

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01312-ZLW-MJW

ANDREW J. BOREL,

Plaintiff(s),

v.

TREK BICYCLE CORPORATION,

Defendant(s).

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Plaintiff's Motion to Compel Second Deposition Pursuant to F.R.C.P. 30(b)(6)[sic] (docket no. 30) is GRANTED finding good cause shown. Plaintiff may take a second Rule 30(b)(6) deposition of Defendant for seven (7) hours. This second deposition shall be limited to inquiry into those areas listed below in paragraphs a through d, inclusive.

It is FURTHER ORDERED that Plaintiff's Motion to Modify the Scheduling Order (docket no. 29) is GRANTED finding good cause shown. The deadline to complete discovery is extended to June 15, 2010, for the limited purpose of taking a second Rule 30(b)(6) deposition only.

It is FURTHER ORDERED that Defendant Trek Bicycle Corporation's Motion for Protective Order Pursuant to F.R.C.P. [sic] 26(c)(1)(A) (docket no. 39) is DENIED.

Plaintiff took the deposition of Defendant's Rule 30(b)(6) witness John Platt on April 1, 2010. Plaintiff served upon Defendant his Notice of Deposition pursuant to Rule 30(b)(6) on March 23, 2010. During this deposition, the designated representative, Mr. Platt, testified:

- a. That Plaintiff was not provided with a complete set of design drawings for the bicycle in question, 2001 Klein Adept Pro frame, and he believed that all testing results/documentation was not provided;
- b. That it was his understanding that a prototype of the 2001 Klein Adept Pro frame had been constructed, and he had test ridden and subsequently authored a report for the engineering department; however he was unable to locate a copy of this report or any other report that related to the

prototype of the 2001 Klein Adept Pro frame;

- c. That although laboratory testing in research and development is typically performed on prototypes, he was unable to locate any testing results or reports pertaining to the prototype 2001 Klein Adept Pro frame;
- d. That the 2001 Klein Adept Pro frame was manufactured at the Klein plant in the state of Washington. He further testified that the plant was closed in 2002 and during the transition to the plant in the state of Wisconsin, most of the documentation as well as electronic documentation maintained on computers concerning the 2001 Klein Adept Pro frame were either lost or destroyed. He was also unable to testify as to what documents relating to the 2001 Klein Adept Pro frame may have may have existed, what information the documents might have contained, or when and how they were lost and/or destroyed.

That based upon this above information, Plaintiff has demonstrated “good cause” to allow an extension to complete discovery and to take a second deposition of the Defendant’s Rule 30(b)(6) witness.

Date: May 26, 2010
