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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTERWOVEN, INC.,
Plaintiff,
v.
VERTICAL COMPUTER SYSTEMS, INC.,
Defendant.

Case No. 10-cv-04645-RS (JCS)

DISCOVERY ORDER

Re: Dkt. No. 228

On December 19, 2013, the Court held a hearing regarding the joint discovery letter filed on December 12, 2013. *See* Dkt. No. 228. For the reasons stated below and on the record at the hearing, the Court denies Defendant’s request to re-open discovery to take the deposition of non-party Frank Livaudais (“Livaudais”).

Defendant knew or should have known of Livaudais’ existence since at least October 2011 when Plaintiff produced documents containing Livaudais’ name. Indeed, Defendant used such documents in a Rule 30(b)(6) deposition in November 2012. Additionally, Defendant disclosed—and therefore indicated its knowledge of—the significance of Livaudais in its June 2013 opposition to Plaintiff’s motion for summary judgment. Despite this knowledge, Defendant waited until nearly a year after the close of discovery to move for the deposition of Livaudais. This indicates a lack of diligence. Moreover, the information sought by Defendant was directly available from the inventor, with whom Defendant’s counsel has had a relationship since 2007.

The Court notes that Defendant improperly ignored the clear orders of this Court and the District Court by making a motion before the District Court Judge regarding this discovery dispute. The Court also notes that the proper procedure for raising any objections to Plaintiff’s alleged failure to properly disclose Livaudais under the Federal Rules of Civil Procedure or the

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Local Rules would have been to bring a timely motion before this Court.

Accordingly, the Court DENIES Defendant's request to re-open discovery to take the deposition of Livaudais.

IT IS SO ORDERED.

Dated: December 20, 2013



JOSEPH C. SPERO
United States Magistrate Judge