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UNITED STATES DISTRICT COURT
Northern District of California

NUANCE COMMUNICATIONS, INC.,

Plaintiff,

v.

ABBY SOFTWARE HOUSE, et al.

Defendants.

No. C 08-2912 JSW (MEJ)

DISCOVERY ORDER RE DKT. #180

On February 23, 2010, the Court held a telephonic conference regarding the discovery disputes presented in the parties' joint discovery dispute letters, filed January 28, 2010 (Dkt. #171), and February 2, 2010 (Dkt. #172). Pursuant to discussions at February 23 hearing, the Court ordered Defendant ABBYY USA Software House, Inc. ("ABBYY USA") to submit a formal written request to the Russian entity ABBYY Production, requesting that it produce the disputed source code to ABBYY USA under the terms of the licensing agreement between the two entities. (Dkt. #179.) The parties are now before the Court because they are unable to reach an agreement regarding the language of the letter, and each party has filed a proposed letter for the Court's consideration. (Dkt. #180.)

Plaintiff Nuance Communications, Inc. ("Nuance") argues that ABBYY USA's version of the request, where it states that "ABBYY USA has informed Nuance and the Court that ABBYY USA lacks the ability to obtain the Source Code through the Software License Agreement," makes the request pointless, arguing that ABBYY USA baldly states that it neither wants the source code nor believes it has the rights to it. (Dkt. #180, Ex. B.) Nuance contends that this is not a good faith effort to request the source code under the terms of the licensing agreement between ABBYY USA and ABBYY Production.

1 In response, ABBYY USA argues that it “simply wishes to convey the nature of the dispute
2 in which ABBYY USA does not believe it has a right to the source code and Nuance believes
3 ABBYY USA does under the terms of the license agreement.” (Dkt. #180.) ABBYY USA contends
4 that its draft incorporates Nuance’s position in full and makes clear that it is Nuance’s position.

5 Upon review of the parties’ arguments, the Court agrees with Nuance. Specifically, if the
6 letter includes the statement that ABBYY USA “lacks the ability to obtain the Source Code through
7 the Software License Agreement” this defeats any good faith request for the source code under the
8 terms of the license agreement. This is especially true as phrased in ABBYY USA’s letter, where it
9 states that it is unable to obtain the source code, and then states that its adversary argues that it can.
10 Such language is unnecessary. Accordingly, the Court approves Nuance’s version of the letter.

11 **IT IS SO ORDERED.**

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13 Dated: February 23, 2010

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16 Maria-Elena James
17 Chief United States Magistrate Judge
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