

Hall Declaration Exhibit G

1 even think about him.

2 Q. Okay.

3 A. At the end of the discussion that I had with I
4 guess it was Jacobsen at one of the shows, he said, Will
5 you support this product? And I said, yes, I would. And
6 I told Gerry to support the product.

7 Q. Okay.

8 A. It didn't occur to me how much support was
9 actually going on.

10 Q. Okay. Was Gerry Pruss violating any QSI policy
11 by providing this information to Mike Mosher or to Howard
12 Penny?

13 MR. RUSSELL: I'm going to have to object to
14 the question, because we don't know what information has
15 been presented, and Fred hasn't reviewed the documents to
16 know what's in it. Again, if you have a particular
17 question regarding some information that was provided by
18 somebody at QSI to somebody, we would appreciate a
19 question as opposed to general vague assertions that Fred
20 clearly doesn't know about since he hasn't seen the
21 documents.

22 BY MS. HALL:

23 Q. Mr. Severson, let's go ahead and start looking
24 at some of these documents then.

25 A. All right.

1 know that someone actually reads this monster manual."

2 A. Where is that at?

3 Q. Let's see. It's the last sentence -- last full
4 sentence in your e-mail.

5 A. Oh, it's good to know somebody actually reads
6 this -- yeah. Uh-huh.

7 Q. Okay. So this manual isn't exactly a best
8 seller?

9 A. Pardon me?

10 Q. This e-mail -- this manual is not exactly a best
11 seller, is it?

12 A. Do I say that in there?

13 Q. No. But you wouldn't say -- you acknowledge
14 that it is not widely read?

15 A. Well, it's kind of like reading *War and Peace*.
16 I mean, it's a big manual. So people use it as a
17 reference manual. I don't think I've ever seen anybody
18 read the whole thing.

19 Q. Would you consider it a classic like *War and*
20 *Peace*?

21 MR. RUSSELL: Objection.

22 THE WITNESS: Well, I would personally. No.
23 I mean, I think I explain things well, so I'm pretty proud
24 of the manual.

25 BY MS. HALL:

1 Q. Did he -- what did he say prior to sending this
2 e-mail to you?

3 A. Prior to sending the e-mail to me? Well, I
4 mean, he stopped over a number of times to talk to me. I
5 mean --

6 Q. Did he talk with you about this -- about this
7 particular issue?

8 A. I believe so.

9 Q. And what did he say?

10 A. He said that he was being sued for copyright
11 violation of apparently material that QSI had written.

12 Q. Did he say that he was also being sued for other
13 information, other files that had nothing to do with QSI?

14 A. I'm not sure.

15 Q. Okay.

16 A. I would like to go to the restroom, if you don't
17 mind.

18 Q. All right. Let's go ahead and take a break.

19 THE VIDEOGRAPHER: Okay. We are going off
20 the record at 10:39 a.m.

21 (Recess taken from 10:39 a.m.
22 until 10:46 a.m.)

23 THE VIDEOGRAPHER: We're back on the record.

24 MS. HALL: And what is the time?

25 THE VIDEOGRAPHER: 10:46.

1 BY MS. HALL:

2 Q. Is there any other purpose to these assignments
3 other than to permit Matthew Katzer to borrow QSI's rights
4 to sue Bob Jacobsen?

5 MR. RUSSELL: To borrow? I'm going to have
6 to --

7 BY MS. HALL:

8 Q. Do you understand the question, Mr. Severson?

9 MR. RUSSELL: -- object, because I don't
10 understand.

11 THE WITNESS: I thought I just answered the
12 question. The only reason that these documents were
13 signed from QSI's point of view was to establish QSI's
14 ownership of our copyrighted material with a lawsuit that
15 was still pending.

16 BY MS. HALL:

17 Q. I'm sorry. Explain that again to me.

18 A. Well, my understanding was that Bob Jacobsen
19 sued Matt over material that I wrote. I can't afford to
20 have a misunderstanding about what I own and what I don't
21 own in terms of supplying products to my customers. In
22 other words, manuals to them could also be sued by Bob
23 Jacobsen for copyright infringement. I have to establish
24 ownership of my own material.

25 Q. Are you saying that you don't establish

1 But your average model railroader having a QSI chip would
2 not necessarily know that a CV.PI.SI has a particular
3 function, whether it's a whistle or a bell or a horn or
4 what have you?

5 A. No. They would need some reference manual or
6 whatever to determine -- or instruction manual that maybe
7 came with the locomotive.

8 Q. They would need to have a particular description
9 of what that particular CV.PI.SI is; is that right?

10 A. They would need to have a description of what
11 that CV does.

12 Q. Okay. And what that particular PI and SI do
13 associated with that CV?

14 A. They would need that in order to actually change
15 the programming for that function, yes.

16 Q. Okay. Okay. So it's necessary for its
17 functionality? Is that a -- is that a -- is that a
18 correct -- would that be a proper characterization?

19 MR. RUSSELL: I'm going to have to object,
20 because I don't know what is necessary because the
21 question is -- I don't understand the question. What is
22 necessary for what?

23 BY MS. HALL:

24 Q. Mr. Severson, do you understand the question?

25 A. We have a -- we have our own software that

1 that doesn't reflect what he's being -- what is in the
2 lawsuit. In the lawsuit is NMRA DCC Reference Manual for
3 QSI Quantum HO Equipped Locomotives Version 3.0, 4.02,
4 4.2, 4.3 and 4.4.

5 A. Okay. This would be the reference manual,
6 right, rather than the instruction manuals that are
7 included with the locomotives?

8 Q. I would assume so.

9 A. And the question is?

10 Q. Is there -- what is the market for the QSI
11 manuals?

12 MR. RUSSELL: I'm going to have to object,
13 because it's vague because I don't understand what a
14 market is.

15 BY MS. HALL:

16 Q. Mr. Severson, do you understand the question?

17 A. No. I don't. Are you saying do we sell the
18 manual?

19 Q. Yeah. Sure.

20 A. No. It's on our website.

21 Q. Does it have a suggested retail price?

22 A. No. We used to. I think the QS-3 -- I think
23 the QS-3 is listed in here -- 3000, the QS-3000. They had
24 a list price I believe of \$20, but don't hold me to that.
25 I think that was the original estimate.

1 becomes our application specific integrated circuit, which
2 we own, and the firmware that we send to them to include
3 with the product when they assemble it.

4 Q. Okay. Does JMRI's QSI decoder definitions hurt
5 the market for your product?

6 A. Not that I am aware of.

7 Q. Okay.

8 A. But like I said, it could if the information is
9 actually wrong.

10 MS. HALL: Move to strike the last part as
11 speculation.

12 MR. RUSSELL: I object. He answered your
13 question as stated. You're stuck with his answer.

14 BY MS. HALL:

15 Q. Does JMRI's inclusion of decoder definitions
16 encourage model railroaders to buy and use QSI decoder
17 chips or your product?

18 A. I don't know.

19 Q. Okay. Let's see here. We're going to go
20 through just a few more things. Then we'll get to the
21 stack of e-mails.

22 A. Okay. I'm going to take a quick break. I'll be
23 right back.

24 Q. That sounds good.

25 THE VIDEOGRAPHER: We are off the record at

1 A. Yes.

2 Q. Okay. All right. Let's take a look at the
3 attached file, which is RGJ_HP.00000017 through 19. Do
4 you recognize these?

5 A. Yes.

6 Q. Okay. And what are they?

7 A. This is a list of released Quantum HO
8 locomotives. This is probably Q-1, although it doesn't
9 say so. We've done a number of versions since this,
10 but --

11 Q. Okay.

12 A. Yeah. This has got to be -- yeah, this is
13 pretty old. All right. It's many pages now.

14 Q. Okay. And you can see from the top it is --

15 A. April 5th or April '05.

16 Q. Okay. April 11, '05. Okay. In providing this
17 information, would you say that Mr. Pruss is discouraging
18 JMRI developers from creating their work?

19 A. If you're going to go through this whole stack
20 here and ask me whether or not I told Gerry to support
21 JMRI, I did.

22 Q. Okay. All right.

23 A. Okay?

24 Q. Okay.

25 A. I stand behind that. I told him at the Detroit

1 establish ownership of my intellectual property, my
2 copyright material. And it's important that I have that.
3 If there's any question to that, then I am in a position
4 to where I cannot deal with Microsoft, I cannot deal with
5 my customers.

6 Q. Okay.

7 A. That's why I'm here.

8 Q. Okay.

9 A. That is the whole thing.

10 Q. Okay. So if I provided evidence to you through
11 Mr. Jacobsen's copyright registrations that state it
12 specifically excludes underlying manufacturer data, then
13 you wouldn't have a problem anymore, would you?

14 MR. RUSSELL: I think you're calling for a
15 legal conclusion as to what would or would not constitute
16 copyright infringement.

17 BY MS. HALL:

18 Q. Mr. Severson, answer the question.

19 A. I would need to review the lawsuit with Matt
20 Katzer and see if he was indeed being sued for copyright
21 material that I wrote. Regardless of what Jacobsen said,
22 I need to find that out. If that's the case, then there
23 is an issue of ownership. I need to rectify that issue of
24 ownership.

25 Q. Let's continue. All right. We are working --

1 last week, last Thursday and last Friday during their
2 depositions. And what you had said -- well, actually, if
3 I understand what you had said before we had -- before we
4 took a break for lunch, what you said is that -- is that
5 you agreed that you had told -- that you had told Bob --
6 actually, I'll tell you what. Let me have you put it in
7 your own words instead of me saying what you said.

8 A. About?

9 Q. About Bob Jacobsen's and JMRI's use of
10 information or data for writing decoder definitions for
11 QSI decoders.

12 A. What I told Bob is that he has access to
13 information that we have in our manuals, reference
14 manuals, regular manuals that are put out with the
15 locomotives, to help him design his product so that it
16 works with our product.

17 Q. Okay.

18 A. This is information about how our product works.

19 Q. Okay.

20 A. In addition, I told Gerry that if the software
21 writers for Decoder Pro need help in understanding how our
22 products work, that he was authorized by me to give them
23 as much help as they needed.

24 Q. Okay. Okay. Getting to that, do you have any
25 reason to believe that Bob Jacobsen or JMRI developers

1 Howard.

2 Q. Uh-huh. Uh-huh. Would this information be
3 within the scope of your permission -- your direction to
4 Mr. Pruss?

5 A. Well, this stuff is provided in each of the
6 individual manuals that is supplied with the locomotive.
7 Not all of them. I mean just for that locomotive. So if
8 you went and got all the manuals for all the locomotives,
9 yeah, you would have this. Gerry has just summarized it
10 for convenience.

11 Q. Okay. Did Gerry have permission to send this
12 information to JMRI developers?

13 A. Well, it's public information.

14 Q. Okay.

15 A. I mean, it's out there. Anybody can have it.

16 Q. Did Gerry have permission to give this to JMRI
17 developers --

18 A. Yes.

19 Q. -- so they -- okay. So they could use it to
20 create decoder definitions?

21 A. Yes. Right. I mentioned that earlier. I
22 totally supported that.

23 Q. Okay. All right. All right. Let's see here.
24 Let's move to Penny Exhibit No. 29. This is
25 RGJ_HP.00000069.

1 is reviewing this document. It is taking some time, but
2 then again it is a lengthy document.

3 THE WITNESS: Well, there is some things in
4 here I don't recognize.

5 BY MS. HALL:

6 Q. That's okay.

7 A. And I don't know whether this covers all of the
8 models that were listed in that previous file. Did you
9 want to know whether they were?

10 Q. No. No. That's fine. What I'd like you to do
11 is I would like you to look through there. The question I
12 have for you, when you're done looking through there, is
13 whether Gerry Pruss was authorized to send this file to
14 JMRI developers so that they could create decoder
15 definitions for QSI decoders.

16 A. Yeah. I think this is all public stuff here.
17 This is already available in the reference manuals in the
18 individual manuals themselves. It's nicely done, I mean,
19 because it's been summarized nicely here. But, yeah, I
20 certainly authorized Gerry to send out material that was
21 already public, like the values, like the numbers and that
22 sort of stuff associated with these CVs. Yeah.

23 In fact, I'm surprised that he did this, because
24 it was already available on our CV Manager, our product
25 that's like Decoder Pro, but it's only to support our own

1 Pruss have your authorization to send this information to
2 JMRI developers so that they could create decoder
3 definitions to support the QSI decoders?

4 A. You know, in my personal opinion it looks like
5 Gerry did these guys a favor by con-catenating the
6 information that was already available, in a format that
7 made it easy for them to incorporate it into their
8 product. That's my guess. And then Gerry could certainly
9 be able to answer that. But that's exactly what it looks
10 like. But, yeah, I mean, he had my authorization to send
11 this kind of information out. This is just straight
12 information that's available --

13 Q. Yeah.

14 A. -- in the reference manual and in CV Manager.
15 (Reviewing document.) It looks like it was done for each
16 of the models in the same way. It's just -- why he did it
17 differently, I have no idea.

18 Gerry's a tool writer. He's always writing
19 software tools to make things easier, particularly the
20 presentation of data, and I suspect that's what happened
21 here. But so far I don't see anything that is not in the
22 public domain in our manuals, but I'm not going through
23 this line by line, you know.

24 Q. No. No. No.

25 A. I'm just giving this an overview.

1 A. Well, every -- well, oftentimes you have the
2 same function key that controls the warning whistle or
3 warning valve, warning horn. So we just have that in our
4 instruction sheets so that we don't have to have a
5 separate word in there like horn or whistle. You know,
6 it's just an easier way to say it.

7 Q. Okay. And does this appear on real trains?

8 A. No. Usually they have a horn or a whistle.

9 Q. Okay. Shut down, do you know what that is?

10 A. Shutting an engine down, yes.

11 Q. And does that appear on real trains?

12 A. Yes.

13 Q. Forward/reverse only, do you know what that is?

14 A. Forward/reverse only? No. I don't. I have a
15 vague memory that I wrote that in the instruction manual
16 someplace, but I can't remember.

17 Q. Okay. Squealing brakes, do you know what that
18 is?

19 A. Brakes squeal.

20 Q. And does that appear on real trains?

21 A. Yes.

22 Q. Pumps, do you know what that is?

23 A. It's a short form of air pumps, yes.

24 Q. Okay. And that appears on real trains?

25 A. Yes.

1 implied licenses to use your materials?

2 MS. HALL: Objection as to implied license.
3 That's not defined.

4 BY MR. RUSSELL:

5 Q. Go ahead and answer the question.

6 A. No. No license of any kind.

7 Q. In your opinion does the authorization to,
8 quote/unquote, create files and other things include the
9 authorization to incorporate your copyrighted text in
10 their files?

11 A. No.

12 Q. So you'd be surprised to find other people
13 having incorporated a lot of your text?

14 A. Yes.

15 Q. But you would expect them to use the information
16 to figure out how to program a decoder?

17 A. Yes.

18 Q. So they can use your materials?

19 A. Yes.

20 Q. And you once talked about some of the rationale
21 for your maintaining some control over your copyrighted
22 materials. And is one of those reasons that the values,
23 the CV values I think is what they're referred to as, are
24 often hard to get correct when you enter them into the
25 programmer?

1 Q. Did you ever -- do you recall ever stating that
2 you gave him permission because you wanted to ensure that
3 Decoder Pro support for QSI Industries decoders was
4 strong?

5 A. Yeah. I told him that I would support his
6 product, sure. I mean, it helps us if, you know, his
7 product works with our product. It helps him.

8 Q. So when you talked to Bob, did you expect that
9 any of that discussion resulted in a license to Bob to use
10 all your textual materials, copyrighted materials?

11 A. Absolutely not. Just like any of my OEMs, I
12 require them to very carefully change their manuals, when
13 they do their own manuals, to maintain the technical
14 accuracy of it. And I look at that when I'm done, and
15 it's required to be QSI copyright when they install it
16 with their locomotives.

17 Q. So for anybody to use and modify your
18 copyrighted materials, it would require --

19 A. Sign-off from me.

20 Q. -- a sign-off from QSI Industries before you
21 would ever consider doing that?

22 A. Yeah. Right. Absolutely.

23 Q. I have no further questions.

24 A. That's the only way I can control my technical
25 documents.

1 this information to JMRI developers -- you've been
2 authorizing Gerry to send this information to JMRI
3 developers?

4 A. Right.

5 Q. And you are aware that JMRI has created these
6 files that support -- created decoder definition files
7 that support QSI decoders; is that right?

8 A. I'm aware of it by word of mouth. Like I said,
9 I've never actually downloaded JMRI or used it.

10 Q. Okay. Where in any of your documentation does
11 it say that you require sign-off by QSI?

12 A. Well, this is -- this is -- if I send somebody
13 information, like I send somebody say my reference manual,
14 I hand them my reference manual, I'm not asking them for a
15 sign-off. This is just information. This stuff that
16 Gerry is sending is just information. That's all it is.
17 It's information that's already available. Gerry was just
18 nice enough to put it in a form that these two developers
19 could easily incorporate.

20 Q. Okay. And so they were -- they -- Gerry had
21 your authorization to send this information to JMRI
22 developers?

23 A. Right.

24 Q. Knowing that JMRI developers were going to
25 create decoder definitions in support of QSI decoders?

1 A. Yes. Right. I knew that. Of course.

2 Q. Okay. So the creation of these decoder
3 definitions that support QSI decoders, that is authorized?

4 A. No. It's the information that is authorized. I
5 mean, it's got to, like, put a name on it or whatever.
6 But it's that, you know, CV13, default value is 10, you
7 know, blah, blah, blah, blah, blah. That information is
8 available through our manuals and through CV Manager and
9 whatever.

10 If they want that information so that it's --
11 you know, when they call up a QSI decoder for a particular
12 model, they can download those CV values easily into that
13 model without actually having to, you know, look at a crib
14 sheet or go to the reference manual or something like
15 that.

16 Q. Okay.

17 A. That was my understanding of how they were to
18 use it.

19 Q. Okay. So if they used that information, the CV
20 values, the descriptions --

21 A. Not the descriptions. I didn't say anything
22 about descriptions. I just said send this information
23 regarding the values to put into -- see, when you download
24 a file for a new decoder, there's no descriptions in that
25 file. It's just CV14 equals 10, or something like that.

1 terms of the millions and billions of dollars that we
2 earn, but I follow the same laws. I follow the same
3 copyright laws.

4 Q. Is a loose conglomeration of model railroad
5 developers scattered throughout the world comparable to
6 Microsoft?

7 A. You mean -- are you saying these people have
8 some kind of right to disobey the law just because they're
9 loose?

10 Q. I'm the one answering (sic) the questions.
11 Answer my question.

12 A. They're not comparable from a number of points
13 of view. Which point of view do you have in mind?

14 Q. I'm asking the questions, Mr. Severson.

15 A. I'm trying to get you to clarify. Clarify what
16 you mean when you say are they the same.

17 Q. You made a comparison between Microsoft and
18 JMRI.

19 A. Right.

20 Q. And I'm asking you, are the two really
21 comparable in your mind?

22 A. I don't think I would be sitting in this
23 deposition if they weren't.

24 Q. Okay. When you told Bob Jacobsen that he had
25 permission to use information from QSI and you authorized

1 Gerry Pruss to send that information to JMRI developers,
2 what did you think they were going to do with it?

3 A. Well, for one thing, I thought I would get
4 contacted with a contractual agreement of what they wanted
5 to do. What I didn't think that they would do would be to
6 take some of the terms that I've got in there and sue a
7 business associate over it. These are the things that
8 surprised the heck out of me.

9 Q. If you expected contractual relations with Bob
10 Jacobsen in 2006, and you had not received them after a
11 specified period of time, why didn't you contact him to
12 start negotiations?

13 A. For one thing, it is not uncommon for software
14 to take two or three years to develop. Ours certainly
15 did. The second thing is that he -- he didn't give me any
16 indication of any progress that was being done on his
17 part. Gerry could have, but Gerry was kind of open loop
18 at this point. I just says, Go ahead and support them.

19 From what I'm seeing all this stuff that's going
20 on here, nothing was happening with JMRI until it actually
21 happened. Then all of the sudden it happened, and Matt
22 got sued, and I'm sitting here right in the middle of this
23 thing not having ownership of my own stuff. It surprised
24 the heck out of me.

25 And, besides that, I'll give you a third reason.

1 I was busy. You know, we're developing our own products,
2 so I'm not sitting here, you know, watching what everybody
3 else out there is doing with our stuff, except for those
4 people that I've got relationships with, like our OEMs.
5 That I know of, because they tell me their locomotive is
6 coming out, we have a schedule, I get a manual, I get a
7 change in the manual, I look it over, I respond to it, so
8 on and so forth. None of that stuff came to me.

9 THE COURT REPORTER: I need you to slow down.

10 THE WITNESS: Oh, I'm sorry. I'm talking too
11 fast.

12 BY MS. HALL:

13 Q. You said you expected a contractual -- some sort
14 of contractual negotiations to be started?

15 A. A phone call, an e-mail, something. I didn't
16 get anything.

17 Q. You did.

18 A. I got something from you. I got something from
19 him here towards the -- you know, towards the 11th hour
20 after Matt got sued. Then I got something.

21 Q. And you didn't respond.

22 A. No. At that point, are you kidding me? Now I'm
23 in situation where I've got to establish ownership of my
24 copyrighted material. We're already in a lawsuit. Matt
25 is already in a lawsuit. I'm not going to sue Bob

1 Jacobsen over this and spend a lot of money when I can
2 establish this thing in court in another route.

3 Q. You haven't been able to identify what
4 copyrighted material was copied from your manual to JMRI
5 decoder definitions; isn't that right?

6 A. Matt gave me a piece of paper that had those
7 terms in there that I recognized as ours. I told you I
8 didn't download JMRI, so I've never used JMRI.

9 Q. So if it turned out that wasn't copyrightable,
10 then you wouldn't have any problem with it, would you?

11 MR. RUSSELL: I'm going to have to object,
12 because that calls for a legal conclusion as to what is
13 copyrightable, which is a judicial decision, not one for a
14 layperson or a non-judge.

15 BY MS. HALL:

16 Q. Answer the question.

17 A. I'm not a lawyer. I cannot tell.

18 Q. If in that vast 187-page manual 124 words appear
19 in that manual and are common in a JMRI decoder
20 definition, would you have a problem with that?

21 MR. RUSSELL: I'm going to have to object to
22 the question, because it's calling for speculation, and
23 there's no foundation for what is in a JMRI file and
24 what's not in a JMRI file. There's no evidence here.

25 THE WITNESS: I'm not able to answer that