

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IMRA AMERICA, INC.,

Plaintiff,

vs.

IPG PHOTONICS CORP.,

Defendant.

CIVIL ACTION NO. 06-CV-15139

DISTRICT JUDGE ARTHUR J. TARNOW

MAGISTRATE JUDGE MONA K. MAJZOUB

**ORDER DENYING PLAINTIFF'S MOTION TO COMPEL CONTINUED
DEPOSITIONS OF IPG DEPONENTS NIKOLAI PLATONOV AND VALENTIN
GAPONTSEV, AND IPG'S 30(b)(6) DESIGNEE(S) ON TECHNICAL MATTERS
(DOCKET NO. 110)**

This matter comes before the Court on Plaintiff's Motion to Compel Continued Depositions of IPG Deponents Nikolai Platonov and Valentin Gapontsev, and IPG's 30(b)(6) Designee(s) on Technical Matters. (Docket no. 110). The motion is fully briefed. This matter has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 113). The Court heard oral argument on the motion on June 21, 2010. This matter is now ready for ruling.

Plaintiff moves for an Order compelling Defendant to produce Nikolai Platonov and Valentin Gapontsev for continued depositions, and produce Defendant's 30(b)(6) designee(s) on technical matters for continued deposition. Plaintiff claims that it needs to continue the depositions of Platonov and Gapontsev because they are key witnesses for new defenses of which Defendant was previously aware but did not adopt until February 10, 2010 when it submitted its final report of its expert, Dr. Philip H. Bucksbaum. (Docket no. 110). Plaintiff asserts that they were not previously aware of the facts and bases for these new defenses. (Docket no. 120). Plaintiff also argues that

Defendant has asserted an eleventh hour derivation defense which Plaintiff must now explore. (Docket no. 120). They further state that they need to continue the deposition of Defendant's Rule 30(b)(6) designee(s) on technical matters because of these new defenses, and because Defendant's original designee (Platonov) was not properly prepared for his 30(b)(6) deposition.

Defendant argues in response that its defenses were timely disclosed years ago in response to Plaintiff's discovery requests. (Docket no. 116). Defendant further argues that Plaintiff has had sufficient opportunity to explore these issues throughout discovery and in the two additional depositions they were granted in a previous motion to compel.

Based on its consideration of the parties' submissions and arguments presented during the June 21, 2010 hearing, the Court finds that the Defendant has presented a tenable argument in opposition to the motion. The record shows that the "new defenses" Defendant is accused of adopting for the first time in February 2010 were in fact disclosed years ago in response to Plaintiff's discovery requests. Plaintiff has had ample opportunity to explore the facts surrounding these defenses during the course of discovery. Furthermore, while Plaintiff now complains that Nikolai Platonov was not adequately prepared for his 30(b)(6) deposition, the Court has not been able to identify a single reference made by Plaintiff at any time during the more than ten hour deposition of Platonov where Plaintiff objected to his lack of preparedness. Instead, Plaintiff waited nearly six weeks after Platonov's deposition before it raised this issue in the instant motion, only one week before the close of discovery. The Court is not persuaded that Plaintiff has been subjected to prejudicial "eleventh hour" disclosures or that continued depositions are warranted. Accordingly, Plaintiff's motion will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Continued Depositions

of IPG's Deponents Nikolai Platonov and Valentin Gapontsev, and IPG's 30(b)(6) Designee(s) on Technical Matters (docket no. 110) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: August 2, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: August 2, 2010

s/ Lisa C. Bartlett
Case Manager