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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JACOBSEN,  
Plaintiff,

No. C 06-1905 JSW (JL)

v.

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION FOR  
DISCOVERY PLAN (Docket # 305)**

MATTHEW KATZER, et al.,  
Defendants.

**Introduction**

All discovery in this case has been referred by the district court (Hon. Jeffrey S. White) pursuant to 28 U.S.C. §636(b). Plaintiff filed a motion for discovery plan and the Defendants filed their response, to which Plaintiff filed a Reply. The Court reviewed the parties' pleadings, notes that all counsel are located outside the San Francisco Bay Area - Plaintiff's counsel in Bethesda, Maryland, Defendants' counsel in Portland, Oregon, and that the matter is also appropriate for decision without oral argument. Accordingly, the Court took the motion under submission without a hearing as provided by Civil Local Rule 7-1(b). After carefully reviewing the moving and opposing papers and the record in this case, including the decision by the Federal Circuit entered August 13, 2008, the Court hereby denies the motion without prejudice to renewal later in the case, should it become demonstrably necessary to expand discovery outside the bounds of the Federal Rules of Civil Procedure and the Civil Local Rules for the Northern District of California.

**United States District Court**  
For the Northern District of California

1 The Court finds that Plaintiff fails to show that this case requires 100 hours of  
2 depositions and 35 interrogatories per party, or expansion of the scope of discovery to  
3 include findings on credibility or a nebulous category of “any other issues that the parties  
4 may inquire into under the circumstances of the case.”

### 5 **Background**

6 Plaintiff is maintaining an action against Defendants for copyright infringement and  
7 violation of the terms of a license for open source software developed for the model train  
8 industry and hobbyists. Plaintiff contends that Defendants copied certain materials from  
9 Plaintiff’s website and incorporated them into their commercial products in violation of the  
10 terms of the software’s license.

11 The district court entered a discovery plan on May 14, 2009 [Dkt.# 302] after holding  
12 a third Case Management Conference. The parties commenced discovery on May 14,  
13 2009. The close of non-expert discovery is October 5, 2009. At this time, no depositions  
14 have been taken and Plaintiff has propounded fourteen (14) interrogatories and  
15 twenty-eight (28) requests for production to Defendants. Contrary to Plaintiff’s contention,  
16 this case does not involve any patent issues, as all of Plaintiff’s patent claims were  
17 dismissed without leave to amend on January 5, 2009 by the district court [Dkt.# 284].

### 18 **Analysis**

19 Plaintiff’s Motion for a Discovery Plan is actually three motions: (1) a motion for  
20 leave to take over 100 additional depositions; (2) a motion for leave to propound ten (10)  
21 additional interrogatories; and (3) a motion to expand the scope of discovery.

#### 22 **1. Additional Depositions**

23 At this time, Plaintiff has yet to conduct any depositions. Plaintiff seeks to replace the  
24 limit in Fed. R. Civ. P. 30 of ten (10) depositions limited to one day of seven (7) hours each  
25 with “100 hours of depositions” per party.

26 Ostensibly this would allow Plaintiff to conduct over 100 mini-depositions of the  
27 legion of 60 developers and 50 manufacturers that Plaintiff feels he needs to depose. See  
28 Motion for Discovery Plan at 3 (stating that testimony may be needed from 60 developers

1 and 50 manufacturers and that these depositions will last less than 30 minutes each).  
2 Plaintiff's counsel has indicated to defense counsel that she intends to depose all of the  
3 approximately 60 developers who assigned their rights to Plaintiff.

4 Plaintiff's motion is unaccompanied by a declaration and fails to make any showing  
5 why extra depositions are necessary as required by the Federal Rules. See *Archer Daniels*  
6 *Midland Co. v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. 578, 586 (D. Minn. 1999)  
7 (stating that parties must make a "particularized showing" why extra depositions are  
8 necessary and stating that "at a minimum, [Defendant] should appropriately exhaust its  
9 current quota of depositions, in order to make an informed request for an opportunity to  
10 depose more witnesses..."). See also *Robertson v. Bair*, 242 F.R.D. 130, 138 (D.D.C.  
11 2007) (noting that the Court begins with the presumption that the limits on depositions in  
12 the Federal Rules were "carefully chosen and that extensions of that limit should be the  
13 exception, not the rule.").

14 Additionally, Plaintiff fails to demonstrate why the benefit of taking over 100  
15 depositions outweighs the burden and expense of this undertaking given the needs of the  
16 case, the amount in controversy, the parties' resources, and the importance of the  
17 additional depositions in resolving the issues as required by the Federal Rules. Fed. R. Civ.  
18 P. 26(b)(2)(C)(iii); see also Fed. R. Civ. P. 26(b)(1) noting that all discovery is subject to the  
19 limitations in Fed. R. Civ. P. 26(b)(2)(C), accord, Adv. Comm. Notes on 1993 Amendments  
20 to FRCP 30(a)(2) stating that more than 10 depositions per side should be allowed only  
21 when consistent with the "benefits vs. burdens" approach of Rule 26(b)(2).

22 The extreme number of depositions requested by Plaintiff would be tremendously  
23 burdensome on Defendants, are vastly disproportionate to the amount in controversy in this  
24 case and are of limited relevance. Defendants' gross sales of the software which is the  
25 subject of Plaintiff's copyright claim in this lawsuit are approximately \$1,200.00. Decl. of  
26 Matthew A. Katzer [Dkt.# 261] ¶ 23.

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**2. Interrogatories**

Plaintiff seeks ten (10) additional interrogatories. Plaintiff has yet to ask his allotted 25 interrogatories to Defendants and has presently only propounded 14 interrogatories to Defendants. As with Plaintiff's request for additional depositions, Plaintiff must make a particularized showing of why these additional interrogatories are necessary when he seeks to serve more interrogatories than contemplated by the Federal Rules. *Archer Daniels Midland Co. v. Aon Risk Services, Inc. of Minn.*, 187 F.R.D. at 586. Again, Plaintiff has failed to make any showing why it is necessary to deviate from the Federal Rules.

Additionally, Plaintiff has also failed to comply with Civ. L.R. 33-3, to attach a "memorandum which sets forth each proposed additional interrogatory and explains in detail why it is necessary to propound the additional questions" to his motion.

**3. Motion to Expand the Scope of Discovery**

Plaintiff's motion also seeks to expand the scope of discovery to "any issues relating to credibility" and "any other issues that the parties may inquire into under the circumstances of the case." Motion for a Discovery Plan at 4 and Proposed Order. Neither parties' "credibility" is related to any claim, defense or subject matter of this copyright and cyber-squatting lawsuit and is therefore irrelevant to this litigation and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Plaintiff's second clause (cited above) is so vague and broad that it would encompass virtually anything and would therefore also lead to discovery requests that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

**Conclusion and Order**

For all the above reasons, Plaintiff's motion is denied without prejudice.

IT IS SO ORDERED.

DATED: June 12, 2009

  
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JAMES LARSON  
Chief Magistrate Judge

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