

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

Case No. 2006 CT 12017 NC

KYLE WOODS,

Defendant.

NOTICE OF FILING AFFIDAVIT

COMES NOW, CMI, Inc., d/b/a CMI, Inc. of Kentucky ("CMI"), by and through the undersigned attorney, and files an Affidavit of CMI President Toby Hall.

Respectfully submitted,

ABEL BAND, CHARTERED
240 S. Pineapple Avenue
Post Office Box 49948
Sarasota, Florida 34230-6948
(941) 366-6660
(941) 366-3999 (fax)
Attorneys for CMI, Inc.

FILED FOR RECORD
2008 MAR 14 PM 3:59
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

By: 

Michael S. Taaffe
FL Bar No. 0490318

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand to the following individuals on this ___ day of March, 2008.

Robert Harrison, Esq.
825 S. Tamiami Trail, Suite 2
Venice, Florida 34285

Cliff Ramey, ASA, Supervisor
Office of the State Attorney
2071 Ringling Boulevard
Sarasota, Florida 34230

By: 

Michael S. Taaffe
Fla. Bar No. 490318

AFFIDAVIT OF TOBY HALL

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

Comes the Affiant TOBY HALL, and being first duly sworn, states as follows:

1) My name is Toby Hall. I am the President of CMI, Inc., located at 316 East 9th Street, Owensboro, Kentucky. I was appointed president in April of 2007. I hold a B.S. in Electrical Engineering and have 15+ years experience in instrumentation design.

2) CMI manufactures, among other things, the Intoxilyzer 5000 and the Intoxilyzer 8000. CMI sells these products throughout the United States and abroad. The Intoxilyzer 8000 is currently in use in 10 states and is approved in 18 states. The Intoxilyzer 8000 is approved and in use in 6 foreign countries.

3) CMI owns certain copyrights in the Source Code for the Intoxilyzer 8000 breath alcohol instruments afforded by Title 17 of the United States Code.

4) CMI considers the Source Code for the Intoxilyzer 8000 breath alcohol instruments proprietary information and a trade secret of CMI. Disclosure of the Source Code would cause irreparable harm to CMI.

925461v.1

5) CMI has a policy in which the Source Code can be obtained for controlled viewing by way of a Protective Order and Non-Disclosure Agreement that have been written to protect our valuable property, namely the Source Code. The process to obtain the Source Code for controlled viewing is outlined in a separate document.

6) The Intoxilyzer 8000 software that is in each of the Intoxilyzer 8000's is an executable file that is stored in a flash ram which is similar to an executable computer program that would run on a personal computer(PC). The software stored in the flash can be read from the flash chip using the proper equipment and stored as a file on a PC. This file on a PC is sometimes referred to as machine code. The software cannot be run on a PC but rather needs to be run on the target(device) for which it was written. The file read from the flash chip can be viewed in hexadecimal format and is not easily readable by a person.

7) Source Code is more easily read by a person who has the appropriate training and experience to read it. It is similar to a foreign language. The Source Code for the Intoxilyzer 8000 spans many files and is written largely in the C++ computer language. The Source Code, once written, is compiled with a C++ compiler and linked with a compatible linker. The compiler compiles the Source Code into object files and the linker then

925461v.1

arranges the objects to be in their proper places. The output of the linker is the file that is programmed into the flash chip and can be viewed in hexadecimal format.

8) The Source Code for the Intoxilyzer 8000 has been coded to perform all of the functions for conducting breath tests. These functions, functions for data entry, and functions for optional accessories have been and are provided for in software as they are created. Once this original Source Code has been generated for these functions, it is available for any customer that would like to incorporate and use it. Configurations to this code are sometimes necessary to meet a customer's needs. Items such as questions asked of the operator at the beginning of a test, print format, and test sequence order are examples of items that are configured differently for different customers.

9) The Source Code used to translate the signals from the detector to an ethanol reading is the same Source Code that was in the instrument that was found to meet all applicable requirements of the National Highway Traffic Safety Administration Model Specifications for evidential breath testers, FR 58 48705 on November 26, 2001.

10) When a customer asks for changes in the functionality of their instruments, we assess the new desired function, compare that to the existing functionality, and will configure the instrument to perform in the new desired fashion. Some

925461v.1

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

functional changes do require changes to the software in the instruments. When this is necessary, updates and configuration changes are made to the instrument Source Code, the code is compiled and linked, and subsequently uploaded into the instrument flash chip. The flash chip is analogous to a computer hard drive. The method for putting the software in the instrument can be a call to the instrument with our proprietary communications software, a direct cable connection to our proprietary communications software, or physically changing the flash chip. Once the customer is satisfied with the new configuration, one of the previously mentioned methods will be used to transfer the new program to the instruments. Upon request, a customer can obtain a list of the major changes in the functionality of the instrument.

11) The flash chip in the Intoxilyzer 8000 contains the program used to operate the instrument. If a customer chooses to store data electronically for tests run on the instrument, that data is stored in a separate data flash in the instrument.

12) The Source Code used to generate the program for the Intoxilyzer instruments is not simple information but rather extremely valuable property owned by CMI, Inc. The Source Code is a culmination of dozens of years of engineering time spent in its creation. CMI holds the Source Code as one of its most valuable assets.

925461v.1

13) The Source Code contains pass codes and communication protocols for instrument operation. The Florida Department of Law Enforcement has asked CMI to put in place pass codes to prevent access to menu functions on the instrument that can and are used by technicians to calibrate, test, and configure the instruments to follow state needs. Were these pass codes widely known, anyone knowing the pass code could potentially change instrument configuration, turn off printing, recalibrate or wipe the calibration from an instrument, destroy subject test data stored on the instrument, or otherwise disable the instrument so that it does not function or does not function to state requirements. To insure that these probabilities do not happen, the state would need to ask CMI to change the pass code after every controlled viewing of the software. This exercise would cost the state thousands of dollars and months of downtime for each instance of controlled viewing of the Source Code. For this reason, pass codes are redacted from the Source Code made available for controlled viewing.

14) The Intoxilyzer 8000 is capable of communicating with a personal computer via phone line and direct connect cable. The communication protocol and pass keys used in these communications are proprietary protocols of CMI. With the Source Code, a person would have access to these proprietary protocols. Anyone knowing these protocols and pass keys could

925461v.1

This fax was received by GFI FAXmaker fax server. For more information, visit: <http://www.gfi.com>

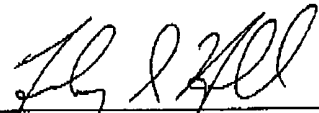
potentially change instrument configuration, turn off printing, recalibrate or wipe the calibration from an instrument, destroy subject test data stored on the instrument, or otherwise disable the instrument so that it does not function or does not function to state requirements. Further, with the appropriate skill set and development tools which are available on the market for purchase, a person with a digital version of the Source Code could change the functionality of the instrument in a subtle or obvious way to do whatever they please. These changes could be made to the instrument with a phone call and without needing to be near the instrument. These protocols are used for all Intoxilyzer 8000's utilizing this communications method around the world. For this reason, pass codes and communication protocols are redacted from the Source Code made available for controlled viewing.

15) I swear or affirm that all of the above statements are true and correct.

[Remainder of page left intentionally blank.]

FURTHER, Affiant sayeth not.

This 14th day of March, 2008.

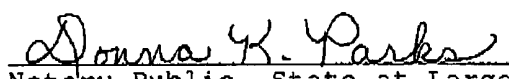


TOBY HALL
President,
CMI, Inc.

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

Subscribed and sworn to before me by Toby Hall, President of CMI, Inc., on this 14th day of March, 2008.



Notary Public, State at Large

Donna K. Parks
Print Name

My Commission Expires:
5-20-10