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9 Attorneys for Plaintiff  
ROBERT JACOBSEN

10  
11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 ROBERT JACOBSEN, an individual, )  
15 )  
Plaintiff, )  
16 v. )  
17 )  
MATTHEW KATZER, an individual, and )  
18 KAMIND ASSOCIATES, INC., an Oregon )  
corporation dba KAM Industries, )  
19 )  
Defendants. )  
20 )  
21 \_\_\_\_\_)

No. C06-1905-JSW  
**MOTION FOR ISSUANCE OF LETTER  
OF REQUEST**  
Courtroom: F, 15th Floor  
Judge: Hon. James Larson  
Date: Friday, Aug. 26, 2009  
Time: 9:00 a.m.

22 NOTICE OF MOTION

23 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD

24 PLEASE TAKE NOTICE that, on Wednesday, August 26, 2009, at 9:00 a.m. in Courtroom  
25 F, 15th floor of the San Francisco Division of the United States District Court for the Northern  
26 District of California, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff  
27 Robert Jacobsen will seek a letter of request to be directed, pursuant to the Hague Convention on  
28

1 Evidence, to the Aargau Central Cantonal Authority in Switzerland, requesting the examination of  
2 a necessary and material witness, Robert Bouwens, on oral examination of interrogatories and  
3 directing production of documents. This motion is based on the following.

#### 4 FACTS

5 Plaintiff Robert Jacobsen has accused Defendants Matthew Katzer and KAMIND  
6 Associates, Inc. of infringing his copyrights in Java Model Railroad Interface (JMRI) software.  
7 Katzer and KAMIND acknowledge that they copied, modified, and distributed portions of JMRI  
8 software, but say that Robert Bouwens, a Swiss national living in the Aargau canton in  
9 Switzerland, committed the acts. Bouwens' testimony directly relates to willfulness elements of  
10 the copyright infringement and DMCA violation claims.

11 As far as Jacobsen is aware, the last time that Bouwens was in the United States was July  
12 2008. The parties have contacted Bouwens. Bouwens did not respond to Jacobsen's email.  
13 Defendant Katzer and Defendants' counsel, Scott Jerger, has also contacted Bouwens to see if  
14 Bouwens would be willing to make himself available for deposition. Despite repeated attempts to  
15 obtain Bouwens' cooperation, Bouwens finally responded, and refused to cooperate.

#### 16 ARGUMENT

17 Federal Rules of Civil Procedure 28(b) states that a deposition may be taken pursuant to  
18 any applicable convention or treaty, or upon the issuance of a letter of request, also known as a  
19 letter rogatory. Plaintiff seeks to depose and obtain documents from Robert Bouwens, a Swiss  
20 national living in Switzerland, who is unwilling to testify voluntarily. In these circumstances, a  
21 letter of request is the only means to obtain the testimony.

22 Switzerland is a signatory to the Convention on the Taking of Evidence Abroad in Civil and  
23 Commercial Matters [hereinafter Hague Evidence Convention]. Switzerland has some of the  
24 strictest laws, including criminal statutes, relating to foreigners gathering evidence for use in a  
25 foreign court. Some lawyers who have sought evidence in Switzerland while unaware of these  
26 rules have been subjected to criminal prosecution. A letter request made through diplomatic  
27 channels pursuant to the Hague Evidence Convention is the only way to obtain evidence from an  
28 unwilling witness.

