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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)
22)

No. C06-1905-JSW
**REPLY MEMORANDUM TO
DEFENDANTS KATZER AND KAMIND
ASSOCIATES, INC.'S RESPONSE TO
MOTION FOR ISSUANCE OF LETTER
OF REQUEST**
Courtroom: F, 15th Floor
Judge: Hon. James Larson
Date: Weds., Sept. 23, 2009
Time: 9:00 a.m.

23 INTRODUCTION

24 Defendants Matthew Katzer and KAMIND Associates, Inc.'s do not object to the issuance
25 of letter of request. Plaintiff Robert Jacobsen respectfully asks this Court order the issuance of the
26 letter.
27

1 ARGUMENT

2 Defendants Matthew Katzer and KAMIND Associates, Inc. do not object to Jacobsen's
3 motion for a letter of request, directed to the Swiss authorities in the canton where Robert
4 Bouwens, Defendants' employee, works. Thus, this Court should issue the letter of request.

5 Defendants quibble about certain phrasing in the letter of request, but these do not provide a
6 reason to bar the issuance of the letter of request. The Second Amended Complaint does indeed
7 state claims for declaratory judgment of non-infringement, invalidity, and unenforceability—
8 causes of action that were also in the two earlier complaints. This district court dismissed these
9 causes of action several months after Defendants filed a disclaimer, one day after missing Judge
10 Laporte's court-ordered deadline to produce their claim construction, infringement, validity, and
11 enforceability positions. Order [Docket # 199]; Declaration of Matthew Katzer, Ex. A [Docket
12 #203]. Defendants argue that because the district court dismissed these causes of action, the
13 district court's order treats the causes of action as if they never existed. Defendants tried that
14 argument with the Federal Circuit when they sought to transfer the pending appeal to the Ninth
15 Circuit. It didn't work. See Exhibit 1 (Federal Circuit order denying motion to transfer). As for
16 the statements that Katzer admitted to copying, modifying, and distributing Jacobsen's code, and
17 admitted ownership, this Court need look no further than the admissions Katzer made to the
18 Federal Circuit in the previous appeal. Jacobsen v. Katzer, 535 F.3d 1373, 1379 (Fed. Cir. 2008)
19 ("The parties do not dispute that Jacobsen is the holder of a copyright in certain materials
20 distributed through his website. Katzer/Kamind also admits that portions of the DecoderPro
21 software were copied, modified, and distributed as a part of the Decoder Commander software.")
22 (footnote omitted).

23 In addition, Katzer takes issue with Jacobsen's description that the QSI manual is an
24 instruction manual, and that Jacobsen hasn't adequately identified his work. Katzer also objects to
25 Jacobsen's description that Katzer is blaming Bouwens for infringement. Jacobsen invites the
26 Court to review the QSI manual, which was filed as Exhibit E with Mr. Katzer's declaration.
27 [Docket #261]. Jacobsen believes his description of the QSI manual is accurate. As for identifying

1 his work, Jacobsen has made the appropriate copyright claim in his registrations. In the previous
2 appeal, the Federal Circuit did not find the registration to be problematic, and neither should this
3 Court. Finally, as for blaming Bouwens, Katzer is quick to point the finger at Bouwens for his
4 work in copying and modifying Jacobsen's Decoder Definition files. Declaration of Matthew
5 Katzer [Docket #261] at 1-2. It's fair to state that Katzer is attempting to blame Bouwens.

6 CONCLUSION

7 For the reasons stated above, the Court should grant the order to issue the letter of request.

8 Respectfully submitted,

9
10 DATED: August 12, 2009

By _____ /s/
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