

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

POSITIVE TECHNOLOGIES, INC.,
Plaintiff,

No. C 11-2226 SI

ORDER OF REFERRAL

v.

SONY ELECTRONICS, INC., DELL, INC.,
ASUS COMPUTER INTERNATIONAL,
AMAZON.COM, INC., BARNES & NOBLE,
INC., AND KOBO, INC.,
Defendants.

_____ /

This matter concerns a discovery dispute in a patent infringement suit brought by plaintiff Positive Technologies, Inc. (“Positive”) against several defendants, including Kobo, Inc. (“Kobo”). Positive accuses Kobo of infringing three of its patents through the manufacture of two devices, the Kobo eReader and the Kobo Wireless eReader. According to Patent Local Rule 3-4(a), in any patent infringement suit, the party accused of such infringement must produce “[s]ource code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality.” Patent L.R. 3-4(a).


In response to its Rule 3-4(a) requirements, Kobo has produced only two publically available user manuals related to the two devices at issue. Kobo maintains that it does not possess any additional documents that would be covered by Patent L.R. 3-4(a). Positive claims that it is inconceivable that Kobo, which admits that it develops the graphical user interface (“GUI”) and software for the eReading applications that run on the devices, does not possess additional materials covered by the Local Rule.

1 For example, Positive believes that Kobo must have the source code for the GUI and any documentation
2 related to the ways in which Kobo's eReading software communicates with the hardware of the two
3 Kobo devices. The Court agrees and joins in questioning how Kobo, as the developer of the GUI and
4 the eReading software, would only have two user manuals responsive to its L. R. 3-4(a) obligations.

5 The Court finds that this issue is appropriate for resolution by a Magistrate Judge. Accordingly,
6 the Court hereby REFERS this discovery dispute, Docket No. 274, to a Magistrate Judge for
7 determination in the first instance.

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9 **IT IS SO ORDERED.**

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11 Dated: April 26, 2012



SUSAN ILLSTON
United States District Judge