Jacobsen Declaration
Exhibit E
October 27, 2005

FOIA Officer
Office of Science
US. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Freedom of Information Act Request for all Documents Related to Patent Infringement, Status, Funding, Distribution of Contributions and Management Practices Associated with the JMRI Project by Berkley Labs. Our File No.: 7431.0081

Dear FOIA Officer:

This request for documents is made pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. This request is made on behalf of KAMIND Associates, Inc. ("KAM") and relates to information gathered by the Physics Division Berkley Livermore Labs (LAB) regarding their duties for JMRI project. KAMIND Associates, Inc. is a small software vendor that has patents being infringed by the JMRI project sponsored by the LAB.

Please consider documents to include all writings, memoranda, letters, notes, working papers, minutes of meetings, photocopies, data, graphs, charts, photographs, inspection reports, compliance reports, records, e-mails (sent, received or drafts), digitized voice communications and any other format of information regarding the JMRI program project (hereafter referred to as COMMUNICATIONS).

The request is agreed to pay up to $5000 by voicemail on 11/8. Please notify if it will work.

on the yano groups: JMRI USERS. [EXHIBIT 8, 9]

13. All COMMUNICATIONS and logs from Skype ID: JacobsenRG related to JMRI activities.
14. Copies (and all drafts) of the welcome letter from the LAB by Bob Jacobson to WCI.
FOIA Officer  
Office of Science  
U.S. Department of Energy  
October 27, 2005

Page 3

17. All COMMUNICATIONS between the following Allen Bryne, Ralph Kimball, Michael Woodman, Graham Plowman, and Jerry Britton. [Exhibit 10, 11, 12]

18. All COMMUNICATIONS about JMRI Royalty payment of $203,000 for KAM Train Server licenses. [Exhibit 13]

Sincerely,

Kevin L. Russell

KLR:kk  
Enclosures

c: KAMIND Associates, Inc.  
(w/enclosures)
Specifically, KAM requests:

1. Funding information from the Department of Energy for the JMRI program at the LAB.
2. All COMMUNICATIONS about the JMRI program and proceedings from Robert Jacobsen (LBNL, 1 Cyclotron Rd, MS 50A2160, Berkley Ca, 94720 email address Bob_Jaccocbsen@lbl.gov). [Exhibit 1, 2, 3]
3. Complete financial records and all COMMUNICATIONS from contributions (PAYPAL) to support the JMRI program. [Exhibit 4, 5]
4. Complete financial records verifying that the funds received for Government project JMRI were deposited in US Treasury.
5. Transcripts of communications (COMMUNICATIONS) to any JMRI team members regarding KAM. [Exhibit 6]
6. All COMMUNICATIONS regarding patent investigation of KAM. [Exhibit 6]
7. All draft COMMUNICATIONS to any member of theJMRI development community. There are 18 members as of 10/24,2005. [Exhibit 2]
8. All COMMUNICATIONS to any member of the JMRI_STRATEGY group. [Exhibit 7]
9. All COMMUNICATIONS regarding legal opinion on Department of Energy personal at any locations regarding the JMRI activities.
10. All COMMUNICATIONS from email archives (2000 to present) to any member on the Yahoo Groups: JMRI DEVELOPERS. [Exhibit 2]
11. All COMMUNICATIONS from email archives (2000 to present) to any member on the Yahoo Groups: JMRI STRATEGY. [Exhibit 7]
12. All COMMUNICATIONS from email archives (2000 to present) to any member on the Yahoo Groups: JMRI USERS. [Exhibit 8, 9]
13. All COMMUNICATIONS and logs from Skype ID: JacobsenRG related to JMRI activities.
14. Copies (and all drafts) of the welcome letter from the LAB by Bob Jacobson to JMRI members posted on Yahoo groups and or source forge.
15. All information related to the KAM legal action in federal court.
Welcome to the JMRI user's discussion group. This is the place to ask questions, make suggestions, complain and complement.

There's more information available on the main JMRI web page:

http://jmri.sf.net

and the main page for DecoderPro:

http://jmri.sf.net/DecoderPro

Decoder Pro is a program to make it easier to program DCC decoders.

Bob Jacobsen (Bob_Jacobsen@... 510-486-7355, fax 510-495-2957)
Exhibit 2 Page 1 of 3

SOURCE FORGE net

Login via SSL
New User via SSL
Search

This Project

Search

results by YAHOO! search

SF.net Subscription
• Subscribe Now
• Manage Subscription
• Realtime Statistics
• Direct Download
• Priority Tech Support
• Project Monitoring

SF.net Resources
• Site Docs
• Site Status (10/20)
• SF.net Supporters
• Compile Farm
• Project Help Wanted
• New Releases
• SF.net Engineer Blog
• Get Support

Site Sponsors

Linux
Integration
Confidence

Online Meetings
Made Easy
TRY IT FREE!

Donate to JMRI
Model Railroad
Interface
Latest supporters:
Anonymous donor
(s) (View All)

Most Active
1 Azureus - BitTorrent
Client
2 Gaim
3 7-Zip
4 phpMyAdmin

Project UNIX name: jmri
Registered: 2001-05-06 22:18
Activity Percentile (last week): 99.63
View project activity statistics
View list of RSS feeds available for this project

http://sourceforge.net/projects/jmri/

10/23/2005
**Exhibit 2 Page 2 of 3**

5 Ares Galaxy  
6 Compiere ERP + CRM Business Solution  
7 FCkeditor  
8 ABC [Yet Another BitTorrent Client]  
9 Asterisk@Home  
10 FileZilla

**More Activity>>**

**Top Downloads**

1 Azureus - BitTorrent Client  
2 eMule  
3 Ares Galaxy  
4 BitTorrent  
5 Shareaza  
6 DC++  
7 GTK+ and The GIMP installers for Windows  
8 Audacity  
9 eMule Plus  
10 NASA World Wind

**More Statistics>>**

**Network Access**

**Message:** The page cannot be displayed

**Explanation:** There is a and it cannot be displayed.

**Try the following:**
- Refresh page: Use button. The timeout  
- Check spelling: C

**SF.net Services**

- Jobs  
- PriceGrabber  
- Geronimo Download  
- Partner Product Offers  
- Get Broadband  
- Sponsor Solutions

**Sponsored Content**

ITA SM a complete email security Solution  
Simple Web Conferencing Try It

---

**Latest File Releases**

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<th>Date</th>
<th>Notes / Monitor</th>
<th>Download</th>
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<td>🕒 - 📞 Download</td>
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[View ALL Project Files]

---

**Latest News**

- **JMRI 1.7.2 test version is available**  
  jacobson - 2005-08-02  
  22:22 [Read More/Comment]

- **JMRI production version 1.6 is available**  
  jacobson - 2005-06-20  
  05:34 [Read More/Comment]

- **JMRI 1.7.1 test release is available**  
  jacobson - 2005-06-18  
  10:17 [Read More/Comment]

- **JMRI test version 1.5.7 is available**  
  jacobson - 2005-06-05  
  09:47

http://sourceforge.net/projects/jmri/  
10/23/2005
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<td>Public Forums (4 messages in 3 forums)</td>
<td>[Read More/Comment]</td>
</tr>
<tr>
<td>DocManager: Project Documentation</td>
<td></td>
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<td>Mailing Lists (4 total)</td>
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<td>Screenshots</td>
<td></td>
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<tr>
<td>Task Manager - Documentation - Releases</td>
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<tr>
<td>CVS Repository (4,316 commits, 1,481 adds) - Browse CVS</td>
<td></td>
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**JMRI test version 1.5.6 has been released**

`jacobsen` - 2005-01-02

16:08

[Read More/Comment]

**JMRI/DecoderPro production version 1.4 is available**

`jacobsen` - 2004-04-09

01:44

[Read More/Comment]

**JMRI/DecoderPro test version 1.3.11 is available**

`jacobsen` - 2004-03-26

11:09

[Read More/Comment]

**JMRI/DecoderPro test version 1.3.8 available**

`jacobsen` - 2003-12-30

12:44

[Read More/Comment]

**DecoderPro new production version 1.2.5**

`jacobsen` - 2003-08-24

08:30

[Read More/Comment]

**JMRI/DecoderPro test version 1.2.2 is available**

`jacobsen` - 2003-08-05

18:35

[Read More/Comment]
Release Notes for JMRI 1.1.14 test release

Date: May 31, 2003

From: Bob Jacobsen (Bob_Jacobsen at lbl.gov, 510-486-7355, fax 510-495-2957)

Subject: JMRI/DecoderPro test version 1.1.14 is now available

Notes:

- I strongly recommend that you save copies of your decoder CV values before experimenting with that last item. You should also read the following writeups:
  - http://www.digitrax.com/LOCK.htm
  - http://groups.yahoo.com/group/jmriusers/message/2219
- I'd like to get a discussion going on how we can include this feature in the normal operation of DecoderPro itself. The current tool takes too much attention to detail to use.
- I'd also like to know whether the printing works on Linux machines. Could somebody try it and let me know? Thanks.

Changes since 1.1.13:

- Speedometer will now accept distances with and without decimal points
- Fix Digitrax 1x3 default values for BEMF CVs (thanks to Bob Blackwell)
- SlotMonitor now has option to show/not show system slots 0, 120-127. By default, these are not shown.
- NCE N12 series decoder definitions (thanks to Jim Scorse)
- Automation classes got an update to include handling of yellow signals
Please note: If you want your donation to be credited to your SourceForge.net user account (so your name will appear on the supporters page and your user account will have the donor icon), you must login to SourceForge.net before making your donation. (You need not login if you want your donation to be anonymous.)

Click on one of the PayPal buttons below to donate money to JMRI Model Railroad Interface.

<table>
<thead>
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<th>Donate $5</th>
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<th>Donate $20</th>
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<th>Donate $100</th>
<th>Donate $250</th>
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Information provided (by this user or project's admin) about donations:

Donations go to defray the costs of the JMRI project. Our current priority is to pay the filing fees for trademark and copyright protection. We need this to help ensure that JMRI & DecoderPro continue to be freely available. In the past, we've spent money on a better serial library (to reduce the number of problems with old Windows computers), better installer tools, and sending CDs to manufacturers for testing. Every bit helps!

Instructions and Frequently Asked Questions

This page includes information about how donations may be made, how the donated money will be used, and information about the public recognition you will receive (unless you opt-out) after making a donation. We appreciate your interest in contributing to JMRI Model Railroad Interface (jmri) and want to make this experience one that you will feel good about. Please read the entirety of this page.

Table of Contents

- Why should I donate money to JMRI Model Railroad Interface (jmri)? How will my donation be used?
- How do I donate money to JMRI Model Railroad Interface (jmri)?

JMRI Model Railroad Interface (jmri)

Supporters

Information provided (by this user or project's admin) about donations:

Donations go to defray the costs of the JMRI project. Our current priority is to pay the filing fees for trademark and copyright protection. We need this help to ensure that JMRI & DecoderPro continue to be freely available. In the past, we've spent money on a better serial library (to reduce the number of problems with old Windows computers), better installer tools, and sending CDs to manufacturers for testing. Every bit helps!

Donate to JMRI Model Railroad Interface (jmri)

The following users have made contributions to JMRI Model Railroad Interface (jmri):

October 2004, week 3: n3ix*, crosland*, rcblackwell*, pdimond*, markysparky628*, cardco*, acsxfan1*, djduchamp*, plocher*

June 2005, week 2: gordonmoore*

Comments Submitted By Contributors:

<table>
<thead>
<tr>
<th>Username</th>
<th>Quotation</th>
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<tbody>
<tr>
<td>nobody</td>
<td>Thanks for a great program.</td>
</tr>
<tr>
<td>nobody</td>
<td>Great Job, Any pointers to getting this working on Linux ?</td>
</tr>
</tbody>
</table>

http://sourceforge.net/project/project_donations.php?group_id=26788 10/21/2005
At 3:26 PM -0800 2/6/04, kam jmri wrote:
> Paul also needs to add that if you distribute or resell open source
> product, you need to get license for IP if the product infringes any
> patents.
>
> ...  
>
> Because open source license only covers copyright and the IP of the
> contributor who contributes to the open source.
> > That is why most oem's who sell linux, usually license the linux
> > version from ibm, (or HP/redhat etc), and mark up the price as
> > "support", even though they pull the code from the net. Decoder
> > pro/jmri come will come into the same camp.
> > So there are really two parts to the "open source" distribution issue.
> > Getting it free on the net is one thing; selling it in the market is a
> > totally different beast. Free on the net usually means that the
> > copyright is clear (you hope; look at the SCO lawsuit). Free on the
> > net, does not mean that the IP is free.
>
> There are several issues confused here: patent vs copyright vs trade secrets, and personal
> vs corporate liability.

Bottom line: Open-source software is on firm legal grounds. JMRI is neither the first
such project, nor the largest, and there is experience with how open-source software
ownership issues play out in the courts. We're OK.

Details: First, let me address patent vs copyright vs trade secrets for the project as a
whole.

JMRI has _no_ copyright issues so long as somebody is using it consistent with its own
license. The authors of the various parts retain copyright in the parts they have written
(see copyright notices in files, but note that under the Berne convention those are not
even necessary). By contributing them, they have agreed to redistribution under the terms
of the license we use, which has been examined pretty closely by competent attorneys.

JMRI contains _no_ trade secrets, by definition. All of the contributed documents are
owned by the contributors, who have agreed to publication of them.

JMRI code may conflict with patent rights owned by others. Should that happen, and a
successful suit be brought, it will be necessary to remove the conflicting code. However,
under U.S. patent law, as the project has received no direct economic benefit from the
malappropriation of the patent, the damages are strictly limited. If we stop our own
distribution promptly upon notification, a judgement against us couldn't be for much more
than legal costs. And it's not at all clear who among the contributors to the project
could even be served with a suit.

Note that JMRI does contain certain parts that are treated specially.
There's code in there that was copied from a book, but the book explicitly allowed that so
long as proper credit was given. There's code that is licensed for use _only_ within
JMRI, not as a general algorithm. And there are documents that have been created from
information that's under NDA, but has been approved for this use.

The actions of individual contributors are another matter. If somebody contributes code
to JMRI that is _not_ theirs to contribute, e.g. is in violation of a non-disclosure
agreement (NDA) they signed, is copyright by somebody else without license, or contains
trade-secret, the courts may well be inclined to take that position, especially if the
infringement is relatively minor, since the courts have already made it clear that
such an approach is warranted. But so long as we pull the offending code or
document immediately upon notification (which we definitely would!!!), the legal
precedents are clear.

Of course, defending against a suit could be costly, even if the suit is without
grounds. But so long as we're reasonable citizens about this it's unlikely that any
body would find it worthwhile to sue.

Bob

-----------------

Bob Jacobsen (Bob_Jacobsen@lbl.gov, 510-486-7355, fax 510-495-2957)

-------------------------- Yahoo! Groups Sponsor --------------------------

Buy Ink Cartridges or Refill Kits for your HP, Epson, Canon or Lexmark
Printer at MyInks.com. Free s/h on orders $50 or more to the US & Canada.
http://www.cltracking.com/1.asp?cid=5511
http://us.click.yahoo.com/mOAaAA/3ex6AA/qnsNAA/YSTolB/TM

-------------------------- Yahoo! Groups Links --------------------------

<*> To visit your group on the web, go to:
   http://groups.yahoo.com/group/jmriusers/

<*> To unsubscribe from this group, send an email to:
   jmriusers-unsubscribe@yahoogroups.com

<*> Your use of Yahoo! Groups is subject to:
   http://docs.yahoo.com/info/terms/

Exhibit 6 page 2 of 2
jmri_strategy - JMRI Strategy

Home

Members Only
Messages
Post
Files
Photos
Links
Database
Polls
Members
Calendar

Activity within 7 days: 1 New Message

Description

Securing and defending the JMRI trademarks.

$$ CLICK HERE $$
Help support the JMRI project Trademark Fund!

Message History

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Group Email Addresses

Related Link: http://groups.yahoo.com/group/jmriusers
Post message: jmri_strategy@yahoogroups.com
Subscribe: jmri_strategy-subscribe@yahoogroups.com
Unsubscribe: jmri_strategy-unsubscribe@yahoogroups.com
List owner: jmri_strategy-owner@yahoogroups.com

YAHO! SPONSOR RESULTS


Strasburg Model Railroad Shop - A 2,000 square foot model railroaders paradise, located in Lancaster County, PA. Order online with quick shipping. www.etrainshop.com

Model Trains at Discount Trains Online - Over 30,000 different model train items online. Order online or by toll-free phone call.

http://groups.yahoo.com/group/jmri_strategy/ 10/23/2005
Members

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At 11:43 PM -0700 4/13/04, kam jmri wrote:
> [MAK] > Are you making the XML schema freely available for any use and
> unencumbered by licensing/patents or does it's use require a license?
> [MAK] KAM Protocol specs are always open, the spec is more open then
> the jmri open agreement that everyone is using. We don't restrict
> commercialization of the spec, nor use or derivative works. We tend to
> "control the spec" from a point of maintenance. In the past 10 years,
> we have never denied any changes to our api or xml specs.

I don't agree with Matt's characterization of the MIT "Artistic License" used by JMRI.

"Everyone is entitled to his own opinion, but not his own facts."
- Sen. Daniel Patrick Moynihan

The JMRI license permits commercial use; at least two commerical products are already
using it. It doesn't permit non-attributed use, commercial or otherwise, so if you create
a derivative work that uses part or all of JMRI, it has to acknowledge that. But once
you've done that, there's no restriction on use or derivative works, nor on
commercialization.

I'm sure people will make their own decisions as to which approach is less restrictive.

Bob
--
Bob_Jacobsen@lbl.gov, +1-510-486-7355, fax +1-510-643-8497, AIM JacobsenRG

Yahoo! Groups Links

<** To visit your group on the web, go to:
  http://groups.yahoo.com/group/jmriusers/

<** To unsubscribe from this group, send an email to:
  jmriusers-unsubscribe@yahoogroups.com

<** Your use of Yahoo! Groups is subject to:
  http://docs.yahoo.com/info/terms/
From: Ralph Kimball [ralphkimball@charter.net]
Sent: Thursday, October 20, 2005 5:53 PM
To: sales
Subject: JMRI

Good Evening:

I think I am correct in understanding that you are suing JMRI for patent infringement. You certainly are entitled to sue whomever you wish. As a model railroading consumer, I think these types of lawsuits are detrimental to our hobby, nobody wins and the consumer is the biggest loser. The only winners are the attorneys.

Until the lawsuit is dropped I will no longer consider KAM products. I expressed the same opinion to MTH when they entered into their lawsuit against Lionel.

This hobby is growing by leaps and bounds and there is room for everyone. A rising tide floats all boats.

Regards,

Ralph

Ralph A. Kimball, Jr.
55 Maple Street
Paxton, MA 01612
508-755-1873
ralphkimball@charter.net

10/24/2005
From: Woodman [woodman@west.net]
Sent: Saturday, October 22, 2005 8:25 PM
To: sales; support
Subject: Re: Patent Dispute

Gentlemen:

Be advised that, from this date, I will not be buying any product manufactured by KAM Industries, any subsidiary or partner. Likewise, I will be informing of the dispute regarding putative patents owned by KAM Industries the following: Members of the three model railroad clubs to which I belong, the 30+ railroading mail lists I participate in and the several prototype and modeling organizations I have membership in. I will inform them of my decision and the reasons I am making the decision and will urge them to do the same.

This may seem trivial to you but, I am constructing, with professional assistance, a layout and workshop in a 1800 sq. ft. bldg. that is being designed from the floor up for digital operations and communications. KAM Industries products, and those of its' partners, have been removed from consideration as possible solutions for this layout and the two contractors involved have been informed of this fact. As someone who has been involved with computer networks since the University of California, Santa Barbara, became the third site in what was to become the Internet and who is technically able to evaluate both sides of the dispute, I have found KAM Industries claims to be without merit and reminiscent of the SCO/LINUX actions, designed to deliberately have a chilling effect on the production of Open Source solutions.

The courts are not the only decision makers involved here since I believe that the market speaks with a much more authoritative voice.

This email is being blind copied to 107 recipients. Have a nice day.

Michael Hadley Woodill
Santa Barbara CA

10/24/2005
KAMIND Associates, Inc
2373 NW 185th Ave
Hillsboro, OR 97124
(503) 291-1221

Account Statement
Account Number: 0010008
Balance: $206,047.96

Amount Enclosed: 

Exhibit 13

Please detach and enclose top portion with payment.

Account Summary

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<td>10/15/2005</td>
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Previous Balance: $203,000.00
New Charges: $3,047.96
Credits / Payments: $0.00

New Balance: $206,047.96

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Account Receivable Activity

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<td>New Charge</td>
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<td>FC-47</td>
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<td>Finance Charge</td>
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<td>DC-53</td>
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<td>Finance charge adjustment Sept 9/15 - 10/15</td>
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Total: $206,047.90 $0.00 $206,047.90