'S SOFTWARE, 100 PERCENT
12 THE SAME FUNCTIONALITY.

13 IN OTHER WORDS, THE DECODER DEFINITION FILES IS NO
14 VALUE, THERE WOULD BE NO REASON MY CLIENT WOULD EVER REVERT TO
15 ANY OF THE ALLEGEDLY INFRINGING PRODUCT.

16 HE'S TAKEN EVERYTHING THAT'S -- THAT THEY ALLEGE
17 INFRINGES OFF HIS WEB SITE, HE SHIPS NEW PRODUCT. I HAVE THE
18 VERSION 308 WITH ME IF MS. HALL WOULD LIKE A COPY OF THAT. SO
19 THE NEW SOFTWARE AS IT'S GONE FORWARD HAS 100 PERCENT REPLACED
20 ALL THE ALLEGED INFRINGING PRODUCT.

21 I THINK, IT IS ABSOLUTELY CLEAR THAT ALL ALLEGEDLY
22 INFRINGING ACTIVITY CEASED AND THERE'S NO POSSIBILITY OF
23 RECURRENCE BECAUSE THERE'S NO REASON THAT DEFENDANTS WOULD EVER
24 GO BACK TO THE OLD ALLEGEDLY INFRINGING DATA WHEN THEY HAVE
25 THEIR OWN DATA WHICH IS SERVES A HUNDRED PERCENT OF THE

1 FUNCTIONALITY.

2 **THE COURT:** SO, LET THEM STOP YOU. WE HAVE A
3 DECLARATION TO THAT EFFECT. WHAT EVIDENCE IN THE RECORD
4 REFUTES THAT?

5 AND EVEN ASSUMING YOUR ANALYSIS OF PROCEDURAL POSTURE
6 IS CORRECT ON -- THE BURDEN SHIFTS BY VIRTUE OF THE DECLARATION
7 THAT THE DEFENDANTS SUBMITTED, IT HAS SHIFTED, YOU GOT A HIGH
8 ENERGY SITUATION.

9 **MS. HALL:** WHO CAN'T OPEN THIS DATABASE AND HE'S
10 CONSULTED WITH FRIENDS WHO ARE ALSO EXPERTS IN SOFTWARE AND
11 THEY CAN'T OPEN THE DATABASE EITHER. THEY HAD TWO MONTHS, WHY
12 COULDN'T THEY GIVE US THE SPREAD SHEET THEY TALK ABOUT? WE
13 COULD HAVE DONE OUR OWN ANALYSIS.

14 **THE COURT:** THE POINT IS, DO YOU HAVE ANY EVIDENCE
15 TO -- OTHER THAN WHAT YOU'RE SAYING HERE VERBALLY IN COURT, TO
16 REFUTE THE DECLARATION THAT THE DEFENDANTS SUBMITTED THEY
17 BASICALLY HAVE CEASED THE ACTIVITY THAT YOUR CLIENT IS
18 COMPLAINING ABOUT?

19 **MS. HALL:** THE EVIDENCE THAT I'VE DESCRIBED ALREADY,
20 THE EVIDENCE THAT -- THE STATEMENT THEY HAVE MADE IS
21 CONCLUSORY, DOESN'T OFFER ANY, YOU KNOW, WHERE'S THE SPREAD
22 SHEET? COULDN'T THEY HAVE INCLUDED THAT?

23 NO, THEY CAN'T. IT'S THEIR BURDEN TO BE ABLE TO SHOW
24 THEY HAVE STOPPED AND THAT THEY WILL NOT RETURN TO IT. 307
25 DOES NOT WORK.

1 **THE COURT:** HAVE YOU FILED AN OBJECTION?

2 **MS. HALL:** YES. I FILED A NUMBER OF OBJECTIONS, BUT I
3 FORGET EXACTLY -- I KNOW I MADE THAT ARGUMENT SOMEWHERE IN MY
4 PAPERS. THIS IS THE -- NECESSARY DON'T WORK.

5 IT'S IMPORTANT TO REMEMBER THAT THE BURDEN HERE ONCE
6 WE'VE SHOWN THAT IT IS ON THEM AND, SECOND, THAT UNDER W.T.
7 GRANT THE U.S. SUPREME COURT DECISION THE COURT SHOULD BE WARY
8 ANY ATTEMPT TO DEFEAT THE INJUNCTION BY PROTESTATION REPENTANCE
9 AND REFORM WHEN THE SENSATION TIME TO AVOID THE PRELIMINARY
10 INJUNCTION.

11 **THE COURT:** SLOW DOWN.

12 **MS. HALL:** THANK YOU.

13 **THE COURT:** START OVER AGAIN. TELL US EXACTLY WHERE
14 YOU'RE READING FROM.

15 **MS. HALL:** I'M READING FROM A QUOTE FROM W.T. GRANT
16 WHICH HAVE IN MY NOTES. THAT IS, THAT THE COURT SHOULD BE WARY
17 OF AN ATTEMPT TO DEFEAT INJUNCTION WHEN THE DEFENDANTS HAVE
18 BEEN MAKING THESE PROTESTATIONS OF REPENTANCE AND REFORM, AND
19 THESE PROTESTATIONS ARE TIMED TO AVOID THE PRELIMINARY
20 INJUNCTION, AND THEY HAVEN'T SHOWN THERE IS NO PROBABILITY OF
21 RECESSION, THE BURDEN ON THEM. AND THEY HAD TWO MONTHS TO GIVE
22 ME THIS SPREAD SHEET, WHERE IS IT? I DON'T KNOW.

23 **THE COURT:** I'LL GIVE YOU THE LAST WORD ON THIS POINT.

24 **MR. JERGER:** WELL, THREE QUICK POINTS. I THINK, I
25 ALREADY ADDRESSED THE MOOTNESS ARGUMENT SHE'S RECENTLY RAISING.

1 I THINK, THIS IS DISTINGUISHABLE FROM THE LGS CASE THAT YOU
2 CITE IN YOUR TENTATIVE RULING, IN THAT MY CLIENTS HAVE CEASED
3 ALL ACTIVITY, THERE'S NO POSSIBILITY OF REOCCURRENCE AND THERE
4 IS NO CERTAINTY WHETHER ANY INFRINGEMENT IS CURRENTLY ONGOING.

5 IN REGARD TO THESE CONTINUED ALLEGATIONS THEY CAN'T
6 GET THE PRODUCT TO WORK, I'LL JUST SAY, THAT MY UNDERSTANDING
7 FROM MY CLIENT IS THEY HAVEN'T REGISTERED WITH A NEW
8 REGISTRATION NUMBER AND THAT'S WHY -- THAT'S HIS THEORY ON WHY
9 THEIR VERSION ISN'T WORKING. THERE'S NO NEFARIOUS THINGS GOING
10 ON THERE.

11 THIRD, BACK TO THE BURDEN, WE VIGOROUSLY DISAGREE THAT
12 THEY HAVE MET ANY SORT OF BURDEN AND THAT BURDEN HAS SHIFTED TO
13 US. WE DISAGREE THAT THEY'VE SHOWN IN THEIR MOVING PAPERS THEY
14 WOULD, IN FACT, SUCCEED ON THE MERITS.

15 SIMPLE THINGS, FOR EXAMPLE, THE PLAINTIFF HASN'T EVEN
16 DEFINED HIS COPYRIGHT RIGHTS WHICH WOULD BE THE FIRST ELEMENT
17 OF A PRIMA FACIE CASE OF COPYRIGHT. WE DON'T KNOW -- OR WE DO
18 KNOW HE'S NOT THE OWNER OF THE -- ALL THE DECODER DEFINITION
19 FILES HE ALLEGES IN PARAGRAPH 41 OF THE AMENDED COMPLAINT.

20 WE ALSO KNOW HE'S NOT THE OWNER OF THE QSI MANUAL ONE
21 OF THE INFRINGING DATA PRODUCTS. BEFORE THOSE MERITS ISSUED
22 WOULD BE DECIDED MORE FACTUAL DISCOVERY WOULD BE NEEDED TO
23 DETERMINE THE EXTENT OF THE RIGHTS THE FOLKS HAVE.

24 THEY DIDN'T ASSIGN THEIR COPYRIGHT RIGHTS TO
25 MR. JACOBSEN, WHETHER THEY WORKED ON THE DECODER DEFINITIONS AS

1 A WHOLE OR WHETHER THEY WORKED ON DISCREET PARTS, AND IF THOSE
2 PARTS AREN'T ASSIGNED TO MR. JACOBSEN THEN THOSE AREN'T PART OF
3 ANY SORT OF PRELIMINARY INJUNCTION. HE'S NOT THE OWNER.

4 **MS. HALL:** I THINK, WE -- ASSIGNMENTS FROM ALL OF THEM
5 OR JUST ABOUT EVERYONE.

6 **THE COURT:** STOP. LET'S MOVE ONTO QUESTION TWO, AND
7 I'LL PUT THAT QUESTION TO YOU ABOUT DIRECT OR INDUCED
8 INDUCEMENT OF COPYRIGHT INFRINGEMENT.

9 **MR. JERGER:** SURE. UPON FURTHER REFLECTION WE AGREE
10 WITH THE COURT THAT DEFENDANTS WOULD BE LIABLE IN THAT
11 SCENARIO.

12 **THE COURT:** I ASSUME, YOU DON'T DISAGREE TODAY WE
13 THAT, MS. HALL?

14 **MS. HALL:** THE COURT IS CORRECT.

15 **THE COURT:** THANK YOU. ANYTHING FURTHER THE PARTIES
16 WISH TO ADDRESS AT THIS POINT THAT'S NOT IN THE QUESTIONS OR
17 NOT IN YOUR PAPERS?

18 MS. HALL?

19 **MS. HALL:** YES, I'D LIKE TO MAKE A POINT ABOUT THE
20 IRREPARABLE HARM HERE. THERE IS IRREPARABLE HARM, AN
21 INJUNCTION IS AN APPROPRIATE THING TO ISSUE BECAUSE OF THE
22 NATURE OF THE SOURCE GROUPS.

23 OPEN SOURCE GROUPS ARE DEFUSED GROUPS, THEY HAVE A FEW
24 LEADERS. THEY OFTEN DO NOT -- ACTUALLY, I THINK, THE PURPOSE
25 OF OPEN SOURCE NOT TO CHARGE ANYTHING FOR THE USE OF THE

1 SOFTWARE, AND THAT BASICALLY MEANS THERE WILL BE ALMOST NO
2 CHANCE FOR DAMAGES.

3 UNDER NORMAL CIRCUMSTANCES MAYBE SOME INSTANCES, AND
4 SO IN AN -- INSTANCES DAMAGES ARE NOT ADEQUATE INJUNCTION IS
5 THE REMEDY THAT WE SEEK. WE BELIEVE IT'S AN APPROPRIATE ONE.
6 IT'S ONE THAT'S GOING TO ALLOW THESE OPEN SOURCE GROUPS TO
7 CONTINUE TO FLOURISH. THEY WILL HAVE THIS REMEDY AVAILABLE TO
8 THEM TO BE ABLE TO STOP PEOPLE LIKE MR. KATZER AND HIS COMPANY
9 FROM INFRINGING.

10 AND ONE THING I ALSO LIKE TO POINT OUT. EVEN IF 307
11 AND 308 ARE NOT -- AREN'T FUNCTIONAL AND, AGAIN, AS I SAID, I
12 DON'T HAVE A SPREAD SHEET OR ANY INFORMATION ABOUT THAT,
13 DEFENDANTS HAVE NOT SHOWN THEY HAVE STOPPED.

14 THERE ARE OTHER VERSIONS THAT ARE PRESENT OUT THERE
15 AND MY CLIENT HAS DESCRIBED HOW -- IN HIS DECLARATION HOW
16 PEOPLE CAN USE THE OTHER VERSIONS AND CAN STILL USE THE
17 SOFTWARE TOOL.

18 MR. KATZER SAID THAT HE HAS FIXED IT SO THAT THE
19 SOFTWARE WILL NO LONGER BE FUNCTIONAL AFTER CERTAIN DATE.
20 WELL, THAT'S -- ONE OF THEM IS IN MARCH OF '07 THAT'S
21 CONTINUING HARM AND, AGAIN, MY CLIENT THROUGH HIS EXPERIMENTS
22 THAT IT DOESN'T STOP IN MARCH IT ACTUALLY WILL CONTINUE TO GO
23 ON, SO THERE IS CONTINUING HARM.

24 IT'S NOT BEEN STOPPED AND WE ASK THE COURT TO ISSUE A
25 PRELIMINARY INJUNCTION.

1 **THE COURT:** COUNSEL, LAST WORD.

2 **MR. JERGER:** AS MY CLIENT STATES IN HIS DECLARATION,
3 HE'S DONE EVERYTHING HUMANLY POSSIBLE HE CAN DO. ALL THE OLD
4 VERSIONS OUT, ALL REGISTERED USERS HAVE BEEN SENT NEW VERSIONS
5 WHICH DON'T CONTAIN ANY OF THE ALLEGEDLY INFRINGING PRODUCT,
6 EVERYTHING BEEN TAKEN OFF THE INTERNET.

7 THERE'S REALLY NOTHING ELSE HUMANLY POSSIBLE TO DO AND
8 WE, AGAIN, DISAGREE THAT PLAINTIFF ARTICULATED ANY IRREPARABLE
9 HARM, BUT RATHER REST ON A CONCLUSORY STATEMENT THAT HE HAS AND
10 WILL SUFFER IRREPARABLE HARM, AND THIS PRESUMPTION GENERALLY
11 APPLIES TO COPYRIGHT CASES.

12 **THE COURT:** LET'S -- MATTER SUBMITTED. I WANT TO MOVE
13 ONTO THE CASE MANAGEMENT CONFERENCE.

14 THE PARTIES HAVE SUBMITTED A JOINT STATEMENT. THE
15 FIRST THING GIVEN THE NATURE -- TO THE EXTENT THIS CASE
16 CONTINUES GIVEN THE NATURE OF THE, SHALL WE SAY, PENDING
17 DISCOVERY DISPUTES AND THE COMPLEXITY OF THEM, EVEN THOUGH THIS
18 COURT GENERALLY HANDLES ITS OWN DISCOVERY DISPUTES, THIS IS A
19 CASE WHERE I'M GOING TO EXERCISE MY DISCRETION TO REFER ALL
20 DISCOVERY MATTERS TO A RANDOMLY ASSIGNED MAGISTRATE JUDGE TO
21 RESOLVE ALL OF THOSE MATTERS AND I'M GOING TO ORDER THAT IN A
22 WRITTEN ORDER TODAY.

23 **MS. HALL:** I HAVE -- I WAS INTERN FOR JUDGE SPERO, I
24 THINK, MIGHT NOT BE A GOOD IDEA TO REFER TO IT TO JUDGE SPERO.
25 TO PUT THAT IN THE RECORD.

1 **THE COURT:** I UNDERSTAND THAT GIVEN COUNSEL IS
2 PLAINTIFF'S COUNSEL, THE FACT SHE WAS A EXTERN FOR JUDGE SPERO
3 WOULD BE INAPPROPRIATE. HE SHOULD BE EXCLUDED FROM THAT RANDOM
4 ASSIGNMENT.

5 I WOULD SAY, BASED UPON THE FILINGS HERE, THAT TO THE
6 EXTENT THIS CASE DOES CONTINUE, I THINK, IT WOULD BEHOOVE THE
7 PARTIES, THE PLAINTIFF HAS ALREADY STATED HIS POSITION, TO
8 CONSIDER A CONSENT TO A MAGISTRATE JUDGE FOR ALL PURPOSES.

9 THIS IS -- ONGOING DISPUTES IN THIS CASE, THIS COURT
10 HAS A HUGE DOCKET, AND AGAIN THE COURT DOES NOT INTEND TO,
11 CAN'T AND WON'T REQUIRE THE PARTIES TO SO CONSENT, BUT WE HAVE,
12 I THINK, SOME OF THE BEST MAGISTRATE JUDGES IN THE COUNTRY WHO
13 ARE TREATED LIKE DISTRICT JUDGES, ARTICLE 3 JUDGES. THEY HAVE
14 MORE TIME TO CONSIDER THESE MATTERS AND TO THE EXTENT YOUR
15 CLIENTS ARE LOOKING FOR EXPEDITIOUS RELIEF YOU'LL GET IT MORE
16 EXPEDITIOUSLY FROM A MAGISTRATE JUDGE.

17 SO IN A MATTER -- THIS IS A MATTER, I THINK, BOTH
18 PLAINTIFF HAS STATED HIS POSITION, DEFENDANTS HAVE STATED THEIR
19 POSITION, I'D LIKE YOU TO -- BOTH SIDES GO BACK TO THEIR
20 RESPECTIVE CLIENTS AND TO ADDRESS THIS ISSUE AND LET THE COURT
21 KNOW BY THE CLOSE OF BUSINESS NEXT WEEK AS A JOINT MATTER
22 WHETHER YOU'RE WILLING TO RECONSIDER.

23 AGAIN, NO ADVERSE CONSEQUENCES OTHER THAN WHAT I
24 MENTIONED, WHICH IS HAVING THE MATTER CONSIDERED BY MORE BUSIER
25 JUDGE WITH MORE CASES. IF YOU DECIDE NOT TO, BUT IN THE

1 MEANTIME, IN THE INTERIM I'M GOING TO ORDER THAT ALL DISCOVERY
2 MATTERS BE HANDLED BY RANDOMLY ASSIGNED MAGISTRATE JUDGE,
3 EXCEPT JUDGE SPERO.

4 NOW, BOTH SIDES, YOUR CLIENT HAS INDICATED HIS
5 WILLINGNESS TO CONSENT?

6 **MS. HALL:** I HAVEN'T FILED THE PAPERS, BUT.

7 **THE COURT:** YOU DON'T NEED TO. BUT WHAT I'M SAYING
8 IS, I WANT TO KEEP THIS, I'M NOT REALLY INTERESTED IN INKLING
9 OUT ONE SIDE OR THE OTHER IN TERMS OF WILLINGNESS OR
10 UNWILLINGNESS.

11 IF BOTH PARTIES DON'T CONSENT IT DOESN'T GO TO THE
12 MAGISTRATE JUDGE FOR ALL PURPOSES, IN LIGHT OF THE FACT I'M
13 GIVING A WEEK, IN LIGHT OF THE FACT THAT YOU AND YOUR CLIENT
14 HAD AN OPPORTUNITY TO OBSERVE THIS COURT, I'M GIVING YOU AN
15 OPPORTUNITY.

16 IN OTHER WORDS, YOU'RE NOT BOUND BY THAT DECISION. I
17 HOPE THAT YOUR CLIENT WOULD CONSIDER, CONTINUE TO CONSIDER THAT
18 CHOICE, BUT I'M GIVING BOTH SIDES, I WANT A JOINT FILING BY
19 NEXT WEEK INDICATING WHETHER THE PARTIES ARE INTERESTED IN
20 CONSENT.

21 AND IF YOU CAN MANIFEST THAT BY CONSENTING OR FILING
22 THE APPROPRIATE PAPERS BY CLOSE OF BUSINESS ON THE 26TH OF
23 JANUARY OR FILE A STATEMENT THAT SAYS THE PARTIES, ALL OF THE
24 PARTIES DO NOT CONSENT TO A MAGISTRATE JUDGE AND THAT WAY WE'LL
25 KNOW WHAT'S GOING ON.

1 BUT ON THE ASSUMPTION THAT WHOEVER HANDLES THIS CASE,
2 WHICHEVER JUDGE HANDLES THIS CASE, THERE ARE MATTERS THAT NEED
3 TO BE ADDRESSED TODAY.

4 THE FIRST ISSUE I WANT TO CONSIDER IS ON PAGE SIX OF
5 YOUR CASE MANAGEMENT CONFERENCE STATEMENT. YOU SAY THAT KAM
6 AND KATZER ANTICIPATE THAT NEW PARTIES WILL BE ADDED. JACOBSEN
7 MAY ALSO ADD PARTIES TO THE CLAIMS AND I WANT TO PUT A CAP ON
8 THIS.

9 I DON'T WANT TO HAVE AMENDMENTS ADDING PARTIES ON THE
10 EVE OF TRIAL, FOR EXAMPLE. SO LET ME START WITH PLAINTIFF,
11 HOW SOON WILL YOU BE ABLE TO MAKE THAT DETERMINATION?

12 **MS. HALL:** THE PARTIES WOULD BE -- ADD BRITTON IF YOU
13 SO ORDERED, ASSUMING THAT YOU STILL WANT HIM IN, IF WE DECIDE
14 WE DON'T WANT TO DECODERPRO.COM, POSSIBLY ROBERT BOWENS AND
15 BOWENS ENGINEERING.

16 **THE COURT:** THAT'S A WHO, I WANT A WHEN.

17 **MS. HALL:** WHEN I WOULD FILE AN AMENDED COMPLAINT OR
18 MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, THERE ARE A COUPLE
19 OF THINGS WE HAVE DISCOVERED.

20 **THE COURT:** I KNOW, I WANT A WHEN, NOW YOU'VE GIVEN ME
21 A WHY?

22 **MS. HALL:** IT REALLY DEPENDENT ON WHAT YOU DECIDE TO
23 RULE.

24 **THE COURT:** ONE SCENARIO IS YOU WILL HAVE TEN DAYS
25 FROM THE ISSUANCE OF AN ORDER RESOLVING THE CURRENT MOTIONS.

1 **MS. HALL:** IF YOU ARE DECIDING THAT YOU ARE DISMISSING
2 ANYTHING WITHOUT PREJUDICE.

3 **THE COURT:** ALL RIGHT. TEN DAYS FROM ISSUANCE OF THE
4 ORDER IN THE CASE OR 30 DAYS, WHICHEVER IS 30 DAYS FROM TODAY,
5 WHICHEVER IS LATER.

6 **MS. HALL:** OKAY.

7 **THE COURT:** SO IF THE COURT HAPPENS TO DELAY ISSUING
8 THE ORDER THEN YOU'LL HAVE MORE TIME.

9 WHAT ABOUT THE DEFENDANTS, CAN YOU MAKE THAT
10 DETERMINATION IN THAT PERIOD OF TIME?

11 **MR. JERGER:** WE CAN DO IT THEN OR WE CAN GUARANTEE IT
12 WILL BE IN OUR FIRST RESPONSIVE PLEADING, IF WE DO CHOSE TO ADD
13 ANY PARTIES.

14 **THE COURT:** WHICH WOULD BE DUE WHEN?

15 **MR. JERGER:** ACCORDING TO WHAT I CALCULATED HERE 20
16 DAYS AFTER THE WRITTEN RULING, ASSUMING THERE IS NO AMENDED
17 COMPLAINT, OR 20 DAYS AFTER THE AMENDED COMPLAINT WE WOULD
18 EITHER FILE A RESPONSIVE PLEADING OR ANOTHER MOTION TO DISMISS.

19 **THE COURT:** IN ORDER TO ACCOMMODATE BOTH SIDES THAT
20 WILL BE THE ORDER OF THE COURT. IN THE FIRST RESPONSIVE
21 PLEADING I WILL EXPECT THE ADDITION OF ANY ADDITIONAL PARTIES
22 AT THAT TIME AND THE PLAINTIFF WILL HAVE LIKE AMOUNT OF TIME.

23 SO THAT ACTUALLY GIVES YOU MORE TIME, AND SO I'M GOING
24 TO VACATE WHAT I SAID BEFORE AND INDICATE THAT WHEN THE
25 DEFENDANT IS REQUIRED TO FILE ITS FIRST AMENDED PLEADING, WHICH

1 IN TURN WILL BE TRIGGERED BY THIS COURT'S ORDER, THE ISSUANCE
2 OF THE COURT'S ORDER.

3 BY THAT TIME I EXPECT THE PARTIES TO ADD ANY
4 ADDITIONAL PARTIES THEY WISH TO ADD. SO THE MATTER, AT LEAST,
5 WILL PROGRESS TO THAT POINT. AND THAT ORDER BECAUSE THIS COURT
6 WILL ISSUE ITS ORDER, I GUESS, ONE THING I WANT TO SAY IS THIS.

7 THAT BY ASKING THE PARTIES TO CONSENT TO A MAGISTRATE
8 JUDGE, THAT DOESN'T MEAN THAT THIS COURT WILL NOT RESOLVE THE
9 MOTIONS BEFORE THE -- IT WILL BECAUSE IT WILL BE UNFAIR TO GIVE
10 THOSE DE NOVO TO A MAGISTRATE JUDGE, SO YOU CAN ASSURE YOUR
11 CLIENTS THE COURT WILL DO THAT.

12 THE PARTIES INDICATE THEY WILL FILE ANY MOTIONS FOR
13 COURT ORDERS RELATING TO OBTAINING FOREIGN DISCOVERY AND TAKING
14 FOREIGN DEPOSITION BY FEBRUARY 16TH, THAT'S THE PLAINTIFF'S
15 PROPOSAL, DOES DEFENDANTS DISAGREE WITH THAT?

16 **MR. JERGER:** YES.

17 **THE COURT:** STOP. THEN I'M GOING TO LEAVE THAT TO THE
18 MAGISTRATE JUDGE, EVEN IF YOU DON'T CONSENT, WILL DECIDE THAT.
19 SO IF THERE'S NOT AGREEMENT I'M NOT GOING TO DEAL WITH IT AT
20 THIS TIME.

21 WITH RESPECT TO THE DATES, THE DUELING SETS OF DATES,
22 THE ONE OTHER POINT WITH RESPECT TO NAMING OF NEW PARTIES, ONE
23 OF THE -- IF THERE ARE NEW PARTIES NAMED AND YOU HAVE
24 INFORMATION ABOUT ANY APPROPRIATE AFFILIATES OR THAT IF YOU
25 KNOW THEY HAVE COUNSEL YOU SHOULD LET THE COURT KNOW BECAUSE AS

1 THE PLAINTIFF POINTS OUT THE COURT WANTS TO KNOW THIS
2 INFORMATION, SO THAT ANY RECUSAL OR DISQUALIFICATION ISSUES
3 MIGHT BE ADDRESSED EARLY ON.

4 WITH RESPECT TO THE DUELING DATES I WANT TO SAY TWO
5 THINGS: THE FIRST THING IS, I WILL DEAL WITH THE -- BECAUSE
6 THE PARTIES DON'T AGREE I WILL BE SOLO NUMBER LIKE AND DECIDE
7 THE DATES AND PUT THEM IN MY ORDER WITH THE FOLLOWING
8 EXCEPTION, THAT WITH RESPECT TO THAT DETERMINATION WILL BE MADE
9 IN A LATER ORDER.

10 IN OTHER WORD, SHOULD THE COURT GET ITS ORDER OUT THIS
11 WEEK THE DATES, THE ACTUAL DATES FOR THE MANAGEMENT OF THIS
12 CASE ARE TO BE DONE BY THE JUDGE WHO'S GOING TO TRY THE CASE.
13 IF THE PARTIES CONSENT TO A MAGISTRATE JUDGE THE MAGISTRATE
14 JUDGE WILL DO THAT, WILL SELECT THOSE DATES.

15 AND I'M NOT GOING TO USURP THAT ABILITY TO MANAGE THE
16 CASE OF THE JUDGE WHO'S GOING TO HANDLE IT. IF MY ORDER IS
17 ISSUED BEFORE NEXT FRIDAY THEN I'LL DEAL -- AND THE PARTIES DO
18 NOT CONSENT TO A MAGISTRATE JUDGE, THEN I WILL ISSUE A SEPARATE
19 ORDER WITH THE DATES THAT WILL GOVERN THE COMPLETION OF
20 DISCOVERY AND PRETRIAL AND FILING OF DISPOSITIVE MOTIONS.

21 AND IN THE FUTURE WHETHER THE PARTIES ARE BEFORE THIS
22 COURT OR A MAGISTRATE JUDGE IT WOULD BEHOVE THE PARTIES TO
23 MORE COMPLETELY AND ADEQUATELY AND EFFECTIVELY MEET AND CONFER
24 WITH RESPECT TO DATES BECAUSE IT'S NOT THE COURT'S JOB, USUALLY
25 NOT THE BEST MANAGEMENT TO BASICALLY PICK DATES WHEN THE

1 PARTIES DISAGREE. THE PARTIES SHOULD KNOW THEIR CASE, THEY
2 SHOULD BE ABLE TO AGREE ON THESE DATES.

3 SO I WOULD SUGGEST THAT THE PARTIES IN THE FUTURE MEET
4 AND CONFER. FOR NOW THE JUDGE WHO'S GOING TO BEING BE HANDLING
5 THIS CASE IN A PLENARY FASHION WILL MAKE THOSE DETERMINATIONS
6 IN A FURTHER ORDER.

7 SO I DON'T BELIEVE THERE'S ANYTHING ELSE WE CAN
8 ACCOMPLISH AT THIS POINT UNTIL THE MOTIONS ARE RESOLVED, BUT
9 HAVING SAID THAT, IS THERE ANYTHING FURTHER FROM PLAINTIFF?

10 **MS. HALL:** NOTHING I CAN THINK OF.

11 **MR. JERGER:** NOTHING FURTHER.

12 **THE COURT:** THE MATTER SUBMITTED.

13 THANK YOU.

14
15 (PROCEEDINGS ADJOURNED.)
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CERTIFICATE OF REPORTER

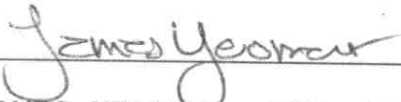
I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 17TH DAY OF OCTOBER, 2007.



JAMES YEOMANS, CSR, RPR